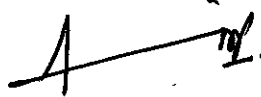


The appeal of Mr. Ghulam Dastagir Patwari Halqa Wadpaga Peshawar received today on 19.05.2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of departmental appeal against the impugned order dated 14.03.2023 is not attached with the appeal which be placed on it.
- 2- Copy of posting/transfer order of respondent no.3 is not attached with the appeal which be placed on it.
- 3- Annexures-I & K of the appeal are illegible which may be replaced by legible/better one.

No. 1468 /S.T.

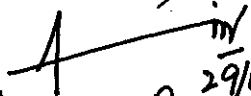
Dt. 22/5 /2023.


For REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Syed Noman Ali Bukhari Adv.
High Court Peshawar.

- ① The order dated 14.3.23. is passed in result of 27-1-23. which is basic order of from which grievance of the appellant arise. so, there is no need to file separate appeal against the same.
- ② corrected.
- ③ Better copy attached, objection removed.
of hand
29/5/23.

The objection no. 1 of this office still stands. Therefore, the appeal is again returned to the learned counsel for the appellant to resubmit the same within seven (07) days.


Assistant Registrar
29/05/23

No. 1540 /ST

Dated: 29/05/2023

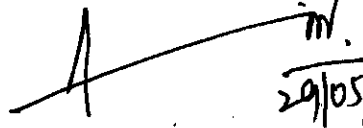
Respected Sir,

The objection No. 1 is concerned with regard to the order mentioned there is no departmental appeal required against the same. Every kind of appellate order passed during the Pendency of Doff whereby appellant was exonerated from charges. The order which effect the posting of appellant against which D-Appeal is already file and attached as Annexure. E

The file resubmitted.
M. S. S.
29/5/2023.

Sir,

The objection no. 1 of this office still stands. The reply of Learned counsel for the appellant is submitted for appropriate order, please.


M. S. S.
29/5/23
Assistant Registrar

Hon'ble Chairman

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

APPEAL NO. 1217 /2023

Ghulam Dastagir

V/S

Revenue Deptt:

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Ghulam Dastagir
APPELLANT
Ghulam Dastagir

THROUGH:

Syed Noman Ali Bukhari
(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 12/7 /2023

Ghulam Dastagir Patwari Halqa Wadpagga
Peshawar.

..... Appellant

VERSUS

- 1- The Deputy Commissioner Peshawar
- 2- The commissioner Peshawar Division Peshawar.
- 3- Mr. Imvan Patwari Halqa Wadpagga, Peshawar.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT 1974 AGAINST THE IMPUGNED TRANSFER ORDER DATED 27/01/2023 WHEREBY THE BLUE EYED PERSON WAS TRANSFERRED AGAINST THE POST OF APPELLANT IN UTTER VIOLATION TO THE TRANSFER & POSTING POLICY & 14/3/2023 (TO THE EXTENT OF REPORT TO KANUNGO OFFICE) AND NOT DECIDING THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF 90 DAYS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS SERVICE APPEAL THE ORDER DATED 27/01/2023 AND TRANSFER ORDER DATED 27/01/2023 TO THE EXTENT OF S.NO:3 MAY PLEASE BE SET ASIDE BEING PASSED PREMATURELY AND VIOLATION OF POSTING/TRANSFER POLICY. AND DIRECTED THE RESPONDENTS NOT TO TRANSFER THE APPELLANT PREMATURELY AND IN VIOLATION OF POSTING/TRANSFER POLICY. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH,

FACTS:

2

1. That the appellant serving as Patwari and performing his duties with ALL Zeal and Zest at different station as per orders of authority.
2. That the appellant was transferred from District Kanungo office to Halqa Wadpagga station vide order dated 30-08-2022. **(Copy of order is attached as annexure- A).**
3. That on 22/01/2023 the Election Commission of Pakistan Issued notification wherein all kind of posting transfer was banned. **(Copy of notification is attached as annexure-B).**
4. That malafidely appellant was suspended to accommodate the blue eyed person for posting to the station of appellant. Which is evident from the date of orders on which date impugned transfer order was issued, on the same date on 27/01/2023 appellant was suspended. The authority succeed to transfer the blue eyed person under the grab of suspension order. **Copy of suspension order and impugned transfer order is attached as annexure-C & D.**
5. That the Appellant feeling aggrieved filed departmental appeal against the impugned orders dated 27-01-2023. Thereafter the inquiry was conducted and the appellant was exonerated from charges vide order dated 14/03/2022 but not reinstated on his post but directed to report to District kanungo Office which is quite illegal. The departmental appeal of the appellant was not responded within statutory period of 90 days. Hence the present appeal on the following grounds amongst others. **Copy of departmental appeal inquiry report and order are attached as annexure-E, F & G.**

GROUND:

- A- That the impugned office orders dated 27/01/2023 is wrong, illegal, unlawful, against the policy and is liable to be struck down and set at naught.
- B- That the appellant's tenure at wadpagga was only 5 months, Therefore, the order dated 27/01/2023 is premature and against the transfer policy.
- C- That according to posting transfer policy, normal tenure for posting is 2 years, but the appellant transferred order was cancelled just after 5

months , which is total violation of Govt: posting transfer policy. Thus the impugned order is liable to be set-aside on this score alone.

- D-** That the transfer of the appellant is also violation of circular based on the Anita Turab case dated 27.2.2013 in which it was clearly mentioned that when the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable, but in the case of the appellant the tenure was not respected and was posted/ transferred just after 5 months without completing his normal tenure.
- E-** That this august Tribunal itself held in its judgment reported as 2012-PLC (CS) page-187 that transfer cannot be made on complaint/Administrative ground. The case of the appellant is same and is also entitled for the same relief.
- F-** That the transfer was made in the period in which already completely ban was imposed on all kind of posting and transfers by Election Commission of Pakistan. So, the impugned order is illegal and against the law and liable to be set-aside on this score alone.
- G-** That the transfer order dated 27/01/2023 is also in violation of notification of Election commission of Pakistan and judgment dated 09/12/2021 of Peshawar High court Peshawar delivered in w.p no 5071-p/2021. Thus, the transfer order is not sustainable in the eye of law. **Copy of PHC order is attached as annexure-H.**
- H-** That the inquiry was conducted and the appellant was exonerated from charges vide order dated 14/03/2022 but not reinstated on his post but directed to report to District kanungo Office which is quite illegal and discriminatory because the other official who was also suspended but on re-instatement he was posted back at his original station from which he was suspended. **Copy of order is attached as annexure-I.**
- I-** That the impugned order is not based on public interest nor any exigencies but rather to adjusted blue eyed person.
- J-** That it is a cherished principle of law, that where a law requires a thing to be done in a particular manner, then the same is be done in that manner and not otherwise.

- K- That In the case of the petitioner, all the prevailing laws have been abused / misused and the department has tried to victimize the petitioner. Such treatment of the department is not covered under Para -1 of the posting transfer policy.

- L- That it is a cherished principle of law, that where a law requires a thing to be done in a particular manner, then the same is be done in that manner and not otherwise.

- M- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.

- N- That the tenure of the appellant has not been completed, so the order dated 09/03/2023 is not according to law and rules without showing any cogent reasons, premature and in violation of posting transfer policy. It is, further mentioned here that not only premature but successive transfers in span of 1 year which is not permissible in eye of law as held in Supreme Court Judgment cited as 2011 PLC(cs) 935. **Copy of posting transfer Policy is attached as Annexure-J.**

- O- That the transfer of the appellant is also violation of circular based on the Anita Turab case dated 27.2.2013 in which it was clearly mentioned that when the ordinary tenure for a posting has been specified in the law or rules made there under, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable, but in the case of the appellant the tenure was not respected and was posted/ transferred without completing his normal tenure. As held in Supreme Court Judgment cited as 2013 PLD-SC 195. **Copy of Circular is attached as Annexure-K.**

- P- That the treatment meted out to the appellant is a clear violation of the Fundamental Rights of the appellants.

- Q- That the respondent Department acted in arbitrary and malafide manner by transferring the appellant and as such the same is against the transfer/posting policy of the Provincial Government.

- R- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

5

It is therefore, most humbly requested that the appeal of the appellant may be accepted as prayed for.

Ghulam Dastagir
APPELLANT
Ghulam Dastagir

THROUGH:

Syed Noman Ali Bukhari
(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.

Ghulam Dastagir
DEPONENT

LIT OF BOOKS:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE
3. Any other case law as per need.

Syed Noman Ali Bukhari
(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

6

APPEAL NO. _____/2023

Ghulam Dastagir

V/S

Revenue Deptt:

AFFIDAVIT

I, Ghulam Dastagir (Appellant) do hereby affirm that the contents of this service appeal are true and correct, and nothing has been concealed from this Honorable Tribunal.


DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

7

APPEAL NO. _____/2023

Ghulam Dastagir

V/S

Revenue Deptt:

.....


**APPLICATION FOR SUSPENSION OF
OPERATION OF ORDER DATED 027/01/2023,
AND 14/03/2023 (TO THE EXTENT OF
REPORT TO KANUNGO OFFICE) OF
APPELLANT TILL THE DISPOSAL OF MAIN
APPEAL.**

RESPECTFULLY SHEWETH:

1. That the appellant has filed an Appeal along-with application in which no date has been fixed so far.
2. That the appellant has good prime facie case and all the ingredients of stay is in favour of appellant.
3. That the grounds of main appeal may also be considered as integral part of this application.
4. That the impugned order has passed on favouritism and nepotism and has been passed in-violation of Posting, Transfer Policy.
5. That the appellant has not completed his tenure and the order dated 27/01/2023 & 14/03/2023 is without any reasons.
6. That the impugned order has passed on favoritism and nepotism and has been passed in-violation of Posting, Transfer Policy.

7. That if the order dated 27/01/2023 & 14/03/2023 is not suspended. Its not only badly effect the right of appellant but also creates hurdles for the appellant to performed her duties efficiently.

It is, therefore, most humbly prayed that the order dated 27/01/2023 & 14/03/2023 (TO THE EXTENT OF REPORT TO KANUNGO OFFICE) may be suspended till the disposal of main appeal. Any other remedy, which this august tribunal deems fit that may also be awarded in favour of appellant.


APPELLANT
Ghulam Dastagir

THROUGH:


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT

AFFIDAVIT:

It is affirmed and declared that the contents of this Application are true and correct to the best of my knowledge and belief.


DEPONENT

THE DEPUTY COMMISSIONER, PESHAWAR
Tel:091-9212301-02, Fax: 091-9212303, DCPeshawar

A

9

Dated: 30-August-2022

No. 6161/DC(P)/DK

The following posting/transfer of the Patwaris are hereby ordered with immediate effect in the larger public interest.

S.No	Name Of Patwar	From PH	To PH
1.	Mr. Ghulam Dastagir	DK Office	Wadpagga
2.	Mr. Israr	Jaili Bala	Kukar
3.	Mr. Ijaz Khalil	DK Office	Tarnab
4.	Mr. Amir Taimur	PDA	Phandu
5.	Mr. Wali Khan	PDA	Ahmad Khel
6.	Mr. Nasrullah	DK Office	Shahdand
7.	Mr. Ilyas	Jalabela	Larama
8.	Mr. Ibrar	Abadi Peshawar	Mera Hyderabad
9.	Mr. Sifat ullah	Muhafiz Khana	Tauda
10.	Mr. Ijaz	DK Office	Achini Payan
11.	Mr. Adrian	Mehal Terai	Nasirpur
12.	Mr. Gul Bahar	Palosi Atozal	Pishtakhara Bala
13.	Mr. Ishfaq	DK Office	Kalu Khel
14.	Mr. Maqsood ur Rehman	Azakhel 1	Deh Bahadur
15.	Mr. Ghafoor Khan	Mamu Khatki	Dhen Bhagbanan
16.	Mr. Tariq Javed	DK Office	Mehal Terai
17.	Mr. Fayyaz	AOK Mattani	Nahaqi

Note: One working day is allowed for joining time.

Sd/-
DEPUTY COMMISSIONER

Endst: No. and Date Even:

Copy forwarded to the:

1. All Assistant Commissioner Saddar, Peshawar
2. PS to Deputy Commissioner, Peshawar.
3. All Tehsildars, Peshawar.
4. Officials concerned for strict compliance.


ADDITIONAL DEPUTY COMMISSIONER
PESHAWAR

B (10)

ELECTION COMMISSION OF PAKISTAN
NOTIFICATION

Islamabad the 22nd January, 2023

F.No.2(1)/2023-Cord.- WHEREAS, the Provincial Assemblies of Punjab and Khyber Pakhtunhwa under Article 112 of the Constitution of the Islamic Republic of Pakistan stand dissolved on 14th and 18th January, 2023 respectively.

AND WHEREAS, the Election Commission of Pakistan is mandated with the constitutional duty to organize and conduct elections in terms of Article 218(3) of the Constitution and to make such arrangements as are necessary to ensure that the elections are conducted honestly, justly, fairly and in accordance with the law and that corrupt practices are guarded against;

AND WHEREAS, it has become imperative that the Election Commission shall take all necessary steps under the Constitution and prevalent law for smooth conduct of General Elections to the Provincial Assemblies of Punjab and Khyber Pakhtunkhwa.

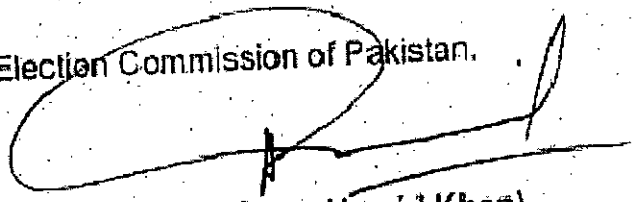
NOW THEREFORE, in exercise of the powers conferred upon it under Articles 218(3), 220 of the Constitution of the Islamic Republic of Pakistan, Sections 4, 5, 8(c) read with Section 230 of the Elections Act, 2017 and as supported by the Workers' Party case through Akhtar Hussain Advocate, General Secretary and 6 others Versus Federal of Pakistan and 2 others reported in PLD 2012 SC 681, and all the other powers enabling it in that behalf, the Election Commission of Pakistan, to ensure transparent election and to provide a level playing field for all contesting candidates and political parties, hereby directs the Caretaker Governments of Punjab and Khyber Pakhtunkhwa:-

- (a) To assist the Election Commission to hold elections in accordance with law as provided under section 230(1)(b) of the Elections Act, 2017.
- (b) To ensure the compliance of all the notifications, directives and the provisions as laid down in Section 230 of the Act *ibid*.
- (c) Not to post or transfer any public official after the issuance of this notification within and to / from Punjab & Khyber Pakhtunkhwa without prior approval in writing of the Election Commission as laid down in Clause 2(f) of Section 230 of the Elections Act, 2017.
- (d) Ensure that all kinds of recruitments in any Ministry, Division, Department or Institution under the Provincial Governments and Local Governments of Punjab and Khyber Pakhtunkhwa are banned with immediate effect, except recruitments by the Provincial Public Service Commissions and those government organizations where test / interviews have already been conducted before this day.
- (e) Not to announce / execute any kind of Development Schemes in Punjab and Khyber Pakhtunkhwa Provinces except those which are ongoing and approved before the issuance of this notification. Moreover, the Provincial Governments and Local Governments of Punjab and Khyber Pakhtunkhwa shall not issue tenders of such schemes till culmination of General Elections of both Assemblies.

Contd...Page-2

- (f) All development funds relating to Local Government institutions of Punjab and Khyber Pakhtunkhwa and Cantonment Boards falling in the jurisdiction of Punjab and Khyber Pakhtunkhwa shall stand frozen with immediate effect till announcement of results of the said General Elections.
- (g) To ensure immediate termination of services of all heads of the institutions appointed on political basis and to send their lists to the Commission forthwith.
- (h) To ensure vacation of the government residential facilities from Ex-Chief Ministers and their advisors, Ex-Provincial Ministers and Ex-Members of the Provincial Assemblies of Punjab and Khyber Pakhtunkhwa, besides ensuring withdrawal of official vehicles from them. Furthermore, the dignitaries shall be provided security / protocol as per their entitlement and any extra deployment of security / protocol be withdrawn from them forthwith.
- (i) The Caretaker Governments shall perform their functions and attend to day-to-day matters which are necessary to run the affairs of the Provinces in accordance with law.
- (j) The Chief Minister or a Minister or any other member of Caretaker Governments shall, within three days from the date of assumption of office, submit to the Commission, a statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding 30th day of June on Form B.

This issues with the approval of Election Commission of Pakistan.



(Omar Hamid Khan)
Secretary
Election Commission of Pakistan



19

THE DEPUTY COMMISSIONER, PESHAWAR

Tel: 091-9212301-02, Fax: 091-9212303, DC Peshawar

No. 23/2/DC(P)/CampOff

Dated: 27-01-2023

ORDER:

Consequent upon the inspection of revenue record of Moza Wadpaga revealed that property in Khasra No.155, 156, 215, 381, 412, 992 and Kita No.6 Khata No.174/293 upto 297 total land measuring 15 kanal 02 marlas was shown as Ghair Mumkin Abadi, while the Patwari Halqa Wadpaga namely Mr. Ghulam Dastagir has affixed his note showing the area as plot to evade govt. taxes leviable on the Ghair Mumkin Abadi. The above property was sold vide Registry Deed No.141 Bahi No.1, dated 09-01-2023. The illegal action of the said official has sustained huge loss to the Govt. exchequer by evading taxes on the property. This is a grave misconduct on the part of the official.

In view of the above, Mr. Ghulam Dastagir Patwari Halqa Wadpaga is hereby placed under suspension with immediate effect.

The Addl. Assistant Commissioner Shah Alam Peshawar is hereby appointed as enquiry officer to probe into the matter and submit enquiry report within seven days positively.


DEPUTY COMMISSIONER
PESHAWAR

Endst: No. and Date Even:

Copy forwarded to the:-

1. Addl. Deputy Commissioner (G), Peshawar.
2. Addl. Assistant Commissioner Shah Alam, Peshawar/enquiry officer for further necessary action.
3. Accounts Officer of DC office for further necessary action.
4. Tehsildar Shah Alam, Peshawar.
5. Official concerned with the direction to report to DC Office and appear before the enquiry officer as and when directed.


DEPUTY COMMISSIONER
PESHAWAR

Amended

THE DEPUTY COMMISSIONER, PESHAWAR
 (Revenue Department)
 Peshawar

Dated: 27-01-2023

No: (DCR)/Camp Office

OFFICE ORDER

The following posting/transfer of the Revenue Staff of this office is hereby ordered with immediate effect:

Sl. No.	Name of Officer	From	To
1	Mr. Sohail Khan Patwar	Waiting for posting	PH Mahal Teral (against the vacant post due to suspension of Anullah Patwar)
2	Mr. Haroon Bashir Patwar	PH Uzalai	PH Mattani (against the vacant post due to proceeding of Nadeem Patwar on Umra)
3	Mr. Mirza... Patwar	PH Bhandal Mar	PH Wadpaga (against the vacant post due to suspension of Ghulam Dastagir Patwar)

[Signature]
 DEPUTY COMMISSIONER

...to the...
 ...Commissioner...
 ...Mattani...
 ...Commissioner...
 ...to...
 ...Patwar...
 ...Umra...

TO,

COMMISSIONER PESHAWAR,
DIVISION KP, PESHAWAR.

E (14)

THROUGH: PROPER CHANNEL

Subject: DEPARTMENTAL APPEAL AGAINST THE
IMPUGNED SUSPENSION ORDER DATED 27/01/2023
AND TRANSFER ORDER DATED 27/01/2023,
WHEREBY THE BLUE EYED PERSON WAS
TRANSFERRED AGAINST THE POST OF APPELLANT
IN UTTER VIOLATION TO THE TRANSFER &
POSTING POLICY AND LETTER DATED 22/01/2023
WHICH IS UNDER THE LAW IS ILLEGAL AND VOID *

PRAYER:

THAT ON THE ACCEPTANCE OF THIS
DEPARTMENTAL APPEAL THE ORDER DATED
27/01/2023 and transfer order dated 27/01/2023 to the
extent of S.No 3 MAY BE SET ASIDE BEING,
PASSED PREMATURELY AND VIOLATION OF
POSTING/TRANSFER POLICY.

RESPECTFULLY SHEWETH,

FACTS:

1. That the appellant serving as Patwariand performing his duties with ALL Zeal and Zest at different station as per orders of authority.
2. That the appellant was transferred District Kanungo office to Halqa Wadpagga station vide order dated 30-08-2022.. (Copy attached annexure- A).
3. That on 22/01/2023 the Election Commission of Pakistan Issued notification wherein all kind of posting transfer was banned. (Copy of document attached).
4. That malalfidely appellant was suspended to accommodate the blue eyed person for posting to the station of appellant. Which is evident from the date of orders on which date impugned transfer order was issued, on the same date on

27/01/2023 appellant was suspended. The authority succeed to transfer the blue eyed person under the grab of suspension order. **Copy of documents is attached.**

5. That feeling highly aggrieved, the Appellant preferring this departmental Appeal / Representation on the following grounds, inter-alia;


GROUND:

- A. That the impugned office order dated 27/01/2023 is wrong, illegal, unlawful, against the policy and is liable to be struck down and set at naught.
- B. That the appellant's tenure at wadpagga was only 5 months, Therefore, the order dated 27/01/2023 is premature and against the transfer policy.
- C. That according to posting transfer policy, normal tenure for posting is 2 years, but the appellant transferred order was cancelled just after 11 days, which is total violation of Govt: posting transfer policy. Thus the impugned order is liable to be set-aside on this score alone.
- D. That the transfer of the appellant is also violation of circular based on the Anita Turab case dated 27.2.2013 in which it was clearly mentioned that when the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable, but in the case of the appellant the tenure was not respected and was posted/ transferred just after 5 months without completing his normal tenure.
- E. That this august Tribunal itself held in its judgment reported as 2012-PLC (CS) page-187 that transfer cannot be made on complaint/Administrative ground. The case of the appellant is same and is also entitled for the same relief.

- F. That the transfer was made in the period in which already completely ban was imposed on all kind of posting and transfers by Election Commission of Pakistan. So, the impugned order is illegal and against the law and liable to be set-aside on this score alone.
- G. That the transfer order dated 27/01/2023 is also in violation of notification of Election commission of Pakistan and judgment dated 09/12/2021 of Peshawar High court Peshawar delivered in w.p no 5071-p/2021. Thus, the transfer order is not sustainable in the eye of law. **Copy of documents is attached.**
- H. That the impugned order is not based on public interest nor any exigencies but rather to adjusted blue eyed person.
- I. That it is a cherished principle of law, that where a law requires a thing to be done in a particular manner, then the same is be done in that manner and not otherwise.

It is, therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Yours obediently


Ghulam Dastagir
Patwari Halqa Wadpagga
Peshawar

Date 9/2/2023

OFFICE OF THE COMMISSIONER

Reference PUCs

PUC is departmental appeal filed by Mr. Gulam Daslagir (Patwar) (appellant) of District Peshawar against order dated 27.01.2023 whereby the appellant was transferred from Patwar Wadpaga to Kanungo office. The appellant has termed the same in utter violation of the posting/transference policy of the Provincial Government. That the appellant was suspended on flimsy pretext of submitting a check to the govt exchequer during an inspection by the AAO Shahalam aimed at removing the appellant from the said halqa which later on did not prove and the appellant was re-instated into service as evidenced from the date of order of handing over halqa Wadpaga in additional charge to another officer (Patwar) and suspension on the same date. Further has stated that he spent only 5 months on Wadpaga and has not completed his legal tenure of 2 years.

Further stated that Hon'ble High Court has clearly directed with judgment dated 23.10.2021 that in the wake of local Elections no posting/transfer of any official/Officer shall be made without approval of the Election Commission and even suspended transfer order of Patwaris of District Peshawar dated 29.12.2021. He has also produced a Notification of the Election Commission of Pakistan dated 15.01.2023 that no posting/transfers shall be made, however, the impugned order of the appellant was made during this banned period which the appellant has termed as illegal and void.

The appellant has prayed for setting aside the impugned order made by the Commissioner of the Election Commission of Pakistan and High Court Judgment dated 23.10.2021.

Submitted please

ACR



18

**ADDITIONAL ASSISTANT COMMISSIONER, SHAH ALAM,
PESHAWAR**

No. /DC(P)/AAC (Shah Alam) Tel: 091-2247794 Dated: 14/02/2023

The Deputy Commissioner
Peshawar.

F

Subject: INQUIRY REPORT.

Respected sir,

With reference to office order of your worthy office NO. 2312/DC(P)/Camp off dated 27-01-2023 the undersigned was appointed as inquiry officer to probe the matter of Khasra No. 155, 156, 215, 381, 412, 992 and kita No. 06 Khata No. 174/293 upto 297.

The undersigned summoned Mr. Ghulam Dastagir Patwari to explain his position. His reply is attached as Flag-A. The undersigned also directed the Naib Tehsildar Dalazak Mr. Mehraj to visit the site and submit the report which is attached as Flag-E. The undersigned also visited the spot and checked the dimension of Khasra under consideration. Furthermore, written statements of buyer, seller as well as witness of registry deed No. 141, Bahc No. 01 dated 09-01-2023 are also attached as Flag-B, Flag-C and Flag-D.

Conclusively from the report of Naib Tehsildar Dalazak and site visit, it is found that despite of being written as Partially Ghair Momkin Abadi in Jamabandi, there is this Five (05) Marla vacant plot situated in Khasra No. 156, in Mouza Wadpaga.

It is found that no misconduct has been done by Patwari and no mal intentions are involved, as there is no false information written on his official note on fard, which can lead to tax evasion.

Report is submitted for your kind consideration please.

(TANIA SHAHEEN)
ADDL: ASSISTANT COMMISSIONER
SHAH ALAM, PESHAWAR

Endst No. & date even.

Copy of the above is forwarded to:

- 1. P.A to Additional Deputy Commissioner (General), Peshawar for information.

(TANIA SHAHEEN)
ADDL: ASSISTANT COMMISSIONER
SHAH ALAM, PESHAWAR

DK.
Speak
just now.

14/02/23



THE DEPUTY COMMISSIONER, PESHAWAR

Tel: 091-9212301-02, Fax: 091-9212303, [E]DCPeshawar

No. 151 /DC(P)/DK

Dated: 14-03-2023

OFFICE ORDER:

Consequent upon the recommendations of the enquiry officer/AAC Shah Alam vide enquiry report No.481-82/DC(P)/AAC(Shah Alam) dated 14-02-2023, Mr. Ghulam Dastagir Patwari is hereby re-instated into service by exonerating charges leveled against him and period of suspension may be treated as on duty. He is directed to report to District Kanungo Office immediately.

Sd/-
DEPUTY COMMISSIONER
PESHAWAR

Endst: No. and Date Even:

Copy forwarded to the:-

- (i) Addl. Assistant Commissioner Shah Alam/enquiry officer, Peshawar.
- (ii) Accounts Officer of DC office for necessary action.
- (iii) Official concerned for strict compliance.


ADDITIONAL DEPUTY COMMISSIONER (G)
PESHAWAR

PESHAWAR HIGH COURT, PESHAWAR

ORDER SHEET

H

Date of Order of Proceedings	Order or other Proceedings with Signature of Judge(s).
1	2
<p>09.12.2021</p>	<p><u>W.P. No.5071-P/2021</u></p> <p>Present: Syed Shahid Shah, Advocate, for the petitioner.</p> <p>Mr. Mubashir Manzoor, Advocate, for the provincial respondents.</p> <p>Mr. Mohsin Kamran, Advocate, for the Election Commission of Pakistan.</p> <p>Ms. Gul Bano, Assistant Deputy Election Commissioner.</p> <p>*****</p> <p>Contends inter-alia that the schedule for conduct of Local Government Elections has been issued on 14.11.2021 with a directive note that <u>"the Districts in respect of which Election schedule of Local Government Election has been issued, no transfers/postings of the Government Officers and officials including Autonomous Bodies/Authorities shall be made without prior approval of the Commission till the publication of election results"</u>, however, the worthy Deputy Commissioner, Peshawar vide order dated 29.11.2021 has made approval of 28 Patwaris which is against the provisions of Section 5(4) of the Elections Act, 2017 and as well directives and instructions of the Election Commission of Pakistan.</p> <p>2. Mr. Mubashir Manzoor, AAG, alongwith Ms. Gul Bano,</p>

Manzoor

Assistant Deputy Election Commissioner, Peshawar stated that the Patwari Halqas have no concern with the conduct of Elections, whereas, the impugned order has been issued in the larger interest of public under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act.


3. Mr. Mohsin Kamran Siddique, Advocate, on behalf of the Provincial Election Commission, stated that Patwaris are the direct subordinates of the Deputy Commissioners and Assistant Commissioners who have been deputed as DROs and ROs in the Elections. He further stated that Patwaris have not yet deputed in the Elections, however, their services would be required to the Provincial Election Commission.

4. Be that as it may, we deem it appropriate to direct the respondents to submit their view point in black and white well before the next date of hearing. Adjourned to 22.12.2021.

INTERIM RELIEF

Notice for the date fixed. In the meanwhile, the impugned order dated 29.11.2021 of the Deputy Commissioner, Peshawar with regard to posting and transfer of Patwaris shall remain suspended.


Senior Puisne Judge


Judge



THE DEPUTY COMMISSIONER, PESHAWAR

Tel: 091-9212301-02, Fax: 091-9212303, [7]DCPeshawar

No. 142 /DC(P)/DK

Dated: 10-03-2023

OFFICE ORDER:

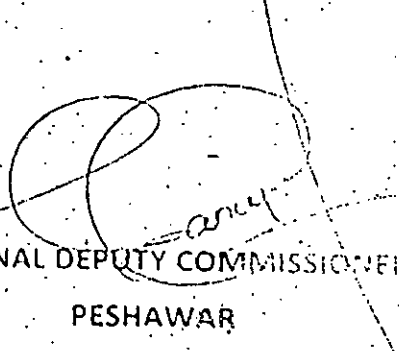
Mr. Sana Ullah Girdawar placed under suspension vide order No.49/ADC/DK dated 30-01-2023 is hereby re-instated into service with immediate effect and posted back to Girdawar Circle Koh-e-Daman in the largest public interest. The period of suspension is considered as on duty.

Sd/-
DEPUTY COMMISSIONER
PESHAWAR

Endst: No. and Date Even:

Copy forwarded to the:-

- (i) Additional Deputy Commissioner (G), Peshawar.
- (ii) Assistant Commissioner Saddar, Peshawar.
- (iii) Tehsildar Saddar Peshawar.
- (iv) Accounts Officer of DC office for necessary action.
- (v) Official concerned for strict compliance.


ADDITIONAL DEPUTY COMMISSIONER (G)
PESHAWAR

J

23

(2)

Posting and Transfer

Statutory Provision.

Section 10 of the NWFP Civil Servants Act, 1973.

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

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

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

Posting transfer policy of the Provincial Government.

- (i) All the posting/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants
- (ii) All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities, for seeking posting/transfers of their choice and against the public interest.
- (iii) All contract Government employees appointed against specific posts, can not be posted against any other post.
- (iv) Existing tenure of posting/transfer of three (03) years for settled areas and two (02) years for unattractive/hard areas shall be reduced to two (02) years for settled areas, 01 1/2 years for unattractive areas and one year for hard areas.
- (v) []

79 Para-17-1 regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No. SDR-VI (Ed.A.G. 1-4/2002/Vol-VI, dated 3-6-1998. Consequently authorities competent under the NWFP Government Rules of 8 June, 1983, District Government Rules of 1 June, 2001, Posting/Transfer Policy and other rules for the time being in force, authorized to make Posting/Transfer subject to observance of the aforesaid rules.

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

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

vii (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for at least eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.

vii) Officers may be posted on executive/administrative posts in the Districts of their domicile except District Commissioner Officers (D.C.Os) and DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thana) of his area/residence is situated.

viii) No posting/transfers of the officers/officials on detailment basis shall be made.

ix) Regarding the posting of husband/wife, both in Provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.

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x)

All the posting/transferring authorities may facilitate the posting/transfer of the unmarried female government servants at the station of the residence of their parents.

xi) Officers/officials except DCOs and DPOs/SPs who are due to retire within one year may be posted on their option on posts in the Districts of their domicile and be allowed to serve there till the retirement.

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)
NO. SOR VI (E&AD) 1-4/2005/VOL-II
Dated Peshawar, 27th Febuary, 2013

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

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

Sir

I am directed in refer to the subject noted above and to state that the Supreme Court of Pakistan vide the subject cited Judgment the following principles of law with regard to protection and conduct of civil servants.

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

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

(REGULATION WING)
NO. SOE-VI-IE&ADM-4/2005/Vol-II
Dated Peshawar, 27th February 2013

K 25

To
E. J. Khan

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

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

Sir,
I am directed to refer to the subject noted above and to state that the Supreme Court of Pakistan in the subject cited judgment has enunciated the following principles of law with regard to protection and conduct of civil servants:

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

As per 7/3

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

Very truly yours

[Handwritten signatures and initials]

ATTESTED

[Handwritten signature]

legal Order Civil Servants own their first and increment begaince to law and the constitution. they are not bound to obey orders from superiors which are illegal or not in accordance with accepted practices and rule based norms instead in such situations they must record their opinion and if necessary dissent.

(iv) OSD officer should not be posted as OSD except for compelling reasons which must be recorded in writing if at all in officer to be posted as OSD such posting should not exceed 03 months. if there is a disciplinary inquiry going on against him/her such inquiry must be posted against a post of his/her equivalent pay scale/grade within 03 months of his/her order as OSD.

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

Yours obediently

(NAJMUS-SAHAR)

SECTION OFFICER (REC-VI)

Endst as above

A copy is forwarded to:

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

SECTION OFFICER (REG-VI)

26

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

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

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

Yours faithfully,

Majam
(NAJ MUIS SAHARI)
SECTION OFFICER (REG-VI)

Encl: as above.

A copy is forwarded to:

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

Majam
SECTION OFFICER (REG-VI)

VAKALAT NAMA

NO. _____/20

IN THE COURT OF KP Service Tribunal, Peshawar

Ghulam Dastagir

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Revenue Deptt.

(Respondent)
(Defendant)

I/We, Ghulam Dastagir (Appellant)

Do hereby appoint and constitute **Mr. M. Asif Yousafzai, ASC** ^{a Syed Noman Ali Bukhari} to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings; if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

[Signature]
(CLIENT)

ACCEPTED

[Signature]
M. ASIF YOUSAFZAI, ASC,

[Signature]
SYED NOMAN ALI BUKHARI
Advocate High Court Peshawar