

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

Appeal No. 1192/2024

Niamat Ullah, Senior Clerk.  
o/o District Director Agriculture  
Extension, DIKhan r/o Fazal  
Rahim Colony, DIKhan.

**VERSUS**

Director General, Agriculture  
Extension Khyber Pakhtunkhwa,  
Peshawar & Others

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**DEPONENT**

①

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

Appeal No. 1192/2024

**Khyber Pakhtunkhwa**  
**Service Tribunal**

Niamat Ullah, Senior Clerk,  
o/o District Director Agriculture Extension,  
DIKhan r/o Fazal Rahim Colony, DIKhan.

Diary No. 15664

Dated 10-09-24

**APPELLANT**

**VERSUS**

- 1- Director General, Agriculture (Extension) Khyber Pakhtunkhwa, Peshawar.
- 2- Govt of Khyber Pakhtunkhwa through Secretary, Agriculture, Civil Secretariat, Peshawar.
- 3- Deputy Secretary-II, Agriculture Department, Khyber Pakhtunkhwa, Peshawar.

**RESPONDENTS**

**JOINT PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS NO.1, 2 & 3.**

**RESPECTFULLY SHEWETH**

**PRELIMINARY OBJECTIONS**

- 1- That the instant appeal is baseless, frivolous and concocted based on malafide intentions and for ulterior motive, hence not tenable at all.
- 2- That the appellant wishes to waste the precious time of this Honorable Tribunal by filling the instant appeal.
- 3- That the appellant has got no prima facie to file the instant appeal.
- 4- That the appellant has deliberately concealed the important facts from this Honorable Tribunal.
- 5- That the instant appeal is not maintainable in its present form and liable to be dismissed.
- 6- That the appellant has no cause of action to file the instant appeal.
- 7- That the appellant has got no locus standi to file the instant appeal.
- 8- That the appellant has deliberately concealed the material fact from this Honorable Tribunal.
- 9- That the appellant has not come to this Honorable Service Tribunal with clean hands.
- 10- That the Supreme Court of Pakistan vide judgment dated 20-01-2023 passed in Civil Appeal No.1532/2022 titled Muhammad Saleem V/S Government of Baluchistan and others wherein the court ordered that "The interference of the Tribunal or courts in matter relating to postings and transfer is, therefore, an encroachment upon the executive domain and in breach of the seminal principle of separation of powers embedded in the Constitution. The Tribunal

was not justified in interfering with the posting/transfer orders of the respondent nor was it in consonance with the settled principles relating thereto. The impugned judgment is therefore, set-aside and with leave of this Court the petition is converted into an appeal and allowed"

(Annex-A)

**ON FACT.**

Para-1 Correct to the extent that the appellant was serving as Senior Clerk BPS-14 in office of the District Director Agriculture, DI Khan since 36 years. However, the official was transferred as Senior Clerk BPS-14 in office of the District Director Agriculture, Dir Upper vide order No.16/108/E:stt./ 16606-12/DGA (E) dated 31.07.2024 **(Annexure-B)**. The official did not assume charge of the said post till date due to which his services were suspended by the respondent no.2 for noncompliance of government orders. **(Annexure-C)**.

Para-2 Correct to the extent that the appellant is serving in Agriculture Extension Department since 01.02.1988 in the office of District Director Agriculture, DIKhan.

Para-3 Pertains to record.

Para-4 Incorrect. The post of Senior Clerk falls under category of Civil Servant and thus the appellant is liable to serve throughout the Province. According to Section 10 of the Civil Servant Act, 1973 every civil servant shall be liable to serve anywhere within or outside the Province **(Annexure-D)**.

Para-5 Correct to the extent that the appellant filed departmental appeal against the office order dated 31.07.2024 which was regretted by Respondent No.2 vide Section Officer-E:stt-I, Govt. of Khyber Pakhtunkhwa Agriculture Department letter dated 12.08.2024 not being covered under the Civil Servant Act 1973 and Appointment, Promotion and Transfer Rules 1989 **(Annexure-E)**.

Para-6 Incorrect. The office order dated 31.07.2024 is not against the law and facts and not against the posting transfer policy.

**GROUND**

Para-A Incorrect. The impugned order is not against the law / transfer rules, transfer policy.

Para-B Correct to the extent that the official is the domicile holder of DI Khan however, he was transferred to Dir Upper as per Civil Servant Act 1973.

Para-C Incorrect. The office order dated 31.07.2024 is not against the law and facts and not against the posting transfer policy. According to the Civil Servant Act 1973 as well as Appointment , Promotion and Transfer Rules 1989, it is mandatory for any civil servant to serve anywhere in the province.

Para-D No comments already explained in Para-B above.

Para-E Incorrect. The transfer order is not due to discrimination and no political victimization is involved.

Para-F Incorrect. That the post of appellant will be filled as per rules.

Para-G Incorrect. Detail comment given in above paras.

Para-H The transfer order is not a result of favoritism or political involvement.

Para-I Incorrect. That the office order dated 31.07.2024 is not against the law and facts and not against the posting transfer policy, it is mandatory for any civil servant to serve anywhere in the province as per Civil Servant Act 1973.

Para-J Incorrect. That the posting / transfer of any civil servant are a routine order.

Para-K Incorrect. Detail comment given in above paras.

Para-L Incorrect. The appellant has been treated in accordance with law and were not violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan 1973.

It is hereby humbly prayed that on acceptance of para wise comments, the appeal of the appellant being devoid of merits, may kindly be dismissed with cost please.

DIRECTOR GENERAL,  
AGRICULTURE (EXTENSION)  
KHYBER PAKHTUNKHWA, PESHAWAR  
RESPONDENT NO.2

Abdul Qayum.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA  
AGRICULTURE, DEPARTMENT, PESHAWAR  
RESPONDENTS NO.1

Atta-ur-Rehman

DEPUTY SECRETARY-II,  
AGRICULTURE DEPARTMENT KHYBER  
PAKHTUNKHWA, PESHAWAR  
RESPONDENTS NO.3

Zain ALi Raza

(4)

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

Appeal No. 1192/2024

Niamat Ullah, Senior Clerk.  
o/o District Director Agriculture Extension,  
DIKhan r/o Fazal Rahim Colony, DIKhan.

**APPELLANT**

**VERSUS**

1. Director General, Agriculture (Extension), Khyber Pakhtunkhwa, Peshawar.
2. Govt of Khyber Pakhtunkhwa through Secretary, Agriculture, Civil Secretariat, Peshawar.
3. Deputy Secretary-II, Agriculture Department, Khyber Pakhtunkhwa, Peshawar.

**RESPONDENTS**

**COUNTER AFFIDAVIT**

We the undersigned hereby solemnly declare / affirm that the contents of the Para-wise reply / comments are true and correct to the best of our knowledge and belief and nothing has been kept secret from this Honorable Tribunal.

It is further stated on Oath that in this appeal the answering respondents have neither been placed ex- parte nor defence has been struck off / cost.

DIRECTOR GENERAL,  
AGRICULTURE (EXTENSION)  
KHYBER PAKHTUNKHWA, PESHAWAR  
RESPONDENT NO.2

Abdul Qayum




SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA  
AGRICULTURE, DEPARTMENT, PESHAWAR  
RESPONDENTS NO.1

Atta-ur-Rehman

DEPUTY SECRETARY-II,  
AGRICULTURE DEPARTMENT KHYBER  
PAKHTUNKHWA, PESHAWAR  
RESPONDENTS NO.3

Zain Ali Raza

10/09/24

(5) 

Annexure (A)

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Umar Ata Bandial, HCU  
Mrs. Justice Ayesha A. Malik  
Mr. Justice Athar Minallah

**CIVIL PETITION NO.1532 OF 2022**

(Against the judgment dated 27.04.2022 of the Baluchistan Service Tribunal, Quetta passed in Service Appeal No.62 of 2022)

Dr. Muhammad Saleem ... Petitioner

**Versus**

Government of Baluchistan, and others ... Respondent(s)

For the petitioner: Mr. Kamran Murtaza, Sr.ASC  
For respondent No.1: Mr.M.Ayaz Swati, Addl.AG Baluchistan.  
For Respondent No.3: Ms. Gulzar Butt, ASC  
Date of hearing: 20.01.2023

**ORDER**

**Athar Minallah, J.-** Dr. Muhammad Saleem

('petitioner') has sought leave against judgment, dated 27.4.2022, of the Baluchistan Service Tribunal ('Tribunal').

2. The controversy stems from the transfer order of Dr. Shamsullah Bazai ('respondent') from the post of Principal, Loralai Medical College ('College'). The respondent was posted as Principal of the College vide notification, dated 04.12.2020. The competent authority, vide notification dated 17.10.2021, directed the respondent to report to the Specialized Healthcare and Medical Education Department, but the notification was later withdrawn vide notification, dated 26.10.2021. He was transferred from the post of the Principal of the College and to the post of Professor (B-20) and Head of Ophthalmology Department, Bolan Medical College, vide notification dated 11.02.2022, while the petitioner replaced him as

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DIRECTOR AGRICULTURE MARKETING  
DIRECTORATE GENERAL AGRICULTURE (EXTENSION)  
KHYBER PAKHTUNKHWA, PESHAWAR

②

Principal of the College. The respondent filed a departmental appeal and it was rejected by the competent authority vide order dated 17.2.2022. He then preferred an appeal before the Tribunal which was allowed vide the impugned judgment dated 27.4.2022.

3. We have heard the learned counsels for the parties and the Additional Advocate General of Baluchistan.

4. The respondent had challenged his posting/transfer orders. He had taken the stance in his departmental representation that allowing him to continue to hold the post of the Principal of the College was in the public interest. Likewise, the Tribunal had concluded that the transfer of the respondent from the latter post was not in the public interest. The Tribunal had raised concerns regarding the status of governance, besides placing reliance on the judgments of this Court, so as to justify interference with the executive functions in connection with posting/transfer of employees. The judgments relied upon were distinguishable, while the principles enunciated in the context of the executive domain with respect to transfer and postings of employees/civil servants appears to have been excluded from consideration.

5. This Court has already highlighted the scope of interference with the executive function of postings and transfers of government officials.<sup>1</sup> It has been held that the transfer of a government official from one place or post to another to meet the exigencies of service was within the exclusive domain and competence of the competent authorities of the executive organ of the State and, ordinarily, it is not amenable to interference except in extraordinary circumstances. This principle is subject to the

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DIRECTOR AGRICULTURE MARKETING  
DIRECTORATE GENERAL AGRICULTURE (EXTENSION)  
HYDER ABKHTUNKHWA, PESHAWAR

<sup>1</sup> *Fida Husain Shah and others v. Government of Sindh and others* (2017 SCMR 798)

condition that the terms and conditions of service are not adversely affected. Moreover, an official has no vested right to claim to be posted/transferred to any particular place of his choice, nor is there a vested right to continue to hold a particular post at a particular place. The transfer and posting of a government servant is limited to the given tenure, if any, or at the pleasure of the competent authority. The question of whether the posting and transfer made by the competent authority was in the public interest is not open to judicial review by a tribunal or court and utmost caution and restraint ought to be exercised in interfering with or encroaching upon the exclusive domain of the executive authorities. The decisions in connection with posting and transfer of government servants must not be subjected to judicial scrutiny unless a law has been clearly violated or mala fide and malice is established without the need for making an inquiry. The interference of the Tribunal or courts in matters relating to postings and transfers is, therefore, an encroachment upon the executive domain and in breach of the seminal principle of separation of powers embedded in the Constitution. The Tribunal was not justified in interfering with the posting/transfer orders of the respondent nor was it in consonance with the settled principles relating thereto. The impugned judgment is, therefore, set-aside and with leave of this Court the petition is converted into an appeal and allowed.

Chief Justice

Judge

Judge



Annexure - (B)

**DIRECTORATE GENERAL AGRICULTURE (EXTENSION)  
KHYBER PAKHTUNKHWA, PESHAWAR**

(8)

OFFICE ORDER

Mr. Niamat Ullah, Senior Clerk (BS-14) office of the District Director Agriculture, DI Khan is hereby transferred/ posted against the vacant post of Senior Clerk (BS-14) in the office of the District Director Agriculture, Dir Upper with immediate effect in the interest of public service.

Sd/- (ABDUL QAYUM)  
DIRECTOR GENERAL  
AGRICULTURE (EXTENSION)  
KHYBER PAKHTUNKHWA, PESHAWAR

No. 16/108/Estt/ 16606-12 /DGA (E)

Dated Peshawar the 31-7 /2024

Copy forwarded to:

1. The PSO to Chief Minister Khyber Pakhtunkhwa.
2. The District Director Agriculture, DI Khan.
3. The District Director Agriculture, Dir Upper.
4. The District Accounts Officer, DI Khan.
5. The District Accounts Officer, Dir Upper
6. The official concerned.

For information and necessary action.

7. File No. 18/1/Estt/ for record.

DIRECTOR GENERAL

DIRECTOR AGRICULTURE MARKETING  
DIRECTORATE GENERAL AGRICULTURE (EXTENSION)  
KHYBER PAKHTUNKHWA, PESHAWAR

Annexure-②

**DIRECTORATE GENERAL AGRICULTURE (EXTENSION) KHYBER  
PAKHTUNKHWA, PESHAWAR**

⑨

**OFFICE ORDER**

Mr. Niamatullah, Senior Clerk (BS-14) office of the District Director Agriculture, DI Khan is hereby suspended from Government Service with immediate effect due non-compliance of order issued by this office vide No.16/108/Estt./16606-12/DGA(E) dated 31.07.2024.

Sd/- (ABDUL QAYUM)  
DIRECTOR GENERAL  
AGRICULTURE (EXTENSION)  
KHYBER PAKHTUNKHWA, PESHAWAR

No.16/108/Estt./ 18/167-70 /DGA (E)

Dated Peshawar the 20/08 /2024

Copy forwarded to:-

1. PS to Minister for Agriculture, Khyber Pakhtunkhwa, Peshawar.
  2. The District Director Agriculture, DI Khan to stop the pay of above named official.
  3. The District Accounts Officer, DI Khan.
  4. The official concerned.
- For information and necessary action.
5. File No. 18/1/Estt./ for record.

DIRECTOR GENERAL

DIRECTOR AGRICULTURE MARKETING  
DIRECTORATE GENERAL AGRICULTURE (EXTENSION)  
KHYBER PAKHTUNKHWA, PESHAWAR

**Posting and Transfer**

Annexure-17

**Statutory Provision.****Section 10 of the NWFP Civil Servants Act, 1973.**

**Posting and Transfer.** Every civil servant shall be liable to serve anywhere within or outside the Province, in any post under the Federal Government, or any Provincial Government or Local authority, or a Corporation or body set up or established by any such Government:-

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

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

**POSTING / TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT**

- i) All the posting/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants
- ii) All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities for seeking posting/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

1. 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.

*[Signature]*  
 DIRECTOR AGRICULTURE MARKETING  
 DIRECTORATE GENERAL AGRICULTURE (EXTENSION)  
 KHYBER PAKHTUNKHWA, PESHAWAR



GOVERNMENT OF KHYBER PAKHTUNKHWA  
AGRICULTURE DEPARTMENT

No. SOE-I(AD)/General/EW/2024/107  
Dated Peshawar, the 12<sup>th</sup> August 2024

Annexure (E)

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To,

Mr. Naimat Ullah,

- i. Senior Clerk, O/O District Director Agriculture Extension, D.I.Khan, Under Transfer as Senior Clerk, O/O District Director Agriculture Extension, Dir Upper.
- ii. Home Address: Fazal Rahim Colony, D.I.Khan.

Subject:

DEPARTMENTAL APPEAL/REPRESENTATION AGAINST IMPUGNED OFFICE ORDER NO. 16/108/ESTT/16806-17 DATED PESHAWAR 31/07/2024, WHEREBY THE APPELANT HAS BEEN TRANSFERRED AS SENIOR CLERK (BS-14) TO THE OFFICE OF DISTRICT DIRECTOR AGRICULTURE, DIR UPPER

I am directed to refer to your application/departmental appeal in the subject noted above and to state that the appeal is hereby regretted being not allowed under the rules/policy, please.

Endst. Of even No. & Date.

Copy forwarded to:

- 1. The Director General, Agriculture Extension, Khyber Pakhtunkhwa, Peshawar, your letter No. 16/108/Estt:/17310/DGA(E) dated 08.08.2024.
- 2. P.S to Secretary Agriculture Department Khyber Pakhtunkhwa, Peshawar.
- 3. P.A to Deputy Secretary-II Agriculture Department Khyber Pakhtunkhwa, Peshawar.
- 4. Master File

SECTION OFFICER-ESTT-I

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SECTION OFFICER-ESTT-I

SECTION OFFICER-ESTT-I

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SECTION OFFICER-ESTT-I

DIRECTORATE GENERAL AGRICULTURE (EXTENSION) KHYBER PAKHTUNKHWA, PESHAWAR

No. Lit./ 18409 DGA

Dated Peshawar the 22/08 /2024

Copy forwarded to Superintendent Establishment HQ Office for information and necessary action as desired.

In-charge Litigation Section  
HQ Office

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22/8/24

16-8-24

DIRECTOR AGRICULTURE MARKETING  
DIRECTORATE GENERAL AGRICULTURE (EXTENSION)  
KHYBER PAKHTUNKHWA, PESHAWAR

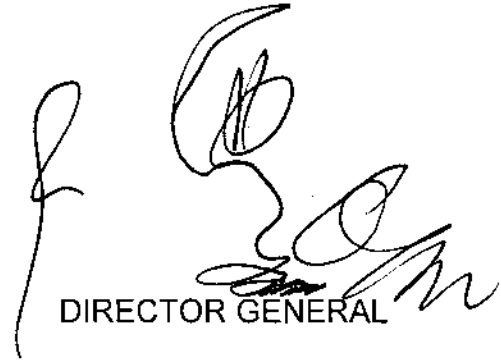
Annexure - (F)

DIRECTORATE GENERAL, AGRICULTURE EXTENSION  
KHYBER PAKHTUNKHWA, PESHAWAR

12

AUTHORITY LETTER

Mr. Asad Ud Din Asif Jah, HQ Office is hereby authorized for attending, vetting the para wise comments and submission of para wise comments in the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 1192/2024 titled Niamat Ullah v/s Govt. of Khyber Pakhtunkhwa through Director General, Agriculture Extension Khyber Pakhtunkhwa Peshawar & Others.

  
DIRECTOR GENERAL