

Appeal No. 1397/2013.
Mr. Muhammad Zaman.

6. 21.11.2013

Appellant with counsel, Mr. Muhammad Jan, GP with Mr. Kafayat Ullah, Administrative Officer for official respondents No.1 to 3 and Miss. Neelam-A-Khan, Advocate, counsel for private respondent No.4 present. The instant appeal has been filed under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, against the transfer order dated 28.08.2013. Preliminary arguments to some extent were heard on 28.10.2013. A pre-admission notice was issued to the respondent department as well as the learned AAG/GP for production of complete record of the impugned transfer, particularly "complaints", if any, cited as reason for the impugned transfer order and record pertaining to the filing of departmental appeal. The operation of the impugned order was suspended. Further preliminary arguments heard today and record perused.

2. Counsel for the appellant contended that the appellant was transferred on 28.08.2013. He filed departmental appeal on 16.09.2013 and the instant appeal on 08.10.2013 for the reason that the departmental appeal of the appellant has been filed but copy of the same not provided to the appellant for which he filed application but in vain. He further contended that the appellant has been transferred at the last leg of his service which is not permissible under the law; that the transfer could not be made on the basis of complaints; and no proper enquiry has been conducted. Regarding the timing for filing of the instant appeal before this Tribunal, counsel for the appellant stated that the appeal is not pre-mature before this Tribunal. He relied on 2005 SCMR 890(b) where it has been held that... Premature matters were not bad but simply premature and must be returned----Failure to return the appeal debarred the Tribunal to subsequently jeopardize rights and bona fide claims of civil servants---Service Tribunal was required to return the appeal at the very first instance, if such course was not adhered to, then the Tribunal subsequently could not damage the civil servant on the grounds of prematurity of appeal when the same had become mature during the pendency allowed by Service Tribunal itself---Service Tribunal had rightly declined to dismiss the appeal on the score of prematurity---Appeal was dismissed. He further stated that Rule-23 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974, Rules of resjudicata and estoppels do not apply in the instant case. He requested that the appeal may be admitted for regular hearing.

3. At the very outset, the learned GP while assisting the Tribunal, was of the view that the appeal is not maintainable as there is no final order and the appeal before the Tribunal is still pre-mature. The original transfer order was issued on 28.08.2013. The appellant filed departmental appeal on 16.09.2013 and the instant appeal on 08.10.2013. The appellant was to file appeal before this Tribunal on or after 15.12.2013 i.e within 30 days after a lapse statutory period of 90 days as required under Section-4, Proviso-(a) of the Khyber Pakhtunkhwa Service Tribunal Act 1974. He was further of the view that the appellant has concealed material facts from the Tribunal. The appellant filed Civil Suit in Civil Court which was dismissed. He filed Writ before the High Court, Peshawar on 04.10.2013 which was disposed off on the same very day. Record shows that the departmental appeal dated 16.09.2013 of the appellant is still under consideration of the respondent department. It has not been filed, so the contention of the counsel of the appellant that the departmental appeal was filed is incorrect and misconceived. He failed to produce the appellate order. Under Rule 23 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, it has been provided that no Tribunal shall entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a Court or a Tribunal of competent jurisdiction. The appellant filed Civil Suit before the Civil Court which has been dismissed. He filed Writ Petition in the Peshawar High Court, Peshawar on 04.10.2013 which has been disposed off on the same day. Being competent court of jurisdiction, the appellant was to file CPLA before the august Supreme Court of Pakistan if so desired. Therefore, the appeal is not maintainable.

4. Counsel for private respondent No.4 argued that the appellant as would appear from his NIC annexed with the appeal, belongs to District Lakki Marwat so he can not claim posting at District Kohat at the last leg of his service. There is no malafide in his transfer. Under Section-10 of the Civil Servant Act 1973, a Civil Servant has to serve any where within or outside the province; that the appellant has been estopped by his own conduct. He challenged his transfer order in the Civil Court which was dismissed and then filed Writ in the Peshawar High Court, Peshawar which was disposed off on the same day so the appeal is badly hit by the Rules of estoppel and "resjudicata"; that there is no final order and the appeal before

the Tribunal is still pre-mature. She requested that the appeal may be dismissed in limine with costs.

5. After hearing the parties and perusal of record, I, the undersigned is of the opinion that the requirements of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 have not been satisfied. There is no final order and the appeal is still pre-mature before this Tribunal. Therefore, the appeal being not maintainable is dismissed in limine with no order as to costs. File be consigned to record.

ANNOUNCED
21.11.2013


Member

Appeal No. 1397/2012
Mr. Muhammad Damian

5.11.2013

Appellant with counsel, Mr. Usman Ghani, Sr. GP along with Mr. Kifayatullah, Admn Officer, office of Chief Engineer, FATA Works & Services Department, Peshawar for the official respondents and private respondent No. 4 in person present. The learned Sr. GP requested for adjournment. To come up for further preliminary hearing on 21.11.2013. Since the operation of the impugned order has been suspended vide this Tribunal order dated 28.10.2013 in the same case but notices does not seem to have been served upon the respondents. However, the representative of the official respondents stated at the Bar that he has a photocopy of the ~~suspension~~ order and seen it. So operation of impugned order as suspended would continue till the date fixed. Moreover, notice to this effect may be issued to the respondents.

MEMBER

Appeal No. 1397/13 *Muhammad Zaman*

3. 25.10.2013 To come up for preliminary hearing on 28.10.2013 instead of 06.11.2013.

[Signature]
CHAIRMAN



4. 28.10.2013 Appellant with counsel (Mr. Saadullah Marwat and Arbab Saif-Ul-Kamal, Advocates) present and heard. In view of allegation of the appellant that he ~~was transferred~~ from one District i.e Kohat to another District i.e Peshawar in violation of Government policy governing transfer of civil servants at the last leg of their service is based on political motives, and that his appeal has been filed by the respondent-department but he has not been provided copy of filing of appeal despite his application in that respect dated 04.10.2013, per affidavit filed along with the appeal, a pre-admission notice be issued to the respondent-department and learned AAG/GP for production of complete record of the impugned transfer, particularly "complaints", if any, cited as reason for the impugned transfer and record pertaining to filing of departmental appeal for further preliminary hearing on 05.11.2013. In the meantime, the operation of the impugned order is suspended, subject to notice.

[Signature]
Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1397/2013


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	09/10/2013	<p>The appeal of Mr. Muhammad Zaman resubmitted today by Mr. Muhammad Daud Barki 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	9-10-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>6-11-2013</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Muhammad Zaman son of Masti Khan received today i.e. on 08.10.2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Appeal may be got signed by the appellant.
- 2- Copy of rejection order of departmental appeal mentioned in the memo of appeal is not attached with the appeal which may be placed on it.

No. 1418 /S.T,

Dt. 07/10 /2013.



REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Daud Barki Adv. Pesh.

Sir

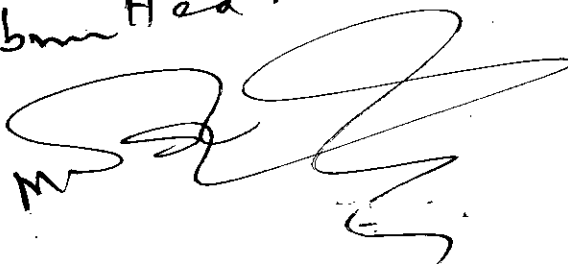
① The observation no 1: is removed and memo of appeal is signed by the applicant.

② The observation no 2 is concerned in this regard I submitted an affidavit for the applicant. Because the department appeal has been filed. But the concerned authority does not provide rejection order to the applicant.


M. Daud Barki

Sir

Re-submitted.


M. Daud Barki

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. 1397/2013

Muhammad Zaman.....**Petitioner**

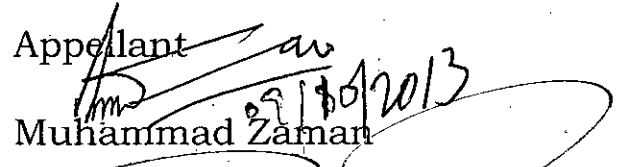
V E R S U S

Secretary (AI&C) Department and others.....**Respondents**

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Grounds of appeal		1-4
2.	Application for interim relief with affidavit		5-6
3.	Copy of CNIC	A	7
4.	Copy of order dated 28.08.2013	B	8
5.	Copy of the Application dated 16.09.2013	C	9
6.	Copy of the positing/ policy	D	10-13
7.	Wakalat Nama		14

Appellant


Muhammad Zaman

Through


Muhammad Daud Barki

Advocate, Peshawar

Cell:03005985044

Date: 8/10/2013

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BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. 1397/2013

C. W. F. Peshawar
Case No. 1448
08/10/13

Muhammad Zaman S/o Masti Khan R/o House No.E-3 Street
No.C&W Colony OTS Road Kohat, Head Clerk C&W Division
FRs Kohat/Peshawar at Kohat.....**Petitioner**

V E R S U S

1. Secretary (AI&C) Department
FATA Secretariat Warsak Road Peshawar.
2. Chief Engineer FATA Works and Services Department
Peshawar.
3. Administrative Officer C/O Chief Engineer W&S FATA,
Peshawar.
4. Mr. Nadir Khan Assistant Southern C&W FATA Circle
Peshawar, presently R/o C&W Colony Quarter No.E-1
OTS Road Kohat.....**Respondents**

**Appeal Under 4 of the Khyber
Pakhtunkhwa Service Tribunal
Act 1974 against the order dated
28.08.2013 whereby the
appellant departmental appeal
has been rejected against the
transfer order dated 28.08.2013
for no good grounds. But the departmental**

rejection order has been not provided.

Handwritten signature
8/10/13

Co-submitted to
and filed.

Handwritten signature
9/10/13

PRAYER

That on acceptance of this appeal the order dated 28.08.2013 may be set aside and to restore the appellant posting at home District/ residential District and not to transfer the appellant in violation of government instruction of the government posting/ transfer policy issued on 15.02.2003.

Any other remedy which this august tribunal deems fit that may also be awarded in favour of the appellant.

Respectfully Sheweth:

1. That the appellant is the resident of District Kohat and being the citizen of Pakistan has ever legal and constitutional rights duly protected under the law of the land.
2. That the appellant joined C&W Department Peshawar as Junior Clerk on 18.06.1978 and is going to retired from service after 8 months on 14.05.2014. (Copy of CNIC is annexure A).
3. That the respondent No.2 issued order dated 28.08.2013 in which the appellant has been transfer on political motivation to Peshawar and an other official i.e respondent No.4 has been posted in place of appellant. (Copy of order dated 28.08.2013 is Annexure B).

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4. That the appellant also moved application on 16.09.2013 to the respondent No.1 for the cancellation the transfer order dated 28.08.2013 on the basis of short period left for retirement but the same was filed. (Copy of the Application is Annexure C).
5. That being no other remedy the appellant is constrained to file the instant appeal on the following grounds:-

GROUND S:

- A. That the transfer of the appellant is in his last leg of service where only 8 months of service of appellant is left is against the norms of justice and fair play.
- B. That the appellant is going to retire from service after 8 months and in case of transfer at the last movement of his service with create hardship for appellant in preparing and finalizing his pension papers etc.
- C. That the Government of KPK has also issued posting/ transfer policy which was duly circulated to all the Departments in which the transfer in last leg of service is banned and if necessitated then to the district of domicile, but in case of the appellant the said clause of

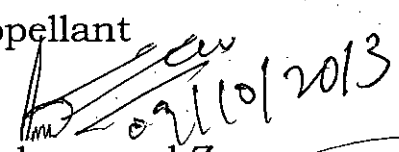
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the policy has been violated and the appellant has been transferred to another District. (Copy of the posting/ policy is Annexure D).

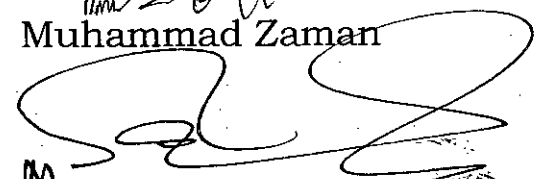
- D. That the posting/ transfer cannot be made as punishment because the same has not provided punishment in the relevant E&D rules thus the posting order dated 28.08.2013 is liable to be set aside.
- E. That the appellant has not been treated according to the settled law/ policy of Government the posting/ transfer of official.
- F. That the appellant seeks permission to advance other ground and proofs at the time of hearing.

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

Appellant


Muhammad Zaman

Through


M
Muhammad Daud Barki
Advocate, Peshawar

Date: 8/10/2013

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BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. _____/2013

Muhammad Zaman.....**Petitioner**

V E R S U S

Secretary (AI&C) Department and others.....**Respondents**

**Application for suspension of
impugned order dated
28.08.2013 till pending final
decision of the main appeal.**

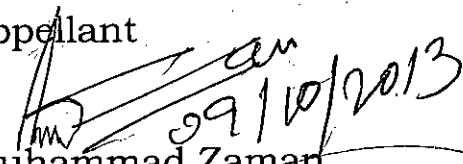
Respectfully Sheweth:

1. That the appellant/ petitioner has filed appeal before this Honourable Tribunal in which no date for hearing has been fixed so far.
2. That the appellant has a good prima facie arguable case the impugned order is without lawful authority and un sustainable in law balance of convenience lies in his favour and in case operation of impugned order is not suspended the very purpose of appeal would be defeated and it would infructuous as well as the appellant would suffer irreparable loss.
3. That the grounds of main appeal may also be as integral part of this application.

(6)

It is, therefore, most humbly prayed that the operation of impugned order dated 28.08.2013 may graciously be suspended till final decision of the appeal.

Appellant


Muhammad Zaman

Through


Muhammad Daud Barki
Advocate, Peshawar

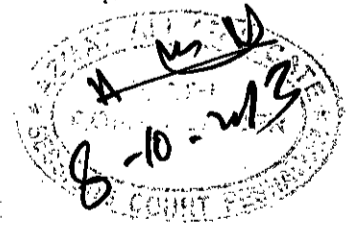
Date: 8/10/2013

AFFIDAVIT

I, Muhammad Zaman S/o Masti Khan R/o House No.E-3 Street No.C&W Colony OTS Road Kohat, Head Clerk C&W Division FRs Kohat/Peshawar at Kohat, do hereby solemnly affirm and declare on oath that the contents of the accompanying application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

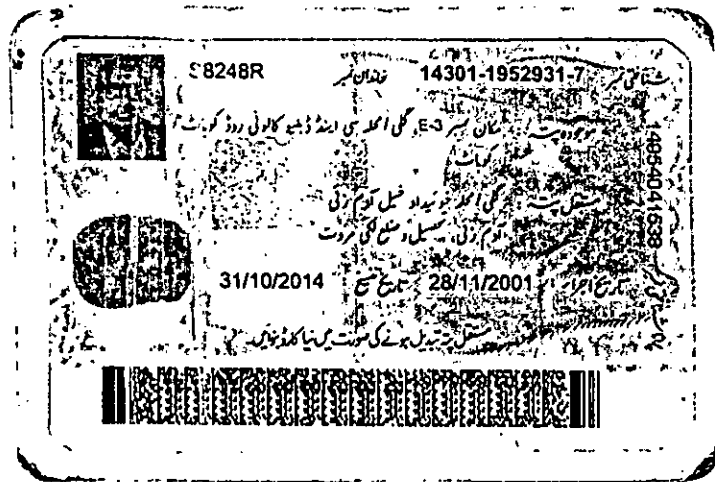

Deponent

ATTESTED



Annex 'A'

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A Hestud
M



OFFICE OF THE CHIEF ENGINEER (FATA)
WORKS & SERVICES DEPARTMENT
PESHAWAR

No. 186 12/11-E
Dated Peshawar the 28/08/2013

OFFICE ORDER

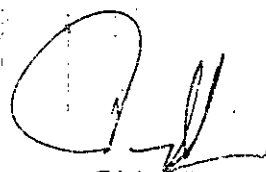
Due to serious complaints against Mr. Muhammad Zaman Head Clerk, C&W FATA Division FR Kohat/Peshawar, the following posting/Transfers of the Assistant/Head Clerk are hereby ordered with immediate effect in the public interest.

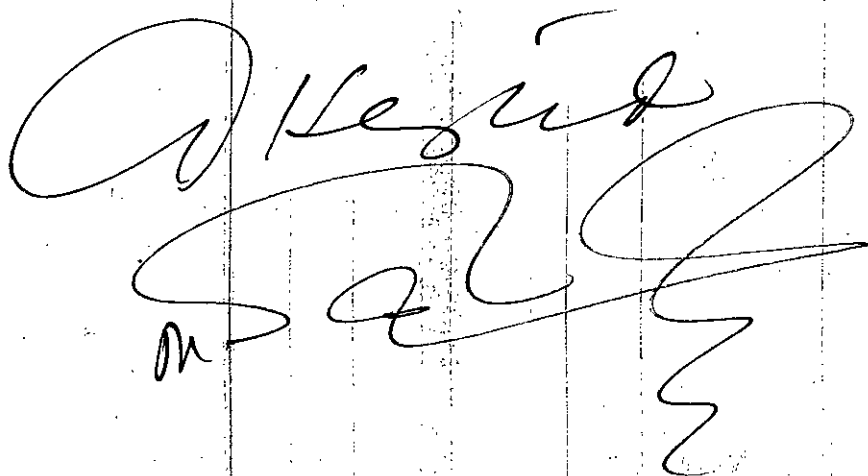
S.#	Name & Designation	From	To	Remarks
1	Mr. Muhammad Zaman	Head Clerk C&W FATA Division FR Kohat/Peshawar	Assistant Southern C&W FATA Circle Peshawar	No 2
2.	Mr. Nadir Khan	Assistant Southern C&W FATA Circle Peshawar	Head Clerk C&W FATA Division FR Kohat/Peshawar	No.1

(Engr. Syed Usaid Jan)
Chief Engineer

Copy to:-

1. The Chief Engineer (C), C&W department Khyber Pakhtunkhwa Peshawar
2. The Additional Accountant General (PR) Sub Office Peshawar
3. The Superintending Engineer, Southern C&W FATA Circle Peshawar
4. The Executive Engineer C&W FATA Division FR Kohat/Peshawar
5. The District Accounts officer Kohat
6. Official concerned.


Chief Engineer



Annex 'C' (9)

To. ✓

The Secretary,
(AI&C) Department,
FATA Secretariat,
Peshawar.

Sub: - **CANCELLATION OF TRANSFER ORDER.**
R/Sir,

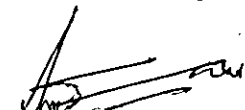
It is very respectfully submitted that the undersigned has been transferred, from C&W Divisions FRS Kohat /Peshawar to Southern C&W FATA Circle Peshawar vide office of the Chief Engineer FATA's Office Order No. 186/2/11-E dated 28-08-2013, (Copy enclosed), for no fault of mine notwithstanding the fact that **I will stand retired from service within far less, than a year.** My only fault is that I could not accede to the illegal demand of M.Ajmal Afridi, Advisor to Chief Minister, KPK, who is not even an MPA of the FATA. The serious complaints referred to in my transfer order have been obtained by the Chief Engineer subsequent to issuing the office order of my transfer merely to show that my transfer has been made on genuine grounds. The true position is that my transfer has been affected to "please" the said MPA. To this effect **I have recorded the conversation between the Chief Engineer and the Said MPA.** Which can be produced before the authorities if desired.

2. In view of the above, mentioned facts, it is requested that the above- referred transfer order may kindly be cancelled , so as to encourage upright attitude amongst the government servants as well as to let me conveniently complete my preparation for retirement.

Note:- Copy of the relevant clause i.e. (xi) of posting / transfer policy of the provincial Government, KPK, dated 15-2-2003, as quoted by **Honorable Peshawar High Court, Peshawar** in their Judgment, .W.P No.1164-P/2013, is enclosed herewith as well. for ready reference, please.

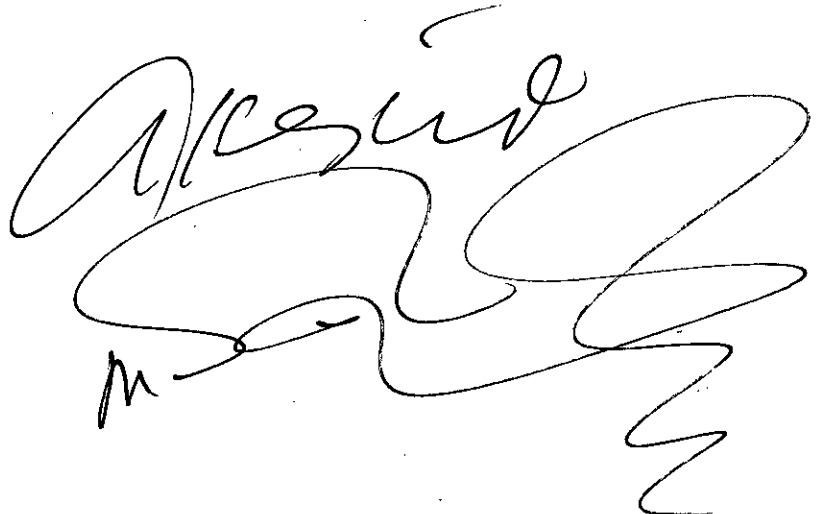
Thanking in anticipation sir,

Your's Obediently Servant,


(Muhammad Zaman)

Head Clerk,
C&W Division, FRs Kohat/Peshawar
at Kohat

Date 16 /09/2013



BETTER COPY.

Anneye (10) (D)

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

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

Dated the Peshawar the 15th February, 2003.

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

SUBJECT: POSTING/TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT.

Dear Sir,

1. I am directed to refer to the subject noted above and to say that in supersession of all policy, instructions issued in this behalf, the competent authority has approved the following Posting/Transfer Policy: -
 - i) All the posting /transfer shall be made strictly in the public interest and shall not be abused/misused to victimize the Government Servant.
 - ii) All Government servants are prohibited to exert political, Administrative or any other pressure upon the posting /transfer authorities for seeking posting transfer of their choice and against the public interest.
 - iii) All contract Govt: employees appointed against specific posts cannot be posted against any other post.
 - iv) The normal tenure of posting shall be three years subject to the condition that for the officers/officials posted in unattractive areas, the tenure shall be two years and for the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the government.
 - v) Months of March and July are fixed for posting/transfer of the officers/officials excluding the officers in B-19 and above in the Province. Posting/transfer in Education and Health Departments shall be made in March

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

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

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

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

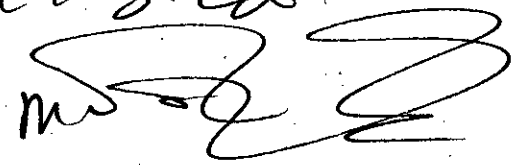
xiii) While considering the posting/transfers proposals all the concerned authorities shall keep in mind the following: -

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

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

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

2. To streamline the posting /transfers in the Distt; Govt: and to remove any imitant/confusions in this regard the provision of Rule 25 of the NWFP Distt: Govt: Rules of Business 2001 read with schedule-IV thereof is referred. As per schedule-IV the Posting /Transferring authorities for the officials/officers shown against each are as under: -

Advised


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

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

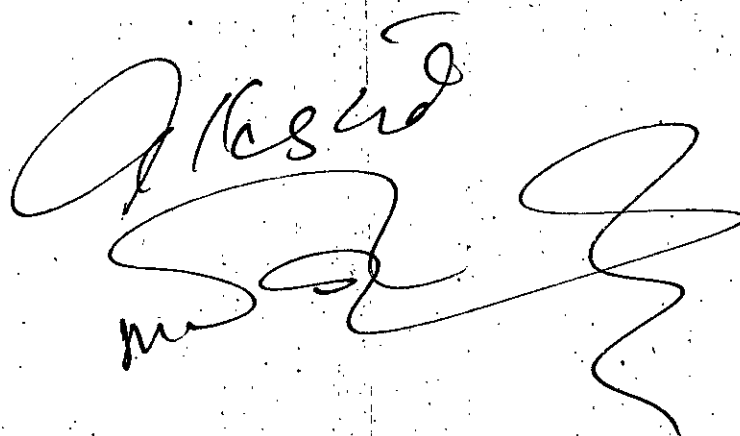
4. I am directed further to request that the above noted policy may be strictly observed/ implemented.

Your Faithfully,

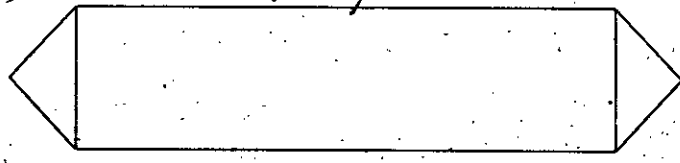
Sd/xxx
(GHULAM JALANI ASIF)
ADDL: SECRETARY(REG.)

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

dated Peshawar the 15.2.2003.



بعدالت صہ کے سرویس ٹریبونل کی



محمد عمران / ایڈوائس

2، پنجاب

بنام سیکریٹری انٹرنل
قائم
و تہ

محمد عمران

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دعویٰ اپیل کر رہا ہوں
جیم

مورخہ
مقدمہ
دعویٰ اپیل کر رہا ہوں
جیم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
 آن مقام کے لیے محمد داؤد بیک کی انکوائری
 مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
 وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
 بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
 اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
 مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
 تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
 اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
 سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
 گے۔ کہ پیروی مذکور کریں۔ لہذا نکالت نامہ لکھ دیا کہ سندر ہے۔

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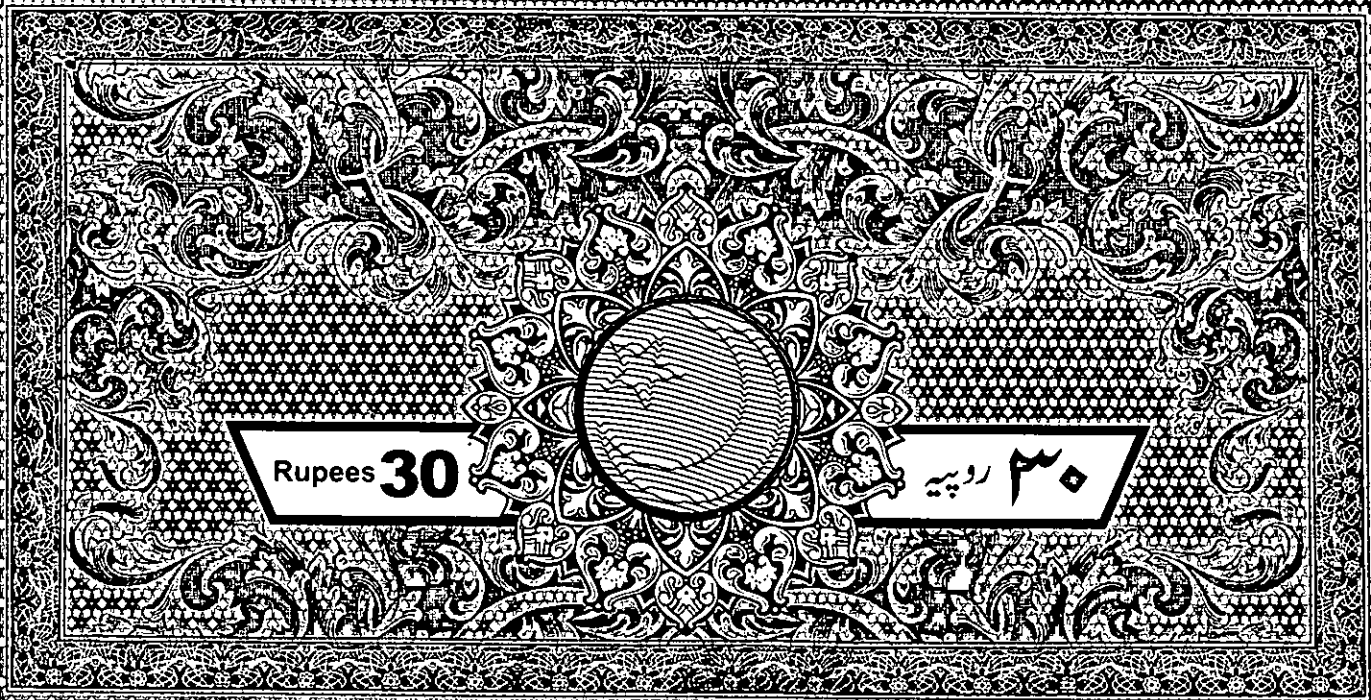
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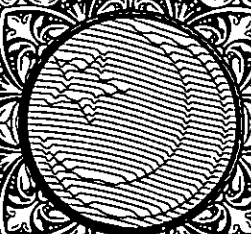
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الع
مقام



Rupees 30

۳۰ روپیہ



بیگم علی

منند محمد زفر خان دہ مشن خاں سکن کوئٹہ سسر و ایڈیٹور سے
 گالٹی نوٹس حال حیدرآباد کے ایف آر سے منسوخ ہو گیا
 لہذا اس کی کہ میں نے صرف ۹/۱۰/۲۰۱۳ کو اس میں تبدیلی کی مستوفی
 کی ہے سیکریٹری ایڈیشن کاٹا کو دروازے کی ضرورت
 جو کہ (Filed) ہو گیا ہے میں نے اس مسئلہ کے ساتھ
 ۱۰/۱۱/۲۰۱۳ کو دروازے کی ضرورت سے متعلق اس مسئلہ
 کا نقل دی ہے اور اس کے اندر اس کے انکار کی ہے
 دروازے کی فوری منت ۱۰/۱۱/۲۰۱۳ کو اس کے نوٹس کے
 اور اس کے منسوخ ہونے کے بعد ۱۳/۱۱/۲۰۱۳ کو اس کے
 ۱۱/۱۰/۱۳ کو جمع

ATTESTED
 AZMAT A. ACHOCRI
 8-10-13
 SESSIONS COURT PESHAWAR

محمد زفر خان
 ۰۵/۱۰/۲۰۱۳

To

The Secretary,
(Aide) Department
Fata Secretariat,
Peshawar

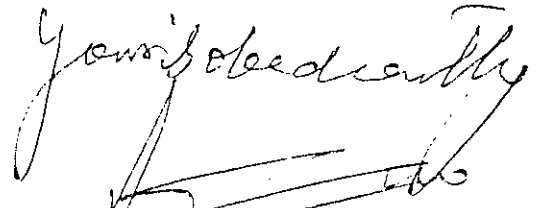
Subject: Decision copy of my cancellation
application of Transfer order dated
28-8-2013.

R/sir,

with due respect it is requested
that a decision copy of my subject cited appli-
cation which was submitted on 16-9-2013
and the application in question has been
filed. The said copy is required for a
Writ petition as directed by the Honorable
High Court Peshawar in his decision dated
04-10-2013 in the Service Tribunal K.P.K.
Peshawar.

Thanks.

Dated 04-10-2013.

Yours obediently

(Mohammed Zaman)
Head clerk F.R.S. Peshawar/
Kohat.

Before the Service Tribunal, KPK, Peshawar
Be fixed
at an early
date.

Mohammad Zaman vs

~~Service Tribunal~~


date:

Application for urgent/early hearing of the Appeal
25/10/13.

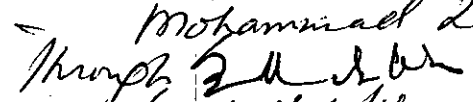
Respectfully Sheweth,

- 1- That the above mentioned Appeal along with application for Status Quo is pending adjudication in Primary bench in which 6/11/2013 is fixed for hearing.
- 2- That the applicant has not relinquished the charge so far, therefore requires status quo order in his favour.

It is therefore most-humbly Prayed that the appeal along with status quo application be urgently fixed.


Applicant

DT- 25/10/13.

Mohammad Zaman
Through  Advocate
Saadullah Khan Marwal

بعدالت مع سردس سروسز پبلک سروسز کمیشن فوراً



محمد رفیق / اسد علی

2ء منجانب

محمد رفیق بنام سکرٹری

ایڈیشنل سکرٹری
لاہور

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ

محمد رفیق
اسد علی

آن مقام سے ور کیلئے محمد داؤد برکی 4ء ارباب سید کمال احمد برکی مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے

اور اس کا ساختہ پر داختم منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کی سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

Handwritten signature and date: 20/10/18

المرقوم
10
Advocate

الع
مقام

POWER OF ATTORNEY

In the K.P.K Service Tribunal Peshawar
Service Appeal No. 1397/2013.

Muhammad Zaman

Versus

Secretary (AISC) FATA & others

Plaintiff
 Appellant
 Petitioner
 Complainant
 Decree Holder

Defendant
 Respondent
 Accused
 Judgment Debtor

I/We Nadir Khan

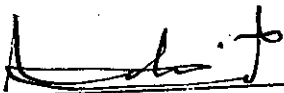
The Repd-4 above named hereby appoint NEELAM-A-KHAN Advocate
in the above mention case to do all or any of the following acts, deeds and things.

1. To appear, act, and plead for me /us in the above mentioned case in this Court /Tribunal or any other court/tribunal in which the same may be tried or heard, and any other proceedings arising out of or connected therewith.
2. To sign verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal, or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said at all its stages.
3. To receive payment of and issue receipt for, all money that may be or become due and payable to us during the course or on the conclusion of the proceedings.
4. To do all other acts and things which may be deemed necessary or advisable during the course of the proceedings.

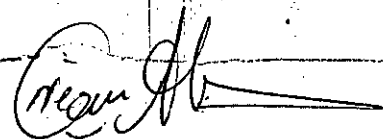
AND HEREBY AGREE:

- a. To ratify whatever the said Advocate may do in the proceedings.
- b. Not to hold the Advocate responsible if the said case be proceeded ex-parte or dismissed in default in consequence of their absence from the Court/Tribunal when it is called for hearing.
- c. That the Advocate shall be entitled to withdraw from the prosecution of the said case if the whole of, any part of the agreed fees remain unpaid.

In witnesses whereof I/We have signed this Power of Attorney / Vakalatnama hereunder the contents of which have been read / explained to me / us and fully understood by me / us this 20th Nov day of 2013 at Peshawar



Signature of Executant /s



NEELAM-A-KHAN

Advocate Supreme court of Pakistan.

Office: TF; No-216 Deans Trade

Centre Peshawar Cantt

Cell No: 03005955133

2005 S C M R 890

[Supreme Court of Pakistan]

Present: Sardar Muhammad Raza Khan and Mian Shakirullah Jan, JJ

MANAGING DIRECTOR, OIL AND GAS DEVELOPMENT COMPANY LTD.---Appellant

versus

Syed NAJMUL HASSAN NAQVI---Respondent

1307/2013
Jhsir3

Civil Appeal No.662 of 2001, decided on 28th February, 2005.

(On appeal from the judgment, dated 23-6-2000 passed by the Federal Service Tribunal, Islamabad in Appeal No.1675(R) of 1999).

(a) Service Tribunals Act (LXX of 1973)---

----S. 4---Civil Procedure Code (V of 1908), S.80 & O.VII, R.11---Premature appeal---Effect--- Any suit or cause of action which is premature, does not entail dismissal of that cause but it results into rejection under O.VII, R.11 C.P.C. that does not operate as res judicata---If appeal before Service Tribunal is premature, it should be returned by Registrar so as to be re-submitted after maturity of cause of action.

Abdullah Bhai's case PLD 1964 SC 106; Muhammad Usman's case PLD 1983 SC 436; Syed Aftab Ahmed's case 1999 SCMR 197; Pakistan International Airlines Corporation's case 1999 PLC (C.S.) 1539 and Sui Southern Gas Company Limited's case 2003 PLC (C.S.) 796 ref.

(b) Service Tribunals Act (LXX of 1973)---

----S. 4---Civil Procedure Code (V of 1908), O.VII, R.11---Premature appeal---Filing of appeal before expiry of ninety days---Penalty of compulsory retirement, setting aside of---Civil servant was compulsory retired from service but Service Tribunal allowed appeal and set aside the penalty---Plea raised by the authorities was that civil servant had filed appeal after eighty days from filing of departmental representation, thus the appeal was premature the same merited dismissal by Service Tribunal---Validity---If at the initial stage, by serious omission, the timely return of appeal was avoided and the cause of action was allowed to mature during pendency of appeal and on the fag end of proceedings, the appeal was dismissed on the ground that the initial submission was premature, such volte face if taken by Service Tribunal, could not be endorsed under any canon of justice---Premature matters were not bad but simply premature and must be returned---Failure to return the appeal debarred the Tribunal to subsequently jeopardize rights and bona fide claims of civil servants---Service Tribunal was required to return the appeal at the very first instance, if such course was not adhered to, then the Tribunal subsequently could not damage the civil servant on the grounds of prematurity of appeal when the same had become mature during the pendency allowed by Service Tribunal itself---Service Tribunal had rightly declined to dismiss the appeal on the score of prematurity---Appeal was dismissed.?

(c) Service Tribunals Act (LXX of 1973)---

---S. 4---Penalty of compulsory retirement, setting aside of---Discrimination---Departmental inquiry was initiated against eight officers but the respondent civil servant was only condemned who was compulsory retired from service just 4 days prior to his superannuation---Service Tribunal allowed the appeal and set aside the penalty---Validity---No action was taken against other officers under inquiry on the ground that he was to retire after about four months---If such reason could prevail with the authorities with regard to that other officer, it was equally available for the respondent civil servant who was compulsorily retired 4 days before his superannuation---Service Tribunal had rightly concluded that the penalty awarded to respondent civil servant was clearly discriminatory and his retirement was expedited mala fide despite the fact that after 4 days he was to retire on superannuation---Supreme Court declined to interfere with the judgment passed by Service Tribunal as the same was unexceptionable---Appeal was dismissed.

Shah Abdul Rasheed, Advocate Supreme Court with Syed Amjad Ali, Dy. Admn. Officer (O.G.D.C.) for Appellant.

Hafiz S.A. Rehman, Advocate Supreme Court for Respondent.

Date of hearing: 28th February, 2005.

JUDGMENT

SARDAR MUHAMMAD RAZA KHAN, J.--- Oil and Gas Development Company Limited, Islamabad has challenged, after leave of the Court, the judgment, dated 23-6-2000 of learned Federal Service Tribunal whereby, on acceptance of the appeal of Syed Najamul Hassan Naqvi, his compulsory retirement from service was set aside.

2. The respondent joined the company on 23-9-1982 as Deputy Chief Geologist and in due course became a Manager (B-21) when on 12-12-1998 he was served with a charge-sheet levelling the allegations of misconduct. An inquiry was held and ultimately it was found that the charges of misconduct were proved. Accordingly, vide office memorandum dated 13-8-1999 he was made to retire from service compulsorily. His appeal before the Service Tribunal succeeded and hence this appeal.

3. Learned counsel for the appellant challenged the very maintainability of appeal before the Tribunal on the ground that it was premature and was filed without waiting for a period of 90 days after filing of appeal or representation before the higher departmental authority. The learned counsel drew analogy from section 80 of the Civil Procedure Code where no suit against Government could be filed before the expiry of two months next after notice in writing, as contemplated by the section itself. It was vehemently asserted by the learned counsel that any suit brought in contravention of section 80, C.P.C. was bound to be rejected under Order VII, rule 11 of the C.P.C. and could not be entertained by the Court. That identical was the case of appeals to be filed under section 4 of the Service Tribunal Act.

4. We believe that the one in hand is a matter squarely akin to the civil law and that is why the learned counsel also consciously sought protection under the provisions of section 80, C.P.C. Still, we cannot avoid making expression that the condition of prematurity involved under section 80, C.P.C. as well as under section 4 of the Service Tribunals Act is of hyper-technical nature. Legislature having realized this fact has amended the section in the year 1962 by adding proviso

to the effect that if a premature suit is instituted without such notice or in contravention of the provision of section 80, C.P.C., the Court shall allow not less than three months to the Government to submit its written statement. The logic behind the issuance of notice under section 80, C.P.C. of providing time to the Government is covered by allowing it three months time after the institution of suit, to file written statement. This carries an idea that the causes of action if premature can be overlooked if those become mature during pendency of the cause. This Court comprising of Mr. Justice A.R. Cornelius, Mr. Justice B.Z. Kaikaus and Mr. Justice Hamoodur Rahman in Abdullah Bhai's case PLD 1964 SC 106-113 had categorically observed that it was open for the Court to have decreed the suit which was premature when it was filed but where the cause of action matured during the pendency of the suit.

5. The aforesaid verdict though available in field, in principle, this Court comprising of two Honourable Judges in Muhammad Usman's case PLD 1983 SC 436 did not agree to the hearing of a premature appeal by the Tribunal under section 4 of the Service Tribunals Act. Subsequent development would indicate that this rule was relaxed in Syed Aftab Ahmed's case 1999 SCMR 197 by holding that where no statutory provision or statutory rule providing a right of appeal or representation is available in the relevant laws of the appellant, he is not bound to file the same and then wait for a period of 90 days in order to have resort to the Service Tribunal. Similar view was taken in Pakistan International Airlines Corporation 1999 PLC (C.S.) 1539 that if the provision of appeal or representation is available in the statutory rules of a corporation or statutory body, the employee shall have to file such appeal but where the rules are not statutory, the employees can directly resort to the Service Tribunal. In the instant case, the Oil and Gas Development Company is not possessed of any statutory rules and hence the appeal before the Tribunal could be filed directly either without filing any appeal or representation before the departmental authority or without waiting for a period of 90 days. The latest view of this Court in this behalf is given in the case of Sui Southern Gas Company Limited 2003 PLC (C.S.) 796.

6. With regard to the stringency of the rule involved, we have another view of the matter as well. Any suit or cause which is premature, does not entail the dismissal of that cause but it results into rejection under Order VII, rule 11, C.P.C. that does not operate as res judicata. We are, therefore, of the firm view that if an appeal before a Service Tribunal is premature, it should be returned by the Registrar so as to be re-submitted after the maturity of the cause of action. Quite an anomalous situation would it be that on the one hand and at the initial stage, by serious omission, the timely return of appeal is avoided and the cause of action is allowed to mature during pendency and, on the other hand, at the fag end of proceedings, it is dismissed on the ground that the initial submission was premature. Such volte face if taken by the Tribunal cannot be endorsed under any canon of justice. The fact remains that premature matters are not bad but simply premature and must be returned. Failure to do so debars the Tribunal to subsequently jeopardize the rights and bona fide claims of the appellants. We, therefore, conclude that a premature appeal before the Tribunal requires to be returned at the very first instance. If this course of action is not adhered to, the Tribunal subsequently, cannot damage the appellant on grounds of prematurity of appeal when the same had become mature during the pendency allowed by the Tribunal itself. The Tribunal, in the instant case, has rightly declined to dismiss the appeal on this score and moreover, this objection was not taken before the Tribunal either, by filing any concise statement.

7. Coming to the factual aspect of the case concerning charges of misconduct and the manner those were tackled with by the Tribunal, we would take up the charge concerning Gas Dehydration Plant. In this charge 8 officers were under inquiry and the respondent was held liable being member of the Evaluation Committee. The learned Tribunal has rightly concluded that on the one hand, the respondent was not a member of Evaluation Committee consisting of 5 members

namely, Mr. Ain-ud-Din Siddique, Mr. Jaffar Muhammad, Mr. Ghulam Abbas Nakai, Mr. Qamar Saeed Awan and Muhammad Athar. It may be remarked at this stage that Mr. Qamar Saeed Awan was exonerated for not being a member of the committee while he was very much the member thereof, whereas, the respondent was condemned though not a member at all. This was an act of discrimination as well.

8. No action was taken against Mr. Qamar Saeed Awan on the ground that he was to retire on 7-1-1999. If such reason could prevail with the authorities qua Mr. Qamar ASaeed Awan, it was equally available for he respondent as well who also was to retire on 17-8-1999. The height of discrimination is that Mr. Qamar Saeed Awan was accordingly exonerated but the respondent was compulsorily retired only 4 days before his superannuation.

9. Concerning the charge about appointment of a consultant, it is rightly observed by the Tribunal that the same appointment of consultant was dropped on 27-4-1995 by the competent authority and the said committee did not take any final decision. There were many officers senior to him in the committee and the final decision never rested with the respondent.

10. Regarding Gas Transport Pipeline the allegation against the respondent was that he facilitated the procurement of a Pipeline at a very high cost, depriving the corporation of the benefits of a fair and transparent competition. Suffice it to say for negation of charge that the decision to adopt the gallop tender was taken at the level of Chairman, the Minister and the Prime Minister. It was implemented through the decision of Chairman O.G.D.C. and the period of 15 days after gallop tender was determined by the Chairman himself.

11. For all the aforesaid reasons, it was rightly concluded that the penalty awarded to the respondent did not commensurate with the so-called misconduct on his part. That he was clearly discriminated and his retirement was expedited malafidely despite the fact that after 4 days he was to retire on superannuation. In the circumstances, the judgment of the Tribunal being unexceptionable is maintained and the appeal is hereby dismissed.

M.H./M-233/S

Appeal dismissed.

2012 P L C (C.S.) 187

[Khyber Pakhtunkhwa Service Tribunal]**Before Sultan Mehmood Khattak and Noor Ali Khan, Members****Mst. SHAMSHAD BEGUM****Versus****CHIEF SECRETARY, KPK, PESHAWAR and 3 others**

Appeal No.2016 of 2010, decided on 10th February, 2011.

Khyber Pakhtunkhwa Civil Servants Act (XVII of 1973)---

---S. 10---Khyber Pakhtunkhwa Service Tribunals Act (I of 1974), S.4---Transfer---Appellant serving as Social Welfare Officer in BPS-17, was transferred from place 'P' to place 'A'---Appellant, on recommendation of DCO, was transferred to place 'C'---Appellant assailed the transfer order on the ground of being premature and based on mala fide---Validity---Appeal of civil servant was accepted holding that. impugned order was premature and passed on the basis of complaint which required a regular enquiry in the matter---Transfer of civil servant could not be made on the basis of complaint because transfer had not been mentioned as punishment in the penalty list in the Rules and Regulations regarding the conduct of civil servant---Appellant being a BPS-17 employee, competent Authority for transfer was Chief Secretary/Secretary of the department; that DCO was not competent to deal with the matter directly and to order enquiry--Impugned order was set aside with direction that appellant would remain posted at place 'A'.

Muhammad Asif Yousafzai for Appellant.

Tahir Iqbal, Government Pleader for Respondents.

JUDGMENT

SULTAN MEHMOOD KHATTAK (MEMBER).--- This appeal has been filed by the appellant against the order dated 15-6-2010 against which the appellant filed Departmental Appeal which was not decided within the statutory period of 90 days. The appellant has prayed for setting aside the impugned order dated 15-6-2010 being passed in- A violation of law, rules and premature.

2. Perusal of the appeal shows that the appellant has been serving as Social Welfare Officer in BPS-17 and was transferred from Peshawar to Abbottabad on 4-7-2009. There a clash was started between the appellant and the District Social Welfare Officer due to which the District Social Welfare Officer wrote a letter to DCO for transferring the appellant from out of District Abbottabad. The DCO wrote letter to the Director Social Welfare on 5-5-2010 with the recommendation of posting/transfer of the appellant from out of District Abbottabad in light of the complaint and DCO recommendation, the appellant was transferred to Charsadda on 15-6-2010. The appellant agitated the matter before the DCO Abbottabad who ordered the enquiry to be conducted to resolve the issue. The appellant was relieved on 7-6-2010 by District Social Welfare Officer despite of pendency of enquiry, but the DCO directed the District

Social Welfare Officer to withdraw the relieving order till the completion of enquiry, resultantly, the relieving of the appellant was withdrawn by the DSW officer on 22-6-2010. In the meanwhile the appellant filed, Departmental Appeal on 26-6-2010 against the order dated 15-6-2010 which was not decided within statutory period. However, after completion of enquiry the appellant and DSW Officer both were recommended to be posted out of District Abbottabad.

3. Arguments heard and record perused. The respondents contested the appeal and submitted their detailed replies which were rebutted by the appellant through her rejoinder submitted accordingly.

4. The counsel for the appellant argued that the impugned transfer order dated 15-6-2010 is premature and based on mala fide, the impugned order has been passed on the enquiry of the DCO who was never authorized and nominated to conduct inquiry or to order as such, because the appellant is BPS-17 and for her the competent authority is Chief Secretary/Secretary of the Department and not the DCO. The Counsel for the appellant further argued that the transfer is nowhere mentioned in the penalty list of the RSO 2000 or E&D rules, therefore, the appellant could not be penalized in shape of transfer. The counsel for the appellant also argued that the impugned order has been passed in violation of rules and regulation as no proper summary was moved for the said, purpose. It is further contended that the appellant has been discriminated because the enquiry officer recommended both the appellant and DSW Officer but only the appellant was posted out without disturbance the other side i.e. DSW Officer, which is evident from the order attached with the rejoinder in which the DSW Officer (Niaz Muhammad) was posted to Mansehra on 15-10-2010. The said officer relieved from Abbottabad on 27-10-2010 and was posted back to Abbottabad on 22-11-2010. The counsel for the appellant lastly argued that the appellant is female and having schools going children at Abbottabad being resident of Abbottabad, it would be difficult for the appellant to travel daily from Abbottabad to Charsadda and vice versa. The same will definitely affect the daily home life of the appellant.

5. The Counsel further contended that as far as the complaint regarding the absence is concerned that was not proved because the appellant produced witnesses during enquiry who give affidavit to the effect that the appellant regularly attended the office. Moreover, escaped of inmate girls was also reported on the very next day (20-1-2009) to the DSW officer. Therefore, the allegations against the appellant were baseless and having no connection with the reality.

6. The AGP for the respondents argued that the appellant was transferred due to complaint submitted to the DCO by the DSW officer and the enquiry officer has recommended that the appellant be posted out of district Abbottabad. He further contended that the order was passed by the competent authority after fulfilling formalities.

7. The Tribunal hold that the impugned order was premature and passed on the basis of complaint which requires a regular enquiry in the matter and transfer of a civil servant could not be made on the basis of complaint because transfer has not been mentioned as punishment in the penalty list in the rules and regulations regulating the conduct of the a civil servant. The Tribunal also observed that the appellant is a BPS- 17 C employee, for her the competent authority is Chief Secretary/Secretary of the Department and DCO Abbottabad was not competent to deal the matter directly and to order to conduct enquiry. The Tribunal also noted that the DSW Officer was also recommended to be posted out of district Abbottabad but he was transferred to Mansehra on 15-10-2010; relieved from Abbottabad on 27-10-2010 and posted back to Abbottabad on 22-11-2010. This proves sheer discrimination against the appellant.

8. In view of above the appeal is accepted, the impugned order ID dated 15-6-2010 is set aside and the

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[Balochistan Service Tribunal]

Before Muhammad Hashim Khan Kakar, Chairman, Muhammad Naeem Khan Ghalzai and Muhammad Anwar Khan Members

MAHBOOB KHAN MANDOKHAIL

Versus

SECRETARY C&W GOVERNMENT OF BALOCHISTAN and 2 others

S.A. No.175 of 2010, decided on 27th October, 2010.

(a) Balochistan Civil Servants Act (IX of 1974)---

----S. 10---Balochistan Service Tribunals Act (V of 1974), S.4---Transfer order---Direct appeal before the Service Tribunal without exhausting departmental remedy---Maintainability---Counsel for authorities had contended that appeal filed by the appellant was not maintainable having been filed directly without exhausting departmental remedy---Contention was repelled as matter of transfer of civil servants being part of terms and conditions of their services, would fall within exclusive jurisdiction of Service Tribunal---Order of transfer of civil servant could straightaway be challenged before Service Tribunal without first exhausting the remedy of representation in the hierarchy of the department---If transfer order was mala fide or in violation of settled law, and was made for extraneous considerations to accommodate some blue eyed-chap, it would squarely fall within the domain of Service Tribunal---Said original orders of the departmental authorities against which no appeal had been provided, had been termed as the original final orders; whereas in those cases where appeal lay, the order passed in appeal was the final order---Order of the departmental authority for the transfer of the civil servant was such against which, no departmental appeal lay before the higher authority; in such a situation, if the aggrieved civil servant wanted to get relief, could immediately approach the Administrative Court or the Tribunal for redressal of his grievance.

(b) Balochistan Civil Servants Act (IX of 1974)---

----S. 10---Balochistan Service Tribunals Act (V of 1974), S.4---Transfer order---Question of transfer/posting under S.10 of Balochistan Civil Servants Act, 1974 fell within the domain of competent authority, but such discretion must not be exercised in an arbitrary or fanciful manner---Such discretion had to be exercised judiciously and in accordance with settled norms of

justice, equity and fairplay---Government was required/duty bound to exercise the discretion keeping in view the nature of duty and requisite capabilities in a fair and impartial manner---There should be no extraneous considerations---Transfer order, if mala fide or in violation of settled law, for extraneous consideration, would fall within the domain of the Service Tribunal---Normally, a civil servant would not be transferred from one station to another, prior to the completion of prescribed period of tenure---Civil servants were generally permitted to complete their normal tenure in case of transfer from one place to another---Such principle had to be followed in the ordinary circumstances, unless for reasons of exigencies of service---Impugned transfer order of the appellant was deviation from normal procedure and transfer/posting Policy, for which even reasons were not assigned---Appellant was going to be retired within a period of 4/5 months; his transfer order, in circumstances smacked of arbitrariness; and was not tenable having been passed in clear violation of transfer/posting Policy, 2003---Notification whereby appellant was transferred, was set aside and appellant would retain his earlier position.

M. Wasy Tareen for Appellant.

Nasrullah Achakzai, A.A.-G. for Respondents.

Date of hearing:26th October, 2010.

JUDGMENT

MUHAMMAD HASHIM KHAN KAKAR, (CHAIRMAN),--- This appeal under section 4 of the Balochistan Service Tribunals Act 1974 has been filed by Mr. Mehboob Khan (appellant) against his transfer order dated 21-9-2010 whereby he was transferred from the post of Acting Chief Engineer Khuzdar to Acting Chief Engineer Design.

2. The relevant facts in small compass are that the appellant is Superintending Engineer (B-19) and was posted as Acting Chief Engineer Khuzdar Region. As per appellant he had been performing his duties to the best of his abilities and no complaint whatsoever in nature against him was made. It is case of the appellant that in spite of clear instructions/guidelines issued by the Government of Balochistan about the Transfer Posting Policy, the respondent No.1 with mala fides transferred him through impugned Notification dated 21-9-2010.

3. On the other hand, the respondents contested the appeal on legal and factual grounds by filing their written replies.

4. We have heard the learned counsel for the parties and perused the available record with their valuable assistance.

5. The learned counsel for the appellant Mr. Wassay Tareen, Advocate contended that the impugned order is against the law, hence not tenable. He also argued that the order in question is based on mala fides and has been passed just to accommodate influential person.

6. On the other hand learned Additional Advocate-General Balochistan Mr. Nasrullah Achakzai Advocate contended that the appeal is not maintainable being filed directly without exhausting departmental remedy and the question of transfer/posting exclusively falls within the domain/jurisdiction of the competent authority. He further contended that this Tribunal has got no jurisdiction to adjudicate upon the same.

7. We are not in agreement with the learned Assistant Advocate-General Balochistan on the ground that the appeal is not maintainable being filed directly before this Tribunal without

exhausting the alternate remedy of filing departmental appeal. We are of the considered view that transfer of civil servants being part of terms and conditions of their services, would fall within exclusive jurisdiction of this Tribunal.

8. It is now settled principle of law that an order of transfer of civil servant can straight away be challenged before Service Tribunal without first exhausting the remedy of representation in the hierarchy of the department.

9. There is no cavil with the proposition that the question of transfer/posting under section 10 of the Balochistan Civil Servants Act, 1974 falls within the domain of competent authority but it is equally important to note that such discretion must not be exercised in an arbitrary or fanciful manner. Such discretion has to be exercised judiciously and in accordance with settled norms of justice, equity and fairplay. The Government is required/duty bound to exercise the discretion keeping in view the nature of duties and requisite capabilities in a fair and impartial manner and there should be no extraneous considerations. Therefore, the transfer order, if mala fide or in violation of settled law, made for extraneous consideration to accommodate some blue eyed chap, it would squarely fall within the domain of this Tribunal.

10. It is also worth mentioning that those original orders of the departmental authorities against which no appeal has been provided, have been termed as the original final orders whereas in those cases where appeal lies, the order passed in appeal is the final order. The order of the departmental authority for the transfer of the civil servant is such against which, under the said rules no departmental appeal lies before the higher authority. Therefore, in such a situation the aggrieved civil servant, if he wants to get relief, may immediately approach the administrative Court or Tribunal for redressal of his grievances.

11. Reverting to the merits of the case, it would be pertinent to mention here that the appellant is Superintending Engineer and he was posted as Acting Chief Engineer Khuzdar Region on 20th April, 2009, whereas respondent No.2 was appointed as Acting Chief Engineer Design on 2nd March, 2010. It is settled principle of law that normally a civil servant shall not be transferred from one station to another prior to completion of scribed period of tenure. Civil servants are generally permitted to complete their normal tenure in case of transfer from one place to another. Such principle has to be followed in the ordinary circumstances, unless for reasons of exigencies of services. The Government of Balochistan (Regulation-1) No.SORI-4(15)S&GAD/369-469 dated 12th March 2003 dealing with the "Transfer Posting", reads as follows:---

- (I) Pre-mature posting/transfer is a burden on the Government exchequer and heavy amount is incurred under the head of T.A/D.A.
- (IV) Frequent Posting/Transfer should be avoided.
- (V) A reasonable tenure of posting at a station may be fixed i.e. at least two years.

12. It is crystal clear that the impugned order is deviation from normal procedure and transfer posting policy mentioned herein above for which even reasons are not assigned. Admittedly the appellant is going to be retired within a period of 4/5 months. As such, the transfer order smacked of arbitrariness and is not tenable being passed in clear violation of transfer/posting Policy 2003.

13. For the discussion, made herein above the impugned Notification No.SCW(SOA)2-3/2010 /5642-55 dated 21-9-2010 is hereby set aside and appellant will retain his earlier position. There shall be no order as to costs.

H.B.T./19/BST

Appeal allowed.