ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Diary No.9041 of 2017
Javed Akhtar
Versus
Chief Personal Officer and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	07.07.2017	**Mr. Arshad Bashir Malik, Advocate for the petitioner.**

Office objection regarding the attestation of the affidavit has already been cleared. As regards, the office objections regarding the non-filing of the certified copy of the impugned transfer order, and dim copies of documents, the same are overruled. On the request of learned counsel for the petitioner, the main case is being taken-up today.

MAIN CASE

2. Through the instant writ petition, the petitioner, Javad Akhtar, Commercial Superintendent (Goods), Pakistan Railways, impugns the order dated 20.06.2017, issued by the Pakistan Railways, whereby the petitioner was transferred from the Dry Port, Rawalpindi to the Dry Port, Quetta.

3. Learned Counsel for the petitioner submitted that the petitioner is due to retire on 19.06.2019; that the petitioner is a civil servant, who was serving as Commercial Superintendent at the Dry Port, Rawalpindi; that the petitioner was transferred to the Dry Port, Quetta, without assigning any reason; that the Personnel Manual of the Pakistan Railways *inter-alia* provides that employees, who attain the age of 57 years (i.e. 3 years before they are due to retire) should not be transferred from their homes and should be stationed at the place of their choice as far as

possible; that the petitioner's transfer from Rawalpindi to Quetta is in violation to the said provision in the Personnel Manual of the Pakistan Railways; and that the Hon'ble Lahore High Court in similar circumstances had granted relief to a petitioner. Learned counsel prayed for the impugned transfer order to be set-aside.

4. I have heard the contentions of the learned counsel for the petitioner.

5. The petitioner is admittedly a civil servant. He is serving as BS-14 Officer in the Pakistan Railways. A writ petition cannot be filed by a civil servant against transfer orders. The consistent view of the Superior Courts has been that a petition under Article 199 of the Constitution cannot be filed by a civil servant with respect to a matter connected with the terms and conditions of the service. The jurisdiction of the High Court in such matters is barred in view of the provisions contained in Article 212 of the Constitution. It is well settled that transfers and postings relate to the terms and conditions of service, and lie within the domain of the competent authority. Reference in this regard may be made to the following case law:-

(i) In the case of Mazar Hussain Bukhari Vs. Secretary, Government of Punjab (1998 SCMR 1948), it was held that even if the transfer orders from one place of posting to another, were challenged on the ground of *malafide*, the same were to be challenged before the Service Tribunal, and Article 212 of the Constitution was a bar against the filing of a constitutional petition before the High Court under Article 199 of the Constitution.

(ii) In the case of Ayyaz Anjum Vs. Government of Punjab, Housing and Physical Planning Department through Secretary and others (1997 SCMR 169), it has been held as follows:-

> *"Clearly, the matters relating to the posting and transfer of a civil servant relate to the terms and conditions of his service. Disputes about these matters fall within the exclusive jurisdiction of the appropriate Service Tribunal. The jurisdiction of High Court is barred in these matters by the express provisions of Article 212(2) of the Constitution."*

(iii) In the case of Rai Ahmad Ali Vs. Province of Punjab and others (1999 SCMR 1832), it was held as follows:-

> *"Article 212 of the Constitution is a bar against filing of a Constitutional petition in relation to the terms and conditions of civil servants. It has been repeatedly held by this Court that a Constitutional petition under Article 199 of the Constitution is not maintainable in relation to any matter connected with the terms and conditions of service in respect whereof the appropriate Service Tribunal is possessed of the requisite jurisdiction, in view of the provisions contained in Article 212 of the Constitution. This Court has also held that even in cases where the order is alleged to be mala fide, the bar of Article 212 is attracted."*

(iv) In the case of Peer Muhammad Vs. Government of Balochistan through Chief Secretary and others (2007 SCMR 54), it has been held as follows:-

> *"It is well-settled by now that the question of posting of a Government servant squarely falls within the jurisdictional domain of the Competent Authority subject to law and rules made thereunder. The question of posting/transfer relates to terms and conditions of a Government servant and Service Tribunal would have exclusive jurisdiction to dilate upon and decide such matters and Constitutional jurisdiction cannot be invoked to get such controversies resolved. We have also adverted to the question of mala fides which according to the learned Advocate Supreme Court could*

have been dilated upon in Constitutional jurisdiction which is not correct because the provisions as contained in Article 212 of the Constitution of Islamic Republic of Pakistan ousts jurisdiction of all other Courts and orders of the departmental authority even though without jurisdiction or mala fide can be challenged only before the Service Tribunal and jurisdiction of Civil Court including High Court is specifically ousted. The plea of mala fide does not confer upon High Court jurisdiction to act in the matter in view of the Constitutional ouster as contained in Article 212 of the Constitution of Islamic Republic of Pakistan and learned Service Tribunal has full jurisdiction to interfere in such-like matters."

6. Since a transfer order has already been issued, there is nothing preventing the petitioner from invoking the jurisdiction of the Service Tribunal. Even otherwise, a transfer made in the exigency of service cannot be interfered with in the constitutional jurisdiction of this Court.

7. The order passed by the Hon'ble Lahore High Court, appended at page 14 of this petition, does not come to the petitioner's aid. As regards, the provision in the Personnel Manual of the Pakistan Railways, the words "as far as possible" imply that there is no blanket prohibition on the transfer of any officer who attains the age of 57 years.

8. In view of the above, this petition is dismissed *in limine*.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*

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