

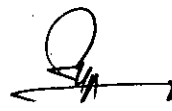
05.06.2018

Neither the appellant nor his counsel present. M/S Amjid Ali, Assistant and Jaffar Ali, Senior Clerk alongwith Usman Ghani, District Attorney for the respondents present.

Since 8.00 A.M the case was called time and again but none appeared on behalf of the appellant.

It will be relevant to mention here that on previous date too, neither the appellant nor his counsel was present and the case was adjourned for today with the hope that someone may put attendance on behalf of the appellant but the situation remained the same. This conduct of the appellant clearly manifests his no interest in pursuing his case. Now it is about 2:00 P.M, and the court time is about to over. As such, this Tribunal is left with no option but to dismiss the appeal in hand in default. Parties are left to bear their own costs. File be consigned to the record room.

  
Member


 EW  
5-6-2018  
Chairman  
Camp Court, Swat

ANNOUNCED  
05.06.2018

29.01.2018

None present on behalf of the appellant. Mr. Muhammad Jan, DDA for the respondents present. To come up for arguments on 02.04.2018 before S.B at Camp Court, Swat.


  
Member

  
Chairman  
Camp Court, Swat

02.04.2018

Appellant in person and Mr. Usman Ghani, District Attorney for the respondents present. Due to strike of bar, counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 04.06.2018 before D.B at camp court, Swat.

  
Member

  
Chairman  
Camp court, Swat

04.06.2018

Neither the appellant nor his counsel present. M/S Mujeebur Rahman, S.O, Amjad Ali, Asstt. And Jafar Ali, Assistant for the respondents present. Adjourned. To come up for further proceedings/arguments before the D.B tomorrow i.e. on 05.06.2018 at camp court, Swat.

  
Member

  
Chairman  
Camp Court, Swat

07.12.2016

Appellant with counsel and Mr. Muhammad Zubair, Sr.GP for the respondents present. Due to

incomplete bench arguments could not be heard. To come up for final hearing on 06.3.2017 before D.B at camp court, Swat.

  
Chairman

Camp court, Swat

06.03.2017

Appellant in person M/S Amjad Ali, Asstt. Anwar Ali, Legal Officer and Yar Gul, Assistant for the alongwith Mr. Muhammad Zubair, Senior Government Pleader for the respondents present. Due to strike of the bar counsel for the appellant is not in attendance. To come up for final hearing on 05.07.2017 before the D.B at camp court, Swat.

  
Member

  
Chairman

Camp court, Swat

10 05.07.2017

Clerk of the counsel for appellant and Mr. Muhammad Zubair, District Attorney for the respondents present. Clerk of the counsel for appellant requested for adjournment. Adjourned. To come up for final hearing on 08.11.2017 before D.B at Camp Court, Swat.


  
Member

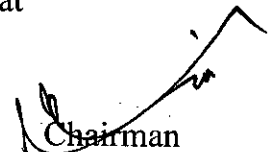
  
Chairman

Camp Court, Swat

08.11.2017

Clerk of counsel for the appellant and Mr. Kabbeerullah Khattak, Addl. AG alongwith Jafar Ali, Senior Clerk for the respondents present. Counsel for the appellant has not turned up from Peshawar. Seeks adjournment. To come up for arguments on 29.01.2018 before S.B at camp court, Swat

  
Member

  
Chairman

Camp court, Swat

09.03.2016


Dr. Haseeb-ur-Rehman on behalf of the appellant  
and Mr. Yousaf Gul, Senior Clerk alongwith Mr. Feroze Ahmad,  
AGP for respondents present. Written reply submitted.  
The appeal is assigned to D.B for rejoinder and final  
hearing for 11.7.2016 at Camp Court Swat.

  
Chairman  
Camp Court Swat

11.07.2016

Appellant in person and Mr. Muhammad Zubair, Sr. G.P  
for the respondents present. Counsel for the appellant is not in  
attendance due to strike of the bar. Adjourned for final hearing on  
7.09.2016 before D.B at camp court, Swat.

  
Member

  
Chairman  
Camp court, Swat.

07.09.2016

Appellant in person and Mr. Muhammad Zubair, Sr.GP for  
the respondents present. Rejoinder submitted. Appellant seeks  
adjournment as his counsel is not turned up from Peshawar.  
Adjourned for final hearing before the D.B on 05.12.2016 at camp  
court, Swat.

  
Member

  
Chairman  
Camp Court, Swat

1260/15

23.11.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Medical Officer at Civil Hospital Khwaza Khela Swat when vide impugned order dated 30.6.2015 prematurely transferred to DHQ Hospital Shangla where against he preferred departmental appeal on 10.7.2015 which was not responded and hence the instant service appeal on 10.11.2015.

That the impugned transfer order is the result of political interference and as such the same is not tenable in the eye of law.

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 12.1.2016 at Camp Court Swat as the matter pertains to the territorial limits of Malakand Division.

Appellant Deposited Security & Process Fee

Chairman

12.01.2016

Dr. Haseeb ur Rehman on behalf of the appellant and Shah Hussain Assistant alongwith Mr. Muhammad Zubair, Sr,GP for respondents present. Requested for adjournment. To come up for written reply/comments before S.B on 09.03.2016 at Camp Court Swat.

Chairman  
Camp Court Swat

Form- A  
FORM OF ORDER SHEET

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

Case No. 1260/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	10.11.2015	<p>The appeal of Dr. Khair-ul-Nabi presented today by Mr. Muhammad Zafar Tahirkheli Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p><i>[Signature]</i> REGISTRAR</p>
2		<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>23-11-15</u>.</p> <p><i>[Signature]</i> CHAIRMAN</p>

**BEFORE THE SERVICE TRIBUNAL, KHYBER PUKHTOONKHWA**  
**PESHAWAR**

Service Appeal No. 1260/2015

Khair UI Nabi,

**V**ERSUS

Govt of Khyber Pakhtunkhwa etc.


=====

**I N D E X**

=====

S.No	Particulars	Annexure	Dates	Pages
1	Memo of Appeal		-	1-2
2	Application for interim relief			3
3	Impugned Transfer Order	"A"	30-06-2015	4
4	Departmental representation	"B"	10-07-2015	5
5	Posting Order	"C"	16-02-2005	6
6	Vakalatnama			7

Date:- 07-11-2015

  
**(Muhammad Zafar Tahirkheli)**  
Advocate,  
High Court Peshawar

  
**(Ansar Ullah Khan)**  
Advocate  
High Court Peshawar

1

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

Service Appeal No. 1260 /2015

Khair Ul Nabi,  
Medical Officer,  
District Headquarter Hospital, Alpuri District Shangla,

N.W.F. Province  
Service Tribunal  
Diary No. 1334  
Cated. 10-11-2015  
..... Appellant

**VERSUS**

1. Government of Khyber Pakhtunkhwa, through Secretary Health, Peshawar.
2. Director General, Health Services, Khyber Pakhtunkhwa

..... Respondents

=====

**SERVICE APPEAL U/S 4 OF NWFP SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED TRANSFER ORDER DATED 30-06-2015 (ANNEX "A"), WHEREBY THE APPELLANT WAS PREMATURELY TRANSFERRED FROM CIVIL HOSPITAL KHWAZAKHELA, SWAT TO DISTRICT HEADQUARTER HOSPITAL ALPURI, DISTRICT SHANGLA, AND HIS DEPARTMENTAL APPEAL DATED 10-07-2015 (ANNEX "B"), WAS NOT DECIDED TILL THE EXPIRY OF STATUTORY PERIOD OF LIMITATION.**

=====

**"Prayer"**

- (a) By accepting this appeal and setting aside the impugned transfer order dated 30-06-2015 (Annex "A"), whereby the appellant was prematurely transferred to Alpuri Shangla from Khwazakhela Swat, and
- (b) Directing the respondent department to cancel the impugned premature transfer order of the appellant and he may be retained as Medical Officer Civil hospital Khwazakhela Swat.

=====

**Respectfully Sheweth,**

1. The appellant has been serving the department honestly and diligently at different places of posting. That he was posted to Civil Hospital Khwazakhela Swat on 16-02-2005. (Copies annexed hereto marked "C")
2. That vide impugned order dated 30-06-2015, the appellant was transferred to Tehsil Headquarter Hospital, Shangla, without any sound reason.
3. That the appellant preferred his representation / departmental appeal dated 10-07-2015 against the impugned premature transfer order, which was not decided till the laps of statutory period of limitation of 90 days. (Annex "B")

Feeling aggrieved and finding no other remedy, the appellant has been constrained to approach the Hon'ble Services Tribunal for the redress of his grievance, inter-alia on the following:

Handwritten notes and signatures in the left margin, including a date "10/11/15".



## Grounds

- (a) The respondent department has acted in a most arbitrary manner while transferring the appellant, without allowing him to complete his tenure at Khwazakhela Swat, without showing any valid cause or cogent reason.
- (b) That the appellant has a clean service record, he was neither served with any adverse remarks nor complaint of any sort was ever filed against him. The respondent department has subjected the appellant to arbitrary treatment for the reasons best known to them.
- (c) That at the time of appellant's transfer, various other junior Medical Officers were posted at the same hospital, who had completed their tenure, but were not disturbed. That instead of transferring the juniors, the respondent department prematurely transferred the appellant, without any sufficient cause or reason, which amounts to victimization and abuse / misuse of power.
- (d) That the appellant was prematurely transferred due to the political pressure asserted by the local MPA, Dr. Haider Ali Khan, for the reasons best known to him.
- (e) The impugned transfer order is thus arbitrary, discriminatory, against the principles of equity, law, justice and proprietary, subject to correction by the worthy authority.
- (f) Appellant seeks permission to take several other grounds at the time of arguments.

In view of the above, it is most humbly requested that by accepting this appeal the impugned transfer order dated 30-06-2015 may kindly be set aside and the respondent department may be directed to retain the appellant at Civil Hospital Khwazakhela Swat.

Any other relief deemed appropriate may also be granted

Peshawar, dated  
07-11-2015

Through,

*Khan*  
Appellant,

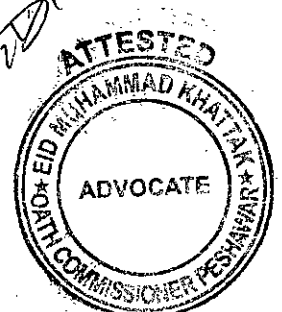
(MUHAMMAD ZAFAR TAHIRKHELI)  
Advocate

*Ansar Ullah Khan*  
(Ansar Ullah Khan)  
Advocate

### Affidavit

I, the appellant, do hereby stat on Oath that the contents of the above appeal are true and correct and nothing has been concealed or withheld from this Hon'ble Tribunal.

*Khan*  
DEPONENT



3

**BEFORE THE SERVICE TRIBUNAL, KHYBER PUKHTOONKHWA**  
**PESHAWAR**

Service Appeal No. \_\_\_\_\_/2015

Khair Ul Nabi,  
Medical Officer,  
District Headquarter Hospital, Alpuri District Shangla, ..... Appellant

**V**ERSUS

1. Government of Khyber Pakhtunkhwa, through  
Secretary Health, Peshawar.
2. Director General, Health Services, Khyber Pakhtunkhwa  
..... Respondents

=====

**PETITION FOR INTERIM RELIEF**

\_\_\_\_\_

**Respectfully Sheweth**

1. That the above titled petition is being filed before this Hon'ble tribunal, in which date of hearing is yet to be fixed.
2. That the contents of the accompanying appeal may kindly be read as part and parcel of the present petition.
3. The petitioner has got a good prima facie case on merits and is sanguine about his success.
4. The Respondent department has issued the impugned transferred order in complete disregard to the Transfer Policy.
5. It is the petitioner who will suffer irreparable harm if in case, his request is refused. The Respondent department may kindly be restrained from transferring the petitioner in violation of the transfer policy of the respondent department.

It is therefore, most humbly prayed that by accepting the present petition, the impugned transfer order dated 30-06-2015 may kindly be suspended till the decision of the present appeal.

*Khan*  
Petitioner,

Through,

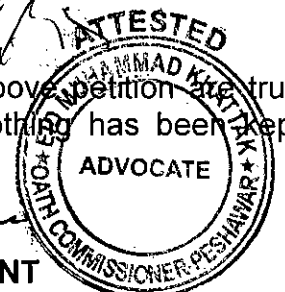
Peshawar, dated  
07-11-2015

(MUHAMMAD ZAFAR TAHIRKHELI)  
Advocate

**Affidavit**

I, the Petitioner, stated on Oath that contents of the above petition are true and correct to the best of my knowledge and belief, and nothing has been kept concealed from this Hon'ble Tribunal.

*Khan*  
DEPONENT





4

A

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT**

Dated Peshawar the 30<sup>th</sup> June 2015

**NOTIFICATION**

No. SO(E)H-II/4-1/2015 The Competent Authority is pleased to order the following transfers/ postings with immediate effect in the best public interest:

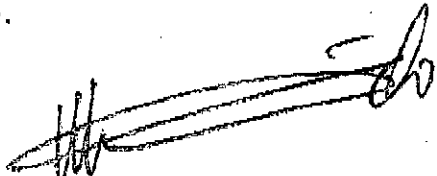
S.#	Name of Doctor	From	To	Remarks
1.	Dr. Khair ul Nabi, MO (BPS-17)	CH Khwaza Khela Swat	DHQ Hospital Alpuri Shangla.	Against the vacant post
2.	Dr. Haseeb ur Rehman, MO (BPS-17)	CH Khwaza Khela Swat	CH Puran Shangla	Against the vacant post
3.	Dr. Mohammad Ali Jan MO (BPS-17)	CH Khwaza Khela Swat	At the disposal of DHO Shangla	Against the vacant post

**SECRETARY HEALTH  
HEALTH DEPARTMENT**

Endst: No. even and date even.

Copy to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General, Health Services, Khyber Pakhtunkhwa, Peshawar.
3. DHO Swat.
4. DHO Shangla.
5. District Account Officer Swat.
6. District Account Officer Shangla.
7. Deputy Director (IT) Health Department.
8. PS to Secretary Health, Khyber Pakhtunkhwa.
9. PA to Special Secretary Health.
10. Doctor concerned.

  
**(Daulat Khan)**  
Section Officer (E-II)



To.

The Honorable.  
Chief Secretary  
Government of Khyber Pakhtunkhwa  
Peshawar.

ANNEXURE

B

Through PROPER CHANNEL

Subject: CANCELLATION OF MALAFIDE/UNLAWFUL TRANSFER ORDER NO. SO(E)H-11/4-1/2015 DATED 30<sup>th</sup> JUNE 2015.

Respected Sir,

With great reverence and humble submission I beg to lay down the following few lines for your kind and sympathetic consideration:

Sir I am serving as Medical Officer (BPS-17) in Civil Hospital Khwazakhela Swat with great zeal and devotion. I have left no stone unturned in the discharging of my official duties and never committed any inefficiency which may create any problems/grievances for the public as well as my superiors.

Keeping in view such a good and appreciable reputation, I was expecting that my officers will protect my official status and provide me the opportunity to perform safe and sound service. But contrary to these facts and prevailing rules on the subject, I have been transferred from my existing position to District Head Quarter Hospital Alupri Shangla against the vacant post without any solid and cogent circumstances.

Sir, it is worth mentioning here that under the Provincial Government policy for posting transfer under S.No(i), all the posting transfer shall be strictly in public interest and shall not be abused or misused to victimize the government servants.

Besides the competent authority whenever desire to fill up any vacant post by transfer the junior most official or officer are to be nominated, or if the post warrants, the posting of senior one then senior most is to be considered for transfer. Contrary to the facts the competent authority has ignored the prevailing rules, and neither junior Medical Officer nor senior have been touched in the process of transfer order. For your kind perusal the panel of junior as well as senior Medical Officers is tabulated below:-

Name of Junior Medical Officers	Name of Senior Medical Officers
Dr. Azizur-Rahman	Dr. Issa Khan
Dr. Mushtaq	Dr. Saleem
Dr. Waqar	Dr. Mustafa
Dr. Nadia Khan	Dr. Fuzia


S24/b  
20/7/15

Sir, from the above narrated exposition it is crystal clear that my order has not been considered on merit and also not in the interest of state/ public. Similarly there are no public complaints or grievances against me, nor have my superiors ever observed my gross irregularities on my part. Thus my transfer has been issued totally on political grounds just to vacate position for posting of another favorite Medical Officer, which is against the spirit of law and the General Justice and prevailing rules on the subject.

Keeping in view the above facts and figures, it is requested that my transfer order may kindly be cancelled on compassionate grounds, and in case there is a vacant position in the District of Shangla, which warrants immediate filling, then junior or senior Medical Officer may be posted therein and I may very kindly be allowed to continue my duties, without any political interference and obliged, please.

10/7/15

Dr. Khairul Nabi  
Medical Officer  
Civil Hospital Khwazakhela



Advance copy forwarded to:  
Chief Secretary govt: of Khyber Pakhtunkhwa

6  
6  
RECEIVED  
C  
GOVERNMENT OF N.W.F.P.  
HEALTH DEPARTMENT

Dated Peshawar, the 16<sup>th</sup> February, 05

NOTIFICATION

Ref: SCHE (Ad) 3-18/2004:- Dr. Khan Yun Nabi (BS-17), Medical Officer, BHO Dandara Swat is hereby transferred and posted at Civil Hospital, Khawaza Khela Swat against the vacant post with immediate effect in the public interest.

SECRETARY HEALTH.

Encl. No. & date given

Copy to them

1. Director General, Health Services, NWFP Peshawar.
2. BHO (H) Swat.
3. DAO Swat.
4. PS to Minister for Health.
5. Doctor concerned.

(Ilam Khan Khattak)  
Section Officer-II.

TRUE COPY

6  
ALHAMBRA C

Better Copy

Government of NWFP  
Health Department  
Dated Peshawar, the 16<sup>th</sup> Feb, 2005

**Notification**

No. SO(Estab)3-18/2004:- Dr. Khair Ul Nabi (BS-17), Medical Officer BHU Bahrain Swat is hereby transferred and post at Civil Hospital, Khwazakhela Swat against the vacant post with immediate effect in the public interest.

SD.....

# VAKALATNAMA

In the Court of Khyber Pakhtunkhwa Service Tribunal, PESHAWAR

No. \_\_\_\_\_ of 2015

Petitioner  
Plaintiff  
Applicant  
Appellant  
Complainant

Khair UI Nabi

Decree-Holder

**V**ERSUS

Respondent  
Defendant  
Opponent  
Accused

Govt. of KP etc.

Judgment-Debtor

I / We Khair UI Nabi, the above noted appellant do hereby appointed and constitute, **Muhammad Zafar Tahirkheli & Ansar Ullah Khan, Advocates High Court**, to appear, plead, act, compromise, withdraw or refer to arbitration for me / us as my / our counsels / advocates in the above noted matter, without any liability for his default and with the authority to engage any other Advocate / Counsel at my / our cost.

The Client / Litigant will ensure his presence before the Court on each and every date of hearing and the counsel would not be responsible if the case is proceeded ex-parte or is dismissed in default of appearance. All cost awarded in favour shall be the right of Counsel or his nominee, and if awarded against shall be payable by me/us.

I / We authorize the said Advocates to withdraw and receive on my / our behalf all sums and amounts payable or deposited on my / our account in the above noted matter.

Dated

10-9/15

Office

**ATIQ LAW ASSOCIATES,**  
87, Al-Falah Street, Besides State Life Building,  
Peshawar Cantt, Phone: 091-5279529  
E-mail : [zafark.advocate@gmail.com](mailto:zafark.advocate@gmail.com)



Client

  
M. Zafar Tahir

Attested & Accepted (Advocates)

  
Ansar Ullah Khan

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 1260/2015**

Mr. Khair-un-Nabi

Appellant

Versus

Govt: of Khyber Pakhtunkhwa Health Department & Others

Respondents

**PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 & 2.**

**Respectfully sheweth:-**

**PRILIMINARY OBJECTIONS:-**

1. That the appellant has neither cause of action nor locus standi.
2. That the appeal is not maintainable in its present form.
3. That the appellant has not come to the Tribunal with clean hands
4. That the appellant is bad due to non-joinder and mis-joinder of un-necessary parties.
5. That the appeal is time barred.

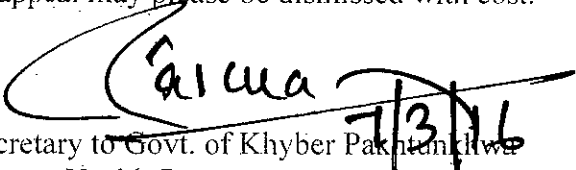
**ON FACTS:-**


1. Pertains to record.
2. Incorrect. The impugned Notification is in public interest and in accordance with section-10 of Civil Servant Act.
3. Incorrect no departmental appeal/representation has been filed by the appellant.

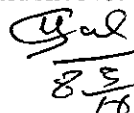
**GROUND:-**

- a. Incorrect. Respondent acted as per parameters set by the law and rules.
- b. Incorrect under section 10 of Civil Servant Act he is to serve anywhere his service required.
- c. As already stated in para 2 above.
- d. Incorrect. The impugned notification has been issued in accordance with law/rules on the subject.p
- e. Incorrect. Govt: is moving as per parameters set by the law.
- f. No comments being legal grounds.

It is, therefore, requested that the service appeal may please be dismissed with cost.

  
Secretary to Govt. of Khyber Pakhtunkhwa  
Health Department.  
(Respondent No. 1)

  
Director General, Health Services,  
Khyber Pakhtunkhwa (Respondent No. 2)

  
8/3/16