


13th March, 2023


Clerk of learned counsel for the appellant present.

Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 17.05.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
PESHAWAR


(Salah-ud-Din)
Member (J)


(Kalim Arshad Khan)
Chairman

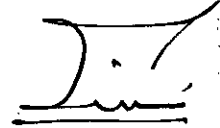
16.05.2022

Junior to counsel for appellant present. Mr. Kabir Ullah Khattak Additional Advocate General for the respondents present.

Junior to counsel for appellant requested for adjournment on the ground that learned counsel for the appellant is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments before the D.B on 20.07.2022.



(Rozina Rehman)
Member (J)



(Salah-Ud-Din)
Member (J)

20.07.2022

Proper Bench is not available, therefore, case is adjourned to 19.10.2022 for the same as before.

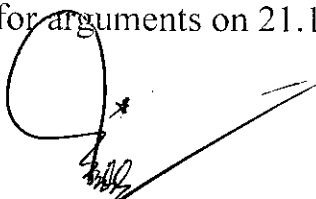


Reader

19.10.2022

Mr. Muzammil Khan Mohmand, junior of learned counsel for the appellant present. Mr. Adnan, Assistant alongwith Mr. Asif Masood Ali Shah, District Attorney for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 21.11.2022 before the D.B.



(Mian Muhammad)
Member (E)



(Salah-Ud-Din)
Member (J)

14.01.2022

Mr. Javed Iqbal Gulbela, Advocate present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present.

The one of us i.e. the Chairman while posted in Peshawar High Court, Peshawar happened to have conducted a judicial inquiry in relation to death of an injured person, wherein he made certain observation about unsatisfactory performance of doctors/staff of the said Hospital. It would be appropriate that this case is heard by some other bench. Adjourned. To come up for arguments before the D.B on 25.02.2022.



(Atiq-Ur-Rehman Wazir)
Member (E)



Chairman

25.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 30.03.2022 for the same as before.



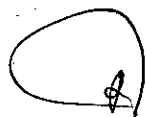
Reader

30.03.2022

Learned counsel for the appellant present.

Mr. Muhammad Tufail S.O (Litigation) alongwith Mr. Muhammad Adeel Butt, learned Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation. Adjourned. To come up for arguments on 16.05.2022 before D.B.



(Rozina Rehman)
Member (J)

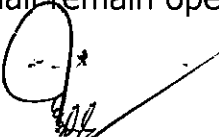


(Salah-Ud-Din)
Member (J)

11.11.2021 Junior to counsel for appellant present.

Muhammad Riaz Khan Paindakheil learned Assistant Advocate General for respondents present.

Former made a request for adjournment as senior counsel is not available today; granted. To come up for arguments on 08.12.2021 before D.B. The restrained order dated 05.08.2021 shall remain operative till next date.

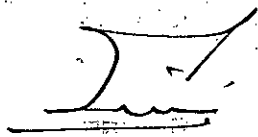

(Mian Muhammad)
Member (E)


(Rozina Rehman),
Member (J)

08.12.2021

Learned counsel for the appellant present. Mr. Safiullah, Section Officer alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.


The Worthy Chairman is on leave, therefore, the bench is incomplete. Adjourned. To come up for arguments on 03.01.2022 before the D.B.


(Salah-ud-Din)
Member (J)

03.01.2022

Counsel for the appellant, Mr. Asif Masood Ali Shah, DDA alongwith Safiullah, Litigation Officer for the respondents present.

Learned counsel for the appellant seeks adjournment for preparation. Request accorded. To come up for arguments on 14.01.2022 before the D.B.


(Atiq-ur-Rehman Wazir)
Member(E)


Chairman

31.08.2021

Due to summer vacations, the case is adjourned to 30.09.2021 for the same as before.


READER

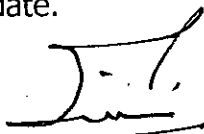
30-9-21

DB is on Tour case to come up
for the same on dated. 18-10-21

18.10.2021

Junior to counsel for the appellant and Mr. ^{\$}Reader
Muhammad Adeel Butt, Addl. AG alongwith Ziaullah,
Deputy Secretary (Legal) for the respondents present.

Due to general strike of the bar, counsel for the appellant is not in attendance today. To come up for arguments on 11.11.2021 before the D.B. The restrain order dated 05.08.2021 shall remain operative till next date.


(Salah-ud-Din)
Member(J)


Chairman

05.08.2021

Appellant present in person. Lawyers are on strike today.

I have gone through the memorandum of appeal. The order dated 09.06.2021 as impugned by the appellant to his extent is already subject of other service appeals filed by the transferees all on their own facts and grounds but in case of the appellant, he has been transferred from THQ Hospital Gadezai, District Buner to DHQ Hospital, Alpuri, District Shangla without mentioning whether there was any vacant post over there or vice any other in the channel. Similarly, it is not discernable from the impugned order that the transfer of the appellant was necessary in the channel of transfers because none from other transferees in the impugned order is shown to have been posted against the post from which the appellant has been transferred. The question of public interest in relation to transfer of the appellant is likely to arise making his case arguable for admission of appeal to full hearing. Accordingly, the appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 31.08.2021 before the D.B.

An application has been filed alongwith memorandum of appeal seeking suspension of operation of impugned order dated 09.06.2021, which to the extent of the appellant is suspended till date fixed.


Chairman

Appellant Deposited
Security & Process Fee




06/08/21

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7084 /2021


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/07/2021	<p>The appeal of Dr. Siraj-ud-Din resubmitted today by Mr. Javed Iqbal Gulbela Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	05.08.2021	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>05/08/2021</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Appellant with counsel present. Learned counsel for the appellant seeks time for preparation. Case to come up on 06.08.2021 before S.B.</p> <p style="text-align: right;"> Chairman</p>

The appeal of Dr. Siraj-ud-Din Medical Officer received today i.e. on 19.07.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.


- 1- Copy of appointment order mentioned in para-2 of the memo of appeal (Annexure-A) is not attached with the appeal which may be placed on it.
- 2- Check list is not attached with the appeal.

No. 1410 /S.T,

Dt. 27/07 /2021


REGISTRAR I
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Javed Iqbal Gulbela Adv. Pesh.

Respected Sir,
The instant objection
is just a clerical mistake and
it be read as Transfer order
instead of appointment order,
Available at Page "9", kindly placed
before the Hon'ble bench.
27-07-2021

(Adv)

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

In Re S.A. 7084 /2021

Dr Siraj-uddin

VERSUS

Secretary Health & Others

INDEX

S#	Description of Documents	Annex	Pages
1.	Grounds of Appeal		1-4
2.	Affidavit		5
3.	Suspension application + affidavit		6-7
4.	Addresses of parties		8
5.	Copy of transfer Order dated 9-06-2021	"A"	9-10
6.	Departmental appeal	"B"	11
6.	Copy of Transfer and Posting Policy	"C"	12-17
7.	Wakalat Nama		18

Dated: 17/07/2021

Appellant

Through

**Javed Iqbal Gulbela
Advocate Supreme Court of
Pakistan**

①

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL PESHAWAR**

In S.A _____/2021

Dr. Siraj uddin (M.O BPS-17) S/o Gul Sher Khan R/o THQ
Hospital Gadazai, District Buner.

-----Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Health at Civil Secretariat, Peshawar.
2. Director Health Services, Khyber Pakhtunkhwa, at Civil Secretariat, Peshawar.

-----Respondents

**Appeal against the Impunged Office Order
No: SOH(E-II)/1-1/2021 Dated: 09-06-2021
of the Office Of Secretary Health Khyber
Pakhtunkhwa, Whereby The Appellant Has
Been Transferred From THQ Hospital
Gadazai District Buner to DHQ Hospital
Alpuri, District Shangla In Utter Violation of
Law & Policy of Transferring and Posting
Governing the Subject.**

Respectfully Sheweth,

1. That the Appellant is a naturally born bona-fide citizen of Islamic Republic of Pakistan and hails from a respectable family.
2. That after going through the mandatorily required criteria laid down for the Selection of Medical Officers. The Appellant got appointed as Medical Officer year's back. (Copy of Transfer Order is annexed herewith as Annexure "A")

3. That since induction into service and getting onto the rolls of this extremely humane and prestigious department, the Appellant has remained the most pragmatic, devoted and dutiful fellow who never left any stone unturned in performance of his duties and importing any responsibility entrusted to the Appellant.
4. That being highly professional and pragmatic towards the responsibilities bestowed upon the shoulders of the Appellant and because of his whetted professional skills, there have never been any sort of soot or sootage upon his long career which fact is reflected from his Service Record, which sans any complaint or adverse or ever communicated to the Appellant.
5. That inspite of all this background, whereby a brief glimpse is given in the preceding paras, the Appellant has been transferred vide impugned Office Order No. SOH(E-ii)/1-1/2021, dated: 09-06-2021, issued from the Office of Secretary Health Khyber Pakhtunkhwa, like a bolt from the blue, from District Buner to District Shangla in a quiet illegal and unwarranted manner.
6. That feeling aggrieved, the Appellant preferred a Departmental Appeal / Representation to the Appellate Authority, but inspite of lapse of stipulated period as postulated in Khyber Pakhtunkhwa Transfer & Posting Policy, nothing came up of the same.
7. That before going jotted down to the grounds of the instant Service Appeal, it would be appropriate to mention here that the Provincial Government has provided for its own transferring and posting policy as visualized as Khyber Pakhtunkhwa Transferring and Posting Policy, wherein it has provided for all sorts of conditions for posting and transferring of any Civil Servant, whereas the same policy has also provided for appointing for this Hon'ble Tribunal quiet

expediciously. (Copy of Transfer & Posting Policy is annexed herewith as Annexure "B").

8. That feeling aggrieved and having the only remedy available being Civil Servant, the Appellant approaches this Hon'ble Tribunal for setting aside the impugned transfer order dated: 09/06/2021 issued from the Office of Secretary Health, inter-alia on the following grounds:-

Grounds:

- A. That impugned transfer and posting order is wrong, illegal, unwarranted, have not tenable in the eyes of law.
- B. That the impugned transfer and posting order is thoroughly inderogation to the principles laid down and enumerated in the transfer & posting policy.
- C. That the Appellant is Buner based and domicile of the Appellant is that of District Buner. So as per the rationale policy, the Appellant is entitled to be placed in District Buner and not beyond that.
- D. That one of the Medical Officer namely Dr. Alia has also been transferred vide the same Transfer Order dated: 09/06/2021 who was also serving as WMO at THQ Gadazai, District Buner. The same post in the same hospital, but when it comes to the Appellant, the case volta-facie changes.
- E. That the Transfer Order of the Appellant is politically motivated and the Appellant has virtually been penalized for no fault and has simply been kicked out from District Buner, as in either case the Appellant can simply adjusted anywhere in District Buner.
- F. That under the mandate of Article 4 of the Constitution, no one should be treated otherwise than in accordance with law wherein Article 25 postulates that alike are to be treated alike but here the case is volta-facie and a totally different yardstick has been taken to treat the Appellant.
- G. That as per the rationale policy of the Government, it has categorically held that the transfer of any civil servant must be in Public Interest rather than making any civil servant escape goat or rather politically victimizing the civil servant as in the instant case.
- H. That from every angle, the impugned Transfer & Posting Order is wrong, illegal, unlawful and is liable to be set-aside

(4)

- I. That any other ground not raised here may graciously be allowed to be raised at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of the instant Service Appeal, the impugned Transfer & Posting Order No: SOH(E-ii)/1-1/2021/ dated: 09/06/2021 of the Office of Secretary Health Khyber Pakhtunkhwa may very graciously be set aside.

Any other relief not specifically asked for may also graciously be extended in favor of the appellant in the circumstances of the case.

Dated: 17/07/2021.

Appellant

Through

Javed Iqbal Gulbela
Advocate Supreme Court of
Pakistan

Saghir Iqbal Gulbela
&
Ahsan Sardar
Advocates, High Court
Peshawar.

NOTE:

No such like appeal for the same appellant, upon the same subject matter has earlier been filed by me, prior to the instant one, before this Hon'ble Tribunal.

Advocate.

5

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

In S.A No-_____/2021

Dr. Siraj Uddin

VERSUS

Secretary Health & Others

AFFIDAVIT

I, Dr. Siraj Uddin S/o Gul Shed Khan R/o Bara Hujra, P.O Pir Baba, Sultan was, Tehsil Daggar, District Buner do hereby solemnly affirm and declare on oath that the contents of the instant Service Appeal is correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


DEPONENT

CNIC:15101-7111948-3

CELL: 0340-0582300

Identified by:

Javed Iqbal Gulbela
Advocate, Supreme Court of
Pakistan

(b)

BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

In Re S.A _____/2021

Dr. Siraj uddin

VERSUS

Secretary Health & Others

Application for suspension of operation of impugned Transfer & Posting Order Dated 09-06-2021

Respectfully Sheweth,

1. That the Appellant / Applicant is filing the instant application, the contents of which may very graciously be considered as integral part and parcel of the instant Appeal.
2. That balance of convenience lies in favor of the Appellant / Applicant.
3. That if the impugned Transfer & Posting orders are not suspended, the Appellant / Applicant shall suffer irreparable loss.
4. That in given circumstances of the case, suspension of operation of the impugned Transfer & Posting Orders Dated 09-06-2021 are indispensable.

It is therefore most humbly prayed that on acceptance of the instant application, the operations of impugned Transfer & Posting Orders Dated 09-06-2021 may very graciously be suspended, till the final disposal of the instant Service Appeal.

Dated: 17-07-2021

Javed Iqbal Gulbeia
Advocate Supreme Court of
Pakistan

7

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR**

In S.A No _____/2021

Dr. Siraj Uddin

VERSUS

Secretary Health & Others

AFFIDAVIT

I, Dr. Siraj Uddin S/o Gul Shed Khan R/o Bara Hujra, P.O Pir Baba, Sultan was, Tehsil Daggar, District Buner do hereby solemnly affirm and declare on oath that the contents of the instant application is correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


DEPONENT

CNIC:15101-7111948-3

CELL: 0340-0582300

Identified by:

Javed Iqbal Gulbela
Advocate, Supreme Court of
Pakistan

8

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

In Re S.A _____/2021

Dr Siraj-uddin

VERSUS

Government of Khyber Pakhtunkhwa & Others

ADDRESSES OF PARTIES

APPELLANT

Dr. Siraj uddin (M.O BPS-17) S/o Gul Sher Khan R/o THQ
Hospital Gadazai, District Buner.

ADDRESSES OF RESPONDENTS

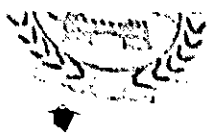
1. Government of Khyber Pakhtunkhwa through Secretary
Health at Civil Secretariat, Peshawar.
2. Director Health Services, Khyber Pakhtunkhwa, at Civil
Secretariat, Peshawar..

Dated: 17/07/2021

Appellant

Through

**Javed Iqbal Gulbela
Advocate Supreme Court of
Pakistan**



(9)
GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Ann 'A'

Dated Peshawar the 09th June, 2021

NOTIFICATION

No.SOH(E-II)/1-1//2021: The Competent Authority is pleased to order the following posting / transfers of doctors with immediate effect in the public interest:-

S.No	Name of doctors	From	To
1.	Dr. Asghar Nawaz S/O Khoob Nawaz, MO (BPS-17)	DHQ Hospital Charsadda	DHQ Hospital Karak against the vacant post of MO (BS-17)
2	Dr. Jibran Khan S/O Qasim Jan, MO (BPS-17)	DHQ Hospital Charsadda	RHC Bandai Nihaq Dir Upper against the vacant post of MO (BS-17)
3.	Dr. Muhammad Waqas S/O Lal Zada, MO (BPS-17)	DHQ Hospital Charsadda	THQ Hospital Wari Dir Upper against the vacant post of MO (BS-17)
4.	Dr. Muhammad Tariq S/O Muhammad Hassan, MO (BPS-17)	DHQ Hospital Charsadda	BHU Bela Chand (Dir Upper)
5.	Dr. Sikandar Zeb S/O Jehanzeb Khan, MO (BPS-17)	DHQ Hospital Charsadda	RHC Chorlakkai Distt: Kohat against the vacant post of MO (BS-17)
6.	Dr. Muhammad Kashif Javed S/O Muhammad Javed, MO (BPS-17)	DHQ Hospital Charsadda	Type "D" Hospital Lachi Kohat against the vacant post of MO (BS-17)
7.	Dr. Maria Babar D/O Salim Khan Shinwari, WMO (BPS-17)	DHQ Hospital Charsadda	DHQ Hospital KDA Kohat against the vacant post of MO (BS-17)
8.	Dr. Sami-Ul-Haq S/O Said Rehman, MO (BPS-17)	DHQ Hospital Charsadda	BHU Kachai Distt: Kohat against the vacant post of MO (BS-17)
9.	Dr. Arshad Karim S/O Haji Fazal Akbar, MO (BPS-17)	DHQ Hospital Charsadda	BHU Sherkot Distt: Kohat against the vacant post of MO (BS-17)
10.	Dr. Inam Ullah S/O Rooh Ullah, SMO (BPS-18)	DHQ Hospital Charsadda	Category "D" Hospital Barawal Dir Upper against the vacant post of SMO (BS-18)
11.	Dr. Amin Gul S/O Raheem Gul, District Specialist Children BPS-18	DHQ Hospital Charsadda	THQ Hospital Wari Dir Upper against the vacant post of District Specialist Children (BS-18)
12.	Dr. Khan Bahadar, BPS-19 (Management Cadre) DMS (Admn)	DHQ Hospital Charsadda	Report to DGHS, Khyber Pakhtunkhwa
13.	Dr. Said Muhammad S/O Akbar Khan, Senior Distt: Specialist Medicine, BPS-19	DHQ Hospital Charsadda	Report to DGHS, Khyber Pakhtunkhwa
14.	Dr. Umer Zia S/O Zia-Ul-Islam, MO (BPS-17)	Under transfer to DHO, Nowshera	DHQ Hospital Charsadda against the vacant post of MO (BS-17)
15.	Dr. Fatima Khattak D/O Fazal Karim Khattak, WMO (BPS-17)	Under transfer to DHO, Nowshera	DHQ Hospital Charsadda against the vacant post of MO (BS-17)
16.	Dr. Yasir Inam S/O Inam Ullah Khan, MO (BS-17)	Under transfer to DHO, Nowshera	DHQ Hospital Charsadda against the vacant post of MO (BS-17)
17.	Dr. Balqees D/O Jamal Shah, WMO (BPS-17)	Under transfer to DHO, Nowshera	DHQ Hospital Charsadda against the vacant post of MO (BS-17)

2

JAVED IQBAL GULBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

(10)

18	Dr. Nida Khan D/O Noor Nawaz Khattak, WMO (BPS-17)	Under transfer to DHO, Nowshera	DHQ Hospital Charsadda against the vacant post of MO (BS-17)
19	Dr. Shanze Khan D/O Yousaf, WMO (BPS-17)	Category "D" Hospital Lachi (Kohat)	DHQ Hospital Charsadda against the vacant post of MO (BS-17)
20	Dr. Faiqa Farah Muslim D/O Muslim Khan, MO (BS-17)	Returned from Deputation	DHQ Hospital Charsadda against the vacant post of MO (BS-17)
21	Dr. Abdul Basit S/O Fida Muhammad, MO (BS-17)	Waiting for posting	DHQ Hospital Charsadda against the vacant post of MO (BS-17)
22	Dr. Yasir Ishaq S/O Muhammad Ishaq MO (BPS-17)	Waiting for posting	DHQ Hospital Charsadda against the vacant post of MO (BS-17)
23	Dr. Asif Naveed S/O Ishaq Ahmad, MO (BS-17)	Waiting for posting	DHQ Hospital Charsadda against the vacant post of MO (BS-17)
24	Dr. Kanwal Falima D/O Tajamal Hussain, WMO (BPS-17)	Under transfer to DHO, Nowshera	Women & Children/LMH Kohat
25	Dr. Samaraat S/O Abdul Wahid Khan, MO (BS-17)	THQ Hospital Khwaza Khela, District Swat	At the disposal of DHO Buner against the vacant post of MO (BS-17)
26	Dr. Zia Ur Rehman, MO (BS-17)	DHQ Hospital Dir Upper	At the disposal of DHO Buner against the vacant post of MO (BS-17)
27	Dr. Rehmal Ullah Jan S/O Malik Ghazi Mar Jan, SMO (BPS-18)	Waiting for posting	As DMS (Admn) at DHQ Hospital Charsadda against the vacant post of SMO (BS-18)
28	Dr. Hayat, Medical Officer (BS-17)	THQ Hospital Gadezi, District Buner	DHQ Hospital Alpuri, District Shangla
29	Dr. Siraj Ud Din, Medical Officer (BS-17)	THQ Hospital Gadezi, District Buner	DHQ Hospital Alpuri, District Shangla
30	Dr. Alia, Women Medical Officer (BS-17)	THQ Hospital Gadezi, District Buner	DHQ Hospital Alpuri, District Shangla

SECRETARY HEALTH
KHYBER PAKHTUNKHWA

Endst. of even No. & Date.

Copy to the:

1. Accountant General Khyber Pakhtunkhwa.
2. Director General, Health Services, Khyber Pakhtunkhwa.
3. MS DHQ Hospital Charsadda with the direction to relieve the doctors at serial No. 01-13 with immediate effect under intimation to this office.
4. District Health Officer Buner with the direction to relieve the doctors at serial No. 28-30 with immediate effect under intimation to this office
5. All DHOs concerned.
6. All DAOs concerned.
7. PS to Secretary Health, Khyber Pakhtunkhwa.
8. PA to Special Secretary Health, Khyber Pakhtunkhwa.
9. PA to Deputy Secretary Health (Estab), Khyber Pakhtunkhwa.
10. Doctors concerned.
11. Master file.

(103)
(Ijaz Rahim)
Section Officer (E-II)

JAVED IQBAL GULBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

Ann 'B'

(11)

To,
The worthy Chief Minister
KPK Peshawar.

Subject: Appeal / Representation

Respected Sir,
with utmost respect the Appellant
very humbly solicits as under:

1. That the Appellant is serving as Medical Officer BPS-17 at T.H.Q Hospital Gadezi District Buner.
2. That the Appellant was transfer from T.H.Q Hospital District Buner to D.H.Q Hospital Alpur, District Shingla vide impugned transfer order dated 09-06-2021, which is illegal, unlawful & against the transfer & posting policy & is liable to be set-aside.
3. That the Appellant is a Domicile Holder of District Buner, so as per the rationed policy the Appellant is entitled to placed at District Buner.

It is therefore most humbly requested that on acceptance of the instant Appeal the impugned transfer order dated 09-06-2021 may kindly be set aside.

Dated: 15-06-2021

Appellant (Signed)
Dr. Siraj ud din

(12)

Ann 124

NO.SOR-II (E&AD) 1-1/85(VOL-II)
Dated Peshawar the 15th February 2003.

Subject: POSTING /TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT.

I am directed to refer to the subject noted above and to say that in supersession of all policy instructions issued in this behalf, the competent authority has approved the following posting Transfer Policy.

- i. All the postings /transfers shall be strictly in public interest and shall not be abused misused to victimize the Government servants.
- ii. All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting /transfer authorities for seeking posting /transfers of their choice and against the public interest.
- iii. All contract Government employees, appointed against specific posts, cannot be posted against anyother post.
- iv. The normal tenure of posting shall be three years subject to the condition that for the officers /officials posted in unattractive areas, the tenure shall be two years and for hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.
- v. Months of March and July are fixed for posting /transfer of the officers /officials excluding the officers in B-19 and above in the Province. Posting /transfer in Education and Health Departments shall be made in March while the remaining Departments shall make posting /transfers in July. There shall be a ban on posting/transfers throughout the year excluding the aforesaid two months. However, there shall be no restriction in cases where posting /transfer of Government employees become inevitable in other months due to promotion /retirement /creation of new posts/return from long leave/involvement in

JAVED IQBAL GULBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

(13)

disciplinary proceedings and adjustment of surplus staff for which specific relaxation shall be obtained from the Chief Minister.

- vi. While making postings transfers from settled areas to FATA and vice versa specific approval of the Governor, NWFP needs to be obtained.
- vii. Officers may be posted on executive /administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thana) of his area /resident is situated.
- viii. No postings /transfers of the officers/officials on detailment basis shall be made.
- ix. Regarding the posting of husband /wife, both in Provincial services, efforts where possible would be made to post such persons at one station and this will be subject to the public interest.
- x. All the posting /transferring authorities may facilitate the postings /transfers of the unmarried female Government Servants at the station of the residence of their parents.
- xi. Officers /officials except DCOs and SPs who are due to retire within one year may be posted on their option, on posts in the Districts of their domicile and be allowed to serve their till the retirement.
- xii. In terms of Rules-17 (1) and (2) read Schedule-III of the Government of NWFP Rules of Business 1985, transfer of officers shown in column I of the following table shall be made by the authorities shown against.

JAVED IQBAL GULBELA
Advocate
Supreme Court of Pakistan
(AS # 5317)

1

Outside the Secretariat

i. Officers of the all Pakistan Unified Group i.e DMG , PSP including Provincial Police Officers in BPS-18 and above.

ii. Other officers in BPS-17 and above to be posted against schedule posts, or posts normally held by the APUG, PCS (EG) and PCS (SG).

iii. Head of Attached Departments and other Officers in B-19 & above in all Departments.

In the Secretariat:

iv. Secretaries .

v. Other Officers of and above the rank of Section Officers:-

- a. Within the Same Department.
- b. Within the Secretariat from one Department to another.

vi. Officials upto the rank of Superintendent:-

- a. Within the same Department.
- b. To and from an Attached Department.

2

Chief Secretary in consultation with the Establishment Department and the Department concerned with the approval of the Chief Minister.

--do--

--do--

Chief Secretary with the approval of Chief Minister.

Secretary of the Department concerned .
Chief Secretary /Secretary Establishment.

Secretary of the Department concerned.
Secretary of the Department in consultation

(15)

c. Within the Secretariat from one
Department to another.

with Head of Attached Department
concerned. Secretary (Establishment)

JAVED IQBAL GULBELA
Associate
Supreme Court of Pakistan
(ASC # 5317)

(16)

xiii. While considering postings /transfers proposals all the concerned authorities shall keep in mind the following:

a. To ensure the posting of proper persons on proper posts, the annual confidential reports, past and present record of service, performance on post held presently and in tile past and general reputation with focus on the integrity of the concerned officers/officials be considered.

b. Tenure on present post shall also be taken into consideration and the posting transfers shall be in the best public interest.

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

i) pre-mature posting/transfer or posting/transfer in violation of the provisions of this policy.

ii) Serious and grave personal (humanitarian) grounds.

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

S.No	Officers	Authority
1.	Posting of District Coordination Officer and Executive Distinct Officer in a District.	Provincial Government
2.	Posting of District Police Officer.	Provincial Government.
3.	Other Officer in BPS-17 and above posted in the District.	Provincial Government .

JAVED IQBAL GULBELA
Advocate
Supreme Court of Pakistan
(ASC # 6317)

17




4.	Official in BPS-16 and below.	Executive District Officer in consultation with District Coordination Officer.
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As per Rule 25(2) of the Rules above the District Coordination Department shall consult the Government if it is proposed to :

- a. transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure; and
- b. require an officer to hold charge of more than one post for a period exceeding two months.

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

JAVED IQBAL SUIBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

قیمت 50 روپے	50163			
ایڈویٹ: <i>[Signature]</i>		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: 7924-10-13				
رابطہ نمبر: 5990617-5050				

بعدالت جناب: *[Signature]*

منجانب: <i>[Signature]</i>	دعویٰ:
<i>[Signature]</i>	علت نمبر:
بنام	مورخہ:
<i>[Signature]</i>	جرم:
	تھانہ:

باعت تحریر آئکہ

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

المرقوم: 17. 7. 2021

العواہ شد العبد

مقام کے لیے منظور ہے۔

[Signature]

نوٹ: اس وکالت نامہ کی فونو کاپی ناقابل قبول ہوگی۔

Dr. Siraj ud-Din.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa through Chief Secretary and others.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Respectfully Sheweth :

PRELIMINARY OBJECTIONS:-

1. That the Appellant has got neither cause of action nor locus standi to file the instant Appeal.
2. That the Appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant Appeal is against the prevailing Law and Rules.
4. That the Appeal is not maintainable in its present form.
5. That the Appellant has filed the instant Appeal with mala-fide intention hence liable to be dismissed.
6. That the Appeal is badly time barred.
7. That the Honourable Tribunal has no Jurisdiction to adjudicate upon the matter.
8. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
9. The impugned transfer Notification has been issued in accordance with Section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973.

FACTS

1. No comments.
2. Pertains to record.
3. Pertains to record however being a Civil Servant he is to serve with devotion and punctuality.
4. Subject to proof.
5. Correct to the extent that the appellant was transferred vide Notification dated 09.06.2021 which was issued by the Competent Authority in accordance with Section-10 of the Khyber Pakhtunkhwa Civil Servant Act 1973. It is worth mentioning that the appellant has already completed his normal tenure and spent three years on the same post.
6. Pertains to record however the instant appeal has been filed prematurely in utter violation of Section-4 of Civil Servant Act 1974 and the dictum laid down by apex Court as well as Service Tribunal in various judgements hence the same is not maintainable under the law.
7. Pertains to record however the maintainability of premature appeals has already been adjudicated by the larger bench of this Honourable Tribunal in case titled "Arif Abbasi versus" of Government of Khyber Pakhtunkhwa Service Appeal No1648/2013 dated 10.10.2014 as well as Supreme Court in so many judgments.
8. Incorrect the appellant has been transferred in accordance with Section-10 of the Khyber Pakhtunkhwa Civil Servant Act 1973 as transfer and posting comes within terms and conditions of service therefore no vested right of the appellant has been violated by the respondents it is worth to mention that the instant appeal has been filed before this Honourable Tribunal prematurely in utter violation of Section-4 of Service Tribunal Act 1974.

GROUND:

- A. Incorrect the impugned notification dated 01.06.2021 is in accordance with law rules and principle of natural justice.
- B. Incorrect the impugned notification has been issued in accordance with law and transfer and posting policy of the Provincial Government policy and in accordance with Section-10. As per Section-10 of the Khyber Pakhtunkhwa Civil Servant Act 1973 a Civil Servant may be posted anywhere even outside of his cadre where the Competent Authority wants to utilize his services.


- C. Incorrect the appellant being a member of Provincial cadre post is liable to be posted anywhere by the Competent Authority under law and she is bound to serve where she is posted.
- D. Pertains to record however it is upon the discretion of competent authority to utilize services of a civil servant.
- E. The para is based on mala fide, misleading concocted hence denied. The appellant has been transferred vide a general transfer posting order in accordance with law. No clause of policy has been mentioned by the appellant which has been violated by respondents in fact respondents acted as per law, rules and policy.
- F. Incorrect the appellant has not been penalized he has been transferred which is terms and conditions her service and is not penalty.
- G. Incorrect already replied above
- H. Incorrect the competent authority has been empowered by Section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973 to transfer a civil servant at anytime to any other post even outside his cadre or province provided his terms & conditions of service is not affected. As per dictum, laid down by the apex court, in 2020 PLCCS 1207 Supreme Court,

PLACE of service ...Prerogatives of employer...Government servant was required to serve any where his employer wanted him to serve; it was not a choice or prerogative of the employee to claim a right to serve at a place that he chose to serve.

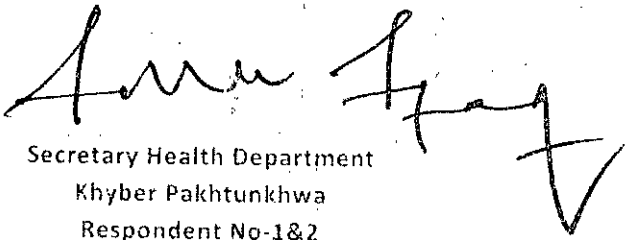
Similarly in another judgment reported as 2004 PLC (CS) 705 S.C. It has been laid down that civil servant could not claim posting at a particular station or at the place of his choice. Competent authority, under S 9 of the Punjab civil servant Act 1974, was empowered to transfer any civil servant from one place to other at anytime in exigencies of service or on administrative ground.

- I. Legal however the respondents also seek permission of this honorable tribunal to adduce other grounds during final hearing.

It is therefore requested that the appeal of the appellant may kindly be dismissed with cost.


Director General Health Services
Khyber Pakhtunkhwa
Respondent No-3

(DR - Lit)


Secretary Health Department
Khyber Pakhtunkhwa
Respondent No-1&2