


17.06.2019

Counsel for the petitioner and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Javed Iqbal, Assistant for the respondents present. Notice be issued to petitioner for attendance for 15.07.2019 before S.B.


(Muhammad Amin Khan Kundi)

Member

15.07.2019

Counsel for the petitioner and Mr. Muhammad Jan, DDA alongwith Muhammad Arif, Superintendent for the respondents present.

Learned counsel for the petitioner states that he is under instructions to request for withdrawal of instant C.O.C proceedings.

Dismissed as withdrawn. File be consigned to the record room.


Chairman

ANNOUNCED
15.07.2019

27.12.2018

Learned counsel for the petitioner present. Mr. Kabirullah Khattak learned Additional Advocate General present. Learned counsel for the petitioner seeks adjournment. Adjourn. To come up for further proceedings 14.02.2019 before S.B.


Member

14.02.2019

Due to general strike of the bar, the case is adjourned. To come up for further proceedings on 20.03.2019 before S.B.


Member


20.03.2019

Due to general strike of the bar, the case is adjourned. To come up for further proceedings on 23.04.2019 before S.B.


(Hussain Shah)
Member

23.04.2019

None for the petitioner present. Addl: AG alongwith Mr. Muhammad Javed, Assistant for respondents present. Due to general strike of the Bar the case is adjourned. Case to come up for further proceedings on 17.06.2019 before S.B.


(Ahmad Hassan)
Member

10.07.2018

Learned counsel for the petitioner present. Mr. Sardar Shoukat Hayat, Additional AG for the respondents also present. Representative of the department is not in attendance therefore, notice be issued to the respondents with the direction to direct the representative to attend the court. Adjourned. To come up for implementation report on 18.08.2018 before S.B.

M.A.
(Muhammad Amin Khan Kundi)
Member

16.08.2018

Petitioner Shah Nawaz in person alongwith his counsels M/S Taimur Ali Khan, Advocate and Asad Mehmood, Advocate present. Mr. Javed, Senior Clerk alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present and submitted parawise comments on C.O.C application which is placed on file. Case to come up for further proceedings on 20.09.2018 before S.B.

S.
Chairman

22-9-2018

Due to Muharram ul Haram holidays
the case was not heard on
20-9-2018. Adju for 12-11-2018

12-11-2018

Y. A. J.
(Reader)
Due to Retirement of Honorable
Chairman the Tribunal is non
functional therefore the case is
adjourned to come up for the
same on 27-12-2018

Y. A. J.
Reader

FORM OF ORDER SHEET

Court of _____

C.O.C Application No. 129/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	25/04/2018	<p>The C.O.C application of Mr. Shah Nawaz submitted today by Mr. Taimur Ali Khan Advocate, may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 25/4/18</p>
2	15/05/18.	<p>This C.O.C application be put up before S. Bench on <u>21/05/18.</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
21.05.2018		<p>Petitioner in person present. Notice be issued to the respondents for implementation report for 10.07.2018 before S.B.</p> <p style="text-align: right;"><i>[Signature]</i> (Muhammad Amin Khan Kundi) Member</p>

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

C.O.C No. 129 /2018

In Execution Petition NO.217/2017

&

In Service Appeal No.658/2017

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 483

Dated 25/04/2018

Mr. Shah Nawaz, Tehsildar,
Chitral, Revenue Deptt:

PETITIONER

VERSUS

1. Mr. Azam Khan, Chief Secretary, KPK, Peshawar.
2. Mr. Zafar Iqbal, Senior Member Board of Revenue, Revenue Deptt:
Peshawar.
3. Mr. Akbar Khan, Commissioner Hazara Division, Abbottabad.
4. Mr. Aurangzeb Haider, Deputy Commissioner, Abbottabad.

RESPONDENTS

.....
CONTEMPT OF COURT PETITION UNDER
CONTEMPT OF COURT ORDINANCE 2003.
.....

RESPECTFULLY SHEWETH:

1. That the petitioner has filed an appeal bearing No. 658/2017 against the order dated 18.04.2017, whereby the petitioner was transferred from Abbottabad to Chitral. The petitioner against premature transfer filed departmental appeal which was also rejected on 15.06.2017.
2. That the said appeal was decided by the Honorable Tribunal on 25.08.2017 and the august Tribunal was kind enough to accept the appeal and set aside the impugned order dated 18.04.2017 and 15.06.2017. (Copy of judgment is attached as Annexure-A)
3. That respondents did not implement the judgment dated 25.08.2017 of this august Tribunal, therefore, the petitioner filed Execution Petition No.217/2017 for implementing judgment dated 25.08.2017 of this Honorable Tribunal which is still pending

before this august Tribunal. (Copy of execution petition is attached as Annexure-B)

4. That during the proceeding of the Execution petition on 29.03.2018, the Tribunal directed the petitioner to assume the charge of the post of Tehsildar Abbottabad and the department/ respondents is directed to accept the charge report of the petitioner. The petitioner in response of direction dated 29.03.2018 submitted his charge report as Tehsildar Abbottabad, but despite the clear direction of this august Tribunal, the respondents did not accept his charge report. (Copies of order dated 29.03.2018 and charge report are attached as Annexure-C&D)
5. That despite the clear direction of Honorable Tribunal, no action has been taken by the respondents on the case of the petitioner till date. Therefore, the petitioner is constrained to file this COC on the following grounds amongst the others:

GROUNDS:

- A) That the respondents has not accepted the charge report of petitioner till date despite of clear direction of the Honorable Tribunal is the violation of Tribunal's order and amounts to Contempt of Court.
- B) That the respondents are legally bound to obey the order dated 29.03.2018 I in letter and spirit, but the respondents are totally failed by not accepting the charge report of the petitioner.
- C) That the attitude and behaviour of the respondents amounts to Contempt of this august Tribunal, because the respondents have not accepted the charge report of the petitioner despite the clear direction of this august Tribunal.
- D) That the judgment dated 25.08.2017 and the order dated 29.03.2018 are still in the field, therefore, the respondents are legally bound to obey the judgment dated 25.08.2017 and order dated 29.03.2018 of this Honorable Tribunal in letter and spirit.
- E) That the petitioner seeks permission to advance the other ground and proof at the time of hearing.

It is, therefore, most humbly prayed that the Contempt of Court proceedings may be initiated against the respondents for not obeying the Honorable Tribunal's directions dated 29.03.2018. The respondent's further please be directed to accept the charge report of the petitioner. Any other remedy which this august Tribunal deems fit and appropriate that may also be awarded in favour of the petitioner.


PETITIONER

Shah Nawaz

THROUGH:


M. ASIF YOUSAFZAI

ADVOCATE SUPREME COURT,

&

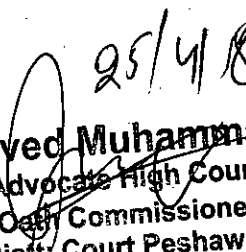

TAIMUR ALI KHAN

ADVOCATE HIGH COURT.

AFFIDAVIT:

It is affirmed and declared that the contents of the above COC Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this august Tribunal.


DEPONENT

25/4/18

Javed Muhammad
Advocate High Court
Oath Commissioner
Distt. Court Peshawar.

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A A

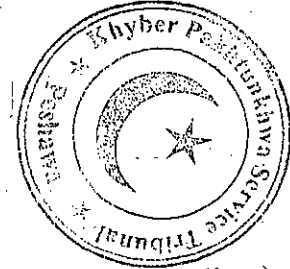
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 658/2017

Date of Institution 16.06.2017

Date of Decision ... 25.08.2017

Shah Nawaz, Tehsildar,
Chitral. Revenue Department.



(Appellant)

VERSUS

1. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar,
and 2 others.

(Respondents)

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate

For appellant.

MR. ZIAULLAH,
Deputy District Attorney

For respondents.

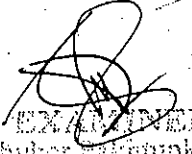
MR. RIZWANULLAH,
Advocate

For private respondent no.3

MR. AHMAD HASSAN,
MR. GUL ZEB KAHN

MEMBER(Executive)
MEMBER(Executive)

ATTESTED


MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

JUDGMENT

AHMAD HASSAN, MEMBER.-

Arguments of the learned counsel for the

parties heard and record perused.

FACTS

2. The brief facts are that the appellant appointed as Patwari in 1982 and afterwards reached the rank of Tehsildar. That the appellant while performing his duty as Tehsildar was transferred from Banda Daud Shah to Abbottabad vide order dated 04.11.2016. That just after about five months, the appellant was again transferred from Abbottabad to Chitral vide order dated 18.04.2017 without completing his normal tenure at previous station. That against the premature transfer order, the appellant filed departmental appeal on 27.04.2017, which was rejected on 15.06.2017, hence the instant service appeal.

ATTESTED


A

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ARGUMENTS

3. The Learned Counsel for the appellant argued that appellant was transferred from Banda Daud Shah to Abbottabad on 04.11.2016. That after five months vide order dated 18.04.2017, he was again transferred from Abbottabad to Chitral prematurely. His departmental appeal was rejected on 15.06.2017 so he filed the instant appeal. In the present case not only Posting/Transfer Policy of the Provincial Government was violated but instructions issued vide letter dated 27.02.2013 were also not adhered too. He further contended that in pursuance of instructions contained in letter dated 24.06.2003 posing/transfer orders of all officials up to BPS-19 except Heads of Attached Department irrespective of grades will be notified by the concerned Administrative Department with prior approval of the Competent Authority obtained on a summary. However, in this no such approval was obtained from the Competent Authority. The respondents in their comments have conceded that the appellant was transferred on the basis of a complaint lodged by the local of the Abbottabad. Learned counsel for the appellant also produced copy of the complaint lodged by Syed Abid Hussain Shah s/o Syed Munwar Shah resident of Tehsil Abbottabad. In case of complaint the department was required to initiate disciplinary action against the appellants instead of premature transfer. At the bottom of the complaint serious allegations of corrupt practices have also been leveled against Secretary Board of Revenue, Commissioner and Deputy Commissioner Abbottabad. Moreover, speaking order was not passed on the departmental appeal of the appellant. Reliance was placed reported as 2009 SCMR 390, 2012 PLC(C.S) 187 and PLD 2008(C.S) 769.

ATTESTED


 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

4. On the other hand the learned counsel for private respondent no.3 argued that as a result of general posting transfer 13 employees were transferred vide order dated 18.4.2017 so as to ensure good management and administration. Under Section-10 of Khyber Pakhtunkhwa Civil Servant Act 1973, a civil servant is required to serve

ATTESTED

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anywhere in the province. The appellant relinquished the charge on 20.04.2017 in Abbottabad and assumed the charge in Chitral on 24.04.2017 so both the orders had taken legal effect. A civil servant can hold a particular post at the pleasure of the competent authority, as held by the Supreme Court of Pakistan in judgment reported in 2017 SCMR 798(Citation-b).


5. Learned Deputy District Attorney contended that as a result of general posting/transfer, the appellant was transferred to Chitral alongwith 13 other officials. This order was issued in public interest and in accordance with Section-10 of Khyber Pakhtunkhwa Civil Servant Act, 1973. As the appellant had assumed charge at Chitral so the present appeal has become infructuous. Reliance was placed on 2010 PLC (C.S) 924 and 2017 SCMR 798 (Citation-b). When the learned Deputy District Attorney was confronted on the point whether summary as required under the aforementioned circular letter of the Provincial Government was moved and approval of the competent authority was obtained, he was unable to give a plausible explanation? However, representative of respondent no.1 and 2 informed that no such summary was moved by respondent no.2 to get approval of the competent authority.

CONCLUSION:

6. Careful perusal of record reveals that the appellant was prematurely transferred from Abbottabad to Chitral in flagrant violation of Posting/Transfer Policy of the Provincial Government of 2009 and instructions circulated through circular letter dated 27.02.2013. To sensitize and remind the respondents about the importance of Posting/Transfer Policy, attention is invited to para-i where it is clearly mentioned that the postings/transfers shall be strictly in public interest and shall not be abused/misused to victimize the government servants. Provision at S.No. xiv of the said policy is also attracted in this case. As the respondents have admitted in their para-wise comments that the appellant was transferred from Abbottabad to Chitral on the basis of complaint lodge

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED


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by local of Abbottabad. Transfer was not the remedy in this case. Transfer of a civil servant cannot be made on the basis of a complaint, as it is not mentioned as punishment in the list of penalties and regulations against the conduct of a civil servant. As serious charges of demanding illegal gratification were leveled against him so disciplinary proceedings should have been initiated under the relevant rules. After going through the complaint addressed to the Provincial Minister for Revenue serious allegations of unholy alliance/nexus between the appellant, Secretary Board of Revenue, Commissioner and Deputy Commissioner Abbottabad were leveled but only the appellant was transferred and rest was brushed under the carpet. The respondents owe an explanation for not probing the serious charges of corruption leveled against Commissioner Hazara and others. It is also a clear manifestation of malafide on their part. Similarly approval of the competent authority as required under letter dated 24.06.2003 through a summary was also not obtained and as such the order was passed by incompetent authority. As the order was passed by incompetent authority is *coram non-judice*, illegal, unlawful and void ab-initio and is not sustainable in the eyes of law.

7. In view of the foregoing, we are constrained to accept the present appeal by setting aside the impugned order dated 18.04.2017 and 15.06.2017. Parties are however, left to bear their own costs. File be consigned to the record room.

Sd/- Ahmad Hassan, Member
Sd/- Gul Zeb Khan, Member

ANNOUNCED
25.08.2017

Certified to be true copy
F. A. KHAN
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 14-09-17
Number of Words 1600
Copying Fee 10-
Urgent 2-
Total 12-
Name of Applicant [Signature]
Date of Completion of Copy 14-09-17
Date of Delivery of Copy 14-09-17

ATTESTED

BB

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. _____/2017
In Service Appeal No.658/2017

Mr. Shah Nawaz, Tehsildar,
Chitral, Revenue Deptt.:

PETITIONER

VERSUS

1. The Chief Secretary, KPK, Peshawar.
2. The SMBR, Revenue Deptt: Peshawar.

RESPONDENTS

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 25.08.2017 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**

.....

RESPECTFULLY SHEWETH:

1. That the petitioner has filed service appeal No. 658/2017 against the order dated 15.06.2017 whereby the departmental appeal of the petitioner has been rejected for no good ground against the premature transfer order dated 18.04.2017 whereby the petitioner was transferred from Abbottabad to Chitral.
2. That the said appeal was finally heard by the Honourable Tribunal on 25.08.2017 and the august Service Tribunal accept the appeal by setting aside the impugned order dated 18.04.2017 and 15.06.2017. (Copy of judgment is attached as Annexure-A)
3. That as the premature transfer order dated 18.04.2017 of the petitioner was set aside by this august Tribunal, therefore the petitioner field an application on 14.09.2017 to respondent No.2 for implementation of judgment dated 25.08.2017 of this august Service Tribunal, but the respondent No.2 did not implemented the judgment of this Hon'able Tribunal till date. (Copy of application is attached is Annexure-B)

ATTESTED


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- 4. That in-action and not fulfilling formal requirements by the department after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.
- 5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to obey the judgment dated 25.08.2017 of this Honourable Tribunal in letter and spirit.
- 6. That the petitioner has having no other remedy except to file this execution petition.

It is, therefore, most humbly prayed that the department may be directed to implement the judgment dated 25.08.2017 of this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.

PETITIONER
Shah Nawaz

THROUGH:

M. ASIF YOUSAFZAI
ADVOCATE SUPREME COURT,

TAIMUR ALI KHAN
ADVOCATE HIGH COURT.

&
S. NOMAN ALI BUKHARI
(ADVOCATE PESHAWAR)

AFFIDAVIT:

It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief.

DEPONENT

~~ATTESTED~~

Oath Commissioner
Zafoor Khan Advocate
Distt: Court Peshawar

18 SEP 2017

ATTESTED
De

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.



Execution Petition No. 217 /2017
In Service Appeal No.658/2017

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 984
Date 21/11/2017

Mr. Shah Nawaz, Tehsildar,
Chitral, Revenue Deptt.:

PETITIONER

VERSUS

1. The Chief Secretary, KPK, Peshawar.
2. The SMBR, Revenue Deptt: Peshawar.

RESPONDENTS

.....
**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS - - TO IMPLEMENT THE
JUDGMENT DATED 25.08.2017 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**
.....

29.03.2018

Petitioner with counsel and Addl. AG alongwith
Attaullah, Assistant Secretary for the respondents present.
Learned AAG informed the Tribunal that the department had
filed a CPLA before the august Supreme Court of Pakistan but
no stay order has been produced today. The petitioner is
directed to assume the charge of the post of Tehsildar,
Abbottabad and the department is directed to accept the charge
report of the petitioner. To come up for implementation report
on 25.4.2018 before the S.B.

SD/-
Chairman


Certified to be true copy

EXCUTORY
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

D (11)

CHARGE ASSUMPTION REPORT


In compliance with august Service Tribunal KPK, Peshawar Judicial order dated 29/03/2018. I Mr. Shah Nawaz Khan assumed the charge of the post of Tehsildar Abbottabad today on 02/04/2018 (F/N).


(SHAHNAWAZ)
Tehsildar, Abbottabad

No. 435-41 /TA dated Abbottabad the / 02 /04/2017.

Copy forwarded for information to the :-

- ✓ 1. SMBR KPK Peshawar for information please.
(Copy of order dated 29/03/2018 attached.)
2. Commissioner Hazara Division, Abbottabad.
3. Deputy Commissioner, Abbottabad.
4. Deputy Commissioner, Chitral.
5. Assistant Secretary (Estt) Board of Revenue.
6. District Controller of Accounts, Abbottabad/Chitral.


(SHAHNAWAZ)
Tehsildar, Abbottabad

VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal Peshawar

Shah Nawaz

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Revenue Deptt

(Respondent)
(Defendant)

I/We Shah Nawaz

Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.


I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20


(CLIENT)

ACCEPTED


M. ASIF YOUSAFZAI
Advocate


TAIMUR ALI KHAN
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:

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Khyber Bazar Peshawar.
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0333-9103240