

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 867/2019

Date of institution ... 02.07.2019
Date of judgment ... 21.08.2019

Iftikhar Ahmed, Sub-Engineer, Drainage Sub-Division (Pabbi Section),
District Nowshera. ... (Appellant)

VERSUS

1. The Secretary to Government of Khyber Pakhtunkhwa Irrigation Department, Peshawar.
 2. The Chief Engineer (South) Government of Khyber Pakhtunkhwa Irrigation Department Peshawar.
 3. The Superintending Engineer (Headquarters) Government of Khyber Pakhtunkhwa Irrigation Department Peshawar.
 4. Syed Mazhar Ali Shah Drainage Sub Division (Head Section) Irrigation Department Peshawar.
- ... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE PRE-MATURE AND POLITICALLY MOTIVATED TRANSFER ORDER NO. 2870 DATED 29.05.2019 PASSED BY THE CHIEF ENGINEER (SOUTH) GOVERNMENT OF KHYBER PAKHTUNKHWA IRRIGATION DEPARTMENT PESHAWAR (RESPONDENT NO. 2) AGAINST WHICH A DEPARTMENTAL APPEAL WAS FILED WITH THE RESPONDENT NO. 1 ON 10.06.2019 BUT THE SAME WAS REJECTED ON 28.06.2019.

Mr. Rizwanullah, Advocate. .. For appellant.
Mr. Ziaullah, Deputy District Attorney .. For official respondents No. 1 to 3.
Mr. M. Asif Yousafzai, Advocate. .. For private respondent No. 4.

Mr. MUHAMMAD AMIN KHAN KUNDI .. MEMBER (JUDICIAL)
MR. HUSSAIN SHAH .. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER:- Counsel for the appellant present. Mr. Ziaullah, Deputy District Attorney for official respondents No. 1 to 3 and counsel for private respondent No. 4 present.

Learned counsel for the appellant also submitted rejoinder, which is placed on record. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Irrigation Department as Sub-Engineer. He was transferred from Drainage Sub-Division (Pabbi Section) District Nowshera to Drainage Sub-Division (Head Section) while private respondent No. 4 (Syed Mazhar Ali Shah)/Canal Officer (BPS-7) was transferred from Drainage Sub-Division (Head Section) to Drainage Sub-Division (Pabbi Section) District Nowshera as Sub-Engineer in own pay and scale (OPS) vide order dated 29.05.2019. The appellant filed departmental appeal on 10.06.2019 which was rejected on 28.09.2019 hence, the present service appeal.

3. Respondents were summoned who contested the appeal by filing of written reply/comments.

4. Learned counsel for the appellant contended that the appellant joined the Irrigation Department as Tracer in the year 1995 and then rose up to the post of Sub-Engineer (BPS-16) on account of his dedication and devotion to his job. It was further contended that he had 24 years unblemished service record in his credit. It was further contended that the appellant was transferred from the post of Sub-Engineer Warsak Canal Division Peshawar to Drainage Sub-Division (Pabbi Section) District Nowshera vide office order dated 26.03.2018. It was further contended that the appellant has not completed his normal tenure when he was transferred by the competent authority from the Drainage Sub-Division (Pabbi Section) District Nowshera to Drainage Sub-Division (Head Section) vide order dated 29.05.2019 while private respondent No. 4 who was actually incumbent of the post of Canals Inspector (BPS-7), accommodated as Sub-Engineer on OPS basis and now prevailed over the competent authority and succeeded to dislodge the appellant from this post at Pabbi, District Nowshera and the private respondent No. 4 was transferred from Drainage Sub-Division

*M. Azam
21.8.2019*

(Head Section) to Drainage Sub-Division (Pabbi Section) District Nowshera vide order dated 29.05.2019. It was further contended that the private respondent No. 4^{is he} basically Canals Inspector (BPS-7) but he was accommodated on higher post of Sub-Engineer in his own pay scale and was malafidely posted at the place of the appellant therefore, the impugned transfer order dated 29.05.2019 is illegal and liable to be set-aside.

5. On the other hand, learned Deputy District Attorney for official respondents No. 1 to 3 and learned counsel for private respondent No. 4 opposed the contention of learned counsel for the appellant and contended that the appellant had completed his normal tenure at the post of Drainage Sub-Division (Pabbi Section) District Nowshera. It was further contended that under Section-10 of the Civil Servants Act, the competent authority is authorized to transfer the civil servant anywhere in the province. It was further contended that the competent authority is also empowered to transfer any civil servant to higher post on OPS basis therefore, it was contended that the impugned transfer order of the appellant and private respondent No. 4 was rightly issued by the competent authority and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Irrigation Department as Sub-Engineer (BPS-16) while private respondent No. 4 was serving as Canals Inspector (BPS-7) but later on private respondent No. 4 was accommodated and was posted as Sub-Engineer in own pay and scale (OPS) basis. The record further reveals that the appellant was transferred from Warsak Canal Division Peshawar to Drainage Sub-Division (Pabbi Section) District Nowshera vide order dated 26.03.2018 but before completion of his normal tenure he was transferred from Drainage Sub-Division (Pabbi Section) District Nowshera to Drainage Sub-Division (Head Section) while private respondent No. 4 namely Syed Mazhar Ali Shah was transferred from Drainage Sub-Division (Head Section) to Drainage Sub-Division (Pabbi Section) District

M. Amin
2-1-8-2019

Nowshera in own pay and scale. It is well settled law that the posting and transfer of civil servant in own pay and scale is not legally permissible and the practice of appointment in own pay and scale (OPS) at higher grade has always been discourage by the superior court as it does not have any sanctioned of law. In this regard reference is made to 2018 SCMR 1411 therefore, the impugned order is illegal and liable to be set-aside. As such, we accept the appeal and set-aside the impugned order. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
21.08.2019




(HUSSAIN SHAH)
MEMBER



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

19.08.2019 Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney for the official respondents present. Counsel for the private respondent No. 4 present. Arguments heard. To come up for order on 21.08.2019 before D.B


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

21.08.2019 Counsel for the appellant present. Mr. Ziaullah, Deputy District Attorney for official respondents No. 1 to 3 and counsel for private respondent No. 4 present. Learned counsel for the appellant also submitted rejoinder, which is placed on record. Arguments heard and record perused.

Vide our detailed judgment of today consisting of four pages placed on file, we accept the appeal and set-aside the impugned order. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
21.08.2019


(HUSSAIN SHAH)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

867/19

19.07.2019

Appellant alongwith counsel, Mr. Muhammad Riaz Khan Paindakhel, Assistant AG alongwith Faizul Haq, Superintendent for official respondents and Mr. Taimur Ali Khan, Advocate for respondent No. 4 present.

The representative of official respondents requests for further time as reply has though been prepared but yet to be vetted. Counsel for respondent No. 4 has submitted Wakalatnama and made a similar request to submit reply.

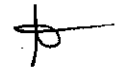
Adjourned to 02.08.2019 before S.B.


Chairman

02.08.2019

Appellant with counsel and Mr. Usman Ghani, District Attorney alongwith Mr. Faiz Ul Haq, Supdt for respondents present. Written reply/comments on behalf of the respondents submitted, which is placed on file. The appellant may file rejoinder to the comments submitted by the respondents, if so, advised.

Adjourned to 19.08.2019 for arguments before D.B.


(Ahmad Hassan)
Member

05.07.2019

Appellant present. Learned counsel for the appellant present.
Preliminary arguments heard.

The appellant (Sub Engineer) has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the posting transfer order dated 29.05.2019 whereby he was transferred from Drainage Sub Division (Pabbi Section) to Drainage Sub Division (Head Section) while the private respondent was transferred at Drainage Sub Division (Pabbi Section) from Drainage Sub Division (Head Section). The appellant has also made impugned the order dated 28.06.2019 through which his departmental appeal-against the order dated 29.05.2.019 was rejected.

Points urged need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for reply/comments. To come up for written reply/comments on 19.07.2019 before S.B

Annexed with the memo of appeal is an application for interim relief. Notice of the said application be issued to the respondents for the date fixed.

The Chief Engineer (South) Khyber Pakhtunkhwa Irrigation Department (respondent No.2) is directed to offer explanation that as to why a Canal Inspector (private respondent) has been accommodated at the higher post of Sub Engineer on OPS/Current Charge Basis despite clear verdict of the august Supreme Court of Pakistan that posting of a civil servant at the higher post on his own pay and scale is not legally permissible.

Appellant Deposited
Security & Process Fee

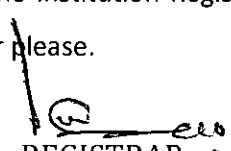

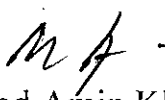

Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 867/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	02/07/2019	<p>The appeal of Mr. Iftikhar Ahmad presented today by Mr. Rizwanullah 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 <u>17/19</u> </p>
2-	02/07/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>03/07/19</u>.</p> <p style="text-align: right;">  MEMBER </p> <p>03.07.2019 Counsel for the appellant present. Adjourned to 05.07.2019 for preliminary hearing before S.B.</p> <p style="text-align: right;">  (Muhammad Amin Khan Kundi) Member </p>

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 867 /2019

1. Iftikhar Ahmed, Sub-Engineer, Drainage Sub Division (Pabbi Section), District Nowshera.

APPELLANT

VERSUS

1. The Secretary to Government of Khyber Pakhtunkhwa Irrigation Department, Peshawar & etc.

RESPONDENTS

I N D E X

S.No	Particulars	Annexure	Pages #
1	Service Appeal	—	1-6
2	Affidavit	—	7
3	Copy of transfer order dated 26-03-2018	A	8
4	Copy of impugned transfer order dated 29-05-2019	B	9
5	Copy of departmental appeal 10-06-2019	C	10
6	Copy of rejection order dated 28-06-2019	D	11
7	Copy of letter of Establishment Department.	E	12-13
8	Application for stay with affidavit	—	14-15
9	Wakalatnama	—	—

Through

Dated: 02-07-2019


Appellant



Rizwanullah
M.A. LL.B
Advocate High Court, Peshawar

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 867 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 910

Dated 02-7-19

1. Iftikhar Ahmed, Sub-Engineer, Drainage Sub Division (Pabbi Section),
District Nowshera.

APPELLANT

VERSUS

1. The Secretary to Government of Khyber Pakhtunkhwa Irrigation
Department, Peshawar.
2. The Chief Engineer (South) Government of Khyber Pakhtunkhwa Irrigation
Department Peshawar.
3. The Superintending Engineer (Headquarters) Government of Khyber
Pakhtunkhwa Irrigation Department Peshawar.
4. Syed Mazhar Ali Shah Drainage Sub Division (Head Section) Peshawar.

Irrigation Deptt:

RESPONDENTS

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
PRE-MATURE AND POLITICALLY
MOTIVATED TRANSFER ORDER NO.
2870 DATED 29-05-2019 PASSED BY
THE CHIEF ENGINEER (SOUTH)
GOVERNMENT OF KHYBER
PAKHTUNKHWA IRRIGATION
DEPARTMENT PESHAWAR
(RESPONDENT NO 2) AGAINST WHICH
A DEPARTMENTAL APPEAL WAS**

Filed to-day

Registrar

2/7/19

FILED WITH THE RESPONDENT NO.1
ON 10-06-2019 BUT THE SAME WAS
REJECTED ON 28-06-2019.

Prayer in Appeal

By accepting this appeal, the impugned orders dated 29-05-2019 & 28-06-2019 may very graciously be set aside being politically motivated, pre-mature and passed in utter violation of posting/transfer policy of the Government of Khyber Pakhtunkhwa as well as law laid down by august Supreme Court of Pakistan in various judgments.

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

Respectfully Sheweth,

Short facts giving rise to the present appeal are as under:-

1. That the appellant joined the Irrigation Department as Tracer in the year 1995 and then rose up to the post of Sub Engineer (BPS-16) on account of his dedication, devotion and commitment to his job. He has 24 years unblemished service record to his credit.
2. That the appellant was transferred from the post of Sub Engineer, Warsak Canal Division Peshawar to Drainage Sub Division (Pabbi Section) District Nowshera vide office order dated 26-03-2018 passed by the Superintending Engineer (Headquarter) Irrigation Department Peshawar (Respondent No. 3). He assumed the charge accordingly.

(Copy of transfer order is appended as Annex-A)
3. That the appellant was performing his duty with great zeal, zest and devotion but one Syed Mazhar Ali Shah (respondent No. 4) who was actually the incumbent of post of Canals Inspector (BPS-7), accommodated as Sub Engineer on OPS basis and now prevailed over

the Competent Authority through unfair means and succeeded to dislodge the appellant from his post at Pabbi, District Nowshera without completing his lawful tenure prescribed under the *posting and Transfer Policy, 2009* vide office order dated 29-05-2019.

(Copy of impugned transfer order is appended as Annex-B).

4. That the appellant felt aggrieved, filed a departmental appeal with the respondent No.1 on 10-06-2019 praying therein that the impugned order dated 29-05-2019 may graciously be set aside on the grounds mention herein. But the same was rejected on 28-06-2019.

(Copy of departmental appeal and rejection order are appended as Annex-C & D respectively).

5. That the appellant now files this service appeal before this Hon'ble Tribunal inter-alia on the following grounds:

GROUND OF APPEAL

- A. That respondents have not treated appellant in accordance with law, rules and policy on the subject and acted in violation of **Article 4 of the Constitution of Islamic Republic of Pakistan, 1973**. Therefore, the impugned orders are against the spirit of administration of justice.
- B. That the Competent Authority was under statutory obligation to have retained the appellant at Pabbi, District Nowshera till completion of his tenure as per Posting and Transfer Policy of Government of Khyber Pakhtunkhwa as well as law laid down by august Supreme Court of Pakistan in case reported in **PLD-2013-SC-195 (citation-h)**. The relevant citation is reproduced herein for facility of reference:-

PLD-2013-SC-195(citation-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.

Therefore, the impugned orders are not sustainable in the eye of law.

- C.** That the Establishment Department of Khyber Pakhtunkhwa vide letter No.SOR.VI(E&AD)1-4/2005/Vol-II dated 27-2-2013 directed all the Secretaries of the respective Departments in Province for strict implementation of the aforesaid dictum of august Supreme Court of Pakistan.

(Copy of letter is appended as Annex-E).

- D.** That it is well settled law that the decision of august Supreme Court of Pakistan is binding on each and every organ of the state by virtue of **Article 189 & 190 of the Constitution of Islamic Republic of Pakistan, 1973**. Reliance can be placed on the judgment of apex court reported in **1996-SCMR-284 (citation-c)**. The relevant citation is mentioned below:

1996-SCMR-284

(citation-c)

---Arts. 189 & 190---Decision of Supreme Court---Binding, effect of--Extent--Law declared by Supreme Court would bind all Courts, Tribunals and bureaucratic set-up in Pakistan.

But the respondent No.1 & 2 have blatantly violated the above dictum of august Supreme Court of Pakistan by passing the impugned orders.

- E.** That the appellant was transferred without completing his lawful tenure and that a lower grade official (respondent No. 4) was also posted in his place on OPS basis which clearly indicates that this action of the Competent Authority was fallacious, malicious and politically motivated. This was obviously done to accommodate his blue eyed chap. Besides, the august Supreme Court through various judgments has also discouraged such practice of appointment on OPS basis as it did not have any sanction of law. Therefore, the impugned orders are against the spirit of administration of justice.
- F.** That the impugned orders were the result of malafide action and colorable exercise of powers by the respondent No. 1 & 2 who did not apply their independent mind regarding the issue of short tenure of appellant at the disputed place. Thus, the impugned orders are not tenable in law.
- J.** That the impugned orders are against law, facts of the case and norms of natural justice. Therefore, the same are not tenable under the law.
- K.** That the respondents No. 1 and 2 have passed the impugned orders in mechanical manner and the same are perfunctory as well as non-speaking and also against the basic principle of administration of justice. Thus, these orders are not warranted under the law.

- L.** That the impugned orders are based on conjectures and surmises. Hence, the same are against the legal norms of justice.
- M.** That the appellant would like to seek the permission of this Hon'ble Tribunal to advance some more grounds at the time of arguments.

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned orders dated 29-05-2019 & 28-06-2019 may very graciously be set aside being politically motivated, premature and passed in utter violation of posting/transfer policy of the Government of Khyber Pakhtunkhwa as well as law laid down by august Supreme Court of Pakistan in various judgments.

Any other relief deemed proper and just in the circumstances of the case, may also be granted.



Appellant

Through



Rizwanullah

M.A. LL.B

Advocate High Court, Peshawar

Dated: 02-07-2019

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2018

1. Iftikhar Ahmed, Sub-Engineer, Drainage Sub Division (Pabbi Section), District Nowshera.

APPELLANT

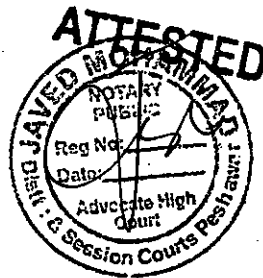
VERSUS

1. The Secretary to Government of Khyber Pakhtunkhwa Irrigation Department, Peshawar & etc.

RESPONDENTS

AFFIDAVIT

I, Iftikhar Ahmed, Sub-Engineer, Drainage Sub Division (Pabbi Section), District Nowshera, do hereby solemnly affirm and declare that the contents of the accompanied Service Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.



02 JUL 2019

Iftikhar Ahmed
DEPONENT



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

Annex - A 8


No. 1913 / B CA / 13 - B

Dated Peshawar 26 /03/2018

OFFICE ORDER


The following posting/transfer amongst the Sub Engineers is hereby ordered with immediate effect in the public interest.

S. NO.	NAME	FROM	TO	REMARKS
1	Muhammad Nawaz Sub Engineer	Dranaige S/Divn: (Pabbi Section) Peshawar Casnal Division	Warsak Canals Division Peshawar	Vice No.2
2	Mr.Iftikhar Ahmad Sub Engineer	Warsak Canals Division Peshawar	Dranaige S/Divn: (Pabbi Section) Peshawar Casnal Division	Vice No.1


SUPERINTENDING ENGINEER
(HEADQUARTERS)

CC

1. Accountant General Khyber Pakhtunkhwa.
2. Superintending Engineer Peshawar Irrigation Circle Peshawar.
3. Executive Engineer Warsak Canals Division Peshawar.
4. Executive Engineer Peshawar Canals Division Peshawar.
5. Official concerned.


SUPERINTENDING ENGINEER
(HEADQUARTERS)

Attested
9/1/2018
Appellant



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

Annex-B

9

No. 2870/IB/A/3-E

Dated Peshawar 28/5/2019

OFFICE ORDER

The following posting/transfer amongst the Sub Engineers is hereby ordered with immediate effect in the public interest:-

SL:No.	Name & designation	From	To	Remarks
1	Syed Mazhar Ali Shah Sub Engineer(OPS)	Drainage Sub Divn: (Head Section)	Drainage Sub Divn: (Pabbi Section)	Vice No.2
2	Mr.Iftikhar Ahmad Sub Engineer	Drainage Sub Divn: (Pabbi Section)	Drainage Sub Divn: (Head Section)	Vice No.1

CHIEF ENGINEER

CC

1. Superintending Engineer Peshawar Irrigation Circle Peshawar.
2. Executive Engineer Peshawar Canals Division Peshawar.
3. PS to Minister for Irrigation Department Khyber Pakhtunkhwa.
4. Officials concerned.

CHIEF ENGINEER

Attested
Appellant

To

The Secretary to Governmnet
Khyber Pakhtunkhwa Irrigation
Department Peshwar.

Through:- Proper channel

Subject: - DEPARTMENTAL APPEAL/APPLICATION FOR SUSPENDING
THE TRANSFER ORDER No.2870/IB/A/3-E,DATED 29-5-2019

R/Sir

It is submitted that I have been transferred from Pabbi Section Drainage Sub Division to Head Section Drainage Sub Division Peshawar vide above quoted office order.

1. That the impugned order may kindly be set aside/withdrawn.
2. That I have not completed my tenure in Pabbi Section of Drainage Sub Division is one years and 02 months with effect from 26-3-2018 to 29-5-2019, that this transfer is illegal and against the Government of Khyber Pakhtunkhwa Civil Servant Rules /policy which has been carried out through political influence and malafide intention of the responsible Department.

Besude the above I have been transferred from one station to others regularly without taking consideration of my tenure which against the principle of posting/transfer policy.

It is therefore requested that keeping in view the above narrated facts it is very humbly requested to accept my appeal/application and withdrawn the impugned order for sake of justice.

Yours Obediently

Iftikhar Ahmad
Sub Engineer Daiange
Sub Division

CC

1. PS to Secretary to Government of KPK Irrigation Department.
2. Chief Engineer (South) Irrigation Department.
3. Superintending Engineer Peshawar Irrigation Circle Peshawar.
4. Executive Engineer Peshawar Canals Division Peshawar

Iftikhar Ahmad
Iftikhar Ahmad
Sub Engineer

*Attested
at Peshawar
Appellant*

H Khan
10-6-19

1361/134-E
10-6-19



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

Annex-D

11

No 3338/IB/A/12-E
To

Dated Peshawar 28 /06/2019

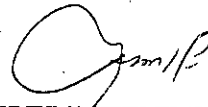
The Superintending Engineer
Peshawar Irrigation Circle Peshawar.

Subject:- DEPARTMENTAL APPEAL /APPLICATION FOR SUSPENDING
THE TRANSFER ORDER NO.2870/IB/A/3-E, DATED 29-5-2019

Reference:- Your letter No.2010/3-E, dated 12-06-2019.

I am directed to refer to the above and to state that the competent authority has reject the appeal of Mr. Iftikhar Ahmad Sub Engineer received with your letter under reference on the following grounds:-

1. That he has served throughout his service in District Peshawar.
2. That he has neither been posted out of station nor even out of the Division and Sub Division.
3. That he has been adjusted from tail section to head Section of Drainage Sub Division.


SUPERINTENDING ENGINEER
(HEADQUARTERS)

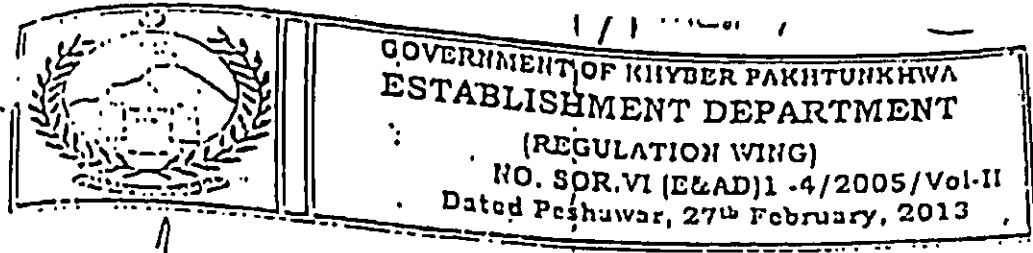
CC

Section Officer (Estt:) Government of Khyber Pakhtunkhwa-Irrigation
Department Peshawar with reference to his letter No.SO(E)IRR/5-2/70/Vol:XXIII, dated
17-6-2019 for information please.

SUPERINTENDING ENGINEER
(HEADQUARTERS)

1691 / 3-E
28-06-2019

Attested
Appellant



Handwritten signature/initials

Vertical handwritten text on the right margin

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

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

Sr.

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

- Handwritten mark* (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.
- Handwritten mark* (ii) Tenure, Posting and Transfer: When the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable.

Handwritten signature
 Attest
Handwritten initials
 Ady

- (iii) **Illegal Orders:** Civil Servants owe their first and foremost allegiance to the law and the constitution. They are not bound to obey orders from superiors, which are illegal or are not in accordance with accepted practices and rule based norms; instead, in such situations, they must record their opinion and, if necessary, dissent...
- (iv) **OSD:** Officers should not be posted as OSD except for compelling reasons, which must be recorded in writing. If at all an officer is to be posted as OSD, such posting should not exceed 03 months. If there is a disciplinary inquiry going on against him/her such inquiry must be completed at the earliest. The officer on special duty may be posted against a post of his/her equivalent pay scale/grade within 03 months of his/her order as OSD.

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

Yours faithfully,

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

Alister
W
Encl: as above.

A copy is forwarded to:-

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

NAJAM
SECTION OFFICER (REG-VI)

Scanned by CamScanner

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2019

1. Iftikhar Ahmed, Sub-Engineer, Drainage Sub Division (Pabbi Section), District Nowshera.

APPELLANT

VERSUS

1. The Secretary to Government of Khyber Pakhtunkhwa Irrigation Department, Peshawar.& etc.

RESPONDENTS

**APPLICATION FOR SUSPENDING
THE OPERATION OF THE
IMPUGNED ORDERS DATED
29-05-2019 & 28-06-2019 PASSED BY
THE RESPONDENT NO. 1 & 2 TILL
THE DISPOSAL OF MAIN APPEAL.**

Respectfully Sheweth:-

1. That the appellant has filed service appeal along with this application in which no date has been fixed so far.
2. That the facts enumerated and grounds taken in the body of service appeal may kindly be considered as an integral part of this application, which make out an excellent prima facie case in favour of the appellant.

- 3. That the impugned orders were passed on the basis of political interference, favoritism / nepotism and also in utter violation of Posting & Transfer Policy as well as law laid down by august Supreme Court of Pakistan in case reported in **PLD-2013-SC-195**.
- 4. That the appellant was transferred without completing his lawful tenure and that a lower grade official (respondent No. 4) was also posted in his place on OPS basis which clearly indicates that this action of the Competent Authority was fallacious, malicious and politically motivated. This was obviously done to accommodate his blue eyed chap. Besides, the august Supreme Court through various judgments has also discouraged such practice of appointment on OPS basis as it did not have any sanction of law. Therefore, the impugned orders are against the spirit of administration of justice.
- 5. That in case the operation of the impugned order is not suspended, the very purpose of appeal would be defeated and it would become infructuous as well.

It is, therefore, humbly prayed that the impugned orders dated 29-05-2019 & 28-06-2019 passed by the respondent No. 1 & 2 may graciously be suspended till the disposal of main appeal.

[Handwritten Signature]
Appellant/Applicant

Through

[Handwritten Signature]

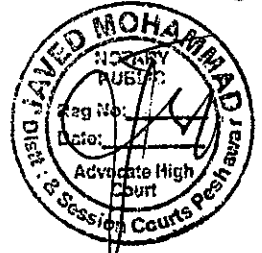
Rizwanullah
M.A. LL.B
Advocate High Court, Peshawar

Dated: 07-02-2019

AFFIDAVIT

1. I, Iftikhar Ahmed, Sub-Engineer, Drainage Sub Division (Pabbi Section), District Nowshera, do hereby solemnly affirm and declare that the contents of the accompanied Stay Application are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

ATTESTED



02 JUL 2019

[Handwritten Signature]

DEPONENT

Before the Honble Chairman, KPK
Service Tribunal,
پشاور عدالت

Service Appeal

(Appellant) 2019ء منجانب

بنام Atiqhar Ahmed

VS

Secretary Irrigation Department

باعت خریا ننگ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کارروائی متعلقہ
آن مقام ~~Peshawar~~ کیلئے ~~Rizwanullah Achakzai~~
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
دیکل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک دروپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی براندگی اور منسوخی
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 دیکل 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
پر واختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ نہ ہو یا حد سے باہر ہو تو دیکل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

Accepted
2019
Atiqhar Ahmed

July

1st

المرقوم

واہ

Peshawar

بمقام

کے لئے منظور ہے
Paw

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR



Service Appeal No. 709 /2018

Khyber Pakhtunkhwa
Service Tribunal
Peshawar
Case No. 961
Dated 24-5-2018

1. Muhammad Shoaib Khan, Assistant Food Controller (PRC), Havelian Abbottabad.

APPELLANT

VERSUS

1. The Secretary to Government of Khyber Pakhtunkhwa Food Department, Peshawar.
2. The Director Food Department Khyber Pakhtunkhwa Peshawar.
3. Azhar Pervaz Food Grain Inspector, DFC office, Abbottabad

RESPONDENTS

APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
PRE-MATURE AND POLITICALLY
MOTIVATED TRANSFER ORDER NO.
2098 DATED 03-05-2018 PASSED BY
THE DIRECTOR FOOD, KHYBER
PAKHTUNKHWA (RESPONDENT NO 2)
AGAINST WHICH A DEPARTMENTAL
APPEAL WAS FILED WITH THE
RESPONDENT NO.1 ON 05-05-2018 BUT
THE SAME WAS REJECTED ON
22-05-2018.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Filed on
24/5/18
Registrar

24.05.2018

Appellant with counsel present. Preliminary arguments heard. It was contended by the learned counsel for the appellant that the appellant was serving as Assistant Food Collector in Haripur and from there he was transferred to the post of Assistant Food Controller Abbottabad vide order dated 23.02.2017, however, private respondent No. 3. namely Mr. Azhar Pervaz, Food Grain Inspector who was serving in lower grade than the appellant prevail upon the competent authority and the appellant was transferred from the office of District Food Controller Abbottabad to the office of District Food Controller Battagram vide order dated 03.05.2018 and private respondent No. 3 was transferred from the District Food Controller Office Abbottabad to the post of appellant in his own pay and scale vide same order. It was further contended that the appellant filed departmental appeal on 03.05.2018 which was rejected on 22.05.2018 hence, the present service appeal within time. It was further contended that the impugned order was passed without completing the normal tenure as per transfer posting policy therefore, the impugned order is illegal and liable to be set-aside.

The contention raised by the learned counsel or the appellant need consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days thereafter notice be issued to the respondents for written reply/comments for 28.06.2018 before S.B at Camp Court Abbottabad. It was further contended by learned counsel for the appellant that the appellant has not relinquished the charge so far and requested for grant of status-quo order. Notice of stay application be also issued to the respondents for the date fixed. In the meanwhile status-quo be maintained till the date fixed. *To the Extent of appellant*

Appellant Deposited
Security & Process Fee

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

M. Amin
(Muhammad Amin Khan Kundi)
Member

11

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1203 /ST

Dated 11 / 7 / 2019

To

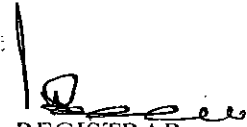
The Chief Engineer (South) Irrigation Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: -

ORDER IN APPEAL NO. 867/2019, MR. IFTIKHAR AHMAD.

I am directed to forward herewith a certified copy of order dated 05.07.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.867/2019

Iftikhar Ahmad

VS

~~IRrigation~~ ~~PIPE~~ Deptt:

.....
REPLY ON BEHALF OF RESPONDENT NO.4
.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

1. That the appeal has no cause of action & locus standi.
2. That the appellant has been estopped by his own conduct to file the appeal.
3. That the impugned order was passed in public interest and under section 10 of the civil servant act 1973, the appellant is liable to serve anywhere.

FACTS:

1. Pertain to record.
2. Pertain to record need no comments.
3. Incorrect. The respondent No.4 having BSc degree in Mechanical engineering who has also passed the departmental B grade examination and working on OPS basis as Sub Engineer since 2016 along with other officials on stop gap arrangement due to shortage of staff in the department which is evident from the order dated 16.08.2018. The appellant and the respondent No. 4 are working in the same Sub Division. Since the posting/adjustment has been ordered within the same Sub Division which involves only change of section, therefore violation of posting/transfer policy does not arise. **(copy of order dated 16.08.2018 is attached as Annexure-A)**
4. Incorrect. The departmental appeal of the appellant having no legal ground, therefore not considered.
5. Incorrect. The appellant has no cause of action to file the instant appeal.

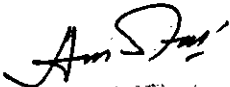
GROUND:

- A. Incorrect. The appellant has been treated according to law and rules. He has internally adjusted in the same Division (i.e. from Pabbi Section to Head Section of Drainage Sub Division) and no violation of the posting/transfer policy was occurred.
- B. Incorrect. Under section-10 of the Civil servant Act 1973, civil servant is liable to serve anywhere within or outside the province, in any post under the Federal Government or any Provincial Government or Local Authority or a corporation of body set up or established by any such government. The instant internal adjustment has been made within one Sub Division/Division in the public interest.
- C. Incorrect. Since the adjustment has been made internally in the same Sub Division, therefore no such policy/verdict of judgment of Honourable Supreme court has been violated.
- D. Incorrect. As replied in para C above.
- E. Incorrect. the appellant and the respondent No are working same Sub Division and was shifted to Pabbi Section in place of the appellant and vice versa. Moreover respondent No.4 having BSc degree in Mechanical engineering who has also passed the departmental B grade examination and has been working on OPS basis as Sub Engineer since 2016 along with other officials on stop gape arrangement due to shortage of staff in the department.
- F. Incorrect. The impugned order was passed in public interest and the appellant is bound to to serve anywhere in the Province under section-10 of the KP Civil servant Act 1973.
- J. Incorrect. The impugned order was passed in public interest and in accordance with law and rules, therefore liable to be maintained.
- K. Incorrect. The impugned order was passed in public interest and in accordance with law and rules, therefore liable to be maintained.
- L. Incorrect. As replied in para J & K above.
- M. The respondent No.4 would also like to seek permission of this Hon'ble Tribunal to advance some other grounds at the time of the arguments.

It is, therefore, most humbly prayed that the appeal in hand may be dismissed being devoid of merit.


RESPONDENT NO.4

THROUGH:


M. ASIF YOUSAFZAI
ADVOCATE SUPREME COURT

&


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT.

AFFIDAVIT

It is affirmed and declared that the contents of reply of respondent No.4 are true and correct to the best of my knowledge and belief.


DEPONENT

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.867/2019

Iftikhar Ahmad

VS

TRIGON ~~THE~~ Deptt:

.....
REPLY ON BEHALF OF RESPONDENT NO.4
TO SUSPENSION APPLICATION
.....

RESPECTFULLY SHEWETH,

1. No comments.
2. Reply to the facts and grounds in service appeal may be considered as an integral part of this application which make out an excellent prima facie case in favour of respondent no. 4.
3. Incorrect. Under section-10 of the Civil servant Act 1973, civil servant is liable to serve anywhere within or outside the province, in any post under the Federal Government or any Provincial Government or Local Authority or a corporation of body set up or established by any such government. The instant internal adjustment has been made within one Sub Division/Division in the public interest.
4. Incorrect. The impugned order was passed in public interest and in accordance with law and rules, therefore liable to be maintained.
5. The hon'ble Tribunal did not suspend the impugned orders.

RESPONDENT NO.4

THROUGH:

M. Asif Yousefzai
M. ASIF YOUSAEZAI
ADVOCATE SUPREME COURT

Taimur Ali Khan
(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT.

AFFIDAVIT

It is affirmed and declared that the contents of reply of respondent No.4 are true and correct to the best of my knowledge and belief.

Maghan

DEPONENT

**BEFORE THE HONORABLE CHAIRMAN KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL**

Appeal No.867/19
Mr.Iftikhar Ahmad Sub Engineer
Drainage Sub Division (Pabbi Section)
District Nowshera

Appellant.

Versus

1. Secretary to Government of Khyber Pakhtunkhwa
Irrigation Department.
2. Chief Engineer (South) Irrigation Department
Khyber Pakhtunkhwa.
3. Superintending Engineer (Headquarter)
South Irrigation Department.

Respondents

Subject:- **JOINT PARAWISE COMMENTS IN SERVICE APPEAL
NO.867/2019 IFTIKHAR AHMAD SUB ENGINEER V/S
GOVERNMENT OF KPK ON BEHALF OF RESPONDENTS
NO.1 TO 3**

Respectfully sheweth

Preliminary objections:-

1. That posting/transfer is the internal affairs of the department and is being issued in the public interest.
2. That the appellant has got no locus standi.
3. That the appeal is not maintainable in its present form.
4. That the appeal is bad for mis joinder of cause of action and non joinder of parties.
5. That the appellant has not come to this Honorable Tribunal with clean hand.

Facts,


1. Correct to the extent that the appellant has joined Irrigation Department as a Tracer BS-05 (Now BS-07) on 12-6-1995. He was subsequently promoted as Sub Engineer BS-11 against 15% reserved quota for diploma holder officials.
2. Needs no comments.
3. In correct, respondents No.4 having BSc Degree in Mechanical Engineering who have also passed the Departmental Grade B Examination working in Head Section of the same Division/Sub Division was shifted to Pabbi Section in place of the appellant and vice versa. Since the posting/adjustment has been ordered within same Division/Sub Division which involves only change of Section therefore violation of posting/Transfer policy does not arise.
4. In correct, the departmental appeal of the appellant having no legal footing/cogent reason/grounds was therefore not considered.
5. The appellant has got no cause of action to file the instant appeal.

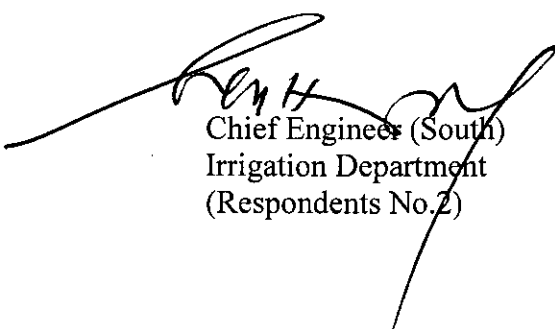
21

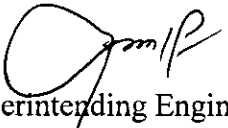
GROUNDS

- A. In correct, the appellant has been treated according to law and rules. He has internally adjusted in the same Division (i.e. from Pabbi Section to Head Section of Drainage Sub Division) and no violation of the posting /Transfer policy was occurred.
- B. Under Section (10) of Khyber Pakhtunkhwa Civil Servant Act 1973, Every Civil Servant shall be liable to serve anywhere within or outside the province ,in any post under the Federal Government ,or any Provincial Government or Local Authority ,or a corporation of body set up or established by any such Government. The instant internal adjustments has been made within one Sub Division/Division in the public interest .
- C&D Since the adjustment has been made internally in the same Sub Division/Division therefore no such policy/verdict of judgment of Supreme Court of Pakistan has been violated.
- E. Incorrect, the respondent No.4 having BSc Engineering Degree and have passed the Departmental Grade B examination has been posted in place of the appellant.
- F. Incorrect, the appellant is bound to serve anywhere in the Province under Section 10 of Khyber Pakhtunkhwa Civil Servant Act 1973.
- J. In correct, the order was issued in the public interest and according to law/rules.
- KL&M. As per g of the grounds. Moreover the respondents seek permission to raise additional grounds at the time of arguments.

It is very humbly prayed to dismiss the appeal with cost.


Secretary to Government of
Khyber Pakhtunkhwa Irrigation
Department
(Respondent No.1)


Chief Engineer (South)
Irrigation Department
(Respondents No.2)


Superintending Engineer
(Headquarters)
(Respondent No.3)