

BEFORE THE HONOURABLE PESHAWAR HIGH COURT PESHAWAR

In the matter of

Service Appeal No. 1669/2022

Muhammad Arif Khan, DIG Prisons, Regional Prison Office Mardan
(Appellant)

Khyber Pakhtunkhwa
Service Tribunal

Entry No. 2725

Dated 5/1/23

VERSUS

- 1- The Honourable Chief Secretary, Khyber Pakhtunkhwa Peshawar
- 2- Secretary to Government of Khyber Pakhtunkhwa Home Department Peshawar
- 3- Inspector General of Prisons Khyber Pakhtunkhwa Peshawar.

.....(Respondents).

INDEX

S.#	DESCRIPTION OF DOCUMENTS	Annex	Page No.
1	Joint Reply /Comments	-	1-3
2	Application for vacation of Stay	-	4
3	Counter Affidavit	A	5


Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In the matter of

Service Appeal No. 1669/2022

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

VERSUS

- 1- The Honourable Chief Secretary, Khyber Pakhtunkhwa Peshawar
- 2- Secretary to Government of Khyber Pakhtunkhwa Home Department
Peshawar
- 3 Inspector General of Prisons Khyber Pakhtunkhwa Peshawar.
**(Respondents).**

**SUBJECT: JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS
NO 1 to 3**

Respectfully Sheweth:-

Preliminary Objections

- i. *That the appellant has got no cause of action.*
- ii. *That the present appeal is not maintainable in its present form.*
- iii. *That the appellant is estopped by his own conduct to file the present appeal.*
- iv. *That the appellant has got no locus standi.*
- v. *That the present service appeal is bad for mis joinder and non-joinder of necessary party.*
- vi. *That the present appeal of the appellant is badly time barred.*
- vii. *That the present appeal is not tenable in the eyes of law as the appellant challenging the lawful order of the competent authority.*
- viii. *That Muhammad Riaz Khan has been transferred to the post of Superintendent Central Prison Mardan vide order dated 12/08/2022 and being necessary party in the instant Service Appeal, the appellant has intentionally not arrayed him as Respondent which make the instant appeal incompetent.*

FACTUAL OBJECTION:-

1. Admitted to the extent that the appellant was promoted to the post of Superintendent Jail (BPS-18) in April, 2022.
2. Pertains to record..
3. Admitted to the extent that the appellant was posted as Superintendent Jail (BPS-18) to Central Jail Mardan, vide Home Department Notification dated 26/05/2022 **(Copy is attached as Annexure-A).**
4. Being civil servant the appellant is duty bound to obey the legal orders of the competent authority. Posting of the appellant from Central Prison Mardan is in accordance with civil servants Act, 1973 and (Appointment, Promotion and Transfer Rules 1989) and do not fall in violation of Terms and conditions of his service. Therefore challenging the lawful order of the competent authority is sheer violation of Terms and conditions of his service. The present appeal is also not maintainable on this score alone. The appellant has been just transferred from his post which does not amount to any malafide on the part of respondents. It is submitted that there are five posts of Deputy Inspector General of Prisons (DIG) at Regional offices against which three officers have already been posted while the competent authority has posted/transferred the appellant against the vacant post of DIG at Regional Prisons Office Mardan to streamline the affairs of Regional Prison office in the best public interest. The post of DIG is more prestigious than that of the post of the Superintendent Jail being higher in hierarchy. Transfer/posting of officers from one

place to another place is neither a punishment nor the right of an officer rather it is the discretion of the competent authority to transfer/post the officer in the best public interest. The three officers already posted as DIG have never challenged the order of the competent authority. So the present appellant cannot challenge the valid and lawful order of the competent authority. DIG Post has been created in the new Rules but no one is ready to be posted as a DIG from the post of Superintendent Jail. Any Superintendent if posted as DIG by the competent authority does not obey the lawful order of the competent authority then the very purpose of creation of the posts of DIG would be ruined with the passage of time, the Superintendent Jail will be promoted to the post of DIG Prisons, but in the meanwhile the present appellant has been posted as DIG Mardan Region against the vacant post in order to functionalize the affairs of the Regional office Mardan. The present appellant has challenged the lawful order of his posting before this Honourable Service Tribunal without any justification.

5. Incorrect and not admitted. The appellant was posted to higher position of DIG from Superintendent Jail being higher in hierarchy and respondents did not committed any discrimination with the appellant.

The impugned Notification was issued with the approval of the competent authority and in accordance with the law. Therefore it does not provide a ground to the appellant to file instant appeal.

6. Pertains to record.

OBJECTION ON GROUNDS:

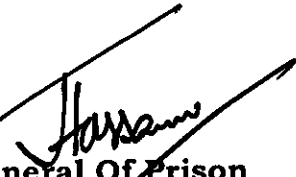
- a) Incorrect. The impugned notification/order is legal and covered under the Law.
- b) Incorrect. No injustice has been done to the appellant as his Transfer from post of Superintendent Jail Mardan is in the best public interest in order to streamline the affairs of the Regional Prison Office Mardan.
- c) Incorrect and not admitted. Transfer/Posting policy of the provincial government is solely discretionary and not binding. Section 10 of the Civil Servant Act, 1973 bestows wider power to provincial government to post or Transfer any public servants to anywhere in Khyber Pakhtunkhwa.
- d) Incorrect and not admitted. His case was different from that of the present appellant. His transfer was the result of serious nature of complaints against him which were, viral on social media and a number of allegations were pouring in regarding his Involvement in demanding illegal gratifications from prisoners and freely use of contraband/use of mobile inside the Jail premises while he was head of the Jail administration i.e Superintendent Jail Peshawar was posting out of the Superintendent Jail Peshawar was needed to pave way for an impartial Inquiry in a Transparent way so to bring to surface the real facts of the issue. While the matter concerns to the present appellant regarding his Posting/Transfer from the post of Superintendent Jail Mardan to the post of DIG is only made in the best public interest higher in hierarchy and no discrimination has been committed by respondents with appellant.
- e) Incorrect. The competent authority can Transfer a civil servants for any reason and post of choice is not an established right of

appellant. The appellant has not been victimised rather treated in accordance with Law/Rules.


Any other grounds/documents may be raised during the arguments with prior permission of this Honorable Tribunal.


PRAYER:

It is therefore most humbly prayed that on acceptance of Joint Para-wise comments on behalf of respondent No. 1 to 3, the appeal of the appellant may kindly be dismissed being devoid of merit & Law, with cost.


Inspector General Of Prison
Khyber Pakhtunkhwa Peshawar
(Respondent No. 3)


Secretary to Government of KPK
Home & TA's Department
(Respondent No. 2)


15-12-2021


Chief Secretary
Khyber Pakhtunkhwa Peshawar
(Respondent No. 1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In the matter of

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 (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa Peshawar and others

..... (Respondents).

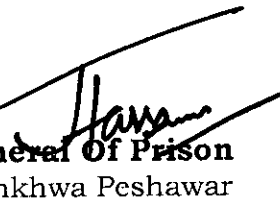
Application for the vacation of Interim Relief granted to appellant By this Honourable Tribunal vide This Tribunal order sheet dated 28-11-2022.


Respectfully Submitted:-

1. That Parawise comments based on facts and grounds have been submitted to this Honourable Service Tribunal before the date of hearing.
2. That the main appeal of the appellant is based on malafide, surmises and conjecture's and without any substance. Balance of convenience also lies in favour of Respondents.
3. Incorrect, hence denied. Posting order of Central Prison Mardan to DIG Prison, Regional Prison office Mardan is ordered in the best public Interest which is just, fair and based in accordance with Law. The respondents did not have committed any discrimination with the appellant and posted him higher in hierarchy.
4. The respondents have got strong Prima facie case and chances of success is quite clear.


PRAYER:

It is therefore most humbly prayed that on acceptance of this application on behalf of the respondents relief as already granted to the appellant vide order sheet dated 28-11-2022 in shape of suspension of the operation of impugned Transfer order dated 12-08-2022 may kindly be vacated till the disposal of instant service appeal.


Inspector General Of Prison
 Khyber Pakhtunkhwa Peshawar
 (Respondent No. 3)


 15/12/2022


Secretary to Government of KPK
 Home & TA's Department
 (Respondent No. 2)


Chief Secretary
 Khyber Pakhtunkhwa Peshawar
 (Respondent No. 1)

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Peshawar
- 3- Inspector General of Prisons Khyber Pakhtunkhwa Peshawar.
.....(Respondents).


COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENTS**No. 1 to 3.**

We, the undersigned respondents do hereby solemnly affirm and declare that the contents of the para-wise comments in the above cited appeal are true and correct to the best of our knowledge and belief that no material/facts have been kept concealed from this Honorable Service Tribunal.


Inspector General Of Prison
Khyber Pakhtunkhwa Peshawar
(Respondent No. 3)


15/11/2022


Secretary to Government of KPK
Home & IA's Department
(Respondent No. 2)


Chief Secretary
Khyber Pakhtunkhwa Peshawar
(Respondent No. 1)