

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	04.01.2016	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>PESHAWAR.</u></p> <p style="text-align: center;">APPEAL NO.1099/2015</p> <p>(Dr. Sameen Khan-vs-Additional Chief Secretary FATA, FATA Secretariat, Warsak Road Khyber Pakhtunkhwa, Peshawar and others).</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>ABDUL LATIF, MEMBER:</u></p> <p>Counsel for the appellant (Mr. Noor Mohammad Khattak, Advocate) and Additional Advocate General (Mr. Muhammad Adeel Butt) for respondents present.</p> <p>2. The instant appeal has been filed by the appellant under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act-1974 against the impugned order dated 02.07.2015 whereby the appellant was transferred to Agency Headquarter Hospital Ghallanai Mohamand Agency from Civil Hospital Jamrud Khyber Agency pre-maturely and in violation of the principle of locus poenitentiae and against not taking action on the departmental appeal of the appellant within the statutory period of ninety days. He prayed that on acceptance of this appeal the impugned transfer order dated 02.07.2015 may very kindly be set aside and the respondents may be directed not to transfer the appellant from Civil Hospital Jamrud Khyber Agency till</p>

completion of his normal tenure.

3. Brief facts giving rise to the instant appeal are that appellant is serving in the respondent-department as Senior Medical Officer (BPS-18). That vide notification dated 03.01.2014 the appellant was transferred from the post of Agency Surgeon Khyber Agency to the post of Incharge Civil Hospital Jamrud Khyber Agency. That in response the appellant submitted his charge report appellant started performing his duty at the concerned station with the utmost satisfaction of his superiors. That appellant while serving as Incharge Civil Hospital Jamrud Khyber Agency an order dated 23.06.2015 was issued due to which the appellant was pre-maturely transferred to AHQ Hospital Ghallanai Mohmand Agency vice private respondent No.4. That feeling aggrieved the appellant knocked the door of the respondent No.2 and 3 and in response the transfer order dated 23.06.2015 was canceled by the respondent No.3 vide order dated 26.06.2015. That astonishingly just after six days the appellant was again transfer from Civil Hospital Jamrud Khyber Agency to AHQ Hospital Ghallanai Mohmand Agency pre-maturely vide impugned order dated 02.07.2015. That appellant preferred departmental appeal on 07.07.2015 which was not responded, hence the instant appeal.

4. The learned counsel for the appellant argued that appellant was posted as Incharge Civil Hospital Jamrud Khyber Agency on 06.01.2014 and was transferred pre-maturely to Agency Headquarter Hospital Ghallanai Mohmand Agency on

	<p style="text-align: center;">A.F.C.</p>	<p>23.06.2015. His request for cancellation of transfer was acceded by respondent No.3 who vide order dated 26.06.2015 withdrew transfer order dated 23.06.2015. The appellant was however again transferred to Agency Headquarter Hospital Ghallanai Mohmand Agency vide impugned order dated 02.07.2015. His departmental appeal dated 07.07.2015 was not responded which resulted in the Service Appeal before the Hon'able Tribunal. He argued that the said transfer order was in violation of Clause I and IV of transfer/posting policy of the Provincial Government. He further argued that Provincial Government vide circular dated 27.02.2013 with reference to Constitution Petition No. 23 of 2012 in Suo-Moto case No. 3/2012 (Petition in Mst. Anita Turab for protection of civil servants registered under Article 184(3) of the constitution of Islamic Republic of Pakistan, 1973) instructed all the concerned departments of the Provincial Government to strictly abide by the policy of tenure regarding posting and transfer of the Civil Servants and the impugned transfer was also violative of the said circular. He contended that the transfer order was based on malafide as in the first instance the original transfer order dated 23.06.2015 was withdrawn but vide impugned order the appellant was again transferred to Mohmand Agency without allowing him to complete the tenure which was two years He prayed that the appeal may be accepted and the impugned order may be set aside.</p> <p>5. The learned Addl: AG resisted the appeal and argued that the appellant was posed in Civil Hospital Jamrud on 03.01.2014 and on completion of the normal tenure which is 1-1/2 years for</p>
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FATA, he was posted in Agency Headquarter Hospital Ghallanai Mohmand Agency on 23.06.2015. He further argued that the said order was cancelled by incompetent authority and hence formal order of his posting to Ghallanai, Mohmand Agency were issued on 02.07.2015 with the approval of the competent authority. He further argued that under Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, a civil servant is liable to serve anywhere and there was no violation of any law/rules by issuing impugned transfer order. He further argued that departmental appeal was not made to the competent authority who in the instant case was Secretary Social Sectors, FATA. He prayed that the appeal being devoid of any merits may be dismissed. He relied on 2011 PLC (C.S)863.

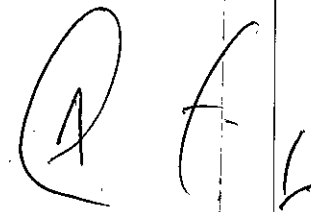
6. Learned counsel for the appellant in rebuttal argued that it was the duty of the concerned forum to refer the departmental appeal to the relevant correct forum and mere addressing representation to a wrong forum would not vitiate the purpose of the representation. He relied on 2003 SCMR 104 and 2005 PLC (C.S) 1042.

7. Arguments of learned counsels for the parties heard and record perused with their assistance.

8. From perusal of the record, it transpired that the appellant was transferred from Civil Hospital Jamrud to Agency Headquarter Hospital, Ghallanai Mohmand Agency after completion of almost 1-1/2 year in the said station. Under the

posting/transfer policy of the Provincial Government normal tenure of posting is two years for settled areas, 1-1/2 years for FATA and one year for hard areas and on a query of the Tribunal as to how Khyber Agency was covered under the tenure of two years meant for settled area, the learned counsel could not produce any documentary evidence in support of his contention. It revealed from the record that normal tenure of posing under the policy of the Provincial Government in FATA is 1-1/2 years which the present appellant has already completed, hence his grievance regarding his transfer out from Khyber Agency to Mohmand Agency is not based on sound footing. This being so, the Tribunal is constrained not to interfere in the case and the appeal being devoid of any merits is therefore dismissed. Parties are left to bear their own costs. File be consigned to the record.


(MUHAMMAD AZIM KHAN AFRIDI)
CHAIRMAN


(ABDUL LATIF)
MEMBER

ANNOUNCED
04.01.2016

03.12.2015

Counsel for the appellant and Mr. Maaz Madni, Assistant Litigation Officer alongwith Addl: A.G for respondents present. Para-wise comments on behalf of respondents No. 1 to 3 submitted. The appeal is assigned to D.B for rejoinder and final hearing for 4.1.2016.


Chairman

14.10.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as SMO at Civil Hospital Jamrud when subjected to frequent transfer orders and finally vide impugned order dated 2.7.2015 he was transferred to Agency Headquarter Hospital Ghailanai, Mohmand Agency regarding which he preferred departmental appeal on 7.7.2015 which was not responded and hence the instant service appeal on 7.10.2015.

That the transfer order is not in the public interest, premature, malafide and politically motivated.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 29.10.2015 before S.B. Notice of stay application be also issued for the date fixed.

Appellant Deposited
Security & Process Fee




Chairman

29.10.2015

Counsel for the appellant and Mr. Maaz Madni, Assistant Litigation Officer alongwith Addl: A.G for official respondents No. 1 to 3 present. Requested for adjournment. None present on behalf of private respondent No. 4. Proceeded ex-parte. To come up for written reply/comments on 23.11.2015 before S.B.


Chairman

23.11.2015

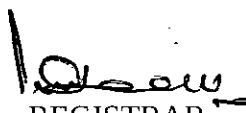

Counsel for the appellant and Mr. Maaz Madni, Assistant Litigation Officer alongwith Addl: A.G for official respondents No. 1 to 3 present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 3.12.2015 before S.B.


Chairman

FORM-A

Court _____

Case No. 1099 / 2015

	Date of Order/ Proceedings	Order or other proceedings with signature of Judge/Magistrate
1.	7.10.2015	<p>The appeal of Mr. Sameen Khan, presented today by Mr. Noor Muhammad Khattak, advocate, may be entered in the institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2.	13-10-2015	<p>This case be put up before the S.B for preliminary hearing on <u>14-10-2015</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO 1099 /2015

Dr. Sameen Khan

VS

A.C.S FATA & Others

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APPELLANT

THROUGH:



NOOR MOAHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1099 /2015

K.W.P. Province
Service Tribunal

Diary No. 1185

Dated 7.10.15

Dr. Sameen Khan, Senior Medical Officer (BPS-18),
Incharge Civil Hospital Jamrud, Khyber Agency under transfer to
Agency Head Quarters Hospital Gallanai, Mohmand Agency.

..... APPELLANT

VERSUS

- 1- The Additional Chief Secretary FATA, FATA Secretariat, Warsak Road Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Social Sector Department, FATA Secretariat, Warsak Road, Khyber Pakhtunkhwa, Peshawar.
- 3- The Director Health Services FATA, FATA Secretariat, Warsak Road, Peshawar.
- ④- Dr. Nusrat Shah, Senior Medical Officer (BPS-18), Agency Headquarters Hospital Ghallanai, Mohmand Agency.

.....RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 2.7.2015 WHEREBY THE APPELLANT WAS TRANSFERRED TO AGENCY HEADQUARTER HOSPITAL GHALLANAI MOHMAND AGENCY FROM CIVIL HOSPITAL JAMRUD KHYBER AGENCY PRE-MATURELY AND IN VIOLATION OF THE PRINCIPLE OF LOCUS POENITENTIAE AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned transfer order dated 2.7.2015 may very kindly be set aside and the respondents may be directed not to transfer the appellant from Civil Hospital Jamrud Khyber Agency till completion of his normal tenure. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That appellant is the senior most employee of the respondent Department and presently serving the respondent Department as Senior medical Officer (BPS-18) quite efficiently and up to the entire satisfaction of his superiors.

*Ex parte
vide order
sheet dated
29/10/15*

*Filed today
29/10/15*

- 2- That vide Notification dated 3.1.2014 the appellant was transfer from the post of Agency Surgeon Khyber Agency to the post of Incharge Civil Hospital Jamrud Khyber Agency. That in response the appellant submitted his charge report appellant started performing his duty at the concerned station with the utmost satisfaction of his superiors. Copy of the notification dated 3.1.2014 is attached as annexure **A.**

- 3- That appellant while serving as Incharge Civil Hospital Jamrud Khyber Agency an order dated 23.6.2015 was issued due to which the appellant was pre-maturely transferred to AHQ Hospital Ghallanai Mohmand Agency vice private respondent No.4. That feeling aggrieved the appellant knocked the door of the respondent No. 2 and 3 and in response the transfer order dated 23.6.2015 was cancelled by the respondent No.3 vide order dated 26.6.2015. Copies of the transfer order dated 23.6.2015 and cancellation order dated 26.6.2015 are attached as annexure **B & C.**

- 4- That astonishingly just after six days the appellant was again transfer from Civil Hospital Jamrud Khyber Agency to AHQ Hospital Ghallanai Mohmand Agency pre-maturely vide impugned order dated 2.7.2015. Copy of the impugned order dated 2.7.2015 is attached as annexure **D.**

- 5- That appellant feeling aggrieved preferred Departmental appeal on 7.7.2015 but no reply has been received so far. Hence the present appeal inter alia on the following grounds. Copy of the Departmental appeal is attached as annexure **E.**

GROUND:

- A- That the impugned order dated 2.7.2015 is 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 by the respondent Department in accordance with law and rules 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 respondent Department violated the principle of Locus Poenitentiae while issuing the impugned order dated 2.7.2015.

- D-** That the impugned order dated 2.7.2015 is the violation of Clause I and IV of the transfer/posting policy promulgated by the Government of Khyber Pakhtunkhwa. Copy of the transfer/posting policy is attached as annexure **F.**
- E-** That the impugned order dated 2.7.2015 has not been issued in the public interest nor exigencies of service, therefore, not tenable and liable to be set aside.
- F-** That the respondent Department issued the impugned order dated 2.7.2015 with malafide manner.
- G-** That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 6.10.2015

APPELLANT



DR. SAMEEN KHAN

THROUGH:



**NOOR MOHAMMAD KHATTAK
ADVOCATE**

BEFORE THE KHYBER PAKHTUNKHEWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO _____ /2015

Dr. Sameen Khan

VS

A.C.S FATA & Others

APPLICATION FOR SUSPENSION OF OPERATION
OF IMPUGNED ORDER DATED 2-7-2015 TILL THE
DISPOSAL OF THIS APPEAL

R/SHEWETH:

- 1- That the appellant filed above mentioned appeal along with this application before this august service Tribunal in which no date has been fixed so far.
- 2- That all the three ingredients necessary for the stay is in favor of the appellant.
- 3- That the transfer of the appellant is against the transfer policy of the Government of Khyber Pakhtunkhwa and the impugned transfer order dated 2-7-2015 is also not issued in the public interest nor exigencies of public service.
- 4- That the grounds of main appeal is also be considered as integral part of this application.

It is therefore humbly prayed that on acceptance of this application the order dated 2-7-2015 may very kindly be suspended till disposal of this appeal.

APPELLANT

Sameen Khan

Dr. SAMEEN KHAN

THROUGH:

Noor Mohammad Khattak

NOOR MOHAMMAD KHATTAK
ADVOCATE

A-5

FATA SECRETARIAT SOCIAL SECTOR S DEPARTMENT.**OFFICE ORDER.**

As approved by the competent authority the following posting / transfer s amongst the officers of Directorate of Health Services,FATA are hereby ordered with immediate effect in the best interest of public.

Sno	Name of Officer	From	To	Remarks
1	Dr. Qasim BPS-18	Incharge CH: Jamrud Khyber Agency	Chief HSRU	Dr. Nazir DD Admin Health Directorate will be relieved of the additional charge of Chief HSRU
2	Dr. Muhammad Rehman BPS-18	DMS AHQ:Hospital Landikotal	Agency Surgeon Khyber	Vice No.3
3	Dr. Sameen BPS-18	Agency Surgeon Khyber	Incharge CH: Jamrud	Vice No.1

Endost: FS/SO –Health /SSD/5772, dated: 3.01.2014.

Sd/XXXXXX.

Secretary Social Sectors

OFFICE OF THE AGENCY SURGEON KHYBER AT JAMRUD.

No.22-30 /As-Khy.

Dated: 006/01/2014.

Cc:

1. DHS FATA- with reference to his endorsement No.377-87, dated: 6/01/2014.
2. MS AHQ:Hospital Landikotal.
3. APAs BARA, Jamrud, Landikotal.
4. Agency Accounts Officer Khyber.
5. Officers concerned.

ATTESTED

[Handwritten signature]

[Handwritten signature]
Agency Surgeon Khyber
7/1/2014

DIRECTORATE OF HEALTH SERVICES FATA
FATA SECRETARIAT WARSAK ROAD PESHAWAR

OFFICE ORDER.

As approved by the competent authority the following posting/transfer of doctors are hereby ordered in the interest of public service with immediate effect.

S. NO.	Name	From	To	Remarks
1.	Dr. Nusrat Shah SMO BPS-18	AHQ Hospital Ghallanai	Khyber Agency as Incharge Civil Hospital Jamrude	Vice No.2 below
2.	Dr. Sameen Khan SMO BPS-18	Khyber Agency	AHO Hospital Ghallanai	Vice No. 1 above

Sd/-
Director Health Services
FATA Peshawar

Endst: no. 6082-86/DHS/FATA/Admn

Dated 23/6/2015

Copy forwarded to the all concerned.

ATTESTED



B-6

DIRECTORATE OF HEALTH SERVICES FATA
FATA SECRETARIAT WARSAK ROAD PESHAWAR.

OFFICE ORDER

As approved by the competent authority, the following posting / transfer of doctors
is hereby ordered in the interest of public service with immediate effect.


Sr. No.	Name	From	To	Remarks
1	Dr. Noorul Shah SP-17-BE-18	AHQ Hospital Ghalianai	Khyber Agency as Incharge Civil Hospital Jamrud	Vice No. 2 below
2	Dr. Saad Khan SP-17-BE-10	Khyber Agency	AHQ Hospital Ghalianai	Vice No.1 above.

Sd/
Director Health Services,
FATA, Peshawar.

UHS/FATA/Admn Dated 23/06/2015

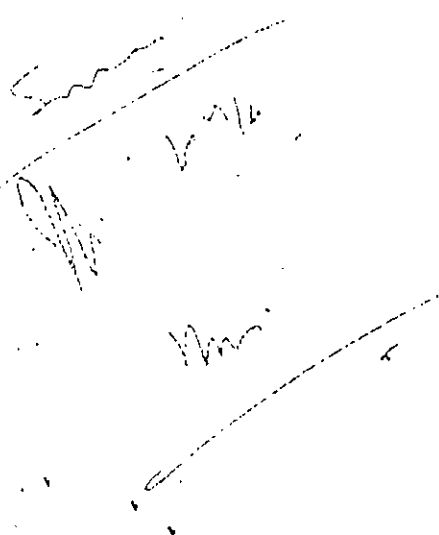
Forwarded to the:-

1. Agency Surgeon Khyber at Jamrud.
2. Medical Superintendent AHQ Hospital Ghalianai.
3. Agency Accounts Officer Khyber and Mohmand Agencies.
4. Officers concerned.


23/6/15
Director Health Services,
FATA, Peshawar

ATTESTED





C-7

**DIRECTORATE OF HEALTH SERVICES FATA
FATA SECRETARIAT WARSAK ROAD PESHAWAR.**

OFFICE ORDER

The office order issued by this Directorate bearing No. 16082-86 / DHS / FA Admn dated 23.06.2015 is hereby withdrawn.

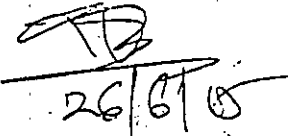
..Sd.....
Director Health Service
FATA, Peshawar.

16254-60

No. _____ /DHS/FATA/Admn Dated 26/06/2015

Copy forwarded to the:-

1. Agency Surgeon Khyber at Jamrud.
2. Medical Superintendent AHQ Hospital Ghallanai.
3. Agency Accounts Officers Khyber and Mohmand.
4. Officers concerned.


26/6/15
Director Health Service
FATA, Peshawar

ATTESTED



D-8



FATA SECRETARIAT
(ADMINISTRATIVE SERVICES SECTION) GOVERNMENT OF PESHAWAR
WARSAK ROAD PESHAWAR

Establishment Section

NOTIFICATION

No. F5/E/100-93 (Vol-8) 8249-SS The following posting/transfers are hereby ordered with immediate effect in the public interest:-

S.No	Name	From	To	Remarks
1.	Dr. Nusrat Shah SMO (BS-13)	Agency Headquarters Hospital Ghallana Mohmand Agency.	Incharge Civil Hospital Jamrud Khyber Agency	Vice No 2
2.	Dr. Sameen Khan SMO (BS-18)	Incharge Civil Hospital Jamrud Khyber Agency	Agency Headquarters Hospital Ghallana Mohmand Agency.	Vice No. 3

ADDITIONAL CHIEF SECRETARY (FATA)

Dated 02/7/2015

Copy to:-

- Secretary Social Sectors Department FATA Secretariat
- Director Health Services (FATA)
- Political Agents Mohmand & Khyber Agencies
- Agency Surgeons Mohmand & Khyber Agencies
- Medical Superintendent, AHOs Hospital Ghallana Mohmand Agency
- Agency Accounts Officers Mohmand & Khyber Agencies
- Officers concerned

DFS

[Signature]
Section Officer (Estab)

ATTESTED

[Signature]

To

The Secretary Administration
Coordination FATA.

Subject: Departmental appeal for cancellation
of transfer order

Sir
With profound respect I have
the honor to say that I Dr
Samin Khan S/o Mr. Eff. Jamroo
Khyber Agency has been transfer
vide your office order No
ES/E/100-93 (Vol 8) 8849-
Dated 2/7/15
to Ghelana AHQ Hospital.
Mohamand agency.

Sir due to my children education
I can not shifted my family
from Khyber Agency ~~Agency~~ to Mohamand
Agency. You are requested for the
Cancellation of my transfer order

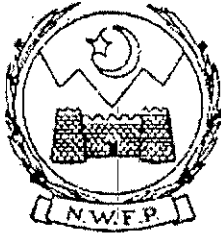
Thanks.
Yours obediently
Dr. Samin Khan
S/o Mr. Eff. Jamroo

ATTESTED

[Handwritten signature]

Secy (A&C) _____
Dy: Secy (S) *[Signature]*
S.O. (E) *[Signature]*
D/No. & date 07-07-15

[Signature] 3/7/15



**GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(Regulation Wing)**

POSTING / TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT.

- i) All the posting/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants
- ii) All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities for seeking posing/transfers of their choice and against the public interest.
- iii) All contract Government employees appointed against specific posts, can not be posted against any other post.
- iv) The normal tenure of posting shall be three ² 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) ¹{ }
- vi) While making postings/transfer from settled areas to FATA and vice-versa, specific approval of Governor, NWFP needs to be obtained
- ²While 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 DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thaana) of his area/residence is situated.
- viii) No posting/transfers of the 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.

¹ 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.

² Added vide Urdu circular letter No. SOR-VI(E&AD)1-4/2003, dated 21-09-2004

ATTES
[Signature]

- 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
¹DCOs 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:
- 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.
 - Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

ATTESTED

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

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.

ATTEST

VAKALATNAMA

IN THE COURT OF RPK Service Tribunal Peshawar

_____ OF 2015

Dr. Sameen Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

A.C.S. FATA & Others

(RESPONDENT)
(DEFENDANT)

I/We Dr. Sameen Khan

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** 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. ____/____/2015

So

CLIENT

h.

ACCEPTED

NOOR MOHAMMAD KHATTAK
(ADVOCATE)

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141

BEFORE THE SERVICES TRIBUNAL
KHYBER PAKHTUNKHWA, PESHAWAR

Appeal No. 1099/2015

Dr. Sameen Khan, Senior Medical Officer (BPS-18)

..... Appellant

Versus

Additional Chief Secretary (FATA) & Others

..... Respondents

Para wise joint comments on behalf of respondent No. 1, 2 & 3.

Respectfully Sheweth;

Preliminary objections

1. That the appellant has no cause of action/locus standi to file the present appeal.
2. That the appellant is estopped by his own conduct to file the instant appeal.
3. That this Honorable Service Tribunal has got no jurisdiction to entertain the instant appeal.
4. That the instant appeal is bad for Miss-Joinder & Non-Joinder of necessary parties.
5. That the present appeal is barred by law.
6. That the appeal is not maintainable in its present form, as no requirement is fulfilled as required under the law.
7. That, the appellant had to serve anywhere in Province/FATA as per Rules & Law.
8. That, the appellant had to serve anywhere in Province/FATA as per Rules & Law.

ON FACTS

1. Pertains to record, however, the civil servant is bound to observe the orders issued by the competent authority in public interest.
2. Correct.

(2)

3. Correct, to the extent of transfer order but question of knocking the door of respondent no. 2 & 3 is completely baseless as the transfer order was not issued by the competent forum and that is why it was cancelled for the reason to be issued from the competent forum.
4. Incorrect, as stated above the matter is not astonishing as the order dated 23-06-2015 was not issued by the competent authority and the appellant had neither been relieved from CH Jamrud nor obeyed the order issued by non-competent forum. The case was forwarded to the competent authority i.e. Secretary Social Sector Department & Additional Chief Secretary FATA, hence impugned order dated 02-07-2015 was issued.
5. Incorrect, the Departmental Appeal was given to Secretary (Admin: Infrastructure & Coordination) who is not a party in the present case/appeal which was under process and that is why the response was not given within stipulated time. In fact, he was supposed to file appeal before the competent authority i.e. Respondent no. 2.

ON GROUNDS


- A. Incorrect, the impugned order is according to Law & facts, norms of justice, hence is not tenable to be set aside or suspended.
- B. Incorrect, hence denied, the appellant is treated in accordance with Law Rules and no violation of Article-4 & 25 have been made
- C. Incorrect, no violation in response to Locus poententia have been made as the appellant as per section-10 is bound to serve anywhere in FATA & Khyber Pakhtunkhwa.
- D. Incorrect, no violation of Clause-I have been made as it is made in public interest and as such like that of Clause-IV the

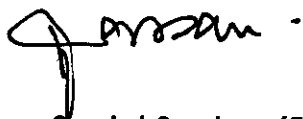
(3)

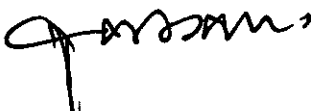
appellant have serve all it services in Khyber Agency under a single roof of Civil Hospital Jamrud.

- E. Incorrect, as stated above the impugned order is issued in the best interest of public and may not be set aside.
- F. Incorrect, no malafidae intention is involved while issuing the impugned order dated 02-07-2015.
- G. That the respondents seek permission to raise additional grounds and proof at the time of arguments.

It is therefore most humbly prayed that the appeal being devoid of merits/legal footing, may please be dismissed with cost.


27/11/15
Director Health Services,
FATA, Peshawar.
RESPONDENT NO. 3


Secretary Social Sectors (FATA),
FATA Secretariat, Peshawar.
RESPONDENT NO. 2


for
Additional Chief Secretary (FATA),
FATA Secretariat, Peshawar
Respondent No. 1

BEFORE THE SERVICES TRIBUNAL
KHYBER PAKHTUNKHWA, PESHAWAR

Appeal No. 1099/2015

Dr. Sameen Khan, Senior Medical Officer (BPS-18)

..... Appellant

Versus

Additional Chief Secretary (FATA) & Others

..... Respondents

REPLY OF APPLICATION

Preliminary objections

1. That the applicant has no cause of action/locus standi to file the present application.
2. That the applicant is estopped by his own conduct to file the instant application.
3. That this Honourable Service Tribunal has got no jurisdiction to entertain the instant application.
4. That the instant application is bad for mis joinder & non-joinder of necessary parties.
5. That the present application is barred by law.
6. That the application is not maintainable in its present form.
7. That the present application is bad in its present form, hence not maintainable and liable to be dismissed.
8. That the present application is against the provision of S. 56 (d) of Specific Relief Act.
9. That, the applicant does not provide the requirement of interim relief.

Respectfully Sheweth:

1. No Comments.
2. Incorrect, none of the ingredients of stay is in favour of appellant.

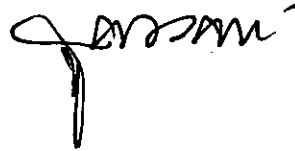
(5)

3. Incorrect, the transfer of the appellant is according to Law & Policy of the Government of Khyber Pakhtunkhwa.
4. That, grounds of the reply may be considered as integral part of the application reply.

It is therefore, most humbly prayed that on acceptance of this reply the application of the applicant may very kindly be dismissed, please.



Director Health Services,
FATA, Peshawar.
RESPONDENT NO. 3



Secretary Social Sectors (FATA),
FATA Secretariat, Peshawar.
RESPONDENT NO. 2

For 

Additional Chief Secretary (FATA),
FATA Secretariat, Peshawar
Respondent No. 1

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 81 ST

Dated 13 / 1 / 2016


To

The Additional Chief Secretary FATA,
FATA Secretariat Warsak Road Peshawar.

Subject: - Judgement.

I am directed to forward herewith certified copy of Judgement dated 4.1.2016 passed by this Tribunal on subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.