

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S. A. No. 1217 /2023

Ghulam Dastagir

versus

Deputy Commissioner & Others

WRITTEN STATEMENT ON BEHALF OF
R. NO. 03 (IMRAN)

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6238

Dated 4/7/2023

Respectfully Sheweth,

Preliminary Objections:

- a. That appeal of appellant is neither maintainable nor per the mandate of law, so is liable to dismissal.
- b. That no one can claim any post as a vested right, appellant being civil servant can be transferred in that circumstances anywhere to any station.
- c. That the judgments quoted are not applicable to the case in the prevailing circumstances.
- d. That in the impugned order dated 27-01-2023, R. No. 03 was posted against a vacant post as appellant was suspended from service regarding enquiry.
- e. That no post can be kept vacant for indefinite period for anyone and it is the mandate of department to post any suitable person on any post.
- f. That no terms and conditions of service of appellant was ever violated, so the hon'ble Tribunal lacks jurisdiction in the matter.

ON FACTS

- 1-3. Para No. 01, 02 and 03 of the appeal does not relate to R. No. 03, so needs no comments. As for as Notification dated 22-01-2023 of the Election Commission is concerned, appellant shall take the matter before the Election Commission of Pakistan for the purpose.

4. Para No. 04 of the appeal is correct to the extent of suspension of appellant from service and not for accommodation of blue eyed person, i.e. R. No. 03. R. No. 03 was not posted at the post of appellant but the said post was vacant due to suspension of appellant from service. No blue eyed person was posted at the place of appellant.

At the same time, the post (Halqa) at Wadpaga was none functional rather laying vacant, so R. No. 03 was later on posted at the said station.

Appellant has no cause of action against R. No. 03 because the impugned order dated 27-01-2023 clearly shows that R. No. 03 was posted against vacant post due to suspension of appellant. No post can be kept vacant for anyone for indefinite period as to whether in the enquiry someone would be exonerated or would be proved guilty.

In the impugned order dated 27-01-2023 other incumbents were also transferred from one station to another.

5. Not correct. The impugned order was made on 27-01-2023 by posting R. No. 03, while appellant was exonerated from the charges on 14-03-2023, so no post can be kept vacant for appellant for indefinite period. In the order dated 14-03-2023, appellant was directed to report for duty to District Kanungo office by R. No. 01 which is a legal order and appellant cannot claim a post of choice.

GROUND:

- a. Not correct. The impugned order dated 27-01-2023 is quite per the mandate of law. Policy has no concern with the subject matter.
- b. Not correct. In the circumstances there was charge against appellant, so tenure / policy has no concern in the matter.
- c. Not correct. In presence of settled law, policy has no legal value in the eyes of law.

- d. Not correct. In the impugned order appellant was not transferred from the post and even R. No. 03 was not posted at the place of appellant, ~~A~~At the same time, appellant was suspended from service due to misconduct and such post cannot be kept vacant for appellant ~~as~~ to whether he would be exonerated from the charges or otherwise.
- e. Not correct. The judgment quoted in the para is not applicable to the case in hand.
- f. Not correct. Due to suspension of appellant from service, the post was lying vacant and then R. No. 03 was posted as such. No one can claim specific post for posting.
- g. Not correct. The impugned order was not made in normal situation. Appellant was facing enquiry regarding misconduct, so the Notification of Election Commission and the judgment has no concern with the subject matter.
- h. In response to this ground of the appeal, it is admitted by the appellant that he was exonerated from the charges on 14-03-2023, while R. No. 03 was posted on 27-01-2023 at the post at Wadpaga. Appellant cannot claim a post of choice. He was directed to report for duty to District Kanungo office which is quite per the mandate of law. He cannot claim such post. *for ever.*
- i. Not correct. The impugned order was based on public interest. The said post cannot be kept vacant for appellant for indefinite period.
- j. Not correct. This para pertains to law and the law was acted upon as per its mandate.
- k. Not correct. In the case in hand, law was followed in true spirit. No one was victimized. Posting and Transfer Policy has no concern with the subject matter in presence of settled law.
- l. Not correct. It is ~~repetition~~ ^{repetition} of ground "J".
- m. Not correct. Appellant was treated as per the mandate of law and rules. No article of any law was ever violated.


- n. Not correct. It is not a tenure post and as per section 10 of Posting Transfer law, every civil servant is liable to transfer anywhere for performance of duty. The judgment quoted in the para is not applicable in the circumstances of the case to the case of appellant.
- o. Not correct. The transfer of appellant was not in a routine manner but the situation was otherwise regarding misconduct in the matter. In such a situation, normal tenure cannot be acted upon, so the judgment is not applicable to the case in hand.
- p. Not correct. The treatment meted out to the appellant is quite per the mandate of law as no violation of any right was ever made.
- q. Not correct. The department acted as per the need of the situation.
- r. Allowed.

It is, therefore prayed that the instant appeal being devoid of merit without substance be dismissed with cost in the interest of justice.



R. No. 03


Through



Saadullah Khan Marwat



Arbab Siaz-ul-Kamal



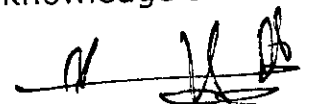
Anjad Nawaz

Advocates,

Dated: 03-07-2023

VERIFICATION

I, **Imran**, R. No. 03 do hereby verify that contents of the **written statement** are true and correct to the best of my knowledge and belief.

DEPONENT

04/07/23

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Misc. A. No. _____/2023

Ghulam Dastagir versus Deputy Commissioner & Others

REPLY TO APPLICATION FOR INTERIM RELIEF:

Respectfully Sheweth,

1. Needs no comments, yet R. No. 03 has assumed the charge of the post on 27-01-2023.
2. Not correct. No prima facie case ever exists what to speak of a good prima facie case.
3. Not correct. No ground of the appeal ever helps in the matter of appellant.
4. Not correct. The impugned order was passed quite per the mandate of law, no favoritism, nepotism was ever made and the Posting Transfer Policy has no legal value in presence of settled law on the subject matter.
5. Not correct. In the prevailing circumstances, normal tenure is not mandatory. The order dated 27-01-2023 is supported by reason as no post can be kept vacant for anyone.
6. Not correct. Para No. 06 of the application is repetition of para No. 04, above.
7. Not correct. Nothing would affect the right of appellant. Appellant was posted at the office of Kanungo, so no right was accrued to him in the matter.

It is, therefore, most humbly requested that the application for Interim Relief be dismissed being without substance.

Applicant

Through

Saadullah Khan Marwat

Advocate

Date: 03-07-2023

AFFIDAVIT

I, Mr. Imran, R. No. 03, do hereby solemnly affirm and declare that contents of **Application** are true and correct to the best of my knowledge and belief.

Further stated on Oath that in this appeal, the answering respondent has neither been pleased ex-parte nor his defence has been struck off.



04/07/23.

DEPONENT

یونیورسٹی جمالیہ سرسبز ٹیڑھ پورہ مل صوبہ سندھ پشاور

منجانب ایڈووکیٹ سیاندرنگ نبر 3 عمران

علاقہ دستگیر بنام محمد ریونسو

دعویٰ اپیل نمبر 1217/23

باعضرت جسٹس ایٹکے

بقدر مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیسٹیم سٹڈیا آڈیٹس خان سرور نے ایڈووکیٹ، ہائی کورٹ کو وکیل مقرر کر کے اٹار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی وکل کاروائی کا کارل اختیار ہوگا نیز وکیل صاحب کو کہنے والی نامہ و آفیز ثالثہ و فیصلہ برتاف دینے جواب دہی اور اقبال دہوئی اور لیکچر ڈگری کرنے اجراء اور دہوئی چیک و ریپیڈ اور رضی دہوئی اور درخواست ہر قسم کی تقلید اور اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری کا لفظ یا اپیل کی برائگی اور مسموعی نیز دائر کرنے اپیل ٹکرائی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ منجور کے کل یا ہجڑوں کا دائرہ کے واسطے اور وکیل یا مقرر قانونی کو اپنے ہمراہ یا اپنی بجائے لکچر کا اختیار ہوگا اور وہ مقدمہ شاہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا سامنے پروا نہ منقولہ قبول ہوگا و دوران مقدمہ میں جو فرجیہ و ہر جانہ التواء مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز لفظیا و فرجیہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام روزہ پر ہو یا عدسے باہر ہو تو وکیل صاحب یا ہمد نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا وکالت نامہ لکھ دیا کہ مندر ہے۔

03-7-2023. المرقوم

القصد القصد القصد

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ارباب نیف اہمال
ایڈووکیٹ

محمد ریونسو
سیاندرنگ نبر 3
ایڈووکیٹ

محمد ریونسو

محمد کوانز
ایڈووکیٹ