4 6	Sr. No	Date of order/ proceeding s	Order or other proceedings with signature of Judge or Magistrate
	1	2	3
•			<b>BEFORE THE YBER PAKHTUNKHWA SERVICE TRIBUNAL</b> Service Appeal No. 1336/2014
· · · · · · · · · · · · · · · · · · ·			Date of Institution 29.10.2014 Date of Decision 27.08.2019
			Mr. Farman Ali, Naib Teihsildar (BPS-14), Revenue Academy Khyber Pakhtunkhwa, Peshawar. Appellant
•			Versus
			<ol> <li>The Government of Khyber Pakhtunkhwa through Chie Secretary Khyber Pakhtunkhwa, Peshawar.</li> <li>Senior Member Board of Revenue, Khyber Pakhtunkhwa Peshawar.</li> <li>Respondents</li> </ol>
		27.08.2019	Mr. Muhammad Hamid MughalMember(J) Mr. Ahmad HassanMember(E)
			<u>JUDGMENT</u> <u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> Appellan
	1	<b>Q</b>	present. Learned counsel for the appellant present. Mr. Usma Ghani learned District Attorney alongwith Muhammad Ari
	6		<ul><li>Superintendent present.</li><li>2. The appellant (Naib Tehsildar) has filed the present servic</li></ul>
7		· · · ·	appeal against the order dated 28.02.2013 whereby the Senio
<i>.</i>		•	Member Board of Revenue Khyber Pakhtunkhwa withdrew hi order of the same day i.e. 28.02.2013 of allowing condonation o

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break in service for 410 days w.e.f 01.11.1984 to 11.01.1986, 01.06.2001 to 15.07.2002 without pecuniary benefits.

Learned counsel for the appellant argued that the appellant 3. was appointed as PTC Teacher on 01.11.1980 and served the Education Department till 31.10.1984; that after completing his patwar training course, the appellant was appointed as Settlement Patwari on 12.01.1986, promoted to the post of Kanungo on 22.06.1995 on acting charge basis; that on 05.05.2001 the appellant was posted as Kanungo Circle Chani Swabi by Settlement Office Mardan; that due to winding up of the settlement operation in Mardan, the appellant was relieved from duty vide order dated 31.05.2001. Learned counsel for the appellant further argued that the appellant was appointed as Settlement Naib Tehsildar on contract basis for settlement operation in Chitral vide order dated 16.07.2002 and his services were regularized vide order dated 05.07.2006 on the strength of judgment of Hon'ble Peshawar High Court Peshawar dated 19.04.2006; that the appellant filed departmental appeal before SMBR Khyber Pakhtunkhwa for condonation of break in service w.e.f 01.11.1984 to 11.01.1986, 01.06.2001 to 15.07.2002 which departmental appeal was partially accepted vide order dated 28.02.2013 however the said order was surprisingly withdrawn vide order made impugned in the present service appeal; that the departmental appeal of the appellant against the withdrawal of order dated 28.02.2013 was not responded. Learned counsel for the appellant further argued that the appellant is

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entitled for pay protection and pensionary benefits of service already rendered in other departments; that pay protection is the right of the appellant under the law; that the Khyber Pakhtunkhwa Finance Department has clarified that pay protection will be admissible to the employees who were subsequently appointed in government service from one department to another department through proper channel.

4. As against that learned District Attorney argued that departmental appeal of the appellant was accepted by the then SMBR but on re-examination of the record, the order was withdrawn for valid reasons. Further argued that the appellant was granted relief by the Hon'ble Peshawar High Court Peshawar in Writ Petition and resultantly his services were regularized. Further argued that the appellant remained as a project employee in the Settlement Department and his services prior to his regular services were not confirmed, more so broken periods of service/employment are not countable towards pay protection and grant of service/pensionary benefits.

5. Arguments heard. File perused.

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6. Upon winding up of the settlement operation the appellant was relieved from his duties vide order dated 31.05.2001, meaning thereby that the services of the appellant were neither confirmed nor pensionable. Later on, vide order dated 16.07.2002 the appellant again got employment on contract basis as Naib Tehsildar for settlement operation in Chitral.

7. On the basis of appointment order dated 16.7.2002, the appellant became contractual employee of a project/settlement operation however he somehow succeeded in regularization of his service vide order dated 05.07.2006.

8. It is settled that no broken period of employment/service is countable towards regular service/pensionary benefits. Similarly a civil servant cannot claim service/pensionary benefits of his piece meal services at different intervals of time rendered prior to his service on regular basis. In this regard reliance is also placed on the recent judgment dated 10.04.2019 of this Tribunal in Service Appeal No.243/2016 filed by Muhammad Bashir Ex-Patwari.

9. In the light of above, the appellant has not been able to seek indulgence of this Tribunal. Consequently the present service appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

(Ahmad Hassan) Member

ANNOUNCED 27.08.2019 (Muhammad Hamid Mughal) Member 27.08.2019

Appellant with counsel present. Mr. Usman Ghani learned District Attorney alongwith Muhammad Arif Superintendent present. Vide separate judgment of today of this Tribunal placed on file, the present service appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

(Ahmad Hassan) Member

ANNOUNCED. 27.08.2019 (Muhammad Hamid Mughal) Member 30.04.2019

Counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Muhammad Arif Superintendent for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 14.06.2019 before D.B.

(Ahmad Hassan) Member

(M. Amin Khan Kundi) Member

14.06.2019

Due to general strike of the Pakistan Bar Council, the case is adjourned. To come up on 03.07.2019 before D.B..

MI

(M. Amin Khan Kundi) Member

(Muhammad Hamid Mughal) Member

03.07.2019

Counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Javid Assistant for the respondent s present. Learned counsel for the appellant requested for adjournment. Adjourned to 27.08.2019 before D.B.

(Hussain-Shah) Member

(M. Amin Khan Kundi) Member

01.2019

Junior to counsel present. Mr. Muhammad Jan, alongwith Mr. Muhammad Arif, Supdt for respondents present. Junior to counsel for the appellant seeks adjournment. Adjourned. Case to come up for arguments on 18.03.2019 before D.B.

> (Ahmad Hassan) Member

> > Member

(M. Hamid Mughal) Member

18.03.2019

Appellant in person and Addl:AG alongwith Mr. Muhammad Javed, Assistant for respondents present.

Appellant requests for adjournment as his learned counsel is appearing before the Mingora Bench of Hon'able Peshawar High Court, Peshawar today. Adjourned to 30.04.2019 before D.B.

Chairman

10.10.2018

Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney learned Deputy District Attorney present. Learned counsel for appellant seeks adjournment. Adjourn. To come up for arguments on 26.11.2018 before D.B.





#### 26.11.2018

Junior to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Junior to counsel for the appellant requested for Adjournment that his senior counsel is not in attendance. To come up for arguments on **38**.11.2018 before D.B.

Member

Member

28.11.2018

Counsel for the appellant and Mr. Ziaullah DDA for the respondents present.

The former requested for adjournment that brief in the sinstant appeal could not be prepared due to over-load. Adjourned to 28.01.2019 before D.B

Member

Chairman

Counsel for the appellant and Addl. AG for the respondents present. Learned counsel for the appellant seeks adjournment. To come up for arguments on 08.05.2018 before the D.B.

hmad Hassan) Member

hairman

08.05.2018 The Tribunal is defunct due to retirement of Hon'ble Chairman. Therefore, the case is adjourned. To come on 28.06.2018

READER

28.06.2018

02.03.2018

Clerk to counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present. Clerk to counsel for the appellant seeks adjournment as learned counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 09.08.2018 before D.B.

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(Muhammad Amin Kundi) Member

(Muhammad Hamid Mughal) Member

09.08.2018

Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present: Learned counsel for the appellant seeks adjournment Adjourned. To come up for arguments on 10.10.2018 before D.B

ANA A (Muhammad Amin Kundi) Member

(Muhammad Hamid Mughal) Member 1336/2014

#### 23.05.2017

Counsel for the appellant present. Mr. Muhammad Ibrar, Assistant Secretary alongwith Mr. Kabirullah Khattak, Assistant AG for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 07.09.2017 before D.B.

(GUL ZZB KHAN) MEMBER

(MUHAMMAD AMIN KHAN KUNDI) **MEMBER** 

07/09/2017

Due to general strike of the bar and bench is incomplete, the case is adjourned for arguments on 19/10/2017 before DB.

> MUHAMMAD HAMID MUGHAL MEMBER

#### 19.10.2017

Clerk to counsel for the appellant and Mr. Muhammad Jan, DDA for respondents present. Clerk to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 03.01.2018 before D.B.

Member (Executive)

Member (Judicial)

03.01.2018

Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 02.03.2018 before D.B.

(Ahmad Hassan) Member(E)

(M.Amin Khan Kundi) Member (J)

#### 22.04.2016

Counsel for the appellant and Mr. Usman Ghani, Sr. GP for respondents present. Arguments could not be heard due to paucity of time. To come up for arguments on 02.09.2016.

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02.09.2016

Counsel for the appellant and Mr. Usman Ghani Sr. GP for respondents present. That informed the Tribunal wherein appeal of the appellant i.e 570/2013 is also pending before this Tribunal and that both the appeals be heard by the one at the same date. Office is directed to fix the instant appeal as well as appeal referred to above before one at the same date. Adjourned for final hearing on 4.01.2017 before D.B.

1011年2月1日に、日 Member

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04.01.2017

Junior to counsel for the appellant and Mr. Muhammad Ibrar, Assistant Director alongwith Mr. Ziaullah, GP for respondents present. Junior to counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 23.5 - 15

(ASHFAQUÈ TAJ) MEMBER

(MUHAMMAD AAMIR NAZIR) MEMBER . . .

Appellant with counsel present. Learned counsel for the appellant argued that due to break in the service of appellant he, after exhausting departmental remedy, preferred service appeal No. 570/2013 against the impugned order dated 28.2.2013 which is subjudice before this Tribunal and wherein it transpired that the said order dated 28.2.2013 was unilaterally withdrawn vide another order of the same day regarding which the appellant preferred afresh departmental appeal on 1.7.2014 which was not responded and hence the instant service appeal on 29.10.2014.

That the appellant is entitled for the condonation of the service break as the same has occurred due to no fault of the appellant.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for 28.7.2015 before S.B.

28.07.2015

29.04.2015

Appellant Deposited Security & Process Fee

> Appellant with counsel and Mr. Naeem Khan, Assistant alongwith Addl: A.G for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 24.11.2015.

Chairmai

24.11.2015

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Arguments could not be heard due to learned Member (Judicial) is on official tour to D.I. Khan. Therefore, the

case is adjourned to  $\frac{22}{4}/16$  for arguments.

Member

## 13.03.2015

Counsel for the appellant present. Requested for adjournment. Adjourned for preliminary hearing to 15.04.2015 before S.B.

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#### 15.04.2015

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16- 11-2115

Appellant in person present. Counsel for the appellant is not in attendance due to strike of the Bar. Adjourned for preliminary hearing to 29.04.2015 before  $S_{i}B_{i}$ 

Chairman

Chairman

## Form-A

## FORM OF ORDER SHEET

Court of 1336/2014 Case No. Order or other proceedings with signature of judge or Magistrate S.No. Date of order Proceedings 2 3 1 13.11.2014 The appeal of Mr. Farman Ali resubmitted today by Mr. 1 Noor Muhammad Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order. REGISTRAR 15-01-2015 This case is entrusted to Bench  $\underline{I\!L}$  for preliminary 2 hearing to be put up there on 16 - 01 - 2015. . Airman 16.1.2015 Notice of general strike received from the Khyber Pakhtunkhwa Bar Council. Notice be issued to appellant and his counsel. To come up for preliminary Notseef the hearing on 16.2.2015. **ÍBER** 16.2.2015 Appellant with counsel present and requested for adjournment. Therefore, case to come up for preliminary hearing on 13.3.2015. MEMBER

The appeal of Mr. Farman Ali Naib Tehsildar Revenue Academy Khyber Pakhtunkhwa received today i.e. on 29.10.2014 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of withdrawal order mentioned in para-6 of the memo of appeal (Annexure-E) is not attached with the appeal which may be placed on it.
- 2- Copies of impugned order and departmental appeal against it are not attached with the appeal which may be placed on it.
- 3- Annexures of the appeal may be annexed serial wise as mentioned in the memo of appeal.
- 4- Index of the appeal may be prepared according to the documents attached with the appeal.
- 5- Copies of order dated 31.5.2001 and 16.7.2002 are illegible which may be replaced by legible/better one
- 6- Copy order sheet of this Tribunal mentioned in para-7 of the memo of appeal is not attached with the appeal which may be placed on it.

No. 1555 /S.T. Dt. 30/10 /2014. REGISTRAR SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR. Mr. Noor Muhammad Khattak Adv. Peshawar. <u>.</u> at c Nate: Sir All objections have been removed, hence resubmitted today dated 13/11/2014.

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

# APPEAL NO. 336 /2014

FARMAN ALI

VS

#### **SMBR**

	INDEX		
S. NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal		1- 5.
2.	Service book	Α	6- 14.
3.	Order dated 31.5.2001	В	15- 16.
4.	Order dated 16.7.2002	С	17.
5.	Memo of appeal & order dated 28.2.2013	D	18- 22.
6.	Withdrawal order	E	23.
7.	Departmental appeal	F	24- 25.
8.	Appeal no. 570/2013	G	26-29.
9.	Order sheet	Н	30- 31.
10.	Vakalat nama		32.

# APPEALLANT

## THROUGH: NOOR MOHAMMAD KHATTAK ADVOCATE

## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

#### APPEAL NO. / 336 /2014

Mr. Farman Ali, Naib Tahsildar (BPS-14), Revenue Academy Khyber Pakhtunkhwa, Peshawar.

8. W.P. 559

..... Appellant

#### VERSUS

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

...... Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED WITHDRAWAL ORDER DATED 28-02-2013 COMMUNICATED TO THE APPELLANT DURING THE PENDENCY OF APPEAL NO. 570/2013 AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

#### PRAYER:

Section 1

On acceptance of this appeal the impugned withdrawal order dated 28-02-2013 may very kindly be set aside and the respondents may be directed to restore and act upon the order dated 28-02-2013 with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

c-submitted to-

Register:

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#### Respectfully Sheweth,

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- 1. That the appellant was appointed as settlement Patwari on 12-01-1986 and was allowed annual increment and he was promoted to the post of Kanungo (BPS-09) on 22-06-1995 on acting charge basis and his service were placed at the disposal of S.E Ghazi Barotha Hydro Power Project Tarbela. (Copy of the service book is attached as Annexure A).
  - That on 02-05-2001 appellant was repatriated to his parent Department and was posted as Kanungo Circle Chani Swabi on 05-05-2001 by Settlement Office Mardan.
- 3. That due to winding up Settlement Operation Mardan Division Mardan, appellant was relieved from duty and placed at the disposal of D.L.R NWFP Peshawar vide order dated 31-05-2001. (Copy of the order dated 31-05-2001 is attached as Annexure B).
  - That appellant was appointed as a N.T (BPS-14) on the recommendation of Selection Committee by the SMBR Khyber Pakhtunkhwa, vide order dated 16-07-2002 on contract basis but later on his services were regularized vide order dated 05-07-2006. (Copy of the order is attached as Annexure C).
  - That appellant filed an appeal before the respondent No. 1 (SMBR Khyber Pakhtunkhwa, Peshawar) which is partially accepted but partially dismissed vide order / judgment dated 28-02-2013. (Copy of the appeal and order dated 28-02-2013 is attached as Annexure D)

That during the proceedings of the appeal of the respondents filed their reply in which they attached and produced copy of the withdrawl order dated 28-02-2013. That it is pertinent to mention that the said withdrawl order dated 28-02-2013 was not communicated to the appellant and the appellant has been kept in dark by the

respondents with malafide intention. (Copy of the withdrawl order is attached as Annexure E).

That feeling aggrieved appellant filed Department Appeal against the withdrawl order dated 28-02-2013 on 01-07-2014 but no reply has been received so far. That on the permission of this August Tribunal the appellant filed the present appeal on the following grounds amongst the others. (Copy of the departmental appeal, memo of appeal No. 570/2013 and order sheet are attached as Annexure F, G and H).

# <u>GROUNDS:-</u>

B.

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A. That the impugned order dated 28-02-2013 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.

- That the appellant has not been treated by the respondents in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Pakistan, 1973.
  - That as per judgment of Superior Court (Reported Judgment 2008 PLC (CS) 482) coupled with judgments of this Honourable Tribunal dated 03-05-2010 titled as "Momen Khan VERSUS Chief Secretary etc" whereby it was held that appellants are entitled for pay protection and pensionary be nefits of service already rendered in another department.

D.

Because as per earlier precedents, pension has been granted to identically settlement patwaries and appellant is also entitled for the same.

E. Because pay protection is the right of appellant as per law and it can not be refused by respondents, much so when other identical settlement patwaries were granted to pay protection and seniority of settlement operation, pension as their services were also taken on against regular revenue posts in Mardan.

Because the break in service has already condoned and previous service already counted for pensionary benefits and kept continued the service of appellant from 1<sup>st</sup> appointed till update, thus appellant is entitled for pay protection and back benefits on the basis of previous service already rendered in settlement operation Mardan.

F.

G. Because as per law, appellant is a regular civil servant and it was due to respondents that posts were abolished by respondents due to winding up wettlement operation Mardan.

H. Because identical appeal has been accepted by respondent (i.e. Commission Mardan).

Because other similarly placed patwaries were granted to the same benefits in appeal titled as "Hilal Said VERSUS DOR Mardan" "Imtiaz Ali VERSUS DOR Mardan" and as per reported judgments of Apex Superior Courts of Pakistan, SCMR 1996 Page 1185, appellant is also entitled for the same benefits / relief.

That as per notification No. 12-1/2011 dated 04/06/2011 of KPK Finance Department has classified that pay protection will be admissible to the employee who is subsequent appointed in Govt. Service from one department to another department through proper channel of said previous service. (Copy of Notification is attached as Annexure I).

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

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

**\ppellant** Farman Ali

Through

NOOR MUHAMMAD KHATTAK

And YAQOOB KHAN

Advocates, Peshawar.

The entries in this page should be renewed or re-attested at least every five years and the signature to lines 9 and 10 should be dated. Name Farman Ali Afghan. Race Moh: Bari Chum Village & P.O. Gujan Garhi 3. Residence Tehsil and District, MARDAN. Abdul Khaliq. Father's name and residence 4. Date of birth by Christian era as 4-2-1963. - 5. nearly as can be ascertained .:5 - 6 6 Exact height by measurement A black mole on Right Cheek Personal marks for identification ... 7. 8. Left hand thumb and Finger impression of (non-gazetted) officer Little Fide Ring Fing Mide Fore E 1. Thuḃ  $\sim$ Kils-1 . . . 9. Signature of Government servant. Signature and designation of the Head of the Office, or other Attesting IO Eotilsment Offices Officer. De Nordon. TTESTE

· . 2 6 7 6 if officiating, Whether substan-tive or officiating and whather permanent or temporary if officiating, atuto (I) mubatantivo appointment, or (ii) whether service counts for pension under Art, 371 C. S. R. : اسبر ارب Other emolument falling under the term"Pay" Additional Pay for officiating Name of post P y in substantive post Date of appointment Signature o Covornmon sorvent G.700-25-1200 Padwari Aman Kot Pomporary. Remporary. Rei ( End 7501 5 de 700/ <u>]</u>4 01 2 1988 750/-La pise R 医非常生物 775 = Tatum - Plats 725/ 12 <u>775/.</u> 88 I. 800 2 Patrions Mich. 7.50 6-9-<u>8~/</u> Set 8001: Rittler Marl 750 800/ 1 4 1-AP -Sc Sellent Pation 800 = 80 Mahib Bond 28/1 1 73 0 Ş¢, Sittle - 1 Pation 8001=1 Surakh Dhevi 8007-3/5 73 ້ວ .Se 12 825 5 825/ 575 1/12 035-49-1770 1 1378-|: 1280 = 1378. Ste Q 1/6 7231 : dt. 16 Mahrib Banda 1427/: 1427 1280  $\overline{n}$  $\frac{1}{2}$ 10 132.8 <u>Sat</u> 7.5 132 ATTESTED

PAKISTAN WATER AND POWER DEVELOPMENT AUTHORITY SERVICE REPORT Name in Full. MR. Farman Hly Father's Name. Abdul Ichals.q. Permanent Address. Tel: 9. Distt: Mardan Vall & P: 0 GUJax Farthi Nominations Share Relationship Name and Permanent Major/ Minor Address MTI. Nasyeen with 1 . . % Mohalle Bericham, 1. G.L.I. Mijer vill: + p.o. Gojon Chri, Tehis Dislli Alnolin 2. E. P. Fund/ G.P. Fund с., <sup>с</sup>., 3. Pension National Identity Card No 129-57-003313 Left hand thumb and finger impressions of (Non-gazetted) Officer :--Ring Finger LittlFinger . . . . . . . . Fore Finger Middle Finger Thumb ome Signature of Employee Designation ...... Branch Mardon SOARP "The entries on this page should be renewed or re-attested at least overy five years and the signatures of employees and the Head of Office should be dated. Finger Prints need not be taken afresh every five years." - Bit ATTESTED ଖ୍ଯ 1.11 

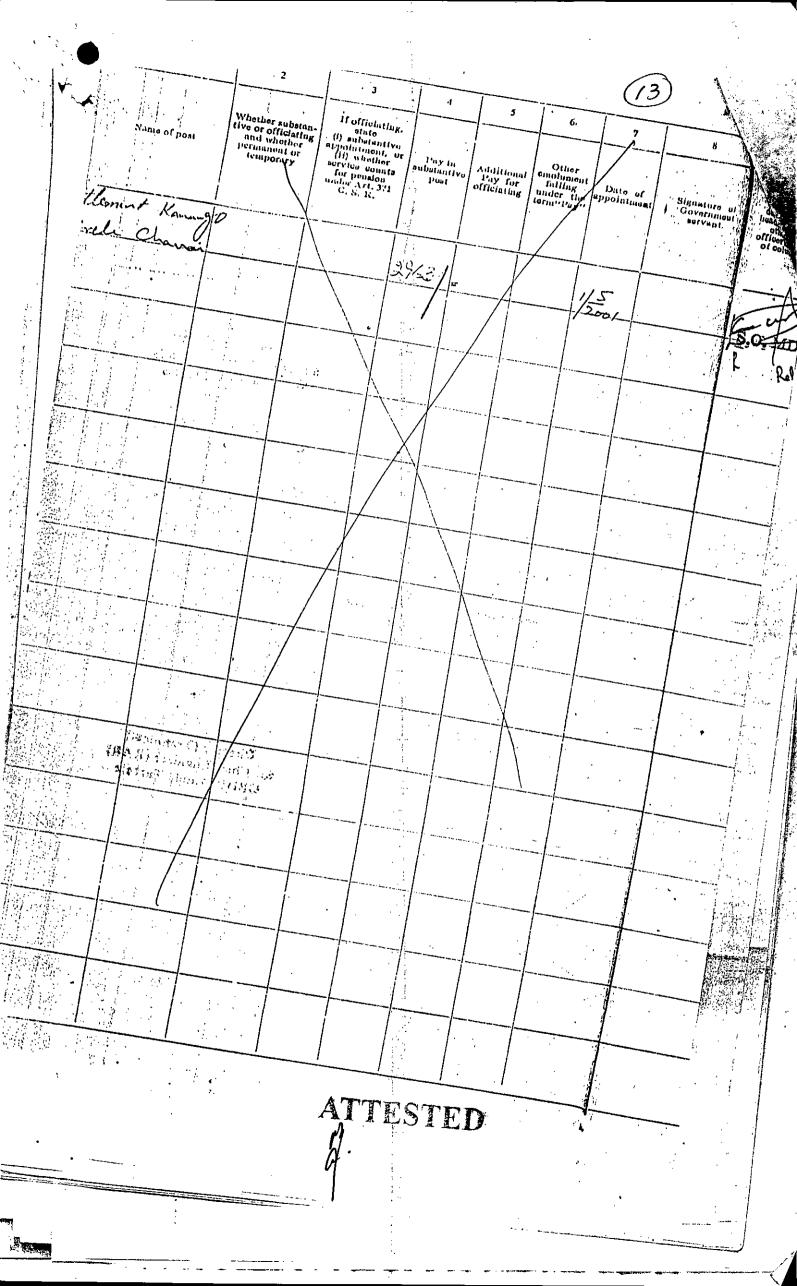
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**F** 3 τo 2 4 51 6 7 ١. 5. 5. 1 If officiating. 1, Whother substan-tive or officiating and whother permanent or itemporary alinto alinto (i) aubstantivo appointment, or (ii) whether service counts for penalon under Art, 371 C. S. R. Other Pay in substantivo omolomont fatling under the term"Pay" Name of post Additional Pay for officiating Date of appointment Signature of Covornment - servest post <u>1/-</u>, 2284 17 1605-97-3060) first in BPS-9 will 1505 5/3 AU SF (R, / 6 KI 11/ A-2/847 • 1+ 3 = 1-5; Û, P  $\Sigma$ 1.1 ÷., ÷ .... Superintending Englacer R-settlement ) Ghazi-Barotha Hydropower Project 14:15 and the second sec ļ 1605 3060 Ванови 306.2: 1160 1.cm 1) pm 0/12/86(AN) Annual Increment Granted 15 With effect from ..... 1/12/96 (Frr)-Lotter No SEC 22/98110/2-62/96-1350 Dated ..... 2/12/96 VERIFIED ·.., , A LO LA Engineer Į, E. &. A. O, U ( Resettlement ) 1/92 Gharl-Berothe Hydropower Projet 1 ŧ ÷ ţ ĥ 3. • Billice Copies of Shlary Bills S.G.H.D WARDS. TAREBLA, ÷., ż 4  $\langle \cdot \rangle$ ATTESTED .. . 1. 4.

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## BETTER COPY OF ANNEXURE......B

#### PAGE-15

#### **OFFICE ORDER**

In pursuance of the decision arrived at in the meeting held on 19/5/2001, provided over by the senior Member Board of Revenue NWFP, Peshawar the winding up Settlement Operation in Swabi District the under mentioned Settlement Patwaris are hereby releaved of their duties w.e.f. 31/5/2001 in accordance with the provision of (appendix E) Chapter-3 of land record.

- S. No. Name of Patwari with Parantage
- 1)- Sarfaraz Khan S/o Sherin Jan
- 2)- Jamshaid Anwar S/o Abdul Malik
- 20)- Rizwanullah S/o Abdul Ghafoor
- 29)- Farman Ali S/o Abdul Khalid

20 29 Officiating Field Kanungo 33

Seniority Position

1

2

33)- Meher Dil Khan S/o Khaista Khan

Dir:Jamal Nasir Deputy Commissioner/ Settlement Officer, Swabi

#### OFFICE OF THE SETTLEMENT OFFICER, MARDAN AT SWABI.

No. 425/3	/SO-mardan/E-19.	Dated Mardan the _	/5/2001
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Copy forwarded to all concerned.

Attested

## -rev. 00053-

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31 -5-2001 B-

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# BETTER COPY OF ANNEXURE.....C

PAGE-17

## BOARD OF REVENUE NORTH WEST FRONTIER PROVINCE. PESHAWAR DATED THE 16/7/2002 ORDER

No. Admn: I/182. On the recommendation of the Departmental Selection Committee, continued for Selection of candidate for settlement operation Chitral, Mr. Farman Ali S/o Abdul Khaliq Ex-Settlement Kanungo circle Chenai Swabi resident of Gugar Gari Tehsil Takht Bhai District Mardan is hereby appointed as Naib Tehsildar on contract basis for Settlement Operation in Chitral District with immediate effect.

Senior Member Board Of Revenue, N.W.F.P.

No. 16771-83/Admn:I/182. Copy forwarded to all concerned.

Attaled

BOARD OF LEVENUE NORTH WEST FRONTIER PROVINCE.

16-7-02

PESHAWAR DATED THE /6 /7/2002.

No. /Admn: T/132. On the recommendation of the Departmental Solection Committee, constituted For selection of candidate for Sottlement Operation Chitral, Mr. Farman Ali S/O Abdul Khaliq Ex-Settlement Kanungo Circle Chenai, resident of Guger Gari Tehsil Takht Bhai District Mardan is hereby aPpointed as Naib Tehsil Takht Bhai District basis for Settlement Operation in Chitral District with fimmediate effect.

> Senior Member, Board of Revenue, N.W.F.P.

P 4

No. 16771-83 /Admn: 1/182. Copy to the :-

ディング

J.R.D\_E\_R\_.

1-	Secretary to Governor, N.W.F.r.
2-	P.S. to Minister for Revenue, N.W.F.P.
3-	Secretary to Govt: N.W.F.P. Finance Department.
	Director, Land Records, N.W.F.r.
5-	District Coordination Officer, Chitnal and Mardan.
6-	District Officer(R&E) Chitral and Mardan.
7-	Settlement Officer, Chitral.
8-	District Accounts Officer, Chitral and Mardan.
9-	Official concerned.
10-	Office order file.
	1 Darres C

Secretary, Board of Revenue, N.W.F.P.

ATTESTED

BEFORE THE SENTOR MEMBER BOARD OF REVENUE KHYBER PAKHTOON KHWA PESHAWAR. 161 Farman Ali Naib Tehsildar Patwar Academy Khyber Pakhtoon Appellant Khwa Peshawar ..... 1.11 Versus 💱 Board of Revenue Khyber Pakhtoon Khwa Peshawar .. Respdt: APPEAL/REPHESENTATION FOR CONDUNATION OF BREAK I.E. WITH EFFECT FROM 1.11.1984 TILL 11.1.1986, 1/6/2001 TILL 15.7.2002 (410 days) AND PREVIOUS SERVICE ALREADY RENDERED IN THE SETTLEMENT OPERATION FROM 1.11.80 TO 15.7.2002 BE COUNTED FOR PAY AND PENSION WITH ALL BACK BENEF ITS. Respectfully Sheweth: That appellant was appointed as PTC Teacher on 1.11.1980 and served the department with devotion as such till 31.10.1984. That appellant has completed his patwar training course with effect from 1.11.1984 till 16.12.1985. That appellant was appointed as Settlement Patwari on 12.1.1986 and was allowed annual increments and he was promoted to the post of Kanungo (BFS-09) on 22.6.1995 on acting charge basis and his service were placed at the disposal of S.E. Ghazi Barotha Hydro ATTESTED .2

Power Project Tarbila. (Copy of sve book is alfacted by And A). That on 2.5.2001, appellant was repatriated to his parent deptt: and was posted as Kanungo circle Chani Swabi on 5.5.2001 by Settlement Officer, Mardan.

That due to winding up settlement operation Mardan Division Mardan, appellant was relieved from duty and placed at the dispoal of D.L.R. NWFP Peshawar vide order 31.5.2001(Copy of the said order is annexure-A).

5.

6.

That appellant was appointed as N.T.(BPS-14) on the recommendation of Divl:Selection Committee by the DLR/SMBR NWFP bide order dated 16.7.2002 . on contract busis (Copy of appointed order is attached as annexure-B).

That appellant filed a writ petition before Honourable Peshawar High Court, Peshawar for regularization of his service in Settlement Operation Chitral, which was accepted vide order/judgement, dated 19.4.2006 with the direction that revenue Hirachy to appoint

the appellant on regular basis (Copy of order/ judgement is attached as annexure-C).

That appellant approached before this Hon'ble

Court for regularization of his service which

5.7.2006, and on the basis of said judgement,

was accepted vide order/judgement dated

acrvice of appellant was regularized.

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9.

10.

(Gopy of judgement is attached as annox-D). That appellant approached before the NWFP Service Tribunal for pleing of his nome in the seniority list of Naib Tebsildars which was accepted vide order/judge ent dated 9.10.2007 and on the basis of said judgement, the name of appellant was stood placed at Serial Nö. 86 of Naib Tebsildars Seniority list issued vide order dated 24.3.2010. (Copy of judgement and seniority list issued vide order dated 24.3.2010 is

attached as annexure-E).

ATTESTED

That simularly placed officials were granted same relief in appeal titled as Arshad Versus P----4

DLR etc., and Shafiqur Rehman VS DLR etc and as per reported judgements of Apex Supreme Court of Pakistan SCMR 1996 Page-1185 and No.2003 SCMR-1074, appellant is also entitled for the same

61

benefit/relief.

It is therefore, humbly prayed that on acceptance of this appeal, that break in service of appellant with effect from 1.11.84 to 11.1.86 and 1.6.2001 to 15.7.2002 may please be condoned and previous service of appellant already rendered as Govt: nervice may please be counted for pay and pensionary benefits accordingly.

Any other relief deemed fit may also be

graciously swarded.

Appol-lar Ali N/Tehsildar Farman

at Mardan

KHAN

ocate High Court,

24/9/20012 Dated: 200 Peor

ATTESTED

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# IN THE COURT OF SENIOR MEMBER BOARD OF REVENUE KHYBER PAKITUNKHWA, PESHAWAR

Departmental Appeal No. 26.09.2012 ł Date of Institution 28.02.2013 Farman Ali, Naib Tehsildar Petwar Academy, Karak, Khyber Pakhtunkhwa) ...... (Respondent) VERSUS Board of Revenue, Khyber Pakht mkhwa ....

2.4

## ORDER

22

Brief facts of the case are that appellant was appointed as patwari on work charge basis and posted with Land Acquisition Collector, Mardan SCARP, by Project Director Mardan SCARP on 12.10.1986. He was promoted as Felid Kanungo purely on temporary basis and his services were placed at the disposal of Superintending Engineer Ghazi Brotha Hydro Power Project Tarbela on 22.05.1995. He was later on posied as Settlement Kanungo Circle Chani by Settlement Officer. Ma.dan on 05.05.2001. Thereafter he was appointed as Naib Tehsildar on contract basis on 16.07.2002. His services were regularized as Naib Tehsildar in Settlement Operation, Chitral w.e.f his date of appointment on 17.06.2006 by Board of Revenue

Khyber Pakhtunkhwa.

Furthermore, in pursuance of the judgment of Peshawar High Court, bis appointment order was modified on regular basis instead of contract basis and W Yere-declared entitled to all benefits as that of regular employees vide Senior Member, Board of Revenue order dated 05.07.2006. The appellant secks condonation of break in service for 410 days. Comments of the Assistant Secretary (Estt:), Board of Revenue also perused. Departmental Appeal is accepted and break in service for 410 days w.c.f 01.11.1984 to 11.01.1986, 01.06.2001 to 15.07.2002 is

ATTESTED

allowed without pecuniary benefits.

ANNOUNCED 28.02.2013

SENIOR MUMBER BOARD OF REVENUE

# E - 23

#### IN THE COURT OF SENIOR MEMBER BOARD OF REVENUE KHYBER PAKHTUNKHWA, PESHAWAR

Departmental Appeal No.			• • •	•	· .
Date of Institution		•'	26.09.2012		
Date of Decision	•••		28.02.2013		13

Farman Ali, Naib Tehsildar Patwar Academy, Karak, Khyber Pakhtunkhwa (Appellant)

Board of Revenue, Khyber Pakhtunkhwa ...... (Respondent)

#### ORDER

On re-examination of appeal and available record attached with the appeal filed by Farman Ali Settlement Naib Tehsildar Chitral, reveals that he was appointed as PTC teacher in Education Department and served there from 01.11.1980 to 31.10.1984. He left the service on his own sweet will and later got Patwar training in the year 1984-85. He was appointed as Patwari on work charged basis in Mardan Scarp (WAPDA) on 12.01.1986. The appellant was appointed as Settlement Naib Tehsildar Chitral vide order dated 16.07.2002. On contract basis which was regularized in compliance Peshawar High Court Judgment in the year 2006.

As the appellant remained employee of Education Department / WAPDA and has never served under the Revenue Department, as such condonation cannot be granted. Furthermore, the appellant has never objected regularization of his service with effect from 16.07.2002 through the judgment of Peshawar Figh Court which has attained finality.

In view the above, I am of the opinion that the orders for condonation of 410 days break in service to regularize his service in Education Department / WAPDA is beyond my jurisdiction, as such orders dated 28.02.2013 is considered as withdrawn, and no effect would be given by any office.

Altested

ANNOUNCED 28.02.2013

(FAZLI REHMANI) SENIOR MEMBER BOARD OF REVENUE

Before the

Chief Secretary KPK Peshawar

Farman Ali Naib Tehsildar Rev: acadamy KPK Peshawar R/o vill: Gujar Garhi Teh: & Dutt: Mardan. Appellant. VS

SMBR KPK Peshawar . Respondent.

Representation / D/Appeal against order/Judgment B Respondent dated 28/2/2013, Whereby Departmental Appenl of appellant was accepted but on the same day same order is withdrawan by respect: vide order/Judgment dated 28/2/2013, the in the absence of appellant, which is illegal, against law and facts.

Respectfully Sheweth:

"That applicant was appointed as a settlement Patwasi for settlement operation Mardan inde order dated 12/1/86 and was promoted as Kanungo (BPS-9) on acting charge basis and was adjusted in Ghazi Brotha Project on depotation. ATTESTED

5. 7.



2- That on 2/572001, affellant was repatriated to his farent department and was posted as Kanungo ciscle chani Swab vide order dated 57572001 by S. O. Mardan.

3. That due to winding up settlement operation Mordan, appellant was selieved from duty and Placed by s. o. Mardan on the dieposal of DhR KPK Peshaway vide order dated 31-5. 4. That appellant was appointed as a SINT (BPS-14) on the Pooper recommendation of Dpc meeting by chairmanship of SMBR KPK Perhawas affer completion of all codel formality vide order dated 16/7/2002 on segular basis. 5. That appellant filed an appeal before SMBR KPK Peshawal, which was partialy accepted with direction that breake in service of appellant is conduned but without pay vide order/Judgment dated 282 2013 ( 10 py of order / Judgment dated 28/2/2013 is attacked 6. That feeling aggrieved, appellant approached before the see Tribunal KPK Peshawas through see appeal on 19/3/2013, in which sespet: has filed their

rephy dated 26/6/2014, in which they filed their order of Judgment dated 28/2/2013 on the same day in absence of appellant, which is illegal, against law & facts: ATTESTED



on the following grounds:-cupy of order/sudgment is attached Grounds:-A: That Levend SMBR KPK Peshawas has Passed vider/Judgment dated 28/2/2013 in the Court Capicity as a Judgment and said court can not withdraw line own order Judgment. B. That appellant filed an application for grant B attested copy of Indgment dated 28/2/2013 on 573/2013, which was properly allowed by worthy SMBR. C. That said order / Judgment has forwarded for implementation by worthy SMBR to AGSH: Secretary BOR KAK, who properly received vide letter dated 18/3/2013 and was implemented with recording entry in the src Book of appellant and granted askear of Pay on the same Judgment. ( Lopy of letter and sve Book is attached, It is these fore, humbly sequested that withdrawan order/Judgment & SMAR KPK fesh dated 28/2/2013 my please be set agid and restored order/Judgment dated 28/2/2013 Carapted orders with all back benefit Apellent .\_ Forman Ali SINIT Mardan

Dated 1/7/2014

G-007 50

..... Appellant

..... Respondents

## **Before the Service Tribunal KPK Peshawar**

Appeal No. <u>570</u>/2013

Farman Ali, Naib Tehsildar Revenue Academy, Khyber Pakhtunkhwa, Peshawar R/o Village Gujar Garhi, Tehsil and District Mardan.



1. Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.

2. Board of Revenue Khyber Pakhtunkhwa, Peshawar.

APPEAL AGAIST ORDER /JUDGMENT OF RESPONDENT NO.1 DATED 28/02/2013, WHEREBY DEPARTMENTAL APPEAL OF APPELLANT IS PARTIALLY DISMISSED, WHICH IS ILLEGAL, AGAINST LAW AND FACTS.

### **Respectfully Sheweth:-**

1.

2.

That appellant was appointed as Settlement Patwari on 12/01/1986 and was allowed annual increments and he was promoted to the post of Kanungo (BPS-0()) on 22/06/1995 on acting charge basis and his services were placed at the disposal of S.E. Ghazi Barotha Hydro

#### (Copy of Service Book is attached as Annexure "A")

That on 02/05/2001, appellant was repatriated to his parent department and was posted as Kanungo Circle Chani Swabi on 05/05/2001 by Settlement Officer, Mardan.

That due to winding up Settlement Operation Mardan Division Mardan, appellant was relieved from duty and placed at the disposal of D.L.R. NWFP Peshawar vide order 31/05/2001.

# (Copy of order dated 31/05/2001 is attached as Annex "B")

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3.5

That appellant was appointed as a S.N.T. (BPS-14) on the recommendation of Selection Committee by the SMBR Khyber Pakhtunkhwa, vide order dated 16/07/2002 on contract basis but later on, his services were regularized vide order dated 5/7/2006.

# (Copy of order is attached as Annex "C")

5.

That appellant filed an appeal before the respondent No.1 (SMBR Khyber Pakhtunkhwa, Peshawar) which is partially accepted but partially dismissed vide order/judgment dated 28/02/2013.

(Copy of appeal and order dated 28/02/2013 is attached as annexure "D").

6. That appellant is entitled for pay protection and back benefit of the service already rendered by appellant in Settlement Operation Mardan on the following grounds: -

#### **GROUNDS:**

A. That as per judgment of Superior Court (reported judgment 2008 PLC (CS) 482) coupled with judgments of this Hon'able Tribunal dated 03/05/2010 titled as Momen Khan vs. Chief Secretary etc., whereby it was held that appellants are entitled for pay

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protection and pensionary benefits of service already rendered in another department. Because as per earlier precedents, pension has been granted to identically settlement patwaries and appellant is also entitled for

the same.

В.

C. 81 Because pay protection is the right of appellant as per law and it can not be refused by respondents, much so when other identical settlement patwaries were granted the pay protection and seniority of settlement operation, pension as their services were also taken on against regular revenue posts in Mardan.

Because the break in service has already condoned and previous service already counted for pensionary benefit and kept D. continued the service of appellant from 1<sup>st</sup> appointment till update, thus appellant is entitled for pay protection and back benefit on the basis of previous service already rendered in settlement operation Mardan.

Because as per law, appellant is a regular civil servant and it was due to respondent that posts were abolished by respondent due E. to winding up settlement operation Mardan.

Because identical appeal has been accepted by respondent (i.e. F. Commissioner Mardan).

Because other similarly placed patwaries were granted to the same benefit in appeal titled as Hilal Said VS DOR Mardan, Imtiaz G. Ali VS DOR Mardan and as per reported judgment of Apex

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Supreme Court of Pakistan, SCMR 1996 page 1185, appellant is also entitled for the same benefit/relief.

H. That as per notification No. 12-1/2011 dated 04/06/2011 of KPK
 Finance Department has classified that pay protection will be admissible to the employee who are subsequent appointment in Govt: service from one department to another department through proper channel of säid previous service.

#### (Copy of notification is attached as Annexure-E)

It is therefore, humbly prayed that on acceptance of this appeal, order/Judgment of teanmissioner Mardan dated 28/2/2013 may please be modified to the extent that appellant may please be granted pay protection, seniority, back benefit of regular service of appellant already rendered in settlement operation Mardan with all back benefits. Any other relief deemed fit may also be graciously awarded.

Appellant

Dated: 19/3 /2013

Through Counsel: Vaqoob Khan Advocate Peshawar High Court Peshawar

#### <u>AFFIDAVIT</u>

I, undersigned declare on Oath that contents of the appeal are true and correct to the best of my knowledge and belief.

Dated: <u>19 / 3</u> /2013.

Deponent\_

# Before the Service Tribunal KPK Peshawar

Appeal No. 570 /2013

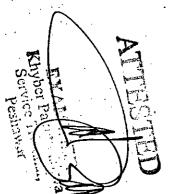
Farman Ali, Naib Tehsildar Revenue Academy, Khyber Pakhtunkhwa Peshawar R/o Village Gujar Garhi, Tehsil and District Mardan Academy Appellant

### VERSUS

Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.

2. Board of Revenue Khyber Pakhtunkhwa, Peshawar.





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APPEALAGAISTORDER/JUDGMENTOFRESPONDENTNO.1DATED28/02/2013,WHEREBYDEPARTMENTALAPPEALOFAPPELLANTISPARTIALLYDISMISSED, WHICHISILLEGAL, AGAINST LAW AND FACTS.

### **Respectfully Sheweth:-**

That appellant was appointed as Settlement Patwari on 12/01/1986 and was allowed annual increments and he was promoted to the post of Kanungo (BPS-0()) on 22/06/1995 on acting charge basis and his services were placed at the disposal of S.E. Ghazi Barotha Hydro Power Project Tarbela.

## (Copy of Service Book is attached as Annexure "A")

That on 02/05/2001, appellant was repatriated to his parent department and was posted as Kanungo Circle Chani Swabi on 05/05/2001 by Settlement Officer, Mardan.

28.10.2014

Certificat

Appellant with counsel and Mr. Muhammad Shn. GE with Mukhtiar Ali, Superintendent for the respondents present and High reply to application for amendment in the memo: of appeal. Copy. handed over to counsel for the appellant. Arguments on application heard and record perused.

Counsel for the appellant argued before the court that the impugned withdrawal order dated 28.2.2013 has been provided . to the appellant with written reply submitted by the respondents on 26.6.2014 during pendency of the instant appeal. After receipt of the order, he immediately filed departmental appeal against the subsequent order dated 28.2.2013. The learned counsel for the appellant seeks permission to amend the appeal to this extent.

The learned Government Pleader, on the other hand argued that the withdrawal order of the decision dated 28.2.2013 of Senior Member, Board of Revenue was made on the same day and the appellant was well aware of the same, therefore, amendment in the appeal is not permissible.

The Tribunal observes that vide order dated 28.2.2013, the departmental appeal of the appellant was accepted by the SMBR and 410 days break in service was allowed without pecuniary benefits. On the same day the said order was withdrawn. According to counsel for the appellant the subsequent order 'was not provided to the appellant earlier and handed over to him on 20.06.2014 with written reply of the respondents submitted in the instant case. Since the appellant has filed fresh departmental appeal against the subsequent order dated 28.2.2013 therefore, the application for amendment is rejected. The appellant may file fresh service appeal before this Tribunal after exhausting departmental remedy under the law/rules. To come up for submission of rejoinder on 26.12.2014. Attested

Member

VAKALATNAMA IN THE COURT OF KPK Service Tribunal Perhavas OF 2014 (APPELLANT) (PLAINTIFF) (PETITIONER) VERSUS (RESPONDENT) (DEFENDANT) Farman Ali I/We Do hereby appoint and constitute NOOR MOHAMMAD KHATTAK, Advocate, Peshawar to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. Dated. 29 / 10 /2014 TENT CEPTED NOOR MOHAMMAD KHATTAK (ADVOCATE) Yagoob Whan Advocate OFFICE: Room No.1, Upper Floor, Islamia Club Building, Khyber Bazar, Peshawar City. Phone: 091-2211391 Mobile No.0345-9383141

# BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

#### Service Tribunal. No: 1336/2014

VERSUS	Арренан
Khyber Pakhtunkhwa	Annellani
Farman Ali, Settlement Naib Tehsildar Revenue Academy Karak	

# 1. Government of Khyber Pakhtunkhwa , through Chief Secretary Khyber Pakhtunkhwa......Respondents

2. Senior Member Board of Revenue Khyber Pakhtunkhwa.

#### PRELIMINARY OBJECTIONS.

- 1. The appeal is not competent in its present form.
- 2. The appeal is badly time barred.
- 3. That appellant has got no cause of action.
- 4. That appeal is bad due to mis-joinder/ non-joinder of necessary parties.
- 5. That appellant is estopped by his own conduct.
- 6. That appellant has not come to the Tribunal with clean hands.

#### <u>ON FACTS</u>.

- 1. Pertains to record.
- 2. Pertains to record.
- 3. Pertains to record.
- 4. Pertains to record.
  - Incorrect. Departmental appeal of the appellant was accepted by the then Senior Member Board of Revenue, however, on re-examination of record the order was withdrawn by the then Senior Member Board of Revenue, as the appellant had not served in the Revenue Department for the period condoned by the Senior Member Board of Revenue.

Incorrect. Withdrawal order dated 28.2.2013 was communicated to the appellant upon receipt of which he has filed the instant appeal.

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