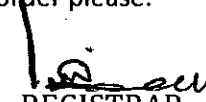
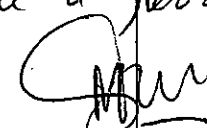




Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 378/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	19/03/2019	<p>The appeal of Eng. Muhammad Naeem presented today by Mr. Khaled Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 19/3/2019</p>
2-	<p><i>Handy with the full a fresh one</i></p> <p style="text-align: center;"> 20/3/19</p> <p>20.03.2019</p>	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>20/3/2019</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Appellant in person present and submitted an application for withdrawal of the instant appeal with the permission to file a fresh one in order to challenge the impugned appellate order. Application is allowed and the present service appeal is hereby dismissed as withdrawn. No order as to costs. File be consigned to the record room.</p> <p style="text-align: right;"> (Hussain Shah) Member</p> <p style="text-align: center;"><u>ANNOUNCED</u> 20.03.2019</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 378 /2019

Engr. Muhammad NaeemAppellant

Versus

The Govt. of KPK & others Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
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2.	Stay Application with Affidavit			5
3.	Notification of Appellant's transfer to the office of Respondent No.	01.04.2016	A	6-7
4.	Notification of Appellant's transfer as XEN (OPS) to Swabi Irrigation Division No.1 Gotki	13.11.2018	B	8
5.	Letter regarding appellant's retirement on 03.08.2019	12.11.2018	C	9
6.	Letter/Charge Relinquished Report	13.11.2018	D	10
7.	Letter/Charge Assumption Report	15.11.2018	E	11
8.	Impugned cancellation/withdrawal Notification	23.11.2018	F	12
9.	Posting/Transfer Policy		G	13-15
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11.	P L D 2013 Supreme Court 195		I	18-20
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Through

Appellant

Khaleed Raza Khan
Advocate,

Supreme Court of Pakistan
4-B, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458
Cell # 0345-9337312

Dated: 14/03/2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 378 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 351

Dated 19-3-2019

Engr. Muhammad Naeem

Executive Engineer XEN (BPS-17) OPS
Office of the Chief Engineer (South)
Kababian, Warsak Road, Peshawar.....

Appellant

Versus

1. **The Govt. of Khyber Pakhtunkhwa**
through Chief Secretary,
Civil Secretariat, Peshawar
2. **The Secretary**
to Govt. of Khyber Pakhtunkhwa
Irrigation Department,
Civil Secretariat, Peshawar.
3. **The Chief Engineer (South)**
Irrigation Department,
Kababian, Warsak Road, Peshawar.
4. **Engr. Muhammad Sajjad**
XEN (OPS)
Swabi Irrigation Division No.1, Swabi..... **Respondents**

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 23.11.2018 OF RESPONDENT NO.2 WHEREBY HE CANCELLED/WITHDREW EARLIER TRANSFER ORDER DATED 13.11.2018 AGAINST WHICH PREFERRED DEPARTMENTAL REPRESENTATION THROUGH PROPER CHANNEL ON 07.12.2018 TO RESPONDENT NO.1 BUT THE SAME WAS NOT DISPOSED OF WITHIN STATUTORY PERIOD OF 90 DAYS.

PRAYER:

On acceptance of the instant appeal, the impugned Notification dated 23.11.2018 may graciously be set aside and by restoring order/Notification dated 13.11.2018 the appellant may be allowed to perform his duties at Swabi as XEN Irrigation Division No.1, Swabi.

Respectfully Sheweth,

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

1. **That** appellant holds Domicile of District Mardan. He is serving Assistant Engineer (BPS-17) XEN (OPS) in the Respondent Department and he is one of the senior Officers of the Department. It is pertinent to submit here that vide Notification dated 01.04.2016 (*Annex:-A*) the Appellant was transferred and posted as Technical Officer OPS at the office of Respondent No.3 where he started performing his duties to the entire satisfaction of high-ups and in the best interest of the Department.
2. **That** while performing duties against post XEN (OPS), appellant was transferred and posted as Executive Engineer Swabi Irrigation Division No.1 (OPS) vide Notification dated 13.11.2018 (*Annex:-B*) and one namely Engr. Muhammad Sajjad holding the same post on OPS basis was transferred to the place of appellant/office of Respondent No.3. It is important to add here that Appellant is going to retire on attaining the age superannuation on 03.08.2019 vide letter dated 12.11.2018 (*Annex:-C*).
3. **That** pursuant to the Notification *ibid*, appellant relinquished the charge vide letter dated 13.11.2018 (*Annex:-D*) and also submitted Charge Assumption Report vide letter dated 15.11.2018 (*Annex:-E*). However, to the utter surprise and dismay of the appellant just after 9/10 days of the issuance of the transfer Notification *ibid*, the Respondent No.2 vide Impugned Notification dated 23.11.2018 (*Annex:-F*) withdrew/cancelled the transfer Notification dated 13.11.2018.
4. **That** as per Posting/Transfer policy (*Annex:-G*) "*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 retirement*". It is important to add here that appellant is also going to retire on superannuation on 03.08.2018.
5. **That** being aggrieved of the impugned Notification dated 23.11.2018, appellant preferred Departmental Appeal (*Annex:-H*) to Respondent No.1 on 07.12.2018. It is worth-mentioning that thereafter appellant filed a Writ Petition before the Peshawar High Court, Peshawar for expeditious disposal of the departmental appeal whereby Respondents were directed to decide

the Departmental Appeal of the appellant within seven days but they have failed to do so.

6. **That** appellant, being aggrieved of the acts and actions of Respondents and impugned Notification dated 23.11.2018, files this 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** the impugned Notification is neither in the public interest nor in exigency of service rather the same is in utter violation of transfer/posting policy and as such is not legally correct. Furthermore, the transfer order dated 13.11.2018 acted upon and appellant submitted/assumed the charge of the newly post as per directions of the high-ups as well as in the light of the said Notification.
- C. **That** the impugned Notification is the result of political consideration which is not only violative of the policy on the subject matter as reflected at Para No.2 of the posting/transfer Policy as well as the judgment of the Apex Court (PLD 2013 SC 195 Annex:-I)
- D. **That** as per posting/transfer policy an officer who is going to retire on attaining the age of superannuation shall be posted on his option. The appellant is going to retire just after 08 months and therefore, under the Policy he is to be posted till his date of retirement. Moreover, the Notification dated 13.11.2018 was withdrawn/cancelled upon political consideration.
- E. **That** while issuing the impugned Notification, the terms as per Transfer Posting Policy have not been respected. It is admitted position that the appellant has served on the previous post for more than the required tenure and after his transfer, the transfer Notification was cancelled just after few

days which is clear violation of law, Rules and Policy.

- F. **That** while issuing the impugned Notification dated 23.11.2018, the Respondents have not only violated the Policy in field but also deprived Appellant from his right to serve the Department in the light of earlier transfer Notification dated 13.11.2018 where Appellant has relinquished the charge of his earlier post.
- G. **That** it is not the matter of withdrawal/cancellation of the earlier Notification dated 13.11.2018 but the Respondents clearly violated the Posting/Transfer Policy which provides to Appellant a vested right to serve the Department at the place of his choice/domicile, therefore, the impugned Notification has been issued against the spirit of posting/transfer Policy and in violation of fundamental rights of Appellant and thus is liable to be struck down.
- H. That clear violation of provision of Section-24A of the General Clauses Act-1897 has been made and no response has been given on the Departmental Appeal of the appellant.
- 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.

Through

Appellant

Khaled Rahman,
Advocate,
Supreme Court of Pakistan

Dated: 19/03/2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2019

Engr. Muhammad NaeemAppellant

Versus

The Govt. of KPK & others Respondents

Application for suspending the operation of the impugned Notification dated 23.11.2018 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 applicant/ appellant.
3. That the balance of convenience also lies in favour of applicant/appellant and in case the impugned Notification is not suspended the applicant/ appellant will suffer irreparable loss.

It is, therefore, humbly prayed that on acceptance of this application, the operation of the impugned Notification dated 23.11.2018 may graciously be suspended till the final disposal of the main appeal.

Through

Applicant

Khaled Rahman,
Advocate,
Supreme Court of Pakistan

Dated: 19 /03/2019

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.

Applicant/Appellant



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

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Annex "A" 6

Dated Peshawar, the 1st April, 2016

NOTIFICATION

No. SO (E)/IRRI/4-9/77/Vol-III: The competent authority is pleased to order postings/transfers of the following officers of Irrigation Department with immediate effect in the public interest:-

S.#	Name of Officer	From	To
1.	Engr. Noor Kamal, Executive Engineer (BS-18)	XEN, Swabi Irrigation Division-I, Swabi.	Report to Secretary Irrigation.
2.	Engr. Musleh-ud Din, Executive Engineer (BS-18)	XEN, Marwal Canal Division, Bannu	Dy. Director (Planning) office of Chief Engineer (North) Irrigation, Vice No. 6
3.	Engr. Abdul Sattar Khan, Executive Engineer (OPS)	XEN, Bannu Canal Division, Bannu	XEN, Kohat Irrigation Division, Kohat, Vice No. 4
4.	Engr. Tariq Ali Khan, Executive Engineer (OPS)	XEN, Kohat Irrigation Division, Kohat.	Deputy Director (Design) office of Chief Engineer (South) Irrigation, Vice No. 5
5.	Engr. Anwar Kamal, Executive Engineer (OPS)	Deputy Director (Design) office of Chief Engineer (South) Irrigation	XEN, Marwal Canal Division, Bannu, Vice No. 2
6.	Engr. Baktur Zaman, Executive Engineer (OPS)	Deputy Director (Planning) office of Chief Engineer (North) Irrigation	XEN, Swabi Irrigation Division-I, Swabi, Vice No. 1
7.	Engr. Muhammad Naeem, Assistant Engineer (BS-17)	SNO, Irrigation Sub-Division, Shahbaz Garhi.	Technical Officer (OPS) office of Chief Engineer (South) Irrigation against the vacant post.
8.	Engr. Aurangzeb Khan, Assistant Engineer (BS-17)	Assistant Director, Remodeling of Warsak Canal System Project, Peshawar.	XEN, Bannu Canal Division, Bannu, Vice No. 3.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Encls: No. & Date as above

Copy of the above is forwarded to:-

- 1- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 2- The Chief Engineer (South), Irrigation Department.
- 3- The Chief Engineer (North), Irrigation Department.
- 4- The Project Director, Remodeling of Warsak Canal System Project, Peshawar.
- 5- The Superintending Engineer (H/Q) North Irrigation.
- 6- The Superintending Engineer (H/Q) South Irrigation.
- 7- The Superintending Engineers, Irrigation Circle, Bannu, Mardan & Swabi.
- 8- The District Accounts Officers, Bannu, Kohat & Swabi.
- 9- The Section Officer (Dev.) Irrigation Department w/r to his letter No. SO(Dev)/IRRI/2-140/WEB/2014 dated 15.10.2014.
- 10- PS to Secretary Minister for Irrigation, Khyber Pakhtunkhwa, Peshawar.
- 11- PS to Secretary Irrigation Department.
- 12- Personal Files of the Officers.

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ATTESTED

Misak Khan
(MISAK KHAN)
SECTION OFFICER (ESH)

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**GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT**

Dated Peshawar the 1st April

NOTIFICATION
2016

No.SO (E) /IRRI/4-9/77/Vol-III: The competent authority is pleased to order postings/ transfers of the following officers of irrigation Department with immediate effect in the public interest:-

S#	Name of officer	From	To
1	Engr Noor Kamal Executive Engineer (BPS-18)	XEN Swabi Irrigation Division-I Swabi	Report to Secretary Irrigation
2	Engr: Musleh ud Din Executive Engineer (BPS-18)	XEN Marwal Canal Division Bannu	Dy: Director (Planning) office of Chief Engineer (North) Irrigation. Vice No.6
3	Engr Abdul Sattar Khan Executive Engineer (OPS)	XEN Bannu Canal Division Bannu	XEN Kohat Irrigation Division Kohat Vice No.4
4	Engr: Tariq Ali Khan Executive Engineer (OPS)	XEN Kohat Irrigation Division Kohat	Deputy Director (Design) Office of Chief Engineer (South) Irrigation Vice No.5
5	Engr: ANwar Kamal Executive Engineer (OPS)	Deputy Director (Design) Office of Chief Engineer (South) Irrigation	XEN Marwal Canal Division Bannu Vice No.2
6	Engr: Baatur Zaman Executive Engineer (OPS)	Deputy Director office of Chief Engineer (north) Irrigation	XEN Swabi Irrigation Division Swabi Vice No.1
7	Engr: Muhammad Naeem Assistant Engineer (BS-17)	SDO, Irrigation Sub Division, Shahbaz Garhi	Technical officer (OPS) Office of Chief Engineer (South) Irrigation against the vacant post.
8	Engr: Aurangzeb Khan Assistant Engineer (BS-17)	Assistant Director, Remodelling of Warsak Canal System Project, Peshawar	XEN Bannu Canal Division, Bannu Vice No.3

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst: No & Date as above Copy of the above is forwarded to:

1. The Accountant General Khyber Pakhtunkhwa Peshawar.
2. The Chief Engineer (South) Irrigation Department.
3. The Chief Engineer (North) Irrigation Department.
4. The Project Director, Remodelling of Warsak Canal System Project, Peshawar.
5. The Superintending Engineer (H/Q) North irrigation.
6. The Superintending Engineer (H/Q) South Irrigation.
7. The Superintending Engineers, Irrigation Circle, Bannu, Mardan & Swabi.
8. The District Accounts Officers, Bannu, Kohat & Swabi.
9. The Section Officer (Dev) Irrigation Department w/r to his letter No. SD (Dev) IRR/2-1-40/WEB/2014 dated 15.10.2014
10. PS to Senior Minister for irrigation, Khyber Pakhtunkhwa, Peshawar
11. PS to Secretary Irrigation Department.
12. Personal Files of the officers.

Misal Khan
Section Officer (Est)

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ATTESTED

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Box "A"
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OFFICE OF THE CHIEF ENGINEER (SOUTH)
GOVT: OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT PESHAWAR

Ph: 091-9212116 Fax No. 091-9212652 E-Mail: chiefoffice@yahoo.com
Twitter: @chiefsouthirrkp Facebook: fb.me/chiefengrsouth

-9
ANNEX C
10

No. 5816 /IB/A-2/1203-PF

Dated 12 /11/2018

To

1. The Chief Engineer (North) Irrigation Department Peshawar.
2. Director General Small Dams Irrigation Department Peshawar.
3. Project Director, Rehabilitation of Irrigation System Peshawar.
4. Project Director, Remodeling of Warsak Canals System Peshawar.
5. Superintending Engineer, Peshawar Irrigation Circle Peshawar.
6. Superintending Engineer, Bannu Irrigation Circle Bannu.
7. Superintending Engineer, D.I.Khan Irrigation Circle D.I.Khan.
8. Superintending Engineer, Mardan Irrigation Circle Mardan.
9. Superintending Engineer, Swabi Irrigation Circle Swabi.
10. Superintending Engineer, Swat Irrigation Circle Swat.
11. Executive Engineer, Mechanical/Hydrology Irrigation Division, Peshawar.

Subject: DEMAND / NO DEMAND, ENQUIRY / NO ENQUIRY ETC. CERTIFICATES IN RESPECT OF ENGR. MUHAMMAD NAEEM TECHNICAL OFFICER O/O THE CHIEF ENGINEER (SOUTH) IRRIGATION DEPARTMENT PESHAWAR

I am directed to refer to the above and to state that date of birth of Engr. Muhammad Naeem, Technical Officer of this office is 04-08-1959. He shall stand retired from Govt. service w.e.f 03-08-2019 on attaining the age of superannuation.


It is therefore requested to furnish the following certificate in respect of the above mentioned name officer at an early date please.

1. Demand/No demand Certificate.
2. Enquiry/ No Enquiry Certificate.
3. Involvement/No involvement Certificate in any Draft para/ Advance para.

Sd-

ADMINISTRATIVE OFFICER

Copy to Engr. Muhammad Naeem, Technical Officer (Local) for information.


ADMINISTRATIVE OFFICER

ATTESTED ATTESTED



OFFICE OF THE CHIEF ENGINEER (SOUTH)
IRRIGATION DEPARTMENT, KHYBER PAKHTUNKHWA,
PESHAWAR.

Phone No. 091-9212116 Fax No. 091-9212652 Email:
chiefoffice@yahoo.com

No 5831 /IB/A-2/7-E

Dated 13 /11/2018

RELINQUISH OF CHARGE

In pursuance to the Govt: of Khyber Pakhtunkhwa Irrigation Department Notification No. SO (E)/IRR/4-9/77/Vol-III dated 13-11-2018, I Engr. Muhammad Naeem relinquish the charge of post of Technical Officer, Office of the Chief Engineer (South) Irrigation Department Peshawar today on the A.N of 13-11-2018.

Engr. Muhammad Naeem
Technical Officer

Copy forwarded for information to the:-

- 1) Accountant General Khyber Pakhtunkhwa Peshawar.
- 2) Chief Engineer (North) Irrigation Deptt: Peshawar.
- 3) Director General Small Dams Irrigation Deptt: Peshawar.
- 4) All Superintending Engineers Irrigation Deptt: Khyber Pakhtunkhwa.
- 5) All Executive Engineers Irrigation Deptt: Khyber Pakhtunkhwa.
- 6) P.S to Secretary Irrigation Deptt: Khyber Pakhtunkhwa Peshawar.
- 7) P.A to Chief Engineer (South) Irrigation Department Peshawar.
- 8) P.A to Superintending Engineer (H/Q) South Irrigation Department Peshawar.
- 9) C&B Assistant (Local)
- 10) Personal file of the officer.

Engr. Muhammad Naeem
Technical Officer

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- 11

OFFICE OF THE EXECUTIVE ENGINEER SWABI IRRIGATION DIVISION
NO.1 SWABI

No. 5985

Dated 15 /11/2018

ASSUMPTION OF CHARGE


In compliance to the Notification of Secretary to Govt: of Khyber Pakhtunkhwa Irrigation Department vide No. SO(E)/IRR/4-9/77/Vol-III dated 13-11-2018, I Engr. Muhammad Naeem have this day on 15-11-2018 (F.N) assumed the charge of the post of Executive Engineer Swabi Irrigation Division No.1 Swabi.

/

Engr. Muhammad Naeem
Executive Engineer
Swabi Irrigation Division No.1
Swabi

Copy forwarded for information to the:-

- 1) Chief Engineer (North) Irrigation Deptt: Peshawar.
- 2) Chief Engineer (South) Irrigation Department Peshawar
- 3) Director General Small Dams Irrigation Deptt: Peshawar.
- 4) All Superintending Engineers Irrigation Deptt: Khyber Pakhtunkhwa.
- 5) P.S to Secretary Irrigation Deptt: Khyber Pakhtunkhwa Peshawar.
- 6) District Accounts Officer Swabi/Mardan.


Engr. Muhammad Naeem
Executive Engineer
Swabi Irrigation Division No.1
Swabi

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GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Annex "F" - 12

Dated Peshawar 23rd November, 2018

NOTIFICATION

No. SO(E)/IRR/4-9/77/Vol-III

The Competent Authority is pleased to withdraw/cancel the posting/transfer order issued vide this department notification of even number dated 13.11.2018, in the best public interest.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Encl: No. & Date as above

Copy of the above is forwarded to:-

- 1- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 2- PS to Chief Minister, Khyber Pakhtunkhwa.
- 3- PS to Chief Secretary, Khyber Pakhtunkhwa.
- 4- The Chief Engineer (North/South), Irrigation Department, Peshawar.
- 5- The Superintending Engineer (H/Q) (South/North) Irrigation Department
- 6- The All Superintending Engineer, Irrigation Department.
- 7- The Project Director, PHLCE Swabi.
- 8- The Director (Tech:), PMC, Irrigation Department.
- 9- District Accounts Officer Peshawar and Swabi.
- 10- The Officers concerned.
- 11- PS to Secretary Irrigation Department.
- 12- PA to Additional Secretary, Irrigation Department.
- 13- Personal Files of the officers.

[Handwritten signature]
23/11/18

[Handwritten signature]
(Abdul Raut)
Section Officer (Estt:)

25/11

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Annex G

15



ESTA CODE

**ESTABLISHMENT CODE KHYBER PAKHTUNKHWA
(REVISED EDITION) 2011**

**A COMPENDIUM OF LAWS, RULES AND INSTRUCTIONS
RELATING TO THE TERMS AND CONDITIONS
OF PROVINCIAL CIVIL SERVANTS**

**COMPILED BY;
(O&M) SECTION
ESTABLISHMENT & ADMINISTRATION DEPARTMENT**

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- vi) ⁸⁰ While 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

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c/B
- 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-16 and below	Executive District Officer in consultation with District Coordination Officer.

3. As per Rule 25(2) of the Rules mentioned above the District Coordination Department shall consult the Government if it is proposed to:

- a) Transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure.
- b) Require an officer to hold charge of more than one post for a period exceeding two months.

4. I am further directed to request that the above noted policy may be strictly observed/implemented.

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).

ATTESTED

ATTESTED

To

The Chief Secretary,
Khyber Pakhtunkhwa Civil Secretariat, Peshawar

ANNEX

H

THROUGH PROPER CHANNEL

16

Subject

DEPARTMENTAL REPRESENTATION AGAINST THE NOTIFICATION DATED 23.11.2018, ISSUED BY THE SECRETARY TO GOVERNMENT OF KPK IRRIGATION DEPARTMENT WHEREBY THE TRANSFER ORDER/NOTIFICATION DATED 13.11.2018 WAS CANCELLED/WITHDRAWN.

It is respectfully submitted.

Sir,

1. That the appellant is one of the Senior Officer of Irrigation Department and is going to retire on attaining age of Superannuation on 03.8.2019.
2. That vide notification dated 01.04.2016, the appellant was transferred and posted as Technical Officer (OPS) Officer of the Chief Engineer (South) Irrigation Department Peshawar against the vacant post. **Copy of the notification is annex "A"**
3. That after serving on the same post for more than the required tenure, the appellant was transferred and posted as Executive Engineer Swabi Irrigation Division No. 1 Swabi (OPS) whereas engineer Muhammad Sajad holding the same post on Ops basis was transferred vice the appellant vide the notification dated 13.11.2018. **Copy of the notification is annex "B"**
4. That the appellant relinquished charge vide letter dated 13.11.2018 and also submitted his assumption report vide letter dated 15.11.2018. **Copies of the charge relinquishment and assumption is annex "C"**
5. That just after 9/10 days the transfer order/notification ibid was withdrawn/cancelled vide notification dated 23.11.2018. **Copy of the notification is annex "D"**

ATTESTED

ATTESTED

6. That the appellant being aggrieved of the impugned notification dated 23.11.2018 challenges the same before your goodself on following grounds.

- 17 - 18

G R O U N D S

- A. That the impugned notification is neither in the public interest nor in exigency of service. The same is in utter violation of transfer/posting policy and as such is not legally correct.
- B. That as per the transfer/posting policy, an officer who is going to retire on attaining the age of superannuation shall be posted on his option. The appellant is going to retire just after 8 months and therefore under the policy he is to be posted at his option till his date of retirement.
- C. That while issuing the impugned notification the terms as per the transfer/posting policy has not been respected. It is admitted position that appellant has served on the previous post for more than the required tenure and after his transfer, the transfer order was cancelled just after few days in violation of the law.
- D. That the impugned notification is also an affront to the judgments passed by the Supreme Court of Pakistan.

It is therefore, humbly requested that on acceptance of instant representation the impugned notification dated 23.11.2018, may kindly be set aside by allowing the appellant to remain posted as Executive Engineer Swabi Irrigation Division No. 1 Swabi till his date of retirement i.e 03.8.2019 being nearest station as the home of appellant is situated at Village Garhi Ismail Zai District Mardan which is under the jurisdiction area of canals network of Swabi Irrigation Division No. 1 Swabi.

Appellant/applicant


Engr: Muhammad Naeem
Executive Engineer (BS-17)
(OPS)

ATTESTED


ATTESTED

PLD 2013 Supreme Court 195

Answer I

Present: Iftikhar Muhammad Chaudhry, C.J., Jawwad S. Khawaja and Khilji Arif Hussain, JJ

Syed MAHMOOD AKHTAR NAQVI and others---Petitioners

Versus

FEDERATION OF PAKISTAN and others---Respondents

[Petition by Ms. Anita Turab for protection of Civil Servants: In re]

Constitution Petitions Nos.23 and 11, Criminal Original Petitions Nos.23, 24 and 27, H.R.C. No. 14427-P, C.M.As. Nos. 1575, 1611, 1792, 197-K and 231-K and Criminal Miscellaneous Application No.587 of 2012 in Criminal Original Petition No. 24 of 2012 in Constitution Petition No.11 of 2012.

(a) Civil Servants Act (LXXI of 1973)---

---Ss. 4, 5, 9 & 10---Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---Constitution of Pakistan, Arts. 9, 14, 18 & 184(3)---Constitutional petition under Art. 184(3) of the Constitution seeking elaboration of constitutional and legal safeguards relating to the working of civil servants---Maintainability---Matter of tenure, appointment, posting, transfer and promotion of civil servants could not be dealt with in an arbitrary manner: it could only be sustained when it was in accordance with the law---Decision which deviated from the accepted or rule-based norm without proper justification, could be tested on the touchstone of a manifest public interest---Fundamental rights of civil servants, inter alia, under Arts.9, 14 & 18 of the Constitution were aspects arising in the present constitutional petition---Constitutional petition was maintainable.

Tariq Aziz-ud-Din's case 2010 SCMR 1301; Syed Yousaf Raza Gillani v. Assistant Registrar PLD 2012 SC 466 and Mehmood Akhtar Naqvi v. Federation of Pakistan. Constitution Petition No.5 of 2012 ref.

(b) Civil Servants Act (LXXI of 1973)---

---S.16---Constitution of Pakistan, Arts. 5 & 184(3)---Civil servant, duties of---Non-subservience to political executive and impartiality---Scope---Although civil servants did have a duty to follow the policy guidelines and directions of the political executive yet, because of Art.5 of the Constitution, their foremost duty was "obedience to the Constitution and the law", not unthinking obedience to all directives (right or wrong) issued from the political executive---Civil servants were public servants and were, therefore, meant to take decisions only in accordance with law in the public interest---Civil servants in their capacity as advisors in decision making or as administrators and enforcers of law, were not subservient to the political executive---Civil servants were under an obligation to remain compliant with the Constitution and law, hence they were not obliged to be servile or unthinkingly submissive to the political executive---Civil servants to give advice in the best public interest and were to administer the law impartially being in charge of the machinery of the State.

Quaid-e-Azam Mohammad Ali Jinnah Speeches as Governor General of Pakistan 1947-48, Sang-e-Meel Publications, Lahore: 2004 ref.

(c) Civil Servants Act (LXXI of 1973)---

---Ss. 3 & 5---Rules of Business, (1973), R. 5(10)---Appointment and conditions of service of civil servants---Transaction of business---Civil servant, opinion of---Scope---Implementation of policy or directives, might be required in some cases notwithstanding the considered views of a civil servant to the contrary, however in such an event, the civil servant should record his/her honest and considered opinion without fear---Decisions violating the law relating to appointment and terms and conditions of service of civil servants which were manifestly wrong and were likely to cause gross injustice or undue hardship should be considered important enough for the purpose of R. 5(10) of Rules of Business, (1973).

(d) Civil Servants Act (LXXI of 1973)---

---Preamble---Object of civil Servant Act, 1973---Parliament had enacted Civil Servants Act, 1973 for providing meaningful legal guarantees to civil servants and doing away with arbitrariness---Object of Civil Servants Act, 1973 was to legally "regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of Pakistan" (Preamble)---Rule of law was the key idea reflected in the whole scheme of the Act.

(e) Civil Servants Act (LXXI of 1973)---

---Ss. 4, 5, 9 & 10---Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---Constitution of Pakistan, Art. 184(3)---Constitutional petition under Art. 184(3) of the Constitution seeking elaboration of constitutional and legal safeguards relating to the working of civil servants---Tenure, appointment, promotion and posting/transfer of civil servants---Favoritism/discouragement of merit---Effect---Tenure, appointment, promotion and posting/transfer were of utmost importance in the civil service, and if same were made on merit in accordance with definite rules, instructions etc., they would rightly be considered and treated as part of the terms and conditions of service of a civil servant; however, where rules and instructions were deviated from and as a result merit was discouraged on account of favoritism, sifarish or considerations other than merit, it should be evident that the civil service would not remain independent or efficient.

(f) Civil Servants Act (LXXI of 1973)---

---Ss. 5 & 11---Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---Civil Servants (Efficiency and Discipline Rules), 1973---Constitution of Pakistan, Art. 184(3)---Appointment and removal of civil servants---Principles---Whenever there were statutory provisions or rules or regulations which governed the matter of appointments of civil servants, the same must be followed, honestly and scrupulously---Even where there were no explicit rules governing the appointment process, and appointments were to be made in the exercise of discretionary powers, such discretion must be employed in a structured, transparent and reasonable manner and in the public interest---Appointing authorities could not be allowed to exercise discretion at their whims, or in an arbitrary manner; rather they were bound to act fairly, evenly and justly and their exercise of power was judicially reviewable---Removal and dismissal of civil servants from service was not left to anyone's whims and caprice and it was governed by rules and regulations---Anachronistic concept where government servants held office during the pleasure of the Authority had no place in a dispensation created and paid for by the people.

Tariq Aziz-ud-Din's case 2010 SCMR 1301; Corruption of Hajj Arrangement's case PLD 2011 SC 963 and Muhammad Yasin v. Federation of Pakistan PLD 2012 SC 132 ref.

(g) Civil Servants Act (LXXI of 1973)---

---S. 9---Constitution of Pakistan, Art. 184(3)---Promotion of civil servants---Discretion---Principles---Discretion in matters of promotion must be exercised fairly and in a transparent manner---Such discretion had to be understood within the four corners of the concept of rule of law upon which the system of governance was founded---Every Authority in the State was bound to obey the dictates of the law and had no personal or absolute discretion.

ATTESTED

Tariq Aziz-ud-Din's case 2010 SCMR 1301 ref.

(h) Civil Servants Act (LXXI of 1973)---

---Ss. 4 & 10---Constitution of Pakistan, Art. 184(3)---Tenure, posting and transfer of civil servants---Principles---When the ordinary tenure for a posting had been specified in the law or rules made thereunder, such tenure must be respected and could not be varied, except for compelling reasons, which should be recorded in writing and were judicially reviewable---Transfers of civil servants by political figures which were capricious and were based on considerations not in the public interest were not legally sustainable.

Corruption of Hajj Arrangement's case PLD 2011 SC 963; Zahid Akhtar v. Government of Punjab PLD 1995 SC 530 and Farrukh Gulzar v. Secretary Local Government and Rural Development Department, Lahore and 2 others 1998 SCMR 2222 ref.

(i) Civil Servants Act (LXXI of 1973)---

---S.16---Constitution of Pakistan, Arts. 5 & 184(3)---Civil servant, duty of---Non-compliance with illegal orders of superiors---Scope---Duty of public officers was to independently discharge their functions and not be influenced by "dictatorial misuse of powers" at the hands of political figures---Civil servants were not bound to obey orders from superiors which were illegal or were not in accordance with accepted practices and rule-based norms; instead, in such situations, they must record their opinion and, if necessary, dissent---Compliance with illegal orders of superiors was not justified on the basis of having been issued from higher authority as it was the law and the Constitution which must be obeyed---Illegal orders (of superiors) could not be defended on the plea that they could expose the concerned government servant to the risk of disciplinary action.

Syed Nazar Abbas Jafri v. Secretary to the Government of the Punjab and another 2006 SCMR 606; Province of Punjab v. Azhar Abbas 2002 SCMR 1; Samiullah Khan Marwat v. Government of Pakistan 2003 SCMR 1140; Iqbal Hussain v. Province of Sindh 2008 SCMR 105; Human Rights Cases Nos.4668 of 2006, 111 of 2007 and 15283-G of 2010 PLD 2010 SC 759 and Zahid Akhtar v. Government of Punjab PLD 1995 SC 530 ref.

(j) Civil Servants Act (LXXI of 1973)---

---S.10---Constitution of Pakistan, Art. 184(3)---Posting of a civil servant as Officer on Special Duty (OSD)---Principles---Officer should not be posted as Officer on Special Duty (OSD) except for compelling reasons, which must be recorded in writing and were judicially reviewable---If at all an officer was to be posted as Officer on Special Duty (OSD), such posting should be for the minimum period possible and if there was a disciplinary inquiry going on against him, such inquiry must be completed at the earliest.

Corruption of Hajj Arrangement's case PLD 2011 SC 963; Mir Shah Nawaz Marri v. Government of Balochistan and others 2000 PLC (C.S.) 533; Syed Ajmal Hussain Bokhari v. Commissioner, Rawalpindi 1997 PLC (C.S.) 754; Sajjad Ahmad Javed Bhatti v. Federation of Pakistan 2009 SCMR 1448 and Lt. Col. (R.) Abdul Wajid Malik v. Government of the Punjab 2006 SCMR 1360 ref.

(k) Civil Servants Act (LXXI of 1973)---

---S.16---Constitution of Pakistan, Arts. 189, 190 & 204(2)(a)---Decision of---Supreme Court---Binding nature of---Scope---Decision given by the Supreme Court on a point of law would be binding on concerned departmental functionaries who would be obliged to apply such legal principle in other similar cases regardless of whether or not a civil servant had litigated the matter in his own case---In view of Art.189 and 190 of the Constitution, a civil servant would be entitled to make a departmental representation or initiate legal proceedings before a competent forum to enforce a legal principle enunciated by the Supreme Court---Failure of a State functionary to apply a legal principle which was clearly and unambiguously attracted to a case, might expose him to proceedings under Art.204(2)(a) of the Constitution.

Al-Jehad Trust v. Federation of Pakistan PLD 1997 SC 84; Hameed Akhtar Niazi v. The Secretary Establishment Division 1996 SCMR 1185 and Baaz Muhammad Kakar v. Federation of Pakistan PLD 2012 SC 870 ref.

(l) Civil Servants Act (LXXI of 1973)---

---Ss. 4, 5, 9 & 10---Constitution of Pakistan, Art. 184(3)---Tenure, appointments, promotions and transfers of civil servants---Discretion of Executive Authority---Interference by courts---Scope---Responsibility of deciding suitability of an appointment, posting or transfer fell primarily on the executive branch of the State which comprised of both the political executive and civil servants---Decision making in relation to tenure, appointments, promotions and transfers remained rule-based and was not susceptible to arbitrariness or absolute and unfettered discretion---Courts ordinarily would not interfere in the functioning of the executive as long as it adhered to the law and established norms and acts in furtherance of its fiduciary responsibility.

Petitioners in person.

Hafiz S.A. Rehman, Sr. Advocate Supreme Court; Amicus Curiae.

Abdul Fatch Malik, A.G., Adnan Karim, A.A.-G., Ali Sher Jakhrani, AIG and Maqsood Ahmed, DSP for Government of Sindh.

Syed Arshad Hussain Shah, A.A.-G. for Government of Khyber Pakhtunkhwa.

Azam Khattak, A.A.-G. for Government of Balochistan.

Jawad Hassan, A.A.-G. for Government of Punjab.

Date of hearing: 18th October, 2012.

JUDGMENT

JAWWAD S. KHAWAJA, J.---Many centuries before the term 'good governance' became a catch-phrase, we find a remarkably eloquent exposition of the principles of good governance in the Epistle of Hazrat Ali to Malik ibn Ashtar, the Governor of Egypt. The revered Khalifa, may Allah be pleased with him, is reported to have said: ".....give careful consideration to the selection of ... officers. Confirm them in their appointments after approval, apprenticeship and probation. Never select men for responsible posts either out of any regard for personal connections or under any influence, for, that might lead to injustice and corruption.... select for higher posts men of experience, men firm in faith ... Such men will not fall an easy prey to temptations and will discharge their duties with an eye on the abiding good of others". The law and the Constitution of Pakistan, with the aim of furthering the welfare of the people of Pakistan, articulate the same principles. The truth is that principles pertaining to the setting up of a just and constitutional government are eternal, not peculiar to our times. Our law, Constitution and courts only apply these universal and time-tested principles to the prevalent situation. In this public interest case seeking elaboration of constitutional and legal safeguards relating to the working of civil servants, we reaffirm these eternal principles which have also been stressed by us in cases decided earlier.

2. The background to this matter is that Suo Motu Case No.3 of 2012 was initiated on the basis of broadcasts on different TV channels on 25-2-2012. In these broadcasts, Syeda Wahida Shah, a candidate of the Pakistan Peoples Party for bye-election to PS-53 (Tando Muhammad

(Khan) was shown slapping a member of the polling staff. The *Suo Motu* case was concluded vide order dated 12-3-2012. Ms. Anita Turab, who is a civil servant in BS-19, presently working in the Ministry of Interior, filed an application in the aforesaid *Suo Motu* case. Since the case stood concluded, the application was ordered on 12-3-2012 to be registered as a petition under Article 184 (3) of the Constitution. It is this petition which is being decided through the present order.

3. The grievance of the petitioner set out in her petition can be summarized. Firstly, she seeks that the standing of the civil service be restored as service of the State and not the service of any transient government. To achieve this object, her submission is that unlawful political interference in the independent and legitimate functioning of civil servants be stopped. Secondly, the petitioner seeks corrective institutional measures to revert the civil service to rule-based management practices in accordance with the letter and spirit of applicable laws, rules and precedents of this Court.

4. On 12-3-2012, we had directed the Secretary Establishment Division, Government of Pakistan, the Chief Secretaries of the four Provinces and the Chief Commissioner, Islamabad Capital Territory to submit their comments. It was noted in the said order that civil servants who act according to law, at times, have to face hardship in the form of immediate transfer or posting as Officers on Special Duty (OSD) even before the completion of their tenure. It was also noticed that frequent transfers, postings and disciplinary proceedings are taken in violation of the law, rules and regulations.

5. The above referred functionaries comprised as a Committee, have submitted their report which includes tentative recommendations. Amongst other things, the Committee has recommended that "[p]ostings and transfers be made on merit", "tenures for various categories of posts be fixed" and that "[n]o civil servant should be posted as OSD for purposes of parking of officers who are unwanted, or, who are not susceptible to pressures." The Committee further recommends that "[a] civil servant should be placed under suspension only by the competent authority after initiation of disciplinary proceedings; and... Officers taken on deputation/borrowed from other tiers of the government should carry the requisite experience and seniority for specific jobs." According to the petitioner, many of the Committee's recommendations are already covered by existing law, rules and regulations, particularly in matters relating to tenure, appointment, transfer and posting of civil servants. There is no dispute or contention that such recommendations must indeed be implemented with immediate effect as a necessary concomitant to good governance. Some other recommendations made by the Committee require legislation or rule making which, necessarily will need to be undertaken by the legislature and/or the competent rule making authority and not by the Court.

6. The petitioner being a civil servant herself has requested revival of the independent, impartial and professional status of the civil service as an institution and to affirm its decision-making authority in furtherance of the rule of law. The petitioner's further grievance is that legal and constitutional safeguards meant to protect the civil service from excessive political interference are being systemically breached. With its safeguards thus withered, the service is growing inefficient and demoralized and with it, the machinery of the State, mandated to enforce good governance, rule of law and fundamental rights of the people of Pakistan, is failing.

7. The petition has been held maintainable because the situation portrayed does raise a question of public importance with reference to the enforcement of fundamental rights. In our constitutional scheme of governance, the importance of such a civil service, which is law-abiding and itself legally protected, cannot be over emphasized. "Good governance", this Court has recently observed, "is largely dependent upon [an] upright, honest and strong bureaucracy. [The] Civil service is the back bone of our administration." per Chaudhry Ijaz Ahmad, J. in Tariq Aziz-ud-Din's case (2010 SCMR 1301). Additionally, the fundamental rights of civil servants, inter alia, under Articles 9, 14 and 18 of the Constitution are also aspects arising in this Constitution Petition. The enforcement of fundamental rights is primarily the responsibility of the Executive branch of the State and civil servants constitute that essential component of the Executive who operate the executive machinery. A duty is thus cast both on the civil service and on the political executive to ensure the effectiveness (in all respects) of the civil service.

8. It is not in contention that civil servants are public servants and are, therefore, meant to take decisions only in accordance with law in the public interest. In their capacity as advisors in decision making or as administrators and enforcers of law, they are not subservient to the political executive. It is their obligation to remain compliant with the Constitution and law. Hence they are not obliged to be servile or unthinkingly submissive to the political executive. One of their prime duties is to give advice in the best public interest and to administer the law impartially being in charge of the machinery of the State. In this regard, the address made by Quaid-i-Azam Mohammad Ali Jinnah to the members of the civil service at Peshawar on 14th April, 1948 is most relevant. Quaid-i-Azam instructed them not to be "influenced by any political pressure, by any political party or individual politician." While urging them to loyally and faithfully serve whichever government came to power "in the ordinary constitutional course", he also reminded them of the need for "fearlessly, maintaining [their] high reputation, prestige, honour and the integrity of [their] service." Noting that pressurizing civil servants was, even in those early days, "a very common fault of politicians", he warned politicians that such behaviour would lead to "nothing but corruption, bribery and nepotism which is a horrible disease..." Ultimately, he urged both politicians and civil servants to "understand [their] own sphere of duty and responsibility and act with others harmoniously and in complete cooperation." Yet, being fully aware that real life was never ideal, he forewarned the civil servants that "you may even be put to trouble not because you are doing anything wrong but because you are doing right. Sacrifices have to be made, and I appeal to you, if need be, to come forward and make the sacrifice..." (Quaid-e-Azam Mohammad Ali Jinnah, Speeches as Governor General of Pakistan 1947-48, Sang-e-Meel Publications, Lahore 2004).

9. These should, indeed, be the guiding principles informing the relationship between the civil service and the political executive - the two limbs of the Executive branch of government, envisaged in the Constitution. Equally so, these principles should inform the judiciary's interpretation of the Articles of the Constitution and legal provisions which relate to the employment of persons in the service of Pakistan. We reaffirm that while civil servants do have a duty to follow the policy guidelines and directions of the political executive yet, because of Article 5 of the Constitution, just like other citizens, their foremost duty is "obedience to the Constitution and the law", not unthinking obedience to all directives (right or wrong) issuing from the political executive. In this context, Rule 5(10) of the Rules of Business, 1973 framed by the Federal Government in accord with Articles 90 and 99 of the Constitution, may be examined: "When the Secretary submits a case to the Minister, the latter may accept the proposal or views of the Secretary or may over-rule him. The Secretary will normally defer to the decision of the Minister and implement it. In case, however, the Secretary feels that the decision of the Minister is manifestly wrong and will cause gross injustice or undue hardship, he may state his reasons and re-submit the case to the Minister. If the Minister still adheres to his earlier decision and the matter is important enough, the Secretary shall request the Minister to refer the case to the Prime Minister and the Minister shall so refer the case for orders of the Prime Minister. If the case is not referred to the Prime Minister, the Secretary shall submit it directly to the Prime Minister with observations of the Minister-in-Charge." In other words, implementation of policy or directives, in some cases may be required notwithstanding the considered views of a civil servant to the contrary. In such event, however, the civil servant should record his/her honest and considered opinion without fear. Decisions violating the law relating to appointment and terms and conditions of service of civil servants which are manifestly wrong and are likely to cause gross injustice or undue hardship should be considered important enough for the purpose of Rule 5(10) *ibid*.

10. It is worth noting that the Constitutions of 1956 and 1962 contained chapters outlining certain safeguards for the civil service. In the 1973 Constitution, the framers omitted a similar chapter from the Constitution and shifted the onus to ordinary legislation. The Law Minister at the time, who was steering the Constitution Bill informed the Constituent Assembly that in the past, constitutional protection for civil servants had been granted "because those who served came from outside and they needed these protections in respect of service". However, since now "this country [was] being run by the leaders of the people" such protections were no more deemed necessary. The purpose of this change, therefore, was to "[break] away from the past colonial traditions" and to emphasize the point that civil servants were not entitled to "any superior or higher status" compared to other citizens. Another reason the Law Minister gave was that the "Constitution is the basic document providing the fundamentals and this matter was not so fundamental as to be provided in the Constitution." (Parliamentary Debates, 31st December, 1972 and 19th February, 1973). It was therefore decided that, as stated in Articles 240, 241 and 242 of the Constitution, the matter would be dealt with through statutes. Such statutes were subsequently passed and include the Civil Servants Act, 1973. It may be emphasized that whatever else the intent behind these changes may have been, it could not have been meant to subjugate of civil servants to constantly changing political imperatives. The intent of the Constitution cannot but be a fuller realization of the goal set out in the speech of the country's founding father quoted earlier: "fearlessly, maintaining [the] high reputation, prestige, honour and the integrity of [the civil] service."

ATTESTED

ATTESTED

11. It was in this spirit, i.e. providing meaningful legal guarantees to civil servants and doing away with arbitrariness, that Parliament enacted statutes such as the Civil Servants Act, 1973. The very object of this statute is to legally "regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of Pakistan" (Preamble). The rule of law is the key idea reflected in the whole scheme of the statute. This impression is textually reinforced by the express stipulation that appointment of civil servants shall be made only "in the prescribed manner" (S. 5), that the terms and conditions shall be only such as are "provided in [the] Act and the Rules" [S. 3(1)] and not be "varied to his disadvantage" [S. 3(2)] and that promotions shall only be made on the basis of objective criteria such as "merit" [S. 9(2)(a)] and "seniority-cum-fitness". [S.9(2)(b)].

12. This Court, in a number of precedents has, interpreted and emphasized these very principles, some of which need to be reiterated at this point. Before that, however, we may note the precept and rule of public trust which forms the basis of this area of the law. This court has repeatedly observed that "functionaries of the State are fiduciaries of the people and ultimately responsible to the people who are their pay masters." [Syed Yousaf Raza Gillani v. Assistant Registrar, (PLD 2012 SC 466) affirming Muhammad Yasin v. Federation of Pakistan]. Most recently, in the case relating to dual nationality of Parliamentarian, we have reiterated that "all State authority is in the nature of a 'sacred trust' and its bearers should therefore be seen as fiduciaries" (Mehmood Akhtar Naqvi v. Federation of Pakistan, Const. P. 5/2012). One of the implications of this concept, highlighted in the case-law considered below, is that the matter of tenure, appointment, posting, transfer and promotion of civil servants cannot be dealt with in an arbitrary manner; it can only be sustained when it is in accordance with the law. Moreover, the use of the words 'in the public interest' in such matters are not fatuous or pointless, but emphasise the fiduciary nature of orders relating to tenure, posting etc. Thus a proposed decision which deviates from the accepted or rule-based norm without proper justification, can be tested on the touchstone of a manifest public interest.

13. Tenure, appointment, promotion and posting/transfer are of utmost importance in the civil service. If these are made on merit in accordance with definite rules, instructions etc., the same will rightly be considered and treated as part of the terms and conditions of service of a civil servant. If, however, rules and instructions are deviated from and as a result merit is discouraged on account of favoritism, sifarish or considerations other than merit, it should be evident the civil service will not remain independent or efficient. It is necessary once again, to hark back to the considerations set out in the speech of Quaid-i-Azam and the eternal wisdom reflected in the Epistle of Hazrat Ali, may Allah be pleased with him, cited at the start of this opinion. It is also relevant to note that the principles of good governance are already envisioned in the Constitution and are also encoded in statutes such as the Civil Servants Act, 1973, the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 and other rules made under the aforesaid Act and in regulations and instructions given in the Civil Establishment Code (Estacode). It is, however, apparent from precedent and civil service matters coming up before Service Tribunals and this Court that problems/difficulties arise for civil servants when the rules of good governance so encoded are breached and the reason for such breach appears to be abuse of discretion. We are aware that matters relating to tenure etc. cannot be put in a strait-jacket and that there is to be an element of flexibility. A balance between the competing pulls of discretion and rule based decision making is a fine one where perception of fairness and even handed treatment is of utmost importance. It is for this reason that transparency in decisions relating to tenure etc. are required to be entrenched and cemented to assure the quality, effectiveness and morale of the civil service. Since executive decisions generally are subject to judicial review, the assurance of transparency is itself likely to eliminate decision making based on considerations other than merit. We have referred to accepted principles and rules above and may now advert to certain relevant rulings earlier rendered by this Court.

A - On the Issue of Appointments and Removals

14. In a number of judgments, the courts have clarified that whenever there are statutory provisions or rules or regulations which govern the matter of appointments, the same must be followed, honestly and scrupulously. In the Corruption of Hajj Arrangements' case (PLD 2011 SC 963) and Tariq Aziz-ud-Din's case *ibid.*, it has been clarified that even where there are no explicit rules governing the appointment process, and appointments are to be made in the exercise of discretionary powers, such discretion must be employed in a structured and reasonable manner and in the public interest. Appointing authorities cannot be allowed to exercise discretion at their whims, or in an arbitrary manner; rather they are bound to act fairly, evenly and justly and their exercise of power is judicially reviewable. And in Muhammad Yasin v. Federation of Pakistan (PLD 2012 SC 132), we have clarified that, when called upon to do so, the Courts are "duty bound to examine the integrity of the selection process", although they "will not engage in any exhaustive or full-fledged assessment of the merits of the appointee nor [...] seek to substitute [their] own opinion for that of the Executive." It may also be noted that just like the appointment of civil servants, their removal and dismissal from service has not been left to anyone's whims and caprice. It is governed by rules and regulations, amongst them the Civil Servants (Efficiency and Discipline Rules), 1973. Indeed, the anachronistic concept where government servants held office during the pleasure of the Crown has no place in a dispensation created and paid for by the people.

B - On the Matter of Promotions

15. In Tariq Aziz-ud-Din's case, we have dealt with some important facets of the civil service including the exercise of discretion in matters of promotion. Such discretion must be exercised fairly and in a transparent manner. Discretion has to be understood within the four corners of the concept of rule of law upon which our system of governance is founded. Every authority in the State is bound to obey the dictates of the law and has no personal or absolute discretion. It was therefore held that "[t]he right [to be considered for promotion] contemplated under section 9 [of the Civil Servants Act] is neither illusory nor a perfunctory ritual and withholding of promotion of an officer is a major penalty in accordance with the Civil Servants (Efficiency and Disciplinary) Rules, 1973, therefore, consideration of an officer for promotion is to be based not only on the relevant law and the rules but also to be based on some tangible material relating to merit and eligibility which can be lawfully taken note of."

C - On the Matter of Transfers and Tenure

16. In the Hajj Corruption Case, the Court reiterated its earlier ruling in Zahid Akhtar v. Government of Punjab (PLD 1995 SC 530), where it had been held that "the normal period of posting of a Government servant at a station, according to Rule 21 of the Rules of Business is three years, which has to be followed in the ordinary circumstances, unless for reasons or exigencies of service a transfer before expiry of the said period becomes necessary in the opinion of the competent authority." Furthermore, with regard to transfers of civil servants, this Court has stated that transfers by political figures which are capricious and are based on considerations not in the public interest are not legally sustainable. Farrukh Gulzar v. Secretary Local Government and Rural Development Department, Lahore and 2 others (1998 SCMR 2222). These are principles of law enunciated by this Court and are to be followed in terms of Article 189 of the Constitution. We, however, repeatedly come across violations of such principles. This unnecessarily leads to litigation which, in turn, clogs Courts and Service Tribunals.

D - On the matter of obeying illegal orders from superiors

17. In Syed Nazar Abbas Jafri v. Secretary to the Government of the Punjab and another (2006 SCMR 606), this Court held that the duty of public officers is to independently discharge their functions and not be influenced by "dictatorial misuse of powers" at the hands of political figures. The Court has also emphasized that the appointment and removal of civil servants is not to be politically motivated. Province of Punjab v. Azhar Abbas (2002 SCMR 1). These decisions highlight the concept of a civil service which enjoys certain legal protections and is thus capable of performing its envisioned role as a law-enforcing institution.

18. The compliance of illegal orders of superiors is not justified on the basis of having been issued from higher authority as it is the law and Constitution which must be obeyed. Here it would be relevant to cite the judgment of this Court in Samiullah Khan Marwat v. Government of Pakistan (2003 SCMR 1140) where it was stated: "...the exercise of powers by the public functionaries in derogation to the direction of law would amount to disobey[ing] the command of law and the Constitution..." Furthermore, in the case of Iqbal Hussain v. Province of Sindh (2008 SCMR 105) the Court held that "the compliance of any illegal and arbitrary order is neither binding on the subordinate forums nor valid in the eyes of law." In case the subordinates are directed to implement an illegal order "they should put on record their dissenting note" Human Rights Cases Nos. 4668 of 2006, 1111 of 2007 and 15283-G of 2010 (PLD 2010 SC 759). Similarly, illegal orders cannot be defended on the plea that these could expose the concerned government servant to the risk of disciplinary action. Zahid Akhtar v. Government of Punjab (PLD 1995 SC 530).

E - On the matter of posting civil servant as Officers on Special Duty (OSD)

19. Ordinarily, no government employee should be posted as OSD except under compelling circumstances. In the Hajj Corruption case, (PLD 2011 SC 963) the Court held: "It is well settled that placing an officer as OSD is tantamount to penalizing him because the expression 'OSD' is not known to either the Civil Servants Act, 1973 or the Civil Servants (Appointment Promotion and Transfer) Rules, 1973." Reference in this regard may also be made to the cases of Mir Shah Nawaz Marri v. Government of Balochistan and others (2000 PLC (C.S) 533), Syed Ajmal Hussain Bokhari v. Commissioner, Rawalpindi (1997 PLC (C.S.) 754), Sajjad Ahmad Javed Bhatti v. Federation of Pakistan (2009 SCMR 1448) and Lt. Col. (R.) Abdul Wajid Malik v. Government of the Punjab (2006 SCMR 1360).

20. The above referred precedents have shaped the contours of the law relating to civil servants and the civil service. In the established tradition of a common law jurisdiction, Article 189 of the Constitution stipulates that, "[a]ny decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan." As this Court has already held "... the interpretation of the various Articles by this Court becomes part of the Constitution". Al-Jehad Trust v. Federation of Pakistan (PLD 1997 SC 84). Specific to the law relating to civil servants and matters in respect of their service, we have enunciated a principle of law in the case titled Hameed Akhtar Niazi v. The Secretary Establishment Division (1996 SCMR 1185) holding that a decision given by this Court on a point of law will be binding on concerned departmental functionaries who will be obliged to apply such legal principle in other similar cases regardless of whether or not a civil servant has litigated the matter in his own case. We are conscious that in some instances the application of a legal principle enunciated in a precedent may be possible without difficulty or ambiguity, while in other cases there may be some uncertainty in determining if a legal principle is in fact applicable as precedent. It is, however, clear that in view of Articles 189 and 190 of the Constitution, a civil servant will be entitled to make a departmental representation or initiate legal proceedings before a competent forum to enforce a legal principle enunciated by this Court.

21. In appropriate cases the failure of a State functionary to apply a legal principle which is clearly and unambiguously attracted to a case, may expose him to proceedings also under Article 204(2)(a) of the Constitution. This Article, it may be recalled, grants this Court the power to punish for contempt any person who "disobeys any order of the Court". In a recent judgment, the Court has clarified the significance of the law of contempt as an enforcement mechanism. It was held "...the Court, in and of itself, has to pass orders and to require the implementation of its orders: responsibility for implementation has been made obligatory on other organs of the State, primarily the Executive. However, in the unfortunate situation that a functionary of the Executive refuses to discharge his constitutional duty, the Court is empowered to punish him for contempt...Simply put, a government of laws cannot be created or continued with toothless courts and defiant or blithely non-compliant public functionaries". Baaz Muhammad Kakar v. Federation of Pakistan (PLD 2012 SC 870). If there still remains any doubt, let us clarify that those executive functionaries who continue to ignore the Constitution and the law, do so at their own peril.

22. The principles of law enunciated hereinabove can be summarized 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.

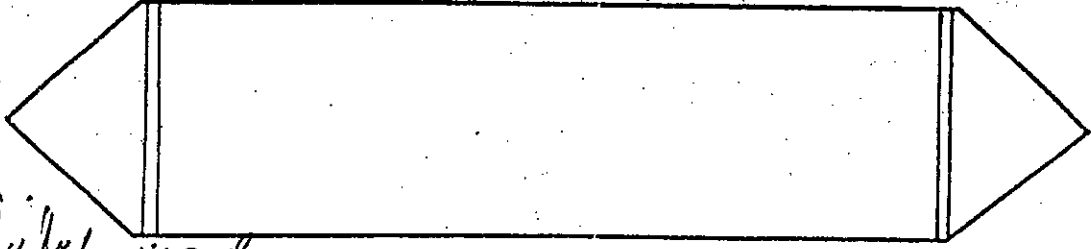
(iv) OSD: Officers should not be posted as OSD except for compelling reasons, which must be recorded in writing and are judicially reviewable. If at all an officer is to be posted as OSD, such posting should be for the minimum period possible and if there is a disciplinary inquiry going on against him, such inquiry must be completed at the earliest.

23. We are fully conscious that the aforesaid matters relate to decision making and administration of the machinery of the State. As such the responsibility of deciding as to suitability of an appointment, posting or transfer falls primarily on the executive branch of the State which comprises of both the political executive and civil servants. Courts ordinarily will not interfere in the functioning of the executive as long as it adheres to the law and established norms and acts in furtherance of its fiduciary responsibility. However, while hearing this petition we have recognized the need for ensuring that decision making in relation to tenure, appointments, promotions and transfers remains rule based and is not susceptible to arbitrariness or absolute and unfettered discretion.

24. Copies of this judgment shall be sent to the Federal Secretary Establishment, the Chief Secretaries of the Provinces, the Commissioner Islamabad Capital Territory and to the Secretaries of all Federal and Provincial government departments.

ATTESTED
ATTESTED

بعدالت کے لئے درخواست



2019ء منجانب اپیلرز
بنام گورنمنٹ

الحکم محمد مصحفی

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کارروائی متعلقہ
آن مقام کے لئے کیلیئے ضلع درگاہ گورنمنٹ
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثتہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک دروپیہ 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 نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی 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 اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب 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 وکالت نامہ لکھد یا کہ سندر ہے۔

المرقوم ۱۹
ماہ ۱۹
۲۰۱۹

بمقام
واہ العب
ب کے لئے منظور ہے۔

Handwritten signature