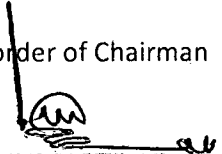


Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 1423/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	03/10/2022	<p>The appeal of Syed Shah Sayad presented today by Mr. Noor Muhammad Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Notices be issued to appellant and his counsel for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR



SERVICE APPEAL No. 1423 /2022

SAYED SHAH SAYED VS **INDUSTRY & COMME:**

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal with Affidavit	1 -
2.	Application for suspension		5
3.	Appointment Order	A	6 -
4.	Copy of order dated 10.11.2014	B	7
5.	Notification dated 18.10.2016	C	8
6.	Notification dated 26.04.2022	D	9
7.	Impugned order dated 23.05.2022	E	10
8.	Order dated 20.09.2022	F	11
9.	Departmental appeal	G	12
10.	Transfer posting policy	H	13-15
11.	Judgment	I	16-27
12.	Vakalatnama		28

Through:


APPELLANT

NOOR MOHAMMAD KHATTAK
ADVOCATE
SUPREME COURT OF PAKISTAN

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

SERVICE APPEAL NO. _____/2022

Mr. ~~Sayed~~ Shah Sayed, Superintendent BPS-17,
Printing Press Headquarter, Peshawar.

..... APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar
- 2- The Secretary Industries Commerce and Technical Education Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Director General Industries & Commerce Department, Peshawar

..... RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED TRANSFER NOTIFICATION DATED 23.05.2022 WHEREBY THE APPELLANT HAS BEEN POSTED/TRANSFERRED AGAINST THE CROSS CADRE POST OF ASSISTANT DIRECTOR STATISTIC AT THE OFFICE OF DEPUTY DIRECTOR INDUSTRIES, COMMERCE AND TRADE KOHAT REGION, KOHAT AND AGAINST THE INACTION OF THE RESPONDENT BY NOT DECIDING THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

That on acceptance of this appeal the impugned transfer notification dated 23.05.2022 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from his original post/cadre of Superintendent from Headquarter Printing Press, Peshawar. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:-

- 1- That the appellant was initially appointed Assistant (BPS-16) on the proper recommendation of Khyber Pakhtunkhwa Public Service Commission in the Government Printing and ~~Stationery~~ Department Khyber Pakhtunkhwa, through office order dated 26.06.2013. Copy of the Appointment Order is attached as Annexure..... **A.**

- 2- That the respondents department allotted accommodation to the appellant through order dated 10.11.2014 and till the impugned order residing in the ibid accommodation. Copy of the order dated 10.11.2014 is attached as Annexure.....**B.**
- 3- That the respondents department on the recommendation of the Departmental Promotion Committee promoted the appellant to the post of Superintendent (BPS-17) in the same department through order date 18.10.2016. Copy of Notification 18.10.2016 is attached as Annexure**C.**
- 4- That on approval of the worthy Chief Minister the respondents through notification dated 26.04.2022 merged the Government Printing and Sanitary Department with Directorate General Industries and Commerce Department Khyber Pakhtunkhwa. Copy of the notification dated 26.04.2022 is attached as Annexure**D.**
- 5- That on promotion to the post of Superintendent (BPS-17) in the Printing Press Department Peshawar the appellant performing his duty quite efficiently and to entire satisfaction of his superior but astonishingly through impugned notification dated 23.05.2022 the appellant has been posted/transferred against the cross cadre of Assistant Director Statistic in the office of the Deputy Director, Industries, Commerce and Trade Kohat Region, Kohat. Copy of the impugned order dated 23.05.2022 is attached as Annexure**E.**
- 6- That it is worth to mention here that respondents on the basis of impugned notification dated 23.05.2022, cancelled the allotment of accommodation through office order dated 20.09.2022. Copy of the order dated. 20.09.2022 is attached as Annexure**F.**
- 7- That appellant feeling aggrieved from the impugned notification dated 23.05.2022 preferred Departmental Appeal before the respondents department which has not been decided by the respondent till date. Copy of the Departmental Appeal is attached as annexure**G.**
- 8- That appellant having no other efficacious remedy but to file the instant appeal on the following grounds amongst the others.

GROUND:



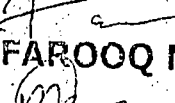
- A- That impugned notification dated 23.05.2022 issued by the respondents is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That appellant has not been treated in accordance with law and rules by the respondent department on the subject noted above and as

such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

- C- That the impugned notification dated 23.05.2022 is also violative of the transfer/posting policy of Provincial Government. Copy of the transfer/posting policy is attached as annexure **H.**
- D- That the impugned notification dated 23.05.2022 has been issued by the respondents in arbitrary and mala fide manner, therefore, the same is not tenable in the eye of law and liable to be struck down.
- E- That the respondent department issued the impugned notification dated 23.05.2022 in violation of rules and judgments rendered by this august Tribunal.
- F- That, the impugned notification dated 23.05.2022 is not passed in the public interest which is clear violation of judgments passed by this Honorable Court and also the apex Supreme Court of Pakistan hence Impugned Notification dated 23.05.2022 is a void ab initio in its nature.
- G- That transfer of the appellant against the cross cadre post is violative of the judgment of the apex court as well as violative of the recent judgment of this august Tribunal. Copy of the judgment is attached as annexure **I.**
- H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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


APPELLANT

SYED SHAH SAYED
Through:
NOOR MOHAMMAD KHATTAK

WALEED ADNAN

UMAR FAROOQ MOMAND

MUHAMMAD AYUB
&
KHANZAD GUL
ADVOCATES

AFFIDAVIT

I ~~Sayed~~ **Shah Sayed** S/O Syed Nawab Hussain Shah R/O House No.T-2094 Mohallah Alfallah, G.T Road Hashtnagri, Peshawar city, do hereby solemnly affirm that the contents of this **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.


Deponent

-5-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

C.M NO. _____ /2022

IN

SERVICE APPEAL No. _____ /2022

SYED SHAH SAYED

VS

**INDUSTRY & COMMERCE
DEPTT:**

**APPLICATION FOR SUSPENSION OF OPERATION OF THE
ORDERS DATED 23.05.2022 AND 20.09.2022 TILL THE
DISPOSAL OF THE ABOVE MENTIONED APPEAL**

R/SHEWETH:

- 1- That the above mentioned appeal along with this application has been filed the applicant/appellant before this august service Tribunal in which no date has been fixed so far.
- 2- That applicant/appellant filed the above mentioned appeal against the impugned transfer notification dated 23.05.2022 whereby the applicant/appellant has been transferred from the post of the Superintendent (BPS-17) Printing Press Headquarter Peshawar and posted against the cross cadre post of Assistant Director Statistic in the Office of the Deputy Director Industries, Commerce and Trade, Kohat region, Kohat in utter violation of the transfer posting policy, law and rules and on the ground of ibid transfer order the respondent issued order dated 20.09.2022 whereby allotment order dated 10.11.2014 has been cancelled.
- 3- That all the three ingredients necessary for the stay is in favor of the applicant/appellant.
- 4- That the impugned orders dated 23.05.2022 and 20.09.2022 had been issued by the respondents in utter disregard of law and prevailing rules.
- 5- That all the grounds of the main appeal be consider as part and parcel of this application.

It is therefore, most humbly prayed that on acceptance of this application the operation of the impugned orders dated 23.05.2022 and 20.09.2022 may very kindly be suspended and the respondents may kindly be directed not to vacate the accommodation form the applicant/appellant till the disposal of the above mentioned service appeal.

APPLICANT

SYED SHAH SAYED

THROUGH:

**NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT**



CONTROLLER

4A0 - 6 -
GOVERNMENT OF KHYBER PAKHTUNKHWA
PRINTING & STATIONERY DEPARTMENT

No. 3053 /Estt:

Dated Peshawar, the 20/6/2013

OFFICE ORDER.

On the recommendation of the Khyber Pakhtunkhwa Public Service Commission and acceptance of the terms and conditions laid down in his offer of appointment Mr. Sayed Shah Sayed S/o Sayed Nawab Hussain Shah House No.T-2094 Mohallah Alfalah, G.T.Road Hashtnagri Peshawar city is hereby appointed as Assistant (BPS-14) in the Government Printing and Stationery Department Khyber Pakhtunkhwa Peshawar with effect from the date of his arrival i.e. 19th June 2013.

Sd/-
(KALIMULLAH KHAN BALOCH)
CONTROLLER

No. 3054

Dated Peshawar the 20/6/2013

Copy forwarded to the Accountant General Khyber Pakhtunkhwa Peshawar.

Sd/-
KALIMULLAH KHAN BALOCH
CONTROLLER

No. 3055-58

Dated Peshawar the 20/6/2013

Copy for information to :-

1. The Accounts Officer, Government Press Peshawar
2. The Manager Government Press Peshawar
3. The Establishment Assistant Government Press Peshawar
4. Official concerned and their personal file.

Sd/-
(KALIMULLAH KHAN BALOCH)
CONTROLLER



CONTROLLER

(S)

"B" -7-

GOVERNMENT OF
KHYBER PAKHTUNKHWA
PRINTING & STATIONERY DEPARTMENT

No. _____ /CP&S.

Dated Peshawar the _____ / _____ /2014.

OFFICE ORDER

Bungalow situated in the Government Press Colony is hereby allotted to Mr. Sayed Shah Sayed Assistant (BPS-16) with immediate effect.

(KALEEMULLAH KHAN BALOCH)
CONTROLLER

No. 786 /CP&S.

Dated Peshawar, the 10/11 /2014

Copy is forwarded for information to:

1. The Accountant General Khyber Pakhtunkhwa Peshawar.
2. The P.S to Secretary to Government of Khyber Pakhtunkhwa Industries Department Peshawar.
3. The Accounts Officer, Government Press Peshawar.
4. The Manager, Government Press Peshawar.
5. The Establishment Assistant Government Press Peshawar.
6. Mr. Sayed Shah Sayed Assistant Government Press Peshawar.
7. The Care Taker Government Press Peshawar.
8. Concerned file.

(KALEEMULLAH KHAN BALOCH)
CONTROLLER

"C"

-8-

GOVERNMENT OF KHYBER PAKHTUNKHWA
INDUSTRIES, COMMERCE AND TECHNICAL
EDUCATION DEPARTMENT



Dated, Peshawar, the _____

NOTIFICATION

No. SOI(IND)2-14/2015 The Competent Authority on the recommendation of Departmental Promotion Committee is pleased to promote Sayed Shah Sayed. Assistant (BPS-16) to the post of Superintendent (BPS-17) in the Government Printing & Stationery Department, Khyber Pakhtunkhwa on regular basis with immediate effect.

The officer will remain on probation after promotion for a period of one year in lieu of Section -6(2) of Khyber Pakhtunkhwa, Civil Servant Act, 1973 read with Rule-15 (i) of KPK Civil Servant (Appointment, Promotion & Transfer) Rules, 1989.

Sd/xxx
Secretary, Industries, Commerce &
Technical Education Department.

Endst. No. SOI(IND)2-14/2015

12904-7
Dated 18th October 2016.

Copy forwarded for information & necessary action to:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Controller, Printing & Stationery Department, Peshawar.
3. The Officer concerned.
4. P.S to Secretary, Industries, Commerce & Technical Education Department.

268
17/10/2016

[Handwritten signature and date]
16/2/16

[Handwritten signature]
(Mohammad Islam)
Section Officer (Admn)

Supdt.

[Handwritten signature]
21/10/16

"D" -9-



GOVT. OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN. DEPARTMENT
(REGULATION WING)

2.38

Dated Peshawar, the 26th April, 2022

NOTIFICATION

No. SO (O&M)/E&AD/2-12/2022: The Chief Minister Khyber Pakhtunkhwa is pleased to approve the merger of the Government Printing & Stationery Department with Directorate General Industries and Commerce, Khyber Pakhtunkhwa with immediate effect. The existing Government Printing & Stationery Department will cease as an independent attached formation of Industries Department forthwith.

2. The Directorate General Industries & Commerce after merger will continue as an attached formation of the Industries, Commerce & Technical Education Department, Khyber Pakhtunkhwa.

3. Necessary amendments in the Khyber Pakhtunkhwa Rules of Business, 1985 will be made separately.

CHIEF SECRETARY,
GOVT. OF KHYBER PAKHTUNKHWA

Endst. No. & Date Even

Copy forwarded to the:-

1. All Provincial Minister Khyber Pakhtunkhwa.
2. Accountant General, Khyber Pakhtunkhwa.
3. All Advisors/Special Assistant to Chief Minister, Khyber Pakhtunkhwa.
4. All Administrative Secretaries, Khyber Pakhtunkhwa.
5. Principal Secretary to Governor, Khyber Pakhtunkhwa.
6. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
7. Registrar Peshawar High Court, Peshawar.
8. PSO to Chief Secretary, Khyber Pakhtunkhwa.
9. All Commissioners, Khyber Pakhtunkhwa.
10. All Deputy Commissioner, Khyber Pakhtunkhwa.
11. All Heads of Attached Departments, Khyber Pakhtunkhwa.
12. Director General, Information, Khyber Pakhtunkhwa.
13. All Heads of Autonomous /Semi-Autonomous Bodies in Khyber Pakhtunkhwa.
14. Secretary to BOG of all MTI's, Khyber Pakhtunkhwa.
15. All Officers, Industries Commerce & Technical Education Department.
16. PS to Secretary Industries Commerce & Technical Education Department.
17. Director General, Industries and Commerce, Khyber Pakhtunkhwa.
18. Controller, Government Printing Press & Stationery Department.
19. Manager, Government Printing Press & Stationery Department.
20. Section Officer (O&M), Establishment Department, Khyber Pakhtunkhwa.

27/04

AST
27/4

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35
27/4
PS

26/04/2022
(SHAMIMULLAH)
SECTION OFFICER (O&M)

No 2137
E-office 27-4-22

S.O/A
Brief regarding ame
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up

GOVT. OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)

Dated Peshawar, the 26th April, 2022

NOTIFICATION

No.SO(O&M)/E&AD/2-12/2022: The chief Minister Khyber Pakhtunkhwa is pleased to approve the merger of the Government Printing & Stationary Department with Directorate General Industries and Commerce, Khyber Pakhtunkhwa with immediate effect. The existing Government Printing & Stationary Department will cease as an independent attached formation of Industries Department forthwith.

2. The Directorate General Industries & Commerce after merger will continue as an attached formation of the Industries, Commerce & Technical Education Department, Khyber Pakhtunkhwa.
3. Necessary amendments in the Khyber Pakhtunkhwa Rules of Business, 1985 will be made separately.

CHIEF SECRETARY
GOVT. OF KHYBER PAKHTUNKHWA

"E"

-10-



**GOVERNMENT OF KHYBER PAKHTUNKHWA
INDUSTRIES, COMMERCE & TECHNICAL
EDUCATION DEPARTMENT**

23rd May, 2022

NOTIFICATION

NO. ADMINISTRATION 3589-22 The Competent Authority has been pleased to order the following Officers of Directorate General of Industries & Commerce Peshawar to hold against each with immediate effect in the public interest:-

Sr	Name of Officer with Designation	From	To
1	Muhammad Rehman, Assistant Director (BP5-17)	Consumer Court, Masehra	Registrar, Consumer Court, Abbottabad
2	Abdul Aziz, Registrar (BP5-17)	Consumer Court, Haripur	Registrar, Consumer Court, Masehra vice S.No 01
3	Muhammad Hanayun, Registrar (BP5-17)	Consumer Court, Abbottabad	Registrar, Consumer Court, Haripur vice S.No 02
4	Muhammad Mansoor, Superintendent (BP5-17)	Office of Dy. Director Industries, Commerce & Trade Kohat Region	Assistant Director (Litigation) Haripur Office, Peshawar
5	Shahid Said, Superintendent (BP5-17)	Print Press, Haripur Office, Peshawar	Assistant Director, Statistics in the office of Dy. Director Industries, Commerce & Trade Kohat Region against the vacant post.

SECRETARY

Government of Khyber Pakhtunkhwa
Industries, Commerce & Technical Education
Department, Peshawar

Encls. No. & Date Even:-

Copy forwarded for information to the:-

1. Accountant General, Khyber Pakhtunkhwa.
2. Director General, Industries & Commerce Peshawar.
3. District Accounts Officers concerned.
4. Officers concerned.
5. PS to Special Assistant to Chief Minister for Industries & Commerce.
6. PS to Secretary, IC&TE Department, Peshawar.

Secretary and Printing Dept
Govt. of Khyber Pakhtunkhwa
Peshawar

20/05/2022
(MUHAMMAD SAQIB)

**GOVERNMENT OF KHYBER PAKHTUNKHWA
INDUSTRIES, COMMERCE & TECHNICAL
EDUCATION DEPARTMENT**

23rd May, 2022

NOTIFICATION**No.SO(IND)2-61/2022/3319-28**

The competent Authority has been pleased in order posting/transfer of the following Officers of Directorate General of Industries & Commerce Peshawar as noted against each, with immediate effect, in the public interest:-

S#	Name of Officer with Designation	From	To
1	Muhammad Rehman, Assistant Director (BPS-17)	Consumer Court, Mansehra	Registrar, Consumer Court Abbottabad
2	Abdul Aziz Registrar (BPS-17)	Consumer Court, Haripur	Registrar, Consumer Court, Manshera vice S.No 01
3	Muhammad Hamyu, Registrar (BPS-17)	Consumer Court, Abbottabad	Registrar, Consumer Court, Haripur vice S.No 2
4	Muhammad Mansoor, Superintendent (BPS-17)	Office of Dy. Director Industries, Commerce & Trade Kohat Region	Assistant Director (Litigation) Hqtrs Office, Peshawar
5	Shah Said, Superintendent	Printing Press, Hqtra Office, Peshawar	Assistant Director, Statistics in the office of Dy. Director, Industries, Commerce & Trade Kohat Region against the vacant post.

SECRETARY

Government of Khyber Pakhtunkhwa
Industries, Commerce & Technical Education
Department Peshawar



"F" 75
11-

DIRECTORATE GENERAL,
INDUSTRIES AND COMMERCE
KHYBER PAKHTUNKHWA, PESHAWAR
(PRINTING PRESS)

OFFICE ORDER.

In pursuance of Government of Khyber Pakhtunkhwa of Industries, Commerce and Technical Education Department posting / transfer vide Notification No. SOI (IND)2-61/2022/3319-28, dated 23.05.2022.

The allotment order bearing endst: NO. 789/CP&S dated 10.11.2014 regarding allotment of Officer Bungalow to Syed Shah Syed, Superintendent (BPS-17) is hereby cancelled upon his transfer to Kohat with immediate effect.

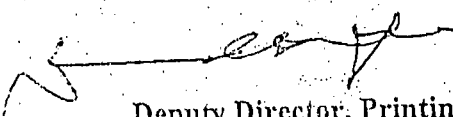
Sd/-Director General, IC,
Khyber Pakhtunkhwa.

Endst: No. 10005-13 /

Dated. 20/09/2022.

Copy of the above is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. PS to Secretary to Government of Khyber Pakhtunkhwa, Industries, Commerce and Technical Education Department.
3. Syed Shah Syed, Assistant Director, Statistics office of Deputy Director, Industries, Commerce and Trade, Kohat Region.
4. The Accounts Officer, Government Printing Press, Peshawar.
5. The Manager, Government Printing Press, Peshawar.
6. The Superintendent, Government Printing Press, Peshawar.
7. The Caretaker, Government Printing Press, Peshawar.
8. The superintendent (Admin), Government Press, Peshawar.
9. Concerned file.


Deputy Director, Printing Press,
Directorate General, Industries & Commerce,
Khyber Pakhtunkhwa, Peshawar

"9" -12-

To

The Secretary, Industries, commerce and Technical Education Department
Khyber Pakhtunkhwa Peshawar.

Through Proper Channel

Deputy Director Printing Press, Directorate General of Industries & Commerce
Khyber Pakhtunkhwa, Peshawar

**Subject: APPEAL/ REPRESENTATION REGARDING ILLEGAL TRANSFER TO
THE TECHNICAL CADRE POST OF ASSISTANT DIRECTOR STATISTICS
(BS-17) KOHAT.**

Respected Sir,

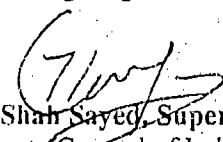
With due respect, it is stated that that I was initially appointed as Assistant (BPS-16) on 19.06.2013 through KPPSC in Government Printing and Stationery Department. I was then promoted to the post of Superintendent (BPS-17) on 18.10.2016 on regular basis and was working on the same post for the last six years until the merger. (Copy of appointment letter and Promotion order attached as Annex- I and II respectively).

That the Government Printing and Stationery Department was merged with the Directorate General of Industries and Commerce vide Notification No. SO (O&M)/E&AD/2-12/2022 dated 26.04.2022 in the light of the summary approved by the Honorable Chief Minister Khyber Pakhtunkhwa. (Copy of Summary to CM and Notification is attached as Annex-III and IV respectively). It is pertinent to mention that in the light of Summary to Chief Minister the seniority of ministerial staff of both departments will be merged after the merger of Government Printing Press and Directorate General of Industries & Commerce. The Para -4 of said Summary is reproduced as under that:

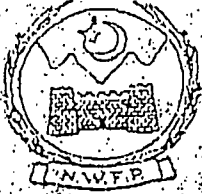
"After the proposed merging of the subject attached departments, seniority of the ministerial staff of both entities will be considered from their date of appointment/promotion and will be merged in their corresponding cadre/scale accordingly",

Dear Sir, instead of issuing the combined seniority list of Superintendents (BS-17) and adjusting me against the general cadre post of Administrative officer (BS-17) being the senior most Superintendent and having completed prescribed length of service for promotion to the post of Administrative officer (BS-17), I have been illegally transferred as Assistant Director Statistics (BS-17) in the office of the Deputy Director Commerce and Trade Kohat region vide Notification No. SOI(IND)2-61/2022/3319-28 which is technical post (Copy of transfer order is at Annexure-V). The nature of my existing post, my experience and qualification are completely different from the mentioned post.

Respected Sir, In the light of above it is humbly requested that my transfer order as Assistant Director Statistics Kohat may be cancelled being illegal and ultra vires.


Sayed Shah Sayed, Superintendent (BPS-17)
Directorate General of Industries & Commerce,
Khyber Pakhtunkhwa, Peshawar

Govt.
3582
10/5/22
W.P. 117



GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(Regulation Wing)

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) The normal tenure of posting shall be three years subject to the condition that for the officers/officials posted in unattractive areas the tenure shall be two years and for the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.
- v) { }.
- vi) While making postings/transfer from settled areas to FATA and vice-versa, specific approval of Governor, NWFP needs to be obtained
While making postings/transfers of officers/officials up to BS-17, from settled areas to FATA and vice-versa approval of the Chief Secretary NWFP needs to be obtained. Whereas, in case of posting/transfer of officers in BS-18 and above, from settled areas to FATA and vice-versa, specific approval of the Governor NWFP shall be obtained.
- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for atleast eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.
- vii) Officers may be posted on executive/administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thaana) of his area/residence is situated.
- viii) No posting/transfers of the officer's/officials on detachment basis shall be made.
- ix) Regarding the posting of husband/wife, both in Provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.
- x) All the posting/transferring authorities may facilitate the posting/transfer of the unmarried female government Servants at the station of the residence of their parents.

ATTESTED

to be true copy
advocate

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) 1-4/2003/Vol-VI, dated 3-6-2008. Consequently authorities competent under the NWFP Government Rules of Business, 1985, District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make posting/transfer subject to observance of the policy and rules. Added vide Urdu circular letter No. SOR-VI(E&AD)1-4/2003, dated 27-09-2004

ATTESTED

-14- (L.F.)

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

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

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

- 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.

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

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Advocate

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

- i) Pre-mature posing/transfer or posting-transfer in violation of the provisions of this policy.
- ii) Serious and grave personal (humanitarian) grounds.

2. To streamline the postings/transfers in the District Government and to remove any irritant/confusions in this regard the provision of Rule 25 of the North West Frontier Province District Government Rules of Business 2001 read with schedule - IV thereof is referred. As per schedule-IV the posting/transferring authorities for the officers/officials shown against each are as under:-

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

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

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

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

.....

All concerned are requested to ensure that tenures of the concerned officers/officials are invariably mentioned in summaries submitted to the Competent Authorities for Posting/Transfer.
(Authority: Letter No: SOR-VI/E&AD/1-4/2003 dated 24-6-2003).

.....

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

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

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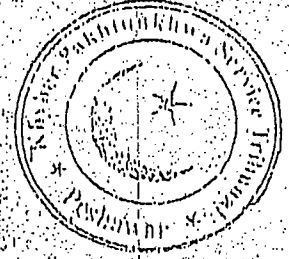
-16-119"

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No. 16578/2020

Date of Institution 11.01.2021

Date of Decision 06.12.2021



Mr. Manzoor Ahmad, Drug Inspector (BPS-17) District Peshawar, under Transfer to the post of Pharmacist (BPS-17) DHQ Hospital KDA Kohat. ... (Appellant)

VERSUS

The Chief Secretary, Khyber Pakhtunkhwa Peshawar and two other ... (Respondents)

Present.

Mr. Noor Muhammad, Advocate, ... For appellant.

Mr. Muhammad Adeel Butt, Addl. Advocate General, ... For respondents.

MR. AHMAD SULTAN TAREEN, CHAIRMAN
MR. SALAH UD-DIN, MEMBER(I)

JUDGMENT

AHMAD SULTAN TAREEN, CHAIRMAN: By the appeal described above in the heading and eight other appeals bearing No. 10301/2020, 10535/2020, 16579/2020, 16580/2020, 923/2021, 1659/2021, 4821/2021, 5187/2021, the appellants have invoked the jurisdiction of this

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Cr. No. 16578/2020

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Khyber Pakhtunkhwa Service Tribunal
Peshawar

Tribunal to challenge their transfers from the post of Drug Inspectors/Drug Analyst to the post of Pharmacists with the prayer copied herein below:-

"On acceptance of this appeal the impugned Notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from the post of Drug Inspector (BPS-17), District Peshawar. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant."

2. This single judgment shall stand to dispose of all the 09 appeals in one place as in all of them common questions of facts and law are involved.

3. The factual account as given by the appellant in Memo. of Appeal has been edited for the purpose of this judgment. The appellants in Appeals No. 16578/2020, 10301/2020, 10535/2020, 16579/2020, 16580/2020, 923/2021, 1559/2021, 4821/2021, 5187/2021, are holders of the post of Drug Inspector in pursuance to their appointment made on the said post in due process. Appellant in Appeal No. 16580/2020 is holder of the post of Drug Analyst. The respondent department transferred them from their respective posts held by them in the relevant cadre to the post of Pharmacist. They through their respective departmental appeals have challenged their transfer orders before the departmental appellate authority but they received no response of their departmental appeals. Consequently, they have preferred their service appeals respectively, as

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enumerated herein above, for judicial review of the impugned transfer orders. The copies of the appointment orders of appellants, last transfer order within cadre and of impugned order followed by the copies of departmental appeals are available on record as annexed with their respective Memorandum of Appeals. The appellants have disputed the transfer as made vide impugned order on the ground that in terms of service rules for them, their appointment, promotion and transfer is governed by notification dated 09.04.2006 of the Government of Khyber Pakhtunkhwa Health Department quite differently from the Pharmacists. The copy of the said notification as annexed with the appeal is also available on file. The appellants amongst other grounds have urged that the impugned notification of their transfer is against law, facts, norms of natural justice and material on record and being not tenable is liable to be set aside to the extent of appellants and private respondents; and that the appellants were not treated by the respondents in accordance with law/rules on the subject in utter violation of Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.

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4. On notice of appeal, the respondents turned up, joined the proceedings and contested the appeal by filing written replies stating therein that the appellants have got no cause of action or locus standi; that the appeals are against the prevailing law and rules and are not maintainable in present form. They with several factual and legal

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JUDGE
JUDICIAL OFFICE
PESHAWAR

objections submitted that the appeals having been filed with malafide intentions are liable to be dismissed as the impugned transfer notification has been issued in accordance with Section 10 of Khyber Pakhtunkhwa Civil Servants Act, 1973.

5. We have heard the arguments and perused the record.

6. The arguments of the parties revolve around their submission in writing made in Memorandum of appeal and written reply respectively and discussed herein above.

7. Learned counsel for the appellant has argued that the impugned notification dated 06/10/2020 is against the law, facts, norms of natural justice and materials on the record; that the appellant has not been treated by the respondents in accordance with law and rules on the subject and as such the respondents has violated Articles-4 and 25 of the Constitution of Pakistan; that the impugned notification dated 06/10/2020 has been issued by the respondent No. 2 in arbitrary and malafide manner; hence, not tenable and liable to be set aside; that the impugned notification dated 06/10/2020 is based on discrimination, favoritism and nepotism and is not tenable in the eyes of law; that the impugned notification dated 06/10/2020 has neither been in the best interest of the public service nor in exigencies of service; that through impugned notification; the appellants has been transferred against the wrong cadre/post; that

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Swat District
Poonja

through impugned notification is violation of clause-I and IV of the transfer/posting policy of the Government of Khyber Pakhtunkhwa.

8. Learned AAG on behalf of respondents rebutted the arguments advanced by learned counsel for the appellants and has argued that the appellants are employees of Health Departments selected through Public Service Commissions of Khyber Pakhtunkhwa but their performance is questionable on the basis of their monthly progress reports compiled on the basis of set indicators besides their facing inquiries; that the appellants have already completed their normal tenure of two years and it is the discretion of the competent authority to transfer a civil servant at anytime even outside of the province; that no terms and conditions of their service have been violated; that the impugned notification is based on law, Rules and principles of natural justice; that there is no malafide on the part of respondents towards the appellants; that the application are transferred in accordance with law in the public interest; that it is the fitness of things to post a right person at a right place to achieve good governance and to enhance public service delivery; that the appellants have been transferred within their cadre within the same directorate even if they have been transferred in ex-cadre, the same is also covered under the second proviso of Act; that the notification issued after observance of all relevant rules/policy.

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9. For any reason but as matter of fact, the posts held by the appellants as Drug Inspector or Drug Analyst, as the case may be, were got vacated by transfer of the appellants and filled by posting of the individuals from the cadre of pharmacists. The appellants in consequence of their transfer have been posted against non-cadre posts. The main defense of the respondents lies in their reply to para-4 of the memorandum of appeal. It has been stated vide para-4 of appeal that by the service rules dated 09/04/2006, the cadre of the appellants is completely different from that of service rule assigned for pharmacists.

The reply of the respondents to said para is copied below:

"The Service Rules does not carry any kind of assignment to a cadre but it specifies the method of recruitment and promotion prospects which is otherwise protected after the merging of cadre. Although transfer is not a punishment but to make such like people punctual, subservient to the public and to overcome the deficiency of efficient of hardworking officer to post right person on right place, the three cadres i.e. hospital pharmacist, drug inspector and analyst having same basic qualification as required for induction through Public Service Commission, were merged to obviate the stagnancy in the cadre. By doing so any drug inspector or an analyst at DTL (who are the cadre of the 04 to 05 persons) can be transferred making them liable to work in hospital under the close

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Commissioner of Income Tax
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supervision of hospital administration and vice versa. Those who are transferred from hospital to work in the field as drug inspector are tremendously working, removing the bottlenecks and highlighting a lot of malpractices previously done by their predecessor who have been sacked from field duty. In other similar cases, the drug inspectors who are sacked are under probe at Provincial Inspection Team and other fora".

10. From the divergent pleadings of parties particularly discussed herein before, the main question wanting determination is, whether vice versa transfer of the holders of the post of Drug Inspector/Analyst and of Pharmacist is reasonably doable?

11. For answer to the formulated questions, prior determination of the legal status of the appellants and the respondents is necessary, as far as their functional duties are concerned. It is pertinent to observe that the Government of Khyber Pakhtunkhwa made the Khyber Pakhtunkhwa Drug Rules, 1982 in exercise of powers conferred by Section 44 of Drug Act, 1976. Rule-2 of ibid rules provides definitions of different words and phrases. The expression "Act" in the said rules means the Drug Act, 1976. Analyst means an Analyst appointed by the Government under the Act. Inspector means an Inspector appointed by the Government under the Act. Board means the Quality Control Board for the Khyber Pakhtunkhwa Province set up under Section 11 (of the Act), Pharmacy

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Khyber Pakhtunkhwa
Pharmacy

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means a shop, store or place where drugs are compounded or prepared on prescription. Part-II of ibid. rules relates to appointment and functions of enforcement staff. Sub Rule-(1) of Rule-3 in Part-II of the said Rules provides that an Inspector and Analyst shall submit monthly returns in Form-1 & Form-2 respectively, to the Board and a Summary on the overall situation of quality control in the area under their respective jurisdiction and the board shall maintain such information in a manner as to monitor the quality of all the drugs sold and to keep watch on the performance of all manufacturers. Rule-4 provides qualifications etc of Inspector and Analyst. Accordingly, no person shall be appointed as Inspector unless he possess the degree in Pharmacy from University or other institutions recognized for this purpose by the Pharmacy Council of Pakistan and has at least one year experience in the manufacture, sell, testing or analysis of drugs or in Drug Control Administration or in hospital or pharmacy. Sub Rule-(2) of Rule-4 provides the qualification for appointment as Analyst which is similar to that of the Inspector except experience which in case of Analyst is 05 years. The same rules i.e. of 1982 provide for duties of Inspectors and Analysts. From the given statutory expositions relating to the position of Drug Inspector and Drug Analyst, we have no hesitation to hold that the posts of Drug Inspector/Drug Analyst are statutory positions with authority of appointment vested in the Provincial Government. The Government of

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 Secretary
 Government of Punjab

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Khyber Pakhtunkhwa vide notification dated 09/04/2006 bearing No. SOH-III/10-04/05 issued in pursuance to the provisions contained in sub rule-(2) of Rule-3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, laid down the method of recruitment, qualification and other conditions of service applicable to the posts specified in column-2 of the appendix. The qualification of Inspector in the appendix is similar to that of qualification provided under Sub-Rule-(1) of Rule-4 of Khyber Pakhtunkhwa Drug Rule, 1982. According to method of recruitment prescribed in column-5 of the appendix, the appointment to the post of Drug Inspector is to be made by initial recruitment while to the post of Chief Drug Inspector and Divisional Drug Inspector by promotion. The respondents in their reply vide para-4 as reproduced herein above have asserted with vehemence that there cadres i.e. Hospital Pharmacist, Drug Inspector and Drug Analyst having same qualification for induction through Public Service Commission, were merged to obviate the stagnancy in the cadre. By doing so Drug Inspector of Analyst at DTL (who are the cadre of 04 to 5 persons) be transferred making them liable to work in hospital under the close supervision of hospital administration. Those who are transferred from hospital to work in the field as Drug Inspector are tremendously working, removing the bottlenecks and

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 Provincial Tribunal
 Peshawar

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highlighting a lot of discrepancies done by their predecessors who have been sacked from field duty.

12. The reply of the respondents as discussed above revolves around the expediency of filling the Drug Regulatory posts by *inter se* transfer of the holders of the post of Drug Inspector/Drug Analyst and of Pharmacists by merger of their cadre to ensure the discipline and quality of performance purportedly for the public good. We are not supposed to doubt the intentions of the respondents for such expediency but at the same time, we have to see that such an expediency is in conformity to the law and rules on the subject. Article 240 of Constitution of Pakistan enshrines, that subject to the Constitution, the appointments and conditions of service in the Service of Pakistan shall be determined by or under the Act of Parliament in case of the services of Federation and by or under the Act of Provincial Assembly in case of services of Province and posts in connection with affairs of the Province. In pursuance of this command of Constitution, the Provincial Service Laws i.e. the Khyber Pakhtunkhwa Civil Servants Act, 1973 and Rules made there-under are in place in general besides other Special Service laws for particular posts and services in connection with affairs of the Province. As already discussed above, the notification dated 09/04/2006 issued in pursuance to Sub Rule-(2) of Rule-3 of (APT) Rules, 1989 is there which laid down the method of recruitment, qualification and other conditions of service

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applicable to the posts of Drug Inspectors of different ranks. Thus, in presence of a legal instrument like notification dated 09/04/2006 having statutory backing, transfer of a Drug Inspector to an ex-cadre post to fill the resultant vacancy by transfer of a non-cadre officer is seemingly not credible. By the impugned order dated 06/10/2020, appellants holding the posts of Drug Inspector and one among them holding the post of Drug Analyst were transferred from their respective posts held by them in relevant cadre and posted as Pharmacist in a wrong cadre. The notification dated 06/04/2006 as far as column-5 of its appendix is concerned expressly provides for appointment of Drug Inspector through initial recruitment. With this position as to method of appointment of Drug Inspector, the post held by him cannot be filled by transfer or promotion from any other cadre albeit the person in the alien cadre may possess the qualification similar to the qualification of Drug Inspector. In holding so, we derive guidance from the law laid down by august Supreme Court of Pakistan in the case of Muhammad Sharif Tareen...vs... Government of Balochistan (2018 SCMR 54). In the ibid case, it was held by the Hon'ble Supreme Court that a post which is required by the rules to be filled by initial recruitment cannot be filled by promotion, transfer, absorption, or by any other method which is not provided by the relevant law and rules. Furthermore, after making reference to the law laid down in the case of Ali Azhar Khan

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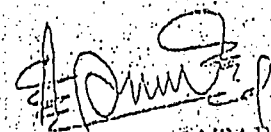
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Government of Balochistan
Quetta

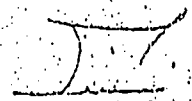
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Baloch vs. Province of Sindh (205 SCMR 456), it was held as follows:

"8. The quintessence of the paragraphs reproduced above is that the appointments made on deputation, by absorption or by transfer under the garb of exigencies of service in an outrageous disregard of merit impaired efficiency and paralyzed the good governance and that perpetuation of this phenomenon, even for a day more would further deteriorate the state of efficiency and good governance."


13. For what has gone above, all the appeals with their respective prayers are accepted as prayed for. Consequently, the impugned order is set aside and respondents are directed not to transfer the appellants from the post of Drug Inspector or Drug Analyst as the case may be. Parties are left to bear their own costs. File be consigned to record room after completion.


(AHMAD SULTAN TAREEN)
Chairman


(SALAH-UD-DIN)
Member(J)

ANNOUNCED
06.12.2021

Date of Presentation of Application 02/02/2022
Number of Words 520
Copying Fee 5/-
Stamp 5/-
Name of Applicant S
Date of Receipt of Copy 02/02/22
Date of Delivery of Copy 02/02/22

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

-28-

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO: _____ OF 20

Syed Shah Sayed (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Industry & Commerce (RESPONDENT)
(DEFENDANT)

I/We (Appellant)

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

Dated. ____/____/202



CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
(BC-10-0853)
15401-0705985-5


UMAR FAROOQ


WALEED ADNAN

&

MUHAMMAD AYUB
ADVOCATES

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