

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

APPEAL NO. 1630 /2023

S. MA GUL

VS

GOVT OF KPK

APPLICATION FOR FIXATION OF THE ABOVE TITLED APPEAL AT
PRINCIPAL SEAT, PESHAWAR

Respectfully Sheweth:

1. That the above mentioned APPEAL is pending adjudication before this Hon'ble Tribunal in which no date has been fixed so far.
2. That according to Rule 5 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974, a Tribunal may hold its sittings at any place in Khyber Pakhtunkhwa which would be convenient to the parties whose matters are to be heard.
3. That it is worth mentioning that the offices of all the respondents concerned are at Peshawar and Peshawar is also convenient to the appellant/applicant meaning thereby that Principal Seat would be convenient to the parties concerned.
4. That any other ground will be raised at the time of arguments with the permission of this Hon'ble tribunal.

It is therefore prayed that on acceptance of this application the appeal may please be fixed at Principal Seat, Peshawar for the Convenience of parties and best interest of justice.

Appellant/Applicant

Dated: 9/8/23

Through


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 1630 /2023

SIMA GUL

V/S

EDUCATION DEPTT:

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APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK,
ADVOCATE SUPREME COURT

1-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 1630/2023

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 6942
Dated 09/08/23

Mst. Sima Gul, Principal (BPS-19),
GGHS Miran Shah, District North Waziristan under transfer to
GGHSS Kotka Bilwar Khan, District Bannu.

..... **APPELLANT**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer (F), North Waziristan.
- 4- The District Education Officer (F), Bannu.

..... **RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED TRANSFER ORDER DATED 21.06.2023 COMMUNICATED ON 12.07.2023 WHEREBY THE APPELLANT HAS BEEN TRANSFERRED FROM NORTH WAZIRISTAN TO BANNU IN UTTER VIOLATION OF TRANSFER/ POSTING POLICY AND AGAINST THE APPELLATE ORDER DATED 08.08.2023 WHEREBY THE DEPARTMENTAL APPEAL HAS BEEN REJECTED/ FILED ON NO GOOD GROUNDS.

Filed on date
[Signature]
Registered
9/8/23

PRAYER:

That on acceptance of this appeal the impugned transfer order dated 21.06.2023 to the extent of appellant at serial No. 2 and appellate order dated 08.08.2023 may very kindly be set aside and the appellant be retained at GGHS Miran Shah North Waziristan. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:-

- 1- That appellant is the employee of the respondents department and performing her duty as Principal (BPS-19) with zeal and zest and up to the entire satisfaction of her superiors.

- 2- That while performing her duty as Principal in GGHS Miran Shah North Waziristan, the appellant was transferred to GGHSS Kotka Bilwar Khan Bannu vide impugned notification dated 21.06.2023. Copy of the notification is attached as annexure.....**A.**
- 3- That it is pertinent to mention here that the impugned notification was communicated to the appellant through her what's app by the DEO North Waziristan on 12.07.2023. Copy of what's app cutting is attached as annexure **B.**
- 4- That it is worth mentioning that vide notification dated 02.07.2023 one Miss Memona Akhtar SST (BPS-16) was assigned the responsibilities of the principal of the ibid school as additional charge. Copy of notification dated 02.07.2023 is attached as annexure**C.**
- 5- That appellant feeling aggrieved from the impugned transfer notification dated 21.06.2023 communicated on 12.07.2023 preferred departmental appeal on 12.07.2023 before the appellate authority which has been rejected vide appellate order dated 08.08.2023 on no good grounds. Copies of the departmental appeal and appellate order are attached as annexure**D & E.**
- 6- That appellant having no other efficacious remedy but to file the instant appeal on the following grounds amongst the others.

GROUND:

- A- That impugned transfer notification dated 21.06.2023 communicated on 12.07.2023 and appellate order dated 08.08.2023 issued by the respondents are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That appellant has not been treated in accordance with law and rules by the respondent department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the impugned transfer notification dated 21.06.2023 communicated on 12.07.2023 is violative of Clause-I of transfer/posting policy of Provincial Government as the same is not in the best interest of public service. Copy of Transfer posting policy is attached as Annexure.....**F**
- D- That according to the transfer and posting policy of the respondent's right person for the right job shall be posted, hence the impugned transfer notification and the subsequent notification dated 02.07.2023 whereby a junior officer of BPS-16 has been assigned with additional responsibility as Principal of the school.
- E- That the impugned transfer notification dated 21.06.2023 communicated on 12.07.2023 appellate order has been issued by the

respondents in arbitrary and mala fide manner, therefore, the same is not tenable in the eye of law and liable to be struck down.

F- That the impugned transfer notification dated 21.06.2023 communicated on 12.07.2023 and appellate order are not passed in the public interest which is clear violation of judgments passed by this Honourable tribunal and Peshawar High Court, Peshawar. Copies of the judgments are attached as annexureG.

G- That it is worth mentioning that the Election Commission of Pakistan vide notification dated 22.01.2023 banned all kinds of transfers/postings in the provinces of Khyber Pakhtunkhwa and Punjab. Copy of the Notification dated 22.01.2023 is attached as annexure H.

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

It is therefore, most humbly prayed that the appeal may kindly be accepted as prayed for.

Dated: 09.08.2023

APPELLANT

Through:

**NOOR MOHAMMAD KHATTAK,
ADVOCATE SUPREME COURT**

KAMRAN KHAN

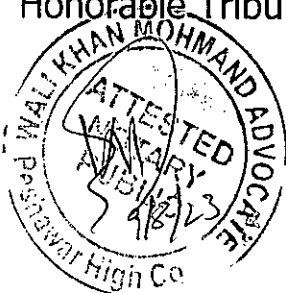
UMAR FAROOQ MOHMAND

&

**MEHMOOD JAN
ADVOCATES**

AFFIDAVIT

I, Mst. Sima Gul, Principal (BPS-19), GGHS Miran Shah, District North Waziristan under transfer to GGHS Kotka Bilwar Khan, Bannu do hereby solemnly affirm that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.


DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL No. _____/2023

SIMA GUL VS EDUCATION DEPTT:

APPLICATION FOR SUSPENSION OF THE OPERATION OF THE
IMPUGNED NOTIFICATION DATED 21.06.2023 & NOTICE
DATED 04.08.2023 TILL THE DISPOSAL OF THE SERVICE
APPEAL.

R/SHEWETH:

- 1- That the above-mentioned appeal along with this application has been filed before this august service Tribunal in which no date has been fixed so far.
- 2- That petitioner filed the above-mentioned service appeal against the transfer notification dated 21.06.2023.
- 3- That in pursuance to the transfer notification a notice dated 04.08.2023 for vacation of accommodation has also been issued. Copy of Notice is attached as Annexure.....
- 4- That all the three ingredients necessary for the stay is in favor of the petitioner.
- 5- That the transfer notification dated 21.06.2023 had been issued by the respondents in utter disregard of judgment and, law and prevailing Rules.

It is therefore, most humbly prayed that on acceptance of this application the operation of the notification dated 21.06.2023 and Notice Dated 04.08.2023 may very kindly be suspended till the disposal of the instant service appeal.


APPLICANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT



GOVT. OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Establishment Officer (S/F) Peshawar
091-9223508

"A"
-S-

Dated Peshawar the June 21st, 2023

NOTIFICATION

NO.SO(S/F)E&SED/4-16/2022/Posting/Transfer: Consequent upon the approval of the Competent Authority and subsequent NOC issued by the Election Commission of Pakistan vide letter No F 10 (1)/2023-Elec-II dated 11/03/2023, the following transfer/posting are hereby ordered with immediate effect

Sr. #	Name/ Designation	From	To	Remarks
01	Mst. Shabina Rahman Principal (BS-19)	GGHS No 1 Sarai Naurang Lakki Marwat	GGCMS No 2 Lakki City	AVP
02	Mst. Sama Gul Principal (BS-19)	GGHS Miran Shah North Waziristan	GGHSS Kotka S. War Khan Banru	AVP

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Ends: of even No. & date:

Copy forwarded to the

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Director, E&SE, Khyber Pakhtunkhwa, Peshawar
3. District Education Officer (if any) concerned
4. District Account Officer concerned
5. Director, E&S, E&SE Department for uploading of details on website at the earliest
6. PS to Minister for E&SE Department, Khyber Pakhtunkhwa
7. PS to Secretary, E&SE Department
8. Teacher concerned
9. Office order file

APPROVED
21/06/2023


(SHAWANA HALEEM,
SECTION OFFICER (S/F)

**GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT**

Dated Peshawar the June 21st, 2023

NOTIFICATION

No.SO(S/F)E&SED/4-16/2022/posting/transfer Consequent upon the approval of the Competent Authority and subsequent NOC issued by the Election Commission of Pakistan vide letter No. F.10 (1)/2023-Elec-II dated 11.03.2023, the following transfer/posting are hereby ordered, with immediate effect.

S.No	Name /Designation	From	To	Remarks
1.	Mst Shabina Rehman Principal (BS-19)	GGHS No.1 Sarai Naurang Lakki Marwat	GGCMHS No.2 Lakki City	AVP
2.	Mst Saima Gul Principal (BS-19)	GGHS Miran Shah North Waziristan	GGHSS Kotka Bilwar Khan Bannu	AVP

**SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
E & SE DEPARTMENT**

Endst: of even No. & date

ATTESTED
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Advocate

12 July 2023

-6- "B"



Aniqa DEO-F

Forwarded



**GOVT. OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT**

Email: eseeoffice@gmail.com
001-8223600

Dated: Peshawar, 12th June 2023

NOTIFICATION

NO. GOVT. E&SE/D-19/2023-Transfer/Transfer Consequently to the approval of the Competent Authority and a subsequent NOC issued by the Director, Commission of Pakistan vide letter no. F 10 (11/2023-E&S) dated 11/03/2023, the following transfers/promotions are hereby ordered with immediate effect:

Sr. No.	Name/ Designation	From	To	Remarks
01	Mst. Shabana Rafiq Khan Principal (DE-19)	GOHS No 1 Sera Naurang Kalan, Muzaffargarh, J.A.A. Div	GOHS No 2 AWP	
02	Mst. Salma Gul Principal (DE-19)	GOHS Miran Shah North Waziristan	GOHS No 2 AWP (Khan Khan, J.A.A. Div)	

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Copy of this N.O. is:

- 1. Copy forwarded to the:
- 1. Assistant General, Higher Publications, Peshawar
- 2. Director, E&SE, Khyber Pakhtunkhwa, Peshawar.
- 3. District Education Officer (Female) concerned.
- 4. District Account Officer concerned.
- 5. Director (E&S), E&SE Department for updating the staff list at the website.
- 6. PD to Minister for E&SE Department, Peshawar.
- 7. PD to Secretary, E&SE Department, Peshawar.
- 8. Transfer concerned.
- 9. Office over file.

4:39 am



Message



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Advocate

**GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT**

Dated Peshawar the June 21st, 2023

NOTIFICATION

No.SO(S/F)E&SED/4-16/2022/posting/transfer Consequent upon the approval of the Competent Authority and subsequent NOC issued by the Election Commission of Pakistan vide letter No. F.10 (1)/2023-Elec-II dated 11.03.2023, the following transfer/posting are hereby ordered, with immediate effect.

S.No	Name /Designation	From	To	Remarks
1.	Mst Shabina Rehman Principal (BS-19)	GGHS No.1 Sarai Naurang Lakki Marwat	GGCMHS No.2 Lakki City	AVP
2.	Mst Saima Gul Principal (BS-19)	GGHS Miran Shah North Wazirstan	GGHSS Kotka Bilwar Khan Bannu	AVP

**SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
E & SE DEPARTMENT**

Endst: of even No. & date

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to be true copy
Advocate



OFFICE OF THE DISTRICT EDUCATION OFFICER MALE
NORTH WAZIRISTAN DISTRICT



Phone: (0925) 311701 Email Address: (deed@nwd@pmail.com)

No. 7102-751/DEO(I)/NWTD

Dated 2/10/2023

"C"
7-

NOTIFICATION:

In pursuance of worthy Secretary Education Khyber Pakhtunkhwa Peshawar transfer order Notification No.P.100(1) 2023-Elec-II dated 11-03-2023, Miss: Memona Akhtar SST (GIS) Civil colony miranshah is hereby nominated/declared as incharge of the school for supervision and look after the school's learning process in the interest of public service.

TORs:

1. She is further directed to look after newly planted trees provided by Pak-Army.
2. Pay special concentration to enroll children.
3. She is completely responsible of the school administration as well as functioning of Bio-Metric device, ensuring teaching/non-teaching staff attendance and maintains separate attendance register for Primary and High section.

Amna Gul
(ANNA HUMA TAQOORI)
DISTRICT EDUCATION OFFICER (I)
NORTH WAZIRISTAN DISTRICT

Copy to:

1. PS to Secretary Education Khyber Pakhtunkhwa Peshawar.
2. The Director, E&S Education Khyber Pakhtunkhwa Peshawar.
3. The Deputy Commissioner North Waziristan District.
4. Col. GI (IS) 7-Division Camp Area Miranshah.
5. The District Account Office North Waziristan District.
6. Office Record.

Amna Gul
DISTRICT EDUCATION OFFICER (I)
NORTH WAZIRISTAN DISTRICT

1. Officer, E&S Education Khyber Pakhtunkhwa Peshawar
2. Head Quarter 7-Division Camp Area Miranshah
3. The District Police Officer North Waziristan for information
4. E&S Section Local Office.

Amna Gul
DISTRICT EDUCATION OFFICER (I)
NORTH WAZIRISTAN DISTRICT

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Advocate

OFFICE OF THE DISTRICT EDUCATION OFFICER MALE
NORTH WAZIRSTAN DISTRICT

Dated 02.08.2023

No 7198-7204/DEO(F)NWTD

NOTIFICATION

In pursuance of worthy Secretary Education Khyber Pakhtunkhwa Peshawar transfer order Notification No. F.10 (1)/2023-Elec-II dated 11.03.2023, Miss Memona Akhtar SSt GGHS Civil Colony miranshah is hereby nominated/declared as incharge of the school for supervision and look after the school's learning process in the interest of public service.

TORs:

1. She is further directed to look after newly planted trees provided by Pak army.
2. Pay special concentration to enroll children.
3. She is completely responsible of the administration as well as functioning of Bio-Metric device, ensuring teaching/non-teaching staff attendance and maintains separate attendance register for Primary and High section.

(ANIQA HUMA TAUQEER)
DISTRICT EDUCATION OFFICER
NORTH WAZIRSTAN DISTRICT.

ATTESTED
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Advocate

To,

The Honorable Secretary,
Elementary & Secondary Education Department,
Peshawar.

"D"
-8-

SUBJECT: CANCELLATION OF TRANSFER

Respected Sir,

With due respect it is stated that today on 12th July 2023, I come to know about my transfer order through a WhatsApp Group. Where a letter was shared by the District education officer (F) which stated my transfer order to Bannu.

Sir. The transfer letter was initially issued on 21st June 2023 but till now I haven't been informed officially by any letter by the department, it's already 23 days passed to it.

I have performed my duty honestly and punctually from the date of charge assumptions of the said post.

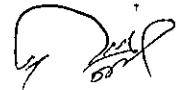
The district administration and education department appreciate all kind of activities of the undersigned regarding my job.

Sir, it is brought to your kind notice that I am neither under any kind of report or complaint nor have I demanded my transfer to Bannu but still I got transferred during ban.

Sir my promotion to grade 20 is due near and I am waiting for it, So It's an humble request that the transfer order may kindly be cancelled and let me continue my services in the North Waziristan in the best of public interest.

I shall be very thankful to you for this act of kindness.

Dated: 12/07/2023



SIMA GUL
Principal
GGHS Civil Colony
Miran shah NWTD

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to be true copy
Advocate



GOVT. OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Email: sectionofficers@gmail.com

091-9223588

"E"
-9-

No. SO(S/F) E&SED/4-16/2023

Dated Peshawar the August 8th, 2023

To

Sima Gul
Principal (BS-19)
GGHS Kotka Bilawar Khan Bannu.

Subject: APPEAL AGAINST TRANSFER

I am directed to refer to the subject noted above and to convey that your appeal has been filed being out of merit, please.


(SHAWANA HALEEM)
SECTION OFFICER (S/F)

Endst: of even No. & Date:

Copy forwarded for information to: PS to Secretary, E&SE Department.


SECTION OFFICER (S/F)

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to be true copy
Advocate



GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(Regulation Wing)

Handwritten: "F"
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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 posting/transfers of their choice and against the public interest.
- iii) All contract Government employees appointed against specific posts, can not be posted against any other post.
- iv) The normal tenure of posting shall be three years subject to the condition that for the officers/officials posted in unattractive areas the tenure shall be two years and for the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.
- v) { }
- vi) While making postings/transfer from settled areas to FATA and vice-versa, specific approval of Governor, NWFP needs to be obtained.
While making postings/transfers of officers/officials up to BS-17, from settled areas to FATA and vice-versa approval of the Chief Secretary NWFP needs to be obtained. Whereas, in case of posting/transfer of officers in BS-18 and above, from settled areas to FATA and vice-versa, specific approval of the Governor NWFP shall be obtained.
- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for atleast eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.
- vii) Officers may be posted on executive/administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and DPO/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thaana) of his area/residence is situated.
- viii) No posting/transfers of the officer's/officials on detailment basis shall be made.
- ix) Regarding the posting of husband/wife, both in Provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.
- x) All the posting/transferring authorities may facilitate the posting/transfer of the unmarried female government Servants at the station of the residence of their parents.

Para-1(v) regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No. SOR-VI (E&AD) 1-4/2008/Vol-VI, dated 3-6-2008. Consequently authorities competent under the NWFP Government Rules of Business, 1985, District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make posting/transfer subject to observance of the policy and rules. Added vide Urdu circular letter No. SOR-VI(E&AD)1-4/2003, dated 21-09-2004.

ATTESTED

10/02/2010 06:17
ADVISOR

- xi) Officers/officials except DCOs and DPOs/SPs who are due to retire within one year may be posted on their option on posts in the Districts of their domicile and be allowed to serve there till the retirement.
DCOs and DPOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against non-administrative posts of equivalent scales;
- xii) In terms of Rule-17(1) and (2) read with Schedule-III of the NWFP Government Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against each officer in column 2 thereof:

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

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

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

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

ATTESTED

to be
Advocate

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.

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).

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.

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Supreme Court of Pakistan]

Present: Qazi Faez Isa and Amin-ud-Din Khan, JJ

PROVINCE OF SINDH and others---Petitioners

Versus

SHAHZAD HUSSAIN TALPUR---Respondent

Civil Petition No. 407-K of 2019, decided on 30th December, 2021.

(Against the judgment dated 15.03.2019 passed by the Sindh Service Tribunal at Karachi in Service Appeal No. 815/2017)

(a) Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974---

---R. 4(1)---Sindh Public Service Commission (Functions) Rules, 1990, R. 3(1)(i)---Special Auditor, Cooperative Societies---Appointment, legality of---Special Auditor was required to be selected by the Provincial Public Service Commission ('the Commission')---Special Auditor was a grade 17 post and the Secretary, Cooperative Societies was not authorized to either select or appoint a person in Grade 17.

Perusal of the original file and documents pertaining to the appointment of the respondent as Special Auditor, Cooperative Societies showed only the relevant notification appointing the respondent; there is nothing therein regarding the number of persons who had applied for the position of Special Auditor, how many had participated in the test and interview, the results of such test and interview, and culminating in a seriatim listing of the applicants in the order of merit - the merit list. The respondent was pre-selected and appointed by the Secretary, Cooperative Societies and this was done without making him take any test and/or interview

The Secretary issued the notification appointing the respondent by using the ubiquitous term competent authority, without disclosing the designation and name of the competent authority. Secretary also did not disclose that he himself was the competent authority in respect of appointments to a Grade 16 position. To enable himself to appoint the respondent, the Secretary illegally downgraded the position of Special Auditor from Grade 17 to Grade 16, and, to ensure that the nexus between him and the respondent went unnoticed the Secretary did not mention the full name of the respondent in the notification and left out the names shared between them - 'Mir' and 'Talpur'.

Special Auditor was required to be selected by the Provincial Public Service Commission ('the Commission'). Special Auditor was a Grade 17 post and the Secretary was not authorized to either select or appoint a person in Grade 17. In selecting and appointing the respondent as Special Auditor the Secretary had acted illegally. Respondent was not selected by the Commission yet he was appointed as Special Auditor, and, it would not make a difference even if it be accepted that the post of Special Auditor was in Grade 16 because selection to Grade 16 posts was also to be done by the Commission. Appointment of respondent as Special Auditor was patently illegal.

(b) Civil service---

---Appointment---Use of the term "competent authority" in notifications, orders, office memorandums, instructions, letters and other communications---Deprecated---Using the term 'competent authority' but without disclosing such person's designation and name is against public policy and also against the public interest since it facilitates illegalities to be committed and protects those committing them.

It is an individual who holds a particular position and by virtue of such position exercises power. Merely mentioning the competent authority without disclosing the designation and name of the person who is supposed to be the competent authority is utterly meaningless. Non-disclosure serves to obfuscate and enables illegalities to be committed.

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The use of vague and imprecise language, such as, the competent authority, in legal matters is anathema and oftentimes results in avoidable disputes, which unnecessarily consume time and public resources. The use of accurate and precise language helps avoid disputes. Using the term the competent authority but without disclosing such person's designation and name is against public policy and also against the public interest since it facilitates illegalities to be committed and protects those committing them. Every functionary of the government, and everyone else paid out of the public exchequer, serves the people; positions of trust cannot be misused to appoint one's own or to illegally exercise power.

There is a need to put a stop to the use of the illusive and elusive term - the competent authority without disclosure of the competent authority's designation and name. Therefore, all the Provincial Governments, Registrars of the Supreme Court and all High Courts, and through the Registrars of the High Courts all District and Sessions courts, are required to issue requisite orders/directions that they and their respective functionaries, semi-government and statutory organizations whenever issuing notifications, orders, office memorandums, instructions, letters and other communications must disclose the designation and the name of the person issuing the same to ensure that it is by one who is legally authorized to do so, and which will ensure that such person remains accountable.

Saulat Rizvi, Additional Advocate-General, Sindh, Ghulam Rasool Mangi, Advocate-on-Record, Ali Gul Sanjrani, Deputy Secretary and Abdul Latif Qazi, Deputy Registrar for Petitioners.

Mukesh Kumar G. Karara, Advocate Supreme Court along with Respondent and M. Iqbal Ch., Advocate-on-Record (absent) for Respondent.

Date of hearing: 30th December, 2021.

JUDGMENT

Qazi Faez Isa, J. This petition has been filed challenging the judgment of the Sindh Service Tribunal at Karachi ('the Tribunal'), which allowed the respondent's appeal and set aside the order dismissing him from the position of Special Auditor in the 'Cooperation Department'. The learned Additional Advocate-General, Sindh ('AAG') says that the 'Cooperation Department' is another name for the Cooperative Department. However, he states that the Sindh Government Rules of Business, 1986 refers to the department as the Cooperative Department. The petitioners are well advised to refer to departments by the names mentioned in the said Rules, and not to cause needless confusion.

2. The learned AAG states that the respondent was terminated from service because he was illegally selected and appointed to the post of Special Auditor by the Secretary of the department. This post could only be filled-in by inviting applicants through advertisements which set out the eligibility criteria and testing their abilities/competence by the Sindh Public Service Commission ('the Commission'). The Commission would then recommend the candidate who had attained the highest marks for appointment. Referring to the Sindh Public Service Commission (Functions) Rules, 1990¹ ('the Commission's Rules') he states that the position of Special Auditor is a grade 17 position and as per the Commission's Rules the selection to a grade 17 position can only be done by the Commission. To support his contention that the position of Special Auditor is a grade 17 position the learned AAG has referred to the Budget Books of the two years preceding the respondent's appointment which show that Special Auditor is a grade 17 position. The learned AAG states that the respondent was appointed by Mr. Ijaz-ul-Haq Talpur ('the Secretary'). However, before appointing the respondent the Secretary downgraded the position of Special Auditor to a grade 16, which he did because a Secretary is authorised to make grade 16 appointments, as provided in the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974² ('the Appointment Rules'). The learned AAG submits that, even if it be conceded that the position of Special Auditor was a grade 16 position then too selection to this post had to be made by the Commission in terms of Rule 3(1)(i) of the Commission's Rules.

3. The petitioners initially contended that the Secretary was the respondent's brother but in the absence of such proof the learned AAG withdrew this allegation. However, the learned AAG points out that the Secretary and the respondent resided together at the same address which was E-92, Block-II, Pakistan Employees Cooperative Housing Society, Karachi (as confirmed by their identity cards) and there was a close nexus between them. Therefore, the Secretary had a conflict of interest and should

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not have appointed the respondent, but he did not disclose his connection and resultant conflict, and did not obtain permission to appoint the respondent. He submits that the respondent was appointed by the notification dated 10 May 2013 ('the Notification') as Special Auditor and this was done by concealing the identities and the connection between the Secretary and the respondent. To appreciate this contention the Notification appointing the respondent is reproduced hereunder:

COOPERATION DEPARTMENT GOVERNMENT OF SINDH

Karachi dated the 10th May, 2013

NOTIFICATION

N.O. S.O. (C-II)1-112/2013. On the recommendation of the Departmental Selection Committee and with the approval of the competent authority, Mr. Shahzad Hussain son of Ghulam Rasool is hereby appointed as Special Auditor, Cooperative Societies in Cooperation Department (BS-16) i.e. Rs. 10000-800-34000 on regular basis with immediate effect.

On his appointment he is posted as Special Auditor, Cooperative Societies Hyderabad against an existing vacancy with immediate effect.

SECRETARY TO THE GOVERNMENT OF SINDH

The learned AAG says that the Notification refers to 'Shahzad Hussain'; however, the respondent's name (or complete name) was 'Mir Shahzad Hussain Talpur', which was also the name under which he had filed the appeal before the Tribunal. He further submits that the Secretary himself was the designated competent authority in respect of making appointments to grade 16 positions but the Notification did not disclose this and the Secretary also did not disclose his name under his signature. Structuring the Notification in this manner, and by concealing the designation and name of the competent authority, enabled the Secretary to illegally appoint the respondent.

4. The learned AAG next contends that the respondent was dismissed from service on 10 February 2014 and the respondent belatedly filed departmental appeal on 2 November 2017. Therefore, since the departmental appeal was filed well beyond the prescribed thirty days period the Tribunal should have dismissed the appeal filed before it on this ground alone. However, the belated filing of the departmental appeal was condoned by categorizing the notification dismissing the respondent from service as a void order and that such a void order could be assailed at any time. The learned AAG submits that the order dismissing the respondent from service was passed in accordance with the law and could not be categorised as a void order. And, having entertained the appeal the Tribunal held that since in an identical case the same relief was granted it could not be denied to the respondent, which the learned AAG says was not correct because the referred case was in respect of lower grade employees who were not required to be selected by the Commission.

5. The learned Mr. Mukesh Kumar Karara represents the respondent and supports the impugned judgment. He states that the respondent and the Secretary were not brothers and it was a coincidence that they were living at the same address. He submits that the respondent met the requisite criteria mentioned in the advertisement issued by the Cooperative Department and he could not be penalized because of any alleged illegalities committed by the Department in appointing the respondent.

6. We have heard the learned counsel and with their assistance also examined the documents on record. We had directed the petitioners (vide order dated 20 December 2021) to produce the original file and documents pertaining to the appointment of the respondent to ascertain how he came to be appointed as Special Auditor. Such file/documents have been examined by us and the learned counsel for the respondent and contain only the Notification appointing the respondent. There is nothing therein regarding the number of persons who had applied for the position of Special Auditor, how many had participated in the test and interview, the results of such test and interview, and culminating in a seriatim listing of the applicants in the order of merit - the merit list. It is clear that the respondent was pre-selected and appointed by the Secretary and this was done without making him take any test and/or interview.

7. The Secretary issued the Notification dated 10 May 2013 appointing the respondent by using the ubiquitous term competent authority, without disclosing the designation and name of the competent

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to the Secretary
Assistant Secretary

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authority. The Secretary also did not disclose that he himself was the competent authority in respect of appointments to a grade 16 position. To enable himself to appoint the respondent, the Secretary illegally downgraded the position of Special Auditor from grade 17 to grade 16. And, to ensure that the nexus between him and the respondent went unnoticed the Secretary did not mention the full name of the respondent in the Notification and left out the names shared between them - Mir and Talpur.

8. The respondent was terminated from service vide notification dated 10 February 2014, which is reproduced hereunder:

COOPERATION DEPARTMENT GOVERNMENT OF SINDH

Karachi dated the 10th February, 2014

NOTIFICATION

No. SO(C-II)1(16)/2008. With the approval of the competent authority the services of Mr. Shahzad Hussain, Special Auditor Cooperative Societies (BS-16) Hyderabad are hereby terminated with immediate effect on the grounds that the post of Special Auditor Cooperative Societies (BS-16) is to be filled through Sindh Public Service Commission and the above said post has not taken from the purview of Sindh Public Service Commission at the time of appointment of Mr. Shahzad Hussain by the Competent Authority i.e. Chief Minister Sindh.

(ALI AHMED LUND)

SECRETARY TO THE GOVERNMENT OF SINDH

The reason given for terminating the respondent from service was that only a person selected by the Commission could be appointed to the position of Special Auditor and that the Secretary was not the competent authority to appoint the respondent. Therefore, since the selection and the appointment of the respondent was illegal he was terminated from service.

9. To determine whether a Special Auditor could be selected by the Cooperative Department and whether the person selected could be appointed by the Secretary we need to consider the applicable law and rules. The Sindh Civil Servant Act, 1973³ governs the appointment of those in 'the service of Pakistan in connection with the affairs of the Province of Sindh'.⁴ Section 5 of the Sindh Civil Servants Act, 1973 states, that:

5. Appointments.---Appointments to a civil service or a civil post in connection with the affairs of the Province shall be made in the prescribed manner by Government or by a person authorised by it in that behalf.⁵

Rule 4 of the Appointment Rules,⁶ made pursuant to the Sindh Civil Servants Act, 1973, prescribes, that:

4. (1) The authorities competent to make appointment to the various posts shall be as follows:

S.No.	Posts	Appointing Authority
6.	Posts sanctioned in Basic Scale-16	Secretary concerned.

10. The Sindh Public Service Commission Act, 1989⁷ was enacted to establish the Sindh Public Service Commission. The functions of the Commission are stipulated in section 7, the relevant portion whereof, is reproduced hereunder:

7. Functions of the Commission.---The functions of the Commission shall be-

- (i) to conduct tests and examinations for recruitment for initial appointment to -
 - (a) such posts connected with the affairs of the Province of Sindh;

Pursuant to the Sindh Public Service Commission Act, 1989 the Sindh Public Service Commission (Functions) Rules, 1990⁸ were enacted, rule 3(1)(i) whereof stipulates, that:

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[Designation]

3. (1) The Commission shall, subject to other provisions of these rules, conduct tests for initial recruitment to-

(i) civil posts connected with the affairs of the Province in basic pay scale 11 to 22 except those specified in the Schedule;

11. The abovementioned laws stipulate that in respect of higher grades it is the Commission which selects candidates, and does so after conducting requisite tests. A Special Auditor was required to be selected by the Commission. The respondent was not selected by the Commission yet he was appointed as Special Auditor. And, it would not make a difference even if it be accepted that the post of Special Auditor was in grade 16 because selection to grade 16 posts is also to be done by the Commission.

12. Special Auditor was a grade 17 post and the Secretary was not authorized to either select or appoint a person in grade 17. In selecting and appointing the respondent as Special Auditor the Secretary had acted illegally. Assuming, for the sake of argument alone, that the Secretary could have selected and appointed a Special Auditor it could only be after conducting the requisite departmental test/interview of all applicants, but this too was not done.

13. The appointment of the respondent as Special Auditor was patently illegal. The learned Mr. Mukesh Kumar Karara concedes that appointment to the post of Special Auditor was to be made after selection of the candidate by the Commission. In these circumstances it is not understandable how the Tribunal could categorise the respondent's termination order to be a void order. The Tribunal overlooked the relevant laws (mentioned above) and disregarded the statutory period within which the departmental appeal had to be filed by the respondent. The Tribunal's impugned judgment is clearly not sustainable and has to be set aside.

14. We are constrained to observe that the Secretary in concealing his designation and name, and by not disclosing that he was the competent authority, succeeded in appointing the respondent. The Secretary issued the Notification which shielded himself in the anonymous cloak of the competent authority and one which also concealed his connection with the respondent.

15. Whenever the Constitution grants power to an individual it mentions the person's position/designation, for instance the President, the Prime Minister, the Chief Justice, the Governor, et cetera. The same also holds true with regard to Federal and provincial laws, including the cited laws and to the governments' rules of business. It is an individual who holds a particular position and by virtue of such position exercises power. Merely mentioning the competent authority without disclosing the designation and name of the person who is supposed to be the competent authority is utterly meaningless. Non-disclosure serves to obfuscate and enables illegalities to be committed. In this case the Secretary was not authorized to appoint the respondent but managed to do so by donning the competent authority cloak. We are not at all persuaded by the contention of the respondent's counsel that the respondent should not be penalized for the illegalities committed by the department. The respondent was illegally selected and appointed by the Secretary and his selection/appointment is not sustainable nor is it such a minor transgression that it could be condoned.

16. We may also observe that the use of vague and imprecise language, such as, the competent authority, in legal matters is an anathema and oftentimes results in avoidable disputes, which unnecessarily consume time and public resources. The use of accurate and precise language helps avoid disputes. Using the term the competent authority but without disclosing such person's designation and name is against public policy and also against the public interest since it facilitates illegalities to be committed and protects those committing them. Every functionary of the government, and everyone else paid out of the public exchequer, serves the people of Pakistan; positions of trust cannot be misused to appoint one's own or to illegally exercise power.

17. For the reasons mentioned above, this petition is converted into an appeal and allowed and the impugned judgment of the Tribunal is set aside. We are also convinced that there is a need to put a stop to the use of the illusive and elusive term - the competent authority without disclosure of the competent authority's designation and name. Therefore, the governments of Sindh (petitioner No. 1), Balochistan, Khyber Pakhtunkhwa, Punjab, the Government of Pakistan, Registrars of the Supreme Court and all High Courts, and through the Registrars of the High Courts all District and Sessions

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Acting Secretary

courts, are required to issue requisite orders/directions that they and their respective functionaries, semi-government and statutory organizations whenever issuing notifications, orders, office Memorandums, instructions, letters and other communications must disclose the designation and the name of the person issuing the same to ensure that it is by one who is legally authorized to do so, and which will ensure that such person remains accountable. Copies of this judgment be sent to the Secretary, Establishment Division, Government of Pakistan, to the Chief Secretaries of the provinces, to the head of the Islamabad Capital Territory, Registrars of the Supreme Court and all High Courts who are directed to issue requisite orders/ directions and to publish the same in their respective gazettes or ask the concerned government to do so. Compliance report be submitted for our consideration in chamber by or before 1 March 2022.

MWA/P-3/SC

Appeal allowed.

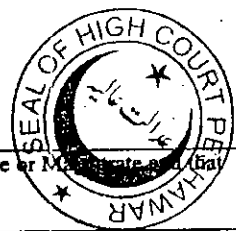
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PESHAWAR HIGH COURT, PESHAWAR.
FORM "A"
FORM OF ORDER SHEET.



Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of judge or parties or counsel where necessary
1	2	3
	28.09.2022.	<p><u>W.P.No.3508-P/2022.</u></p> <p><u>Present:-</u> Mr.Noor Muhammad Khattak, Advocate for the petitioners.</p> <p>====</p> <p><u>S M ATTIQUE SHAH:-</u> Through instant writ petition, petitioners have approached to this court with the following prayer:-</p> <p>"1. An appropriate writ may kindly be issued to declare the impugned notification vide dated 22.08.2022 to the extent of the term "Competent Authority", as ineffective upon the rights of petitioners, without mandate of law, illegal, unlawful, unconstitutional, impracticable, invalid, void ab initio and ultra vires in light of the judgments cited as <u>2022 SCMR 439</u> narrated under the roof of grounds.</p> <p>2. Further, a writ of mandamus may also be kindly issued directing the respondents No.1, 2, 3, (Provincial Government) defined under Article 129 of the Constitution of Islamic Republic of Pakistan to act strictly in accordance with law while communicating the respondent No.05 to keep him bound for notifying/publishing the orders/directions contained in the judgment cited as <u>2022 SCMR 439</u> under proper authority in the official Gazette under Section 20-A of General Clauses Act to take a legal effect. "</p> <p>2. In essence, the petitioners are aggrieved from notification No.SOH-III/7-262/2022(Drug Inspector), issued by respondent No.4 being in violation of the judgment of the august Apex</p>

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Court rendered in *Province of Sindh and others Vs. Shahzad Hussain Talpur*, reported as (2022 SCMR 439).

3. Heard. Record perused.
4. Perusal of the ibid notification would reflect that the said notification has been issued pursuant to the judgment of the Khyber Pakhtunkhwa Services Tribunal dated 06.12.2021 in Service Appeal No.16578/2020. For ready reference, the said notification is reproduced below:-

NOTIFICATION

SOH-III/7-2F2/2022(Drug Inspector) : In compliance of the Services Tribunal, Peshawar judgment dated 06.12.2021 in Service Appeal no. 16578/2020, and consequent upon the approval of competent authority, the posting/transfer orders of the following Chief Drug Inspector/Drug Inspectors/Drug Analyst is hereby made with immediate effect.

S. No.	Name of Officers & Designation	From	To	Remarks
1.	Syed Muhammad Asad Halimi Chief Drug Inspector BS-19	Chief Pharmacist (BP-19), KDA, Kohat	Chief Drug Inspector (BS-19), District D.I. Khan	Against the vacant post
2.	Tayyab Abbas Chief Drug Inspector BS-19	Chief Pharmacist (BS-19), Services Hospital, Peshawar	Chief Drug Inspector (BS-19), District Abbottabad	Against the vacant post
3.	Amin ul Haq Senior Drug Inspector (BS-19)	Already under report to DG, DC&PS on account of Disciplinary proceeding under E&D Rules, 2011		
4.	Arif Hussain Analyst BS-18	Senior Pharmacist (BS-18), Services Hospital, Peshawar	Drug Analyst (BS-18), Drug Testing Laboratory (DTL), Peshawar	Against the vacant post
5.	Manzoor Ahmad Drug Inspector BS-17	Drug Inspector (BS-17) District Peshawar	Drug Inspector (BS-17) District Dir Lower	Against the vacant post
6.	Zia Ullah Drug Inspector BS-17	Drug Inspector (BS-17) District Dir Lower	Drug Inspector (BS-17) District Bannu	Against the vacant post
7.	Muhammad Shoaib Khan Drug Inspector BS-17	Already under report to DG, DC&PS on account of Disciplinary proceeding under E&D Rules, 2011		
8.	Shahzada Mustafa Anwer Drug Inspector BS-17	Waiting for posting at Directorate of Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar	Drug Inspector (BS-17) District Karak	Against the vacant post

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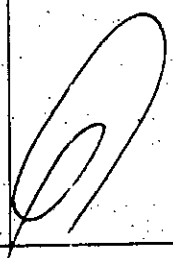
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Secretary to Govt. of Khyber
Pakhtunkhwa Health Department.

Ibid notification clearly reflects that the same is based upon the judgment of the Service Tribunal dated 06.12.2021 passed in Service Appeal No.16578/2020 of the petitioners. In fact the petitioners through instant writ petition under the guise of the ibid judgment of the august Apex Court, seek setting aside of the said notification being violative of the ibid judgment of the august Apex Court.

The matter of the impugned notification revolves around the posting/ transfers of the petitioners which squarely falls within the terms and; condition of the service of the petitioners provided by Chapter II of the Civil Servants Act, 1973, which are indeed amenable to the jurisdiction of the Khyber Pakhtunkhwa Service Tribunal provided by section 4 of the Service Tribunal Act, 1974. The jurisdiction of this court in such matter is explicitly barred under the provisions of Article 212 (2) of the Constitution.

Miss Rukhsana Ijaz Vs. Secretary, Education, Punjab & others (1997 SCMR 167), Ayyaz Anjum Vs. Govt: of Punjab, Housing & Physical Planning Department through Secretary and others (1997 SCMR 169), Rafique Ahmad Chaudhry Vs. Ahmad Nawaz Malik & others (1997 SCMR 170), Secretary Education NWFP, Peshawar and 2 others Vs.



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Mustamir Khan & others (2005 SCMR 17) and Peer Muhammad Vs. Govt: of Baluchistan through Chief Secretary & others (2007 SCMR 54).

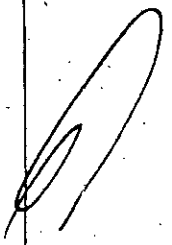
5. The ibid view of the august Apex Court has further been affirmed in recent judgment rendered by the august Apex Court in *Chief Secretary, Govt: of Punjab Lahore and others Vs. M/s Shamim Usman's* reported in (2021 SCMR 1390), the relevant portion of the ibid judgment is reproduced below:-

"The High Court had no jurisdiction to entertain any proceedings in respect of terms and conditions of service of a civil servant which could be adjudicated upon by the Service Tribunal. The High Court as a constitutional court should always be mindful of the jurisdictional exclusion contained under Article 212 of the Constitution. Any transgression of such constitutional limitation would render the order of the High Court void and illegal."

Coming to the contention of the learned counsel for the petitioners that the impugned notification is liable to be set aside being in violation of the judgment of the august Apex Court reported in the case of *Province of Sindh Vs. Shehzad Hussain Talpur (2022 SCMR 439)*, the relevant portion of the ibid judgment is reproduced below:-

"15. Whenever the Constitution grants power to an individual it mentions the person's position/designation, for instance the President, the Prime Minister, the Chief Justice, the Governor, et cetera. The same also holds true with regard to Federal and provincial laws,

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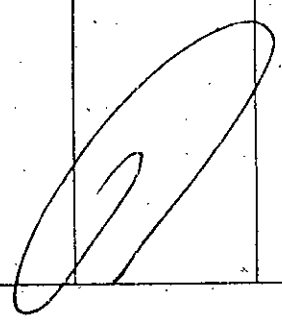
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including the cited laws and to the governments' rules of business. It is an individual who holds a particular position and by virtue of such position exercises power. Merely mentioning the competent authority without disclosing the designation and name of the person who is supposed to be the competent authority is utterly meaningless. Non-disclosure serves to obfuscate and enables illegalities to be committed. In this case the Secretary was not authorized to appoint the respondent but managed to do so by donning the competent authority cloak. We are not at all persuaded by the contention of the respondent's counsel that the respondent should not be penalized for the illegalities committed by the department. The respondent was illegally selected and appointed by the Secretary and his selection/appointment is not sustainable nor is it such a minor transgression that it could be condoned.

16. We may also observe that the use of vague and imprecise language, such as, the competent authority, in legal matters is an anathema and oftentimes results in avoidable disputes, which unnecessarily consume time and public resources. The use of accurate and precise language helps avoid disputes. Using the term the competent authority but without disclosing such person's designation and name is against public policy and also against the public interest since it facilitates illegalities to be committed and protects those committing them. Every functionary of the government, and everyone else paid out of the public exchequer, serves the people of Pakistan; positions of trust cannot be misused to appoint one's own or to illegally exercise power.

17. For the reasons mentioned above, this petition is converted into an appeal and allowed and the impugned judgment of the Tribunal is set aside. We are also convinced that there is a need to put a stop to the use of the illusive and elusive term - the competent authority without disclosure of the competent authority's designation and name. Therefore, the governments of Sindh (petitioner No. 1), Balochistan, Khyber Pakhtunkhwa, Punjab, the

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Peshawar High Court



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Government of Pakistan, Registrars of the Supreme Court and all High Courts, and through the Registrars of the High Courts all District and Sessions courts, are required to issue requisite orders/directions that they and their respective functionaries, semi-government and statutory organizations whenever issuing notifications, orders, office memorandums, instructions, letters and other communications must disclose the designation and the name of the person issuing the same to ensure that it is by one who is legally authorized to do so, and which will ensure that such person remains accountable. Copies of this judgment be sent to the Secretary, Establishment Division, Government of Pakistan, to the Chief Secretaries of the provinces, to the head of the Islamabad Capital Territory, Registrars of the Supreme Court and all High Courts who are directed to issue requisite orders/ directions and to publish the same in their respective gazettes or ask the concerned government to do so. Compliance report be submitted for our consideration in chamber by or before 1 March 2022."

Pursuant to the above judgment of the august Apex Court the worthy Chief Secretary, Government of Khyber Pakhtunkhwa has issued a notification No.SO(Lit-1)E&AD/1-1/2020 dated 14.02.2022 vide which compliance of the ibid judgment was sought in letter and spirit in future. However, due to the reasons best known to the respondents at the time of issuance of the impugned notification the ibid judgment of the august Apex Court was not complied with in letter and; spirit.

Under the provisions of Article 189 of the Constitution the decisions of the Supreme Court are binding on all other courts. For ready



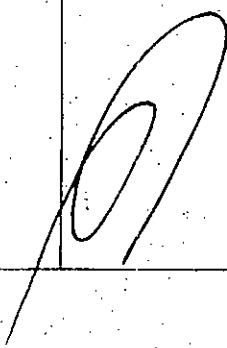
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Peshawar High Court

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		<p>reference the same is reproduced below:-</p> <p>"Any decision of the Supreme Court shall, to the extent that it decides a question of law which is based upon or enunciates a principle of law, is binding on all other courts in Pakistan."</p> <p>Given that the decisions of the Supreme Court are binding upon all the stakeholders and; as earlier discussed the Government of Khyber Pakhtunkhwa has already issued a notification qua the compliance of the ibid judgment of the august Apex Court in letter and; spirit, however, mere non-compliance of the ibid judgment of the august Apex Court would not confer jurisdiction upon this court in a matter which is squarely arising out of the terms and; conditions of the service of a civil servant. Undeniably the decisions of the august Apex Court are binding on each and; every organ of the state by virtue of the provisions of Articles 189 and; 190 of the Constitution. It is well settled that a question of law, pronounced or declared by august Apex Court in terms of Article 189 of the Constitution has binding effect on all functionaries both executive and; the judicial authorities. The superior courts, tribunals have obligation to implement and; adhere to the judgment of the Supreme Court rendered. Moulvi Abdul Qadir & others Vs. Moulvi Abdul Wassay and others (2010 SCMR 1877).</p> <p>6. In view thereof the worthy Service</p>
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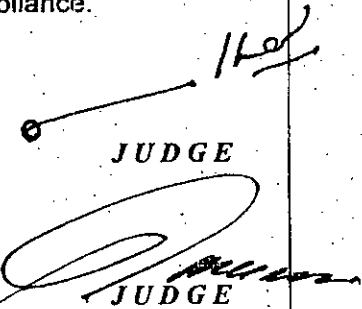
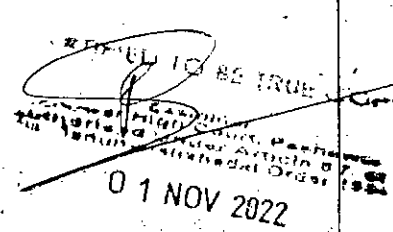


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		<p>Tribunal Khyber Pakhtunkhwa is very much clothed with the jurisdiction and; authority to implement the ibid decision of the august Apex Court in terms of Articles 189 and; 190 of the Constitution and; petitioners can validly agitate the same before the worthy Service Tribunal if they so wish and; desire.</p> <p>7. For what has been discussed above, this petition, being bereft of any merit, is hereby dismissed in <i>limine</i>. However, respondents are directed to implement and; enforce the ibid judgment of august Apex Court in its letter and; spirit. Copy of instant judgment be sent to the worthy Chief Secretary for compliance.</p> <p style="text-align: right;">  JUDGE JUDGE </p> <p style="text-align: center;"> <u>Announced.</u> Di.28.09.2022. </p> <p style="text-align: right;">  01 NOV 2022 </p>
No. _____ Date of Presentation of Application _____ No of Pages _____ Copying fee _____ Total _____ Date of Preparation of Copy _____ Date of delivery of Copy _____ By _____	<p style="font-size: 2em; text-align: center;">57026</p> <p style="font-size: 2em; text-align: center;">17 of 1-11-22</p> <p style="font-size: 2em; text-align: center;">68</p> <p style="font-size: 2em; text-align: center;">1-11-22</p> <p style="font-size: 2em; text-align: center;">1-11-22</p> <p style="font-size: 2em; text-align: center;">[Signature]</p>	

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No.1700/2022

Date of presentation of Appeal.....29.11.2022
Date of Hearing.....13.07.2023
Date of Decision.....13.07.2023

**Mr. Muhammad Tayyab Abbas, Chief Drug Inspector (BPS-19),
Health Department, Police Services Hospital, Peshawar.....Appellant**

Versus

1. **The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
2. **The Secretary to Government of Khyber Pakhtunkhwa Health Department.**
3. **The Director General, Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.....(Respondents)**

Service Appeal No.1748/2022

Date of presentation of Appeal.....06.12.2022
Date of Hearing.....13.07.2023
Date of Decision.....13.07.2023

Mr. Zia Ullah, Drug Inspector (BPS-17), Health Department Khyber Pakhtunkhwa Peshawar under transfer to District Bannu.....Appellant

Versus


1. **The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
2. **The Secretary to Government of Khyber Pakhtunkhwa Health Department.**
3. **The Director General, Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.....(Respondents)**

Service Appeal No.1873/2022

Date of presentation of Appeal.....20.12.2022
Date of Hearing.....13.07.2023
Date of Decision.....13.07.2023

**Mr. S.M-Asad Halimi, Chief Drug Inspector (BS-19) District Kohat
.....Appellant**

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Service Tribunal
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Versus

1. The Chief Secretary, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
1. The Secretary to Government of Khyber Pakhtunkhwa Health Department.
2. The Director General, Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.....(Respondents)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For the appellants
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 22.08.2022 ISSUED IN SHEET VIOLATION OF THE APEX COURT'S JUDGMENT REPORTED IN 2022 SCMR 439 READ WITH LETTER DATED 14.02.2022, JUDGMENT OF THE AUGUST PESHAWAR HIGH COURT DATED 28.09.2022 RENDERED IN W.P NO.3508-P/2022 RESPECTIVELY, WHILE PARTIALLY EXECUTING THE JUDGMENT OF THIS AUGUST TRIBUNAL DATED 06.12.2021 AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANTS WITHIN STATUTORY PERIOD OF NINETY DAYS.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment the above three appeals are being decided as they are similar in nature and almost with the same contentions, therefore, can be conveniently decided together.

2. Facts of the appeals as enumerated in the memoranda and grounds are summarized as under:

a. Muhammad Tayyab Abbas SA 1700 of 2022:

Earlier against his transfer, vide order dated 30.04.2020, from the post of Chief Drug Inspector Mardan to the post of Chief

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Pharmacist Services Hospital, Peshawar, the appellant Tayyab

Abbas filed SA No.10535/2020 with the following prayer:

"On acceptance of this appeal the respondents may kindly be directed to pass an order in favor of the appellant in the following terms:-

- i. Declare that the impugned Notification No. SOH-III/7-262/2020 DATED 30 APRIL, 2020 is void ab initio. Therefore, the respondents may kindly be directed to withdraw the impugned notification.*
- ii. The posting/transfer be done in a rational manner as per the prevailing laws, the appellant is redressed & to get his constitutional rights through this Hon'ble Service Tribunal.*
- iii. That the appellant order of illegal ex-cadre transfer/posting may kindly be revoked and continue his services in his own cadre i.e. Drug Inspector*
- iv. Grant any other relief which is deemed appropriate by this Hon'ble Service Tribunal in the circumstances of the case."*

b. Ziaullah SA 1748 of 2022

Against his transfer, vide order dated 06.10.2020, from the post of Drug Inspector Lower Dir to the post of Pharmacist DHQ Hospital, Lower Dir, the appellant Ziaullah filed SA No.16579 of 2020 with following prayer:

"That on acceptance of this appeal the impugned Notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from the post of Drug Control Unit, Temargara, District Dir Lower. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant."

c. SM Asad Halimi SA 1873 of 2022

Against his transfer, vide order dated 30.04.2020, from the post of Chief Drug Inspector Kohat to the post of Chief Pharmacist

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Service Tribunal
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DHQ Hospital, KDA, Kohat, the appellant SM Asad Halimi
filed SA No. 10301 of 2020 with the following prayer:-


"On acceptance of this appeal the respondents may kindly be directed to pass an order in favor of the appellant in the following terms:-

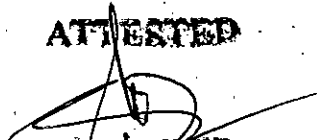
- j. Declare that the impugned Notification No. SOH-III/7-262/2020 DATED 30 APRIL, 2020 is void ab initio. Therefore, the respondents may kindly be directed to withdraw the impugned notification.*
- ii. The posting/transfer be done in a rational manner as per the prevailing laws, the appellant is redressed & to get his constitutional rights through this Hon'ble Service Tribunal.*
- iii. That the appellant order of illegal ex-cadre transfer/posting may kindly be revoked and continue his services in his own cadre i.e. Drug Inspector*
- iv. Grant any other relief which is deemed appropriate by this Hon'ble Service Tribunal in the circumstances of the case."*

3. The appeals of the appellants and others were decided on 06.12.2021 vide consolidated judgment passed in SA No.16578 of 2020 titled "Manzoor Ahmad versus Chief Secretary and others", in the following manner:

"For what has gone above, all the appeals with their respective prayers are accepted as prayed for. Consequently, the impugned order is set aside and respondents are directed not to transfer the appellants from the post of Drug Inspector or Drug Analyst as the case may be."

It is the contention of the appellants in these appeals that instead of compliance of the judgment dated 06.12.2021 to the respective prayers of the appellants, issued an impugned transfer Notification on



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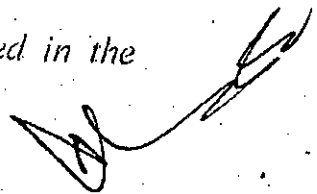
30.04.2022 (in cases of appellant Tayyab Abbas and SM Asad Halimi) & Notification dated 22.08.2022 (in the case of Ziaullah appellant), under the garb of compliance, transferring the appellants from their respective places of postings to other stations; that the appellants filed departmental appeals but those were not decided within 90 days compelling the appellants to file these appeals.

4. On receipt of the appeals and their admission to full hearing, the respondents were summoned. They put appearance and contested the appeals by filing written replies raising therein numerous legal and factual objections. The defense setup was a total denial of the claims of the appellants. It was mainly contended that the matters of transfer of the appellants had already been adjudicated by this Tribunal on 31.10.2022 in execution Petition No.4821/2021 and by the honourable Peshawar High Court in WP No.3508-P/2022, therefore, the appeals were hit by the principle of res-judicata; that after issuance of the Notifications dated 30.04.2022 and 22.08.2022, the appellants filed execution applications to get the above notifications set aside but the Tribunal decided the execution applications jointly through order dated 31.10.2022 in the following manner:

"In the above state of affairs when we see the notification dated 22.08.2022, issued in compliance of the judgment, it appears that the judgment had been implemented in its letter and spirit and we cannot allow anybody to exploit the terms by making self-beneficial interpretation and to get any relief which was not granted in the

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judgment. Therefore, the contention of the petitioners that they could not be transferred from the stations they were previously posted, is not well founded."

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5. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.

6. The Learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned Deputy District Attorney controverted the same by supporting the impugned orders.

7. In the earlier round of litigation, the contention of the appellants was that they should not be posted against wrong cadres, which contention was allowed by the Tribunal in its Judgment dated 06.12.2021 and vide Notification dated 22.08.2022, in compliance with the said judgment, the appellants and others were posted against their original posts/assignments/cadre. The stance of the appellants in the execution petitions, filed by them, was to get implemented the judgment dated 06.12.2021 passed in SA No.16578/2021. According to them, their subsequent transfer, to other stations, vide Notification dated 22.08.2022, could not be made in lieu of the judgement. The prayers in these appeals are also the same as they want to set aside their transfer order made by the official respondents in compliance with the judgment dated 06.12.2021. The instant appeals are thus hit by rule 23 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974.

Rule 23 of the above Rules is as under:



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"23. No entertainment of appeal in certain cases:-No Tribunal shall entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a Court or a Tribunal of competent jurisdiction."

Word 'matter' has been used in the above rule. The matter of subsequent transfers and postings of the appellants from their previous places/stations, made vide the impugned Notification, is directly and substantially in issue in these appeals. The same issue was agitated by the present appellants in the execution applications when their subsequent transfer order was made on 22.08.2022. The appellants had urged in the execution applications that in view of the judgment dated 06.12.2021, they could not be transferred vide order dated 22.08.2022 from their previous place(s)/station(s) of posting, while, as aforesaid, in these appeals, their prayers are also the same. Therefore, the matter directly and substantially in issue in these appeals was decided by the Tribunal while deciding the execution applications on 31.10.2022. These appeals are thus hit by the principle of res-judicata.

The matters of the impugned transfer orders of the appellants were taken up and decided in the execution applications filed by the appellants prior to their filing of these appeals. The same were decided by the Tribunal on 31.10.2022 in detail. The relevant portion of the order deciding such matters, is as under:

"12.

During the pendency of the above petitions, respondents, in compliance with the judgment dated 06.12.2021, in Service Appeal No.16578/2020, produced a copy of Notification No.SOH-III/7-262/2022(Drug Inspector) dated

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22.08.2022, vide which the petitioners were dealt with in the following manner:-

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S. No	Name of Officers & Designation	From	To	Remarks
1	Syed Muhammad Asad Halimi Chief Drug Inspector BS-19	Chief Pharmacist (BS-19), KDA, Kohat	Chief Drug Inspector (BS-19), District D.I. Khan	Against the vacant post
2	Tayyab Abbas Chief Drug Inspector BS-19	Chief Pharmacist (BS-19) Services Hospital Peshawar	Chief Drug Inspector (BS-19), District Abbottabad	Against the vacant post.
3	Amin ul Haq Senior Drug Inspector (BS-18)	Already under report to DG.DC&PS on account of disciplinary proceeding under E&D Rules, 2011		
4	Arif Hussain Analyst (BS-18)	Senior Pharmacist (BS-18), Services Hospital, Peshawar	Drug Analyst (BS-18), Drug Testing Laboratory (DTL), Peshawar.	Against the vacant post.
5	Manzoor Ahmad, Drug Inspector (BS-17)	Drug Inspector (BS-17), District Peshawar	Drug Inspector (BS-17), District Dir Lower.	Against the vacant post.
6	Zia Ullah Drug Inspector BS-17	Drug Inspector (BS-17) District Dir, Lower.	Drug Inspector (BS-17) District Bannu	Against the vacant post
7	Muhammad Shoaib Khan Drug Inspector (BS-17)	Already under report to DG. DC&PS on account of disciplinary proceedings under E&D Rules, 2011.		
8	Shazada Mustafa Anwar Drug Inspector BS-17	Waiting for posting at Directorate of Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar	Drug Inspector (BS-17) District Karak	Against the vacant post.

13. The above petitions were taken up for decision on 14.09.2022 when the learned counsel for the petitioners informed the Tribunal that he

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had filed four (4) more execution petitions on 14.09.2022, so it was deemed appropriate that let all the petitions be decided together and, therefore, the above petitions were adjourned for 31.10.2022 for decision of the same.

14. In the newly instituted execution petitions No.533/2022, 534/2022, 535/2022 and 536/2022, the petitioners prayed that the judgment might be implemented in true letter and spirit without wasting the precious time of the Tribunal as well as to avoid unnecessary rounds of litigation. It is, however, urged in paragraph 6 of all the newly filed execution petitions that the respondent/department submitted compliance notification issued on 22.08.2022, which was totally in defiance of the judgment whereas proper compliance of the judgment as desired by the Tribunal was to be made and for which basically the appeals were accepted as prayed for.

15. The main stress of the learned counsel for the petitioners was that as all the appeals with their respective prayers were accepted as prayed for, therefore, the petitioners could not be transferred from the stations they were already posted.

16. It is cardinal principle that while judging the intention of a document, the construction of the document has to be seen and for the purpose not any portion but the whole/entire document has to be seen. Keeping in view the above principle, paragraph 10 of the judgment is worth reproduction, which reads as under:

"10. From the divergent pleadings of parties particularly discussed herein before, the main question wanting determination is, whether vice versa transfer of the holders of the post of Drug Inspector/Analyst and of Pharmacist is reasonably doable? "

17. The rest of the paragraphs of the judgment have answered the above, one and the only formulated question/point for determination in detail and the finding was in negative, which by all means very clearly speaks that the only issue before the Tribunal was whether vice versa transfer of the holders of the post of Drug Inspector/Analyst and of Pharmacist is reasonably doable and that was decided in negative. Thus by no stretch of imagination it could be inferred from the judgment that it also intended not to transfer the petitioners from one station to another. True

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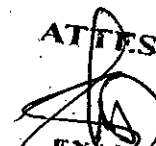
that all the appeals with their respective prayers were accepted as prayed for but with specific and quite clear resultant consequence of setting aside the impugned order and not transferring the appellants from the post of DRUG INSPECTOR or DRUG ANALYST as the case may be. This condition of the order, after acceptance of the appeals, has restricted the relief to the above extent only i.e. the Drug Inspectors should remain posted as Drug Inspectors while Drug Analyst should remain posted as such etc and none of the two or of any other category could be given posting against any other category. Therefore, this Tribunal, while executing the judgment and sitting as executing court, cannot extend the relief by giving that any other meaning or import, especially, to extract the meaning that the petitioners could not be transferred from the stations they are already posted.

18. There is no denying the fact that the executing court cannot go beyond the terms of the decree/order/judgment it stands for and it cannot modify these terms or deviate from them in exercise of its power of execution rather it has to execute/implement the judgment/decreed/order strictly in the terms of the same.

19. In the above state of affairs when we see the notification dated 22.08.2022, issued in compliance of the judgment, it appears that the judgment had been implemented in its letter and spirit and we cannot allow anybody to exploit the terms by making self-beneficial interpretation and to get any relief which was not granted in the judgment. Therefore, the contention of the petitioners that they could not be transferred from the stations they were previously posted, is not well founded."

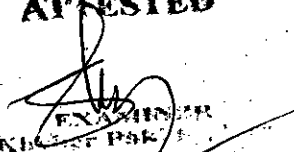
8. On merits, we see no good ground to set aside the impugned order/transfer Notification rather the same appears to us to be in conformity with the terms of the earlier judgment of the Tribunal handed down in Service Appeal No.16578 of 2021 as regards posting of the officers against their own cadre posts while as regards the contention of the appellants that they ought not to have been transferred from their previous places/stations of postings, it has no force being ill founded. It

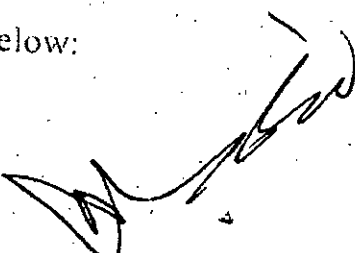


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may be added that the appellants Muhammad Tayyab Abbas and SM Asad Halimi, both, were Chief Drug Inspectors (BPS-19) and were transferred against the wrong cadre of Chief Pharmacists (BPS-19) while the appellant Ziaullah was Drug Inspector (BPS-17) and was transferred on 06.10.2020 against the wrong cadre of Pharmacist (BPS-17). Some others were also transferred in the same order. All the aggrieved persons, including the appellants, filed appeals that they should not be transferred against wrong cadre. Their pleas were accepted. They were consequently transferred vide the impugned Notification dated 22.08.2022 but the appellants are again aggrieved and contend that they should not have been transferred even from the stations they were earlier posted. The only ground taken by the appellants is that the impugned transfer Notification was against the terms of the Judgment dated 06.12.2021 of this Tribunal. When we peruse the judgment, it is not like that, rather the crux of the judgment is that the appellants of those appeals, including the present appellants, should not be posted against wrong cadres and this is what the respondents have done vide the impugned Notification. Now, for the transfer of a civil servant from one station/place, the Government of Khyber Pakhtunkhwa has devised/notified a posting/transfer policy setting out certain conditions but none of those conditions are pressed in the service appeals by either of the three appellants. Otherwise it is the prerogative of the Government under section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 to post a civil servant anywhere in the province. Section 10 is reproduced below:

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"10. 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"

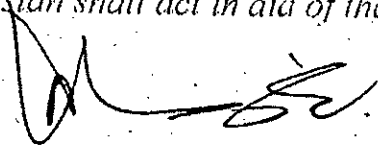
Therefore, in the absence of any ground much less convincing, the impugned transfer Notification is hardly open to any exception.

9. Now coming to the second contention of the appellants that the impugned Notifications of Transfer were in sheer violation of the judgment of the Supreme Court of Pakistan reported as "2022 SCMR 439", it is observed that before filing of these appeals, a writ petition No.3508/2022 was filed in the Peshawar High Court with the same contention. The Peshawar High Court decided the writ petition on 28.09.2022 with the observation that this Tribunal was very much clothed with the jurisdiction and authority to implement the decision of the august Apex Court in terms of Articles 189 and 190 of the Constitution and petitioners can validly agitate the same before this Tribunal. Article 189 of the Constitution of Islamic Republic of Pakistan, 1973 is as under:

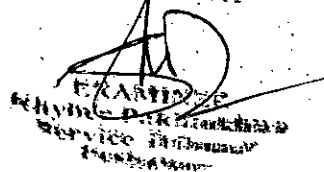
"189. Decisions of Supreme Court binding on other Courts.-Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other Courts in Pakistan."

Article 190 is also reproduced:

"190. Action in aid of Supreme Court.-All executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court."



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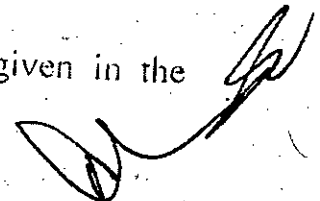
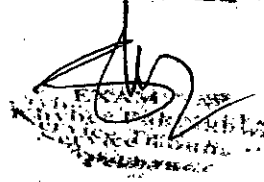
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Under Article 189 of the Constitution of Islamic Republic of Pakistan the decision of the Supreme Court of Pakistan to the extent that decides a question of law or is based upon or enunciates a principle of law has been made binding on all other courts in Pakistan yet in a case reported as *Shahid Pervaiz v Ejaz Ahmad and others* 2017 SCMR 206, the Supreme Court of Pakistan held as under:

"A fourteen Member Bench of this Court in the case of Justice Khurshid Anwar Bhinder v. Federation of Pakistan (PLD 2010 SC 483), has concluded that where the Supreme Court deliberately and with the intention of settling the law, pronounces upon a question of law, such pronouncement is the law declared by the Supreme Court within the meaning of Article 189 and is binding on all the Courts of Pakistan. It cannot be treated as mere obiter dictum. Even obiter dictum of the Supreme Court, due to high place which the Court holds in the hierarchy in the country enjoys a highly respected position as if it contains a definite expression of the Court's view on a legal principle, or the meaning of law".

Therefore, and especially when the Establishment Department of the Government of Khyber Pakhtunkhwa, vide letter No. SO(Lit-1)E&AD/1-1/2020 dated 14.02.2022 circulated the relevant part of the above judgment of the Supreme Court, amongst all the functionaries of the provincial government with the direction to comply with the orders/directions contained in the said judgment in letter and spirit in future, the mere mentioning of the words 'Competent Authority' and missing the name(s) of such Competent Authority in the impugned Notification dated 22.08.2022 besides not writing name under the signature of the Secretary to Government of Khyber Pakhtunkhwa Health Department, both, are not in compliance with the directions of the august Supreme Court of Pakistan. The directions given in the

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Judgment was to issue requisite orders/directions to all the Courts and Departments/functionaries that they, semi-government and statutory organizations, whenever issuing notifications, orders, office memoranda, instructions, letters and other communications must disclose the designation and the name of the person issuing the same to ensure that it is by one who is legally authorized to do so, and which will ensure that such person remains accountable. The purpose of the direction of writing designation and name has been specified by the Supreme Court in the above underlined portion. Since the appellants have only prayed that the respondents might be directed to act upon/implement properly the judgment of the Supreme Court of Pakistan.

10. Therefore, while dismissing these appeals, we direct that the Judgment of Supreme Court of Pakistan shall be acted upon by modifying the impugned Notification accordingly within 15 days of receipt of this Judgment under intimation to the Tribunal through its Registrar. Costs to follow the event. Consign.

11. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 13th day of July, 2023.*

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


KALIM ARSHAD KHAN
Chairman


FAREEHA PAUL
Member (Executive)

Date of Presentation of Application 09/07/23
Number of Words 14-1
Sealing Fee 700
Rent 15
Date of Delivery of Copy 09/07/23

MOST IMMEDIATE
COURT MATTER



6 (30) -41-
GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(JUDICIAL WING)

No SO(Lii-I)E&AD/1-1/2020
Dated: Peshawar, the 14.02.2022

To

1. The Senior Member Board of Revenue.
2. The Additional Chief Secretary, P&D Department.
3. All Secretaries to the Government of Khyber Pakhtunkhwa.
4. All the Commissioners, Khyber Pakhtunkhwa.
5. The Secretary, KP Public Service Commission, Peshawar.
6. All Heads of Attached Departments/ Autonomous Bodies in KP.
7. All the Deputy Commissioners, Khyber Pakhtunkhwa.

Subject: - JUDGMENT AS TO DISCLOSURE OF DESIGNATION & NAME OF THE "COMPETENT AUTHORITY" WHILE ISSUING NOTIFICATIONS, ORDERS, OFFICE MEMORANDUMS, INSTRUCTIONS, LETTERS AND OTHER COMMUNICATIONS ETC.

I am directed to refer to the subject cited above and to state that the Hon'ble Supreme Court of Pakistan in its Judgment dated 30.12.2021 passed in the C.A No. 62-K of 2021 arising out of C.P No. 407-K of 2019 has passed certain orders/ given directions, the operative part whereof is reproduced as under:-

"For the reasons mentioned above, this petition is converted into an appeal and allowed and the impugned judgment of the Tribunal is set aside. We are also convinced that there is a need to put a stop to the use of the illusive and elusive term – the *competent authority* without disclosure of the competent authority's designation and name. Therefore, the governments of Sindh (petitioner No. 01) Baluchistan, Khyber Pakhtunkhwa, Punjab, the Government of Pakistan, Registrars of the Supreme Court and all High Courts, and through the Registrars of the High Court's all District and Sessions Courts, are required to issue requisite orders/ directions that they and their respective functionaries, semi-governments and statutory organizations whenever issuing notifications, orders, office memorandums, instructions, letters and other communications must disclose the designation and the name of the person issuing the same to ensure

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that it is by one who is legally authorized to do so, and which will ensure that such person remains accountable. Copies of this Judgment be sent to the Secretary, Establishment Division, Government of Pakistan, to the Chief Secretaries of the Provinces, to the head of the Islamabad Capital Territory, Registrars of the Supreme Court and all High Courts who are directed to issue requisite orders/ directions and to **publish the same in their respective gazettes** or ask the concerned government to do so. Compliance report be submitted for our consideration in chamber by or before 1 March 2022."

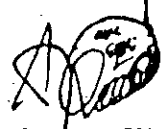
You are therefore, requested to comply with the orders/ directions contained in the said Judgment in letter & spirit in future.

*Chief Secretary, Govt. of
Khyber Pakhtunkhwa*

Endst: of even No. & Date.

Copy forwarded for information to the:-

1. Registrar, Supreme Court of Pakistan at Islamabad.
2. Deputy Registrar, Supreme Court of Pakistan M.R. Kayani Road, Karachi with reference to his letter No. C.A62-K of 2021 arising out of No. C.P 407-K of 2019 dated 26.01.2022.
3. Manager, Printing Press Peshawar for issuing it in the official gazette of Khyber Pakhtunkhwa.
4. All Additional Secretaries/ Deputy Secretaries in Establishment & Administration Department.
5. PS.to Chief Secretary, Khyber Pakhtunkhwa.
6. All Section Officers/ Estate Officers in Establishment & Administration Department.
7. PS to Secretary Establishment Department, Khyber Pakhtunkhwa.
8. PS to Special Secretary (Estt), Establishment Department, Khyber Pakhtunkhwa.
9. PA to Additional Secretary (Judicial), Establishment Department.
10. PA to Deputy Secretary (Judicial), Establishment Department.
11. Master File.



*(Mukaram Khan)
Section Officer (Litigation-I)*

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of the original

از دفتر اسٹنٹ کمشنر میرانشاہ شمالی وزیرستان

"H"

نوٹس

-43-

Mrs. SEEMA SHUJA

بنام

بذریعہ ایریا محرر شی میرانشاہ

آپ کو مطلع کیا جاتا ہے کہ آپ کو آرڈر نمبر 74۔۔۔ میں غیر قانونی طور پر مقیم ہیں۔ لہذا آپ کو بذریعہ نوٹس بذراستلاع

کیا جاتا ہے۔ کہ تین (03) دن کے اندر راندوٹہ کورہ کو آرڈر خالی کریں۔ ورنہ آپ کے خلاف قانونی کارروائی عمل میں لائی جائیگی۔
نوٹس بعد از قبیل واپس داخل دفتر کیا جائے۔

بجانب
اسٹنٹ کمشنر میرانشاہ
شمالی وزیرستان

04/08/2023

مورخہ:

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از دفتر کمشنر میرانشاہ شمالی وزیرستان

نوٹس

نام Mrs. SEEMA SHUJA

بذریعہ البریا محروسہ میرانشاہ

آپ کو مطلع کیا جاتا ہے کہ آپ کو ادھر نمبر 74 میں منبر ٹالوئی

طور پر مقیم ہیں۔ لہذا آپ کو بذریعہ نوٹس یہ اطلاع کیا جاتا ہے کہ تین (03)

دن کے اندر مذکورہ کو ادھر خالی کریں۔ ورنہ آپ کے خلاف قانونی کارروائی

محکم میں لائی جائیگی۔

نوٹس بعد از تعمیل واپس داخل دفتر کیا جاوے

اسسٹنٹ کمشنر میرانشاہ

شمالی وزیرستان

مورخہ 04/8/23

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Advocate



DITRICT EDUCATION OFFICER FEMALE
NORTH WAZIRISTAN DISTRICT



Phone: (0928) 311907 Email Address: deofemalenwtd@gmail.com

No. 7198-96 /DEO(F)/NWD

Dated 2/08/2023

To

District Account officer,
North Waziristan District.

Subject: **STOPPAGE OF PAY.**

Reference to the transfer order issued by worthy Secretary Education Khyber Pakhtunkhwa Peshawar Notification No.F.10/(1) 2023-Elec- II dated 11-03-2023, you are requested that the salary of Mst: Seema Gul Princiapal BS-19 Personal No: 50177820 may be stopped /in-active with immediate effect in the best interest of public service.

Aniqa Humaira
(ANIQA HUMAIRA AUQEER)
DISTRICT EDUCATION OFFICER (F),
NORTH WAZIRISTAN DISTRICT

Copy to the:

1. Secretary E&SE Department Khyber Pakhtunkhwa Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa Peshawar.
3. Office record.

Aniqa Humaira
DISTRICT EDUCATION OFFICER (F),
NORTH WAZIRISTAN DISTRICT

ATTESTED

[Signature]
to be true copy
Date: 02/08/2023

ELECTION COMMISSION OF PAKISTAN
NOTIFICATION

Islamabad the 22nd January, 2023

F.No.2(1)/2023-Cord. WHEREAS, the Provincial Assemblies of Punjab and Khyber Pakhtunkhwa under Article 112 of the Constitution of the Islamic Republic of Pakistan stand dissolved on 14th and 10th January, 2023 respectively;

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

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

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

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

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

This Issues with the approval of Election Commission of Pakistan.

(Omar Hamid Khan)
Secretary
Election Commission of Pakistan

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to 4/10/23 COPY

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Handwritten signature and text below the stamp

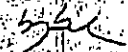
Copy forwarded for information to the:

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

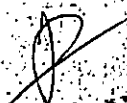
II. Copy also forwarded to the:

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

ECP Secretariat, Islamabad.


(Shahid Iqbal)
Additional Director General
(Elections)

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VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Appeal No /2023

SIMA GUL

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

EDUCATION DEPTT

(RESPONDENT)
(DEFENDANT)

I/We Appellant.

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. / /202



CLIENT

ACCEPTED


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT


WALEED ADNAN


KAMRAN KHAN


UMAR FAROOQ MOHMAND


MUHAMMAD AYUB

&


MAHMOOD JAN
ADVOCATES

OFFICE:

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