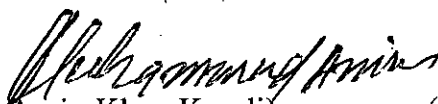


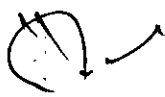
12.02.2019

Appellant absent. Learned counsel for the appellant is also absent.
Mr. Muhammad Jan, Deputy District Attorney for the respondents present.
Case called but neither appellant nor his counsel turned up. The present
case pertains to the year 2013. Consequently, the present service appeal is
dismissed in default. No order as to costs. File be consigned to the record
room.

ANNOUNCED

12.02.2019


(M. Amin Khan Kundi)
Member


(Muhammad Hamid Mughal)
Member

07.08.2018

Junior to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Junior to counsel for the appellant requested for adjournment as senior counsel is not in attendance. Adjourned. To come up for arguments on 02.10.2018 before D.B



(Muhammad Amin Kundi)
Member



(Muhammad Hamid Mughal)
Member

02.10.2018

Junior to counsel for the appellant and Mr. Riaz Ahmed Paindakhel Assistant Advocate General for the respondent present. Junior to counsel for the appellant seeks adjournment on the ground that his senior is not available today. Adjourned. To come up for arguments on 09.11.2018 before D.B.



(Hussain Shah)
Member



(Muhammad Hamid Mughal)
Member

09.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 18.12.2018.



Reader

18.12.2018

Junior counsel for the appellant Mr. Ayoub Amin, Advocate present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Junior counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is busy in the Hon'ble Peshawar High Court. Adjourned. To come up for arguments on 12.02.2019 before D.B.



(Hussain Shah)
Member



(Muhammad Amin Khan Kundi)
Member

07.2.2018

Clerk of counsel and Mr. Ziaullah, Deputy District Attorney for the respondents present. The Learned counsel for the appellant was stated to be busy before the august Supreme Court of Pakistan. Seeks adjournment. To come up for arguments on 10.04.2018 before D.B.


Member


Chairman

10.04.2018

Junior to counsel for the appellant and Asst: AG for respondents present. Junior to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 21.06.2018 before D.B.

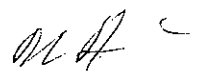

(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

21.06.2018

Counsel for the appellant and Mr. Muhammad Jan, DDA for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for order on 07.08.2018 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

1346/2013

07.06.2017

Clerk of the counsel for appellant present. Mr. Ziaullah, Deputy District Attorney for the respondents also present. Clerk of the counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 06.10.2017 before D.B.

(GUL ZEB KHAN)
MEMBER


(MUHAMMAD AMIN KHAN KUND)
MEMBER

06.10.2017

Agent to counsel for appellant present. Mr. Muhammad Jan, Deputy District Attorney for respondents present. Agent to counsel for appellant seeks adjournment. Adjourn. To come up for arguments on 28.11.2017 before D.B.

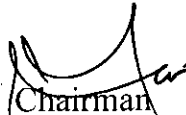

Member
(Executive)


Member
(Judicial)

28.11.2017

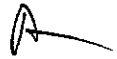
Clerk to counsel for the appellant and Addl: AG for respondent present. Clerk to counsel for appellant seeks adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 07.02.2018 before the D.B


Member


Chairman

10.06.2016

Clerk to counsel for the appellant and Mr. Ziaullah, GP for respondents present. Arguments could not be heard due to non-availability of learned counsel for the appellant as well as the learned Member (Judicial) Mr. Muhammad Aamir Nazir is on leave, therefore, Bench is incomplete. To come up for arguments on 25.10.2016 before D.B.



MEMBER

25.10.2016

Clerk to counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Clerk to counsel for the appellant requested for adjournment. To come up for arguments on 23.02.2017 before D.B.



Member



Chairman

23.02.2017

Clerk to counsel for the appellant and Adll: AG for respondents present. Clerk to counsel for the appellant requested for adjournment as counsel for the appellant was busy before Peshawar High Court, Peshawar. To come up for arguments on 07.06.2017 before D.B.



(AHMAD HASSAN)
MEMBER



(MUHAMMAD AAMIR NAZIR)
MEMBER

11.03.2015

Agent of counsel for the appellant and Addl. A.G for respondents present. Rejoinder submitted. The appeal is assigned to D.B for final hearing/arguments for 01.10.2015.


Chairman

01.10.2015

Clerk to counsel for the appellant and Mr. Ziaullah, GP for the respondents present. Clerk to counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 16-3-16.


Member


Member

16.03.2016

Clerk to counsel for the appellant and Mr. Ziaullah, GP for respondents present. Clerk to counsel for the appellant requested for adjournment as counsel for the appellant stated to be busy before the Hon'ble Peshawar High Court. To come up for arguments on

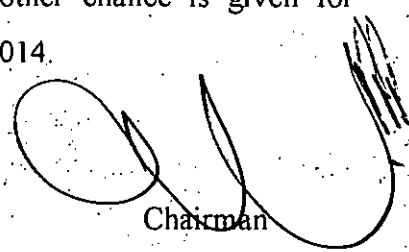
10.6.16 before D.B.


MEMBER


MEMBER

28.01.2014

Appellant in person and AAG for the respondents present. Written reply has not been received. Another chance is given for written reply/comments, positively, on 11.4.2014.


Chairman

11.4.2014

Clerk of counsel for the appellant and Mr. Daud Jan, Supdt. for respondents with AAG present. Written reply has not been received. A last chance is given for written reply/comment on 21.7.2014.

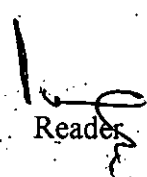
8
21.7.2014

Clerk of counsel for the appellant and Mr. Chairman, Supdt. for respondents with AAG present. Written reply/para-wise comments received on behalf of the respondents, copy whereof is handed over to the clerk of counsel for the appellant for rejoinder on 26.11.2014.


Chairman

26.11.2014

No one is present on behalf of the appellant. Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for rejoinder on 11.03.2015.


Reader


Appeal No. 1346/2013.
Mr. Muslim Khan.

30.09.2013

Counsel for the appellant present and heard on preliminary.

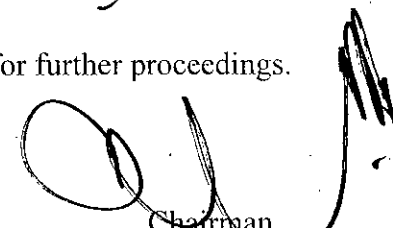
Contended that the appellant has not been treated in accordance with the law/rules. The impugned as well as transfer order ^s have been issued by the incompetent authority. Moreover the impugned transfer order dated 06.08.2013 is pre-mature against which he filed departmental appeal but the same has been rejected vide letter dated 11.09.2013, hence the present appeal on 17.09.2013. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections/limitation. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notice be issued to the respondents. Counsel for the appellant also submitted an application for suspension the operation of the impugned orders dated 26.07.2013 and 06.08.2013 till the final disposal of the instant appeal. Notice of application should also be issued to the respondents for reply/arguments. To come up for written reply on main appeal as well as reply/arguments on stay application on 18.11.2013.

Appellant deposited
Process fee & Security
Rs. 1800/- Bank Receipt
attached with file


Member.

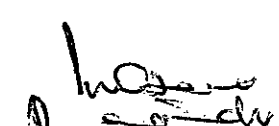
30.09.2013

This case be put before the Final Bench I for further proceedings.


Chairman

18-11-13



counsel for the appellant and Sand Jay
Assistant, for respondents present. The worthy
chairman, is on tour to abroad. To come up
for written reply/comment on 28-01-2014


Incharge

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1346 /2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	17/09/2013	<p>The appeal of Mr. Muslim Khan presented today by Mr. Khaled Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	20-9-2013.	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>30-9-2013</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1346 /2013

Muslim Khan

The Govt. of KP and others

Versus

.....Appellant

.....Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-5
2.	Stay Application with Affidavit			6-7
3.	Selection and transfer order of appellant	10.04.2010	A	0-9
4.	Appellant's transfer order to GHS Ghazi Baba Bajaur Agency	16.11.2011	B	0-10
5.	Order thereby above transfer order was withdrawn	02.12.2011	C	0-11
6.	Order of appellant's adjustment at GHS Khar No.2, Bajaur Agency	12.02.2013	D	0-12
7.	Departmental Representation	14.02.2013	E	0-13
8.	Order of appellant's re-adjustment as AAEO, Bajaur Agency	26.03.2013	F	0-14
9.	Impugned transfer Notification	26.07.2013	G	0-15
10.	Impugned adjustment order	06.08.2013	H	0-16
11.	Departmental Representation		I	17-18
12.	Impugned appellate order	11.09.2013	J	0-19
13.	Extracts from the case of ANITA TURAB		K	20-36
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15.	Wakalat Nama			41

Through

Appellant

Khaled Rahman
Khaled Rahman
Advocate, Peshawar

Ø-B, Haroon Mansion,
Khyber Bazar, Peshawar.
Cell # 0345-9337312

Dated: 17 / 09/ 2013

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1346/2013

Muslim Khan,
Ex-AAEO, office of the
Agency Education Officer
Bajaur AgencyAppellant.

~~1385~~
~~17-9-13~~

Versus

1. The Additional Chief Secretary
FATA Secretariat, Warsak Road, Peshawar.
2. The Secretary Education (FATA)
FATA Secretariat, Warsak Road, Peshawar.
3. The Director Education (FATA)
FATA Secretariat, Warsak Road,
Peshawar.Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNALS
ACT, 1974 AGAINST IMPUGNED ORDER DATED
26.07.2013 WHEREBY APPELLANT WAS
TRANSFERRED FROM THE POST OF AAEO,
BAJAUR AGENCY AND HIS SERVICES WERE
PLACED AT THE DISPOSAL OF DIRECTORATE
OF EDUCATION FATA AND THE ORDER DATED
06.08.2013 AGAINST WHICH HE FILED
DEPARTMENTAL REPRESENTATION BUT THE
SAME WAS REJECTED VIDE LETTER DATED
11.09.2013.

13/9
17/9/13

11-9-13
19

PRAYER:

On acceptance of the instant appeal, the impugned
order dated 26.07.2013 and the consequent order dated

06.08.2013 may graciously be brushed aside by allowing the appellant to be posted as AAEO Bajaur Agency!

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That on 10.04.2010 (*Annex:-A*) appellant was selected and transferred to the post of AAEO, Bajaur Agency after observing all the codal formalities for a period of five years. In pursuance of the order appellant took over the charge of his post of AAEO, Bajaur Agency and performed his duties to the entire satisfaction of the high-ups.
2. That on 16.11.2011 (*Annex:-B*) without completing his tenure of five years appellant was transferred to GHS Ghazi Baba Bajaur Agency against which appellant preferred a Representation and accordingly the order dated 16.11.2011 was withdrawn on the ground of incompleteness of five years tenure vide order dated 02.12.2011 (*Annex:-C*).
3. That on 01.02.2013 again appellant was transferred to GHS Top Mandal, Bajaur Agency but the order was modified and appellant was adjusted at GHS Khar No.2, Bajaur Agency vide order dated 12.02.2013 (*Annex:-D*).
4. That being aggrieved of the order *ibid*, the appellant challenged the same through a departmental Representation on 14.02.2013 (*Annex:-E*) but during the pendency of

Representation vide order dated 26.03.2013 (*Annex:-F*) appellant was re-adjusted against the post of AAEO, Bajaur Agency.

5. That within a short span thereafter, appellant was again subjected to another transfer quite prematurely vide Notification dated 26.07.2013 (*Annex:-G*) issued by Respondent No.2 and adjusted at GHS Shago Bajaur Agency vide order dated 06.08.2013 (*Annex:-H*). The appellant filed a departmental Representation (*Annex:-I*) thereagainst but the same was rejected vide appellate order dated 11.09.2013 (*Annex:-J*), hence this appeal inter-alia on the following grounds:-

Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned orders, which are unjust, unfair and hence not sustainable in the eye of law.
- B. That the impugned transfer order has been issued by an incompetent authority because for the post of AAEO Respondent No.3 is the competent authority whereas the impugned order has been issued by Respondent No.2 which is thus void, ab-initio, Coram-non-judice and hence not

sustainable.

- C. That appellant has been transferred for a tenure of five years and before the completion of the period of five years the impugned order has been issued which is thus premature and as per the Judgment of the Apex Court in ANITA TURAB's case (*Annex:-K*) the tenure of a posting shall be respected.
- D. That the ground mentioned in the appellate order is also misconceived and fallacious because as per the subsequent orders dated 02.12.2011, 12.02.2013 and 26.03.2013 the earlier tenure has been broken, therefore, the impugned appellate order is also without lawful authority and hence not maintainable.
- E. That the impugned transfer order is against the transfer/posting policy (*Annex:-L*) issued by the competent authority, therefore, the impugned orders are not maintainable on this ground also.
- F. That within a short span, appellant has been subjected to numerous transfer orders which is against the principle of good governance and public interest.
- G. That the impugned order is neither in the public interest nor in exigency of service but is based upon political considerations which is prohibited by the law aimed, therefore is not maintainable.

- H. That the impugned order has been issued during the period of ban.
- I. That the order impugned is based upon administrative ground which is not legal because transfer is not a penalty under the law and administrative ground cannot be made the reason for transfer.
- J. That the appellate order is illegal as no valid reasons and grounds as per Section 24A of the General Clauses Act, 1897 have been given in support thereof.
- K. That the impugned orders are in violation of the Judgments of the Apex Court as well as this Hon'ble Tribunal.
- L. That appellant also begs to submit other grounds at the time of arguments.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through


Appellant

Khaled Rahman,
Advocate, Peshawar.

Dated: 17 / 09/ 2013

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**Service Appeal No. _____/2013**

Muslim KhanApplicant.

Versus

The Addl: Chief Secretary FATA etc.....Respondents

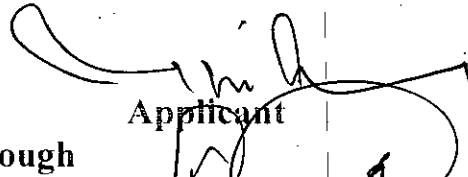

Application for suspending the operation of the impugned orders dated 26.07.2013 and 06.08.2013 till the final disposal of the instant appeal.

Respectfully Sheweth,

1. That the above titled service appeal is being filed today which is yet to be fixed for hearing.
2. That the facts alleged and grounds taken in the body of main appeal may kindly be as an integral part of this application, which make out an excellent prima facie case in favour of the appellant.
3. That the balance of convenience also lies in favour of appellant and in case the impugned orders are not suspended the appellant will suffer irreparable loss.

It is, therefore, humbly prayed that on acceptance of this application, the operation of the impugned orders

dated 26.07.2013 and 06.08.2013 may graciously be suspended till the final disposal of the appeal.


Applicant

Through
Khaleed Rahman,
Advocate, Peshawar.

Dated: 17 / 09/ 2013

Affidavit

I, Muslim Khan, Ex-AAEO, office of the Agency Education Officer Bajaur Agency, do hereby affirm and declare on oath that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


Deponent

ATTESTED



Better Copy



DIRECTORATE OF EDUCATION, FATA SECRETARIAT, PESHAWAR

TRANSFER

Mr. Muslim Khan SET GHS Batwar, Bajaur Agency is hereby transferred on his own pay & BPS against the vacant post of AAEO in the office of the AEO Bajaur Agency with effect from the date of taking over charge.

NOTE:

1. Charge report should be submitted to all concerned.
2. TA/DA etc. is not allowed.

(FAZLI MANAN)
Director Education
FATA NWFP Peshawar

Ends: No. 4962-66/A-12/Muslim Khan AAEO

Dated Pesh: the 10/04/2010

Copy forwarded to the:

1. Agency Education Officer, Bajaur Agency w/r to his letter No.7133 dated 7.4.2010.
2. Agency Accounts Officer, Bajour Agency at Khar
3. Headmaster, GHS Batwar, Bajaur Agency.
4. P.A to D.E FATA.
5. P/File.

Sd/

DY DIRECTOR EDUCATION
FATA N.W.F.P. PESHAWAR

ATTESTED

A

4

ANNEX A

TRANSFER

Mr. Mahmud Khan 51 F.G.H. Bahawal, Bajour Agency is hereby transferred on his own pay & B.P. against the vacant post of AAO in the office of the AAO Bajour Agency. The state of his department charges change report should be submitted to all concerned. P.A./D.A etc. is not allowed.

(FAZIL MANAN)
 DIRECTOR EDUCATION
 TATA NWFP PESHAWAR

4962-66

10/4

Copy forwarded to: Information Officer
 Agency Education Officer, Bajour Agency w/r to letter No. 7127 dated 14/2010

- 1. Agency Accounts Officer, Bajour Agency at Khan Headquarter G.H. Bahawal, Bajour Agency
- 2. P.A to D.I JATA
- 3. P/file

[Signature]
 BY DIRECTOR
 TATA NWFP

Asstt
 Br MB

[Signature]
 12/04/2010

[Signature]

AT

11/04/10
 11/04/10

DIRECTORATE OF EDUCATION, FATA SECRETARIAT, PESHAWAR
TRANSFER

Being SET (Science) and junior to other SETs in Bajour Agency, Mr. Muslim Khan SET (Science) working as AAEO in the office of AEO Bajour Agency is hereby transferred in his own pay and scale to GHS Ghazi Baba, Bajour Agency against vacant post with immediate effect in the interest of public service.

NOTE:

1. Charge report should be submitted to all concerned.
2. TA/DA etc: is not allowed.

10
B
ANNEX

SECRETARY
ADDMN: & COORDINATION
FATA SECRETARIAT

19477-80

Endst: No. _____/A-12/Muslim Khan AAEO Dated Pesh: the 16/11 2011

Copy forwarded to the:-

1. Agency Education Officer, Bajour Agency at Khar with the direction to submit a panel of at least 03 senior most SETs each for the resultant vacant posts of AAEO as per prescribed criteria already conveyed to you vide this office No. 1736 dated 6-10-2011.
2. Agency Accounts Officer, Bajour Agency at Khar
- ✓ 3. Headmaster GHS Ghazi Baba, Bajour Agency
4. P.A to D.E FATA

ATTESTED

ADDL: DIRECTOR (ESTAB)

17/11
GHS Ghazi Baba

16/11/11

[Signature]

[Signature]



DIRECTORATE OF EDUCATION, FATA SECRETARIAT, PESHAWAR
CANCELLATION OF TRANSFER ORDER

The transfer order in respect of Mr. Muslim Khan AAEO Bajour to GHS Ghazi Baba (Bajour) as SET issued vide this Directorate Endst: No. 19477-80/ A-12/Muslim Khan AAEO dated 16-11-2011 is hereby withdrawn due to his incomplete tenure (less than 05 years).

NOTE:

- 1 Charge report should be submitted to all concerned;
- 2 TA/DA etc: is not allowed.

(FAZLI MANAN)
 DIRECTOR EDUCATION (FATA)

20503-7

Endst: No. _____/A-12/Muslim Khan AAEO Dated Pesh: the 2/12 2011

Copy forwarded to the:-

- 1 Agency Education Officer, Bajour Agency at Khar
- 2 Agency Accounts Officer, Bajour Agency at Khar
- 3 Headmaster GHS Ghazi Baba, Bajour Agency
- 4 PS to Addl: Chief Secretary FATA
- 5 PS to Secretary A&C FATA

ADDL DIRECTOR (ESTAB)

ATTESTED

ANNEX 13

13

DIRECTORATE OF EDUCATION, FATA SECRETARIAT, PESHAWAR
CORRIGENDUM

In partial modification of FATA Secretariat Social Sectors Department order issued under No. FS/SSD/SO(E)AAEO/253-59 dated 01/02/2013, Mr. Muslim Khan AAEO under order of adjustment at GHS Top Mandal, Bajour Agency occurring at S/No.4 is hereby re-adjusted at GHS Khar-No.2, Bajour Agency against newly created SET (Sc) post.

Note:

The terms & conditions of his re-adjustment will be the same as already prescribed in the above mentioned order of FATA Secretariat.

(ROZ WALI KHAN)
DIRECTOR EDUCATION (FATA)

2109-13

Endst: No: _____/A-12/Muslim Khan AAEO Dated Pesh: the 12/2 2013

Copy forwarded to the:-

- 1 Section Officer (Edu), Social Sectors Department, FATA Secretariat
- 2 Agency Education Officer Bajour Agency at Khar w/r to his No. 4179 dated 04/02/2013
- 3 Agency Accounts Officer, Bajour Agency at Khar
- 4 Headmaster GHS Top Mandal, Bajour Agency
- 5 Headmaster GHS Khar No.2, Bajour Agency

ADDL: DIRECTOR (ESTAB)

ATTESTED

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13

بخدمت جناب ڈائریکٹر صاحب آف ایجوکیشن فاٹا پشاور
درخواست برائے ہمدردانہ اپیل

جناب عالی!

مؤدبانہ گزارش ہے کہ میرا تقرری / ایڈجسٹمنٹ بتاریخ 10.04.2010 کو ایجوکیشن آفس باجوڑ میں بحیثیت AAEO ہوئی۔
جناب والا! دوران ملازمت میرا تبادلہ GHS غازی بابا کو اس بنیاد پر ہوا کہ میں سائنس ٹیچر بعد ازاں تبادلہ کا یہ حکم نامہ 2.12.011 کو
اس بنیاد پر رکوا یا گیا کہ بندہ فرض شناس اور سختی سے اور ساتھ ہی پانچ سال ٹینور بھی پورا نہیں ہے۔

جناب والا! ایک بار پھر میرا تبادلہ کیا گیا اور میرے جگہ ایک ایسے بندے کو تعینات کیا گیا جس کا تعلق مینجمنٹ کیڈر سے ہے اور
حیثیت ADO ضلع دریر میں تعینات تھا۔ یہ کیڈر صرف KPK کیلئے تھا اور فاٹا اس سے بالکل مستثنیٰ تھا۔

میں نے بھی یہ کیڈر اور PSC کو الیفائی کیا تھا لیکن فاکٹ میں یہ implant نہیں ہے۔ اس وجہ سے میں نے Refuse کیا تھا۔ اب
مجھے مذکورہ پوسٹ سے ہٹا کر غیر قانونی بندے کو ٹرانسفر کیا گیا جو کہ انصاف کے تقاضوں کے بالکل خلاف ہے۔

اسلئے آپ صاحبان مہربانی کر کے حالیہ ٹرانسفر پر نظر ثانی کر کے مجھے پانچ سال ٹینور مکمل کرنے کے احکامات صادر فرمادیں۔

العارض

مورخہ 14.02.13

آپ کا تابع دار

مسلم خان AAEO باجوڑ

ATTESTED

Handwritten signature or initials at the top of the page.

ATTESTED

Main body of handwritten text, likely a legal or official document, written in Urdu. The text is dense and covers most of the page.

AMNA B
13

14

ANNEX F

DIRECTORATE OF EDUCATION, FATA SECRETARIAT, PESHAWAR

RE-ADJUSTMENT

Mr. Muslim Khan SET (Sc) GHS Khar No.2, Bajour Agency is hereby re-adjusted as AAEO in the Agency Education Office, Bajour Agency with effect from the date of his taking over charge Vice Mr. Abdul Haq AAEO promoted as Headmaster.

NOTE:-

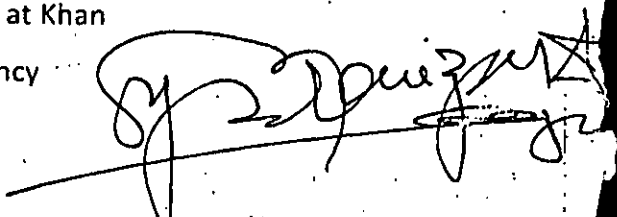
- 1 Charge report should be submitted to all concerned.
- 2 TA/DA etc is not allowed
- 3 The order will take effect as & when the post vacated by Mr. Abdul Haq AAEO.

(MUHAMMAD ISLAM BANGASH)
DIRECTOR EDUCATION (FATA)

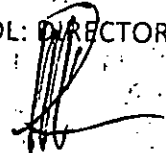
Endst: No. 5683-27 /A-12/Muslim Khan SET(Sc): Dated Pesh: the 26-3 2013

Copy forwarded to the:-

1. PS to Governor Khyber Pakhtunkhwa for information
2. Agency Education Officer Bajour Agency at Khar
3. Agency Accounts Officer, Bajour Agency at Khan
4. Headmaster GHS Khar No.2, Bajour Agency
5. P.A to Director Education FATA



ADDL: DIRECTOR (ESTAB)



ATTESTED

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**DIRECTORATE OF EDUCATION
(FATA), SECRETARIAT
WARSAK ROAD PESHAWAR**
Phone No. 091-9210166 Fax No. 091-9210216

(137)

Annex B

Dated Peshawar the 26th July, 2013

NOTIFICATION

No.SO (FATA/Edu)/1-30/2013: One having spent last four years out of five on administrative post of AAEO Bajaur, despite the fact that he was transferred on administrative grounds previously also, Mr. Muslim Khan AAEO, Bajour BS-16 is hereby transferred and his services are placed at the disposal of Directorate of Education FATA with immediate effect for further adjustment in a school against an appropriate post.

Secretary Education FATA

Endst: No & Date even: /1798-102

Copy forwarded to:

1. The Director Education FATA, FATA Secretariat Peshawar.
2. Agency Account Officer Bajaur Agency.
3. Officers concerned.
4. PS to Secretary Education FATA, Governor's Secretariat Peshawar.

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Section Officer (Edu FATA)

DIRECTORATE OF EDUCATION, FATA SECRETARIAT, PESHAWAR

ADJUSTMENT

Consequent upon removal from AAED post and placement of his services at the disposal of this Directorate vide S.O (Edu) FATA Secretariat Endst: No. SO(FATA/Edu)/1-30/2013 dated 26//7/2013, Mr. Muslim Khan is hereby posted/adjusted at GHS Shago Bajour Agency on his own pay & scale against vacant post.

NOTE:-

- 1 Charge report should be submitted to all concerned.
- 2 TA/DA etc is not allowed

(ROZ WALI KHAN)
DIRECTOR EDUCATION (FATA)

Endst: No. 10054-57/A-12/Muslim Khan Ex-AAED

Dated Pesh: the 26/8/2013

Copy forwarded to the:-

- 1 Section Officer (Edu) FATA Secretariat w/r to his letter mentioned above.
- 2 Agency Education Officer, Bajour Agency at Khar
- 3 Agency Accounts Officer, Bajour Agency at Khar
- 4 Headmaster GHS Shago, Bajour Agency

ADDL: DIRECTOR (ESTAB)

ATTESTED

To

Director Education,

FATA Secretariat, Warsak Road,
Peshawar.

(17)

ANNEX "1"

Subject: Departmental Representation against the impugned order dated 26.07.2013 whereby appellant was transferred from the post of AAEO Bajaur Agency and his services were placed at the disposal of Directorate of Education FATA.

Respected Sir,

With due respect I have the honour to submit this departmental appeal/representation for your kind consideration and favourable action on the following facts and grounds:

1. That on 10.04.2010 (*Annex:-A*) appellant was selected and transferred to the post of AAEO, Bajaur Agency after observing all the codal formalities for a period of five years. In pursuance of the order appellant took over the charge of his post of AAEO, Bajaur Agency and performed his duties to the entire satisfaction of the high-ups.
2. That on 16.11.2011 (*Annex:-B*) without completing his tenure of five years appellant was transferred to GHS Ghazi Baba Bajaur Agency against which appellant preferred a Representation and accordingly the order dated 16.11.2011 was withdrawn on the ground of incompleteness of five years tenure vide order dated 02.12.2011 (*Annex:-C*).
3. That on 01.02.2013 again appellant was transferred to GHS Top Mandal, Bajaur Agency but the order was modified and appellant was adjusted at GHS Khar No.2, Bajaur Agency vide order dated 12.02.2013 (*Annex:-D*).
4. That being aggrieved of the order *ibid*, the appellant challenged the same through a departmental Representation on 14.02.2013 (*Annex:-E*) but during the pendency of Representation vide order dated 26.03.2013 (*Annex:-F*) appellant was re-adjusted against the post of AAEO, Bajaur Agency.
5. That within a short span thereafter, appellant was again subjected to another transfer quite prematurely vide Notification dated 26.07.2013 (*Annex:-G*) issued by the Secretary Education FATA. appellant being aggrieved of the same challenges the validity of the same through this departmental Representation *inter-alia* on the following

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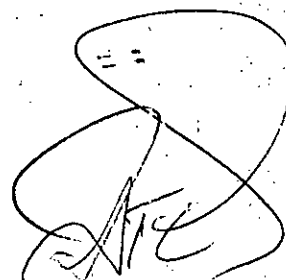
grounds:-

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Grounds:

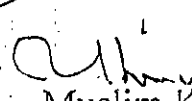
- A. That the impugned order has been issued by the incompetent authority because for the post of AAEO the Director is the competent authority whereas the impugned order has been issued by the Secretary which is thus void, ab-initio, Coram-non-judice and hence not sustainable.
- B. That appellant has been transferred for a tenure of five years and before the completion of the period of five years the impugned order has been issued which is thus premature and as per the Judgment of the Apex Court in ANITA TURAB's case the tenure of a posting shall be respected.
- C. That within a short time appellant has been subjected to numerous transfer orders which is against the principle of good governance and public interest.
- D. That the impugned order is neither in the public interest nor in exigency of service but is aimed at other considerations, therefore is not maintainable.
- E. That the impugned order has been issued during the period of ban.

It is, therefore, humbly requested that on acceptance of this departmental Representation, the impugned order dated 26.07.2013 may graciously be set aside and appellant by allowing appellant to be posted as AAEO Bajaur Agency.



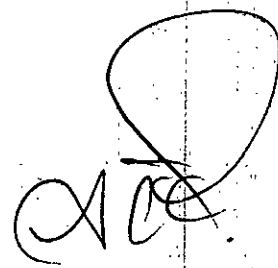
Yours faithfully

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Muslim Khan,
AAEO, office of the
Agency Education Officer
Bajaur Agency

Dated: 30/08/2013



Amy J (19)



FATA SECRETARIAT
(Education Department)
Warsak Road Peshawar

NO.S.O (FATA) EDU/1-30/Bajour/22-6
Dated Peshawar the 11-9-2013

To

The Director of Education FATA,
Peshawar.

SUBJECT: -DEPARTMENTAL APPEAL REGARDING CANCELLATION OF TRANSFER ORDER.

I am directed to refer to your letter No.11112 dated 27-8-2013 on the subject noted above and to state that the Secretary Education FATA has regretted appeal of Mr.Muslim Khan ex-AAEO Bajour Agency on the ground that he has completed his normal tenure i.e. four years out of 5 years on administrative post.

(Muhammad Tariq)
Section officer (FATA Edu)

Encl AA

CC:-

P.S to Secretary Education FATA.

[Signature]
Section officer (FATA Edu)

[Large handwritten signature]

PLD 2013 Supreme Court 195

Present: Iftikhar Muhammad Chaudhry, C.J., Jawwad S. Khawaja and Khilji Arif Hussain, JJ

Syed MAHMOOD AKHTAR NAQVI and others---Petitioners

Versus

FEDERATION OF PAKISTAN and others---Respondents

[Petition by Ms. Anita Turab for protection of Civil Servants: In re]

Constitution Petitions Nos.23 and 11, Criminal Original Petitions Nos.23, 24 and 27, H.R.C. No. 14427-P, C.M.As. Nos. 1575, 1611, 1792, 197-R and 231-R and Criminal Miscellaneous Application No.587 of 2012 in Criminal Original Petition No. 24 of 2012 in Constitution Petition No.11 of 2012.

(a) Civil Servants Act (LXXI of 1973)---

---Ss. 4, 5, 9 & 10---Civil Servants (Appointment, Promotion and Transfer) Rules, 1973--- Constitution of Pakistan, Arts. 9, 14, 18 & 184(3)---Constitutional petition under Art. 184(3) of the Constitution seeking elaboration of constitutional and legal safeguards relating to the working of civil servants---Maintainability---Matter of tenure, appointment, posting, transfer and promotion of civil servants could not be dealt with in an arbitrary manner; it could only be sustained when it was in accordance with the law---Decision which deviated from the accepted or rule-based norm without proper justification, could be tested on the touchstone of a manifest public interest---Fundamental rights of civil servants, inter alia, under Arts.9, 14 & 18 of the Constitution were aspects arising in the present constitutional petition---Constitutional petition was maintainable.

Tariq Aziz-ud-Din's case 2010 SCMR 1301; Syed Yousaf Raza Gillani v. Assistant Registrar PLD-2012 SC 466 and Mehmood Akhtar Naqvi v. Federation of Pakistan, Constitution Petition No.5 of 2012 ref.

(b) Civil Servants Act (LXXI of 1973)---

---S.16---Constitution of Pakistan, Arts. 5 & 184(3)---Civil servant, duties of---Non-subservience to political executive and impartiality---Scope---Although civil servants did have a duty to follow the policy guidelines and directions of the political executive yet, because of Art.5 of the Constitution, their foremost duty was "obedience to the Constitution and the law", not unthinking obedience to all directives (right or wrong) issued from the political executive---Civil servants were public servants and were, therefore, meant to take decisions only in accordance with law in the public interest---Civil servants in their capacity as advisors in decision making or as administrators and enforcers of law, were not subservient to the political executive---Civil servants were under an obligation to remain compliant with the Constitution and law, hence they were not obliged to be servile or unthinkingly submissive to the political executive---Civil servants to give advice in the best public interest and were to administer the law impartially being incharge of the machinery of the State.

Quaid-e-Azam Mohammad Ali Jinnah Speeches as Governor General of Pakistan 1947-48, Sang-e-Meel Publications, Lahore: 2004 ref.

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(c) Civil Servants Act (LXXI of 1973)---

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---Ss. 3 & 5---Rules of Business, (1973), R. 5(10)---Appointment and conditions of service of civil servants---Transaction of business---Civil servant, opinion of---Scope---Implementation of policy or directives, might be required in some cases notwithstanding the considered views of a civil servant to the contrary, however in such an event, the civil servant should record his/her honest and considered opinion without fear---Decisions violating the law relating to appointment and terms and conditions of service of civil servants which were manifestly wrong and were likely to cause gross injustice or undue hardship should be considered important enough for the purpose of R. 5(10) of Rules of Business, (1973).

(d) Civil Servants Act (LXXI of 1973)---

---Preamble---Object of civil Servant Act, 1973---Parliament had enacted Civil Servants Act, 1973 for providing meaningful legal guarantees to civil servants and doing away with arbitrariness---Object of Civil Servants Act, 1973 was to legally "regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of Pakistan" (Preamble)---Rule of law was the key idea reflected in the whole scheme of the Act.

(e) Civil Servants Act (LXXI of 1973)---

---Ss. 4, 5, 9 & 10---Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---Constitution of Pakistan, Art. 184(3)---Constitutional petition under Art. 184(3) of the Constitution seeking elaboration of constitutional and legal safeguards relating to the working of civil servants---Tenure, appointment, promotion and posting/transfer of civil servants---Favoritism/discouragement of merit---Effect---Tenure, appointment, promotion and posting/transfer were of utmost importance in the civil service, and if same were made on merit in accordance with definite rules, instructions etc., they would rightly be considered and treated as part of the terms and conditions of service of a civil servant; however, where rules and instructions were deviated from and as a result merit was discouraged on account of favoritism, sifarish or considerations other than merit, it should be evident that the civil service would not remain independent or efficient.

(f) Civil Servants Act (LXXI of 1973)---

---Ss. 5 & 11---Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---Civil Servants (Efficiency and Discipline Rules), 1973---Constitution of Pakistan, Art. 184(3)---Appointment and removal of civil servants---Principles---Whenever there were statutory provisions or rules or regulations which governed the matter of appointments of civil servants, the same must be followed, honestly and scrupulously---Even where there were no explicit rules governing the appointment process, and appointments were to be made in the exercise of discretionary powers, such discretion must be employed in a structured, transparent and reasonable manner and in the public interest---Appointing authorities could not be allowed to exercise discretion at their whims, or in an arbitrary manner; rather they were bound to act fairly, evenly and justly and their exercise of power was judicially reviewable---Removal and dismissal of civil servants from service was not left to anyone's whims and caprice and it was governed by rules and regulations---Anachronistic concept where government servants held office during the pleasure of the Authority had no place in a dispensation created and paid for by the people.

Tariq Aziz-ud-Din's case 2010 SCMR 1301; Corruption of Hajj Arrangement's case PLD 2011 SC 963 and Muhammad Yasin v. Federation of Pakistan PLD 2012 SC 132 ref.

(g) Civil Servants Act (LXXI of 1973)---

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---S. 9---Constitution of Pakistan, Art. 184(3)---Promotion of civil servants---Discretion---Principles---Discretion in matters of promotion must be exercised fairly and in a transparent manner---Such discretion had to be understood within the four corners of the concept of rule of law upon which the system of governance was founded---Every Authority in the State was bound to obey the dictates of the law and had no personal or absolute discretion.

Tariq Aziz-ud-Din's case 2010 SCMR 1301 ref.

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(h) Civil Servants Act (LXXI of 1973)---

---Ss. 4 & 10---Constitution of Pakistan, Art. 184(3)---Tenure, posting and transfer of civil servants---Principles---When the ordinary tenure for a posting had been specified in the law or rules made thereunder, such tenure must be respected and could not be varied, except for compelling reasons, which should be recorded in writing and were judicially reviewable---Transfers of civil servants by political figures which were capricious and were based on considerations not in the public interest were not legally sustainable.

Corruption of Hajj Arrangement's case PLD 2011 SC 963; Zahid Akhtar v. Government of Punjab PLD 1995 SC 530 and Farrukh Gulzar v. Secretary Local Government and Rural Development Department, Lahore and 2 others 1998 SCMR 2222 ref.

(i) Civil Servants Act (LXXI of 1973)---

---S.16---Constitution of Pakistan, Arts. 5 & 184(3)---Civil servant, duty of---Non-compliance with illegal orders of superiors---Scope---Duty of public officers was to independently discharge their functions and not be influenced by "dictatorial misuse of powers" at the hands of political figures---Civil servants were not bound to obey orders from superiors which were illegal or were not in accordance with accepted practices and rule-based norms; instead, in such situations, they must record their opinion and, if necessary, dissent---Compliance with illegal orders of superiors was not justified on the basis of having been issued from higher authority as it was the law and the Constitution which must be obeyed---Illegal orders (of superiors) could not be defended on the plea that they could expose the concerned government servant to the risk of disciplinary action.

Syed Nazar Abbas Jafri v. Secretary to the Government of the Punjab and another 2006 SCMR 606; Province of Punjab v. Azhar Abbas 2002 SCMR 1; Samiullah Khan Marwat v. Government of Pakistan 2003 SCMR 1140; Iqbal Hussain v. Province of Sindh 2008 SCMR 105; Human Rights Cases Nos.4668 of 2006, 111 of 2007 and 15283-G of 2010 PLD 2010 SC 759 and Zahid Akhtar v. Government of Punjab PLD 1995 SC 530 ref.

(j) Civil Servants Act (LXXI of 1973)---

---S.10---Constitution of Pakistan, Art. 184(3)---Posting of a civil servant as Officer on Special Duty (OSD)---Principles---Officer should not be posted as Officer on Special Duty (OSD) except for compelling reasons, which must be recorded in writing and were judicially reviewable---If at all an officer was to be posted as Officer on Special Duty (OSD), such posting should be for the minimum period possible and if there was a disciplinary inquiry going on against him, such inquiry must be completed at the earliest.

Corruption of Hajj Arrangement's case PLD 2011 SC 963; Mir Shah Nawaz Marri v. Government of Balochistan and others 2000 PLC (C.S.) 533; Syed Ajmal Hussain Bokhari v. Commissioner, Rawalpindi 1997 PLC (C.S.) 754; Sajjad Ahmad Javed Bhatti v. Federation of Pakistan 2009 SCMR 1448 and Lt. Col. (R.) Abdul Wajid Malik v. Government of the Punjab 2006 SCMR 1360 ref.

(k) Civil Servants Act (LXXI of 1973)---

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---S.16---Constitution of Pakistan, Arts. 189, 190 & 204(2)(a)---Decision of---Supreme Court--
-Binding nature of---Scope---Decision given by the Supreme Court on a point of law would be binding on concerned departmental functionaries who would be obliged to apply such legal principle in other similar cases, regardless of whether or not a civil servant had litigated the matter in his own case---In view of Art.189 and 190 of the Constitution, a civil servant would be entitled to make a departmental representation or initiate legal proceedings, before a competent forum to enforce a legal principle enunciated by the Supreme Court---Failure of a State functionary to apply a legal principle which was clearly and unambiguously attracted to a case, might expose him to proceedings under Art.204(2)(a) of the Constitution.

Al-Jehad Trust v. Federation of Pakistan PLD 1997 SC 84; Hamced Akhtar Niazi v. The Secretary Establishment Division 1996 SCMR 1185 and Baaz Muhammad Kakar v. Federation of Pakistan PLD 2012 SC 870.ref.

(I) Civil Servants Act (LXXI of 1973)---

---Ss. 4, 5, 9 & 10---Constitution of Pakistan, Art. 184(3)---Tenure, appointments, promotions and transfers of civil servants---Discretion of Executive Authority---Interference by courts---Scope---Responsibility of deciding suitability of an appointment, posting or transfer fell primarily on the executive branch of the State which comprised of both the political executive and civil servants---Decision making in relation to tenure, appointments, promotions and transfers remained rule-based and was not susceptible to arbitrariness or absolute and unfettered discretion---Courts ordinarily would not interfere in the functioning of the executive as long as it adhered to the law and established norms and acts in furtherance of its fiduciary responsibility.

Petitioners in person.

Hafiz S.A. Rehman, Sr. Advocate Supreme Court: Amicus Curiae.

Abdul Fatch Malik, A.G., Adnan Karim, A.A.-G., Ali Sher Jakhrani, AIG and Maqsood Ahmed, DSP for Government of Sindh.

Syed Arshad Hussain Shah, A.A.-G. for Government of Khyber Pakhtunkhwa.

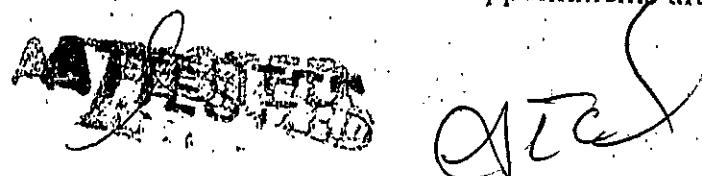
Azam Khattak, A.A.-G. for Government of Balochistan.

Jawad Hassan, A.A.-G. for Government of Punjab.

Date of hearing: 18th October, 2012.

JUDGMENT

JAWWAD S. KHAWAJA, J.---Many centuries before the term 'good governance' became a catch-phrase, we find a remarkably eloquent exposition of the principles of good governance in the Epistle of Hazrat Ali to Malik ibn Ashtar, the Governor of Egypt. The revered Khalifa, may Allah be pleased with him, is reported to have said: ".....give careful consideration to the selection of ... officers. Confirm them in their appointments after approval,



apprenticeship and probation. Never select men for responsible posts either out of any regard for personal connections or under any influence. For, that might lead to injustice and corruption... select for higher posts men of experience, men firm in faith... Such men will not fall an easy prey to temptations and will discharge their duties with an eye on the abiding good of others". The law and the Constitution of Pakistan, with the aim of furthering the welfare of the people of Pakistan, articulate the same principles. The truth is that principles pertaining to the setting up of a just and constitutional government are eternal, not peculiar to our times. Our law, Constitution and courts only apply these universal and time-tested principles to the prevalent situation. In this public interest case seeking elaboration of constitutional and legal safeguards relating to the working of civil servants, we reaffirm these eternal principles which have also been stressed by us in cases decided earlier.

2. The background to this matter is that Suo Motu Case No.3 of 2012 was initiated on the basis of broadcasts on different TV channels on 25-2-2012. In these broadcasts, Syeda Wahida Shah, a candidate of the Pakistan Peoples Party for bye-election to PS-53 (Tando Muhammad Khan) was shown slapping a member of the polling staff. The Suo Motu case was concluded vide order dated 12-3-2012. Ms. Anita Turab, who is a civil servant in BS-19, presently working in the Ministry of Interior, filed an application in the aforesaid Suo Motu case. Since the case stood concluded, the application was ordered on 12-3-2012 to be registered as a petition under Article 184 (3) of the Constitution. It is this petition which is being decided through the present order.

3. The grievance of the petitioner set out in her petition can be summarized. Firstly, she seeks that the standing of the civil service be restored as service of the State and not the service of any transient government. To achieve this object, her submission is that unlawful political interference in the independent and legitimate functioning of civil servants be stopped. Secondly, the petitioner seeks corrective institutional measures to revert the civil service to rule-based management practices in accordance with the letter and spirit of applicable laws, rules and precedents of this Court.

4. On 12-3-2012, we had directed the Secretary Establishment Division, Government of Pakistan, the Chief Secretaries of the four Provinces and the Chief Commissioner, Islamabad Capital Territory to submit their comments. It was noted in the said order that civil servants who act according to law, at times, have to face hardship in the form of immediate transfer or posting as Officers on Special Duty (OSD) even before the completion of their tenure. It was also noticed that frequent transfers, postings and disciplinary proceedings are taken in violation of the law, rules and regulations.

5. The above referred functionaries comprised as a Committee, have submitted their report which includes tentative recommendations: Amongst other things, the Committee has recommended that "[p]ostings and transfers be made on merit", "tenures for various categories of posts be fixed" and that "[n]o civil servant should be posted as OSD for purposes of parking of officers who are unwanted, or, who are not susceptible to pressures." The Committee further recommends that "[a] civil servant should be placed under suspension only by the competent authority after initiation of disciplinary proceedings; and... Officers taken on deputation/borrowed from other tiers of the government should carry the requisite experience and seniority for specific jobs." According to the petitioner, many of the Committee's recommendations are already covered by existing law, rules and regulations, particularly in matters relating to tenure, appointment, transfer and posting of civil servants. There is no dispute or contention that such recommendations must indeed be implemented with immediate effect as a necessary concomitant to good governance. Some other recommendations made by the Committee require legislation or rule making which, necessarily will need to be undertaken by the legislature and/or the competent rule making authority and not by the Court.

6. The petitioner being a civil servant herself has requested revival of the independent,

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impartial and professional status of the civil service as an institution and to affirm its decision-making authority in furtherance of the rule of law. The petitioner's further grievance is that legal and constitutional safeguards meant to protect the civil service from excessive political interference are being systemically breached. With its safeguards thus withered, the service is growing inefficient and demoralized and with it, the machinery of the State, mandated to enforce good governance, rule of law and fundamental rights of the people of Pakistan, is failing.

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7. The petition has been held maintainable because the situation portrayed does raise a question of public importance with reference to the enforcement of fundamental rights. In our constitutional scheme of governance, the importance of such a civil service, which is law-abiding and itself legally protected, cannot be over emphasized. "Good governance", this Court has recently observed, "is largely dependent upon [an] upright, honest and strong bureaucracy. [The] Civil service is the back bone of our administration." per Chaudhry Ijaz Ahmad, J. in Tariq Aziz-ud-Din's case (2010 SCMR 1301). Additionally, the fundamental rights of civil servants, inter alia, under Articles 9, 14 and 18 of the Constitution are also aspects arising in this Constitution Petition. The enforcement of fundamental rights is primarily the responsibility of the Executive branch of the State and civil servants constitute that essential component of the Executive who operate the executive machinery. A duty is thus cast both on the civil service and on the political executive to ensure the effectiveness (in all respects) of the civil service.

8. It is not in contention that civil servants are public servants and are, therefore, meant to take decisions only in accordance with law in the public interest. In their capacity as advisors in decision making or as administrators and enforcers of law, they are not subservient to the political executive. It is their obligation to remain compliant with the Constitution and law. Hence they are not obliged to be servile or unthinkingly submissive to the political executive. One of their prime duties is to give advice in the best public interest and to administer the law impartially being in charge of the machinery of the State. In this regard, the address made by Quaid-i-Azam Mohammad Ali Jinnah to the members of the civil service at Peshawar on 14th April, 1948 is most relevant. Quaid-i-Azam instructed them not to be "influenced by any political pressure, by any political party or individual politician." While urging them to loyally and faithfully serve whichever government came to power "in the ordinary constitutional course", he also reminded them of the need for "fearlessly, maintaining [their] high reputation, prestige, honour and the integrity of [their] service." Noting that pressurizing civil servants was, even in those early days, "a very common fault of politicians", he warned politicians that such behaviour would lead to "nothing but corruption, bribery and nepotism which is a horrible disease..." Ultimately, he urged both politicians and civil servants to "understand [their] own sphere of duty and responsibility and act with others harmoniously and in complete cooperation." Yet, being fully aware that real life was never ideal, he forewarned the civil servants that "you may even be put to trouble not because you are doing anything wrong but because you are doing right. Sacrifices have to be made, and I appeal to you, if need be, to come forward and make the sacrifice..." (Quaid-e-Azam Mohammad Ali Jinnah, Speeches as Governor General of Pakistan 1947-48, Sang-e-Meel Publications, Lahore 2004).

9. These should, indeed, be the guiding principles informing the relationship between the civil service and the political executive - the two limbs of the Executive branch of government, envisaged in the Constitution. Equally so, these principles should inform the judiciary's interpretation of the Articles of the Constitution and legal provisions which relate to the employment of persons in the service of Pakistan. We reaffirm that while civil servants do have a duty to follow the policy guidelines and directions of the political executive yet, because of Article 5 of the Constitution, just like other citizens, their foremost duty is "obedience to the Constitution and the law", not unthinking obedience to all directives (right or wrong) issuing from the political executive. In this context, Rule 5(10) of the Rules of Business, 1973 framed by the Federal Government in accord with Articles 90 and 99 of the Constitution, may be examined: "When the Secretary submits a case to the Minister, the latter may accept the proposal or views of the Secretary or may over-rule him. The Secretary will normally defer to the decision of the

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Minister and implement it. In case, however, the Secretary feels that the decision of the Minister is manifestly wrong and will cause gross injustice or undue hardship, he may state his reasons and re-submit the case to the Minister. If the Minister still adheres to his earlier decision and the matter is important enough, the Secretary shall request the Minister to refer the case to the Prime Minister and the Minister shall so refer the case for orders of the Prime Minister. If the case is not referred to the Prime Minister, the Secretary shall submit it directly to the Prime Minister with observations of the Minister-in-Charge." In other words, implementation of policy or directives, in some cases may be required notwithstanding the considered views of a civil servant to the contrary. In such event, however, the civil servant should record his/her honest and considered opinion without fear. Decisions violating the law relating to appointment and terms and conditions of service of civil servants which are manifestly wrong and are likely to cause gross injustice or undue hardship should be considered important enough for the purpose of Rule 5(10) ibid.

10. It is worth noting that the Constitutions of 1956 and 1962 contained chapters outlining certain safeguards for the civil service. In the 1973 Constitution, the framers omitted a similar chapter from the Constitution and shifted the onus to ordinary legislation. The Law Minister at the time, who was steering the Constitution Bill informed the Constituent Assembly that in the past, constitutional protection for civil servants had been granted "because those who served this country [was] being run by the leaders of the people" such protections were no more deemed necessary. The purpose of this change, therefore, was to "[break] away from the past colonial traditions" and to emphasize the point that civil servants were not entitled to "any superior or higher status" compared to other citizens. Another reason the Law Minister gave was that the "Constitution is the basic document providing the fundamentals and this matter was not so fundamental as to be provided in the Constitution." (Parliamentary Debates, 31st December, 1972 and 19th February, 1973). It was therefore decided that, as stated in Articles 240, 241 and 242 of the Constitution, the matter would be dealt with through statutes. Such statutes were subsequently passed and include the Civil Servants Act, 1973. It may be emphasized that whatever else the intent behind these changes may have been, it could not have been meant to subjugate civil servants to constantly changing political imperatives. The intent of the Constitution cannot but be a fuller realization of the goal set out in the speech of the country's founding father quoted earlier: "fearlessly, maintaining [the] high reputation, prestige, honour and the integrity of [the civil] service."

11. It was in this spirit, i.e. providing meaningful legal guarantees to civil servants and doing away with arbitrariness, that Parliament enacted statutes such as the Civil Servants Act, 1973. The very object of this statute is to legally "regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of Pakistan" (Preamble). The rule of law is the key idea reflected in the whole scheme of the statute. This impression is textually reinforced by the express stipulation that appointment of civil servants shall be made only "in the prescribed manner" (S. 5), that the terms and conditions shall be only such as are "provided in [the] Act and the Rules" [S. 3(1)] and not be "varied to his disadvantage" [S. 3(2)] and that promotions shall only be made on the basis of objective criteria such as "age, experience, ability and other relevant factors" [S. 9(1)(a)].

12. This Court, in a number of precedents has, interpreted and emphasized these very principles, some of which need to be reiterated at this point. Before that, however, we may note the precept and rule of public trust which forms the basis of this area of the law. This court has repeatedly observed that "functionaries of the State are fiduciaries of the people and ultimately responsible to the people who are their pay masters." [Syed Yousaf Raza Gillani v. Assistant Registrar, (PLD 2012 SC 466) affirming Muhammad Yasin v. Federation of Pakistan]. Most recently, in the case relating to dual nationality of Parliamentarian, we have reiterated that "all

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State authority is in the nature of a 'sacred trust' and its bearers should therefore be seen as fiduciaries". (Mehmood Akhtar Naqvi v. Federation of Pakistan, Const. P. 5/2012). One of the implications of this concept, highlighted in the case-law considered below, is that the matter of tenure, appointment, posting, transfer and promotion of civil servants cannot be dealt with in an arbitrary manner; it can only be sustained when it is in accordance with the law. Moreover, the use of the words 'in the public interest' in such matters are not fatuous or pointless, but emphasise the fiduciary nature of orders relating to tenure, posting etc. Thus a proposed decision which deviates from the accepted or rule-based norm without proper justification, can be tested on the touchstone of a manifest public interest.

13. Tenure, appointment, promotion and posting/transfer are of utmost importance in the civil service. If these are made on merit in accordance with definite rules, instructions etc., the same will rightly be considered and treated as part of the terms and conditions of service of a civil servant. If, however, rules and instructions are deviated from and as a result merit is discouraged on account of favoritism, sifarish or considerations other than merit, it should be evident the civil service will not remain independent or efficient. It is necessary once again, to hark back to the considerations set out in the speech of Quaid-i-Azam and the eternal wisdom reflected in the Epistle of Hazrat Ali, may Allah be pleased with him, cited at the start of this opinion. It is also relevant to note that the principles of good governance are already envisioned in the Constitution and are also encoded in statutes such as the Civil Servants Act, 1973, the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 and other rules made under the aforesaid Act and in regulations and instructions given in the Civil Establishment Code (Estacode). It is, however, apparent from precedent and civil service matters coming up before Service Tribunals and this Court that problems/difficulties arise for civil servants when the rules of good governance so encoded are breached and the reason for such breach appears to be abuse of discretion. We are aware that matters relating to tenure etc. cannot be put in a strait-jacket and that there is to be an element of flexibility. A balance between the competing pulls of discretion and rule based decision making is a fine one where perception of fairness and even handed treatment is of utmost importance. It is for this reason that transparency in decisions relating to tenure etc. are required to be entrenched and cemented to assure the quality, effectiveness and morale of the civil service. Since executive decisions generally are subject to judicial review, the assurance of transparency is itself likely to eliminate decision making based on considerations other than merit. We have referred to accepted principles and rules above and may now advert to certain relevant rulings earlier rendered by this Court.

A - On the Issue of Appointments and Removals

14. In a number of judgments, the courts have clarified that whenever there are statutory provisions or rules or regulations which govern the matter of appointments, the same must be followed, honestly and scrupulously. In the Corruption of Hajj Arrangements' case (PLD 2011 SC 963) and Tariq Aziz-ud-Din's case ibid, it has been clarified that even where there are no explicit rules governing the appointment process, and appointments are to be made in the exercise of discretionary powers, such discretion must be employed in a structured and reasonable manner and in the public interest. Appointing authorities cannot be allowed to exercise discretion at their whims, or in an arbitrary manner; rather they are bound to act fairly, evenly and justly and their exercise of power is judicially reviewable. And in Muhammad Yasin v. Federation of Pakistan (PLD 2012 SC 132), we have clarified that, when called upon to do so, the Courts are "duty bound to examine the integrity of the selection process", although they "will not engage in any exhaustive or full-fledged assessment of the merits of the appointee nor [...] seek to substitute [their] own opinion for that of the Executive." It may also be noted that just like the appointment of civil servants, their removal and dismissal from service has not been left to anyone's whims and caprice. It is governed by rules and regulations, amongst them the Civil Servants (Efficiency and Discipline Rules), 1973. Indeed, the anachronistic concept where government servants held office during the pleasure of the Crown has no place in a dispensation created and paid for by the people.

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15. In Tariq Aziz-ud-Din's case, we have dealt with some important facets of the civil service including the exercise of discretion in matters of promotion. Such discretion must be exercised fairly and in a transparent manner. Discretion has to be understood within the four corners of the concept of rule of law upon which our system of governance is founded. Every authority in the State is bound to obey the dictates of the law and has no personal or absolute discretion. It was therefore held that "[t]he right [to be considered for promotion] contemplated under section 9 [of the Civil Servants Act] is neither illusionary nor a perfunctory ritual and withholding of promotion of an officer is a major penalty in accordance with the Civil Servants (Efficiency and Disciplinary) Rules, 1973, therefore, consideration of an officer for promotion is to be based not only on the relevant law and the rules but also to be based on some tangible material relating to merit and eligibility which can be lawfully taken note of."

C - On the Matter of Transfers and Tenure

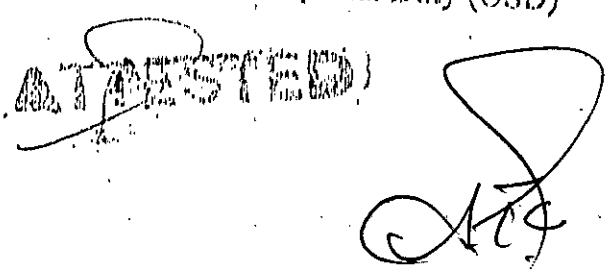
16. In the Hajj Corruption Case, the Court reiterated its earlier ruling in Zahid Akhtar v. Government of Punjab (PLD 1995 SC 530), where it had been held that "the normal period of posting of a Government servant at a station, according to Rule 21 of the Rules of Business is three years, which has to be followed in the ordinary circumstances, unless for reasons or exigencies of service a transfer before expiry of the said period becomes necessary in the opinion of the competent authority." Furthermore, with regard to transfers of civil servants, this Court has stated that transfers by political figures which are capricious and are based on considerations not in the public interest are not legally sustainable. Farukh Gulzar v. Secretary Local Government and Rural Development Department, Lahore and 2 others (1998 SCMR 2222). These are principles of law enunciated by this Court and are to be followed in terms of Article 189 of the Constitution. We, however, repeatedly come across violations of such principles. This unnecessarily leads to litigation which, in turn, clogs Courts and Service Tribunals.

D - On the matter of obeying illegal orders from superiors

17. In Syed Nazar Abbas Jafri v. Secretary to the Government of the Punjab and another (2006 SCMR 606), this Court held that the duty of public officers is to independently discharge their functions and not be influenced by "dictatorial misuse of powers" at the hands of political figures. The Court has also emphasized that the appointment and removal of civil servants is not to be politically motivated. Province of Punjab v. Azhar Abbas (2002 SCMR 1). These decisions highlight the concept of a civil service which enjoys certain legal protections and is thus capable of performing its envisioned role as a law-enforcing institution.

18. The compliance of illegal orders of superiors is not justified on the basis of having been issued from higher authority as it is the law and Constitution which must be obeyed. Here it would be relevant to cite the judgment of this Court in Samiullah Khan Marwat v. Government of Pakistan (2003 SCMR 1140) where it was stated: "...the exercise of powers by the public functionaries in derogation to the direction of law would amount to disobey[ing] the command of law and the Constitution..." Furthermore, in the case of Iqbal Hussain v. Province of Sindh (2008 SCMR 105) the Court held that "the compliance of any illegal and arbitrary order is neither binding on the subordinate forums nor valid in the eyes of law." In case the subordinates are directed to implement an illegal order "they should put on record their dissenting note" Human Rights Cases Nos. 4668 of 2006, 1111 of 2007 and 15283-G of 2010 (PLD 2010 SC 759). Similarly, illegal orders cannot be defended on the plea that these could expose the concerned government servant to the risk of disciplinary action. Zahid Akhtar v. Government of Punjab (PLD 1995 SC 530).

E - On the matter of posting civil servant as Officers on Special Duty (OSD)



19. Ordinarily, no government employee should be posted as OSD except under compelling circumstances. In the Mujj Corruption case, (PLD 2011 SC 963) the Court held: "It is well settled that placing an officer as OSD is tantamount to penalizing him because the expression 'OSD' is not known to either the Civil Servants Act, 1973 or the Civil Servants (Appointment Promotion and Transfer) Rules, 1973." Reference in this regard may also be made to the cases of Mir Shah Nawaz Marri v. Government of Balochistan and others (2000 PLC (C.S) 533), Syed Ajmal Hussain Bokhari v. Commissioner, Rawalpindi (1997 PLC (C.S.) 754), Sajjad Ahmad Javed Bhatti v. Federation of Pakistan (2009 SCMR 1448) and Lt. Col. (R.) Abdul Wajid Malik v. Government of the Punjab (2006 SCMR 1360).

20. The above referred precedents have shaped the contours of the law relating to civil servants and the civil service. In the established tradition of a common law jurisdiction, Article 189 of the Constitution stipulates that, "[a]ny decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan." As this Court has already held "... the interpretation of the various Articles by this Court becomes part of the Constitution". Al-Jehad Trust v. Federation of Pakistan (PLD 1997 SC 84). Specific to the law relating to civil servants and matters in respect of their service, we have enunciated a principle of law in the case titled Hameed Akhtar Niazi v. The Secretary Establishment Division (1996 SCMR 1185) holding that a decision given by this Court on a point of law will be binding on concerned departmental functionaries who will be obliged to apply such legal principle in other similar cases regardless of whether or not a civil servant has litigated the matter in his own case. We are conscious that in some instances the application of a legal principle enunciated in a precedent may be possible without difficulty or ambiguity, while in other cases there may be some uncertainty in determining if a legal principle is in fact applicable as precedent. It is, however, clear that in view of Articles 189 and 190 of the Constitution, a civil servant will be entitled to make a departmental representation or initiate legal proceedings before a competent forum to enforce a legal principle enunciated by this Court.

21. In appropriate cases the failure of a State functionary to apply a legal principle which is clearly and unambiguously attracted to a case, may expose him to proceedings also under Article 204(2)(a) of the Constitution. This Article, it may be recalled, grants this Court the power to punish for contempt any person who "disobeys any order of the Court". In a recent judgment, the Court has clarified the significance of the law of contempt as an enforcement mechanism. It was held "...the Court, in and of itself, has to pass orders and to require the implementation of its orders; responsibility for implementation has been made obligatory on other organs of the State, primarily the Executive. However, in the unfortunate situation that a functionary of the Executive refuses to discharge his constitutional duty, the Court is empowered to punish him for contempt... Simply put, a government of laws cannot be created or continued with toothless courts and defiant or blithely non-compliant public functionaries". Baaz Muhammad Kakar v. Federation of Pakistan (PLD 2012 SC 870). If there still remains any doubt, let us clarify that those executive functionaries who continue to ignore the Constitution and the law, do so at their own peril.

22. The principles of law enunciated hereinabove can be summarized as under:--

(i) Appointments, Removals and Promotions: Appointments, removals and promotions must be made in accordance with the law and the rules made thereunder; where no such law or rule exists and the matter has been left to discretion, such discretion must be exercised in a structured, transparent and reasonable manner and in the public interest.

(ii) Tenure, posting and transfer: When the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for

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compelling reasons, which should be recorded in writing and are judicially reviewable.

(iii) Illegal orders: Civil servants owe their first and foremost allegiance to the law and the Constitution. They are not bound to obey orders from superiors which are illegal or are not in accordance with accepted practices and rule based norms; instead, in such situations, they must record their opinion and, if necessary, dissent.

(iv) OSD: Officers should not be posted as OSD except for compelling reasons, which must be recorded in writing and are judicially reviewable. If at all an officer is to be posted as OSD, such posting should be for the minimum period possible and if there is a disciplinary inquiry going on against him, such inquiry must be completed at the earliest.

23. We are fully conscious that the aforesaid matters relate to decision making and administration of the machinery of the State. As such the responsibility of deciding as to suitability of an appointment, posting or transfer falls primarily on the executive branch of the State which comprises of both the political executive and civil servants. Courts ordinarily will not interfere in the functioning of the executive as long as it adheres to the law and established norms and acts in furtherance of its fiduciary responsibility. However, while hearing this petition we have recognized the need for ensuring that decision making in relation to tenure, appointments, promotions and transfers remains rule based and is not susceptible to arbitrariness or absolute and unfettered discretion.

24. Copies of this judgment shall be sent to the Federal Secretary Establishment, the Chief Secretaries of the Provinces, the Commissioner Islamabad Capital Territory and to the Secretaries of all Federal and Provincial government departments.

جواد ایس خواجہ، جج

”مستحسن طرز حکمرانی“ (good governance) کے جدید تصورات سے صد ہا سال قبل ہمیں اس موضوع پر نہایت فصیح اور جامع ہدایات ایک قدیم تحریر میں ملتی ہیں۔ یہ تحریر باب شہر حکمت حضرت علیؓ کرم اللہ وجہہ سے منسوب ایک خط ہے، جو والی مصر مالک بن اشتر کو لکھا گیا۔ خلیفہ اپنے مکتوب میں فرماتے ہیں کہ ”افسران کا چناؤ کرتے ہوئے انتہائی محتاط رہو اور انہیں آزمائشی مدت کی تکمیل پر مستقل کر دیا کرو۔ اہم عہدوں پر تعیناتی کبھی بھی ذاتی تعلق یا دباؤ کی بنا پر نہ کرو کہ ایسا کرنا بددیانتی اور نا انصافی کی وجہ بن سکتا ہے۔ اونچے عہدوں کے لئے تجربہ کار اور مضبوط ایمان کے حامل افراد کا چناؤ کرو اور ایسے افراد کا اخلاق اور ان کو پہنکانا آسان نہیں ہوتا، اور یہ لوگ زیادہ دور اندیش اور بااقتدار ہوتے ہیں۔ انہیں ان کے کام میں لگائے اور ان کے کام کو بروقت انجام دینے میں مددگار بنو اور ان کی بنیادی تصورات حکمت ازلی ہیں۔ عہد جدید کی اختراع نہیں۔ ہمارا آئین اور قانون اور ان پر عملدرآمد کرنے والی عدالتوں کا وظیفہ صرف اس قدر ہے کہ ان ازلی اصولوں کا ادھار حال میں درپیش واقعات اور مسائل پر کریں۔“

عوامی مفاد کے اس مقدمے میں عدالت سے سرکاری ملازمین کے دائرہ ملازمت کو حاصل قانونی اور آئینی تحفظات کی وضاحت چاہی گئی ہے عدالت نے ایک بار پھر ”مستحسن طرز حکمرانی“ کے ان ازلی اصول و قواعد کا اعادہ کیا ہے جن کی وضاحت اس سے پہلے بھی متعدد مقدمات میں کی جا چکی ہے۔

2۔ اس معاملے کا پس منظر کچھ یوں ہے کہ مورخہ 25-2-2012 کو مختلف ٹی وی چینلز پر ایک خبر نشر ہوئی جس میں ٹنڈو محمد خان (حلقہ PS-53) کے ضمنی انتخابات کے دوران اس حلقہ سے پاکستان پیپلز پارٹی کی امیدوار سیدہ وحیدہ شاہ کو پولنگ سٹاف کے ایک رکن کو تھیٹر مارتے ہوئے دکھایا گیا۔ اس واقعے کا از خود نوٹس لیا گیا (مقدمہ نمبر 2012/3)، جس کا فیصلہ 12-3-2012 کو سنا دیا گیا۔ اسی دوران، وزارت داخلہ میں متعین گریڈ 19 کی ایک سرکاری ملازمہ، مسماۃ انیتا تراب، نے مذکورہ بالا از خود نوٹس میں ایک درخواست دائر کی۔ چونکہ مذکورہ بالا مقدمہ 12-3-2012 کو مکمل ہو گیا تھا لہذا ان

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درخواست کو آئین کی دفعہ 184(3) کے تحت سماعت کے لئے منظور کر لیا گیا۔ موجودہ فیصلے کے لئے اس درخواست کو نمٹا رہے ہیں۔

3. درخواست گزار کا مدعا درخواست میں تفصیلاً بیان کیا گیا ہے، ہم سیاق و سباق واضح کرنے کے لیے یہاں مختصراً دہرا دیتے ہیں۔ درخواست کی گئی ہے کہ اولاً یہ باور کرایا جائے کہ سرکاری ملازمین ریاست کے ملازم ہیں نہ کہ حکومت وقت کے۔ اور اس مقصد کو حاصل کرنے کے لئے درخواست گزار نے کہا ہے کہ سرکاری ملازمین کی قانونی اور آزادانہ فرائض کی انجام دہی میں کسی بھی قسم کی سیاسی مداخلت نہیں ہونی چاہیے۔ ثانیاً، درخواست گزار کی استدعا ہے کہ سرکاری ملازمین کو وضع شدہ قوانین، قواعد و ضوابط اور عدالتی نظائر کے روشنی میں اپنے فرائض منصبی کی انجام دہی میں مکمل آزادی کی یقین دہانی کرائی جائے۔

4. مورخہ 12-3-2012 کو ہم نے اسٹیلشمنٹ ڈویژن کے سیکریٹری، حکومت پاکستان، چاروں صوبوں کے چیف سیکریٹریز اور چیف کمشنر اسلام آباد کو مقدمے میں اپنا نقطہ نظر دائر کرنے کو کہا۔ اس حکم میں ہم نے واضح کیا کہ سرکاری ملازمین کو قانون کے مطابق اپنے فرائض کی انجام دہی کے دوران بعض اوقات مشکلات کا سامنا کرنا پڑتا ہے مثلاً یا تو فوری طور پر ان کا تبادلہ کر دیا جاتا ہے یا پھر انہیں اپنی تعیناتی کی مدت مکمل کئے بغیر آفیسر آن سپیشل ڈیوٹی (او ایس ڈی) بنا دیا جاتا ہے اور یہ بات بھی سنا رہے ہیں کہ تبادلوں، تقرریوں اور تادیبی کارروائیوں میں اکثر قانون اور قواعد و ضوابط کو بالائے طاق رکھا جاتا ہے۔

5. متذکرہ بالا عہدیداران پر مشتمل کمیٹی نے اپنی سفارشات پر مبنی رپورٹ عدالت میں دائر کی ہے اور سفارشات کے ساتھ ساتھ، کمیٹی نے بھی سفارش کی کہ ”تقرر اور تبادلے اہلیت کی بنیاد پر ہونے چاہئیں“، ”مختلف اقسام کی ملازمتوں کے لئے مدت منصبی مقرر کی جانی چاہیے“ اور یہ کہ ”کسی بھی سرکاری ملازم کو محض افسران بالا کی نا پسندیدگی یا سیاسی دباؤ میں نہ آنے کی وجہ سے آفیسر آن سپیشل ڈیوٹی (او ایس ڈی) نہ کیا جائے گا“۔ کمیٹی نے مزید سفارش کی کہ ”کسی بھی سرکاری ملازم کی معطلی مجاز افسران کی جانب سے صرف باضابطہ تادیبی کارروائی شروع کرنے کے بعد ہی کی جائے گی اور دوسرے اداروں سے ڈیپوٹیشن پر لے گئے ملازمین کو متعلقہ ذمہ داری کی بابت تجربہ اور سناریٹی ضرور حاصل ہونی چاہیے“۔ درخواست گزار کے مطابق، کمیٹی کی متعدد سفارشات، خاص طور پر وہ سفارشات جو سرکاری ملازمین کے تقرر و تبادلے اور تعیناتی کی بابت ہیں، پہلے ہی قانون اور قواعد و ضوابط میں موجود ہیں۔

بلا شبہ ایسی سفارشات پر فی الفور عملدرآمد ہونا چاہیے تاکہ ملک میں بہتر طرز حکمرانی قائم ہو سکے۔ بعض دیگر سفارشات ایسی ہیں جن کے متعلق قانون سازی کی ضرورت ہے۔ اس سلسلے میں مقررہ سے رجوع کرنا مناسب ہو گا جو قانون سازی کی ذمہ دار ہے۔

6. درخواست گزار نے اپنی سفارشات پر بحال ہونی چاہیے تاکہ وہ قانون پر عملدرآمد اور فیصلہ سازی میں پیشہ ورانہ رتبہ اور ان کی خود مختاری بحال ہو سکیں۔ درخواست گزار نے مزید استدعا کی ہے کہ سرکاری ملازمین اپنا قانونی کردار بطریق احسن ادا کر سکیں۔ درخواست گزار نے مزید استدعا کی ہے کہ سرکاری ملازمین کو حاصل قانونی اور آئینی تحفظ بڑھتی ہوئی سیاسی مداخلت کی بناء پر اپنی حقیقت کھو چکا ہے۔ اس سے سرکاری ملازمین اخلاقی زوال کا شکار ہیں اور روز بروز اپنی فعالیت کھو رہے ہیں۔ اس انحطاط کی بدولت ریاستی مشینری، جس کا مقصد بہترین طرز حکمرانی کی بنیاد رکھنا اور پاکستان کے عوام کے بنیادی حقوق کا تحفظ اور قانون کی بالادستی برقرار رکھنا ہے، بری طرح متاثر ہو رہی ہے۔

7. عدالت نے درخواست کو قابل سماعت اس لئے گردانا کیوں کہ اس میں اٹھائے گئے سوال کا بنیادی حقوق کے نفاذ سے براہ راست تعلق ہے۔ اور حقیقت یہ ہے کہ آئینی طرز حکمرانی کے قیام اور اس کی فعالیت میں سرکاری ملازمین کا کلیدی کردار ہے۔ حال ہی میں طارق عزیز الدین (2010 SCMR 1301) کے مقدمہ میں عدالت واضح کر چکی ہے کہ ”بہت حسن طرز حکمرانی“ کے قیام کا انحصار ”مکمل طور پر ایماندار، با اصول اور مضبوط بیورو کریسی پر ہے۔ سرکاری ملازمین ہماری انتظامیہ کی ریڑھ کی ہڈی ہیں“۔ مزید برآں یہ درخواست اس لیے بھی قابل سماعت ہے کہ اس میں سرکاری ملازمین کو حاصل بنیادی حقوق من جملہ زیر آرٹیکل 14، 9 اور 18 سے متعلقہ نکات اٹھائے گئے ہیں۔ حقیقت یہ ہے کہ بنیادی حقوق کے نفاذ کی ذمہ داری بنیادی طور پر ریاست کے انتظامی عضو پر ہے۔ سرکاری ملازمین انتظامیہ کا اہم حصہ ہیں، بلکہ یہ کہنا مناسب ہو گا کہ اس ذمہ داری سے عہدہ براء ہونے میں وہ سیاسی انتظامیہ

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10- یہاں سے ملتا ہے کہ اس کے بارے میں 1973ء اور 1956ء کے آئین اور 1962ء کے آئین میں اصلاحی ترمیموں کے بارے میں بحث ہو چکی ہے۔

اس کے علاوہ اس کے بارے میں 1973ء اور 1956ء کے آئین اور 1962ء کے آئین میں اصلاحی ترمیموں کے بارے میں بحث ہو چکی ہے۔ اس کے علاوہ اس کے بارے میں 1973ء اور 1956ء کے آئین اور 1962ء کے آئین میں اصلاحی ترمیموں کے بارے میں بحث ہو چکی ہے۔ اس کے علاوہ اس کے بارے میں 1973ء اور 1956ء کے آئین اور 1962ء کے آئین میں اصلاحی ترمیموں کے بارے میں بحث ہو چکی ہے۔

پاکستان، 1947-48 سنکڑ میں پیش کی گئی، 2004 (اپریل 1947-48 سنکڑ میں پیش کی گئی، 2004)

اس کے علاوہ اس کے بارے میں 1973ء اور 1956ء کے آئین اور 1962ء کے آئین میں اصلاحی ترمیموں کے بارے میں بحث ہو چکی ہے۔ اس کے علاوہ اس کے بارے میں 1973ء اور 1956ء کے آئین اور 1962ء کے آئین میں اصلاحی ترمیموں کے بارے میں بحث ہو چکی ہے۔ اس کے علاوہ اس کے بارے میں 1973ء اور 1956ء کے آئین اور 1962ء کے آئین میں اصلاحی ترمیموں کے بارے میں بحث ہو چکی ہے۔

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Handwritten number '32' in a circle at the bottom center.

تاکہ یہ امور پارلیمنٹ کے مجریہ قانون کے ذریعہ طے نئے جائیں۔ آئینی بل پیش کرتے وقت وزیر قانون نے انین ساز اسمبلی میں اس تبدیلی کا دفاع کرتے ہوئے مدلل کیا کہ ان کے تناظر میں ماضی میں سرکاری ملازمین کو آئینی تحفظ س لئے دیا گیا تھا "کیونکہ جو لوگ فرانس سر انجام دے رہے تھے وہ اکثر باہر سے آتے تھے اور چاہتے تھے کہ ان کو اپنی نوکری کی بابت غیر معمولی تحفظ حاصل ہو، تاہم اب چونکہ "ملک کی باگ دوڑ عوامی رہنماؤں کے ہاتھ میں آ گئی ہے" اس لئے سرکاری ملازمین کو مذکورہ تحفظ انین میں دینا ضروری نہیں رہا۔ ان کے مطابق اس تبدیلی کا مقصد دراصل یہ تھا کہ "سامراجی روایات کو ختم کیا جائے" اور اس نقطے پر اصرار کیا جائے کہ سرکاری ملازمین قانوناً دوسرے شہریوں کے برابر ہیں، اعلیٰ و ارفع رتے پر فائز حکمران طبقہ نہیں۔ ایک اور وجہ جو کہ وزیر قانون نے بیان کی وہ یہ تھی کہ "انین انتہائی بنیادی اصولوں پر مشتمل ایک دستاویز ہے جبکہ یہ معاملہ ایسی بنیادی اہمیت کا حامل نہیں کہ اسے انین میں شامل کیا جائے" (پارلیمانی بحث مورخہ 31 دسمبر 1972ء اور 19 فروری 1973ء)۔ لہذا یہ فیصلہ ہوا کہ ان معاملات کا تصفیہ متعلقہ قوانین کے تحت کیا جائے جیسا کہ انین کے آرٹیکل 241، 240 اور 242 میں مرقوم ہے۔ انین سازی کے مرحلہ کے فوراً بعد ایسے قوانین و ضوابط نافذ بھی ہوئے۔ مختصر یہ کہ انین سازوں کا مقصد سرکاری ملازمین کو سیاسی دباؤ سے سرنگوں کرنا قطعاً نہیں تھا۔ اس حوالے سے آئینی احکامات کا مقصد تو پہلے ہی قائد اعظم کی متفکرہ بالا تقریر میں بیان ہو چکا ہے وہ یہ ہے کہ "سرکاری ملازمین بلا خوف و خطر اپنی اعلیٰ شہرت، اپنے وقار، اپنی عزت اور اپنی ملازمت کی سالمیت کو قائم رکھیں"۔ 1973ء کا انین بھی اس وعدہ کا ضامن ہے۔

11۔ یہی وہ ضمانت تھی کہ جس کو عملی جامہ پہنانے کے لئے پارلیمنٹ نے قانون برائے سرکاری ملازمین مجریہ 1973ء جیسے قوانین نافذ کئے۔ اس قانون کا اہم مقصد قانونی طور پر "حکومت پاکستان کے ملازمین کو تقرری اور ملازمت کے قواعد و ضوابط کو ترتیب دینا ہے" (ابتدائیہ)۔ قانون کی بالادستی اس تمام قانون کا مرکزی تصور ہے۔ اور اس تصور کی جھلک ہمیں متعدد شقوں میں ملتی ہے۔ جن میں بیان کیا گیا ہے کہ سرکاری ملازمین کا تقرر صرف "مجوزہ طریقہ کار" (S.S) سے ہی ہو گا، اور ان ہی شرائط و ضوابط کی بناء پر ہو گا "جو کہ قانون یا قواعد میں ذمے گئے ہیں" (S.S(1))۔ اور "ان شرائط و ضوابط میں دوران ملازمت ایسی تبدیلی نہیں کی جا سکتی جس سے نقصان ہو"۔ (S.S(2)) اور ترقی صرف "اہلیت" (S.S(2)(a)) اور "سنیاری اور موافقت (S.S(2)(b)) کے با مقصد کلیے کی بنیاد پر ہونی چاہیے۔

12۔ ان اصولوں کی تشریح گزشتہ نظائر میں بار بار کی جا چکی ہے۔ چیدہ چیدہ نظائر کا حوالہ ہم ذیل میں دے رہے ہیں۔ مگر ان سب سے قبل "امانتی تعلق" کے نظریہ کا ذکر لازم ہے جو اس شعبہ قانون کا بنیادی نظریہ ہے۔ اس عدالت نے بار بار وضاحت کی کہ "ریاست کے عہدیداران عوام کے امین ہیں اور عوام کو جوابدہ ہیں جو کہ دراصل ان کو اس کی ادائیگی بھی کرتے ہیں" (سید یوسف رضا گیلانی بنام اسٹینٹ رجسٹرار 466SC 2012PLD)۔ حال ہی میں پارلیمانی نمائندگان کی دہری شہریت کے مقدمے میں ہم نے بیان کیا کہ ریاست کی جانب سے ذمے گئے تمام اختیارات "مقدس امانت" کی مانند ہیں اور جس کسی کو بھی انین اور قانون کے مطابق اختیارات حاصل ہیں وہ ان اختیارات کا امین ہے (محمود اختر نقوی بنام وفاق پاکستان آئینی درخواست نمبر 5، 2012ء)۔

13۔ تقرر، ترقی اور عرصہ ملازمت سرکاری ملازمین کے لئے انتہائی اہم ہیں اور اگر یہ اہلیت کے مطابق وضع کردہ قواعد و ہدایات کی روشنی میں نہیں بلکہ سفارشوں اور اقرباء پروری کی بنیاد پر ہوں گے تو اس سے سرکاری ملازمین کی خود مختاری اور آزادی متاثر ہو گی۔ یہاں پر ایک دفعہ پھر ضروری ہے کہ ہم قائد اعظم کی تقریر میں ملنے والے اصول اور حضرت علیؑ کے منثورات سے جواہر نکالنے والی دانیسی حکمت اپنے پیش نظر رکھیں۔ یہ بیان کرنا بھی ضروری ہے کہ مستحسن طرز حکمرانی کے اصول انین میں بیان کردہ ہیں اور مختلف قوانین مثلاً قانون برائے سرکاری ملازمین 1973ء، سرکاری ملازمین (تقرر، ترقی اور تبادلے) کے قواعد مجریہ 1973ء اور ان قوانین کے تحت رائج کردہ قواعد و ہدایات جو کہ سول اسٹیبلشمنٹ کوڈ میں ان کی تفصیلات درج ہیں۔ تاہم عدالتی نظائر اور سرکاری ملازمت سے متعلقہ معاملات جو کہ سروس ٹریبونل اور اس عدالت کے روبرو لائے جاتے ہیں سے ظاہر ہے کہ سرکاری ملازمین کی مشکلات اور پریشانیوں میں اضافہ اس وقت ہوتا ہے جب مذکورہ بالا قوانین کے تحت ذمے گئے مستحسن طرز حکمرانی کے اصول کی خلاف ورزی کی جاتی ہے۔ ہم جانتے ہیں کہ ملازمت کی مدت وغیرہ سے متعلق معاملات میں لچک کی گنجائش رہنا محال ہے۔ اور کچھ معاملات ہمیشہ صوابدیدی رہیں گے۔ مگر صوابدیدی کے استعمال اور قاعدہ کی پاسداری کے مابین توازن ضرور رہنا چاہیے۔

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14. گزشتہ فیصلوں میں عدالتیں بار بار یہ واضح کر چکی ہیں کہ جہاں بھی تعیناتی یا برطرفی سے متعلق قوانین و ضوابط موجود ہیں، تو ان پر سختی سے اور دیانتداری سے عمل ہونا چاہیے۔ اور جہاں ان معاملات کے بارے میں تحریری قوانین و ضوابط موجود نہیں ہیں، اور یہ معاملہ صوابدیدی ہے، وہاں بھی اس صوابدید کا استعمال عوامی مفاد میں اور مناسب اور شفاف انداز میں ہونا چاہیے (بحوالہ حج بدعنوانی مقدمہ اور طارق عزیز الدین کا مقدمہ (963SC 2011PLD)۔ تعیناتی کرنے والے حکام قطعاً اس بات کے مجاز نہیں کہ وہ اپنی صوابدید بلا جواز (Arbitrary) انداز میں استعمال کریں۔ بلکہ ان کا فرض ہے کہ وہ منصفانہ فیصلے کریں اور ان کے فیصلے پر عدالتی نظر ثانی بھی ہو سکتی ہے۔ محمد یسین بنام رفاق پاکستان (2SC 2012PLD) میں ہم واضح کر چکے ہیں کہ عدالتیں، استدعا کئے جانے پر، ”چناؤ کے طریق کار کی صحت“ کا جائزہ لینے کی پابند ہیں، ”اگرچہ وہ چنے گئے شخص کے کوائف کا تفصیلی جائزہ نہیں لیتیں اور نہ انتظامیہ پر اپنی رائے مسلط کرتی ہیں“۔ اسی طرح برطرفی کے سلسلے میں بھی تو انڈین، مثلاً قواعد برائے فعالیت و تادیب سرکاری ملازمین، 1971 کی پاسداری لازم ہے۔ رول ہمارے نظام حکومت میں اس فرسودہ تصور کے لئے کوئی گنجائش نہیں رہی جس کے مطابق تمام سرکاری ملازمین صرف اس وقت تک اپنے مناصب کے حقدار رہتے ہیں جب تک تاج شاہی ان سے راضی رہے، یا، جب تک ان پر نڈر لازم رہے۔ یہ تصور ہمارے نظام میں بر محل نہیں جہاں پر ہر ریاستی عہدار بالآخر عوام کا

(ب) ترقی

15. طارق عزیز الدین کے مقدمے میں ہم نے سرکاری ملازمت سے متعلق متعدد اہم مسائل کا جواب دیا ہے۔ بشمول ترقی کی بابت صوابدیدی اختیارات کے سوال کا۔ یہ اختیارات صرف شفاف اور منصفانہ انداز میں ہی استعمال ہو سکتے ہیں۔ بات یہ ہے کہ صوابدید بھی حکمرانی قانون کے حدود اربعہ کے اندر ہی استعمال ہو سکتی ہے، کیونکہ یہ وہ تصور ہے جس پر ہمارے پورے ریاستی نظام کی بنیاد ہے۔ ریاست کا ہر عہدہ دار اپنے فرائض کی ادائیگی میں قانون کی حکمرانی کی پاسداری کرے گا۔ اسی لئے عدالت نے کہا تھا کہ ”ترقی کے لئے زیر غور آنے کا جو حق [سول سرونٹس ایکٹ] کے سیکشن 9 میں عطا کیا گیا ہے وہ کوئی فرضی وعدہ یا رسمی مرحلہ نہیں ہے۔ سول سرونٹس [فعالیت و تادیب] قواعد، 1973 کے مطابق ایک افسر کی ترقی روکنا باقاعدہ سزا ہے۔ غرضیکہ جب ایک افسر کو ترقی کے لئے جانچا جائے تو فیصلہ متعلقہ قوانین و ضوابط کی روشنی میں کیا جانا چاہیے، اور اس افسر کی قابلیت کے متعلق ٹھوس شواہد کو بنیاد بنایا جانا چاہیے۔“

16. انتظام حج بدعنوانی کیس میں عدالت نے زابد اختر بنام حکومت پنجاب (530SC 1995PLD) میں اپنے فیصلے کا اعادہ کیا، جس میں کہا گیا تھا کہ ”رولز آف بزنس کے رول 21 کے مطابق ایک سرکاری افسر کی ایک مقام پر تعیناتی کی معیاد عام طور پر 3 سال ہے۔ عمومی حالات میں اس کی ضرور پاسداری ہونی چاہیے۔ ماسوائے ایسے ہنگامی حالات میں جہاں مجاز اتھارٹی کی رائے میں تبادلہ بے پناہ لازم ہو جائے۔“ مزید برآں سرکاری ملازمین کے تبادلوں کے معاملے میں عدالت یہ بھی واضح کر چکی ہے کہ ایسے تبادلے جو سیاسی شخصیات نے عوامی مفاد کی بجائے اپنے مفاد کو بچانے کے لئے کئے ہوں، وہ قانونی طور پر قابل دفاع نہیں۔“ فرح گلزار بنام سیکریٹری، مقامی حکومت و محکمہ دیہی ترقی (1998) (222SCMR)

(ج) افسران بالا کے غیر قانونی احکام کی تعمیل

17. سید نظر عباس جعفری بنام سیکریٹری حکومت پنجاب وغیرہ (606SCMR 2008) میں عدالت کہہ چکی ہے سرکاری ملازمین کا فرض بنتا ہے کہ وہ آزادانہ طور پر اپنی ذمہ داریوں سے نبرد آزما ہوں اور سیاسی شخصیات کی ”آمرانہ ڈھونس“ میں نہ آئیں۔ عدالت نے اس بات پر بھی زور دیا تھا کہ سرکاری ملازمین کا تقرر اور ان کی برطرفی سیاسی بنیادوں پر نہیں ہونی چاہیے۔ صوبہ پنجاب بنام اظہر عباس (1SCMR 2002) یہ تمام فیصلے ایک ایسی سول سروس کے خدوخال بیان کرتے ہیں جو قانونی تحفظ کی حامل ہو اور بطور ادارہ سوئپی گئی ذمہ داریوں سے آزادانہ طور پر اور بخوبی عہدہ برآ ہوں۔

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18. سرکاری ملازمین کے غیر قانونی اقدامات محض اس بنیاد پر جائز نہیں بن جاتے کہ وہ افسران بالا کے اور امر کے اتباع میں اٹھائے گئے۔ من و عن اتباع کا حق صرف آئین اور قانون کو ہے۔ اس سلسلے میں سلیم اللہ خان مروت بنام حکومت پاکستان (1140SCMR 2000) کا حوالہ مفید ہے جہاں یہ کہہ دیا گیا تھا کہ "سرکاری عہدیداران کے تئیں قانون کو نظر انداز کرتے ہوئے اختیارات کا استعمال آئین سے روگردانی تصور کیا جائے گا۔" مزید برآں اقبال حسن بنام صوبہ سندھ (105SCMR 2008) میں عدالت نے قرار دیا کہ "ماتحت فورم پر لازم نہیں کہ وہ اوپر سے آنے والے کسی ایسے حکم کی تعمیل کرے جو سراسر غیر قانونی اور بلا جواز ہو۔ بلکہ یہ جائز بھی نہیں۔" اور اگر ماتحت لوگوں سے ایک غیر قانونی امر کی تعمیل کروائی جائے تو "انہیں چاہیے کہ وہ اپنا اختلافی نوٹ ضرور لکھیں" (759SC 2010PLD) غیر قانونی اقدامات پر عملدرآمد صرف اس لئے جائز نہیں بن جاتا کہ ایسا نہ کرنے کی صورت میں سرکاری ملازم کو تادیبی کارروائی کا خدشہ تھا۔ زاہد حسین بنام حکومت پنجاب (530SC 1995PLD)۔

19. کسی بھی سرکاری ملازم کو او ایس ڈی کے طور پر تعینات نہیں کیا جانا چاہیے، ماسوائے ان حالات میں جہاں یہ ناگزیر ہو۔ حج بدعنوانی کیس (963SC 2011PLD) میں عدالت نے فیصلہ دیا "یہ امر طے شدہ ہے کہ کسی افسر کو او ایس ڈی بنانے کا مطلب اس کو سزا دینا ہے کیونکہ یہ اصطلاح سرکاری ملازمین کے قانون مجریہ 1973ء اور سرکاری ملازمین (تقرر، ترقی اور تبادلہ) کے قواعد 1973ء میں نہیں دی گئی ہے۔" مقدمات میر شاہ نواز مراد بنام حکومت بلوچستان وغیرہ (2000 PLC (CS) 533)، سید اجمل حسین بخاری بنام کشن راولپنڈی (1997 (CS) 754) ساجد احمد جاوید بنام وفاق پاکستان (1448SCMR 2009) اور ایوان عدالت کارگل (ر) عبد الواحد ملک بنام حکومت پنجاب (1360SCMR 2006) میں بھی اس اصول کو تسلیم کیا گیا ہے۔

20. متذکرہ بالا نظائر قانون کے خدوخال واضح کرتے ہیں۔ ہمارے قانونی نظام کا خاصہ ہے کہ اس میں شرح قانون میں نظائر کا کردار اہم ہے۔ آئین کا آرٹیکل 189 وضاحت کرتا ہے کہ "عدالت عظمیٰ" کا کوئی بھی فیصلہ جو کہ کسی قانونی نقطے کا فیصلہ کرتا ہو اور قانونی نقطہ کی بنیاد پر ہو پاکستان کی تمام عدالتیں اس پر عملدرآمد کی پابند ہیں" ایک گزشتہ فیصلے میں عدالت واضح کر چکی ہے، "اس عدالت کی جانب سے کی گئی شرح آئین کا حصہ بن جاتی ہے۔" الجہاد ٹرسٹ بنام وفاق پاکستان (PLD 1997 84SC)۔ سرکاری ملازمین سے متعلقہ ایک مقدمے حمید اختر نیازی بنام سیکریٹری اسٹیشنمنٹ ڈویژن (1185SCMR 1996) میں یہ واضح کیا جا چکا ہے کہ جب یہ عدالت کوئی اصول یا قاعدہ واضح کر دے، تو پھر اس کا اطلاق، ہر خاص و عام پر ہو گا۔ اور اگر کسی تشریح سے فائدہ ایسے شخص کو ہو رہا ہے جو اس مقدمے میں فریق نہیں تھا، تب بھی ایسے فائدہ ضرور پہنچایا جانا چاہیے۔ اس کی جانب سے مقدمہ بازی کا انتظار نہیں کیا جانا چاہیے۔ ہم سمجھ سکتے ہیں کہ کچھ معاملات میں تو نظائر میں طے شدہ قانونی اصول بغیر کسی تامل اور ابہام کے من و عن لاگو ہوں گے، مگر کچھ معاملات ایسے بھی ہوں گے جہاں یہ طے کرنے میں مشکل پیش آ سکتی ہے۔ بہر حال قاعدہ یہ بیخ آئین کے آرٹیکل 189 اور 190 کے تحت سرکاری ملازمین کو حق حاصل ہے کہ وہ عدالت کی جانب سے طے کردہ اس قانونی اصولوں کے نفاذ کے لیے محکماتہ اعتراض دائر کریں یا مجاز عدالت سے قانونی چارہ جوئی کریں۔

21. اگر کوئی ریاستی عہدہ دار جان بوجہ کر اور ڈھٹائی کے ساتھ عدالت کی جانب سے بیان کئے گئے ان احکامات سے روگردانی کرتا ہے تو ظاہر ہے کہ اسے اس حرکت سے باز آنا چاہیے۔ ورنہ یاد رہے کہ آرٹیکل 204(2)(a) اس عدالت کو اختیار دیتا ہے کہ وہ کسی بھی ایسے شخص کو توہین عدالت کی سزا دے جو "اس عدالت کے احکامات کی حکم عدولی کا مرتکب ہو" اپنے ایک حالیہ فیصلے میں عدالت نے توہین عدالت کے قانون کی اہمیت واضح کی ہے۔ عدالت نے طے کیا کہ "عدالت بذات خود احکامات جاری کرتی ہے اور چاہتی ہے کہ اس کے احکامات پر عملدرآمد کیا جائے؛ عملدرآمد کی ذمہ داری ریاست کے دوسرے ستونوں کے لئے لازم ہے خاص طور پر انتظامیہ کے لئے۔ بد قسمتی سے اگر انتظامی اہلکار قانون کے مطابق اپنے فرائض سر انجام دینے سے روگردانی کرتے ہیں تو عدالت کے پاس اختیار ہے کہ وہ انہیں توہین کی سزا دے۔ بات یہ ہے کہ قانون کی حکمرانی کا خواب بے اختیار عدلیہ اور نافرمان اور غیر محتاط سرکاری اہلکاروں کی موجودگی میں شرمندہ تعبیر نہیں ہو سکتا۔" باز محمد کاکڑ بنام وفاق پاکستان (2010 of 77 Constitution Petition No) اگر کوئی عہدہ دار کوئی ایسا امر کرے جو اس کی وضاحت کر دینے کے لئے وہ انتظامی عہدیداران کو آئین اور قانون کے تحت روگردانی سے روگردانی کرنا پڑے تو اس سے روگردانی وہ نتائج کے ذمہ دار ہوں گے۔

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22. اوپر وضع کردہ اصولوں کو ذیل میں مختصراً بیان کیا جا رہا ہے:

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(i) تقرر، برطرفی اور ترقی

تقرر، برطرفی اور ترقی لازمی طور پر قانون سے مطابقت رکھنے اور جہاں کوئی قانون اور ضابطہ نہ ہو اور فیصلہ صوابدیدی ہو تو صوابدید سلیقے سے اور شفاف و بہترین انداز میں اور عوامی مفاد میں استعمال کی جانی چاہیے۔

(ii) مدت ملازمت

جہاں پر عمومی طور پر مدت ملازمت قانون اور ضابطوں میں بیان کر دی گئی ہو وہاں مذکورہ مدت کو پورا کیا جانا ضروری ہے اور اس میں کوئی رد و بدل نہیں کیا جا سکتا سوائے اس کے کہ کوئی اور چارہ کار نہ ہو لیکن ایسی صورت میں وجوہات کو تحریری طور پر بیان کیا جانا ضروری ہے اور اس پر قانونی کارروائی کا حق محفوظ ہونا چاہیے۔

(iii) غیر قانونی احکامات

سرکاری ملازمین کی پہلی اور اہم ذمہ داری قانون اور انین کی پاسداری ہے وہ اپنے حکام بالا کے کسی ایسے حکم کو ماننے کے پابند نہیں جو کہ صریحاً غیر قانونی، استبدادی اور عوامی مفاد کے برخلاف ہو اور اس قسم کے حالات میں اختلافی رائے کا اظہار تحریری طور پر کرنا چاہیے۔

(iv) او ایس ڈی

افسران کو ضروری وجوہات کے بغیر او ایس ڈی نہیں بنایا جائے گا یہ وجوہات عدالتی داد رسی کے تابع ہوں گی۔ اگر کسی وجہ سے کسی افسر کو او ایس ڈی بنایا گیا تو اس کی وہ تقرری ممکن حد تک قلیل مدت کی ہونی چاہیے اور اگر اس کے خلاف کوئی محکمہ تادیبی کارروائی چل رہی ہو تو اس کو بھی جلد از جلد مکمل کیا جانا ضروری ہے۔

23. ہمیں معلوم ہے کہ ریاست میں انتظامیہ کا کردار کلیدی ہے۔ اور انتظامیہ کی دونوں شاخیں یعنی سرکاری ملازمین اور سیاسی انتظامیہ اپنے دائرہ کار میں رہتے ہوئے آزاد اور خود مختار ہیں تاوقتیکہ وہ اپنے امور انین و قانون اور قواعد کے مطابق اور درست انداز میں چلاتے رہیں، عدالتیں ان کے دائرہ کار میں مداخلت نہیں کریں گی۔ مگر واضح رہے کہ اس کا یہ مطلب نہیں کہ سیاسی ملازمین کے تقرر، ترقی، تبادلہ وغیرہ کی بابت مطلق العنانیت، بدعنوانی اور سیاسی مداخلت کو قبول کیا جائے گا۔

24. فیصلے کی نقول وفاقی سیکریٹری اسٹیبلشمنٹ، ضوبوں کے چیف سیکریٹریز، کمشنر اسلام آباد اور تمام وفاقی اور صوبائی محکموں کے سیکریٹریز کو بچھوانی جا رہی ہیں۔

25. یہ تحریر انگریزی میں جاری کردہ فیصلہ کے اہم حصوں کا خلاصہ ہے۔ ہم انین کے آرٹیکل 28 اور 251 کی منشا کو ذہن میں رکھتے ہوئے اسے جاری کر رہے ہیں۔

MWA/A-31/S

ATTENDED
ATTENDED

Order accordingly.

ATW

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:-

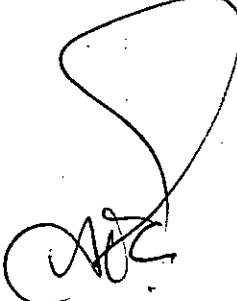
Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:

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[.]

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.



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.

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.

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.

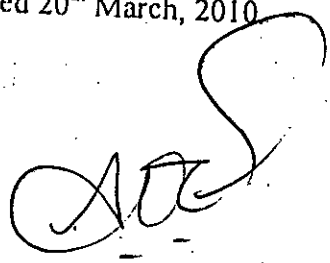
No posting/transfers of the officers/officials on detailment basis shall be made.

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.

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.

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

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



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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:

- a) To ensure the posting of proper persons on proper posts, the Performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/ officials be considered.
- b) Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

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

BEFORE THE KHYBER APKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No.1346/2013

**Muslim Khan
Ex-Assistant Agency Education Officer
AEO Officer Bajour Agency**

Appellant.

.....VS.....

- 1. The Additional chief Secretary FATA Peshawar**
- 2. The Secretary Education FATA Warsak Road Peshawar.**
- 3. The Director Education FATA Warsak Road Peshawar**

Respondents.

Para wise Comments on Behalf of R.No.1 , 2 & 3

Preliminary objections.

- 1. That appellant has got no cause of action/locus standi to file the instant appeal.**
- 2. That the appellant has not come to this Tribunal with clean hands.**
- 3. That the appellant has concealed material facts from this tribunal.**
- 4. That the appellant is estopped by his own conduct to bring the present appeal.**
- 5. That the appeal is time barred.**
- 6. That the appeal is bad due to non-joinder of necessary parties.**

Respectfully/Shewith

- 1. No comments. Pertains to record.**
- 2. No comments. Pertains to record.**
- 3. No comments. Pertains to record. However transfer comes within terms and conditions of service and civil servant is to serve any where.**
- 4. No comments. Pertains to record.**
- 5. Incorrect. The appellant has been worked for a period of four years out of five years as per criteria issued by the Competent authority for the posting of Assistant Agency Education Officer. As the appellant was transferred on administrative ground in the interest of public service. Copy attached. Annexure "A".**

Grounds:

- A. Incorrect. The appellant transfer order has been issued on administrative ground for the smooth running of the department and is in accordance with law.**
- B. Incorrect. The appellant is a gazetted officer in BPS -16. The competent authority for the transfer of BPS-16 is R.No. 2 and not R.No.3.**
- C. No . Comments. As explained above in Para A.**
- D. Incorrect. It is clear in the criteria issued by the competent authority for the posting of Assistant Agency Education officer from Para No.7 that maximum periods will be**

5 years based on good performance otherwise the incumbent could be posted out any time on administrative grounds/poor performance.

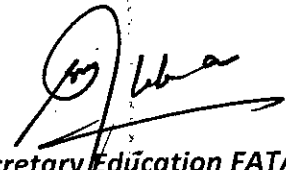
- E. Incorrect. As explained above in Para D.
- F. Incorrect. The order of the appellant was issued by the competent authority in the interest of public and for the smooth running of the Department.
- G. Incorrect. No Political interference was involved in appellant transfer as the order has been issued on administrative ground.
- H. Incorrect.
- I. No comments. As explained in above Para's.
- J. Incorrect. Each and every case has its own merit and circumstances.
- K. Incorrect.
- L. The respondents also seeks permission to advance other grounds at the time of argument.

In the light of above facts it is humbly preyed that the appeal may very kindly be dismissed having no legal force.


Respondent No. 1


Addle: Chief Secretary (FATA)
FATA Secretariat Peshawar

Respondent No.2.


Secretary Education FATA
FATA Secretariat Peshawar

Respondent No.3


Director Education FATA
Warsak Road Peshawar.

AFFIDAVIT

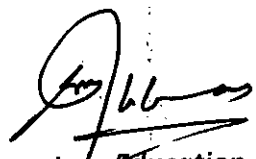
We the above respondents do hereby declare and affirm that the above comments are true and correct to the best of our knowledge and nothing has been concealed from this

Honorable court.

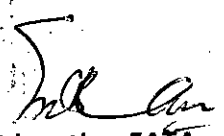
Respondent No. 1


Addle: Chief Secretary(FATA)
FATA Secretariat Peshawar

Respondent No.2.


Secretary Education FATA
FATA Secretariat Peshawar

Respondent No.3


Director Education FATA
Warsak Road Peshawar.

cc 'A'

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**DIRECTORATE OF EDUCATION
(FATA), SECRETARIAT
WARSAK ROAD PESHAWAR
Phone No. 091-9210166 Fax No. 091-9210216**

Amir & G

Dated Peshawar the 26th July, 2013

NOTIFICATION

No.SO (FATA/Edu)/1-30/2013: On having spent last four years out of five on administrative post of AAEO Bajaur, despite the fact that he was transferred on administrative grounds previously also, Mr. Muslim Khan AAEO, Bajour BS-16 is hereby transferred and his services are placed at the disposal of Directorate of Education FATA with immediate effect for further adjustment in a school against an appropriate post.

Secretary Education FATA

Endst: No & Date even: /1798-102

Copy forwarded to:

1. The Director Education FATA, FATA Secretariat Peshawar.
2. Agency Account Officer Bajaur Agency.
3. Officers concerned.
4. PS to Secretary Education FATA, Governor's Secretariat Peshawar.

ATTESTED

Section Officer (Edu.FATA)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1346/2013

Muslim Khan.....Appellant

Versus

The Addl: Chief Secretary FATA and others.....Respondents

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO REPLY FILED BY RESPONDENTS NO.1-3.**

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous, the detailed replies thereof are as under:-

I. That valuable rights of the appellant have been infringed through the impugned order which has been challenged through the instant appeal under the law, therefore, appellant has got a strong cause of action and for that matter locus standi to file the instant appeal.

II. That appellant has approached the Hon'ble Tribunal with a bonafide claim inas much as he has been treated in violation of the law.

III. That all the facts relevant for the disposal of the instant appeal concisely have been incorporated in the appeal and nothing has been concealed from the Hon'ble Tribunal.

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11.03.15

- IV. That appellant has challenged the impugned order within the meaning of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Acts, 1974. It is a settled principle that estoppel does not operate against the law.
- V. That the appeal is within time.
- VI. That all necessary and proper parties have been arrayed as Respondents in the instant appeal, hence the question of mis-joinder and non-joinder is misconceived.

Facts:

- 1-2. Being not replied hence admitted.
3. Incorrect. The transfer/posting is governed by the Transfer/Posting Policy formulated by the Government and the same cannot be violated.
4. Being not replied hence admitted.
5. Incorrect. The transfer is effected in the public interest or in exigency of service but in the case in hand the transfer order has been issued in violation of the rules and law and prematurely by an incompetent authority and therefore is not sustainable in the eye of law.

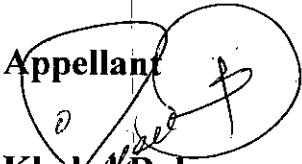
Grounds:

- A. Incorrect. Transfer order cannot be issued on administrative grounds, therefore, the impugned order is violation of law.

- B. Incorrect. The impugned order has been issued by an incompetent authority.
- C. Being not replied hence admitted.
- D. Incorrect. The Transfer/Posting Policy has been violated. The appellants have been transferred prematurely. Moreover, the performance of the appellants was upto the mark.
- E. Incorrect hence denied.
- F. Incorrect. The transfer order has been issued illegally and against the public interest.
- G. Incorrect. The impugned order is the result of the political consideration.
- H-K. Incorrect hence denied.

It is, therefore, humbly prayed that the reply of answering Respondents No.1-3 may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Appellant

 Khaled Rahman
 Advocate, Peshawar

Dated: 11 /03/2015

Affidavit

I, Khaled Rahman Advocate, as per instructions of my clients, do hereby affirm and declare on oath that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

ATTESTED



Dependent
