

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

SERVICE APPEAL NO. 2052/2023


Dr. Muhammad Zahid.....Appellant

Versus

Government of Khyber Pakhtunkhwa & othersRespondents

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DEPUTY

BEFORE THE HONORABLE PAKHTUNKHWA SERVICE

TRIBUNAL PESHAWAR.

Khyber Pakhtunkhwa
Service Tribunal

Appeal No. 2052/2023

Diary No. 9269
Dated 11/21/23

Dr. Muhammad Zahid.....Petitioner

VERSUS

Secretary Health Khyber Pakhtunkhwa and Others.....Respondents

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Sheweth:-

Preliminary objections

1. That the Appellant has got no cause of action or locus standi to file the instant Appeal.
2. That the Appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant Appeal is against the prevailing Law and Rules.
4. That the Appeal is not maintainable in its present form.
5. That the Appellant has filed the instant Appeal with mala-fide intention hence liable to be dismissed.
6. That the Appeal is badly time-barred.
7. That the Honourable Tribunal has no Jurisdiction to adjudicate upon the matter.
8. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
9. The impugned transfer Notification has been issued in accordance with Section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973.

FACTS

1. No comments.
2. Correct to the extent that the appellant being a member of General

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cadre was posted against the post of Management Cadre (MS DHQ Hospital Charsadda) on OPS however, it is worth to mention that such posting does not create any vested right in favour of the appellant being a member of ex-cadre.

3. Correct to the extent of Notification dated 10.07.2023 wherein the appellant was transferred in the public interest. According to Section 10 of the Khyber Pakhtunkhwa civil servant Act 1973, being a Civil Servant he is to serve any where he is posted by the competent authority as and a Civil Servant is not entitled to be posted in accordance with his own whims and wishes.
4. Correct to the extent that in compliance of the impugned Notification dated 10.07.2023 the appellant relinquished the charge of the post as he himself admitted the relinquishment of charge of the post however, the appellant did not submit his arrival to the DGHS till date.
5. Incorrect. As stated in para 04 above the appellant relinquished the charge of the post in compliance to the Notification dated 10.07.2023 however, he did not submit his arrival report therefore, he is not entitled for salary from the office of DGHS or as MS DHQ Charsadda.
6. Incorrect. Transfer/ posting of a civil servant comes within the terms and conditions of his service therefore, by transferring a civil servant does not violate any vested right of the civil servant therefore, the appellant does not come within the definition of aggrieved person.
7. Already replied in the preceding paras. However, the Honourable Tribunal in Service Appeal No 5795/2021 judgment dated 27/08/2021 clearly mentioned that it is the power of the competent authority to transfer a civil servant even before completion of his normal tenure under section 10 of Khyber Pakhtunkhwa civil servant Act 1973.

GROUND:

- A. Incorrect. The impugned Notification dated 10.07.2023 as well as the actions of the answering respondents are in accordance with law, rules and Principle of natural justice.
- B. Incorrect. Already replied in Para 07 of the Facts.
- C. Incorrect. The appellant being a member of Provincial cadre post is liable to be posted anywhere by the Competent Authority under law and he is bound to serve where he is posted. The impugned Notification is issued by the competent authority in the public interest.

D. Incorrect as stated in the above paras the appellant is a civil servant and the competent authority is empowered by law hence the competent authority transfer the appellant in accordance with law.

E. Incorrect. The appellant has been transferred after fulfilling all the codal formalities as before issuance of the impugned Notification dated 10.07.2023 the replying respondents obtained NOC from the Election Commission of Pakistan which is annexed as (Annexure-A) further transfer comes within the terms and conditions of his service. There is no political pressure or motivation behind issuance of the impugned Notification.

F. Incorrect. The competent authority has been empowered by Section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973 to transfer a civil servant at any time to any other post even outside his cadre or province provided his terms & conditions of service is not affected .As per dictum, laid down by the apex court, in 2020 PLCCS 1207 Supreme Court,

PLACE of servicePrerogatives of employer...Government servant was required to serve anywhere his employer wanted him to serve; it was not a choice or prerogative of the employee to claim a right to serve at a place that he chose to serve.

Similarly in another judgment reported as 2004 PLC (CS) 705 S.C. It has been laid down that civil servant could not claim posting at a particular station or at the place of his choice. Competent authority, under S 9 of the Punjab civil servant Act 1974, was empowered to transfer any civil servant from one place to other at anytime in exigencies of service or on administrative ground.

G. The replying respondents also seek permission of this Honorable Tribunal to adduce other grounds during final hearing of the case.

It is therefore, requested that the appeal of the appellant may kindly be dismissed with costs.



Director General Health Services
Khyber Pakhtunkhwa
(Respondent No-3)

DR SHOUKAT ALI



Secretary to Govt. of Khyber
Pakhtunkhwa Health Department
(Respondent No-1&2)

MR. MEHMOOD ASLAM (SEC. HEALTH)

No.F.3 (1)/2023-EIs (PEC) Vol- E (9)
OFFICE OF THE
PROVINCIAL ELECTION COMMISSIONER
KHYBER PAKHTUNKHWA

Special Messenger

Shami Road Peshawar, Cantt:
27th June, 2023

To,

✓
The Secretary,
Health Department,
Government of Khyber Pakhtunkhwa,
PESHAWAR.

Subject: - ISSUANCE OF NOCs.

Dear Sir,

With reference to your office letter No. * SOH(E-V)/2-2/EC/P/2023/posting/transfer dated 31st May, 2023 I am directed to attach herewith the Election Commission of Pakistan, Secretariat, Islamabad letter No.F.10 (1)/2023-Elec-II, dated 21st June, 2023 (Copy Enclosed), for further necessary action at your end.

Encl: - As above.

(KASHIF ABBAS MALIK)
Deputy Director (Elections)

SSH (E&A)
AS - ESTT
AS - MTI
DS - Admin
DS - Legal
DS - ESTTj

No. F.10(1)/2023-Elec-II
ELECTION COMMISSION OF PAKISTAN

"Secretariat"
Constitution Avenue, G-5/2,
Islamabad, the 21st June, 2023.



To,

✓ The Provincial Election Commissioner,
Khyber Pakhtunkhwa,
Peshawar.

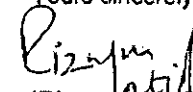
Subject: ISSUANCE OF NOC.

Dear Sir,

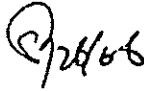
I am directed to refer to your letter No. F.3 (1)/2023-EIs (PEC) Vol-XIII (11) dated 7th June, 2023, on the subject noted above and to say that the Hon'ble Commission has been pleased to accede the request of the Section Officer (E-V), Health Department, KPK for posting/transfer in respect of the following Officers:-

S.N	Name of Doctors	Form	To
1.	Dr. Muhammad Zahid, General Cadre, (BS-19)	Medical Superintendent, (BS-20), DHQ Hospital, Charsadda in OPS	Report to Directorate, General Health Services, Khyber Pakhtunkhwa
2.	Dr. Muhammad Shoaib Khan, Management Cadre (BS-19)	Medical Superintendent, (BS-19), Type-D Hospital Lachi Kohat	Medical Superintendent (BS-20), DHQ Hospital, Charsadda in OPS



Yours sincerely,

(Rizwana Latif)
Assistant Director (Election-II)





SPEC (E)
Dm-El

AD/EI 26/06
WA 26/06 SA-1

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

SERVICE APPEAL NO. 2052/2023

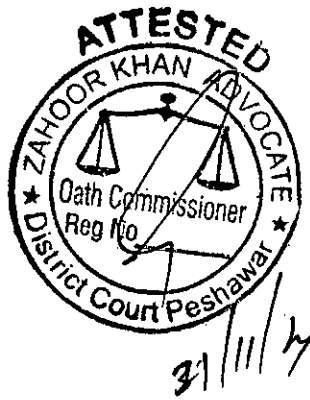
Dr. Muhammad Zahid.....Appellant

Versus

Government of Khyber Pakhtunkhwa & othersRespondents.

Affidavit

I, Dr. Shaukat Ali Director General Health Services, Khyber Pakhtunkhwa, Peshawar, do hereby solemnly affirm that the contents of the parawise Comments on behalf of Respondents are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'able Court. It is further stated on oath that in this appeal the defense of the Department has not been struck off / costs.




Deponent



**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR**

OFFICE ORDER:

In continuation of this Directorate Office Order No. 9074-78/E-I dated 24/08/2023 and in order to streamline the affairs of litigation section and for timely submission of comments in various court cases, Dr. Muhammad Sohail Khattak (BS-19) working as Director (Litigation & Coordination) at DGHS is hereby authorized to sign parawise comments on behalf of the undersigned in the best public interest.

Furthermore, Dr. Muhammad Sohail Khattak is authorized to sign movement orders of the concerned officers / officials working under him in order to represent the undersigned in various court cases within and outside the province.

Sdxxxxxxxxxxxxx
DIRECTOR GENERAL HEALTH
SERVICES KHYBER PAKHTUNKHWA PESHAWAR


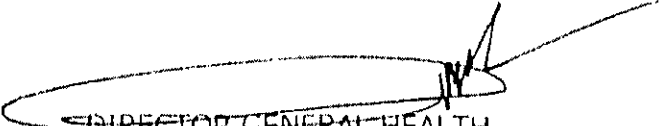
No. 195A-571 DGHS

Dated Peshawar the 12/12/2023

Copy forwarded to the:

1. Secretary to Govt: of Khyber Pakhtunkhwa, Health Department, Peshawar.
2. Addl: Director General (HRM), DGHS Office, Peshawar.
3. Addl: Director General (Admin), DGHS Office, Peshawar.
4. Director (HRM), DGHS Office, Peshawar.
5. Officer concerned.
6. Deputy Director (Accounts), DGHS Office, Peshawar.

For information and necessary action.



DIRECTOR GENERAL HEALTH
SERVICES KHYBER PAKHTUNKHWA PESHAWAR



**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR**

*All communications should be addressed to the Director General Health Services
Peshawar and not to any official by name
Office # 091-9210269 Fax # 091-9210230*

AUTHORITY LETTER

Mr Laeeq Ahmad Focal Person (Litigation) Directorate General Health Services, Khyber Pakhtunkhwa, is hereby authorized to submit parawise comments in Service Appeal No. 2052/2023 titled Dr. Muhammad Zahid VS Govt. of Khyber Pakhtunkhwa & others on behalf of the undersigned at Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**Director General Health Services
Khyber Pakhtunkhwa, Peshawar.**