

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

S.A No. 1556/2023

**MR. IRSHAD KHAN
VERSUS
GOVT. OF KHYBER PAKHTUNKHWA & OTHERS**

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Respondent No. 4

Through


RAB NAWAZ KHAN

Advocate High Court, Peshawar.

①

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

S.A No. 1556/2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 25 7528

Dated 14/09/23

**MR. IRSHAD KHAN
VERSUS**

GOVT. OF KHYBER PAKHTUNKHWA & OTHERS

Written Reply for and on behalf of Respondent No. 4

Respectfully Sheweth:

The respondent No. 4 most respectfully submits his defense as under:

Preliminary Objections:

1. **That** appellant has approached this Hon'ble Tribunal with sullied hands, hence, denuded of all equities.
2. **That** appellant has no locus standi to file the present service appeal.
3. **That** appellant was working as Naib Tehsildar in his own pay and scale and under the law, he has no right to be retain on the position of higher scale.
4. **That** appeal of the appellant is not maintainable under the Civil Servant Act, 1973 as under section 10 of the Act *ibid*, appellant is liable to serve anywhere in Khyber Pakhtunkhwa in connection to the affairs of the Provincial Govt.

Reply on Facts:

1. **Para No. 1** of the appeal needs strong proof and the appellant is put to strict proof to prove the same.
2. **Para No. 2** of the appeal is correct to the extent of employment of appellant in respondents' department, however, presently he is not performing his duties as Naib Tehsildar (Settlement), as he has relinquished his charge and replying respondent No. 4 is working as Naib Tehsildar (Settlement) which fact is fully evident from the minutes of meetings attended by the replying respondent in official capacity as Naib Tehsildar (Settlement).

{True copy of charge assumption report along with
relevant record is attached, as Annex-RA}

3. **In reply to Para No. 3** it is submitted that although Election Commission of Pakistan banned all kinds of transfer / postings but later on such ban was relaxed vide order dated: 10-03-2023 for some period and now on 29-05-2023 again ban has been imposed upon all kinds of posting / transfer.

{True copy of order dated: 29-05-2023 is attached,
as Annex-RB}

4. **Para No. 4** is not related to the answering respondent and official respondents will be in better position to answer the same. However, it would be relevant to state that dozen of Naib Tehsildars / Tehsildars were awaiting posting at Revenue & Estate Department, who are senior to the appellant and recently vide order dated: 21-08-2023 some 40 officials have been transferred/posted on various positions. It would be relevant to state that keeping in view the judgments/directions of Hon'ble Supreme Court of Pakistan, postings/transfers are always made in criteria of right person for a right job/post. So when senior officials are available with department, junior can't be posted on higher post.

{True copy of order dated: 21-08-2023 is attached,
as mark Annex-RC}

5. **Para No. 5** is not related to the answering respondent and official respondents will be in better position to answer the same. However, it would be imperative to state that an employee can't make pick and chose in respect of his posting / transfer and under the law, he can be transferred from any position and place to another position and place. Detailed reply has been given in preceding para.
6. **Para No. 6** of the petition is incorrect. Appellant was appointed in the year 2012 in settlement operation Mansehra and since then he is working there, so the assertion that he has not completed the normal tenure of posting is incorrect. Moreover, transfer order doesn't portray any influence of political nature rather the same is made in public interest, as replying respondent along with others was in wait for posting at Revenue & Estate Department. Moreover, appellant was working as Naib Tehsildar in his Own Pay & Scale (OPS) and has no right to be retained on the same post when suitable candidates are available with the department. Settlement Operation was started in District Mansehra in the year 2010 and task was given to the staff to complete settlement in 260 Mauzajaat but in 13/14 years of operation, they have completed only 160 Mauzajaat while 100 are still remaining, so department in order to speed up the matter, transferred the answering respondent who has much experience in the field. It would be imperative to state that two time extension has been given to the settlement staff but to no avail. Moreover, the transfer order (impugned order) has been acted upon, as replying respondent has assumed charge as Naib Tehsildar Settlement and appellant has assumed charge of his new assignment in the office of Director Land Records.
7. **Para No. 7** would be answered by official respondents in better way. However, in heading of appeal, appellant stated that appeal has been rejected while in para under reply, he stated that appeal is pending.
8. **Para No. 8** needs no reply.
9. **Para No. 9** is related to official respondents. However, it would be relevant to state that as per service law, every civil servant is duty bound to serve on any

post to which he is posted and he can't pick and choose posting of his own choice.

10. **Para No. 10** is incorrect. Appellant has no locus standi to prefer instant service appeal.

Reply on Grounds:

- A. **Ground A** of the appeal is incorrect. Settlement Operation was started in District Mansehra in the year 2010 and task was given to the staff to complete settlement in 260 Mauzajaat but in 13/14 years of operation, they have completed only 160 Mauzajaat while 100 are still remaining, so department in order to speed up the matter, transferred the answering respondent who has much experience in the field. It would be imperative to state that two time extension has been given to the settlement staff but to no avail. Moreover, the transfer order (impugned order) has been acted upon, as replying respondent has assumed charge as Naib Tehsildar Settlement and appellant has assumed charge of his new assignment in the office of Director Land Records.
- B. **Ground B** of appeal is incorrect. Transfer/posting is not a vested right of civil servant and as per law, he can be posted at any place. Moreover, appellant was working in OPS while replying respondent is eligible under the law to be posted as Naib Tehsildar.
- C. **Ground C** of appeal is incorrect. As posting / Transfer order was made by the official respondent in a time when ban was relaxed by the Election Commission of Pakistan, so no violation of any provision of Constitution of Islamic Republic of Pakistan, 1973 is made nor any departure is made of Election Act, 2017.
- D. **Ground D** of the appeal is incorrect. As stated earlier, appellant was appointed in 2012 in the settlement operation Mansehra and he worked there for more than 11 years, so he has completed normal tenure of posting at one place. Competent Authority has the power to place any employee, where they think fit to post him and the employee has no vested right to question the same. Previous order of transfer of petitioner was passed by the Director land record while in present order, services of petitioner are placed at the disposal of Director land record, so there is no illegality or irregularity in the transfer order.
- E. **Ground E** of appeal is incorrect. Appellant is treated in accordance with law and Constitution.
- F. **Ground F** of appeal needs no reply.

It is therefore, requested that the captioned appeal be dismissed in the light of the written reply filed by Respondent No. 4.

Through

Respondent No. 4

RAB NAWAZ KHAN
Advocate High Court.

(4)

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

S.A No. 1556/2023

**MR. IRSHAD KHAN
VERSUS
GOVT. OF KHYBER PAKHTUNKHWA & OTHERS**

Written reply to application for suspension.

Respectfully sheweth:

1. Para No. 1 of application needs no reply.
2. Para No. 2 of application is incorrect. Transfer order has been passed in accordance with law and no violation of any provision of service law, constitution or Election Act has been made.
3. Para No. 3 of application is incorrect. Transfer order dated: 10-05-2023 is not only acted upon but the replying respondent is regularly performing as Naib Tehsildar Settlement and attending various meetings in his official capacity. Moreover, appellant also took charge of his new assignment in the office of Director Land Records, so application of appellant does not meet the standard criteria under the law.

It is therefore, requested that the captioned appeal be dismissed in the light of the written reply filed by Respondent No. 4.

Through

Respondent No. 4


**RAB NAWAZ KHAN
Advocate High Court.**

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**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

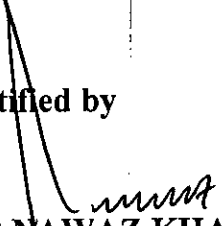
S.A No. 1556/2023

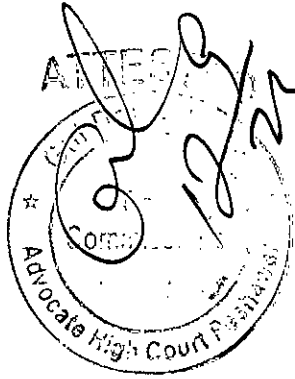
**MR. IRSHAD KHAN
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AFFIDAVIT

I, **Muhammad Asad ullah, Naib Tehsildar Labor Kot (Settlement) Operation, Mansehra / Respondent No. 4**, do hereby solemnly affirm and declare that the contents of the attached reply are true and correct and nothing has been concealed from this Hon'ble Court

Identified by


**RAB NAWAZ KHAN
Advocate High Court.**



Deponent

"RA"

6

CHARGE ASSUMPTION REPORT

In compliance with the Office Order No. LR-IV/Estb/DLR/7452-59 dated 13-12-2022 issued by the Director Land Records / Chief Settlement Officer, Board of Revenue, Khyber Pakhtunkhawa, Peshawar. I, **Irshad Khan**, hereby assume the Charge of **Naib Tehsildar Settlement-II Mansehra** today on 15-12-2022(FN).



(IRSHAD KHAN)
NAIB TEHSILDAR SETTLEMENT-II,
MANSEHRA.

No 10-13 SO(M)

Dated: 15-12-2022

Copy to:

1. The Commissioner Hazara Division Abbottabad.
2. The Deputy Commissioner Mansehra.
3. The District Accounts Officer Mansehra.
4. PS to Senior Member Board of Revenue, Khyber Pakhtunkhawa, Peshawar.



SETTLEMENT OFFICER,
MANSEHRA

(7)

CHARGE RELINQUISHED REPORT

In compliance of order No. LR-IV/Estb/DLR/7452-59 dated 13-12-2022 issued by the Director Land Records / Chief Settlement Officer, Board of Revenue, Khyber Pakhtunkhawa, Peshawar. I, Irshad Khan, hereby relinquish Charge of post of the Settlement Girdawar/Peshi Kanungo today on 15-12-2022(FN).



(Irshad Khan)

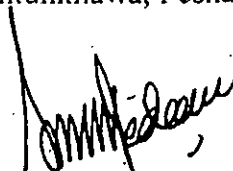
SETTLEMENT GIRDAWAR/PESHI KANUNGO,
MANSEHRA.

No 6-9 SO(M)

Dated 15-12-2022

Copy to:

1. The Director Land Records/Chief Settlement Officer, Board of Revenue, Khyber Pakhtunkhwa.
2. The District Accounts Officer Mansehra.
3. PS to Senior Member Board of Revenue, Khyber Pakhtunkhawa, Peshawar.
4. PS to Commissioner Hazara Division, Abbottabad.



SETTLEMENT OFFICER,
MANSEHRA.



(3)

"RB"



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

No. SO (Policy) (E&AD) 1-4/2023
Dated Peshawar, the 29th May, 2023

To

1. Additional Chief Secretary P&D Department Govt. of Khyber Pakhtunkhwa
2. Senior Member Board of Revenue, Govt. of Khyber Pakhtunkhwa
3. Administrative Secretaries to Govt. of Khyber Pakhtunkhwa
4. All Divisional Commissioners in Khyber Pakhtunkhwa
5. All Heads of Attached Departments in Khyber Pakhtunkhwa
6. All Deputy Commissioners in Khyber Pakhtunkhwa


Subject: -
Dear Sir,

BAN ON POSTINGS AND TRANSFERS IN KHYBER PAKHTUNKHWA

I am directed to refer to the above cited subject and to convey that in view of the fragile fiscal position of the Provincial Government, the Hon'ble Chief Minister Khyber Pakhtunkhwa has been pleased to impose ban on inter-district posting and transfers of officers and officials under the Government of Khyber Pakhtunkhwa as per the following:

- i. There shall be complete ban on inter-district transfers in all the departments;
- ii. This ban shall not apply on transfers within the districts and within the Secretariat and Directorates. However, while proposing such transfers of officers/officials within the district, Directorates or the Secretariat, as the case may be, due diligence must be observed and tenure, suitability of the officers/officials for the posts and past performance must be taken into account;
- iii. In cases posting and transfer is necessitated due to some court orders or some administrative exigencies, ban relaxation will be obtained from Chief Minister through summary. For such posting/transfers, departments will put forth sound justifications. Subsequently in cases where NOC from Election Commission is required, cases will be taken up with ECP for ban relaxation by the concerned Administrative Departments.
- iv. This ban shall not apply on filling of vacant posts through recommendations of the Khyber Pakhtunkhwa Public Service Commission as Election Commission of Pakistan has already granted exemption in such cases.

Yours sincerely,


(Noor-ul-Haq)
Deputy Secretary (PS/29/23)

ENDST: NO. & DATE EVEN

Copy is forwarded for information to:

1. Principal Secretary to Governor, Khyber Pakhtunkhwa
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
3. CSO/PSO to Chief Secretary to Govt. of Khyber Pakhtunkhwa.
4. All Additional Secretaries/Deputy Secretaries/Section Officers in Establishment & Administration Department


Section Officer (Policy)

REGISTERED MAIL



OFFICE OF THE
COMMISSIONER HAZARA DIVISION
ABBOTTABAD
PH: 0992-9310335, Fax No. 9310265

ORDER

Dated Abbottabad, the 21/08/2023.

No. Estb 59 CHD 8961-9020: In pursuance of BOR, Revenue & Estate Department, Government of Khyber Pakhtunkhwa Order Nos. Estt:V/PCS/2022/17397-17406 & Estt:V/PCS/2022/17407-15 dated: 27/07/2023, the Competent Authority is pleased to order the posting/transfer of following Revenue Officers Officials in the best public interest with immediate effect:

S#	Name/Designation	From	To
1.	Noor-ul-Wahaj Tehsildar (ACB)	Waiting for posting	Tehsildar Kandia, Kohistan Upper (against vacant post) (Add. Chrg DHPP)
2.	Shahzad Ahmad Tehsildar	Waiting for posting	Tehsildar, Pattan Lower Kohistan (Vice Sr# 15)
3.	Adeel Hussain Shah Tehsildar	Waiting for posting	Tehsildar Pallas, District Kolai Pallas (against vacant post)
4.	Mazhar Mehmood Tehsildar	Waiting for posting	Tehsildar Oghi, District Mansehra (Vice Sr# 12)
5.	Asghar Khan Tehsildar (ACB)	Waiting for posting	Tehsildar Lower Tanawal Abbottabad (Vice Sr# 13)
6.	Muhammad Ejaz Tehsildar (ACB)	Waiting for posting	Tehsildar Havelian Abbottabad (Vice Sr# 09)
7.	Malik Zahid Gul Tehsildar (ACB)	Waiting for posting	Tehsildar Dour Maira, Torghar (Vice Sr# 14)
8.	Gul Nawaz Naib-Tehsildar	Tehsildar (OPS), District Haripur	Naib-Tehsildar Lora, District Abbottabad (Vice Sr# 23)
9.	Jamshed Khan Tehsildar	Tehsildar Havelian, Abbottabad	Tehsildar Haripur, (Vice Sr# 08)
10.	Zaffar Mehmood Naib-Tehsildar	Tehsildar (OPS) Balakot, District Mansehra	H.V.C (Rev), Commissioner Office, Abbottabad against the vacant post.
11.	Yar Muhammad Tehsildar (ACB)	Tehsildar Judbah, Torghar.	Tehsildar Balakot, District Mansehra (Vice Sr# 10)
12.	Muhammad Riaz (Tehsildar ACB)	Tehsildar Oghi, Mansehra	Tehsildar Judbah Torghar (Vice Sr # 11)
13.	Atiq-ur-Rehman Tehsildar (ACB)	Tehsildar Lower Tanawal, Abbottabad	Tehsildar Bankhard Ranolia, Kohistan Lower (Vice Sr # 16)
14.	Musharaf Khan Tehsildar (ACB)	Dour Maira, District Torghar	Services placed at the Disposal of Board of Revenue, Khyber Pakhtunkhwa Peshawar
15.	Aqeel Ahmad Naib-Tehsildar	Tehsildar (OPS) Pattan, Kohistan Lower	Naib-Tehsildar Lower Tanawal, Abbottabad (Vice Sr# 24)
16.	Muhammad Din Naib-Tehsildar	Tehsildar (OPS) Bankhard Ranolia, Kohistan Lower	Naib-Tehsildar Battagram (Vice Sr# 30)
17.	Faiz Muhammad Naib-Tehsildar	Waiting for Posting	Naib-Tehsildar Judbah, District Torghar (Vice Sr# 40)

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18.	Ahtisham Rashid Naib-Tehsildar	Waiting for posting	Naib-Tehsildar, Pallas, District Kolai Pallas (Vice Sr# 38)
19.	Sabeel Ahmad Naib-Tehsildar	Waiting for posting	Naib-Tehsildar Baffa, Mansehra (Vice Sr# 28)
20.	Awais Ahmad Naib-Tehsildar	Waiting for posting	Naib-Tehsildar, Dassu (Additional Charge DHPP) Kohistan Upper (Vice Sr# 34)
21.	Awais Siddique Naib-Tehsildar	Waiting for posting	DK Kohistan Upper (Add. Charge. DHPP) (Vice Sr# 39)
22.	Miss. Momena Tariq Naib-Tehsildar	Waiting for posting	DRA, Abbottabad (Vice Sr# 25)
23.	Muhammad Ejaz Kanungo	Naib-Tehsildar (OPS) Lora, Abbottabad	Repatriated to Deputy Commissioner Office, Haripur for further posting
24.	Syed Waqar Shah Kanungo	Naib-Tehsildar (OPS) Lower Tanawal, Abbottabad	Repatriated to Deputy Commissioner Office, Haripur for further posting
25.	Azhar Masood Kanungo	DRA (OPS) Abbottabad	Repatriated to Deputy Commissioner Office, Abbottabad for further posting
26.	Muhammad Akmal Kanungo	DK (OPS) Haripur	Repatriated to Deputy Commissioner Office Abbottabad for further posting.
27.	Jan Nisar Kanungo	Naib-Tehsildar (OPS) Darband, Mansehra	Repatriated to Deputy Commissioner Office, Mansehra for further posting
28.	Muhammad Rashid Kanungo	Naib-Tehsildar (OPS) Baffa Pakhal	Repatriated to Deputy Commissioner Office Mansehra for further posting.
29.	Amir Zeb Kanungo	Naib-Tehsildar (OPS) Land Acq. Mansehra	Placed at the disposal of Deputy Commissioner Office Mansehra for further posting.
30.	M. Imtiaz Khan Kanungo	Naib-Tehsildar (OPS) Battagram	Repatriated to Deputy Commissioner Office Haripur for further posting.
31.	Muhammad Saeed Kanungo	DRA (OPS) Battagram	Repatriated to Deputy Commissioner Office Mansehra for further posting.
32.	Waheed Akhtar Kanungo	DK (OPS) Battagram	Repatriated to Deputy Commissioner Office Mansehra for further posting.
33.	Niaz-Hussain Kanungo	DK (OPS) Torghar	Repatriated to Deputy Commissioner Office, Mansehra for further posting.
34.	Muhammad Ibrar Kanungo	Naib-Tehsildar (OPS) Dassu, Kohistan Upper	Repatriated to Deputy Commissioner Office Mansehra for further posting.
35.	Najeeb-ur-Rehman Kanungo	Naib-Tehsildar (OPS) Kandia Kohistan Upper	Repatriated to Deputy Commissioner Office, Kohistan Upper for further posting.
36.	Farhat Abbas Kanungo	DRA (OPS) Kohistan Upper	Repatriated to Deputy Commissioner Office, Torghar for further posting.
37.	Zaboor Khan Kanungo	Naib-Tehsildar (OPS) Pattan Kohistan Lower	Repatriated to Deputy Commissioner Office, Kohistan Lower for further posting.
38.	Asif Hayat Kanungo	Naib-Tehsildar (OPS) Kolai Pallas	Repatriated to Deputy Commissioner Office, Kolai Pallas for further posting.
39.	Muhammad Naseer Kanungo	DK (OPS) Dassu	Repatriated to Deputy Commissioner Office Kolai Pallas for further posting.
40.	Khalid Hussain Kanungo	Naib-Tehsildar (OPS) Judbah, Torghar	Repatriated to Deputy Commissioner Office, Abbottabad for further posting.

The Competent Authority has further directed that all the Deputy Commissioners shall post the repatriated officials against the original sanctioned posts of Kanungo and all the Patwaris posted in their own pay scale shall be reverted to their original positions and grades.

By order
Commissioner
Hazara Division

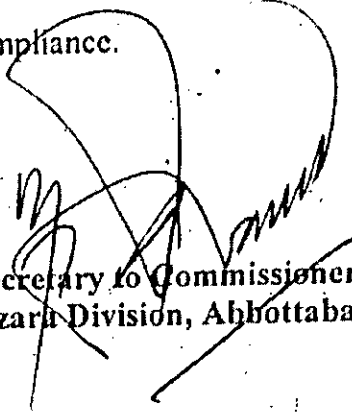
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Copy forwarded for information to the:

- 1- All the Deputy Commissioners, in Hazara Division for information & necessary action, please.
- 2- All the District Account Officers in Hazara Division.
- 3- SPS to SMBR, Khyber Pakhtunkhwa, Peshawar.
- 4- Assistant Secretary (Estt), Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
- 5- PS to Commissioner, Hazara Division, Abbottabad.
- 6- Revenue Officers/Officials concerned for immediate compliance.


Secretary to Commissioner
Hazara Division, Abbottabad