

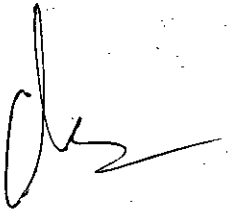
Service Appeal No. 1555/2013,
Muhammad Zaman Versus Secretary (Admn, Infra & Coord)
FATA Secretariat, Peshawar.

14.5.2014.

Appellant with counsel, Mr. Muhammad Jan, GP Kifayatullah, Administrative Officer for the official respondents and private respondent No. 4 alongwith counsel present.

2. At the very outset it was pointed out by the respondents that the appellant has been retired from service and his appeal, wherein he has impugned the transfer order, has become infructuous.

3. The learned counsel for the appellant frankly admitted at the bar that the appellant has already been retired from service, however, through the instant appeal, the appellant has impugned the transfer order on the ground that it was illegal and against the government policy as the appellant during the last leg of service wanted his posting as Head Clerk, C&W FATA Division, FR Kohat to avail pensionery benefits from that very place.



4. Through the instant appeal though the appellant has challenged the transfer order dated 22.11.2013 but in the meanwhile he got retired and the appeal has become infructuous. However, keeping in view the claim of the appellant through the instant appeal and considering the principles of natural justice, the respondents are directed to allow pensionery benefits to the appellant from place when he was already serving C&W Division, FR Kohat. Similarly, the respondents should also resolve the issue of salary of

the appellant which was withheld from him and be paid to him in accordance with his entitlement from the said place of posting by creating a supernumerary post for the purpose of receiving salary and pensionary benefits.

5. In the light of the above observations, the instant appeal stand disposed of accordingly.

ANNOUNCED
14.5.2014.


MEMBER


MEMBER

1555/13

1.4.2014.

Appellant with Junior counsel, Mr. Muhammad Jan, GP with Kifayatullah, AO for official respondents and private respondent No. 4 with counsel present. Senior counsel for the appellant is not available. To come up for arguments on 7.5.2014.


MEMBER


MEMBER

07.05.2014

Appellant in person, Mr. Muhammad Jan, GP with Kifayatullah, Administrative Officer for official respondents and private respondent No. 4 with counsel present. Appellant submitted an application and stated that he wants to engage another counsel. He requested for short adjournment. To come up for arguments on 8.5.2014.


MEMBER


MEMBER

8.5.2014.

Appellant with Mr. Daud Burki Advocate/counsel present and Wakalatnama placed on file. Mr. Muhammad Jan, GP with Kifayatullah, AO for official respondents and private respondent No. 4 in person present and stated that his counsel was present from morning till 12.00 O'clock but left for hon'ble High Court. To come up for arguments on 14.5.2014.


MEMBER


MEMBER

16.1.2014

Counsel for the appellant, Mr. Usman Ghani, Sr.GP with Kifayatullah, Admn. Officer for the official respondents present and stated that written reply prepared for vetting and requested for adjournment. Counsel for private respondent No.4 also present and requested for further time. To come up for written reply on main appeal as well as reply/arguments on application on 3.2.2014.

MEMBER

MEMBER

3.2.2014

Appellant with counsel and Mr. Muhammad Adeel Butt, AAG with Kifayatullah, Administrative Officer for the respondents for the official respondents and private respondent No. 4 with counsel present. Written replies received. Copies handed over to counsel for the appellant. To come up for arguments on stay application on 26.2.2014.

MEMBER

MEMBER

26.2.2014

Appellant with counsel, Mr. Usman Ghani, Sr.GP with Kifayatullah, Administrative Officer for the official respondents and private respondent with junior counsel present. Rejoinder received. Copies handed over to the learned SGP and junior to counsel for private respondent. To come up for arguments on 01.4.2014.

MEMBER

Mr. Muhammad Zaman

1555/2013

9.12.2013.

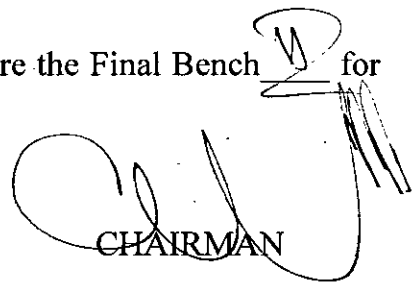
Appellant with counsel present. Preliminary arguments heard and case file perused. Through the instant appeal, the appellant has impugned order dated 22.11.2013, vide which his departmental appeal against the transfer order dated 28.8.2013 was turned down. Points raised at the Bar before the Tribunal need consideration. The appeal is admitted to 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 submission of written reply on 3.1.2014. Alongwith the appeal, the appellant also submitted an application for suspension of impugned order, however, the same will be decided on the date fixed, after notice to the opposite party.

Appellant deposited
Process fee of Security
of Rs-2200/- Bank Receipt
attached with file


MEMBER

9.12.2013

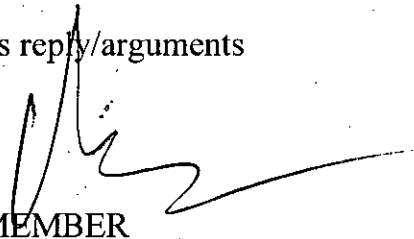
This case be put up before the Final Bench ^W for further proceedings.


CHAIRMAN

27.12.2013.

Appellant with counsel, Mr. Muhammad Jan, GP with Kifayatullah, Admn. Officer for the official respondents and private respondent No. 4 with counsel present. Respondents need time. To come up for written reply on main appeal as well as reply/arguments on stay application on 14.1.2014.


MEMBER


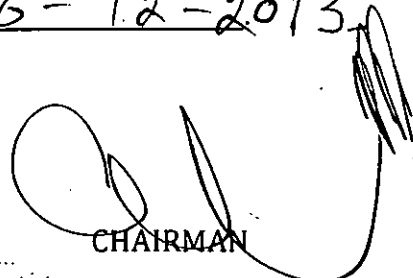
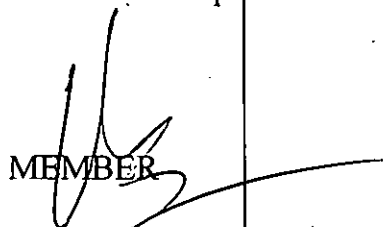

MEMBER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1555/2013

S.No.	Date of order (Proceedings)	Order or other proceedings with signature of judge or Magistrate
1		3
1	02/12/2013	<p>The appeal of Mr. Muhammad Zaman presented today by Mr. Saadullah Khan Marwat Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	3-12-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>6-12-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
3	6-12-2013	<p>Counsel for the appellant present. Due to shortage of time, preliminary arguments could not be heard. To come up for preliminary hearing on 9.12.2014.</p> <p style="text-align: right;"> MEMBER</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

S.A. No. 1555/2013

Muhammad Zaman

Versus

Secretary FATA & others,

I N D E X

S.No	Documents	Annex	P.No.
1.	Memo of Appeal		1-4
2.	Transfer Order, 28.08.2013	"A"	5
3.	Civil Suit, 10.9.13	"B"	6-8
4.	Rejection Order of Suit, 26.9.13	"C"	9-10
4.	Writ Petition, 11.09.2013	"D"	11-14
5.	Disposal Order, 04.10.2013	"E"	15-16
	Representation, 16.09.2013	"F"	17
6.	Service Appeal, 10.10.2013	"G"	18-21
7.	Suspension Order, 28.10.2013	"H"	22-23
8.	Dismissal Order, 22.11.2013	"I"	24-27
9.	Rejection of Rep., 22.11.2013	"J"	28
10.	Application for Relief, 25.11.2013		29-30

Through

Appellant

Dated.29.11.2013

Saad Ullah Khan Marwat
Advocate.

21-A Nasir Mension,
Shoba Bazar, Peshawar.

Ph: 0300-5872676

1

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 1555 /2013

Muhammad Zaman S/o Masti Khan
Head Clerk, C&W Division, FR Kohat Appellant

Versus

1. Secretary (Admn, Infra & Coord)
FATA, Secretariat, Warsak Road,
Peshawar.
2. Chief Engineer, FATA, Works &
Services Department, Peshawar.
3. Administrative Officer, Works &
Services Department, FATA,
Peshawar.
4. Nadar Khan, Assistant, Sothern
C&W, FATA, Circle Peshawar.
(Under transfer to FR, Kohat). Respondents

5. *Additional chief secy FATA, Govt of KP, Peshawar*

1598
29-11-13

APPEAL UNDER SECTION 4 OF THE
KPK SERVICE TRIBUNAL ACT 1974,
AGAINST ORDER DATED 22.11.2013,
OF RESPONDENT NO. 1 WHEREBY
APPEAL DATED 16.09.2013 WAS
REJECTED FOR NO LEGAL REASON.

P. 28

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth;

1. That appellant was performing his duties as Head Clerk in C&W Division, FR Kohat, with great zeal and deal.
2. That Superintending Engineer, Aslam Khan Wazir Sothern Circle Peshawar made telephone to appellant to supply Tender Form to contractors round about 4 / 5 for road work but he refused to do so as the contractors were not eligible for the purpose as per their enlistment with Engineering Council. On the aforesaid count, contractors made complaints against him. Mr. Amjad Afridi, Adviser to C.M, KPK, was also behind them. All of them met respondent No. 2 on 28.08.2013 in his office and then the transfer order was issued by him. Recording of the dispute was made and is available and as and when, the same was required would be produced to the Hon'ble Tribunal.
3. That respondent No. 2, without any investigation, inquiry or to call for any explanation of appellant, passed / issued order dated 28.08.2013 wherein he was transferred from C&W, FATA Division, FR Kohat to C&W, FATA Circle, Peshawar. (Copy as annex "A")
4. That appellant filed Civil Suit before the court of Senior Civil Judge, Kohat which was turned down on the score of jurisdiction. (Copies as annex "B" & "C")
5. That thereafter appellant filed writ petition before Peshawar High Court, Peshawar on 11.09.2013 which came up for hearing on 04.10.2013 and then the Hon'ble Court was pleased to direct the appellate authority to decide the representation of the petitioner in accordance with law through speaking order within a month and then writ petition was disposed off accordingly. (Copies as annex "D" & "E")
6. That on 16.09.2013, appellant submitted representation before respondent No. 1 for cancellation of order dated 28.08.2013 and as per the information of appellant, the same was filed on 27.09.2013 but copy of the same was supplied to appellant despite written request too. (Copy as annex "F")

7. That thereafter appellant filed appeal No. 1397/2013 before this Hon'ble Tribunal on 08.10.2013 which came up for hearing on 28.10.2013 and then the Hon'ble Chairman of the Tribunal was pleased to suspend the operation of the impugned order subject to notice and then the case was fixed on 05.11.2013. (Copies as annex "G" & "H")
8. That on 21.11.2013, arguments were heard and the case was then fixed on 22.11.2013 for orders and on the said date, the appeal was dismissed, being premature as by then no appellate order was passed by the authority. (Copy as annex "I")
9. That on 22.11.2013, the appellate authority rejected the departmental appeal of appellant on grounds which were not part and parcel of the subject matter. (Copy as annex "J")

Hence this appeal, inter alia, on the following grounds:-

GROUND S:


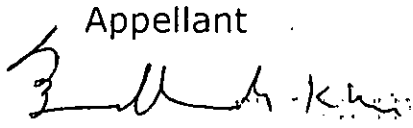
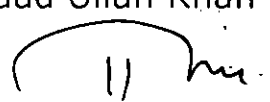
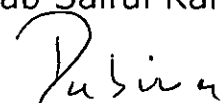
- a. That as is evident from order dated 28.08.2013 of respondent No. 2, appellant was transferred from C&W, FATA Division FR Kohat to the post of Assistant Southern C&W, FATA, Circle, Peshawar on "**serious complaints**" but such allegation is totally false and absolutely incorrect as appellant did not make himself part and parcel of the mal practices of the contractors, so as a punishment, he was transferred.
- b. That the impugned transfer order was based on serious complaints against appellant but the authority never confronted him with the same nor any inquiry was made, being mandatory, as the allegations were false.
- c. That though appellant has filed suit / writ petition before the Civil Courts but as per the verdicts of the apex of the Supreme Court of Pakistan and per Article 212 of the Constitution of Islamic Republic of Pakistan 1973, said courts have no

jurisdiction in matters relating to terms and condition of a Civil Servant.

- d. That order of rejection of representation of appellant by the appellate authority was not based on legal footing, rather on the grounds which were not part and parcel of the matter, so the same is of no legal effect. Only para 2 of the appellate order relates to the subject matter which is not supported by any reason and is against the verdicts of the apex Court.
- e. That the subject matter is not a routine transfer but appellant did not surrender of the illegal demand of the contractors as well as Amjid Afridi, Adviser to CM, KPK, so the same is based on malafide and political interference.
- f. That politically motivated orders are highly condemned by the apex Supreme Court of Pakistan, rather stressed upon the courage of the servants not to comply with the same.
- g. That appellant is to retire from service within next 5 / 6 months. On attaining the age of superannuation.

It is, therefore, most humbly prayed that on acceptance of appeal, order dated 22.11.2013 of respondent No. 1 be set aside and appellant be restored to his original post of Head Clerk, C&W, FATA Division, FR Kohat with all back benefits.

Dated.29.11.2013


 Appellant
 Through 
 Saad Ullah Khan Marwat

 Arbab Saiful Kamal
 & 
 Miss Rubina Naz,
 Advocates.



OFFICE OF THE CHIEF ENGINEER (FATA)
WORKS & SERVICES DEPARTMENT
PESHAWAR

No. 186 / 12/11-E
Dated Peshawar the 28 / 09 / 2013

OFFICE ORDER

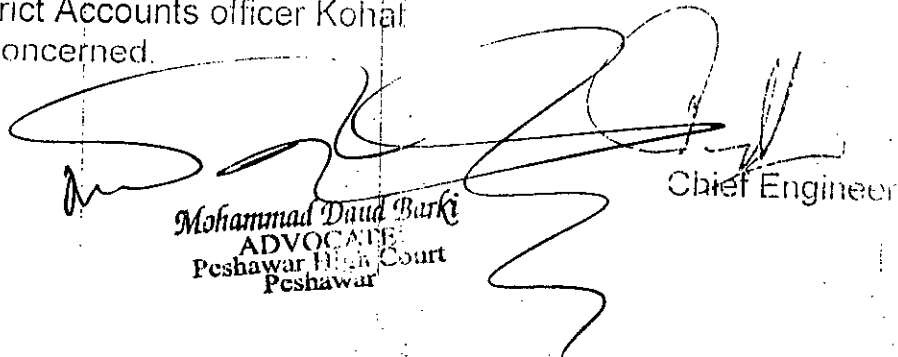
Due to serious complaints against Mr. Muhammad Zaman Head Clerk, C&W FATA Division FR Kohat/Peshawar, the following posting/Transfers of the Assistant/Head Clerk are hereby ordered with immediate effect in the public interest.

S.#	Name Designation	&	From	To	Remarks
1	Mr. Muhammad Zaman		Head Clerk C&W FATA Division FR Kohat/Peshawar	Assistant Southern C&W FATA Circle Peshawar	Vice No. 1
2	Mr. Nadir Khan		Assistant Southern C&W FATA Circle Peshawar	Head Clerk C&W FATA Division FR Kohat/Peshawar	Vice No. 2

(Engr. Syed Daud Jan)
Chief Engineer.

Copy to:

1. The Chief Engineer (C), C&W department Khyber Pakhtunkhwa Peshawar
2. The Additional Accountant General (PR) Sub Office Peshawar
3. The Superintending Engineer, Southern C&W FATA Circle Peshawar
4. The Executive Engineer C&W FATA Division FR Kohat/Peshawar
5. The District Accounts officer Kohat
6. Official concerned.


Mohammad Daud Barki
ADVOCATE
Peshawar High Court
Peshawar
Chief Engineer

Attested
by

ایک سال ریٹائرڈ ہونے کے بعد یہ فیصلہ کیا گیا کہ اس شخص کو
 تین سال کی عطلہ دیا جائے گا۔ اس کے دوران اس شخص کو آرڈر آف ڈسپلینس
 جاری کیا جائے گا اور یہ فیصلہ اس کے لئے جاری کیا جائے گا۔
 اس کے دوران اس شخص کو آرڈر آف ڈسپلینس جاری کیا جائے گا۔
 اس کے دوران اس شخص کو آرڈر آف ڈسپلینس جاری کیا جائے گا۔
 اس کے دوران اس شخص کو آرڈر آف ڈسپلینس جاری کیا جائے گا۔

مجلس اعلیٰٰ نے اس شخص کو آرڈر آف ڈسپلینس جاری کیا ہے۔
 اس کے دوران اس شخص کو آرڈر آف ڈسپلینس جاری کیا جائے گا۔

اس شخص کو آرڈر آف ڈسپلینس جاری کیا جائے گا۔
 اس کے دوران اس شخص کو آرڈر آف ڈسپلینس جاری کیا جائے گا۔

اس شخص کو آرڈر آف ڈسپلینس جاری کیا جائے گا۔

1. اس شخص کو آرڈر آف ڈسپلینس جاری کیا جائے گا۔
 اس کے دوران اس شخص کو آرڈر آف ڈسپلینس جاری کیا جائے گا۔

2. اس شخص کو آرڈر آف ڈسپلینس جاری کیا جائے گا۔
 اس کے دوران اس شخص کو آرڈر آف ڈسپلینس جاری کیا جائے گا۔

3. اس شخص کو آرڈر آف ڈسپلینس جاری کیا جائے گا۔
 اس کے دوران اس شخص کو آرڈر آف ڈسپلینس جاری کیا جائے گا۔

(3) یہ دعویٰ ہے کہ فلاں فلاں نے فلان فلان کو اپنے قبضے سے

لے لیا اور اس کو اپنے قبضے سے لے لیا اور یہ دعویٰ ہے کہ فلاں فلاں نے
اسے اپنے قبضے سے لے لیا اور یہ دعویٰ ہے کہ فلاں فلاں نے
یہ قبضے سے لے لیا اور یہ دعویٰ ہے کہ فلاں فلاں نے

(4) یہ دعویٰ ہے کہ فلاں فلاں نے فلاں فلاں کو اپنے قبضے سے
لے لیا اور یہ دعویٰ ہے کہ فلاں فلاں نے

(5) یہ دعویٰ ہے کہ فلاں فلاں نے فلاں فلاں کو اپنے قبضے سے
لے لیا اور یہ دعویٰ ہے کہ فلاں فلاں نے

(6) یہ دعویٰ ہے کہ فلاں فلاں نے فلاں فلاں کو اپنے قبضے سے
لے لیا اور یہ دعویٰ ہے کہ فلاں فلاں نے

لے لیا اور یہ دعویٰ ہے کہ فلاں فلاں نے
لے لیا اور یہ دعویٰ ہے کہ فلاں فلاں نے
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10.9.2013

محمد رضا خان (مدعی) نے یہ دعویٰ کیا ہے

[Handwritten signature]

Attested by *[Handwritten signature]*

Date of C. Proceedings 2

GG&PD—Khyber Pakhtunkhwa—1115—Civil Judge—15 Pads—4.4.2013—(15)—Civil Judge Order

FORM "B" FORM OF ORDER SHEET

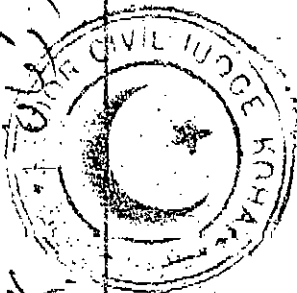
SERIAL NO. OF ORDER OR PROCEEDINGS	DATE OF ORDER OR PROCEEDINGS	ORDER OR OTHER PROCEEDINGS WITH SIGNATURE OF JUDGE OR MAGISTRATE AND THAT OF PARTIES OR COUNSEL, WHERE NECESSARY
1	2	3

0-5.
26-9-13

26-9-13

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(3)



Handwritten notes on the left margin, including dates like 4/10 and 4/13, and other illegible text.

Asmatullah Wazir
Civil Judge V/JM
Kohat

Defendant Mr. Nadir Khan along with his counsel present, while no one present on behalf of plaintiff. Its almost 12 O'clock. Ex-Parte arguments heard.

Arguments for the counsel for the defendant No. 4 and perusal of case file reveals that plaintiff is civil servant in C & W Department who seeks declaration and Injunctions regarding his transfer which is a matter of service tribunal. The available record submitted by plaintiff does not answer satisfactorily, the question of jurisdiction and maintainability and

Asmatullah Wazir
Civil Judge V/JM
Kohat

ATTESTED TO
Handwritten signature and stamp



2. That the petitioner joined C&W Department, Peshawar as Junior Clerk and is going to retire from service after 09 months on 14.05.2014. (Copy of CNIC is Annexure "A").
3. That the respondent No.2 issued a transfer order dated 28.08.2013, in which the petitioner has been transferred to Peshawar and an other official i.e. respondent No.4 has been posted in place of petitioner. (Copy of order dated 28.08.2013 is Annexure "B").
4. That the petitioner also made oral request to the respondent No.2 for cancellation of transfer order on the basis of short period left for retirement, but the same was not accede, the petitioner also moved representation to the competent authority i.e. respondent No.1 on 09.09.2013, which is still pending. (Copy of representation/ appeal is Annexure "C").
5. That having no other remedy, the petitioner is constrained to file the instant petition, on the following grounds:

G R O U N D S:

- A. That transfer of the petitioner in his last leg of service, where only 09 months of service of petitioner is left, is against the norms of justice and fairplay.

FILED TODAY

Deputy Registrar

11 SEP 2013

ATTESTED

EXAMINER
Peshawar High Court

... OR OTHER PROCEEDINGS WITH SIGNATURE OF JUDGE OR MAGISTRATE AND THAT OF PARTIES OR COUNSEL, WHERE NECESSARY

3

thus the suit stands dismissed. File be
consigned to record room after its
proper compilation and completion

Order Announced

04.10.2013

(ASMATULLAH WAZIR)
Civil Judge-V, Kohat

Asmatullah Wazir
Civil Judge V/1M
Kohat

Attested
by

ATTESTED TO BE TRUE COPY

COPYING BY 25/11/2013

D 14

IN THE PESHAWAR HIGH COURT, PESHAWAR

W.P No. 2448 - P/2013



Muhammad Zaman S/o Masti Khan
R/o House No.E-3, Street C&W Colony Road Kohat,
Head Clerk C&W Division, FRs Kohat & Peshawar, Kohat

.....Petitioner

VERSUS

1. Additional Chief Secretary FATA at Peshawar
2. Chief Engineer (FATA),
Works & Services Department, Peshawar
3. Administrative Officer,
C/o Chief Engineer C&W FATA, Peshawar
4. Mr. Nadir Khan, Assistant Southern
C&W FATA Circle, Peshawar.....Respondents

*Presently R/o: C&W Colony, Quarter No E-1,
O.T.S. Road Kohat.*

WRIT PETITION UNDER ARTICLE 199
OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN, 1973

Respectfully Sheweth:

1. That the petitioner is the resident of District Kohat and being the citizen of Pakistan, has ever legal and constitutional rights duly protected under the law of the land.

FILED TODAY
Deputy Registrar
11 SEP 2013

ATTESTED
EXAMINER
Peshawar High Court



2. That the petitioner joined C&W Department, Peshawar as Junior Clerk and is going to retire from service after 09 months on 14.05.2014. (Copy of CNIC is Annexure "A").
3. That the respondent No.2 issued a transfer order dated 28.08.2013, in which the petitioner has been transferred to Peshawar and an other official i.e. respondent No.4 has been posted in place of petitioner. (Copy of order dated 28.08.2013 is Annexure "B").
4. That the petitioner also made oral request to the respondent No.2 for cancellation of transfer order on the basis of short period left for retirement, but the same was not accede, the petitioner also moved representation to the competent authority i.e. respondent No.1 on 09.09.2013, which is still pending. (Copy of representation/ appeal is Annexure "C").
5. That having no other remedy, the petitioner is constrained to file the instant petition, on the following grounds:

G R O U N D S:

- A. That transfer of the petitioner in his last leg of service, where only 09 months of service of petitioner is left, is against the norms of justice and fairplay.

FILED TODAY

Deputy Registrar

11 SEP 2013

ATTESTED

EXAMINER
Peshawar High Court

13

- B. That the petitioner is going to retire from service after 09 months and incase of transfer at the last moments of his service will create hardship for petitioner in preparing and finalizing his pension papers.
- C. That the Govt of KPK has also issued posting/ transfer policy which was duly circulated to all the departments, in which the transfer in last leg of service is banned and if necessitated, then to the district of domicile, but in case of petitioner the said clause of the policy has been violated and the petitioner has been transferred to another district.
- D. That the petitioner has not been treated according to the settled law / policy government the posting/ transfers of officials.
- E. That the petitioner seeks permission to advance other grounds and proofs at the time of hearing.

It is, therefore, humbly prayed that on acceptance of this petition, the order dated 28.08.2013 may be declared to the extent of petitioner as illegal, unconstitutional and violation of posting/ transfer policy of the government and the respondents may please be directed not to transfer the petitioner in his last 9 months service out of his district Kohat.

FILED TODAY
Deputy Registrar
11 SEP 2013


ATTESTED
EXAMINER
Peshawar High Court

Any other remedy which deems fit by this Honourable Court may also be granted in favour of petitioner.

INTERIM RELIEF:

By way of interim relief, this august Court may kindly be pleased to suspend the operation of the impugned order dated 28.08.2013, till the final disposal of the writ petition.


Through

Petitioner

Muhammad Daud Barki
Advocate, Peshawar

Date: 9/9/2013

CERTIFICATE:

Certified on instructions of my client that petitioner has not previously moved this Hon'ble Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 regarding the instant matter.



ADVOCATE

LIST OF BOOKS:

1. Constitution of Islamic Republic of Pakistan, 1973
2. Any other law books according to need

FILED TODAY
Deputy Registrar
11 SEP 2013

ACCEPTED
EXAMINER
Peshawar High Court


ADVOCATE

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Court of.....

Case No.....

Serial No. of Order of Proceedings	Date of Order of Proceedings	Order or other Proceedings with Signature of Judge.
1	2	3
	<p>ORDER 04.10.2013</p>	<p><u>Writ Petition No.2448-P/2013 with Interim Relief.</u></p> <p>Present: Mr. Muhammad Daud Barki, Advocate, for Muhammad Zaman, petitioner.</p> <p>*****</p> <p><u>MAZHAR ALAM KHAN MIANKHEL J.-</u></p> <p>Muhammad Zaman, petitioner herein, through the instant constitutional petition, has asked for the issuance of an appropriate writ declaring that the Office Order dated 28.08.2013 of respondent No.2, whereby, he has been transferred from the post of Head Clerk (C&W), FATA Division FR Kohat / Peshawar to Assistant, Southern (C&W), FATA Circle, Peshawar, being nullity in the eye of law, is of no effect whatsoever.</p> <p>2. We have gone through the available record carefully and considered the submissions made by the learned counsel for the petitioner.</p> <p><i>M. J. K.</i></p>

ATTESTED

EXAMINER
Peshawar High Court

3. When we questioned whether this Court, in view of bar contained in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 can embark upon the matter in dispute as it solely comes within the purview of the terms and conditions of service, the learned counsel for the petitioner very frankly conceded the aforesaid position and submitted that though this Court has no jurisdiction to entertain the matter, being related to the terms and conditions of service but since the petitioner has filed a representation before the departmental authority in this regard, which is pending decision and till its decision, one way or the other, he is handicapped to approach any Court of competent jurisdiction, therefore, a direction be given by this Court to the departmental authority to decide the same, within a specific time. In this view of the matter, we, without dilating upon the merits of the case, direct the departmental authority to decide the representation of the petitioner, in accordance with law through a speaking order, within a month. This writ petition is disposed of accordingly.

Announced.

04. 10. 2013

Sd/- Maghaz Ali Ullah J

Sd/- Musabbat Hilali J

JUDGE

JUDGE

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court Peshawar
Authorised Under Article 87 of
the Qanun-e-Shahadat Order 1984

08-10-13

07/10
08/10
08/10 (Fayaz)

F

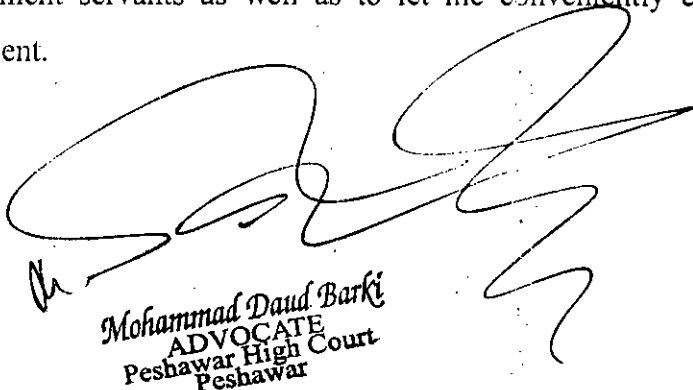
The Additional Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.



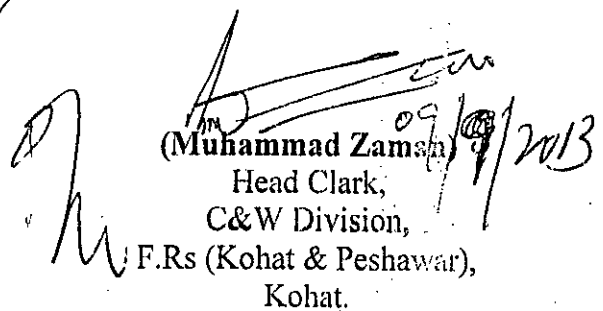
Subject:- **CANCELLATION OF TRANSFER ORDER**

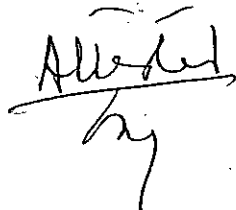
It is very respectfully submitted that the undersigned has been transferred, vide office of the Chief Engineer FATA's Office Order No. 186/2/11-E dated 28-08-2013, (copy enclosed), for no fault of mine notwithstanding the fact that I will stand retired from service within far less, than a year. My only fault is that I could not accede to the illegal demand of Mr. Anjad Afridi, Advisor to Chief Minister, KPK, who is not even an MPA of the FATA. The serious complaints referred to in my transfer order have been obtained by the Chief Engineer subsequent to issuing the office order of my transfer merely to show that my transfer has been made on genuine grounds. The true position is that my transfer has been effected to please the said MPA. To this effect I have recorded the conversation between the Chief Engineer and the said MPA. The said record could be produced before the authorities if so required.

2. In view of the above, it is requested that the above-referred order of my transfer may kindly be cancelled, so as to encourage upright attitude amongst the government servants as well as to let me conveniently complete my preparation for retirement.


Mohammad Daud Barki
ADVOCATE
Peshawar High Court
Peshawar

Yours Obedient Servant,


(Muhammad Zaman)
Head Clerk,
C&W Division,
F.Rs (Kohat & Peshawar),
Kohat.



G (18)

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. 1397/2013

Muhammad Zaman S/o Masti Khan R/o House No.E-3 Street
No.C&W Colony OTS Road Kohat, Head Clerk C&W Division
FRs Kohat/Peshawar at Kohat.....**Petitioner**

V E R S U S

1. Secretary (AI&C) Department
FATA Secretariat Warsak Road Peshawar.
2. Chief Engineer FATA Works and Services Department
Peshawar.
3. Administrative Officer C/O Chief Engineer W&S FATA,
Peshawar.
4. Mr. Nadir Khan Assistant Southern C&W FATA Circle
Peshawar, presently R/o C&W Colony Quarter No.E-1
OTS Road Kohat.....**Respondents**

**Appeal Under 4 of the Khyber
Pakhtunkhwa Service Tribunal
Act 1974 against the order dated
28.08.2013 whereby , the
appellant departmental appeal
has been rejected against the
transfer order dated 28.08.2013
for no good grounds. But The departmental
rejection order has been not provided.**

PRAYER

That on acceptance of this appeal the order dated 28.08.2013 may be set aside and to restore the appellant posting at home District/ residential District and not to transfer the appellant in violation of government instruction of the government posting/ transfer policy issued on 15.02.2003.

Any other remedy which this august tribunal deems fit that may also be awarded in favour of the appellant.

Respectfully Sheweth:

1. That the appellant is the resident of District Kohat and being the citizen of Pakista has ever legal and constitutional rights duly protected under the law of the land.
2. That the appellant joined C&W Department Peshawar as Junior Clerk on 18.06.1978 and is going to retired from service after 8 months on 14.05.2014. (Copy of CNIC is annexure A).
3. That the respondent No.2 issued order dated 28.08.2013 in which the appellant has been transfer on political motivation to Peshawar and an other official i.e respondent No.4 has been posted in place of appellant. (Copy of order dated 28.08.2013 is Annexure B).

4. That the appellant also moved application on 16.09.2013 to the respondent No.1 for the cancellation the transfer order dated 28.08.2013 on the basis of short period left for retirement but the same was filed. (Copy of the Application is Annexure C).
5. That being no other remedy the appellant is constrained to file the instant appeal on the following grounds:-

GROUND S:

- A. That the transfer of the appellant is in his last leg of service where only 8 months of service of appellant is left is against the norms of justice and fair play.
- B. That the appellant is going to retire from service after 8 months and in case of transfer at the last movement of his service with create hardship for appellant in preparing and finalizing his pension papers etc.
- C. That the Government of KPK has also issued posting/ transfer policy which was duly circulated to all the Departments in which the transfer in last leg of service is banned and if necessitated then to the district of domicile, but in case of the appellant the said clause of

the policy has been violated and the appellant has been transferred to another District. (Copy of the posting/ policy is Annexure D).

- D. That the posting/ transfer cannot be made as punishment because the same has not provided punishment in the relevant E&D rules thus the posting order dated 28.08.2013 is liable to be set aside.
- E. That the appellant has not been treated according to the settled law/ policy of Government the posting/ transfer of official.
- F. That the appellant seeks permission to advance other ground and proofs at the time of hearing.

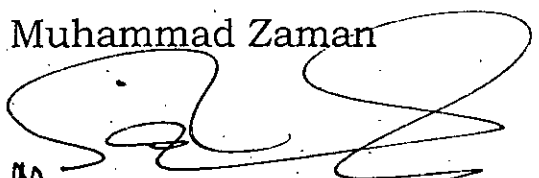
It is, therefore, most humbly prayed that on acceptance of this appeal, the appeal of the appellant may be accepted as prayed for.

Attested
by

Appellant.

Muhammad Zaman

Through


M
Muhammad Daud Barki
Advocate, Peshawar

Date: 8/10/2013

A

22



**BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. 1397/2013

~~Case No. 14418~~
~~Date 08/10/13~~

Muhammad Zaman S/o Masti Khan R/o House No.E-3 Street
No.C&W Colony OTS Road Kohat, Head Clerk C&W Division
FRs Kohat/Peshawar at Kohat.....**Petitioner**

V E R S U S

1. Secretary (AI&C) Department
FATA Secretariat Warsak Road Peshawar.
2. Chief Engineer FATA Works and Services Department
Peshawar.
3. Administrative Officer C/O Chief Engineer W&S FATA,
Peshawar.
4. Mr. Nadir Khan Assistant Southern C&W FATA Circle
Peshawar, presently R/o C&W Colony Quarter No.E-1
OTS Road Kohat.....**Respondents**

**Appeal Under 4 of the Khyber
Pakhtunkhwa Service Tribunal
Act 1974 against the order dated
28.08.2013 whereby the
appellant departmental appeal
has been rejected against the
transfer order dated 28.08.2013
for no good grounds. But the departmental
rejection order has been not provided.**

[Handwritten signature]
8/10/13

submitted to
filed.

[Handwritten signature]
9/10/13

ATTESTED

[Handwritten signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar



28.10.2013

Appellant with counsel (Mr. Saadullah Marwat and

Saif-Ul-Kamal, Advocates) present and heard. In view of allegation of the appellant that he was transferred from one District i.e Kohat to another District i.e Peshawar in violation of Government policy governing transfer of civil servants at the last leg of their service is based on political motives, and that his appeal has been filed by the respondent-department but he has not been provided copy of filing of appeal despite his application in that respect dated 04.10.2013, per affidavit filed alongwith the appeal, a pre-admission notice be issued to the respondent-department and learned AAG/GP for production of complete record of the impugned transfer, particularly "complaints", if any, cited as reason for the impugned transfer and record pertaining to filing of departmental appeal for further preliminary hearing on 05.11.2013. In the meantime, the operation of the impugned order is suspended, subject to notice.

Certified to be true copy
 E.M. Khan
 Khyber Pakhtunkhwa Service Tribunal,
 Peshawar

Self-Chairman

Attested by

Date of Presentation of Application 28.10.2013
 Number of Pages 800
 Copies For 6-0
 Up 6-0
 To 6-0
 Name of Copy [Signature]
 Date of Completion of Copy 29.10.2013
 Date of Delivery of Copy 29.10.2013

**BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR**



Service Appeal No. 1347/2013

Muhammad Zaman S/o Masti Khan R/o House No.E-3 Street
No.C&W Colony OTS Road Kohat, Head Clerk C&W Division
FRs Kohat/Peshawar at Kohat.....**Petitioner**

V E R S U S

1. Secretary (AI&C) Department
FATA Secretariat Warsak Road Peshawar.
2. Chief Engineer FATA Works and Services Department
Peshawar.
3. Administrative Officer C/O Chief Engineer W&S FATA,
Peshawar.
4. Mr. Nadir Khan Assistant Southern C&W FATA Circle
Peshawar, presently R/o C&W Colony Quarter No.E-1
OTS Road Kohat.....**Respondents**

**Appeal Under 4 of the Khyber
Pakhtunkhwa Service Tribunal
Act 1974 against the order dated
28.08.2013 whereby the
appellant departmental appeal
has been rejected against the
transfer order dated 28.08.2013
for no good grounds. But the departmental**

rejection order has been not provided.

*Filed to...
8/10/13*

*Co-submitted to...
and filed.*

9/10/13

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar



Mr. Muhammad Jan

2013

Appellant with counsel, Mr. Muhammad Jan, GP with Mr. Kafayat Ullah, Administrative Officer for official respondents No.1 to 3 and Miss. Neelam-A-Khan, Advocate, counsel for private respondent No.4 present. The instant appeal has been filed under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, against the transfer order dated 28.08.2013. Preliminary arguments to some extent were heard on 28.10.2013. A pre-admission notice was issued to the respondent department as well as the learned AAG/GP for production of complete record of the impugned transfer, particularly "complaints", if any, cited as reason for the impugned transfer order and record pertaining to the filing of departmental appeal. The operation of the impugned order was suspended. Further preliminary arguments heard today and record perused.

2. Counsel for the appellant contended that the appellant was transferred on 28.08.2013. He filed departmental appeal on 16.09.2013 and the instant appeal on 08.10.2013 for the reason that the departmental appeal of the appellant has been filed but copy of the same not provided to the appellant for which he filed application but in vain. He further contended that the appellant has been transferred at the last leg of his service which is not permissible under the law; that the transfer could not be made on the basis of complaints; and no proper enquiry has been conducted. Regarding the timing for filing of the instant appeal before this Tribunal, counsel for the appellant stated that the appeal is not pre-mature before this Tribunal. He relied on 2005 SCMR 890(b) where it has been held that... Premature matters were not bad but simply premature and must be returned----Failure to return the appeal debarred the Tribunal to subsequently jeopardize rights and bona fide claims of civil servants---Service Tribunal was required to return the appeal at the very first instance, if such course was not adhered to, then the Tribunal subsequently could not damage the civil servant on the grounds of prematurity of appeal when the same had become mature during the pendency allowed by Service Tribunal itself---Service Tribunal had rightly declined to dismiss the appeal on the score of prematurity---Appeal was dismissed. He further stated that Rule-23 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974, Rules of resjudicata and estoppels do not apply in the instant case. He requested that the appeal may be admitted for regular hearing.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

3. At the very outset, the learned GP while assisting the Tribunal, was of the view that the appeal is not maintainable as there is no final order and the appeal before the Tribunal is still pre-mature. The original transfer order was issued on 28.08.2013. The appellant filed departmental appeal on 16.09.2013 and the instant appeal on 08.10.2013. The appellant was to file appeal before this Tribunal on or after 15.12.2013 i.e within 30 days after a lapse statutory period of 90 days as required under Section-4, Proviso-(a) of the Khyber Pakhtunkhwa Service Tribunal Act 1974. He was further of the view that the appellant has concealed material facts from the Tribunal. The appellant filed Civil Suit in Civil Court which was dismissed. He filed Writ before the High Court, Peshawar on 04.10.2013 which was disposed off on the same very day. Record shows that the departmental appeal dated 16.09.2013 of the appellant is still under consideration of the respondent department. It has not been filed, so the contention of the counsel of the appellant that the departmental appeal was filed is incorrect and misconceived. He failed to produce the appellate order. Under Rule 23 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, it has been provided that no Tribunal shall entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a Court or a Tribunal of competent jurisdiction. The appellant filed Civil Suit before the Civil Court which has been dismissed. He filed Writ Petition in the Peshawar High Court, Peshawar on 04.10.2013 which has been disposed off on the same day. Being competent court of jurisdiction, the appellant was to file CPLA before the august Supreme Court of Pakistan if so desired. Therefore, the appeal is not maintainable.

4. Counsel for private respondent No.4 argued that the appellant as would appear from his NIC annexed with the appeal, belongs to District Lakki Marwat so he can not claim posting at District Kohat at the last leg of his service. There is no malafide in his transfer. Under Section-10 of the Civil Servant Act 1973, a Civil Servant has to serve any where within or out side the province; that the appellant has been estopped by his own conduct. He challenged his transfer order in the Civil Court which was dismissed and then filed Writ in the Peshawar High Court, Peshawar which was disposed off on the same day so the appeal is badly hit by the Rules of estoppel and "resjudicata": that there is no final order and the appeal before

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

the Tribunal is still pre-mature. She requested that the appeal may be dismissed in limine with costs.

5. After hearing the parties and perusal of record, I, the undersigned is of the opinion that the requirements of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 have not been satisfied. There is no final order and the appeal is still pre-mature before this Tribunal. Therefore, the appeal being not maintainable is dismissed in limine with no order as to costs. File be consigned to record.

SRJ
Member

ANNOUNCED
21.11.2013

Certified to be true copy

[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Attested
by

Date of Presentation of Application: 25-11-2013
 Number of Pages: 1600
 Copying Fee: 10
 Urgent:
 Total:
 Name of Officer:
 Date of Completion of Work: 29-11-2013
 Date of Delivery of Copy: 29-11-2013

J

28



Additional Chief Secretary (FATA)

FATA SECRETARIAT
(Administration, Infrastructure & Coordination Department)
Warsak Road Peshawar

ORDER:-

Whereas the application of Muhammad Zaman Head Clerk C&W Division FR Kohat/Peshawar seeking cancellation of transfer order has been given due consideration however, on perusal of record, the following observations have come to notice:-

- (i) That he was required to submit his application through proper channel however he has addressed his application directly to Secretary A,I&C which is in violation of rules.
- (ii) He was transferred from the post of Head Clerk C&W FATA Division FR Kohat/Peshawar to the post of Assistant in Southern C&W FATA Circle Peshawar vide Chief Engineer (FATA) Works & Services Office Order No.186/2/11-E dated 28-08-2013, however, instead of compliance of order or lodging appeal, he locked the whole record in his charge, taking away the keys with him thus paralyzing the whole official working of the C&W Division FR Kohat/Peshawar.
- (iii) In view of Para-(ii) above, the tenders schedule for 04-09-2013 were postponed and were re-scheduled for 09-09-2013 due to non availability of record locked by him.

2- File perused and the petitioner was heard in person today. I didn't see any weightage in the representation/arguments therefore the instant representation is rejected.

Announced:
22-11-2013

(Shafirullah)
Secretary (Admn, Infra: & Coord)

*Attested as be
the true copy of original*

Section Officer (ESTAB)
Civil Secretariat (FATA)
Peshawar

*Attested
by*

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. _____/2013

Muhammad Zaman Versus Secretary FATA & Others**APPLICATION FOR SUSPENSION OF THE
OPERATION OF THE IMPUGNED ORDER
DATED 22.11.2013 TILL THE DECISION OF
THE CASE.****Respectfully sheweth:-**

1. That the subject appeal is filed today and no date of hearing is yet fixed.
2. That the impugned order is politically motivated and applicant has become victim of the same.
3. That applicant has not yet relinquished the charge of the assignment and is hopeful of its success, being based on legal footing. Balance of convenience also lies in favour of applicant.
4. That if the impugned order is not suspended, applicant shall suffer irreparable loss as the orders are of no legal effect.
5. That facts and grounds of the appeal be read as integral part of this application for grant of interim relief as operation of the original order was suspended, prior to the same by the Hon'ble Tribunal on 28.10.2013.

It is therefore, most humbly requested that the application be accepted as prayed for in the heading.

Appellant

Through



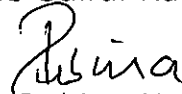
Saad Ullah Khan Marwat

Dated. 28.11.2013



Arbab Saiful Kamal

&



Miss Rubina Naz,

Advocates.

AFFIDAVIT

I, Muhammad Zaman S/o Masti Khan, Head Clerk, C&W Division, FR Kohat, do hereby solemnly affirm and declare that the contents of the application are true and correct to the best of my knowledge and belief.

Deponent



Muhammad Zaman

بعد الت چاپ سروس ٹریبونل صوبہ سرحد پشاور

ایڈوانس

مخانب

محمد زمان

بنام

سیکرٹری فائو و سرحد

دعویٰ اپیل

پا عہد شکرہ ایچکے

مقررہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیلئے سعید اڈاس خان سرفراز ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے رضی نامہ و تقرر ثالث و فیصلہ بر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور رضی دعویٰ اور درخواست ہر قسم کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری کی طرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظارتی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مشاور قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر واضحہ منظور قبول ہوگا اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا و خرچہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا وکالت نامہ مکھ دیا کہ سند ہے۔

المترقوم

العبد العبد العبد

11
ارباب سنیہ اکمال
ایڈووکیٹ

سعید اللہ خان مروت
ایڈووکیٹ

محمد زمان
[Signature]

صوبہ سرحد
پشاور

VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal Peshawar.

M. Luman (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

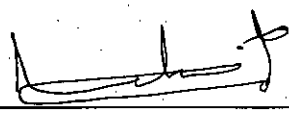
C & W Depu. (Respondent)
(Defendant)

I/We, Nadir Khan (Respondent)

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 outstanding against me/us.

Dated _____/20


(CLIENT)

ACCEPTED


M. ASIF YOUSAFZAI
Advocate.

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar
Cell: (0333-9103240)

بعدالت مدد میں درخواست

پشاور

مورخہ 8 جنوری 2014ء 2014ء پنجاب ہائی کورٹ
مقدمہ
دعویٰ
جرم

بنام
محمد زحای
سیکرٹری فائنا

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب وہی وکل کاروائی متعلقہ
آن مقام پشاور کیلئے محمد اقبال خیل ایڈووکیٹ
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب وہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ 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 برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

المرقوم 8 ماہ جنوری 2014ء

پشاور

العبد محمد اقبال خیل

کے لئے منظور ہے۔

پشاور

مقام

Advocate

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO.1555/13

Mohammad Zaman.

VS

Secretary FATA etc.

REPLY ON BEHALF OF RESPONDENT NO. 4

(NADAR KHAN).

R.SHEWETH.

PRELIMINARY OBJECTIONS:

- 1- The appellant has no cause of action.
- 2- The appellant has no locus standi.
- 3- The appellant has not come with clean hands and concealed material facts from this august Tribunal.
- 4- The appellant has no legal right to claim choice posting.
- 5- The appeal is not maintainable under section -4(b)(i) of the STA 1974.

FACTS:

- 1- Incorrect. The zeal and deal of appellant is evident from the correspondences made by the XEN of the office. As per those letters, the appellant has not only committed insubordination but also disobey the directions of high ups.
- 2- Incorrect, misleading hence denied.
- 3- Incorrect. The order has been passed in public interests.
- 4- Correct and that order is still in field because the suit was dismissed and not returned for submission before a proper forum.

- 5- Correct the Peshawar high court directed the respondent Deptt: to decide the appeal dated. 9.9.2013 (Annexure – C) with the writ petition.
- 6- The appellant submitted second departmental appeal on 16.9.2013 which is the violation of law as there is no provision of second appeal in the law. The rest of para is incorrect.
- 7- Pertains to record. However the appeal was rightly dismissed in preliminary.
- 8- Correct, as in para-7 above.
- 9- Incorrect. The appellant's appeal was rightly rejected with solid reasons and grounds.

GROUND:


- A- Incorrect, no such reasons are given in order dated. 28.8.13, as the same was a routine order.
- B- Incorrect and not related to replying respondent.
- C- It was the fault of the counsel of appellant as to why he chose a wrong forum.
- D- Not related to replying respondent, however, the final is a speaking order which provide full reasons.
- E- Incorrect. The order is a routine order.
- F- Incorrect, hence denied.
- G- Incorrect. The appellant should obey the order to avoid complications in pension fixation.

It is therefore, most humbly prayed that the appeal of the appellant may be dismissed with costs.

RESPONDENT NO. 4

NADAR KHAN

THROUGH:


M.ASIF YOUSAFZAI
ADVOCATE.

AFFIDAVIT.

It is affirmed that the contents of this reply are true and correct.





OFFICE OF THE CHIEF ENGINEER (FATA)
WORKS & SERVICES DEPARTMENT
PESHAWAR

No. 186 / 2/11-E
Dated Peshawar the 28/08/2013

OFFICE ORDER

Due to serious complaints against Mr. Muhammad Zaman Head Clerk, C&W FATA Division FR Kohat/Peshawar, the following posting/Transfers of the Assistant/Head Clerk are hereby ordered with immediate effect in the public interest.

S.#	Name & Designation	From	To	Remarks
1	Mr. Muhammad Zaman	Head Clerk C&W FATA Division FR Kohat/Peshawar	Assistant Southern C&W FATA Circle Peshawar	Vice No.2
2	Mr. Nadir Khan	Assistant Southern C&W FATA Circle Peshawar	Head Clerk C&W FATA Division FR Kohat/Peshawar	Vice No.1

Copy to:-

1. The Chief Engineer (C), C&W department Khyber Pakhtunkhwa Peshawar
2. The Additional Accountant General (PR) Sub Office Peshawar
3. The Superintending Engineer, Southern C&W FATA Circle Peshawar
3. The Executive Engineer C&W FATA Division FR Kohat/Peshawar
5. The District Accounts officer Kohat
6. Official concerned.

(Engr. Syed Daud Jan)
Chief Engineer

Chief Engineer



OFFICE OF THE
EXECUTIVE ENGINEER
C & W FATA DIVISION FRS
PESHAWAR / KOHAT AT KOHAT

(2)

No. 10540/13-E,
To

Dated Kohat the 26/6/2013

Muhammad Zaman,
Head Clerk C&W FATA Division,
FRs Peshawar/Kohat at Kohat

Subject: - **EXPLANATION**

Reference is made to the Chief Engineer FATA Works & Services Department Peshawar letter No.1203/2/11-E, dated 13.06.2013 and No.1224/2/11-E, dated 24.06.2013.

You have failed to hand over the charge to your reliever who has arrived on 14 June, 2013 to take over from you. You have been directed time and again to hand over the charge but you have not carried out compliance of your posting orders. In addition, **you have made deliberate attempts to deny some very important documents like cheque book, cash book, contract agreements etc, so very urgently needed during the critical period of closing the financial year 2012-13.** Lately, you have resorted to malingering so as to avoid contact with the office.

You are called upon to explain reasons as to why not disciplinary action shall be initiated against you.


Executive Engineer

Copy to the:-

1. Chief Engineer FATA Works & Services Department Peshawar for information please.
2. Superintending Engineer (Southern) C&W FATA Circle Kohat.

Executive Engineer



OFFICE OF THE
EXECUTIVE ENGINEER
C & W FATA DIVISION FRS
PESHAWAR / KOHAT AT KOHAT

3

No. 10548 / 13 - E,
To

Dated Kohat the 27/6/2013

The Chief Engineer (FATA),
Works & Services Department,
Peshawar.

Subject: - NON COMPLIANCE OF POSTING ORDER

Reference is made to your office No.1203/2/11-E, dated 13.06.2013
No.1224/2/11-E, dated 24.06.2013 and this office letter No.10540/3-E, dated
26.06.2013(copy attad)

Muhammad Zaman Head Clerk has been categorically told to hand over the charge to his reliever but of no avail. He has been avoiding to hand over the charge under one pretext or another. Lately, he has resorted to milingring so as to avoid contact with the office. He has deliberately retained some very important documents like cheque book, cash books, contract agreements etc. He has taken away the keys of his office so as to deliberately deny documents etc to the staff during the critical, week of June 2013. He no more attends the office and has kept all the important documents under lock and key. His where abouts are not known, and does not attend telephone calls made to him. His conduct, therefore, warrants disciplinary action against him.

The matter is reported to you for your kind perusal with the request to please advise on the matter.


Executive Engineer

Copy to the Superintending Engineer (Southern) C&W FATA Circle Kohat for information please.

Executive Engineer



OFFICE OF THE
EXECUTIVE ENGINEER
C & W FATA DIVISION FRS
PESHAWAR / KOHAT AT KOHAT

4

No. 158 / 3 - E,
To


Dated Kohat the 6/9 / 2013

Muhammad Zaman,
Head Clerk C&W FATA Division,
FRs Peshawar / Kohat at Kohat.

Subject: - **HANDING/TANKING OVER OF CHARGE**

You have been posted out to Southern C&W FATA Circle Peshawar vide Chief Engineer FATA Works & Services Department Peshawar Office Order **No:186/2/11-E, dated 28.08.2013**. Your replacement Mr. Nader Khan Head Clerk has given arrival on 29.08.2013 on which you have been directed by the undersigned to hand over the charge immediately. You are deliberately avoiding to hand over the charge thereby creating hinderances to the so very important functions i.e. tenders etc. of the Divisional Office. The same is not only causing embarsement to the undersigned but is also annoying the superiors.

You are finally directed to hand over the charge to your replacement (already functioning) forthwith and confirm.


Executive Engineer

Copy to the:-

1. Chief Engineer FATA Works & services Department Peshawar for information please.
2. Superintending Engineer C&W FATA Circle Peshawar for information please.


Executive Engineer

5

OFFICE OF THE CHIEF ENGINEER (CENTRE)
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR
No.217-E/ 419 / CE / C&WD
Dated Peshawar the 27/09/2013

To


Mr. Muhammad Zaman
Assistant (under order of transfer
to Superintending Engineer
Southern C&W FATA Circle, Peshawar)
R/O C&W Colony O.T.S Road
Jungle Khel, Kohat.

Subject: NON-COMPLIANCE OF ORDERS.

It has been reported that on your transfer to the O/O Superintending Engineer Southern C&W FATA Circle Peshawar vide Chief Engineer (FATA) Works & Services Department Peshawar orders No. 186/2/11-E dated 25/08/2013, you have left the office of Executive Engineer FATA Division FR Kohat/FR Peshawar on your sweet will, whereas your successor Assistant/Head Clerk reported there on 29/08/2013 and since then you are found absent as you have not assumed the posting at Peshawar till yet. It is further reported that you have locked the Almirah/Cup Board and the official documents relating to Tenders/Tender Register P.I.T Book/Register etc are still in your custody.

By the reasons as stated above, you have been found guilty of MIS-conduct under the Disciplinary Rules, 2011.

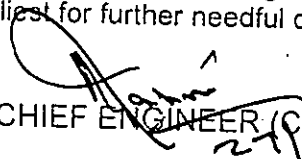
You are, hereby directed to immediately attend the Executive Engineer's office and hand over official record properly. In case you failed to follow with the orders, further proceedings under the E&D Rules, 2011 will be taken. At the same time your conduct as reported shall be asked to be reflected in your confidential reports and place them on official record.

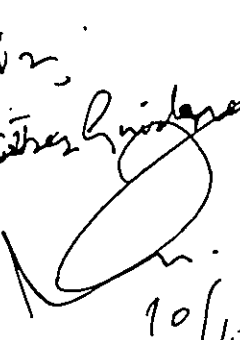

(ENGR: FAZLI KABIR)
CHIEF ENGINEER (CENTRE)

Copy forwarded to the:-

1. Chief Engineer (FATA) Works & Services Department Peshawar with reference to his memo NO. 320/2/47-E dated 23/09/2013.
2. Superintending Engineer Southern C&W FATA Circle Peshawar for information.

Executive Engineer C&W FATA Division FR Kohat/Peshawar at Kohat. Please keep informed this office of the position and handing/taking over of official record/documents at the most earliest for further needful of this office.


CHIEF ENGINEER (CENTRE)
27/9

Sir,
For further kindness.

10/10.



6

OFFICE OF THE CHIEF ENGINEER (FATA)
WORKS & SERVICES DEPARTMENT
PESHAWAR

No. 377 12/47-E
Dated Peshawar the, 14/10/2013

To

The Chief Engineer ©,
C&W Department Khyber Pakhtunkhwa,
Peshawar

Subject:

NON-COMPLIANCE OF ORDERS

Ref:

Your letter No. 217-E/419/Chief Engineer (C)/C&WD, dated 27.9.2013.

As per report of the Executive Engineer, C&W FATA Division FR Peshawar/Kohat

~~Mr. Muhammad Zaman Assistant transferred vide this office No. 186/2/11-E dated 25.8.2013~~
has not yet handed over the charge to his incumbent.

It is therefore requested that disciplinary proceeding may be initiated against the official under E&D Rules 2011.

(Engr. Syed Daud Jan)
Chief Engineer

Copy to the:-

1. Superintending Engineer(S), C&W FATA Circle Peshawar
2. Executive Engineer, C&W FATA Division FR Kohat/Peshawar

Chief Engineer

Seen
Daud Jan
Khan
28/10

7

OFFICE OF THE
EXECUTIVE ENGINEER
COMMUNICATION & WORKS DIVISION FRS
PESHAWAR / KOHAT AT KOHAT

No. 257 13-25
To

dated Kohat the, 14/10 /2013

The Assistant Political Agent,
FR Kohat.
Subject:- VACATION OF OFFICE FROM THE EX: HEAD CLERK MUHAMMAD ZAMAN

As desired by the Chief Engineer FATA Works & Services Department Peshawar on 14.10.2013, you are requested to deploy your Tehsildar / Khasadars to office of the undersigned, so that the office may be unlocked from illeagle occupation of Muhammad Zaman (the then Head Clerk), in order to be able the undersigned to start the office duties.

Please treat the message on urgent basis.

Copy forwarded to the:-

1. Chief Engineer FATA Works & Service Department Peshawar for information please.
2. Superintending Engineer C&W FATA Circle Kohat for information please.
3. Deputy Commissioner Kohat for information please.

cc Executive Engineer

cc Executive Engineer

21/10/13

*
Received
MMK
21/10/13

OFFICE OF THE CHIEF ENGINEER (CENTRE)
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR

No. 217-E / 580 / CE / C&WD

Dated Peshawar the 29 / 10 / 2013

OFFICE ORDER

As reported by the Chief Engineer (FATA) W&SD Peshawar, the services of Muhammad Zaman "Assistant" O/O the Superintending Engineer Southern C&W FATA Circle Peshawar are hereby suspended, with immediate effect, on account of his disobedience, misconduct and irresponsible attitude with his XEN and non-obeying the orders of his higher-ups i.e. Chief Engineer (FATA) W&SD Peshawar as well as not handing over Tender Register/office record and locking the Almirah etc.

(ENGR. FAZLI KABIR)
CHIEF ENGINEER (CENTRE)

Copy forwarded to the:-

1. Chief Engineer (FATA) W&SD Peshawar w/r to his letter No. 377/2/47-E dated 14-10-2013.
2. Superintending Engineer Southern C&W FATA Circle Peshawar. If the said official is still absent & not reported in his office his pay & allowances shall stopped.

Executive Engineer C&W FATA Division FR-Peshawar/Kohat.


CHIEF ENGINEER (CENTRE)

FORM "B"
FORM OF ORDER SHEET

9

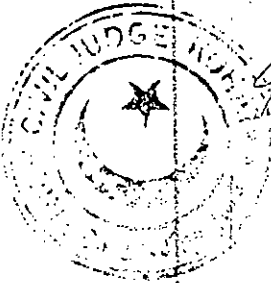
11/9/13

SERIAL NO. OF ORDER OR PROCEEDINGS	DATE OF ORDER OR PROCEEDINGS	ORDER OR OTHER PROCEEDINGS WITH SIGNATURE OF JUDGE OR MAGISTRATE AND THAT OF PARTIES OR COUNSEL, WHERE NECESSARY.
1	2	3

5-5

26-9-13

Handwritten notes in Urdu script, including a signature and the date 10/13.



Asmatullah Wazir
Civil Judge V/JM
Kohat

Handwritten notes in Urdu script on the left margin, including a circled number 3 and various dates and names.

4-10-13

Defendant Mr. Nadir Khan along with his counsel present, while no one present on behalf of plaintiff. Its almost 12 O'clock. Ex-Parte arguments heard.

Arguments for the counsel for the defendant No. 4 and perusal of case file reveals that plaintiff is civil servant in C & W Department who seeks declaration and Injunctions regarding his transfer which is a matter of service tribunal. The available record submitted by plaintiff does not answer satisfactorily, the question of jurisdiction and maintainability and

Asmatullah Wazir
Civil Judge V/JM
Kohat

ATTESTED TO BE TRUE COPY

COPING BRANCH
12/10/13

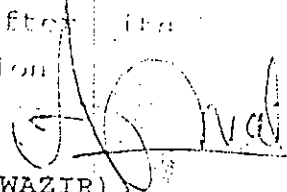
P.T.O.

10

SERIAL NO. OF ORDER OR PROCEEDINGS	DATE OF ORDER OR PROCEEDINGS	ORDER OR OTHER PROCEEDINGS WITH SIGNATURE OF JUDGE OR MAGISTRATE AND THAT OF PARTIES OR COUNSEL, WHERE NECESSARY
1	2	3

thus ~~the suit stands dismissed~~. File be
consigned to record room after its
proper compilation and completion.

Order Announced
04.10.2013



(ASMATULLAH WAZIR)
Civil Judge-V, Kohat
Asmatullah Wazir
Civil Judge V/M
Kohat.

ATTESTED TO BE TRUE COPY
COPING OFFICE
KOHAT
13/10/13

(11) 100

**THE
PESHAWAR HIGH COURT
PESHAWAR**

Ph. No. 091-9210149-158
Ext. No. 364

No. 14633 /Judl:

Dated Peshawar the 10/10 2013

From

The Additional Registrar (J),
Peshawar High Court,
Peshawar.

To

1. The Addl: Chief Secretary FATA,
FATA Secretariat, Warsak Road, Peshawar.
2. The Chief Engineer FATA,
Works & Services Department, Peshawar.
- ✓ 3. The Administrative Officer,
C/o Chief Engineer C&W FATA, Peshawar.

Subject:

Writ Petition No. 2448-P/2013 with Interim Relief.


Muhammad Zaman s/o Masti Khan --- Petitioner

Versus

Addl: Chief Secretary FATA & others --- Respondents

Memo:

I am directed to forward herewith copy of order dated 04-10-2013, passed by Division Bench of this Court in the titled case, for compliance.


ADDITIONAL REGISTRAR (J)

10/10/13

Encl:

CE FATA W&S Dept	Copy of order.
Diary No.	406
Date	
Case No.	11-10-2013
C.E. W&S	
S.E. HQ	
T.O.	6/2 gsk
P.E. (S)	
D.E. (R)	
D.E. (Water Supp.)	
A.O.	✓
B&AO	

10/10/13

IN THE PESHAWAR HIGH COURT, PESHAWAR

12

W.P No. 2448-P/2013

Muhammad Zaman S/o Masti Khan
R/o House No.E-3, Street C&W Colony Road Kohat,
Head Clerk C&W Division, FRs Kohat & Peshawar, Kohat

.....Petitioner

V E R S U S

1. Additional Chief Secretary FATA at Peshawar
2. Chief Engineer (FATA),
Works & Services Department, Peshawar
3. Administrative Officer,
C/o Chief Engineer C&W FATA, Peshawar
4. Mr. Nadir Khan, Assistant Southern
C&W FATA Circle, Peshawar,.....

Respondents

*Presently R/o, C&W Colony. Quarter No E-1,
O.T.S. Road Kohat*

**WRIT PETITION UNDER ARTICLE 199
OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN, 1973**

Respectfully Sheweth:

1. That the petitioner is the resident of District Kohat and being the citizen of Pakistan, has ever legal and constitutional rights duly protected under the law of the land.

FILED TODAY
Deputy Registrar
11 SEP 2013

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

13

Court of.....

Case No.....of.....

Serial No. of Order of Proceedings	Date of Order of Proceedings	Order or other Proceedings with Signature of Judge.
1	2	3
	<p><u>ORDER</u> 04.10.2013</p>	<p><u>Writ Petition No. 2448-P/2013 with Interim Relief.</u></p> <p>Present: Mr. Muhammad Daud Barki, Advocate, for Muhammad Zaman, petitioner.</p> <p>*****</p> <p><u>MAZHAR ALAM KHAN MIANKHEL J.-,</u></p> <p>Muhammad Zaman, petitioner herein, through the instant constitutional petition, has asked for the issuance of an appropriate writ declaring that the Office Order dated 28.08.2013 of respondent No.2, whereby, he has been transferred from the post of Head Clerk (C&W), FATA Division FR Kohat / Peshawar to Assistant, Southern (C&W), FATA Circle, Peshawar, being nullity in the eye of law, is of no effect whatsoever.</p> <p>2. We have gone through the available record carefully and considered the submissions made by the learned counsel for the petitioner.</p> <p><i>Mazhar Alam Khan</i></p>

14

3. When we questioned whether this Court, in view of bar contained in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 can embark upon the matter in dispute as it solely comes within the purview of the terms and conditions of service; the learned counsel for the petitioner very frankly conceded the aforesaid position and submitted that though this Court has no jurisdiction to entertain the matter, being related to the terms and conditions of service; but since the petitioner has filed a representation before the departmental authority in this regard, which is pending decision and till its decision, one way or the other, he is handicapped to approach any Court of competent jurisdiction, therefore, a direction be given by this Court to the departmental authority to decide the same, within a specific time. In this view of the matter, we, without dilating upon the merits of the case, direct the departmental authority to decide the representation of the petitioner; in accordance with law through a speaking order, within a month. This writ petition is disposed of accordingly.

Announced.
04. 10. 2013

M. J. Khan
JUDGE

Imran
JUDGE

ayaz



Most Urgent
Court t Matter

15
OFFICE OF THE CHIEF ENGINEER (FATA)
WORKS & SERVICES DEPARTMENT
PESHAWAR

No. 248 /6 / 22-E
Dated Peshawar the 29/11/2013

To

The Chief Engineer ©,
C&W Department Khyber Pakhtunkhwa,
Peshawar
The Executive Engineer,
C&W FATA Division FR Kohat/Peshawar
At Kohat

Subject: APPEAL NO. 1397/2013 MUHAMMAD ZAMAN S/O MASTI KHAN
R/O HOUSE NO.E-3, C&W COLONY OTS ROAD KOHAT, HEAD
CLERK C&W DIVISION FRs KOHAT/PESHAWAR AT KOHAT V/S
SECRETARY AI&C DEPARTMENT AND OTHERS

Enclose herewith a copy of JUDGMENT announced on 21.11.2013
of Service Tribunal Khyber Pakhtunkhwa Peshawar in the subject cited case for
information and necessary action.

DA As Above

(Sgt: Aslam Khan)
Chief Engineer

Copy alongwith copy of judgment forwarded to the:

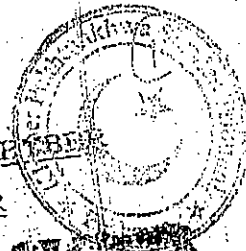
1. Superintending Engineer, Southern C&W FATA Circle Peshawar
2. Section Officer (Lit.), FATA Secretariat Peshawar alongwith copy of judgment for information.

DA/ As Above

Chief Engineer

16

**BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR**



Service Appeal No. 1397/2013

28/08/13
28/08/13

Muhammad Zaman S/o Masit Khan R/o House No. 3-3 Street
No. C&W Colony OTS Road Kohat, Head Clerk C&W Division
FRs Kohat/Peshawar at Kohat.....
Partitioner

V E R S U S

1. Secretary (AI&C) Department
PATA Secretariat Warsak Road Peshawar.
2. Chief Engineer PATA Works and Services Department
Peshawar.
3. Administrative Officer C/O Chief Engineer PATA
Peshawar.
4. Mr. Nadir Khan Assistant Southern C&W
Peshawar, presently R/o C&W Colony
OTS Road Kohat..... Respondent

ATTENDED
[Signature]

Appeal Under 4 of the Khyber
Pakhtunkhwa Service Tribunal
Act 1974 against the order dated
28.08.2013 whereby the
appellant departmental appeal
has been rejected against the
transfer order dated 28.08.2013

[Signature]
28/08/13

co-submitted to
and filed.

[Signature]
28/10/13

for no good grounds. But the departmental
rejection order has been not granted.

801
[Signature]

1397/2013
Mr. Muhammad J. Khan



Appellant with counsel, Mr. Muhammad Jan, GP, Administrative Officer for official respondents to 3 and Miss. Noorani A-Khan, Advocate, counsel for private respondent No. 4 present. The instant appeal has been filed under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against the transfer order dated 28.08.2013. Preliminary arguments to some extent were heard on 28.10.2013. A pre-admission notice was issued to the respondent department as well as the relevant AAO/GP for production of complete record of the impugned transfer, particularly "complaints", if any, cited as reason for the impugned transfer order and record pertaining to the filing of departmental appeal. The operation of the impugned order was suspended. Further preliminary arguments heard today and record perused.

1. Counsel for the appellant contended that the appellant was transferred on 28.08.2013. He filed departmental appeal on 16.09.2013 and the instant appeal on 08.10.2013 for the reason that the departmental appeal of the appellant has been filed but copy of the same not provided to the appellant for which he filed application but in vain. He further contended that the appellant has been transferred at the last leg of his service which is not permissible under the law, that the transfer could not be made on the basis of complaints, and no proper enquiry has been conducted. Regarding the timing for filing of the instant appeal before this Tribunal, counsel for the appellant stated that the appeal is not premature before this Tribunal. He relied on 2005 SCMR 820(b) where it has been held that... Premature matters were not bad but singly premature and must be returned---Failure to return the appeal debited the Tribunal to subsequently jeopardize rights and bona fide claims of civil servants---Service Tribunal was required to return the appeal at the very first instance, if such course was not adhered to, then the Tribunal subsequently could not damage the civil servant on the grounds of prematurity of appeal when the same had become mature during the pendency allowed by Service Tribunal itself---Service Tribunal had rightly declined to dismiss the appeal on the score of prematurity---Appeal was dismissed. He further stated that Rule-23 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974, Rules of res judicata and estoppels do not apply in this instance. He requested that the appeal may be admitted for regular hearing.

Appeal No. 1247/19012

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3. At the very outset, the learned GP while assisting the Tribunal, was of the view that the appeal is not maintainable as there is no final order and the appeal before the Tribunal is still pre-mature. The original transfer order was issued on 28.08.2013. The appellant filed departmental appeal on 16.09.2013 and the instant appeal on 08.10.2013. The appellant was to file appeal before this Tribunal on or after 22.12.2013 i.e. within 30 days after a lapse of statutory period of 90 days as required under Section-4, Proviso (a) of the Khyber Pakhtunkhwa Service Tribunal Act 1974. He was further of the view that the appellant has conceded material facts from the Tribunal. The appellant filed Civil Suit in Civil Court which was dismissed. He filed Writ before the High Court, Peshawar on 04.10.2013 which was disposed off on the same very day. Record shows that the departmental appeal dated 16.09.2013 of the appellant is still under consideration of the respondent department. It has not been filed, so the contention of the counsel of the appellant that the departmental appeal was filed is incorrect and misconceived. He failed to produce the appellate order. Under Rule 23 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, it has been provided that no Tribunal shall entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a Court or a Tribunal of competent jurisdiction. The appellant filed Civil Suit before the Civil Court which has been dismissed. He filed Writ Petition in the Peshawar High Court, Peshawar on 04.10.2013 which has been disposed off on the same day. Being competent court of jurisdiction, the appellant was to file PLA before the august Supreme Court of Pakistan if so desired. Therefore, the appeal is not maintainable.

Counsel for private respondent No.1 argued that the appellant is would appear from his NIC annexed with the appeal, belongs to District Lakki Marwat so he can not claim posting at District Kohat at the last leg of his service. There is no malafide in his transfer. Under Section-19 of the Civil Servant Act 1973, a Civil Servant has to serve any where within or out side the province; that the appellant has been estopped by his own conduct. He challenged his transfer order in the Civil Court which was dismissed and then filed Writ in the Peshawar High Court, Peshawar which was disposed off on the same day so the appeal is badly hit by the Rules of estoppel and "resjudicata"; that there is no final order and the appeal before

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the Tribunal is still pre-mature. She requested that the appeal may be dismissed in limine with costs.

5. After hearing the parties and perusal of record, I, the undersigned is of the opinion that the requirements of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 have not been satisfied. There is no final order and the appeal is still pre-mature before this Tribunal. Therefore, the appeal being not maintainable is dismissed in limine with no order as to costs. File be consigned to record.

ANNOUNCED
21.11.2013

[Handwritten signature]

Certified to be true copy

[Handwritten signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application: 29-11-2013

Page No. 1600

Page No. 10

Page No. 2

Page No. 12

Date of Delivery of Copy: 29-11-2013

Date of Delivery of Copy: 29-11-2013

حضرت صاحب انجمن صاحب سہ ماہی فائنا ڈولٹرن آرگنائزیشن

(20)

صاحب عالی

میں آپس میں محمد زین اللہ صاحب صاحب فائنا ڈولٹرن

کو صفات فوراً 2013ء کو یہاں سے تبدیل ہو گیا

اور دیگر ایڈمنسٹریٹو امور کو اس میں

حاضر ہی رہے لیکن آج محمد زین اللہ صاحب صاحب

کو خارج نہیں کیا گیا اور نئے کوائف سے عمل

کھیل رہا ہے تو یہ دھوکہ دیا گیا ہے کہ وہ سارا

رہا اور اس کے پاس ہے اور ہمارا کوئی کام نہیں ہو سکتا

ہم نے بار بار 21-21-21 صاحب - ASE صاحب اور

صاحب کو اجازت دی ہے لیکن یہاں کوئی تبدیلی نہیں ہوئی

لہذا ہم اب بھی آرگنائزیشن کے لیے کھیل رہا ہے

اس لیے کہ میں نے محمد زین اللہ صاحب کو مجبور کیا ہے

یا قانون کے مطابق نئے طور پر ایڈمنسٹریٹو

دلوالی ہے تاکہ یہاں بحال ڈیپارٹمنٹ کے امور

حل ہو سکیں

صاحب ابھی ان کھیل رہا ہے

P.T.O

(1) محمد علي

(2) مدر رشاد فان

(3) مدر عبد الله فان

(4) مدر الشريف

(5) مدر باعین فان

(6) مدر علي فان

لقل الرئي لزورى فاروان

✓ راء سيف المختار صاحب

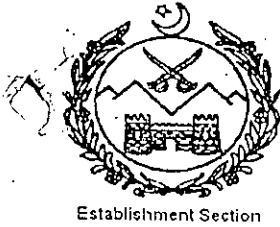
✓ (2) S-E صاحب فان اسفل لوف

(3) A.P.A.C.B صاحب الف لوف

(4) D.C صاحب لوف

Sir,
For your Personal/Guidance.
Please.

u.
AC.
ABD



21

Confidential -
FATA SECRETARIAT
(ADMINISTRATION, INFRASTRUCTURE & COORDINATION DEPARTMENT)
WARSAK ROAD PESHAWAR

No.FS/E/100-23 (Vol-36)/ 8070-72
Dated 10/10/2013

To

Mr. Luqman Shafi,
Executive Engineer,
Buildings FATA Division,
Khyber Agency.

Subject: INQUIRY

I am directed to enclose herewith a copy of Chief Engineer (FATA) Works & Services Department letter No.230/2/46-E dated 05-09-2013 alongwith its enclosure i.e letter No.1002/2-E dated 04-09-2013 and to request to conduct an enquiry into the charges levelled against Muhammad Zaman Head Clerk, Office of Executive Engineer C&W FATA Division FR Kohat/Peshawar at Kohat and furnish a Facts Finding Inquiry Report fixing responsibility on person(s) at fault within a period of 15 days.

self

(JIBREEL RAZA)
Section Officer (Estab)

Copy to:-

1. Chief Engineer (FATA) Works & Services Department
2. Executive Engineer, C&W FATA Division FR Kohat/Peshawar at Kohat
(for information)

Jibreel Raza

Section Officer (Estab)

Seon Asadani

Amir
28/10

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
Misc: Application No. Nil/2014 in the Main Service Appeal No. 1555/2013

Muhammad Zaman s/o Masti Khan,
Assistant R/o H. No.3 E Street,
C&W Colony OTS Road Kohat.....

Appellant

VERSUS

1. Secretary AI&C FATA Secretariat Peshawar
2. Chief Engineer FATA, Works & Services Department,
Peshawar
3. Administrative Officer, Works & Services FATA
Peshawar
4. Nadir Khan Assistant/Head Clerk C&W FATA Divn: FR Kohat/Peshawar
5. Additional Chief Secretary (FATA) **Respondents**

Para-wise Comments on behalf Respondents 1, 2, 3 & 5

Respectfully Shewewth:

Preliminary objections

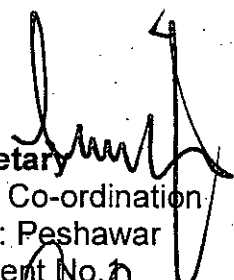
- a) The Petitioner has got no locus standi to file the instant application.
- b) The application is wholly incompetent, misconceived and untenable.
- c) The applicant has not come to the court with clean hands. The application also suffers from mis-statement and concealment of facts.
- d) That the application is not maintainable in its present form and badly time barred.
- e) That the applicant has got no cause of action.
- f) That the appellant is estopped by his own conduct to file the instant application

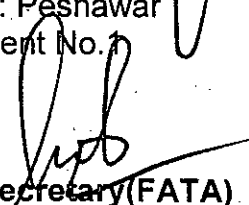
PARAWISE REPLY

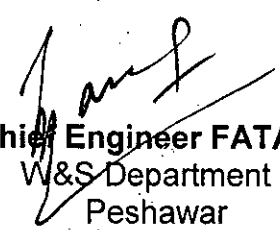
1. Para No.1 of the application needs no comments.
2. In correct, the posting/transfer policy of the Govt. provide such an opportunity to a person, if one exercises the option. In the instant case applicant tried himself posted as Head Clerk at Kohat and never put a request/option for posting to his home District Lakki Marwat. On the other Chief Engineer (FATA) W&S department is not Competent Authority to accede to such a request, because the area of settled Districts including District Lakki Marwat falls within the domain of another Competent Authority.
3. In-correct. The impugned order is according to law and without political motivation. The application has not been victimized.

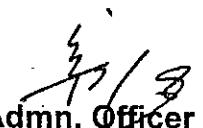
4. It is no matter, either the applicant relinquished the charge or otherwise, his substitute has since assumed duties and functioning there. Necessary reports of XEN and Arrival of Private Respondent (Nadir Khan) have been annexed with the detail comments to main Service Appeal.
5. Mis-conceiving, when the substitute reported/assumed duties and paid with salaries, then how the appellant is entitle to be paid on the same post, double drawl of pay cannot be justified nor entertain-able It is on the part of Appellant/Applicant that he would have to assume duties at his place of posting and then ask for salaries.
6. Detailed comments to the main Service Appeal being filed shall be taken as integral part to the Misc. Application.
7. False/Incorrect, the substitute has since assumed duties. The Govt: work cannot be with-held for want of mere claim of applicant that he shall remain posted there. The orders of posting/transfers have since been implemented; there no question arises as to whether applicant assumed duties or not at the place where he stands posted.

As narrated in above paras and comments filed in the main Service Appeal, orders are stands implemented quite for last 3-4 months ago; therefore, the Tribunal is prayed, to dismiss both Misc. applications and the main Service Appeal with cost against the applicant as prayed for earlier.


Secretary
Admn. Infra. & Co-ordination
FATA Sectt: Peshawar
Respondent No.1


Addl. Chief Secretary (FATA)
FATA Sectt: Peshawar
Respondent No.5


Chief Engineer FATA
W&S Department
Peshawar
Respondent No.2


Admn. Officer FATA
W&S Department Peshawar
Respondent No.3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Misc: Application No. Nil/2014 in the Main Service Appeal No. 1555/2013

Muhammad Zaman

Appellant

VERSUS

Secretary AI&C (FATA) & Others.

Respondents

AFFIDAVIT

I, Mr. Kifayatullah Administrative Officer, W&S Department Peshawar do hereby solemnly affirm and declare that the contents of the accompanying Para-wise comments submitted by Respondent No. 1,2,3&5 are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Court.


DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 1555/2013

Muhammad Zaman s/o Masti Khan,
Assistant R/o H. No.3 E Street,
C&W Colony OTS Road Kohat.....

Appellant

VERSUS

1. Secretary AI&C FATA Secretariat Peshawar
2. Chief Engineer FATA, Works & Services Department,
Peshawar
3. Administrative Officer, Works & Services FATA
Peshawar
4. Nadir Khan Assistant/Head Clerk C&W FATA Divn:FR Kohat/Peshawar
5. Additional Chief Secretary (FATA) **Respondents**

Para-wise Comments on behalf Respondents 1, 2, 3 & 5

Respectfully Shewewth:

Preliminary objections

- a) The appellant has got no locus standi and/ or cause to file the instant appeal.
- b) The appeal is wholly incompetent, misconceived and untenable.
- c) The appellant has not come to the court with clean hands. The appeal also suffers from mis-statement and concealment of facts.
- d) That the appeal is not maintainable in its present form and badly time barred.
- e) That the appellant has got no cause of action.
- f) That the appeal is bad for mis-joinder and non-joinder.
- g) That the language/phrases used in the appeal itself speak of the mentality of appellant and what to say his position of Government Servant.
- h) That the appellant is estopped by his own conduct to file the appeal.

Facts

1. It is incorrect, though appellant was working as Head Clerk in the office of the Executive Engineer, C&W FATA Division FR Kohat/Peshawar at Kohat, but it cannot be said that his working and dealing with general public i.e. contractors was good/cooperative
2. In-correct. Para-2 of the Appeal, itself proves the working/thinking/attitude and mode of his services. It is correct appellant had been transferred due to certain complaints of the contractors being his ill attitude and not friendly atmosphere. Feeling seriousness of the situation, the authority deemed it fit

atmosphere. Feeling seriousness of the situation, the authority deemed it fit to post him out for the smooth/friendly working in the XEN's office in the best interest of Govt: and the department. The same reasons were brought into the notice of the Tribunal in the earlier Service Appeal No. 1397 of 2013 of the Appellant.

3. As replied in Para-2 above.
4. Appellant, being senior most officials, was well aware that Civil Courts even the August Peshawar High Court was not competent to interfere in the cases, relating to terms and conditions of services. The appellant's sole object behind such litigation is only to pressurize the Respondents.
5. As per reply in Para-4 above.
6. Appellant filed the departmental appeal directly to the address of Additional Chief Secretary (FATA) FATA Secretariat, without routing the W&S department which is violative of the rules/regulations on this account. The attitude of appellant, by passing the Chief Engineer (FATA) is also questionable?
7. Respondents were failed to know that under what circumstances the transfer orders were suspended, when no chance to other party viz Govt: was provided. However the honourable Tribunal later dismissed the service appeal being premature on 22.11.2013. On the other the transfer orders have since been implemented as the Private Respondent No. 4 (Mr. Nadir Khan Assistant/Head Clerk) had assumed duties on 29.8.2013 (Annex: I) and stands implemented quite 3 & ½ months ago. Pay Roll of the Respondent-4 is also annexed for reference (Annex: II, III). Any reversal or cancellation/suspension of orders at this stage, definitely affect badly the whole working and the smooth functioning of the office at large.
8. Needless to comment. Appellant himself admitted his Service Appeal before the Tribunal was pre-mature. As stated in above para, Respondent-4 is working since 29.8.2013 and order stands implemented.

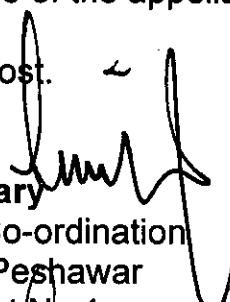
9. In-correct. Speaking orders of 22.11.2013 are well meaningful the position is fully expressed and the manners as well as the locking of official record by the appellant, due to which the Govt. work hampered. The XEN arranged alternate Tender Register so that the Govt: working may not suffer due to the role of the appellant, who taken away the keys of almirah/cup board with him to handicap the office hands. The appellant was also heard in person and Appellant Authority accorded reasonable opportunities to the appellant on this state...

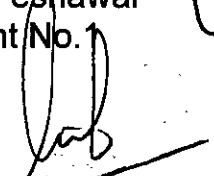
Grounds

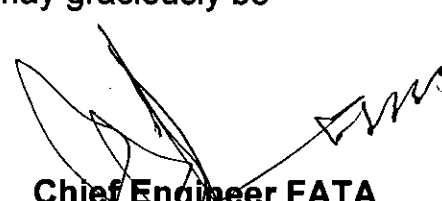
- a. False, as stated in the preceding para/comments, the working of Appellant were discriminative with general public and there were chances of any mishap and tussles due to which the office working would have been affected.
- b. In-correct. Leaving aside to go in confrontation, the authority deemed it appropriate to remove the appellant of the position of Head Clerk in the best interest as well as to curb any chances of further incidents.
- c. Needs no comments, as narrated in pre-ceding paras, appellant as well as his Councils were fully aware, that Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 put Bar on Civil Courts/High Courts on their jurisdiction in the cases of civil servants falling under the terms and condition of services.
- d. No needs to further comments. The back grounds of the case and the dealings of appellant's with general public/contractors are fully described as above.
- e. In correct, transfer orders are not politically motivated, orders were/had been issued on the circumstantial evidence and prevailing situation thereto, keeping in view all the con in the interest of Govt.

f. Correct the appellant is nearing to retirement, but no where it is provided that he may be left as Head Clerk there, particularly when his position became troublesome for the state/Govt: He belongs to District Lakki Marwat and has no right to stay at Kohat for the mere reasons of his retirement. He can manage his documentation with regard to pension/GPFund etc from the Headquarters' office very effectively/easily.

In the wake of above said stated facts/grounds, the appellant's request to stay at C&W FATA Division Peshawar/ Kohat may not be honoured due to his established attitude. His posting there, will further boost confrontation in large. To safe guard the life of the appellant too, the instant appeal may graciously be dismissed with cost.


Secretary
Admn. Infra. & Co-ordination
FATA Sectt: Peshawar
Respondent No. 1


Addl. Chief Secretary (FATA)
FATA Sectt: Peshawar
Respondent No. 5


Chief Engineer FATA
W&S Department
Peshawar
Respondent No. 2


Admn. Officer FATA
W&S Department Peshawar
Respondent No. 3



OFFICE OF THE
EXECUTIVE ENGINEER
C & W FATA DIVISION FRS
PESHAWAR / KOHAT AT KOHAT

No. 224/13-E,
To


Dated Kohat the 16/8/2013

The Chief Engineer FATA,
Works & Services Department,
Peshawar.

Subject: - ARRIVAL REPORT

Reference: - Your office Order No.126/2/11-E, dated 28.08.2013

In compliance to your office order No. noted above, Mr. Nader Khan Head Clerk has submitted arrival report to this office on 29.08.2013(F.Noon), which is intimated for information please.


Executive Engineer

Copy forwarded to:-

1. The Chief Engineer (Centre) C&W Department Khyber Pakhunkhwa Peshawar for information please.
2. The District Accounts Officer Kohat
3. The Divisional Accounts Officer (Local).

Executive Engineer

C.E. C&W Division (Centre)
Order No. <u>224</u>
Date <u>7/10/12</u>
C. No. <u>1</u>
Cl. <u>1</u>
S. (P.O.)
C.E. (R&B)
D.E. (Tech)
A.O. <u>[Signature]</u>
5240

To,

The Executive Engineer,
C&W FATA Division FRs,
Kohat /Peshawar at Kohat

Subject: - ARRIVAL REPORT

In compliance of Chief Engineer FATA Works & Services Department Peshawar office order No. 186/2/11-E, dated 28.08.2013. I beg to submit my arrival report for duty to day 29.08.2013 (F/Noon)

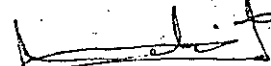
Thanks

DU. 29.08.2013

*Zaman hand over
the charge to Nader
immediately.*

*Nader
29-8-2013*

Yours obediently



(Mr. Nader Khan)

Head Clerk

C&W FAT Division FRs
Peshawar/Kohat at Kohat