

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No: 627 / 2018

Khyber Pakhtunkhwa Service Tribunal

Diary No. 672

Date: 09-5-2018

MUHAMMAD AYAZ,
Reader, A.A.C VI, Mardan.

..... APPELLANT

VERSUS

1. GOVERNMENT OF KHYBER PAKHTUNKHWA,
Through Senior Member Board of Revenue,
Peshawar.
2. THE COMMISSIONER,
Mardan Division, Mardan.
3. THE DEPUTY COMMISSIONER,
District, Mardan.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF SERVICE TRIBUNALS ACT, 1974 AGAINST IMPUGNED ORDER NO. 4622/ESTT-13/DCM DATED 08.11.2017 & IMPUGNED APPELLATE ORDER DATED 09.04.2018 ISSUED BY RESPONDENT NO. 2 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN DISMISSED.

PRAYER: That, on acceptance of this Service Appeal, the Impugned Order as well as Impugned Appellate Order may please be set-aside being against the law / rules / judgment of this Honourable Tribunal dated 03.01.2018 & Appellant be allowed the same benefit as being allowed to the incumbent in Service Appeal No. 1340 / 2015 with such other relief as may deem fit in the circumstances of the case may also be granted.

9/5/18

Service Appeal No. 627/2018

Date of Institution: 09.05.2018

Date of Decision: 20.12.2018

Muhammad Ayaz

Vs

**Government of Khyber Pakhtunkhwa
through Senior Member of Board of Revenue
Peshawar and 2 others.**

Judgment/Order:-

05.04.2018

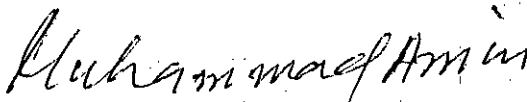
HUSSAIN SHAH MEMBER (E) Learned counsel for the appellant present. Learned Deputy District Attorney on behalf of respondents present.

In the present service appeal the appellant has challenged the order dated 08.11.2017 of the Deputy Commissioner Mardan/respondent No.3 whereby the application of the appellant to be posted/adjusted as Junior Clerk in the Office of Deputy Commissioner Mardan (Mother Department) was regretted.

At the very outset Learned counsel for the appellant stated that this Tribunal has already decided the appeal of identical nature titled Hameedullah versus Government of Khyber Pakhtunkhwa through Senior Member of Board of Revenue bearing No.1340/2015 vide judgment dated 03.01.2018 and the appellant being similarly placed person is also entitled to the same relief.

Arguments heard. File perused.

The contention of Learned counsel for the appellant is found genuine hence the present appeal is also disposed off in terms of judgment dated ~~24.06.2018~~ ^{3.1.2018} passed in service appeal bearing No.1340/2015 titled Hameedullah versus Government of Khyber Pakhtunkhwa Board of Revenue through its Senior Member Peshawar and others. Parties are left to bear their own costs. File be consigned to the record room. Disposed off accordingly.


(Muhammad Amin Khan Kundi)
MEMBER


(Hussain Shah)
MEMBER

ANNOUNCED
20.12.2018

Service Appeal No. 627/2018

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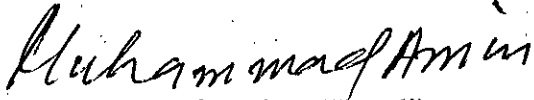
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(Muhammad Amin Khan Kundi)
MEMBER


(Hussain Shah)
MEMBER

ANNOUNCED

20.12.2018

26.10.2018

Due to retirement of Hon'able Chairman, the Tribunal is defunct. Therefore, the case is adjourned for the same on 14.12.2018 before D.B.


Reader

14.12.2018


Mr. Shah Mamoon, Advocate for appellant and Mr. Mr. Muhammad Arif, Superintendent for respondent No. 1 alongwith Ziaullah, DDA for the respondents present.

Learned counsel for the appellant argued the matter at some length. It was claimed that the case of appellant was similar to the appellant in appeal No. 1340/2015 decided on 03.01.2018.

Copy of the judgment in the said appeal shows that the same was authored by Mr. Muhammad Amin Khan Kundi, Hon'ble Member. Let instant matter be placed before a Bench wherein the said Hon'ble Member is constituted.

Adjourned to 20.12.2018 for arguments before the D.B.


Member


Chairman

28.05.2018

Learned counsel for the appellant present. preliminary arguments heard.

Through the present service appeal the appellant (Reader AAC-VI Mardan) seeks repatriation/readjustment in the Office of Deputy Commissioner Mardan.

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections.

Appellant Deposited
Security & Process Fee

The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/ comments on 13.08.2018 before S.B

13.08.2018

Counsel for the appellant and Mr. Kabirullah Khattak AAG alongwith Mr. Attaullah Assistant Secretary, for respondents present. Written reply not submitted. Representative of the respondents seeks time to file written reply/comments. Granted. To come up for written reply/comments on 17.09.2018 before SB.

(Muhammad Amin Khan Kundi)
Member

Member



17.09.2018

Appellant in person present. Mr. Waheed Ur Rehman, Junior Clerk alongwith Mr. Kabirullah, Addl: AG for respondents present. Written reply submitted. Case to come up for arguments on 26.10:2018 before D.B.

(Ahmad Hassan)
Member

Form-A
FORM OF ORDERSHEET

Court of _____
Case No. 627/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	09/05/2018	<p>The appeal of Mr. Muhammad Ayaz presented today by Mr. Shah Mamoon Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 9/5/18</p>
2-	15/05/18	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>28/05/18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

①

BEFORE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Service Appeal No: 627 / 2018

MUHAMMAD AYAZ

VS

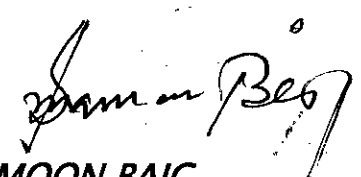
Government of KPK etc.

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Appellant,

Through:


SHAH MAMOONA BAIG
(Advocate, Peshawar)

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No: 627 / 2018

Khyber Pakhtunkhwa Service Tribunal

Diary No. 672

Dated 09-5-2018

MUHAMMAD AYAZ,
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..... APPELLANT

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- 2. THE COMMISSIONER,
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Filed to-day
Registrar
9/5/18

Respectfully Sheweth,

Short facts, giving rise to present Service Appeal, are as under:

1. That, Appellant was initially appointed as Junior Clerk in the Office of the Respondent No. 3, copy of the Appointment Order is attached as Annexure A.
2. That, in the year 2001 i.e. after the abolition of Commissionerate System, due to promulgation of the than Local Government Ordinance, 2001, the services of the Appellant were placed in Surplus Pool along with other incumbents, copy of the Relevant Order is attached as Annexure B.
3. That, Appellant was adjusted from the Surplus Pool to the post of Secretary Union Council in District Government, Mardan, copy of the Adjustment Order is attached as Annexure C.
4. That, with the revival of Commissionerate System, the Appellant was again posted to the office of the Deputy Commissioner i.e. Respondent No. 3, at the Court of AAC-VI on temporary basis in addition to his own duties.
5. That, the Appellant apart from others approached the Departmental Authority for his repatriation / readjustment to his parent Department i.e. Respondent No. 3, copy of the Application is attached as Annexure D.
6. That, the Respondent No. 3 vide Order dated 08.11.2017 regretted the Application of the Appellant on the analogy of Mr. Hameedullah Secretary Union Council, Mardan having the similar grievances against the Department, copy of the Impugned Order is attached as Annexure E. It is important to mention here that the Service Appeal of Mr. Hameedullah Secretary Union Council, Mardan has been accepted by this Honourable Tribunal vide Judgment dated 03.01.2018, copy of the same is attached as Annexure E/1.
7. That, as per law applicable, Appellant submitted his Departmental Appeal before the Competent Authority i.e. Respondent No. 2 on

08.01.2018, copy of the Departmental Appeal is attached as Annexure F.

8. That, the Respondent No. 2 dismissed the Departmental Appeal of the Appellant vide Order dated 09.04.2018, copy of the Impugned Appellate Order is attached as Annexure G, hence, this Service Appeal on the following amongst other grounds: -

GROUNDS:

- I. That, the Impugned Order as well as Impugned Appellate Order is illegal, unlawful, void and ineffective.
- II. That, the same are against the principles of Natural Justice, also.
- III. That, Appellant is not involved in any malpractices nor any complaint or inquiry is pending against her.
- IV. That, the Impugned Order as well as Impugned Appellate Order was passed without showing any reason or justification; hence the same is violative of section 24-A of General Clauses Act.
- V. That, according to the dictate of Superior Courts whenever any court of law decide a point of law relating to the terms of service of an employee which covers not only the case of employee who litigated, but also to other employees who may have not taken any legal proceedings, in such cases, the dictates and rule of good governance demand that the benefit of such Judgment by the court of law be extended to other employees, who may not be party to the litigation instead of compelling them to approach the court of law.
- VI. That, similarly placed employees of the Respondent Department have been repatriated / readjusted to their original / parent positions hence the Appellant also deserves the same treatment at the touchstone of the principle settled by the August Supreme Court of Pakistan in Judgment reported in 2009 SCMR 1.

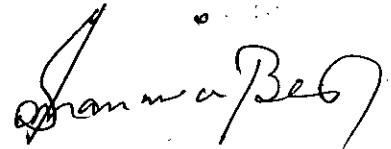
- VII. That, apart from the above mentioned Judgment of Supreme Court of Pakistan, this Honourable Tribunal has also rendered clear directions to the Respondents in similar nature cases through its different Judgments which the Respondents have never applied, as yardstick, to tackle such kind of cases, hence the instant Appeal.
- VIII. That, any other ground, not specifically mentioned in the memo of Appeal, would be agitated at the time of Arguments with the permission of this Honourable Tribunal.

It is, therefore, requested that Service Appeal of the Appellant be accepted as prayed for.



Appellant

Through:



SHAH MAMOON BAIG
(Advocate, Peshawar)

(6)

BEFORE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Service Appeal No: _____ / 2018

MUHAMMAD AYAZ

VS

Government of KPK etc.

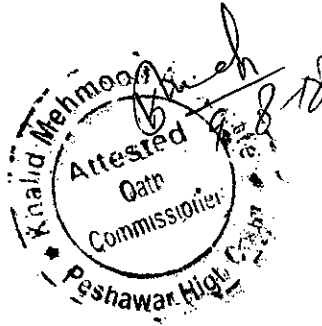
AFFIDAVIT

I, Muhammad Ayaz, Reader, A.A.C VI, Mardan, Appellant, do hereby on oath affirm and declare that the contents of the Service Appeal are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Honourable Tribunal.

Deponent

Identified by:

SHAH MAMOONA BAIG
(Advocate, Peshawar)



BEFORE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Service Appeal No: _____ / 2018

YASMIN

VS

Government of KPK etc.

ADDRESSES OF PARTIES.

APPELLANT:

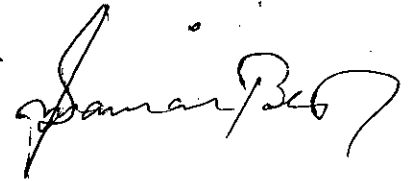
MUHAMMAD AYAZ, Reader, A.A.C VI, Mardan.

RESPONDENTS:

1. Government of Khyber Pakhtunkhwa, Through Senior Member Board of Revenue, Peshawar.
2. The Commissioner, Mardan Division, Mardan.
3. The Deputy Commissioner, District, Mardan.

Appellant

Through:



SHAH MAMOON BAIG
(Advocate, Peshawar)

OFFICE OF THE DISTRICT COORDINATION OFFICER, MARDAN.

OFFICE ORDER

In continuation of this office Order No.2833-50/DCO(M) dated 12.12.2001, the following transfer/adjustment/postings amongst the Union Councils Secretaries and other staff of Mardan District is hereby ordered with immediate effect in the public interest:

S.No.	Name of official	Designation	From	To	Remarks.
1-	Mr. Sardar Hussain	Secretary, Union Council	Garhi Daulat Zai	Rustam	Vice Riazullah posted in Garhi Daulat Zai.
2-	Mr. Muhammad Ayaz-2	-do-	Rustam	Jamal Garhi	Against the vacant post
3-	Pir Rajwali Shah	J/C	Executive District Officer, Finance & Planning Mardan	District Officer (Revenue & Estate) Mardan	Vice No.4
4-	Mr. Shad Muhammad	-do-	District Officer (Revenue & Estate) Mardan	Executive District Officer, Finance Department Mardan	Vice No.3

District Coordination Officer,
Mardan.

No. 16 /DCO(M)

Dated Mardan the 24th December, 2001

Copy forwarded to the:

- 1- Zila Nazim, District Government, Mardan.
- 2 TMO Mardan.
- 3 DAO Mardan.
- 4- P.S to D.C.O Mardan.
- 5- Officials concerned for compliance.

certified
[Signature]

[Signature]
Human Resource Development Officer,
For District Coordination Officer, Mardan.

بخدمت جناب ڈپٹی کمشنر صاحب ضلع مردان

بذریعہ اسسٹنٹ ڈائریکٹر لوکل گورنمنٹ مردان

درخواست برائے ایڈجسٹ کرنے جو نیئر کلرک خالی پوسٹ

جناب عالی!

درخواست حسب ذیل عرض ہیں۔

1. گزارش ہے کہ میں / سائل سال 1995 میں ڈپٹی کمشنر صاحب کے آفس میں بطور جو نیئر کلرک بھرتی ہوا تھا۔ اور بطور محرر عدالت میں ڈیوٹی سرانجام دیتا تھا۔
2. سال 2001 میں ڈپٹی کمشنر صاحب کا پوسٹ ختم کیا گیا۔ اور مجھے / سائل کو یونین کونسل جمال گڑھی میں سیکرٹری کے پوسٹ پر ایڈجسٹ کیا گیا۔
3. سال 2008 میں DCO صاحب مردان نے میرا آرڈر جنرل ریکارڈ روم مردان کو بطور اضافی چارج کیا گیا۔
4. سال 2011 میں DCO صاحب مردان نے میرا آرڈر ڈپٹی ڈسٹرکٹ آفیسر جوڈیشل کو بطور محرر کیا گیا۔
5. سال 2013 میں ڈپٹی کمشنر صاحب مردان نے میرا آرڈر بطور ریڈر عدالت AAC-6 کو کیا گیا اور تاحال عدالت AAC-6 میں بطور ریڈر ڈیوٹی سرانجام دیتا ہوں۔
6. آپ صاحبان کے زیر سایہ جو نیئر کلرک کا پوسٹ خالی پڑا ہے۔

اس لئے آپ صاحبان مہربانی کر کے بندہ کو جو نیئر کلرک کے خالی پوسٹ پر ایڈجسٹ کرنے کا حکم

صادر فرمائیں۔

بندہ تاحیات لب بہ دعا گور ہے گا۔

العرض

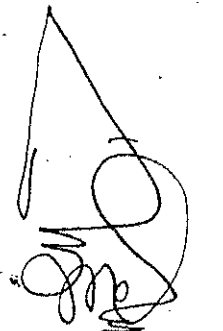
مورخہ: 06-09-2017

محمد آیاز

ریڈر عدالت AAC-6 مردان

سیکرٹری ونگ کونسل







OFFICE OF THE
DEPUTY COMMISSIONER
MARDAN
No. 4622 /Estt-13/DCM
Dated Mardan the 08/10/2017

To

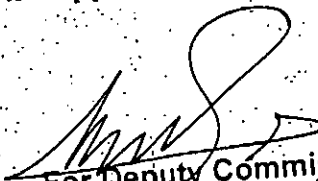
The Addl: Assistant Commissioner -VI,
Mardan.

Subject: Application.

Memo:

I am directed to refer to your office letter No. 113/ dated 11/10/2017 on the subject noted above and to say that the competent authority has regretted the request of Mr. Muhammad Ayaz Secretary, U/C Jamal Garhi posted in your office to be posted/adjusted as Junior Clerk in office of the Deputy Commissioner Mardan. As in case of Mr. Hameedullah, Secretary Village Council, advice of Establishment Department was sought, which this office was advised vide letter No.SOR-V(E&AD)/1-4/2008, date 22.09.2015 that:

“Request of Mr. Hameedullah Ex-Junior Clerk is not covered under the surplus pool policy as he had been adjusted in Distt of Domicile on his own will. Therefore the request of the applicant may be regretted.

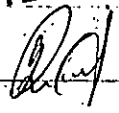

For Deputy Commissioner
Mardan

No & date even:

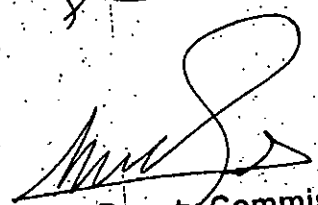
Copies forwarded to:

- 1 PS to Deputy Commissioner Mardan.

ATTESTED



Examiner in Charge to
Criminal Justice Court
Mardan Division Mardan


For Deputy Commissioner
Mardan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**SERVICE APPEAL NO. 1340/2015**

Date of institution ... 02.12.2015

Date of judgment ... 03.01.2018

Hameedullah
 Secretary, Union Council
 Presently Junior Clerk in Licence Branch
 O/O Deputy Commissioner, Mardan.

... (Appellant)

VERSUS

1. **The Govt. of Khyber Pakhtunkhwa,**
through Senior Member Board of Revenue.
2. **The Commissioner,**
Mardan Division, Mardan.
3. **The Deputy Commissioner,**
District Mardan.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER
 PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE
 IMPUGNED ORDER DATED 23.11.2015 PASSED BY
 RESPONDENT NO. 2 WHEREBY THE DEPARTMENTAL
 REPRESENTATION OF THE APPELLANT AGAINST THE ORDER
 DATED 05.10.2015 ISSUED BY RESPONDENT NO. 3 WAS
 UNLAWFULLY REGRETTEED.

Mr. Khaled Rehman, Advocate.

.. For appellant.

Mr. Muhammad Jan, Deputy District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI
 Mr. AHMAD HASSAN

.. MEMBER (JUDICIAL)
 .. MEMBER (EXECUTIVE)

JUDGMENT

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

Brief facts of the present service appeal are that the appellant was appointed as
 Junior Clerk in the year 1993 in the office of Deputy Commissioner Mardan and

during devolution process in the year 2001 he was rendered surplus. However, later on the appellant was adjusted as Secretary Union Council in Katlang, District Mardan and during service he was directed by District Coordination Officer Mardan to perform the duty in Licence Branch, Mardan as Junior Clerk in addition to his own duties till further orders vide order dated 30.09.2010. The appellant filed application to Deputy Commissioner Mardan for transfer/adjustment against the vacant post in his parent department but the same was turned down vide order dated 05.10.2015. The appellant also filed departmental appeal against the said order but the said departmental appeal was also dismissed vide order dated 23.11.2015 hence, the present service appeal on 02.12.2015.

3. Learned counsel for the appellant contended that the appellant was appointed as Junior Clerk in the office of Deputy Commissioner Mardan but later on during devolution process he was rendered surplus and was adjusted as Secretary Union Council in Katlang District Mardan. It was further contended that the appellant have much experience of the job of the post of Junior Clerk therefore, the District Coordination Officer Mardan directed him to perform the duty in Licence Branch in addition to his own duties vide order dated 30.09.2010. It was further contended that the other employees who were rendered surplus in the same devolution ~~but they~~ were subsequently transferred/adjusted in the office of DOR, Mardan vide order dated 26.01.2006, 06.07.2009, 17.07.2009 and 14.04.2009 in pursuance of the Establishment Department letters dated 27.02.2009 and 02.04.2009 and likewise after the restoration of the Commissionerate system the former employees of the Commissioner office were also repatriated as is evident from the order dated 06.01.2009 and 08.07.2009. It was further contended that the appellant also moved an application to the competent authority for his repatriation to the post of Junior Clerk but the same was turned down vide letter dated 05.10.2015 which was challenged before the departmental authority but the departmental appeal of the appellant was also rejected hence, the present service appeal. It was further contended that the appeal of the same nature case was also accepted by this Service Tribunal in Appeal No. 999/2012 vide judgment dated

03.01.2013 therefore, it was contended that the impugned order dated 05.10.2015 passed by respondent No. 3 whereby the application for adjustment of the appellant was rejected as well as the order dated 23.11.2015 passed by the departmental authority are illegal and liable to be set-aside and prayed for acceptance of the present appeal.

4. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the application of the appellant for repatriation/adjustment in the parent department was rightly turned down by respondents as the appellant was adjusted in surplus policy. It was further contended that the transfer application of the appellant to his parent department was dismissed by the competent authority on the opinion of Establishment/Administration Department therefore, the appellant has got no cause of action and prayed for dismissal of appeal.

5. Perusal of the record reveals that the appellant was appointed as Junior Clerk in the year 1993 in the office of Deputy Commissioner Mardan and during devolution process in the year 2001 he was rendered surplus and was later on adjusted as Secretary Union Council in Katlang, District Mardan vide order dated 27.08.2010. Perusal of the record further reveals that vide order dated 30.09.2010 the District Coordination Officer Mardan directed the appellant to perform duty in Licence Branch Mardan as Junior Clerk in addition to his own duties till further orders. Meaning thereby that the appellant has experience in his parent department as Junior Clerk. We have also gone through the impugned order and reach the conclusion that the Commissioner Peshawar in his impugned order has not properly appreciated in letter and spirit of this Tribunal judgment rendered in Appeal No. 999/2012 dated 03.01.2013.

6. The record reveals that the facts of the aforementioned appeal as well as the present service appeal are identical we would like to reproduce para-7 & 8 of the said judgment.

"7 The Tribunal Observes that after devolution plan in the year 2001, officials of various categories serving in the defunct Commissioner and Deputy Commissioner offices became surplus. The appellant while serving as Senior Clerk in the office of Defunct Deputy Commissioner office Mardan had also been declared surplus. He was then adjusted as Secretary Union Council in his own pay and scale. On creation of DCO, DOR offices and restoration of Commissionerates, the official respondent started repatriation/adjustment of their ex-staff without framing, policy/instruction. They must frame a unified policy for adjustment of their old staff on the basis of experience and other facts, but no such policy framed hence adopted the practice of pick & chose. The appellant being adjusted against the wrong post as Secretary Union Council in his own pay and scale was more deserving for adjustment in the parent department but he has been denied for no plausible reason.

8 ~~In view of the above discussion, the appeal is accepted and respondents No. 2 & 3 are directed to repatriated the appellant to his parent department and adjust him against the vacant post of Senior Clerk. It is further observed that Devolution plan of General Musharaf @ had played havoc upon and broken the back-bone of Administrative set-up. Since government is again restoring Commissionerate system, therefore, instead of fresh recruitments and repatriating the then experience staff at random, government should make amendment in "surplus staff adjustment policy" especially with respect to Ex-Commissioners and Deputy Commissioner.~~

Offices staff only for re-adjustment to facilitate smooth running of the above referred offices".

9. While perusing the impugned order in the back-drop of the said paragraphs, it become evident that the cited judgment was not appreciated in letter and spirit nor any cogent and convincing ground was given in the impugned order for any distinction.

10. In the light of the stated position of the case, the Tribunal is of the considered view that having arguable case on the touch-stone of the grounds of discrimination and a previous decision of this Tribunal in another Service Appeal No. 999/2012 ibid, the instant case is remanded to the respondent No. 2 to look into the matter strictly in accordance with judgment in appeal No. 999/2012 and to re-decide the matter within a period of two months of the receipt of this judgment. Needless to mention that the impugned order stands set-aside. The appeal is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
03.01.2018

S.D.
(AHMAD HASSAN)
MEMBER

S.D.
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Handwritten signature

بعد التفتت جناب عالی

رقم آواز ولید محمد الوالی رقم 6-AA-C-1111 (مائل)

Spec. Head

تخلیہ سے پہلے علم سے ڈیپارٹمنٹ میں

جناب عالی - عالی! اس میں سائنس میں ڈیپارٹمنٹ میں

1) یہ اس میں سائنس میں ڈیپارٹمنٹ میں آواز ولید محمد الوالی پوسٹ جو سائنس میں

جناب عالی سے رجوع ہے۔ فقیر صاحب AA-C-6 گزارا گیا ہے۔
ATTESTED
(فصل درج ذیل سے)

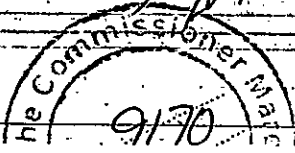
Examiner / Reader to
Commissioner Court
Mardan Division, Mardan

2) میں عزت سے رجوع ہے۔ اس میں سائنس میں ڈیپارٹمنٹ میں آواز ولید محمد الوالی پوسٹ جو سائنس میں
SOR-V (E-SAD) 1-4/2008

22/09/2015 کو سنا، ریٹائرمنٹ سے پہلے اس میں سائنس میں ڈیپارٹمنٹ میں آواز ولید محمد الوالی پوسٹ جو سائنس میں

میں سائنس میں ڈیپارٹمنٹ میں آواز ولید محمد الوالی پوسٹ جو سائنس میں

تخلیہ سے پہلے علم سے ڈیپارٹمنٹ میں



تخلیہ سے پہلے علم سے ڈیپارٹمنٹ میں

(20)

IN THE COURT OF COMMISSIONER MARDAN DIVISION, MARDAN.

Muhammad Ayaz Reader A.A.C-6 Mardan.

Appellant.

Versus

Deputy Commissioner Mardan.

Respondent.

Case No.....

Date of institution: 08-01-2018

Date of Decision: 09-04-2018

DEPARTMENTAL APPEAL AGAINST THE ORDER OF DEPUTY
COMMISSIONER MARDAN DATED 08-11-2017.

ORDER:-

This order will dispose off the instant appeal submitted by the above noted appellants for the adjustment in the office of Deputy Commissioner Mardan.

Brief facts of the case are that the appellant was appointed as junior clerk in the office of Deputy Commissioner Mardan. After the abolition of the Deputy Commissioner office due to promulgation of the then local Government Ordinance 2001, the appellant was placed in Surplus Pool, Subsequently he was adjusted as Secretary Union Council in the District Government, with the revival of DC Offices the appellant was posted to the office of Deputy Commissioner Mardan at the Court of A.A.C-6 on temporary basis in Addition to his own duties.

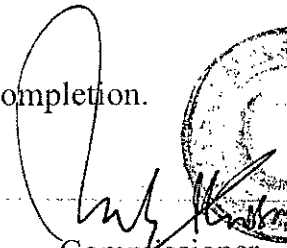
Now the appellant prayed is that since their other colleagues were repatriated/readjusted in the office of Deputy Commissioner Mardan, he is also entitled to be readjusted/repatriated.

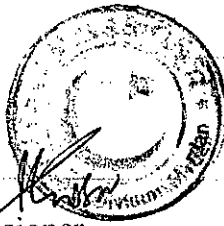
Appellant with counsel present and Deputy Commissioner Mardan Submitted parawise comments placed on file. Arguments heard and comments of the Deputy Commissioner Mardan perused.



Perusal of the file and record reveals that official once adjusted in the office can not be readjusted in another office, hence no space in law exists to provide relief to the appellant for the readjustment/repatriation in his parent department/office. If the Government makes amendment in the surplus staff adjustment policy with regard to employees of Ex Commissioner Office and Deputy Commissioner Offices then the new policy will be follow. Since the appellants have once been adjusted as Secretary Union Council, hence he can not be readjusted/repatriated to the office of Deputy Commissioner as per present Government policy. Moreover, the appellant had made application for repatriation to the Deputy Commissioner Mardan but regretted after having received the advice from the Section Officer (REG-V) Government of Khyber Pakhtunkhwa Establishment and Admn: Department (Regulation wing) Notification NO.SOR-V(E&AD)1-4/2008 dated 22-09-2015 in which stated that **"the request of Mr. Hameedullah ex-Junior Clerk is not covered under Surplus Policy as he has been adjusted in district of domicile on his own will"**. Therefore the appeal in hand is hereby dismissed. No order to cost.

File be consigned to record room after necessary completion.

Announced
09-04-2018


Commissioner,
Mardan Division, Mardan.




50			37259
ایڈوکیٹ: سہ ماہی سب		پشاور بار ایسوسی ایشن، خیبر پختونخواہ	
بار کونسل ایسوسی ایشن نمبر: BC 10-8061			
رابطہ نمبر: 0321-9029802			

بعدالت جناب: سر جسٹس راجہ ایوب خان کے لیے کثافت۔

منجانب: Appelland	دعویٰ:
محمد ایاز بنام کوٹلیہ و مہتمم	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

باعت تحریر آنگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے درج ذیل بیرونی وجوہات کی کارروائی متعلقہ
 ان مقام۔ کثافت کے لیے سہ ماہی سب کو وکیل مقرر
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جو اب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم بیرونی یا ڈگری کی طرف سے یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرانے اپیل نگرانی و نظارتی و بیرونی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ بیرونی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المقوم: 

Amir Beg

5-8658590-15191
 سہ ماہی سب عدالت کثافت

مقام کثافت کے لیے منظور ہے۔

Accepted & Accepted
 Amir Beg

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 627/2018

Muhammad Ayaz Reader to AAC-VI, Mardan.

VS

1. Govt of Khyber Pakhtunkhwa through Senior Member, Board of Revenue.
2. The Commissioner, Mardan Division, Mardan
3. The Deputy Commissioner, Mardan

Respectfully Sheweth:

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 01,02 & 03

PRELIMINARY OBJECTIONS

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

REPLY ON FACTS:

1. Pertains to record hence no comments are offered.
2. As above.
3. As above.
4. Incorrect. Vide letter No. 3070-80/DC(M)/PS/EA-04, dated 25.03.2013 AD Local Govt, Mardan was requested to direct the appellant to carry out duties as Reader to AAC-VI, Mardan (a BPS-07 post) in addition to his own duties, due to shortage of readers, which does not vest any such right to him to be adjusted as Junior Clerk (BPS-11). (Annex-A)
5. His application was turned down on merit.
6. This office regretted his request firstly in pursuance of advise tendered by the Establishment Department vide letter No. SOR-V(E&AD) 1-4/2008, dated 22.09.2015, which says that a surplus employee, if adjusted in his District of domicile, does not deserve to be re-adjusted in DC office. Second, at the time of his adjustment as

Secretary UC BPS-06, when scale of Junior Clerk was 05, he did not show any gesture to come back to his parent department and now after lapse of 17 years, when post of J/Clerk has been upgraded to BPS-11, he wants to return in DC Office. If this trend is encouraged, tomorrow he will vie for his return to the post of Secretary U.C in case same is upgraded. This trend will trigger an unending shuttling practice of employees between various departments.

7. His appeal was dismissed on merit.

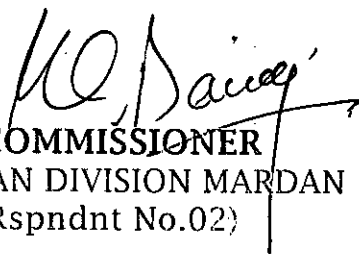
8. As above.


REPLY ON GROUNDS:

- I. Incorrect, the order appealed against was legal and based on merit.
- II. Incorrect, as above.
- III. No comments are offered.
- IV. As replied in Para No. 06 in reply to facts.
- V. Incorrect, every case has its own merits.
- VI. Incorrect. As replied above.
- VII. Incorrect. This case is different from all other cases, having different & distinct circumstances.
- VIII. Incorrect. The appellant has no cogent ground to raise subsequently, therefore same may not be permitted.

In view of the above, the instant appeal is baseless, therefore it is requested to be dismissed with costs.


DEPUTY COMMISSIONER
MARDAN (Rspndnt No.03)


COMMISSIONER
MARDAN DIVISION MARDAN
(Rspndnt No.02)


SENIOR/MEMBER
BOARD OF REVENUE
KHYBER PAKHTUNKHWA
(Rspndnt No.01)
Senior Member
Board of Revenue
Khyber Pakhtunkhwa

ACM-2

Annex-A



OFFICE OF THE DEPUTY COMMISSIONER
MARDAN

No. 3070-80 DC(M)/PS/EA-4
Dated Mardan the 25/03/2013

To,

Assistant Director, Local Govt.
Mardan.

Subject:- Additional Charges To Secretary Union Councils.

In response to Assistant Commissioner Mardan and Takht Bhai request for detailment of Secretary Union Councils with Additional ACs Mardan and Takht Bhai.

Keeping in view shortage of ministerial staff, their request for granting additional charges to Secretary Union Councils with AC / Additional ACs as below may be ordered.

S.No.	Name of Secretary with Union Council	Additional Charge To be Given.
1.	Pir Muhammad Suhail Secretary UC Sher Garh	Reader to AC Takht Bhai.
2.	Mr. Roedad Gul Secretary UC Gujrat	Reader to AAC-V Mardan.
3.	Mr. Muhammad Ayaz Secretary UC Jamal Garhi.	Reader to AAC-VI Mardan.
4.	Mr. Musaddiq Shah Secretary UC Madey Baba.	Reader to AAC-I Takht Bhai.
5.	Mr. Muhammad Shafique Secretary UC Daman-e-Koh.	Reader to AAC-II Takht Bhai.

It is therefore requested that further necessary action may be taken in intimation to this office.


Deputy Commissioner
Mardan

No. & date even.

Copy to the:

1. Commissioner, Mardan Division, Mardan
2. Assistant Commissioner Mardan w/r to his letter No.871/ACM-2 dated 14-3-2013.
3. Assistant Commissioner, Takht Bhai.
4. PS to Chief Secretary Khyber Pakhtunkhwa.
5. PS to Secretary LG&RD Deptt. Govt. of Khyber Pakhtunkhwa.


Deputy Commissioner
Mardan

Seen


KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 269 /ST

Dated 14/02/2019

To


The Commissioner,
Government of Khyber Pakhtunkhwa,
Mardan Division Mardan.

Subject: -

JUDGMENT IN APPEAL NO. 627/2018, MR. MUHAMMAD AYAZ.

I am directed to forward herewith a certified copy of Judgement dated 20.12.2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

Rid
J
2/2/19

16101-0658598-5

03449574974

through
Ashraf

per
STP

9
OFFICE OF THE DISTRICT COORDINATION OFFICER MARDAN.

OFFICE ORDER

Consequent upon the devolution of power plan and restructuring of the Provincial Government offices functioning in the District the following Senior Clerks (BPS-07) and Junior Clerks (BPS-5) borne on the cadre strength of ex-DC Mardan, and ex-Commissioner office Mardan, and hereby adjusted against the newly created post of Secretary Union Council (BPS-06), on the basis of seniority in the public interest with immediate effect:

Sr. No.	Name of official	From	Union Council	REMARKS
1-	Mr. Khalid Pervaiz, Sr Clerk B-7	Commissioner office Mardan	Maho Dheri	In his own pay & State
2-	Mr. Naseer-ud-Din, -do-	-do-	Bari Chum	-do-
3-	Mr. Imtiaz Uddin, Sr Clerk	Commissioner Office Mardan	Ghala Dheri	-do-
4-	Mr. Abdur Rashid, -do-	-do-	Kohi Barmol	-do-
5-	Mr. Wisal Khan, -do-	-do-	Ruria	-do-
6-	Mr. Hamidullah, -do-	DC Office Mardan	RTA Mardan	-do-
7-	Mr. Muhammad Zubair, J/Clerk	-do-	Shergarh	-do-
8-	Mr. Mushtaq Ali	-do-	Makori	-do-
9-	Mr. Nisar Ahmad	-do-	Pir Siddi	-do-
10-	Mr. Muhammad Ali-2	-do-	Kandari	-do-
11-	Mr. Liaqat Ali	-do-	Maday baba	-do-
12-	Mr. Taj Gul	-do-	Chamtar	-do-
13-	Mr. Muhammad Ayaz	-do-	Kati Garhi ✓	-do-
14-	Mr. Tariq	-do-	Shamat Pur	-do-
15-	Mr. Bawar Khan	-do-	Manga	-do-
16-	Mr. Muhammad Ilyas	-do-	Garhi Daulat Zai	-do-
17-	Mr. Athar Rahim	-do-	Hathian	-do-
18-	Mr. Sajid Akbar, -do-	-do-	Lundkhawar	-do-
19-	Mr. Muhammad Hilal	-do-	Machi	-do-
20-	Mr. Nausahad Khan	-do-	Jalala	-do-
21-	Mr. Farhad Ali-2	-do-	Kot Jungara	-do-
22-	Mr. Musafar Khan	-do-	Mian Essa	-do-
23-	Mr. Mukamil Shah	-do-	Sari Balool	-do-
24-	Mr. Hidayat Khan	-do-	Rural Mardan	-do-
25-	Mr. Khalid Khan	-do-	Khazana Dheri	-do-

Centibel

✓

Zahur

(CAPT ZAHUR AHMAD KHAN KHALIL)
DISTRICT COORDINATION OFFICER
MARDAN.

9/A

No. 937/44/D C.O(M)

Dated Mardan the 1st September, 2001

Copy forwarded to the

- 1- Secretary Establishment & General Administration, NWFP Peshawar
- 2- Secretary to Government of NWFP, LG&RDD Peshawar.
- 3- Secretary Board of Revenue, NWFP Peshawar.
- 4- Lt. Col. Khirshid Ahmad Awan, Chief Administrative Officer, Devolution Power, LG&RDD NWFP Peshawar.
- 5- Mr. Muhammad Fayyaz Durani, Coordinator Devolution of Power Plan, LG&RDD NWFP Peshawar
- 6- All District Heads of concerned Departments in Mardan.
- 7- District Accounts Officer Mardan
- 8- Officials concerned for information and compliance


DISTRICT COORDINATION OFFICER
MARDAN

OFFICE ORDER.

Mr. Muhammad Ayaz s/o Muhammad Ayub r/o Village Gadder Tehsil & District Mardan is hereby appointed as Junior Clerk BPS No.5 against the vacant post caused due to the death of Mr. Aurang Zeb Moharrir (J/Clerk) EAO-III Mardan, on the following terms and conditions till further orders:-

1. His appointment is purely on temporary basis.
2. He will be on probation for two years from the date of his taking over charge as J/Clerk and his services will be terminated without notice if he did not prove his probation period successfully.
3. He will produce Health and Age Certificate from Medical Supdt: DHQ Hospital Mardan and Character Certificate from the Supdt: of Police Mardan.
4. He will be entitled to draw his salary alongwith usual allowances in BPS No.5 as permissible under the rules.
5. His appointment is subject to the approval of the Departmental Promotion/Selection Committee.

[Signature]
Deputy Commissioner
Mardan.

OFFICE OF THE DEPUTY COMMISSIONER MARDAN.

No. 3/00 /G.EA.

Dated Mardan the 7/5/1995.

Copies to all concerned for information and necessary action.

[Signature]
Deputy Commissioner
Mardan.

*Record keeper,
To directors. ^{copy}
M. Email.
R
8/5/95*

*The official should
get with Bashir Hussain
check and learn the
contourment & committee
cases work.*

*M. Email,
RAC. 8/5/95*