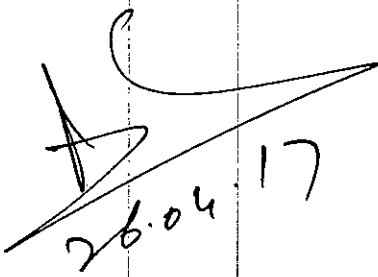


Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	26.04.2017	<p style="text-align: center;">3</p> <p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR</u></p> <p style="text-align: center;">Appeal No. 542/2016</p> <p style="text-align: center;">Fazle Subhan Versus the Additional Chief Secretary FATA, Peshawar and 2 others.</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-</u></p> <p>Counsel for the appellant and Mr. Muhammad Jan, Government Pleader alongwith Daud Jan, Superintendent for respondents present.</p> <p>2. Mr. Fazle Subhan hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.</p> <p>3. Brief facts of the case of the appellant are that the appellant was serving as Theology Teacher in GPS Dew Dheri Tehsil Prang Ghar when the said transfer order was cancelled vide impugned order dated 10.05.2016 constraining the appellant to prefer departmental appeal on 13.05.2016 which was not responded and hence the instant service appeal on 20.05.2016.</p> <p>4. Learned counsel for the appellant has argued that the judgment of the Hon'ble High Court Peshawar dated 19.02.2013 was incorrectly relied on. That the posts of</p>


26.04.17

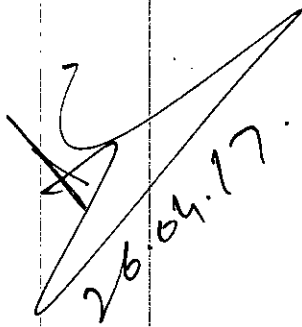
PTC/C.T available in Tehsil Prang Ghar in the year, 2011 were advertised in which last date for receiving applications was given as 01.11.2012. That the posts of Theology Teacher against which the appellant was transferred was not the subject matter of the Writ Petition. That the said transfer order is against clauses 1 & 4 of the posting/ transfer policy and notification dated 27.02.2013 and as such liable to be set aside.

5. Learned Government Pleader has argued that this court lacks jurisdiction to interpret the judgment of the Hon'ble High Court. That the said post is to be filled in the light of the judgment of Hon'ble High Court and as such claim of the appellant against the said post is not maintainable.

6. We have heard arguments of the learned counsel for the parties and perused the record.


7. Perusal of the judgment of the Hon'ble Peshawar High Court Peshawar would suggest that the same was in respect of PTC/C.T posts while the appellant was transferred and posted against the post of Theology Teacher. It was not established that the said post was meant for initial appointment as such we are of the view that the impugned order of cancellation of the transfer order to the extent of appellant is against facts and clauses 1 & 4 of posting/transfer policy coupled with notification dated 27.02.2013 issued on the basis of Ms. Anita Turab case.

8. We therefore accept the present appeal and set aside the

A handwritten signature in black ink, followed by the date '26.04.17' written below it.

impugned order dated 10.05.2016 to the extent of appellant.
Parties are left to bear their own costs. File be consigned to the
record room.


(Muhammad Azim Khan Afridi)
Chairman


(Muhammad Amin Khan)
Member

26.04.17

ANNOUNCED
26.04.2017

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20.03.2017

Counsel for the appellant and Addl: AG alongwith Mr. Daud Jan, Supdt for respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 24.04.2017 before D.B. The restraint order shall continue.


(AHMAD HASSAN)
MEMBER

24.04.2017

Counsel for the appellant is not in attendance. Mr. Daud Jan, Superintendent alongwith Additional AG for the respondents present. In view of order sheet dated 15.2.2017 appeal adjourned to 26.04.2017 for a short date before D.B. The restraint order shall continue.


(Member Hassan)
Member


(Muhammad Arif Khan) Chairman
Member

15.02.2017

Counsel for the appellant and Addl: AG alongwith Mr Daud Jan, Supdt for respondents present. Learned AAG informed the Tribunal that a C.O.C application is pending before august High Court, Peshawar and that since they had to submit the compliance report which has been halted by the order of this Tribunal by way of restraining order, so the status-quo application may kindly be dispose of urgently. Counsel for the appellant requested for a short adjournment as he was busy today before Peshawar High Court, Peshawar in other cases. In the circumstances, short date for next week is issued prior to C.O.C proceedings before august High Court for full hearing. To come up for arguments on 22.02.2017 before D.B. *The restraint order shall continue.*


(AHMAD HASSAN)
MEMBER


(ASHFAQUE TAJ)
MEMBER

22.02.2017

Clerk to counsel for the appellant and Mr. Daud Jan (Supdt) alongwith Addl: AG for respondents present. Argument could not be heard due to general strike of the bar. To come up for argument on 20.03.2017 before D.B. The restrain order shall continue:


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

07.10.2016

Counsel for the appellant and Addl: AG - for respondents present. Counsel for the appellant requested for adjournment. Adjournment granted. To come up for arguments on 07.02.2016. The restraint order shall continue.



(MUHAMMAD AAMIR NAZIR)
MEMBER



(PIR BAKHSH SHAH)
MEMBER

07.02.2017

Clerk to counsel for the appellant and Mr. Usman Ghani, Sr. GP alongwith Mr. Daud Jan, Supdt for respondents present. Clerk to counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 15.02.2017. The restraint order shall continue.



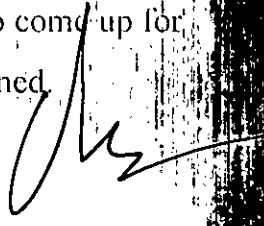
(ASHFAQUE TAJ)
MEMBER



(MUHAMMAD AAMIR NAZIR)
MEMBER

21.06.2016

Appellant with counsel and Mr. Daud Jan, Supdt. alongwith Ziaullah, GP for respondents present. Requested for submission of written reply. Request accepted. To come up for written reply on 27.7.2016. Status-quo be maintained.


Member

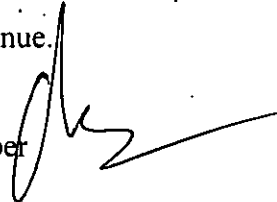
27.07.2016

Counsel for the appellant and Mr. Murtaza Khan, Steno alongwith Addl. AG for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 05.09.2016. The restraint order shall continue.


Chairman

05.09.2016

Agent to counsel for the appellant and Mr. Murtaza Khan, Stenographer alongwith Mr. Usman Ghani, Sr.GP for respondents present. Rejoinder submitted, copy whereof handed over to learned Sr.GP. To come up for arguments on 7-10-16 before D.B. The restraint order shall continue.

Member 


Member

Appeal no. 542/2016
Fazal Subhan vs Govt

24.5.2016

Counsel for the appellant present. Preliminary arguments heard and record perused.

Appellant is aggrieved of transfer/posting order dated 10.5.2016 vide which his earlier transfer order was prematurely withdrawn where-against he preferred departmental appeal on 13.5.2016 which was rejected on 16.5.2016 and hence the instant service appeal on 20.5.2016.

According to stance of the appellant the impugned order dated 10.5.2016 was passed on erroneous interpretation of the judgment of the august Peshawar High Court dated 19.2.2013 passed in Writ Petition No. 1087/2011 titled "Abdul Malik and others, Versus Addl. Chief Secretary (FATA) and others". That according to the spirit of the said judgment the respondents were to implement policy of the government for appointment against post in Tehsil Prang Ghar by giving preference to the local of the area. That the appellant is also local of the area and was entitled to appointment against the said post as directed in the judgment of the august Peshawar High Court and as such the impugned order dated 10.5.2016 including final order dated 16.5.2016 are against facts and law and liable to be set aside.

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 21.06.2016 before S.B. Notice of stay application shall also be issued to the respondents for the date fixed. Status quo be maintained.

Appellant Deposited
Security & Process Fee

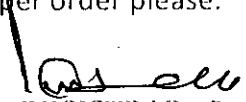

26/5/16


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 542/2015


S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	24/05/2016	<p>As per direction of the worthy Chairman, the present appeal filed by Mr. Fazal Subhan through Mr. Noor Muhammad Khatak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	24-5-16	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on. <u>24-5-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Fazal Subhan T.T GPS Dew Dheri Tehsil Prang Ghar Mohmand Agency received today i.e. on 20.05.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of proper rejection order of departmental appeal is not attached with the appeal which may be placed on it.
- 2- Memorandum of appeal is unsigned which may be got signed.

No. 841 /S.T,

Dt. 23/5 /2016



REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Noor Muhammad Khattak Adv. Pesh.

Note:

2/Sir,

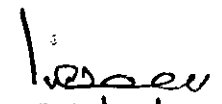
That as no such separate order regarding rejection of Departmental appeal has been issued, therefore the appeal in hand may kindly be placed before the Honorable Bench.


23/5/2016.

Sir,

The observations of this office and reply of counsel for the is submitted for order please.

Handble
check - on

Be final before 
23/5/16

S. B. J.
24.05.16

BEFORE THE KHYBER PA KHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 542 /2016

FAZAL SUBHAN

VS

A.C.S FATA

INDEX

S. NO.	DOCUMENTS	ANNEXURE	PAGE
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2.	Stay application	5.
3.	Order	A	6-7.
4.	Impugned order	B	8.
5.	Judgment	C	9-15.
6.	Advertisement	D	16.
7.	Departmental appeal & rejection	E	17.
8.	Transfer/posting policy	F	18-20.
9.	Vakalat nama	21.

APPELLANT

THROUGH: 
NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 542 /2016

K.W.P. Provincial
Service Tribunal
Diary No. 519
Dated 20-5-2016

Mr. Fazle Subhan, Theology Teacher (BPS-15),
GPS Dew Dheri, Tehsil Prang Ghar, Mohmand Agency.

..... Appellant

VERSUS

- 1- The Additional Chief Secretary FATA, FATA Secretariat, Warsak Road, Peshawar.
- 2- The Director of Education FATA, FATA Secretariat, Warsak Road, Peshawar.
- 3- The Agency Education Officer, Mohmand Agency at Ghalani.

..... Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974
AGAINST THE IMPUGNED ORDER DATED 10-05-2016
WHEREBY THE APPELLANT WAS PREMATURELY
TRANSFERRED TO GHS YOUSUF KHEIL MOHMAND
AGENCY AND AGAINST THE APPELLATE ORDER DATED
16-05-2016 WHEREBY THE DEPARTMENTAL APPEAL OF
THE APPELLANT HAS BEEN REGRETTEED ON NO GOOD
GROUNDS

PRAYER:

That on acceptance of this appeal the impugned order dated 10-05-2016 and appellate order dated 16-05-2016 may be set aside and the respondents may be directed that not to transfer the appellant from GPS Dew Dheri, Prang Ghar, Mohmand 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:

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

- 1- That appellant was appointed as Theology Teacher in the respondent Department on the proper recommendation of the Departmental Selection Committee and after proper advertisement issued/published in the leading News Paper. That right from appointment till date the appellant has served the respondent Department quite efficiently and up to the entire satisfaction of his superiors.

~~Had to do~~
~~20/5/16~~
20/5/16

- 2- That after serving for considerable time at GHS Yousuf Kheil Mohmand Agency the appellant submitted an application dated 01-06-2016 before the respondent No.3 for his transfer to his home station or nearby station. That the said application of the appellant was accepted by respondent No.3 and in result the appellant was transferred to GPS Dew Dheri Prang Ghar, Mohmand Agency against the vacant post vide order 09-06-2015. Copies of the application and order are attached as annexure **A & B.**
- 3- That in response to the order dated 09-06-2015 the appellant submitted his charge report at GPS Dew Dheri and started performing his duty with all zeal and zest.
- 4- That vide impugned order dated 10-05-2016 the respondent No.3 cancelled the transferred order dated 09-06-2015 by miss-interpreting the judgment dated 19-02-2013 passed in writ petition No.1087/2011 of the august Peshawar High Court Peshawar. Copies of the impugned order and judgment of the Peshawar High Court Peshawar are attached as annexure..... **C & D.**
- 5- That according to the said judgment dated 19-02-2013 Peshawar High Court Peshawar directed the respondent Department to implement the policy regarding initial recruitment of the cadres of PST and CT. That it is pertinent to mention that the petitioners in the said writ petition No.1087/2011 have questioned the selection process of the respondent Department which was conducted by the respondent Department in light of the advertisement issued in 2011. Copy of the advertisement is attached as annexure..... **E.**
- 6- That due to miss-reading of the said judgment dated 19-02-2013 the respondent No.3 pre-maturely transferred the appellant from GPS Dew Dheri, prang Ghar. That the appellant feeling aggrieved from the impugned order dated 10-05-2016 filed Departmental appeal before the respondent No.3 but the same was regretted by the respondent No.3 on no good grounds vide impugned appellate order dated 16-05-2016. Copy of the Departmental appeal and rejection order which has been written/drafted on the Departmental appeal is attached as annexure **F.**
- 7- That the appellant having no other remedy preferred the instant appeal inter alia on the following grounds.

GROUND:

- A- That the impugned orders dated 10-05-2016 and 16-05-2016 issued by the respondent No.3 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 the 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 impugned order dated 10-05-2016 is against the clause I and IV of the transfer/posting policy of the Provincial Government of Khyber Pakhtunkhwa. Copy of the transfer/posting policy of the Government of Khyber Pakhtunkhwa is attached as annexure..... **G.**
- D- That the judgment of the august Peshawar High Court Peshawar has been mis interpreted by the respondents and as such the transfer order dated 10.5.2016 has been issued by the respondents in violation of the principle of Locus Poenitentiae.
- E- That appellant and one namely Zubair shah has been posted in the concerned school i.e. GPS Dew Dheri wherein both the teachers have been transferred vide impugned order dated 10.5.2016 and as such the concerned school has become non functional. That if the impugned order has not been set aside then the students of the concerned school would be badly affected.
- F- That the impugned order dated 10-05-2016 has not been issued by the respondent No.3 in the public interest nor exigencies of service.
- G- That the respondents acted in arbitrary and malafide manner while issuing the impugned order dated 10-05-2016.
- H- That the impugned order has been issued by the respondents on malafide basis by taking shelter of the august Peshawar High Court Peshawar.
- I- That the impugned order has been issued by the respondents with ulterior motives just to accommodate their blue persons.
- J- 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 be accepted as prayed for.

Dated: 16.5.2016

APPELLANT



FAZLE SUBHAN

THROUGH:



**NOOR MOHAMMAD KHATTAK
ADVOCATE
(0345-9383141)**

BEFORE THE KHYBER PAKHTUNKHEWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO _____/2016

FAZAL SUBHAN

VS

A.C.S FATA

APPLICATION FOR SUSPENSION OF OPERATION
OF IMPUGNED ORDER DATED 10.5.2016 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 for.
- 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 10.5.2016 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 impugned transfer order dated 10.5.2016 may very kindly be suspended till disposal of this appeal.

APPELLANT



FAZAL SUBHAN

THROUGH:



NOOR MOHAMMAD KHATTAK
ADVOCATE

NO. 6319
DATED 11/07/15
F-6 MISC NEW


10

A-6

The Agency Education Officer
Mohmand AgencySubject; REQUEST FOR TRANSFER.

Memo;

I am directed to enclose herewith the Deputy Secretary (Admn/Services) FATA Secretariat letter No.FS/PS/C-433/2014 dated 29-4-2015 (copy enclosed) in respect of Mr.Fazal Subhyan TT Govt High School Yousaf Khel Mohmand Agency on the above noted subject for necessary action as per rules/policy in vogue please.

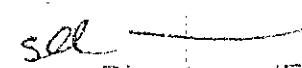

Deputy Directress (Estab)

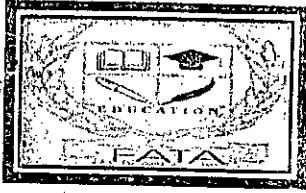
Encl.No. _____/

Dated _____ 2015.

Copy to;

1. Deputy Secretary (Admn/Services) FATA Secretariat Peshawar.
2. P.A to Director Education FATA.


Deputy Directress (Estab)**ATTESTED**

OFFICE OF THE AGENCY EDUCATION OFFICER
MOHMAND AGENCY AT GHALLANAI
P.NO 0924290180 FAX:0924290180
NO. 116/88 /Dated: Ghallanai/ 9 /06/2015.

① - ⑦

SUBJECT ; TRANSFER /POSTING

Memo:-

Reference to the director of education fata KPK Peshawar No.6319 dated 1.6.2015.

Mr. Fazii Subhan TT GHS yousaf Khel Mohmand Agency is hereby transfer on his own pay and scale to GPS Dew Dheri Prang Ghar in the intrest of Public Service.

Note : no TA DA is allowed

2 Charge report should be submitted to all concerned.


Agency Education Officer

Mohmand Agency

Endostt: No. _____ / dated /6/2015

Copy to

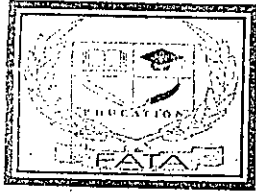
- 1- Director of Education FATA Peshawar
- 2- AAEO
- 3- Headmaster GHS Yousaf Khel

Agency Education Officer

Mohmand Agency

ATTESTED





OFFICE OF THE AGENCY EDUCATION OFFICER
MOHMAND AGENCY AT GHALLANAI
P.NO.0924290180 FAX:0924290180

C-8

CANCELLATION OF TRANSFER ORDERS.

In pursuance of the decision of the Honorable High Court Peshawar, Transfer orders of the following teachers to the Schools Located in Tehsil Prang Ghar as noted against their names issued vide this office Endst. Nos and dates even are hereby cancelled with immediate effect.

The teachers are directed to assume charges in their original Schools under intimation to this office in stipulated period of time positively.

S.No.	Name	Desig:	School where transferred	Remarks.
1	Hassan Khan	CT	GMS Nao Killi	
2	Afzal Shah	CT	GHS Nivi Killi Prang Ghar	
3	Yousaf	DM	GMS Nao Killi	
4	Iqbal Shah	PST	GPS Prang Ghar	
5	Zubair Shah	PST	GPS Dew Dhery	
6	Fazli Subhan	TT	GPS Dew Dhery	
7	Merwas	TT	GPS Sra Shah	
8	Qasim	TT	GPS Kirra No.02	
9	Bacha Hassan	PST	GPS Prang Ghar	
10	Muhammad Raza	PST	GPS Sra Shah	
11	Zuhra Bibi	CT	GGMS Nivi Killi	

(SAEED GUL)

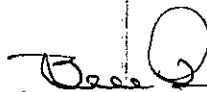
Agency Education Officer
Mohmand Agency at Ghallanai

Endst.No.Estab:II/Cancellation/ 24382-85 /dated: 10/05/2016.

Copy to:-

1. Director Education FATA K.P.K Peshawar.
2. Political Agent Mohmand Agency.
3. AAEO (Concerned)
4. Teacher Concerned

ATTESTED


Agency Education Officer
Mohmand Agency at Ghallanai

Hdi



IN THE PESHAWAR HIGH COURT PESHAWAR

D-9



Writ Petition No. 1087/2011

1. Abdul Malik S/O. Said Muhammad Shah R/O Tehsil Prang Ghar Mohmand Agency.
2. Seema Gul D/O Saeed ur Rehman R/O Tehsil prang Ghar Mohmand Agency.
3. Zaman Khan S/O Rasul Shah R/O Tehsil prang Ghar Mohmand Agency.
4. Muhammad Daud S/O Miras Khan R/O Tehsil prang Ghar Mohmand Agency.

..... (Petitioners)

Versus

1. Additional Chief Secretary FATA, Khyber Pakhtunkhwa FATA Secretariat Peshawar.
2. Director of Education FATA Secretariat, Peshawar.
3. Deputy Director of Education FATA, Khyber Pakhtunkhwa Peshawar.
4. Agency Education Officer, Mohmand Agency at Ghalanai.

..... (Respondents)

Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973

Prayer in Writ Petition:

On acceptance of this Writ Petition an appropriate writ may please be issued directing the respondents to stop forthwith filling the posts of PTC & CT in Tehsil prang Ghar through transfer, the petitioners are continuously denied appointment being resident of Tehsil Prang Ghar on no ground what so ever, mala fide vacant posts are created in other tehsils by transferring the teachers to Tehsil Prang Ghar, the Petitioners throughout remained in the top of merit lists for appointment against the post of CT & PTC, the transfers so made be declared as illegal, unlawful and without lawful authority and of no legal effect, the transfer orders so made in violation of law and ban imposed by the respondents on such transfers, be reversed and teachers so transferred in violation of law be sent back to their own Tehsil & the posts vacated in Tehsil prang ghar be filled

ATTESTED

Deputy Registrar
Peshawar

ATTESTED

10

from amongst the eligible and fit residents of this Tehsil, the petitioners are eligible and fit for appointment against the posts of PTC & CT may be considered for appointment or any other remedy deemed proper may also be allowed.

Respectfully Submitted:

1. That the Mohmand Agency consists of 7 Tehsils namely
 - i. Halimzai.
 - ii. Yakaghond.
 - iii. Pandyali.
 - iv. Safi.
 - v. Ambar.
 - vi. Prang Ghar.
 - vii. Khwaizi- baizi.

The Petitioners belong to Tehsil prang ghar, this tehsil is adjacent of settled area, rather most of its area is considered to be part of settled area and due to its location is accessible and on road side. The Petitioners are highly qualified and at their credit Masters degrees in Art, besides have the professional qualifications of M. Ed, B.Ed, CT and PTC. (Copies of the degrees & certificates are attached as Annexure A)

2. That as per Notification dated 13.7.2009, the posts CT, PET, DM, JET / AWI is to filled on 25 % Tribal Agency Level & 75 % on Tehsilwise open merit. While the post of PTC is to filled 100 % on open merit at Tehsil level basis. Similar policy was in vogue even prior to that. (Copy of the Notification dated 13.7.2009 is attached as Annexure B)

3. That in view of the location of Tehsil Prang Ghar, PTC/ CT teachers from other tehsils make every endeavour to get themselves transfer to tehsil prang ghar against any expected vacant posts, and when transferred on the one hand blocked appointments for the new entrant in Tehsil Prang Ghar and on the other hand created vacancies in other Tehsils.

4. That since the year 2007 the petitioners are applying against the advertised posts and remained in the top of merit lists, however non from Tehsil Prang Ghar get appointment in view of the fact that the vacants posts were filled through transfer. (Copies of the appointment letters are attached as Annexure C, D, E, F & G)

5. That vide letter dated 26.10.2009 even ban has been imposed on the transfer of teaching staff in BPS-15 and below, albeit it was never implemented or followed and frequently vacant posts have been filled through transfer in Tehsil Prang Ghar, quite recently, when one teacher namely Ghani ur Rehman died on

ATTESTED

FILED TO PAY

30/11/2011

30/11/2011

(11)

18.2.2011 of Tehsil Prang Ghar, on the other day the post was filled through transfer from one Hassan Khan of Tehsil Halimzai, similarly one Qayum was transferred from another Tehsil to Prang Ghar Tehsil, there are a lot of such transfers, but the copies were not provided to the petitioners despite their best effort. The Petitioners throughout agitated this issue with the respondents; however no action was taken thereon, they also met with the Director of Education FATA but in vain. (Copies of the appeals & representations are attached as Annexure H)

6. That since the petitioners remained deprived of their appointment and have got no other adequate remedy available in law are constrained to invoke the constitutional jurisdiction of this honorable Court inter alia on the following grounds:

Grounds of Writ Petition:

- A. That the Petitioners are fit and eligible for appointment in accordance with the policy of the respondents for appointment against posts of PTC & CT however remained deprived of illegally and unlawfully.
- B. That the Petitioner have not been treated in accordance with law, the rights secured and guaranteed under the law have been violated.
- C. That in view of the location of Tehsil Prang Ghar, PTC/ CT teachers from other tehsils make every endeavour to get themselves transfer to tehsil Prang Ghar against any expected vacant posts, and when transferred on the one hand blocked appointments for the new entrant in Tehsil Prang Ghar and on the other hand created vacancies in other Tehsils, thus the petitioners remained deprived of appointments illegally and unlawfully.
- D. That the transfers made in violation of law and policy of the respondent department are liable to be reversed and the petitioners be considered for appointment in accordance with law against the vacant posts.
- E. That the right for employment of the petitioners are secured under article 9, 18 and 25 of the Constitution, however it has been recklessly violated.
- F. That the respondents are bound to follow the law and implement the policy in letter and spirit, similarly any violation of the ban on transfer so imposed should entail reversal of the transfer orders.

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Public Prosecutor

FILE

Dep

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20/11/2011

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(S)

G. That the petitioners seek permission of this honorable Court to relay on additional grounds at the hearing of this petition.

It is therefore prayed that on acceptance of this Writ Petition an appropriate writ as prayed for may please be issued against the respondents and in favour of the Petitioners.

[Signature]

Petitioner

Through

[Signature]

IJAZ ANWAR
Advocate, Peshawar

List of Books:

- 1. Constitution 1973.
- 2. Civil Servants (Appointment, Promotion & Transfer) Rules 1989.
- 3. Civil Servant Act, 1973.

Certificate:

Certified that no writ petition the same subject and between the same parties has been filed previously or concurrently.

ATTESTED

[Signature]

[Signature]

FILED TO COURT

Deputy Clerk

30 SEP 2011

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

13

Court of.....

Case No.....of.....

Serial No. of Order of Proceedings	Date of Order of Proceedings	Order or other Proceedings with Signature of Judge.
1	2	3
	<p><u>ORDER</u> 19.02.2013</p> <p><i>[Signature]</i></p>	<p><u>Writ Petition No. 1087/2011</u></p> <p>Present: Mr. Ijaz Anwar, Advocate, for Abdul Malik etc., petitioners.</p> <p>Mr. Obaid Razaq, Addl. AG, for the respondents.</p> <p>*****</p> <p><u>KHALID MAHMOOD, J.</u>-Abdul Malik etc., petitioners herein, through the instant constitutional petition, have asked for the issuance of an appropriate writ declaring that act of the respondents filling the posts of PTC / CT through the transfers in Tehsil Prang Ghar by ignoring them from appointments through initial recruitment being nullity in the eye of law is of no effect whatever. They have also asked for the issuance of an appropriate writ directing the respondents to consider them for appointments against the aforesaid posts besides being eligible and deserving persons are also the residents of Tehsil</p>

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ATTESTED
[Signature]
Peshawar High Court

Prang Ghar.

14

2. The main contention of the learned counsel for the petitioner was that when the petitioners besides being residents of Tehsil Prang Ghar are also eligible, how since 2007, from creation and vacation of the posts of PTC / CT, they have been deprived from appointments against the aforesaid posts by filling the same through transfer, which is totally based on mala fide and purely on political consideration. The learned counsel by referring to Notification bearing No. FS / F / 100-19 (Vol-27) / 6497-6508, dated 03.07.2009 and Circular letter dated 26.10.2009 further contended that when the government, by itself, formulated the recruitment policy in case of Agency Cadre posts in BS-1-15, how the respondents could go beyond it by filling the posts through transfer, that too, when this illegal act has been done in the period of ban on transfer.

3. As against that, the learned Additional Advocate General though tried his level best to controvert the allegations, levelled by the petitioners, but he was totally failed to do so.

4. We have gone through the available record

ATTESTED



carefully and considered the submissions made by the learned counsel for both the parties.

5. Since the petitioners are eligible and deserving candidates being resident of Tehsil Parang, they, under the law and constitution, couldn't be deprived from their due right and also required to be considered for appointments against the posts of PTC / CT in Tehsil Prang Ghar because it is the right of the locals of the area, in which, the posts are created or vacated to be employed in the said posts. Therefore, we, direct the respondents to implement the policy qua appointments against the aforesaid posts in Tehsil Prang Ghar, in its letter and spirit by keeping in their mind that the locals of the said area, who are otherwise eligible and deserving, should not be deprived from their due right, which is guaranteed by the constitution. This writ petition is disposed of in the above terms.

Announced.
19. 02. 2013

sd/ Khalid M. Khan
sd/ Ghoshad Qaiser

ATTESTED

[Signature]

[Signature]

20/2/13

(Fayaz)

CERTIFIED TO BE TRUE COPY

[Signature]

16-03-13

Peshawar
Authority
The District

D
F
D

دو خواستیں و طلبہ ہیں

حکومت سندھ ایس ایس ایف میں دو پوزیشنوں کے لیے درخواستیں قبول کرنا شروع کر چکی ہیں۔ ان پوزیشنوں کے لیے درخواستیں جمع کروانے کی تاریخ 11-11-2012 تک ہے۔

شراائط

- 1- درخواستیں جمع کرانے کی آخری تاریخ 11-11-2012 تک ہے۔ اس تاریخ کے بعد وصول ہونے والی درخواستیں قبول نہیں کی جائیں گی۔
- 2- ہر ایک پوزیشن کے لیے عمر کی حد کا تعین اور اندراج گورنمنٹ ہائی اسکول کے ذریعے کیا جائے گا۔
- 3- درخواست دہنے کے لیے ایس ایس ایف میں طلبہ کی ضرورت ہے۔
- 4- تقرری ریگولر بنیادوں پر ہوگی لیکن پائس اور کوریج کے متعلقہ افسروں کے۔
- 5- تقرریاں خالصتاً سیرت کی بنیاد پر مرحومہ حکومتی قوانین ایس ایس ایف کے مطابق ہوں گی۔
- 6- انٹرویو مندرجہ ذیل شیڈول کے مطابق ہوں گے۔ انٹرویو وغیرہ میں شامل ہونے کے لیے کوئی فی اے ای ایس ایس ایف میں داخل ہونا ضروری ہے۔

تاریخ	تاریخ	پوزیشن	پوزیشن
12-11-2012	12-11-2012	میٹرک بعد شہادۃ العالیہ فی العلوم العربیہ و اسلامیہ سیکنڈ ڈویژن از تنظیم الوقایف المدارس یا ایم اے عربی سیکنڈ ڈویژن (مٹا اور شدہ ہو چکی)	AT (BPS-15) 18-35
12-11-2012	12-11-2012	میٹرک بعد شہادۃ العالیہ فی العلوم العربیہ و اسلامیہ سیکنڈ ڈویژن از تنظیم الوقایف المدارس یا بی اے سیکنڈ ڈویژن بعد اسلامیات و عربیہ و شہادۃ العالیہ از تنظیم الوقایف المدارس	TT (BPS-14) 18-35
13-11-2012	13-11-2012	بی اے ای ایس ایف بعد سی ٹی سٹیٹیکٹ اوپن انڈیکیشن	CT (Gon): BPS-09 18-35
13-11-2012	13-11-2012	بی اے ای ایس ایف بعد سی ٹی ای ای	PET (BPS-09) 18-35
14-11-2012	14-11-2012	بی اے ای ایس ایف بعد سی ٹی ای ای	DM (BPS-09) 18-35
14-11-2012	14-11-2012	میٹرک بعد جملہ قرأت و سندھ حفظ القرآن از تنظیم الوقایف المدارس	Qari (BPS-09) 18-35
14-11-2012	14-11-2012	میٹرک بعد حفاظت و سیرت میں تجربہ	Assistant Store Keeper (BPS-07)

حکومت سندھ ایس ایس ایف میں دو پوزیشنوں کے لیے درخواستیں قبول کرنا شروع کر چکی ہیں۔ ان پوزیشنوں کے لیے درخواستیں جمع کروانے کی تاریخ 11-11-2012 تک ہے۔

ATTESTED

no PST post has been added

درخواست/اپیل برائے منسوی ٹرانسفر

جنرل - عالی

تعداد میں ہے کہ سائین علی اساتذہ ٹرانسفر کھینچ کر اٹھانا سے محنت کھینچنا

کو بوجھ میں جس دن سے علم اساتذہ میں ہے جن میں اپیل کر کے ہے جنرل - عالی

میں ایک مہینہ ہے کہ دھرم (اسلام آباد) میں کس کا قیمت وقت صانع بوجھ

ہے اساتذہ کے ٹرانسفر بوجھ سے علماء کا مزید وقت صانع بوجھ

لہذا اب صانع سے اس میں کہ کس کو اساتذہ کی حال پر اس میں

تعداد اس درخواست میں اپیل کو منظور کر کے ٹرانسفر اور دیگر امور کو حل کرنا

جاری کریں -

2016

صانع لائسنس ہوئی - الحارین!

End/No

24382-96

ATTESTED

Seen and filed

AEO Mohammad
16/5/16

1 حسن خان

2 اقبال شاہ

3 محمد اسفند

4 اقبال شاہ

5 ناصر شاہ

6 فخر شاہ

7 میر علی

8 شادان

9 زبیر

صانع

F - 18
1



**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 years subject to the condition that for the officers/officials posted in unattractive areas the tenure shall be two years and for the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.
- v) { }
- vi) While making postings/transfer from settled areas to FATA and vice-versa, specific approval of Governor, NWFP needs to be obtained

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

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.

ATTESTED

VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar

OF 2016

Fazal Subhan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

A.C.S. IATA

(RESPONDENT)
(DEFENDANT)

I/We Fazal Subhan

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. ___/___/2016



CLIENT



ACCEPTED

NOOR MOHAMMAD KHATTAK
(ADVOCATE)

OFFICE:

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

Phone: 091-2211391

Mobile No 0345-0383141

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No: 542/2016

Fazle Subhan.....Appellant.

VERSUS

1. Additional Chief Secretary FATA, FATA Secretariat Peshawar.
2. The Director Education FATA, FATA Secretariat, Peshawar.
3. The Agency Education Officer, Mohmand Agency at GhalaniRespondents.

Para-wise comments on behalf of respondent No: 2 & 3.

Respectfully Sheweth:

Preliminary Objection

1. That the appellant has got no cause of action to file the instant appeal.
2. That the appellant has not come to this Honorable Tribunal with clean hands.
3. That the appellant has concealed material facts from this Honorable Tribunal.
4. That the appellant is estopped by his own conduct to bring the present appeal.
5. That the appeal is bad due to mis-joinder and non-joinder of necessary parties.
6. The appellant submitted joint departmental appeal which is not permitted hence, his appeal was not maintainable.
7. That this Honorable Tribunal has no jurisdiction to entertain the Appeal.
8. That the instant appeal is not maintainable and devoid of merits.

On Facts:

1. No comments. Subject to record.
2. The appellant transfer was made in violation of policy, whereby Agency cadre post i.e PST/CT can not be filled up by way of transfer.
3. No comments. As elucidated in para-2 above and paras below.
4. Incorrect. The previous transfer of the appellant was issued in violation of Law/policy. The judgment dated 19.2.2013 of Peshawar High Court directed the respondents department that "the local of the area should not be deprived from their due right" so the interpretation can be given to the Judgment, that a post vacated in one Tehsil should not be filled up by way of transfer from other Tehsil. The said judgment is intact being part of the policy of the respondents department. It is pertinent to mention, here that the petitioners in W.P. No. 1087/2011 have again approached the Peshawar High Court Peshawar through contempt petition No. 41-P/2016 photo copy attached as Annexure (A). So It is wrong to suggest that, the respondents have mis-interpreted the judgment dated 19.2.2013.
5. Incorrect. The main contention of the petitioners in Writ Petition No. 1087/2011 was, that the respondents department may be restrained from filling up posts of PST/CT by way of transfer. Copy of writ petition is attached as Annexure (B).
6. As elucidated in para-4 and 5 above.
7. That the appellant has got no cause of action to file instant appeal.

Grounds:

- A. Incorrect. The respondents department is bound by law and the impugned order 10/05/2016 has been issued as per law/policy.
- B. Incorrect. There is no violation of Article 4 and 25 of the constitution, the appellant transfer is actually issued keeping in view policy of the department and order of Peshawar High Court dated 19.2.2013.
- C. Incorrect. The appellant previous transfer order was issued in violation of policy. It has been rectified, in light of honorable court decision dated 19.2.2013.
- D. Incorrect. Principal of locus poenitentiae does not apply in appellant case, because, the competent authority has the power to pass an order, and also, has the power to rescind an order. The appellant could not benefited himself from the ibid principal, being himself standing at a wrong position.
- E. Incorrect hence denied. As replied above.
- F. Incorrect. The impugned order has been issued as per law.
- G. Incorrect. There is no malafide on the part of the respondents and he was treated as per policy.
- H. Incorrect. As stated in para-G above.
- I. Incorrect. As elucidated in para-G above.
- J. Incorrect. As stated in para-G above.
- K. The respondents also seek permission to raise additional grounds at the time of arguments.

In light of the above facts it is humbly requested to please dismiss the appeal having no legal grounds with cost.

Respondent No. 2.


Director Education FATA.

Respondent No. 3.


Agency Education Officer,
Mohmand Agency.

AFFIDAVIT

We the above respondents do hereby declare and affirm that the above comments are true and correct to the best of our Knowledge and belief that nothing has been concealed from this Honorable Tribunal.

Respondent No. 2.


Director Education FATA.

Respondent No. 3.


Agency Education Officer,
Mohmand Agency.

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A

IN THE PESHAWAR HIGH COURT PESHAWAR

OC NO. 41-P /2016

W.P No. 1087/2011

dated on 19.2.2013

1. Zaman Khan s/o Rasul Shah R/O Tehsil Prang Ghar Mohmand Agency.
2. Seema Gul D/O Saeed ur Rehman R/O Tehsil Prang Ghar Mohmand Agency

(Complainants)

VERSUS

1. Additional Chief Secretary FATA, Khyber Pakhtunkhwa FATA Secretariat Peshawar.
2. Hameed Ullah Jan Director of Education FATA Secretariat, Peshawar.
3. Saeed Gul Agency Education Officer, Mohmand Agency at Ghalanai.

(Respondents)

**Application for initiation of Contempt proceedings
against the respondents for willfully violating/not
complying and flouting the judgment & order dated
19.2.2013 of this Honourable Court**

Respectfully Submitted:

1. That the complainant has filed Writ Petition No. 1087/2011 in this Honourable Court with the following prayer: -

"On acceptance of this petition an appropriate writ may please be issued directing the respondents to stop forthwith filling the posts of PTC&CT in Tehsil prang Ghar through transfer, the petitioners are continuously denied appointment being resident of Tehsil Prang Ghar on no ground what so ever, malafidely vacant posts are created in other Tehsil by transferring the teachers to Tehsil Prang Ghar, the petitioners throughout remained in the top of merit lists for appointment against the post of CT & PTC, the transfers so made be declared as illegal, unlawful and without lawful authority and of no legal effect,

the transfer orders so made in violation of law and ban imposed by the respondents on such transfers, be reversed and teachers so transferred in violation of law be sent back to their own Tehsil and the posts so vacated in Tehsil Prang Ghar be filled from amongst the eligible and fit residents of this Tehsil, the petitioners are eligible and fit for appointment against the posts of PTC & CT may be considered for appointment or any other remedy deemed proper may also be allowed."

(Copy of writ petition is attached as annexure A).

3. That the writ petition came up for hearing on 19.2.2013, the writ petition was allowed in the following terms.

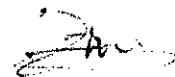
"since the petitioners are eligible and deserving candidates being resident of Tehsil Parang, they under the law and constitution, could not be deprived from their due right and also required to be considered for appointments against the posts of PTC/CT in Tehsil Prang Ghar because it is the right of the locals of the area, in which, the posts are created or vacated to be employed in the said posts. Therefore, we, direct the respondents to implement the policy qua appointments against the aforesaid posts in Tehsil Prang Ghar, in its letter and spirit by keeping in their mind that the locals of the said area, who are otherwise eligible and deserving, should not be deprived from their due right, which is guaranteed by the constitution. This writ petition is disposed of in the above terms."

(Copy of the judgment and order dated 19.2.2013 is attached as annexure B).

4. That the complainants thereafter approached the respondents for implementation of the Judgments and order of this Honorable Court, however, they gave a deaf ear.
5. That the respondents are willfully flouting and violating the Judgment and Order of this Honorable Court, and had made themselves liable to be proceeded against for the contempt of court.

6. That in the interest of justice and for the sake of rule of law, the respondents deserve exemplary punishment so that the dignity and honour of the Courts is maintained.

It is, therefore, prayed that on acceptance of this application appropriate contempt proceedings be initiated against the respondents for willfully flouting and violating the judgment and orders of this Honorable Court.



Complainants

Through



IJAZ ANWAR
Advocate Peshawar

(B)

(26) (31) (47)

IN THE PESHAWAR HIGH COURT PESHAWAR

Writ Petition No. ⁽¹⁰⁸⁾ /2011

Abdul Malik S/O Said Muhammad Shah R/O Tehsil Prang Ghar Mohmand Agency and others.....(Petitioners)

Versus

Additional Chief Secretary FATA, Khyber Pakhtunkhwa FATA Secretariat Peshawar and others.....(Respondents)

ADDRESSES OF PARTIES

Petitioner:

- 1. Abdul Malik S/O Said Muhammad Shah R/O Tehsil Prang Ghar Mohmand Agency.
- 2. Seema Gul D/O Saeed ur Rehman R/O Tehsil prang Ghar Mohmand Agency.
- 3. Zaman Khan S/O Rasul Shah R/O Tehsil prang Ghar Mohmand Agency.
- 4. Muhammad Daud S/O Miras Khan R/O Tehsil prang Ghar Mohmand Agency.

Respondents:

- 1. Additional Chief Secretary FATA, Khyber Pakhtunkhwa FATA Secretariat Peshawar.
- 2. Director of Education FATA Secretariat, Peshawar.
- 3. Deputy Director of Education FATA, Khyber Pakhtunkhwa Peshawar.
- 4. Agency Education Officer, Mohmand Agency at Ghalanai.

Petitioners *[Signature]*

Through

[Signature]

IJAZ ANWAR
Advocate Peshawar

RECORDED
Date: *[Signature]*
30 *[Signature]*

[Large Signature]

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PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Court of.....

Case No.....of.....

Serial No. of Order of Proceedings	Date of Order of Proceedings	Order or other Proceedings with Signature of Judge.
1	2	3
	<p>ORDER 19.02.2013</p> <p><i>Amir</i></p>	<p><u>Writ Petition No.1087/2011</u></p> <p>Present: Mr. Ijaz Anwar, Advocate, for Abdul Malik etc., petitioners.</p> <p>Mr. Obaid Razzaq, Addl. AG, for the respondents.</p> <p>*****</p> <p><u>KHALID MAHMOOD, J.</u>-Abdul Malik etc., petitioners herein, through the instant constitutional petition, have asked for the issuance of an appropriate writ declaring that act of the respondents filling the posts of PTC / CT through the transfers in Tehsil Prang Ghar by ignoring them from appointments through initial recruitment being nullity in the eye of law is of no effect whatever. They have also asked for the issuance of an appropriate writ directing the respondents to consider them for appointments against the aforesaid posts besides being eligible and deserving persona are also the residents of Tehsil</p>

ATTESTED

EXAMINER
Peshawar High Court

13 MAY 2016

Prang Ghar.

2. The main contention of the learned counsel for the petitioner was that when the petitioners besides being residents of Tehsil Prang Ghar are also eligible, how since 2007, from creation and vacation of the posts of PTC / CT, they have been deprived from appointments against the aforesaid posts by filling the same through transfer, which is totally based on mala fide and purely on political consideration. The learned counsel by referring to Notification bearing No. FS / E / 100-19 (Vol-27) / 6497-6508, dated 03.07.2009 and Circular letter dated 26.10.2009 further contended that when the government, by itself, formulated the recruitment policy in case of Agency Cadre posts in BS-1-15, how the respondents could go beyond it by filling the posts through transfer, that too, when this illegal act has been done in the period of ban on transfer.

3. As against that, the learned Additional Advocate General though tried his level best to controvert the allegations, levelled by the petitioners, but he was totally failed to do so.

4. We have gone through the available record

ATTESTED

EXAMINED
Deputy Registrar

10 MAY 2016

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carefully and considered the submissions made by the learned counsel for both the parties.

5. Since the petitioners are eligible and deserving candidates being resident of Tehsil Parang, they, under the law and constitution, couldn't be deprived from their due right and also required to be considered for appointments against the posts of PTC / CT in Tehsil Prang Ghar because it is the right of the locals of the area, in which, the posts are created or vacated to be employed in the said posts. Therefore, we, direct the respondents to implement the policy qua appointments against the aforesaid posts in Tehsil Prang Ghar, in its letter and spirit by keeping in their mind that the locals of the said area, who are otherwise eligible and deserving, should not be deprived from their due right, which is guaranteed by the constitution. This writ petition is disposed of in the above terms.

Announced.
19. 02. 2013

Admitted

sd/ Khalid Mehmood Khan - J

sd/ Jashid Raisar - J

off

20/2/13

(Fayaz)

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Constitution Order 1984

13 MAY 2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL No.542/2016

FAZAL SUBHAN

VS

A.C.S FATA

REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO THE REPLY SUBMITTED BY THE RESPONDENTS

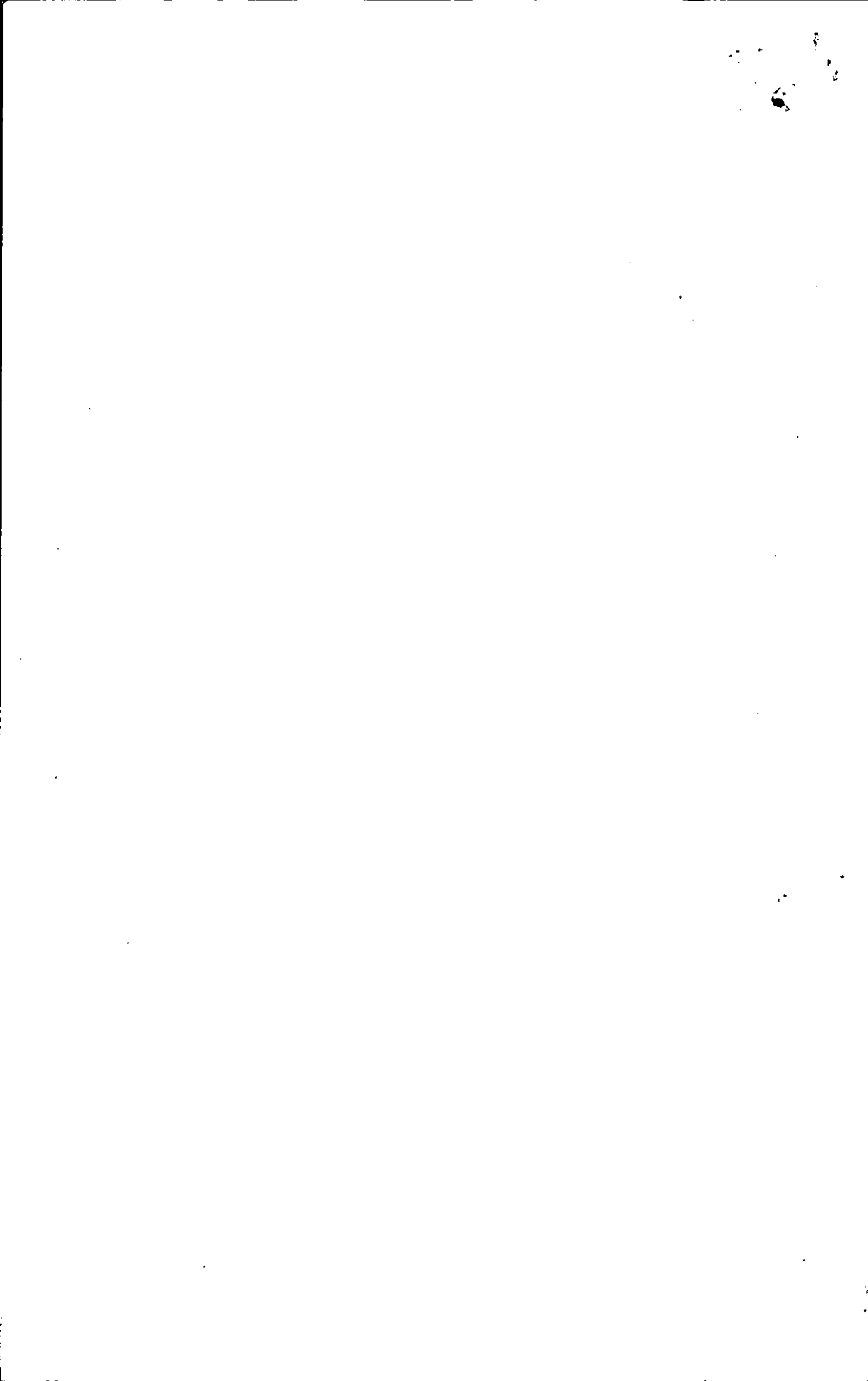
R/SHEWETH:

All the preliminary objections raised by the respondents are incorrect, baseless and not in accordance with law and rules rather the respondents are estopped due to their own conduct to raise any objection at this stage of the appeal.

ON FACTS:

1 TO 7.

- 1- Admitted correct hence need no comments.
- 2- Incorrect and not replied accordingly. That there is no violation of policy. Further more that there is no such policy or criteria due to which any vacant post should be filled up on any initial recruitment rather than transfer.
- 3- Incorrect and not replied accordingly hence denied.
- 4- Incorrect and not replied accordingly. That the previous transfer order of the appellant has been issued in accordance with law/Policy. That the respondents misinterpreted the above mentioned judgment dated 19.02.2013.
- 5- Incorrect and not replied accordingly. That the petitioners in writ petition No. 1087/2011 questioned the selection process of the respondent Department which was conducted by the respondent Department in light of the advertisement issued in 2011.
- 6- Incorrect and not replied accordingly hence denied.
- 7- Incorrect and not replied accordingly hence denied.



GROUND:

(A to I):

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondent are incorrect, baseless and not in accordance with law and Rules. That the impugned transfer order dated 10.05.2016 is against the clause I and IV of the transfer/posting policy and has not been passed in public interest not exigencies of service. That the impugned transfer order has been issued by the respondent Department with ulterior motive just to accommodate their blue eyed persons.

It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may be accepted in favor of the appellant.

APPELLANT


FAZAL SUBHAN

THROUGH:


**NOOR MOHAMMAD KHATTAK
ADVOCATE**

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1000 /ST

Dated 27 / 4 / 2017


To

The Agency Education Officer,
Government of Khyber Pakhtunkhwa,
Mohmand Agency at Ghlanai.

Subject: - JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 26.4.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

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C. A. No. 1520/2008.

by the court through judicial proceedings. In order to enable the appellant to get his pension for the period before his involvement in the criminal case the retirement order dated 26.8.2000 is amended to the extent that he will stand retired from service on the date of registration of FIR i.e. 5.6.1985. The appeal is accepted to that extent and the impugned order is partially set aside. No order as to costs. File be consigned to the record". He further asserted that the Tribunal has also failed to take into consideration that the appellant after reinstatement have rendered service for 6/7 years on account of which he was entitled to pension from the period 06.02.1989 to 17.07.1994. Therefore, while granting the appellant partial relief the same should have been allowed which needs to be rectified.

4. On the other hand, the learned Additional Advocate General, KPK, stated that after conviction of the appellant, which had been maintained in appeal also, he was not entitled to pensionary benefits rather the Tribunal has also erred in partially accepting the appeal while considering the appellant to be retired from the date of registration of the FIR i.e., 05.06.1985. That after conviction the appellant was not entitled to get any pensionary benefits.

5. We have heard the learned counsel for the appellant as well as learned Additional Advocate General, KPK, and have gone through the impugned judgment and the material available on record.

6. The appellant has a long service record at his credit. He had been inducted in service as CT Teacher on 01.08.1961, he has not been involved in any departmental disciplinary proceeding and prior to the period of his conviction his performance has been judged to be satisfactory. Moreover, the contention of the appellant for the grant of pension for the period from 06.02.1989 to 17.07.1994 cannot be justified in any manner as during this

ATTESTED

Superintendent
Supreme Court of Pakistan
Islamabad

ASST Grade Clerk BPS 16

misappropriation amount
\$ Rs 30,71,480
misconduct.

Accepted

P/34 10.6.7.15. Reversion as SC BPS 14. wef.
P/25. 7.7.15
SA 14.12.15

Transfer O.G. file

T.T. BPS 15

P-6. application forwarded
application accepted vide order dated 9.8.15

P-7

P-8 10.10.5.16 — s. No 6.

P-17 BA. 13.5.16.

does not fall.
P-9.

2011 — 5.11.12 ← clearing date for applicant

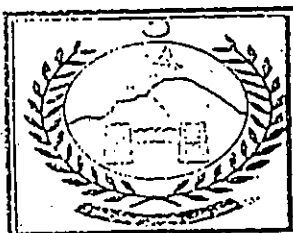
C. T. + P. ST in writ.

P-18

change I+4 of Transfer Policy

notification dated 27.2.13

Case — 12 (iv)
2015 SCR 1418 (cc)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

(REGULATION WING)

NO. SOR.VI (E&AD)1-4/2005/Vol-II

Dated Peshawar, 27th February, 2013

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Date: 28 Feb 2013

To
[Handwritten signature]

1. The Additional Chief Secretary (P&D) Khyber Pakhtunkhwa.
2. The Additional Chief Secretary (FATA) Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
4. All Commissioners in Khyber Pakhtunkhwa.

Subject: CONSTITUTION PETITION NO.23 OF 2012 OUT OF SUO MOTO CASE NO. 3/2012 (PETITION BY MS. ANITA TURAB FOR PROTECTION OF CIVIL SERVANTS REGISTERED UNDER ARTICLE 184 (3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973.)

Sir,

I am directed to refer to the subject noted above and to state that the Supreme Court of Pakistan vide the subject cited judgment has enunciated the following principles of Law with regard to protection and conduct of civil servants.

- (i) **Appointments; Removals and Promotions:** Appointments, removals and promotions must be made in accordance with the law and the rules made hereunder, where no such law or rule exists and the matter has been left to discretion, such discretion must be exercised in a structured, transparent and reasonable manner and in the public interest.
- (ii) **Tenure; Posting and Transfer:** When the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable.

[Handwritten initials]
4/3

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Asst. Secy

[Handwritten signature]
Secy to Govt
STB

(iii) **Illegal Orders:** Civil Servants owe their first and foremost allegiance to the law and the constitution. They are not bound to obey orders from superiors which are illegal or are not in accordance with accepted practices and rule based norms; instead, in such situations, they must record their opinion and, if necessary, dissent.

(iv) **OSD:** Officers should not be posted as OSD except for compelling reasons; which must be recorded in writing. If at all an officer is to be posted as OSD, such posting should not exceed 03 months. If there is a disciplinary inquiry going on against him/her such inquiry must be completed at the earliest. The officer on special duty may be posted against a post of his/her equivalent pay scale/grade within 03 months of his/her order as OSD.

2. I am, therefore, directed to request you to note the above principles of law for strict compliance.

Yours faithfully,

Naajam
(NAJ-MUS-SAHAR)
SECTION OFFICER (REG-VI)

Encl: as above.

A copy is forwarded to:-

1. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. The Secretary Provincial Assembly, Khyber Pakhtunkhwa.
4. The Accountant General, Khyber Pakhtunkhwa.
5. The Registrar; Peshawar High Court, Peshwar.
6. The Secretary Khyber Pakhtunkhwa, Public Service Commission.
7. All Addl: Secretaries Establishment & Administration Department.
8. All Deputy Secretaries in Establishment & Administration Department.

Naajam
SECTION OFFICER (REG-VI)