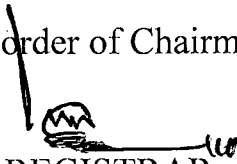


Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- 1569/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	08/11/2022	<p>The appeal of Mr. Rooh-ul-Amin presented today by Mr. Khaled Rehman Advocate. It is fixed for preliminary hearing before touring Single Bench at Swat on _____. Notices be issued to appellant and his counsel for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR.</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1569 /2022

Rooh-Ul-Amin.....Appellant

Versus

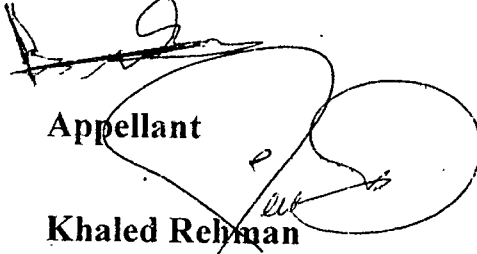
The Govt. of KPK & others ..... Respondents

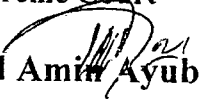
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S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Writ Petition Affidavit			1-8
2.	Addresses of Parties			0-9
3.	Assistant Food Controller	12.05.2022	A	10
4.	Order of Appellant's premature transfer	27.05.2022	B	11
5.	Office order whereby appellant was directed to perform his duties against the post of Assistant Food Controller In-charge PRC, Swat	30.05.2022	C	12
6.	Impugned transfer order	28.07.2022	D	13
7.	Show Cause Notice issued to Respondent No.3	14.07.2022	E	14
8.	Posting/Transfer policy		F	15-17
9.	Departmental Appeal		G	18-19
10.	Office Memorandum	03.01.2013	H	20-23
11.	Court Fee			
12.	Wakakat Nama			


Through

Appellant

  
Khaled Rehman  
Advocate Supreme Court

  
Muhammad Amin Ayub

&

  
Muhammad Ghazanfar Ali  
Advocates, High Court

4-B, Haroon Mansion  
Khyber Bazar, Peshawar  
Off: Tel: 091-2592458  
Cell # 0313-9040434

Dated: 08 /11/2022

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 1569 /2022

**Mr. Rooh-Ul-Amin**

Assistant Food Controller,

PRC, Head Quarter, Swat..... **Appellant**

Versus

1. **The Director Food**

Food Department, Sikander Town Sikandar Town, Peshawar,  
Khyber Pakhtunkhwa

2. **The District Food Controller**

District, Swat,  
Q925+JR, College Colony Saidu Sharif, Swat,  
Khyber Pakhtunkhwa

3. **Mr. Usman Khan Shalmani**

Assistant Food Controller, District Swat  
Q925+JR, College Colony Saidu Sharif, Swat,  
Khyber Pakhtunkhwa .....

**Respondents**

---

**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED OFFICE ORDER DATED 28.07.2022 WHEREBY APPELLANT WAS PREMATURELY TRANSFERRED AGAINST WHICH HE PREFERRED DEPARTMENTAL APPEAL ON 01.08.2022 BUT THE SAME WAS NOT DISPOSED OF WITHIN THE STATUTORY PERIOD OF 90 DAYS.**

---

**PRAYER:**

On acceptance of the instant appeal, the impugned office order dated 28.07.2022 issued by Respondent No.2 may graciously be set aside earlier office order dated 30.05.2022 in the public interest as well as in the interest of justice.

---

Respectfully Sheweth,

Acts giving rise to the present writ petition are as under:-

1. That initially appellant was inducted into the service of the Respondents Department way back in the year 1989. Since then he has been performing his duties to the entire satisfaction of the high-ups, during that period he has never been proceeded against departmentally.
2. That while performing duties appellant was offered promotion on account of his meritorious service from the post of Cane Inspector (BPS-7) to Assistant Food Controller (BPS-16) vide office order dated 12.05.2022 (*Annex:-A*), therein he was transferred from the office of the District Food Controller Hangu, to office of the District Food Controller, Kohat.
3. That pursuant to the transfer order *ibid*, appellant took over the charge and starting performing duties at the office of District Food Controller, Kohat. It is necessary to adduce here that all of sudden by means of office order dated 27.05.2022 (*Annex:-B*) just after 15 days, appellant was prematurely transferred to office of the Respondent No.2. In continuation of the transfer order *ibid*, Respondent No.1 issued office order dated 30.05.2022 (*Annex:-C*) whereby appellant was directed to perform his duties against the post of Assistant Food Controller In-charge PRC, Swat with immediate effect in the public interest. In this backdrop of the matter appellant took over the charge, while performing his duties against the subject post, Respondent No.2 yet issued Impugned Transfer Order dated 28.07.2022 (*Annex:-D*) whereby he was unlawfully directed to hand over the charge to Respondent No.3. It is valuable to mention here that transfer of the Respondent No.3 has been made upon political influence because departmental proceedings were carried out against him vide Show Cause Notice dated 14.07.2022 (*Annex:-E*)
4. That as per Posting/Transfer policy (*Annex:-F*) "*All the posting/transfer shall be in public interest and shall not be abused/misused to victimize the Government Servants and normal positing/transfer tenure must be respected*". It is further submitted that the Hon'ble Superior Courts of the country time and again held that the instructions of the Policy in vogue

must be fulfilled and the civil servants must not be made a rolling stone by way of premature transfers.

5. That being aggrieved of the impugned office order dated 28.07.2022, Appellant preferred Departmental Appeal (*Annex:-G*) to Respondent No.1 which is still pending and thereafter having other quick remedy had filed a ~~Writ Petition under the Hon'ble Peshawar High Court, Mingora Bench/Dar-ul-Qaza, Swat~~ but the same was not fruitful.
6. That appellant, being aggrieved of the acts and actions of Respondents and the impugned office order dated 28.07.2022, files the instant Service Appeal this inter-alia on the following grounds:-

**Grounds:**

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned office order, which is unjust, unfair and hence not sustainable in the eye of law.
- B. That the impugned office order dated 28.07.2022 issued by the Respondent No.2 who under Rule-4 of the Khyber Pakhtunkhwa Government Servants (Appointment, Promotion and Transfer) Rules, 1989 is not competent to transfer appellant. Therefore, it is settled principle of law that where the basic order is against the law then the superstructure built thereon would automatically fall to the ground. Therefore, colorable exercise of power has been made by the Department which is repugnant to the Policy. Reliance is placed on reported judgments, 2016 PLC (CS) 221, PLD 2013 SC 195 and 1998 SMCR 2222 wherein it was held that:-

**PLD 2013 SC 195**

*“---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*

*“---Transfer of employee---Mala fide---Effect---Two orders of transfer of employee were made within a span of a fortnight---Validity---Employee (appellant) 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.”*

- F. That the impugned transfer order dated 28.07.2022 was passed by Respondent No.2 which is clear violation of the Rules of Business because appellant was transferred/adjusted on the existing place of posting by the Director Food Khyber Pakhtunkhwa, Peshawar and under the law the orders of the high-ups cannot be bypassed by subordinates even otherwise, the District Food Controller is not competent authority to transfer the appellant.
- G. That the Hon'ble Supreme Court of Pakistan in the case of “Syed Mehmood Akhtar Naqvi and others ...VS... The Federation of Pakistan” reported in PLD 2013 Supreme Court 195 has laid down the following principle regarding the tenure in posting/transfer:

*“Tenure, posting and transfer: when the ordinary tenure for 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.”*


It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.


Through

  
Appellant

**Khaled Rehman**  
Advocate Supreme Court

  
**Muhammad Amin Ayub**

&

  
**Muhammad Ghazanfar Ali**  
Advocates, High Court

Dated: 06/11/2022

## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. \_\_\_\_\_/2022

Rooh-Ul-Amin.....Appellant

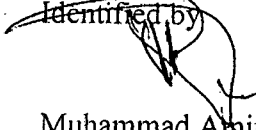
Versus

The Govt. of KPK &amp; others ..... Respondents


**Affidavit**

I, Mr. Rooh-Ul-Amin, Assistant Food Controller, PRC, Head Quarter, Swat, Peshawar, do hereby solemnly affirm and declare on oath that the contents of this writ petition are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Court.

Identified by



Muhammad Amin Ayub  
Advocate, Peshawar



Deponent







- 11 Annex "B"  
Our faith, "Corruption free Pakistan"

**GOVERNMENT OF KHYBER PAKHTUNKHWA**  
**DIRECTORATE OF FOOD, PESHAWAR**

No. 1963 /PF-

Dated: 27/05/2022

091-9225378 M fooddirectoratkpk@gmail.com foodKPGovt @foodkpgovt

**OFFICE ORDER**

Mr. Rohul Amin Assistant Food Controller, Office of District Food Controller Kohat is hereby transferred and posted as Incharge PRC Swat with immediate effect in the public interest.

**DIRECTOR FOOD  
KHYBER PAKHTUN KHWA,  
PESHAWAR.**

**Endorsement No & Date Even**

Copy forwarded to:

- 1 The District Account Officers, Kohat and Swat
- 2 The Assistant Directors Food, Kohat and Malakand.
- 3 The District Food Controllers, Kohat and Swat.
- 4 PS to Minister Food, Khyber Pakhtunkhwa.
- 5 PS to Secretary Food, Khyber Pakhtunkhwa.
- 6 Official concerned.
- 7 Personal files.

**DIRECTOR FOOD  
KHYBER PAKHTUN KHWA,  
PESHAWAR**

TESTED TO BE  
TRUE COPY

B



Our faith, "Corruption free Pakistan"

GOVERNMENT OF KHYBER PAKHTUNKHWA

DIRECTORATE OF FOOD, PESHAWAR

No. 1978/PF-

Dated: 30/05/2022

091-9225378 | [fooddirector@kpk.gov.pk](mailto:fooddirector@kpk.gov.pk) | [foodKPGovt](https://www.facebook.com/foodKPGovt) | [@foodkpgovt](https://www.instagram.com/foodkpgovt)

**OFFICE ORDER**


In continuation of this Directorate Office Order No. 1963/PF dated 27-05-2022, on transfer of Mr. Rohul Amin Assistant Food Controller, as Incharge PRC Swat, Mr. Said Haleem AFC will perform the duties of AFC (H.Q) Swat with immediate effect in the public interest.

  
DIRECTOR FOOD  
KHYBER PAKHTUN KHWA,  
PESHAWAR.

**Endorsement NO & Date EVER**

Copy forwarded to:

- 1 The Assistant Director Food, Malakand.
- 2 The District Food Controller, Swat. ✓
- 3 PS to Minister Food, Khyber Pakhtunkhwa.
- 4 PS to Secretary Food, Khyber Pakhtunkhwa.
- 5 Official concerned.
- 6 Personal files.

  
DIRECTOR FOOD  
KHYBER PAKHTUN KHWA,  
PESHAWAR

NEEDED TO BE  
FILED BY

- 13

**OFFICE OF THE DISTRICT FOOD CONTROLLER, SWAT.**

No.90/Office order

Dated: 28-07-2022.

0946-9240316

M fcswat@gmail.com

f Dfcswat

@Dfcswat

Annex "D"

**OFFICE ORDER.**

Mr Usman Khan Shalmani Assistant Food Controller will be the overall incharge of the PRC Swat and also be responsible for the receipt/releases of wheat.

He will maintain the FG-3, 6, 7,8,13 registers on daily /monthly basis and also the early submission of daily, fortnightly, monthly returns to the office of the undersigned and other quarter concerned etc.

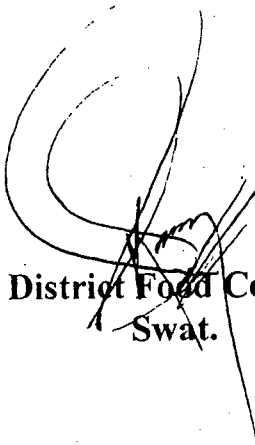
Mr Rohul Amin Assistant Food Controller is directed to hand over the charge of PRC Swat to Mr Usman khan Shalmani Assistant Food Controller.


  
District Food Controller,  
Swat.

**Endst. No. & Date Even.**

Copy forwarded to:

1. The Director Food Khyber Pakhtunkhwa Peshawar for information please.
2. The Deputy Director Food Khyber Pakhtunkhwa Peshawar for information please.
3. Mr Usman Khan Shalmani Assistant Food Controller for compliance.
4. Mr Rohul amin Assistant Food Controller for compliance.

  
District Food Controller,  
Swat.

  
ATTACHED TO BE  
TRADE COPY



GOVERNMENT OF KHYBER PAKHTUNKHWA  
DIRECTORATE OF FOOD,  
PESHAWAR

No: 2598 IPF

Dated 14/07/2022

☎ 01 8225378 | M fooddirector@kpk.gov.pk | @fooddirectorpk

**SHOW CAUSE NOTICE**

I, Kashif Iqbal Jelani, Director Food, Khyber Pakhtunkhwa, as competent authority under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Mr Usman Khan Assistant Food Controller, Office of DFC Swat as follows:

An Inquiry was ordered vide Food Directorate Office Order No. 178/Inspector-8 dated 13-05-2022 regarding illegal hoarding of Government 5196 Atta bags confiscated in a raid conducted by Assistant Commissioner Kabal and District Food Controller, Swat jointly on 13-05-2022,

The Inquiry Officer in its report recommended that after perusal of the record regarding illegal hoarding of Government subsidized 5196 atta bags by nominated dealer namely Mr. Muhammad Jawad S/O Rehman Gul at Kabal Bazar District Swat the Food Staff i.e. Mr Usman Khan AFC Swat was directed by the DFC Swat to supervise and coordinate the whole operation of Ramzan Package-2022, but you were failed to performed your monitoring and supervisory duty regarding supply of subsidized atta to the general public of District Swat

2 To ascertain the charges, proper formal enquiry was ordered vide Food Directorate letter No 1852/ET-Swat Atta Enquiry dated 20-05-2022. The enquiry Officer in its report dated 13-07-2022 recommended that the referred letter of DFC Swat dated 24-09-2021 has no specific area for monitoring and supervision of subsidized wheat atta was assigned to any of the executive staff member rather the referred office Order was of general nature for the whole District. Therefore, the allegations levelled against Mr Usman Khan AFC could not be establishment

3 As a result thereof, I, Kashif Iqbal Jelani, Director Food Khyber Pakhtunkhwa as competent authority, have decided on the basis of the recommendation of Enquiry Officer to award the **Minor Penalty of Censure** under Sub Rule-(1) (a) (i) of Rule-4 of E&D Rules-2011

4 You are, therefore, required through this Show Cause Notice to explain as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person

5 If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

6 A copy of the Inquiry report is enclosed

DIRECTOR FOOD  
KHYBER PAKHTUNKHWA,  
PESHAWAR

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**Endorsement No. & Date Even**

Copy is forwarded to

- 1) The Deputy Director Food Malakand Division
- 2) The District Food Controller Swat with the direction to serve the notice.
- 3) Officer concerned / Personal File

DIRECTOR FOOD  
KHYBER PAKHTUNKHWA,  
PESHAWAR

-15

Anna F<sup>3</sup>



# ESTA CODE

**ESTABLISHMENT CODE KHYBER PAKHTUNKHWA  
( REVISED EDITION ) 2011**

**A COMPENDIUM OF LAWS, RULES AND INSTRUCTIONS  
RELATING TO THE TERMS AND CONDITIONS  
OF PROVINCIAL CIVIL SERVANTS**

**COMPILED BY;  
(O&M) SECTION  
ESTABLISHMENT & ADMINISTRATION DEPARTMENT**

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F

Posting and Transfer

Statutory Provision.

Section 10 of the NWFP Civil Servants Act, 1973.

Posting and Transfer. Every civil servant shall be liable to serve anywhere within or outside the Province, in any post under the Federal Government, or any Provincial Government or Local authority, or a Corporation or body set up or established by any such Government:-

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region;

Provided further that, where a civil servant is required to serve in a post outside a service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

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) Existing tenure of posting/transfer of three (03) years for settled areas and two (02) years for unattractive/hard areas shall be reduced to two (02) years for settled areas, 01½ years for unattractive areas and one year for hard areas.
- v) <sup>79</sup>[ ]

79 Para-1(v) regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No: SOR-VI (E&AD) 1-4/2008/Vol-VI, dated 3-6-2008. Consequently authorities competent under the NWFP Government Rule of Business, 1985, District Government Rules of Business 2011, 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.

Handwritten signature or initials in a circle.

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- vi) <sup>80</sup> While making posting/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. Save Tehsildars/Naib Tehsildars within a division, in respect of whom the concerned Commissioner will exercise the same power. 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.

Provided that the power to transfer Political Tehsildars and Political Naib Tehsildars within FATA between different divisions shall rest in Additional Chief Secretary FATA.

- vi (a) 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.
- vii) Officers may be posted on executive/administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thaana) of his area/residence is situated.
- viii) No posting/transfers of the officers/officials on detailment basis shall be made.
- ix) Regarding the posting of husband/wife, both in Provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.
- x) All the posting/transferring authorities may facilitate the posting/transfer of the unmarried female government Servants at the station of the residence of their parents.
- 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



<sup>81</sup> 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:

<b>Outside the Secretariat</b>	
1. Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above.	Chief Secretary in consultation with Establishment Department and Department concerned with the approval of the Chief Minister.
2. Other officers in BPS-17 and above to be posted against scheduled posts, or posts normally held by the APUG, PCS(EG) and PCS(SG).	-do-
3. Heads of Attached Departments and other Officers in B-19 & above in all the Departments.	-do-
<b>In the Secretariat</b>	
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 Department 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.

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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 posting/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(i) 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.

5. 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

(Authenticity: Letter No: SOR-V/ES/AO/1-4/2003 dated 24-6-2003).

18  
The Director Food,  
Khyber Pakhtunkhwa, Peshawar.

Amir G

Through: Proper Channel

Subject: Departmental Representation against the premature impugned transfer order dated 28.07.2022 whereby the appellant was directed to hand over the charge of PRC Swat to Mr. Usman Khan Shalmani Assistant Food Controller.

Respected Sir,

With due respect I have the honour to submit this departmental appeal/representation for your kind consideration and favourable action on the following facts and grounds:

1. That initially appellant was inducted into the service of the Department way back in the year 1989. Since then he has been performing his duties to the entire satisfaction of the high-ups, during that period he has never been proceeded against departmentally.
2. That while performing duties appellant was offered promotion on the account of his meritorious service from the post of Cane Inspector to Assistant Food Controller vide office order dated 12.05.2022. It is pertinent to aver here that therein the appellant was transferred from the office of the District Food Controller Hangu to office of the District Food Controller Kohat.
3. That pursuant the transferred order *ibid.* appellant took over the charge and starting performing duties. It is necessary to adduce here that all of sudden by means of office order dated 27.05.2022 appellant was prematurely transferred to District Food Controller PRC Go down Swat. Appellant complied with the office order and reported to the place of posting and commence performing duties. Moreover, The Director Food issued office order dated 30.05.2022 whereby appellant was directed to perform his duties against the post of Assistant Food Controller in charge PRC Swat. In this backdrop of the matter appellant was performing his duties against the subject post but once again vide impugned transferred order dated 28.07.2022 whereby he was unlawfully directed to hand over the charge to one Mr. Usman Khan Shalmani Assistant Food Controller.
4. That against the above-mentioned order dated 28.07.2022, appellant now prefer this departmental appeal to your good-self for favorable considerations inter-alia on the following grounds:-

Grounds:

- A. That the provincial Government has enacted posting transfer policy for the civil servant wherein it was held that normal posting transfer order must be respected and all the posting/transfer shall be strictly in public interest and shall not be abused/misused to victimize the Government servants.
- B. That the impugned office order is neither in the public interest nor in exigency of service rather the same is in utter violation of transfer/posting policy and as such is not legally correct. Furthermore, no further posting/transfer order in respect of the appellant has been made which clearly suggests political influence.

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- C. That the impugned office order is the result of political consideration which is not only violative of the policy on the subject matter as reflected at Para No.2 of the posting/transfer Policy as well as the judgment of the Apex Court (PLD 2013 SC-195 Annex-I)
- D. That while issuing the impugned office order, the terms as per transfer-posting policy have not been respected. It is admitted position that the appellant has served on the previous places for short span of time, therefore, it will not be wrong to add here appellant has been made a rolling stone by way premature transfer orders which is clear violation of law, Rules and Policy.
- E. That while issuing the impugned office order dated 28.07.2022, the Department has not only violated the Policy in field but also deprived appellant from his right to serve the Department in the light of earlier transfer orders where appellant has relinquished the charge of his earlier place of posting.
- F. That the impugned transfer order is not only repugnant to the posting transfer policy but also contrary to the verdict of the Hon'ble Courts, therefore, the premature transfer order of the appellant also falls within the ambit of contempt of court.
- G. That the impugned transfer order dated 28.07.2022 was passed by the District Food Controller, Swat which is clear violation of the Rules of Business because appellant was transferred/adjusted on the existing place of posting by the Director Food Khyber Pakhtunkhwa, Peshawar and under the law the orders of the high-ups cannot be bypassed by subordinates even otherwise, the District Food Controller is not competent authority to transfer appellant.
- H. That the Hon'ble Supreme Court of Pakistan in the case of "Syed Mehmood Akhtar Naqvi and others ...VS... The Federation of Pakistan" reported in PLD 2013 Supreme Court 195 has laid down the following principle regarding the tenure in posting/transfer:

*"Tenure, posting and transfer: when the ordinary tenure for 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."*

The same judgment has become a benchmark for all transfers and postings and was also circulated by the Government of Pakistan throughout the country vide office Memorandum dated 03.01.2013 incorporating the same principle.

It is, therefore, humbly requested that on acceptance of this departmental Representation, the impugned transfer dated 28.07.2022 may be set aside by allowing the appellant to complete his remaining tenure as Assistant Food Controller PRC Incharge Swat.

Yours faithfully

*Rosh-ul-Amin*  
Assistant Food Controller  
PRC Swat.

Diary No- 5073 -  
Dated: 1/07/2022

*Pastor Agud*  
01-07-22

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No.F.1/11/2012-Lit-IV

Islamabad - the 3rd January, 2013.

OFFICE MEMORANDUM

SUBJECT: ORDER PASSED BY SUPREME COURT OF PAKISTAN IN CONST. PETITION NO.23/2012 FILED BY MS ANITA TURAB AND OTHERS VS. FEDERATION OF PAKISTAN dated 19.10.2012

The undersigned is directed to refer to the subject cited above and to say that the Supreme Court of Pakistan has enunciated certain guiding principles for depoliticizing the public service vide its judgment dated 12-11-2012 passed in the subject case. The operative parts of the judgment given vide para-22 are reproduced 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.

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GOVERNMENT OF PAKISTAN  
Cabinet Secretariat  
ESTABLISHMENT DIVISION

No.F.1/11/2012-Lit-IV

Islamabad - the 3<sup>rd</sup> January, 2013.

OFFICE MEMORANDUM

Subject: ORDER PASSED BY SUPREME COURT OF PAKISTAN IN CONST. PETITION NO.23/2012 FILED BY MS. ANITA TURAB AND OTHERS VS. FEDERATION OF PAKISTAN DATED 18.10.2012

The undersigned is directed to refer to the subject cited above and to say that the Supreme Court of Pakistan has enunciated certain guiding principles for depoliticizing the public service vide its Judgment dated 12-11-2012 passed in the subject case. The operative parts of the Judgment given vide para-22 are reproduced 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.

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2. The Supreme Court has further recognized the need for ensuring that decision making in relation to tenure, appointment, removal, promotion and transfer remains ruled based and is not susceptible to arbitrariness or absolute and unfettered discretion.

3. In view of the foregoing, the following guidelines have been circulated vide Establishment Division's O.M. No. 4/10/2012-E-2 dated 26<sup>th</sup> December, 2012 (copy enclosed) with the approval of competent authority for strict compliance of the Supreme Court orders, dated 12.11.2012 while passing any such orders relating to appointment, tenure and transfer of the officers in BS-17 to BS-22:-

- a) The normal tenure specified must be respected and may not be varied except for compelling reasons which should be recorded in writing and would be defensible if subjected to judicial scrutiny.
- b) The officer appointed on a post be allowed to earn at least one Annual Performance Evaluation Report.
- c) The officer should not be posted as OSD except for compelling reasons, usually for training, temporary inefficiency of extreme hardship and transit period for minimum possible time with the reasons to be recorded in writing.
- d) There is no space for unilateral surrender of the officers by Ministries/Divisions/Provincial Governments and they are requested to refrain from this practice. However, even if they intend to change the officer, matter may be taken up with the Establishment Division, in case of APUG and federal employees and with respective Provincial Departments dealing with service matters of the officer, for appropriate action.

4. Attention of all the Ministries/Divisions/Departments/Organizations is also invited to the existing provisions contained in the constitution of Pakistan, 1973, Rules of Business, 1973, Pakistan Penal Code, and Conduct Rules, 1964. The relevant extracts are as under:-

The Constitution of Islamic Republic of Pakistan 1973 In terms of article 240 of the 1973 Constitution the appointment to and the conditions of service of Pakistan are determined in-cr-a-lia through the act of Parliament.

- "4. Right of individuals to be dealt with in accordance with law, etc.
  - (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.
  - (2) In particular:-
    - (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
    - (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and
    - (c) no person shall be compelled to do that which the law does not require him to do"

"9. Security of person. No person shall be deprived of life or liberty save in accordance with law"

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3. In view of foregoing, the following guidelines have been circulated vide Establishment Division's O.M.No.4/10/2012-E-2 dated 26<sup>th</sup> December, 2012 (copy enclosed) with the approval of competent authority for strict compliance of the Supreme Court orders, dated 12.11.2012 while passing any such orders relating to appointment, tenure and transfer of the officers in BS-17 to BS-22:-

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- d) There is no space for unilateral surrender of the officers by Ministries/Divisions/Provincial Governments and they are requested to refrain from this practice. However, even if they intend to change the officer, matter may be taken up with the Establishment Division, in case of APUG and federal employees and with respective Provincial Departments dealing with service matters of the officer, for appropriate action.

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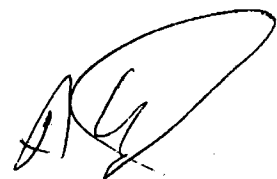
The Constitution of Islamic Republic of Pakistan 1973 In terms of article 240 of the 1973 Constitution the appointment to and the conditions of service of Pakistan are determined inter-alia through the Act of Parliament.

"4. Right of individuals to be dealt with in accordance with law, etc.

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  - (c) no person shall be compelled to do that which the law does not require him to do.

"9. Security of person. No person shall be deprived of life or liberty save in accordance with law"

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WAKALAT NAMA

IN THE COURT OF KPK Service Tribunal Peshawar

Rooh-ul-Amin

Appellant(s)/Petitioner(s)

VERSUS

Govt of KPK &

Respondent(s)

I/We Appellant do hereby appoint  
**Mr. Khaled Rehman**, Advocate, Supreme Court, **Mr. Muhammad Amin Ayub & Muhammad Ghazanfar Ali**, Advocates in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

**AND hereby agree:-**

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this \_\_\_\_\_

Attested & Accepted by

Signature of Executants

**Khaled Rahman,**  
Advocate,  
Supreme Court of Pakistan

BC-105542

CNIC-16101-4888813-3

cell-03138922889

&

**Muhammad Amin Ayub**  
Advocate, High Court

&

**Muhammad Ghazanfar Ali**  
Advocate, High Court

4-B, Haroon Mansion  
Khyber Bazar, Peshawar  
Off: Tel: 091-2592458