

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 516/2018

Date of institution ... 10.04.2018

Date of judgment ... 15.07.2019

Khair ul Amin Patwari,
Presently posted with Mehri Dil Patwari as Office Assistant
In office of District Revenue Accounts, Mardan.

... (Appellant)

VERSUS

1. Commissioner Mardan, District Mardan.
2. Deputy Commissioner District Mardan.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF SERVICE TRIBUNAL ACT, 1974 AGAINST ORDER DATED 19.03.2018 PASSED BY RESPONDENT NO. 1 ON DEPARTMENTAL APPEAL DATED 12.02.2018 AND ORDER DATED 02.02.2018 PASSED BY RESPONDENT NO. 2, WHEREBY APPELLANT HAS BEEN REMOVED FROM SERVICE, WHICH IS ILLEGAL AGAINST LAW AND FACTS.

Mr. Amjad Ali, Advocate.

.. For appellant.

Mr. Muhammad Jan, Deputy District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. HUSSAIN SHAH

.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Revenue Department as Patwari. He was imposed major penalty of removal from service vide order dated 02.02.2018 by the Deputy Commissioner Mardan on the allegation of corruption. The appellant filed

*M. Amin
15.7.2019*

departmental appeal on 12.02.2018 which was rejected on 19.03.2018 hence, the present service appeal on 10.04.2018.

3. Respondents were summoned who contested the appeal by filing of written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving as Patwari in Revenue Department. It was further contended that the appellant was imposed major penalty of removal from service vide order dated 02.02.2018 on the allegation of corruption but neither charge sheet, statement of allegation was framed or served upon the appellant nor any Parwana ⁱⁿ of summon is available on the record to show that the inquiry officer has informed the appellant for inquiry proceeding. It was further contended that fact finding inquiry dated 17.11.2017 reveals that the inquiry officer has recommended that the inquiry may be filed/dropped without further action while the same inquiry officer has recommended in the fact finding inquiry dated 28.12.2017 that the appellant be proceeded against Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 but thereafter neither charge sheet, statement of allegation was framed or served upon the appellant nor regular inquiry was conducted nor the appellant was associated in any regular inquiry nor the appellant was handed over show-cause notice alongwith the copy of inquiry report rather the competent authority has passed the impugned order and imposed major penalty of removal from service on the basis of fact finding inquiry dated 28.12.2017 therefore, it was contended that the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside and prayed for acceptance of appeal.

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that

M. Anwar
15.7.2019

the appellant has patched up the matter with complainant Siyar Mohammad and the inquiry officer has stated in the fact finding inquiry that the appellant has returned the illegal gratification to the complainant Siyar Mohammad as per statement of complainant therefore, it was contended that the inquiry officer has found guilty the appellant in fact finding inquiry and the competent authority has rightly imposed major penalty of removal from service on the basis of said inquiry report and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving as Patwari in Revenue Department. Departmental proceeding was initiated against the appellant on the complaint of one Siyar Mohammad and the inquiry officer in fact finding inquiry report dated 17.11.2017 recommended that in view of the statement of complainant, the inquiry may be filed without any further action.

However, again a fact finding inquiry report dated 18.12.2017 was submitted by the same inquiry officer wherein he recommended a departmental proceeding against the appellant under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 but thereafter neither charge sheet, statement of allegation was framed or served upon the appellant nor any regular inquiry was conducted nor the appellant was associated in any regular inquiry nor a show-cause notice alongwith copy of regular inquiry was handed over to the appellant rather the competent authority has imposed the major penalty of removal from service on the basis of fact finding inquiry dated 28.12.2017 meaning thereby, that the appellant was condemned unheard which was rendered the whole proceeding illegal and liable to be set-aside. As such, we partially accept the appeal, set-aside the impugned order and reinstate the appellant into service. However, the respondent-department is at liberty to conduct regular/de-novo inquiry in the mode and manner prescribed under the

M. Amin
15.12.2019

LOS

Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011. The issue of back benefits will also be subject to the outcome of regular/de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
15.07.2019


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER


(HUSSAIN SHAH)
MEMBER

15.07.2019

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of four pages placed on file, we partially accept the appeal, set-aside the impugned order and reinstate the appellant into service. However, the respondent-department is at liberty to conduct regular/de-novo inquiry in the mode and manner prescribed under the Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011. The issue of back benefits will also be subject to the outcome of regular/de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
15.07.2019


(HUSSAIN SHAH)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER


25-2-2019

The Bench is incomplete therefore
case is adjourned to 8-4-2019

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Reuder

08.04.2019

Appellant in person present. Asst: AG for respondents present. Appellant seeks adjournment as his counsel is not available today. Adjourned. Case to come up for arguments on 20.05.2019 before D.B.


(Ahmad Hassan)
Member

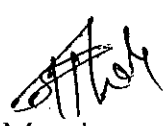

(M. Amin Khan Kundi)
Member


20.05.2019

Appellant in person, Mr. Riaz Paindakhel learned Asst: AG for the respondents present.

Appellant requests for adjournment as his learned counsel is in appearance before Apex Court at Islamabad today.

Adjourned to 15.07.2019 for argument before D.B.


Member


Chairman

Service Appeal No. 516/2018


12.06.2018

Appellant in person present. Mr. Nabi-ur-Rehman, ADK alongwith Mr. Kabirullah Khattak, Additional AG for the respondents also present. Written reply submitted. Adjourned. To come up for rejoinder and arguments on 09.08.2018 before D.B.


(Muhammad Amin Khan Kundi)
Member

09.08.2018

Appellant in person and Mr. Zia Ullah learned Deputy District Attorney present. Appellant submitted rejoinder which is placed on file and requested for adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 04.10.2018 before .D.B



(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

04.10.2018


Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 19.11.2018 before D.B.



Member


Member

19.11.2018

Learned counsel for appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Mr. Muhammad Arif Superintendent present. Learned counsel for appellant seeks adjournment. Adjourn. To come up for arguments on 28.12.2018 before D.B.


Member


Member

28-12-2018

The Bench is incomplete therefor
case is adjourned to 25-2-2019


Render

17.04.2018

Counsel for the appellant Khair ul Amin present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Revenue Department as Patwari and during service he was imposed major penalty of removal from service vide order dated 02.02.2018 on the allegation that the appellant has not deposited amount of taxes rupees 62500/-. It was further contended that the appellant filed departmental appeal on 12.02.2018 which was rejected on 19.03.2018 hence, the present service appeal on 10.04.2018. It was further contended that neither charge sheet or statement of allegation was served upon the appellant nor proper inquiry was conducted nor the appellant was provided opportunity of personal hearing and defence therefore, the impugned order is illegal and liable to be set-aside.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 06.06.2018 before S.B.

Appellant Deposited
Security & Process Fee


(Muhammad Amin Khan Kundi)
Member

06.06.2018

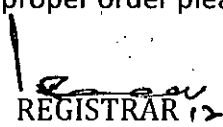

None present on behalf of appellant. Mr. Kabir Ullah Khattak, Addl: AG for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 12.06.2018 before S.B


Member

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 516/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	12/04/2018	<p>The appeal of Mr. Khairul Amin resubmitted today by Mr. Amjid Ali Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR 12-14/18</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>17/04/18.</u></p> <p style="text-align: right;"> MEMBER</p>
2-	12/04/18.	

The appeal of Mr. Khair-ul-Amin Patwari presently posted as office Assistant DRO Mardan received today by i.e. on 10.04.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days:

1- Memorandum of appeal is not signed by the counsel.

No. 738 /S.T,

Dt. 11/04 /2018

Lawyer
REGISTRAR 11/4/18
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Amjid Ali Adv. Mardan.

Resubmission after completion

*Amjid Ali
Mardan*

13-4-2018

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. 516 /2018

Khair ul Amin Patwari.....Appellant

VERSUS

Commissioner Mardan, District Mardan and another

...Respondents

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Appellant

Through

Amjad Ali (Mardan)

Advocate

Supreme Court of Pakistan

Cell: 0321-9882434

Dated: 9.4.2018

(1)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. 516 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 520

Dated 10-4-2018

Khair ul Amin Patwari,
Presently posted with Mehri Dil Patwari as
Office Assistant in Office of District Revenue
Accounts, Mardan.

.....Appellant

VERSUS

1. Commissioner Mardan, District Mardan.
2. Deputy Commissioner District Mardan.

.....Respondents

**SERVICE APPEAL U/S 4 OF SERVICE
TRIBUNAL ACT, 1974. AGAINST
ORDER DATED 19.03.2018 PASSED
BY RESPONDENT NO.1 ON
DEPARTMENTAL APPEAL DATED
12.02.2018 AND ORDER DATED
02.02.2018 PASSED BY RESPONDENT
NO.2, WHEREBY APPELLANT HAS
BEEN REMOVED FROM SERVICE,
WHICH IS ILLEGAL AGAINST LAW
AND FACTS.**

Filed to-day
Registrar
10/4/18

PRAYER

On acceptance of this appeal, the
impugned Appellate Order dated
19.03.2018 of respondent No.1 and

Re-submitted
to-day 12/4/18

order dated 02.02.2018, passed by respondent No.2 may please be set-aside and appellant may please be reinstated in service with all back benefits and E&D Rules 2011, may please be declared ultra-vires.

Respectfully Sheweth:-

Appellant humbly submits as under

- 1) That appellant remained as Patwari Halqa Gumbat, while during his duty at Mouza Gumbat, one Siyar Mohammad S/o Wafadar R/o Yar Hussain, District Swabi filed a complaint/application leveling the allegations that the appellant received gratification amount of Rs.62,500/- ~~intention~~ of paying Taxes for attestation of mutation. Neither the Patwari Halqa returned to him the amount of Rs.62,500/- nor mutation has been attested on his name. **(Copy of application is Annex "A")**
- 2) That the above complaint/ application was marked to the Inquiry Officer, so, AAC-VI, Mardan as Inquiry Officer submitted his inquiry report to the Deputy Commissioner through Letter No.126 dated 19.11.2017 without conducting inquiry into the matter with observation that the applicant Siyar Muhammad resolved the issue with appellant, but worthy Deputy Commissioner re-sent the complaint for inquiry and report, where the learned AAC-VI, Mardan ex-parte proceeded the appellant and he submit his inquiry report to

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the Deputy Commissioner, Mardan through letter No.139 dated 28.02.2017.

- 3) That after that the appellant was called for personal hearing by Deputy Commissioner, Mardan wherein, the appellant appeared, [redacted] and [redacted] the worthy Deputy Commissioner through letter No.269-79/16(6)/DK/RA dated 02.02.2018 impose^d major penalty, while removing him from his service. **(Copies statement & order dated 02.02.2018 are attached as Annex "B")**
- 4) That being aggrieved from the order dated 02.02.2018 issued by respondent No.2, the appellant filed departmental appeal. **(Copy of memo of appeal is Annex "C")**
- 5) That in departmental appeal, comments asked and dismissed vide order dated 19.03.2018. **(Copy comments and order dated 19.03.2018 are Annex "D & E")**
- 6) That the impugned order dated 19.03.2018 of respondent No.1 and order dated 02.02.2018 of respondent No.2 are illegal against law and facts on the following:-

GROUND.

- A. Because the order of respondent No.2 dated 02.02.2018 is illegal, against law and record of case file, hence the same is not maintainable and liable to be set-aside.
- B. Because it is evident from the record that the allegations in complaint are not proved against the

appellant. Furthermore, the complainant Siyar Muhammad stated that he doesn't want to pursue his application, but even then major penalty was imposed against him, therefore, too the order dated 02.02.2018 is liable to be set-aside.

- C. Because the Inquiry Officer didn't conduct the inquiry as per Law and Rules. The Inquiry Officer neither ^{has} given show cause notice nor charge sheet to the appellant which is mandatory as per KPK Service Rules, therefore, too the order of learned respondent No.2 is liable to be set-aside.
- D. Because penalty imposed on appellant is major one, the appellant is totally innocent into the matter, but even than illegal order has been passed.
- E. Because none of the witness has been examined by the I.O in front of appellant.
- F. Because no opportunity of cross-examination given to appellant.
- G. Because appellant is jobless and didn't retain office of profit.
- H. Because the Star witness has not been examined.
- I. Because the DC, Mardan can't assume the role of Inquiry Officer.
- J. Because E&D Rules, 2011 are ultra-vires as not passed by the Govt. as defined in Article 129 of the Constitution of Pakistan.
- K. Because as per cessation/ repeal of Removal from Service Ordinance by the legislature original E&D

Rules, 1973 are restored then issuing of E&D Rules, 2011 by Chief Minister as an executive authority is against the said Legislative Act.

L. Because under the rules before removal from service regular inquiry is must, however, no such inquiry was conducted in appellant's case, which is violation of due process of law.

M. Because ~~the~~ appellant has not ^{been} served with any show cause notice.

N. Because the appellant has performed his duty regularly, and there is no complaint against him.

O. Because ~~the~~ appellant has been deprived of his right of defense.

P. Because ~~the~~ appellant was condemned unheard, as no opportunity of personal hearing has been awarded to the appellant.

Q. Because ~~the~~ appellant was not informed about the initiation of disciplinary action.

R. Because appellant was not provided documentary evidence to prove his innocence, while appellant was orally informed about his removal on 26.10.2015 and appellant obtained his removal order on 27.10.2015 ^{through} his personal efforts and the appellant's appeal is within time.

S. Because the appellant was proceeded ex-parte, which is against law and natural justice.

T. Because the appellant is a poor person and sole bread earner of his large family.

(B)

- U. Because the appellant has no other source of income.
- V. Because, if the appellant's appeal is not accepted. He and his entire family will suffer.
- W. Because E&D Rules, 2011 are ultra-vires as not passed by the Govt. as defined in Article 129 of the Constitution of Pakistan.
- X. Because as per cessation/ repeal of Removal from Service Ordinance by the legislature original E&D Rules, 1973 are restored then issuing of E&D Rules, 2011 by Chief Minister as an executive authority is against the said Legislative Act.

It is therefore, humbly prayed that, on acceptance of this appeal, the impugned Appellate Order dated 19.03.2018 of respondent No.1 and order dated 02.02.2018, passed by respondent No.2 may please be set-aside and appellant may please be reinstated in service with all back benefits and E&D Rules 2011, may please be declared ultra-vires.

Any other relief which this hon'ble court deems appropriate in the circumstances of the case though not specifically asked for may kindly also be granted.

Dated: 09.04.2018

Appellant

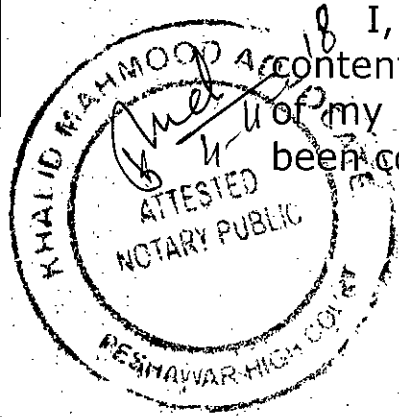
Through

Amjad Ali (Mardan)
Advocate Supreme Court

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this hon'ble Tribunal.

Deponent



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خدمت قضاہ کیلئے اسٹریٹجی وزیر اعلیٰ کا ۱۹/۱۱/۲۰۱۶

درخواستیہ تہذیبیہ

۱۱/۱۱

پنجاب میں عدالتوں کی طرف سے نکلنے والے جرموں کی

کارروائی اور پنشنوں کی حلقہ سالانہ کارروائی کیلئے

پنجاب میں غیر ال ایمنڈ سیکم کے تحت کارروائی

قضاہ میں

درخواستیہ تہذیبیہ

۱۱/۱۱/۲۰۱۶ میں ایک کسب و کار کے تحت کارروائی کیلئے درخواستیہ تہذیبیہ

۱۱/۱۱/۲۰۱۶ میں ایک کسب و کار کے تحت کارروائی کیلئے درخواستیہ تہذیبیہ

۱۱/۱۱/۲۰۱۶ میں ایک کسب و کار کے تحت کارروائی کیلئے درخواستیہ تہذیبیہ

پنجاب میں عدالتوں کی طرف سے نکلنے والے جرموں کی کارروائی

کارروائی اور پنشنوں کی حلقہ سالانہ کارروائی کیلئے

پنجاب میں غیر ال ایمنڈ سیکم کے تحت کارروائی

درخواستیہ تہذیبیہ



ATTESTED

Handwritten signature of the official.

Examiner / Reader to
Commissioner Court
Muzaffargarh Division

۱۱/۱۱/۲۰۱۶

سیارچی ولد وفادار سائیکس پائریٹ
مظفر صاحب

۱۱/۱۱/۲۰۱۶



OFFICE OF THE
DEPUTY COMMISSIONER
MARDAN

No. 269-79 /16(6)/DK/RA
Dated Mardan the 02 /02/2018

Ann-B
(8)

OFFICE ORDER

Whereas, a letter bearing No. Rev-VII/Misc/CMD/Pesh/6425-26, dated 29.03.2017 alongwith its enclosure received from the Deputy Secretary-II, Board of Revenue, Khyber Pakhtunkhwa, vide which a complaint submitted by Mr. Siyar Muhammad R/O Yar Hussain, Swabi was forwarded to this office for appropriate action. The complainant stated that he had purchased landed property measuring 02 Kanal-11 Marla from Mst Rabia Bibi in Mauza Gumbat. That thumb Impression of the vendor was taken in office of the Tehsildar Mardan, the Patwari (Khairul Amin) had received Rs. 62500/- as tax amount from him, but till that date neither the mutation was attested in his name nor the amount was returned to him; and

Whereas, vide letter No. 827-30/52-DK/RA, dated 14.04.2017, the matter was entrusted to AAC-VI, Mardan for inquiry, who submitted his report vide No. 126, Dated 17.11.2017 stating therein that the complainant Mr. Siyar Khan appeared before him and stated that the Patwari had returned the amount Rs. 62500/- to him and requested for withdrawal of his complaint; and

Whereas, the refund of Rs.62500/- confirmed that he had received the money, hence further clarification was required so as to ascertain whether there was any element of corruption in the matter or otherwise; the AAC-VI, Mardan was asked vide this office letter No. 1440-41/52(Siyar)-DK/RA, dated 30.11.2017, that the matter needed proper probe, therefore a comprehensive & speaking report may be submitted into the matter so that action may be taken accordingly; and

Whereas, The AAC-VI, Mardan/Inquiry Officer vide No. 139, dated 28.12.2017 submitted his final report stating therein that Khair-Ul-Amin had received Rs. 62500/- from Mr. Siyar Khan (Complainant), of which Rs.48000/- was tax amount/mutation fee, whereas the Rs.14500/- was illegal gratification which was returned to the complainant after filing the complaint. Likewise, another irregularity on the part of Patwari, as pointed out by the complainant, was that the mutation is still pending as un-attested. That the Patwari failed in performing his duties and involved in corrupt practices and recommended that disciplinary action may be taken against him; and

Whereas, vide this office letter No. 138-40/6(Khairul Amin)-DK/RA, dated 17.01.2018, he was called for personal hearing on 23.01.2018, wherein he failed in rebutting the allegations leveled against him, rather he "pleaded guilty" before the undersigned. Since, Khair-Ul-Amin Patwari confessed before the undersigned, hence considering his confession as conclusive proof, no further inquiry was conducted.

The whole course of affairs confirmed that Mr. Khair-Ul-Amin Patwari involved in corrupt practices, coupled with willfully avoiding his appearance before the Inquiry Officer which is clear misconduct.

In the above backdrop, I Dr. Imran Hamid Sheikh, Deputy Commissioner, Mardan, being the competent authority, do hereby impose major penalty upon Mr. Khair-Ul-Amin Patwari, as envisaged in Section 4(1), a (ii) of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, and remove him from Govt Service, forthwith.

M. [Signature] 31/1/18
Deputy Commissioner
Mardan

Endst No. & Date Even:

1. Commissioner, Mardan Division, Mardan for information please.
2. Deputy Secretary/Secretary-II, Board of Revenue w/r to his letter under reference.
3. Addl Deputy Commissioner Mardan.
4. The District Comptroller of Accounts Mardan for necessary action.
5. The Assistant Commissioner, Mardan.
6. The Addl Assistant Commissioner-VI, Mardan.
7. The Accounts Officer Deputy Commissioner Office Mardan for necessary action.
8. The Tehsildar Mardan/Katlang/Takht Bhai/Rustam.
9. Incharge Chief Minister Complaint Cell, Mardan w/r to his letter No. 58/2017/CM/C.C(M), dated 02.03.2017.
10. The officials concerned.



M. [Signature] 31/1/18
Deputy Commissioner
Mardan

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

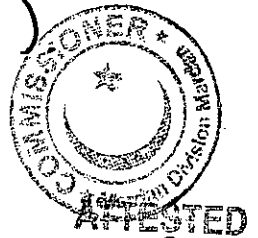
(1)

Ann - C

BEFORE THE COMMISSIONER MARDAN. (9)

KHAIRU Amin Patwari, presently
Posted with Mehir Dil Patwari
as a office assistance in the
office of District Revenue Account
Mardan. (Applicant / Appellant)

Reader



Subject: - Departmental Appeal on behalf Applicant / Appellant against

Examiner / Reader to
Commissioner Court
Mardan Division Mardan

The order of Deputy Commissioner

Mardan. Letter No 269-79/16(6)/DK/RA

dated 2-2-18 vide which the Applicant
/ Appellant is Removed from Service forthwith
illegally u/s 4(i), a(ii) of the K.P.K Civil
Servants (ESD) Rules 2011.

Prayer: - on the acceptance of this appeal
the order of worthy Deputy Commissioner



(2)

(10)

dated 2/2/18 may graciously be set aside and ~~the~~ appellant/applicant service may kindly be restored.

Respect Sir:- The applicant submit as under



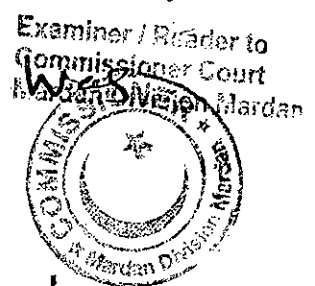
(1) That the applicant/appellant Remained as Patwari halqa Gumbat while during his duty at Mauza Gumbat, one syar Mohammad s/o Wafadar R/o yar Hussain District Swabi filed a complaint application leveling the allegations that the appellant Received gratification amount Rs 62,500/- in connection of paying Taxes for attestation of mutation. Neither the Patwari halqa Returned to him the Amount Rs 62,500/- nor Mutation has been attested on his name. (Copy of application annexed)

(3)

(11)

(3) That the above complaint application was marked to the Inquiry officer, so A.A.C VI Mardan as Inquiry officer submit his Inquiry Report to the Deputy Commissioner through Letter No 126
19-11-17 without conducting Inquiry into the matter with observation that the applicant Syar Mohammad Resolved the Issue with appellant, But worthy Deputy Commissioner Re-send the Complaint for Inquiry & Report. Where the A.A.C VI Mardan exparte Proceeded the appellant, & He submit his Inquiry Report to the Deputy Commissioner Mardan through Letter No 139/28/2/17

(4) That after that The appellant called for personal hearing by Deputy Commissioner Mardan. Where in the appellant appeared. his statement



(4)

(12)

was Recorded. and Finally the
worthy Deputy Commissioner through
Letter No 269-79/16(6) / DK / RA.
dated 2-2-18 Impose major Penalty
while Removing him from his
service. (Copies are attached).

Being aggrieved from order dated
2-2-18. of the worthy Deputy Commissioner
The applicant / appellant submit
This Departmental appeal on
the following ground.

Grounds:-

(A) That the order of worthy Deputy
Commissioner dated 2-2-18 is
illegal, against the Law &
Record of Case File, hence the
same is not maintainable &



ATTESTED

Examiner / Reader to
Commissioner Court
Mandan Division Mandan

liable to be set aside.

(5)

(B) That it is evident from the

Record, that the allegations in

complaint are not proved against

the appellants, further more the

complainant Syed Mohammad stated

that he does not want to pursue

~~his~~ application. But even then

major penalty was imposed against

him. Therefore for the order dated

2-2-18

is liable to be set aside.



[Handwritten signature]

Commissioner Court
Mardan Division Mardan

(C) That the Inquiring Officer did not
conduct the Inquiring as per law
8 Rules. The Inquiring Officer ~~is~~
given show cause notice nor charge
sheet to the applicant/appellant. which

(13)

(6)

(14)

is mandatory as per N.P.K Services Rules. There fore too the order of learned Deputy Commissioner is liable to be set aside.

(D) That penalty imposed on applicant/ Appellant is Major one, The appellant is totally innocent into the matter. But even then illegal order has been passed.

ATTESTED

[Signature]

Examiner / Reader to
Commissioner Court
Mardan Division Mardan



It is therefore humbly prayed that on the acceptance of this Departmental appeal, The order of Deputy Commissioner dat 2/2/18 'is may please be set aside and the appellant may kindly be ordered to Restore / Re Instate on his service.

Dated:- 12/2/18

Applicant / Appellant
KHAIR ul Admin
Datwari

[Signature]

BEFORE THE COURT OF COMMISSIONER MARDAN DIVISION MARDAN

Khairul Amin , Ex. Patwari Distt Mardan.....Appellant

VERSUS

Deputy Commissioner, Mardan.....Respondent

15

SUBJECT: DEPARTMENTAL APPEAL ON BEHALF OF APPLICANT/APELLANT AGAINST THE ORDER OF DEPUTY COMMISSIONER, MARDAN LETTER NO. 269-79/16(6)/DK/RA, DATED 02.02.2018 VIDE WHICH THE APPLICANT/APELLANT IS REMOVED FROM SERVICE FORTHWITH ILLEGALLY U/S 4(I),A (II) OF THE KPK CIVIL SERVANTS (E&D) RULES, 2011

Respected Sir.

Preliminary Objections:

1. The appellant has got no cause of action.
2. The appellant has not come to the court with clean hands.
3. The appellant has no locus Standi to file the appeal.
4. The appeal is bad for non-joinder and mis-joinder of necessary parties.
5. This Hon'able Court has got no jurisdiction.

PARA WISE COMMENTS**REPLY ON FACTS:**

1. The Deputy Secretary-II, Board of Revenue vide letter No. Rev-VII/Misc/CMD/Pesh/6425-26, dated 29.03.2017 forwarded a complaint submitted by Mr. Siyar Khan stating therein that he had purchased landed property measuring 02 Kanal- 11 Marla from Mst Rabia Bibi in Mauza Gumbat. That thumb impression of the vendor was taken in office of the Tehsildar Mardan, the Patwari (Khairul Amin) had received Rs. 62500/- as tax amount from him, but till that date neither the mutation was attested in his name nor the amount was returned to him.
(Complaint is Annex-A, letter of BoR is Annex-B)
3. As the letter referred to pointed out refund of Rs.62500/- to the complainant by the appellant, which confirmed that he had received the money, hence further clarification was required so as to ascertain whether there was any element of corruption in the matter or otherwise; the AAC-VI, Mardan was asked vide this office letter No. 1440-41/52(Siyar)-DK/RA, dated 30.11.2017, that the matter needed proper probe, therefore a comprehensive & speaking report may be submitted into the matter so that action may be taken accordingly. (Letter No. 1440-41 is Annex-C)
4. Incorrect. The AAC-VI, Mardan/Inquiry Officer vide No. 139, dated 28.12.2017 submitted his final report stating therein that Khair-ul-Amin had received Rs. 62500/- from Mr. Siyar Khan (Complainant), of which Rs.48000/- was tax amount/mutation fee, whereas the Rs.14500/- was illegal gratification which was returned to the complainant after filing the complaint. Likewise, another irregularity on the part of Patwari, as pointed out by the complainant, was that the mutation is still pending as un-attested. The appellant also failed in performing his duties and involved in corrupt practices and recommended that disciplinary action may be taken against him.
(Letter No. 139 is Annex-D)

Consequently, vide this office letter No. 138-40/6(Khairul Amin)-DK/RA, dated 17.01.2018, he was called for personal hearing on 23.01.2018, wherein he failed in rebutting the allegations leveled against him, rather he "pleaded guilty" before the undersigned, and his confession was conclusive proof of his corrupt practices. Besides he did not bother to appear before the Inquiry officer, therefore, the penalty of removal from service has been imposed upon him.

(Letter No. 138-40 is Annex-E)

In view of above, the appellant has no ground to submit this appeal.



ATTESTED

Examiner / Reader to
Commissioner Court
Mardan Division

REPLY ON GROUNDS

- A. Incorrect, the order is fully in accordance with law & rules, hence it is maintainable.
- B. Incorrect. As explained in reply to Para No. 4 above, the allegations have fully been proved against him.
- C. Incorrect, he was conveyed all the charges vide letter No. 138-40/6(Khairul Amin)-DK/RA, dated 17.01.2018.
- D. Incorrect. He has been proved guilty of corrupt practices.

In view of the above, the appeals appeared baseless; therefore, it is requested to be dismissed in limine.



Deputy Commissioner
Mardan (Respondent)



ATTESTED



Examiner / Reader to
Commissioner Court
Mardan Division, Mardan

Ann. E

IN THE COURT OF COMMISSIONER MARDAN DIVISION, MARDAN.

U
Khair Ul Amin Patwari

Appellant (17)

Deputy Commissioner Mardan etc.

Versus

Respondents

Case No.....

Date of institution: 19/02/2018

Date of Decision: 19/03/2018

DEPARTMENTAL APPEAL AGAINST THE ORDERS DATED
02/02/2018 WHEREBY THE APPELLANT IS REMOVED FROM
SERVICE.

ORDER:-

Through this appeal, the appellant has challenged the impugned office orders dated 02/02/2018 passed by the Worthy Deputy Commissioner Mardan whereby the appellant is removed from service.

Brief facts of the case are that one named Khair- Ul Amin ex-patwari was terminated by respondent (Deputy Commissioner Mardan) on the allegation that on the complaint of one Mr. Siar Khan r/o Ya: Hussain district Swabi against the said patwari had received Rs.62500/- illegally for entering of the mutation. An enquiry was conducted by the competent authority and the competent authority appointed AAC-VI Mardan to probe into the matter and report. The enquiry officer after conducting the detail enquiry submitted the detail report to the competent authority with the opinion that Khair-Ul Amin ex-patwari is guilty of the allegation and recommend drastic action against him. After the enquiry major penalty was imposed on him under E&D rules and he was removed, with his involvement in corrupt practices and willfully not appearing before enquiry officer were established.

Arguments of behalf of council heard and comments received from D.C Office also perused. The counsel for petitioner contended that two reports has been submitted by enquiry officer and in the 2nd report the enquiry officer has recommended major penalty. Further stated that the complainant has withdrawn his complaint. No show cause or charge sheet has been served on the applicant and no codal formalities were fulfilled.

From the arguments and perusal of record/comments of D.C no material procedural short coming can be pointed out, except that the applicant was not been charge sheeted. When in result of an enquiry, personal hearing was conducted were in the appellant has confessed to these charges and the return of money to the complainant are enough proof/reason not to further charge sheet, the appellant and conduct further proceedings under E&D rules. The charges of evolvment in corrupt practice not attesting mutation and not appearing before enquiry officer are enough grounds to impose major penalty on the appellant. Further his two other appeals pending in this court shows that the appellant has also been given two minor penalties of stoppage of increments and downgrading of scales, in other enquiries shows that appellant is continuously involved in irregularities and has not mended his ways. Hence in light of above reason and founding no meaningful irregularities the appeal stands dismissed.

File be consigned to record room after necessary completion.

ATTESTED

Examiner / Order to
Commissioner Court
Mardan Division

Commissioner
Mardan Division, Mardan



Announced.
19/03/2018

۲۰۱۸ء منجانب اسلام آباد

4/4/2018

مورخہ:

مقدمہ:

دعویٰ:

بنام:

تھریڈس ٹیوٹری

کنسٹریوٹن ڈیڑن رڈ

جدم:

Service Appeal

باجت تحریر آفندہ

NO

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

ابن مقام لکھنؤ کیلئے امجد علی ایڈووکیٹ، سپریم کورٹ آف پاکستان اسلام آباد

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا مکمل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء و وصولی چیک دروپہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زاریں 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 اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختیار قانونی کو اپنے ہمراہ یا اپنے بجائے تقریر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ و جانہ التوائے مقدمہ کے سبب سے 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 سنڈ رہے۔

المرقوم:

4

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۶/۲۰۱۸

۶/۲۰۱۸

العبد

گواہ

العبد

بمقام

ایمان کے لیے منظور ہے۔

Accepted by
Amjad Ali
MURDER
ADVOCATE
SUPREME COURT

امجد علی ایڈووکیٹ سپریم کورٹ آف پاکستان، ڈسٹرکٹ کورٹس، مردان

0321-9882434 0321-9870175

P. 258/11/10
7/10/2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 516/2018

Khairul Amin, Ex. Patwari Distt Mardan.....Appellant

VERSUS

1. Commissioner Mardan Division, Mardan.
2. Deputy Commissioner, Mardan:.....Respondents

SUBJECT: SERVICE APPEAL U/S 4 OF SERVICE TRIBUNAL ACT,1974. AGAINST ORDER DATED 19.03.2018 PASSED BY RESPONDENT NO.1 ON DEPARTMENTAL APPEAL DATED 12.02.2018 AND ORDER DATED 02.02.2018 PASSED BY RESPONDENT NO.2, WHEREBY APPELLANT HAS BEEN REMOVED FROM SERVICE, WHICH IS ILLEGAL AGAINST LAW & ACTS

Respected Sir,

Joint Para-wise comments on behalf of Respondent No.1 and Respondent No. 02 are as under:

Preliminary Objections:

1. The appellant has got no cause of action.
2. The appellant has not come to the court with clean hands.
3. The appellant has no locus Standi to file the appeal.
4. The appeal is bad for mis-joinder and non-joinder of necessary parties.
5. This Hon'ble Tribunal has got no jurisdiction.
6. The appeal is time-barred.

Reply on Facts:

1. The Deputy Secretary-II, Board of Revenue vide letter No. Rev-VII/Misc/CMD/Pesh/6425-26, dated 29.03.2017 forwarded a complaint submitted by Mr. Siyar Khan stating therein that he had purchased landed property measuring 02 Kanal- 11 Marla from Mst Rabia Bibi in Mauza Gumbat. That thumb impression of the vendor was taken in office of the Tehsildar Mardan, the Patwari (Khairul Amin) had received Rs. 62500/- as tax amount from him, but till that date neither the mutation was attested in his name nor the amount was returned to him.

(Complaint is Annex-A, letter of BoR is Annex-B)

2. As the letter referred to pointed out refund of Rs.62500/- to the complainant by the appellant, which confirmed that he had received the money, hence further clarification

2
was required so as to ascertain whether there was any element of corruption in the matter or otherwise; the AAC-VI, Mardan was asked vide this office letter No. 1440-41/52(Siyar)-DK/RA, dated 30.11.2017, that the matter needed proper probe, therefore a comprehensive & speaking report may be submitted into the matter so that action may be taken accordingly. (Letter No. 1440-41 is Annex-C)

The AAC-VI, Mardan/Inquiry Officer vide No. 139, dated 28.12.2017 submitted his final report stating therein that Khair-UI-Amin had received Rs. 62500/- from Mr. Siyar Khan (Complainant), of which Rs.48000/- was tax amount/mutation fee, whereas the Rs.14500/- was illegal gratification which was returned to the complainant after filing the complaint. Likewise, another irregularity on the part of Patwari, as pointed out by the complainant, was that the mutation is still pending as un-attested. The appellant also failed in performing his duties and involved in corrupt practices and recommended that disciplinary action may be taken against him.

(Letter No. 139 is Annex-D)

3. In light of facts mentioned in Para No. 02 above, vide this office letter No. 138-40/6(Khairul Amin)-DK/RA, dated 17.01.2018, the appellant was called for personal hearing on 23.01.2018, wherein he failed in rebutting the allegations leveled against him, rather he "pleaded guilty" before the undersigned, and his confession was conclusive proof of his corrupt practices. Besides he did not bother to appear before the Inquiry officer, therefore, the penalty of removal from service has been imposed upon him.

(Letter No. 138-40 is Annex-E)

4. Pertains to record.
5. Said appeal was dismissed on merit.
6. Incorrect. The orders referred to were passed after fulfilling all codal formalities, as such same were legal.

REPLY ON GROUNDS

- A. Incorrect; the order is fully in accordance with law & rules, hence it is maintainable.
- B. Incorrect. As explained in reply to Para No. 4 above, the allegations have fully been proved against him.
- C. Incorrect, he was conveyed all the charges vide letter No. 138-40/6(Khairul Amin)-DK/RA, dated 17.01.2018.
- D. Incorrect. He has been proved guilty of corrupt practices.
- E. Incorrect.
- F. Incorrect.

G. No Comments.

H. Incorrect.

I. Incorrect. Inquiry was conducted through Addl: Assistant Commissioner-VI, Mardan.

J. Incorrect, E & D rules are in vogue since 2011 and all the departments have practically adopted the same since its promulgation.

K. No Comments.

L. Incorrect. The matter was properly inquired into and opportunity of personal hearing was given to the appellant.

M. As above.

N. As replied in Para No. 1 of reply on facts above.

O. Incorrect, He has been given full opportunity to defend himself.

P. As replied in Para No. L above.

Q. Incorrect, he was properly informed of disciplinary action against him.

R. Incorrect, the appellant was removed on 02.02.2018 after a detailed personal hearing.

S. The complainant willfully evaded inquiry proceedings, which indicated that he had nothing to offer in his defense. Later, penalty was imposed after providing him full opportunity of personal hearing.

T. No Comments.

U. As above.

V. No Comments.

W. As replied in to Para "J" above.

X. As replied to Para "J" above.

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

Netted to Subject to the approval of learned AACI

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

Forwarded to AG KPK for vetting please

Service Tribunal, Peshawar
**Commissioner
Mardan Division Mardan
(Rspndnt No.01)**

29/5
**For Deputy Commissioner
Mardan**

Agreed

as above approval
**Additional Advocate General
Kyber Pakhtunkhwa
Service Tribunal Peshawar**
18

Annex - B

GOVERNMENT OF KHYBER PAKHTUNKHWA,
BOARD OF REVENUE,
REVENUE & ESTATE DEPARTMENT.

No. Rev-VII/Misc/CMD/Pesh/

6425-26

Peshawar dated the 29/03/2017.

To,

The Deputy Commissioner,
Mardan.

SUBJECT:- COMPLAINT OF SIYYAR KHAN.

Enclosed please find herewith a copy of Chief Minister's Complaint Cell, Mardan letter No. 58/2017/CM/C.C(M) dated 02.03.2017 alongwith its enclosure on the subject noted above with the request to take appropriate action as per law/rules and also submit a detailed report within one week positively.

[Signature]
Deputy Secretary-II

No. & date even.

Copy forwarded to the Incharge Chief Minister's Complaint Cell, Mardan with reference to his letter cited above.

[Signature]
Deputy Secretary-II

DC OFFICE MARDAN	
Diary No: 20842 Dt: 3/17	
A.D.C	
D.O.F. P	
A.O	
Supdt:	<input checked="" type="checkbox"/>
S/Steno	

*Diary for
PO ref.*

*R.A.
As admitted to the*

needful
[Signature]



Annex - C

OFFICE OF THE
DEPUTY COMMISSIONER
MARDAN

No. 1440-41/52(Siyar)-DK/RA
Dated Mardan the 30 /11/2017

To

The Addl Assistant Commissioner-VI,
Mardan.

Subject:

COMPLAINT OF SIYAR KHAN

Memo:

This is with reference to your report bearing No. 126, dated 17.11.2017 on the subject noted above.

The matter needs proper investigation; therefore you are directed to send a speaking and comprehensive report into the matter so that action may be taken into the matter accordingly.


Addl Deputy Commissioner
Mardan

Endst No. & Date Even:

Cc:

1. The Deputy Commissioner, Mardan for information please.


Addl Deputy Commissioner
Mardan

3/16



OFFICE OF THE
ADDL ASSISTANT COMMISSIONER-VI
MARDAN

NO 139 DATE 28/12/2017

Annex - D

To

The Additional Deputy Commissioner
Mardan,

Subject: Complaint of Siyar Khan

Memo:

In compliance with the orders of worthy Deputy Commissioner Mardan on earlier report bearing No-126 Dated 17-11-2017, both complainants as well as Patwari Khair ul Amin were summoned for reinquiry in the matter. Complainant Siyar Khan attended inquiry proceeding on 15-12-2017. He recorded his detail statement two pages which is enclosed with the report for kind perusal and Patwari Khair ul Amin did not attend the inquiry proceedings.

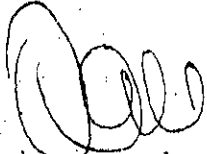
From perusal of the statement of complainant Siyar Khan it's become clear that the Patwari Khair ul Amin had received Rs 62500/- from the complainant which included Rs 48000/- as mutation fees and taxes and Rs 14500/- as their own fees illegal gratification which were returned to the complainant after lodging complaint to the worthy Deputy Commissioner. Second irregularity on the part of the Patwari pointed out by the complaint is that the Patwari neither entered nor attested the mutation of the complainant.

Findings

From the above it's become clear that the Patwari has failed to perform his duty and also involved in corruption which liable him to be proceedings against under F&D 2011.
Report is submitted please.


Qaisar Khan
Addl Assistant Commissioner-VI
Mardan

Rev. Assstt.


ADDL (M)
01/01/2018
No. 19-
01/01/2018



Annex - E

OFFICE OF THE
DEPUTY COMMISSIONER
MARDAN

No. 138-40 / 06 (Khairul Amin)-DK/RA
Dated Mardan the 17/01/2018

To

Mr. Khairul Amin,
Ex- Patwari Halqa Gumbat.

Subject: **PERSONAL HEARING**

A letter bearing No. Rev-VII/Misc/CMD/Pesh/6425-26, dated 29.03.2017 alongwith its enclosure received from the Deputy Secretary-II, Board of Revenue, kpk, vide which a complaint submitted by Mr. Syar Muhammad R/O Yar Hussain, Swabi was forwarded to this office for appropriate action. The complainant stated that he had purchased landed property measuring 02 Kanal- 11 Marla from Mst Rabia Bibi in Mauza Gumbat and that thumb impression of the vendor was taken in office of the Tehsildar Mardan. That the Patwari (Khairul Amin) had received Rs. 62500/- as tax amount, but till that date neither the mutation was attested in his name nor did the amount was returned to him.

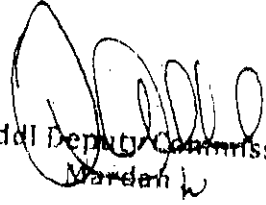
Vide letter No. 827-30/52-DK/RA, dated 14.04.2017, the matter was entrusted to AAC-VI, Mardan for inquiry, who submitted his report vide No. 126. Dated 17.11.2017 stating therein that the complainant Mr. Syar Khan appeared before him and stated that the Patwari had returned the amount Rs. 62500/- and requested for withdrawal of his complaint, hence, the inquiry officer recommended for filing of the inquiry.

As the refund of Rs.62500/- confirmed that you had received the money illegally and further clarification was required so as to ascertain whether there was any element of corruption in the matter or otherwise, the AAC-VI, Mardan was asked vide this office letter No. 1440-41/52(Siyar)-DK/RA, dated 30.11.2017, that the matter needed proper probe, therefore a comprehensive & speaking report may be submitted into the matter so that action may be taken accordingly.

The AAC-VI, Mardan vide No. 139, dated 28.12.2017 submitted his report stating therein that the Patwari (you) has received Rs. 62500/- from Mr. Syar Khan (Complainant) of which Rs. 42000/- was tax amount/mutation fee, whereas the Rs.14500/- was illegal gratification which was returned to the complainant after filing the complaint. Likewise another irregularity on the part of Patwari, as pointed out by the complainant, was that the mutation is still pending as un-attested. That the Patwari Khairul Amin failed in performing his duties and involved in corrupt practices and recommended that disciplinary action may be taken against him.

In the above backdrop, you appeared to be guilty of misconduct and corrupt practices by receiving illegal money from the complainant and failed in fulfilling your duties, which warrants any of the penalty to be imposed upon you envisaged in rule 4 of the Khyber Pakhtunkhwa revised E & D rules, 2011.

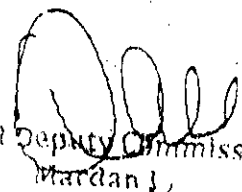
You are therefore directed to appear before the Worthy Deputy Commissioner, Mardan for personal hearing on 23.01.2018 at 10:30 a.m.


Addl Deputy Commissioner
Mardan

No & Date Even:

Copy forwarded to:

1. The Deputy Commissioner, Mardan for information please
2. The Assistant Commissioner Mardan to remain present during the proceeding of personal hearing as revenue expert please.


Addl Deputy Commissioner
Mardan



OFFICE OF THE
ADDITIONAL ASSISTANT COMMISSIONER-VI
MARDAN

NO. 126 DATE 17/11/2017

To

The Deputy Commissioner
Mardan

Subject: Complaint of Siyar Khan

Memo:

Reference your kind office letter No.827-30/52(Siyar)-DK/RA Dated 14-04-2017 on the subject captured above.

On the complaint of Mr. Siyar Khan R/o Yar Hussain District Sawabi against Khairul Amin Patwari that he received Rs. 62500/- illegally for entering of the mutation. An enquiry was ~~initiated~~ ^{captured} to the undersigned to probe in to the matter and report

The undersigned issued summon to the parties for recording of their statements. The complainant Mr. Siyar present in person and stated that Patwari Halqa Khairul Amin resolved his issue and returned Rs.62500/- to me, and requested for withdrawal of the application without further action.

In view of the above complainant statement the inquiry may be filed without further action please.

[Signature]
Qaisar Khan

Additional Assistant Commissioner-VI
Mardan.

DC OFFICE MARDAN
File No. <u>2257</u> D. No. <u>244</u>
10/11/17
A.O
S. No.

A.B.C

This matter is not so simple. If complaint is genuine, Patwari will be penalized & if complaint is genuine, complainant will be against. Ask AAC-VI to complete comprehensive report.

DEF

22/11

[Handwritten signature]

[Handwritten signature]

24/11/17

*No. 2382
29/11/17*

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

In re:

S.A.No.516/2018

Khair ul Amin Patwari.....Appellant

VERSUS

Commissioner Mardan, District Mardan and another

...Respondents

REJOINDER ON BEHALF OF THE APPELLANT

Sir,

PRELIMINARY OBJECTION

That all the preliminary objections are incorrect,
misconceived, denied.

ON FACTS

1. That Para-1 of appeal is correct and that of reply is incorrect, hence denied.
2. That Para-2 of appeal is correct and that of reply is incorrect, hence denied.
3. That Para-3 of appeal is correct and that of reply is incorrect, hence denied.
4. That Para-4 of the appeal is admitted as written as pertains to record.

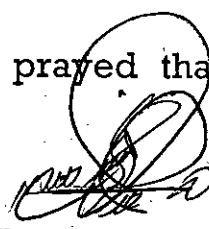
5. That Para-5 of the appeal is correct, however, respondents' para that dismissed on merits incorrect, hence denied.
6. That Para-6 of the appeal is correct and that of reply is incorrect, hence denied. Moreover, paras have not been replied as correct or incorrect and no specific denial so no para-wise comments in true sense.

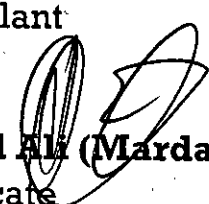
GROUNDS

All the grounds (A to X) of the appeal are correct and those of reply are incorrect, hence denied. Moreover, ex-parte action/ inquiry is always a weak type of Inquiry and needs to be on merit. There is no evidence, no service of summon on appellant for inquiry and personal hearing by D.C Mardan, which too is not meaningful can't replace inquiry procedure/ findings.

PRAYER

It is, therefore, humbly prayed that, appeal may please be accepted.


Appellant
Through


Amjid Ali (Mardan)
Advocate
Supreme Court of Pakistan

AFFIDAVIT

I, do hereby affirm and declare as per information furnished by my client that the contents of the accompanying **Rejoinder** are true and correct and nothing has been concealed from this Hon'ble Court.

Deponent

