

29.06.2022

Learned counsel for the appellant present and seeks adjournment on the ground that he has not prepared the brief in order to properly assist the court. Adjourned. To come up for preliminary hearing on 12.08.2022 before S.B.





(Fareeha Paul)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 828 /2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	25/05/2022	<p>The appeal of Mr. Muhammad Haroon resubmitted today by Mr. Ztaj Anwar Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-	27.5.22	<p>This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put there on <u>13.6.2022</u>. Notices be issued to appellant and his counsel for the date fixed.</p> <p> CHAIRMAN</p>
	13 th June, 2022	<p>Clerk to counsel for the appellant present.</p> <p>Counsel are on strike. To come up for preliminary hearing on 29.06.2022 before S.B.</p> <p> (Kalim Arshad Khan) Chairman</p>

This is an appeal filed by Mr. Muhammad Haroon Jan submitted today on 24/03/2022 against the transfer notification dated 18-02-2022 against which he preferred/made departmental appeal/ representation on 23.02.2022 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, which is premature as laid down in an authority report as 2005-SCMR-890.

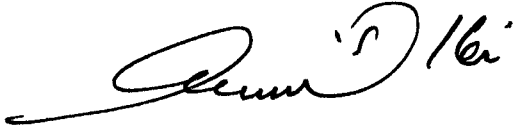
As such the instant appeal is returned in original to the appellant/Counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action.

No. 765 /ST,

Dt. 28-3-2022.


REGISTRAR,
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Zartaj Anwar Adv. Pesh.

That under the Policy of Posting
Transfer 15 days are already elapsed
and the case is transferred for
Peshawar High Court as well.


BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 828 / 2022

Muhammad Haroon Jan (Motor Vehicle Examiner) office, Driving License Branch Peshawar.....(Appellant)

VERSUS

Govt of Khyber Pakhtunkhwa through Secretary, Transport & Mass Transit Khyber Pakhtunkhwa Peshawar and others.
.....(Respondents)

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Through

Appellant



ZARTAJ ANWAR

Advocate Supreme Court of
Pakistan

Office FR , 3-4 Forth Floor
Bilour Plaza Peshawar Cantt.

Cell.0331-9399185

E.mail Zartaj9@yahoo.com

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1116 / 2022

Muhammad Haroon Jan (Motor Vehicle Examiner) office,
Driving License Branch Peshawar.

(Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Secretary, Transport & Mass Transit Khyber Pakhtunkhwa Peshawar.
2. Director, Directorate Transport & Mass Transit Khyber Pakhtunkhwa Peshawar.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned order dated 18.02.2022 whereby the appellant was pre-maturely transferred from the post of Motor Vehicle Examiner BPS-12 Driving License Branch Peshawar to Motor Vehicle Examiner office District Shangla and also against the spouse policy under the posting transfer policy, against which the appellant filed departmental appeal on 23.02.2022 which is not yet responded even after laps of statutory period.

Prayer in Appeal: -

On acceptance of this appeal the impugned order dated 18.02.2022 whereby the appellant was pre-maturely transferred from the post of Motor Vehicle Examiner BPS-12 Driving License Branch Peshawar to Motor Vehicle Examiner office District Shangla and also against the spouse policy under the

posting transfer policy, may kindly be set aside and the appellant may please retained on the post of Motor Vehicle Examiner BPS-12 Driving License Branch Peshawar, Any other relief which is not specifically asked may also be granted to the appellant.

Respectfully Submitted:

1. That the appellant is a law abiding citizen of Pakistan, and having every right under the constitution of Islamic Republic of Pakistan 1973.
2. That the appellant is the employee of Directorate of Transport & Mass Transit Khyber Pakhtunkhwa Peshawar and was posted as Motor Vehicle Examiner BPS-12 in Driving License Branch Peshawar vide office order dated 27.07.2021. *(Copy of the office order dated 27.07.2021 is attached as annexure A).*
3. That since his appointment the appellant performing his duties with great zeal and devotion and to the entire satisfaction of his superiors without any complaint whatsoever regarding his performance till date.
4. That while working in the said capacity after 7 months the appellant has illegally/Prematurely transferred from the post of Motor Vehicle Examiner BPS-12 Driving License Branch Peshawar to the Post of Motor Vehicle Examiner Office, District Shangla vide impugned office order dated 18.02.2022. *(Copy of the office order dated 18.02.2022 is attached as annexure B).*
5. That it is pertinent to mention here that the wife of the appellant is also working/doing her house Job in CMH Hospital Peshawar, the same was bought in the knowledge of the respondent department by submitting her working certificate, but the respondents ignored this fact and malafidely issued the transfer order of the appellant just to adjust their own blue eyed ones, which is also against the spouse policy. *(Copy of the approved application is attached as annexure C).*
6. That being aggrieved from the acts and omission of the respondents the appellant submitted his departmental appeal on 23.02.2022 to the respondent department for the cancellation of

his transfer order dated 18.02.2022, but the respondent department turn deaf ear. *(Copy of the application is attached as annexure D).*

7. That due to the retirement of the chairman of Khyber Pakhtunkhwa Service Tribunal Peshawar, the tribunal was defunct/not functional therefore the appellant approached to the Honourable Peshawar High Court Peshawar in W.P No 761-P/2022, with interim relief, which was granted to the appellant on the following terms:

Accordingly this petition stands disposed of in the terms that the impugned order dated 18.02.2022 is suspended till hearing the case of the petitioner by the KP Service Tribunal Peshawar, the petitioner shall approach the service tribunal the moment it becomes functional failing which this order shall cease to have any effect.

(Copy of the Writ Petition and interim order is attached as annexure E).

8. That now the Khyber Pakhtunkhwa Service Tribunal became functional and the appellant filed this Service Appeal inter alia on the following grounds:

GROUND OF SERVICE APPEAL

- A) That the appellant is performing duties as Motor Vehicle Examiner BPS-12 in Driving License Branch Peshawar to the entire satisfaction of his superiors without any complaint whatsoever regarding his performance till date.
- B) That the Appellant has not been treated in accordance with law hence the rights secured and guaranteed under the law and constitution is badly violated.
- C) That the appellant even after 7 months illegally/Prematurely transferred from the post of Motor Vehicle Examiner BPS-12 Driving License Branch Peshawar to the Post of Motor Vehicle Examiner Office, District Shangla vide impugned office order dated 18.02.2022. which is illegal and against the posting and transfer policy.

- D) That infact there exist no exigencies of service nor the order of transfer can be termed as in the public interest, rather it was passed in favour of the others i.e. their own blue eyed ones as a result of political pressure at the cost of the appellant, and thus not tenable in the eyes of law.
- E) That the transfer order is based on malafide intention and biased ,infact to adjust their own blue eyed ones, is illegal and unlawful and violative upon the rights of the appellant.
- F) That the appellant has not yet completed his normal tenure as Motor Vehicle Examiner BPS-12 in Driving License Branch Peshawar, the pre mature transfer order is thus illegal and unlawful, moreover the same is in violation of posting and transfer policy of the Provincial Govt.
- G) That according to the Posting / transfer policy of the provincial Govt firstly all the posting transfer shall be strictly in public interest and shall not be abused / misused to victimize the govt servant, in case of present appellant the order of Posting/ transfer was not issued in the mod and manner of the posting transfer policy as the wife of present appellant serving/doing her house job in CMH Hospital Peshawar, and the appellant has also brought this fact in the knowledge of the respondent department but the respondent department ignored this fact and issued premature transfer order which is also against spouse policy.
- H) That under the Wedlock policy of posting and transfer was intended to ensure to the benefit of a family, it advanced social good and unless there were insurmountable hurdles, in its Case reported in 2004 PLC (CS) 622, 2003 PLC (CS) 1322, 1994 PLC(CS)1644, 1991PLC(CS)478.
- I) That the transfer order is illegal and unlawful, moreover the same is in violation of posting and transfer policy (Wedlock Policy) of the Provincial Govt.
- J) That the transfer order is illegal and unlawful, politically motivate, moreover the same is in violation of posting and transfer policy of the Provincial Govt.

- K) That the impugned transfer order is illegal, unlawful, without lawful authority and passed without jurisdiction, not in the prescribed period, in violation of transfer and posting policy.
- L) That the transfer order of the appellant is in outcome of political pressure which smacked malafide and such order issued on the recommendation of the political Minister respectively show that the impugned order is the outcome of political pressure. The issue was held in 2012 PLC (CS) 648.
- M) That the appellant performed his duties with entire satisfaction of his superior without any complaint whatsoever regarding his performance thus the posting transfer order is the violation of Posting transfer policy.
- A. That the Appellant seeks the permission of this honourable Tribunal to rely on additional grounds at the hearing of this Appeal.

It is, therefore, humbly prayed that On acceptance of this appeal the impugned order dated 18.02.2022 whereby the appellant was pre-maturely transferred from the post of Motor Vehicle Examiner BPS-12 Driving License Branch Peshawar to Motor Vehicle Examiner office District Shangla and also against the spouse policy under the posting transfer policy, may kindly be set aside and the appellant may please retained on the post of Motor Vehicle Examiner BPS-12 Driving License Branch Peshawar, Any other relief which is not specifically asked may also be granted to the appellant.

Appellant

Through



ZARTAJ ANWAR

Advocate Peshawar

&

IMRAN KHAN

Advocate Peshawar

AFFIDAVIT

I, Muhammad Haroon Jan (Motor Vehicle Examiner) office, Driving License Branch Peshawar, do hereby solemnly affirm and declare on oath that the contents of the above appeal are true and correct and that nothing has been kept back or concealed from this Honourable Tribunal.

Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. _____ / 2022

Muhammad Haroon Jan (Motor Vehicle Examiner) office, Driving License Branch Peshawar

.....(Appellant)

VERSUS

Govt of Khyber Pakhtunkhwa through Secretary, Transport & Mass Transit Khyber Pakhtunkhwa Peshawar and others.

.....(Respondents)

APPLICATION FOR SUSPENSION OF THE
IMPUGNED TRANSFER ORDER DATED
18.02.2022 OF THE APPELLANT, TILL THE
FINAL DECISION OF THE TITLED
SERVICE APPEAL.

Respectfully Submitted:

1. That the above titled service appeal is adjudication before this Honorable Tribunal in which no date fixed for hearing.
2. That the facts and grounds taken in the titled service appeal may kindly be taken as integral part of the instant application.
3. That it is pertinent to mention here that the applicant has already impugned the order dated 18.02.2022 in his service appeal.
4. That the transfer order is illegal and unlawful, and based on malafide intention of the respondents, the applicant was prematurely transferred from the post of Motor Vehicle Examiner BPS-12 Driving License Branch Peshawar to Motor Vehicle Examiner office District Shangla, moreover the same is in violation of posting and transfer policy (Wedlock Policy) of the Provincial Govt.
5. That according to the Posting / transfer policy of the provincial Govt firstly all the posting transfer shall be strictly in public interest and shall not be abused / misused to victimize the govt servant, in case of present appellant the order of Posting/

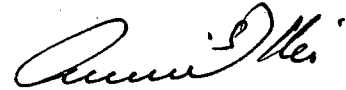
transfer was not issued in the mod and manner of the posting transfer policy as the wife of present appellant serving/doing her house job in CMH Hospital Peshawar, and the appellant has also brought this fact in the knowledge of the respondent department but the respondent department ignored this fact and issued premature transfer order which is also against spouse policy.

6. That the applicant has a good prima facie case in his favor and he is sanguine of its success. So all the three ingredients/ pre-requisites for the grant of status quo strongly lies in favor of the applicant.
7. That the applicant would be exposed to great hardship and inconvenience in case if order dated 18.02.2022 is not suspended.

It is, therefore, humbly prayed that on acceptance of this application the Impugned transfer order dated 18.02.2022 of the appellant may kindly be suspended till the final decision of the titled service appeal.

Appellant

Through



ZARTAJ ANWAR
Advocate, Peshawar
&

IMRAN KHAN
Advocate Peshawar

AFFIDAVIT

I, Muhammad Haroon Jan (Motor Vehicle Examiner) office, Driving License Branch Peshawar, do hereby solemnly affirm and declare that the contents of the above service appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

Deponent



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AVIDI A

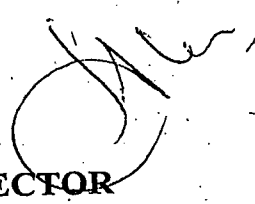
**DIRECTORATE OF TRANSPORT & MASS TRANSIT
KHYBER PAKHTUNKHWA**

Ground Floor Benevolent Fund Building, Peshawar Cantt. Tel: 091-9214185/9212061

Dated: 27-07-2021

ORDER:

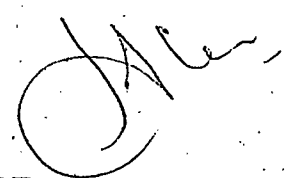
No. DIR/TPT/1-82/P&T/6133-35 . The Competent Authority is pleased to place the services of Mr. Haroon Jan, Motor Vehicle Examiner (BPS-12) in Driving License Branch, Peshawar. He will jointly conduct driving test along with Senior Motor Vehicle Examiner Mr. Malik Muddasir with immediate effect in best public interest.


**DIRECTOR
Transport & Mass Transit
Khyber Pakhtunkhwa**

Endst: No. & Date Even:

A copy is forwarded for information to the: -

1. Motor Vehicle Examiner Office, Peshawar.
2. Driving License Branch, Peshawar.
3. Official Concerned.


**DIRECTOR
Transport & Mass Transit
Khyber Pakhtunkhwa**



10

Awwali B

**DIRECTORATE OF TRANSPORT & MASS TRANSIT
KHYBER PAKHTUNKHWA**

Ground Floor Benevolent Fund Building, Peshawar Cantt: ☎ 091-9214185/9210736

ORDER

Dated: 18-02-2022

No. Dir/TPT/1-82/P&T/824-53. The Competent Authority is pleased to transfer the following officials, made in the best public interest, with immediate effect:

S.	NAME	FROM	TO
1.	Badi-uz-Zaman Motor Vehicle Examiner (BPS-12)	Motor Vehicle Examiner Office, District Kohat	Report to Directorate of Transport & Mass Transit, till the outcome of inquiry pertaining to issuance of verification and fitness to BANNED Auto Rickshaws during his tenure as MVE in Districts Haripur and Kohat, in pursuance of Transport and Mass Transit Department Letter No. SO(E)/TMTD/2-80/Inquiry/2020-21/1194-95 dated: 16-02-2022
2.	Haroon Jan Motor Vehicle Examiner (BPS-12)	Motor Vehicle Examiner Office, Driving License Branch Peshawar	Motor Vehicle Examiner Office, District Shangla
3.	Adnan Halim Motor Vehicle Examiner (BPS-12)	Motor Vehicle Examiner Office, District Torghar	Motor Vehicle Examiner Office, District Hangu
4.	Haris Alam Motor Vehicle Examiner (BPS-12)	Motor Vehicle Examiner Office, District Khyber	Motor Vehicle Examiner Office, District Kohat
5.	Aftab Alam Motor Vehicle Examiner (BPS-12)	Directorate of Transport and Mass Transit	Motor Vehicle Examiner Office, District Bajaur
6.	Haider Ali Motor Vehicle Examiner (BPS-12)	Directorate of Transport and Mass Transit	Motor Vehicle Examiner Office, District Khyber
7.	Hamid Aslam Motor Vehicle Examiner (BPS-12)	Directorate of Transport and Mass Transit	Motor Vehicle Examiner Office, District South Waziristan
8.	Saif-ur-Rahman Motor Vehicle Examiner (BPS-12)	Directorate of Transport and Mass Transit	Motor Vehicle Examiner Office, District Kohistan (Upper and Lower), District Kolai Palas with additional charge of MVE Office District Torghar
9.	Wasim Sajid Motor Vehicle Examiner (BPS-12)	Directorate of Transport and Mass Transit	Motor Vehicle Examiner Office, District North Waziristan


Director
Transport & Mass Transit
Khyber Pakhtunkhwa

Endst: No & Date Even:

A copy is forwarded for information to the:-

1. Commissioners/Chairmen RTAs, Khyber Pakhtunkhwa.
2. Deputy Commissioners of the concerned districts.
3. Additional Deputy Commissioners (G)/District Transport Officers/MLAs (concerned).
4. Secretaries Regional Transport Authorities (concerned).
5. Officials Concerned.


Director
Transport & Mass Transit



OFFICE OF THE
DISTRICT MOTOR VEHICLE EXAMINER PESHAWAR (DL)

KHYBER PAKHTUNKHWA

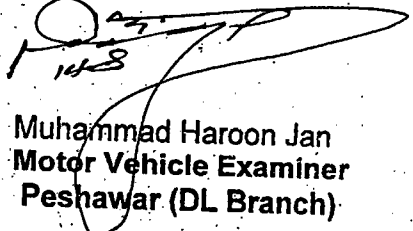
Transport & Mass Transit, Khyber Pakhtunkhwa
District Transport Office Near Peshawar Bus Terminal GT Road Peshawar

To,

The Secretary Transport,
Peshawar, Khyber Pakhtunkhwa.

23/2
SUBJECT: REQUEST FOR TRANSFER/POSTING

This is in reference to Office Order # DIR/TPT/1-82/P&T/824-53 dated 18/02/2022, this is stated that undersigned is residing in Charsadda with his family and daily basis commuting to Peshawar for job purpose. Furthermore, the undersigned wife is doing house job in Combined Military Hospital (CMH), Peshawar, therefore I must take care of her daily commutation and related responsibilities please. Keeping in view family responsibilities and commitments the undersigned the name may please be withdrawn from the aforementioned office order please.


Muhammad Haroon Jan
Motor Vehicle Examiner
Peshawar (DL Branch)

Dated 23/02/ 2022

Diary No. 386

Dated 23-02-22

P.S. To Secretary Transport
Deptt Khyber Pakhtunkhwa



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OFFICE OF THE
DISTRICT MOTOR VEHICLE EXAMINER PESHAWAR (DL)

KHYBER PAKHTUNKHWA

Transport & Mass Transit, Khyber Pakhtunkhwa
District Transport Office Near Peshawar Bus Terminal GT Road Peshawar

To,

The Director Transport & Mass Transit,
Peshawar, Khyber Pakhtunkhwa.

SUBJECT: REQUEST FOR TRANSFER/POSTING

This is in reference to Office Order # DIR/TPT/I-82/P&T/824-53 dated 18/02/2022, this is stated that undersigned is residing in Charsadda with his family and daily basis commuting to Peshawar for job purpose. Furthermore, the undersigned wife is doing house job in Combined Military Hospital (CMH), Peshawar, therefore I must take care of her daily commutation and related responsibilities please. Keeping in view family responsibilities and commitments the undersigned the name may please be withdrawn from the aforementioned office order please.

Muhammad Haroon Jan
Motor Vehicle Examiner
Peshawar (DL Branch)

Dated 23/02/2022

Recd
23/02/2022
Diary No. 599
Date 23/02/2022
Directorate of Transport
And Mass Transit, KPK

To: The Commandant
CMH Peshawar

Subject: Permission for House Job- CMH Psc

Respected Sir,

1. With due respect it is stated that I Dr. Gul Rukh Naushad D/o Naushad Ali Khan, have passed MBBS in 2021 from Women Medical & Dental College Abbottabad-Pakistan under registration no. 2015/KMU/WMC/25 dated 30-09-2021. Now I am looking for House Job and it will be an honour for me to work in Pakistan's one of the best Medical Institute. I will be highly grateful if you kindly grant me permission for house job.

2. Thanking you in anticipation.

Yours Faithfully

Dated: ___/___/2021

Gulrukhs
Dr. Gul Rukh Naushad
D/o Naushad Ali Khan

Remarks by HoD Med

Recommended

Remarks by HoD Surg

Brigadier
Dr. Fozad Ahmad Siddiqi
FRCP (Medicine)
Classified Medical Specialist
HoD of Medicine
CMH Peshawar

Comdt's Remarks

Approved, pl

Dated: 5/12 2021

13
Approved D
X/12/21

13
Brigadier
Commandant
(Rizwan Sadiq)

14
Amended: E

IN THE PESHAWAR HIGH COURT PESHAWAR



W. P No. _____/2022

Muhammad Haroon Jan (Motor Vehicle Examiner) office,
Driving License Branch Peshawar.

(Petitioner)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Secretary, Transport & Mass Transit Khyber Pakhtunkhwa Peshawar.
2. Director, Directorate Transport & Mass Transit Khyber Pakhtunkhwa Peshawar.

(Respondents)

WRIT PETITION UNDER ARTICLE 199 OF
THE CONSTITUTION OF THE ISLAMIC
REPUBLIC OF PAKISTAN, 1973.

Prayer in Writ Petition:

On acceptance of this writ petition an appropriate writ may please be issued declaring the order No.Dir/TPT/1-82/P&T/824-53 dated 18.02.2022 of the respondent No. 2 whereby the Petitioner was pre maturely transferred from the post of Motor Vehicle Examiner BPS-12 Driving License Branch Peshawar to Motor Vehicle Examiner office District Shangla, furthermore the transfer order dated 18.02.2022 is based on malafide intention and just to adjust their own blue eyed ones and even against the Spouse Policy, the wife of the petitioner is also doing her house job in the CMH Hospital Peshawar, the transfer order is in violation of posting and transfer policy of the Govt and thus ineffective upon the rights of the petitioner, the Petitioner may please be allowed to continue his duties and complete his normal tenure as Motor Vehicle Examiner BPS-12 Driving License Branch

WP761-2022 MUHAMMAD HAROON VS GOVT CF.pdf

ATTESTED
EXAMINER
Peshawar High Court

Peshawar or any other remedy deemed proper may also be allowed.

Respectfully Submitted:

1. That the petitioner is a law abiding citizen of Pakistan, and having every right under the constitution of Islamic Republic of Pakistan 1973.
2. That the petitioner is the employee of Directorate of Transport & Mass Transit Khyber Pakhtunkhwa Peshawar and was posted as Motor Vehicle Examiner BPS-12 in Driving License Branch Peshawar vide office order dated 27.07.2021. *(Copy of the office order dated 27.07.2021 is attached as annexure A).*
3. That since his appointment the petitioner performing his duties with great zeal and devotion and to the entire satisfaction of his superiors without any complaint whatsoever regarding his performance till date.
4. That while working in the said capacity after 7 months the petitioner has illegally/Prematurely transferred from the post of Motor Vehicle Examiner BPS-12 Driving License Branch Peshawar to the Post of Motor Vehicle Examiner Office, District Shangla vide impugned office order dated 18.02.2022. *(Copy of the office order dated 18.02.2022 is attached as annexure B).*
5. That it is pertinent to mention here that the wife of the petitioner is also working/doing her house Job in CMH Hospital Peshawar, the same was bought in the knowledge of the respondent department by submitting her working certificate, but the respondents ignored this fact and malafidely issued the transfer order of the petitioner just to adjust their own blue eyed ones, which is also against the spouse policy. *(Copy of the approved application is attached as annexure C).*
6. That being aggrieved from the acts and omission of the respondents the petitioner submitted an application to the respondent department for the cancellation of his transfer order dated 18.02.2022, but the respondent department turn deaf ear. *(Copy of the application is attached as annexure D).*
7. That being aggrieved from the illegal order of the respondent, and the petitioner has got no other adequate and efficacious

ATTESTED
EXAMINER
Peshawar High Court

LB

remedy available in law is constrained to invoke the constitutional jurisdiction of this Honorable Court inter alia on the following grounds:

GROUNDS OF WRIT PETITION

- A) That the petitioner is performing duties as Motor Vehicle Examiner BPS-12 in Driving License Branch Peshawar to the entire satisfaction of his superiors without any complaint whatsoever regarding his performance till date.
- B) That the petitioner has not been treated in accordance with law hence the rights secured and guaranteed under the law and constitution is badly violated.
- C) That the petitioner even after 7 months illegally/Prematurely transferred from the post of Motor Vehicle Examiner BPS-12 Driving License Branch Peshawar to the Post of Motor Vehicle Examiner Office, District Shangla vide impugned office order dated 18.02.2022, which is illegal and against the posting and transfer policy.
- D) That infact there exist no exigencies of service nor the order of transfer can be termed as in the public interest, rather it was passed in favour of the others i.e. their own blue eyed ones as a result of political pressure at the cost of the petitioner, and thus not tenable in the eyes of law.
- E) That the transfer order is based on malafide intention and biased ,infact to adjust their own blue eyed ones, is illegal and unlawful and violative upon the rights of the petitioner.
- F) That the petitioner has not yet completed his normal tenure as Motor Vehicle Examiner BPS-12 in Driving License Branch Peshawar, the pre mature transfer order is thus illegal and unlawful, moreover the same is in violation of posting and transfer policy of the Provincial Govt.
- G) That according to the Posting / transfer policy of the provincial Govt firstly all the posting transfer shall be strictly in public interest and shall not be abused / misused to victimize the govt servant, in case of present petitioner the order of Posting/ transfer was not issued in the mod and manner of the posting transfer policy as the wife of present petitioner serving/doing her

house job in CMH Hospital Peshawar, and the petitioner has also brought this fact in the knowledge of the respondent department but the respondent department ignored this fact and issued premature transfer order which is also against spouse policy.

- H) That under the Wedlock policy of posting and transfer was intended to ensure to the benefit of a family, it advanced social good and unless there were insurmountable hurdles, in its Case reported in 2004 PLC (CS) 622, 2003 PLC (CS) 1322, 1994 PLC(CS)1644, 1991PLC(CS)478.
- I) That the transfer order is illegal and unlawful, moreover the same is in violation of posting and transfer policy (Wedlock Policy) of the Provincial Govt.
- J) That the transfer order is illegal and unlawful, politically motivate, moreover the same is in violation of posting and transfer policy of the Provincial Govt.
- K) That the impugned transfer order is illegal, unlawful, without lawful authority and passed without jurisdiction, not in the prescribed period, in violation of transfer and posting policy.
- L) That the transfer order of the petitioner is in outcome of political pressure which smacked malafide and such order issued on the recommendation of the political Minister respectively show that the impugned order is the outcome of political pressure. The issue was held in 2012 PLC (CS) 648.
- M) That the petitioner performed his duties with entire satisfaction of his superior without any complaint whatsoever regarding his performance thus the posting transfer order is the violation of Posting transfer policy.
- N) That the Petitioner seeks the permission of this Honourable Court to rely on additional grounds at the hearing of this petition.

ATTESTED
EXAMINER
Peshawar High Court

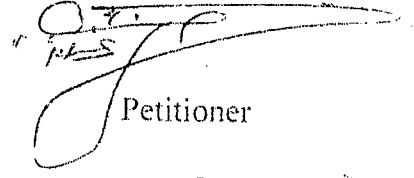
Interim Relief:

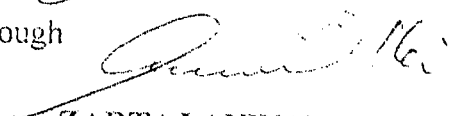
By way of interim relief the Order dated 18.02.2022 may please be suspended to the extent of petitioner and the respondents may kindly be restrained from


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relieving from the present post or status quo be maintained till the decision of the above noted Writ Petition.

It is therefore respectfully prayed that on acceptance of this writ Petition an appropriate Writ as prayed for may please be issued in favour of the Petitioner and against the respondents.

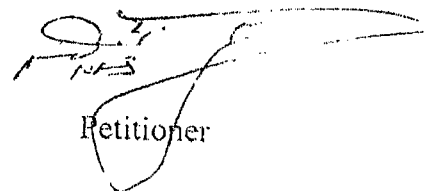

Petitioner

Through 
ZARTAJ ANWAR
Advocate Peshawar

&

IMRAN KHAN
Advocate Peshawar

Certificate

Certified that no writ petition on the same subject and between the same parties has been filed previously or concurrently.


Petitioner

Note :

That presently the Service Tribunal is defunct/not functional due to the retirement of the chairman, therefore file this writ Petition.


ATTESTED
EXAMINER
Peshawar High Court

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IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Writ Petition No.761-P/2022

Muhammad Haroon Jan (Motor Vehicle Examiner)
Office Driving License Branch Peshawar.

Petitioner (s)

VERSUS

Government of Khyber Pakhtunkhwa
Through Secretary Transport & Mass Transit
Khyber Pakhtunkhwa Peshawar.

Respondent (s)

For Petitioner (s) :-
For Respondent (s)
Date of hearing:

Mr. Zartaj Anwar, Advocate.
Nemo case in motion
08.03.2022

JUDGMENT

ROOH-UL-AMIN KHAN, J:- By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, Muhammad Haroon Jan, the petitioner, serving against the post of Motor Vehicle Examiner, Peshawar, seeks setting aside of order dated 18.02.2022, whereby he has been transferred from District Peshawar to District Shangla, Swat.

2. Admittedly, petitioner is a civil servant and in light of judgments of the Hon'ble Supreme Court of Pakistan in cases of **Miss Rukhsana Ijaz vs. Secretary, Education, Punjab & others (1997 SCMR 167); Ayyaz Anjum vs. Government of Punjab, Housing and Physical Planning Department through Secretary and others (1997 SCMR 169); Rafique Ahmad Chaudhry vs. Ahmad Nawaz Malik & others (1997 SCMR 170); Secretary**

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ATTESTED
EXAMINER
Peshawar High Court

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Education NWFP, Peshawar and 2 others vs. Mustamir Khan & another (2005 SCMR 17) and Peer Muhammad vs. Government of Baluchistan through Chief Secretary & others (2007 SCMR 54), transfer and post being related to the terms and conditions of service of a civil servant can be raised before the Departmental Authority and then before the Service Tribunal. Jurisdiction of this Court in such like matters is specifically barred under Article 212 of the Constitution.

3. When learned counsel for the petitioner was confronted with the above referred legal position, he contended that as the KP Service Tribunal is non-functional and the petitioner has not yet relinquished the charge, therefore, the petitioner having no alternate remedy has approached this court for the grant of only interim relief in the manner that till hearing the case of the petitioner by the Service Tribunal, the respondents be restrained from relieving the petitioner.

4. Accordingly, this petition stands disposed of in the terms that the impugned order dated 18.02.2022 is suspended till hearing the case of the petitioner by the KP Service Tribunal, Peshawar. The petitioner shall approach the Service Tribunal the moment it becomes functional, failing which this order shall cease to have any effect.

Announced:
08.03.2022

M. Siraj Afridi CS

[Signature]
Senior Puisne Judge

JUDGE

[Signature]
DB of Mr. Justice Rooh ul Amin Khan Hon'ble Senior Puisne Judge:
And Hon'ble Mr. Justice Shakil Ahmad.

CERTIFIED TO BE TRUE COPY

EXAMINED
National Judicial Commission, Peshawar
Authorized Officer (Article 8.7 of
the Government of Peshawar Order 1998)

09 MAR 2022

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Policy

NO.SOR-II (E&AD) 1-1/85(VOL-II)
Dated Peshawar the 15th February 2003.

Subject: POSTING /TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT.

I am directed to refer to the subject noted above and to say that in supersession of all policy instructions issued in this behalf, the competent authority has approved the following posting Transfer Policy.

- i. All the postings /transfers shall be strictly in public interest and shall not be abused misused to victimize the Government servants.
- ii. All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting /transfer authorities for seeking posting /transfers of their choice and against the public interest.
- iii. All contract Government employees, appointed against specific posts, cannot be posted against any other post.
- iv. The normal tenure of posting shall be three years subject to the condition that for the officers /officials posted in unattractive areas, the tenure shall be two years and for hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.

v. Months of March and July are fixed for posting /transfer of the officers /officials excluding the officers in B-19 and above in the Province. Posting /transfer in Education and Health Departments shall be made in March while the remaining Departments shall make posting /transfers in July. There shall be a ban on posting/transfers throughout the year excluding the aforesaid two months. However, there shall be no restriction in cases where posting /transfer of Government employees become inevitable in other months due to promotion /retirement /creation of new posts/return from long leave/involvement in

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disciplinary proceedings and adjustment of surplus staff for which specific relaxation shall be obtained from the Chief Minister.

vi. While making postings transfers from settled areas to FATA and vice versa specific approval of the Governor, NWFP needs to be obtained.

vii. Officers may be posted on executive /administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thana) of his area /resident is situated.

viii. No postings /transfers of the officers/officials on detailment basis shall be made.

ix. Regarding the posting of husband /wife, both in Provincial services, efforts where possible would be made to post such persons at one station and this will be subject to the public interest.

x. All the posting /transferring authorities may facilitate the postings /transfers of the unmarried female Government Servants at the station of the residence of their parents.

xi. Officers /officials except DCOs and SPs who are due to retire within one year may be posted on their option, on posts in the Districts of their domicile and be allowed to serve till the retirement.

xii. In terms of Rules-17 (1) and (2) read Schedule-III of the Government of NWFP Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against.

1

Outside the Secretariat

i. Officers of the all Pakistan Unified Group i.e DMG , PSP including Provincial Police Officers in BPS-18 and above.

ii. Other officers in BPS-17 and above to be posted against schedule posts, or posts normally held by the APUG, PCS (EG) and PCS (SG).

iii. Head of Attached Departments and other Officers in B-19 & above in all Departments.

In the Secretariat:

iv. Secretaries .

v. Other Officers of and above the rank of Section Officers:-

- a. Within the Same Department.
- b. Within the Secretariat from one Department to another.

vi. Officials upto the rank of Superintendent:-

- a. Within the same Department.
- b. To and from an Attached Department.

2

Chief Secretary in consultation with the Establishment Department and the Department concerned with the approval of the Chief Minister.

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Chief Secretary with the approval of Chief Minister.

Secretary of the Department concerned .
Chief Secretary /Secretary Establishment.

Secretary of the Department concerned.
Secretary of the Department in consultation

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xiii. While considering postings /transfers proposals all the concerned authorities shall keep in mind the following:

a. To ensure the posting of proper persons on proper posts, the annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/officials be considered.

b. Tenure on present post shall also be taken into consideration and the posting transfers shall be in the best public interest.

ix) Governments servants including District Govt. employees feeling aggrieved due to the orders of posting/transfers authorities may seek remedy from the next higher authority/the appointing authority) as the case may be through an appeal to be submitted within seven days of the receipt of such orders. Such appeal shall be disposed of within fifteen days. The option of appeal against posting /transfer orders could be exercised only in the following cases:-

i) pre-mature posting/transfer or posting/transfer in violation of the provisions of this policy.

ii) Serious and grave personal (humanitarian) grounds.

To streamline the postings /transfers in the District Government and to remove any irritant/confusions in this regard the provision of Rule 25 of the North- West Frontier Province District Government Rules of Business 2001 read with schedule -IV thereof is referred. As per schedule -IV the posting/transferring authorities for the officers /officials against each are as under :-

S.No	Officers	Authority
1.	Posting of District Coordination Officer and Executive District Officer in a District.	Provincial Government
2.	Posting of District Police Officer.	Provincial Government.
3.	Other Officer in BPS-17 and above posted in the District.	Provincial Government .

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4.	Official in BPS-16 and below.	Executive District Officer in consultation with Distinct Coordination Officer.
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As per Rule 25(2) of the Rules above the District Coordination Department shall consult the Government if it is proposed to :

- a. transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure; and
- b. require an officer to hold charge of more than one post for a period exceeding two months.

4. I am directed further to request that that above noted policy may be strictly observed implemented.

POWER OF ATTORNEY

In the Court of Khyber Pakhtun Khwa Special Tribunal Peshawar
Muhammad Mehal Haroon Jan

} For
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

Govt of Khyber Pakhtun Khwa
and others

} Defendant
} Respondent
} Accused
}

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____
Fixed for _____

I/W. the undersigned, do hereby nominate and appoint

ZARAJ ANWAR & IMRAN KHAN ADVOCATES, my true and lawful attorney, for me in my same and on my behalf to appear at Peshawar to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or sub-pocna and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so. any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at _____
the _____ day to _____ the year _____
Executant/Executants _____
Accepted subject to the terms regarding fee _____

Im Khan
IMRAN KHAN
Advocate High Court
Mob. 0315-9090648

Zaraj Anwar
ZARAJ ANWAR
Advocate High Courts
ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3, Fourth Floor, Bilqis Plaza, Saddar Road, Peshawar Cantt
Mobile-0331-9399185
BC-10-9851
CNIC: 17301-1610454-5