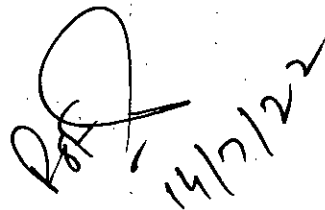


**BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR**

C.M No. _____ / 2022
In
Service Appeal No.917/2022


14/7/22

Dr Jamil Ahmad.....**Appellant**

Versus

Government of KP & Others


.....**Respondents**

I N D E X

S#	Description of Documents	Annex	Pages
1.	Application		1-2
2.	Copies of the orders dated:15 th June, 2022 and 4 th July, 2022		3-14

Through

Appellant


Ali Zaman
Advocate, High Court
Peshawar
Cell#0300-5868244

Dated: 14.07.2022

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

C.M No _____ 2022
In Re:
Service Appeal No 917/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 705

Dated 14/7/2022

Dr. Jamil Ahmad

VERSUS

Government of KP and other

APPLICATION FOR THE IMPLEADMENT OF DR. IFRAN
UD DIN ALLEGED MEDICAL SUPERINTENDENT
DISTRICT HEADQUARTER HOSPITAL, BATKHELA AS
NECESSARY PARTY IN THE PENAL OF
RESPONDENT IN ABOVE NOTED SERVICE APPEAL

Respectfully Sheweth: -

The Applicant/Appellant humbly submits as under:-

- 1) That the titled case is pending adjudication before this Honourable Tribunal and is fixed for comments, in which next date of hearing 27-07-2022.
- 2) That at the time of filing of service appeal, the above mentioned person was not mentioned in array of Respondent, hence the instant application.
- 3) That now the Applicant/Appellant wants to implead the above mentioned Dr. Ifran ud Din alleged Superintendent as necessary party at the penal of Respondent for the just and fair disposal.

Put up to the court with reluctant appeal.

14/7/2022

Reader.

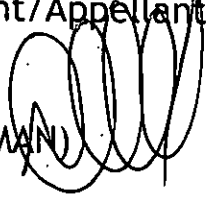
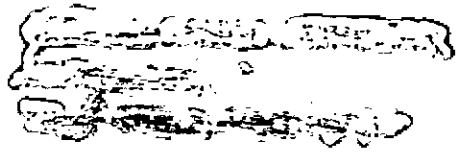
- 4) That this Honourable Tribunal has got ample power to entertain the instant application and allowed the same at the vary first date.
- 5) That there is no legal bar in allowing the instant application and the same shall secure the ends of justice.

It is, therefore, respectfully prayed that on acceptance of this Application, the above mentioned person may kindly be parted to the instant appeal as necessary party in the panel of Respondent for just and fair disposal of the instant service appeal in the larger interest of justice.

Applicant/Appellant

Through:

(ALI ZAMAN)
&

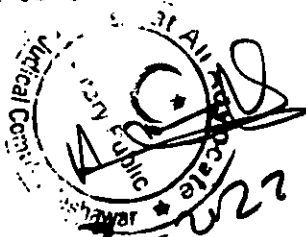



Dated: -

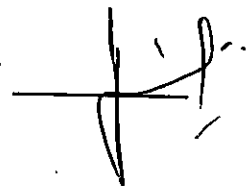
AFFIDAVIT:-

I, Dr. Jamil Ahmad S/O Abdullah R/O Mohallah Amir Abad, village Balogram Tehsil Babuzai District Swat, do hereby solemnly affirm and declare on oath that all the contents of accompanying Application are true and correct to the best of my knowledge and belief and nothing has been concealed OR withheld from this Honourable Court.

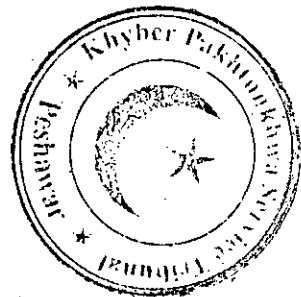
ATTESTED



DEPONENT



**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**



Appeal No. 917/2022

Dr. Jamil Ahmad, Medical Superintendent (BPS-19)
Management Cadre DHQ Hospital Batkhela, Malakand S/O
Abdullah Resident of Mohallah Amir Abad, Balogram, Tehsil
Babo zai, District Swat.

(Appellant)

VERSUS

1. The Govt Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. Secretary Health, Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
3. Director General Health Services, Khyber Pakhtunkhwa, Civil Secretariat Peshawar.

(Respondents)

<p align="center">APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE NOTIFICATION NO. SOH(E-V)/4-4/2022, DATED 18.05.2022, WHEREBY THE APPELLANT WAS TRANSFERRED FROM MEDICAL SUPERINTENDENT, DHQ HOSPITAL BATKHELA, MALAKAND TO PESHAWAR, AGAINST WHICH THE DEPARTMENTAL APPEAL DATED 24.05.2022 WAS INSTITUTED BEFORE RESPONDENT NO. 02, AND TILL DATE NO RESPONCE HAS BEEN GIVEN.</p>
--

Prayer in Appeal: -

On acceptance of this appeal the impugned Notification dated 18.05.2022 may please be set-aside/ Cancelled and the appellant may pleased be allowed to continue his duties as Medical Superintendent DHQ Hospital Batkhela, Malakand.

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

3

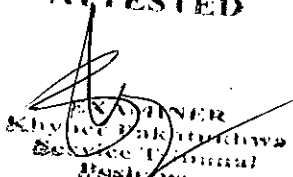
(2) (4)

Respectfully Submitted:

Compendium of the facts from which the present appeal arises are as under:-

1. That the appellant was initially appointed as Medical Officer (BPS-17) in the Health Department in the year 1995 and later on was promoted to Senior Medical Officer (BPS-18) and presently serving as Medical Superintendent Management Cadre (BPS-19).
2. That after the promulgation of the Khyber PakhtunKhwa Health (Management) Services Rules 2008, the appellant opted for Management Cadre and since then the appellant is serving in Management Cadre.
3. That the appellant has perform his duty from his initial appointment with full devotion, zeal and zest and no complaint whatsoever regarding his performance yet by the respondents, which clearly proves that the appellant is hard working and devoted person and all of the sudden without any complaint, Notice, the Respondent No. 02 transferred the appellant from Medical Superintendent DHQ Hospital Batkhela, Malakand to Peshawar which speaks of the Respondents' mala-fide intention, illegal, Unlawfull, without jurisdiction without law full authority, viod ab initio and ineffective upon the legal and valid rights of the appellant.

ATTESTED



EXAMINER
Khyber PakhtunKhwa
Service Tribunal
Peshawar

8

4. That it is pertinent to mention here that the appellant has been transferred four times in last one year i.e. from Swat to Bunair on April 2021, then from Bunair to Peshawar on May 2021, thereafter from Peshawar to Batkhela on July 2021 and now again without any complaint and completion of his tenure transferred from Batkhela to Peshawar Vide Notification Dated: 18.05.2022 illegally, unlawfully with mala-fide intention just to harass him for some ulterior motive because the appellant has arrested one tout in the hospital carrying out laboratory tests to his own private laboratory, who was written complained by community and private laboratory holders on 28 April, who is the brother of "PTI Mayor" Batkhela and arresting report was submitted to Respondent No. 3 upon which he threaten the appellant for dire consequences and in the result, transferred the appellant from Batkhela by using political influence. (Copies of Notification Dated: 18.05.2022 and written complaint and Letter to DGHS Peshawar Vide No. 4490-98/DHQ/F, Dated: 28.04.2022 and Posting Order Notification No. SOH(E-VP/4-4/2021 Dated: 09.07.2021 are attached as Annexure "A", "B", "C", "D" & "E")

5. That the said illegal transfer by the Respondent No. 02 is the result of Political Victimization and being the result of personal benefits because the appellant has submitted letter regarding the "Inquiry Into The Scheme Of Improvement And Standardization Of DHQ Hospital Batkhela District Malakand" Dated: 16.04.2022 against the contractors who made corruption of millions Rupee, to the Chairman Provincial Inspection Team Khyber Pakhtunkhwa (PIT) besides that four doctors/ paramedical staff who have political affiliation relived due to bad /absent, performance through disciplinary action committee implementation by the appellant. (Copy of Letter Regarding PIT Inquiry No. 4085-96/DHQ/ADP Dated: 16.04.2022 and Letter No. 4552-55/DHQ/PF Dated: 29.04.2022 are attached as Annexure "F" & "G")

ATTESTED

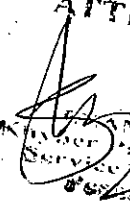

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

6. That regarding the illegal transfer respectable citizens as well as the P.W.D Labour Union K.P.K has condemned and submitted an applications to Respondent No. 1 having Reference No. 243/5, Dated: 23.05.2022 and Reference No. 242/5, Dated: 23.05.2022 and Reference No. 244/5, Dated: 23.05.2022 and besides that a Junior Doctor of Management Cadre (BS-18) was transferred on the post of (BPS-20) which is against the Health Policy because on the said post a (BPS-20) or (BPS-21) officer must be appointed which clearly shows that the said transfer is based on favoritism and personal benefits by the Respondent No. 2. (Copies of Applications Reference No. 243/5, Dated: 23.05.2022 and Reference No. 242/5, Dated: 23.05.2022 and Reference No. 244/5, Dated: 23.05.2022 and Facebook Posts are attached as Annexure "H", "I", "J" & "K")
7. That it is pertinent to mention here that during tenure of the appellant as Medical Superintendent DHQ Hospital Bathkela, the appellant's Hospital received Best Performance Award from IMU (International Monitoring Unit) and becomes on the top position in the whole province besides that a (Sehat Sahulat Program) starts in July 2017 and till July 2021 approximately total 3500 operations were done in (Sehat Sahulat Program) and in the last 9 months under the supervision of appellant total 8000 operations were done which clearly shows the performance of the Hospital which the appellant maintain by his hard work besides that the appellant has listed for Promotion Training BPS-20 by Letter No. SOH(E-V)/4-4/2022/Promotion Training/Management BS-19 to BS-20, Dated: 16.05.2022. (Copies of IMU Performance Data, Newspaper Cutting and Record of Sehat Sahulat Program are attached as Annexure "L", "M" & "N")

ATTESTED

CHIEF CLERK
 District Peshawar
 Service Tribunal
 Peshawar

- 8. That life threats from unknown sources networks were received to the appellant to quit MS Position due to which the appellant suffers mental stress and agony in this regards the appellant submitted reports to Respondent No. 3 as well as DG Anti Corruption and DG FIA (Copies of Letters Dated: 30.04.2022 are attached as Annexure "O" & "P")
- 9. That the appellant throughout agitated the matter in department by filing application and departmental appeal, but the department remained reluctant and finally dismissed the departmental appeal of the Appellant. (Copy of Departmental Appeal and Order are attached as annexure "Q" "Q-1").
- 10. That the transfer of the appellant is violation of the rationalization policy of the Government of Khyber Pakhtunkhwa and also against the aim and objectives or spirit of the said rationalization policy in order to improve the health care. (Copy of Notification of Rationalization Policy is attached as annexure "R").
- 11. That previously the appellant was transferred illegally and unlawfully by Respondent No. 2 due to political victimization in the year 2020 upon which the appellant has filed an appeal before this Honorable Tribunal which was decided in favour of the appellant. (Copies of the Appeal and Order are attached as Annexure "S" & "T")
- 12. That the Notification impugned is liable to be set aside/ Cancelled inter alia on the following grounds: -

ATTESTED

 MINISTER
 Khyber Pakhtunkhwa
 Service Tribunal
 PESHAWAR

(4)
(8)

Grounds of Appeal:

A. That the appellant has not been treated in accordance with law, moreover, it is a result of political victimization which resulted in illegal transfer of the appellant.

B. That the impugned Notification is illegal, void abinitio, with malafide intentions, without lawful authority, jurisdiction, and ineffective upon the rights of the appellant, hence liable to be cancelled.

C. That the appellant has served only for nine months at Batkhela as Medical Superintendent DHQ Hospital Batkhela, Malakand, and has not yet completed his normal tenure of posting and thus the transfer order is illegal and unlawful, moreover the same is in violation of posting and transfer policy of the Provincial Government and also against the Judgments of the Superior Courts Reported in PLD 1995 SC 530 and PLD 2013 SC 195.

D. That even otherwise it is also not in the interest of the Department to make rolling stone its employee, on one hand the working of the department is disturbed while on the other hand the employee is humiliated and his family life is disturbed.

ATTESTED

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


E. That it is pertinent to mention here that the appellant has been transferred four times in the last one year without any complaint, notice or any reason and now all of the sudden again transferred the appellant from Batkhela to Peshawar illegally unlawfully based on political influence and victimization. The appellant has been transferred total nine times since 2014 which is totally unlawful and illegal against the posting transfer policy of the provincial government and violation of the rights of the appellant.

F. That in fact there exist no exigencies of service nor the order of transfer can be termed as in the public interest, rather it was issued just to humiliate and victimize the appellant.

G. That the August Supreme Court of Pakistan has in its Judgment in Constitutional Petition No. 23/2012 decided on 18.10.2012, decided a point of law and while commenting upon the transfer and posting and other related matters of service held as under;

- i. Appointments, Removals and Promotions must be made in accordance with the law and the rules made there under. Where no such law or rule exists and the matter has been left to discretion, such discretion must be exercised in a structured, transparent and reasonable manner and in the public interest.

ATTESTED


EXAMINER
Service Tribunal
Peshawar

ii. *Tenure, posting and transfer.* When the ordinary for a posting has been specified in the law or rules made there under, such tenure must be respected and cannot varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable.

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

H. That similarly in an identical nature in Writ Petition No. 4119-P/2019, this Honorable Court has rendered a judgment, wherein the respondents therein were strictly directed to implement and follow the posting, transfer and placement policy of provincial government in letter and spirit without any discrimination, however, the respondents in the instant case have ignore hence violated the said policy.

I. That the impugned Notification has been issued against the rationalization policy of the Provincial Government of Khyber Pakhtunkhwa, which is gross miss conduct of the authority.

J. That the transfer and posting on the direction of Chief Minister / Minister and other political figures has been declared illegal time and again by the superior courts.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

K. That the appellant has performed his duty with great zeal and devotion, hard work and till date no complaint of the appellant has registered to the respondents, in this regard guidance may be taken from the ACR's of the appellant.

L. That the other grounds will be raised, if any, at the time of arguments, with the permission of this Honble Tribunal.

It is therefore prayed that on acceptance of this appeal the impugned Notification No. SOH(E-V)/4-4/2022, dated 18.05.2022 may please be set-aside/ Cancelled and the appellant may please be allowed to continue his duties as Medical Superintendent DHQ Hospital Batkhela, Malakand.

Appellant

Through

ALI ZAMAN

&

ABDUL SAMAD DURRANI
Advocates High Court, Peshawar

AFFIDAVIT

I, Dr. Jamil Ahmad, Medical Superintendent (BPS-19) Management Cadre DHQ Hospital Batkhela, Malakand S/O Abdullah Resident of Mohallah Amir Abad, Balogram, Tehsil Babo zai, District Swat, do hereby solemnly affirm and declare that the contents of the above appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

ATTESTED

DEPONENT

ENAMUL HUSSAIN
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. _____/2022

*Dr. Jamil Alimad, Medical Superintendent (BPS-19)
Management Cadre DHQ Hospital Batkhela, Malakand S/O
Abdullah Resident of Mohallah Amir Abad, Balogram, Tehsil
Babo zai, District Swat.*

(Appellant)

VERSUS

*Govt Khyber Pakhtunkhwa, through Chief Secretary, Khyber
Pakhtunkhwa Peshawar and others.*

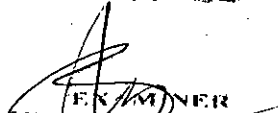
(Respondents)

**APPLICATION FOR SUSPENSION OF THE
IMPUGNED NOTIFICATION NO. SOH(E-V)/4-
4/2022, DATED 18.05.2022, TILL THE
FINAL DISPOSAL OF THE INSTANT APPEAL.**

Respectfully Submitted:

1. *That the appellant has filed the accompanied service appeal in which no date has been fixed so far.*
2. *That all the grounds raised in the main appeal may kindly be considered as part and parcel of the instant application.*
3. *That the appellant has Prime facie and arguable case, and balance of convenience also lies in favor of the appellant/applicant.*
4. *That if the impugned notification is not suspended, the applicant/appellant will suffer irreparable loss, which cannot be compensated in terms of money or else.*

ATTESTED


**EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar**

18

5. That valuable rights of the applicant/appellant are involved in the case hence the instant application may be allowed, in best interest of the justice.

It is therefore prayed that on acceptance of this application the order of the impugned Notification may kindly be suspended till final disposal of the Appeal.


Appellant

Through


ALI ZAMAN

Date of Presentation of Application 13/7/22
 Number of Words 4400
 Copying Fee 46/-
 Urgent 5/-
 Total 50/-
 Name of Copylest _____
 Date of Completion of Copy 13/7/22
 Date of Delivery of Copy 13/7/22

&


ABDUL SAMAD DURRANI
Advocates
High Court, Peshawar

AFFIDAVIT

I, Dr. Jamil Ahmad, Medical Superintendent (BPS-19) Management Cadre DHQ Hospital Batkhela, Malakand S/O Abdullah Resident of Mohallah Amir Abad, Balogram, Tehsil Babo zai, District Swat, do hereby solemnly affirm and declare that the contents of the above appeal as well as the application are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



DEPONENT

15th June, 2022

Counsel for the appellant present.



Appellant is aggrieved of order dated 18.05.2022, whereby the appellant was transferred without completion of tenure from M/S DHQ Hospital Batkhela and was directed to report to Directorate General Health Services, Khyber Pakhtunkhwa. He submitted departmental appeal on 24.05.2022 which was regretted on 14.06.2022. It is contended that just 09 months before the appellant was transferred and posted as M/S DHQ Hospital Batkhela. Thus the impugned posting/ transfer order was against the posting/transfer policy of the government. Let the appeal be admitted to full hearing.

As to the application for suspension of the operation of the impugned order, it is directed that operation of the impugned order shall stand suspended to the extent of appellant till the date fixed subject to notice to the other side. The appellant is directed to deposit security and process fee within 10 days. To come up for written reply/comments on 04.07.2022.

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(Kalim Arshad Khan)
Chairman

Certified to be true copy

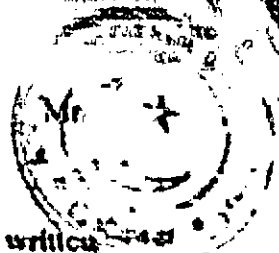
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Amount of Presentation of Appeal	15-06-2022
No. of Months	200
Cost of Appeal	12-00
Details	12-00
Total	16-00
Amount of Security	15-06-2022
Amount of Process Fee	15-06-2022

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Admitted

4 July 2022

Appellant alongwith his counsel present Mr. Muhammad Adeel Butt, Addl: AG present.



None for the respondents present nor their written reply comments have been submitted till date. Learned counsel for the appellant submits that the department had not taken any action on the order of this Tribunal passed on 05.06.2022, suspending the operation of the impugned order of transfer of the appellant, to which a query was placed before the learned counsel for the appellant whether the appellant had relinquished charge of the post, the reply of learned counsel for the appellant was that the appellant had not yet relinquished the charge of the post from where he was transferred. It is, therefore, directed that the respondents shall not make any hindrance in the performance of the duties of the appellant because the operation of impugned order of transfer has already been suspended through order of this court, which further stands suspended. Respondents are directed to submit written reply comments on the next date To come up for further proceedings on 27.07.2022 before S.B.

(Handwritten signature)

(Kalim Arshad Khan)
Chairman

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Certified to be true copy

(Handwritten signature)
Secretary
Service Tribunal
Pakistan

Advocates

04-07-22

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4/10/22

04-07-22
04-07-22