29.11.2016

Counsel for the appellant, Mr. Muhammad Ibrar, Assistant Secretary and Mukhtiar Ali, Superintendent alongwith Additional AG for official respondents No. 1 to 3 present. Learned counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 7.4.17 before D.B.

(ABDUL LATIF) MEMBER

(PIR BAKHSH SHAH) MEMBER

07,04,2017

Counsel for the appellant and Mr. Muhammad Jan, Government Pleader for the respondents present.

Learned counsel for the appellant informed the Tribunal that he is not in a position to controvert the proposition of further transfer/posting of the appellant to some other station convenient to the appellant.

In view of the above he requested for withdrawal of the appeal.

Dismissed as withdrawn. File be consigned to the record room.

OUNCED

7:04,2017

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Chairmai

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22.10.2015

Counsel for the appellant and Mr. Mukhtiar Ali, Supdt. alongwith Mr. Ziaullah, GP for official respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 5-4-/6 for arguments.

MEMBER

МЕМВЕГ

05.042016

Clerk to counsel for the appellant and Mr. Ziaullah, GP for respondents present. Clerk to counsel for the appellant requested for adjournment. To come up for arguments on 22.07.2016.

Methober

22.07.2016

Counsel for the appellant and Assistant AG for respondents present. The learned Government Pleader objected that the present appellants have already been transferred and not interested in the instant appeals and the cases are anfractuous. Learned counsel for the appellant requested for further time to contact the appellant. Request accepted. To come up for arguments/further proceedings on 29.11.2016.

Member

Member

8.12.2014

Clerk to counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Mukhtiar Ali, Supdt. for the respondents present. The Tribunal is incomplete. To come up for the same on 27.2.2015.

READER

27.2.2015

Counsel for the appellant and Mr. Ziaullah, GP for the respondents present. Counsel for the appellant moved an application for impleadment of Fazal Rabi, Patwari, Halqa Shahi Payan, Peshawar, as respondent. Copy handed over to the learned GP. To come up for reply/arguments on application on 14.5.2015.

MEMBER

MEMBER

14.05.2015

Appellant in person and Mr. Mukhtiar Ali, Supdt alongwith Muhammad Jan, GP for the respondents present. Appellant requested for adjournment. Adjourned to 22.10.2015 for arguments before D.B.

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Member

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29.4.2014

Appellant with counsel and Mr. Muhammad Jan, GP with Mir Qasam, Assistant Secretary, Muhammad Jamil, ADK and Muhammad Tariq Steno for official respondents present. Rejoinder received. Copy handed over to the learned GP. To come up for arguments on 10.6.2014.

MEMBER

10.6.2014

Appellant with counsel and Mr. Muhammad Jan, GP with Mir Qasam Assistant Secretary and Muhammad Jamil, ADK for the respondents present. Rejoinder received. Copy handed over to the learned GP. To come up for arguments on 23.7.2014.

MEMB

MEMBER

23.7.2014

Appellant with counsel and Mr. Muhammad Jan, GP with Mukhtiar Ali, Supdt. for respondent No. 1 present. Due to retirement of learned executive Member, the bench is incomplete. To come up for arguments on 28.10.2014.

28.10.2014

Junior to counsel for the appellant and Mr. Muhammad Jan, GP with Mukhtiar Ali, Supdt. for the respondents present. Due to incomplete Bench, case is adjourned to 08.12.2014 for arguments.

MEMBER

1535/2013 14 3 2014

Junior to counsel for the appellant and Mr. Muhammad Jan, GP with Mukhtiar Ali, Supdt. for respondent No.1 present and reply on main appeal as well as stay application filed. None on behalf of respondents No. 2 and 3 present despite the fact that on previous date of hearing their representatives were present before the court and were directed to submit written reply on main appeal as well as stay application but to-day neither representatives of respondents No. 2 and 3 i.e. Commissioner, Peshawar & Deputy Commissioner, Peshawar, were available before the court nor their written reply received. Hence they are placed ex-parte.

Perusal of the case file reveals that the case pertains to transfer of Patwar Halqa Chughal Pura, Peshawar in which stay application has also been moved by the appellant but to facilitate the appellant to get stay order, respondents No. 2 and 3 intentionally not pursuing the case. Hence, the learned Government Pleader is directed to bring the conduct of respondents No.2 and 3, into the notice of highest authorities. To come up for rejoinder on 10.4.2014.

MENTER

MEMBER

0.4.2014

Appellant with counsel, and Mr. Muhammad Jan, GP with Mir Qasam, Assistant Secretary for respondent No.1 present who already filed written reply. Muhammad Ayub, Assistant for respondent No.1, and Dilawar Khan, ADK for respondent No. 2 present and submitted separate application for setting aside ex-parte proceedings against them alongwith written replies. Since written replies also submitted by the respondents, therefore, counsel for the appellant has no objection. As such ex-parte proceedings against respondents No. 2 and 3 set aside. Copy of written replies handed over to counsel for the appellant. To come up for rejoinder on 29.4.2014.

MEMBER

DMEMBER

Counsel for the appellant, Mr. Muhammad Jan, GP with Mir Qasam, Assistant Secretary for respondent No.1, Tariq, Steno for respondent No.2 and Muhammad Jamil, ADK for respondent No. 3 present and requested for further time. None is available on behalf of private respondent No.4. Fresh notice be issued to him. To come up for reply/arguments on stay application on 24.2.2014.

MEMBER

MEMBER

24.2.2014

Appellant in person and Mr. Muhammad Adeel Butt, AAG with Mir Qasam, Assistant Secretary for respondent No. 1 present and reply filed. Mr. Muhammad Ayub Revenue Accountant and for respondent No. 2 and Muhammad Jamil, ADK for respondent No. 3 present and requested for further time. None is available on behalf of respondent No.4 nor his written reply received, despite proper service, hence placed ex-parte. To come up for written reply of respondents No. 2 and 3 on main appeal as well as reply/arguments on stay application on 14.3.2014.

MEMBER

AppearlNo. 1535/2013 Ma Michammed A

26.12.2013

Appellant with counsel present. Preliminary arguments

heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the order dated 26.07.2013, the appellant filed departmental appeal which has been rejected on 11.10.2013. He further contended that the order has been issued in violation of Rule-5 of the Civil Servants (Appeal) Rules 1986. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notices be issued to the respondents. The appellant has also filed an application for suspension of impugned order dated 26.07.2013 and 11.10.2013. Notice of application should also be issued to the respondents. To come up for written reply on main appeal on 05.03.2014 as well as reply arguments on stay application on 10.01.2014.

26.12.2013

This case be put before the Final Bench

for further proceedings.

hairmar

10.1.2014

Appellant with counsel and Mr. Muhammad Jan, GP present. None is available on behalf of the respondents. Fresh notices be issued to them. To come up for reply/arguments on application on 31.1.2014.

MEMBER

Form- A FORM OF ORDER SHEET

	Court of_	- CANTOT ORDER SHEET
	Case No	1535 /2013
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	25/11/2013	The appeal of Mr. Muhammad Asif resubmitted today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.
2	29-11-201	Davida D
	29-11-201	This case is entrusted to Primary Bench for preliminary hearing to be put up there on 26-12-2013
		CHARMAN

The appeal of Mr. Muhammad Asit Patwarisreceived today i.e. on 11.11.2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of departmental appeal preferred by the appellant before Commissioner Peshawar Division respondent no 2 mentioned in para-4 of the memo of appeal is not attached with the appeal which is not attached with the appeal which may be placed on it.

 2- Annexure-B of the appeal is illegible which may be replaced by legible/better one.

KHYBER PAKHTUNKHWA PESHAWAR.

de Jan Comphonico

Mr. M.Asif Yousafzai Adv

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Muhammad Asif	1535//3Petitioner
Mulialililau ASII	
•	VERSUS

Government of Khyber Pakhtunkhwa through Secretary Revenue & Estate Department. Peshawar and others.-----Respondents

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4.	Copy of Order (26.7.2013)	В	08-10
5.	Copy of appeal.	С	11- 12
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APPELLANT Muhammad Asif

THROUGH:

M. ASIF YOUSAFZAI ADVOCATE

Taimur Ali Khan Advocate.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Service Appeal No. 1535 /2013

1547

Muhammad Asif, Patwari,
Presently posted as Patwari Halqa Chughal Pura,
District Peshawar------

-<u>Appellant</u>

VERSUS

- 1. The Secretary to Government of Khyber Pakhtunkhwa, Revenue & Estate Department,/SMBR Peshawar.
- 2. Commissioner Peshawar Division, Peshawar.
- 3. Deputy Commissioner Peshawar.
- 4. Haji Namdar Patwari , Halqa Shah Baig Peshawar.

.....Respondents

APPEAL U/4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 11.10.2013 WHEREBY THE APPELLANT'S DEPARTMENTAL APPEAL HAS BEEN REJECTED AGAINST THE TRANSFER ORDER DATED. 26.7.2013 FOR NO GOOD GROUNDS.

PRAYER:

That on acceptance of this appeal the order dated. 11.10.2013 may be set-aside and the respondents may be directed to modify the order dated. 26.7.2013 and to restore the appellant's posting at Halqa Chughal Pura Peshawar and not to transfer the appellant in violation of Govt: instruction/policy. Any other remedy which this

ac-submitted to-day

Bue 35/11/13



Respectfully Sheweth

- 1. That the appellant is a senior most Patwari, serving in the Revenue Department under control and command of Deputy Commissioner Peshawar.
- 2. That, lastly the appellant was posted at Halqa Chughal Pura, Peshawar vide order dated 12.3.2013. Copy of Oder is attached as Annexure-A.
- 3. That after serving for less than four months, the respondent No. 3 once again transferred the appellant to Halqa Issa Khel under the garb of Supreme Court decision made in Khawaja Asif's case, vide order dated. 26.7.2013. (copy of order dated 16.9.2013 is Annexure B).
- 4. That the appellant aggrieved by the aforesaid order, filed Representation/ Appeal before the Commissioner Peshawar Division, Peshawar (Respondent No.2) which has been rejected vide order dated 11.10.2013 (copy of the representation and order are Annexure C&D)
- 5. That the impugned posting and transfer order dated 26.7.2013 and rejection order dated 11.10.2013 is void and without lawful authority and passed in violation of Supreme Court's judgment, which are liable to be set aside, inter alia, on the following grounds:-

GROUNDS

- A) That the transfer order of the appellant is politically motivated on the recommendations of the setting MPA who is on inimical terms with the appellant, so the impugned order on the face of record is void, unlawful and passed in violation of posting transfer policy of the Govt:
- B) That the transfer of the appellant is premature and in his place blue eyed person of the political and influential MPA has

3

been posted and thus the impugned transfer order is based on malafide and ulterior motive.

- C) That the respondents particularly Respondent No. 2&3 has not acted in accordance with in view of Article- 4,25 of the Constitution r/w section 24-A of the General Clauses Act 1897 and thus the impugned order is without merit & lawful Authority, unlawful and thus unsustainable in the eyes of law.
- D) That the transfer order of the petitioner smacks arbitrariness, deviation from the normal procedure of law.
- E) That the transfer of petitioner is void and unlawful/ immature, being voilative of relevant law as under civil servant cannot be transferred without completion of his normal tenure.
- F) That the transfer of the appellant within four months shows the political pressure on the Authorities which is against the law of land.
- G) That the respondents have violated the principles laid down by the august Supreme Court of Pakistan in Anita Turab Case in which it has been clearly stated that the tenure fixed by the Govt: shall be respected.
- H) That the appellant has been prematurely transferred on the basis of Supreme Court's judgment and if that judgment was to be obeyed, then the appellant was required to be posted back from where he was transferred on 12.3.2013. Thus the respondents have misused the judgment of the Supreme court of Pakistan.
- I) That the respondents have violated the Govt: posting /transfer policy dated. 15.2.2003. (Copy of Policy is attached as Annexure—E)
- J) That the final order is not based on cogent groundsand is also the violation of Section -24-A of the General Clauses Act as well as the Supreme Court's Judgment repotted as 1991 SCMR-2230.

K) That the appellant seeks permissions to advance other grounds and proofs at the time of hearing.

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

APPELLANT

MUHAMMAD REPARE

Through

M. ASIF YOUSAFZAI ADVOCATE &

Taimur Ali Khan Advocate.

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

	Service Appeal NO	/2013
Muhammad Asi	f	Petitioner
	VERSUS	
	Khyber Pakhtunkhwa throug lue & Estate Department. Pe	
and others		Respondents

APPLICATION FOR SUSPENSION OF IMPUGNED ORDER DATED 26.7.2013 AND 11.10.2013 TILL PENDING FINAL DECISION OF MAIN APPEAL.

Respectfully Sheweth,

- 1. That the petitioner/ appellant has filed Appeal before this Hon,ble Tribunal in which no date hearing has been fixed so for.
- 2. That the appellant has got a good prima facie arguable case, the impugned order is without lawful authority and unsustainable in law, balance of convenience lies in his favour and in case operation of impugned order is not suspended, the very purpose of appeal would be defeated and it would infructuous as well and the appellant would suffer irreparable loss.
- 3. That the grounds of main appeal may also be considered as integral part of this application.
- 4. That the respondents have misused the Supreme Court's judgments to please the blue eyed persons.

It is, therefore, prayed that the operation of impugned order dated 26.7.2013 AND 11.10.2013 may graciously be suspended till final decision of appeal.

Petitioner Muhammad Asif

Through

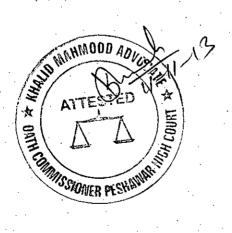
M. ASIF YOUSAFZAI ADVOCATE

&

Taimur Ali Khan Advocate.

AFFIDAVIT:

It is affirmed and declared that the contents of Application are true and correct to the best of my knowledge and belief.



Deponent.



OFFICE OF THE DEPUTY COMMISSIONER PESHAWAR.

Dated Peshawar the 12_103/2013

OFFICE ORDER.

The following postings/transfers amongst the patwaris of Peshawar District are hereby ordered in the public interest with immediate offect:

S #	Name of Patwari	-From	Townson
1	Qaiserud Din	P.H Jhalarian	Report to
~			DC's office
(2.)	Shakir	P.H	P.H.
		Pahirpura	Jhalarian
			vice No.1
3.	Tariq javed	Waiting for	P.H
		posting.	Paharipura
			vice No.2
3. : .	Haji Mohammad	P.H	P.H Tukra
		Chughalpura	No.3
4.	Asif.	P.H Tukra	P.H.
	· ·	No.3	Chughalpura
1			vice No.3

Deputy Commissioner > Peshawar.

NO. 3894-98/DC(P)/DK.

 Σ /DC(P)/DK. Dated Peshawar the I2 /03/2013

Copy forwarded to the:-

- 1. Additional Deputy Commissioner, Peshawar.
- 2. Assistant Commissioner, Peshawar.
- 3. Tehsildar Peshawar.
- 4. Revenue Bill Clerk.
- 5. Official concerned for compliance.

Deputy Commissioner, Peshawar.

ATTESTED

Bellow Copy.

OFFICE OF THE PESHAWAI

Dated Peshawar the \$6/07/2013



OFFICE ORDER

Upon review of transfers made during the caretaker government's tenure pursuant to Supreme Court of Pakistan order and decision rendered in Khawaja Asif versus. Federation of Pakistan on 22.5.2013 and 6.6.2013, and delimitation of revenue estates ordered by the Board of Revenue, Government of Khybor Pakhtunkhwa, toliowing postings/transfers of Patwaris are ordered with immediate effect in the public interest:

Description Per Andread Reservice No. 42		S#	Name of Patwari	From	το
2. Mohammad Shakir Mohammad Israr P.H. Jhalarian P.H. Kalokhel P.H. Jhalarian P.H. Sardar Garhi Jhalarian P.H. Chughalpura P.H. Chughalpura P.H. Chughalpura P.H. Chughalpura P.H. Chughalpura P.H. Chughalpura P.H. Gull Bela vice No. 45 P.H. Essa Khel Hamcer vice No. 46 P.H. Dab Bunyadi Jick No. 47 P.H. Gull Bela vice No. 46 P.H. Dab Bunyadi Jick No. 47 P.H. Dab Bunyadi Jick No. 48 P.H. Sarkhana vice No. 46 P.H. Dab Bunyadi Jick No. 48 P.H. Sarkhana vice No. 46 P.H. Dab Bunyadi Jick No. 48 P.H. Sarkhana vice No. 46 P.H. Dab Bunyadi Jick No. 48 P.H. Sarkhana vice No. 46 P.H. Dab Bunyadi Jick No. 48 P.H. Sarkhana vice No. 46 P.H. Dab Bunyadi Jick No. 48 P.H. Sarkhana vice No. 46 P.H. Dab Bunyadi Jick No. 48 P.H. Sarkhana vice No. 49 P.H. Jogani vice No. 51 P.H. Mamo Khatka vice No. 52 P.H. Mahal Gabri No. 52 P.H. Mahal Gabri No. 53 P.H. Garhi Sherdad vice No. 55 P.H. Azakhel No. 1 vice No. 55 P.H. Azakhel No. 1 vice No. 55 P.H. Azakhel No. 1 vice No. 56 P.H. Azakhel No. 1 vice No. 56 P.H. Azakhel No. 1 vice No. 56 P.H. Asarian Jick No. 58 P.H. Asarian No. 50 P.H. Babuzai vice No. 58 P.H. Nasirpur P.H. Nasirpur No. 50 P.H. Babuzai vice No. 52 P.H. Dab Jick No. 56 P.H. Babuzai vice No. 52 P.H. Babuzai vice No. 62 P.H. Garni Chandan vice No. 63 P.H. Babuzai vice No. 64 P.H. Babuzai vice No. 65 P.H. Garni Chandan vice No. 65 P.H. Garni Ch	ļ	1.	Inamullah	P.H Budhai	<u> </u>
Mohammad Shakir Mohammad Israr P.H. Jhalarian P.H. Kalokhel P.H. Mian Gujar V. Mo. 43 Zah'd Khan P.H. Sardar Garhi P.H. Daman Alghari vira No. 44 5. Nisar Khan P.H. Pharipura P.H. Gul Bela vice No. 45 P.H. Pharipura P.H. Gul Bela vice No. 45 P.H. Mahal Terai P.H. Gul Bela vice No. 45 P.H. Mahal Terai P.H. Gul Bela vice No. 45 P.H. Mahal Terai P.H. Gul Bela vice No. 45 P.H. Gul Bela vice No. 45 P.H. Dab Buriyadi No. 47 P.H. Dab Buriyadi No. 47 P.H. Oilla Shah Baij vice No. 49 P.H. Oilla Shah Baij vice	i	<u>م</u> ا	.		No 41
4. Zah'd Khan P.H Sardar Garhi No.43 P.H Daman Alghari vica No.45 P.H Chughalpura P.H Coll Beia vice No.45 P.H Chughalpura P.H Essa Khel Harnese vice No.46 P.H Dab Bunyadi ide No.47 P.H Dab Bunyadi ide No.48 P.H Dab Bunyadi ide No.48 P.H Dab Bunyadi ide No.47 P.H Dab Bunyadi ide No.47 P.H Dab Bunyadi ide No.47 P.H Dab Bunyadi ide No.48 P.H Dab Bunyadi ide No.47 P.H Dab Bunyadi ide No.49 P.H Sarkhana vice No.48 P.H Nami kiel No.49 P.H Sarkhana vice No.51 P.H Mamo Khatk vice No.52 P.H Garhi Sherdad vice No.53 P.H Saidi Sang vice No.55 P.H Abadi Peshawa against the vacant post. P.H Nasirpur P.H Kaniza vice No.58 P.H Tukra No.1 P.H Nasirpur P.H Babuzai vice No.62 P.H Garni Chandan vice No.63 P.				P.H. Jhalarian	
4. Zah'd Khan 5. Nisar Khan 6. Mohammad Asif 7. Tarid Javed. 8. Haji Mohammad 9. Malik Abdul Ghaffar 10. Mansoor Khan 11. Qaibarud Din 12. Qaibarud Din 13. Pi r'assanat Shah 14. Mohammad Ali Jan 15. Nasrullah 16. Mir. M. Nadeern 17. Shah dhan 18. Asadullah 19. H. Basa Khel 19. H. Faliu Abdur 19. H. Faliu Abdur 19. H. Mahal Gabri 19. Mir Salahud-din 19. H. Mahal Basa Khel 19. Mir Salahud-din 19. Mir Salahud-din 19. Mir Salahud-din 19. H. Mahal Gabri 20. Mir Fayyaz 21. Mir Shaukat 22. Shajid 23. Aslain 24. Mir Junis 25. Mir Amjed Suñail 26. Mir Salim Shahzad 27. Mr shaukamif Shab 28. H. Sardar Garhi P.H. Pharipura P.H. Pharipura P.H. Pharipura P.H. Pharipura P.H. Achini Payan P.H. Dab Bunyadi dick No.45 P.H. Sarkhana vice No.45 P.H. Sarkhana vice No.45 P.H. Sarkhana vice No.55 P.H. Hamil Vice No.55 P.H. Garhi Sherdad vice No.55 P.H. Abadi Pesnawa against the vacant post. P.H. Nasirpur P.H. Sheikh Mohammadi R. P.H. Sheikh Mohammadi R. P.H. Nasirpur P.H. Nasirpur P.H. Nasirpur P.H. Tukra No.3 P.H. Kaniza vice No.58 P.H. Kaniza vice No.62 P.H. Babuzai vice No.62 P.H. Babuzai vice No.62 P.H. Babuzai vice No.62 P.H. Shaih Alam vice No.63 P.H. Shaih Alam vice No.63 P.H. Salim Shahzad P.H. Sarkhana Vice No.65 P.H. Shaih Alam vice No.62 P.H. Sarkhana Vice No.65 P.H. Shaih Alam vice No.62 P.H. Shaih Alam vice No.63 P.H. Salim Shahzad P.H. Sarkhana Vice No.65 P.H. Shaih Alam vice No.65 P.H. Salim Shahzad P.H. Sarkhana Vice No.65 P.H. Salim Shahzad P.H. Sarkhana Vice No.65 P.H. Babuzai vice No.65 P.H. Sarkhana Vi	l i	3	Mohammad Israr	P H Kalokhei	PH Miss Chart
5. Nisar Khan 6. Misar Khan 7. Tariq Javed. 8. Haji Mohammad 9. H Achini Payan 10. Mansoor Khan 11. Ghafoor. 12. Qaiterud Din 13. Pi rassanat Shah 14. Mohammad Ali Jan 15. Nasrullah 16. Mir. M. Nadeern 17. Shari Jehan 18. Asadullah 19. Mi Salahud-din 20. Mir. Fayyaz 21. Mir. Shaukat 22. Sharid 23. Astein 24. Mir. Yunis 26. Mir. Amjed Suhail 26. Mir. Amjed Suhail 27. Mir. Mirkammit Shah 27. H Achini Payan 28. P.H Dab Bunyadi No. 47 29. H Oalb Bunyadi No. 47 29. H Oalb Bunyadi No. 48 29. H Achini Payan 29. H Ali Bain No. 50 29. H Abadi Peshawa against the vacant post. 29. H Asadullah 29. H Asamikishin 29. H Babuzai vice No. 58 29. H Carini Sherdia vice No. 58 29. H Charpariza vice No. 58 29. H Charpariza vice No. 58 29. H Charpariza vice No. 58 29. H Babuzai vice No. 62 29. Mir. Amjed Suhail 20. Mir. Yunis 21. Mir. Amjed Suhail 22. Mir. Amjed Suhail 23. Mir. Amjed Suhail 24. Mir. Yunis 25. Mir. Amjed Suhail 26. Mir. Salim Shahzad 27. Mir. Mukammit Sipah 28. P.H Sardhana P.H Garai Talik vice No. 34 29. H Gara Talik vice No. 34 29. H Gara Talik vice No. 34 20. Mir. Mir. Mansanata Vice No. 35 20. Mir. Mir. Mansanata Vice No. 35 21. H Babuzai vice No. 62 22. Mir. Amjed Suhail 23. Astein 24. Mir. Yunis 25. Mir. Amjed Suhail 26. Mir. Mir. Manmit Sipah 27. Mir. Mukammit Sipah 28. H Achini P.H Garai Talik vice No. 34 29. H Garai Talik vice No. 34 20. Mir. Mir. Mir. Mir. Mir. Mir. Mir. Mir	ļ	, !		·	No 43
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	29.	Mr. Inayatullah.	· · · · · · · · · · · · · · · · · · ·	No.67 P.H. Kafoor Dheri vice
	30.	Deedar	P.H Swati/charkhana	No.68 P.H Kankola vice No.69
	31.	Mr. Tilawat Shah	P.H Tehkal Payan	P H Passani vice No.70
5-7	32.	Mr. Sadaqatullah	P.H Mahal Salu	P.H Masho Khel vice No.71
	33.	Noor-Hussain	Waiting for posting.	Politica Mushtarzai vice No.73
C	34.	Mr. M. Nadeem	P.H Mashogager.	P.H Masho Peki vice
:	35.	Mr. Ikramullah	P.H. Tehkal Bala No.1	P.H. Behlol zar vice
	36.	Mr. M. Saeed	P.H. Lala Ahmed	P.H. Malakander vice No.16
	37.	Mr Abdul Jabbar	P.H Wadpaga	P.H Terai Payan (Darmangi) vice No.75
	38.	Mr. M. Zarif.	P.H Gulozai.	PH Urmar Maira vicc
	39.	Mian Inamullah	P.H Shahi Bala	P.H Maryamzai vice No.78
	40.	Nr. Riaz Khan	P.H Shagi Hindkiyan	PH Budhni 🐝 🗇
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	43.	Mr. Gulzar Mr. M. Ilyas	P.H. Jala Bela. P.H Mian Gujar.	P.H. Achini, Payan vice
•				No.9
	44 45.	Mr. Ifrahim Shah	P.H Daman Afghani	P.H Hargoni vice No.11
	46	Mr. Sher Wali Mir Rehman Shah	P.H Gul Bela P.H Essa Khel	P.H Jhalarian vice No.2
		Will reclinian Shan	Hameed.	P.H Sardar Garhi vice No.4
	47.	Mr. Zikriya Khan	P.H Dab Bunyadi	P.H Phanpura vice No.5
	48.	Haji Namdar	P.H Qilla Shah	PH Chughulpura vice
	49.	Nr. Ali Akber	Baig P.H Sarkhana	No 6 P H Fatu Abdur Ramma
	50.			vice No.13
		Mr. Insanul Haq	PH Jogani	P.H. Mahal Terai vice No.7
	51.	Malik Zainul Abideer Mr. Farmanullah	ı │ P.H Niami │ P.H Mamo Khatki	P.H. Tukra No.3 vice No.8
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	53.	and the contract of the contra	P.H Garhi Sherda	
	55.	Mr. Waheed Khan	P.H Sufaid Sung	P.H. Nodeh Payan vide No.15
	56.	Mr. Mohamma	ad P.H Aza Khel 1	P.H. Mahal Gabri vice
	57.		P.H Charpariza	No 14 P.H. Essa Khel Topchian
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	60	Vir. Shindi Gul	P.H Chaghar Mat	vice No.19 · iti P.H Pakha Ghulam vice No.12
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	63	Mian Noorul Haq	P H Shahalam	No.23 P.H Achar vice No.27
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	6	8. Mr. Amjed Khan	RESKeroor the	No.26.
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	69.	Mr. Moorul Qamar.	P.H	P.H. Hazar Khawani vice
			Kankola/Kattar	No.28
1	70.	Mr. Tilawatur	P.H.Passani	P.H Swati/Charkhana
.		Rehman		vice No.30
*	.71.	Mr. Wisal Khan	P.H Masho Khel	P.H.Tukra No.1 vice No.
-	72.	Mr. Mumtaz Ali Shah	P.H Masho Peki	F3 13 18 1 25 1 1
	_		1	No.32
	73.	Mr. Bostan	P H Mushtarzai.	
			1 1	P.H Mashogagar vice No.34
	74.	Mr. Mansoor Khan	P.H Behlolzai	w
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•	75.	Mohammad Aamer	P.H Terai Payan	D
	į		(Darmangi)	P.H. Lala Ahmed vice No.36
	76.	Mr. Faqir Hussain	Patwari PDA	:
4	177	Mr. Yasin Khan	· ·	P.H Wadpaga vice No 3/
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	78.	Mr. Salahud Din	DAIM	No.31
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-	79.	Mr. Roohul Amin		No.40.
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	ţ .	I		vice No.35

Deputy Commissioner, Peshawar.

NO 1119-25

/DC(P)/DK.

Dated Peshawar the 36 /07/2013

Copy forwarded to the:-

1. Commissioner Peshawar Division Peshawar.

2. Additional Deputy Commissioner, Peshawar...

3 Assistant Commissioner, Peshawar.

4. PS to SMBR Khyber Pakhtunkhwa Peshawar.

5. Tehsildar Peshawar.

Revenue Bill Clerk.

7. Official concerned for compliance.

Deputy Commissioner, Peshawar, Before the Commissioner, Peshawar Division Peshawar.

Mohammad Asif Patawri Halqa Chughal Pura Peshawar. (Appellant)

Fersijs

- 1. Deputy Commissioner Peshawar.
- 2. Haji Namdar Patwari Qila Shah Baig Peshawar. (Respondents)

Departmental Representation against the Order No. 1119-25/DC(P)/DK dated 26/07/2013 whereas appellant has permanently transferred from Patwar Halqa Chughal Pura to P.H. Qila Shah Baig Peshawar in violation to the law, rules as prescribed in the Civil Servant Act.

Respected Sir,

- 1. That appellant is serving as Patwari Halqa-Chughal Pura with best of his abilities and to the entire satisfaction of his superior.
- 2. That petitioner at first transferred vide order No. 3894-98/DC (P) DK Dated 12/3/2013 and just after a lapse of about three months the impugned order is issued without considering the tenure.
- 3. That on 26/07/2013 while appellant has hardly completed three Months of his tenure over the said Halqa was transferred by the D.C Peshawar Vide Order No.1119-25/DC(P)/ without any justification and totally under the influence of Political pressure.
- 4. That appellant feeling aggrieved by the above mentioned impugned and pre-mature Transfer Order file the instant departmental appeal on the following amongst other ground:-

Commissioner Peshawar

11/10

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<u>Grounds:</u>

- A. That impugned Order is result of malafide and only meant to advance favoritisms.
- B. That in the impugned order the respondent No. 1 takes the shelter of the Judgment of the Supreme Court of Pakistan in the ease of "Khawaja Asif VS Fedration" but contrary to its sprit. issued the impugned order as the judgment of the Supreme Court read as the order made by care takers government are void ab initio and illegal but the respondent inpite of cancelling the said orders issued the impugned order which is against the judgment of the Supreme Court so is not tenable.
 - C. That the order of the respondent No.1 is against the verdict of the apex court.
 - D. That impugned order is issued during the ban period so illegal and have no effect upon the appellant.
 - E. That there is a very clear and established policy for the transfer and posting of Public Servant wherein it has been categorically mentioned that a Civil servant has to serve on a post for at least three year but the impugned Transfer order has been issued in violation to the these rules.
 - \hat{F} . That impugned Order is just to give choice to the blue eyed of the Political authorities thus is result of malfide intention hence not tenable in the eyes of law.

In the light of facts submitted above the impugned Order No. 1119-25/DC (P) DK 26/07/2013 may kindly be set a side.

Mohammad Asif PH Chughal Pula Peshawar

Through

Syed Shalind Shali Nessor Por Advotate





OFFICE OF THE COMMISSIONER PESHAWAR DIVISION PESHAWAR

APPEAL NO: 9

DATE OF INSTITUTION: 19.08.2013 DATE OF DECISION: 11.10.2013

Mohammad Asif Patwari Halqa Chughal Pura Peshawar.....(Appellant)

VERSUS

1. Deputy Commissioner, Peshawar.

2. Haji Namdar Patwari.....(Respondents)

ORDER

This is a departmental appeal filed by the above name appellant against the order of Deputy Commissioner Peshawar bearing No.1119-25/DC(P)/DK dated 26.07.2013, whereby he was transferred from the post of Patwar Halqa Chughal Pura to Patwar Halqa Essa Khel Hameed.

Perusal of the record reveals that no illegality/irregularity in passing the impugned order has been committed, as posting/transfer of revenue field staff is a routine matter and are made on administrative grounds, purely in the interest of public service.

Keeping in view the above, the appeal is hereby rejected being not maintainable.

COMMISSIONER PESHAWAR DIVISION PESHAWAR.

ANNOUNCED 11.10.2013

ATTESTED



NO.SOR-1(E&AD)1-1/85(Vol:II)

Dated the Peshawar the 15th February, 2003.

1-	All Administrative secretaries to Govt: of NWFP.
2-	The Secretary to Governor NAVED
3-	The Secretary to Chief Minister, NWFP.
4-	All Heads of Attached Departments in NWFP.
5-	All the Heads of Autonomous (See)
6-	All the Heads of Autonomous/Semi Autonomous Bodies in NWFF
7-	All Distt: Co-Ordination Officer/Political Agents in NWFP. The Registrar Perhaman Will Company and the Company of the Company
8-	The Registrar Peshawar High Court Peshawar.
9_	All Distt: & Session Judges in NWFP.
-	The Secretary NWFP Public Service Commission, Deal
10-	The Director Anti-Corruption Establishment, Peshawar.
11-	The Secretary Board of Boundary 1988 The Secretary Board of Boundary 1988 The Secretary Board of Boundary 1988 The Secretary Board of Boundary 1988 The Secretary Board of Boundary 1988 The Secretary Board of Boundary 1988 The Secretary Board of Boundary 1988 The Secretary Board of Boundary 1988 The Secretary 1988 Th
12-	The Secretary Board of Revenue, NWFP, Peshawar.
	The Registrar, NWFP Service Tribunal Peshawar

SUBJECT: POSTING/TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT.

Dear Sir,

- l am directed to refer to the subject noted above and to say that in supersession of all policy, instructions issued in this behalf, the competent authority has approved the following Posting/Transfer Policy: -
- i) All the posting /transfer shall be made strictly in the public interest and shall not be abused/misused to victimize the Government Servant.
- ii) All Government servants are prohibited to exert political, Administrative or any other pressure upon the posting /transfer authorities for seeking posting transfer of their choice and against the public interest.
- iii) All contract Govt: employees appointed against specific posts cannot be posted against any other post.
- 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) Months of March and July are fixed for posting/transfer of the officers/officials excluding the officers in B-19 and above in the Province. Posting/transfer in Education and Health Departments shall be made in March

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while the remaining departments shall make posting/transfer in july. There shall be a ban on posting/transfer throughout the year excluding the aforementioned two months due to promotion/retirement/creation of new post/return from long leave/involvement in disciplinary proceedings and adjustment of surplus staff for which specific relaxation shall be obtained from the Chief Minister.

- vi) While making posting/transfers from settled area to FATA vice-versa specific approval of the Governor NWFP needs to be obtained.
- Officers may be posted on executive/administrative posts in the Disti: of their domicile except District Co-Ordination Officers (DCOs), and Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where a Police Station (Thana) of his area/residence is situated.
- viii) No posting/transfers of the officers/officials on the detailment basis shall be made.
- ix) Regarding the posting of husband/wife, both in the Provincial Services, efforts where possible would be made to post such persons at one station and this will be subject to the public interest.
- x) All posting/transfers authorities may facilitate the posting/transfers of unmarried female Govt; Servant at the station of their residence of their parents.
- xi) Officer/officials except DCOs and SPs who are due to retire within one year may be posted on their option, on posts in the Distt: of their domicile and be allowed to serve there till retirement.
- xii) In terms of Rule-17 (1) and (2) read with schedule-III of the Govt: of NWFP Rules of Business 1985, transfer of officers shown in column 1 of the following table, table shall be made by the authorities shown against each officers in column 2 thereof:

COLUMN -1 Column -2 Outside the Secretariat.

1. Officers of the all Pakistan
Unified Group i.e. DMG, PSP
including Provincial Police
Officers in BPS-18 and above.

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)

3. Head of attached Deptt: and other officers in B-19 & above in all the Deptt:

Chief secretary in consultation with the Establishment Deptt. With the of the Chief Minister.

ATTEST_D

In the Secretariat.

4. Secretaries.

Chief Secretary with the approval

5. Other officers and above the rank of Section Officers: -

a)- Within the same Deptt:

Secretary of the Depti: concerned.

b)-Within the Secretariat from one Deptt: to another.

Chief Secretary/ Secretary Establishment.

6. Officers up to the rank of Superintendents.

Secretary of the Deptt: concerned.

a)- Within the same Deptt:

Secretary of the Deptt: in consultation with the Head of Attached Deptt:

b)- To and from Attached Deptt:

Secretary Establishment.

c)- Within the Secretariat from one Deptt: to another.

- xiii) While considering the posting/transfers proposals all the concerned authorities shall keep in mind the following:
 - a). To ensure the posting of proper persons on proper posts the annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on integrity of the concerned officer/officials be considered.
 - b). Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.
- xiv) Government servants including Distt: Government employees feeling aggrieved due to the orders of posting/transfers authorities may seek remedy from the next higher authority/ the appointing authority as the case may be brought an appeal to be submitted within seven days of the receipt of such order. Such appeal shall be disposed of within fifteen days. The option of appeal against posting/transfers orders could be exercised only in the following cases:
 - i)- premature posting/transfers or posting/transfers in violation of this policy.
 - ii)- Serious and grave personal (humanitarian) grounds.
- To streamline the posting /transfers in the Distt; Govt: and to remove any imitant/confusions in this regard the provision of Rule 25 of the NWFP Distt: Govt: Rules of Business 2001 read with schedule-IV thereof is referred. As per schedule-IV the Posting /Transferring authorities for the officials/officers shown against each are as under: -

STIEST

	065-275	Authority
<u>S.No</u> 1-	Officers Posting of Distt; Coordination Officer and Executive Distt: Officer	Provincial Govt:
2-	in a Disti: Posting of Disti: Police Officer.	Provincial Govt: Provincial Govt:
3-	Other officer in BPS-17 and above posted in the Disti: Official in BPS-16 and below.	Executive Distt: Officer i
4-	Official in BPS-10 and octow	consultation with Dist Coordination Officer.

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

transfer the holder of the tenure post before the completion of his tenure or a)-

extend the period of his tenure; and

Acquire an officer to hold charge of more than one post for a period exceeding two months.

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

Your Faithfully,

Sd/xxx (GHULAM JALANI ASIF) ADDL: SECRETARY(REG:)

Endst:NO.SOR-1(E&AD)1-1/85

dated Peshawar the 15.2.2003.

VAKALAT NAMA

NO. IN THE COURT OF Service Pribunal Heshautor. (Appellant) (Petitioner) (Plaintiff) **VERSUS** (Respondent) (Defendant) -Do hereby appoint and constitute M.Asif Yousafzai, Advocate, Peshawar, 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 costs. 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. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is

Dated ______/20

outstanding against me/us.

(CLIENT)

ACCEPTED

M. ASIF YOUSAFZAI

Advocate

M. ASIF YOUSAFZAI

Advocate High Court, Peshawar.

OFFICE:

Room No.1, Upper Floor, Islamia Club Building, Khyber Bazar Peshawar. Ph.091-2211391-0333-9103240

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. **1535/2013**

Muhammad Asif Patwari halqa Chughal PuraDistrict Peshawar

VERSUS

Secretary to Government of Khyber Pakhtunkhwa Revenue & Estate Department and others.

COMMENTS ON BEHALF OF RESPONDENTS NO.1.

Preliminary objection.

- 1. The appeal is not competent in its present form.
- 2: That appellant has got no cause of action.
- 3. That appeal is bad due to mis-joinder/non-joinder of necessary parties.
- 4. That appellant is estopped by his own conduct.
- 5. That appellant has not come to the Tribunal with clean hands.
- 6. That this Tribunal has no jurisdiction to entertain the appeal.

ON FACTS.

- 1. No comments. Relates to record of the office of Deputy Commissioner, Peshawar
- 2 Pertain to record.
- Incorrect. Posting/transfer order was made by the Deputy Commissioner, to improve public service and in public interest.
- 4 Departmental Appeal has rightly been rejected by Commissioner, Peshawar Division.
- 5 Incorrect.

GROUNDS.

- A. Incorrect. Posting/transfer order was made by the Deputy Commissioner to improve public service and public interest and is very much legal.
- B. Incorrect.
- C. Incorrect.
- D. Incorrect. Transfer order was issued under the normal procedure/law.
- E. Incorrect. Deputy Commissioner, being Collector of District is empowered to make posting/transfers of Patwaris as and when needed.
- F. In-correct. As preceding para.
- G.Incorrect.
- H. Incorrect. .
- I. Incorrect.

- J. Incorrect. Commissioner being next authority has rightly rejected the appeal/representation of the appellant.
- K. Incorrect. Additional ground cannot be agitated during arguments.

The appeal having no legal facts may be dismissed with costs.

Respondent No.1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1535/2013

Muhammad Asif Patwari halqa Chughal PuraDistrict Peshawar

Khyber Pakhtunkhwa Secretary Government of Revenue & Estate Department and others.

COMMENTS ON BEHALF OF RESPONDENTS NO.10N STAY APPLICATION.

- 1. Para No.I of the application needs no comments.
- 2. Para No.2 is incorrect hence denied. The appellant has no prime facie case. The impugned order is issued by the lawful authority. Balance of convenience also lies in favour of respondents. If the impugned order is suspended, the respondent will suffer irreparable loss.
- 3. That the ground in main parawise comments may be considered as integral part of this reply.

It is requested that the application may be dismissed with cost

Respondent No.I.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1535/2013

Muhammad Asif Patwari halqa Chughal PuraDistrict Peshawar

VERSUS

Secretary to Government of Khyber Pakhtunkhwa Revenue & Estate Department and others.

COMMENTS ON BEHALF OF RESPONDENTS NO.10N STAY APPLICATION.

- 1. Para No.I of the application needs no comments.
- Para No.2 is incorrect hence denied. The appellant has no prime facie case. The impugned order is issued by the lawful authority. Balance of convenience also lies in favour of respondents. If the impugned order is suspended, the respondent will suffer irreparable loss.
- 3. That the ground in main parawise comments may be considered as integral part of this reply.

It is requested that the application may be dismissed with costs

Respondent No.I.

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL PESHAWAR.

Service appeal No.1535/2013

Versus

- 1. The Secretary to Government of Khyber Pakhtunkhwa, Revenue & Estate Department, /SMBR Peshawar.
- 2. Commissioner, Peshawar Division, Peshawar.
- 3. Deputy Commissioner, Peshawar.

REPLY ON STAY APPLICATION ON BEHALF OF RESPONDENT NO.2

RESPECTFULLY SHEWETH.

- 1. No comments.
- 2. In correct. Appellant has got no case at all. The impugned order is with law full authority and is sustainable in law. No balance of convenience ever lies in favour of applicant. Transfer to any post and anywhere does not give irreparable loss to any servant.
- 3. The grounds of main reply may be considered as integral part of this application.
- 4. Incorrect. No rule/law/judgment of the August Supreme Court of Pakistan has been violated.

It is thus prayed that stay application may graciously be dismissed.

Dated 10.04.2014

Peshawar Division Peshawar. (Respondent No.2)

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL PESHAWAR.

Service appeal No.1535/2013

Versus

- 1. The Secretary to Government of Khyber Pakhtunkhwa, Revenue & Estate Department, /SMBR Peshawar.
- 2. Commissioner, Peshawar Division, Peshawar.
- 3. Deputy Commissioner, Peshawar.

REPLY ON STAY APPLICATION ON BEHALF OF RESPONDENT NO.2

RESPECTFULLY SHEWETH.

- 1. No comments.
- 2. In correct. Appellant has got no case at all. The impugned order is with law full authority and is sustainable in law. No balance of convenience ever lies in favour of applicant. Transfer to any post and anywhere does not give irreparable loss to any servant.
- 3. The grounds of main reply may be considered as integral part of this application.
- 4. Incorrect. No rulc/law/judgment of the August Supreme Court of Pakistan has been violated.

It is thus prayed that stay application may graciously be dismissed.

Dated 10.04.2014

Commissioner.
Peshawar Division Peshawar.
(Respondent No.2)

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL PESHAWAR.

Service appeal No.1535/2013

Muhammad Asif, Patwari, Presently posted as Patwari Halqa Chugal Pura, District Peshawar......Petitioner

Versus

- 1. The Secretary to Government of Khyber Pakhtunkhwa, Revenue & Estate Department, /SMBR Peshawar.
- Commissioner, Peshawar Division, Peshawar.
- 3. Deputy Commissioner, Peshawar.

REPLY ON STAY APPLICATION ON BEHALF OF RESPONDENT NO.2

RESPECTFULLY SHEWETH.

- 1. No comments.
- 2. In correct. Appellant has got no case at all. The impugned order is with law full authority and is sustainable in law. No balance of convenience ever lies in favour of applicant. Transfer to any post and anywhere does not give irreparable loss to any servant.
- 3. The grounds of main reply may be considered as integral part of this application.
- 4. Incorrect. No rulc/law/judgment of the August Supreme Court of Pakistan has been violated.

It is thus prayed that stay application may graciously be dismissed.

Dated 10.04.2014

Compissioner Peshawar Division Peshawar. (Respondent No.2)

Before the Hon, ble member II, Service Forbund Ungber Parchten Icara.

Subjet: Application for Setting aside Ex-Poste decision against Resport NO2.

Respectfully Shevelh: -

It is hubby Insmitted that Case titled: - Muhanned Asif vs Commission Perham fixed for Learning on 14/3/2014 has been declared / decided as Bx- parte against Respondent No 2 (Commission Perham on) due to absence of the Rep. of Commission Perham Perhi

It is Subly parayed that this office intend to deposite Comments in The Subject titled case and the ex-parte decision again Raspelt No. 2, my bendly be set aside, giving apportantly of defence of the case titled, decided on 14/3/2014

Dt 10/4/2019

Ob estually yours

A mb

Muhammel Ayub

Rap. & Commento

Page

Resport No 2.

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL PESHAWAR.

Service appeal No.1535/2013

Versus

- 1. The Secretary to Government of Khyber Pakhtunkhwa, Revenue & Estate Department/SMBR Peshawar.
- 2. Commissioner, Peshawar Division, Peshawar.
- 3. Deputy Commissioner, Peshawar.

PARA WISE COMMENTS ON MAIN APPEAL ON BEHALF OF RESPONDENT NO.2 ARE AS UNDER:

Preliminary objection:

- 1. The appeal is not competent in its present form.
- 2. That appellant has got no cause of action.
- 3. That appeal is bad due to mis-joinder/non-joinder of necessary parties.
- 4. That appellant is estopped by his own conduct.
- 5. That the appellant has not come to the Tribunal with clean hands.
- 6. That the instant appeal is barred by law.

Respectfully sheweth.

- 1. No comments. Pertains to record of Respondent No.3.
- 2. No. comments. Pertains to record of Respondent No.3.
- 3. Incorrect. In fact, the impugned order was issued by Respondent No.3 in pursuance of Supreme Court of Pakistan decision rendered in Khawaja Asif VS Federation of Pakistan on 22/5/2013 and 6/6/2013 and delimitation of revenue estates ordered by the BOR, Khyber Pakhtunkhwa, however, respondent No. 3 being head of the District Administration is also responsible to the provincial government with regard to maintaining discipline, enhance performance of officials/subordinate offices and ensuring optimum service delivery to the public and on the basis of the fact that Respondent No. 3 is competent authority to transfer any official working under his control.
- 4. Correct to the extent that departmental appeal of the appellant was rejected, however the rejection order is based on sound and cogent reason.
- 5. Incorrect. No rule/law/policy/judgment of the August Supreme Court of Pakistan has been violated while transferring the appellant and the impugned orders were issued in the best public interest to improve service delivery to the masses.

GROUNDS

- A. In correct. As stated in para-3.
- B. In correct. The transfer order of the appellant has been issued on the basis of the fact explained in Para-3 above and no political interference is involved.
- C. In correct. No violation of Article-4, 25 of the constitution and section 24-A of the General Clauses Act 1897 have been made. Moreover, as stated in para-3.
- D. In correct. As stated in Para- 3 & para-5 above.
- E. In correct. As stated in para-3 & 5.

J. Her

- F. In correct. The allegations are based on mere presumptions and devoid of factual facts.
- G. In correct. As stated in Paras- 3 & 5.
- H. In correct. As evident from the contents of impugned order of DC Peshawar, the same were issued in compliance of the Supreme Court of Pakistan dated 22.05.2013 & 06.06.2013.
- I. In correct. No violation of the policy has been made and as explained in para-5.
- J. In correct. As stated in Para-C of grounds & para-5 of facts.
- K. The respondent seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, prayed that on basis of the above, the appeal may very graciously be rejected.

Dated 10.04.2014

Commissioner
Peshawar Division Peshawar.
(Respondent No.2)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHAWA PESHAWAR.

Service appeal No. 1535/2013

Muhammad Asfi Petitioner

VS

Senior Member Board of Revenue and Estate

Commissioner Peshawar Division, Peshawar.

Deputy Commissioner Peshawar

PARAWISE REPLY ON BEHALF OF RESPONDENT NO. 1 & 2

Preliminary objections:-

- 1. That the appellant has got no cause of action.
- 2. That the appeal is not maintainable in its present form.
- 3. That the appellant has cancealed material facts from Honrable Tribunal and has not approached to the Tribunal with clean hands.
- 4. That this Honorabe Tribunal has got no jurisdiction to adjudicate the appeal.
- 5. That the appeal is bad in the present form due to non-joinder and mis-joiner of necessary parties.
- 6. That the Office order vide No. 5612-19/DOR/DK, dated 15-04-2013 is an administrative order, which do not affect the terms and condition of service of the appellant.

RESPECTFULLY SHEWEATH

- 1. Pertains to record.
- 2. Pertains to record.
- 3. Incorrect. The impugned order is in accordance with law.
- 4. The departmental appeal was rejected on the grounds of maintainability, hence the appeal is not maintainable. Further transfer is terms and condition of service and Government servant has to serve any where he is transferred.
- 5. Incorrect order No. 5612-19/DOR/DK passed by the Competent Authority is very much legal.

GROUNDS

- a. Incorrect. No polifical motives are involved in the subject order. The order is purely on administrative grounds and passed by the Competent Authority where by the appellant was directed to report to PDA Office.
- b. Incorrect. As denied and replied in para (a) above.
- c. Incorrect. No illegality has been done by the Competent Authority.
- d. Incorrect. The order issued by the competent authority.
- e. Incorrect.
- f. Incorrect,
- ig. It is, therefore, humbly submitted that the intact appeal may please be dismissed with cost thought out.

^	15 1 1	
,	 Respondent 	

3. Respondent

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BEFORE THE SERVICE TRIBUNAL KHYBER P	ΑΚΗΤΙΙΝΙΚΗ ΔΙΑΖ	A DECE AMAR
- 30 MCG ODDGOLNO, 1535/2013		H FESTINIVAR.
Muhammad Asfi,	Petilioner	
Senier Member Board of Revenue and Estate	•	. ·
Commissioner Peshawar Division, Peshawar.		
Defoly Commissioner Poshawar		

PARAWISE REPLY ON BEHALF OF RESPONDENT NO. 1 & 2

Proliminary objections:

- 1. That the appollant has got no cause of action.
- 2. That the app is not maintainable in its present form.
- 3. That the app. It has cancealed material facts from Horizable tribunal and has mol approached to the fribunal with clean hands.
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RESPECTFULLY SHEWEATH

- C. Pertains to record.
- Pertains to record.
- Incorrect. The impugned order is in accordance with law.
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- .d. Incorrect: The order issued by the competent authority.
- .e. Incórrect.
- Incorrect.
- ri. II, is, therefore, humbly submitted that the infact appeal may please be: dismissed with cost thought out.

 Responde 	Shill
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Lespondent

BISFORE THE HON'BLE BENCH-IT, KHYBER PAILHTUNKHWA, SERVICE TRIBUNAL, PESH

Sub:

Application for Setting assicle Ex-parte Decision agant Deputy Commissioner, Perhawar (Respondent NO.3) in case tithe "Muhammad Heif Vs SMBR etc.

R/Sheweth.

Subject titled care was fixed for heavily before the strained for heavily before the 1tm the, Somie Tribunal Bench-B, Khyper Pacchtunicher on 14/3/2014, which have hun decided as exparte against the Deputy Commissioner, Perhawar as respondent NO-3.

It is humbly prayed that exparts decision as mentioned above may please he let aside.

Comments in the fungent case has heer prepared Congred and network to himmite to day hoper this book count.

Jours Bhediantly.

Diluwar Kham.

ADK/Rep: Of DC, Peshawar

10/4/2014.

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1535/2013

Muhammad Asif

VS

Revenue Deptt:

REJOINDER ON BEHALF OF APPELLANT

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-6) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 Admitted, hence no comments.
- 2 Admitted, hence no comments.
- Incorrect, the appellant was transferred prematurely violating the judgments of Superior Courts.
- Incorrect, the rejection of departmental appeal is not based on sound and cogent reason.
- Incorrect, the posting and transfer order is premature, thus violation of Supreme Courts Judgments, moreover the posting and transfer order is not in public interest but based on the recommendation of sitting MPA thus politically motivated.

GROUNDS:

- A) Incorrect, the order was made on the recommendation of sitting MPA thus politically motivated which is void, unlawful and passed in violation of posting transfer policy of Govt.
- B) Incorrect, while Para-B of appeal is correct.
- C) Incorrect, while Para-C of the appeal is correct.
- D) Incorrect, and not reply according to Para-D of the appeal.
- E) Incorrect. The Para-E of appeal and contention of appellant is correct.
- F) Incorrect, the transfer was made just after 4 months on recommendation of sitting MPA which clearly shows political pressure on authorities.
- G) Incorrect, while para G of the appeal is correct.
- H) Incorrect, while para H of the appeal is correct.
- I) Incorrect, the respondents have violated the Govt: posting/transfer policy on premature transfer of the appellant on political interference.
- J) Incorrect, while para J of the appeal is correct.
- K) Legal.

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

APPELLANT Muhammad Asif

Through:

(M. ASIF YOUSAFZAI) ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.

DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1535/2013

Muhammad Asif

VS

Revenue Deptt:

REJOINDER ON BEHALF OF APPELLANT

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-6) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

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- Incorrect, the rejection of departmental appeal is not based on sound and cogent reason.
- Incorrect, the posting and transfer order is premature, thus violation of Supreme Courts Judgments, moreover the posting and transfer order is not in public interest but based on the recommendation of sitting MPA thus politically motivated.

GROUNDS:

- A) Incorrect, the order was made on the recommendation of sitting MPA thus politically motivated which is void, unlawful and passed in violation of posting transfer policy of Govt.
- B) Incorrect, while Para-B of appeal is correct.
- C) Incorrect, while Para-C of the appeal is correct.
- D) Incorrect, and not reply according to Para-D of the appeal.
- E) Incorrect. The Para-E of appeal and contention of appellant is correct.
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- G) Incorrect, while para G of the appeal is correct.
- H) Incorrect, while para H of the appeal is correct.
- I) Incorrect, the respondents have violated the Govt: posting/transfer policy on premature transfer of the appellant on political interference.
- J) Incorrect, while para J of the appeal is correct.
- K) Legal.

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

APPELLANT Muhammad Asif

Through:

(M. ASIF YOUSAFZAI) ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.

ATTES DO 2 CA

DEPONENT

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1535/2013

Muhammad Asif

VERSUS

Revenue Deptt:

APPLICATION FOR IMPLEADMENT OF BELOW MENTIONED OFFICIAL

RESPECTFULLY SHEWETH:

- 1. That the above mentioned appeal is pending before this august Tribunal.
- 2. That the applicant has challenged the transfer order dated 26.7.2013, wherein the respondent No.4 (Namdar) was posted in his place.
- 3. That during the pendency of appeal the respondents Deptt: has issued another order on 30.5.2014, whereby an other official, namely Fazal Rabi was posted on the disputed post. (Copy of the order is attached as Annexure-A1)
- 4. That in the prevailing circumstances it is necessary to implead Mr.Fazal Rabi as respondent in the instant appeal. His name and address is as under.

Fazal Rabi, Patwari, Halga Shahi Pyan, Peshawar.

It is most therefore, humbly prayed that the official mentioned in para-4 above, may be arrayed as respondent in the instant appeal being necessary party and the notice may also please be issued for the date fixed.

Appellant/Applicant

Mohámmad Asif

Through:

(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.
&
(TAIMUR ALI KHAN)
ADVOCATE, PESHAWAR.

AFFIDAVIT:

It is affirmed on oath that the contents of application are true and correct.

Deponent

