

13.03.2017

Counsel for appellant, Mr. Noor Wazir, Superintendent (litigation) and Mr. Muhammad Bakhtiar, Account Clerk alongwith Mr. Muhammad Adeel Butt, Additional AG for official respondents No. 1 to 4 present. Learned counsel for appellant requested for adjournment. Adjournment granted. To come up for arguments on 21.04.2017 before D.B.

(M. Noor Wazir)
MEMBER

(ASHFAQUE TAJ)
MEMBER

21.04.2017

None present on behalf of the appellant Mr. Abdur Rasheed Tareen, Admin Officer alongwith Mr. Muhammad Adeel Butt, Additional AG for official respondents No. 1 to 4 present. Notice be issued to appellant to appear before the Tribunal on 19.05.2017 before D.B.

(Ahmad Hassan)
Member

(Muhammad Amin Khan Kundi)
Member

19.05.2017

Counsel for the appellant present, Mr. Abdur Rashid Tareen, Admin Officer alongwith Mr. Kabirullah Khattak, Assistant Advocate General for the respondents also present. Learned counsel for the appellant stated at the bar that since the appellant stood retired from service therefore, the present service appeal has become infructuous and requested for withdrawal of the same. Request accepted. Signature of learned counsel for the appellant has taken on the margin of order sheet. The appeal in hand stands dismissed as withdrawn. File be consigned to the record room.

ANNOUNCED
19.05.2017

(GUL ZEB KHAN)
MEMBER

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

The appellant stood retired. Thereafter, the case has become infructuous. May please be allowed to be withdrawn. 19-5-2017

09.08.2016

Appellant in person and Mr. Abdur Rashid, AAO
alongwith Addl: AG for respondents present. Written reply
submitted. The appeal is assigned to D.B for rejoinder and final
hearing on 06.12.2016.


Member

06.12.2016

Counsel for the appellant, Mr. Bakhtiar Ali, Account Clerk
alongwith Mr. Muhammad Jan, GP for official respondents No. 1 to 4 and
private respondent No. 5 in person present. Private respondent No. 5
submitted written reply, copy whereof handed over to learned counsel for
the appellant and learned GP. Counsel for the appellant also submitted
rejoinder on written reply submitted by official respondents No. 1 to 4
which is placed on file. To come up for rejoinder on the written reply of
private respondent No. 5 and arguments on 25.1.17 before D.B.


(ASHFAQUE TAJ)
MEMBER


(MUHAMMAD AMIR NAZIR)
MEMBER

25.01.2017

None for the appellant present. Mr. Ziaullah, GP for
respondents present. Notice be issued to the appellant and his
counsel. To come up for arguments on 13.03.2017 before D.B.


Member


Chairman

Appeal No- 588/2016
Rabiullah vs Govt

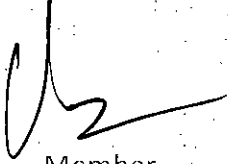
2016

Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal, appellant has impugned order dated 23.2.2016 vide which the appellant was transferred from Bannu to Kohat. Against the impugned order, appellant filed departmental appeal on 29.2.2016 which was not responded within statutory period, hence, the instant service appeal.

Learned counsel for the appellant submitted before the court that the appellant ^{is} in his last leg of his service and under the rules he is entitled to be posted ^{at} his home district. That impugned order is based on mala-fide and against the rules ^{as} and the appellant is ^{on the verge of his} ~~near to~~ retirement.

Since the instant appeal is within time and matter require further consideration of this Tribunal, therefore, admit for regular hearing, ²subject to deposit of security and process fee within 10 days. Notices be issued to the respondents for written reply/comments for 11.7.2016 before S.B, counsel for the appellant submitted an application for suspension of the impugned order. Notice of the same be given to the respondents. Meanwhile, status-quo be maintained.

Appellant Deposited
Security & Process Fee


Member

11.07.2016

Appellant in person and Mr. Abdur Rashid, AAO alongwith Mr. Muhammad Jan, GP for official respondents and Samiullah, for private respondent No. 5 present. Requested for adjournment. To come up for written reply/comments on

~~9-8-16~~

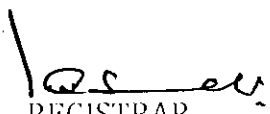
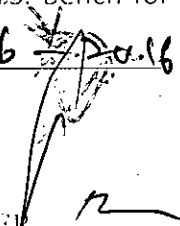

Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 588/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	02/06/2016	<p>The appeal of Mr. Rafiullah presented today by Mr. Amanullah Marwat Advocate, may be entered in the Institution register and put up to the learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	6-6-16	<p>This case is entrusted to learned Member/S. Bench for preliminary hearing to be put up there on <u>7-6-2016</u></p> <p style="text-align: right;"> MEMBER</p> <p style="text-align: center;">D. S. P</p>

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. 588 /2016


Rafi Ullah(Appellant)

V E R S U S

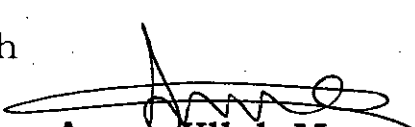
Government of Khyber Pakhtunkhwa through Secretary C&W,
Civil Secretariat, Peshawar and others.....(Respondents)

INDEX

S.No	Description of Documents	Annex	Pages
1.	Memo of Appeal		1-5
2.	Affidavit		6
3.	Application with affidavit		7-9
4.	Addresses of the parties		10
5.	Copy of impugned order dated 23/02/2016	A	11
6.	Copies of application and receipt	B & C	12-13
7.	Copy of Posting and Transfer Policy of Provincial Government (Esta Code)	D	14-15
8.	Wakalat Nama		16


Appellant

Through


Aman Ullah Marwat
Advocate High Court,
Peshawar.
Cell No. 0334-9054585

Dated: 30/05/2016

①

BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 588 /2016

Khyber Pakhtukhwa Service Tribunal

Diary No. 562

Dated 02-6-2016

Rafi Ullah S/o Gul Dayaz Khan (Assistant) Head Clerk Office of the Executive Engineer C&W Division Bannu.....(Appellant)

V E R S U S

1. Government of Khyber Pakhtunkhwa through Secretary C&W, Civil Secretariat, Peshawar.
2. Chief Engineer (Center) Communication & Works Department, Khyber Pakhtunkhwa, Peshawar.
3. XEN C&W Bannu Division, Bannu.
4. XEN C&W Kohat Division, Kohat.
5. Sami Ullah (Assistant) Head Clerk, Office of the Executive Engineer C&W Division Kohat.....(Respondents)

APPEAL UNDER SECTION 4 OF KHYBER PUKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 23/02/2016 PASSED BY RESPONDENT NO. 2 WHEREBY APPELLANT WAS TRANSFER FROM BANNU TO KOHAT.

Filed to-day
 Registrar
 2/6/16

2

PRAYER IN APPEAL:

On acceptance of this appeal the impugned order dated 23/02/2016 of respondent No. 3 may kindly be declared void, illegal, without lawful authority and is liable to be set aside.

Any other remedy the Hon'ble Tribunal deems fit may also granted in favour of the appellant.

Respectfully Sheweth:

1. That appellant was appointed as Junior Clerk in C&W Department and now is performing his duty as (Assistant) Head Clerk Office of the Executive Engineer C&W Division Bannu up to entire satisfaction of this superiors and no allegations or complaint of any nature, whatsoever has been made against him.
2. That appellant is about to retire on 16/04/2017 but unfortunately he was transferred by respondent No. 2 from Bannu to Kohat Division vide order dated

3

23/02/2016. (Copy of impugned order dated 23/02/2016 is attached as annexure "A").

3. That against such impugned order dated 23/02/2016 appellant preferred departmental appeal before respondent No. 1 through post which has not been responded till date vide application dated 29/02/2016. (Copies of application and receipt are attached as annexure "B" & "C").
4. That after laps of statutory period, appellant assails the impugned order before this Hon'ble Tribunal, inter-alia on the following grounds:

GROUND:

- A. That the impugned transfer order dated 23/02/2016 passed by respondent No. 2 is against the law, facts and record of the case, hence untenable.
- B. That under the law when any person who is about to retire will be allowed to performed duty in home District. But respondent No. 3 has not taken into



consideration, this aspect of the case while passed impugned order, thus caused prejudice to the rights of the appellant.

- C. That impugned order passed by respondent No. 3 is illegal, without lawful authority without jurisdiction and is based on malafide, therefore, is not sustainable in the eyes of law.
- D. That the impugned order has been passed by respondent at the back of the appellant, thus violated principle of natural justice.
- E. That impugned order has been passed with malafide intention and on political consideration such impugned transfer order is the result of illegal exercise of authority not vested to respondent No. 3.
- F. That respondent No. 3 has failed to point out circumstances on the basis of it can be justified that impugned order of appellant was made in the best public interest, so there is no such circumstances which warrants interference to issue transfer of the appellant at the verge of his retirement, so such

5

action of the respondents is without lawful authority, which is liable to be set aside.

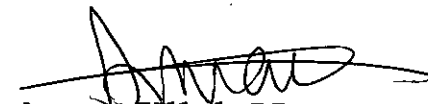
G. That appellant seeks leave of this Hon'able Tribunal to rely on additional grounds at the time of final hearing/ arguments.

It is, therefore, most humbly prayed that on acceptance of this appeal the impugned order dated 23/02/2016 of respondent No. 3 may kindly be declared null, void, without lawful authority and is liable to be set aside.

Any other remedy the Hon'ble Tribunal deems fit may also granted in favour of the appellant.


Appellant

Through


Aman Ullah Marwat
Advocate High Court,
Peshawar.

Dated: 23/05/2016.

6

BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/2016

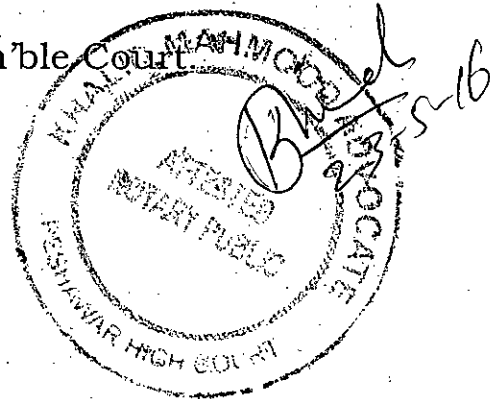
Rafi Ullah(Appellant)

V E R S U S

Government of Khyber Pakhtunkhwa through Secretary C&W,
Civil Secretariat, Peshawar and others.....(Respondents)

AFFIDAVIT

I, Rafi Ullah S/o Gul Dayaz Khan (Assistant) Head Clerk
Office of the Executive Engineer C&W Division Bannu, do
hereby solemnly affirm and declare that the contents of the
Service Appeal are true and correct to the best of my
knowledge and belief and nothing has been concealed from
this Hon'ble Court



Rafiullah Khan
DEPONENT

7

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR**

C.M. No. ____/2016

In

Service Appeal No. ____/2016

Rafi Ullah(Appellant)

V E R S U S

Government of Khyber Pakhtunkhwa through Secretary C&W,
Civil Secretariat, Peshawar and others.....(Respondents)

**TO SUSPEND OPERATION OF IMPUGNED
TRANSFER ORDER DATED 23/02/2016 OF
RESPONDENT NO. 3, TILL THE FINAL
DISPOSAL OF THE CASE.**

Respectfully Sheweth:

1. That the above mentioned appeal is being filed by appellant before this Hon'ble Tribunal, in which no date of hearing has yet been fixed.
2. That the facts and grounds of the appeal may please be read as integral part of this application, so the

8

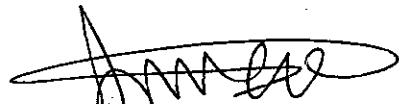
appellant on the face of it has got a strong arguable case and is sanguine about its success.

3. That respondent No. 3 has passed impugned transfer order is utter violation of the law, so the balance of convenience also in favour of appellant.
4. That if the interim relief as prayed for is not granted to the appellant then he will suffer an irreparable loss.

It is, therefore prayed that on acceptance of this application, the interim relief as prayed for in the heading of this application may kindly be granted to the appellant, till the final disposal of the main appeal.

Rufiullah Khan
Appellant

Through



Aman Ullah Marwat
Advocate High Court,
Peshawar.

Dated: 23/05/2016

(9)

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR**

C.M. No. ____/2016

In

Service Appeal No. ____/2016

Rafi Ullah(Appellant)

V E R S U S

Government of Khyber Pakhtunkhwa through Secretary C&W,
Civil Secretariat, Peshawar and others.....(Respondents)

AFFIDAVIT

I, Rafi Ullah S/o Gul Dayaz Khan (Assistant) Head Clerk
Office of the Executive Engineer C&W Division Bannu, do
hereby solemnly affirm and declare that the contents of the
Application are true and correct to the best of my knowledge
and belief and nothing has been concealed from this Hon'ble
Court.



Rafi Ullah Khan
DEPONENT

10

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2016

Rafi Ullah(Appellant)

V E R S U S

Government of Khyber Pakhtunkhwa through Secretary C&W,
Civil Secretariat, Peshawar and others.....(Respondents)

ADDRESSES OF THE PARTIES

APPELLANT:

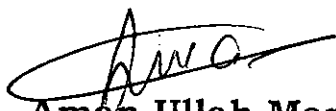
Rafi Ullah S/o Gul Dayaz Khan (Assistant) Head Clerk
Office of the Executive Engineer C&W Division Bannu.

RESPONDENTS:

1. Government of Khyber Pakhtunkhwa through Secretary C&W, Civil Secretariat, Peshawar.
2. Chief Engineer (Center) Communication & Works Department, Khyber Pakhtunkhwa, Peshawar.
3. XEN C&W Bannu Division, Bannu.
4. XEN C&W Kohat Division, Kohat.
5. Sami Ullah (Assistant) Head Clerk, Office of the Executive Engineer C&W Division Kohat.


Appellant

Through


Aman Ullah Marwat
Advocate High Court,
Peshawar.

Dated: 23/05/2016

11



Office Of The Chief Engineer (Centre)
Communication & Works Department
Khyber Pakhtunkhwa Peshawar.

No. 217-E / 347 / CEC / C&WD

Dated Peshawar the 23 / 02 / 2016

10-B

OFFICE ORDER

The following posting/transfer of Assistants/Head Clerks, in the C&W Department is hereby ordered, with immediate effect, in the best public interest :-

Sl. #	Name	From	To	Remarks
1	Sami Ullah (Assistant)	Head Clerk O/O the Executive Engineer C&W Division Kohat.	Head Clerk O/O the Executive Engineer C&W Division Bannu.	Vice No. 2.
2	Rafi Ullah (Assistant)	Head Clerk O/O the Executive Engineer C&W Division Bannu.	Head Clerk O/O the Executive Engineer C&W Division Kohat.	Vice No. 1.

CHIEF ENGINEER (CENTRE)

Copy forwarded to :-

- 1- The Superintending Engineers C&W Circle Kohat / Bannu.
- 2- The Executive Engineers C&W Division Kohat & Bannu.
- 3- The PSO to Advisor to Chief Minister for C&W Department.
- 4- The District Accounts Officers District Kohat & Bannu.
- 5- Officials Concerned.

Seen 21/2/16 P.L.

[Signature]
CHIEF ENGINEER (CENTRE)

*S.F.
C
28/2/16*

[Large handwritten signature]

C.T.C

(12)

(5)

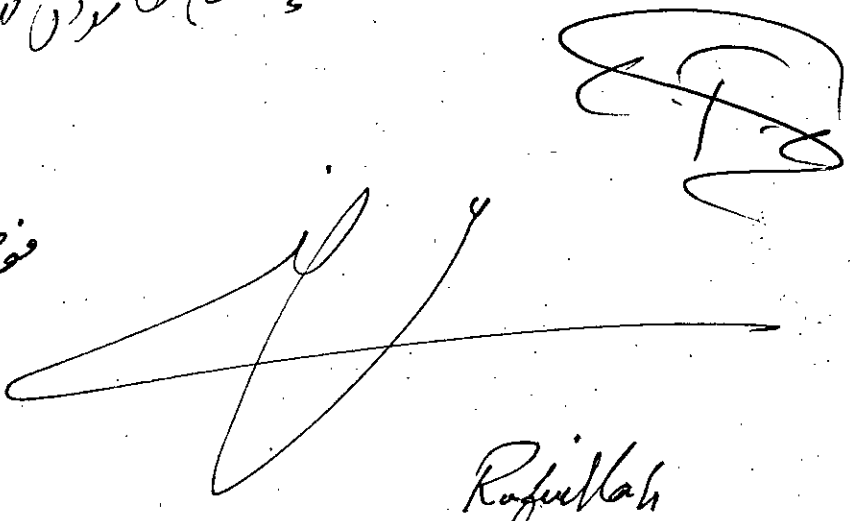
~~Amir~~

خدمت صبا سیکرٹری سے مل کر حکم فرمایا کہ فوٹو پیشاورد

عنوان: درخواست برائے کنسٹیشن آف تبدیلگی آڈر

صبا عالی

گزشتہ چند دنوں میں ساری نوٹری اپنے منہ سے باہر نکال رہے
 امداد فنڈی ترقی پانچ کروڑوں میں صید مل کر لگا رہا تھا۔ جو کہ فنڈی تقریباً
 اسیا مدت میں مدد بھی پورا نہیں۔ فنڈی کو تبدیل کر دیا گیا ہے۔ فنڈی کا مدت
 معذرت تقریباً بارہ ماہ رہتا ہے۔ اس کے بعد فنڈی سنشن ہو سکتا ہے۔
 برائے میر بانی فنڈی کا یہ تبادلہ (Est Code) رول صیبا فوٹو مالی درخواست
 کیساتھ لکھ ہے۔ اس میں میر بانی کے آڈر کنسل کرو اور مشکور فرمائیں
 فنڈی کا مدت آٹھ لاکھ روپے (800000) فرموزن کے لئے ہے۔
 حسین نواز شیخ پوری
 فقط مورخہ: 2016-2-29



Rafiqullah

آٹھ لاکھ روپے صیبا سیکرٹری سے مل کر فرمائیں

13

No. 133

12

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no postage is due.

40/-
Rs. Ps.
28/3

Received a registered letter addressed to

S. S. S. S.

Post-Stamp
C. K. W.

Initials of Receiving Officer. *Write here "letter", "postcard", "packet" or "parcel" insured before it when necessary.

Insured for Rs. (in figures) (in words)

If insured.

Insurance fee for (in figures) (in words) Kilo Grams.

Name and address of sender

C. K. W.

14

Posting and Transfer

Statutory Provision.

Section 10 of the NWFP Civil Servants Act, 1973.

Posting and Transfer. Every civil servant shall be liable to serve anywhere within or outside the Province, in any post under the Federal Government, or any Provincial Government or Local authority, or a Corporation 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 a 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 not been so required to serve.

Posting/transfer policy of the Provincial Government.

- i) All the posting/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants
- ii) All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities for seeking posing/transfers of their choice and against the public interest.
- iii) All contract Government employees appointed against specific posts, can not be posted against any other post.
- iv) Existing tenure of posting/transfer of three (03) years for settled areas and two (02) years for unattractive/hard areas shall be reduced to two (02) years for settled areas, 01½ years for unattractive areas and one year for hard areas.
- v) ⁷⁹ []

⁷⁹ Para-I(v) regarding months of March and July for posting transfer and authorities for relaxation of ban deleted vide letter No. SOR-VI (E&AD) 1-4/2008 Vol-VI, dated 3-6-2008. Consequently authorities competent under the NWFP Government Rules of Business, 1985, District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make Posting Transfer subject to observance of the policy and rules.

15

vi) While making posting/transfers of officers/officials up to BS-17 from settled areas to FATA and vice versa approval of the Chief Secretary, NWFP needs to be obtained. Save Tehsildars/Naib Tehsildars within a division in respect of whom the concerned Commissioner will exercise the same power. Whereas, in case of posting/transfer of officers in BS-18 and above, from settled areas to FATA and vice versa, specific approval of the Governor, NWFP shall be obtained.

Provided that the power to transfer Political Tehsildars and Political Naib Tehsildars within FATA between different divisions shall rest in Additional Chief Secretary FATA.

vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for at least eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.

vii) Officers may be posted on executive/administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thana) of his area/residence is situated.

viii) No posting/transfers of the officers/officials on detailment basis shall be made.

ix) Regarding the posting of husband/wife, both in Provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.

x) All the posting/transferring authorities may facilitate the posting/transfer of the unmarried female government Servants at the station of the residence of their parents.

xi) Officers/officials except DCOs and DPOs/SPs who are due to retire within one year may be posted on their option on posts in the Districts of their domicile and be allowed to serve there till the retirement

Para-VI added vide circular letter No. SOR-VI/E&AD/1-4 2010 Vol-VIII dated 20th March, 2010.

C.T.E.

تہمت 10 روپے

ایڈووکیٹ / دستخط کنندہ

بار کونسل ابار ایسوسی ایشن

رابطہ نمبر: ۹۰۵۱۳۶ - ۰۸۳۳۶

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

53123

PESHAWAR BAR ASSOCIATION

PESHAWAR BAR ASSOCIATION

بعدالت جناب: Befari Homblo Service Tribunal

دعویٰ: منجانب:

علت نمبر:

مورثہ:

جرم:

تھانہ:

APPELLANT

Rafiqullah

Respondent

بابت تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام سید علی احمد کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو

راضی نامہ کرنے و تقریر چالان و فیصلہ برطاعت دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق

زریں مدد تخط کرنے کا اختیار ہوگا، نیز ضرورت عدم پیروی یا تاخیر کی صورت میں یا اہیل کی آزمائش اور منسوخی، نیز

دائر کرنے اہیل نگرانی و پیروی کرنے کا اختیار ہوگا اور ضرورت مقدمہ مذکورہ کے کل یا جزوی

کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہو گا اور صاحب

مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا مانتہ ہذا اختتام منظور و قبول ہوگا دوران مقدمہ

میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا وہ وکیل موصوف کو ملے گا۔ ہر کار خیز ہوگا کوئی تاریخ پیشی مقام

دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ لاپرواہی یا مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المرقوم: 30-5-2016

الع بد

الع بد

مقام Rafiqullah

30-5-2016

30-5-2016

تہمت اس کالت نامہ کی ذمہ داری پورا کرنا واجب ہے

Court Copy

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 588/2016

Mr. Rafi Ullah S/O Gul Dayaz Khan Assistant/Head Clerk


O/O the Executive Engineer C&W Division Bannu.....Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary C&W Department etc.
2. Chief Engineer (Centre) C&W Department Khyber Pakhtunkhwa Peshawar.
3. Executive Engineer C&W Division, Bannu.
4. Executive Engineer C&W Division, Kohat.....Respondents

AFFIDAVIT

I, Abdur Rashid Tareen Administrative Officer, Office of the Chief Engineer Centre C&W Department, Peshawar, do hereby solemnly affirm and declare on oath that the contents are true and correct to the best of my knowledge and belief that nothing has been concealed from this Honorable Court.



DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 588/2016

Rafi-Ullah S/O
Gul Dayaz Khan
Assistant / (Head Cleark)
Office of Executive Engineer C&W Division Bannu _____ Appellant

VS

1. Government of Khyber Pakhtunkhwa through Secretary C&W, Civil Secretariat, Peshawar..
2. Chief Engineer (Centre) Communication & Works Departmental, Khyber Pakhtunkhwa, Peshawar.
3. XEN C&W Bannu Division, Bannu.
4. XEN C&W Kohat Division, Kohat.
5. Sami Ullah (Assistant) Head Clerk, Office of Executive Engineer C&W Division Kohat
..... (Respondents)

Comment of Respondent – 1 , 2 , 3 & 4

PRILIMINARY OBJECTION

1. The instant appeal is Mis-conceived, because appellant requested and prayed that order dated 23/2/2016 of RESPONDENT-3 may be declared void, illegal to be set aside, but no such order of Respondent-3, Executive Engineer C&W Division Bannu found with the instant Appeal.
2. The Appellant is estopped by his own conduct to prefer the instant appeal before this Tribunal.
3. The Appellant has got no locus standi and cause of action.

FACTS

1. No need to comment, pertains to official record.
2. Respondent-2 have vested power to exercise it judiciously and being Civil Servant, the appellant should to serve anywhere, when deemed necessary / appropriate.
3. In fact, the appellant over ridden the channel and directly sent his so called departmental appeal to the Respondant-1 (Secretary C&W), the appellant should have to route through channel as per the Government standing instructions issued in this state, which he himself not availed.
4. Incorrect / Mis conceiving. Appellant just after 2-days i.e of 26/2/2016 these order filed Civil Suit in Civil Court at Bannu, when a Notice was received and comments were filed (Annexed- I / II). In the meanwhile Appellant himself withdraw Civil Suit, 755/16 (78/1) which was allowed (Annexed-III). So that was for the Appellant to have submitted Departmental Appeal to the Competent Authority, which he did not, but sent such appeal direct to Secretary C&W on 25/2/2016, while his case / Civil Suit was there. The Appellant not followed channel in this case.

GROUNDS

- A. Incorrect, Respondent-2 have vested power to exercise it judiciously and being Civil Servant, the appellant should to serve anywhere, when deemed necessary / appropriate.
- B. In-correct / Mis conceived. Respondent No. 3 neither passed any order nor empowered for such like transfer order.
- C. The same reply as described in para – B above.
- D. Incorrect, the competent authority as per situation / circumstances, can post any person any time.
- E. Incorrect. As per para B and C above.
- F. The same as per reply expressed in para-B, C and E above.

G. As stated in the opening as well as in the preceding paras of Facts / Grounds, the instant appeal is non-submissive due to certain technicalities and its removing in Court / Tribunal. Due to lacking of technicalities and mis-apprehension assailing Respondent-3 (Executive Engineer C&W Division Bannu) in the prayer declaring order, nul, void, without lawful authority is mis-conceived even not cleared in this state. Furthermore, the respondents may also be allowed to raise additional grounds at the time of arguments.

Therefore, it is prayed that the instant appeal being devoid of merits and substance, may be dismissed with cost.

**SECRETARY TO GOVERNMENT OF
KHYBER PAKHTUNKHWA
C&W Department Peshawar
Respondent - 1**

**CHIEF ENGINEER (CENTRE)
C&W Department
Peshawar
Respondent-2**

**EXECUTIVE ENGINEER
C&W Division
Bannu
Respondent - 3**

**EXECUTIVE ENGINEER
C&W Division
Kohat
Respondent - 4**

سمن بغرض فزارداد امور شیخ طلب

آرڈر ۵ قاعدہ او ۵ مجموعہ ضابطہ دیوانی

بعدالت صلح سولہ جمعہ ۱۱/۷/۱۹۱۱

شیخ الاسلام بنام حکومت

بنام (3) سرگند راجہ سنگھ

واضح ہو کہ سرگند راجہ سنگھ کے نام ایک ماتر جس کی نقل عرضی دہلی لف سے ثابت کے دائرہ کے لئے لکھی گئی ہے اور یہ حکم دیا جاتا ہے کہ آج تاریخ ۱۱/۷/۱۹۱۱ء کو اس وقت ۱۱ بجے تک دو سہرہ سالہ وکالت محکمہ عدالت میں حاضر ہوں اور جو ایسی دہلی کی کریں اور آج برلازم سے کہ اس روز جملہ دستاویزات بھی پیش کریں۔ سمن پر آج انحصار کرنا جاتے ہیں۔ آپ کو اطلاع دی جاتی ہے کہ اگر آپ حاضر نہ ہوں تو مقدمہ بغیر حاضر کی آپ کے مسنون اور فیصل ہوگا۔

بیت میرے دستخط اور عدالت کے آج تاریخ ۱۱/۷/۱۹۱۱ء کو جاری کیا گیا۔



۱۱/۷/۱۹۱۱

۱۱/۷/۱۹۱۱

۱۱

بسم الله الرحمن الرحيم
الحمد لله رب العالمين
والصلاة والسلام على
سيدنا محمد وآله الطيبين
الطاهرين
الذين هم خاتم النبيين
مبشرين ونذيرين
والله اعلم بالصواب

الحمد لله رب العالمين

والصلاة والسلام على
سيدنا محمد وآله الطيبين
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الطاهرين
الذين هم خاتم النبيين
مبشرين ونذيرين
والله اعلم بالصواب

لقد انصرفت من كل ما كان لي من مال

سبح الله
هو ما كان لي من مال

دروا من كل ما كان لي من مال
سبح الله
هو ما كان لي من مال

صاحب عالمي

كبري من كل ما كان لي من مال
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سبح الله
هو ما كان لي من مال

صاحب عالمي
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سبح الله
هو ما كان لي من مال

سبح الله

IN THE COURT OF CIVIL JUDGE/JUDICIAL MAGISTRATE-X BANNU

SUIT NO.78/1

Mr. Rafiullah S/ Gul Dayaz Khan (Assistant)
R/O Sukari Zabta Khan, District Bannu.

VERSUS

- 1- Secretary to Government of Khyber Pakhtunkhwa C&W Department, Peshawar.
- 2- Chief Engineer (Centre) KPK C&W Department, Peshawar.
- 3- Superintending Engineer C&W Circle Bannu.
- 4- Superintending Engineer C&W Circle Kohat.
- 5- District Accounts Officer Bannu.

COMMENTS OF RESPONDENTS NO. 1 TO 4 PRELIMINARY OBJECTION

- 1. The instant Appeal in not maintainable in its present form.
- 2. The contents of the Appeal are misconceiving and the material facts has been concealed from this Honorable Court.
- 3. The Appellant is stopped by his own conduct to prefer the instant Appeal before this Honorable Court.
- 4. The Appeal has no locus standi and cause of action.
- 5. The present Appeal is incompetent due to non-joinder of necessary parties particularly the Private Respondents who is necessary for impleadment.

FACT

- (A) It is incorrect, the appellant is going to retirement by 15th April, 2017. Hence the posting of appellant is not made un-lawfully or the disregard of service rules/policy.
- (B) Incorrect, the appellant is a Govt. Servant and his present appeal in this Court is in-competent.

GROUND

- 1. No. comments Pertain to record.
- 2. Incorrect, appellant will stand retire by 15-04-2017, hence he has more than one year service to retirement.
- 3. Correct.
- 4. Incorrect. In this posting no Political involvement is involved.
- 5. Incorrect, according to set procedural requirement, the appellant should have to prefer Departmental Appeal to the next Appellate Authority as advised in the posting/transfer policy of the Government, which he had not availed.
- 6. No comments being Court Jurisdiction on this particular para.

In the wake of above submission, the civil suit before this Court being meritless may please be rejected and prayed to file the limine.

CHIEF ENGINEER (CENTRE)
C&W DEPTT: KPK PESHAWAR
(RESPONDENTS NO. 1 & 2)

SUPERINTENDING ENGINEER
C&W CIRCLE BANNU
(RESPONDENT NO. 3)

SUPERINTENDING ENGINEER
C&W CIRCLE KOHAT
(RESPONDENT NO. 4)

لہذا فیہ ایک اپیل کی ہے
30-3-26 (26/02/2016ء) 78/1

ORDER SHEET

Court of Lubna Zaman / Senior Civil Judge, Bannu. Page

Case Title: 755/16 of

No. and Date: Order of the Proceeding with signature of Judge or Magistrate and that of parties or counsel where necessary.

25/2/16

Instant suit submitted through counsel. Suit is entrusted to the Court of Learned Civil Judge X Bannu for disposal. Plaintiff is directed to attend the said court today.

(Lubna Zaman)
Senior Civil Judge, Bannu.

Order-02
26-02-2016

The case file received from the Court of the learned SCJ, Bannu today. It includes plaint, correct address of plaintiffs, affidavit, list of documents and attached documents as per list of documents & Wakalatnama.

Learned counsel for the plaintiff appeared and admits the contents of the plaint and document(s) annexed thereto as true and correct. Be registered in the relevant register. Alongwith the plaint an application for grant of temporary injunction was also submitted. Notice of the application for the grant of temporary injunction alongwith copy of the plaint be issued to defendants. Defendants be summoned for

9/3/16

26/02/2016
Civil

ATTESTED
Copying Agency
Lower Court Bannu
30-4-16

لجان

1 June 2016
237

3-2016

Plaintiff

present. Represented

on behalf of defendants no.

4 present. Authority letter

submitted, placed on file.

Remaining defendants have

been served properly but

not present. Hence, placed

ex-parte. Attendance completed

file to come up for reply

w/s on 4-4-16

Signature
09/03/2016

1- Registration No:	1921
2- Date of Presentation of Application	30-4-16
3- Date of Receipt of the file	30-4-16
4- Date of Preparation of copy	30-4-16
5- Date of Delivery of copy	2
6- No. of copies / words	4
7- Ordinary Fee	
8- Urgent Fee	
Total Fee	
Signature of copyist	B d

O-----05
30-03-2016

Plaintiff present in person and filed an application for requisitioning the case and its withdrawal. File was requisitioned for today.

Plaintiff requests for withdrawal of instant suit with the assertion that he wants to file an appeal before the court of service tribunal and thus does not want to proceed further against defendants in the instant suit. To this effect, statement of the plaintiff was recorded before the court.

In view of contents of application and statement of plaintiff, instant suit stands dismissed as withdrawn with no order as to cost. Case file be consigned to the record room after its completion.

ANNOUNCED
30-03-2016

ATTESTED

Copying Agency
Lower Court Bannu
30-4-16

Muhammad Sher Ali Khan
Civil Judge-X, Bannu

ATTESTED
Copying Agency
Lower Court Bannu
30-4-26

755
16

(21)

21-21

<p>3-3 3-6 11-17 4-21</p> <p>...</p>	<p>3-3 3-6 11-17 4-21</p>
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30/3/16
26 2/6
787

①

④

بعد از صواب سول فتح بن ۱۰ تیر

فتح الله بن سول
755/16

کتاب مسجل در خواست برادر والی مقدم و ولایت

کتاب من مقدم

Amir

20/03/16

صواب عالی - سول احمدی در اول مهر
کرتا - ۹

۱- یکم صدر است ۴۴ - ۲۰ و ۲۰

۲- یکم صدر است ۴۴ - ۲۰ و ۲۰

۳- یکم صدر است ۴۴ - ۲۰ و ۲۰

۴- یکم صدر است ۴۴ - ۲۰ و ۲۰

ATTESTED
Copying Agency
Lower Court Bannu
30-4-16

Rafiqullah
فتح الله - سول

13

بدرت ضد - خ ن صاحب بنوں -
رطوع زنده - مجمع قوانین حکومت

بدرت از روح ابراهیم ولد علی و بیارخان سید صاحب بنوں

755/16

ببین که کم مگر است با نیت اختیار کردن تو
در وقت سزاوار است که مثل هر امری در

ببین اصل دادرش تا چه حد است و نیز اعتراض
دی که در وقت و محو مالک زینت کار
مهرتوی شایع کار EXA

سین کریمت علی

16 - 16

30-3-16

Rafiqullah
شیخ المرحوم

مدعی

ATTESTED
Copying Agency
Lower Court Bannu
30-4-16

سمن بغرض قرار داد امور طلب

Ch
Chs

آرڈر ۵ قاعدہ او ۵ مجموعہ ضابطہ دیوانی

۱۶/۱۱/۵۹

بعدالت

صوفیہ ۴۲

بنام

مدعا علیہ

بنام

پتہ

واضح ہو کہ

دار کیا ہے۔ لہذا آپ کو بذریعہ تحریر حکم دیا جاتا ہے کہ آپ بتاریخ ۰۹ ماہ ۱۱/۵۹

بوقت

کی کریں اور آپ پر لازم ہے کہ اس روز جملہ دستاویزات بھی پیش کریں۔ جن پر آپ انحصار

کرنا چاہتے ہیں۔ آپ کو اطلاع دی جاتی ہے کہ اگر آپ حاضر نہ ہوں تو مقدمہ بغیر حاضر کی

آپ کے مسموع اور فیصل ہوگا۔

بہ ثبت میرے دستخط اور مہر عدالت کے آج بتاریخ ۰۴ ماہ ۱۱/۵۹ جاری کیا گیا۔

سمن

کے

Case No. (W. Dant)	
City No.	۵۵۵
Date	۱۲/۱۱/۵۹
Case No.	
F.C.	
F. (H.O.)	
F. (Bar)	
SAO	

۱۱-۱۱-۱۱ ملاحظہ
Bannu

۹/۱۱/۵۹



بعدالت جناب شہزادہ سید علی محمد

رابع اللہ نام کو باقی حقوق و منافع

دعوی استوار ہے

درخواستیں مہر و اجراء طاری سے اٹھائی جائیں

مقدمہ میں تصدیق کے ساتھ ساتھ

سب سے پہلے 22/2/16ء کو 2/5/16ء تک

مہر و اجراء طاری سے اٹھائی جائیں

تحتویات کے

جناب علی: سائل ذیل عرض کرتا ہے

1- یہ سائل نے چند بار بعدالت جناب میں دائر

کیا ہے جو کہ

یہ سائل نے چند دستاویزی ثبوت پیش کیے اور

بین علی سے سائل نے کہا ہے کہ یہ سائل نے کئی دفعہ

سائل نے کہا ہے کہ یہ سائل نے کئی دفعہ

یہ سائل نے کہا ہے کہ یہ سائل نے کئی دفعہ

Waqar Ullah Khan Advocate Outh Commissioner

رابع اللہ

بعدالتضام سٹیٹ سول جج بنوں

صبح اللہ خان ولد گل ویا ز خان کنہ میر اعظم بالستیا محل بنوں مدعی

بنام

۱۔ صبح اللہ خان ہیڈ کلرک سے اینڈ دیپو ڈوٹرن کوٹاٹ
بتا در کوٹے کوٹاٹ

۲۔ ایڈیشن سے اینڈ دیپو ڈوٹرن کوٹاٹ
سٹیٹ ایگنٹس سے اینڈ دیپو ڈوٹرن (بنوں)

۳۔ ڈیپو ڈوٹرن اکاؤنٹس آف سٹیٹ بنوں

۵۔ سٹیٹ ٹری سے اینڈ دیپو ڈوٹرن صہب حقو خواہ کشادر

۶۔ صہب حقو سے اینڈ دیپو ڈوٹرن صہب حقو خواہ کشادر

د الفے دعویٰ براد ہمدرد مدعی حکم استوار یہ بدیں حقون

مدعی ہیڈ کلرک کے پوسٹ پر لکھنا ت ہے اور ریٹرنس

تیلے ہر ماہ 20 دن باقی ہے اور اپنے پوسٹ پر

اپنے فالس انجام دے رہا ہے اب مدعا علیہ نے

بذریعہ دعویٰ فرار بدینتی سے اپنے دستخط سے

کھنامہ PF2E 4497 حوالہ 2/3/2016 جاری کیا ہے

جو کہ جلی ہے مدعی نے کسی قسم کا کاروبار مدعا علیہ

بنا کر نہیں دیا ہے بلکہ مدعا علیہ کیلئے سارے

سارے Representation زیر غور ہے اور مدعی

بالنسبة لعلی، من تفرات و فی ہے جو کہ مدعی، حقوق
میں کوئی وکیل ہے لیکن معاملہ اس میں عمل
درآمد نہ کرے کہ مدعی کا تمخواہ مذکورہ مذکورہ مقدم

دو - دعویٰ افراد ہمدرد ڈگری بدین امر کے حکم نامہ
عدم 2/5/2016 نمبر PF2E-97 ماہ صفر قانون
قرار دیکر اس میں بیٹس رفتانہ کرے جو ضرر و خسر

ضابطہ عالی - دعویٰ مدعی ذیل ہے

- 1- یہ کہ مدعی نے معاملہ بہ سزا کے لئے لائن لائنات ہے کہ
(نسل کوڑے لڑائی)
- 2- یہ کہ مدعی نے قانون ایک سال سے گزری ہے ہی مقدم کو ہے
مقدمہ کے سبب میں لائنات پر کیا گیا
(نسل کوڑے لڑائی)

3- یہ کہ مدعی نے مدعی کا تو نام جاری کیا ہے اور
اپنی اور لائنات بالکل صاف ہے
مدعی نے مدعی کے کو Representation
جو کہ Under ہے کہ مدعی کو ہے
جو سب سے کام جاری رکھنے کا ہے
(نسل درخواست لہ ہے)

4- یہ کہ اس میں مدعی نے ٹرانسکرپشن کے صرف عدالت دیوانی
سے رجوع کیا ہے لیکن وہاں سے وہاں سے

MOST IMMEDIATE/COURT MATTER



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

No. 275-E / 109 / CEC / C&WD

Dated Peshawar the 13 / 05 / 2016

To

The Executive Engineer,
C&W Division Bannu.

Subject:- RAFIULLAH V/S SAMIULLAH HEAD CLERK ETC

Enclosed herewith a copy of summon dated 04-05-2016 received from Civil Judge-III Bannu regarding the subject cited suit for information and immediate necessary action.

You are also authorized to attend the court on 09-06-2016 on behalf of Respondent No.5 & 6 and also on subsequent dates.

DA/As above

CHIEF ENGINEER (CENTRE)
12/5

Copy forwarded to the:-

- 1- The Executive Engineer C&W Division Kohat.
- 2) Section Officer (Litigation) C&W Department Peshawar.

CHIEF ENGINEER (CENTRE)

(9)

6

بعدالت جناب سیکرٹری جنرل چی جی 44 ہائوس لاہور

بسم اللہ تعالیٰ
کہاں تھی حکومت ہند

دعویٰ استوار ہے

755
16

درخواست نمبر اجداد عمارتی قسم امتناعی تا تصدیق مقدم
بدین حصوں میں آٹھس آئیڈ 217E/347/GE
تاریخ 23/2/16 عطل کر دیا گیا
جوں کے توں رکھے

جناب عالی: سائل ادوی ذیل عرض کرتا ہے

۱۔ میرے چچا نے میرا پورا حصہ سب سے سب ڈیڈ کیا ہے جو میری
ہستحق ہے۔ کہہ تو ایسا کہان ہے، سائل نے حق میں لڑا ہے اور
میں نے جیت لیا ہے

۲۔ میرے چچا نے میری ادوی بھی لے لی ہے کہ میں نے اس کو
سے لائی ہے لیکن ان کا اقبال ہے

میں نے اپنی ادوی کے لئے عدالت میں جاکر اپنے حق کا
تصدیق کیا ہے

اپنے حق کے لئے درخواست کیا ہے

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بھائی صاحب
میں نے اپنی ادوی کے لئے عدالت میں جاکر
اپنے حق کا تصدیق کیا ہے

اپنے حق کے لئے

(7)

لعدالت صاحب سیکرٹری سول جج صاحبہ بنوں

78 / 1 - 3 - 2016 (منصوب) 30-3-16

ربیع الثانی ولید گل دیاز خان سکینہ سوکڑی اپنا بطمان بنوں - مدعی

Or - 1/2
26/2/16
S.C.J. BANNU

755 / 16
نیا

Ex P. 1 - ہوبانی حکومت چیر کتو خواہ بزرگ سیکرٹری کمیونٹیشن اینڈ
ورکس ڈیپارٹمنٹ کشاور

Ex P. 2 - چیف ایگزیکٹو آفیسر کمیونٹیشن اینڈ ورکس ڈیپارٹمنٹ کشاور

Ex P. 3 - سپرنٹنڈنٹ ایگزیکٹو سی اینڈ ڈیپو سرائل بنوں

Ex P. 4 - سپرنٹنڈنٹ ایگزیکٹو سی اینڈ ڈیپو سرائل کوہاٹ

Ex P. 5 - ڈسٹرکٹ ایگرونیٹا آفسر بنوں

"الف" دعویٰ برادہر ڈسٹرکٹ ایگرونیٹا آفسر بنوں کے مدعی کا رہائش

پہلے ایکسپال باقی ہے کہ برادہر قانون سیدوشی جج والے عدالت

کو اپنے ہی ڈسٹرکٹ میں لکھتا کیا جائے گا کہ ان کے

تبادلہ دوسرا اضلاع کو نہ ہوگا بدیں وہ مدعی کا ٹرانسفر

برادہر آفسر لکھنؤ کے نام لکھتا No 217E / 347 / CEC / G800

پیشاور کوڈ 23/02/16 قانون ہا لکھی ٹرانسفر یعنی برادہر

دارہ اختیار سے باہر اور سرکاری رولز کی خلاف ورزی ہے جو کہ

مدعی کے حقوق پر غیر حوزہ کا حکم ہے لہذا استغناء وہ کہ حکم

قرار دیا جاوے جو ضروری ہے

دعویٰ برادہر ڈسٹرکٹ ایگرونیٹا آفسر بنوں کے مدعی کا رہائش

معدوم کہ مدعی کو حکم دیا جاوے کہ وہ آفسر لکھنؤ کے نام لکھتا

23/2/16 برادہر آفسر لکھنؤ کے نام لکھتا جو ضروری ہے

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صاحب عالی مدعی کے ذمے ہے

یہ سائل کے ریٹرنس کیلئے توڑیا گیا ہے (نقل سرکاری دفتر ہے)

۱۔ یہ ممبر قانون سکریٹریٹ کے عدالتوں کو اپنے ہی اہتمام میں لکھنا
کیا جائیگا وہ اپنے ریٹرنس کے ساتھ اپنی بددیانتی کے لئے اپنے

26/2/16
S.C.J. BANNU

۲۔ یہ ممبر عدالت کے جو جج ہیں ان کے سائل / مدعی کا توڑنا / ٹرانس
نوں سے کوئی ٹیکہ

No 217 E/347/CEC/C 8

۱۶/۲/۲۰۱۶ کو دیا ہے جو وہ لکھنا مذکورہ صفحہ قانون پر لکھی گئی
درخواست میں ہے بددیانتی اور دائرہ اختیار سے باہر ہے جو وہ منوع و ممانع
قرار دیا جا رہا ہے کہ وہ منوع کو بائیں بنا کر کہ وہ لکھنا مذکورہ منوع
کر رہا ہے

۵۔ یہ ممبر عدالت کے جو جج ہیں ان کے سائل / مدعی کا توڑنا / ٹرانس
صاف لکھا ہے کہ وہ منوع کو بائیں بنا کر کہ وہ لکھنا مذکورہ منوع
لاحق ہوگا

۶۔ یہ ممبر عدالت کے جو جج ہیں ان کے سائل / مدعی کا توڑنا / ٹرانس
صاف لکھا ہے کہ وہ منوع کو بائیں بنا کر کہ وہ لکھنا مذکورہ منوع
لاحق ہوگا

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لکھنا
مدعی کا توڑنا / ٹرانس
صاف لکھا ہے کہ وہ منوع کو بائیں بنا کر کہ وہ لکھنا مذکورہ منوع
لاحق ہوگا

لکھنا


۱۔ Registration No: 1921
۲۔ Date of Presentation of Application 29-4-16
۳۔ Date of Receipt of the file 30-4-16
۴۔ Date of Preparation of copy 30-4-16
۵۔ Date of Delivery of copy 30-4-16
۶۔ No. of copies 10

IN THE HONORABLE COURT OF SERVICE TRIBUNOL PESHAWAR.

APPEAL No. 588/2016

It is submitted for the kind information of the honorable court that I Mr. Samiullah Khan was transferred to C&W Division Bannu by the Chief Engineer (Centre) C&W Department, Peshawar vide No. 217-E/ 347/ CEC /C&WD dated 23.2.2015 and I accordingly reported arrival for duty on 1.4.2015 but Mr. Rafiullah has file civil suit in the court of Civil Judge NO. VIII Bannu who issued status quo and accordingly I came back to my duty station Kohat. Latter on Mr. Rafiullah Khan Head Clerk withdraw the case from the above court with the remarks that he will file case in honorable court of Serviceable tribunal. After filling case in the court of service Tribunal status quo was issued on 15.6.2016.

Being Provincial Government Servant I obey the order of Government/competent authority regarding my transfer to District Bannu and now I will accept the decision of Honorable court as and when made.



SAMIULLAH KHAN
HEAD CLERK
C&W DIVISION KOHAT. 6/12/2016

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