


FORM OF ORDER SHEET

Court of _____

Appeal No. 1556/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/07/2023	<p>The appeal of Mr. Irshad Khan presented today by Mr. Noor Muhammad Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 01-08-2023</p> <p>By the order of Chairman  REGISTRAR</p>

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

SERVICE APPEAL NO. 1556 /2023

IRSHAD KHAN

VS

GOVT OF KPK

I N D E X

S. NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGE
1.	Appeal with affidavit		1-3
2.	Suspension application		4
3.	Notification 22.01.2023	A	5-7
4.	Letters	B	8
5.	Order dated 13.12.2022	C	9-10
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APPELLANT

Through

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

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

APPEAL NO. 1556 /2023

Mr. Irshad Khan, Naib Tehsildar, Labor Kot, Settlement Operation Mansehra, Services placed at the disposal of Director Land Records, Khyber Pakhtunkhwa, Peshawar.

.....APPELLANT

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Establishment, Khyber Pakhtunkhwa, Peshawar.
2. The Senior Member of Revenue, Khyber Pakhtunkhwa, Peshawar.
3. The Director Land Record, Khyber Pakhtunkhwa, Peshawar.
4. Mr. Muhammad Asad Ullah Naib Tehsildar, Under Transfer to Labor Kot Settlement Operation Mansehra.

.....RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 10.05.2023 WHEREBY THE APPELLANT HAS BEEN TRANSFERRED FROM THE POST OF NAIB TEHSILDAR LABOR KOT SETTLEMENT OPERATION MANSEHRA AND HIS SERVICES WERE PLACED AT THE DISPOSAL OF DIRECTOR LAND RECORDS IN UTTER VIOLATION OF TRANSFER POSTING POLICY AND AGAINST THE APPELLAT ORDER DATED 25.07.2023 WHEREBY THE DEPARTMENTAL APPEAL OF APPELLANT HAS BEEN REJECTED.

PRAYER:

That on acceptance of this appeal the impugned order dated 10.05.2023 and appellate order dated 25.07.2023 may very kindly be set aside and the respondents may kindly be directed to retain the appellant as Naib Tehsildar Labor Kot Settlement Operation Mansehra. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

Respectfully Sheweth:

Facts arising for the institution of instant writ petition are as under.

- 1- That the appellant is a law abiding citizen of Islamic Republic of Pakistan, and permanent resident of District Mansehra.
- 2- That the appellant is an employee of the respondent department and performing his duty as Naib Tehsildar, Settlement Operation Mansehra.

- 3- That it is worth mentioning that the Election Commission of Pakistan vide notification dated 22.01.2023 banned all kinds of transfers/postings in the provinces of Khyber Pakhtunkhwa and Punjab. Copy of the Notification dated 22.01.2023 is attached as annexure**A.**
- 4- That it's worth to mentioned here that the Settlement Officer Mansehra made requisition through letters dated 31/05/2022 and dated 30/11/2022 to Director Land Record Board of Revenue Khyber Pakhtunkhwa, for posting of Naib Tehsildar in Settlement Operation Mansehra which become vacant due to retirement of the Naib Tehsildar of the said area, and further requested that appellatant may kindly be posted against the said post due to sufficient experience in the settlement work, to complete the targeted task. Copies of the letters are attached as annexure.....**B.**
- 5- That due to ibid Requisitions the appellatant was transferred and posted as Naib Tehsildar, Settlement-II Mansehra vide order dated 13/12/2022, and after that started performing his duties quit efficiently and up to the entire satisfaction of his high ups without any complaint and any objection. Copy of the order dated 13/12/2022 is attached as annexure.....**C.**
- 6- That the respondents through political intervention transferred the appellatant from settlement-II Mansehra and was directed to report to Director land record Peshawar without completing his Normal Tenure according to transfer posting policy and in utter disregard of the notification dated 22.01.2023 of the Election Commission. Copy of the impugned order dated 10.05.2023 is attached as annexure**D.**
- 7- That feeling aggrieved from impugned order the appellatant preferred departmental representation but the same has not been decided till date. Copy of the departmental representation is attached as annexure..... **E.**
- 8- That by not deciding the departmental appeal the appellatant approach the Peshawar High Court, Peshawar in writ petition 1804-P/2023 and the same was decided vide order dated 12.06.2023 by directing the respondent to decide the departmental appeal and tell then no adverse action shall be taken against the petitioner. Copy of the judgment dated 12.06.2023 is attached as annexure**F.**
- 9- That vide appellate order dated 25.07.2023 the departmental appeal of the appellatant was rejected. Copy of the appellate order is attached as annexure **G.**
- 10- That appellatant feeling aggrieved and having no other remedy preferred the instant appeal on the following grounds.

GROUND:

- A-** That the impugned order dated 10.05.2023 and appellate order dated 25.07.2023 being contrary to law and rules and in utter violation of the

notification dated 22.01.2023, hence not tenable in the eye of Law and needs interference of this Honorable Court to be set aside.

- B-** That 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 treatment meted out to the appellant is highly discriminatory and in clear violation of the notification of the Election Commission of Pakistan as mandated under Articles 218 (3), 220 of the Constitution of Islamic Republic of Pakistan read with section 4, 5, 8 (c) and 230 of the Election Act 2017.
- D-** That the impugned order dated 10.05.2023 and appellate order dated 25.07.2023 are violative of Clause-I, IV and XIII of the transfer/posting policy of the Government of Khyber Pakhtunkhwa as the appellant has been transferred prematurely from his current post. Copy of the transfer/posting policy is attached as annexure **G.H.**
- E-** That the treatment meted out to the appellant is a clear violation of the Fundamental Rights of the appellant as enshrined in the Constitution of Pakistan 1973.
- F-** That the 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 be accepted as prayed for.

Dated 27.07.2023



APPELLANT

THROUGH:

NOOR MUHAMMAD KHATTAK


KAMRAN KHAN


UMAR FAROOQ MOHMAND


WALEED ADNAN


M. AYUB GHILZAI
ADVOCATES

AFFIDAVIT

I, Mr. Irshad Khan, Naib Tehsildar, Labor Kot, Settlement Operation Mansehra, Services placed at the disposal of Director Land Records, Khyber Pakhtunkhwa, Peshawar, do hereby solemnly affirm and declare that the contents of the accompanying **Appeal** true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL No. _____/2023

IRSHAD KHAN

VS

SMBR

APPLICATION FOR SUSPENSION OF THE IMPUGNED ORDER DATED 10.05.2023 AND APPELATE ORDER DATED 25.07.2023 TILL THE DISPOSAL OF THE ABOVE MENTIONED APPEAL

R/SHEWETH:

- 1- That the above mentioned appeal along with this application has been filed the appellant before this august service Tribunal in which no date has been fixed so far.
- 2- That appellant filed the above mentioned appeal against the impugned order dated 10.05.2023 and appellate order dated 25.07.2023 whereby the appellant has been transferred in utter violation of the law and rules.
- 3- That all the three ingredients necessary for the stay is in favor of the appellant.

It is therefore, most humbly prayed that on acceptance of this application the impugned order dated 10.05.2023 and appellate order dated 25.07.2023 may please be suspended till the disposal of the above mentioned service appeal.

Dated: 27.07.2023

APPLICANT

**THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE**

Islamabad the 22nd January, 2023

-5-
A-①

F.No.2(1)/2023-Cord.- WHEREAS, the Provincial Assemblies of Punjab and Khyber Pakhtunkhwa under Article 112 of the Constitution of the Islamic Republic of Pakistan stand dissolved on 14th and 16th January, 2023 respectively.

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

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

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

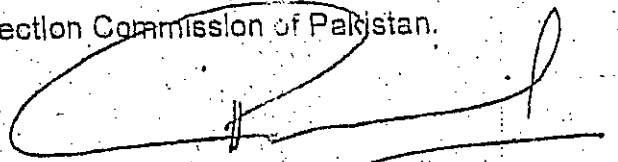
- (a) To assist the Election Commission to hold elections in accordance with law as provided under section 230(1)(b) of the Elections Act, 2017.
- (b) To ensure the compliance of all the notifications, directives and the provisions as laid down in Section 230 of the Act *ibid*.
- (c) Not to post or transfer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

Contd...Page-2

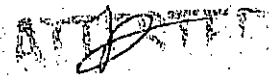
ATTESTED

- (f) All development funds relating to Local Government institutions of Punjab and Khyber Pakhtunkhwa and Cantonment Boards falling in the jurisdiction of Punjab and Khyber Pakhtunkhwa shall stand frozen with immediate effect (iii) announcement of results of the said General Elections. (7)
- (g) To ensure immediate termination of services of all heads of the institutions appointed on political basis and to send their lists to the Commission forthwith.
- (h) To ensure vacation of the government residential facilities from Ex-Chief Ministers and their advisors, Ex-Provincial Ministers and Ex-Members of the Provincial Assemblies of Punjab and Khyber Pakhtunkhwa, besides ensuring withdrawal of official vehicles from them. Furthermore, the dignitaries shall be provided security / protocol as per their entitlement and any extra deployment of security / protocol be withdrawn from them forthwith.
- (i) The Caretaker Governments shall perform their functions and attend to day-to-day matters which are necessary to run the affairs of the Provinces in accordance with law.
- (j) The Chief Minister or a Minister or any other member of Caretaker Governments shall, within three days from the date of assumption of office, submit to the Commission, a statement of assets and liabilities including assets and liabilities of his spouse and dependant children as on the preceding 30th day of June on Form B.

This issues with the approval of Election Commission of Pakistan.



(Omar Hamid Khan)
Secretary
Election Commission of Pakistan



7- 8

Copy forwarded for information to the:

- (1) Secretary to the President, Alwan-e-Sadr, Islamabad.
- (2) Secretary to the Prime Minister, Prime Minister's Secretariat, Islamabad.
- (3) Secretary, Ministry of Parliamentary Affairs, Govt. of Pakistan, Islamabad.
- (4) Secretary, Ministry of Interior, Government of Pakistan, Islamabad.
- (5) Secretary, Ministry of Planning, Development and Reforms, Government of Pakistan, Islamabad. (for implementation and Circulation to all relevant Departments)
- (6) Secretary, Senate Secretariat, Islamabad.
- (7) Secretary, National Assembly of Pakistan, Islamabad.
- (8) Secretary, Ministry of Defence, Government of Pakistan, Rawalpindi.
- (9) Secretary, Establishment Division, Government of Pakistan, Islamabad. (for Implementation and Circulation to all concerned)
- (10) Principal Secretary to the Governor, Punjab, Lahore.
- (11) Principal Secretary to Chief Minister of Punjab, Lahore.
- (12) Chief Secretary, Government of Punjab, Lahore.
- (13) Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar. } For Implementation and Circulation to all subordinate Departments
- (14) Registrar, Supreme Court of Pakistan, Islamabad.
- (15) Registrar, Lahore High Court, Lahore.
- (16) Registrar, Peshawar High Court, Peshawar.
- (17) Provincial Election Commissioner Punjab, Lahore.
- (18) Provincial Election Commissioner Khyber Pakhtunkhwa, Peshawar.
- (19) Inspector General of Police, Punjab, Lahore.
- (20) Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.

ii. Copy also forwarded to the:

- (1) Director General (Law)
 - (2) Director General (IT- Policy & Planning)
 - (3) Additional Director General (Training)
 - (4) Additional Director General (GSI)
 - (5) Additional Director General (Elections-II)
 - (6) Principal Staff Officer to Hon'ble CEC
 - (7) Director to Hon'ble CEC
 - (8) Director (Elector Rollz)
 - (9) Director (MIS)
 - (10) Director (Political Finance)
 - (11) Director (MCO)
 - (12) Deputy Director (Budget)
 - (13) Deputy Director (Election-I & II)
 - (14) Deputy Director (Confid.)
 - (15) Deputy Director (Political Finance)
 - (16) Deputy Director (Training)
 - (17) Deputy Director (Web)
 - (18) Deputy Director (Law)
 - (19) PS to Hon'ble Members - I, II, III & IV.
 - (20) Staff Officer to Secretary
 - (21) Assistant Director (Monitoring)
 - (22) PS to Additional Secretary (Admn)
 - (23) JPA to Special Secretary (ECP)
- ECP Secretariat, Islamabad.

Shahid Iqbal
 (Shahid Iqbal)
 Additional Director General
 (Elections)

~~ATTACHED~~



OFFICE OF THE
SETTLEMENT OFFICER
MANSEHRA

No. 607-12 SO(M)

Dated: 31/05/2022

-8-

To

The Director Land Records/
Chief Settlement Officer,
Board of Revenue, Khyber Pakhtunkhwa.

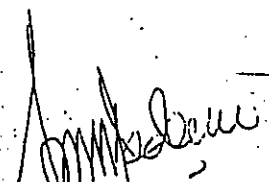
'B' (8)

Subject: REQUISITION OF SETTLEMENT NAIB TEHSILDAR, AGAINST THE
VACANT POST IN SETTLEMENT OPERATION MANSEHRA

Dear Sir,

Kindly refer to this office letter No. 561-65 SO(M) dated 09-05-2022, and to state that post of Settlement Naib Tehsildar-II Manshra is vacant due to retirement of Mr. Niaz Muhammad since 02-05-2022. Target of completion of Settlement work of 30 mouzajat before 30-06-2022 was given by the worthy Senior Member Board of Revenue. 45 Mouzajat were targeted which can be completed within target time, out of which 09 targeted mouzajat were under supervision of Settlement Naib Tehsildar-II, which are affecting badly due to retirement of incumbent Naib Tehsildar.

Keeping in view the target assigned by the worthy Senior Member Board of Revenue, it is therefore requested that Mr. Irshad Khan, Settlement Girdawar (BPS-11) presently serving as Peshi Kanungo in Settlement Operation Manshra who have sufficient experience of Settlement as well as Revenue work may please be post as Settlement Naib Tehsildar (OPS) against the vacant post so that the targeted mouzajat could be completed within target date, please.


Settlement Officer,
Manshra.

Encls: No & Date Even
Copy forwarded to:

1. The Deputy Commissioner Manshra.
2. PS to Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. PS to Commissioner Hazara Division, Abbottabad.


Settlement Officer,
Manshra.

~~ATTACHED~~



OFFICE OF THE
SETTLEMENT OFFICER
MANSEHRA.

No. 1646-48 SO(M)
Dated: 30/11/2022.

To

The Director Land Records/
Chief Settlement Officer,
Board of Revenue, Khyber Pakhtunkhwa,
Peshawar.

Subject:

REQUISITION OF SETTLEMENT NAIB TEHSILDAR IN
SETTLEMENT OPERATION MANSEHRA

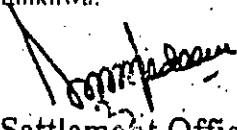
Reference to the subject noted above and to state that there are two sanctioned posts of Settlement Tehsildar and two posts of Settlement Naib Tehsildar in Settlement Operation Mansehra. It is further stated that Mr. Malik Sajjad Settlement Tehsildar shall retired on 31-12-2022, which will badly suffer the pace of Settlement work in targeted mouzas.

In view of above it is therefore, requested that Mr. Muhammad Akhtar and Mr. Said Muhammad who are serving as Naib Tehsildar in Settlement Operation Mansehra, amongst the said two Naib Tehsildars one may be posted as Settlement Tehsildar (ORS) against the post vacant due to retirement of the said Officer and Mr. Iqbal Khan, Settlement Kaungo presently serving as Peshi Kaungo in Settlement Operation Mansehra may be posted as Settlement Naib Tehsildar against the vacant post of Settlement Naib Tehsildar, please.


Settlement Officer,
Mansehra.

Encls: No. & Date Even
Copy to.

1. PS to Senior Member Board of Revenue, Khyber Pakhtunkhwa.
2. PS to Commissioner Hazara Division, Abbottabad.


Settlement Officer,
Mansehra.

ATTESTED
to be true Copy



GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF LAND RECORDS
REVENUE AND ESTATE DEPARTMENT

10-

E-Mail: landrecord.kpk@gmail.com

Phone: 091-9210057

@LandrecordKP
fb.com/landrecord.kpk

Peshawar dated the 13/12/2022.

OFFICE ORDER:

No. LR-IV/Estb/DLR/ 7452-59 The following posting/transfer of Settlement
Tehsildars/Naib Tehsildars are hereby ordered with immediate effect in the public interest.

S.No	Officer	From	To
1.	Said Muhammad	Naib Tehsildar, Settlement-II, Mansehra	Tehsildar(OPS), Settlement-II, Mansehra
2.	Malik Sajjad Khan	Tehsildar (OPS), Settlement-II, Mansehra	DRA, Haripur
3.	Nisar Ahmad	Naib Tehsildar/DRA, Haripur	Naib Tehsildar, Settlement-I, Mansehra.
4.	Muhammad Akhtar	Naib Tehsildar, Settlement-I, Mansehra.	At the Disposal of Commissioner Hazara Division
5.	Irshad Khan	Girdawar Settlement, Mansehra	Naib Tehsildar, Settlement-II, Mansehra

Approved by
Competent Authority

Dist: No. & date even.

Copy forwarded for information to the;


1. Commissioner Hazara Division, Abbottabad, for information and necessary action please.
2. Deputy Commissioner Haripur & Mansehra.
3. Settlement Officer, Mansehra.
4. District Accounts Officers, Haripur & Mansehra.
5. Senior PS to Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
6. PA to Director Land Records, Khyber Pakhtunkhwa.
7. Officials concerned.
8. Officer Order file.

Director Land Records
Khyber Pakhtunkhwa

AD/ESTD

-11- 4 D6

Z (10)

	GOVERNMENT OF KHYBER PAKHTUNKHWA BOARD OF REVENUE REVENUE & ESTATE DEPARTMENT.
091-9213989	Peshawar Dated the 10 /05/2023
091-9214208	

ORDER

No. Estt:V/ Assad Ullah/NT /_____ The following posting /transfer of Naib Tehsildars (BS-14) are hereby ordered with immediate effect in the best public interest :-

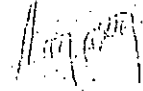
S.No	Name of Official	From	To
1.	Mr. Muhammad Asad Ullah Naib Tehsildar (BS-14)	Waiting for posting in Board of Revenue	Naib Tehsildar Labor Kot Settlement Operation Manserha.
2.	Mr. Irshad Khan Naib Tehsildar (BS-14)	Naib Tehsildar Labor Kot Settlement Manserha	Services place at the disposal of Director Land Records

By Order of
Competent Authority

No. Estt:V/ Assad Ullah/NT

Copy forwarded to the:-

1. Settlement Officer Manserha
2. SPS to Senior Member Board of Revenue.
3. District Accountant Officer Manserha.
4. PS to Secretary-I, Board of Revenue, Khyber Pakhtunkhwa.
5. PA to Director Land Records Khyber Pakhtunkhwa.
6. Personal Files.


Noor Khan
Assistant Secretary (Estt)

RECEIVED
ESTT

"E" -12-

To

The Worthy Senior Member Board Of Revenue,
Khyber Pakhtunkhwa, Peshawar.

Departmental Diary
Dy. No. 3878
Date 12.5.23
Revenue & P.W.D.
Khyber Pakhtunkhwa
J

Through Proper Channel

Subject: DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 10.05.2023 WHEREBY THE APPELLANT HAS ILLEGALLY AND UNLAWFULLY BEEN TRANSFERRED AND IS PLACED AT THE DISPOSAL OF DIRECTOR LAND RECORD.

Respected Sir,

The appellant with great respect submits as under:

- 1- That the appellant is an employee of your good-self department and performing his duty as Naib Tehsildar, Settlement Operation Mansehra.
- 2- That it is worth mentioning that the Election Commission of Pakistan vide notification dated 22.01.2023 banned all kinds of transfers/postings in the provinces of Khyber Pakhtunkhwa and Punjab.
- 3- That it is worth to mentioned here that the Settlement Officer Mansehra made requisition through letters dated 31/05/2022 and dated 30/11/2022 to Director Land Record Board of Revenue Khyber Pakhtunkhwa, for posting of Naib Tehsildar in Settlement Operation Mansehra which become vacant due to retirement of the Naib Tehsildar of the said area, and further requested that appellant may kindly be posted against the said post due to sufficient experience in the settlement work, to complete the targeted task.
- 4- That due to ibid Requisitions the appellant was transferred and posted as Naib Tehsildar, Settlement-II Mansehra vide order dated 13/12/2022, and after that started performing his duties quit efficiently and to the entire satisfaction of his high ups without any complaint and any objection.
- 5- That the now vide impugned order dated 10/05/2023 astonishingly transferred the appellant from the post of Naib Tehsildar and his services placed at the disposal of Director land record without completing his Normal Tenure according to transfer posting policy and in utter disregard of the notification dated 22.01.2023 of the Election Commission.
- 6- That feeling aggrieved from impugned order and having no other remedy but to prefer the instant departmental appeal on the following grounds.

GROUNDS:

- A- That the impugned order dated 10.05.2023 being contrary to law and rules and in utter violation of the notification dated 22.01.2023, hence not tenable in the eye of Law and needs interference of this Honorable Court to be set aside.
- B- That appellant has not been treated by the your good-self department in accordance with law and rules on the subject noted above and as such violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C- That the treatment meted out to the appellant is highly discriminatory and in clear violation of the notification of the Election Commission of Pakistan as mandated under Articles 218 (3), 220 of the Constitution of Islamic Republic of Pakistan read with section 4, 5, 8 (c) and 230 of the Election Act 2017.
- D- That the impugned transfer orders is also violative of Clause-I, IV and XIII of the transfer/posting policy of the Government of Khyber Pakhtunkhwa as the appellant has been transferred prematurely from his current post.
- E- That the treatment meted out to the appellant is a clear violation of the Fundamental Rights of the appellant as enshrined in the Constitution of Pakistan 1973.

It is, therefore, most humbly requested that on acceptance of this departmental appeal the impugned order dated 10.05.2023 may very kindly be set aside and the appellant be retained on his post.

Dated: 12.05.2023

Yours Obediently



IRSHAD KHAN

NAIB TEHSILDAR (BPS-14)

Revenue Department,
Khyber Pakhtunkhwa.



-14- 'F'

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

WRIT PETITION No. _____/2023

Mr. Irshad Khan, Naib Tehsildar, Labor Kot, Settlement Operation Mansehra, Services placed at the disposal of Director Land Records, Khyber Pakhtunkhwa, Peshawar.

.....PETITIONER

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Senior Member of Revenue, Khyber Pakhtunkhwa, Peshawar.
3. The Director Land Record, Khyber Pakhtunkhwa, Peshawar.
4. Mr. Muhammad Asad Ullah, Naib Tehsildar (Revenue), Under Transfer to Labor Kot Settlement Operation Mansehra.

.....RESPONDENTS

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973 AS AMENDED UP TO DATE

Respectfully Sheweth:

Facts arising for the institution of instant writ petition are as under.

- 1- That the petitioner is a law abiding citizen of Islamic Republic of Pakistan.
- 2- That the petitioner is the employee of the respondent department and performing his duty as Naib Tehsildar (Settlement), Settlement Operation Mansehra.
- 3- That it is worth mentioning that the Election Commission of Pakistan vide notification dated 22.01.2023 banned all kinds of transfers/postings in the provinces of Khyber Pakhtunkhwa and Punjab. Copy of the Notification dated 22.01.2023 is attached as annexureA.
- 4- That it's worth to mentioned here that the Settlement Officer Mansehra made requisition through letters dated 31/05/2022 and dated 30/11/2022 to Director Land Record Board of Revenue Khyber Pakhtunkhwa, for posting of Naib Tehsildar in Settlement Operation Mansehra which become vacant due to retirement of the Naib Tehsildar of the said area, and further requested that petitioner may kindly be posted against the said post due to sufficient experience in the settlement work, to complete the targeted task. Copies of the letters are attached as annexure.....B.
- 5- That due to ibid Requisitions the petitioner was transferred and posted as Naib Tehsildar, Settlement-II Mansehra vide order dated 12/12/2022 and after that started performing his duties quit efficiently

ATTENDED
EXAMINER
Peshawar High Court

-15- 8

PESHAWAR HIGH COURT, PESHAWAR

Form "A"

FORM OF ORDER SHEET



Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary
12.06.2023	<p>Writ Petition No. 1604/P/2023 with IR</p> <p>Present: Petitioner in person.</p> <p>M/s Daniyal Khan Chamkani and Hassnain Tariq, AAGs alongwith Pir Haroon Shah, Minister Revenue and Abdur Rehman, Superintendent, SMBR, for the respondents.</p> <p>*****</p> <p>SHAKEEL AHMAD, J.- Through instant petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has sought the following relief;</p> <p><i>"It is, therefore, most humbly prayed that on acceptance of this writ petition the impugned order dated 10.05.2023 may kindly be declared as illegal, unlawful, unconstitutional and ineffective upon the rights of the petitioner. That the petitioner order dated 10.05.223 may very kindly be set aside. Furthermore the respondents may be directed to decide the departmental appeal/representation of the petitioner in light of clause XIV of the Transfer/Posting Policy. Any other remedy which this august Court deems appropriate may kindly also be granted in favor of the petitioner."</i></p> <p>2. At the very outset, both the learned AAGs appearing on behalf of the respondents alongwith Minister Revenue stated at the bar that petitioner is a civil servant and his appeal is still subjudice before the Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar (respondent No.2), and requested that this petition may be disposed of with the direction to the worthy SMBR to decide the fate of</p>

ATTESTED
EXAMINER
Peshawar High Court



the departmental appeal of the petitioner within a fortnight from the date of receipt of this order, positively. The petitioner present in person agreed with the contention of the learned AAGs representing the respondents.

3. In view of the above, this petition is disposed of with the direction to the worthy Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar (respondent No.2) to decide the fate of the departmental appeal of the petitioner within a period of fortnight from the date of receipt of this order, positively, after providing right of hearing to the petitioner. Till then, no adverse action shall be taken against the petitioner.

Announced:
Dt.12.6.2023


JUDGE

JUDGE

CERTIFIED TO BE TRUE COPY
BY
PESHAWAR HIGH COURT, PESHAWAR
Authorized Under Article 87 of
the Qanoon-e-Shahadat Act 1984

08 JUL 2023

1027
08/07/2023
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 GOVERNMENT OF KHYBER PAKHTUNKHWA, BOARD OF REVENUE, REVENUE & ESTATE DEPARTMENT.		"9"
091-9213989	091-9214208	17-
		Peshawar Dated the 25/07/2023

ORDER

No. Estt:V/Irshad Khan/SNT/17/184 WHEREAS: Mr. Irshad Khan Settlement Naib Tehsildar Labor Kot Settlement Operation Mansehra was transferred on 10.05.2023 and his services were placed at the disposal of Director Land Records.

AND WHEREAS: he filed Departmental Appeal as well as filed Writ Petition before the Hon'able Peshawar High Court Peshawar and the Hon'able Peshawar disposed of the Writ Petition in the following terms :-

" In view of the above, this petition is disposed of with the direction to the worthy Senior Member Board of Revenue, Khyber Pakhtunkhwa , Peshawar (respondent No.2) to decide the fate of the departmental appeal of the petitioner with a period of fortnight from the date of receipt of this order, positively, after providing right of hearing to the petitioner".

AND WHEREAS: In compliance with the order of Hon'able Peshawar High Court, Peshawar Mr. Irshad Khan was afforded the opportunity of personal hearing on 23.06.2023 and the official requested for cancellation of his posting order dated 10.05.2023.

AND WHEREAS: during the personal hearing, the official admitted the fact that he has worked in Settlement Operation Mansehra for the last 8/10 years in the capacity of Patwari, Girdawar and Naib Tehsildar.

AND WHEREAS: the newly posted Naib Tehsildar is an experienced Revenue knowing official and was posted to speed up the Settlement work to complete the Settlement work in due course of time as the said Settlement Operation has already been delayed.

AND WHEREAS: The Settlement Operations are also going on in other Districts of the Province i.e Abbottabad, Malakand, Nowshera, D.I.Khan therefore, the department intends to utilize the services of the official in any other Settlement Operation in the province.

AND WHEREAS: The official (Mr. Irshad Khan) will be posted as Naib Tehsildar in any one of the Settlement Operation going on in other Districts of the Province once the summary already moved for ban relaxation is approved by the Chief Minister, Khyber Pakhtunkhwa.

AND WHEREAS: posting/transfer is a part of service and a Government servant is legally bound to perform his official duty as per directions of the relevant Competent Authority wherever required.

THEREFORE, the instant appeal of the official for cancellation of the order dated 10.05.2023 is hereby filed being meritless.


**Senior Member
Board of Revenue**

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**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 Government.
- v) { }
- vi) 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 atleast 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 (Thaana) of his area/residence is situated.
- 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.

ATTESTED

1 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) 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

- (23)
- 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;
- 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 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: a) Within the same Department b) To and from an Attached Department c) Within the Secretariat from one Department to another	Secretary of the Department concerned. Secretary of the Dept in consultation with Head of Attached Department concerned. Secretary (Establishment)

- 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.

(21)

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.

- 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:-

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.

3. As per Rule 25(2) of the Rules mentioned above the District Coordination 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.

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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/1-4/2003 dated 24-6-2003).

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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 E&A Department for issuance of Notifications.

~~RESTRICTED~~

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Appeal _____ No _____ /2021

Muhammad Ishaq

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

SMB PL

(RESPONDENT)
(DEFENDANT)

I/We Appellant

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** 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. ____/____/2021



CLIENT

ACCEPTED

**NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT**


WALEED ADNAN


KAMRAN KHAN


UMAR FAROOQ MOHMAND


MUHAMMAD AYUB


**MAHMOOD JAN
ADVOCATES**

&

OFFICE:

Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)