

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Service Appeal No. 1156/2019

Date of Institution ... 11.07.2019

Date of Decision ... 03.02.2021

Professor Nasir Ali,
Principal (BPS-20),
Government Commerce College No. 2,
Ring Road Peshawar.

... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa, through Chief Secretary
Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar
and six other respondents.

... (Respondents)

Mr. Ali Gohar Durrani,
Advocate

--- For appellant.

MR. MUHAMMAD RASHEED,
Deputy District Attorney

--- For respondents.

MUHAMMAD JAMAL KHAN
ATIQU-UR-REHMAN WAZIR

--- **MEMBER (Judicial)**
--- **MEMBER (Executive)**

JUDGEMENT:

MUHAMMAD JAMAL KHAN, MEMBER:- By virtue of the instant appeal, submitted under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, the vires of Notification dated 31.05.2019 passed by the Secretary to Government of Khyber Pakhtunkhwa Higher Education Department, has been called in question whereby appellant Nasir Ali who was holding the post of Professor in GCC No. 2 Peshawar was transferred as Principal GCC No. Mardan.

2. That appellant being a civil servant was inducted into service as a Lecturer on 04.11.1991 and during the course of rendition of services he was promoted to the post of Professor from Associate Professor on

31.08.2018. Appellant performed services on deputation as Chairman of the Technical Board Khyber Pakhtunkhwa, Controller of examination Board of Intermediate and Secondary Education, Peshawar, and Controller of Board of Technical Education, Peshawar. By virtue of holding his office as Principal of Government College of Management Sciences-II Ring Road, Peshawar, he is ex-officio Chairman of the Departmental Selection Committee, a meeting for the appointment of Mali in BPS-03 was held on 12.01.2019 in a plenary session. The attendance of five candidates was requisitioned for 14.01.2019 however, only one Asif Khan came for interview whereas the remaining four candidates did not turn up. The person who attended interview namely, Asif Khan was issued appointment order dated 23.02.2019, the aforesaid person was already working against the subject post on contract. A letter dated 07.03.2019 was written by Engineer Faheem Khan MPA of Provincial Assembly of Khyber Pakhtunkhwa PK-72 for appointment of one Shahid Khan on the post of Mali. The letter was accompanied with a covering letter of Secretary Higher Education vide letter dated 19.03.2019, that letter was followed by incessant calls to appellant, for accommodating the nominee of MPA either by terminating the services of already appointed Mali or doing anything else. Tremendous pressure was exerted on appellant to the extent that he has to bring it to the notice of Director General Commerce Education and Management Sciences for devising a machinisim either to forbear the pressure tactics employed by political figure suggesting to relieve the Principal of the appointment process and instead the same be done through Director General Office. However, the pressure of MPA continued as he was member of the ruling party of Pakistan Tareek Insaf. In view of the prevalence of ban on posting transfer in the teaching faculty in the colleges of Khyber Pakhtunkhwa transfer was not legally justified thus on this premise a summery was moved by respondent no. 2 to the Chief Minister of the Province to get relaxation in the ban to ensure the posting transfer. No reason has been assigned in the summery for relaxation in ban which necessitated the posting transfer. In this regard the tenure of appellant has been mentioned to be three years and eight months which is incorrect as the promotion and transfer order dated 31.08.2018 is eminently clear reflecting that appellant has passed just nine months tenure while rendering duties on

the current post. Nevertheless, despite having short coming the, Chief Minister of Province approved summery on 29.05.2019 as a result of which the posting transfer order of appellant was made. Respondent No. 7 despite transfer order was not content by attacking the office of respondent no. 2 which even resulted into lodging of an FIR by the Secretary Higher Education against the P.S of MPA concerned. The posting transfer order was challenged before the Peshawar High Court, Peshawar, due to the bar under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, the petition was dismissed in limine with the direction of seeking remedy in a competent forum. Representation was made to the official respondents which remained undecided despite the lapse of requisite period hence, the present service appeal.

3. Respondents were summoned, in pursuance thereof respondent No. 1 to 5 attended the Tribunal through their legally authorized representative and submitted reply/comments. Private respondent No. 6 attended the Tribunal in person and submitted his reply. Respondent No. 7 was noticed but neither attended the Tribunal in person nor deputed someone else to represent him. Certain objections of legal and factual nature were raised including cause of action, locus standi, non-maintainability of appeal and limitation.

4. We have heard the arguments of learned counsel of both parties and gone through the record on file.

5. Learned counsel for the appellant vehemently contended that basically the issue arose due to the appointment of Mali on a vacant seat. The local MPA by virtue of his letter dated 07.03.2019 recommended the name of one Mr. Shahid Khan son of Bakhtiar Ahmad to be appointed to a vacant post of Class-IV/Mali in GCMS no. 2 however, the selection committee, constituted for the purpose, did not entertain the referred to letter and carried on with their reposed assignment. The learned counsel contended that ban was imposed by the provincial government on the general posting/transfer of teaching faculty in the Colleges of Khyber Pakhtunkhwa, except the newly recruited/appointed officers by the Public Service Commission vide notification dated 05.11.2018, accordingly, the untoward incident took

place as a result of which the brother and relative of MPA raided the office of Secretary Higher Education where abusive language was used by breaking the office paraphernalia which factum has been reported in the daily Mashriq vide the press cutting dated 01.06.2019 of the referred to daily, that not a year was completed by the appellant than he was transferred as his tenure commenced with effect from 31.08.2018. The learned counsel submitted that whenever a ban is going to be relaxed in that case reason has to be assigned which has not forth come in the instant case but even then the ban was relaxed. The learned counsel submitted that what was the notification on the basis of which order available at para no. 3 of page no. 23 of appeal was made, the learned counsel referred to lodging of FIR regarding the untoward incident vide FIR No. 231 dated 31.05.2019 under sections 186 & 506 CPC at PS Sharqi Peshawar Cantt. A writ petition was filed in the Peshawar High Court, Peshawar, but the same was disposed of in limine directing appellant to make recourse to the competent forum having jurisdiction in the matter. The learned counsel placed reliance on **PLD 1995 Supreme Court 530, 1998 SCMR 2222, PLD 2013 Supreme Court 295**. The learned counsel contended that exertion of pressure of political nature on civil servant is unwarranted. While seeking redressal appellant has to wait for 90 days and only then he can make recourse to the Tribunal. On concluding his arguments he submitted that either reply being submitted is incorrect or else the contents of FIR.

6. On the other hand, the learned Deputy District Attorney submitted that it is not clear from the bare perusal of appeal as to which one of the order has been challenged as no reference to the impugned order has been made, if appellant has challenged the transfer order that has already been acted upon as the incumbent has relinquished and assumed his charge. He referred to Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, that a civil servant can be posted anywhere in the province. That the untoward incident took place on 30.05.2019 whereas FIR was lodged on 31.05.2019 whereas the summery for relaxing the ban bear the date of 29 May 2019, therefore, he submitted that the FIR has no nexuses with the instant case which has been lodged in another case, that transfer cannot be

claimed as a matter of right. The learned Deputy District Attorney submitted that a single candidate was available at the time of interview sans the other candidates then how the case of appointed candidate could have been compared with the rest of them. As regard the letter of MPA it was written on 07.03.2019 after making of an appointment order while making reference to para-6 of reply the learned Deputy District Attorney submitted that the plea of appellant is based on hearsay as he did not specify the person who pressurized him for the purpose. Likewise while making reference to para-8 of reply he submitted that appellant while holding BPS-20 grade has served for more than twelve long years at key positions at Peshawar, the competent authority in all official matters of such officers falls within the competency of Chief Minister of the province, that the appellant did not raise any objection when he was transferred from Kohat to Peshawar.

7. The record on file abundantly clarify the fact that the issue between appellant and respondents arose on the appointment of a Class-IV employee on a vacant post. A Departmental Selection Committee was constituted for the purpose, the attendance of the prospective candidates was requisitioned however, out of five candidates only one candidate turned up who was interviewed, considered and recommendation for his appointment was made and he was accordingly, appointed to the post of Class-IV i.e Mali vide office order dated 23.02.2019 made by Principal GCMS-II Peshawar. The record reflect that when the appointment of Class-IV post was made certain political pressure of extraneous nature emanated from powerful circles requesting appellant to consider the case of certain candidate for appointment to the post of Class-IV Mali in GCMS-II while taking notice of the same, it was brought into the knowledge of the Director General Commerce Education and Management Sciences Chamkani More, Khyber Pakhtunkhwa, Peshawar, by the appellant vide his letter dated 16.04.2019 but to no avail. When appellant did not bow to the pressure the authority at the helm of affairs adopted another course and as ban on general posting/transfers of teaching faculty in the Colleges of Khyber Pakhtunkhwa was imposed vide notification bearing No. SO(Colleges-II)HED/27-1/2018 dated 05.11.2018, therefore, a summery was moved to the Chief Minister Khyber Pakhtunkhwa by

Secretary Higher Education Department dated 10.05.2019 for granting of approval in relaxation of ban together with a summer for transfer posting of appellant from GCC-II Ring Road Peshawar to GCC-II Mardan wherein approval was granted by the Chief Minister in consequence of which the competent authority passed the posting/transfer order of appellant vide notification bearing No. SO(CE&MS)HED/1-8/206(1-7) dated 31.05.2019. No compelling reasons whatsoever have been mentioned by the competent authority while granting approval to the proposed relaxation of ban on the posting/transfer order of teaching cadre how then approval was granted is a question mark? Which has not been explained unequivocally by the respondents either in their respective replies or else through any document originating from their office. The record on file reveal that by virtue of order dated 31.08.2018 the present appellant while holding the post of Associate Professor in BPS-19 was promoted to the post of Professor/Principal in BPS-20 of Commerce College Cadre whereby he was transferred from GCC-II Peshawar as a Principal to GCC-II, Peshawar, whereas by virtue of notification dated 31.05.2019 he was transferred from GCC-II Ring Road Peshawar to Principal GCC-II Mardan which clearly means that he has not completed a year at the given place and was transferred which has been made on the basis of nothing else than exertion of political pressure. According to the tenets of the Khyber Pakhtunkhwa Government Posting/Transfer Policy which is still in vogue a normal tenure of a civil servant is two years and before completion of his tenure normally he cannot be transferred unless and until there are compelling reasons and that too solely in the public interest which has to be prominently mentioned to reasonably justify that very order but nothing of the sort was done in case of appellant, if there was any lapse or an incident of misconduct on the part of appellant, the competent authority having carte blanche in the matter should have invoked and set in motion the powers so conferred which was the only course open and legally authorized excluding making resort to a stratagem of the like nature which is strongly disapproved having no legal sanctity or sanction behind it. An order passed while exerting political pressure on the civil servant has been looked with disfavor and disapproved by the Hon'ble Supreme Court of Pakistan in its judgment reported as PLD 1995 Supreme Court 530 vide its citation (a & b). It has been further

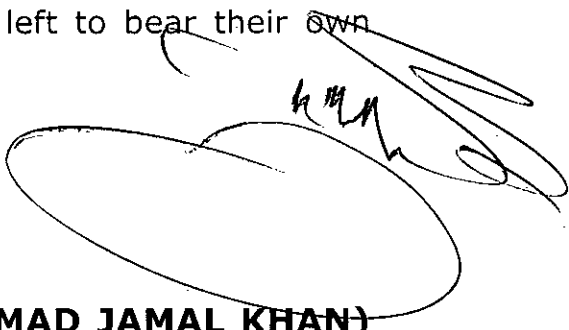
elaborated and the bench is fortified by the dictum laid down by the Hon'ble apex court reported as PLD 2013 Supreme Court 1995 where it has been held that when the ordinary tenure for a posting has been specified in the law or rules such tenure must be respected and could not be varied except for compelling reasons which should be recorded in writing and was held to be judicially reviewable, therefore, it was held that transfers of civil servants by political figures which were capricious was based on consideration not in the public interest and thus was stated not legally sustainable. In 1998 SCMR 2222 it has been held candidly by the Hon'ble Supreme Court of Pakistan that there should be a transfer policy of the government and all transfers should be made in accordance with such policy. The Government of Khyber Pakhtunkhwa has violated its own canon of rules by passing of the posting transfer order of appellant by acquisition of extra-ordinary means which cannot be approved. The record on file speaks volume of the facts that the order of transfer and posting of appellant was passed otherwise than in due course of law and that too due to extraneous pressure of political nature which cannot hold ground, therefore, irrespective of the fact of the charge relinquishment and assumption of appellant the impugned order dated 31.05.2019 is not sustainable, accordingly, appellant has to complete his normal tenure at the place of his posting where he rendered duties before the passage of the impugned order/notification and his transfer can be made after completion of his tenure. If a civil servant is not ensured his normal tenure at a given station he cannot satisfactorily deliver services to the public at large thus jeopardizing the whole system. As regard the lodging of FIR primarily the competent court of law having cognizance of the matter and who is empowered could deal with the same however, the incident and the immoderate chain of events which took place in the office of the Secretary Higher Education can be taken notice of for the purpose of adjudicating the instant lis.

8. At this juncture when the posting transfer order of appellant dated 31.05.2019 has been set at naught by the bench we are constrained to look sympathetically into the case of other incumbent who stands impleaded as respondent No. 6 namely; Khalid Khan, who has been posted as Principal Government Commerce College-2 Ring

Road Peshawar who is totally innocent as regard the whole episode having no fault at all, therefore, the authority at the helm of affairs/respondents No. 1 to 5 are directed to make his adjustment on a suitable post equal to his rank somewhere in the Provincial Metropolis so that he and his family members are relieved of agonies and chagrins which they had to confront as the result of the rescission of the posting transfer order of the appellant.

9. Resultantly, on acceptance of the instant appeal we set-aside the impugned order dated 31.05.2019 alongwith allied orders adversely affecting the rights of appellant whereby appellant has to complete his normal tenure at the given station. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
03.02.2021



(MUHAMMAD JAMAL KHAN)
Member (Judicial)



(ATIQ-UR-REHMAN WAZIR)
MEMBER (Executive)

Service Appeal No. 1156/2019

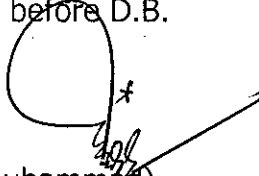
S.No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	03.02.2021	<p><u>Present.</u></p> <p>Mr. Ali Gohar Durrani, Advocate ... For appellant</p> <p>Mr. Muhammad Rasheed, Deputy District Attorney ... For respondents.</p> <p>Vide our detailed judgement of today, we set-aside the impugned order dated 31.05.2019 alongwith allied orders adversely affecting the rights of appellant whereby appellant has to complete his normal tenure at the given station. Parties are left to bear their own costs. File be consigned to the record room.</p> <p><u>ANNOUNCED</u> 03.02.2021</p> <p>(Muhammad Jamal Khan) Member (Judicial)</p> <p>(Atiq-ur-Rehman Wazir) Member (Executive)</p>

07.01.2021

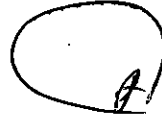
Nemo for appellant.

Asif Masood Ali Shah learned Deputy District Attorney
alongwith Salman Assistant for respondents present.

Notice be issued to appellant/counsel for 03.02.2021 for
arguments, before D.B.



(Mian Muhammad)
Member (E)



(Rozina Rehman)
Member (J)

19.08.2020

Due to summer vacations, the case is adjourned to 21.10.2020 for the same.

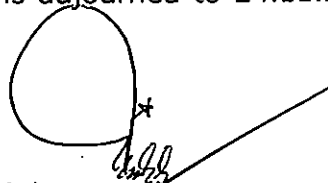


Reader

21.10.2020

Junior to counsel for the appellant and Addl. AG for the respondents present.

The Bar is observing general strike today, therefore, the matter is adjourned to 24.11.2020 for hearing before the D.B.



(Mian Muhammad)
Member



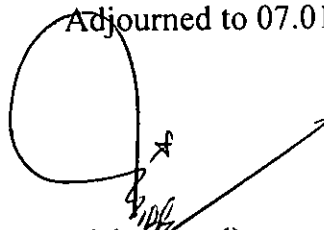
Chairman

24.11.2020

Counsel for the appellant present. Addl: AG alongwith Majid Khan, Junior Clark for official respondents and private respondent No. 6 in person present.

Learned counsel for the appellant requests for time to procure and go through the comments of respondents.

Adjourned to 07.01.2021 for arguments before D.B.




(Mian Muhammad)
Member (E)



Chairman

25.06.2020

Counsel for the appellant present. Addl: AG alongwith Mr. Salman, Assistant for respondent No.3 present. Written reply on behalf of respondent No. 6 and 7 not submitted. Notice be issued to private respondent no. 6 and 7 for submission of written reply/comments on 13.07.2020 before S.B.

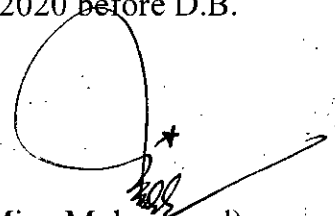

MEMBER

13.07.2020

Clerk to counsel for the appellant and Addl: AG for official respondents and private respondent No. 6 in person present.

Private respondent No.6 submitted written reply/comments which is placed on file.

To come up for arguments on 28.07.2020 before D.B.

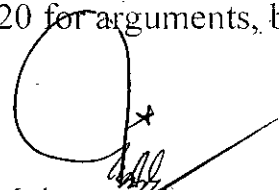

(Mian Muhammad)
Member(E)

28.07.2020

Nemo for appellant.

Mr. Kabir Ullah, Khattak learned Additional Advocate General alongwith Salman Assistant for official respondents present. Private respondent #.6 in person present.

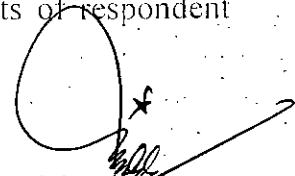
Notice be issued to appellant and his counsel for 19.08.2020 for arguments, before D.B.


(Mian Muhammad)
Member (E)


(Rozina Rehman)
Member (J)

03.03.2020

Junior to counsel for the appellant and Addl. AG alongwith Qazi Ayaz, Litigation Officer for respondents No. 1 to 4 present and submitted written reply which is placed on file. Nemo for respondent No. 6. Fresh notice be issued to him. To come up for written reply/comments of respondent No. 6 on 18.03.2020.



Member

18.03.2020

Junior to counsel for the appellant present. Mr. Kabirullah Khattak learned Addl. AG alongwith Qazi Ayaz Litigation Officer for respondent No. 1 to 4 and private respondent No.6 in person present. None present on behalf of respondent No.7. Reply on behalf of respondent No.1 to 4 already submitted. Private respondent No. 6 seeks time to submit written reply/comments. Notice be issued to the private respondent No.7 to attend the court and submit written reply/comments. Last opportunity is granted. To come up for written reply/comments on behalf of private respondents No. 6 & 7 on 02.04.2020 before S.B.



(Hussain Shah)
Member

02.04.2020

Due to public holiday on account of COVID-19, the case is adjourned for the same on 25.06.2020 before S.B.



Reader

1156/19

19.12.2019

Junior to counsel for the appellant and Addl. AG along with Naeem, A.D. for the respondents present.

Representative of respondents seeks time to furnish the requisite reply/comments. Adjourned to 02.01.2020 on which date the reply/comments shall positively be submitted.


Chairman

02.01.2020

Counsel for the appellant and Addl. AG along with Naeem Gul, A.D. for the respondents present.

Representative of respondents seeks time to furnish reply/comments. Adjourned to 17.02.2020 on which date the requisite reply/comments shall positively be submitted.


Chairman

17.02.2020

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG along with Mr. Muhammad Israr, Litigation Officer on behalf of official respondents No. 1 to 5 and private respondent No. 6 in person present. Written reply on behalf of respondents not submitted. Representative of the department as well as private respondent No. 6 seeks further time to furnish reply/comments. Adjourned to 03.03.2020 for written reply/comments before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

23.10.2019

Counsel for appellant present.

Contends that the impugned transfer order pertaining to the appellant, issued on 31.05.2019 was a result of political pressure exerted by an MPA of the province. Even an FIR was registered against the said MPA on 31.05.2019, wherein the transfer of the appellant, as desired by the MPA, was duly mentioned. The issue of appointment of a Mali in Government College of Management Science, No.2 became the bone of contention between the management and the MPA namely Engr. Faheem Khan which triggered the move for transfer of the appellant despite the ban by Government. Further contends that the summary, sent to competent authority for lifting of ban, was not supported by any legitimate ground for the purpose.

Instant appeal is admitted for regular hearing in view of arguments of learned counsel and the available record. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/ comments on 06.11.2019 before S.B.

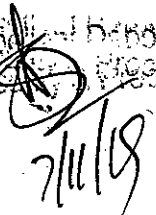

Chairman

06.11.2019

Counsel for the appellant has submitted an application for extension of time to deposit process fee and security which has not been deposited within prescribed time inadvertently.

Application is accepted and the appellant is allowed to deposit security and process fee within three working days from today. Thereafter, notices be issued to the respondents for submission of reply/comments on 19.12.2019 before S.B.


Chairman

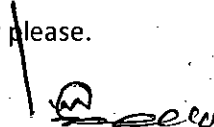
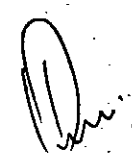
Deposited
Security Process Fee

21/11/19

Form-A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 1156/2019 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	17/09/2019	<p>The appeal of Professor Nasir Ali resubmitted today by Mr. Ali Gohar Durrani Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR, 17/9/19</p>
2-	18/09/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>23/10/19</u>.</p> <p> CHAIRMAN</p>

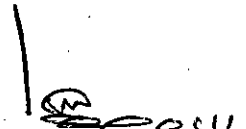
1-18

This is an appeal filed by Professor Nasir Ali today on 11/07/2019 against the order dated 31.05.2019 against which he preferred/made departmental appeal/ representation on 14.06.2019 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, which is premature as laid down in an authority reported as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/Counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action.


No. 1205/ST,

Dt. 12-7-2019


REGISTRAR -
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Ali Gohar Durrani Adv. Pesh.

The period of 90 days has lapsed, the appeal may therefore be placed before the Bench of the worthy Tribunal.


Ali Gohar Durrani
17-08-19.

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

Appeal No. 1156/2019

Prof. Nasir Ali

Versus

Government of Khyber Pakhtunkhwa through Chief Secretary and others

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6.	Copy of the letter dated 07-03-2019 & Covering Letter dated 19-03-2019	D	14-15
7.	Copy of the Letter dated 16-04-2019	E	16
8.	Copy of the ban on postings	F	17-19
9.	Copy of the summary of posting of Appellant	G	20-24
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Through

APPELLANT



(ALI GOHAR DURRANI)
Advocate High Court
0332-9297427

khaneliegohar@yahoo.com
Shah | Durrani | Khattak
62-C/1, University Road,
University Town, Peshawar.

①
BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

APPEAL No. 1156 /2019

Khyber Pakhtunkhwa
Service Tribunal

Case No. 947

Dated: 11/7/2019

1. Prof. Nasir Ali,
Principal (Bps-20),
Government Commerce College No. 2,
Ring Road, Peshawar.

..... Appellant

Versus

- ✓ 1. The Government of Khyber Pakhtunkhwa,
Through Chief Secretary Government of Khyber Pakhtunkhwa,
Civil Secretariat Peshawar.
- ✓ 2. The Higher Education, Archives & Libraries Department,
Through Secretary Higher Education, Government of Khyber
Pakhtunkhwa,
Civil Secretariat, Peshawar.
- ✓ 3. The Directorate General,
Commerce Education & Management Sciences,
Through Director General.
- ✓ 4. The Establishment Department,
Through Secretary Establishment, Government of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.
5. Chief Minister
Government of Khyber Pakhtunkhwa,
Chief Minister House, Peshawar.
6. Khalid Khan,
Principal
Government Commerce College No. 2,
Mardan.
7. Engr. Fahim Ahmad Khan

Filed to-day

Registrar
11/7/19

Re-submitted to-day
and filed.
Registrar
17/9/19

2

MPA, PK-72, Peshawar.
Provincial Assembly Khyber Pakhtunkhwa.

.....Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE TRANSFER ORDERS OF THE APPELLANT WHEREBY HE HAS BEEN TRANSFERRED/POSTED ILLEGALLY AND WITHOUT LAWFUL AUTHORITY AND IN CONTRAVENTION OF THE BAN

RESPECTFULLY SUBMITTED:

1. That the Appellant is a civil servant posted as principal (bps-20) with the Respondent No. 2. The Appellant was appointed initially as Lecturer in 04-11-1991. Subsequently after promotions the Appellant was promoted to full professor from Associate Professor vide Notification No.SO/E-I)E&AD/9-88/2018 dated 31st August 2019. The Appellant besides the above is a law abiding citizen of Pakistan and also hails from a respectable family. .

Copy of the Notification No.SO/E-I)E&AD/9-88/2018 is Annex-A

2. That the Appellant also served through deputation as the Chairman of the Technical Education Board Khyber Pakhtunkhwa, Controller of Examinations Board of Intermediate and Secondary Education Peshawar, Controller of Board of Technical Education Peshawar.
3. That the Appellant by virtue of his office as Principal of Government College of Management Sciences-II Ring Road, Peshawar also is ex-officio chairman of the Departmental Selection Committee in respect of the said college.
4. That the Appellant in terms of reference to the Departmental Selection Committee referred to in ¶2 had held a meeting for appointment of Mali BPS-03. This meeting was held on 12-01-2019, and all the members participated in

the meeting. The minutes reflect that five candidates were issued call letters on 14-01-2019 but only one Asif Khan came for the interview whereas the rest 04 candidates didn't show up for the interview. The person who came for the interview namely Asif Khan was issued appointment order dated 23-02-2019. It is imperative to mention that the said Asif Khan was already working against the said post on contract.

**Copy of the Minutes of meeting are Annex-B
Copy of the appointment order is Annex-C**

5. **That** the Appellant was subsequent to the afore-mentioned appointment of the said Asif Khan the MPA for Provincial Assembly of Khyber Pakhtunkhwa PK-72 namely Engr. Fahim Ahmad Khan wrote to the Respondent No. 2 vide letter dated 07-03-2019 for appointment of one Shahid Khan on the post of Mali against which the office order was already issued. This letter was communicated to the Appellant with a covering letter from the Secretary Higher Education vide letter dated 19-03-2019.

Copy of the letter dated 07-03-2019 & Covering Letter dated 19-03-2019 is Annex-D

6. **That** the said letters were followed by continuous calls to the Appellant for "adjusting" the nominee of the said MPA by either terminating the services of the already appointed Mali or doing anything else to ensure the appointment of the nominee of the MPA. The Appellant was put under such immense pressure that he had to write to the Respondent No. 3 to bring an end to these pressure tactics as well as to absolve the principal of the appointment process and instead the same be done through Director General office. The letter was also copies to the Chief Secretary of the Province as well as the PS to the Secretary Higher Education.

Copy of the Letter dated 16-04-2019 is Annex-E

7. **That** the high handedness however didn't abate. The MPA concerned being a member of the ruling party i.e. Pakistan Tehreek-i-Insaf, exerted pressure to the optimum in order to get back to the Appellant. This was however not possible otherwise due to the unblemished and crystal clear service career of the Appellant.

8. That the fact that there is a ban imposed on general postings/transfers of teaching faculty in colleges of Khyber Pakhtunkhwa, even transfer wasn't feasible. So a summary (impugned summary) was initiated by the Respondent No. 2 for the Chief Minister of the province to get a relaxation in the ban in order to ensure that the transfer/posting is done. The summary in itself is inherently filled with malice, as to get dispensation from the ban no reasons have been given as to why the posting/transfer is required. Also most importantly the tenure of the Appellant is mentioned to be of 03 years and 08 months, which is absolute lie, as the promotion and posting order dated 31-08-2019 is very clear showing that the Appellant has had only 9 months tenure on the current posting. However despite these clear lacunas, the Chief Minister of the province approved the summary on 29-05-2019. This culminated in the posting/transfer order of the Appellant from GCC No. 2 Ring Road Peshawar to GCC No. 2 Mardan. The Respondent No. 7 despite the transfer order isn't content and had attacked the office of the Respondent No. 2, which was reported in news dailies.

Copy of the ban on postings is Annex-F

Copy of the summary of posting of Appellant is Annex-G

9. That the said transfer/posting also resulted in the lodging of an FIR by the Secretary Higher Education against the PS of the MPA concerned.

Copy of the FIR is Annex-H.

10. That the appellant assailed the order of transfer/posting before the Peshawar High Court Peshawar. However due to the bar under Article 212 of the Constitution of Islamic Republic of Pakistan 1973, the appellant petition was dismissed in limine as not maintainable and the same may be filed before the appropriate forum.

Copy of the Grounds of WP 3186/2019 and Judgment is Annex-I.

11. That the appellant had also moved a representation to the official Respondents and in the light of the Supreme Court Judgments the same have to be decided within 15 days. The representation has not been decided as yet.

Copy of the representation is Annex-J

12. That the said posting/transfer order being without any lawful authority, and with no immediate need for the same, also the fact that the person posted to

the post of the Appellant hadn't even requested for it is tainted with malafide, the Appellant having no other "effacious", efficient and proper remedy and after the lapse of the period of 15days in matters pertaining transfer of civil servants, the appellant approaches this Honorable Tribunal in its constitutional jurisdiction amongst others on the following grounds:

Grounds:

- a. **Because** the transfer/posting order is based in malafide and is inherently illegal, unlawful and without jurisdiction on the score of the ill-will involved in the order of transfer/posting and is thus liable to be set-aside.
- b. **Because** The Rules designate certain posts as 'tenure posts' (rule 22 read with Schedule IV of the Rules) and prescribe a period of three years for an incumbent to serve on such posts. Such prescribed tenure may therefore be categorized as the ideal duration for which a civil servant should serve at a particular post. The post of the appellant is a tenure post, yet he has been transferred from his posting only after 8months on the post which is against the Rules. Thus the appellant having not been allowed to complete his normal tenure and thus the order impugned is violation of transfer posting policy of the Government and the judgment of the apex court reported in PLD 1995 SC Page No 530 and PLD 2013 Supreme Court Page No 195.
- c. That the recently the august Supreme Court of Pakistan has in its Judgment reported in 2013 PLD SC 195, decided a point of law and while committing upon the transfer and posting and other related matters of service held as under:-

(i) Appointments, Removals and Promotions:- Appointments, removals and promotions must be made in accordance with the law and the rules made there under; where no such law or rule exists and the matter has been left to discretion, such discretion must be exercised in a structured, transparent and reasonable manner and in the public interest.

(ii) Tenure, posting and transfer: When the ordinary tenure for a posting has been specified in the law or rules made there under; such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable.

(iii) Illegal Orders: Civil servants owe their first and foremost allegiance to the law and the Constitution. They are not bound to obey orders from superiors which are illegal or are not in accordance with accepted practices and rule, based norms; instead, in such situations, they must record their opinion and; if necessary, dissent.

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

Relying upon the Judgment of the Supreme Court of Pakistan the Respondents are duty bound to have follow the law, judgment of the superior courts, and posting and transfer should not have been influenced in any manner whatsoever.

d. Because the Supreme Court of Pakistan in CP No. 2812/2017 clearly directed in the following terms:

“.....The issues raised in this petition are substantial questions of law of public importance in terms of Article 212(3) of the Constitution, which we have dilated upon and which were left unattended by the learned chairman and members of the Tribunal. The Tribunal also did not take into account the referred to judgments of this Court. The Tribunal referred to a judgment of this Court, Zaka Ullah Bajwa v Chief Secretary, Government of the Punjab (2005 SCMR 13), which held that a civil servant, “is required to serve anywhere against the post to which he is transferred”, however, that does not mean a civil servant can be made to serve under his subordinate or for a very brief period of time or that the minister can undermine the authority of the secretary of the department”.

It was further observed in the said judgment that:

“The Chief Secretary and the secretaries of the departments of the Government are directed not to act pursuant to any notification, order and/or instruction whereby a minister orders the posting/transfer of a civil servant.”

The present case is all about orders of an MPA and completely political and is liable to be set aside.

e. **Because** Section 10 of the Khyber Pakhtunkhwa Civil Servants Act states as follows:

“Every civil servant shall be liable to serve anywhere within or outside the Province in any post under the Federal Government, or

any Provincial Government or local authority, or a an corporation or body set up or established by any such Government:

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:

Provided further that where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had been so required to serve."

The aforesaid section does not empower the Government to cut short the normal tenure of a posted/transferred civil servant, and particularly without assigning any reason. In the case of Mahmood Akhtar Naqvi (Anita Turab case) (above) this Court held: "16. In the Hajj Corruption Case, the court reiterated its earlier ruling in Zahid Akhtar v. Government of Punjab (PLD 1995 SC 530), where it had been held that

"the normal period of posting of a Government servant at a station, according to Rule 21 of the Rules of Business is three years, which has to be followed in the ordinary circumstances, unless for reasons or exigencies of service a transfer before expiry of the said period becomes necessary in the opinion of the competent authority." Furthermore, with regard to transfers of civil servants, this Court has stated that transfers by political figures which are not legally sustainable. Farrukh gulzar v. Secretary Local Government and Rural Development Department, Lahore and 2 others (1998 SCMR 2222). These are principles of law enunciated by this court and are to be followed in terms of Article 189 of the Constitution. We, however, repeatedly come across violations of such principles. This unnecessarily leads to litigation which, in turn, clogs Courts and Service Tribunals."

- f. Because in-fact there exist no exigencies of service nor can the order of transfer be termed as in the public interest rather the same has been issued in violation of the transfer and posting policy and in ban period.
- g. **Because** the Appellant's only fault is standing up to a powerful Member Parliament to ensure that an appointment is done on the basis of merit and not on nepotism.
- h. **Because** the Appellant has been treated illegally, unlawfully and against the spirit of the law.
- i. **Because** the mechanism provided under Article 212 is attracted for the reason of the order being corum non judice and illegal for the entrenched malice on part of the Respondents in the case.

8

- j. **Because** the Appellant has been seriously discriminated in line with the spirit of Article 25 of the Constitution of Islamic Republic of Pakistan, as there is a blanket ban imposed on transfers of teaching faculty within the province, yet in order to settle score with the Appellant, there has been a dispensation sought and granted without even a remote reference as to how or why such dispensation was sought and granted by the competent authority. There has been no reason given. The record is clear that there is no reason other than the clear political pressure being exerted on the appellant.
- k. **Because** Respondents have no authority to initiate/approve the impugned summary which is illegal, unlawful, tainted with malafide and issued without any jurisdiction albeit lawful authority. The actions on part of the respondents seriously are in the negation of the Constitution of the Islamic Republic of Pakistan, 1973 and the Civil Servants Act.
- l. **Because** before taking the impugned action, no due process of law has been adopted by the Respondents.
- m. **Because** the fundamental Rights of the Appellant protected under Article 4, 9, 18 and 25 of the Constitution of Islamic Republic of Pakistan 1973 are being violated.
- n. **Because** the actions and inactions of the Respondents proclaim their own mala fide.
- o. **Because** the Appellant has got the fundamental right of being treated in accordance with law but the treatment meted out to the Appellant is on consideration other than legal and he has been deprived of his rights duly guaranteed to him by the constitution of Pakistan.
- p. **Because** the Respondents cannot be allowed under the law to pass any illegal order.
- q. **Because** the appellant has not been treated in accordance with law, hence his rights secured and guaranteed under the Law are badly violated.

9

r: Because the Appellant craved for leave to add further grounds at the time of his oral arguments before this Hon'ble Court highlighting further contraventions of the provisions of the Constitution & Laws which adversely affected the Appellant.

PRAYER:

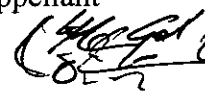
In view of the above, it is humbly prayed that this honorable Tribunal may graciously be pleased to declare that the summary of the transfer/posting of the Appellant initiated on the basis of political pressure be declared as illegal, unlawful, against the norms of justice and coram non iudice and to Direct the respondents to forthwith withdraw the impugned summary and the transfer/posting orders of the Appellant. Any other relief deemed appropriate in the circumstance of the case may also be granted.

Interim Relief:

May it please this Honorable Court to suspend the Summary of posting/transfer of the Appellant till the final disposal of the writ petition, and that no adverse action be taken against him.


Appellant

Through



(ALI GOHAR DURRANI)
Advocate High Court
0332-9297427

khaneliegohar@yahoo.com
Shah | Durrani | Khattak
62-C/1, University Road,
University Town, Peshawar.

10

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

Appeal No. _____/2019

Prof. Nasir Ali

Versus

Government of KP and others

AFFIDAVIT

I, **Prof. Nasir Ali** S/O Haji Said Kareem R/O Dado Kali, Tehsil Tangi, District Charsadda do hereby solemnly affirm and declare on oath that the contents of accompanied writ petition are true and correct to the best of my knowledge and belief and nothing has been intentionally concealed from this Honorable Court.

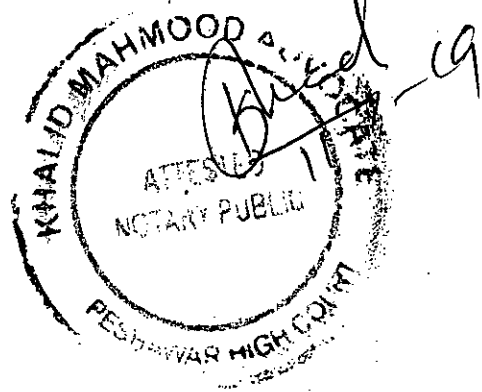
Nasir

Deponent

**CNIC No. 17102-1145807-1
0333-9393894**

Identified By:

Ali Gohar Durrani
**Ali Gohar Durrani
Advocate High Court(s)**





GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Ahmed

(11) (A)

DATED Peshawar, the August 31, 2018

NOTIFICATION

NO.SO(E-DE&AD)/9-88/2018. Consequent upon their promotion from Associate Professors (BS-19) to the post of Professor/Principal (BS-20), of Commerce College Cadre, as notified vide this Department's Notification of even No. dated 29.5.2018, the Competent Authority is pleased to order posting/transfer of the following Professors, in the public interest:-

S. #	NAMES OF OFFICERS	FROM	TO	Remarks
1.	Mr. Muhammad Shafiq (BS-20)	Associate Professor, GCMS, Peshawar	Professor/Principal GCMS, Peshawar	A.V.P
2.	Mr. Nasir Ali (BS-20)	Associate Professor, GCC No.2 Peshawar.	Professor/Principal, GCC No. 2 Peshawar.	A.V.P

CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA

Endst. No. & date even

- Copy forwarded to the:-
1. Principal Secretary to Governor, Khyber Pakhtunkhwa.
 2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
 3. Secretary to Government of Khyber Pakhtunkhwa, Higher Education Department.
 4. Divisional Commissioner, Peshawar.
 5. Accountant General, Khyber Pakhtunkhwa.
 6. Director General (Commerce) Khyber Pakhtunkhwa.
 7. Deputy Commissioner, Peshawar.
 8. Director Information, Khyber Pakhtunkhwa.
 9. Principal of concerned college(s).
 10. PS to Chief Secretary, Khyber Pakhtunkhwa./PS to Secretary Establishment
 11. Professors concerned.
 12. Manager, Govt. Printing Press Peshawar.

(ISHTIAQ AHMAD)
SECTION OFFICER (ESTT. I) *WJ*
PH: & FAX # 091-9210529

21.08.2018

OFFICE OF THE PRINCIPAL GOVERNMENT COLLEGE
OF MANAGEMENT SCIENCES-II RING ROAD PESHAWAR.

Annex - (B)

12

(B)

MINUTES OF THE MEETING

A meeting of the Departmental Selection Committee comprising of the following officers was held at 10:00 AM dated 12-01-2019 under the Chairmanship of the Principal, Government College of Management Sciences-II Ring Road Peshawar on the subject of "appointment of Mali BPS-03 against the vacant post". The called letters to the five 05 candidates were issued on 04 -01-2019 but 04 were found absent on the date of interview.

The committee thoroughly interviewed one candidate who was found suitable for the above mentioned post. Hence, the committee unanimously recommend Mr. Asif Khan S/O Bakht Munir, Mohalla Lal Bahadar, Nasir Bagh Road Peshawar for the post to the Competent Authority for appointment. The relevant record such as called letters, official correspondence and list issued from the Employment Exchange Peshawar No.EEP//Vac:1-8/A/148 dated 10-12-2018 was thoroughly checked & found correct.

SELECTION COMMITTEE

- 1- Prof. Nasir Ali
- 2- Prof. Hazrat Zubair
- 3- Prof. Muhammad Rafiq
- 4- Muhammad Taib (Director Commerce DGCE&MS)

Chairman _____
Member _____
Member _____
Departmental Representative _____



Engr. Fahim Ahmad Khan
Member Provisional Assembly PK-72

Annex
"D"

Ref No: 495

Date: 07-03-2019

To,

THE SECRETARY,
HIGHER Education,
K.P.

5-17

58
15/3/19

SUBJECT:- Application for post as Mali in
Govt. College of Management Sciences No-2
Peshawar

MR. Sarband Khan s/o Barkhuda Ahmed having
CNIC NO 17301-5777-366-9 Resident of Kandi Akhron
Ahmad Peshawar as applicant applied for vacant post
as class IV Mali in G.C.M.S No-2. I strongly recommend
applicant for same post. Kindly process applicant
file as per government rules and laws. Thanks

Best Regards

For action
please

DG/Commerce

ENGR FAHIM AHMAD

D Adm
Forward to Principal
G.C.M.S-II Ring Road
for m/action

Engineer
Fahim Ahmad Khan
MPA PK-72

Add: Sarband Anand Khan Barr Road, Peshawar.
Mob: 0322 1908487 / 0336 42000 E-mail: fahimco@gmail.com

Ph.0919331695



facebook:Dgcecms.kpk@gmail.com

DIRECTORATE GENERAL OF COMMERCE EDUCATION
& MANAGEMENT SCIENCES, KHYBER PAKHTUNKHWA,
RANO GARHI, PESHAWAR.
email:prof.mnadeemdg@gmail.com

No. DGCE&MS/Admn/22-1716/1
To,

Dated: 17/03/2019.

535

20/03/2019

The Principal
Government College of Commerce No.2,
Ring Road Peshawar.

Subject:- APPLICATION FOR POST AS MALI IN GOVT. COLLEGE OF
COMMERCE-2, PESHAWAR.

I am directed to refer to the subject noted above and to enclose a D.O
letter from Engr. Fahim Ahmad Khan, MPA PK-72 regarding appointment of Mr. Shahid
Khan S/O Bakhtiar Ahmad, resident of Landi Akhoun Ahmad, Peshawar as Mali
received through Secretary, Higher Education Department for consideration under the
rules / policy please.

DA/As above.

(MUHAMMAD TAIB)
DIRECTOR (ADMN).

(16)
Annex
"E"
②

**OFFICE OF THE PRINCIPAL GOVERNMENT COLLEGE OF
MANAGEMENT SCIENCES-II RING ROAD PESHAWAR.**

No. GCC-2/R.ROAD/PESH:/4110
To

Dated 16-4-2019.

The Director General,
Commerce Education & Management Science
Chamkani More, Khyber Pakhtunkhwa Peshawar.

Subject:- APPOINTMENT OF MALI.

Dear Sir,

Reference to the subject cited above and to state that a post of Mali was created in the last Budget 2018-19 on the request of the then Principal GCMS-II Ring Road for maintaining lawns and other related activities.

It is to mention that the Director General office has issued a schedule for the interview and notified the composition of the appointment committee in which Director (Admn) of the Director General Commerce Education & Management Sciences Khyber Pakhtunkhwa was also a member (Annex-A). The whole process was completed as per rules and in light of the Judgments of the Superior Judiciary.

But it is ironical to mention that after completing all the process on merit. (Minutes Annex-B) unwarranted Political as well as Administrative Pressure from the high ups was exerted on this office against this merit based appointment, which is against the Judgment of the Supreme Court of Pakistan and Government rules. This office is obligated under the rules to carry out its duties as per rules and policies of the Government of Khyber Pakhtunkhwa and adhere to merit and Government rules for such appointments. In light of this bitter experience the Director General office is requested to carry out recruitment process of Class IV employees itself and absolve the Principals from this process.


PRINCIPAL

Endst: No. GCC-2/R.ROAD/PESH:/4110(1-3)
Copy forwarded for information to:-

Dated 16-04-2019.

- 1- PS to Chief Secretary Civil Secretariat Khyber Pakhtunkhwa Peshawar.
- 2- PS to Secretary Higher Education Archives & Library Department Civil Secretariat Peshawar.

PRINCIPAL
GCMS-II Peshawar



GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT

Dated Peshawar the 06 Jul 2018

NOTIFICATION

No. SO/COLEGES-ED/ED/23-1/2018 (Consequent upon the approval of the Chief Minister Khyber Pakhtunkhwa, the Secretary to Govt. of Higher Education Department Khyber Pakhtunkhwa is pleased to impose ban, on general postings // transfers of teaching faculty in the colleges of Khyber Pakhtunkhwa, except the newly recruited/appointed officers by the Public Service Commission and adjustment made as a result of promotions by the Provincial Selection Board, with immediate effect till further orders.

SECRETARY TO GOVT.
OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION DEPARTMENT

Encl. No. & Date Even.

A copy is forwarded to the-

1. Director Higher Education, Khyber Pakhtunkhwa, Peshawar.
2. All Deputy Secretaries, Higher Education Department.
3. All Section Officers in Higher Education Department (COMMERCIAL)
4. PS to Secretary Higher Education Department Khyber Pakhtunkhwa, Peshawar.

(Mohammad Fayaz Khan)
SECTION OFFICER (C-II)

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**GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION ARCHIVES &
LIBRARIES DEPARTMENT**

Dated Peshawar the 05.11.2018

NOTIFICATION

No.SO(Colleges-II)HED/27-1/2018. Consequent upon the approval of the Chief Minister Khyber Pakhtunkhwa, the Secretary to Govt. of High Education Department Khyber Pakhtunkhwa is pleased to impose ban, on general postings / transfers of teaching faculty in the colleges of Khyber Pakhtunkhwa, except the newly recruited/ appointed officers by the Public Service Commission and adjustment made as a result of promotions by the Provincial Selection Board, with immediate effect till further orders.

SECRETARY TO GOVT.
OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION DEPARTMENT

Endst: No. & Date Even.

A copy is forwarded to the:-

1. Director Higher Education, Khyber Pakhtunkhwa, Peshawar.
2. All Deputy Secretaries, Higher Education Department.
3. All Section Officers in Higher Education Department.
4. P.S to Secretary Higher Education Department, Khyber Pakhtunkhwa, Peshawar.

Sd/-
(Muhammad Fayaz Khan)
SECTION OFFICER (C-III)

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

DAILY MASHRIQ PESHAWAR

روزنامہ
سید تاج میر شاہ
پشاور
عہدہ فو کے بانی
مشرق
مسلل اشاعت کے 52 سال

ABC CERTIFIED
پشاور ڈائری اسلام آباد سے شائع ہونے والا کثیر الاشاعت قومی اخبار

جلد 52 ہفتہ 26 رمضان المبارک 1440ھ کم جون 2019ء 18 جولائی قیمت 20 روپے شمارہ نمبر 181

19

ایم بی ایس کے بھائی کا سیکرٹری ہائیر ایجوکیشن کے دفتر بردھاوا
ایجوکیشن کے بھائی اور شہزادہ کی کام گورنمنٹ اور پھولہ چیف سیکرٹری کا مقدمہ درج کر دیا گم
پشاور (غزور پور) گورنمنٹ کالج آف کامرس ہائیر ایجوکیشن کے دفتر پر ہلکا پھلکا ہونے لگا ہے
پشاور میں کلاس فور ملازم کی بھرنی پر ایم بی ایس کے دفتر میں کام گورنمنٹ کرتے ہوئے سالانہ فوڈ دیا
ایجوکیشن کے قریبی عزیز نے سیکرٹری آف ایجوکیشن پر چیف سیکرٹری (بقیہ 3 صفحہ 10)

ایم بی ایس کے بھائی

3
میں نے بتایا کہ میں نے کوئی آئی آر کرنے کا کام جاری کر دیا ہے مگر اہل طبیعات کے ذرائع نے بتا کر کسی ہی لی اوکو درخواست ارسال کر دی ہے ذرائع کے مطابق گورنمنٹ کالج آف کامرس پشاور میں کلاس فور کی ایک ایس ای نالی تھی جس پر چار سال قبل آصف ہائیڈرو پاور کو عارضی طور پر بھرنی کیا گیا تھا۔ بھرنی کے دوران مگر ٹیم نے گورنمنٹ ایس ای پر سٹیل بھرنی کا کام جاری کیا جس کیلئے چاروں مٹھی چھیل دی گئی ذرائع نے بتایا کہ چھ مٹھی ایس ای پر کرشمہ چار سال سے کلاس فور کے طور پر عارضی ذیلی لی چل رہی تھی اس لئے کبھی نے اس ایس ای پر موجود الیکٹریٹی کو بھرنی کر رکھی تھی وہی جس کیلئے کرشمہ ماہ تقریباً چھ مٹھی کا دیا گیا جس کیلئے ایم بی ایس نے ایجوکیشن کے بھائی کے ساتھ سے امور اٹھایا کیا اور اس نے بتایا ایم بی ایس کے بھائی اور ان کے قریبی عزیز اور بی ایس کی جانب سے ڈی سی کی نامہ مزاحمتی کیا تھا جو بھاری گی اور اس کے بعد سول سیکرٹریٹ میں ہائیر ایجوکیشن کے سیکرٹری جنرل کے دفتر پر ہلکا پھلکا ہوا اور وہیں ایس ای کے ذرائع نے بتایا کہ سیکرٹری کے دفتر میں موجود ایک ہائیر ایجوکیشن کی آئی ایم اور ایک پروفیسر نے سچ بتاؤ کی کوشش کی جس کے دوران ایم بی ایس کے بھائی اور قریبی عزیز نے گورنمنٹ کے ساتھ کیا تھا جس کی سیکرٹری کی اور سیکرٹری کے سر پر سرحد سائن کو جس میں کہنا اس واقعہ کیلئے سیکرٹری ہائیر ایجوکیشن نے چیف سیکرٹری کو کھانے کی بھرنی کی تو وہی میں چیف سیکرٹری نے ہائیر ایجوکیشن کے سیکرٹری کے دفتر میں شروع کر کے اور کامز کار میں داخلے پر ایم بی ایس کے بی ایس کے بھائی اور ایم بی ایس کے بھائی کیلئے مقدمہ درج کر دیا گم جاری کر دیا اس سلسلے میں قریبی بھائی کے ذرائع نے بتایا کہ بھائی ایس ای کے بارے میں کسی قسم کی رپورٹ وصول نہیں ہوئی ہے۔



GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT

Ammer
v 61

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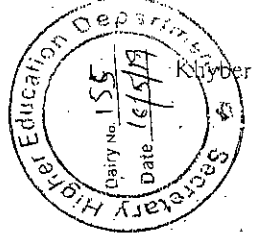


SUMMARY FOR CHIEF MINISTER, KHYBER PAKHTUNKHWA

Subject: - TRANSFER/POSTING.

A summary on the above subject is submitted for approval of the Chief Minister,

Khyber Pakhtunkhwa.



[Signature]
10/5/2019

SECRETARY
HIGHER EDUCATION DEPARTMENT

MED-122088

Secretary Establishment
Khyber Pakhtunkhwa

Chief Secretary
Khyber Pakhtunkhwa

Principal Secretary to Chief Minister,
Khyber Pakhtunkhwa

PS/Secy E&AD KP
Distr

17/5/19

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21

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2

Views of Establishment Department may kindly be perised vide Para 3-4 of the Summary.

Syed Jamal-ud-din Shah
Secretary Establishment
27 May, 2019

Chief Secretary / KPK

27/5
CHIEF SECRETARY
Govt. of Khyber Pakhtunkhwa

CAIC S Khyber Pakhtunkhwa
No. 2422
Date: 27/5/19
P.S. Secy E&AD KB
Diary No. [Handwritten]
FTS No. [Handwritten]
Date: 27/5/19

pseph

CS

21/5
Principal Secretary to CM
Khyber Pakhtunkhwa

Office of the PSCM
Diary No. 1183
Dated 28/07/19



GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES AND
LIBRARIES DEPARTMENT

22

101

SUMMARY FOR HONORABLE CHIEF MINISTER-KHYBER
PAKHTUNKHWA

Subject:- TRANSFER/POSTING.

The following transfer/posting proposal is submitted:

Sr. No.	Name & Designation	To be Transferred		Remarks
		From	To	
1	Mr. Nasir Ali, Principal BPS-20 Tenure- 03 years 08 months Domicile-Charsadda	GCC No.02 Ring Road, Peshawar.	GCC No.02 Mardan.	Vice Sr. No. 02
2	Mr. Khalid Khan, Principal BPS-20 Tenure- 07 years Domicile- Bannu	GCC No.02 Mardan	GCC No.02 Ring Road, Peshawar.	Vice Sr. No. 01

2- Since ban has been imposed on general postings/transfers of teaching faculty in the colleges of Khyber Pakhtunkhwa (F/A), therefore, the Honorable Chief Minister, Khyber Pakhtunkhwa being competent authority is requested to relax ban and approve the proposal contained at para-1 above please.

(Manzoor Ahmad)
Secretary
Higher Education Department

Secretary Establishment
Khyber Pakhtunkhwa

Chief Secretary
Khyber Pakhtunkhwa

Chief Minister
Khyber Pakhtunkhwa

N.P.S

3. Summary for Chief Minister Khyber Pakhtunkhwa moved by Higher Education Department regarding posting/transfer in respect of Mr. Nasir Ali, Professor (BS-20) and Mr. Khalid Khan Professor (BS-20) has been examined in light of notification placed at (F/A).

4. Proposal of the Administrative Department contained in Para-1 of the Summary is endorsed for orders of the Honorable Chief Minister, Khyber Pakhtunkhwa in relaxation of ban.

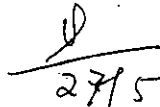
(Syed Jamal-ud-Din Shah)
Secretary Establishment
May 27, 2019

Chief Secretary, Khyber Pakhtunkhwa

05.

Para 1/5 endorsed

HCM


27/5
CHIEF SECRETARY
Govt. of Khyber Pakhtunkhwa

06

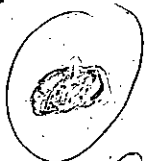
Para 05 is approved



29-5-2019

Chief Minister
Khyber Pakhtunkhwa

CS


23

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**GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES AND
LIBRARIES DEPARTMENT**

DATED PESHAWAR THE 27/05/2019

NOTIFICATION

No. SO/CE&MS/HED/1-8/206 (1-7) Pursuant to the approval received for transfer of him on the summary, the Competent Authority is pleased to order posting transfer of the following Professors Principals (BPS-20) of Commerce College Mardan with immediate effect.

No.	Name of Officer	From	To
1	Mr. Nasir Ali Principal BPS-20	GCC No. 02 Ring Road, Peshawar	Principal GCC No 02, Mardan Vice Sr No 07
2	Mr. Khalid Khan, Principal BPS-20	GCC No.02 Mardan.	Principal GCC No. 02 Ring Road, Peshawar vice Sr.No.01

**SECRETARY TO
GOVT. OF KHYBER PAKHTUNKHWA,
HIGHER EDUCATION, DEPARTMENT**

Encl: No. & date even:

Copy of the above is forwarded to the:-

- 1- Director General, Commerce Education and Management Sciences, Chamkan,
Mora, near Govt. Polytechnic Institute, Sardar Khan Peshawar.
- 2- Accountant General Khyber Pakhtunkhwa, Peshawar.
- 3- District Accounts Officer Mardan.
- 4- The Principal Govt. College of Commerce No.02 Ring Road, Peshawar.
- 5- The Principal Govt. College of Commerce No.02 Mardan.
- 6- Officers concerned.
- 7- PS to Secretary HED


SECTION OFFICER (COMMERCE)

Annex
 25
 H

ایگزیزل پولیس ڈیپارٹمنٹ، لاہور (20.06.2011) (ممبرانہ) (ممبرانہ) (ممبرانہ)
 2286/13

کاؤنٹر فائل
 تاریخ: 23/06/2011

ابتدائی اطلاع رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زبردستی 153 مجموعہ ضابطہ صدارتی

تعداد: 231
 تاریخ: 23/06/2011

1- تاریخ وقت رپورٹ	23/06/2011
2- نام و سکونت اطلاع دہندہ سٹیشن	ڈیپارٹمنٹ آف ایجوکیشن، لاہور
3- مختصر کیفیت جرم (موردہ) / حال اگر کچھ ایسا ہو	PPC 506-186
3- جائے وقوعہ داخلہ تھانہ سے پورست	ایس ایس ٹی کالج، لاہور
5- نام و سکونت ملزم	ڈیپارٹمنٹ آف ایجوکیشن، لاہور
6- کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں تاخیر یا تاخیر کی وجہ بتائی جائے	23/06/2011
7- تھانہ سے روانگی کی تاریخ و وقت	23/06/2011

اسٹیشن آفیسر نے اطلاع درج کروائی۔
 To the capital city Police Officer
 Khayr Paltunkhwa Peshawar subject Registration of FIR against Zeshan Khan, PS to Engineer Fahem MPA. Dear Sir, it is stated that Mr Fahem Khan MPA talked the undersign on telephone about the transfer of Mr Nasir ul Principal Govt college of management science No 212. However along with others transfers in every wide manner which is very Politically charged that The Powers vests with Honorable chief minister and summary has been sent and will hopefully be done in a couple of days. The worthy MPA directed that his PS Zeshan Khan will visit my office and will meet to get clarification. It may be mentioned that the attitude of Mr. Fahem Khan is always very non Parliamentary but we try to keep him in a good humour. After half an hour a person claiming himself to be the cousin of Mr. Fahem Khan MPA violently banged the door and with out asking slanted shouting that why they are not properly taken care of as the department is just playing avoid and did not issue orders as their desire. He resorted to abusive language and shout-d high up to the sky as his loud voices could be heard outside in the corridor. I tried to explain that their names were in the list and the transfer of Principal comes under the ambit of chief Minister. but he was not ready to listen to me and I felt he will stand up for physical scuffled violence. Mr. Nasir ul is ex-Bic. Police (70 years old)

PT6

and Malik naz Ex-Professor Islamiya college were sitting in my office in Pursuit of their Personal affairs Pertaining to the University Issues. Realizing the aggressive actions, MY sojida owner Agha intervened and requested him to listen to the secretary and find Problem solvers Point of view, however with this he shouted more and Threatened him that he will break his mouth as to why she interfered, it did not end up here rather continued with more abusive language and Thrown the Papers on my table, left office with more Threats. MY Nasir Khan my Personal secretary, MY Khawar Khan Naib Sasid, MY Pataizat Khan Naib Sasid, MY Hameed Afridi Assistant Professor, president Khyber Pktdkt Professor, Lecturers Association and Mr Muneed Ali Constable No 3440 who heard all dialogues shouting with repetition of MY sojida was agha Ex-Dict Politics attached herewith such a criminal action has not only terrorized scared Public office rather challenged write of the government. It therefore request to register a criminal case under relevant section of Law and TATA Pt asc.

دستور شکنی کی ایک سنگین مثال ہے۔ اس کی ذمہ داری اگھا صاحب پر ہے۔ ان کی ایسی باتیں کہیں نہ ہونی چاہئیں جو کسی شخص کی عزت و حیثیت کو نقصان پہنچانے کے لیے کہی جائیں۔ اس کی رو سے ایک کیس رجسٹر کیا جائے۔

Asst. P. Elcanth

رقم	
تاریخ	
موضوع	اطلاع کے لیے اطلاع دینا اور مطلع کرنا۔ اس کے لیے اطلاع کا درخواستیوں کو مطلع کرنے اور اس کے خلاف کارروائی کرنے کے لیے اطلاع دینا۔

اطلاع کے لیے اطلاع دینا اور مطلع کرنا۔ اس کے لیے اطلاع کا درخواستیوں کو مطلع کرنے اور اس کے خلاف کارروائی کرنے کے لیے اطلاع دینا۔ ایک طرح سے تہذیبی اور اخلاقی امور کے بارے میں اطلاع دینا اور اس کے خلاف کارروائی کرنے کے لیے اطلاع دینا۔

انٹیکسٹریٹل پولیس صوبہ سرحد فارم نمبر ۷۳ گورنمنٹ پولیس پشاور جاب نمبر 19/540 فارم نمبر ۷۳ تعداد دو ہزار چھترہ سو ۲۳ مارچ 2006/بی ڈور (فارم-ٹور جابز) ضمنی فارم (پولیس)

فارم نمبر ۷۳-۵ (۱)

ابتدائی اطلاعی رپورٹ

کاؤنٹر فائل

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ مجموعہ ضابطہ فوجداری

ضلع: پشاور

تھانہ: شرقی

وقت: دفتری اوقات

تاریخ وقت وقوع: 30/05/2019

علت نمبر: 231

1	تاریخ وقت رپورٹ: 31/05/2019 وقت 14:00 بجے	چاکیڈگی پرچہ 31/05/2019 وقت 14:00 بجے
2	نام و سکونت اطلاع دہندہ مستغیث	منظور احمد سیکرٹری ٹو گورنمنٹ آف خیبر پختونخوا ایئر ایجوکیشن آرکائیو ڈیپارٹمنٹ
3	مختصر کیفیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو۔	PPC 506 - 186
4	جائے وقوعہ فاصلہ تھانہ سے اور سمت :-	آفس ہاؤس ایجوکیشن آرکائیو ایڈ لائبریری ڈیپارٹمنٹ
5	نام و سکونت ملزم	ذیشان خان سیکرٹری ٹو انجینئر فہیم MPA
6	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	انگریزی درخواست نمبر 2381/31/05/2019 پر مقدمہ قائم کیا جاتا ہے
7	تھانہ سے روانگی کی تاریخ وقت	پریسبیل عام

ابتدائی اطلاع نیچے درج کرو۔

انگریزی درخواست نمبر 2381 مورخہ 31/05/2019 بوساطت افسران بالا موصول ہو کر درخواست ذیل ہے

To The Capital City Police Officer Khyber Pakhtunkhwa Peshawar, Subject Registration of FIR against Zeeshan Khan PS to Engineer Faheem MPA, Dear Sir, It is stated that Mr. Faheem Khan Principal Govt. College of Management Sciences NO.2 Peshawar along with others transfers in a very rude manner which I very politically clarified that the powers rests with Honorable Chief Minister and summary has been sent and will hopefully be done in a couple of days. The worthy MPA directed that his PS Zeeshan Khan will visit my office and will meet to get clarification. It may be mentioned that the attitude of Mr. Faheem Khan is always very non parliamentary but we try to keep him in a good humour. After half an hour a person claiming himself to be the cousin of Mr. Faheem Khan MPA violently banged the door and without asking started shouting that why they are not properly taken care of as the department is just plying around and did not issue orders as their desire. He restored to abusive language and shouted high up to the sky as his loud voices could be heard outside in the corridor. I tried to explain that their names were in the list and the transfer of principal comes under the ambit of Chief Minister but he was not ready to listen to me and I felt he will stood up for physical scuffled violence. Mr. Sajid Owais Agha Ex-DIG Police (70 year old



26A

And Malik Naz Ex-Professor Islamia College were sitting in my office in pursuit of their personal affairs pertaining to the university issues. Realizing the aggressive adios. Mr Sajjid Owais Agha intervened and requested to listen to the Secretary had ptul problem solving point of view, however with this he shouted more and threatened him that he will break his mouth as to why he interfered. It did not end up here rather continued with more abusive language and thrown, the papers on my table, left office with more threats. Mr Nasir Khan may personal Secretary Mr. Khawais Khan Niab Qasid, Mr Potaqat Khan Naib Qasid, Mr. Hameed Afridi (Assistant Professor) president 'Khyber, Pakhtunkhwa Professors, lecturers Association' and Mr Murad Ali constable No. 3440 who heard all dialogues shouting with the statement of Mr. Sajjid Owais Agha. Ex-DIG Police is attached herewith such a criminal action has not only terrorized scared public office rather challenged write of the Government. I therefore, requested to register a criminal case under relevant section of law and 7 ATA. Please

دستخط انگریزی منظور احمد سیکرٹری ٹو گورنمنٹ آف خیبر پختونخوا ہائیر ایجوکیشن، آرکائیو اینڈ لائبریری ڈیپارٹمنٹ مورہ
31/05/2019 کارروائی تھانہ موصولہ تحریری درخواست بوساطت افسران بالا حرف بہ حرف درج بالا ہو کر مضمون درخواست
سے صورت جرم بالا کاپی جا کر پرچہ جرم بالا چاک کیا جا کر نقول پرچہ جات ہمراہ تحریری درخواست بغرض تفتیش حوالہ انسپکٹر لعل
زادہ خان OII انوسٹی گیشن شاہ کئے جاتے ہیں۔ پرچہ گزارش ہے؛ دستخط انگریزی ارشاد ASI-PS-E/Cantt

31/05/2019

BEFORE THE HON'BLE PESHAWAR HIGH COURT, PESHAWAR

Annex
I
27

W.P No. _____/2019

1. Prof. Nasir Ali,
Principal (Bps-20),
Government Commerce College No. 2,
Ring Road, Peshawar.



Versus

..... Petitioner

1. The Government of Khyber Pakhtunkhwa,
Through Chief Secretary Government of Khyber Pakhtunkhwa,
Civil Secretariat Peshawar.
2. The Higher Education, Archives & Libraries Department,
Through Secretary Higher Education, Government of Khyber
Pakhtunkhwa,
Civil Secretariat, Peshawar.
3. The Directorate General,
Commerce Education & Management Sciences,
Through Director General.
4. The Establishment Department,
Through Secretary Establishment, Government of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.
5. Chief Minister
Government of Khyber Pakhtunkhwa,
Chief Minister House, Peshawar.
6. Khalid Khan,
Principal
Government Commerce College No. 2,
Mardan.

ATTESTED
EXAMINER
Peshawar High Court
10 JUL 2019

7. Engr. Fahim Ahmad Khan
MPA, PK-72, Peshawar.
Provincial Assembly Khyber Pakhtunkhwa.

.....Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF THE
ISLAMIC REPUBLIC OF PAKISTAN.

RESPECTFULLY SUBMITTED:

1. That the petitioner is a civil servant posted as principal (bps-20) with the Respondent No. 2. The petitioner was appointed initially as Lecturer in 04-11-1991. Subsequently after promotions the petitioner was promoted to full professor from Associate Professor vide Notification No.SO/E-I)E&AD/9-88/2018 dated 31st August 2019. The petitioner besides the above is a law abiding citizen of Pakistan and also hails from a respectable family.

Copy of the Notification No.SO/E-I)E&AD/9-88/2018 is
Annex-A

2. That the petitioner also served through deputation as the Chairman of the Technical Education Board Khyber Pakhtunkhwa, Controller of Examinations Board of Intermediate and Secondary Education Peshawar, Controller of Board of Technical Education Peshawar.
3. That the Petitioner by virtue of his office as Principal of Government College of Management Sciences-II Ring Road, Peshawar also is ex-officio chairman of the Departmental Selection Committee in respect of the said college.
4. That the petitioner in terms of reference to the Departmental Selection Committee referred to in ¶2 had held a meeting for appointment of Mali BPS-

ATTESTED
EXAMINER
Peshawar High Court
10 JUL 2019

03. This meeting was held on 12-01-2019, and all the members participated in the meeting. The minutes reflect that five candidates were issued call letters on 14-01-2019 but only one Asif Khan came for the interview whereas the rest 04 candidates didn't show up for the interview. The person who came for the interview namely Asif Khan was issued appointment order dated 23-02-2019. It is imperative to mention that the said Asif Khan was already working against the said post on contract.

Copy of the Minutes of meeting are Annex-B
Copy of the appointment order is Annex-C

5. That the petitioner was subsequent to the afore-mentioned appointment of the said Asif Khan the MPA for Provincial Assembly of Khyber Pakhtunkhwa PK-72 namely Engr. Fahim Ahmad Khan wrote to the Respondent No. 2 vide letter dated 07-03-2019 for appointment of one Shahid Khan on the post of Mali against which the office order was already issued. This letter was communicated to the petitioner with a covering letter from the Secretary Higher Education vide letter dated 19-03-2019.

Copy of the letter dated 07-03-2019 & Covering Letter dated 19-03-2019 is Annex-D

6. That the said letters were followed by continuous calls to the petitioner for "adjusting" the nominee of the said MPA by either terminating the services of the already appointed Mali or doing anything else to ensure the appointment of the nominee of the MPA. The petitioner was put under such immense pressure that he had to write to the Respondent No. 3 to bring an end to these pressure tactics as well as to absolve the principal of the appointment process and instead the same be done through Director General office. The letter was also copied to the Chief Secretary of the Province as well as the PS to the Secretary Higher Education.

Copy of the Letter dated 16-04-2019 is Annex-E

7. That the high handedness however didn't abate. The MPA concerned being a member of the ruling party i.e. Pakistan Tehreek-i-Insaf, exerted pressure to the optimum in order to get back to the petitioner. This was however not

ATTESTED
EXAMINER
Peshawar High Court
10 JUL 2019

(7) (30)

possible otherwise due to the unblemished and crystal clear service career of the Petitioner.

8. That the fact that there is a ban imposed on general postings/transfers of teaching faculty in colleges of Khyber Pakhtunkhwa, even transfer wasn't feasible. So a summary (impugned summary) was initiated by the Respondent No. 2 for the Chief Minister of the province to get a relaxation in the ban in order to ensure that the transfer/posting is done. The summary in itself is inherently filled with malice, as to get dispensation from the ban no reasons have been given as to why the posting/transfer is required. Also most importantly the tenure of the petitioner is mentioned to be of 03 years and 08 months, which is absolute lie, as the promotion and posting order dated 31-08-2019 is very clear showing that the petitioner has had only 9 months tenure on the current posting. However despite these clear lacunas, the Chief Minister of the province approved the summary on 29-05-2019. This culminated in the posting/transfer order of the petitioner from GCC No. 2 Ring Road Peshawar to GCC No. 2 Mardan. The Respondent No. 7 despite the transfer order isn't content and had attacked the office of the Respondent No. 2, which was reported in news dailies.

Copy of the ban on postings is Annex-F

Copy of the summary of posting of petitioner is Annex-G

9. That the said posting/transfer order being without any lawful authority, and with no immediate need for the same, also the fact that the person posted to the post of the petitioner hadn't even requested for it is tainted with malafide, the petitioner having no other "effacious", efficient and proper remedy approaches this Honorable Court in its constitutional jurisdiction amongst others on the following grounds:

Grounds:

- a. Because the transfer/posting order is based in malafide and is inherently illegal, unlawful and without jurisdiction on the score of the ill-will involved in the order of transfer/posting and is thus liable to be set-aside.

ATTESTED
EXAMINER
Peshawar High Court
10 JUL 2019

- (31)
- b. Because the petitioner's only fault is standing up to a powerful Member Parliament to ensure that an appointment is done on the basis of merit and not on nepotism.
 - c. Because the Petitioner has been treated illegally, unlawfully and against the spirit of the law.
 - d. Because the mechanism provided under Article 212 is not attracted for the reason of the order being corum non judice and illegal for the entrenched malice on part of the Respondents in the case.
 - e. Because the petitioner has been seriously discriminated in line with the spirit of Article 25 of the Constitution of Islamic Republic of Pakistan, as there is a blanket ban imposed on transfers of teaching faculty within the province, yet in order to settle score with the petitioner, there has been a dispensation sought and granted without even a remote reference as to how or why such dispensation was sought and granted by the competent authority.
 - f. Because Respondents have no authority to initiate/approve the impugned summary which is illegal, unlawful, tainted with malafide and issued without any jurisdiction albeit lawful authority. The actions on part of the respondents seriously are in the negation of the Constitution of the Islamic Republic of Pakistan, 1973.
 - g. Because before taking the impugned action, no due process of law has been adopted by the Respondents.
 - h. Because the fundamental Rights of the petitioner protected under Article 4, 9, 18 and 25 of the Constitution of Islamic Republic of Pakistan 1973 are being violated.
 - i. Because the actions and inactions of the Respondents proclaim their own mala fide.
 - j. Because the Petitioner has got the fundamental right of being treated in accordance with law but the treatment meted out to the Petitioner is on

ATTESTED
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10 JUL 2019

consideration other than legal and he has been deprived of his rights duly guaranteed to him by the constitution of Pakistan.

- k. Because the Respondents cannot be allowed under the law to pass any illegal order.
- l. Because the Petitioner crave for leave to add further grounds at the time of his oral arguments before this Hon'ble Court highlighting further contraventions of the provisions of the Constitution & Laws which adversely affected the Petitioner.

P R A Y E R:

In view of the above, it is humbly prayed that this honorable Court may graciously be pleased to:

- g. Declare that the action of respondents in exerting undue pressure on the petitioner in relation to the appointment of a Mali are acts in negation of the law, without lawful authority and inherently based in malafide.
- h. Declare further that the summary of the transfer/posting of the petitioner initiated on the basis of political pressure be declared as illegal, unlawful, against the norms of justice and corum non judice.
- i. Direct the respondents to forthwith withdraw the impugned summary and the transfer/posting orders of the petitioner.
- j. Declare that the Respondent No. 7 i.e. MPA PK-72 may permanently be restrained from interference in the affairs of the department.
- k. Direct the Respondents to treat the Petitioner in accordance with the law.
- l. Any other relief deemed appropriate in the circumstance of the case may also be granted.

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10 JUL 2019

33

Interim Relief:

May it please this Honorable Court to suspend the Summary of posting/ transfer of the petitioner till the final disposal of the writ petition, and that no adverse action be taken against him.

Petitioner

Through

(ALI GOHAR DURRANI)

Advocate High Court

0332-9297427

khaneliegohar@yahoo.com

Shah | Durrani | Khattak

62-C/1, University Road,

University Town, Peshawar.

CERTIFICATE:

It is certify that no such like writ petition has earlier been filed by the Petitioner in this Honourable Court

Petitioner

LIST OF BOOKS:

1. Constitution of Islamic Republic of Pakistan 1973
2. Services Laws
3. Case Laws as per need

Advocate

ATTESTED

EXAMINER
Peshawar High Court

10 JUL 2019

Writ Petition No. _____/2019

Prof. Nasir Ali

Versus

Government of KP and others

AFFIDAVIT

I, Prof. Nasir Ali S/O Haji Said Kareem R/O Dado Kali, Tehsil Tangi, District Charsadda do hereby solemnly affirm and declare on oath that the contents of accompanied writ petition are true and correct to the best of my knowledge and belief and nothing has been intentionally concealed from this Honorable Court.

Deponent

CNIC No. 17102-1145807-1
0333-9393894

Identified By:

Ali Gohar Durrani
Advocate High Court(s)

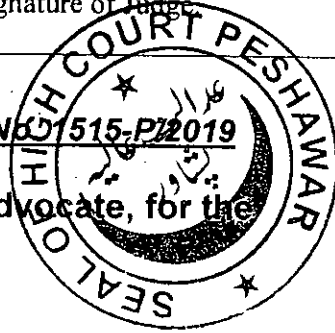
at	on solemnly
at	
day of <u>Jun</u> 19	<u>Nasir Ali</u>
at <u>Dado Kareem</u>	<u>Charsadda</u>
who was	<u>Ali Gohar</u>
Who is present	
	<u>Ali</u>
	<u>3/6/19</u>
	<u>Peshawar</u>

Nasir Verified

ATTESTED
EXAMINER
Peshawar High Court
15 JUL 2019

PESHAWAR HIGH COURT, PESHAWAR.

ORDER SHEET

Date of Order/ Proceedings	Order or other Proceedings with Signature of Judge
<p><u>18/06/2019</u></p>	<div data-bbox="1061 522 1396 853" style="text-align: right;">  </div> <p><u>WP No. 3186-P/2019 with IR with CM No. 1515-P/2019</u></p> <p><u>Present:</u> Mr. Ali Gohar Durrani, Advocate, for the petitioner.</p> <p style="text-align: center;">===</p> <p><u>WAQAR AHMAD SETH, C.J.-</u> Through C.M. No. 1515-P/2019, learned counsel for the petitioner wants to place on record additional documents, which is allowed and the documents annexed therewith shall be treated as part and parcel of the Writ Petition.</p> <p>2. Petitioner has filed the instant Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer:-</p> <p style="text-align: center;"><i>"In view of the above, it is humbly prayed that this honourable Court may graciously be pleased to:</i></p> <p><i>g. Declare that the action of respondents in exerting undue pressure on the petitioner in relation to the appointment of a Mali are acts in negation of the law, without lawful authority and inherently based in malafide.</i></p> <p><i>h. Declare further that the summary of the transfer/posting of the petitioner initiated on the basis of political pressure be declared as illegal,</i></p>

ATTESTED

[Signature]
Court

unlawful, against the norms of justice and coram non iudice.

- i. Direct the respondents to forthwith withdraw the impugned summary and the transfer/posting orders of the petitioner.**
- j. Declare that the respondent No. 7 i.e. MPA PK-72 may permanently be restrained from interference in the affairs of the department.**
- k. Direct the Respondents to treat the petitioner in accordance with the law.**
- l. Any other relief deemed appropriate in the circumstance of the case may also be granted".**

3. Arguments heard and record perused.

4. Admittedly, the petitioner is a civil servant and his grievance relates to '**terms and conditions**' of service, the appropriate remedy for seeking his redressal, would surely be the Services Tribunal.

5. This Court is barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 to take cognizance of any matter relating to '**terms and conditions**' of service of a civil servant. The Apex Court in Ali Azhar Khan Baloch's case (2015 SCMR 456), has again laid down that the issue relating to the '**terms and conditions**' of service cannot be entertained by a High Court either in its constitutional jurisdiction or in its original

ATTESTED
EXAMINER
Peshawar High Court
10 JUL 2019

civil jurisdiction being barred under Article 212 of the Constitution.

6. In view of the above, this Writ Petition being not maintainable is hereby dismissed in limine along with Interim Relief. However, the petitioner may seek his legal remedy before appropriate forum.

2



Chief Justice



Judge

CERTIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1984

10 JUL 2019

26531
 No. _____
 Date of Presentation of Application 10/7/19
 No of Pages _____
 Copying fee 44/-
 Total _____
 Date of Preparation of Copy 10/7/19
 Date of Delivery of copy 10/7/19
 Received By _____

Annex J

Dated Peshawar the, 12th June, 2019

38

To

The Director General
Directorate of Commerce Education & Management Sciences
Peshawar

Subject: **APPEAL FOR JUSTICE**

Please refer to the above cited subject and to state that I have been transferred from GCMS No. 2 Peshawar to GCMS No. 2 Mardan in violation of tenure policy of Government for transfer/posting through a summary moved by the Higher Education Department reflecting my tenure of posting in the former College as 03 years & 08 months as against the actual tenure of 09 months of my posting in said College as per Notification No. SO(E-I)E&AD/9-88/2018 dated 31.08.2018 (copy enclosed).

During my tenure in GCMS No. 2 Peshawar, I have performed my duties whole heartedly and brought unprecedented improvement in the College with regard to enhancement of students' enrolment, introduction of new academic programmes, infrastructure development in addition to getting 06 months training programme in Accounting from KP-TEVTA.

The main cause of my transfer pertains to the appointment of Mr. Asif Khan S/o Bakht Munir during the month of February, 2019 against the vacant post of Mali (BPS-03) that was processed on the basis of list of 05 candidates obtained from Employment Exchange Peshawar as required under the rules and on the basis of recommendations of a Committee with representation from your good office constituted for the purpose.

Afterwards, Engr. Fahim Ahmad Khan, MPA (PK-72) came to my Office during March, 2019 and directed that the post in question was required to have been filled as per his recommendation given that the College falls in his constituency. He further directed that the said appointment order may be withdrawn for appointing his recommended person. It was responded to him that the appointment order could not be withdrawn as it has been made by observing all the codal formalities and no violation of rules of the Government made in the matter. Subsequently, the MPA also submitted a letter to the undersigned through Secretary HED for necessary consideration (Copy enclosed).

The extent of malafide on part of the MPA can well be judged from the FIR lodged by Secretary HED against him due to his unlawful interference in the instant official matter and use of unparliamentarily language in the good office of Secretary HED. Copy of the FIR is enclosed.

Keeping in view the above mentioned facts, it is requested that the competent authority may kindly be approached for the cancellation of Notification of transfer/posting of the undersigned as it is totally based on the malafide act of the MPA and is also against the tenure policy of the Government besides having no other grounds for the transfer in question.

(PROF. NASIR ALI)
Principal GCMS No. 2 Mardan

Copy to:

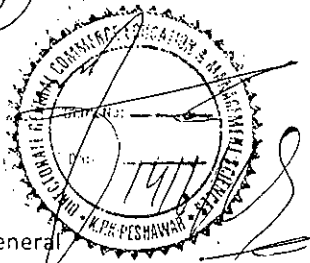
- 1- PSO to Chief Secretary Government of Khyber Pakhtunkhwa
- 2- PS to Secretary to Government of Khyber Pakhtunkhwa, Higher Education Department

Principal GCMS No. 2 Mardan

3

38 A

Dated Peshawar the, 12th June, 2019.



To

o/c

The Director General
Directorate of Commerce Education & Management Sciences
Peshawar

Subject: APPEAL FOR JUSTICE

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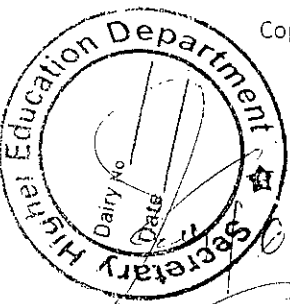
(PROF. NASIR ALI)

Principal GCMS No. 2 Mardan

Copy to:

- 1- PSO to Chief Secretary Government of Khyber Pakhtunkhwa
- 2- PS to Secretary to Government of Khyber Pakhtunkhwa, Higher Education Department

Principal GCMS No. 2 Mardan



POWER OF ATTORNEY

39

BEFORE THE Service Tribunal Kpk Peshawar
No. _____ of 2019

Pro-Nasir Ali

Govt of Kpk through Chief Secretary and others.

I/we The Nasir Ali do hereby

appoint & constitute ALI GOHAR, KHYZAR HUSSAIN

& ZARAK SHAH, ADVOCATES OF THE

HIGH COURT(S) as counsel (for Peshawar) in the above mentioned case, to do all or any of the following acts, deeds and things:-

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal or any other court/tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file Plaint/Written Statement or withdraw all proceedings, petitions, suit appeals, revision, review, affidavits and applications for compromise or withdrawal, or for submission to arbitration of the said case, or any other document, as may be deemed necessary or advisable by him for proper conduct, prosecution or defence of the said case at any stage.
3. To do and perform all other acts which may be deemed necessary or advisable during the course of the proceedings.

AND HEREBY AGREE:-

- a) To ratify whatever the said Advocates may do in the proceedings in my interest
- b) Not to hold the Advocates responsible if the said case be proceeded ex-parte or dismissed in default in consequence of their absence from the Court/Tribunal when it is called for hearing or is decided against me/us.
- c) That the Advocates shall be entitled to withdraw from the prosecution of the said case if the whole OR any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Power of Attorney/Wakalat Nama hereunder the contents of which have been read/explained to me/us and fully understood by me / us this Thursday day of

July at July


Signature of Executant(s)

Accepted subject to term regarding payment of fee.


ALI GOHAR

Advocate High Court
0332-9297427

khaneliegohar@yahoo.com


KHYZAR HUSSAIN

Advocate High Court
0333-2854999

khussain@law.gwu.edu


ZARAK SHAH

Advocate High Court
0333-8335886

zark41@hotmail.com

SHAH | DURRANI | KHATTAK Law Firm (+92-91-5843329)

House No. 62-C/1, University Road, University Town Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SA No.1156/19

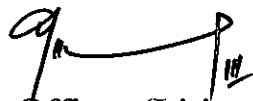
Nasir Alii.....(Appellant)

VERSUS

**Govt. of Khyber Pakhtunkhwa through Secretary, Higher Education Department &
Others..... (Respondents)**

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S No.	Description of Documents	Annexure	Pages
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2	Affidavit		5


Section Officer (Litigation)
Higher Education Department,
Khyber Pakhtunkhwa Peshawar

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 1156/2019

Prof. Nasir Ali, Principal Government College of Commerce No.2, Mardan..... (Appellant)

Versus

Government of Khyber Pakhtunkhwa through Chief Secretary and others..... (Respondents)

PARA-WISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 TO 5.

Respectfully Sheweth: -

Preliminary Objections: -

1. That the appellant has got no cause of action/locus standi to file the instant Service Appeal.
2. That the appellant is trying to conceal material facts from this Honourable Tribunal and is not entitled to the extraordinary relief of this Tribunal.
3. That the appellant has not come to this Honourable Tribunal with clean hands.
4. That the instant service appeal is hit by doctrine of laches.
5. That the appellant is estopped by his own conduct to file the instant service appeal.

On Facts: -

1. Pertains to record.
2. Correct with further explanation that the plea of the appellant itself testifies the fact that the appellant served for more than 12 year on key posts at Peshawar.
3. Correct.
4. Correct to the extent that DPC was scheduled for determination of suitability of the candidates for the vacant post of Mali in the said college. As is claimed by the appellant that only one candidate out of called 05 candidates was available. In such like situation it was required to postpone/cancel the interview process. All the candidates should have to be informed to ensure their participation in the interview or may have again requested Manager Employment Exchange for furnishing fresh list of candidates for desired post. The concluding of interview with availability of sole candidate that is itself putting a question mark on the process of interview.
5. Incorrect and misleading. The MPA concerned being public representative and has to facilitate the locals of the respective constituency that's why that he recommended the quoted person with clear intimation that this application may be processed as per rules and law, therefore, the matter having no nexus with the transfer of the appellant. The provision of Civil Servant

Act is crystal clear about posting/transfer of Civil Servant from which states that:

- i. ***“10. Every civil servant shall be liable to serve anywhere within or outside the Province in any post under the Federal Government, or any Provincial Government or local authority, or a an corporation or body set up or established by any such Government:***
- ii. ***Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region: Provided further that where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favorable than those to which he would have been entitled if he had been so required to serve.***

- 6. Incorrect, misleading the plea of the appellant is based on “hear say” because the appellant did not specified the persons who pressurized him for the purpose thus the plea of the appellant is void of facts and having no sound footings.. The contents of DO letter of the concerned MPA itself speaks that the appellant was not put under immense pressure.
- 7. As elaborated in para-6 above. No political pressure has been put on the appellant.
- 8. Incorrect and misleading. Actually the appellant is BPS-20 officer (he served for more than long twelve years on key position at Peshawar) and for the officers of BPS-19 and above the competency in all official matters rests with the Hon’ble Chief Minister. As elaborated in para-5 above posting/transfer is the prerogative of the Provincial Government/Competent Authority. So far as relaxation in the imposed ban is concerned, that is the pre requisite of any posting/transfer suggestion because the said ban is imposed by the competent authority i.e. the Chief Minister Khyber Pakhtunkhwa and no other authority can grant relaxation in the imposed ban, therefore, the plea of the appellant is based on lame excuses. Furthermore, on need basis even the appellant himself was once transferred from Kohat to Peshawar just one and a half year after his posting without waiting for completion of routine tenure at that station. This also testifies that posting transfer of the Civil Servants is a routine matter that takes place in the best public interest. As earlier elaborated that the appellant has enjoyed posting at Peshawar on key positions for more than twelve years. The rest of the plea is void of facts.
- 9. Incorrect, misleading and void of facts.
- 10. Correct to the extent that the request of the appellant through filing of writ petition was also dismissed by the Hon’ble Peshawar High Court for want of jurisdiction.
- 11. The Departmental Presentation of the appellant was found without sound footing, therefore, filed.
- 12. As explained in above paras.

GROUNDS

- a- Incorrect. The appellant has been treated in accordance with law, rules and policy on the subject and the respondents have not violated norms of justice rather acted according to norms of justice.
- b- Incorrect. As explained in the para-8 above.
- c- The order has been issued in accordance with law and with the approval of competent authority. No constitutional right of the petitioner has been violated and he has been dealt with in accordance with law and laid down instructions of the Apex Court. The respondents have not violated norms of justice rather acted according to norms of justice.
- d- As explained in the preceding paras.
- e- The appellant has been treated in accordance with law, rules and policy on the subject and the respondents have not violated norms of justice rather acted according to norms of justice.
- f- Incorrect as explained in para-8 above.
- g- Incorrect as explained in para-8 above.
- h- Incorrect. The appellant has been treated in accordance with law, rules and policy.
- i- Incorrect. Postings/transfers are always made in the public interest.
- j- Incorrect. As explained in the preceding paras.
- k- Incorrect. As explained in the preceding paras.
- l- Incorrect. As explained in the preceding paras.
- m- It is incorrect. No fundamental right of the appellant under Article-4, 9, 18 and 25 of the Constitution of Islamic Republic of Pakistan is violated.
- n- Incorrect. As explained in the preceding paras.
- o- Incorrect. As explained in the preceding paras.
- p- Incorrect. As explained in the preceding paras.
- q- The appellant has been treated in accordance with law, rules and policy on the subject and the respondents have not violated norms of justice rather acted according to norms of justice.
- r- The respondents may also like to assist this honourable court with additional grounds at the time of arguments.

PRAYER

In view of the above, the instant appeal is not maintainable and without any merit, therefore, the appellant do not deserve any relief as prayed for in this appeal. The instant appeal may be dismissed in the public interest.

RESPONDENT NO. 1) CA
Government of Khyber Pakhtunkhwa,
through Chief Secretary Khyber Pakhtunkhwa Peshawar.

RESPONDENT NO. 2) CA
Government of Khyber Pakhtunkhwa through Secretary, Higher
Education Department, Peshawar.

RESPONDENT NO. 3) CC
The Director General, Commerce Education & Management
Sciences Khyber Pakhtunkhwa Peshawar.

RESPONDENT NO. 4) Adi
Government of Khyber Pakhtunkhwa through, Secretary,
Establishment Department, Peshawar

~~RESPONDENT NO. 5)
Government of Khyber Pakhtunkhwa Chief Minister House,
Peshawar.~~

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

(5)

SA No. 1156/19

Nasir Ali.....(Appellant)

VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary, Higher Education Department &
Others.....(Respondents)

AFFIDAVIT

I, Qazi Muhammad Ayaz (Litigation Officer), Higher Education, Archives & Libraries Department, Government of Khyber Pakhtunkhwa, on the instructions of respondents do hereby solemnly declare and affirm on oath, that the contents of Joint Parawise Comments are correct to the best of my knowledge and belief and that nothing has been concealed therein from this Hon'ble Court.



Deponent

CNIC No. 17301-7027499-5

Before the Honorable Justice Tribunal Kalyan Parthasarathy

In Re:
Appeal No. 1156-19

Prof; Naveen Ali vs Govt of KP.

Fixed for 06-11-19.

Application for the extension of time for the deposit of notice fee.

Respectfully Submitted,

- 1) That the instant appeal is fixed for today.
- 2) That the appellant has inadvertently not deposited the notice fee ^{inadvertently} and seeks the permission for doing same.

It is therefore requested most earnestly, to kindly allow the extension in time to deposit fee for notice.

Appellant

through



Ali Gohar Durrani
Advocate High Court

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

Service Appeal No. 1156/2019

Prof. Nasir Ali, Principal Government College of Commerce No.2, Mardan.....
(Appellant)

Versus

Government of Khyber Pakhtunkhwa through Chief Secretary and others.....
(Respondents)

PARA-WISE COMMENTS ON BEHALF OF RESPONDENT NO. 6.


Respectfully Sheweth: -

Preliminary Objections: -

1. That the appellant has no cause of action/ locus standi to file the appeal in hand.
2. That the appellant had been working in Government College of Commerce No.2 Peshawar since 04-11-2015 and was promoted to the post of Professor/Principal (BPS- 20) and took the charge of his office on 01-09-2018.
3. That the instant appeal is not maintainable.
4. That the appeal in hand is barred by limitation.

On Facts: -

- 1- Pertains to record.
- 2- Correct.
- 3- Correct.
- 4- Pertains to record.
- 5- Correct with further clarification that the MPA concerned has clearly mentioned in the DO letter " process applicant file as per rules and law" hence linking the same letter with transfer case has no weightage in the eyes of law.
- 6- Incorrect. The contents of DO letter of the concerned MPA itself speaks that the appellant was not put under immense pressure.
- 7- Incorrect. There is no such evidence on record which show exertion of pressure on the appellant from the concerned MPA.



8- Incorrect. Posting/transfer of the Civil Servant is a routine business that takes place in the larger public interest as has been done even in case of the appellant when he was posted at Kohat in November 1991 and was transferred/posted at Peshawar in May 1993 just after one and a half year that transpires the facts that Provincial Govt: strictly follows the prescribed parameters in the best public interest. The appellant was transferred in the public interest and not on any ulterior or malicious motives. It is not correct that his transfer was politically motivated. Posting transfer of Govt: servant is a routine and normal practice and made on need and tenure basis. The appellant has served at Peshawar for about 12 years throughout his carrier. Further, during the ban period, relaxation of ban granted by the competent authority in routine transfers is common practice.

9- Contents of FIR are very much clear hence no comments.

10- Pertains to record.

11- No comments.

12- As explained in above paras.

GROUNDS

a- Incorrect. The appellant has been treated in accordance with law, rules and policy on the subject and the respondents have not violated norms of justice rather acted according to norms of justice.

b- Incorrect. As explained in the para-8 above.

c- Pertains to official respondents.

d- As explained in the preceding paras.

e- The appellant has been treated in accordance with law, rules and policy on the subject and the respondents have not violated norms of justice rather acted according to norms of justice.

f- Incorrect as explained in para-8 above.

g- Incorrect as explained in para-8 above.

h- Incorrect. The appellant has been treated in accordance with law, rules and policy.

i- Incorrect. Postings/transfers are always made in the public interest.

j- Incorrect. As explained in the preceding paras.



- k- Incorrect. As explained in the preceding paras.
- l- Incorrect. As explained in the preceding paras.
- m- It is incorrect. No fundamental right of the appellant under Article-4, 9, 18 and 25 of the Constitution of Islamic Republic of Pakistan is violated.
- n- Incorrect. As explained in the preceding paras.
- o- Incorrect. As explained in the preceding paras.
- p- Incorrect. As explained in the preceding paras.
- q- The appellant has been treated in accordance with law, rules and policy on the subject and the respondents have not violated norms of justice rather acted according to norms of justice.
- r- The respondents may also like to assist this honourable court with additional grounds at the time of arguments.

PRAYER

In view of the above, the instant appeal is not maintainable and without any merit, therefore, the appellant do not deserve any relief as prayed for in this appeal. The instant appeal may be dismissed in the public interest.

RESPONDENT **NO.** 1)

Government of Khyber Pakhtunkhwa,
through Chief Secretary Khyber Pakhtunkhwa Peshawar.



RESPONDENT **NO.** 6)

Principal Government College of Commerce No.2 Peshawar.

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 344 /ST Dated 15/02/2021


To

The Secretary Higher Education Archives and Libraries Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 1156/2019, PROFESSOR NASIR ALL.

I am directed to forward herewith a certified copy of Judgement dated 03.02.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.