


FORM OF ORDER SHEET

Court of _____

Appeal No. 2477/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	28/11/2023	<p>The appeal of Dr. Liaqat Ali presented today by Mr. Khaled Rehman Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____ Parcha Peshai is given to the counsel for the appellant.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 2477 /2023

Dr. Liaqat AliApplicant/Appellant

Versus

The Govt. of KPK and others.....Respondents

Application on behalf of appellant for allowing the titled Appeal to be contested at the Principal Seat of the Service Tribunal.

Respectfully Sheweth,

1. That the titled Service Appeal is being filed before the Hon'ble Tribunal which is yet to be fixed for hearing.
2. That the counsel of the appellant is based at Peshawar and appellant also feels it convenient that the appeal be fixed before Principal Seat of the Hon'ble Tribunal.
3. That the official Respondents in the titled appeal are also based at Peshawar, therefore, it would be convenient to official Respondents that the case is fixed before Principal Seat at Peshawar.
4. That the hearing of the instant appeal at Camp Court Mingora will cause the applicant as well as other official Respondents hardship and also loss of time and expense, therefore, it would be in the interest of justice that the appeal in hand be heard at the Principal Seat.

It is, therefore, humbly prayed that the titled Service Appeal may graciously be allowed to be heard/contested at Principal Seat at Peshawar for disposal in the interest of justice.

Through

Applicant/Appellant


Khaled Rahman

Advocate, Supreme Court

Dated: 28 /11/2023

Verification

Verified that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


Counsel

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2477/2023

Dr. Liaqat Ali Appellant

Versus


The Govt. of KPK & others Respondents

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Through

Appellant


Khaled Rehman
Advocate, Supreme Court

&


Muhammad Ghazanfar Ali
Advocate, High Court

4-B, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458

Dated: 31 /11/2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2477/2023

Dr. Liaqat Ali

Medical Superintendent,

DHQ Hospital, Bajaur

Under Transfer as District Specialist (Peads),

DHQ Hospital, Bajaur Appellant

Versus

1. The Govt. of Khyber Pakhtunkhwa
through Chief Secretary
Civil Secretariat, Peshawar.
2. The Secretary,
Government of Khyber Pakhtunkhwa
Health Department, Civil Secretariat, Peshawar.
3. Dr. Wazir Khan Safi,
DHO, North Waziristan
under transfer as Medical Superintendent,
DHQ Hospital, Bajaur. Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 18.08.2023 WHEREBY APPELLANT WAS ILLEGALLY AND PREMATURELY TRANSFERRED DURING THE PERIOD OF BAN FROM THE POST OF MEDICAL SUPERINTENDENT DHQ HOSPITAL, BAJAUR VICE RESPONDENT NO.3 WHO WAS TRANSFERRED AGAINST THE SUBJECT POST FROM THE POST OF DHO, NORTH WAZIRISTAN AGAINST WHICH THE APPELLANT REFERRED A DEPARTMENTAL REPRESENTATION ON 21.08.2023 BUT THE SAME WAS NOT DISPOSED OF WITHIN THE STATUTORY PERIOD OF 90 DAYS.

PRAYER:

On acceptance of the instant appeal, the impugned Notification dated 18.08.2023 may graciously be set aside and appellant may be allowed to be posted as Medical Superintendent, DHQ Hospital, Bajaur.

Respectfully Sheweth,

Facts giving rise to the present writ petition are as under:-

1. **That** the appellant is senior Officer of the Health Department and has been serving the Department to the entire satisfaction of the high-ups, moreover, he has longstanding unblemished and impeccable service record at his credit.
2. **That** the appellant was transferred and posted as Medical Superintendent, DHQ Hospital Bajaur vide Notification dated 25.03.2022 and consequently joined the post and started performing his duties to the best of his abilities and with full dedication. During his stint of service he earned good reputation on account of his upto-the-marked performance.
3. **That** vide impugned Notification dated 18.08.2023 (*Annex:-A*), the appellant was prematurely transferred from the post of Medical Superintendent, DHQ Hospital, Bajaur and posted as District Specialist (Peads), DHQ Hospital, Bajaur whereas Respondent No.3 was transferred against the subject post from the post of District Health Officer, North Waziristan in violation of law, rules and policy on the subject matter.
4. **That** being aggrieved of the impugned Notification dated 18.08.2023 *ibid*, appellant preferred a Departmental Representation dated 21.08.2023 (*Annex:-B*) to the Competent Authority but the same was not disposed of within the statutory period of 90 days.
5. **That** appellant, being aggrieved of the impugned Notification dated 18.08.2023 and the non-disposal of the Departmental Representation within the statutory period, files the instant Service Appeal *inter-alia* on the following grounds:-

Grounds:

- A. **That** Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned Notification, which is unjust, unfair and hence not sustainable in the eye of

law.

- B. **That** on dissolution of the Provincial Assemblies of Punjab and Khyber Pakhtunkhwa on 14th & 18th of January, 2023, the Election Commission of Pakistan has imposed complete ban on the transfer and posting vide Notification dated 22.01.2023 (*Annex:-C*) and similarly on dissolution of the Provincial Assemblies of Sindh and Baluchistan, the Election Commission of Pakistan has issued similar Notification dated 15.08.2023 (*Annex:-D*). In spite of such ban by the Election Commission of Pakistan on transfer and posting the impugned Notification has been issued without the approval of the Commission which is thus ultra vires, without lawful authority and thus not sustainable in the eye of law.
- C. **That** the Caretaker Government has no such mandate under the law inasmuch as it is authorized to deal with the day-to-day affairs of the Government and refrain from important Government decisions including transfer and posting of civil servants. This issue has been the subject matter of discussion before the Supreme Court of Pakistan in celebrated Judgment in *Khwaja Asif Case* and subsequent judgments. However, the dicta of the Apex Court has been violated while issuing the impugned Notification which has resulted in serious miscarriage of justice.
- D. **That** the impugned Notification is also violative of Section-4, 5, 8(3) & 230 of the Elections Act, 2017 read with Article-2A, 218(3) & 220 of the Constitution of the Islamic Republic of Pakistan, 1973 and thus being unconstitutional, against the mandate of law as well as Rules and Policy of the Provincial Government is liable to be brushed aside.
- E. **That** as per Posting/Transfer policy of the Provincial Government (*Annex:-E*) "*All the posting/transfer shall be strictly in public interest and shall not be abused/misused to victimize the Government Servants*" It is further submitted that in the light of Posting/Transfer policy *ibid* the normal tenure of posting has been fixed as **2 years**. The impugned Notification in this respect is premature and accordingly is violative of the Policy of the Provincial Government and therefore, liable to be set aside.

F. **That** the Superior Courts of the Country time and again held that the instructions of the Policy in vogue must be fulfilled and the civil servant must not be made a rolling stone by way of premature transfers. The Hon'ble Supreme Court of Pakistan in the case of "Syed Mehmood Akhtar Naqvi and others ...VS... The Federation of Pakistan" reported in PLD 2013 Supreme Court 195 has laid down the following principle regarding the tenure in posting/transfer:-

"Tenure, posting and transfer: when the ordinary tenure for 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."

The Judgment *ibid*, has been circulated by the Federal Government as well as Provincial Government vide Office Memorandum dated 03.01.2013 (*Annex:-F*) amongst all the Government Functionaries yet the same was flouted with impunity.

G. **That** the impugned Notification is neither in the public interest nor in exigency of service rather the same has been issued on political considerations and therefore, is violative of the transfer/posting Policy *ibid*, as well as repeated Judgments of the Hon'ble Supreme Court of Pakistan wherein it has been emphatically directed that transfer and posting shall not be issued on political grounds.

H. **That** repeated instructions of the Federal as well as Provincial Governments have been trampled with impunity while issuing the impugned Notification. It has been directed by both the Governments to shun such like practice of posting as the same is not only against the public interest, judgments of the Hon'ble Supreme Court of Pakistan but also results in heartburning and discrimination amongst officers.

I. **That** appellant would like to offer some other grounds during the course of arguments.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.



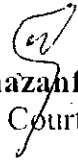
Appellant

Through



Khaled Rehman
Advocate Supreme Court

&



Muhammad Ghazanfar Ali
Advocates, High Court

Dated: 21 /11/2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2023

Dr. Liaqat Ali Appellant

Versus

The Govt. of KPK & others Respondents

Affidavit

I, Dr. Liaqat Ali, Medical Superintendent (BPS-19), DHQ Hospital, Bajaur Under Transfer to District Specialist (Peads), DHQ Hospital, Bajaur against vacant post, do hereby solemnly affirm and declare on oath that the contents of this Appeal are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Tribunal.


Deponent



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Arwana A
**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

Dated: Peshawar the 18th August, 2023.

NOTIFICATION

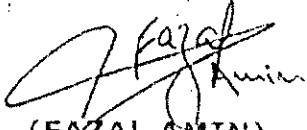
NO.SOH (E-V)/2-2/2023 The Competent Authority (Chief Minister, Khyber Pakhtunkhwa) is pleased to order posting/ transfer of the following doctors with immediate effect, in the best public interest:-

S.NO	NAME OF DOCTOR	FROM	TO
1.	Dr. Wazir Khan Safi, Management Cadre (BS-19)	District Health Officer, North Waziristan	Medical Superintendent (BS-19), DHQ Hospital Bajaur. Vice S.No. 02
2.	Dr. Liaqat Ali, Specialist Cadre (BS-18)	Medical Superintendent (BS-19), DHQ Hospital Bajaur in OPS	District Specialist (Peads) BS-18, DHQ Hospital Bajaur against the vacant post
3.	Dr. Miraj Wazir, General Cadre (BS-17)	Medical Officer (BS-17), attached to DHO office North Waziristan	District Health Officer (BS-18), North Waziristan in OPS. Vice S.No.01

**SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

No. 1338-47 / Notification of even No. & dated:
Copies forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Director General Health Services. Khyber Pakhtunkhwa.
3. MS, DHQ Hospital Bajaur.
4. District Health Officer, North Waziristan.
5. District Accounts Officer, North Waziristan and Bajaur.
6. PS to Secretary Health Department Khyber Pakhtunkhwa.
7. Deputy Director (IT), Health Department, Peshawar.
8. All concerned doctors.
9. Personal files of the concerned doctors.


(FAZAL AMIN)
SECTION OFFICER (E-V)

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The Secretary Govt of
Khyber Pakhtunkhwa
Health Department

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Annex "B"

Subject: DEPARTMENTAL REPRESENTATION/DEPARTMENTAL APPEAL AGAINST THE OFFICE ORDER NO. 1338-47/NOTIFICATION DATED PESHAWAR THE 18TH AUGUST 2023 WHEREBY THE APPELLANT HAS BEEN POSTED/ TRANSFERRED FROM MEDICAL SUPERINTENDENT (BS-19), DHQ HOSPITAL BAJAUR IN OPS TO DISTRICT SPECIALIST (PEADS) BS-18, DHQ HOSPITAL DISTT BAJAUR.

Sheweth!

The appellant/applicant most humbly submits as under:

1. That the appellant/applicant has been posted at Medical superintendent (BS-19), DHQ Hospital Bajaur in OPS and has been working as such with full zeal and devotion.
2. That the applicant has been very punctual and has been fulfilling his duties without any hiatus in the same; he has earned quite a reputation throughout his stay at the hospital.
3. That vide the notification No. 1338-47/notification Dated Peshawar the 18th August 2023, the applicant/ appellant has been transferred from Medical superintendent (BS-19), DHQ Hospital Bajaur in OPS to District Specialist (Peads) BS-18, DHQ Hospital Distt Bajaur.
4. That the notification in hand has not been in accordance with law and rules on the subject and has not been issued with due diligence thus liable to be set aside and the appellant be allowed to resume his duties at the position.
5. That the notification has been issued in disregard of the transfer policy has set a minimum of three years in various pronouncements of the higher judiciary for posting at a place: the appellant was transferred to the post on March 25th, 2022 and thus he has just served for about one and a half years.

APPELLANT

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6. That the notification dated Islamabad the 15th August 2023 of the Honorable Election Commission of Pakistan has completely banned any postings/transfers by the Federal or Provincial Governments, thus the notification regarding the transfer/posting is in utter violation of the same and thus liable to be set aside.

7. That the appellant/applicant may be allowed to resume his duties as Medical Superintendent in the DHQ Bajaur and set aside the posting/transfer of the appellant/applicant.

It is, therefore, most humbly prayed that on acceptance of the departmental representation, the transfer/posting may be set aside and he may be let to resume his duties at the current post in the light of law and rules on the subject.

Dated: August 19, 2023

Applicant/appellant

Dr. Liaqat Ali, Medical
Superintendent (BS-19),
DHQ Hospital Bajaur

ATTESTED

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Dairy No. 8176

Date 21-8-23

Health Department

Secretary Govt of
Ferozpur
Health Department

Subject: DEPARTMENTAL REPRESENTATION/DEPARTMENTAL APPEAL AGAINST THE OFFICE ORDER NO. 1338-47/NOTIFICATION DATED PESHAWAR THE 18th AUGUST 2023 WHEREBY THE APPELLANT HAS BEEN POSTED/TRANSFERRED FROM MEDICAL SUPERINTENDENT (BS-19), DHQ HOSPITAL BAJAUR IN OPS TO DISTRICT SPECIALIST (PEADS) BS-18, DHQ HOSPITAL DISTT BAJAUR.

h!

The appellant/applicant most humbly submits as under: that the appellant/applicant has been posted at medical superintendent (BS-19), DHQ Hospital Bajaur in OPS and has been working as such with full zeal and devotion.

The applicant has been very punctual and has been fulfilling his duties without any hiatus in the same; he has earned quite a reputation throughout his stay at the hospital.

In view of the notification No. 1338-47/notification dated Peshawar the 18th August 2023, the applicant/appellant has been transferred from Medical Superintendent (BS-19), DHQ Hospital Bajaur in OPS to District Specialist (Peads) BS-18, DHQ Hospital Distt Bajaur.



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Amir C²

ELECTION COMMISSION OF PAKISTAN
NOTIFICATION

Islamabad the 22nd January, 2023

F.No 2(1)/2023-Cord.- WHEREAS, the Provincial Assemblies of Punjab and Khyber Pakhtunkhwa under Article 112 of the Constitution of the Islamic Republic of Pakistan stand dissolved on 14th and 18th January, 2023 respectively.

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

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

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

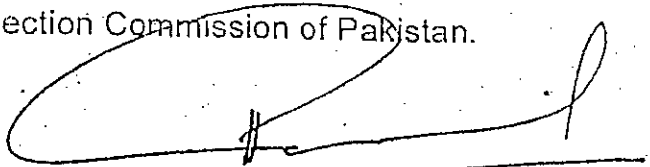
- (a) To assist the Election Commission to hold elections in accordance with law as provided under section 230(1)(b) of the Elections Act, 2017.
- (b) To ensure the compliance of all the notifications, directives and the provisions as laid down in Section 230 of the Act *ibid*.
- (c) Not to post or transfer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

Contd...Page-2

ATTESTED

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

This issues with the approval of Election Commission of Pakistan.



(Omar Hamid Khan)

Secretary

Election Commission of Pakistan

ATTESTED

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Ans. D

ELECTION COMMISSION OF PAKISTAN



NOTIFICATION

Islamabad the 15th August, 2023

F.No.2(1)/2023-Coord.- WHEREAS, the National Assembly and Provincial Assemblies of Sindh and Balochistan under Articles 58(1) and Article 112(1) of the Constitution of the Islamic Republic of Pakistan stand dissolved on 9th, 11th and 12th August, 2023 respectively.

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

AND WHEREAS, it has become imperative that the Election Commission shall take all necessary steps under the Constitution and prevalent law for the smooth conduct of General Elections.

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

- (a) To assist the Election Commission to hold elections in accordance with law as provided under section 230 of the Elections Act, 2017.
- (b) To ensure compliance of all the notifications, directives and the provisions laid down in Section 230 of the Act *ibid*.
- (c) Not to post or transfer any public official after the issuance of this notification under the Federal Government and the Provincial Governments without prior approval in writing of the Election Commission as laid down in Clause 2(f) of Section 230 of the Elections Act, 2017.
- (d) Ensure that all Ministries, Divisions, Departments or Institution under the Federal, Provincial Governments and Local Governments are banned with immediate effect, except with the prior approval of the Commission and except recruitments by the Federal and Provincial Public Service Commissions and those government organizations where test / interviews have already been conducted before this day.

Contd P/2

ADDITIONAL SECRETARY

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- (e) Not to announce / execute any kind of Development Schemes at Federal and Provincial levels except those which are ongoing and approved before the issuance of this notification. Moreover, the Federal Government, Provincial Governments and Local Governments shall not issue tenders of such schemes till culmination of General Elections and except with the prior approval of the Commission.
- (f) All development funds relating to Local Government institutions in the Provinces and Cantonment Boards, for the new schemes, throughout the Country, shall stand frozen after announcement of election schedule with immediate effect till the announcement of results of the General Elections. However, in case of any vital scheme the case may be referred to the Commission for decision.
- (g) To ensure immediate termination of services of all heads of the institutions appointed on political basis and to send all such cases to the Commission for approval of termination or otherwise.
- (h) To ensure vacation of the government residential facilities from Ex-Prime Minister, Ex-Chief Ministers and their advisors, Ex-Federal, Ex-Provincial Ministers and Ex-Members of National and Provincial Assemblies of Sindh and Balochistan, besides ensuring withdrawal of official vehicles from them. Furthermore, the dignitaries shall be provided security / protocol as per their entitlement and any extra deployment of security / protocol be withdrawn from them forthwith.
- (i) The Caretaker Governments shall perform their functions and attend day-to-day matters which are necessary to run the affairs of the Federation and Provinces in accordance with law.
- (j) The Care-Taker Governments shall not attempt to influence the elections or do or cause to be done anything which may, in any manner, influence or adversely affect the free and fair elections.
- (k) The Care-Taker Governments being non-political entities can take actions or decisions regarding existing bilateral or multilateral agreements or the projects already initiated under the Public Private Partnership Authority Act, 2017 (VIII of 2017), the Inter-Governmental Commercial Transactions Act, 2022 (XXX of 2022) and the Privatization Commission Ordinance, 2000 (LII of 2000) under intimation to this Commission.
- (l) The Care-Taker Prime Minister, Chief Ministers or Ministers or any other members of Caretaker Governments shall, within three days from the date of assumption of office, submit to the Commission, a statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding 30th day of June on Form-B.

This issues with the approval of the Election Commission of Pakistan.

(Omar Hamid Khan)
Secretary

Election Commission of Pakistan

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Posting and Transfer

Statutory Provision.

Section 10 of the NWFP Civil Servants Act, 1973.

Posting and Transfer. Every civil servant shall be liable to serve anywhere within or outside the Province, in any post under the Federal Government, or any Provincial Government or Local authority, or a Corporation or body set up or established by any such Government:-

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region;

Provided further that, where a civil servant is required to serve in a post outside a service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

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) Existing tenure of posting/transfer of three (03) years for settled areas and two (02) years for unattractive/hard areas shall be reduced to two (02) years for settled areas, 01½ years for unattractive areas and one year for hard areas.
- v) ⁷⁹ []

⁷⁹ Para-I(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.

- vi) ⁸⁰While making posting/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. Save Tehsildars/Naib Tehsildars within a division in respect of whom the concerned Commissioner will exercise the same power. 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.

Provided that the power to transfer Political Tehsildars and Political Naib Tehsildars within FATA between different divisions shall rest in Additional Chief Secretary FATA.

- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for at least 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 officers/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.
- 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

⁸⁰ Para-VI added vide circular letter No. SOR-VI/E&AD/1-4/2010/Vol-VIII dated 20th March, 2010.

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⁸¹DCOs 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 Department in consultation with Head of Attached Department concerned. Secretary (Establishment)

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

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

⁸¹ Added vide Urdu circular letter No: SOR-VI (E&AD)/1-4/2005, dated 9-9-2005.

(Signature)

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 posting/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-15 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.

5. 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).

17

GOVERNMENT OF PAKISTAN
Cabinet Secretariat
ESTABLISHMENT DIVISION

Anita F

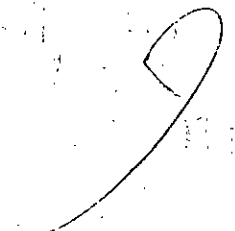
No.F.1/11/2012-Lit-IV

Islamabad – the 3rd January, 2013.

OFFICE MEMORANDUM

Subject: ORDER PASSED BY SUPREME COURT OF PAKISTAN IN CONST. PETITION NO.23/2012 FILED BY MS. ANITA TURAB AND OTHERS VS. FEDERATION OF PAKISTAN DATED 18.10.2012

The undersigned is directed to refer to the subject cited above and to say that the Supreme Court of Pakistan has enunciated certain guiding principles for depoliticizing the public service vide its Judgment dated 12-11-2012 passed in the subject case. The operative parts of the Judgment given vide para-22 are reproduced as under:-

- (i) Appointments, Removals and Promotions: Appointments, removals and promotions must be made in accordance with the law and the rules made thereunder; 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.
 - (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 and are judicially reviewable. If at all an officer is to be posted as OSD, such posting should be for the minimum period possible and if there is a disciplinary inquiry going on against him, such inquiry must be completed at the earliest.
- 

GOVERNMENT OF PAKISTAN
Cabinet Secretariat
ESTABLISHMENT DIVISION

17

No.F.1/11/2012-Lit-IV

Islamabad—the 3rd January, 2013.

OFFICE MEMORANDUM

SUBJECT: ORDER PASSED BY SUPREME COURT OF PAKISTAN IN CONST. PETITION NO.23/2012 FILED BY MS. ANITA TURAB AND OTHERS VS. FEDERATION OF PAKISTAN dated 13.10.2012

JAN 2013

(A)

The undersigned is directed to refer to the subject cited above and to say that the Supreme Court of Pakistan has enunciated certain guiding principles for depoliticizing the public service vide its judgment dated 12-11-2012 passed in the subject case. The operative parts of the judgment given vide para-22 are reproduced as under:-

JAN 2013

(M)

(A)

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23/1/13

2-1)/(MR-II)/(MR-III)

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2-1)/(MR-IV)

RECORDED
08 JAN 2013

- i) Appointments, Removals and Promotions: Appointments, removals and promotions must be made in accordance with the law and the rules made thereunder, 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.
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REGISTERED

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2. The Supreme Court has further recognized the need for ensuring that decision making in relation to tenure, appointment, removal, promotion and transfer remains ruled based and is not susceptible to arbitrariness or absolute and unfettered discretion.

3. In view of foregoing, the following guidelines have been circulated vide Establishment Division's O.M.No.4/10/2012-E-2 dated 26th December, 2012 (copy enclosed) with the approval of competent authority for strict compliance of the Supreme Court orders, dated 12.11.2012 while passing any such orders relating to appointment, tenure and transfer of the officers in BS-17 to BS-22:-

- a) The normal tenure specified must be respected and may not be varied except for compelling reasons which should be recorded in writing and would be defensible if subjected to judicial scrutiny.
- b) The officer appointed on a post be allowed to earn at least one Annual Performance Evaluation Report.
- c) The officer should not be posted as OSD except for compelling reasons, usually for training, temporary inefficiency of extreme hardship and transit period for minimum possible time with the reasons to be recorded in writing.
- d) There is no space for unilateral surrender of the officers by Ministries/Divisions/Provincial Governments and they are requested to refrain from this practice. However, even if they intend to change the officer, matter may be taken up with the Establishment Division, in case of APUG and federal employees and with respective Provincial Departments dealing with service matters of the officer, for appropriate action.

4. Attention of all the Ministries/Divisions/Departments/Organizations is also invited to the existing provisions contained in the Constitution of Pakistan, 1973, Rules of Business, 1973, Pakistan Penal Code, and Conduct Rules, 1964. The relevant extracts are as under:-

The Constitution of Islamic Republic of Pakistan 1973 In terms of article 240 of the 1973 Constitution the appointment to and the conditions of service of Pakistan are determined inter-alia through the Act of Parliament.

"4. Right of individuals to be dealt with in accordance with law, etc.

- (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.
- (2) In particular:-
 - (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
 - (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and
 - (c) no person shall be compelled to do that which the law does not require him to do:

"9. Security of person. No person shall be deprived of life or liberty save in accordance with law"



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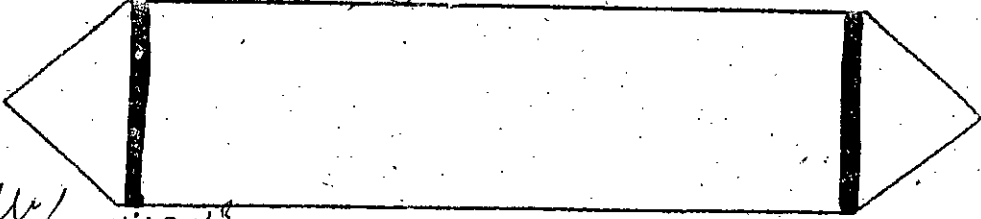
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9. Security of person. No person shall be deprived of life or liberty save in accordance with law"

ANNEXED
ANNEXED

Attached to be
True Copy

بعد االت سرویس کٹر ہونے اور



2023ء منجانب اعلیٰ

ڈائریکٹوریٹ ملہ بنام گورنمنٹ

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آئنگے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی کی وجوہ ذہی وکل کاروائی متعلقہ آئنگے
آن مقام کے لئے

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر االت ہ فیصلہ برطانت دینے جواب ذہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخ
نیز دائر کرنے اپیل نگرانی و نظرتانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جافہ التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا اوکالت نامہ لکھ دیا کہ سندر ہے۔

المرقوم 28
ماہ نومبر 2023ء

واہ العب

کے لئے منظور ہے۔

بمقام