

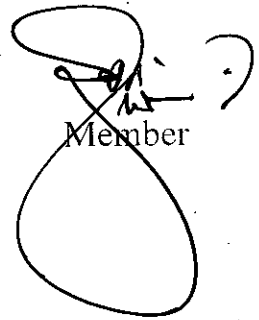
E.P. No. 464/2019,
Idag ul Haq vs Govt

23.06.2020

Counsel for the petitioner present. Mr. Kabir Ullah Khattak
learned Additional Advocate General for the respondents present.

At the very outset, order of the August Supreme Court of
Pakistan passed in C.P No.696-P of 2019 was produced vide
which the operation of the impugned judgment was suspended.

In view of the above and with consent of the learned counsel for
the petitioner, instant execution proceedings stand adjourned sine
die till the decision of the August Supreme Court of Pakistan. The
petitioner would be at liberty to seek restoration after the decision
of August Supreme Court. File be consigned to the record room.


Member

31.01.2020 Learned counsel for the petition present. Mr. Kabirullah Khattak learned Additional AG alongwith Mr. Gulzar Mehmood AD for the respondents present. Implementation report not submitted. Representative of the respondents seeks time to furnish implementation report on the next date of hearing. Adjourned. To come up for implementation report on 12.03.2020 before S.B.


(Hussain Shah)
Member

19.02.2020 Counsel for the petitioner and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Aziz-ur-Rehman, Superintendent for the respondents present. Representative of the department submitted para-wise comments. The same is placed on record. Learned counsel for the petitioner requested for adjournment to examine the same. Adjourned to 31.03.2020 for further proceeding before S.B.





(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

31.03.2020 Due to public holiday on account of COVID-19, the case is adjourned to 23.06.2020 for the same. To come up for the same as before S.B.


Reader

Form- A
FORM OF ORDER SHEET

Court of _____
Execution Petition No. 464/2019

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1 | 23.12.2019 | <p>The execution petition of Mr. Ijaz-ul-Haq submitted today by Afsha Naz Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This execution petition be put up before S. Bench on <u>17/01/20</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Nemo for petitioner.</p> <p>Notices be issued to petitioner as well as respondents. To come up for implementation report on 31.01.2020 before S.B. Learned Addl. A.G shall also be served for the next date.</p> <p style="text-align: right;"> Chairman</p> <p><u>i</u></p> |
| 2- | 17.01.2020 | |

BEFORE THE SERVICES TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

Execution Petition No. 464/2019

Miscellaneous Petition No. 464 of 2019

Ijaz-ul-Haq S/O Mohammad Ismail R/O Arrot, Matta, District, Swat

.....Petitioner

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Fisheries, Khyber Pakhtunkhwa.
2. Director General Fisheries, Khyber Pakhtunkhwa, Peshawar
3. Director Fisheries, Khyber Pakhtunkhwa, Peshawar...

..... Respondents

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| 2. | Copy of Appeal No 646/2019 Dated: 08/05/2019 | A | 3 - 12 |
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Dated 23/12/2019

Through

M. Ejaz
Petitioner

Afsha NAAZ
AFSHA NAAZ advocate
JIAS Law Associates

①

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

Execution petition no 464/2019

Miscellaneous Petition No. 464 of 2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 2190

Dated 23/12/19

Ijaz-ul-Haq S/O Mohammad Ismail R/O Arrot, Matta, District, Swat

.....Petitioner

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Fisheries, Khyber Pakhtunkhwa.
2. Director General Fisheries, Khyber Pakhtunkhwa, Peshawar
3. Director Fisheries, Khyber Pakhtunkhwa, Peshawar...

..... Respondents

**APPLICATION FOR IMPLEMENTATION
OF JUDGMENT AND ORDER DATED
05/09/2019 PASSED BY THIS
HONOURABLE TRIBUNAL IN SERVICE
APPEAL NO.646/2019 WHEREBY THE
RESPONDENTS WERE DIRECTED
WITHDRAW THE TRANSFER ORDER
OF PETITIONER AS THE SAME WAS
NOT ON THE BASIS OF
ADMINISTRATIVE GROUNDS OR ANY
PUBLIC INTEREST.**

Filed to-day

Registrar

Respectfully Sheweth

Briefly the facts of the case are as under:

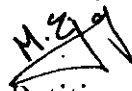
1. That the petitioner joined the fisheries department on regular basis as fisheries watcher (BPS-7) and performed duties at Madyan and Matta, Swat.
2. That the petitioner was transferred from Matta to D.I Khan vide office order No. 8056-59/DGD/Esst/T&P Dated 11/03/2019 followed by relieving order bearing No128/ADF/F Dated 13/03/2019
3. That representation was filed against the transfer order dated 11/03/2019 and relieving order dated 13/03/2019 but of no avail and after statutory period, the Petitioner approached this honourable tribunal through service appeal No.646/2019 on 08/05/2019. *(Copy of appeal is annexed as Annexure-A).*

4. That this honourable tribunal accepted the appeal on 05/09/2019 and the respondents were directed to withdraw the transfer order dated 11/03/2019 and post the petitioner in his home district and no disciplinary proceedings be taken against the petitioner on the grounds relating to this appeal. *(copy of judgment is annexed as Annexure-B)*
5. That the respondents were requested time and again to withdraw the transfer order dated 11/03/2019 and post the petitioner in his home District but in vain. A written application was also submitted to respondent No. 02 but the same was not answered. *(Copy of application is Annexure-C)*
6. That the Petitioner is serving as fisheries watcher having meager salary and it is practically impossible to support his family in district DI Khan.
7. That the respondents are reluctant to implement and honour the judgment & order of this honourable tribunal, rather threatening the Petitioner of dire consequences regarding his service, hence, this petition.

It is, therefore, prayed that on acceptance of this application, the judgment and order dated 05/09/2019 passed by this honourable tribunal may kindly be implemented and respondent No. 02 may kindly be directed to withdraw the transfer order dated 11/03/2019 and post the petitioner in his home district i.e. Swat. It is also prayed that the withdrawal and posting order may kindly be submitted before this honourable tribunal to secure the ends of justice.

Dated 23/12/2019

Through


Petitioner


AFSHA NAAZ advocate
JIAS Law Associates

Affidavit:-

I , Ijaz-ul-Haq S/O Mohammad Ismail R/O Arkot, Matta, Swat, do hereby solemnly affirm and declare on oath that the contents of this petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this honourable Tribunal.


DEPONENT

ANNX-A

(4)

(3)

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No. _____/2019

Ijaz-ul-Haq S/o Muhammad Ismail
R/o Arkot, Matta, District Swat.....**Appellant**

VERSUS

1. Govt of KPK through Secretary Fisheries,
Civil Secretariat, Peshawar
2. Director General Fisheries, KPK, Peshawar
3. Director Fisheries, KPK, Peshawar
4. Assistant Director Fisheries, D.I.Khan
5. Assistant Director Fisheries, Swat at Matta...**Respondents**

**Service Appeal u/s 4 of the Service
Tribunal Act, 1973 against the
impugned transfer order dated
11.03.2019 of respondent No.2**

Respectfully Sheweth:

Briefly the facts of the case are as under:

1. That the appellant/ applicant joined Fisheries Department on regular basis as Fisheries Watcher (BPS-7) vide office order No.1229-31/DF/E dated PeshawarSM 18.01.2017 and was posted as Fisheries Watcher (BPS-7) in the office of District Officer Fisheries, Swat at Madyan, Swat. (Copy of appointment order is annexed as "A").

Handwritten signature

- ② ④
2. That the appellant performed his duties as Fisheries Watcher (BPS-7) in the office of District Officer Fisheries, Swat at Madyan from the appointment period dated 18.01.2017 till 31.01.2017 through office order dated 18.01.2017 *ibid* and served the department for six months.
 3. That appellant was transferred from the office District Officer Fisheries, Swat at Madyan through transfer order No.BO-VII/FD/1-4/BE-2017-18 dated 17.07.2017 followed by revised relieving order No.805-19/ADF/F-34 dated 31.07.2017 to the office of District Officer Fisheries, Swat at Matta and served at District Officer Fisheries at Matta, Swat from period comprising of 1 year and 6-7 months i.e. 31.07.2017 till 11.03.2019. (Copies of office order dated 17.07.2017 & 31.07.2017 are attached as Annexure "B").
 4. That since appointment, the appellant/ applicant performed his duties to the best of his abilities, which has been eulogized and acknowledged by his honourable superiors.
 5. That to the utter surprise and astonishment, the appellant/ applicant was transferred from the office of District Officer Fisheries, Matta, Swat to the office of District Officer Fisheries, D.I.Khan vide office order No.8056-59/DGD/Estt/T&P dated 11.03.2019. In consequence whereof, the appellant/ applicant was relieved vide office order No.128/ADF/F-dated Matta 13.03.2019. (Copy of office orders dated 11.03.2019 and 13.03.2019 are annexed "C" & "D" respectively).

- 4
- 5
6. That the Impugned transferred order dated 11.03.2019 followed by revised relieving order dated 13.03.2019 is with utmost regard, against the law, rules & policy governing the subject.
 7. That the appellant performed his duties as Fisheries Watcher (BPS-7) diligently, but, again due to political influence and malafide, transferred the appellant from District Officer Fisheries, Swat at Matta to District Officer Fisheries, D.I.Khan vide Notification/ office order dated 11.03.2019 and revised relieving order dated 13.03.2019. (impugned herein).
 8. That consequently, on 11.04.2019, the appellant filed departmental appeal before the Director General Fisheries/ respondent No.2 against his premature transfer from the office of District Officer Fisheries, Swat at Matta to District Officer Fisheries, D.I.Khan, the said appeal was dismissed vide order No.8280-81/ DGF/Estt dated 23.04.2019. (Copies of departmental appeal and order dated 23.04.2019 are attached as Annexure "E" & "F").
 9. That in the last continuous one year, the appellant has been transferred from one District to another District and one post to another post i.e. three times and thus is aggrieved of the impugned transfer order, hence prefers this service appeal, for the following amongst other grounds:

(4) 6

GROUND 3:

- A. That the impugned transfer order dated 11.03.2019 and revised relieving order dated 13.03.2019, is manifestly illegal, unlawful, without lawful authority, without jurisdiction, void ab-initio and ineffective upon the rights of the appellant/ applicant, hence untenable in the eye of law and liable to be set aside/ cancelled.
- B. That the Notification dated 11.03.2019 of respondent No.2 (impugned herein) is based on political influence and malafide, transferring the appellant from one post to another post, is illegal, unlawful and unconstitutional and against the transfer / posting policy, hence untenable and liable to be set aside.
- C. That the impugned order is illegal, unlawful, against law and facts, in violation of transfer and posting policy and politically motivated on the recommendation of Provincial Minister for Fisheries.
- D. That the impugned order from Matta to District D.I.Khan is a premature order as the appellant/ applicant has not completed his service tenure i.e. 2 years.
- E. That initially the appellant was transferred from District Officer Fisheries, Swat at Madyan to District Officer Fisheries, Swat at Matta as Fisheries Watcher and after lapse of six months, and when the appellant legally performing his duties being Fisheries Watcher again

(2) (7)

transferred on the political influence and malafidely victimized and pressurized the appellant by transferring from District Officer Fisheries, Swat at Matta to District Officer Fisheries, D.I.Khan.

F. That the appellant after assuming his charge as Fisheries Watcher (BPS-7) delivered his duties honestly, efficiently and diligently and number of times, the appellant refused to fulfill the illegal demands of politicals for that reason, the appellant is transferred from District Officer Fisheries, Swat at Matta to District Officer Fisheries, D.I.Khan illegally.

G. That the order of appellate authority is patently illegal as the authorities cannot ~~not~~ issue any show cause while deciding appeal of the appellant in the same order.

H. That there is no bar under the law that the departmental appeal should not be filed to the appellate authority directly or through proper channel, even it can be sent through a courier service.

I. That as per rules of service, the minimum posting period for civil servant, is not less than two years, but, in the appellant's case he has not completed his service tenure for 2 years.

J. That the appellant is being treated unequally against the law and he is being deprived of equal protection of law.

- (8)
- (8)
- K. That through the impugned transfer order dated 11.03.2019, the respondents have violated the fundamental rights of the appellant as guaranteed by the Constitution of Pakistan.
- L. That the appellant/ applicant is serving as Fisheries Watcher (BPS-7) having meager salary, in which it is practically impossible to support his family in District D.I.Khan as impugned order will have financial implications on the appellant/ applicant.
- M. That as stated above, the impugned transfer is based on political influence to make the post of Fisheries Watcher (BPS-07) at Matta vacant and appoint a blue-eyed individual on the subject post.
- N. That any other grounds may be taken at the time of arguments, with the kind permission of this Honourable Court.

It is, therefore, humbly prayed that on acceptance of this service appeal, the impugned transfer order dated 11.03.2019 of respondent No.2 based on political influence and malafide, the same may kindly be set aside and be declared as illegal, unlawful and unconstitutional and against the transfer/ posting policy and be set aside as such.

Any other remedy which deems fit by this Honourable Tribunal may also be granted in favour of appellant.

Through

Appellant


Ms. Afsha Naz

Advocate, Peshawar

Date: 8/5/2019

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No. _____/2019

Ijaz-ul-Haq.....Appellant

V E R S U S

Govt of KPK and others.....Respondents

AFFIDAVIT

I, **Ijaz-ul-Haq** S/o Muhammad Ismail R/o Arkot, Matta, District Swat, do hereby solemnly affirm and declare on oath that the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


DEPONENT

(8) (10)

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No. _____/2019

Ijaz-ul-Haq.....Appellant

V E R S U S

Govt of KPK and others.....Respondents

Application for grant of interim relief by suspending the operation of impugned transfer order No.8056-59/DGD/Estt/T&P dated 11.03.2019 and revise relieving order No.128/ADF/F-dated Matla 13.03.2019, till final disposal of the appeal.

Respectfully Sheweth:

1. That the captioned service appeal is being filed before this Honourable Tribunal, in which no date of hearing has yet been fixed.
2. That the grounds of main service appeal kindly be read as an integral part of this application.
3. That on the face of it, the applicant/ appellant has got a good prima facie case and is sanguine about its success.
4. That balance of convenience tilts in favour of applicant/ appellant for grant of interim relief.

(4)

(11)

5. that if the operation Impugned transfer and relieving orders are not suspended, the respondents are not restrained and the interim relief is not granted in favour of the applicant/ appellant, he would sustain irreparable loss, which is not redeemable in terms of money.

It is, therefore, most humbly prayed that on acceptance of this application, the interim relief (as prayed for) may please be granted in favour of the applicant/ appellant, till the final disposal of the case.

Through Applicant/Appellant

Ms. Afsha Naz
Advocate, Peshawar

Dated: / / 2019

AFFIDAVIT:

It is, stated on oath that the contents of the **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.


DEPONENT

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No. _____/2019

Ijaz-ul-Haq.....Appellant

V E R S U S

Govt of KPK and others.....Respondents

ADDRESSES OF PARTIES

APPELLANT

Ijaz-ul-Haq S/o Muhammad Ismail
R/o Arkot, Matta, District Swat

RESPONDENTS

1. Govt of KPK through Secretary Fisheries,
Civil Secretariat, Peshawar
2. Director General Fisheries, KPK, Peshawar
3. Director Fisheries, KPK, Peshawar
4. Assistant Director Fisheries, D.I.Khan
5. Assistant Director Fisheries, Swat at Matta

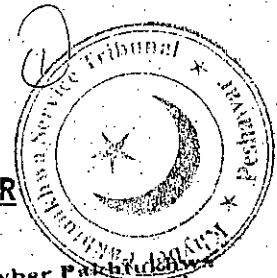
Through Appellant


Ms. Afsha Naz
Advocate, Peshawar

Date: 8/5/2019

13

Annex - B



BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No. 646 /2019

Khyber Pakhtunkhwa Service Tribunal

Diary No. 732

Dated 08/5/2019

**Ijaz-ul-Haq S/o Muhammad Ismail
R/o Arkot, Matta, District Swat.....Appellant**

V E R S U S

- ✓ 1. Goyt. of KPK through Secretary Fisheries, Civil Secretariat, Peshawar
- ✓ 2. Director General Fisheries, KPK, Peshawar
- ✓ 3. Director Fisheries, KPK, Peshawar
- ✓ 4. Assistant Director Fisheries, D.I.Khan
- ✓ 5. Assistant Director Fisheries, Swat at Matta...**Respondents**

Service Appeal u/s 4 of the Service Tribunal Act, 1974 against the impugned transfer order dated 11.03.2019 of respondent No.2

Respectfully Sheweth:

Filed to-day

Briefly the facts of the case are as under:

Registrar
8/5/19

- 1. That the appellant/ applicant joined Fisheries Department on regular basis as Fisheries Watcher (BPS-7) vide office order No.1229-31/DF/E dated Peshawar 18.01.2017 and was posted as Fisheries Watcher (BPS-7) in the office of District Officer Fisheries, Swat at Madyan, Swat. (Copy of appointment order is annexed as "A").

Re-submitted to-day and filed.

Registrar
17/5/19

ATTESTED

EXAMINER
Khyber Pakhtunkhwa Service Tribunal

Attested
[Signature]

| Sr. No | Date of order/ proceedings | Order or other proceedings with signature of Judge or Magistrate |
|--------|----------------------------|--|
| 1 | 2 | 3 |
| | 05.09.2019 | <p align="center">BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</p> <p align="center">Appeal No: 646/2019</p> <p>Date of Institution ... 08.05.2019 Date of Decision ... 05.09.2019</p> <p align="center">-----</p> <p>Ijaz Ul Haq S/o Muhammad Ismail R/o Arkot, Matta, District Swat -----Appellant</p> <p align="center">Versus</p> <p>The Government of Khyber Pakhtunkhwa through Fisheries Civil Secretariat Peshawar and others -----Respondent</p> <p>Mr. Muhammad Amin Khan Kundi.....Member(J) Mr. Hussain Shah.....Member (E)</p> <p>JUDGMENT</p> <p>Mr. HUSSAIN SHAH:- Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney alongwith Mr. Gulzar Assistant Director for the respondents present.</p> <p>2. The appellant joined the Fisheries Department on regular basis as Fisheries Watcher (BPS-7) Vide office order No. 1229-31/DF/E dated 18.01.2017. The appellant was posted as Fisheries Watcher (BPS-7) in the office of District Office Fisheries, Swat at Madyan, Swat. The appellant performed his duties as Fisheries Watcher (BPS-7) in the office District Officer Fisheries, Swat at Madyan from 18.01.2017 till 17.07.2017 and served the department in Madyan for six months. The appellant was transferred alongwith his post from the office of District Officer Fisheries, at Madyan to the office of Assistant Director fisheries Matta Swat through order No. BO-VII/FD/1-4/BE-2017-18 dated 17.07.2017 and relieved by relieving order No. 805-19/AD/F-34 dated 31.07.2017. The appellant was again transferred from the office of District Officer Fisheries, Matta, Swat, to the office of District Officer Fisheries D.I .Khan vide order dated 11.03.2019. Being aggrieved the</p> |

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ATTESTED

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

appellant preferred a departmental appeal to DG Fisheries, against his pre-mature transferred to D.I Khan which is far away from his home District Swat on 11.04.2019 which was rejected on 23.04.2019 where after the appellant preferred the instant service appeal on 09.05.2019.

3. The learned counsel for the appellant argued that the impugned transfer order dated 11.03.2019 and subsequent relieving order dated 13.03.2019 is illegal, unlawful, without lawful authority, without jurisdiction and ineffective hence and untenable in the eyes of law and liable to be set aside/cancelled on the grounds that the appellant was transferred on the political grounds moreover the posting order dated 11.03.2019 is against the relevant provisions of the terms and conditions of a Civil Servant as expressed in the Civil Servant Act 1973, the Appointment Promotion Transfer Rules and the Posting Transfer Policy of the Government of Khyber Pakhtunkhwa issued under the mandatory statutory provision as to express specifically the tenure of posting at a place be not list then two (02) years. Further argued that the appellant being a low paid employee has been posted out from District Swat to D.I Khan which causes tremendous financial difficulties. The learned counsel for the appellant also invited the attention of this Tribunal to the order of Director General Fisheries in connection to his departmental appeal wherein the explanation of the appellant was called upon for submitting departmental appeal directly to Director General Fisheries instead of through proper channel. The learned counsel also invited the attention of this Tribunal the revised relieving order of Assistant Director Matta Swat dated 13.03.2019 with a copy endorsed to Director General Fisheries Khyber Pakhtunkhwa in reference to the order of Director General Fisheries convey vide No. 8056-59/DGF/Estt;/ T7P. dated 11.03.2019. The learned counsel for the appellant argued that this relieving order and

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

endorsing a copy to the Director General establishes the connection between the transfer of the appellant and higher ups in the Fisheries Department. The learned counsel for the appellant relied upon the judgment of this Tribunal reported on 2011 PLC (C.S) 1305 & 2012 PLC (C.S): He also relied upon the judgment of August Supreme Court of Pakistan reported on PLD 2013 195, 2011 PLC (C.S) & 2009 SCMR 390. He further pleaded that on acceptance of the instant service appeal the impugned transfer order dated 11.03.2019 of respondent No. 2 is based on political influence and mala fide intention hence the said may kindly be set aside and declared be unlawful and un-constitutional and the posting transfer policy.

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4. The learned Deputy District Attorney contested the facts, grounds of the appeal and arguments of the learned counsel for the appellant and stated that the appellant, being a Civil Servant, is required to serve anywhere in Khyber Pakhtunkhwa and as expressed in the terms and conditions of his appointment order wherein at serial No.8 it has been clearly stated that his service shall be transferable throughout the province and merged area of FATA. He further argued that the appellant has served in the District of his Home Domicile for two years and two months i.e. from 18.01.2017 to 11.03.2019, therefore, his transfer to D.I Khan is not pre-mature. The learned Deputy District Attorney also contradicted the motive of the posting in D.I Khan as political motivated and stated that the same was a routine posting Transfer and the appellant is trying to malign the intention of the administrative authorities hence is false. He further pleaded that on the above grounds the appeal may be dismissed with heavy cost.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

5. Arguments heard. File perused.

6. After the detailed scrutiny of the documents on record, arguments

and counter arguments of the learned counsel for the appellant and the learned Deputy District Attorney and observed that the appellant was appointed and posted on 18.01.2017 in the Madyan Station. He was posted/transferred from Madyan to Matta alongwith his post on 31.07.2017, wherefrom he was further posted to D.I Khan against a vacant post on 11.03.2019. His tenure in Matta Station is lesser than two (02) years hence the arguments of the learned counsel for the appellant stands grounds because the tenure of a Civil Servant is measured on the basis of holding a post at a particular station and not on the basis of tenure in a District. Moreover, the contention of the Director General as expressed in the rejection order of the appeal of the appellant speaks loudly the interest of the holder of the designation of the Director General Fisheries in this posting transfer order.

7. In view of the above two grounds this Tribunal is of the considered view that the Posting Transfer order dated 11.03.2019 of the appellant was not on the basis of administrative grounds or any public interest, hence the appeal is accepted and the respondent authorities are directed to withdraw this order and are further directed to post the appellant in his Home District and no disciplinary proceeding be initiated against the appellant on the grounds relating to this appeal. Parties are left to bear their own costs. File be consigned to the record room.

Muhammad Amin
 (Muhammad Amin Khan Kundi)
 Member

ASD
 (Hussain Shah)
 Member

Certified to be true copy

MEMBER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

ANNOUNCED
 05.09.2019

Date of Registration of Application 30-9-2019
 Number of Words 1600
 Copying Fee 24 =
 Urgent 4 =
 Total 28 =
 Name of Officer ASD
 Date of Issuance of Order 30-9-2019
 Date of Issuance of Copy 30-9-2019

18

To

ANNX-C

The Respected Director General,
Fisheries, K.P.K, Peshawar

SUBJECT: REQUEST FOR WITHDRAWAL OF TRANSFER ORDER IN LIGHT OF COURT ORDER IN SERVICE APPEAL NO.646/2019 BEARING TITLE IJAZ UL HAQ VS GOVT OF K.PK AND FOUR OTHERS

RESPECTED SIR

The applicant employee humbly submits as under:

1. That the petitioner is an employee of fisheries department on regular basis as Fisheries Watcher (BPS-07).
2. That the applicant was transferred from Matla, swat to D.I.Khan. Against the said transfer order representation was filed to your honour which was not considered. Resultantly, the applicant filed a service appeal which was decided in favour of the applicant on 05/09/2019.
3. That the department was directed by the tribunal to withdraw its transfer order with the following observations:

" Hence the appeal is accepted and the respondent authorities are directed to withdraw this order and are further directed to post the appellant in his home district and no disciplinary proceedings be initiated against the appellant on the grounds relating to this appeal."

(ATTESTED COPY OF ORDER IS ANNEXED)

IT IS, THEREFORE, MOST HUMBLY PRAYED THAT TRANSFER ORDER DATED 11/03/2019 MAY KINDLY BE WITHDRAWN AND OBLIGE.

DATED: 8/10/2019

OUR'S FAITHFULLY

Ijaz
8/10/19

^{m. s. s. g.}
IJAZ UL HAQ S/O MUHAMMADISMAIL
FISHERIES WATCHER PRESENTLY
POSTED AT D.I.KHAN

Attested
Ijaz
23/12/19

| | | | | |
|--|-------|---|--|---|
| قیمت 50 روپے | 26812 |  |  |  |
| ایڈوکیٹ: <u>Alsalal</u> | | پشاور بار ایسوسی ایشن، خیبر پختونخواہ | | |
| بار کونسل ایسوسی ایشن نمبر: 13-bc-4239 | | | | |
| رابطہ نمبر: 0333-9737373 | | | | |

بعدالت جناب: سروس ٹریسٹول بشام

| | |
|--------------|-------------|
| مخائب: محم | دعویٰ: سروس |
| Petitioner | CM |
| عجائز الحق | علت نمبر: |
| بنام | مورخہ: |
| گورنمنٹ کپک | جرم: |
| DG Fisheries | تھانہ: |

باعث تحریر آنکہ

عجائز الحق
M. 2019

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

آن مقام بشام کیلئے افشانا / جوہل عجائز ایڈوکیٹس کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 24/12/2019

العبد واشد العبد
مقام بشام کے لیے منظور ہے۔

Attested & Accepted

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR.

EXECUTION PETITION NO.464-P/2019.

Ijaz ul Haq S/O Muhammad Ismail,
Resident of Arkot, Matta, District Swat.

VERSUS

Government of Khyber
Pakhtunkhwa & Others.

| S/No. | Documents. | Annexure | Page. |
|-------|-------------------|----------|-------|
| 1- | Reply/Comments. | ----- | 1-2. |
| 2- | Affidavit. | ----- | 3. |
| 3- | Authority letter. | ----- | 4. |

Dated. 03/02 /2020.

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR.

EXECUTION PETITION NO.464-P/2019.

Ijaz ul Haq S/O Muhammad Ismail,
Resident of Arkot, Matta, District Swat.

VERSUS

Government of Khyber
Pakhtunkhwa & Others.

Para wise reply/comments/written statement to the titled execution petition, for & on behalf of respondents.

Respectfully Sheweth,

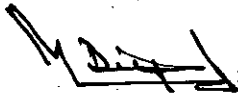
REPLY ON FACTS.


- 1) No comments.
- 2) No comments.
- 3) In correct. The representation of the appellant was considered and disposed of with cogent reasons. The appellant obeyed the said orders, joined his duties & received transfer grant due to which the appellant was supposed to avoid himself from filing service appeal before the Hon'able Service Tribunal, Khyber Pakhtunkhwa.
- 4) The respondents while discussing the matter with the scrutiny committee of the Law Department decided on mutual consensus to file CPLA against the impugned orders of the Hon'able Service Tribunal, Khyber Pakhtunkhwa before the Apex court & submitted CPLA No.696-P/2019 before the Apex Court, which is pending.
- 5) As explained above in para-4, the request of the appellant had been kept pending till the decision of the Apex Court.
- 6) Incorrect. The appellant being a Civil Servant is to serve anywhere in Khyber Pakhtunkhwa and as expressed in the terms & conditions of his appointment order wherein it has been clearly stated at serial No.8 that the service of the appellant shall be transferable throughout Khyber Pakhtunkhwa and Merged Areas.

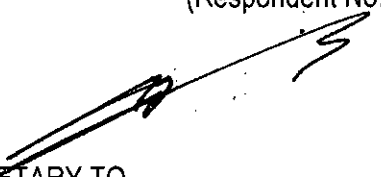
- 7) The respondents have filed Civil Petition for leave to Appeal under Article-212(13) of the Constitution of Islamic Republic of Pakistan, 1973 against the impugned judgment/order of the Hon'able Service Tribunal, Khyber Pakhtunkhwa dated.05-09-2019, which will might be decided in near future & the matters will be settled accordingly.

Keeping in view of the above facts & circumstances, the posting/transfer order has already been obeyed by the appellant & joined his duties in D.I.Khan with effect from April, 2019, received transfer grant, getting pay & allowances regularly from the office of District Officer Fisheries, D.I.Khan, therefore he should wait till the final decision of the Apex Court.

It is, therefore, most humbly prayed that the execution petition may kindly be dismissed.



DIRECTOR FISHERIES,
KHYBER PAKHTUNKHWA
PESHAWAR
(Respondent No.3)



DIRECTOR GENERAL FISHERIES,
KHYBER PAKHTUNKHWA
PESHAWAR
(Respondent No.2)

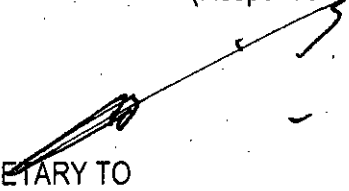

SECRETARY TO
GOVERNMENT OF KHYBER PAKHTUNKHWA
AGRICULTURE, LIVESTOCK & COOPERATIVE
DEPARTMENT.
(Respondent No.1)

AUTHORITY LETTER.

Mr. Gulzar Mahmood, Assistant Director Fisheries, (L&S) BPS-17, Directorate General Fisheries, 2-Shami Road Peshawar Cantt; is hereby authorized to submit affidavit & attend Khyber Pakhtunkhwa, Peshawar in the execution petition No.464-P/2019 titled "Ijaz ul Haq S/O Muhammad Ismail, Resident of Arkot, Matta, District Swat versus Government of Khyber Pakhtunkhwa & Others on behalf of respondents on each & every date of hearing till the decision of the case.


DIRECTOR FISHERIES,
KHYBER PAKHTUNKHWA
PESHAWAR
(Respondent No.3)


DIRECTOR GENERAL FISHERIES,
KHYBER PAKHTUNKHWA
PESHAWAR
(Respondent No.2)


SECRETARY TO
GOVERNMENT OF KHYBER PAKHTUNKHWA
AGRICULTURE, LIVESTOCK & COOPERATIVE
DEPARTMENT.
(Respondent No.1)

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR.

EXECUTION PETITION NO.464-P/2019.

Ijaz ul Haq S/O Muhammad Ismail, Resident of
Arkot, Matta, District Swat.

VERSUS

Government of Khyber
Pakhtunkhwa & Others.

AFFIDAVIT.

I Mr. Gulzar Mahmood, Assistant Director Fisheries (L&S) (BPS-17), Directorate General Fisheries, Khyber Pakhtunkhwa do hereby solemnly affirm and declare that the contents of the accompanying para wise comments submitted by the Respondents are true to the best of my knowledge & belief & that nothing has been concealed from this Hon'able Court.



Deponent

(GULZAR MAHMOOD),
NIC NO. 17301-1383259-9
CELL NO.0313-9111615

Identified by _____

Additional Advocate General, Khyber Pakhtunkhwa,
Service Tribunal, Peshawar.

2020

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan

C.P.No.696-P of 2019

[Against the judgment dated 05.09.2019, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Appeal No.646/2019]

*Govt. of KP through Secretary Agriculture,
Livestock & Cooperative Department,
Peshawar & others.*

...Petitioner (s)

Versus

Ijaz-ul-Haq.

...Respondent(s)

For the Petitioner (s) : Barrister Qasim Wadood,
Addl.A.G: KP
Gulzar Mehmood, Assistant
Director, Fisheries, KP

For the Respondent(s) : N.R.

Date of Hearing : 26.03.2020

ORDER

Gulzar Ahmed, CJ.— We have heard the learned Additional Advocate General, KP.

2. The learned AAG contends that the respondent was posted in Matta, District Swat and his post was transferred to Madyan, District Swat, which were both in his home District. After he had served for two years and two months, he was transferred vide letter dated 11.03.2019, to District D.I. Khan. There was no transfer of respondent from Matta to Madyan but his very post was transferred. He contends that the learned Khyber Pakhtunkhwa Service Tribunal, Peshawar (the Tribunal) in the impugned

Altaf

hussain
Drawing & Disbursing Officer
PR4885, O/o Director Fisheries,
Khyber Pakhtunkhwa Peshawar.

ATTESTED

[Signature]
Senior Court Associate
Supreme Court of Pakistan
Islamabad

18/4/20

judgment dated 05.09.2019, has not appreciated this very aspect of the matter.

3. The contention raised by the learned AAG requires consideration. Leave to appeal is granted to consider, *inter alia*, the same. The appeal shall be heard on the available record but the parties are allowed to file additional documents within a period of one month. As the matter relates to service, office is directed to fix the same expeditiously preferably after three months.

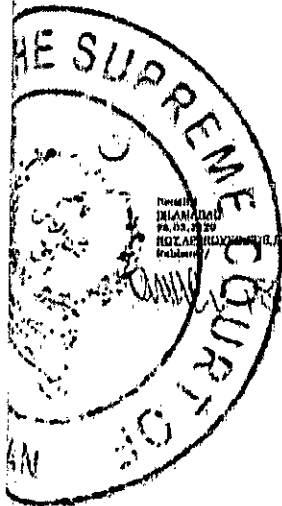
C.M.A.No.1557-P/2019.

4. The operation of the impugned judgment is suspended.

Sd/-HCJ

Sd/-J
Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad



6426/20

GR No: _____ Civil/Criminal

Date of Presentation: 26.3.20

No of Words: _____

No of Folios: 6

Requisition Fee Rs: _____

Copy Fee in: _____

Court Fee Stamps: 8

Date of Completion of work: 18/4/20

Date of delivery of copy: 22-04-2020

Completed by: [Signature]

Drawing & Disbursing Officer
PR4885, O/o Director Fisheries,
Khyber Pakhtunkhwa Peshawar.

[Signature]
Drawing & Disbursing Officer
PR4885, O/o Director Fisheries,
Khyber Pakhtunkhwa Peshawar.