

Form No: HCJD/C-121.

ORDER SHEET
ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

Writ Petition No. 3827 of 2019

Hafeezullah Khan.
Vs
Federation of Pakistan through Secretary Ministry of Housing & Works, Islamabad and another.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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04.11.2019. Mr. Muhammad Ramzan Khan, Advocate for the petitioner.

Through the instant petition, the petitioner has assailed Office Memorandum dated 24.10.2019.

2. The facts, in brief, are that the petitioner is an employee of Establishment Division, Islamabad, he was sent on deputation to Ministry of Housing & Works, however vide the impugned Office Memorandum, he has been transferred back/repatriated to respondent No.2.

3. Learned counsel for the petitioner, *inter alia*, contended that the order passed is not repatriation order but rather is a transfer order. When confronted that if such is the case whether the instant petition is maintainable, learned counsel for the petitioner submitted that the petitioner has no remedy against order dated 24.10.2019 for a period of 90 days.

4. Arguments advanced by learned counsel for the petitioner have been heard and the documents placed on the record examined with his able assistance.

5. The contention of the learned counsel for the petitioner is that the impugned order is a transfer order has little substance inasmuch as the bare reading of the order shows that it is a repatriation order. In this behalf, the captioned impugned Office Memorandum as well as the contents of the same clearly shows that the petitioner is being asked to join the parent department. It is trite law that the borrowing department can always repatriate/send back the deputationist any time even before the expiry of the deputation period. However, in case the submission of the learned counsel for the petitioner is accepted and impugned letter is taken as transfer order, the instant petition is barred under Article 212 of the Constitution, as transfers and postings fall within the terms and conditions of service, hence a petition under Article 199 of the Constitution is not maintainable. It was argued by learned counsel for the petitioner that for a period of 90 days the petitioner has no remedy; the referred contention is negated by the observation of the Hon'ble Supreme Court of Pakistan in case reported as ***"Ali Azhar Khan Baloch vs. Province of Sindh"*** (2015 SCMR 456).

6. In view of above, the instant petition is not maintainable and is accordingly dismissed in *limine*.

(AAMER FAROOQ)
JUDGE

Shakeel Afzal