

IN THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

CM No. _____/2023

IN

APPEAL No.1474/2023

PROF. KHURSHID AHMAD

VS. GOVT. OF KHYBER PAKHTUNKHWA & OTHERS

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Appellant/Applicant

Through



ALI GOHAR DURRANI

Advocate High Court(s)

0332-9297427

khaneliegohar@yahoo.com

SHAH | DURRANI | KHATTAK

(A REGISTERED LAW FIRM)

HOUSE NO. 231-A, STREET NO. 13,

NEW SHAMI ROAD, PESHAWAR.

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—

IN THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

—

CM No. _____/2023
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PROF. KHURSHID AHMAD VS. GOVT. OF KHYBER PAKHTUNKHWA & OTHERS

AN APPLICATION FOR PLACING ON FILE ADDITIONAL DOCUMENTS

Respectfully Submitted:

1. **That** the subject captioned case is pending adjudication before this Honorable Tribunal and is fixed for 31-08-2023.
2. **That** the appellant/applicant is required to submit additional documents, and he seeks the permission for the placement of the documents on file for the just and judicious decision of the instant case.

(Copy of additional documents are attached)
3. **That** proprietary rights demand that the said documents be allowed to be placed on file.

It is, therefore, most humbly prayed that on the acceptance of this application the documents mentioned in Para II of the application may kindly be allowed to be placed on file.

Appellant/Applicant

Through

ALI GOHAR DURRANI
Advocate High Court(s)
0332-9297427
khaneliegohar@yahoo.com
SHAH | DURRANI | KHATTAK
(A REGISTERED LAW FIRM)
HOUSE NO. 231-A, STREET NO. 13,
NEW SHAMI ROAD, PESHAWAR.

(2)

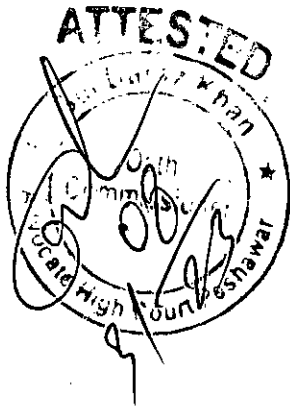
IN THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

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PROF. KHURSHID AHMAD VS. GOVT. OF KHYBER PAKHTUNKHWA & OTHERS

AFFIDAVIT

I, hereby solemnly declare and affirm on oath that the contents of this CMA are true and correct to the best of my knowledge and belief, as per the instructions communicated by my client and nothing has been kept secret from this Hon' able Service Tribunal.



Deponent

ALI GOHAR DURRANI
Advocate High Court

C.N.I.C: 17101-8851818-1

Cell No. 0332-9297427



GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES AND
LIBRARIES DEPARTMENT

SUMMARY FOR THE CHIEF MINISTER

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Subject: REPRESENTATION AGAINST TRANSFER ORDERS DATED 22/03/2023

Mr. Khurshid Ahmad, Ex-Director, Higher Education has submitted a Departmental appeal (Flag-A), against his transfer from the post of Director, Higher Education to GDC Hayatabad as Professor, wherein, stated that he has recently been promoted to (B5-20) and posted as Director Higher Education Khyber Pakhtunkhwa vide Notification dated 21/12/2023 (Flag-B) keeping in view his unblemished service record. However after 02 months service as Director, I got transferred to GDC Hayatabad as Prof. and Mr. Faridullah Shah Professor with 4 months tenure, was transferred as Director vide Notification dated 22/3/2023 (Flag-C). The appellant has given detail in his appeal, however, in short the appellant has requested to withdraw the posting/ transfer order dated 22/03/2023 whereby the appellant has been transferred from the post of Director Higher Education, in clear negation of the Posting and Transfer Policy of the Civil servants as per his stance and in a ban period in negation of section 230 (2) (f) and in contravention of the dictum as laid in Khawaja Muhammad Asif v. Federation of Pakistan and others (2013 SCMR 1205) and reiterated in 2021 PLC (CS)519 as quoted by the appellant.

2. A Summary regarding Transfer/posting of the above named officers was moved and approved by the Chief Minister of Khyber Pakhtunkhwa, subject to obtaining ban relaxation from E.C.P (Flag-D). After granted NOC by the Election Commission of Pakistan (Flag-E), the Establishment Department has issued transfer/posting Notification of the said officers ibid (Flag-C).

3. It is pertinent to mention here that the Khyber Pakhtunkhwa posting/transfer policy (Flag-F) provides that:

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

(Page 1/3)

opportunity of personal hearing with my...
an officer nominated by her.

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES AND
LIBRARIES DEPARTMENT

4. Departmental appeal in r/o Mr. Khurshid Ahmad Ex-Director, Higher Education, Khyber Pakhtunkhwa (now Professor GDC, Hayatabad) is submitted for appropriate orders by the Chief Minister Khyber Pakhtunkhwa being Competent Authority please.

Anela Durrani
(DR. ANEELA MAHFOOZ DURRANI)
Secretary, Higher Education, Archives & Libraries
Department
11.5.23

~~Minister for Higher Education,
Archives & Libraries, Khyber Pakhtunkhwa~~

[Signature]
Minister for Law, Parliamentary Affairs
and Human Right & Higher Education,
Archives and Libraries Department,
Khyber Pakhtunkhwa

Chief Secretary
Khyber Pakhtunkhwa.

Chief Minister
Khyber Pakhtunkhwa

8-5-0

(Page 2 of 2)

appeal in
opportunity of personal hearing either by himself or else
- L. memo. *[Signature]*

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5- Summary for Chief Minister, Khyber Pakhtunkhwa moved by Higher Education Department regarding representation against transfer order dated 22.03.2023 in respect of Mr. Khurshid Ahmad, Ex-Director, Higher Education now Professor (BS-20) at GDC, Hayatabad Peshawar has been examined.

6- The applicant has submitted a departmental appeal at (F/A) against his transfer from the post of Director, Higher Education to GDC Hayatabad as Professor after 02 months service as Director and has requested for withdrawal/cancellation of the posting/transfer order dated 22.03.2023 (F/B & C).

7- The Administrative Department has submitted the case to the competent authority for appropriate orders under Khyber Pakhtunkhwa Posting/Transfer Policy (F/F).

8- Departmental appeal of the appellant has been examined. The appellant was transferred from the post of Director, Higher Education Department after 02 months service against the said post while Mr. Faridullah Shah, Professor (BS-20) with 04 months tenure was transferred as Director. Higher Education & Establishment Department had mentioned in that Summary that both the officers had not completed their normal tenure.

9- Since, the applicant submitted appeal on 27.03.2023 (F/A) against the posting/transfer order dated 22.03.2023 (F/C), therefore, his appeal is covered under Para-xiv of Posting/Transfer Policy of the Provincial Govt. which stipulates that "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" (F/G). Moreover, as the aforementioned posting/transfer order was issued on approval of the Chief Minister, Khyber Pakhtunkhwa (F/D), therefore, in the instant case, the Chief Minister, Khyber Pakhtunkhwa is the Reviewing Authority in terms of Rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 (F/H).

10- Proposal of the Administrative Department contained in Para-4 read with Para-9 of the Summary may be submitted for appropriate orders of the Chief Minister, Khyber Pakhtunkhwa.

Sd/-

(AKHTAR SAEED TURK)
Secretary Establishment
June 06, 2023

Chief Secretary Khyber Pakhtunkhwa

11. Chief Minister may kindly dispose of the appeal at flag A after affording him an opportunity of personal hearing either by himself or through an officer nominated by him.

16

- 5- Summary for Chief Minister, Khyber Pakhtunkhwa moved by Higher Education Department regarding representation against transfer order dated 22.03.2023 in respect of Mr. Khurshid Ahmad, Ex-Director, Higher Education now Professor (BS-20) at GDC, Hayatabad Peshawar has been examined.
- 6- The applicant has submitted a departmental appeal at (F/A) against his transfer from the post of Director, Higher Education to GDC Hayatabad as Professor after 02 months service as Director and has requested for withdrawal/cancellation of the posting/transfer order dated 22.03.2023 (F/B & C).
- 7- The Administrative Department has submitted the case to the competent authority for appropriate orders under Khyber Pakhtunkhwa Posting/Transfer Policy (F/F).
- 8- Departmental appeal of the appellant has been examined. The appellant was transferred from the post of Director, Higher Education Department after 02 months service against the said post while Mr. Faridullah Shah, Professor (BS-20) with 04 months tenure was transferred as Director, Higher Education & Establishment Department had mentioned in that Summary that both the officers had not completed their normal tenure.
- 9- Since, the applicant submitted appeal on 27.03.2023 (F/A) against the posting/transfer order dated 22.03.2023 (F/C), therefore, his appeal is covered under Para-xiv of Posting/Transfer Policy of the Provincial Govt. which stipulates that "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" (F/G). Moreover, as the aforementioned posting/transfer order was issued on approval of the Chief Minister, Khyber Pakhtunkhwa (F/D), therefore, in the instant case, the Chief Minister, Khyber Pakhtunkhwa is the Reviewing Authority in terms of Rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 (F/H).
- 10- Proposal of the Administrative Department contained in Para-4 read with Para-9 of the Summary may be submitted for appropriate orders of the Chief Minister, Khyber Pakhtunkhwa.

(AKHTAR SAEED TURK)
Secretary Establishment
June 04, 2023

Chief Secretary Khyber Pakhtunkhwa

11. Chief Minister may kindly dispose of the appeal at flag A after affording him an opportunity of personal hearing either by himself or through an officer nominated by him.
Chief Minister

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From prepage-

12. At no stage were adequate reasons given for transfer of these officers after such short tenures.

Secy HED may pl discuss.

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u/ka
17/6/2023

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To,

1. THE WORTHY CHIEF MINISTER,
KHYBER PAKHTUNKHWA.
2. THE WORTHY CHIEF SECRETARY,
KHYBER PAKHTUNKHWA.

SECY HED
File Received on 27/3/23
Date / 09:50 am
Time

THROUGH

THE WORTHY SECRETARY HED,
KHYBER PAKHTUNKHWA.

27/3/2023

SUBJECT: REPRESENTATION AGAINST TRANSFER ORDERS DATED 22-03-2023.

RESPECTED SIR,

The Appellant most earnestly request to submit as under:

1. That the appellant is a civil servant who has worked in the Higher Education Department Khyber Pakhtunkhwa Government for well over three decades, since his initial recruitment.
The appellant during this time has served the department with complete dedication and utmost honesty. The PER's and service record of the appellant bears witness to the professionalism of the appellant. The appellant also has been granted promotions during this time period and given important assignments, which the appellant has always ensured to complete.
Copy of the Initial Recruitment of the appellant is Annex-A.
Copy of promotion orders are Annex-B.
Copy of assignments are Annex-C.
2. That recently the appellant was posted and transferred against the vacant position of Director, Higher Education on 21.12.2022, wherein he was performed his duties mentoriously.
Copy of transfer as Director Higher Education is Annex-D.
3. That the appellant being completely apolitical and having no political affiliation was posted as stated in para 2 above due to his unblemished service record. However, a summary was initiated whereby a one Prof. Dr. Faridullah Shah was proposed to be posted in the appellant's stead. The summary is imperative wherein comments of the Chief Minister at Para 6 sought a query about the tenure of both the appellant and Prof. Dr. Faridullah Shah. In response para 7 provided the tenure, and the same shows that the tenure of the present appellant is 02 months whereas that of Prof. Dr.

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Faridullah Shah is 4 months. But this aspect was completely ignored and vide para 12 the para 1 read with para 5 was approved. This is despite the fact that Secretary Establishment on his turn had sought "appropriate order" on the summary and not transfer orders.

Copy of the summary is Annex-E.

4. That it is important to mention that pursuant to the dissolution of Khyber Pakhtunkhwa Assembly on 18.01.2023, under Article 224 of the Constitution of the Islamic Republic of Pakistan, a Caretaker setup was installed in the province of Khyber Pakhtunkhwa. Election Commission of Pakistan had issued Notification on 22.01.2023 wherein they have imposed a ban on all posting and transfer in the province of Khyber Pakhtunkhwa.

Copy of the ECP Notification dated 22.01.2023 is Annex-F

5. That since the mandate of caretaker setup is very limited as has been discussed in an array of judgments wherein the mandate of Constitution and certain provisions of Election Act, 2017 have also been taken into consideration but despite that, a letter dated 14.03.2023 was written and sought approval for posting of Prof. Dr. Faridullah Shah as the Director Higher Education purely on political basis.

Copy of letter dated 14.03.2023 is Annex-G

6. That in the aftermath of the above-mentioned letter dated 14-03-2023, the appellant was ordered to be transferred on 22-03-2023. The appellant in compliance of the said orders relieved charge, and to challenge the same, prefers this instant representation on the following set of legal submissions.

Copy of the transfer orders dated 22-03-2023 is Annex-H.

Grounds- Submissions in Law:

- a. Because the Appellant is an aggrieved person within the meaning of Article 212 of the constitution of the Islamic Republic of Pakistan 1973 in respect of his terms and conditions of service, and is by law required to submit a representation within seven days of the transfer orders and are required to be disposed of within 15 days, per the Posting and transfer policy of Civil Servants which lay as under:

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 posting/transfer or posting transfer in violation of the provisions of this policy.

- b. Because the Fundamental Rights of the Appellant have been violated in relation to Article 4, 8, 9, 18 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973. This Honorable court being the custodian of the Rights of citizens of Pakistan as enshrined in the law of the land made in furtherance of the rights and the protections afforded by the Constitution of Islamic Republic of Pakistan, 1973, is why the Appellant seek the redressal of his grievances.
- c. Because the decision of transfer taken on the basis of the Summary dated 01.02.2023 is based in a nullity in the eyes of the law as it goes in direct negation of the provisions of law. Furthermore, when the base is wrong and rooted in a nullity any superstructure built on the base is wrong. The principle laid down through PLD 1958 SC 104 has been reiterated in PLD 2022 SC 119, 2021 SCMR 637, PLD 2007 SCMR 1835, which essentially forms part of our jurisprudence.
- d. Because as soon as a care-taker setup is appointed, the Constitutional command is that 'its mandate is to hold free and fair election in aid of ECP'. No care-taker Cabinet could make policy decision even in relation to appointment and posting of civil servants. This principle was settled by the Supreme Court after 18th Amendment to the Constitution in the case Khawaja Muhammad Asif v. Federation of Pakistan, etc, 2013 SCMR 1205; followed by another case 2016 SCMR 1299, Nematullah Vs Ch. Governing Body; and reaffirmed by the Supreme Court in PLD 2021 SC 313.
- e. Because The Rules designate certain posts as 'tenure posts' (rule 22 read with Schedule IV of the Rules) and prescribe a period of three years for an incumbent to serve on such posts. Such prescribed tenure may therefore be categorized as the ideal duration for which a civil servant should serve at a particular post. The post of the appellant is a tenure post, yet he has been transferred from his posting before the tenure was complete. Thus, the appellant having not been allowed to complete his normal tenure and thus the order impugned is violation of transfer posting policy of the Government and the judgment of the apex court reported in PLD 1995 SC Page No 530 and PLD 2013 Supreme Court Page No 195.
- f. That the recently the august Supreme Court of Pakistan has in its Judgment reported in 2013 PLD SC 195, decided a point of law and while committing upon the transfer and posting and other related matters of service held as under:-

(i) Appointments, Removals and Promotions:- Appointments, removals and promotions must be made in accordance with the law and the rules made there under, 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.

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- b. Because the Fundamental Rights of the Appellant have been violated in relation to Article 4, 8, 9, 18 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973. This Honorable court being the custodian of the Rights of citizens of Pakistan as enshrined in the law of the land made in furtherance of the rights and the protections afforded by the Constitution of Islamic Republic of Pakistan, 1973, is why the Appellant seek the redressal of his grievances.
- c. Because the decision of transfer taken on the basis of the Summary dated 01.02.2023 is based in a nullity in the eyes of the law as it goes in direct negation of the provisions of law. Furthermore, when the base is wrong and rooted in a nullity any superstructure built on the base is wrong. The principle laid down through PLD 1958 SC 104 has been reiterated in PLD 2022 SC 119; 2021 SCMR 637; PLD 2007 SCMR 1835, which essentially forms part of our jurisprudence.
- d. Because as soon as a care-taker setup is appointed, the Constitutional command is that its mandate is to hold free and fair election in aid of EGP. No care-taker Cabinet could make policy decision even in relation to appointment and posting of civil servants. This principle was settled by the Supreme Court after 18th Amendment to the Constitution in the case Khawaja Muhammad Asif v. Federation of Pakistan, etc, 2013 SCMR 1205; followed by another case 2016 SCMR 1299; Nematullah Vs Ch. Governing Body; and reaffirmed by the Supreme Court in PLD 2021 SC 313.
- e. Because The Rules designate certain posts as tenure posts (rule 22 read with Schedule IV of the Rules) and prescribe a period of three years for an incumbent to serve on such posts. Such prescribed tenure may therefore be categorized as the ideal duration for which a civil servant should serve at a particular post. The post of the appellant is a tenure post, yet he has been transferred from his posting before the tenure was complete. Thus, the appellant having not been allowed to complete his normal tenure and thus the order impugned is violation of transfer posting policy of the Government and the judgment of the apex court reported in PLD 1995 SC Page No 530 and PLD 2013 Supreme Court Page No 195.
- f. That the recently the august Supreme Court of Pakistan has in its Judgment reported in 2013 PLD SC 195, decided a point of law and while committing upon the transfer and posting and other related matters of service held as under:-

(i)

Appointments, Removals and Promotions:- Appointments, removals and promotions must be made in accordance with the law and the rules made there under; 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.

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- (ii) Tenure, posting and transfer: 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.
- (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) O.S.D Officers should not be posted as OSD except for compelling reasons, which must be recorded in writing and are judicially reviewable. If at all an Officer is to be posted as OSD, such posting should be for the minimum period possible and if there is a disciplinary inquiry going on against him, such inquiry must be completed as the earliest.

g. Because Section 10 of the Khyber Pakhtunkhwa Civil Servants Act states as follows:

"Every civil servant shall be liable to serve anywhere within or outside the Province in any post under the Federal Government, or any Provincial Government or local authority, or a an corporation or body set up or established by any such Government:

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

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

The aforesaid section does not empower the Government to cut short the normal tenure of a posted/transferred civil servant, and particularly without assigning any reason. In the case of Mahmood Akhtar Naqvi (Anita Turab case) (above) this Court held: "16. In the Hajj Corruption Case, the court reiterated its earlier ruling in Zahid Akhtar v. Government of Punjab (PLD 1995 SC 530), where it had been held that

"the normal period of posting of a Government servant at a station, according to Rule 21 of the Rules of Business is three years, which has to be followed in the ordinary circumstances, unless for reasons or exigencies of service a transfer before expiry of the said period becomes necessary in the opinion of the competent authority."

Furthermore, with regard to transfers of civil servants, this Court has stated that transfers by political figures which are not legally sustainable. Farukh gulzar v. Secretary Local Government and Rural Development Department, Lahore and 2 others (1998 SCMR 2222).

(13)

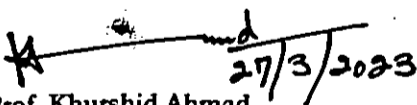
These are principles of law enunciated by this court and are to be followed in terms of Article 189 of the Constitution. We, however, repeatedly come across violations of such principles. This unnecessarily leads to litigation which, in turn, clogs Courts and Service Tribunals."

- h. Because in-fact there exist no exigencies of service nor can the order of transfer be termed as in the public interest rather the same has been issued in violation of the transfer and posting policy and in ban period.
- i. Because the principles of legitimate expectation as expounded by the Honorable Superior Courts of Pakistan and recently reiterated in 2022 SCMR 694 is seriously violated in the instant case.
- j. Because the care-taker set up has tried to assume the role of a regular/elected government and is making transfers and posting purely on political basis in complete and sheer negation of the law which are highly objectionable and violative thus, against the Natural justice of equal treatment as guaranteed by the Constitution of Islamic Republic of Pakistan.

Prayer:

IT IS THEREFORE very humbly prayed that on acceptance of this Representation, may it please the competent authority to so kindly withdraw the posting/transfer orders dated 22-03-2023 whereby the appellant has been transferred from the post of Director Higher Education, in clear negation of the Posting and Transfer Policy of the Civil Servants, and in a ban period in negation of Section 230 (2) (f) and in contravention of the dictum as laid in Khawaja Muhammad Asif v. Federation of Pakistan and others (2013 SCMR 1205), and reiterated in 2021 PLC (CS) 519.

Appellant


Prof. Khurshid Ahmad
Government Degree College, Hayatabad,
Peshawar.