FORM OF ORDER SHEET

Appeal No. 1403/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1.	2	3
1	22/06/2023	The appeal of Mr. Sartaj Alam presented today by
-		Mr. Mir Zaman Safi Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 23-06-23.
		By the order of Chairman

REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 403 /2023

SARTAJ ALAM

VS REVENUE DEPTT:

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APPELLANT

THROUGH: MIR ZAMAN SAFI ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. 1403 /2023

VERSUS

- 1- The Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
- 2- The Commissioner, Peshawar Division, Peshawar.
- 3- The Deputy Commissioner, District Charsadda.
- 4- Mr. Alamzeb, Patwari, Kharakai, District Charsadda.

..RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED
APPELLATE ORDER DATED 14.06.2023 WHEREBY
DEPARTMENTAL APPEAL OF THE PRIVATE RESPONDENT NO.
4 IS HEREBY ACCEPTED AND THE RESPONDENT NO.2
ALLOWED HIM TO ASSUME CHARGE AGAINST THE POST
ALREADY HELD BY THE APPELLANT I.E. PATWARI HALQA
SHABQADAR

<u>PRAYER</u>

That on acceptance of this service appeal the impugned appellate order dated 14.06.2023 may very kindly be set aside and directed the respondents not to transfer the appellant from the post of Patwari Halqa Shabqadar till completion of his normal tenure. Any other relief which this august Tribunal deems fit that may also be awarded in favor of appellant.

R/SHEWETH; ON FACTS:

The brief facts of the present appeal are as under:-

- 1. That the appellant is the employee of the respondent department and is serving as Patwari Halqa Shabqadar quite efficiently and up to the entire satisfaction of his superiors.
- 2. That the appellant while performing his duty as Patwari Halqa Kharakai, District Charsadda was transferred and posted at Patwar Halqa Shabqadar vide Office order dated 29.03.2023. That in compliance of the order dated 29.03.2023 the appellant took over the charge and started performing his duty efficiently, wholeheartedly and upto the entire

- 4. That it is pertinent to mention here that the appellant recently transferred as Patwari Halqa Shabqadar i.e. vide order dated 29.03.2023 and the appellant has only two and half months tenure at the station mentioned above.
- 5. That the appellant feeling aggrieved and having no other remedy but to file the instant service appeal before this august Tribunal on the following grounds amongst the others.

GROUNDS:

- A-That the impugned appellate order dated 14.06.2023 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- 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.
- C- That the respondents acted in arbitrary and malafide manner while issuing the impugned appellate order dated 14.06.2023 by transferring the appellant from the post of Patwari Halqa Shabqadar pre-maturely and in violation of law and rules.
- E- That the impugned appellate order dated 14.06.2023 is violative of the principle of natural justice, hence the same is not tenable and liable to be set aside.
- F- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 21.06.2023.

APPELLANT

SARTAJ ALAM

THROUGH:

MIR ZAMAN SAFI

&

MUNFAT ALI ADVOCATES

CERTIFICATE:

It is certified that no other earlier appeal was filed between the parties.

DEPONENT

LIST OF BOOKS:

- 1- CONSTITUTION OF PAKISTAN, 1973
 - 2- SERVICES LAWS BOOKS
 - 3- ANY OTHER CASE LAW AS PER NEED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. /2023

SARTAJ ALAM

·VS

DEPTT:

AFFIDAVIT

I Mir Zaman Safi, Advocate High Court, Peshawar on the instructions and on behalf of my client do hereby solemnly affirm and declare that the contents of this service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

MIR ZAMAN SAFI

Advocate

High Court, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO.		٠.	/202	3
ALLEAL NO.	 		1404	•

SARTAJ ALAM

V/S

REVENUE DEPTT:

APPLICATION FOR SUSPENSION OF OPERATION OF THE IMPUGNED APPELLATE ORDER DATED 14.06.2023 TILL THE FINAL DISPOSAL OF THE ABOVE MENTIONED APPEAL

R/SHEWETH:

- 1- That the above mentioned service appeal along with this application has been filed by the appellant before this august Service Tribunal in which no date is fixed so far.
- 2- That appellant filed the above mentioned appeal against the impugned appellate order dated 14.06.2023 whereby departmental appeal of the private respondent No.4 has been accepted and allowed him to assume charge against the post of Patwari Halqa Shabqadar while the same has already held by the appellant.
- 3- That all the three ingredients necessary for the stay is in favor of the appellant.
- That the impugned appellate order dated 14.06.202 has been issued by the respondent No.2 in utter disregard of law and prevailing Rules.

It is, therefore, most humbly prayed that on acceptance of this application the operation of the impugned appellate order dated 14.06.2023 may very kindly be suspended till the final disposal of the above mentioned service appeal.

Dated: 21.06.2023

APPLICANT

SARTAJALAM

THROUGH:

MIR ZAMAN SAFI ADVOCATE



OFFICE OF THE DEPUTY COMMISSIONER CHARSADDA :

Email: decharsadda@gmail.com Ph: # 091- 9220024, 9220144 Fax #: 091-9220021

No. DC (CHD) Estt: 7 (25) Posting/Transfer/Revenue/ 2775-82 Dated: 29/03/2023.

OFFICE ORDER

The following postings/transfers amongst the revenue staff are hereby ordered in the l public interest with immediate effect:

S.No.	Name/ Designation	From	To
1	Shah Khalid, Patwari	Maira Utmanzai	Maira Umarzai
2	Wisal Muhammad, Patwari	Maira Umarzai	Maira Utmanzai
3	Sartai Alam, Patwari	Kharakai	Shabqadar
4	Alamzeb, Patwari	Shabqadar	Kharakai

CHARSADDA

Endst: Even No & Date

Copy forwarded to the:

- 1. ADC (G) Charsadda.
- AC Charsadda.
 AAC Shabqadar.
- 4. Tehsildar/N. Tehsildar Charsadda & Shabqadar.
- 5. DK Charsadda.
- 6. Officials concerned for compliance.

DEPUTY COMMISSIONER **CHARSADDA**

B-B ا فعا ما صد رام داری این ماد و اراده سردی دفی الارتبری المری NO DC(CHD) Estt. 7(25) posting Transfer Revenue 2775.82 Date 29/3/2013 المردع فلم مشر مركع علم يران حواله بنا ما مود على عران حواله بنا ما مود على مران حواله بنا ما مود على الم أبرست وارد ادمل مين ـ 1926-12 - mie die ... nie Open () جمنع کامال شیر 1991 علد فی صوفور ہے جلد آل صوفور میس ہے۔ انت لات رس (1 نس يت اله الم الله الم الم الم 1960 مع ربعار وسي الم 1960 مع ربعار وسي الم الم الم سيره مست سالمال مفرونعتي - 40 0 118 - 95 - 94 Jul - 40 min 30 -فعل قریب منددستی طلای سوجو دیے حکہ طلایل ہے صور ہیں ہے۔ ترکیمی کساڑیک فرداندن فرد الله فسي نتول رفيط ففا فان فاندات مل رولي آمارسي ر بن طبر رصر سامان بناسی لعل تلاب فرن رولس واین مال ۱۹۰۵ بنا ریع مومور بنا مِي قلد سالة فلا بردالله کی صلر

P-T-0

4711 Jave (3) (5) Covid (1) Covid (1 July 162 mil () ou 2018 mil 1994 , and our construction of the co ر اوراق برتالی ارزای برتالی 100 10 - 2012 2012 2010 (la 0, /2/6) U/2/6 2010 (15) 4 (15) Lever the de circ sand 20 july 300 22 in Bright of 1885 churches ار فاران رواری فوری سے -از اور ماز اران کی فوری سے فرستا مرسال المراد المراد المراز المر ar Mes/19 de cus sed laires 5 do فردرارس زبرار کی دو بری سے سنر دوندزی نری زیاری و در ای دستری افلا یا را ای AAL افرادری Williams () Jour all finite visl. 161

BEI ONE THE COMMISSIONER PESHAWAR DIVISION PESHAWAR

BIA

Alamzeb 5/0 Haji Bahadar R/O Matta Mughal Khel, Tehsil Shabqadar, District Charsadda.

_Appellant

\$ 1 R\$615

- 1 Deputy Commissioner Charsadda
- 2 Girdawar Shabqadar Circle
- 3 Tehsildar Shabqadar
- 4. Sartaj Alam Patwari

Respondents

3874-27/4/23

APPEAL AGAINST THE ORDER DATED 29/03/2023 OF THE DEPUTY COMMISSIONER CHARSADDA

- A That, the appellant is the law abiding citizen permanent and bonafide resident of Matta Mughal Khel, Tehsil Shabqadar District, Charsadda.
- B That, the appellant is serving as Patwari in Revenue Department, initially the appellant was transferred to Mozah Shabqadar on dated 28/11/2022.

 Copy of transfer order dated 28/11/2022. attached as Annexure A.
- C. That, on 27/3/2023 the appellant submitted an application to Deputy Commissioner Charsadda for grant of 23 days. Ex Pakistan leaves to travel abroad to perform umrah.,
 Copy of the application is attached as Annexure.
- Deputy Commissioner Charsadda vide order dated 27/3/2023. with direction that the appellant is likely to return on the same post and grade after expiry of his Ex Pakistan leave.

 Copy of the order dated 27/3/2023 is attached as Annexure C.
- E That, during his leave while performing umrah the Deputy Commissioner Charsadda issued an order herein impugned where the appellant was transferred to Kharkhai from Shabqadar.

 Copy of the impugned order dated 29/3/2023 is attached as Annexure D.

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- 9
- That, the impugned order is against the law having malalidely and illegally been passed in contravention of hasic law and policy declared by the Government. The appellant was on leave and the impugned order has been passed in his absence.

Copies of umrah documents is attached as Annexure E.

- c. That, the appellant was transferred to Shabqadar on dated 20/11/2022 and he was premature transferred from the said Mozah, which is in clear contravention of basic law and policy declared by the Government.
- It That, the impugned order is also against the settled policy of the Government, the Government of Kpk Revenue Department has recently issued a notification where all such type of transfer and posting was made subject to approval of the competent authority.

 Copy of the said Notification attached as Annexure F.
- That, the impugned order of the Deputy Commissioner Charsadda is also against the Election Act, 2017 and other election and enabling laws.
- That, the Sartaj Alamd Patwari is transferred on the seat of the appellant which against the law, unwarranted, un-constitutional, against the norms of natural justice.
- K. That, any other ground not specifically taken will be argued with the permission at the time of arguments.
- acceptance of this appeal the impugned order dated 29/3/2023 may kindly be set aside and further be declared illegal unlawful, void and ineffective being against the principle of natural justice.

INTERIM RELIEF

By way of Interim relief the impugned order may kindly be suspended till the final disposal of the instant case.

Appellant in Person

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Annex-A

OFFICE OF THE COMMISSIONER PESHAWAR DIVISION PESHAWAR

No. 2-1/D.Appeal/AR/2023 Dated 14.06.2023 7011

To

The Deputy Commissioner Charsadda.

Subject:

JUDGMENT IN DEPARTMENTAL APPEAL

Please find attached herewith a copy of judgment dated 14.05.2023 passed by the Commissioner Peshawar/Appellate authority in the departmental appeal filed by Mr. Alamzeb, Patwari (appellant) for information and onward necessary action, please.

No. 2-1/ D. Appeal/AR/2023

Copy forwarded to PS to Commissioner Peshawar Division.

ASSTT: TO COMMISSIONER (REVIGA)
PESHAWAR DIVISION PESHAWAR

ASSTT. TO COMMISSION PESHAWAR

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OFFICE OF THE COMMISSIONER PESHAWAR DIVISION PESHAWAR

DATE OF INSTITUTION 27.04.2023 DATE OF DISPOSAL 14.06.2023 APPEAL NO. 466/2023

Mr. Alamzeb Patwan, District Charsadda

Deputy Commissioner Charsadda

Versus

Appellant

Respondent

ORDER

This order will dispose of the departmental appeal filed by the above named appellant against the order of the Deputy Commissioner dated 29.03.2023 whereby the appellant was transferred from Patiyar halqa Shabqadar to Patiyar halqa Shabq

Aggreeved of the same, the appellant filed the appeal in hand terming the same in violation of law, rules/policy and prayed for setting aside the impugned order.

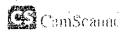
Brief facts of the case are that the appellant applied for 23 days ex-Pakistan leave on 27.03.2023 before the competent authority to proceed for Umra to Saudi Arabia. The AAC concerned recommended his application to the Deputy Commissioner on the same day. The competent authority approved the application and 23 days ex-Pakistan leave w.e.t 29.03.2023 to 20.04.2023 was sanctioned with the NOC to travel abroad. It is clearly mentioned in the office order dated 27.03.2023 that the official is likely return to the same post, and grade after expl.y of his ex-Pakistan leave. The appellant was transferred vide order dated 29.03.2023 during his ex-Pakistan leave, hence the instant appeal was filed by the appellant.

Para-wise comments sought from the Deputy Commissioner Charsadda received and perused. As per plea of the Respondent (Deputy Commissioner Charsadda), that since Rabi Girdawari was in progress and the appellant proceeded for Umra, therefore, it was inevitable to post another Patwari in his place to conduct Girdawari/crops inspection.

Appellant present and heard. Case record also perused. From perusal of record and Rules it is transpired that the appellant was granted ex-Pakistan leave on 27.03.2023 for performance of Umra with NOC to travel abroad and it was clearly mentioned that on the expiry of his ex-Pakistan leave the appellant is likely to return to his post and grade. The appellant was however, transferred to another halqa vide order dated 29.03.2023 instead of handing over charge of the post of the appellant in addition to another adjacent halqa Patwai. As per section-28 of the Revised Leave Rules -1981 (Assumption of charge on return from leave etc), "a civil servant, on return from leave, shall report for duty to the authority that sanctioned his leave and assume charge of the post of which he is directed by that authority unless such direction has been given to him in advance" the subject transfer of the appellant was made in violation of the ibid Rules. The plea of the Respondent in Para-wise comments is not convincing.

2/16/2003

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keeping the above in view, the appeal in hand is accepted. The impugned order bearing DC(CHD)Estt:7 (25) Posting Transfer Revenuel 2775-82 dated 29.03.2023 is set aside to the extent of the appellant falling at S.No. 04 of the office order. The appellant is allowed to assume charge of the post of Patwari halqa Shabqadar with immediate effect. File be consigned to GRR after necessary compilation.



Announced 14.06.2023 COMMISSIONER PESHAWAR DIVISION PESHAWA



GOVERNMENT OF NWFP ESTABLISHMENT & ADMINISTRATION DEPARTMENT (Regulation Wing)

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 posing/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) The normal tenure of posting shall be three years subject to the condition that for the officers/officials posted in unattractive areas the tenure shall be two years and for the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Covernment.
- v) 1{ }
 vi) While making postings/transfer from settled areas to FATA and viceversa, specific approval of Governor, NWFP needs to be obtained

²While making postings/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. 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.

- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for atleast eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.
- of their domicile except District Coordination 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.

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Para-I(v) regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No. SOR-VI (E&AD) 1-4/2008/Vol-VI, dated 3-6-2008. Consequently authorities competent under the NWFP Government Rules of Business. 1985. District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make posting/transfer subject to observance of the policy and rules. Added vide Urdu circular letter No. SOR-VI(E&AD)1-4/2003, dated 21-09-2004

- (13)
- viii) No posting/transfers of the officer's/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.
- 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.
- 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 DCOs and DPOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against-non-administrative posts of equivalent scales;
- xii) In terms of Rule-17(1) and (2) read with Schedule-III of the NWFP Government Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against each officer in column2 thereof:

·			<u> </u>
	Outside the Secretariat		!
1.	Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above.	Chief Secretary in c with Establishment I and Department with the approval of Minister.	concerned
2.	Other officers in BPS-17and above to be posted against scheduled posts, or posts normally held by the APUG, PCS(EG) and PCS(SG).	-do-	
3.	Heads of Attached Departments and other Officers in B-19 & above in all the Departments.	-do-	
	In the Secretariat		
1.	Sceretaries	Chief Secretary approval of the Chief	with the Minister.
2.	Other Officers of and above the rank of Section Officers: a) Within the Same Department	Secretary of the Depar	tment
	b) Within the Secretariat from one Department to another.	concerned. Chief secretary/Secret Establishment.	ary
3.	Officials up to the rank of Superintendent:		

Added vide Urdu circular letter No: SOR-VI (E&AD)/1-4/2005, dated 9-9-2005.

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Posting - Transfer Policy - updated tift 10 Jan, 2009

the state of the s		
a) Within the same Department	Secretary of the concerned.	Department
	Secretary of the consultation with Attached concerned.	
c)Within the Secretariat from one Department to another	Secretary (Establish	ıment)

- xiii) While considering posting/transfer proposals all the concerned authorities shall keep in mind the following:
 - a) To ensure the posting of proper persons on proper posts, the Performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/officials be considered.
 - b) Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.
- due to the orders of posting/transfer authorities may seek remedy from the next higher authority / the appointing authority as the case may be through an appeal to be submitted within seven days of the receipt of such orders. Such appeal shall be disposed of within fifteen days. The option of appeal against posting/ transfer orders could be exercised only in the following cases.
 - i) Pre-mature posing/transfer or posting transfer in violation of the provisions of this policy.
 - ii) Serious and grave personal (humanitarian) grounds
- 2. To streamline the postings/transfers in the District Government and to remove any irritant/confusions in this regard the provision of Rule 25 of the North West Frontier Province District Government Rules of Business 2001 read with schedule IV thereof is referred. As per schedule-IV the posting/transferring authorities for the officers/officials shown against each are as under:

	<u> </u>	
S. No.	Officers	Authority
1.	Posting of District Coordination Officer and Executive District Officer in a District.	Provincial Government.
2,	Posting of District Police Officer.	Provincial Government
3.	Other Officers in BPS-17 and above posted in the District.	Provincial Government
4.	Official in BPS-16 and below	Executive District Officer in consultation with District Coordination Officer.

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VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

	OF 2023	
C + A	(APPELLANT)	
Sartes Alam	(PLAINTIFF)	
	(PETITIONER)	
•		

VERSUS

SMBR & Others

(RESPONDENT) (DEFENDANT)

I/We Saritas Alam

Do hereby appoint and constitute MIR ZAMAN SAFI, Advocate, Peshawar 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 cost. 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.

Dated. 20 / 06 /2023

<u>ACCEPTED</u> MIR ZAMAN SAFI ADVOCATE

OFFICE:

Room No.6-E, 5th Floor, Rahim Medical Centre, G.T Road, Hashtnagri, Peshawar. Mobile No.0333-9991564 0317-9743003