

08.02.2019

Counsel for the appellant, Addl. AG alongwith Hazrat Shah, Superintendent for the official respondents and counsel for private respondent No. 6 present.

It is not disputed that the order dated 10.01.2019 conveying the withdrawal of office order No. 24794-97/DHS/Admn dated 22.10.2018 has been issued by the authority competent for the purpose.

The appeal in hand is essentially against the order dated 22.10.2018, whereby, the appellant was transferred vice respondent No. 6. Against the said order a departmental appeal was preferred by the appellant on 31.10.2018 which was regretted on 14.11.2018. The appeal in hand was thereafter preferred, wherein, it is prayed that the order dated 22.10.2018 be set aside being illegal and without proper authority. It is further noted in the prayer that the appellant be allowed to serve in A.H.Q

Hospital, Parachinar under his posting order dated 14.07.2017.

In the circumstances, the appeal in hand appears to have become infructuous as the impugned order has already been recalled. The same is disposed of accordingly.



Chairman

ANNOUNCED
08.02.2019

Appeal No. 1429/2018

18.1.2019

Appellant in person, Addl. AG alongwith Hazrat Shah, Superintendent for official respondents and counsel for private respondent No. 6 present.

The appellant has deposited costs of Rs. 2000/- and requests for adjournment on account of non-availability of his learned counsel who is expected to return today from abroad. He has also produced copy of letter dated 10.01.2019 , whereby, Section Officer (E-V) Health Department has informed Director Health Services Tribal Districts, Peshawar regarding withdrawal of office order No. 24794-97/DHS/Admn. dated 22.10.2018 by the competent authority.

Adjourned to 08.02.2019 on which date further proceedings in the appeal in hand, after issuance of letter dated 10.01.2019, shall also be argued.

Chairman



26.12.2018

Appellant present. Private respondent with counsel present. appellant seeks adjournment on the ground that his counsel is not in attendance. Adjourn. Last opportunity is granted. Notice be issued to the official respondents for 08.01.2019 with direction to furnish reply/comments. ~~Adjourn~~ To come up for further proceedings on the date fixed before S.B. The ad-interim relief granted to the appellant vide preceding order sheet is extended till the next already fixed.


Member

08.1.2019

Mr. Laiq Hussain father of appellant present. nemo for official respondents. Mr. Amanullah for respondent No. 5 present.

There is yet another application for adjournment on behalf of the appellant who was given last opportunity on 26.12.2018. The application is allowed on payment of cost of Rs. 2000/- to be paid on next date of hearing. Adjourned to 18.01.2019. Notices be repeated to respondents No. 1 & 4 for the next date. The interim relief granted to the appellant on 07.12.2018 shall remain operative till next date.


Chairman

Dr. Ashfaq Hussain

07.12.2018

Appellant alongwith counsel and Mr. Muhammad Jan,
Deputy District Attorney for the respondents present.

In pursuance to this Tribunal order dated 30.11.2018, the
appellant has submitted amended memo. of appeal which is
placed on file.

In support of application for suspension of the impugned
order, it is contended that while issuing the impugned order
not only the tenure of appellant at his last place of posting
was disregarded but also the impugned transfer order was
issued by an incompetent authority i.e. Director Health
Services Tribal District, Peshawar which was violative of
posting/transfer policy of the Provincial Government. The
latter provided that the competent authority for transfer of
officers in BPS-17 and above, posted in the district, was the
Provincial Government.

As the appeal in hand has already been admitted for
regular hearing and in view of the above averments the
appellant had a prima-facie case, the operation of impugned
order dated 22.10.2018 is suspended till next date of hearing.
The respondents shall furnish reply/comments to the amended
appeal as well as application for interim relief. Adjourned to
26.12.2018 on which date the application for interim relief
shall be argued.


Chairman

30.11.2018

Learned counsel for the appellant present. preliminary arguments heard.

Being aggrieved against the transfer posting order dated 22.10.2018 the appellant (Dental Surgeon) has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974.

Learned counsel for the appellant argued inter-alia that the impugned posting transfer order is premature and against the transfer/posting policy.

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The FATA has been merged in the Khyber Pakhtunkhwa Province. As such the appellant is directed to furnish amended appeal with correct nomenclature of the respondents alongwith security and process fee within a week and thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 07.12.2018 before S.B




Appellant Deposited
Security & Process Fee


Member

Form- A
FORM OF ORDER SHEET.

Court of _____

Case No. 1429/2018


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/11/2018	<p>The appeal of Dr. Ashfaq Hussain resubmitted today by Mr. Mumtaz Ahmad Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 27/11/18</p>
2-	28/11/2018.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>29/11/2018.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
29	11.2018	<p>Appellant with counsel present. Learned counsel for the appellant seeks adjournment to furnish the transfer posting order of the July 2017 and the documents in respect of earlier litigation before Hon'ble Peshawar High Court Peshawar. Adjourn. To come up for preliminary hearing tomorrow i.e. on 30.11.2018 before S.B.</p> <p style="text-align: right;"> Member</p>

This is an appeal filed by Dr. Ashfaq Hussain today on 22/11/2018 against the order dated 22/10/2018 against which he preferred/made departmental appeal/ representation on 31.10.2018 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 reported as 2005-SCMR-890.

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

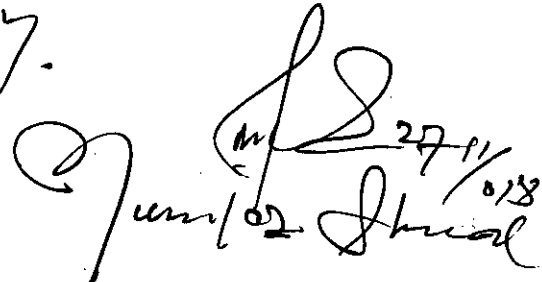
No. 2270/ST,

Dt. 23-11/2018

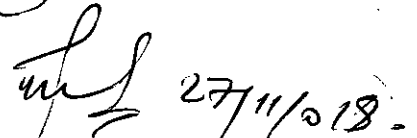

REGISTRAR 23/11/18
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Mumtaz Ahmad Adv. Pesh.

*Sir resubmitted this one compl-
tains accordingly.*


Mumtaz Ahmad
Adv.

*Sir, regretted Order of respondent is
annexed on page No 15-A the appeal in
hand is mature and will within time
hence re-submitted for consideration
accordingly.*


27/11/18.

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

**Khyber Pakhtukhwa
Service Tribunal**

Amended Service Appeal No. 1429 /2018.

Diary No. 2203

Date 4-12-2018

Dr. Ashfaq Hussain (Dental Surgeon) Son of Laiq Hussain
R/o Shalo Zai, Parachinar, District Kurram.....**Appellant**

V E R S U S

- 1) Medical Superintendent, D.H.Q Hospital, Parachinar
District Kurram
- 2) Agency Surgeon Lower & Central District Kurram
- 3) Director Health Services Tribal Districts
- 4) Secretary Health Khyber Pakhtunkhwa, Civil
Secretariat, Peshawar
- 5) Director General Health Services, Khyber
Pakhtunkhwa, Khyber Road, Peshawar
- 6) Hassan Jan, Dental Surgeon, Tehsil Headquarter
Hospital, Alizai District Kurram (through DHO District
Kurram)**Respondents**

AMENDED APPEAL UNDER SECTION 4 OF
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
ACT 1974 AGAINST THE IMPUGNED ORDER
DATED 22.10.2018, WHEREIN THE SERVICES
OF THE APPELLANT WERE TRANSFERRED
FROM DHQ PARACHINAR TO THQ ALIZAI,
DISTRICT KURRAM

Appellant Deposited
Security & Process Fee
8/12/18

Respectfully Sheweth:-

Brief facts of the instant appeal are as under:

1. That the appellant was appointed as Surgeon in 2011.
2. That the appellant was transferred from THQ Hospital Alizai to AHQ, Hospital Parachinar vide order dated 14.07.2017. (Copy of Order dated 14.07.2017 is attached as annexure "A").
3. That surprisingly soon after about 1 year the respondent No.2 transferred again the appellant prematurely vide order dated 22.10.2018. (Copy of the impugned notification dated 22.10.2018 is attached as annexure "B").
4. That the appellant then filed departmental representation before the respondent no.2 and 3 however these appeals were regretted/declined vide order dated 23.10.2018. (Copy of the Departmental Appeal & Departmental order are attached as annexure "C").
5. That instant amended appeal is filed on direction of Hon'ble Tribunal vide order dated 30.11.2018 with

fresh nomenclature of respondents No.1 to 3 accordingly.

6. That the appellant now left with no choice but to approach this Hon'ble Tribunal inter alia, on the following grounds amongst others:

GROUND S:-

- A. That the impugned order of the respondent No.2 is against the settled procedure of Service Law and facts which is liable to be set aside.
- B. That the impugned order dated 22.10.2018 itself speak malafide on the part of respondent No.2.
- C. That apparently the impugned order dated 22.10.2018 is against the pronouncement of the Superior Courts judgments regarding political involvement of the public representative in the Government Department.
- D. That legally respondent no 2 is not authorized to issue any transfer order a sunder the policy / rules only the provincial government is authorized to issue transfer / posting order in BPS -17 and above, hence the impugned order being illegal, unauthorized and void ab initio, needs to be reversed accordingly.

- E. That the appellant has only served about 1 years and now has been transferred which is premature and against the settled norms of the tenure of transfer of a Civil Servant.
- F. That the appellant has till date served with full devotion and vigor and to the entire stratification of his high-ups but despite the fact his services has been transferred without assigning any reasons and against the transfer/posting policy specially of the employee of the far flung area, hence the impugned order dated 22.10.2018 is needs to be reverse by allowing him to continue his duty in AHQ Hospital Parachinar by restoring the order dated 14.07.2017.
- G. That the impugned order is against the general procedure of Transfer and Posting envisaged in the transfer/posting policy of the Civil Servants.
- H. That legally the respondent No.2 is not authorized to transfer the appellant to far flung area without prior permission from the Secretary Health (Respondent No.3) hence the impugned order needs to be revesed accordingly.

I. That any other grounds will be raised at the time of arguments with the prior permission of this Hon'ble Tribunal

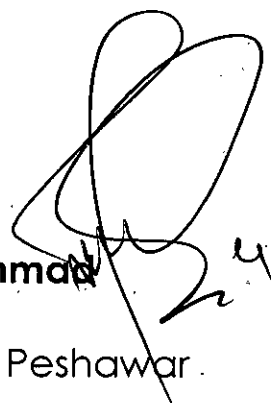
It is, therefore, humbly prayed that By acceptance of this instant Service Appeal the impugned order dated 22.10.2018 and departmental regretting order of respondent No.2 & 3 may kindly be set aside (being premature), illegal, unauthorized and without lawful authority and appellant be allowed to serve in AHQ Hospital Parachinar as per order dated 14.07.2017 accordingly by restoring the order dated 14.07.2017.

Through

Appellant

Mumtaz Ahmad
Advocate,
High Court Peshawar.

Dated 04.12.2018



4/12/18

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Amended Service Appeal No. _____/2018

Dr. Ashfaq Hussain (Dental Surgeon).....**Appellant**

V E R S U S

Medical Superintendent, D.H.Q Hospital, Parachinar
District Kurram & others.....**Respondents**

ADDRESSES OF PARTIES

APPELLANT:

Dr. Ashfaq Hussain Son of Laiq Hussain
R/o Shalo Zai, Parachinar, District Kurram

RESPONDENTS:-

- 1) Medical Superintendent, D.H.Q Hospital, Parachinar
District Kurram
- 2) Agency Surgeon Lower & Central District Kurram
- 3) Director Health Services Tribal Districts
- 4) Secretary Health Khyber Pakhtunkhwa, Civil Secretariat,
Peshawar
- 5) Director General Health Services, Khyber Pakhtunkhwa,
Khyber Road, Peshawar
- 6) Hassan Jan, Dental Surgeon, Tehsil Headquarter Hospital,
Alizai District Kurram (through DHO District Kurram)

Appellant
Through

Mumtaz Ahmad
Advocate,
High Court Peshawar

Dated 04.12.2018



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

No.SOH(EV)6-276/2018/Dr. Ashfaq Hussain
Dated Peshawar the 10TH January-2019

To
The Director Health Services
Tribal Districts, Peshawar

Subject : **REQUEST FOR CANCELLATION ORDER**

I am directed to refer to the subject noted above and to enclose herewith a copy of application in respect of Dr. Ashfaq Hussain Dental Surgeon (BS-17) attached to AHQ Hospital, Parachinar and the competent Authority has been pleased to withdraw the office order No. 24794-97/DHS/Admin dated 22.10.2018 under intimation to this department.


(HAMID IQBAL)
SECTION OFFICER (E-V)

Copy for information to:

1. PS to Secretary Health Department
2. PA to DS (Admn) Health Department


SECTION OFFICER (E-V)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. 1429 /2018

Dr. Ashfaq Hussain (Dental Surgeon).....**Appellant**

V E R S U S

District Health Services Officer, Tribal District (District Kurram Parachinar) & others.....**Respondents**

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Service Appeal		1-5
2.	Affidavit		6
3.	Application for suspension		7-8
4.	Affidavit		9
5.	Addresses of Parties		10
6.	Copy of Order dated 14.07.2017	A	11-12
7.	Copy of the impugned notification dated 22.10.2018	B	13-13-A
8.	Copy of the Departmental Appeal & Departmental order <i>9 Policy.</i>	C	14-27
9.	Wakalatnama		26

Through 
Appellant

Through

Dated 20.11.2018

Mumtaz Ahmad
Advocate
High Court Peshawar
Cell.No.0333-911816

D

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 1429/2018

Diary No. 1668

Dated 22/11/2018

Dr. Ashfaq Hussain (Dental Surgeon) Son of Laiq Hussain
R/o Shalo Zai, Parachinar, District Kurram.....**Appellant**

V E R S U S

- 1) District Health Services Officer, Tribal District (District Kurram Parachinar)
- 2) Director Health Services Tribal District (District Kurram Parachinar)
- 3) Secretary Health Khyber Pakhtunkhwa, Civil Secretariat, Peshawar
- 4) Director General Health Services, Khyber Pakhtunkhwa, Khyber Road, Peshawar
- 5) Hassan Jan, Dental Surgeon, Tehsil Headquarter Hospital, Alizai District Kurram (through DHO District Kurram)**Respondents**

APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT
1974 AGAINST THE IMPUGNED ORDER
DATED 22.10.2018, WHEREIN THE SERVICES
OF THE APPELLANT WERE TRANSFERRED
FROM DHQ PARACHINAR TO THQ ALIZAI,
DISTRICT KURRAM

Filed to-day

[Signature]
Registrar
22/11/18

Re-submitted to -day
and filed.

[Signature]
Registrar
27/11/18

2

Respectfully Sheweth:-

Brief facts of the instant appeal are as under:

1. That the appellant was appointed as Surgeon in 2014.
2. That the appellant was transferred from THQ Hospital Alizai to AHQ, Hospital Parachinar vide order dated 14.07.2017. (Copy of Order dated 14.07.2017 is attached as annexure "A").
3. That surprisingly soon after about 1 year the respondent No.2 transferred again the appellant prematurely vide order dated 22.10.2018. (Copy of the impugned notification dated 22.10.2018 is attached as annexure "B").
4. That the appellant then filed departmental representation before the respondent no.2 and 3 however these appeals were regretted/declined vide order dated 23.10.2018. (Copy of the Departmental Appeal & Departmental order are attached as annexure "C").
5. That the appellant now left with no choice but to approach this Hon'ble Tribunal inter alia, on the following grounds amongst others:

3

G R O U N D S :-

- A. That the impugned order of the respondent No.2 is against the settled procedure of Service Law and facts which is liable to be set aside.
- B. That the impugned order dated 22.10.2018 itself speak malafide on the part of respondent No.2.
- C. That apparently the impugned order dated 22.10.2018 is against the pronouncement of the Superior Courts judgments regarding political involvement of the public representative in the Government Department.
- D. That legally respondent no 2 is not authorized to issue any transfer order a sunder the policy / rules only the provincial government is authorized to issue transfer / posting order in BPS -17 and above, hence the impugned order being illegal, unauthorized and void ab initio, needs to be reversed accordingly.
- E. That the appellant has only served about 1 years and now has been transferred which is premature and against the settled norms of the tenure of transfer of a Civil Servant.

4

- F. That the appellant has till date served with full devotion and vigor and to the entire stratification of his high-ups but despite the fact his services has been transferred without assigning any reasons and against the transfer/posting policy specially of the employee of the far flung area, hence the impugned order dated 22.10.2018 is needs to be reverse by allowing him to continue his duty in AHQ Hospital Parachinar by restoring the order dated 14.07.2017.
- G. That the impugned order is against the general procedure of Transfer and Posting envisaged in the transfer/posting policy of the Civil Servants.
- H. That legally the respondent No.2 is not authorized to transfer the appellant to far flung area without prior permission from the Secretary Health (Respondent No.3) hence the impugned order needs to be revesed accordingly..
- I. That any other grounds will be raised at the time of arguments with the prior permission of this Hon'ble Tribunal

S

It is, therefore, humbly prayed that By acceptance of this instant Service Appeal the impugned order dated 22.10.2018 and departmental regretting order of respondent No.2 & 3 may kindly be set aside (being premature), illegal, unauthorized and without lawful authority and appellant be allowed to serve in AHQ Hospital Parachinar as per order dated 14.07.2017 accordingly by restoring the order dated 14.07.2017.

Appellant

Through

Mumtaz Ahmad
Advocate,
High Court Peshawar

Dated 20.11.2018

29/11/18

6

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. _____/2018

Dr. Ashfaq Hussain (Dental Surgeon).....**Appellant**

VERSUS

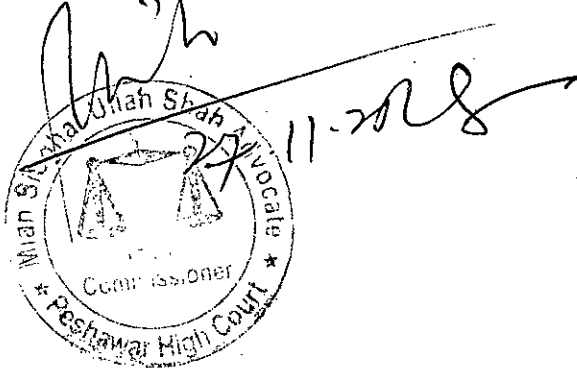
District Health Services Officer, Tribal District (District Kurram Parachinar) & others.....**Respondents**

AFFIDAVIT

I, Dr. Ashfaq Hussain Son of Laiq Hussain R/o Shalo Zai, Parachinar, District Kurram, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.


DEPONENT

ATTESTED



7

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No: _____/2018

Dr. Ashfaq Hussain (Dental Surgeon).....Appellant

V E R S U S

District Health Services Officer, Tribal District (District Kurram Parachinar) & others.....Respondents

APPLICATION FOR SUSPENSION OF THE
OPERATION OF IMPUGNED ORDER DATED
22.10.2018 TILL THE FINAL DECISION OF THE
ACCOMPANYING SERVICE APPEAL

Respectfully Sheweth:

1. That the above noted service appeal is being filed before this Hon'ble Tribunal, in which no date of hearing has yet been fixed.
2. That the applicant/ appellant has got a good prima facie and arguable case and is sanguine about its success.
3. That the balance of convenience also lies in favour of the applicant/ appellant.

8

4. That if the operation of impugned transfer order is not suspended, then the applicant/ appellant would suffer irreparable loss.
5. That the facts and reasons stated in the accompanying service appeal may please be read integral part of this application

It is, therefore, respectfully prayed that on acceptance of this application, the operation of impugned order dated 22.10.2018 may kindly be suspended, till the final decision of the case.

Through

Appellant

Dated 20.11.2018

Mumtaz Ahmad
Advocate,
High Court Peshawar

9

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. _____/2018

Dr. Ashfaq Hussain (Dental Surgeon).....**Appellant**

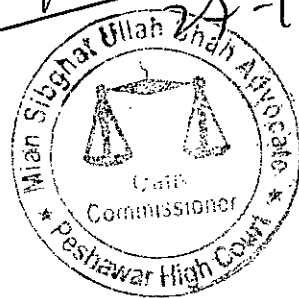
VERSUS

District Health Services Officer, Tribal District (District Kurram Parachinar) & others.....**Respondents**

AFFIDAVIT

I, Dr. Ashfaq Hussain Son of Laiq Hussain R/o Shalo Zai, Parachinar, District Kurram, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Ashfaq Hussain
Sec-11-2018



Ashfaq Hussain
DEPONENT

10

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. _____/2018

Dr. Ashfaq Hussain (Dental Surgeon).....**Appellant**

V E R S U S

District Health Services Officer, Tribal District (District Kurram Parachinar) & others.....**Respondents**

ADDRESSES OF PARTIES

APPELLANT:

Dr. Ashfaq Hussain Son of Laiq Hussain
R/o Shalo Zai, Parachinar, District Kurram

RESPONDENTS:-

- 1) District Health Services Officer, Tribal District (District Kurram Parachinar)
- 2) Director Health Services Tribal District (District Kurram Parachinar)
- 3) Secretary Health Khyber Pakhtunkhwa, Civil Secretariat, Peshawar
- 4) Director General Health Services, Khyber Pakhtunkhwa, Khyber-Road, Peshawar
- 5) Hassan Jan, Dental Surgeon, Tehsil Headquarter Hospital, Alizai District Kurram (through DHO District Kurram)

Through

Appellant

Mumtaz Ahmad
Advocate,
High Court Peshawar

Dated 07.11.2018



DIRECTORATE OF HEALTH SERVICES FATA

FATA SECRETARIAT WARSAK ROAD PESHAWAR

PH # 091-9210212

FAX # 091-9212110

OFFICE ORDER

The following postings / transfers of Dental Surgeons (BS-17), are hereby ordered in the interest of public service with immediate effect.

S#	Name with Designation	From	To	Remarks
1	Dr. Ashfaq Hussain Dental Surgeon	THQ Hospital Alizai	AHQ Hospital Parachinar	Vice # 2
2	Dr. Mir Hassan Jan Dental Surgeon	AHQ Hospital Parachinar	THQ Hospital Alizai	Vice # 1

--/--
Director Health Services,
FATA, Peshawar.

Dated 14 / 17 / 2017

No. 15310-14 /DHS/FATA/Admin

Copy forwarded to the:-

1. Medical Superintendent AHQ Hospital Parachinar.
 2. Additional Agency Surgeon Lower & Central Kurram at Sadda.
 3. Focal Person HRMIS FATA.
 4. Agency Accounts Officers Kurram Agency.
 5. Dental Surgeons concerned.
- For information and further necessary action.

Director Health Services,
FATA, Peshawar.

ASD
[Signature]



DIRECTORATE OF HEALTH SERVICES FATA

FATA SECRETARIAT WARSAK ROAD PESHAWAR

PH # 091-9210212

FAX # 091-9212110

3
12

OFFICE ORDER

This Directorate office order bearing endorsement No. 15310-14/DHS/FATA/Admin dated 14-7-2017, regarding postings / transfers of Dental Surgeons, is hereby cancelled with immediate effect in the interest of public service.

--/--

Director Health Services,
FATA, Peshawar.

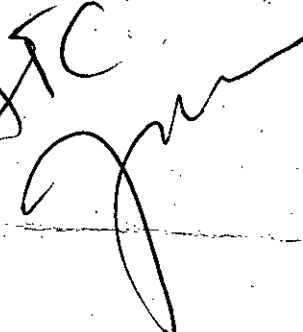
No. 16354-58 /DHS/FATA/Admin

Dated 4 / 8 / 2017

Copy forwarded to the:-

1. Medical Superintendent AHQ Hospital Parachinar.
 2. Additional Agency Surgeon Lower & Central Kurram at Sadda.
 3. Focal Person HRMIS FATA.
 4. Agency Accounts Officer Kurram Agency.
 - ✓ 5. Dental Surgeons concerned.
- For information and further necessary action.


Director Health Services,
FATA, Peshawar.

ATC


DIRECTORATE OF HEALTH SERVICES
FATA SECRETARIAT WARSAK ROAD PESHAWAR
 PH # 091-9210212 FAX # 091-9212110

OFFICE ORDER

The following postings / transfers of Dental Surgeons (BS-17), are hereby ordered in the interest of public service with immediate effect.

S#	Name with Designation	From	To	Remarks
1	Dr. Mir Hassan Jan Dental Surgeon	THQ Hospital Alizai	AHQ Hospital Parachinar	Vice # 2
2	Dr. Ashfaq Hussain Dental Surgeon	AHQ Hospital Parachinar	THQ Hospital Alizai	Vice # 1

--/--
 Director Health Services,
 Tribal Districts, Peshawar.

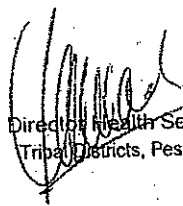
No. 24794-97 DHS/Admin.

Dated 22 / 10 / 2018

Copy forwarded to the:-

- 1) Medical Superintendent DHQ Hospital Parachinar.
- 2) Additional Agency Surgeon Lower & Central Kurram at Sadda.
- 3) District Accounts Officer Tribal District Kurram.
- 4) Doctors concerned.

For information and necessary action.


 Director Health Services,
 Tribal Districts, Peshawar.

Handwritten signature/initials



13-A

DIRECTORATE OF HEALTH SERVICES
FATA SECRETARIAT WARSAK ROAD, PESHAWAR

OFFICE ORDER

The following postings/transfer of Dental Surgeon (BS-17) are hereby ordered in the interest of public service with immediate effect.

S#	Name with Designation	From	To	Remarks
1.	Dr. Mir Hassan Jan Dental Surgeon	THQ Hospital Alizai	AHQ Hospital Peshawar	Vice # 2
2.	Dr. Ashfaq Hussain Dental Surgeon	AHQ Hospital Parachinar	THQ Hospital Alizai	Vice # 1

Sd/-
Director Health Services,
Tribal Districts, Peshawar

No.24794-97/DHS/Admin

dated 22/10/2018

Copy forwarded to the:

- 1) Medical Superintendent DHQ Hospital Parachinar
- 2) Additional Agency Surgeon Lower & Central Kurram at Sadda.
- 3) District Accounts Officer Tribal District Kurram.
- 4) Doctors concerned.

For information and necessary action.

AFC

Sd/-
Director Health Services,
Tribal Districts, Peshawar

To

The Secretary Health KPK.

Subject: **REQUEST FOR CANCELLATION OF TRANSFER ORDER.**

Sir,

It is stated that I have been transferred to THQ Hospital Alizai vide your office order No: 24794-97/DHS/Admin dated 22/10/2018.

I had already served six year duty at THQ Alizai w.e.f June 2011 to July 2017.

It is pertinent to mention here that I have served as Dental Surgeon BPS 17 at AHQ Hospital Parachinar for the last 14 Months and I have not completed a normal Tenure at the said station hence it is a premature Transfer.

Further my mother is seriously ill and taking medication regularly and in these circumstances it would be very difficult for to serve at such a far flung station. Furthermore medical Superintendent AHQ Hospital Parachinar has no observation or objection on my duty.

Keeping in view of premature tenure as well as my domestic problems it is requested to kindly take necessary measures for cancellation of the office order quoted above please.

I would be very thankful to you for this kindness.

Dated: 31/10/2018

Your Obediently

Dr. Ashfaq Hussain

Dental Surgeon AHQ Hospital
Parachinar.

ATC
[Signature]

To

The Director Health Services
Tribal District at Peshawar.



15

Subject;
Sir.

REQUEST FOR CANCELLATION OF TRANSFER ORDER.

Most respectfully it is stated that I have been transferred to THQ Hospital Ali Zai vide Your Office Order NO 24794-97 /DHS/Admin dated 22/10/2018..

It is pertinent to mention here that I have served as Dental Surgeon BPS 17 at AHQ Hospital Parachinar for the last 14 Months and I have not completed a normal Tenure at the said station hence it is a Free Mature Transfer.

Further my mother is seriously ill and taking medication regularly and in these circumstances it would be very difficult for to serve at such a far flung station.

Keeping in view of premature tenure as well as my domestic problems it is requested to kindly take necessary measures for cancellation of the Office order quoted above please.

I would be very thankful to you for this kindness.

D.H.S. PATA

D.No.

6669

Date.

24-10-18

Yours Obediently

Dr Ashfaq Husain
Dental Surgeon AHQ Hospital
Parachinar

Dated 23-10-2018

ATC

15-A

To

The Addit on Chief Secretary FATA.
Warsak Road Peshawar.

6980
12 11 18

Subject: REQUEST FOR CANCELLATION OF TRANSFER ORDER.

Sir,

It is stated that I have been transferred to THQ Hospital Alizal vide your office order No: 24794 97/DHS/Admin dated 22/10/2018.

I had already served six year duty at THQ Alizal w.e.f June 2011 to July 2017

It is pertinent to mention here that I have served as Dental Surgeon BPS 17 at AHQ Hospital Parachinar for the last 14 Months and I have not completed a normal Tenure at the said station hence it is a premature Transfer.

Further my mother is seriously ill and taking medication regularly and in these circumstances it would be very difficult for to serve at such a far flung station. Furthermore medical Superintendent AHQ Hospital Parachinar has no observation or objection on my duty.

Keeping in view of premature tenure as well as my domestic problems it is requested to kindly take necessary measures for cancellation of the office order quoted above please

would be very thankful to you for this kindness.

Dated: 31/10/2018

Your Obediently

Dr. Ashfaq Hussain

Dental Surgeon AHQ Hospital Parachinar.

Asst. Comm. (FATA)

DHS

2270
06-11-2018

Handwritten signature

16

Posting and Transfer

Statutory Provision.

Section 10 of the NWFP Civil Servants Act, 1973.

Posting and Transfer. Every civil servant shall be liable to serve anywhere within or outside the Province, in any post under the Federal Government, or any Provincial Government or Local authority, or a Corporation or body set up or established by any such Government:-

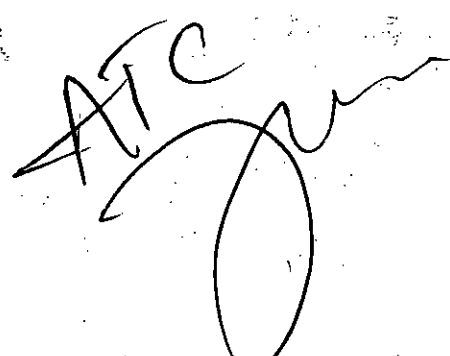
Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region;

Provided further that, where a civil servant is required to serve in a post outside a service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

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 posting/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) Existing tenure of posting/transfer of three (03) years for settled areas and two (02) years for unattractive/hard areas shall be reduced to two (02) years for settled areas, 01½ years for unattractive areas and one year for hard areas.
- v) []

⁷⁹ 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.

ATC


- vi) ⁸⁰ While making posting/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. Save Tehsildars/Naib Tehsildars within a division in respect of whom the concerned Commissioner will exercise the same power. 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.

Provided that the power to transfer Political Tehsildars and Political Naib Tehsildars within FATA between different divisions shall rest in Additional Chief Secretary FATA.

- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for at least 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 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 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.
- 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

80

Para-VI added vide circular letter No. SOR-VI/E&AD/I-4/2010/Vol-VIII dated 20th March, 2010.

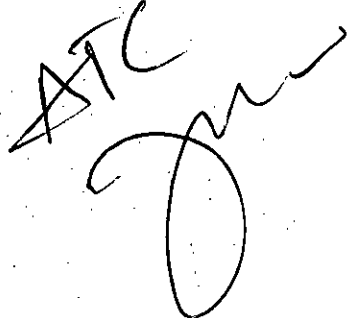
⁸¹ DCOs and DPOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against non-administrative posts of equivalent scales;

- 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 Department 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:
- 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.
 - Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

⁸¹ Added vide Urdu circular letter No: SOR-VI (E&AD)/1-4/2005, dated 9-9-2005.

ATC


19

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 posting/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.

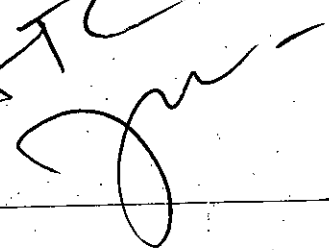
3. As per Rule 25(2) of the Rules mentioned above the District Coordination Department shall consult the Government if it is proposed to:

- 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.

5. 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-VIE&AD/1-4/2003 dated 24-6-2003).

ATC


20

PLACEMENT POLICY.

In order to utilize the expertise of the officers who have received foreign training in various fields, the provincial Government has decided to adopt the Placement Policy, approved by the Prime Minister of Pakistan, and make it a part of its Posting/Transfer Policy. Placement Policy is as follows:-

- i) All placements would be made on the basis of merit and keeping in view the needs of the organization.
- ii) The first priority in placement must go to the parent organization of the participant from where the individual had applied. This will be in consonance with the concept of establishing the "Need" for the department and fulfilling the need through "capacity building for the organization.
- iii) In order to follow the "bottom up approach" for Devolution, the priority within departments must go to the Districts, the Provinces and then the Federal Government.
- iv) The second priority in placement should go to up-grading the existing training Institution within the country. The knowledge gained by the officers, will be of immense value to bring about a qualitative change in the training institutions. The following proposals are made in this regard:
 - a) Permanent posting of an officer to the training institutions for 2-3 years;
 - b) Temporary attachment with the training intuitions for 3 to 6 months for some research project on helping in developing case studies;
 - c) Earmarked as a visiting faculty member for specific subject.
- v) Individuals posted to their parent organizations will also organize training for their subordinates within the department, in order to transfer the knowledge and bring about a qualitative change internally;
- vi) 6 The Normal tenure of posting as already provided in the policy would be ensured;
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21

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ATC
[Handwritten Signature]

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⁸⁰ Para-VI added vide circular letter No. SOR-VI/E&AD/1-4/2010/Vol-VIII dated 20th March, 2010.

AFC


23

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⁸¹ Added vide Urdu circular letter No: SOR-VI (E&AD)/1-4/2005, dated 9-9-2005.

(24)

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.

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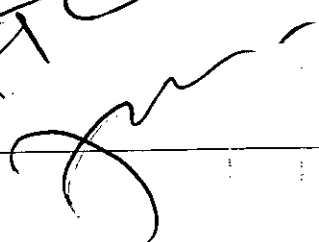
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4. I am further directed to request that the above noted policy may be strictly observed/implemented.

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

ATC


82 PLACEMENT POLICY.

(25)

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- vi) *by* The Normal tenure of posting as already provided in the policy would be ensured;
- vii) No participant should be allowed to be posted on deputation to multinational donor agencies for at least 5 years;
- viii) No participants will decline/represent against his/her posting.

⁸² Placement Policy has been made part of the posting/transfer policy vide Urdu circular No.SOR-VI(E&AD)1-4/06, dated 9-2-2007



Court Matter

To

The Section Officer (E-V),
Govt: of Khyber Pakhtunkhwa,
Health Department, Peshawar.

Subject:- REQUEST FOR CANCELLATION ORDER.

Reference your letter No. SOH (E-V)6-276/2018/Dr. Ashfaq Hussain dated 10.01.2018 on the subject noted above and to state that:

- i. Dr. Ashfaq Hussain was appointed as Dental Surgeon on contract basis with the approval of competent authority in the year 2014 and working in THQ Hospital Alizai, District Kurram since 2017.
- ii. He was transferred from AHQ Hospital Parachinar to THQ Hospital Alizai vide office order No. 24794-97/DHS/Admn dated 22.10.2018.
- iii. He filed an appeal No. 1429/2018 in the Khyber Pakhtunkhwa Service Tribunal where the above order was suspended till next date, i.e., 26.12.2018, vide order attached.
- iv. The order of the Honorable Court was implemented vide order attached.
- v. Now the counsel of the private respondent No. 6 (Dr. Syed Mir Hassan Jan) presented in the court and argued the order dated 07.12.2018 through which the impugned order was suspended.
- vi. The Honorable Court adjourned the case to 08.02.2019 without any suspension or status quo, vide order dated 18.01.2019 (attached) which means the transfer order dated 22.10.2018 remained intact.

As the appellant has not obeyed the order of his superiors and preferred to challenge it in the court, therefore, it is, requested to let the court to decide the appeal.

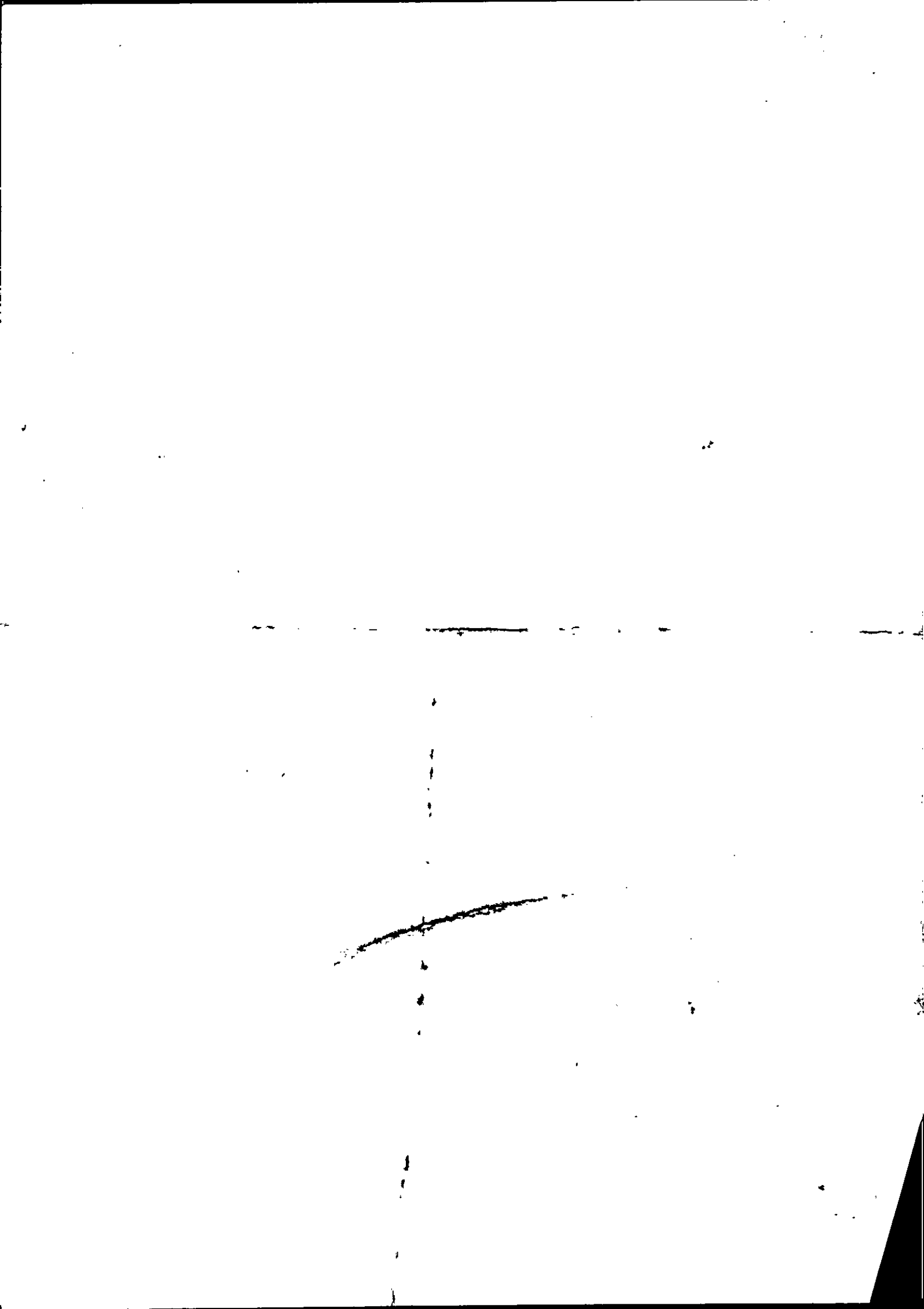
Director Health Services,
Tribal Districts, Peshawar.

No. 1032-35/DHS/Liti

Copy to the:-

- ✓ 1. Registrar, Khyber Pakhtunkhwa Service Tribunal w/r to order dated 18.01.2019 in Appeal No. 1429/2018.
2. Agency Surgeon, District Kurram.
3. Medical Superintendent DHQ Hospital Parachinar.
4. Dr. Ashfaq Hussain, Dental Surgeon. He is directed to report to his new place of duty till final decision of the court.

(Signature)
Director Health Services.

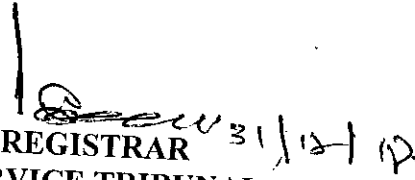


This is an appeal filed by Mr. Zahoor Ahmad today on 31/12/2018 against the order dated 26.11.2018 and 27.12.2018 against which he preferred/made departmental appeal/ representation on 28.12.2018 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, which is premature as laid down in an authority reported as 2005-SCMR-890.

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

No. 2499 /ST,

Dt. 31-12-2018


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Khanzada Ajmal Zeb Khan Adv. Pesh.

26

 <p>پشاور بار ایسوسی ایشن</p>	 <p>85613</p>
<p>پشاور بار ایسوسی ایشن، خیبر پختونخواہ</p> <p>پارٹنل ایسوسی ایشن نمبر: 73118</p> <p>رابطہ نمبر: 711066 - 0332</p>	

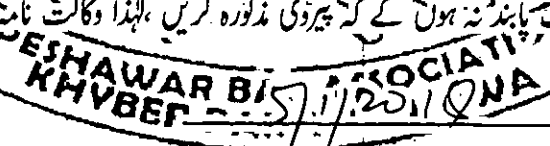
بعدالت جناب: سر مکمل نام

<p>منجانب: ڈاکٹر اشفاق صفی</p> <p>ڈاکٹر اشفاق صفی بنام MS مدد</p>	<p>دعویٰ:</p> <p>علت نمبر:</p> <p>مورخہ:</p> <p>جرم:</p> <p>تھانہ:</p>
---	--

دعا راضی
مقرر
مقرر

باعت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ
 آن مقام کے لیے محمد زاہد امجد کو وکیل مقرر
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرز یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اپیل نگرانی و نظرتالی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جائزہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے
 المرقوم:



مقام: واہ شہ

کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی ذمہ داری ناقابل قبول ہوگی۔

15/11/2011

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

In Reference of Service Appeal No.1429/2018

Dr. Ashfaq Hussain (Dental Surgeon)Appellant

Versus

District Health Services Officer and othersRespondents

REPLY OF THE MAIN APPEAL ON
BEHALF OF RESPONDENT NO.5

Sheweth:

PRELIMINARY OBJECTION:

1. That the applicant has got no cause of action or no locus standi to file the instant appeal.
2. That the application in hand is frivolous baseless and not relevant with the facts of the case file.
3. That applicant has not contacted this Tribunal with clean hands. *It is also not maintainable.*

ON FACTS:

1. Para-1 of the main appeal is incorrect and is in needs of documentary proof.
2. Para-2 of the main appeal needs no comments.
3. Para-3 of the main appeal is incorrectly drafted, the appeal of appellant is premature.
4. Para-4 of the main appeal is incorrect, misstatement, no departmental appeal has been

preferred as per procedural law, therefore, there is no specific order of the competent authority over departmental appeal, if so submitted within the time as prescribed for.

5. The appellant is estopped to bring this appeal, which is not maintainable.

GROUNDS

- A. Para-A of the grounds is incorrect and is not beneficiary infavour of appellant.
- B. Para-B of the grounds is incorrect, the order dated 22.10.2018 is correct, based on bonafiedy on the part of respondent No.2, hence black mud has thrown over the shoulder of respondent No.2, Hence denied.
- C. Para-C of the grounds is also incorrect and wrong.
- D. Para-D of the grounds is wrongly drafted by the appellant, respondent No.2 being Head of the Department is fully authorize to pass any type of legal order within the parameter of law, therefore, this para is absolutely incorrect.
- E. Para-E of the grounds is incorrect, the services of the appellant were **transferred in the public interest on dated 22.10.2018, but not in the personal interest of the appellant**, therefore, Para-E of the grounds in appeal is incorrect and the appellant cannot challenge the viries of the order dated 22.10.2018, who is competent authority having jurisdiction of the same.
- F. Para-F of the grounds is incorrect, the appellant by himself has not complied the directions of order dated 22.10.2018 till date and has not taken over the charge, as per service rules and law,

therefore, statement of Para-F of the main appeal are without any justification and legal footings, therefore, is incorrect.

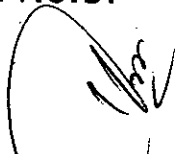
G. That in reply Para-G of the grounds, the Rules/ Law of Civil Servant Act are not applicable on the official order dated 22.10.2018, therefore, repetition in the appeal.

H. Para-1 of the grounds of appeal is incorrect, respondent No.2 being competent authority having jurisdiction to pass the official order with in parameter of procedural law, so Para-4 of the grounds is wrong and incorrect.

I. Para-I of the grounds needs no comments.

PRAYER

→ It is therefore, very respectfully submitted that on acceptance of this reply of the main service appeal NO.1429/2018 titled above, may kindly be dismissed/ rejected with cost infavour of present respondent No.5.


Respondent No.5
Dr. Syed Mir Hassan Jan
(Dental Surgeon)

Through


Khanzada Ajmal Zeb Khan
Advocate
Supreme Court of Pakistan

&


Sayed Fida Hussain
Advocate High Court

dt.
26/11/18

26/11/18

Advocate

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

In Reference of Service Appeal No.1429/2018

Dr. Ashfaq Hussain.....Appellant

Versus

District Health Services Officer and othersRespondents

REPLY TO THE APPLICATION FOR
SUSPENSION OF IMPUGNED
ORDER DATED 22.10.2018 ON
BEHALF OF RESPONDENT NO.5

Sheweth:

1. Para-1 of the application needs no comments.
2. That there is no prima-facie case of appellant, hence this para is wrong.
3. Para-3 is also wrong and incorrect.
4. That Mr. Dr. Ashfaq Hussain the appellant has not leftover the charge, nor has taken over the charge, as per order dated 22.10.2018 till date, issued from the office of respondent No.2, therefore, no irreparable loss is being occurred, hence this para is also wrong.
5. That wrong facts and reasons are written in the main service appeal No.1429/18, therefore, the

said incorrect reasons cannot be considered as part and parcel of the suspension application by the appellant, Hence denied.

PRAYER

→ It is, therefore, requested that the application for suspension of operation of order dated 22.10.2018 may kindly be rejected/ dismissed in favour of present respondent No.5

Respondent No.5
Dr. Syed Mir Hassan Jan
(Dental Surgeon)

Through

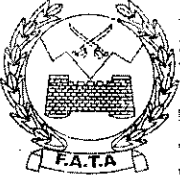
Khazada Ajmal Zeb Khan
Advocate
Supreme Court of Pakistan

&

Sayed Fida Hussain
Advocate High Court

att 26/12/18

26/12/18
26/12/18
26/12/18



DIRECTORATE OF HEALTH SERVICES
Tribal Districts, Peshawar.

Phone: 091-9210212

FAX: 091-9212110

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 2298

Dated 20-12-2018

OFFICE ORDER

In pursuance of Khyber Pakhtunkhwa Service Tribunal order dated 07.12.2018, in Appeal No. 1429/2018, titled "Dr. Ashfaq Hussain Dental Surgeon VS Govt: of Khyber Pakhtunkhwa and others" the order of the Honorable Court is hereby implemented till 26.12.2018.

Sd/xxxxxxxxxxxxxx
Director Health Services,
Tribal Districts, Peshawar.

No. 27848-50 /DHS/Liti: dated 13 / 12 / 2018

Copy to the:-

1. Registrar, Khyber Pakhtunkhwa Service Tribunal w/r to the above cited appeal and order.
2. Medical Superintendent, District Headquarter Hospital Kurram.
3. Offer concerned.

M. Amullah S
Director Health Services
Tribal Districts, Peshawar. 13/12/18
3

Put up to the court
with relevant appeal.

Reader

[Signature]
24/12/18.

1



BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. 1429/2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1668

Dated 22/11/2018

Dr. Ashfaq Hussain (Dental Surgeon) Son of Laiq Hussain
R/o Shalo Zai, Parachinar, District Kurram..... **Appellant**

D.S. DATA
8536
10-12-18

VERSUS

- 1) District Health Services Officer, Tribal District (District Kurram Parachinar)
- 2) Director Health Services Tribal District (District Kurram Parachinar)
- 3) Secretary Health Khyber Pakhtunkhwa, Civil Secretariat, Peshawar
- 4) Director General Health Services, Khyber Pakhtunkhwa, Khyber Road, Peshawar
- 5) Hassan Jan, Dental Surgeon, Tehsil Headquarter Hospital, Alizai District Kurram (through DHO District Kurram) **Respondents**

APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT
1974 AGAINST THE IMPUGNED ORDER
DATED 22.10.2018, WHEREIN THE SERVICES
OF THE APPELLANT WERE TRANSFERRED
FROM DHQ PARACHINAR TO THQ ALIZAI,
DISTRICT KURRAM

Filed to-day
Registrar
22/11/18

Re-submitted to-day
and filed.
Registrar
27/11/18

JOA / Lt. gether
27/12/18

Certified to be true copy

Registrar
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Dr. Ashfaq Hussain

07.12.2018

Appellant alongwith counsel and Mr. Muhammad Jan,
Deputy District Attorney for the respondents present.



In pursuance to this Tribunal order dated 30.11.2018, the appellant has submitted amended memo. of appeal which is placed on file.

In support of application for suspension of the impugned order, it is contended that while issuing the impugned order not only the tenure of appellant at his last place of posting was disregarded but also the impugned transfer order was issued by an incompetent authority i.e. Director Health Services Tribal District, Peshawar which was violative of posting/transfer policy of the Provincial Government. The latter provided that the competent authority for transfer of officers in BPS-17 and above, posted in the district, was the Provincial Government.

As the appeal in hand has already been admitted for regular hearing and in view of the above averments the appellant had a prima-facie case, the operation of impugned order dated 22.10.2018 is suspended till next date of hearing. The respondents shall furnish reply/comments to the amended appeal as well as application for interim relief. Adjourned to 26.12.2018 on which date the application for interim relief shall be argued.

Certified to be true copy

CHIEF JUSTICE
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL,
PESHAWAR


Chairman

Date of Presentation of Appeal 07-12-18
 Number of Words 800
 Copying Fee 6.00
 Urgent 2.00
 Total 8.00
 Name of Copyist [Signature]
 Date of Completion of Copy 07-12-18
 Date of Delivery of Copy 07-12-18

No:

1429/18

Dated 08/01/2018

To

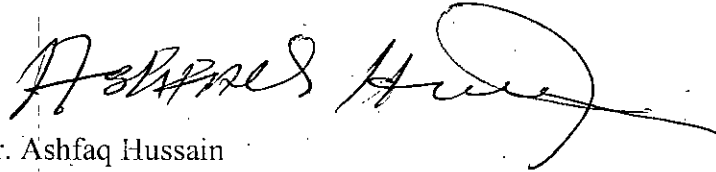
The Chairman
Service Tribunal K.P.K
Peshawar

Subject:- **APPLICATION FOR ONE WEEK EXTENTION OF CASE HEARING.**

Sir,

Most respectfully, it is stated that my lawyer has gone to Moscow for few days.

Therefore, I request you to extend my case date and order suspension for one week. I shall be very thankful.



Dr. Ashfaq Hussain
Case No. 2914/18

Dated 8/01/2019

To

The chairman service
tribunal, KPK.

Subject:.. Application for Extension of case
Date for one week.

R/sir,

Most respectfully it is stated that
my case date is on 8/1/2019.

My lawyer has gone to Moscow for
few weeks.

Therefore I request you to Extend
My case date for one week.

I shall be very thankful.

Put up to the court
with relevant appeal.

Reader

27/12/18.

Appellant ~~Dr~~
Dr Ashfaq Hussain

Service Appeal No
1429/18

Through
Advocate
Munir Ahmad.

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T

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DIRECTORATE HEALTH SERVICES FATA

FATA SECRETARIAT WARSAK ROAD PESHAWAR.

No _____/DHS/FATA/Admn Dated:-

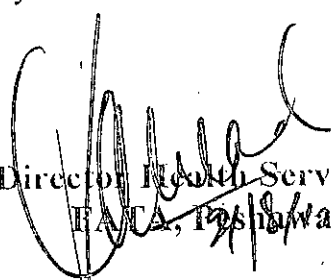
Phone# 091-9210106

FAX# 091-9210212

OFFICE ORDER:

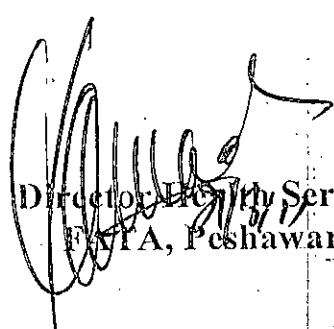
The posting /transfer order of this office bearing No.15310-14/DHS/FATA/ Admn dated 14-07-2017 is hereby retained back in the interest of public service.

Consequent upon above, this Directorate office order bearing No.16354-58/DHS/FATA/ Admn dated 04-08-2017 is hereby withdrawn with immediate effect.


Director Health Services,
FATA, Peshawar

No 17/25-28/DHS/FATA/Admn, dated 22/08/2017.
Copy for information and necessary action to the:

- Medical Superintendents, AHQ Hospital Parachinar Kurram Agency.
- Agency Surgeon Central and lower Kurram at Sadda.
- Agency Account office Kurram Agency
- Officers concerned.


Director Health Services,
FATA, Peshawar

To

The Additional Chief Secretary FATA
Warsak Road Peshawar

Subject: APPLICATION FOR RETAINING MY TRANSFER
ORDER


Respected Sir,

Most respectfully it is stated that I have been transferred from TTIQ Hospital Ali Zai to AHQ Hospital Parachinar via Order No. 15310-14/DHS/Admin on dated 14.07.2017, now the order has been cancelled via order No.16354-58/DHS/FATA-Admin. My transfer was through proper channel as I have completed normal tenure and the Medical Superintendent and the Agency Surgeon has also given me NOCs for transfer.


Therefore I requested you to please retain my transfer order.

Dated: 8/8 /2017

Yours Obediently


Dr. Ashfaq Hussain
Dental Surgeon AHQ Parachinar

Received

 ACS.
8/8/2017.

Service copy no 1429/18
~~1429/18~~

Received of two papers -
from the applicant

Sh. J. Singh
15/11/18

Attn
25/11/18



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

No.SOH(EV)6-276/2018/Dr. Ashfaq Hussain
Dated Peshawar the 10TH January-2019

To

The Director Health Services
Tribal Districts, Peshawar

Subject : **REQUEST FOR CANCELLATION ORDER**

I am directed to refer to the subject noted above and to enclose herewith a copy of application in respect of Dr. Ashfaq Hussain Dental Surgeon (BS-17) attached to AHQ Hospital, Parachinar and the competent Authority has been pleased to withdraw the office order No. 24794-97/DHS/Admin dated 22.10.2018 under intimation to this department.


(HAMID IQBAL)
SECTION OFFICER (E-V)

Copy for information to:

1. PS to Secretary Health Department
2. PA to DS (Admn) Health Department


SECTION OFFICER (E-V)

گورنمنٹ ہسپتال کراچی - کراچی

ڈاکٹر شرفان بیگ ڈائریکٹر ہسپتال

دفعہ ۱۱۱، ۱۱۲، ۱۱۳، ۱۱۴، ۱۱۵، ۱۱۶، ۱۱۷، ۱۱۸، ۱۱۹، ۱۲۰

۱) گورنمنٹ ہسپتال کراچی کے تحت آئی سی سی کے تحت

۲) گورنمنٹ ہسپتال کراچی کے تحت آئی سی سی کے تحت

گورنمنٹ ہسپتال کراچی

Received
18/1/2019
Dr. 1000/-

for the pay for the relevant period. Copy of judgment is attached as annexure-A.

4. That the respondents were under legal obligation to implement the judgment in letter and spirit.
5. That a period of more than three and half months elapsed but judgment of the Tribunal has not been implemented so far.

It is, therefore, most humbly prayed that on acceptance of the Execution Petition, the respondents may be directed to implement the judgment dated 09.02.2018 in Service Appeal No. 818/2013 in letter and spirit.

PETITIONER

Through:-

(TAIMUR ALI KHAN)
Advocate, Peshawar.

Posting and Transfer

Statutory Provision.

Section 10 of the NWFP Civil Servants Act, 1973.

Posting and Transfer. Every civil servant shall be liable to serve anywhere within or outside the Province, in any post under the Federal Government, or any Provincial Government or Local authority, or a Corporation or body set up or established by any such Government:-

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:

Provided further that, where a civil servant is required to serve in a post outside a service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

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) Existing tenure of posting/transfer of three (03) years for settled areas and two (02) years for unattractive/hard areas shall be reduced to two (02) years for settled areas, 01½ years for unattractive areas and one year for hard areas.
- v) ⁷⁹ []

⁷⁹ 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.

- vi) ⁸⁰While making posting/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. Save Tehsildars/Naib Tehsildars within a division in respect of whom the concerned Commissioner will exercise the same power. 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.

Provided that the power to transfer Political Tehsildars and Political Naib Tehsildars within FATA between different divisions shall rest in Additional Chief Secretary FATA.

- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for at least 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 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 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.
- 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

⁸¹ 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 Department 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:

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

⁸¹ Added vide Urdu circular letter No: SOR-VI (E&AD)/1-4/2005, dated 9-9-2005.

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 posting/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.

5. 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/1-1/2003 dated 24-6-2003).

PLACEMENT POLICY.

In order to utilize the expertise of the officers who have received foreign training in various fields, the provincial Government has decided to adopt the Placement Policy, approved by the Prime Minister of Pakistan, and make it a part of its Posting/Transfer Policy. Placement Policy is as follows:-

- i) All placements would be made on the basis of merit and keeping in view the needs of the organization.
- ii) The first priority in placement must go to the parent organization of the participant from where the individual had applied. This will be in consonance with the concept of establishing the "Need" for the department and fulfilling the need through "capacity building for the organization.
- iii) In order to follow the "bottom up approach" for Devolution, the priority within departments must go to the Districts, the Provinces and then the Federal Government.
- iv) The second priority in placement should go to up-grading the existing training Institution within the country. The knowledge gained by the officers, will be of immense value to bring about a qualitative change in the training institutions. The following proposals are made in this regard:
 - a) Permanent posting of an officer to the training institutions for 2-3 years;
 - b) Temporary attachment with the training institutions for 3 to 6 months for some research project on helping in developing case studies;
 - c) Earmarked as a visiting faculty member for specific subject.
- v) Individuals posted to their parent organizations will also organize training for their subordinates within the department, in order to transfer the knowledge and bring about a qualitative change internally;
- vi) 4 The Normal tenure of posting as already provided in the policy would be ensured;
- vii) No participant should be allowed to be posted on deputation to multinational donor agencies for at least 5 years;
- viii) No participants will decline/represent against his/her posting.

⁸² Placement Policy has been made part of the posting transfer policy vide Urdu circular No.SOR-VI(E&AD)1-4/06, dated 9-2-2007