

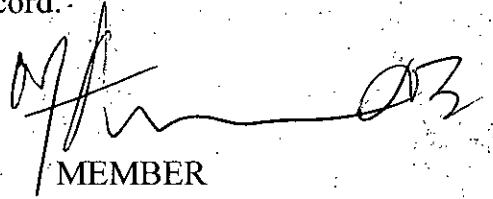
3/1/14  
Tareq  
Mir

3.1.2014.

Counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Mir Qasam, Assistant Secretary for the official respondents present. Counsel for the appellant requested for withdrawal of the appeal. His signature obtained in the margin of order sheet. As such the appeal in hand is dismissed as withdrawn. File be consigned to the record.

ANNOUNCED

3.1.2014.



MEMBER

608/2013

17.7.2013

None is available on behalf of the appellant as well as private respondent No.4. Mr. Muhammad Jan, GP with Mr. Mir Qasam, Assistant Secretary for the official respondents present and requested for time. Notices be issued to the appellant as well as private respondent No. 4. To come up for written reply on main appeal as well as reply/arguments on stay application on 16.9.2013.

  
MEMBER

  
MEMBER

*alot d.*  
*Qasam*  
*Counsel for*  
*appellant*

16.9.2013

Junior to counsel for the appellant and Mr. Muhammad Jan, GP with Mukhtiar Ali, Assistant for the official respondents present and requested for further time. Fresh notice be issued to respondent No.4. To come up for written reply on main appeal as well as reply/arguments on stay application on 18.11.2013.

  
MEMBER

18.11.2013

Junior to counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Mukhtiar Ali, Assistant for respondent No.1 present and requested for time. None is available on behalf of other respondents. Fresh notices be issued to them. To come up for written reply on main appeal as well as reply/arguments on stay application on 3.1.2014 positively.

  
MEMBER

  
MEMBER

07.05.2013.

Appellant with counsel and Mr. Attaullah, Supdt for respondent No.1 with Mr. Muhammad Jan, GP for official respondents present. Mr. Khalid Rehman, Advocate filed wakalat Nama on behalf of private respondent No.4 and requested for time. The learned counsel for the appellant stated that the application for the suspension of the transfer order dated.13.03.2013 has already been submitted in the appeal. To come up for written reply in the main appeal as well as reply/arguments on application on 23.05.2013.

Member

  
Reader to  
Member

22.05.2013.

Appellant in person and Mr. Muhammad Jan, GP with Attaullah, Supdt. for the official respondents and clerk to counsel for private respondent No. 4 present. In pursuance of promulgation of Khyber Pakhtunkhwa Ordinance 2013, the Tribunal is incomplete. To come up for the same on 25.06.2013.

  
READER

27.6.2013

Clerk to counsel for the appellant Mr. Muhammad Jan, GP for the official respondents present. In pursuance of promulgation of Khyber Pakhtunkhwa Service Tribunal (Amendment) Ordinance 2013, the Tribunal is incomplete. To come up for the same on 17.7.2013.

  
READER

Appeal No. 608/2013.  
Mr. Noor Hussain.

16.4.2013



Counsel for the appellant present and heard. Contended that the appellant was posted as Patwari Halqa Mahal Saloo, Tehsil & District, Peshawar. He had been posted in the Halqa on 17.10.2011. He was transferred out to the office of Deputy Commissioner on 13.3.2013. He challenged his new transfer vide departmental appeal dated 22.3.2013 without any positive results. He seeks annulment of the order of his transfer dated 13.3.2013 to arrive at correct decision. Detailed discussion and thorough study of record is necessary. Hence, case is admitted to regular hearing and fixed for 7.5.2013. The appellant is directed to deposit security amount and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 7.05.2013.

Appellant deposited  
Process fee & Security  
RS. 2000/- Bank Receipt  
attached with file.

  
Member

16.4.2013



This case be put up Before the Final Bench  
for further proceedings.

  
  
Chairman

Form- A  
FORM OF ORDER SHEET

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

Case No. 608/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	08/04/2013	<p>The appeal of Mr. Noor Hussain presented today by Mr. Ijaz Anwar Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p> REGISTRAR</p>
2	8-4-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <del>16-4-2013</del>.</p> <p> CHAIRMAN</p>

**BEFORE THE KHYBER PAKHTUNKWA SERVICE  
TRIBUNAL PESHAWAR**

Appeal No. 608 /2013

Noor Hussain Patwari Halqa Mahal Saloo, Tehsil & District,  
Peshawar.

**Appellant**


**VERSUS**

Senior Member Board of Revenue Khyber Pakhtunkhwa  
Peshawar and others.


**Respondents**


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S. No	Description of Documents	Annexure	Page No.
1	Memo of Appeal		1-3
2	Application and Affidavit		4-5
3	Transfer Order dated 17.10.2011	'A'	6
4	Impugned transfer order dated 13.03.2013	'B'	7
5	Departmental Appeal & rejection order dated 05.04.2013	'C & D'	8-10
6	Posting and transfer Policy	'E'	11-14
7	Vakalatnama		

  
**Appellant**

Through

  
**IJAZ ANWAR**  
Advocate, Peshawar

&   
**SAJID AMIN**  
Advocate, Peshawar

**BEFORE THE KHYBER PAKHTUNKWA SERVICE  
TRIBUNAL PESHAWAR**

A.W.P. Peshawar  
688  
08-4-13

Appeal No. 608 /2013

Noor Hussain Patwari Halqa Mahal Saloo, Tehsil & District,  
Peshawar.

**(Appellant)**

**VERSUS**

1. Senior Member Board of Revenue Khyber Pakhtunkhwa Peshawar.
2. Commissioner Peshawar Division, Peshawar.
3. Deputy Commissioner, Peshawar.
4. Sadaqat Ullah Patwari waiting for posting, Office of the Additional Deputy Commissioner, Peshawar.

**(Respondents)**

**Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the Office Order dated 13.03.2013, whereby the appellant has been transferred from Halqa Mahal Saloo and directed to report to Deputy Commissioner Office while Respondent No. 2 has been transferred vice the appellant, against which his Departmental Appeal dated 22.03.2013, has also been rejected vide order dated 05.04.2013.**

Prayer in Appeal;

**On acceptance of this appeal the Orders dated 13.03.2013 and 05.04.2013, may please be set-aside and the appellant be allowed to continue his duties as Patwar Halqa Mahal Saloo Peshawar.**

Respectfully Submitted:

1. That the appellant is serving as Patwari in the Respondent Department.
2. That it is pertinent to point out here that the appellant remained at different stations as and when directed/posted.

3. That the appellant was lastly transferred to Halqa Mahal Saloo vide order dated 17.10.2011. the appellant took over the charge of his post and started performing my duties. (Copy of the order dated 17.10.2011 is attached as Annexure A).
4. That having hardly served for about one year, without allowing the him to complete his normal tenure of posting vide order dated 13.03.2013, the appellant has been transferred to Deputy Commissioner Office, Peshawar while Respondent No. 4 has been posted vice the appellant. (Copies of the order dated 13.03.2013 is attached as Annexure 'B')
5. That the appellant submitted his Departmental Appeal dated 22.03.2013, to the Respondent No. 2, however, it has also been rejected vide order dated 05.04.2013. (Copies of the Departmental Appeal & rejection order dated 05.04.2013, are attached as Annexure 'C' & 'D')
6. That the impugned transfer order is illegal, unlawful, against the Rules, politically motivated and malafide inter alia on the following grounds:

#### **Grounds of Appeal:**

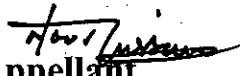
- A. That the appellant has not yet completed his normal tenure and thus the transfer order is illegal and unlawful, moreover the same is in violation of posting and transfer policy of the Provincial Govt. and the judgment of the apex court reported in PLD 1995 SC page 530.
- B. That the impugned order dated 13.03.2013 is made on the recommendation of the Chief Minister, who has got no authority to make such recommendation. thus the impugned order being Political motivated is against the transfer and posting policy and also against the reported judgements of the Superior Courts.
- C. That during his posting as Patwari, the performance of the appellant remained commendable and there was no complaint whatsoever regarding his performance.
- D. That in fact there exist no exigencies of service nor the order of transfer can be termed as in the public interest, rather it was issued in violation of law and transfer / posting policy of the Provincial Govt.
- E. That the respondent without caring for law, had in a quick succession issued a number of orders in favour of the




Respondent No. 4 against the public interest or exigency of service.

- F. That the impugned transfer order is illegal, unlawful, politically motivated without lawful authority and passed without jurisdiction, not in the prescribed period, in violation of transfer and posting policy.
- G. That the appellant seek permission of this Honourable Court to rely on additional grounds at the hearing of this Appeal.

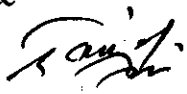
It is, therefore, very humbly prayed that on acceptance of this appeal the Orders dated 13.03.2013 and 05.04.2013, may please be set-aside and the appellant be allowed to continue his duties as Patwar Halqa Mahal Saloo Peshawar

  
Appellant

Through

  
IJAZ ANWAR  
Advocate, Peshawar

&

  
SAJID AMIN  
Advocate, Peshawar

**BEFORE THE KHYBER PAKHTUNKWA SERVICE  
TRIBUNAL PESHAWAR**

Appeal No. \_\_\_\_\_/2013

Noor Hussain Patwari Halqa Mahal Saloo, Tehsil & District,  
Peshawar.

**Appellant**

**VERSUS**

Senior Member Board of Revenue Khyber Pakhtunkhwa  
Peshawar and others.

**Respondents**

**Application for the suspension of the transfer order  
Dated 13.03.2013 till the decision of the above noted  
Appeal**

**Respectfully Submitted:**

1. That the appellant has filed today the above noted appeal in this Honourable Tribunal in which no date of hearing has been fixed so far.
2. That the facts and ground mentioned in the accompanied appeal may be read as integral part of this application.
3. That the applicant has got a good prima facie case and there is likelihood of it success.
4. That the appellant has so far not relinquished his charge of his post.
5. That the applicant would be exposed to great hard ship and inconvenience in case the order is not suspended.
6. That the order passed is in violation of law.
7. That it will also serve the interest of justice if the order impugned is suspended till the final decision of the appeal.

It is there fore prayed that on acceptance of this application the operation of the impugned cancellation order dated 13.03.2013 may please be suspended till the decision of the appeal.

*Noor Hussain*  
Applicant

Through

*Ijaz Anwar*

**IJAZ ANWAR**

Advocate, Peshawar

&

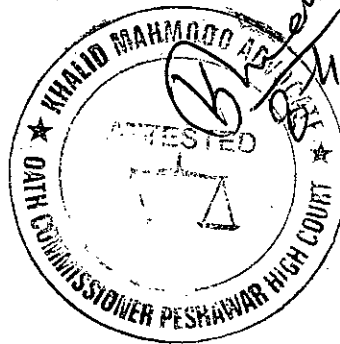
*Sajid Amin*

**SAJID AMIN**

Advocate, Peshawar

### AFFIDAVIT

I, **Noor Hussain Patwari Halqa Mahal Saloo, Tehsil & District, Peshawar**, do hereby solemnly affirm and declare on oath that the contents of the above appeal as well as application are true and correct and that nothing has been kept back or concealed from this honourable Tribunal.



*Noor Hussain*  
**DEPONENT**

⑥ Annex: A

OFFICE ORDER.

By the approval of competent authority, the following posting/transfer is hereby ordered with immediate effect :-

S.No.	Name of Patwari	From	To
1-	Mr. Noor Hussain	Waiting posting	PH Mahal Saloo
2-	Mr. Shahid	-do-	PH Roda

*[Signature]*  
District Officer  
Revenue and Estate Peshawar

No. 4680-82 /DOR&E/DK dated 17 / 9 / 10 /2011

Copy forwarded to the :-

- 1-Tehsildar Peshawar.
- 2-Official concerned.
- 3-Office order file.

*[Signature]*  
District Officer  
Revenue and Estate Peshawar

*[Handwritten initials]*

7

ANNEX: B

OFFICE OF THE  
DEPUTY COMMISSIONER PESHAWAR.

Dated Peshawar the 13/03/2013

OFFICE ORDER.

The following postings/transfers amongst the patwaris of Peshawar District are hereby ordered in the public interest with immediate effect.

S #	Name of Patwari	From	To
1	Noor Hussain	P.H Mahal Salo	Report to DC's office
2	Sadaqatullah	Waiting for posting	P.H Mahal Salo vice No.1

  
Deputy Commissioner, Peshawar. 13/3

11006-10 /DC(P)/DK. Dated Peshawar the 13/03/2013

Copy forwarded to the:-

1. Additional Deputy Commissioner, Peshawar.
2. Assistant Commissioner, Peshawar.
3. Tehsildar Peshawar.
4. Revenue Bill Clerk.
5. Official concerned for compliance.

  
Deputy Commissioner, Peshawar. 13/3

yusuf

(3)

Approved: C

**BEFORE THE OFFICE OF COMMISSIONER**  
**PESHAWAR DIVISION PESHAWAR**

Noor Hussain Patwari Halqa Mahal Saloo Peshawar.

Appellant

VERSUS

1. Deputy Commissioner, Peshawar.
2. Sadaqat Ullah Patwari waiting for posting, Office of the Additional Deputy Commissioner, Peshawar.

Respondents

Departmental Appeal under Section 22 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 r/w Rule 3 of the NWFP Civil Servant Appeal Rules 1986 against the Office Order dated 13.03.2013, whereby the appellant has been transferred from Halqa Mahal Saloo and directed to report to Deputy Commissioner Office while Respondent No. 2 has been transferred vice the appellant.

Prayer in Appeal;

On acceptance of this Departmental Appeal the Order dated 13.03.2013 may please be set-aside and the appellant be allowed to continue his duties as Patwari Halqa Mahal Saloo, Peshawar.

Respectfully Submitted;

1. That the appellant is serving as Patwari in the Respondent Department.
2. That it is pertinent to point out here that I remained at different stations as and when directed/posted.
3. That I was lastly transferred to Halqa Mahal Saloo vide order dated 17.10.2011. I took over the charge of my post and started performing my duties. (Copy of the order dated 17.10.2011 is attached).
4. That having hardly served for about one year, without allowing me to complete my normal tenure of posting vide order dated 13.03.2013, I have been transferred to Deputy Commissioner Office, Peshawar while Respondent No. 2 has been posted in my place.
5. That the impugned order is illegal, unlawful, against the Rules, politically motivated and malafide inter alia on the following grounds:



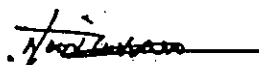
9

Grounds of Appeal:

- A. That I have not yet completed my tenure and thus the transfer order is illegal and unlawful, moreover the same is in violation of posting and transfer policy of the Provincial Govt.
- B. That I have not been allowed to complete my tenure and thus the order impugned is violation of transfer posting policy of the Govt and the judgment of the apex court reported in PLD 1995 SC page 530.
- C. That the impugned order dated 13.03.2013 is made on the recommendation of the Chief Minister, who has got no authority to make such recommendation. thus the impugned order being Political motivated is against the transfer and posting policy and also against the reported judgements of the Superior Courts.
- D. That during my posting as Patwari my performance remained commendable and there was no complaint whatsoever regarding my performance.
- E. That in fact there exist no exigencies of service nor the order of transfer can be termed as in the public interest, rather it was issued in violation of law and transfer / posting policy of the Provincial Govt.
- F. That the respondent without caring for law, had in a quick succession issued a number of orders in favour of the Respondent No 2 against the public interest or exigency of service.
- G. That the undersigned seek permission of this Honourable Court to rely on additional grounds at the hearing of this Appeal.

It is therefore, humbly prayed that On acceptance of this Departmental Appeal the Order dated 13.03.2013 may please be set-aside and the appellant be allowed to continue his duties as Patwari Halqa Mahal Saloo, Peshawar.

Appellant



(NOOR HUSSAIN)

Patwari  
Halqa Mahal Saloo,  
Peshawar

Dated : 22-03-2013





(10)      Arrived: D

**OFFICE OF THE  
COMMISSIONER PESHAWAR  
DIVISION PESHAWAR**

No. \_\_\_\_\_/Appeals(N.Hussain)/2013

Dated 05.03.2013

To

Mr. Noor Hussain,  
Patwar Halqa Mahal Saloo,  
Now DC Office Peshawar.  
(Appellant)

Subject: **DEPARTMENTAL APPEAL AGAINST THE ORDER NO. 4006-10/DC(P)/DK dated 13.03.2013**

I am directed to refer to your appeal filed before the Appellant Authority (Commissioner Peshawar) against the office order of Deputy Commissioner Peshawar bearing No.4006-10/DC(P)/DK dated 13.03.2013.

You are hereby informed/intimated that your appeal has been rejected by the Appellant Authority (Commissioner Peshawar) on administrative grounds being not maintainable.

*Shama Niamat*

( SHAMA NIAMAT )

Assistant to Commissioner (R/GA)  
For Commissioner Peshawar Division

**No. 3254/Appeals(N.Hussain)/2013**

Copy forwarded to the Deputy Commissioner, Peshawar for information please.

*Shama Niamat*

Assistant to Commissioner (R/GA)  
For Commissioner Peshawar Division

*YEL*



BETTER COPY

ANNEX E (11)

GOVERNMENT OF N.W.F.P  
ESTABLISHMENT & ADMINISTRATION DEPARTMENT  
(REGULATION WING)

NO.SOR-1(E&AD)1-1/85(Vol:11)

Dated the Peshawar the 15<sup>th</sup> February, 2003.

- 1- All Administrative secretaries to Govt: of NWFP.
- 2- The Secretary to Governor, NWFP.
- 3- The Secretary to Chief Minister, NWFP.
- 4- All Heads of Attached Departments in NWFP.
- 5- All the Heads of Autonomous/Semi Autonomous Bodies in NWFP.
- 6- All Distt: Co-Ordination Officer/Political Agents in NWFP.
- 7- The Registrar Peshawar High Court Peshawar.
- 8- All Distt: & Session Judges in NWFP.
- 9- The Secretary NWFP Public Service Commission, Peshawar.
- 10- The Director Anti-Corruption Establishment, Peshawar.
- 11- The Secretary Board of Revenue, NWFP, Peshawar.
- 12- The Registrar, NWFP Service Tribunal, Peshawar.

SUBJECT: POSTING/TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT.

Dear Sir,

1. I am directed to refer to the subject noted above and to say that in supersession of all policy. instructions issued in this behalf. the competent authority has approved the following Posting/Transfer Policy: -
  - i). All the posting /transfer shall be made strictly in the public interest and shall not be abused/misused to victimize the Government Servant...
  - ii). All Government servants are prohibited to exert political, Administrative or any other pressure upon the posting /transfer authorities for seeking posting transfer of their choice and against the public interest.
  - iii). All contract Govt: employees appointed against specific posts cannot be posted against any other post..
  - iv). The normal tenure of posting shall be three years subject to the condition that for the officers/officials posted in unattractive areas. the tenure shall be two years and for the hard areas the tenure shall be one year. The unattractive and

*gpc*

ATTESTED  
*[Signature]*

while the remaining departments shall make posting/transfer in July. There shall be a ban on posting/transfer throughout the year excluding the aforementioned two months due to promotion/retirement/creation of new post/return from long leave/involvement in disciplinary proceedings and adjustment of surplus staff for which specific relaxation shall be obtained from the Chief Minister.

- vi) While making posting/transfers from settled area to FATA vice-versa specific approval of the Governor NWFP needs to be obtained.
- vii) Officers may be posted on executive/administrative posts in the Distt: of their domicile except District Co-Ordination Officers (DCOs), and Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where a Police Station (Thana) of his area/residence is situated.
- viii) No posting/transfers of the officers/officials on the detailment basis shall be made.
- ix) Regarding the posting of husband/wife, both in the Provincial Services, efforts where possible would be made to post such persons at one station and this will be subject to the public interest.
- x) All posting/transfers authorities may facilitate the posting/transfers of unmarried female Govt: Servant at the station of their residence of their parents.
- xi) Officer/officials except DCOs and SPs who are due to retire within one year may be posted on their option, on posts in the Distt: of their domicile and be allowed to serve there till retirement.
- xii) In terms of Rule-17 (1) and (2) read with schedule-III of the Govt: of NWFP Rules of Business 1985, transfer of officers shown in column 1 of the following table, table shall be made by the authorities shown against each officers in column 2 thereof: -

COLUMN-1	COLUMN-2
<p><u>Outside the Secretariat.</u></p> <ol style="list-style-type: none"> <li>1. Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above.</li> <li>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)</li> <li>3. Head of attached Deptt: and other officers in B-19 &amp; above in all the Deptt:</li> </ol>	<p>Chief secretary in consultation with the Establishment Deptt. With the approval of the Chief Minister.</p>

YUC

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In the Secretariat.	Chief Secretary with the approval of the Chief Minister.
4. Secretaries.	Secretary of the Deptt: concerned.
5. Other officers and above the rank of Section Officers: -	Chief Secretary/ Secretary Establishment.
a)- Within the same Deptt:	Secretary of the Deptt: concerned.
b)- Within the Secretariat from one Deptt: to another.	Secretary of the Deptt: in consultation with the Head of Attached Deptt:
6. Officers up to the rank of Superintendents.	Secretary Establishment.
a)- Within the same Deptt:	
b)- To and from Attached Deptt:	
c)- Within the Secretariat from one Deptt: to another.	

- xiii) While considering the posting/transfers proposals all the concerned authorities shall keep in mind the following: -
  - a). To ensure the posting of proper persons on proper posts the annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on integrity of the concerned officer/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 Distt: Government employees feeling aggrieved due to the orders of posting/transfers authorities may seek remedy from the next higher authority/ the appointing authority as the case may be brought an appeal to be submitted within seven days of the receipt of such order. Such appeal shall be disposed of within fifteen days. The option of appeal against posting/transfers orders could be exercised only in the following cases: -
  - i)- premature posting/transfers or posting/transfers in violation of this policy.
  - ii)- Serious and grave personal( humanitarian) grounds.

YLB

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S.No	Officers	Authority
1-	Posting of Distt: Coordination Officer and Executive Distt: Officer in a Distt:	Provincial Govt:
2-	Posting of Distt: Police Officer.	Provincial Govt:
3-	Other officer in BPS-17 and above posted in the Distt:	Provincial Govt:
4-	Official in BPS-16 and below.	Executive Distt: Officer in consultation with Distt: Coordination Officer.

3. As per Rule-25 (2) of the Rules mentioned above the Distt: Coordination Department shall consult the Govt: if it is proposed to:-
- a)- transfer the holder of the tenure post before the completion of his tenure or extend the period of his tenure; and
  - b)- Acquire an officer to hold charge of more than one post for a period exceeding two months.

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

Your Faithfully,

Sd/xxx  
(GHULAM JALANI ASIF)  
ADDL: SECRETARY(REG:)

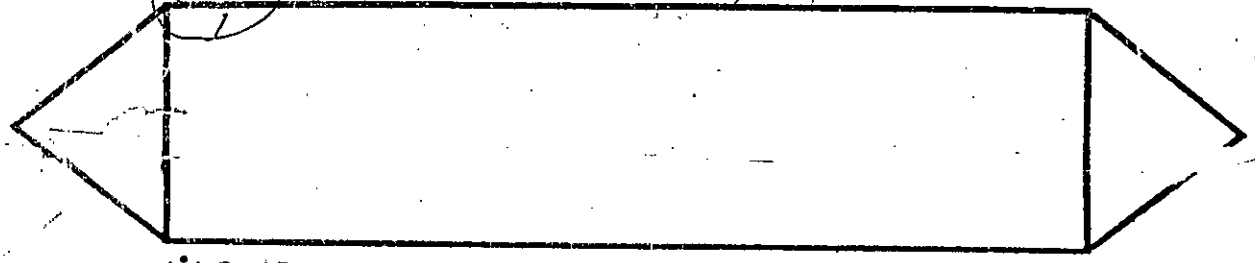
Endst:NO.SOR-1(E&AD)1-1/85

dated Peshawar the 15.2.2003.

*gh*

ATTESTED  
*an*

# بعدالت



2013ء منجانب

خواجہ حسن بنام الہی ام 19/1/2013ء

سرور اسلام

مورخہ  
مقدمہ  
دعویٰ  
جرم

## باعث تحریر آئندہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ  
آن مقام کے لئے ایچ آر انور صاحب اور امین حسین خان الوردی صاحب  
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوفہ مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز  
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور مشورشی  
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
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 بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ  
پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے وہ ہوگا۔  
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی  
مذکورہ کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

Accepted  
Page 4  
Case No. Amn  
Advocate Pak.

2013

ماہ 1 ستمبر

8

المرقوم

خواجہ حسن

خواجہ حسن

مقام کے لئے منظور ہے

خواجہ حسن خواجہ

مقام کے لئے

BEFORE THE KHYBER PAKHTUNKWA SERVICE  
TRIBUNAL PESHAWAR .

Appeal No. 608 /2013

Noor Hussain Patwari Halqa Mahal Saloo, Tehsil & District,  
Peshawar.

Appellant

VERSUS

Senior Member Board of Revenue Khyber Pakhtunkhwa  
Peshawar and others.

Respondents

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7	Vakalatnama		

Appellant

Through



IJAZ ANWAR  
Advocate, Peshawar

&

SAJID AMIN  
Advocate, Peshawar

**BEFORE THE KHYBER PAKHTUNKWA SERVICE  
TRIBUNAL PESHAWAR**

Appeal No. \_\_\_\_\_/2013

Noor Hussain Patwari Halqa Mahal Saloo, Tehsil & District,  
Peshawar.

**(Appellant)**

**VERSUS**

1. Senior Member Board of Revenue Khyber Pakhtunkhwa Peshawar.
2. Commissioner Peshawar Division, Peshawar.
3. Deputy Commissioner, Peshawar.
4. Sadaqat Ullah Patwari -waiting for posting, Office of the Additional Deputy Commissioner, Peshawar.

**(Respondents)**

**Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the Office Order dated 13.03.2013, whereby the appellant has been transferred from Halqa Mahal Saloo and directed to report to Deputy Commissioner Office while Respondent No. 2 has been transferred vice the appellant, against which his Departmental Appeal dated 22.03.2013, has also been rejected vide order dated 05.03.2013.**

Prayer in Appeal;

**On acceptance of this appeal the Orders dated 13.03.2013 and 05.04.2013, may please be set-aside and the appellant be allowed to continue his duties as Patwar Halqa Mahal Saloo Peshawar.**

Respectfully Submitted:

1. That the appellant is serving as Patwari in the Respondent Department.
2. That it is pertinent to point out here that the appellant remained at different stations as and when directed/posted.

3. That the appellant was lastly transferred to Halqa Mahal Saloo vide order dated 17.10.2011. the appellant took over the charge of his post and started performing my duties. (Copy of the order dated 17.10.2011 is attached as Annexure A).
4. That having hardly served for about one year, without allowing the him to complete his normal tenure of posting vide order dated 13.03.2013, the appellant has been transferred to Deputy Commissioner Office, Peshawar while Respondent No. 4 has been posted vice the appellant. (Copies of the order dated 13.03.2013 is attached as Annexure 'B')
5. That the appellant submitted his Departmental Appeal dated 22.03.2013, to the Respondent No. 2, however, it has also been rejected vide order dated 05.03.2013. (Copies of the Departmental Appeal & rejection order dated 05.03.2013, are attached as Annexure 'C' & 'D')
6. That the impugned transfer order is illegal, unlawful, against the Rules, politically motivated and malafide inter alia on the following grounds:

### Grounds of Appeal:

- A. That the appellant has not yet completed his normal tenure and thus the transfer order is illegal and unlawful, moreover the same is in violation of posting and transfer policy of the Provincial Govt. and the judgment of the apex court reported in PLD 1995 SC page 530.
- B. That the impugned order dated 13.03.2013 is made on the recommendation of the Chief Minister, who has got no authority to make such recommendation. thus the impugned order being Political motivated is against the transfer and posting policy and also against the reported judgements of the Superior Courts.
- C. That during his posting as Patwari, the performance of the appellant remained commendable and there was no complaint whatsoever regarding his performance.
- D. That in fact there exist no exigencies of service nor the order of transfer can be termed as in the public interest, rather it was issued in violation of law and transfer / posting policy of the Provincial Govt.
- E. That the respondent without caring for law, had in a quick succession issued a number of orders in favour of the



Respondent No. 4 against the public interest or exigency of service.

F. That the impugned transfer order is illegal, unlawful, politically motivated without lawful authority and passed without jurisdiction, not in the prescribed period, in violation of transfer and posting policy.

G. That the appellant seek permission of this Honourable Court to rely on additional grounds at the hearing of this Appeal.

It is, therefore, very humbly prayed that on acceptance of this appeal the Orders dated 13.03.2013 and 05.04.2013, may please be set-aside and the appellant be allowed to continue his duties as Patwar Halqa Mahal Saloo Peshawar

**Appellant**

Through



**IJAZ ANWAR**  
Advocate, Peshawar  
&

**SAJID AMIN**  
Advocate, Peshawar

**BEFORE THE KHYBER PAKHTUNKWA SERVICE  
TRIBUNAL PESHAWAR**

Appeal No. \_\_\_\_\_/2013

Noor Hussain Patwari Halqa Mahal Saloo, Tehsil & District,  
Peshawar.

**Appellant**

**VERSUS**

Senior Member Board of Revenue Khyber, Pakhtunkhwa  
Peshawar and others.

**Respondents**

**Application for the suspension of the transfer order  
Dated 13.03.2013 till the decision of the above noted  
Appeal**

**Respectfully Submitted:**

1. That the appellant has filed today the above noted appeal in this Honourable Tribunal in which no date of hearing has been fixed so far.
2. That the facts and ground mentioned in the accompanied appeal may be read as integral part of this application.
3. That the applicant has got a good prima facie case and there is likelihood of it success.
4. That the appellant has so far not relinquished his charge of his post.
5. That the applicant would be exposed to great hard ship and inconvenience in case the order is not suspended.
6. That the order passed is in violation of law.
7. That it will also serve the interest of justice if the order impugned is suspended till the final decision of the appeal.

It is there fore prayed that on acceptance of this application the operation of the impugned cancellation order dated 13.03.2013 may please be suspended till the decision of the appeal.

**Applicant**

Through



**IJAZ ANWAR**

Advocate, Peshawar

&

**SAJID AMIN**

Advocate, Peshawar

**AFFIDAVIT**

I, **Noor Hussain Patwari Halqa Mahal Saloo, Tehsil & District, Peshawar**, do hereby solemnly affirm and declare on oath that the contents of the above appeal as well as application are true and correct and that nothing has been kept back or concealed from this honourable Tribunal.

**DEPONENT**

⑥ ANNEX-A

OFFICE ORDER.

By the approval of competent authority, the following posting/transfer is

hereby ordered with immediate effect :-

S.No.	Name of Patwari	From	To
1.	Mr.Noor Hussain	Waiting posting	PH Mahal Saloo
2.	Mr.Shahid	-do-	PH Tota

*[Signature]*  
District Officer  
Revenue and Estate Peshawar

No. 4680-82 /DOR&E/DK dated 17 9 10 /2011

Copy forwarded to the :-

- 1-Tehsildar Peshawar.
- 2-Official concerned.
- 3-Office order file.

*[Signature]*  
District Officer  
Revenue and Estate Peshawar

7

Amended: B

OFFICE OF THE  
DEPUTY COMMISSIONER PESHAWAR.  
Dated Peshawar the 13/03/2013

OFFICE ORDER

The following postings/transfers amongst the patwaris of Peshawar District are hereby ordered in the public interest with immediate effect.

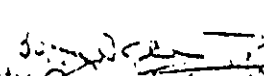
S #	Name of Patwari	From	To
1	Noor Hussain	P.H Mahal Salo	Report to DC's office
2	Sadaqatullah	Waiting for posting	P.H Mahal Salo vice No.1

  
Deputy Commissioner, Peshawar. 13/3/13

11666-10 /DC(P)/DK. Dated Peshawar the 13 /03/2013

Copy forwarded to the:-

1. Additional Deputy Commissioner, Peshawar.
2. Assistant Commissioner, Peshawar.
3. Tehsildar Peshawar.
4. Revenue Bill Clerk.
5. Official concerned for compliance.

  
Deputy Commissioner, Peshawar. 13/3/13

(3)

APPEAL:- C

BEFORE THE OFFICE OF COMMISSIONER  
PESHAWAR DIVISION PESHAWAR

Noor Hussain Patwari Halqa Mahal Saloo Peshawar.

Appellant

VERSUS

1. Deputy Commissioner, Peshawar.
2. Sadaqat Ullah Patwari waiting for posting, Office of the Additional Deputy Commissioner, Peshawar.

Respondents

Departmental Appeal under Section 22 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 r/w Rule 3 of the NWFP Civil Servant Appeal Rules 1986 against the Office Order dated 13.03.2013, whereby the appellant has been transferred from Halqa Mahal Saloo and directed to report to Deputy Commissioner Office while Respondent No. 2 has been transferred vice the appellant.

Prayer in Appeal:

On acceptance of this Departmental Appeal the Order dated 13.03.2013 may please be set-aside and the appellant be allowed to continue his duties as Patwari Halqa Mahal Saloo, Peshawar.

Respectfully Submitted:

1. That the appellant is serving as Patwari in the Respondent Department.
2. That it is pertinent to point out here that I remained at different stations as and when directed/posted.
3. That I was lastly transferred to Halqa Mahal Saloo vide order dated 17.10.2011. I took over the charge of my post and started performing my duties. (Copy of the order dated 17.10.2011 is attached).
4. That having hardly served for about one year, without allowing me to complete my normal tenure of posting vide order dated 13.03.2013, I have been transferred to Deputy Commissioner Office, Peshawar while Respondent No. 2 has been posted in my place.
5. That the impugned order is illegal, unlawful, against the Rules, politically motivated and malafide inter alia on the following grounds:

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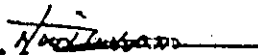
(9)

Grounds of Appeal:

- A. That I have not yet completed my tenure and thus the transfer order is illegal and unlawful, moreover the same is in violation of posting and transfer policy of the Provincial Govt.
- B. That I have not been allowed to complete my tenure and thus the order impugned is violation of transfer posting policy of the Govt and the judgment of the apex court reported in PLD 1995 SC page 530.
- C. That the impugned order dated 13.03.2013 is made on the recommendation of the Chief Minister, who has got no authority to make such recommendation. thus the impugned order being Political motivated is against the transfer and posting policy and also against the reported judgements of the Superior Courts.
- D. That during my posting as Patwari my performance remained commendable and there was no complaint whatsoever regarding my performance.
- E. That in fact there exist no exigencies of service nor the order of transfer can be termed as in the public interest, rather it was issued in violation of law and transfer / posting policy of the Provincial Govt.
- F. That the respondent without caring for law, had in a quick succession issued a number of orders in favour of the Respondent No 2 against the public interest or exigency of service.
- G. That the undersigned seek permission of this Honourable Court to rely on additional grounds at the hearing of this Appeal.

It is therefore, humbly prayed that On acceptance of this Departmental Appeal the Order dated 13.03.2013 may please be set-aside and the appellant be allowed to continue his duties as Patwari Halqa Mahal Saloo, Peshawar.

Appellant



(NOOR HUSSAIN)

Patwari

Halqa Mahal Saloo,

Peshawar

Dated : 22-03-2013

(10)

Annex: D

OFFICE OF THE  
COMMISSIONER PESHAWAR  
DIVISION PESHAWAR

No. \_\_\_\_\_ / Appeals(N.Hussain)/2013 .

Dated 05.03.2013

To

Mr. Noor Hussain,  
Patwar Halqa Mahal Saloo,  
Now DC Office Peshawar.  
(Appellant)

Subject: DEPARTMENTAL APPEAL AGAINST THE ORDER NO. 4006-10/DC(P)/DK dated 13.03.2013

I am directed to refer to your appeal filed before the Appellant Authority (Commissioner Peshawar) against the office order of Deputy Commissioner Peshawar bearing No.4006-10/DC(P)/DK dated 13.03.2013.

You are hereby informed/intimated that your appeal has been rejected by the Appellant Authority (Commissioner Peshawar) on administrative grounds being not maintainable.

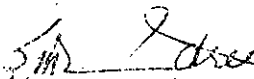


( SHAMA NIAMAT )

Assistant to Commissioner (R/GA)  
For Commissioner Peshawar Division

No. 3254 / Appeals(N.Hussain)/2013

Copy forwarded to the Deputy Commissioner, Peshawar for information please.



Assistant to Commissioner (R/GA)  
For Commissioner Peshawar Division



BETTER COPY

ANNEX E (11)

GOVERNMENT OF N.W.F.P  
ESTABLISHMENT & ADMINISTRATION DEPARTMENT  
(REGULATION WING)

NO.SOR-1(E&AD)1-1/85(Vol:11)

Dated the Peshawar the 15<sup>th</sup> February, 2003.

- 1- All Administrative secretaries to Govt: of NWFP.
- 2- The Secretary to Governor, NWFP.
- 3- The Secretary to Chief Minister, NWFP.
- 4- All Heads of Attached Departments in NWFP.
- 5- All the Heads of Autonomous/Semi Autonomous Bodies in NWFP.
- 6- All Distt: Co-Ordination Officer/Political Agents in NWFP.
- 7- The Registrar Peshawar High Court Peshawar.
- 8- All Distt: & Session Judges in NWFP.
- 9- The Secretary NWFP Public Service Commission, Peshawar.
- 10- The Director Anti-Corruption Establishment, Peshawar.
- 11- The Secretary Board of Revenue, NWFP, Peshawar.
- 12- The Registrar, NWFP Service Tribunal, Peshawar.

SUBJECT: POSTING/TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT.

Dear Sir,

1. I am directed to refer to the subject noted above and to say that in supersession of all policy, instructions issued in this behalf, the competent authority has approved the following Posting/Transfer Policy: -
  - i). All the posting /transfer shall be made strictly in the public interest and shall not be abused/misused to victimize the Government Servant...
  - ii). All Government servants are prohibited to exert political, Administrative or any other pressure upon the posting /transfer authorities for seeking posting transfer of their choice and against the public interest.
  - iii). All contract Govt: employees appointed against specific posts cannot be posted against any other post..
  - iv). The normal tenure of posting shall be three years subject to the condition that for the officers/officials posted in unattractive areas, the tenure shall be two years and for the hard areas the tenure shall be one year. The unattractive and

ATTESTED  
*[Signature]*

while the remaining departments shall make posting/transfer in July. There shall be a ban on posting/transfer throughout the year excluding the aforementioned two months due to promotion/retirement/creation of new post/return from long leave/involvement in disciplinary proceedings and adjustment of surplus staff for which specific relaxation shall be obtained from the Chief Minister.

- vi) While making posting/transfers from settled area to FATA vice-versa specific approval of the Governor NWFP needs to be obtained.
- vii) Officers may be posted on executive/administrative posts in the Distt: of their domicile except District Co-Ordination Officers (DCOs), and Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where a Police Station (Thana) of his area/residence is situated.
- viii) No posting/transfers of the officers/officials on the detailment basis shall be made.
- ix) Regarding the posting of husband/wife, both in the Provincial Services, efforts where possible would be made to post such persons at one station and this will be subject to the public interest.
- x) All posting/transfers authorities may facilitate the posting/transfers of unmarried female Govt: Servant at the station of their residence of their parents.
- xi) Officer/officials except DCOs and SPs who are due to retire within one year may be posted on their option, on posts in the Distt: of their domicile and be allowed to serve there till retirement.
- xii) In terms of Rule-17 (1) and (2) read with schedule-III of the Govt: of NWFP Rules of Business 1985, transfer of officers shown in column 1 of the following table, table shall be made by the authorities shown against each officers in column 2 thereof: -

COLUMN-1	COLUMN-2
<p><u>Outside the Secretariat.</u></p> <ol style="list-style-type: none"> <li>1. Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above.</li> <li>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)</li> <li>3. Head of attached Deptt: and other officers in B-19 &amp; above in all the Deptt.</li> </ol>	<p>Chief secretary in consultation with the Establishment Deptt. With the approval of the Chief Minister.</p>

<p>In the Secretariat.</p> <p>4. Secretaries.</p> <p>5. Other officers and above the rank of Section Officers: -</p> <p>a)- Within the same Deptt:</p> <p>b)- Within the Secretariat from one Deptt: to another.</p> <p>6. Officers up to the rank of Superintendents.</p> <p>a)- Within the same Deptt:</p> <p>b)- To and from Attached Deptt:</p> <p>c)- Within the Secretariat from one Deptt: to another.</p>	<p>Chief Secretary with the approval of the Chief Minister.</p> <p>Secretary of the Deptt: concerned.</p> <p>Chief Secretary/ Secretary Establishment.</p> <p>Secretary of the Deptt: concerned.</p> <p>Secretary of the Deptt: in consultation with the Head of Attached Deptt:</p> <p>Secretary Establishment.</p>
---	--

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

- a). To ensure the posting of proper persons on proper posts the annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on integrity of the concerned officer/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 Distt: Government employees feeling aggrieved due to the orders of posting/transfers authorities may seek remedy from the next higher authority/ the appointing authority as the case may be brought an appeal to be submitted within seven days of the receipt of such order. Such appeal shall be disposed of within fifteen days. The option of appeal against posting/transfers orders could be exercised only in the following cases: -

- i)- premature posting/transfers or posting/transfers in violation of this policy.
- ii)- Serious and grave personal( humanitarian) grounds.

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S.No	Officers	Authority
1-	Posting of Distt: Coordination Officer and Executive Distt: Officer in a Distt:	Provincial Govt:
2-	Posting of Distt: Police Officer.	Provincial Govt:
3-	Other officer in BPS-17 and above posted in the Distt:	Provincial Govt:
4-	Official in BPS-16 and below.	Executive Distt: Officer in consultation with Distt: Coordination Officer.

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

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

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

Your Faithfully,

Sd/xxx  
(GHULAM JALANI ASIF)  
ADDL: SECRETARY(REG:)

Endst:NO.SOR-1(E&AD)1-1/SS

dated Peshawar the 15.2.2003.

ATTESTED  
*[Signature]*

لہذا یہ شے ہی جہاں سے ہے

اسے دیکھو یہ وہی ہے

30/4/2013

مذاقت الہیہ ہو گی

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