


FORM OF ORDER SHEET

Court of _____

Appeal No. _____

2430/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge.
1	2	3
1-	17/11/2023	<p>The appeal of Mr. Muhammad Zubair presented today by him. It is fixed for preliminary hearing before touring Single Bench at Swat on</p> <p>By the order of Chairman</p>  <p>REGISTRAR</p>

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 2430 / of 2023

Muhammad Zubair

.Appellant

Versus


Govt. of Khyber Pakhtunkhwa and others

Respondents.

SERVICE APPEAL UNDER SECTION 4

LIST OF DOCUMENT ATTACHED WITH THE APPEAL

Sl No.	Document detail	Mark	Page No.
1.	Service appeal	-	1-6
2.	Application for suspension of Posting/transfer Notification dated 31.7.2023.	-	7
3.	Posting/transfer Notification dated 16.12.2020	A	8-9
4.	Posting/transfer Notification dated 31.5.2022	B	10-11
5.	Certificate of District & Sessions Judge, Shangla.	C	12
6.	Certificate of Senior Civil Judge(Admn)Shangla.	D	13
7.	Letter No. 174-79 dated 30.3.2023	E	14-18
8.	Posting/transfer Notification dated 31.7.2023 (Impugned)	F	19
9.	Departmental appeal/representation dated 4.8.2023	G	20-24
10.	Identification of Unattractive/Hard area policy.	H	25



(MUHAMMAD ZUBAIR)

APPELLANT

①

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 2430 / of 2023

Muhammad Zubair son of Pir Dad resident of Munir Colony Alpuri District Shangla working as District Attorney, Law Department Khyber Pakhtunkhwa.....

.....Appellant

Versus

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary to Govt. of Khyber Pakhtunkhwa, Law, Parliamentary Affairs and Human Rights Department, Peshawar.
3. Mr. Salik Rauf, District Attorney, Shangla at Alpuri Respondents.

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION NO. SO(E) LD/15-11/2022, DATED 31.7.2023 ISSUED BY RESPONDENT NO. 1 & 2 WHEREBY APPELLANT IS TRANSFERRED FROM DISTRICT SHANGLA TO DISTRICT KOHISTAN LOWER AND RESPONDENT NO. 3 FROM DISTRICT ABBOTTABAD TO DISTRICT SHANGLA AGAINST THE LAW, RULES, NATURAL JUSTICE, AND THE TENURE POLICY OF THE PROVINCIAL GOVERNMENT

PRAYER

ON ACCEPTING OF THE INSTANT APPEAL, THE IMPUGNED NOTIFICATION NO. SO(E) LD/15-11/2022, DATED 31.7.2023 ISSUED BY RESPONDENT NO. 1 & 2 MAY VERY KINDLY BE DECLARED ILLEGAL, AGAINST LAW, RULES, NATURAL JUSTICE AND TENURE POLICY OF THE PROVINCIAL GOVERNMENT AND THE APPELLANT MAY VERY KINDLY BE ALLOWED TO CONTINUE HIS DUTY AS DISTRICT ATTORNEY SHANGLA.

Respectfully sheweth:

1. That the appellant is serving as District Attorney in Law, Parliamentary Affairs and Human Rights Department, Khyber Pakhtunkhwa since 11.3.2005 and since his first appointment the appellant performs his duty with great zeal, zest, honesty and to the entire satisfaction of the department.

2. That the appellant was previously posted as District Attorney Kohistan Upper vide Notification No. SO(G)LD/15-11/2019/Vol.II, dated 16.12.2020 and the appellant performed his duties with full devotion in response to the transfer/posting notification dated 16.12.2020. (Copy of Notification dated 16.12.2020 is attached as Annexure – A).
 3. That the appellant was then transferred from the office of District Attorney Kohistan Upper to District Attorney Shangla vide Notification No. LD/15-11/2022/PSB/2276-2312 dated 31.5.2022 and the appellant assumed the charge on 11.6.2022. (Copy of Notification dated 31.5.2022 is attached as annexure-B).
 4. That the appellant was performing his duties with punctuality, in the public interest and according to his ability and capacity which is evident from the fact that the Hon'ble District & Sessions Judge and Senior Civil Judge(Admn)Shangla issued appreciation certificates in favor of the appellant due to his outstanding performance. Copies of the certificates is attached as annexure – C &D.
 5. That it is imperative to note that after dissolution of the provincial assembly of Khyber Pakhtunkhwa on 18.1.2023, a care-taker setup was installed in the province of Khyber Pakhtunkhwa in pursuance of Article 224 of the Constitution of Islamic Republic of Pakistan, 1973.
 6. That in March, 2023 the appellant wrote a letter to the provincial government about the alleged loss of Rs. 36, 20, 50, 163/22 due to the involvement of the officer/officials of District Collector Office Shangla. Copy is attached as annexure-E.
 7. That the Deputy Commissioner/District Collector, Shangla annoyed on the report, managed to transfer the appellant from the post of District Attorney, Shangla to Kohistan Lower vide respondent No. 1 & 2 Notification No. SO(E)LD/15-11, dated 31.7.2023. Copy of Notification is attached as annexure-F.
 8. That feeling aggrieved from the notification, the appellant preferred departmental appeal/representation on 4.8.2023 which has not sofar been responded. Copy of departmental appeal/representation is attached as annexure-G.
7. That the appellant being aggrieved approach this Hon'ble Tribunal after passing of stipulated period of time inter-alia on the following ground:

GROUNDS

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- a. That the impugned Notification dated 31.7.2023 is against law, rules, principles of natural justice, hence void ab initio not sustainable under the law.
- b. That as per transfer posting policy of Provincial Government, normal tenure on a post for a civil servant is 2 years however, the appellant has been made rolling stone by transferring prematurely vide notification dated 31.7.2023 in utter violation of the ibid policy.
- c. That the appellant has remained in the Un-attractive areas like Kohistan, Shangla for a longer period, therefore, as per posting/transfer policy of the provincial government, option for further posting should have been taken from the appellant which has not been done in the alleged notification. Copy of the policy is attached as annexure-H.
- d. That the appellant is entitled to be treated equally in accordance with transfer/posting policy however, the appellant has been discriminated by transferring him pre-maturely which is violation of Article 4 and 25 of the Constitution of Pakistan, 1973.
- e. That as per reported judgment of Supreme Court of Pakistan 2018 SCMR 1411(b), section 10 of the Baluchistan Civil Service Act, 1974 did not prescribe a minimum period during which a civil servant must serve at his post, it did not mean that the government without assigning any reason could move a civil servant from the place he was posted to after a month or subject the civil servant to repeated postings in a short period of time because that would amount to punishing him. Such posting also adversely affected the public interest and resulted in the wastage of scarce resources and constituted bad governance.
- f. That by issuing the impugned pre-mature, malafidely and politically motivated notification dated 31.7.2023, the respondents violated dictum of the apex court laid down in the case of Anita Turab.

- g. That the notification dated 31.7.2023, is also against the mandate of the interim government as per Election Act, 2017 as interpreted by the August Supreme Court of Pakistan vide judgment reported in 2021 PLC(C.S) 519, 2013 SCMR 1205.
- h. That as soon as caretaker set-up was appointed, the constitutional command is that "Its mandate is to hold free and fair election in the aid of ECP". No care-taker setup could make any policy decision even in relation to transfer posting in civil servants what to say of removal and appointment of members of the Board of Governors of different MTIs who have been appointed after going through all the process of appointment so mentioned in the preceding paras. This principle was settled by the Supreme Court after 18th Amendment to the constitution in the case of Khwaja Muhammad Asif versus Federation of Pakistan, etc. reported as 2013 SCMR 1205, followed by another case of Nematullah versus Chairman Governing Body (2016 SCMR 1299) and re-affirmed by the Supreme Court in PLD 2021 SC 313. To be more concise, the Supreme Court has most vividly observed that "That mandate of the care-taker government is to hold the mantle in the interregnum when the term to the sitting government has expired and the new government is yet to take charge. A care-taker government is empowered only to carry out day to day affairs of the state with the help of available machinery/ resources/ manpower. It cannot take policy decision and permanent measures including recruitments, making appointments, transfers and postings of government servants. It must leave such matters to the elected government which take charge as a result of elections. A caretaker government/cabinet has to confine itself to running day to day administration of the state and to take decision required for orderly running the affairs of the state".
- i. That the mandate of the caretaker setup is very limited as has been discussed in an array of judgments wherein the mandate of constitution and certain provisions of Election Act, 2017 have also been taken into consideration but despite that, the department have with mala-fide intention and in complete negation of the law have issued the impugned notification.

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- j. That the constitutional guarantee of the right to be dealt with in accordance with law is being infringed in respect of the appellant, for no plausible reason or rhyme, and therefore, the impugned decisions in question is liable to be strike down. These principles are time and again reiterated by the Hon'ble Supreme Court of Pakistan and have recently held of immense value in PLD 2021 SC 600 in the following words:

“Constitutional guarantee of the right to be dealt with in accordance with law, under Article 4 of Constitution, is available not only to every citizen of the country but also to every other person for the time being within Pakistan, said constitutional guarantee cannot be curtailed or limited in the case or matter of any person whosoever he may be and whatever the allegations against him may be”.

Furthermore, the right to be dealt with in due process of law as per Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 is being made redundant in the instant case against the appellant. The right is absolute and cannot be done away with and it needs to be taken as liberty as possible as per the dictum laid by the Hon'ble Supreme Court of Pakistan in PLD 2022 SC 497.

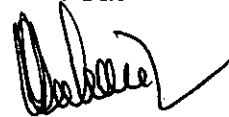
“In corporation of the right to a fair trial and due process by Article 10-A in the constitution as an independent fundamental right underscores the constitutional significance of fair trial and due process and like other fundamental rights, it is to receive a liberal and progressive interpretation and enforcement”.

- k. That the Hon'ble Supreme Court of Pakistan in the recent judgment in Justice Qazi Faez Isa case held in unequivocal terms that the highest of offices are not to be denied the fundamental rights so guaranteed by the constitution. The judgment is reported as PLD 2022 SC 119 and lay as under:

“Right to be dealt with in accordance with law. No one, including a judge of the highest court in the land, is above the law. At the same time, no one, including a judge of the highest court in the land, can be denied his right to be dealt with in accordance with law; it matter little if the citizen happens to hold a high public office, he is equally subject to and entitled to the protection of law.”

- (6)
- I. That the impugned notification dated 31.7.2023 is nullity in the eyes of law as act of department goes in direct negation of the provision of law. Furthermore, when the base is wrong and rooted in a nullity, any superstructure built on the base, is also unsustainable. The principle laid down through PLD 1958 SC 104 has been reiterated in PLD 2022 SC 119, 2021 SCMR 637, PLD 2007 SC 1835 which essentially form part of our jurisprudence.

It is therefore, humbly prayed that on acceptance of this service appeal the posting/transfer notification as mentioned above may kindly be declared as against law, rules, based on malafide intention, natural justice and against the posting/transfer policy of the provincial government and also against the mandate of the interim government and the appellant may please be restored on the post of District Attorney Shangla. Any other relief which the Hon'ble tribunal deems appropriate may also please be awarded.



(Muhammad Zubair)

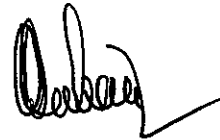
Appellant.

17.11.2023

AFFIDAVIT

I, Muhammad Zubair son of Pir Dad, District Attorney do hereby solemnly affirm and declare that no such appeal has ever been filed before this hon'ble Tribunal, nor pending nor decided. That the contents of foregoing affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed or suppressed from this hon'ble tribunal.

Dated 17.11.2023



(MUHAMMAD ZUBAIR)

DEPONENT

①

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. / of 2023

Muhammad ZubairAppellant

Versus

Govt. of Khyber Pakhtunkhwa and others Respondents.

SERVICE APPEAL UNDER SECTION 4

APPLICATION FOR SUSPENSION OF POSTING/TRANSFER
NOTIFICATION NO.SO(E)LD/15-11/2022, DATED 31.7.2023
TILL THE FINAL DISPOSAL OF THE SERVICE APPEAL

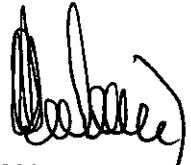
Respectfully sheweth:

Appellant submitted as under:

- 1.That the service appeal is being filed in the Hon'ble tribunal in which date has not yet been fixed.
- 2.That the appellant has a good prima facie case and chances of success is also there on the face of case.
- 3.That balance of convenience is also in favor of the appellant.
- 4.That in the interest of justice and public service, suspension of the impugned notification is necessary.

It is, therefore, humbly prayed that on acceptance of this petition, the impugned posting/transfer notification dated 31.7.2023 may kindly be suspended till the decision of the service appeal.

Dated 11.7.2023


(MUHAMMAD ZUBAIR)
APPELLANT



7A^o (8)

**GOVERNMENT OF KHYBER PAKHTUNKHWA LAW,
PARLIAMENTARY AFFAIRS & HUMAN RIGHTS
DEPARTMENT**

Dated Peshawar the 16th December, 2020.

NOTIFICATION

SO(G)LD/15-11/2019-Vol-II/

The Competent Authority is pleased to order the posting/transfer of the following officers of Law, Parliamentary Affairs & Human Rights Department, in the interest of public service, with immediate effect:-

S.#	Name & Designation	From	To
1.	Mst. Wasima Jamil, DA (BS-19)	Solicitor, DG Law & HR	District Attorney Peshawar, relieving Mr. Noor Zaman, DA (BS-19) of additional charge of the post of District Attorney Peshawar.
2.	Mr. Noor Zaman, DA (BS-19)	District Attorney Labour Court Peshawar	District Attorney Service Tribunal Peshawar vice Sr. No.03.
3.	Mr. Usman Ghani, DA (BS-19)	District Attorney Service Tribunal Peshawar	District Attorney Labour Court Peshawar vice Sr. No.02.
4.	Mr. Jamshed Khan, DA (BS-19)	District Attorney Hangu.	District Attorney D.I. Khan vice Sr. No.06.
5.	Mr. Mustafa Kamal, DA (BS-19)	District Attorney Tank	District Attorney Hangu vice Sr. No.04. He is also authorized to hold additional charge of the post of District Attorney Kurram in addition to his own duties.
6.	Mr. Tariq Aziz, DA (BS-19)	District Attorney D.I. Khan	District Attorney Tank vice Sr. No.05. He is also authorized to hold additional charge of the post of District Attorney South Waziristan in addition to his own duties.
7.	Mr. Salik Raul, DA (BS-19)	District Attorney Haripur	District Attorney Abbottabad vice Sr. No.08.
8.	Mr. Muhammad Siddique, DA (BS-19)	District Attorney Abbottabad	District Attorney Mansehra vice Sr. No.10.
9.	Mr. Ghulam Mustafa, DA (BS-19)	District Attorney Tor Ghar	District Attorney Haripur vice Sr. No.07.
10.	Mr. Umar Farooq, DA (BS-19)	District Attorney Mansehra	District Attorney Tor Ghar vice Sr. No.09.
11.	Mr. Muhammad Daud Jan, DA (BS-19)	District Attorney Nowshera	District Attorney Charsadda vice Sr. No.15. He is also authorized to hold additional charge of the post of District Attorney Mohmand in addition to his own duties.
12.	Mr. Muhammad Zubair Khan, DA (BS-19)	District Attorney Shangla	District Attorney Kohistan Upper vice Sr. No.13. He is also authorized to look after the work of District Attorney Kolai Palas in addition to his own duties.
13.	Mr. Abdul Wakeel, DA (BS-19)	District Attorney Kohistan	District Attorney Battagram against the vacant post.
14.	Mr. Jamal Abdul Nasir, DA (BS-19 a.c.b)	District Attorney Malakand	District Attorney Swat, against the vacant post.

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15.	Mr. Noor Ullah, DA (BS-19 a.c.b)	District Attorney Charsadda	District Attorney Nowshera vice Sr. No.11.
16.	Mr. Masood Ul Hassan, DA (BS-19 a.c.b)	SO (Opinion) Law Department	District Attorney Khyber against the vacant post.
17.	Mr. Tahir Iqbal, DDA (BS-18)	Deputy District Attorney Hangu	Solicitor, DG Law & HR in his own pay & scale vice Sr. No.01.
18.	Mr. Amir Qadir, DDA (BS-18)	Deputy District Attorney Swat	District Attorney Shangla in his own pay & scale vice Sr. No.12. He is also authorized to look after the work of District Attorney Kohistan Lower in addition to his own duties.
19.	Mr. Muhammad Jan, DDA (BS-18)	Deputy District Attorney Service Tribunal Peshawar	SO (Opinion) Law Department

Secretary to Govt. of Khyber Pakhtunkhwa
Law, Parliamentary Affairs & Human
Rights Department

Endst: No. & Date Even:
Copy forwarded to the:-

12684-95

1. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
2. All Divisional Commissioners, Khyber Pakhtunkhwa.
3. Accountant General, Khyber Pakhtunkhwa.
4. Deputy Commissioner, Abbottabad, Battagram, Charsadda, D.I Khan, Hangu, Tank, Mansehra, Tor Ghar, Lakki Marwat, Peshawar, Kohat, Shangla, Nowshera, Haripur, Swat, Malakand, Khyber, Kurram, South Waziristan, Muhmand, Kolai Palas, Kohistan Upper & Kohistan Lower.
5. Director General, Law and Human Rights Khyber Pakhtunkhwa.
6. PSO to Chief Secretary, Khyber Pakhtunkhwa.
7. Registrar, Service Tribunal Peshawar.
8. District Account Officers concerned.
9. PS to Minister Law, Parliamentary Affairs and Human Rights Khyber Pakhtunkhwa.
10. PS to Secretary Law, Parliamentary Affairs and Human Rights Department.
11. PA to Deputy Secretary (Admn), Law Department.
12. Officers Concerned.
13. Personal files.

Aurangzeb

(AURANGZEB) 16/12/2020
Section Officer (General)



**GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS & HUMAN RIGHTS
DEPARTMENT**

"B"

Dated Peshawar, the 14th May 2022

(10)

NOTIFICATION

No. SO(G)(LD)/15-11/2022/P9B/22-16-212) consequent upon their promotion from Deputy District Attorney (BS-18) to District Attorney (BS-19) on regular basis as notified vide this Department Notification of even number, dated: 19-04-2022, following postings / transfers and adjustment of officers are hereby ordered, in the best public interest with immediate effect;

S.No	Name of officer	From	To
1.	Mr. Masood Ul Hasean, District Attorney (BS-19)	District Attorney, Khyber	Retained against the Post of District Attorney, Peshawar.
2.	Mr. Farhaj Sikandar Yar Khan, District Attorney (BS-19)	District Attorney D.I.Khan	Retained against the Post of District Attorney, D.I.Khan.
3.	Mr. Noor Ullah, District Attorney (BS-19)	District Attorney, Nowshera	District Attorney, Bajaur against the vacant post.
4.	Mr. Mohammad kamran Qureshi, District Attorney (BS-19)	District Attorney, Swabi	Retained against the Post of District Attorney, Swabi.
5.	Mr. Fahd Iqbal, District Attorney (BS-19)	Solicitor, DG Law & HR.	Retained against the Post of Solicitor DG Law & HR.
6.	Mr. Armat Ullah Khan, District Attorney (BS-19)	Deputy Law Officer, Law Department	Law Officer, Law Department against the vacant post.
7.	Mr. Abid Jamal, District Attorney (BS-19)	Deputy Solicitor, DG Law and HR	District Attorney Orakzai against the vacant post.
8.	Mr. Samad Khan, District Attorney (BS-19)	District Attorney Labour Court, Mardan	Retained against the Post of District Attorney Labour Court, Mardan
9.	Mr. Muhammad Rasheed, District Attorney (BS-19)	Deputy District Attorney Service Tribunal, Peshawar.	District Attorney, Mohmand against the vacant post.
10.	Mr. Nazir Khan, District Attorney (BS-19)	Deputy District Attorney, Abbottabad	District Attorney, Kofal Pata; against the vacant post.
11.	Mr. Anwar Ul Haq, District Attorney (BS-19)	Deputy District Attorney, Swat	District Attorney Labour Court, Swat against the vacant post.
12.	Mr. Maqbool ur Rehman, District Attorney (BS-19)	District Attorney, Bannu	Retained against the post of District Attorney, Bannu.
13.	Mr. Arshad Alam, District Attorney (BS-19)	District Attorney, Lower Dir	Retained against the post of District Attorney, Lower Dir.
14.	Mr. Muhammad Jan, District Attorney (BS-19)	Deputy Legislation Officer, Law Department.	District Attorney, Chitral Upper against the vacant post for one day for actualization of promotion and after that will report to Law Department for further posting.
15.	Miss. Syeda Yusra Aman, District Attorney (BS-19)	Deputy District Attorney, Nowshera	District Attorney, Nowshera vice S.No. 3.
16.	Mr. Khursheed Ahmad, District Attorney (BS-19)	Deputy District Attorney, Mardan.	District Attorney, Dir Upper against the vacant post.
17.	Mr. Muhammad Bilal, District Attorney (BS-19)	Deputy District Attorney, Haripur	District Attorney, Haripur vice S.No. 22
18.	Mr. Shakhrollah, District Attorney (BS-19)	Law Officer, Advocate General Office	District Attorney, Lower Chitral against the vacant post for one day for actualization

(Signature)



GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS & HUMAN RIGHTS
DEPARTMENT

(11)

			promotion and after that will report to Law Department for further posting.
19.	Mr. Akhtar Hayat Khan, District Attorney (BS-19)	District Attorney, Shangla	District Attorney, Battagram vice S.No. 23
20.	Mr. Zubair Muhammad, District Attorney (BS-19)	Deputy Director Human Rights, DG Law & HR.	District Attorney, South Waziristan against the vacant post for one day for actualization of promotion and after that will report to Law Department for further posting.
21.	Mr. Noor Ali Khan, District Attorney (BS-19)	Deputy District Attorney, Kohat	District Attorney, Labour Court D.I.Khan against the vacant post

ADJUSTMENT

22.	Mr. Ghulam Mustafa, District Attorney (BS-19)	District Attorney, Haripur	District Attorney, Karak against the vacant post.
23.	Mr. Abdul Wakeel, District Attorney (BS-19)	District Attorney, Battagram	District Attorney, Kohistan vice S.No. 24
24.	Muhammad Zubair Khan, District Attorney (BS-19)	District Attorney, Kohistan	District Attorney, Shangla vice S.No. 19

Secretary to Govt: of Khyber Pakhtunkhwa
Law, Parliamentary Affairs & Human
Rights Department

Endst: of even No. & date.

Copy is forwarded to the:

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
4. Registrar Peshawar High Court, Peshawar.
5. Director General of Law & Human Rights Khyber Pakhtunkhwa.
6. Solicitor, Directorate General of Law & Human Rights, Khyber Pakhtunkhwa.
7. Section Officer (PSB), Establishment Department.
8. Budget Officer-II, Finance Department.
9. PSO to Chief Secretary, Khyber Pakhtunkhwa.
10. PS to Minister for Law, Khyber Pakhtunkhwa.
11. District Accounts Officers concerned.
12. Manager Government Printing Press, Peshawar.
13. Officer concerned.

Aurangzeb

(AURANGZEB)
Section Officer (General)

12

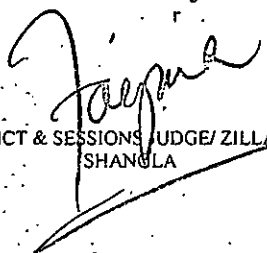


DISTRICT JUDICIARY SHANGLA
OFFICE OF THE DISTRICT & SESSIONS JUDGE/ ZILLA QAZI, SHANGLA,
KHYBER PAKHTUNKHWA.

CERTIFICATE

Certified that Muhammad Zubair , District Attorney
District Shangla . He is regularly appearing in different Courts of the
District in Civil cases pertaining to the Government and his professional
experience was found satisfactory. He takes keen interest in his job.




DISTRICT & SESSIONS JUDGE/ ZILLA QAZI,
SHANGLA

(13)



DISTRICT JUDICIARY SHANGLA
KHYBER PAKHTUNKHWA.

CERTIFICATE

Certified that Muhammad Zubair , District Attorney
District. Shangla . He is regularly appearing in different Courts of the
District in Civil cases pertaining to the Government and his professional
experience was found satisfactory. He takes keen interest in his job.

Senior Civil Judge (Admin)
SHANGLA





OFFICE OF THE
DISTRICT ATTORNEY
SHANGLA AT ALPURA

NO. 174-79 D.A (SH)/Dated 30/03/2023

Phone & Fax# 0996-851279.

governmentleadershangla@gmail.com

E^D

(14)

To

The Senior Member Board of Revenue,
Khyber Pakhtunhwa, Peshawar.

Subject: Conduct of Government cases-inquiry thereof.

Dear Sir,

It is submitted that:-

1. The District Collector Shangla issued Notification under section 4 of the Land Acquisition Act, 1894 on 11.09.2003 and revised Notification on 25.01.2005 for acquisition of the following property for Establishment of Government Polytechnic Institute and vocational Centre at Alpuri.

Locality	Khasra No.	Kind of land	Measurement
Lilowni	1363	Dhaka rak	2 K ----01 Marla
	1365	Abi	13 K---16 Marlas
		Ghair Mumkin	0 K-----04 Marlas
		Total	16 K---01 Marla

2. The possession of the property was taken vide Notification under section 17 of Land Acquisition Act, 1894 on 20.05.2005.

3. The Collector issued award under section 11 of the Act on 10.07.2006 and rates as per detail given below was fixed:-

Khasra No.	Kind of land	Measurement	Rates per Kanal	Amount
1367	Dhaka Rak	02K---01M	11140	22,837
1365	Abi	13K--16M	206540	2850252
	Ghair Mumkin	0K---04M	251,280	50,256
Total				29,23,345
Add 15% compulsory Acquisition Charges				438,501/75
Grand Total				33,61,846/75

4. The land owners/petitioners filed reference under section 18 of the Land Acquisition Act, 1894. The District Judge/Referee Judge Shangla accepted the petition/reference and enhanced the rates vide judgement and decree dated 30.04.2010 as under:-

S. No.	Kind of Land	Khasra No.	Measurement	Rates fixed	Amount
1.	Dhaka rak	1363	2 k --01 M	50000	102500
2.	Abi	1365	13 k--16M	400000	5520000
3.	Ghair Mumkin	1365	0 k -- 4 M	251,280	50,200
Total					56,72,700
Add 15% compulsory Acquisition charges.					850,905
Total					65,23,605
(-) deduction of payment made to the owners as per award.					33,61,846/75
Net payable to the owners.					31,61,758/25

Operational part/concluding para. of the judgment dated 30.04.2010 of the learned referee Judge/District Judge is quoted as under:-

"اراضی زیر بحث کی بازاری قیمت مندرجہ بالا تمام عناصر کو مد نظر رکھتے ہوئے ذیل مقرر کی جاتی ہے اور ایوارڈ میں دی گئی قیمت کو اسی شرح سے بڑھانے کی ڈگری کی جا کر مذکورہ ایوارڈ میں ترمیم کی جاتی ہے۔"

۱۔ آبی اراضی کی فی کنال قیمت = 400000 روپے

۲۔ ڈھاکہ رکھ اراضی کی فی کنال قیمت = 50000 روپے

اس کے علاوہ سائیلان زیر دفعہ 17 حصول اراضی ایکٹ کے تحت نوٹیفیکیشن سے پندرہ فیصد جا بزانہ کے حقدار قرار دیئے جاتے ہیں۔ اور اس کے علاوہ قانون کے مطابق شرح منافع دفعہ 4 کے نوٹیفیکیشن سے تاریخ کے بھی حقدار ٹھہرائے جاتے ہیں۔ اور بدیں طور درخواست عذر داری ریفرنس بلڈ منظور کیا جا کر ڈگری حسب تفصیل بالا بحق سائیلان جاری کی جاتی ہے۔ اور مذکورہ ایوارڈ میں ترمیم کا حکم دیا جاتا ہے۔"

5. The relevant sections of the Land Acquisition Act, 1864 is also quoted as under:-

NWFP- Amendment.

Section-28. Collector may be directed to pay interest on excess compensation.

If the sum which, in the opinion of the Court, the Collector ought to have been awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay simple interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

Section 34. Payment of Interest:-

When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with simple interest thereon at the rate of six per centum per annum from the time of so taking possession until it shall have been so paid or deposit.

6. The in the light of judgment/decree dated 30.04.2010 and relevant sections quoted above, the calculation of the interest on the amount is as under:-

particular	Excess Amount	Rates per annum	Period	Amount of Interest
1. Principal Amount	2749,355	6% per annum	10.07.2006 to 11.02.2015(8Years 7 months)	1883,308/17
2. 15% compulsory Acquisition charges	412,403/255			212,387/67
Total amount	31,61,758/25	Total payable 06 % interest upto 15.02.2015		20,95,695/84
(+)Add principal amount				27,49,355/-
add 15% compulsory acquisition charges				4,12,403/25
Total payable amount upto 11.02.2015.				52,57,454/09

7. The acquisition staff posted in the District Collector office, Shangla and departmental representative of Deputy Commissioner office are close relatives and family members of the petitioners /decree holder, therefore, they in connivance with the decree holders sent an amount of Rs. 56,02,110/= to court vide Deputy Commissioner Shangla letter No.2080-86 dated 11.02.2015 for payment to the decree holders. This cause over payment of Rs. 344,655/91 to the decree holders.

8. The District Collector Shangla instead of closing the executing proceedings agreed for commission constituted to work-out exact out-standing amount of decree by the court of learned Senior Civil Judge Shangla on 25.05.2016. The commission was duly attended by the representative of Deputy Commissioner Shangla. The representative of Deputy Commissioner office could not properly explained/calculated the payment and again a sum of Rs. 89,96,025/= was fixed as due payment upto 27.05.2016.

9. The objection petition upon the calculation was filed before Senior Civil Judge Shangla which was rejected by the court because one of the decree holder is practicing lawyer and always remains in close contacts with the presiding officers of the Court, therefore, our objection petition was rejected by the Court on 13.06.2016. The District Collector Shangla office was failed to properly assist the Advocate General office Peshawar High Court Mingora Bench/Darul Qaza Swat, thus our R.F.A filed against the said order was also dismissed vide order /Judgment of the Peshawar High Court /Darul Qaza Swat dated 14.04.2022.

10. The Director Technical Education and Vocational Training Authority Khyber Pakhtunkhwa forwarded a cheque amounting to Rs. 1,1900,000/= in the name of Deputy Commissioner/District Collector Shangla vide letter No.Shangla/1139,KP-TEVTA/Lit dated 02.02.2022. In the said letter, the Director shows his concern regarding the exaggerated calculation of the compensation. (Copy is enclosed as Annexure-A). The representative of the directorate namely Mr. Shah Riaz Khan Deputy Director also briefed the undersigned about the situation. On the same day case was fixed for hearing in the Court. The undersigned alongwith the Deputy Director concerned attended and requested the court for re-calculation of figure in accordance with the decree of the court. Date

(17)

was adjourned and the undersigned personally held calculation of the amount and finally it was concluded that the decree holders are already in receipt of Rs. 344,655/= over and above the due amount. Thus an application was drafted and the court was requested to recover the said over payment from the decree holder and further payment of Rs. 11900000/= was stopped. (Copy is attached as annexure-B)

11. The departmental representative and land acquisition staff of District Collector Shangla office are close relatives and family members of the decree holders, therefore, they were unhappy from the situation. Aziz Ullah Jan ADC (G) was also unhappy on it for the reason best known to him.

12. In the meanwhile, other two references of the same family titled Said Romen Versus Government of Khyber Pakhtunkhwa and Khizar Hayat etc Versus Government of Khyber Pakhtunkhwa etc. were remanded to the District Judge Shangla by the Hon'ble Peshawar High Court Mingora Bench/Darul Qaza. The undersigned argued both the references and the Hon'able Judge decided the cases against the Department on 10.12.2022. Representative of the Deputy Commissioner Mr. Daftar Ali A.D.K. was present in the court.

13. The departmental representative of Deputy Commissioner office and Land Acquisition staff of District collector Shangla are close relative and family members of the petitioners, therefore, they deliberately delayed the filing of appeals in the Peshawar High Court Mingora Bench/Darul Qaza with the active support of Mr. Azizullah Jan A.D.C (G) Shangla.

Loss in all the above cases is calculated as under:-

(1) Muhammad Sher Vs Govt: of Khyber Pakhtunkhwa etc	122,44,655/=
(2) Said Romen V.s Govt: of Khyber Pakhtunkhwa etc	16,44,26,849/81
(3) Khizar Hayat etc Versus Govt: of Khyber Pakhtunkhwa etc	18,53,78658/41
Total Losses	36,20,50,163/22

Detail of losses is attached as annexure-C

As the above official/officer of District Collector office Shangla are involved in the losses to the public exchequer as calculated above, therefore, departmental proceedings may please be initiated against them as per rules on the subject. For fair and impartial inquiry I would also like to request that the inquiry may please be conducted through officer/officers other than from PMS cadre.

Thanks.

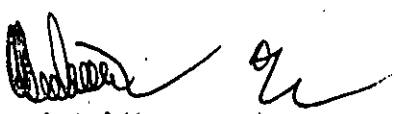

District Attorney
Shangla

Copy alongwith its enclosures is forwarded to:-

1. The Secretary to Government of Khyber Pakhtunkhwa, Law, Policy and Human Rights Department Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department Peshawar.

3. The Commissioner, Malakand Division, Saidu Sharif Swat.
4. The Chairman, ERRA, Islamabad.
5. The Director, Technical Education and Vocational Training Authority Khyber Pakhtunkhwa, Peshawar. He is requested to please pursue early hearing application in CPLA in case of Muhammad Sher etc. pending in the August Supreme Court of Pakistan.

For favour of information and necessary action please.


**District Attorney
Shangla**

GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS & HUMAN RIGHTS
DEPARTMENT

Dated Peshawar the 31st July 2023

NOTIFICATION

SO(E)LD/: 5-11/2022/

The following posting / transfer of the officers of Law, Parliamentary Affairs & Human Rights Department, is hereby ordered in the best public interest, with immediate effect:-

S#	Name & Designation	From	To
1.	Mr. Salik Rauf, District Attorney, (BPS-19)	District Attorney, Abbottabad	District Attorney, Shangla
2.	Mr. Noor Zaman, District Attorney, (BPS-19)	District Attorney, Kohistan Lower	District Attorney, Khyber
3.	Muhammad Zubair, District Attorney, (BPS-19)	District Attorney, Shangla	District Attorney, Kohistan Lower
4.	Mr. Masood-UI-Hassan, District Attorney, (BPS-19)	District Attorney, Dir Lower	Deputy Legislation Officer, Law Department
5.	Mr. Anwar-UI-Haq, District Attorney, (BPS-19)	District Attorney, Kurram	District Attorney, Labour Court Swat.
6.	Mr. Arshad Alam, District Attorney, (BPS-19)	District Attorney, Khyber	District Attorney, Mardan
7.	Mr. Khurshed Ahmad, District Attorney, (BPS-19)	District Attorney, Mardan	District Attorney, Abbottabad

02. Consequent upon the above, Mr. Imran Ullah, District Attorney, Hangu and Mr. Ajab Khan, Assistant District Attorney, Dir Lower will be authorized to look after the work of District Attorney Kurram and District Attorney Dir Lower, respectively, in addition to their own duties.

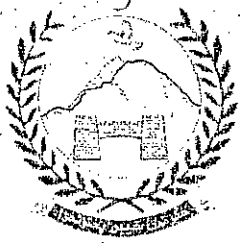
**Secretary to Govt: of Khyber Pakhtunkhwa
Law, Parliamentary Affairs & Human
Rights Department**

Endst: No. & Date Even/9802-32

Copy forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa.
2. Director General, Law and Human Rights Khyber Pakhtunkhwa.
3. District & Session Judge(s) concerned.
4. Deputy Commissioner(s) concerned.
5. District Account Officer(s) concerned.
6. PS to Minister for Law, Khyber Pakhtunkhwa.
7. PS to Secretary Law, Parliamentary Affairs and Human Rights Department.
8. Officer(s) concerned.
9. Personal files.

**(Muhammad Bilal)
Section Officer (Estab)**



OFFICE OF THE
DISTRICT ATTORNEY
SHANGLA AT ALPURAL.

NO. 259 D.A (SH) Dated 04/08/2023.

Phone & Fax# 0996-851279.
governmentpleadershangla@gmail.com

14
20

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Law, Parliamentary Affairs and Human Rights Department
Peshawar.

Subject:

DEPARTMENTAL APPEAL/REPRESENTATION AGAINST THE NOTIFICATION
NO. SO(E)LD/15-11/2022 DATED 31.7.2023 WHEREBY THE APPELLANT
HAS BEEN PREMATURELY TRANSFERRED FROM THE POST OF DISTRICT
ATTORNEY SHANGLA AND POSTED AGAINST THE POST OF DISTRICT
ATTORNEY KOHISTAN LOWER IN UTTER VIOLATION OF
LAW, RULES, PRINCIPLES OF NATURAL JUSTICE AND TRANSFER POSTING
POLICY OF THE PROVINCIAL GOVERNMENT KHYBER PAKHTUNKHWA.

Dear Madam,

Enclosed kindly find herewith the subject appeal/representation in
respect of the undersigned and addressed to the Hon'ble Chief Minister Khyber
Pakhtunkhwa for favour of further necessary action please

(MUHAMMAD ZUBAIR)
DISTRICT ATTORNEY
SHANGLA

To

(21)

The Hon'ble Chief Minister,
Khyber Pakhtunkhwa,
Peshawar.

Through:- PROPER CHANNEL.

Subject: DEPARTMENTAL APPEAL/REPRESENTATION AGAINST THE NOTIFICATION NO. SO(E)LD/15-11/2022 DATED 31.7.2023 WHEREBY THE APPELLANT HAS BEEN PREMATURELY TRANSFERRED FROM THE POST OF DISTRICT ATTORNEY SHANGLA AND POSTED AGAINST THE POST OF DISTRICT ATTORNEY KOHISTAN LOWER IN UTTER VIOLATION OF LAW, RULES, PRINCIPLES OF NATURAL JUSTICE AND TRANSFER POSTING POLICY OF THE PROVINCIAL GOVERNMENT KHYBER PAKHTUNKHWA.

Respected Sir,

The appellant submits as under:-

1. That the appellant is serving as District Attorney in Law Parliamentary Affairs and Human Rights Department, Khyber Pakhtunkhwa since 11.03.2005 and since his first appointment the appellant performs his duty with great zeal, zest, honesty and to the entire satisfaction of the department.
2. That the appellant was previously posted as District Attorney Upper Kohistan vide Notification No.SO(G)LD/15-11/2019/Vol-II dated 16.12.2020 and the appellant performed his duties with full devotion in response to the transfer/posting Notification dated 16/12/2020. (Copy of Notification dated 16/12/2020 is attached as Annexure "A").
3. That the appellant was then transferred from the office of District Attorney Kohistan Upper to District Attorney Shangla Vide Notification No. LD/15-11/2022/PSB/2276-2312 dated 31.05.2022 and the appellant assumed the charge on 11.06.2022. (Copy of Notification 31/05/2022 is attached as annexure "B").
4. That the appellant was performing his duties with punctuality, in the public interest and according to his ability and capacity which is evident from the fact that the Hon'ble District & Session's Judge and Senior Civil Judge/Admin Shangla issued appreciation certificates in favor of the appellant due to his outstanding performance. Copies of certificates are attached as annexure "C" & "D".
5. That it is imperative to note that after dissolution of the provincial assembly of Khyber Pakhtunkhwa on 18.01.2023, a caretaker setup was installed in the province of Khyber Pakhtunkhwa in pursuance of Article 224 of the Constitution of Islamic Republic of Pakistan 1973.
6. That since the Provincial Assembly stood dissolved and election has to take place in the province, therefore, in light of Article 218 of the Constitution of Islamic Republic of Pakistan 1973 and Section 230 of the Election Act 2017, the Election Commission

of Pakistan has imposed a ban on all posting and transfer in the province of Khyber Pakhtunkhwa vide Notification dated 22.01.2023.

7. That the appellant was shocked to know that the department issued the impugned Notification No. SO(E)LD/15-11/2022 dated 31.7.2023 whereby the appellant has been prematurely transferred from the post of District Attorney Shangla and posted against the post of District Attorney Kohistan lower in utter violation of section 230 of the Election Act 2017, Notification dated 22.01.2023 of the Election Commission of Pakistan, rules, principles of natural justice, and Transfer Posting Policy of the Provincial Government Khyber Pakhtunkhwa.
8. That feeling aggrieved from the impugned Notification dated 31.7.2023, the appellant filing the instant Departmental Appeal/Representation on the following grounds:

GROUNDS

- A. That the impugned Notification dated 31.7.2023 is against the law, rules principles of natural justice, hence void ab initio not sustainable under the law.
- B. That as per Transfer Posting Policy of Provincial Government normal tenure on a post for a civil servant is 2 years however the appellant has been made a rolling stone by transferring prematurely vide Notification dated 31.7.2023 in utter violation of the ibid policy.
- C. That as per judgments of superior courts, the authority given to any official shall be exercised as a Public Trust and in accordance with law and rules however the Notification dated 31.7.2023 is an example of colorful exercise of powers in violation of law and Rules.
- D. That the appellant is entitled to be treated equally in accordance with transfer posting policy however the appellant has been discriminated by transferring him prematurely which is violation of Article 4 and 25 of the constitution of Pakistan 1973.
- E. As per reported judgment of Supreme Court of Pakistan 2018 SCMR 1411(b), Section 10 of the Baluchistan Civil Servant Act 1974 did not prescribe a minimum period during which a civil servant must serve at his post, it did not mean that the government without assigning any reason could move a civil servant from the place he was posted to after a month or subject the civil servant to repeated postings in a short period of time because that would amount to punishing him such postings also adversely affected the public interest and resulted in the wastage of scarce resources and constituted bad governance.
- F. That by issuing the impugned pre-mature, political motivated Notification dated 31.7.2023, the department violated dictum of the Apex Court laid down in the case of Anita Turab.

- G. That the Notification dated 31.7.2023 is also against the mandate of the interim government as per Election Act, 2017 as interpreted by the August Supreme Court of Pakistan vide judgment reported in 2021 PLC (C.S) 519, and 2013 SCMR 1205.
- H. That as soon as caretaker setup was appointed, the constitutional command is that "Its mandate is to hold free and fair election in the aid of ECP". No caretaker setup could make any policy decisions even in relation to transfer posting of civil servants what to say of removal and appointment of members of the Board of Governors of different MTI's who have been appointed after going through all the process of appointment so mentioned in the preceding paras. This principle was settled by the Supreme Court after 18th Amendment to the Constitution in the case KHAWAJA MUHAMMAD ASIF Vs. FEDERATION OF PAKISTAN, etc. reported as 2013 SCMR 1205; followed by another case of NEMATULLAH Vs CHAIRMAN GOVERNING BODY (2016 SCMR 1299); and reaffirmed by the Supreme Court in PLD 2021 SC 313. To be more concise, the Supreme Court has most vividly observed that "That mandate of a caretaker Government is to hold the mantle in the interregnum when the term to the sitting government has expired and the new government is yet to take charge, A caretaker government is empowered only to carry out day to day affairs of the state with the help of available machinery/ resources/ manpower. It cannot take policy decisions and permanent measures including recruitments, making appointments, transfers and postings of government servants. It must leave such matters to the elected government which takes charge as a result of elections, a caretaker government/ cabinet has to confine itself to running day to day administration of the state and to take decisions required for orderly running the affairs of the state".
- I. That the mandate of the caretaker setup is very limited as has been discussed in an array of judgments wherein the mandate of Constitution and certain provisions of Election Act 2017 have also been taken into consideration but despite that, the department have with mala fide intentions and in complete negation of the law have issued the impugned Notifications.
- J. That the Constitutional guarantee of the right to be dealt with in accordance with law is being infringed in respect of the petitioners, for no plausible reason or rhyme, and therefore the impugned decisions in question is liable to be strike down. These principles are time and again reiterated by the Honorable Supreme Court and have recently held of immense value in PLD 2021 Sc 600 in the following words:

"Constitutional guarantee of the right to be dealt with in accordance with law, under Article 4 of Constitution, is available not only to every citizen of the country but also to every other person for the time being with Pakistan, said constitutional guarantee cannot be curtailed or limited in the case or matter of any person whosever he may be and whatever the allegations against him may be."

Furthermore, the right to be dealt with in due process of law as per Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 is being made redundant in the instant case against the petitioners. The right is absolute and cannot be done away with and it needs to be taken as liberally as possible as per the dictum laid by the Honorable Supreme Court in PLD 2022 SC 497.

"In corporation of the right to a fair trial and due process by Article 10-A in the Constitution as an independent fundamental right underscores the constitutional significance of fair trial and due process and like other fundamental rights; it is to receive a liberal and progressive interpretation and enforcement."

K. That the Honorable Supreme Court of Pakistan in the recent judgment in Justice Qazi-Faez Isa case has held in unequivocal terms that the highest of offices are not to be denied the fundamental rights so guaranteed by the Constitution. The judgment is reported as PLD 2022 SC 119 and lay as under:

"Right to be dealt with in accordance with law. No one, including a judge of the highest court in the land, is above the law, At the same time, no one, including a Judge of the highest Court in the land, can be denied his right to be dealt with in accordance with law; it matters little if the citizen happens to hold a high public office, he is equally subject to and entitled to the protection of law."

L. That the impugned Notification dated 31.7.2023 is nullity in the eyes of law as the act of department goes in direct negation of the provisions of law. Furthermore, when the base is wrong and rooted in a nullity, any superstructure built on the base, is also unsustainable. The principle laid down through PLD 1958 SC 104 has been reiterated in PLD 2022 SC 119, 2021 SCMR 637, PLD 2007 SCMR 1835, which essentially forms part of our jurisprudence.

It is, therefore, requested to kindly re-consider the transfer of the appellant, declare the impugned Notification dated 31.7.2023 as against the Transfer Posting policy of the Provincial Government, mandate of the Caretaker Government, laid down dictum of the August Supreme Court of Pakistan, may very kindly be withdrawn/cancelled and the appellant may kindly be allowed to complete his normal tenure in District Shangla in the best interest.

(Muhammad Zubair)
**DISTRICT ATTORNEY
SHANGLA**

Identification of Unattractive/Hard Areas policy;

I am directed to refer to the subject and to say that the Provincial Cabinet in its meeting held on 30th March, 2010 inter-alia approved the following for the purpose of Posting/ Transfer Policy:-

1. The distinction between unattractive/hard areas should be done away with and both should be labeled as Unattractive areas.
2. Existing list of FATA areas be retained.
3. The following areas were recommended/approved to constitute unattractive areas in NWFP:-
 - a. Kohistan District.
 - b. Tank District.
 - c. Chitral District.
 - d. Battagram District.
 - e. Shangla District.
 - f. Hangu District.
 - g. PATA areas of Mansehra (Kala Dhaka)

Tenure of posting.

- i. The erstwhile normal tenure of 2 years be retained.
- ii. Existing tenure for unattractive areas be retained. However, in case of married civil servants; transfer should be made just at the beginning of school session and tenure should be one year instead of 1.5 year, so that academic disruptions are avoided.
- iii. At the time of entry in service, all civil servants be asked to give 4 options from unattractive areas.
- iv. After a stint of service in unattractive area, employees may be offered option to serve in district of choice.

(Authority; letter No. SOR-VIE&AD/1-4/2010/Vol-VIII, Dated, 10th April, 2010)