

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1635/2013

Date of Institution. ... 23.12.2013  
Date of Decision. ... 25.04.2014

Dr. Rashid Ahmad, M.S DHQ Hospital,  
Lakki Marwat.

... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through the Chief Secretary, Khyber Pakhtunkhwa.
2. The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
4. The D.G. Health Services, Khyber Pakhtunkhwa, Peshawar.
5. Mr. Mashal Khan, SMO, Gambela Lakki Marwat. ... (Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE PREMATURE, POLITICALLY MOTIVATED TRANSFER ORDER DATED 3.9.2013 AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF NINETY DAYS.

MR. MUHAMMAD ASIF YOUSAFZAI,  
Advocate

... For Appellant.

MR. USMAN GHANI,  
Sr.G.P

... For Official Respondents.

MR. SAADULLAH KHAN MARWAT,  
Advocate

... For Private Respondent No. 5.

MR. MUHAMMAD AAMIR NAZIR, ...  
MR. SULTAN MAHMOOD KHATTAK, ...

MEMBER  
MEMBERJUDGMENT

MUHAMMAD AAMIR NAZIR, MEMBER.- The appellant Dr. Rashid Ahmad, Medical Superintendent DHQ Hospital, Lakki Marwat through the instant appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 has impugned order dated 3.9.2013 vide which he was transferred prematurely on the basis of political interference and against not taking any action on the departmental appeal filed by the appellant within the statutory period of ninety days.

25.04.14

2. Briefly stated facts giving rise to the appeal in hand are that the appellant is a senior doctor of BPS-19 belongs to Management Cadre. That on 13.12.2012, the appellant was transferred to District Tank as EDO (H) from DHQ Hospital, Lakki Marwat. That on 6.3.2013, the appellant was promoted as regular BPS-19 officer in Management Cadre of the Health Department and was posted as Dy. DHO, Charsadda. That on 22.4.2013, the appellant was transferred as M.S DHQ Hospital, Lakki Marwat against BPS-19 Management Cadre post, however, within just five months, he was again transferred due to political interference vide the impugned order dated 3.9.2013. That the impugned order is premature and is in violation of rules and policy governing the transfer and posting of civil servants and that on the place of appellant a junior doctor i.e. private respondent No.5 of BPS-18 belonging to General Cadre was posted which is violation of the policy of the government regarding posting/transfer of General Cadre and Management Cadre doctors. That against the impugned order, the appellant filed departmental appeal and also approached the hon'ble Peshawar High Court, Bannu Bench through a Writ Petition which was dismissed for want of jurisdiction on 22.10.2013. That since departmental appeal filed by the appellant was not respondent within the statutory period of ninety days, hence the instant appeal.

3. After institution of the instant appeal, it was admitted to regular hearing and the respondents were summoned by the Tribunal. The respondents contested the appeal and submitted their written reply. We have heard the arguments of the learned counsel for the parties and have gone through the available record on the file.

4. The learned counsel for the appellant argued before the court that the impugned transfer order dated 3.9.2013 is based on political interference and the appellant was transferred from the post of Medical Superintendent DHQ Hospital, Lakki Marwat just within five months which is violation of transfer and posting policy laid down by the government; that the political interference can be judged from the

25-04-14

fact that the person who replaced the appellant vide impugned order is a doctor of General Cadre and is serving in BPS-18 while the post against which he was transferred is of Management Cadre and belongs to BPS-19. He further argued that the respondents have violated the principles laid down by the august Supreme Court of Pakistan in case of Anita Turab. The learned counsel for the appellant requested that the appeal may be accepted as prayed for.

5. In rebuttal, the learned Sr. Government Pleader, assisted by the learned counsel for private respondent No.5, argued before the court that it is the prerogative of the competent authority to make transfer and posting orders in public interest and under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, every civil servant is bound to perform duties anywhere in Pakistan as deemed appropriate by the competent authority; that the appellant who claimed to be an officer of Management Cadre was posted against Management Cadre post as Deputy District Health Officer, Bannu against the vacant post of BPS-19, so there is no justification for the appellant to seek suspension of the impugned order; that no political interference whatsoever, was made and the impugned order has been passed in good faith. The learned Sr.G.P prayed for dismissing the instant appeal.

6. Perusal of the case file reveals that through the instant appeal, the appellant prayed for striking down the impugned transfer order dated 3.9.2013 on the ground that the same is premature and politically motivated. The record suggests that on 6.3.2013, the appellant was promoted as regular BPS-19 officer in Management Cadre of the Health Department and was posted as Deputy DHO Charsadda. Later on 22.4.2013, the appellant was transferred as Medical Superintendent, DHQ Hospital Laki Marwat against Management Cadre post of BPS-19, however, after a short time of about five months, the appellant was

OK  
25.04.14

again transferred vide impugned order dated 3.9.2013 as Deputy DHO, Bannu. Perusal of the summary moved by the Health Department for transfer of the appellant available on file reveals that the Establishment Department after going through the summary has clearly laid down that posting of officer of General Cadre against Management Cadre is violation of Government policy. Similarly, posting of BS-18 officer against BS-19 post is also violation of the government policy, needs justification. Furthermore, the appellant who has recently been transferred on 22.04.2013 has yet to complete his normal tenure at his present posting. All the observations made by the Secretary Establishment Department were overlooked and the appellant was transferred prematurely, violating the government policy of transfer & posting and also policy laid down by the government for posting of officers of General Cadre against the post of Management Cadre.

7. Hence, keeping into consideration all the above mentioned facts and circumstances of the case, we are of the firm view that the appellant made a case for indulgence of the Tribunal.

8. Therefore, the appeal is accepted and impugned order is set aside. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED  
25.04.2014

(SULTAN MAHMOOD KHATTAK)  
MEMBER

(MUHAMMAD AAMIR NAZIR)  
MEMBER

1635/13

14.4.2014.

Appellant with counsel, Sr. GP with Sheryar, Assistant for the official respondents and private respondents with counsel present. Mr. Muhammad Aamir Nazir, learned Member of the Bench is on leave, therefore, case is adjourned to 21.4.2014 for further arguments.

  
MEMBER

21.4.2014

Appellant with counsel, Sr.GP with Sheryar, Assistant for the official respondents and private respondent No. 5 with counsel present. Further arguments heard. To come up for order on 25.4.2014.

  
MEMBER

  
MEMBER

25.4.2014

Appellant in person, Mr. Sheryar, Assistant for the official respondents and private respondent No.5 in person present. Arguments already heard. Record perused. Vide our detailed judgment of to-day, the appeal is accepted. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED  
25.04.2014

  
MEMBER

  
MEMBER

27.3.2014.

Appellant with counsel, Mr. Muhammad Jan, GP with Sheryar, Assistant for the official respondents and private respondents No. 5 with counsel present. Copy of rejoinder in connected appeal handed over to opposite sides to-day, therefore, the instant appeal is also adjourned to 31.3.2014 for arguments.

MEMBER

MEMBER

31.3.2014

Appellant with counsel, Mr. Ziaullah, GP for the official respondents and private respondent No.5 with counsel present. Arguments of the learned counsel for the appellant as well as learned counsel for private respondent No.5 heard. The learned GP stated that he is not in possession of case file and requested for adjournment. To come up for remaining arguments on 7.4.2014.

MEMBER

MEMBER

7.4.2014.

Appellant with counsel, Sr.GP with Sheryar, Assistant for the official respondents and private respondents No. 5 with counsel were present early in the morning but later on due to sudden strike of the bar, counsel for the parties left the Tribunal. To come up for remaining arguments on 14.4.2014.

MEMBER

MEMBER

very justification for filing the instant appeal. Therefore, on acceptance of the application, the impugned order dated 3.9.2013 is suspended. To come up for rejoinder on 11.3.2014.

ANNOUNCED  
28.2.2014

MEMBER

MEMBER

11.3.2014

Appellant with counsel, Mr. Usman Ghani, Sr.GP for the official respondents and private respondents No. 5 with counsel present. The learned Sr.GP stated that the written reply of respondents No. 2 and 4 may be considered written reply on behalf of all the official respondents. Counsel for the private respondent No. 5 also submitted application for vacation of stay. Copy handed over to counsel for the appellant as well as learned Sr.GP. To come up for reply/arguments on application of private respondent No.5 and arguments on main appeal on 20.3.2014. Rejoinder, if any, in the meantime.

MEMBER

MEMBER


20.3.2014

Appellant with counsel Mr. Usman Ghani, Sr.GP with Sheryar, Assistant for official respondents and private respondent No. 5 with counsel present. Reply to application for vacation of stay, received on behalf of the appellant. Copies handed over to opposite sides. To come up for arguments on 27.3.2014.

MEMBER

MEMBER

Deputy DHO Charsadda. Later on 22.4.2013, the appellant was transferred as Medical Superintendent, DHQ Hospital Laki Marwat against Management Cadre post of BPS-19, however, after a short time of about five months, the appellant was again transferred vide impugned order dated 3.9.2013 as Deputy DHO, Bannu. Perusal of the summary moved by the Health Department for transfer of the appellant available on file reveals that the Establishment Department after going through the summary has clearly laid down that posting of officer of General Cadre against Management Cadre is violation of Government policy. Similarly, posting of BS-18 officer against BS-19 post is also violation of the government policy, needs justification. Furthermore, the appellant who has recently been transferred on 16.04.2013 has yet to complete his normal tenure at his present posting. All the observations made by the Secretary Establishment Department were overlooked and the appellant was transferred prematurely, violating the government policy of transfer & posting and also policy laid down by the government for posting of officers of General Cadre against the post of Management Cadre. Since a prima-facie and arguable exists in favour of the appellant, and the balance of convenience, is also in his favour, therefore, this Tribunal is of affirm view that if the impugned order dated 3.9.2013 is not suspended, the appellant will suffer irreparable loss and might defeat the

  
28.02.14




4. In rebuttal, the learned Sr. Government Pleader, assisted by the learned counsel for private respondent No.5, argued before the court that it is the prerogative of the competent authority to make transfer and posting orders in public interest and under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, every civil servant is bound to perform duties anywhere in Pakistan as deemed appropriate by the competent authority; that the appellant who claimed to be an officer of Management Cadre was posted against Management Cadre post as Deputy District Health Officer, Bannu against the vacant post of BPS-19, so there is no justification for the appellant to seek suspension of the impugned order; that no political interference whatsoever, was made and the impugned order has been passed in good faith. The learned Sr.G.P prayed for dismissing the application for suspension of the impugned order dated 3.9.2013.

5. Perusal of the case file reveals that through the instant appeal, the appellant prayed for striking down the impugned transfer order dated 3.9.2013 on the ground that the same is premature and politically motivated. The record further suggests that on 6.3.2013, the appellant was promoted as regular BPS-19 officer in Management Cadre of the Health Department and was posted as

28.02.14

3. The learned counsel for the appellant while arguing the application for suspension of the impugned order, submitted before the court that the appellant is a senior doctor of BPS-19 belongs to Management Cadre whereas private respondent No. 5 is a doctor belonging to General Cadre having BPS-18; that on 22.4.2013, the appellant was transferred as Medical Superintendent, DHQ Hospital, Lakki Marwat against BPS-19 post of Management Cadre, however, just within five months, he was again transferred due to political interference; that the impugned transfer order is premature and is in violation of rules/policy governing transfer and posting of government servants; that on place of the appellant, a junior doctor belonging to General Cadre was posted vide impugned order dated 3.9.2013; that the appellant filed a departmental appeal against the impugned order and in the meanwhile also filed a Writ Petition before the hon'ble Peshawar High Court, Bannu Bench but the same was dismissed for want of jurisdiction. The learned counsel for the appellant contended that the impugned order is in violation of the policy of the government dated 15.2.2003 regarding posting/order and also against the principle laid down by the august Supreme Court of Pakistan in case of Anita Turab. The learned counsel for the appellant requested for suspension of the impugned order dated 3.9.2013.


  
28.02.14

1635/2013

28.2.2014

Appellant alongwith his counsel, Mr. Sheryar, Assistant and Gulyar, Assistant with Mr. Usman Ghani Sr.GP for the official respondents, private respondent No. 5 with counsel and applicant (Dr. Nek Nawaz) with counsel present. Written reply of official respondents received. Copies whereof, handed over to counsel for the parties. The learned counsel for the applicant stated at the Bar that his client has already filed separate appeal and has impugned the same transfer order dated 3.9.2013, therefore, he does not want to press the application for his impleadment and requested that the applications for temporary injunction pending in both the appeals may be decided together. Request accepted and arguments on application for temporary injunction heard and case file perused.

2. Appellant through the instant appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, has impugned the transfer order dated 3.9.2013 on the basis of being premature and politically motivated. The appellant further contended that against the impugned transfer order departmental appeal was filed which was not decided within the statutory period of ninety day, therefore, the instant appeal. Alongwith the appeal an application for temporary injunction for suspension of the impugned order was also filed.

  
28.02.14

17.2.2014

Appellant with counsel Mr. Sher Yar, Assistant for respondents No. 1 and 2 with Muhammad Jan, GP for the official respondents No. 1 to 4 and counsel for private respondent No. 5 present. Written replies on main appeal as well as stay application, received on behalf of the private respondent No. 5. Copies handed over to counsel for the appellant and learned GP. The learned GP needs time to file written reply on behalf of official respondents. Dr. Nek Nawaz with Mr. Ishtiaq Ahmad, Advocate/counsel present and submitted two separate applications, one for impleadment being necessary party and the other for consolidation of two appeals filed against the same notification on the similar grounds. Copies handed over to opposite sides. To come up for written reply of official respondents on main appeal as well as stay application and reply/arguments on both the applications of applicant (Dr. Nek Nawaz Khan) on 28.2.2014. The operation of impugned order is suspended to the extent of appellant and private respondent No.5, till the date fixed.

MEMBER

MEMBER

Appeal No. 1635/2013  
Dr. Raheel Ahmed

21.01.2014

Appellant with counsel present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. The appellant was transfer and posted as MS (BPS-19) at DHQ Lakki Marwat on 22.04.2013, within a short span of five months the appellant again transferred and posted as DHO (BPS-19) at Banuu on 03.09.2013, against which the appellant filed departmental appeal on 04.09.2013, which has not been responded within the statutory period of 90 days, hence the instant appeal on 23.12.2013. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents. Appellant has also filed an application for suspension of impugned order dated 03.09.2013. Notice of application should also be issued to the respondents for reply/arguments. To come up for written reply on main appeal on 17.02.2014 as well as reply/arguments on stay application on 31.01.2014.

Appellant deposited  
Process fee & Security  
of Rs. 200/- Basic Receipt  
attached with file

21.01.2014

This case be put before the Final Bench 15 for further proceedings.

Member

Chairman

31.1.2014

Appellant with counsel and Mr. Muhammad Jan, GP present. To-day, the case was fixed for submission of written reply on stay application/arguments but none is available on behalf of the respondents nor their written reply received, despite proper service, hence the operation of impugned order dated 3.9.2013 is suspended till next date. Fresh notices be issued to the respondents. To come up for written reply on main appeal as well as reply/arguments on stay application on 17.2.2014.



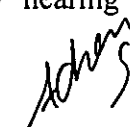
MEMBER

MEMBER

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 1635/2013

| S.No. | Date of order Proceedings    | Order or other proceedings with signature of judge or Magistrate   |
|-------|------------------------------|--|
|       | 2                            | 3  |
| 2     | 23/12/2013<br><br>30-12-2013 | <p>The appeal of Dr. Rashid Ahmad presented today by Mr. M. Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"><br/>REGISTRAR</p> <p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>13-1-2014</u>.</p> <p style="text-align: right;"><br/>CHAIRMAN</p> |
| 2     | 13.01.2014                   | <p>Appellant in person present and requested for adjournment. To come up for preliminary hearing on 21.01.2014.</p> <p style="text-align: right;"><br/>Reader</p>   |

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

APPEAL NO. 1635 /2013.

Dr. Rashid Ahmed.

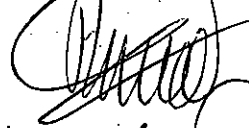
Vs

Health Deptt:

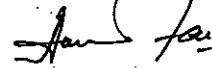
**INDEX.**

| S.NO | DOCUMENTS              | ANNEXURE | PAGE               |
|------|------------------------|----------|--------------------|
| 1-   | Memo of appeal.        | ---      | 1 - 4              |
| 2-   | Stay application.      | ---      | 5 - 6              |
| 3-   | Order dt. 13.12.2012.  | A        | 7                  |
| 4-   | Order dt. 6.3.2013.    | B        | 8 - 15             |
| 5-   | Order dt. 22.4.2013.   | C        | 16 - 19            |
| 6-   | Order dt. 3.9.2013.    | D        | 20                 |
| 7-   | Appeal.                | E        | 21 - 22            |
| 8-   | High Court's order.    | F        | 23 - 26            |
| 9-   | Copy of summary.       | G        | 27 - 29            |
| 10-  | Transfer policy.       | H        | <del>30 - 36</del> |
| 11-  | Circular dt. 27.2.2013 | I        | <del>35</del> 37   |
| 13-  | Vakalat nama.          | ---      | <del>38</del> 38   |

APPELLANT



THROUGH:



M.ASIF YOUSAFZAI

ADVOCATE.

\*

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

APPEAL NO. 1635 /2013.

K.W.P. Peshawar  
1635  
23/12/13

Dr. Rashid Ahmed,

Ms, DHQ, Hospital, Lakki Marwat.....Appellant.

**VERSUS**

- 1- The Govt: of KPK, through The Chief Secretary, KPK Peshawar.
- 2- The Secretary Health Deptt: KPK Peshawar.
- 3- The Secretary Establishment Deptt: KPK Peshawar.
- 4- The D.G Health services, KPK Peshawar.
- 5- Mr. Mashal Khan, SMO, Gambela Lakki Marwat.

..... Respondents.

**APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT 1974 AGAINST THE PREMATURE, POLITICALLY MOTIVATED TRANSFER ORDER DATED. 3.9.2013 AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF NINETY DAYS.**

23/12/13

**Prayer:**

*That on acceptance of this appeal the impugned order dated. 3.9.2013 may be set-aside to the extent of appellant and the respondents may also be directed not to transfer the appellant prematurely in violation of law and rules. Any other remedy which this august tribunal*



*deems fit that may also be awarded in favour of appellant.*

**R.SHEWETH.**

- 1- That the appellant is a BPS-19 senior doctor and belongs to management cadre, where as the respondent No.5 is a BPS-18 doctor and belongs to general cadre.
- 2- That on 13.12.2012, the appellant was transferred to Tank as EDO(H) from DHQ Hospital Lakki Marwat. Copy of order is attached as Annexure – A.
- 3- That 6.3.2013 the appellant was promoted as Regular BPS-19 officer in Management Cadre of the health Deptt; and was posted Dy: DHO, Charsadda and then to Tank. Copy of order is attached as Annexure – B
- 4- That on 22.4.2013 the appellant was transferred as MS DHQ Hospital Lakki Marwat against BPS-19 management cadre post. Copy of order is attached as Annexure – C.
- 5- That just within 5 months, the appellant was again transferred due to political interference, prematurely and in violation of rules/policy and on his place a junior officer of BPS-18 of general cadre has been posted vide order dated. 3.9.2013. Copy of the order is attached as Annexure – D.
- 6- That the appellant filed departmental appeal against the said order on 4.9.2013 but the same remained un-responded till the lapse of statutory period. However the appellant has also filed a writ petition before the High Court at Bannu Bench but the same had also been dismissed for want of jurisdiction on 22.10.2013 against which he also filed appeal before the Supreme Court of Pakistan where the decision of the High Court maintained. Copies of High Court's order and appeal are attached as Annexure – E&F and the Supreme Court decision will be produced later on as the copy of the same has not been provided till date.
- 7- That as the statutory period on the departmental appeal of appellant is lapsed; therefore the present appeal on the following grounds amongst the others.

**GROUNDS:**

- A- That the order dated. 3.9.2013 is against the law, rules, Govt; policy and norms of justice, therefore liable to be set-aside.
- B- That the impugned order is malafide and to post a blue eyed junior officer of BPS-18 of General Cadre against the post of BPS-19 of Management cadre, which is not legally permissible.
- C- That the impugned order is politically motivated and despite of showing legal position in the summary, the respondent No.5 has been posted against the higher scale post which is evident from the Annexure - G.
- D- That the appellant's tenure at DHQ Lakki Marwat was just 5 months .Thus the impugned order dated 3.9.2013 was premature.
- E- That the impugned order dated 3.9.2013 is against and in total violation of the government posting and transfer policy dated. 15.2.2003. copy of the posting and transfer policy is attached as Annexure- H
- F- That the even the order dated 3.9.2013 is based on no good grounds and is the violation of Govt; circular dated. 27.2.2013 and as such the same is not sustainable. Copy of Circular is attached as Annexure – I.
- G- That the order dated 16.9.2013 is against the principles laid down by Hon'ble Supreme Court of Pakistan in case of Anita Turab.
- H- That the order dated. 3.9.2013 is also amounting to violation of verdict of the Hon'able supreme Court of Pakistan given in Qazi Abdul karim's case in which such practice of the Govt: has been deprecated in strong words.
- I- That the appellant has not been treated according to law and rules and Govt; posting/transfer policy.

J- That transfer order dated. 3.9.2013 is not in public interest rather based on political whims. More over the there were neither exigencies of service nor any complaints against the appellant.

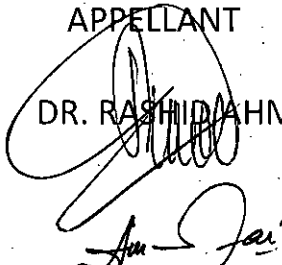
K- That the appellant seeks permission to advance other proofs and grounds at the time of hearing .

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

APPELLANT

DR. RASHID AHMED

THROUGH:

  
M.ASIF YOUSAFZAI  
ADVOCATE.

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

APPEAL NO. \_\_\_\_\_/2013.

Dr. Rashid Ahmed

Vs

Health Deptt:

**APPLICATION FOR SUSPENSION OF  
IMPUGNED ORDER DATED 3.9.2013 TILL  
PENDING FINAL DECISION OF MAIN  
APPEAL.**

**Respectfully Sheweth,**

1. That the petitioner/ appellant has filed Appeal before this Hon,ble Tribunal in which no date hearing has been fixed so for.
2. That the impugned order dated.3.9.2013 is politically motivated, premature and passed in violation of Govt: instructions regarding posting/transfer.
3. That the appellant has not yet relinquished the charge of the post.
4. That the appellant has got a good prima facie arguable case, the impugned order is without lawful authority and unsustainable in law, balance of convenience lies in his favour and in case operation of impugned order is not suspended, the very purpose of appeal would be defeated and it would infructuous as well and the appellant would suffer irreparable loss.
5. That the grounds of main appeal may also be considered as integral part of this application.


It is, therefore, prayed that the operation of impugned order dated 3.9.2013 may graciously be suspended till final decision of appeal.



Petitioner

DR. RASHID AHMED


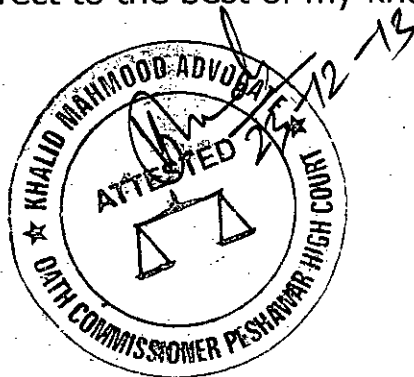
Through



M. ASIF YOUSAFZAI  
ADVOCATE

**AFFIDAVIT:**

It is affirmed and declared that the contents of Application are true and correct to the best of my knowledge and belief.



Deponent.



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

16 A

7

Dated Peshawar the December 13<sup>th</sup>, 2012

NOTIFICATION

NO. SOH(E-V)2-214/2008 The Competent Authority has been pleased to order the posting/transfer of Dr. Rashid Ahmad Khan (BS-18), D.H.Q Hospital, Lakki Marwat to the post of Deputy E.D.O (H), Tank, in his own pay & scale, against the vacant post, with immediate effect in the public interest.

SECRETARY HEALTH  
Govt. of Khyber Pakhtunkhwa

Endst. No. & Date Even  
Copy to the:-

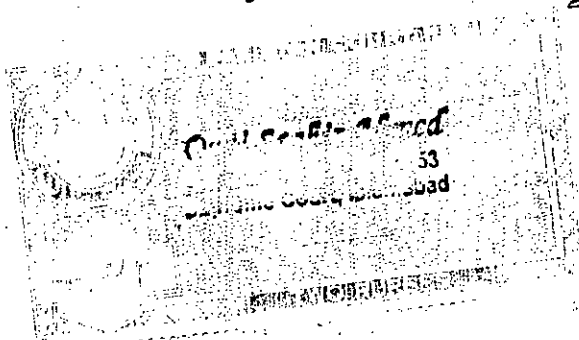
1. Director General, Health Services, Khyber Pakhtunkhwa, Peshawar.
2. EDO (Health), Lakki Marwat/Tank.
3. M.S, D.H.Q Hospital, Lakki Marwat.
4. Deputy EDO (Health), Tank.
5. District Accounts Officer, Lakki Marwat/Tank.
6. PS to Minister for Health.
7. PS to Secretary Health.
8. PA to Spl. Secretary, Health.
9. Computer Programmer, Health Deptt.
10. Dr. Rashid Ahmad Khan (BS-18), D.H.Q Hospital, Lakki Marwat.

*11 from Director Concerned*

(MUHAMMAD IRSHAD)  
SECTION OFFICER (E-V)

*20/12*

*1671*  
*20/12/12*  
DHQ



*Ahmed Nawaz Chaudhary*  
A.S.C.  
Advocate On Record  
Supreme Court of Pakistan  
Islamabad. Mob: 0300-9511254

*TESTED*

B

(8)

BETTER COPY

-18-

GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

Dated Peshawar the March 6, 2013

NOTIFICATION

NO.SOH(E-V)4-20/2012-13 The Competent authority, on the recommendations of the Provincial Selection Board, is pleased to promote the following Member of Service of Health Management Cadre from BS-18 to BS-19 on regular basis with immediate effect:-

| Sr. No | Name of Officer            | Sr. No | Name of Officer        |
|--------|----------------------------|--------|------------------------|
| 1.     | Dr. Attiq-ur-Rehman        | 33.    | Dr. Iftikhar Ahmad     |
| 2.     | Dr. Muhammad Aqeel Farooqi | 34.    | Dr. Muhammad Khan      |
| 3.     | Dr. Zafeer Hussain         | 35.    | Dr. Rashid Ahmad Khan  |
| 4.     | Dr. Ashfaq Ahmad           | 36.    | Dr. Sertaj Khan        |
| 5.     | Dr. Sher Muhammad          | 37.    | Dr. Ihsanul Akber      |
| 6.     | Dr. Iftikhar Iqbal         | 38.    | Dr. Muhammad Umar Shah |
| 7.     | Dr. Abdul Jamil            | 39.    | Dr. Aurangzeb          |
| 8.     | Dr. Tahir Bashir ud-Din    | 40.    | Dr. Aneer ur Rehman    |
| 9.     | Dr. Balqias Khan           | 41.    | Dr. Wahid Gul          |
| 10.    | Dr. Farhat Yasmin          | 42.    | Dr. Iftikhar ud Din    |
| 11.    | Dr. Muhammad Rasool Jan    | 43.    | Dr. Ghulam Subhani     |
| 12.    | Dr. Fazli Malik            | 44.    | Dr. Shaukat Hussain    |
| 13.    | Dr. Zahoor Ahmad           | 45.    | Dr. Abdul Wahid        |
| 14.    | Dr. Arshad Amer            | 46.    | Dr. Fahim Hussian Khan |
| 15.    | Dr. Muhammad Daud          | 47.    | Dr. Syed Mujtaba       |
| 16.    | Dr. Muhammad Sherin        | 48.    | Dr. Haroon Khan        |
| 17.    | Dr. Khalid Iqbal           | 49.    | Dr. Rehman Ullah       |
| 18.    | Dr. Musharaf               | 50.    | Dr. Ghazali Khan       |
| 19.    | Dr. Arshad Ahmad           | 51.    | Dr. Janbaz Afridi      |

TESTED  
Au

(9)

- 189 -

|     |                         |     |                       |
|-----|-------------------------|-----|-----------------------|
| 20. | Dr. Ghulam Nabi Khan    | 52. | Dr. Saeed Gul         |
| 21. | Dr. Shams ul Haq        | 53. | Dr. Saifullah Khalid  |
| 22. | Dr. Ashoor Khan         | 54. | Dr. Aqeel Jan Bangash |
| 23. | Dr. Muhammad Daraz Khan | 55. | Dr. Israrullah        |
| 24. | Dr. Muhammad Riaz       | 56. | Dr. Shaheen Afridi    |
| 25. | Dr. Farooq Shah         | 57. | Dr. Ubaid Hussain     |
| 26. | Dr. S. Minhadd Haq      | 58. | Dr. Tariq Mehmood     |
| 27. | Dr. Azam Khan Wazir     | 59. | Dr. S. Muhammad Samin |
| 28. | Dr. Abdur Rehman        | 60. | Dr. Fakhruddin        |
| 29. | Dr. Fazli Hadi          | 61. | Dr. Ihsanullah Turabi |
| 30. | Dr. Nek Nawaz           | 62. | Dr. Muhammad Ayub     |
| 31. | Dr. Muhammad Ali        | 63. | Dr. Akbar Shah        |
| 32. | Dr. Muhammad Asif       | 64. | Dr. Inamullah Khan    |

2. The officers on promotion shall remain on probation for a period of one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-15(1) of Khyber Pakhtunkhwa Civil Servants (Appointment Promotion & Transfer) Rules, 1989.

3. Consequent upon above, the following postings/transfers are hereby ordered, in the public interest:-

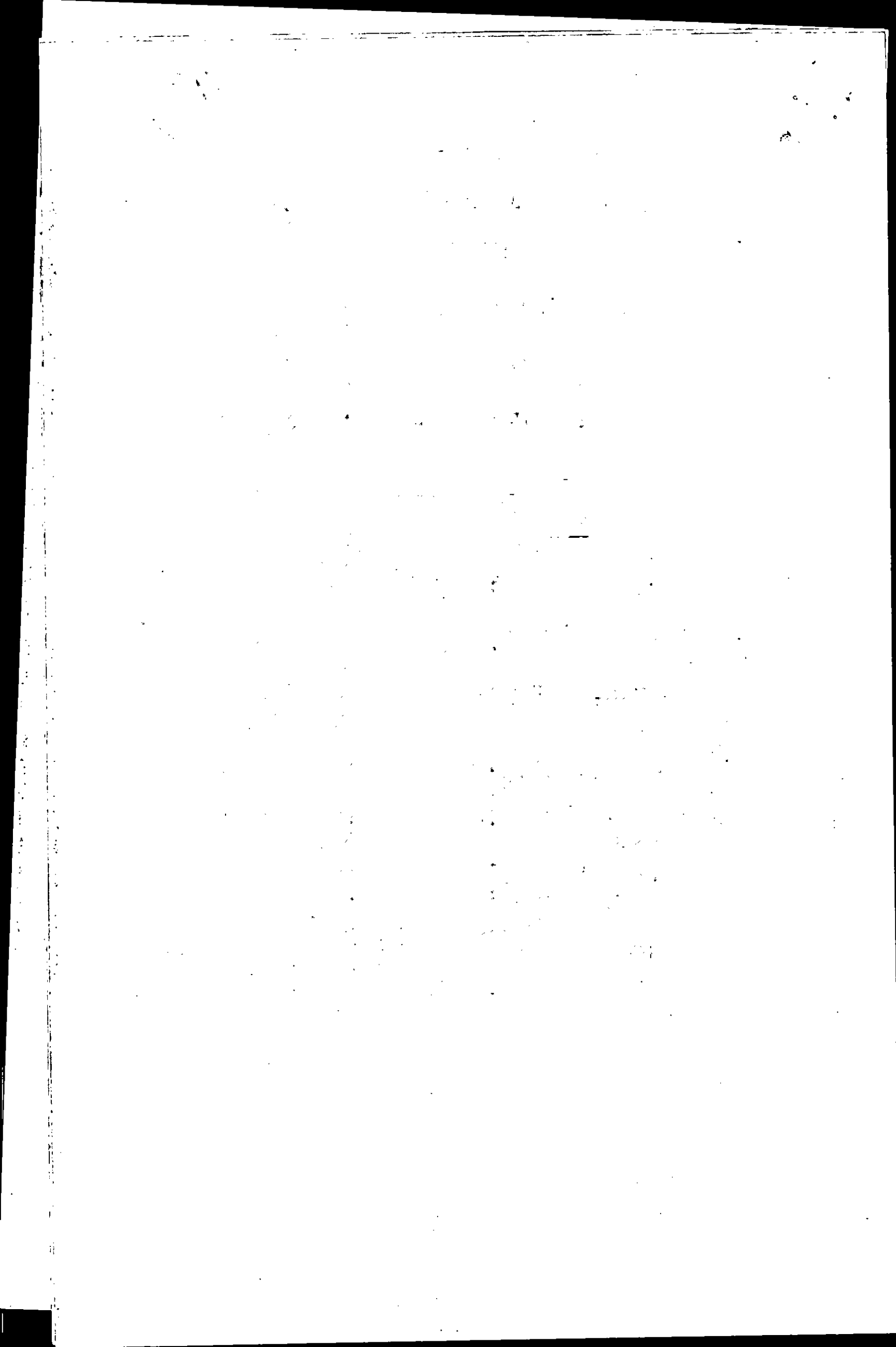
| Sr. No | Name of Officer                    | From   | To  |
|--------|------------------------------------|--|---|
| 1.     | Dr. Attiq-ur-Rehman (BS-19)        | MS, Safwat Ghayur Memorial Hospital Peshawar | Services placed at the disposed of MS Police and Service Hospital Peshawar      |
| 2.     | Dr. Muhammad Aqeel Farooqi (BS-19) | DHQ Buner                                    | DHQ Buner against the post of BS-19   |
| 3.     | Dr. Zafeer Husain (BS-19)          | DHQ Swabi                                    | DHQ Swabi against the post of BS-19   |
| 4.     | Dr. Ashfaq Ahmad (BS-19)           | SMO DHQ Karak                                | In-charge Type-C Hospital Takht-e-Nasrat Karak against the vacant post of BS-19 |
| 5.     | Dr. Sher Muhammad (BS-19)          | MS DHQ Hospital Buner                        | MS, DHQ Hospital against the post of BS-19                                      |
| 6.     | Dr. Ifikhar Iqbal (BS-19)          | SMO KTH Peshawar                             | DTO Peshawar against vacant post of BS-19                                       |



|     |                                       |  |   |
|-----|---------------------------------------|--|---|
| 7.  | Dr. Abdul Jamil<br>(BS-19)            | Vice Principal Bacha Khan<br>Medical College Mardan      | Services placed at the<br>disposal Principal, BKMC<br>Mardan for further posting              |
| 8.  | Dr. Tahir Bashir ud Din<br>(BS-19)    | MS DHQ Hospital<br>Timergarah Dir Lower                  | MS DHQ Hospital<br>Timergarah Dir Lower<br>against the post of BS-19                          |
| 9.  | Dr. Balqias Khan<br>(BS-19)           | Dhq Karak  | DHQ Karak against the post<br>of BS-19  |
| 10. | Dr. Farhat Yasmin<br>(BS-19)          | Coordinator (PH) office of<br>DHQ Haripur                | Coordinator (PH) office of<br>the DHO Haripur against<br>the post of BS-19                    |
| 11  | Dr. Muhammad Rasool<br>Jan<br>(BS-19) | Public Health Specialist<br>MNCH Programme<br>Peshawar   | D.M.S, L.M.H, Kohat   |
| 12. | Dr. Fazli Malik<br>(BS-19)            | Coordinator (PH) office of<br>DHO Mardan                 | Coordinator (PH) office of<br>the DHO Mardan against<br>the post of BS-19                     |
| 13. | Dr. Zahoor Ahmad<br>(BS-19)           | Smo cd Dagga Piran,<br>Mardan                            | Vice Principal DHDC<br>Abbottabad against the<br>vacant post                                  |
| 14. | Dr. Arshad Amer<br>(BS-19)            | Course Director PHSA,<br>Peshawar                        | Dy. DHO, Peshawar vice Sr.<br>No. 71  |
| 15. | Dr. Muhammad Daud<br>(BS-19)          | SMO SBBT Hospital<br>Abbottabad                          | Vice Principal, DHDC<br>Abbottabad against the<br>vacant post                                 |
| 16. | Dr. Muhammad Sherin<br>(BS-19)        | DMS Bacha Khan Medical<br>Complex. Shah Mansoor<br>Swabi | M.S Bacha Khan Medical<br>Complex Shahmansoor<br>Swabi  |
| 17. | Dr. Khalid Iqbal<br>(BS-19)           | SMO, DHQ Hospital<br>Chitral                             | DMS (Stores), Govt. LRH<br>Peshawar against the post of<br>BS-19                              |
| 18. | Dr. Musharaf<br>(BS-19)               | SMO Central Jail Hospital<br>Peshawar                    | Services placed at the<br>disposal of Chief Executive,<br>HMC Peshawar for further<br>posting |
| 19. | Dr. Arshad Ahmad<br>(BS-19)           | DHW Nowshera   | DHO Nowshera against the<br>post of BS-19   |
| 20. | Dr. Ghulam Nabi Khan<br>(BS-19)       | DMS HMC Peshawar   | DMS HMC Peshawar  |

|     |                                       |  |  |
|-----|---------------------------------------|--|--|
| 21. | Dr. Shams ul Haq<br>(BS-19)           | Director (Operation)<br>Rescue 1122 B&D Deptt:<br>Khyber Pakhtunkhwa<br>Peshawar | Coordinator (PH) office of<br>the DHO Peshawar against<br>the post                   |
| 22. | Dr. Ashoor Khan<br>(BS-19)            | SMO Silwat Bhayyur<br>Hospital Peshawar  | Coordinator (PH) office of<br>the DHO Peshawar against<br>the post.                  |
| 23. | Dr. Muhammad Daraz<br>Khan<br>(BS-19) | Coordinator office of DHQ<br>Karak   | MS DHQ Hospital Karak<br>vice Sr. No. 75   |
| 24. | Dr. Muhammad Riaz<br>(BS-19)          | MS AHQM Bajaur Agency  | Services placed at the<br>disposal of DHS FATA for<br>further posting                |
| 25. | Dr. Farooq Shah<br>(BS-19)            | Agency Surgeon Mohmand<br>Agency   | Services placed at the<br>disposal of DHS FATA for<br>further posting                |
| 26. | Dr. S. Minhadd Haq<br>(BS-19)         | SMO Ch. Khanaspur<br>District Abbottabad   | Dy. DHQ Abbottabad<br>against the vacant post of<br>BS-19                            |
| 27. | Dr. Azam Khan Wazir<br>(BS-19)        | Agency Surgeon Khyber<br>Agency  | MS DHQ Hospital, Hnagu<br>vice Sr. No. 65  |
| 28. | Dr. Abdur Rehman<br>(BS-19)           | AD DGHS Peshawar   | Dy. Director (Admn) office<br>of DGHS Peshawar against<br>the vacant post            |
| 29. | Dr. Fazli Hadi<br>(BS-19)             | DTO Mardan   | DTO Mardan against the<br>post of BS-19  |
| 30. | Dr. Nek Nawaz<br>(BS-19)              | DHO Bannu  | DHO Bannu against the post<br>of BS-19   |
| 31. | Dr. Muhammad Ali<br>(BS-19)           | In-charge Category-D<br>Hospital Jamalabad                                       | In-charge Category-D<br>Hospital Jamalabad<br>Charsadda against the post<br>of BS-19 |
| 32. | Dr. Muhammad Asif<br>(BS-19)          | Assistant Coordinator Roll<br>Back Maraiia Programme<br>Khyber Pakhtunkhwa       | DTO Haripur vice Sr. No.<br>77   |
| 33. | Dr. Iftikhar Ahmad<br>(BS-19)         | Incharge THQ Tangi<br>Charsadda  | Incharge THQH Tangi<br>Charsadda against the post<br>of BS-19                        |
| 34. | Dr. Muhammad Khan<br>(BS-19)          | ADHO Khyber Agency   | Dy: DHO Charsadda against<br>the vacant post   |

|     |                                      |  |   |
|-----|--------------------------------------|--|---|
| 35. | Dr. Rashid Ahmad Khan<br>(BS-19)     | DY: DHO Tank   | Dy: DHO, Charsadda<br>against the vacant post   |
| 36. | Dr. Sertaj Khan<br>(BS-19)           | Dy. Director office of<br>Director Health Services<br>FATA   | Services placed at the<br>disposal of FATA<br>Secretariat for further<br>posting  |
| 37. | Dr. Ihsanul Akber<br>(BS-19)         | Waiting for posting  | Services placed at the<br>disposal of DHO Swabi   |
| 38. | Dr. Muhammad Umar<br>Shah<br>(BS-19) | MS DHQH Tank   | Services placed at the<br>disposal of DHO D.I Khan  |
| 39. | Dr. Aurangzeb<br>(BS-19)             | SMO Ch. Thall Hangu  | In-charge CH Thall Hangu<br>against the post of BS-19   |
| 40. | Dr. Aneer ur Rehman<br>(BS-19)       | Waiting for posting  | Services placed at the<br>disposal of Chief Executive<br>SGTH Swat for further<br>posting   |
| 41. | Dr. Wahid Gul<br>(BS-19)             | Project Mavi ger<br>Programme Implementation<br>Unit Equipment Basic<br>Health Services Khyber<br>Pakhtunkhwa Peshawar | MS E.S.H. Pabbi Nowshera<br>Vice Sr. No. 78   |
| 42. | Dr. Iftikhar ud Din<br>(BS-19)       | In-charge THQH Drosh<br>Chitral  | In-charge THQH Drosh<br>Chitral against the post of<br>BS-19  |
| 43. | Dr. Ghulam Subhani<br>(BS-19)        | Assistant Director office of<br>the DGHS Khyber<br>Pakhtunkhwa   | DMS (Admin) LRH<br>Peshawar against the vacant<br>post  |
| 44. | Dr. Shaukat Hussain<br>(BS-19)       | Public Health Specialist   | Dy. DHO Batagram against<br>the   |
| 45. | Dr. Abdul Wahid<br>(BS-19)           | DTO Buner  | Coordinator (PH) office of<br>DHO Buner Vice Sr. No. 67   |
| 46. | Dr. Fahim Hussian Khan<br>(BS-19)    | Assistant Director office of<br>DGHS Khyber<br>Pakhtunkhwa Provincial<br>Coordinator for FP & PHC<br>Peshawar          | Dy. DHO Manshera vice Sr.<br>No. 69 on actualization he<br>will continue to work as<br>Provincial Coordinator NP<br>for FP & PHC Peshawar |
| 47. | Dr. Syed Mujtaba<br>(BS-19)          | RMO KTH Peshawar   | RMO KTH Peshawar<br>against the post of BS-19   |



|     |                                  |  |   |
|-----|----------------------------------|--|---|
| 48. | Dr. Haroon Khan<br>(BS-19)       | Blood Bank Officer HMC<br>Peshawar                         | Service placed at the<br>disposal of Chief Executive<br>HMC Peshawar for further<br>posting   |
| 49. | Dr. Rehman Ullah<br>(BS-19)      | RMO HMC Peshawar   | RMO HMC Peshawar<br>against the post of BS-19   |
| 50. | Dr. Ghazali Khan<br>(BS-19)      | SMO Govt. LRH Peshawar                                     | Incharge RHC Nagani<br>Peshawar against the post of<br>BS-19 VICE Sr. No 79   |
| 51. | Dr. Janbaz Afridi<br>(BS-19)     | Deputy Director (EPI)<br>office of DGHS Peshawar           | Deputy Director (EPI) office<br>of DGHS Peshawar against<br>the post of BS-19   |
| 52. | Dr. Saeed Gul<br>(BS-19)         | AD DGHS Peshawar   | DMS Sarhad Hospital of<br>Psychiatric Diseases<br>Peshawar agains the vacant<br>post. He will work in<br>Nutrition Cell o/o the<br>DGHS Khyber<br>Pakhtunkhwa |
| 53. | Dr. Saifullah Khalid<br>(BS-19)  | Vice Principal PIMT<br>Abbottabad                          | MS Mental and General<br>Hospital Dadar Manshera<br>vice Sr. No. 70   |
| 54. | Dr. Aqeel Jan Bangash<br>(BS-19) | DHO Battagram  | DHO Battagram against<br>the post of BS-19  |
| 55. | Dr. Israrullah<br>(BS-19)        | Public Health Specialist<br>MNCH Programme Chitral         | Dy. DHO Chitral   |
| 56. | Dr. Shaheen Afridi<br>(BS-19)    | SPO Health Department                                      | Consultant Health<br>Department (She will draw<br>pay against the vacant post<br>of Vice Principal PHPI<br>Peshawar)  |
| 57. | Dr. Ubaid Hussain<br>(BS-19)     | Deputy Manager TB<br>Control Program Khyber<br>Pakhtunkhwa | Dy. DHO Bannu against the<br>vacant post  |
| 58. | Dr. Tariq Mehmood<br>(BS-19)     | SMO Bacha Khan Medical<br>Colelge Mardan                   | Service placed at the<br>disposal of Chief Executive<br>MMC Mardan  |
| 59. | Dr. S. Muhammad Samin<br>(BS-19) | DTO Kohat  | Dy. DHO Kohat against the<br>vacant post of BS-19   |
| 60. | Dr. Fakhruddin<br>(BS-19)        | AD DGHS office Peshawar                                    | Dy. DHO Kohat against the<br>vacant post of BS-19   |

|     |   |   |   |
|-----|---|---|---|
| 61. | Dr. Ihsanullah Turabi<br>(BS-19)          | AD DGHS Office Peshawar                 | Ms. Silwat Ghayyur (I.D. Children) Hospital Peshawar Vice Sr. No. 1                                     |
| 62. | Dr. Muhammad Ayub<br>(BS-19)              | SMO SGTH Swat                           | Dy. DHO Swat against the vacant post of BS-19   |
| 63. | Dr. Akbar Shah<br>(BS-19)                 | DMS KTH Peshawar                        | Services placed at the disposal of Chief Executive Peshawar   |
| 64. | Dr. Inamullah Khan<br>(BS-19)             | DMS SGTH Swat                           | Coordinator (PH) office of DHO Swat against the vacant post of BS-19                                    |
| 65. | Dr. Abdur Rashid<br>(General Cadre BS-19) | DMS SGTH Swabi                          | Services Placed at the disposal of DHO haripur for further posting as PMO                               |
| 66. | Dr. Muhammad Riaz Malik<br>(BS-19)        | MS DHQ Hospital Hangu                   | MS DHQ Hospital Nowhera vice Sr. No. 73   |
| 67. | Dr. Fazal Azeem<br>(General Cadre BS-19)  | Coordinator (PH) office of DHO Buner    | Services placed at the disposal of DHO Buner for further posting  |
| 68. | Dr. Aslam Sherani                         | Principal Medical Officer               | MS DHQH Tank vice Sr. No. 36  |
| 69. | Dr. Gul Muhammad<br>(BS-19)               | Dy DHO Mansehia                         | In-charge THQ Hospital Topi Swabi vice Sr. No.72.   |
| 70. | Dr. Feroz Khan<br>(Gen Cadre BS-19)       | MS Mental & Gen Hospital Dadar Mansehra | Services placed at the disposal of DHO Mansehra for further posting                                     |
| 71. | Dr. Noor Ul Mebood<br>(BS-18)             | DY. Dho, Peshawar                       | Services placed at the disposal of Chief Executive, HMC Peshawar for further posting in PICO, Peshawar. |
| 72. | Dr. Bakht Jamal<br>(BS-18)                | Incharge, THQ Hospital, Topi, Swabi     | SMO RHC Sheikh Swabi.   |
| 73. | Dr. Akbar Khaksar<br>(Gen Cadre BS-19)    | MS HHQ Hospital                         | SMO DHQ Hospital, Nowshera against the vacant post.   |
| 74. | Dr. Speen Khan<br>(Gen Cadre BS-19)       | Incharge UD Kakshal Peshawar.           | SMO Central Jail Hospital Peshawar vice Sr. No. 18  |
| 75. | Dr. Lal Sharaf<br>(Gen Cadre BS-19)       | MS DHQ Hospital, Dir Upper              | At the disposal of DHO, Dir, Upper for the further posting  |

(15)  
- 25 -

|     |   |                                 |  |
|-----|---|---------------------------------|--|
| 76. | Dr. Ghani Rehman<br>(Gen Cadre BS-18)               | MS, DHQ Hospital Dir.<br>Upper  | At the disposal of DHO Dir<br>Upper, for further posting.                                      |
| 77. | Dr. Muhammad Rafiq<br>(Gen Cadre BS-18)             | D.T.O. Haripur                  | At the disposal of D.H.O<br>Khyber Pakhtunkhwa for<br>further posting                          |
| 78. | Dr. Muhammad Arshad<br>Mehmood<br>(Gen Cadre BS-18) | M.S E.S.H. Pabbi Noshera        | At the disposal of D.G.H.S<br>Khyber Pakhtunkhwa for<br>further posting                        |
| 79. | Dr. Jamshid Ahmad<br>(BS-19)                        | Incharge RHC Nahagi<br>Peshawar | Services placed at the<br>disposal of Chief Executive<br>KTH, Peshawar for further<br>posting. |

**SECRETARY HEALTH**  
**Govt. of Khyber Pakhtunkhwa**

**Endst. No. & Date Even:**

Copy to the:-

1. Secretary to Governor, Khyber Pakhtunkhwa, Peshawar.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Accountant General, Khyber Pakhtunkhwa, Peshawar.
4. Director General, Health Services, Khyber Pakhtunkhwa, Peshawar
5. Director, Health Services FATA, Peshawar.
6. Chief Executive, LRH/KTH/HMC, Peshawar.
7. Director, P.H.S.A. Peshawar
8. Medical Superintendent of the Concerned Hospitals mentioned above.
9. District Health Officer of all concerned district mentioned above.
10. District Accounts Officer of all concerned districts mentioned above.
11. Agency Accounts Officer of all concerned agencies mentioned above.
12. PSO to Chief Secretary, Khyber Pakhtunkhwa.
13. PS to Secretary Establishment, Khyber Pakhtunkhwa
14. PS to Minister for Health.
15. PS to Secretary Health.
16. Doctors concerned.
17. Computer Programmer, health Department.

**SECTION OFFICER (E-V)**



GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

C-16

AB

**NOTIFICATION**

DATED PESHAWAR, THE APRIL 22, 2013

NO.SO(E-I)E&AD/9-133/2013. Government of Khyber Pakhtunkhwa is pleased to order posting/transfer of the following officers of Health Department, in the public interest, with immediate effect:-

| S.# | NAME OF OFFICER  | FROM   | TO  | REMARKS  |
|-----|--|--|---|--|
| 1.  | Dr. Abdul Khaliq<br>(Member Health Management Cadre BS-20)       | Chief Medical Officer, DHQ Hospital, Bannu                     | DHO Swat  | Against the post of BS-20 in Health Management Cadre vice Sr. No.29  |
| 2.  | Dr. Tariq Khan<br>(Member Health Management Cadre BS-20)         | Chief Medical Officer, KTH, Peshawar                           | MS. Naseerullah Babar Memorial Hospital, Peshawar                       | Against the post of BS-20 in Health Management Cadre vice Sr. No.14.   |
| 3.  | Dr Fazole Maula<br>(Member Health Management Cadre BS-20)        | Principal Health School Abbottabad                             | Project Director HIV AIDS Control Programme, Peshawar                   | Against the post as stop gap arrangement till the post is filled in accordance with project policy vice Sr. No.34.     |
| 4.  | Dr Rohullah Jan<br>(Member Health Management Cadre BS-20)        | Director (PH) office of DG Health Services, Khyber Pakhtunkhwa | Principal Public School, Hayatabad, Peshawar.                           | Against the post of BS-20 in Health Management Cadre.  |
| 5.  | Dr Muhammad Qasim Khan<br>(Member Health Management Cadre BS-20) | DHO Abbottabad   | DHO Mardan  | Against the vacant post of BS-20 in Health Management Cadre.   |
| 6.  | Dr Muhammad Umer Shah<br>(Member Health Management Cadre BS-19)  | PMO Khidmatgaran, D.I.Khan.                                    | DHO D.I.Khan  | Against the post of BS-19 in Health Management Cadre vice Sr. No.7.  |
| 7.  | Dr Muhammad Ashiq Saleem<br>(Gen. Cadre BS-19)                   | DHO D.I.Khan   | PMO Khidmatgaran, D.I.Khan  | Against the vacant post of PMO (BS-19) in the General Cadre.   |
| 8.  | Dr Tariq Masood<br>(Member Health Management Cadre BS-19)        | PMO DHQ Teaching Hospital, D.I.Khan                            | Principal Public Health School, D.I.Khan                                | Against the vacant post of BS-19 in Health Management Cadre  |
| 9.  | Dr Rashid Ahmed<br>(Member Health Management Cadre BS-19)        | Dy DHO Tank  | MS DHQ Hospital, Lakki Marwat   | Against the post of BS-19 in Health Management - Cadre vice Sr. No.17.   |
| 10. | Dr Muhammad Ishaq<br>(Gen. Cadre BS-19)                          | MS City Hospital, Lakki Marwat                                 | Services placed at the disposal of DHO Lakki Marwat for further posting | Against the vacant post of PMO (BS-19) in the General Cadre.   |
| 11. | Dr Abdul Ghafoor<br>(Member Health Management Cadre BS-19)       | Instructor, PGPI LRH, Peshawar                                 | Director (PH) office of DGHS, Peshawar, in his own pay and scale.       | Against the post of BS-20 in Health Management Cadre due to deficiency of officers of BS-20 in the Cadre vice Sr. No.4 |
| 12. | Dr Akbar Jan<br>(Member Health Management Cadre BS-19)           | PMO Lakki Marwat   | DHO Bannu   | Against the post of BS-19 in Health Management Cadre vice Sr. No.13.   |

Ahmed Nazam Chaudhary  
A.S.C.  
Advocate On Record  
Supreme Court of Pakistan  
Islamabad. Mob: 0300-9511254

ATESTED





GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

(17)

PAGE-2

| S. #. | NAME OF OFFICER   | FROM  | TO  | REMARKS  |
|-------|---|---|---|--|
| 13.   | Dr Nek Nawaz<br>(Member Health<br>Management Cadre<br>BS-19)                | DHO Bannu   | DHO Lakki<br>Marwat   | Against the post of<br>BS-19 in Health<br>Management Cadre<br>vice Sr. No.38   |
| 14.   | Dr Muhammad Zaman<br>Khatik<br>(Member Health<br>Management Cadre<br>BS-19) | MS Naseerullah<br>Babar Memorial<br>Hospital, Peshawar. | Course Director,<br>PHSA, Peshawar  | Against the post of<br>BS-19 in Health<br>Management Cadre<br>vice Sr. No.15.  |
| 15.   | Dr Muhammad Nasir<br>Raza<br>(Gen. Cadre BS-19)                             | Course Director,<br>PHSA, Peshawar                      | PMO Police &<br>Services Hospital,<br>Peshawar                                      | Against the vacant<br>post of PMO (BS-19)<br>in the General Cadre.   |
| 16.   | Dr Atiqur Rehman<br>(Member Health<br>Management Cadre<br>BS-19)            | PMO Police &<br>Services Hospital,<br>Peshawar          | Dy DHO<br>Charsadda   | Against the post of<br>BS-19 in Health<br>Management Cadre<br>vice Sr. No.39   |
| 17.   | Dr Mashaf Khan<br>(Gen. Cadre BS-18)  | MS DHQ Hospital,<br>Lakki Marwat.                       | Services placed at<br>the disposal of<br>DHO Lakki<br>Marwat for further<br>posting | Against the vacant<br>post of SMO (BS-18)<br>in the General Cadre.   |
| 18.   | Dr Arshad Ahmed<br>(Member Health<br>Management Cadre<br>BS-19)             | DHO Nowshera  | Incharge/MS THQ<br>Hospital Tangi<br>Charsadda.                                     | Against the post of<br>BS-19 in Health<br>Management Cadre<br>vice Sr.No.22  |
| 19.   | Dr Muhammad Nawaz<br>(Gen. Cadre.BS-19)                                     | MS DHQ.Hospital,<br>Charsadda                           | Services placed at<br>the disposal of<br>DHO Charsadda<br>for further posting.      | Against the vacant<br>post of PMO (BS-19)<br>in the General Cadre  |
| 20.   | Dr Muhammad Ali<br>(Member Health<br>Management Cadre<br>BS-19)             | WC PMO Category D<br>Hospital, Jamalabad<br>Charsadda   | DHO Malakand.   | Against the post of<br>BS-19 in Health<br>Management Cadre<br>vice Sr. No.40.  |
| 21.   | Dr Fazal Akbar<br>(Gen. Cadre BS-19)  | DHO Charsadda   | Services placed at<br>the disposal of<br>DHO Charsadda<br>for further posting.      | Against the vacant<br>post of PMO (BS-19)<br>in the General Cadre  |
| 22.   | Dr Jamshed Ahmed<br>(Member Health<br>Management Cadre<br>BS-19)            | PMO KTH,<br>Peshawar                                    | DHO Charsadda   | Against the post of<br>BS-19 in Health<br>Management Cadre<br>vice Sr. No.21   |
| 23.   | Dr Ifkhar Ahmed<br>(Member Health<br>Management Cadre<br>BS-19)             | Incharge THQ<br>Hospital Tangi,<br>Charsadda            | DHO Nowshera  | Against the post of<br>BS-19 in Health<br>Management Cadre<br>vice Sr. No.18   |
| 24.   | Dr Zafeer Hussain<br>(Member Health<br>Management Cadre<br>BS-19)           | DHO Swabi   | DHO Abbottabad,<br>in his own pay and<br>scale.                                     | Against the post of<br>BS-20 in Health<br>Management Cadre<br>due to deficiency of<br>officers of BS-20 in<br>the Cadre vice Sr.<br>No.5 |
| 25.   | Dr Syed Ahmed<br>(Member Health<br>Management Cadre<br>BS-19)               | Blood Bank Officer,<br>LRH, Peshawar                    | Dy Director (PH)<br>office of DGHS<br>Khyber<br>Pakhtunkhwa<br>Peshawar             | Against the vacant<br>post of BS-19 in<br>Health Management<br>Cadre.  |
| 26.   | Dr Saifullah Khalid<br>(Member Health<br>Management Cadre<br>BS-19)         | MS Mental &<br>General Hospital<br>Dadar, Mansehra      | DHO Mansehra  | Against the post of<br>BS-19 in Health<br>Management Cadre<br>vice Sr. No.27.  |

*Ahmed Nawaz Chaudhary*  
A.S.C.  
Advocate On Record  
Supreme Court of Pakistan  
Islamabad. Mob: 0300-9511254



GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

18

PAGE-3

| S.# | NAME OF OFFICER   | FROM   | TO   | REMARKS  |
|-----|---|--|--|--|
| 27. | Dr Muhammad Javed<br>(Gen Cadre BS-19)                      | DHO Mansehra   | Services placed at the disposal of DHO Mansehra  | Against the vacant post of PMO (BS-19) in the General Cadre  |
| 28. | Dr Ihsanul Akbar<br>(Member Health Management Cadre BS-19)  | PMO DHO Hospital, Swabi  | DHO Swabi  | Against the post of BS-19 in Health Management Cadre vice Sr. No.24.                                       |
| 29. | Dr Khurshid Ali<br>(Gen. Cadre BS-19)                       | DHO Swat   | Services placed at the disposal of Chief Executive, SGT Hospitals Swat                                     | Against the vacant post of PMO (BS-19) in the General Cadre  |
| 30. | Dr. Tahir Nadeem<br>(Member Health Management Cadre BS-19)  | Waiting for posting  | Provincial Coordinator, National Programme for Family Planning and Primary Health Care, Khyber Pakhtunkhwa | He will draw pay against the post of Incharge CH Mattani, Peshawar.  |
| 31. | Dr Fahim Hussain<br>(Member Health Management Cadre BS-19)  | Provincial Coordinator, National Programme for Family Planning and Primary Health Care, Khyber Pakhtunkhwa | Provincial Programme Manager, MNCH Programme, Khyber Pakhtunkhwa.  | Against the vacant post as stop gap arrangement till the post is filled in accordance with project policy. |
| 32. | Dr Shad Ali<br>(Member Health Management Cadre BS-19)       | Incharge CH Kalu Khan, Swabi   | DHO Haripur  | Against the post of BS-19 in Health Management Cadre vice Sr. No.33  |
| 33  | Dr.S. Mazhar Ali Shah<br>(Gen Cadre BS-19)                  | DHO, Haripur   | Services placed at the disposal of DHO Haripur for further posting   | Against the vacant post of PMO (BS-19) in the General Cadre  |
| 34. | Dr. Sher Muhammad<br>(Gen Cadre BS-18)                      | Project Director HIV AIDS Control Programme, Peshawar  | Services placed at the disposal of DHO Malakand for further posting.                                       | Against the vacant post of SMO (BS-18) in the General Cadre.   |
| 35. | Dr. Zia ul Hasnain<br>(Gen Cadre BS-18)                     | Dy Director (PH) office of DGHS Peshawar under transfer as DTO Haripur                                     | Services placed at the disposal of MS Police & Services Hospital, Peshawar                                 | Against the vacant post of SMO (BS-18) in the General Cadre.   |
| 36. | Dr. Muhammad Ishaq Rasool<br>(Gen Cadre BS-19)              | PMO Sarhad Hospital for Psychiatric Diseases, Peshawar   | Services placed at the disposal of Chief Executive, LRH Peshawar   | Against the vacant post of PMO (BS-19) in the General Cadre  |
| 37. | Dr Musharaf<br>(Member Health Management Cadre BS-19)       | HMC, Peshawar  | Services placed at the disposal of MS Sarhad Hospital for Psychiatric Diseases, Peshawar.                  | He is surplus at HMC in Specialized Psychiatric diseases.  |
| 38. | Dr Abdul Ghaffar<br>(Gen Cadre BS-18)                       | DHO Lakki Marwat   | Services placed at the disposal of DHO Lakki Marwat  | Against the post of SMO (BS-18) in the Gen Cadre.  |
| 39. | Dr Muhammad Khan.<br>(Member Health Management Cadre BS-19) | Dy DHO Charsadda   | MS DHQ Hospital, Charsadda   | Against the post of BS-19 in Health Management Cadre vice Sr. No.19  |

*Ahmed Nawaz Chaudhary*  
A.S.C.  
Advocate On Record  
Supreme Court of Pakistan  
Islamabad. Mob: 0300-9511254



GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

PAGE-4

| S.NO. | NAME OF OFFICER  | FROM                           | TO  | REMARKS   |
|-------|--|--------------------------------|---|---|
| 40.   | Dr Bakht Zada<br>(Gen Cadre BS-19)                         | DHO Malakand                   | Services placed at the disposal of DHO Malakand for further posting                 | Against the vacant post of PMO (BS-19) in the General Cadre.        |
| 41.   | Dr Zakeem Ahmed<br>(Gen Cadre BS-19)                       | MS DHQ Hospital Haripur.       | Services placed at the disposal of Director Gen Health Services for further posting | Against the vacant post of PMO (BS-19) in the General Cadre.        |
| 42.   | Dr Muhammad Daud<br>(Member Health Management Cadre BS-19) | Vice Principal DHDC Abbottabad | MS DHQ Hospital, Haripur  | Against the post of BS-19 in Health Management Cadre vice Sr. No.41 |
| 43.   | Dr Muhammad Ayub<br>(Member Health Management Cadre BS-19) | Dy. DHO Swat                   | MS DHQ Hospital Btkhela.  | Against the post of BS-19 in Health Management Cadre vice Sr. No.44 |
| 44.   | Dr Hanifullah<br>(Gen Cadre BS-18)                         | MS-DHQ Hospital Btkhela        | Services placed at the disposal of DHO Malakand for further posting                 | Against the post of SMO (BS-18) in the Gen Cadre.                   |

CHIEF SECRETARY  
GOVERNMENT OF KHYBER PAKHTUNKHWA

ENDST. NO. & DATE EVEN

Copy forwarded to the:-

1. Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Secretary to Govt. of Khyber Pakhtunkhwa, Health Department.
4. All Divisional Commissioners in Khyber Pakhtunkhwa.
5. Accountant General, Khyber Pakhtunkhwa.
6. Director General Health Services, Khyber Pakhtunkhwa.
7. All Deputy Commissioners in Khyber Pakhtunkhwa.
8. All District Health Officer in Khyber Pakhtunkhwa.
9. Chief Executive, Govt. LRH/KTH/HMC, Peshawar.
10. All Medical Superintendents of concerned Hospitals.
11. Project Director, HIV AIDS Control Program, Peshawar.
12. Provincial Coordinator, National Program for Family Planning and Primary Health Care, Khyber Pakhtunkhwa.
13. Principal, Public School, Abbottabad, Hayatabad Peshawar and DIK.
14. All District Accounts Officer concerned.
15. PS to Chief Secretary, Khyber Pakhtunkhwa.
16. P.S. to Secretary Establishment, Khyber Pakhtunkhwa.
17. Officers concerned.
18. Manager, Govt Printing Press Peshawar.

*Muhammad*  
(MUHAMMAD JAVED SIDDIQI)  
SECTION OFFICER (ESTT- I)  
PH & FAX # 091-9210529

Zaibunnisa

*Ahmed Nawaz Chaudhary*  
A.S.C.  
Advocate On Record  
Supreme Court of Pakistan  
Islamabad. Mob: 0300-9511254



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

Dated Peshawar the 3<sup>rd</sup> September 2013.

**NOTIFICATION**

**NO.SOH(E-V)1-450/07** The Competent Authority is pleased to order the following postings/transfers of doctors with immediate effect in the public interest:-

| S# | Name of Doctor            | Present posting                | Proposed posting  |
|----|---------------------------|--------------------------------|---|
| 1. | Dr Rashid Ahmed (BS-19)   | MS DHQ Hospital, Lakki Marwat  | Dy DHO Bannu against the vacant post of BS-19                       |
| 2. | Dr. Nek Nawaz (BS-19)     | DHO Lakki Marwat               | MS City Hospital Lakki Marwat against the vacant post of BS-19      |
| 3. | Dr. Mashal Khan (BS-18)   | SMO RHC Gambela, Lakki Marwat  | MS DHQ Hospital, Lakki Marwat in his own pay & Scale vice Sr. No.1. |
| 4. | Dr. Abdul Ghaffar (BS-18) | SMO City Hospital Lakki Marwat | DHO Lakki Marwat in his own pay & Scale Vice Sr No.2                |

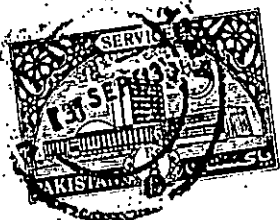
SECRETARY HEALTH  
Govt of Khyber Pakhtunkhwa.

**Endst. No. & Date even.**

Copy to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar
2. Director General Health Services, Khyber Pakhtunkhwa.
3. District Health Officer, Lakki Marwat
4. District Health Officer Bannu.
5. Medical Superintendent, DHQ Hospital Lakki Marwat.
6. Medical Superintendent City Hospital Lakki Marwat
7. District Accounts Officer Bannu/Lakki Marwat.
8. Incharge RHC Gambela, Lakki Marwat.
9. PS to Minister Health Khyber Pakhtunkhwa Peshawar.
10. PS to Secretary Health.
11. Computer Programmer Health Deptt
12. Doctors concerned.

Dispatcher,  
Govt of Khyber Pakhtunkhwa  
Health Department,  
Peshawar



Ahmed Nawaz Chaudhary  
A.S.C.  
Advocate On Record  
Supreme Court of Pakistan  
Islamabad: Mob: 0300-9511254

( HINA HAFEEZ )  
SECTION OFFICER (E-V)

ATTESTED  
A

To

The Honourable Chief Minister  
Khyber Pakhtunkhwa, Peshawar.

~~21~~

E

21

- 30 -

Ahmed Nazam Chaudhary  
A.S.C.  
Advocate On Record  
Supreme Court of Pakistan  
Islamabad. Mob: 0300-9511254

Through: PROPER CHANNEL

Subject: DEPARTMENTAL APPEAL AGAINST THE NOTIFICATION ISSUED BY PROVINCIAL HEALTH DEPARTMENT KHYBER PAKHTUNKHWA BEARING NO.SOH(E-V)1-450/07 DATED 3/9/2013

Dear Sir,

Respectfully, It is stated that I, while working as Medical Superintendent DHQ Hospital Lakki Marwat was transferred and posted as Deputy DHO Bannu. I submit my Departmental appeal against the said posting/transfer on the following grounds:-

- 1) That I am working in the Provincial Health Department since 15-6-1987 on regular basis. I have worked with full devotion and always received appreciation of the higher ups.
- 2) That on my promotion to (BS-19) in the Health Management Cadre, I was posted as Deputy DHO Tank 6-3-2013 and then transferred and posted as MS DHQ Hospital Lakki Marwat dated 22-4-2013.
- 3) I have hardly completed few months of my posting as MS DHQ Hospital Lakki Marwat and have not yet completed the normal tenure of my service, pre-mature posting/transfer is a violation of Section 10(iv) of the Khyber Pakhtunkhwa Civil Servant Act 1973.
- 4) I belong to Health Management Cadre in (BS-19) and working against a post of Health Management Cadre in BS-19. However, the incumbent doctor does not belong to Health Management Cadre which is violation of the Health Management Cadre Rules 2008.
- 5) Moreover, the aspire doctor is in (BS-18) while the post of MS DHQ Hospital Lakki Marwat falls to the share of Health Management Cadre in BS-19. Posting of officers of lover grad against position in a higher scale is a violation of the judgment of Supreme Court of Pakistan duly circulated by the Establishment Department(Annex-I)
- 6) That the said posting/transfer were made on political basis while section (i) and (ii) of the Civil Servant Act 1973 provides that all posting/transfer shall be made in the public interest and not on any political ground (Annex-II).

AYESHA

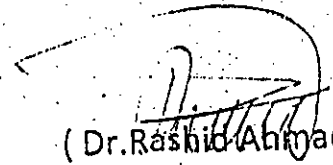
~~2~~

22

~~21~~


In view of the above it is humbly requested that the said posting/transfer may be set aside and the disturbed officers may be restored on merit. Else I have no other way but to knock the door of Khyber Pakhtunkhwa Service Tribunal Peshawar.

Yours faithfully

 4/9/2013

( Dr. Rashid Ahmad (BS-19))

MS DHQ Hospital Lakki Marwat.

  
Ahmed Nawaz Chaudhary  
A.S.C.  
Advocate On Record  
Supreme Court of Pakistan  
Islamabad. Mob: 0300-9511254

Judgment Sheet

7

IN THE PESHAWAR HIGH COURT,  
BANNU BENCH

[JUDICIAL DEPARTMENT]

OSP No. 274-B of 2013

Date of hearing: 22/10/2013

Petitioner(s): Dr Rashid Ahmad, by

M/s M. Shauq Nawaz Khan & Associates, Islamabad

Respondent(s): Govt of Peshawar, Peshawar

Res. by M/s Saadullah Khan Marwat, Peshawar  
Chaf & Mansoor  
Q. Bal. P.

JUDGMENT

ROOH UL AMIN KHAN, J. - By way of this constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, petitioner Dr. Rashid Ahmad Khan, seeks indulgence of this Court against his transfer order bearing No.SOH (E-V)-450/-07 dated 03.09.2013, from the post of Medical Superintendent DHQ Lakki Marwat to District Health Officer, Bannu, alleging the same to be illegal, void ab initii, against the Tenure Policy and

*Handwritten signature/initials*

ATTESTED

*Handwritten signature*  
Peshawar High Court,  
Bannu Bench

ATTESTED  
*Handwritten signature*



Rules and based on political motivations. It is averred in the petition that petitioner being a qualified MBBS doctor, having course of Management, had been posted as MS DHQ hospital Lakki Marwat from the last four months, when all of a sudden and without any lawful justification, vide impugned order, with extreme mala fide, he has been transferred to the post of District Health Officer Bannu and one Dr. Mashal Khan SMO Serai Gambila Lakki Marwat, being a simple Medical Officer in BPS.18 of General Cadre, has been transferred at the place of the petitioner because of his political affiliation, who legally could not be posted at the post of Health management group, hence, seeks setting aside of the impugned order through instant writ petition.

2. We have heard the arguments of the learned counsel for the petitioner and have gone through the record as well as the impugned order.

3. Admittedly, petitioner is a civil servant. As manifest from the impugned order, the same relates to general

*Handwritten signature/initials*

**ATTESTED**  
 ENA JUSER  
 Peshawar High Court  
 Bannu Bench

MS/PS/D



transfer of the petitioner in the public interest. There is no  
 mention in the impugned order which depict that the petitioner  
 has been transferred from Management Cadre to the General  
 Cadre. Transfer of an employee/civil servant is the part of  
 terms and conditions of his service. Under section 10 of the  
 NWFP Civil Servants Act, 1973, a civil servant can be  
 transferred during period of his service, which is one of the  
incidents of service, squarely falling under the terms and  
conditions of service, as such, comes within the domain of  
 Service Tribunal. Even if, the impugned transfer order is  
passed on the basis of mala fide, coram non iudice, or is in  
violation of any rules, the same could only be challenged  
before the Service Tribunal. In service matters, Art. 212 of the  
 Constitution of Islamic Republic of Pakistan, 1973, places  
complete bar on any other Court, except the Tribunals  
 constituted for that purpose. In pursuance of the said Article,  
 Service Tribunals have been established, which have the  
 exclusive jurisdiction in such matters, whereas, any other

*Copy*

~~ATTESTED~~

*[Signature]*  
 Federal High Court,  
 Islamabad

4

Court, including the High Court, has got no jurisdiction to  
 interfere in such matters. In this regard cases titled, "Ayyaz  
 Najum Vs Government of Punjab, Housing and Physical  
 Planning Department through Secretary and others" and  
"Rafique Ahmad Chaudhry Vs Ahmad Nawaz Malik and  
 others" (1997 S C M R 169 and 170) Miss Rukhsana Ijaz vs  
 Secretary Education, Punjab & others (1997 SCMR 167),  
 Secretary Education NWFP Peshawar and 2 others vs  
 Mustamir Khan and another (2005 SCMR 17) and Peer  
 Muhammad Vs Governemtn of Baluchistan through Chief  
 Secretary & others (2007 SCMR 54) can be relied.

4. In view of the constitutional bar, this Court has got no jurisdiction to entertain the instant petition. Thus this petition is dismissed in limine, for want of jurisdiction.

Announced:  
22.10.2013

sd/ Rosh-ul-Amin Khan  
sd/ Syed Afzar Shah

CERTIFIED TO BE TRUE COPY



Examiner  
Peshawar High Court Bannu Bench  
Authorized Under Article 87 of  
The Qanun-e-Shahadat Order 1984

05/11/13



G  
= 27

**GOVERNMENT OF KHYBER PAKHTUNKHWA**  
**HEALTH DEPARTMENT.**

**SUMMARY FOR CHIEF MINISTER.**

**SUBJECT:- POSTING OF DHO LAKKI MARWAT AND MS DHQ HOSPITAL, LAKKI MARWAT.**

The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa has verbally conveyed direction of the Chief Minister, Khyber Pakhtunkhwa that Dr Abdul Ghaffar (BS-18) may be posted as DHO Lakki Marwat whereas Dr Mashal Khan (BS-18) may be posted as MS DHQ Hospital Lakki Marwat.

2. The posts of MS DHQ Hospital Lakki Marwat and DHO Lakki Marwat are in BS-19. These posts fall to the share of Health Management Cadre. Dr Rashid Ahmed (Member Health Management Cadre BS-19) is working as MS DHQ Hospital Lakki Marwat since 12.4.2013 whereas the post of DHO Lakki Marwat is occupied by Dr Nek Nawaz (Member Health Management Cadre BS-19) from the same date.

3. Dr Abdul Ghaffar, SMO City Hospital, Lakki Marwat and Dr Mashal Khan SMO RHC Gambela, Lakki Marwat are in BPS-18 and belongs to General Cadre. Before their present postings, they were working as DHO Lakki Marwat and MS DHQ Hospital Lakki Marwat respectively. However, they were replaced by the above mentioned officers.

4. According to schedule III of the Khyber Pakhtunkhwa Rules of Business, 1985, the postings/transfers of the Heads of attached Departments and other officers in BPS-19 and above in all Departments would be made with the approval of the Chief Minister (Annex: I).

5. In view of the above, the Health Department proposes the following postings/transfers in the public interest:-

| S.# | Name of doctor           | Present posting                 | Proposed posting   |
|-----|--------------------------|---------------------------------|--|
| 1.  | Dr Rashid Ahmed (BS-19)  | MS DHQ Hospital, Lakki Marwat   | Dy: DHO Bannu against the vacant post of BS-19                     |
| 2.  | Dr Nek Nawaz (BS-19)     | DHO Lakki Marwat                | MS City Hospital, Lakki Marwat against the vacant post of BS-19    |
| 3.  | Dr Mashal Khan (BS-18)   | SMO RHC Gambela, Lakki Marwat   | MS DHQ Hospital, Lakki Marwat in his own pay & scale vice Sr: No.1 |
| 4.  | Dr Abdul Ghaffar (BS-18) | SMO City Hospital, Lakki Marwat | DHO Lakki Marwat in his own pay & scale vice Sr: No.2              |

*Munir Nawaz Chaudhary*  
A.S.C.  
Advocate On Record  
Supreme Court of Pakistan  
Islamabad. Mob: 9300-9511254

Orders of the Chief Minister, Khyber Pakhtunkhwa are solicited on the proposal contained in para 5 above.

*M. Fakhre Alam*  
23/07/13  
(Dr Fakhre Alam)

ATTESTED  
★

07. The summary has been examined and observed as under:-

- i. Posting of officers of General Cadre against Management Cadre is violation of Government policy.
- ii. Posting of BS-18 officers (s.no.3 & 4) against BS-19 posts is also violation of the government policy needs justification.
- iii. Dr Rasheed Ahmad (s.no.1) has recently been transferred on 16.04.2013 and has yet to complete his normal tenure at his present posting.
- iv. Cogent reasons for posting/transfer have not been mentioned.
- v. Substitutes of officers at s.no.3 & 4 have not been proposed.

08. The Administrative Department may be asked to revisit the summary and clarify/rectify the above observations.

*(Signature)*  
 (Sikander Qayyum)  
 Secretary Establishment  
 August 07, 2013

Chief Secretary/Khyber Pakhtunkhwa.

Sery Health

*(Signature)*  
 12/8  
 Chief Secretary  
 Govt. of Khyber Pakhtunkhwa

*(Signature)*  
 Ahmed Anwar Chaudhry  
 A.S.C.  
 Advocate On Record  
 Supreme Court of Pakistan  
 Islamabad. Mob: 0300-9511254

NPP

C.S.

25/8/2013  
 CHIEF MINISTER  
 KHYBER PAKHTUNKHWA

29

~~29~~

GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT.

SUMMARY FOR CHIEF MINISTER.

SUBJECT:- POSTING OF DHO LAKKI MARWAT AND MS DHQ HOSPITAL LAKKI MARWAT.

Para 7-8 of the summary refers.

9 Due to deficiency of officers of the Health Management Cadre in BS-19, the Health Department has proposed officer of the General Cadre for posting as such. Moreover, in terms of Section 10 of the Civil Servant Act, 1973, 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 corporation or body set up or established by any such Government.

10. Due to ailing health, Dr Abdur Rashid (S.No.1) is facing difficulty in dealing with the affairs of the official business of the post of MS. To reduce the work load, he has been proposed against the post of Deputy DHO.

11. Due to transfer of the officers at Sr: No.3 & 4, the health facilities would not suffer as a number of doctors are available there.

12. In view of the above, the proposal contained in para 5 of the summary may be placed before the competent authority for orders.

*M. Fakhre Alam*  
(Dr Fakhre Alam )  
Secretary Health  
16/08/2013

Chief Secretary, Khyber Pakhtunkhwa.

Chief Minister

*M. Fakhre Alam*  
21/8  
Chief Secretary  
Govt: of Khyber Pakhtunkhwa

13. Para 5 approved.  
*C/S. (11.11.11)*

*Per my instructions*  
21/8/2013

29

- 35 -

GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT.

SUMMARY FOR CHIEF MINISTER.

SUBJECT:- POSTING OF DHO LAKKI MARWAT AND MS DHQ HOSPITAL, LAKKI MARWAT.

Minister Health, Khyber Pakhtunkhwa.

*[Signature]*  
Minister for Health  
Khyber Pakhtunkhwa.

Chief Secretary, Khyber Pakhtunkhwa.

7. Please examine.

*[Signature]*  
CHIEF SECRETARY

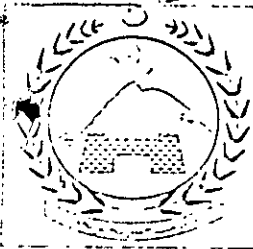
SECRETARY ESTABLISHMENT

*[Signature]*  
Ahmed Nawaz Chaudhary  
A.S.C.  
Additional Charge  
Secretary, Government of Khyber Pakhtunkhwa  
Islamabad. Mob: 0300-9511754



*Legal At:  
Supdt-  
Mardan*

H ~~28~~  
30



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT 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) Existing tenure of posting/transfer of three (03) years for settled areas and two (02) years for unattractive/hard areas shall be reduced to two (02) years for settled areas, 01½ years for unattractive areas and one year for hard areas. *(See P06) as retained*

v) *2 years tenure retained vide P-06 for un-attractive/hard area*

vi) While making posting/transfers of officers/officials up to BS-17 from settled areas to FATA and vice versa approval of the Chief Secretary, Khyber PakhtunKhwa needs to be obtained. Save Tehsildars/Naib Tehsildars within a division in respect of whom the concerned Commissioner will exercise the same power. 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, Khyber PakhtunKhwa shall be obtained."

Provided that the power to transfer Political Tehsildars and Political Naib Tehsildars within FATA between different divisions shall rest in Additional Chief Secretary FATA.

- 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.

Circular letter No. SOR-VI/E&AD/1-4/2008/Vol-VII dated, the 11<sup>th</sup> September, 2009  
 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 Khyber PakhtunKhwa Government Rules of Business, 1955, 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.  
 Para-VI added vide circular letter No. SOR-VI/E&AD/1-4/2010/Vol-VIII dated 20<sup>th</sup> March, 2010.  
 Sub para-VI (a) added vide circular letter No. SOR-VI/E&AD/1-4/2008 dated 22<sup>nd</sup> October, 2008.

*TESTED*

- 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.
- 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 Khyber Pakhtunkhwa 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:<br>a) Within the Same Department<br>b) Within the Secretariat from one Department to another. | Secretary of the Department concerned.<br>Chief secretary/Secretary Establishment.  |
| 3.                      | Officials up to the rank of Superintendent:<br>a) Within the same Department  | Secretary of the Department concerned.  |

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



32

|  |   |
|--|---|
| b) To and from an Attached Department                    | Secretary of the Department in consultation with Head of Attached Department concerned. |
| c) Within the Secretariat from one Department to another | 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.

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.

\*\*\*\*\*

Updated up to April, 2010.

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.

33

Authority: Letter No: SOR-I/E&AD/1-1/2003 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 E&A Department for issuance of Notifications.

SPECIMEN NOTIFICATION.

GOVERNMENT OF KHYBER PAKHTUNKHWA  
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 KHYBER PAKHTUNKHWA

Endst. No. and date even.

Copy forwarded

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

(NAME)  
SECTION OFFICER  
Administrative Department

Authority: Letter No. SO (E-1) E&AD/9-12/2006 dated 22-12-2006.

The competent authority has been pleased to direct that Para 1(v) of the Posting/Transfer Policy contained in this Department letter No:SOR-1 (E&AD) 1-1/85 Vol-II, dated 15-2-2003 shall stand deleted, with immediate effect, consequently allowing the authorities, competent under the Khyber PakhtunKhwa Government Rules of Business, 1985 and the District Government Rules of Business, 2001 or any other rules for the time being in force, to make posting/transfers of Government servants, any time during the year, in genuinely deserving and necessary cases, in public interest,

----- to this effect

subject to strict observance of all other provisions of posting/transfer policy contained and notified vide circular letter under reference. Hence there will be no ban on posting/transfer of Government Servants in any part of the year while carrying out postings/transfers of Government Servants.

The authorities concerned will ensure that no injustice whatsoever is caused to any civil servant, public work is not suffered and service delivery is improved.

I am therefore directed to request that the provisions of posting/transfer policy, as amended to the extent above, may kindly be followed in letter and spirit in future so as to keep good governance standard in this regard.

Authority: Urdu circular No: SOR-VI (E&AD) 1-4/2008 Vol-VI, dated 3-6-2008.

According to the policy of the provincial Government, maximum tenure on a post is three years. Contrary to the Policy, Store Keepers, Cashiers, Accountants and other ministerial staff remains posted in their particular field for long time, which may result in misuse of this position, due to which not only public exchequer may sustain loss but general public also suffers. The Provincial Government has taken serious notice of this situation & decided that all Administrative Secretaries and DCOs may submit a certificate within one month to the effect that above mentioned officials, having completed three years on their posts, have been adjusted on posts other than those they held previously.

Authority: Urdu circular No: SOR-VI (E&AD) 05 dated 28<sup>th</sup> Oct, 2005.

The Chief Minister Khyber Pakhtunkhwa has directed that:-

- i) Submission of summary would not be required in case of mutual transfer.
- ii) ✓ Posting/transfer shall be made according to the policy.
- iii) Government Servants shall avoid direct submission of applications to the Chief Minister.
- iv) In genuinely deserving case, they should approach the Administrative Secretaries who could process the case according to policy.
- 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) 1-4/2003, dated 8-6-2004 & Urdu Letter No: SOR-VI (E&AD) Misc: 72003, dated 3-1-2006.

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) Khyber Pakhtunkhwa 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 decide 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 Khyber Pakhtunkhwa Govt Servants (Conduct) Rules 1987 shall be proceeded against under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance 2000. As required under the Khyber Pakhtunkhwa 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

34

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}.

\*\*\*\*\*  
"In continuation of this Department circular letter No.SOR-VI/E&AD/1-4/2008/Vol-VII dated 11<sup>th</sup> September, 2009, I am directed to refer to the subject and to say that the Provincial Cabinet in its meeting held on 30<sup>th</sup> March, 2010 inter-alia approved the following for the purpose of Posting/Transfer Policy:-

Unattractive/Hard Areas

1. The distinction between unattractive/hard areas should be done away with and both should be labeled as Unattractive areas. ✓
2. Existing list of FATA areas be retained.
3. The following areas were recommended/approved to constitute unattractive areas in NWFP:-

- a. Kohistan District.
- b. Tank District.
- c. Chitral District.
- d. Bagram District.
- e. Shangla District. ✓
- f. Hangu District.
- g. PATA areas of Mansehra (Kala Dhaka)

1) Tenure for settled area 03 year  
2) unattractive area is 02 year  
(P-I)

Tenure of posting.

- i. ✓ The erstwhile normal tenure of 2 years be retained. ✓
- ii. Existing tenure for unattractive areas be retained. However, in case of married civil servants, transfer should be made just at the beginning of school session and tenure should be one year instead of 1.5 year, so that academic disruptions are avoided.
- iii. At the time of entry in service, all civil servants be asked to give 4 options from unattractive areas.
- iv. After a stint of service in unattractive area, employees may be offered option to serve in district of choice.

PLACEMENT POLICY.

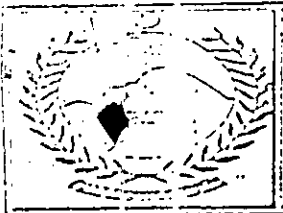
In order to utilize the expertise of the officers who have received foreign training in various fields, the provincial Government has decided to adopt the Placement Policy, approved by the Prime Minister of Pakistan, and make it a part of its Posting/Transfer Policy. Placement Policy is as follows:-

- 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 than the Federal Government.
- iv) The second priority in placement should go to up-gradings the existing training Institution within the country. The knowledge gained by the 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 intuitions 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 participants will decline/represent against his/her posting.

\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

(REGULATION WING)

NO. SOR.VI (E&AD)1 -4/2005/Vol-II  
Dated Peshawar, 27<sup>th</sup> February, 2013

Environment Department  
Government of Khyber Pakhtunkhwa  
Secretary  
Peshawar  
28 Feb 2013

- To: *[Handwritten signature]*
1. The Additional Chief Secretary (P&D) Khyber Pakhtunkhwa.
  2. The Additional Chief Secretary (FATA) 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 TURAB 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 noted 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.

(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 signatures and initials]*  
Secy  
Secy Est  
- ST3

**TESTED**  
*[Handwritten signature]*

(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,

*naizam*

(NAJ-MUS-SAHAR)

SECTION OFFICER (REG-VI)

Encl: as above.

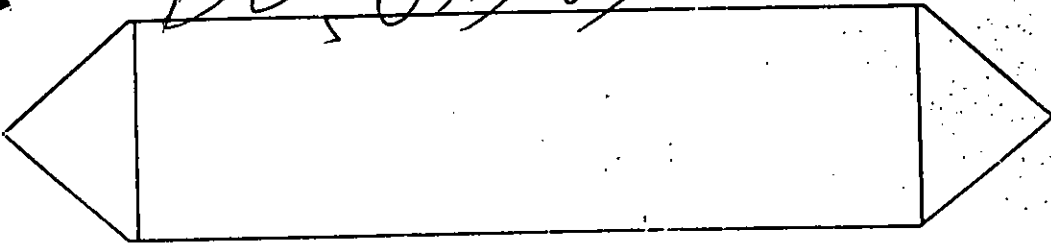
A copy is forwarded to:-

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.

*naizam*

SECTION OFFICER (REG-VI)

بعدالت سید سید محمد یونس کسٹومرز



2، مخمب  
رکسید احمد بنام گنت

مورخہ  
مقدمہ  
دعویٰ  
جرم

### باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ  
آن مقام کسٹومرز کیلئے محمد آصف یونس امیر سید  
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز  
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیہملہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی  
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار  
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ  
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے وہوگا۔  
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی  
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

20

ماہ

المرقوم

کے لئے منظور ہے۔  
محمد آصف یونس  
امیر سید

بمقام



**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR**

S.A No. 1635/2013

Dr. Rasheed Ahumed Versus Govt. of KP & Others

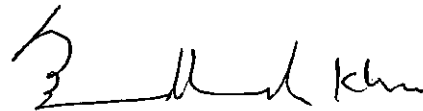
**I N D E X**

| <b>S.#</b> | <b>Description of Documents</b>  | <b>Annex</b> | <b>Page</b> |
|------------|----------------------------------|--------------|-------------|
| 1.         | Memo of Written Statement        |              | 1-6         |
| 2.         | W.P. No. 274-B/2013              | "R"          | 7-10        |
| 3.         | Comments of R. No. 5             | "R1"         | 11-14       |
| 4.         | Transfer of R. No. 5, 22.04.2013 | "R2"         | 15-18       |
| 5.         | S.C Judgment, 06.06.2013         | "R3"         | 19-63       |
| 6.         | Judgment of PHC, 25.07.2013      | "R4"         | 64-67       |
| 7.         | Impugned Order, 03.09.2013       | "R5"         | 68-00       |
| 8.         | HC, Bannu Judgment, 22.10.2013   | "R6"         | 69-72       |
| 9.         | CPLA before SC / RP of HC Bannu  | "R7"         | 73-77       |
| 10.        | SC Judgment, 09.12.2013          | "R8"         | 78-82       |
| 11.        | Rejection of Appeal of Appellant | "R9"         | 83-         |



Petitioner

Through



Saadullah Khan Marwat  
Advocate

Dated: 17 .02.2014

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR**

S.A No. 1635/2013

Dr. Rasheed Ahumed                      Versus                      Govt. of KP & Others

**WITTEN STATEMENT ON BEHALF OF RESPONDENT NO. 5**

**(DR. MASHAAL KHAN)**

**Respectfully Sheweth,**

**PRELIMINARY OBJECTION.**

1. That the appeal is not maintainable as no vested right of appellant was ever infringed.
2. That not only estoppel in way of filing of appeal exists but the same also hits by principal of resjudicata too.
3. That on the same subject matter, appellant 1<sup>st</sup> filed writ petition before High Court, Circuit Bench Bannu which was dismissed in limine and thereafter filed CPLA before the apex Supreme Court of Pakistan which was also dismissed in limine on 09.12.2013.
4. That appellant has suppressed material facts from the Hon'ble Tribunal as the impugned order was issued in the light of the judgment of the apex court against the Care Taker Govt. as well as the judgments of the Hon'ble High Court Peshawar of R. No 5.
5. That petitioner belongs to Management Cadre BPS-19 and was posted in the same cadre and scale of the post of Deputy DHO, Bannu.
6. That appellant seeks specific post of MS DHQ Hospital, Lakki Marwat which is against the laid down Law.
7. That wrong address of R. No. 5 was given by the appellant in the memo of appeal to defent his case.

**ON FACTS**

1. In response to para No. 1 of the appeal, it is submitted that appellant vis-à-vis R. No. 5 were appointed against their

own cadres. Appellant who claims Management Cadre was posted against Management Cadre as Deputy DHO, Bannu on a vacant post of BPS-19, so he should have no grievance against the respondents.

2. In response to this para of the appeal, it is submitted that appellant is a Civil Servant and he can be transferred anywhere as per law & rules.
3. In response to this para, it is also submitted that on promotion to BPS-19, he was posted as Deputy DHO, Charsadda against the vacant post vide order dated 06.03.2013. From the para, being vague, he has not disclosed that on what date, he was transferred to Tank or if he was prematurely transferred to Tank, then Rules and policy was violated and he should complained about the premature transfer to Tank as per the policy but being a choice post, he kept mum or such transfer.
4. In response to this para of the appeal, it is once again submitted that such transfers was premature as is evident from date, 06.03.2013 and date of transfer of Tank was not given by the appellant in the para and date 22.04.2013, meaning thereby that premature transfers made three times were accepted by the appellant which were surly against the rules and policy.
5. Not correct. No political interference was ever made but in this para, appellant has suppressed material facts from the Hon'ble Tribunal as he has filed writ petition No. 274-B /2013 before the Peshawar High Court, Peshawar Circuit Bench Bannu wherein R. No. 5 has submitted comments to the said writ petition as well as to the writ petition No. 295-B / 2013, Dr. Nek Nawaz versus Govt. & others. (Copy of W.P No. 274-B / 2013 and comments of R. No. 5 as annex "R" & "R1).

In the said comments, the position of the case regarding the subject matter was fully explained which short history is as under:-

- a. That Govt. decided to hold General Election in the country and to do the needful, Care Taker Govt. was formed only to conduct fair and transparent election

but the Care Taker Govt. deviated from the mandate and started to make appointments, promotions, transfers, termination, dismissals, etc. in thousands all over the country. R. No. 5 along with Dr. Abdul Ghaffar also became victim and were transferred from the post of SMO (Health) and EDO (Health) vide order dated 22.04.2013 and were posted as MO / SMO. Appellant and Dr. Nek Nawaz were transferred and posted as SMO and EDO (Health) Lakki Marwat. (Copy as annex "R2")

- b. That the illegal action of the Care Taker Govt. got wide publicity in media / press and the matter was taken to the apex Supreme Court of Pakistan by the aggrieved servants and the apex court also took suo moto notice of the illegal acts of the Care Taker Govt. and all were reversed to their original position vide judgment dated 06.06.2013. (Copy as annex "R3")
- c. That R. No. 5 as well as Dr. Abdul Ghaffar filed writ petitions before the Peshawar High Court, Peshawar against order dated 22.04.2013, which came up for hearing on 25.07.2013 and the same were disposed off in the light of the judgment of the apex court as well as of the High Court to restore them to their original positions. (Copy as annex "R4")
- d. That in the light of the said judgments, R. No. 5 as well as Dr. Abdul Ghaffar were restored to their original positions vide the impugned order dated 03.09.2013. (Copy as annex "R5")
- e. That against the impugned order dated 03.09.2013, not only appellant but also Dr. Nek Nawaz filed writ petitions before the Peshawar High Court Peshawar, Circuit Bench Bannu which were, after through probe, dismiss in limine vide judgment dated 22.10.2013. (Copy as annex "R6")
- f. That appellant filed CPLA before the apex Supreme Court of Pakistan and Dr. Nek Nawaz filed Review Petition before High Court, Circuit Bench Bannu

against the said judgments. (Copy of CPLA as annex "R7")

- g. That the apex Supreme Court of Pakistan dismissed CPLA of appellant in limine vide judgment dated 09.12.2013 and the Review Petition of Dr. Nek Nawaz is still pending disposal before High Court, Circuit Bench Bannu. (Copy as annex "R8")
- h. That Nek Nawaz filed appeal before this Hon'ble Tribunal which was admitted to regular hearing, prior to the appeal of the appellant. The same was not only admitted to regular hearing but operation of the impugned order was also suspended, despite the fact that the impugned order dated 03.09.2013 was not only actualized, honored, implemented and acted upon, so in such like scenario of the case, the operation of the impugned order was not justified in any manner to be suspended and that too when the contesting respondents was not served with any notice. The action behind the same is not worth explainable.

So the impugned transfer order was made by the authority by keeping in view the aforesaid facts which could not be termed as premature and inviolation of rules / policy.

As far as posting of R No. 5 as SMO RHC Ghambilla is concerned, appellant has no concern with the same as he has been posted against the post of BPS-19 and in Management cadre.

- 6. Not correct. The departmental appeal of appellant was not honored. By filling writ petition before High Court and CPLA before the apex court means that appellant is estopped by his own conduct. On filling the appeal in hand. The appeal of appellant is also hit by resjudicata because subject matter before the Hon'ble High Court as well as before the apex court and this Hon'ble Tribunal is one and the same which was too against the impugned order dated 03.09.2013.

7. Not correct. The departmental appeal of appellant was rejected on \_\_\_\_\_ but the same order was not impugned before the Hon'ble Tribunal. The original order was merged in appellate order, so the appellate order was required to be assailed. (Copy as annex "R9")

**GROUND S:**

- a. Not correct. The position has been explained in the reply in para 5 of the appeal.
- b. Not correct. Appellant has been posted against the Management cadre and in BPS-19, so no vested right of him was ever infringed.
- c. Not correct. No political pressure was ever exerted and the impugned order was made as explained above in para No. 5.
- d. Not correct. Availing of tenure is not mandatory and if mandatory as stated by the appellant in the para, then such like orders were made time and again since 06.03.2012 which were premature but were not agitated by the appellant as he had managed the same through personal and political efforts.
- e. Not correct. The position has been explained above and more so, in presence of law and rules on the subject, policy has no legal value.
- f. Not correct. The good ground was of the judgments of the Peshawar High Court as well as of the apex Supreme Court of Pakistan, delivered against Care Taker Govt. Appellant was transferred and posted as MS, DHQ Hospital, Lakki Marwat during Care Taker Govt. which was not vested with powers to do so.
- g. Not correct. There is no order of the date 16.09.2013 and the case of Anita Turab cited in the para is not applicable to the case in hand as such action was taken in the Care Taker Govt. by posting appellant as MS, DHQ Hospital, Lakki Marwat.

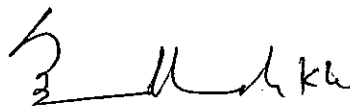
- h. Not correct. The order dated 03.09.2013 was made by keeping in view the verdicts of the Hon'ble High Court as well as of the apex Supreme Court.
- i. Not correct. Appellant was treated in accordance with law, rules and policy by keeping in view the aforesaid judgments.
- j. Not correct. The transfer order was not only based on judgments of the courts but was in public interest. No political whims exists. There was exigency of service as the order was per the judgments of the Hon'ble courts.
- k. Needs no comments.

It is, therefore, most humbly prayed that the appeal of appellant being devoid of merit and without substance be dismissed with cost.




R. No. 5

Through

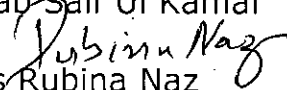


Saadullah Khan Marwat

Dated: 17.02.2014



Arbab Saif Ul Kamal



Miss Rubina Naz  
Advocate,

### **COUNTER AFFIDAVIT**

I, Dr. Mashaal Khan S/o Muhammad Yaqoob Khan, do hereby solemnly affirm and declare that contents of Written Statement are true and correct to the best of my knowledge and belief while that of the appeal are illegal and incorrect.

I reaffirm the same on oath once again to be true and correct as per the available record.



DEPONENT

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR**

S.A No. 1635/2013

Dr. Rasheed Ahumed                      Versus                      Govt. of KP & Others

**REPLY TO APPLICATION FOR SUSPENSION  
OF ORDER DATED 03.09.2013**

**Respectfully Sheweth,**

1. Needs no comments.
2. Not correct. The position has been explained in para 5 of the written statement. Neither the impugned order was politically motivated nor was premature nor was passed in violation of any instruction of posting and transfer rules.
3. Totally false and absolutely incorrect. Appellant has relinquished the charge while R. No. 5 has assumed the charge of the assignment on 04.09.2013.
4. Not correct. Appellant has no case at all what to speak of good prima facie arguable case. The impugned order is with law full authority and is sustainable in law as the same was based on the judgments of the apex courts. No balance of convenience ever lies in favour of petitioner as he has relinquished the charge and R. No. 5 has assumed the same. The impugned order has since been acted upon, implemented and got finality. Transfer to any post and anywhere does not give irreparable loss to any servant.
5. In response to this para, it is submitted that petitioner has suppressed material fact from the Hon'ble Tribunal as he was well aware with the judgments of the Hon'ble Courts but such fact was intentionally suppressed to get relief in illegal manner and through back doors.

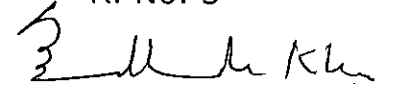


It is, therefore, most humbly requested that the application of appellant be dismissed with cost.

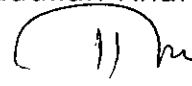


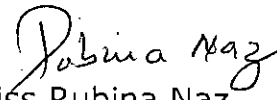
R. No. 5

Through

  
Saadullah Khan Marwat

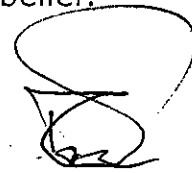
Dated: 17.02.2014

  
Arbab Saif Ul Kamal

  
Miss Rubina Naz  
Advocate,

**AFFIDAVIT**

I, Dr. Mashaal Khan S/o Muhammad Yaqoob Khan, do hereby solemnly affirm and declare that contents of Application are true and correct to the best of my knowledge and belief.



DEPONENT

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR**

S.A No. 1635/2013

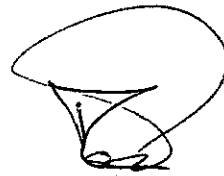
Dr. Rasheed Ahumed. Versus Govt. of KP & Others

Application for recalling / vacation of order dated 04.01.2014

**Respectfully Sheweth,**

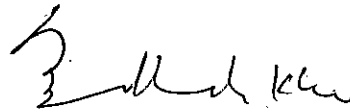
1. That the subject matter is pending disposal before this Hon'ble Tribunal.
2. That petitioner of the appeal has suppressed material facts from the Hon'ble Tribunal as the impugned order dated 03.09.2013 has since been implemented, acted upon and got finality, so cannot be legally suspended.

It is, therefore, most humbly requested that the impugned order dated 04.01.2014 be recalled / vacated hence forthwith.

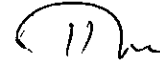


R. No. 5

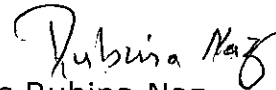
Through



Saadullah Khan Marwat



Arbab Saif Ul Kamal



Miss Rubina Naz  
Advocate,

Dated: 17 .02.2014

R

7

IN THE PESHAWAR HIGH COURT BANNU BENCH,  
BANNU

Writ Petition No. 274-B / 2013

Dr. Rashid Ahmad Khan son of Ghulam Akbar Khan (Presently M.S  
DHQ hospital Lakki Marwat).

.....:(Petitioner. )

Versus

1. Government of Khyber Pukhtun Khwa through Secretary Health department Peshawar.
2. Director General Health department Khyber Pukhtunkhwa Peshawar.
3. Dr.Mashal Khan SMO R.H.C Serai Gambila LakkiMarwat.

.....(Respondents )

WRIT PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF THE ISLAMIC REPUBLIC OF  
PAKISTAN, 1973.

PRAYER:

On acceptance of instant Constitutional Writ petition, the transfer order bearing No.SOH (E-V)1-450/07 dated 3-9-2013 of the petitioner from the post of Medical Superintendent DHQ Lakki Marwat to District health officer, Bannu being illegal, void ab initio, against the tenure, policy and rules being based under the political motivations, may very kindly be declared as such and be set aside in the interest of justice.

INTERIM RELIEF

Interim relief in shape of suspensions of the impugned transfer order dated 3-9-2013 till final disposal of the Writ petition, may very kindly be granted.

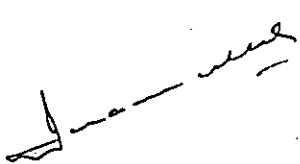
Respectfully Sheweth:

- 1) That the petitioner is a qualified MBBS doctor having the course of Management and as such for about four months back, he has

2) That all of a sudden and without any lawful justification, the petitioner has been transferred vide the impugned order, with extreme malafide, therefore seeks indulgence of this Honourable Court into the matter under the constitutional authority, inter alia on the following grounds. (Copy of the impugned order is annexed herewith as annexure "A")

GROUND S

- i) That the impugned order is based on malafide and has been passed with political motivation, against the law and rules of propriety.
- ii) That the tenure which has been laid down under the rules being three years, has totally been ignored and violated by the respondents while passing the impugned order. Moreover there is no complaint, whatsoever, against the petitioner, rather he is functioning with good performance.
- iii) That the petitioner has got an unblemished service career and particularly a qualified as Health Management Cadre in BPS-19, while the respondent is a simple Medical officer in BPS-18 of general cadre who could not be posted at the post of Health management group but because of his political affiliation, he procured the impugned illegal order.
- iv) That Articles 4 & 25 of the Constitution of Pakistan has been deliberately violated.



therefore, this Honourable Court has got the jurisdiction to entertain and to adjudicate upon the matter for the sake of the Constitutional and legal rights of the petitioner being secured and guaranteed under the law and constitution

- (v) That the petitioner has also preferred a departmental appeal against the impugned order but in vain. (Copy of said departmental appeal is annexure "B").
- vi) That the petitioner also seek permission to rely and advance additional grounds at the time of hearing of instant Writ petition..

It is therefore humbly prayed that On acceptance of instant Constitutional petition, the transfer order bearing No.SOH (E-V)1-450/07 dated 3-9-2013 of the petitioner from the post of Medical Superintendent DHQ Lakki Marwat to District health officer, Bannu being illegal, void ab initio, against the tenure, policy and rules being based under the political motivations, may very kindly be declared as such and be set aside in the interest of justice.

**INTERIM RELIEF**

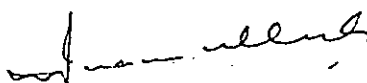
Interim relief in shape of suspensions of the impugned transfer order dated 3-9-2013 till final disposal of the Writ petition may very kindly be granted.

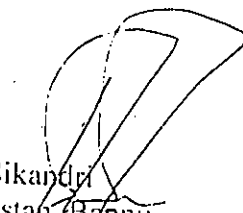
Dated 05/9/2013

Dr. Rashid Ahmad Khan  
Petitioner

Through counsel .

Muhammad Shah Nawaz Khan Sikandri  
Advocate Supreme Court of Pakistan, Bannu

  
Inamullah Khan Kakki Advocate  
High Court Bannu

  
ASC

10

CERTIFICATE

It is to certify that no such Writ petition has been decided earlier nor pending in any other forum except the instant one.

Advocate

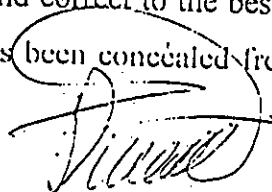
LAW BOOKS

- I) Constitution of Islamic Republic of Pakistan, 1973.
- II) ESTA Cide
- III) Service and Transfer rules
- IV) CPC
- V) Health Management Cadre Act, 2008
- VI) Other case law according to need

Advocate

AFFIDAVIT

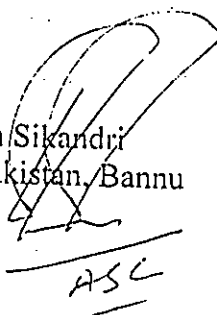
I, Dr. Rashid Ahmad Khan son of Ghulam Akbar Khan (Presently M.S DHQ hospital Lakki Marwat). . the petitioner do hereby solemnly affirm and declare on oath that all the contents of instant Writ petition are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable court.



(Deponent)

Identified by

Muhammad Shah Nawaz Khan/Sikandri  
Advocate Supreme Court of Pakistan, Bannu



ASC

R||

||

**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR**

W.P No. 274-B/2013

Dr. Abdur Rasheed

Versus

Government & others

**REPLY ON BEHLAF OF R.NO.3**

**Respectfully Sheweth;**

**Preliminary Objections:-**

1. That the Writ Petition is not maintainable as no vested rights of petitioner were ever infringed.
2. That with due respect, the hon'ble High Court has no jurisdiction in the matter pertaining to terms and conditions of a Civil Servant.
3. That the bar contained in Article 212(3) in the Constitution of Islamic Republic of Pakistan, the hon'ble Court cannot step in such like matters and the exclusive jurisdiction rests with the KPK Service Tribunal, Peshawar.
4. That alternate remedy is available to the petitioner in shape of departmental appeal/representation which is mandatory in law and petitioner was legally bound to follow/avail the same.
5. That the petition is without any cause of action.
6. That petitioner concealed material facts from this hon'ble Court as the Writ Petition of R.No.3 was not brought on surface.

**ON FACTS:**

1. In response to Para No.1 of the petition, it is submitted that General Election was took place in May, 2013 and the

control of the regime was put into the hands of Interim/Caretaker Government. The sole task of the Caretaker Government was to conduct fair election in the country but as soon as the same came into being, it started appointments, promotions, terminations, reductions, transfers, etc. R.N.3 also became victim of the said adverse action of the Caretaker Government and was transferred from the post of MS DHQ Hospital, Lakki Marwat and petitioner was posted as such.

By keeping in view the large number of posting, transfers, appointments, etc. in the country by the Caretaker Government, the apex Supreme Court of Pakistan took so-motto Notice/action in almost all 3 dozens of cases wherein it was held that the Caretaker Government has no power to step into appointments, transfers, promotions, reductions, etc. and thereafter vide judgment dated 06.06.2013, all such acts were declared to be of no legal effect in constitutional petition No.30 of 2013, Khwaja Muhammad Asif Versus Federation of Pakistan and others, etc. (Copy s annex "R")

That by keeping in view the aforesaid development of the aforesaid case, Dr. Abdul Ghaffar and Dr. Mashal Khan also filed Writ Petition No.1988/2013 and Writ Petition No.1989/2013 and after hearing, the Writ Petitions were disposed of in light of the judgment already given by this Court. (Copy as annex "R-1")

That the said judgments were transmitted to the department and as a result of the same, the impugned Notification dated 03.09.2013 was issued by R.No.1.

That by keeping in view the aforesaid facts, this hon'ble Court is now reviewing the judgment of the Peshawar High Court, Peshawar and the apex Supreme



Court of Pakistan which are not within the ambit of this hon'ble Court.

2. Not Correct. The position has been explained fully above. The impugned order was the result of the judgment of the hon'ble Peshawar High Court, Peshawar dated 25.07.2013 and the apex Supreme Court of Pakistan which is not open to interfere with.

**GROUND S:-**

- i. Not correct. The impugned order dated 03.09.2013 was motivated as per the judgment of the principle seat of Peshawar High Court, Peshawar as well as of the judgment of the apex Court. No political interference was ever made nor it was needed.
- ii. Not correct and as stated above, the impugned order was passed in light of the judgments of the courts. No complaint, whatsoever, exists against replying respondent.
- iii. Not correct. The impugned order has not made on the score alleged in the ground of the Writ Petition but was made in the light of the judgments of the courts.
- iv. Not correct. Article 4 and 25 of the Constitution were never violated and petitioner was treated in accordance with law and with due respect the hon'ble Court has no jurisdiction regarding terms and conditions of service and bar contained in Article 212 of the Constitution of Islamic Republic of Pakistan. Copy of order dated 19.09.2013 in Writ Petition No. 790-P/2013 is attached. (copy as annex "R-2")
- v. In response to the para, it is submitted that petitioner is a Civil Servant and when departmental appeal was filed as admitted in the para by him, then he shall recourse to law and knock the doors of the hon'ble Service Tribunal, Peshawar having exclusive jurisdiction in the matter.

- vi. Needs no comments, however, petitioner can take any additional ground which he likes.

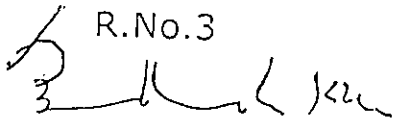
It is, therefore, most humbly prayed/requested that the Writ Petition of petitioner, being de-void of merit, without jurisdiction and cause, non maintainable and without substance, be dismissed with cost.


**INTERIM RELIEF:-**

With due respect that when the hon'ble Court has no jurisdiction in the matter, then entertainment of the Writ Petition is not legally justified what to speak of grant of interim relief.


Though interim relief has been granted to the petitioner by suspending operation of the order dated 03.09.2013, the same not only put in adverse position R.No.3 but also official respondents by issuing subsequent order. The same is liable to be recalled as per the mandate of law.

Through

R.No.3  
  
 Saadullah Khan Marwat

  
 Arbab Saif-ul-Kamal

&

  
 Miss Robina Naz  
 Advocates,

Dated: .09.2013

R/2

15



GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

DATED PESHAWAR, THE APRIL 22, 2013

**NOTIFICATION**

**NO.SO(E-I)E&AD/9-133/2013.** Government of Khyber Pakhtunkhwa is pleased to order posting/transfer of the following officers of Health Department, in the public interest, with immediate effect:-

| S.# | NAME OF OFFICER   | FROM   | TO  | REMARKS  |
|-----|---|--|---|--|
| 1   | Dr. Abdul Khaliq<br>(Member Health Management Cadre BS-20)        | Chief Medical Officer, CHQ Hospital, Bannu                     | DHO Swat  | Against the post of BS-20 in Health Management Cadre vice Sr. No.29  |
| 2   | Dr. Tariq Khan<br>(Member Health Management Cadre BS-20)          | Chief Medical Officer, KTH, Peshawar                           | MS Naseerullah Babar Memorial Hospital, Peshawar                        | Against the post of BS-20 in Health Management Cadre vice Sr. No.14  |
| 3   | Dr. Fazle Maula<br>(Member Health Management Cadre BS-20)         | Principal Health School, Abbottabad                            | Project Director HIV AIDS Control Programme, Peshawar                   | Against the post as stop gap arrangement till the post is filled in accordance with project policy vice Sr. No.34.     |
| 4   | Dr. Rohullah Jan<br>(Member Health Management Cadre BS-20)        | Director (PH) office of DG Health Services, Khyber Pakhtunkhwa | Principal Public School, Hayatabad, Peshawar.                           | Against the post of BS-20 in Health Management Cadre.  |
| 5   | Dr. Muhammad Qasim Khan<br>(Member Health Management Cadre BS-20) | DHO Abbottabad   | DHO Mardan  | Against the vacant post of BS-20 in Health Management Cadre.   |
| 6   | Dr. Muhammad Umer Shah<br>(Member Health Management Cadre BS-19)  | PMO CD Khidmalgaran, D.I.Khan.                                 | DHO D.I.Khan  | Against the post of BS-19 in Health Management Cadre vice Sr. No.7.  |
| 7   | Dr. Muhammad Ashiq Saleem<br>(Gen. Cadre BS-19)                   | DHO D.I.Khan   | PMO CD Khidmalgaran, D.I.Khan   | Against the vacant post of PMO (BS-19) in the General Cadre.   |
| 8   | Dr. Tariq Masood<br>(Member Health Management Cadre BS-19)        | PMO DHO Teaching Hospital, D.I.Khan                            | Principal Public Health School, D.I.Khan                                | Against the vacant post of BS-19 in Health Management Cadre  |
| 9   | Dr. Rashid Ahmed<br>(Member Health Management Cadre BS-19)        | Dy DHO Tank  | MS DHO Hospital, Lakki Marwat   | Against the post of BS-19 in Health Management Cadre vice Sr. No.17.   |
| 10  | Dr. Muhammad Ishaq<br>(Gen. Cadre BS-19)                          | MS City Hospital, Lakki Marwat                                 | Services placed at the disposal of DHO Lakki Marwat for further posting | Against the vacant post of PMO (BS-19) in the General Cadre.   |
| 11  | Dr. Abdul Ghafoor<br>(Member Health Management Cadre BS-19)       | Instructor, PGP LRH, Peshawar                                  | Director (PH) office of DGHS, Peshawar, in his own pay and scale.       | Against the post of BS-20 in Health Management Cadre due to deficiency of officers of BS-20 in the Cadre vice Sr. No.4 |
| 12  | Dr. Akbar Jan<br>(Member Health Management Cadre BS-19)           | PMO Lakki Marwat   | DHO Bannu   | Against the post of BS-19 in Health Management Cadre vice Sr. No.13.   |

*[Handwritten signature]*



GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

PAGE-2

| S. #. | NAME OF OFFICER   | FROM  | TO  | REMARKS   |
|-------|---|---|---|---|
| 13.   | Dr Nek Nawaz<br>(Member Health Management Cadre BS-19)              | DHO Bannu   | DHO Lakki Marwat  | Against the post of BS-19 in Health Management Cadre vice Sr. No.38   |
| 14.   | Dr Muhammad Zaman Khattak<br>(Member Health Management Cadre BS-19) | MS Naseerullah Babar Memorial Hospital, Peshawar. | Course Director, PHSA, Peshawar   | Against the post of BS-19 in Health Management Cadre vice Sr. No.15.  |
| 15.   | Dr Muhammad Nasir Raza<br>(Gen. Cadre BS-19)                        | Course Director, PHSA, Peshawar                   | PMO Police & Services Hospital, Peshawar                                | Against the vacant post of PMO (BS-19) in the General Cadre.  |
| 16.   | Dr Atliqur Rehman<br>(Member Health Management Cadre BS-19)         | PMO Police & Services Hospital, Peshawar          | Dy Charsadda DHO  | Against the post of BS-19 in Health Management Cadre vice Sr. No.39.  |
| 17.   | Dr Mashal Khan<br>(Gen. Cadre BS-18)                                | MS DHQ Hospital, Lakki Marwat.                    | Services placed at the disposal of DHO Lakki Marwat for further posting | Against the vacant post of SMO (BS-19) in the General Cadre.  |
| 18.   | Dr Arshad Ahmed<br>(Member Health Management Cadre BS-19)           | DHO Nowshera                                      | Incharge/MS THQ Hospital Tangi Charsadda.                               | Against the post of BS-19 in Health Management Cadre vice Sr. No.23.  |
| 19.   | Dr Muhammad Nawaz<br>(Gen. Cadre BS-19)                             | MS DHQ Hospital, Charsadda                        | Services placed at the disposal of DHO Charsadda for further posting    | Against the vacant post of PMO (BS-19) in the General Cadre   |
| 20.   | Dr Muhammad Ali<br>(Member Health Management Cadre BS-19)           | I/C PMO Category D Hospital, Jamalabad Charsadda  | DHO Malakand.   | Against the post of BS-19 in Health Management Cadre vice Sr. No.40.  |
| 21.   | Dr Fazal Akbar<br>(Gen. Cadre BS-19)                                | DHO Charsadda                                     | Services placed at the disposal of DHO Charsadda for further posting    | Against the vacant post of PMO (BS-19) in the General Cadre   |
| 22.   | Dr Jamshed Ahmed<br>(Member Health Management Cadre BS-19)          | PMO KTH, Peshawar                                 | DHO Charsadda   | Against the post of BS-19 in Health Management Cadre vice Sr. No.21.  |
| 23.   | Dr Illikhar Ahmed<br>(Member Health Management Cadre BS-19)         | Incharge THQ Hospital Tangi, Charsadda            | DHO Nowshera  | Against the post of BS-19 in Health Management Cadre vice Sr. No.18   |
| 24.   | Dr Zafeer Hussain<br>(Member Health Management Cadre BS-19)         | DHO Syabi   | DHO Abbottabad, in his own pay and scale.                               | Against the post of BS-20 in Health Management Cadre due to deficiency of officers of BS-20 in the Cadre vice Sr. No.5. |
| 25.   | Dr Syed Ahmed<br>(Member Health Management Cadre BS-19)             | Blood Bank Officer, LRH, Peshawar                 | Dy Director (PH) office of DGHS Khyber Pakhtunkhwa Peshawar             | Against the vacant post of BS-19 in Health Management Cadre.  |
| 26.   | Dr Saifullah Khalid<br>(Member Health Management Cadre BS-19)       | MS-Montal & General Hospital Dadar, Mansehra      | DHO Mansehra  | Against the post of BS-19 in Health Management Cadre vice Sr. No.27.  |

DR. NASHAZ  
46.5  
DHO  
LAKKI

*[Handwritten signature]*



17

GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

PAGE-3

| S.#. | NAME OF OFFICER   | FROM   | TO  | REMARKS  |
|------|---|--|---|--|
| 27.  | Dr Muhammad Javed<br>(Gen Cadre BS-19)                            | DHO Mansehra   | Services placed at<br>the disposal of DHO<br>Mansehra   | Against the vacant post<br>of PMO (BS-19) in the<br>General Cadre  |
| 28.  | Dr Ihsanul Akbar<br>(Member Health<br>Management Cadre<br>BS-19)  | PMO DHO<br>Hospital, Swabi   | DHO Swabi   | Against the post of BS-<br>19 in Health<br>Management Cadre vice<br>Sr: No.24.   |
| 29.  | Dr Khurshid Ali<br>(Gen. Cadre BS-19)                             | DHO Swat   | Services placed at<br>the disposal of Chief<br>Executive, SGT<br>Hospitals Swat   | Against the vacant post<br>of PMO (BS-19) in the<br>General Cadre  |
| 30.  | Dr. Tahir Nadeem<br>(Member Health<br>Management Cadre<br>BS-19)  | Waiting for<br>posting   | Provincial<br>Coordinator, National<br>Programme for<br>Family Planning and<br>Primary Health Care,<br>Khyber Pakhtunkhwa | He will draw pay against<br>the post of Incharge CH<br>Mallani, Peshawar.  |
| 31.  | Dr Fahim Hussain<br>(Member Health<br>Management Cadre<br>BS-19)  | Provincial<br>Coordinator,<br>National<br>Programme for<br>Family Planning<br>and Primary<br>Health Care,<br>Khyber<br>Pakhtunkhwa | Provincial<br>Programme<br>Manager, MNCH<br>Programme, Khyber<br>Pakhtunkhwa.   | Against the vacant post<br>as stop gap arrangement<br>till the post is filled in<br>accordance with project<br>policy. |
| 32.  | Dr Shad Ali<br>(Member Health<br>Management Cadre<br>BS-19)       | Incharge CH<br>Kalu Khan,<br>Swabi   | DHO Haripur   | Against the post of BS-<br>19 in Health<br>Management Cadre vice<br>Sr: No.33  |
| 33.  | Dr.S. Mazhar Ali<br>Shah<br>(Gen Cadre BS-19)                     | DHO, Haripur   | Services placed at<br>the disposal of DHO<br>Haripur for further<br>posting   | Against the vacant post<br>of PMO (BS-19) in the<br>General Cadre  |
| 34.  | Dr. Sher Muhammad<br>(Gen Cadre BS-18)                            | Project Director<br>HIV AIDS<br>Control<br>Programme,<br>Peshawar  | Services placed at<br>the disposal of DHO<br>Malakand for further<br>posting.   | Against the vacant post<br>of SMO (BS-18) in the<br>General Cadre.   |
| 35.  | Dr. Zia ul Hasnain<br>(Gen Cadre BS-18)                           | Dy Director (PH)<br>office of DGHS<br>Peshawar under<br>transfer as D/O<br>Haripur   | Services placed at<br>the disposal of MS<br>Police & Services<br>Hospital, Peshawar                                       | Against the vacant post<br>of SMO (BS-18) in the<br>General Cadre.   |
| 36.  | Dr. Muhammad Ishaq<br>Rasool<br>(Gen Cadre BS-19)                 | PMO Sarhad<br>Hospital for<br>Psychiatric<br>Diseases,<br>Peshawar   | Services placed at<br>the disposal of Chief<br>Executive, LRH<br>Peshawar   | Against the vacant post<br>of PMO (BS-19) in the<br>General Cadre  |
| 37.  | Dr Musharaf<br>(Member Health<br>Management Cadre<br>BS-19)       | HMC, Peshawar  | Services placed at<br>the disposal of MS<br>Sarhad Hospital for<br>Psychiatric Diseases,<br>Peshawar                      | He is surplus at HMC.<br>Specialized in<br>Psychiatric diseases.   |
| 38.  | Dr Abdul Ghaflar<br>(Gen Cadre BS-18)                             | DHO Lakki<br>Marwat  | Services placed at<br>the disposal of DHO<br>Lakki Marwat   | Against the post of SMO<br>(BS-18) in the Gen<br>Cadre.  |
| 39.  | Dr Muhammad Khan,<br>(Member Health<br>Management Cadre<br>BS-19) | Dy DHO<br>Charsadda  | MS DHO Hospital,<br>Charsadda   | Against the post of BS-<br>19 in Health<br>Management Cadre vice<br>Sr: No.19  |

18

GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT



PAGE-4

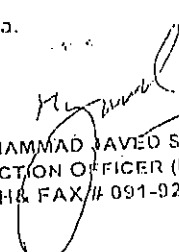
| S.NO. | NAME OF OFFICER  | FROM                           | TO  | REMARKS   |
|-------|--|--------------------------------|---|---|
| 40.   | Dr Bakht Zada<br>(Gen Cadre BS-19)                         | DHO Malakand                   | Services placed at the disposal of DHO Malakand for further posting                 | Against the vacant post of PMO (BS-19) in the General Cadre.        |
| 41.   | Dr Zakeem Ahmed<br>(Gen Cadre BS-19)                       | MS DHQ Hospital Haripur.       | Services placed at the disposal of Director Gen Health Services for further posting | Against the vacant post of PMO (BS-19) in the General Cadre.        |
| 42.   | Dr Muhammad Daud<br>(Member Health Management Cadre BS-19) | vice Principal DHDC Abbottabad | MS DHQ Hospital, Haripur  | Against the post of BS-19 in Health Management Cadre vice Sr: No.41 |
| 43.   | Dr Muhammad Ayub<br>(Member Health Management Cadre BS-19) | Dy: DHO Swat                   | MS DHQ Hospital Bikhela.  | Against the post of BS-19 in Health Management Cadre vice Sr: No.44 |
| 44.   | Dr Hanifullah<br>(Gen Cadre BS-18)                         | MS DHQ Hospital Balkhela       | Services placed at the disposal of DHO Malakand for further posting                 | Against the post of SMO (BS-18) in the Gen Cadre.                   |

CHIEF SECRETARY  
GOVERNMENT OF KHYBER PAKHTUNKHWA

ENDST. NO. & DATE EVEN

Copy forwarded to the:-

1. Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Secretary to Govt. of Khyber Pakhtunkhwa, Health Department.
4. All Divisional Commissioners in Khyber Pakhtunkhwa.
5. Accountant General, Khyber Pakhtunkhwa.
6. Director General Health Services, Khyber Pakhtunkhwa.
7. All Deputy Commissioners in Khyber Pakhtunkhwa.
8. All District Health Officer in Khyber Pakhtunkhwa.
9. Chief Executive, Govt. LRH/KTH/HMC, Peshawar.
10. All Medical Superintendents of concerned Hospitals.
11. Project Director, HIV AIDS Control Program, Peshawar.
12. Provincial Coordinator, National Program for Family Planning and Primary Health Care, Khyber Pakhtunkhwa.
13. Principal, Public School, Abbottabad, Hayatabad Peshawar and DIK.
14. All District Accounts Officer concerned.
15. PS to Chief Secretary, Khyber Pakhtunkhwa.
16. P.S. to Secretary Establishment, Khyber Pakhtunkhwa.
17. Officers concerned.
18. Manager, Govt Printing Press Peshawar.

  
 (MUHAMMAD AVED SIDDIQI)  
 SECTION OFFICER (ESTT- I)  
 PH & FAX # 091-9210529

R/3

19

6-6-13

**IN THE SUPREME COURT OF PAKISTAN**  
(Original Jurisdiction)

**PRESENT:**

**MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, C.J**  
**MR. JUSTICE IJAZ AHMED CHAUDHRY**  
**MR. JUSTICE GULZAR AHMED**

**CONSTITUTION PETITION NO. 30 OF 2013**

Khawaja Muhammad Asif

.... Petitioner

**Versus**

Federation of Pakistan & others

.... Respondents

**AND**

**CMAs NO. 2991 & 3015 OF 2013 IN CONST. PETITION NO. 23 OF 2013**

*(Appointments, postings and transfers made by the Caretaker Government)*

**A/W**

**CIVIL MISC. APPLICATION NO. 3331 OF 2013**

*(Application of Mr. Sikandar Ahmed Rai, Acting Secretary W&P)*

**CIVIL MISC. APPLICATION NO. 3343 OF 2013**

*(Application of Mr. Sanaullah Shah, M.D. ENAR)*

**CIVIL MISC. APPLICATION NO. 3354 OF 2013**

*(Application of Rana Asad Amin, Advisor Finance Division)*

**CIVIL MISC. APPLICATION NO. 3355 OF 2013**

*(Application of Mr. Muhammad Amir Malik, Member I.T)*

**CIVIL MISC. APPLICATION NO. 3356 OF 2013**

*(Application of Kamran Ali, Member Legal/MP-I)*

**CIVIL MISC. APPLICATION NO. 3373 OF 2013**

*(Application of Dr. Fayyaz Ahmed Ranja, D.G. Pakistan Manpower)*

**CIVIL MISC. APPLICATION NO. 3375 OF 2013**

*(Application of Mr. Tariq Mehmood Pirzada, MD PHA)*

**CIVIL MISC. APPLICATION NO. 3376 OF 2013**

*(Application of Mr. Tariq Shafi Chak, E.D. NAVTTC)*

20

Const.P.30/13 etc.

**CIVIL MISC. APPLICATION NO. 3377 OF 2013**

(Application of Mr. Farooq Sultan Khattak, Director CDA)

**CIVIL MISC. APPLICATION NO. 3378 OF 2013**

(Application of Mr. Rizwan Mumtaz Ali, Chairman NFC)

**CIVIL MISC. APPLICATION NO. 3379 OF 2013**

(Application of Mr. Asad Ahmed Jaspal, Director Training PTV)

**CIVIL MISC. APPLICATION NO. 3380 OF 2013**

(Application of Mr. Zafar Iqbal Bangash, Producer PTV)

**CIVIL MISC. APPLICATION NO. 3382 OF 2013**

(Application of Mr. Wasim Muhammad Khan, Chairman NTC)

**CIVIL MISC. APPLICATION NO. 3383 OF 2013**

(Application of Mr. Abid Javed Akbar, CE, TDA)

**CIVIL MISC. APPLICATION NO. 3385 OF 2013**

(Application of Mr. Asif Ghafoor, Addl. Secy. National Heritage)

**CIVIL MISC. APPLICATION NO. 3396 OF 2013**

(Application of Mr. Muhammad Altaf Bawan, D.G. HRM (NAB))

**CIVIL MISC. APPLICATION NO. 3397 OF 2013**

(Application of Mr. Tahir Alam Khan, DIG (Security))

**CIVIL MISC. APPLICATION NO. 3403 OF 2013**

(Application of Syed Khalid Ali Raza Gardezi, J.S. M/o Finance)

**CIVIL MISC. APPLICATION NO. 3404 OF 2013**

(Application of Mr. Umar Ali, J.S. State & Frontier Region Div.)

**CIVIL MISC. APPLICATION NO. 3405 OF 2013**

(Application of Dr. Imran Zeb Khan, Chief Commissioner Afghan Refugees)

**CIVIL MISC. APPLICATION NO. 3406 OF 2013**

(Application of Mr. Amjad Nazir, Secretary States and Frontier Region Div.)

**CIVIL MISC. APPLICATION NO. 3407 OF 2013**

(Application of Mr. Waheed ur Rehman Khattak, Addl. SP (Saddar))



**CIVIL MISC. APPLICATION NO. 3408 OF 2013**  
(Application of Mr. Muhammad Khalid Khattak, DIG  
(HQ) Ibd)

**CIVIL MISC. APPLICATION NO. 3409 OF 2013**  
(Application of Mr. Sabih Hussain, SP (HQ), Ibd)

**CIVIL MISC. APPLICATION NO. 3410 OF 2013**  
(Application of Mr. Muhammad Ahsan Raja,  
Chairman PM Insp. Commission)

**CIVIL MISC. APPLICATION NO. 3438 OF 2013**  
(Application of Mr. Abdur Rashid, Director, DRAP)

**CIVIL MISC. APPLICATION NO. 3451 OF 2013**  
(Application of Mr. Mumtaz Khan, Member IRSA)

**CIVIL MISC. APPLICATION NO. 3467 OF 2013**  
(Application of Mr. Viqar Rasheed Khan, Chairman  
NTC)

**CIVIL MISC. APPLICATION NO. 3478 OF 2013**  
(Application of Dr. Shahbaz Ahmad Kureshi,  
Consultant, Poly Clinic)

**CIVIL MISC. APPLICATION NO. 3479 OF 2013**  
(Application of Mr. Noor Zaman Khan, Director  
NACTA)

**CIVIL MISC. APPLICATION NO. 3480 OF 2013**  
(Application of Mr. Muhammad Nadeem AGM  
Marketing)

**CIVIL MISC. APPLICATION NO. 3481 OF 2013**  
(Application of Dr. Anees Kausar, M.O. Poly Clinic)

**CIVIL MISC. APPLICATION NO. 3492 OF 2013**  
(Application of Mr. Tahir Maqsood, D.G. PITAD)

|                    |   |
|--------------------|---|
| For the Petitioner | Miangul Hassan Aurangzeb, ASC<br>Syed Safdar Hussain, AOR assisted by<br>Syed Ali Shah Gilani, Advocate |
| On Court Notice    | Mr. Irfan Qadir,<br>Attorney General for Pakistan<br>Mr. Dil Muhammad Alizai, DAG                       |
| For Estt. Division | Mr. Sher Afzal, Joint Secretary   |

**For the applicants**

- |                          |  |
|--------------------------|--|
| (In CMA 3331/13),        | Mr. Muhammad Shoalb Shaheen, ASC       |
| (In CMA 3343/13),        | Nemo                                   |
| (In CMA 3354/13),        | Mr. Shah Khawar, ASC                   |
| (In CMA 3355-56/13),     | Sardar Muhammad Aslam, ASC             |
| (In CMA 3373/13),        | Nemo                                   |
| (In CMA 3375/13),        | Mr. Tariq Mehmood Pirzada, in Person   |
| (In CMA 3376/13),        | Mr. Tariq Shafi Chak, in person        |
| (In CMA 3377/13)         | Mr. Farooq Sultan Khattak, in person   |
| (In CMA 3378/13),        | Mr. Aftab Rana, ASC                    |
| (In CMA 3379-80/13),     | Mr. Shahid Mehmood Khokhar, ASC        |
| (In CMA 3382/13),        | Nemo                                   |
| (In CMA 3383/13),        | Rai Muhammad Nawaz Kharral, ASC        |
| (In CMA 3385/13),        | Mr. Asif Ghafoor, In person            |
| (In CMA 3396/13),        | Nemo                                   |
| (In CMA 3397/13),        | Mr. Tahir Alam Khan, in person         |
| (In CMA 3403/13),        | Syed Khalid Ali Raza Gardezi, in peson |
| (In CMA 3404-3406/13),   | Mr. Muhammad Akram Gondal, ASC         |
| (In CMA 3407/13),        | Nemo                                   |
| (In CMA 3408/13),        | Nemo                                   |
| (In CMA 3409/13),        | Nemo                                   |
| (In CMA 3410/13),        | Mr. Muhammad Ahsan Raja, in person     |
| (In CMA 3438/13),        | Nemo                                   |
| (In CMA 3451/13),        | Mr. Waqar Rana, ASC                    |
| (In CMA 3467/13),        | Mr. Viqar Rashceed Khan, In person     |
| (In CMA 3478 & 3481/13), | Mr. Tariq Asad, ASC                    |
| (In CMA 3479/13),        | Mr. Noor Zaman, in person              |
| (In CMA 3480/13),        | Nemo                                   |
| (In CMA 3492/13),        | Nemo                                   |

Date of hearing: 06.06.2013

**J U D G M E N T**

**IFTIKHAR MUHAMMAD CHAUDHRY, CJ.**— This

Constitution Petition has been filed under Article 184(3) of the Constitution of the Islamic Republic of Pakistan by one of the elected Parliamentarians, namely, Khawaja Muhammad Asif, wherein he has sought the following reliefs: -

“Declare, in the circumstances aforesaid, the acts of the care-taker government in effecting the aforesaid transfers/postings/shuffling null and void, void ab initio and of no legal effect being in contravention of Constitution, constitutional conventions and law.

In the alternative, declare that the aforesaid acts of the care-taker government of passing and signing of the



orders affecting the aforesaid transfers/postings/shuffling were never, in fact, signed and/or passed and/or communicated for further necessary action.

Direct, In the circumstances aforesaid, that all the postings/transfers/shuffling be reversed and the status quo ante be reverted to, i.e. the position when the care-taker government was sworn in.

Direct the Federation/care-taker government to refrain from effecting any further appointments/transfers/shuffling during their remaining tenure."

2. As in CMAs 2991 & 3015 of 2013 in Constitution Petition No.23 of 2012 identical issues about appointments, transfers and postings, etc., were raised, therefore, a learned Bench of this Court, vide order dated 28.05.2013, referred the said miscellaneous applications to this Bench, to avoid overlapping of the proceedings and/or the possibility of rendering of conflicting judgments on similar issues in the event of parallel proceedings being conducted in two different benches simultaneously.

3. On 22.05.2013 and 04.06.2013, orders were passed and the Secretaries of the concerned Ministries/Divisions of the Federal Government were called upon to furnish details of the Government servants/employees, who were appointed, transferred, posted, etc. Relevant paras there from are reproduced hereinbelow respectively:-

Order dated 22.05.2013

"3. He has stated that the Caretaker Government has made *inter alia* following transfers and postings in the civil service, statutory bodies, autonomous or semi autonomous bodies, corporations and regulatory authorities :-

- a) The Chairman of the National Highway Authority, Hamid Ali Khan was replaced, on 16.05.2013, by Sajjad Hussain Baloch;
- b) The Chairman NEPRA was replaced, on 16.05.2013, and Justice (R) Ahmad Khan Lashari has been appointed;
- c) The Managing Director SNGPL, Arif Hameed was replaced, on 15.05.2013, by Amin Tufail;
- d) The Managing Director SSGCL was replaced, on 15.03.2013, by Rahat Kamal Siddiqul;



- c) *The Managing Director, Pakistan Mineral Development Corporation, Khalid Khokhar was replaced by Saifullah Khan;*
- f) *The Chairman, National Fertilizer, Rizwan Mumtaz Ali was removed on 09.05.2013;*
- g) *The Managing Director, Oil and Gas Development Corporation, Masood Siddiqui was removed on 06.05.2013;*
- h) *The Chairman, State Life Corporation was removed on 16.05.2013;*
- i) *The Chairman, Pakistan Tourism Development Corporation has reportedly been removed and another appointed in his stead;*
- j) *The Chairman, Pakistan Software Export Board has been removed and in his stead Saleem Ahmed Ranjha has been appointed who is a direct inductee of Yusuf Raza Gillani the previous Prime Minister;*
- k) *The Director General, FIA who was appointed one month back is also reportedly in the process of being replaced;*
- l) *That certain employees/officers of the Pakistan Telecommunication Authority have reportedly been removed from service without following the procedure as set out under the relevant statute;*
- m) *That reportedly many other mid - level staff of such like aforesaid corporation/bodies have been shuffled/transferred/removed".*

7. We do allow the learned Attorney General for Pakistan to take instructions from the Government but in view of the importance of the issue involved in the petition, we direct that: -

all the appointments, transfers and postings, which have been made by the Caretaker Government, referred to hereinabove, shall stand suspended and till pendency of this petition no further appointment, transfer and posting shall be made by the Caretaker Government including the appointment of Federal Ombudsman, Tax Ombudsman and Anti-Dumping Tribunal, except the postings and transfers, which relate to day-to-day business of the government and are required to be made in the interest of State and also to watch the interest of public, strictly following the rules and regulations on the subject, and in a transparent manner."

**Order dated 04.06.2013**

"2. Khawaja Muhammad Asif, petitioner, appeared in person and stated that the order dated 22.05.2013 has not been complied with in letter and spirit inasmuch as the Caretaker Government without lawful authority terminated the services of some of those officers who were already working and performing their duties in Finance Division and I.T., either as Advisors or on contract. As duly elected government is likely to take over within a day or so and

25

budget is likely to be prepared shortly, therefore, due to unlawful action of Caretaker Government concerned Divisions are facing a lot of difficulties. He has further stated that about more than 100 officers have been sent on deputation to different organizations from the Province of Balochistan after 22<sup>nd</sup> May, 2013 without adhering to the rules and regulations knowing well that the orders relating to the policy making cannot be passed by the Caretaker Government.

4. Since all these issues are important in nature, therefore, we direct the Secretaries, Establishment, Cabinet, Health, Water & Power, Finance Division(s) and all other concerned Departments/Corporations to file lists of the officers -

- (a) who were appointed against any post by the Caretaker Government after taking over including Chairmen etc of the Corporations whose list finds mention in the order dated 22.05.2013;
- (b) whose services were acquired on deputation from different organizations on different positions in the Departments and Corporations controlled by the Federal Government;
- (c) whose services were terminated because they were holding different positions on contract basis in all the Government Departments/Hospitals;
- (d) whose transfers have been made contrary to the judgment of Anita Turab's case, etc;
- (e) Deputationists brought to Federal Government Departments from the Province of Balochistan."

In response to the above orders, summary of the transfers, postings, termination of service/contract of the employees was submitted *vide* CMA No.3515/2013, which reads as under: -

**STATEMENT INDICATING POSTINGS/TRANSFERS/APPOINTMENTS MADE BY THE CARETAKER GOVERNMENT**

| Sl. No | Group/ Service                   | Promotion | Directive | Ministries/ Division's Proposal | Repatriated | Add. Current Charge | Routine Postings Transfers | Contract appointments | Transfer on deputation | Total |
|--------|----------------------------------|-----------|-----------|---------------------------------|-------------|---------------------|----------------------------|-----------------------|------------------------|-------|
| 1.     | Autonomous Bodies                | -         | 03        | 11                              | 03          | 02                  | -                          | 11                    | -                      | 30    |
| 2.     | Secretariat Group                | 31        | 59        | 18                              | 07          | -                   | 24                         | -                     | -                      | 139   |
| 3.     | Pakistan Administrative Services | 17        | 15        | 07                              | -           | -                   | 33                         | -                     | -                      | 72    |
| 4.     | Police                           | 67        | 09        | 06                              | 01          | -                   | 33                         | -                     | -                      | 116   |

|    |          |     |    |    |    |    |     |    |    |     |
|----|----------|-----|----|----|----|----|-----|----|----|-----|
| 5. | Ex-Cadre | -   | 02 | 09 | -  | -  | -   | -  | -  | 11  |
| 6  | Misc.    | -   | 08 | -  | -  | -  | 24  | -  | 44 | 74  |
|    | Total    | 115 | 94 | 51 | 11 | 02 | 114 | 11 | 44 | 442 |

4. It may be mentioned here that in the order dated 22.05.2013 it had been observed that any individual whose posting, appointment or transfer was suspended and he was aggrieved of the said order, he might come forward by making application(s), which would be dealt with after hearing him/them.

5. It may be observed that learned Attorney General informed that Justice (R) Faqir Muhammad Khokar, Chairman Anti-Dumping Appellate Tribunal, Justice (R) Ahmed Khan Lashari, Chairman NEPRA and Justice (R) Kalash Nath Kohli, Chairman Sacked Employees' Review Board have tendered resignations, which are under process, except the resignation of Chairman Anti-Dumping Tribunal, which has already been accepted on 31.05.2013. Mr. Sher Afzal, Joint Secretary is directed that no sooner their resignations are accepted, he may inform the Court.

6. Learned counsel for the petitioner contended that under the Constitution of the Islamic Republic of Pakistan, the elected Parliamentary Government is responsible to achieve the object of good governance and in continuance of the same, it is obliged to post suitable persons being in the employment of the Government/private sector to head various departments, corporations and organizations controlled by the Government to run their result-oriented administration, as such elected Government has to fulfill the object and purpose of welfare of the citizens. The Caretaker Government, which is installed for a limited period of 2/3 months with the object of

assisting the Election Commission of Pakistan in organizing fair, free, honest and just elections, cannot be considered to be the replacement of the elected Government. As such, the Caretaker Government is debarred from making large scale transfers, postings, re-shuffling of the Government employees, having far reaching effects/impact on the administration, commercial and industrial departments/organizations, because if a person is appointed against an important position, and his performance is not found suitable or it is not in accordance with the policies of the elected Government, it would not be possible for the Government to implement its policies. He further argued that the Caretaker Government had also exceeded its authority in assigning the reasons that the appointments, postings, transfers, reshuffling, etc., have been made following the directions/observations contained in the letter dated 02.04.2013 of the Election Commission of Pakistan.

7. Learned Attorney General for Pakistan did not address arguments on the issues involved in these cases as such and only confined to making certain references to the record, e.g., CMA 2676 & 2770/2013 in Constitution Petition No.23/2012 filed pursuant to the Court's directions as well as CMA No.3514/2013, etc., filed in the case.

8. In pursuance of this Court's order dated 22.05.2013, various individuals filed applications seeking relief against their postings, transfers, etc. and such of the applicants, who were present in Court, were also afforded opportunity of hearing. Some of them did not press their applications and requests so made by them were allowed. For convenience of reference, details of the applications are reproduced hereinbelow:-

Applications dismissed in default:

28

| S.# | CMA No.     | Applicant's Name         | Designation/Deptt.  | Grievance/Remarks  |
|-----|-------------|--------------------------|---|--|
| 1.  | CMA.3343/13 | Sanaullah Shah           | M.D. ENAR, Petrotech Service Ltd.   | His services were placed at the disposal of SEC vide letter dated 9.4.2013   |
| 2.  | CMA.3373/13 | Dr. Fayyaz Ahmad Ranjha  | Director General Pakistan Manpower Institute  | He was pre-mature repatriated to Province of Punjab vide Notification dated 9.5.2013   |
| 3.  | CMA.3382/13 | Wasi Muhammad Khan       | Chairman NTC  | Applicant has challenged the notification dated 30.4.2013 whereby Mr. Viqar Rasheed Khan was appointed on contract basis as Chairman NTC by ignoring him   |
| 4.  | CMA.3396/13 | Muhammad Altaf Bawany    | D.G. (HRM,), NAB  | The applicant being regular Officer of NAB was serving as Chief Instructor, NIM (formerly NIPA) on deputation and vide Notification dated 28.2.2011 he was repatriated to his parent department to join new assignment as D.G. NAB   |
| 5.  | CMA.3407/13 | Waheed ur Rehman Khattak | Addl. SP (Saddar)   | Applicant was transferred from Punjab to Balochistan vide notification dated 16.5.2013 by ignoring the seniority as two of his colleagues were senior to him   |
| 6.  | CMA.3408/13 | Muhammad Khalid Khattak  | D.I.G. Headquarters, Islamabad  | Applicant was promoted from BS-19 to BS-20 vide Notification dated 3.4.2013 and thereafter vide notification dated 10.4.2013 he was transferred from the post of AIG (General) to DIG (HQ) and prayed that his case does not strictly fall in any kind of transfer and posting |
| 7.  | CMA.3409/13 | Shabih Hussain           | PSP BS-18-AC c/o ICT Police, Islamabad  | The applicant was serving in KPK and Vide Notification dated 15.5.2013 his services have been placed at the disposal of Federal Government for further posting in Islamabad Police and it was a routine transfer   |
| 8.  | CMA.3438/13 | Dr. Abdul Rashid         | Director, Pharma Licensing, Quality Assurance & Quality Control, Drug Regulatory Agency of Pakistan | Vide Notification dated 21.3.2013 the applicant has been transferred from the post of Director Pharma Licensing Quality Assurance & Quality Control to the post of Deputy Director General (Pharmacovigilance) DRAP, Islamabad   |
| 9.  | CMA.3480/13 | Muhammad Nadeem          | Asstt. Gen. Manager Marketing   | The applicant has been transferred vide Office Order dated 5.4.2013 from Zonal Head Gujranwala to AGM  |



29

|     |             |               |   |   |
|-----|-------------|---------------|---|---|
| 10. | CMA.3492/13 | Tahir Maqsood | Additional Secretary (awaiting posting) | (Marketing) Lahore<br>The applicant was serving as Senior Joint Secretary and his services have been placed at the disposal of Estt. Division vide Notification dated 10.5.2013 |
|-----|-------------|---------------|---|---|

**Applications dismissed where alternate remedy was availed:**

| S.# | CMA.          | Applicant's Name          | Designation/Deptt.  | Remarks  |
|-----|---------------|---------------------------|---|--|
| 1.  | CMA.3383/2013 | Abid Javed Akbar          | C.E. Trade Development Authority                          | Rai Nawaz Kharral, learned counsel stated that the applicant has already approached to the Islamabad High Court for redressal of his grievance regarding termination of his contract. Dismissed.   |
| 2.  | CMA.3478/13   | Dr. Shahbaz Ahmad Kureshi | Consultant Physician (Cardiology) in Polyclinic Islamabad | Mr. Husnain Ibrahim Kazmi, learned counsel for the caveator (Dr. Nasir Moln) has filed CMA No. 3491/13 and stated that the applicant's Writ Petition No.1999/2013 has already been dismissed on 13.5.2013 and no CPLA has been filed before this Court against the said order and contrary to it the applicant opted to approach the Service Tribunal where the matter is pending. When it was brought into the notice of the learned counsel for the applicant he stated that he may be allowed to withdraw this CMA. Dismissed as Withdrawn. |
| 3.  | CMA 3481/13   | Dr. Anis Kausar           | Medical Officer, FG Polyclinic Islamabad                  | Mr. Tariq Asad learned counsel for the applicant is not in attendance. This application is identical to CMA 3478 which we have already dismissed.  |

30

|  |  |  |  |                                     |
|--|--|--|--|-------------------------------------|
|  |  |  |  | This application is also dismissed. |
|--|--|--|--|-------------------------------------|

**Application dismissed on the ground that appointment/transfer was made in routine:**

|    |                  |                 |                           |  |
|----|------------------|-----------------|---------------------------|--|
| 1. | CMA No.3479/2013 | Noor Zaman Khan | Director NACTA, Islamabad | Applicant was serving as Senior Government Pleader in KPK and he has been transferred as Director NACTA, Islamabad and now has reported back to his parent department. Plea of the applicant is that his spouse is working in Islamabad, therefore, he was brought on deputation. Since the applicant has been reverted back to his parent department in routine, no interference is called for in the instant proceedings. Dismissed. |
|----|------------------|-----------------|---------------------------|--|

**Applications which were not entertained:**

|    |                  |                                |                           |   |
|----|------------------|--------------------------------|---------------------------|---|
| 1. | CMA No.3375/2013 | Muhammad Tariq Mehmood Pirzada | M.D. PHA                  | Applicant appeared and stated that he has been transferred on completion of tenure period, does not press this petition. Dismissed as not pressed.  |
| 2. | CMA No.3377/13   | Farooq Sultan Khattak          | Director CDA, Islamabad   | Applicant states that he has been sent back to his parent department, therefore, does not press this CMA. Dismissed as not pressed.   |
| 3. | CMA No.3378/2013 | Rizwan Mumtaz Ali              | Chairman NFC              | Mr. Aftab Alam Rana, learned counsel for the applicant has no instructions because he could not answer to our queries. Dismissed accordingly.   |
| 4. | CMA No.3379/2013 | Asad Ahmed Jaspal              | Dir. Training Academy PTV | Mr. Shahid Mehmood Khokhar, learned counsel for the applicant states that applicant is in the employment of PTV Corporation and he is aggrieved from his transfer on the verbal orders of the Acting Manager. As the applicant is in the employment of a Corporation, therefore no indulgence can be shown in the instant proceedings. Dismissed. |
| 5. | CMA No.3380/2013 | Zafar Iqbal Bangash            | Producer, PTV             | Mr. Shahid Mehmood Khokhar, learned counsel for the applicant states that applicant is in the employment of PTV Corporation and he is aggrieved from his transfer   |

|     |                  |                              |   |   |
|-----|------------------|------------------------------|---|---|
|     |                  |                              |   | on the verbal orders of the Acting Manager. As the applicant is in the employment of a Corporation, therefore no indulgence can be shown in the instant proceedings. Dismissed.     |
| 6.  | CMA No.3397/13   | Tahir Alam Khan              | DIG Security                                  | Mr. Tahir Alam Khan, applicant appeared and stated that his case pertains to actualisation, therefore, he does not want to press this application. Dismissed as not pressed.        |
| 7.  | CMA No.3403/13   | Syed Khalid Ali Raza Gardezi | J.S. M/o Finance GoP                          | Syed Khalid Ali Raza Gardezi, applicant appeared and stated that he has been sent back to his parent department, therefore, does not press this petition. Dismissed as not pressed. |
| 8.  | CMA No.3404/2013 | Umar Ali                     | J.S. States & Frontier Regions Division       | Mr. Muhammad Akram Gondal, learned counsel stated that the applicants have been promoted on merits, therefore, he does not press these applications Dismissed as not pressed.       |
| 9.  | CMA No.3405/2013 | Dr. Imran Zeb Khan           | Chief Commissioner Afghan Refugees, Ibd.      |   |
| 10. | CMA No.3406/2013 | Amjad Nazir                  | Secretary, States & Frontier Regions Division |   |

9. It is to be observed that the other learned Bench of this Court, while hearing Constitution Petitions No.23/2013 on 09.05.2013 was, *prima facie*, of the opinion that notification of the Election Commission dated 02.04.2013 did not provide any valid justification, much less a compelling reason, so as to justify the transfers, postings, etc., in question. The contents of notification of the ECP are reproduced hereinbelow: -

**"ELECTION COMMISSION OF PAKISTAN  
NOTIFICATION**

Islamabad the 2<sup>nd</sup> April, 2013

No.F.8(12)/2012-Cord(1)- WHEREAS it is expedient to ensure that all those who are in the service of Pakistan perform their duties to serve public interest and assist the

32

Election Commission of Pakistan in the conduct of General Elections 2013 fairly, justly, honestly and in accordance with law;

AND WHEREAS it is also expedient to take pre-emptive steps so that no employee in the service of Pakistan should try to influence the election process in any manner to favour any particular political party or a candidate;

NOW THEREFORE, in exercise of the powers conferred upon it under Article 218(3) of the Constitution read with sections 103(c) and 104 of the Representation of the People Act 1976, the directions dated 08.06.2012 of the Supreme Court of Pakistan in Workers' Party Pakistan's case and all other powers enabling it in that behalf, the Election Commission of Pakistan is pleased to direct the Federal and Provincial Caretaker Governments to:

- (i) Shuffle/transfer all Federal and Provincial Secretaries. However, if the caretaker government considers that a federal or provincial secretary need not be transferred/shuffled, it may refrain from doing so and intimate the same to the Election Commission.
- (ii) Assess whether the Chairpersons / Chief Executives of all autonomous and semi-autonomous and/or state owned bodies, IG Police, CCPOs, City Commissioners, DCOs, DPOs, SHOs, patwaris and EDOs are independent individuals and transfer those who do not meet this criteria.

2. Clauses (iii) and (iv) of this Commission's Notification No.8(12)/2012-Cord(1) dated 26th March, 2013 are hereby withdrawn. This directive shall not apply to specific transfers made under the directions of the Election Commission.

By Order of the Election Commission of Pakistan.

Sd/-  
(Syed Sher Afgan)  
Acting Secretary"

10. A perusal of the above notification suggests that it was issued by the ECP under Article 218(3) of the Constitution read with sections 103(c) and 104 of the Representation of the People Act, 1976 and the directions dated 08.06.2012 of this Court issued in Worker's

33



Party Pakistan v. Federation of Pakistan (PLD 2012 SC 681) and all other powers enabling it in that behalf, directing the Federal and Provincial Caretaker Governments to transfer/shuffle all Federal and Provincial Secretaries. However, if the Caretaker Government considered that a Federal or Provincial Secretary need not be transferred/shuffled, it would refrain from doing so and intimate the same to the ECP. We tend to agree with the learned counsel for the petitioner that under the notification noted hereinabove; the Caretaker Government had been authorized not to transfer/shuffle any Government servant, if it considered that it was not expedient to do so. But, at any rate, no powers were given to requisition the services of the employees on deputation or make fresh appointments against the available vacancies, or make proforma promotions of officials of all grades in autonomous and semi-autonomous bodies, corporations, regulatory authorities, statutory bodies, government controlled corporations, etc.

11. It is to be seen that the Caretaker Cabinet/Prime Minister were installed in the Federation and Provinces in the month of March, 2013 after dissolution of the National and the Provincial Assemblies on completion of their respective terms provided under Article 224(1) & (1A) of the Constitution, which read as under: -

224. Time of election and bye-election.— (1) A general election to the National Assembly or a Provincial Assembly shall be held within a period of sixty days immediately following the day on which the term of the Assembly is due to expire, unless the Assembly has been sooner dissolved, and the results of the election shall be declared not later than fourteen days before that day.

(1A) On dissolution of the Assembly on completion of its term, or in case it is dissolved under Article 58 or Article 112, the President, or the Governor, as the case may be, shall appoint a caretaker Cabinet:

34

Provided that the care-taker Prime Minister shall be appointed by the President in consultation with the Prime Minister and the Leader of the Opposition in the outgoing National Assembly, and a care-taker Chief Minister shall be appointed by the Governor in consultation with the Chief Minister and the Leader of the Opposition in the outgoing Provincial Assembly:

Provided further that if the Prime Minister or a Chief Minister and their respective Leader of the Opposition do not agree on any person to be appointed as a care-taker Prime Minister or the care-taker Chief Minister, as the case may be, the provisions of Article 224A shall be followed :

Provided also that the Members of the Federal and Provincial care-taker Cabinets shall be appointed on the advice of the care-taker Prime Minister or the care-taker Chief Minister, as the case may be.

12. As in instant case the Caretaker Prime Minister could not be appointed in terms of Article 224(1A) of the Constitution for want of consensus between the former elected Prime Minister and the Leader of the House, therefore, the provisions of Article 224A of the Constitution were invoked, and ultimately on account of inability of the Committee constituted under Article 224A(1) & (2) to decide the matter, the names of the nominees were referred to the Election Commission of Pakistan for finalizing the name of the caretaker Prime Minister within two days, thus, as a result of deliberations by the ECP, Caretaker Prime Minister was appointed in accordance with the provisions of Articles 224(1A) and 224A(1) & (2) of the Constitution.

13. Essentially, according to the settled and accepted norms/practice, the Caretaker Government (Prime Minister and Cabinet) is required to perform its functions to attend to the day-to-day matters, which are necessary to run the affairs of the State and also to watch the national interests, etc., in any eventuality in absence of an elected Government, and such Government is not authorized to

35

make decisions/appointments having effect on the working/policies of the future Government, which is likely to take over after the elections. Apart from providing assistance to the Election Commission in organizing free, fair, honest and just elections in the country, it is not vested with the authority to take decisions concerning the affairs of the Government, which are bound to pre-empt the scope and sphere of activity, powers and jurisdiction of an elected Government. A Caretaker Government possesses limited powers and authority particularly in view of the fact that when it is appointed, there is no National Assembly in place and thus the all important aspect of accountability is absent. Further, the exercise of complete powers by the Caretaker Government goes against the doctrine of separation of powers which is the lifeline of any vibrant democracy. As noted earlier, the absence of legislature results in lack of checks and balances. The Caretaker Government also lacks the mandate of the majority of people, which is to be acquired by elected government through the general elections. Therefore, if a Caretaker Government is allowed to exercise complete powers available to an elected Government, it may make an attempt to continue to remain in office for a longer period of time or may take such decisions which may cause problems for the future elected government.

14. As per the scheme of the Constitution, prior to the 18<sup>th</sup> Constitutional Amendment, where the President dissolved the National Assembly under Article 48(5), he shall, in his discretion, appoint caretaker Cabinet. Similarly, if the President, dissolves the National Assembly on the advice of the Prime Minister, he is required to put in place an interim set up or a temporary arrangement to ensure the

(36)

continuity of the functions of the Government to run day-to-day affairs of the State till the appointment of duly elected Government with its Cabinet after completion of the election process. Unfortunately, after the promulgation of the Constitution of 1973, during the Martial Law regime of General (R) Zia-ul-Haq in 1985, by means of the 8th Constitutional Amendment, an infamous provision, namely, Article 58(2)(b) was inserted into the Constitution, which provided that the President may dissolve the National Assembly in his discretion where, in his opinion, a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary. The said provision was later deleted by means of Thirteenth Constitutional Amendment in 1997. During the next Martial Law regime of General (R) Pervez Musharraf, the same was again inserted through the 17<sup>th</sup> Constitutional Amendment passed in 2003. However, after the restoration of democratic governance in the country, the new elected Government again deleted the said provision from the Constitution through the 18<sup>th</sup> Constitutional Amendment passed in 2010. It is to be noted that in exercise of the powers under the said provision, for more than one time, the National Assembly was dissolved and the elected Prime Minister/Cabinet were removed, and caretaker Prime Minister and Cabinet were appointed.

15. The object and purpose of making reference to these provisions is to highlight that the functions of the elected Government have remained under serious threats. At the same time, it is also significant to point out that despite appointment of the Caretaker Prime Minister/Cabinet, no guidelines were ever provided laying down



the parameters to be observed by the Caretaker Governments in the exercise of their powers. As far as Constitution is concerned, Article 2A envisages that State shall exercise its powers and authority through the chosen representatives of the people and a comprehensive procedure, including qualifications and the disqualifications for the persons to be elected as Members of *Majlis-e-Shoora* (Parliament) has been prescribed. Thus, it is the chosen representatives of the people who have to run the affairs of the State for a fixed term of five years. Such representatives of the people are required to ensure good governance, lay down policies, and ensure betterment of the general public through legislative and executive actions. On the contrary, a Caretaker Government as compared to an elected Government remains in office for a very limited period whose first and last concern is to ensure that fair, free, honest and just elections are held in the country. The concept of caretaker or Interim Government, in absence of an elected government is in vogue in a number of countries since the ancient times. Inasmuch as, in the Constitution of some of the countries, the concept of caretaker government does not specifically find a place, yet the practice of appointing caretaker government is in vogue those countries. Such countries include India, Australia, Canada, Bangladesh, Holland, New Zealand, UK, etc. With the passage of time, all those countries have developed Constitutional conventions, on the basis of which the caretaker governments are put in place to run the affairs of the State during the Interim period, i.e. till returning to power of the duly elected governments having full powers and such caretaker governments do not, in general, take any major policy decisions, including making appointments of civil servants, etc.,

particularly in the manner it has been done by the Caretaker Government that had come into existence on completion of the term of the previous Government.

16. At this stage, reference may be made to the Constitutional system of Australia. As per the scheme of the Australian Constitution, the caretaker government is expected to conduct itself in accordance with a series of conventions administered by the department of the Prime Minister and Cabinet, although there is no law compelling the caretaker government to do so. Usually, there is no separate appointment of a caretaker government and the outgoing government continues to function as caretaker government. During the 1975 Australian constitutional crisis, the then Governor-General appointed a new government with the assurance that it would immediately advise a general election, and it would operate on a caretaker basis in the meantime. The political system of Australia ensures that a Cabinet is always maintained and that caretaker governments abide by the conventions. Any flouting of the conventions by a caretaker government would immediately come to light, and could go against them in the election campaign. In this regard, a document titled "Guidance on Caretaker Conventions" has been administered by the Department of the Prime Minister and Cabinet. Section 1.2 of the Caretaker Conventions provides that a caretaker government operates until the election result clearly indicates that either the incumbent party has retained power, or in the case where there is to be a change of government, until the new government is appointed by the Governor-General. The relevant clauses of the guidelines are reproduced hereinbelow: -

39



### "3. SIGNIFICANT APPOINTMENTS

3.1 Governments defer making significant appointments during the caretaker period. When considering the advice it would give on whether an appointment qualifies as 'significant', the agency should consider not only the importance of the position, but also whether the proposed appointment would be likely to be controversial.

3.2 If deferring the appointment is impracticable, usually for reasons associated with the proper functioning of an agency, there are several options:

- the Minister could make an acting appointment where permissible;
- the Minister could make a short term appointment until shortly after the end of the caretaker period; or
- if those options are not practicable, the Minister could consult the relevant Opposition spokesperson regarding a full term appointment."

In Canada too, "Guidelines on the Conduct of Ministers, Secretaries of State, Exempt Staff and Public Servants during an Election" have been issued which provide, *inter alia*, as under: -

#### GUIDELINES ON THE CONDUCT OF MINISTERS, SECRETARIES OF STATE, EXEMPT STAFF AND PUBLIC SERVANTS DURING AND ELECTION

This does not mean that government is absolutely barred from making decisions of announcements, or otherwise taking action, during an election. It can and should do so where the matter is routine and necessary for the conduct of government business, or where it is urgent and in the public interest - for example, responding to a natural disaster. In certain cases where a major decision is unavoidable during a campaign (e.g., due to an international obligation or an emergency), consultation with the Opposition may be appropriate, particularly where a major decision could be controversial or difficult for a new government to reverse.

#### Contracts, G&Cs and Appointment

Appointments should normally be deferred. The Prime Minister's Office must be consulted before making any commitments concerning appointments that cannot be deferred.

40



As far as UK is concerned, they have also issued similar guidelines in 2010. Relevant guidelines are reproduced hereinbelow: -

**SECTION G**  
**Government Decisions**

1. During an election campaign the Government retains its responsibility to govern and Ministers remain in charge of their Departments. Essential business must be carried on. In particular Cabinet Committees can continue to meet and consider correspondence if necessary, although in practice this may not be practical. If something requires urgent collective consideration, the Cabinet Secretariat should be consulted.

2. However, it is customary for Ministers to observe discretion in initiating any new action of a continuing or long-term character. Decisions on matters of policy, and other issues such as large and/or contentious procurement contracts, on which a new Government might be expected to want the opportunity to take a different view from the present Government should be postponed until after the Election, provided that such postponement would not be detrimental to the national interest or wasteful of public money.

**SECTION H**  
**Public and Senior Civil Service Appointments**

1. All appointments requiring approval by the Prime Minister, other Civil Service and public appointments likely to prove sensitive, (including those where Ministers have delegated decisions to officials or other authorities, such as appointments to certain NHS boards), should effectively be frozen until after the Election. This applies to appointments where a candidate has already accepted a written offer. The individual concerned should be told that the appointment will be subject to confirmation by the new Administration after the Election.

2. It is recognised that, should this procedure result in the cancellation (or substantial delay) of an appointment by the new Administration, the relevant Department could be vulnerable to legal action by a disappointed candidate who had already accepted a written offer. To reduce the risk of this happening, Departments might wish to:

- recommend to their Secretary of State the advisability either of delaying key stages in the process, or of consulting the Opposition (e.g. on a short-list of candidates or a single name for final selection) where an appointment is likely to take effect just before or after an election;

41



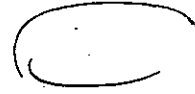
- issue a conditional letter of offer, making it clear that the formal offer of the appointment will need to be confirmed by a new Administration.
3. In cases where an appointment is due to end between the announcement of the Election and Election Day, and no announcement has been made concerning the new appointment, it will normally be possible for the post to be left vacant until incoming Ministers have been able to take a decision either about re-appointment of the existing appointee or the appointment of a new person. This situation is also likely to apply to any appointments made by Letters Patent, or otherwise requiring Royal approval, since it would not be appropriate to invite Her Majesty to make a conditional appointment.
4. In the case of public and Senior Civil Service appointments, Departments should delay the launch of any open competition during an election period, to give any incoming Administration the option of deciding whether to follow the existing approach.
5. In those cases where an appointment is required to be made, it is acceptable, in the case of sensitive Senior Civil Service positions, to allow temporary promotion or substitution. In the case of public appointments, the current term may be extended to cover the Election period, or as required, with the prior approval of the Commissioner for Public Appointments. This will allow time for new Ministers to take a decision about longer term appointment. In any cases of doubt, and particularly where circumstances make it difficult to apply these temporary arrangements, Departments should consult the Propriety and Ethics Team in the Cabinet Office.

The Cabinet Manual: *A guide to laws, conventions and rules on the operation of government*, 1<sup>st</sup> edition, October 2011 provides, *inter alia*, as under: -

#### PARLIAMENT

7. Parliament has a number of functions, which include: controlling national expenditure and taxation; making law; scrutinising executive action; being the source from which the Government is drawn; and debating the issues of the day. All areas of the UK are represented in the House of Commons, which provides a forum for Members of Parliament (MPs) to speak and correspond on behalf of their constituents, where they can seek redress if necessary.

42



8. Parliament comprises the Sovereign in Parliament and two Houses: the House of Commons, which is wholly elected, and the House of Lords, which comprises the Lords Spiritual and Temporal. Parliament has overall control of the public purse; the Government may not levy taxes, raise loans or spend public money unless and until it has authorisation from Parliament. The House of Commons claims exclusive rights and privileges over the House of Lords in relation to financial matters, and the powers of the House of Lords to reject legislation passed by the House of Commons are limited by statute.

9. In the exercise of its legislative powers, Parliament is sovereign. In practice, however, Parliament has chosen to be constrained in various ways – through its Acts, and by elements of European and other international law.

10. Parliament also scrutinises executive action. Indeed, the government of the day is primarily responsible to Parliament for its day-to-day actions. This function is exercised through a variety of mechanisms, such as the select committee system, Parliamentary questions, oral and written statements, debates in both Houses and the Parliamentary Commissioner for Administration. See Chapter Five for more on Parliament.  
[Emphasis supplied]

11. By the Scotland Act 1998, the Government of Wales Acts 1998 and 2006 and the Northern Ireland Act 1998, Parliament devolved powers over areas of domestic policy such as housing, health and education to directly elected legislatures in Scotland, Wales and Northern Ireland. Parliament retains the legal power to continue to legislate on these matters, but it does not normally do so without the consent of these devolved legislatures. See Chapter Eight for more on devolution.

17. Coming to the case in hand, it may be mentioned here that this is not the first time that this Court is confronted with such a situation. Earlier too, identical matters have been dealt with by the Superior Courts of Pakistan. In the case of Khawaja Muhammad Sharif v. Federation of Pakistan (PLD 1988 Lahore 725) wherein the Lahore High Court held that caretaker Cabinets have to confine themselves to take care of the day-to-day administration of the State. Relevant portion of the judgment reads as under: -

43



"26. The learned Attorney-General submitted that it is quite correct that Caretaker Cabinets have to take care of the day-to-day administration of the State. There may be no bar to take policy decisions if so required by the circumstances. He is right. Caretaker Cabinets have to confine themselves to take care of the day-to-day administration of the State. They can take all decisions requiring attention or action, may be having far-reaching effects, like in respect of war and peace or earthquake or floods. But they can neither forget the predominant position of their being Caretaker nor can they take undue advantage of their position either for themselves or for their political parties. They have to be impartial to everybody, including their rivals or opponents in the political fields. They cannot take advantage of their official position of Caretaker Government at the expense of other political forces or people at large. Neutrality, impartiality, detachment and devotion to duty to carry on day-to-day affairs of the State without keeping in view one's own interest or of one's party are the sine qua non of a Caretaker Cabinet."  
[Emphasis supplied]

In the case of *Regional Commissioner of Income Tax v. Zaffar Hussain* (PLD 1992 SC 869) Mr. Justice (R) Abdul Shakurul Salam J., in his dissenting note held as under: -

"3. The following points are obvious and noteworthy. Firstly, that when the leader of the Opposition became care-taker Prime Minister, displeasure or rancour of the Opposition was given vent to by ordering the removal of the respondents from their service. It was rather petty. Secondly, as far as the authority of the Care-taker Cabinet is concerned, I had said in the case of "Muhammad Sharif v. Federation of Pakistan" (PLD 1988 Lahore 725) in the Lahore High Court that "Care-taker Cabinets have to confine themselves to take care of the day to day administration of the State. They can take all decisions requiring attention or action, may be having far-reaching effects, like in respect of war and peace or earthquake or floods. But they can neither forget the predominant position of their being Care-taker nor can they take undue advantage of their position either for themselves or for their political parties. They have to be impartial to everybody, including their rivals or opponents in the political fields. They cannot take advantage of their official position of care-taker Government at the expense of other political forces or people at large. Neutrality, impartiality, detachment and devotion to duty to carry on day to day affairs of the State without keeping in view one's own interest or of one's own party are the sine qua non of a Care-taker Cabinet. The judgment was upheld by this