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**What is the scope of powers vested in an Administrative Judge under the Anti-Terrorism Act, 1997, to transfer cases from one Anti-Terrorism Court, and how do these powers differ from the powers of the Chief Justice of a High Court to transfer cases across the province?**

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RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

COURT: HON'BLE MR. JUSTICE SHOUKAT ALI RAKHSHANI

SUBJECT: CRIMINAL LAW

DATE: 02<sup>ND</sup> AUGUST 2024.

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QUERY: **What IS the scope of powers vested in an Administrative Judge under the Anti-Terrorism Act, 1997, to transfer cases from one Anti-Terrorism Court, and how do these powers differ from the powers of the Chief Justice of a High Court to transfer cases across the province?**

### RESEARCH MEMO

#### Establishment and Powers of Anti-Terrorism Courts

In response to the query, it is crucial to observe here the Anti-Terrorism Act of 1997 in Pakistan provides for the establishment of Anti-Terrorism Courts under section 13 of the ATA and outlines their powers and procedures. Its subsection (1) provides that the Federal or Provincial Government, if so directed by the Federal Government, may establish one or more Anti-Terrorism Courts for **each territorial area** as may be specified by the High Court. In the **territorial areas** where more than one Anti-Terrorism Courts are established, subsection (2) make it obligatory for the Government, to *designate*, in consultation with the Chief Justice, one of such judges as **Administrative judge** of that **territorial area**. All cases tried under the Act, pertaining to that **territorial area** *shall be filed before the Court of the Administrative judge*, who may either try the case himself or assign any cases or cases for trial to any other Anti-Terrorism Court at any time prior to the framing of the charge for trial, as dictated by Subsection (2).

#### Territorial Jurisdiction and Administrative Judge's Role

It requires due emphasis that the concept of "**area**" in the context of Section 13 (1) & (2) of the Anti-Terrorism Act 1997 refers to the **specific geographic** or **territorial jurisdiction** within which a judge or judges appointed under said section would exercise their authority. These areas are typically specified by the High Court, by virtue of power granted under subsection (1) of the Act. Such areas are akin to the territorial areas for ordinary Courts, known as Sessions Divisions in Criminal side while Districts in Civil side. In the case of General (R) Syed Pervez Musharraf v. The State and another (PLD 2014 Balochistan 44), the Court observed that under Section 28 (1) of the Anti-Terrorism Act, 1997, the Chief Justice of a High Court has the authority to transfer cases between Anti-Terrorism Courts only within the territorial jurisdiction of

that High Court. The Court noted that term "area" as defined in Section 2(k) of the Act refers to the jurisdiction of the specific High Court where the Anti-Terrorism Court is established. **This case gives vigor to the notion that the High Court, under the aegis of section 13(1) of the Act specify the territorial area for Anti-Terrorism Courts in the Province and High Court's jurisdiction extends to all such specified territorial areas, as defined under section 2(k) of the Act.**

### Scope of Administrative Judge's Powers

It needs to be highlighted here that the Administrative judge designated under subsection (2)'s powers were confined to receiving, trying or assigning the cases to other Courts of Anti-Terrorism Courts with concurrent jurisdiction within the ***specified territorial area*** and it ***had no powers*** to transfer, withdraw or recall any cases assigned by him to any other Anti-Terrorism Court within the specified territorial area. In the year 1999, sub Section (4) of section 13 of the Act was inserted in the Act vide ***Ordinance XX of 1999***, subsequently, amended vide Ordinance of VI 2002, and the Government was required to establish one Additional Anti-Terrorism Court at the principle seat of the each High Court and appoint a Judge of such High Court as a judge of Anti-Terrorism Court for the area. An austere look at the above provisions of subsection (4), makes it abundantly clear that the establishment of Additional Anti-Terrorism Courts at the Principle seat of the each High Court shall be made for each territorial areas independently and the judge so appointed as Additional Anti-Terrorism, ***shall be the Administrative judge for that area***. Such Administrative judge, in addition to the powers exercisable under the Act, may on his own motion or on the application of a party, at any stage of the proceedings, ***for sufficient cause, including the grounds mentioned under section 28***, transfer, withdraw or recall any case before any other Anti-Terrorism Court in ***that territorial area*** and try himself or make it over for trial in any other Anti-Terrorism Court ***in that area***. Thus, an Administrative Judge has the power to transfer cases from one Anti-Terrorism Court to another Court ***within an specific area but not any other territorial area*** which may come within his ***Administrative jurisdiction***, in case where a single judge is appointed for two or more territorial areas. Conversely, section 28 provides the Chief Justice with broader powers to transfer any case instituted under the Act to any of the Anti-Terrorism Court functioning within any area specified by the High Court across the province, to ensure the proper administration of justice, which may include considerations of fairness, impartiality concerns, public interest or other judicial concerns that may not be adequately addressed with the powers bestowed on the Administrative judge.

In the case of ***Hafiz Ali Dur vs. Qalandar Bux others*** (2012 YLR 309), the Sindh High Court deliberated that the Chief Justice holds exclusive authority for case-transfers across ATCs in the province. ***But Section 13(4) of the Act allows an Administrative Judge to transfer cases within their administrative jurisdiction, but not beyond it.*** Thus, the Chief Justice's authority to transfer cases is comprehensive

across the entire province, reflecting a legislative intent to centralize this power within the highest judicial administrative office of the province.

### **Distinction between Administrative Judge and Chief Justice's Powers**

Having said so, it may be noted that although the powers conferred on the Administrative judge under section 13 (4) of the Act are limited to its specified territorial jurisdiction and primarily focused on *ensuring **the efficient and effective administration of justice and case-management**, taking into account factors such as **the workload of courts**, accommodating judges availability, **the convenience of parties** and **witnesses**, and **other administrative oversight***, nevertheless, the law has not curtailed the power of Administrative Judge to transfer cases within his territorial jurisdiction on Administrative grounds. The provisions of sub section (4) unequivocally states that the Administrative judge for any **sufficient cause**, including the grounds mentioned in section 28, exercise his powers of case transfer. Thus suggests that the Administrative judge possesses powers to transfer cases on Administrative basis as well as exercise such powers on deciding application containing grounds which fall within the ambit of judicial determination. As regards the powers of the Chief justice, contained in section 28 of the Act, they also include administrative and judicial powers of transfer within or outside the area, yet within the province.

### **Judicial vs. Administrative Transfer of Cases**

It may be observed that an administrative transfer of a criminal case typically refers to the transfer of a case from one jurisdiction to another or from one court to another by an administrative order, **often for reasons related to court administration**, such as **caseload balancing** or **the administrative convenience of the courts**. This type of transfer is not based on judicial considerations but rather on administrative needs. On the other hand, a judicial transfer of a criminal case occurs when a judge orders the transfer of a case from one court to another due to various judicial reasons, such as **the need for a fair trial, the convenience of parties or witnesses, potential conflicts of interest**, or other legal considerations.

### **Case Law on Transfer of Cases**

It is apropos to refer at the outset to the *generic legal principle* governing transfer of criminal cases which runs that ***“No straight-jacket formula or hard and fast rule can be prescribed for transfer criminal cases, which has always to be decided on the basis of facts and circumstances of each case, convenience and protection of the witnesses or parties<sup>1</sup>, and the paramount consideration is being the need to meet the ends of justice<sup>2</sup>”*** and relevant considerations which govern the matters of transfer of criminal cases from one Court to another Court. August Apex Court.

Following judicial interpretation further clarify that the transfer of cases is a matter to be decided on the facts and circumstances of each case:

In the case of **Muhammad Shareef v. The State and Others (2016 P. Cr.L.J 216 [Sindh])**, the applicant sought the transfer of his case from the Anti-Terrorism Court in Khairpur to one in Karachi due to perceived threats to his life. The court, led by Syed Muhammad Farooq Shah, J., noted that while Section 28 of the Anti-Terrorism Act and Section 526 of the CrPC allow for case transfers for the safety of parties or fairness of proceedings, no specific mistrust was directed at the Khairpur judge. ***The court emphasized that the threat to the applicant's life alone was insufficient for transferring the case, given that law enforcement should protect citizens and the transfer would impose significant inconvenience on the accused and witnesses.*** The application was therefore dismissed, but directives were issued to ensure proper protection for all parties involved.

The case of **Gulsher Boriro vs the State & 7 others (2011 YLR 1493)** involved a transfer application under section 526 of the Criminal Procedure Code, where the applicant cited imminent threats to life and danger to the complainant and witnesses as reasons for the transfer. The court examined the evidence and arguments presented, including the lack of specific allegations and the absence of reports to the police or applications to the trial court regarding the threats and proceeded to decline the transfer application.

In case of **Ahmed Ali Khan vs the State (2007 YLR 1735)** High Court of Sindh dealt with a transfer application where the applicants cited threats and a highly charged atmosphere as reasons for the transfer. The court evaluated the reasonableness of the apprehensions expressed by the accused and the opposition by the complainant and state counsel and was pleased to allow the criminal transfer application.

In the same vein, in case **Ahmed Omar Sheikh and 3 others vs vs the State (2002 SCMR 1562)** the Supreme Court of Pakistan upheld the High Court's decision to transfer a criminal case from an Anti-Terrorism Court in Karachi to one in Hyderabad. The transfer was ordered due to severe safety concerns and threats against the prosecution team and witnesses in Karachi, creating an atmosphere deemed unsuitable for a fair trial. The Supreme Court justified the transfer under Section 526 of the Criminal Procedure Code and Section 28 of the Anti-Terrorism Act, emphasizing that such measures are necessary to ensure justice and security. The relevant portion of the judgment is reproduced below for ready reference:

*"7. Both the aforesaid sections are sufficiently wide and comprehensive which entitled any party to move the High Court for the transfer to the case from one Court to another on the grounds mentioned above. The grounds which prevailed with the learned High Court in transferring the case to Anti -Terrorism Court at Hyderabad were that atmosphere at Karachi was not congenial for trial, the prosecution team and witnesses were under constant threat and the apprehension of the prosecution that it may not get proper justice from the Court concerned, whereas atmosphere at Hyderabad was normal NF in case of any law,*



and order situation it was comparatively easy to control the same there. In view of section 526, Cr.P.C. read with section 28 of the Act the learned High Court was competent and empowered to transfer any case from one Anti-Terrorism Court to another within or outside the area of Karachi for the protection and safety of the witnesses and that of the accused. The prosecution also entertained reasonable apprehensions that the Court concerned was not fairly and impartially conducting in the matter, hence sufficient grounds were made out for the transfer of the case out of Karachi. In *Muhammad Nawaz v. Ghulam Kadir and 3 others* (PLD 1973 SC 327), this Court after considering sufficient case-law on the subject, observed as under:--

*"the transfer of a case from a Court of competent jurisdiction is justified only if there is a reasonable apprehension in the mind of the party concerned that the Court would not be able to act fairly and impartially in the matter. It is of paramount importance that parties arraigned before Courts should have confidence in their impartiality. It is one of the important duties of a High Court to create and maintain such confidence, and this can be done only by ensuring that, so far as practicable, a party will not be forced to undergo a trial by a Judge or Magistrate whom he reasonably regards as being prejudiced against him. What is a reasonable apprehension must be decided in each case with reference to the incidents and the surrounding circumstances; and the Court must endeavour, as far as possible, to place itself in the position of the applicant seeking transfer, and look at the matter from his point of view, having due regard to his state of mind and the degree of intelligence possessed by him. Nevertheless, it is not every incident regarded as unfavourable by the applicant which would justify the transfer of the case. The test of reasonableness of the apprehension must be satisfied, namely, that the apprehension must be such as a reasonable man might justifiably be expected to have."*

8. Recently, in another case, reported as *Khawar Saleem v. The State* (2001 SCMR 905) it has been held as follows:--

*"No allegation had been made against the person of the learned Presiding Officer of the Court in the transfer application and the transfer of the case was sought on the ground that the manner in which the proceedings were taken and orders passed, a person could legitimately entertain an apprehension that he would not be treated fairly. Without expressing any opinion as to whether in such circumstances, the petitioner was justified in entertaining an apprehension that fair trial shall not take place keeping in view over all circumstances of the case. We feel persuaded to hold that it is expedient for the ends of justice that the case is transferred from the said Court to another Court under section 526(1)(e) of the Code of Criminal Procedure."*

9. We are also of the opinion that the learned High Court was justified, to transfer the case from Anti-Terrorism Court at Karachi to Anti-Terrorism Court at Hyderabad so that trial may be held in a more congenial atmosphere and tension-free situation. Apprehensions about safety of the witnesses and prosecution team and with regard to holding of a fair trial for even dispensation of justice were sufficient grounds for transfer of the case from one Court to another."

## Conclusion

The powers of the Administrative Judge and the Chief Justice to transfer cases are distinct but complementary, ensuring the administration of justice within the framework of the Anti-Terrorism Act. **Administrative Judges manage and transfers cases within their jurisdiction, while the Chief Justice can transfer cases across the province for judicial reasons.** While deciding an application for transfer of the criminal cases, the courts consider transfer applications on the grounds of **threats to life by examining the specifics of the threat, the evidence provided, and the reasonableness of the apprehensions.** The decisions are made based on the merits of each case, the safety of the parties involved, and the interests of justice.

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1- Abdul Nazar Madani Vs. State of Tamilnadu, AIR 2008 SC P.2293.

- 2- Dr. Subramanya Swamy Vs. Ramakrishna Hegde, AIR 1990 SC p.113