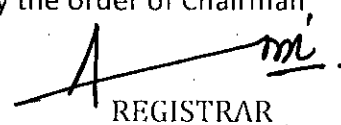
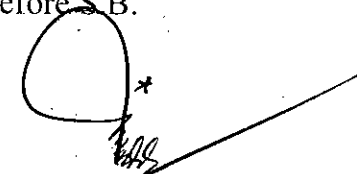
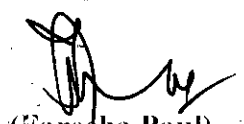


FORM OF ORDER SHEET

Court of _____

C.O.C application No. 402 /2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	18/07/2022	<p>The C.O.C application of Mr. Noor Zaman Khattak submitted today by Mr. Noor Muhammad Khattak Advocate. Original file be requisitioned. It is fixed for hearing before Single Bench on <u>20/07/2022</u>.</p> <p style="text-align: right;">By the order of Chairman,  REGISTRAR</p>
20.07.2022		<p>Counsel for the petitioner present.</p> <p>Notice of COC Petition be issued to the respondents. To come up for reply/arguments on 27.07.2022 before S.B.</p> <p style="text-align: right;">  (Mian Muhammad) Member (E)</p>
27.07.2022		<p>Petitioner present in person. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Naid Wali, Assistant Litigation for respondents present.</p> <p>2. Petitioner submitted an application for withdrawal of the instant C.O.C Petition No. 402/2022, wherein he stated that he wanted to withdraw the instant petition for the time being. Application is placed on file. Dismissed accordingly. Consign.</p> <p>3. <i>Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 27th day of July, 2022.</i></p> <p style="text-align: right;">  (Fareeha Paul) Member (E)</p>

27.07.2022

Petitioner present in person.



Mr. Muhammad Adeel Butt, Addl. Advocate General alongwith Naid Wali, Assistant Litigation for respondents present.

2. Petitioner submitted an application for withdrawal of the instant C.O.C Petition No. 402/2022, wherein he stated that ~~his grievance has been redressed and~~ ^{ed} he wants to withdraw the instant petition. Application is placed on file. Dismissed accordingly. Consign.

for the time being

3. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 27th day of July, 2022.*

(Fareeha Paul)
Member (E)

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

COC petition No. 402 /2022

In

Service Appeal No.7446/2021

Mr. Noor Zaman Khattak.....**Appellant**

VERSUS

Mr. Shehzad Bangash,
Chief Secretary KPK & others.....**Respondents**

I N D E X

S#	Description of Documents	Annex	Pages
1.	Contempt of Court petition with affidavit		1-2
2.	Application for suspension		3
3.	Copy of judgment dated 05.01.2022	"A"	4-8
4.	Copy of Notification dated 15.07.2022	"B"	9
5.	Wakalatnama		10

Petitioner

Through


Noor Muhammad Khattak

Advocate

Supreme of Pakistan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

COC PETITION NO. 402 /2022
IN
SERVICE APPEAL NO. 7446/2021

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 727
Dated 18/7/2022

Mr. Noor Zaman Khattak, District Attorney (BPS-19),
Service Tribunal, Peshawar. **PETITIONER**

VERSUS

- 1- Mr. Shehzad Bangash, Chief Secretary Khyber Pakhtunkhwa,
Peshawar.
- 2- Mr. Masood Ahmad, Secretary Law, Parliamentary Affairs
and Human Rights Department, Khyber Pakhtunkhwa,
Peshawar.

..... **RESPONDENTS/CONTEMNORS**

CONTEMPT OF COURT PETITION UNDER SECTION 3 & 4
OF THE CONTEMPT OF COURT ORDINANCE, 2004 FOR
INITIATING CONTEMPT OF COURT PROCEEDINGS
AGAINST THE RESPONDENTS/CONTEMNORS

PRAYERS:

That on acceptance of this petition contempt of court proceeding may kindly be initiated against the contemnor/respondents by not complying/ implementing the judgment dated 05.01.2022. 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 appellant/petitioner was initially transferred prematurely from the post of District Attorney at Service Tribunal Peshawar vide order dated 03.06.2021 which he challenged vide service appeal No. 7446/2021.
- 2- That after hearing the arguments from both sides the impugned pre-mature transfer order therein was set aside and the appeal was accepted with the following observation.
"We are of the considered opinion that the appellant has not been treated in accordance with law and he was illegally transferred

without approval of the competent authority and such approval was obtained after his transfer at a belated stage. In view of the forging, the instant appeal is accepted. The impugned orders dated 03.06.2021 and 11.06.2021 are set aside and the appellant is allowed posting in service tribunal to complete his normal tenure."

Copy of Judgment dated 05.01.2022 is attached as Annexure **A.**

3- That after the acceptance of the appeal vide judgment supra the appellant started performing his duties efficiently and up to the entire satisfaction.

4- That it is pertinent to mention here that in the ibid Judgment clear directions has been issued to the respondents/ contemnors to allow the petitioner/ appellant to complete his normal tenure but astonishingly the respondents/ contemnors issued another pre-mature transfer vide notification dated 15.07.2022 which is clear violation of the judgment supra and amounts to contempt of court. Copy of the notification dated 15.07.2022 is attached as annexure **B.**

It is therefore, most humbly prayed that the contempt of court proceedings may kindly be initiated against the respondents contemnor as prayed for.

Dated: 16-07-2022

PETITIONER

NOOR ZAMAN KHATTAK

THROUGH:

NOOR MOHAMMAD KHATTAK

KAMRAN KHAN
ADVOCATES, PESHAWAR

AFFIDAVIT

I, Noor Zaman Khattak s/o Qamar Zaman do hereby solemnly affirm on oath that the contents of the Contempt of Court petition are true and correct to the best of knowledge & belief and nothing has been concealed from this Honourable Tribunal.

Noor Zaman Khattak



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

CM No. _____/2022

IN

COC PETITION No. _____/2022

NOOR ZAMAN KHATTAK VS GOVT. OF KP

**APPLICATION FOR SUSPENSION OF THE OPERATION
OF THE NOTIFICATION DATED 15.07.2022 TILL THE
DISPOSAL OF THE ABOVE-MENTIONED CONTEMPT OF
COURT PETITION**

R/SHEWETH:

- 1- That the above-mentioned COC petition along with this application has been filed before this august service Tribunal in which no date has been fixed so far.
- 2- That petitioner filed the above-mentioned COC petition against the ridicules and contemptuous acts of the respondents by not complying the judgment and violating the directions of this Honorable tribunal by issuing the notification dated 15.07.2022.
- 3- That all the three ingredients necessary for the stay is in favor of the petitioner.
- 4- That the notification dated 15.07.2022 had been issued by the respondents in utter disregard of judgment and, law and prevailing Rules.

It is therefore, most humbly prayed that on acceptance of this application the operation of the notification dated 15.07.2022 may very kindly be suspended till the disposal of the above-mentioned coc petition.

Dated: 18.07.2022

APPLICANT

NOOR ZAMAN KHATTAK

THROUGH:

**NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT**

-A-2x



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 7446/2021

Diary No. 7631

Dated 24-9-2021

Mr. Noor Zaman Khattak, District Attorney (BPS-19),
Service Tribunal Peshawar Under transfer to Directorate General of Law
and Human Rights Peshawar.

..... **APPELLANT**

VERSUS

- 1- The Honourable Chief Minister through its Principal Secretary, CM Secretariat, Peshawar.
- 2- The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Law, Parliamentary Affairs & Human Rights Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Director General, Law and Human Rights, Khyber Pakhtunkhwa, Peshawar.
- 5- Mr. Usman Ghani, District Attorney Labour Court, Peshawar (additional Charge as District Attorney at Khyber Pakhtunkhwa Service Tribunal, Peshawar).

..... **RESPONDENTS**

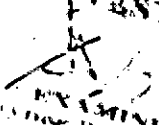
APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATIONS DATED 03-06-2021 AND 11-06-2021 WHEREBY THE APPELLANT HAS PREMATURELY BEEN TRANSFERRED FROM THE POST OF DISTRICT ATTORNEY SERVICE TRIBUNAL PESHAWAR AND THE PRIVATE RESPONDENT HAS BEEN GIVEN THE ADDITIONAL CHARGE OF THE POST IN QUESTION IN UTTER VIOLATION OF TRANSFER/POSTING POLICY AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD.

PRAYER:

That on acceptance of this appeal the impugned notifications dated 03-06-2021 and 11-06-2021 may very kindly be set aside and the respondents may kindly be directed not transfer the appellant from the post of District Attorney Khyber Pakhtunkhwa Service Tribunal, Peshawar till completion of his normal tenure. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Filed to-day
Registrar
24/9/2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7446/2021

Date of Institution ... 24.09.2021

Date of Decision ... 05.01.2022



Mr. Noor Zaman Khattak, District Attorney (BPS-19), Service Tribunal Peshawar
Under transfer to Directorate General of Law and Human Rights Peshawar.
... (Appellant)

VERSUS

The Honourable Chief Minister through its Principal Secretary, CM Secretariat
Peshawar and four others. ... (Respondents)

Syed Noman Ali Bukhari,
Advocate ... For Appellant

Javed Ullah,
Assistant Advocate General ... For official respondents No. 1 to 4

Usman Ghani,
Private Respondent No.5 ... In Person

AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQ-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are

that the appellant is serving as District Attorney and during the course of his service, the appellant was transferred and posted as District Attorney at Service Tribunal vide order dated 16-12-2020. While performing his duty, the appellant was again transferred and was directed to report to the directorate general of law & human rights vide order dated 03-06-2021. In compliance, the appellant reported arrival on 08-06-2021. Additional responsibility of his post was assigned to respondent No. 5 vide order dated 11-06-2021. The appellant however was allowed to draw his salary against the post of District Attorney at Service Tribunal, as there was no post available for him in the directorate. Feeling aggrieved, the

appellant filed departmental appeal, which was not responded within the statutory period, hence the instant service appeal with prayers that the impugned orders dated 03-06-2021 and 11-06-2021 may be set aside and the respondents may be directed not to transfer the appellant from the post of District Attorney Service Tribunal, until completion of his normal tenure.

02. Learned counsel for the appellant has contended that the impugned orders are against law, facts and norms of natural justice and material on record, hence not tenable and liable to be set aside; that the appellant has not been treated in accordance with law, as such the respondents violated Article 4 and 25 of the Constitution; that the impugned orders are violative of Clause-1 and IV of transfer/posting policy of provincial government; that the impugned orders have been issued by respondents in arbitrary and mala fide manner, therefore the same is not tenable in the eye of law and liable to be struck down; that the impugned orders are also against the policy in a manner that prior to his transfer, respondents were required to have submit a summery before the chief minister, but the same legal requirement has not been fulfilled; that it is important to mention that respondent No. 5 have been assigned an additional charge and once any other person has been posted on it, the same would affect the appellant; that the appellant is still drawing his salary against the post of district attorney in service tribunal, from which he was transferred vide impugned order, as there is no post of OSD in the directorate of Law and human rights affairs and the appellant has illegally been directed to report there; that the impugned orders are issued just to harass the appellant and to accommodate his blue eyed person.

03. Learned Assistant Advocate General for the official respondents has contended that the impugned notification of transfer has been issued with the approval of the competent authority and it is mandatory upon the appellant to be transferred anywhere by the competent authority in terms of section 10 of Khyber Pakhtunkhwa Civil Servant Act, 1973, therefore, the appeal is liable to be dismissed; that as regard the assertion of the appellant regarding efficiency, the

ATTESTED

EXAMINER

Service Tribunal

Peshawar

service of the appellant has not been up to the mark and the appellant has a chequered history and was proceeded departmentally on the complaints from different quarters; that the entire service of the appellant is full of explanations, inquiries, warnings and showcause notices; that due to poor performance of the appellant, the appellant was transferred from service tribunal in the best public interest; that due to poor performance of the appellant, respondent No. 5 was authorized to hold additional charge of the office of District Attorney Service Tribunal in addition to his own duty till further orders vide notification dated 11-06-2021; that salary of the appellant has not been stopped by taking a lenient view in pursuance of principle set out by Superior Courts.

04. Private respondent No. 5 vide his written comment submitted before the tribunal has contended that the post of district attorney is not a tenure protected one and the competent authority can transfer any officer in exigency of service under law; that respondent No. 5 has rightly been posted by the competent authority in exigency of service in the best public interest under the prevailing law and rule; that the impugned transfer order have been passed after obtaining concurrence of the competent authority; that the appellant has not been posted as OSD, rather he was directed to report to directorate general of law and human rights affairs till further orders.

05. We have heard learned counsel for the parties and have perused the record.

06. Record reveals that the appellant was transferred to service tribunal vide order dated 16-12-2020. In a short span of five months, the appellant was directed to report to directorate general of law and human rights vide order dated 03-06-2021 and respondents No. 5 was assigned additional responsibility to the post of the appellant vide order dated 11-06-2021. It is interesting to note that the appellant reported his arrival in the directorate vide arrival report dated 08-06-2021, but there was no post available for him, hence he was allowed to draw

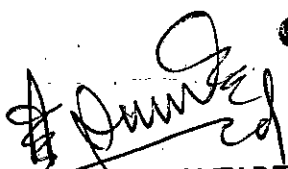
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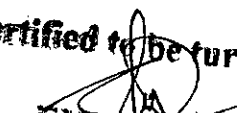

EXAMINER
 Khushal Pakhtukhwa
 Service Tribunal
 Peshawar

his salary from the post of District Attorney Service Tribunal, the post from where the appellant was transferred, which shows malafide on part of the respondent. In order to justify their stance, the respondents had projected the appellant with a tainted past, whereas on the strength of PLJ 2005 Tr.C (Services) 107 and PLJ 2016 Tr.C. (Services) 324, it cannot be made a ground for awarding penalty to a government servant. Moreover, transfer is not a punishment and if the respondents felt it expedient that the appellant was guilty of misconduct, he was required to be proceeded against, instead he was transferred and that too without posting against any post and without approval of the competent authority, which however was not warranted. We have observed that the appellant was transferred in violation of clause-I and IV of transfer policy, as he had not completed his tenure against the post. It is pertinent to mention that the appellant was transferred on 03-06-2021, but approval of the chief minister was obtained on a summery on 21-06-2021, which shows that the appellant was illegally transferred without approval of the competent authority and such approval was obtained in later date and on this score alone, the impugned orders are liable to be set at naught.

07. We are of the considered opinion that the appellant has not been treated in accordance with law and he was illegally transferred without approval of the competent authority and such approval was obtained after his transfer at a belated stage. In view of the foregoing, the instant appeal is accepted. The impugned orders dated 03-06-2021 and 11-06-2021 are set aside and the appellant is allowed posting in service Tribunal to complete his normal tenure. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
05.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


(ATIQU-UR-REHMAN WAZIR)
MEMBER (E)



GOVERNMENT OF KHYBER PAKHTUNKHWA - B-9
LAW, PARLIAMENTARY AFFAIRS & HUMAN RIGHTS
DEPARTMENT

Dated Peshawar the July 15th, 2022

NOTIFICATION

/4888-4901

SO(G)LD/15-11/2019-Vol-II/

The following posting / transfer of the officers of Law, Parliamentary Affairs & Human Rights Department, is hereby ordered in the best public interest, with immediate effect:-

S#	Name & Designation	From	To
1.	Mr. Noor Zaman Khattak, District Attorney (BS-19)	District Attorney, Service Tribunal, Khyber Pakhtunkhwa.	District Attorney, Kohistan Lower against the vacant post.
2.	Mr. Muhammad Jan, District Attorney (BS-19)	Deputy Law Officer, Law Department.	District Attorney, Service Tribunal, Khyber Pakhtunkhwa vice S. No. 1

APK
15/07/2022

Secretary to Govt: of Khyber Pakhtunkhwa
Law, Parliamentary Affairs & Human
Rights Department

Endst: No. & Date Even:

Copy forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Advocate General, Khyber Pakhtunkhwa, Peshawar.
3. Director General, Law and Human Rights Khyber Pakhtunkhwa.
4. Registrar Service Tribunal Khyber Pakhtunkhwa.
5. District Attorney Office, Service Tribunal, Khyber Pakhtunkhwa & Kohistan Lower.
6. District Account Officer, Peshawar & Kohistan Lower.
7. PS to Minister for Law, Khyber Pakhtunkhwa.
8. PS to Secretary Law, Parliamentary Affairs and Human Rights Department.
9. PA to Deputy Secretary (Admn), Law Department.
10. Officers Concerned.
11. Personal files.

Aurangzeb

(AURANGZEB)

Section Officer (General)

H
P.C

VAKALATNAMA

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

APPEAL NO: _____ OF 2022

Noor Zaman Khattak

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

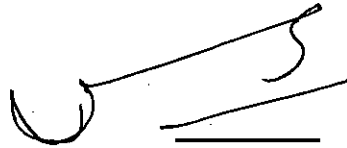
Govt of KP and others

(RESPONDENT)
(DEFENDANT)

I/We Noor Zaman Khattak

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** 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. ____/____/2022



CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK

KAMRAN KHAN

&
UMAR FAROOQ

MUHAMMAD MAAZ MADNI

HAIDER KHAN
ADVOCATES

OFFICE:

Flat No.(TF) 291-292 3rd floor
Deans trade centre Peshawar cantt:
Mobile No. 0334-5277323

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

COC Petition No. 402/2022

In

Service Appeal No. 7446/2021

Mr. Noor Zaman Khattak, District Attorney (BPS-19) Service Tribunal, Peshawar
.....Petitioner

VERSUS

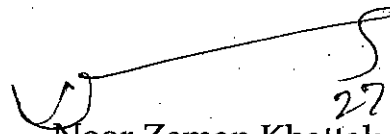
Chief Secretary Khyber Pakhtunkhwa Peshawar.....Respondent

**Application for withdrawal of COC Petition No. 402/2022 in Service appeal
No. 7446/2021, in Khyber Pakhtunkhwa Service Tribunal Peshawar.**

Respectfully Sheweth:-

1. It is stated that COC Petition No. 402/2022 in Service appeal No. 7446/2021 was fixed for hearing today on 27/07/2022, before the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. The petitioner/applicant want to withdraw the said COC against the respondent, before the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar for time being.

It is therefore, humbly requested to accept the subject application, and the applicant may be allowed to withdraw the said application.


27/7/22
Noor Zaman Khattak
District Attorney
Khyber Pakhtunkhwa
Service Tribunal