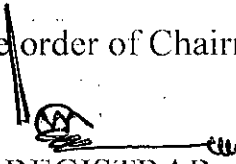


# FORM OF ORDER SHEET

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

Case No.- 1912/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/12/2022	<p>The appeal of Mr. Miraj-ud-Din resubmitted today by Mr. Shahid Qayyum Khattak Advocate. It is fixed for preliminary hearing before touring Single Bench at D.I.Khan on _____. Notices be issued to appellant and his counsel for the date fixed.</p> <p>By the order of Chairman  REGISTRAR,</p>

Sir,

1. The deficiency regarding the statutory period of 90 days wait was not fulfilled but the Learned Counsel requested to put up the objections and his reply before the court.
2. Submitted for an appropriate order, please.

Hon'ble Chairman

*Remature, Honour, be returned, under, Statutory period, classes*

*17/10/22*

*[Signature]*  
Registrar 10/10/22

NO: 2813 / ST  
Dt: 14/10/2022

*Registrar*

*[Signature]*  
14/10/22

*The Statutory Period has now been completed  
Put up for further n/a & order please*


*[Signature]*  
Shahid Royan Khattar  
Asst  
26.12.2022

This is an appeal filed by Mr. Miraj-ud-Din today on 04/10/2022 against the order dated 15.09.2022 against which he preferred/made departmental appeal/representation on 16.09.2022 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, which is premature as laid down in an authority report as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/Counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action.

No. 2773 /ST,

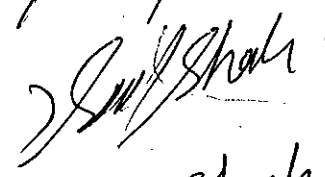
Dt. 07/10/2022.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Shahid Daryum Adv. Pesh.

Note:- The instant petition is filed against Transfer and the Transfer policy is attached with this petition, whereby it was stated that the appeal should be decided within fifteen days by the departmental authority. Furthermore identical appeal is also attached with this petition, whereby the appeal is decided by this honorable Tribunal pre-maturely. Hence this petition may be treated the same. Re. Submitted for further necessary action.

(plz be put before the bench.)

  
Syed Roman Shah  
Advocate  
07/10/2022.

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

Service Appeal No. 19/12 of 2022

Miraj-ud-Din

Versus.

Govt. Of Khyber Pakhtunkhwa etc  
**Service Appeal**

S #	Description of Documents	Annex	Page No.
1.	Service appeal with Civil Misc.		1-9
2.	Addresses of Parties		10
3.	Copy of office order No. 4438-42/PS (Estt:) dated 23.07.2020	A	11
4.	Copy of Departmental Appeal by Appellant dated 27.05.2021	A-I	12
5.	Copy of Departmental Appeal by Appellant dated 03.12.2021	A-II	13-13A
6.	Copy of office order No.2007-2010/Estt: dated 07.04.2022	B	14
7.	Copy of Office order bearing No.1106/Supdt: dated 08.05.2022	C-I	15-15A
8.	Copy of Office order bearing No.1125/Supdt: dated 10.05.2022	C-II	16
9.	Copy of Office order bearing No.2027/S-32 dated 28.07.2022	C-III	17
10.	Copy of Office order bearing No.2331/ dated 08.09.2022	C-IV	18

11.	Copy of Office order bearing Endst. No.5226-30/Acct: Dated 15.09.2022	C-V	19
12.	Copy of Departmental Appeal of appellant	D	20
13.	Copy of the Writ Petition No.285-D/2022	E	21-37
14.	Other documents		38-49
15.	Vakalatnama		50

Yours Humble Appellant

(MIRAJ-UD-DIN)

Through

  
Shahid Qayam Khattak  
Advocate Supreme Court.

  
Syed Roman Shah,  
Advocate High Court

①

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

Service Appeal No. 1912 of 2022

Miraj-ud-Din, Senior Clerk BPS-14, Deputy Commissioner Office, South Waziristan Tribal District.

**APPELLANT**

**VERSUS**

1. Government of Khyber Pakhtunkhwa, through Secretary, Revenue & Estate Department, Khyber Pakhtunkhwa, Peshawar.
2. Senior Member Board of Revenue, Revenue & Estate
3. Department, Khyber Pakhtunkhwa, Peshawar.
4. Commissioner, D.I.Khan Division, D.I.Khan.
5. Deputy Commissioner, South Waziristan at Tank.
6. Secretary to Commissioner, D.I.Khan Division, D.I.Khan

**RESPONDENTS**

**SERVICE APPEAL UNDER SECTION 4 OF THE K.P.  
SERVICE TRIBUNALS ACT, 1974, AGAINST THE  
OFFICE ORDER BEARING ENDST.  
No.522630/ACCT: DATED 15.09.2022 ISSUED  
BY THE RESPONDENT NO.3.**

**PRAYER:**

On acceptance of present Service Appeal and by setting aside Office order bearing Endst. No.5226-30/Acct: Dated 15.09.2022, the impugned transfer of appellant from South Waziristan to D.I.Khan, may graciously be cancelled and as result thereof the posting of appellant as Senior Clerk at D.C. Office South Waziristan, may graciously be restored.

Respectfully Sheweth,

1. That the appellant is serving in the office of Deputy Commissioner, South Waziristan as Senior Clerk.
2. That the appellant is a District Cadre employee and Deputy Commissioner is his appointing authority, transferring authority as well as Drawing & Disbursing officer. Therefore, appellant cannot be transferred out of the territorial authority / jurisdiction of the Deputy Commissioner, South Waziristan.
3. That the appellant service record, seniority, ACRs, Lien etc are maintained in Deputy Commissioner's office, South Waziristan Tribal District, hence Deputy Commissioner is the appointing authority similar transferring power vested with Deputy Commissioner despite that Commissioner wrongly issued transfer order to the appellant, hence liable to be set aside.
4. That previously the petitioner was transferred from Deputy Commissioner's office South Waziristan Tribal District to the Commissioner office D.I.Khan vide office order No. 4439-42/PS(Estt:) dated 23.07.2020 (Annexure A) and accordingly the appellant filed several applications for his repatriation to parent department (Annexure A-I & A-II).
5. That accordingly the petitioner served in Commissioner Office, D.I.Khan, at District D.I.Khan and thereafter vide office order No.2007-2010/Estt: dated 07.04.2022 (Annexure B), the petitioner was repatriated to his parent office i.e Deputy Commissioner's office, South Waziristan Tribal District.
6. That accordingly appellant reported to his parent office (Deputy Commissioner's office, South Waziristan Tribal District) and started to perform his official duties.

7. That vide order No.1106/Supdt: dated 08.05.2022 issued from the office of respondent No.4, the appellant has been assigned the task to look after the affairs of Naib Tehsildar Shawal (OPS) (Annexure C-I) but subsequently the said order has been modified vide order No.1125/Supdt: dated 10.05.2022 (Annexure C-II) and the appellant has been directed to look after the affairs of Naib Tehsildar Sararogha (OPS). Again, after the lapse of about two months another order bearing No.2027/S-32 28.07.2022 (Annexure C-III), issued from the office of respondent No.4, the appellant has been assigned the duties of Office Superintendent in the office Deputy Commissioner, South Waziristan Tribal District.
8. That once again vide order No.2331/ dated 08.09.2022, issued from the office of respondent No.4, the service of appellant has been transferred and posted as Reader to Deputy Commissioner's South Waziristan (Annexure C-IV) and now, again respondent No.3, vide Office order bearing Endst. No.5226-30/Acct: Dated 15.09.2022 (Annexure C-V), was directed the appellant to report to the office of Commissioner, D.I.Khan Division at District D.I.Khan.
9. That aggrieved from the transfer order, the appellant preferred a department appeal on 16.09.2022 but the same has not been considered. Copy of Departmental Appeal of appellant is enclosed as (Annexure D).
10. That appellant time and again approached to the office of Respondent No.3 but till date no response of the Departmental Appeal has been received to the appellant; therefore, the appellant has been left with no option but to file present service appeal before this Honourable Tribunal for cancellation of his transfer order dated 15.09.2022 on, inter alia, the following grounds:

GROUND:



(4)

- A. That the impugned Office order bearing Endst. No.522630/Acct: Dated 15.09.2022 is illegal, unlawful, without jurisdiction, without lawful authority and having no binding effect upon rights of appellant.
- B. That the appellant is a District Cadre employee and Deputy Commissioner is his appointing authority, transferring authority as well as Drawing & Disbursing officer. Therefore, appellant cannot be transferred out of the territorial authority/jurisdiction of the Deputy Commissioner, South Waziristan Tribal District. On this sole ground, the impugned transfer order is squarely unwarranted.
- C. That previously although the appellant was transferred to Commissioner Office at D.I.Khan but he was drawing salary from the Deputy Commissioner's office South Waziristan Tribal District. This fact alone is sufficient to establish that the impugned transfer of appellant is having no legal backing and he is still at the roll of Deputy Commissioner's Office South Waziristan Tribal District.
- D. That appellant has been made a rolling stone by official respondents just because of the fact that he is not having any political backing.

Firstly, the appellant was transferred from South Waziristan Tribal District to D.I.Khan vide Office Order dated 23.07.2020, and the appellant was repatriated to his parent office D.C. Office South Waziristan 07.04.2022.

Secondly, the petitioner vide office order dated 15.09.2022, again transferred out from South Waziristan Tribal District to Commissioner Office at D.I.Khan despite the fact that at D.I.Khan there is a separate Deputy Commissioner, whose staff can be posted anywhere in the District D.I.Khan.

- E. That the appellant has been transferred out from District South Waziristan only for the reason that he impugned the illegal allotment of the official accommodation, occupied by appellant, to the DPO

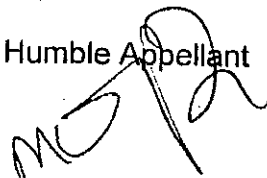
South Waziristan, despite the fact that the DPO South Waziristan had already allotted an official accommodation; and in this regard appellant filed a Writ Petition No. 285-D of 2022 before the Honourable Peshawar High Court, D.I.Khan Bench, which is still pending.

- F. The only aim and intent of impugned office order is to sabotage the rights of appellant and get vacate from him the official accommodation which he is legally occupying being a District Cadre employee and his family is still residing there. Hence, a great, great injustice is being done to the appellant. Copy of the Writ Petition No.285-D/2022 is enclosed as Annexure E.
- G. That the impugned office order is not in the public interest rather the same is based on mala fide and therefore, the same is having no legal sanctity and not worth to be maintained.
- H. That the appellant being a district cadre employee and can only serve within the control of Deputy Commissioner, South Waziristan Tribal District, the impugned office order is therefore nullity in the eyes of law and, rights of appellant are required to be protected.
- I. That even otherwise the appellant after his repatriation to Deputy Commissioner's Office South Waziristan, has not completed his ordinary tenure of service; and it has been held by the superior Courts that when the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable. On this score too, the impugned transfer is liable to be cancelled.
- J. That under the Khyber Pakhtunkhwa Posting & Transfer Policy normal tenure of service is three years and transfer in the violation of such policy is simply to be recalled. Reliance is placed on 2001 PLC (CS) 172.

- K. xi. That the appellant family residing in Deputy Commissioner's Compound SWTD at Tank and previously when the appellant was transferred to DIKhan he was directed to draw his salary from his parent department i.e Deputy Commissioner, Office South Waziristan Tribal District as his parent office is Deputy Commissioner's office South Waziristan Tribal District therefore the transfer order is illegal and against the rule and regulation thus liable to be set aside.
- L. That appellant has also filed several applications to the respondent that being security threats to appellant is facing severe hardship in travelling from Tank to DIKhan, despite that the appellant has been mala fide posted in DIKhan.
- M. That the counsel for appellant may be allowed to raise additional grounds at the time of arguments.

It is therefore, humbly prayed that the present service appeal may graciously be allowed as prayed for and thereby the impugned transfer of appellant may kindly be cancelled and as result thereof the posting of appellant as Senior Clerk, Deputy Commissioner Office South Waziristan, may kindly be restored.

Yours Humble Appellant



(MIRAJ-UD-DIN)

Through



**Shahid Qayam Khattak**  
Advocate Supreme Court.



**Syed Roman Shah,**  
Advocate High Court

**VERIFICATION:** I, the appellant, on this day of October-2022, herein mentioned above, do hereby verify that all the contents of this appeal are true & correct and also that it is the first appeal on the subject matter and no such appeal has earlier been filed.

*[Handwritten signature]*

**Appellant**

**AFFIDAVIT:** I, the appellant; do hereby solemnly affirm and declare on oath that all the Para-wise contents of above **Service Appeal** are true & correct to the best of my knowledge, belief and information; and that, nothing has been deliberately concealed from this Honourable Tribunal.

*[Handwritten signature]*

**Deponent**

**Identified by Counsel:**

**Shahid Qayam Khattack**  
Advocate Supreme Court.

*[Handwritten signature]*



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

Civil Misc No. \_\_\_\_\_ of 2022

In Service Appeal No. \_\_\_\_\_ of 2022

Miraj-ud-Din

**Vs**

Govt. of Khyber Pakhtunkhwa etc

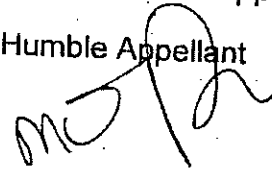
**APPLICATION FOR SUSPENSION OF THE OPERATION OF IMPUGNED  
OFFICE ORDER BEARING ENDST. NO.522630/ACCT: DATED  
15.09.2022, TILL FINAL DECISION OF SERVICE APPEAL AND IN THE  
MEANWHILE RESPONDENTS MAY ALSO BE ABSTAINED FROM  
TAKING ANY ACTION DETRIMENTAL TO THE SERVICE CAREER OF  
APPELLANT.**

**Respectfully Sheweth:**

1. That a Service Appeal is being filed before this august court and the grounds of same may please be considered as an integral part of this Petition.
2. That the petitioner/appellant has got a good prima case on law as well as on facts and there is every likelihood of the success of Service Appeal; hence, balance of convenience tilts in favour of the appellant.
3. That the appellant is a District Cadre employee and Deputy Commissioner is his appointing authority, transferring authority as well as Drawing & Disbursing officer. Therefore, appellant cannot be transferred out of the territorial authority/jurisdiction of the Deputy Commissioner, South Waziristan; therefore, in case of non-suspension of impugned Office Order, the petitioner / appellant will suffer an irreparable loss. Moreover, the appellant is still at the role of Deputy Commissioner's Office South Waziristan and is taking salaries from there.

It is, therefore, humbly prayed that on acceptance of the present Civil Misc. Petition, the operation of impugned office order may please be suspended and respondents may please be desisted from taking any action detrimental to service career of appellant, till decision of Service Appeal.

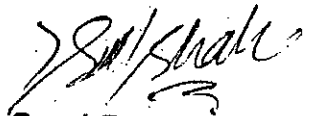
Yours Humble Appellant



(MIRAJ-UD-DIN)

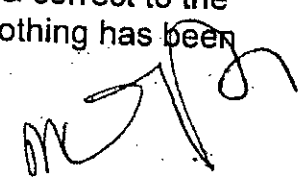
Through

  
Shahid Qayam Khattak  
Advocate Supreme Court.

  
Syed Roman Shah,  
Advocate High Court

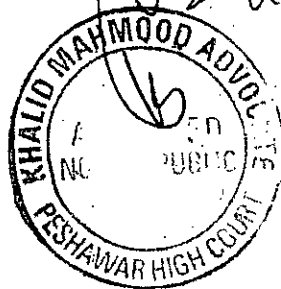
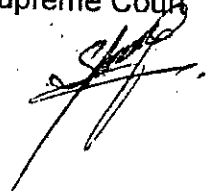
AFFIDAVIT

I, the appellant; do hereby solemnly affirm and declare on oath that all the Para-wise contents of above **Misc. Application** are true & correct to the best of my knowledge, belief and information; and that, nothing has been deliberately concealed from this Honourable Tribunal.

  
Deponent

Identified by Counsel:

Shahid Qayam Khattak  
Advocate Supreme Court



(10)

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

Service Appeal No. \_\_\_\_\_ of 2022

**Miraj-ud-Din**

**VERSUS**

**Government of Khyber Pakhtunkhwa & others**

**ADDRESSES OF PARTIES**

**APPELLANT**

Miraj-ud-Din, Senior Clerk BPS-14, Deputy Commissioner Office, South Waziristan Tribal District.

**RESPONDENTS**

1. **Government of Khyber Pakhtunkhwa**, through Secretary, Revenue & Estate Department, Khyber Pakhtunkhwa, Peshawar;
2. **Senior Member Board of Revenue**, Revenue & Estate Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. **Commissioner office**, at D.I.Khan.
4. **Deputy Commissioner office**, South Waziristan at Tank.
5. **Secretary to Commissioner**, Commissioner Office at D.I.Khan

Yours Humble Appellant

(MIRAJ-UD-DIN)

Through

**Shahid Qayam Khattak**  
Advocate Supreme Court.

  
**Syed Roman Shah,**  
Advocate High Court



OFFICE OF THE  
**COMMISSIONER**  
DIKHAN DIVISION DIKHAN



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📧 @commissionerdkh    📧 @commissionerdkh    📧 commissionerdkh@yaho.com

No. 4438 PS (Esstj) Dated: D.I.Khan the        /2020

**OFFICE ORDER:**

In pursuance of the direction of the competent authority Mr. Muhammad Miraj-ud-Din Burki, Senior Clerk office of the Deputy Commissioner South Waziristan Tribel District is hereby directed to report to the office of the Commissioner D.I. Khan Division with immediate effect in the best public interest till further orders.

Sd/-  
Commissioner,  
D.I.Khan Division, D.I.Khan.

No. 4439-42/PS (Esstj) Dated the D.I.Khan 23/07 /2020

Copy to:

1. Deputy Commissioner SWTD.
2. PS to Commissioner, D.I. Khan Division, D.I. Khan.
3. Officers concerned for compliance.
4. Office order file.

*[Signature]*  
Secretary to Commissioner,  
D.I.Khan Division, D.I.Khan

*[Signature]*  
**ATTESTED**



To:

(12)

Amnest-B A-1

The Worthy Commissioner,  
DIKhan Division, DIKhan

Subject: REQUEST FOR REPATRIATION TO MY PARENT OFFICE (DEPUTY  
COMMISSIONER'S OFFICE SOUTH WAZIRISTAN TRIBAL DISTRICT)

R/Sir,

It is submitted that I was transferred from office of Deputy Commissioner,  
South Waziristan Tribal District on 23<sup>rd</sup> July, 2020 and working as Assistant General (OPS) in  
your kind control on detail basis.

It is brought into your kind notice that my family is living in Deputy  
Commissioner's Compound SWTD at Tank and I am traveling more than 160-KMs on daily  
basis for duty to DIKhan. I am low paid employee and my more than half salary has been  
spent on fare charge due to which I have a lot of difficulties in household expenses.

It is also mentioned here that my mother is heart patient, she has to go to  
Doctor three or four times in a week. At my home there is no one except me, to go for  
hospital with her.

In view of above circumstance, it is, therefore, humbly requested that I may  
please be repatriated to my parent office (Deputy Commissioner's Office, South Waziristan  
Tribal District) so that I can perform my duties in good manner and also take care of my  
ailing mother, please.

With best regard.

You'r obediently

(MIRAJ UDDIN)

Senior Clerk (BPS-14)

Working as Assistant General (OPS),  
Commissioner's office, DIKhan Division

Dated 27<sup>th</sup> May, 2021

**ATTESTED**

*[Handwritten signature]*  
Sery

Commissioner Office  
Diary No. 1367  
Date: 28.5.2021  
DIKhan Division DIKhan

Accept  
*[Handwritten signature]*  
Sery

(13)

Amec-A-11

To: The Worthy Commissioner,  
DIKhan Division, DIKhan

Subject: APPEAL / REQUEST FOR REPATRIATION TO MY PARENT OFFICE  
(DEPUTY COMMISSIONER'S OFFICE SOUTH WAZIRISTAN TRIBAL  
DISTRICT)

R/Sir,  
With due respect and humble submission, it is submitted I had earlier requested to your good self vide my application dated 27<sup>th</sup> May, 2021 to repatriate my service back to my parent office i.e Deputy Commissioner office, SWTD which was filed on 11.06.2021 by your kind self for the reasons not known to me.

I hereby once again request your good self to repatriate my services to my parent office as my family is living in Tank and I have to travel for about 160-KMs on daily basis for my duty to and fro. Since I am a low paid employee receiving a meagre salary and have to support a large family including my old age parents and school going children. In current situation, the journey from Tank to DIKhan and back to Tank is also unsafe / risky for me as in past I have received many life threats from miscreants.

It is also brought into your kind notice that my mother is a heart patient and I have to take her for medical checkup almost 3-4 times a week and there is none except me to look after her.

In view of the above circumstance, it is, therefore, humbly prayed that I may please be repatriated to my parent office (Deputy Commissioner's Office, South Waziristan Tribal District) on Humanitarian Grounds, as I have been subjected to undergo this fatigue without committing any fault so that I can perform my duties with peace of mind and also take care of my family especially my ailing mother, please.

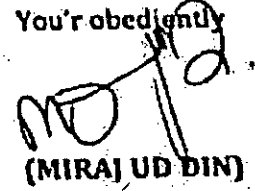
I hoped that your good self will consider my request sympathetically

INSHALLAH.

With best regard,

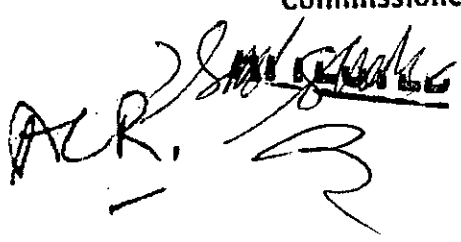
1
Commissioner Office
DIKhan Division
12-21-21

You'r obediently



(MIRAJ UD DIN)  
Senior Clerk (BPS-14)  
Office of Deputy Commissioner, SWTD  
Working as Assistant General (OPS),  
Commissioner's office, DIKhan Division

Dated 3<sup>rd</sup> December, 2021



(3-A)

Better copy  
of Annex-A-II

To:

The Worthy Commissioner,  
DIKhan Division, DIKhan

Subject:

APPEAL / REQUEST FOR REPATRIATION TO MY PARENT OFFICE  
(DEPUTY COMMISSIONER'S OFFICE SOUTH WAZIRISTAN TRIBAL  
DISTRICT)

R/Sir,

With due respect and humble submission, it is submitted I had earlier requested to your good self vide my application dated 27<sup>th</sup> May, 2021 to repatriate my service back to my parent office i.e Deputy Commissioner office, SWTD which was filed on 11.06.2021 by your kind self for the reasons not known to me.

I hereby once again request your good self to repatriate my services to my parent office as my family is living in Tank and I have to travel for about 160-KMs on daily basis for my duty to and fro. Since I am a low paid employee receiving a meagre salary and have to support a large family including my old age parents and school going children. In current situation, the journey from Tank to DIKhan and back to Tank is also unsafe / risky for me as in past I have received many life threats from miscreants.

It is also brought into your kind notice that my mother is a heart patient and I have to take her for medical checkup almost 3-4 times a week and there is none except me to look after her.

In view of the above circumstance, it is, therefore, humbly prayed that I may please be repatriated to my parent office (Deputy Commissioner's Office, South Waziristan Tribal District) on Humanitarian Grounds, as I have been subjected to undergo this fatigue without committing any fault so that I can perform my duties with peace of mind and also take care of my family especially my ailing mother, please.

I hoped that your good self will consider my request sympathetically  
INSHALLAH.

With best regard.

You'r obediently

  
**ATTESTED**

(MIRAJ UD DIN)

Senior Clerk (BPS-14)  
Office of Deputy Commissioner, SWTD  
Working as Assistant General (OPS),  
Commissioner's office, DIKhan Division

Dated 3<sup>rd</sup> December, 2021

(14)

Amerl - "B"



OFFICE OF THE  
**COMMISSIONER**  
DIKHAN DIVISION DIKHAN

+92-966-9200331    +92-966-9200332    +92-333-9971948  
@commissionerdkh    @commissionerdkh    commissionerdkh@fata.gov.pk



No. 2007-2010 /Estt:

Dated DIKhan the 7 /04/2022

**OFFICE ORDER**

The following officials are hereby repatriated to their parent offices with immediate effect in the best public interest:

Sr. #	Name of officials	From	To
B.	Mr. Miraj ud Din, Senior Clerk	Commissioner office DIKhan	Deputy Commissioner office, SWTD
Q.	Mr. Muhammad Rafi, Computer Operator	Deputy Commissioner office SWTD	Commissioner office, DIKhan

Sd/-  
**COMMISSIONER,**  
DIKhan Division, DIKhan

**Endst: No. & Date Even**

Copy to the:

1. Deputy Commissioner, South Waziristan Tribal District
2. PS to Commissioner, DIKhan Division DIKhan.
3. Officials concerned for compliance.

*[Signature]*  
Secretary to Commissioner,  
DIKhan Division, DIKhan  
*[Signature]*

*[Signature]*  
**ATTESTED**

15

Armed - C

OFFICE OF THE DEPUTY COMMISSIONER, SOUTH WAZIRISTAN TRIBAL DISTRICT

No. 1106 /Supdt:

Dated

Tank the 08/05/2022

OFFICE ORDER

Consequent upon the repatriation of Mr. Malrajuddin, Burki, Senior Clerk from Commissioner, DIKhan office, he is hereby directed to look after the affairs of Nahi Tehsildar Shawal (OPS) with immediate effect and till further order in best public interest.

*[Signature]*  
DEPUTY COMMISSIONER,  
South Waziristan Tribal District

Dated Tank the 08/05/2022

No. 1107-12 /Supdt:

Copy to:

- 1) The Additional Deputy Commissioner (General), SWTD.
- 2) The Assistant Commissioner, Ladha Tribal Sub Division.
- 3) The AAC, Ladha Tribal Sub Division.
- 4) The Superintendent, DC's Office, Tank.
- 5) The Accountant, DC's Office Tank.
- 6) Official concerned for compliance.

*[Signature]*  
DEPUTY COMMISSIONER,  
South Waziristan Tribal District

*[Signature]*  
**ATTESTED**

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of Amel - C.

**OFFICE OF THE DEPUTY COMMISSIONER, SOUTH WAZIRISTAN TRIBAL DISTRICT**

No. 1106 /Supdt: Dated Tank the 08.05.2022

**OFFICE ORDER**

Consequent upon the repatriation of Mr. Mairajuddin, Burki, Senior Clerk from Commissioner, DIKhan office, he is hereby directed to look-after the affairs of Naib Tehsildar Shawal (OPS) with immediate effect and till further order in best public interest.

Sd/--  
DEPUTY COMMISSIONER,  
South Waziristan Tribal District

No. 1107-12 /Supdt:

Copy to:

- 1) The Additional Deputy Commissioner (General), SWTD.
- 2) The Assistant Commissioner, Ladha Tribal Sub Division.
- 3) The AAC Ladha Tribal Sub Division.
- 4) The Superintendent, DC's office, Tank.
- 5) The Accountant, DC's office Tank.
- 6) Official concerned for compliance.

*J. J. Khan*  
**ATTESTED**

Sd/--  
DEPUTY COMMISSIONER,  
South Waziristan Tribal District

16

Amer - C-11

OFFICE OF THE DEPUTY COMMISSIONER, SOUTH WAZIRISTAN TRIBAL DISTRICT

No. 1125 /Supdt:

Dated

Tank the 10/05/2022

OFFICE ORDER

In partial modification of this office order vide No.1106-12/Supdt: dated 08.05.2022, Mr. Mairajuddin, Burki, Senior Clerk is hereby directed to look-after the affairs of Naib Tehsildar Sararogha (OPS) with immediate effect and till further order in best public interest.

  
DEPUTY COMMISSIONER,  
South Waziristan Tribal District

No. 1126-31 /Supdt:

Dated Tank the 10/05/2022

Copy to:

- 1) The Additional Deputy Commissioner (General), SWTD.
- 2) The Assistant Commissioner, Ladha Tribal Sub Division.
- 3) The AAC, Ladha Tribal Sub Division.
- 4) The Superintendent, DC's Office, Tank.
- 5) The Accountant, DC's Office Tank.
- 6) Official concerned for compliance.

  
**ATTESTED**

  
DEPUTY COMMISSIONER,  
South Waziristan Tribal District



17

**OFFICE OF THE DEPUTY COMMISSIONER,  
SOUTH WAZIRISTAN TRIBAL DISTRICT**

Phone # 0963-510364/510386  
Fax # 0963-510442

Amend - C-111

No. 2027/S-32

Dated

Tank the 28/07/2022

**OFFICE ORDER**

Mr. Miraj-ud-din Burki, Senior Clerk is hereby assigned the duties of Office Superintendent due to non-availability of regular superintendent with immediate effect and till further order in best public interest.

  
DEPUTY COMMISSIONER,  
South Waziristan Tribal District

No. 2028-34/S-32

Copy to:

- 1) The Additional Deputy Commissioner (General), SWTD.
- 2) The Additional Deputy Commissioner (F&P), SWTD.
- 3) All Assistant Commissioners, Ladha/Sarwakai/Wana TSDs
- 4) All AACs, Ladha/Sarwakai/Wana TSDs.
- 5) The Superintendent, DC's Office, Tank.
- 6) The Accountant, DC's Office Tank.
- 7) Official concerned for compliance.

  
**ATTESTED**  
R

  
DEPUTY COMMISSIONER,  
South Waziristan Tribal District





(18)  
Annex - CIV  
**OFFICE OF THE DEPUTY COMMISSIONER  
SOUTH WAZIRISTAN TRIBAL DISTRICT**  
Phone#0963-510364 Fax#0963-510442

No. 2331 /

Dated

Tank the 28 /09/2022.

**OFFICE ORDER**

Mr. Mirajuddin Burki, Senior Clerk is hereby transferred and posted as Reader to DC SWTD with Immediate effect in the best public interest:

  
Deputy Commissioner,  
South Waziristan Tribal District

No. 2332-36/s

Copy to:

- 1) The Additional Deputy Commissioner (General), SWTD.
- 2) The Assistant Commissioner, Sarwakai TSD.
- 3) The Superintendent, DC Office SWTD.
- 4) The Accountant, DC Office SWTD.
- 5) Official concerned for compliance.

**ATTESTED**  


  
Deputy Commissioner,  
South Waziristan Tribal District

(19)

Amex - CV



OFFICE OF THE  
**COMMISSIONER**

DIKHAN DIVISION DIKHAN

☎ 0966-9280351    ☎ 92-966-9280352    ☎ 92-383-9971968  
📧 commissionerdik    📧 commissionerdik    📧 commissionerdikhan@yahoo.com



**OFFICE ORDER**

Mr. Muhammad Meraj-Ud-Din Barki, Senior Clerk, Office of the Deputy Commissioner, South Waziristan Tribal District is hereby directed to report to the office of the Commissioner, DIKhan Division with immediate effect, till further orders in the best public interest.

-sd-  
Commissioner  
DIKhan Division, DIKhan

Endst No. 5226-30 /Acct:

Dated DIKhan the 15 /09/2022

Copy forwarded to the:

1. Deputy Commissioner, South Waziristan Tribal District.
2. Assistant to Commissioner (Rev & GA), DIKhan Division, DIKhan.
3. PS to Commissioner DIKhan Division DIKhan.
4. Official Concerned.

*[Handwritten Signature]*  
**ATTESTED**

*[Handwritten Signature]*  
Secretary to Commissioner  
DIKhan Division, DIKhan

To:

The Worthy Commissioner,  
DIKhan Division, DIKhan

Subject: **APPEAL**

R/Sir,

With due respect and humble submission, it is submitted that I am working as Senior Clerk in the office of Deputy Commissioner, SWTD as a district cadre employee. I was transferred / repatriated five months ago (on 7<sup>th</sup> April, 2022) to my parent office i.e Deputy Commissioner, SWTD. (Order copy alongwith with my application is attached for ready reference). Now your good office once again transferred me from Deputy Commissioner office SWTD being my parent office to Commissioner office, DIKhan Division (copy attached).

In this connection it is submitted that my family is living in Tank and I have to travel for about 160-KMs on daily basis for my duty to and fro. Since I am a low paid employee receiving a meagre salary and have to support a large family including my old age parents and school going children. In current situation, the journey from Tank to DIKhan and back to Tank is also unsafe / risky for me as in past I have received many life threats from miscreants.

It is also brought into your kind notice that my mother is a heart patient and I have to take her for medical checkup almost 3-4 times a week and there is none except me to look after her.

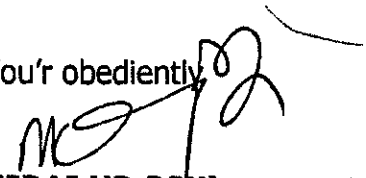
It is also mentioned here that as per Provincial Govt. policy, an official / officer will allow to complete two years tenure where as I have served only for five months, being district cadre employee.

In view of the above circumstance, it is, therefore, humbly prayed that my transferred order may be withdrawn / cancelled and retain me in my parent office (Deputy Commissioner's Office, South Waziristan Tribal District) on **Humanitarian Grounds as well as Provincial Govt Rules/ Policy**, please.

I hoped that your good self will consider my request sympathetically **INSHALLAH.**

With best regard.

You'r obediently



**(MIRAJ UD DIN)**

Senior Clerk (BPS-14)

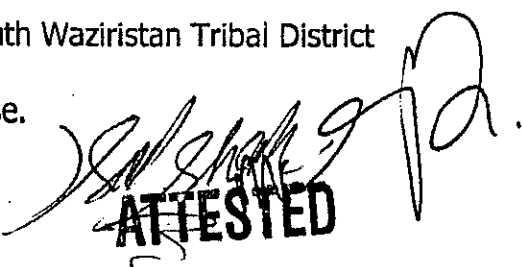
Office of Deputy Commissioner, SWTD

**Dated 16<sup>th</sup> September, 2022**

Copy to the:

1. Senior Member Board of Revenue, Revenue & Estate Department, Govt of Khyber Pakhtunkhwa, Peshawar
2. Deputy Commissioner, South Waziristan Tribal District

For similar request, please.



Annex - E

**BEFORE THE HONOURABLE PESHAWAR HIGH COURT,  
DERA ISMAIL KHAN BENCH.**

Writ Petition No. 285 -D of 2022

Meraj-ud-Din Vs. Govt. of Khyber Pakhtunkhwa etc  
Writ Petition

Index:

S#	Description of Documents	Annexure	Page numbers
1.	Writ Petition with Civil Misc. Application	—	01—14
2.	Copy of the office order No.4438/PS(Estt) dated 23.07.2020	A	15
3.	Copy of the office order bearing No.5236-40/Estt: dated 18.11.2020	B	16
4.	Copy of the office order bearing No.2007-2010/Estt: dated 07.04.2022	C	17
5.	Copies of salary slips of petitioner showing deduction of House Rent Allowance	D	18—19
6.	Copy of the impugned office order No.3803 dated 06.12.2021	E	20
7.	Copy of the impugned office order No.3816 dated 07.12.2021	F	21
8.	Copy of the office Order No.1168/S-32 dated 18.03.2021	G	22
9.	Copies of the Civil suit etc and the order dated 21.05.2022 of the learned District Judge Tank	H	23—58
10	Copy of the notice of filing Writ Petition with postal receipts	—	59—60
11	Court Fee	—	61

*Annex - E*

*[Signature]*  
**ATTESTED**

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22

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12	Vakalatnama	-	62
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Yours Humble Petitioner

*(Signature)*  
(Meraf-ud-Din)  
Through Counsel  
*(Signature)*

Muhammad Yousuf Khan  
Advocate Supreme Court.

Dr. 05 June, 2022

*(Signature)*  
**ATTESTED**

2(23)

**BEFORE THE HONOURABLE PESHAWAR HIGH COURT**  
**DERA ISMAIL KHAN BENCH**

Writ Petition No. 285 -D of 2022

Meraj-ud-Din, son of Daraz Khan, caste Barki, resident of Tehsil Ladha, District South Waziristan.

(Petitioner)

VERSUS

1. Govt. of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. Commissioner, D.I.Khan Division D.I.Khan.
3. Deputy Commissioner District South Waziristan.
4. Khan Zaib, District Police Officer, South Waziristan.
5. Assistant Commissioner/Estate Officer, District South Waziristan.

(Respondents)

Om  
-1/18/22

**WRIT PETITION UNDER ARTICLE 199**  
**OF THE CONSTITUTION OF ISLAMIC**  
**REPUBLIC OF PAKISTAN 1973.**

**Respectfully Sheweth,**

FOLLOWING LAW POINTS OF GENERAL PUBLIC IMPORTANCE ARE BEING RAISED IN THE INSTANT CONSTITUTIONAL PETITION FOR CONSIDERATION OF THIS HON'BLE COURT.

1. Whether cancellation of the allotment of petitioner is not violative of the provisions of Khyber Pakhtunkhwa Residential Accommodation at Districts (Procedure for Allotment) Rules, 2018?
2. Whether conditions for cancellation of allotment as described in Chapter-VII of the ibid Residential Accommodation Rules-2018 are not inapplicable to the petitioner?



**ATTESTED**

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3. Whether petitioner is not entitled to retain official accommodation in accordance with the Rule 18(1) of the said Rules of 2018?
4. Whether the grant and cancelation of an allotment is not the prerogative of Estate Officer/Assistant Commissioner?
5. Whether cancellation of allotment of petitioner and grant of allotment to respondent No.4 by the D.C. South Waziristan vide letter dated 07.12.2021 is not illegal, without jurisdiction and voidable?
6. Whether District Administration is aloof from the Lay and Courts?
7. Whether compliance of law and legal procedure is not binding upon the Deputy Commissioner and respondent No.4?
8. Whether petitioner is not justified to file present Writ Petition when the Civil Courts have become handicapped before the Deputy Commissioner South Waziristan?
9. Whether it is the prerogative of District Police Officer South Waziristan to retain three official accommodations at a same time and that to in violation of the Khyber Pakhtunkhwa Residential Accommodation at Districts (Procedure for Allotment) Rules, 2018?

*Handwritten signature/initials*

Respectfully Sheweth,

1. That the addresses of parties as given above, are correct and sufficient for the purpose of service.
2. That the petitioner has been serving as Senior Clerk in the office of Deputy Commissioner, South Waziristan at Tank, and he on administrative basis was temporarily posted at Commissioner Office, D.I.Khan, vide office order No.4438/PS(Estt) dated 23.07.2020 (Annexure A); and accordingly, the petitioner was posted in the General Branch Commissioner Office, D.I.Khan, vide office order bearing No.5236-40/Estt: dated 18.11.2020 (Annexure B) and in the said office order it was

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**ATTESTED**

specifically noted, "The incumbent at Serial No.2 will draw his pay & allowances from his parent office i.e. DC Office SWTD and will not claim any right of seniority over the officials of this office on the basis of this order."

3. That the petitioner in the public interest, performed duties at Commissioner Office D.I.Khan and then repatriated to his parent Department i.e. D.C. Office South Waziristan vide office order bearing No.2007-2010/Estt: dated 07.04,2022 (Annexure C).

4. That the petitioner, in the year 2010, was allotted an official accommodation in the political compound of erstwhile South Waziristan Agency, at District Tank and since then he was under the occupation of said accommodation and the monthly house rent for the said residence had been deducting from salaries of petitioner. Copies of salary slips of petitioner showing deduction of House Rent Allowance are enclosed as Annexure D.

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5. That after temporary posting of petitioner at Commissioner Office, D.I.Khan, and as the petitioner was still at the role of D.C. Office South Waziristan being its permanent employee and taking salary from D.C. Office South Waziristan, the petitioner was entitled to retain the said official accommodation. Even in case of transfer too, the petitioner was entitled to keep the occupation of said residence in view of the provisions of Rule 18(1) of the aforesaid Rules 2018.

6. That thereafter, the Deputy Commissioner, South Waziristan, vide office order No.3803 dated 06.12.2021 (Annexure E) malafidely and exceeding his official authority, cancelled the allotment of petitioner and instead

  
**ATTESTED**



allotted the said accommodation to the respondent No.4 due to high headed-ness vide office order No.3816 dated 07.12.2021 (Annexure F). It would not be out of place to mention here that the respondent No.4 had already availed the facility of official accommodation vide office Order No.1168/S-32 dated 18.03.2021 (Annexure G) and therefore, respondent No.4, legally, was not entitled to get allot any other government accommodation.

7. That previously the petitioner filed a civil suit before the learned Civil Court Tank on the ground that the official residents was located within the territorial jurisdiction of District Tank and interim injunction was also granted to the petitioner but in interlocutory appeal from respondents, the learned District Judge Tank, vide order dated 21.05.2022 was pleased to return the plaint to petitioner under order VII Rule 10 of CPC mainly on the ground that official accommodation was under the administrative control of D.C. South Waziristan and therefore, the matter was falling within the jurisdiction of Civil Court South Waziristan. Legally the jurisdiction of civil courts is to be determined on the basis of territorial jurisdiction of the Civil Court and not on the basis of administrative authority of the Executives and the suit residence is located in District Tank. Copies of the Civil suit etc and the order dated 21.05.2022 of the learned District Judge Tank are jointly enclosed as Annexure H.

8. That it is worthy to mention that on the basis of interim injunction by the learned Civil Court the petitioner, who was once ousted from the possession of official residence by the respondent No.4, was again put back in the possession of official residence in question.

*[Handwritten Signature]*  
**ATTESTED**

That in-fact the Assistant commissioner South Waziristan is the Estate Officer; but the Deputy Commissioner South Waziristan illegally and unlawfully assumed the jurisdiction of an Estate Officer and thus violated the law, therefore, petitioner has been left with no efficacious remedy, but to file this Writ Petition for the redressal of his grievances on, inter alia, the following grounds:

**GROUND:**

- i. That cancellation of the allotment of petitioner and allotment to respondent No.5 vide office orders dated 06.12.2021 and 07.12.2021 by the D.C. South Waziristan, are based on malfeasance, misuse of official authority, without jurisdiction, without lawful authority and having no binding effect upon rights of petitioner.
- ii. That the jurisdiction for allotment or cancellation of allotment rests with the Estate Officer South Waziristan and the Deputy Commissioner, South Waziristan, was absolutely having no authority or powers to issue impugned office orders.
- iii. That now the petitioner has been repatriated from Commissioner Office, D.I.Khan. to D.C. Office south Waziristan vide office order dated 07.04.2022.
- iv. That the respondent No.4 was already allotted an official accommodation vide office order dated 18.03.2021 and under the provisions of Khyber Pakhtunkhwa Residential Accommodation at Districts (Procedure for Allotment) Rules, 2018, he was having no justification to get allot another official accommodation.

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It will be pertinent to point out that legally the house rent of an employee is deducted for retention of one official accommodation. Thus,

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**ATTESTED**

allotment of second official residence, means no deduction of further house rent and in this way a government employee cannot be permitted to enjoy two official residences at the cost of one house rent. In this way the government exchequer is being put into heavy loss and such double allotment is required to be looked into besides recovery of losses through the National Accountability Bureau.

Hence, respondents No.3 & 4 by themselves have violated the provisions of Rule 21 of the Rules, 2018, which enable cancellation of the allotment if allottee has retained two official accommodations simultaneously.

h-1/AR

v. That it is apparent through the cancellation of the allotment of petitioner and allotment to respondent No.4 vide orders dated 06.12.2021 and 07.12.2021, that the same were issued by the Deputy Commissioner, south Waziristan; whereas, under the "Khyber Pakhtunkhwa Residential Accommodation at Districts (Procedure for Allotment) Rules, 2018" only an Estate Officer i.e. Assistant Commissioner can issue such orders.

a. The term "allotment order" as defined in Clause (b) of Rule 2 of ibid Rules, means an order, issued by the Estate officer specifying the details and terms and conditions of allotment in favour of an allottee.

b. The term "Estate Officer" as defined in Clause (g) of Rule 2 ibid, means the Assistant Commissioner in the Headquarter of a district.

Hence, impugned cancellation and re-allotment orders are nullity in the eyes of law as such powers are only conferred upon the Estate Officer, who by virtue of post is Assistant Commissioner in the District.

vi. That malafide, favouritism, nepotism, high headed-ness and autocracy on the part of Deputy Commissioner, South Waziristan, is apparent through

**ATTESTED**

the fact that he himself cancelled the allotment of petitioner and allotted the house to respondent No.4, despite the fact that petitioner had never been transferred out from D.C. Office South Waziristan rather he was temporarily posted at D.I.Khan but was still at the role of D.C. South Waziristan and was taking salaries from there. The note given under office order dated 18.11.2020 (Annexure B) is very much clear and not open to any other interpretation.

vii. That even otherwise, under Rule 18(1) of the "Khyber Pakhtunkhwa Residential Accommodation at Districts (Procedure for Allotment) Rules, 2018" an allottee, upon his transfer to other district, can retain the official accommodation for a period of one year on normal rent and for a further period of one year on market rent. Rule 18(1) is reproduced hereunder for ready reference, please.

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*18. Retention in case of transfer.—(1) An allottee, who is transferred out of Peshawar in any department, organization, board, authority and Commission etc., or is posted within Peshawar to an ineligible department, organization, authority board and Commission etc.; may retain the residential accommodation on the following terms:*

- (a) one year on payment of normal rent; and*
- (b) subsequent one year on payment of market rent:*

*Provided that such retention shall only be allowed if the allottee did not avail residential accommodation in his new place of posting and family of the allottee also resides with him in such residential accommodation:*

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**ATTESTED**

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*Provided further that no further extension shall be allowed beyond the permissible period mentioned above*

The petitioner had not availed the facility of official accommodation at D.I.Khan and therefore, he was rightful and entitled to retain the house in question for a further period up-to two years.

viii. That legally an allotment can be cancelled on the following grounds:

- Chy AS
- a. Allotted premises can only be used for residential purpose by the allottee, otherwise the allotment shall be cancelled (Rule 20 of the Rules, 2018).
  - b. Possessing more than one residential accommodations. (Rule 21 of the Rules, 2018).
  - c. Possessing accommodation both by husband and wife. (Rule 22 of the Rules, 2018).
  - d. Making of structural changes in the allotted premises (Rule 23 of the Rules, 2018).
  - e. Not residing in allotted premises (Rule 24 of the Rules, 2018).
  - f. Non-payment of rent (Rule 25 of the Rules, 2018).
  - g. Petitioner had never been transferred to D.I.Khan rather posted there on temporary basis therefore. Rule 26 of the Rules-2018, cannot be a ground for the cancellation of his allotment; moreover, petitioner has been posted/repatriated to his parent Department i.e. D.C. Office South Waziristan.
  - h. In case of retirement, dismissal, removal resignation from service. (Rule 27 of the Rules, 2018).
  - i. Non provision or provision of wrong information (Rule 28 of the Rules, 2018).
  - j. Unsocial practise (Rule 29 of the Rules, 2018).

  
**ATTESTED**

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k. Allotment made in violation of rules or unauthorised occupant (Rules 30 & 31 of the Rules, 2018).

Hence, not a single condition, as mentioned above, applies to the case of petitioner to cancel his allotment, and as such, a great injustice has been done to the petitioner.

ix. That the counsel for the petitioner may be allowed to raise additional grounds during the course of arguments.

It is, therefore, humbly prayed that on acceptance of present writ petition and by issuance of an appropriate writ, order or direction, directing respondents to:

a. Immediately restore the allotment of official residence to the petitioner and thereby the office order dated 06.12.2021 regarding cancellation of allotment of petitioner as well as re-allotment to respondent No.4 vide office order dated 07.12.2021 may graciously be declared as illegal, without jurisdiction, without lawful authority, null and ab-initio void being violative of the mandate of the K.P. Residential Accommodation in Districts (Procedure for Allotment) Rules-2018.

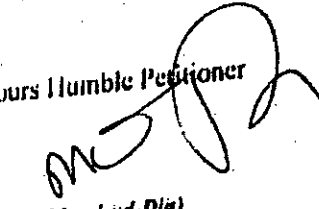
b. Abide the law, legal procedure do not travel beyond the provisions contained in Khyber Pakhtunkhwa Residential Accommodation at Districts (Procedure for Allotment) Rules, 2018.

  
**ATTESTED**

H (32)

c. Any other relief deemed appropriate by this Honourable Court in the given circumstances of case, may also be granted to the petitioner.

Yours Humble Petitioner



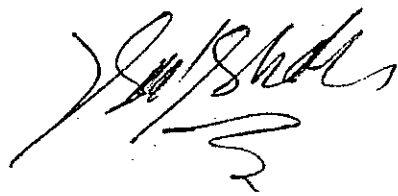
(Meraj-ud-Din)  
Through Counsel

Muhammad Yousuf Khan  
Advocate Supreme Court.

Di. 03 June, 2022

**BOOKS REFERRED:**

1. Constitution of Islamic Republic of Pakistan, 1973.
2. Khyber Pakhtunkhwa Residential Accommodation at Districts (Procedure for Allotment) Rules, 2018.



**ATTESTED**

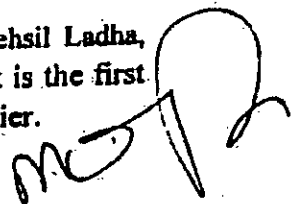
**BEFORE THE HONOURABLE PESHAWAR HIGH COURT,**  
**DERA ISMAIL KHAN BENCH.**

Writ Petition No. 285 -D of 2022

Meraj-ud-Din Vs. Govt. of Khyber Pakhtunkhwa etc  
Writ Petition

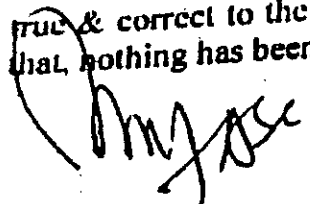
**CERTIFICATE**

I, Meraj-ud-Din, son of Daraz Khan, caste Barki, resident of Tehsil Ladha, District South Waziristan, the petitioner, do hereby certify that it is the first Writ Petition on the subject and no such petition was filed earlier.

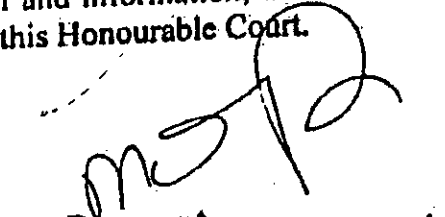
  
Petitioner


**AFFIDAVIT**

I, Meraj-ud-Din, son of Daraz Khan, caste Barki, resident of Tehsil Ladha, District South Waziristan, the petitioner, do hereby solemnly affirm and declare on oath that all the Para-wise contents of above Writ Petition are true & correct to the best of my knowledge, belief and information; and that nothing has been deliberately concealed from this Honourable Court.



Identified by Counsel:  
**MUHAMMAD YOUSUF KHAN ASC.**

  
Deponent  
12201-2433301.1

  
**ATTESTED**



(13) (34)

**BEFORE THE HONOURABLE PESHAWAR HIGH COURT**  
**DERA ISMAIL KHAN BENCH**

Civil Misc. Petition No. 390 -D of 2022 (N) .

Writ Petition No. 285 -D of 2022.

**Meraj-ud-Din Vs. Govt. of Khyber Pakhtunkhwa etc**  
**Writ Petition**

**APPLICATION FOR THE GRANT OF INTERIM RELIEF TO  
PLEASE RESTRAIN RESPONDENTS FROM INTERFERING IN  
THE POSSESSION OF PETITIONER OVER THE SUIT  
ACCOMMODATION.**

*Amir Khan*  
**Respectfully Sheweth,**

1. That a Writ Petition is being filed before this Honourable Court and grounds of same may please be considered as an integral part of this Civil Misc. Application.
2. That the petitioner has got strong and prima facie case in his favour and there is every likelihood of the success of the Writ Petition; hence, balance of convenience tilts in favour of the petitioner.
3. That the respondent No.4 had already been allotted an official residence and legally he cannot retain the other one; even then respondent No.3 illegally, unlawfully and without jurisdiction allotted the official accommodation of petitioner to respondent No.4 after illegally cancelling from the name of petitioner despite the fact that petitioner is still serving in D.C. Office Tank. Therefore, in case of non-grant of interim relief, the petitioner will suffer an irreparable loss and the writ petition too would become fruitless.

It is, therefore, humbly prayed that on acceptance of present Civil Misc. Application respondents may please be restrained from taking over

*Subhan*  
**ATTESTED**

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possession of the Official Accommodation and not to interfere in the possession of petitioner till decision of the Writ Petition.

Yours Humble Petitioner

*[Handwritten Signature]*  
(Meraj-ud-Din)  
Through Counsel

Dt. 03 June, 2022

*[Handwritten Signature]*  
Muhammad Yousuf Khan  
Advocate Supreme Court.

**AFFIDAVIT:**

I, Meraj-ud-Din, son of Daraz Khan, caste Barki, resident of Tehsil Latha, District South Waziristan, the petitioner, do hereby solemnly affirm and declare on oath that all the Para-wise contents of above Civil Misc. Petition are true & correct to the best of my knowledge, belief and information; and that, nothing has been deliberately concealed from this Honourable Court.

*[Handwritten Signature]*

Identified by Counsel:  
Muhammad Yousuf Khan ASC

*[Handwritten Signature]*

Deponent  
12201-2433301-1

*[Handwritten Signature]*  
**ATTESTED**

(36)

**PESHAWAR HIGH COURT, D.I.KHAN BENCH**

**FORM OF ORDER SHEET**



Date of order or proceedings	Order or other proceedings with signature of Judge(s)
(1)	(2)
28.6.2022	<p><u>H.P.No:781-D/2022(37) W/A</u> <u>G.M.No:190-D/2022 (N)</u></p> <p><b>Present:</b> Muhammad Yousof Khan, Advocate for the petitioner.</p> <p>Mr. Adnan Ali, Asstt. A.G. for the respondents.</p> <p>***</p> <p>The respondent No.3 shall file para-wise comments so as to reach this Court within a fortnight positively. In the meantime, status quo be maintained subject to notice for next available D.B.</p> <p style="text-align: right;"><i>[Signature]</i> JUDGE</p> <p style="text-align: right;"><i>[Signature]</i> JUDGE</p> <p style="text-align: center;">ATTEST: <i>[Signature]</i> EXAMINOR Peshawar High Court Bench, Baya Himat Khan</p>

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H.P. No. 781  
G.M. No. 190  
28/6/22

K/2022/73

(D.B)  
Hon'ble Justice (for Answer)  
Hon'ble Justice Muhammad Faisal Wali

*[Signature]*  
**ATTESTED**

FORM OF ORDER SHEET (37)

Date of Order or proceedings (1)	Order or other proceedings with signature of Judge(s). (2)
12.9.2022	<p><u>W.P. No. 285-D/2022 with</u> <u>C.M. No. 390-D/2022</u></p> <p><b>Present:</b> Muhammad Yousaf Khan, Advocate for the petitioner.</p> <p>Mr. Rehmatullah Asstt. Advocate General alongwith Mr. Sohail Ahmad Shah, Addl. Assistant Commissioner for the respondents.</p> <p>***</p> <p>Comments not received. The latter seeks sometime to provide the requisite comments. May do so within a week positively. Adjourned to a date in office. In the meanwhile, status quo be maintained.</p> <p><i>[Signature]</i> <b>ATTESTED</b></p> <p><i>[Signature]</i> <b>JUDGE</b></p> <p><i>[Signature]</i> <b>JUDGE</b></p>

Office  
13/09

Mr. Justice Muhammad Shabir  
Mr. Justice Shabir

**COMMISSIONER**

DIKHAN DIVISION DIKHAN

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commissionerdkhan@yahoo.com

No. 5236-40/Estt:Dated DIKhan the 18/11/2020.Office order:

In continuation of this office order No.3219-20/Acctt: dated 30.7.2019 and office letter No.4727/Estt: dated 15.10.2020 following posting transfer is hereby ordered with immediate effect in the best public interest: -

S.No.	Name of official	From	To	Remarks
1.	Mr. Fida Muhammad Computer Operator Dc Office Tank	General Branch Commissioner's office DIKhan	Report to DC office Tank.	Repatriated to his parent office
2.	Mr. Muhammad Miraj-ud- Din Burki, Senior Clerk of DC office SWTD.	Waiting for posting in this office	Assistant General Branch in his own pay & Scale	Vice No.1
3.	Mr. Ahsanullah Assistant DC office Tank	Commissioner's office DIKhan	Report to DC office Tank	Repatriated to his parent office

Note: - The incumbent at Serial No.2 will draw his pay and allowances from his parent office i.e DC Office SWTD and will not claim any right of seniority over the officials of this office on the basis of this order.

Sd/  
Commissioner  
DIKhan Division, DIKhan

Endst No.& Date Even.

Copy to the

1. Deputy Commissioner, South Waziristan Tribal District Tank.
2. Deputy Commissioner, Tank
3. PS to Commissioner DIKhan Division DIKhan.
4. Official Concerned for compliance.



**ATTESTED**

Secretary to Commissioner  
DIKhan Division, DIKhan

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Service Appeal No. 09/2022

**BEFORE:** SALAH-UD-DIN -- MEMBER(J)  
MIAN MUHAMMAD --- MEMBER(E)

Khayal Muhammad S/o Muzamil R/o Village Maidan, Tehsil Luddah, District South Waziristan, presently posted as Deputy District Education Officer (Male), District South Waziristan..... (Appellant)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Education, Civil Secretariat, Peshawar.
2. Secretary Elementary & Secondary Education (E&SE), Civil Secretariat, Peshawar.
3. District Education Officer (Male), South Waziristan.
4. Mr. Mehrab Gul, Headmaster, Govt. High School Azam, Warsak South Waziristan. .... (Respondents)

**Present:**

MR. AFRASIAB KHAN WAZIR,  
Advocate, -- For Appellant.

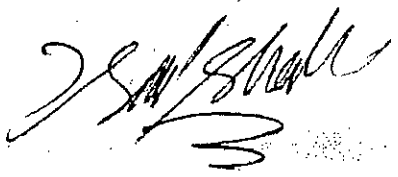
MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,  
Assistant Advocate General -- For official respondents.

MR. TAIMUR ALI KHAN,  
Advocate, -- For private respondent No.4

Date of Institution ... 30.12.2021  
Date of hearing ... 06.07.2022  
Date of Decision ... 06.07.2022

**JUDGEMENT**

**MIAN MUHAMMAD, MEMBER(E):-** The service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that "the impugned notification No. SO (SM) E&SED/7-1/2021/PT/GMC/DDEO dated 07.12.2021 may kindly be set aside and notification No. SO (SM) E&SED/7-1/2021/PT/GMC dated 28.10.2021 may kindly be restored."



**ATTESTED**

02. Brief facts of the case are that the appellant was posted as Head Master (BS-17) GHS Muhammad Nawaz Kot, South Waziristan when transferred and posted as Deputy District Education Officer (Male) South Waziristan in his own pay and scale vide Notification dated 28.10.2021. However, he was subsequently transferred and reposted as Head Master (BS-17) GHS Muhammad Nawaz Kot South Waziristan and private respondent No. 4 was now posted in his place as Deputy District Education Officer (Male) South Waziristan vide Notification dated 07.12.2021. Feeling aggrieved the appellant submitted departmental appeal on 20.12.2021 which was not decided and thereafter the Service Tribunal was approached on 30.12.2021 pre-maturely.

03. On admission of the appeal, the respondents were put on notice to submit reply/Parawise comments. They submitted reply/Parawise comments denying and rebutting assertions made in the service appeal. We have heard arguments of the learned counsel for the appellant and private respondent No. 4 as well as learned Additional Advocate General for official respondents and have gone through the record with their assistance.

04. Learned counsel for the appellant contended that the appellant had been prematurely transferred from the post of Deputy District Education Officer (Male) South Waziristan where he could only serve for about 40 days. This was a blatant violation of Clause I & IV of the Posting Transfer Policy of the Provincial government. The transfer had neither been made in the public interest nor after completion of normal tenure of posting but issued in an arbitrary manner with total disregard to norms of justice and service laws. The same is, therefore, liable to be set aside being not tenable under the cannon of law and justice. To strengthen his arguments on the

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**ATTESTED**

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completion of normal tenure on a post and exercise of power by the competent authority in a just and judicial manner, he relied on P.L.D 2013 Supreme Court 195.

05. Learned counsel for private respondent No. 4 contended that the impugned order had been issued in public interest and could not be attributed to completion of tenure. If completion of tenure was a question then private respondent No. 4 had also not completed his normal tenure against his previous post i.e. OHS Azam Warsak South Waziristan. The impugned order dated 07.12.2021 had been issued keeping in view the exigency of services from administrative point of view and which was very well in accordance with the spirit of Clause 1 of the Posting Transfer Policy of the Provincial government. To strengthen his arguments, he relied on 1996 SCMR 1649 and 2021 SCMR 1064.

06. Learned Assistant Advocate General argued that a civil servant is bound to serve anywhere in the province under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973. A civil servant is not entitled to be posted on his choice post and station. The impugned Notification dated 07.12.2021 is therefore legal, passed by the competent authority empowered with such authority as well as jurisdiction and with legal sphere and mandate. In support of his arguments, he relied on this Service Tribunal judgement delivered in service appeal No. 7259/2021 dated 26.01.2022 in the case titled "Noor Hassan, (TC BS-19) District Education Officer Mohmand versus the Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar and others". The impugned order might, therefore, be maintained in favour of the respondent department and the service appeal be graciously dismissed, he concluded.

  
**ATTESTED**



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07. Perusal of the record revealed that the appellant had been posted as Deputy District Education Officer (M) South Waziristan, in his own pay scale (OPS) vide earlier notification dated 28.10.2021 and he could only serve for about 40 days when re-transferred and posted as Head Master GHS Muhammad Nawaz Kot South Waziristan against the vacant post vide impugned notification dated 07.12.2021. Now, private respondent No. 4 who was earlier posted at GHS Azam Warsak South Waziristan is posted as substitute of the appellant as Deputy District Education Officer (M) South Waziristan vide the impugned notification.

08. It is also a matter of the record that both the appellant as well as private respondent No. 4 are in BS-17 and belonging to the teaching cadre. They were required to be posted on specified posts reserved for teaching cadre as prescribed in their service rules and laid down under the august Peshawar High Court judgement dated 18.11.2009 delivered in Writ Petition no. 2937/2009. When attention of the learned AAG was invited to this fact, he contended that due to shortage of officers in management cadre, the respondents were compelled to resort to such stopgap arrangements in public interest. It is, however, observed that the department could not make up the deficiency of officers in management cadre despite lapse of 13 long years since the judgement of honourable Peshawar High Court. The impugned notification dated 07.12.2021 did mention the word "in the public interest" but did not substantiate to establish as what necessitated respondent No. 2 to re-transfer the appellant after just 40 days? The posting/transfer policy of the provincial government determines and allows 02 years normal tenure to be completed by an officer on a particular post. In the instant case, there was neither complaint nor anything adverse against the appellant and

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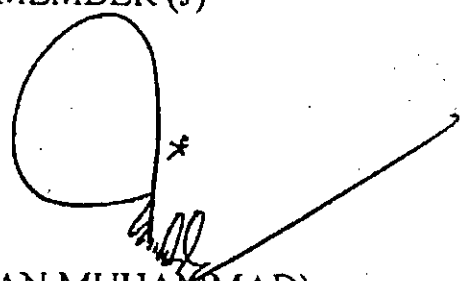
the respondents were obligated to have observed and honoured sanctity of their own posting/transfer policy by allowing him to complete his normal tenure of 02 years. The respondents are under obligation to address the issue of deficiency of management cadre officers immediately and stop the flood gate of posting of teaching cadre officers against the posts reserved for management cadre under the garb of stopgap management.

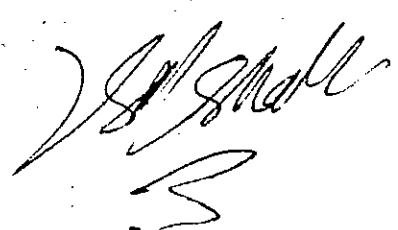
09. With the above observations in view, the instant appeal is accepted as prayed for. The impugned notification dated 07.12.2021 is set aside and the appellant is allowed to complete his normal tenure as Deputy District Education Officer (M) South Waziristan.

10. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 06<sup>th</sup> of July, 2022.



  
(SALAH-UD-DIN)  
MEMBER (J)

  
(MIAN MUHAMMAD)  
MEMBER (E)

  
**ATTESTED**

NO.SOR-II (E&AD) 1-1/85(VOL-II )  
Dated Peshawar the 15<sup>th</sup> February 2003.

Subject: POSTING /TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT.

I am directed to refer to the subject noted above and to say that in supersession of all policy instructions issued in this behalf, the competent authority has approved the following posting Transfer Policy.

- i. All the postings /transfers shall be strictly in public interest and shall not be abused misused to victimize the Government servants.
- ii. All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting /transfer authorities for seeking posting /transfers of their choice and against the public interest.
- iii. All contract Government employees, appointed against specific posts, cannot be posted against anyother 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 hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.
- v. Months of March and July are fixed for posting /transfer of the officers /officials excluding the officers in B-19 and above in the Province. Posting /transfer in Education and Health Departments shall be made in March while the remaining Departments shall make posting /transfers in July. There shall be a ban on posting/transfers throughout the year excluding the aforesaid two months. However, there shall be no restriction in cases where posting /transfer of Government employees become inevitable in other months due to promotion /retirement /creation of new posts/return from long leave/involvement in

  
**ATTESTED**

disciplinary proceedings and adjustment of surplus staff for which specific relaxation shall be obtained from the Chief Minister.

- vi. While making postings transfers from settled areas to FATA and vice versa specific approval of the Governor, NWFP needs to be obtained.
- vii. Officers may be posted on executive /administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thana) of his area /resident is situated.
- viii. No postings /transfers of the officers/officials on detailment basis shall be made.
- ix. Regarding the posting of husband /wife, both in Provincial services, efforts where possible would be made to post such persons at one station and this will be subject to the public interest.
- x. All the posting /transferring authorities may facilitate the postings /transfers of the unmarried female Government Servants at the station of the residence of their parents.
- xi. Officers /officials except DCOs and 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 till the retirement.
- xii. In terms of Rules-17 (1) and (2) read Schedule-III of the Government of NWFP Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against.

  
**ATTESTED**

1

**Outside the Secretariat**

i. Officers of the all Pakistan Unified Group i.e DMG , PSP including Provincial Police Officers in BPS-18 and above.

ii. Other officers in BPS-17 and above to be posted against schedule posts, or posts normally held by the APUG, PCS (EG) and PCS (SG).

iii. Head of Attached Departments and other Officers in B-19 & above in all Departments.

**In the Secretariat:**

iv. Secretaries .

v. Other Officers of and above the rank of Section Officers:-

- a. Within the Same Department.
- b. Within the Secretariat from one Department to another.

vi. Officials upto the rank of Superintendent:-

- a. Within the same Department.
- b. To and from an Attached Department.

  
**ATTESTED**

2

Chief Secretary in consultation with the Establishment Department and the Department concerned with the approval of the Chief Minister.

--do--

--do--

Chief Secretary with the approval of Chief Minister.

Secretary of the Department concerned .  
Chief Secretary /Secretary Establishment.

Secretary of the Department concerned.  
Secretary of the Department in consultation

c. Within the Secretariat from on  
Department to another.

with Head of Attached Department  
concerned. Secretary (Establishment)

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**ATTESTED**

xiii. While considering postings /transfers proposals all the concerned authorities shall keep in mind the following:

a. To ensure the posting of proper persons on proper posts, the 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.

ix) Governments servants including District Govt. employees feeling aggrieved due to the orders of ,posting/transfers authorities may seek remedy from the next higher authority/(the appointing authority) as the case may be through an appeal to be submitted within seven days of the receipt of such orders. Such appeal shall be disposed of within fifteen days. The option of appeal against posting /transfer orders could be exercised only in the following cases:-

i) pre-mature posting/transfer or posting/transfer in violation of the provisions of this policy.

ii) Serious and grave personal (humanitarian) grounds.

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 against each are as under :-

S.No	Officers	Authority
1.	Posting of District Coordination Officer and Executive Distinct Officer in a District.	Provincial Government
2.	Posting of District Police Officer.	Provincial Government.
3.	Other Officer in BPS-17 and above posted in the District.	Provincial Government .

*J. M. Shah*  
**ATTESTED**

4.	Official in BPS-16 and below.	Executive District Officer in consultation with District Coordination Officer.
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As per Rule 25(2) of the Rules above the District Coordination Department shall consult the Government if it is proposed to :

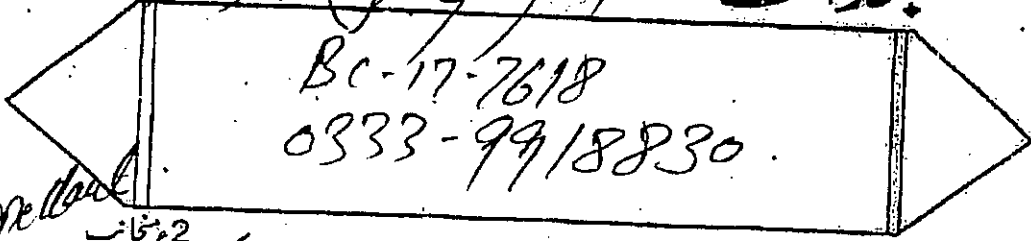
- a. transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure; and
- b. require an officer to hold charge of more than one post for a period exceeding two months.

4. I am directed further to request that that above noted policy may be strictly observed implemented.

*J. S. Shinde*  
**ALISTED**



بعدالت  
صالح اللہین



Appellate  
2، پنجاب  
صالح اللہین بنام گورنمنٹ ونگز

موزخ  
مقدمہ  
دعویٰ  
پریم

باعث تحریر آنگہ

مقدمہ مندرجہ عنہ لائن بالا میں اپنی طرف سے واسطے پیروی کا جواب کوئی دلیل و کاروائی متعلقہ  
آن مقام 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 ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور  
اہمیت ڈگری کرنے اجراء اور اصولی چیک در و پیرا عرضی 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 منسوخی  
نیز دائر کرنے اپیل گمرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار  
ہوگا۔ اور صاحب مقرر شدہ کو کسی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساتھ  
پر داخلہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔  
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی  
مذکورہ کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

صالح اللہین وکیل دربار عالی  
سلسلہ - ٹونوئی ہڈن خانہ ٹانہ ٹول ڈی آئی ٹانہ  
1722

المرتوم 04 10 2022  
واہ الع

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