


07.11.2022

Appellant alongwith his counsel Mr. Muhammad Musadiq Zahid, Advocate present. Preliminary arguments heard.

Learned counsel for the appellant contended that the appellant who is basically Kanungo and was posted as Settlement Naib Tehsildar (OPS) Tehsil Havelian against the vacant post vide office order dated 09.12.2021. He was again transferred as Niab Tehsildar (OPS) Settlement operation Abbottabad vide Notification dated 04.02.2022. Subsequently, the appellant was once again transferred as Settlement Naib Tehsildar (OPS) Havelian against the vacant post vide yet another Notification dated 18.03.2022 from where he was repatriated to the office of Deputy Commissioner, Abbtabad vide office order dated 21.09.2022 and private respondent No. 3 (Mr. Chanzeb Khan) was now posted against the post vacated by the appellant. Later on, even private respondent No. 3 (Mr. Chanzeb Khan) was repatriated to the office of Deputy Commissioner Abbottabad and now private respondent No. 4 (Irshad Khan) was posted as Settlement Naib Tehsildar Havelian (OPS) vide office order dated 05.10.2022. It was vehemently argued that the appellant has been made rolling stone and transferred for 4 times within a short span of 9 months. His departmental appeal submitted through Settlement Officer Abbottabad was regretted on 06.10.2022 by respondent No. 2. The appellant has been targeted and made scapegoat without any fault on his part. The frequent transfers particularly of private respondents have been made on political grounds and consideration due to which the appellant has suffered. His frequent posting/transfer is a clear and blatant violation of provision I & IV of Posting Transfer Policy of the

Provincial Government. Tenure of a civil servant has been ensured as held in PLD 2013, Supreme Court 195 which has to be observed by the respondent department in letter and spirit. To strengthen his arguments, learned counsel for the appellant relied on 2011 PLC (C.S) 935, 2016 PLC (C.S) 526 and PLD 2013 Supreme Court 195.

Points raised need consideration. The appeal is admitted to regular hearing, subject to all just and legal objections. 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. To come up for reply/comments before the S.B on 25.11.2022. Alongwith the service appeal, an application for suspension of the operation of impugned orders dated 21.09.2022, 05.10.2022 and 06.10.2022 has been submitted which is placed on file. Operation of the impugned orders dated 21.09.2022, 05.10.2022 and 06.10.2022 are suspended till further order. Notice of the said application be also issued to the respondents for submission of reply/comments on the date fixed.


(Mian Muhammad)
Member (E)

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

Case Title: Nawaz, Hass vs _____

S.#	Contents	Yes	No
1.	This appeal has been presented by: <u>Syad Noman Ali</u>	✓	
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the requisite documents?	✓	
3.	Whether Appeal is within time?	✓	
4.	Whether the enactment under which the appeal is filed mentioned?	✓	
5.	Whether the enactment under which the appeal is filed is correct?	✓	
6.	Whether affidavit is appended?	✓	
7.	Whether affidavit is duly attested by competent oath commissioner?	✓	
8.	Whether appeal/annexures are properly pagged?	✓	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10.	Whether annexures are legible?	✓	
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/clear?	✓	
13.	Whether copy of appeal is delivered to A.G/D.A.G?	✓	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15.	Whether numbers of referred cases given are correct?	✗	
16.	Whether appeal contains cuttings/overwriting?		
17.	Whether list of books has been provided at the end of the appeal?		
18.	Whether case relate to this Court?		
19.	Whether requisite number of spare copies attached?		
20.	Whether complete spare copy is filed in separate file cover?		
21.	Whether addresses of parties given are complete?		
22.	Whether index filed?		
23.	Whether index is correct?		
24.	Whether Security and Process Fee deposited? on _____		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on _____		
26.	Whether copies of comments/reply/rejoinder submitted? on _____		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on _____		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: _____

Signature: _____

Dated: _____

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No. 1461 /2022

Nawaz Hassan Abbasi

V/S

Revenue Deptt:

.....
I N D E X

S.N	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-05
2.	Stay Application	06-07
3.	Copy of order	A	08
4.	Copy of order	B	09
5.	Copy of order	C	10
6.	Copy of impugned transfer order	D	11
7.	Copy of departmental appeal	E	12
8.	Copy of letters	F	13-14
9.	Copy of impugned order	G	15
10.	Copy of application	H	16
11.	Copy of rejection	I	17
12.	Copy of posting transfer policy	J	18-20
13.	Copy of circular	K	21-22
14.	Vakala Nama	-----	23


APPELLANT

Nawaz Hassan Abbasi

THROUGH:


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

1

APPEAL NO. 1461 /2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1556

Dated 11-10-2022

Mr Nawaz Hassan Abbasi Naib Tehsildar.
Settlement Havelian District Abbottabad.

..... Appellant

VERSUS

- 1- The Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Land record Khyber Pakhtunkhwa Peshawar.
- 3- Mr. Chanzeb Khan, kanungo, kanungo, District Abbottabad.
- 4- Mr. Irshad Khan, Settlement Kanungo, Peshi Kanungo, settlement operation Mansehra.

..... **RESPONDENTS**

.....

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT 1974 AGAINST THE TRANSFER ORDER DATED 21/09/2022 and 05/10/2022 WHEREBY THE APPELLANT WAS PREMATURELY TRANSFERRED AND AGAINST REJECTION ORDER DATED 06/10/2022 WITHOUT SHOWING ANY REASON,

Filed to-day
Registrar
11/10/2022

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 21/09/2022 and 05/10/2022 MAY BE SET ASIDE BEING, PASSED PREMATURELY AND VIOLATION OF POSTING/TRANSFER POLICY. THE RESPONDENT DEPTT: MAY FURTHER PLEASE BE DIRECTED NOT TO TRANSFER THE APPELLANT PREMATURELY AND IN VIOLATION OF POSTING/TRANSFER POLICY AND POLITICALLY MOTIVATED. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY

②

**ALSO BE AWARDED IN FAVOUR OF
APPELLANT**

.....

R/ SHEWETH:

ON FACTS:

- 1- That Appellant is the employee of respondent Department was serving the respondent Department as Naib tehsildar quite efficiently and up to the entire satisfaction of his superiors.
- 2- That the appellant was transferred vide order dated 09/12/2021 from settlement operation Abbottabad to tehsil Havelian, Settlement operation Abbottabad. **Copy of order is attached as annexure-A .**
- 3- That just after two months the appellant was transfer vide order dated 04/02/2022 from tehsil Havelian, Settlement operation Abbottabad to settlement operation Mansehra and from the date of arrival work with full zeal and zest. **Copy of order is attached as annexure-B.**
- 4- That just after one month the appellant was transfer vide order dated 18/03/2022 from settlement operation Mansehra to tehsil Havelian, Settlement operation Abbottabad and from the date of arrival work with full zeal and zest. **Copy of order are attached as annexure-C.**
- 5- That again just after 6 months the appellant was prematurely transfer vide impugned order dated 21-09-2022 from tehsil Havelian, Settlement operation Abbottabad to DC office Abbottabad. The Appellant feeling aggrieved filed departmental appeal against the impugned order which was dully forwarded for comments from Settlement Officer Abbottabad. The Settlement Officer Abbottabad file comments in favor of the appellant. **Copy of impugned order departmental appeal and letters is attached as annexure -D, E & F.**
- 6- That thereafter appellant present in office of DLR on 05/10/2022 for query about departmental appeal decision. Then the appellant confronted with another impugned order 05/10/2022 whereby the respondent no.3 was transferred from the place of appellant and respondent n0.4 was posted at place of appellant. The appellant on spot filed appeal against the order dated 05/10/2022 wherein clearly stated that the the order has been passed during my pendency of departmental appeal therefore requested that the order may be set – aside and the pending appeal may be decided. **Copy of impugned order dated 05/10/2022 and appeal is attached as annexure-G & H.**
- 7- That on next day 06/10/2022 the departmental appeal of the appellant was rejected by incompetent authority without showing any reason. **Copy of rejection order is attached as annexure-I.**
- 8- That the Appellant having no other remedy filed the instant appeal on the following grounds amongst the others.

13

GROUNDS:

- A- That, impugned order dated 21/09/2022 and 05/10/2020 is against the Law, policy, rules, superior court judgment facts and norms of natural justice.
- B- That the transfer order dated 21-09-2022 is premature against the post for period of three year but despite that the appellant was transferred just after six months and respondent no.4 in place of appellant is politically motivated.
- C- That In the case of the petitioner, all the prevailing laws have been abused / misused and the department has tried to victimize the petitioner. Such treatment of the department is not covered under Para -1 of the posting transfer policy.
- D- That Para 3 of the posting / transfer policy further provides that the normal tenure of posting shall be two years , which has not been observed in the case of the petitioner .
- E- That it is a cherished principle of law, that where a law requires a thing to be done in a particular manner, then the same is be done in that manner and not otherwise.
- F- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- G- That the tenure of the appellant has not been completed, so the order dated 21/09/2022 is not according to law and rules without showing any cogent reasons, premature and in violation of posting transfer policy. It is, further mentioned here that not only premature but successive transfers in span of 1 year which is not permissible in eye of law as held in Supreme Court Judgment cited as 2011 PLC(cs) 935. Copy of posting transfer Policy is attached as Annexure-J.
- H- That the transfer of the appellant is also violation of circular based on the Anita Turab case dated 27.2.2013 in which it was clearly mentioned that when the ordinary tenure for a posting has been specified in the law or rules made there under, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable, but in the case of the appellant the tenure was not respected and was posted/ transferred without completing his normal tenure. As held in Supreme Court Judgment cited as 2013 PLD SC 195. Copy of Circular is attached as Annexure-K.

- I- That consecutive transfer orders of the appellant shows that the appellant was made a rolling stone and not allowed him to do his duty to best of his abilities as held in Superior Court Judgment cited as 2016 PLC (cs) 526 and 2011 PLC(cs) 935
- J- That the treatment meted out to the appellant is a clear violation of the Fundamental Rights of the appellants.
- K- That the respondent Department acted in arbitrary and malafide manner by transferring the appellant and as such the same is against the transfer/posting policy of the Provincial Government.
- L- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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


APPELLANT

Nawaz Hassan Abbasi

THROUGH:


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.


DEPONENT

LIT OF BOOKS:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE
3. Any other case law as per need.


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT

5

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. _____/2022

Nawaz Hassan Abbasi

V/S

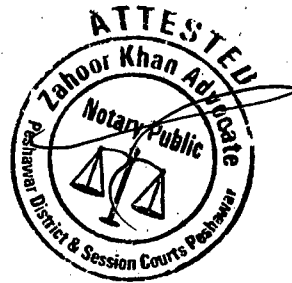
Revenue Deptt:

AFFIDAVIT

I, Nawaz Hassan Abbasi (Appellant) do hereby affirm that the contents of this service appeal are true and correct, and nothing has been concealed from this Honorable Tribunal.



DEPONENT



6

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

Appeal No. _____/2022

Nawaz Hassan Abbasi

V/S

Revenue Deptt:

.....

**APPLICATION FOR SUSPENSION OF
OPERATION OF ORDER DATED 21.09.2022
& 05/10/2022 & 06.10.2022 OF APPELLANT
TILL THE DISPOSAL OF MAIN APPEAL.**

RESPECTFULLY SHEWETH:

1. That the appellant has filed an Appeal along-with application in which no date has been fixed so far.
2. That the appellant has good prime facie case and all the ingredients of stay is in favour of appellant.
3. That the grounds of main appeal may also be considered as integral part of this application.
4. That the impugned order has passed on favouritism and nepotism and has been passed in-violation of Posting, Transfer Policy.
5. That the appellant has not completed his tenure and the order dated 21.09.2022 & 05/10/2022 & 06.10.2022 is without any reasons,
6. That the impugned order has passed on favoritism and nepotism and has been passed in-violation of Posting, Transfer Policy.
7. That if the order dated 21.09.2022 & 05/10/2022 & 06.10.2022 is not suspended. Its not only badly effect the right of appellant but also creates hurdles for the appellant to performed his duties efficiently.

7

It is, therefore, most humbly prayed that the order dated 21.09.2022 & 05/10/2022 & 06.10.2022 may be suspended till the disposal of main appeal. Any other remedy, which this august tribunal deems fit that may also be awarded in favour of appellant.

Nawaz Hassan Abbasi

APPELLANT

Nawaz Hassan Abbasi

THROUGH:

Syed Noman Ali Bukhari

(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT

AFFIDAVIT:

It is affirmed and declared that the contents of this Application are true and correct to the best of my knowledge and belief.

Nawaz Hassan Abbasi

DEPONENT





A 08

**GOVERNMENT OF KHYBER PAKHTUNKHWA
(DIRECTOR LAND RECORDS)
REVENUE AND ESTATE DEPARTMENT**

■ E-Mail: landrecord.kpk@gmail.com

Phone: 091-9210057

■ @LandrecordKP
■ fb.com/landrecord.kpk

Peshawar dated the 09/12/2021.

OFFICE ORDER:

No.LR-V/Settl/P&T/3252-57 The Competent Authority is pleased to post Mr. Nawaz Hassan, Revenue Kanungo, presently working in Settlement Operation Abbottabad, against the vacant post of Settlement Naib Tehsildar in his own pay and scale in Tehsil Havelian, Settlement Operation Abbottabad with immediate effect till further order.

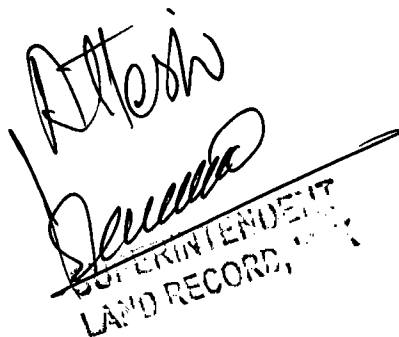
Approved by
Competent Authority

Endst: No. & Date Even.

Copy forwarded to the;

1. Deputy Commissioner, Abbottabad.
2. Settlement Officer, Abbottabad.
3. District Accounts Officer, Abbottabad.
4. PS to Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
5. PS to Commissioner Abbottabad Division.
6. Officer Concerned for compliance.


Director Land Records
Khyber Pakhtunkhwa


SUPERINTENDENT
LAND RECORD, PESHAWAR



B 09

**GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF LAND RECORDS
REVENUE AND ESTATE DEPARTMENT**

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@LandrecordKP

Peshawar dated the February 04, 2022

NOTIFICATION:

No. LR-V/Settlement/T&P/ 556-67 Consequent upon the suspension of Mr. Chan Zeb, Settlement Naib Tehsildar (OPS), Settlement Operation Mansehra and his repatriation to Revenue Side/Deputy Commissioner, Abbottabad, the Competent Authority is pleased to transfer and post Mr. Nawaz Hassan Abbasi, Naib Tehsildar (OPS) Settlement Operation Abbottabad in his place in the best public interest with immediate effect till further orders.

Approved by
Competent Authority

Endst: No. & Date even

Copy for information forwarded to the:-

1. Commissioner, Hazara Division Abbottabad.
2. Deputy Commissioners, Abbottabad and Mansehra.
3. Settlement Officers, Abbottabad and Mansehra.
4. District Accounts Officers, Abbottabad and Mansehra.
5. PS to Special Assistant to Chief Minister on Revenue & Estate, Khyber Pakhtunkhwa.
6. PS to Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
7. Officials concerned for compliance.
8. Office order file.

Atkin
Superintendent
**SUPERINTENDENT
LAND RECORD, KPK**

[Signature]
**Director Land Records/
Chief Settlement Officer
Khyber Pakhtunkhwa**



5 10

**GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT**

Phone: 091-9210057, Fax: 091-9213989
E-Mail: landrecord.kpk@gmail.com

fb.com/landrecord.kpk
@LandrecordKP

Peshawar dated the 18/03/2022

NOTIFICATION

No. LR-V/Settlement/Mansehra/P&T/ 2268-86 The following posting/
transfer amongst Settlement Naib Tehsildars/Settlement Kanungos in the Settlement Operations is
hereby ordered with immediate effect in best public interest:

S. No.	Name of Officials	From	To	Remarks
1.	Mr. Ifikhar Ahmad	Waiting for posting in the office of Commissioner Peshawar.	Settlement Naib Tehsildar Circle-II, Nowshera	Against the vacant post
2.	Mr. Nawaz Hassan Abbasi	Settlement Naib Tehsildar Mansehra (OPS)	Settlement Naib Tehsildar (OPS) Havelian Abbottabad	Against the vacant post
3.	Mr. Niaz Muhammad	Naib Tehsildar Darband Mansehra	Settlement Naib Tehsildar Mansehra	Vice S. No. 02
4.	Mr. Zahid Hussain	Under repatriation to Deputy Commissioner Nowshera vide Board of Revenue office order No. LR-V/SO/NSR/1372-79 dated 28.02.2022	On acceptance of his departmental appeal, posted as Settlement Kanungo Circle Nowshera.	

Note:- Officials at S.No.2 & 3 will hand/take over their respective charges after 31.03.2022.

Approved By
Competent Authority

Endst: No. & Date even:-

Copy forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa.
2. Divisional Commissioners Peshawar and Hazara.
3. Secretary-I, Board of Revenue, Khyber Pakhtunkhwa.
4. Deputy Commissioners Peshawar, Abbottabad, Nowshera and Mansehra.
5. Settlement Officers Abbottabad, Nowshera and Mansehra.
6. District Accounts Officers Nowshera, Abbottabad and Mansehra.
7. PS to SMBR/Secretary Revenue & Estate Department Khyber Pakhtunkhwa.
8. Officials concerned for compliance.
9. Office Order File

Director Land Records
Chief Settlement Officer
Khyber Pakhtunkhwa

SUPERINTENDENT
LAND RECORD, KPK

D 11



GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF LAND RECORDS
REVENUE AND ESTATE DEPARTMENT

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Peshawar dated the 21/09/2022.

OFFICE ORDER

No.LR-IV/SR/P&T/Vol-III/20166-74 The following posting / transfer amongst Kanungos/Settlement Naib Tehsildars in Settlement Operation Abbottabad is hereby ordered with immediate effect in the public interest:-

S.No	Name with Designation	From	To	Remarks
01	Mr. Chanzeb Khan, Kanungo	Kanungo Circle Abbottabad	Settlement Naib Tehsildar Havelian, Abbottabad (OPS)	Vice S.No.02
02	Mr. Hassan Nawaz Abbasi, Kanungo	Settlement Naib Tehsildar Havelian, Abbottabad (OPS)	Repatriated to his parent office i.e. DC office Abbottabad	

This issues with the approval of Senior Member, Board of Revenue.

Director Land Records
Chief Settlement Officer.

Endst No. & Date Even.

Copy forwarded to the;

1. Divisional Commissioner, Hazara Division, Abbottabad.
2. Deputy Commissioner, Abbottabad.
3. Settlement Officer, Abbottabad.
4. Additional Deputy Commissioners (G) Abbottabad.
5. District Accounts Officer, Abbottabad.
6. Senior Private Secretary to Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
7. Officers / Officials concerned for compliance.
8. Personal Files.

Director Land Records
Chief Settlement Officer.

SUPERINTENDENT
LAND RECORD, KPK

E (12)
کفرہ صاحب

DLR رقبہ ایسٹ آف ریلوینو کٹارہ

صاحب عالی

گذشتہ سیکہ سائل عرصہ گزشتہ پانچ ماہ سے

آپ کے زیر مابہ نائب تحصیلدار سبڈو سبڈو حویلیاں

لغبات ہے۔ اور رقبہ کام اعانداری اور قیمت سے

LR-17/SR/PQT/11701-111/20166-74

سر انجام دے رہا ہے۔ صاحب نے ہر آرڈر

سنہ 22/09/2022 کو وائس حوالہ ڈیپٹی کمشنر اسٹ آباد کر دیا ہے۔

صاحب عالی۔ سرور گذشتہ سیکہ بھی تک دورانہ مکمل نہ ہوا اور

حجے قبل از وقت تبدیل کر دیا گیا ہے۔ جو کہ صوبائی حکومت کا

لغباتی و تبادلہ یا کسی کے حذف ہے۔

اسیہ گذشتہ سیکہ حکم مذکورہ کو منسوخ فرمایا جا رہا ہے۔

صاحب کی سفارشات کے لئے دعاؤں میں

22/09/2022

موقوف

لنور حسن عباسی نائب تحصیلدار سبڈو سبڈو حویلیاں

ضلع اسٹ آباد

Signature

Signature
SUPERINTENDENT
LAND RECORD, KPK



F (13)
GOVERNMENT OF KHYBER PAKHTUNKHWA
(DIRECTORATE OF LAND RECORDS)
REVENUE AND ESTATE DEPARTMENT

E-Mail: landrecordkpk@gmail.com

Phone: 091-9210057

@LandrecordKP
fb.com/landrecord.kp

Peshawar dated the 23/09/20

No.LR-V/SO'Atd/ 20344-46


To

✓ The Settlement Officer
Abbottabad

Subject:

APPLICATION OF MR. NAWAZ HASSAN ABBASI, SETTLEMENT NAIB
TEHSILDAR, HAVELIAN

I am directed to enclose herewith application of Mr. Nawaz Hassan Abbas
Settlement Naib Tehsildar (OPS), Settlement Operation Havelian, Abbottabad with the request
to furnish view/comments on the content of the application please.


Deputy Director Land Records
Khyber Pakhtunkhwa

Encl: No. & date even.

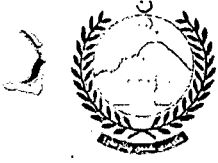
Copy forwarded for information to the:-

- 1) PS to Secretary to Govt. of Khyber Pakhtunkhwa, Revenue & Estate Department.
- 2) PA to Director Land Records, Khyber Pakhtunkhwa.


Deputy Director Land Records
Khyber Pakhtunkhwa


SUPERINTENDENT
LAND RECORD, KPK





OFFICE OF THE SETTLEMENT
OFFICER ABBOTTABAD

No.App/2022-23/ 2695 /SO/ATD Dated Abbottabad the: 23/09/2022

To

The Director Land Records/Chief Settlement Officer
Khyber Pakhtunkhwa, Peshawar

Subject: **APPLICATION OF MR. NAWAZ HASSAN ABBASI, SETTLEMENT
NAIB TEHSILDAR, HAVELIAN**

This is with reference to your office order No.LR-IV/SR/P&T/Vol-III/20166074 dated: 21/09/2022 on the captioned subject and to state that Mr. Nawaz Hassan Abbasi, Settlement Naib Tehsildar (OPS) is a competent revenue officer, working for the last one year in Settlement Operation. During his period, the official has conducted inspections of completed mouzas, resultantly, the mouzas were consigned to District Administration. Moreover, the official is again transfer without completing his tenure.

Thus, it is requested that the ibid under transfer official may be retained on the post of Settlement Naib Tehsildar (OPS) Tehsil Havelian, Abbottabad in the best interest of the Settlement Operation.

SETTLEMENT OFFICER
ABBOTTAABD

Attest
[Signature]
SUPERINTENDENT
LAND RECORD, KPK

[Signature]

53 18



GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF LAND RECORDS
REVENUE AND ESTATE DEPARTMENT

E-Mail: landrecords.kpk@gmail.com

Phone: 091-9210057

@LandrecordsKP
in.com/landrecords.kpk

Peshawar dated the 05/10/2022

OFFICE ORDER

No.LR-V/S.O/P&T/ 21342-56 The following posting / transfer amongst
Kanungos/Settlement Naib Tehsildars in Settlement Operations is hereby ordered with immediate
effect in the public interest:-

S.No	Name with Designation	From	To	Remarks
01	Mr. Chanzeb Khan, Kanungo	Settlement Naib Tehsildar Havelian, Abbottabad (OPS)	Repatriated to his parent office i.e. DC office Abbottabad	
02	Mr. Irshad Khan, Settlement Kanungo	Peshi Kanungo, Settlement Operation, Mansehra.	Settlement Naib Tehsildar Havelian, Abbottabad (OPS)	Vice No.02

This issues with the approval of Senior Member, Board of Revenue.

[Signature]
Director Land Records
Chief Settlement Officer.

Endst No. & Date Even.

Copy forwarded to the:

1. Divisional Commissioner, Hazara Division, Abbottabad.
2. Deputy Commissioners, Mansehra and Abbottabad.
3. Settlement Officers, Mansehra and Abbottabad.
4. Additional Deputy Commissioners (C), Mansehra and Abbottabad.
5. District Accounts Officers, Mansehra and Abbottabad.
6. Senior Private Secretary to Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
7. Officers / Officials concerned for compliance.
8. Personal Files.
9. Office order file.

ATTESTED

[Signature]
Director Land Records
Chief Settlement Officer.

H

16

لکھنؤ صوبہ D.L.R سپورٹس بورڈ آف انڈیا لکھنؤ

منشی

LR-W/SR/P-201/111-20166-74

لکھنؤ سپورٹس بورڈ آف انڈیا

صوبہ 21/09/2022 کو ہوا جس کے خلاف میں نے حکمانہ اپیل دائر کر رکھی ہے۔

میں آج صوبہ 5/10/2022 کو اپنی اپیل کی معلومات کے لئے دفتر حاضر ہوا تو معلوم

ہوا کہ ایک آرڈر نمبر LR-V/340/P-27/21342-56 صوبہ 5/10/2022 کو ہو چکا ہے۔

جو کہ سپریم کورٹ کی طرف قانون ہے۔ سپریم کورٹ کے فیصلہ تک حکم مذکورہ

موقوف و فٹا ہوا ہے۔ اپیل کے ~~مذکورہ~~ دوران جو آرڈر مذکورہ لیا گیا ہے

وہ خلاف قانون ہے

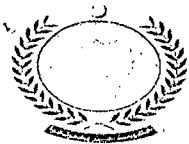
اسیذا آرڈر مذکورہ کو مسترد کر دیا جائے سپریم کورٹ کے فیصلہ و فٹا ہوا ہے۔

05/10/2022

لکھنؤ صوبہ سپورٹس بورڈ آف انڈیا

منشی اسد علی

ACCEPTED



I (7)
GOVERNMENT OF KHYBER PAKHTUNKHWA
(DIRECTORATE OF LAND RECORDS)
REVENUE AND ESTATE DEPARTMENT

E-Mail: landrecord.kpk@gmail.com

Phone: 091-9210057

@LandrecordKP
fb.com/landrecord.kpk

No.LR-V/SO/Atd/ 21452-54

Peshawar dated the 06/10/2022.

To

The Settlement Officer
Abbottabad

Subject: APPLICATION OF MR. NAWAZ HASSAN ABBASI, SETTLEMENT NAIB
TEHSILDAR, HAVELIAN

I am directed to refer to your letter No. 2695 dated 23.09.2022 on the captioned subject and to state that the request cannot be entertained, hence filed.

sd/
Assistant Director Land Records
Khyber Pakhtunkhwa

Endst: No. & date even.

Copy forwarded for information to the:-

- 1) PS to Secretary to Govt; of Khyber Pakhtunkhwa, Revenue & Estate Department.
- 2) PA to Director Land Records, Khyber Pakhtunkhwa.

Assistant Director Land Records
Khyber Pakhtunkhwa

~~ATTESTED~~

ANNURE

J-18
18

Posting - Transfer Policy - updated till 10-Jan, 2009



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 ²three 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.
- (vii) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for at least eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.
- (viii) 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 the place where the Police Station (Thaana) of his area/residence is situated.
- (ix) No posting/transfers of the officer's/officials on detailment basis shall be made.
- (x) 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.
- (xi) All the posting/transferring authorities may facilitate the posting/transfer of the Government servants at the station of the residence of their parents.

Para-(v) regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No. SOR-VI (E&AD) 1-4/2008/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) 1-4/2008, dated 21-09-2008

ATTACHED

18

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- 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 most normal posts by the APUG, PCS (Gen) and PCS (Spec).	-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)/1-1/2005, dated 9-7-2005.

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ATTESTED



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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 / 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.

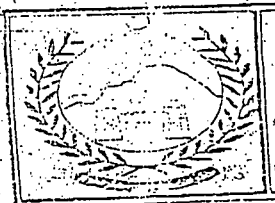
All concerned are requested to ensure that tenures of the concerned officers/officials are invariably mentioned in summaries submitted to the Competent Authorities for Posting/Transfer.
(Authority: O.A. No. (OR-VI/E&AD)/4/2003 dated 24-6-2003).

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.

(Handwritten signature)

ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

(REGULATION WING)

NO. SOR.VI (E&AD) 1-4/2005/Vol-II

Dated Peshawar, 27th February, 2013

Handwritten notes and stamps on the right margin, including a circular stamp with the number 31.

To
Handwritten name in Urdu script.

1. The Additional Chief Secretary (P&D) Khyber Pakhtunkhwa
2. The Additional Chief Secretary (P&A) Khyber Pakhtunkhwa
3. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa
4. All Commissioners in Khyber Pakhtunkhwa

Subject: CONSTITUTION PETITION NO. 23 OF 2012 OUT OF SUO MOTO CASE NO. 3/2012 (PETITION BY MS ANITA TURAB FOR PROTECTION OF CIVIL SERVANTS REGISTERED UNDER ARTICLE 184(3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973)

Sir,
I am directed to refer to the subject noted above and to state that the Supreme Court of Pakistan vide the subject cited judgment has enunciated the following principles of Law with regard to protection and conduct of civil servants.

- (i) Appointments, Removals and Promotions: Appointments, removals and promotions must be made in accordance with the law and the rules made thereunder, 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.
- (ii) Tenure, Posting and Transfer: When the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for compelling reasons which should be recorded in writing and are judicially reviewable.

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ATTESTED

ATTESTED

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(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.

(iv) OSD: Officers should not be posted as OSD except for compelling reasons, which must be recorded in writing. If at all an officer is to be posted as OSD, such posting should not exceed 03 months. If there is a disciplinary inquiry going on against him/her such inquiry must be completed at the earliest. The officer on special duty may be posted against a post of his/her equivalent pay scale/grade within 03 months of his/her order as OSD.

2. I am, therefore, directed to request you to note the above principles of law for strict compliance.

Yours faithfully,

NAJAM
(NAJ-MUS-SAHAR)
SECTION OFFICER (REG-VI)

Encl: as above.

A copy is forwarded to:-

1. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. The Secretary Provincial Assembly, Khyber Pakhtunkhwa.
4. The Accountant General, Khyber Pakhtunkhwa.
5. The Registrar, Peshawar High Court, Peshwar.
6. The Secretary Khyber Pakhtunkhwa, Public Service Commission.
7. All Addl: Secretaries Establishment & Administration Department.
8. All Deputy Secretaries in Establishment & Administration Department.

NAJAM
SECTION OFFICER (REG-VI)

~~RECEIVED~~

Attested

VAKALATNAMA

NO. _____/20

IN THE COURT OF KP Service Tribunal, Peshawar

Nawaz Hassan Abbasi Appellant
Petitioner
Plaintiff

VERSUS

Revenue Deptt Respondent (s)
Defendants (s)

I/WE Nawaz Hassan Abbasi (Appellant)
do hereby appoint and constitute the **SYED NOMAN ALI BUKHARI Advocate High Court** for the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party to commence and prosecute / to appear and defend this action / appeal / petition / reference on my / our behalf and all proceedings that may be taken in respect of any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take documents, to accept the process of the court, to appoint and instruct council, to represent the aforesaid Appellant, Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party agree(s) ratify all the acts done by the aforesaid.

DATE _____/20

[Signature]
(CLIENT)

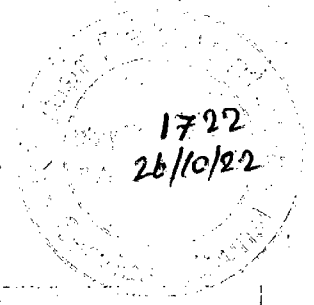
ACCEPTED

[Signature]
UZMA Syed
(Advocate)

[Signature]
SYED NOMAN ALI BUKHARI
ADVOCATE HIGH COURT
BC-15-5643

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

PROFORMA FOR EARLY HEARING

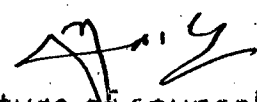


FORM 'A'

To be filled by the Counsel/Applicant

Case Number	1461/2022		
Case Title	Muhammad Nawaz Abbasi v. Revenue Department. etc		
Date of Institution	21/11/2022		
Bench	SB <input checked="" type="checkbox"/>	DB	
Case Status	Fresh <input checked="" type="checkbox"/>	Pending	
Stage	Notice	Reply	Argument
Urgency to clearly stated.	Interim Relief		
Nature of the relief sought.	Interim Relief		
Next date of hearing	21 st 2022		
Alleged Target	-		
Date	25/10/2022		
Counsel for	Petitioner <input checked="" type="checkbox"/>	Respondent	In person

Be listed in 2nd week of November.
Allowed.
26/10/22


Signature of counsel/party

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

PROFORMA FOR EARLY HEARING

FORM 'B'

Inst#

Early Hearing _____ -p/20 _____

In case No. 1461 _____ -p/20 22

M. Nawaz Abbasi Vs Revenue Department others.

Presented by M. Musaddique Zahid Adv on behalf of APPLICANT. Entered in the relevant register.

Put up alongwith main case 1461/2022

Last date fixed	17 ¹⁰ / ₂₀₂₂
Reason(S) for last adjournment, if any by the Branch Incharge.	unavailability of Counsel
Date(s) fixed in the similar matter by the Branch Incharge	
Available dates Readers/Assistant Registrar branch	

Assistant Registrar

REGISTRAR

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL PESHAWAR**

SCANNED
KPST
Peshawar

CM No. _____/2022
IN
Service Appeal No. 1461 /2022

Muhammad Nawaz Abbasi

...APPELLANT

VERSUS

Revenue Department & others.

...RESPONDENTS

SERVICE APPEAL


INDEX

S. #	Description	Page Nos.	Annexure
1.	Application alongwith affidavit	1 to 2	
2.	Wakalatnama		

....APPELLANT

Through

Dated: 25/10 /2022


 (Muhammad Musaddique Zahid)
 Advocate High Court, Abbottabad

BEFORE THE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL PESHAWAR

CM No. _____/2022
IN
Service Appeal No. 1461/2022

Muhammad Nawaz Abbasi

...APPELLANT

VERSUS

Revenue Department & others.

...RESPONDENTS

SERVICE APPEAL

APPLICATION FOR EARLY FIXATION OF TITLED SERVICE
APPEAL AND REQUISITION OF RECORD

Respectfully Sheweth; -

1. That the titled appeal is pending adjudication before this Honourable Court and is fixed for preliminary arguments.
2. That the appellant has brought a good prima facie arguable case and balance of convenience is also tilts in his favour.

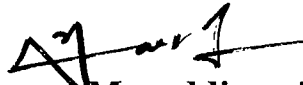
3. That the matter in hand is of urgent nature and valuable rights of the appellant are involved in the present lis.
4. That if the titled appeal is not fixed for an early date, the appellant will suffer irreparable loss and purpose of filing of titled appeal will be defeated.

It is, therefore, humbly prayed that on acceptance of the instant application, titled appeal may graciously be fixed for an early date in the interest of justice and the record be requisitioned.

....APPELLANT

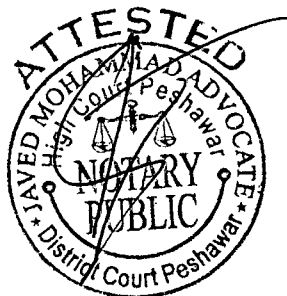
Dated: 25/10/2022

Through



(Muhammad Musaddique Zahid)
Advocate High Court, Abbottabad

AFFIDAVIT:-

I, Muhammad Nawaz Abbasi son of Noor Hassan Abbasi resident of Banda Khair Ali Khan, Tehsil & District Abbottabad, do hereby solemnly affirm and declare that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.



25 OCT 2022


DEPONENT

وکالت نامہ

کورٹ فیس

بعدالت صدر دفتر جیٹ روڈ لاہور
عنوان: محمد نواز مسک بنام ایجوکیشنل سوسائٹی ریسٹورنٹ
منجانب: ایڈوانس
نوعیت مقدمہ: ایڈوانس

باعث تحریر آنکہ ایڈوانس

مقدمہ مندرجہ میں اپنی طرف سے واسے پیروی وجواب دہی کل کاروائی متعلقہ آں مقام
محمد صدوق زما ایڈوانس بنام ایجوکیشنل سوسائٹی ریسٹورنٹ

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل صاحب
موصوف کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف و دینے اقبال دعویٰ اور بصورت دیگر ڈگری کرانے اجراء
وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور
کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی بجائے تقرر کا اختیار
بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا ساختہ پرداختہ مجھ کو منظور و
قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب ہوں گے۔
نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب موصوف
پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں کوئی جزو بقایا ہو تو وکیل صاحب موصوف
مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بمراد استجارت ناش بصیغہ مفلسی کے دائر کرنے اور اس کے
پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کر دیا تاکہ سند رہے۔

المرقوم: محمد نواز مسک

بمقام: ایڈوانس

محمد نواز مسک

محمد نواز مسک

محمد نواز مسک

2011 P L C (C.S.) 935**[Supreme Court of Pakistan]****Present: Sardar Muhammad Raza Khan, Muhammad Akhtar Shabbir and
Sarmad Jalal Osmany, JJ
MUHAMMAD ILYAS KHAN****Versus****SENIOR MEMBER, BOARD OF REVENUE, N.-W.F.P., PESHAWAR and
others**

Civil Petition No.1337 of 2008, decided on 16th October, 2008.

(On appeal from the judgment, dated 25-9-2008 passed by the N.-W.F.P. Service Tribunal in Appeal No.806 of 2008).

North-West Frontier Province Local Government Ordinance (XIV of 2001)---

---S. 30(3)---Constitution of Pakistan, Art.212(3)---Successive transfers---Scope--- Respondent was Patwari who was transferred to three stations within a span of eight months---Service Tribunal accepted appeal filed by respondent Patwari and set aside his transfer orders---Validity---Successive transfers of respondent to three stations within a span of eight months were against posting/transfer policy of Provincial Government, which indicated that a government servant should not be transferred in ordinary circumstances, prior to completion of a period of three years at one place of posting---Transfer order of respondent was passed during ban period, prematurely under political influence, as copy of the same was sent to private secretary to Provincial Minister for Revenue---Tenure of posting of an officer or official of Government to a District Government was provided in S.30(3) of North-West Frontier Province Local Government Ordinance, 2001, as three years but any officer could be transferred earlier due to exigency of service or in public interest---Dispute raised in petition for leave to appeal related to an individual grievance and no substantial question of law of public importance was involved to warrant interference by Supreme Court under Art.212 (3) of the Constitution---Supreme Court did not find any illegality or infirmity in the judgment passed by Service Tribunal so as to justify interference by Supreme Court under Art.212(3) of the Constitution---Petition was dismissed.

Zahid Akhtar v. Government of Punjab PLD 1995 SC 530; Muhammad Nasir Khan v. Secretary Education, Government of Punjab and others 2000 PLC (C.S.) 312; Abdul Haq v. G.M. S.N.G.P. Ltd. 2000 SCMR 925; Muhammad Binyamin v. WAPDA 1991 SCMR 382; Muhammad Azim v. Chief Engineer Irrigation 1991 SCMR 255; Muhammad Nawaz v. Divisional Forest Officer, Islamabad and 2 others 1982 SCMR 880; Arif Ghafoor v. Managing Director, H.M.C. Taxila and others PLD 2002 SC 13; Saboor Ahmad v. Managing Director, Sui Southern

Company Limited and another 2002 SCMR 953 and Faiz Ahmad V. Deputy Postmaster-General, Lahore and others 1991 SCMR 368 rel.

Qazi Muhammad Anwar, Senior Advocate Supreme Court and Arshad Ali Chaudhry, Advocate-on-Record for Petitioner.

Hafiz S.A. Rehman, Senior Advocate Supreme Court, Haroon governance demands that efforts should be made to fill up the permanent vacant posts and vacancies within a reasonable period of time. Our constitutional and legal system attaches foremost importance to transparency and fairness in the administration of matters relating to appointment and career building of civil servants who are required to perform sensitive public duties strictly in accordance with law. There is no room for spoils system in our jurisprudence.

This petition along with C.M.A. No.3449 of 2010 is disposed of in terms of directions contained in paragraph 18 of this judgment.

M.H./S-35/K. Order accordingl

2016 P L C (C.S.) 526

[Lahore High Court]

Before Mahmood Ahmad Bhatti, J

MUMTAZ AHMAD KHAN

Versus

SECRETARY TO GOVERNMENT OF THE PUNJAB, LOCAL GOVERNMENT AND COMMUNITY DEVELOPMENT DEPARTMENT, LAHORE and 2 others

W.P.No.7692 of 2015, heard on 27th May, 2015.

(a) Employee of Provincial autonomous body---

----Transfer of employee---Mala fide---Effect---Two orders of transfer of employee were made within a span of a fortnight---Validity---Employee (petitioner) was not a government servant but was an employee of Local Government Board which was an autonomous body---Where a person complained of the violation of statutory rules or had challenged an order which was tainted with mala fides then constitutional petition was maintainable---Employee was ordered to be repatriated to an authority which had ceased to exist and had become defunct---Validity---Employee was not treated fairly, justly and equitably---Transfer of employee was not in the public interest or was not necessitated by an exigency or his services were not required for a particular post or for a particular station---Employee had been made an officer-on-special duty and had been left in the lurch---If courts of law countenanced and approved such exercise of authority then it would make a mockery of law and travesty of justice---Such acts of department would not give a message of hope to the honest and scrupulous persons and might tend to undermine their confidence---Employees of government or autonomous bodies were not to be made rolling stones---Impugned order passed by the department was declared to have been passed without lawful authority and of no legal effect and authority---Employee would continue to discharge his duties at the place where he was performing the same prior to his transfer--Impugned order was set aside---Constitutional petition was accepted in circumstances.

Zahid Akhtar v. Government of Punjab PLD 1995 SC 530; Syed Mahmood Akhtar Naqvi v. Federation of Pakistan and others PLD 2013 SC 195; Regarding Corruption in Hajj Arrangements in 2010 PLD 2011 SC 963=2011 PLC (C.S.) 1489 and Zarai Taraqati Bank Limited and others v. Said Rehman and others 2013 SCMR 642 rel.

(b) Constitution of Pakistan---

----Art. 199---Constitutional petition---Maintainability---Where a person complained of the violation of statutory rules or had challenged an order which was tainted with mala fides then constitutional petition was maintainable.

Zarai Taraqati Bank Limited and others v. Said Rehman and others 2013 SCMR 642 rel.

Allah Bakhsh Khan Kulachi for Petitioner.

Muhammad Javed Saeed, A.A.G. for Respondents Nos.1 and 2.

Muhammad Akram Chaudhary for Respondent No.3.

Date of hearing: 27th May, 2015.

JUDGMENT

MAHMOOD AHMAD BHATTI, J.--- Mumtaz Ahmad Khan, the petitioner has filed this petition to assail the vires of a Notification No. LCS (Admn)-7(371)/2012-P dated 19.5.2015 (Annex. "E") issued by the Secretary to Govt. of Punjab, Local Govt. and Community Development Department, Lahore, respondent No.1, whereby the petitioner was ordered to be transferred from TMO, TMA Choubara and Asif Javed, respondent No.3 was posted as TMO, TMA Choubara in his place.

2. The facts, in brief, are that the petitioner was performing his duties in DG Khan Development Authority. This authority was wound up some ten years ago, rendering the petitioner jobless and obliging him to file W.P. No. 8304 of 2010, which was allowed by the order dated 22.4.2014 directing the respondents to absorb the petitioner in any department of the Government of Punjab. Consequently, the petitioner was appointed as Tehsil Municipal Officer (BS-17), Choubara by virtue of an order dated 10.7.2014 passed by respondent No.1 herein. He assumed the charge as TMO, Choubara but within a span of four months, he developed differences with the Administrator, T.M.O./ Assistant Commissioner, Choubara who dispensed with his services vide order dated 4.11.2014. Once again, the petitioner instituted W.P. No.15123 of 2014. It seems that despite the restraining order dated 7.11.2014, the petitioner resigned to his fate. He, was ordered to take over as TMO, TMA Karor Lal Eason vide order dated 4.5.2015 passed by respondent No.1 herein. In compliance with the aforesaid order he assumed the charge of the office of Tehsil Municipal Officer, TMA Karor Lal Eason, on 6.5.2015. Before he could settle in, he has been ordered to pack up and hand over the charge to Asif Javed (BS-16), respondent No.3 vide the impugned order dated 19.5.2015.

3. It is the contention of the learned counsel for the petitioner that the petitioner is not being allowed to discharge his duties conscientiously. At first, the Administrator, TMA Choubara ordered his repatriation to his parent department vide order dated 4.11.2014, knowing full well that DG Khan Development Authority had become defunct and dysfunctional. When the petitioner challenged this order by filing W.P. No.15123 of 2014, better sense prevailed and respondent No.1 Secretary to the Government of

Punjab, Local Government and Community Development Department, Lahore appointed him to the post of TMO, Karor Lal Eason vide order dated 4.5.2015. He complied with the order and assumed the charge on 6.5.2015. Thereafter, he was to be allowed to continue functioning as TMO, TMA Karor Lal Eason. Instead, he was given the marching orders by respondent No.1 vide the impugned order dated 19.5.2015. This time around he has been directed to report to PLGB for further orders, meaning thereby that he has been left in the lurch. It is stressed by him that two orders of transfer of the petitioner within a span of a fortnight are tainted with mala fide, besides being violative of the law laid down by the Honourable Supreme Court of Pakistan in the cases reported as Zahid Akhtar v. Government of Punjab (PLD 1995 SC 530), Syed Mahmood Akhtar Naqvi v. Federation of Pakistan and others (PLD 2013 SC 195) and Regarding Corruption in Hajj Arrangements in 2010 PLD 2011 SC 963=2011 PLC (C.S.) 1489. He has concluded his arguments by making submission that if civil servants and public functionaries are made rolling stones, it would cause disquiet and resentment among them. They would become disillusioned and disenchanted, which would erode their confidence.

4. Conversely, the learned counsel for respondent No.3, who entered appearance at limine stage and at whose instance this case is being treated as a PUCCA CASE has argued that respondent No.3 has been reverted to his original post. Therefore, it cannot be contended with any amount of persuasion that he is instrumental in bringing about the down-fall of the petitioner or has any hand in sending him packing to Punjab Local Government Board (PLGB), Lahore. In short, no favour has been shown to respondent No 3. He has also contested the claim of the petitioner that his transfer from Karor Lal Eason is politically motivated. He has also putforth the argument that this Court lacks jurisdiction to entertain this petition in view of the bar contained in Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973.

5. The learned Law Officer remained equivocal and tight-lipped.

6. I have heard the learned counsel for the parties at considerable length and perused the record annexed to the writ petition, in addition to mulling over the cases cited by the learned counsel for the petitioner. To take up the last argument of the learned counsel for respondent No.3 first, it needs to be clarified that the petitioner is not a government servant. He is an employee of the Punjab Local Government Board, Lahore, which is an autonomous body. This is evident from his appointment letter dated 10.7.2014 (Annex. "A/II"). His services are being governed by the Punjab Local Govt. District Service (TMA Cadre) Rules, 2005. It is well-established law that where a person complains of the violation of statutory rules or challenges an order, which is tainted with mala fides, he can maintain a writ petition. Suffice it to make reference to the judgment of the Honourable Supreme Court of Pakistan reported as Zarai Taraqiati Bank Limited and others v. Said Rehman and others (2013 SCMR 642). I am of the view that Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973, is not a bar to the entertaining and deciding this writ petition.

7. From the facts set out in the preceding paragraphs, it is crystal clear that the petitioner is getting a raw deal. He is not being treated fairly, justly and equitably. At one time, he was shown the door, while at another time he was ordered to be

repatriated to an Authority, which had long ceased to exist and has become defunct. Now, before he could learn the ropes and settle in, he was given the marching orders and asked to pack up and that too within a span of a fortnight. From a perusal of the impugned order, it is crystal clear that it has not been claimed by respondent No.1 either that the transfer of the petitioner is in the public interest or is necessitated by an exigency or that his services are required for a particular post or for a particular station. To all intents and purposes, he has been made an OSD and left in the lurch. If the Courts of law countenanced and approved of such naked exercise of authority, it would make a mockery of law and travesty of justice. Besides, it would not give a message of hope to the honest and the scrupulous and might tend to undermine their confidence, which is not in the interest of anybody in the long run. The employees of the government or autonomous bodies are not to be made rolling stones, as has been held by the Honourable Supreme Court of Pakistan in the cases relied upon by the learned counsel for the petitioner.

For what has been stated above, this writ petition is allowed and the impugned order dated 19.5.2015 passed by the Secretary, Punjab Local Government Board is declared to have been passed without lawful authority and of no legal effect and accordingly is set aside with the result that the petitioner would continue to discharge his duties as TMO, Karor Lal Eason, District Layyah.

ZC/M-238/L Petition allowed.

Date of hearing: 7th December, 2012.

ORDER

MIAN SAQIB NISAR, J.---Petitioner pre-emptor has lost his cause on the issue of *Talbs* before the forums below as the attesting witnesses of the notice of *Talb-i-Ishhad* have not been examined by him. In the context of the above, it is expedient to reproduce section 13 of the Punjab Pre-emption Act, 1991 which reads as below:--

"13. Demand of pre-emption.---(1) The right of pre-emption of a person shall be extinguished unless such person makes demands of pre-emption in the following order, namely:--

- (a) "Talb-i-Muwathibat";
- (b) "Talb-i-Ishhad"; and
- (c) Talb-i-Khusumat'.

Explanation.---(1)

Note.---

(II)

(III)

(2)

- (3) Where a pre-emptor has made *Talb-i-Muwathibat* under subsection (2); he shall as soon thereafter as possible but not later than two weeks from the date of knowledge make *Tabl-i-Ishhad* by sending a notice in writing attested by two truthful witnesses, under registered cover acknowledgment due, to the vendee, confirming his intention to exercise the right of pre-emption."

It is clear from the above, that for the purposes of *Talb-i-Ishhad* the notice thereof has to be attested by two truthful witnesses. This is the mandate of law and sine qua non for the making of a valid *Talb-i-Ishhad* and also for the exercise of right of pre-emption. The question, therefore, which arises in the pre-emption matters is, as to how such notice should be proved, if it is disputed by the defendant-vendee of the case. In this regard, the provisions of Article 79 of the Qanun-e-Shahadat Order, 1984 are relevant which stipulates:--

"79. Proof of execution of document required by law to be attested.--If a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses at least

have been called for the purpose of proving its execution, if there be two attesting witnesses alive, and subject to the process of the Court and capable of giving evidence".

Reading the two noted provisions together, it is vivid that a document which is required by law, as in preemption suits, the notice of *Talb-i-Ishhad* is required by section 13 (ibid) to be attested by two witnesses and it (the document) shall not be used in evidence until and unless two witnesses have been produced to prove the attestation of the same. In the instant case, as mentioned earlier, the alleged witnesses of the notice of *Talb-i-Ishhad* have not been examined by the petitioner with the consequences that the alleged notice does not qualify the test of proof as envisaged by Article 79 of the Qanun-e-Shahadat Order, 1984 and thus cannot be used as a piece of evidence to prove the making of *Talb-i-Ishhad* by the petitioner, meaning thereby that his right of pre-emption "shall be extinguished" as mandated by section 13 ibid. Therefore, we do not find any merit in this petition which is hereby dismissed and leave is refused.

MWA/A-33/S

Petition dismissed.

P L D 2013 Supreme Court 195

Present: Iftikhar Muhammad Chaudhry, C.J.,
Jawwad S. Khawaja and Khilji Arif Hussain, JJ.

Syed MAHMOOD AKHTAR NAQVI
and others---Petitioners

versus

FEDERATION OF PAKISTAN
and others---Respondents

[Petition by Ms. Anita Turab for protection of Civil Servants. In re]

Constitution Petitions Nos.23 and 11. Criminal Original Petitions Nos.23, 24 and 27, H.R.C. No. 1442/P, C.M.As. Nos. 1575, 1611, 1792, 197-K and 231-K and Criminal Miscellaneous Application No.587 of 2012 in Criminal Original Petition No. 24 of 2012 in Constitution Petition No.11 of 2012.

(a) *Civil Servants Act (LXXI of 1973)*---

---Ss. 4, 5, 9 & 10---*Civil Servants (Appointment, Promotion and Transfer) Rules, 1973*---*Constitution of Pakistan, Arts. 9, 14, 18 & 184(3)*---*Constitutional petition under Art. 184(3) of the Constitution seeking elaboration of constitutional and legal safeguards relating to*

Appellant

the working of civil servants---Maintainability---Matter of tenure, appointment, posting, transfer and promotion of civil servants could not be dealt with in an arbitrary manner; it could only be sustained when it was in accordance with the law---Decision which deviated from the accepted or rule-based norm without proper justification, could be tested on the touchstone of a manifest public interest---Fundamental rights of civil servants, inter alia, under Arts. 9, 14 & 18 of the Constitution were aspects arising in the present constitutional petition---Constitutional petition was maintainable. [pp.202,205] A & F

Tariq Aziz-ud-Din's case 2010 SCMR 1301; Syed Yousaf Raza Gillani v. Assistant Registrar PLD 2012 SC 466 and Mehmood Akhtar Naqvi v. Federation of Pakistan, Constitution Petition No.5 of 2012 ref.

(b) Civil Servants Act (LXXI of 1973)---

---S.16---Constitution of Pakistan, Arts. 5 & 184(3)---Civil servant, duties of---Non-subservience to political executive and impartiality---Scope---Although civil servants did have a duty to follow the policy guidelines and directions of the political executive yet, because of Art.5 of the Constitution, their foremost duty was "obedience to the Constitution and the law", not unthinking obedience to all directives (right or wrong) issued from the political executive---Civil servants were public servants and were, therefore, meant to take decisions only in accordance with law in the public interest---Civil servants in their capacity as advisors in decision making or as administrators and enforcers of law, were not subservient to the political executive---Civil servants were under an obligation to remain compliant with the Constitution and law, hence they were not obliged to be servile or unthinkingly submissive to the political executive---Civil servants to give advice in the best public interest and were to administer the law impartially being incharge of the machinery of the State. [p.203] B & C

Quaid-e-Azam Mohammad Ali Jinnah Speeches as Governor General of Pakistan 1947-48, Sang-e-Meei Publications, Lahore: 2004 ref.

(c) Civil Servants Act (LXXI of 1973)---

---Ss. 3 & 5---Rules of Business, (1973), R. 5(10)---Appointment and conditions of service of civil servants---Transaction of business---Civil servant, opinion of---Scope---Implementation of policy or directives, might be required in some cases notwithstanding the considered views of a civil servant to the contrary, however in such an event, the civil servant should record his/her honest and considered opinion without fear---Decisions violating the law relating to appointment and terms and conditions of service of civil servants which were manifestly wrong

and were likely to cause gross injustice or undue hardship should be considered important enough for the purpose of R. 5(10) of Rules of Business, (1973). [p. 203] D

(d) Civil Servants Act (LXXI of 1973)---

---Preamble---Object of civil Servant Act, 1973---Parliament had enacted Civil Servants Act, 1973 for providing meaningful legal guarantees to civil servants and doing away with arbitrariness---Object of Civil Servants Act, 1973 was to legally "regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of Pakistan" (Preamble)---Rule of law was the key idea reflected in the whole scheme of the Act. [p. 205] E

(e) Civil Servants Act (LXXI of 1973)---

---Ss. 4, 5, 9 & 10---Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---Constitution of Pakistan, Art. 184(3)---Constitutional petition under Art. 184(3) of the Constitution seeking elaboration of constitutional and legal safeguards relating to the working of civil servants---Tenure, appointment, promotion and posting/transfer of civil servants---Favoritism/discouragement of merit---Effect---Tenure, appointment, promotion and posting/transfer were of utmost importance in the civil service, and if same were made on merit in accordance with definite rules, instructions etc., they would rightly be considered and treated as part of the terms and conditions of service of a civil servant; however, where rules and instructions were deviated from and as a result merit was discouraged on account of favoritism, sifarish or considerations other than merit, it should be evident that the civil service would not remain independent or efficient. [p. 205] G

(f) Civil Servants Act (LXXI of 1973)---

---Ss. 5 & 11---Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---Civil Servants (Efficiency and Discipline Rules), 1973---Constitution of Pakistan, Art. 184(3)---Appointment and removal of civil servants---Principles---Whenever there were statutory provisions or rules or regulations which governed the matter of appointments of civil servants, the same must be followed, honestly and scrupulously---Even where there were no explicit rules governing the appointment process, and appointments were to be made in the exercise of discretionary powers, such discretion must be employed in a structured, transparent and reasonable manner and in the public interest---Appointing authorities could not be allowed to exercise discretion at their whims, or in an arbitrary manner; rather they were bound to act fairly, evenly and justly and their exercise of power was judicially reviewable---

Removal and dismissal of civil servants from service was not left to anyone's whims and caprice and it was governed by rules and regulations---Anachronistic concept where government servants held office during the pleasure of the Authority had no place in a dispensation created and paid for by the people. [pp. 206, 210] H & N

Tariq Aziz-ud-Din's case 2010 SCMR 1301; Corruption of Hajj Arrangement's case PLD 2011 SC 963 and Muhammad Yasin v. Federation of Pakistan PLD 2012 SC 132 ref.

(g) Civil Servants Act (LXXI of 1973)---

---S. 9---Constitution of Pakistan, Art. 184(3)---Promotion of civil servants---Discretion---Principles---Discretion in matters of promotion must be exercised fairly and in a transparent manner---Such discretion had to be understood within the four corners of the concept of rule of law upon which the system of governance was founded---Every Authority in the State was bound to obey the dictates of the law and had no personal or absolute discretion. [p. 207] I

Tariq Aziz-ud-Din's case 2010 SCMR 1301 ref.

(h) Civil Servants Act (LXXI of 1973)---

---Ss. 4 & 10---Constitution of Pakistan, Art. 184(3)---Tenure, posting and transfer of civil servants---Principles---When the ordinary tenure for a posting had been specified in the law or rules made thereunder, such tenure must be respected and could not be varied, except for compelling reasons, which should be recorded in writing and were judicially reviewable---Transfers of civil servants by political figures which were capricious and were based on considerations not in the public interest were not legally sustainable. [pp. 207, 210] J & O

Corruption of Hajj Arrangement's case PLD 2011 SC 963; Zahid Akhtar v. Government of Punjab PLD 1995 SC 530 and Farrukh Gulzar v. Secretary Local Government and Rural Development Department, Lahore and 2 others 1998 SCMR 2222 ref.

(i) Civil Servants Act (LXXI of 1973)---

---S.16---Constitution of Pakistan, Arts. 5 & 184(3)---Civil servant, duty of---Non-compliance with illegal orders of superiors---Scope---Duty of public officers was to independently discharge their functions and not be influenced by "dictatorial misuse of powers" at the hands of political figures---Civil servants were not bound to obey orders from superiors which were illegal or were not in accordance with accepted practices and rule-based norms; instead, in such situations, they must record their opinion and, if necessary, dissent---Compliance with illegal

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orders of superiors was not justified on the basis of having been issued from higher authority as it was the law and the Constitution which must be obeyed---Illegal orders (of superiors) could not be deferred on the plea that they could expose the concerned government servant to the risk of disciplinary action. [pp. 208, 210] K & P

Syed Nazar Abbas Jafri v. Secretary to the Government of the Punjab and another 2006 SCMR 606; Province of Punjab v. Azhar Abbas 2002 SCMR 1; Samiullah Khan Marwat v. Government of Pakistan 2003 SCMR 1140; Iqbal Hussain v. Province of Sindh 2008 SCMR 105; Human Rights Cases Nos.4668 of 2006, 111 of 2007 and 15283-G of 2010 PLD 2010 SC 759 and Zahid Akhtar v. Government of Punjab PLD 1995 SC 530 ref.

(j) Civil Servants Act (LXXI of 1973)---

---S.10---Constitution of Pakistan, Art. 184(3)---Posting of a civil servant as Officer on Special Duty (OSD)---Principles---Officer should not be posted as Officer on Special Duty (OSD) except for compelling reasons, which must be recorded in writing and were judicially reviewable---If at all an officer was to be posted as Officer on Special Duty (OSD), such posting should be for the minimum period possible and if there was a disciplinary inquiry going on against him, such inquiry must be completed at the earliest. [pp. 208, 210] L & Q

Corruption of Hajj Arrangement's case PLD 2011 SC 963; Mir Shah Nawaz Marri v. Government of Balochistan and others 2000 PLC (C.S.) 533; Syed Ajmal Hussain Bokhari v. Commissioner, Rawalpindi 1997 PLC (C.S.) 754; Sajjad Ahmad Javed Bhatti v. Federation of Pakistan 2009 SCMR 1448 and Lt. Col. (R.) Abdul Wajid Malik v. Government of the Punjab 2006 SCMR 1360 ref.

(k) Civil Servants Act (LXXI of 1973)---

---S.16---Constitution of Pakistan, Arts. 189, 190 & 204(2)(a)---Decision of Supreme Court---Binding nature of---Scope---Decision given by the Supreme Court on a point of law would be binding on concerned departmental functionaries who would be obliged to apply such legal principle in other similar cases regardless of whether or not a civil servant had litigated the matter in his own case---In view of Art.189 and 190 of the Constitution, a civil servant would be entitled to make a departmental representation or initiate legal proceedings before a competent forum to enforce a legal principle enunciated by the Supreme Court---Failure of a State functionary to apply a legal principle which was clearly and unambiguously attracted to a case, might expose him to proceedings under Art.204(2)(a) of the Constitution. [p. 209] M

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Al-Jehad Trust v. Federation of Pakistan PLD 1997 SC 84;
Hameed Akhtar Niazi v. The Secretary Establishment Division 1996
SCMR 1185 and Baaz Muhammad Kakar v. Federation of Pakistan PLD
2012 SC 870 ref.

(1) *Civil Servants Act (LXXI of 1973)*---

---Ss. 4, 5, 9 & 10---Constitution of Pakistan, Art. 184(3)---Tenure,
appointments, promotions and transfers of civil servants---Discretion of
Executive Authority---Interference by courts---Scope---Responsibility of
deciding suitability of an appointment, posting or transfer fell primarily
on the executive branch of the State which comprised of both the
political executive and civil servants---Decision making in relation to
tenure, appointments, promotions and transfers remained rule-based
and was not susceptible to arbitrariness or absolute and unfettered
discretion---Courts ordinarily would not interfere in the functioning of
the executive as long as it adhered to the law and established norms
and acts in furtherance of its fiduciary responsibility. [p. 210] R

عزت مآب جناب جسٹس جواد ایس خواجہ کے فیصلے کا اردو ترجمہ ملاحظہ ہو۔

[صفحات 211 تا 222]

Petitioners in person.

Hafiz S.A. Rehman, Sr. Advocate Supreme Court: Amicus
Curiae.

Abdul Fateh Malik, A.G., Adnan Karim, A.A.-G., Ali Sher
Jakhrani, AIG and Maqsood Ahmed, DSP for Government of Sindh.

Syed Arshad Hussain Shah, A.A.-G. for Government of Khyber
Pakhtunkhwa.

Azam Khattak, A.A.-G. for Government of Balochistan.

Jawad Hassan, A.A.-G. for Government of Punjab.

Date of hearing: 18th October, 2012.

JUDGMENT

JAWWAD S. KHAWAJA, J.---Many centuries before the term
'good governance' became a catch-phrase, we find a remarkably
eloquent exposition of the principles of good governance in the Epistle of
Hazrat Ali to Malik ibn Ashtar, the Governor of Egypt. The revered
Khalifa, may Allah be pleased with him, is reported to have said:
".....give careful consideration to the selection of ... officers. Confirm
them in their appointments after approval, apprenticeship and probation.
Never select men for responsible posts either out of any regard for

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personal connections or under any influence, for, that might lead to
injustice and corruption.... select for higher posts men of experience,
men firm in faith ... Such men will not fall an easy prey to temptations
and will discharge their duties with an eye on the abiding good of
others". The law and the Constitution of Pakistan, with the aim of
furthering the welfare of the people of Pakistan, articulate the same
principles. The truth is that principles pertaining to the setting up of a
just and constitutional government are eternal, not peculiar to our times.
Our law, Constitution and courts only apply these universal and time-
tested principles to the prevalent situation. In this public interest case
seeking elaboration of constitutional and legal safeguards relating to the
working of civil servants, we reaffirm these eternal principles which
have also been stressed by us in cases decided earlier.

2. The background to this matter is that Suo Motu Case No.3 of
2012 was initiated on the basis of broadcasts on different TV channels on
25-2-2012. In these broadcasts, Syeda Wahida Shah, a candidate of the
Pakistan Peoples Party for bye-election to PS-53 (Tando Muhammad
Khan) was shown slapping a member of the polling staff. The Suo Motu
case was concluded vide order dated 12-3-2012. Ms. Anita Turab, who
is a civil servant in BS-19, presently working in the Ministry of Interior,
filed an application in the aforesaid Suo Motu case. Since the case stood
concluded, the application was ordered on 12-3-2012 to be registered as
a petition under Article 184 (3) of the Constitution. It is this petition
which is being decided through the present order.

3. The grievance of the petitioner set out in her petition can be
summarized. Firstly, she seeks that the standing of the civil service be
restored as service of the State and not the service of any transient
government. To achieve this object, her submission is that unlawful
political interference in the independent and legitimate functioning of
civil servants be stopped. Secondly, the petitioner seeks corrective
institutional measures to revert the civil service to rule-based
management practices in accordance with the letter and spirit of
applicable laws, rules and precedents of this Court.

4. On 12-3-2012, we had directed the Secretary Establishment
Division, Government of Pakistan, the Chief Secretaries of the four
Provinces and the Chief Commissioner, Islamabad Capital Territory to
submit their comments. It was noted in the said order that civil servants
who act according to law, at times, have to face hardship in the form of
immediate transfer or posting as Officers on Special Duty (OSD) even
before the completion of their tenure. It was also noticed that frequent
transfers, postings and disciplinary proceedings are taken in violation of
the law, rules and regulations.

5. The above referred functionaries comprised as a Committee,

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have submitted their report which includes tentative recommendations. Amongst other things, the Committee has recommended that "[p]ostings and transfers be made on merit", "tenures for various categories of posts be fixed" and that "[n]o civil servant should be posted as OSD for purposes of parking of officers who are unwanted, or, who are not susceptible to pressures." The Committee further recommends that "[a] civil servant should be placed under suspension only by the competent authority after initiation of disciplinary proceedings; and... Officers taken on deputation/borrowed from other tiers of the government should carry the requisite experience and seniority for specific jobs." According to the petitioner, many of the Committee's recommendations are already covered by existing law, rules and regulations, particularly in matters relating to tenure, appointment, transfer and posting of civil servants. There is no dispute or contention that such recommendations must indeed be implemented with immediate effect as a necessary concomitant to good governance. Some other recommendations made by the Committee require legislation or rule making which, necessarily will need to be undertaken by the legislature and/or the competent rule making authority and not by the Court.

6. The petitioner being a civil servant herself has requested revival of the independent, impartial and professional status of the civil service as an institution and to affirm its decision-making authority in furtherance of the rule of law. The petitioner's further grievance is that legal and constitutional safeguards meant to protect the civil service from excessive political interference are being systemically breached. With its safeguards thus withered, the service is growing inefficient and demoralized and with it, the machinery of the State, mandated to enforce good governance, rule of law and fundamental rights of the people of Pakistan, is failing.

7. The petition has been held maintainable because the situation portrayed does raise a question of public importance with reference to the enforcement of fundamental rights. In our constitutional scheme of governance, the importance of such a civil service, which is law-abiding and itself legally protected, cannot be over emphasized. "Good governance", this Court has recently observed, "is largely dependent upon [an] upright, honest and strong bureaucracy. [The] Civil service is the back bone of our administration." per *Chaudhry Ijaz Ahmad, J. in Tariq Aziz-ud-Din's case* (2010 SCMR 1301). Additionally, the fundamental rights of civil servants, inter alia, under Articles 9, 14 and 18 of the Constitution are also aspects arising in this Constitution Petition. The enforcement of fundamental rights is primarily the responsibility of the Executive branch of the State and civil servants constitute that essential component of the Executive who operate the executive machinery. A duty is thus cast both on the civil service and on

the political executive to ensure the effectiveness (in all respects) of the civil service.

8. It is not in contention that civil servants are public servants and are, therefore, meant to take decisions only in accordance with law in the public interest. In their capacity as advisors in decision making or as administrators and enforcers of law, they are not subservient to the political executive. It is their obligation to remain compliant with the Constitution and law. Hence they are not obliged to be servile or unthinkingly submissive to the political executive. One of their prime duties is to give advice in the best public interest and to administer the law impartially being in charge of the machinery of the State. In this regard, the address made by Quaid-i-Azam Mohammad Ali Jinnah to the members of the civil service at Peshawar on 14th April, 1948 is most relevant. Quaid-i-Azam instructed them not to be "influenced by any political pressure, by any political party or individual politician." While urging them to loyally and faithfully serve whichever government came to power "in the ordinary constitutional course", he also reminded them of the need for "fearlessly, maintaining [their] high reputation, prestige, honour and the integrity of [their] service." Noting that pressurizing civil servants was, even in those early days, "a very common fault of politicians", he warned politicians that such behaviour would lead to "nothing but corruption, bribery and nepotism which is a horrible disease..." Ultimately, he urged both politicians and civil servants to "understand [their] own sphere of duty and responsibility and act with others harmoniously and in complete cooperation." Yet, being fully aware that real life was never ideal, he forewarned the civil servants that "you may even be put to trouble not because you are doing anything wrong but because you are doing right. Sacrifices have to be made, and I appeal to you, if need be, to come forward and make the sacrifice..." (Quaid-e-Azam Mohammad Ali Jinnah, Speeches as Governor General of Pakistan 1947-48, Sang-e-Meel Publications, Lahore 2004).

9. These should, indeed, be the guiding principles informing the relationship between the civil service and the political executive - the two limbs of the Executive branch of government, envisaged in the Constitution. Equally so, these principles should inform the judiciary's interpretation of the Articles of the Constitution and legal provisions which relate to the employment of persons in the service of Pakistan. We reaffirm that while civil servants do have a duty to follow the policy guidelines and directions of the political executive yet, because of Article 5 of the Constitution, just like other citizens, their foremost duty is "obedience to the Constitution and the law", not unthinking obedience to all directives (right or wrong) issuing from the political executive. In this context, Rule 5(10) of the Rules of Business, 1973 framed by the Federal Government in accord with Articles 90 and 99 of the

Constitution, may be examined: "When the Secretary submits a case to the Minister, the latter may accept the proposal or views of the Secretary or may over-rule him. The Secretary will normally defer to the decision of the Minister and implement it. In case, however, the Secretary feels that the decision of the Minister is manifestly wrong and will cause gross injustice or undue hardship, he may state his reasons and re-submit the case to the Minister. If the Minister still adheres to his earlier decision and the matter is important enough, the Secretary shall request the Minister to refer the case to the Prime Minister and the Minister shall so refer the case for orders of the Prime Minister. If the case is not referred to the Prime Minister, the Secretary shall submit it directly to the Prime Minister with observations of the Minister-in-Charge." In other words, implementation of policy or directives, in some cases may be required notwithstanding the considered views of a civil servant to the contrary. In such event, however, the civil servant should record his/her honest and considered opinion without fear. Decisions violating the law relating to appointment and terms and conditions of service of civil servants which are manifestly wrong and are likely to cause gross injustice or undue hardship should be considered important enough for the purpose of Rule 5(10) *ibid*.

10. It is worth noting that the Constitutions of 1956 and 1962 contained chapters outlining certain safeguards for the civil service. In the 1973 Constitution, the framers omitted a similar chapter from the Constitution and shifted the onus to ordinary legislation. The Law Minister at the time, who was steering the Constitution Bill informed the Constituent Assembly that in the past, constitutional protection for civil servants had been granted "because those who served came from outside and they needed these protections in respect of service". However, since now "this country [was] being run by the leaders of the people" such protections were no more deemed necessary. The purpose of this change, therefore, was to "[break] away from... the past colonial traditions" and to emphasize the point that civil servants were not entitled to "any superior or higher status" compared to other citizens. Another reason the Law Minister gave was that the "Constitution is the basic document providing the fundamentals and this matter was not so fundamental as to be provided in the Constitution." (Parliamentary Debates, 31st December, 1972 and 19th February, 1973). It was therefore decided that, as stated in Articles 240, 241 and 242 of the Constitution, the matter would be dealt with through statutes. Such statutes were subsequently passed and include the Civil Servants Act, 1973. It may be emphasized that whatever else the intent behind these changes may have been, it could not have been meant to subjugate of civil servants to constantly changing political imperatives. The intent of the Constitution cannot but be a fuller realization of the goal set out in the speech of the country's founding

father quoted earlier: "fearlessly, maintaining [the] high reputation, prestige, honour and the integrity of [the civil] service."

11. It was in this spirit, i.e. providing meaningful legal guarantees to civil servants and doing away with arbitrariness, that Parliament enacted statutes such as the Civil Servants Act, 1973. The very object of this statute is to legally "regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of Pakistan" (Preamble). The rule of law is the key idea reflected in the whole scheme of the statute. This impression is textually reinforced by the express stipulation that appointment of civil servants shall be made only "in the prescribed manner" (S. 5), that the terms and conditions shall be only such as are "provided in [the] Act and the Rules" [S. 3(1)] and not be "varied to his disadvantage" [S. 3(2)] and that promotions shall only be made on the basis of objective criteria such as "merit" [S. 9(2)(a)] and "seniority-cum-fitness". [S.9(2)(b)].

12. This Court, in a number of precedents has, interpreted and emphasized these very principles, some of which need to be reiterated at this point. Before that, however, we may note the precept and rule of public trust which forms the basis of this area of the law. This court has repeatedly observed that "functionaries of the State are fiduciaries of the people and ultimately responsible to the people who are their pay masters." [Syed Yousaf Raza Gillani v. Assistant Registrar, (PLD 2012 SC 466) affirming Muhammad Yasin v. Federation of Pakistan]. Most recently, in the case relating to dual nationality of Parliamentarian, we have reiterated that "all State authority is in the nature of a 'sacred trust' and its bearers should therefore be seen as fiduciaries" (Mehmood Akhtar Naqvi v. Federation of Pakistan, Const. P. 5/2012). One of the implications of this concept, highlighted in the case-law considered below, is that the matter of tenure, appointment, posting, transfer and promotion of civil servants cannot be dealt with in an arbitrary manner; it can only be sustained when it is in accordance with the law. Moreover, the use of the words 'in the public interest' in such matters are not fatuous or pointless, but emphasise the fiduciary nature of orders relating to tenure, posting etc. Thus a proposed decision which deviates from the accepted or rule-based norm without proper justification, can be tested on the touchstone of a manifest public interest.

13. Tenure, appointment, promotion and posting/transfer are of utmost importance in the civil service. If these are made on merit in accordance with definite rules, instructions etc., the same will rightly be considered and treated as part of the terms and conditions of service of a civil servant. If, however, rules and instructions are deviated from and as a result merit is discouraged on account of favoritism, *sifarish* or considerations other than merit, it should be evident the civil service will

not remain independent or efficient. It is necessary once again, to hark back to the considerations set out in the speech of Quaid-i-Azam and the eternal wisdom reflected in the Epistle of Hazrat Ali, may Allah be pleased with him, cited at the start of this opinion. It is also relevant to note that the principles of good governance are already envisioned in the Constitution and are also encoded in statutes such as the Civil Servants Act, 1973, the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 and other rules made under the aforesaid Act and in regulations and instructions given in the Civil Establishment Code (Estacode). It is, however, apparent from precedent and civil service matters coming up before Service Tribunals and this Court that problems/difficulties arise for civil servants when the rules of good governance so encoded are breached and the reason for such breach appears to be abuse of discretion. We are aware that matters relating to tenure etc. cannot be put in a strait-jacket and that there is to be an element of flexibility. A balance between the competing pulls of discretion and rule based decision making is of utmost importance. It is for this reason that transparency in decisions relating to tenure etc. are required to be entrenched and cemented to assure the quality, effectiveness and morale of the civil service. Since executive decisions generally are subject to judicial review, the assurance of transparency is itself likely to eliminate decision making based on considerations other than merit. We have referred to accepted principles and rules above and may now advert to certain relevant rulings earlier rendered by this Court.

A - On the Issue of Appointments and Removals

14. In a number of judgments, the courts have clarified that whenever there are statutory provisions or rules or regulations which govern the matter of appointments, the same must be followed, honestly and scrupulously. In the Corruption of Hajj Arrangements' case (PLD 2011 SC 963) and Tariq Aziz-ud-Din's case *ibid*, it has been clarified that even where there are no explicit rules governing the appointment process, and appointments are to be made in the exercise of discretionary powers, such discretion must be employed in a structured and reasonable manner and in the public interest. Appointing authorities cannot be allowed to exercise discretion at their whims, or in an arbitrary manner; rather they are bound to act fairly, evenly and justly and their exercise of power is judicially reviewable. And in Muhammad Yasin v. Federation of Pakistan (PLD 2012 SC 132), we have clarified that, when called upon to do so, the Courts are "duty bound to examine the integrity of the selection process", although they "will not engage in any exhaustive or full-fledged assessment of the merits of the appointee nor [...] seek to substitute [their] own opinion for that of the Executive." It may also be

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noted that just like the appointment of civil servants, their removal and dismissal from service has not been left to anyone's whims and caprice. It is governed by rules and regulations, amongst them the Civil Servants (Efficiency and Discipline Rules), 1973. Indeed, the anachronistic concept where government servants held office during the pleasure of the Crown has no place in a dispensation created and paid for by the people.

B - On the Matter of Promotions

15. In Tariq Aziz-ud-Din's case, we have dealt with some important facets of the civil service including the exercise of discretion in matters of promotion. Such discretion must be exercised fairly and in a transparent manner. Discretion has to be understood within the four corners of the concept of rule of law upon which our system of governance is founded. Every authority in the State is bound to obey the dictates of the law and has no personal or absolute discretion. It was therefore held that "[t]he right [to be considered for promotion] contemplated under section 9 [of the Civil Servants Act] is neither illusory nor a perfunctory ritual and withholding of promotion of an officer is a major penalty in accordance with the Civil Servants (Efficiency and Disciplinary) Rules, 1973, therefore, consideration of an officer for promotion is to be based not only on the relevant law and the rules but also to be based on some tangible material relating to merit and eligibility which can be lawfully taken note of."

C - On the Matter of Transfers and Tenure

16. In the Hajj Corruption Case, the Court reiterated its earlier ruling in Zahid Akhtar v. Government of Punjab (PLD 1995 SC 530), where it had been held that "the normal period of posting of a Government servant at a station, according to Rule 21 of the Rules of Business is three years, which has to be followed in the ordinary circumstances, unless for reasons or exigencies of service a transfer before expiry of the said period becomes necessary in the opinion of the competent authority." Furthermore, with regard to transfers of civil servants, this Court has stated that transfers by political figures which are capricious and are based on considerations not in the public interest are not legally sustainable. Farrukh Gulzar v. Secretary Local Government and Rural Development Department, Lahore and 2 others (1998 SCMR 2222). These are principles of law enunciated by this Court and are to be followed in terms of Article 189 of the Constitution. We, however, repeatedly come across violations of such principles. This unnecessarily leads to litigation which, in turn, clogs Courts and Service Tribunals.

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D - On the matter of obeying illegal orders from superiors

17. In Syed Nazar Abbas Jafri v. Secretary to the Government of the Punjab and another (2006 SCMR 606), this Court held that the duty of public officers is to independently discharge their functions and not be influenced by "dictatorial misuse of powers" at the hands of political figures. The Court has also emphasized that the appointment and removal of civil servants is not to be politically motivated. Province of Punjab v. Azhar Abbas (2002 SCMR 1). These decisions highlight the concept of a civil service which enjoys certain legal protections and is thus capable of performing its envisioned role as a law-enforcing institution.

18. The compliance of illegal orders of superiors is not justified on the basis of having been issued from higher authority as it is the law and Constitution which must be obeyed. Here it would be relevant to cite the judgment of this Court in Samiullah Khan Marwat v. Government of Pakistan (2003 SCMR 1140) where it was stated: "...the exercise of powers by the public functionaries in derogation to the direction of law would amount to disobey[ing] the command of law and the Constitution..." Furthermore, in the case of Iqbal Hussain v. Province of Sindh (2008 SCMR 105) the Court held that "the compliance of any illegal and arbitrary order is neither binding on the subordinate forums nor valid in the eyes of law." In case the subordinates are directed to implement an illegal order "they should put on record their dissenting note". Human Rights Cases Nos. 4668 of 2006, 1111 of 2007 and 15283-G of 2010 (PLD 2010 SC 759). Similarly, illegal orders cannot be defended on the plea that these could expose the concerned government servant to the risk of disciplinary action. Zahid Akhtar v. Government of Punjab (PLD 1995 SC 530).

E - On the matter of posting civil servant as Officers on Special Duty (OSD)

19. Ordinarily, no government employee should be posted as OSD except under compelling circumstances. In the Hajj Corruption case, (PLD 2011 SC 963) the Court held: "It is well settled that placing an officer as OSD is tantamount to penalizing him because the expression 'OSD' is not known to either the Civil Servants Act, 1973 or the Civil Servants (Appointment Promotion and Transfer) Rules, 1973." Reference in this regard may also be made to the cases of Mir Shah Nawaz Marri v. Government of Balochistan and others (2000 PLC (C.S) 533), Syed Ajmal Hussain Bokhari v. Commissioner, Rawalpindi (1997 PLC (C.S.) 754), Sajjad Ahmad Javed Bhatti v. Federation of Pakistan (2009 SCMR 1448) and Lt. Col. (R.) Abdul Wajid Malik v. Government of the Punjab (2006 SCMR 1360).

20. The above referred precedents have shaped the contours of the law relating to civil servants and the civil service. In the established tradition of a common law jurisdiction, Article 189 of the Constitution stipulates that, "[a]ny decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan." As this Court has already held "... the interpretation of the various Articles by this Court becomes part of the Constitution". Al-Jehad Trust v. Federation of Pakistan (PLD 1997 SC 84). Specific to the law relating to civil servants and matters in respect of their service, we have enunciated a principle of law in the case titled Hameed Akhtar Niazi v. The Secretary Establishment Division (1996 SCMR 1185) holding that a decision given by this Court on a point of law will be binding on concerned departmental functionaries who will be obliged to apply such legal principle in other similar cases regardless of whether or not a civil servant has litigated the matter in his own case. We are conscious that in some instances the application of a legal principle enunciated in a precedent may be possible without difficulty or ambiguity, while in other cases there may be some uncertainty in determining if a legal principle is in fact applicable as precedent. It is, however, clear that in view of Articles 189 and 190 of the Constitution, a civil servant will be entitled to make a departmental representation or initiate legal proceedings before a competent forum to enforce a legal principle enunciated by this Court.

21. In appropriate cases the failure of a State functionary to apply a legal principle which is clearly and unambiguously attracted to a case, may expose him to proceedings also under Article 204(2)(a) of the Constitution. This Article, it may be recalled, grants this Court the power to punish for contempt any person who "disobeys any order of the Court". In a recent judgment, the Court has clarified the significance of the law of contempt as an enforcement mechanism. It was held "...the Court, in and of itself, has to pass orders and to require the implementation of its orders, responsibility for implementation has been made obligatory on other organs of the State, primarily the Executive. However, in the unfortunate situation that a functionary of the Executive refuses to discharge his constitutional duty, the Court is empowered to punish him for contempt... Simply put, a government of laws cannot be created or continued with toothless courts and defiant or blithely non-compliant public functionaries". Baaz Muhammad Kakar v. Federation of Pakistan (PLD 2012 SC 870). If there still remains any doubt, let us clarify that those executive functionaries who continue to ignore the Constitution and the law, do so at their own peril.

22: The principles of law enunciated hereinabove can be summarized as under:--

- (i) Appointments, Removals and Promotions: Appointments, removals and promotions must be made in accordance with the law and the rules made thereunder; 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.
- (ii) Tenure, posting and transfer: When the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be 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.
- (iv) OSD: Officers should not be posted as OSD except for compelling reasons, which must be recorded in writing and are judicially reviewable. If at all an officer is to be posted as OSD, such posting should be for the minimum period possible and if there is a disciplinary inquiry going on against him, such inquiry must be completed at the earliest.

23. We are fully conscious that the aforesaid matters relate to decision making and administration of the machinery of the State. As such the responsibility of deciding as to suitability of an appointment, posting or transfer falls primarily on the executive branch of the State which comprises of both the political executive and civil servants. Courts ordinarily will not interfere in the functioning of the executive as long as it adheres to the law and established norms and acts in furtherance of its fiduciary responsibility. However, while hearing this petition we have recognized the need for ensuring that decision making in relation to tenure, appointments, promotions and transfers remains rule based and is not susceptible to arbitrariness or absolute and unfettered discretion.

24. Copies of this judgment shall be sent to the Federal Secretary Establishment, the Chief Secretaries of the Provinces, the Commissioner Islamabad Capital Territory and to the Secretaries of all Federal and Provincial government departments.

فیصلہ

”مستحسن طرزِ حکمرانی“ (good governance) کے جدید تصورات سے صد ہا سال قبل ہمیں اس موضوع پر نہایت فصیح اور جامع ہدایات ایک قدیم تحریر میں ملتی ہیں۔ یہ تحریر باب شہرِ حکت حضرت علیؑ ”کرم اللہ وجہہ سے منسوب ایک خط ہے، جو والی مصر مالک بن اشتر کو لکھا گیا۔ خلیفہ اپنے مکتوب میں فرماتے ہیں کہ ”افسران کا جنازہ کوترے ہوئے انتہائی محتاط رہو اور انہیں آزمائشی مدت کسی تکمیل پر مستقل کر دیا کرو۔ اہم عہدوں پر تعیناتی کبھی بھی ذاتی تعلق یا دباؤ کی بنا پر نہ کرو کہ ایسا کرنا بددیانتی اور نا انصافی کی وجہ بن سکتا ہے۔ اونچے عہدوں کے لئے تجربہ کار اور مضبوط ایمان کے حامل افراد کا جنازہ کرو ایسے افراد کا اخلاق اچھا ہوتا ہے، ان کو بھگانا آسان نہیں ہوتا، اور یہ لوگ زیادہ دور اندیش اور عاقبت اندیش ہوتے ہیں“۔ پاکستان کا آئین اور قانون، عوام کی فلاح و بہبود کی حصول کی خاطر انہی بنیادی اصولوں کی وضاحت کرتا ہے۔ سچ یہ ہے کہ ایک آئینی اور منصفانہ طرزِ حکومت کا تصور اور اس کی بنیادی تصورات حکمتِ ازلی ہیں، عہدِ جدید کی اختراع نہیں۔ ہمارا آئین اور قانون اور ان پر عملدرآمد کرنے والی عدالتوں کا وظیفہ صرف اس قدر ہے کہ ان اذلی اصولوں کا اطلاق حال میں درپیش واقعات اور مسائل پر کریں۔

عوامی مفاد۔ کہ اس مقدمے میں عدالت سے سرکاری ملازمین کے دائرہ ملازمت کو حاصل قانونی اور آئینی تحفظات کی وضاحت چاہی گئی ہے۔ عدالت نے ایک بار پھر ”مستحسن طرزِ حکمرانی“ کے ان اذلی اصول و قواعد کا اعادہ کیا ہے جن کی وضاحت اس سے پہلے بھی متعدد مقدمات میں کی جا چکی ہے۔

2۔ اس معاملے کا پس منظر کچھ یوں ہے کہ مورخہ 25-2-2012 کو مختلف ٹی وی چینلز پر ایک خبر نشر ہوئی جس میں نذیر محمد خان (حلقہ PS-53) کے ضمنی انتخابات کے دوران اس حلقہ سے پاکستان پیپلز پارٹی کی امیدوار سیدہ وحیدہ شاہ کو پولنگ سٹاف کے ایک رکن کو چھڑ مارتے ہوئے دکھایا گیا۔ اس واقعے کا از خود نوٹس لیا گیا (مقدمہ نمبر 3/2012)، جس کا فیصلہ 12-3-2012 کو سنایا گیا۔ اسی دوران، وزارت داخلہ میں متعین گریڈ 19 کی ایک سرکاری ملازمہ، سماجی انیٹا تراب، نے مذکورہ بالا از خود نوٹس میں ایک درخواست دائر کی۔ چونکہ مذکورہ بالا مقدمہ 12-3-2012 کو مکمل ہو گیا

تھا لہذا ان کی درخواست کو آئین کی دفعہ (3) 184 کے تحت سماعت کے لئے منظور کر لیا گیا۔ موجودہ فیصلے کے ذریعے ہم اس درخواست کو نمٹا رہے ہیں۔

3- درخواست گزار کا مدعا درخواست میں تفصیلاً بیان کیا گیا ہے، ہم سیاق و سباق واضح کرنے کے لیے یہاں مختصراً دہرا دیتے ہیں۔ درخواست کی گئی ہے کہ اولاً یہ باور کرایا جائے کہ سرکاری ملازمین ریاست کے ملازم ہیں نہ کہ حکومت وقت کے۔ اور اس مقصد کو حاصل کرنے کے لئے درخواست گزار نے کہا ہے کہ سرکاری ملازمین کی قانونی اور آزادانہ فرائض کی انجام دہی میں کسی بھی قسم کی سیاسی مداخلت نہیں ہونی چاہیے۔ ثانیاً، درخواست گزار کی استدعا ہے کہ سرکاری ملازمین کو وضع شدہ قوانین، قواعد و ضوابط اور عدالتی نظائر کے روشنی میں اپنے فرائض منصبی کی انجام دہی میں مکمل آزادی کی یقین دہانی کرائی جائے۔

4- مورخہ 12-3-2012 کو ہم نے اسٹیٹسمنٹ ڈویژن کے سیکریٹری، حکومت پاکستان، چاروں صوبوں کے چیف سیکریٹریز اور چیف کمشنر اسلام آباد کو مقدمے میں اپنا نقطہ نظر دائر کرنے کو کہا۔ اس حکم میں ہم نے واضح کیا کہ سرکاری ملازمین کو قانون کے مطابق اپنے فرائض کی انجام دہی کے دوران بعض اوقات مشکلات کا سامنا کرنا پڑتا ہے مثلاً یا تو فوری طور پر ان کا تبادلہ کر دیا جاتا ہے یا پھر انہیں اپنی تعیناتی کی مدت مکمل کئے بغیر آفیسر آن سپیشل ڈیوٹی (او ایس ڈی) بنا دیا جاتا ہے اور یہ بات بھی سامنے آئی ہے کہ تبادلوں، تقرریوں اور تادیبی کارروائیوں میں اکثر قانون اور قواعد و ضوابط کو بالائے طاق رکھا جاتا ہے۔

5- متذکرہ بالا عہدیداران پر مشتمل کمیٹی نے اپنی سفارشات پر مبنی رپورٹ عدالت میں دائر کی۔ پٹھان اور سفارشات کے ساتھ ساتھ، کمیٹی نے بھی سفارش کی کہ ”تقرر اور تبادلے اہلیت کی بنیاد پر ہونے چاہئیں“، ”مختلف اقسام کی ملازمتوں کے لئے مدت منصبی مقرر کی جانی چاہیے“ اور یہ کہ ”کسی بھی سرکاری ملازم کو محض افسران بالا کی ناپسندیدگی یا سیاسی دباؤ میں نہ آنے کی وجہ سے آفیسر آن سپیشل ڈیوٹی (او ایس ڈی) نہ کیا جائے گا“۔ کمیٹی نے مزید سفارش کی کہ ”کسی بھی سرکاری ملازم کی معطلی مجاز افسران کی جانب سے صرف باضابطہ تادیبی کارروائی شروع کرنے کے بعد ہی کی جائے گی اور دوسرے اداروں سے ڈیپوٹیشن پر لئے گئے ملازمین کو متعلقہ ذمہ داری کی بابت تجربہ اور سنیارٹی ضرور حاصل ہونی

چاہیے“۔ درخواست گزار کے مطابق، کمیٹی کی متعدد سفارشات، خاص طور پر وہ سفارشات جو سرکاری ملازمین کے تقرر و تبادلے اور تعیناتی کی بابت ہیں، پہلے ہی قانون اور قواعد و ضوابط میں موجود ہیں۔

بااثر ایسی سفارشات پر فی الفور عملدرآمد ہونا چاہیے تاکہ ملک میں بہتر طرز حکمرانی قائم ہو سکے۔ بعض دیگر سفارشات ایسی ہیں جن کے متعلق قانون سازی کی ضرورت ہے۔ اس سلسلے میں مقدمہ سے رجوع کرنا مناسب ہوگا جو قانون سازی کی ذمہ دار ہے۔

6- درخواست گزار نے بحیثیت ایک سرکاری ملازمہ کے یہ استدعا بھی کی ہے کہ سرکاری ملازمت کا پیشہ وارانہ رتبہ اور ان کی خود مختاری بحال ہونی چاہیے تاکہ وہ قانون پر عملدرآمد اور فیصلہ سازی میں اپنا قانونی کردار بطریق احسن ادا کر سکیں۔ درخواست گزار نے مزید استدعا کی ہے کہ سرکاری ملازمین کو حاصل قانونی اور آئینی تحفظ بڑھتی ہوئی سیاسی مداخلت کی بناء پر اپنی حقیقت کھو چکا ہے۔ اس سے سرکاری ملازمین اخلاقی زوال کا شکار ہیں اور روز بروز اپنی فعالیت کھو رہے ہیں۔ اس انحطاط کی بدولت ریاستی مشینری، جس کا مقصد بہترین طرز حکمرانی کی بنیاد رکھنا اور پاکستان کے عوام کے بنیادی حقوق کا تحفظ اور قانون کی بالادستی برقرار رکھنا ہے، بری طرح متاثر ہو رہی ہے۔

7- عدالت نے درخواست کو قابل سماعت اس لئے گردانا کیوں کہ اس میں اٹھائے گئے سوال کا بنیادی حقوق کے نفاذ سے براہ راست تعلق ہے۔ اور حقیقت یہ ہے کہ آئینی طرز حکمرانی کے قیام اور اس کی فعالیت میں سرکاری ملازمین کا کلیدی کردار ہے۔ حال ہی میں طارق عزیز الدین (2010 SCMR 1301) کے مقدمہ میں عدالت واضح کر چکی ہے کہ ”مستحسن طرز حکمرانی“ کے قیام کا انحصار ”مکہ، لی، طور پور ایماندار، با اصول اور مضبوط بیورو کریسی پر ہے۔ سرکاری ملازمین ہماری انتظامیہ کی ریڑھ کی ہڈی ہیں“۔ مزید برآں یہ درخواست اس لیے بھی قابل سماعت ہے کہ اس میں سرکاری ملازمین کو حاصل بنیادی حقوق سن جملہ زیر آرٹیکل 9، 14 اور 18 سے متعلقہ نکات اٹھائے گئے ہیں۔ حقیقت یہ ہے کہ بنیادی حقوق کے نفاذ کی ذمہ داری بنیادی طور پر ریاست کے انتظامی عضو پر ہے۔ سرکاری ملازمین انتظامیہ کا اہم حصہ ہیں، بلکہ یہ کہنا مناسب ہوگا کہ اس ذمہ داری سے عہدہ براء ہونے میں وہ سیاسی انتظامیہ کے دست و بازو ہیں۔ اس بنا پر، ان کی کارکردگی اور پیشہ وارانہ خود مختاری کا سوال بنیادی حقوق سے جڑا ہوا ہے جو کہ اس عدالت کے دائرہ اختیار سماعت میں شامل ہے۔

8- کوئی بھی فریق اس حقیقت سے منکر نہیں ہے کہ سرکاری ملازمین عوام ہی کے خادم ہیں اور

کیونکہ آئین کی دفعہ 5 کے تحت دوسرے تمام شہریوں کی طرح ان کی بھی سب سے اہم ذمہ داری "قانون اور آئین کی تابعداری کرنا ہے"۔ مگر سیاسی تنظیمیں کی جانب سے جاری کردہ تمام احکامات کی بلاسوچے سمجھے کہ یہ درست ہیں یا غلط اطاعت کرنا ضروری نہیں۔ اس ضمن میں وفاقی حکومت کی جانب سے آئین کے آرٹیکل 90 اور 99 کے تحت راج کردہ قواعد کارس کار مجریہ 1973ء (Rules of Business) کے قاعدہ نمبر (10) کا جائزہ لینا ضروری ہے جس کے مطابق "جب ایک سیکریٹری وزیر کے روبرو کوئی معاملہ لے کر جاتا ہے تو آخر الذکر اگر چاہے تو تجویز اور سیکریٹری کے خیالات سے اتفاق کرے اور اگر چاہے تو اسے رد کر دے۔ سیکریٹری عموماً وزیر کے فیصلے کی تائید اور اس کے نفاذ کا پابند ہے لیکن اگر سیکریٹری یہ محسوس کرے کہ وزیر کا فیصلہ مکمل طور پر غلط ہے اور یہ نا انصافی اور غیر ضروری مشکلات کا باعث بنے گا، تو وہ اپنے تحفظات بیان کرتے ہوئے معاملے کو دوبارہ وزیر کے روبرو پیش کر سکتا ہے۔ اگر وزیر پھر بھی قائل نہ ہو اور معاملہ انتہائی اہمیت کا حامل ہو تو سیکریٹری وزیر سے درخواست کر سکتا ہے کہ معاملے کو وزیر اعظم کے پاس بھیج دیا جائے۔ وزیر مذکورہ معاملہ وزیر اعظم کے روبرو بھیج دے گا۔ اگر معاملہ وزیر اعظم کو بھیجا نہیں جاتا تو پھر سیکریٹری انچارج وزیر کے تحفظات کے بیان کے ساتھ معاملہ براہ راست وزیر اعظم کو بھیج دے گا۔" بالفاظ دیگر، یہ درست ہے کہ بعض اوقات پالیسی اور ہدایات کا نفاذ کرتے ہوئے سرکاری ملازمین کو اپنی رائے کے برعکس بھی جانا پڑتا ہے۔ اس طرح کے حالات میں سرکاری ملازم کو چاہیے کہ وہ اپنی ایمانداری اور عاقبت اندیشی آراء کا بلا خوف و خطر ضرور اظہار کرے۔ یاد رہے کہ سرکاری ملازمین کے تقرر اور ملازمت کے متعلق ایسے فیصلے جو کہ قانون کے منافی ہوں اور ظلم پر مبنی ہوں، اسی نوعیت کے اہم فیصلے ہیں جن میں جرأت اور بے باکی سے اظہار رائے کیا جانا چاہیے۔

10۔ یہاں یہ بیان کرنا از حد ضروری ہے کہ 1956ء کے آئین اور 1962ء کے آئین میں سرکاری ملازمین کو تحفظ فراہم کرنے کی خاطر باقاعدہ ابواب موجود تھے۔ 1973ء کے آئین میں یہ باب حذف کر دیا گیا، تاکہ یہ امور پارلیمنٹ کے مجریہ قانون کے ذریعہ طے کیے جائیں۔ آئین میں پیش کرتے وقت وزیر قانون نے آئین ساز اسمبلی میں اس تبدیلی کا دفاع کرتے ہوئے مطلع کیا کہ ان کے

قانون کے مطابق عوامی مفاد میں فیصلے کرنے کے پابند ہیں۔ معاملہ چاہے فیصلہ سازی میں مشاورت کا ہو، یا انتظامی ذمہ داریوں کا، کسی بھی معاملے میں وہ سیاسی انتظامیہ کی سن و عن اطاعت کے پابند نہیں۔ ان کا اولین فریضہ آئین اور قانون کی پاسداری ہے۔ اور اس معاملے میں انہیں اپنا کردار حکومت وقت کے زیرِ غلاموں کی طرح نہیں بلکہ عوام کے مخلص خادموں کی طرح کرنا چاہیے۔ اس حوالے سے قائد اعظم "محمد علی جناح کا وہ خطبہ ہمارا مورد نظر ہے جو انہوں نے 14 اپریل 1948ء کو پشاور میں سرکاری ملازمین کو دیا۔ قائد اعظم نے انہیں ہدایت کی کہ وہ "کسی بھی سیاستدان سے سیاسی پارٹی، یا سیاسی دباؤ سے اثر قبول نہ کریں"۔ "آئینی طریق کار سے اقتدار میں آنے والی" کسی بھی حکومت کی خدمت کرنے کی ہدایت کے ساتھ ہی ساتھ، انہوں نے "بلا خوف و خطر (اپنی) اعلیٰ شہرت، (اپنی) وقار، (اپنی) عزت اور (اپنی) سروس کی سالمیت قائم رکھنے" پر بھی خصوصی زور دیا۔ اس بات کا نوٹس لیتے ہوئے کہ ریاست کے ان ابتدائی ایام میں بھی سول سروس پر دباؤ والا "سیاستدانوں کی ایک معروف خامی" تھی، انہوں نے سیاستدانوں کو خبردار کیا کہ ایک دن اس کا نتیجہ "بندعنوانی، رشوت ستانی اور اقبواء پروری جیسی خوفناک سماجی بیماریوں" کی صورت میں نکلے گا۔ آخر میں انہوں نے سیاست دانوں اور سرکاری ملازمین دونوں کو یہ تلقین کی کہ وہ "اپنے اپنے دائرہ کار اور دائرہ ذمہ داری کو سمجھیں اور ایک دوسرے کے ساتھ ہم آہنگی کی فضا میں تعاون کریں"۔ تاہم قائد اعظم "کو اس حقیقت کا بخوبی ادراک تھا کہ حالات ہمیشہ مثالی نہیں ہوتے۔ اس لئے انہوں نے سرکاری ملازمین کو خبردار کیا کہ "آپ آزمائشوں میں ڈالے جائیں گے۔ اپنی لغزشوں کے باعث نہیں، بلکہ اپنی راست بازی کی وجہ سے۔ اس وقت قربانیاں نذر کار ہوں گی۔ میں آج آپ سے درخواست کرتا ہوں کہ جس آڑے وقت میں آپ سامنے آئیں گے اور قربانیوں کے نذرانے پیش کیجئے گا۔" (قائد اعظم "محمد علی جناح، خطبات بطور گورنر جنرل آف پاکستان، 48 - 1947 سبک میل پبلی کیشنز، لاہور، 2004)

9۔ آئین کے رُو سے، سرکاری ملازمین اور سیاسی انتظامیہ ریاست کے انتظامی عضو کی دو شاخیں ہیں۔ قانونی ضوابط اور آئین کی وہ دفعات جو کہ حکومت پاکستان کے ملازمین سے متعلقہ ہیں انہی اصولوں کو عملی جامہ پہنانے کی خاطر نافذ کی گئی ہیں۔ ہم تو یقین کرتے ہیں کہ سرکاری ملازمین کی ذمہ داری ہے کہ وہ سیاسی انتظامیہ کے احکام پر عملدرآمد کے ساتھ ساتھ قانون اور آئین کی پاسداری کریں

تاظر میں ماضی میں سرکاری ملازمین کو آئینی تحفظ س لئے دیا گیا تھا " کیونکہ جو لوگ فرائض سر انجام دے رہے تھے وہ اکثر باہر سے آئے تھے اور پتہ اہتیر تھے کہ ان کو اپنی نوکری کی بابت غیر معمولی تحفظ حاصل ہو " تاہم اب چونکہ "ملک کی باگ دوڑ عوامی رہنماؤں کے ہاتھ میں آگئی ہے" اس لئے سرکاری ملازمین کو مذکورہ تحفظ آئین میں دینا ضروری نہیں رہا۔ ان کے مطابق اس تبدیلی کا مقصد دراصل یہ تھا کہ "سما سراجی روایات کو ختم کیا جائے" اور اس نقطے پر اصرار کیا جائے کہ سرکاری ملازمین قانوناً دوسرے شہریوں کے برابر ہیں، اعلیٰ وارفع رتے پر فائز حکمران طبقہ نہیں۔ ایک اور وجہ جو کہ وزیر قانون نے بیان کی وہ یہ تھی کہ "آئین انتہائی بنیادی اصولوں پر مشتمل ایک دستاویز ہے جبکہ یہ معاملہ ایسی بنیادی اہمیت کا حامل نہیں کہ اسے آئین میں شامل کیا جائے" (پارلیمانی بحث مورخہ 31 دسمبر 1972ء اور 19 فروری 1973ء)۔ لہذا یہ فیصلہ ہوا کہ ان معاملات کا تفسیر متعلقہ قوانین کے تحت کیا جائے جیسا کہ آئین کے آرٹیکل 240، 241 اور 242 میں مرقوم ہے۔ آئین سازی کے مرحلہ کے فوراً بعد ایسے قوانین و ضوابط نافذ بھی ہوئے۔ مختصر یہ کہ آئین سازوں کا مقصد سرکاری ملازمین کو سیاسی دباؤ سے سرگوں کرنا قطعاً نہیں تھا۔ اس حوالے سے آئینی احکامات کا مقصد تو پہلے ہی قائد اعظم کی متذکرہ بالا تقریر میں بیان ہو چکا ہے وہ یہ ہے کہ "سرکاری ملازمین بلا خوف و خطر اپنی اعلیٰ شہرت، اپنے وقار، اپنی عزت اور اپنی ملازمت کی سالمیت کو قائم رکھیں"۔ 1973ء کا آئین بھی اس وعدہ کا ضامن ہے۔

11۔ یہی وہ ضمانت تھی کہ جس کو عملی جامہ پہنانے کے لئے پارلیمان نے قانون برائے سرکاری ملازمین مجریہ 1973ء جیسے قوانین نافذ کئے۔ اس قانون کا اہم مقصد قانونی طور پر "حکومت پاکستان کے ملازمین کو تقرری اور ملازمت کے قواعد و ضوابط کو ترتیب دینا ہے" (ابتدائیہ)۔ قانون کی بالادستی اس تمام قانون کا مرکزی تصور ہے۔ اور اس تصور کی جھلک آئین متعدد جگہوں میں ملتی ہے۔ جن میں بیان کیا گیا ہے کہ سرکاری ملازمین کا تقرر صرف "مجوزہ طریقہ کار" (S.5) سے ہی ہوگا، اور ان ہی شرائط و ضوابط کی بناء پر ہوگا "جو کہ قانون یا قواعد میں ذمے گئے ہیں" [S.3(1)]۔ اور "ان شرائط و ضوابط میں دوران ملازمت ایسی تبدیلی نہیں کی جا سکتی جس سے نقصان ہو"۔ [S.3(2)] اور ترقی صرف "اہلیت" [S.9(2)(a)] اور "سنبازگی اور موافقت" [S.9(2)(b)] کے با مقصد کلے کی بنیاد پر ہونی چاہیے۔

12۔ ان اصولوں کی تشریح گزشتہ نظائر میں بارہا کی جا چکی ہے۔ چیدہ چیدہ نظائر کا حوالہ ہم ذیل میں دے رہے ہیں۔ مگر ان سب سے قبل "امانتی تعلق" کے نظریہ کا ذکر لازم ہے جو اس شعبہ قانون کا بنیادی نظریہ ہے۔ اس عدالت نے بارہا وضاحت کی کہ "ریاست کے عہدیداران عوام کے امین ہیں اور عوام کو جوابدہ ہیں جو کہ دراصل ان کو اس کی ادائیگی بھی کورتے ہیں" (سید یوسف رضا گیلانی بنام اسٹنٹ رجسٹرار (PLD 2012 SC 466)۔ حال ہی میں پارلیمانی نمائندگان کی دہری شہریت کے مقدمے میں ہم نے بیان کیا کہ ریاست کی جانب سے دیئے گئے تمام اختیارات "مقدس امانت" کی مانند ہیں اور جس کسی کو بھی آئین اور قانون کے مطابق اختیارات حاصل ہیں وہ ان اختیارات کا امین ہے (محمود اختر نقوی بنام وفاق پاکستان آئینی درخواست نمبر 5، 2012ء)۔

13۔ تقرر، ترقی اور عرصہ ملازمت سرکاری ملازمین کے لئے انتہائی اہم ہیں اور اگر یہ اہلیت کے مطابق وضع کردہ قواعد و ہدایات کی روشنی میں نہیں بلکہ سفارشوں اور اقرباء پروری کی بنیاد پر ہوں گے تو اس سے سرکاری ملازمین کی خود مختاری اور کارکردگی متاثر ہوگی۔ یہاں پر ایک دفعہ پھر ضروری ہے کہ ہم قائد اعظم کی تقریر میں طے کردہ اصول اور حضرت علیؑ کے مکتوب سے جھلکنے والی دائمی حکمت اپنے پیش نظر رکھیں۔ یہ بیان کرنا بھی ضروری ہے کہ مستحسن طرز حکمرانی کے اصول آئین میں بیان کردہ ہیں اور مختلف قوانین مثلاً قانون برائے سرکاری ملازمین 1973ء، سرکاری ملازمین (تقرر، ترقی اور تبادلے) کے قواعد مجریہ 1973ء اور ان قوانین کے تحت رائج کردہ قواعد و ہدایات جو کہ سول سٹیشنمنٹ کوڈ میں ان کی تفصیلات درج ہیں۔ تاہم عدالتی نظائر اور سرکاری ملازمت سے متعلقہ معاملات جو کہ سروس ٹریبونل اور اس عدالت کے روبرو لائے جاتے ہیں سے ظاہر ہے کہ سرکاری ملازمین کی مشکلات اور پریشانیوں میں اضافہ اُس وقت ہوتا ہے جب مذکورہ بالا قوانین کے تحت دیئے گئے مستحسن طرز حکمرانی کے اصول کی خلاف ورزی کی جاتی ہے۔ ہم جانتے ہیں کہ ملازمت کی مدت وغیرہ سے متعلق معاملات میں چلن کی گنجائش رہنا محال ہے۔ اور کچھ معاملات ہمیشہ صوابدیدی رہیں گے۔ مگر صوابدیدی کے استعمال اور قاعدہ کی پاسداری کے مابین توازن ضرور رہنا چاہیے۔

(1) تقرر اور برطرفی

14۔ گزشتہ فیصلوں میں عدالتیں بارہا یہ واضح کر چکی ہیں کہ جہاں بھی تعیناتی یا برطرفی سے متعلق قوانین و ضوابط موجود ہیں، تو ان پر سختی سے اور دباننداری سے عمل ہونا چاہیے۔ اور جہاں ان

معاملات کے بارے میں تحریری قوانین و ضوابط موجود نہیں ہیں، اور یہ معاملہ صوابدیدی ہے، وہاں بھی اس صوابدیدی کا استعمال عوامی مفاد میں اور مناسب اور شفاف انداز میں ہونا چاہیے (بحوالہ جج بدعنوانی مقدمہ اور طارق عزیز الدین کا مقدمہ (PLD 2011 SC 963)۔ تعیناتی کرنے والے حکام قطعاً اس بات کے مجاز نہیں کہ وہ اپنی صوابدیدی بلا جواز (Arbitrary) انداز میں استعمال کریں۔ بلکہ ان کا فرض ہے کہ وہ منصفانہ فیصلے کریں اور ان کے فیصلے پر عدالتی نظر ثانی بھی ہو سکتی ہے۔ محمد یسین بنام وفاق پاکستان (PLD 2012 SC 2) میں ہم واضح کر چکے ہیں کہ عدالتیں، استدعا کے جانے پر، ”جسٹاؤ کے طریق کار کی صحت“ کا جائزہ لینے کی پابند ہیں، ”اگرچہ وہ جسے گھنے شخص کے کوائف کا تفصیلی جائزہ نہیں لیتیں اور نہ انتظامیہ پر اپنی رائے مسلط کرتی ہیں۔“ اسی طرح برطانی کے سلسلے میں بھی قوانین، مثلاً قواعد برائے فعالیت و تادیب سرکاری ملازمین، 1971 کی پاسداری لازم ہے۔ یوں ہمارے نظام حکومت میں اس فرسودہ تصور کے لئے کوئی گنجائش نہیں رہی جس کے مطابق تمام سرکاری ملازمین صرف اس وقت تک اپنے منصب کے حقدار رہتے ہیں جب تک تاج شاہی اُن سے راضی رہے، یا، جب تک ان پر نظر کرم رہے۔ یہ تصور ہمارے نظام میں بر محل نہیں جہاں پر ہر ریاستی عہدیدار بالاخر عوام کا تنخواہ دار ہے۔

(ب) ترقی

15۔ طارق عزیز الدین کے مقدمے میں ہم نے سرکاری ملازمت سے متعلق متعدد اہم مسائل کا جواب دیا ہے۔ بشمول ترقی کی بابت صوابدیدی اختیارات کے سوال کا۔ یہ اختیارات صرف شفاف اور منصفانہ انداز میں ہی استعمال ہو سکتے ہیں۔ بات یہ ہے کہ صوابدیدی حکمرانی قانون کے حدود و رابعہ کے اندر ہی استعمال ہو سکتی ہے، کیونکہ یہ وہ تصور ہے جس پر ہمارے پورے ریاستی نظام کی بنیاد ہے۔ ریاست کا ہر عہدہ دار اپنے فرائض کی ادائیگی میں قانون کی حکمرانی کی پاسداری کرے گا۔ اسی لئے عدالت نے کہا تھا کہ ”ترقی کے لئے زیر غور آنے کا جو حق [سول سروسٹس ایکٹ] کے سیکشن 9 میں عطا کیا گیا ہے وہ کوئی فرضی وعدہ یا رسمی مرحلہ نہیں ہے۔ سول سروسٹس [فعالیت و تادیبی] قواعد، 1973 کے مطابق ایک افسر کی ترقی روکنا باقاعدہ سزا ہے۔ غرضیکہ جب ایک افسر کو ترقی کے لئے جانچا جائے تو فیصلہ متعلقہ قوانین و ضوابط کی روشنی میں کیا جانا چاہیے، اور اس افسر کی قابلیت کے متعلق ٹھوس شواہد کو بنیاد بنایا جانا چاہیے۔“

16۔ انتظام جج بدعنوانی کیس میں عدالت نے زاہد اختر بنام حکومت پنجاب (PLD 1995 SC 530) میں اپنے فیصلے کا اعادہ کیا، جس میں کہا گیا تھا کہ ”زولسز آف بزنس کے رول 21 کے مطابق ایک سرکاری افسر کی ایک مقام پر تعیناتی کی معیاد عام طور پر 3 سال ہے۔ عسومی حالات میں اس کی ضرور پاسداری ہونی چاہیے۔ ماسوائے ایسے ہنگامی حالات میں جہاں مجاز اتھارٹی کی رائے میں تبادله سے پناہ لازم ہو جائے۔“ مزید برآں سرکاری ملازمین کے تبادلوں کے معاملے میں عدالت یہ بھی واضح کر چکی ہے کہ ایسے تبادلے جو سیاسی شخصیات نے عوامی مفاد کی بجائے اپنے مفاد کو بچانے کے لئے کئے ہوں، وہ قانونی طور پر قابل دفاع نہیں۔“ فرخ گلزار بنام سیکریٹری، مقامی حکومت و محکمہ دیہی ترقی (1998 SCMR 222)۔

(ج) افران بالا کے غیر قانونی احکام کی تعمیل

17۔ سید نذر عباس جعفری بنام سیکریٹری حکومت پنجاب وغیرہ (2008 SCMR 606) میں عدالت کہہ چکی ہے سرکاری ملازمین کا فرض بنتا ہے کہ وہ آزادانہ طور پر اپنی ذمہ داریوں سے خبردار ما ہوں اور سیاسی شخصیات کی ”آمرانہ دھونس“ میں نہ آئیں۔ عدالت نے اس بات پر بھی زور دیا تھا کہ سرکاری ملازمین کا تقرر اور ان کی برطانی سیاسی بنیادوں پر نہیں ہونی چاہیے۔ صوبہ پنجاب بنام اظہر عباس (2002 SCMR 1) یہ تمام فیصلے ایک ایسی سول سروس کے خدو خال بیان کرتے ہیں جو قانونی تحفظ کی حامل ہو اور بطور ادارہ سوچی گئی ذمہ داریوں سے آزادانہ طور پر اور بخوبی عہدہ برآ ہو۔

18۔ سرکاری ملازمین کے غیر قانونی اقدامات محض اس بنیاد پر جائز نہیں بن جاتے کہ وہ افران بالا کے اور آمر کے اتباع میں اٹھائے گئے۔ من و عن اتباع کا حق صرف آئین اور قانون کو ہے۔ اس سلسلے میں سلیم اللہ خان مروت بنام حکومت پاکستان (2000 SCMR 1140) کا حوالہ مفید ہے جہاں یہ کہہ دیا گیا تھا کہ ”سرکاری عہدیداران کے تئیں قانون کو نظر انداز کرتے ہوئے اختیارات کا استعمال آئین سے روگردانی تصور کیا جائے گا۔“ مزید برآں اقبال حسن بنام صوبہ سندھ (2008 SCMR 105) میں عدالت نے قرار دیا کہ ”ماتحت فورم پر لازم نہیں کہ وہ اوپر سے آنے والے کسی ایسے حکم کی تعمیل کرے جو سراسر غیر قانونی اور بلا جواز ہو۔ بلکہ یہ جائز بھی نہیں۔“ اور اگر ماتحت لوگوں سے ایک غیر قانونی امر کی تعمیل کروائی جائے تو ”انہیں چاہیے کہ وہ اپنا اختلافی نوٹ ضرور

لکھیں“ (PLD 2010 SC 759) غیر قانونی اقدامات پر عملدرآمد صرف اس لئے جائز نہیں بن جاتا کہ ایسا نہ کرنے کی صورت میں سرکاری ملازم کو تاہی کارروائی کا خدشہ تھا۔ زاہد حسین بنام حکومت پنجاب (PLD 1995 SC 530)۔

19- کسی بھی سرکاری ملازم کو او ایس ڈی کے طور پر تعینات نہیں لیا جانا چاہیے، ماسوائے ان حالات میں جہاں یہ ناگزیر ہو۔ حج بدعنوانی کیس (PLD 2011 SC 963) میں عدالت نے فیصلہ دیا ”یہ امر طے شدہ ہے کہ کسی افسر کو او ایس ڈی بنانے کا مطلب اُس کو سزا دینا ہے کیونکہ یہ اصطلاح سرکاری ملازمین کے قانون مجریہ 1973ء اور سرکاری ملازمین (تقرر، ترقی اور تبادلہ) کے قواعد 1973ء میں کہیں بھی بیان کردہ نہیں ہے۔“ مقدمات میر شاہ نواز مری بنام حکومت بلوچستان وغیرہ (2000 PLC (CS) 533)، سید اجمل حسین بخاری بنام کمشنر راولپنڈی (1997 PLC (CS) 754) ساجد احمد جاوید بھٹی بنام وفاق پاکستان (2009 SCMR 1448) اور لیفٹیننٹ کرنل (ر) عبدال واجد ملک بنام حکومت پنجاب (2006 SCMR 1360) میں بھی اس اصول کی توثیق کی گئی۔

20- متذکرہ بالا نظائر قانون کے خدوخال واضح کرتے ہیں۔ ہمارے قانونی نظام کا خاصہ ہے کہ اس میں شرح قانون میں نظائر کا کردار اہم ہے۔ آئین کا آرٹیکل 189 وضاحت کرتا ہے کہ ”عدالت عظمیٰ“ کا کوئی بھی فیصلہ جو کہ کسی قانونی نقطے کا فیصلہ کرتا ہو اور قانونی نقطہ کی بنیاد پر ہو پاکستان کی تمام عدالتیں اس پر عملدرآمد کی پابند ہیں“ ایک گزشتہ فیصلے میں عدالت واضح کر چکی ہے، ”اس عدالت کی جانب سے کسی گئی شرح آئین کا حصہ بن جاتی ہے“ الجہاد رت۔ بنام وفاق پاکستان (PLD 1997 SC 84)۔ سرکاری ملازمین سے متعلقہ ایک مقدمے حمید اختر نیازی بنام سیکریٹری اسٹیبلیشمنٹ ڈویژن (1996 SCMR 1185) میں یہ واضح کیا جا چکا ہے کہ جب یہ عدالت کوئی اصول یا قاعدہ واضح کر دے، تو پھر اس کا اطلاق، ہر خاص و عام پر ہوگا۔ اور اگر کسی تشریح سے فائدہ ایسے شخص کو ہو رہا ہے جو اس مقدمے میں فریق نہیں تھا، تب بھی اُسے فائدہ ضرور پہنچایا جانا چاہیے۔ اُس کی جانب سے مقدمہ بازی کا انتظار نہیں کیا جانا چاہیے۔ ہم سمجھ سکتے ہیں کہ کچھ معاملات میں تو نظائر میں طے شدہ قانونی اصول بغیر کسی تامل اور ابہام کے من و عن لاگو ہوں گے، مگر کچھ معاملات ایسے بھی ہوں گے جہاں یہ طے کرنے میں مشکل پیش آسکتی ہے۔ بہر حال قاعدہ یہ ہے آئین کے آرٹیکل 189 اور 190 کے تحت سرکاری

ملازمین کو حق حاصل ہے کہ وہ عدالت کی جانب سے طے کردہ اس قانونی اصولوں کے نفاذ کے لیے محکمات اعتراض دائر کریں یا مجاز عدالت سے قانونی چارہ جوئی کریں۔

21- اگر کوئی ریاستی عہدہ دار جان بوجھ کر اور ڈھٹائی کے ساتھ عدالت کی جانب سے بیان کئے گئے ان احکامات سے روگردانی کرتا ہے تو ظاہر ہے کہ اُسے اس حرکت سے باز آنا چاہیے۔ ورنہ یاد رہے کہ آرٹیکل (a) (2) 204 اس عدالت کو اختیار دیتا ہے کہ وہ کسی بھی ایسے شخص کو توہین عدالت کی سزا دے جو ”اس عدالت کے احکامات کی حکم عدولی کا مرتکب ہو“ اپنے ایک حالیہ فیصلے میں عدالت نے توہین عدالت کے قانون کی اہمیت واضح کی ہے۔ عدالت نے طے کیا کہ ”عدالت بذات خود احکامات جاری کرتی ہے اور چاہتی ہے کہ اُس کے احکامات پر عملدرآمد کیا جائے؛ عملدرآمد کی ذمہ داری ریاست کے دوسرے ستونوں کے لئے لازم ہے خاص طور پر انتظامیہ کے لئے۔ بد قسمتی سے اگر انتظامی اہلکار قانون کے مطابق اپنے فرائض سر انجام دینے سے روگردانی کرتے ہیں تو عدالت کے پاس اختیار ہے کہ وہ انہیں توہین کی سزا دے۔ بات یہ ہے کہ قانون کی حکمرانی کا خواب بے اختیار عدلیہ اور نافرمان اور غیر محتاط سرکاری اہلکاروں کی موجودگی میں شرمندہ تعبیر نہیں ہو سکتا۔“ باز محمد کائز بنام وفاق پاکستان (Constitution Petition No.77 of 2012) اگر ابھی بھی کوئی ابہام ہو تو ہم یہ وضاحت کر دیں کہ وہ انتظامی عہدیداران جو آئین اور قانون کے صریح احکامات کو نظر انداز کرنے پر تامل ہے وہ تامل کے ذمے دار ہوں گے۔

22- اوپر وضع کردہ اصولوں کو ذیل میں مختصر بیان کیا جا رہا ہے:

(i) تقرر، برطرفی اور ترقی

تقرر، برطرفی اور ترقی لازمی طور پر قانون کے مطابق ہونی چاہیے اور جہاں کوئی قانون اور ضابطہ نہ ہو اور فیصلہ صواب دیدی ہو تو صواب دید سلیقے سے اور شفاف و بہترین انداز میں اور عوامی مفاد میں استعمال کی جانی چاہیے۔

(ii) مدت ملازمت

جہاں پر عمومی طور پر مدت ملازمت قانون اور ضابطوں میں بیان کر دی گئی ہو وہاں مذکورہ مدت کو پورا کیا جانا ضروری ہے اور اس میں کوئی رد و بدل نہیں کیا جاسکتا سوائے اس کے کہ کوئی اور چارہ کار نہ ہو لیکن ایسی صورت میں وجوہات کو تحریری طور پر بیان کیا جانا ضروری ہے اور اس پر قانونی کارروائی کا حق محفوظ ہونا چاہیے۔

(iii) غیر قانونی احکامات

سرکاری ملازمین کی پہلی اور اہم ذمہ داری قانون اور آئین کی پاسداری ہے وہ اپنے حکام بالا کے کسی ایسے حکم کو ماننے کے پابند نہیں جو کہ صریحاً غیر قانونی، استبدادی اور عوامی مفاد کے برخلاف ہو اور اس قسم کے حالات میں اختلافی رائے کا اظہار تحریری طور پر کرنا چاہیے۔

(iv) او ایس ڈی

افسران کو ضروری وجوہات کے بغیر او ایس ڈی نہیں بنایا جائے گا یہ وجوہات عدالتی دائرہ کے تابع ہوں گی۔ اگر کسی وجہ سے کسی افسر کو او ایس ڈی بنایا گیا تو اس کی وہ تقرری ممکن حد تک قلیل مدت کی ہونی چاہیے اور اگر اس کے خلاف کوئی حکمانہ تادیبی کارروائی چل رہی ہو تو اس کو بھی جلد از جلد مکمل کیا جانا ضروری ہے۔

23۔ ہمیں معلوم ہے کہ ریاست میں انتظامیہ کا کردار کلیدی ہے۔ اور انتظامیہ کی دونوں شاخیں یعنی سرکاری ملازمین اور سیاسی انتظامیہ اپنے دائرہ کار میں رہتے ہوئے آزاد اور خود مختار ہیں تا وقتیکہ وہ اپنے امور آئین و قانون اور قواعد کے مطابق اور درست انداز میں چلاتے رہیں، عدالتیں ان کے دائرہ کار میں مداخلت نہیں کریں گی۔ مگر واضح رہے کہ اس کا یہ مطلب نہیں کہ سیاسی ملازمین کے تقرر، ترقی، تبادلہ وغیرہ کی بابت مطلق العنانیت، بدعنوانی اور سیاسی مداخلت کو قبول کیا جائے گا۔

24۔ فیصلے کی نقول وفاقی سیکریٹری اسٹیبلشمنٹ، صوبوں کے چیف سیکریٹریز، کمشنر اسلام آباد اور تمام وفاقی اور صوبائی حکموں کے سیکریٹریز کو بھجوائی جا رہی ہیں۔

25۔ یہ تحریر انگریزی میں جاری کردہ فیصلہ کے اہم حصوں کا خلاصہ ہے۔ ہم آئین کے آرٹیکل 28 اور 251 کی منشا کو ذہن میں رکھتے ہوئے اسے جاری کر رہے ہیں۔

MWA/A-31/S

Order accordingly.

P L D 2013 Supreme Court 223

Present: Mian Shakirullah Jan, Jawwad S. Khawaja
and Ijaz Ahmei Chaudhry, JJSUPERINTENDENT CENTRAL JAIL, ADYALA,
RAWALPINDI---Petitioner

versus

HAMMAD ABBASI---Respondent

Civil Petition No.1393 of 2010, decided on 7th December, 2011.

(Against the judgment dated 15-6-2010 of the Lahore High Court, Rawalpindi Bench, passed in Writ Petition No.426 of 2010).

Civil Procedure Code (V of 1908)---

---O. XXVII-A, R. 1---Anti-Terrorism Act (XXVII of 1997), S. 21-F---
Case involving substantial question as to the interpretation of
constitutional law---Non-issuance of notice to the Provincial Advocate
General---Effect---High Court in its constitutional jurisdiction declared
S.21-F of Anti-Terrorism Act, 1997 as ultra vires of the Constitution
and struck it down, without issuing notices to the Provincial Advocate
General as required under O. XXVII-A, C.P.C.---Legality---Petition for
leave to appeal was converted into appeal and allowed, judgment of
High Court was set-aside and writ petition was remanded to the High
Court for its decision afresh after issuance of notices to the concerned
Advocate General and Attorney General. [pp. 223, 224] A & B

Federal Public Service Commission v. Syed Muhammad Afaq
PLD 2002 SC 167 ref.

Abdul Razzaq Mirza Addl. A.G. for Petitioner.

Ilyas Siddiqui, Advocate Supreme Court for Respondent No.1.

Raja Muhammad Aleem Abbasi, D.A.G. (on Court's call).

Date of hearing: 7th December, 2011.

ORDER

MIAN SHAKIRULLAH JAN, J.---Through the impugned judgment the High Court while allowing the petition, has declared section 21-F of the Anti-Terrorism Act, 1997 as ultra vires of the Constitution and liable to be struck down and directed the jail authorities to calculate the remissions which were clogged by section 21-F of the said Act. At the very outset, the learned Additional Advocate General has contended that as the vires of the Act was under consideration and