

Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	10.11.2015	<p data-bbox="592 453 1396 541" style="text-align: center;">KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.</p> <p data-bbox="763 579 1209 617" style="text-align: center;">Service Appeal No. 145/2015.</p> <p data-bbox="609 667 1453 743" style="text-align: center;">Aziz-ur-Rahman Versus The Govt. of KPK through Chief Secretary, Peshawar etc.</p> <p data-bbox="738 793 933 831" style="text-align: center;"><u>JUDGMENT</u></p> <p data-bbox="738 869 1518 919" style="text-align: center;"><u>PIR BAKHSHAH SHAH, MEMBER.-</u> Appellant</p> <p data-bbox="592 957 1518 1171">with counsel (Mr. Khushdil Khan, Advocate) and Government Pleader (Mr. Ziaullah) with Muhammad Iqbal, Supt. And Muhammad Yasin, Supdt. for the respondents present.</p> <p data-bbox="592 1285 1518 2406">The appellant Azizur Rahman is Sub-Engineer BPS-11 who was posted as SDO in his own pay and scale as SDO, Takht-e-Nasrati, District Karak by the competent authority vide his order dated 20.2.2014. The appellant was transferred from the said post and posted as Sub-Engineer (BS-11) P.H.E Division, Hangu vide impugned order dated 12.2.2015. Feeling aggrieved from this order, he instituted this appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, which was returned firstly on the ground that the appeal was prematurely filed. However, according to the order dated 12.3.2015, passed by the Worthy Chairman, the appeal was admitted for regular hearing. Hence, the respondent department has submitted their parawise comments to which the appellant has also filed his rejoinder, available on record.</p>

Arguments heard and record perused.

While placing his reliance on a judgment of learned Baluchistan Service Tribunal as 2011 PLC(C.S)993, it was submitted by the learned counsel for the appellant that in the said judgment those original orders of the departmental authority against which no appeal has been provided, the same have been termed as final order and since transfer order of a civil servant are also placed in the same category, therefore, the civil servant may come to the Tribunal immediately without waiting for the statutory period of 90 days. It was further submitted that the impugned order is based on malafide, which is premature and motivated by political influence, therefore, the same is liable to be set aside. Reliance was placed on 2009-SCMR-390 and 2005-SCMR-890. He requested that the appeal may be accepted.

This appeal was resisted by the learned GP on the ground that according to Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, a service appeal may be filed after filing of departmental appeal and when the same is not responded then the appellant should have waited for 90 days and as this requirement has been by-passed by appellant in the instant appeal, therefore, the same is not maintainable which may be dismissed on this ground. Reliance was placed on the

judgment of this Tribunal in appeal No. 1648/2013 of the Larger Bench.

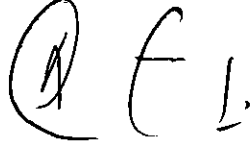
While posting the appellant who was Sub Engineer BPS-11 against the post of SDO BS-17 Takhte Nasrati, District Karak vide order dated 20.2.2014, the same seems to be a stop-gap arrangement as the appellant was not in regular BPS-17. Perusal of the impugned order shows that the appellant was sent to Hangu in his own pay and scale as Sub-Engineer and the post so vacated by the appellant at Karak was filled in by SDO Asif Farooq giving him the additional charge of the post. In this context the learned counsel for the appellant submitted that the appellant was transferred to Hangu so that Sub Engineer Abdul Hameed (BS-11) could be transferred from Hangu to Karak. He further submitted that this transfer was motivated politically. We do not find any evidence on file in support of this contention of the learned counsel for the appellant. The Tribunal is of the view that in case any such machination was underway as suggested by the learned counsel for the appellant, in that case, the competent authority may have issued separate transfer orders of Abdul Hameed from Hangu to Karak and that of the appellant from Karak to Hangu because Abdul Hameed has not been transferred vice the appellant. Since the appellant being in BPS-11, was working on the post of BS-17, therefore, he was rightly transferred to his post of BS-11. This being so, a further interference by this



Tribunal in the matter may amount to give a choice posting to the appellant in violation of the rules. Hence, the appeal being without merit is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

10.11.2015.



(ABDUL LATIF)
MEMBER



(PIR BAKHSH SHAH)
MEMBER

05.11.2015

Counsel for the appellant and Mr. Muhammad Yasin, Supdt. alongwith Mr. Ziaullah, GP for respondents present. Arguments heard.

To come up for order on 10-11-2015.


Member


Member

07.08.2015

Appellant with counsel and Mr. Muhammad Yasin, Supdt. alongwith Mr. Ziaullah, GP for respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 01.09.2015 for rejoinder and arguments. Till then status-quo is extended.



Member



Member

01.09.2015

Appellant alongwith clerk to-counsel for the appellant and Asst: AG for the respondents present. Clerk to counsel for the appellant stated that counsel for the appellant is busy before the Supreme Court of Pakistan in the case of Akhtar Rasool-vs-Chief Secretary. Requested for adjournment. To come up for arguments on 2-10-2015 Till then status-quo is extended.



Member



Member

02.10.2015

Appellant in person and Mr. Muhammad Yaseen, Supt: alongwith Addl: AG for respondents present. Arguments could not be heard due to general strike of the Bar. To come up for arguments on 5-11-15



Member



Member

145/15

10.4.2015

Appellant in person and Mr. Muhammad Iqbal, Supdt. alongwith Addl. AG for respondents present. Parawise comments submitted, copy handed over to appellant. To come up for rejoinder and arguments on 07.05.2015 Till then status quo is extended.


MEMBER

07.05.2015

Clerk of counsel for the appellant and Mr. Muhammad Jan, GP with Muhammad Yaseen, Supdt. for the respondents present. Request made on behalf of the appellant for submission of rejoinder. The learned Member (Judicial) is also on leave, therefore, case to come up for rejoinder and arguments on 15.06.2015. Till then status is extended.


MEMBER

15.06.2015

Appellant in person and Mr. Muhammad Yasin, Supdt. alongwith Assistant A.G for respondents present. Arguments could not be heard due to non-availability of learned counsel for the appellant. To come up for same on 7.8.2015. Till then status-quo is extended.


Member


Member

3

26.02.2015

Appellant with counsel present. Learned counsel for the appellant argued that the appellant was transferred vide impugned order dated 12.02.2015 from Position of SDO, PHE Sub-Division Takht-e-Nasrati, Karak to that of the Sub Engineer PHE Division Hangu with malafide intentions and at the instance of the Minister. He referred to the transfer order bearing endorsement No. and copies addressed to different Officers including PS to Minister S.No. 6 .

Let pre-admission notice be issued to the respondents for 12.3.2015. Status-quo be maintained till then.


Chairman

12.03.2015

Appellant with counsel and Assistant A.G alongwith SO for respondents present. Preliminary arguments heard. For the reasons mentioned in order sheet No.3 dated 26.2.2015 the appeal is admitted to regular hearing.

Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments before S.B on 10.4.2015. Till then status-quo be maintained.


Chairman



*Appellant deposited
Process fee & Security*



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 145/2015


S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	23/02/2015	<p>As per direction of the worthy Chairman the present appeal filed by Aziz-ur-Rehman through Mr. Khushdil Khan Advocate may be entered in the Institution Register and put up to the Bench for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	23-2-2015	<p>To come up for preliminary hearing on 26-2-2015</p> <p style="text-align: right;"> MEMBER</p>

This is an appeal filed by Aziz-ur-Rehman today on 16/02/2015 against the order dated 12.02.2015 against which he preferred/made a departmental appeal on 14.02.2015 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, which is premature as laid down in an authority reported as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action.

No. 203 /ST,

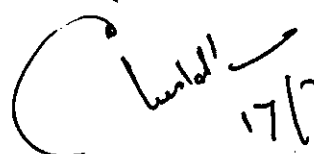
Dt. 16/2 /2015


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Khushdil Khan Adv. Pesh.

Siv)

Resubmitted with request that this appeal filed in view of reported judgement in the identical case by the full bench of Baluchistan Service Tribunal which is Amara C. Pasi this honor candidly laid down principle that in the transfer case an aggrieved civil servant can file appeal directly without exhausting departmental remedy, therefore this appeal filed before the exhausting dept. remedy so it is not premature & may kindly not consider premature, in some way be entertained on merits.


17/2/2015

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 145 /2015

Aziz-ur-Rahman Appellant

Versus

The Govt. of KP through
Chief Secretary & others Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-3
2.	Copy of order thereby appellant was recently transferred as Sub Engineer PHE Division Karak and posted as Sub Divisional Officer (Own Pay Scale) Sub Division Takht-e-Nasrati District Karak	20.02.2014	A	0-4
3.	Copy of the impugned order thereby appellant was transferred from PHE Sub Division Takht-e-Nasrati Karak to PHE Division Hangu.	12.02.2015	B	0-5
4.	Copy of the judgment delivered by Hon'ble full Learned Bench of Baluchistan Service Tribunal reported in 2011 PLC (C.S.) Page 993.		C	6-10
5.	Wakalat Nama			

Through


Appellant

Khush Dil Khan
Advocate,

Supreme Court of Pakistan
9-B, Haroon Mansion,
Khyber Bazar, Peshawar.
Cell # 091-2213445

Dated: 14 / 02/ 2015

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 145 /2015

Aziz-ur-Rahman,
 Sub-Engineer (BPS-11),
 Public Health Engineering Department,
 Sub Division, Takht-e-Nasrati, Karak
 Under transfer to PHE Division Hangu.....Appellant

M. W. P. Province
Service Tribunal

Diary No. 122Dated 16-2-2015

Versus

1. The Govt. of Khyber Pakhtunkhwa,
 through Chief Secretary,
 Civil Secretariat, Peshawar.
2. The Secretary,
 Govt. of Khyber Pakhtunkhwa,
 Public Health Engineering Department,
 Civil Secretariat, Peshawar.
3. The Chief Engineer,
 Govt. of Khyber Pakhtunkhwa,
 Public Health Engineering Department, Peshawar.....Respondents.

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 12.02.2015 THEREBY APPELLANT WAS TRANSFERRED FROM PUBLIC HEALTH ENGINEERING SUB DIVISION TAKHT NASRATI KARAK TO PUBLIC HEALTH ENGINEERING DEPARTMENT SUB DIVISION HANGU IN VIOLATION OF LAW, RULES, AND POLICY ON SUBJECT.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That appellant is the employee of respondent department holding the post of Sub Engineer since 26.03.1983 and performing his duties efficiently, to the best of his abilities and no complaint whatsoever in nature against him was made.
2. That the appellant was recently transferred as Sub Engineer PHE Division Karak and posted as Sub Divisional Officer (Own Pay Scale) Sub Division Takht-e-Nasrati District Karak with immediate effect vide order dated

Filed to-day

Registrar

Re-submitted to-day
and filed.

Registrar

23/2/15

20.02.2014 (**Annex: A**) but even one year has not yet completed that he was transferred from the said station to PHE Division Hangu under political influence of the Minister concerned vide impugned order dated 12.02.2015 (**Annex: B**). It is pertinent to mention that no officer has yet been posted against the post of appellant and the same has kept vacant for unknown reasons.

3. That the full Learned Bench of Hon'ble Baluchistan Service Tribunal has recently delivered a judgment in case of transfer of a Civil Servant reported in 2011 PLC (C.S.) 993 (**Annex: C**) therein laid down a **dictum that the matter of transfer of Civil Servants being part of terms and conditions of their services would fall within exclusive jurisdiction of Service Tribunal and the order of transfer of the Civil Servant could straight away be challenged before the Service Tribunal without first exhausting the remedy of representation in the hierarchy of the department.** In pursuance of this principle of law laid down by their honours, the appellant submit this appeal on the following amongst other grounds:

Grounds:

- A. That the appellant has not yet completed one year at Sub-Division Takht-e-Nasrati Karak then he was transferred to PHE Division Hangu by the impugned order dated 12.02.2015 without cogent reason and legal justification which is not sustainable under the law, rules and policy on subject and liable to be set aside.
- B. That Respondent No.3 is the Posting and Transfer authority in the case of appellant while the impugned order was passed by the Respondent No.2 by misusing its power and authority for malafide purposes. Thus the impugned order is without jurisdiction, illegal, incompetent and void ab initio and liable to be set aside.
- C. That the impugned order is based on malafides which was not passed in the public interest rather same was prompted with political interference and influence which is not warranted by law and rules.

- D. That the appellant had not yet completed the normal tenure three years of his posting then the impugned order was passed and he was transferred to PHE Division Hangu in violation of Posting Transfer Policy of the Provincial Government and he was politically victimized for ulterior motives.

It is, therefore, humbly prayed that on acceptance of this service appeal, the impugned order dated 12.02.2015 may kindly be set aside and appellant may graciously be retained at original place of duty i.e. PHE Sub Division Takht-e-Nasrati Karak.

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

Through


Appellant

Khush Dil Khan,
Advocate,
Supreme Court of Pakistan

Dated: 14 / 02/ 2015

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2015

Aziz-ur-Rahman,
Sub-Engineer (BPS-11),
Public Health Engineering DepartmentAppellant

Versus

Govt. of Khyber Pakhtunkhwa
through Chief Secretary and others..... Respondents.

APPLICATION FOR SUSPENDING THE OPERATION OF
IMPUGNED ORDER DATED 12.02.2015 THEREBY
APPELLANT/APPLICANT WAS TRANSFERRED FROM PHE
SUB DIVISION TAKHT NASRATI KARAK TO PHE DIVISION
HANGU TILL THE FINAL DISPOSAL OF THE INSTANT
APPEAL.

Respectfully Sheweth,

1. That the above titled service appeal is being filed today which is yet to be fixed for hearing.
2. That the facts alleged and grounds taken in the body of main appeal may kindly be taken as an integral part of this application, which make out an excellent prima facie case in favour of appellant/applicant.
3. That the balance of convenience also lies in favour of appellant as the post is still vacant no officer has yet been transferred against that very post thus in such circumstances if the operation of the impugned order is not suspended then applicant/appellant will suffer irreparable loss.

It is, therefore, humbly prayed that on acceptance of this application, the operation of the impugned order dated 12.02.2015 may graciously be suspended till the final disposal of the appeal.

Through



Appellant

Khush Dil Khan,

Advocate,

Supreme Court of Pakistan

Dated: 16 / 02/ 2015

Affidavit

I, Aziz-ur-Rahman, Sub-Engineer (BPS-11), Public Health Engineering Department, Sub Division Takht-e-Nasrati Karak under transfer to PHE Division Hangu, do hereby solemnly affirm and declare on oath that the contents of this application are true and correct to the best of my knowledge and nothing has been concealed from this Hon'ble Tribunal.

Identified by:



Khush Dil Khan,

Advocate

Supreme Court of Pakistan


Deponent

Annex "A" - P-4



GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

Dated Peshawar, the February 20, 2014

ORDER

No.SO(ESTT)/PHED/1-44/2013. The competent authority has been pleased to transfer Mr. Aziz-ur-Rehman, Sub Engineer PHE Division Karak and posted as SDO (OPS) PHE Sub Division Takht-e-Nasratti, District Karak, with immediate effect, in the public interest.

SECRETARY

215 / 2014
Endst:No.SO(ESTT)/PHED/1-44/2013

Dated Peshawar, the February 20, 2014

Copy forwarded for information and necessary action to the:-

1. Principal Secretary to Chief Minister Khyber Pakhtunkhwa Peshawar.
2. Accountant General Khyber Pakhtunkhwa Peshawar.
3. Chief Engineer (South) PHE Peshawar.
4. Superintending Engineer PHE Circle Kohat.
5. Executive Engineer PHE Division Karak.
6. District Accounts Officer Karak.
7. PS to Minister for PHE Khyber Pakhtunkhwa Peshawar
8. PS to Secretary PHE Department Khyber Pakhtunkhwa Peshawar.
9. Officer concerned.
10. Office Order File / Personal File.

115
Seen & filed
20/02/14

SECTION OFFICER (ESTT)

ATTACHED



Annex-B P-54

**GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT**

Dated Peshawar, the February 12, 2015

ORDER

No.SO(ESTT)/PHED/1-44/2013-14. The competent authority has been pleased to order the following transfers/postings of the Sub Engineers of the PHE Department, with immediate effect, in the public interest:-

S.No	Name	From	To	Remarks
1.	Mr. Aziz-ur-Rehman BPS-11	SDO (OPS) PHE Sub Division Takht-e- Nasrati, Karak	Sub Engineer PHE Division Hangu	Vice S.No.2
2.	Mr. Abdul Hamid, BPS-11	Sub Engineer PHE Division Hangu	Sub Engineer PHE Division Karak	Against the vacant post

2. Mr. Asif Farooq, SDO (OPS) PHE Sub Division Karak is hereby authorized to hold additional charge of the vacant post of SDO PHE Sub Division Takht-e-Nasrati, Karak in addition to his own duties, till further orders.

SECRETARY

No.SO(ESTT)/PHED/1-44/2013-14 **Dated Peshawar, the Febraury 12, 2015**

Copy forwarded for information & necessary action to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Chief Engineer (South) PHE Khyber Pakhtunkhwa Peshawar
3. Superintending Engineer PHE Circle Kohat
4. Executive Engineer PHE Division Karak/Hangu
5. District Accounts Officer Karak/Hangu
6. ✓ PS to Minister for PHE Khyber Pakhtunkhwa Peshawar
7. PS to Secretary PHE Department Khyber Pakhtunkhwa Peshawar
8. PA to Deputy Secretary (Admn) PHE Department Peshawar
9. Officials concerned.
10. Office Order/Personal Files.

ATTESTED

SECTION OFFICER (ESTT)

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2011] Mahboob Khan Mandokhail v. Secretary C&W Government 993
of Balochistan (Muhammad Hashim Khan Kakar, Chairman)

made to Khaliq Dad v. Inspector-General of Police, and 2 others 2004
SCMR 192 wherein it was observed:---

that the initiation of disciplinary action and criminal
proceedings are not inter-dependent which could have been
initiated simultaneously and brought to their logical end
separately with different conclusions."

It was also held in Government of N.-W.F.P through Secretary,
Finance, Excise and Taxation Department, Peshawar and 2 others v.
Asrangzeb 2003 SCMR 338:---

"that the petitioner cannot be allowed to take premium of his
abscondence in a criminal case and to use it as a ground for
absence from his official duty, He remained fugitive from law
and Courts and remained in hiding himself for a long time and
never applied for leave despite notices, therefore, his absence
without leave was sufficient ground for his removal from
service."

5. In the circumstances, we find that learned Tribunal in the
impugned judgment has discussed the matter in depth and assigned
cogent and sound reasoning before arriving at the conclusion. Neither
any misreading or non-reading of the material on file could be pointed
out in the impugned judgment, justifying interference by this Court.
Even otherwise, no substantial question of law of public importance is
involved in the present case.

6. For the foregoing reasons, we do not find any merit in this
petition which is dismissed and leave refused.

M.H/L-3/SC Leave refused.

2011 P L C (C.S.) 993

[Balochistan Service Tribunal]

Before Muhammad Hashim Khan Kakar, Chairman,
Muhammad Naeem Khan Ghalzai and
Muhammad Anwar Khan Members

MAHBOOB KHAN MANDOKHAIL

versus

SECRETARY C&W GOVERNMENT OF
BALOCHISTAN and 2 others

S.A. No.175 of 2010, decided on 27th October, 2010.

(a) Balochistan Civil Servants Act (IX of 1974)---

*---S. 10---Balochistan Service Tribunals Act (V of 1974), S.4---
Transfer order---Direct appeal before the Service Tribunal without
exhausting departmental remedy---Maintainability---Counsel for
authorities had contended that appeal filed by the appellant was not
maintainable having been filed directly without exhausting
departmental remedy---Contention was repelled as matter of transfer of
civil servants being part of terms and conditions of their services,
would fall within exclusive jurisdiction of Service Tribunal---Order of
transfer of civil servant could straightaway be challenged before
Service Tribunal without first exhausting the remedy of representation
in the hierarchy of the department---If transfer order was mala fide or
in violation of settled law, and was made for extraneous considerations
to accommodate some blue eyed-chap, it would squarely fall within the
domain of Service Tribunal---Said original orders of the departmental
authorities against which no appeal had been provided, had been
termed as the original final orders; whereas in those cases where
appeal lay, the order passed in appeal was the final order---Order of
the departmental authority for the transfer of the civil servant was such
against which, no departmental appeal lay before the higher authority;
in such a situation, if the aggrieved civil servant wanted to get relief,
could immediately approach the Administrative Court or the Tribunal
for redressal of his grievance. [pp. 995, 996] A & C*

(b) Balochistan Civil Servants Act (IX of 1974)---

*---S. 10---Balochistan Service Tribunals Act (V of 1974), S.4---
Transfer order---Question of transfer/posting under S.10 of
Balochistan Civil Servants Act, 1974 fell within the domain of
competent authority, but such discretion must not be exercised in an
arbitrary or fanciful manner---Such discretion had to be exercised
judicially and in accordance with settled norms of justice, equity and
fairplay---Government was required/duty bound to exercise the
discretion keeping in view the nature of duty and requisite capabilities
in a fair and impartial manner---There should be no extraneous
considerations---Transfer order, if mala fide or in violation of settled
law, for extraneous consideration, would fall within the domain of the
Service Tribunal---Normally, a civil servant would not be transferred
from one station to another, prior to the completion of prescribed
period of tenure---Civil servants were generally permitted to complete
their normal tenure in case of transfer from one place to another---
Such principle had to be followed in the ordinary circumstances, unless
for reasons of exigencies of service---Impugned transfer order of the
appellant was deviation from normal procedure and transfer/posting*

Policy, for which even reasons were not assigned---Appellant was going to be retired within a period of 4/5 months; his transfer order, in circumstances, smacked of arbitrariness; and was not tenable having been passed in clear violation of transfer/posting Policy, 2003--- Notification whereby appellant was transferred, was set aside and appellant would retain his earlier position. [p. 996] B & D

M. Wasy Tareen for Appellant.

Nasrullah Achakzai, A. A.-G. for Respondents.

Date of hearing: 26th October, 2010.

JUDGMENT

MUHAMMAD HASHIM KHAN KAKAR, (CHAIRMAN).---

This appeal under section 4 of the Balochistan Service Tribunals Act 1974 has been filed by Mr. Mehboob Khan (appellant) against his transfer order dated 21-9-2010 whereby he was transferred from the post of Acting Chief Engineer Khuzdar to Acting Chief Engineer Design.

2. The relevant facts in small compass are that the appellant is Superintending Engineer (B-19) and was posted as Acting Chief Engineer Khuzdar Region. As per appellant he had been performing his duties to the best of his abilities and no complaint whatsoever in nature against him was made. It is case of the appellant that in spite of clear instructions/guidelines issued by the Government of Balochistan about the Transfer Posting Policy, the respondent No.1 with mala fides transferred him through impugned Notification dated 21-9-2010.

3. On the other hand, the respondents contested the appeal on legal and factual grounds by filing their written replies.

4. We have heard the learned counsel for the parties and perused the available record with their valuable assistance.

5. The learned counsel for the appellant Mr. Wassay Tareen, Advocate contended that the impugned order is against the law, hence not tenable. He also argued that the order in question is based on mala fides and has been passed just to accommodate influential person.

6. On the other hand learned Additional Advocate-General Balochistan Mr. Nasrullah Achakzai Advocate contended that the appeal is not maintainable being filed directly without exhausting departmental remedy and the question of transfer/posting exclusively falls within the domain/jurisdiction of the competent authority. He further contended that this Tribunal has got no jurisdiction to adjudicate upon the same.

7. We are not in agreement with the learned Assistant Advocate-

General Balochistan on the ground that the appeal is not maintainable being filed directly before this Tribunal without exhausting the alternate remedy of filing departmental appeal. We are of the considered view that transfer of civil servants being part of terms and conditions of their services, would fall within exclusive jurisdiction of this Tribunal.

8. It is now settled principle of law that an order of transfer of civil servant can straight away be challenged before Service Tribunal without first exhausting the remedy of representation in the hierarchy of the department.

9. There is no cavil with the proposition that the question of transfer/posting under section 10 of the Balochistan Civil Servants Act, 1974 falls within the domain of competent authority but it is equally important to note that such discretion must not be exercised in an arbitrary or fanciful manner. Such discretion has to be exercised judiciously and in accordance with settled norms of justice, equity and fairplay. The Government is required/duty bound to exercise the discretion keeping in view the nature of duties and requisite capabilities in a fair and impartial manner and there should be no extraneous considerations. Therefore, the transfer order, if mala fide or in violation of settled law, made for extraneous consideration to accommodate some blue eyed chap, it would squarely fall within the domain of this Tribunal.

10. It is also worth mentioning that those original orders of the departmental authorities against which no appeal has been provided, have been termed as the original final orders whereas in those cases where appeal lies, the order passed in appeal is the final order. The order of the departmental authority for the transfer of the civil servant is such against which, under the said rules no departmental appeal lies before the higher authority. Therefore, in such a situation the aggrieved civil servant, if he wants to get relief, may immediately approach the administrative Court or Tribunal for redressal of his grievances.

11. Reverting to the merits of the case, it would be pertinent to mention here that the appellant is Superintending Engineer and he was posted as Acting Chief Engineer Khuzdar Region on 20th April, 2009, whereas respondent No.2 was appointed as Acting Chief Engineer Design on 2nd March, 2010. It is settled principle of law that normally a civil servant shall not be transferred from one station to another prior to completion of scribed period of tenure. Civil servants are generally permitted to complete their normal tenure in case of transfer from one place to another. Such principle has to be followed in the ordinary circumstances, unless for reasons of exigencies of services. The Government of Balochistan (Regulation-1) No.SORI-4(15)S&GAD/369

469 dated 12th March 2003 dealing with the "Transfer Posting", reads as follows:---

- (I) Pre-mature posting/transfer is a burden on the Government exchequer and heavy amount is incurred under the head of T.A/D.A.
- (IV) Frequent Posting/Transfer should be avoided.
- (V) A reasonable tenure of posting at a station may be fixed i.e. at least two years.

12. It is crystal clear that the impugned order is deviation from normal procedure and transfer posting policy mentioned herein above for which even reasons are not assigned. Admittedly the appellant is going to be retired within a period of 4/5 months. As such, the transfer order smacked of arbitrariness and is not tenable being passed in clear violation of transfer/posting Policy 2003.

13. For the discussion, made herein above the impugned Notification No.SCW(SOA)2-3/2010/5642-55 dated 21-9-2010 is hereby set aside and appellant will retain his earlier position. There shall be no order as to costs.

H.B.T./19/BST

Appeal allowed.

2009 P L C (C.S.)/997

[Supreme Court of Pakistan]

*Present: Khalil-ur-Rehman Ramday, Faqir Muhammad Khokhar
and Mahmood Akhtar Shahid Siddiqui, JJ*

QASIM WASTI and others

versus

SECRETARY TO GOVERNMENT OF PUNJAB,
REVENUE DEPARTMENT, BOARD OF REVENUE,
LAHORE and others

Civil Appeals Nos.702 to 724 of 2008, decided on 26th May, 2009.

(Against the judgment, dated 25-7-2007, of the Punjab Service Tribunal, Lahore passed in Service Appeals Nos.2374, 1182 of 2005, 1846, 1183 of 2006, 2442 of 2005, 2462 of 2004, 1184, 2439 of 2005, 2199 of 2006, 2460 of 2004, 2556 of 2005 and 1852 of 2006).

WAKALAT NAMA

IN THE COURT OF K.P. Service Tribunal, Rawalpindi

Azizur Rahman

Sud Engineer (PA-1) Talab

Nordli, Rawk Dist. Appellant(s)/Petitioner(s)

VERSUS

The Chief Secretary
Govt of P.F. & Affairs

Respondent(s)

I/We Azizur Rahman do hereby appoint
Mr. Khush Dil Khan, Advocate Supreme Court of Pakistan in the above
mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this

Attested & Accepted by

Khush Dil Khan,
Advocate, Supreme Court of Pakistan

Signature of Executants

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.145/2015

Mr. Aziz-ur-Rehman,
SUB Engineer (BPS-11),
PHE Sub Division Takht-e-Nasrati Karak,
Under transfer to PHE Division Hangu Appellant

VERSUS

1. The Government of KPK,
through Chief Secretary
2. The Secretary to Govt. of KPK,
Public Health Engineering Department
3. Chief Engineer (South),
PHE KPK Peshawar Respondents

PARA WISE COMMENTS OF RESPONDENTS NO.1, 2 & 3

Respectfully Sheweth,

Preliminary Objections

1. That appellant has got no locus standi.
2. That appellant has not come to this Hon'able tribunal with clean hands.
3. That this Hon'able tribunal has got no jurisdiction.
4. The appeal is time barred.
5. The appeal is barred by law.
6. The appeal is not maintainable in its present form.

Facts of the case

1. Correct to the extent that the appellant is the employee of respondent department holding the post of Sub Engineer (BPS-11) since 26.03.1983.
2. Incorrect. Due to shortage of regular SDOs (BPS-17) in the Department, the official concerned was posted as SDO (OPS) PHE Sub Division Takht-e-Nasrati Karak vide this department Order dated 20.02.2014. However, on availability of regular SDOs (BPS-17), he has been posted to his original post of the Sub Engineer (BPS-11) at PHE Division Hangu in the public interest.
3. The appellant has got no cause of action to file the instant appeal.

[Handwritten signature]

GROUNDS:

- a. That ground 'A' of the appeal is incorrect, misconceived. Denied as the appellant has been posted against his original post of the Sub Engineer (BPS-11) at PHE Division Hangu in exigency of services and in the public interest.
- b. That ground 'B' of the appeal is incorrect, misconceived. Denied as the post of SDO (BPS-17) was involved in the said postings/transfers and hence respondent No.2 is competent in this regard.
- c. That ground 'C' of the appeal is incorrect, misconceived. Denied as the order dated 12-02-2015 has been issued in the public interest without any political interest and no malafide intention is involved.
- d. That ground 'D' of the appeal is incorrect, denied. Moreover explained in preceding paras.

PRAYERS

Keeping in view the position explained above, it is very humbly requested that the appeal may be dismissed with cost.



**CHIEF ENGINEER (SOUTH)
PHE PESHAWAR
(Respondent No.3)**



**SECRETARY TO GOVT. OF KPK
PHE DEPARTMENT
(Respondent No.1 - 2)**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.145/2015

Mr. Aziz-ur-Rehman,
SUB Engineer (BPS-11),
PHE Sub Division Takht-e-Nasrati Karak,
Under transfer to PHE Division Hangu Appellant

VERSUS

1. The Government of KPK,
through Chief Secretary
2. The Secretary to Govt. of KPK,
Public Health Engineering Department
3. Chief Engineer (South),
PHE KPK Peshawar Respondents

**WRITTEN REPLY TO THE APPLICATION FOR SUSPENSION
OF IMPUGNED ORDER DATED 12-02-2015 ON BEHALF OF
RESPONDENTS NO.1, 2 & 3**

Respectfully Sheweth,

1. No comments.
2. Incorrect. The order dated 12-02-2015 has been issued in the public interest without any political interest. Moreover, the ground taken in the body of main reply may kindly be treated as an integral part of the instant reply.
3. Incorrect. The case for posting of a suitable officer against the post of SDO PHE Sub Division Takht-e-Nasrati Karak is under process in the department. However, in the meanwhile the charge of said post has been assigned to the SDO PHE Sub Division Karak as a stop-gap arrangement; hence the appellant has neither prima-facie case nor balance of convenience lies in his favour. No irreparable loss would be caused to the appellant/petitioner if the application is dismissed.

PRAYERS

Keeping in view the position explained above, it is requested that the application may be dismissed.


**CHIEF ENGINEER (SOUTH)
PHE PESHAWAR
(Respondent No.3)**


**SECRETARY TO GOVT. OF KPK
PHE DEPARTMENT
(Respondent No.1 - 2)**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.145/2015

Mr. Aziz-ur-Rehman,
SUB Engineer (BPS-11),
PHE Sub Division Takht-e-Nasrati Karak,
Under transfer to PHE Division Hangu Appellant

V E R S U S


1. The Government of KPK,
through Chief Secretary
2. The Secretary to Govt. of KPK,
Public Health Engineering Department
3. Chief Engineer (South),
PHE KPK Peshawar Respondents

PARA WISE COMMENTS OF RESPONDENTS NO.1, 2 & 3

AFIDAVIT

I, Muhammad. Iqbal, Superintendent (Estt) PHED Peshawar, do hereby solemnly declare that contents of the Para-wise comments are correct to the best of my knowledge and record and nothing has been concealed from this honourable Court.

Deponent


SUPERINTENDENT (ESTT)
PHE DEPARTMENT

Identified by /

Senior Government Pleader
KPK Service Tribunal Peshawar

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

IN RE:

Service Appeal No. 145 / of 2015

Aziz ur Rehman

...

...

Appellant

VERSUS

Government of Khyber Pakhtunkhwa
through Chief Secretary and others... ..

...

Respondents

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2.	Copy of Departmental Appeal with Registered Postal Receipt	14.2.2015 16.2.2015	R/A	3 - 5
3.	Extract of the judgment reported in 2005 SCMR 890	28.2.2005	R/B	6 - 11

Appellant

Through:

(Khush Dil Khan)

Advocate

Supreme Court of Pakistan

9-B, Haroon Mansion

Khyber Bazar Peshawar

Dated: .08.2015

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

IN RE:

Service Appeal No. 145 / of 2015

Aziz ur Rehman

...

...

Appellant

VERSUS

Government of Khyber Pakhtunkhwa

through Chief Secretary and others... ..

...

Respondents

REJOINDER ON BEHALF OF APPELLANT.

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS:

The Preliminary Objections raised by the answering respondents are frivolous and not sustainable under the law and rules on subject.

ON FACTS

1. Para No.1 of the reply needs no further elucidation.
2. The reply is incorrect and against the office record. As evident from the impugned order available on page No.5 of the appeal no officer has been posted against the post of appellant wherefrom he transferred to PHE Division Hangu.
3. The impugned order being malafide and passed under the influence of Minister concerned and the rights of appellant were adversely affected, so he rightly filed the instant appeal in the competent Forum. It is pertinent to mention that appellant has earlier filed Departmental Appeal before respondent No.1 under the Registered Post on 16.2.2015 but same was not disposed of within the statutory period. During the pendency of his departmental appeal he directly approached to this Honourable Tribunal in view of judgment of the


Honourable Balochistan Service Tribunal reported as 2011 PLC (S.S) 993 already attached with the appeal at page No.6. Now the appeal has been matured during proceedings in this Honourable Tribunal, so in view of the reported judgment of Supreme Court of Pakistan **2005 SCMR 890** therein their Lordship have laid down a principle that **once the pre mature appeal became mature during the pendency so the same be not dismissed on the point of Pre Maturity.** (Copy of Departmental Appeal with Registered Post Receipt as Annex R/A and Extracts of the judgment as Annex R/B).

GROUND:

Grounds from A to D taken by the answering respondents in their respective reply are frivolous and baseless so denied.

It is, therefore, humbly prayed that appeal of the appellant may graciously be accepted and the impugned order dated 12.2.2015 may kindly be set aside and the reply as furnished by respondents may also please be rejected.

Dated: 13 .08.2015

Through: 
(Khush Dil Khan)
Advocate
Supreme Court of Pakistan

To

The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.

Annex A
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**Subject: DEPARTMENTAL APPEAL/ REPRESENTATION
AGAINST THE IMPUGNED ORDER DATED 12.02.2015
PASSED BY THE SECRETARY, PUBLIC HEALTH
ENGINEERING DEPARTMENT KHYBER
PAKHTUNKHWA. THEREBY APPELLANT WAS
TRANSFERRED FROM PHE SUB DIVISION TAKHT-E-
NASRATI KARAK TO PHE DIVISION HANGU WITH
IMMEDIATE EFFECT.**

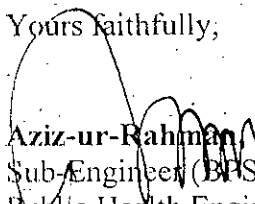
Respected Sir,

1. That I/appellant is the employee of Public Health Engineering Department holding the post of Sub Engineer since 26.03.1983 and performing my duties efficiently, to the best of my abilities and no complaint whatsoever in nature against me was made.
2. That the I/appellant was recently transferred as Sub Engineer PHE Division Karak and posted as Sub Divisional Officer (Own Pay Scale) Sub Division Takht-e-Nasrati District Karak with immediate effect vide order dated 20.02.2014 but even one year has not yet completed that I was transferred from the said station to PHE Division Hangu under political influence of the Minister concerned vide impugned order dated 12.02.2015. It is pertinent to mention that no officer has yet been posted against my post and the same has kept vacant for unknown reasons.
3. That I had not yet completed one year at Sub-Division Takht-e-Nasrati Karak then transferred me to PHE Division Hangu by the impugned order dated 12.02.2015 without cogent reason and legal justification which is not sustainable under the law, rules and policy on subject and liable to be set aside.
4. That the Chief Engineer (South) PHE Peshawar is the Posting and Transfer authority in my case while the impugned order was passed by the Secretary Public Health Engineering Department which is based on malafides.
5. That I had not yet completed the normal tenure three years of my posting then the impugned order was passed and I was transferred to PHE

Division Hangu in violation of Posting Transfer Policy of the Provincial Government and I was politically victimized for ulterior motives. P-4

It is, therefore, humbly prayed that on acceptance of this departmental appeal/representation, the impugned order dated 12.02.2015 may kindly be set aside and I may graciously be retained at original place of duty i.e. PHE Sub Division Takht-e-Nasrati Karak.

Yours faithfully;


Aziz-ur-Rahman,
Sub-Engineer (BPS-11),
Public Health Engineering Department,
Sub Division, Takht-e-Nasrati, Karak
Under transfer to PHE Division Hangu

Dated: 14 / 02 / 2015

P-5

of sender

13/2/2015

No.1459

16.2.2015

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