

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

W.P.No.1199-P of 2017.

Date of hearing: 25.04.2017.

Mr.Shumail Ahmad Butt, advocate for the petitioner.

Mr.Muhammad Riaz, Special Public Prosecutor for NAB.

Mr.Manzoor Khan Khalil, DAG for Federal Government.

JUDGMENT

LAL JAN KHATTAK, J.-

Petitioner, through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, has prayed this court for issuance of an appropriate writ to declare the order (Memorandum No.2/33/2012-ECL) dated 22.01.2013 as illegal, unlawful, without lawful authority, void ab initio and of no legal effect, whereby his name has been placed in the Exit Control List.

2. Brief facts of the case are that the petitioner is a civil servant in the Accountant General's office of

Khyber Pakhtunkhwa as an Auditor. He was appointed as Budget Officer, on deputation, with effect from 04.04.2005, in the Police Department, however, on his promotion to BPS-18, he was repatriated to his parent department. According to the record of the case, NAB authorities initiated an inquiry qua involvement of the petitioner and others regarding purchase of some sub-standard equipments in the police department. Pursuant to the ibid inquiry and investigation, petitioner's name was placed in Exit Control List vide order dated 22.01.2013 (the impugned order), which is reproduced as under:-

**GOVERNMENT OF PAKISTAN
MINISTRY OF INTERIOR**

No.2/33/2012-ECL Islamabad, the
January 22nd, 2013.

MEMORANDUM

SUBJECT: **PLACEMENT OF EXIT
CONTROL LIST.**

It has been decided to place the name of Javed Khan S/o Turab Khan (CNIC No.17301-0787960-1), resident of House # 113 Street No. 2 Sector N-2 Phase-IV, Hayatabad Peshawar on Exit Control List, under Section 2 of Exit from Pakistan (Control) Ordinance, 1981.

All concerned are requested to take immediate action in the matter.

Sd/-
(Mehmood Ahmed)
Section Officer (ECL)
Tel: 9208179

3. Being aggrieved with the impugned order, petitioner made a Representation to the Ministry of Interior, Government of Pakistan, Islamabad but to no avail, hence the instant writ petition.

4. Arguments heard and record gone through.

5. No doubt, the Federal Government u/s 2 of the Exit from Pakistan (Control) Ordinance, 1981 can prohibit any person from proceeding to a destination outside Pakistan notwithstanding the fact that such person is in possession of valid travel documents but before exercising the ibid power, the authority must apply its mind judiciously, fairly and justly to the facts of each case. While prohibiting a person from proceeding to a destination from Pakistan, the Ministry of

Interior shall not pass its order in a mechanical manner and if it intends to curtail the movement of a person for any reason, then the prohibition must be through a speaking order.

6. When viewed in the context of the above, the impugned order cannot be termed as a lawful order for its being bereft of any reason. It appears that the authority has issued the impugned order in a mechanical manner without applying its mind judiciously, fairly and independently. Restricting free movement of a person from Pakistan is a drastic step, which is permissible only when same is taken not only in the public interest but to justify the prohibition, the authority must give cogent, convincing and appealable reasons sans, which the action to deprive a person of his basic right of free movement guaranteed by the Constitution cannot be countenanced.

7. According to the record, the only reason, though not taken specifically, for passing the impugned order is that there are pending two References against the petitioner under the National Accountability Ordinance, 1997 but admittedly in both the References, the petitioner has been released on bail by this court, which orders are still in the field.

8. When the petitioner has been released on bail in the two References filed against him by the NAB authorities and when no sufficient reason has been given for placing his name in the Exit Control List, then, on no count, the impugned order can be termed as a legal and valid order.

9. For what has been discussed above, this petition is allowed and the impugned order dated 22.01.2013 is declared as illegal, unlawful, without lawful authority and of no legal effect. Consequently, the Ministry of Interior,

Government of Pakistan is directed to
remove the petitioner's name from the
Exit Control List forthwith.

JUDGE

JUDGE

Announced
25.04.2017.