

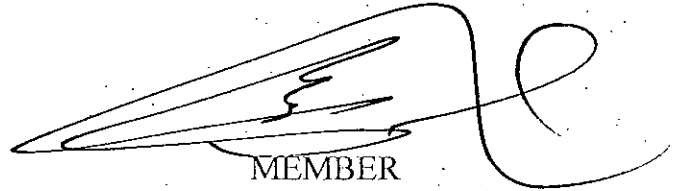
853/2014

29.3.2016

Appellant present in person and Mr. Farhaj Sikandar, GP for the respondents present. Appellant submitted an application wherein he requested for withdrawal of the appeal unconditionally. As such, the appeal is dismissed as withdrawn.

ANNOUNCED

29.3.2016

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above the printed text.

MEMBER

Camp Court, D.I.Khan

11.08.2015

Counsel for the appellant, M/S Mukhtiar Ali, Supdt. and Abdul Jalil, Naib Tehsildar alongwith Assistant A.G for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 29.9.2015 at Camp Court D.I.Khan as the appeal pertains to the territorial limits of D.I.Khan Division.


Chairman

29.09.2015

None is available on behalf of the appellant. Fresh notices be issued to appellant and his counsel. Mr. Farhaj Sikandar, GP for the respondents present and requested for time to contact them. On request of the learned GP another last chance is given to the respondents for submission of written reply on the next date. Case to come up for the same on 29.11.15 at camp court, D.I.Khan.


MEMBER
Camp court, D.I.Khan

23.11.2015

Appellant in person and Mr. Farhaj Sikandar, GP with Attaullah, Asstt Secretary for the respondents present and requested for further time. Therefore, case to come up for written reply at camp court, D.I.Khan on

29-12-2015,


MEMBER
Camp Court, D.I.Khan

19.3.2015

Counsel for the appellant and Mr. Muhammad Jan, GP with Mukhtiar Ali, Supdt. for respondents No. 1 & 2 present and requested for further time. Fresh notice be issued to respondent No. 3. To come up for written reply on 01.06.2015.


MEMBER

01.06.2015

None for the appellant present. Mr. Mukhtiar Ali, Supdt and Mr. Abdul Jalil, Naib Tehsildar alongwith Muhammad Jan, GP for the respondents present. Representative of the respondents requested for time to submit written reply/comments. Request accepted. To come up for written reply/comments on 11.08.2015 before S.B.


Member


Member

11.08.2015

27.10.2014

Appeal No. 838/2014
Mr. Muhammad Qasim

Counsel for the appellant present. Mr. Kamran Ullah, Advocate also filed Wakalat Nama on behalf of the appellant. Preliminary arguments heard and case file perused. Through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, the appellant has impugned order dated 23.01.2014, vide which the appellant was reverted from the post Tehsildar to the post of Naib-Tehsildar. Against the above referred impugned order appellant filed departmental appeal on 20.02.2014 which was not responded within the statutory period of 90 days, hence the instant appeal on 11.06.2014. Counsel for the appellant contended that the impugned notification has been issued in violation of law and rules. He relied on PLD 2008 Supreme Court 412, 2008 SCMR 1148, 2006 SCMR 1641 and 1995 SCMR 1593. He further contended that similar nature of appeal No. 804/2014 titled Muhammad Akram has already been admitted and pending before the learned Bench-II, therefore, the same may also be clubbed with the said appeal.

Since the matter pertains to terms and conditions of service of the appellant, hence admit for regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 13.01.2015 before the learned Bench-II.


Member

13.1.2015

Counsel for the appellant and Mr. Muhammad Jan, GP with Mukhtiar Ali, Supdt. for the respondents present. Representative of the respondents submitted before the court that written reply is under process of completion put up for signature which will be submitted on the next date. To come up for the same on 19.3.2015.


MEMBER

3.
Reader Note.

19.08.2014

Counsel for the appellant present. The Hon'ble Bench is on tour to Abbottabad, therefore, case to come up for preliminary hearing on 12.9.2014.


Reader

4.
Reader Note.

12.09.2014

Counsel for the appellant present. The learned Member (Judicial) is not working due to a recent order of the Hon'ble Peshawar High Court, Peshawar effecting his status as District and Session Judge. To come up for preliminary hearing on 27.10.2014.

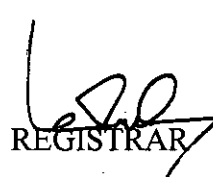


Reader



Form - A
Form of Order Sheet

Court of _____

Case No. 832/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	11/06/2014	<p>The appeal of Mr. Ghulam Qasim presented today by Mr. Rizwanullah Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	17-6-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>19-8-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 832 /2014

Ghulam Qasim

VERSUS

The Government of Khyber
Pakhtunkhwa through
Chief Secretary and others.

I N D E X

S.No	Particulars	Annexure	Pages #
1	Service Appeal	—	1-8
2	Affidavit	—	9
3	Copy of Service Rules 2008	“A”	10-13
4	Copy of Notification dated 2-12-2011	“B”	14-15
5	Copy of Notification regarding promotion	“C”	16-17
6	Copy of Writ Petition alongwith order sheet	“D”	18-34
7	Notification regarding withdrawal of promotion	“E”	35
8	Departmental Appeal dated 20-2-2014	“F”	36-39
9	Copy of posting order as Tehsildar on current charge basis	“G”	40-41
10	Wakalatnama	—	—


Appellant

Through


Rizwanullah

M.A. LL.B

Advocate High Court,
Peshawar

Dated:- 10-6-2014

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 839 /2014

Ghulam Qasim,
Tehsildar, Irrigation,
District D.I.Khan.

866
11-6-2014

APPELLANT

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary.
2. The Secretary Revenue & Estate Department/SMBR KPK Peshawar.
3. The Commissioner D.I.Khan Division, D.I.Khan.

RESPONDENTS

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
IMPUGNED NOTIFICATION NO.
1984-2061 DATED 23-1-2014 PASSED
BY THE SECRETARY BOARD OF
REVENUE & ESTATE DEPARTMENT /
SMBR, KHYBER PAKHTUNKHWA
(RESPONDENT NO.2) AGAINST WHICH
A DEPARTMENTAL APPEAL WAS
PREFERRED BUT THE SAME WAS NOT
RESPONDED WITHIN THE STATUTORY
PERIOD OF LAW.**

Prayer in Appeal

By accepting this appeal, the impugned Notification No. 1984-2061 dated 23-1-2014 passed by the Secretary Board of Revenue and Estate Department / SMBR, Khyber Pakhtunkhwa (respondent.No2) whereby the appellant was reverted illegally from the post of Tehsildar to the post of Naib-Tehsildar, may graciously be set aside and the appellant may kindly be restored as Tehsildar alongwith all back wages and consequential benefits.

Any other relief deemed appropriate in the circumstances of the case, not specifically asked for, may also be granted to the appellant.

Respectfully Sheweth,

Short facts giving rise to the present appeal are as under:-

1. That the appellant was a permanent employee of the **Board of Revenue & Estate Department** in capacity as Tehsildar (B-16) at the relevant time.
2. That according to Tehsildar, Naib Tehsildar / Subordinate Revenue Service Rules 2008, notified vide No.32102/Admn:1/135/SSRC dated 26-12-2008, the post of Tehsildar was to be filled in under clause(a) to the extent of 20% by initial recruitment, under clause(b) to the extent of 60% by promotion from Naib Tehsildars and under clause(c) to the extent of 20% from the officials working in various branches of Revenue Administration. But for all categories minimum qualification was 2nd class graduation from a recognized University as per column 5 describing minimum qualification for appointment by promotion. The condition of graduation was to be made applicable after 5 years of the date of Notification to the promotion quota of 60% under clause(b) **(Copy of the rules is appended as Annex-A).**
3. That the above Rules were further amended vide Notification No.12390-12429/Admn:1/1/296/Amendment dated 30-3-2011. Through this Notification clauses(b) and (c) of column 7 were substituted and officials like District Kunongos, District Revenue Accountants and Head Clerks (Revenue) were made eligible for the 60% quota meant for the Naib Tehsildars. The condition of graduation for 5 years as mentioned in Rules 2008 was also deleted.**(Copy of Notification is appended as Annex-B).**
4. That on 18-6-2013, the appellant and other employees of the Revenue Department ^{were} ~~was~~ promoted as Tehsildar (B-16) on

regular basis after recommendation of properly constituted and legally competent "DPC" because the above employees were senior in their cadre and having the eligibility for the posts of Tehsildars (B-16) under the relevant rules (**Copy Annex-C**).

5. That Shakirullah and others employees of the Revenue Department, felt aggrieved by the various promotion orders of Tehsildars, approached the Hon'ble Peshawar High Court by way of filing a writ petition No.1720-P/2013 praying therein that the impugned Notification and illegal promotions may graciously be set aside and the respondents No.1 to 3 be directed to consider the entire case strictly in accordance with the rules in vogue. This writ petition came up for hearing before the Hon'ble Court and it was held that the court has no jurisdiction to entertain the grievance of the petitioners and that the matter falls within the exclusive jurisdiction of the Service Tribunal. However, the writ petition was converted into departmental appeal and the same was sent to respondent No. 1 i.e Secretary, Revenue and Estate Department, KPK to decide it within the statutory period of law (**Copy Annex-D**).
6. That the Competent Authority vide Notification No Estt:I/26/1984-2061 dated 23-1-2014 has illegally withdrawn the promotion orders of the appellant and other employees of the Revenue Department, on the pretext of lack of prescribed qualification for posts of Tehsildars, without application of his independent mind to the merit of the case (**Copy of impugned Notification as Annex-E**).
7. That the appellant felt aggrieved by the said Notification, filed a departmental appeal with the respondent No.1 on 20-2-2014 within the statutory period of law, praying therein that the impugned Notification may graciously be withdrawn and he may kindly be restored as Tehsildar with all back wages and benefits (**Copy of departmental appeal is appended as Annex-F**).
8. That the departmental appeal was neither decided within the statutory period of law with cogent reasons nor any information whatsoever was given to the appellant as required under

Article 19-A of the Constitution of Islamic Republic of Pakistan 1973. Thus, the Appellate Authority has blatantly violated the provision of law as well as Constitution and the Principle laid down by **August Supreme Court of Pakistan** in case reported in **2011 SCMR 1 (Citation –B)**. The relevant citation is reproduced herein for facility of reference:-

(b) General Clauses Act (X of 1897)---

----S. 24-A ---Speaking order- Public functionaries are bound to decide cases of their subordinates after application of mind with cogent reasons within reasonable time.

It is well settled law that the decision of August Supreme Court of Pakistan is binding on each and every organ of the State by virtue of Article 189 and 190 of the Constitution of Islamic Republic of Pakistan, 1973. Reliance can be placed on the judgment reported in **1996-SCMR-Page-284 (Citation-C)**. The relevant citation is as under:-

(c) Constitution of Pakistan (1973)

Arts. 189 & 190--- Decision of Supreme Court—Binding, effect of--- Extent—Law declared by Supreme Court would bind all Courts, Tribunals and bureaucratic set-up in Pakistan.

9. That the appellant now files this appeal before this Hon'ble Tribunal inter-alia on the following grounds within the statutory period of law.

GROUND'S OF APPEAL

- A. That the order of Competent Authority is not based on sound reasons and correct appreciation of law for the reasons that the condition of educational qualification was not the requirement of relevant Rules 2011 for the post of Tehsildar to be filled through promotion. The

condition of the said qualification was only essential for the post of Tehsildar under the Rules 2008 which were superseded by subsequent Rules 2011 and the condition in respect of qualification was deleted accordingly. The Competent Authority was under statutory obligation to have considered the case of promotion in respect of employees in its true perspective and in accordance with the above Rules 2011. But he has over looked this aspect of the case and as such great injustice has been caused to the appellant as well as other employees. Therefore, the unilateral impugned Notification was malafide, incompetent, capricious, perverse having no sanction of law, was in excess of powers, in derogation of settled rules and principle of law, against the public policy and also against the interest of Public Authority and Trust.

- B. That the Competent Authority was bound to have provided an opportunity of hearing to the appellant before passing the impugned order in respect of his reversion from the post of Tehsildar to Naib Tehsildar, in order to justify his eligibility of promotion as Tehsildar(B-16). But he failed to do so. Thus, the appellant has been condemned / penalized without being heard contrary to the basic Principle of Natural Justice known as "**Audi Alteram Partem**". It is also well settle law that no adverse order can be passed against any person without providing him an opportunity of hearing. Reliance in this respect can be placed on the judgments of August Supreme Court of Pakistan reported in **2008-PLD (Supreme Court) 412 citation (a)** and **2002-SCMR-1034 citation (o)**. The relevant citations of the said judgments are reproduced herein for facility of reference:-

2008-PLD(Supreme Court)412 citation (a)

Administration of justice---

---Natural justice, principles of---Opportunity of hearing---Scope---Order adverse to interest of a person cannot be passed without providing him an opportunity of hearing---Departure from such rule may render such order illegal.

2002-SCMR-1034 citation (o)

Maxim

"Audi alteram partem "Application---Principle enshrined in maxim "Audi alteram partem" has to be applied in all judicial and non-judicial proceedings notwithstanding the fact that right of hearing has not been expressly provided by the statute governing the proceedings.

Therefore, the impugned Notification is against the spirit of administration of justice.

- C. That it is worth mentioning at this juncture that after withdrawal of Notification in respect of promotion of appellant and others, the Competent Authority has also posted them as Tehsildar (B-16) on current charge basis (**Copy Annex-G**). This clearly shows that the above employees were eligible for the said posts under the relevant Rules. Therefore, the impugned Notification is not sustainable in the eyes of law.
- D. That respondents No.2 has not treated appellant in accordance with law, rules and policy on subject and acted in violation of **Article 4 of the Constitution of Islamic Republic of Pakistan, 1973** and illegally notified the impugned Notification, which is unjust, unfair and hence not warranted under the law.
- E. That joint departmental appeal was not maintainable under the **Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986** which requires separate departmental appeals / representations. Since the Hon'ble High Court has directed for decision of the departmental appeal strictly in accordance with the rules, therefore, respondent No.2 has illegally accepted the said joint departmental appeal of 44 appellants. It is well settled law that when a statute prescribes a particular mode of doing an act it must be done in that way alone to gain validity. Reliance can be placed on the judgment of August Supreme Court of Pakistan reported in **2008-SCMR-1148 (citation-b)**. The relevant portion of the said judgment is reproduced herein for facility of reference:-

(b) Administration of justice---


----Where law provided for doing of a particular act in a particular manner, then same would be done in such particular manner or not at all

Therefore, the impugned Notification is liable to be set aside on this count alone.

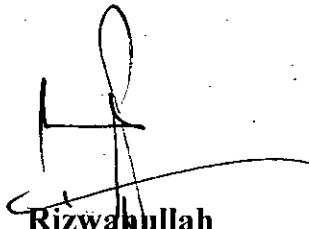
- F. That the appellant was promoted as Tehsildar in accordance with law and this order has also been acted upon. Moreover, the appellant has served the Revenue Department for sufficient long period and as such it had taken legal effect and created vested rights in his favour. Thus, the said Notification in respect of his promotion cannot be declared as illegal and the **Principle of Locus Poenitentiae** is attracted in the matter.
- G. That the appellant was senior, eligible as per rules and rightly promoted as Tehsildar by the Competent Authority after the recommendations of properly constituted (DPC). Hence, the impugned Notification in respect of withdrawal of said promotion is not tenable under the law.
- H. That the Competent Authority has passed impugned Notification in mechanical manner and the same is perfunctory as well as non-speaking and also against the basic principle of administration of justice. Therefore, the impugned Notification is bad in law.
- I. That the impugned Notification of the Competent Authority is the result of misreading and non-reading of relevant service rules. Hence the same has not sanctity under the law.
- H. That the appellant would like to seek the permission of this Hon'ble Tribunal to advance some more grounds at the time of arguments.

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned Notification No. 1984-2061 dated 23-1-2014 passed by the Secretary Board of Revenue and Estate Department / SMBR, Khyber Pakhtunkhwa (respondent No.2) whereby the appellant was reverted illegally from the post of Tehsildar to the post of Naib-Tehsildar, may graciously be set aside and the appellant may kindly be restored as Tehsildar alongwith all back wages and consequential benefits.

Any other relief deemed proper and just in the circumstances of the case, may also be granted.


Appellant

Through


Rizwanullah
M.A. LL.B
Advocate High Court,
Peshawar

Dated: 10-6-2014

BEFORE THE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/2014

Ghulam Qasim, Tehsildar, Irrigation, District D.I.Khan.

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary and others.

AFFIDAVIT

I, Ghulam Qasim, Tehsildar Irrigation, District D.I.Khan, do hereby solemnly affirm and declare that the contents of the accompanied Service Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

ATTESTED




Deponent

GOVERNMENT OF NORTH - WEST FRONTIER PROVINCE REVENUE AND ESTATE DEPARTMENT



NOTIFICATION

Tehsildar, Naib Tehsildar / Subordinate Revenue Service Rules 2008

Annex A

Peshawar dated the 26/12/2008.

Annexure A

No. 32102 /Admn:I/135/SSRC.

In pursuance of the provisions contained in sub - rule (2) of rule 3 of the North West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 read with the Cabinet Division Notification No. SRO. 457 (1) / 2001 dated 28th June, 2001 and in supersession of all previous rules issued in this behalf, the Revenue and Estate Department, in consultation with the Establishment and the Finance Department, hereby lays down the method of recruitment, qualification and other conditions specified in column 3 to 7 of the Appendix to this Notification and applicable to posts borne on the cadre strength of Revenue and Estate Department specified in column 2 of the said appendix:-

Appendix

1 S.No	2 Nomenclature of the post	3 Appointing Authority	4 Minimum Qualification for appointment by initial recruitment or by transfer	5 Minimum Qualification for appointment by promotion	6 Age limit	7 Method of recruitment
1.	Tehsildar (BPS 16)	Administrative Secretary (SMBR)	Second class Graduation from any University recognized by the Higher Education Commission	Second class Graduation from any University recognized by the Higher Education Commission.	21 - 30 years For initial recruitment	(a) Twenty percent by initial recruitment; and (b) Sixty percent by promotion, on the basis of Seniority - cum - fitness From amongst the Graduate Naib Tehsildar with at least Five Years Service as such. The condition of Graduation will be applicable after five years from the date of issuance of this Notification; and (c) Twenty percent by Promotion, on the basis of Joint Seniority -cum - fitness from amongst the Graduate Assistants / Senior Scale Stenographer of Board of Revenue NWFP Director Land Record NWFP Revenue Appellate Court / Sub - Registrar with at least Five Years Service as such.

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Attested
Adv

(11)

(11)

	2	3	4	5	6	7
2.	Naib Tehsildar (BPS 14)	Administrative Secretary (SMBR)	Second class Graduation from any University recognized by the Higher Education Commission	Second class Graduation from any University recognized by the Higher Education Commission	21 - 30 years For initial recruitment	(a) Fifty percent by initial recruitment, through NWJ Public Service Commission based on the result of Competitive Examination conducted by it in accordance with syllabus, and (b) Thirty percent by promotion, on the basis of Seniority - cum - fitness from amongst Graduate Kanungos with least Five Years Service as such, who have passed the Departmental Examination of Naib Tehsildar. The condition of Graduation will be applicable after five years from the date of issuance of this Notification. 2-3-12- (c) Twenty percent by promotion, on the basis of joint Seniority - cum - fitness from amongst Junior Scale Stenographer and Assistants in the office of Political Agent and Assistant Political Agent Frontier Region Assistant / Junior Scale Stenographer of Ex - Deputy Commissioner / Commissioners offices presently working in the offices of DCO / ACO / EDO (F&P) and DOR who are Graduate with five Years Service as such. By transfer from amongst Naib Tehsildar
3.	District Kanungo (Saddar Kanungo) (BPS 14)					By transfer from amongst Naib Tehsildar
4.	Head Clerk (Revenue) (BPS 14)					By transfer from amongst Naib Tehsildar
5.	District Revenue Accountant (BPS 14)					By transfer from amongst Naib Tehsildar

Attested
14/1/12
Adv

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	2	3	4	5	6	7
6.	Kanungo (BPS - 09)	District Officer (Revenue & Estate) /Collector.	-	-	-	By promotion, on the basis of joint Seniority -cum - fitness, on District level from amongst the Patwaris / Tehsil Revenue Accountant and Wasil Baqi Nawis who have passed the Departmental Examination of Kanungo with at least five Years Service as such.
7.	Senior Tehsil Revenue Accountant (BPS 07) and Junior Tehsil Revenue Accountant Wasil Baqi Nawis / Additional Wasil Baqi Nawis (BPS - 05)	-	-	-	-	By transfer from amongst Patwaris
8.	Patwari (BPS - 05)	District Officer (Revenue & Estate) /Collector,	Intermediate or equivalent qualification, who have passed the Patwari Examination having one year diploma in information technology from any institution technology from any institution recognized by Board of technical education	18 to 30	By initial recruitment	By initial appointment for amongst the Patwari passed candidates entered in Register maintained by the District Collector of the District Concerned having one year diploma in information technology from any institution recognized by Board of technical education. The condition of diploma will be applicable after three years from the date of issuance of Notification.

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Attested
14/11/11
Adv

13
2011

Sd/-
Secretary to Government of NWFP
Revenue and Estate Department

13

Copy forwarded for information and necessary action :

1. Secretary to Government of NWFP Establishment Department
2. Secretary to Government of NWFP Finance Department
3. Secretary to Government of NWFP Law & Parliamentary Affairs Department
4. Secretary NWFP Public Service Commission
5. Secretary to Governor NWFP.
6. Registrar Peshawar High Court Peshawar
7. Advocate General, NWFP
8. Accountant General NWFP Peshawar
9. Private Secretary to Chief Secretary NWFP
10. All District Coordination Officer, in NWFP
11. All District Officer (Revenue & Estate) /Collector, in NWFP
12. Director Land Record NWFP
13. The Controller, Government Printing Press, NWFP Peshawar with the request that the notification may be published in the official gazette and to supply one hundred printed copies to the undersigned

13

Attested
H. J. J.
Adv

Tubal
file

Deputy Secretary
Government of NWFP
Revenue & Estate Department

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PHH
GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, 0000000000, 00TH SEPTEMBER, 2012.

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE/REVENUE & ESTATE DEPARTMENT

NOTIFICATION

Dated Peshawar, 2nd December, 2011.

No. Estt:1/29G/Amendment/29174....In pursuance of provisions contained in Sub-Rule (2) of rule 3 of the North West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Revenue & Estate Department in consultation with the Establishment, Finance and Law Departments hereby directs that in the Department Notification No. 32102/Admn:1/135/SSRC, dated 26-12-2008 read with Notification No. 12389/Admn:1/29G/Amendment, dated 30.03.2011, the following further amendments shall be made, namely:

AMENDMENTS

In the Appendix:-

1.	Tehsildar (BPS-16)	<p>Against S.No. 1, in column No. 7, for the existing entries, at clauses (a), (b) and (d), the following shall be substituted, namely:</p> <p>(a) Twenty percent by initial recruitment, through Public Service Commission based on the result of a Competitive Examination conducted by it in accordance with syllabus, and</p> <p>(b) Sixty percent by promotion, on the basis of joint seniority-cum-fitness from amongst Naib Tehsildars, District Revenue Accountants, District Kamungos and Sub-Registrar with at least five years service.</p> <p>(c) Twenty percent by promotion on the basis of joint seniority-cum-fitness from amongst Superintendents of the office of Board of Revenue (Revenue & Estate and Land Settlement & Consolidation Department), Commissioners, DOR and Political Agents and Senior Staff Officers of the offices of Board of Revenue, Commissioners, Additional Commissioners, DCOs and Political Agents having five years service.</p>
2	Naib Tehsildar (BPS-14) (Divisional Cadre)	<p>Against S.No. 2, in column No. 7, for the existing entries, at clause (b), (c) and (d), the following shall be substituted, namely:</p> <p>(b) Twenty five percent by promotion, on the basis of seniority-cum-fitness from amongst Kamungos with at least five years service as such and he has passed the departmental examination of Naib Tehsildar.</p> <p>(c) Twenty-five percent by promotion on the basis of joint seniority-cum-fitness from amongst Assistants of the office of BOR, Commissioners, Additional Commissioners, DCOs, DOR office and Executive District Officers (P.P), with at least five years service, Political Mohanms of the office of Political Agent/Assistant Political Agents, with 10 years service</p>

Attested
H.T.J
Adv

(d) The officers so appointed shall successfully complete Settlement/Revenue training and pass Kanungo Certificate Examination.

EXPLANATION: Ministerial employees of the Board of Revenue eligible for appointment to the post of Haib Tolaidan under the provision of clause (c) shall, for the purposes of the said clause, be deemed to belong to the division and zone respectively in which their home district is situate.

Note: Vacancy in a division will be filled on respective divisional basis.

3. Deput Kanungo (BPS-14)	Against S.No. 3, in column No. 7, for the existing entries, the following shall be substituted, namely: By selection on seniority-cum-fitness with due regard to seniority from amongst labor-cadre passed Kanungos with at least 03 years.
4. Head Clerk (Re. amr) BPS-14 (Divisional cadre)	Against S.No. 4, in column No. 7, for the existing entries, the following shall be substituted, namely: Assistant having dealt with revenue or acquisition matters for at least 03 years.
5. District Revenue Accountant (BPS-14)	Against S.No. 5, in column No. 7, for the existing entries, the following shall be substituted, namely: By promotion, on the basis of selection on seniority from amongst Kanungos with at least 03 years service.
6. Kanungo (BPS-9)	Against S.No. 6, in column No. 7, for the existing entries, the following shall be substituted, namely: By promotion, on the basis of joint seniority-cum-fitness, on District level from amongst the patwaris/Lehsil Revenue Accountant who have passed the Departmental Examination of Kanungo.
7. Patwari (BPS-10)	Against S.No. 7, in column No. 7, for the existing entries, at clause (a) and (b) the following shall be substituted, namely: (a) By initial appointment from amongst the Patwari passed candidates entered in the Register maintained by the District Collector of the district concerned having one year certificate in information technology from a recognized institution recognized by Board of Technical Education. (b) Successfully completed 09 months Settlement training. This condition will be applicable w.e.f. January, 2014.

Attested
H. I. I.
Adv

Sd/-
SECRETARY



GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

Peshawar dated the 12/06/2013

NOTIFICATION

No. Estt: 1/26/ _____ Consequent upon the recommendation of Departmental Promotion Committee, the Competent Authority is pleased to order the promotion the following Naib Tehsildar, District Kanungo, District Revenue Accountant & Sub-Registrar (BPS - 14) to the post of Tehsildar (BPS - 16) on regular basis with immediate effect:-

S.NO	NAME OF OFFICER
1.	Mr. Gul Ghazi Khan
2.	Mr. Mukhtiar Ali
3.	Mr. Mushtaq Ahmad
4.	Mr. Liaqat Ali
5.	Mr. Ghulam Farooq
6.	Mr. Naz Amin
7.	Mr. Tariq Saleem
8.	Mr. Akbar Iftikhar Ahmad
9.	Muhammad Ayub Khan
10.	Mr. Shafi-ur-Rehman
11.	Mr. Attaullah
12.	Mr. Musafiq Hussain
13.	Mr. Abdul Qayum
14.	Muhammad Bashir
15.	Mr. Iftikhar Ahmad
16.	Muhammad Akram
17.	Mr. Ghulam Qasim

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2. On promotion, the above officers will be on probation for a period of one year in terms of Section-6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973, read with Rule 15 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules - 1989.

3. Consequent upon above, the following postings / transfers are orders with immediate effect:-

S.NO.	NAME OF OFFICER	FROM	TO
1.	Mr. Gul Ghazi Khan	Tehsilda Pakhti Nasrati (OPS)	Retained on the same station.
2.	Mr. Mukhtiar Ali	District Revenue Accountant Swabi	Services placed at the disposal of Commissioner Mardan Division for further posting.
3.	Mr. Mushtaq Ahmad	Sub-Registrar Karak	Services placed at the disposal of Commissioner Bannu Division for further posting.
4.	Mr. Liaqat Ali	Sub - Registrar Charsadda	Tehsildar / Recovery Officer Peshawar Circle
5.	Mr. Ghulam Farooq	Political Tehsildar (PR) Kohat	Retained on the same post.
6.	Mr. Naz Amin	PNT Barang Bajaur Agency	Services placed at the disposal of Commissioner, Malakand for further posting.
7.	Mr. Tariq Saleem	Tehsilda Domail	Retained on the same post.
8.	Mr. Akbar Iftikhar Ahmad	PT, Ali Zai Kurram Agency	Retained on the same post.
9.	Muhammad Ayub Khan	Tehsilda Bannu	Retained on the same post.

12/06/2013

ANNEXURE

5

S.NO.	NAME OF OFFICER	FROM	TO
10.	Mr. Shafi-ur-Rehman	District Kamungo Swat	Services placed at the disposal of Commissioner, Malakand for further posting.
11.	Mr. Attaullah Khan	Tehsildar Charsadda	Retained on the same post.
12.	Mr. Musadiq Hussain	Tehsildar Thall	Retained on the same post.
13.	Mr. Abdul Qayum	Tehsildar Kohat	Retained on the same post.
14.	Muhammad Bashir	Tehsildar Ghazi	Retained on the same post.
15.	Mr. Mulkar Ahmad	Naib Tehsildar Manselua	Services placed at the disposal of Commissioner, Hazara for further posting.
16.	Muhammad Akram	DEA DIKhan	Services placed at the disposal of Commissioner, DIKhan for further posting.
17.	Mr. Ghulam Qasim	Naib Tehsildar Paroha DIKhan	Services placed at the disposal of Commissioner, DIKhan for further posting.

By order of
Secretary to Government of
Revenue & Estate Department

No. Estt/261/235/24/00

- Copy to be sent to:-
1. All Commissioners in Khyber Pakhtunkhwa
 2. All Deputy Commissioners in Khyber Pakhtunkhwa
 3. All Political Agents in Khyber Pakhtunkhwa
 4. Superintendent Engineer (O) PESCO Peshawar Circle Peshawar
 5. Deputy Secretary (Law & Order) F.A.P.A. Secretariat Khyber Pakhtunkhwa
 6. Officers concerned
 7. Personal Files

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Deputy Secretary to Government of
Revenue & Estate Department.

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Annex-D p. 18
~~Annex-D p. 18~~

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

Writ Petition No. 1725-Pos/2013

Shakir Ullah & others Petitioners

Versus

Secretary Revenue and Estate Deptt: Khyber Pakhtunkhwa
Peshawar & others Respondents

INDEX

S.No.	Description of documents	Annexure	Pages
1.	Memo of writ petition		1-12
2.	Affidavit		13
3.	Addresses of the parties		14-20
4.	Copy of appointments orders	"A"	21-25
5.	Copy of Tehsildar, Naib Tehsildar Rules, 2008	"B"	26-29
6.	Copy of Notification No.12390-12429/Admn: 1/1/296/ Amendment dated 30/03/2011.	"C"	30-32
7.	Copy of Notification No.Esst: 1/1/296/Amendment /29174 dated 02/12/2011	"D"	33
8.	Copy of Impugned order No.Esst: 1/ 26-11338 dated 04/06/2013	"E"	34-36
9.	Copy of Seniority List	"F"	37-45
10.	Copy of letter Estt: 1/1/7270 dated 21/03/2012	"G"	46
11.	Court Fee Stamp Rs.500/-		In original
12.	Wakalat Namas		In original

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Dated 17/06/2013

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Through

Petitioners

Abdul Matin Khan

Maaz Ullah Khan Khalil
Advocates, High Court,
Peshawar.
Cell # 0301-5921847

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URGENT FORM

IN THE PESHAWAR HIGH COURT, PESHAWAR.

Writ Petition No. 172 of 2013

Shakir Ullah & others Petitioners

Versus

Secretary Revenue and Estate Deptt: Khyber Pakhtunkhwa
Peshawar & others Respondents

Will you kindly treat the accompanying Writ Petition as urgent
and in accordance with the Provisions of Rules, 1 chapter 2-A, High
Court Rules & Orders Volume V.

2) The Grounds of urgency are:

- A) That the respondents are bent upon issuing promoting orders almost on weekly basis favouring their blue eyed officials jeopardizing the career of those young Naib Tehsildars /petitioners who have qualified competitive examination conducted by Public Service Commission.
- B) That in order to keep a lid on their illegal orders, the petitioner are being denied access to the relevant documents.
- C) That if the matter is no heard urgently the petitioners are going to suffer multiple and irreparable loss to their career.

Dated 17/06/2013

Petitioners

Through

Abdul Matin Khan

Muaz Ullah Khan Khalil
Advocates, High Court,
Peshawar.
Cell # 0301-5921847

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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

Writ Petition No. 1725 of 2013

- 1) Shakir Ullah Son of Khan Mir R/o Mohallah Sodan Khel, Village Piro Khel, Tehsil Landi Kotal Khyber Agency.
- 2) Munir Ahmad Son of Jhangi Khan R/o Outside Lahgari Gate, Bagh Ghali Al-Noor Masjid, Street Sahib Jan Colony House No.69, D.I, Khan.
- 3) Rahamd Ullah Khan Son of Ahmad Khan R/o Village, Daulat Khel, Ishaq Khel, Tehsil & District Lakki Marwat.
- 4) Imtiaz Ali Shah Son of Muhammad Ali Shah R/o Village & P.O Warana Shahabad, Tehsil Takht Nasrati, District Karak.
- 5) Khalid Khan Son of Istikhar Hussain R/o Village & P.O Khar Bajaur Agency.
- 6) Fazli Wadood Son of Fazli Mahmood R/o Village Saad Ullah, Mohmand Agency.
- 7) Irshad Ali Son of Dost Muhammad R/o Village, P.O and Tehsil Tangi District Charsadda.
- 8) Noor ul Amin Son of Zar Mueen R/o Hassan Abad Colony, P.O Zafarabad Colony, D.I. Khan.
- 9) Amir Nawaz Son of Gul Daraz R/o Main Panyala Tehsil Paharpur District D.I Khan

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- (2)
- 10) Shah Wazir Son of Abdullah Khan R/o Waziristan Hotel & Restaurant Wana Road, South Waziristan Agency.
 - 11) Sikandar Khan Son of Sar Zamin Khan R/o Village & P.O Tehsil Charbagh, Mohallah Manri District Swat.
 - 12) Ishtiaq Ahmed Khan Son of Ala ud Din R/o Village & P.O Old Sakhakot Malakand Agency.
 - 13) Shams-ul Islam Son of Faqir Gul R/o Village & P.O Ghari Usmani Khel Tehsil Dargai, District Malakand.
 - 14) Muhammad Ilyas Son of Shah Nasim Khan R/o Mohallah Khattak Khel, Village & P.O Hazura Tehsil & District Swat.
 - 15) Yasir Salman Kundi Son of Hamid Khan Kundi R/o Chowk Chashma Road, P.O Shiekh Yousaf D.I. Khan.
 - 16) Yad Ullah Khan Khattak Son of Mohibullah Khattak R/o Mohallah Pela Khel, P.O Lund Khwar, Tehsil Takht Bhai District Mardan.
 - 17) Ahmad Hashmi Son of Fazli Rabbi R/o Village Raidghari, Tehsil & P.O Lal Qilla, Maida District Dir Lower.
 - 18) Amin Ullah Khan Son of Dost Muhammed Khan R/o Village Baggi Qamar P.O Rehmani Khel, Tehsil Paharpur District D.I. Khan.
 - 19) Islah ud Din Son of Syed Badshah R/o Village Nawab Dhery, P.O Talakar, Tehsil Thakt Bhai District Mardan.

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- (22)
- 20) Zahid Younis Son of Muhammad Younis R/o Village & P.O Latamber, Tehsil & District Karak.
- 21) Niamat Ullah Son of Khanim Ullah R/o Village & P.O Dhery Lakpani Tehsil & District Mardan.
- 22) Muhammad Riaz Son of Fazal Aziz R/o Village, P.O and Tehsil Monda District Dir Lower.
- 23) Muhammad Yar Son of Waqif Khan R/o Village & P.O Skhakot Bazaar Malakand Agency.
- 24) Sher Ali Khan Son of Sahibzar Gul R/o Landi Kass Mingora Swat.
- 25) Munawar Shah Son of Abdur Rashid R/o Village Shehadda P.O Chakdara Tehsil Adenzai, District Dir Lower.
- 26) Iftikhar ud Din Son of Zewar Din R/o Gulbahar Colony No.1 Mardan Road, GPO Charsadda.
- 27) Younis Khan Son of Waqif Khan R/o Village & P.O Akhagram Tehsil Wari District Dir Lower
- 28) Mujahid Ali Son of Khalil ur Rehman R/o Village Kand Tazadin P.O Pabbi District Nowshera.
- 29) Syed Abdul Akbar Shah Son of Syed Gul Chaman R/o Village Pirabad, P.O Bashkhalai, District Mardan.
- 30) Syed Sultan Haider Shah Son of Syed Gulzar Hussain Shah R/o House No.946/14-A, Shiekhabad No.3, District Peshawar.

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- 31) Aftab Ahmed Son of Javed Muhammad R/o Village & P.O Chaghar Matti Tehsil & District Peshawar.
- 32) Dil Nawaz Khan Son of Alam Zeb R/o Village & P.O Kalo Khan, Tehsil & District Swabi.
- 33) Kifayat Ullah Son of Heji Akbar R/o Street Idressabad Gulbahar No.3, Peshawar.
- 34) Faqir Hussain Son of Muhammad Younis R/o Kandi Taza Din P.O Pabbi District Nowshera.
- 35) Zulfiqar Khan Son of Arsala Khan R/o Village Hassan Ghari Shami Road, Peshawar.
- 36) Waqar Ahmad Son of Muhammad Irfan R/o Village & P.O Kanshian Tehsil Bala Kot District Mansehra.
- 37) Muhammad Faraz Qureshi Son of Muhammad Riaz Qureshi R/o Street No.1 Al-Mansoor Town, Ayub Medical Complex Abbottabad.
- 38) Fazal ur Rehman Son of Habib ur Rehman R/o Village & P.O Paind Hashim Khan Tehsil & District Haripur.
- 39) Farukh Jadoon Son of Anwar Ahmed Khan R/o Village & P.O Langra Tehsil & District Abbottabad.
- 40) Fayaz Ahmed Son of Pir Khan R/o Village & P.O Bearan Ghali, Tehsil & District Abbottabad.
- 41) Bilal Ahmad Son of Farid ud Din R/o Village Kalis P.O Tehsil & District Haripur.

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42) Tanveer Shahzad Son of Muhammad Sahif R/o Badira
Road Mohallah Lahor Banda, Manshra.

43) Ijaz Ahmad Son of Muhammad Riaz R/o Tanda Mera,
Village & P.O Salhad Tehsil & District Abbottabad.

44) Muhammad Salim Son of Muhammad Saddique R/o
Village Badhair, P.O Nathia Ghali Tehsil & District
Abbottabad.

..... Petitioners

Versus

- 1) Secretary Revenue and Estate Deptt: Khyber
Pakhtunkhwa Peshawar.
- 2) Departmental Promotion Committee Revenue and Estate
Deptt: Khyber Pakhtunkhwa Peshawar through
Respondent No.1.
- 3) Deputy Secretary Revenue and Estate Deptt: Khyber
Pakhtunkhwa Peshawar.
- 4) Hazrat Qamar C/o Commissioner Malakand Division.
- 5) Muhammad Siddique Reader to Member -II Board of
Revenue.
- 6) Misri Khan Tehsildar Chota Lahor District Swabi.
- 7) Bashir Ahmed Tehsildar Swabi.
- 8) Mian Sami Ullah Tehsildar Tangi.
- 9) Abdul Haleem C/o Commissioner Hazara.
- 10) Asghar Shah C/o Commissioner Hazara posted at
Battgram.
- 11) Ali Sher Khan Tehsildar on Special Duty Revenue
Peshawar.
- 12) Abdul Ghaffar Tehsildar Sarai Nourang.

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- 13) Muhammad Taj C/o Commissioner Hazara.
- 14) Said Rehman Tehsildar Anti Corruption Peshawar.
- 15) Qaiser Khan Tehsildar FR Bannu.
- 16) Najeeb Ullah Tehsildar Irrigation (Rod Kohi) D.I.Khan
- 17) Muhammad Ghulam C/o Commissioner Kohat.
- 18) Muhammad Hayat Tehsildar (OPS) National Accountability Bureau.
- 19) Waheed Ahmed (OPS) Allai.
- 20) Muhammad Hamayun C/o Commissioner Malakand Division.
- 21) Surir Ahmed Tehsildar Nowshera.
- 22) Muhammad Riaz Tehsildar Pabbi.
- 23) Muhammad Nawaz Tehsildar Battagram
- 24) Mir Laiq Tehsildar Mardan
- 25) Nouman Ali Shah PT Lower Orakzai, Kurram Agency.
- 26) Shourin Shah Tehsildar (OPS) Shabqadar.
- 27) Hidayat Ullah Tehsildar (OPS) Behrain.
- 28) Ghulam Sarwar C/o Commissioner Malakand Division.
- 29) Farzand Ali C/o Commissioner Malakand Division.
- 30) Said Rahim C/o Commissioner Malakand Division.
- 31) Fazli Raziq C/o Commissioner Malakand Division.
- 32) Asmat Ullah C/o Commissioner Bannu.
- 33) Hussain Bakhshi C/o Commissioner D.I.Khan
- 34) Abdur Rashid C/o Commissioner D.I.Khan
- 35) Fatch Ullah FATA Secretariat.
- 36) Mulazim Hussain C/o Commissioner D.I.Khan Division.
- 37) Muhammad Israr C/o Commissioner Bannu.
- 38) Afzal Khan Tehsildar Khadu Khel (OPS) Binner.
- 39) Gul Said Recovery Officer NRSP, Matta Swat.
- 40) Jehanzeb C/o Commissioner Malakand.
- 41) Anwar ul Haq C/o Commissioner Malakand.

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- 42) Kutab Khan C/o Commissioner D.I Khan.
 43) Qaiser Khan
 44) Latif Khan Sons of Ismail Khan R/o Bajkatta District
 Buner.

..... Respondents

WRIT PETITION UNDER ARTICLE 199 OF
 THE CONSTITUTION OF THE ISLAMIC
 REPUBLIC OF PAKISTAN, 1973, AGAINST
 THE ORDER OF RESPONDENTS NO.1 TO 3
 WHEREBY RESPONDENT NO.4 TO WERE
 PROMOTED VIDE NOTIFICATION NO. ESTT:
 1/26/11333 DATED 04/06/20013 ISSUED IN
 BLATANT VIOLATION OF THE TEHSILDARI
 AND NAIB TEHSILDARI RULES 2008 AS
 AMENDED FROM TIME TO TIME.

Prayer:

On acceptance of this writ petition the impugned notification and the illegal promotions may be set aside and respondents No.1 to 3 be directed to reconsider the entire case strictly in accordance with the Rules in vogue.

Respectfully Sheweth:

The petitioners submit as under:

- 1) That the petitioners were recruited as Naib Tehsildars through a competitive examination conducted by the Khyber Pakhtunkhwa Public Service Commission and the petitioners were accordingly appointed as Naib Tehsildars by the Respondents vide appointment order No. 1782-1907/Admn:V/PSC dated 22/01/2009. (Copy of the appointments order are at Annexure "A").
- 2) That according to Tehsildar, Naib Tehsildar / Subordinate Revenue Service Rules 2008, Notified vide No.32102/Admn:1/135/SSRC dated 26/12/2008, the post of Tehsildar was to be filled in under clause-(c) to the extent

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of 20% by initial recruitment, under clause (b) to the extent of 60% by promotion from Naib Tehsildars and under clause (c) to the extent of 20% from the officials working in various branches of Revenue Administration, but for all categories minimum Qualification was 2nd Class graduation from a recognized University as per column 5 describing minimum qualification for appointment by promotion. The condition of graduation was to be made applicable after 5 years of the date of notification to the promotion quota of 60% under clause (b). (Copy of the Rules is at Annexure "B")

3) That these Rules were further amended vide Notification No.12390 - 12429/ Adm: 1/1/296/Amendment dated 30/03/2011. Through this notification clauses (b) and (c) of column 7 were substituted and officials like District Kunongos, District Revenue Accountants and Head Clerks (Revenue) were made eligible for the 60% Quota meant for the Naib Tehsildars. The non-application of the condition of graduation for 5 years was also done away with. (Copy of the Amendment Notification is at Annexure "C").

4) That yet another amendment was made in the said rules vide Notification No.Estt:1/1/296/Amendment 129174 dated 02/12/2011 where again for the post of Tehsildar changes were introduced in the 60% Quota meant for promotion of Naib Tehsildars to the post of Tehsildars. This time Sub-Registrar were included in the list of eligible officials. (Copy of this Notification is at Annexure "D").

5) That it will be easy to conclude that the minimum qualification for recruitment to the post of Tehsildar is

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Second class Graduation as throughout these amendments, the entries in column No.5 have neither been deleted nor changed and the non-application of the condition of graduation for five years was also deleted.

6) That it can be easily concluded that all the amendments introduced in the 60% Quota originally meant only for Naib Tehsildars, are meant to reduce the chances of directly recruited Naib Tehsildars to become Tehsildars under malafide intention of the authorities.

7) That respondents No.1 to 3, through the impugned orders, have promoted Respondent No.4 to 42 against the rules without ensuring the basic qualification of graduation required for promotion to the post of Tehsildar as required by the entries in column No.5 of the Rules, as these stand today, with the result that respondents No.6,7,9,10,13,14,18,19,20,21,22,23,24,28,29,30,32,33,35,36,38 &42 have been promoted despite the fact that they are not graduates. (Copy of the impugned order No.Esst:1/26-11338 dated 04/06/2013 is at Annexure "E").

8) That respondent No.43&44 have been promoted clandestinely through administrative orders as both of them were Patwaries in the year 2007-08 but are now working as EACs in District Buner. According to Letter No.Esst: 1/1/7270 dated 02/03/2012, issued by respondent No.1 addressed to Director Land Record, wherein the designation of both these respondents was mentioned as District Kanungo. It is amazing that an official who was District Kanungo in the year of 2012, received three promotions i.e. as Naib Tehsildar, Tehsildar and EACs in one year. This could have happened only in the revenue Deptt: (Copy of the Letter is as Annexure "F").

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- 9) That these promotions have been ordered in haste and without due process of law as no joint seniority list has been prepared in accordance with law regarding those officials who were to be considered for promotion to the post of Tehsildar. Such a joint seniority list is the basic requirement for any promotion process.
- 10) That the so-called final seniority list issued vide Office No.Estt-V/S.1/927 dated 26/04/2013 contains the name of those officials who have been shown as promoted to the post of Naib Tehsildars through the Administrative order of S.M.B.R. Such like administrative order is neither a process recognized by the Rules on the subject nor is logical because in the presence of Departmental Promotion Committee, no authority, even the Chief Secretary, cannot promote any person to any post without the process of approval by a Departmental Promotion Committee. (Copy of the Seniority List is at Annexure "G").
- 11) That the seniority list has been issued at the back of the petitioners as the same has not been circulated amongst the petitioners as required by law.
- 12) That the seniority list shows that promotions have been ordered every 2/3 days which tells upon the working of one of the most important department of the province.
- 13) That the respondents No. 1 to 3 are busy in processing further cases of promotion without adopting the proper procedure in accordance with rules on the subject. Any such orders, if issued, during the pendency of this writ

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petition would be brought to the notice of this Hon'ble Court with due permission.

- 14) That the attitude of the Respondents No.1 to 3 is arbitrary, arrogant, motivated by favouritism, against the law and facts and liable to be stopped through interim order to save the career of the petitioners who are young and are likely to suffer irreparable loss.
- 15) That feeling aggrieved, the petitioners have no other adequate remedy under the existing law of the land but to approach this Hon'ble Court through this writ petition with the request to set aside the impugned promotion orders on the following, amongst others;

Grounds:

- A) That the impugned order is against the law on the subject and the rules framed by the respondents themselves;
- B) That the respondents want to favour certain officials to the detriment of the petitioners who have joined the service through competitive examination and the respondents are bent upon destroying their career from the very start;
- C) That promoting some of the respondents as Naib Tehsildars through administrative orders, instead of the

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normal route of DPC, and then promoting them further as Tehsildars shows their favouritism and disregard for law.

D) That the orders of the respondents No.1 to 3 are illegal, arbitrary and against the fundamental rights and need interference by this Hon'ble Court.

It is, therefore, most humbly prayed that on acceptance of this writ petition the impugned notification and the illegal promotions may be set aside and the respondent be directed to reconsider the entire case strictly in accordance with the Rules in vogue.

Interim Relief:

That the illegal impugned orders of promotion may kindly be suspended till the decision of this Writ petition as the same is against the Rules on face of it.

Dated 17/06/2013

Petitioners

Through

[Handwritten Signature]

Abdul Mutin Khan
Advocate, High Court,
Peshawar.

Certificate:

Certified that as per instruction of my client no such like writ petition on the subject has earlier been filed before this Hon'ble Court.

Advocate

List of Books:

- 1) Constitution of the Islamic Republic of Pakistan, 1973,
- 2) Other law books as per need.

Advocate

ATTESTED

[Handwritten notes on the left margin: "A. I. Khan", "A", "A. Khan"]

Service Tribunal. On the part of the learned counsel for the petitioner the case was adjourned for further study and preparation of the case. Today the learned counsel on the part of the petitioner when occupied the Rostum, stated at the bar that through the instant writ petition he has challenged the impugned order on the grounds that he is eligible for promotion but the department has denied him to consider, wherein the jurisdiction of this Court is barred under Article 226 of Constitution of Pakistan and the same question is amenable to the jurisdiction of Service Tribunal constituted under the article 174. The learned counsel for the petitioner, however, submitted that the instant petition has been filed on 18/02/2013 and since that is pending adjourned for decision, in which he requested that the instant writ petition be transmitted to respondent No.1, as departmental.

Case No. 1

18/2/13

18/2/13

appeal for decision. The request of the counsel for the petitioner is genuine, thus, copy of this Writ Petition be transmitted to respondent No.1 i.e. Secretary Revenue and Estate Department Khyber Pakhtunkhwa shall be treated as Departmental Appeal and be decided in the prescribed limits of time strictly in accordance with Rules and Law.

With the above observations, this Writ Petition is disposed off accordingly.

Announced:
5th November, 2013.

[Signature]
JUDGE

[Signature]
JUDGE

*Ali Raza
A.C.W.*

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Annex-E 35
GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

Peshawar dated the 23/01/2014

NOTIFICATION

No. Estt:1/26/_____

Upon acceptance of appeal filed by Mr. Shakirullah & others, the Competent Authority held the promotion order to post of Tehsildar issued vide this department Notifications No. Estt:1/26/11338 dated 04.06.2013, No Estt:1/26/12401 and No. Estt:1/26/12342 dated 18.06.2013 in respect of following officials as not having the prescribed qualification for the post of Tehsildars. Accordingly, the promotion orders of the officials listed below are withdrawn and they are reverted to the post held before prior to their promotion.

S.NO	NAME OF OFFICIAL
1.	Mr. Misri Khan
2.	Mr. Bashir Ahmad
3.	Mr. Abdul Haleem
4.	Mr. Asghar Shah
5.	Mr. Muhammad Taj
6.	Mr. Saib Rehman
7.	Mr. Muhammad Hayat
8.	Mr. Waheed Ahmad
9.	Mr. Muhammad Hamayun
10.	Mr. Sarir Ahmad
11.	Mr. Muhammad Riaz
12.	Muhammad Nawaz
13.	Mr. Mir Laiq
14.	Mr. Ghulam Sarwar
15.	Mr. Farzand Ali
16.	Mr. Saib Rahim
17.	Mr. Fazli Raziq
18.	Mr. Asmat Ullah
19.	Mr. Hussain Bakhsh
20.	Mr. Abdur Rashid
21.	Mr. Fatch Ullah
22.	Mr. Mulazim Hussain
23.	Mr. Afzal Khan
24.	Mr. Kutab Khan
25.	Mr. Abdul Ghazi Khan

Attested
H. I. J.
Adv.

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S.NO	NAME OF OFFICIAL
26.	Mr. Mukhtiar Ali
27.	Mr. Mushtaq Ahmad
28.	Mr. Liaqat Ali
29.	Mr. Naz Amin
30.	Mr. Shafi-ur-Rehman
31.	Mr. Attaullah
32.	Mr. Musadiq Hussain
33.	Mr. Abdul Qayum
34.	Muhammad Bashir
35.	Mr. Itikhar Ahmad
36.	Muhammad Akram
37.	Mr. Ghulam Qasim
38.	Mr. Attaullah
39.	Mr. Tifa Muhammad

No.Esst:1/26/ 1984-2061

By order of
Secretary

Copy forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa.
2. All Commissioners, in Khyber Pakhtunkhwa.
3. All Deputy Commissioners, in Khyber Pakhtunkhwa.
4. All Political Agents in Khyber Pakhtunkhwa.
5. Deputy Secretary (Law & Order) FATA Secretariat Khyber Pakhtunkhwa.
6. Official concerned.

Secretary-I

To

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

Subject:- DEPARTMENTAL APPEAL

Prayer in Appeal

By accepting this departmental appeal, the impugned Notification No. 1984-2061 dated 23-1-2014 passed by the Secretary Board of Revenue and Estate Department/SMBR, KPK, whereby the appellant was reverted illegally from the post of Tehsildar to the post of Naib-Tehsildar, may graciously be set aside and the appellant may kindly be restored as Tehsildar alongwith all back wages and consequential benefits.

RESPECTED SIR,

That the appellant files this Departmental Appeal before the Hon'ble Appellate Authority inter-alia on the following grounds:-

1. That the appellant was serving as Naib Tehsildar at the relevant time under the supervision and control of Board of Revenue & Estate Department.
2. That according to Tehsildar, Naib Tehsildar / Subordinate Revenue Service Rules 2008, notified vide No.32102/Admn:1/135/SSRC dated 26-12-2008, the post of Tehsildar was to be filled in under clause(a) to the extent of 20% by initial recruitment, under clause(b) to the extent of 60% by promotion from Naib Tehsildars and under clause(c) to the extent of 20% from the officials working in various branches of Revenue Administration. But for all categories minimum qualification was 2nd class graduation from a recognized University as per column 5 describing minimum qualification for appointment by promotion. The condition of graduation was to be made applicable after 5 years of the date of Notification to the promotion quota of 60% under clause(b) **(Copy of the rules is appended as Annex-A)**
3. That the above Rules were further amended vide Notification No.12390-12429/Admn:1/1/296/Amendment dated 30-3-2011. Through this Notification clauses(b) and (c) of column 7 were substituted and officials like District Kunongos, District Revenue Accountants and Head Clerks (Revenue) were made eligible for the 60% quota meant for the Naib Tehsildars. The condition of graduation for 5 years as mentioned in Rules 2008 was also deleted. **(Copy of the amended Notification of rules is as Annex-B).**

4. That on 18-6-2013, the appellant and other employees of the Revenue Department was promoted as Tehsildar (B-16) on regular basis after recommendation of properly constituted and legally competent "DPC" because the above employees were senior in their cadre and having the eligibility for the posts of Tehsildars (B-16) under the relevant rules (Copy Annex-C).
5. That Shakirullah and others employees of the Revenue Department, felt aggrieved by the various promotion orders of Tehsildars, approached the Hon'ble Peshawar High Court by way of filing a writ petition No.1720-P/2013 praying therein that the impugned Notification and illegal promotions may graciously be set aside and the respondents No.1 to 3 be directed to consider the entire case strictly in accordance with the rules in vogue. This writ petition came up for hearing before the Hon'ble Court and it was held that the court has no jurisdiction to entertain the grievance of the petitioners and that the matter falls within the exclusive jurisdiction of the Service Tribunal. However, the writ petition was converted into departmental appeal and the same was sent to respondent No. 1 i.e Secretary, Revenue and Estate Department, KPK to decide it within the statutory period of law (Copy Annex-D).
6. That the Competent Authority vide Notification No Estt:1/26/1984-2061 dated 23-1-2014 has illegally withdrawn the promotion orders of appellant and other employees of the Revenue Department, on the pretext of lack of prescribed qualification for posts of Tehsildars, without application of his independent mind to the merit of the case. Hence, the impugned order is not sustainable in the eye of law (Copy Annex-E).
7. That it is worth mentioning at this juncture that after withdrawal of Notification in respect of promotion of appellant and others, the Competent Authority has also posted them as Tehsildar (B-16) on current charge basis (Copy Annex-F). This clearly shows that the above employees were eligible for the said posts under the relevant Rules.
8. That the order of Competent Authority is not based on sound reasons and correct appreciation of law for the reasons that the condition of educational qualification was not the requirement of relevant Rules 2011 for the post of Tehsildar to be filled through promotion. The condition of the said qualification was only essential for the post of Tehsildar under the Rules 2008 which were superseded by subsequent Rules 2011 and the condition in respect of qualification was deleted accordingly. The Competent Authority was under statutory obligation to have considered the case of promotion in respect of employees in its true perspective and in accordance with the above Rules 2011. But he has over looked this aspect of the case and as such great injustice has been caused to the appellant as well as other employees. Therefore, the unilateral impugned order was malafide, incompetent, capricious, perverse having no sanction of law, was in excess of powers, in derogation of settled rules and principle of law, against the public policy and also against the interest of Public Authority and Trust.

9. That the Competent Authority was bound to have provided an opportunity of hearing to the appellant before passing the impugned order in respect of his reversion from the post of Tehsildar to Naib Tehsildar, in order to justify his eligibility of promotion as Tehsildar(B-16). But he failed to do so. Thus, the appellant has been condemned / penalized without being heard contrary to the basic Principle of Natural Justice known as "Audi Alteram Partem". Hence the impugned order is against the spirit of administration of justice. It is also well settled law that no adverse order can be passed against any person without providing him an opportunity of hearing. Reliance in this respect can be placed on the judgments of August Supreme Court of Pakistan reported in 2008-PLD(Supreme Court)412 citation (a) and 2002-SCMR-1034 citation (o). The relevant citations of the said judgments are reproduced herein for facility of reference:-

2008-PLD(Supreme Court)412 citation (a)

Administration of justice---

---Natural justice, principles of---Opportunity of hearing---Scope---Order adverse to interest of a person cannot be passed without providing him an opportunity of hearing---Departure from such rule may render such order illegal.

2002-SCMR-1034 citation (o)

Maxim

"Audi alteram partem" Application ---Principle enshrined in maxim "Audi alteram partem" has to be applied in all judicial and non-judicial proceedings notwithstanding the fact that right of hearing has not been expressly provided by the statute governing the proceedings.

It is well settled law that the decision of August Supreme Court of Pakistan is binding on each and every organ of the State by virtue of Article 189 and 190 of the Constitution of Islamic Republic of Pakistan, 1973. Reliance can be placed on the judgment reported in 1996-SCMR-Page-284 (Citation-C). The relevant citation is as under:-

(c) Constitution of Pakistan (1973)

Arts. 189 & 190--- Decision of Supreme Court— Binding, effect of--- Extent—Law declared by Supreme Court would bind all Courts, Tribunals

and bureaucratic set-up in Pakistan.

10. That the Competent Authority has passed impugned order in mechanical manner and the same is perfunctory as well as non-speaking and also


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against the basic principle of administration of justice. Therefore, the impugned order is not warranted by law.

11. That the impugned order of the Competent Authority is the result of misreading and non-reading of relevant service rules. Hence the same is liable to be set aside.

In view of the above narrated facts, the impugned Notification No. 1984-2061 dated 23-1-2014 passed by the Secretary Board of Revenue and Estate Department/SMBR, KPK, whereby the appellant was reverted *illegally* from the post of Tehsildar to the post of Naib-Tehsildar, may graciously be set aside and the appellant may kindly be restored as Tehsildar alongwith all back wages and consequential benefits.

Yours obediently,


Ghulam Qasim,
Tehsildar, Irrigation,
District D.I.Khan

Dated: 20-2-2014

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

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Peshawar dated the 24/01/2014.

Annex-G

No. Fstt/126/ 227-0. On issuance of Notification No. Fstt/126/1983, dated 23.01.2014 the Competent Authority is pleased to post the following Naib Tehsildars, District Kanungos, District Revenue Accountants, Sub-Registrars and Superintendents as Tehsildar on Current Charge Basis with immediate effect and in public interest: -

S.No.	NAME	DESIGNATION & PRESENT POSTING	TO
	Mr. Misri Khan	Tehsildar Lahor, District Swabi	Retained on the same post (On current Charge basis)
2.	Mr. Bashir Ahmad	Tehsildar Swabi	Retained on the same post (On current Charge basis)
3.	Mr. Abdul Halceem	Tehsildar Battagram	Retained on the same post (On current Charge basis)
4.	Mr. Asghar Shah	Tehsildar Mardan	Retained on the same post (On current Charge basis)
5.	Mr. Muhammad Taj	Tehsildar Manshra	Retained on the same post (On current Charge basis)
6.	Mr. Said Rehman	Tehsildar Anti-Corruption	Retained on the same post (On current Charge basis)
7.	Mr. Muhammad Hayat	Tehsildar Tangi District Charsadda	Tehsildar Tangi District Charsadda (Current Charge basis)
8.	Mr. Waheed Ahmad	Tehsildar Haripur	Retained on the same post (On current Charge basis)
9.	Mr. Muhammad Hamayun	Tehsildar Upper Dir	Retained on the same post (On current Charge basis)
10.	Mr. Sarir Ahmad	Tehsildar Nowshera	Tehsildar Nowshera (Current Charge basis)
11.	Mr. Muhammad Riaz	Tehsildar Pabbi	Retained on the same post (On current Charge basis)
12.	Muhammad Nawaz	Tehsildar Charsadda	Retained on the same post (On current Charge basis)
13.	Mr. Mir Laiq	Tehsildar Peshawar	Retained on the same post (On current Charge basis)
14.	Mr. Ghulam Sarwar	Tehsildar Behrain	Retained on the same post (On current Charge basis)
15.	Mr. Farzand Ali	Tehsildar Mandar	Retained on the same post (On current Charge basis)
16.	Mr. Said Rahim	Tehsildar Timergara	Retained on the same post (On current Charge basis)
17.	Mr. Fazli Raziq	Tehsildar Gagra	Retained on the same post (On current Charge basis)
18.	Mr. Asmat Ullah	Tehsildar Bannu	Retained on the same post (On current Charge basis)
19.	Mr. Hussian Bakhsh	Tehsildar Land Acquisition DIK	Retained on the same post (On current Charge basis)
20.	Mr. Abdur Rashid	Tehsildar Kulachi	Retained on the same post (On current Charge basis)
21.	Mr. Fatch Ullah	Political Tehsildar Dossali (NVA)	Retained on the same post (On current Charge basis)
22.	Mr. Mulazim Hussain	Tehsildar Paharpur	Retained on the same post (On current Charge basis)
23.	Mr. Afzal Khan	Tehsildar Khadu Khel	Retained on the same post (On current Charge basis)

Attested
[Signature]
Acw.

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24.	Mr. Kutab Khan	Tehsildar Havelian	Retained on the same post (On current Charge basis)
25.	Mr. Gul Ghazi Khan	Tehsildar/RO Khyber Bank Peshawar	Retained on the same post (On current Charge basis)
26.	Mr. Mukhtiar Ali	Tehsildar Inspector Stamp Mardan.	Retained on the same post (On current Charge basis)
27.	Mr. Mushtaq Ahmad	Tehsildar/Reader to SMBR	Retained on the same post (On current Charge basis)
28.	Mr. Liaqat Ali	Tehsildar Razzar	Retained on the same post (On current Charge basis)
29.	Mr. Naz Amin	Tehsildar Kalkot	Retained on the same post (On current Charge basis)
30.	Mr. Attaullah	Tehsildar /RO PESCO Peshawar Circle	Retained on the same post (On current Charge basis)
31.	Mr. Musadiq Hussain	Tehsildar Thall	Retained on the same post (On current Charge basis)
32.	Muhammad Bashir	Tehsildar Katlang	Retained on the same post (On current Charge basis)
33.	Mr. Mikhair Ahmad	Tehsildar/LAC NHA Hazara	Retained on the same post (On current Charge basis)
34.	Muhammad Akram	Tehsildar Babuzai Swat	Retained on the same post (On current Charge basis)
35.	Mr. Ghulam Qasim	Tehsildar Irrigation DIK	Retained on the same post (On current Charge basis)
36.	Mr. Attaullah	Tehsildar Daggar	Retained on the same post (On current Charge basis)
37.	Mr. Tila Muhammad	Tehsildar /RO PESCO Khyber Circle	Retained on the same post (On current Charge basis)

No. Estt: 1/26/ 2271-79

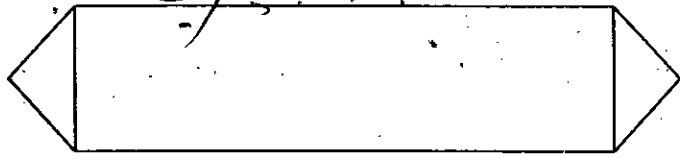
By order of
Secretary

Copy to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. All Commissioners in Khyber Pakhtunkhwa.
3. All Deputy Commissioners in Khyber Pakhtunkhwa.
4. All Political Agents in Khyber Pakhtunkhwa.
5. Official Concerned.
6. Personal Files.

Secretary-

بعدالت حساب جس میں صاحب کسٹومرز کی طرف سے



اسرائیل

2 منجانبہ
بنام

Service Appeal

Chulam Qasim

VS

Govt of KPK Through
Chief Secretary etc

مورخہ

مقدمہ

دعویٰ

جزم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام لہار کیلئے رضوان اللہ علیہ

مقرر کر 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 ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

زر میں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی

اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے

اور اس کا ساختہ پر داختم منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے

سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

2014

جول

ماہ

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المرقوم

Attested & accepted
Adu

العبد گواہ العبد

کے لئے منظور ہے۔

لہار

مقام