


FORM OF ORDER SHEET

Court of _____

Appeal No. 439/2024


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	25/03/2024	<p>The appeal of Mr. Habib Ullah resubmitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 26.03.2024 . Parcha Peshi given to the counsel for the appellant.</p> <p>By the order of Chairman  REGISTRAR</p>

The appeal of Mr. Habib Ullah received today i.e on 21 .03.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- According to sub-rule-4 of rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974 respondent no. 3 is un-necessary/improper party, in light of the rules ibid and on the written direction of the Worthy Chairman the above mentioned respondent number be deleted/struck out from the list of respondent.

No. 649 /S.T.

Dt. 22/3/2024.



REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Noor Muhammad Khattak Adv.
High Court Peshawar.

R/sig

Resubmitted after necessary completion.



BEFORE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Service Appeal NO. 439-P/2024

HABIB ULLAH

VS

GOVT: OF KP & OTHERS

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APPELLANT

THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL No. 439/2024

Mr. Habib Ullah Khan, Assistant Director Information (BPS-17)
PRO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar

..... **APPELLANT**

V E R S U S

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary Information & Public Relations Civil Secretariat, Peshawar.
3. Mr. Sajid Mehmood, Assistant Director (BS-17), Directorate General Information & Public Relations, Peshawar.

..... **RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 8.12.2023 WHEREBY THE APPELLANT HAS BEEN TRANSFERRED AGAINST THE CROSS CADRE POST OF PRODUCER (BPS-17) AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of the instant service appeal the impugned Notification dated 8.12.2023 may kindly be set aside to the extent of the appellant and private respondent No.4. That the respondents may please be directed not to transfer the appellant from his original post of Assistant Director Information (BPS-17). Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

R/Sheweth:

Facts arising for the institution of instant service appeal are as under:-

- 1- That appellant is the law abiding citizen of Pakistan and is serving the respondent department as Assistant Director Information (BPS-17) quite efficiently and up to the entire satisfaction of his superior. Copy of appointment order is attached as annexure..... **A**
- 2- That the appellant started performing his duties at his concerned station quite efficiently, but astonishingly the respondent No.2 issued the impugned Notification dated 08/12/2023 whereby the appellant has been transferred against the cross cadre post of Producer (BPS-17) in violation of the prevailing laws and Rules. That in the ibid impugned Notification the private respondent No.4 was transferred/posted against the post of appellant. Copy of the impugned notification dated 08/12/2023 is attached as annexure **B**
- 3- That the appellant feeling aggrieved from the impugned notification dated 8.12.2023 preferred departmental appeal before the respondent No 1 followed by writ petition No.6238-P/2023 before the Peshawar High Court, Peshawar but the same was dismissed on the point of jurisdiction vide judgment dated 9.2.2024. Copy of departmental appeal and judgment are attached as annexure..... **C & D**
- 4- That where after the appellant waited for the statutory period of ninety days and filed the instant appeal on the following grounds amongst the others.

GROUND:

- A- That the impugned notification dated 08/12/2023 being contrary to law and rules, hence not tenable in the eye of Law and needs interference of this Honorable Tribunal to be set aside.
- B- That appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C- That the impugned notification dated 08/12/2023 in utter violation of the transfer and posting policy of the Government.
- D- That the treatment meted out to the appellant is highly discriminatory and in clear violation of the Fundamental Rights of the appellant as enshrined in the Constitution of Pakistan 1973 and also violation of Articles 218 (3), 220 of the Constitution of Islamic Republic of Pakistan.

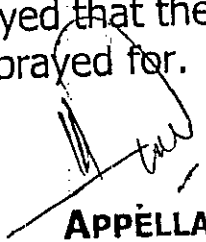
E- That the impugned transfer Notification dated 8.12.2023 is also violative clause XIII of the transfer/posting policy of the Government of Khyber Pakhtunkhwa. Copy of the transfer/posting policy is attached as annexure..... E

F- That the impugned notification dated 08/12/2023 is also violative of Rules 12 of Appointment, Promotion & Transfer Rules, 1989.

G- That the impugned Notification is violative the latest Judgment of this august Tribunal passed in appeal No.16578/2020 titled Manzoor Ahmad VS Govt: Of KPK decided on 6.12.2021, therefore the appellant is similarly placed person/employee and is liable for similar treatment under the principle of consistency reported in 2009 SCMR 1. Copy of the judgment is attached as annexure F

H- That the appellants seek permission to advance other grounds and proofs at the time of hearing.

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



APPELLANT

THROUGH:

**NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT**

UMAR FAROOQ MOHMAND

MUZZAMMIL KHAN

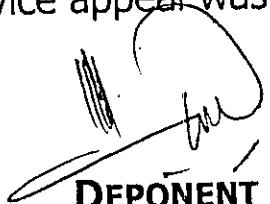
WALEED ADNAN

MEHMOOD JAN

ADVOCATES HIGH COURT

VERIFICATION:

It is verified that no other earlier service appeal was filed between the parties.



DEPONENT

-4-

BEFORE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Service Appeal NO. _____ -P/2024

HABIB ULLAH

VS

GOVT: OF KP & OTHERS

AFFIDAVIT

I, Habib Ullah Khan, (the appellant) do hereby solemnly affirm that the contents of this appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.



DEPONENT

-5-

BEFORE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

CM NO. _____-P/2024

In

Service Appeal NO. _____-P/2024

HABIB ULLAH

VS

GOVT: OF KP & OTHERS

APPLICATION FOR SUSPENSION OF OPERATION OF
IMPUGNED NOTIFICATION DATED 08/12/2023, WHEREBY
THE APPELLANT HAS BEEN TRANSFERRED AGAINST THE
CROSS CADRE POST OF PRODUCER (BPS-17), TILL THE
DISPOSAL OF THE MAIN APPEAL.

R/SHEWETH:

- 1- That the above mentioned appeal along with this application has been filed the appellant before this august Tribunal in which no date has been fixed so far.
- 2- That appellant filed the above mentioned appeal against the impugned notification dated 08/12/2023, whereby the appellant has been transferred against the cross cadre post of producer (BPS-17).
- 3- That all the three ingredients necessary for the stay is in favor of the appellant.
- 4- That the impugned notification dated 08/12/2023 in utter disregard of law and prevailing Rules.

It is therefore, most humbly prayed that on acceptance of this application the operation of impugned notification dated 08/12/2023 may very kindly be suspended till the disposal of the above mentioned service appeal.

APPELLANT

THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

AFFIDAVIT

I, Habib Ullah Khan, do hereby solemnly affirm that the contents of this **application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

DEPONENT



Establishment Section

'A'-6-

(5)

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

NOTIFICATION:-

No. FS/E/100-19(Vol-46)/136-40 : On the recommendations of Khyber Pakhtunkhwa Public Service Commission Peshawar, the Competent Authority (Chief Secretary Khyber Pakhtunkhwa) has been pleased to appoint the following as Assistant Director Information / Information Officer in Information Department Khyber Pakhtunkhwa in BS-17 (Rs. 30370-2300-76370) plus usual allowances as admissible under the rules with immediate effect:-

S. No	Name and Father's Name
1.	Habibullah Khan S/O Mir Khatim Khan resident of South Waziristan Agency.
2.	Nisar Muhammad S/O Muhammad Jan resident of Bajaur Agency.

TERMS & CONDITIONS:-

- i. The above posts, for all intents and purposes, shall be within the definition of Civil Servants and they shall be entitled for GP Fund, Pension and Gratuity.
- ii. They shall be governed by the Khyber Pakhtunkhwa Civil Servants Act 1973 and all the laws applicable to the Civil Servants and rules framed thereunder.
- iii. They will be governed by such rules and orders relating to leave, TA and Medical Attendance as may be prescribed by the Government.
- iv. They will be on probation initially for a period of one year extendable for another period of one year.
- v. Their services will be liable to termination at any time without assigning any reason before the expiry of the period of probation/extended period of probation, if their work during this period is found unsatisfactory. In such an event, they will be given one month's notice of termination from service or one month's pay in lieu thereof.
- vi. Their seniority will be determined in accordance with the merit assigned by the Khyber Pakhtunkhwa Public Service Commission.
- vii. They will be governed by the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules 2011 and Government Servants (Conduct) Rules 1987 and any other instructions which may be issued by the Government from time to time.
- viii. In case they wish to resign at any time, a month notice shall be necessary or in lieu thereof, a month's pay shall be deposited.
- ix. They will not be entitled to TAVDA on appointment.

2- In case the above terms and conditions are acceptable, an **UNDERTAKING** to this effect on a Judicial Stamp Paper duly attested by the Oath Commissioner should be produced in Administration, Infrastructure & Coordination Department FATA Secretariat and they may submit arrival report within 15 days on receipt of this Notification failing which the appointment shall be deemed to have been cancelled.

ADDITIONAL CHIEF SECRETARY (FATA)
(Continued on Page-2)

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Dated 31/10/2017

Copy to:-

1. Secretary to Government of Khyber Pakhtunkhwa Information & Public Relations Department Peshawar.
2. Accountant General Khyber Pakhtunkhwa.
3. PS to Secretary AI&C Department (FATA).
4. Officers concerned.
5. Personal Files.

Section Officer (Estab)


31/10/17



-8- BWA

DIRECTORATE GENERAL INFORMATION & PRS
KHYBER PAKHTUNKHWA, PESHAWAR

No. INF/Comm./ 844 --
Dated Peshawar, the 22/02/2023

OFFICE ORDER

The Competent Authority is pleased to direct the following officers/officials of the Directorate General Information & PRs, Khyber Pakhtunkhwa to perform duties as PROs with the Caretaker Provincial Ministers/ Advisors to Chief Minister as noted against their names:

Sl#	Name of PRO	Cell No.	Name & Portfolio of Minister/ Advisor
1.	Mr. Ghulam Hussain, Deputy Director Information	0345-9088855	Mr. Adnan Jalil • Minister for Industries, Commerce and Technical Education Department • Revenue Department
2.	Mr. Khan Sarwar, Deputy Director Information	0333-9151692	Mr. Bakht Nawaz Khan Thakot Minister for Climate Change, Forestry, Environment and Wildlife Department
3.	Mr. Attaullah Khan Assistant Director Information	03459109905	1. Mr. Himayat Ullah Khan • Advisor to CM on Finance and Energy & Power 2. Dr. Abid Jameel • Advisor to CM on Health
4.	Mr. Afraslab, Assistant Director Information	0345-9002797	1. Mr. Shahid Khan Khattak • Minister for Transport and Mass Transit Department • Science, Technology and Information Technology Department 2. Syed Masood Shah • Minister for Establishment & Administration Department Inter Provincial Coordination Department
5.	Mr. Habibullah Mehsud, Assistant Director Information	0343-8965281	Chief Secretary
6.	Mr. Khan Ghalib, Assistant Director Information	0343-9142092	Mr. Haji Fazal Elahi • Minister for Food Department • Irrigation Department
7.	Mr. Rizwan Malik, Assistant Director Information	0313-5925856	Mr. Abdul Haleem Qasuriya • Minister for Agriculture Department • Livestock, Fisheries and Cooperative Department
8.	Mr. Mujahid Khan, Assistant Director Information	0316-1952630	1. Mr. Manzoor Khan Afridi • Minister for Excise and Taxation Department • Labour Department
9.	Mr. Fazal Qayyum, Assistant Information Officer	03018865468	Haji Muhammad Ghufraan Minister for Minerals Development Department
10.	Mr. Irshad Ahmad, Assistant Director Information	0300-9326146	Advocate Sawal Nazir Minister for Local Government, Election and Rural Development Department

1

-9-

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11.	Mr. Rizaz Ghafur, Assistant Director Information	03459365135	Mr. Haraid Ghah • Minister for Public Health Engineering Department • Planning & Development Department
12.	Mr. Shan Muhammad, Script Writer	0332-9196075	Mr. Taj Muhammad Afridi Minister for Relief, Rehabilitation and Settlement Department
13.	Muhammad Huzafa, Assistant Information Officer	0317-4008892	Justice (R) Irshad Qalcer • Minister for Law, Parliamentary Affairs and Human Rights Department • Higher Education, Archives and Libraries Department
14.	Mr. Sajid Khan, Assistant Producer	0300-5097336	Mr. Shafiullah Khan • Minister for Housing Department • Prisons
15.	Mr. Naeem ul Haq, Non Linear Editor	0346-9339197	Mr. Muhammad Ali Shah Minister for Communication & Works Department
16.	Mr. Mukhtiar Ahmed, Assistant Director Information	0346-5658172	Mr. Zafar Mahmood Advisor to CM on Culture, Tourism, Archeology and Museums
17.	Mr. Kramatullah, IT Assistant		Mr. Rehmat Salam Khattak Advisor to CM on Elementary & Secondary Education
18.	Mr. Qazi Arif, Translator	03329931459	Syed Jarrar Hussain Bukhari Advisor to CM on population Welfare

(Signature)
DEPUTY DIRECTOR (COM)
For DG

No. & Date Even

- Copy to:
1. Private Secretary(ies) to Caretaker Provincial Ministers/Advisors to Chief Minister, Khyber Pakhtunkhwa
 2. PS to Secretary Information & PRs, Govt. of Khyber Pakhtunkhwa
 3. PS to DG Information & PRs, Khyber Pakhtunkhwa
 4. Concerned PROs

(Signature)
DEPUTY DIRECTOR (COM)
For DG

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"B" - 10 -

To be substituted with the Notification bearing the same Number dated 08.12.2023



**GOVERNMENT OF KHYBER PAKHTUNKHWA
INFORMATION & PUBLIC RELATIONS DEPARTMENT**

Dated Peshawar the 08th December, 2023

NOTIFICATION:

No. SO. Estt/INF/4-24/2020/Posting/Transfer:- The Competent Authority, Secretary to Govt of Khyber Pakhtunkhwa, Information & Public Relations Department has been pleased to issue the following posting/transfer of officers of the Directorate General Information & Public Relations, Khyber Pakhtunkhwa, in the public interests, with immediate effect:

S.No	Name & Designation	From	To
1.	Salim Khan (BPS-19)	Director Information (Admin;), (Personal-19), HQs Office Peshawar	Allowed to actualize his promotion to BS-19 on regular basis on the already occupied post of Director Information (Admin), HQs Office Peshawar
2.	Mubashir Rahim Malik, (BPS-19)	Deputy Director (Personal-19), Regional Information Office, Abbottabad.	Director Information (PR), HQs Office Peshawar.
3.	Liaqat Amin (BPS-19)	Director Information (PR) (Personal-19), HQs Office Peshawar	Director Information (Coord:), HQs Office Peshawar.
4.	Ghulam Hussain (BPS-18)	Station Director, Pakhtunkhwa Radio FM 92.2 MHz, Peshawar	Deputy Director (Training), HQs Office Peshawar
5.	Muhammad Sarwar Khattak (BPS-18)	Deputy Director, Regional Information Office, Kohat	Deputy Director, Regional Information Office, Bannu
6.	Haroon ur Rasheed (BPS-18)	Deputy Director (Litigation) HQs Office Peshawar	Deputy Director, Regional Information Office, Peshawar
7.	Ikramullah Saeed (BPS-18)	Assistant Director, Headquarter Office, Peshawar	Deputy Director, Regional Information Office, Abbottabad
8.	Mukhtiar Ahmad (BPS-18)	Assistant Director, Headquarter Office, Peshawar	Deputy Director (Transport), HQs Office Peshawar
9.	Irshad Muhammad Khan (BPS-18)	Producer, Pakhtunkhwa FM Radio, Kohat	Deputy Director, Regional Information Office, Kohat
10.	Nizam ud Din (BPS-18)	Deputy Director (OPS), Regional Information Office, Swat.	Deputy Director (Communication-II), HQs Office Peshawar
11.	Habib Ullah (BPS-17)	HQs Office Peshawar / PRO to Chief Secretary	Producer Pakhtunkhwa Radio FM 92.2 MHz, Peshawar
12.	Nisar Muhammad (BPS-17)	Awaiting posting	Assistant Director (Litigation), HQs Office Peshawar
13.	Muhammad Athar Suri (BS-17)	T.Engineer, Pakhtunkhwa Radio FM 92.2 MHz, Peshawar.	He is authorized to hold look after charge of the post of Station Director, Pakhtunkhwa Radio FM 92.2 MHz, Peshawar
14.	Anwar Khan (BPS-17)	Deputy Director (OPS), Regional Information Office, Bannu	In-charge FM Radio, Kohat
15.	Muhammad Jalal (BS-17)	T. Engineer, Pakhtunkhwa FM Radio, Swat	He is authorized to hold look after charge of the post of RJO, Swat

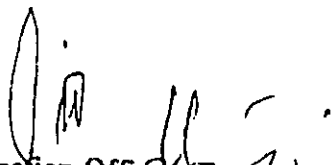
16.	Muhammad Daud (BPS-17)	Producer, FM Radio, Kurram	Assistant Director (Estab), HQs Office, Peshawar
17.	Muhammad Iqbal (BPS-17)	Administrative Officer, HQs Office Peshawar	Superintendent (Accounts), HQs Office Peshawar.
18.	Mr. Sajid Khan (BPS-17)	Assistant Producer, HQs Office Peshawar	Assistant Director, HQs Office Peshawar / PRO to Caretaker Minister for Transport and Housing
19.	Mr. Sajid Mehmood Khan (BPS-17 ACB)	Assistant Information Officer, Pakhtunkhwa Radio, Mardan	A.D, HQs Office Peshawar. He will work as PRO to Chief Secretary
20.	Miss. Neelam Zahir (BPS-16)	Assistant Information Officer, HQs Office Peshawar	Producer (BPS-17) (OPS) in Pakhtunkhwa Radio FM 92.2 MHz, Peshawar
21.	Mrs. Farhat Irshad (BS-16)	Assistant Information Officer, Registrar Section, HQs Office Peshawar	Assistant Director (Admn) (BPS-17) (OPS)
22.	Miss. Bushra Sikandri (BS-16)	Jr. T. Engineer, FM Radio Kurram	She is authorized to hold look after charge of the post of In-charge FM Radio, Kurram

SECRETARY

Information & Public Relations Department

Copy of the above is forwarded for information to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General, Directorate General IPRs, Khyber Pakhtunkhwa.
3. P.S. to Minister for Information & Public Relations.
4. P.S. to Secretary Information & PRs. Department.
5. Station Director, Pakhtunkhwa Radio, FM 92.2 MHz, Peshawar.
6. Regional Information Officers concerned.
7. Station Incharge, Pakhtunkhwa FM Radio, Kohat.
8. Station Manager, Pakhtunkhwa FM Radio, Mardan.
9. District Accounts Officer, Kohat, Bannu, Mardan & Abbottabad.
10. Officers concerned.
11. Personal files.
12. Master file


 Section Officer (Establishment)

PSIC Sindhwa, Peshawar
Diary No. 5934 (10) P-12-
Date 22-12-2023

To,

The Chief Secretary
Government of Khyber Pakhtunkhwa, Peshawar.

Subject: DEPARTMENTAL APPEAL AGAINST TRANSFER

Respected Sir,

It is humbly submitted that the undersigned has recently been transferred and posted as Producer (BS-17) Pakhtunkhwa Radio FM 92.2 MHz, Peshawar. However, I would not be able to effectively discharge duties associated with new assignment (FM Radio Production) due to the following reasons:-

1. That the undersigned has no requisite experience in radio production. Furthermore, at the time of recruitment through KPPSC to the post of Assistant Director Information (BS-17) under the then service rules the undersigned was ineligible for the position of Producer (BS-17) due to lack of relevant experience in radio production as mentioned in service rules dated 18th August, 2011 (attached) "At least Second Class Master's degree in Journalism or Mass Communication from a recognized university with two years' experience in radio programming and production".

2. That the job descriptions for both positions (Assistant Director Information (BS-17) and Producer (BS-17)) differ significantly in nature.

3. That the Directorate General of Information & Public Relations (DGIPRs) operates nine FM radio stations across the province and has recruited designated and experienced Producers (BS-17) for the production at these FM radio stations. The designated Producers for radios are presently working elsewhere, while the Assistant Directors who lack the requisite expertise are often posted in radio, which affect the quality of production and is against the spirit of this cadre.

In light of the above, it is requested that the transfer order to the extent of serial No. 11 (attached), may be reconsidered for posting on general cadre position, please.

Thanking you in anticipation.

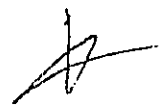
Yours faithfully,

Habib Ullah Khan

Assistant Director Information BS-17

Directorate General Information & Public Relations

22/12/2023



11/11/23 -13-

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

WRIT PETITION NO. _____ -P/2023

Mr. Habib Ullah Khan, Assistant Director Information (BPS-17)
PRO to Chief Secretary, KP, Peshawar



..... PETITIONER

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary Information & Public Relations, Civil Secretariat, Peshawar.
3. The Director General, Directorate of Information & Public Relations Civil Secretariat, Peshawar.
4. Mr. Sajid Mehmood, Assistant Director (BS-17), Directorate General Information & Public Relations, Tehsil Bara District Khyber.

..... RESPONDENTS

**WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN 1973 AS AMENDED UP TO DATE.**

Respectfully Sheweth:

**Facts arising for the institution of instant writ
petition are as under:-**

- 1- That petitioner is the law abiding citizen of Pakistan and is serving the respondent department as Assistant Director Information (BS-17) quite efficiently and up to the entire satisfaction of his superior. That lastly the petitioner was posted as PRO to Chief Secretary. Copy of appointment order and posting order are attached as annexure..... **A & B.**
- 2- That the petitioner started performing his duties at his concerned station quite efficiently, but astonishingly the respondents vide Notification dated 08/12/2023 transferred/posted the petitioner against the cross cadre post of Producer (BS-17) Pakhtunkhwa Radio FM 92.2 MHz, Peshawar and the private respondent being junior to the petitioner has been posted vice petitioner. Copy of the impugned notification dated 08/12/2023 is attached as annexure..... **C.**

ATTESTED
EXAMINER
Peshawar High Court
Peshawar

3- That the petitioner feeling aggrieved from the impugned notification dated 8.12.2023 preferred departmental appeal before the respondent No 1 but the same has not been decided till date though under clause -XIV of the transfer/posting policy the appellate authority is duty bound to decide the Departmental appeal of the petitioner within fort night. Copies of departmental appeal and transfer/posting policy are attached as annexure..... **D & E.**

4- That petitioner feeling aggrieved and having no other efficacious remedy preferred the instant writ petition on the following grounds:-

GROUND:

A- That the impugned notification dated 08/12/2023 being contrary to law and rules, hence not tenable in the eye of Law and needs interference of this Honorable Court to be set aside.

B- That petitioner has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.

C- That the impugned notification dated 08/12/2023 in utter violation of the transfer and posting policy of the Government.

D- That the treatment meted out to the petitioner is highly discriminatory and in clear violation of the Fundamental Rights of the petitioner as enshrined in the Constitution of Pakistan 1973 and also violation of Articles 218 (3), 220 of the Constitution of Islamic Republic of Pakistan.

E- That the impugned transfer orders is also violative of the transfer/posting policy of the Government of Khyber Pakhtunkhwa as the petitioner has been prematurely transferred from his current post.

F- That the impugned notification dated 08/12/2023 is also violative of Rules 12 of Appointment, Promotion & Transfer Rules, 1989.

G- That the impugned notification has not been issued in the public interest nor exigencies of public service, hence not tenable and liable to be set aside.

ATTESTED
EXAMINER
Peshawar High Court
Peshawar

H- That the petitioners seek permission to advance other grounds and proofs at the time of hearing.

-15-

It is therefore, most humbly prayed that on acceptance of this writ petition the impugned notification dated 08/12/2023 may kindly be declared as illegal, unlawful, unconstitutional and ineffective upon the rights of the petitioner, may very kindly be set aside to the extent of petitioner and private respondent OR the respondents may be directed to decide the departmental appeal/representations of the petitioner in light of clause XIV of the Transfer/posting policy. Any other remedy which this august Court deems appropriate may kindly also be granted in favor of the petitioner.

Interim Relief:

By way of interim relief, the impugned notification dated 08/12/2023 may very kindly be suspended to the extent of petitioner and private respondent till the disposal of instant writ petition.

PETITIONER

THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

UMAR FAROOQ MOHMAND

MUZZAMMIL KHAN

WALEED ADNAN

MEHMOOD JAN

KHANZAD GUL
ADVOCATES HIGH COURT

VERIFICATION:

It is verified that no other earlier writ petition was filed between the parties.

DEPONENT

LIST OF BOOKS

1. Constitution of Pakistan.
2. Services law books
3. Any other case law as per need.

WP6238P2023 HABIB ULLAH KHAN VS GOVT CF PG26

CERTIFIED TO BE TRUE COPY
EXAMINER
Peshwar High Court, Peshawar
Authorized Under Article 8, 7 of
the Qanoon-e-Shahadat Act 1984
13 FEB 2024

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

- 16 -

WRIT PETITION NO. _____ -P/2023

HABIB ULLAH KHAN VS GOVT: OF KP & OTHERS

AFFIDAVIT

I, Habib Ullah Khan S/O Mir Khatim Khan, R/O Gali Hazrat Ali Dra Ban Chongi Muhallah Farooq Abad Dera Ismail Khan, do hereby solemnly affirm that the contents of this **Writ Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



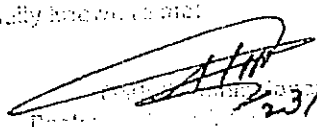
DEPONENT
CNIC NO. 12101-9740443-9
CELL: 0343 9965281

IDENTIFIED BY


NOOR MOHAMMAD KHATTAK
Advocate Supreme Court,

No. 57473

Certified that the above was verified on solemn affirmation before me in office this 23 day of Dec 2023 by Habib Ullah Khan s/o Mir Khatim Khan D.I. Khan who was identified to me by Mir M. Khattak who is personally known to me.


23/12/2023

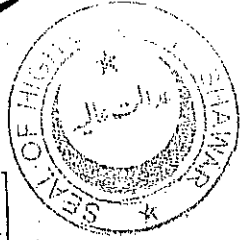
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EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 6, 7 of
the Qanun-e-Amnahadad Act 1984
13 FEB 2024

PESHAWAR HIGH COURT PESHAWAR

Form "A"

Order Sheet

- 17 -



Date of Order, or Proceedings	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary
2	3
09.02.2024	<p><u>Writ Petition No.6238-P/2023.</u></p> <p><u>Present:</u></p> <p>Mr. Umar Farooq Mohmand, Advocate, for the petitioner:</p> <p>Barrister Syed Muhammad Shah, AAG, for the respondents:</p> <p>*****</p> <p><u>FAZAL SUBHAN, J.</u> - Through the instant petition under Article 199 of the Islamic Republic of Pakistan, 1973 (Constitution), petitioner has made the following prayers: -</p> <p><i>"On acceptance of this writ petition the impugned notification dated 08.12.2023 may kindly be declared as illegal, unlawful, unconstitutional and ineffective upon the rights of the petitioner, may very kindly be set aside to the extent of petitioner and private respondent OR the respondents may be directed to decide the departmental appeal / representation of the petitioner in light of clause XIV of the Transfer / posting policy."</i></p> <p>2. Record shows that the petitioner was serving in the respondent-department as Assistant Director Information and was lastly posted as PRO to Chief Secretary. That to the surprise of petitioner, the respondents issued notification No.SO.Estt/INF)4-</p>

ATTESTED
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24/2020/Posting/Transfer dated 08.12.2023, whereby he was transferred to Pakhtunkhwa Radio FM 92.2 MHz, Peshawar, as Producer, however, the same is a cross cadre post and an officer junior to the petitioner, has been posted against his earlier post. That being aggrieved, the petitioner filed departmental appeal, but the same has not been decided; hence, having no other efficacious remedy, he preferred the instant Writ Petition.

3. We have heard the learned counsel for petitioner in motion and have noted that the petitioner is a Civil Servant and due to bar contained in Article 212 of the Constitution, the petitioner can seek his remedy from the concerned forum, as the matter in instant Writ Petition relates to the terms and conditions of his service. In such eventuality, the High Court is not competent to adjudicate upon the matter, agitated in the Constitutional petition. The superior Courts in plethora of judgments, has held that in the matter exclusively falling within the domain of Administrative Courts and Tribunals established under Article 212 of the Constitution, the High Court cannot entertain such petition of a Civil Servant, due to statutory bar. In this respect, reliance can safely be placed on case law reported in *2015 SCMR 253*, *2018 PLC (CS) 394* and

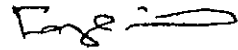
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EXAMINER
Peshawar High Court
Peshawar

2019 PLC (CS) 488:

4. In this view of the matter, the instant Constitutional petition, being not maintainable, is hereby dismissed.

Announced.
Dated: 09.02.2024.

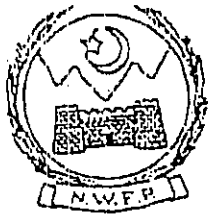

JUDGE


JUDGE

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Peshawar High Court, Peshawar
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the Qanun-e-Shahadat Act 1984
13 FEB 2024

32824
 Date of Presentation of Application 13-2-24
 No. of Pages 7
 Copying fee 28
 Total 13-2-24
 Date of Preparation of Copy 13-2-24
 Date of Lodgement of Copy 13-2-24
 Amount of Fee 13-2-24

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GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(Regulation Wing)

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) The normal tenure of posting shall be three years subject to the condition that for the officers/officials posted in unattractive areas the tenure shall be two years and for the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.
- v) []
- vi) While making postings/transfer from settled areas to FATA and vice-versa, specific approval of Governor, NWFP needs to be obtained.

While making postings/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. 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.
- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for atleast 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 (Thaana) of his area/residence is situated.
- viii) No posting/transfers of the officer's/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.

Para-1(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. Added vide Urdu circular letter No. SOR-VI(E&AD) 4/2008, dated 21-09-2008

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- 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
 DCOs and DPOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against non-administrative posts of equivalent scales;
- xii) In terms of Rule-17(1) and (2) read with Schedule-III of the NWFP Government Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against each officer in column 2 thereof:

Outside the Secretariat		
1.	Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above.	Chief Secretary in consultation with Establishment Department and Department concerned with the approval of the Chief Minister.
2.	Other officers in BPS-17 and above to be posted against scheduled posts, or posts normally held by the APUG, PCS(EG) and PCS(SG).	-do-
3.	Heads of Attached Departments and other Officers in B-19 & above in all the Departments.	-do-
In the Secretariat		
1.	Secretaries	Chief Secretary with the approval of the Chief Minister.
2.	Other Officers of and above the rank of Section Officers: a) Within the Same Department b) Within the Secretariat from one Department to another.	Secretary of the Department concerned. Chief Secretary, Secretary Establishment
3.	Officials up to the rank of Superintendent: a) Within the same Department b) To and from an Attached Department c) Within the Secretariat from one Department to another	Secretary of the Department concerned. Secretary of the Dept in consultation with Head of Attached Department concerned. Secretary (Establishment)

xiii) While considering posting/transfer proposals all the concerned authorities shall keep in mind the following:

- a) To ensure the posting of proper persons on proper posts, the Performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/officials be considered.
- b) Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

Added vide Urdu circular letter No: SOR-VI (E&AD)/1-4/2005, dated 9-5-2005.



xiv) Government servants including District Govt. employees feeling aggrieved due to the orders of posting/transfer authorities may seek remedy from the next higher authority / the appointing authority as the case may be through an appeal to be submitted within seven days of the receipt of such orders. Such appeal shall be disposed of within fifteen days. The option of appeal against posting/ transfer orders could be exercised only in the following cases.

- i) Pre-mature posing/transfer or posting transfer in violation of the provisions of this policy.
- ii) Serious and grave personal (humanitarian) grounds.

2. To streamline the postings/transfers in the District Government and to remove any irritant/confusions in this regard the provision of Rule 25 of the North West Frontier Province District Government Rules of Business 2001 read with schedule - IV thereof is referred. As per schedule-IV the posting/transferring authorities for the officers/officials shown against each are as under:-

S. No.	Officers	Authority
1.	Posting of District Coordination Officer and Executive District Officer in a District.	Provincial Government.
2.	Posting of District Police Officer.	Provincial Government
3.	Other Officers in BPS-17 and above posted in the District.	Provincial Government
4.	Official in BPS-16 and below	Executive District Officer in consultation with District Coordination Officer.

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

- a) Transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure.
- b) Require an officer to hold charge of more than one post for a period exceeding two months.

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

.....

All concerned are requested to ensure that tenures of the concerned officers/officials are invariably mentioned in summaries submitted to the Competent Authorities for Posting/Transfer.
 (Authority: Letter No: SOR-VI/E&AD/1-4/2003 dated 24-6-2003).

.....

It has been decided by the Provincial Government that posting/transfer orders of all the officers up to BS-19 except Heads of Attached Departments irrespective of grades will be notified by the concerned Administrative Departments with prior approval of the Competent Authority obtained on the Summary. The Notifications/orders should be issued as per specimen given below for guidance.

All posting/transfer orders of BS-20 and above and Heads of Attached Departments (HAD) shall be issued by the Establishment Department and the Administrative Departments shall send approved Summaries to E&A Department for issuance of Notifications.

Existing Service Rules

Vetted/17250122/10

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GOVERNMENT OF KHYBER PAKHTUNKHWA, INFORMATION, PUBLIC RELATIONS AND CULTURE DEPARTMENT.

NOTIFICATION

O/c

Peshawar Dated the 18th August, 2011.

No.SO(INF)11(34)S.Rules/2011 Vol.V. In pursuance of the provision contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of all previous rules issued in this behalf, the Information Public Relations and Culture Department, in consultation with the Establishment Department and Finance Department hereby lays down the method of recruitment, qualifications and other conditions, specified in Columns 3 to 5 of the Appendix to this notification which shall be applicable to various posts in the Directorate of Information, Khyber Pakhtunkhwa as specified in column 2 of the said appendix.

APPENDIX

S. No.	Nomenclature of Post.	Minimum qualification prescribed for appointment by initial recruitment.	Age Limit	Method of recruitment
	Director of Information (BS-19)			By Promotion on the basis of seniority-cum-fitness, from amongst the Deputy Director Information, Public Relations Officer to Governor and Station Directors with twelve years service in BPS-17 and above.

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O/c

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2	Deputy Director Information/Public Relations Officer to Governor/Station Director (BPS-18)			By promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Directors Information, Information Officers and Producers with five years service as such.
3	Assistant Director Information/Information Officer (BPS-17)	(i) At least Second Class Master's Degree in Journalism or Mass Communication from a recognized University; and (ii) two years practical experience in the relevant field.	21 to 32 years.	(a) Fifty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Information Officers with five years services as such; and (b) fifty per cent by initial recruitment.
4	Producer (BPS-17)	At least Second Class Master's Degree in Journalism or Mass Communication from a recognized University with two years experience in radio programming and production.	21 to 32 years.	By initial recruitment.
5	Budget and Account Officer (BPS-17)			By transfer on deputation from the office of Accountant General, Khyber Pakhtunkhwa.
6	Assistant Director Programmer (BPS-17)	At least Second Class Master's Degree in Computer Science or Information Technology or equivalent qualification from a recognized University.	21 to 32 years.	By initial recruitment.

Copy of the above is forwarded for information and necessary action to the:-

1. Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Secretary Establishment, Government of Khyber Pakhtunkhwa.
4. Secretary Finance, Government of Khyber Pakhtunkhwa.
5. Secretary Law and Parliamentary Affairs, Government of Khyber Pakhtunkhwa.
6. Registrar, Peshawar High Court, Peshawar.
7. Chairman, Khyber Pakhtunkhwa Service Tribunal.
8. P.S to Minister for Information, Public Relations & Culture, Government of Khyber Pakhtunkhwa, Peshawar.
9. P.S to Secretary Information, Public Relations & Culture Department, Government of Khyber Pakhtunkhwa, Peshawar.
10. Director Information, Khyber Pakhtunkhwa.
11. Manager, Government Printing Press, Peshawar with the request to provide 50 Copies of the Gazette Notification.
- 12.

[Signature]
18/8/11
SECTION OFFICER (INFORMATION)

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(B)

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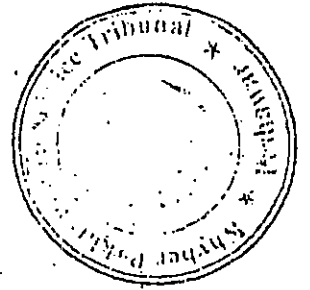
-26-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 16578/2020

Date of Institution ... 11.01.2021

Date of Decision ... 06.12.2021



Mr. Manzoor Ahmad, Drug Inspector (BPS-17) District Peshawar, under Transfer to the post of Pharmacist (BPS-17) DHQ Hospital KDA Kohat. (Appellant).

VERSUS

The Chief Secretary, Khyber Pakhtunkhwa Peshawar and two other. (Respondents)

Present.

Mr. Noor Muhammad,
Advocate.

For appellant.

Mr. Muhammad Adeel Butt,
Addl. Advocate General

For respondents.

MR. AHMAD SULTAN TAREEN,
MR. SALAH-UD-DIN,

CHAIRMAN
MEMBER(J)

JUDGMENT

AHMAD SULTAN TAREEN, CHAIRMAN:-By the appeal described above in the heading and eight other appeals bearing No. 10301/2020, 10535/2020, 16579/2020, 16580/2020, 923/2021, 1559/2021, 4821/2021, 5187/2021, the appellants have invoked the jurisdiction of this

ATTESTED

Khyber
Service
Tribunal
Peshawar

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Tribunal to challenge their transfers from the post of Drug Inspectors/Drug Analyst to the post of Pharmacists with the prayer copied herein below:-

"On acceptance of this appeal the impugned Notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from the post of Drug Inspector (BPS-17), District Peshawar. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant."

2. This single judgment shall stand to dispose of all the 09 appeals in one place as in all of them common questions of facts and law are involved.

3. The factual account as given by the appellant in Memo. of Appeal has been edited for the purpose of this judgment. The appellants in Appeals No. 16578/2020, 10301/2020, 10535/2020, 16579/2020, 16580/2020, 923/2021, 1559/2021, 4821/2021, 5187/2021, are holders of the post of Drug Inspector in pursuance to their appointment made on the said post in due process. Appellant in Appeal No. 16580/2020 is holder of the post of Drug Analyst. The respondent department transferred them from their respective posts held by them in the relevant cadre to the post of Pharmacist. They through their respective departmental appeals have challenged their transfer orders before the departmental appellate authority but they received no response of their departmental appeals. Consequently, they have preferred their service appeals respectively, as

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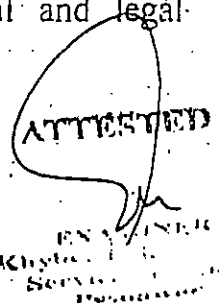
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enumerated herein above, for judicial review of the impugned transfer orders. The copies of the appointment orders of appellants, last transfer order within cadre and of impugned order followed by the copies of departmental appeals are available on record as annexed with their respective Memorandum of Appeals. The appellants have disputed the transfer as made vide impugned order on the ground that in terms of service rules for them, their appointment, promotion and transfer is governed by notification dated 09.04.2006 of the Government of Khyber Pakhtunkhwa Health Department quite differently from the Pharmacists. The copy of the said notification as annexed with the appeal is also available on file. The appellants amongst other grounds have urged that the impugned notification of their transfer is against law, facts, norms of natural justice and material on record and being not tenable is liable to be set aside to the extent of appellants and private respondents; and that the appellants were not treated by the respondents in accordance with law/rules on the subject in utter violation of Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.

Sumit

4. On notice of appeal, the respondents turned up, joined the proceedings and contested the appeal by filing written replies stating therein that the appellants have got no cause of action or locus standi; that the appeals are against the prevailing law and rules and are not maintainable in present form. They with several factual and legal

ATTESTED

 Khyber Pakhtunkhwa
 Health Department



objections submitted that the appeals having been filed with malafide intentions are liable to be dismissed as the impugned transfer notification has been issued in accordance with Section 10 of Khyber Pakhtunkhwa Civil Servants Act, 1973.

5. We have heard the arguments and perused the record.
6. The arguments of the parties revolve around their submission in writing made in Memorandum of appeal and written reply respectively and discussed herein above.

7. Learned counsel for the appellant has argued that the impugned notification dated 06/10/2020 is against the law, facts, norms of natural justice and materials on the record; that the appellant has not been treated by the respondents in accordance with law and rules on the subject and as such the respondents has violated Articles-4 and 25 of the Constitution of Pakistan; that the impugned notification dated 06/10/2020 has been issued by the respondent No. 2 in arbitrary and malafide manner; hence, not tenable and liable to be set aside; that the impugned notification dated 06/10/2020 is based on discrimination, favoritism and nepotism and is not tenable in the eyes of law; that the impugned notification dated 06/10/2020 has neither been in the best interest of the public service nor in exigencies of service; that through impugned notification, the appellants has been transferred against the wrong cadre/post; that

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through impugned notification is violation of clause-I and IV of the transfer/posting policy of the Government of Khyber Pakhtunkhwa.

8. Learned AAG on behalf of respondents rebutted the arguments advanced by learned counsel for the appellants and has argued that the appellants are employees of Health Departments selected through Public Service Commissions of Khyber Pakhtunkhwa but their performance is questionable on the basis of their monthly progress reports compiled on the basis of set indicators besides their facing inquiries; that the appellants have already completed their normal tenure of two years and it is the discretion of the competent authority to transfer a civil servant at anytime even outside of the province; that no terms and conditions of their service have been violated; that the impugned notification is based on law, Rules and principles of natural justice; that there is no malafide on the part of respondents towards the appellants; that the application are transferred in accordance with law in the public interest, that it is the fitness of things to post a right person at a right place to achieve good governance and to enhance public service delivery; that the appellants have been transferred within their cadre within the same directorate even if they have been transferred in ex-cadre, the same is also covered under the second proviso of Act; that the notification issued after observance of all relevant rules/policy.

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Khyber Pakhtunkhwa
Secretary
Postgraduate

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9. For any reason but as matter of fact, the posts held by the appellants as Drug Inspector or Drug Analyst, as the case may be, were got vacated by transfer of the appellants and filled by posting of the individuals from the cadre of pharmacists. The appellants in consequence of their transfer have been posted against non-cadre posts. The main defense of the respondents lies in their reply to para-4 of the memorandum of appeal. It has been stated vide para-4 of appeal that by the service rules dated 09/04/2006, the cadre of the appellants is completely different from that of service rule assigned for pharmacists.

The reply of the respondents to said para is copied below:

"The Service Rules does not carry any kind of assignment to a cadre but it specifies the method of recruitment and promotion prospects which is otherwise protected after the merging of cadre. Although transfer is not a punishment but to make such like people punctual, subservient to the public and to overcome the deficiency of efficient of hardworking officer to post right person on right place, the three cadres i.e. hospital pharmacist, drug inspector and analyst having same basic qualification as required for induction through Public Service Commission, were merged to obviate the stagnancy in the cadre. By doing so any drug inspector or an analyst at DTL (who are the cadre of the 04 to 05 persons) can be transferred making them liable to work in hospital under the close

Dr. M. J. Singh

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 Director
 Service Tribunal
 Patna

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supervision of hospital administration and vice versa. Those who are transferred from hospital to work in the field as drug inspector are tremendously working, removing the bottlenecks and highlighting a lot of malpractices previously done by their predecessor who have been sacked from field duty. In other similar cases, the drug inspectors who are sacked are under probe at Provincial Inspection Team and other fora".

10. From the divergent pleadings of parties particularly discussed herein before, the main question wanting determination is, whether vice versa transfer of the holders of the post of Drug Inspector/Analyst and of Pharmacist is reasonably doable?

11. For answer to the formulated questions, prior determination of the legal status of the appellants and the respondents is necessary, as far as their functional duties are concerned. It is pertinent to observe that the Government of Khyber Pakhtunkhwa made the Khyber Pakhtunkhwa Drug Rules, 1982 in exercise of powers conferred by Section 44 of Drug Act, 1976. Rule-2 of ibid rules provides definitions of different words and phrases. The expression "Act" in the said rules means the Drug Act, 1976. Analyst means an Analyst appointed by the Government under the Act. Inspector means an Inspector appointed by the Government under the Act. Board means the Quality Control Board for the Khyber Pakhtunkhwa Province set up under Section 11 (of the Act). Pharmacy

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EXAMINER
Khyber Pakhtunkhwa
Pharmacy Board

means a shop, store or place where drugs are compounded or prepared on prescription. Part-II of ibid rules relates to appointment and functions of enforcement staff. Sub Rule-(1) of Rule-3 in Part-II of the said Rules provides that an Inspector and Analyst shall submit monthly returns in Form-1 & Form-2 respectively, to the Board and a Summary on the overall situation of quality control in the area under their respective jurisdiction and the board shall maintain such information in a manner as to monitor the quality of all the drugs sold and to keep watch on the performance of all manufacturers. Rule-4 provides qualifications etc of Inspector and Analyst. Accordingly, no person shall be appointed as Inspector unless he possess the degree in Pharmacy from University or other institutions recognized for this purpose by the Pharmacy Council of Pakistan, and has at least one year experience in the manufacture, sell, testing or analysis of drugs or in Drug Control Administration or in hospital or pharmacy. Sub Rule-(2) of Rule-4 provides the qualification for appointment as Analyst which is similar to that of the Inspector except experience which in case of Analyst is 05 years. The same rules i.e. of 1982 provide for duties of Inspectors and Analysts. From the given statutory expositions relating to the position of Drug Inspector and Drug Analyst, we have no hesitation to hold that the posts of Drug Inspector/Drug Analyst are statutory positions with authority of appointment vested in the Provincial Government. The Government of

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Khyber Pakhtunkhwa vide notification dated 09/04/2006 bearing No. SOH-III/10-04/05 issued in pursuance to the provisions contained in sub rule-(2) of Rule-3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, laid down the method of recruitment, qualification and other conditions of service applicable to the posts specified in column-2 of the appendix. The qualification of Inspector in the appendix is similar to that of qualification provided under Sub-Rule-(1) of Rule-4 of Khyber Pakhtunkhwa Drug Rule, 1982. According to method of recruitment prescribed in column-5 of the appendix, the appointment to the post of Drug Inspector is to be made by initial recruitment while to the post of Chief Drug Inspector and Divisional Drug Inspector by promotion. The respondents in their reply vide para-4 as reproduced herein above have asserted with vehemence that there cadres i.e. Hospital Pharmacist, Drug Inspector and Drug Analyst having same qualification for induction through Public Service Commission, were merged to obviate the stagnancy in the cadre. By doing so Drug Inspector of Analyst at DTL (who are the cadre of 04 to 5 persons) be transferred making them liable to work in hospital under the close supervision of hospital administration. Those who are transferred from hospital to work in the field as Drug Inspector are tremendously working, removing the bottlenecks and

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 EXAMINER
 Khyber Pakhtunkhwa
 Government
 Peshawar

-35- (18)

highlighting a lot of discrepancies done by their predecessors who have been sacked from field duty.

12. The reply of the respondents as discussed above revolves around the expediency of filling the Drug Regulatory posts by *inter se* transfer of the holders of the post of Drug Inspector/Drug Analyst and of Pharmacists by merger of their cadre to ensure the discipline and quality of performance purportedly for the public good. We are not supposed to doubt the intentions of the respondents for such expediency but at the same time, we have to see that such an expediency is in conformity to the law and rules on the subject. Article 240 of Constitution of Pakistan enshrines that subject to the Constitution, the appointments and conditions of service in the Service of Pakistan shall be determined by or under the Act of Parliament in case of the services of Federation and by or under the Act of Provincial Assembly in case of services of Province and posts in connection with affairs of the Province. In pursuance of this command of Constitution, the Provincial Service Laws i.e. the Khyber Pakhtunkhwa Civil Servants Act, 1973 and Rules made there-under are in place in general besides other Special Service laws for particular posts and services in connection with affairs of the Province. As already discussed above, the notification dated 09/04/2006 issued in pursuance to Sub Rule-(2) of Rule-3 of (APT) Rules, 1989 is there which laid down the method of recruitment, qualification and other conditions of service

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Khyber Pakhtunkhwa
Secretariat
Peshawar

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applicable to the posts of Drug Inspectors of different ranks. Thus, in presence of a legal instrument like notification dated 09/04/2006 having statutory backing, transfer of a Drug Inspector to an ex-cadre post to fill the resultant vacancy by transfer of a non-cadre officer is seemingly not credible. By the impugned order dated 06/10/2020, appellants holding the posts of Drug Inspector and one among them holding the post of Drug Analyst were transferred from their respective posts held by them in relevant cadre and posted as Pharmacist in a wrong cadre. The notification dated 06/04/2006 as far as column-5 of its appendix is concerned expressly provides for appointment of Drug Inspector through initial recruitment. With this position as to method of appointment of Drug Inspector, the post held by him cannot be filled by transfer or promotion from any other cadre albeit the person in the alien cadre may possess the qualification similar to the qualification of Drug Inspector. In holding so, we derive guidance from the law laid down by august Supreme Court of Pakistan in the case of Muhammad Sharif Tareen, vs... Government of Balochistan (2018 SCMR 54). In the ibid case, it was held by the Hon'ble Supreme Court that a post which is required by the rules to be filled by Initial recruitment cannot be filled by promotion, transfer, absorption, or by any other method which is not provided by the relevant law and rules. Furthermore, after making reference to the law laid down in the case of Ali Azhar Khan


ATTESTED
 EXAMINER
 Ministry of Health
 Sindh Government

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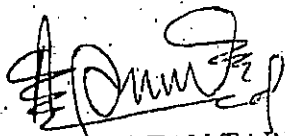
Baloch...vs...Province of Sindh (205 SCMR 456), it was held as follows:

"8: The quintessence of the paragraphs reproduced above is that the appointments made on deputation, by absorption or by transfer under the garb of exigencies of service in an outrageous disregard of merit impaired efficiency and paralyzed the good governance and that perpetuation of this phenomenon, even for a day more would further deteriorate the state of efficiency and good governance."

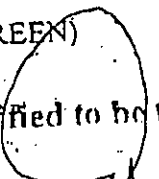
13. For what has gone above, all the appeals with their respective prayers are accepted as prayed for. Consequently, the impugned order is set aside and respondents are directed not to transfer the appellants from the post of Drug Inspector or Drug Analyst as the case may be. Parties are left to bear their own costs. File be consigned to record room after completion.


(SALAH-UD-DIN)
Member(J)

ANNOUNCED
06.12.2021



(AHMAD SULTAN TAREEK)
Chairman

Certified to be true copy


Khyber Peshawar
litig. laws
Service Tribunal.

Date of Presentation of Application 9/2/2022
5500

56
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Date of Delivery 9/2/2022

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VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Amal NO: _____ OF 2024

HABIB ULLAH KHAN (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS


GOVT OF KPK (RESPONDENT)
(DEFENDANT)



I/We _____
Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** 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. ____/____/202


CLIENT

ACCEPTED


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT
(BC-10-0853)
(15401-0705985-5)

UMAR FAROOQ MOHMAND

WALEED ADNAN

&
MEHMOOD JAN
ADVOCATES

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