

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 7902/2021

BEFORE: ROZINA REHMAN --- MEMBER(J)
MUHAMMAD AKBAR KHAN--- MEMBER(E)

Mrs. Riffat Noreen Charge Nurse (BPS-16) DHQ Hospital Nowshera
..... (*Appellant*)

VERSUS

1. The Chief Secretary to Govt: of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. The Secretary to Govt: of Khyber Pakhtunkhwa, Health Department Civil Secretariat Peshawar.
3. The Director General Health Service, Khyber Pakhtunkhwa, Peshawar.
4. The Medical Superintendent, DHQ Hospital, Nowshera...(*Respondents*)

Present:

SYED NOMAN ALI BUKHARI,
Advocate --- For Appellant

ASIF MASOOD ALI SHAH,
Deputy District Attorney --- For respondents

Date of Institution.....06.12.2021
Date of Hearing.....07.04.2023
Date of Decision.....07.04.2023

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

"That on acceptance of this appeal the impugned order dated 30.07.2021 and 22.11.2021 may please be set aside being, passed prematurely and in violation of posting/transfer policy and the respondent department may please be directed not to transfer the appellant in

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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."

02. Brief facts of the case are that the appellant while performing her duty in Casualty at District Headquarter Hospital Nowshera was transferred from DHQ Hospital Nowshera to DHQ Hospital Hangu vide order dated 16.07.2021. Feeling aggrieved the appellant filed departmental appeal on 02.08.2021 which was accepted and the impugned transfer order of the appellant dated 16.07.2021 was withdrawn in pursuance of inquiry report. However, subsequently withdrawal order of the impugned order was also withdrawn by the departmental appellate authority vide order dated 22.11.2021 with placing the matter of transfer of the appellant at the disposal of the Director General Health Services for consideration in the light of the inquiry report forwarded to him. That the Director General Health Services has passed no order and the impugned order remained intact, hence the appellant filed the instant service appeal.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in her appeal. We have heard arguments of learned counsel for the appellant and learned Deputy District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the transfer order was made on the basis of external influence and not as a routine transfer; that the impugned transfer order is violation of Clause-I, IV and

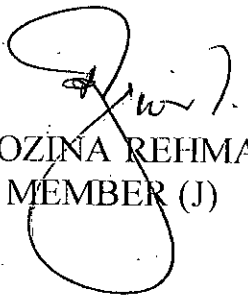
XIII of the transfer/posting policy of the Government of Khyber Pakhtunkhwa. He next contended that no reason has been mentioned in the impugned order which is also in violation of the General Clauses Act, 1987. That the transfer of the appellant is also violation of circular based on the Anita Turab case dated 27.02.2013 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. That the withdrawal order dated 22.11.2021 without any reason is also in violation of Government Posting/Transfer Policy. In the last he submits that the impugned orders dated 20.05.2021, 16.07.2021, 22.10.2021 and 22.11.2021 are against the law, facts, norms of justice, politically motivated, violation of government circulars, therefore, not tenable and liable to be set aside.


05. Learned Deputy District Attorney argued that the appellant has been transferred to DHQ Hospital Hangu in public interest and not on person liking and disliking; that Ms. Sunny Gul Charge Nurse BPS-16 Qazi Hussain Ahmed Medical Complex Nowshera was transferred to DHQ Hospital Nowshera against the vacant post. He next argued that the appellant has been transferred after completion of her tenure. That the transfer order issued on 22.11.2021 was correct because the competent authority for posting transfer of official/officer BPS-16 is Director General Health Services Khyber Pakhtunkhwa. The appellant has been transferred according to relevant law, and policy of the government.

06. Scrutiny of available record in the case file reveal that upon representation by the appellant before the appellate authority against her transfer order inquiry was conducted by Inquiry Committee comprising two senior health professionals. The said inquiry clearly brought out the facts and its findings were crystal clear. As per findings of the inquiry committee the appellant was performing her job in a professional way and according to the given standard operating procedures of the hospital. The abrupt transfer of the appellant (Charge Nurse) to far flung district of Hangu was externally and politically motivated. In the first instance the appellate authority accepted the appeal of the appellant through speaking order in light of the findings of the inquiry report which was withdrawn just after four days and the ball was thrown back to the court of Director General Health Services with whom it is still pending. The whole episode speaks loud of the pressure of external influences and interference in the management of the hospitals. Such meddling badly effects the service delivery. We do not find any merit to sustain the impugned transfer order of the appellant on any ground, be it ~~legal~~, administrative or moral.

07. Foregoing in view the appeal is accepted as prayer for and the impugned orders dated 30.07.2021 and 22.11.2021 is set aside. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 07th day of April, 2023.*


(ROZINA REHMAN)
MEMBER (J)


(MUHAMMAD AKBAR KHAN)
MEMBER (E)

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ORDER

07.04.2023


01. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file consisting of (04) pages, the appeal is accepted as prayer for and the impugned orders dated 30.07.2021 and 22.11.2021 is set aside. Costs shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 07th day of April, 2023.*

(ROZINA REHMAN)
MEMBER (J)

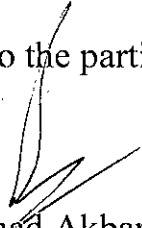

(MUHAMMAD AKBAR KHAN)
MEMBER (E)

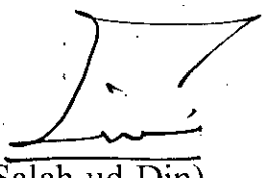
24.03.2023

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

Learned counsel for the appellant seeks adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 07.04.2023 before the D.B. Parcha Peshi given to the parties.

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(Muhammad Akbar Khan)
Member (E)


(Salah-ud-Din)
Member (J)

21.09.2022

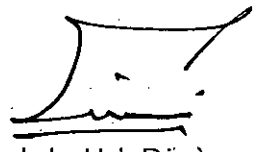
Clerk of learned counsel for the appellant present.
Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in Service Tribunal Camp Court Abbottabad. Adjourned. To come up for arguments on 30.11.2022 before the D.B.

P



(Mian Muhammad)
Member (Executive)



(Salah-Ud-Din)
Member (Judicial)

30/11/22

Deleted from list to come up for the same on 23.2.23



23.02.2023

Bench is incomplete, therefore, the case is adjourned to

24.03.2023 for the same as before.




Reader

25th April, 2022

Counsel for the ~~appellant~~ present. Mr. Muhammad Riaz Khan Painsdakheil, Asst. AG for official respondents No. 1 to 4 present.

Counsel for the appellant requested adjournment to assist the Tribunal. Request is accepted. Case to come up for arguments before the D.B 01.06.2022.

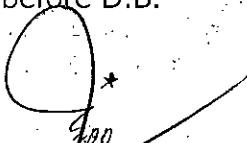

(Fareeha Paul)
Member (E)



Chairman

01.06.2022

Clerk of learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents No. 1 to 4 present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court Peshawar. Adjourned. To come up for arguments on 25.07.2022 before D.B.


(Mian Muhammad)
Member (E)


(Salah-ud-Din)
Member (J)

*proper DB not available to
come up for the same as before
on 24/9/22*



21.03.2022

Counsel for the appellant present. Mr. Kabirullah Khattak,
Addl: AG for the respondents present.

Written reply on behalf of the respondents not submitted.
Notices be issued to the respondents for submission of written
reply/comments. To come up for written reply/comments on
05.04.2022 before S.B.

Counsel for the appellant present. Mr. Kabirullah Khattak,
Addl: AG for the respondents present.

(MIAN MUHAMMAD)

MEMBER(E)

22.03.2022

Counsel for the appellant present. Mr. Kabirullah Khattak,
Addl: AG for the respondents present.

Written reply on behalf of the respondents not submitted.
Notices be issued to the respondents for submission of written
reply/comments. Adjourned. To come up for written
reply/comments on 05.04.2022 before S.B. If the appellant was
relieved after passing of the impugned order, the respondents
shall restore ante-status quo by allowing the appellant to take
charge of the post at DHQ Hospital Nowshera, *As per order sheet
dated 23.12.2021.*

(MIAN MUHAMMAD)
MEMBER(E)

05.04.2022

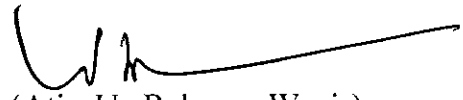
Counsel for the appellant present. Mr. Kabirullah
Khattak Adl. AG along with Usman Assistant for official
respondents present. Written reply submitted by
respondent No. 1 to 4. which is placed on file. Rejoinder if
any in the meantime. To come up for arguments before D.B.
on 25.04.2022.

 Chairman

19.01.2022


Appellant in-person present: Mr. Muhammad Adeel Butt, Addl. AG alongwith Mr. Jaffar Ali Assistant for respondents present.

Reply/comments on behalf of respondents are still awaited. Representative of respondents sought time for submission of reply/comments. Granted. To come up for reply/comments before the S.B on 04.02.2022.


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

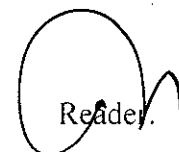
04.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 21.02.2022 for the same as before.


Reader

21.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to ~~21~~ 03.2022 for the same as before.


Reader.



23.12.2021

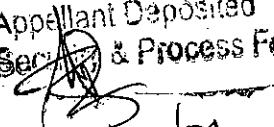
Counsel for the appellant present. Preliminary arguments heard.

The appellant has invoked the jurisdiction of this Tribunal to challenge the transfer order dated 16.07.2021, whereby he was transferred from DHQ Hospital Nowshera to DHQ Hospital Hangu. On departmental appeal preferred before the higher authority i.e. the Secretary Health, Government of Khyber Pakhtunkhwa, the said order was withdrawn in pursuance to an enquiry got conducted by the appellate authority after departmental appeal. However, subsequent order as to withdrawal of the impugned order was also withdrawn by the departmental appellate authority vide order dated 22.11.2021 with placing the matter of transfer of the appellant at the disposal of the Director General Health Services for consideration in the light of the enquiry report forwarded to him. Learned counsel contends that the D.G Health Services has passed no order and the impugned order remained intact which in view of the enquiry of the department was passed under extraneous influence. Points raised need consideration. This appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 19.01.2022 before S.B.

An application for interim relief seeking suspension of impugned order till disposal of main appeal has been filed with the memorandum of appeal. Notice of the application be also given to the respondents. The operation of order is suspended till next date. If the appellant was relieved after passing of the impugned order, the respondents shall restore ante-status quo by allowing the appellant to take charge of the post at DHQ Hospital Nowshera.


Chairman

Appellant Deposited
Security & Process Fee




24/12/21

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7902/2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	22/12/2021	<p>The appeal of Riffat Noreen resubmitted today by Syed Noman Ali Bukhari Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put there on <u>23/12/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

SCANNED
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Peshawar

The appeal of Mst. Rifat Noreen Charge Nurse DHQ Hospital Noshera received today i.e. on 06.12.2021 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- ① Copy of reliving order dated 20.05.2021 mentioned in para-4 of the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Annexure-B of the appeal is illegible which may be replaced by legible/better one.
- 3- Annexures of the appeal may be attested.
- ④ Sub-rule-4 of rule-6 of the Khyber Pakhtunkhwa Service Tribunal rules 1974 requires that every civil servant to whom the relief claimed may affect shall also be shown as respondent.

No. 2391 /S.T,

Dt. 07/12 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Syed Noman Ali Bukhari Adv.

Sir All objection removed and file
R- Submitted



④ Ye, due to clerical Mistake here the
first page of the Appeal change with permission.



**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECK LIST**

Case Title: Riffat Noreen vs Health Deptt

S.#	Contents	Yes	No
1.	This appeal has been presented by: <u>Syed Noreen Ali Bulhara</u>	✓	
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the requisite documents?	✓	
3.	Whether Appeal is within time?	✓	
4.	Whether the enactment under which the appeal is filed mentioned?	✓	
5.	Whether the enactment under which the appeal is filed is correct?	✓	
6.	Whether affidavit is appended?	✓	
7.	Whether affidavit is duly attested by competent oath commissioner?	✓	
8.	Whether appeal/annexures are properly paged?	✓	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10.	Whether annexures are legible?	✓	
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/clear?	✓	
13.	Whether copy of appeal is delivered to A.G/D.A.G?	✓	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?		
15.	Whether numbers of referred cases given are correct?	✓	
16.	Whether appeal contains cuttings/overwriting?	X	✓
17.	Whether list of books has been provided at the end of the appeal?	✓	
18.	Whether case relate to this Court?	✓	
19.	Whether requisite number of spare copies attached?	✓	
20.	Whether complete spare copy is filed in separate file cover?	✓	
21.	Whether addresses of parties given are complete?	✓	
22.	Whether index filed?	✓	
23.	Whether index is correct?	✓	
24.	Whether Security and Process Fee deposited? on _____		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on _____		
26.	Whether copies of comments/reply/rejoinder submitted? on _____		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on _____		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

Syed Noreen Ali Bulhara

Signature:

[Signature]

Dated:

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No. 7902 /2021

Rifat Noreen

V/S

Health Department

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4.	Copy of departmental appeal	- B -	10-11
5.	Copy order of inquiry	- C -	12
6.	Copy of order	- D -	13
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APPELLANT

THROUGH:

7/10/21
Sluz
(SYED NOMAN ALI BUKHARI)
ADVOCATES, PESHAWAR

Date: ___/___/2021

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 7902 /2021

Khyber Pakhtun
Service Tribunal

Diary No. 7967

Dated 06/12/2021

Mrs. Riffat Noreen Charge Nurse (Bps-16)
DHQ Hospital Nowshera.

(APPELLANT)

VERSUS

1. The Chief Secretary to Govt: of KP, Civil Secretariat Peshawar.
2. The Secretary to Govt: of KP, Health deptt: Civil Secretariat Peshawar.
3. The DG Health Services, KP Peshawar.
4. The Medical Superintendent, DHQ Hospital, Nowshera.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 16.07.2021, RECEIVED ON 30.07.2021 WHEREBY THE APPELLANT WAS TRANSFER IN UTTER VIOLATION OF POSTING TRANSFER POLICY, AND AGAINST APPELLATE ORDER DATED 22.11.2021 WHEREBY THE CANCELATION ORDER DATED 18.11.2021 OF THE TRANSFER WAS WITHDRAWN.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 30.07.2021 AND 22.11.2021 MAY PLEASE BE SET ASIDE BEING, PASSED PREMATURELY AND IN VIOLATION OF POSTING/TRANSFER POLICY AND THE RESPONDENT DEPTT: MAY PLEASE BE DIRECTED NOT TO TRANSFER THE APPELLANT 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.

Filed to-day

Registrar

Re-
and filed.

Registrar


22/12/2021

APPROPRIATE THAT MAY ALSO BE AWARDED IN
FAVOUR OF APPELLANT.

2

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant now a days working as Charge nurse BPS-16. The appellant performing his duties with ALL Zeal and Zest at different station as per orders of authority.
2. That the colleague of the appellant was performing his duties at DHQ Hospital Nowshera While she was on duty in casualty on nursing counter, a woman came to nursing counter and insisted to inject me injDyclo. The colleague of the appellant requested her to make a slip, then go to doctor and inj will be given in female ward, not on counter, because could not maintain your Privacy here on counter. She insisted the colleague of the appellant to give her inj without slip, without prescription and on nursing counter.
3. That thereafter, She started shouting informed her husband that nurse misbehaved with me, her husband called MS to change the duty of this nurse immediately. MS did not issue any order of duty change. after one month that woman came again, and when saw colleague of the appellant on counter, she started shouting why this nurse still here on counter, although I had ordered to changed her duty, she again called her husband, he claim himself as journalist of Geo Group.
4. That On 2nd day MS relieved appellant vide order dated 20.05.201 without law full authority along with her colleague From hospital on the ground of misbehavior and unprofessional attitude with female patient and sent order to complainant's husband. Thereafter the DG Helath Services issued transfer order of the appellant from DHQ HOspital Nowshera to DHQ Hospital Hangu on the basis of outer influence in violation of posting transfer policy (Copy of ~~reliving order~~ transfer order is attached as annexure-A 
5. That the appellant feeling aggrieved from the impugned order filed departmental appeal on 02.08.21, wherein the appellant also requested to conduct inquiry for the same purpose, on basis of which inquiry Committee was constituted by the appellate authority vide order dated 16.08.2021. (Copy of departmental appeal and order dated 16.08.2021 is attached as Annexure- B & C).

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6. That thereafter constitution of inquiry, on malafide intentions DG Health Services Transfer Sunny Gul Charge Nurse in place of appellant from MTI Qazi Hussain Ahmad Medical Complex Nowshera vide order dated 22.10.2021. **copy of the order dated 22.10.2021 is attached as annexure-D.**
7. That inquiry officer submitted inquiry report 29th October 2021 which is in favor of the appellant and concluded that the transfer order was made on the basis of external influence and not as a routine transfer and that too without processing the file at directorate level as no record in the relevant section was found to substantiate the reason of their transfer. **Copy of the inquiry report is attached as annexure-E.**
8. That after inquiry the appellate authority accepted the departmental appeal of the appellant and transfer order dated 16.07.2021 is hereby cancelled vide order dated 18.11.2021. but quite astonishingly just after 04 days the appellate authority withdrawn his previous order dated 18.11.2021 for the reason the same should have been processed by Director general Health services being the competent authority vide order dated 22.11.2021. **copy of the order dated 18.11.2021 and 22.11.2021 is attached as annexure-E & G.**
9. That the appellant has no other remedy therefore constrained to file this appeal on the basis of following grounds amongst others.

GROUND:

- A) That the impugned order dated 20.05.2021, 16.07.2021, 22.10.2021 AND 22.11.2021 is against the law, facts, norms of justice, politically motivated, violation of Govt: circulars, therefore not tenable and liable to be set aside.
- B) That the appellant transfer order was made on the basis of external influence and not as a routine transfer and that too without processing the file at directorate level as no record in the relevant section was found to substantiate the reason of their transfer, so without showing any cogent reasons and without giving personal hearing is against the law rules, posting transfer policy and principal of locus poenentiae.

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**Copy of posting transfer policy is attached as Annexure-
H-**

- C) That the appellant is married and resident of district Mansehra. So, transfer of appellant, out of district is against the law, rules, policy and according to supreme court judgment and this Hon'ble Tribunal Judgment. further appellant also shall not be transferred on humanitarian ground, so the impugned order is liable to be set-aside..
- D) That the impugned order was passed in sheer negation of law rules, framed for the posting and transfer of married civil servants, in slipshod, perfunctory, arbitrary and clandestine manners thus liable to be set aside.
- E) That, relevant law, rules and regulations have blatantly bypassed/ violated by the respondents and the relevant law, rules and regulations have never been taken into consideration by the respondents and thus the notification so passed by the respondents have no legal sanctity in the eyes of law.
- F) That, no solid, valid, concrete or confidence inspiring reasons/ justification has been given by the competent authority while transferring the appellant.
- G) That, the impugned transfer order has neither been in the best interest of public service nor in exigencies of service, hence, not tenable and liable to be set aside.
- H) That, the impugned transfer order is violative of clause-I, IV and XIII of the transfer/ posting policy of the Government of Khyber Pakhtunkhwa as the appellant has been transferred from his current post.
- I) That, the powers or jurisdiction are vested in authority to exercise it justly, fairly, honestly, judiciously and in accordance with law, rules and regulations but the respondents have transgressed upon their powers while dealing with the matter in hand.
- J) That the impugned order is not a rational one and based on personal liking and disliking.

- K) 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. **Copy attached as annexure-I**
- L) That no reasons have been mentioned in the impugned order which is the violation of Clause-24-A of the General Clauses Act 1897.
- M) That the with drawl order dated 22.11.2021 without any reason is also in violation of Government Posting/Transfer Policy. Thus, the withdrawn order is not sustainable in the eye of law.
- N) That this Hon;ble Tribunal Already Accepted the Same Nature Appeal Miskeen Vs irrigation deptt. So the appellant may also be treated at par and the same relief may also be given to the appellant. ~~Copy of the same is attached as annexure-II~~
- O) That the impugned order is not based on public interest nor any exigencies but rather to adjusted blue eyed person.
- P) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

7/11/21
Attested

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

Rifat Noreen
APPELLANT
Rifat Noreen

THROUGH: *N.A. Bukhari*
(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT

S. Khan
SHAHKAR KHAN YOUSAFZAI
ADVOCATE, PESHAWAR

CERTIFICATE:

6

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

DEPONENT

LIST 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 BUKHARD)
ADVOCATE HIGH COURT

7

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Appeal No. _____ /2021

Rifat Noreen

V/S

Health Department

.....

**APPLICATION FOR SUSPENDING
THE OPERATION OF ORDER DATED
20.05.2021, 16.07.2021 AND 22.10.2021
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 prima 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 favoritism and nepotism and has been passed in-violation of Posting, Transfer Policy.
5. That if the order is not suspended and charge will take from the appellant. It badly effect the right of appellant.

2

It is, therefore, most humbly prayed that the order dated 20.05.2021, 16.07.2021 AND 22.10.2021 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

Rifat Noreen

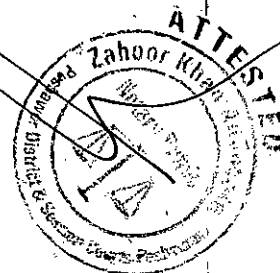
THROUGH:


(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



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(BETTER COPY)

OFFICE ORDER:

The following posting / transfer of the incharge Nurses MTI hereby ordered in the interest public nurses with under the orders.

S.No	Name of Charge Nurses	From	To	Remarks
1	Mrs. Seema Shaheen D/o. Abdul Qayyum, Charge Nurse, BS-19	DHQ Hospital, Nowshera	DHQ Hospital, Hangu	Against the Vacant Post
2.	Mrs. Rifat Noreen D/o. Muhammad Ibrahim, Charge Nurse, BS-16	DHQ Hospital, Nowshera	DHQ Hospital, Hangu	Against the Vacant Post

NB. Arrival / Departure reports should please submitted to this directorate for record.

Sd/-
**DIRECTOR GENERAL HEALTH
SERVICES, KP, PESHAWAR**

No. 2714-18/E.II, dated: Pesh, the 16/07/2021

Copy Forwarded to the:

1. Hospital Director, Qazi Hussain Ahmad, Medical Complex, Nowshera.
2. Medical Superintendent, DHQ Hospital, Nowshera.
3. Medical Superintendent, DHQ Hospital, Hangu.
4. District Accounts Officer, Hangu
5. District Accounts Officer, Nowshera
6. DA-Concerned, DGHS, KP, Peshawar.

For information and necessary action.

**DIRECTOR GENERAL HEALTH
SERVICES, KP, PESHAWAR**

OFFICE ORDER

The following Postings/Transfers of Charge Nurses, IIIrd Grade are hereby ordered in the interest of public Service with immediate effect.

S.No.	Name of Charge Nurse	From	To	Remarks
01	Mrs. Seema Shabeer D/O Abdul Qayyum Charge Nurse BS-16	DIHQ Nowshera	Hospital, DIHQ Hospital, Hangu	Assign the vacant post
02	Mrs. Rifa Noreen D/O Muhammad Ibrahim Charge Nurse BS-16	DIHQ Nowshera	Hospital, DIHQ Hospital, Hangu	Assign the vacant post

NB: - Arrival/Departure reports should please be submitted to this Directorate for record.

Sd/-
DIRECTOR GENERAL HEALTH SERVICES, K.P PESHAWAR.

No. 2714-18 /E.II.

Dated Pesh. The 16 /07 /2021

- Copy forwarded to the:-
01. Hospital Director, Qazi Hussain Ahmad Medical Complex Nowshera
 02. Medical Superintendent, DIHQ Hospital, Nowshera
 03. Medical Superintendent, DIHQ Hospital, Hangu.
 04. District Accounts Officer, Hangu.
 05. District Accounts Officer, Nowshera.
 06. DA-concerned, DGHS K.P Peshawar.
- For information and necessary action.

Supes attached

20/7/21

22/7/21

20/7/21

DIRECTOR GENERAL HEALTH SERVICES, K.P. PESHAWAR

19/7/21

To.

The Secretary Health,
Govt of Khyber Pakhtunkhwa,

Subject: APPEAL TO WITHDRAW OUR TRANSEER ORDERS

Honourable Sir,

I Miss Riffat Noreen Charge Nurse (BPS-16) working in DHQ hospital Nowshera. I am serving in Health Department for the many years. In my entire service no one complaint against me and not a single penalty was awarded to me

Coming to the current issue.

While my colleague Was on duty in casualty on nursing counter, a woman came to nursing counter and insisted to inject me injDyclo.

My colleague requested her to make a slip, then go to doctor and inj will be given in female ward, not on counter, because could not maintain your Privacy here on counter. She insisted to give me inj without slip, without prescription and on nursing counter.

She started shouting informed her husband that nurse misbehaved with My colleague, her husband called MS to change the duty of this nurse immediately. MS did not issue any order of duty change. after one month that woman came again, and when saw My colleague on counter, she started shouting why this nurse still here on counter, although I had ordered to changed her duty, she again called her husband, he claim himself as journalist of Geo Group.

On 2nd day MS relieved me and My colleague From hospital and sent order to her husband that I have taken action against them.



We requested to constitute an inquiry committee to probe facts, MS again kept reliving letters and ordered us to keep continue your duties. My duty was changed from casualty to surgical ward as desired that women and her husband.

Women's husband Mr. Mushtaq Paracha came to hospital, My colleague was called by MS to his office, ten to fifteen male were present in MS office, MS an Mushtaq Paracha insulted My colleague, shouting on her that you have misbehaved with my wife, I will not spare you, threatened her in loud voice.

Now after two months I received my Transfer letter to Hangu along with My colleague as I was supporting her in this injustice and requesting MS not to hear one side

Honourable Sir.

At that time MS have to constitute an inquiry Committee, but he did not.

He was continually busy to keep happy that so called journalist, tortured me, harassed me and humiliated not only me the whole nursing community.

It is humbly requested to order for withdrawal of our transfer letter and order an impartial inquiry from Secretariat it required please.

I will be very thank full for your this act of kindness.

Dated: 02.08.2021


Yours Faithfully,

Miss Riffat Noreen

Charge Nurse



GOVT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated the Peshawar 16th August, 2021

NOTIFICATION

No. SOII-III/3-5/2021. The Competent Authority, is pleased to constitute Inquiry Committee comprising the following officers to conduct a fact finding inquiry with regard to posting/transfer of Miss. Seema Shaheen & Miss. Riffat Noreen, Charge Nurses (BS-16) influenced by a journalist without hearing the appellants, by the MS, DHQ Hospital, Nowshera as stated in their appeal, with immediate effect:-

- i. Deputy Secretary (Drugs), Health Department. (Chairman)
- ii. Mst. Waseema Rafiq, AD (Nursing) DGHS. (Member)

The Inquiry Committee shall submit its report within fifteen (15) days positively.

Encl: Relevant record attached.

Secretary to Govt. of Khyber Pakhtunkhwa
Health Department

End of even No and Date.

Copy forwarded for necessary action and information along with enclosures to the:-

1. Director General, Health Services, Khyber Pakhtunkhwa.
2. Deputy Secretary (Drugs), Health Department.
3. PS to Secretary Health Department.
4. Inquiry Members.

(Naseer Ahmad)
SECTION OFFICER-III



GOVERNMENT OF KHYBER PAKHTUNKHWA HEALTH
DEPARTMENT

No. SO(Drugs)/115/2-43/2021
Dated Peshawar, the 29th October, 2021

To

The Section Officer (E-III),
Health Department,

Subject: - INQUIRY REPORT.

I am directed to refer to your Notification No. SO11-III/3-5/2021,
dated 16th August, 2021 and to enclose herewith the Inquiry report (In-
original) for further necessary action as desired, please.

Encl: As above.

(Muhammad Ilyas)
Deputy Secretary (Drugs)/Inquiry Officer

Endst: No. & Date Even.

Copy is forwarded to:-

1. PS to Secretary Health, Khyber Pakhtunkhwa, Peshawar.
2. PS to Special Secretary Health (B&D), Khyber Pakhtunkhwa, Peshawar.
3. PA to Additional Secretary Health (Dev), Khyber Pakhtunkhwa,
Peshawar.

Deputy Secretary (Drugs)/Inquiry Officer

Inquiry Officers:

1. Muhammad Ibrahim, Deputy Secretary (Drugs), Health Department, Khyber Pakhtunkhwa,
2. Mrs. Waseema Rafiq, Assistant Director (Nursing) DGHS KP, Peshawar.

(15)

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Authorization.

Health Department's Notification (Annex-I) authorized to conduct a fact finding inquiry with regard to posting/transfer of Miss. Seema Shaheen & Miss. Refat Noreen, Charge Nurse (BS-16) influenced by a journalist without hearing the appellants by the Medical Superintendent at DHQ Hospital, Nowshera as stated in their appeal.

Documents Reviewed.

1. Personal Files of both the nurses.
2. Files contain progress of transfer in respect of both the nurses.
3. Statement of Miss Seema Shaheen (Annex-II).
4. Statement of Miss Refat Noreen (Annex-III).

Methodology.

In pursuance to the Health Department's Notification regarding conduction of fact finding inquiry on the appeal of charge nurses (Annex-IV), the inquiry team visited the DHQ Hospital, Nowshera and examined the procedure followed in this regard and acquire the statements from the charge nurses who were transferred on outward pressure at the seams.

History of the Case.

The case under inquiry relates to transfer of 02 charge nurses served in DHQ Hospital, Nowshera who were transferred to DHQH, Hangu under the office order of DGHS (Annex-V). They apprised the Inquiry Committee that Mr. Mushtaq Paracha, the Journalist accompanying a lady supposed to be his wife alongwith Ikram, Ward Orderly asked the charge nurses i.e Seema Shaheen & Refat Noreen for administering of Inj. Dyclo which was refused by the said nurses

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on the plea that the said counter is not meant for administering the injections for which separate room is earmarked. They stated that they guided him to do so but Mr. Mushtaq Parach rushed toward the office of Medical Superintendent of the hospital and influenced the MS to remove them from their positions on the pretext of not abiding on his instructions, Medical Superintendent called the supervisor, Mrs. Mussarat Jabeen to relieve them from the current position who demanded a written order in the same case.

The same journalist while knowing that two charge nurses were still performing duty at the same places, he threatened the charge nurses in the shape of their transfers outside the district. The behavior of the outsiders in the presence of staff was reported by the charge nurses to the Medical Superintendent of the said hospital and levelled the charges of harassment against said person for a fair inquiry (Annex-VI). On the contrary, the Medical Superintendent relieved both of them per his office order (Annex-VII) and placed at the disposal of Director General Health Services who further transferred both of them to DHQH Hangu (Annex-V). No inquiry was found in the office record that could substantiate the stance of Medical Superintendent for relieving the nurses. The personal files of both the nurses were also checked thoroughly but no adverse report found present in it.

Findings:

1. From perusal of the said record, statement of the Charge Nurses, visit of the hospital and record of the Assistant Director Nursing at DGHS, it appears that the posting/transfers of the charge nurses ordered by the Director General Health Services who is otherwise competent to do the same but on the pretext that the same has been done on the influence of some outsider with no complaint on record is also proved.
2. The administration of the hospital did not handle the issue amicably to avoid such situation.
3. The Director General health Services could have posted the charge nurses to some near station rather far flung area and that too without any complaint which smells the apprehension of the appellant.
4. Upon visit of the hospital, it has been surfaced that the nurses are being working in place of paramedics leading shortage of nurses to perform their own job. The duty rota for nurses is not in accordance to their job description.

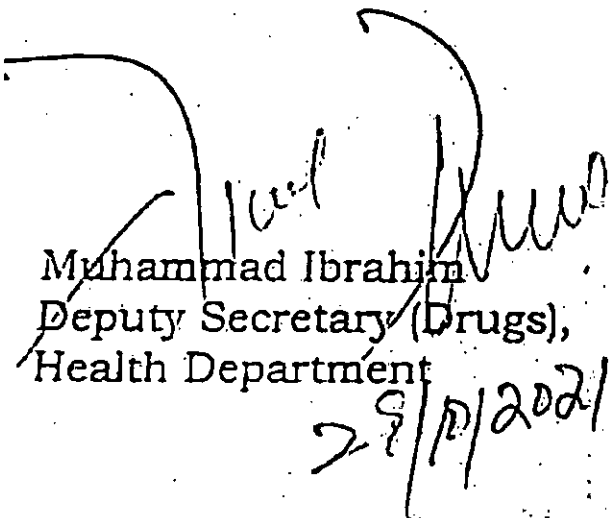
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5. The space, where the emergency services are being rendered and where the untoward incident happened, is not sufficient to cope with emergencies and requires proper arrangement/segregation of work to avoid such incidents.

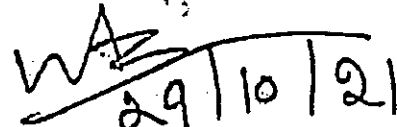
6. The refusal of the nursing staff for administering injection on the dispensing counter was valid as the same was in compliance with the direction of the administration refraining the staff not to administer injection/IV fluid on the nursing counter rather the same shall be done at segregated area declared for it.

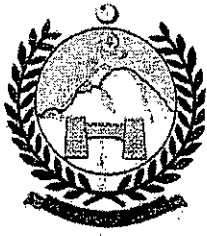
Conclusion:-

Based on the above facts it is concluded that the above mentioned transfers were made on the basis of external influence and not as a routine transfers and that too without processing the file at Directorate level as no record in the relevant section was found to substantiate the reason of their transfers. Such acts may demoralize the staff of Health Department that belong to any cadre.


Muhammad Ibrahim
Deputy Secretary (Drugs),
Health Department

29/10/2021


Mrs. Waseema Rafiq,
Assistant Director (Nursing)
DGHS KP, Peshawar



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

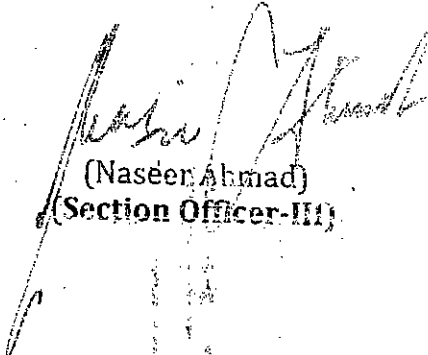
No. SOH-III/3-5/2021(DHQ Nowshera)
Dated the Peshawar 18th November, 2021

To

**The Medical Superintendent,
DHQ Hospital, Nowshera.**

SUBJECT:- OFFICE ORDER.

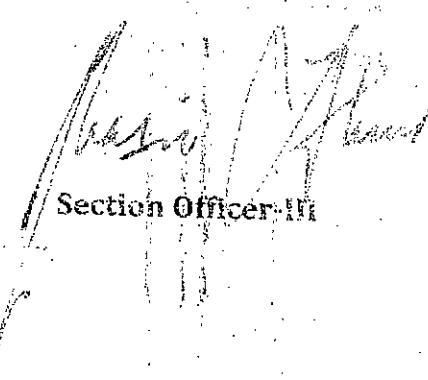
I am directed to refer to the subject noted above and to convey that the Office Order No. 2714-18/E.II, dated 16-07-2021 issued by Director General, Health Services, Khyber Pakhtunkhwa, Peshawar in respect of Mrs. Seema Shaheem D/o Abdul Qayum & Miss. Rifat Noreen D/o Muhammad Ibrahim, Charge Nurses (BS-16) is hereby cancelled with effect from 16-07-2021.


(Naseer Ahmad)
(Section Officer-III)

Endst: even no & date.

Copy forwarded to the:-

1. Director General, Health Services, Khyber Pakhtunkhwa, Peshawar for similar necessary action, please.
2. Medical Superintendent, DHQ Hospital, Hangu.
3. District Accounts Officers, Nowshera & Hangu.
4. PS to Secretary Health, Khyber Pakhtunkhwa.
5. Charge Nurses concerned.


Section Officer-III



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

No. SOH-III/3-5/2021(DHQ Nowshera)
Dated the Peshawar 22nd November, 2021

NOTIFICATION

SOH-III/3-5/2021(DHQ Nowshera): The Office Order, bearing No. SOH-III/3-5/2021(DHQ Nowshera), dated 18-11-2021 regarding cancellation of Transfer Order in respect of Mrs. Seema Shaheem d/o Abdul Qayum & Miss. Rifat Noreen d/o Muhammad Ibrahim, Charge Nurses (BS-16), is hereby withdrawn as the same should have been processed by Director General Health Services (DGHS), being the Competent Authority. Consequently, the Inquiry Report is hereby forwarded to DGHS for further necessary action, with immediate effect.

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

Endst: even no & date.

Copy forwarded to the:-

1. Director General, Health Services, Khyber Pakhtunkhwa, Peshawar.
2. Medical Superintendent, DHQ Hospital, Hangu.
3. District Accounts Officers, Nowshera & Hangu.
4. PS to Secretary Health, Khyber Pakhtunkhwa.
5. Charge Nurses concerned.

Section Officer-III



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 in making 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) 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 Government.

v) While making postings/transfer from settled areas to FATA and vice-versa, specific approval of Governor NWFP needs to be obtained.

While 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 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 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.

Para-1(v) regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No. SOR-VI (E&AD) 11/2007/Vol-VI dated 5-6-2008. Consequently authorities competent under the NWFP Government Rules of Business, 1985 District Government Rules of Business, 2004, 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) 11/2007 dated 21-09-2007.

ATTESTED

(Signature)

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- 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.
- 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. 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.
- ii) 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 column 2 thereof.

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 consultation with Establishment Department and Department concerned with the approval of the Chief Minister.
2.	Other officers in BPS-17 and 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.	Secretaries	Chief Secretary with the approval of the Chief Minister.
2.	Other Officers of and above the rank of Section Officers: a) Within the Same Department b) Within the Secretariat from one Department to another.	Secretary of the Department concerned Chief secretary/Secretary Establishment
3.	Officials up to the rank of Superintendent.	

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

Noted

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a) Within the same Department.	Secretary of the Department concerned.
b) To and from an Attached Department.	Secretary of the Dept in consultation with Head of Attached Department concerned.
c) Within the Secretariat from one Department to another.	Secretary (Establishments)

xiii) While considering posting/transfer proposals, all the concerned authorities shall keep in mind the following:

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

xiv) Government servants including District Govt. employees feeling aggrieved 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:

1) Premature posing/transfer or posting transfer in violation of the provisions of this policy.

2) 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:-

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.

APPROVED

[Signature]
 District

1	163/21	UMIAR KHAN (2)
2	445/22	IJAZ HUSSAIN (1)
3	560/22	M FAYAZ
4	740/22	KHYAL BADSHAH
5	72/23	SYED ANWAR
6	103/23	M. RAHIM
7	271/23	QUDRAT ULLAH
8	705/23	REDDAD KHAN (11)

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REPLY

S.NO.	APPEAL NO.	APPELLANT NAME
1	1890/22	KHALID KHAN
2	2005/22	M. UZAIR ALI
3	521/23	IBRAR UD DIN

23

As per Rule 25(2) of the Rules mentioned above, the District Government/Department shall consult the Government if it is proposed to:

- a) Transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure.
- b) Require an officer to hold charge of more than one post for a period exceeding two months.

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

All concerned are requested to ensure that tenures of the concerned officers/officials are invariably mentioned in summaries submitted to the Competent Authorities for Posting/Transfer.
(Authority: Letter No: SOR-VI/E&AD/1-47/2003 dated 24-6-2003)

It has been decided by the Provincial Government that posting/transfer orders of all the officers up to BS-19 except Heads of Attached Departments irrespective of grades will be notified by the concerned Administrative Departments with prior approval of the Competent Authority obtained on the Summary. The Notifications/orders should be issued as per specimen given below for guidance.

All posting/transfer orders of BS-20 and above and Heads of Attached Departments (HAD) shall be issued by the Establishment Department and the Administrative Departments shall send approved Summaries to D&A Department for issuance of Notifications.

SPECIMEN NOTIFICATION

GOVERNMENT OF NWFP
NAME OF ADMINISTRATIVE
DEPARTMENT

Dated Peshawar: _____

NOTIFICATION

NO. _____ The Competent Authority is pleased to order the transfer of Mr. _____ Department and to post him as _____ in the interest of public service with immediate effect.

CHIEF SECRETARY
GOVERNMENT OF NWFP

Endst. No. and date even.

Copy forwarded

- 1.
- 2.
- 3.
- 4.

ATTACHED

Attchd

- v) In case of direct submission of application to the Chief Minister Secretariat for Posting/ Transfer, the concerned govt servants shall be proceeded against under the prevalent rules and regulations.

(Authority: Urdu circular No. SOR-VI(E&AD)/1-4/2007, dated 26-2-2007
Urdu Letter No. SOR-VI(E&AD)/Misc. 7/2005, dated 5-11-2005.)

It has been decided with the approval of the competent authority that:

- i) Mutual transfer would be allowed if both the concerned employees agree; except the Government Servants holding Administrative posts;
- ii) NWFP Government Rules of Business 1985 shall be observed while issuing posting/transfer orders.

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

The competent authority has decided that in order to maintain discipline, enhance performance of the departments and ensure optimum service delivery to the masses, the approved/prevalent policy of the posting/transfer shall be strictly followed. Government Servants violating the policy and the NWFP Govt Servants (Conduct) Rules 1987 shall be proceeded against under the NWFP Removal from Service (Special Powers) Ordinance 2000. As required under the NWFP Govt Rules of Business 1985, the Administrative Secretaries shall ensure compliance with the policy and defaulting offices/officials be taken to task & entries to this effect shall be made in their PERs/ACRs. In case subordinate officers are working on sites or proceeding for the purpose of inspection, they shall submit inspection Report to their Administrative Secretaries. Administrative Secretaries shall ensure submission of such reports.

(Authority: Urdu circular No. SOR-VI(E&AD)/1-4/06, dated 29-6-2007)

PLACEMENT POLICY

In order to utilize the expertise of the officers who have received foreign training in various fields, the provincial Government has decided to adopt the Placement Policy, approved by the Prime Minister of Pakistan, and make it a part of its Posting/Transfer Policy. Placement Policy as follows:

- i) All placements would be made on the basis of merit and keeping in view the needs of the organization.
- ii) The first priority in placement must go to the parent organization of the participant from where the individual had applied. This will be in consonance with the concept of establishing the "Need" for the department and fulfilling the need through "capacity building" for the organization.
- iii) In order to follow the "bottom up approach" for Devolution, the priority within departments must go to the Districts, the Provinces and then the Federal Government.
- iv) The second priority in placement should go to up-grading the existing training Institution within the country. The knowledge gained by the

Placement Policy has been made part of the posting/transfer policy vide Urdu circular No. SOR-VI(E&AD)/4/06, dt 9-2-2007

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- officers, will be of immense value to bring about a qualitative change in the training institutions. The following proposals are made in this regard:
- a) Permanent posting of an officer to the training institutions for 2-3 years;
 - b) Temporary attachment with the training institutions for 3 to 6 months for some research project on helping in developing case studies;
 - c) Earmarked as a visiting faculty member for specific subject.
 - v) Individuals posted to their parent organizations will also organize training for their subordinates within the department, in order to transfer the knowledge and bring about a qualitative change internally;
 - vi) The Normal tenure of posting as already provided in the policy would be ensured;
 - vii) No participant should be allowed to be posted on deputation to multinational donor agencies for at least 5 years;
 - viii) No participant will decline/represent against his/her posting.
- *****

RECEIVED

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[Stamp]



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

(REGULATION WING)

NO. SOR/V/EA/114/2005/Vol-II
Dated Peshawar, 27th February, 2013

Handwritten notes and signatures in the top left margin.

- To:
1. The Additional Chief Secretary (P&D) Khyber Pakhtunkhwa
 2. The Additional Chief Secretary (P&D) 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 SUO MOTO CASE NO. 3/2012 PETITION BY MS. ANITA MURAB 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 cited above and to state that the Supreme Court of Pakistan vide the subject cited judgment has enunciated the following principles of law with regard to protection and conduct of civil servants.

Handwritten notes: 'As 4/3' and other illegible scribbles.

- (i) **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.
- (ii) **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.

Handwritten note: 'very good'

Handwritten signatures and initials.

Handwritten signature: 'S. H. / S. H. / S. H.'

ATTESTED

Large handwritten signature and the word 'ATTESTED' written below it.

(iii) Illegal 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 going on 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,

NAJAM
(NAJ-MUS-SAHAR)
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.

NAJAM
SECTION OFFICER (REG-VI)

Amir

VAKALAT NAMA

NO. _____/2021

IN THE COURT OF KP Service Tribunal, Peshawar

Miss. Rifat Noreen

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

T. Health Deptt.

(Respondent)
(Defendant)

I/We, Miss. Rifat Noreen

Do hereby appoint and constitute **SYED NOMAN ALI BUKHARI Advocate High Court 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 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

Rifateen
(CLIENT)

ACCEPTED

Syed Noman Ali Bukhari
SYED NOMAN ALI BUKHARI
Advocate High Court Peshawar.

Cell: (0306-5109438)

S. Khan
SHAHKAR KHAN YOUSAFZAI
Advocate Peshawar.

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 7902 OF 2021

Riffat Noreen.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa and others.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 01 TO 04

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 and also in the present circumstances of the issue.
5. That the appellant has filed the instant appeal with mala-fide intention hence liable to be dismissed.
6. That the appellant has not come to this Honorable Tribunal with clean hands.
7. That the appeal is barred by law and limitation.
8. That the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.
9. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.

ON FACTS:

1. Correct.
2. Pertains to record.
3. Pertains to record.
4. Incorrect. The appellant has been transferred to DHQ Hospital Hangu in the public interest.
5. Pertains to record.

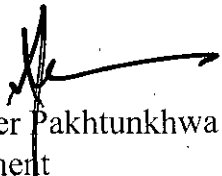
6. Incorrect. Ms. Sunny Gul Charge Nurse BPS-16 Qazi Hussain Ahmad Medical Complex Nowshera was transferred to DHQ Hospital Nowshera against the vacant post.
7. Pertains to record.
8. Correct because competent authority for posting transfer of official / officers BPS-16 is Director General Health Services Khyber Pakhtunkhwa.
9. Needs no comments being legal.

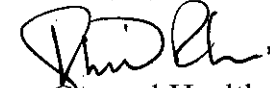
ON GROUNDS:

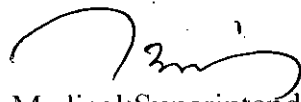
- A) Incorrect. The appellant has been transferred to DHQ Hospital Hangu in the public interest and not against the law.
- B) Incorrect as in preceding para.
- C) Incorrect, as per terms and condition of appointment, the appellant is liable to serve anywhere in the province.
- D) As in Para-A.
- E) Incorrect. The appellant has been transferred according to relevant law, policy of the Govt.
- F) Incorrect. The appellant has been transferred to DHQ Hospital Hangu in the public interest.
- G) As in preceding para.
- H) As in Para-B.
- I) As in Para-A.
- J) Incorrect. The appellant has been transferred in public interest and not on personal liking and disliking.
- K) Incorrect. The appellant has been transferred after completion of her tenure.
- L) Incorrect. The transfer order has been issued in the best public interest.
- M) Incorrect. The transfer order was issued on 22/11/2021 was correct because competent authority for posting transfer of official / officers BPS-16 is Director General Health Services Khyber Pakhtunkhwa.
- N) Pertains to record.
- O) As in Para-A.
- P) Answering respondents also seek prior permission of this Honorable Tribunal to adduce additional grounds at the time of arguments.

PRAYER:

It is therefore humbly prayed that on acceptance of the comments, the instant appeal of the appellant may very graciously be dismissed with costs. |


Secretary to Govt. of Khyber Pakhtunkhwa
Health Department
Respondent No. 01 & 02


Director General Health Services
Khyber Pakhtunkhwa
Respondent No. 03


Medical Superintendent
DHQ Hospital Nowshera
Respondent No. 04
Medical Superintendent
D.H.Q Hospital
Nowshera

