

ORDER

24th May, 2022

Counsel for the appellant present. Mr. Asif Masood Ali Shah,
Deputy District Attorney for respondents present.

Vide our detailed judgment of today placed in Service Appeal No. 7035/2021 titled "Dr. Ijaz Ahmad-vs- The Government of Khyber Pakhtunkhwa through Chief Secretary to the Government of Khyber Pakhtunkhwa Peshawar and others" this appeal is also dismissed. Costs shall follow the events. Consign.

Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 24th day of May, 2022.



(KALIM ARSHAD KHAN)
CHAIRMAN



(FAREEHA PAUL)
MEMBER(E)

0.05.2022

Mr. Tariq Altaf and Hidayatullah Khattak, Advocates for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Argument heard. To come up for order before the D.B on 12.05.2022.

(Fareeha Paul)
Member (E)


Chairman

12th May, 2022

Counsel for the appellant present. Mr. Asif Masood Ali Shah, DDA for the respondents present.

On 10.05.2022, arguments were heard in this appeal and case was fixed for order but in the connected appeal No. 7035/2021, titled "Dr. Ijaz Ahmad Vs. Health Department etc." learned counsel for the appellant has sought adjournment to assist the court properly. To-day he concluded his arguments. To come up for order/consideration on 24.05.2022 before this D.B.


(Fareeha Paul)
Member(E)


(Kalim Arshad Khan)
Chairman

26.01.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Jaffar Ali, Assistant for respondents present.

Reply/comments on behalf of respondents are still awaited. Representative of respondents requested for time to furnish reply/comments. Granted. To come up for reply/comments before the S.B on 17.02.2022.



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

17.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 09.03.2022 for the same as before.

09.03.2022

Due to retirement of the Hon'able Chairman, the case is adjourned to 18.04.2022 for the same as before.



Reader

Reader

18.04.2022

Learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General alongwith Safiullah, Focal Person for the respondents present and submitted reply/comments, which are placed on file. To come up for arguments before the D.B on 10.05.2022. The appellant may submit rejoinder within a fortnight, if so advised. The operation of the impugned order dated 03.03.2021 to the extent of appellant shall remain suspended till next date.



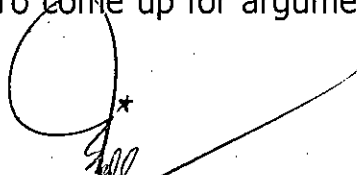
Chairman


11.11.2021

Counsel for appellant present.

Muhammad Riaz Khan Paindakheil learned Assistant Advocate General for respondents present.

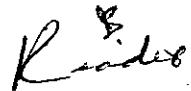
Reply of respondents was not submitted. Learned A.A.G is directed to submit reply/comments within 10 days positively in office. Learned counsel for appellant stated that similar nature case is fixed for 13.12.2021, therefore, instant appeal may also be adjourned to the said date. Request is accorded. To come up for arguments on 13.12.2021 before D.B.


(Mian Muhammad)
Member (E)


(Rozina Rehman)
Member (J)

13-12-21

D B is on Tour case to come up
For the same on Dated. 13-1-22



Reader

13.01.2022

Junior to counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG for respondents present.

Reply/comments on behalf of official respondents are still awaited. Learned Additional Advocate General sought time for submission of reply/comments. Last opportunity is granted to respondents to furnish reply/comments on or before next date, failing which their right to submit reply/comments shall be deemed as struck off by virtue of this order. To come for arguments before the D.B on 26.01.2022.




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

Dr. Tahir Saeed, 7447/2021

12.10.2021 Learned Counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant impugned the transfer order of respondent-department dated 03.03.2021 through which the appellant was transferred from DHQ Hospital Banda Daud Shah, Karak to THQ Hospital Lakki Marwat as District Surgeon. The appellant preferred departmental appeal dated nil and after having waited for the statutory period, submitted the instant service appeal on 24.09.2021. Learned counsel for the appellant was confronted with pertinent question of limitation to which he replied that application for condonation has been submitted with the memorandum of appeal. Moreover, copy of the order sheet dated 22.09.2021 in service appeal No. 7035/2021 titled Dr. Ijaz Ahmad- vs- Government of Khyber Pakhtunkhwa and others, was produced and requested for suspension of the impugned order in respect of the appellant as well.

Points raised need consideration. The appeal is admitted to regular hearing, subject to all just and legal objections including limitation. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time or extension of time is not sought, the office shall submit the file with a report of non-compliance. File to come up for arguments on 11.11.2021 before the D.B.

An application has been submitted alongwith the memorandum of appeal for suspending the operation of impugned transfer order dated 03.03.2021. Notice of this application be also issued to the respondents for submission of written reply/comments for the date fixed. Keeping in view the "principle of consistency" the same impugned notification already suspended in case of one of the effectees/ aggrieved litigants the impugned notification dated 03.03.2021 shall also remain suspended to the extent of present appellant till the date fixed.


(Mian Muhammad)
Member(E)



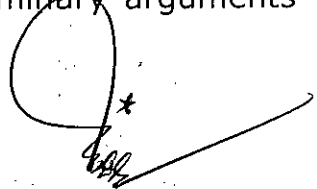
Appellant Deposited
Security & Process Fee
12/10/21

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7447 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	24/09/2021	<p>The appeal of Dr. Tahir Saeed presented today by Mr. Tariq Altaf Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR,</p>
2-	05.10.2021	<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put up there on <u>05/10/2021</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Learned counsel for the appellant present and sought adjournment being not prepared for preliminary arguments today. Adjourned. To come up for preliminary arguments before the S.B on 12.10.2021.</p> <p style="text-align: right;"> (MIAN MUHAMMAD) MEMBER (EXECUTIVE)</p>

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: *Dr Tahir Saeed vs Govt of KPK etc*

S#	CONTENTS	YES	NO
1	This Appeal has been presented by:	✓	
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?		
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15	Whether numbers of referred cases given are correct?	✓	
16	Whether appeal contains cutting/overwriting?	✓	
17	Whether list of books has been provided at the end of the appeal?		
18	Whether case relate to this court?	✓	
19	Whether requisite number of spare copies attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?	✓	
22	Whether index filed?	✓	
23	Whether index is correct?	✓	
24	Whether Security and Process Fee deposited? On		
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On		
26	Whether copies of comments/reply/rejoinder submitted? On		
27	Whether copies of comments/reply/rejoinder provided to opposite party? On		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

TARIG ACHAF

Signature:

[Signature]

Dated:

23/9/2021

BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No _____/2021

Dr Tahir SaeedAppellant
V E R S U S
Govt of KPK & others Respondents

I N D E X

S NO	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Service Appeal	-	1-10
2.	Affidavit	-	11
3.	Application for Suspension	-	12-13
4.	Affidavit		14
5.	Application for Condonation of Delay		15-16
6.	Affidavit		17
7.	Copy of the CNIC	A	18
8.	Copy of Appointment Order, Service Card and Salary Slip	B	19-22
9.	Copy of CNIC of Wife of the Appellant and Nikah Nama <i>with letter dated 13th 08 2021</i>	"C"	23-25
10.	Copy of the Transfer Order dated 03.03.2021	"D"	26
11.	Copy of Departmental Appeal	"E"	27
12.	Copy of Letter dated 11.08.2021	"F"	28
13.	Copy of Appeal and Order	G	29-35
14.	Wakalat Nama		36


Appellant

Through:

Dated: 23.09.2021


TARIQ ALTAF
Advocate, High Court,
At District Courts Kohat

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BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No 7447/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7632

Dated 24/9/2021

Dr Tahir Saeed S/o Ghulam Sardar, District Surgeon, THQ
Hospital, Banda Daud Shah Karak.

.....Appellant

V E R S U S

1. Govt of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Khyber Pakhtunkhwa Peshawar.
2. The Health Department, Govt of KPK through Secretary Health, Civil Secretariat, Khyber Pakhtunkhwa Peshawar.
3. Director General Health Services, Government of Khyber Pakhtunkhwa, Directorate Health, Peshawar.

.....Respondents

Filed to-day

Registrar

24/9/2021

SERVICE APPEAL UNDER SECTION 4 OF
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
ACT 1974 READ WITH ALL OTHERS LAW
ENABLING JURISDICTION OF THIS HON'BLE
TRIBUNAL UNDER ARTICLE 212 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF
PAKISTAN 1973, AGAINST THE IMPUGNED
ORDER DATED 03.03.2021, WHEREBY THE
APPELLANT WAS TRANSFERRED FROM THQ
HOSPITAL BANDA DAUD SHAH KARAK TO THQ
HOSPITAL, LAKKI MARWAT AS DISTRICT

②

**SURGEON (BS-18) WHICH IS AGAINST THE
WEDLOCK / SPOUSE POLICY.**

Prayer in Appeal:

On acceptance of this Appeal, the Order dated 03.03.2021, whereby the Respondent No 2 has illegally, pre-maturely and against the Wedlock / Spouse Policy issued transfer order of the Appellant vide which the Appellant has been transferred from the THQ Hospital Banda Daud Shah Karak to THQ Hospital Lakki Marwat, which is illegal, unlawful, against the lawful authority and the same may kindly be cancelled / set aside and the Appellant may graciously be allowed to continue his services as District Surgeon at THQ Banda Daud Shah.

Respectfully Sheweth:-

The Appellant humbly submits as under:-

1. That the Appellant is the Law abiding citizen of Pakistan and is entitled for all the rights guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. **(Copy of the CNIC is attached as Annex 'A').**
2. That briefly stated the fact relevant for the purpose of this petition are that, Appellant was appointed as Medical Officer (BS-17) at THQ Hospital Karak and thereafter promoted and now is serving as District Surgeon (BS-18) at THQ Hospital Banda Daud Shah Karak, since than the Appellant was performing his duty with full devotion. **(Copy of Appointment**

Order, Service Card and Salary Slip are attached Annex "B")

3. That after appointment, the Appellant took over the charge against the above mentioned Sanctioned Post, the Appellant was being competent for the said post he was performing his duty with great zeal & zest and with full devotion with no complaint whatsoever.
4. That wife of the Appellant namely Dr Sidra Baig is also appointed in the Respondents Departments and presently serving as W. Medical Officer, THQ Hospital Banda Daud Shah Karak. **(Copy of CNIC of Wife of the Appellant and Nikah Nama is attached as annexure C)**
5. That when the Appellant was performing his duty on his respective post with good results and was giving outstanding performance, the Appellant had been shown efficiency in his duty, an inquiry against one of the colleague was conducted and on the recommendation of that inquiry the respondents had illegally and malafidely issued a notification dated 03.03.2021 for the transfer from THQ Hospital Banda Daud Shah to THQ Hospital Lakki Marwat of the Appellant alongwith 6 others Doctors, which is illegal, unlawful, void ab initio, against the legal and fundamental rights of the Appellant and is also against the spouse / wedlock policy. **(Copy of**

the Transfer Order dated 03.03.2021 is attached as annexure "D")

6. That thereafter the Appellant filed a Departmental Appeal before the Respondent No 2, but with no fruitful result. **(Copy of Departmental Appeal is attached as annexure E)**
7. That thereafter the Appellant was serving his duties as District Surgeon BS-18 in THQ Hospital Banda Daud Shah, moreover a letter was issued on dated 11th August 2021 to the Appellant for Explanation for non-implementation of Posting / Transfer Notification dated 03.03.2021. **(Copy of Letter dated 11.08.2021 is attached as annexure F)**
8. That thereafter, the Appellant time and again visited to the office of respondents and made several requests for cancellation of his illegal transfer, but in vain.
9. That feeling aggrieved from the act of Respondents, having no other adequate and efficacious remedy, approaches this Honourable Tribunal on the following grounds inter-alia:-

GROUND:-

- A) That the Appellant is peaceful and law abiding citizen of Islamic Republic of Pakistan and is fully entitled to all the basic and fundamental rights as

enshrined in the fundamental law of the state, interpreted and guaranteed by the law of the land.

- B) That the impugned transfer order dated 03.03.2021 passed by the respondents are patently illegal, against facts and evidence available on file, hence liable to be reserved and set aside.
- C) That the appellant has been punishment for wrong act of one of the Junior Surgeon and the inquiry committee never associated appellant in the proceedings there is no complaint against the appellant, till date and punishment of the appellant for an offence which he has not committed is against law, justice equity and procedure, hence the impugned order is liable to be cancelled.
- D) That the law recognizes no punishment in form of a transfer, which is what, has been done with the appellant.
- E) That the fact of the matter is that the appellant did no wrong and he is still being made to suffer that also through the novel mode transfer. As transfer cannot be inflicted as a punishment. The travesty of justice in the instant case is that the post of the appellant from which he has been transferred is left to be vacant. How can the same be allowed to be kept vacant to the detriment of the appellant is something which the appellant is not privy to. However, it is worth mentioning that it is the bounden duty of the Government functionaries to

act in accordance with law and ensure that no violation of the law takes place.

- F) That the posting to Lakki Marwat is clearly unprecedented as the appellant is made to be work away from his spouse/family.
- G) That the impugned Transfer Order of the Appellant is also against the Spouse policy, as the wife of the Appellant is also serving as W. MO in THQ Hospital, Banda Daud Shah and it is difficult and impossible for the Appellant to serving in other district hospital.
- H) That because of the spouse Policy also goes in straight conflict with judgments of the Superior Courts reported in:
 - a. 2011 PLC (cs) 592 Lahore.
 - b. 2003 PLC (cs) 1322 Lahore
 - c. 2015 PLC (cs) 1215 Balochistan Service Tribunal
 - d. 2014 PLC (cs) 1032 Karachi High Court Sindh
 - e. 2004 PLC (cs) 622 Lahore High Court
- I) That the leaving of the posting at THQ Hospital vacant through the transfer of the appellant is in itself against public interest for the people of Banda Daud Shah.
- J) That the principles of natural justice and that of the law, rules and policy dictates and require that the appellant be allowed to work as the District Surgeon THQ Hospital Banda Daud Shah.

- K) That the fundamental rights of the appellant have been violated in relation to Article 4, 8, 9, 18 and 25 of the Constitution of the Islamic republic of Pakistan, 1973, the said rights follow out of the terms and conditions of services of the appellant and this Hon'ble Tribunal being the custodian of the rights of Civil Servants as enshrined in the Civil Servants Act, the rules made thereunder as well as the protection afforded by the Constitution of Islamic republic of Pakistan, 1973 is why the appellant seeks the redress of their grievances and to bring to an end the ordeal the Appellant is going through due to the illegal, unlawful and unjust acts and inaction of the respondents.
- L) That the law does not recognize transfer as a punishment. This is concept alien to the Civil Servant Act, 1974, the rules made thereunder. Therefore transferring Appellant as a punishment is illegal.
- M) That the rights of the Appellant are secured under article-8 and the entirety of Part-II of the Constitution of the Islamic republic of Pakistan, and its redress fall solely within the ambit of Article 212 of the Constitution of the Islamic republic of Pakistan, 1973.
- N) That the Appellant have not been treated in accordance with law, and their right secured and

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guaranteed under law and Constitution have been violated.

- O) That the Appellant has suffered for no fault of their own and the entire premise of the case is based on the illegality of the respondents to the complete detriment of the Appellant.
- P) That the deviation from settled law and adopting the novel principles of "inclusion" which aren't recognized by the Constitution law nor the service law of the country is clearly in disregard of the law and the dictums of the Hon'ble Superior Courts of Pakistan.
- Q) That the respondents cannot be allowed under the law to pass any illegal order, as valuable rights of the Appellants are involved, which are guaranteed under the Constitution of Islamic republic of Pakistan, 1973.
- R) That the decisions of the provincial government by transferring the appellant by order dated 03.03.2021 is illegal, unlawful and without lawful authority.
- S) That the order dated 03.03.2021 and explanation letter dated 11.08.2017 vindictive and violative upon the rights of the appellants and is liable to be stuck down.
- T) That in similar nature Service Appeal No.7035/2021 titled Dr. Ejaz Amjad transfer order

has been suspended and fixed for on 13.12.2021.
**(Copy of Appeal and Order is attached as
annexure G)**

U) That any other grounds will be raised at the time of arguments with the permission of this Hon'ble Court.

PRAYER:-

It is, therefore, most humbly prayed that, On acceptance of this Appeal, the Order dated 03.03.2021, whereby the Respondent No 2 has illegally, pre-maturely and against the Wedlock / Spouse Policy issued transfer order of the Appellant vide which the Appellant has been transferred from the THQ Hospital Banda Daud Shah Karak to THQ Hospital Lakki Marwat, which is illegal, unlawful, against the lawful authority and the same may kindly be cancelled / set aside and the Appellant may graciously be allowed to continue his services as District Surgeon at THQ Banda Daud Shah. On acceptance of this Appeal, the Order dated 03.03.2021, whereby the Respondent No 2 has illegally, pre-maturely and against the Wedlock / Spouse Policy issued transfer order of the Appellant vide which the Appellant has been transferred from the THQ Hospital Banda Daud Shah Karak to THQ Hospital Lakki Marwat, which is illegal, unlawful, against the lawful authority and the same may kindly be cancelled / set aside and the Appellant may graciously be allowed to continue his services as District Surgeon at THQ Banda Daud Shah. On acceptance of this Appeal, the Order dated 03.03.2021, whereby the Respondent No 2 has illegally, pre-maturely and against the Wedlock / Spouse Policy issued transfer order of the Appellant vide which the Appellant has been transferred from the THQ Hospital Banda Daud Shah Karak to THQ Hospital Lakki Marwat, which is illegal, unlawful, against the lawful authority and the same may kindly be cancelled / set aside and the Appellant may graciously be allowed to continue his services as District Surgeon at THQ Banda Daud Shah. On


acceptance of this Appeal, the Order dated 03.03.2021, whereby the Respondent No 2 has illegally, pre-maturely and against the Wedlock / Spouse Policy issued transfer order of the Appellant vide which the Appellant has been transferred from the THQ Hospital Banda Daud Shah Karak to THQ Hospital Lakki Marwat, which is illegal, unlawful, against the lawful authority and the same may kindly be cancelled / set aside and the Appellant may graciously be allowed to continue his services as District Surgeon at THQ Banda Daud Shah. On acceptance of this Appeal, the Order dated 03.03.2021, whereby the Respondent No 2 has illegally, pre-maturely and against the Wedlock / Spouse Policy issued transfer order of the Appellant vide which the Appellant has been transferred from the THQ Hospital Banda Daud Shah Karak to THQ Hospital Lakki Marwat, which is illegal, unlawful, against the lawful authority and the same may kindly be cancelled / set aside and the Appellant may graciously be allowed to continue his services as District Surgeon at THQ Banda Daud Shah.

Any other relief, not specifically asked for may also graciously be extended in favour of the Appellant in the circumstances of the case.


Appellant

Through:

Dated: 23.09.2021


TARIQ ALTAF
Advocate, High Court,
At District Courts Kohat

(11)

BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No _____/2021

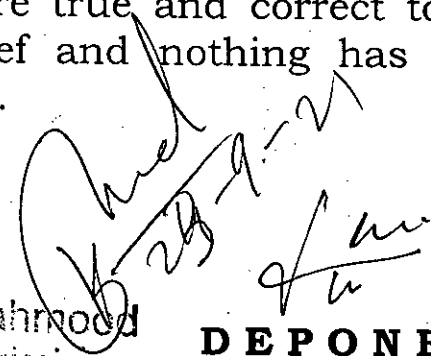
Dr Tahir Saeed.....Appellant

V E R S U S

Govt of KPK & others Respondents

AFFIDAVIT

I, Dr Tahir Saeed S/o Ghulam Sardar, District Surgeon, THQ Hospital, Banda Daud Shah Karak, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.


Khalid Mahmood
Oath Commissioner
Peshawar High Court

DEPONENT

BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA PESHAWAR

CM No. _____/2021

In Re:

Service Appeal No _____/2021

Dr Tahir SaeedAppellant

V E R S U S

Govt of KPK & others Respondents

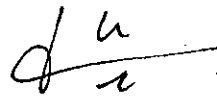
APPLICATION FOR SUSPENDING THE
IMPUGNED TRANSFER ORDER DATED
03.03.2021 AND THE RESPONDENTS MAY
ALSO BE RESTRAINED FROM TAKING
ANY KIND OF ADVERSE ACTION AGAINST
THE APPELLANT, TILL THE FINAL
DISPOSAL OF THE MAIN SERVICE
APPEAL.

Respectfully Sheweth:

1. That the titled Service Appeal is being filed before this Hon'ble Tribunal in which no date of hearing is fixed.
2. That the grounds of main appeal may be considered as integral part of this application.
3. That the balance of convenience also lies in favour of the appellant.
4. That the appellant has a good prima facie case and all the three ingredients are in favour of the appellant.

5. That the appellant has been punishment for wrong act of one of the Surgeon and the inquiry committee never associated appellant in the proceedings there is no complaint against the appellant till date and punishment of the appellant for an offence which he has not committed is against law, justice equity and procedure, hence the impugned order is liable to be cancelled.
6. That if the operation of the impugned Notification No.SOH-1(HD)3-5/2020 dated 03.03.2021 not suspended then the appellant would suffer irreparable loss.
7. That any other ground will any will be raised at the time of arguments with the prior permission of this Hon'ble Court.

It is, therefore, most humbly prayed that by accepting this application, the interim relief as prayed for in the instant application may kindly be passed in favour of the appellant against the respondents



Appellant

Through:

Dated: 23.09.2021



TARIQ ALTAF

Advocate, High Court,
At District Courts Kohat

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BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA PESHAWAR

CM No. _____/2021

In Re:

Service Appeal No _____/2021

Dr Tahir Saeed.....Appellant

VERSUS

Govt of KPK & others Respondents

AFFIDAVIT

I, Dr Tahir Saeed S/o Ghulam Sardar, District Surgeon, THQ Hospital, Banda Daud Shah Karak, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Khalid Mahmood
23-9-21

DEPONENT
Khalid Mahmood
Oath Commissioner
Peshawar High Court

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BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA PESHAWAR

CM No. _____/2021

In Re:

Service Appeal No _____/2021

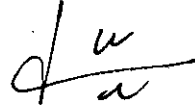
Dr Tahir Saeed.....Appellant
V E R S U S
Govt of KPK & others Respondents

APPLICATION FOR CONDONATION OF
DELAY IN FILING THE INSTANT SERVICE
APPEAL

Respectfully Sheweth:

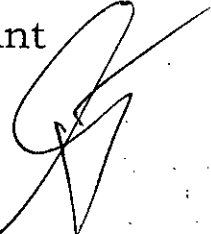
1. That the captioned appeal is filed before this Honourable Court, in which no date of hearing has yet to be fixed.
2. That the grounds of the accompanying appeal may be read as integral part of this appeal.
3. That the delay, if any, in filing of instant appeal, is neither intentional nor deliberate but due to the reason that the Departmental Appeal was filed before the respondents.
4. That valuable rights of the appellant are involved, the same would be defeated, if the delay in filing of the petition is not condoned.
5. That even otherwise law tilts in favour of adjudication on merit rather than on technicalities.

It is, therefore, most humbly prayed that on acceptance of this application, the delay, if any, in filing the above titled appeal may kindly be condoned in the interest of justice.



Appellant

Through:



Dated: 23.09.2021

TARIQ ALTAF
Advocate, High Court,
At District Courts Kohat

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BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA PESHAWAR

CM No. _____/2021

In Re:

Service Appeal No _____/2021

Dr Tahir SaeedAppellant

V E R S U S

Govt of KPK & others Respondents

AFFIDAVIT

I, Dr Tahir Saeed S/o Ghulam Sardar, District Surgeon, THQ Hospital, Banda Daud Shah Karak, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Khalid Mahmood
23-9-21
[Signature]
Khalid Mahmood
Oath Commissioner
Peshawar High Court

DEPONENT



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GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Annex-B

Dated Pesh: the 30th May 2018

NOTIFICATION

No SOH-I/HD/7-53/2018

Consequent upon their appointment as Distt: Specialists (BS-18) through Public Service Commission, Khyber Pakhtunkhwa vide this department's Notifications of even No. dated 8th January 2018, 13th Feb: 2018, 19th Feb: 2018 and 15th May 2018, the competent authority is pleased to post the following Distt: Specialist (BS-18) in the hospitals noted against their names with immediate effect:-

S.No.	Name	Posting	Posted at
District Specialist Gynaecology (BS-18)			
1	Dr. Sadia Dilawar D/O Dilawar Khan	Distt. Specialist adhoc DHQH Haripur	DHQH Haripur.
2	Dr. Nazia Suleman D/O Muhammad Suleman	Fresh	Type 'D' Hospital Boi Abbottabad
3	Dr. Shazia Tabassum D/O Rosnan Khattak	WMO, HMC	Type D Hospital Lachi Kohat
4	Dr. Farhana Hussain D/O Hussain Ahmad	MO DHQH Timergara Dir Lower	Category D Hospital Wari Dir Lower
District Specialist Surgery (BS-18)			
1	Dr. Tahir Saeed S/O Ghulam Sardar	MO THQH Karak	THQH Banda Daud Shah Karak
2	Dr. Maryam Alam Khan D/O Muhammad Alam Khan	MO Naseer Ullah Babar Memorial Hospital Peshawar	RHC Jamal Abad Charsadda
District Specialist Anaesthesia BS-18			
1	Dr. Jawad Khan S/O Muhammad Rafiq	MO HMC Peshawar	Category 'C' Hospital Shabqadar Charsadda
Distt: Specialist Pathology (BS-18)			
1	Dr. Saima Nadeem D/O Sheryar Nadeem	Demonstrator KMC	THQH Chakdara Dir Lower
2	Dr. Muhammad Tanq Humayun S/O Faqar Muhammad Khan	Fresh	DHQH Upper Dir
Distt: Specialist Paeds (BS-18)			
1	Dr. Muhammad Athar Khalily S/O Khalil ur Rehman	MO LRH Peshawar	Type 'D' Hospital Garhi Habibullah Mansehra
2	Dr. Zia ur Rehman S/O Aziz ur Rehman	Fresh	THQH Takhtbai Mardan
Distt: Specialist Cardiology (BS-18)			
1	Dr. Ibrahim Gul S/O Kabal Khan	Fresh	DHQH Upper Dir
Distt: Specialist Gastroenterology (BS-18)			
1	Dr. Saad S/O Suleman Khan	AP LRH Peshawar	DHQH Haripur
2	Dr. Nadeem Jan S/O Khan Afzal	Assistant Professor Gastroenterology	DHQH Swabi
3	Dr. Mubeen ul Haq S/O Muhammad Jehangir Khan	MO DHQH Dir Khan	DHQH Karak

ATTESTED

**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

Dated Pesh: the 30th May 2018

NOTIFICATION

No. SOH-I/HD/7-53/2018: Consequent upon their appointment as Distt: Specialists (BS-18) through Public Service Commission, Khyber Pakhtunkhwa vide this department's notification of even No. dated 8th January 2018, 13th Feb: 2018, 19th Feb 2018 and 15th May 2018, the competent authority is pleased to post the following Distt: Specialist (BS-18) in the hospitals noted against their names with immediate effect:-

S NO	Name of Doctor	Present Place of Posting	Posted at
District Specialist Gynecology (BS-18)			
1	Dr Sadia Dilawar D/o Dilawar Khan	Distt: Specialist adhoc DHQH Haripur	DHQH Haripur
2	Dr Nazia Suleman D/o Muhammad Suleman	Fresh	Type "D" Hospital Boi Abbottabad
3	Dr Shazia Tabassum D/o Roshan Khattak	WMO, HMC	Type D Hospital Lachi Kohat
4	Dr Farhana Hussain S/o Hussain Ahmad	MO DHQH Timergara Dir Lower	Category D Hospital Wari Dir Lower
District Specialist Surgery (BS-18)			
1	Dr Tahir Saeed S/o Ghulam Sardar	MO THQH Karak	THQH Banda Daud Shah Karak
2	Dr Maryam Alam Khan D/o Muhammad Alam Khan	MO Naseer Ullah Babar Memorial Hospital, Peshawar	RHC Jamal Abad Charsadda
District Specialist Anaesthesia BS-18			
1	Dr Jawad Khan S/o Muhammad Rafiq	MO HMC, Peshawar Category "C" Hospital Shabqadar Charsadda	
District Specialist Pathology BS-18			
1	Saima Nadeem D/o Sheryar Nadeem	Demonstrator KMC	THQH Chakdara Dir Lower
2	Dr Muhammad Tariq Humayun S/o Muhammad Khan	Fresh	DHQH Upper Dir
Distt Specialist Paeds BS-18			
1	Dr Muhammad Athar Khalily S/o Khalil ur Rehman	MO LRG Peshawar	Type "D" Hospital Garhi Habibullah Mansehra
2	Dr Zia ur Rehman S/o Aziz ur Rehman	Fresh	THQH Takhtbhai Mardan
Distt Specialist Cardiology BS-18			
1	Dr Ibrahim Gul S/o Kabal Khan	Fresh	DHQH Upper Dir
Distt: Specialist Gastroenterology			
1	Dr Dilaram S/o Suleman Khan	AP LRH Peshawar	DHQH Haripur
2	Dr Naeem Jan S/o Khan Afal	Assistant Professor Gastroenterology	DHQH SWabi
3	Dr Moeen ul HAq S/o Muhammad Jehangir Khan	MO DHQTH D I Khan	DHQH Karak

ATTESTED

2. The above mentioned appointees are directed to assume their duty within 30 days after issuance of this notification failing which their appointment shall be treated as cancelled.

SECRETARY HEALTH

Endst No and date even

C.C

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Hospital/Medical Director MTI concerned.
3. DHOs concerned.
4. Medical Supdt; DHQs/THQs concerned.
5. Medical Supdt; Naseerullah Khan Babar Memorial Hospital Peshawar.
6. Distt: Accounts Officer concerned.
7. Doctor concerned.
8. Personal file of the doctors concerned.


(Tasleem Khan)
Section Officer-I


ATTESTED

21

GOVT. OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

STAFF ID CARD

Name: Dr Tahir Saeed
Father's Name: Ghulam Sardar
Designation: District Surgeon



THQ HOSPITAL B.D SHAH KARAK Authority:

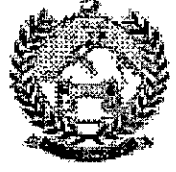
[Signature]
ATTESTED

C.N.I.C Number 14203-2044719-5
D.O.B 17-08-1982
Blood Group: A+ve
Contact No: 0315-9816181
Home Address: Street 09, House # A-65,
Sikandar Town Peshawar

Note:- For Information/Verification, Please Contact THQ Hospital MD Shah Karak Peshawar. For E.O. 2011/11

Dist. Govt. KP-Provincial
District Accounts Office Karak
Monthly Salary Statement (December-2020)

(22)



Personal Information of Mr TAHIR SAEED d/w/s of GHULAM SARDAR

Personnel Number: 00696319 CNIC: 1420320447195 NTN:
 Date of Birth: 17.08.1982 Entry into Govt. Service: 04.09.2012 Length of Service: 08 Years 03 Months 029 Days

Employment Category: Active Permanent

Designation: DISTRICT SPECIALIST SURGI 80814219-DISTRICT GOVERNMENT KHYBE

DDO Code: KK6910-MS THQ BD SHAH

Payroll Section: 001 GPF Section: 001 Cash Center:

GPF A/C No: 696319 Interest Applied: Yes **GPF Balance:** 209,805.00

Vendor Number: -

Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 18 Pay Stage: 6

Wage type		Amount	Wage type		Amount
0001	Basic Pay	55,570.00	1000	House Rent Allowance	5,810.00
1210	Convey Allowance 2005	5,000.00	1538	Non - Practicing Allowanc	3,000.00
1974	Medical Allowance 2011	1,847.00	1985	Health Professional Allow	100,000.00
2148	15% Adhoc Relief All-2013	307.00	2199	Adhoc Relief Allow @10%	186.00
2211	Adhoc Relief All 2016 10%	3,316.00	2224	Adhoc Relief All 2017 10%	5,557.00
2247	Adhoc Relief All 2018 10%	5,557.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3018	GPF Subscription	-5,360.00	3501	Benevolent Fund	-800.00
3609	Income Tax	-12,923.00	4004	R. Benefits & Death Comp:	-1,350.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 152,486.85 Recovered till DEC-2020: 74,953.00 Exempted: 0.61- Recoverable: 77,534.46

Gross Pay (Rs.): 186,150.00 Deductions: (Rs.): -20,433.00 Net Pay: (Rs.): 165,717.00

Payee Name: TAHIR SAEED

Account Number: 0010008491670014

Bank Details: ALLIED BANK LIMITED, 250321 University Town Jamrud Rd.Peshawar University Town Jamrud Rd.Pesh,
 Peshawar

Leaves: Opening Balance: Availed: Earned: Balance:

Permanent Address:

City: KARAK

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: drtahirsaeed82@gmail.com


ATTESTED

23

Annex C

PAKISTAN National Identity Card
ISLAMIC REPUBLIC OF PAKISTAN

Name: **Sidra Baig**

Father Name: **Abdul Ghafoor Baig**

Gender / Country of Stay: **Pakistan**

Identity Number: **17301-4431560-8** Date of Birth: **28.08.1986**

Date of Issue: **11.07.2017** Date of Expiry: **11.07.2027**

Holder's Signature: *Sidra*

ATTESTED

17301-4431560-8

461A

101601118251

135-86-651167

Registrar General of Pakistan

گمشدہ کارڈ ملنے پر قریبی لیڈ بکس میں ڈال دیں

25

OFFICE OF THE DISTRICT HEALTH OFFICER KARAK

OFFICE ORDER

Reference to the Govt: of Khyber Pakhtunkhwa, Health Department Notification No. SO (E) H-II/4-1/2018/AS/A dated Peshawar the 23rd January, 2018 regarding the transfer of Dr. Sidra Baig Women Medical Officer & on arrival to this office on 30/01/2018, Dr. Sidra Baig Women Medical Officer (BS-17) is hereby adjusted at THQ Hospital Banda Daud Shah Karak against the vacant post of Medical Officer (BS-17) in the interest of public service.

H
DISTRICT HEALTH OFFICER
KARAK

No. 781-84 /Estb:

Dated 13/02/2018.

Copy forwarded to:-

1. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar for information please.
2. The District Accounts Officer Karak for information.
3. The PMO I/C THQ Hospital Banda Daud Shah Karak for information.
4. Dr. Sidra baig Women Medical Officer for information & compliance of the order.

MW
DISTRICT HEALTH OFFICER
KARAK *11*

6
ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar, the 3rd March, 2021

NOTIFICATION

SOH-I/HD/3-5/2020 The Competent Authority is pleased to order posting/transfer of the following doctors, in the best public interest, with immediate effect:-

S. #	NAME & DESIGNATION OF DOCTOR	FROM	TO	Remarks
1.	Dr. Rizwan Ahmad Chief District Surgeon (BS-20) DHQ Hospital Karak	DHQ Hospital Karak	DHQ Hospital Kohat as Chief District Surgeon	Against the vacant post
2.	Dr. Jamil Anwar Senior District Surgeon (BS-19) DHQ Karak	DHQ Hospital Karak	City Hospital Lakki Marwat as Senior District Specialist	Against the vacant post
3.	Dr. Tahir Saeed District Surgeon (BS-18) THQ Hospital Banda Daud Shah	THQ Hospital Banda Daud Shah	THQ Hospital, Lakki Marwat as District Surgeon	Against the vacant post
4.	Dr. Ijaz Ahmad District Specialist Surgry (BS-18) at Cat "C" Hospital Karak	Cat "C" Hospital Karak	DHQ Hospital Chitral	Against the vacant post
5.	Dr. Muhammad Nisar Chief District Surgeon (BS-20) DHQ Hospital Kohat	DHQ Hospital Kohat	DHQ Hospital karak as Chief District Specialist (BS-20)	Against the place of Dr. Rizwan
6.	Dr. Abdul Waheed Jan Senior District Specialist (BS-19) City Hospital Lakki Marwat	City Hospital Lakki Marwat	DHQ Hospital, Karak	Against the place of Dr. Jamil Anwar
7.	Dr. Arshad Aziz District Surgeon (BS-18) THQ Hospital Lakki Marwat	THQ Hospital Lakki Marwat	THQ Hospital, Banda Daud Shah	Against the place of Dr. Tahir Saeed

-SD-

Secretary to Govt. of Khyber Pakhtunkhwa
Health Department

Endst: of even No. & date:-

Copy forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa.
2. The Director General Health Services Khyber Pakhtunkhwa.
3. The Medical Superintendent/Incharge DHQ Hospital, Kohat, Karak, Banda Daud Shah & Lakki Marwat.
4. District Account Officer, Kohat, Karak, Lakki Marwat.
5. The Medical Superintendent City Hospital, Peshawar.
6. Deputy Director IT, with the request to upload the instant Notification in the official website of Health Department Govt of Khyber Pakhtunkhwa.
7. PS to the Secretary Health Govt. of Khyber Pakhtunkhwa.
8. PA to the Deputy Secretary (E) Health Department.
9. Doctors Concerned.
10. Master file.

Section Officer (E-I) 03/03/2021

ATTESTED

27

To
The Secretary Health
Khyber Pakhtunkhwa

Subject: Appeal against the Transfer
Respected Sir

With reference to Health Department Notification No. SOR II (E&AD) I-I-65 (Vol II), dated 15-02-2003 and dated 9 March, 2021, I take the opportunity to submit the following:

1) That I have been serving health department since 25 January 2011. Pursuant to the above cited Notification I was working as District Surgeon (BPS 18) at THQ Hospital Banda Daud Shah, Karak with full devotion, dedication with locals putting lot of faith in me for uplift of the THQ

2) Despite performing satisfactorily, having nothing adverse against me or any misconduct, my services have been transferred to THQ Laki, Mardan. Although lawful but for me the displacement would have detrimental effect on my personal as my family life

3) My wife is also a woman Medical Officer at THQ, Banda Daud Shah and her life has increased enormously due to the spouse-ship. The hospital being a peripheral and backward area, the instant transfer will certainly deprive and devoid us from the wife and mental peace

4) As per the Khyber Pakhtunkhwa (Appointment, Deputation, Posting and Transfer of Teachers, lecturers, Instructors and Doctors) Regulatory Act, 2011 kind attention is invited to the section IX of the Notification No. SOR II (E&AD) I-I-65 (Vol II), dated 15-02-2003 regarding posting of spouse having same station of duty

In light of the above, your good-self is requested to review the order and my services may be retained at THQ Hospital Banda Daud Shah under the spouse working policy, so that I may be able to work with the same zeal and enthusiasm.

[Handwritten Signature]

Dr Tahir Saeed
District Surgeon (BPS 18)
THQ Hospital
Banda Daud Shah Karak.

[Handwritten: SSH-2011 / DS EST]

[Handwritten: 11/3/21]

ATTESTED

Amir E

To,

The Secretary Health
Khyber Pakhtunkhwa

Subject: APPEAL AGAINST THE TRANSFER

Respected Sir,

With reference to Health Department Notification No SOH-I/HD/3-5/2020 Dated Peshawar the 3rd March, 2021, I take the opportunity to submit the following lines with regards to the transfer.

1) That I have been serving Health department since 23rd January 2013. Prior to issuance of the above said Notification, I was working as District Surgeon (BPS-18) at THQ Hospital Banda Daud Shah, Karak with full devotion, dedication with locals putting lot of faith in my services and struggles for uplift of the THQ.

2) Despite performing satisfactory, having nothing adverse against me and not being guilty of any misconduct, my services have been transferred to THQ Lakki Marwat astonishingly which is although lawful but for me the displacement would have detrimental effect on my performance as well as my family life.

3) My wife is also a woman Medial Officer at THQ, Banda Daud Shah and our efficiency has increased enormously due to the spouse-ship. The Hospital being peripheral and situated in a remote backward area, the instant transfer will certainly deprive and devoid us from the sense of security and mental peace.

4) As per the Khyber Pakhtunkhwa (Appointment, deputation, Posting and Transfer of Teachers, Lecturers, Instructors and Doctors) Regulatory Act 2011..... Moreover, your kind attention is invited to the section IX of the Notification No SOR-II(E&AD)1-1/85 (Vol-II) dated 15.02.2003 regarding posting of spouse having same station of duty.

In light of the above, your good-self is requested to review the order and my services may be retained at THQ Hospital Banda Daud Shah under the spouse working policy so that I may be able to work with the same zeal and enthusiasm.

**Dr Tahir Saeed
District Surgeon (BPS-18)
THQ Hospital
Banda Daud Shah, Karak**

[Signature]
ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

SOH/HD/3-5/2020
Dated Peshawar 11th August, 2021

28
[Handwritten signature]

To

Dr. Tahir Ahmad
District Surgeon (BS-18)
THQ Hospital Banda Daud Shah

SUBJECT: EXPLANATION FOR NON-IMPLEMENTATION OF POSTING /
TRANSFER NOTIFICATION NO. SOH/HD/3-5/2020 DATED
3rd MARCH, 2021.

I am directed to refer to the subject noted above and say that you were transfer from THQ Hospital Banda Daud Shah to THQ Hospital Lakki Marwat as District Surgeon (BS-18) vide this department Notification with the approval of the Competent Authority (Chief Minister Khyber Pakhtunkhwa) under administrative grounds. However you are blatantly failed to obey the said lawful orders remained same place of posting

The above omission and commission of in subordination on your part constitutes the act of misconduct and the terms of the Khyber Pakhtunkhwa Civil Servants (E&D) 2011

You are once again directed to immediately relinquish your charge and move to the new station. You are further directed as to why disciplinary proceedings may not be initiated against you under the rules (bid

[Handwritten signature]
ATTESTED

[Handwritten signature]
Section Officer E-I

Ednst. No and date even

Copy forwarded to the

- 1 Director General Health Services, Khyber Pakhtunkhwa, Peshawar
- 2 MS, THQ Hospital Banda Daud Shah District Karak.
- 3 MS THQ Hospital Lakki Marwat.
- 4 District Accounts Officer Banda Daud Shah District Karak / Lakki Marwat
- 5 PS to the Secretary Health Khyber Pakhtunkhwa Peshawar Peshawar
- 6 PS to the Special Secretary (E&A) Govt of Khyber Pakhtunkhwa Health Department
7. PA to Deputy Secretary (Estab). Health Department, Peshawar
8. Master file

[Handwritten signature]
Section Officer E-I

BETTER COPY 28

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

SOH-I/HD/3-5/2020

Dated Pesh: the 11th August 2021

Amex F

To,

Dr Tahir Saeed
District Surgeon (BS-18)
THQ Hospital Banda Daud Shah

Subject: EXPLANATION FOR NON-IMPLEMENTATION OF POSTING TRANSFER NOTIFICATION NO. SOH-I/HD/3-5/2020 DATED 3RD MARCH, 2021.

I am directed to refer to the subject noted above and say that you were transfer from THQ Hospital Banda Daud Shah to THQ Hospital Lakki Marwat as District Surgeon (BS-18) vide this department Notification with the approval of the Competent Authority (Chief Minister, Khyber Pakhtunkhwa) under administrative grounds. However you are blatantly failed to obey the said lawful orders remained same place of posting.

The above omission and commission of in subordination on your part constitutes the act of misconduct and the terms of the Khyber Pakhtunkhwa Civil Servants (E&D), 2011.

You are once again directed to immediately relinquish your charge and move to the new station. You are further directed as to why disciplinary proceedings may not be initiated against you under the rules ibid.

Section Officer E-I


ATTESTED

Endst No and Date even

Copy forwarded to the:-

1. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
2. MS, THQ Hospiatal Banda Daud Shah District Karak
3. MS THQ Hospital LAKki Marwat
4. District Accounts Officer, Banda Daud Shah District Karak / Lakki Marwat.
5. PS to the Secretary Health Khyber Pakhtunkhwa Peshawar, Peshawar.
6. PS to the Special Secretary (E&A) Govt of Khyber Pakhtunkhwa Health Department.
7. PA to Deputy Secretary (Estab), Health Department, Peshawar.
8. Master file.

Section Officer E-I

(29)

Annex-G

IN THE
HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL
PESHAWAR

Appeal No. _____/2021

Dr. Ejaz Ahmed District Surgeon Cat "C" Hospital, Karak.
..... Appellant

Versus

1. The Government of Khyber Pakhtunkhwa,
Through Chief Secretary to the Government of Khyber Pakhtunkhwa,
Peshawar.
2. The Health Department, Government of Khyber Pakhtunkhwa,
through Secretary to the Government of Khyber Pakhtunkhwa, Health
Department, Civil Secretariat Peshawar.
3. Director General,
Health Services, Health Department, Government of Khyber Pakhtunkhwa.
..... Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 READ WITH ALL OTHERS LAW ENABLING
JURISDICTION OF THIS HONORABLE TRIBUNAL UNDER ARTICLE 212
OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN,
1973, TO WITHDRAW THE TRANSFER ORDERS OF THE APPELLANT
DATED 03-03-2021 AND HE BE ALLOWED TO CONTINUE HIS
SERVICES AS THE DISTRICT SURGEON AT THE CAT "C" HOSPITAL
ALONGSIDE HIS SPOUSE.

RESPECTFULLY SUBMITTED:

The Appellant most earnestly request to submit as under:

BRIEF FACTS:

1. That the Petitioner joined the Health Department of Khyber Pakhtunkhwa Government in the year 2003 as Medical Officer (BS-17) after proper competitive selection process. Subsequently the petitioner was appointed as District Specialist Surgery (BS-18) on the recommendations of the then NWFP Public Service Commission. The recent most posting of the Petitioner was as District Surgeon at Cat "C" hospital Karak.
Copy of the Initial Appointment Orders are Annex-A.
Copy of the Orders as DSS (BS-18) are Annex-A/1.
Copy of the orders as SMO (BS-18) are Annex-A/2.
2. That the appellant has been performing his duties quite diligently and with utmost dedication since his initial appointment.

That the appellant attained his MBBS degree in the year 1996, and got qualification of FCPS surgery in the year 2002.

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ATTESTED

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BETTER COPY

IN THE
HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL
PESHAWAR

Appeal No. _____/2021

Dr. Ejaz Ahmed District Surgeon Cat "C" Hospital, Karak.
.....Appellant

Versus

1. The Government of Khyber Pakhtunkhwa,
Through Chief Secretary to the Government of Khyber Pakhtunkhwa,
Peshawar.
2. The Health Department, Government of Khyber Pakhtunkhwa,
through Secretary to the Government of Khyber Pakhtunkhwa, Health
Department, Civil Secretariat, Peshawar.
3. Director General,
Health Services, Health Department, Government of Khyber Pakhtunkhwa.
.....Respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 READ WITH ALL OTHERS LAW
ENABLING JURISDICTION OF THIS HONORABLE TRIBUNAL UNDER
ARTICLE 212 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF
PAKISTAN, 1973, TO WITHDRAW THE TRANSFER ORDERS OF THE
APPELLANT DATED 03-03-2021 AND HE BE ALLOWED TO
CONTINUE HIS SERVICES AS THE DISTRICT SURGEON AT THE CAT
"C" HOSPITAL ALONGSIDE HIS SPOUSE.**

RESPECTFULLY SUBMITTED:

The Appellant most earnestly request to submit as under:

ATTESTED

BRIEF FACTS:

1. That the Petitioner joined the Health Department of Khyber Pakhtunkhwa Government in the year 2003 as Medical Officer (BS-17) after proper competitive selection process. Subsequently the petitioner was appointed as District Specialist Surgery (BS-18) on the recommendations of the then NWFP Public Service Commission. The recent most posting of the Petitioner was as District Surgeon at Cat "C" hospital Karak.
Copy of the Initial Appointment Orders are Annex-A.
Copy of the Orders as DSS (BS-18) are Annex-A/1.
Copy of the Orders as SMO (BS-18) are Annex-A/2.
2. That the appellant has been performing his duties quite diligently and with utmost dedication since his initial appointment.
3. That the appellant attained his MBBS degree in the year 1996, and got qualification of FCPS surgery in the year 2002

ATTESTED

that the qualifications supra are duly registered with the Pakistan Medical & Dental Council (now Pakistan Medical Commission).

- 4. That the appellant's spouse namely Dr. Tahira Rehman, is also a qualified surgeon and is working as District Gynaecologist at Fat "C" City Hospital Kunal. The appellant and his spouse namely Dr. Tahira Rehman have been stationed at the same hospital for almost two years.

Copy of appointment of Dr. Tahira is Annex A/1

- 5. That based on a complaint against the petitioner, an inquiry committee was constituted by the Director General Health Services vide Letter No. SOE-1/HD/3-5/2018 dated 21-05-2019. The committee was headed by the Additional DG Health Services. The inquiry committee however recommended that a specialist needs to be added in the panel therefore another inquiry be conducted on the subject. It is with reverence stated that the said inquiry report or the constitution of the inquiry documents have not been provided to the petitioner.

- 6. That in the light of aforementioned an inquiry committee was constituted vide Notification No. SOE-1/(HD)3-59/Vol-I dated 15-10-2019. The said inquiry committee comprised of four members headed by the Director DHIS, Health Directorate. The petitioner joined the inquiry proceedings, which were held at the Hayatabad Medical Complex. The said inquiry committee issued its inquiry report (hereinafter first inquiry report) recommended issuance of censure/warning with the direction to improve his communication skills and documenting records wherever necessary. It is pertinent to mention herein that the petitioner is only in possession of the signed inquiry report, without any annexures/enclosures, which are in possession of the respondents and are not handed over to the petitioner, despite repeated requests. It is also important to state that the said inquiry report also wasn't shared with the petitioner officially.

Copy of the first inquiry report is Annex-B.

- 7. That in the scheme of things provided under the Civil Servants Employees Disciplinary and Efficiency Rules, 2011, the petitioner should have been issued a censure and the matter closed. However, that wasn't to be, as the Health Department constituted yet another inquiry headed by the Commissioner Bannu Division and having one other member vide Notification No. SOE-1/HD/1-45/2019 dated 01-07-2020. This committee also issued their inquiry report (hereinafter de-novo inquiry). The de-novo inquiry report in total negation of the first inquiry report whereby only warning/censure was recommended.

Copy of the de-novo inquiry committee is Annex-C.

- 8. That the de-novo inquiry in violation of all the norms of justice and fair-play issued the said report. The report amongst many other things adopted a new and novel method of punishment in form of transfer of the petitioner. It also recommended the infliction of minor punishment on the petitioner for "oversight/lapse". Clearly establishing that the petitioner did no such thing which warrants any imposition of penalty.

- 9. That the de-novo inquiry in violation of all the norms of justice and fair-play issued the said report. The report amongst many other things adopted a new and novel method of punishment in form of transfer of the


ATTESTED


ATTESTED

that the qualifications (sic) duly registered with the Pakistan Medical & Dental Council (now Pakistan Medical Commission).

4. That the appellant's spouse namely Dr. Tahira Rehman is also a qualified surgeon and is working as District Gynecologist at Cat "C" City Hospital Karak. The appellant and his spouse namely Dr. Tahira Rehman have been stationed at the same hospital for almost two years.
Copy of appointment of Dr. Tahira is Annex "A/3"

5. That based on a complaint against the petitioner, an inquiry committee was constituted by the Director General Health Services vide Letter No.SOH-I/HD/3-5/2018 dated 23-05-2019. The committee was headed by the Additional DG Health Services. The inquiry committee however recommended that a specialist needs to be added in the panel therefore another inquiry be conducted on the subject. It is with reverence stated that the said inquiry report or the constitution of the inquiry documents have not been provided to the petitioner.

6. That in the light of aforementioned an inquiry committee was constituted vide Notification No.SOH-I/(HD)/3-59/Vol-I dated 15-10-2019. The said inquiry committee comprised of four members headed by the Director DHIS, Health Directorate. The petitioner joined the inquiry proceedings, which were held at the Hayatabad Medical Complex. The said inquiry committee issued its inquiry report (hereinafter first inquiry report) recommended issuance of censure/warning with the direction to improve his communication skills and documenting records wherever necessary. It is pertinent to mention herein that the petitioner is only in possession of the signed inquiry report, without any annexures/enclosures, which are in possession of the respondents and are not handed over to the petitioner, despite repeated requests. It is also important to state that the said inquiry report also wasn't shared with the petitioner officially.

Copy of the first inquiry report is Annex-B.

7. That in the scheme of things provided under the Civil Servants Employees Disciplinary and Efficiency Rules, 2011, the petitioner should have been issued a censure and the matter closed. However, that wasn't to be as the Health Department constituted yet another inquiry headed by the Commissioner Bannu Division and having one other member vide Notification No.SOE-1/DH/1-45/2019 dated 01-07-2020. This committee also issued their inquiry report (hereinafter de-novo inquiry). The de-novo inquiry report in total negation of the first inquiry report whereby only warning/censure was recommended.

Copy of the de-novo inquiry committee is Annex-C.

8. That the de-novo inquiry in violation of all the norms of justice and fair-play issued the said report. The report amongst many other things adopted a new and novel method of punishment in form of transfer of the petitioner. It also recommended the infliction of minor punishment on the petitioner for "oversight/lapse". Clearly establishing that the petitioner did no such thing which warrants any imposition of penalty.
9. That the de-novo inquiry in violation of all the norms of justice and fair-play issued the said report. The report amongst many other things adopted a new and novel method of punishment in form of transfer of the

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petitioner for "oversight/lapse". Clearly establishing that the petitioner did no such thing which warrants any imposition of penalty. The appellant was transferred vide transfer order dated 03-03-2021 to District Chitral.

Copy of the transfer order is Annexure-D

- 10. That the law recognizes no punishment in form of a transfer, which is what, has been done with the appellant.
- 11. That the fact of the matter is that the appellant did no wrong, and he is still being made to suffer that also through the novel mode of transfer. As transfer cannot be inflicted as a punishment. And when there is a spouse in government service of the same government and same district, then it is the responsibility of the Government to ensure that the spouses stay at the same station, if not the same station at least the same district, provided there is a vacancy. The travesty of justice in the instant case is that the post of the appellant from which he has been transferred is left to be vacant. How can the same be allowed to be kept vacant to the detriment of the appellant is something which the appellant isn't privy to. However, it is worth mentioning that it is the bounden duty of the Government functionaries to act in accordance with the law and ensure that no violation of the law takes place. The violation of the spouse policy clearly is illegal.
- 12. That the posting to Chitral is clearly unprecedented as the appellant is made to be work away from his spouse.
- 13. That the leaving of the posting at Cat "C" Hospital vacant through the transfer of the appellant is in itself against public interest for the people of Karak.
- 14. That the principles of natural justice and that of the law, rules and policy dictates and require that the appellant be allowed to work as the District Surgeon at Cat "C" Hospital, Karak, where his spouse is also currently performing her duties all diligently and with dedication.
- 15. That in respect of the illegality committed by the transfer orders of the appellant dated 03-03-2021, the appellant had moved a representation, but to no avail. He moved further applications/ representation however to no avail. Subsequently due to the dysfunctionality of the Honorable Tribunal, the Honorable Peshawar High Court Bannu Bench was approached, alongwith transfer for matters pertaining to an illegal, unlawful and without jurisdiction inquiry. The Honorable Bench was pleased to suspend all the disciplinary proceedings against the appellant. That the appellant case was subsequently fixed two times but on both occasions, the case was de-listed due to Covid-19 Pandemic. The appellant shall when the bench resumes working at Bannu, withdraw the petition to the extent of prayer for transfer. However the Appellant in respect of the transfer approach this honorable tribunal for indulgence of this tribunal amongst others on the following grounds:

Copy of the relevant documents in respect of the High Court and representation are Annex-E


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petitioner for "oversight/lapse". Clearly establishing that the petitioner did no such thin which warrants any imposition of penalty. The appellant was transferred vide transfer order dated 03-03-2021 to District Chitral.

- 10. That the law recognizes no punishment in form of a transfer, which is what, has been done with the appellant.
- 11. That the fact of the matter is that the appellant did no wrong, and he is still being made to suffer that also through the novel mode of transfer. As transfer cannot be inflicted as a punishment. And when there is a spouse in government service of the same government and same district, then it is the responsibility of the Government to ensure that the spouses stay at the same station, if not the same station at least the same district, provided there is a vacancy. The travesty of justice in the instant case is that the post of the appellant form which he has been transferred is left to be vacant. How can the same be allowed to be kept vacant to the detriment of the appellant something which the appellant isn't privy to. However, it is worth mentioning that it is the bounden duty of the Government functionaries to act in accordance with the law and ensure that no violation of the law takes place. The violation of the spouse policy clearly is illegal.
- 12. That the posting to Chitral is clearly unprecedented as the appellant is made to be work away from his spouse.
- 13. That the leaving of the posting at Cat "C" Hospital vacant through the transfer of the appellant is in itself against public interest for the people of Karak.
- 14. That the principles of natural justice and that of the law, rules and policy dictates and require that the appellant be allowed to work as the District Surgeon at Cat "C" Hospital, Karak where his spouse is also currently performing her duties all diligently and with dedication.
- 15. That in respect of the illegality committed by the transfer orders of the appellant dated 03-03-202, the appellant had moved a representation, but to no avail. He moved further application/representation however to no avail. Subsequently due to the dysfunctional-ness of the Honorable Tribunal, the Honorable Peshawar High Court Bannu Bench was approached alongwith transfer for matters pertaining to an illegal, unlawful and without jurisdiction inquiry. The Honorable Bench was pleased to suspend all the disciplinary proceedings against the appellant. That the appellant case was subsequently fixed two times but on both occasions, the case was de-listed due to Covid-19 Pandemic. The appellant shall when the bench resumes working at Bannu, withdraw the petition to the extent of prayer for transfer. However the Appellant in respect of the transfer approach this honorable tribunal for indulgence of this tribunal amongst others on the following grounds:

Copy of the relevant documents in respect of the High Court and representation are annex-E

[Signature]
ATTESTED

[Signature]
ATTESTED

GROUND:

- a. Because the Appellant is an aggrieved person within the meaning of Article 212 of the constitution of the Islamic Republic of Pakistan 1973.
- b. Because the Fundamental Rights of the Appellant have been violated in relation to Article 4, 8, 9, 10 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973. The said rights flow out of the terms and conditions of service of the appellant and this Honorable tribunal being the custodian of the Rights of Civil Servants as enshrined in the Civil Servants Act, the rules made thereunder as well as the protection afforded by the Constitution of Islamic Republic of Pakistan, 1973, is why the Appellant seeks the redress of their grievances and to bring to an end the ordeal the Appellant is going through due to the illegal, unlawful and unjust acts and inaction of the Respondents.
- c. Because the violation of the spouse policy also goes in straight conflict with judgments of the superior courts reported in:
 - 2011 PLC (cs) 592 Lahore.
 - 2003 PLC (cs) 1322 Lahore
 - 2015 PLC (cs) 1215 Balochistan Service Tribunal
 - 2014 PLC (cs) 1032 Karachi High Court Sindh
 - 2004 PLC (cs) 622 Lahore High Court
- d. Because the law doesn't recognize transfer as a punishment. This is a concept alien to the Civil Servants Act 1974, the rules made thereunder. Therefore transferring petitioner as a punishment is illegal.
- e. Because the Appellant has been discriminated under the law. The said deviation and negation is unwarranted and not recognized by the law.
- f. Because the Rights of the Appellant are secured under Article 8, and the entirety of Part II of the Constitution of the Islamic Republic of Pakistan, and its redress falls solely within the ambit of Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973.
- g. Because the Appellant have not been treated in accordance with law, and their right secured and guaranteed under Law and Constitution have been violated.
- h. Because the Appellant has suffered for no fault of their own and the entire premise of the case is based on the illegality of the respondents to the complete detriment of the Appellants.


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GROUND:

- a. Because the Appellant is an aggrieved person within the meaning of Article 212 of the constitution of Islamic Republic of Pakistan, 1973.
- b. Because the Fundamental Rights of the Appellant have been violated in relation to Article 4, 8, 9, 18 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. The said rights flow out of the terms and conditions of service of the appellant and this Honorable tribunal being the custodian of the rights of Civil Servants as enshrined in the Civil Servants Act, the rules made thereunder as well as the protection afforded by the Constitution of Islamic Republic of Pakistan, 1973, is why the Appellant seeks the redress of their grievances and to bring to an end the ordeal the Appellant is going through due to the illegal, unlawful and unjust acts and inaction of the Respondents.
- c. Because the violation of the spouse policy also goes in straight conflict with judgments of the superior courts reported in:

2011 PLC (cs) 592 Lahore

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2014 PLC (cs) 1032 Karachi High Court Sindh

2004 PLC (cs) 622 Lahore High Court


ATTESTED

- d. Because the law doesn't recognize transfer as a punishment. This is a concept alien to the Civil Servants Act 1974, the rules made thereunder. Therefore transferring petitioner as a punishment is illegal.
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- f. Because the Rights of the Appellant are secured under Article 8, and the entirety of Part II of the Constitution of the Islamic Republic of Pakistan, and its redress falls solely within the ambit of Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973.
- g. Because the Appellant have not been treated in accordance with law, and their right secured and guaranteed under Law and Constitution have been violated.
- h. Because the Appellant has suffered for a no fault of their own and the entire premise of the case is based on the illegality of the respondents to the complete detriment of the Appellants.


ATTESTED

- i. Because the deviation from settled law and adopting the novel principles of "inclusion" which aren't recognized by the Constitutional law nor the services law of the country is clearly in disregard of the law and the dictums of the Honorable Superior Courts of Pakistan.
- j. Because the Appellant has served the department with utmost honesty and clarity and must not be deprived of their due rights.
- k. Because the Respondents cannot be allowed under the law to pass any illegal order, as valuable Rights of the Appellants are Involved, which are guaranteed under the Constitution of Islamic Republic of Pakistan 1973.
- l. Because the decisions of the provincial government by transferring the appellant by order dated 03-03-2021 is illegal, unlawful and without lawful authority.
- m. Because the order dated 03-03-2021 is vindictive and violative upon the rights of the Appellants and is liable to be strike down.
- n. Because the Appellant crave for leave to add further grounds at the time of his oral arguments before this Hon'ble Court highlighting further contraventions of the provisions of the Constitution & Laws.

PRAYER:

In view of the above, it is humbly prayed that this honorable Court may graciously be pleased to withdraw the transfer orders of the appellant dated 03-03-2021 and he be allowed to continue his services as the District Surgeon at the Cat "C" Hospital alongside his spouse.

Interim Relief:

For what has been stated in the body of the writ petition, which may so kindly be read as part and parcel for the grant of the Interim relief, may it please this Honorable Court to so kindly suspend the transfer orders dated 03-03-2021 till the final disposal of the instant writ petition.

[Signature]
Appellant

Through

[Signature]
(ALLEGHAR DURRANI)
Advocate High Court
0332-9297427
khaneliegohar@yahoo.com
Shah | Durrani | Khattak
(a registered law firm)
House No. 231-A, New Shami Road, Peshawar.

[Signature]
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Certificate:

[Signature]
ATTESTED

- i. Because the deviation from settled law and adopting the novel principles of "inclusion" which aren't recognized by the Constitution law nor the services law of the country is clearly in disregard of the law and the dictums of the Honorable Superior Courts of Pakistan.
- j. Because the Appellant has served the department with utmost honesty and clarity and must not be deprived of their due rights.
- k. Because the Respondents cannot be allowed under the law to pass any illegal order, as valuable Rights of the Appellants are involved, which are guaranteed under the Constitution of Islamic Republic of Pakistan 1973.
- l. Because the decision of the provincial government by transferring the appellant by order dated 03-03-2021 is illegal, unlawful and without lawful authority.
- m. Because the order dated 03-03-2021 is vindictive and violative upon the rights of the Appellants and is liable to be strike down.
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P R A Y E R:

In view of the above, it is humbly prayed that this honorable Court may graciously be pleased to withdraw the transfer orders of the appellant dated 03-03-2021 and he be allowed to continue his services as the District Surgeon at the Cat "C" Hospital alongside his spouse.

Interim Relief:

For what has been stated in the body of the writ petition, which may so kindly be read as part and parcel for the grant of the Interim relief, may it please this Honorable Court to so kindly suspend the transfer orders dated 03-03-2021 till the final disposal of the instant writ petition.

Sd/-
Appellant

Through

Sd/-
(Ali Gohar Durrani)
Advocate High Court
0332-9297427
khaneliegohar@yahoo.com
Shah | Durrani | Khattak
(a registered law firm)
House No.231-A, New Shami Road, Peshawar.

ATTESTED

Certificate:

ATTESTED



Appellant present through counsel.

Preliminary arguments heard. Record perused.

The appellant has impugned the order dated 03.03.2021 whereby he has been transferred from the Category-C Hospital Karak to D.H.Q Hospital Chitral against the vacant post. Subject to all just and legal objections including limitation, this appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 11/08/2021 before D.B.

An application has been submitted alongwith the memorandum of appeal seeking ad interim relief for suspension of the impugned order to the extent of appellant. Notice of the application be given to the respondents for the same date as already fixed. The operation of impugned order to the extent of appellant shall remain suspended till next date.

27/9/21

(Rozina Rehman)
Member (J)

filed to be true copy
EXAMINER
Hyderabad Pakhtunkhwa
Service Tribunal
Peshawar

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ATTESTED

34

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Appellant present through counsel.

Preliminary arguments heard. Record perused.

The appellant has impugned the order dated 03.03.2021 whereby he has been transferred from the Category-C Hospital Karak to D.H.Q Hospital Chitral against the vacant post. Subject to all just and legal objections including limitation, this appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 11/08/2021 before D.H.

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Sd/-
(Rozina Rehman)
Member (J)


ATTESTED


ATTESTED

35

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

A Request for adjournment was made on behalf of appellant; granted. To come up for arguments on ___/___/2021 before D.B. The operation of impugned order to the extent of appellant shall remain suspended till next date.

(Rozina Rehman)
Member (J)

Chairman

filed to be bare copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

[Signature]
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Date of Presentation of Application 7/9/2021
 Number of Vards 800
 Copying Fee 10/-
 Agent 4/-
 Total 14/- *[Signature]*
 Name of Copyist _____
 Date of Completion of Copy 7/9/21
 Date of Receipt of Copy 7/9/21

[Signature]
ATTESTED

35

BETTER COPY 39

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

A request for adjournment was made on behalf of appellant; granted. To come up for arguments on ____/____/2021 before D.B. The operation of impugned order to the extent of appellant shall remain suspended till next date.

(Rozina Rehman)
Member (J)

Chairman


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ATTESTED

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 7447 OF 2021

Dr. Tahir Saeed..... **Appellant**

Versus

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

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Sheweth:

Preliminary Objections:-

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

REPLY ON FACTS:-

1. Subject to proof.
2. Correct to the extent of appointment of the appellant and subsequently promotion as District Surgeon.
3. Pertains to record, however; it is duty of a Civil Servant to perform his duties with full zeal and zest as the government provided full benefits and other privileges to a Civil Servant.
4. Pertains to record.
5. Correct to the extent that the appellant was transferred vide notification dated 03.03.2021, however; the appellant being a Civil Servant is liable to be transferred by the competent authority from one post to other as the same comes with in terms and conditions of service. Therefore, he was rightly transferred by the competent authority under section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973.
6. Pertains to record. However, the instant appeal has been filed in violation of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 as the departmental appeal has been filed on 11.03.2021, however; the instant appeal has been filed on 23.09.2021 which is badly time barred. Hence, the instant appeal is not maintainable.

7. Incorrect, the doctor concerned intentionally avoid obeying the legal orders of the competent authority, however; he has been transferred under section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973.
8. Incorrect, hence denied. Moreover, the impugned notification dated 03.03.2021 is legal as mentioned in Paras above.
9. Incorrect, no vested right of the appellant has been violated. Therefore, appellant has no cause of action to challenge the notification.

REPLY ON GROUNDS:

- A. In reply, it is stated that the respondents have never violated the fundamentals rights of the appellant.
- B. Incorrect, the impugned notification has been issued in accordance with law, Rules and transfer and posting policy of the Provincial Government. The appellant has been treated in accordance with Article-4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C. Incorrect, the impugned notification dated 03.03.2021 (Inquiry annexed) has been issued in accordance with law in the public interest.
- D. Incorrect, the Competent Authority has been empowered by Section-10 of the Civil Servant Act 1973 to utilize services of a Civil Servant by posting him against any post even outside his cadre. The appellant has not been penalized as transfer comes with in terms and conditions of services.
- E. As per Para-D. However, it is worth mentioning that the Apex Court in a recent judgment reported as 2021 SCMR 1064 held that transfer of an employee / public servant fell within the of "terms and conditions" of service, which included transfer and posting. Transfer and posting was part of service and it was for the authority to determine where services of any staff member were required.
- F. Incorrect, already replied in paras above. The appellant being employee of provincial cadre, therefore he may be transferred anywhere within the province or even outside the province.
- G. Incorrect, the appellant has no vested right to challenge the impugned notification which has been issued by the competent authority in accordance with law. Detail reply has been given in the above paras.
- H. In reply, it is submitted that the competent authority has been empowered by Section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973 to transfer a civil servant at any time to any other post even outside his cadre or province provided his terms & conditions of service is not affected as per dictum, laid-down by the apex court, in 2020 PLC (CS) 1207 i.e;

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

Similarly in another judgment reported as 2004 PLC (CS) 705 S.C, it has been laid down that civil servant could not claim posting at a particular station or at the place of his choice. Competent authority, under S 9 of the Punjab civil servant Act 1974, was empowered to transfer any civil servant from one place to other at any time in exigencies of service or on administrative ground.

I to J. Incorrect, already replied above.

K. Incorrect, no vested rights of the appellant has been violated by the respondents.

L to T. Incorrect, detail reply already gives in paras ibid. Moreover, the instant appeal is badly time barred and appellant is not entitled for any relief.

U. Legal, however the respondents also seek permission of this honorable tribunal to adduce other grounds during final arguments.

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

Secretary Health Department
Khyber Pakhtunkhwa
Respondent No-1&2

AFFIDAVIT

It is hereby stated on oath and solemnly affirm that the contents of para-wise comments are correct to the best of my knowledge & belief and nothing has been deliberately concealed

19
Deponent



BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 7447 OF 2021

Dr. Tahir Saeed.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa and others.....Respondents

**REPLY TO THE APPLICATION FOR CONDONATION OF DELAY ON BEHALF
OF RESPONDENTS NO. 1 TO 2**

Respectfully Sheweth:

1. No comments
2. That the grounds of the main reply may be considered as integral part of this reply.
3. Incorrect according to law the petitioner is to explain each and every day delay however no such explanation of delay has been mentioned in the instant petition.
4. Incorrect transfer and posting is terms and conditions of service no vested right of the petition has been violated by the respondent of the petition.
5. Incorrect the Apex Court as well as Service Tribunal in its judgment dated 22.10.2021 in appeal No. 3522/2021 held that if in appeal is liable to be dismissed on limitation then its merits needs not to be discussed.

It is therefore, requested that the instant petition alongwith service appeal may kindly be dismissed with cost.



Secretary Health Department
Khyber Pakhtunkhwa
Respondent No-1&2

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 7447 OF 2021

Dr. Tahir Saeed.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa and others.....Respondents

**REPLY TO THE APPLICATION FOR SUSPENSION OF THE IMPUGNED
NOTIFICATION DATED 03.03.2021 ON BEHALF OF RESPONDENTS NO. 1 TO 2**

Respectfully Sheweth:

1. No comments
2. That the grounds of the main reply may be considered as integral part of this reply.
3. Incorrect all the three ingredients are in favour of the respondents.
4. As per para-3.
5. Incorrect the impugned notification dated 03.03.2021 as in accordance with law.
6. As per para-3.
7. Legal however the respondents also seek permission of this honorable tribunal to adduce other grounds during final hearing.

It is therefore, requested that the instant petition alongwith service appeal may kindly be dismissed with cost.



Secretary Health Department
Khyber Pakhtunkhwa
Respondent No-1&2

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 7447 OF 2021

Dr. Tahir Saeed.....Appellant

Versus

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

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Sheweth:

Preliminary Objections:-

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

REPLY ON FACTS:-

1. Subject to proof.
2. Correct to the extent of appointment of the appellant and subsequently promotion as District Surgeon.
3. Pertains to record, however; it is duty of a Civil Servant to perform his duties with full zeal and zest as the government provided full benefits and other privileges to a Civil Servant.
4. Pertains to record.
5. Correct to the extent that the appellant was transferred vide notification dated 03.03.2021, however; the appellant being a Civil Servant is liable to be transferred by the competent authority from one post to other as the same comes with in terms and conditions of service. Therefore, he was rightly transferred by the competent authority under section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973.
6. Pertains to record. However, the instant appeal has been filed in violation of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 as the departmental appeal has been filed on 11.03.2021, however; the instant appeal has been filed on 23.09.2021 which is badly time barred. Hence, the instant appeal is not maintainable.

7. Incorrect, the doctor concerned intentionally avoid obeying the legal orders of the competent authority, however; he has been transferred under section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973.
8. Incorrect, hence denied. Moreover, the impugned notification dated 03.03.2021 is legal as mentioned in Paras above.
9. Incorrect, no vested right of the appellant has been violated. Therefore, appellant has no cause of action to challenge the notification.

REPLY ON GROUNDS:

- A. In reply, it is stated that the respondents have never violated the fundamentals rights of the appellant.
- B. Incorrect, the impugned notification has been issued in accordance with law, Rules and transfer and posting policy of the Provincial Government. The appellant has been treated in accordance with Article-4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C. Incorrect, the impugned notification dated 03.03.2021 (Inquiry annexed) has been issued in accordance with law in the public interest.
- D. Incorrect, the Competent Authority has been empowered by Section-10 of the Civil Servant Act 1973 to utilize services of a Civil Servant by posting him against any post even outside his cadre. The appellant has not been penalized as transfer comes with in terms and conditions of services.
- E. As per Para-D. However, it is worth mentioning that the Apex Court in a recent judgment reported as 2021 SCMR 1064 held that transfer of an employee / public servant fell within the of "terms and conditions" of service, which included transfer and posting. Transfer and posting was part of service and it was for the authority to determine where services of any staff member were required.
- F. Incorrect, already replied in paras above. The appellant being employee of provincial cadre, therefore he may be transferred anywhere within the province or even outside the province.
- G. Incorrect, the appellant has no vested right to challenge the impugned notification which has been issued by the competent authority in accordance with law. Detail reply has been given in the above paras.
- H. In reply, it is submitted that the competent authority has been empowered by Section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973 to transfer a civil servant at any time to any other post even outside his cadre or province provided his terms & conditions of service is not affected as per dictum, laid down by the apex court, in 2020 PLC (CS) 1207 i.e;

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

Similarly in another judgment reported as 2007 PLC (CS) 705 S.C, it has been laid down that civil servant could not claim posting at a particular station or at the place of his choice. Competent authority, under S 9 of the Punjab civil servant Act 1974, was empowered to transfer any civil servant from one place to other at any time in exigencies of service or on administrative ground.

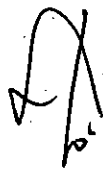
I to J. Incorrect, already replied above.

K. Incorrect, no vested rights of the appellant has been violated by the respondents.

L to T. Incorrect, detail reply already gives in paras ibid. Moreover, the instant appeal is badly time barred and appellant is not entitled for any relief.

U. Legal, however the respondents also seek permission of this honorable tribunal to adduce other grounds during final arguments.

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



Secretary Health Department
Khyber Pakhtunkhwa
Respondent No-1&2

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD, D.B
PESHAWAR.

No.

Appeal No. 7447 of 20 21

Dr. Tahis Saeed Appellant/Petitioner

Govt. of KPK through Chief Secy: Respondent

Respondent No. 3

Notice to: —

Director General Health Govt: of
KPK Health Deptt. Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 11/11/21 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No.....dated.....~~

Given under my hand and the seal of this Court, at Peshawar this 16/11/21

Day of Oct 20 21

(for Reply)



Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.