


Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	16.05.2018	<p align="center"><b><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></b></p> <p align="center"><b>Service Appeal No. 400/2018</b></p> <p>Date of Institution ... 20.03.2018 Date of Decision ... 16.05.2018</p> <p>Dr. Jehanzeb Dawar.</p> <p align="right"><b>APPELLANT</b></p> <ol style="list-style-type: none"> <li>The Additional Chief Secretary (FATA), FATA Secretariat Warsak Road Peshawar.</li> <li>The Secretary Social Sectors Department (FATA), FATA Secretariat Warsak Road Peshawar.</li> <li>The Director Health Services (FATA), FATA Secretariat Warsak Road Peshawar.</li> <li>Dr. Rahim Nawaz.</li> </ol> <p align="right"><b>RESPONDENTS</b></p> <p align="center"><b><u>JUDGMENT</u></b></p> <p><b><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u></b> - Learned Counsel for the appellant present. Learned Deputy District Attorney on behalf of official respondents present. Learned Counsel for private respondent No. 4 present.</p> <ol style="list-style-type: none"> <li>The appellant has filed the present service appeal u/s 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974 against the order dated 13.12.2017 whereby the posting transfer order dated 18.11.2016 was withdrawn till the final decision of court in service appeal bearing No.207/2017.</li> <li>Learned counsel for the appellant argued that the vide posting/ transfer order dated 18.11.2017 private respondent No.4</li> </ol>

was transferred from the post of Agency Surgeon South Waziristan and the appellant was appointed/posted as such. Further argued that the respondent No.4 challenged the posting transfer order dated 18.11.2017 by filing service appeal bearing No.207/2017 and during the pendency of the said service appeal, the impugned order dated 13.12.2017 regarding withdrawal of posting transfer order dated 18.11.2016 was issued, Learned counsel for the appellant contended that vide the impugned order dated 13.12.2017 the transfer order dated 18.11.2016 was withdrawn till the decision of service appeal No.207/2017, which service appeal was dismissed vide judgment/order dated 15.02.2017. Further argued that upon the dismissal of service appeal bearing No.207/2017 the posting/transfer order dated 18.11.2016 was revived. Further argued that fresh posting/transfer order of the appellant issued after institution of present service appeal would have no effect on the merits of the present appeal.

4. As against that Learned Deputy District Attorney assisted by Learned counsel for private respondent No.4 argued that vide fresh posting transfer order dated 22.03.2018 the appellant has been posted as Incharge Medical Superintendent AHQ Hospital Wanna hence the present service appeal has become infructuous. Further argued that the impugned order dated 13.12.2017 was issued in the light of Status quo granted by this Service Tribunal in service appeal bearing No.207/2017. Further argued that the respondents has acted in accordance with law and the appellant is bound to serve

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anywhere in the province/FATA under Section-10 of the Khyber Pakhtunkhwa Civil Servants Act 1973.

5. Arguments heard. File perused.

6. Vide posting/transfer order dated 18.11.2016 Dr. Rahim Nawaz (respondent No.4) was transferred from the post of Agency Surgeon South Waziristan to the post of M.O North Waziristan Agency while Dr. Jehanzeb Dawar (Appellant) was transferred from the post of SMO North Waziristan and posted as Agency Surgeon South Waziristan Agency. Dr. Rahim Nawaz (respondent No.4) challenged the posting/transfer order dated 18.11.2016 by filing service appeal No.207/2017. During the pendency of service appeal No.207/2017 order dated 13.12.2017 was issued whereby respondent No.4, upon his promotion, was placed at the disposal of MS AHQ Hospital Wanna. Similarly vide another order of the same date the posting/transfer order dated 18.11.2016 mentioned above was withdrawn till the final decision of court in service appeal No.207/2017. Service appeal No.207/2017 was then dismissed being not pressed vide judgment/order dated 15.12.2017. After the dismissal of service appeal No.207/2017 Dr. Jehanzeb Dawar (Appellant) filed the present service appeal for his posting as Agency Surgeon South Waziristan Agency.

7. It may be mentioned that respondent No.4 gained posting as Agency Surgeon South Waziristan on the strength of order dated 31.05.2016. Hence upon the disposal/dismissal of service appeal

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bearing No.207/2017 posting order dated 13.12.2017 regarding fresh posting of respondent No.4, upon his promotion, stood revived and the posting/transfer order dated 31.05.2016 vis a vis respondent No.4 no more remained in the field. Otherwise at this stage private respondent No.4 has also nearly completed his normal tenure at the post of Agency Surgeon South Waziristan. Perusal of documents available on file would show that the appellant has earlier served as Agency Surgeon South Waziristan Agency and has also assumed the charge of his post as Incharge Medical Superintendent AHQ Wanna in compliance with posting/transfer order dated 22.03.2018.

8. In the light of above discussion the present service appeal is accepted in terms that the post of Agency Surgeon South Waziristan shall be deemed vacant and the respondent department is directed to fill up the same by issuing proper posting/transfer order in accordance with law, rules and policy. Parties are left to bear their own costs. File be consigned to the record room after its completion.

*Muhammad Amin Kundi*

(Muhammad Amin Kundi)  
MEMBER

*Muhammad Hamid Mughal*  
16.05.2018

(Muhammad Hamid Mughal)  
MEMBER

Announced  
16.05.2018

24.04.2018

Counsel for the appellant and Addl:AG for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for rejoinder and arguments on 15.05.2018 before D.B. Till then the impugned order is suspended.



(Ahmad Hassan)  
Member



(M. Hamid Mughal)  
Member

15.05.2018

Junior to counsel for the appellant and Mr. Kabir Ullah Khattak, learned Additional Advocate General present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant not available. Since the impugned order is under suspension, hence last opportunity is granted. Adjourn. To come up for arguments on 16.05.2018 before D.B.



(Muhammad Amin Kundi)  
Member



(Muhammad Hamid Mughal)  
Member

16.05.2018

Learned counsel for the appellant and Learned Deputy District Attorney for official respondents present. Learned counsel for private respondent No.4 also present. Vide separate judgment of today of this Tribunal placed on file, the present service appeal is accepted in terms that the post of Agency Surgeon South Waziristan shall be deemed vacant and the respondent department is directed to fill up the same by issuing proper posting/transfer order in accordance with law, rules and policy. Parties are left to bear their own costs. File be consigned to the record room.



(Muhammad Amin Kundi)  
Member



(Muhammad Hamid Mughal)  
Member

29.03.2018

Counsel for the appellant present. Preliminary arguments heard and case file perused. Learned counsel for the appellant argued that vide order dated 18.11.2016 the appellant was transferred from the post of SMO North Waziristan Agency as Agency Surgeon as South Waziristan Agency. He assumed the charge of the post on 21.11.2016. Dr. Rahim Nawaz, MO (Private respondent no.4) filed an appeal in this Tribunal against the aforementioned transfer order. During the pendency of the said service appeal respondent no.3 through impugned order dated 13.12.2017 withdrew transfer order dated 18.11.2016. Subsequently, private respondent no.4 informed this Tribunal that his grievances had been redressed and appeal was dismissed as withdrawn vide order dated 15.12.2017. Feeling aggrieved the appellant filed departmental appeal on 19.12.2017 which was not responded so he filed writ petition 915-P/2018 in Peshawar High Court Peshawar whereby directions were given to the respondents for disposal of his departmental appeal through a speaking order. He has also submitted an application for suspension of operation of impugned order dated 13.12.2017 till the disposal of this appeal. Aforementioned transfer order is not in line with posting/transfer policy notified by the Provincial Government. The appellant has not been treated in accordance with the para-meters prescribed in the policy.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 12.04.2018 before S.B. Till then the impugned order is suspended.

  
(AHMAD HASSAN)  
MEMBER

12.04.2018

Junior counsel for appellant and Addl: AG alongwith Mr. Shah Nawaz, Litigation Officer for official respondent No. 1 to 3 present, and junior counsel for private respondent No. 4 present and submitted fresh wakalat nama which is placed on file. Written reply submitted on behalf official respondent no. 1 to 3 as well as private respondent no. 4. To come up for rejoinder and arguments 24.04.2018 before D.B. Till then the impugned order is suspended.



  
Member

Appellant Deposited  
Security & Process Fee

Form-A  
FORM OF ORDERSHEET

Court of \_\_\_\_\_

Case No. 400/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	20/03/2018	<p>The appeal of Dr. Jehanzeb Dawar presented today by Mr. Noor Muhammad Khattak 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</p>
2-	21/03/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>29/03/18.</u></p> <p style="text-align: right;"> MEMBER</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL**

APPEAL NO. 400 /2018

**DR. JEHANZEB DAWAR VS ACS (FATA) & OTHERS**

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APPELLANT

THROUGH:



**NOOR MOHAMMAD KHATTAK,  
ADVOCATE**

ROOM NO. 1, UPPER FLOOR,  
NEW ISLAMIA CLUB BUILDING,  
KHYBER BAZAR, PESHAWAR CITY

**0345-9383141**



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

APPEAL NO. 400 /2018

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 430

Dr. Jehanzeb Dawar, Agency surgeon, South Waziristan Agency, 20/3/2018  
Under Transfer to the post of Senior Medical Officer,  
North Waziristan Agency at Miranshah

..... Appellant

**VERSUS**

- ✓1- The Additional Chief Secretary (FATA), FATA Secretariat, Warsak Road, Peshawar.
- ✓2- The Secretary Social Sectors Department (FATA), FATA Secretariat, Warsak Road, Peshawar.
- ✓3- The Director Health Services (FATA), FATA Secretariat, Warsak Road, Peshawar.
- 4- Dr. Rahim Nawaz, Medical officer North Waziristan Agency under transfer the post of Agency Surgeon, South Waziristan Agency.

..... Respondents

**SERVICE APPEAL UNDER SECTION-4 OF THE SERVICE  
TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER  
DATED 13.12.2017 WHEREBY THE APPELLANT WAS  
TRANSFERRED FROM THE POST OF AGENCY SURGEON  
SOUTH WAZIRISTAN AGENCY PRE MATURELY AND  
AGAINST THE TRANSFER/POSTING POLICY AND  
AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL  
APPEAL OF APPELLANT WITHIN THE STATUTORY  
PERIOD OF NINETY DAYS**

**PRAYER:** That on acceptance of this appeal the impugned order dated 13.12.2017 may very kindly be set aside and the respondents may be directed no to transfer the appellant from the post of Agency Surgeon North Waziristan Agency till completion of his normal tenure. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

**R/SHEWETH:**

**ON FACTS:**

- 1- That appellant is a bonafide, peaceful & Law abiding citizen of Pakistan and is the employee of respondent Department. That appellant has recently been awarded with TAMGHA-E-IMTIAZ by the President of Pakistan on the basis of meritorious performance while posted as

Filed to  
Registrar  
20/3/18

Agency surgeon, Bajaur Agency. Copy of the Tamgha-e-Imtiaz is attached as annexure..... **A.**

- 2- That right from appointment till date the appellant is performing his duty in the respondent Department quite efficiently, whole heartedly and up to the entire satisfaction of his high ups.
- 3- That appellant while serving as Senior Medical Officer (BPS-18) at North Waziristan Agency Miransha the appellant was transferred and posted as Agency Surgeon South Waziristan Agency by the competent authority vide order dated 18-11-2016. Copy of the order dated 18-11-2016 is attached as annexure ..... **B.**
- 4- That the appellant after receiving the order date 18-11-2016 took over the charge of the post of Agency Surgeon South Waziristan Agency by submitted his charge report dated 21-11-2016 and as such the private respondent was relieved from the post. Copy of Charge Report is attached as annexure ..... **C.**
- 5- That in the meanwhile private respondent no. 4 filed service appeal no.207/2017 instituted on 28-02-2017 against the order dated 18-11-2016 along with stay application. Copy of service appeal along with stay application is attached annexure ..... **D.**
- 6- That during the pendency of the above mentioned service appeal the respondent No.3 issued the impugned order dated 13.12.2017 whereby the transfer order dated 18.11.2016 was withdrawn till the final decision of the Court/tribunal. That in light of the said order dated 13.12.2017 the Counsel for the private respondent No.4 withdrawn the service appeal No.207/2017 unconditionally vide order sheet dated 13.12.2017. Copy of withdrawal order sheet & impugned order dated 13-12-2017 are attached as annexure ..... **E & F.**
- 7- That feeling aggrieved from the premature order dated 13.12.2017 the appellant filed Departmental appeal before the appellate authority but inspite of the clear directions of the august Peshawar High Court Peshawar dated 14.3.2018 the respondents are not willing to decide the Departmental appeal of the appellant and as such the same is still pending before the appellate authority. Copy of the Departmental appeal and judgment are attached as annexure ..... **G & H.**
- 8- That the appellant having no other ray of hope but to approach this Honourable Tribunal through the instant

service appeal on the following grounds amongst the others.

**GROUND:**

- A-** That the impugned order dated 13.12.2017 is against the Law, policy, facts and norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B-** That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C-** That, the treatment meted out to the appellant is a clear violation of the Fundamental Rights of the appellant.
- D-** That, the respondent Department acted in arbitrary and malafide manner by transferring the appellant in such short span of time which is against the transfer/posting policy of the Provincial Government.
- E-** That the impugned order dated 13.12.2017 is against the clause-I and IV of the transfer/posting policy of the provincial Government. Copy of the policy is attached as annexure ..... **I.**
- F-** That, the appellants has been discriminated by the respondent Department on the subject noted above and as such the respondents violated the Principle of Natural Justice.
- G-** That the impugned order dated 13.12.2017 has been issued conditionally by the respondents and as such after the withdrawal of the service appeal No.207/2017 the said order dated 13.12.2017 has become ineffective.
- H-** That the impugned order dated 13.12.2017 has not been issued in the public interest nor exigencies of public service, therefore not tenable and liable to be set aside.
- I-** That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

Dated: 13.2.2018

APPELLANT



**DR. JEHAZEB DAWAR**

THROUGH:



**NOOR MOHAMMAD KHATTAK  
&**



**MUHAMMAD MAAZ MADNI,  
ADVOCATES,  
HIGH COURT PESHAWAR**

**BEFORE THE KHYBER PAKHTUNKHEWA SERVICE TRIBUNAL**  
**PESHAWAR**

APPEAL NO \_\_\_\_\_/2018.

**DR. JEHAZEB DAWAR**

**VS**

**A.C.S FATA**

**APPLICATION FOR SUSPENSION OF OPERATION**  
**OF IMPUGNED ORDER DATED 13.12.2017 TILL**  
**THE DISPOSAL OF THIS APPEAL**

**R/SHEWETH:**

- 1- That the appellant filed above mentioned appeal along with this application before this august service Tribunal in which no date has been fixed so for.
- 2- That appellant filed the above mentioned appeal against the impugned transfer order dated 13.12.2017 whereby the appellant was pre-maturely transferred from the post Agency Surgeon South Waziristan Agency pre-maturely to the post of Senior Medical Officer, North Waziristan Agency at Miranshah.
- 3- That all the three ingredients necessary for the stay is in favor of the appellant.

It is therefore humbly prayed that on acceptance of this application the impugned transfer order dated 13.12.2017 may very kindly be suspended till disposal of this appeal.

**APPELLANT**

  
**JEHAZEB DAWAR**

**THROUGH:**

  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

ATTESTED

ATTESTED

*[Faint, illegible text]*

*[Faint, illegible text]*

A-5

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B-6

**DIRECTORATE OF HEALTH SERVICES  
FATA SECRETARIAT, WARSAK ROAD, PESHAWAR**

Ph: 091-9210212, Fax # 091-9212110.

No. \_\_\_\_\_/DHS/FATA/Admr.

Dated: 18/11/2016.

**OFFICE ORDER:**

The competent authority has been pleased to order the following postings/transfers in the interest of public with immediate effect.

No.	Name & Designation	From	To	Remarks
1	Dr. Rahim Nawaz, BS-17, G. Cadre	Agency Surgeon South Waziristan	MO North Waziristan Agency	Against the Vacant Post
2	Dr. Jahanzeb Dawar BS-18, G. Cadre	SMO North Waziristan	Agency Surgeon South Waziristan Agency	Vice No. 1

Sd/xxx  
Additional Chief Secretary FATA

No. 1868695/DHS/FATA/Admr, dated 18/09/2016.

Copy for information:

1. The Secretary Social Sectors Department FATA, Peshawar.
2. The Political Agents, FR Bannu & FR Lakki.
3. The Agency Surgeons, FR Bannu & FR Lakki.
4. The AGPR Sub Office, Peshawar.
5. The District Accounts Officers, FR Bannu & FR Lakki.
6. The P.S to Additional Chief Secretary FATA, Peshawar.
7. Officers concerned.

For information and necessary action

**ATTESTED**

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**ATTESTED**

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*[Handwritten signature]*  
Director Health Services,  
FATA Peshawar

OFFICE OF THE AGENCY SURGEON  
SOUTH WAZIRISTAN AGENCY

No. \_\_\_\_\_

Dated 21/11/2016

~~(S)~~ ~~(S)~~

To

The Director Health Services  
FATA Peshawar

C. (S) (7)

Subject: ASSUMPTION OF CHARGE

With reference to the section officer (Establishment) FATA Secretariat  
coordination & Administration Department order  
No. \_\_\_\_\_ and Director  
Health Service FATA Peshawar office letter bearing endorsement  
No. 18686-95- Dated: 18/11/2016-  
1. Dr. Jehanzeb Khan assumed the Charge of Agency Surgeon S W Agency today on  
21/11/2016

Agency Surgeon  
S W Agency

No. 1750-57-1

dated 21/11/2016

Copy to the:-

1. Political Agent SWA at Tank
2. Assistant Political Agent Ladha at Tank
3. Assistant Political officer SWA at Tank
4. Assistant Political Agent Wana
5. Agency Account officer SWA at Tank
6. Manager NBP Main Branch
7. Manager NBP Wana Branch
8. Manager MCB Branch Tank

For information and necessary action Please.

ATTESTED

*[Signature]*

ATTESTED

*[Signature]*

Agency Surgeon  
S W Agency

*[Signature]*



D-8

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

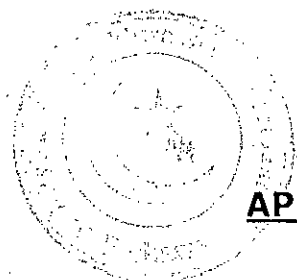
Appeal No. 207 /2017

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 213

Date 28-2-2017

Doctor Rahim Nawaz Shah,  
Agency Surgeon,  
North Waziristan Agency (N.W.A):



**APPELLANT**

VERSUS

- 1. The Additional Chief Secretary, (FATA), FATA Secretariat, Warsak Road, Khyber Pakhtunkhwa, Peshawar.
- 2. *Political Agent South Waziristan Agency.*
- 3. The Secretary, Government of Khyber Pakhtunkhwa, Social Sector Department, (FATA), FATA Secretariat, Warsak Road, Khyber Pakhtunkhwa, Peshawar.
- 4. The Director, Health Services, (FATA), Warsak Road, Khyber Pakhtunkhwa, Peshawar.
- 5. *Agency Account Officer South Waziristan Agency*
- 6. Dr. Jehanzeb Dawar, Agency Surgeon, SWA.

**RESPONDENTS**

Replied

Filed today

*[Signature]*

28/2/17

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST THE PREMATURE POLITICALLY MOTIVATED TRANSFER DATED 18.11.2016 WHEREBY THE APPELLANT HAS BEEN TRANSFERRED JUST AFTER 5/6 MONTHS AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF 90 DAYS.

ATTESTED

*[Signature]*

ATTESTED

*[Signature]*

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 18.11.2016 MAY BE SET ASIDE AND THE APPELLANT POSTING MAY BE RESTORED AS AGENCY SURGEON NORTH WAZIRISTAN AGENCY WITH FURTHER DIRECTION TO THE RESPONDENTS NOT TO TRANSFER THE APPELLANT PREMATURELY ON THE BASIS OF POLITICAL INTERFERENCE.

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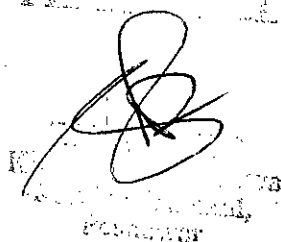
RESPECTFULLY SHEWETH:

1. That the appellant joined the Health Department on 18.7.2004. The appellant remained posted at various stations and performed his duty up to the entire satisfaction of his superior. The appellant was lastly posted as Agency Surgeon SWA vide order dated 31.5.2016. **(Copy of Order is attached as Annexure-A).**
2. That the appellant was also given appreciation letter for his exemplary performance on Polio Eradication SWA, which include:
  - i)- Administrative Coverage. 118%.
  - ii)- Market Survey (MS) result 85%.
  - iii)- 11/12 lots in LQAS
  - iv)- 677 children are reported still missed.

**Copy of letter is attached as Annexure-B.**

3. That the appellant was transferred just after 5/6 month vide order dated 18.11.2016 without any cogent reasons and without showing any agencies of service. **(Copy of the order is attached as Annexure-C).**
4. That the appellant filed departmental appeal against the said premature transfer order dated 25.11.2016 and also filed a writ petition no. 4691/2016 in the august Peshawar High Court for quick decision of departmental appeal. The august court heard the writ petition on 15.12.2016 was kind enough

ATTESTED

  
Secretary

ATTESTED  


(12) (10)

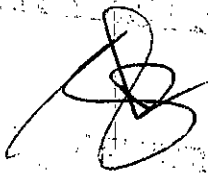
to direct the respondents to decide the appeal of appellant as per clause-xiv of the policy. (**Copy of the Appeal and Court decision is attached as Annexure-D & E**).

5. That even after the august Peshawar high Court directions, the appeal of the appellant has not been decided till the expiry of statutory period of 90 days. Hence the present on the following grounds amongst the others.

**GROUND:**

- A) That the orders dated 18.11.2016 and against not taking action on the departmental appeal of the appellant within statutory period of 90 days are against the law, rules norms, of justice and in violation of posting transfer policy of the government.
- B) That the impugned order dated 18.11.2016 is premature because the appellant was again transferred just after 5/6 months which is the violation of tenure policy of the government.
- C) That the impugned order dated 18.11.2016 have not been passed in the public interest, rather it is attempt to accommodate the blue eyed person.
- D) That even the impugned order dated 18.11.2016 is not a well-reasoned order which is in violation of Section-24-A of the General Clauses Act and also in violation of the Judgment of the Supreme Court of Pakistan, Reported as 1991-SCMR Page-2330.
- E) That the impugned order is against the Clauses, 1, 2, 4 of the posting transfer policy dated 15.2.2003. **Copy of Policy is attached as Annexure-F.**
- F) That the impugned order is against the Anita Turab judgment and circular dated 27.2.2013. **Copy of Circular is attached as Annexure-G.**

ATTESTED

  
Peshawar

ATTESTED



- (11)
- G) That there were no complaint against the appellant; rather the appellant was given good performance certificates by the concerned political authorities.
- H) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

  
**APPELLANT**

Dr. Rahim Nawaz

THROUGH:

  
**(M. ASIF YOUSAFZAI )  
ADVOCATE SUPREME COURT.**

  
**(SYED NOMAN ALI BUKHARI)**

**&  
(Taimur ALI KHAN)  
ADVOCATES PESHAWAR**

**ATTESTED**

  
**Taimur Ali Khan,  
Advocate Peshawar**

**ATTESTED**



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

12

Appeal No. \_\_\_\_\_/2016

Dr. Rahim Nawaz

V/S

Health Department.

**APPLICATION FOR THE SUSPENSION OF OPERATION OF ORDER  
DATED 18.11.2016 TILL THE DISPOSAL OF MAIN APPEAL**

**RESPECTFULLY SHEWETH:**

1. That the appellant filed an appeal along with this application in which no date has been fixed so far.
2. That the appellant has a good performance and the impugned order dated 18.11.2016 has been passed prematurely and utter violation of posting transfer policy.
3. That the grounds of main appeal may also be considered as integral part of this application
4. That the appellant has not relinquished the charge of the post as yet and there is no legal hurdle to grant interim relief in favor of appellant.
5. That if the impugned order is not suspended then the appellant will be suffer from irreparable loss.


It is, therefore, most humbly prayed that the operation of order dated 18.11.2016 may be suspended till the disposal of main appeal. Any other remedy which this august Tribunal that may also be awarded in favour of appellant.

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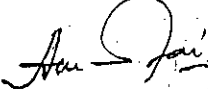
*[Signature]*

ATTESTED

*[Signature]*  
Secretary,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

  
APPELLANT  
Dr. Rahim Nawaz

THROUGH:

  
( M. ASIF YOUSAFZAI )  
ADVOCATE SUPREME COURT  
PESHAWAR.

&   
TAIMUR ALI KHAN  
ADVOCATE.


**AFFIDAVIT**

It is affirmed and declared that the contents of the above application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

  
Deponent

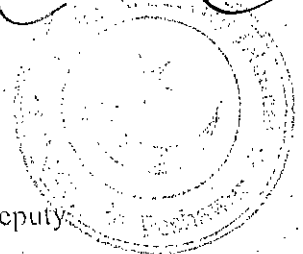
  
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Date of Presentation ..... 09-02-18  
Number of ... 24/50  
Copying ... 14  
Urgency ... 2  
Total ... 16  
Name ...  
Exec ...  
Date ... 09-02-18  
09-02-18

**ATTESTED**  


Dr. Rahim Nawaz

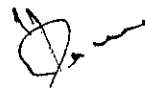
E-14



23.11.2017

Appellant in person present. Learned Deputy District Attorney and counsel for private respondents also present. In the present appeal ~~perains~~ transfer order has been challenged as such last opportunity granted. Adjourn. To come up for rejoinder, if any, and arguments on 15-12-17 before D.B.

  
(Gul Zeb Khan)  
Member


  
(Muhammad Hamid Mughal)  
Member

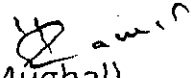
15.12.2017

Learned counsel for the appellant present. Mr. Riaz Pinda Kheil, learned Assistant Advocate General for the respondents present. Learned counsel for the private respondent present. Learned counsel for the appellant submitted three (03) orders of the respondent department dated 15.11.2017, dated 13.12.2017, dated 13.12.2017 and stated at the bar that in the light of above mentioned orders he does not want to press the present appeal. Perusal of the orders submitted by the learned counsel for the appellant would show that vide order dated 15.11.2017, the appellant along with other medical doctors have been promoted from BS-17 to BS-18, similarly vide order dated 13.12.2017, upon promotion the appellant has been placed at the disposal of MS AHQ Hospital Wana, likewise vide another order dated 13.12.2017 the order made impugned in the present appeal has been withdrawn till the final decision of the court.

In view of the statement of learned counsel for the appellant as mentioned above, the present appeal is hereby dismissed being not pressed. No order as to costs. File be Consigned to Record Room.

ATTESTED

  
(Gul Zeb Khan)

  
(Muhammad Hamid Mughal)

F-15

**DIRECTORATE OF HEALTH SERVICES FATA**  
FATA SECRETARIAT, WARSAK ROAD, PESHAWAR.

OFFICE ORDER

In pursuance of interim relief (status quo) granted by Khyber Pakhtunkhwa Service Tribunal Peshawar dated 02.03.2017 in appeal No. 207/2017-Dr. Rahim Nawaz VS ACS FATA and others, the transfer order issued by this Directorate bearing No. 18686-95/DHS/FATA/Admn dated 18.11.2016 is hereby withdrawn with the approval of competent authority till the final decision of the court.

Sd/xxxxx  
Additional Chief Secretary FATA

No 23744-51 /DHS/Admn/FATA Dated: 13 /12/2017

Copy for information and necessary action to:

1. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. Political Agent SW Agency at Tank.
3. Agency Surgeon SW Agency.
4. Agency Accounts Officer SW Agency.
5. PS to Additional Chief Secretary FATA.
6. PS to Secretary AI&C Department FATA.
7. PS to Secretary SSD, FATA.
8. Officer concerned.

ATTESTED  
[Signature]

[Signature]  
Director Health Services,  
FATA Peshawar

ATTESTED  
[Signature]



G-16

To

The Additional Chief Secretary (FATA),  
FATA Secretariat, Peshawar.

Subject: APPEAL/REPRESENTATION AGAINST THE ORDER DATED 13-12-2017

R/Sir,

Most respectfully it is stated that I am working the senior most Doctor amongst the doctor of having FATA domicile. I have served in FATA during intense Law & Order situation of FATA mainly when I was Agency Surgeon Bajaur at Khar during the tense situation of Bajaur Agency, and due to the said extra ordinary effort I am awarded with Tamgha-e-Imtiaz by the President of Pakistan in the year 2012.

I was transfer from the post of Senior Medical Officer to the post of Agency Surgeon South Waziristan Agency vide order dated 18-11-2016 accordingly, I took over the charge there at SW Agency wana and started performing duties to the best of my abilities. Later on Dr. Rahim Nawaz filed service appeal before the Service Tribunal Peshawar against the order dated 18-11-2016 in which status quo was granted to the appellant (Dr. Rahim Nawaz) and finally vide order dated 13-12-2017 the status quo was implemented and the order dated 18-11-2016 was suspended.

It is therefore, most kindly requested that the order dated 13-12-2017 be cancelled and I may be retain on the post of Agency Surgeon SW Agency to complete my normal tenure.

I shall be very thankful to you for this kindness.

Dated: 19-12-2017

Obediently Yours,

Dr. Jehanzeb Dawar,  
Agency Surgeon,  
SWA

ATTESTED



11-17

# PESHAWAR HIGH COURT, PESHAWAR

## FORM OF ORDER SHEET

Court of.....

Case No.....of.....



Serial No. of Order of Proceedings	Date of Order of Proceedings	Order or other Proceedings with Signature of Judge
1	2	3
	<p><b>ORDER</b> 14.03.2018</p>	<p><b><u>Writ Petition No.915-P/2018</u></b></p> <p>Present: Mr. Muhammad Maaz Mandi, Advocate, for Dr. Jehanzaib Dawar, petitioner.</p> <p>Mr. Waqar Ahmad Khan, Addl. AG, for the officials of Provincial Govt.:</p> <p>*****</p> <p><b><u>ABDUL SHAKOOR, J.-</u></b> Dr. Jehanzaib Dawar, petitioner herein, through the instant constitutional petition, has asked for the issuance of an appropriate writ directing respondent No.2 to decide his departmental appeal in light of Clause-xiv of the Transfer / Posting Policy of the Provincial Government.</p> <p>2. At the very outset the learned counsel appearing on behalf of the petitioner submitted at the bar that he would be satisfied, if a direction is given to the departmental authority to decide his appeal in light of aforesaid provision of law. When so, we without</p>

2

**ATTESTED**  
EXAMINER  
Peshawar High Court  
17 MAR 2018

touching the merits of the case, lest it may prejudice the case of either party, would like to direct the departmental authority viz. respondent No.2 to decide the appeal of the petitioner strictly in accordance with law through a speaking order as early as possible, after receipt of this order. This writ petition is disposed of accordingly.

**Announced.**  
14.03.2018

*[Signature]*  
**CHIEF JUSTICE**  
*[Signature]*  
**JUDGE**

**CERTIFIED TO BE TRUE COPY**

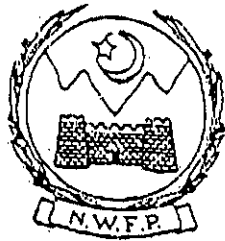
Examiner  
Peshawar High Court, Peshawar  
Authorised Under Article 87 of  
The Qanun-e-shariat Order 1980

**17 MAR 2018**

14712

No. ....  
Date of Presentation of Application *17/3/18*  
No of Pages *2*  
Copying *2*  
Urgent Fee *2*  
Total *17/3/18*  
Date of Preparation of *17/3/18*  
Date of Delivery of *17/3/18*  
Received By *[Signature]*

*(Fayaz) (D.B. of Hon'ble Mr. Justice Yahya Afridi, HCJ & Hon'ble Mr. Justice Abdul Shakoore)*



GOVERNMENT OF NWFP  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT  
(Regulation Wing)

I-19

POSTING / TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT.

- i) All the posting/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 posing/transfers of their choice and against the public interest.
- iii) All contract Government employees appointed against specific posts, can not 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 the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.
- v) {
- vi) While making postings/transfer from settled areas to FATA and vice-versa, specific approval of Governor, NWFP needs to be obtained.  
<sup>2</sup>While making postings/transfers of officers/officials up to BS-17, from settled areas to FATA and vice-versa approval of the Chief Secretary NWFP needs to be obtained. Whereas, in case of posting/transfer of officers in BS-18 and above, from settled areas to FATA and vice versa, specific approval of the Governor NWFP shall be obtained.
- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for atleast eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.
- vii) Officers may be posted on executive/administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thaana) of his area/residence is situated.
- viii) No posting/transfers of the officer's/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 subject to the public interest.
- x) All the posting/transferring authorities may facilitate the posting/transfer of the unmarried female government Servants at the station of the residence of their parents.

ATTESTED

Para-1(v) regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No: SOR-VI (E&AD) 1-4/2008/Vol-VI, dated 3-6-2008. Consequently authorities competent under the NWFP Government Rules of Business, 1985, District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make posting/transfer subject to observance of the policy and rules. Added vide Urdu circular letter No. SOR-VI(E&AD) 1-4/2008

- xi) Officers/officials except DCOs and DPOs/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 there till the retirement  
 DCOs and DPOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against non-administrative posts of equivalent scales;
- xii) In terms of Rule-17(1) and (2) read with Schedule-III of the NWFP Government Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against each officer in column 2 thereof.

Outside the Secretariat		
1.	Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above.	Chief Secretary in consultation with Establishment Department and Department concerned with the approval of the Chief Minister.
2.	Other officers in BPS-17 and above to be posted against scheduled posts, or posts normally held by the APUG, PCS(EG) and PCS(SG).	-do-
3.	Heads of Attached Departments and other Officers in B-19 & above in all the Departments.	-do-
In the Secretariat		
1.	Secretaries	Chief Secretary with the approval of the Chief Minister.
2.	Other Officers of and above the rank of Section Officers: a) Within the Same Department b) Within the Secretariat from one Department to another.	Secretary of the Department concerned. Chief secretary/Secretary Establishment.
3.	Officials up to the rank of Superintendent: a) Within the same Department b) To and from an Attached Department c) Within the Secretariat from one Department to another	Secretary of the Department concerned. Secretary of the Dept in consultation with Head of Attached Department concerned. Secretary (Establishment)

- xiii) While considering posting/transfer proposals all the concerned authorities shall keep in mind the following:

**ATTESTED**

*[Handwritten signature]*

To ensure the posting of proper persons on proper posts, the Performance Evaluation Report/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.

xiv) Government servants including District Govt. employees feeling aggrieved due to the orders of posting/transfer 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 posing/transfer or posting transfer in violation of the provisions of this policy.
- ii) Serious and grave personal (humanitarian) grounds.

2. 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 shown 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 Officers in BPS-17 and above posted in the District.	Provincial Government
4.	Official in BPS-16 and below	Executive District Officer in consultation with District Coordination Officer.

3. As per Rule 25(2) of the Rules mentioned 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.
- b) Require an officer to hold charge of more than one post for a period exceeding two months.

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

.....

All concerned are requested to ensure that tenures of the concerned officers/officials are invariably mentioned in summaries submitted to the Competent Authorities for Posting/Transfer.

{Authority: Letter No: SOR-VI/E&AD/1-4/2003 dated 24-6-2003}.

.....

It has been decided by the Provincial Government that posting/transfer orders of all the officers up to BS-19 except Heads of Attached Departments irrespective of grades will be notified by the concerned Administrative Departments with prior approval of the Competent Authority obtained on the Summary. The Notifications/orders should be issued as per specimen given below for guidance.

All posting/transfer orders of BS-20 and above and Heads of Attached Departments (HAD) shall be issued by the Establishment Department and the Administrative Departments shall send approved Summaries to E&A Department for issuance of Notifications.

*Handwritten signature and initials*

**VAKALATNAMA**

*Before the Khyber Pakhtunkhwa Service Tribunal*  
\_\_\_\_\_ OF 2018 *Peshawar*

Dr. Jehanzeb Dawar (APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

A.C.S FATA & Others (RESPONDENT)  
(DEFENDANT)

I/We Dr. Jehanzeb Dawar  
Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. \_\_\_\_/\_\_\_\_/2018

Jas  
CLIENT

ACCEPTED  
**NOOR MOHAMMAD KHATTAK**  
&  
**MUHAMMAD MAAZ MADNI**  
ADVOCATES

OFFICE:  
Flat No.3, Upper Floor,  
Islamia Club Building, Khyber Bazar,  
Peshawar City.  
Phone: 091-2211391  
Mobile No.0345-9383141

**BEFORE THE SERVICES TRIBUNAL**  
**KHYBER PAKHTUNKHWA PESHAWAR**

APPEAL No. 400/2018


Dr. Jehnazeb Dawar

.....Appellant

Versus

Additional Chief Secretary FATA & others ..... Respondents

S NO.	DETAIL	PAGE NO.	Description
1	Para wise Comments	1-3	
2	Affidavit	4	
3	Notification dated 22.03.2018	5	A
4	Order sheet dated 02.03.2018	6	B
5	Application for vacation of suspension order dated 29.03.2018	7	C

  
Faiz Muhammad  
Assistant Litigation,  
DHS FATA Peshawar.  
0301-8846252



**BEFORE THE SERVICES TRIBUNAL**  
**KHYBER PAKHTUNKHWA PESHAWAR**

APPEAL No. 400/2018

Dr. Jehnazeb Dawar ..... Appellant

Versus

Additional Chief Secretary FATA & others ..... Respondents

**Para wise comments on behalf of respondent No. 1, 2 & 3.**

**Respectfully Sheweth;**

**Preliminary objections**

1. That the appellant has concealed the facts that he has already granted an administrative post of Medical Superintendent AHQ Hospital Wana vide order dated 22.03.2018 (copy annexed at 'A').
2. That the appellant has got no locus standi to file the instant appeal.
3. That the appellant has not come to this Honorable Tribunal with clean hands
4. That the appellant has got no cause of action to file the instant petition.
5. That, the appeal is bad for non-joinder and mis-joinder of unnecessary parties.
6. That the impugned order is in accordance with section 10 of civil servant Act 1973.

**ON FACTS:**

1. Pertain to record.
2. Pertain to record.
3. Correct.
4. Correct.
5. Correct.
6. Correct to the extent of order dated 13.12.2017 in the light of interim relief (status quo) granted to the respondent No. 4 by the Khyber Pakhtunkhwa Service Tribunal vide order dated 02.03.2017 and the Respondent Department honored the

order dated 02.03.2017 and private respondent No. 4 was adjusted on his post as Agency Surgeon Wana and as the grievances of the respondent No. 4 was redressed by the Respondent Department, therefore, the private respondent No. 4 withdraw his case. Moreover, the respondent No. 4 has not completed his tenure on the post of Agency Surgeon SWA (copy of the order dated 02.03.2017 is annexed at 'B')

7. Pertain to record.
8. Incorrect, the instant appeal become infructuous due to the order dated 22.03.2018, and the appellant has no cause of action to file the instant appeal.


**ON GROUNDS:**

- A. Incorrect. The order dated 13.12.2017 was passed ~~is~~ in the light of status quo granted by this Honorable Tribunal vide order dated 02.03.2017, which is liable to be maintained.
- B. Incorrect, the appellant has been treated according to law and rules by the respondent department and not violated any article of the constitution of Pakistan 1973.
- C. Incorrect, the appellant was treated according to law and rules.
- D. Incorrect, the respondent department has been acted in accordance with law and rules. Moreover, the appellant was bond to serve any-where in the Province / FATA under section 10 of Khyber Pakhtunkhwa Service Tribunal Act 1973.
- E. Incorrect as replies in Para-D above.
- F. Incorrect, no discrimination has been made to the appellant by the respondent department and was treated in accordance with law and rules.
- G. Incorrect, the order dated 13.12.2017 has been passed in the pursuance of Honorable Court order dated 02.03.2017.
- H. Incorrect, the order dated 13.12.2017 has been passed in the pursuance of Honorable Court order dated 02.03.2017. Moreover, the present appeal becomes infructuous due to

passing of order dated 22.03.2018 by further posting / transfer of the appellant.

- I. That the respondent seek permission to advance other grounds and proof at the time of hearing.

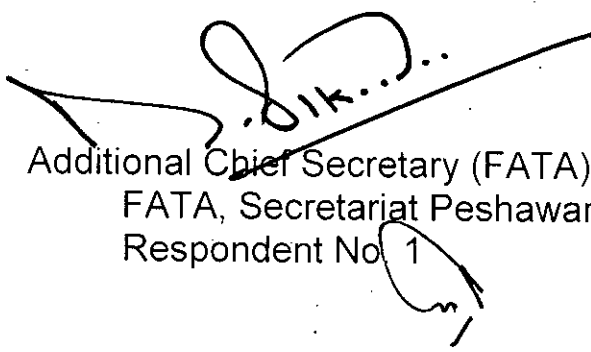
It is therefore most humbly prayed that the appeal in hand may kindly be dismissed with cost being meritless and wastage of precious time of the department.



Secretary SSD FATA  
FATA Secretariat Peshawar  
Respondent No. 2



Director Health Services,  
FATA, Peshawar  
Respondent No. 3



Additional Chief Secretary (FATA)  
FATA, Secretariat Peshawar  
Respondent No. 1

**BEFORE THE SERVICES TRIBUNAL**  
**KHYBER PAKHTUNKHWA PESHAWAR**

APPEAL No. 400/2018

Dr. Jehnazeb Dawar

.....Appellant

Versus

Additional Chief Secretary FATA & others ..... Respondents

**AFFIDAVIT**

I, **Faiz Muhammad**, Assistant Litigation, DHS FATA Peshawar, do hereby affirm & declare on oath on behalf of the respondents that the contents of the para wise comments are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Honorable Court.

DEPONENT



---

**Faiz Muhammad,**  
Litigation, Assistant  
DHS FATA, Peshawar.  
0301-8846252  
NIC No. 17301-8498414-1



Establishment Section

(Social Sectors Department)  
WARSAK ROAD PESHAWAR

Dated Peshawar 22-03-2018.

**NOTIFICATION.**

**No.FS/SSD/SO(H)/1-1/2018/57-81** The following postings/transfers of Officer of Directorate of Health Services FATA are hereby ordered with immediate effect in the best Public interest:-

S#	Name of Officer	From	To	Remarks
1	Dr. Nisar Ali (BS-19)	Waiting for posting	Medical Superintendent AHQ Hospital, Parachinar, Agency, Kurram	Against the vacant post.
2	Dr. Muhammad Ismail (BS-18)	SMO Orakzai Agency	Manager IVMP (Malaria Control Programme) FATA.	Against the vacant post.
3	Dr. Muhammad Shafiq Afridi (BS-18)	SMO Khyber Agency	Agency Surgeon, Khyber Agency.	Against the vacant post.
4	Dr. Muhammad Younas (BS-18)	SMO North Waziristan Agency	Agency Surgeon, North Waziristan Agency	Against Vice No.7
5	Dr. Jahanzeb (BS-18)	SMO AHQ Hospital Wana	In Charge, Medical Superintendent, AHQ Hospital Wana.	
6	Dr. Khalid Javed (BS-18)	Acting MS AHQ Hospital Landikotal, Khyber Agency	Medical Superintendent, AHQ Hospital Landikotal, Khyber Agency.	Against the vacant post
7	Dr. Inayat Ur Rahman (BS-17)	Agency Surgeon, North Waziristan Agency.	Medical Officer, AHQ Hospital Khar, Bajaur Agency	Against the vacant post

**Additional Chief Secretary (FATA)**

Dated 22-03-2018

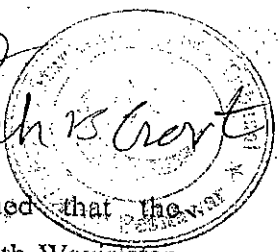
**Endst:of even No & Date.**

Copy to :-

1. Secretary Health Department Khyber Pakhtunkhwa, Peshawar.
2. Director Health Services FATA, Peshawar.
3. Accountant General (PR) Sub Office Peshawar
4. Medical Superintendent AHQ Hospital Khyber, Bajaur, Orakzai, North Waziristan, South Waziristan & Kurram Agencies.
5. Political Agents Khyber, Bajaur, Orakzai, North Waziristan, South Waziristan & Kurram Agencies
6. Agency Surgeons Khyber, Bajaur, Orakzai, North Waziristan, South Waziristan & Kurram Agencies
7. Agency Accounts Officers Khyber, Bajaur, Orakzai, North Waziristan, South Waziristan & Kurram Agencies
8. PS to ACS FATA
9. PS to Secretary (SSD)
10. Officers concerned.

*[Signature]*  
Section Officer (Health)

Appeal No. 207/2017  
Dr. Ratin Nawaz Shah vs Govt



23.2017

Counsel for the appellant argued that the appellant is serving as Agency Surgeon South Waziristan Agency where he was posted on 31.05.2016. That vide impugned order dated 18.11.2016. He was transferred from the said post to the post of Medical Officer North Waziristan Agency where-against he preferred departmental representation on 23.11.2017 which was not responded despite directions of the Hon'ble High Court and hence the instant service appeal on 28.2.2017.

That the impugned order is premature and against the policy of the government including circular dated 27.2.2013 wherein it is laid down that ordinary tenures shall be 2 years. That the appellant has not yet relinquished the charge of the post of Agency Surgeon South Waziristan Agency.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 22.3.2017 before S.B. Status quo be maintained.

Certified to be true copy  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Chairman

Date of Presentation of ..... 02-03-17

Number of Vols. .... 800

Copying Fee ..... 500

Urgent ..... 2/1

Total ..... 1300

Name of Copy ..... [Signature]

Date of Copying ..... 02-03-17

Date of Delivery ..... 02-03-17

**BEFORE THE SERVICES TRIBUNAL**  
**KHYBER PAKHTUNKHWA PESHAWAR**

**APPEAL No. 400/2018**

Dr. Jehnazeab Dawar

..... Appellant

Versus


Additional Chief Secretary FATA & others ..... Respondents

**APPLICATION FOR VACATION OF OPERATION OF IMPUGNED ORDER DATED 29.03.2018.**

**R/SHEWETH:**

1. No comments.
2. Incorrect. The impugned transfer order dated 13.12.2017 was passed in the pursuance of status quo granted in the favor of the Respondent No. 4 vide order dated 02.03.2017. Moreover, the instant appeal is infructuous on the basis of order dated 22.03.2018 wherein the appellant has been transferred and posted as Medical Superintendent AHQ Hospital Wana, SWA.
3. Incorrect, the present appeal is infructuous as the appellant has been further transferred vide order dated 22.03.2018. Moreover, the three ingredients necessary for vacation of suspension order dated 29.03.2018 in favor of the Respondent No. 4.

It is, therefore, most humbly prayed that the suspension order dated 29.03.2018 may kindly be vacated with cost.

  
Secretary, SSB FATA  
FATA Secretariat Peshawar  
Respondent No. 2

  
Director Health Services,  
FATA Peshawar  
Respondent No. 3

  
Additional Chief Secretary (FATA)  
FATA, Secretariat Peshawar  
Respondent No. 1

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

**Service Appeal No. 400/2018**

Dr. Jehanzeb

VS

Health Deptt:

.....  
**REPLY ON BEHALF OF RESPONDENT NO.4**  
.....

**RESPECTFULLY SHEWETH:**

**Preliminary Objections:**

1. The appellant has no locus standi and cause of action.
2. The appellant has not come with clean hands.
3. The appeal is time barred.
4. The appeal is bad for non-joinder and mis-joinder of parties.
5. The appeal is not maintainable as the appellant was further transferred vide order dated 22.03.2018 and as such the instant appeal is infructious.

**FACTS:**

1. First portion of para 1 is admitted correct hence no comments while the rest of para is incorrect as certain complaint has been filed against the appellant in which the Governor KPK directed for thorough departmental inquiry into allegations against the appellant and subsequently reference in the NAB for initiating appropriate action against the appellant which is evident from the note sheet dated 10.12.2015. **(Copy of note sheet dated 10.12.2015 is attached as Annexure-A)**
2. Pertain to record.
3. Pertain to record.
4. Pertain to record.
5. Correct, however the honorable Tribunal granted status quo in the favour of the respondent No. 4 vide order dated 02.03.2017. **(Copy of order dated 02.03.2017 is attached as Annexure-B)**



6. Order dated 13.12.2017 was passed by the respondent department in the pursuance of interim relief (Status Quo) granted by KPK Service Tribunal on 02.03.2017 in the favour of respondent NO.4 and as the grievance of respondent No.4 was redressed by the passing the order dated 13.12.2017 therefore he withdraw his case. Moreover respondent No. 4 has not completed his tenure on the post of Agency Surgeon SWA.
7. Pertain to record.
8. Incorrect. The instant appeal is infructious. due to the order dated 22.03.2018 and the appellant has no cause of action to file the instant appeal. **Copy of order dated 22.03.2018 is attached s Annexure-C)**

#### **GROUND:**

- A. Incorrect. The impugned order dated 13.12.2017 was passed in the pursuance of order dated 02.03.2017 of this august Tribunal and is accordance with law, facts norms of natural justice and materials on record, hence liable to maintain.
- B. Incorrect. The appellant has been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondent department has not violated any Article of the Constitution of Pakistan 1973.
- C. Incorrect. The impugned orders dated 13.12.2017 was passed in the pursuance of order dated 02.03.2017 of this august Tribunal and no violation of fundamental right has been made by the respondent department.
- D. Incorrect. The respondents department acted in accordance with law and rules. Moreover the appellant is bound to serve anywhere in the province/FATA under section-10 of the KPK, Civil Servant Act 1975.
- E. Incorrect. As replied in para D above.
- F. Incorrect. The respondents department has not discriminated the appellant and has passed the order dated 13.12.2017 in the pursuance of order dated 02.03.2017 of this august Tribunal.
- G. Incorrect. The grievance of respondent No.4 was redressed by passing the order dated 13.12.2017, therefore he private respondent withdraw his case. Moreover order 13.12.2017 is still in filed and as such the order dated 13.12.2017 has not became ineffective.

Furthermore the instant appeal is infructious by passing the order dated 22.03.2018.

- H. Incorrect. The impugned orders dated 13.12.2017 was passed in the pursuance of order dated 02.03.2017 of this august Tribunal which is liable to be maintain.
- I. Respondent No.4 also seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly prayed that the appeal in hand may be dismissed with cost.

**Respondent No.4**

Through:



**TAIMUR ALI KHAN  
(ADVOCATE HIGH COURT)**

**AFFIDAVIT**

It is affirmed and declared that the contents of reply are true and correct to the best of my knowledge and belief and nothing has been concealed from the Hon'able Tribunal.



DEPONENT

12/4/18  
**Javed Muhammad**  
Advocate High Court  
Oath Commissioner  
Distt: Court Peshawar.

**BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA**

**Service Appeal No. 400/2018**

Dr. Jehnazeb Dawar ..... Appellant

**Versus**

Additional Chief Secretary FATA & others..... Respondents.

**REPLY ON APPLICATION FOR VACATION  
OF SUSPENSION ORDER DATED 29.03.2018.**

1. No comments.
2. Incorrect. The impugned transfer order dated 13.12.2017 was passed in the pursuance of status quo granted in the favor of the Respondent No. 4 vide order dated 02.03.2017. Moreover, the instant appeal is infructuous on the basis of order dated 22.03.2018 wherein the appellant has been transferred and posted as Medical Superintendent AHQ Hospital Warina, SWA.
3. Incorrect. The present appeal is infructuous as the appellant has been further transferred vide order dated 22.03.2018. Moreover, the three ingredients necessary for vacation of suspension order dated 29.03.2018 in favor of the Respondent No. 4.

It is, therefore, most humbly prayed that suspension order dated 29.03.2018 may kindly be vacated.

THROUGH

APPELLANT



(TAIMUR ALI KHAN)  
ADVOCATE HIGH COURT

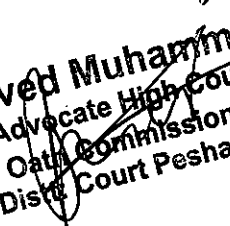
AFFIDAVIT

It is affirmed and declared that reply on application is true and correct to the best of my knowledge and belief and nothing has been concealed from the Hon'able Tribunal.



DEPONENT

12/7/18

  
Javed Muhammad  
Advocate High Court  
Oath Commissioner  
Distt Court Peshawar.

NOTE FOR ADDITIONAL CHIEF SECRETARY, F.A.T.A

A

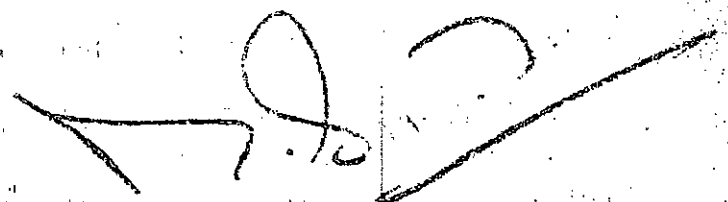
VISIT OF THE GOVERNOR TO WANA, SOUTH WAZIRISTAN  
AGENCY DATED 26.11.2015

During the subject visit, consequent upon various public/local complaints against the Agency Surgeon, the Governor had directed for immediate removal of the incumbent Agency Surgeon. FATA Secretariat processed the case

Now, Mr. Ghalib Khan (MNA-SWA) alongwith Mr. Mehmood Bittani visited the Hon'ble Governor and clarified that the said complaints were actually against the former Agency Surgeon Dr. Jehanzeb Khan and not against the incumbent Agency Surgeon Dr. Esa Khan who had, in fact, assumed the charge just few days before the subject visit of the Hon'ble Governor.

After cognizance of the factual situation, the Hon'ble Governor has directed that Dr. Esa Khan shall be reinstated and posted as Agency Surgeon Wana. Furthermore, the Governor has directed for thorough departmental inquiry into allegations against the former Agency Surgeon and subsequent reference in the National Accountability Bureau for initiating appropriate action against him.

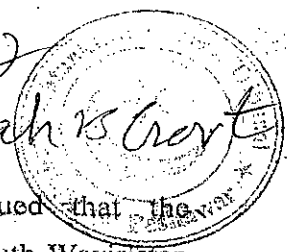
It is requested that further necessary action may be taken in the matter and compliance report be submitted to this Secretariat for perusal of the Governor please.



Principal Secretary to Governor  
10 December 2015

BB

Appeal No. 207/2017  
Dr. Rahim Nawaz Shah vs Govt



2.3.2017

Counsel for the appellant argued that the appellant is serving as Agency Surgeon South Waziristan Agency where he was posted on 31.05.2016. That vide impugned order dated 18.11.2016. He was transferred from the said post to the post of Medical Officer North Waziristan Agency where-against he preferred departmental representation on 23.11.2017 which was not responded despite directions of the Hon'ble High Court and hence the instant service appeal on 28.2.2017.

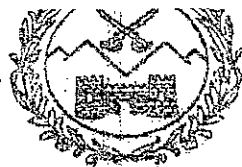
That the impugned order is premature and against the policy of the government including circular dated 27.2.2013 wherein it is laid down that ordinary tenures shall be 2 years. That the appellant has not yet relinquished the charge of the post of Agency Surgeon South Waziristan Agency.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 22.3.2017 before S.B. Status quo be maintained.

Certified to be true copy  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Chairman

Date of Presentation of Petition 02-03-17  
Number of Wards 800  
Copying Fee  
Urgent  
Total  
Name of Counsel  
Date of Completion 02-03-17  
Date of Delivery 02-03-17



Establishment Section

(Social Sectors Department)  
WARSAK ROAD PESHAWAR

Dated Peshawar 22-03-2018.

**NOTIFICATION.**

No.FS/SSD/SO(H)/1-1/2018/ 57-81 The following postings/transfers of Officer of Directorate of Health Services FATA are hereby ordered with immediate effect in the best Public interest:-

S#	Name of Officer	From	To	Remarks
1	Dr. Nisar Ali (BS-19)	Waiting for posting	Medical Superintendent AHQ Hospital, Parachinar, Kurram Agency.	Against the vacant post.
2	Dr. Muhammad Ismail (BS-18)	SMO Orakzai Agency	Manager IVMP (Malaria Control Programme) FATA.	Against the vacant post.
3	Dr. Muhammad Shafiq Afridi (BS-18)	SMO Khyber Agency	Agency Surgeon, Khyber Agency.	Against the vacant post.
4	Dr. Muhammad Younas (BS-18)	SMO North Waziristan Agency	Agency Surgeon, North Waziristan Agency	Against Vice No.7
5	Dr. Jahanzeb (BS-18)	SMO AHQ Hospital Wana	In Charge, Medical Superintendent, AHQ Hospital Wana.	
6	Dr. Khalid Javed (BS-18)	Acting MS AHQ Hospital Landikotal, Khyber Agency	Medical Superintendent, AHQ Hospital Landikotal, Khyber Agency.	Against the vacant post
7	Dr. Inayat Ur Rahman (BS-17)	Agency Surgeon, North Waziristan Agency.	Medical Officer, AHQ Hospital Khan Bajaur Agency	Against the vacant post.

**Additional Chief Secretary (FATA)**

**Endst:of even No & Date.**

Dated 22-03-2018

Copy to :-

1. Secretary Health Department Khyber Pakhtunkhwa, Peshawar.
2. Director Health Services FATA, Peshawar.
3. Accountant General (PR) Sub Office Peshawar
4. Medical Superintendent AHQ Hospital Khyber, Bajaur, Orakzai, North Waziristan, South Waziristan & Kurram Agencies.
5. Political Agents Khyber, Bajaur, Orakzai, North Waziristan, South Waziristan & Kurram Agencies
6. Agency Surgeons Khyber, Bajaur, Orakzai, North Waziristan, South Waziristan & Kurram Agencies
7. Agency Accounts Officers Khyber, Bajaur, Orakzai, North Waziristan, South Waziristan & Kurram Agencies
8. PS to ACS FATA
9. PS to Secretary (SSD)
10. Officers concerned.

*[Signature]*  
Section Officer (Health)

OFFICE OF THE MEDICAL SUPERINTENDENT  
AHQ HOSPITAL WANA SOUTH WAZIRISTAN

No.

NO-1

Date: Wana the 16/04/2018

The Director Health Services  
FATA Peshawar

Subject: **Charge Report of MS AHQ Hospital Wana SWA.**

Dear Sir

With reference the Additional Chief Secretary FATA Notification No.

FS/SS/ISO (H)/1-1/2018/51-51 dated 22-03-2018

I Dr. Jahanzeb Khan SMO BS-18 has assumed the Charge of Medical  
Superintendent AHQ Hospital Wana South Waziristan Agency, from on 15/04/2018  
FN

Necessary Charge Reports Forms are enclosed herewith in triplicate for  
your kind information and favour of further necessary action please

(Dr. Jahanzeb Khan)  
Medical Superintendent  
AHQ Hospital Wana S-W Agency

No.

103

NO-1

Copy to the:-

- 1- Political Agent S-W Agency at Tank / Wana
- 2- Assistant Political Agent Wana S-W Agency  
For information please
- 3- Manager National Bank of Pakistan Tank
- 4- Manager National of Pakistan Wana (2000)
- 5- Manager United Bank Limited Wana (0881)
- 6- Agency Account Officer S-W Agency at Tank  
Along with Specimen Signature, for information and necessary action please
- 7- Officer concerned.

8- Agency Surgeon Wana SWA

(Dr. Jahanzeb Khan)  
Medical Superintendent  
AHQ Hospital Wana S-W Agency



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

No 1135 /ST

Dated 31 /05/2018


To

The Director Health Services (FATA),  
FATA Secretariat, Warsak Health,  
Government of Khyber Pakhtunkhwa,  
Peshawar.

Subject: **ORDER/JUDGEMENT IN APPEAL NO. 400/2018, MR. JEHANZEB DAWAR.**

I am directed to forward herewith a certified copy of Judgment/Order dated 16/05/2018 passed by this Tribunal on the above subject for strict compliance.

**Encl: As above**

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.



# VAKALAT NAMA

NO. \_\_\_\_\_/20

IN THE COURT OF Service Tribunal KPIC Peshawar

Dr. Jehanzeb (Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Aes PATA cid other (Respondent)  
(Defendant)

I/we Dr. Rahim Nawaz Khan R# 4

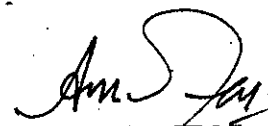
Do hereby appoint and constitute **M. Asif Yousafzai, Advocate, Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.


I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated \_\_\_\_\_/20

  
( CLIENT )

ACCEPTED

  
**M. ASIF YOUSAFZAI**  
Advocate

  
**TAIMUR ALI KHAN**  
1 Advi

**M. ASIF YOUSAFZAI**  
Advocate High Court,  
Peshawar.

**OFFICE:**

Room No.1, Upper Floor,  
Islamia Club Building,  
Khyber Bazar Peshawar.  
Ph.091-2211391-  
0333-9103240



Establishment Section

(Social Sectors Department)  
**WARSAK ROAD PESHAWAR**

Dated Peshawar 22-03-2018.

**NOTIFICATION.**

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7	Dr. Inayat Ur Rahman (BS-17)	Agency Surgeon, North Waziristan Agency.	Medical Officer, AHQ Hospital Khar, Bajaur Agency	Against the vacant post.

**Additional Chief Secretary (FATA)**

**Dated 22-03-2018**

**Endst. of even No & Date.**

Copy to :-

1. Secretary Health Department Khyber Pakhtunkhwa, Peshawar.
2. Director Health Services FATA, Peshawar.
3. Accountant General (PR) Sub Office Peshawar
4. Medical Superintendent AHQ Hospital Khyber, Bajaur, Orakzai, North Waziristan, South Waziristan & Kurram Agencies.
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8. PS to ACS FATA
9. PS to Secretary (SSD)
10. Officers concerned.

*[Signature]*  
Section Officer (Health)