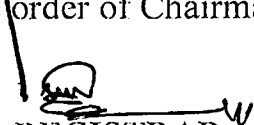


FORM OF ORDER SHEET

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

Case No. - 1669/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	24/11/2022	<p>The appeal of Mr. Muhammad Arif Khan presented today by Mr. Muhammad Zafar Tahirkheli Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Notices be issued to appellant and his counsel for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

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

Service Appeal No. 1669 /2022

Muhammad Arif Khan

**V**ersus

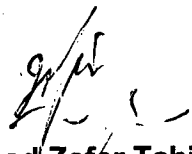
Govt of Khyber Pakhtunkhwa etc.

=====

**I N D E X**

S.No	Particulars	Annexure	Pages
1	Memo of Petition		1-3
2	Affidavit		4
3	Application for Interim Relief		5
4	Impugned Order 12-08-2022	"A"	6-7
5	Departmental Appeal 17-08-2022	"B"	8-9
6	Notification 26-05-2022	"C"	10
7	Charge assumption Report 13-06-2022	"C1"	11
8	ST Judgment 17-01-2022		12-18
9	Vakalatnama		19

Peshawar, dated  
24<sup>th</sup> November, 2022

  
(Muhammad Zafar Tahirkheli)  
ASC,  
87, Alfalah Street, Cantt Colony,  
Peshawar.  
0300-9597670

①

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

Service Appeal No. 1669 /2022

Muhammad Arif Khan, DIG Prisons, Regional Prison Office Mardan,  
..... Appellant

**V**ersus

1. The Hon'ble Chief Secretary,  
Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Government Khyber Pakhtunkhwa,  
Home Department.
3. Inspector General of Prisons,  
Khyber Pakhtunkhwa, Peshawar.

.... Respondents

=====

**APPEAL U/S 4 OF SERVICE TRIBUNAL ACT 1974, AGAINST THE  
IMPUGNED ORDER DATED 12-08-2022 (COPY ANNEXED MARKED  
"A"), WHEREIN THE APPELLANT WAS TRANSFERRED  
PREMATURELY AND HIS DEPARTMENTAL APPEAL DATED  
17-08-2022 (COPY ANNEXED MARKED "B"), WAS NOT DECIDED  
WITHIN THE STATUTORY PERIOD OF LIMITATION.**

=====

**Prayer:**

By accepting this appeal and setting aside the impugned pre-mature transfer order dated 12-08-2022 and allowing the appellant to continue with his service as Superintendent Jail at Central Prison Mardan for a full tenure of 03 years.

**RESPECTFULLY SHEWETH**

1. That the appellant being qualified and eligible was selected and appointed as Assistant Superintendent Jail (BPS-14) vide order dated 22-03-1993. He was promoted in the year 2018 as Deputy Superintendent Jail (BPS-17) and was then ultimately promoted as Superintendent Jail (BPS-18) in April, 2022.
2. The appellant has been serving the department honestly and diligently at various places of postings to the utmost satisfaction of his superiors. He was neither served with any adverse remarks nor was he ever penalized by any departmental proceedings till date.
3. That after his promotion as Superintendent Jail (BPS-18) the appellant was transferred and posted as Superintendent Jail (BPS-18), Central Prison Mardan in his own pay scale vide notification dated 26-05-2022. He assumed the charge of his duties on 13-06-2022. (Copy annexed "C" & "C1")

- (2)
4. That to the appellant's utter surprise he was once again transferred and posted as DIG Regional Prison Office Mardan in his own pay scale vide impugned order dated 12-08-2022. (**Annex "A"**)
  5. The appellant was pre-maturely transferred just after 02 and a half months of his assumption of charge as Superintendent Jail Mardan. The appellant was shocked to receive such an arbitrary treatment without any sufficient cause or plausible explanation.
  6. That the appellant preferred a departmental appeal dated 17-08-2022 against the impugned pre-mature transfer order but was not replied upon till the lapse of statutory period of limitation. (**Annex "B"**)

Feeling aggrieved and finding no other appropriate remedy, the appellant has been constrained to approach the Hon'ble Service Tribunal for the redress of his grievance inter-alia on the following,

### Grounds


- a. That the impugned transfer order was passed in haste by the respondent department without considering the material facts on record and thus the same is illegal and void ab-initio and is liable to be set right by this Hon'ble Tribunal.
- b. The worthy department was required to act in accordance with the well-established principles of equity, law, justice and propriety. The impugned order was passed in haste, wherein the appellant has been subjected to harsh treatment without any lawful justification.
- c. The impugned transfer is not only arbitrary and discriminatory but is also against the postings / transfer policy of the Provincial Government, wherein the appellant was lawfully entitled to enjoy his normal tenure of posting for a minimum period of 03 years, but was however denied the said benefit.
- d. That the worthy Tribunal in its recent decision passed vide judgment and order dated 17-01-2022 in service appeal No. 7786/2021, titled, "Maqsood ur Rehman Vs Govt. of Khyber Pakhtunkhwa" has categorically held that, the transfer order based on malafide, administrative expediencies and without taking into consideration the tenure of the office at the place office posting is illegal. Pre-mature transfer is violative of clause-I & IV of posting / transfer policy notified by the Provincial Government read with letter of Establishment Department dated 27-02-2013, pertaining to posting / transfer.  
**(Copy of judgment annexed)**
- e. The impugned action by the worthy authority needs to be set right by the Hon'ble appellate authority by partially modifying the impugned order dated 12-08-2022 and allowing the appellant to continue with his service as Superintendent Jail at Central Prison Mardan for his full tenure of 03 years.

The appellant seeks leave of the Hon'ble Tribunal to rely on additional grounds at the time of final arguments.

(3)

In view of the above, it is most humbly requested that by accepting this appeal the impugned pre-mature transfer order dated 12-08-2022, may kindly be set aside and being modified up to the extent of the appellant by allowing him to continue with his service as Superintendent Jail at Central Prison Mardan for a full tenure of 03 years.

Any other relief deemed appropriate may also be granted in addition to the relief prayed above.

  
Appellant

Through,

Peshawar, dated  
24<sup>th</sup> November, 2022

  
(Muhammad Zafar Tahirkheli)  
ASC

(4)

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

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

Muhammad Arif Khan

**V**ersus

Govt of Khyber Pakhtunkhwa etc.

=====  
I N D E X  
=====

**Affidavit**

I, the appellant, Muhammad Arif Khan s/o Muhammad Ashraf Khan, DIG Prisons, Regional Prison Office Mardan, do hereby state on Oath that the contents of the accompanying appeal are true and correct to the best of my knowledge and belief, and nothing has been concealed from this Hon'ble Tribunal.

ATTESTED  
GOVERNMENT  
MARDAN  
24/11/22

  
DEPONENT

CNIC No. 17301-4839385-3  
Cell No. 0300-9013535

Date: - 24<sup>th</sup> November, 2022

(5)

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

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

Muhammad Arif Khan

**V**ersus

Govt of Khyber Pakhtunkhwa etc.

=====  
**APPLICATION FOR INTERIM RELIEF**  
\_\_\_\_\_

**Respectfully Sheweth:**

1. The above titled appeal is being filed, wherein the contents of the main appeal, may kindly be read as part and parcel of the present application.
2. The appellant has a strong prima facie case on merits in which he is most likely to succeed.
3. That the impugned premature transfer order will cause irreparable harm to the applicant and his cause would be seriously prejudiced if incase the interim relief is refused.
4. The balance of convenience lies in maintaining the status-quo order.

In view of the above, it is most humbly requested that by accepting this application the impugned transfer order dated 12-08-2022 being premature and politically motivated, may kindly be suspended pending adjudication the instant service appeal.



Applicant


Through,

  
(Muhammad Zafar Tahirkheli)  
ASC

Peshawar, dated  
24<sup>th</sup> November, 2022

**Affidavit:**

I Muhammad Arif Khan s/o Muhammad Ashraf Khan, the applicant, state on oath that the contents of the above application are true and correct and nothing has been concealed or withheld from this Hon'ble Tribunal.



Deponent



Government of Khyber Pakhtunkhwa  
Home & Tribal Affairs Department

Dated Peshawar the 12<sup>th</sup> August, 2022

**NOTIFICATION:**

No. SO(P&R)HD/1-30/2020: The competent authority is pleased to order posting / transfer of the following officers of the Inspectorate General of Prisons, Khyber Pakhtunkhwa, with immediate effect, in the public interest:-

#	NAME OF OFFICERS	FROM	TO
1	Muhammad Riaz Supdt. Jail (BPS-18)	District Jail Buner at Daggar	Central Prison Mardan against the post of Superintendent BPS-19 (OPS) vice No.29.
2	Mr. Samiullah Khan Supdt. Jail (BPS-18)	District Jail Kohat	Central Prison D.I.Khan against the vacant post of Supdt. Jail (BPS-19) (OPS).
3	Sahibzada Muhammad Qaiser AIG (BPS-18)	Regional Prison Office Peshawar	Regional Prison Office Peshawar against the vacant post of DIG Prisons (BPS-19) (OPS).
4	Siyyar Ahmad Deputy Supdt. Jail now appointed in (BPS-18) on a.c.b	Central Prison Bannu as Deputy Supdt. Jail (BPS- 17)	Regional Prison Office Peshawar as AIG Prisons (BPS-18) vice No.03 above.
5	Abdul Bari AIG Prisons (BPS-18)	Regional Prison Office Mardan	District Jail Kohat against the vacant post of Supdt. Jail (BPS-18) vice No.02.
6	Muhammad Naeem AIG Prisons (BPS-18)	Regional Prison Office Swat	Regional Prison Office Abbottabad against the vacant post.
7	Muhammad Waseem Supdt. Jail (BPS-18)	District Jail Abbottabad	Central Prison Karak against the vacant post.
8	Muhammad Hamid Deputy Supdt. Jail now appointed in (BPS-18) on a.c.b	Central Prison Haripur against the post of Supdt. Jail (OPS)	District Jail Abbottabad as Supdt. Jail (BPS-18) vice No.07 above.
9	MST. Fauzia Taj Deputy Supdt. Jail now appointed in (BPS-18) on a.c.b	Central Prison Haripur as Deputy Supdt. Jail (BPS- 17).	Prison Staff Training Academy Haripur against the vacant post of Commandant (BPS-19) (OPS).
10	Syed Muhammad Junaid Deputy Supdt. Jail (BPS-17) now appointed in (BPS-18) on a.c.b	Sub Jail Malakand	District Jail Buner vice No.01 above.
11	MST. Nagina Mehsud Deputy Supdt. Jail (BPS-17)	District Jail Lakki Marwat as Incharge	Central Prison D.I.Khan vice No.13.
12	Mr. Abdul Nasir Deputy Supdt. Jail (BPS-17)	Central Prison Karak	District Jail Lakki Marwat as Incharge vice No.11 above.
13	Mr. Zafarullah Jan Deputy Supdt. Jail (BPS-17)	Central Prison D.I.Khan	Sub Jail Tank against the vacant post of Deputy Supdt. Jail (BPS-17).
14	Muhammad Ayub Deputy Supdt. Jail (BPS-17)	Central Prison Peshawar	District Jail Kohat against the vacant post.
15	Mr. Shamroze Khan Asstt. Supdt. Jail now promoted to Deputy Supdt. Jail (BPS-17)	Central Prison Peshawar as Assistant Superintendent Jail (BPS-16) against the post of Deputy Superintendent Jail (BPS- 17) (OPS)	Inspectorate of Prisons, Khyber Pakhtunkhwa Peshawar against the vacant post of Deputy Supdt. Jail (BPS-17).
16	Mr. Amjad Ali Khan Deputy Supdt. Jail (BPS-17)	Central Prison Mardan as Deputy Supdt. Jail (BPS- 17)	Central Prison Peshawar as Deputy Supdt. Jail (BPS-17) Vice No. 15 above.
17	Mr. Shehr Yar Asstt. Supdt. Jail now promoted to Deputy Supdt. Jail (BPS-17)	Sub Jail Battagram as Assistant Supdt. Jail (BPS- 16)	Sub Jail Battagram against the vacant post of Deputy Supdt. Jail (BPS-17).
18	Syed Zain-Ul-Arifeen Shah Asstt. Supdt. Jail now promoted to Deputy Supdt. Jail (BPS-17)	District Jail Abbottabad as Assistant Superintendent Jail (BPS-16)	District Jail Abbottabad against the vacant post of Deputy Supdt. Jail (BPS-17).
19	Mr. Ihsan-Ud-Din Asstt. Supdt. Jail now promoted to Deputy Supdt. Jail (BPS-17)	Central Prison Peshawar as Assistant Superintendent Jail (BPS-16)	Sub Jail Malakand as Deputy Supdt. Jail (BPS-17) vice No.10 above.

TRUE COPY





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7

**Government of Khyber Pakhtunkhwa  
Home & Tribal Affairs Department**

0.	Syed Muhammad Salman Asstt; Supdt; Jail now promoted to Deputy Supdt; Jail (BPS-17)	Sub Jail Charsadda as Assistant Supdt; Jail (BPS-16) against the post of Deputy Superintendent Jail (BPS-17) (OPS)	Sub Jail Charsadda as Deputy Supdt; Jail (BPS-17) on regular basis.
1.	Mr. Aftab Ahmad Asstt; Supdt; Jail now promoted to Deputy Supdt; Jail (BPS-17)	Central Prison Mardan as Assistant Superintendent Jail (BPS-16)	Central Prison Mardan against the vacant post of Deputy Supdt; Jail (BPS-17).
2.	Mr. Riaz Ahmad Asstt; Supdt; Jail now promoted to Deputy Supdt; Jail (BPS-17)	District Jail Chitral as Assistant Supdt; Jail (BPS-16)	District Jail Manshura vice No. 26.
3.	Mr. Rashad Ahmad Asstt; Supdt; Jail now promoted to Deputy Supdt; Jail (BPS-17)	District Jail Abbottabad as Assistant Superintendent Jail (BPS-16)	Central Prison Mardan as Deputy Supdt; Jail (BPS-17) vice No. 16 above.
4.	Mr. Fazle Rahim Asstt; Supdt; Jail now promoted to Deputy Supdt; Jail (BPS-17)	Sub Jail Khar Bajaur as Assistant Supdt; Jail (BPS-16) against the post of Deputy Superintendent Jail (BPS-17) (OPS)	Sub Jail Swabi as Deputy Supdt; Jail (BPS-17) on regular basis vice No.25.
5.	Mr. Murad Khan Deputy Supdt; Jail (BPS-17)	Sub Jail Swabi as Deputy Supdt; Jail (BPS-17)	District Jail Chitral against the vacant post.
6.	Mr. Zahoor Elahi Deputy Supdt; Jail (BPS-17)	District Jail Manshura as Deputy Supdt; Jail (BPS-17)	Sub Jail Besham (Shangla) against the vacant post of Deputy Supdt; Jail (BPS-17).
7.	Mr. Sabz Ali Deputy Supdt; Jail (BPS-17) belong to District Bannu and due for retirement on 22-03-2023 on 60 years	For pay with Sub Jail Wana (SW) as Deputy Supdt; Jail and for duty with Internment Centre Lakki Marwat as Incharge	Central Prison Bannu Vice No..04 above.
8.	Mr. Umair Khan, Superintendent Jail (BPS-18)	AIG (BP-18) Regional Prison Office Hazara Abbotabad.	Central Prison Haripur against the post of Superintendent BPS-19 (OPS) vice No.8.
9.	Mr. Muhammad Arif, Superintendent Jail (BPS-18)	Superintendent Central Prison Mardan (OPS)	DIG (BPS-19) Regional Prison Office Mardan against the vacant post (OPS).

**SECRETARY HOME  
KHYBER PAKHTUNKHWA**

Encl: of even No & date

Copy forwarded for information to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
3. Principal Secretary to Chief Minister Khyber Pakhtunkhwa.
4. District Accounts Officer concerned.
5. PS to Special Assistant to Chief Minister on Prisons, Khyber Pakhtunkhwa.
6. PS to Home Secretary, Khyber Pakhtunkhwa, Peshawar.
7. PS to Special Secretary-I, Home Department, Peshawar.
8. Officers concerned.
9. Notification file.

SECTION OFFICER (Prison-I)



**TRUE COPY**

ANNEXURE

"B"

(8)

To

The Hon'ble Chief Secretary,  
Khyber Pakhtunkhwa, Peshawar.

Through,

Inspector General of Prisons,  
Khyber Pakhtunkhwa, Peshawar.

=====

**DEPARTMENTAL APPEAL / REPRESENTATION AGAINST THE  
IMPUGNED PRE-MATURE TRANSFER OF THE APPELLANT ISSUED  
VIDE NOTIFICATION DATED 12-08-2022**

=====

**RESPECTFULLY SHEWETH**

1. That the appellant being qualified and eligible was selected and appointed as Assistant Superintendent Jail (BPS-14) vide order dated 22-03-1993. He was promoted in the year 2018 as Deputy Superintendent Jail (BPS-17) and was then ultimately promoted as Superintendent Jail (BPS-18) in April, 2022.
2. The appellant has been serving the department honestly and diligently at various places of postings to the utmost satisfaction of his superiors. He was neither served with any adverse remarks nor was he associated with any departmental proceedings till date.
3. That after his promotion as Superintendent Jail (BPS-18) the appellant was transferred and posted as Superintendent Jail (BPS-18), Central Prison Mardan in his own pay scale vide notification dated 26-05-2022. He assumed the charge of his duties on 13-06-2022.
4. That to the appellant's utter surprise he was once again transferred and posted as DIG Regional Prison Office Mardan in his own pay scale vide impugned order dated 12-08-2022.
5. The appellant was pre-maturely transferred just after 02 and a half months of his assumption of charge as Superintendent Jail Mardan. The appellant was shocked to receive such an arbitrary treatment without any sufficient cause or plausible explanation.
6. The worthy department was required by law to act in accordance with the well established principles of equity, law, justice and propriety. The impugned order was passed in haste, wherein the appellant has been subjected to harsh treatment without any lawful justification.

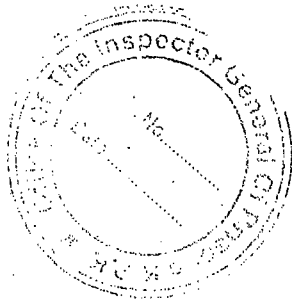
The impugned transfer is not only arbitrary and discriminatory but is also against the postings / transfer policy of the Provincial Government, wherein the appellant was lawfully entitled to enjoy his normal tenure of posting for a minimum period of 03 years, but was however denied the said benefit.

- 8. The impugned action by the worthy authority needs to be set right by the Hon'ble appellate authority by partially modifying the impugned order dated 12-08-2022 and allowing the appellant to continue with his service as Superintendent Jail at Central Prison Mardan for his full tenure of 03 years.

The appellant seeks leave of the worthy authority to be allowed the opportunity to be heard in person.

Dated. 17<sup>th</sup> August, 2022

*[Signature]*  
 MUHAMMAD ARIF KHAN  
 DIG PRISONS  
 REGIONAL PRISON OFFICE MARDAN 17/8/22



Received one copy

*[Signature]*

17-8-22

3:00 PM

*[Signature]*

TRUE COPY



GOVERNMENT OF KHYBER PAKHTUNKHWA,  
HOME & TRIBAL AFFAIRS DEPARTMENT.

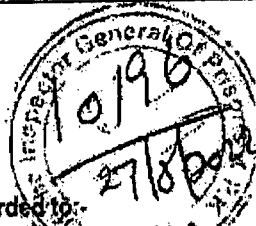
Dated Peshawar the 26<sup>th</sup> May, 2022

**NOTIFICATION**

**NO.SOP&RHDI-30/2022:** The competent authority is pleased to order posting/transfer of the following officers of the Inspectorate of Prisons, Khyber Pakhtunkhwa, in the public interest, with immediate effect:-

Sr.No.	Name of officer with designation	From	To	Remarks
1.	Muhammad Riaz, Deputy Superintendent (BPS-17) now promoted to BPS-18.	Deputy Superintendent Jail (BPS-17), Central Prison Mardan	Superintendent Jail (BPS-18), District Jail Buner	Against the vacant post
2.	Muhammad Waseem Khan, Deputy Superintendent Jail (BPS-17) now promoted in BPS-18.	District Jail Abbottabad.	Superintendent Jail (BPS-18), District Jail Abbottabad.	Against the vacant post
3.	Abdul Bari, Deputy Superintendent (BPS-17) now promoted in BPS-18.	Central Prison Mardan	A.I.G(BPS-18), Regional Prison Office Mardan	Against the vacant post.
4.	Muhammad Arif, Deputy Superintendent Jail (BPS-17) now appointed in BPS-18 on acting charge basis.	District Jail Taimeraga	Superintendent Jail (BPS-19), Central Prison Mardan in his own pay & scale.	Vice No.5
5.	Amin Shoab, Superintendent Jail (BPS-18)	Superintendent Jail (BPS-19), Central Prison Mardan in his own pay & scale	Superintendent Jail (BPS-18) District Jail Taimergara	Vice No.4
6.	Hashmatullah, Deputy Superintendent Jail (BPS-17) now appointed in BPS-18 on acting charge basis.	Inspectorate of Prisons, Peshawar.	A.I.G (BPS-19), Inspectorate of Prisons, Peshawar in his own pay & scale.	Against the vacant post.
7.	Muhammad Naeem, Deputy Superintendent Jail (BPS-18) now appointed in (BPS-18) on acting charge basis	Central Prison Bannu	A.I.G (BPS-18), Regional Prison Officer Swat.	Against the vacant post.
8.	Muhammad Ayub, Deputy Superintendent Jail (BPS-17)	Incharge Sub-Jail Charsadda	Deputy Superintendent Jail (BPS-17), Central Prison Peshawar	Against the vacant post.
9.	Syed Muhammad Salman, Assistant Superintendent Jail(BPS-16)	Assistant Superintendent Jail (BPS-16), Central Prison Mardan	Incharge Sub-Jail Charsadda against the post of Deputy Superintendent Jail (BPS-17) in his own pay & Scale	Vice No.8

DD-ELAD  
A



SECRETARY HOME  
KHYBER PAKHTUNKHWA

Endst: No. & date as above.

Copy of the above is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa Peshawar.
2. The Inspe for General of Prisons, Khyber Pakhtunkhwa, Peshawar.
3. District Accounts Officers concerned.
4. PS to Secretary, Home & TAs Department, Peshawar.
5. PS to Special Secretary-I, Home & TAs Department, Peshawar.
6. Officers concerned.
7. Master File.

*(Signature)*  
Section Officer (Prison-I)

TRUE COPY

**CHARGE ASSUMPTION REPORT**

In pursuance to the Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department Peshawar Notification No. SO (P&R)HD/1-30/2022 dated 26-05-2022. I, Muhammad Arif Khan, assumed the charge of Superintendent (BPS-18) in Central Prison Mardan on 13-06-2022 (FN).

**Speciman Signatures as under:-**


1. Muhammad Arif Khan




2. Muhammad Arif Khan




3. Muhammad Arif Khan



  
**(MUHAMMAD ARIF KHAN)**  
 SUPERINTENDENT  
 CENTRAL PRISON MARDAN

**ATTESTED**

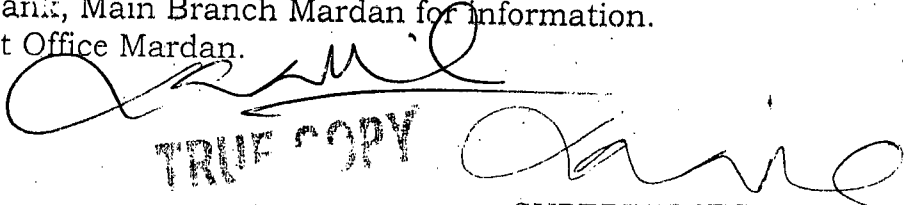
  
 ASSISTANT DIRECTOR  
 CENTRAL PRISON MARDAN

**OFFICE OF THE SUPERINTENDENT CENTRAL PRISON MARDAN**No. 47-56 /13 / 06 / 2022.

Copy of the above is forwarded to:

1. The P.S to Secretary, Home & Tribal Affairs Department Khyber Pakhtunkhwa Peshawar for information with reference to the Notification referred above please.
2. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar, for information, please.
3. The P.S to Special Assistant to Chief Minister for Prisons Khyber Pakhtunkhwa for information please.
4. All Superintendents J: Mardan Circle.
5. Manager National Bank, Main Branch Mardan for information.
6. The District Account Office Mardan.
7. Officer Concerned.

TRUE COPY

  
 SUPERINTENDENT  
 CENTRAL PRISON MARDAN

769  
(12)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 7786/2021

Date of Institution ... 25.11.2021

Date of Decision ... 17.01.2022



Maqsood Ur Rehman, Superintendent, Central Prison Peshawar.

... (Appellant)

**VERSUS**

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

Fazal Shah Mohmand,  
Advocate

... For Appellant

Muhammad Adeel Butt,  
Additional Advocate General

... For respondents

**AHMAD SULTAN TAREEN**  
**ATIQU-UR-REHMAN WAZIR**

...  
...

**CHAIRMAN**  
**MEMBER (EXECUTIVE)**

**JUDGMENT**

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

Brief facts of the

case are that the appellant while serving as Superintendent Jail Haripur, was transferred as Superintendent Jail Peshawar vide order dated 22-04-2021. During the course of his service, certain allegations went viral against the appellant on social media from an unknown account, upon which a fact finding inquiry was proposed by the Administrative Department to the competent authority, but before conducting such inquiry, the appellant was also transferred vide order dated 10-11-2021. Feeling aggrieved, the appellant filed departmental appeal dated 11-11-2021, which was not responded within the stipulated timeframe, hence the instant service appeal with prayers that the impugned notification dated 10-11-2021 may be set aside to the extent of the appellant and the

UNTESTED

CHIEF CLERK  
Khyber Pakhtunkhwa Service Tribunal  
Peshawar

*[Signature]*  
**TRUE COPY**

**ATTESTED**

appellant may be allowed to perform his duty as Superintendent Central Prison, Peshawar.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law and rule on the subject in violation of Article-4 and 25 of the Constitution and law of the land; that the impugned order is based on malafide, which is evident from the way the appellant was treated, which does not have the support of any law; that the entire episode is aimed at vested interests to dislodge the appellant and pave way for accommodating respondent No. 4 at Central Prison Peshawar, who being influential, was promoted from the post of Deputy Superintendent (BPS-17) to the post of Superintendent (BPS-18) vide order dated 09-08-2021 and within two months was transferred as Superintendent Jail (BPS-19) in his own pay & scale at Central Prison Mardan vide order dated 01-10-2021 and now within another two months, was posted as Superintendent Jail Peshawar vide impugned order dated 10-11-2021; that post of Superintendent Jail Peshawar is in BPS-19, while the respondent No. 4 being junior to the appellant and also serving in BPS-18 is being posted against BPS-19 post in his own pay & scale, thus the impugned order is nullity in the eye of law; that the impugned order is alien to law, as the law on the subject does not provide transfer of civil servant from his post for the purpose of inquiry; that even otherwise, no transfer can be made before departmental proceedings are finalized, as transfer is nowhere mentioned as punishment; that the appellant has also approached the cybercrime/quarter concerned for unearthing the truth about the episode and to trace the real culprit; that the impugned order is pre-mature to the extent of the appellant as the appellant performed against the post only for six months and not yet completed his normal tenure, thus the respondents has violated the transfer/posting policy; that as per instructions contained in ESTA-CODE no action/proceedings can be taken on the basis of anonymous complaint/allegation, as in the present case the allegations

ATTACHED

45  
 ENCL  
 other  
 in file

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are leveled from unknown source, so the entire action initiated is not tenable in the eye of law; that even otherwise, as per judgments of the apex court, no proceedings can be made in pursuance of the press-clipping, what to say of social-media reports and most particularly when such reports are from un-known accounts, thus the entire action speaks of anything but not fair and bonafide; that the impugned order to the extent of the appellant smacks malafide, as the appellant is treated in a manner not known to law; that it is worth to mention that some fake accounts are there inside the department through which certain honest and efficient officers are maligned without any substance for vested interests and the appellant has approached the quarter concerned to unveil such accounts and their users; that the allegations leveled against the appellant are totally false, baseless, unfounded besides the complainant is not known nor ever he remained in prison, which speaks volumes of the veracity of the baseless allegations; that the appellant has been victimized for no omission or commission on his part.

03. Learned counsel for the respondents has contended that the appellant was posted as Superintendent Central Jail Peshawar, however his performance was not found satisfactory as number of complaints were pouring in regarding his involvement in demanding illegal gratifications from prisoners and use of contraband without any control as well as use of mobile phone inside the jail premises during his tenure as superintendent Jail Peshawar; that such allegations went viral on social media, which not only made the appellant liable for disciplinary action but also defamed the prestige of the institution; that in the wake of such allegations, transfer of the appellant was imperative to pave way for conducting impartial inquiry in a transparent way, so as to surface the real facts of the issue; that being a civil servant, the appellant is duty bound to obey orders of the competent authority and the appellant is liable to be posted at any place across the province; that the appellant has neither relinquished the charge of the post of Superintendent Central Prison Peshawar nor assumed charge in his new

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APPELLED

EXAMINER  
Peshawar



place of posting; that the impugned order does not favor any person, rather it was made in the public interest; that the appellant was transferred on administrative grounds on account of complaints regarding malpractices/illegal activities as were made viral on social media, which required due consideration and impartial investigation as the question of dignity of prison department is involved.

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

05. Record reveals that the appellant, while posted as Superintendent Central Jail Peshawar, attracted wrath of the respondents, when certain allegations against the appellant went viral on social media. Upon perusal of such allegations, it was found that the allegations so leveled against the appellant are general in nature and contents of the allegations would suggest that it has been made viral by an unknown account without any mention of the complainant. In order to dig out the facts, the administrative department proposed a fact-finding inquiry but the appellant was also transferred on administrative grounds before initiation of such inquiry. It is a settled law that a civil servant cannot be penalized merely because of allegations and such punishment would be bad unless such official was found guilty. In the instant case too, neither any of the charge is yet proved against him nor any disciplinary proceedings are initiated against him, hence transferring him as a punishment is not tenable and is liable to be set aside. It is not yet clear as to whether proceedings of the fact-finding inquiry is initiated otherwise.

06. Transfer on administrative ground is not permissible under the law, this issue has already been thrashed out and settled in various judgments relied upon by the learned counsel for the appellant that transfer of a civil servant could not be made on the basis of complaint because transfer had not been mentioned as punishment in the penalty list in the rules and regulations regarding the conduct

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 Service Tribunal  
 Peshawar

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of civil servants. Reliance is placed on 2015 PLC (CS) 1035 and 2012 PLC (CS) 187. We are of the considered view that the impugned transfer order was made on malafide on part of the respondents, administrative expediencies and without taking into consideration the tenure of the officer at the place of his posting, hence is illegal. Needless to mentions that the appellant was pre-maturely transferred, so the respondents violated Clause-I and iv of the posting/transfer policy notified by the provincial government read with letter of the establishment department dated 27-02-2013 pertaining to posting/transfer. The respondents during the course of arguments have stated at the bar that a summery has already been submitted to the chief minister for cancellation of the impugned order of transfer, which will be done after approval of the competent authority.

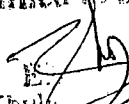
07. In view of the fore-going discussion, the instant appeal is accepted. The impugned order dated 10-11-2021 is set aside and posting of the appellant is restored as Superintendent Central Jail Peshawar. Parties are left to bear their own costs. File be consigned to record room.

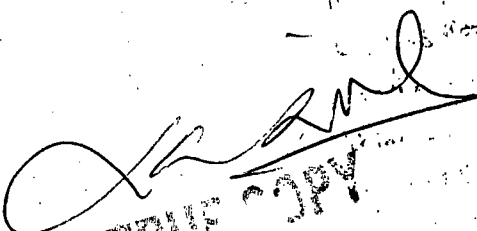
ANNOUNCED  
17.01.2022

  
(AHMAD SULTAN TAREEN)  
CHAIRMAN

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

Certified to be true copy

  
OFFICER  
Khyber Pakhtunkhwa  
Secy of the Panel  
Peshawar

  
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Khyber Pakhtunkhwa  
Service Tribunal  
7931  
25/11/2021

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No 7786/2021

Maqsood Ur Rehman, Superintendent, Central Prison Peshawar.  
.....Appellant

**VERSUS**

1. Govt. of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.
2. Govt. of Khyber Pakhtunkhwa, through Secretary, Home & Tribal Affairs, Department, Civil Secretariat, Peshawar.
3. Inspector General Prison, Khyber Pakhtunkhwa, Peshawar.
4. Umair Khan, Superintendent, Central Prison, Mardan.  
.....Respondents

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974  
AGAINST THE NOTIFICATION DATED 10-11-2021  
WHEREBY THE APPELLANT HAS BEEN TRANSFERRED  
FROM THE POST OF SUPERINTENDENT CENTRAL PRISON,  
PESHAWAR AND HAS BEEN ATTACHED FOR THE  
PURPOSE OF PAY AGAINST THE VACANT POST OF DIG  
PRISON AT REGIONAL PRISON ABBOTTABAD AND  
POSTED AT INSPECTORATE OF PRISONS, PESHAWAR TILL  
FURTHER ORDERS AND AGAINST WHICH  
REVIEW/REPRESENTATION DATED 11-11-2021 OF THE  
APPELLANT HAS NOT BEEN RESPONDED SO DESPITE THE  
LAPSE OF REQUISITE PERIOD.**

**PRAYER:-**

On acceptance of this appeal the impugned Notification dated 10-11-2021 to the extent of the appellant, may kindly be set aside and the appellant may kindly be allowed to perform his duties as Superintendent Central Prison, Peshawar.

10/11/2021  
5/11/2021  
Respectfully Submitted:-

1. That the appellant while serving as Deputy Superintendent Prisons was promoted to (BPS-18) vide Notification dated 27-09-2017 and was promoted from the post of Superintendent District Jail (BPS-18) to the post of Superintendent Central Prison BPS-19 vide Notification dated 11-08-2021 and since appointment the petitioner performed his duties with honesty and full devotion and to the entire satisfaction of his high ups. (Copies of Notifications dated 27-09-2017 & Notification dated 11-08-2021 are enclosed as Annexure A & B).

2. That the appellant while posted as Superintendent Central Prison was transferred and posted as Superintendent

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30.11.2021

Counsel for the appellant present and preliminary arguments heard. Memorandum of appeal and annexures therewith have been perused.

Vide notification dated 22.04.2021, the appellant was transferred from the post of Superintendent Central Prison Haripur and was posted as Superintendent Central Prison Peshawar. Vide impugned notification dated 10.11.2021, he has been transferred from the post of Superintendent Central Prison Peshawar and posted at Inspectorate of Prison Peshawar till further order against the vacant post of DIG Prisons (BPS-19) at Regional Prison Office Abbottabad for the purpose of pay. Learned counsel contends that the transfer of appellant is result of some unfounded complaint upon which the enquiry is yet to take place. However, the competent authority was misled that the transfer of the appellant is necessary for fact finding enquiry, which is against the law. Points raised need consideration. Subject to all just and legal objections, the appeal is admitted for 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 on 23.12.2021 before S.B at Peshawar.

An application has been submitted alongwith Memorandum of appeal seeking suspension of the operation of impugned notification dated 10.11.2021 to the extent of appellant till decision of the main service appeal. Notice of the application be also given to the respondents. The operation of the impugned notification is suspended to the extent of appellant till date fixed.

Chairman  
Camp Court, A/Abad

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# VAKALATNAMA

In the Court of

**Khyber Pakhtunkhwa Service Tribunal, Peshawar**

Service Appeal No. \_\_\_\_\_

B.C No.	10-7764
Advocate	M. Zafar
Cell No.	0300-9597670
CNIC	17301-1639615-3

Petitioner  
Plaintiff  
Applicant  
Appellant  
Complainant

**Muhammad Arif Khan**

Decree-Holder

**V**ERSUS

Respondent  
Defendant  
Opponent  
Accused

**Govt of KP etc**

Judgment-Debtor

I / We **Muhammad Arif Khan** the above noted Petitioner / Appellant do hereby appointed and constitute, **Muhammad Zafar Khan Tahirkheli, ASC**, to appear, plead, act, compromise, withdraw or refer to arbitration for me / us as my / our counsels / advocates in the above noted matter, without any liability for his default and with the authority to engage any other Advocate / Counsel at my / our cost.

The Client / Litigant will ensure his presence before the Court on each and every date of hearing and the counsel would not be responsible if the case is proceeded ex-parte or is dismissed in default of appearance. All cost awarded in favour shall be the right of Counsel or his nominee, and if awarded against shall be payable by me/us.

I / We authorize the said Advocates to withdraw and receive on my / our behalf all sums and amounts payable or deposited on my / our account in the above noted matter.



Client

  
**M. Zafar Khan Tahirkheli**

Attested & Accepted (Advocates)

Dated 24-11-2022

Office **ATIQ LAW ASSOCIATES,**  
87, Al-Falah Street, Besides State Life Building,  
Peshawar Cantt, Phone: 091-5279529  
E-mail : [zafartk.advocate@gmail.com](mailto:zafartk.advocate@gmail.com)