

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 1748/2022

Zia ullah -----Appellant

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary and
others ----- Respondent

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(Signature) 30/5/23
Section officer (Lit-II)
Govt: of Khyber Pakhtunkhwa
Health Department
Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

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

SERVICE APPEAL NO. 1748 /2022

Zia Ullah Drug Inspector (BPS-17), Health Department Khyber Pakhtunkhwa
under Transfer to District
Bannu.....Appellant

Versus

- 1. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar
- 2. The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar
- 3. The Director General Drug Control & Pharmacy Services, Khyber
Pakhtunkhwa, Peshawar

.....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 Appeal is badly time barred.
- 6. That the Honourable Tribunal has no Jurisdiction to adjudicate upon the matter.
- 7. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
- 8. That the Appellant has filed the instant Appeal with mala-fide intention as Disciplinary proceedings against the appellant on account of Inefficacy & Misconduct are under process therefore appellant in order to pressurize the respondents filed similar nature case before various forums (Annexure-1)

9. That Honourable PHC Peshawar in WP No. 3508/P/2022 whereas this honourable Tribunal vide order dated 31.10.2022 in execution petition No. 170/2022, No. 172/2022, 236/2022, 533/2022, 534/2022, 535/2022, 536/2022 in Service Appeals Titled Mr. Manzoor Ahmad vs. Govt along with others of judgment dated 06.12.2021 hence the instant appeal is hit by principle of Res-judicata.
10. The impugned transfer Notification has been issued in accordance with Section 10 of the Civil Servant Act 1973 as prerogatives of the competent authority.

ON FACTS:

1. Correct to the extent that the appellant & others had filed appeal bearing No. 16579/2020 before the Service Tribunal and the appeals were decided on 06/12/2021. The appellant filed another petition to the Peshawar High Court Peshawar vide WP No. vide WP No. 3508/P/2022 (**Judgment PHC Peshawar is placed at Annexure-2**) as well as vide order 31.10.2022 in execution petition No. 170/2022 of judgment dated 06.12.2021 in Service Appeals No. 172/2022, 236/2022, 533/2022, 534/2022, 535/2022, 536/2022 which were decided in the favour of respondents. (**Annexure-3**).
2. **False, incorrect & Misleading Statement.**

The appellant along with others had filed different appeals against their transfer/posting Notification vide appeal No. 16578/2020 & 16579/2020 & others before the Service Tribunal which were decided on 06.12.2021. The Appellant along with others filed execution petitions No. 170/2022 No. 172/2022, 236/2022, 533/2022, 534/2022, 535/2022, 536/2022 of dated 06.12.2021 in Service appeal. Titled Mr. Manzoor Ahmad vs. Govt along with others The decision of the execution petitions were announced on 31.10.2022 wherein the appellant Drug Inspector Zia Ullah was posted as

a drug inspector as per spirit of ibid judgment dated 06-12-2021 (Annexure-4).

The operative clause of the order of execution petition dated 31st October 2022 is as under;

"In view above state of affairs when we see the notification dated 22.08.2022 issued in compliance of the judgement it appears that judgement has been implemented in its letter & spirit and we cannot allow any body to exploit the terms by making a self-beneficial interpretation and to get any relief which was not granted in the judgement. Therefore the contentions of the petitioner/s that they could not be transferred from the station they were previously posted, is not well founded."

3. Correct to the extent of the order dated 06.12.21 however the judgment of the Service Tribunal is implemented in its true letter & spirit as explained in para 2 above.

4. Already explained in para 1 & 2.

5. **Incorrect, False & Misleading Statement.** The Respondents had implemented the judgment of the Service Tribunal in appeal.No. 16579/2020 & Others in its true letters & spirit and the appellant was posted as a drug inspector at district bannu. In fact the appellant & some other drug inspectors want to post them on post of their choice which is not permissible under the law.

6. **Incorrect, False & misleading Statement.** The appellant was transferred and posted to the post of the Drug Inspector District Bannu as per spirit of the WP No. 3508/P/2022 dated 28.09.2022 & in execution of the judgment of this honorable tribunal dated 06-12-2021. The appellant is unwilling worker and having poor performance in term of implementation of the Drug

h

laws/Rules. The respondent No 3, the controlling office of the appellant/s issued explanation letters to the Drug inspector/s for not obeying the order of the competent authority and commit disobedience after the lapse of 2 months and 08 days. The noncompliance of the order to take the charge of the Drug inspector at district bannu will hamper the activities of the drugs/medicines in the market as well as in the Public Hospitals which will create unrest in District bannu.

7. Incorrect. The appellant is not an aggrieved person as+ no vested right of the petitioner has been violated by the replying respondents however reply on the grounds is as under.

Grounds:

A. **Incorrect.** The impugned Notification is based on law Rules principles of Natural Justice and in accordance with dictum laid by Supreme Court of Pakistan in various judgment. As per 2020 PLCCS 1207 Supreme Court,

Place of service is the Prerogatives of employer. Government servant was required to serve anywhere 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 any time in exigencies of service or on administrative ground.

B. **Incorrect.** There is no mala fide on the part of respondents towards the appellant. The appellant issued the transfer notification in accordance with law in the public interest and in implementation of the judgment of the honorable Service Tribunal.

K/

- C. Explained Para-A.
- D. Explained Para-A.
- E. **Incorrect.** The appellant has been posted as per compliance of the Judgement of the Service Tribunal in appeal No. 16579/2020 & Others within his cadre as a drug inspector.
- F. Incorrect. Already explained in Para A.
- G. Incorrect. Already replied in Paras above.
- H. Para No H of the grounds has referred to case law without giving any correlation with the instant case. The Apex Court has held in 2010 PLC CS Supreme Court 924 (b) "Every case is to be decided on its own peculiar circumstances and facts" hence the referred judgment in the para is not applicable to the instant case.
- I. Incorrect. Already replied above.
- J. Incorrect. The appellant has been treated as per law, Rules and in accordance with the Constitution of the Islamic Republic of Pakistan 1973.
- K. The implementation of the Apex court judgement has been validly implemented and the transfer of appellant was in accordance to **Rule (1) & 2 read with schedule-III** of the Khyber Pakhtunkhwa Rule of Business 1985 wherein the Secretary Health is the competent authority for the posting transfer of BS-17 & 18.
- L. Incorrect the case law referred in the para has no relevancy with the instant case. The Apex Court has held in 2010 PLC CS Supreme Court 924 (b) "Every case is to be decided on its own

peculiar circumstances and facts" hence the referred judgment in the para is not applicable to the instant case.

M. Already explained in the preceding paras.

N. No comments however, the replying respondents seek permission of this honorable Court to adduce other grounds during final hearing of the case.

Keeping in view the above detailed para wise comments, it is therefore, requested that the instant service appeal may please be dismissed with heavy cost.

Secretary Health Govt. of Khyber
Pakhtunkhwa

Respondent No-01&02

19/05/2023

Director General Drug Control &
Pharmacy Services, Khyber
Pakhtunkhwa

Respondent No-3



**DIRECTORATE GENERAL DRUG CONTROL
PHARMACY SERVICES**

Annex-1

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Annex I

All correspondence should be addressed to the Director General Drug Control & Pharmacy Services
DG Phone: 222824 No. 1231 /DGDCPS/2022
Email: directoratedcps@gmail.com Dated the Peshawar: 08 / 12 /2022

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Health Department Peshawar.

Attention: **SECTION OFFICER-III**

SUBJECT: **DISCIPLINARY ACTION AGAINST MR. ZIA ULLAH PROVINCIAL DRUG INSPECTOR (BS-17) BANNU, DIRECTORATE GENERAL DRUG CONTROL AND PHARMACY SERVICES, KHYBER PAKHTUNKHWA, PESHAWAR.**

Dear Sir,

Kindly refer to the letter No. SOH-III/7-262/2022(Drug Inspector), dated 22nd August, 2022 on the subject cited above.

MR. ZIA ULLAH PROVINCIAL DRUG INSPECTOR (BS-17) was transferred vide No. SOH-III/7-262/2022(Drug Inspector), dated 22ND August, 2022 by the Health Department in compliance to the decision/order of Khyber Pakhtunkhwa Service Tribunal in service appeal No. 16578/2020 to the post of Provincial Drug Inspector Bannu (**Annexure-I**).

The Directorate General DC & PS issued vide Letter No/Endorsement No. 917-/DGDCPS/2022 dated 25-08-2022 to Zia Ullah Provincial Drug Inspector Bannu for submission of his Arrival/Departure report (**Annexure-II**) but he fails do so.

Subsequently, after lapse of two months and eight days, an explanation letter vide letter No. 1042-47/DGDCPS dated 31-10-2022 for his not obeying the order of the competent authority which tantamount his disobedience in taking the charge of Provincial Drug Inspector Bannu (**Annexure-III**) but he again failed to do in stipulated time period.

Furthermore, Vide letter No. 1207-10/DGDCPS/2022 dated 6th December, 2022 (**Annexure-IV**) was served to the District Heads/incharge Senior Drug Inspector for current status of the concerned Drug inspector.

This act of not obeying the orders of the competent authority tantamount disobedience of the Mr. Zia Ullah in respect of Assuming Charge of Provincial Drug Inspector Bannu.

In view of the above, it is proposed that disciplinary proceeding under E&D Rules 2011 may kindly be initiated against Mr. Zia Ullah Provincial Drug Inspector Bannu.

DIRECTOR GENERAL,
Drug Control & Pharmacy Services,
Khyber Pakhtunkhwa Peshawar.

Copy Forwarded for information to: -

1. PS to Minister Health, Government of Khyber Pakhtunkhwa.
2. PA to Section Officer-III, Health Department Peshawar.



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar, the 22nd August, 2022

NOTIFICATION

SOH-III/7-262/2022 (Drug Inspector): In compliance of the Services Tribunal, Peshawar judgment dated 06-12-2021 in Service Appeal no 16570/2020, and consequent upon the approval of competent authority, the posting/transfer orders of the following Chief Drug Inspector/Drug Inspectors/Drug Analysts hereby made with immediate effect.

S. No	Name of Officers & Designation	From	To	Remarks
1	Syed Muhammad Asad Hattul Chief Drug Inspector BS-19	Chief Pharmacist (BS-19), RDA, Kohat.	Chief Drug Inspector (BS-19), District D.I Khan.	Against the vacant post.
2	Tayyab Abbass Chief Drug Inspector BS-19	Chief Pharmacist (BS-19), Services Hospital, Peshawar.	Chief Drug Inspector (BS-19), District Abbottabad.	Against the vacant post.
3	Amin ul Haq Senior Drug Inspector BS-18	Already under report to DG, DC&PS on account of disciplinary proceeding under E&D Rules, 2011.		
4	Arif Hussain Analyst BS-18	Senior Pharmacist (BS-18), Services Hospital, Peshawar.	Drug Analyst (BS-18), Drug Testing Laboratory (DTL), Peshawar.	Against the vacant post.
5	Manzoor Ahmad Drug Inspector BS-17	Drug Inspector (BS-17), District Peshawar.	Drug Inspector (BS-17), District Dir Lower.	Against the vacant post.
6	Zia Ullah Drug Inspector BS-17	Drug Inspector (BS-17), District Dir Lower.	Drug Inspector (BS-17), District Bannu.	Against the vacant post.
7	Muhammad Shoaib Khan Drug Inspector BS-17	Already under report to DG, DC&PS on account of disciplinary proceeding under E&D Rules, 2011.		
8	Shazada Mustafa Anwar Drug Inspector BS-17	Waiting for posting at Directorate of Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.	Drug Inspector (BS-17), District Karak.	Against the vacant post.

-5/-

Secretary to Govt. of Khyber Pakhtunkhwa
Health Department

Enclst of even No and Date.

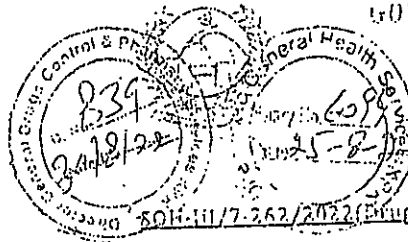
Copy forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General, Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.
3. Registrar, Khyber Pakhtunkhwa, Service Tribunal Peshawar.
4. Medical Superintendent, DHQ Hospital, concerned.
5. Medical Superintendent, Services Hospital, Peshawar.
6. District Health Officer concerned.
7. In-charge, Drug Testing Laboratory, Peshawar.
8. District Accounts Officer, concerned.

Copy Forwarded for information to :-

1. PS to Minister Health, Government of Khyber Pakhtunkhwa.

Dated Peshawar, the 22nd August, 2022



CERTIFICATION

5014-11/7-262/2022 (Drug Inspector): In compliance of the Services Tribunal Peshawar judgment dated 06-12-2021 in Service Appeal no 16576/2020, and consequent upon the approval of competent authority, the posting/transfer orders of the following Chief Drug Inspector/Drug Inspectors/Drug Analyst is hereby made with immediate effect.

S. No	Name of Officers & Designation	From	To	Remarks
1.	Syed Muhammad Asad Hallmi Chief Drug Inspector BS-19.	Chief Pharmacist (BS-19), KDA, Kohat.	Chief Drug Inspector (BS-19), District D.I Khan	Against the vacant post.
2.	Tayyab Abbass Chief Drug Inspector BS-19	Chief Pharmacist (BS-19), Services Hospital, Peshawar.	Chief Drug Inspector (BS-19), District Abbottabad.	Against the vacant post.
3.	Amin ul Maq Senior Drug Inspector BS-12	Already under report to DG, DC&PS on account of disciplinary proceeding under E&D Rules, 2011.		
4.	Arif Hussain Analyst BS-18	Senior Pharmacist (BS-18), Services Hospital, Peshawar.	Drug Analyst (BS-18), Drug Testing Laboratory (DTL), Peshawar.	Against the vacant post.
5.	Manzoor Ahmad Drug Inspector BS-17	Drug Inspector (BS-17), District Peshawar.	Drug Inspector (BS-17), District Dir Lower.	Against the vacant post.
6.	Zia Ullah Drug Inspector BS-17	Drug Inspector (BS-17), District Dir Lower.	Drug Inspector (BS-17), District Bannu.	Against the vacant post.
7.	Muhammad Shoab Khan Drug Inspector BS-17	Already under report to DG, DC&PS on account of disciplinary proceeding under E&D Rules, 2011.		
8.	Shazada Mustafa Anwar Drug Inspector BS-17	Waiting for posting at Directorate of Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.	Drug Inspector (BS-17), District Karak.	Against the vacant post.

Secretary to Govt. of Khyber Pakhtunkhwa
Health Department

**OFFICE OF THE DIRECTORATE GENERAL DRUG CONTROL & PHARMACY SERVICES
KHYBER PAKHTUNKHWA PESHAWAR**

No. 917 /DGDCPS/2022

Dated: 25 / 8 / 2022

Copy forwarded to:

1. Mr. Syed Muhammad Asad Halimi Chief Drug Inspector (BPS-19).
2. Mr. Tayyab Abbas Chief Drug Inspector (BPS-19).
3. Mr. Arif Hussain Analyst (BPS-18).
4. Mr. Manzoor Ahmad Drug Inspector (BPS-17).
5. Mr. Zia Ullah Drug Inspector (BPS-17).
6. Mr. Shehzada Mustafa Anwar Drug Inspector (BPS-17).
7. Accountant General Khyber Pakhtunkhwa Peshawar.
8. District Account officer Kohat.
9. District Account Officer Lower Dir/ Bannu.
10. District Account officer Karak.

For Information and necessary action Please.

The above officers are directed to submit Arrival / Departure to Drug Directorate for record purpose.

DEPUTY DIRECTOR
Drug Control & Pharmacy Service
Khyber Pakhtunkhwa Peshawar.

Copy Forwarded for information to: -

- 1 PS to Minister Health, Government of Khyber Pakhtunkhwa.



DIRECTORATE GENERAL DRUG CONTROL
& PHARMACY SERVICES

Annex 10 (14)
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-161

All communication should be addressed to the Director General Drug Control & Pharmacy Services
DG Phone: +92-91-9222824

No. 1042-47 /DGDCPS/2022

Email: directoratedcps@gmail.com

Dated the Peshawar: 31 / 10 /2022

To

1. Mr. Syed Muhammad Asad Halimi
Chief Drug Inspector (BPS-19)
Dara Ismail Khan.
2. Mr. Tayyab Abbas
Chief Drug Inspector (BPS-19)
Abbottabad.
3. Mr. Manzoor Ahmad
Drug Inspector (BPS-17)
Dir Lower.
4. Mr. Zia Ullah
Drug Inspector (BPS-17)
Bannu.


Subject: EXPLANATION

Reference Government of Khyber Pakhtunkhwa Health Department Notification No. SOH-III/ 7-262/2022(Drug Inspector) dated 22nd August, 2022 and the Directorate Endorsement No.917/DG, DCPS/ 2022 dated 25th August, 2022 (copy enclosed).

Whereas the Competent authority issued your transfer order referred above in the compliance of Services Tribunal Peshawar judgement dated 06-12-2021 in service appeal No. 16578/2020.

Whereas you are not obey the order of the competent authority and your arrival/departure report is not reached to this Directorate after the lapse of 68 days (months & 8 days) time Period. It tantamount your disobedience in this regard if not taking compliance of order of the Government.

You are hereby called upon to explain that why disciplinary proceedings under E&D Rules 2011 are not initiated against you for not taking the charge stipulated period after issuance of the notification No. SOH-III/7-262/2022(Drug Inspector) dated 22nd August, 2022 and Directorate endorsement No.917/DG, DCPS/ 2022 dated 25th August, 2022.


DIRECTOR GENERAL,
Drug Control & Pharmacy Services
Khyber Pakhtunkhwa Peshawar.

Cc:

1. District Account Officer, Peshawar, Kohat D.I.Khan, Abbottabad, Dir Lower Bannu.
2. Section Officer (H-III) Govt, of KP Peshawar Health Department with reference Health Department letter No. SOH-III/7-262/2022 (Drug Inspector) dated 22nd August, 2022.

Copy Forwarded for information to: -

1. PS to Minister Health, Government of Khyber Pakhtunkhwa.

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FEDERAL BUREAU OF INVESTIGATION
DEPARTMENT OF JUSTICE



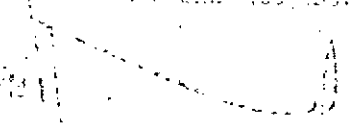
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MEMORANDUM FOR THE DIRECTOR
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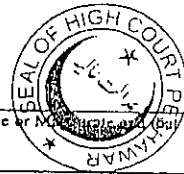
Annex-2

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Annex-2

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PESHAWAR HIGH COURT, PESHAWAR.
FORM "A"
FORM OF ORDER SHEET.



Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of judge or Member of Bench or of parties or counsel where necessary
1	2	3
	28.09.2022.	<p><u>W.P.No.3508-P/2022.</u></p> <p><u>Present:-</u> Mr.Noor Muhammad Khattak, Advocate for the petitioners.</p> <p>====</p> <p><u>S M ATTIQUE SHAH:-</u> Through instant writ petition, petitioners have approached to this court with the following prayer:-</p> <p>"1. An appropriate writ may kindly be issued to declare the impugned notification vide dated 22.08.2022 to the extent of the term "Competent Authority", as ineffective upon the rights of petitioners, without mandate of law, illegal, unlawful, unconstitutional, impracticable, invalid, void ab initio and ultra vires in light of the judgments cited as 2022 SCMR 439 narrated under the roof of grounds.</p> <p>2. Further, a writ of mandamus may also be kindly issued directing the respondents No.1, 2, 3, (Provincial Government) defined under Article 129 of the Constitution of Islamic Republic of Pakistan to act strictly in accordance with law while communicating the respondent No.05 to keep him bound for notifying/publishing the orders/directions contained in the judgment cited as 2022 SCMR 439 under proper authority in the official Gazette under Section 20-A of General Clauses Act to take a legal effect. "</p> <p>2. In essence, the petitioners are aggrieved from notification No.SOH-III/7-262/2022(Drug Inspector), issued by respondent No.4 being in violation of the judgment of the august Apex</p>

ATTESTED
EXAMINER
Peshawar High Court

(23)

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Court rendered in *Province of Sindh and others Vs. Shahzad Hussain Talpur*, reported as (2022 SCMR 439).

3. Heard. Record perused.
4. Perusal of the ibid notification would reflect that the said notification has been issued pursuant to the judgment of the Khyber Pakhtunkhwa Services Tribunal dated 06.12.2021 in Service Appeal No.16578/2020. For ready reference, the said notification is reproduced below:-

NOTIFICATION

SOH-III/7-262/2022(Drug Inspector) : In compliance of the Services Tribunal, Peshawar judgment dated 06.12.2021 in Service Appeal no. 16578/2020, and consequent upon the approval of competent authority, the posting/transfer orders of the following Chief Drug Inspector/Drug Inspectors/Drug Analyst is hereby made with immediate effect.

S. No.	Name of Officers & Designation	From	To	Remarks
1.	Syed Muhammad Asad Halimi Chief Drug Inspector BS-19	Chief Pharmacist (BP-19), KDA, Kohat	Chief Drug Inspector (BS-19), District D.I. Khan	Against the vacant post
2.	Tayyab Abbas Chief Drug Inspector BS-19	Chief Pharmacist (BS-19), Services Hospital, Peshawar	Chief Drug Inspector (BS-19), District Abbottabad	Against the vacant post
3.	Anis ul Haq Senior Drug Inspector (BS-18)	Already under report	to DG, DC&PS on account of Disciplinary proceeding under E&D Rules, 2011	
4.	Adil Hussain Analyst BS-18	Senior Pharmacist (BS-18), Services Hospital, Peshawar	Drug Analyst (BS-18), Drug Testing Laboratory (DTL), Peshawar	Against the vacant post
5.	Manzoor Ahmad Drug Inspector BS-17	Drug Inspector (BS-17) District Peshawar	Drug Inspector (BS-17) District Dir Lower	Against the vacant post
6.	Zia Ullah Drug Inspector BS-17	Drug Inspector (BS-17) District Dir Lower	Drug Inspector (BS-17) District Bannu	Against the vacant post
7.	Muhammad Shoab Khan Drug Inspector BS-17	Already under report	to DG, DC&PS on account of Disciplinary proceeding under E&D Rules, 2011	
8.	Shahzade Mustafa Anwar Drug Inspector BS-17	Waiting for posting at Directorate of Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar	Drug Inspector (BS-17) District Karak	Against the vacant post

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ATTESTED
EXAMINER
Peshawar High Court

Secretary to Govt. of Khyber
Pakhtunkhwa Health Department.

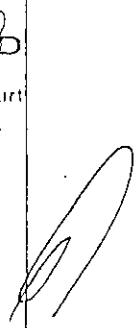
Ibid notification clearly reflects that the same is based upon the judgment of the Service Tribunal dated 06.12.2021 passed in Service Appeal No.16578/2020 of the petitioners. In fact the petitioners through instant writ petition under the guise of the ibid judgment of the august Apex Court, seek setting aside of the said notification being violative of the ibid judgment of the august Apex Court.

The matter of the impugned notification revolves around the posting/ transfers of the petitioners which squarely falls within the terms and; condition of the service of the petitioners provided by Chapter II of the Civil Servants Act, 1973, which are indeed amenable to the jurisdiction of the Khyber Pakhtunkhwa Service Tribunal provided by section 4 of the Service Tribunal Act, 1974. The Jurisdiction of this court in such matter is explicitly barred under the provisions of Article 212 (2) of the Constitution. *Miss Rukhsana Ijaz Vs. Secretary, Education, Punjab & others (1997 SCMR 167), Ayyaz Anjum Vs. Govt. of Punjab, Housing & Physical Planning Department through Secretary and others (1997 SCMR 169), Rafique Ahmad Chaudhry Vs. Ahmad Nawaz Malik & others (1997 SCMR 170), Secretary Education NWFP, Peshawar and 2 others Vs.*

ATTESTED
EXAMINER
Peshawar High Court

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<p>ATTESTED EXAMINER, Peshawar High Court</p> 	<p><i>Mustamir Khan & others (2005 SCMR 17) and Peer Muhammad Vs. Govt: of Baluchistan through Chief Secretary & others (2007 SCMR 54).</i></p> <p>5. The ibid view of the august Apex Court has further been affirmed in recent judgment rendered by the august Apex Court in <i>Chief Secretary, Govt: of Punjab Lahore and others Vs. M/s Shamim Usman's</i> reported in (2021 SCMR 1390), the relevant portion of the ibid judgment is reproduced below:-</p> <p><i>"The High Court had no jurisdiction to entertain any proceedings in respect of terms and conditions of service of a civil servant which could be adjudicated upon by the Service Tribunal. The High Court as a constitutional court should always be mindful of the jurisdictional exclusion contained under Article 212 of the Constitution. Any transgression of such constitutional limitation would render the order of the High Court void and illegal."</i></p> <p>Coming to the contention of the learned counsel for the petitioners that the impugned notification is liable to be set aside being in violation of the judgment of the august Apex Court reported in the case of <i>Province of Sindh Vs. Shehzad Hussain Talpur (2022 SCMR 439)</i>, the relevant portion of the ibid judgment is reproduced below:-</p> <p><i>"15. Whenever the Constitution grants power to an individual it mentions the person's position/designation, for instance the President, the Prime Minister, the Chief Justice, the Governor, et cetera. The same also holds true with regard to Federal and provincial laws,</i></p>
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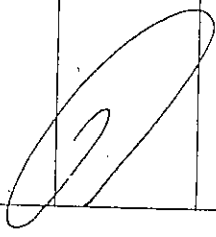
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including the cited laws and to the governments' rules of business. It is an individual who holds a particular position and by virtue of such position exercises power. Merely mentioning the competent authority without disclosing the designation and name of the person who is supposed to be the competent authority is utterly meaningless. Non-disclosure serves to obfuscate and enables illegalities to be committed. In this case the Secretary was not authorized to appoint the respondent but managed to do so by donning the competent authority cloak. We are not at all persuaded by the contention of the respondent's counsel that the respondent should not be penalized for the illegalities committed by the department. The respondent was illegally selected and appointed by the Secretary and his selection/appointment is not sustainable nor is it such a minor transgression that it could be condoned.

16. We may also observe that the use of vague and imprecise language, such as, the competent authority, in legal matters is an anathema and oftentimes results in avoidable disputes, which unnecessarily consume time and public resources. The use of accurate and precise language helps avoid disputes. Using the term the competent authority but without disclosing such person's designation and name is against public policy and also against the public interest since it facilitates illegalities to be committed and protects those committing them. Every functionary of the government, and everyone else paid out of the public exchequer, serves the people of Pakistan; positions of trust cannot be misused to appoint one's own or to illegally exercise power.

17. For the reasons mentioned above, this petition is converted into an appeal and allowed and the impugned judgment of the Tribunal is set aside. We are also convinced that there is a need to put a stop to the use of the illusive and elusive term - the competent authority without disclosure of the competent authority's designation and name. Therefore, the governments of Sindh (petitioner No. 1), Balochistan, Khyber Pakhtunkhwa, Punjab, the

ATTESTED
EXAMINER
Peshawar High Court



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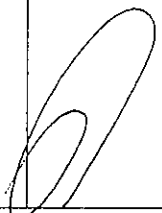
-38-

17

Government of Pakistan, Registrars of the Supreme Court and all High Courts, and through the Registrars of the High Courts all District and Sessions courts, are required to issue requisite orders/directions that they and their respective functionaries, semi-government and statutory organizations whenever issuing notifications, orders, office memorandums, instructions, letters and other communications must disclose the designation and the name of the person issuing the same to ensure that it is by one who is legally authorized to do so, and which will ensure that such person remains accountable. Copies of this judgment be sent to the Secretary, Establishment Division, Government of Pakistan, to the Chief Secretaries of the provinces, to the head of the Islamabad Capital Territory, Registrars of the Supreme Court and all High Courts who are directed to issue requisite orders/ directions and to publish the same in their respective gazettes or ask the concerned government to do so. Compliance report be submitted for our consideration in chamber by or before 1 March 2022."

Pursuant to the above judgment of the august Apex Court the worthy Chief Secretary, Government of Khyber Pakhtunkhwa has issued a notification No.SO(Lit-1)E&AD/1-1/2020 dated 14.02.2022 vide which compliance of the ibid judgment was sought in letter and spirit in future. However, due to the reasons best known to the respondents at the time of issuance of the impugned notification the ibid judgment of the august Apex Court was not complied with in letter and; spirit.

Under the provisions of Article 189 of the Constitution the decisions of the Supreme Court are binding on all other courts. For ready



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EXAMINER
Peshawar High Court

reference the same is reproduced below:-

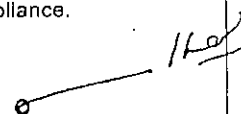

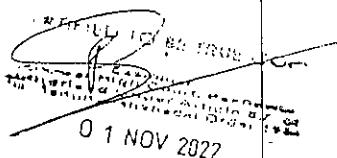
"Any decision of the Supreme Court shall, to the extent that it decides a question of law which is based upon or enunciates a principle of law, is binding on all other courts in Pakistan."

Given that the decisions of the Supreme Court are binding upon all the stakeholders and; as earlier discussed the Government of Khyber Pakhtunkhwa has already issued a notification qua the compliance of the ibid judgment of the august Apex Court in letter and; spirit, however, mere non-compliance of the ibid judgment of the august Apex Court would not confer jurisdiction upon this court in a matter which is squarely arising out of the terms and; conditions of the service of a civil servant. Undeniably the decisions of the august Apex Court are binding on each and; every organ of the state by virtue of the provisions of Articles 189 and; 190 of the Constitution. It is well settled that a question of law, pronounced or declared by august Apex Court in terms of Article 189 of the Constitution has binding effect on all functionaries both executive and; the judicial authorities. The superior courts, tribunals have obligation to implement and; adhere to the judgment of the Supreme Court rendered. *Moulvi Abdul Qadir & others Vs. Moulvi Abdul Wassay and others (2010 SCMR 1877).*

6. In view thereof the worthy Service

ATTESTED
EXAMINER
Peshawar High Court

(2)
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		<p>Tribunal Khyber Pakhtunkhwa is very much clothed with the jurisdiction and; authority to implement the ibid decision of the august Apex Court in terms of Articles 189 and; 190 of the Constitution and; petitioners can validly agitate the same before the worthy Service Tribunal if they so wish and; desire.</p> <p>7. For what has been discussed above, this petition, being bereft of any merit, is hereby dismissed in <i>limine</i>. However, respondents are directed to implement and; enforce the ibid judgment of august Apex Court in its letter and; spirit. Copy of instant judgment be sent to the worthy Chief Secretary for compliance.</p> <p style="text-align: right;">  JUDGE  JUDGE </p> <p style="text-align: center;"> <u>Announced.</u> Dt. 28.09.2022. </p> <p style="text-align: right;">  01 NOV 2022 </p>
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No. 57026
Date of Presentation of Application 1-11-22
No of Pages 17-p
Applying for 68
Total 1-11-22
Date of Preparation of Copy 1-11-22
Date of Delivery of Copy 1-11-22
68

(2-3-2009) Form 1 (Amended)

Annex-24

Page 20

Annex 3

31st Oct, 2022

1. Learned for the petitioner present. Mr. Kabirullah Khan, Addl: AG alongwith Mr. Sufiullah, Focal Person for respondents present.

02. This single order shall also dispose of executions petitions No. 171/2022 titled "Syed Mohammad Asad Halimi-vs-Health Department", No. 172/2022 titled "Muhammad Arif Hussain-vs- Health Department", No. 234/2022 titled "Tayyab Abbas-vs-Health Department", No. 533/2022 titled "Zia Ullah-vs-Health Department", No. 534/2022 titled "Manzoor Ahmad-vs-Health Department", No. 535/2022 titled " Shoaib Khan-vs-Health Department", No. 536/2022 titled "Gohar Ali-vs-Health Department" as all are regarding execution of the judgment dated 06.12.2021, passed in the appeals of the petitioners in all the petitions. The relief granted in the judgment was as under:-

"For what has gone above, all the appeals with their respective prayers are accepted as prayed for. Consequently, the impugned order is set aside and respondents are directed not to transfer the appellants from the post of Drug Inspector or Drug Analyst as the case may be. Parties are left to bear their own costs. File be consigned to record room after completion".

3. In the instant matter the prayer of the petitioner Amin Ul Haq was as under:-

"That on acceptance of this appeal the impugned notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from the post of Drug Inspector (BS-17), District Peshawar. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant".

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

4. Similarly in the appeal of the petitioner in execution petition No. 171/2022 titled "Syed Mohammad Asad Halimi-vs-Health Department" his prayer was as under:-

"On acceptance of this appeal the respondents may kindly be directed to pass an order in favor of the appellant in the following terms:-

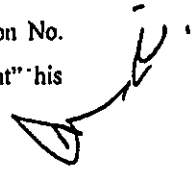

- i. Declare that the impugned notification No. SOH-III/7-262/2020 dated 30th April, 2020 is void ab initio. Therefore, the respondents may kindly be directed to withdraw the impugned notification.
- ii. The posting/transfer be done in a rational manner as per the prevailing laws, the appellant is redressed & to get his constitutional rights through this Hon'ble Service Tribunal.
- iii. That the appellant order of illegal ex-cadre transfer/posting may kindly be revoked and continue his services in his own cadre i.e. Drug Inspector.
- iv. Grant any other relief which is deemed appropriate by this Hon'ble Service Tribunal in the circumstances of the case."

5. In appeal of the petitioner in execution petition No. 172/2022 titled "Muhammad Arif Hussain-vs-Health Department" his prayer was as under:-

"that on acceptance of this appeal the impugned notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and private respondent No.5 and the respondents may kindly be directed not to transfer the appellant from the post of Drug Analyst (BS-18), Drug testing laboratory, Peshawar. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant".

6. *In appeal of the petitioner in execution petition No. 236/2022 titled "Tayyab Abbas-vs-Health Department" his prayer was as under:-

"On acceptance of this appeal the respondents may kindly be directed to pass an order in favor of the appellant in the following terms:-


ATTESTED

Attested Officer
Khyber Pakhtunkhwa Service Tribunal
Peshawar

4. Similarly in the appeal of the petitioner in execution petition No. 171/2022 titled "Syed Mohammad Asad Halimi-vs-Health Department" his prayer was as under:-

"On acceptance of this appeal the respondents may kindly be directed to pass an order in favor of the appellant in the following terms:-

- i. Declare that the impugned notification No. SOH-III/7-262/2020 dated 30th April, 2020 is void ab initio. Therefore, the respondents may kindly be directed to withdraw the impugned notification.
- ii. The posting/transfer be done in a rational manner as per the prevailing laws, the appellant is redressed & to get his constitutional rights through this Hon'ble Service Tribunal.
- iii. That the appellant order of illegal ex-cadre transfer/posting may kindly revoked and continue his services in his own cadre i.e. Drug Inspector.
- iv. Grant any other relief which is deemed appropriate by this Hon'ble Service Tribunal in the circumstances of the case."

5. In appeal of the petitioner in execution petition No. 172/2022 titled "Muhammad Arif Hussain-vs-Health Department" his prayer was as under:-

"that on acceptance of this appeal the impugned notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and private respondent No.5 and the respondents may kindly be directed not to transfer the appellant from the post of Drug Analyst (BS-18), Drug testing laboratory, Peshawar. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant".

6. In appeal of the petitioner in execution petition No. 236/2022 titled "Tayyab Abbas-vs-Health Department" his prayer was as under:-

"On acceptance of this appeal the respondents may kindly be directed to pass an order in favor of the appellant in the following terms:-

ATTESTED

Secretary
Peshawar

Peshawar. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant".

9. In appeal of the petitioner in execution petition No. 535/2022 titled "Shoab Khan-vs-Health Department", his prayer as under:

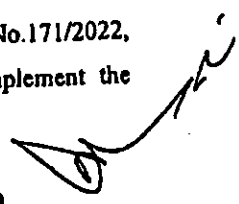
"That on acceptance of this appeal the impugned notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from the post of Drug Inspector (BS-17), District Mardan. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant".

10. In appeal of the petitioner in execution petition No. 536/2022 titled "Gohar Ali-vs-Health Department" his prayed as under:

"That on acceptance of this appeal the impugned notification dated 11.01.2021 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from the post of Drug Inspector (BS-17), District Swat. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant".

11. The prayer in the instant petition is to initiate contempt proceedings and to implement the judgment of this Tribunal while in the connected execution petitions No. 171/2022, 172/2022 and 236/2022, the prayers are to implement the judgment in letter & spirit.

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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12. During the pendency of the above petitions, respondents, in compliance with the judgment dated 06.12.2021, in Service Appeal No.16578/2020, produced a copy of Notification No.SOH-III/7-262/2022(Drug Inspector) dated 22.08.2022, vide which the petitioners were dealt with in the following manner:-

S.No	Name of Officers & Designation	From	To	Remarks
1.	Syed Muhammad Asad Halimi Chief Drug Inspector BS-19	Chief Pharmacist (BS-19), KDA, Kohat	Chief Drug Inspector (BS-19), District D.I. Khan	Against the vacant post
2.	Tayyab Abbas Chief Drug Inspector BS-19	Chief Pharmacist (BS-19) Services Hospital Peshawar	Chief Drug Inspector (BS-19), District Abbottabad	Against the vacant post.
3.	Amin ul Haq Senior Drug Inspector (BS-18)	Already under report to DG, DC&PS on account of disciplinary proceeding under E&D Rules, 2011		
4.	Arif Hussain Analyst (BS-18)	Senior Pharmacist (BS-18), Services Hospital, Peshawar	Drug Analyst (BS-18), Drug Testing Laboratory (DTL), Peshawar.	Against the vacant post.
5.	Manzoor Ahmad, Drug Inspector (BS-17)	Drug Inspector (BS-17), District Peshawar	Drug Inspector (BS-17), District 17, District, Dir Lower.	Against the vacant post
6.	Zia Ullah Drug Inspector BS-17	Drug Inspector (BS-17) District Dir, Lower.	Drug Inspector (BS-17) District Bannu	Against the vacant post
7.	Muhammad Shoaib Khan Drug Inspector (BS-17)	Already under report to DG, DC&PS on account of disciplinary proceedings under E&D Rules, 2011.		
8.	Shazada Mustafa Anwar Drug Inspector BS-17	Waiting for posting at Directorate of Drug Control & Pharmacy	Drug Inspector (BS-17) District Karak	Against the vacant post.

ATTESTED


 CHIEF SECRETARY
 KHYBER PAKHTUNKHWA
 PESHAWAR

		Services, Khyber Pakhtunkhw a. Peshawar		
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13. The above petitions were taken up for decision on 14.09.2022 when the learned counsel for the petitioners informed the Tribunal that he had filed four (4) more execution petitions on 14.09.2022, so it was deemed appropriate that let all the petitions be decided together and, therefore, the above petitions were adjourned for 31.10.2022 for decision of the same.

14. In the newly instituted execution petitions No.533/2022, 534/2022, 535/2022 and 536/2022, the petitioners prayed that the judgment might be implemented in true letter and spirit without wasting the precious time of the Tribunal as well as to avoid unnecessary rounds of litigation. It is, however, urged in paragraph 6 of all the newly filed execution petitions that the respondent/department submitted compliance notification issued on 22.08.2022, which was totally in defiance of the judgment whereas proper compliance of the judgment as desired by the Tribunal was to be made and for which basically the appeals were accepted as prayed for.

15. The main stress of the learned counsel for the petitioners was that as all the appeals with their respective prayers were accepted as prayed for, therefore, the petitioners

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Khyber Pakhtunkhwa Service Tribunal
Peshawar

could not be transferred from the stations they were already posted.

16. It is cardinal principle that while judging the intention of a document, the construction of the document has to be seen and for the purpose not any portion but the whole/entire document has to be seen. Keeping in view the above principle, paragraph 10 of the judgment is worth reproduction, which reads as under:

"10. From the divergent pleadings of parties particularly discussed herein before, the main question wanting determination is, whether vice versa transfer of the holders of the post of Drug Inspector/Analyst and of Pharmacist is reasonably doable?"

17. The rest of the paragraphs of the judgment have answered the above, one and the only formulated question/point for determination in detail and the finding was in negative, which by all means very clearly speaks that the only issue before the Tribunal was whether vice versa transfer of the holders of the post of Drug Inspector/Analyst and of Pharmacist is reasonably doable and that was decided in negative. Thus by no stretch of imagination it could be inferred from the judgment that it also intended not to transfer the petitioners from one station to another. True that all the appeals with their respective prayers were accepted as prayed for but with specific and quite clear resultant consequence of setting aside the impugned order and not transferring the appellants from the post of DRUG INSPECTOR or DRUG

ATTESTED

Khatun Arshad Khaw
Chairman

ANALYST as the case may be. This condition of the order, after acceptance of the appeals, has restricted the relief to the above extent only i.e. the Drug Inspectors should remain posted as Drug Inspectors while Drug Analyst should remain posted as such etc and none of the two or of any other category could be given posting against any other category. Therefore, this Tribunal, while executing the judgment and sitting as executing court, cannot extend the relief by giving that any other meaning or import, especially, to extract the meaning that the petitioners could not be transferred from the stations they are already posted.

18. There is no denying the fact that the executing court cannot go beyond the terms of the decree/order/judgment it stands for and it cannot modify these terms or deviate from them in exercise of its power of execution rather it has to execute/implement the judgment/decreed/order strictly in the terms of the same.

19. In the above state of affairs when we see the notification dated 22.08.2022, issued in compliance of the judgment, it appears that the judgment had been implemented in its letter and spirit and we cannot allow anybody to exploit the terms by making self-beneficial interpretation and to get any relief which was not granted in the judgment. Therefore, the contention of the petitioners that they could not be transferred from the stations they were previously posted, is not well founded.

ATTESTED

Kalim Arshad Khan
Chairman
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

20. It was also argued by the petitioners Amin ul Haq and Muhammad Shoaib that instead of compliance of judgment, the department did not give them any posting because of some disciplinary proceedings. It is in this regards observed that in the appeals of the above two petitioners there is no mention of the disciplinary proceedings nor the same were discussed anywhere in the judgment. Therefore, the Tribunal, in the respective execution petitions of the petitioners, cannot direct the department not to take any disciplinary action against them. Needless to say that the above named two petitioners have every right to separately challenge the disciplinary proceedings, which they might have and if they did not already challenge those. In case they challenge the same now, those would definitely have to be decided subject to all limitations and restrictions and in accordance with law. Copy of this order to be placed on all the connected matters. Consign.

21. Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 31st day of October, 2022.

[Signature]

(Kalim Arshad Khan)
Chairman

Certified to be true copy
[Signature]
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 13/12/22
Number of Words 3620
Copying Fee 42/-
Deposit 42/-
Total 42/-
Date of Receipt of Copy 13/12/22
Date of Delivery of Copy 13/12/22

Given

Annex-15

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Annex-16

-10-

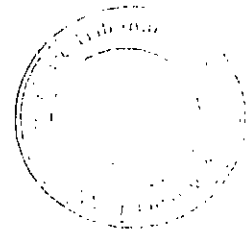
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 16578/2020

Date of Institution ... 11.01.2021

Date of Decision ... 06.12.2021



Mr. Manzoor Ahmad, Drug Inspector (BPS-17) District Peshawar, under Transfer to the post of Pharmacist (BPS-17) DHQ Hospital KDA Kohat. (Appellant)

VERSUS

The Chief Secretary, Khyber Pakhtunkhwa Peshawar and two other. (Respondents)

Present.

Mr. Noor Muhammad, Advocate. For appellant.

Mr. Muhammad Adeel Butt, Addl. Advocate General. For respondents.

Signature

MR. AHMAD SULTAN TAREEN, CHAIRMAN
MR. SALAH-UD-DIN, MEMBER (J)

JUDGMENT

AHMAD SULTAN TAREEN, CHAIRMAN: By the appeal described above in the heading and eight other appeals bearing No. 10301/2020, 10535/2020, 16579/2020, 16580/2020, 923/2021, 1559/2021, 4821/2021, 5187/2021, the appellants have invoked the jurisdiction of this

ATTESTED
Signature
Secretary

-11- (14)

Tribunal to challenge their transfers from the post of Drug Inspectors, District Analyst to the post of Pharmacists with the prayer copied herein below:-

"On acceptance of this appeal the impugned Notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from the post of Drug Inspector (BPS-17), District Peshawar. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant."

2. This single judgment shall stand to dispose of all the 09 appeals in one place as in all of them common questions of facts and law are involved.

3. The factual account as given by the appellant in Memo. of Appeal has been edited for the purpose of this judgment. The appellants in Appeals No. 16578/2020, 10301/2020, 10535/2020, 16579/2020, 16580/2020, 923/2021, 1559/2021, 4821/2021, 5187/2021, are holders of the post of Drug Inspector in pursuance to their appointment made on the said post in due process. Appellant in Appeal No. 16580/2020 is holder of the post of Drug Analyst. The respondent department transferred them from their respective posts held by them in the relevant cadre to the post of Pharmacist. They through their respective departmental appeals have challenged their transfer orders before the departmental appellate authority but they received no response of their departmental appeals. Consequently, they have preferred their service appeals respectively, as

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District Peshawar

enumerated herein above, for judicial review of the impugned transfer orders. The copies of the appointment orders of appellants, last transfer order within cadre and of impugned order followed by the copies of departmental appeals are available on record as annexed with their respective Memorandum of Appeals. The appellants have disputed the transfer as made vide impugned order on the ground that in terms of service rules for them, their appointment, promotion and transfer is governed by notification dated 09.04.2006 of the Government of Khyber Pakhtunkhwa Health Department quite differently from the Pharmacists. The copy of the said notification as annexed with the appeal is also available on file. The appellants amongst other grounds have urged that the impugned notification of their transfer is against law, facts, norms of natural justice and material on record and being not tenable is liable to be set aside to the extent of appellants and private respondents; and that the appellants were not treated by the respondents in accordance with law/rules on the subject in utter violation of Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.

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4. On notice of appeal, the respondents turned up, joined the proceedings and contested the appeal by filing written replies stating therein that the appellants have got no cause of action or locus standi; that the appeals are against the prevailing law and rules and are not maintainable in present form. They with several factual and legal

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objections submitted that the appeals having been filed with mala fide intentions are liable to be dismissed as the impugned transfer notification has been issued in accordance with Section 10 of Khyber Pakhtunkhwa Civil Servants Act, 1973.

5. We have heard the arguments and perused the record.

6. The arguments of the parties revolve around their submission in writing made in Memorandum of appeal and written reply respectively and discussed herein above.

7. Learned counsel for the appellant has argued that the impugned notification dated 06/10/2020 is against the law, facts, norms of natural justice and materials on the record; that the appellant has not been treated by the respondents in accordance with law and rules on the subject and as such the respondents has violated Articles-4 and 25 of the Constitution of Pakistan; that the impugned notification dated 06/10/2020 has been issued by the respondent No. 2 in arbitrary and mala fide manner; hence, not tenable and liable to be set aside; that the impugned notification dated 06/10/2020 is based on discrimination, favoritism and nepotism and is not tenable in the eyes of law; that the impugned notification dated 06/10/2020 has neither been in the best interest of the public service nor in exigencies of service; that through impugned notification, the appellants has been transferred against the wrong cadre/post; that

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-14- (12)

through impugned notification is violation of clause-I and IV of the transfer/posting policy of the Government of Khyber Pakhtunkhwa.

8. Learned AAG on behalf of respondents rebutted the arguments advanced by learned counsel for the appellants and has argued that the appellants are employees of Health Departments selected through Public Service Commissions of Khyber Pakhtunkhwa but their performance is questionable on the basis of their monthly progress reports compiled on the basis of set indicators besides their facing inquiries; that the appellants have already completed their normal tenure of two years and it is the discretion of the competent authority to transfer a civil servant at anytime even outside of the province; that no terms and conditions of their service have been violated; that the impugned notification is based on law, Rules and principles of natural justice; that there is no malafide on the part of respondents towards the appellants; that the application are transferred in accordance with law in the public interest; that it is the fitness of things to post a right person at a right place to achieve good governance and to enhance public service delivery; that the appellants have been transferred within their cadre within the same directorate even if they have been transferred in ex-cadre, the same is also covered under the second proviso of Act; that the notification issued after observance of all relevant rules/policy.

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Khyber Pakhtunkhwa
Government



-15- (14)

9. For any reason but as matter of fact, the posts held by the appellants as Drug Inspector or Drug Analyst, as the case may be, were got vacated by transfer of the appellants and filled by posting of the individuals from the cadre of pharmacists. The appellants in consequence of their transfer have been posted against non-cadre posts. The main defense of the respondents lies in their reply to para-4 of the memorandum of appeal. It has been stated vide para-4 of appeal that by the service rules dated 09/04/2006, the cadre of the appellants is completely different from that of service rule assigned for pharmacists.

The reply of the respondents to said para is copied below:

"The Service Rules does not carry any kind of assignment to a cadre but it specifies the method of recruitment and promotion prospects which is otherwise protected after the merging of cadre. Although transfer is not a punishment but to make such like people punctual, subservient to the public and to overcome the deficiency of efficient of hardworking officer to post right person on right place, the three cadres i.e. hospital pharmacist, drug inspector and analyst having same basic qualification as required for induction through Public Service Commission, were merged to obviate the stagnancy in the cadre. By doing so any drug inspector or an analyst at DTL (who are the cadre of the 04 to 05 persons) can be transferred making them liable to work in hospital under the close

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supervision of hospital administration and vice versa. Those who are transferred from hospital to work in the field as drug inspectors are tremendously working, removing the bottlenecks and highlighting a lot of malpractices previously done by their predecessor who have been sacked from field duty. In other similar cases, the drug inspectors who are sacked are under probe at Provincial Inspection Team and other fora".

10. From the divergent pleadings of parties particularly discussed herein before, the main question wanting determination is, whether vice versa transfer of the holders of the post of Drug Inspector/Analyst and of Pharmacist is reasonably doable?

11. For answer to the formulated questions, prior determination of the legal status of the appellants and the respondents is necessary, as far as their functional duties are concerned. It is pertinent to observe that the Government of Khyber Pakhtunkhwa made the Khyber Pakhtunkhwa Drug Rules, 1982 in exercise of powers conferred by Section 44 of Drug Act, 1976. Rule-2 of ibid rules provides definitions of different words and phrases. The expression "Act" in the said rules means the Drug Act, 1976. Analyst means an Analyst appointed by the Government under the Act. Inspector means an Inspector appointed by the Government under the Act. Board means the Quality Control Board for the Khyber Pakhtunkhwa Province set up under Section 11 (of the Act). Pharmacy

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means a shop, store or place where drugs are compounded or prepared on prescription. Part-II of ibid rules relates to appointment and functions of enforcement staff. Sub-Rule-(1) of Rule-3 in Part-III of the said Rules provides that an Inspector and Analyst shall submit monthly returns in Form-1 & Form-2 respectively, to the Board and a Summary on the overall situation of quality control in the area under their respective jurisdiction and the board shall maintain such information in a manner as to monitor the quality of all the drugs sold and to keep watch on the performance of all manufacturers. Rule-4 provides qualifications etc of Inspector and Analyst. Accordingly, no person shall be appointed as Inspector unless he possess the degree in Pharmacy from University or other institutions recognized for this purpose by the Pharmacy Council of Pakistan and has at least one year experience in the manufacture, sell, testing or analysis of drugs or in Drug Control Administration or in hospital or pharmacy. Sub-Rule-(2) of Rule-4 provides the qualification for appointment as Analyst which is similar to that of the Inspector except experience which in case of Analyst is 05 years. The same rules i.e. of 1982 provide for duties of Inspectors and Analysts. From the given statutory expositions relating to the position of Drug Inspector and Drug Analyst, we have no hesitation to hold that the posts of Drug Inspector/Drug Analyst are statutory positions with authority of appointment vested in the Provincial Government. The Government of



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Khyber Pakhtunkhwa vide notification dated 09/04/2006 bearing No SOH-III/10-04/05 issued in pursuance to the provisions contained in sub-rule-(2) of Rule-3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, laid down the method of recruitment, qualification and other conditions of service applicable to the posts specified in column-2 of the appendix. The qualification of Inspector in the appendix is similar to that of qualification provided under Sub-Rule-(1) of Rule-4 of Khyber Pakhtunkhwa Drug Rule, 1982. According to method of recruitment prescribed in column-5 of the appendix, the appointment to the post of Drug Inspector is to be made by initial recruitment while to the post of Chief Drug Inspector and Divisional Drug Inspector by promotion. The respondents in their reply vide para-4 as reproduced herein above have asserted with vehemence that there cadres i.e. Hospital Pharmacist, Drug Inspector and Drug Analyst having same qualification for induction through Public Service Commission, were merged to obviate the stagnancy in the cadre. By doing so Drug Inspector of Analyst at DTL (who are the cadre of 04 to 5 persons) be transferred making them liable to work in hospital under the close supervision of hospital administration. Those who are transferred from hospital to work in the field as Drug Inspector are tremendously working, removing the bottlenecks and

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highlighting a lot of discrepancies done by their predecessors who have been sacked from field duty.

12. The reply of the respondents as discussed above revolves around the expediency of filling the Drug Regulatory posts by *inter se* transfer of the holders of the post of Drug Inspector/Drug Analyst and of Pharmacists by merger of their cadre to ensure the discipline and quality of performance purportedly for the public good. We are not supposed to doubt the intentions of the respondents for such expediency but at the same time, we have to see that such an expediency is in conformity to the law and rules on the subject. Article 240 of Constitution of Pakistan enshrines that subject to the Constitution, the appointments and conditions of service in the Service of Pakistan shall be determined by or under the Act of Parliament in case of the services of Federation and by or under the Act of Provincial Assembly in case of services of Province and posts in connection with affairs of the Province. In pursuance of this command of Constitution, the Provincial Service Laws i.e. the Khyber Pakhtunkhwa Civil Servants Act, 1973 and Rules made there-under are in place in general besides other Special Service laws for particular posts and services in connection with affairs of the Province. As already discussed above, the notification dated 09/04/2006 issued in pursuance to Sub Rule-(2) of Rule-3 of (APT) Rules, 1989 is there which laid down the method of recruitment, qualification and other conditions of service

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applicable to the posts of Drug Inspectors of different ranks. Thus, in presence of a legal instrument like notification dated 09/04/2006 having statutory backing, transfer of a Drug Inspector to an ex-cadre post to fill the resultant vacancy by transfer of a non-cadre officer is seemingly not credible. By the impugned order dated 06/10/2020, appellants holding the posts of Drug Inspector and one among them holding the post of Drug Analyst were transferred from their respective posts held by them in relevant cadre and posted as Pharmacist in a wrong cadre. The notification dated 06/04/2006 as far as column-5 of its appendix is concerned expressly provides for appointment of Drug Inspector through initial recruitment. With this position as to method of appointment of Drug Inspector, the post held by him cannot be filled by transfer or promotion from any other cadre, albeit the person in the alien cadre may possess the qualification similar to the qualification of Drug Inspector. In holding so, we derive guidance from the law laid down by august Supreme Court of Pakistan in the case of Muhammad Sharif Fareen vs. Government of Balochistan (2018 SCMR 54). In the ibid case, it was held by the Hon'ble Supreme Court that a post which is required by the rules to be filled by initial recruitment cannot be filled by promotion, transfer, absorption, or by any other method which is not provided by the relevant law and rules. Furthermore, after making reference to the law laid down in the case of Ali Azhar Khan

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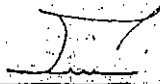
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Baloch vs. Province of Sindh (205 SCMR 456), it was held as follows:

"8. The quintessence of the paragraphs reproduced above is that the appointments made on deputation, by absorption or by transfer under the garb of exigencies of service in an outrageous disregard of merit impaired efficiency and paralyzed the good governance, and that perpetuation of this phenomenon even for a day more would further deteriorate the state of efficiency and good governance.

13. For what has gone above, all the appeals with their respective prayers are accepted as prayed for. Consequently, the impugned order is set aside and respondents are directed not to transfer the appellants from the post of Drug Inspector or Drug Analyst as the case may be. Parties are left to bear their own costs. File be consigned to record room after completion.


(SALAH-UD-DIN)
Member(J)

ANNOUNCED
06.12.2021


(AHMAD SULTAN TAKEEN)
Chairman


Certified to be true &

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Publication of Appeal/Order: 9/2/2022
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9/2/2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 1748/2022

Zia ullah ----- Appellant

VERSUS

Government of Khyber Pakhtunkhwa through Chief & others

----- Respondent

AFFIDAVIT.

I Mohammad Tufail Section Officer (Lit-II) govt. of Khyber Pakhtunkhwa Health Department do hereby solemnly affirm and declare that the joint Para-wise comments in Service Appeal No. 1748/2022 at Page-1-6 is submitted on behalf of respondents is true and correct to the best of my knowledge, belief and that nothing has been concealed from this Hon'ble Court.

M. Tufail 30/5/23

Section officer (Lit-II)
Govt: of Khyber Pakhtunkhwa
Health Department
Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

Identified by:-

Addl: Advocate General,
Khyber Pakhtunkhwa



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

AUTHORITY LETTER

Mr. Safi Ullah, Focal Person (Litigation-II), Health Department, Civil Secretariat is hereby authorized to attend/defend the Court Cases and file comments on behalf of Secretary Health Government of Khyber Pakhtunkhwa before the Service Tribunal and lower Courts.

(MAHMOOD ASLAM)

Secretary to Govt. of Khyber Pakhtunkhwa
Health Department
Secretary to Govt. of
Khyber Pakhtunkhwa
Health Department

9/5/23