

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.7129/2021

Date of Institution ... 02.08.2021  
Date of Decision ... 22.07.2022

Dr. Muhammad Israr Ul Haq, Management Cadre (BPS-18), posted as  
District Health Officer, District North Waziristan.

... (Appellant)

**VERSUS**

The Chief Secretary, Khyber Pakhtunkhwa, Peshawar and three  
others.

... (Respondents)

Noor Muhammad Khattak,  
Advocate

... For appellant.

Muhammad Adeel Butt,  
Additional Advocate General

... For official respondents #1 to 3.

Yasir Salim,  
Advocate

... For private respondents # 4.

Rozina Rehman  
Fareeha Paul

... Member (J)  
... Member (E)

**JUDGMENT**

**ROZINA REHMAN, MEMBER (J):** The appellant has invoked the  
jurisdiction of this Tribunal through above titled appeal with the prayer  
as copied below:

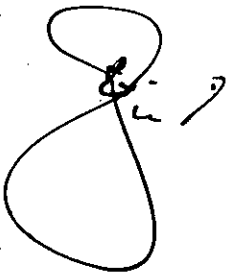
**"On acceptance of this appeal, the impugned Notification  
dated 09.07.2021 may very kindly be set aside to the extent  
of posting of the private respondent No.4 against the post  
occupied by the appellant and the respondents may kindly be**



**directed not to transfer the appellant from the post of District Health Officer, District North Waziristan".**

2. Brief facts of the case are that the appellant is the employee of the respondents' Department and belongs to Management Cadre who was lastly transferred to the post of District Health Officer North Waziristan on 06.03.2020. He assumed the charge on 10.03.2020. It was on 11.09.2020 when appellant was prematurely transferred and posted at the disposal of DG Health Services and one Dr. Muhamad Ikram was posted against the post of appellant. Dr. Muhammad Ikram was suspended with immediate effect on 17.09.2020 and transfer order dated 11.09.2020 was never actualized, resultantly, appellant was allowed to work on his own post of DHO District North Waziristan. Feeling aggrieved from the suspension order, Dr. Muhammad ikram preferred writ petition and got a stay order. In the meanwhile, appellant was performing his duty as DHO North Waziristan. During pendency of writ petition another transfer order was issued on 08.01.2021 but the same was suspended by the august Court and it was on 09.07.2021 when private respondent No.4 was posted against the post held by the appellant in utter violation of posting transfer policy. Feeling aggrieved, he filed departmental appeal which was not responded to, hence, the present service appeal.

3. We have heard Noor Muhammad Khattak Advocate, learned counsel for the appellant, Muhammad Adeel Butt, learned Additional Advocate General for official respondents No.1 to 3 and Yasir Salim Advocate for private respondent No.4 and have gone through the record and the proceedings of the case in minute particulars.



4. Noor Muhammad Khattak Advocate, learned counsel for the appellant argued inter alia that Notification dated 09.07.2021 to the extent of private respondent No.4 is against law, facts and norms of natural justice, hence, not tenable and liable to be set aside. He submitted that the appellant was not treated in accordance with law and rules and as such respondents violated Article-4 & 10-A of the Constitution of Islamic Republic of Pakistan, 1973. It was further submitted that the impugned Notification dated 09.07.2021 was issued by respondent No.2 in arbitrary and malafide manner and that private respondent No.4 belongs to General Cadre, but even then, he was posted against the post of appellant who belongs to Management Cadre. Lastly, he submitted that the impugned Notification is not in the best interest of public service and is violative of Clauses-I, IV & XIII of the transfer posting policy of the Government of Khyber Pakhtunkhwa, therefore, appeal may kindly be accepted.

5. Conversely, learned AAG assisted by the learned counsel for private respondent No.4 submitted that appellant is an employee of the Health Department who was in BS-17, however, was posted as DHO North Waziristan in his own pay and scale (OPS) vide Notification dated 06.03.2020 and that holding post on the basis of OPS does not create any vested right in favor of incumbent and that Notification dated 11<sup>th</sup> September, 2020 was never questioned by the appellant at any forum vide which he was transferred from North Waziristan and his services were placed at the disposal of Director General of Health Services. He contended that Dr. Muhammad Ikram filed a writ petition before the Peshawar High Court, Bannu Bench and that Dr. Ikram Ullah was performing his duties as DHO North Waziristan till the impugned order

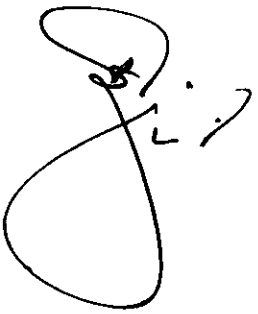


dated 09.07.2021 and that transfer Notification of Dr. Ikram Ullah was issued however the same was suspended by the august Peshawar High Court, thus, Dr. Ikram Ullah remained as DHO North Waziristan which is sufficient to prove that he performed his duties at North Waziristan instead of appellant. Lastly, he submitted that private respondent No.4 was transferred vide Notification dated 09.07.2021 in place of Dr. Ikram Ullah and that neither the appellant has been posted nor transferred from the post of DHO North Waziristan. He, therefore, requested for dismissal of the instant appeal.

6. From the record it is evident that Dr. Muhammad Israr Ul Haq the present appellant (Management Cadre, BS-17) Medical Officer Rural Health Center Domel Bannu was transferred and posted as District health Officer, North Waziristan in his own pay and scale with immediate effect vide Notification dated 6<sup>th</sup> March, 2020. In compliance, he assumed charge on 10.03.2020. It was on 11<sup>th</sup> September, 2020 when the present appellant was transferred and his services were placed at the disposal of Director General Health Services while one Dr. Muhammad Ikram Safi, District Health Officer Kolai Palas was transferred and posted as DHO Tribal District North Waziristan. In the meanwhile, departmental proceedings were initiated against Dr. Muhammad Ikram and he was suspended vide Notification dated 17<sup>th</sup> September, 2020. He was directed vide Notification dated 18<sup>th</sup> September, 2020 to report to Directorate General Health Service Khyber Pakhtunkhwa. He challenged his suspension order in the august Peshawar High Court. In the meanwhile, he was transferred from North Waziristan and his services were placed with the Director General

Health Services, while one Dr. Atta Ullah Khan was transferred and posted as DHO North Waziristan. He also challenged his transfer order in the august Peshawar High Court in CM No.3-B of 2021 in Writ Petition No.886-B/2020 and vide order dated 11.01.2021 of the august Peshawar High Court, Notification dated 08.01.2021 vide which Dr. Ikram was transferred to DG health Services and Ata Ullah was transferred and posted as DHO North Waziristan was suspended.

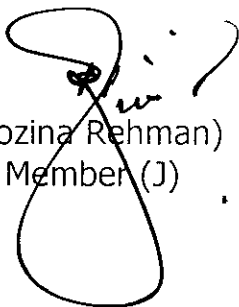
7. From the above discussion, it is very much evident that the present appellant after getting transferred on 11<sup>th</sup> September, 2020 never remained on the said post till today. Learned counsel for appellant was asked in respect of his current status and he frankly conceded that he is not serving as DHO North Waziristan and that he is getting salary from somewhere else. It is very much astonishing that the impugned order does not find mention of the appellant. The operation of impugned order was suspended by this Tribunal vide order dated 05.08.2021 to the extent of appellant and respondent No.4. An implementation petition was also submitted. The appellant is not serving there and he has been transferred and getting his salary from the post where he is now serving and he is no more there in District North Waziristan, therefore the Notification dated 09.07.2021 was properly issued whereby, services of Dr. Ikram were placed at the disposal of District Health Officer Mardan and Dr. Hafeez Ullah Deputy Director EPI for Merged Districts Peshawar was transferred and posted as District Health Officer North Waziristan in his own pay and scale vide Notification dated 09<sup>th</sup> July, 2021.



8. In view of the above discussion, instant service appeal is hereby dismissed. File be consigned to the record room.

ANNOUNCED.  
22.07.2022

  
(Fariha Paul)  
Member (E)

  
(Rozina Rehman)  
Member (J)

ORDER  
22.07.2022

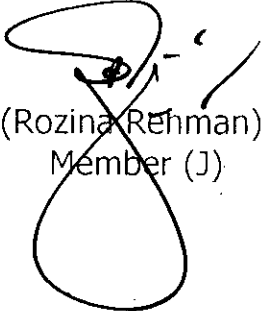
Appellant present through counsel.

Muhammad Adeel Butt, learned Additional Advocate General alongwith Safi Ullah Focal Person for respondents No.1 to 3 present. Private respondent No.4 present through counsel.

Vide our judgment of today of this Tribunal placed on file, instant service appeal is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.  
22.07.2022


  
(Farzeha Paul)  
Member (E)

  
(Rozina Rehman)  
Member (J)

05.11.2021 Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General for official respondents present. Counsel for private respondent present.

Request for adjournment was made on behalf of appellant; granted. To come up for arguments on 25.11.2021 before D.B.

  
(Rozina Rehman)  
Member (J)

  
Chairman



7129/21

23.09.2021

Counsel for the appellant and Kabriullah Khattak, Addl. AG for the official respondents and counsel for private respondent No. 4 present.

Due to shortage of time, arguments could not be heard. Case is adjourned to 22.10.21 for arguments before the D.B. In the meanwhile the operation of the impugned order shall remain suspended to the extent of appellant and respondent No. 4 till the date fixed.



(Rozina Rehman)  
Member(Judicial)



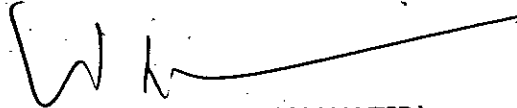
Chairman

22.10.2021

Junior of learned counsel for the appellant present.

Mr. Riaz Paindakheil, Assistant Advocate General alongwith Mr. Ziaullah Deputy Secretary for official respondents No. 1 to 3 present. Nemo for private respondent No.4

Former made a request for adjournment as senior counsel for the appellant is busy before Hon'ble Peshawar High Court Peshawar. Adjourned. To come up for arguments on 05.11.2021 before D.B. Private respondent. 4 be put on notice for the date fixed.



(ATIQ UR REHMAN WAZIR)  
MEMBER (E)



(ROZINA REHMAN)  
MEMBER (J)

24.01.2022 Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Painsakheil Assistant Advocate General for the respondents present.

Mrs. Rozina Rehman learned Member (Judicial) is on leave, therefore, case is adjourned. To come up for arguments on 07.02.2022 before D.B.



(Salah-Ud-Din)  
Member (J)

7-02-2022


Due to retirement of the Honble Chairman the case is adjourned to come up for the same as before on 31-05-2022



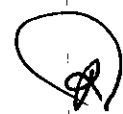
22.06.2022 Counsel for the appellant present.

Naseer Ud Din Shah learned Assistant Advocate General for respondents present.

Former made a request for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 19/07.2022 before D.B. *with last chance.*

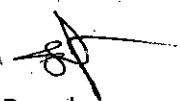


(Fareeha Paul)  
Member(E)

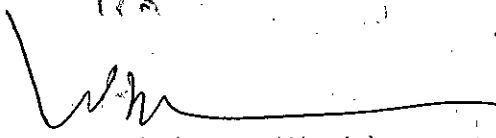



(Rozina Rehman)  
Member (J)

25.11.2021 Proper DB is not available, therefore, the case is adjourned to 17/12/22 for the same <sup>as</sup> before ~~D.B.~~

  
Reader

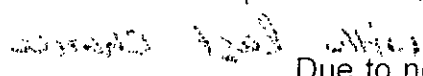
17.12.2021 Mr. Noor Muhammad Khattak, Advocate, for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for official respondents No. 1 to 3 present. Clerk of learned counsel for private respondent 4 present and submitted an application for adjournment on the ground that learned counsel for private respondent No. 4 is ill. Adjourned. To come up for arguments on 14.01.2022 before the D.B.


  
(Atiq-ur-Rehman Wazir)  
Member (E)

  
(Salah-ud-Din)  
Member (J)

14.01.2022 Appellant present through representative.

Muhammad Adeel Butt, learned Additional Advocate General for official respondents present. Counsel for private respondent No.4 present.

  
Due to non-availability of Mr. Mian Muhammad Member (Executive), the case could not be heard. Adjourned. To come up for arguments on 24.01.2022 before D.B.

  
(Rozina Rehman)  
Member (J)

05.11.2021 Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General for official respondents present. Counsel for private respondent present.

Request for adjournment was made on behalf of appellant; granted. To come up for arguments on 25.11.2021 before D.B.



(Rozina Rehman)  
Member (J)



Chairman

7129/21

23.09.2021

Counsel for the appellant and Kabriullah Khattak, Addl. AG for the official respondents and counsel for private respondent No. 4 present.

Due to shortage of time, arguments could not be heard. Case is adjourned to 22.10.21 for arguments before the D.B. In the meanwhile the operation of the impugned order shall remain suspended to the extent of appellant and respondent No. 4 till the date fixed.



(Rozina Rehman)  
Member(Judicial)



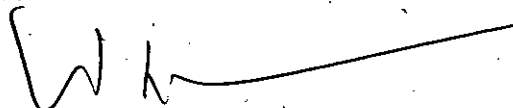
Chairman

22.10.2021

Junior of learned counsel for the appellant present.

Mr. Riaz Paindakheil, Assistant Advocate General alongwith Mr. Ziaullah Deputy Secretary for official respondents No. 1 to 3 present. Nemo for private respondent No.4

Former made a request for adjournment as senior counsel for the appellant is busy before Hon'ble Peshawar High Court Peshawar. Adjourned. To come up for arguments on 05.11.2021 before D.B. Private respondent. 4 be put on notice for the date fixed.



(ATIQU UR REHMAN WAZIR)  
MEMBER (E)



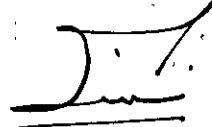
(ROZINA REHMAN)  
MEMBER (J)

27.08.2021

Mr. Noor Muhammad Khattak, Advocate for the appellant present. Mr. Muhammad Rashid, Deputy District Attorney alongwith Mr. Ziaullah, Deputy Secretary (Litigation), Mr. Shahbaz Khan, SO for official respondents No. 1 to 3 and Mr. Yasir Saleem, Advocate for private respondent No.4 present.

Reply/comments on behalf of respondents No. 1 to 3 submitted, copy of which handed over to the learned counsel for the appellant. Learned counsel for the appellant sought time for reply of the application submitted by respondent No.4 for summary dismissal of the instant appeal. Adjourned. To come up for reply as well as arguments on the application for summary dismissal before the D.B on 13.09.2021. Meanwhile the operation of the impugned order shall remain suspended to the extent of appellant and respondent No.4 till the date fixed.


  
(MIAN MUHAMMAD)  
MEMBER (EXECUTIVE)

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

13.09.2021

Mr. Noor Muhammad, Advocate for the appellant present. Mr. Muhammad Riaz Khan, Asst: AG for official respondents and Mr. Yasir Saleem, Advocate for private respondent No.4 present.

Learned counsel for the appellant submitted reply on application submitted by private respondent No.4 which is placed on file. A copy of the same is also handed over to the respondents. Learned Asst: AG sought time for arguments. Adjourned. To come up for arguments on 23.09.2021 before the D.B. Meanwhile the operation of the impugned order shall remain suspended to the extent of appellant and respondent No.4 till the date fixed.

  
(Mian Muhammad)  
Member(E)

  
(Atiq-Ur-Rehman Wazir)  
Member(E)

7129/21

11.08.2021

Counsel for the respondent No. 4 present. This file has been requisitioned on application of respondent No. 4 seeking early fixation of the appeal and for its summary dismissal. Application for early hearing alongwith application for dismissal of appeal have been placed on file.

Learned counsel for respondent No. 4 contends that the appellant has concealed material facts from this Tribunal and has obtained suspension order by misleading facts. Although the appeal was fixed for 22.09.2021 before the D.B but in view of the application for its summary dismissal, let it be posted for an early date to get reply of the appellant on the applications of respondent No. 4 before the D.B on 27.08.2021. Notice of the substituted date be issued to appellant/learned counsel as well as official respondents.

Appellant Deposited  
Security & Process Fee

  
Chairman

05.08.2021

Counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant contends that the transfer of the appellant through impugned order is against the posting/transfer policy of the Provincial Government. Let the respondents be put on notice for regular hearing. The appeal is admitted for regular hearing subject to all legal objections to be determined during full hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 22.09.2021 before the D.B.

An application has been filed alongwith the appeal for interim relief. Notice of the application be also given to the respondents. The operation of the impugned order shall remain suspended to the extent of appellant and respondent No. 4 till next date.

  
Chairman

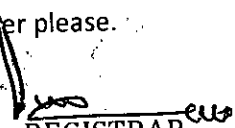


Form- A

# FORM OF ORDER SHEET

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

Case No.- 7129 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	02/08/2021	<p>The appeal of Mr. Israr-ul-Haq resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR,</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on _____.</p> <p style="text-align: right;">CHAIRMAN</p>
2-		

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR  
CHECK LIST**

Case Title: Muhammad Israr-Ul-Haq V/S

HEALTH DEPARTMENT

S#	CONTENTS	YES	NO
1	This Appeal has been presented by: <b>NOOR MOHAMMAD KHATTAK</b>	✓	
2	Whether Counsel/Appellant/Respondent/Deponents 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 paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	x	✓
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 AG/DAG?	✓	
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 cutting/overwriting?	x	✓
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: **NOOR MOHAMMAD KHATTAK**

Signature: \_\_\_\_\_

Dated: \_\_\_\_\_

02-08-2021

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

**SERVICE APPEAL NO. \_\_\_\_\_/2021**

**M, ISRAR-UL-HAQ                      V/S                      HEALTH DEPARTMENT**

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Dated: \_\_\_\_\_ 2021

**APPELLANT**

Through:

**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

FLATE NO. 04, 2<sup>ND</sup> FLOOR,  
JUMA KHAN PLAZA, NEAR FATA SECRETARIAT,  
WARSAK ROAD, PESHAWAR

**0345-9383141**

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

**APPEAL NO. 7/29 /2021**

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 7393

Dr. Muhammad Israr-Ul-Haq, Management Cadre (BPS-18),  
Posted as District Health Officer, District North Waziristan. **Dated 02/08/2021**

..... **APPELLANT**

**VERSUS**

- 1- The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
- 4- Dr. Hafizullah, General Cadre (BPS-17), under transfer/ posted as District Health Officer, North Waziristan (OPS), District North Waziristan.

..... **RESPONDENTS**

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 09-07-2021 WHEREBY THE PRIVATE RESPONDENT NO.4 HAS BEEN POSTED AGAINST THE POST OCCUPIED BY THE APPELLANT IN UTTER VIOLATION OF TRANSFER/POSTING POLICY AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD.**

**PRAYER:**

That on acceptance of this appeal the impugned Notification dated 09-07-2021 may very kindly be set aside to the extent of posting of the private respondent No.4 against the post occupied by the appellant and the respondents may kindly be directed not transfer the appellant from the post of District Health Officer, District North Waziristan. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

**R/SHEWETH:**

**ON FACTS:**

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

Filed to-day  
Registrar  
02/08/2021

- 1- That appellant is the employee of respondents Department and belongs to the Management cadre, and was lastly transferred to the post of District Health Officer, District North Waziristan vide notification dated 06-03-2020. That appellant assumed the charge of the mention post on 10-03-2020. Copies of the notification dated 06-03-2020 and charge report are attached as annexure .....**A & B.**
- 2- That it is important to mention here that vide notification dated 11-09-2020 the appellant was prematurely transferred and posted at the disposal of D.G Health Services and one Dr. Muhammad Ikram was posted against the post of appellant. Copy of the Notification dated 11.09.2020 is attached as annexure ..... **C.**
- 3- That just after few days vide notification dated 17-09-2020 the one who posted against the post of appellant was suspended with immediate effect and the transfer order dated 11.09.2020 never actualized in its form, resultantly the appellant was allowed to work on his own post of the DHO, District North Waziristan. That vide order dated 18-09-2020 the transferee of the order dated 11.09.2020 was directed to report to the D.G Health Services Peshawar. Copies of the notification dated 17.09-2020 and 18-09-2020 are attached as annexure.....**D &E.**
- 4- That the transferee feeling aggrieved from the suspension order dated 17-09-2020 preferred a writ petition No. 886-B/2020 before the August Peshawar High Court, Bannu Bench and the August Court vide order dated 23.09-2020 directed the respondents that "*they may continue inquiry proceedings but no adverse order shall be taken against the petitioner/ transferee*". That in the meanwhile the appellant was performing his duty as DHO, District North Waziristan. Copy of the order dated 23.09.2020 is attached as annexure.....**F.**
- 5- That during pendency of the mention writ petition another transfer order/ notification dated 08-01-2021 was issued and the same was also suspended by the August Peshawar High Court, Bannu Bench vide order dated 11.01.2021. Copies of the notification dated 08-01-2021 and order dated 11.01.2021 are attached as annexure ....**G&H.**
- 6- That as the appellant was performing his duty on his post but vide impugned order dated 09-07-2021 the private respondent No. 4 was posted against the post, held by the appellant, in utter violation of the posting/ transfer policy of the provincial government and the cadre policy. Copy of the impugned notification dated 09-07-2021 is attached as annexure .....**I.**

- 7- That appellant feeling aggrieved from the impugned notification/ order 09-07-2021 preferred departmental appeal on 10-07-2021 and no response has been given by the respondents within the stipulated time period. Copy of the departmental appeal is attached as annexure .....**J.**
- 8- That the appellant feeling aggrieved and having no other remedy but to file this appeal on the following grounds amongst others.

**GROUND:**

- A- That the impugned Notification dated 09.07.2021 to the extent of private respondent No. 4, placed at serial No. 6 of the impugned notification, is against the law, facts, norms of natural justice and materials on the record, hence not tenable and liable to be set aside to the extent of appellant and private respondent No.4.
- B- That the appellant has not been treated by the respondents 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.
- C- That the impugned Notification dated 09.07.2021 has been issued by the respondent No.2 in arbitrary and malafide manner, hence not tenable and liable to be set aside to the extent of appellant and private respondent No.4.
- D- That it is worth to mention here that private respondent No. 4 belongs to the General Cadre whereas the appellant belongs to the Management Cadre and the question/ disputed post is to be held/ hold by official belongs to the management cadre.
- E- That suitable person be posted at suitable post, in this respect this Honorable Tribunal vide judgment dated 09-08-2019 in Appeal No. 823/2019 and judgment dated 07-07-2020 in appeal No. 944/2020 have held that no person from General Cadre be posted on the post of Management cadre and only the person from the management cadre be posted on the post of management cadre. So the question post is one of the management cadre post and the appellant is belongs to the management cadre but the private respondent No. 4 belongs to the general cadre hence he (private respondent No.4) cannot be posted at this post. Copies of the judgment dated 09-08-2019 and dated 07-07-2020 are attached as annexure .....**K.**

- F- That the impugned Notification dated 09.07.2021 is based on discrimination, favoritism and nepotism, hence not tenable to the extent of private respondent No. 4 in the eye of law.
- G- That the impugned Notification dated 09.07.2021 has neither been in the best interest of public service nor in exigencies of service, hence not tenable and liable to be set aside.
- H- That the impugned notification dated 09.07.2021 is violative of Clause-I, IV and XIII of the transfer/posting policy of the Government of Khyber Pakhtunkhwa. Copy of the transfer/posting policy is attached as annexure ..... L.
- I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

**APPELLANT**

**MUHAMMAD ISRAR-UL-HAQ**

**THROUGH:**

**NOOR MOHAMMAD KHATTAK**

**KAMRAN KHAN**

**UMER FAROOQ**

**&**

**SAID KHAN**

**ADVOCATES**

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

**MUHAMMAD ISRAR-UL-HAQ . VS**

**HEALTH DEPTT:**

**AFFIDAVIT**

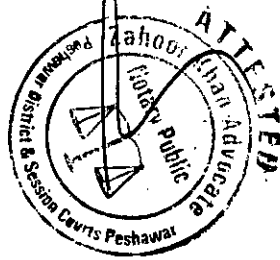
Stated on oath that the contents of the accompanying service appeal are correct to best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal.

  
**DEPONENT**

**CERTIFICATE:**

Certify that no earlier service appeal has been filed by the appellant in the instant matter before this Honorable Service Tribunal.

  
**CERTIFICATION**





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

**SERVICE APPEAL No. \_\_\_\_\_/2021**

**MUHAMMAD ISRAR-UL-HAQ VS HEALTH DEPTT:**

**APPLICATION FOR SUSPENSION OF OPERATION OF  
THE IMPUGNED NOTIFICATION DATED 09.07.2021 TILL  
THE DISPOSAL OF THE ABOVE MENTIONED APPEAL**

**R/SHEWETH:**

- 1- That the above mentioned appeal along with this application has been filed the appellant before this august service Tribunal in which no date has been fixed so far.
- 2- That appellant filed the above mentioned appeal against the impugned notification dated 09.07.2021 whereby the private respondent No. 4 belonging to the general cadre has been posted against the post of management cadre in utter violation of law and rules and through the same order the appellant has been disturb.
- 3- That all the three ingredients necessary for the stay is in favor of the appellant.
- 4- That the impugned order dated 09.07.2021 had been issued by the respondents in utter disregard of law and prevailing Rules.
- 5- That all the grounds of the main appeal be consider as part and parcel of this application.

It is therefore, most humbly prayed that on acceptance of this application the operation of the impugned Notification dated 09.07.2021 to the extent of appellant and private respondent No.4 may very kindly be suspended till the disposal of the above mentioned service appeal.

**APPLICANT**

**MUHAMMAD ISRAR-UL-HAQ**

**THROUGH:**

**NOOR MOHAMMAD KHATTAK  
ADVOCATE**

ANNEXURE A

7



Government of Khyber Pakhtunkhwa  
Health Department

Dated Peshawar the 06<sup>th</sup> March, 2020

**NOTIFICATION**

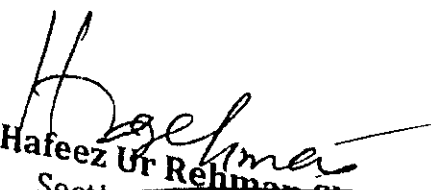
**NO. SOH(HD)/E-V/2-2/2020** The competent authority is pleased to transfer Dr. Muhammad Israr Ul Haq (Management Cadre BS-17) Medical Officer Rural Health Centre, Domail Bannu and post him as District Health Officer, North Waziristan in his own pay & scale, in the best of public interest, with immediate effect.

Secretary Health  
Government of Khyber Pakhtunkhwa

**Endst. Of even No. & Date.**

Copy to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. Director Health Services, Merged areas, Peshawar.
4. DHO, Bannu
5. DHO, NWA.
6. DAO, Bannu.
7. DAO, NWA.
8. Deputy Director (IT), Health Department, with the direction to upload the notification on official website.
9. PS to Minister for Health Department, Khyber Pakhtunkhwa.
10. PS to Secretary Health Department, Khyber Pakhtunkhwa.
11. Doctor concerned.

  
(Hafeez Ur Rehman Shah)  
Section Officer (E-V)

**ATTESTED**

8

ANNEXURE B

In compliance to the Secretary Health Government of Khyber Pakhtunkhwa Peshawar Notification No.SOH(11D)/E-V/2-2/2020 dated 06-03-2020.

I Dr.Muhammad Israr Ul Haq Management Cadre BPS-17 took over the Charge as District Health Officer North Waziristan Tribal District today on 10/03/2020 F.N.

Therefore all secret and demi Secret correspondence should be addressed on the name of the undersigned.

MY SPECIMEN SIGNATURE IS GIVEN BELOW:-

Dr. Muhammad Israr Ul Haq District Health Officer,  
North Waziristan Tribal District.

Signature  
01. \_\_\_\_\_  
02. \_\_\_\_\_  
03. \_\_\_\_\_

Initial  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_


Attested  
(Dr.Muhammad Israr Ul Haq)  
District Health Officer,  
North Waziristan Tribal District

No. 1133-41 /PF/MRN/DHO dated Miranshah the 10 /03/2020.

Copy Forwarded to the:-

01. PS to Secretary to Government Health Department KPK Peshawar.
02. Director Health Services Merged Area Peshawar.
03. PS to Minister for Health Department. Khyber Pakhtunkhwa.
04. Director General Health Services Khyber Pakhtunkhwa Peshawar.
05. Deputy Commissioner North Waziristan Tribal District.
06. District Account Officer North Waziristan Tribal District.
07. Manager National Bank of Pakistan Miranshah Branch.
08. Manager Muslim Commercial Bank Mirali Branch.
09. All line department of North Waziristan Tribal District.

For information and further necessary action.

  
District Health Officer,  
North Waziristan Tribal District.

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ATTESTED



ANNEXURE C (9)

GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

Dated Peshawar the 11<sup>th</sup> Sep, 2020

## NOTIFICATION

No.SOH(HD)EV/4-4/PT:- The competent authority has been pleased to order following posting / transfer of Management Cadre Doctors with immediate effect and in the best of public interest:-

Sr.No	Name	From	To
1.	Dr. Muhammad Israr Ul Haq	District Health Officer (BS-18), Tribal District North Waziristan (OPS)	Transferred and services placed at the disposal of Director General Health Services.
2.	Dr. Muhammd Ikram Safi	District Health Officer, Kolai Palas (BS-19) OPS	District Health Officer (BS-18), Tribal District North Waziristan (OPS) vice Sr.No.1

2. Consequent upon the above, Dr. Taj Muhammad, Management Cadre (BS-19), District Health Officer, Kohistan Upper will look after the charge of District Health Officer, Kolai Palas until further orders in addition to his own duties.

### SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA HEALTH DEPARTMENT

Copy of the above is forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General, Health Services, Khyber Pakhtunkhwa, Peshawar.
3. Director Health Services, Merged District, Merged District Secretariat.
4. District Account Officers (Kolai Palas / North Waziristan)
5. Dr. concerned for information and necessary action with the direction to provide copies of Charge Relinquishment / Assumption to this department for record.
6. Deputy Director (IT) for uploading on official website.
7. PS to Secretary Health.

*B*

*M. Irfan Usman*  
11/09/2020  
(MUHAMMAD IRFAN USMAN)  
SECTION OFFICER (E-V)  
HEALTH DEPARTMENT

Section Officer (EV)  
Health Department  
Khyber Pakhtunkhwa

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ATTENDED



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

ANNEXURE D  
10

Dated Peshawar the 17<sup>th</sup> September 2020

NOTIFICATION

No.SO(E)H-II/10-25/2020 WHEREAS, The Governor Inspection Team in its fact finding inquiry communicated to Health Department Government of Khyber Pakhtunkhwa vide letter No. 16-632/Inq/GIT/18/1548 dated 27.11.2018 has recommended initiation of proper departmental proceedings against Dr. Muhammad Kabir on the charges of non-registration with Pakistan Medical and Dental Council (PMDC)

AND WHEREAS, The National Accountability Bureau (NAB) vide its letter No.1/34(989)/IW-I/NAB(KPK) dated 04.01.2019 has also conveyed that Dr. Muhammad Kabir S/o Bashir Ahmad (CNIC# 17101-5671498-3) could not prove the authenticity of degree and registration with PMDC

AND WHEREAS, Director Health Services Tribal Districts, Peshawar vide letter No. 28093 /DHS / ADMIN dated 19.12.2018 has also intimated that the recommendation of GIT about the said doctor should be implemented in letter and spirit.

NOW THEREFORE, in exercise of the powers conferred under Rule-6, of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the competent authority is pleased to suspend Dr. Muhammad Kabir with immediate effect.

Sd/-

SECRETARY HEALTH  
KHYBER PAKHTUNKHWA

Endst. of even No. & Date.

Copy to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General National Accountability Bureau (NAB) w/r to No.1/34(989)/IW-I/NAB(KPK) dated 04.01.2019.
3. Director General, Health Services, Khyber Pakhtunkhwa.
4. Director Health Services, merged areas, Peshawar.
5. Secretary Governor Inspection Team w/r to letter No. 16-632/Inq/GIT/18/1548 dated 27.11.2018.
6. Deputy Director (IT), Health Department.
7. PS to Secretary Health, Khyber Pakhtunkhwa.
8. PA to Additional Secretary-(E&A), Health Department.
9. Doctor concerned.
10. Master file.

B

(Muhammad Jawad Sardar)  
Section Officer (E-II)  
17.09.2020

Section Officer  
Health Secretariat  
Govt. of KP

ATTACHED

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT**Dated Peshawar, the 18<sup>th</sup> Sept, 2020**NOTIFICATION**

**No. SOH(HD)EV/4-4/PT.** Consequent upon suspension of Dr. Ikram Ullah Khan, District Health Officer (BS-18) Tribal District North Waziristan vide Notification No. SOEH-H/10-25/2020, dated 17<sup>th</sup> Sep, 2020; he is directed to report to Directorate General Health Services, Khyber Pakhtunkhwa with immediate effect.

**SECRETARY HEALTH**

Copy to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar
3. Deputy Commissioner District North Waziristan Notification referred also enclosed for information and necessary action.
4. Manager Govt Printing Press with the request to publish gazette notification on this and enclosed notification.
5. Section Officer (General) Health Department for information and necessary payment.
6. District Account Officer, North Waziristan.
7. Deputy Director (IT), Health Department, Peshawar
8. PS to Secretary Health Department.

**(MUHAMMAD IRFAN USMAN)  
SECTION OFFICER-V  
HEALTH DEPARTMENT**

ANNEXURE E

(11)

GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

Dated Peshawar the 18th Sep. 2020

NOTIFICATION

Notification No. SO(HEH)1027/2020 dated 17th Sep. 2020; he is directed to  
with immediate effect

SECRETARY HEALTH

- 1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
- 3. Deputy Commissioner District North Waziristan notification referred also enclosed for information and necessary action.
- 4. Manager Govt. Printing Press with the request to publish gazette notification of this and enclosed notification.
- 5. Section Officer (General) Health Department for information and necessary payment.
- 6. District Account Officer, North Waziristan.
- 7. Deputy Director (IT), Health Department, Peshawar.
- 8. PS to Secretary Health Department.

Ahsan  
SM

*(Signature)*  
 (MUHAMMAD IRFAN USMAN)  
 SECTION OFFICER-V  
 HEALTH DEPARTMENT  
 Section Officer (EV)  
 Health Department  
 Khyber Pakhtunkhwa

*(Signature)*

BEFORE THE HONORABLE PESHAWAR HIGH COURT

PESHAWAR

Writ petition No 886-B /2020Ikram Ullah Khan serving as District Health Officer  
PetitionerVERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar.
2. Secretary Health Khyber Pakhtunkhwa Peshawar.
3. Additional Secretary Health Khyber Pakhtunkhwa Peshawar.
4. Director Health Services Merged Areas, Peshawar.
5. Director General Health Services KPK Peshawar.
6. Director National Accountability Bureau (NAB).

Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF ISLAMIC REPUBLIC OF  
PAKISTAN, 1973 AS AMENDED UP-TO DATE

Respectfully Sheweth:-

The Petitioner humbly submits as under:-

1. That the Petitioner is the law abiding citizen of Pakistan and is entitled for all the rights guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. (Copy of the CNIC is attached as Annex 'A').

2. That the Petitioner being a qualified person having the degrees of Medical (MD) as well as Master of Public Health (MPH) Master of Business Administration (MBA) the Respondents department appointed the Petitioner the Post of Management Cadre in BPS -17 and he

Filed Today

21 SEP 2020

Additional Registrar

ESTD  
EDM NOTE 9S  
BMP QUAD CAMER

ATTACHED



FORM PESHAWAR HIGH COURT  
 FORM OF ORDER SHEET

13

Date of order or proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties of counsel where necessary.
2.	3.
23.9.2020	<p><b>W.P No.886-B of 2020.</b>  <u>Present:</u></p> <p>Mr. Bashir Khan Wazir Advocate for petitioner.</p> <p>*****</p> <p>Respondents No.1,2 and 4 be put on notice to file comments within fortnight.</p> <p><b><u>Interim Relief.</u></b></p> <p>Notice for 13.10.2020. Meanwhile the respondents may continue the inquiry proceedings but no adverse action shall be taken against the petitioner.</p> <p>Sd/ Justice Ms.Musarrat Hilali, J              Sd/ Mr.Justice Sahibzada Asadullah, J</p> <p>CERTIFIED TO BE TRUE COPY</p> <p>Examiner              Peshawar High Court Bannu Bench              Authorised Under Article 87 of              The Qanun-e-Shahadat Ordinance 1984</p>

SCANNED

Khalid Khan

EDMI NOTERS  
 MP QUAD CAMERA

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ANNEXURE G

14  
BETTER COPY

GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

Dated Peshawar the 08<sup>th</sup> January, 2020

**NOTIFICATION**

**No. SOH/HD/E-V/4-4/2020.** The Competent Authority is pleased to order the following posting / transfer of the doctors with immediate effect, in the best of public interest:-

S. NO	NAME	FROM	TO
1.	Dr. Ikramullah, management Cadre (BS-17)	District Health Officer (BS-18), North Waziristan Tribal District in OPS	Report to Director General Health Services, Khyber Pakhtunkhwa
2.	Dr. Attaullah Khan, General Cadre (BS-17)	Coordinator (BS-17), Health Sector reforms Unit (HSRU), Health Department	District Health Officer (BS-18), North Waziristan Tribal District in his own pay & scale

**SECRETARY HEALTH  
Govt of Khyber Pakhtunkhwa**

Endst of even No & Date.  
Copy of the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar
3. Chief, HSRU, Health Department Khyber Pakhtunkhwa, Peshawar.
4. DHO. North Waziristan
5. District Accounts Officer, North Waziristan
6. Deputy Director (IT), Health Department for uploading on official website.
7. PS to Secretary Health, Government of Khyber Pakhtunkhwa.
8. Doctors concerned.

(Latif-Ur-Rehman)  
SECTION OFFICER (E-V)

**ATTACHED**



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

Dated Peshawar the 08<sup>th</sup> January, 2021

NOTIFICATION

NO. SOH/HD/E-V/4-4/2020

The Competent Authority is pleased to order the following posting/ transfer of doctors with immediate effect, in the best of public interest:-

Sr.#	NAME	FROM:	TO
1.	Dr. Ikram Ullah, Management (BS-17)	District Health Officer (BS-18), North Waziristan Tribal District in OPS	Report to Directorate General Health Services, Khyber Pakhtunkhwa
2.	Dr. Attaullah Khan, General (BS-17)	Coordinator Health Sector Reforms Unit (HSRU), Health Department	District Health Officer (BS-16), North Waziristan Tribal District in his own pay & scale

SECRETARY HEALTH  
Govt. of Khyber Pakhtunkhwa

Endst. of even No. & Date.

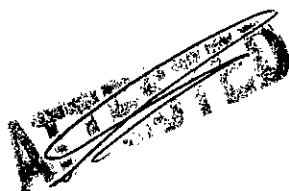
Copy to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. Chief, HSRU, Health Department Khyber Pakhtunkhwa, Peshawar.
4. DHO, North Waziristan.
5. District Accounts Officer, North Waziristan.
6. Deputy Director (IT), Health Department for uploading on official website.
7. PS to Secretary Health, Government of Khyber Pakhtunkhwa.
8. Doctors concerned.

*[Handwritten signature]*

08-1-21  
(Latif Ur Rehman)  
SECTION OFFICER (E-V)

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ANNEXURE A

15

*[Handwritten signature]*



**PESHAWAR HIGH COURT**  
**BANNU BENCH**

FORM 'A'  
FORM OF ORDER SHEET

*[Handwritten mark]*

Date of order or proceedings	Order or other proceedings with signature of Judge (s).
(1)	(2)
11.01.2021	<p><u>C.M No.03-B of 2021 in</u> <u>W.P No.886-B/2020.</u> Present:</p> <p>Mr. Bashir Khan Wazir Advocate for petitioner.</p> <p>***</p> <p>Notice of C.M be issued to the respondents for 25.01.2020. Meanwhile the notification dated 08.01.2021 shall remain suspended till the date fixed and shall be recalled. If learned counsel for the petitioner failed to appear before the Court on the date fixed.</p> <p>Sd/ Justice Ms. Musarrat Hifal, J</p> <p>CERTIFIED TO BE TRUE COPY</p> <p><i>[Signature]</i> Examined Peshawar High Court, Bannu Bench Additional Judge, Sd/ Justice The Court was constituted on 15/01/2021</p>

SCANNED  
12 JAN 2021  
*[Signature]*  
Khair Khan

*[Handwritten signature]*

15/01/2021

**UNRECORDED**

BETTER COPY

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT**

Dated Peshawar the July 09, 2021

**NOTIFICATION**

**No. SOH(E-V)/4-4/2021.** The Competent Authority is pleased to order posting / transfer of the following doctors, in the best interest, with immediate effect:-

S. NO	NAME	FROM	TO
1.	Dr Kaleem Ullah, Management Cadre, (BS-19)	District Health Officer, Swabi	Report to Directorate General Health Services Khyber Pakhtunkhwa
2.	Dr Basit Saleem, Management Cadre (BS-19)	Waiting for posting	District Health Officer, Swabi vice S. No 1
3.	Dr Tariq Hayat (BS-17)	District Health Officer, Khyber	Report to Directorate General Health Services, Khyber Pakhtunkhwa
4.	Dr Qasim Abbas, Management Cadre (BS-18)	Deputy Director SHPI, Peshawar	District Health Officer, Khyber Vice S No 3
5.	Dr. Ikramullah Safi, management Cadre (BS-17)	District Health Officer, North Waziristan	At the disposal of District Health Officer, Mardan
6.	Dr Hafizullah (BS-17)	Deputy Director EPI for Merged Districts, Peshawar	District Health Officer, North Waziristan in his own pay & scale, vice S. No 5
7.	Dr Zakir Hussain, Management Cadre (BS-18)	District Health Officer, South Waziristan	Report to Directorate General Health Services, Khyber Pakhtunkhwa
8.	Dr Wali Rehman (BS-18)	Waiting for posting	District Health Officer, South Waziristan, vice S No 7

**SECRETARY HEALTH  
GOVERNMENT OF KHYBER PAKHTUNKHWA**

Endst of even No. &amp; date

Copy to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar

*(Signature)*

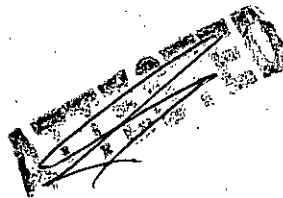
17

**BETTER COPY**



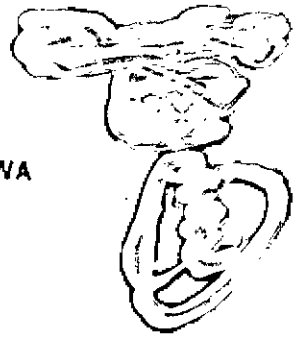
3. District Health Officer, Swabi, Mardan, Khyber, North Waziristan & South Waziristan.
4. Director, SHPI, Peshawar
5. District Accounts Officer, Swabi, Mardan, Khyber, North Waziristan & South Waziristan.
6. Deputy Director (IT), Health Department, with the direction to upload the notification on official website.
7. PS to Minister for Health Department, Khyber Pakhtunkhwa.
8. PS to Secretary Health Department, Khyber Pakhtunkhwa.
9. Doctors Concerned.
10. Personal file of the doctors Concerned.

**(Latif-Ur-Rehman)**  
**SECTION OFFICER (E-V)**





GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT



Dated: Peshawar the July 09, 2021

**NOTIFICATION**

**NO. SOH(E-V)/4-4/2021**

The Competent Authority is pleased to order posting/transfer of the following doctors, in the best public interest, with immediate effect.

S.NO	NAME	FROM	TO
1	Dr. Kaleem Ullah, Management (BS-19) Cadre	District Health Officer, Swabi	Report to Directorate General Health Services Khyber Pakhtunkhwa
2	Dr. Basit Saleem, Management (BS-19) Cadre	Waiting for posting	District Health Officer, Swabi, vice S No 1
3	Dr. Tariq Hayat (BS-17)	District Health Officer, Khyber	Report to Directorate General Health Services Khyber Pakhtunkhwa
4	Dr. Qasim Abbas, Management (BS-19) Cadre	Deputy Director SHPS Peshawar	District Health Officer, Khyber, vice S No 3
5	Dr. Ikramullah Safi, Management (BS-17) Cadre	District Health Officer, North Waziristan	At the disposal of District Health Officer Mardan
6	Dr. Farzullah (BS-17)	Deputy Director EP for Merged Districts Peshawar	District Health Officer North Waziristan in his own pay & scale vice S No 5
7	Dr. Zaid Hussain, Management (BS-19) Cadre	District Health Officer, South Waziristan	Report to Directorate General Health Services Khyber Pakhtunkhwa
8	Dr. Waqar Rehman	Waiting for posting	District Health Officer South Waziristan vice S No 7

SECRETARY HEALTH  
GOVERNMENT OF KHYBER PAKHTUNKHWA

Page No. 5 Date


Director Peshawar  
Services Khyber Pakhtunkhwa Peshawar

**ATTACHED**

17



3. District Health Officer, Swabi, Mardan, Khyber, North Waziristan & South Waziristan.
4. Director, SHPI, Peshawar.
5. District Accounts Officer, Swabi, Mardan, Khyber, North Waziristan & South Waziristan.
6. Deputy Director (IT), Health Department, with the direction to upload the notification on official website.
7. PS to Minister for Health Department, Khyber Pakhtunkhwa.
8. PS to Secretary Health Department, Khyber Pakhtunkhwa.
9. Doctors concerned.
10. Personal file of the doctors Concerned.

  
(Latif-Ur-Rehman)  
SECTION OFFICER (E-V)

9/7/21

**ATTACHED**



ANNEXURE "J"

18



To,

The Hon'ble Chief Secretary  
Khyber Pakhtunkhwa  
Peshawar

**Subject:-- DEPARTMENTAL APPEAL AGAINST IMPUGNED TRANSFER ORDER VIDE NOTIFICATION DATED 09.07.2021 BY THE SECRETARY HEALTH KHYBER PAKHTUNKHWA WITH MALAFIDE INTENTION JUST TO DEPRIVE THE APPELLANT FROM HIS VALUABLE RIGHTS.**

Respected Sir,

1. That the Appellant is peaceful and law abiding citizen of Pakistan and serving in Health Department KPK Peshawar.
2. That the Appellant is inducted in management cadre of the Health Department as there are two different categories, one is General Cadre and the other is Management Cadre, though both the Cadres shall have qualified as MBBS and in addition for the Management Cadre the MPH Degree is mandatory, the Appellant having the same mandatory degrees, therefore he has been inducted in Management Cadre.
3. That the Appellant was transferred vide notification dated 06.03.2020 and posted as District Health Officer North Waziristan, thereafter the Appellant assumed the charge and was performing his duty with great zeal and zest, meanwhile without completion of posting tenure the Appellant has been transferred vide order dated 11.09.2020.
4. That after seven days the Secretary Health again issued another notification in respect of Transfer of the newly transferred incumbent on dated 18.09.2020, the Appellant had already been preferred an Appeal to the Secretary Health and stated that once the newly transfer incumbent

~~TESTED~~

have been retransferred in the light of suspension Order, the Appellant have the right to be continue his service in his previous position.

5. That the newly transferred officer has approached to the Hon'ble Peshawar High Court Bannu Bench and impugned the said Orders, in which on 23.09.2020 an Interim relief was granted in his favour, therefore without issuance of any Fresh order the newly posted incumbent was continue his service without any written order of the Competent authority.
6. That the Appellant was advised by the Secretary Health for waiting and further stated that the Writ petition No. 886-B/2020 is pending before the Hon'ble Peshawar High Court Bannu Bench and I have been instructed to be wait till the final disposal of the case.
7. That during the pendency of that Writ Petition the Secretary Health again issued transfer Order of the newly transferee on dated 08.01.2020, whereby another person of General Cadre has been ordered to be transferred on the said Post, the newly transferee has impugned the said in CM No. 03/2021, wherein the Hon'ble Peshawar High Court suspended the said Order.
8. That the Appellant is suffering since his transfer on dated 11.09.2020 and continuously the matter is subjudice before the Hon'ble Peshawar High Court in the above mentioned Writ Petition, therefore I was having no way to challenge the same orders. The secretary Health once again issued another transfer Order on dated 09.07.2021 whereby the newly posted incumbent has been transferred to District Mardan and on his place an incompetent person Dr Hafizullah BS-17 has been posted, the Appellant while aggrieved from the said order submitted request to the

**ATTESTED**

Secretary Health and now the instant Departmental Appeal.

9. That the Appellant belongs to the Management Cadre and entitled to be posted on Administrative Post and he is eligible to be posted on his previous position as his transfer was issued prematurely and now once again on the place of Appellant another ineligible person has been posted who belongs to the General Cadre and as per the consistent views of the Apex Courts that no person of General Cadre would be posted on the place of Management Cadre.

It is, therefore, humbly prayed that on acceptance of this Appeal, the Impugned Transfer Order dated 09.07.2021 and all previous transfer Orders passed by the Secretary Health KPK of the Appellant may kindly be suspended / set aside and the Appellant may kindly be allowed to perform his duty on his previous position as per the notification dated 06.03.2020

Dated: 10.07.2021

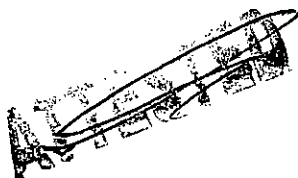
Appellant



DR. Israr ul Haq  
S/o Abdul Rasheed Khan  
Ex-District Health Officer  
North Waziristan

Note:

All the relevant documents / record is attached herewith the instant Appeal.



21



TRUST A LEADER TO DELIVER

Sales Tax Invoice

Call: 111-123-456  
GST NO.  
12-00-9808-002-73

Acct / Coupon	Consignment Note No.			Org.	Dest.
	470	9721886			<i>PKW</i>

Mode of Payment	Insured	Dimension			Wt. (kgs)	Pcs.
<input type="checkbox"/> Coupon <input type="checkbox"/> FOC <input type="checkbox"/> COD <input type="checkbox"/> Account <input type="checkbox"/> Cash	<input type="checkbox"/> Yes <input type="checkbox"/> No.	L(cm)	W(cm)	H(cm)	<i>0.5</i>	<i>1</i>
	Value					

From (Shipper)

*15 van wal*  
*HQ*

Phone

To (Consignee)

*The Honourable*  
*Chief*

Phone

E-mail

Service Type

Overnight  Holiday  
 Extra Sp.  Same Day  
 Second Day

Service Charges

Weight *0.5*

Handling *1*

Other *1*

GST

Insurance Premium

Description

**PICKUP INFORMATION**

Courier Code	Date	Time
	<i>10/7/2010</i>	

**TOTAL** *580*

I warrant that I have read the terms and conditions on the reverse of this consignment note and that all details given herein are true and correct. I further declare that the contents of this consignment do not contain any letter. The execution of this consignment note is prima facie evidence of the conclusion of contract between shippers & TCS (PVT) LTD.

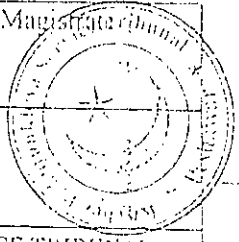
Shipper's Signature *[Signature]*

AS PER N.O. ACT 1898. TCS WILL NOT CARRY LETTER/POST CARDS

Any suggestions / complaints about service may be mailed to PO Box # 2042, Karachi-75400

ATTACHED

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
<p style="text-align: center;"><b>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</b> Service Appeal No. S23/2019</p> <p>Date of Institution ..... 24.06.2018 Date of Decision ..... 09.08.2019</p> <p>Dr. Hameed Ali S/o Sadaf Ali Agency Surgeon/Merged Area District Kurram. <span style="float: right;">Appellant</span></p> <p style="text-align: center;">Versus</p> <p>1. Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar. 2. Secretary Health Department Government of Khyber Pakhtunkhwa, Peshawar. 3. Director General Health Services Government of Khyber Pakhtunkhwa, Peshawar. 4. Dr. Moeen Begum AHQ Hospital Parachinar. <span style="float: right;">Respondents</span></p> <p>09.08.2019 Mr. Muhammad Hamid Mughal-----Member(J) Mr. Ahmad Hassan-----Member(E)</p> <p style="text-align: center;"><u>JUDGMENT</u> <u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> - Appellant present. Learned counsel for appellant present. Mr. Muhammad Jan learned Deputy District Attorney for official respondents present. Private respondent No.4 alongwith counsel present.</p> <p>2. The appellant (Senior Medical Officer (BS-18)) has filed the</p>		



28.8.2019

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

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**ATTESTED**



present service appeal being aggrieved against the order dated 14.03.2019 whereby his transfer from the post of Senior Medical Officer AHQ Hospital Parachinar to the post of Agency Surgeon Merged Area Kurram in place of private respondent No.4, was withdrawn.

3. Learned counsel for the appellant argued that vide order dated 07.03.2019 the appellant was transferred from the post of Senior Medical Officer AHQ Hospital Parachinar to the post of Agency Surgeon Merged Area Kurram however within a few days of the issuance of the said order the same was withdrawn vide impugned order dated 14.03.2019. Further argued that the impugned order is premature and in utter violation of laws, rules and policy. Further contended that private respondent No.4 has already been posted as Agency Surgeon Merged Area Kurram since 2014 but she is not willing to leave the said post.

4. As against that learned Deputy District Attorney assisted by learned counsel for private respondent No.4, argued that the posting order of the appellant as Agency Surgeon Merged Area Kurram was issued by the incompetent authority. Further argued that the post of Agency Surgeon (BS-18) falls to the share of Health Management Cadre in BS-18 while the appellant belongs to General Cadre and that cross cadre posting is against the Health Management Cadre Service Rules, 2008. Next contended that the transfer posting order dated 07.03.2019 was illegal hence rightly withdrawn.

5. Arguments heard. File perused.

6. There is no dispute that the post of Agency Surgeon is a

9.8.2019

ATTESTED

Signature  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

BS

Signature



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Management Cadre Post whereas both the appellant and private respondent No.4 belong to General Cadre.

7. - Learned counsel for the appellant could not demonstrate that under the relevant rules, how a Medical Officer/Senior Medical Officer of General Cadre can be appointed against the Management Cadre post. Director Health Services Merged Areas Peshawar has exceeded his authority by issuing transfer posting order dated 07.03.2019 in relation to the appellant (BS-18) and private respondent No.4 (BS-19).

8. In the light of above the appellant has not been able to seek indulgence of this Tribunal. Consequently the respondent department is directed to appoint suitable officer from Management Cadre against the post of Agency Surgeon Merged Area Kurram, within 15 days of the receipt of this judgment. The respondent department is further directed to recall all the transfer posting orders of Medical Officer/Senior Medical Officers against the posts of Management Cadre. The present service appeal is disposed of in the above noted terms. Parties are left to bear their own costs. File be consigned to the record room.

*(Signature)*

(Ahmad Hassan)  
Member

*(Signature)*

(Muhammad Hamid Mughal)  
Member

Certified to be true copy  
MEMBER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

*(Signature)*

<b>ANNOUNCED</b>	Date of Presentation of Appeal	28-8-19
09.08.2019	Number of Words	1200
	Copying Fee	16-00
	Urgent	4-00
	Total	20-00
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	Date of Completion of Copy	28-8-19
	Date of Delivery of Copy	28-8-19



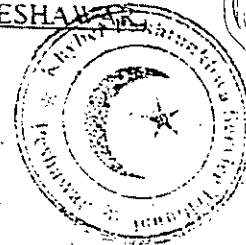
25

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

Service Appeal No. 4944/2020

Date of Institution ... 03.06.2020

Date of Decision ... 07.07.2020



Dr. Muhammad Zarin, Ex-Deputy Director EPI, Merged Areas, Peshawar.  
... (Appellant)

**VERSUS**

Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar  
and six others. ... (Respondents)

MR. ASIF ALI SHAH,  
Advocate

For appellant.

MR. MUHAMMAD JAN,  
Deputy District Attorney

For respondents No. 1 to 6

MR. NAVEED AKHTAR  
Advocate

For respondent No. 7

MIAN MUHAMMAD  
HAMID FAROOQ DURRANI

MEMBER (Executive)  
CHAIRMAN

**JUDGMENT:**

MIAN MUHAMMAD, MEMBER:- Arguments of learned counsel for the  
parties heard and record perused.

ATTESTED

*[Signature]*  
Member (Executive)  
Service Tribunal  
Peshawar

**FACTS:**

02. Brief facts of the case are that the appellant belongs to general cadre and is a  
Medical Officer (BPS-17), who was attached to DHO Office, Mohmand and then  
posted as Assistant Director EPI (BPS-18) Merged Districts in his own pay and  
scale vide notification dated 01.08.2019. He was performing his duties as Assistant  
Director EPI (BPS-18), Directorate Health Services Merged Areas Peshawar when  
another notification of his transfer was issued on 28.04.2020 and private

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Respondents No.7 i.e Dr. Mushtaq Ahmad (BPS-18) of Management Cadre was posted as Assistant Director EPI (BPS-18) in Directorate Health Services Merged Areas Peshawar. The appellant feeling aggrieved with the notification dated 28.04.2020 (impugned order) preferred departmental appeal on 30.04.2020 which was filed/regretted on 18.05.2020, hence, the instant service appeal.

**ARGUMENTS:**

03. Learned counsel for Appellant vehemently contended that the appellant has been transferred frequently from the one post to another making him rolling stone without completion of his normal tenure which is one of the basic rights, part of the terms and conditions of service of the appellant of which he has protection under Tenure Policy. He further argued that the appellant has been targeted on the illegal and unlawful directions of the political figures and the impugned order dated 28.04.2020 has been issued in utter disregard to the principle of fairness, merit and transparency. Moreover, the appellant has been made a victim of discrimination, demerit, partiality and favoritism due to the reason that he had conducted an impartial enquiry against the illegal appointment/recruitment of PSDP's staff. He therefore, requested that the impugned order be set aside and let the appellant continue to complete his normal tenure against the post of Assistant Director (BPS-18) EPI where he is still holding the charge on the basis of status quo/stay order granted by the Services Tribunal on 05.06.2020.

ATTESTED

04. Learned counsel for private Respondent No.7 contested the arguments of the learned counsel for the appellant on the ground that the appellant was a BPS-17 Officer and posted against the elevated position of BPS-18 in his own pay and scale. Private Respondent No.7 is a well qualified officer in BPS-18 from the

Management Cadre and as such no violation of the law or rules has been made by dislodging the appellant from higher post of BS-18 and posting him in an equivalent post falling in BPS-17. He referred to Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-7(2) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989 and argued that the fundamental law has an overriding effect over policy and in case of exigency the government may make adjustment in public interest. He further contended that on availability of an appropriate/suitable officer from Management Cadre has been posted against the position as Assistant Director EPI which is a BPS-18 post and carries higher responsibilities. Moreover, no disliking for enquiry conducted by the appellant is exhibited anywhere in the notification to establish that the appellant has been victimized for the said deed. Moreover, the transfer order has been issued after four months of the enquiry report submitted by the appellant in his capacity as enquiry officer.

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05. The learned Deputy District Attorney relied mainly on the replies/arguments of the learned counsel for private Respondent No.7 and produced a recent judgment of the Khyber Pakhtunkhwa Services Tribunal in Service Appeal No. 1968/2019 (Fateh Khan-vs-Govt. of Khyber Pakhtunkhwa) dated 25.06.2020. He also contended that the question of non-compliance with the tenure policy does not arise because the appellant has rightly been posted in his own cadre (General cadre) according to his pay scale (BPS-17), therefore, no violation of law and rules has been made by the Respondents. He also pointed out that the Appellant was holding higher post (BPS-18) in his own pay and scale and referred to SCMR 1189 (2014) assailing that the practice of appointment on OPS (Own Pay Scale) basis had been discouraged by the august Supreme Court, as it did not have any

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sanction of law. The learned Deputy District Attorney drew attention of the Bench to yet another notification issued by Director Health Services, Merged Areas on 18.06.2020, whereby the services of appellant have been placed at the disposal of District Health Officer, Mohmand for further posting against the vacant position of Medical Officer (BPS-17). He, therefore, raised a question that did the appellant make a departmental appeal against it or otherwise?. The learned counsel for the appellant expressed his ignorance about the issuance of such office order and assailed it on the ground that when the impugned transfer notification dated 28.04.2020 was held in abeyance by Secretary Health on 16.06.2020 how come Director Health Services, Merged Areas can issue yet another transfer order of the Appellant and so much so that the post is held by the Appellant on the strength of stay order granted by the Services Tribunal on 05.06.2020.

CONCLUSION:

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06. In the light of arguments advanced by the parties and indepth perusal of available record, we have arrived at the conclusion that the Appellant being an officer of General Cadre in BS-17 was posted against higher post BS-18 mentioning specifically "in his own pay and scale". On availability of an officer in BS-18 from the Management cadre the Appellant was rightly posted back in his original cadre and pay scale. Therefore, he was not affected in anyway by the impugned order dated 28.04.2020.

07. For what has been discussed above, it is important to note here that the official Respondents had been directed through various judgments not to intermingle the posts in two cadres and post officials from one cadre to the other. The Respondents, however, have remained at loss in compliance thereof. It is a

**ATTESTED**

EX-MINISTER  
 Jhybee Pkth Khwa  
 Service Tribunal  
 Peshawar

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sorry state of affairs that the policies of Government/rules are defined by the responsible officers for adjustment and convenience of their blue eyed.

08. We therefore, dismiss the appeal in hand and stay granted on 05.06.2020 is hereby withdrawn. Parties are left to bear their own costs. File be consigned to the record room.

SD/-  
(HAMID FAROOQ DURRANI)  
Chairman

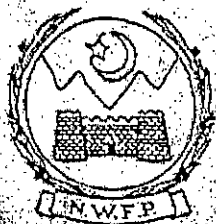
SD/-  
(MIAN MUHAMMAD)  
Member(E)

**ANNOUNCED**  
07.07.2020

Certified to be true copy  
Khyber Pakhtunkhwa  
Services Tribunal  
Peshawar

Date of Presentation of Application: 08/07/2020  
Number of Words: 2000  
Copying fee: 22/-  
Urgent:   
Total: 22/-  
Name of Copyist:   
Date of Completion of Copy: 10/07/2020  
Date of Delivery of Copy: 10/07/2020

Stamp: Khyber Pakhtunkhwa Services Tribunal Peshawar



**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 posing/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 three 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) <sup>1</sup>{ }
- vi) While making postings/transfer from settled areas to FATA and vice-versa, specific approval of Governor, NWFP needs to be obtained  
  
<sup>2</sup>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.
- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for atleast 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 officer's/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.

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 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)1-4/2003, dated 21-09-2004



- 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  
 1 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 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-
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)/1-4/2005, dated 9-9-2005.

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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.

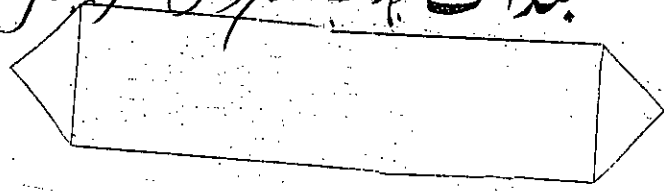
{Authority: Letter No: SOR-VI/E&AD/1-4/2003 dated 24-6-2003}.

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.

ATTACHED

بعدالت جناب سرور میں فریونٹل کیم سٹا



Health و عیونہ

2 جناب  
بنام

ڈاکٹر اسرار الحق

مورخہ

مقدمہ

دعویٰ

جرم

### باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے بیرونی حساب سے کل کاروائی کا اختیار  
کیلئے **نور محمد ایڈووکیٹ**  
آن مقام **سیما**۔  
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز  
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثت و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور  
بصورت اگر کری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی  
اور منسوقی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت  
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے  
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے  
اور اس کا ساختہ پر داخنتہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے  
سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں  
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

2021ء

ماہ

المرقوم

Accepted  
Attest

واہ العیونہ

کے لئے منظور ہے۔

مقام



**BEFORE THE' HONORABLE KHYBER PAKFITUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

SERVICE APPEAL NO. 7129//2021

Dr. Muhammad Israr UI Haq ..... Appellant

Versus

Govt. of Khyber Pakhtunkhwa through Chief Secretary and others.....Respondents

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS 1 TO 3.**

**RESPECTFULLY SHEWETH;**

**PRELIMINARY OBJECTIONS:-**

1. That the Appellant has got neither cause of action nor did locus standi to file the instant Appeal.
2. That the Appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant Appeal is against the prevailing Law and Rules.
4. That the Appeal is not maintainable in its present form.
5. That the Appellant has filed the instant Appeal with mala-fide intention hence liable to be dismissed.
6. That the Appeal is badly time-barred.
7. That the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.
8. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
9. The impugned transfer Notification has been issued in accordance with Section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973.

## FACTS

1. Correct to the extent that the appellant is an employee of the Health Department who was in BPS-17 however was posted as DHO North Waziristan in his own pay and scale (OPS) vide Notification dated 06.03.2020. It is worth mentioning that holding post on the basis of OPS does not create any vested right in favor of an incumbent.
2. Correct to the extent that the appellant was transfer vide notification dated 11.09.2020 however the appellant being posted on OPS had no vested right to remain posted as DHO North Waziristan. It is further to clarify that the appellant has never questioned notification dated 11.09.2020 at any forum of law.
3. Correct to the extent that Dr. Ikramullah was suspended vide notification dated 17.09.2020 however rest of the para is denied as no such order / notification has been Annex by the appellant in support of his claim.
4. Correct to the extent that Dr. Ikram Ullah filled a WP No. 886-B/2020 before the Peshawar High Court Bannu Bench whereby the Honorable Court vides order 23.09.2020 directed that the respondents shall not take any adverse order against the petitioner (Dr. Ikram Ullah). It is further clarified that Dr. Ikram Ullah were performing duties as DHO North Waziristan till the impugned order dated 09.07.2021.
5. Correct to the extent that notification dated 08.01.2021 was issued whereby Dr. Ikram Ullah DHO North Waziristan was transferred however the Honorable Peshawar high court suspended the transfer notification dated 08.01.2021 thus Dr. Ikram Ullah remained as DHO North Waziristan which is sufficient to prove that Dr. Ikram Ullah performed his duties as DHO North Waziristan instated of the appellant.
6. Correct to the extent that private respondent No.4 was transferred vide notification dated 09.07.2021 in place of Dr. Ikram Ullah DHO North Waziristan it is worth mentioning that neither the appellant has been posted or transferred from the post of DHO North Waziristan nor did he has any vested right to be posted against the post of DHO North Waziristan hence the para is denied.
7. Pertains to record however the instant appeal has been filed in violation of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 as the same has been prematurely filed which is not maintainable.
8. Incorrect as the appellant has not been posted/transferred vide the impugned notification dated 09.07.2021 therefore no vested right of the appellant has been violated by the Competent Authority therefore he is not an aggrieved person hence the instant appellant is liable to be dismissed.

## GROUNDS:

- A. Incorrect the impugned notification dated 09.07.2021 is in accordance with law rules and principal of natural justice hence liable to be maintained.
- B. Incorrect the impugned notification has been issued in accordance with law Rules and transfer and posting policy of the Provincial Government. The appellant has been treated in accordance with Article-4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C. Incorrect the impugned notification dated 09.07.2021 has been issued in accordance with law in the public interest.
- D. Incorrect the Competent Authority has been empowered by Section-10 of the Civil Servant Act 1973 to utilize services of a Civil Servant by posting him against any post even outside his cadre.
- E. Already replied in para-D however it is worth mentioning that due to shortage of Management Cadre Staff, Incumbents of General Cadre are posted against administrative positions in the exigencies of services further the honorable service tribunal in service appeal title "Dr. Malik Niaz VS Government of Khyber Pakhtunkhwa", maintained such posting of the Competent Authority. The Apex Court in a recent judgment reported is 2021 SCMR 1064 held that transfer of an employee / public servant fell within the ambient of "terms and conditions" of service, which included transfer and posting. Transfer and posting was part of service and it was for the authority to determine where services of any staff member were required.
- F. Incorrect already replied in paras above.
- G. Incorrect the appellant has no vested right to challenge the impugned notification which has been issued the competent authority in accordance with law.
- H. Incorrect the competent authority has been empowered by Section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973 to transfer a civil servant at any time to any other post even outside his cadre or province provided his terms & conditions of service is not affected .As per dictum, laid down by the apex court, in 2020 PLCCS 1207 Supreme Court,

PLACE of service ....Prerogatives of employer...Government servant was required to serve any where his employer wanted him to serve; it was not a choice or prerogative of the employee to claim a right to serve at a place that he chose to serve.


Similarly in another judgment reported as 2004 PLC (CS) 705 S.C. It has been laid down that civil servant could not claim posting at a particular station or at the place of his choice. Competent authority, under S 9 of the Punjab civil

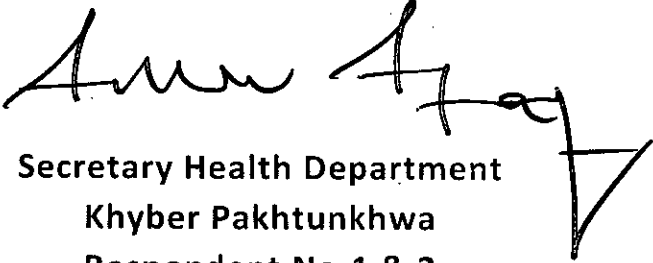
servant Act 1974, was empowered to transfer any civil servant from one place to other at anytime in exigencies of service or on administrative ground.

I. Legal however the respondents also seek permission of this Honorable Tribunal to adduce other grounds during final hearing.

**PRAYER:**

It is therefore requested that the appeal of the appellant may kindly be dismissed with costs.

  
Director General Health Services  
Khyber Pakhtunkhwa  
Respondent No-3  
DS (lit)

  
Secretary Health Department  
Khyber Pakhtunkhwa  
Respondent No-1 & 2

1

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

**Appeal No.7129/2021**

**Dr. Muhammad Israr Ul Haq VS Govt: of KP & Others**

**REPLY ON BEHALF OF APPELLANT IN RESPONSE**  
**TO THE APPLICATION SUBMITTED BY PRIVATE**  
**RESPONDENT NO.4**

**R.SHEWETH:**

- 1- Correct that the above mentioned appeal is pending adjudication before this august Tribunal in which 13.9.2021 date is fixed for hearing.
- 2- Incorrect and misconceived. That the present application of the private respondent No.4 is not maintainable in light of Service Tribunal Act, 1974 and service Tribunal Rules, 1974.
- 3- Incorrect and misconceived. That the instant appeal along with stay application filed by the appellant before this august Tribunal is purely on merit and this august Tribunal has the exclusive jurisdiction to entertain the instant appeal under section-4 of the Service Tribunal Act, 1974.
- 4- Incorrect and misconceived. That appellant filed the instant appeal against the impugned Notification dated 9.7.2021 whereby the private respondent was transferred against the post already held by the appellant. That the appellant being aggrieved from the ibid Notification firstly exhausted the remedy of Departmental appeal and then filed the instant appeal under section-4 of the service Tribunal Act, 1974.
- 5- Incorrect and misconceived. That the appellant was transferred the post of District Health Officer, District North Waziristan vide notification dated 06-03-2020. That appellant assumed the charge of the mention post on 10-03-2020 and started his duty as DHO North Waziristan but unfortunately the appellant was prematurely transferred and posted at the disposal of D.G Health Services and one Dr. Muhammad Ikram was posted against the post of appellant but the said transfer Notification was not actualized because of the reason that Dr. Ikram Safi who was transferred vice the appellant was suspended by the competent authority on account of NAB inquiry, resultantly the appellant was allowed to work on his own post of the DHO, District North Waziristan. That vide order dated 18-09-2020 the transferee

of the order dated 11.09.2020 was directed to report to the D.G Health Services Peshawar. That the transferee (Dr. Ikram Safi) feeling aggrieved from the suspension order dated 17-09-2020 preferred a writ petition No. 886-B/2020 before the August Peshawar High Court, Bannu Bench and the August Court vide order dated 23.09-2020 directed the respondents that "*they may continue inquiry proceedings but no adverse order shall be taken against the petitioner/transferee*". That in the meanwhile the appellant was performing his duty as DHO, District North Waziristan. That during pendency of the mention writ petition another transfer order/ notification dated 08-01-2021 was issued and the same was also suspended by the August Peshawar High Court, Bannu Bench vide order dated 11.01.2021. That against the said Notification dated the appellant also filed Departmental appeal before the appellate authority but during the pendency of the ibid Departmental appeal the respondents issued the present impugned Notification dated 09-07-2021 whereby the private respondent No. 4 was posted against the post, held by the appellant, in utter violation of the posting/ transfer policy of the provincial government and the cadre policy. Copies of the record are attached as annexure ..... **R.**

- 6- Incorrect and misconceived as stated above in para No.5 that the private respondent was transferred against the post already held by the appellant, therefore in terms of section-4 of the service Tribunal Act, 1974 the appellant is an aggrieved person/civil servant to file the instant appeal.
- 7- Incorrect and misconceived hence denied.

It is therefore most humbly prayed that on acceptance of this reply the application submitted by the respondent No.4 may kindly be dismissed with cost.

**APPELLANT**  


**Dr. Muhammad Israr Ul Haq**

**THROUGH:**  
  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

ANNEXURE "R"

Better Copy

12543

14/10/2020

3

To

The worth health secretary  
Government of Khyber Pakhtunkhwa  
Peshawar

Subject: DEPARTMENTAL APPEAL AGAINST NOTIFICATION DATED 11.09.2020 VIDE WHICH APPELLANT. BEING MEMBER OF MANAGEMENT CADRE IN BPS-17 HAS PREMATURELY BEEN TRANSFERRED, FROM THE POSTION OF DHO NORTH WAZIRISTAN AND DIRECTED TO REPORT DG HS PESHAWAR IN VIOLATION OF LAW/RULES/POLICY GOVERNING THE SUBJECT.

Prayer-In-Appeal:

On the acceptance of instant departmental Appeal, impugned Notification dated: 11.09.2020 may be declared as illegal, unlawful, without lawful authority, abinitio void and of no legal effect, hence be set at naught and appellant may be allowed to perform duties as DHO, North Waziristan till completion of normal tenure of service, In the best of justice and equity.

=====

Respected Sir,

with humble request and profound submission. It is stated :

1. That appellatant, being Member of Mangement Cadre in BPS-17 has transferred. By the Competent Authority, as District Health Officer (DHO), North Waziristan, Vide Notification dated 06/03/2020. (Copy of Notification dated 06.03.2020 is attached for kind perusal)
2. That appellatant performed duties with zeal/devotion and outmost satisfaction of the superiors, particularly during the pandemic of COVID-19.2
3. That appellatant has prematurely been transferred, vide Notification dated 11.09.2020, in ulter disregared to law/rules governing the subject, hence the impugned Notification ibid, deserves to be re-visited.
4. That impugned transfer Notification dated 11.09.2020 is against the posting and transfer policy of Government of Khyber Pakhtunkhwa. As the appellatant has been transferred within six months of his transfer instead of completion of normal tenure of three years. Hence indulgence of your honor is imminent for smooth administration of justice.
5. That any other ground, with the permission of your honor, will be taken at the time of personal hearing, if granted.

It is , therefore , most humbly requested that on acceptance of instant Departmental Appeal, impugned Notification dated: 11.09.2020 may be set aside and appellatant may be allowed to continue duties as DHO, North Waziristan till completion of normal tenure of posting, so as avoid untoward situation and further complications.

Dated.14/10/2020

APPELLANT

DR.MUHAMMAD ISRAR UL HAQ  
BPS-17(WALTING FOR POSTING)  
D.G.H.S OFFICE PESHAWAR  
Cell # 0332 9400848

ATTACHED

12543

14/10/2020

The Worthy Health Secretary,  
Government of Khyber Pakhtunkhwa,  
Peshawar

DEPARTMENTAL APPEAL AGAINST NOTIFICATION DATED 11.09.2020, VIDE WHICH APPELLANT, BEING MEMBER OF MANAGEMENT CADRE IN BPS-17 HAS PREMATURELY BEEN TRANSFERRED, FROM THE POSITION OF DHO NORTH WAZIRISTAN AND DIRECTED TO REPORT D.G H.S PESHAWAR, IN VIOLATION OF LAW/RULES/POLICY GOVERNING THE SUBJECT.

**Prayer in Appeal:**

On acceptance of instant Departmental Appeal, Impugned Notification dated 11.09.2020 may be declared as illegal, unlawful, without lawful authority and hence void and of no legal effect, hence be set at naught and appellant may be allowed to perform duties as DHO, North Waziristan till completion of normal tenure of service, in the best interest of justice and equity

Respected Sir,

With humble requests and profound submissions, it is stated:

1. That appellant, being Member of Management Cadre in BPS-17 has been transferred to the competent Authority, as District Health Officer (DHO) North Waziristan vide Notification dated: 06.03.2020  
(Copy of Notification dated: 06.03.2020 is attached for kind perusal)
2. That appellant performed duties with zeal/devotion and utmost satisfaction of the state, particularly during the Pandemic of COVID-19
3. That appellant has prematurely been transferred, vide Notification dated: 11.09.2020, in violation of law/rules governing the subject, hence the impugned transfer is liable to be rescinded
4. That impugned transfer Notification dated: 11.09.2020 is against the existing policy of Government of Khyber Pakhtunkhwa, as the appellant has been transferred only six months after his transfer instead of completion of normal tenure of service. It is a gross abuse of your honor's jurisdiction for smooth administrative functioning.
5. That any other ground, with the permission of your honor, will be taken up for the benefit of appellant if granted.

It is, therefore, most humbly requested that on due consideration of the Departmental Appeal and the Notification dated: 11.09.2020, the impugned transfer may be allowed to continue till the completion of normal tenure of posting as a District Health Officer in North Waziristan.

Date 14/10/2020

APPELLANT

DR. MUHAMMAD ISRAH UL HAQ  
BPS-17 (WAITING FOR POSTING)  
D.G.H.S. OFFICE PESHAWAR  
- 033-3514111

ATTESTED



To  
The Worthy Chief Secretary  
Government of Khyber Pakhtunkhwa  
Peshawar

11/09/2020  
06/03/2020

SUBJECT: DEPARTMENTAL APPEAL AGAINST NOTIFICATION DATED, 11.09.2020 VIDE WHICH APPELLANT, BEING MEMBER OF MANAGEMENT CADRE IN BPS 17 HAS PREMATURELY BEEN TRANSFERRED, FROM THE POSITION OF DHO NORTH WAZIRISTAN AND DIRECTED TO REPORT D.G. H.S PESHAWAR, IN VIOLATION OF LAW/RULES/POLICY, GOVERNING THE SUBJECT.

Prayer-In-Appeal:

On acceptance of instant Departmental Appeal, Impugned Notification dated 11.09.2020 may be declared as illegal unlawful without lawful authority as infirm void and of no legal effect, hence be set at naught and appellant may be allowed to perform duties as DHO, North Waziristan till completion of normal tenure of service, in the best interest of justice and equity.

\*\*\*\*\*

Respected Sir,

With humble request and profound submission it is stated

1. That appellant, being Member of Management Cadre in BPS 17 is posted at Peshawar by the Competent Authority, as District Health Officer (DHO) North Waziristan. Notification dated: 06.03.2020. (Copy of Notification dated: 06.03.2020 is attached for kind perusal)
2. That appellant performed duties with zeal/devotion and utmost satisfaction of the superiors, particularly during the Pandemic of COVID-19.
3. That appellant has prematurely been transferred, vide Notification dated: 11.09.2020 in utter disregard to law/rules governing the subject, hence the impugned Notification deserves to be re-visited.
4. That impugned transfer Notification dated: 11.09.2020 is against the posting and transfer policy of Government of Khyber Pakhtunkhwa, as the appellant has been transferred within six months of his transfer instead of completion of normal tenure of three years, hence indulgence of your honor is imminent for smooth administration of justice.
5. That any other ground, with the permission of your honor, will be taken at the time of personal hearing, if granted.

It is, therefore, most humbly requested that on acceptance of instant Departmental Appeal, impugned Notification dated: 11.09.2020 may be set aside and appellant may be allowed to continue duties as DHO, North Waziristan till completion of normal tenure of posting, so as avoid untoward situation and further complications

APPELLANT

Dated: 23/10/2020

DR. MUHAMMAD ISRAR UL HAQ  
BPS-17 (WAITING FOR POSTING)  
D.G. H.S. OFFICE PESHAWAR.

ATTESTED

To,

The Secretary Health  
Govt: of Khyber Pakhtunkhwa

622  
07/06/21

(5)

Subject:-

DEPARTMENTAL APPEAL AGAINST NOTIFICATION DATED 11/09/2020 VIDE WHICH APPELLANT BEING MEMBER OF MANAGEMENT CADRE BPS-20 HAS PREMATURELY BEEN TRANSFERRED FROM THE POSITION OF DHQ NORTH WAZIRSTAN AND DIRECTED TO REPORT TO DGHS PESHAWAR IN VIOLATION OF RULES OF GOVERNMENT THE SUBJECT.

Dear Sir,

I had submitted departmental appeal to your good office vide diary no 6177 dated 23/10/2020 for retention of my services as DHO NWTB being premature transferred at the disposal of DGHS Peshawar for the future transfer which is still awaited.

Therefore, it is once again requested to consider my appeal for retention of my services as DHO NWTB being premature transferred, please.

Dated:07/06/2021

Yours faithfully

(Dr. Muhammad Israr ul Haq)  
Management Cadre BPS-17  
DHO North Waziristan.

~~ATTESTED~~

5

To

The Secretary Health  
Govt: of Khyber Pakhtunkhwa

Subject: DEPARTMENTAL APPEAL AGAINST NOTIFICATION DATED 11/09/2020 VIDE WHICH APPELLENT BEING MEMBER OF MANAGEMENT CADRE BS-20 HAS PREMATURELY BEEN TRANSFERRED FROM THE POSITION OF DHQ NORTH WAZIRISTAN AND DIRECTED TO REPORT TO DGHS PESHAWAR IN VIOLATION OF RULES OF GOVERNING THE SUBJECT

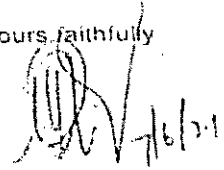
Dear Sir,

I had submitted departmental appeal to your good office vide diary no 6177 dated 23/10/2020 for retention of my services as DHO NWTD being premature transferred at the disposal of DGHS Peshawar for the further transfer which is still awaited.

Therefore, it is once again requested to consider my appeal for retention of my services as DHO NWTD being premature transferred, please

Dated: 07/06/2021

Yours faithfully



(Dr. Muhammad Israr ul Haq)  
Management Cadre BS-17  
DHO North Waziristan

~~ATTESTED~~

D. *[Signature]*  
Secy. Health

The Honourable Secretary Health,  
Health Department - Khasra P. Chhatrikiya, Peshawar

Subject: Departmental Appeal for cancellation of impugned order No 2276-79/personal issued vide dated 07.04.2021, by the Director General Health services, KP Peshawar, whereby the services of the appellant has been transferred from the DHO Office North Waziristan to the disposal of DHO Chitral Tawar.

RESPECTED SIR

The case is viewed as under:

- 1. That the appellant is holding a responsible position of District North Waziristan and the said title services rendered by the Social Welfare Department, which is given to him on the basis of his appearance.
- 2. That the appellant namely Mr. Saeed Ullah former Clerk who remained Head Clerk for the period of 1991 to 2011 and Mr. Saad Muhammad former Clerk who was assigned to him in 2011 for the period of 2011 to 2021 who has been assigned to DHO Chitral Tawar as a life member in a respectable manner. In view of the fact that the appellant has been in the service of the Government for a long period and has been performing his duties with justice and integrity and has been awarded the award.
- 3. That the appellant is a person of high caliber and is well versed in his work and is a member of the staff of the Government and is a person of high caliber and is a member of the staff of the Government and is a person of high caliber and is a member of the staff of the Government.
- 4. That the appellant is a person of high caliber and is well versed in his work and is a member of the staff of the Government and is a person of high caliber and is a member of the staff of the Government.
- 5. That the appellant is a person of high caliber and is well versed in his work and is a member of the staff of the Government and is a person of high caliber and is a member of the staff of the Government.

*[Signature]*  
ATTY/STEN

7

GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

Dated Peshawar the 17<sup>th</sup> September 2020

NOTIFICATION

No. SO(CH-11/10-25/2020

WHEREAS, The Governor Inspection Team in its fact finding inquiry communicated to Health Department Government of Khyber Pakhtunkhwa vide letter No. 16-632/Inq/GIT/18/548 dated 27.11.2018 has recommended initiation of proper departmental proceedings against Dr. Akram Ullah Khan S/o Yar Jan on the charges of non-registration with Pakistan Medical and Dental Council (PMDC).

AND WHEREAS, The National Accountability Bureau (NAAB) vide its letter No. 134/899/TW-1/NAAB/CPK dated 04.01.2019 has also conveyed that Dr. Akram Ullah Khan S/o Yar Jan (CNIC# 66101-4722959-9) could not prove their genuineness of degree and registration with PMDC.

AND WHEREAS, Director Health Services Tribal Districts, Peshawar vide letter No. 28093 / DHS / ADM/18 dated 19.12.2018 has also intimated that the recommendation of GIT about the said doctor should be implemented in letter and spirit.

NOW THEREFORE, in exercise of the powers conferred under Rule-6, of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2016 the Government hereby is pleased to remove Dr. Akram Ullah Khan with immediate effect.

SECRETARY HEALTH  
KHYBER PAKHTUNKHWA

First of even No. & Date  
Copy to the

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Director General National Accountability Bureau (NAAB) wh to No. 134/899/TW-1/NAAB/CPK dated 04.01.2019.
3. Director General, Health Services, Khyber Pakhtunkhwa.
4. Director Health Services, merged areas, Peshawar.
5. Secretary Governor Inspection Team wh to letter No. 16-632/Inq/GIT/18/548 dated 27.11.2018.
6. Deputy Director (IT) Health Department.
7. P.S. to Secretary Health, Khyber Pakhtunkhwa.
8. P.S. to Additional Secretary (P&A), Health Department.
9. Director concerned.
10. For M.O. etc.

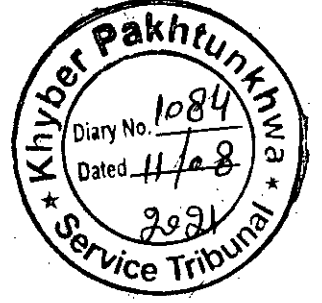
17.09.2020  
Muhammad Jawad Sardari  
Section Officer, F-11

Section Officer  
Muhammad Jawad Sardari  
17.09.2020

ATTESTED

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

C.M No. : \_\_\_\_\_/2021  
In  
Service Appeal No. 7129 /2021



Dr. Muhammad Israr ul Haq .....Appellant

V E R S U S

Govt of KP through Chief Secretary & others

.....Respondents

*Put up to the worthy chair-man  
with relevant appeal -*

**APPLICATION FOR EARLY FIXATION IN THE  
ABOVE TITLED SERVICE APPEAL.**

*11/8/2021*

*Lead*

**Respectfully Sheweth:**

1. That the above titled service appeal is pending adjudication before this Honourable Court which is fixed for 22.09.2021.
2. That the instant application is accompanied with application for summary dismissal and the contents of the same may kindly be considered as integral part of the instant application.
3. That the appellant has concealed the material facts from this Hon'ble Tribunal and thereby obtained suspension order from this Hon'ble Tribunal vide order dated 05.08.2021.
4. That the appellant has neither any cause of action nor any locus standi to challenge the transfer notification dated 09.07.2021. By obtaining the suspension order

from this Hon'ble Tribunal the appellant is trying to disturb the smooth running of the affairs of the department.

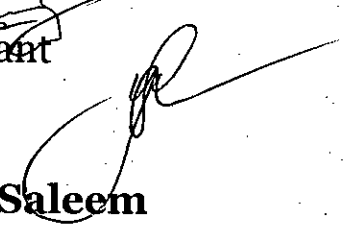
5. That keeping in view the above facts, the given date is too far and the applicant would be exposed to great hardships.
6. That this Hon'ble Tribunal has the power to fix an earlier date so as to look into the maintainability of the instant appeal.

**It is, therefore, most humbly prayed that on acceptance of this application, the above titled case may kindly be fixed as at earliest.**

Date: 11.08.2021

Through

  
Appellant

  
**Yasir Saleem**  
Advocate High Court  
Peshawar

**AFFIDAVIT**

I do hereby solemnly affirm and declare on oath that the contents of the accompanying **Early Hearing Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

  
**DEPONENT**

**BEFORE THE AUTHORITY UNDER THE  
PAYMENT OF WAGES PESHAWAR**

CM/ \_\_\_\_\_ 2021

in  
Service Appeal No. *7129/2021*

Dr. Muhammad Israr ul Haq..... (Appellant)

VERSUS

Chief Secretary KPK and others..... (Respondents)

Application on behalf of the Respondent No.  
4 for summary dismissal of the instant Appeal

Respectfully sheweth:

1. That the instant appeal is pending before this Honourable tribunal in which next date of hearing is 22.09.2021.
2. That the service appeal is not maintainable in its present form inter-alia on the following grounds.
  - a. That the appellant has got no cause of action to file the instant appeal.
  - b. That the appellant is not an aggrieved person in terms of section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 to challenge the transfer order/ notification dated. 09.07.2021.
  - c. That the petitioner has not disclosed material and true facts before this Honorable Tribunal in order to get relief which is illegal and not tenable in the eye of law.
  - d. That the appellant has been transferred vide the office order dated 11.09.2020 and was placed at the disposal of the DG Health Services Peshawar and from there he was transferred and posted as ~~DHO~~ <sup>Surveillance officer</sup> Bannu. It is pertinent to mention here that the appellant has taken charge of his post at Bannu and started performing his duties there and thus his transfer order has been actualized. The appellant is also drawing his salary <sup>from</sup> ~~as~~ DHO Bannu. *(Copy of salary slip for the month July 2021 is attached)*




- e. That the name of the appellant has not been reflected in the Transfer Order/ Notification dated 09.07.2021 and as such he cannot challenge the same before this Honourable Tribunal.
- f. That the applicant seeks leave of this Honourable court to take additional grounds at the time of arguments.

*It is therefore requested that on acceptance of this application the appeal in hand may kindly be dismissed with costs.*

  
Applicant/ Respondent No. 4

Through,

  
**YASIR SALEEM**  
Advocate High Court  
Peshawar

**AFFIDAVIT**

I do hereby solemnly affirm and declare on oath that the contents of the above application are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.



  
DEPONENT

2129/21  
**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**  
**CHECK LIST**

Case Title: Muhammad Israr-Ul-Haq V/S HEALTH DEPARTMENT

S#	CONTENTS	YES	NO
1	This Appeal has been presented by: <b>NOOR MOHAMMAD KHATTAK</b>	✓	
2	Whether Counsel/Appellant/Respondent/Deponents 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 paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	x	✓
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 AG/DAG?	✓	
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 cutting/overwriting?	x	✓
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: **NOOR MOHAMMAD KHATTAK**

Signature: \_\_\_\_\_

Dated: **-07-2021**



05.08.2021 Counsel for the appellant present: Preliminary arguments heard.

Learned counsel for the appellant contends that the transfer of the appellant through impugned order is against the posting/transfer policy of the Provincial Government. Let the respondents be put on notice for regular hearing. The appeal is admitted for regular hearing subject to all legal objections to be determined during full hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 22.09.2021 before the D.B.

An application has been filed alongwith the appeal for interim relief. Notice of the application be also given to the respondents. The operation of the impugned order shall remain suspended to the extent of appellant and respondent No. 4 till next date.

*[Signature]*  
Chairman

Certified to be true copy

*[Signature]*  
Khyber Pakhtunkhwa  
Scribe Tribunal  
Peshawar

*[Handwritten notes and dates]*  
Date of presentation of application: 05/08/21  
Number of copies: 16/1  
Copies: 10/1  
Date of delivery of copy: 06/08/21

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

SERVICE APPEAL NO. \_\_\_\_\_/2021

**M, ISRAR-UL-HAQ                      V/S                      HEALTH DEPARTMENT**

**I N D E X**

<b>S.N O</b>	<b>DOCUMENTS</b>	<b>ANNEXUR E</b>	<b>PAGE</b>
1	Memo of appeal	.....	1 - 4
2	Affidavit	.....	5
3	Stay Application	.....	6
4	Notification dt: 06-03-2020	<b>A</b>	7
5	Charge report	<b>B</b>	8
6	Notification dt: 11.09.2020	<b>C</b>	9
7	Notification dt: 17.09.2020	<b>D</b>	10
8	Notification dt: 18.09.2020	<b>E</b>	11
9	Order dt: 23.09.2020	<b>F</b>	12-13
10	Notification dt: 08.01.2021	<b>G</b>	14
11	Order dt: 11.01.2021	<b>H</b>	15
12	Impugned notification dt: 09-07-2021	<b>I</b>	16-17
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16	transfer/posting policy	<b>L</b>	30-32
17	Wakalat Nama	.....	33

Dated: \_\_\_\_\_ 2021

**APPELLANT**

Through:

**NOOR MOHAMMAD KHATTAK  
ADVOCATE**

FLATE NO. 04, 2<sup>ND</sup> FLOOR,  
JUMA KHAN PLAZA, NEAR FATA SECRETARIAT,  
WARSAK ROAD, PESHAWAR

**0345-9383141**

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

APPEAL NO. \_\_\_\_\_/2021

Dr. Muhammad Israr-Ul-Haq, Management Cadre (BPS-18),  
Posted as District Health Officer, District North Waziristan.

*D. Appeal*

..... APPELLANT

**VERSUS**

- 1- The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
- 4- Dr. Hafizullah, General Cadre (BPS-17), under transfer/ posted as District Health Officer, North Waziristan (OPS), District North Waziristan.

..... RESPONDENTS

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 09-07-2021 WHEREBY THE PRIVATE RESPONDENT NO.4 HAS BEEN POSTED AGAINST THE POST OCCUPIED BY THE APPELLANT IN UTTER VIOLATION OF TRANSFER/POSTING POLICY AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD.**

**PRAYER:**

That on acceptance of this appeal the impugned Notification dated 09-07-2021 may very kindly be set aside to the extent of posting of the private respondent No.4 against the post occupied by the appellant and the respondents may kindly be directed not transfer the appellant from the post of District Health Officer, District North Waziristan. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

*Is W. Beeth the name actually been occupied by the Appellant? D. Appeal something else?*

**R/SHEWETH:**

**ON FACTS:**

**Brief facts giving rise to the present appeal are as**

**under:-**

- 1- That appellant is the employee of respondents Department and belongs to the Management cadre, and was lastly transferred to the post of District Health Officer, District North Waziristan vide notification dated 06-03-2020. That appellant assumed the charge of the mention post on 10-03-2020. Copies of the notification dated 06-03-2020 and charge report are attached as annexure .....**A & B.**
- 2- That it is important to mention here that vide notification dated 11-09-2020 the appellant was prematurely transferred and posted at the disposal of D.G Health Services and one Dr. Muhammad Ikram was posted against the post of appellant. Copy of the Notification dated 11.09.2020 is attached as annexure ..... **C.**
- 3- That just after few days vide notification dated 17-09-2020 the one who posted against the post of appellant was suspended with immediate effect and the transfer order dated 11.09.2020 never actualized in its form, resultantly the appellant was allowed to work on his own post of the DHO, District North Waziristan. That vide order dated 18-09-2020 the transferee of the order dated 11.09.2020 was directed to report to the D.G Health Services Peshawar. Copies of the notification dated 17.09-2020 and 18-09-2020 are attached as annexure.....**D & E.**
- 4- That the transferee feeling aggrieved from the suspension order dated 17-09-2020 preferred a writ petition No. 886-B/2020 before the August Peshawar High Court, Bannu Bench and the August Court vide order dated 23.09-2020 directed the respondents that "*they may continue inquiry proceedings but no adverse order shall be taken against the petitioner/ transferee*". That in the meanwhile the appellant was performing his duty as DHO, District North Waziristan. Copy of the order dated 23.09.2020 is attached as annexure.....**F.**
- 5- That during pendency of the mention writ petition another transfer order/ notification dated 08-01-2021 was issued and the same was also suspended by the August Peshawar High Court, Bannu Bench vide order dated 11.01.2021. Copies of the notification dated 08-01-2021 and order dated 11.01.2021 are attached as annexure ....**G&H.**
- 6- That as the appellant was performing his duty on his post but vide impugned order dated 09-07-2021 the private respondent No. 4 was posted against the post, held by the appellant, in utter violation of the posting/ transfer policy of the provincial government and the cadre policy. Copy of the impugned notification dated 09-07-2021 is attached as annexure .....**I.**

7- That appellant feeling aggrieved from the impugned notification/ order 09-07-2021 preferred departmental appeal on 10-07-2021 and no response has been given by the respondents within the stipulated time period. Copy of the departmental appeal is attached as annexure .....J.

8- That the appellant feeling aggrieved and having no other remedy but to file this appeal on the following grounds amongst others.

**GROUND:**

A- That the impugned Notification dated 09.07.2021 to the extent of private respondent No. 4, placed at serial No. 6 of the impugned notification, is against the law, facts, norms of natural justice and materials on the record, hence not tenable and liable to be set aside to the extent of appellant and private respondent No.4.

B- That the appellant has not been treated by the respondents 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.

C- That the impugned Notification dated 09.07.2021 has been issued by the respondent No.2 in arbitrary and malafide manner, hence not tenable and liable to be set aside to the extent of appellant and private respondent No.4.

D- That it is worth to mention here that private respondent No. 4 belongs to the General Cadre whereas the appellant belongs to the Management Cadre and the question/ disputed post is to be held/ hold by official belongs to the management cadre.

E- That suitable person be posted at suitable post, in this respect this Honorable Tribunal vide judgment dated 09-08-2019 in Appeal No. 823/2019 and judgment dated 07-07-2020 in appeal No. 944/2020 have held that no person from General Cadre be posted on the post of Management cadre and only the person from the management cadre be posted on the post of management cadre. So the question post is one of the management cadre post and the appellant is belongs to the management cadre but the private respondent No. 4 belongs to the general cadre hence he (private respondent No.4) cannot be posted at this post. Copies of the judgment dated 09-08-2019 and dated 07-07-2020 are attached as annexure .....K.

F- That the impugned Notification dated 09.07.2021 is based on discrimination, favoritism and nepotism, hence not tenable to the extent of private respondent No. 4 in the eye of law.

G- That the impugned Notification dated 09.07.2021 has neither been in the best interest of public service nor in exigencies of service, hence not tenable and liable to be set aside.

H- That the impugned notification dated 09.07.2021 is violative of Clause-I, IV and XIII of the transfer/posting policy of the Government of Khyber Pakhtunkhwa. Copy of the transfer/posting policy is attached as annexure ..... L.

I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

**APPELLANT**

**MUHAMMAD ISRAR-UL-HAQ**

**THROUGH:**

**NOOR MOHAMMAD KHATTAK**

**KAMRAN KHAN**

**UMER FAROOQ**

**&**

**SAID KHAN  
ADVOCATES**



قیمت  
50 روپے

92985



ایڈوکیٹ:

بار کونسل / ایسوسی ایشن نمبر:

رابطہ نمبر: ۰۳۳۱-۸۵۹۲۵۵۴

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

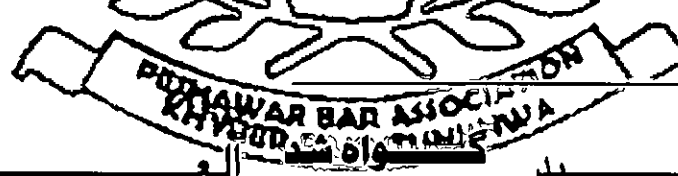
بجالات جناب KPTC Semi Tribunal

منجانب: <u>رہسینا اٹک / ڈاکٹر حفیظ</u>	دعویٰ:
	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

**باعث تحریر آنکہ**

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام پشاور کے لیے ایڈووکیٹ ایسوسی ایشن کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرہے اور فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زیریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری سیکٹرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانون کو اپنے ہمراہ مانے بجائے نظر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور ان کا ساختہ پر دستخط منظور و قبول ہوگا دوران مقدمہ میں جو چیز چاہے ہر جائزہ اتوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے



المرقوم:

مقام کے لیے منظور ہے۔

accepted

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔