

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Appeal No.2607/2023

Abdullah Shah, Patwari, District Hangu

.....(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat Peshawar.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
3. Assistant Secretary Establishment, Board of Revenue, Peshawar.
4. Deputy Commissioner, Hangu
5. Deputy Commissioner Peshawar
6. Commissioner Peshawar Division, Peshawar.

.....(Respondents)

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Deposited

07-05-2024

8-B

Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Appeal No.2607/2023

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.....(Appellant)

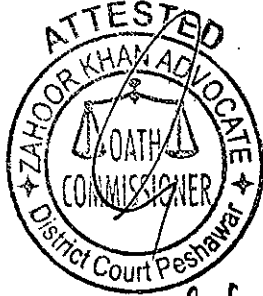
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6. Commissioner Peshawar Division, Peshawar.

.....(Respondents)

AFFIDAVIT

I, Aafaq Wazir, Deputy Commissioner, Peshawar do hereby solemnly affirm and declare on oath that the contents of this reply are true and correct to the best of my knowledge and belief. It is further stated on oath that in this appeal the answering respondents have neither been placed Ex-Parte nor their defense has been struck off/est.



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DEPONENT

Handwritten signature of Aafaq Wazir

(Aafaq Wazir)
**Deputy Commissioner
Peshawar**

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

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Abdullah Shah, Patwari, District Hangu

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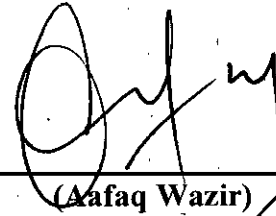
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AUTHORITY LETTER

I, Mr. Aafaq Wazir, Deputy Commissioner Peshawar do hereby authorize Mr. Pervez Khan, Superintendent of Deputy Commissioner Office, Peshawar for submission of joint parawise comments before the Honourable Khyber Pakhtunkhwa Services Tribunal Peshawar and to peruse the case on each subsequent hearing fixed in the case till finalization of the case, hence, an authority letter issued in favour of above named officer.



(Aafaq Wazir)
Deputy Commissioner
Peshawar
(Respondent No.5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

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.....(Appellant)

VERSUS

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5. Deputy Commissioner Peshawar
6. Commissioner Peshawar Division, Peshawar.

Khyber Pakhtunkhwa
Service Tribunal

Distt No. 12326

Dated 22-04-2024

.....(Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.2, 3, 5 & 6

Respectfully Sheweth,

Preliminary Objections.

1. That the appellant in the instant case has no locus standi and cause of action to institute present appeal.
2. That the appellant has not come to this honourable court with clean hands.
3. That the appellant is estopped by his own conduct to file the instant appeal.
4. That the appeal is not maintainable in the present form.

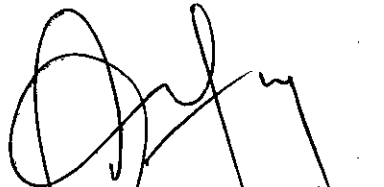
REPLY ON FACTS.

1. Pertains to record.
2. No comments.
3. Correct.
4. Correct.
5. Correct to the extent that according to the Peshawar High Court Judgment dated 05-09-2023 in W.P. No.4903-P/2022 (Annex-A) action was taken and order was issued accordingly.
6. Correct to the extent that the appellant submitted appeal in the court of Respondent No.06 being appellant authority against the decision/order of Respondent No.05, but appeal was filed due to the Judgment of Peshawar High Court Peshawar as referred in Para-5 above which was beyond the jurisdiction.
7. Incorrect. The said order was issued according to the Judgment of Peshawar High Court Peshawar as referred in Para-5 above and hence was in accordance with law, facts and principal of justice on ground.

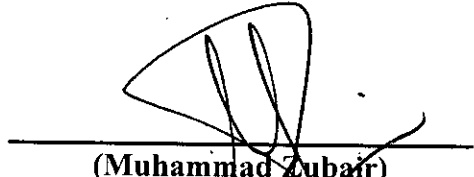
Objections on Grounds:

- A. Incorrect. The order was issued upon the direction of Peshawar High Court in its judgment as referred in Para-5 above.
- B. Incorrect. As per Para-A.
- C. Incorrect. The order was issued as per Judgment of Peshawar High Court and therefore was legal and cannot be set a side
- D. Incorrect. The Judgment of Peshawar High Court is in detail and therefore the respondents have to follow the judgment.
- E. Incorrect. Judgment of Peshawar High Court was followed in letter and spirit and therefore no question of discrimination arises.
- F. No comments.
- G. Incorrect. Appellant is bound to follow the Judgment of Peshawar High Court Peshawar.
- H. Incorrect. As per above paras.
- I. Incorrect. As per above paras. The order was issued on the direction of Peshawar High Court Peshawar and appellant is indirectly blaming honourable court.
- J. Incorrect.
- K. No comments.

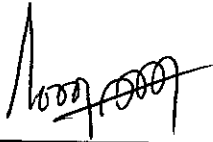
It is therefore prayed before the honourable Tribunal that appeal in hand having no weight may very humbly be dismissed with cost.



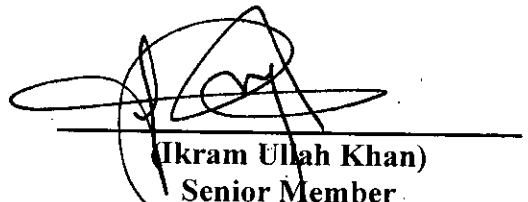
(Aafaq Wazir)
Deputy Commissioner
Peshawar
(Respondent No.5)



(Muhammad Zubair)
Commissioner Peshawar Division
Peshawar
(Respondent No.6)



(Noor Khan)
Assistant Secretary Establishment,
Board of Revenue Khyber Pakhtunkhwa
(Respondent No.3)



(Ikram Ullah Khan)
Senior Member
Board of Revenue, Khyber Pakhtunkhwa
(Respondent No.2)

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Judgment Sheet
IN THE PESHAWAR HIGH COURT,
PESHAWAR.

JUDICIAL DEPARTMENT.

JUDGMENT



Writ Petition No.4903-P/2022.

Date of hearing 05.09.2023.

Muhammad Salman etc

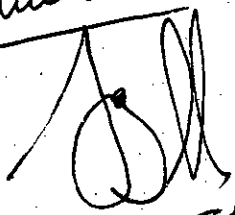
Vs

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

Petitioner (s) by: Mr. M. Asif Yousafzai
Advocate.

Respondent(s) by: Mr. Junaid Zaman AAG
(for respondents No.1 to
5) and Khalid Rehman
Advocate(for respondent
No.6).

WIOAR AHMAD, J:-Through instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, petitioners have challenged impugned order dated 01.12.2022, whereby upon approval of competent authority, respondent No.6 was transferred and posted in the establishment of patwaris at Peshawar.

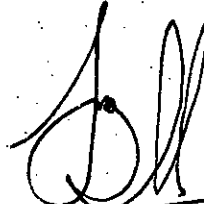
Attested

Supdt DC office
Peshawar

ATTESTED
EXAMINER
Peshawar High Court
Peshawar

2. As per contents of instant petition, initially respondent No.6 had been appointed as Patwari at District Hangu, Peshawar vide order dated 19.10.2009. Being domicile holder of District Peshawar, his services were placed at the disposal of Deputy Commissioner Peshawar Vide office order No. Estt: VII/Posting/Transfer/Hangu/24314-20 dated 14.09.2022, and in light of said order, subsequently he was posted/adjusted against the vacant post at Mian Gujjar by respondent No.5 vide order dated 01.12.2022. Aggrieved from said order, petitioners have approached this Court by filing instant writ petition.

3. Official respondents as well as private respondent No.6 submitted their parawise comments, wherein they denied stance of petitioners by raising various legal and factual objections.

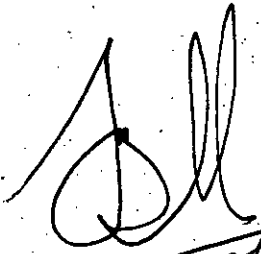
4. Arguments of learned counsel for petitioners, learned counsel for private respondent as well as learned AAG on


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Peshawar

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Peshawar High Court
Peshawar

behalf of official respondents heard and record perused.

5. Perusal of record reveals that respondent No.6 (Abdullah Shah) was no doubt belonging to District Peshawar but he had got himself appointed against the post of Patwari at District Hangu. His appointment had not been made on merit or in a competing process but had only been made possible because of recommendation of the then Chief Minister of Khyber Pakhtunkhwa. His appointment has not been questioned in instant writ petition but his subsequent transfer and posting at District Peshawar has been impugned in instant writ petition. So far as his subsequent transfer and posting at District Peshawar is concerned, it is imported to be noted that he was holding a District cadre post at District Hangu. The establishment of Patwari Halqa at District Peshawar was different establishment wherein petitioners who are seven in numbers had been expecting their


Sub-DC Office
Peshawar

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EXAMINER
Peshawar High Court
Peshawar

(36)

own appointment being enlisted for such recruitment at District Peshawar. It is case of petitioners before this Court that as a result of transfer and posting of respondent No.6, they had lost a post of Patwari Halqa in establishment of Patwaris at District Peshawar, for which they were having a legitimate expectation to participate in its recruitment process and to be appointed after getting successful. The Deputy Commissioner was competent authority for making appointment of Patwaris at District Peshawar but he had not initiated any request for hiring services of respondent No.6. It could not be established by official respondents that any special reason had been existing due to which the department required services of respondent No.6. He could not be demonstrated to have any special skill or expertise due to which his services could be needed to department. Like his earlier appointment, he had again moved an application to the SMBR and

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Supero DC Office
Peshawar

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 Peshawar High Court
 Peshawar

procured his order of transfer from establishment of Deputy Commissioner Hangu to establishment of Deputy Commissioner Peshawar. Mere grant of NOC by the two Deputy Commissioners would not justify colourable act of respondents in getting respondent No.6 adjusted in establishment of Patwaris at District Peshawar. Petitioners were having legitimate expectation of participating in recruitment process and appointment on the subject post therefore, they were also found to be having valid cause of grievance for filing instant writ petition. Posting and transfer of respondent No.6 was found to be the result of favoritism and could not be justified by respondents in their comments.

Sill
supd office
Peshawar

This Court in its earlier judgment dated 20.01.2009 rendered in Writ Petition No.335/2007 had also intervened in a similar case, wherein it was held;

"On the other hand, petitioner on the available record which remained uncontroverted was

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 Peshawar High Court
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the senior most candidate of Patwar and was on top of the merit list and deserved to be appointed on any vacancy to accrue in future but was ignored. When the Revenue Department is not honouring its own record maintained by it with regard to seniority and appointment of Patwari in a fair manner thus, has reduced it naught by such act and omission. The impugned order being without lawful authority and in violation of all laws regulating the subject matter, cannot be sustained. This was also the stance of official respondents when they were confronted with the legal position so emerging and the same stance was taken by the learned counsel for the official respondents that the impugned action taken is not defensible in law.

4. For the above stated reasons, this petition is admitted and is accordingly allowed. The impugned order of appointment and transfer of respondent No.5 is set aside and he shall be reverted back to initial place of posting at Chitral and be attached with the land settlement staff while petitioner be considered for appointment as per rules and merit discussed above on the post in question."

6. In light of what has been discussed above, petitioners have made out a case for intervention of this Court in its

[Handwritten Signature]
 Supt. De. Officer
 Peshawar

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constitutional jurisdiction. This writ petition is allowed, the impugned transfer order of respondent No.6 stands set aside and he shall be reverted to his original post at District Hangu.

[Handwritten Signature]
Superintendent
Peshawar

[Handwritten Signature]
JUDGE

[Handwritten Signature]
JUDGE

Date of hearing & announcement of judgment... 05.09.2023.
Date of preparation and signing of judgment 09.09.2023.

25122
18-12-2023
Date of Presentation of Application 17-12-2023
No of Pages
Copying fee 68-00
Total 18-12-2023
Date of Preparation of Copy 18-12-2023
Date of Delivery of Copy
Received By *Abdul Haman*

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EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 8, 7 of
the Canton-e-Shahadai Act 1984
18 DEC 2023