Said Rehman Advocate, learned counsel for appellant present.

Riaz khan Paindakhel, learned Assistant Advocate General for respondents present.

Learned counsel for the appellant requested for withdrawal of the instant service appeal as the grievance of the appellant has been redressed. In this respect, an application was also submitted which is placed on file.

In view of the above, instant service appeal is hereby dismissed as withdrawn. No order as to costs. File be consigned to the record room.

Announced. 06.10.2022

> (Rozina Rehman) Member (J) Camp Court Swat

04.07.2022

No one present on behalf of appellant. Mr. Noor Zaman, District Attorney present.

**Notices** be issued appellant/counsel to respondents for submission of written reply/comments. To come up for written reply/comments on 03.08.2022 before S.B at camp court, Swat.

> (Fareena Paul) Member (E) Camp Court, Swat

is affaitored to 7-9.22 forthe Game.

07.09.2022

Nemo for the appellant. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Reply/comments on behalf of respondents not submitted. Learned Assistant Advocate General seeks time to contact the respondents for submission of reply/comments. Last opportunity is granted. Previous date was changed on the strength of Reader's Note, therefore, notice be issued to the appellant and his counsel to attend the Tribunal on the next date. Adjourned. To come up for reply/comments on 06.10,2022 before S.B at Camp Court Swat.

> (Mian Muhammad) Member (E) Camp Court Swat

1860年

08.02.2022 Tour is hereby canceled .Therefore, the case is adjourned to 05.04.2022 for the same as before at Camp Court Swat.

Reader

05.04.2022

Nemo for the appellant. Mr. Riaz Ahmed Paindakhel, Assistant Advocate General present.

Previous date was changed on Reader Note, therefore, notices be issued to the respondents through registered post and to come up for submission of written reply/comments on 12.05.2022 before the S.B at Camp Court Swat.

Notice also be issued to appellant/counsel for the appellant for the date fixed.

(Salah-Ud-Din)
Member (J)
Camp Court Swat

12.05.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General present.

Vide previous order sheet, it was ordered that notices be issued to the respondents through registered post, however on perusal of the record, it transpired that the same have not been sent to the respondents, therefore, in this respect explanation be called from the Muharrar. Again notices be issued to the respondents through registered post and to come up for submission of written reply/comments on behalf of respondents on 04.07.2022 before the S.B at Camp Court Swat.

(Salah-Ud-Din) Member (J) Camp Court Swat 02.11.2021

Nemo for the appellant. Security and process fee have not been deposited by the appellant, therefore, notice be issued to appellant as well as his counsel for 04.01.2022 before the D.B at Camp Court Swat.

(Atiq-Ur-Renman Wazir)

Member (E). Camp Court Swat (Salah-Ud-Din) Member (J) Camp Court Swat

04.01.2022

Appellant in person present and submitted an application for permission to deposit security and process fee.

The application is allowed. The appellant is directed to deposit requisite security and process fee within three working days. There-after notices be issued to the respondents for submission of written reply/comments before the S.B on 08.02.2022 at Camp Court Swat.

Appending Deposited
Security Process Fee

(Salah-Ud-Din) Member (J)

Camp Court Swat

24.08.2021

Nemo for the appellant. I have gone through the memorandum of appeal and documents annexed therewith.

In terms of normal procedure, the appeal appears to be barred but in view of particular legal position to be discussed herein-after, the bar of limitation for the time-being is immaterial. In wake of COVID, 19, the Government of Khyber Pakhtunkhwa for the first time declared Public Health Emergency in March, 2020 for three months which was extended from time to time for further term and presently it has been extended by the Government vide Notification No. SOG/HD/1-102/Covid-19/2020/3062, dated 30.06.2021 for the period from 01.07.2021 to 30.09.2021. The case of the appellant falls within the period of emergency. In view of Section 30 of the Khyber Pakhtunkhwa Epidemic Control and Emergency Relief Act, 2020, the limitation period provided under any law shall remain frozen. This appeal having been filed after promulgation of the said Act, is not affected by bar of limitation. Excluding the case of appellant from rigors of limitation, his appeal is fit for full hearing. Keeping the question of limitation relating to filing of instant appeal intact for determination during full hearing, this appeal, subject to all just and legal objections is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of noncompliance. File to come up for arguments on 02.11.2021 before the D.B at camp court, Swat.

Notice be issued to appellant to deposit security and process fee within the prescribed time.

Charman
Camp Court, Swat.

### Form- A

# FORM OF ORDER SHEET

Court of_			
	210101	/2024	

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	03/03/2021	The appeal of Mr. Muhammad Younas presented today by Mr. Sain Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.
. ; 2∔	01-04-21	This case is entrusted to touring S. Bench at Swat for preliminar hearing to be put up there on $\frac{OS/OS/21}{OS}$
		A)
	26.07.2021	To come up for preliminary hearing on 24.08.2021 before S.B at Camp Court, Swat. Notices be issued to appellant/counsel for the date fixed.
		Chairman
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### BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL **PESHAWAR**

APPEAL NO	340	/202
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**MUHAMMAD YOUNAS (Chowkidar) CVD Palonow** Hero Shah, Tehsil Dargai, District Malakand.

VS

- 1. The Director General (extention) Livestock and Dairy **Development KP Bacha Khan Chowk Peshawar.**
- 2. District Director Livestock Malakand at Batkhela.

**INDEX** 

S.NO.	DOCUMENTS	ANNEVUDE	DACE
3.140.	DOCUMENTS	ANNEXURE	PAGE
1	Memo of appeal	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	1- 3.
2	Appointment Order	A	4.
3	Transfer & Further adjustment orders	B & C	´5-6.
4	Transfer Order	D	7.
5	Judgment as (2003 PLC (CS)983)	E	8-9.
6	Departmental Appeal	F	10-11.
7	Vakalat nama		12.

**APPELLANT** 

THROUGH:

ARSHAD KHAN KHATTAK

arshad khan khattak

8

Advocate

Sub Divisional Courts
Dargai Malakand SAID RAHMAN

**ADVOCATES** 

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR Khyber Pakhtukhwa

APPEAL NO. 340 /2020

Diary No. 3413

Dated 03/3/202

Mr. Muhammad Younas (Chowkidar) Civil Veterinary Dispensary Palonow Hero Shah Tehsil Dargai District Malakand

### **APPELLANT**

#### **VERSUS**

1- The Director General (extension) livestock and Dairy Development, Khyber Pakhtunkhwa, Bacha Khan Chowk Charsada Road Peshawar.

2- The District Director Livestock Malakand at Batkhela.

.....RESPONDENTS

APPEAL UNDER SECTION-4 OF THE PAKHTUNKHWA SERVICE TRIBUNAL ACT, AGAINST THE IMPUGNED ORDER DATED 18/11/2020 WHEREBY THE APPELLANT HAS BEEN TRANSFERRED/ADJUSTED AT THE OFFICE OF DISTRICT DIRECTOR LIVESTOCK MALAKAND AT BATKHELA, AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF 0 DAYS.

### PRAYER:

That on acceptance of this appeal the impugned order dated 18.11.2020 may very kindly be set aside and the appellant may be retained as Chowkidar at CVD Palonow.

### R/SHEWETH: ON FACTS:

Registrar

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

- 1- That the appellant was appointed as Chowkidar (BPS-01) dated 13.05.2015 in the Office of Senior Veterinary Officer Semen Production unit Harichand District Charsadda. Appointment order is annexed as (A).
- 2- That the mention station of duty was on a distance of about 40km from the residence of the Appellant and the Appellant used Bicycle as his convince.

- ■3- Then after about (05 years, 06 months and 05 days) the Appellant was transferred as on the disposal of the District Director Livestock Malakand vide order no.21404-08/DGL and DD dated 9.10.2019 and further adjusted at CVD Palonow vide order no 850-51/1/4 dated 10.10.2019. Orders are annexed as (B & C).
  - 4- Then after a lapse of (01 year, 01 month and 09 days) the Appellant was transferred/ Adjusted as Chowkidar in the office of District Director Livestock Malakand at Batkhela without any reason. The distance between the home and office is about 70 km. it will make a lot of problems for the appellant as well as for his family. Transfer order is annexed as (D).
  - 5- It is pertinent to mention here that CVD Palonow has (02) posts of Class-IV Servants. (01) Post became vacant due to retirement of Mr. Misal Khan on 10.04.2020 While the Appellant was transferred on 18.11.2020 and thus both the Posts of Class-IV are Vacant. At present the CVD runs without any Class-IV.
  - 6- It seems that political pressure is involved in the case and thus space is made for the appointment of some favorite people which is violation of the fundamental rights of the Appellant as reserved under Article-04/25 and 38 of the Constitution of Islamic Republic of Pakistan 1973.
  - 7- The same situation was in CP NO. 118/2002 and CP NO.119 /2002. Both the Respondents were female teachers and transferred to far flung areas to vacate their Posts for new Appointments. Both the Petitions were dismissed and leave was refused. Judgment is attached (as 2003 PLC (CS) 983) as (E).
  - 8- That the departmental appeal of the appellant which was filed on 25.11.2020 before, the respondent no.2 was not considered. That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others. Copy of the Departmental Appeal is attached as annexure....... (F).

### **GROUNDS:**

A- That the impugned transfer orders dated 18.11.2020 is against the law, facts, norms of natural justice and material on the record hence, not tenable and liable to be set aside.

- B- That appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondent violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
  - C- That the respondent acted in arbitrary and mala fide manner while issuing the impugned transfer order dated 18.11.2020.
  - D- That the respondent transferred the appellant in a hasty manner without any cogent reason and pushed the appellant in much difficulties.
  - E- That no reason has been shown and the transfer was made under the Political pressure.
  - F- That in most of the Departments, Class-IV Servants are posted locally and it helps them towards happy life while in the case in hand the Appellant treated with a cruel manner which is against the natural justice.
  - G- That appellant has been discriminated on the subject noted above and as such the impugned order dated 18.11.2020 is not tenable in the eye of law.
  - H-That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

APPELLANT

MUHAMMAD YOUNAS

THROUGH:

ARSHAD KHAN KHATTAK

ARSHAD KHAN KHATTAK

Advocate
Sub Divisional Court SAID RAHMAN
Dargai Malakand
ADVOCATES





# OFFICE OF THE DIRECTOR CATTLE BREEDING & DAIRY FARM HARICHAND DISTRICT CHARSADDA PH & FAX #: 091 - 6640187

#### ORDER

On the recommendation of Departmental selection committee in its meeting held on 29/04/2015, the competent authority is pleased to appoint Mr. Muhammad Younas S/O Amir Azam Village Heroshah Tehsil Dargi District Malakand against the vacant post of Chowkidar BPS-01 at the permissible pay scale @ Rs. 4800-150-9300 plus regular allowances in the office of Senior Veterinary Officer Semen Production Unit Harichand from the date of Joining on regular basis.

His appoint shall be governed by the following terms and conditions

- i. His appointment shall be on regular basis.
- j. His appointment shall be subject to the medical fitness by the concerned Medical Superintendent.
- k. He will be governed by such rules regulation order acts and ordinance etc. relating to appointment / transfer leave efficiency and discipline and conduct as have been / may be prescribed by the government.
- I. His service shall be liable to termination on the following condition:
- e. At any time with out notice and with out showing any reason during the period of his appointment on probation i.e. 2-years if there work during this period was not found satisfactory.
- i. On one month notice by the Government on one side and by him on by other. In case the notice on either side is less than one month, a sum equivalent to one month pay for the period by which the notice falls short of one month will be paid by Government to him or in lieu there of one month pay shall be forfeited.
- ii. By Government with out previous notice if satisfied trail evidence that he is unfit and/or likely to remain unfit for a considerable period by reasons of ill health or physical disability to discharge there duties the decision of the Government is to what constituted considerable period shall be final,
- f. He shall not be entitled to any traveling /daily allowance while journey for first appointment.
- i. He shall contribute to provident fund in such a manner and it such as may be prescribed by the Government.

If he is willing to accept the above mentioned terms and conditions, he should report to concerned office with in 15-days, failing which the candidate on waiting list shall be given the chance of appointment.

Sd/xxxxxx
Director
Cattle Breeding & Dairy
Farm Harichand
the
7/3/

No. <u>| 068-71</u>/1/6-V date Copy to:

Harichand

1. The Director General (Extension) Livestock & Dairy Development Department Khyber Pakhtunkhwa Peshawar for information please.

2. The Director Breed Improvement & Farms Livestock & Dairy Development Department Khyber Pakhtunkhwa Peshawar for information please.

3. The District Account Officer Charsadda for information & further necessary action.
4. The Senior Veterinary Officer Sense Braduetics the further necessary action.

The Senior Veterinary Officer Semen Production Unit Harichand for information.
 Mr. Muhammad Younas S/O Amir Azam Village Heroshah Tehsil Dargi District Malakand for compliance.

Cattle Breeding & Dairy
Farm Harichand



# DIRECTORATE GENERAL (EXTENSION)

### LIVESTOCK & DAIRY DEVELOPMENT KHYBER PAKHTUNKHWA

Bacha Khan Chowk, Charsadda Road Peshawar. Email: dglddext@yahoo.comTel: 091-9210276, 9210249, Fax: 091-9210285

### ORDER.

The following transfer/posting of Class-IV staff of this department is hereby ordered in the best interest of public service with immediate effect.

S.No	Name of official	From office of the	То
1.	Mr. Muhammad Younas, Chowkidar, (BPS-03)	One, Hanchand Chaisadda	4 '-

(DR. ALAM ZEB) DIRECTOR HEADQUARTERS

No: 21404-08 L&DD

Dated

Peshawar

0 / /10/2019

Copy of the above is forwarded to:

- 1. Director Breed improvement and Farms, Peshawar for information.
- 2. District Director Livestock Malakand.
- 3. Senior Veterinary Officer Semen Production Unit, Harichand Charsadda
- 4. District Accounts Officer, Charsadda and Malakand
- 5. Official concerned for information and immediate compliance.

(DR. ALAM ZEB)

DIRECTOR HEADQUARTERS

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# OFFICE OF THE DISTRICT DIRECTOR LIVESTOCK MALAKAND AT BATKHELA

ddlmalakand1@gmail.com

Livestock Malakand

(W) 0932-411904

### Adjustment order.

Mr. Muhammad Younas Chowkidar BPS-03 transferred by Director Headquarters livestock & Dairy Development Department Khyber Pakhtunkhwa Peshawar order No.21404-08DGL&DD dated 09.10.2019 is hereby adjusted in Civil Veterinary Dispensary Palonow as a Chowkidar in the best interest of public services with immediate effect.

DISTRICT DIRECTOR LIVESTOCK
MALAKAND AT BATKHELA

No. 850-51/1/4

Malakand

dated

10/10/2019

1) Incharge Civil Veterinary Dispensary Palonow for information please.

2) Official concerned for information and compliance.

DISTRICT DIRECTOR LIVESTOCK MALAKANIJAT BATKHELA

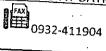




# OFFICE OF THE DISTRICT DIRECTOR LIVESTOCK MALAKAND AT BATKHELA

ddlmalakand1@gmail.com Livestock Malakand





## Adjustment order.

Mr. Muhammad Younas Class-IV Civil Veterinary Dispensary Zoormandi is hereby transfer/adjusted to Office of the District Director Livestock Malakand in the best interest of the public services with immediate effect.

MALAKAND AT BATKHELA

No. 1385-86

Malakand

dated

*8*/11/2020.

Copy to:

- 1. Incharge Civil Veterinary Dispensary Zoormandi.
- 2. Official concerned for information and compliance.

MALAKAND AT BATKHELA



2003 P L C (C.S.) 983

# Supreme Court of Pakistan]

Present: Munir A. Sheikh, Iftikhar Muhammad Chaudhry and Faqir Muhammad Khokhar, JJ

WAPDA

Versus

# Miss AMIRA NASREEN and another

Civil Petitions Nos. 118 and 119 of 2002, decided on 18th September, 2002.

(On appeal from the judgment of the Federal Service Tribunal, Islamabad, dated 19-11-2001 passed in Appeals Nos.447(P)/SC/2001 and 448(P)/SC/2001).

# North-West Frontier Province Service Tribunals Act (I of 1974)----

Service Tribunal---Female lady teachers were transferred from their home station to a distant station---One of the teachers was unmarried, while husband of the other was employed at the station from where she was transferred---On posts against which the teachers were working the Authorities wanted to recruit two teachers on contract basis--Service Tribunal having come to the conclusion that the transfer was not in public interest. allowed the appeals and transfer orders were set aside---Plea raised by the Authorities was that transfer was their prerogative, therefore, appeals before Service Tribunal were not maintainable---Validity---Service Tribunal had rightly found that the transfer, was not in public interest--Supreme Court under Art.212(3) of the Constitution could grant leave against judgment of Service Tribunal---No question of law of public importance within the contemplation of Art.212(3) of the Constitution was involved----Leave to appeal was refused.

Sh. Zamir Hussain, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Petitioner (in both Petitions).

Date of hearing: 18th September, 2002

#### **JUDGMENT**

MUNIR A. SHEIKH, J.---By this common judgment, we propose to decide Civil Petitions Nos. 118 and 119 of 2002 as questions of law and facts are identical in both of them.

2. The respondents in both these petitions are female teachers who were posted at Peshawar from where Miss Amira Nasreen, respondent in Civil Petition No. 118 of 2002 was transferred to Tarbella Dam whereas Mrs. Farah Akhtar, respondent in Civil Petition No. 119 of 2002 to Mardan. They challenged their transfer orders by tiling appeals before the Service Tribunal which have been accepted through the impugned judgment dated 19-4-2001 and their transfer orders set aside Learned counsel for the petitioner submitted that it is the prerogative of the petitioner-Department to

transfer any of its employees from one station to another, therefore, the appeals before the Service Tribunal were not maintainable.

- 4. We have noticed that the Service Tribunal has taken note of the fact that after transfer of the respondents, the posts against which they were working, the petitioner-Department wanted to recruit two teachers on contract basis, therefore, the Tribunal has come to the conclusion that the transfer of the respondents was not in, the public interest. One of the respondents is unmarried and the husband of the other employed at Peshawar.
- 5. Apart from what has been stated above, under Article 212 of the Constitution, it is within the discretion of this Court to grant leave against the judgment of the Service Tribunal. In the facts and circumstances of these cases, we do not feel disposed to exercise discretion to grant leave. Besides no question of law of public importance within the contemplation of Article 212(3) of the Constitution is also involved.
- 6. For the foregoing reasons, these petitions have no merits which are hereby dismissed and leave refused.

M.H./W-36/S

Petitions dismissed.

(D) (CF P

То

The District Director Livestock

Malakand at Batkhela.

Subject: Appeal against adjustment order No. 1385-86/1/5 dated 18/11/2020.

Respected Sir,

It is stated that I was appointed as Chowkidar BPS 1 at cattle breeding and dairy farm Harichand vide order No. 1068-72/1/6-V dated 13/05/2015. (Copy enclosed) after period of 3 and a half years on my request my services were transferred from district Charssada to district Malakand vide order No. 214404-08 DGL & DD dated 09/10/2019 by director head quarter. In pursuance of said order I was adjusted against vacant post at C.V.D Pulnow on 10/10/2019 vide order No. 850-51/1/4. (Copies enclosed)

It is further stated that after a lapse year and a month through adjustment order No. 1385-86/1/5 dated 18/11/2020 I was again transferred to Batkhela.

I hereby appeal against the last mentioned adjustment order on the following below listed grounds:-

### **Grounds:**

- 1. It is worth mentioning that I am BPS-03 employee, drawing very low salary, it is very difficult for me to commute or lodge/board at Batkhela.
- 2. That my salary only is the only source of income for me and my family. Which hardly meets/fulfill our daily requirements.
- 3. That my kids are studying in Hero shah model School, Palonow which is at a little distance from my present work place. My transfer from the current post will effect the studies/education of my kids.

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- 4. That I am the only male member of my family, having three kids/toddlers and a wife. My transfer will effect a heavy blow on my family life.
- 5. That being a class IV employee of your department, a gesture of kindness on your part for cancelation of adjustment order No. 1385-86/1/5 dated 18/11/2020 will highly appreciated.

It is humbly prayed that kindly cancelled the said order for the sake and convince of me and my family.

Your obediently,

Dated: 25/11/2020.

Arshad Mark - Prings Advisoate

ten Darger Shells Southand

Muhammad Younas Khan BPS-03Chowkidar at C.V.D Palonow.

### **VAKALATNAMA**

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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MUHAMMAD YOUNAS

(APPELLANT)

### **VERSUS**

- 1. The Director General (extention) Livestock and Dairy Development KP Bacha Khan Chowk Peshawar.
- 2. District Director Livestock Malakand at Batkhela.

(RESPONDENTS)

I/We Muhammad Younas do hereby appoint and constitute ARSHAD KHAN KHATTAK, Advocate, 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. 3 / 3 /2021

CLIENT

ATTESTED

**ACCEPTED** 

RSHAD KHAN KHATTAK

ARSHAD KHAN KHATTAK

Dargai Malakand

Advocate
Sub Divisional Courts

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SAID RAMMAN ADVOCATES

OFFICE:

Dargai Bar, District Malakand Mobile No.0332-3036403 Mobile No.0345-9704705 Got per wood the series (10) EUN 12) Em 12) Em 2) Ein 10) Em 2) Em 6/69 DE CONTRACTO Mario Monpen, Illuio Cupality for energia مي رباز کو والی لما و Company of the service of the servic