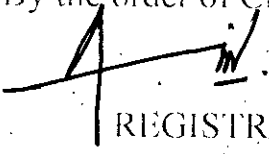


FORM OF ORDER SHEET

Court of _____

Appeal No. 168/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	22/01/2024	<p>The appeal of Mr. Pir Hassanat Shah' presented today by Mr. Muhammad Ilyas Orakzai Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____ . Parcha Peshi is given to counsel for the appellant.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal NO. 168 -P/2024

PIR HASSANAT SHAH

VS

REVENUE DEPARTMENT

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5.	Copies of departmental appeal and appellate order dated 16/01/2024	C & D	7-9
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APPELLANT

THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 168 -P/2024

Mr. Pir Hassanat Shah, Patwari
Patwar Halqa, Hazar Khwani Peshawar
Under transfer to DK office Peshawar.

..... APPELLANT

V E R S U S

1. The Government of Khyber Pakhtunkhwa through Secretary Revenue Department, Civil Secretariat, Peshawar.
2. The Commissioner Peshawar Division, Peshawar
3. The Deputy Commissioner Peshawar Division, Peshawar.
4. Mr Inam Ullah-I Patwari, Patwar Halqa Sufaid Sang under transfer to Patwar Halqa Hazar Khwani, Peshawar

..... RESPONDENTS

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974 AGAINST BOTH THE IMPUGNED ORDER DATED 08/12/2023, WHEREBY THE APPELLANT HAS BEEN PREMATURELY TRANSFERRED FROM THE PATWARI HALQA HAZAR KHWANI PESHAWAR TO DK OFFICE, PESHAWAR WITHOUT COMPLETING HIS NORMAL TENURE AND AGAINST THE APPELLATE ORDER DATED 16/01/2024, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN DISMISSED ON NO GOOD GROUND.

PRAYER:-

That on acceptance of the instant Service Appeal, the impugned transfer order dated 08/12/2023 of respondent No 3 and appellate order dated 16/01/2024 of the respondent No 2 may very kindly be set aside to the extent of appellant and private respondent and the appellant may be retained on the station from appellant was transferred i.e. Patwar Halqa Hazar Khwani. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

R/SHEWETH:
ON FACTS:

Facts arising for the institution of instant service appeal are as under:-

- 1- That the appellant is employee of the respondent department and is serving as Patwari since 2010 till date.
- 2- That the appellant was transferred/posted to present station/Patwar Halqa Hazar Khwani Peshawar vide order dated 12/09/2023, after assumption of charge of his post the appellant started performing his duties quit efficiently and to the entire satisfaction of his superior. Copy of order dated 12/09/2023 is attached as annexure.....**A**
- 3- That while performing his duties, astonishingly vide impugned order dated 08/12/2023 the appellant was prematurely transferred from Patwar Halqa Hazar Khwani Peshawar and posted at DK Office Peshawar without completing his normal tenure. Copy of the impugned notification dated 08/12/2023 is attached.....**B**
- 4- That appellant aggrieved from the impugned order being illegal, premature and against the policy of the government, preferred the departmental appeal before respondent No 2, which dismissed vide impugned appellate order dated 16/01/2024. Copies of departmental appeal and appellate order dated 16/01/2024 are attached as annexure.....**C&D**
- 5- That Appellant feeling aggrieved and having no other efficacious remedy preferred the instant Service Appeal on the following grounds:-

GROUND:

- A- That both the impugned transfer order dated 08/12/2023 & appellate order dated 16/01/2024 being contrary to law and rules, hence not tenable in the eye of Law and needs interference of this Honorable Tribunal to be set aside.
- B- That Appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That both the impugned transfer order dated 08/12/2023 & appellate order dated 16/01/2024 are in utter violation of the Transfer and Posting Policy of the Government.
- D- That the treatment meted out to the appellant is highly discriminatory and in clear violation of the Fundamental Rights of the Appellant as enshrined in the Constitution of Pakistan 1973 and also violation of Articles 218 (3), 220 of the Constitution of Islamic Republic of Pakistan.
- E- That both the impugned orders are also violative of the transfer/posting policy of the Government of Khyber Pakhtunkhwa

as the Appellant has been prematurely transferred from his current post. Copy of the transfer/posting policy is attached as annexure.....E

F- That both the impugned transfer order dated 08/12/2023 & appellate order dated 16/01/2024 are also violative of Rule 12 of Appointment, Promotion & Transfer Rules, 1989.

G- That the appellant seeks permission to advance other grounds and proofs at the time of arguments.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.



APPELLANT

THROUGH:



**NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT**


MUZZAMMIL KHAN MOHMAND


UMAR FAROOQ MOHMAND


WALEED ADNAN


MEHMOOD JAN


**KHANZAD GUL
ADVOCATES HIGH COURT**

CERTIFICATE:

No such like appeal is pending or filed between the parties on the subject matter before this Honorable Tribunal.


Advocate

AFFIDAVIT.

I, Pir Hassanat Shah, Patwari, do hereby solemnly affirm on oath that the contents of the above appeal are true and correct to the best of my knowledge and believe and nothing has been concealed from this Honorable Tribunal.


DEPONENT

-4-

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal NO. _____ -P/2024

PIR HASSANAT SHAH

VS

REVENUE DEPARTMENT

**APPLICATION FOR SUSPENSION OF OPERATION OF BOTH THE
IMPUGNED ORDERS DATED 08/12/2023 & 16.01.2024, TO THE
EXTENT OF APPELLANT AND PRIVATE RESPONDENT, TILL THE
DISPOSAL OF THE MAIN APPEAL.**

R/SHEWETH:

- 1- That: the above mentioned appeal along with this application has been filed the appellant before this august Tribunal in which no date has been fixed so far.
- 2- That appellant filed the above mentioned appeal against both the impugned orders dated 08/12/2023, whereby the appellant has been prematurely transferred from the Patwari Halqa Hazar khwani Peshawar to DK Office, Peshawar without completing his normal tenure and against the appellate order dated 16/01/2024, whereby the departmental appeal of the appellant has been dismissed on no good grounds.
- 3- That all the three ingredients necessary for the stay is in favor of the appellant.
- 4- That both the impugned orders dated 08/12/2023 & 16/01/2024 had been issued by the respondents in utter disregard of law and prevailing Rules.

It is therefore, most humbly prayed that on acceptance of this application the operation of both the impugned orders dated 08/12/2023 & 16/01/2024 may very kindly be suspended till the disposal of the above mentioned service appeal.


APPELLANT

THROUGH:


**NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT**

AFFIDAVIT

I, Pir Hassanat Shah, Patwari, do hereby solemnly affirm 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 Honorable Tribunal.


DEPONENT



"A" -5-

THE DEPUTY COMMISSIONER, PESHAWAR

Tel: 091-9212301-02, Fax: 091-9212303, DCPeshawar

No. 860 DC(P)/DK

Dated: 12-09-2023

OFFICE ORDER

Pir Hassanat Shah, Patwar waiting for posting is hereby transferred/posted at Patwar Halqa Hazar Khawni Peshawar with immediate effect till further order in the largest interest of public.

SD/-

**DEPUTY COMMISSIONER
PESHAWAR**

Endst: No. and Date Even:

Copy forwarded to the:

- (i) Assistant Commissioner City, Peshawar.
- (ii) Tehsildar City Peshawar.
- (iii) Official concerned for information.


**ADDITIONAL DEPUTY COMMISSIONER (G)
PESHAWAR**



"B" - 6-

THE DEPUTY COMMISSIONER, PESHAWAR
Tel: 091-9212301-02, Fax: 091-9212303, [] DCPeshawar

No. 5005/DC(P)
Dated: 08/12/2023

OFFICE ORDER

The Posting / Transfer of the following Patwaris are hereby ordered with immediate effect in the largest Public interest.

SR. NO	NAME OF OFFICIAL	FROM	TO
1.	Mr. Wali Khan	DK Office	Malkandher
2.	Mr. Zain Ul Abiden	Malkandher	DK office
3.	Mr. Mir Zameen	DK Office	Jala Bela
4.	Mr. Javed Khan	DK Office	Ghara Tajak
5.	Mr. Waheed Khan	DK Office	Deh Bahdur
6.	Mr. Fawad Shah	Deh Bahdur	DK Office
7.	Mr. Ghafoor Khan	DK Office	Urmar Miana
8.	Mr. Kifyat Ullah (Under Suspension)	Urmar Miana	DK Office
9.	Mr. Basheer Ullah	DK Office	Tehkal Bala - I
10.	Mr. Salim Shahzad	Tehkal Bala - I	DK Office
11.	Mr. Inam Ullah -- I	Sufaid Sang	Hazar Khwani
12.	Mr. Peer Hasssanat	Hazar Khwani	DK Office -
13.	Mr. Siraj	Shahi Payyan	Mashogagar

-SD-
DEPUTY COMMISSIONER
PESHAWAR

Endst: No. and Date Even:

Copy of the above is forwarded to the:-

1. All Assistant Commissioners, Peshawar.
2. Inquiry is initiated against Mr. Kifyat Ullah, under E&D Rules, whereas Mr. Saleem Ullah Khan Ayubi Additional Assistant Commissioner Faqirabad Peshawar is hereby nominated as inquiry Officer.
3. All Tehsildars, Peshawar for Information.
4. PS to Deputy Commissioner, Peshawar.
5. Officials concerned for strict compliance.


ADDITIONAL DEPUTY COMMISSIONER - GENERAL
PESHAWAR

DISTRICT ADMINISTRATION PESHAWAR

To,

The Worthy Commissioner,
Peshawar Division, Peshawar.

Subject: DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 08/12/2023 WHEREBY THE APPELLANT HAS BEEN TRANSFERRED PREMATURELY.

Respected Sir,

- 1- That the appellant is the employee of your good-self department and is serving as Patwari since 2010 till date quite efficiently and upto the entire satisfaction of his superiors.
- 2- That the appellant was transferred/posted to present station/Patwar Halqa Hazar Khwani Peshawar vide order dated 12-09-2023, after assumption of charge of his post the appellant started performing his duties quit efficiently and to the entire satisfaction of his superior.
- 3- That while performing his duties astonishingly vide impugned order dated 08/12/2023 the appellant was prematurely transferred from Patwar Halqa Hazar Khwani Peshawar and posted at DK Office Peshawar without competing his normal tenure. Copy of the impugned notification dated 08/12/2023 is attached.
- 4- That appellant aggrieved from the impugned order being illegal, premature and against the policy of the government, preferred the instant departmental appeal before your honor inter alia on the following grounds:-

GROUND:

- A- That the impugned order dated 08/12/2023 being contrary to law and rules and in utter violation of the law on the subject hence not tenable in the eye of Law.

- 8-
- B-** That appellant have not been treated by the department concerned in accordance with law and rules on the subject noted above and as such action of the respondent department is violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C-** That the impugned transfer order is also violative of the transfer/posting policy of the Government of Khyber Pakhtunkhwa as the appellant have been transferred against the law on the subject.
- D-** That the treatment meted out to the appellant is a clear violation of the Fundamental Rights of the appellant as enshrined in the Constitution of Pakistan 1973.
- E-** That the impugned order is also violative of Rules 12 of Appointment, Promotion & Transfer Rules, 1989.
- F-** That concerned authority has violated Clause-I, Clause-IV and Clause-XIII of the transfer posting policy of the government have been violated by the respondents vide the impugned notification.
- G-** That the impugned order dated 08/12/2023 has not been issued to the public interest.

It is, therefore, most humbly requested that on acceptance of this departmental appeal the impugned order dated 08/12/2023 may very kindly be set aside to the extent of appellant and the appellant be retained on the station from where he was transferred i.e. Hazar Khwani till completion of his normal tenure.

Dated:

Yours Obediently

Pir Hasnat Shah





"D" -9-

**IN THE COURT OF
COMMISSIONER PESHAWAR DIVISION
PESHAWAR**

DATE OF INSTITUTION 18.12.2023.
DATE OF DISPOSAL 16.01.2024.
APPEAL NO.08/2023.

PIR HABIB SHAH (PATWARI) O/O DEPUTY COMMISSIONER PESHAWAR.

DEPUTY COMMISSIONER PESHAWAR.

VS

(Appellant)

ORDER

(Respondent)

This order will dispose off the departmental appeal filed by the above named appellant against the order of the Deputy Commissioner Peshawar bearing No.5005/DC(P) dated 08.12.2023, whereby the appellant was transferred from the post of Patwar Halqa Hazar Khwani to District Kanungo Office Peshawar.

Brief facts of the case leading to institution of the instant appeal are that the appellant was posted as Patwar Halqa Hazar Khwani District Peshawar and he assumed the charge of the post accordingly. However, after a period of two and a half months he was transferred to the office of District Kanungo Peshawar.

The appellant in his statement stated that he has been transferred prematurely and the impugned order was issued in utter violation of law / rules of posting / transfer policy.

Appellant present and heard in person. Comments furnished by the Deputy Commissioner Peshawar also examined. From perusal of the case file / proceedings of the case, it is evident that the Deputy Commissioner Peshawar being the competent authority is authorized to decide the posting / transfer of his subordinate staff, keeping in view the administrative requirements and public facilitation i.e. right man for the right job. The appellant has been treated as per law and no violation of posting / transfer policy has been made. Moreover, the appellant could not produce any solid argument or evidence during course of personal hearing to prove that his posting orders have been issued in violation of law.

Keeping in view the above, the appeal is dismissed. The impugned order bearing No.5005/DC(P) dated 08.12.2023 of Deputy Commissioner Peshawar is upheld and maintained.

File be consigned to GRR after necessary compilation.

**Announced
16.01.2024**

**COMMISSIONER
PESHAWAR DIVISION PESHAWAR**





"E" - 10 -

GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(Regulation Wing)

POSTING / TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT.

- i) All the posting/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants
- ii) All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities for seeking posing/transfers of their choice and against the public interest.
- iii) All contract Government employees appointed against specific posts, can not be posted against any other post.
- iv) The normal tenure of posting shall be three years subject to the condition that for the officers/officials posted in unattractive areas the tenure shall be two years and for the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.
- v) { }
- vi) While making postings/transfer from settled areas to FATA and vice-versa, specific approval of Governor, NWFP needs to be obtained

While making postings/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. 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.
- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for atleast 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 officer's/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.

Para-1(v) regarding months of March and July for posting/transfer, and authorities for relaxation of ban-deleted vide letter No: SOR-VI (E&AD) 1-4/2008/Vol-VI, dated: 3-6-2008. Consequently authorities competent under the NWFP Government Rules of Business, 1985, District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make posting/transfer subject to observance of the policy and rules. Added vide Urdu circular letter No: SOR-VI(E&AD)1-4/2003, dated 21-09-2004

- 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
 DCOs and DPOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against non-administrative posts of equivalent scales;
- xii) In terms of Rule-17(1) and (2) read with Schedule-III of the NWFP Government Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against each officer in column 2 thereof:

Outside the Secretariat		
1.	Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above.	Chief Secretary in consultation with Establishment Department and Department concerned with the approval of the Chief Minister.
2.	Other officers in BPS-17 and above to be posted against scheduled posts, or posts normally held by the APUG, PCS(EG) and PCS(SG).	-do-
3.	Heads of Attached Departments and other Officers in B-19 & above in all the Departments.	-do-
In the Secretariat		
1.	Secretaries	Chief Secretary with the approval of the Chief Minister.
2.	Other Officers of and above the rank of Section Officers: a) Within the Same Department b) Within the Secretariat from one Department to another.	Secretary of the Department concerned. Chief secretary/Secretary Establishment.
3.	Officials up to the rank of Superintendent: a) Within the same Department b) To and from an Attached Department c) Within the Secretariat from one Department to another	Secretary of the Department concerned. Secretary of the Dept in consultation with Head of Attached Department concerned. Secretary (Establishment)

- xiii) While considering posting/transfer proposals all the concerned authorities shall keep in mind the following:
- To ensure the posting of proper persons on proper posts, the Performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/officials be considered.
 - Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

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

- 12 -

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 posing/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.

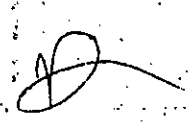
.....

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).

.....

It has been decided by the Provincial Government that posting/transfer orders of all the officers up to BS-19 except Heads of Attached Departments irrespective of grades will be notified by the concerned Administrative Departments with prior approval of the Competent Authority obtained on the Summary. The Notifications/orders should be issued as per specimen given below for guidance.

All posting/transfer orders of BS-20 and above and Heads of Attached Departments (HAD) shall be issued by the Establishment Department and the Administrative Departments shall send approved Summaries to E&A Department for issuance of Notifications.



- 13 -

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal _____ No _____ /2024

Pir Hasnait Shah _____

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Revenue _____

(RESPONDENT)
(DEFENDANT)

I/we Pir Hasnait Shah.

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/202


CLIENT

ACCEPTED


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT


WALEED ADNAN


UMAR FAROOQ MOHMAND


MUHAMMAD AYUB

&


MAHMOOD JAN
ADVOCATES

OFFICE:
Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)