

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.2679 of 2021

Tufail Ahmed Shaikh
Versus
Federation of Pakistan & others

Date	Order with signature of Judge
------	-------------------------------

For hearing of CMA 19791/21

Date of hearing: 12.01.2022

M/s. Ahmed Ali Hussain and Syed Zaeem Hyder for plaintiff.

Mr. Khursheed Jawed, Deputy Attorney General for defendant No.1.

Mr. Abdul Rashid Rajpar for defendants No.2, 3 and 4.

Mr. Yasir Ahmed Shah and Mr. S. Abrar Ahmed Bukhari for defendant No.5.

-.-.-

Muhammad Shafi Siddiqui, J.- Instant suit is filed by an employee of National Highway Authority impugning order and letter of 08.11.2021 that concern with his transfer and posting from Member (South Zone) NHA, Karachi (in his own pay & scale) to Member (Motorways-South) NHA, Lahore (in his own pay & scale).

While the plaintiff's counsel in his arguments raised the grievance as to the competence of defendant No.5 who was transferred and posted at his post, he was asked to confine to his case only to the extent whether the transfer and posting that concerns plaintiff is in violation of law or otherwise. Learned counsel submitted that the subject transfer and posting is based on mala fide at the behest of defendant No.5 and has relied upon the Regulations of National Highway Authority Regulations for Appointments, Promotions and Transfers available at page 57 of the file. regulation No.4.10 that was relied upon is reproduced as under:-

“4.10. The normal tenure of posting of officers and staff in NHA shall be three years on same post, which can be extended for further two years on the recommendations of Member concerned.”

In support of his contention, learned counsel for plaintiff has further relied upon the case of Mahmood Akhtar Naqvi/Anita Turab¹ wherein colourable and mala fide transfers were addressed, as stated. Learned counsel has further relied upon the case of Searle Solution² regarding maintainability of the suit before this Court, as being a constitutional Court.

The National Highway Authority has filed counter-affidavit and their counsel adopted the arguments of counsel for defendant No.5 who has assisted this Court in the matter. Learned counsel for defendant No.5 submitted that the rules of National Highway Authority are statutory as gazetted on 09.03.1995 and in terms whereof the transfer and posting vide Chapter-V is prerogative of competent authority which can transfer the employee to the head office or any other subordinate offices in Pakistan under its administrative control or management.

Counsel for defendant No.5 has further relied upon NHA Code 2005 formulated to resolve the controversies and functioning of NHA which it faces and in case the Code faces any contradiction with the rules and the detailed procedure framed under any of the provisions of Code, the former shall take precedence. While relying on this Code, he again reiterated posting and transfer, which was considered to be prerogative of the authority. He emphasized that Chapter V of Code that concerns with transfer and posting provides that except for Chairman and Members, normal tenure for an officer on the same post would be three years and would not exceed five years in any case. Plaintiff as a

¹ Syed Mahmood Akhtar Naqvi v. Federation of Pakistan/Anita Turab (PLD 2013 SC 195).

² Searle IV Solution (Pvt.) Ltd. v. Federation Of Pakistan (2018 SCMR 1444)

Member Technical being engineer, was excluded for such application of normal tenure of even three years.

I have heard the learned counsel and perused material available on record.

The appointment letter available at page 39 Annexure P/5 provides that the appointment shall be governed by Federal Government Employees rules of the category that employee belongs to. Clause (g) of the appointment letter provides that an employee may be posted or transferred to the head office or to the directorate general, National Highway or sub-office anywhere in Pakistan. The appointment letter further provides that other terms and conditions will be same as applicable to Federal Government Servants of the category concerned.

There is no cavil to the fact that the plaintiff is an engineer and Member Technical as disclosed in the transfer letter of 08.11.2021. The gazetted rules that concerns with the posting and transfer in terms of Chapter V of the National Highway Authority's Employees Service Rules, 1995 framed under National Highway Authority Act, 1991 duly framed by the federal government, recognizes that the competent authority may post or transfer an employee of the authority to the head office or to any of the subordinate offices in Pakistan under its administrative control or management, which has only gained strength on the basis of NHA Code 2005 which excludes Chairman and Member from the applicability of normal tenure for an officer on the same post for three years and not extendable for a period of more than five years "in all". Thus, even the Code excludes Chairman and Member Technical from application of such normal tenure of an officer/employee.

There is no question of violation of any fundamental right and it is not established at all by the plaintiff that it is a colourable exercise of power as he himself has placed an itinerary of his transfer and posting at

page 19 of the file which shows that for almost all, he never remained at any post for a period of three years approximately. I am of the view that an employee with such rules as called National Highway Authority Employees Service Rules, 1995 or the terms and conditions of service, either statutory or accepted ones, cannot object to such transfers and postings being part and parcel of service terms. Hence the application in hand seeking injunctive orders merits no consideration and is dismissed accordingly.

Dated: 17-01-2022

Judge