

PCL XL error 30.01.2018

Subsystem: KERNEL


Error: IllegalOperatorSequence

Operator: 0x

Position: 87

Counsel for the petitioner and Mr. Usman Ghani, District

Attorney for respondents present. Implementation report not submitted. Requested for adjournment. Notices be issued to the respondents for submission of implementation report. To come up for further proceedings on 22-3-18 before S.B.

  
(Ahmad Hassan)  
Member(E)

22.03.2018

Petitioner with counsel and Mr. Kabirullah Khattak, Additional AG for the respondents present. Representative of department is not in attendance despite issuance of notice therefore, again fresh notice be issued to the respondents for attendance. Adjourned. To come up for implementation report on 29.05.2018 before S.B.

  
(Muhammad Amin Khan Kundi)  
Member

29.05.2018

Petitioner with counsel present. Learned District Attorney present.

Arguments heard. File perused.

Admittedly the petitioner is still holding the post of Head Clerk Agency Surgeon Office North Waziristan Agency hence in these circumstances the judgment in question needs no further implementation. Learned counsel for the petitioner stated that now the appellant is aggrieved against the order dated 08.05.2018 whereby the appellant was directed to hand over complete record of his office for the year 2011, 2012 to 2015-2016 to Mr. Asmat Ullah Office Assistant (Head Clerk). Since otherwise in the order dated 08.05.2018 the appellant has not been directed to relinquish the charge of his post as such the said order has no concern with the implementation of the judgment in question. Consequently the present execution petition is consigned to the record room, leaving the parties to bear their own costs.

  
Member

Execution Petition No. 213/2017

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	16.11.2017	<p>The Execution Petition of Syed Muhammad submitted to-day by Mr. Noor Muhammad Khattak Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR - 16/11/17</p>
2-	17/11/17	<p>This Execution Petition be put up before S. Bench on <u>18/12/17</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
18.12.2017		<p>Notice of the present Execution Petition be issued to the respondent department. To come up for reply as well as implementation report on <u>30.01.2018</u> before S.B</p> <p style="text-align: center;"><i>[Signature]</i> (Muhammad Hamid Mughal) MEMBER</p>



## DIRECTORATE HEALTH SERVICES FATA

FATA SECRETARIAT WARSAK ROAD PESHAWAR.

No. \_\_\_\_\_ /DHS/FATA/Admn Dated:-

Phone# 091-9210106

FAX# 091-9210212

\*\*\*\*\*

### OFFICE ORDER:-

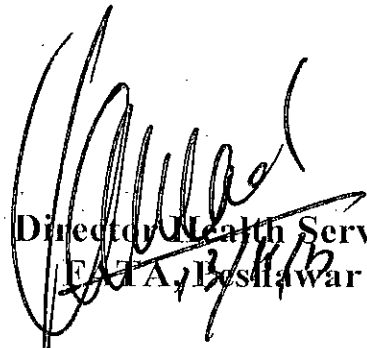
Mr. Asmatullah, Office Assistant (BPS-16), attached to Medical Superintendent AHQ Hospital Wana, SW Agency is hereby transferred and posted at the office of Medical Superintendent AHQ Hospital Miranshah NW Agency against vacant post of office Assistant in the interest of public service with immediate effect till further orders.

However he will deal the account matters of the office of Agency Surgeon NW Agency.

Director Health Services,  
FATA, Peshawar

No. 21525-31 /DHS/FATA/Admn, dated 14/10/2017.  
Copy for information and necessary action to the:

- Medical Superintendent AHQ Hospitals, Wana SW Agency and Miranshah NW Agency
- Agency Surgeons NW and SW Agencies.
- Agency Account offices NW and SW Agencies.
- Official concerned.

  
Director Health Services,  
FATA, Peshawar

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

EXECUTION PETITION NO. 213 /2017

IN APPEAL NO. 1054/2016

**SYED MUHAMMAD VS ACS (FATA) & OTHERS**

**INDEX**

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4.	Vakalat nama	.....	9

**APPELLANT:**

**THROUGH:**   
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR**

**EXECUTION PETITION NO. 213 /2017**

**IN APPEAL NO. 1054/2016**

Khyber Pakhtukhwa  
Service Tribunal

Diary No. 9/0

Dated 16-11-17

Mr. Syed Muhammad, Head Clerk,  
Agency Surgeon office North Waziristan Agency, Miranshah

..... **PETITIONER**

**VERSUS**



- 1- The Additional Chief Secretary (FATA), FATA Secretariat, Warsak Road, Peshawar.
- 2- The Secretary Social Sectors Department (FATA), FATA Secretariat, Warsak Road, Peshawar.
- 3- The Director Health Services (FATA), FATA Secretariat, Warsak Road, Peshawar.
- 4- The Agency Surgeon North Waziristan Agency Miranshah.

..... **RESPONDENTS**

**EXECUTION PETITION FOR DIRECTING THE  
RESPONDENTS TO OBEY THE JUDGMENT IN ITS TRUE  
LETTER AND SPIRIT**

**R/SHEWETH:**  
**ON FACTS:**



***Brief facts giving rise to the present execution  
petition are as under:***

- 1- That petitioner while serving as Head Clerk (B-11) in the office of Agency Surgeon NW Agency Miranshah was prematurely transferred vide order dated 10-10-2016 against which the petitioner filed Service Appeal bearing no. 1054/2016 well in time.
- 2- That the appeal of the appellant was accepted in favour of the appellant in its detail judgment dated 24-10-2017 in which the impugned transfer order dated 10-10-2016 has been set aside and the appellant has been retained as Head Clerk in the office of respondent no. 4. Copy of the judgment is attached as annexure ..... **A.**
- 3- That after obtaining copy of the judgment the petitioner submitted an application before the respondents alongwith copy of judgment dated 24-10-2017 for implementation. Copy of application is attached as annexure ..... **B.**

- 4- That, the petitioner time and again visited the office of the respondents for implementation of the judgment dated 24-10-2017 but till date no response has been received so far, from the respondent's side and the respondents are delaying the matter by one way or the other.
- 5- That, the petitioner is left with no other remedy but to approach this Honourable Tribunal by filing the present execution petition.

It is therefore, most humbly prayed that on this execution petition the respondents may be directed to implement the judgment of this august Tribunal dated 24-10-2017 passed in appeal No. 1054/2016 in its true letter & spirit. Any other remedy which this Honourable Tribunal deems fit that may also be awarded in favour of the petitioner.

Dated: 16-11-2017

**PETITIONER**  
  
**SYED MUHAMMAD**  
**THROUGH:**  
  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

A-3

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

Appeal No. 1054 /2016

Khyber Pakhtukhwa  
Service Tribunal

Diary No. 1087

Mr. Said Mohammad, Junior Clerk (BPS-9),  
O/O the Agency Surgeon North Waziristan Agency at Miran Shah,  
Dated 14-10-2016  
..... Appellant

**VERSUS**

- 1- The Additional Chief Secretary FATA, FATA Secretariat Warsak Road, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary, Social Sector. Department FATA, FATA Secretariat, Warsak Road, Khyber Pakhtunkhwa, Peshawar.
- 3- The Director Health Services FATA, FATA Secretariat Warsak Road, Khyber Pakhtunkhwa, Peshawar.
- 4- The Agency Surgeon, North Waziristan Agency at Miran Shah.



..... **RESPONDENTS**


**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 10.10.2016 WHEREBY THE APPELLANT HAS BEEN TRANSFERRED PREMATURELY AND INAVIOLATION OF TRANSFER/POSTING POLICY AND AGAINST THE APPELLATE ORDER DATED 13.10.2016 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS**

**PRAYER:**

That on acceptance of this appeal the impugned orders dated 10.10.2016 and 13.10.2016 may very kindly be set aside and the respondents may be directed not to transfer the appellant from the office of Agency Surgeon North Waziristan Agency. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

ed to-day  
Said Mohammad  
Registrar

**ATTESTED**

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

**R/SHEWETH:**

**ON FACTS:**

- 1- That appellant is the employee of the respondent Department and is serving as Junior Clerk (BPS-12) in the respondent Department. That right from appointment till date the appellant has served the respondent Department quite efficiently and up to the entire satisfaction of his superiors.

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 1054/2016

Date of Institution ... 14.10.2016

Date of Decision ... 24.10.2017



Said Muhammad, Junior Clerk (BPS-09) office of the Agency Surgeon, North Waziristan Agency at Miranshah. ... (Appellant)

VERSUS

1. The Additional Chief Secretary, FATA, FATA Secretariat, Khyber Pakhtunkhwa, Peshawar and 3 others. ... (Respondents)

MR. NOOR MUHAMMAD KHATTAK,  
Advocate

... For appellant

MR. KABEERULLAH KHATTAK,  
Addl. Advocate General

... For respondents.

MR. NIAZ MUHAMMAD KHAN,  
MR. GUL ZEB KHAN,

...  
...CHAIRMAN TESTED  
MEMBERJUDGMENTNIAZ MUIHAMMAD KHAN, CHAIRMAN.-

Arguments of the

learned counsel for the parties heard and record perused.

FACTS

2. The appellant was transferred vide order dated 10.10.2016 from Agency Surgeon, North Waziristan Agency to the Directorate Health Services, FATA, Peshawar on administrative ground. Against this order, the appellant filed departmental appeal on 10.10.2016 which was rejected on 13.10.2016. The appellant then filed the present service appeal on 14.10.2016.

ENAMUN  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar



5

### ARGUMENTS.

3. The learned counsel for the appellant argued that the impugned transfer was made as a punishment though mentioned on administrative ground. That in the impugned original order, the disciplinary proceedings were initiated against the appellant by appointing the enquiry officer. In this connection, he relied upon a judgment reported as 2012 PLC(C.S)187 and unreported judgment of this Tribunal dated 05.05.2017 in service appeal No. 481/2016. He further argued that cadre of the appellant is District Cadre and under the posting/transfer policy of the Government, he cannot be transferred outside the District/Agency.

4. On the other hand the learned Addl. Advocate General argued that under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, the Authority is competent to transfer a civil servant anywhere in the Province. That the appellant had completed his normal tenure and he could be transferred by the Authority under the posting/transfer policy of the Government. In this regard, he relied upon a judgment reported as 2017-SCMR-798. That the appellant could be transferred on administrative ground as well. In this regard he relied upon a judgment reported as 2005-SCMR-442. He also argued that the appellant did not file departmental appeal to the appellate authority rather the same was filed and rejected by the Agency Surgeon, N.W Agency. He further argued that the Agency Surgeon N.W Agency was transferred on 06.09.2016 and the appeal has been rejected by him on 13.10.2016.

### CONCLUSION.

5. The issue of departmental appeal is to be taken up first. Under sub rule 2 of Rule 4 of the Khyber Pakhtunkhwa Civil Servants (Appeals) Rules, 1986, the aggrieved civil servant is bound to file appeal through Head of the office in which the appellant is posted at the time of filing the appeal. It is the responsibility of the head of the office to forward

ATTESTED  
 By: [Signature]  
 Service Tribunal,  
 Peshawar

①

the appeal to the competent authority if he himself is not such authority. The appellant has rightly filed the appeal through head of the office in which he was serving at that time. It was the responsibility of the head of the office to have forwarded the same to the Appellate Authority. If the Agency Surgeon had rejected the appeal himself or at the relevant time he was already transferred from the said office, the department should have taken action against him. Rather it became a matter of disciplinary proceedings but nothing of the sort. For this, the appellant cannot be penalized. The departmental appeal is therefore, competently made for the purpose of the present appeal. The interpretation made by the learned counsel for the respondents on Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 is not correct because this Section never authorizes any authority to transfer a civil servant anywhere without any criteria. The wording of this section makes a civil servant liable to serve anywhere within or outside the Province but no authority can be presumed to have unbridled powers to post/transfer a civil servant according to his own whims on the ground that he has the powers under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 to transfer any civil servant. Every functionary of the State is bound to exercise powers in the best interest of public and the best interest of public is the one which ensures consistency, transparency and in accordance with the laid criteria, policy and rules. The Government of Khyber Pakhtunkhwa had been issuing different policies, instructions and rules to circumscribe the unfettered powers of government functionaries. No functionary can bypass the policies, instructions and rules by assuming unchecked powers. The impugned order is firstly illegal on the ground that there is no use of the words "public interest". Secondly there is no use of the term "tenure" which means that the authority has not passed the order either in public interest or on the basis of completion of tenure. The judgment relied upon by the learned counsel for the respondents regarding tenure are inapplicable in the present case. The very impugned order speaks of initiation of disciplinary proceedings

ATTESTED

EX. A. 101/12  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

against the appellant and transfer of the appellant to another office which in view of judgment pressed into service by the learned counsel for the appellant, cannot be upheld.

6. As a sequel to the above discussion, the appeal is accepted and the impugned order is set aside. Parties are left to bear their own costs. File be consigned to the record room.

Announced  
24.10.2017 Sd/- Niaz Muhammad Khan,  
Chairman  
Sd/- Gulzeb Khan,  
Member

Certified to be true copy  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 27-10-2017  
Number of Words 2000  
Copying Fee 12  
Urgent 2  
Total 14  
Name of Copyist [Signature]  
Date of Completion of Copy 27-10-2017  
Date of Delivery of Copy 27-10-2017

The Director Health Services  
PAMA works Road Peshawar

Subject: Request for Implementation of  
Court Decision

R/Sir, Respectfully it is stated the honourable  
Service Tribunal KPK has been decided my  
Appeal No. 1054/2016 vide order sheet dated 25/10/2017  
(photo copy attached).

Therefore it is requested to kindly implement  
the court decision accordingly and effect.

Thanks S

Dated:- 26/10/2017

Accepted  
[Signature]

yours obediently  
[Signature]  
(Mr. Syed Muhammad)  
Head Clerk  
Agency Surgeon Office  
NWSA.

**VAKALATNAMA**

BEFORE THE KPK Service Tribunal Peshawar

OF 2017

Said Mohammad

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

A.C.S. FATA & Others

(RESPONDENT)  
(DEFENDANT)

I/We Said Mohammad

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

Dated. \_\_\_\_/\_\_\_\_/2017

Client Signature  
CLIENT

Accepted Signature  
**ACCEPTED**

**NOOR MOHAMMAD KHATTAK**

Advocate Signature  
**MUHAMMAD MAAZ MADNI  
ADVOCATES**

OFFICE:

Flat No.3, Upper Floor,  
Islamia Club Building, Khyber Bazar,  
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141



# DIRECTORATE HEALTH SERVICES FATA

FATA SECRETARIAT WARSAK ROAD PESHAWAR.

No \_\_\_\_\_ /DHS/FATA/Admn Dated:-

Phone#: 091-9210106

FAX#: 091-9210212

\*\*\*\*\*

## OFFICE ORDER:-

Mr. Asmatullah, Office Assistant (BPS-16), attached to Medical Superintendent AHQ Hospital Wana, SW Agency is hereby transferred and posted at the office of Medical Superintendent AHQ Hospital Miranshah NW Agency against vacant post of office Assistant in the interest of public service with immediate effect till further orders.

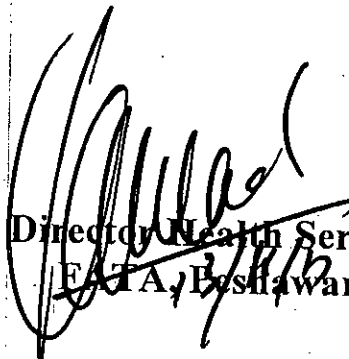
However he will deal the account matters of the office of Agency Surgeon NW Agency.

Director Health Services,  
FATA, Peshawar

No 21525-31 /DHS/FATA/Admn, dated 14/11/2017.

Copy for information and necessary action to the:

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- Agency Surgeons NW and SW Agencies.
- Agency Account offices NW and SW Agencies.
- Official concerned.

  
Director Health Services,  
FATA, Peshawar

**OFFICE OF THE AGENCY SURGEON  
NORTH WAZIRISTAN AGENCY AT MIRANSHAH**

Tel: (0928) 300788 FAX: (0928) 311662

Email: agency Surgeon nwa2018@gmail.com

No. 8395-1pp

Dated: 08/05/2018

To,


✓ Mr. Said Muhammad  
Junior Clerk of this office.

Subject:-  
Memo:-

**PROVISION OF RECORD**

As discussed in the meeting on 16/04/2018 under the chairmanship of Director Health Services FATA Peshawar.

You are directed to hand over complete record of accounts of this office for the year 2012-13 to 2015-16 to Mr. Asmatullah Office Assistant (Head Clerk) of this office within 03 days, of the receipt of this letter.

  
AGENCY SURGEON,  
NORTH WAZIRISTAN MIRANSHAH

No. \_\_\_\_\_

**Copy to the:-**

- 1- Director Health Services FATA Peshawar for information with reference to his instruction in the above meeting please.
- 2- Political Agent NWA, Miranshah for information please.
- 3- Head Clerk of this office for necessary action.

AGENCY SURGEON,  
NORTH WAZIRISTAN MIRANSHAH

- 1- Cash Book
- 2- Vouchers
- 3- Sanctions
- 4- Supply orders
- 5- Cost Statement
- 6- Expt. Statements
- 7- Phys. Verification certificates