

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,CAMP COURT ABBOTTABAD

Service Appeal No. 818/2015

Date of Institution... 15.07.2015

Date of decision... 24.08.2017

Iftikhar Ahmad ADEO (Male) son of Mumtaz Ahmad, office of the District Education Office (Male) Mnsehra. ... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Peshawar and 2 others. ... (Respondents)

Appellant

*Pro Se*

MR. MUHAMMAD BILAL  
Deputy District Attorney ...

For respondents.

MR. NIAZ MUHAMMAD KHAN, ...  
MR. MUHAMMAD HAMID MUGHAL ...

CHAIRMAN  
MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the appellant and learned Deputy District Attorney heard and record perused.

FACTS

2. The appellant has challenged his premature transfer from Circle Lora, Abbottabad to the office of the District Education Officer, Mansehra dated 19/3/2015, against which he filed a departmental appeal on 27.3.2015 which was not responded to and thereafter the appellant filed the present appeal on 15.7.2015.

3. During the pendency of the present appeal an order was passed by the Director, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar by posting the appellant back to his position on 23.08.2016 but again on 27.10.2016 he has been transferred as ASDEO Circle Sherwan-II.

ARGUMENTS

4. The appellant argued that he is in the Management Cadre whereas respondent No. 3 belongs to Teaching Cadre and both the posts are not inter-transferable. That he had

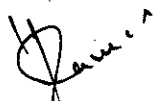
spent 11 months in the days when he was transferred on 19.3.2015 without assigning any reason though the normal tenure is 2 years.

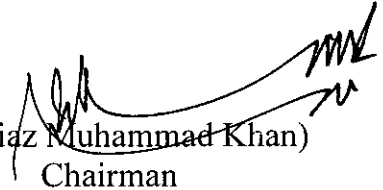
5. On the other hand the learned DDA argued that the Teaching Cadre and Management Cadre are inter-transferable. That the transfer of the appellant was made in the public interest.

**CONCLUSION.**

6. According to posting/transfer policy of the Provincial Government the normal tenure of posting is 2 years and according to notification of the Establishment Department dated 27.2.2013, if the ordinary tenure for a posting is specified in the law or rules that cannot be violated except for compelling reasons which should be recorded in writing and are justiciable. The same principle has been held by the august Supreme Court of Pakistan in Anita Turab's case. As per the Government of Khyber Pakhtunkhwa posting/transfer policy, 2003, the normal tenure of posting is 2 years for areas other than unattractive areas and hard areas. District Abbottabad has not been declared as unattractive or hard area. Therefore, the normal tenure of the appellant should have been two years. No reason whatsoever has been given in the impugned order which was mandatory as discussed above.

7. Resultantly, this appeal is accepted and the impugned order is set aside. Parties are left to bear their own costs. File be consigned to the record room.

  
(Muhammad Hamid Mughal)  
Member

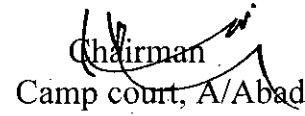
  
(Niaz Muhammad Khan)  
Chairman  
Camp Court, A/Abad

ANNOUNCED  
24.08.2017

23.08.2017

Counsel for the appellant and Mr. Muhammad Bilal, Deputy District Attorney for the respondents present. Due to shortage of time arguments could not be heard. To come up for arguments on 24.08.2017 before this D.B

  
Member

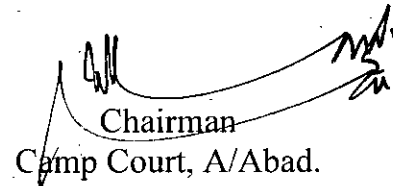
  
Chairman  
Camp court, A/Abad

24.08.2017

Appellant *Pro se* and Mr. Muhammad Bilal, Deputy District Attorney for the respondents present. Arguments heard and record perused. .

This appeal is accepted as per our detailed judgment of today. Parties are left to bear their own cost. File be consigned to the record room.

  
Member

  
Chairman  
Camp Court, A/Abad.

ANNOUNCED

24.08.2017

16.03.2016

Appellant in person, Mr. Shafiq-ur-Rehman, ADO alongwith Mr. Muhammad Saddique, Sr. GP for official respondents No. 1 and 2 and counsel for private respondent No. 3 present. Written reply by official respondents No. 1 and 2 submitted. Private respondent No. 3 has already been proceeded ex-parte. The appeal is assigned to D.B for rejoinder and final hearing for 17.10.2016 at Camp Court A/Abad.

  
Chairman

Camp Court A/Abad

17.10.2016

Appellant in person and Mr. Muhammad Siddique, Sr.GP for the respondents present. Learned Sr.GP requested for adjournment. To come up for final hearing before the DB on 13.03.2017 at camp court, Abbottabad. Rejoinder submitted.

  
Member

  
Chairman

Camp Court, A/Abad

13.03.2017

Appellant in person and Mr. Muhammad Siddique, Sr.GP for the respondents present. Due to non-availability of D.B arguments could not be heard. To up for final hearing before the D.B on 23.08.2017 at camp court, Abbottabad.

  
Chairman

Camp Court, A/Abad

28.07.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as ASDEO (M) Circle Lora District Abbottabad when prematurely transferred vide impugned order dated 19.3.2015 regarding which he preferred departmental appeal on 27.3.2015 which was not responded and hence the instant service appeal on 15.7.2015.

That the impugned transferred order is the result of the malafide as the appellant was transferred time and again on 7 occasions within a short span of one year.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 15.9.2015 at Camp Court Abbottabad as the matter pertains to the territorial limits of Hazara Division.

Appellant Deposited  
Security & Process Fee

15.9.2015

Appellant in person and Mr. Sohail Ahmad, Assistant alongwith Mr. Muhammad Tahir Aurangzeb, G.P for respondents present. Requested for adjournment. To come up for written reply/comments on 14.12.2015 before S.B at Camp Court A/Abad.

Chairman

Chairman

Camp Court A/Abad

14.12.2015

Appellant in person and Mr. Sohail Ahmad Zeb, Assistant alongwith Mr. Muhammad Siddique, Sr.G.P for official respondents No.1 and 2 present. None present for private respondent No.3. Proceeded ex-parte. Written reply not submitted by official respondents No.1 and 2. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on behalf of official respondents No.1 and 2 on 16.3.2016 before S.B at Camp Court A/Abad.



Chairman

Camp Court A/Abad

Form- A  
FORM OF ORDER SHEET

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

Case No. 818/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	15.07.2015	<p>The appeal of Mr. Iftikhar Ahmad presented today by Mr. Shahzada Irfan Zia Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	16-7-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>28-7-2015</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR**

Service Appeal No. 818 / of 2015

Iftikhar Ahmad ADEO (Male) ... Appellant

VERSUS

Province of Khyber Pakhtunkhwa and others ... Respondents

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Through:

*Iftikhar Ahmad*  
Appellant  
*Irfan Zia*  
(Shahzada Irfan Zia)  
Advocate High Court,  
13-C, Haroon Mansion  
Khyber Bazar, Peshawar  
Cell # 0300-9345297

Dated: 15.07.2015

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

Service Appeal No. 818 / of 2015

Iftikhar Ahmad ADEO (Male) son of  
Mumtaz Ahmad, Office of the District Education  
Officer (M) Mansehra...

Appellant

VERSUS

1. Province of Khyber Pakhtunkhwa through  
Secretary Elementary & Secondary Education  
Khyber Pakhtunkhwa, Peshawar.

2. Director of Elementary & Secondary Education,  
Khyber Pakhtunkhwa, Peshawar.

③ Zulfiqar Ahmad son of Khan Zaman, S.S.T,  
Circle Lora, Office of the District Education  
Officer, Abbottabad...

**M.W.F. Province  
Service Tribunal**

**Diary No. 853**

**Dated 15-7-2015**

Respondents

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED  
ORDER DATED 19.3.2015, WHEREBY THE APPELLANT HAS  
BEEN PREMATURELY TRANSFERRED FROM CIRCLE LORA,  
DISTRICT ABBOTTABAD TO THE OFFICE OF D.E.O  
MANSEHRA AND RESPONDENT NO.3 HAS MALAFIDELY  
BEEN ADJUSTED AGAINST THE POST OF APPELLANT AND  
DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST  
THE IMPUGNED ORDER ELICITED NO RESPONSE WITHIN  
THE STATUTORY PERIOD.

Respectfully Sheweth:

FACTS OF THE CASE.

- 15/7/15
1. That the appellant was appointed/selected as A.S.D.E.O (M) in  
Management Cadre on the recommendation of Public Service  
Commission and adjusted in the Office of E.D.O, Haripur, vide order  
dated 10.5.2011. (Annex: A).



2. That after two years the appellant was transferred from District Haripur and adjusted in the Office of District Education Officer Torghar, vide order dated 17.7.2013. (Annex: B).
3. That on promotion of one Mr. Muhammad Tanveer A.D.E.O to the post of S.D.E.O, a post of A.D.E.O had become vacant in District Abbottabad and the appellant being permanent resident of District Abbottabad applied for his adjustment against the said vacant post. (Annex: C). The appellant was recommended for adjustment against the said vacant post of A.S.D.E.O Lora District Abbottabad but meanwhile the respondent No.2 adjusted respondent No.3 against the said vacant post despite of the fact that respondent No.3 is serving as S.S.T (Teaching Cadre) and the post vacant was of Management Cadre. (Annex: D). It is pertinent to mention that adjustment order of respondent NO.3 was issued in advance in the month of November 2013 in Circle Bio, District Abbottabad, but subsequently he was adjusted in Circle Lora, during his probation period due to political influence. (Annex: E).
4. That the appellant filed a Departmental Appeal against the adjustment of respondent No.3 against the post of ASDEO (Management Cadre) (Annex: F). On the appeal of the appellant the adjustment order of respondent No.3 dated 17.2.2014 was cancelled by the respondent No.2 and the appellant was posted/adjusted against the vacant post of ASDEO (M) Circle Lora District Abbottabad, thus the wrong was rectified vide order dated 25.2.2014. (Annex: G).
5. That unfortunately the respondent No.3 who is an influential person, used political influence and pressurized the respondent No.2 and as a result after ten days the respondent No.2 again restored the illegal order dated 17.2.2014 and withdrew his previous order dated 25.2.2014. (Annex: H).
6. That the appellant being aggrieved from the order dated 07.03.2014 approached the august High Court in Writ Petition bearing No. 175-P

of 2014, but during the proceedings the respondents produced before the Court an order dated 17.3.2014, whereby the office order dated 25.2.2014 had been restored and the impugned order dated 07.03.2014 was cancelled. On the basis of said order the Writ Petition was disposed of by the august Court. (Annex: I&J).

7. That it is astonishing that after disposal of Writ Petition before the august High Court, the respondent No.2 again restored the adjustment order of respondent no.3 dated 17.2.2014 and the order dated 17.3.2014 which was produced before the august High Court was withdrawn, vide order dated 21.3.2014. The conduct of respondent No.2 is tantamount to Contempt of Court and even fraud with law, which needs hard look. (Annex: K).
8. That the appellant again filed a Departmental Appeal against the order dated 21.3.2014, and approached the august High Court in Writ Petition No. 220-A of 2014, and again the respondent No.2 withdrew his order dated 21.3.2014 through order dated 4.4.2014. (Annex: L & L/1).
9. That in compliance of the order dated 4.4.2014 the appellant took over charge of vacant post of ASDEO Lora District Abbottabad and performed his official duties to the entire satisfaction of his superiors with great zest and zeal at his new place of posting. (Annex: M).
10. That being aggrieved from the order dated 4.4.2014 the respondent No.3 approached the august High Court in Writ Petition bearing No. 266-A/2014, but the same was dismissed being not maintainable, but on 19.3.2015 the respondent No.2 passed an other transfer order whereby the appellant has been transferred from Circle Lora District Abbottabad and his services has been placed at the disposal of D.E.O (M) Mansehra. The departmental appeal of the appellant against the impugned order dated 19.3.2015 elicited no response within the statutory period, hence the present appeal is being filed inter alia on the following grounds: (Annex: N&O).

GROUND:

- a. That the vacant post of ASDEO of Lora Circle is a Management Cadre Post, while the respondent NO.3 is S.S.T (Teaching Cadre), therefore, he is not eligible for adjustment against the said post and his adjustment against the said post is illegal, void and an undue favour has been extended to respondent No.3, being a blue eyed chap. Both the cadres have different functions and qualification and are not interchangeable. The respondent nO.3 has no experience of Management Cadre, and it was reported by the D.E.O (M) Abbottabad in his letter dated 14.2.2014 that respondent NO.3 (Zulfiqar Ahmad SST) having poor performance and bad reputation and does not deserve to be adjusted against such a highly sensitive post. (Annex: P).
- b. That the impugned transfer order dated 19.3.2015 is pre-mature as the appellant has not completed his normal tenure, thus the order is against the law, rules and Government Policy, therefore, liable to be set aside.
- c. That it is unfortunate that within a period of one year number of transfer orders and cancellation of transfer orders have been made by respondent No.2. Such practice adversely affects the efficiency of the incumbents and also reduces their confidence and faith. Such exercise is against the judgments of the Honourable Supreme Court of Pakistan.
- d. That the impugned order is against the principles laid down by the Honourable Supreme Court of Pakistan in case of Anita Turab, therefore, not sustainable under the law.
- e. That the impugned transfer order is neither in exigency of service nor public interest rather based on political whims and malafide on the part of respondents.

- f. That the conduct of respondent No.2 is highly objectionable and he misused his authority and restored and cancelled orders on his own whims and even cheat the High Court and committed fraud on law. His conduct is contemptuous which needs hard look.

In view of the aforesaid facts and circumstances of the case it is humbly prayed that the impugned transfer order dated 19.3.2015 may graciously be set aside, being illegal and void. And the orders dated 04.04.2014 and 25.2.2014 may kindly be restored directing the respondents to allow the appellant to perform his statutory duties against the post of A.S..D.E.O (M) Lora Circle, District Abbottabad.

*Gulikhar Ahmad*  
Appellant

Through:

*18/07/15*  
(Shahzada Irfan Zia)  
Advocate, Peshawar.

Dated: 15 .07.2015

CERTIFICATE:

Certified that as per instructions of my client no such Service Appeal on behalf of the appellant has earlier been filed in this Honourable Service Tribunal on the subject matter.

*18/07/15*  
Advocate.

~~Annex-I~~

(Annex: A)

**Office of the Executive District Officer  
Elementary & Secondary Education Haripur**

PH No. 0995-610178, 610268

**ADJUSTMENT ORDER**

In compliance with Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar Notification vide Endst: No. 584-830/File No. I/ADO(M)/M.C dated 05.05.2011 and No. 102-35/F No. 436 Vol-II/ADO (M)/PSC dated 10.05.2011 the following Assistant District Officers (Male) newly selected/recommended by Public Service Commission Peshawar are hereby adjusted in the Offices/Circles mentioned against the name of each in the light of terms and condition already notified in the above mentioned notification:-

S. No.	Name with Father's Name	Adjusted at	Remarks
1.	Abdul Qayyum Khan S/O Haji Lal Khan	ADO (P&D)	
2.	Arshad Mehmood S/O Ghulam Nabi	ADO Circle S. Saleh	Against vacant post
3.	Iftikhar Ahmad S/O Muntaz Ahmad	ADO Physical & Sports	Against vacant post
4.	Fazal Qadir S/O Ali Asghar	ADO Circle Phurala	Against vacant post
5.	Abdul Wahab S/O Abdul Ghafoor	ADO Circle Ghazi	Against vacant post
6.	Said Bad Shah S/O Ali Ahmad	ADO (Estb) Primary	Against vacant post
7.	Muhammad Saeed Ur Rehman S/O Abdul Hadi	ADO (Estb:) Sec:	Against vacant post
8.	Abdul Samad S/O Muhammad Miskeen	ADO Circle Haripur	Against vacant post
9.	Ashfaq Rasool Safi S/O Ghulam Rasool Safi	ADO Circle Kot Najibuallah	Against vacant post

Note: The District Officer male is directed that before handing over charge to above ADOs the following documents may be collected from them and sent to this office for onward submission to the Director Elementary and Secondary Education Govt: of Khyber Pakhtunkhawa Peshawar.

1. Proper relieving chit from DDO (M)/Principal Concerned.
2. Last Pay Slip.
3. Last Pay certificate.

*s.d.*  
Executive District Officer  
Elementary and Secondary Education  
Haripur.

Endst: No. 10117-32

Date: 10/5/2011

Copy 11 information to:-

1. The Secretary E&SE Khyber Pakhtunkhwa Peshawar.
2. The Directress E&SE Khyber Pakhtunkhwa Peshawar.
3. The District Coordination Officer Haripur.
4. The District Officer (M) E&SE Haripur.
5. The Senior District Account Officer Haripur.
6. The Deputy District Officer (M) E&SE Haripur.
7. All ADOs Concerned.
8. Office file.

*M. M. M. M. M.*  
Executive District Officer  
Elementary and Secondary Education  
Haripur.

attested.  
*187*

**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER**  
**PAKHTUNKHWA, PESHAWAR.**

(P-31)

**NOTIFICATION**

The services of Mr. Iftikhar Ahmad ADEO (P&D) O/O DEO (M) Haripur is hereby placed at the disposal of District Education Officer Torghar for further adjustment in his own pay & BPS in the interest of public service with immediate effect.

Note:-

- i. Charge report should be sent to all concerned.
- ii. No TA/DA etc are allowed.

**DIRECTOR**

Endst: No. 2624-26 F.No.436/Vol-8 (B) Male Transfer. Dated Pesh: the 17/7/2013

Copy of the above is to the:-

1. District Education Officer (Male) Haripur & Torghar.
2. District Accounts Officer Haripur & Torghar.
3. Officer concerned.
4. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar
5. M/File.

Deputy Director (Estab)  
 E&SE Khyber Pakhtunkhwa Peshawar.

17/7/13

attested.  
 18/7

(Annex: C) (8)

To

The Director  
Elementary & Secondary Education  
K.P.K Peshawar

Subject: Application for Adjustment against vacant  
Post of ASDEO(M)

Sir,

It is submitted that I am working  
against ADD post in District Torghar which  
is about 200 km from my home.

Now, one Muhammad Tanvir ADD  
in Distt: Abbottabad has been selected  
SDEO and nearby he is going to be  
adjusted as SDEO(M)

So, it is requested that, I may  
be adjusted against that mentioned post  
which is going to be vacant due to promotion  
of Muhammad Tanvir ADD as SDEO(M)  
in District Abbottabad, as I am also resident  
of District Abbottabad.

I shall be very thankful for your  
kind favour.

Yours Obediently  
4/10/13  
IFTIKHAR AHMAD ADD

o/o DEO(M) Torghar

IFTIKHAR AHMAD  
Assistant District Officer (P & D)  
Education Dept Torghar

attested  
18/1

Subject: Request for Adjustment Against Vacant Post

Sir,

It is submitted that I am working against ADO post in Distt: Torghar which is very far from my home Distt: Abbottabad.

Now, one Muhammad Tanvir ADO of Distt: Abbottabad has been selected as SDEO and is going to be adjusted against SDEO (M) post.

It is therefore, requested that, I may be adjusted against ADO post in Distt: Abbottabad which is my native district, for which I shall be highly thankful to you.

Hopping favourable response please.

Dated

20/12/2013

Yours obediently

*Iftikhar Ahmad*

IFTIKHAR AHMAD

IFTIKHAR AHMAD  
Asstt District Officer, (P & D)  
Education Deptt Torghar

may be adjusted against  
the post applied for as  
per Rules/Policy.

HAFIZ QALANDAR KHAN LODHI  
Advisor to Chief Minister For Food,  
Khyber Pakhtunkhwa

21/12/13

attested.  
IA



Anna - 5(a)

(Annex : D) (10)

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER  
PAKHTUNKHWA, PESHAWAR.

CORRIGENDUM.

Please read the posting address as "ASDEO (Male) Circle Lora" instead of (ASDEO (Male) Circle Boi) in District Abbottabad in respect of Mr. Zulfiqar Ahmad SST GMS Kukmong notification issued vide this Directorate under endorsement No. 3766-71 dated 28-11-2013.

DIRECTOR

Endst: No. 2472-77 /F.No.436/Vol-01/ADEO (M) Gen: transfer/K.P.

Dated Peshawar the 17/2/2014

Copy of the above is to the:-

1. District Education Officer (M) Abbottabad.
2. District Accounts Officer Abbottabad.
3. SDEO (M) Abbottabad.
4. Officer concerned.
5. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
6. Master File.

Deputy Director (Etab)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa, Peshawar

*[Handwritten signature]*  
17/2/2014

*[Handwritten notes]*  
New  
19/2

*[Handwritten signature]*  
attested  
18/2

**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER  
PAKHTUNKHWA, PESHAWAR.**

**NOTIFICATION**

Consequent upon the approval by the competent authority, Mr. Zulfiqar Ahmad SST GMS; Kukmong District Abbottabad is hereby adjusted as ASDEO (M) Circle Boi District Abbottabad t in his own pay & BPS in the interest of public service with effect from: date of vacation of the post subject to the following terms & Conditions.

1. Charge report should be submitted to all concerned.
2. No TA/DA etc are allowed.
3. The order of the above named SST (Teaching cadre) will be effective subject to the conditions that he will give an undertaking/affidavit on legal paper/stamp paper to DEO (M) Abbottabad to the effect not to claim seniority of Management cadre.
4. His seniority will be intact in teaching cadre as per rules. He will not affect the promotion of any incumbent of that cadre.
5. The terms & conditions mentioned in his appointment orders as SST Teaching cadre will intact.
6. He will not claim any kind of absorption in management cadre.

**DIRECTOR**

Endst: No. 3766-71 /F.No .436 / /Vol-01/ADEO (M) Gen: Transfer/K.P.  
Dated Peshawar the 28/11/2013

Copy of the above is to the:-

1. District Education Officer (M) Abbottabad.
2. District accounts Officer Abbottabad.
3. SDEO (Male) Abbottabad.
4. Officer concerned.
5. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar
6. Master File.

Deputy Director (Estab)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

attested.  
BT

F  
①  
(Annex F)  
(12)

Director  
Elementary & Secondary Education  
KPK, Peshawar.

Subject: APPEAL FOR ADJUSTMENT OF MR. IFTIKHAR AHMED ASDEO (M)  
AGAINST VACANT POST AT DISTRICT ABBOTTABAD AND  
CANCELLATION OF PRE-MATURE NOTIFICATION DATED  
28.11.2013 OF MR ZULFIQAR AHMED SST GMS KUKMONG  
ABBOTTABAD

Respected Sir,

Succinctly facts of appeal are as under:-

1. That, the undersigned was selected as ASDEO (M) in management cadre by PSC KPK and was appointed by your good self on 05.05.2011 and adjusted by DEO (M) Haripur on 10.05.2011 as ASDEO physical and sports at DEO (M) office Haripur. (copy of order is attached herewith)
2. That, the appellant is the permanent resident of District Abbottabad but due to non availability of post, was posted at Haripur and served there almost two years.
3. That, on 17.07.2013 the appellant was transferred from Haripur to District Torghar. (copy of order is attached for ready reference)

attested  
IA

4. That, the appellant is now serving as ADEO at District Torghar, District Torgarh is the far flung remote area and about 200 Km away from District Abbottabad. That's way I submitted an application on 6.10.2013 for adjustment in district Abbottabad against vacant post of ASDEO which was going to be vacant upon the selection of Mr. Muhammad Tanvir ASDEO as SDEO. (Copy of application is attached herewith)
5. That, the appellant submitted the recommendations of three sitting ministers for adjustment against vacant post on priority basis being resident of District Abbottabad. (Copy of letters are attached)
6. That, the appellant visited your office on 15.01.2014 for feed back upon the application already been submitted to your office on 06.10.2013 but got wondered to know that pre-mature order has made on 28.11.2013 almost two months advance against pre-vacation of post, whereas the said post has vacated on 03.01.2014. (The copy of Notification is attached)
7. That, the worthy DEO (M) Abbottabad too proposed the appellant for adjustment against said vacant post on 16.01.2014 as the post has become vacant on 03.01.2014 (Copy of DEO (M) Abbottabad letter is attached)
8. That, the respected father of appellant has been served for almost forty precious years of their life in

attested  
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suffered from serious sickness of sugar, urine problem and being paralyzed. In this scenario and sensitive circumstances it's my foremost duty to look after and serve my extreme age father which I can not do because of my posting at District Torgarh.

9. That, much more regretted to state that I am deprived of my right due to the adjustment of SST (Teaching cadre) in place of mine. It is against the service rules and merit policy.

Therefore, keeping in view the above mentioned facts and figures and relevant documentary record your majesty is humbly prayed to cancel the Notification of dated 28.11.2013 and I may kindly be adjusted against the vacant post at Abbottabad. Otherwise I have reserved the right to knock the door of any Court of law for justice and protection of my right.

I shall be highly thankful to you for this act of kindness

Thanking in Anticipation

*Ifikhar Ahmed*

**Ifikhar Ahmed**

ASDEO

DEO (M) Office Torgarh

Dated:-20.01.2014

Copy to:

1. Minister for (E & SE) KPK for information and favorable necessary action.
2. Secerearty ( E & SE) KPK Peshawar for information and favorable necessary action.

*attested*  
*IA*

**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER  
PAKHTUNKHWA PESHAWAR**

**OFFICE ORDER**

Mr. Iftikhar Ahmad ADEO (Management cadre) DEO (M) Torghar is hereby transferred and posted against the vacant post of ASDEO (M) Circle Lora District Abbottabad in his own pay & BPS in the interest of public service with immediate effect.

The transfer/posting in respect of Mr. Zulfiqar Ahmad SST GMS Kukmang as ASDEO (M) Circle Lora issued vide this office under endorsement No. 2472-77 dated 17-02-2014 is hereby cancelled.

Endst: No. 3554-59 / F.No.436/Vol-1/ADEO (M) Transfers.

**DIRECTOR**

Dated Peshawar the 25/2/ 2014.

Copy of the above is to the:-

1. District Education Officers Torghar & Abbottabad.
2. District Accounts Officer Torghar & Abbottabad.
3. SDEO (M) Abbottabad.
4. Officers concerned.
5. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
6. Master file.

M. R. I  
Deputy Director (Estab)

✓ Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

(16)

- 25/2/14

attested.  
187

(Annex : H) (16)

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER  
PAKHTUNKHWA PESHAWAR

OFFICE ORDER

The office order issued vide this Directorate under endorsement No. 2472-77 dated 17-02-2014 is hereby restored.

The office order issued vide this Directorate under endorsement No. 3554-59 dated 25-02-2014 is hereby withdrawn.

Note: - 1. Complaint report should be submitted to all concerned.

13/3/14  
Endst: No. \_\_\_\_\_ / F.No.436/Vol-1/ADEO (M) Transfers. 07/3/14  
Dated Peshawar the \_\_\_\_\_ / 2014.

Copy of the above is to the:-

1. District Education Officers Torghar & Abbottabad.
2. District Accounts Officer Torghar & Abbottabad.
3. SDEO (M) Abbottabad.
4. Officers concerned.
5. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
6. Master file.

Deputy Director (Estab)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar  
11/3/2014  
6/10/14

attested.  
IF

PESHAWAR HIGH COURT ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

JUDGMENT SHEET

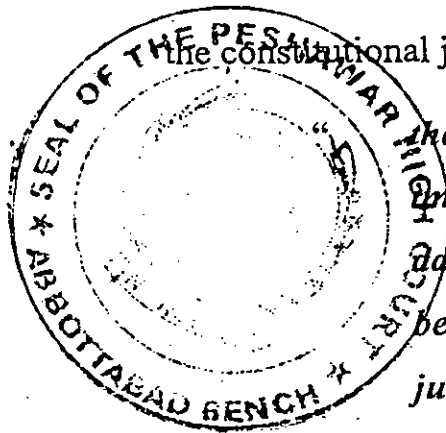
W.P.No. 175-P of 2014

Date of hearing 20-03-2014

Petitioner Iftikhar Ahmed by Mr. Zahid Mahmood Qureshi

Respondents ✓

WAQAR AHMED SETH, J. Iftikhar Ahmed petitioner seeks



the constitutional jurisdiction of this Court praying for :-

that on acceptance of this writ petition, the impugned order of respondents No.4 and 5 dated 28.11.2013 and 7.3.2014 may kindly be set-aside and declared illegal, without jurisdiction and without lawful authority, besides being malafidely and for ulterior motives. The notifications / officer order No.3554-54 dated 25.02.2014 may kindly be restored and directed the respondents that the petitioner be transferred / posted as Circle Lora Abbottabad as ASDEO ”.

2- Learned counsel for the petitioner produced Office Order dated 17.03.2014, whereby the office order dated 7.3.2014 has been cancelled and office order dated 25.02.2014 stands restored.

20/3/14  
Peshawar High Court  
Abbottabad Bench  
Sd/-  
Judge

attested  
17



**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER  
PAKHTUNKHWA PESHAWAR**

**OFFICE ORDER**

The office order issued vide this Directorate under endorsement No. 3554-59 dated 25-02-2014 is hereby restored.

The office order issued vide this Directorate under endorsement No. 1318-23 dated 07-03-2014 is hereby cancelled.

Note:- 1. Complaint report should be submitted to all concerned.

Endst: No. 2556-61 /F.No.436/Vol-1/ADEO (M) Transfers.

**DIRECTOR**

Dated Peshawar the 17/3/2014

Copy of the above is to the:-

1. District Education Officers Torghar & Abbottabad.
2. District Accounts Officer Torghar & Abbottabad.
3. SDEO (M) Abbottabad.
4. Officers concerned.
5. PA to Director (E&SE) Khyber Pakhtunkhwa Peshawar.
6. Master file.

Deputy Director (E&SE)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

17/3/14

attested  
PA

Annex - 5 (C)

(Annex: K)

(20)

**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER  
PAKHTUNKHWA PESHAWAR**

**OFFICE ORDER**

The transfer order in respect of Mr. Zulfiqar Ahmad SST from Govt. Middle School Kukmong to SDEO (M) Abbottabad as ASDEO (M) Circle District Abbottabad issued vide No. 2472-77 dated 17-02-2014 is hereby restored & he should continue as ASDEO (M) Circle Lora Abbottabad till further orders.

The transfer order in respect of Mr. Ifkhar Ahmad ADEO O/O DEO (M) Torghar as ASDEO (M) Circle lora SDEO (M) Abbottabad restored vide No. 2556-61 dated 17-03-2014 is hereby withdrawn

Note:- Compliance report should be sent to all concerned.

DIRECTOR

Endst: No. 3982-87 /F.No.436/Vol-1/ADEO (M) Transfers. 31/3  
Dated Peshawar the 31/3/2014.

Copy of the above is to the:-

1. District Education Officers Torghar & Abbottabad.
2. District Accounts Officers Torghar & Abbottabad.
3. SDEO (M) Abbottabad.
4. Officials concerned.
5. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
6. Master file.

Deputy Director (Estab)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

attested  
[Signature]

21/3/14

✓ Annex-5

(Annex: L)

(21)

To

The Secretary Elementary Secondary Education  
Khyber Pakhtoonkhwa  
Peshawar.

Subject: APPEAL AGAINST OFFICE ORDER ENDST: NO 3962-87  
Dated 21-03-2014

Respected Sir,

1. A notification of adjustment was issued under Endst: No 376671 dated 28-11-2013 which was against rule, merit and policy as pre-mature adjustment was made by violating the right of others. (Copy of notification is attached) page-1(a,b)
  2. Mr. Zulfiqar Ahmad is SST (Senior School Teacher) i-e belong to teaching cadre while the post is ASDEO which is for management cadre the matter is clear in the light of terms and condition mentioned in the notification No. 3766-71 dated 28/11/2013.
  3. The office order i/r of Mr. Iftikhar Ahmad (Management Cadre) was issued under Endst: No 3554-59 dated 25/2/2014 who has served about 03 years out district but again was withdrawn under Endst: No 1318-23 dated 07/03/2014 without assigning any reason. (Copies are attached Page 2,3).
  4. Again under Endst: No 2556-61 dated 17/03/2014 the order no 3554-59 dated 25/02/2014 was restored and order No .1318-23 dated 07-03-2014 was concealed copy of order is attached page-4.
  5. Then again under Endst: No 3962-87 dated 21/03/2014 Mr. Zulfiqar Ahmad SST from Govt Middle School Kukmong was restored and the transfer order in respect of Mr. Iftikhar Ahmad ADEO has withdrawn. (Copy of the order is attached page -5)
- Sir, in the light of above it is crystal clear that the Directorate of Elementary & Secondary Education has made E & SE: a child play.  
Sir, such practices are not only wasting the time, energy and money of officials but also a great case of inefficiency of department.  
Sir, you are requested to direct the concerned officials to stop such practices and made adjustment/ transfer on merit immediately and concealed the order Endst No. 3962-87 dated 21/03/2014.

I hope merit will be kept in view, otherwise, I have the option of court for justices.

Thanks.

Dated: 25-03-2014

Copy to

- 1- Chief Secretary KPK Civil Secretariat  
Peshawar for information & n/action.
- 2- Secretary Establishment KPK, Civil  
Secretariat Peshawar.
- 3- Record Copy.

Yours Obediently,

*Iftikhar Ahmad*  
Iftikhar Ahmad

ADEO

Village & P.O Banda  
Sahib Khan Tehsil  
Havelian District  
Abbottabad.

attested  
IB

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER  
PAKHTUNKHWA, PESHAWAR.

OFFICE ORDER

Consequent upon the judgment of the Honourable Peshawar High Court Bench Abbottabad dated 20-03-2014, the transfer order in respect of Mr. Iftikhar Ahmad ADEO from DEO (M) Torghar to DEO (M) Abbottabad as ASDEO (M) Circle Lora (Abbottabad) issued vide this Directorate under endorsement No 3554-59/F.No.436/Vol-01/ADEO (M) dated 25-02-2014 is hereby restored and he is allowed to continue his duty as ASDEO (M) Circle Lora Abbottabad till further orders.

The transfer order in respect of Mr. Zulfiqar Ahmad SST GMS Kukmong to SDEO (M) Abbottabad as ASDEO (M) Circle Lora District Abbottabad restored vide No. 3982-87 dated 21-03-2014 is hereby withdrawn.

7210-18

DIRECTOR

Endst: No. \_\_\_\_\_/F.No.436/Vol-01/ADEO (M) Transfers.

04/04/14

Dated Peshawar the \_\_\_\_\_ 2014

Copy of the above is to the:-

1. Registrar Peshawar High Court, Abbottabad Bench.
2. Registrar Peshawar High Court, Peshawar.
3. District Education Officer (M) Abbottabad.
4. District Accounts Officer Abbottabad.
5. SDEO (M) Abbottabad.
6. Officials concerned.
7. PS to Secretary to Govt. of Khyber Pakhtunkhwa, E&SE Department.
8. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
9. Master File.

Deputy Director (Estab)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa, Peshawar

attested  
18/4

*[Handwritten signature]*  
4/4/2014

(Annex: M)

(2)

GOVERNMENT OF KHYBER PAKHTUNKHWA  
CERTIFICATE OF TRANSFER OF CHARGE

Certified that I, IFTIKHAR AHMAD, ASDEO, Toyshay

have this day before/ After Noon, Take over/ Relinquished charge of the office ASDEO o/o SDEO(M) Abbottabad

with reference to the order of the K.P.K Government No.7210-18/ F.No.436/vol-01/ASDEO(M) Transfer dated 04-04-2014

Transferring Mr. Vacant post, ASDEO(M) Circle Lora Distt. Abbottabad

2. Particulars of cash and important/ secret/ confidential document handed over/taken over are noted on the reverse.

Station: Abbottabad

Signature (relieved)  
Government Servant V. Post

Designation: ASDEO o/o Lora

Signature of Government  
Servant Receiving Charge IFTIKHAR AHMAD

Designation: IFTIKHAR AHMAD  
ASDEO(M) o/o SDEO(M)  
Abbottabad

Date: 05-04-2014

Encl. No. 589-93 Dated 09-4-2014

From: SDEO(M)  
Abbottabad

- To:
1. The Accountant- General  
K.P.K, Peshawar.
  2. Dy. District Officer (Estt) EtSEKPK Peshawar.
  3. District Account Officer Haripur, Abbottabad.
  4. SDEO(M) Abbottabad.
  5. SDEO(M) Abbottabad.
  6. \_\_\_\_\_
  7. \_\_\_\_\_

the charge of the office of ASDEO(M) Circle Lora o/o SDEO(M) Attd

Was transferred from Vacant post

To Mr. IFTIKHAR AHMAD, ASDEO(M) Circle Lora

On the before/Afternoon of the 05-04-2014

Signature [Signature]  
Designation Sub-Divisional Education  
Officer (Pt) Pz Abbottabad

[Signature]  
Dy. District Education Officer  
(Male) Abbottabad  
11/4/14

attested  
[Signature]



OFFICE OF THE DISTRICT EDUCATION OFFICER (M)  
DISTRICT TOR GHAR

(M.)  
(24)

Subject: CHARGE RELINQUISH REPORT

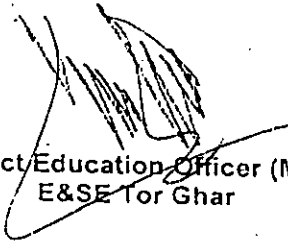
In compliance with Govt; of Khyber Pakhtunkhwa E&SE Deptt: Peshawar notification issued Vide No. 7210-18/F.No.436/Vol-01/ADEO (M) Transfers. Dated 04-04/2014. I, Mr. Iftikhar Ahmed ADEO (M) Torghar hereby relinquish the charge of the post of ADEO (M) Tor Ghar today on 04-04-2014 (A.N) to report at office of DEO (M) Tor Ghar for my new assignments as ADEO (M) at DEO (M) Office Abbottabad for further necessary process.

Iftikhar Ahmed  
A.D.E.O (Male)  
E&SE Torghar

Endst: No 22311-39 Dated 04/04/2014.

Copy for information to the:-

1. Director (E&SE) Khyber Pakhtunkhwa Peshawar.
2. Deputy Director (Estab) E&SE Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (M) Tor Ghar & Abbottabad.
4. District Account Officer Tor Ghar at Mansehra & Abbottabad.
5. Officers Concerned.
6. Office File.

  
District Education Officer (M)  
E&SE Tor Ghar

attested.  
IA

427/24/3/15 (Annex: N)  
(25)

**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER PAKHTUNKHWA.**

**NOTIFICATION**

The following transfers/posting are hereby ordered in their own pay & BPS in the interest of public service with immediate effect subject to the following terms & conditions:-

S#	Name/designation & address	Where posted as	Remarks
1	Mr. Iftikhar Ahmad ASDEO (M) Circle Lora District Abbottabad.	His services placed at the disposal of DEO (M) Mansehra.	For further posting against vacant post of ASDEO/ADEO
2	Mr. Zulfiqar SST GMS Kukmong District Abbottabad	ASDEO (M) Circle Lora District Abbottabad	Vice S.No.1

**TERMS & CONDITIONS.**

1. Charge report should be submitted to all concerned.
2. No TA/DA etc are allowed.
3. The order of the SST at S.No.2 above (teaching cadre) will be effective subject to the conditions that they will give an undertaking/affidavit on legal paper/stamp paper to DEO (M) Abbottabad to the effect not to claim seniority of Management cadre.
4. His seniority will be intact in teaching cadre as per rules. He will not affect the promotion of any incumbent of that cadre.
5. The terms & conditions mentioned in his appointment orders as SST teaching cadre will intact.
6. He will not claim any kind of absorption in management cadre.

2182  
243

Endst: No. 3861-63 /F. No. P.File-Zulfiqar /Abbottabad. Dated Peshawar the 19/3 2015

Copy of the above is to the:-

1. District Education Officer (M) Abbottabad/Mansehra.
2. District Accounts Officer Abbottabad/Mansehra.
3. SDEO (M) Abbottabad.
4. Officials concerned.
5. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
6. Master File.

Deputy Director (Estab)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

M. Jehan  
For record  
24/3/15

SDEO(M)  
For information  
and do. as  
needed.  
21/3/15

19/3/15  
16/3/15

attested  
187

(Annex: 0)

(26)

The Secretary,  
Elementary & Secondary Education,  
KPK Peshawar

63

Sub:- Appeal for the cancellation of Notification No.3861-63 Dated:19-03-2015 of  
Mr: Zulfiqar SST GMS Kukmog as ASDEO (M) Circle Lora Distt: Abbottabad.

Respectfully Sheweth,

Brief facts of the appeal are:

1. That the appellant was selected ASDEO (M) in Management cadre by PSC KPK and was adjusted as ASDEO at DEO (M) office Haripur on 10-05-2011. (Copy of adjustment order attached annex-1)
2. That on 17-07-2013, the appellant was transferred from Haripur to Distt: Torghar (Copy of notification is attached annex-2.)
3. That, the appellant is the permanent resident of Distt: Abbottabad, but due to non-availability of post served for two years at Haripur and for one year at Distt: Torghar Hard Area.
4. That, the appellant submitted an application for adjustment in Distt: Abbottabad against vacant post of ASDEO but it was astonishing that pre-mature adjustment has been made on 28<sup>th</sup> November 2013 of one Mr: Zulifiqar SST GMS Kukmung (two month before vacation of seat) which was against merit policy, rule and regulations the notification is self-explanatory (copy of notification is attached annex-3.
5. The service of Mr: Zulfiqar SST is also immature that is less than two years why the competent authority is bound to adjust him as ASDEO which is neither his cadre nor he can be adjusted as ASDEO in the presence of PSC selected ASDEO (copy of notification Zulfiqar SST is attached annex-4)
6. That in the short period of 02 month about five notifications have been issued and withdrawn by the honorable Director E & SE KPK. I appealed your good-self about that (copy of appeal and all notifications are attached as annex-5 a,b,c,d,e,f)
7. That Mr. Zulfiqar SST filled a writ petition No.266-A/2014 versus Govt: of KPK through Secretary E & SE on 15-04 2014 in which salary of honorable secretary was also stopped. In which clear Judgment and directions are given to honorable Director which are violated in notification No.3861-13 dated. 19-03-2015 (copy of judgment 19-03-2015 is also attached annex-6)
8. That much more regretted to state that I am deprived of my right due to the adjustment of SST Teaching cadre in mine place by transferring me to other district after a short period of 4<sup>th</sup> month without any justification only to full fill the ambition of one blue eyed of a political personality by violating all rules and regulations, merit and transferring policy.


Therefore, in the view of above mentioned facts and figures and relevant documentary record you are humbly prayed to cancel the notification No.3861-63 dated. 19-03-2015.

Otherwise, I have reserved the right to knock at the door of court for justice & protection of my right.

I shall be highly thankful, for favorable act of kindness.

Thanks

Yours Obediently,

  
Iftikhar Ahmad ASDEO (Circle Lora)  
O/O DEO (M) Abbottabad.

- Copy to.
- 1. Chief Minister KPK for information
- 2. Minister Education. KPK for information an n/a
- 3. Chief Secretary KPK for information
- 4. Personal File

attested  
IF

Dated: 27/03/2015



OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) ABBOTTABAD

No. 999-1003 /EB

Dated 14/02/2014

The Director,  
Elementary & Secondary Education,  
Khyber Pakhtunkhwa, Peshawar.

Subject: ADJUSTMENT OF MR. ZULFIQAR AHMED SST GMS KUKMONG TEACHING CADRE AGAINST THE POST OF ASDEO CIRCLE BOI, ABBOTTABAD.

Memo:

Reference is invited to your office notification issued under Endst: No. 3766-71/F.No. 436/Vol-VADEO(M) Gen. Transfer/KP dated 28.11.2013 regarding adjustment of Mr. Zulfiqar Ahmed SST GMS Kukmong (Teaching Cadre) against the post of ASDEO (M) Circle Boi.

It is also brought into your kind notice that the adjustment order of above named SST was issued in advance in the month of November, 2013. Further more the post of ASDEO was not lying vacant.

In this regard it is further submitted that the post of ASDEO (Circle) Lora became vacant due to selection of Mr. Muhammad Tanveer as Sub Divisional Education Officer (M) Kohistan vide Government of Khyber Pakhtunkhwa, Elementary & Secondary Education, Peshawar notification issued vide No. SO(S/M)E&SED/4-16/SDEOs(BS-17)Mgt: Cadre dated 02.01.2014.

Mr. Iftikhar Ahmed, ASDEO (M) Torghar (Management Cadre) and resident of District Abbottabad has already been recommended for adjustment against the resultant vacancy of ASDEO (Circle Lora) vide this office Memo: No. 377 dated 16.1.2014.

It is, therefore, requested that Mr. Zulfiqar Ahmed SST GMS Kukmong (Teaching Cadre) having poor performance and bad reputation as the undersigned personally observed in his various visits to the school, does not deserve to be adjusted against such a highly sensitive post i.e. the custodian of the rights of thousand of employees.

If the same order was passed in the light of Honourable Minister or Chief Minister Directives, then the Competent Authority is requested to approach the concerned authorities to review their directives for the sanctity of the Department just to extend relief to entire circle.

*M M M*  
DISTRICT EDUCATION OFFICER (M)  
ABBOTTABAD.

Endst: of even number and date:

Copy forwarded to:

1. PSO to Chief Minister, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Commissioner, Abbottabad.
3. P/S to Secretary to Government of Khyber Pakhtunkhwa, E&SED Peshawar.
4. P/S to Commissioner Hazara Division, Abbottabad.

*M M M*  
DISTRICT EDUCATION OFFICER (M)  
ABBOTTABAD.

attested  
IPF

OFFICE OF THE DISTRICT EDUCATION OFFICER (M) ABBOTTABAD



No. 2033 / EB

Dated: 24/03/2014

0992-9310102, 0992-330131

EDO.Education.Atd@gmail.com

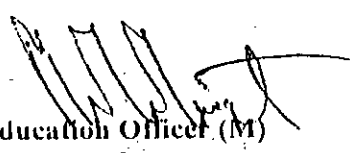
The Director E&SE  
Khyber Pakhtunkhwa  
Peshawar

Subject: CANCELLATION OF TRANSFER ORDER

Memo:

It is submitted that Mr. Iftikhar Ahmad S/O Muntaz Ahmad, ASDEO approached to the Honorable Peshawar High Court Circuit Bench Abbottabad through WP No. 175/A of 2014 for restoration of his transfer order as he belongs to the Management cadre, but in the mean while your good office canceled the transfer order of Mr. Zulfiqar SST GMS Kukmang Abbottabad, belonging to teacher cadre and order of Mr. Iftikhar was restored on dated 17.03.2014 which was placed before the Honorable Peshawar High Court Circuit Bench Abbottabad on 20.03.2014 and the Court disposed off the said Writ petition.

It is a matter of great concern that your good office again passed another order vide Endst No. 3982-87 dated 21.03.2014 and reversed the proceeding of the Honorable High Court dated 20.03.2014. (Copies of the Court order dated 20.03.2014 and transfer order dated 21.03.2014 are attached, with the request that order of the Court dated 20.03.2014 may please be honored and subsequent order vide Endst No. 3982-87 dated 21.03.2014 be cancelled.

  
District Education Officer (M)  
Abbottabad

attested  
IA



Iftikhar Ahmad 2، پنجاب  
Province of KPK

15.7.2015 مورخہ

Iftikhar Ahmad مقدمہ

Service Appeal. دعویٰ

جرم

### باعث تحریر آنکہ

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

آن مقام Peshawar کیلئے Shahzada Tofan Zia

مقررہ کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی

اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے

اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے

سبب سے دہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا نکالت نامہ لکھ دیا کہ سندر ہے۔

Accepted by

2015

July

ماہ

15th

المرقوم

العہد گاہ العہد

کے لئے منظور ہے۔

Peshawar

مقام

Iftikhar Ahmad

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.**

Service Appeal No: 818/2015.

Iftikhar Ahmad ADEO(Male) District Mansehra. ....Appellant.

VERSUS

Secretary (E&SE) Department, Khyber Pakhtunkhwa & others. ....Respondents

**PARAWISE COMMENTS ON & FOR BEHALF OF RESPONDENTS No: 1-2.**

Respectfully Sheweth :-

The Respondents submit as under:-

**PRELIMINARY OBJECTIONS.**

1. That the Appellant has got no cause of action / locus standi.
2. That the instant Service Appeal is badly time barred. Hence is liable to be dismissed.
3. That the Appellant has concealed material facts from this Honorable Tribunal in the instant service appeal.
4. That the instant service appeal is against the relevant provisions of law.
5. That the Appellant is not an aggrieved person under article 212 of the constitution of the Islamic Republic of Law of Pakistan 1973.
6. That the Appellant has filed the instant appeal on malafide intentions just to put extra ordinary pressure on the Respondents for the grant of illegal & even unauthorized service benefits.
7. That the Appellant has not come to this Honorable Tribunal with clean hands.
8. That the instant appeal is liable to be dismissed for mis-joinder & non-joinder of the necessary parties to the present appeal.
9. That the Appellant is estopped by his own conduct to file the instant appeal
10. That the instant Service Appeal is not maintainable in its present form .
11. That the Notification dated 19-3-2015 is legally competent & liable to be maintained in favour of the Respondents in the interest of justice.
12. That this Honorable Tribunal has got no jurisdictions to entertain the instant Service Appeal.
13. That the Appellant has been treated as per laws, rules & relevant policy in the instant case.
14. That the Appellant is not entitled for the grant of relief he has sought from this Honorable Tribunal.
15. That the instant Service Appeal is barred by law.
16. That no departmental appeal has been filed by the appellant against the impugned Notification.

ON FACTS

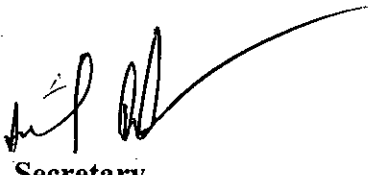
- 1 That Para-I is correct to the extent that the appellant was recommended by the Khyber Pakhtunkhwa, Public Service Commission against the Asstt: Sub: Divisional Educational Officer (ASDEO) post and upon the said recommendations, the Appellant has been adjusted vide order dated 10-5-2011 issued by the then EDO(S&L) now DEO(M) Haripur against the vacant post of Asstt: District Officer (Physical & Sports ). (copy of the said Notification & adjustment order are Annexure-A & B).
- 2 That Para-2 is correct to the extent that the services of the appellant has been placed at the disposal of DEO (M) Toor Ghar vide Notification dated 17-7-2013 against the ADEO(P&D) post on the grounds that the appellant has been recommended by the Public Service Commission on the above said post in Management cadre under which the appellant can be transferred and post anywhere in the Province U/S-10 of Civil Servants Act 1973 of being a Provincial cadre post for the whole Khyber Pakhtunkhwa.(copy of the said Notification is Annexure-C).
- 3 That Para-3 is incorrect and misleading. The appellant is working against the Management Cadre post of ASDEO in the Respondent Department. Hence he is liable and supposed to serve anywhere in the Province, wherever his services are required by the competent authority under the mandatory provisions of Section-10 Civil Servant Act-1973. Therefore, the plea of the appellant regarding his adjustment against the ASDEO(M) Management Cadre post in his home District Abbott Abad is illegal and without solid justification.
- 4 That Para-4 is incorrect & misleading on the grounds that the issuance of the office order dated 25-2-2014 by the Respondent No: 2 in favour of the appellant has been issued in terms of the submissions as made in Para-3 of the instant reply. Hence needs no further comments.
- 5 That Para-5 is incorrect and denied. The Respondent No: 2 has acted within legal sphere under the mandatory provisions of Section-10 Civil Servant Act 1973, on the grounds that the appellant is basically belongs to the Management Cadre and he is supposed to serve anywhere in the Province wherever his services against the ASDEO (M) post are required by the competent authority. Hence the plea of the Appellant in this Para is liable to be dismissed in favour of the Respondents.
- 6 That Para-6 needs no comments being pertains to the court record of the Honorable Peshawar High Court Peshawar.
- 7 That Para-7 is incorrect & misleading. The Respondents have got jurisdictions to transfer & post a civil servant anywhere in the Province, wherever his services are required U/S-10 of Civil Servants Act 1973. Hence the Notification dated 31-3-2014 has also been issued in terms of the above made submissions in the instants reply.
- 8 That Para-8 needs no comments being pertains to the record of the Superior Court.
- 9 That Para-9 is correct. Hence needs no further comments.
- 10 That Para-10 is incorrect & denied. The Respondents are entitled U/S-10 of Civil Servant Act 1973 to transfer and post a civil servant /appellant wherever his services against the ASDEO(M) post are required. Furthermore, the appellant wants to stick to the post as ASDEO(M) at District Abbott Abad despite the fact that the appellant belongs to the Provincial Management Cadre post. Hence the order / Notification dated 19-3-2015 of the Respondent No: 2 is legally competent and is liable to be maintained in favour of the Respondents in the interest of justice. However the Respondents further submit on the following grounds inter alia :-

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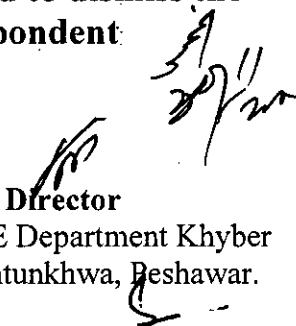
**ON GROUNDS**

- A Incorrect & denied. The appellant belongs to the Provincial Management Cadre post in the Respondent Department & he is supposed to be adjusted and post wherever his services are required by the competent authority against the ASDEO (M) post. Whereas rest of the Para regarding the adjustment of the Respondent No: 3 is baseless and without legal justification.
- B Incorrect & denied. The Notification dated 19-3-2015 is within legal sphere issued by the Respondent No: 2 in the light of the mandatory provisions of law, facts and circumstances of the case. Hence the same is liable to be maintained in favour of the Respondents in the interest of justice.
- C Incorrect & denied. The statement of the appellant is baseless, because the post of the appellant is basically a Provincial Management Cadre post and not a tenure oriented. Hence the act of the Respondents with regard to the adjustment of the appellant in the office of the DEO(M) Mansehra vide Notification dated 19-3-2015 is in accordance with law, rules & policy.
- D Incorrect & denied. The case of the appellant is totally different from the referred case of the August Supreme Court of Pakistan. Hence this Para is also liable to be dismissed.
- E Incorrect & denied. The Notification dated 19-3-2015 is within legal sphere. Neither any aspect of the exertion of Political Pressure nor any such proof has been shown by the appellant in support of his plea. Hence rejected.
- F Incorrect & denied. The Respondents have acted as per law, rules & policy in the instant case. Hence the Notification dated 19-3-2015 is liable to be maintained in favour of the Respondent Department in the interest of justice. However the replying Respondents also seek leave of this Honorable Tribunal to submit additional record and case law at the time of arguments on main appeal.

**In view of the above made submissions, it is requested that this Honorable Tribunal may very graciously be pleased to dismiss the instant service appeal with cost in favor of the Respondent Department.**



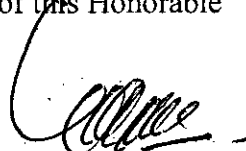
**Secretary**  
(E&SE) Department Khyber  
Pakhtunkhwa, Peshawar.



**Director**  
E&SE Department Khyber  
Pakhtunkhwa, Peshawar.

**AFFIDAVIT**

I, Khaista Rehman Asstt: Director (Lit: II) E&SE Department Khyber Pakhtunkhwa, Peshawar do hereby solemnly affirm and declare on oath that the contents of the instant Parawise Comments in the titled Service appeal are true & correct to the best of my knowledge & belief & that nothing has been concealed from the ambit of this Honorable Tribunal.



**Deponent**

~~Annex-I~~

(Annex: A & B)  
(6)

**Office of the Executive District Officer  
Elementary & Secondary Education Haripur**

PH No. 0995-610178. 610268

**ADJUSTMENT ORDER**

In compliance with Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar notification vide Endst: No. 584-830/File No.1/ADO(M)/M.C dated 05.05.2011 and No. 102-103/Endst: No. 436 Vol-II/ADO (M)/PSC dated 10.05.2011 the following Assistant District Officers (ADOs) newly selected/recommended by Public Service Commission Peshawar are hereby adjusted to the Offices/Circles mentioned against the name of each in the light of terms and condition already notified in the above mentioned notification:-

S. No.	Name with Father's Name	Adjusted at	Remarks
1.	Abdul Qayyum Khan S/O Haji Lal Khan	ADO (P&D)	Against vacant post
2.	Arshad Mahmood S/O Ghulam Nabi	ADO Circle S. Saleh	Against vacant post
3.	Ifrikhar Ahmad S/O Mumtaz Ahmad	ADO Physical & Sports	Against vacant post
4.	Fazal Qadir S/O Ali Asghar	ADO Circle Phurala	Against vacant post
5.	Abdul Wahab S/O Abdul Ghafoor	ADO Circle Ghazi	Against vacant post
6.	Said Bad Shah S/O Ali Ahmad	ADO (Estb) Primary	Against vacant post
7.	Muhammad Saeed Ur Rehman S/O Abdul Hadi	ADO (Estb) Sec:	Against vacant post
8.	Abdul Samad S/O Muhammad Miskeen	ADO Circle Haripur	Against vacant post
9.	Ashfaq Rasool Safi S/O Ghulam Rasool Safi	ADO Circle Kot Najibuallah	Against vacant post

Note: The District Officer male is directed that before handing over charge to above ADOs the following documents may be collected from them and sent to this office for onward submission to the Director Elementary and Secondary Education Govt. of Khyber Pakhtunkhawa Peshawar.

Proper relieving chit from DDO (M)/Principal Concerned.  
Last Pay Slip.  
Last Pay certificate.

*sd*  
Executive District Officer  
Elementary and Secondary Education  
Haripur.

Endst: No. 10117-32

Date: 10/5/2011

Copy 11 information to:-

- The Secretary E&SE Khyber Pakhtunkhwa Peshawar.
- The Directress E&SE Khyber Pakhtunkhwa Peshawar.
- The District Coordination Officer Haripur.
- The District Officer (M) E&SE Haripur.
- The Senior District Account Officer Haripur.
- The Deputy District Officer (M) E&SE Haripur.
- All ADOs Concerned.
- Office file.

*IFTIKHAR AHMAD*  
Executive District Officer  
Elementary and Secondary Education  
Haripur.

o/o DEOCM Torghar  
IFTIKHAR AHMAD

Annex-2

Annex C  
~~(Annex: B)~~ (7)

**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER  
PAKHTUNKHWA, PESHAWAR.**

(P-3)

**NOTIFICATION**

The services of Mr. Iftikhar Ahmad ADEO (P&D) O/O DEO (M) Haripur is hereby placed at the disposal of District Education Officer Torghar for further adjustment in his own pay & BPS in the interest of public service with immediate effect.

Note:-

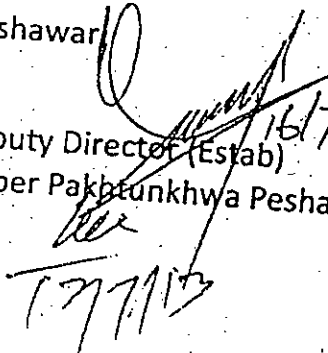
- i. Charge report should be sent to all concerned.
- ii. No TA/DA etc are allowed.

**DIRECTOR**

Endst: No. 1624-26 F.No.436/Vol-8 (B) Male Transfer. Dated Pesh: the 17/7/2013

Copy of the above is to the:-

1. District Education Officer (Male) Haripur & Torghar.
2. District Accounts Officer Haripur & Torghar.
3. Officer concerned.
4. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar
5. M/File.

  
Deputy Director (Estab)  
E&SE Khyber Pakhtunkhwa Peshawar.  
16/7/2013  
17/7/13

O/O DEO (M) TORGHAR

IFTIKHAR AHMAD  
District Officer (P & D)  
Education Dept Torghar



**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER  
PAKHTUNKHWA.**

**OFFICE ORDER.**

The services Mr. Zulfiqar SST working against the post of ASDEO at District Education Officer (M) Abbottabad is hereby placed at the disposal of District Education Officer (M) Abbottabad for further posting against the vacant post of SST in his own pay & BPS in the interest of public service with immediate effect.

Note:-

1. Charge report should be sent to all concerned.
2. No TA/DA etc are allowed.

Endst: No. 2471-73 /F. No. P.F. Zulfiqar SST (M) Abbottabad.

**DIRECTOR**

Dated Peshawar the 15/02 2016

Copy of the above is to the:-

2. District Accounts Officer Abbottabad.
3. Section Officer (Primary) E&SE Department w/r to the letter No. SO(PE)1-1/Abbottabad/2015 dated 02-02-2016.
4. SST concerned.
5. PA to Director (E&SE). Khyber Pakhtunkhwa, Peshawar.
6. Master File.

15/2/16  
Deputy Director (Estab)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa

DEO (Male)

12/2/16



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT**

No. SO(PE)1-1/Abbottabad/2015

Dated Peshawar the 02-02-2016

To


The Director,  
Elementary & Secondary Education,  
Khyber Pakhtunkhwa, Peshawar.

Subject:- **DEPARTMENTAL APPEAL FOR JUSTICE**

Dear Sir,

I am directed to refer to your letter No. 03/P. File /Zulfiqar SST/ADEO/A/Abad dated 03/08/2015, on the subject noted above in respect of Mr. Iftikhar Ahmad ASDEO (Circle Lora) O/O DEO (M) District Abbottabad, and to direct you to relieve Mr. Zulfiqar SST from the post of ASDEO/ADO Abbottabad and post any other suitable officer of Management Cadre in his place as the Director E&SE deems appropriate.

Yours faithfully,

  
(QASIM KHAN)  
SECTION OFFICER (PRIMARY)

original

## Before the Service Tribunal KPK Peshawar

Service Appeal No. 818 of 2015

Titled: Iftikhar Ahmad ADEO (M) Manshera.....

(Appellant)

V/S

Secretary E&SE Department KPK, Peshawar & Others.....

(Respondents)

### Replication to the written reply submitted by respondents is as under:-

Respectfully Sheweth:-

#### Preliminary Objections:-

1. Incorrect, being civil servant and aggrieved by the illegal act of respondents, the appellant has got the cause of action/locus standi.
2. Incorrect, Appeal is well within time and the same was honored by the respondent No.01, but respondents No.2 & 3 did not honor it.
3. Incorrect, liable to proof.
4. Incorrect, the appeal is in accordance with law.
5. Incorrect an evasive.
6. Incorrect, the appellant was transferred seven times within one calendar year and this act of the respondents is very much discriminatory in the eyes of law.
7. Incorrect, and against the facts and circumstances of the case.
8. Incorrect, evasive.
9. Incorrect, the appellant entitled under the law to bring the present appeal and the appellant was stopped by the illegal act of the respondents.
10. Incorrect, the appeal is in accordance with law and is maintainable in its present form for appropriate order before this Honorable Tribunal.
11. Incorrect, Notification No.3861-63 dated 19-03-2015 is against the transfer policy and merit and is liable to be set aside by this Honorable Tribunal.
12. Incorrect, being service matter squarely comes within the domain of service Tribunal under article 212-A of 1973.
13. Incorrect, the appellant has highly been discriminated and not treated as per law.
14. Incorrect, being aggrieved by the act of the respondents, the appellant is entitled for the relief prayed for.
15. Incorrect, the instant appeal is well within time and not barred by time.
16. Incorrect, the appellant submitted an appeal before the competent authority which was duly honored by the competent forum but was not honored in letter and spirit by the issuing authority.

#### ON FACTS

1. Para- 1 already admitted by the respondents, needs no comments.
2. Para-2 is also already admitted by the respondents, needs no comments.
3. Incorrect, the appellant has not been allowed to complete his normal tenure which is violation of transfer/posting policy and the judgment of the apex court reported in PLD 1995 SC page No.530 and PLD 2013 SC page No.195, Furthermore the respondents No.3 from teaching cadre is posted against management cadre post which is also violation of the rules/policy. Further added that almost all his colleagues in M.C are performing their duties at their home Districts. (Copy of which is attached as annexure- A)
4. Incorrect and against the facts and circumstances of the case.
5. Incorrect, the Respondents No.2 without observing the provision of law, rule, policy and merit has issued repeated/frequent transfer orders of appellant just to accommodate the favorite respondent No.3 for wrong posting against management cadre/seat though he belongs to teaching cadre.

6. Incorrect, the record of Honorable Court is of great importance on the basis of which the Transfer order of Appellant was restored.
7. Incorrect, the notification dated 21-03-2014 is clear proof of colorable exercise of power U/S-10 of civil servant Act-1973, showing no, regards to the prescribed Law, Rule, Policy and merit on the subject is against the Transfer/Posting policy that the detail is given in Para-06 above.
8. That the record of the superior Court has already been annexed with the main appeal of the appellant.
9. Para No-9, accepted by the respondents needs no comments.
10. Incorrect, mischieved and against the facts, all most all the ADEO,s as well ASDEO,s are performing their duties at their home District, Furthermore Transfer order of the appellant is pre-Mature and against the transfer/posting policy & is liable to be struck down by this Honorable Tribunal.

**GROUNDS:-**

- a. Incorrect, sufficient explanation has been submitted in the main appeal.
- b. Incorrect, the notification dated 19-03-2015 is not only violation of transfer/posting policy but also sheer violation of judgment of Apex Court reported in PLD-1995 S.C page No.530 and PLD-2013 SC page No.195 which is liable to be set aside by this Honorable Tribunal.
- c. Incorrect, the notification dated 19-03-2015 is totally against the notification No.SOR. VI(E and AD) I-4/2015/Vol-II Dated Peshawar, 27<sup>th</sup> Feburary 2013 made by Establishment Department (Regulation Wing) Govt. of KPK. **(Copy of notification is attached as annexure-B)**
- d. Incorrect, the case of appellant is totally at par with the referred case of the august Court being a civil servant it is cardinal principal of law that all civil servants should be treated alike & no different yard stick be used.
- e. Incorrect, the detail is given in the proceeding Paras above
- f. Incorrect, the detail is given in replication of the mentioned Para's, and the notification is against the prevailing rules set for the purpose which is liable to be struck down.

**PRAYER:**

It is therefore most humbly prayed that on acceptance of the accompanying replication, this Honorable Tribunal would be pleased to set aside the order dated: 19-03-2015 or any other relief this Tribunal may deem fit in the circumstances of the case may also granted please..

Appellant

VERIFICATION:

I, Mr. Iftikhar Ahmad ASDEO (M) Mansehra do hereby solemnly affirmand declare on oath, that the contents of this replication are true and correct and nothing has been concealed from this Honorable Tribunal.

Appellant

Iftikhar Ahmad ASDEO (M)  
Mansehra

P L D 1995 Supreme Court 530

*Present: Saiduzzaman Siddiqui  
and Raja Afrasiab Khan, JJ*

ZAHID AKHTAR—Petitioner

versus.

GOVERNMENT OF PUNJAB through Secretary, Local  
Government and Rural Development,  
Lahore and 2 others—Respondents

Civil Petition No.175(L) of 1995, decided on 19th March, 1995.

(On appeal from the judgment/order dated 12-2-1995 of Lahore High  
Court, Lahore passed in Writ Petition No.995 of 1995).

## (a) Administrative decision—

---Government servant should comply only with those orders/directions of his superior which were legal and within his competence—Compliance of illegal or an incompetent direction/order could neither be justified on the plea of same having been issued from superior authority nor same could be defended on the ground that non-compliance thereof, could have exposed concerned Government servant to the risk of disciplinary action—Role of bureaucracy in the administrative set-up highlighted.

Tamed and subservient bureaucracy can neither be helpful to Government nor it is expected to inspire public confidence in the administration. Good governance is largely dependent on an upright, honest and strong bureaucracy. Therefore, mere submission to the will of superior is not a commendable trait in a bureaucrat. Elected representatives placed in charge of administrative departments of Government are not expected to carry with them a deep insight in the complexities of administration. The duty of a bureaucrat, therefore, is to apprise these elected representatives the nicety of administration and provide them correct guidance in discharge of their functions in accordance with the law. Succumbing to each and every order or direction of such elected functionaries without bringing to their notice the legal infirmities in such orders/directions may sometimes amount to an act of indiscretion on the part of bureaucrats which may not be justifiable on the plane of hierarchical discipline. A Government servant is expected to comply only those orders/directions of his superior which are legal and within his competence. Compliance of an illegal or an incompetent direction/order can neither be justified on the plea that it came from a superior authority nor it could be defended on the ground that its non-compliance would have exposed the concerned Government servant to the risk of disciplinary action. [p. 533] A

(b) Pu  
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## (b) Punjab Government Rules of Business, 1974—

R. 21(2) & Sched. V—Constitution of Pakistan (1973), Art.139—Appointments, postings, promotions and transfers—Authorities competent to make transfers of civil servants of different categories—Government servant's repeated transfers from one place to another in a span of few months by the order of Minister concerned and carrying out of such orders obediently by the Secretary of the Department concerned highly unethical and undesirable—Guideline is the policy directive of the Government and provisions of R.21, Rules of Business, to be strictly followed by the Secretaries/Heads of the Department concerned—Normal period of posting of Government servant at a station as per policy decision of Government being for three years, has to be followed in ordinary circumstances unless for reasons of exigencies of service such policy has to be departed from—Guidelines of policy of Government relating to transfer of Government servants stated with special reference to advice which Secretary of a Department must render to Minister incharge where the latter had acted in violation of Rules of Business.

A reading of rule 21(2) with Schedule V of the Rules of Business, 1974 makes it clear that the transfer of a Section Officer/Under-Secretaries and other officers of equivalent rank within the department is to be done by the Secretary of that Department. Rule 21 of the Rules of Business, which deals with power of posting, promotion and transfer of Government servants does not contemplate exercise of these powers by the Minister. The normal period of posting of a Government servant at a station, according to the above-referred policy decision of the Government, is 3 years, which has to be followed in the ordinary circumstances, unless for reasons of exigencies of services mentioned in the aforesaid policy of Government, a transfer before expiry of 3 years period becomes necessary in the opinion of competent Authority. The transfer orders of Government servant concerned, therefore, could neither be justified on the plane of policy directive of Government nor they were sustainable on the language of Rule 21(2) read with Schedule V of the Rules of Business, 1974. Transfer orders of Government servants were not made in accordance with the policy directives of the Government and such power was not exercised by the competent authority as contemplated by Rule 21(2) read with Schedule V of the Rules of Business, 1974. The fact that the transfers were made in violation of policy directive of the Government, which has the status of a Rule, and provisions of Rule 21(2), Rules of Business were not followed strictly, opened the door for the Government servant concerned to bring in outside influence to obtain the desired transfers. Secretary concerned neither resisted these unethical and undesirable moves of his subordinates nor he pointed out to the Minister incharge, that the transfer orders made by him from time to time in respect of various officers of his department were neither in conformity with the declared policy of Government nor these transfer orders conformed to the provisions of Rule 21(2) of the

Rules of Business, 1974, it was the duty of the Secretary concerned to have pointed out to the Minister concerned the extent of his authority in such matters, besides bringing to his notice that such frequent transfers of a Government servant could neither be justified as the exigencies of service nor it could be described in the public interest. Such unconcerned and lukewarm attitude on the part of Head of a Government Department is not expected to promote discipline or efficiency in the Department. On the contrary, such attitude may have a demoralising effect on his subordinates encouraging them to seek intervention and favours of outside agencies, which may ultimately adversely affect the overall discipline and efficiency in the department. Guidelines mentioned in policy directives of the Government and provisions of Rule 21 of the Rules of Business, 1974 should be kept in view by all concerned while dealing with the transfers of Government servants. The office was directed to send a copy of judgment to the Government of Punjab for circulating it to all its departments, for future guidance. [p. 539] B

Pir Sabir Shah v. Government of N.-W.F.P. PLD 1994 SC 738 ref.

Dr. A. Basit, Advocate Supreme Court with Ch. Mehdi Khan Mehtab, Advocate-on-Record for Petitioner.

Farooq Bedar, Additional A.-G., Punjab for Respondents.

Date of hearing: 19th March, 1995.

#### JUDGMENT

SAIDUZZAMAN SIDDIQUI, J.—The petitioner, an employee of Government of Punjab Local Government and Rural Department LG & RD, challenged his transfer order dated 23-1-1995, from Muzaffargarh, in a Constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, hereinafter to be referred as 'the Constitution' only before the Lahore High Court. A learned Judge in Chamber by order dated 12-2-1995, dismissed the petition as not maintainable, in view of the bar contained in Article 212 of the Constitution. The petitioner is seeking leave to appeal against the above order of the Lahore High Court.

Dr. A. Basit, the learned counsel for the petitioner firstly, contended before us that the transfer of a Government servant does not fall within the scope of terms and conditions of the service and as such the bar contained in Article 212 of the Constitution is not applicable to the case of the petitioner. In the alternative, the learned counsel for the petitioner very vehemently contended that the transfer order of the petitioner being malicious and having been passed by an authority not competent under the law, for objects wholly alien to the Punjab Civil Servants Act (hereinafter to be referred as 'the Act' only) was coram non jure and as such it could be challenged before the High Court in a Constitutional petition under Article 199 of the Constitution notwithstanding the bar contemplated in Article 212 of the Constitution. In

port of his contention, the learned counsel for the petitioner relied on the  
of Pir Sabir Shah v. Government of N.-W.F.P. PLD 1994 SC 738.

Mr Farooq Bedar, the learned Additional Advocate-General, Punjab,  
opposed the grant of leave in the petition on the ground of its  
competency, but, on our query, frankly stated that 4 orders of transfer of  
petitioner, passed in quick succession within a period of less than a month were  
only unusual but also offended against the declared policy of Government  
to the transfer of Government servants.

On a tentative examination of the material produced before us in the  
we also felt that the manner in which successive transfer orders of the  
petitioner were passed in the case, supported the contention of the petitioner  
these transfer orders were not based on any exigency of service but were  
reasons which bore no nexus with the spirit and object of the Rules  
governing the transfer of a Government servant. We, accordingly, directed the  
learned Addl. A.-G. to seek instructions from the authorities concerned and  
before us full facts concerning frequent transfers of the petitioner  
between the period from 4-7-1994 to 23-1-1995. The learned Addl. A.-G. in  
response to our direction candidly submitted before us a detailed note today,  
stating the facts relating to the transfer of petitioner between the period  
from 4-7-1994 to 23-1-1995. After going through this note, we were convinced  
that the various transfer orders of petitioner passed between the period from  
4-7-1994 to 23-1-1995 could not be described/treated as a normal incident of  
transfer in service but were based on extraneous considerations bearing no  
nexus with the object and spirit of Rules governing the transfer of Government  
servants. We, accordingly, further directed the Secretary, Local Government  
& Rural Department, Punjab, to appear before us in the case at 11-30 a.m.  
to state the reasons behind this unusual and frequent transfer of the  
petitioner. Mr. Shafqat Ezdi Shah, Secretary, LG & RD, accordingly, appeared  
before us at 11-30 a.m. and stated that he had no role in the successive  
transfers of the petitioner in the case. According to Mr. Shafqat Ezdi Shah, all  
orders for transfer of the petitioner in the case were passed by the Minister  
in charge of his department which he was bound to comply. The inherent  
helplessness noticed by us in the above statement of the Secretary, LG & RD  
was not only shocking but also disappointing. We need not stress here that a  
rigid and subservient bureaucracy can neither be helpful to Government nor  
is expected to inspire public confidence in the administration. Good  
governance is largely dependent on an upright, honest and strong bureaucracy.  
Therefore, mere submission to the will of superior is not a commendable trait  
of a bureaucrat. Elected representatives placed in charge of administrative  
departments of Government are not expected to carry with them a deep insight  
into the complexities of administration. The duty of a bureaucrat, therefore, is, to  
assist these elected representatives the nicety of administration and provide  
correct guidance in discharge of their functions in accordance with the

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law. Succumbing to each and every order or direction of such elected functionaries without bringing to their notice, the legal infirmities in such orders/directions may sometimes amount to an act of indiscretion on the part of bureaucrats which may not be justifiable on the plane of hierarchical discipline. It hardly needs to be mentioned that a Government servant is expected to comply only those orders/directions of his superior which are legal and within his competence. Compliance of an illegal or an incompetent direction/order can neither be justified on the plea that it came from a superior authority nor it could be defended on the ground that its non-compliance would have exposed the concerned Government servant to the risk of disciplinary action.

In the case before us, the Minister of LG & RD directed Secretary LG & RD on 3-8-1994 that Sh. Ehsan Elahi, Assistant Engineer, LG & RD Lodhran, be transferred and posted as A.E., Faisalabad vice Sh. Zahid Akhtar (petitioner) who was transferred from Faisalabad and posted as A.E., Kasur. Copy of the order of Minister was endorsed to Nawab Sher Waseer M.P.A., Haji Muhammad Ismail M.P.A. and Mr. Wasee Zafar M.P.A. Secretary LG & RD complied with above order of Minister LG & RD and issued the necessary notification dated 4-8-1994. On 10-8-1994, the Minister LG & RD cancelled the posting of petitioner and allowed Mr. Khalid Mahmood, LCS Engineer, to continue as A.E., Kasur on deputation. Copy of this order was endorsed to besides the Secretary LG & RD to Rao Abdul Qayyum M.P.A. PP.151 and Sardar Hussain Dogar, M.P.A. PP.146. The Secretary LG & RD complied with this order of the Minister on 16-8-1994. On 13-9-1994 the Minister LG & RD was again pleased to direct that the petitioner, who was awaiting posting, be posted as A.E. LG & RD, Faisalabad vice Sh. Ehsan Ellahi, who should report to Government for his further posting. Copy of this order of Minister was endorsed to Secretary LG & RD and Mr. Wasi Zafar, M.P.A., Faisalabad. The Secretary LG & RD on 19-9-1994 complied with the order of Hon'ble Minister by issuing order for posting of petitioner as A.E. Faisalabad vice Ehsan Ellahi posted to Narowal against a vacant post. Then came an order from Chief Minister's Secretariat on 5-10-1994, informing Secretary LG & RD that posting of Sh. Ehsan Ellahi as S.D.O. in the Local Government, Faisalabad, has been approved by the Chief Minister. Copy of this letter was endorsed to Minister LG & RD. Consequent to this order, the Secretary LG & RD recalled his earlier orders dated 19-9-1994 transferring Sh. Ehsan Elahi, from Faisalabad to Narowal, and re-posted him as A.E., Faisalabad. As a result thereof the petitioner, who was posted as A.E., Faisalabad was transferred from there and was directed to report to the LG & RD Department, Government of Punjab. The petitioner thereafter, awaited for his posting until 28-12-1994 when the Hon'ble Minister for LG & RD passed an order for his posting as A.E. LG & RD, Muzaffargarh vice Mr. Abdul Khaliq, who was directed to report to Government for further posting. Copy of this letter was endorsed by the Minister to Malik Bilal Mustafa Khar, M.P.A. PP-213 Muzaffargarh. This

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order was complied by the Secretary LG & RD on 29-12-1994. The Hon'ble Minister LG & RD on 9-1-1995 cancelled the posting order of petitioner issued by Secretary LG & RD in compliance of his orders dated 29-12-1994 and directed that Abdul Khaliq should continue as A.E. Muzaffargarh. Copy of this order of the Minister was endorsed to Malik Bilal Mustafa Khar, M.P.A., Muzaffargarh. The Secretary LG & RD immediately complied with the above directions of his Minister by issuing another order dated 10-1-1995 cancelling the posting order of petitioner dated 29-12-1994. On 16-1-1995, the Hon'ble Minister LG & RD again issued an order directing Secretary LG & RD to post the petitioner as A.E. LG & RD, Muzaffargarh vice Abdul Khaliq, A.E., who was directed to report to Government for further posting. Copy of this order of Minister was endorsed to Malik Abdul Rehman Khar, M.P.A., Muzaffargarh. No sooner the above order of Minister LG & RD was implemented by the Secretary by issuing the posting order dated 18-1-1995, another order was passed by the Hon'ble Minister LG & RD on 21-1-1995 cancelling the order of Secretary LG & RD dated 18-1-1995 which he had issued in compliance with the earlier order of Minister dated 16-1-1995. The Secretary LG & RD dutifully complied with the orders of the Minister and issued another order dated 23-1-1995 cancelling earlier posting of the petitioner.

The narration of the above facts makes it abundantly clear that none of the orders in the case passed by the Hon'ble Minister, transferring or cancelling the posting of the petitioner was motivated by the exigencies of the service. The endorsements on the letters of the Minister LG & RD produced before us, sufficiently unveiled the forces at work in the background of these transfers. It required no intelligence to conclude that these transfer orders were passed by the Hon'ble Minister for reasons which has no bearing either with the exigencies of the service or with the good administration of the department. The scenario looked more like a battle of wits than an ordinary case of transfer of a Government servant, as every time the petitioner was able to get a posting order for a particular station, the incumbent already working there, was able to frustrate it, perhaps with his better approach or connections, leaving the petitioner in lurch. This ugly situation could be avoided easily by following the existing policy and rules in this regard. The Government of Punjab as late as 16-3-1980 issued Memorandum No.S.O. (Coord.) 1-13/79 laying down the broad guidelines for transfer of Government servants. Paragraph 4 of this policy decision lays down amongst other, the following principles for transfer of Government servants:--

4. Transfers of officers and staff shall be made by the authorities specified in Schedule V to the Punjab Government Rules of Business, 1974, and the Delegation of Powers Rules pertaining to different Departments but Services; General Administration and Information Department shall be consulted, if it is proposed to transfer the holder of a tenure post before the completion of his tenure or extend the

period of his tenure. Before completion of tenure, every officer may be asked to indicate four places of his choice for posting.

No transfers shall normally be made except under the following circumstances:--

- (a) On completion of tenure/prescribed stay at hard stations.
- (b) On completion of 3 years' stay at a particular station in other cases.
- (c) On compassionate grounds.
- (d) On disciplinary grounds.
- (e) On promotion/demotion.
- (f) Administrative requirements.
- (g) No officer/official shall be transferred, who is under special report nor shall earned leave be granted to him except by the order of the Authority, which placed him under such report.

Transfer before the completion of the period of tenure should be ordered only if the competent Authority is satisfied that:--

- (a) The transfer involves appointment to higher service or a post carrying higher emoluments.
- (b) The transfer is being made to a post for which the officer has special aptitude, qualifications or experience.
- (c) The officer has proved unsuitable in the post from which he is being transferred.
- (d) The officer holding a lien on the post, has become available.
- (e) The transfer is on compassionate grounds.

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 .....  
 No request for transfer of an officer on complaint or unfitness to hold a post shall be entertained unless the officer has spent at least three months on his present assignment and a special report has been initiated on his performance."

The spirit behind the transfer policy was stated in the above policy decision, as follows—

The policy of postings should be designed so as to ensure stability in appointments to encourage professionalism by recognizing and promoting merit; while providing an allround experience to the individual officers. In order to avoid stagnation in performance and ideas and to provide dynamic administration, repeated appointments to the same type of job need to be avoided unless in some special cases, specialization is desired. The transfer policy is to be guided foremost by the service of public interest and the individual's interest is to be integrated therewith as far as possible for ensuring greater harmony and efficiency. Important assignments need to be filled in by those officers, who have good record of service so that they may develop their talent and may make maximum contribution to the public welfare. In cases, where officers show certain weaknesses in professional and character traits, they may be so positioned as to be amendable to direction, advice and guidance."

The Rules of Business (Provincial Government) 1974, framed under Article 139 of the Constitution, in respect of Province of Punjab, lay down the functions of a Provincial Minister, incharge of an administrative department, as follows—

**6. Function of the Minister.—A minister shall—**

- (a) be responsible for policy matters and for the conduct of business of his Department;

Provided that in important political, economic or administrative matters, the Minister shall consult the Chief Minister;

- (b) submit cases to the Chief Minister as required by the provisions of these rules;

(v) keep the Chief Minister informed of any important case disposed of by him without reference to the Chief Minister; and

(d) conduct the business relating to his Department in the Assembly.

Rule 21 of the Rules of Business, *ibid*, which deals with the appointment, posting, promotion and transfer of a Government servant reads as follows:--

"21. Appointments, postings, promotion and transfers--(1) Approval of the Chief Minister will be obtained before issue of orders in cases relating to appointments, promotions, postings and transfers to posts mentioned in Schedule IV.

(2) Transfers of civil servants shown in column 1 of Schedule V shall be made by the Authority shown against each in column 2 thereof.

(3) The Services, General Administration and Information Department shall be consulted if it is proposed to--

(a) transfer the holder of a tenure post before the completion of tenure or extend the period of his tenure; and

(b) require an officer to hold charge of more than one post for a period exceeding four months.

(4) Tenure:

The normal tenure of posts specified in column 1 of the Schedule VI shall be as shown against such posts in column 2 thereof."

Schedule V of the Rules of Business, *ibid*, which is relevant in the present case reads as follows:--

#### "SCHEDULE V

(See Rule 21(2))

#### Authorities competent to make transfers to and from the Secretariat

(i) Officers of All Pakistan Services, General Administration and Information Department in consultation with the Department concerned.

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Zahid Akhtar v. Government of Punjab  
(Saiduzzaman Siddiqui, J)

SC 539

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| Heads of Attached Departments and equivalent posts.                                      | Ditto   |
| Heads of Regional Officers.  | Ditto   |
| Officers shown in the Schedule IV, other than those specified above, in the Secretariat. |   |
| Secretaries  | Services, General Administration and Information Department.  |
| Section Officer/Under Secretaries and other officers of equivalent rank—                 |   |
| a) within the same Department  | Secretary   |
| b) to and from an attached Department  | 'Services, General Administration and Information Department. |
| c) within the Secretariat from one Department to another.                                | Ditto   |
| vii) officials below the rank of Section Officers--                                      |   |
| a) within the same Department  | Secretary.  |
| b) to and from and Attached Department Regional Office                                   | Services, General Administration and Information Department.  |
| c) within the Secretariat from one Department to another.                                | Ditto."   |

A reading of Rule 21(2) with Schedule V of the Rules of Business *ibid*, makes it clear that the transfer of a Section Officer/Under-Secretaries and other officers of equivalent rank within the department is to be done by the Secretary of that department. Rule 21 of the Rules of Business, which deals with power of posting, promotion and transfer of Government servants does

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not contemplate exercise of these powers by the Minister. The normal period of posting of a Government servant at a station, according to the above referred policy decision of the Government, is 3 years, which has to be followed in the ordinary circumstances, unless for reasons of exigencies of services mentioned in the aforesaid policy of Government, a transfer before expiry of 3 years' period becomes necessary in the opinion of competent Authority. The transfer orders in the present case, therefore, could neither be justified on the plane of policy directive of Government referred to above, nor they were sustainable on the language of Rule 21(2) read with Schedule V of the Rules of Business, *ibid*. We are in no doubt that if the transfer orders in the case before us would have been made in accordance with the policy directives of the Government referred to above and power was exercised by the competent Authority as contemplated by Rule 21(2) read with Schedule V of the Rules of Business, *ibid*, there would have been no room for manoeuvring by the officers affected by such transfer. The fact that the transfers were made in violation of policy directive of the Government, which has the status of a Rule, and provisions of Rule 21(2) *ibid*, were not followed strictly, opened the door for the Government servant concerned to bring in outside influences to obtain the desired transfers. We are also sorry to note that the Secretary LG & RD, neither resisted these unethical and undesirable moves of his subordinates nor he pointed out to the Hon'ble Minister incharge, that the transfer orders made by him from time to time in respect of various officers of his department were neither in conformity with the declared policy of Government nor these transfer orders conform to the provisions of Rule 21(2) of the Rules of Business, *ibid*. It was the duty of the Secretary LG & RD to have pointed out to the Minister concerned the extent of his authority in such matter, besides bringing to his notice that such frequent transfer of a Government servant could neither be justified as the exigencies of service nor it could be described in the public interest. We are constrained to observe that such unconcerned and lukewarm attitude on the part of Head of a Government Department is not expected to promote discipline or efficiency in the department. On the contrary such attitude may have a demoralising effect on his subordinates encouraging them to seek intervention and favours of outside agencies, which may ultimately adversely affect the overall discipline and efficiency in the department. We, therefore, expect that the guidelines mentioned in the policy directives of the Government referred to above and the provisions of Rule 21 of the Rules of Business, *ibid*, will be kept in view by all concerned while dealing with the transfers of Government servants. The office is directed to send a copy of this judgment to the Government of Punjab for circulating it to all its departments, for future guidance. With these observations, this petition stands dismissed as not maintainable.

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Petition dismissed.

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have been called for the purpose of proving its execution, if there be two attesting witnesses alive, and subject to the process of the Court and capable of giving evidence".

When the two noted provisions together, it is vivid that a document is required by law, as in preemption suits, the notice of *Talb-i-Ishhad* is required by section 13 (ibid) to be attested by two witnesses (the document) shall not be used in evidence until and unless two witnesses have been produced to prove the attestation of the same. In the case, as mentioned earlier, the alleged witnesses of the notice of *Ishhad* have not been examined by the petitioner with the witnesses that the alleged notice does not qualify the test of proof as laid by Article 79 of the Qanun-e-Shahadat Order, 1984 and thus cannot be used as a piece of evidence to prove the making of *Talb-i-Ishhad* by the petitioner, meaning thereby that his right of pre-emption is extinguished, as mandated by section 13 ibid. Therefore, we do not find any merit in this petition which is hereby dismissed and leave is

Petition dismissed.

LA-33/S/

P L D 2013 Supreme Court 195

Present: Ifikhar 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

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

Original Petitions Nos: 23 and 11, Criminal Original Petitions Nos: 24 and 27, H.R.C. No. 14427-P, C.M.As. Nos. 1575, 1611, 1612-K and 231-K and Criminal Miscellaneous Application No. 587 of 2012 in Criminal Original Petition No. 24 of 2012 in Constitution Bench No. 11 of 2012.

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

1, 5, 9 & 10---Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---Constitution of Pakistan, Arts. 9, 14, 18 & 25---Constitutional petition under Art. 184(3) of the Constitution for the elaboration of constitutional and legal safeguards relating to



the working of civil servants---Maintainability---Manner 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. [pp. 202, 205] A & R

Tariq Aziz-ud-Din's case 2010 SCMR 1300, Syed Younsaf Raza Gillani v. Assistant Registrar PLD 2012 SC 466 and Mohtamood Akhtar Naqvi v. Federation of Pakistan, Constitution Bench No. 5 of 2012 ref.

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

---S.16---Constitution of Pakistan, Arts. 5 & 184(3)---Civil servants' 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 in charge of the machinery of the State. [p. 203] B & C

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---Transgression 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 appointments and terms and conditions of service of civil servants which were manifestly wrong

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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). [p. 203] D

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

---Preamble---Object of civil Servant 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. [p. 205] E

(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. [p. 205] G

(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. [pp. 206, 210] H & N*

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. [p. 207] I*

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. [pp. 207, 210] J & O*

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's 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 from higher authority must be obeyed the plea that the risk of disciplin

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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. [pp. 208, 210] K & P

Syed Naza: Abbas Jafri v. Secretary to the Government of the Punjab and another 2006 SCMR 606; Province of Punjab v. Azhar Abbas 2002 SCMR 1; Samullah 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. [pp. 208, 210] L & Q

Corruption of Hajj Arrangement's case PLD 2011 SC 963; Mirah Nawaz Marri v. Government of Balochistan and others 2000 PLC (S) 533; Syed Ajmal Hussain Bokhari v. Commissioner, Rawalpindi 7 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 by the Supreme Court on a point of law would be binding on concerned departmental functionaries who would be obliged to apply 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 Arts. 189 and 190 of the Constitution, a civil servant would be entitled to a departmental representation or initiate legal proceedings before 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, would expose him to proceedings under Art. 204(2)(a) of the Constitution. [p. 209] M

Al-Jehad Trust v. Federation of Pakistan PLD 1997 SC 198  
 Hameed Akhtar Niazi v. The Secretary Establishment, Division 1997  
 SCMR 1185 and Baaz Muhammad Kakar v. Federation of Pakistan PLD  
 2012 SC 870 ref.

**(I) 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  
 Executive Authority---Interference by courts—Scope---Responsibility  
 deciding suitability of an appointment, posting or transfer fell primarily  
 on the executive branch of the State which comprised of both 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  
 the executive as long as it adhered to the law and established norms  
 and acts in furtherance of its fiduciary responsibility. [p. 210] R

کتاب جناب جس جو اہل جس خوجہ کے فیصلے کا اردو ترجمہ ملاحظہ ہو۔

[222 تا 211، کتاب]

Petitioners in person.

Hafiz S.A. Rehman, Sr. Advocate Supreme Court, Appellate

Curiae.

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

Syed Arshad Hussain Shah, A.A.-G. for Government of K  
 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  
 'good governance' became a catch-phrase, we find a remarkable  
 eloquent exposition of the principles of good governance in the Bp  
 Hazrat Ali to Malik ibn Ashtar, the Governor of Egypt. The m  
 Khalifa, may Allah be pleased with him, is reported to have  
 ".....give careful consideration to the selection of ... officers. O  
 them in their appointments after approval, apprenticeship and pro  
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the nation. The law and the Constitution of Pakistan, with the aim of  
ensuring the welfare of the people of Pakistan, articulate the same  
principles. The truth is that principles pertaining to the setting up of a  
parliament 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  
requiring 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  
12-3-2012. 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  
interference in the independent and legitimate functioning of  
civil servants be stopped. Secondly, the petitioner seeks corrective  
constitutional 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  
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  
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 "posts 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 susceptible to pressures." The Committee further recommends that "no 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 users 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 of 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 the 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 these 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, "largely depends upon [an] upright, honest and strong administration. The Civil service is the back bone of our administration." per Chaudhry Latif Ahmad, J. in Tariq Aziz-ud-Din's case (2010 SCMR 1901). Additionally, the fundamental rights of civil servants, under the Charter Articles 9, 14 and 18 of the Constitution are also aspects arising in this Constitutional 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 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 Peshawar 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 affirm 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 or 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

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other quoted earlier: "Fearless, maintaining [the] high reputation, prestige, honour and the integrity of [the] civil service."

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 its 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 Haji 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 Yasim 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

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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 *Haji 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 necessarily 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 an illegal and arbitrary order is neither binding on the subordinate forum 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).

*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 Haji 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 Marwat v. Government of Balochistan and others (2000 PLC (C.S) 533), 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).

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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 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.

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 کو مل رہا

فیصلہ

”ستحسن طرز حکمرانی“ (good governance) کے جدید تصورات سے صدمہ سالانہ نہیں اس موضوع پر نہایت فصیح اور جامع ہدایات ایک قدیم تحریر میں ملتی ہیں۔ یہ تحریر باب شہر حرکت حضرت علیؓ ”کرم اللہ وجہہ سے منسوب ایک خط ہے، جو ولایتی مہر مالک بن اشتر کو لکھا گیا۔ خلیفہ ائمہ مکتوب میں فرماتے ہیں کہ ”افسران کا جنازہ کرتے ہوئے انتہائی محتاط رہو اور انہیں آزمائشی مدت کسی تکمیل پر مستقل کر دیا کرو۔ اہم عہدوں پر تعیناتی کبھی بھی ذاتی تعلق یا دباؤ کی بنا پر نہ کرو کہ ایسا کرنا بددیانتی اور ناانصافی کی وجہ بن سکتا ہے۔ اونچے عہدوں کے لئے تجربہ کار اور مضبوط ایمان کے حامل افراد کا جنازہ کرو ایسے افراد کا اخلاق اچھا ہوتا ہے، ان کو بھگنا آسان نہیں ہوتا، اور یہ لوگ زیادہ دور اندیش اور عاقبت اندیش ہوتے ہیں۔“ پاکستان کا آئین اور قانون، عوام کی فلاح و بہبود کی حصول کی خاطر انہی بنیادی اصولوں کی وضاحت کرتا ہے۔ آج سے کہ ایک آئینی اور منصفانہ طرز حکومت کا تصور اور اس کی بنیادی تصورات حکمت ازلی ہیں، عہد جدید کی اختراع نہیں۔ ہمارا آئین اور قانون اور ان پر عملدرآمد کرنے والی عدالتوں کا ذمہ صرف اس قدر ہے کہ ان ازلی اصولوں کا اطلاق حال میں درپیش واقعات اور مسائل پر کریں۔

عوامی مفاد کے اس مقدمے میں عدالت سے سرکاری ملازمین کے جائزہ ملازمت کو حاصل قانون اور آئینی تحفظات کی وضاحت چاہی گئی ہے۔ عدالت نے ایک بار پھر ”ستحسن طرز حکمرانی“ کے ان ازلی اصول و قواعد کا اعادہ کیا ہے جن کی وضاحت اس سے پہلے بھی متعدد حتمات میں کی جا چکی ہے۔

2۔ اس معاملے کا پس منظر کچھ یوں ہے کہ مورخہ 25-2-2012 کو مختلف فیہ دیہی صدر ایک خبر نشر ہوئی جس میں شہزاد محمد خان (حلقہ PS-53) کے ضمنی انتخابات کے دوران اس حلقے سے پاکستان پیپلز پارٹی کی امیدوار سیدہ وحیدہ شاہ کو پولنگ سٹاف کے ایک رکن کو جیتا مارتے ہوئے دکھایا گیا۔ اس واقعے کا از خود نوٹس لیا گیا (مقدمہ نمبر 3/2012)، جس کا فیصلہ 12-3-2012 کو سنایا گیا۔ اسی دوران، وزارت داخلہ میں متعین کریڈٹ 19 کی ایک سرکاری ملازمہ، مسماۃ امینا تران نے مذکورہ بالا از خود نوٹس میں ایک درخواست دائر کی۔ چونکہ مذکورہ بالا مقدمہ 12-3-2012 کو مکمل ہو گیا

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حالہذا ان کی درخواست کو آئین کی دفعہ (3) 184 کے تحت سماعت کے لئے منظور کر لیا گیا۔ موجودہ فیصلے کے ذریعے ہم اس درخواست کو منسوخ کر رہے ہیں۔

3۔ درخواست گزار کا نام خاور خواست میں تفصیلاً بیان کیا گیا ہے، ہم سیاق و سباق واضح کرنے کے لیے یہاں مختصر اور ہرادیے ہیں۔ درخواست کی گئی ہے کہ اولاً یہ باور کرایا جائے کہ سرکاری ملازمین ریاست کے ملازم ہیں نہ کہ حکومت وقت کے۔ اور اس مقصد کو حاصل کرنے کے لئے درخواست گزار کے کہا ہے کہ سرکاری ملازمین کی قانونی اور آزادانہ فرائض کی انجام دہی میں کسی بھی قسم کی سیاسی مداخلت نہیں ہونی چاہیے۔ ثانیاً، درخواست گزار کی استدعا ہے کہ سرکاری ملازمین کو وضع شدہ قوانین، قواعد و ضوابط اور عدالتی نظائر کے روشنی میں اپنے فرائض منصبی کی انجام دہی میں مکمل آزادی کی یقین دہانی کرائی جائے۔

4۔ مورخہ 12-3-2012 کو ہم نے اسٹیبلشمنٹ ڈویژن کے سیکرٹری، حکومت پاکستان، چاروں صوبوں کے چیف سیکرٹریز اور چیف کمشنر اسلام آباد کو مقدمے میں اپنا نقطہ نظر دائر کرنے کو کہا۔ ان حکم میں ہم نے واضح کیا کہ سرکاری ملازمین کو قانون کے مطابق اپنے فرائض کی انجام دہی کے دوران بعض اوقات مشکلات کا سامنا کرنا پڑتا ہے مثلاً یا تو فوری طور پر ان کا تبادلہ کر دیا جاتا ہے یا پھر ایس ایچ آئی تھیلی کی مدت مکمل کے بغیر آفیسر آن سٹیل ڈیوٹی (او ایس ڈی) بنا دیا جاتا ہے اور یہ بات کی شان سے آئی ہے کہ تبادلوں، تقرریوں اور تادیبی کارروائیوں میں اکثر قانون اور قواعد و ضوابط کو بالائے طاق رکھا جاتا ہے۔

5۔ متذکرہ بالا اراغہ داران پر مشتمل کمیٹی نے اپنی سفارشات پر مبنی رپورٹ عدالت میں دائر کی۔ کچھ اور سفارشات کے ساتھ ساتھ، کمیٹی نے بھی سفارش کی کہ "تقرر اور تبادلے اہلیت کی بنیاد پر ہونے چاہئیں"، "مختلف اقسام کی ملازمتوں کے لئے مدت منصبی مقرر کی جانی چاہیے" اور یہ کہ "کسی بھی سرکاری ملازم کو محض افسران بالا کی ناپسندیدگی یا سیاسی دباؤ میں نہ آنے کی وجہ سے آفیسر آن سپیشل ڈیوٹی (او ایس ڈی) نہ کیا جائے گا"۔ کمیٹی نے مزید سفارش کی کہ "کسی بھی سرکاری ملازم کی معطلی مجاز افسران کی جانب سے صرف باضابطہ تادیبی کارروائی شروع کرنے کے بعد ہی کی جائے گی اور دوسرے اداروں سے ڈیپوٹیشن پر لئے گئے ملازمین کو متعلقہ ذمہ داری کی بابت تجربہ اور سنیارٹی ضرور حاصل ہونی

شاہیے۔ درخواست گزار کے مطابق، کمیٹی کی متعدد سفارشات، خاص طور پر دو سفارشات جو سرکاری ملازمین کے تقرر و تبادلے اور تعیناتی کی بابت ہیں، پہلے ہی قانون اور قواعد و ضوابط میں موجود ہیں۔ بلاشبہ ایسی سفارشات پر فی الفور عملدرآمد ہونا چاہیے تاکہ ملک میں بہتر طرز حکمرانی قائم ہو سکے۔ بعض دیگر سفارشات ایسی ہیں جن کے متعلق قانون سازی کی ضرورت ہے۔ اس سلسلے میں مقدمے کے رجوع کرنا مناسب ہوگا جو قانون سازی کی ذمہ دار ہے۔

6۔ درخواست گزار نے بحیثیت ایک سرکاری ملازم کے یہ استدعا بھی کی ہے کہ سرکاری ملازمت کا پیشہ و زمانہ رتبہ اور ان کی خود مختاری بحال ہونی چاہیے تاکہ وہ قانون پر عملدرآمد اور فیصلہ سازی میں اپنا قانونی کردار بطریق احسن ادا کر سکیں۔ درخواست گزار نے مزید استدعا کی ہے کہ سرکاری ملازمین کو حاصل قانونی اور آئینی تحفظ برحقی ہونی سیاسی مداخلت کی بنا پر اپنی حقیقت کھو چکا ہے۔ اس سے سرکاری ملازمین اخلاقی زوال کا شکار ہیں اور روز بروز اپنی فعالیت کھو رہے ہیں۔ اس انحطاط کی بدولت ریاستی مشینری، جس کا مقصد بہترین طرز حکمرانی کی بنیاد رکھنا اور پاکستان کے عوام کے بنیادی حقوق کا تحفظ اور قانون کی بالادستی برقرار رکھنا ہے، بری طرح متاثر ہو رہی ہے۔

7۔ عدالت نے درخواست کو قابل سماعت اس لئے گردانا کیوں کہ اس میں اٹھائے گئے سوال کا بنیادی حقوق کے نفاذ سے براہ راست تعلق ہے۔ اور حقیقت یہ ہے کہ آئینی طرز حکمرانی کے قیام اور اس کی فعالیت میں سرکاری ملازمین کا کلیدی کردار ہے۔ حال ہی میں طارق عزیز الدین (2010) (SCMR 1301) کے مقدمہ میں عدالت واضح کر چکی ہے کہ "منحصر طور پر حکمرانی کے قیام کا انحصار "مکمل طور پر اہم انداز، با اصول اور مضبوط بہور و کوریسی اور ہے۔ سرکاری ملازمین ہماری انتظامیہ کی ریڑھ کی ہڈی ہیں"۔ مزید برآں یہ درخواست اس لیے بھی قابل سماعت ہے کہ اس میں سرکاری ملازمین کو حاصل بنیادی حقوق کن جملہ آرٹیکل 14، 9 اور 18 سے متعلقہ نکات اٹھائے گئے ہیں۔ حقیقت یہ ہے کہ بنیادی حقوق کے نفاذ کی ذمہ داری بنیادی طور پر ریاست کے انتظامی عضو پر ہے۔ سرکاری ملازمین انتظامیہ کا اہم حصہ ہیں، بلکہ یہ کہنا مناسب ہوگا کہ اس ذمہ داری سے عہدہ براء ہونے میں وہ سیاسی انتظامیہ کے ذمہ دار ہیں۔ اس بنا پر، ان کی کارکردگی اور پیشہ ورانہ خود مختاری کا سوال بنیادی حقوق سے جڑا ہوا ہے جو کہ اس عدالت کے دائرہ اختیار سماعت میں شامل ہے۔

8۔ کوئی بھی فریق اس حقیقت سے منکر نہیں ہے کہ سرکاری ملازمین عوام ہی کے خادم ہیں اور

قانون کے تحت عوامی مفاد میں فیصلہ سازی میں مشاورت کا یہ یا انتہائی ذمہ داریوں کا، جس بھی معاملے میں دو سیاسی انتظامیہ کی من و عن اطاعت کے پابند نہیں۔ ان کا اولین فریضہ آئین اور قانون کی پاسداری ہے۔ اور اس معاملے میں انہیں اپنا کردار حکومت وقت کے زیر خریدہ خدماؤں کی طرح نہیں بلکہ عوام کے قصص خدماؤں کی طرح کرنا چاہیے۔ اس حوالے سے قائد اعظمؒ محمد علی جناح کا وہ خطبہ، راجہ امور نظر ہے جو انہوں نے 14 اپریل 1948ء کو پشاور میں سرکاری ملازمین کو دیا۔ قائد اعظمؒ نے انہیں ہدایت کی کہ وہ "کسی بھی سیاستدان سے سیاسی ہارٹی، یا سیاسی دباؤ سے اثر قبول نہ کریں۔" "آئینی طریق کار سے اقتدار میں آنے والی" کسی بھی حکومت کی خدمت کرنے کی ہدایت کے ساتھ ہی ساتھ، انہوں نے "بلا خوف و خطر (اپنی) اعلیٰ شہرت، (اپنی) وقار، (اپنی) عزت اور (اپنی) سروس کی سالمیت قائم رکھنے" پر بھی خصوصی زور دیا۔ اس بات کا نوٹس لیتے ہوئے کہ ریاست کے ان ابتدائی ایام میں بھی سول سروس پر وہ "ذاتاً سیاستدانوں کی ایک معروف خامی" تھی، انہوں نے یہ استدعا کی کہ "یہ دن اس کا نتیجہ" "بدعنوانی، رشوت ستانی اور انہوں نے ریاست پروری جیسی حوصلہ شکنی کی صورت میں نکلے گا۔ آخر میں انہوں نے ریاست دانوں اور سرکاری ملازمین دونوں کو یہ تلقین کی کہ وہ "اپنے اپنے دائرہ کار اور دائرہ فہماری کو سمجھیں اور ایک دوسرے کے ساتھ ہم آہنگی کی فضا میں تعاون کریں۔" "قائد اعظمؒ کو اس حقیقت کا بخوبی ادراک تھا کہ حالات ہمیشہ مثالی نہیں ہوتے۔ اس لئے انہوں نے سرکاری ملازمین کو خبردار کیا کہ "آپ آزمائشوں میں ڈالے جائیں گے۔ اپنی لغزشوں کے باعث نہیں، بلکہ اپنی راست بازی کی وجہ سے۔ اس وقت قربانیاں درکار ہوں گی۔ میں آج آپ سے درخواست کرتا ہوں کہ اس آزمیے وقت میں آپ سامنے آئیں گے اور قربانیوں کے نذرانے پیش کیجئے گا۔" (قائد اعظمؒ محمد علی جناح، خطبات بطور گورنر جنرل آف پاکستان، 48 - 1947 سنک میل پبلی کیشنز، لاہور 2004)

9۔ آئین کے رو سے، سرکاری ملازمین اور سیاسی انتظامیہ ریاست کے انتظامی عضو کی دو شاخیں ہیں۔ قانونی ضوابط اور آئین کی وہ دفعات جو کہ حکومت پاکستان کے ملازمین سے متعلقہ ہیں انہی اصولوں کو عملی جامہ پہنانے کی خاطر نافذ کی گئی ہیں۔ ہم تو یقین کرتے ہیں کہ سرکاری ملازمین کی ذمہ داری ہے کہ دو سیاسی انتظامیہ کے احکام پر عملدرآمد کے ساتھ ساتھ قانون اور آئین کی پاسداری کریں

سے اہم ذمہ داری  
سے جاری کردہ تمام  
من میں وفاقی حکومت  
سے کار مجریہ 1973ء  
س کے مطابق "جب  
نو آخر الذکر اگر  
اگر چاہے تو اسے  
کے نفاذ کا پابند  
کامل طور پر غلط  
سے گا، تو وہ اپنے  
پیش کر سکتا ہے  
ن ہو تو سیکریٹری  
کے پاس بھیج دیا  
اگر معاملہ وزیر  
تحفظات کے بیان  
سے درست ہے کہ بعض  
سے بھی جانا پڑتا ہے۔  
ن، تشریح آراء کا بلا خوف و  
سے متعلق ایسے فیصلے جو کہ  
جرات اور بے باکی سے  
1962ء کے آئین میں  
1973ء کے آئین میں یہ  
سے جائیں۔ آئینی بل پیش  
ہوئے مطلع کیا کہ ان کے

کیونکہ آئین کی دفعہ 5 کے تحت دوسرے تمام شہریوں کی طرح ان کی بھی سب سے اہم ذمہ داری "قانون اور آئین کسی تابعداری کو ناہے"۔ مگر سیاسی تحکیم کی جانب سے جاری کردہ تمام احکامات کی بلا سچے سمجھے کہ یہ درست ہیں یا غلط اطاعت کرنا ضروری نہیں۔ اس ضمن میں ذاتی حکومت کی جانب سے آئین کے آرٹیکل 90 اور 99 کے تحت رائج کردہ قواعد کا سرکار مجریہ 1973 (Rules of Business) کے قاعدہ نمبر (10) کا جائز دلیمنا ضروری ہے جس کے مطابق "جب ایک سیکریٹری وزیر کے رو برو کوئی معاملہ لے کر جاتا ہے تو آخر الذکر اگر چاہے تو تجویز اور سیکریٹری کے خیالات سے اتفاق کرے اور اگر چاہے تو اسے رد کر دے۔ سیکریٹری عموماً وزیر کے فیصلے کی تائید اور اس کے نفاذ کا باعث ہے لیکن اگر سیکریٹری بہ محسوس کرے کہ وزیر کا فیصلہ مکمل طور پر غلط ہے اور یہ نا انصافی اور غیر ضروری مشکلات کا باعث بنے گا، تو وہ اپنے تحفظات بیان کرتے ہوئے معاملے کو دوبارہ وزیر کے رو برو پیش کر سکتا ہے اگر وزیر پھر بھی قائل نہ ہو اور معاملہ انتہائی اہمیت کا حامل ہو تو سیکریٹری وزیر سے درخواست کر سکتا ہے کہ معاملے کو وزیر اعظم کے پاس بھیج دیا جائے۔ وزیر مذکورہ معاملہ وزیر اعظم کے رو برو بھیج دے گا۔ اگر معاملہ وزیر اعظم کو بھیجا نہیں جاتا تو پھر سیکریٹری انچارج وزیر کے تحفظات کے بیان کے ساتھ معاملہ براہ راست وزیر اعظم کو بھیج دے"۔ بالفاظ دیگر، یہ درست ہے کہ جس اوقات پالیسی اور ہدایات کا نفاذ کرتے ہوئے سرکاری ملازمین کو اپنی رائے کے برعکس بھی جانا پڑتا ہے اس طرح کے حالات میں سرکاری ملازم کو چاہیے کہ وہ اپنی ایمانداری اور عاقبت اندیش آراء کا بلا خوف و خطر ضرور اظہار کرے۔ یاد رہے کہ سرکاری ملازمین کے تقرر اور ملازمت کے متعلق ایسے فیصلے جو کہ قانون کے منافی ہوں اور ظلم پر مبنی ہوں، اسی نوعیت کے اہم فیصلے ہیں جن میں خیرات اور بے باکی سے اظہار رائے کیا جانا چاہیے۔

10۔ یہاں یہ بیان کرنا از حد ضروری ہے کہ 1956ء کے آئین اور 1962ء کے آئین میں

سرکاری ملازمین کو تحفظ فراہم کرنے کی خاطر باقاعدہ ابواب موجود تھے۔ 1973ء کے آئین میں یہ باب حذف کر دیا گیا، تاکہ یہ امور پارلیمنٹ کے مجریہ قانون کے ذریعہ طے کئے جائیں۔ آئین میں یہ تبدیلی کرتے وقت وزیر قانون نے آئین ساز اسمبلی میں اس تبدیلی کا دفاع کرتے ہوئے مطلع کیا کہ ان کے

قانون کے مطابق عوام اور  
روایا انتظامی ذمہ دار ہو  
ان کا اولین فریضہ آئین  
کے ذریعہ نفاذ ہونے کی  
سے قائد اعظم محمد علی جناح  
سرکاری ملازمین کو دیا۔  
پارسی، یا سیاسی  
انے والی کسی بھی  
خطر (ایسی) ہے  
سالمیت فاطمہ  
ابتدائی ایام میں بھی سول  
انہوں نے سیاستدانوں  
الفریاء پروری جب  
نے سیاست دانوں اور  
بہ جاری کو  
تعاون کوہیں۔ تاہم  
ان کے انہوں نے سرکار  
لفوضوں کے باعث  
دراکار ہوں گی۔  
سامنے آئیے گا اور  
ظلمات بطور گورنر جنرل  
9۔ آئین کے  
مابین ہیں۔ قانونی حوالہ  
کی اصولوں کو عملی جامہ پہ  
داری ہے کہ وہ سیاسی انتظام

انٹار میں ماضی میں سرکاری ملازمین کو آئینی تحفظ کے لئے دیا گیا تھا "کیونکہ جو لوگ فرائض سر انجام دے رہے تھے وہ اکثر باہر سے آئے تھے اور چاہتے تھے کہ ان کو اپنی یوکیٹی کسی بابت غیر معمولی تحفظ حاصل ہو" تاہم اب چونکہ "ملک کی باگ دوز عوامی رہنماؤں کے ہاتھ میں آگئی ہے" اس لئے سرکاری ملازمین کو مذکورہ تحفظ آئین میں دینا ضروری نہیں رہا۔ ان کے مطابق اس تبدیلی کا مقصد دراصل یہ تھا کہ "سامراجی روایات کو ختم کیا جائے" اور اس نقطے پر اصرار کیا جائے کہ سرکاری ملازمین قانوناً دوسرے شہریوں کے برابر ہیں، اسی والٹ رٹے پر قائم حکمران طبقہ نہیں۔ ایک اور وجہ جو کہ وزیر قانون نے بیان کی وہ یہ تھی کہ آئین انتہائی بنیادی اصولوں پر مشتمل ایک دستاویز ہے جبکہ یہ معاملہ ایسی بنیادی اہمیت کا حامل نہیں کہ اسے آئین میں شامل کیا جائے" (پارلیمانی بحث مورخہ 31 دسمبر 1972ء اور 19 فروری 1973ء)۔ لہذا یہ فیصلہ ہوا کہ ان معاملات کا تفسیر متعلقہ قوانین کے تحت کیا جائے جیسا کہ آئین کے آرٹیکلز 240، 241 اور 242 میں مرقوم ہے۔ آئین سازی کے مرحلے کے فوراً بعد ایسے قوانین و ضوابط نافذ بھی ہوئے۔ مختصر یہ کہ آئین سازیوں کا مقصد سرکاری ملازمین کو سیاسی دباؤ سے سرتوں کر مانتھنا نہیں تھا۔ اس حوالے سے آئینی احکامات کا مقصد تو پہلے ہی قائم و دائم کی منہ کر کے بالآخر یہ مسیحاں ہو چکا ہے وہ یہ ہے کہ "سرکاری ملازمین بلا خوف و خطر اپنی اعلیٰ شہرت، اپنے وقار، اپنی عزت اور اپنی ملازمت کی سلبیت کو قائم رکھیں"۔ 1973ء کا آئین بھی اس وعدہ کا ضامن ہے۔

11۔ یہی وہ ضمانت تھی کہ جس کو عملی جامہ پہنانے کے لئے پارلیمان نے قانون برائے سرکاری ملازمین مجریہ 1973ء جیسے قوانین نافذ کئے۔ اس قانون کا اہم مقصد قانونی طور پر "حکومت پاکستان کے ملازمین کو نفوری اور ملازمت کے قواعد و ضوابط کو ترتیب دینا" (ابتدائی)۔ قانون کی بالادستی اس تمام قانون کا مرکزی تصور ہے۔ اور اس تصور کی جھلک ہمیں مقدموں میں ملتی ہے۔ جن میں بیان کیا گیا ہے کہ سرکاری ملازمین کا تقرر صرف "مجوزہ طریقہ کار" (S.5) سے ہی ہوگا اور ان کی شرائط و ضوابط کی بنا پر ہوگا "جو کہ قانون یا قواعد میں ذمے گئے ہیں" [S.3(1)]۔ اور "ان شرائط و ضوابط میں دوران ملازمت ایسی تبدیلی نہیں کی جاسکتی جس سے نقصان ہو"۔ [S.3(2)] اور رتی صرف "اہلیت" [S.9(2)(a)] اور "نیابتی اور موافقت" [S.9(2)(b)] کے باقاعدگی کی بنیاد پر ہونی چاہیے۔

12۔ ان اصولوں کی تشریح گزشتہ نظائر میں بار بار کی جا چکی ہے۔ جدیدہ جیدہ نظائر کا حوالہ ہم ذیل میں دے رہے ہیں۔ مگر ان سب سے قبل "امانتی تعلق" کے نظریہ کا ذکر لازم ہے جو اس شعبہ قانون کا بنیادی نظریہ ہے۔ اس عدالت نے بار بار وضاحت کی کہ "ریاست کے عملیداران عوام کی امین ہیں اور عوام کو جو ابدہ ہیں جو کہ دراصل ان کو اس کی ادائیگی بھی کرتے ہیں" (سید یوسف رضا گیلانی بنام اسٹنٹ رجسٹرار 466 (PLD 2012 SC)۔ حال ہی میں پارلیمانی نمائندگان کی دہری شہریت کے مقدمے میں ہم نے بیان کیا کہ ریاست کی جانب سے دیئے گئے تمام اختیارات "مقدس امانت" کی مانند ہیں اور جس کسی کو بھی آئین اور قانون کے مطابق اختیارات حاصل ہیں وہ ان اختیارات کا امین ہے (محمود اختر نقوی بنام وفاق پاکستان آئینی درخواست نمبر 5، 2012ء)۔

13۔ تقرر، ترقی اور عرصہ ملازمت سرکاری ملازمت کے لئے انتخابی اہم ہیں اور اگر یہ اہلیت کے مطابق وضع کردہ قواعد و ہدایات کی روشنی میں نہیں بلکہ سفارشوں اور اثر باہ پروری کی بنیاد پر ہون گے تو اس سے سرکاری ملازمت کی خود مختاری اور کارکردگی متاثر ہوگی۔ یہاں پر ایک دفعہ پھر ضروری ہے کہ ہم قائد اعظم کی تقریر میں طے کردہ اصول اور حضرت علیؑ کے مکتوب سے جھلکنے والی دائمی حکمت اپنے پیش نظر رکھیں۔ یہ بیان کرنا بھی ضروری ہے کہ مستحسن طرز حکمرانی کے اصول آئین میں بیان کردہ ہیں اور مختلف قوانین مثلاً قانون برائے سرکاری ملازمت 1973ء، سرکاری ملازمت (تقرر، ترقی اور تبادلے) کے قواعد بحریہ 1973ء اور ان قوانین کے تحت رائج کردہ قواعد و ہدایات جو کہ ہول اسٹیبلشمنٹ کوڈ میں ان کی تفصیلات درج ہیں۔ تاہم عدالتی نظائر اور سرکاری ملازمت سے متعلقہ معاملات جو کہ سروس ٹریبونل اور اس عدالت کے رویہ والائے جاتے ہیں سے ظاہر ہے کہ سرکاری ملازمت کی مشکلات اور پریشانیوں میں اضافہ اس وقت ہوتا ہے جب مذکورہ بالا قوانین کے تحت دیئے گئے مستحسن طرز حکمرانی کے اصول کی خلاف ورزی کی جاتی ہے۔ ہم جانتے ہیں کہ ملازمت کی مدت وغیرہ سے متعلق معاملات میں لچک کی گنجائش رہتا محال ہے۔ اور جو معاملات ہمیشہ صوابدیدی رہیں گے۔ مگر صوابدید کے استعمال اور قاعدہ کی پاسداری کے مابین توازن ضرور رہنا چاہیے۔

(1) تقریر اور برطرفی

14۔ گزشتہ فیصلوں میں عدالتیں بار بار یہ واضح کر چکی ہیں کہ جہاں بھی تعیناتی یا برطرفی سے متعلق قوانین و ضوابط موجود ہیں، تو ان پر سختی سے اور دیانتداری سے عمل ہونا چاہیے۔ اور جہاں ان

سات کے بارے میں تحریری قوانین و ضوابط موجود نہیں ہیں، اور یہ معاملہ صوابدیدی ہے، وہاں بھی صوابدیدی کا استعمال عوامی مفاد میں اور مناسب اور شفاف انداز میں ہونا چاہیے (بحوالہ جج بدعنوانی طارق عزیز الدین کا مقدمہ (PLD 2011 SC 963)۔ تعیناتی کرنے والے حکام قطعاً ان کے مجاز نہیں کہ وہ اپنی صوابدیدی بلا جواز (Arbitrary) انداز میں استعمال کریں۔ بلکہ ان کا رازے کردہ منصفانہ فیصلے کریں اور ان کے فیصلے پر عدالتی نظر ثانی بھی ہو سکتی ہے۔ محمد یسین بنام وفاق (PLD 2012 SC-2) میں ہم واضح کر چکے ہیں کہ عدالتیں، استدعا کئے جانے پر، جواز کے طریق کار کی صحت کا جائزہ لینے کی پابند ہیں، "اگرچہ وہ جسے اپنے شخص کے کوآف کا تفصیلی جائزہ نہیں لیتیں اور نہ انتظامیہ پر اپنی رائے تسلط کرتی ہیں"۔ اسی طرح برطرفی کے سلسلے میں بھی قوانین، مثلاً قواعد برائے فعالیت و تادیب کارکنان ملازمین، 1971 کی پاسداری لازم ہے۔ یوں ہمارے نظام حکومت میں اس فرسودہ تصور کے لئے کوئی گنجائش نہیں رہی جس کے مطابق تمام سرکاری ملازمین صرف اس وقت تک اپنے منصب کے دار رہتے ہیں جب تک تاریخ شمسی ان سے راضی رہے، یا، جب تک ان پر نظر کرم رہے۔ یہ تصور اے نظام میں برکھل نہیں جہاں پر بریاتی عہدہ دار بالآخر عوام کا تنخواہ دار ہے۔

(ت) ترقی

15۔ طارق عزیز الدین کے مقدمے میں ہم نے سرکاری ملازمت سے متعلق متعدد اہم مسائل اٹھائے دیئے۔ بشمول ترقی کی بابت صوابدیدی اختیارات کے سوال کا۔ یہ اختیارات صرف شفاف و منصفانہ انداز میں ہی استعمال ہو سکتے ہیں۔ بات یہ ہے کہ صوابدیدی بھی حکمرانی قانون کے حدود و اربعہ کے اندر ہی استعمال ہو سکتی ہے، کیونکہ یہ وہ تصور ہے جس پر ہمارے پورے ریاستی نظام کی بنیاد ہے۔ امت کا ہر عہدہ دار اپنے فرائض کی ادائیگی میں قانون کی حکمرانی کی پاسداری کرے گا۔ اسی لئے ان کے لئے کہا تھا کہ "توقسی کے لئے ذیو غور آنے کا جو حق [سول سروس ایکٹ] کے سیکشن 9 میں عطا کیا گیا ہے وہ کوئی فرضی وعدہ یا رسمی مرحلہ نہیں ہے سول سروس [فعالیت و نادیمی] قواعد، 1973 کے مطابق ایک افسر کی ترقی کو روکنا یا ناقص سزا ہے۔ غرضیکہ جب ایک افسر کو ترقی کے لئے جانچا جائے تو فیصلہ متعلقہ قوانین و ضوابط کی روشنی میں کیا جانا چاہیے، اور اس ترقی کی قابلیت کے متعلق نہیں شواہد کو بنیاد بنایا جانا چاہیے۔"



16۔ انتظام حج بدعنوانی کیس میں عدالت نے زاہد اختر بنام حکومت پنجاب PLD 1995 SC 530 میں اپنے فیصلے کا اعادہ کیا، جس میں کہا گیا تھا کہ "زولتس آف مزنس کے رول 21 کے مطابق ایک سیرکاری افسر کی ایک مقام پر تعیناتی کی معیاد عام طور پر 3 سال ہے۔ عمومی حالات میں اس کی ضرور پاسداری ہونی چاہیے۔ ماسوائے ایسے ہنگامی حالات میں جہاں مجازاً اعتباری کی رائے میں تبادلہ سے پناہ لازم ہو جائے۔" مزید برآں سرکاری ملازمین کے تبادلوں کے معاملے میں عدالت یہ بھی واضح کر چکی ہے کہ ایسے تبادلے جو یہ کسی شخصیت نے عمومی مفاد کی بجائے اپنے مفاد پر جانے کے لئے کئے ہوں، وہ قانونی طور پر قابل دفع نہیں۔ فرس گمز اور عام سیکرٹری، مقامی حکومت گلگت دیہی ترقی (1998 SCMR 222)۔

(ج) افسران بالا کے غیر قانونی احکام کی تعمیل

17۔ سید نذر عباس جعفری بنام سیکرٹری حکومت پنجاب وغیرہ (2008 SCMR 606) کے لئے کوئی منجانب عدالت کہہ چکی ہے سرکاری ملازمین کا فرض بنتا ہے کہ وہ آزادانہ طور پر اپنی ذمہ داریوں سے ہٹ جائیں ہوں اور سیاسی شخصیات کی "آمرانہ دھونس" میں نہ آئیں۔ عدالت نے اس بات پر بھی زور دیا ہے کہ سرکاری ملازمین کا تقرر اور ان کی بدظرفی سیاسی بنیادوں پر نہیں ہونی چاہیے۔ صوبہ پنجاب بنام عباس (2002 SCMR 1) یہ تمام فیصلے ایک ایسی سول سروس کے حدود و حال بیان کرتے ہیں جو قانونی تحفظ کی حامل ہو اور بطور ادارہ سوچنی گئی ذمہ داریوں سے آزادانہ طور پر اور بخوبی عہدہ برآہوں۔

18۔ سرکاری ملازمین کے غیر قانونی اقدامات محض اس بنیاد پر جائز نہیں بن جاتے کہ افسران بالا کے اور آمر کے اتباع میں اٹھائے گئے۔ سن دین اجات کا حق صرف آئین اور قانون کے تحت استعمال میں سلطے میں سلیم اللہ خان مروت بنام حکومت پاکستان (2000 SCMR 1140) کا حوالہ دیا ہے جہاں یہ کہہ دیا گیا تھا کہ "سرسکاری عہدیداران کے تنبی قانون کو نظر انداز کرنے ہونے اختیارات کا استعمال آئین سے روگردانی تصور کیا جائے گا"۔ مزید برآں سیکشن 9 میں اقبال حسن بنام صوبہ سندھ (2008 SCMR 105) میں عدالت نے فرمادیا کہ "مناحنہ" میں سول سروس پر فورم پر لازم نہیں کہ وہ اوپر سے آنے والے کسی ایسے حکم کی تعمیل کرے جو غیر قانونی روکنا باقاعدہ سراسر غیر قانونی اور بلا جواز ہو۔ بلکہ یہ جائز بھی نہیں۔ اور اگر ماتحت لوگوں سے کوئی نئی فیصلہ ملے ایک غیر قانونی امر کی تعمیل کر دئی جائے تو انہیں چاہیے کہ وہ اپنا اختلافی نوٹ ضرور پیش کر کے



لیکن " (PLD 2010 SC 759) غیر قانونی اقدامات پر عملدرآمد صرف اس لئے جائز نہیں بن سکتا کہ ایسا نہ کرنے کی صورت میں سرکاری ملازم کو تاہی کارروائی کا خدشہ تھا۔ زاہد حسین بنام حکومت پاکستان (PLD 1995 SC 530)۔

19۔ کسی بھی سرکاری ملازم کو او ایس ڈی کے طور پر تعینات نہیں کیا جانا چاہیے، ماسوائے اُن کے کہ جن میں جہاں یہ تاثر یہ ہو۔ حج بد عنوانی کیس (PLD 2011 SC 963) میں عدالت نے یہ امر طے شدہ ہے کہ کسی افسر کو او ایس ڈی بنانے کا مطلب اُس کو سرکاری ملازمین (مقرر، ترقی اور تبادلہ) کے قواعد 1973ء میں کہیں بھی بیان شدہ نہیں ہے۔ "مقامات میر شاہ نواز مری بنام حکومت بلوچستان وغیرہ (2000 PLC (CS) 330) میراجمل حسین بخاری بنام کشنر اور اپنڈی (1997 PLC (CS) 754) ساجد احمد جاوید بنام نفاق پاکستان (2009 SCMR 1448) اور لینٹینٹ کرنل (ر) عبدالواحد ملک بنام پنجاب (2006 SCMR 1360) میں بھی اس اصول کی توثیق کی گئی۔

20۔ متذکرہ بالا نفاذ قانون کے خدو خال واضح کرتے ہیں۔ ہمارے قانونی نظام کا خاصہ ہے اس میں شرح قانونوں میں نظائر کا گروہ دار اہم ہے۔ آئین کا آرٹیکل 189 وضاحت کرتا ہے کہ عدالت عظمیٰ کا کوئی بھی فیصلہ جو کہ کسی قانونی نقطے کا فیصلہ کرتا ہو قانونی نقطے کی بنیاد پر ہو پاکستان کی تمام عدالتیں اس پر عملدرآمد کی ذمہ داری ہیں۔ ایک نثریہ فیصلے میں عدالت واضح کر چکی ہے، "اس عدالت کی جانب سے کسی شرح آئین کا حصہ بن جاتی ہے۔" الجہاؤنرسٹ بنام وفاق پاکستان (PLD 1997 SC 111) سرکاری ملازمین سے متعلق ایک مقدمے حمید اختر نیازی بنام سیکریٹری اسٹیشنمنٹ ڈویژن (1996 SCMR 111) میں یہ واضح کیا جا چکا ہے کہ جب یہ عدالت کوئی اصول یا قاعدہ واضح کرے اور اس کا اطلاق، برخاستہ و عام پر ہوگا۔ اور اگر کسی شرح سے فائدہ ایسے شخص کو ہو رہا ہے جو اس میں فریق نہیں تھا تب بھی اسے فائدہ ضرور پہنچایا جانا چاہیے۔ اُس کی جانب سے مقدمہ بازی نہیں کیا جانا چاہیے۔ ہم سمجھتے ہیں کہ کچھ معاملات میں تو نظائر میں طے شدہ قانونی اصول بغیر اس اور ایہام کے بن و بن الاوتوبوں کے، مگر کچھ معاملات ایسے بھی ہوں گے جہاں یہ طے کرنے میں پیش آسکتی ہے۔ بہر حال قاعدہ یہ ہے آئین کے آرٹیکل 189 اور 190 کے تحت سرکاری

کے نفاذ کے لیے حکمانہ

جانب سے بیان کے

چاہیے۔ ورنہ یا درجے

تو تو بین عدالت کی سزا

ہو۔ " اپنے ایک حالیہ

ات نے طے کیا کہ

ی ہے کہ اس کے

ست کے دوسرے

مذہبی سے اگر

رو گروہ دانی کرنے

ے۔ بات یہ ہے کہ

مان اور غیر محتاط

سکتا۔" باز محرم کا کرنام

آج بھی کوئی ایہام ہو

کامات کو نظر انداز کرنے

ہاں کوئی قانون اور ضابطہ

راز میں اور عوامی مفاد میں

ملازمین کو حق حاصل ہے کہ وہ عدالت کی جانب سے طے کردہ اس قانونی اصولوں کے نفاذ کے لیے محکمات  
اعتراض دائر کریں یا مجاز عدالت سے قانونی چارہ جوئی کریں۔

21۔ اگر کوئی ریاستی عہدہ دار جان بوجھ کر اور ڈھٹائی کے ساتھ عدالت کی جانب سے بیان کے  
گئے ان احکامات سے روگردانی کرتا ہے تو ظاہر ہے کہ اسے اس حرکت سے باز آنا چاہیے۔ ورنہ یاد رہے  
کہ آرٹیکل 204(2)(a) اس عدالت کو اختیار دیتا ہے کہ وہ کسی بھی ایسے شخص کو توہین عدالت کی سزا  
دے جو "اس عدالت کے احکامات کی حکم عدولی کا مرتکب ہو" اپنے ایک حالیہ  
فیصلے میں عدالت نے توہین عدالت کے قانون کی اہمیت واضح کی ہے۔ عدالت نے طے کیا کہ  
"عدالت بذات خود احکامات جاری کرتی ہے اور چلتی ہے کہ اس کے  
احکامات پر عملدرآمد کیا جائے؛ عملدرآمد کی ذمہ داری ریاست کے دوسرے  
ستونوں کے لئے لازم ہے خاص طور پر انتظامیہ کے لئے۔ بد قسمتی سے اگر  
انتظامیہ اہلکار قانون کے مطابق اپنے فرائض سر انجام دے سے باز رہیں تو  
ہیں تو عدالت کے پاس اختیار ہے کہ وہ انہیں توہین کی سزا دے۔ مات یہ ہے کہ  
قانون کی حکمرانی کا خواب بے اختیار عدلیہ اور قاضیوں اور غیر محتاط  
سرکاری اہلکاروں کی موجودگی میں شرمندہ تعبیر نہیں ہو سکتا"۔ باز محمد کاثر بہاؤ  
وفاق پاکستان (Constitution Petition No.77 of 2012) اگر ایسی بھی کوئی ایہام ہو تو  
ہم یہ وضاحت کریں کہ وہ انتظامی عہدیداران جو آئین اور قانون کے تحت احکامات کو نظر انداز کرنے  
پر تلے ہوئے ہیں وہ نتائج کے ذمے دار ہوں گے۔

22۔ اوپر وضع کردہ اصولوں کو ذیل میں مختصراً بیان کیا جا رہا ہے:

(i) تقرر، برطرفی اور ترقی

تقرر، برطرفی اور ترقی لازمی طور پر قانون کے مطابق ہونی چاہیے اور جہاں کوئی قانون اور ضابطہ  
نہ ہو اور فیصلہ صواب دیدی ہو تو صواب دیدی سلیٹے سے اور شفاف و بہترین انداز میں اور عوامی مفاد میں  
استعمال کی جانی چاہیے۔

## (ii) مدت ملازمت

جہاں پر عمومی طور پر مدت ملازمت قانون اور ضابطوں میں بیان کر دی گئی ہو وہاں مذکورہ مدت کو پورا کیا جانا ضروری ہے اور اس میں کوئی رد و بدل نہیں کیا جاسکتا سوائے اس کے کہ کوئی اور چارہ کار نہ ہو لیکن اسکی صورت میں وجوہات کو تحریری طور پر بیان کیا جانا ضروری ہے اور اس پر قانونی کارروائی کا حق محفوظ ہوتا ہے۔

## (iii) غیر قانونی احکامات

سرکاری ملازمین کی پہلی اور اہم ذمہ داری قانون اور آئین کی پاسداری ہے وہ اپنے حکام بالا کے کسی ایسے حکم کو ماننے کے پابند نہیں جو کہ صریحاً غیر قانونی، استبدادی اور عوامی مفاد کے برخلاف ہو اور اس قسم کے حالات میں اختلافی رائے کا اظہار تحریری طور پر کرنا چاہیے۔

## (iv) اولس ڈی

افسران کو ضروری وجوہات کے بغیر اولس ڈی نہیں بنایا جائے گا یہ وجوہات عدالتی دادرسی کے تابع ہوں گی۔ اگر کسی وجہ سے کسی افسر کو اولس ڈی بنایا گیا تو اس کی وہ تقرری ممکن حد تک قلیل مدت کی ہونی چاہیے اور اگر اس کے خلاف کوئی حکمانہ تادیبی کارروائی چل رہی ہو تو اس کو بھی جلد از جلد مکمل کیا جانا ضروری ہے۔

23۔ ہمیں معلوم ہے کہ ریاست میں انتظامیہ کا کردار کلیدی ہے۔ اور انتظامیہ کی دونوں شاخیں یعنی سرکاری ملازمین اور سیاسی انتظامیہ اپنے دائرہ کار میں رہتے ہوئے آزاد اور خود مختار ہیں تا وقتیکہ وہ اپنے امور آئین و قانون اور قواعد کے مطابق اور درست انداز میں چلاتے رہیں، عدالتیں ان کے دائرہ کار میں مداخلت نہیں کریں گی۔ مگر واضح رہے کہ اس کا یہ مطلب نہیں کہ سیاسی ملازمین کے تقرر، ترقی، تبادلہ وغیرہ کی بابت مجلس العنایت، بد عنوانی اور سیاسی مداخلت کو قبول کیا جائے گا۔

24۔ فیصلے کی نقول و قاتی سیکرٹری سٹیبلشمنٹ، صوبوں کے چیف سیکرٹریز، کمشنر اسلام آباد اور تمام قاتی اور صوبائی محکموں کے سیکرٹریز کو بحجوائی جاری ہیں۔

25۔ یہ تحریر انگریزی میں جاری کردہ فیصلے کے اہم حصوں کا خلاصہ ہے۔ ہم آئین کے آرٹیکل 28 اور 251 کی مشاکوہ میں رکھے ہوئے اسے جاری کر رہے ہیں۔

MWA/A-31/S

Order accordingly



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

(REGULATION WING)  
NO. SOR.VI (E&AD)1 -4/2005/Vol-II  
Dated Peshawar, 27<sup>th</sup> February, 2013

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Govt. of Khyber Pakhtunkhwa  
Secy (E&AD)  
Dated 28 Feb 2013

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.

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4/3  
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Secy E&AD / Secy Est  
*[Handwritten initials]*

- (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,

*NAJAM*  
(NAJ-MUS-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.

*NAJAM*  
SECTION OFFICER (REG-VI)

*[Handwritten mark]*

(MA)

**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER PAKHTUNKHWA,  
PESHAWAR.**

**OFFICE ORDER.**

The following postings/transfers are hereby ordered in their own pay & BPS in the interest of public service with immediate effect.

S#	Name/Designation & Address	Where adjusted as	Remarks
1	Mr. Abdul Waheed ASDEO (M) Circle Abbottabad.	ASDEO (M) Circle Sherwan Abbottabad.	Vice S.No. 02
2	Mr. Chanzeb ASDEO (M) Circle Sherwan Abbottabad.	ASDEO (M) Circle Damtoor Abbottabad.	Vice S.No.03
3	Mr. Sharafat Khan ASDEO (M) Circle Damtoor Abbottabad.	ASDEO (M) Circle Pattan Abbottabad.	Against V/Post
4	Mr. Asif Khan ASDEO (M) Circle Qalander Abad Abbottabad.	ADEO (Spors) at DEO (M) Abbottabad.	Vice S.No.12
5	Mr. Ishtiaq Khan ASDEO (M) Circle Nathia Gali Abbottabad.	ASDEO (M) Circle Boi Abbottabad.	Vice S.No. 6
6	Mr. Irshad Ali ASDEO (M) Circle Boi Abbottabad.	ADEO (Estab) Primary at DEO (M) Abbottabad.	Vice S.No. 11
7	Mr. Muneeb Ur Rehman ASDEO (M) Circle Birote Abbottabad.	ASDEO (M) Circle Hajia Gali Abbottabad.	Vice S.No. 08
8	Mr. Mehmood Ul Hassan ASDEO (M) Circle Hajia Gali Abbottabad.	ASDEO (M) Circle Abbottabad.	Vice S.No.01
9	Mr. Zulfiqar Ahmad SST GMS, Kanger Maira Abbottabad	ASDEO (M) Circle Birote Abbottabad.	Vice S.No.07
10	Mr. Shafiq Ur Rehman ADEO (P&D) DEO (M) Abbottabad.	ASDEO (M) Nathia Gali Abbottabad.	Vice S.No. 05
11	Mr. Arshad Mehmood ADEO (Estab) Primary at DEO (M) Abbottabad.	ADEO (P&D) at DEO (M) Abbottabad.	Vice S.No. 10
12	Mr. Wasim Fazal ADEO (Sports) at DEO (M) Abbottabad.	ASDEO (M) Circle Qalandar Abad Abbottabad.	Vice S.No.04
13	Mr. Iftikhar Ahmad ADEO (Estab) DEO (M) Mansehra	ASDEO (M) Circle Lora Abbottabad.	Against V/Post

Note:-

1. Charge report should be sent to all concerned.
2. No TA/DA etc are allowed.

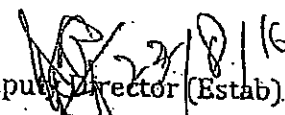
**DIRECTOR**

Endst: No. 7388-92 /F.No. 436/Vol-27/ADEO (M) Transfers.

Dated Peshawar the 23/8/ 2016

Copy of the above is forwarded to the:-

1. District Education Officer (M) Abbottabad.
2. District Account Officer Abbottabad.
3. Officials concerned.
4. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
5. Master File.

  
Deputy Director (Estab)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa.

①

Directorate of Elementary & Secy: Education

Khyber Pakhtunkhwa, Peshawar

No. \_\_\_\_\_/F.No. P.F. Zulfiqar SST/ADEO/A/Abad

Dated Peshawar the 5/4 2016

To

The District Education Officer  
(Male) Abbottabad.

Subject: - APPLICATION FOR ADJUSTMENT.

Memo:

I am directed to enclose here with copy of application in respect of Mr. Iftikhar Ahmad ASDEO (M) Circle Mansehra on the subject cited above which is self explanatory for your perusal and comments.

In this regard, I am further directed to ask you to submit your comments/report to this Directorate immediately so as to further proceed into the matter.

Deputy Director (Estab)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa.

Endst: No. 705

Copy of the above is to:-

1. Mr. Iftikhar Ahmad ASDEO (M) Circle Mansehra.
2. PA to Director (E&SE) Khyber Pakhtunkhwa.

Deputy Director (Estab)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa

11/4/16

(A)



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT  
No. SO(PE)1-1/Abbottabad/2015  
Dated Peshawar the 02-02-2016

To

The Director,  
Elementary & Secondary Education,  
Khyber Pakhtunkhwa, Peshawar.

*JSR*

Subject:- DEPARTMENTAL APPEAL FOR JUSTICE

Dear Sir,

I am directed to refer to your letter No. 03/P. File /Zulfiqar SST/ADEO/A/Abad dated 03/08/2015, on the subject noted above in respect of Mr. Iftikhar Ahmad ASDEO (Circle Lora) O/O DEO (M) District Abbottabad, and to direct you to relieve Mr. Zulfiqar SST from the post of ASDEO/ADO Abbottabad and post any other suitable officer of Management Cadre in his place as the Director E&SE deems appropriate.

Yours faithfully,

*Qasim Khan*

(QASIM KHAN)  
SECTION OFFICER (PRIMARY)

*9c*



**OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) ABBOTTABAD.**

**TRANSFER/ADJUSTMENT.**

As approved by the Competent Authority, The following ASDEO is hereby transferred/adjusted on his own pay & BPS as recorded against his name in the interest of public service with effect from the date of his taking over charge.

S.No.	Name of Officer	From Circle	To Circle
1	Mr. Iftikhar Ahmed	ASDEO (under transfer District Mansehra to Circle Lora District Abbottabad)	Against newly created post of ASDEO Circle Sherwan II

**Note:-**

1. Charge report should be submitted to all concerned.
2. No. TA/DA and Transfer grant is allowed to any one.

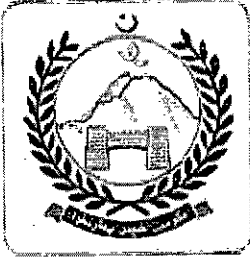
*-sd-*  
DISTRICT EDUCATION OFFICER (M)  
ABBOTTABAD.

Endst: No. 8445-SD/EB-I/F/ASDEO. Dated A/Abad the 27/10 /2016.

Copy forwarded to:-

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar w/r to approval dated 26-10-2016.
2. District Accounts Officer, Abbottabad.
3. PS to Secretary to Govt: of Khyber Pakhtunkhwa Elementary & Secondary Education Deptt: Peshawar.
4. SDEO (M) Abbottabad & Havelian.
5. Officer concerned.
6. Budget & Accounts Officer, local office.
7. Assist: Programmer EMIS local office.

*mgs*  
DISTRICT EDUCATION OFFICER (M)  
ABBOTTABAD.



**KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

No. 202 /ST Dated: 30 / 8 /2017

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281  
Fax:- 091-9213262


To,

The District Education Officer (Male),  
Government of Khyber Pakhtunkhwa,  
Abbottabad.

Subject: - **JUDGMENT IN APPEAL NO. 818/2015, IFTIKHAR AHMAD.**

I am directed to forward herewith a certified copy of judgment dated 24/08/2017 passed by this tribunal on the above subject for strict compliance.

**Encl: as above**

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR