

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Amended Service Appeal No.1961/2023

Muhammad Nauman.....Appellant

Versus

The Govt. of KPK & others ..... Respondents

**INDEX**


S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Amended Appeal with Affidavit			1-6
2.	Notification of appellant's posting	05.04.2021	A	7-9
3.	Notification of appellant's transfer to District Mardan	30.11.2022	B	10
4.	Another Transfer Notification of appellant	26.05.2023	C	11
5.	Departmental Appeal	01.06.2023	D	12-13
6.	Writ Petition No.2406-P/2023		E	14-15
7.	Posting/Transfer Policy		F	16-18
8.	Notification of transfer of Respondent No.4 to the subject post during pendency of appeal	05.12.2023	G	19
9.	FIR		H	20
10.	Wakakat Nama			

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: 03 /01/2024

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Khyber Pakhtunkhwa  
Service Tribunal

**Amended Service Appeal No.1961/2023**

Diary No. 10227

Dated 3-1-2024

**Muhammad Nauman**

Assistant Director,

Fisheries Department,

Under Transfer to District Nowshera ..... **Appellant**

Versus

1. **The Govt. of Khyber Pakhtunkhwa**  
though Secretary Agriculture, Livestock, Fisheries  
& COOP Department, Civil Secretariat, Peshawar.
2. **Director General,**  
Directorate General Fisheries,  
Khyber Pakhtunkhwa, Shami Road, Peshawar
3. **Mr. Tanveer Shehzad**  
Assistant Director Fisheries (BPS-17),  
Under Transfer to District Mardan
4. **Mr. Muhammad Israil**  
Assistant Director Fisheries (Acting Charge),  
Under transfer to District Mardan ..... **Respondents**

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**AMENDED SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED OFFICE ORDER DATED 26.05.2023 WHEREBY APPELLANT WAS PREMATURELY TRANSFERRED AGAINST WHICH HE PREFERRED DEPARTMENTAL APPEAL ON 01.06.2023 BUT THE SAME WAS NOT DISPOSED OF WITHIN THE STATUTORY PERIOD OF 90 DAYS.**

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**PRAYER:**

On acceptance of the instant appeal, the impugned office order dated 26.05.2023 issued by Respondent No.2 may graciously be set aside and appellant may be allowed to complete his tenure at District Mardan.

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Respectfully Sheweth,

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

1. That initially appellant was inducted into the service of the Agriculture, Live Stock, Fisheries and Cooperative Department Khyber Pakhtunkhwa as Assistant Director (BPS-17) on 28.01.2021 and was posted at Charsadda vide Notification dated 05.04.2021 (*Annex:-A*) while Respondent No.3 was posted at Mardan. Since then appellant has been performing his duties to the entire satisfaction of the high-ups, so far he has never been proceeded against departmentally.
2. That while performing duties at District Charsadda appellant was transferred to District Mardan vide Notification dated 30.11.2022 (*Annex:-B*). Pursuant to the order ibid appellant took over charge against the respective post and started performing his duties optimally with full devotion. It is pertinent to mention here that respondent No.3 after completion of his usual tenure got transferred from District Mardan to District Swabi.
3. That appellant immediately started performing his duty at District Mardan and after a lapse of six months he was confronted yet with another transfer Notification dated 26.05.2023 (*Annex:-C*) wherein the services of the appellant was prematurely transferred from Mardan to Nowshera, where upon appellant being aggrieved of the impugned office order ibid preferred a departmental appeal dated 01.06.2023 (*Annex:-D*) followed by Writ Petition No.2406-P/2023 (*Annex:-E*) wherein it was held that:-

*In View of the above, this writ petition, being not maintainable, stands dismissed, however, we direct the Respondents to decide the departmental appeal of the Petitioner strictly in accordance with law.*

4. That as per Posting/Transfer policy of the Provincial Government (*Annex:-F*) "*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 shall be *2 years*. 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."*

5. **That** appellant filed Service appeal No.1961/2023 which was admitted for regular hearing and during pendency of the appeal Respondent No.4 (Mr. Muhammad Israil) an Acting Charge appointee was illegally transferred from District Shangla to District Mardan in violation of the law vide Notification dated 05.12.2023 (*Annex;-G*).
6. **That** on the last date of hearing, during the course of arguments, the transfer order of Respondent No.4 was produced before the Tribunal whereupon the appellant was directed to make Respondent No.4 as party in the array of Respondents being transferred to disputed post. Consequently, the instant amended 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 office order, which is unjust, unfair and hence not sustainable in the eye of law.
- B. **That** an FIR (*Annex:-H*) was lodged by authorities of Anti-Corruption against Ex-MPA's and other statespersons including respondent No.3 while posted at District Mardan. In order to cover up the ongoing unstable situation the impugned Notification was circulated which depicts a sketch of political pressure and unfair preference and is purely violative of the Transfer/Posting Policy *ibid*. It is necessary to add here that In spite of appellant being senior was transferred prematurely within a short span of

six months while Respondent No.3 was reverted back to his former place of posting without completion of his prescribed tenure which is neither in the public interest nor in any exigency of service rather clearly reveals mala fide.

- C. **That** while issuing the impugned office order, the terms as per transfer/posting policy has not been respected. It is admitted position that the appellant has served on the previous place of posting for short span of time, therefore, it will not be wrong to add here appellant has been made a rolling stone by way of premature transfer which is clear violation of law, Rules and Policy. Reliance is placed on 2016 PLC (CS) 526, 2018 SCMR 1411 and 2016 PLC (CS) 526; the relevant Head Notes are as under:-

2018 SCMR 1411

*“---S. 10---Posting and transfer of civil servant---Minimum period of posting/transfer-- -While S. 10 of the Balochistan Civil Servants Act, 1974 did not prescribe a minimum period during which a civil servant must serve at his post, it did not mean that the Government without assigning any reason could move a civil servant from the place he was posted to after a month or subject the civil servant to repeated postings in a short period of time because that would amount to punishing him---Such postings also adversely affected the public interest and resulted in the wastage of scarce resources and constituted bad governance.”*

2016 PLC (CS) 526

*“---Transfer of employee---Mala fide---Effect---Two orders of transfer of employee were made within a span of a fortnight---Validity---Employee (appellant) was not a government servant but was an employee of Local Government Board which was an autonomous body---Where a person complained of the violation of statutory rules or had challenged an order which was tainted with mala fides then constitutional petition was maintainable---Employee was ordered to be repatriated to an authority which had ceased to exist and had become defunct---Validity---Employee was not treated fairly, justly and equitably---Transfer of employee was not in the public interest or was not necessitated by an exigency or his services were not required for a particular post or for a particular station---Employee had been made an officer-on-special duty and had been left in the lurch---If courts of law countenanced and approved such exercise of authority then it would make a mockery of law and travesty of justice---Such acts of department would not give a message of hope to the honest and scrupulous persons and might tend to undermine their confidence---Employees of government or autonomous bodies were not to be made rolling stones---Impugned order passed by the department was declared to have been passed without lawful authority and of no legal effect and authority---Employee would continue to discharge his duties at the place where he was performing the same prior to his transfer--*

*Impugned order was set aside--- Constitutional petition was accepted in circumstances."*

- D. **That** repeated instructions of the Federal as well as Provincial Governments have been trampled with impunity while it has been emphatically 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 but inspite of the same, the directions were not followed which is against the ethics of good governance and an act of insubordination.
- E. **That** Respondent No.4 who is an Acting Charge Assistant Director Fisheries has been illegally transferred to the subject post during the pendency of the Service Appeal which is against the law and hit by the doctrine of the lis pendence. It is settled law that when an issue is seized of by any Court of law then the matter should be left for the disposal of the Court and the Department cannot pre-empt the jurisdiction of the Court.
- F. **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.

Through

Appellant

**Khaled Rehman**  
Advocate Supreme Court

&

**Muhammad Ghazanfar Ali**  
Advocates, High Court

Dated: 09 /01/2024

## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

## Amended Service Appeal No.1961/2023


Muhammad Nauman.....Appellant

Versus

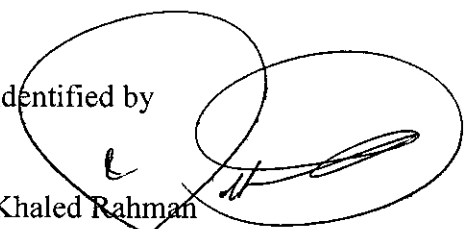
The Govt. of KPK &amp; others ..... Respondents \*

Affidavit

I, Muhammad Nauman, Assistant Director, Fisheries Department, Under Transfer to District Nowshera, do hereby solemnly affirm and declare on oath that the contents of this writ petition are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Court.

  
Deponent

Identified by

  
Khaled Rahman  
Advocate, Peshawar

ATTESTED



03-01-2024



GOVERNMENT OF KHYBER PAKHTUNKHWA  
LIVESTOCK, FISHERIES & COOPERATIVE  
DEPARTMENT  
Civil Secretariat Complex -II (Ex-FATA Sectt.), Warsak Road, Peshawar

Dated Peshawar the December 05, 2023

**NOTIFICATION**

**NO.SO (E)LFC/2-4/2023:** The posting/transfer of the following officers of Directorate General Fisheries Khyber Pakhtunkhwa are hereby ordered, in the public interest with immediate effect: -

S.No	Name & Designation of the officers	From	To
1	Mr. Tanveer Shehzad, Assistant Director Fisheries (BS-17).	Assistant Director Fisheries Mardan & lookafter charge of the post of Assistant Director Fisheries, Swabi.	Assistant Director Fisheries, Swabi.
2	Muhammad Israil, Assistant Director Fisheries (BPS-17) on acting charge basis.	Assistant Director Fisheries, Shangla.	Assistant Director Fisheries, Mardan.
3	Muhammad Miraj, Assistant Research Officer (BPS-16).	Assistant Research Officer office of Assistant Director Fisheries, Shangla.	Assistant Director Fisheries, Shangla (OPS).

SD/-  
SECRETARY  
LIVESTOCK, FISHERIES & COOP:  
DEPARTMENT

Copy forwarded to the:-

1. Director General Fisheries, Khyber Pakhtunkhwa, Peshawar.
2. District Account Officers, Mardan, Shangla and Swabi.
3. PS to Secretary Livestock, Fisheries & Cooperative Department.
4. Officers concerned.
5. Master File.

*Waqar Khan*  
05/12/23  
(Waqar Khan)  
Section Officer (Estt:)

*AW*