

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 466/2016

Date of Institution ... 02.05.2016

Date of Decision ... 29.04.2019

Said Badshah (Ex-Tehsil Office Kanungo Mardan) R/o Village Tehsil and District Mardan. ... (Appellant)

VERSUS

The Secretary, Revenue Department, Khyber Pakhtunkhwa, Peshawar and two others. ... (Respondents)

-----  
MR. MUHAMMAD ADAM KHAN,  
Advocate

--- For appellant.

MR. ZIAULLAH  
Deputy District Attorney

--- For respondents.

MR. AHMAD HASSAN,  
MR. HAMID FAROOQ DURRANI

--- MEMBER(Executive)  
--- CHAIRMAN

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS

2. Learned counsel for the appellant argued that on the allegations of non-production of original mutation, disciplinary proceedings were conducted against the appellant and thereafter major penalty of reduction of two increments in the time scale of pay was awarded to him vide impugned order dated 31.08.2015. He preferred departmental appeal on 28.09.2015, which was dismissed vide order dated 21.03.2016, hence, the present service appeal. He further argued that scrutiny of record revealed that relevant Charsala/Jamabandi was prepared by Muhammad Ghulam, Patwari. Despite repeated requests by the appellant, Habib-

Ur-Rehman, Patwari failed to return the mutation. Neither statements of witnesses, were recorded nor opportunity of cross examination was provided to the appellant. No show cause notice was served on the appellant before imposing the penalty referred to above. As such Sub Rule (I)(b) of Rule-14 of E&D Rules 2011 was violated, which alone is sufficient ground to render the entire proceedings as illegal/unlawful. On reaching the age of superannuation, he retired on 13.09.2015. Penalty imposed on him at the verge of retirement was going cause recurring financial loss to him.

3. On the other hand learned Deputy District Attorney argued that he failed to produce original mutation no. 7462 attested on 27.01.2009 on Mauza Hoti before the Anti Corruption Establishment, Mardan despite repeated directions. Being custodian of revenue record, it was his basic responsibility to ensure its safety. He was required to report the matter to the high ups regarding misplacement of mutation referred to above but failed in discharging his duty thus rendered himself liable to disciplinary action. Penalty was awarded after fulfillment of all codal formalities.

### CONCLUSION

4. The background of the present service appeal is that the appellant while serving as Kanungo Tehsil office, Mardan handed over mutation (Fard Sarkar) of Moza Hoti to the concerned Patwari for preparation of Charsala for the year 2012-13. The Patwari concerned after doing the needful returned the above mutation to the appellant. Upon scrutiny, it revealed that mutation no. 7462 was missing from the record. The said mutation was required by the Anti Corruption Establishment,

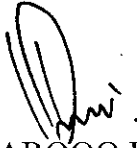
Mardan but the appellant despite repeated directions from the high-ups failed to produce it. On receipt of complaint the Deputy Commission, Mardan ordered enquiry and after winding up of the process major punishment of reduction of two increments in time scale of pay was awarded to him vide impugned order dated 31.08.2015.

5. We have gone through the enquiry report and observed that though statements of the concerned were recorded but opportunity of cross examination was not afforded to the appellant. Another serious illegality was non-issuance of show cause notice before imposition of penalty. It not only goes against Sub-Rule (I)(b) of Rule 14 of E&D Rules 2011 but also the consistent view of the superior courts on this proposition. That show cause notice should invariably be served on the accused. This alone was a valid ground to vitiate the entire proceedings. It has also not been denied by the respondents that the appellant never forwarded mutation to the Patwari Halqa for preparation of Charsala but he failed to return the same. The appellant failed to report the matter in time to the high ups for taking remedial steps. Silence on the part of the appellant amounts to negligence/misconduct.

6. Furthermore, on reaching the age of superannuation, the appellant stood retired from government service on 13.09.2015, whereas impugned order was passed on 31.08.2015. The respondents were well aware of his date of retirement and bound to take this important aspect of the case into consideration before passing the impugned order. In normal circumstances such cases are sent back to the respondents to conduct de-novo enquiry but as the appellant has already retired

from service, therefore, de-novo enquiry cannot be conducted against him at this stage. Furthermore, penalty awarded to him appeared to be harsh and ample justification is available for modification.

7. As a sequel to above, the appeal is partially accepted and penalty of reduction of two increments in the time scale of pay is converted/modified into minor penalty of censure. Parties are left to bear their own costs. File be consigned to the record room.



(HAMID FAROOQ DURRANI)  
CHAIRMAN



(AHMAD HASSAN)  
MEMBER

ANNOUNCED  
29.04.2019

Order

29.04.2019 Appellant with counsel present. Mr. Ziaullah, Deputy District Attorney alongwith Mr. Ali Akbar, ADK for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the appeal is partially accepted and penalty of reduction of two increments in the time scale of pay is converted/modified into minor penalty of censure. Parties are left to bear their own cost. File be consigned to the record room.

Announced:  
29.04.2019



(HAMID FAROOQ DURRANI)  
Chairman



(Ahmad Hassan)  
Member

06.11.2018

Due to retirement of Hon'able Chairman, the Tribunal is defunct. Therefore, the case is adjourned for the same on 26.12.2018 before D.B.

  
Reader

26.12.2018

Appellant in person and Mr. Ziaullah, DDA alongwith Ali Akbar, ADK for the respondents present.

Appellant requests for adjournment due to non-availability of learned counsel. Adjourned to 27.02.2019 for arguments before the D.B.

  
Member

  
Chairman

27.02.2019

Appellant in person.


The appellant seeks adjournment due to indisposition of his learned counsel. Adjourned to 29.04.2019 before D.B.

  
Member

  
Chairman

23.05.2018

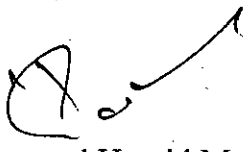
Appellant in person and Mr. Ziaullah, DDA for respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 01.08.2018 before D.B.

  
(Muhammad Amin Kundi)  
Member

01.08.2018


Appellant absent. Learned counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Ali Akbar, AADK for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 24.09.2018 before D.B.

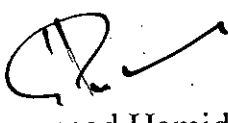
  
(Ahmad Hassan)  
Member (E)

  
(Muhammad Hamid Mughal)  
Member (J)

24.09.2018

Appellant in person and Mr, Muhammad Jan learned Deputy District Attorney present. Appellant seeks adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 06.11.2018 before D.B.

  
(Hussain Shah)  
Member

  
(Muhammad Hamid Mughal)  
Member

2/8/2017

Appellant in person and Mr. ALI Akbar, ADK alongwith Mr. Zaiullah, Deputy District Attorney for the respondents present. Appellant seeks adjournments. To come up for argument on ~~14/11/~~2017 before DB.

(GUL ZEB KHAN)  
MEMBER

(MUHAMMAD HAMID MUGHAL)  
MEMBER

14.11.2017

Appellant in person and Kabeerullah Khattak, Addl. AG for the respondents present. Seeks adjournment as learned counsel for the appellant is ill. Granted. To come up for arguments before the D.B on 23.01.2018.

MA  
Member

Chairman

23.01.2018

Appellant in person present. Mr. Muhammad Jan, DDA for the respondents present. Counsel for the appellant is not in attendance due to general strike of the bar. To come up for arguments on 26.03.2018 before D.B.

Member

Chairman

26.03.2018

Junior to counsel for the appellant and Mr. Riaz Paindakheil, learned Assistant Advocate General for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not available. Adjourn. To come up for arguments on 23.05.2018 before D.B

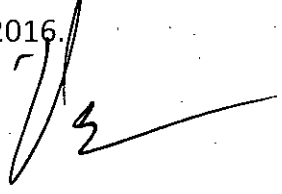
(Muhammad Amin Kundi)  
MEMBER

(Muhammad Hamid Mughal)  
MEMBER



17.08.2016

Appellant in person and Mr. Aziz ur Rehman, District Kanungo alongwith Addl. AG for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing on 7.12.2016.

  
Member

07.12.2016


Appellant in person and Mr. Muhammad Ibrar, Assistant Secretary alongwith Assistant AG for the respondents present. Appellant submitted rejoinder which is placed on file. To come up for arguments on 11.4.17 before D.B.


  
(ASHFAQUE TAJ)  
MEMBER

11.04.2017

Appellant with counsel present. Mr. Muhammad Ibrar, Assistant Secretary alongwith Mr. Ziaullah, Government Pleader for respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 02.08.2017 before D.B.

  
(Ahmad Hassan)  
Member


  
(Muhammad Amin Khan Kundi)  
Member



10.05.2016

Counsel for the appellant present. The learned counsel for the appellant argued that the appellant was proceeded against for bad reputation and failure to produce the mutation No. 7462 attested on 27.01.2009 to the Anti Corruption Establishment. Charge sheet and statement of allegations was served upon the appellant but he was not called for any inquiry which was conducted at the back of the appellant. Impugned order dated 31.08.2015 was imposed on the appellant wherein he was reduced by two stages in the scale of pay which was erroneously recorded as reduction of two increments in the time scale. That the appellant was retired on superannuation on 13.09.2015. He further argued that the appellant was not given opportunity of defense and fair trial nor he was heard in person hence principle of natural justice were not fulfilled while proceeding against the appellant. He prayed that the instant appeal may be admitted for regular hearing. He further contended that last date of submission of the service appeal was 29.4.2016 but the same could not be filed on account of weekend brake of Saturday and Sunday hence the same was filed on 02.05.2016 and application for condonation to this effect has been filed.

After hearing learned counsel for the appellant this appeal is admitted for regular hearing. Security and process fee be deposited within 10 days, where-after notices be issued to the respondents for written reply/comments for 22.7.2016 before S.B.

  
Member

22.07.2016

Appellant in person and Additional AG for respondents present. Learned Additional AG requested for adjournment due to non-appearance of representative of the department. Request accepted. Last opportunity granted for submission of written reply/comments for 17.08.2016 before S.B.



  
MEMBER

Appellant Deposited  
Security & Process Fee

Form- A  
FORM OF ORDER SHEET

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

Case No. 466/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	2-5-2016	<p>The appeal of Mr. Said Badshah presented today by Mr. Muhammad Adam Khan 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>
2	9-5-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>10-5-16</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE THE PROVINCIAL SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No:- 466 -P/2016

Said Badshah

**Versus**

The Secretary & others

..... Appellant

..... Respondent




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Dated:- 29/04/2016  
(Friday)

Appellant  
Said Badshah

Through:-

  
Muhammad Adam Khan  
Advocate High Court,  
Peshawar.  
District Courts Mardan

**BEFORE THE PROVINCIAL SERVICE TRIBUNAL, PESHAWAR.**

**Appeal No. 466 /2016.**

**P.W.F. Provincial  
Service Tribunal  
Diary No. 442  
Dated 02-5-2016**

Said Badshah (Ex-Tehsil Office kanungo Mardan) R/o Village Tehsil & District Mardan.

(Appellant).

**VERSUS**

1. The Secretary, Revenue Department, KPK, Peshawar.
2. The Deputy Commissioner, Mardan.
3. The Commissioner, Mardan Division, Mardan.

(Respondents).

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**APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST  
THE ORDER OF THE DEPUTY COMMISSIONER/RESPONDENT No. 2, CONTAINED  
IN LETTER NO.1201-1208/DCE/HVC DATED 31-08-2015 AND THE APPEAL THERE-  
AGAINST REJECTED BY THE COMMISSIONER/ RESPONDENT NO.3 ON  
21.03.2016.**

Sir,

- Handwritten: 2/5/16*
1. That while employed as "Tehsil Office Kanungo Mardan, the Appellant was proceeded- against disciplinarily and vide Letter No.1201-1208/DCE/HVC dated 31.08.2015, awarded the punishment of reduction of two increments in the time scale of pay by the D.C/RespondentNo.1.

**(Copies are Annexure-"A to D").**

show that the entry against the relevant mutation No.7462 was not marked, on account of its non-availability in the bundle, returned by the Patwari Halqa.

6. That on enquiry from Mr.Habibur-Rahman Patwari about the non-existence of the relevant mutation, he stated in reply that he had prepared the relevant charsala/jamabandi by Muhammad Ghulam Pawari and that he will contact the said Mr.Muhammad Ghulam Patwari in this respect and will return the relevant mutation. He apprehended that the relevant mutation might have been misplaced in Patwarkhana.
7. That inspite of repeated demands Mr.Habiaur-Rahman Patwari did not return the mutation, with the plea that he is searching for the same.
8. That the relevant mutation had been misplaced from the custody of Habibur-Rahman Patwari Halqa and not from custody of Appellant.
9. That Appellant had not displayed any carelessness nor committed misconduct in the preservation of the relevant mutation, as the same was not lost from his custody and even, not from his office.
10. That no witness was examined in presence of Appellant during the enquiry proceedings. While, the testimony of the witness, who is not subjected to the test of cross-examination, has no legal force.
11. That the long standing service record of the Appellant is clean and unblemished through-out.
12. That Appellant retired from service on attaining the age of superannuation w.e.. 13.09.2015.

**(Copy attached as Annexure-“4”).**

12. That Appellant reserves the right to claim further grounds, also.

by the order dated 30th April, 1979, dismissing him from service and the order of the Commissioner, Bahawalpur dated 27th March, 1980, rejecting his appeal against the same. The appellant was charge-sheeted by the Addl. D. C. (G), acting as authorised officer for his failure to produce the Enquiry File No. 232 dated 2nd March, 1978 against Malik Mohammad Aslam, Tehsildar, Rahimyar Khan which was received by the appellant while he was HVC. He was also charged for misplacing the same. Explanation of the appellant was found unsatisfactory and Mr. Hakam Khan Baloch, Assistant Commissioner was appointed as Enquiry Officer who vide his enquiry report dated 10th March, 1979 held that the allegation of missing the said file has been proved against the appellant but he recommended for the lenient view. In view of the defence evidence, the appellant had good reputation. He was served with a show-cause notice dated 19th March, 1979 for major penalty. After taking into consideration his reply to the show-cause notice, the D. C. vide his order dated 30th April, 1979, dismissed him from service by an *ex parte* order. His appeal was also dismissed by Commissioner, Bahawalpur vide his order dated 27th March, 1979. In this appeal the learned counsel contended that the appellant was not heard by the D. C. nor he was served with any notice for hearing. The appellant, in this behalf, placed reliance upon Rule 8 of Punjab Civil Servants (E & D) Rules, 1975 which implicitly lays down that the authority shall, after affording the accused an opportunity of being heard in person. The learned counsel argued on the basis of the record that the Enquiry Officer sent the file to the Authorized Officer as laid down under Rule 7 of the E & D Rules, 1975 and obtained the orders directly which were clearly illegal. According to the learned counsel there has been a violation of the express requirements of the rule, therefore, as laid down *In re: Collector, Sahiwal v. M. Akhtar* (1) and *In re: Allah Ditta v. M. B. R. (Cons.)* (2). The following observations of the Court were implicitly relied upon:

"The view taken by the Courts in Pakistan is contrary to the view taken by the Megarry, J. The Courts have been distinguished between the violation of the principle of *audi alteram partem* and violation of any directory law providing for hearing on one hand and contravention of a mandatory provision of law providing for such hearing. The defect in the first category was held cured by a hearing given at later stages of the proceedings while it was found to be incurable if the matter fell in the second category."

On the strength of above it is contended that the order was void *ab initio* and the defect could not be cured even in hearing of the case. The Department has nothing to controvert the above contention of the appellant. In the circumstances, we are constrained to hold that the order passed by the departmental authority is illegal and void *ab initio*. The appeal is accepted and the impugned order is set aside. The case is remanded to the D.C. Rahimyar Khan for *de novo* proceedings.

Appeal accepted.

(1) 1971 S C M R 681

(2) P L D 1976 Lah. 897

1981 P L C (C. S.) 101

[Service Tribunal Punjab]

Present: M. Saleem Chaudhry, Chairman and one Member

NOOR MUHAMMAD MALIK

versus

SECRETARY TO GOVERNMENT, PUNJAB,  
COMMUNICATIONS & WORKS DEPARTMENT

Appeal No. 179/595 of 1980, decided on 21st September, 1980.

- (a) Punjab Civil Servants (Efficiency and Discipline) Rules, 1975—  
— R. 8—Opportunity—Personal hearing—Mandatory before imposition of penalty—Executive Engineer (Grade 18) served with show-cause notice—Administrative Secretary without affording personal hearing after receipt of reply to show-cause notice recommending reversion as Assistant Engineer (Grade 17) and M. L. A./Governor approving same—Personal hearing afforded by Secretary after obtaining approval of Governor—Matter not placed again before Governor and penalty order issued—Defence plea raised during personal hearing, held, not considered by competent authority—Penalty order, in circumstances, held, violative of r. 8 and not sustainable. [p. 163]A
- (b) Punjab Civil Servants (Efficiency and Discipline) Rules, 1975—  
— R. 6 (3)—Show-cause notice—Nature of penalty proposed to be imposed—Not mentioned—Notice indicating any of the penalties given in r. 4—Quantum of proposed punishment, held, not intimated—Accused, in circumstances, held, materially prejudiced in his defence—Consequential penalty order set aside. [p. 163]B

ORDER

M. SALEEM CHAUDHRY (CHAIRMAN).—In this case the appellant is aggrieved by the order of Governor/MLA dated 5th December, 1979 reverting him from the post of XEN to the rank of Assistant Engineer on the charge of gross irregularities committed in the construction of new block of Fatima Jinnah Medical College Hostel and Lecture Theatres. In this case the appellant was served with a show-cause notice, dated 12th February, 1979 on the following 13 charges:—

- (1) The concrete pavement of the approach road is not only uneven and poorly finished but also far below the specification.
- (2) The quality of plaster work both internal and external as per test report is 1:5.64 and 1:3.80 against the specification of 1:5 and 1:3 respectively.
- (3) The mosaic sinks provided in the pantry are of poor quality with the result that one sink has already developed a crack even before being put to use.
- (4) The joinery work in door shutters etc. is of low quality.
- (5) The panel door fixtures and those of steelite windows are of sub-standard quality, inferior material and improper fabrication.

- (6) The concrete grill (Jali) is crudely finished and improperly fixed.
- (7) Most of the towel rails in the toilets have become rusty and mirrors faded even before use.
- (8) E. i. Switch boxes are substandard.
- (9) By way of unnecessary splitting of works, seven more contractors were entered into for completion of the finishing work. The works were splitted to bring the same within your powers in violation of rules which has resulted in poor quality due to more number of lower class contractors.
- (10) The non-scheduled items namely :—
- Wood work in Almirahs/Wardrobas.
  - PVC water pipe heavy duty for wash hand basins and sinks.
  - Waste coupling heavy duty for wash hand basins and sinks.
  - Cement concrete sinks finished with mosaic topping finished with white chips ;

have been paid at exorbitant rates.

- (11) Requisite percentage of check measurements of entries made by Sub Engineer in the M. Bs. were not carried out as required under the rules.
- (12) Construction of approach road, boundry wall, additional etc. although allotted to M/s. Taj-ud-Din & Co., were actually executed by M/s. Inter-home Const. Co., through private arrangements without the approval of the Department as per Rules.
- (13) Stair railing is not properly acrewed and few steps are somewhat uneven.

Paragraph 2 of the aforesaid Notice read as follows :—

"In view of the carelessness and gross negligence on your part as mentioned above, you have been found to be inefficient in terms of rule 3(a) of the Punjab Civil Servants (E & D) Rules, 1975. It is therefore, proposed to impose upon you one of the penalties given in rule 4 *ibid.*"

After receiving his reply the case was processed by the Department and the Secretary C & W Punjab recommended the reversion of the appellant from the post of XEN to that of Assistant Engineer which was approved by the Governor/MLA on 7th November, 1979. However, it was noted that the appellant had not been allowed any opportunity of personal hearing before making recommendations by Secretary C & W or passing impugned orders by the Governor/MLA which was contrary to the requirements of rule 8 of the Punjab Civil Servants (E & D) Rules, 1975 which provided as under :—

"Action by the Authority.—In the case of any proceedings recommended which has been reported for orders under sub rule (4) of rule 7, sub-rule (8) of Rule 7, the authority shall after affording the appellant an opportunity of being heard in person pass such orders as it may think fit."

The appellant was accordingly summoned by the Department for personal hearing on 22nd November, 1979 but again thereafter the appellant did not appear to have ever been placed before the Governor/MLA till 25th December, 1979 when the orders were formally issued for communication to the appellant. The appellant filed review petition dated 5th January, 1980 which too was rejected on 18th March, 1980 without granting him a personal hearing.

The appellant besides his contentions on merits has raised the legal contention that due opportunity of hearing has been denied to the appellant. Moreover the show-cause notice was also defective in as much as it fails to specify any penalty. Rule 4 provided both for major and minor penalty and the appellant was never given to understand as to what action was proposed against him. Both the contentions raised above could not be adequately met with by the Department. Admittedly the first order dated 25th December, 1979 was issued without granting personal hearing to the appellant. Thus it was a clear violation of rule 8 of the E & D Rules, 1975. Even after granting the hearing to the appellant on 22nd November, 1979 the case was never placed before the Governor/MLA. Thus the aforesaid hearing did not cure the defect of personal hearing. The defence pleas raised by the appellant during the course of personal hearing on 22nd November, 1979, do not appear to have been considered by the competent authority at all. Even the show-cause notice failed to specify the action proposed against the appellant. The appellant has the legitimate grievance that he was not apprised of the quantum of proposed punishment that likely to be imposed upon him. Thus the grievance of the appellant that he had suffered material prejudice in his defence appears to be well founded. We therefore accept this appeal and set aside the orders passed by the Department. We do not feel called upon to adjudicate upon the other contentions raised by the appellant as the order merits to be set aside being contrary to the requirements of rules 6 and 8 of E & D Rules, 1975 itself. The case is accordingly remanded to the Department.

Case remanded.

1981 P L C (C. S.) 163

[Service Tribunal Punjab]

Present : M. Saleem Chaudhry, Chairman and Two Members

Rana MUHAMMAD IQBAL

versus

COMMISSIONER, SARGODHA DIVISION Etc.

Appeal No. 52/221 of 1979, decided on 20th August, 1979.

Punjab Service Tribunals Act (IX of 1974) —

S. 4—Disciplinary proceedings—Penalty of removal from service consequential to charge of acquiring property beyond known sources of income—Accused producing estimate prepared by expert in defence—Such report disbelieved but no expert opinion obtained by competent authority to support allegation—Case remanded for



occurrence was on account of it the benefit should have been extended for the murder of Yaqub also.

So far as the merits of the case and the conviction of the appellants under section 302/34, P.P.C. is concerned, we have re-examined the material brought on the record against them with the assistance of the learned counsel for the appellants. In treating Chaudhary as a disinterested witness of the occurrence, the two Courts have ignored any circumstance which may have a material bearing on the question. His appearing as a witness in two murder cases would itself be indicative of the fact that he was inimical to the appellants or was unreliable. His presence at the spot at the time of occurrence has been accounted for. In the circumstances, his statement cannot provide the requisite corroboration to the evidence of Walayat. These witnesses had satisfactorily explained their presence on the thoroughfare near the residence of the appellants by stating that they had gone to attend the Court at Samundari. The trial Judge had the benefit of perusing the record of the Court of the Magistrate to find out whether 30th was the date fixed for the appearance of the deceased and their associates and whether they had in fact appeared there. The following observations of the trial Court are reproduced in extenso-

"Exhibit D.G. is the certified copy of the proceedings, which has been referred by the learned counsel for the accused in this regard. The learned counsel for the accused has argued that according to the entries of Exhibit D.G. the date fixed in the case of Mamma and Yaqub was 29th March 1974 and not 30th March, 1974 as alleged by the prosecution. I have perused the original file of theft case, which has been summoned from Court concerned and have come to the conclusion that the entries, whereby 29th March, 1974 has been shown as a date fixed in the theft case of Mamma and Yaqub accused is very much doubtful. There is overwriting on the date. A perusal of the face of the said file would show that 30th March, 1974 was a date which was fixed in the said case and not 29th March, 1974 as shown in the order sheet. I feel no hesitation to say that the unsuccessful attempt has been made by the accused party to get benefit out of the fabricated entries of the proceedings in the theft case. I intend to move the Court concerned to take action against the official at fault in this regard".

There were other corroborative factors noted by the High Court, namely, the wrist watch on the dead body of Mamma having stopped at 5-15, the photographs of the Chappar burnt and the entire occurrence having taken place in the heart of the village Abadi. The conclusion drawn was that it could not be accomplished by a single person. For cogent reasons, the High Court has rejected the argument that the ocular evidence was considered unsatisfactory for recording the conviction of Mir and Shamman the acquitted accused, the same testimony cannot be considered sufficient for recording the conviction of the appellants. The High Court has considered and we think rightly the material on record sufficient to establish a case beyond reasonable doubt against the appellants and, therefore, their conviction under section 302/34, P.P.C. (two counts) was proper.

As regards the mitigation and sentence the High Court for

in the case of conviction for the murder of Mamma who was maintaining illicit relations with Moondan and who had conveyed an untrue reply. It is to be noted that deceased Yaqub was not murdered in any different place or at any different time or in a different circumstance. It was the same occurrence in which both were done to their association in the past against the father of the appellants also established as in the case of theft of the buffalo and the attack on their father. In such a situation the law laid down by the court in Ghulam Rasul's case and in that of Nazeer would hold good. We would, therefore, maintain the conviction of the appellants under section 302/34, P.P.C. (on two counts) set aside the sentence of death of both for the murder of Yaqub and convert it into imprisonment for life and a fine of Rs.10,000 to each or in default they would suffer for years' R.I. The sentence of life imprisonments shall be concurrently undergone. The fine, if realized, shall be paid as compensation to the heirs of Yaqub. In the matter of computation of sentence the appellants shall have the benefit of section 382-B, Cr.P.C.

Order accordingly.

2nd Show Cause  
notice

1985 S C M R 1747

Present: Muhammad Haleem, C.J., Muhammad Afzal Zullah,  
Nasim Hasan Shah and Shafiqur Rahman, JJ

INAYATULLAH KHAN--Appellant

versus

THE PROVINCIAL GOVERNMENT,  
N.W.F.P., PESHAWAR--Respondent

Full Appeal No. 41-R of 1979, decided on 16th June, 1985.

(On appeal from the judgment and order, dated 26-9-1978 passed by the N.-W.F.P. Service Tribunal in Appeal No. 39 of 1976).

(a) Constitution of Pakistan (1973)--

Art. 212--Civil service--Compulsory retirement--Natural justice, principles of--Leave to appeal granted to examine question amongst others as to whether failure to give a final show-cause notice against proposed penalty was violative of principles of natural justice.

(p. 1747) A

(b) Civil service--

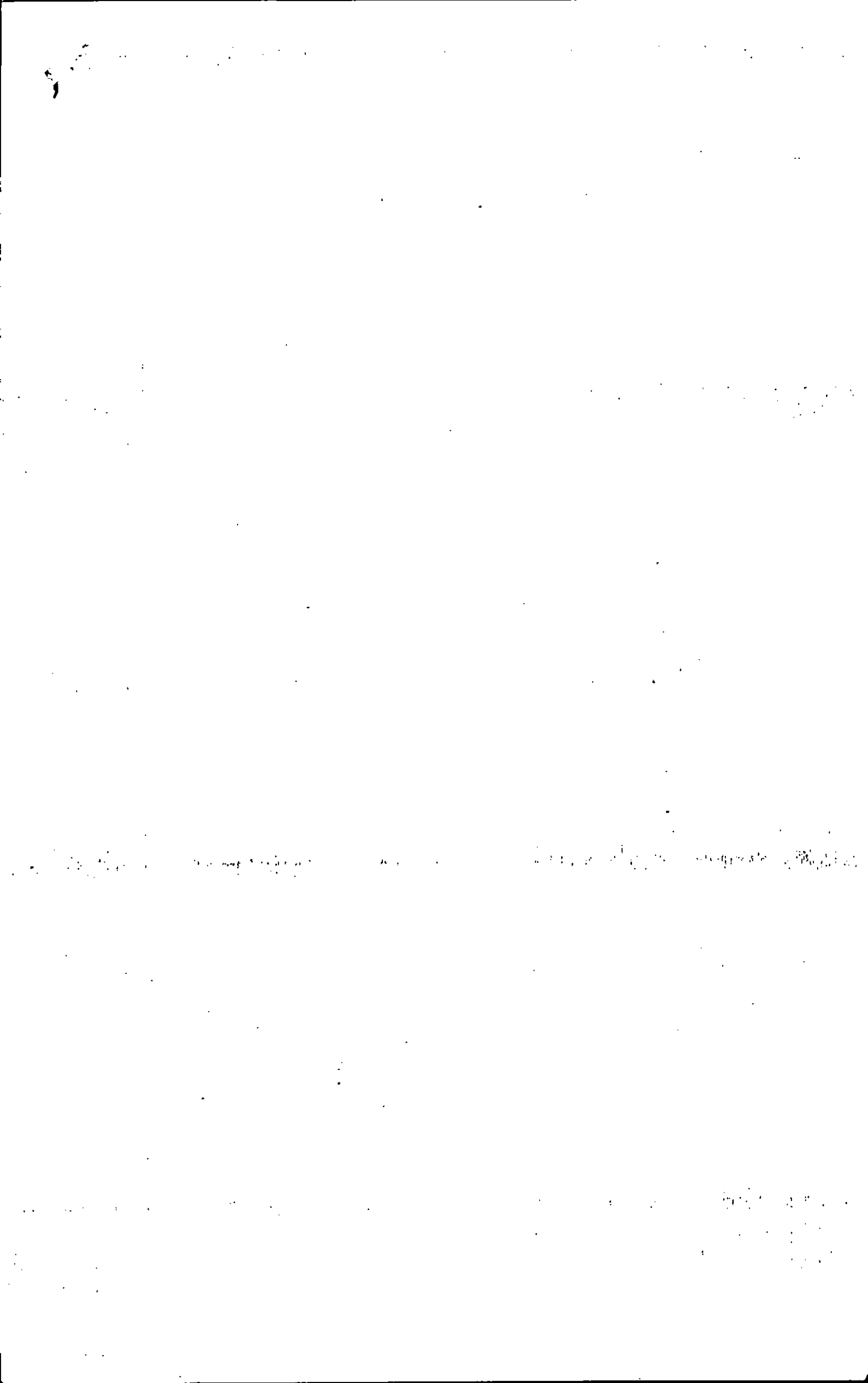
Compulsory retirement--Failure to give a second show-cause notice, was a violation of principles of natural justice--Case remanded to authorised officer from stage at which second show-cause notice should have been given to civil servant.--[Natural justice, principles of].

(p. 1748) B

Syed Mir Muhammad v. N.-W.F.P. Government through Chief Secretary P L D 1981 S C 176 and Qazi Faizul Haq v. N.-W.F.P. through the Chief Secretary 1984 S C M R 451 mentioned.

Abdul Samad Khan, Advocate-on-Record Supreme Court of Pakistan, Peshawar for Appellant.  
Mian Muhammad Ajmal, Asstt. A.-G., N.-W.F.P., Peshawar for Respondent.

Date of hearing: 16th June, 1985.



It is prayed that on acceptance of this Appeal, the impugned order may be set-aside and Appellant may be exonerated from the charges, as leveled against him.


The costs of this Appeal may also be awarded in favour of Appellant against the Respondents.

Appellant

(Said Badshah)  
Ex-Tehsil office kanungo Mardan




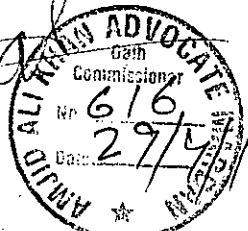
Dated:29.04.2016  
(Friday)

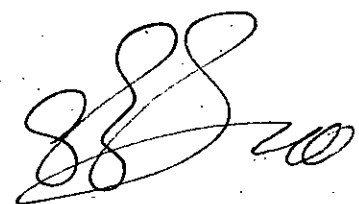
Through:   
Muhammad Adam Khan  
Advocate High Court  
at District Courts Mardan.

MUHAMMAD ADAM KHAN  
B.A LLE Advocate  
High Court Mardan

**AFFIDAVIT**

I, Said Badshah / the Appellant, do hereby stated on solemn affirmation that the contents of the above Appeal are true and correct to the best of my knowledge and belief and that nothing is concealed from this Honourable Tribunal.



Deponent: Said Badshah

CHARGE SHEET

ANNEXURE

ATTESTED

ADAM KHAN

I, Deputy Commissioner, Mardan, as competent authority, hereby charge you, Mr. Said Badshah Tehsil office Kanungo Katlang as follows:-

That you, while posted as Tehsil Office Kanungo, Mardan committed the following irregularities:-

- i. That you (being custodian of the revenue record) failed to produce the original mutation No. 7462 attested on 27.01.2009 at Mauza Hoti before the Anti corruption Establishment Mardan in spite of verbal as well as official correspondence of the department. At the result of which the ACE, Mardan filed complaint under section 174, 175 PPC in the court of special Judge, ACE, Khyber Pakhtunkhwa which is fixed for 20.08.2015.
- ii. That you deliberately failed to hand over the said mutation to the Anti corruption establishment, Mardan.

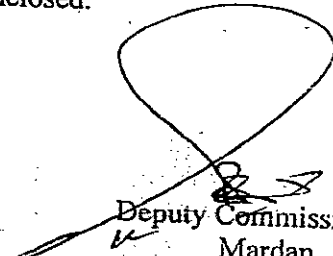
2. By reason of the above, you appear to be guilty of misconduct under rule 3 of the Khyber Pakhtunkhwa Government servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in rule 4 of the rules ibid.

3. You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the inquiry Committee, as the case may.

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

5. Intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed.

  
Deputy Commissioner,  
Mardan.

Endst: No. & date even

Copy along with statement of allegations forwarded to:-

1. The Assistant Commissioner, Mardan.
2. The Additional Assistant Commissioner®, Mardan
3. The Tehsildar, Mardan.
4. Mr. Said Badshah Tehsil Office Kanungo, Katlang with the direction to submit written defense within 7 days of the receipt of this charge sheet to the inquiry committee.

DISCIPLINARY ACTON.

I, Deputy Commissioner, Mardan, as competent authority, am of the opinion that Mr. Said Badshah the then Tehsil office Kanungo Mardan 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

- i. That you (being custodian of the revenue record) failed to produce the original mutation No. 7462 attested on 27.01.2009 at Mauza Hoti before the Anti corruption Establishment Mardan in spite of verbal as well as official correspondence of the department. At the result of which the ACE, Mardan filled complaint under section 174, 175 PPC in the court of special Judge, ACE, Khyber Pakhtunkhwa which is fixed for 20.08.2015.
- ii. That you deliberately failed to hand over the said mutation to the Anti corruption establishment, Mardan.

For the purpose of inquiry against the said accused with reference to the above allegations, an inquiry officer/inquiry Committee, consisting of the following, is constituted under rules 10(1) (a) of the ibid rules.

- i. Additional Assistant Commissioner @, Mardan.
3. The Inquiry committee shall, in accordance with the provision of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.
4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the inquiry committee.

  
Deputy Commissioner,  
Mardan.

7/7

جواب بسلسلہ چارج شیٹ موصول شدہ سائل بخوالہ نمبری 89-89/DK/HVC مورخہ 05-07-2015

ANNEXURE

جناب عالی:-

ATTESTED

ADAM KHAN

2009

27-01-20199

یہ کہ سائل قبل ازیں بطور افس قانون مردان تعینات تھا۔ یہ درست ہے کہ من سائل سے انتقال نمبر 7462 مصدقہ

موضوع ہوتی انٹی کرپشن اسٹیبلشمنٹ مردان نے بغرض انکو اجری طلب کیا تھا۔ لیکن من سائل انتقال مذکورہ الہکاران انٹی

کرپشن مردان کو بدیں وجہ پیش کرنے میں ناکام رہا کہ اس سے قبل موضع ہوتی کا چار سالہ بابت سال 2013

مطابق ہدایات میں نے زیر تحریر چار سالہ کے لئے متعلقہ انتقالات حسب ضابطہ موجودہ پٹواری حبیب الرحمان کو باخذ دستخط بحوالہ کیا گیا تھا۔

یعنی جملہ متعلقہ انتقالات کو رجسٹر میں درج کر کے حبیب الرحمان پٹواری کو بغرض تحریر چار سالہ مذکورہ بحوالہ کیا۔ نقل رجسٹر وصولی انتقالات

لف ہے۔ بعد میں جب پٹواری حبیب الرحمان نے چار سالہ موضع ہوتی مکمل کیا تو اصل انتقالات بد دفتر افس قانون گو مردان مجھے واپس

حوالہ اور رجسٹر کے دستہ نام کو جب موصول ہوا تو

انتقالات میں موجود نہیں ہے۔ اس لئے میں نے وہی انتقال کو رجسٹر خود میں بقلم سُرخ مارکنگ نہیں کی ہے (نقل رجسٹر لف ہے)۔ اس

انتقال کے متعلق پٹواری حبیب الرحمان سے دریافت کیا تو جواب دیا کہ میں نے چار سالہ محمد غلام پٹواری پر تحریر کی ہے اس سے معلوم کر کے

انتقال ایکو جلد از جلد واپس کرونگا اپ فکر نہ کرے پٹواری خانہ میں کہیں پس و پیش ہو گیا ہوگا۔ اسی دن سے آج تک میرے بار بار یاد دہانی کے

پٹواری بالانے مجھے انتقال واپس نہیں کیا۔ انتقال مذکورہ کی گم ہونے میں من سائل قصور وار نہیں ہے بلکہ حسب ضابطہ کارروائی کی ہے۔

انتقال حبیب الرحمان پٹواری موضع ہوتی سے کہیں گم ہو گیا ہے۔ لہذا التماس کیجاتی ہے کہ من سائل کو چارج بالا سے بری الذمہ کرنے کا حکم

صادر فرمائی جائے۔ من سائل دعا گور ہیں گے۔

سید بادشاہ سابقہ افس قانون گو مردان۔

7 D  
ATTESTED  
ADAM KHAN

OFFICE ORDER

Whereas Mr. Said Badshah Tehsil Office Kanungo, Mardan now Kattlang was proceeded under the Khyber Pakhtunkhwa Government servants (Efficiency and discipline) Rules 2011 into the allegations that he (being custodian of the revenue record) failed to produce the original mutation No. 7462 attested on 27.01.2009 at Mauza Hoti before the Anti-Corruption Establishment Mardan in spite of verbal as well as official correspondence of the department. At the result of which ACE, Mardan filed a complaint under section 174, 175 PPC in the court of special Judge, ACE, Khyber Pakhtunkhwa for procurement the document in question.

And whereas the inquiry officer after fulfillment the codal formalities, has furnished his report which reflects that the mutation in question was received by the Patwari for preparation of 'Charsala' but was not returned as has been highlighted by office Kanungo in the list through which the mutation was received back by the office Kanungo, Mardan. He provided the mutations along with the missing mutation for preparation of 'Charsala' to Patwari Halqa, which has not been returned to the Office Kanungo (Said Badshah) by Patwari Halqa (Habibur Rehman) But the Office Kanungo, being custodian of public documents failed to report the matter to the competent authority, as such, he is responsible for negligence on his part as he failed to report to their high ups well in time.

Keeping in view of the above facts and perusal of record, Mr. Said Badshah Tehsil Office Kanungo Kattlang is hereby awarded major penalty as envisaged in 4 (b), (i) of the efficiency & Discipline Rules 2011 and is hereby imposed penalty of reduction of two increments in the time scale of pay with immediate effect.

Deputy Commissioner,  
Mardan

Endst. No. & date even

Copies to:

1. The Commissioner, Mardan Division, Mardan.
2. The Secretary-I, Board of revenue, Khyber Pakhtunkhwa, Peshawar.
3. The District Accounts Officer, Mardan.
4. The Assistant Commissioner, Mardan.
5. The Additional Assistant Commissioner (Rev), Mardan.
6. The Accounts Officer Deputy Commissioner Office, Mardan.
7. The Tehsildar, Mardan/Kattlang.
8. The Finance Assistant (Local branch)
9. The officials concerned for strict compliance

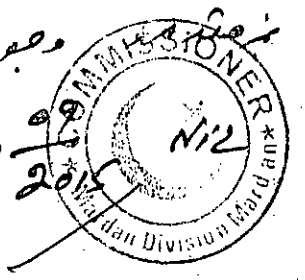
Deputy Commissioner

A  
S  
D

نقل اپیل / Representation از قلم منصفہ بعد التخصیص علیہ عدویں جو ماردان

عنوان  
سید بادشاہ سابقہ افسیس ماردان

مردان 21/03/2016



To  
The Commissioner  
Mardan Division,  
Mardan.

ANNEXURE 7E

PAGE NO. 9

Through proper channel  
Subject:- Representation

ATTESTED  
Adam Khan  
ADAM KHAN

Sir,

With reference to the order The Dg, Commissioner Mardan, contained in Letter No.1201-1208/DCE/HVC dated 31.08.2015, whereby I am awarded the punishment of reduction of two increments in the time scale of pay.

Copies are Annexure-A to D.

It is submitted that the impugned order is unjustified, illegal, against the principles of natural justice and the same is liable to be set-aside, exonerating the Appellant from the charge leveled against him, on the following amongst many other grounds:-

1. That I am implicated in the case without any justification and the responsibility of Patwari Halqa is shifted to me unjustifiedly.
2. That I have never indulged myself in the commission of the alleged offence.
3. That I am condemned unheard.
4. That the material point is not taken into consideration at any stage that the questioned mutation No. 7462 was not in my custody, when it lost. Hence, I was not supposed to have produced the same to the Anti Corruption Establishment. Because, the Charsala for the year 2012-2013 was under

See page (2)

30.03.2016

7E



preparation and mutations were handed-over to Mr Habibur-Rahman Patwari Halqa Hoti, under his signature as a token of receipt thereof. Later on, on completion of the relevant Charsala, the mutations were returned by the Patwari. But, on scrutiny thereof, the relevant mutation No.7462 was missing.

5. That it is to clarify that during the scrutiny inquestion, I had been marking the entries in the relevant register, with red-ink. The Register would show that the entry against the relevant mutation No. 7462 is not marked. On account of it is non-availability in the bundle, returned by the Patwari Halqa.
6. That on enquiry from Mr. Habibur-Rahman Patwari about the non-existing of the relevant mutation, he stated in reply that he had prepared the relevant Charsala by Muhammad Ghulam Patwari and that he will contact the said Mr. Muhammad Ghulam Patwari in this respect and will return the relevant mutation. He apprehended that the relevant mutation might have been misplaced in Patwarkhana.
7. That inspite of repeated demands Mr. Habibur-Rahman Patwari did not return the mutation, with the plea that he is searching for the same.
8. It is added that the relevant mutation had been misplaced from the custody of Habibur\_Rahman Patwari Halqa and not from my custody.
9. That I had not displayed any carelessness nor committed misconduct in the preservation of the relevant mutation, as the same was not lost from my custody and even, not from my office.
10. That no witness was examined in my presence during the enquiry proceedings. While, the testimony of the witness, not subjected to the test of cross-examination, has no legal force.

ATTESTED

*[Signature]*  
20.03.2016

Examiner/Member to  
Commissioner Court  
Mardan Division Mardan

*See page (3)*

*[Signature]*  
30.03.2016

11. That I am retired from service on attaining the age of supranuation .

Copy attached as Annexure- "E".

12. That I reserve the right to claim further grounds, also.

It is prayed that on acceptance of this Representation, the impugned order may be set-aside and I may be exonerated from the charges, as levelled against me.

Dated: 28.09.2015


Appellant

( Said Badshah )  
Ex-Tehsil office  
Kanungo,  
Katlang, Mardan.

Address:

Village Mayar, Mardan.

Through:

  
Muhammad AdamKhan,  
Advocate, Mardan.

نقل حکم از فیروز / ضمیمه آذینک منقسمه بعد از آن جناب کتبه صادره در روز 21/03/2016

دعویہ 30-09-2015  
ضمیمہ 21-03-2016  
مردان  
عنوانت  
سید بادشاہ سابقہ افسیس کاٹونگو مردان  
ڈپٹی کمشنر مردان



IN THE COURT OF COMMISSIONER MARDAN DIVISION, MARDAN.

ANNEXURE

F

12

Said Bad Shah ex-Tehsil Office Kanungo  
Versus  
Deputy Commissioner/District Collector Mardan

Appellant

PAGE NO.

Respondent

ATTESTED  
ADAM KHAN

Case No.: .....  
Dated of institution: 30/09/2015  
Dated of Decision: 21/03/2016

REPRESENTATION

ORDER:-

Through this representation the appellant has assailed the office order NO.1201-1208/DC/HVC dated 31/08/2015. of the Deputy Commissioner Mardan whereby the appellant was awarded the punishment of reduction of two increments in the time scale of pay.

Brief facts of the case are that the appellant was serving as Tehsil Office Kanungo Mardan. The appellant handed over the mutations (Fard Sarkar) of Mauza Hoti to the concerned patwari for preparation of Charsala for the year 2012/13. The patwari concerned after preparing the relevant Charsala, returned the said mutations to the appellant but on scrutiny thereof, a mutation No.7462 was missing by the patwari halqa. The said mutation was required to the Anti Corruption Establishment Mardan but the appellant as well as patwari halqa could not produce the same to them in spite of verbal as well as official correspondence. Hence, the Anti Corruption Establishment Mardan filed a complaint under Section 174, 175 PPC in the court of Special Judge ACE, KPK, Peshawar for procurement the documents in question. Moreover, Deputy Commissioner Mardan on the complaint of the complainant ordered for conducting an inquiry against the appellant and AAC (Rev) Mardan namely Gohar Khan was appointed as inquiry officer who conducted inquiry proceedings against the appellant and after completion of all the codal formalities submitted his exhaustive report before the Deputy Commissioner Mardan. In the said report appellant was recommended for imposing of awarding major penalty as envisaged in 4 (B), (i) of the E&D Rules 2011, hence, the appellant was awarded the punishment of two increments in the time scale of pay with immediate effect vide the impugned order dated 31/08/2015, hence, the appellant has filed the instant representation before this court.

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

Contd...P/2

See page (2)

20.03.2016

F

From perusal of record of the case and arguments advanced at the bar, it reveals that the appellant has failed to submit the proper report before the competent authority within proper time regarding missing of mutation inspite of repeated chances. The appellant being custodian of the record and being responsible official has failed to perform his duty properly, hence establishing his irresponsibility and inefficiency. Further the enquiry proceedings and report also perused which does not show any legal infirmity.

In view of the above, I have come to the conclusion that the impugned order passed by the Deputy Commissioner Mardan is based on facts and relevant law which call for no interference. Hence, upheld and the appeal in hand being without any substance is hereby dismissed. No order as to costs.

File be consigned to record room after necessary completion.

Announced.  
21/03/2016

*[Signature]*  
Commissioner  
Mardan Division, Mardan



*[Signature]*  
No. 855  
Date of Application 22.03.2016  
Name of Applicant [Handwritten Name]  
Wards 800 Fee 8/-  
Urgent Fee \_\_\_\_\_  
Signed Copyist *[Signature]*  
Date of Preparation 30.03.2016

ATTESTED  
*[Signature]*  
30.03.2016  
Examiner/Reader to  
Commissioner Court  
Mardan Division Mardan

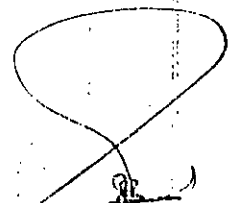


OFFICE OF THE  
DEPUTY COMMISSIONER,  
MARDAN.

No 716-2016-DK/HVC/DC(M)  
Dated Mardan the 21/09/2015

OFFICE ORDER

On attaining the age of superannuation i.e 60 years of age, Mr. Said Badshah Kanungo of this Office is hereby retired from Government Service w.e.f. 13.09.2015 (A.N): as per Service Book, his date of birth is 14.09.1955. The retired official is also allowed to draw encashment of LPR for 12 months subject to his entitlement under the rules.

  
Deputy Commissioner  
Mardan

Endst. No. & Date Eych

Copies to:-

1. The District Comptroller of Accounts Mardan for information and necessary action.
2. The Assistant Commissioner Mardan for information please.
3. The Tehsildar Mardan for information and necessary action.
4. The Tehsildar Katlang for information and necessary action.
5. The official concerned for information.

  
Deputy Commissioner  
Mardan

30 45

VAKALAT NAMA

In the Court of Service Tribunal, Peshawar

Service Appeal

No. \_\_\_\_\_

of 2016

Said Biddhah

(Petitioner)

(Plaintiff)

(Appellant)

**VERSUS**

The Secretary & others.

(Respondent)

(Defendant)

I/We Said Biddhah

the

above noted Appellant

do

hereby appoint and constitute **Muhammad Adam Khan, Advocate Mardan** as Counsel in subject proceedings and authorize him to appear, plead etc., compromise, withdraw or refer to arbitration for me/us, as my/our Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel at my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated: 28.4.2016

Said Biddhah  
Appellant  
(Signature of Client)

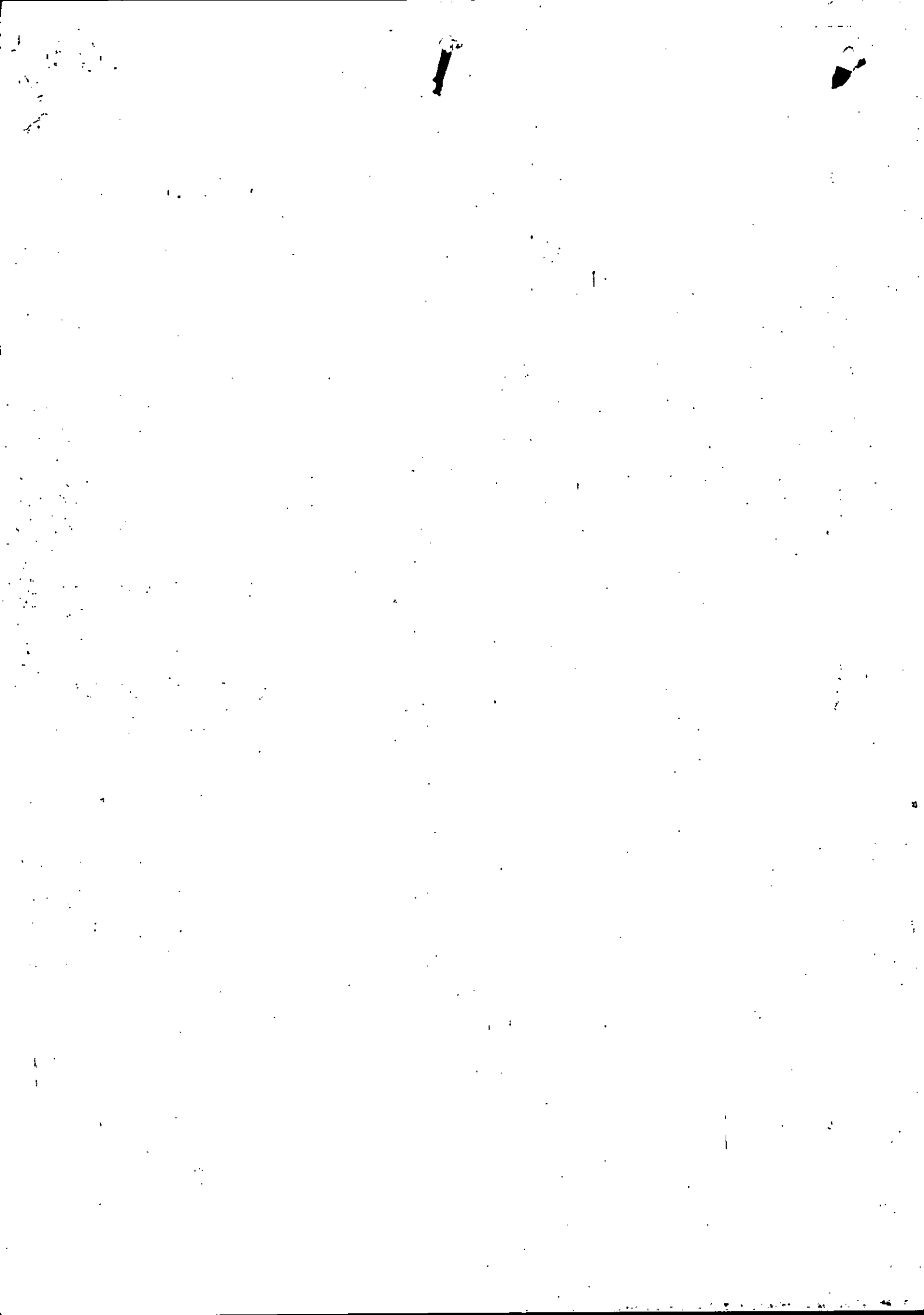
MUHAMMAD ADAM KHAN,  
Advocate,  
District Courts, Mardan.

Adam  
Accepted

**MUHAMMAD ADAM KHAN**  
B.A LLB Advocate  
High Court Mardan .

درجہ اولیٰ سال 2012

736	684	6812	6656	6636	6535	634	6236	6218	635
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7539	7538	7537	7536	7535	7534	7534	7534	7364	72
7541	7544	7543	7542	7541	7540	7540	7540		

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- 7750 (7562) (7561) (7560) (7559) (7558) (7557) (7556) (7555)
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- 7865 (7715) (7714) (7713) (7712) (7711) (7710) (7709) (7708)
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- 7878 (7730) (7730) (7729) (7728) (7727) (7726) (7725) (7724)
- 884 (7740) (7739) (7738) (7737) (7736) (7735) (7734) (7733) (7732)
- 890 (7741) (7740) (7739) (7738) (7737) (7736) (7735) (7734)

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3079	7901	7900	7899	7898	7897	7896
32808	7912	7911	7910	7909	7908	7907
8099	7923	7922	7921	7920	7919	7918
8109	7932	7931	7929	7928	7927	7926
8120	7939	7938	7937	7936	7935	7934
8132	7948	7947	7946	7945	7944	7943
8143	7958	7957	7956	7955	7954	7953
8154	7965	7964	7963	7962	7961	7960
8165	7973	7972	7971	7970	7969	7968
8176	7983	7982	7981	7980	7979	7978
8187	7991	7990	7989	7988	7987	7986
8198	8003	8002	8001	8000	7999	7998
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8221	8018	8017	8016	8015	8014	8013
8230	8024	8023	8022	8021	8020	8019
8237	8032	8031	8030	8029	8028	8027
8247	8039	8038	8037	8036	8035	8034
8256	8047	8046	8045	8044	8043	8042
8267	8059	8058	8057	8056	8055	8054
8278	8065	8064	8063	8062	8061	8060
8289	8072	8071	8070	8069	8068	8067
8300	8078	8077	8076	8075	8074	8073

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8085	8086	8087	8088	8089	8090	8091	8092	8093	8094	8095	8096	8097	8098	8099	8100	8101	8102	8103	8104	8105	8106	8107	8108	8109	8110	8111	8112	8113	8114	8115	8116	8117	8118	8119	8120	8121	8122	8123	8124	8125	8126	8127	8128	8129	8130	8131	8132	8133	8134	8135	8136	8137	8138	8139	8140	8141	8142	8143	8144	8145	8146	8147	8148	8149	8150	8151	8152	8153	8154	8155	8156	8157	8158	8159	8160	8161	8162	8163	8164	8165	8166	8167	8168	8169	8170	8171	8172	8173	8174	8175	8176	8177	8178	8179	8180	8181	8182	8183	8184	8185	8186	8187	8188	8189	8190	8191	8192	8193	8194	8195	8196	8197	8198	8199	8200	8201	8202	8203	8204	8205	8206	8207	8208	8209	8210	8211	8212	8213	8214	8215	8216	8217	8218	8219	8220	8221	8222	8223	8224	8225	8226	8227	8228	8229	8230	8231	8232	8233	8234	8235	8236	8237	8238	8239	8240	8241	8242	8243	8244	8245	8246	8247	8248	8249	8250	8251	8252	8253	8254	8255	8256	8257	8258	8259	8260	8261	8262	8263	8264	8265	8266	8267	8268	8269	8270	8271	8272	8273	8274	8275	8276	8277	8278	8279	8280	8281	8282	8283	8284	8285	8286	8287	8288	8289	8290	8291	8292	8293	8294	8295	8296	8297	8298	8299	8300	8301	8302	8303	8304	8305	8306	8307	8308	8309	8310	8311	8312	8313	8314	8315	8316	8317	8318	8319	8320	8321	8322	8323	8324	8325	8326	8327	8328	8329	8330	8331	8332	8333	8334	8335	8336	8337	8338	8339	8340	8341	8342	8343	8344	8345	8346	8347	8348	8349	8350	8351	8352	8353	8354	8355	8356	8357	8358	8359	8360	8361	8362	8363	8364	8365	8366	8367	8368	8369	8370	8371	8372	8373	8374	8375	8376	8377	8378	8379	8380	8381	8382	8383	8384	8385	8386	8387	8388	8389	8390	8391	8392	8393	8394	8395	8396	8397	8398	8399	8400
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- 8932 (8752) (8749) (8748) (8747) (8746) (8745) (8744)
- 8946 (8759) (8758) (8757) (8756) (8755) (8754) (8753)
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- 9083 (8929) (8928) (8927) (8926) (8925) (8924) (8923)



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(8944)	(8943)	(8940)	(8939)	(8933)	(8932)	(8931)	(8930)	(87)
(8970)	(8969)	(8968)	(8967)	(8966)	(8963)	(8962)	(8959)	(875)
(8985)	(8982)	(8981)	(8977)	(8976)	(8975)	(8972)	(8971)	(8)
(8995)	(8994)	(8991)	(8990)	(8989)	(8988)	(8987)	(8986)	(877)
(9008)	(9006)	(9005)	(9004)	(9003)	(9002)	(9000)	(8997)	(8782)
(9017)	(9016)	(9015)	(9014)	(9013)	(9011)	(9010)	(9009)	(8791)
(9025)	(9024)	(9023)	(9022)	(9021)	(9020)	(9019)	(9018)	(8802)
(9042)	(9040)	(9039)	(9036)	(9035)	(9034)	(9032)	(9031)	(8814)
(9053)	(9051)	(9050)	(9049)	(9048)	(9047)	(9043)		(8822)
(9064)	(9062)	(9061)	(9060)	(9059)	(9058)	(9056)		(8)
(7609)	(7355)	(7256)	(6531)	(8674)	(9073)			(8837)
(8627)	(8542)	(8431)	(8090)	(8066)	(7789)	(7651)		(8846)
(8771)	(8775)	(8772)	(8711)	(8680)	(8674)	(8637)	(8636)	(885)
(8889)	(8872)	(8862)	(8852)	(8844)	(8813)	(8812)	(8811/1)	(88)
(8941)	(8934)	(8937)	(8936)	(8935)	(8934)	(8901)		(8873)
(8966)	(8961)	(8952)	(8950)	(8949)	(8948)	(8945)	(8942)	(8)
(8993)	(8992)	(8984)	(8983)	(8980)	(8979)	(8978)	(8973)	(8886)
(9027)	(9026)	(9012)	(9007)	(8999)	(8998)	(8996)		(8894)
(9044)	(9041)	(9038)	(9037)	(9033)	(9030)	(9029)	(9028)	(8905)
(9066)	(9065)	(9063)	(9057)	(9055)	(9054)	(9052)	(9046)	(8913)
(9082)	(9081)	(9080)	(9079)	(9078)	(9077)	(9076)	(9074)	(8922)
(909)	(9089)	(9088)	(9087)	(9086)	(9085)	(9084)	(9083)	(8929)

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(9300)	(9297)	(9296)	(9295)	(9294)	(9293)	(9292)	9101	909	
9300	9308	9307	(9306)	9305	(9304)	(9303)	9302	9111	910
(9318)	(9317)	(9316)	(9315)	(9314)	(9313)	(9312)	(9311)	9127	91
(9327)	(9326)	(9325)	(9324)	9322	(9321)	(932)	9319	9136	913
(9335)	(9333)	(9332)	(9331)	9330	(9329)	(9328)	9141	914	
(9342)	(9341)	(9340)	(9339)	9338	(9337)	(9336)	9154	915	
(9342)	(9341)	(9340)	(9339)	9338	(9337)	(9336)	9162	916	
(9342)	(9341)	(9340)	(9339)	9338	(9337)	(9336)	9171	917	
(9357)	(9356)	(9355)	(9354)	9353	(9352)	(9351)	9350	9171	917
(9365)	(9364)	(9363)	(9362)	(9361)	(9360)	(9359)	(9358)	9177	917
(9372)	(9371)	(9370)	(9369)	(9368)	(9367)	(9366)	9182	918	91
(9382)	(9381)	(9380)	(9379)	9378	9377	(9376)	(9375)	9190	919
(9391)	(9390)	(9389)	(9388)	(9387)	(9386)	(9385)	(9384)	9203	920
(9400)	(9398)	(9397)	(9396)	(9395)	(9394)	(9393)	(9392)	9218	921
(9411)	(9410)	(9409)	(9408)	(9407)	(9406)	(9405)	(9404)	9227	922
(9421)	(9420)	(9419)	(9418)	(9417)	(9416)	(9415)	(9414)	9235	923
(9430)	(9429)	(9428)	(9427)	(9426)	(9425)	(9424)	(9423)	9244	924
(9440)	(9439)	(9438)	(9437)	(9436)	(9435)	(9434)	(9433)	9251	925
(9440)	(9439)	(9438)	(9437)	(9436)	(9435)	(9434)	(9433)	9251	925
(9440)	(9439)	(9438)	(9437)	(9436)	(9435)	(9434)	(9433)	9251	925
(9457)	(9456)	(9455)	(9454)	(9453)	(9452)	(9451)	9258	926	
(9465)	(9464)	(9463)	(9462)	(9461)	(9460)	(9459)	(9458)	9271	927
(9473)	(9472)	(9471)	(9470)	(9469)	(9468)	(9467)	(9466)	9279	928
(9480)	(9479)	(9478)	(9477)	(9476)	(9475)	(9474)	9291	929	

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- 19668 .9486) 9485) 9484) (9483) (9482) (9481)
- 19680 9498) 9496) 9493) 9492) 9491) 9490) 9487
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- 19698 .9520) 9516) 9509) 9508) 9506) 9505) 9504
- 19701 9531) 9528) 9527) 9526) 9525) 9524) 9523) 9522
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- 19737 9575) 9574) 9573) 9572) 9571) 9570) 9569) 9568
- 19747 9583) 9583) 958) 9580) 9579) 9578) 9577) 9576
- 19754 9591) 9590) 9589) 9588) 9582) 9586) 9581) 9584
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- 19786 9609) 9608) 9655) 9604) 9603) 9597) 9596
- 19795 9617) 9616) 9615) 9614) 9613) 9612) 9611
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- 19808 9644) 9639) 9638) 9634) 9632) 9631) 9629) 9628
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- 19819 9661) 9660) 9659) 9658) 9657) 9657) 9656
- 19825 9667) 9666) 9665) 9664) 9663) 9662

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17 Feb

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- 52 (11513) (12218) (12217) (12216) (12214) (12204) (12178) (12151)
- 39 (11637) (12247) (12245) (12242) (12237) (12232) (12231) (12226) (12223)
- 67 (11663) (12275) (12274) (12273) (12270) (12669) (12266) (12260) (12248)
- 72 (11680) (12288) (12287) (12282) (12279) (12278) (12277) (12276) (12275)
- 82 (11695) (12291) (12290) (12293) (12292) (12291) (12290) (12289)
- (11714) (12307) (12305) (12309) (12301) (12299)

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(12319)	(12318)	(12317)	(12312)	(12311)	(12310)	(11591)	(1155)
(12331)	(12329)	(12325)	(12324)	(12323)	(12322)	(11891)	(11)
(12356)	(12352)	(12350)	(12347)	(12337)	(12336)	(11938)	(119)
(11352)	(11351)	(11086)	(11754)	(11888)	(11415)	(11964)	(1)
(11794)	(11678)	(11768)	(11753)	(11666)	(10656)	(11621)	(11453)
(11960)	(11959)	(11956)	(11947)	(11941)	(11945)	(11918)	(11909)
(12030)	(12025)	(12018)	(12010)	(11981)	(11987)	(11965)	(12012)
(12051)	(12050)	(12048)	(12047)	(12043)	(12041)	(12032)	(12021)
(12073)	(12067)	(12059)	(12059)	(12058)	(12059)	(12059)	(1205)
(12100)	(12098)	(12094)	(12092)	(12088)	(12082)	(12079)	(1205)
(12126)	(12123)	(12115)	(12107)	(12105)	(12102)	(12100)	(12)
(12146)	(12142)	(12140)	(12139)	(12137)	(12135)	(12130)	(12104)
(12164)	(12163)	(12161)	(12158)	(12156)	(12154)	(12150)	(12148)
(12175)	(12174)	(12173)	(12170)	(12169)	(12168)	(12167)	(12166)
(12189)	(12188)	(12187)	(12185)	(12181)	(12180)	(12179)	(11627)
(11492)	(11484)	(10420)	(10429)	(10423)	(12192)	(12190)	(12128)
(11626)	(11600)	(11593)	(11592)	(11586)	(11581)	(11552)	(11513)
(11655)	(11652)	(11643)	(11641)	(11640)	(11639)	(11637)	(12247)
(11679)	(11677)	(11676)	(11672)	(11668)	(11667)	(11663)	(11663)
(11694)	(11693)	(11692)	(11689)	(11688)	(11685)	(11682)	(11680)
(11713)	(11709)	(11708)	(11707)	(11706)	(11702)	(11695)	(12295)
(11721)	(11720)	(11717)	(11716)	(11715)	(11714)	(11714)	(125)



**BEFORE THE PROVINCIAL SERVICE TRIBUNAL, PESHAWAR**

Appeal No. 446 / 2014.

*Hearing 10.05.2016*

**Said Badshah VS The Secretary and others;**

**APPLICATION FOR CONDONATION OF DELAY.**

1. That the Appellant on 29.04.2016/the Friday, while travelling from Mardan to Peshawar for the institution of the captioned Appeal, arrived a bit late and by that time the court time had been over. While, there were holidays, on account of Saturday and Sunday, on next two days. Hence, the appeal was instituted on 2.5.2016, with the delay of two days.
2. That the delay in question was not deliberate and willful. But, the same was beyond the control of Appellant.
3. That the valuable rights of Appellant are involved in this Appeal. Hence, he has the right to be heard on legal and factual grounds.
4. That the delay is liable to be condoned on the grounds as per Para No. 1 to 3, above.

**It is prayed that the delay in the institution of the captioned Appeal, may be condoned in favour of Appellant.**

**Appellant**

*[Signature]*  
(Said Badshah)

Dated:- *09.05.2016*

Through: *[Signature]*  
Muhammad Adam Khan  
Advocate High Court  
at District Courts Mardan.

**AFFIDAVIT**

I, Said Badshah / the Appellant, do hereby stated on solemn affirmation that contents of the above Application are true and correct to the best of my knowledge and b and nothing concealed from this Honourable Tribunal.

**ATTESTED**  
**DILARAM KHAN**  
Advocate  
Notary Public Mardan  
233 - Date: *9.5*  
2016

Deponent: *[Signature]*  
Said Badshah



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Appeal No. 1415/15**

Said Badshah (Ex Tehsil Office Kanungo), R/O Village and Distt Mardan

.....Appellant.

**VERSUS**

1. The Secretary, Revenue Department, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Commissioner, Mardan.
3. The Commissioner Mardan Division Mardan.

.....Respondents

**Appeal U/S-4 of KPK Service Tribunal Act 1973 Against The Order Of The Order Of The Deputy Commissioner/Respondent No. 02, Contained In Letter No. 1201-1208/DCE/HVC, Dated 31.08.2015 and the Appeal Thereagainst Rejected by The Commissioner/Respondent No. 3 On 31.03.2016**

**Respectfully Sheweth:**

**Joint Para-Wise Comments on behalf of Respondent from S.No. 01 to 03:**

**Preliminary Objections:**

1. The appellant has got no cause of action.
2. The appeal is hopelessly time-barred.
3. The appellant has not come to this Tribunal with clean hands.
4. This Honourable Tribunal has got no jurisdiction to adjudicate the appeal.
5. The Appeal is bad for Misjoinder/Non-Joinder of the necessary Parties.

**Reply on Facts:**

1. The appellant failed to produce the original mutation No. 7462 attested on 27.01.2009 at Mauza Hoti before the Anti Corruption Establishment Mardan inspite of directions by the superiors thereto as same was misplaced. Being custodian of revenue record, he should have ensured its safety. Further, he should have reported the misplacement of mutation No. 7462, which he failed; hence made himself liable to be proceeded against under the relevant rules. That's why he was proceeded against under the E&D rules. He was issued charge sheet and statement of allegations which he replied to and after proper inquiry and upon recommendation by the Inquiry Officers, the penalty of stoppage of two increments was awarded to him.

(Copy of statement of allegation is annex-A, Charge Sheet is statement of allegations is Annex-B, copy of inquiry report is Annex-C)

2. Correct.

**Reply on Grounds:**

1. Incorrect. The appellant being Office Kanungo was custodian of record as such he can not absolve himself of the responsibility of safe custody of revenue record.
2. Incorrect. In the inquiry in which penalty of stoppage of two increments was imposed upon the appellant, he has been proved guilty.
3. Incorrect. He had been provided an opportunity of being heard personally. He has also recorded his statement dated 05.07.2015 before the Inquiry Officer.

4. As replied in Para No. 01 of reply to Facts.
5. Being custodian of the revenue record, he should have reported missing of the mutation, which he failed.
6. Incorrect. Habib-Ur-Rehman who misplaced the mutation has been awarded major penalty of compulsory retirement. Whereas the appellant who was custodian of the revenue record, upon his criminal ignorance and failing to report the matter to his high-ups, has been awarded minor penalty.
7. As above.
8. As explained in Para No. 06.
9. He should have reported the matter to his officers so that a proper line of action might have been adopted, and the matter might have been settled within the department. Consequent upon his concealment and closing his eyes over the matter, the ACE had to file complaint under section 174 and sec. 175 PPC in the court of Special Judge ACE, Khyber Pakhtunkhwa which tarnished the image of the department badly.
10. Incorrect.
11. Incorrect/
12. Pertains to record, hence no comments.
13. Incorrect.

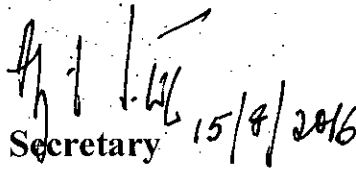
In view of above, the appeal seems baseless, therefore it is requested to be dismissed in limine.



**Commissioner**  
Mardan Division Mardan  
(Respondent No. 3)



**Deputy Commissioner**  
Mardan (Respondent No. 2)



15/8/2016

**Secretary**  
Revenue Deptt, Khyber Pakhtunkhwa  
(Respondent No. 01)



BEFORE THE SERVICE TRIBUNAL PESHAWAR

.....

*Hearing 07.12.2016.*

Appeal No. /2016

Said Badshah Versus The Secretary & others

REJOINDER

PRELIMINARY OBJECTIONS:

1 to 5 All the preliminary objections are incorrect and false. Denied.

FACTS

1. Para-1 of the written statement is malafidely moulded. Denied.
2. Needs no further comments.

GROUND

1. Para-1 of appeal is correct. While, the Reply thereto is incorrect and false. Denied.
2. Para-2 of Reply is incorrect and false. Denied.
3. Para-3 of Reply is incorrect and false. Denied.

No witnesses in support of the charge was examined in the presence of Appellant, to prove the charge against him, during the enquiry.


4. Incorrect, false, Denied. While, Para-4 of Appeal is correct.

5 to 9: Incorrect, and false. Denied.

10 to 13 Para-10 to 13 of Appeal are correct. While, the reply there-to is incorrect and based on malice, denied.

It is prayed that on acceptance of this Appeal, this Hon'ble Tribunal may be graciously be pleased to set side the impugned order and the Appellant may be exonerated from the charges as levelled against him, with costs.

Appellant ✓

( SAID BADSHAH ) 

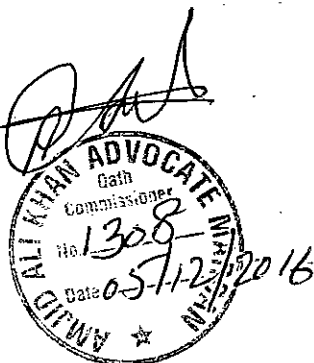
Through

  
MUHAMMAD ADAM KHAN  
Advocate Mardan.

AFFIDAVIT

I Said Badshah the Appellant do hereby state on solemn affirmation that the contents of the Appeal and this rejoinders are true and correct. While the objections raised in written statement are incorrect and false.

Appellant (Said Badshah) 



KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 947 /ST

Dated 14 - 5 - / 2019


To

The Deputy Commissioner,  
Government of Khyber Pakhtunkhwa,  
Mardan.

Subject: - JUDGMENT IN APPEAL NO. 466/2016, SAID BADSHAH.

I am directed to forward herewith a certified copy of Judgement dated 29.04.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR,  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.

No. \_\_\_\_\_ /ST

Dated \_\_\_\_\_ / 2019

To

The Agency Education Officer,  
Government of Khyber Pakhtunkhwa,  
Khyber Agency.

Subject: - JUDGMENT IN APPEAL NO. 751/2016, MR. SAIFULLAH.

I am directed to forward herewith a certified copy of Judgement dated 15.04.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.