

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	16.01.2020	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> Service Appeal No. 743/2019</p> <p style="text-align: right;">Date of Institution 18.06.2019 Date of Decision 17.02.2020</p> <p>Tehseen Ullah.</p> <p style="text-align: right;">Appellant</p> <p style="text-align: center;">Versus</p> <ol style="list-style-type: none"> 1. The Government of Khyber Pakhtunkhwa through Chief Secretary Peshawar. 2. The Senior Member Board of Revenue Khyber Pakhtunkhwa Peshawar. 3. The Commissioner Peshawar Division Peshawar. <p style="text-align: right;">Respondents</p> <p>Mr. Muhammad Hamid Mughal-----Member(J) Mr. Mian Muhammad -----Member(E)</p> <p style="text-align: center;"><u>JUDGMENT</u> <u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> Learned counsel for the appellant present. Mr. Riaz Paindakheil learned Assistant Advocate General present.</p> <p>2. The appellant has filed the present service appeal against the order dated 25.02.2019 whereby the posting order dated 22.02.2019 of the appellant as Naib Tehsildar Passport Torkham Khyber, was withdrawn.</p> <p>3. Learned counsel for the appellant pleaded that the</p>

17.2.2020

posting transfer order of the appellant was withdrawn just within three days of its issuance; that the appellant has been made rolling stone; that the impugned order is neither issued in the public interest nor in exigency of service rather the same is premature, politically motivated and in utter violation of posting transfer policy.

4. As against that learned AAG argued that the appellant has not come to this Tribunal with clean hands; that posting transfer of the Tehsildars and Naib Tehsildars is purely made in the public interest without any political influence and no violation of the posting transfer policy was made.

5. Arguments heard. File perused.

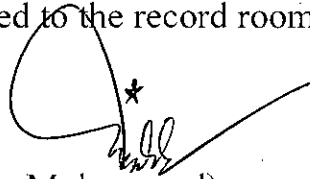
6. It is unfortunate that due to governance issue, most of the posts in revenue department have just become a money making posts. Admittedly the appellant is holding the substantive post of Kanungo but he is performing the duties of higher post of Naib Tehsildar on OPS/Current Charge Basis.

7. The august Supreme Court of Pakistan has already held that the performance of duty at a higher post on Current Charge Basis has no legal backing. In the given circumstances the appellant (Kanungo) could not make out a case for issuance of direction to the respondents to post him as Naib Tehsildar. It may also be mentioned that this Tribunal has repeatedly issued directions to the Revenue Department to exercise restraint from making appointment at higher posts on Current Charge Basis.

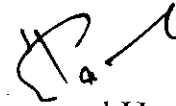
17.2.2020

The record reflects that the respondents have posted many officials of Kanungo rank/lower rank at the higher post of Naib Tehsildars. This Tribunal is therefore constrained to set aside all the orders of posting of Kanungo/lower rank officials as Naib Tehsildars on OPS/Current Charge Basis.

8. As a sequel to above the present service appeal is dismissed. Parties are left to bear their own costs. Copy of this judgment be sent to the respondents for compliance. File be consigned to the record room.



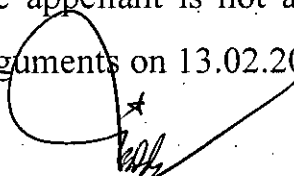
(Mian Muhammad)
Member




(Muhammad Hamid Mughal)
Member

ANNOUNCED
17.02.2020


11.02.2020 Junior to counsel for the appellant and Mr. Usman Ghani learned District Attorney alongwith Muhammad Arif Superintendent present. Junior to counsel for the appellant seeks adjournment as senior learned counsel for the appellant is not available. Adjourn. To come up for arguments on 13.02.2020 before D.B.


Member


Member

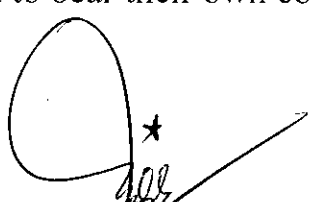
13.02.2020 Learned counsel for the appellant and Mr. Riaz Khan Paindakheil learned Assistant Advocate General alongwith Muhammad Arif Superintendent present. Arguments heard. To come up for order on 17.02.2020 before D.B.


Member


Member

17.02.2019 Learned counsel for the appellant present. Mr. Riaz Paindakheil learned Assistant Advocate General present.

Vide separate judgment of today of this Tribunal placed on file, the present service appeal is dismissed. copy of this judgment be sent to the respondents for compliance. Parties are left to bear their own costs. File be consigned to the record room.


(Mian Muhammad)
Member


(Muhammad Hamid Mughal)
Member

ANNOUNCED.
17.02.2020

17.12.2019

Lawyers are on strike on the call of Peshawar Bar Association. Adjourn. To come up for further proceedings/arguments on 18.12.2020 before D.B.


Member


Member

18.12.2019

Appellant absent. Learned counsel for the appellant absent. Mr. Riaz Paindakheil learned Assistant Advocate General present. Adjourn. To come up for arguments on 31.12.2019 before D.B.


Member


Member

31.12.2019

Counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present. Learned District Attorney requested for adjournment. Adjourned to 17.01.2020 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

27.01.2020

Appellant in person and Mr. Muhammad Jan, DDA alongwith Muhammad Arif, Superintendent for the respondents present.

Due to general strike on the call of K.P. Bar Council, instant appeal is adjourned to 11.02.2020 for arguments before the D.B.


Member


Member

29.11.2019


Appellant still absent. Learned counsel for the appellant also absent. Junior to counsel for the appellant present. Mr. Riaz Khan Paindakheil learned AAG alongwith Muhammad Arif Superintendent present. Junior to counsel for the appellant seeks adjournment. It seems that the appellant has filed the present service appeal against posting transfer order but is not interested to pursue the same. In the interest of justice, last opportunity is granted. Adjourn. To come up for arguments on 09.12.2019 before D.B. Fresh notice be issued to the appellant for the date fixed.

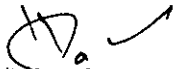

Member


Member

09.12.2019

Lawyers are on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourn. To come up for further proceedings/arguments on 17.12.2019 before D.B.


Member


Member

03.10.2019

Junior to counsel for the appellant and Mr. Riaz Kundi Paindakheil learned Assistant Advocate General present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 15.10.2019 before D.B.


Member


Member

15.10.2019

Appellant absent. Learned counsel for the appellant absent. Mr. Usman Ghani learned District Attorney alongwith Muhammad Arif Superintendent present. Appellant be put to notice. Being posting transfer case, adjourned for a short date. To come up for arguments on 24.10.2019 before D.B.


Member


Member

24.10.2019


None present for the parties. Notice be issued to the parties for attendance and arguments for 29.11.2019 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

21.08.2019

Appellant in person present. Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Arif Superintendent for the respondents present and submitted written reply/comments. Adjourned. To come up for rejoinder/arguments on 04.09.2019 before D.B.


(Hussain Shah)
Member

04.09.2019

Appellant with counsel present. Mr. Riaz Khan Paindakhel learned Assistant Advocate General alongwith Mr. Arif Superintendent for the respondents present. Learned counsel for the appellant submitted rejoinder which is placed on file and seeks adjournment Adjourned. To come up for arguments on 30.09.2019 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

30.09.2019

Due to general strike of the bar, the case is adjourned to 03.10.2019 before D.B.


Member


Member

05.07.2019 Junior to counsel for the appellant and Mr. Muhammad Jan, DDA for respondents present. Written reply/comments not submitted. Notices be issued to the respondents for submission of written reply/comments. Case to come up for written reply/comments on 17.07.2019 before S.B.



(Ahmad Hassan)
Member

17.07.2019 Junior to counsel for the appellant and Mr. Muhammad Riaz Khan Painsdakhel, Asstt. AG alongwith Attaullah, Assistant Secretary for the respondents present.

Representative of the respondents states that written reply prepared and in process of vetting. He requests for short adjournment. To come up for written reply/comments on 31.07.2019 before S.B.



Chairman

31.07.2019 Nemo for the appellant. Mr. Usman Ghani, District Attorney alongwith Mr. Attaullah, Assistant Secretary for respondents present.

The representative of the respondents requests for further time to submit the reply/comments.

Adjourned to 21.08.2019 before S.B.



Cha

27.06.2019

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 25.02.2019 whereby the posting transfer order in respect of the appellant as Naib Tehsildar Passport Khyber was withdrawn.

Points raised need consideration. The present service appeal is admitted for regular hearing subject to all the legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for reply/comments. To come up for written reply/comments on 05.07.2019 before S.B

Annexed with the memo of appeal is an application for interim relief. Notice of the said application be also issued to respondents for the date fixed.

It transpired that the appellant who is basically a Kanungo, has been performing the duties of higher post of Naib Tehsildar since long. Senior Member Board of Revenue (respondent No.2), Commissioner Peshawar Division, Peshawar (respondent No.3) are directed to offer explanation to that effect in as much as the august Supreme Court of Pakistan has already held that performance of duty at higher post on current charge basis has no legal backing. Chief Secretary Khyber Pakhtunkhwa (respondent No.1) is also directed to look into the matter and restrain Senior Member Board of Revenue (respondent No.2) and Commissioner Peshawar Division, Peshawar (respondent No.3) from making appointments on money making posts on current charge basis. Needless to mention that time and again the SMBR has been directed to shun the practice of making appointments on higher posts on current charge basis. Copy of this order sheet be sent to all the respondents for compliance.

Appellant deposited
Security & Process Fee

27/6/19



Pa
Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 743/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	18/06/2019	<p>The appeal of Mr. Tehseen Ullah presented today by Mr. Khaled Rehman 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-	27/06/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>27/06/19</u></p> <p style="text-align: right;"> MEMBER</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 743 /2019

TehseenullahAppellant

Versus

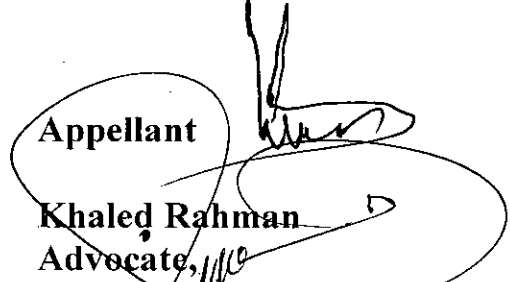
The Govt. of KPK & others Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-4
2.	Stay Application with Affidavit			5
3.	Transfer order of appellant as Political Naib Tehsildar, Torkham, District Khyber	05.12.2017	A	6
4.	Another transfer order of appellant as Naib Tehsildar Khewzai Mohmand	09.07.2018	B	7-9
5.	Transfer/posting order of appellant as Naib Tehsildar Passport Torkham, District Khyber	22.02.2019	C	10-11
6.	Impugned transfer order	25.02.2019	D	12
7.	Posting/Transfer policy		E	13-15
8.	Departmental Appeal	26.02.2019	F	16-19
9.	PLD 2013 SC 195		G	20-22
10.	Office Memorandum in light of Judgment of august Supreme Court	23.01.2013	H	23-24
11.	Wakalat Nama			25

Through

Appellant


Khaled Rahman
Advocate,
Supreme Court of Pakistan
4-B, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458
Cell # 0345-9337312

Dated: 17 /06/2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 743 /2019Khyber Pakhtunkhwa
Service TribunalDiary No. 863Dated 18/6/2019**Tehseenullah**

Naib Tehsildar Passport

Torkham, District Khyber.....

Appellant

Versus

1. **The Govt. of Khyber Pakhtunkhwa**
through Chief Secretary,
Civil Secretariat, Peshawar
2. **The Senior Member Board of Revenue**
Govt. of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar.
3. **The Commissioner**
Peshawar Division, Peshawar..... **Respondents**

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 25.02.2019 OF RESPONDENT NO.3 WHEREBY HE CANCELLED/WITHDREW EARLIER TRANSFER ORDER DATED 22.02.2019 AGAINST WHICH APPELLANT PREFERRED DEPARTMENTAL REPRESENTATION ON 26.02.2019 TO RESPONDENT NO.2 BUT THE SAME WAS NOT DISPOSED OF WITHIN THE PRESCRIBED PERIOD OF 90 DAYS.

Filed to-day

Registrar

18/6/19

PRAYER:

On acceptance of the instant appeal, the impugned order dated 25.02.2019 may graciously be set aside by restoring office order dated 22.02.2019 and the appellant may be allowed to perform his duties as Naib Tehsildar Passport, Torkham, District Khyber.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. **That** appellant was initially appointed as Patwari and thereafter was promoted as Kanungo on the account of his meritorious service, and was posted as Naib Tehsildar on current charge basis at Abbottabad where he

performed his duty to the entire satisfaction of the high-ups.

2. **That** appellant was performing the duties as Political Naib Tehsildar at Landi Kotal. It is worth mentioning that after serving for short period of just 7 months, appellant was prematurely transferred from the post of Political Tehsildar Landi Kotal, Khyber Agency to Political Naib Tehsildar, Torkham, District Khyber against the vacant post vide office order dated 05.12.2017 (*Annex:-A*). It would also be opt to add here that Respondents without completing the prescribed tenure of posting/transfer vide office order dated 09.07.2018 (*Annex:-B*) again prematurely transferred the appellant from Naib Tehsildar Turkham to Naib Tehsildar Khewzai Mohmand.
3. **That** pursuant to the order appellant performed the duties of the said post without any complaint. Appellant was satisfied that in future he would not be made a rolling stone but again was prematurely transferred from the existing place of posting to the vacant post of Naib Tehsildar Passport Torkham, District Khyber vide order dated 22.02.2019 (*Annex:-C*).
4. **That** thereafter, appellant took over the charge against the said post on 22.02.2019 and started performing his duties, however, to the utter shocked and dismay of the appellant just after three days, vide impugned order dated 25.02.2019 (*Annex:-D*) the transfer order dated 22.02.2019 *ibid*, was withdrawn/cancelled without any reason muchless lawful and on political basis which is crystal clear violation of posting transfer policy.
5. **That** as per Posting/Transfer policy (*Annex:-E*) "*all the posting/ transfers shall be made strictly in public interest and shall not be abused/ misused to victimize Government Servants, with further directions that the normal tenure of posting shall be three years*". Furthermore, it is not first occasion where the appellant has been prematurely transferred on political consideration and utter violation of posting/transfer policy rather he was subjected to repeated premature transfers.
6. **That** being aggrieved of the impugned office order dated 25.02.2019, appellant preferred Departmental Appeal (*Annex:-F*) to Respondent No.2 on 26.02.2019 which was not disposed of within the prescribed period of 90

days hence, appellant files the instant appeal inter-alia on the following grounds:-

Grounds:

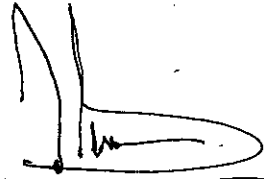
- A. **That** Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned office order, which is unjust, unfair and hence not sustainable in the eye of law.
- B. **That** the impugned office order is neither in the public interest nor in exigency of service rather the same is in utter violation of transfer/ posting policy and as such is not legally correct. Furthermore, the transfer order dated 22.02.2019 which acted upon and appellant submitted/assumed the charge of the new post as per directions of the high-ups as well as in the light of the said order.
- C. **That** the impugned orders is the result of political consideration which is not only violative of the policy on the subject matter as well as the judgment of the Apex Court (**PLD 2013 SC 195 Annex:-G**) "*wherein it was held that a normal tenure of posting of Government Servant should be completed and there should not be premature transfer, it was further held that Government Servant having the fundamental protection which are enshrined to them under the Constitution of the Islamic Republic of Pak in 1973*". Therefore, appellant was highly victimized by way of repeated premature transfers on political consideration as well as clear violation of landmark Judgment of the Apex Court.
- D. **That** while issuing the impugned order, the terms as per Transfer/Posting Policy have not been respected. It is admitted position that the appellant has served on the previous post just for three days, hence, the transfer order was cancelled just after that which is clear violation of law, Rules and Policy.
- E. **That** while issuing the impugned office order dated 25.02.2019, the Respondents have not only violated the Policy in field but also deprived appellant from his right to serve the Department in the light of earlier transfer order dated 22.02.2019 where he has relinquished the charge of his

earlier post.

- F. **That** it is not only the matter of withdrawal/cancellation of the earlier Notification dated 22.02.2019 but the Respondents has also clearly violated the Posting/Transfer Policy which provides that appellant should have been allowed to complete his tenure, therefore, the impugned office order has been issued against the spirit of posting/transfer Policy and in violation of fundamental rights of appellant and thus is liable to be struck down.
- G. That the impugned order is against the Tenure Policy and thus violative of the Transfer/Posting Policy issued by the Provincial Government as well as against the Judgment of the august Supreme Court of Pakistan circulated through O.M. dated 03.01.2013 (*Annex:- H*).
- H. That clear violation of provision of Section-24A of the General Clauses Act-1897 has been made and no response has been given on the Departmental Appeal of the appellant.
- I. That appellant would like to offer some other grounds during the course of arguments.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Through


Appellant
 Khaled Rahman,
 Advocate,
 Supreme Court of Pakistan

Dated: 17 /06/2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2019

TehseenullahAppellant

Versus

The Govt. of KPK & others Respondents

Application for suspending the operation of the impugned office order dated 25.02.2019, till the final disposal of the instant appeal.

Respectfully Sheweth,

1. That the above titled service appeal is being filed today which is yet to be fixed for hearing.
2. That the facts alleged and grounds taken in the body of main appeal may kindly be taken as an integral part of this application, which make out an excellent prima facie case in favour of applicant/ appellant.
3. That the balance of convenience, also lies in favour of applicant/appellant and in case the impugned order is not suspended the applicant/appellant will suffer irreparable loss.

It is, therefore, humbly prayed that on acceptance of this application, the operation of the impugned order dated 25.02.2019 may graciously be suspended till the final disposal of the main appeal.

Through

Applicant

Khaled Rahman,
Advocate,
Supreme Court of Pakistan

Dated: 17/06/2019

Verification

Verified that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Applicant/Appellant



OFFICE OF THE
COMMISSIONER PESHAWAR DIVISION
PESHAWAR

No: 6/7/EA/1/
Dated: 05.12.2017

OFFICE ORDER

Annex 'A' - 6

The following posting / transfers amongst Tehsildars / Naib Tehsildars in Khyber & Mohmand Agencies are hereby ordered with immediate effect in the public interest.

S.#	Name of Officials	From	To
1.	Mr. Khalid Khan Tehsildar (BPS-16)	Services placed at the disposal of this office	PT Safi Mohmand Agency
2.	Mr. Shams-ul-Islam Tehsildar (BPS-16)	Services placed at the disposal of this office	PT Landikotal Khyber Agency
3.	Mr. Miraj Khan Tehsildar (BPS-16)	PT Safi Mohmand Agency	Report to Board of Revenue Khyber Pakhtunkhwa
4.	Mr. Tehseenullah Naib Tehsildar (CCB)	PT Landikotal Khyber Agency (OPS)	PNT Passport Torkham (OPS) against the vacant post

-Sd-

COMMISSIONER
PESHAWAR DIVISION PESHAWAR

No: 6/7/EA/1/

15198-205

Copy forwarded to:

1. Additional Chief Secretary FATA, FATA Secretariat, Peshawar.
2. Principal Secretary to Governor, Khyber Pakhtunkhwa.
3. Political Agents Khyber & Mohmand Agencies.
4. Agency Accounts Officers, Khyber & Mohmand Agency.
5. PS to Chief Secretary, Govt. of Khyber Pakhtunkhwa.
6. PS to Commissioner Peshawar Division.
7. Officials concerned for compliance.

ASSISTANT TO COMMISSIONER(R/GA)
PESHAWAR DIVISION PESHAWAR

Secy:	
AC P/D:	
AC R/Ga:	
Suptd:	
Branch:	
Diary No.	
Date:	12277 5/17

ATTESTED

A

Annex "B"

235

Secy:	
AC PID:	
AC R/Ga:	
Supd:	
Branch:	
Diary No.	
Date:	7562 10/18

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

Peshawar dated the 09/07/2018

ORDER

No. Estt: EP/12/078 In pursuance to the concurrence of the Election Commission of Pakistan conveyed through letter No. F.2(18)/2018-Cord., dated 05.07.2018, the Competent Authority is pleased to order the posting / transfer amongst the following Naib Tehsildars with immediate effect and in public interest:-

S.No	Name of Naib Tehsildar	From	To
1.	Mr. Kifayatullah	Naib Tehsildar Mohmand	Naib Tehsildar Khair Abad
2.	Mr. Mustamir Shah Senior Clerk	Naib Tehsildar (CCB) Khair Abad	Repatriated to his parent office
3.	Mr. Qaisar Khan	Tehsildar (CCB) Pabbi	Naib Tehsildar Acquisition Charsadda
4.	Mr. Shakil Barki	Naib Tehsildar Halimzai	Naib Tehsildar Passport Torkham
5.	Mr. Ahmad Ali	Naib Tehsildar Bazaar Zakhakhel	Naib Tehsildar Firkaghund.
6.	Mr. Khaista Rehman	Naib Tehsildar Ekkaghund	DRA Charsadda. Mr. Muhammad Tahir DRA (CCB) repatriated to his parent office.
7.	Mr. Muhammad Riaz	Naib Tehsildar BARA	Naib Tehsildar Halimzai
8.	Mr. Muhammad Shakil	Naib Tehsildar Mullagori	Naib Tehsildar Bara
9.	Mr. Shehryar Khan	Naib Tehsildar Khwezai	Naib Tehsildar Mullagori
10.	Mr. Riaz Ul Haq	Naib Tehsildar Ambar	Naib Tehsildar FR Peshawar.
11.	Mr. Tehseenullah Kanungo	Naib Tehsildar (CCB) Passport Torkham	Naib Tehsildar (CCB) Khwezai
12.	Mr. Tanzeel-ur-Rehman	Naib Tehsildar FR Peshawar	Naib Tehsildar Ambar
13.	Mr. Faiz Muhammad	PNT (OPS) South Waziristan	Naib Tehsildar (OPS) Mohmend Circle
14.	Mr. Inayat-Ur-Rehman	Naib Tehsildar (OPS) Charsadda	Naib Tehsildar (OPS) Pendiiali
15.	Mr. Nasrullah	Naib Tehsildar Katlang	Naib Tehsildar Takht Bhai
16.	Mr. Arshad Iqbal	Naib Tehsildar Takht Bhai	Naib Tehsildar Mardan
17.	Mr. Sabaz Ali	Naib Tehsildar (OPS) Takht Bhai	Naib Tehsildar (OPS) Katlang
18.	Mr. Yadullah	Awaiting posting in Commissioner Office Mardan	Naib Tehsildar Land Acquisition Swabi
19.	Mr. Ahdar Rashid	Naib Tehsildar Land Acquisition Swabi	Naib Tehsildar Lahor
20.	Mr. Nisar Ullah	Naib Tehsildar Swabi	Naib Tehsildar Rustum

ATTESTED

B

- 8

21.	Mr. Umbaras	Naib Tehsildar Rustum	Naib Tehsildar Swabi
22.	Mr. Fazale Rabi	Naib Tehsildar (CCB) Haripur	Naib Tehsildar (CCB) Abbottahad
23.	Mr. Ghulam Murtaza	Naib Tehsildar Khanpur	HCR DC Office Hairpur
24.	Mr. Hafiz Bilal	HCR DC Office Haripur	Naib Tehsildar Khanpur
25.	Mr. Imtaiz	Naib Tehsildar Oghi	Naib Tehsildar Baffapakhai
26.	Mr. Inayat	Naib Tehsildar Mansehra	Settlement Naib Tehsildar Mansehra
27.	Mr. Farrukh Jadoon	Tehsildar (OPS) Balakot	Naib Tehsildar Mansehra
28.	Mr. Awal Khan	DK DC Office Haripur	Naib Tehsildar Allai
29.	Mr. SherZada	Naib Tehsildar (OPS) Battagram	Repatriated to his parent office
30.	Mr. Saif ur-Rehman	Naib Tehsildar (OPS) Kandia	Repatriated to his parent office
31.	Mr. Gul Shehzad	Naib Tehsildar Abbottabad	Naib Tehsildar Battagram
32.	Mr. Muhammad Saleem	Tehsildar (OPS) Abbottabad	Naib Tehsildar Oghi
33.	Mr. Aqeel Ahmad	Naib Tehsildar (OPS) Kandar	Repatriated to his parent office
34.	Mr. Sabir Hussain Shah	Naib Tehsildar Settlement Mansehra	Repatriated to his parent office
35.	Mr. Dildar Khan	Sub Registrar Mansehra	Naib Tehsildar Kandar
36.	Mr. Muhammad Asghar	Naib Tehsildar Martung Shangla	Naib Tehsildar Barang
37.	Mr. Sadaqat Ali Senior Clerk	Naib Tehsildar Gadezai	Repatriated to his parent office.
38.	Mr. Nimatullah (DK)	Naib Tehsildar (CCB) Chagharzai	Naib Tehsildar Barikot
39.	Mr. Sultan Zeb	Naib Tehsildar Chamla	Naib Tehsildar Khwazakhela
40.	Mr. Naseer Abas	Naib Tehsildar (CCB) Gagra	Repatriated to his parent office
41.	Syed Zafar Ali	Naib Tehsildar Charbagh	Naib Tehsildar Dir Upper (Headquarter)
42.	Mr. Alam Zeb	Naib Tehsildar Barikot	Naib Tehsildar Sheringal Dir Upper
43.	Mr. Shah Wazir	Naib Tehsildar Matta	Naib Tehsildar Gagra with additional charge of NT Chagharzai
44.	Mr. Ibrar Ahmad	Naib Tehsildar (ACB) Kalam	Naib Tehsildar (ACB) Gadezai Buner
45.	Mr. Nawab Ali Senior Clerk	Naib Tehsildar KhwazaKhela	Repatriated to his parent office
46.	Mr. Jehun Ali	Naib Tehsildar Baizai Malakand	District Kanungo Swat
47.	Mr. Faiz Muhammad	District Kanungo Swat	Naib Tehsildar Dargai. Mr. Faraz Dayan NT (CCB) Dargai, repatriated to his parent office.
48.	Mr. Sardar Yousaf	PNT DC office SW	Naib Tehsildar Batkhela

9/7/18

ATTESTED

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49.	Mr. Muhammad Rafiq	PNT-I Kurrum	DK Kohat
50.	Mr. Fazal Rahim	NT (CCB) Hangu	PNT Jawaki
51.	Mr. Muhammad Naseer	PNT (OPS) Jawaki	Naib Tehsildar (OPS) Hangu
52.	Mr. Zafar Iqbal	Tehsildar (OPS) Kohat	Naib Tehsildar Kohat
53.	Mr. Hafeez Ud Din	PNT Lower Orakzai	PNT Upper Orakzai
54.	Mr. Saaz Muhammad	PNT Central Kurrum	PNT Dara
55.	Mr. Khushta Akbar	PNT Upper Orakzai	PNT Lower Orakzai
56.	Mr. Javed Khan	DRA Kohat	PNT-I Kurrum
57.	Mr. Muhammad Shoaib	Naib Tehsildar Kohat	Naib Tehsildar Karak. Mr. Wazir Mohammad NI (CCB) Karak, repatriated to his parent office.
58.	Mr. Musadiq Hussain	PNT-II Upper Kurrum	DRA Kohat
59.	Mr. Asmatullah	PNT Dara	PNT Central Kurrum
60.	Mr. Umar Farooq	PNT (OPS) Shewa	Repatriated to his parent office
61.	Mr. Abdul Salam	NT Lakki	NT Kakki
62.	Mr. Gohar Ali	NT Serai Naurang	NT Lakki
63.	Mr. Ali Akbar	NT (CCB) Tajori	Repatriated to his parent office
64.	Mr. Nek Nawaz	DRA Lakki	NT Tajori
65.	Mr. Ghulam Abbas	PT (OPS) Dosili	PT (OPS) Mirali
66.	Mr. Shaifullah	Naib Tehsildar Bakka Khel	Naib Tehsildar Domail
67.	Mr. Musharaf Khan	Naib Tehsildar Domail	DK Bannu
68.	Mr. Abdur Rehman	Sub-Registrar Bannu	Naib Tehsildar Bannu
69.	Mr. Murad Ali	DRA Bannu	Naib Tehsildar Naurang
70.	Mr. Fazal Karim	Naib Tehsildar Pindiali	PNT South Wazirsatan

By Order Of
Senior Member

No. Estt./S/95/2017/27079-98

Copy forwarded to the:-

1. Election Commission of Pakistan with reference to his letter No. F.2(18)/2018-Cord., dated 05.07.2018.
2. Additional Chief Secretary PATA, Fata Secretariat, Khyber Pakhtunkhwa.
3. Accountant General, Khyber Pakhtunkhwa Peshawar.
4. Commissioners of the respective Divisions.
5. PSO to Chief Secretary, Khyber Pakhtunkhwa.
6. Deputy Commissioners of the respective Districts including FATA Districts.
7. Director Information Khyber Pakhtunkhwa, Peshawar.
8. District Accounts Officers of the respective Districts.
9. Officers / Officials concerned.
10. Personal Files.

ATTESTED

Assistant Secretary (Estt)



Annex C
10

**OFFICE OF THE
COMMISSIONER PESHAWAR DIVISION
PESHAWAR**

No: 6/7/EA/2019/1/2399-408
Dated: 22.02.2019

OFFICE ORDER

The following posting / transfer amongst Tehsildars / Naib Tehsildars are hereby ordered with immediate effect in the public interest:

S.#	Name of Officials	From	To
1.	Mr. Kifayatullah Tehsildar (BPS-16)	Waiting for posting	Tehsildar Reconciliation Peshawar
2.	Mr. Yadullah Khattak Tehsildar (BPS-16)	Waiting for posting	Tehsildar Bara
3.	Mr. Zahid Younas Tehsildar (BPS-16)	Tehsildar Bara	Report to Commissioner Office
4.	Mr. Shahid Shah Naib Tehsildar (BPS-14)	Waiting for posting	Naib Tehsildar Hassan Khel Peshawar
5.	Mr. Said Muhammad Naib Tehsildar (BPS-14)	Waiting for posting	Naib Tehsildar Pindiali Mohmand
6.	Mr. Zulfiqar Khan Naib Tehsildar (BPS-14)	Naib Tehsildar Bara	Naib Tehsildar Shabqadar
7.	Mr. Roshan Lal Naib Tehsildar (BPS-14)	Waiting for posting	District Revenue Accountant Nowshera
8.	Mr. Inayat ur Rehman Kanungo (BPS-11)	Naib Tehsildar Pindiali (OPS)	Naib Tehsildar Bara (OPS)
9.	Mr. Abid Ali Kanungo (BPS-11)	District Revenue Accountant Nowshera (OPS)	Naib Tehsildar Khairabad (OPS)
10.	Mr. Tehseen ullah Kanungo (BPS-11)	Naib Tehsildar Khwezai Mohmand (OPS)	Naib Tehsildar Passport Torkham Khyber
11.	Mr. Ghuncha Gul Naib Tehsildar (BPS-14)	Waiting for posting	Naib Tehsildar Khwezai Mohmand

-Sd-

**COMMISSIONER
PESHAWAR DIVISION PESHAWAR**

No: 6/7/EA/2019/1/2399-408

Copy forwarded to:

1. Senior Member Board of Revenue Khyber Pakhtunkhwa.
2. Accountant General Khyber Pakhtunkhwa.
3. All Deputy Commissioners in Peshawar Division.
4. PS to ACS merged areas Secretariat.
5. PS to Commissioner Peshawar Division.
6. Officials concerned for compliance.

**SECRETARY TO COMMISSIONER
PESHAWAR DIVISION PESHAWAR**

ATTESTED

D
- 11

CHARGE ASSUMPTION REPORT

In compliance with the worthy Commissioner Peshawar Division, Peshawar office order No. 6/7/EA/2019/I/2399-408 dated 22-02-2019, I Tehseen Ullah assumed the charge of the post of Naib Tehsildar Passport, Torkham today on 23-02-2019 (F.N).


Tehseen Ullah


(Naib Tehsildar Passport, Torkham)

OFFICE OF THE NAIB TEHSILDAR PASSPORT, TORKHAM.

No. 855-62 /NTP-TKM, dated Torkham the 23-02-2019

Copy forwarded to the:

1. Senior Member, Board of Revenue Khyber Pakhtunkhwa.
2. Accountant General, Khyber Pakhtunkhwa.
3. Deputy Commissioner, Khyber.
4. PS to Additional Chief Secretary, merged areas Secretariat.
5. PS to Commissioner Peshawar Division, Peshawar.
6. Assistant Commissioner, Landikotal.
7. District Accounts Office, Khyber.
8. Personal File.


Naib Tehsildar Passport, Torkham

ATTESTED





OFFICE OF THE
COMMISSIONER PESHAWAR DIVISION
PESHAWAR

12

No: 6/7/EA/2019/1/
Dated: 25.02.2019

OFFICE ORDER

Annoea "D"

This office order bearing No.6/7/EA/2019/1/2399-408 dated 22.02.2019 is hereby withdrawn with immediate effect:

-Sd-

COMMISSIONER
PESHAWAR DIVISION PESHAWAR

No: 6/7/EA/2019/1/23409-16

Copy forwarded to:

1. Senior Member Board of Revenue Khyber Pakhtunkhwa.
2. Accountant General Khyber Pakhtunkhwa.
3. All Deputy Commissioners in Peshawar Division.
4. PS to ACS Merged Areas Secretariat.
5. PS to Commissioner Peshawar Division.
6. Officials concerned for compliance.

SECRETARY TO COMMISSIONER
PESHAWAR DIVISION PESHAWAR

ATTESTED

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-13-
ANNEE E



ESTA CODE

**ESTABLISHMENT CODE KHYBER PAKHTUNKHWA
(REVISED EDITION) 2011**

**A COMPENDIUM OF LAWS, RULES AND INSTRUCTIONS
RELATING TO THE TERMS AND CONDITIONS
OF PROVINCIAL CIVIL SERVANTS**

**COMPILED BY;
(O&M) SECTION
ESTABLISHMENT & ADMINISTRATION DEPARTMENT**

ATTESTED

Posting and Transfer

Statutory Provision.

Section 10 of the NWFP Civil Servants Act, 1973.

Posting and Transfer. Every civil servant shall be liable to serve anywhere within or outside the Province, in any post under the Federal Government, or any Provincial Government or Local authority, or a Corporation or body set up or established by any such Government:-

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region;

Provided further that, where a civil servant is required to serve in a post outside a service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

Posting/transfer policy of the Provincial Government.

- i) All the posting/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants
- ii) All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities for seeking posing/transfers of their choice and against the public interest.
- iii) All contract Government employees appointed against specific posts, can not be posted against any other post.
- iv) Existing tenure of posting/transfer of three (03) years for settled areas and two (02) years for unattractive/hard areas shall be reduced to two (02) years for settled areas, 01½ years for unattractive areas and one year for hard areas.
- v) ⁷⁹[]

⁷⁹ Para-1(v) regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No: SOR-VI (E&AD) 1-4/2008/Vol-VI, dated 3-6-2008. Consequently authorities competent under the NWFP Government Rule of Business, 1985, District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make Posting/Transfer subject to observance of the policy and rules.

ATTESTED

- vi) ⁸⁰While making posting/transfers of officers/officials up to BS-17 from settled areas to FATA and vice versa approval of the Chief Secretary, NWFP needs to be obtained. Save Tehsildars/Naib Tehsildars within a division in respect of whom the concerned Commissioner will exercise the same power. Whereas, in case of posting/transfer of officers in BS-18 and above, from settled areas to FATA and vice versa, specific approval of the Governor, NWFP shall be obtained.

Provided that the power to transfer Political Tehsildars and Political Naib Tehsildars within FATA between different divisions shall rest in Additional Chief Secretary FATA.

- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for at least eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.
- vii) Officers may be posted on executive/administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thaana) of his area/residence is situated.
- viii) No posting/transfers of the officers/officials on detailment basis shall be made.
- ix) Regarding the posting of husband/wife, both in Provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.
- x) All the posting/transferring authorities may facilitate the posting/ transfer of the unmarried female government Servants at the station of the residence of their parents.
- xi) Officers/officials except DCOs and DPOs/SPs who are due to retire within one year may be posted on their option on posts in the Districts of their domicile and be allowed to serve there till the retirement

ALREADY

⁸¹DCOs and DPOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against non-administrative posts of equivalent scales;

- xii) In terms of Rule 17(1) and (2) read with Schedule-III of the NWFP Government Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against each officer in column 2 thereof:

Outside the Secretariat	
1. Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above.	Chief Secretary in consultation with Establishment Department and Department concerned with the approval of the Chief Minister.
2. Other officers in BPS-17 and above to be posted against scheduled posts, or posts normally held by the APUG, PCS(EG) and PCS(SG).	-do-
3. Heads of Attached Departments and other Officers in B-19 & above in all the Departments.	-do-
In the Secretariat	
1. Secretaries	Chief Secretary with the approval of the Chief Minister.
2. Other Officers of and above the rank of Section Officers:	
a) Within the Same Department	Secretary of the Department concerned.
b) Within the Secretariat from one Department to another.	Chief secretary/Secretary Establishment.
3. Officials up to the rank of Superintendent:	Secretary of the Department concerned.
a) Within the same Department	Secretary of the Department in consultation with Head of Attached Department concerned.
b) To and from an Attached Department	
c) Within the Secretariat from one Department to another	Secretary (Establishment)

- xiii) While considering posting/transfer proposals all the concerned authorities shall keep in mind the following:
- To ensure the posting of proper persons on proper posts, the Performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/ officials be considered.
 - Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

ATTESTED

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

- i) Pre-mature posting/transfer or posting transfer in violation of the provisions of this policy.
- ii) Serious and grave personal (humanitarian) grounds.

2. To streamline the postings/transfers in the District Government and to remove any irritant/confusions in this regard the provision of Rule 25 of the North West Frontier Province District Government Rules of Business 2001 read with schedule – IV thereof is referred. As per schedule-IV the posting/transferring authorities for the officers/officials shown against each are as under:-

S.No.	Officers	Authority
1.	Posting of District Coordination Officer and Executive District Officer in a District.	Provincial Government.
2.	Posting of District Police Officer.	Provincial Government.
3.	Other Officers in BPS-17 and above posted in the District.	Provincial Government.
4.	Official in BPS-16 and below	Executive District Officer in consultation with District Coordination Officer.

3. As per Rule 25(2) of the Rules mentioned above the District Coordination Department shall consult the Government if it is proposed to:

- a) Transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure.
- b) Require an officer to hold charge of more than one post for a period exceeding two months.

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

5. All concerned are requested to ensure that tenures of the concerned officers/officials are invariably mentioned in summaries submitted to the Competent Authorities for Posting/Transfer.

(Authority: Letter No: SOR-VI/E&AD/1-4/2003 dated 24-6-2003).

ATTESTED

PS/SMBP
Dy No. 1226
Date 26/2/2019
Govt. of Khyber Pakhtunkhwa

To,

The Senior Member,
Board of Revenue Khyber Pakhtunkhwa,
Peshawar.

Amal F

-16-

-16-

Subject:

DEPARTMENTAL APPEAL AGAINST
THE IMPUGNED ORDER
NO.6/7/EA/2019/1/23409-16 DATED
25/02/2019

Respected Sir,

The appellant submits as under.

1. That the appellant was initially appointed as Patwari and later on the appellant was promoted as Kanungo on the basis of seniority cum fitness.
2. That the appellant was posted as Naib Tehsildar Current Charge basis in the settlement Abbottabad and after posting as N.T, the appellant performed his duty with great zeal zeast and enthusiasm.
3. That the appellant was transferred posted as political Naib Tehsildar in landi Kotal and after assuming charge as such the appellant was transferred prematurely vide order dated 05/12/2017 against the post of N.T at

Secy-I

26/2/19

26/2/19

26/2/19

ATTESTED

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Torkham. However after serving for about 7 months the appellant was once against transferred prematurely from the post of N.T Torkham to the newly created district Mohmand and was posted against the post of Naib Tehsildar Khewzai Mohmand vide order dated 09/07/2018. (Copies of the order are annexed as annexure "A & B")

4. That the appellant hardly served as Naib Tehsildar Khwezai Mohmand, again the appellant was subjected to another General Transfer order dated 22/02/2019 whereby the appellant was transferred from the post of N.T Khwezai against the vacant post of Naib Tehsildar Passport Tor Khan Khyber. (Copy of the transfer order dated 22/02/2019 is annexed as annexure "C")

5. That the appellant assumed the charge as Naib Tehsildar Passport Torkham, on dated 25/02/2019, however after serving for 3 days again the appellant transfer order dated 22/02/2019, was withdrawn without any legal Justification and in utter violation of transfer posting policy. (Copy of the charge report and impugned order is annexed as annexure "D & E")

ATTESTED

6. That feeling aggrieved from the impugned order the appellant having no other adequate remedy filling this departmental appeal on the following grounds.

Grounds:-

A. That the impugned order is against the law rules principles of natural justice hence void and not sustainable in the eyes of law.

B. That on the appellant was made a rolling stone and subjected to frequent transfer without completing his normal tenure, hence transfer posting policy of the provincial Government has been violated.

C. That even the impugned order has not been issued in public interest or agony of service but with its sole purpose of rewarding some their blue eyed chap.

D. That the appellant has been subjected to discrimination by issuing frequent premature transfer orders hence article 25 of the constitution of Islamic republic of Pakistan 1973 has been violated.

ATTESTED

E. That even the impugned order of withdrawal does not disclose any reason hence the order is not speaking order.

F. That the impugned order is in total violation of the dictum laid down in the case of Anita Turab by Supreme Court of Pakistan circulator through the country for compliance by east: Durrani GOP.

G. That the impugned order is the result of malafide and political motivation.

It is therefore, requested that the impugned order may kindly be set aside and transfer order dated 22/02/2019 may kindly be restored.

Appellant

Tehseen Ullah
Naib Tehsildar Passport
Torkham District Khyber.



ATTESTED

P L D 2013 Supreme Court 195**Present: Iftikhar Muhammad Chaudhry, C.J., Jawwad S. Khawaja and Khilji Arif Hussain, JJ****Syed MAHMOOD AKHTAR NAQVI and others---Petitioners****Versus****FEDERATION OF PAKISTAN and others---Respondents**

[Petition by Ms. Anita Turab for protection of Civil Servants: In re]

Constitution Petitions Nos.23 and 11, Criminal Original Petitions Nos.23, 24 and 27, H.R.C. No. 14427-P, C.M.As. Nos. 1575, 1611, 1792, 197-K and 231-K and Criminal Miscellaneous Application No.587 of 2012 in Criminal Original Petition No. 24 of 2012 in Constitution Petition No.11 of 2012.

(a) Civil Servants Act (LXXI of 1973)---

---Ss. 4, 5, 9 & 10---Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---Constitution of Pakistan, Arts. 9, 14, 18 & 184(3)---Constitutional petition under Art. 184(3) of the Constitution seeking elaboration of constitutional and legal safeguards relating to the working of civil servants---Maintainability---Matter of tenure, appointment, posting, transfer and promotion of civil servants could not be dealt with in an arbitrary manner; it could only be sustained when it was in accordance with the law---Decision which deviated from the accepted or rule-based norm without proper justification, could be tested on the touchstone of a manifest public interest---Fundamental rights of civil servants, inter alia, under Arts.9, 14 & 18 of the Constitution were aspects arising in the present constitutional petition---Constitutional petition was maintainable.

Tariq Aziz-ud-Din's case 2010 SCMR 1301; Syed Yousaf Raza Gillani v Assistant Registrar PLD 2012 SC 466 and Mehmood Akhtar Naqvi v. Federation of Pakistan, Constitution Petition No.5 of 2012 ref.

(b) Civil Servants Act (LXXI of 1973)---

---S.16---Constitution of Pakistan, Arts. 5 & 184(3)---Civil servant, duties of---Non-subservience to political executive and impartiality---Scope---Although civil servants did have a duty to follow the policy guidelines and directions of the political executive yet, because of Art.5 of the Constitution, their foremost duty was "obedience to the Constitution and the law", not unthinking obedience to all directives (right or wrong) issued from the political executive---Civil servants were public servants and were, therefore, meant to take decisions only in accordance with law in the public interest---Civil servants in their capacity as advisors in decision making or as administrators and enforcers of law, were not subservient to the political executive---Civil servants were under an obligation to remain compliant with the Constitution and law, hence they were not obliged to be servile or unthinkingly submissive to the political executive---Civil servants to give advice in the best public interest and were to administer the law impartially being incharge of the machinery of the State.

Quaid-e-Azam Mohammad Ali Jinnah Speeches as Governor General of Pakistan 1947-48, Sang-e-Meel Publications, Lahore: 2004 ref.

(c) Civil Servants Act (LXXI of 1973)---

---Ss. 3 & 5---Rules of Business, (1973), R. 5(10)---Appointment and conditions of service of civil servants---Transaction of business---Civil servant, opinion of---Scope---Implementation of policy or directives, might be required in some cases notwithstanding the considered views of a civil servant to the contrary, however in such an event, the civil servant should record his/her honest and considered opinion without fear---Decisions violating the law relating to appointment and terms and conditions of service of civil servants which were manifestly wrong and were likely to cause gross injustice or undue hardship should be considered important enough for the purpose of R. 5(10) of Rules of Business, (1973).

(d) Civil Servants Act (LXXI of 1973)---

---Preamble---Object of Civil Servants Act, 1973---Parliament had enacted Civil Servants Act, 1973 for providing meaningful legal guarantees to civil servants and doing away with arbitrariness---Object of Civil Servants Act, 1973 was to legally "regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of Pakistan" (Preamble)---Rule of law was the key idea reflected in the whole scheme of the Act.

(e) Civil Servants Act (LXXI of 1973)---

---Ss. 4, 5, 9 & 10---Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---Constitution of Pakistan, Art. 184(3)---Constitutional petition under Art. 184(3) of the Constitution seeking elaboration of constitutional and legal safeguards relating to the working of civil servants---Tenure, appointment, promotion and posting/transfer of civil servants---Favoritism/discouragement of merit---Effect---Tenure, appointment, promotion and posting/transfer were of utmost importance in the civil service, and if same were made on merit in accordance with definite rules, instructions etc., they would rightly be considered and treated as part of the terms and conditions of service of a civil servant; however, where rules and instructions were deviated from and as a result merit was discouraged on account of favoritism, sifarish or considerations other than merit, it should be evident that the civil service would not remain independent or efficient.

(f) Civil Servants Act (LXXI of 1973)---

---Ss. 5 & 11---Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---Civil Servants (Efficiency and Discipline Rules), 1973---Constitution of Pakistan, Art. 184(3)---Appointment and removal of civil servants---Principles---Whenever there were statutory provisions or rules or regulations which governed the matter of appointments of civil servants, the same must be followed, honestly and scrupulously---Even where there were no explicit rules governing the appointment process, and appointments were to be made in the exercise of discretionary powers, such discretion must be employed in a structured, transparent and reasonable manner and in the public interest---Appointing authorities could not be allowed to exercise discretion at their whims, or in an arbitrary manner; rather they were bound to act fairly, evenly and justly and their exercise of power was judicially reviewable---Removal and dismissal of civil servants from service was not left to anyone's whims and caprice and it was governed by rules and regulations---Anachronistic concept where government servants held office during the pleasure of the Authority had no place in a dispensation created and paid for by the people.

Tariq Aziz-ud-Din's case 2010 SCMR 1301; Corruption of Hajj Arrangement's case PLD 2011 SC 963 and Muhammad Yasin v. Federation of Pakistan PLD 2012 SC 132 ref.

(g) Civil Servants Act (LXXI of 1973)---

---S. 9---Constitution of Pakistan, Art. 184(3)---Promotion of civil servants---Discretion---Principles---Discretion in matters of promotion must be exercised fairly and in a transparent manner---Such discretion had to be understood within the four corners of the concept of rule of law upon which the system of governance was founded---Every Authority in the State was bound to obey the dictates of the law and had no personal or absolute discretion.

ATTESTEL

Tariq Aziz-ud-Din's case 2010 SCMR 1301 ref.

(h) Civil Servants Act (LXXI of 1973)---

---Ss. 4 & 10---Constitution of Pakistan, Art. 184(3)---Tenure, posting and transfer of civil servants---Principles---When the ordinary tenure for a posting had been specified in the law or rules made thereunder, such tenure must be respected and could not be varied, except for compelling reasons, which should be recorded in writing and were judicially reviewable---Transfers of civil servants by political figures which were capricious and were based on considerations not in the public interest were not legally sustainable.

Corruption of Hajj Arrangement's case PLD 2011 SC 963; Zahid Akhtar v. Government of Punjab PLD 1995 SC 530 and Farrukh Gulzar v. Secretary Local Government and Rural Development Department, Lahore and 2 others 1998 SCMR 2222 ref.

(i) Civil Servants Act (LXXI of 1973)---

----S.16---Constitution of Pakistan, Arts. 5 & 184(3)---Civil servant, duty of---Non-compliance with illegal orders of superiors---Scope---Duty of public officers was to independently discharge their functions and not be influenced by "dictatorial misuse of powers" at the hands of political figures---Civil servants were not bound to obey orders from superiors which were illegal or were not in accordance with accepted practices and rule-based norms; instead, in such situations, they must record their opinion and, if necessary, dissent---Compliance with illegal orders of superiors was not justified on the basis of having been issued from higher authority as it was the law and the Constitution which must be obeyed-- -Illegal orders (of superiors) could not be defended on the plea that they could expose the concerned government servant to the risk of disciplinary action.

Syed Nazar Abbas Jafri v. Secretary to the Government of the Punjab and another 2006 SCMR 606; Province of Punjab v. Azhar Abbas 2002 SCMR 1; Samiullah Khan Marwat v. Government of Pakistan 2003 SCMR 1140; Iqbal Hussain v. Province of Sindh 2008 SCMR 105; Human Rights Cases Nos.4668 of 2006, 111 of 2007 and 15283-G of 2010 PLD 2010 SC 759 and Zahid Akhtar v. Government of Punjab PLD 1995 SC 530 ref.

(j) Civil Servants Act (LXXI of 1973)---

---S.10---Constitution of Pakistan, Art. 184(3)---Posting of a civil servant as Officer on Special Duty (OSD)---Principles---Officer should not be posted as Officer on Special Duty (OSD) except for compelling reasons, which must be recorded in writing and were judicially reviewable---If at all an officer was to be posted as Officer on Special Duty (OSD), such posting should be for the minimum period possible and if there was a disciplinary inquiry going on against him, such inquiry must be completed at the earliest.

Corruption of Hajj Arrangement's case PLD 2011 SC 963; Mir Shah Nawaz Marri v. Government of Balochistan and others 2000 PLC (C.S.) 533; Syed Ajmal Hussain Bokhari v. Commissioner, Rawalpindi 1997 PLC (C.S.) 754; Sajjad Ahmad Javed Bhatti v. Federation of Pakistan 2009 SCMR 1448 and Lt. Col. (R.) Abdul Wajid Malik v. Government of the Punjab 2006 SCMR 1360 ref.

(k) Civil Servants Act (LXXI of 1973)---

---S.16---Constitution of Pakistan, Arts. 189, 190 & 204(2)(a)---Decision of---Supreme Court---Binding nature of---Scope---Decision given by the Supreme Court on a point of law would be binding on concerned departmental functionaries who would be obliged to apply such legal principle in other similar cases regardless of whether or not a civil servant had litigated the matter in his own case---In view of Art.189 and 190 of the Constitution, a civil servant would be entitled to make a departmental representation or initiate legal proceedings before a competent forum to enforce a legal principle enunciated by the Supreme Court---Failure of a State functionary to apply a legal principle which was clearly and unambiguously attracted to a case, might expose him to proceedings under Art.204(2)(a) of the Constitution.

Al-Jehad Trust v. Federation of Pakistan PLD 1997 SC 84; Hameed Akhtar Niazi v. The Secretary Establishment Division 1996 SCMR 1185 and Baaz Muhammad Kakar v. Federation of Pakistan PLD 2012 SC 870 ref.

(l) Civil Servants Act (LXXI of 1973)---

---Ss. 4, 5, 9 & 10---Constitution of Pakistan, Art. 184(3)---Tenure, appointments, promotions and transfers of civil servants---Discretion of Executive Authority---Interference by courts---Scope---Responsibility of deciding suitability of an appointment, posting or transfer fell primarily on the executive branch of the State which comprised of both the political executive and civil servants---Decision making in relation to tenure, appointments, promotions and transfers remained rule-based and was not susceptible to arbitrariness or absolute and unfettered discretion--- Courts ordinarily would not interfere in the functioning of the executive as long as it adhered to the law and established norms and acts in furtherance of its fiduciary responsibility.

Petitioners in person.

Hafiz S.A. Rehman, Sr. Advocate Supreme Court: Amicus Curiae.

Abdul Fateh Malik, A.G., Adnan Karim, A.A.-G., Ali Sher Jakhriani, AIG and Maqsood Ahmed, DSP for Government of Sindh.

Syed Arshad Hussain Shah, A.A.-G. for Government of Khyber Pakhtunkhwa.

Azam Khattak, A.A.-G. for Government of Balochistan.

Jawad Hassan, A.A.-G. for Government of Punjab.

Date of hearing: 18th October, 2012.

JUDGMENT

JAWWAD S. KHAWAJA, J.---Many centuries before the term 'good governance' became a catch-phrase, we find a remarkably eloquent exposition of the principles of good governance in the Epistle of Hazrat Ali to Malik ibn Ashtar, the Governor of Egypt. The revered Khalifa, may Allah be pleased with him, is reported to have said: ".....give careful consideration to the selection of ... officers. Confirm them in their appointments after approval, apprenticeship and probation. Never select men for responsible posts either out of any regard for personal connections or under any influence, for, that might lead to injustice and corruption.... select for higher posts men of experience, men firm in faith ... Such men will not fall an easy prey to temptations and will discharge their duties with an eye on the abiding good of others". The law and the Constitution of Pakistan, with the aim of furthering the welfare of the people of Pakistan, articulate the same principles. The truth is that principles pertaining to the setting up of a just and constitutional government are eternal, not peculiar to our times. Our law, Constitution and courts only apply these universal and time-tested principles to the prevalent situation. In this public interest case seeking elaboration of constitutional and legal safeguards relating to the working of civil servants, we reaffirm these eternal principles which have also been stressed by us in cases decided earlier.

2. The background to this matter is that Suo Motu Case No.3 of 2012 was initiated on the basis of broadcasts on different TV channels on 25-2-2012. In these broadcasts, Syeda Wahida Shah, a candidate of the Pakistan Peoples Party for bye-election to PS-53 (Tando Muhammad

Khan) was shown slapping a member of the polling staff. The Suo Motu case was concluded vide order dated 12-3-2012. Ms. Anita Turab, who is a civil servant in BS-19, presently working in the Ministry of Interior, filed an application in the aforesaid Suo Motu case. Since the case stood concluded, the application was ordered on 12-3-2012 to be registered as a petition under Article 184 (3) of the Constitution. It is this petition which is being decided through the present order.

3. The grievance of the petitioner set out in her petition can be summarized. Firstly, she seeks that the standing of the civil service be restored as service of the State and not the service of any transient government. To achieve this object, her submission is that unlawful political interference in the independent and legitimate functioning of civil servants be stopped. Secondly, the petitioner seeks corrective institutional measures to revert the civil service to rule-based management practices in accordance with the letter and spirit of applicable laws, rules and precedents of this Court.

4. On 12-3-2012, we had directed the Secretary Establishment Division, Government of Pakistan, the Chief Secretaries of the four Provinces and the Chief Commissioner, Islamabad Capital Territory to submit their comments. It was noted in the said order that civil servants who act according to law, at times, have to face hardship in the form of immediate transfer or posting as Officers on Special Duty (OSD) even before the completion of their tenure. It was also noticed that frequent transfers, postings and disciplinary proceedings are taken in violation of the law, rules and regulations.

5. The above referred functionaries comprised as a Committee, have submitted their report which includes tentative recommendations. Amongst other things, the Committee has recommended that "[p]ostings and transfers be made on merit", "tenures for various categories of posts be fixed" and that "[n]o civil servant should be posted as OSD for purposes of parking of officers who are unwanted, or, who are not susceptible to pressures." The Committee further recommends that "[a] civil servant should be placed under suspension only by the competent authority after initiation of disciplinary proceedings; and... Officers taken on deputation/borrowed from other tiers of the government should carry the requisite experience and seniority for specific jobs." According to the petitioner, many of the Committee's recommendations are already covered by existing law, rules and regulations, particularly in matters relating to tenure, appointment, transfer and posting of civil servants. There is no dispute or contention that such recommendations must indeed be implemented with immediate effect as a necessary concomitant to good governance. Some other recommendations made by the Committee require legislation or rule making which, necessarily will need to be undertaken by the legislature and/or the competent rule making authority and not by the Court.

6. The petitioner being a civil servant herself has requested revival of the independent, impartial and professional status of the civil service as an institution and to affirm its decision-making authority in furtherance of the rule of law. The petitioner's further grievance is that legal and constitutional safeguards meant to protect the civil service from excessive political interference are being systematically breached. With its safeguards thus withered, the service is growing inefficient and demoralized and with it, the machinery of the State, mandated to enforce good governance, rule of law and fundamental rights of the people of Pakistan, is failing.

7. The petition has been held maintainable because the situation portrayed does raise a question of public importance with reference to the enforcement of fundamental rights. In our constitutional scheme of governance, the importance of such a civil service, which is law-abiding and itself legally protected, cannot be over emphasized. "Good governance", this Court has recently observed, "is largely dependent upon [an] upright, honest and strong bureaucracy. [The] Civil service is the back bone of our administration." per Chaudhry Ijaz Ahmad, J. in Tariq Aziz-ud-Din's case (2010 SCMR 1301). Additionally, the fundamental rights of civil servants, inter alia, under Articles 9, 14 and 18 of the Constitution are also aspects arising in this Constitution Petition. The enforcement of fundamental rights is primarily the responsibility of the Executive branch of the State and civil servants constitute that essential component of the Executive who operate the executive machinery. A duty is thus cast both on the civil service and on the political executive to ensure the effectiveness (in all respects) of the civil service.

8. It is not in contention that civil servants are public servants and are, therefore, meant to take decisions only in accordance with law in the public interest. In their capacity as advisors in decision making or as administrators and enforcers of law, they are not subservient to the political executive. It is their obligation to remain compliant with the Constitution and law. Hence they are not obliged to be servile or unthinkingly submissive to the political executive. One of their prime duties is to give advice in the best public interest and to administer the law impartially being in charge of the machinery of the State. In this regard, the address made by Quaid-i-Azam Mohammad Ali Jinnah to the members of the civil service at Peshavar on 14th April, 1948 is most relevant. Quaid-i-Azam instructed them not to be "influenced by any political pressure, by any political party or individual politician." While urging them to loyally and faithfully serve whichever government came to power "in the ordinary constitutional course", he also reminded them of the need for "fearlessly, maintaining [their] high reputation, prestige, honour and the integrity of [their] service." Noting that pressurizing civil servants was, even in those early days, "a very common fault of politicians", he warned politicians that such behaviour would lead to "nothing but corruption, bribery and nepotism which is a horrible disease..." Ultimately, he urged both politicians and civil servants to "understand [their] own sphere of duty and responsibility and act with others harmoniously and in complete cooperation." Yet, being fully aware that real life was never ideal, he forewarned the civil servants that "you may even be put to trouble not because you are doing anything wrong but because you are doing right. Sacrifices have to be made, and I appeal to you, if need be, to come forward and make the sacrifice..." (Quaid-e-Azam Mohammad Ali Jinnah, Speeches as Governor General of Pakistan 1947-48, Sang-e-Meel Publications, Lahore 2004).

9. These should, indeed, be the guiding principles informing the relationship between the civil service and the political executive - the two limbs of the Executive branch of government, envisaged in the Constitution. Equally so, these principles should inform the judiciary's interpretation of the Articles of the Constitution and legal provisions which relate to the employment of persons in the service of Pakistan. We reaffirm that while civil servants do have a duty to follow the policy guidelines and directions of the political executive yet, because of Article 5 of the Constitution, just like other citizens, their foremost duty is "obedience to the Constitution and the law", not unthinking obedience to all directives (right or wrong) issuing from the political executive. In this context, Rule 5(10) of the Rules of Business, 1973 framed by the Federal Government in accord with Articles 90 and 99 of the Constitution, may be examined: "When the Secretary submits a case to the Minister, the latter may accept the proposal or views of the Secretary or may over-rule him. The Secretary will normally defer to the decision of the Minister and implement it. In case, however, the Secretary feels that the decision of the Minister is manifestly wrong and will cause gross injustice or undue hardship, he may state his reasons and re-submit the case to the Minister. If the Minister still adheres to his earlier decision and the matter is important enough, the Secretary shall request the Minister to refer the case to the Prime Minister and the Minister shall so refer the case for orders of the Prime Minister. If the case is not referred to the Prime Minister, the Secretary shall submit it directly to the Prime Minister with observations of the Minister-in-Charge." In other words, implementation of policy or directives, in some cases may be required notwithstanding the considered views of a civil servant to the contrary. In such event, however, the civil servant should record his/her honest and considered opinion without fear. Decisions violating the law relating to appointment and terms and conditions of service of civil servants which are manifestly wrong and are likely to cause gross injustice or undue hardship should be considered important enough for the purpose of Rule 5(10) *ibid*.

10. It is worth noting that the Constitutions of 1956 and 1962 contained chapters outlining certain safeguards for the civil service. In the 1973 Constitution, the framers omitted a similar chapter from the Constitution and shifted the onus to ordinary legislation. The Law Minister at the time, who was steering the Constitution Bill informed the Constituent Assembly that in the past, constitutional protection for civil servants had been granted "because those who served came from outside and they needed these protections in respect of service". However, since now "this country [was] being run by the leaders of the people" such protections were no more deemed necessary. The purpose of this change, therefore, was to "[break] away from the past colonial traditions" and to emphasize the point that civil servants were not entitled to "any superior or higher status" compared to other citizens. Another reason the Law Minister gave was that the "Constitution is the basic document providing the fundamentals and this matter was not so fundamental as to be provided in the Constitution." (Parliamentary Debates, 31st December, 1972 and 19th February, 1973). It was therefore decided that, as stated in Articles 240, 241 and 242 of the Constitution, the matter would be dealt with through statutes. Such statutes were subsequently passed and include the Civil Servants Act, 1973. It may be emphasized that whatever else the intent behind these changes may have been, it could not have been meant to subjugate civil servants to constantly changing political imperatives. The intent of the Constitution cannot but be a fuller realization of the goal set out in the speech of the country's founding father quoted earlier: "fearlessly, maintaining [the] high reputation, prestige, honour and the integrity of [the civil] service."

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11. It was in this spirit, i.e. providing meaningful legal guarantees to civil servants and doing away with arbitrariness, that Parliament enacted statutes such as the Civil Servants Act, 1973. The very object of this statute is to legally "regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of Pakistan" (Preamble). The rule of law is the key idea reflected in the whole scheme of the statute. This impression is textually reinforced by the express stipulation that appointment of civil servants shall be made only "in the prescribed manner" (S. 5), that the terms and conditions shall be only such as are "provided in [the] Act and the Rules" [S. 3(1)] and not be "varied to his disadvantage" [S. 3(2)] and that promotions shall only be made on the basis of objective criteria such as "merit" [S. 9(2)(a)] and "seniority-cum-fitness". [S.9(2)(b)].

12. This Court, in a number of precedents has, interpreted and emphasized these very principles, some of which need to be reiterated at this point. Before that, however, we may note the precept and rule of public trust which forms the basis of this area of the law. This court has repeatedly observed that "functionaries of the State are fiduciaries of the people and ultimately responsible to the people who are their pay masters." [Syed Yousaf Raza Gillani v. Assistant Registrar, (PLD 2012 SC 466) affirming Muhammad Yasin v. Federation of Pakistan]. Most recently, in the case relating to dual nationality of Parliamentarian, we have reiterated that "all State authority is in the nature of a 'sacred trust' and its bearers should therefore be seen as fiduciaries" (Mehmood Akhtar Naqvi v. Federation of Pakistan, Const. P. 5/2012). One of the implications of this concept, highlighted in the case-law considered below, is that the matter of tenure, appointment, posting, transfer and promotion of civil servants cannot be dealt with in an arbitrary manner: it can only be sustained when it is in accordance with the law. Moreover, the use of the words 'in the public interest' in such matters are not fatuous or pointless, but emphasise the fiduciary nature of orders relating to tenure, posting etc. Thus a proposed decision which deviates from the accepted or rule-based norm without proper justification, can be tested on the touchstone of a manifest public interest.

13. Tenure, appointment, promotion and posting/transfer are of utmost importance in the civil service. If these are made on merit in accordance with definite rules, instructions etc., the same will rightly be considered and treated as part of the terms and conditions of service of a civil servant. If, however, rules and instructions are deviated from and as a result merit is discouraged on account of favoritism, sifarish or considerations other than merit, it should be evident the civil service will not remain independent or efficient. It is necessary once again, to hark back to the considerations set out in the speech of Quaid-i-Azam and the eternal wisdom reflected in the Epistle of Hazrat Ali, may Allah be pleased with him, cited at the start of this opinion. It is also relevant to note that the principles of good governance are already envisioned in the Constitution and are also encoded in statutes such as the Civil Servants Act, 1973, the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 and other rules made under the aforesaid Act and in regulations and instructions given in the Civil Establishment Code (Estacode). It is, however, apparent from precedent and civil service matters coming up before Service Tribunals and this Court that problems/difficulties arise for civil servants when the rules of good governance so encoded are breached and the reason for such breach appears to be abuse of discretion. We are aware that matters relating to tenure etc. cannot be put in a strait-jacket and that there is to be an element of flexibility. A balance between the competing pulls of discretion and rule based decision making is a fine one where perception of fairness and even handed treatment is of utmost importance. It is for this reason that transparency in decisions relating to tenure etc. are required to be entrenched and cemented to assure the quality, effectiveness and morale of the civil service. Since executive decisions generally are subject to judicial review, the assurance of transparency is itself likely to eliminate decision making based on considerations other than merit. We have referred to accepted principles and rules above and may now advert to certain relevant rulings earlier rendered by this Court.

A - On the Issue of Appointments and Removals

14. In a number of judgments, the courts have clarified that whenever there are statutory provisions or rules or regulations which govern the matter of appointments, the same must be followed, honestly and scrupulously. In the Corruption of Hajj Arrangements' case (PLD 2011 SC 963) and Tariq Aziz-ud-Din's case *ibid*, it has been clarified that even where there are no explicit rules governing the appointment process, and appointments are to be made in the exercise of discretionary powers, such discretion must be employed in a structured and reasonable manner and in the public interest. Appointing authorities cannot be allowed to exercise discretion at their whims, or in an arbitrary manner; rather they are bound to act fairly, evenly and justly and their exercise of power is judicially reviewable. And in Muhammad Yasin v. Federation of Pakistan (PLD 2012 SC 132), we have clarified that, when called upon to do so, the Courts are "duty bound to examine the integrity of the selection process", although they "will not engage in any exhaustive or full-fledged assessment of the merits of the appointee nor [...] seek to substitute [their] own opinion for that of the Executive." It may also be noted that just like the appointment of civil servants, their removal and dismissal from service has not been left to anyone's whims and caprice. It is governed by rules and regulations, amongst them the Civil Servants (Efficiency and Discipline Rules), 1973. Indeed, the anachronistic concept where government servants held office during the pleasure of the Crown has no place in a dispensation created and paid for by the people.

B - On the Matter of Promotions

15. In Tariq Aziz-ud-Din's case, we have dealt with some important facets of the civil service including the exercise of discretion in matters of promotion. Such discretion must be exercised fairly and in a transparent manner. Discretion has to be understood within the four corners of the concept of rule of law upon which our system of governance is founded. Every authority in the State is bound to obey the dictates of the law and has no personal or absolute discretion. It was therefore held that "[t]he right [to be considered for promotion] contemplated under section 9 [of the Civil Servants Act] is neither illusory nor a perfunctory ritual and withholding of promotion of an officer is a major penalty in accordance with the Civil Servants (Efficiency and Disciplinary) Rules, 1973, therefore, consideration of an officer for promotion is to be based not only on the relevant law and the rules but also to be based on some tangible material relating to merit and eligibility which can be lawfully taken note of."

C - On the Matter of Transfers and Tenure

16. In the Hajj Corruption Case, the Court reiterated its earlier ruling in Zahid Akhtar v. Government of Punjab (PLD 1995 SC 530), where it had been held that "the normal period of posting of a Government servant at a station, according to Rule 21 of the Rules of Business is three years, which has to be followed in the ordinary circumstances, unless for reasons or exigencies of service a transfer before expiry of the said period becomes necessary in the opinion of the competent authority." Furthermore, with regard to transfers of civil servants, this Court has stated that transfers by political figures which are capricious and are based on considerations not in the public interest are not legally sustainable. Farrukh Gulzar v. Secretary Local Government and Rural Development Department, Lahore and 2 others (1998 SCMR 2222). These are principles of law enunciated by this Court and are to be followed in terms of Article 189 of the Constitution. We, however, repeatedly come across violations of such principles. This unnecessarily leads to litigation which, in turn, clogs Courts and Service Tribunals.

D - On the matter of obeying illegal orders from superiors

17. In Syed Nazar Abbas Jafri v. Secretary to the Government of the Punjab and another (2006 SCMR 606), this Court held that the duty of public officers is to independently discharge their functions and not be influenced by "dictatorial misuse of powers" at the hands of political figures. The Court has also emphasized that the appointment and removal of civil servants is not to be politically motivated. Province of Punjab v. Azhar Abbas (2002 SCMR 1). These decisions highlight the concept of a civil service which enjoys certain legal protections and is thus capable of performing its envisioned role as a law-enforcing institution.

18. The compliance of illegal orders of superiors is not justified on the basis of having been issued from higher authority as it is the law and Constitution which must be obeyed. Here it would be relevant to cite the judgment of this Court in Samiullah Khan Marwat v. Government of Pakistan (2003 SCMR 1140) where it was stated: "...the exercise of powers by the public functionaries in derogation to the direction of law would amount to disobey[ing] the command of law and the Constitution..." Furthermore, in the case of Iqbal Hussain v. Province of Sindh (2008 SCMR 105) the Court held that "the compliance of any illegal and arbitrary order is neither binding on the subordinate forums nor valid in the eyes of law." In case the subordinates are directed to implement an illegal order "they should put on record their dissenting note" Human Rights Cases Nos. 4668 of 2006, 1111 of 2007 and 15283-G of 2010 (PLD 2010 SC 759). Similarly, illegal orders cannot be defended on the plea that these could expose the concerned government servant to the risk of disciplinary action. Zahid Akhtar v. Government of Punjab (PLD 1995 SC 530).

11/2/2014

E - On the matter of posting civil servant as Officers on Special Duty (OSD)

19. Ordinarily, no government employee should be posted as OSD except under compelling circumstances. In the Hajj Corruption case, (PLD 2011 SC 963) the Court held: "It is well settled that placing an officer as OSD is tantamount to penalizing him because the expression 'OSD' is not known to either the Civil Servants Act, 1973 or the Civil Servants (Appointment Promotion and Transfer) Rules, 1973." Reference in this regard may also be made to the cases of *Mir Shah Nawaz Marri v. Government of Balochistan and others* (2000 PLC (C.S) 533), *Syed Ajmal Hussain Bokhari v. Commissioner, Rawalpindi* (1997 PLC (C.S.) 754), *Sajjad Ahmad Javed Bhatti v. Federation of Pakistan* (2009 SCMR 1448) and *Lt. Col. (R.) Abdul Wajid Malik v. Government of the Punjab* (2006 SCMR 1360).

20. The above referred precedents have shaped the contours of the law relating to civil servants and the civil service. In the established tradition of a common law jurisdiction, Article 189 of the Constitution stipulates that, "[a]ny decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan." As this Court has already held "... the interpretation of the various Articles by this Court becomes part of the Constitution". *Al-Jehad Trust v. Federation of Pakistan* (PLD 1997 SC 84). Specific to the law relating to civil servants and matters in respect of their service, we have enunciated a principle of law in the case titled *Hameed Akhtar Niazi v. The Secretary Establishment Division* (1996 SCMR 1185) holding that a decision given by this Court on a point of law will be binding on concerned departmental functionaries who will be obliged to apply such legal principle in other similar cases regardless of whether or not a civil servant has litigated the matter in his own case. We are conscious that in some instances the application of a legal principle enunciated in a precedent may be possible without difficulty or ambiguity, while in other cases there may be some uncertainty in determining if a legal principle is in fact applicable as precedent. It is, however, clear that in view of Articles 189 and 190 of the Constitution, a civil servant will be entitled to make a departmental representation or initiate legal proceedings before a competent forum to enforce a legal principle enunciated by this Court.

21. In appropriate cases the failure of a State functionary to apply a legal principle which is clearly and unambiguously attracted to a case, may expose him to proceedings also under Article 204(2)(a) of the Constitution. This Article, it may be recalled, grants this Court the power to punish for contempt any person who "disobeys any order of the Court". In a recent judgment, the Court has clarified the significance of the law of contempt as an enforcement mechanism. It was held "...the Court, in and of itself, has to pass orders and to require the implementation of its orders; responsibility for implementation has been made obligatory on other organs of the State, primarily the Executive. However, in the unfortunate situation that a functionary of the Executive refuses to discharge his constitutional duty, the Court is empowered to punish him for contempt... Simply put, a government of laws cannot be created or continued with toothless courts and defiant or blithely non-compliant public functionaries". *Baaz Muhammad Kakar v. Federation of Pakistan* (PLD 2012 SC 870). If there still remains any doubt, let us clarify that those executive functionaries who continue to ignore the Constitution and the law, do so at their own peril.

22. The principles of law enunciated hereinabove can be summarized as under:--

(i) Appointments, Removals and Promotions: Appointments, removals and promotions must be made in accordance with the law and the rules made thereunder; where no such law or rule exists and the matter has been left to discretion, such discretion must be exercised in a structured, transparent and reasonable manner and in the public interest.

(ii) Tenure, posting and transfer: When the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable.

(iii) Illegal orders: Civil servants owe their first and foremost allegiance to the law and the Constitution. They are not bound to obey orders from superiors which are illegal or are not in accordance with accepted practices and rule based norms; instead, in such situations, they must record their opinion and, if necessary, dissent.

(iv) OSD: Officers should not be posted as OSD except for compelling reasons, which must be recorded in writing and are judicially reviewable. If at all an officer is to be posted as OSD, such posting should be for the minimum period possible and if there is a disciplinary inquiry going on against him, such inquiry must be completed at the earliest.

23. We are fully conscious that the aforesaid matters relate to decision making and administration of the machinery of the State. As such the responsibility of deciding as to suitability of an appointment, posting or transfer falls primarily on the executive branch of the State which comprises of both the political executive and civil servants. Courts ordinarily will not interfere in the functioning of the executive as long as it adheres to the law and established norms and acts in furtherance of its fiduciary responsibility. However, while hearing this petition we have recognized the need for ensuring that decision making in relation to tenure, appointments, promotions and transfers remains rule based and is not susceptible to arbitrariness or absolute and unfettered discretion.

24. Copies of this judgment shall be sent to the Federal Secretary Establishment, the Chief Secretaries of the Provinces, the Commissioner Islamabad Capital Territory and to the Secretaries of all Federal and Provincial government departments.

MWA/A-31/S

Order accordingly.

ATTESTED

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GOVERNMENT OF PAKISTAN
Cabinet Secretariat
ESTABLISHMENT DIVISION

- 23 -
ANUS H.

No.F.1/11/2012-Lit-IV

Islamabad – the 3rd January, 2013.

OFFICE MEMORANDUM

Subject: ORDER PASSED BY SUPREME COURT OF PAKISTAN IN CONST. PETITION NO.23/2012 FILED BY MS. ANITA TURAB AND OTHERS VS. FEDERATION OF PAKISTAN DATED 18.10.2012

The undersigned is directed to refer to the subject cited above and to say that the Supreme Court of Pakistan has enunciated certain guiding principles for depoliticizing the public service vide its Judgment dated 12-11-2012 passed in the subject case. The operative parts of the Judgment given vide para-22 are reproduced as under:-

- (i) Appointments, Removals and Promotions: Appointments, removals and promotions must be made in accordance with the law and the rules made thereunder; where no such law or rule exists and the matter has been left to discretion, such discretion must be exercised in a structured, transparent and reasonable manner and in the public interest.
- (ii) Tenure, posting and transfer: When the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable.
- (iii) Illegal orders: Civil servants owe their first and foremost allegiance to the law and the Constitution. They are not bound to obey orders from superiors which are illegal or are not in accordance with accepted practices and rule based norms; instead, in such situations, they must record their opinion and, if necessary, dissent.
- (iv) OSD: Officers should not be posted as OSD except for compelling reasons, which must be recorded in writing and are judicially reviewable. If at all an officer is to be posted as OSD, such posting should be for the minimum period possible and if there is a disciplinary inquiry going on against him, such inquiry must be completed at the earliest.

ATTESTED

2. The Supreme Court has further recognized the need for ensuring that decision making in relation to tenure, appointment, removal, promotion and transfer remains ruled based and is not susceptible to arbitrariness or absolute and unfettered discretion.

3. In view of foregoing, the following guidelines have been circulated vide Establishment Division's O.M.No.4/10/2012-E-2 dated 26th December, 2012 (copy enclosed) with the approval of competent authority for strict compliance of the Supreme Court orders, dated 12.11.2012 while passing any such orders relating to appointment, tenure and transfer of the officers in BS-17 to BS-22:-

- a) The normal tenure specified must be respected and may not be varied except for compelling reasons which should be recorded in writing and would be defensible if subjected to judicial scrutiny.
- b) The officer appointed on a post be allowed to earn at least one Annual Performance Evaluation Report.
- c) The officer should not be posted as OSD except for compelling reasons, usually for training, temporary inefficiency of extreme hardship and transit period for minimum possible time with the reasons to be recorded in writing.
- d) There is no space for unilateral surrender of the officers by Ministries/Divisions/Provincial Governments and they are requested to refrain from this practice. However, even if they intend to change the officer, matter may be taken up with the Establishment Division, in case of APUG and federal employees and with respective Provincial Departments dealing with service matters of the officer, for appropriate action.

4. Attention of all the Ministries/Divisions/Departments/Organizations is also invited to the existing provisions contained in the Constitution of Pakistan, 1973, Rules of Business, 1973, Pakistan Penal Code, and Conduct Rules, 1964. The relevant extracts are as under:-

The Constitution of Islamic Republic of Pakistan 1973 In terms of article 240 of the 1973 Constitution the appointment to and the conditions of service of Pakistan are determined inter-alia through the Act of Parliament.

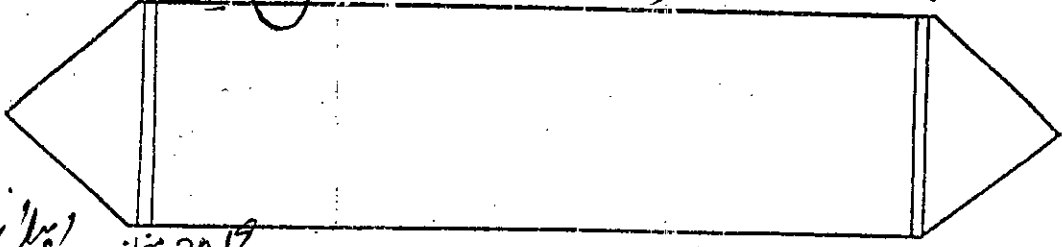
“4. Right of individuals to be dealt with in accordance with law, etc.

- (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.
- (2) In particular:-
 - (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
 - (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and
 - (c) no person shall be compelled to do that which the law does not require him to do:

“9. Security of person. No person shall be deprived of life or liberty save in accordance with law”

ATTESTE

بعد التنازل اسروسٹریٹو ملو کی سرور



2019ء پنجاب اسپلینڈ

تعمیرات کا
بی نام درخواست

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکے

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

آن مقام کے لئے خالد علی کیلئے خالد علی

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دکیل صاحب کو راضی نامہ کرنے و تقریر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صوبائی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقریر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانشین التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہوا یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ مندر ہے۔

المرقوم 17
ماہ جولائی 2019ء

کے لئے منظور ہے۔

بمقام

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.743/2019

Mr. Tehseenullah Naib Tehsildar Passport Torkham, District Khyber.

Appellant

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. The Senior Member Board of Revenue Khyber Pakhtunkhwa.
3. The Commissioner Peshawar Division.

Respondents

COMMENTS ON BEHALF OF RESPONDENT NO.2 (SENIOR MEMBER BOARD OF REVENUE KHYBER PAKHTUNKHWA) AND RESPONDENT NO.3 (COMMISSIONER PESHAWAR DIVISION PESHAWAR).

Respectfully sheweth

1. That the appellant has got no cause of action to file the instant appeal.
2. That the appellant is estopped by his own conduct to file the appeal.
3. That the appellant did not come to the tribunal with clean hands.
4. That the appeal is not maintainable in its present form.

On facts

1. Pertains to record.
2. Incorrect. Posting / transfer of revenue officials is part and parcel of the job and is made at any time in public interest. Moreover, the posting / transfer order was made in compliance of the directions of Election Commission of Pakistan conveyed through letter No.F.2(18)2018-Cord dated 05.07.2018.
3. Pertains to record.
4. Incorrect. Posting / transfer of Tehsildar / Naib Tehsildar is purely made in the best public interest. No violation of posting / transfer policy has been made on political basis.
5. In correct as per para 4.
6. Pertains to record.

Grounds:

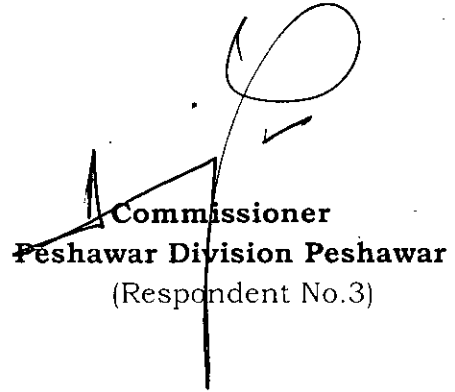
- A. Incorrect. The appellant has been treated as per law and no violation of Article 4of the constitution has been made.
- B. Incorrect. Posting / transfer orders is issued in the best public interest and no violation of posting / transfer policy has been made.
- C. Incorrect. Neither the order was made on political consideration nor any policy / rules have been violated.
- D. Incorrect. As per para B of the grounds.
- E. Incorrect. No violation of any policy have been made.
- F. Incorrect. As per para B of the grounds.

- G. Incorrect. As per para B of the grounds.
- H. Incorrect. No violation of section 24A of the General Clauses Act-1897 has been made.
- I. The respondents will also seek permission to submit additional grounds at the time of arguments.

Keeping in view the above, the appeal having no legal grounds may be dismissed with costs.



Senior Member
Board of Revenue
Khyber Pakhtunkhwa
(Respondent No.2)



Commissioner
Peshawar Division Peshawar
(Respondent No.3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 743/2018

Tehsinullah.....Appellant

Versus

The Govt. of KPK and othersRespondents

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO REPLY FILED BY RESPONDENTS.**

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering Respondents are erroneous and frivolous. Appellant has got a strong cause of action. The question of estoppel is misconceived. All the relevant facts have been incorporated in the memo of the appeal and nothing has been concealed from the Hon'ble Tribunal. Appeal is maintainable.

Facts:

1. No plausible reply has been submitted by the Respondents which amounts to admission.
2. Reply to Para No.2 of the appeal is incorrect hence not admitted. It is submitted that after just 7 months appellant was prematurely transferred from the post of Political Tehsildar Landi Kohat Khyber Agency to Political Naib Tehsildar Torkham, District Khyber against the vacant post vide order dated 05.12.2017, where the appellant without completing normal tenure vide order dated 09.07.2018 again prematurely transferred to Naib Tehsildar Khewzao Mohmand. *It was held in Sheikh Riaz-ul-Haq's case, admittedly, civil servant*

being citizen of Pakistan have fundamental rights including the right to access to justice as envisaged under Article 9 of the Constitution.

3. No plausible reply has been submitted by the Respondents which amounts to admission.
- 4&5. Reply to Para No.4&5 of the appeal are incorrect hence vehemently denied. It is not exclusive domain of the Respondents to transfer the appellant prematurely rather the Respondents have to follow the posting/transfer policy as per its mandate. Furthermore, appellant has been prematurely transferred on political basis and utter violation of the policy.
6. Not admitted as replied by the Respondents.

Grounds:

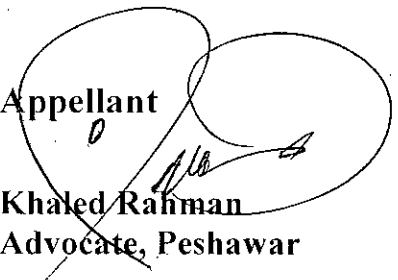
- A. Incorrect. The appellant was not treated according to law and Respondents unlawfully issued impugned office orders which are not sustainable in the eye of law.
- B. Incorrect. The impugned office order is neither in the public interest nor in exigency of service.
- C. Incorrect hence not admitted. The impugned office orders are not only against the posting/transfer policy rather against the Landmark judgment reported in **PLD 2013 SC 195**. Therefore, appellant was highly victimized by repeated premature transfer orders.
- D. Incorrect. Detail rejoinder has already been submitted hereinabove.
- E-H: Not admitted being incorrect. By issuing premature transfer orders Respondents violated the posting/transfer policy, and unlawfully cancelled the earlier transfer order, and clearly violated Rule-24A of General Clauses Act-1987.

I. Needs no rejoinder.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Appellant


Khaled Rahman
Advocate, Peshawar

Dated: ____/09/2019

Verification

Verified that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


Appellant

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 985 /ST

Dated 20-03 / 2020


To

The Commissioner,
Government of Khyber Pakhtunkhwa,
Peshawar Division, Peshawar.


Subject: - JUDGMENT IN APPEAL NO. 743/2019, MR. TEHSEEN ULLAH.

I am directed to forward herewith a certified copy of Judgement dated 17.02.2020 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

Annex 5th 58

	<p style="text-align: center;">GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT (REGULATION WING) NO. SOR.VI (E&AD)1-4/2005/Vol-II Dated Peshawar, 27th February, 2013</p>
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To: *[Handwritten signature]*

1. The Additional Chief Secretary (P&D) Khyber Pakhtunkhwa.
2. The Additional Chief Secretary (FATA) Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
4. All Commissioners in Khyber Pakhtunkhwa.

Subject: CONSTITUTION PETITION NO.23 OF 2012 OUT OF SUO MOTO CASE NO. 3/2012 (PETITION BY MS. ANITA TURAB FOR PROTECTION OF CIVIL SERVANTS REGISTERED UNDER ARTICLE 184 (3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973.)

Sir,

I am directed to refer to the subject noted above and to state that the Supreme Court of Pakistan vide the subject cited judgment has enunciated the following principles of Law with regard to protection and conduct of civil servants.

- (i) **Appointments, Removals and Promotions:** Appointments, removals and promotions must be made in accordance with the law and the rules made thereunder, where no such law or rule exists and the matter has been left to discretion, such discretion must be exercised in a structured, transparent and reasonable manner and in the public interest.
- (ii) **Tenure, Posting and Transfer:** When the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable.

[Handwritten notes: 25/11, SO, 4/3, and a signature]

ATTESTED

ATTESTED

[Handwritten signatures and initials: So Lic / So Est]

[Handwritten signature]

[Handwritten signature]

(3)

(3)

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(iii) **Illegal Orders:** Civil Servants owe their first and foremost allegiance to the law and the constitution. They are not bound to obey orders from superiors which are illegal or are not in accordance with accepted practices and rule based norms; instead, in such situations, they must record their opinion and, if necessary, dissent.

(iv) **OSD:** Officers should not be posted as OSD except for compelling reasons, which must be recorded in writing. If at all an officer is to be posted as OSD, such posting should not exceed 03 months. If there is a disciplinary inquiry going on against him/her such inquiry must be completed at the earliest. The officer on special duty may be posted against a post of his/her equivalent pay scale/grade within 03 months of his/her order as OSD.

2. I am, therefore, directed to request you to note the above principles of law for strict compliance.

Yours faithfully,

naizam

(NAJ-MJS-SAHAR)
SECTION OFFICER (REG-VI)

Encl: as above.

A copy is forwarded to:-

1. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. The Secretary Provincial Assembly, Khyber Pakhtunkhwa.
4. The Accountant General, Khyber Pakhtunkhwa.
5. The Registrar, Peshawar High Court, Peshwar.
6. The Secretary Khyber Pakhtunkhwa, Public Service Commission.
7. All Addl. Secretaries Establishment & Administration Department.
8. All Deputy Secretaries in Establishment & Administration Department.

naizam

SECTION OFFICER (REG-VI)

~~ATTESTED~~

ATTESTED