

02.07.2015

Agent of counsel for the appellant and Mr. Yar Gul, Senior Clerk alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 14.10.2015 before S.B.


Chairman

14.10.2015

Agent of counsel for the appellant, M/S Qibaz Khan, SO and Yar Gul, Senior Clerk alongwith Assistant A.G for respondents present. Para-wise comments on behalf of respondents No. 1 and 2 submitted. Learned Assistant A.G relies on the same on behalf of respondent No. 3. The appeal is assigned to D.B for rejoinder and final hearing for 8.2.2016.


Chairman

08.02.2016


Counsel for the appellant and Mr. Asif Khan, Naib Qasid alongwith Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for adjournment. To come up for rejoinder and arguments on 2-6-2016.


Member


Member


02.06.2016

Counsel for the appellant and Mr. Usman Ghani, Senior Government Pleader for respondents present. Learned counsel for the appellant requested for withdrawal of the instant appeal. Signature of learned counsel for the appellant secured on margin of the order sheet. Dismissed as withdrawn. File be consigned to the record room.

I want to withdraw appeal


ANNOUNCED
02.06.2016


MEMBER


MEMBER

Counsel for the appellant present. Learned counsel for the appellant argued that vide order dated 15.10.2014 the appellant was transferred and posted to District Mardan and vide order dated 10.11.2014 he was adjusted as PHC Technician and assigned the work of Tehsil Mardan Sanitary but vide impugned order dated 2.12.2014 the said transfer order was cancelled due to political interference as evident from order dated 2.12.2014 as copy of the same has been forwarded to PS to Minister for Health. That according to a note the copy of order dated 15.10.2014 (Annexure F Page-13), the impugned order was passed on the political interference of PS of the Senior Minister for Health which fact is also reflected from the comments given in departmental appeal (Annexure I Page-16)

That against the impugned order dated 2.12.2014 the appellant preferred departmental appeal on 15.12.2014 which was not responded and hence the instant service appeal on 20.3.2015.

Regarding posting and transfer on political interference reliance is placed on a case law reported as 2007 SCMR 599.

Point urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments on 2.7.2015 before S.B.


Chairman

Appellant Deposited
Security & Process Fee





4

13.04.2015

clerk: munshi
Date noted.

(Signature)

None present for appellant. The appeal be relisted for preliminary hearing for 28.4.2015 before S.B. Notice to counsel for the appellant be issued for the date fixed.

(Signature)
Chairman

24-4-15

20-4-15

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 236/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	20.03.2015	<p>The appeal of Mr. Asad Jan presented today by Mr. Khaled Rehman Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2	26-3-15	<p>This case is entrusted to Bench <u>I</u> for preliminary hearing to be put up thereon <u>30-3-15</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
3	30.03.2015	<p>None present for appellant. The appeal be relisted for preliminary hearing for 13.4.2015 before S.B.</p> <p style="text-align: right;"><i>[Signature]</i> Chairman</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 236 /2015

Asad Jan

.....Appellant

Versus

The Govt. of KPK & others

.....Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-5
2.	Stay Application with Affidavit			0-6
3.	Transfer order	23.06.2011	A	0-7
4.	Application for transfer		B	8-9
5.	Transfer order	15.10.2014	C	0-10
6.	Adjustment order of appellant	10.11.2014	D	0-11
7.	Impugned office order	02.12.2014	E	0-12
8.	Order revealing political influence	15.10.2014	F	0-13
9.	Departmental Representation	15.12.2014	G	0-14
10.	Letter to Respondent No.2	13.01.2015	H	0-15
11.	Letter of Respondent No.2	04.02.2015	I	0-16
12.	Transfer/Posting Policy		J	17-20
13.	2007 SCMR 599		K	21-27
14.	Wakalat Nama			

Appellant

Through

Khaled Rahman

Advocate

Supreme Court of Pakistan

3-D, Haroon Mansion

Khyber Bazar, Peshawar

Off: Tel: 091-2592458

Cell # 0345-9337312

Dated: 20 /03/2015

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2136 /2015

Asad Jan,
Junior Primary Healthcare Technician
(PM/TSI), DHO Office, Mardan *Appellant*

VERSUS

1. **The Govt. of Khyber Pakhtunkhwa**
through Secretary Health,
Civil Secretariat, Peshawar.
2. **The Director General,**
Health Services,
Attached Department Complex,
Khyber Road, Peshawar.
3. **The District Health Officer,**
District Mardan..... *Respondents*

A.W.P Province
Service Tribunal
Diary No. 244
Dated 20-3-2015

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED OFFICE ORDER DATED 02.12.2014 WHEREBY THE TRANSFER ORDER OF THE APPELLANT WAS QUITE PREMATURELY CANCELLED ON POLITICAL CONSIDERATIONS AGAINST WHICH APPELLANT FILED DEPARTMENTAL REPRESENTATION TO THE APPELLATE AUTHORITY ON 15.12.2014 BUT THE SAME WAS NOT DISPOSED OF WITHIN THE STATUTORY PERIOD OF 90 DAYS.

PRAYER:

On acceptance of the instant appeal, the impugned office order dated 02.12.2014 may graciously be set aside by restoring the office orders dated 15.10.2014 and 10.11.2014.

Respectfully Sheweth,

Asad Jan
20/3/15

Facts giving rise to the present appeal are as under:-

1. That appellant is employee of the Health Department serving as Junior Primary Healthcare Technician (MP/TSI) (BPS-9). He was appointed as such on 11.03.2009 and till date has been performing his duties to the entire satisfaction of his high-ups.
2. That on his initial appointment in 2009 at District Buner, appellant remained posted there for more than 02 years and was then transferred to District Swat vide order dated 23.06.2011 (*Annex:-A*) where he remained posted for yet another 3½ years, whereafter, appellant submitted an application (*Annex:-B*) to the competent authority for his transfer to the nearest district due to the reasons mentioned therein and consequently the application was considered and vide order dated 15.10.2014 (*Annex:-C*) appellant was transferred to District Mardan in the public interest.
3. That in pursuance of the order dated 15.10.2014 *ibid*, Respondent No.3 issued office order dated 10.11.2014 (*Annex:-D*) whereby appellant was adjusted against the vacant post of Junior Primary Healthcare Technician (MP/TSI) and did not issue any transfer order in consequence of the transfer order of appellant.
4. That another person interested in the same post started exerting political pressures for his choice posting and thus succeeded in issuance of the

impugned office order dated 02.12.2014 (*Annex:-E*) whereby the transfer order of the appellant dated 15.10.2014 was canceled. Copy of the same order has been sent to the PS to Minister for Health Khyber Pakhtunkhwa and the remarks of the Private Secretary to the concerned Minister on the order dated 15.10.2014 (*Annex:-F*) confirm the political consideration behind the order.

5. That being aggrieved of the impugned office order *ibid*, appellant preferred a departmental Representation (*Annex:-G*) to the appellate authority on 15.12.2014 which was processed and report was called from the Respondent No.2 vide letter dated 13.01.2015 (*Annex:-H*) which was submitted by Respondent No. 2 vide letter dated 04.02.2015 (*Annex:-I*) but the appeal was not disposed of within the statutory period of 90 days, hence this appeal *inter-alia* on the following grounds:-

Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned order, which is unjust, unfair and hence not sustainable in the eye of law.

- B. That under the Transfer/Posting Policy (*Annex:-J*) a transfer can be effected in the public interest or in exigency of service but the impugned office order has been issued not only in oblivion of the two but rather has been issued for serving the considerations opposite to the public interest and good service order.
- C. That the impugned Office order is the result of political pressure, which is not only violative of the Transfer/Posting Policy *ibid* but has been deprecated by the superior fora in numerous Judgments: reliance is placed on **2007 SCMR 599** (*Annex:-K*).
- D. That the impugned Office order has been issued in violation of the tenure policy mandated by the law as just after 1½ Month of the transfer of the appellant the same was cancelled and that too on political considerations and without any reasons muchless lawful.
- E. That well-set instructions and Policy guidelines issued by the Government from time to time have been violated while issuing the impugned Office order which is against the ethics of good governance.
- F. That appellant would like to offer some other grounds during the course of arguments.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.



Appellant

Through



Khaled Rahman,
Advocate, Peshawar.

Dated: 20 / 03/ 2015

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2015

Asad JanApplicant

Versus

The Govt. and others.....Respondents

Application for suspending the operation of the impugned office order 02.12.2014 till the final disposal of the instant appeal.

Respectfully Sheweth,

1. That the above titled service appeal is being filed today which is yet to be fixed for hearing.
2. That the facts alleged and grounds taken in the body of main appeal may kindly be taken as an integral part of this application, which make out an excellent prima facie case in favour of applicant/ appellant.
3. That the balance of convenience also lies in favour of applicant/appellant and in case the impugned office order is not suspended the applicant/appellant will suffer irreparable loss.

It is, therefore, humbly prayed that on acceptance of this application, the operation of the impugned office order dated 02.12.2014 may graciously be suspended till the final disposal of the main appeal.

[Signature]
Applicant

Through

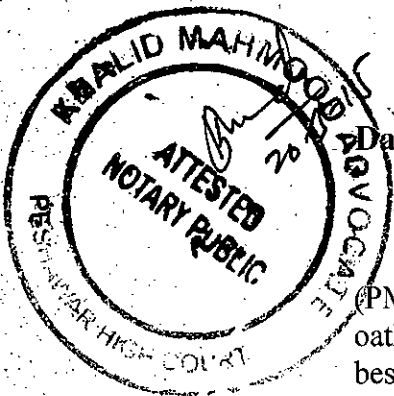
[Signature]
Khaled Rahman,
Advocate Peshawar

Dated: 20 /01/2015

Affidavit

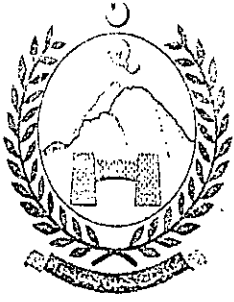
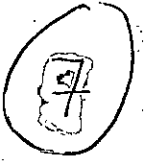
I, Asad Jan, Junior Primary Healthcare Technician (PM/TSI), DHO Office, Mardan do hereby affirm and declare on oath that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

[Signature]
Deponent



TO BE SUBSTITUTED FOR THE SAME NUMBER & DATE.

ANNEX A'



**DIRECTORATE
GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR**

All communications should be addressed to the Director General Health Services Peshawar and not to any official by name.

E-Mail Address: nwfpghs@pko.gov.pk
Office Ph# 091-9210269
Exchange# 091-9210187, 9210196

OFFICE ORDER.

As approved by the competent authority, Mr. Asad Jan Sanitary Inspector BPS-09 attached to EDO (Health) Bunir is hereby transferred to EDO (Health) Swat against the vacant post TSI BPS-09/ ^{Senior PHE Tech (MP)} in the interest of public service with immediate effect.

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

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

No. **16471-85** /E.V, Dated Pesh. The **23/6** /2011.

Copy forwarded to the:-

01. EDO (Health), Bunir.
02. EDO (Health), Swat.
03. Official concerned.
04. DA-concerned.
05. Master file.

For information and necessary action.

23/6/11
ASSISTANT DIRECTOR (P-11),
DGHS, K.P.K., PESHAWAR.
23/06

**Attested to be
True Copy**

**Attested to be
True Copy**



NO 3880

DISTRICT HEALTH OFFICER
SWAT AT GULKADA.
Phone No. 0946-9240139,
Fax No: 0946-9240215
Email. edohswat@yahoo.com

8

Dated 25/09/2014.

Annex "B"

To,

The Director General Health Services,
Khyber Pakhtunkhwa Peshawar.

Subject:-

APPLICATION FOR TRANSFER.

Memo:-

I have the honour to submit herewith an application in original in respect of Mr. Asad Jan Jr. PHCTech: (M.P) TSI (which is self explanatory) under the control of the undersigned, with the remarks that this office has no objection and also recommend the transfer of the above named official from District Swat to District Peshawar.

DISTRICT HEALTH OFFICER
DISTRICT SWAT AT GULKADA.

No

Copy forwarded to the above named official concerned for information.

DISTRICT HEALTH OFFICER
DISTRICT SWAT AT GULKADA.

Attested to be
True Copy

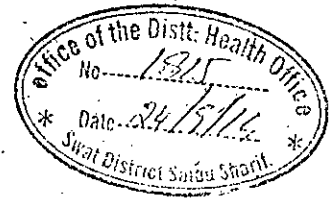
B

C

4

To

The Director General Health,
Khyber Pakhtunkhwa
Peshawar.



Subject: Application for Transfer.

Sir!

With due respect, it is stated that currently I am working as Jr. PHC Technician (MP) / Tehsil Sanitary Inspector at District Swat, from last 03 years and 03 months. I am resident of Peshawar and I have to take care of my father, who is ill and need proper care at home.

Therefore, kindly Transfer me from District Swat to a District near to Peshawar, like Charsadda, Nachehri, mardan, which is my legal right, under rules.

Thanking You in anticipation

Your Sincere
Asad Jan
Jr. PHC (MP) / T.S.O.

E-11

Attested to be True Copy

Date



Annex "C"

130

DIRECTORATE GENERAL HEALTH SERVICES KHYBER PAKHTUN KHWA PESHAWAR.

E-Mail Address: nwipdghs@yahoo.com Office Ph# 091-9210269 Exchange# 091-9210187, 9210196 Fax # 091-9210230

OFFICE ORDER

Mr. Asad Jan PHC Tech(MP) / TSI attached to DHO Swat is hereby transferred and posted at District Mardan in the interest of public service with immediate effect.

Subsequently, the DHO Mardan is hereby directed to relieve his substitute (Cadre employee) having longest stay to report to DHO Swat for duty.

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

Sd/xxxxxx
DIRECTOR GENERAL HEALTH
SERVICES KHYBER PAKHTUNKHWA
PESHAWAR

No. 6901-07 /E-V,

dated 15/10/14

Copy forwarded to the:-

01. DHO Swat w/r to his letter No. 3880/PF dated 25.09.2014.
02. DHO Mardan.
03. DAO Swat.
04. DAO Mardan.
05. Supdt: Promotion Cell DGHS, Khyber Pakhtunkhwa Peshawar.
06. Official Concerned.
07. DA Concerned.

For information and necessary action.

Attested to be
True Copy

Estab Gishant.
as per DGHS direction.
Haji Kifayat Khan

ASSISTANT DIRECTOR (P-III)
DGHS, KHYBER PAKHTUNKHWA
PESHAWAR

31/10/14

Attested to be
True Copy 1966
31/10/2014

Annex "D"



حکومت خیبر پختونخوا

District Health Department - Mardan

DISTRICT HEALTH OFFICER

Mardan (Khyber Pakhtunkhwa)

Ph: # (0937) 9230030 Fax: # (0937) 9230349

Email: edohmr@yahoo.com

OFFICE ORDER

As per notification received from Director General Health Services, Khyber Pakhtunkhwa, Peshawar vide No. 6901-07/E-V dated 15/10/2014 regarding transfer order in respect of Mr. Asad Jan PHC Tech: (M.P) / TSI BPS-9 from DHO Swat to DHO Mardan is hereby adjusted against the vacant post of PHC Tech: (MP) / TSI BPS-09 under the head of account MR-7016 (other health facilities) in the best interest of public with immediate effect.

However Mr. Asad Jan PHC Tech: (MP) / TSI will work as a Tehsil Sanitary Inspector Mardan.

District Health Officer
Mardan

No. 15459-66/DHO

Dated Mardan the: 10/11 /2014

Copy forwarded to the:

1. Director General Health Services, Khyber Pakhtunkhwa, Peshawar vide No. quoted above for information and requested that this office is not in position to relieve his substitute from this office.
 2. DHO Swat for information
 3. Deputy DHO, Mardan
 4. DSI Sanitation Unit Mardan
 5. Accountant DHO Office, Mardan
 6. P&D Section DHO Office, Mardan.
 7. Computer Cell, DHO Office, Mardan
 8. Official Concerned
- for information & necessary action.

Attested to be
True Copy

Attested to be
True Copy

District Health Officer
Mardan

Annex "E"



**DIRECTORATE
GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR**

All communications should
addressed to the Director Gen
Health Services Peshawar and
to any official by name

E-Mail Address K.P.Kdghs@yaho
Office # 091-9210269
Exchange # 091-9210187, 9210
Fax # 091-9210230

OFFICE ORDER

As approved by the competent authority, the posting/transfer order in r/o Mr. Asad Jan Jr PHC Tech (MP) TSI from District Swat to District Mardan contained in this Directorate office order bearing endost. No. 6901-07/E-V dated 15.10.2014 is hereby cancelled.

Sd/*****

**DIRECTOR GENERAL HEALTH
SERVICES KHYBER PAKHTUNKHWA PESHAWAR**

No. 8443-50 /AE-VI,

Dated Peshawar the: 02/12/2014.

Copy forwarded to the:

1. PS to Minister for Health Khyber Pakhtunkhwa Peshawar. ;
2. DHO, Swat.
3. DHO, Mardan.
4. DAO, Swat.
5. DAO, Mardan.
6. Supdt. Promotion Cell DGHS office Peshawar.
7. Official concerned.
8. DA Concerned.

For information and necessary action.

**ASSISTANT DIRECTOR (P-III)
DIRECTORATE GENERAL HEALTH
SERVICES KHYBER PAKHTUNKHWA PESHAWAR**

**Attested to be
True Copy**

IZHAR KHAN

0300 59240709 125

Annex "F"

09119210269

13
A. S. Mulla
for Health

DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR

OFFICE ORDER



AD (M)
01/12/11

Mr. Asad Jan PIC, Peshawar, PNL attached with DHO Swat is hereby transferred and posted at District Mardan in the interest of public service with immediate effect.

Subsequently, the DHO Mardan is hereby directed to relieve his substitute (Cadre employee) having longest stay to report to DHO Swat for duty.

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

Sd/-
DIRECTOR GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR

dated: 15/10/11

No. 6901-07

As-V.

Copy forwarded to the
1. DHO Swat w/r to his letter No. 3880/P dated 25-09-2011

- 2. DHO Mardan.
- 3. DAO Swat.
- 4. DAO Mardan.
- 5. Supdt. Promotion Cell, DGHS, Khyber Pakhtunkhwa Peshawar.
- 6. Official Concerned.
- 7. DA Concerned.

For information and necessary action

DGHS
Please cancelled
order

Assistant Director (P/III)
DGHS, KHYBER PAKHTUNKHWA PESHAWAR

Private Secretary
Senior Minister for Health
& Information Technology
Khyber Pakhtunkhwa

Attested to be
True Copy

F

بخدمت جناب سیکرٹری ہیلتھ صوبہ خیبر پختون خواہ پشاور

11801

اپیل

11/12/15

جناب عالی

گزارش کی جاتی ہے کہ سائل DHO آفس سوات میں TSI کی پوسٹ پر عرصہ تین سال سے زیادہ عرصے سے تعینات تھا۔ سائل نے ڈی جی صاحب کو تبادلہ کی درخواست دی جس پر سائل کا تبادلہ روز کے تحت بذریعہ آرڈر نمبر 6901-07/E-V مورخہ 15-10-214 DHO آفس مردان کو ہوا۔ سائل نے مردان میں ڈیوٹی جوائن کی۔ اور ڈیوٹی شروع کی مگر ڈیڑھ مہینے بعد سائل کا ٹرانسفر آرڈر بذریعہ آرڈر نمبر 8443-50/AE-VI مورخہ 02-12-2014 (منسوخ کر دیا گیا۔ چونکہ سائل نے اپنے سروس کا دورانیہ سوات میں مکمل کیا ہے۔ سائل کا تبادلہ سیاسی اثر و رسوخ کی وجہ سے کینسل ہوا۔ جناب عالی انسپکٹر صاحبان سیاسی اثر و رسوخ استعمال کرتے ہیں۔ اور ہر انسپکٹر تقریباً 10 بارہ سال سے مختلف اضلاع میں تعینات ہیں۔ اور دوسرے حق داروں کا حق مارتے ہیں۔

جناب عالی تقریباً ایک ماہ بعد میرا تبادلہ منسوخ کرنا میرے ساتھ نا انصافی ہے بلکہ بغیر کسی وجہ سے غیر قانونی بھی ہے اس لئے سائل آپ صاحبان سے پرزور اپیل کرتا ہے کہ سائل کا جو آرڈر آپ صاحبان نے منسوخ کیا ہے اس کو واپس کیا جائے۔

سائل آپ صاحبان سے درخواست اپیل کرتا ہے۔ کہ سائل کے اپیل پر کارروائی کر کے سائل کا تبادلہ آرڈر نمبر

8443-50/AE-VI مورخہ 02-12-2014 منسوخ کی جائے۔ کیونکہ سائل نے سوات میں اپنا سروس کا دورانیہ پورہ کیا ہے

جناب عالی: تمام آرڈرز کے کاپیاں لف ہذا ہیں۔

851-1

العرض

آپ کا تعبدار نوکر

اسد جان

Attested to be True Copy

سنیئر انسپکٹر ڈی ایچ او آفس مردان

Slema



Annex "H1"
GOVERNMENT OF
KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

15

469

13-1-15

No. SO-III/8-89/2015/Asad Jan
Dated Peshawar, the 13th January, 2015.

To

The Director General Health Services,
Khyber Pakhtunkhwa, Peshawar.

Subject: APPEAL

I am directed to refer to the subject noted above and forward herewith a copy of application lodged by Mr. Asad Jan Sanitary Inspector DHO Office Mardan along with its enclosures which is self explanatory for further necessary action and report in the matter may be furnished to this Department at the earliest.

Encl: as above.

(Muhammad Tariq)
Section Officer-III

Endst: No & date even.

Copy forwarded to PS to Secretary Health Khyber Pakhtunkhwa, Peshawar.

Section Officer-III

Attested to be
True Copy

H



Annex "7"

16

6

**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUN KHWA PESHAWAR.**

E-Mail Address: nwfdghs@yahoo.com	Office Ph# 091-9210269	Exchange# 091-9210187, 9210196	Fax #
091-9210230			
NO. 836	/E-V.	Dated. 4/2 /2015	

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Health Department Peshawar.

Dairy No. **2410**
Dated **6/2**
Khyber Pakhtunkhwa
Health Department

Subject: - APPEAL

P-51c

Dear Sir,

With reference to your letter No. SOH-III/8-89/2015 (Asad Jan) dated 13/01/2015 on the subject noted above and to state that Mr. Asad Jan Jr PHC Tech(MP)/TSI was transferred from District Swat to District Mardan and DHO Mardan was directed to relieve his substitute having longest stay to report to DHO Swat for duty vide this Directorate Office Order bearing Order No. 6901-07/E-V dated 15/10/2014 at Annex-A.

It is further stated that latter on the same order was cancelled as per directives of the Ps to Minister for Health Khyber Pakhtunkhwa Peshawar at (Annex-B).c)

Yours Faithfully

[Signature]
DIRECTOR GENERAL HEALTH
SERVICES KHYBER PAKHTUNKHWA,
PESHAWAR

ASIF ALI SHAH

[Signature]

[Signature]

9/6/2

[Signature]

Attested to be
True Copy

50/11

dy- 8/10

[Signature]

Annex 'c' J



Posting and Transfer

Statutory Provision.

Section 10 of the NWFP Civil Servants Act, 1973.

Posting and Transfer. 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:-

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

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

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, one and a half (1½) years for unattractive areas and one year for hard areas.
- v) ⁷⁹[]

⁷⁹ Para-1(v) regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No: SOR-VI (E&AD) 1-4/2008/Vol-VI, dated 3-6-2008. Consequently authorities competent under the NWFP Government Rules of Business, 1985, District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make Posting/Transfer subject to observance of the policy and rules.

Attested to be
True Copy

Attested to be
True Copy



- vi) ⁸⁰While making posting/transfers of officers/officials up to BS-17 from settled areas to FATA and vice versa approval of the Chief Secretary, NWFP needs to be obtained. 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, NWFP 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 at least eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.
- vii) Officers may be posted on executive/administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thaana) of his area/residence is situated.
- viii) No posting/transfers of the officers/officials on detailment basis shall be made.
- ix) Regarding the posting of husband/wife, both in Provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.
- x) All the posting/transferring authorities may facilitate the posting/ transfer of the unmarried female government Servants at the station of the residence of their parents.
- xi) Officers/officials except DCOs and DPOs/SPs who are due to retire within one year may be posted on their option on posts in the Districts of their domicile and be allowed to serve there till the retirement

⁸⁰ Para-VI added vide circular letter No. SOR-VI/E&AD/1-4/2010/Vol-VIII dated 20th March, 2010.

**Attested to be
True Copy**

**Attested to be
True Copy**

19

⁸¹DCOs and DPOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against non-administrative posts of equivalent scales;

- xii) In terms of Rule 17(1) and (2) read with Schedule-III of the NWFP Government Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against each officer in column 2 thereof:

Outside the Secretariat		
1.	Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above.	Chief Secretary in consultation with Establishment Department and Department concerned with the approval of the Chief Minister.
2.	Other officers in BPS-17 and above to be posted against scheduled posts, or posts normally held by the APUG, PCS(EG) and PCS(SG).	-do-
3.	Heads of Attached Departments and other Officers in B-19 & above in all the Departments.	-do-
In the Secretariat		
1.	Secretaries	Chief Secretary with the approval of the Chief Minister.
2.	Other Officers of and above the rank of Section Officers: a) Within the Same Department b) Within the Secretariat from one Department to another.	Secretary of the Department concerned. Chief secretary/Secretary Establishment.
3.	Officials up to the rank of Superintendent: a) Within the same Department b) To and from an Attached Department c) Within the Secretariat from one Department to another	Secretary of the Department concerned. Secretary of the Department in consultation with Head of Attached Department concerned. Secretary (Establishment)

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

- a) To ensure the posting of proper persons on proper posts, the Performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/ officials be considered.
- b) Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

⁸¹ Added vide Urdu circular letter No: SOR-VI (E&AD)/1-4/2005, dated 9-9-2005.

**Attested to be
True Copy**

**Attested to be
True Copy**

20

15

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 posting/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.

5. All concerned are requested to ensure that tenures of the concerned officers/officials are invariably mentioned in summaries submitted to the Competent Authorities for Posting/Transfer.

(Authority: Letter No: SOR-VI/E&AD/1-4/2003 dated 24-6-2003).

Attested to be
True Copy

6. On the other hand Roy Muhammad Nawaz Kharal, learned Advocate Supreme Court for respondents vehemently controverted the view point as canvassed by learned counsel for petitioner and supported the impugned judgment being free from any illegality or serious irregularity.

7. The main point, which requires serious consideration, is whether the petitioner has matured his title through adverse possession. The petitioner claimed that respondents have lost their rights of ownership and status of mortgagors over the suit property and he has become owner in possession of the same due to open and hostile possession for more than 12 years and also by prescription for being remained in possession as mortgagee for more than 60 years. We are of the opinion that this plea is not available to him inasmuch as section 28 of the Act has been declared repugnant to the Injunctions of Islam by this Court in the case of Maqbool Ahmad v. Hakoomat-e-Pakistan 1991 SCMR 2963, wherein it has been held that section 28 of the Act is repugnant to the Injunctions of Islam insofar as it provides for extinguishment of the right in the property at the determination of the period prescribed for instituting a suit for possession of the said property and that this decision shall take effect from 31st of August, 1991 and on this date section 28 of the Act shall also cease to have effect.

8. For what has been discussed above, we are of the considered opinion that impugned judgment is based on valid and sound reasons and is entirely in consonance with the law laid down by this Court. Neither there is misreading nor non-reading of material brought on record or misconstruction of facts or law.

9. Resultantly, the petition being devoid of force is dismissed and leave to appeal refused.

M.H./M-218/SC

Petition dismissed.

2007 S C M R 599

[Supreme Court of Pakistan]

Present: Sardar Muhammad Raza Khan and Nasir-ul-Mulk, JJ

ROSHAN KHAN, SET GOVERNMENT HIGH SCHOOL
KUZ PAO, DISTRICT SHANGLA----Petitioner

versus

DIRECTOR SCHOOLS AND LITERACY, N.-W.F.P.,
PESHAWAR and 4 others----Respondents

Attested to be
True Copy

Civil Petition No.747-P of 2004, decided on 3rd October, 2006.

(On appeal from the judgment, dated 10-8-2004 passed by N.-W.F.P. Service Tribunal, Peshawar in Appeal No.205 of 2004).

North-West Frontier Province Civil Servants Act (XVIII of 1973)---

---S. 10---Rules of Business, (N.-W.F.P); 1974, R.21(2)---Transfer of civil servant---Political influence---Recommendation of Member of Provincial Assembly---Civil servant was a senior school teacher who assailed his transfer order before Service Tribunal but without any success---Plea raised by civil servant was that his transfer was politically motivated and on the recommendations of Member of Provincial Assembly---Validity---Transfer of civil servant under the orders of even a Minister was void and unlawful, being violative of R.21(2) read with Schedule V of Rules of Business, (N.-W.F.P.), 1974---Supreme Court, while condemning the role of Minister, that of tamed and subservient bureaucracy was also condemned and need for an upright, honest and strong bureaucracy was emphasized---Member of Provincial Assembly in view of background of political influence had been guilty of misconduct, unfair exploitation and malpractice that maligned the legislature and disrupted administration---Supreme Court converted petition for leave to appeal into appeal and set aside the transfer order of civil servant---Appeal was allowed. [pp. 603, 604] A & B

Munawar Khan v. Niaz Muhammad 1993 SCMR 1287; Parwez Yunas Uppal's case PLJ.2000 (Tr.C) Service 473; Zahid Akhter's case PLD 1995 SC 530 and Sayyad Sikandar Ali Shah's case 2002 SCMR 1124 fol.

Malik Shahzad Ahmed, Advocate Supreme Court, for Petitioner

Khushdil Khan, Additional Advocate-General, N.-W.F.P. along with Respondents Nos.2 and 5.

Mir Adam Khan, Advocate-on-Record along with Pir Muhammad Khan, MPA and Hamid Iqbal, MPA on Court's call.

Date of hearing: 3rd October, 2006.

JUDGMENT

SARDAR MUHAMMAD RAZA KHAN, J.--- Roshan Khan, a Senior English Teacher of District Shangla seeks leave to appeal against the judgment dated 10-8-2004 of learned N.-W.F.P. Service Tribunal, Peshawar, whereby, his appeal was dismissed and his transfer order dated 8-3-2003 from Shangla to Government High School Kuz Pao was considered valid, within the contemplation of section 10 of N.-W.F.P. Civil Servants Act, 1973. The plea of the petitioner that his transfer was void being politically motivated, was not taken into consideration.

23

2. The petitioner alleges and claims to have served Education Department for 30 years and currently belonged to the senior class of teachers. He was holding the post of Assistant District Officer (M) Inspection, since 12-3-2002. Due to his honest and bold action against the teachers, absent from duty, eight teachers who were proceeded against accordingly, nursed grudge and departmental rivalry against the petitioner. They approached Mr. Pir Muhammad Khan MPA whom they had allegedly favoured in elections and thus with the active role of the MPA aforesaid, petitioner was transferred vide order dated 8-3-2003.

3. He preferred departmental appeal, giving the aforesaid background, whereupon, on acceptance of such appeal on 28-2-2004, his transfer order dated 8-3-2003 was withdrawn. The political influence once again got spurred and, to the utter disappointment of the petitioner, the above mentioned order dated 28-2-2004 was cancelled on 11-3-2004. He knocked unsuccessfully at the door of Service Tribunal and hence this petition.

4. As, gross violation of repeated verdicts of this Court was prima facie noticed, a Full Bench of this Court issued notice to the respondents. Again, this Court on 23-5-2006, in view of the allegations levelled by the petitioner, issued notice to Pir Muhammad Khan, MPA to appear before the Court. On appearance he furnished written reply which forms paper book-III of this record.

5. At page 26 of the file there is a memo on the letter head pad of Pir Muhammad Khan MPA where he has given different directions for the postings and transfers of different civil servants. In his comments he stated that the endorsements on the letter head pad (P-26) are undated, unnumbered, unsigned by Pir Muhammad Khan and not addressed to any one. He never denied, in so many words, the endorsement having been made by him but still he said that "the same can only amount to proposals which were to be considered by the concerned authorities and such proposals do not amount to any order or directions or recommendations."

6. From the aforesaid remarks, the MPA who professes to be an Advocate as well, tried to interpret his endorsements at page-26 as mere proposals of recommendatory nature. This is factually incorrect because, the language used is indicative of direction and not proposals. A letter No.3131/F.No.72/ADO(M)/Shangla dated 22-1-2003 written by Directorate of Schools and Literacy to the Section Officer (Primary) Government of N.-W.F.P. Schools and Literacy Department Peshawar proves how Mr. Pir Muhammad MPA was involved in the transfer of the petitioner. A para reproduced therefrom would be self-explanatory:--

"2. On 8-3-2003 Mr. Pir Muhammad Khan, MPA District Shangla

visited this office and submitted a proposal for making transfer of some SET/ADOs of District Shangla and thus his recommendation was honoured and transfer order was issued (copy attached) wherein the appellant concerned was victimized/suffered having immature tenure against the ADO(M) post at Shangla."

7. Another letter No.4454/F.No.72/ADO(Male)/Shangla dated 29-1-2004 would reinforce the charge that Mr. Pir Muhammad Khan MPA had pursued the matter. The relevant para of this letter by Deputy Director (Estt.) Schools and Literacy N.-W.F.P., as follows, is quite revealing:--

"2. However it is further clarified that his transfer order was made on the request of Mr. Pir Muhammad Khan MPA in March, 2003 and since this Directorate has issued his transfer order hence this Directorate is not in a position to cancel it rather the worthy Secretary, (S&L) N.-W.F.P. is the competent/appellate authority to consider his appeal regarding cancellation of his transfer order."

8. It is deplorable that the officers concerned invited the recommendations of MPAs for cancellation of transfer order, specially, Pir Muhammad Khan MPA, the one who opposed the petitioner. This very letter shows that even the department was aware that it was impossible for the petitioner to obtain recommendation of Pir Muhammad Khan MPA because it was he who victimized the petitioner. Anyhow, when the petitioner was asked to bring recommendations of an MPA, he produced one of Mr. Hamid Iqbal. It seems that Mr. Hamid Iqbal did not volunteer to make recommendation. It was probably arranged by the petitioner under the desire of the department, in order to balance the pressure. The relevant para is as follows:--

"3. As regards obtaining of recommendation/consent from Pir Muhammad Khan MPA Shangla as per your directions contained in your letter referred to the above, so it is not possible for him as he has been victimized through the said MPA, however, he has been got favourable/strong recommendation of Mr. Hamid Iqbal, MPA, also belongs to District Shangla (Annexure "B")."

9. Another letter would further clarify the persistent involvement of Mr. Pir Muhammad Khan MPA. The same is reproduced:--

"Directorate of Schools and Literacy N.-W.F.P. Peshawar.

No.11408/dated 2-12-2003.

The Section Officer (Primary)
Government of N.-W.F.P., Peshawar.

Sub: Transfer Cancellation

Attested to be
True Copy

25

Memo.

Kindly refer to your office letter No.S0(PE)(S&L)EDO dated Peshawar the 10-11-2003 the following comments are hereby submitted for clarification of situation:--

- (1) The letter issued vide reference No.3131/F.No.72/ADO(M) Shangla dated 27-10-2003 by Director (S&L) Shangla, it is requested that the said proposal/view was submitted by the worthy MPA Mr. Pir Muhammad Khan. This officer has neither forwarded for said proposal nor is involved in this matter.
- (2) The ADO Mr. Roshan Khan is an efficient and hardworking officer.
- (3) The ADO concerned Mr. Roshan Khan had not completed his normal tenure on the said post.

Keeping in view the above facts if the transfer order of the officer concerned is cancelled this office will have no objection.

Executive District Office
Schools and Literacy"

10. All documentary evidence has gone a long way to prove that Pir Muhammad Khan was persistently involved in getting the petitioner transferred. He dubbed it as mere proposal but, under the prevailing conditions, one can well contemplate as to what is meant by the proposal of an elected representative who carries a weight to throw.

11. As early as in 1993, this Court had sensed the malady. In *Munawar Khan v. Niaz Muhammad* 1993 SCMR 1287, a larger Bench had taken serious notice of allocation of appointment quota to the Ministers, MNAs and MPAs though with the blessings of the executive, and had declared them void ab initio, calling upon all Courts, Tribunals and Authorities to so declare. A healthy example of such compliance was Parwez Yunas Uppal's case PLJ.2000 (Tr.C.) Service 473, where the learned Federal Service Tribunal declared a transfer order void and mala fide because it was motivated by a privilege motion moved in the assembly and because the competent authority had passed it without the application of its own and independent mind.

12. Transfer of civil servant under the orders of even a Minister was held by this Court to be void and unlawful, being violative of Rule 21(2) read with Schedule V of Rules of Business 1974. While condemning the role of Minister, that of tamed and subservient bureaucracy was also condemned and need for an upright, honest and strong bureaucracy was

emphasized. Zahid Akhter's case PLD 1995 SC 530 is the relevant reference.

13. Lately, in Sayyad Sikandar Ali Shah's case 2002 SCMR 1124, the role of competent/Administrative authorities was once again condemned when they yield and surrender to the dishonestly intruding political influence.

14. It is for quite a long time, that some of the peoples representatives, whose sacred and scholarly job it was to legislate while honourably confining themselves to the dignified mansions of the assemblies, have started undesirable, dishonest and corrupt interference into the purely Executive/Administrative domain of appointments, promotions and transfers of civil servants. By now it has turned into a mafia that does not care about Law, Rules, Regulations, Rules of Business and repeated deprecations by the Supreme Court of Pakistan and High Courts. All forces seem to have whittled down before the exploitation and blackmail by some people whose weight, and not legislation, matters. This is bound to destroy the institutions, if not already destroyed.

15. Despite the fact that there is no law in the country giving authority to MPAs or MNAs to interfere into the Executive and Administrative domain, even to the extent of recommendations and proposals; despite the fact that the Rules of Business are utterly to the contrary; despite the fact that such practice is highly deprecated and condemned by this Court on numerous occasions, Mr. Pir Muhammad Khan, on whose letter head pad word Advocate appears below his name, has flouted all Law, Rules and Regulations. As an Advocate he ought to have been aware of the verdicts of the superior Courts and if not, at least, he ought to have known the Rules of Business and above all, the nature of his own obligations towards legislation in the Assembly and not beyond.

16. Before this Court he appeared personally and held the rostrum to address. It was a short but eloquent speech where, instead of clarifying his position, he argued the case against the petitioner saying that he was beaten by the teachers, that law and order situation had arisen and that his transfer was, therefore, necessary, again not realizing, that law and order also was not his headache. It is quite interesting that he still kept venom against the petitioner. At the end he requested the Court, not that he be absolved but that the instant petition be dismissed. In view of the background of political influence, the background of the case in hand and the repeated verdicts of this Court, we are constrained to observe that Mr. Pir Muhammad Khan MPA has been guilty of misconduct, unfair exploitation and malpractice that maligns the legislature and disrupts the administration.

SCMR

Attested to be
True Copy

2007]

17

petitio

dated

M. H.

Crimi

Novem

Feder

199-I

(a) O

1979)

—Ss

Delib

Pang

Supri

Court

Pulm

icy

1124,
again
truding

17. It was for the reasons above that we had accepted the petitioner's claim after conversion into appeal through our short order dated 3-10-2006 that runs as follows:--

peoples
e while
of the
ference
tments,
d into a
ules of
Pakistan
fore the
and not
, if not

"For detailed reasons to be given later on, the impugned judgment dated 10-8-2004 of the learned N.-W.F.P. Service Tribunal is set aside, the transfer order # 1201-1206/F.No.72/DS&L/ADO(M)/Shangla, dated 8-3-2003 passed by Director Primary Education N.-W.F.P., Peshawar is hereby set aside as withdrawn and that Endst. No.1077-82/F.No.13/Vol: 1/DIE/ADO(M) Shangla, dated 12-3-2002 of the Director Primary Education, N.-W.F.P. Peshawar is restored.

M.H./R-22/SC

Appeal allowed.

2007 S C M R 605

[Shariat Appellate Jurisdiction]

*Present: Justice Javed Iqbal, Chairman,
Justices Sardar Muhammad Raza Khan,
Ch. Ijaz Ahmed, Dr. Allama Khalid Mehmood
and Allama Rashid Ahmed Jullundhari, Members*

IBRAR HUSSAIN and others----Appellants

versus

THE STATE and another----Respondents

ostrum to
clarifying
at he was
and that
t law and
still kept
, not that
ew of the

Criminal Appeals Nos.14(S) and 15(S) of 2005, decided on 15th November, 2006.

(On appeal from the judgment, dated 2-5-2005 passed by the Federal Shariat Court, Islamabad, in Criminal Appeals Nos.196-I and 199-I of 2003, Murder Reference No.17-I of 2003).

(a) Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979)---

hand and
serve, that
ct, unfair
rupts, the

---Ss.10(4) & 11---Reappraisal of evidence---Contradictory statements---
Deliberate and dishonest improvements---Accused were convicted for
gang rape and abduction and were sentenced to death penalty and
imprisonment for life respectively, by Trial Court---Federal Shariat
Court partly allowed the appeal and set aside the sentence for gang rape
but maintained that of abduction---Plea raised by accused was that in
view of contradictory statements of victim, conviction and sentence could

Attested to be
True Copy

WAKALAT NAMA

IN THE COURT OF KPK Service Tribunal Peshawar

Asad Jan

Appellant(s)/Petitioner(s)

VERSUS

the Govt of KPK and
others

Respondent(s)

I/We Appellant do hereby appoint
Mr. Khaled Rehman, Advocate in the above mentioned case, to do all or
any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.


AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by


Khaled Rehman,
Advocate, Peshawar.


Signature of Executants