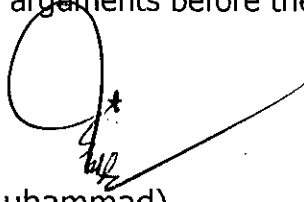
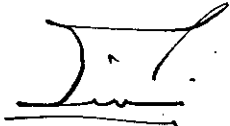


29.04.2022 Junior of learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for official respondents No. 1 to 3 and counsel for private respondent No.4 present.

Junior of learned counsel for the appellant seeks adjournment on the ground that learned senior counsel is busy before the Hon'able Peshawar High Court, Peshawar. Adjourned. To come up for arguments before the D.B on 25.05.2022.



(Mian Muhammad)
Member(E)



(Salah Ud Din)
Member(J)

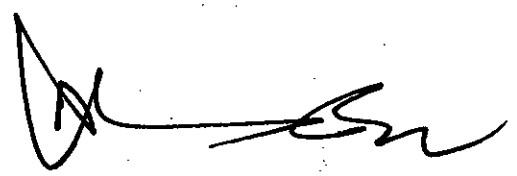
25th May, 2022 Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, DDA for respondents present.

Learned counsel for the appellant states that the appellant does not want to further pursue the case. He submitted an application for withdrawal of the appeal. Application placed on file. Dismissed as withdrawn. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 25th day of May, 2022.*



(Fareeha Paul)
Member(E)



(Kalim Arshad Khan)
Chairman

13.01.2022

Junior to counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG alongwith Mr. Haseen Ullah, Assistant for official respondents No. 1 to 3 and private respondents No. 4 present and submitted reply/comments which are placed on file.

To come for rejoinder if any, and arguments before the D.B on 03.02.2022. The respondents are directed to maintain status quo till disposal of the appeal.



(Atiq-Ur-Rehman Wazir)
Member (E)

03.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 29.04.2022 for the same as before.



Reader



29-9-21

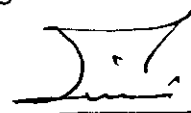
DB is on Tond case to come up
For the same on Dated. 18-10-21

8
Rended

18.10.2021

Junior to counsel for the appellant and Mr. Muhammad Rasheed, DDA alongwith Syed Alam Zaib Shah, Litigation Officer for the respondents present.

Due to general strike of the bar, counsel for the appellant is not in attendance today. To come up for arguments on 28.11.2021 before the D.B.


(Salah-ud-Din)
Member(J)


Chairman

18.11.2021

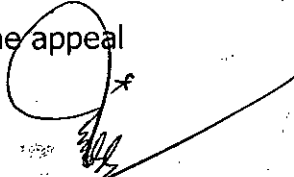
Clerk of learned counsel for the appellant present. Syed Alamzeb Shah, Litigation Officer alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present and sought some time for submission of reply/comments. Adjourned. To come up for submission of reply/comments on 13.12.2021 before the S.B.


(Salah-Ud-Din)
Member (J)

13.12.2021

Junior of learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Haseen Ullah, Assistant and Syed Alam Zeb Shah, Litigation Officer for respondents present.

Representative of the respondents seeks time to submit written reply/comments. Adjourned. To come up for written reply/comments on 13.01.2022 before S.B. The respondents are directed to maintain status quo till disposal of the appeal


(MIAN MUHAMMAD)
MEMBER (E)

services at disposal of the same DEO, without disclosing any purpose of the transfer of the appellant in the given style. Unless rebutted by the respondents during course of regular hearing, the impugned order on its face seems tainted with malafide and result of unjust exercise of the Authority. Therefore, this appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 02.09.2021 before the D.B.

Appellant Deposited
Security & Process Fee

2/8/21

An application has been filed alongwith the appeal, seeking suspension of the impugned order dated 16.03.2021 to the extent of appellant till disposal of the appeal. The interim injunctive relief as solicited is granted. The respondents are directed to maintain status quo till disposal of the appeal.


Chairman

02.09.2021

Due to summer vacations, the case is adjourned to 29.09.2021 for the same as before.

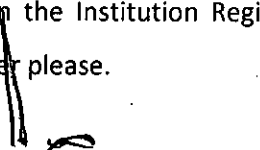

READER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7068 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	16/07/2021	<p>The appeal of Mr. Shahid Aziz resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>27/07/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	27.07.2021	<p>Counsel for the appellant present. Preliminary arguments heard.</p> <p>The crux of the contention is that the appellant had challenged his transfer from present post departmentally and failing to get remedy from the department then approached this Tribunal through Service Appeal No. 11012/2020 for judicial review of his transfer order. The order then passed to transfer the appellant from present post was judicially held not tenable and was set aside. Now, the respondent No. 2 vide order dated 16.03.2021, as impugned in the present appeal, has again transferred the appellant from the post of ADEO (Primary) office of DEO (M) Dir Upper and placed his</p>

The appeal of Mr. Shahid Aziz SST presently posted at disposal of the DEO (M) Dir Upper received today i.e. on 13.07.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures A, B, C, E, F and G of the appeal are illegible which may be replaced by legible/better one.
- 2- Wakalat nama is not attested by the counsel of the appellant.

No. 1288 /S.T,

Dt. 14/07 /2021



REGISTRAR,
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Noor Muhammad Khattak Adv. Pesh.

Sir
16/7/21

Objection No. 1 ANNEXURE, A-B-C-E-G objection was removed ANNEXURE "F" page 13 are illegible,

Objection No. 2 was completion Please put up the Hon eble Court

 16/07
2021

Before the Kyber Pakhtunkhwa Service Tribunal, Peshawar

D.M No - 2022

in Service Appeal No. 7068/2021

Shahid AB3 vs Govt of KP

Application for the withdrawal of the mentioned Appeal

R/S

1. That, The above title service Appeal is pending adjudication before this Honorable Tribunal which is fixed for today i.e. 05-5-2022.

2. That, The Appellant doesn't pursue the instant Appeal any more, therefore, the Appellant withdraws the instant Appeal.

3. That, The, there is no legal bar on acceptance of the instant Application.

It is therefore, most humbly prayed that on acceptance of this application the above titled Appeal may kindly be withdrawn.

Applicant/Appellant

Through -

Moor Muhammad Khalid
A-51

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECK LIST

Case Title: SHAHID AZIZ V/S EDUCATION DEPARTMENT

S#	CONTENTS	YES	NO
1	This Appeal has been presented by: NOOR MOHAMMAD KHATTAK	✓	
2	Whether Counsel/Appellant/Respondent/Deponents have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	x	✓
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?	✓	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15	Whether numbers of referred cases given are correct?	✓	
16	Whether appeal contains cutting/overwriting?	x	✓
17	Whether list of books has been provided at the end of the appeal?	✓	
18	Whether case relate to this court?	✓	
19	Whether requisite number of spare copies attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?	✓	
22	Whether index filed?	✓	
23	Whether index is correct?	✓	
24	Whether Security and Process Fee deposited? On _____	✓	
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	✓	
26	Whether copies of comments/reply/rejoinder submitted? On _____	✓	
27	Whether copies of comments/reply/rejoinder provided to opposite party? On _____	✓	

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: **NOOR MOHAMMAD KHATTAK**

Signature: _____

Dated: _____

14-07-2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. _____/2021

SHAHID AZIZ

V/S

EDUCATION DEPTT:


I N D E X

S NO	DOCUMENTS	ANNEXURE	PAGE
1	Memo of appeal	-----	1 – 4
2	Stay application	-----	5
3	MNA letter	A	6 – 7
4	Notification	B	8
5	Order dated 11.8.2020	C	9
6	Departmental appeal	D	10
7	Judgment dated 1.09.2020	E	11 – 12
8	Notification dated 31.08.2020	F	13
9	Cancellation order dated 14.09.2020	G	14
10	Appellate order dated 16.09.2020	H	15
11	Judgment /order dated 15.01.2021	I	16 – 22
12	Impugned order/notification dated 16.03.2021	J	23
13	COC applications	K	24 – 25
14	Notification dated 16-03-2021	L	26
15	Departmental appeal	M	27
16	Wakalatnama	-----	28

Dated: ____/____/2021

APPELLANT

Through:


NOOR MOHAMMAD KHATTAK
Advocate, High Court, Peshawar
Flat No. 4, 2nd Floor, Juma Khan Plaza,
Warsak Road, Peshawar
0345-9383141

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

SERVICE APPEAL NO. 7068 / 2021

Diacy No. 7245
Dated 13/7/2021

Mr. Shahid Aziz, SST (Teaching Cadre) presently posted & placed at the disposal of DEO (M) Dir Upper.

..... **APPELLANT**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officers Male & Female, District Dir Upper.
- 4- Ajeeb Ullah, ASDEO (M.C), transferred and posted in place of appellatant as ADEO (Secondary) at o/o DEO (M) Dir Upper.

..... **RESPONDENTS**

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 16-03-2021 WHEREBY THE APPELLANT HAS PREMATURELY BEEN TRANSFERRED & PRIVATE RESPONDENT NO. 4 HAS BEEN POSTED IN PLACE OF APPELLANT AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned Notification dated 16-03-2021 may very kindly be set aside and the respondents may kindly be directed not to transfer the appellatant from the post of Assistant District Education Officer (M) Dir Upper. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellatant.

Filed to-day
Registrar
13/7/2021

R/SHEWETH:
ON FACTS:

That appellatant is the employee of the respondent Department and is presently under transfer and placed at the disposal of DEO (M) Dir Upper.

That the appellatant was posted against the management cadre posts mentioned above through different orders/notifications. That in response to the said Notifications/orders regarding their

Re-submitted to-day
and filed.
Registrar
2-
16/7/21

posting the appellant submitted their arrival reports and started performing their duties quite efficiently and up to the entire satisfaction of their superiors.

- 3- That astonishingly through political interference the appellant have been transferred and posted against the teaching cadre posts vide Notification and order dated 11.8.2020. Copies of the MNA letter, notification and order are attached as annexure **A, B & C.**
- 4- That appellant feeling aggrieved from the Notification and order dated 11-08-2020 submitted Departmental appeals before the appellate authority and where after filed Write Petition before the Peshawar High Court, Daru Qaza Bench at Swat and the same write petition was disposed of with the direction to decide the Departmental appeal of the petitioner one way or the other vide order dated 01.09.2020. Copies of the Departmental appeal and judgment dated 1.09.2020 are attached as annexure **D & E.**
- 5- That in response, the appellate authority accepted the Departmental appeal of the appellant and directed (through No. Dated Peshawar the 31.08.2020) the respondent No.2 to cancel the order dated 11.08.2020. That vide order dated 14.09.2020 the transfer order dated 11.08.2020 of the appellant were withdrawn by the respondent No. 2, but astonishingly through appellate order dated 16.09.2020 the said cancellation order dated 14.09.2020 has been withdrawn and restored the original transfer order dated 11.08.2020 by the respondent No. 2. Copies of the notification dated 31.08.2020, cancellation order dated 14.09.2020 and withdrawal/appellate order dated 16.09.2020 are annexed as annexure **F, G & H.**
- 6- That appellant feeling aggrieved from the transfer order dated 11.08.2020 and appellate order dated 16.09.2020 preferred Service Appeal No. 11012/2020 before the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar which was allowed vide Judgment dated 15.01.2021 setting aside the transferred order dated 11.08.2020. Copy of the judgment /order dated 15.01.2021 is annexed as annexure **I.**
- 7- That the respondents inspite the fact the previous pre mature transfer order dated 11.8.2020 was set aside by the august Tribunal through judgment dated 15.1.2021 again transfer the appellant from the posts ibid vide impugned order/notification dated 16.03.2021. Copy of the impugned order/notification is annexed as annexure **J.**

- 8-** That feeling aggrieved from the impugned order/notification the appellant filed Contempt of Court Applications before KP Service Tribunal Peshawar which is still pending as the Honorable Service Tribunal has become nonfunctional hence the CoC application was not fixed with in time and also filed Departmental Appeal against the said notification dated 16-03-2021 but till date the same has not been decided by the respondents. Copies of the COC applications, notification & Departmental Appeal are annexed as annexure **K, L & M.**
- 9-** That having no other adequate and efficacious remedy, the appellant approaches this august court inter alia on the following grounds.

GROUND:

- A-** That the impugned Notification/order dated 16-03-2021 issued by the respondent No.2 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B-** That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C-** That the impugned Notification and order dated 16-03-2021 are against the clauses I, II, III & IV of the transfer/posting policy of the provincial Government of Khyber Pakhtunkhwa.
- D-** That the impugned Notification/order of even date 16-03-2021 is also violative of the management cadre policy, therefore not tenable and liable to be set aside.
- E-** That the treatment meted out to the appellant is a clear violation of the Fundamental Rights of the petitioner.
- F-** That the respondents acted in arbitrary and malafide manner by issuing the impugned Notification & order dated 16-03-2021 against the appellant.
- G-** That, the appellant has been discriminated by the respondents on the subject noted above and as such the respondents violated the Principle of Natural Justice.
- H-** That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that the appeal of the appellant may kindly be accepted as prayed for.

Dated: ____/____/2021


APPELLANT

SHAHID AZIZ

Through:


NOOR MOHAMMAD KHATTAK

&

MUHAMMAD MAAZ MADNI

Advocates

HIGH COURT PESHAWAR

CERTIFICATE:

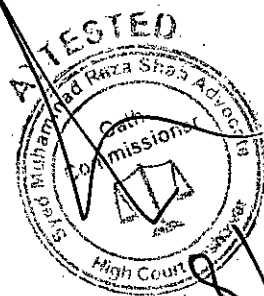
It is verified that no other such like appeal has been filed OR pending between the parties.


ADVOCATE

AFFIDAVIT

I, Shahid Aziz s/o Badshah Zada r/o Chinar Cham Shaw PO Dir Tehsil Dir District Dir Upper do hereby solemnly affirm that the content of the above appeal are true and correct to the best of knowledge and believe.


DEPONENT
15701-1212781-7



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

SERVICE APPEAL No. _____/2021

Shahid Aziz

VS

Education DEPARTMENT

**APPLICATION FOR SUSPENSION OF OPERATION OF
THE IMPUGNED ORDER DATED 16.3.2021 TO THE
EXTENT OF THE APPLICANT TILL THE DISPOSAL OF THE
ABOVE MENTIONED APPEAL**

R/SHEWETH:

- 1- That the above mentioned appeal along with this application has been filed the appellant before this august service Tribunal in which no date has been fixed so far.
- 2- That appellant filed the above mentioned appeal against the impugned order dated 16.3.2021 whereby the appellant has been transferred pre maturely.
- 3- That all the three ingredients necessary for the stay is in favor of the appellant.
- 4- That the impugned order dated 16.3.2021 had been issued by the respondents in utter disregard of law and prevailing Rules.

It is therefore, most humbly prayed that on acceptance of this application the operation of the impugned order dated 16.3.2021 to the extent of appellant may very kindly be suspended till the disposal of the above mentioned service appeal.

Dated: 9.7.2021

APPLICANT


Shahid Aziz

THROUGH:


**NOOR MOHAMMAD KHATTAK
ADVOCATE**

MEMBER NATIONAL ASSEMBLY OF PAKISTAN

PROPOSAL TRANSFER POSTING :

1. SHAHID LODHAN –deputy DEO(M) Upper dir.
2. SHAHID AZIZ – ADEO (M) primary Upper dir :
3. PIR MUHAMMAD – SDEO (M) wari circle.
4. MUHAMMAD HANIF – A SDEO (M) wari circle.
5. MUHAMMAD IQBAL- A DEO (F) P & D & ASDEO Barawal.
6. MUHAMMAD ZADA- ADEO (M) transfer to GHS Katan Upper dir.
7. MUHAMMAD RIAZ –SST GHS ADEO Dir upper.
8. SARDARAZ KHAN – ADEO (litigation)GHS Molalger GHS



ANNEXURE - A

6

Date

SANIB SICHATULLAH
NA-05 Upper Dir

Proposed Transfer/Posting

- X Shaukat Lodhyan - Deputy DEO (M) Upper Dir
- (P.P.) Asghar Aziz - SST - ADEO (M) Primary Upper Dir
- X ~~P.H. Muhammad - SDEO (M) Wari Circle~~
- SSC GMS Graduate to
Muhammad Hanif - A SDEO (M) Wari Circle
- Muhammad Iqbal -
A DEO (F) RD to ASDEO Barawal
- (6) Muhammad Zada -
A DEO (M) transfer to GHS Kator Upper Dir
- Muhammad Riaz SST GHS Mula
A DEO (F) Dir Upper
- Sardar Khan - ADEO (Lateralization)
GHS Mula GMS

ATTENDED
M. SICHATULLAH

Suit # 412, Block-H, Parliament Lodges, Islamabad. Cell: 0513-8802230, 0343-8802230

SANIB SICHATULLAH
Member National Assembly

ATTESTED

X

PAGE 07

1. ABDUL AZIZ –SST GHS seri sultan khel to ADEO (M) primary EST Dir.
2. MUHAMMAD HANIF –SST-GMS gamdat to ASDEO wari
3. PIR MUHAMMAD –ASDEO wari to ASDEO elitigation DEO (M) Dir upper (vacant).
4. MUHAMMAD IQBAL- ADEO(F) To ASDEO Barawal
- 5, MUHAMMAD RIAZ SST GHS MOLAVI To ADE O (F) P & D DIR UPPER
6. NASEER AHMAD SST GHS WARI TO ADEO DEO DIR UPPER
7. HAZRAT WHAB (ASSISTANT) SDEO (F) WARI TO SDEO (F) WARI
8. MUHAMMAD KHAN DEO (F) TO SDEO (F) WARI
9. MUHAMMAD ZADA ADEO (M) DIR.

7

1. Abdul Aziz ^{P.K} SST GHS Seri Sultan Khel
to
A DEO (M), Primary Est. Div U.

2. Muhammad Hanif SST GHS Candat
to
A SDEO Wari

3. Fazeer Muhammad A SDEO Wari
to
A SDEO Litigation DEO (M) Div U (vacant)

Amir
Principals

14/5/20

4. Muhammad Iqbal ADEO (F)
to A SDEO barawal

5. Muhammad Riaz SST GHS Molavi to
ADEO (F) P&D Div U,

6. Nazeer Ahmad SST GHS Wari to
^{Secretary}
ADEO DES Div U,

7. Hazrat Wahab (Assistant) SDEO (F) Wari
to
SDEO (F), Larjan

8. Mahmood Khan A SDEO (F) to
SDEO (F) Wari

~~Amir~~
~~Principals~~

9. Muhammad Zaid ADEO (M) Div U to

ATTESTED

[Signature]

Directorate of Elementary & Secondary Education Khyber
Pakhtunkhwa, Peshawar

No. 5003/F.No.32/vol-4/SST(M)/Transfer Cases

Dated Peshawar the 11-16/2020

To

The District Education Officers,

(M) Dir Upper,

Subject :- PROPOSAL FOR TRANSFER/POSTING

Memo:

I am directed to the subject cited above and to enclose

Herewith a proposal bearing no. nil dated 14.05.2020, for your perusal and to ask you to submit your report and apprise this office which if it belongs to management cadre and which pertains to teaching cadre, so as to proceed further into the matter as per rules please.

Deputy Director ,(Estab)

Elementary and Secondary Education
Khyber Pakhtunkhwa

_____ Endst.no: _____

Copy of the above is to:-

1. P A to Director (E & SE) Local Directorate.

Deputy Director (Estab)

Elementary & Secondary Education
Khyber Pakhtunkhwa

Directorate of Elementary & Secondary Education

Khyber Pakhtunkhwa, Peshawar

No. 5003/F.No 32/Vol-4/ SST (M)/Transfer Cases

Dated Peshawar the 14/5 / 2020

O.P.S.S

DESPATCHER
Director (E&SE)
KPK Peshawar

ANNEXURE B

8

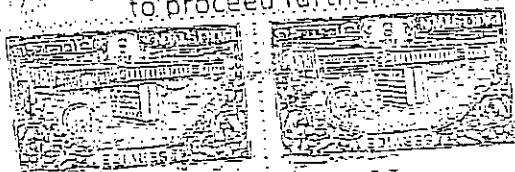
To

The District Education Officers,
(M) Dir Upper.

Subject:-
Memo:

PROPOSAL FOR TRANSFER/POSTING

I am directed to the subject cited above and to enclose herewith a proposal bearing No.Nil dated 14-05-2020, for your perusal and to ask you to submit your report and apprise this office which of them belongs to Management Cadre and which pertains to teaching cadre, so as to proceed further into the matter as per rules please.



Deputy Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa

Encl:- No. _____

Copy of the above is to:-

- 1. PA to Director (E&SE) Local Directorate.

Deputy Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa

ADAO

APPROVED
[Signature]
[Signature]

APPROVED

[Signature]

**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR**

NOTIFICATION

The competent authority is pleased to order transfer/posting of the following -----in their own pay scale,with immediate effect in the interest of public service.

S	Name of disignation	from	To(posted as)	remarks
1.	Mr.abdul aziz SST(T.C)	GHS seri sultan khel	ADEO(primary)o/o DEO (M)Dir upper	Vii2
2.	Muhammad zada (T.C)	DEO(primary)o/o DEO(M) Dir upper	G H S katan	Vii1adminstrative basis
3.	Muhammad hanif (SST)	GMS Gamdar	ASDEO Circle wari	Vice ii 5
4.	Muhammad iqbal (M.C)	ADEO(F)at o/o DEO(F) Dir upper	ASDEO Circle barwal	AVP under administrative basis
5.	Peer Muhammad (M.C)	ASDEO Circle wari	ASDEO circle s Larjam	AVP
6.	Muhammad riaz SST(T.C)	G.H.S Malavi	ADEO(F) at o/o DEO(F) Dir upper	VICEII 4
7.	Naseer ahmad SST(T.C)	GHS wari	ADEO(secondary)at o/o DEO(m) Dir upper	Viceii 8
8.	Shahid ázizSST(T.C)	ADEO(secondary)at o/o DEO(M) Dir upper	Ghs wari	Vice ii7 adminstrative basis

Note:

- 1.posting/adjustment of teaching cadre officers shall be considered as stop-gop arrangement till the arrival of management cadre officers.
- 2.the order of the above mentioned teaching cadre officers will be effective subject in the condition that be will give an understanding affidavit on leval papper /stamp papper DEO(M/F)Dir upper to the effect .not to claim seniority of management cadre.
- 3.charge report should be submitted in all concerned :
- 4.NO.TA/DA is allowed
- 5.the terms & condition mentioned in their appointment order as reaching cadre will remain intact.

DIRECTOR

Elementary & secondary Education

Khyber pakhtunkhwa

Endst :no.-----F.NO.12/VOL-/ADEO ,(M) Transfer dated 11.02.2020

Copy forwarded to the:

- 1.district education officer (M/F)Dir upper
- 2.district account officer Dir upper
3. Officers concerned
4. Master copy

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER PAKHTUNKHWA PESHAWAR

REGULATION

The Competent Authority is pleased to order transfer/posting of the following officers in their own pay scale, with immediate effect in the interest of public service.

No	Name & Designation	From	To (postul as)	Remarks
1	Mr. Abdul Aziz SST (T.C)	GHS Seri Sultan Khel	ADEO(Primary) at O/O DEO(M) Dir Upper	VH2
2	Muhammad Zafar (T.C)	ADEO((Primary)) at O/O DEO(M) Dir Upper	GHS Koton	VH1 under Administrative basis
3	Mr. Muhammad Hanif SST	GMS Gamlat	ASDEO Circle Wari	Vice#5
4	Mr. Muhammad Iqbal (M.C)	ADEO (F) at O/O DEO(F) Dir Upper	ASDEO Circle Barwal.	AVP under Administrative basis
5	Mr. Peer Muhammad (M.C)	ASDEO Circle Wari	ASDEO Circle Larjam	AVP
6	Mr. Muhammad Riz SST (T.C)	GHS Atolawi	ADEO(F) at O/O DEO(F) Dir Upper	Vice#4
7	Mr. Nazeer Ahmad SST (T.C)	GHS Wari	ADEO(Secondary) at O/O DEO(M) Dir Upper	Vice#8
8	Mr. Shahid Aziz SST (T.C)	ADEO(Secondary) at O/O DEO(M) Dir Upper	GHS Wari	Vice#7 under Administrative basis

Adhoc copy of 700

Note:

1. Posting/Adjustment of Teaching Cadre Officers shall be considered as stop-gap arrangement till the arrival of Management Cadre officers.
2. The order of the above mentioned Teaching cadre officers will be effective subject to the condition that he will give an undertaking/affidavit on legal paper/stamp paper to DEO (N/F) Dir Upper to the effect, not to claim seniority of Management cadre.
3. Charge Report should be submitted to all concerned.
4. No TA/DA is allowed.
5. The terms & conditions mentioned in their appointment order as teaching cadre will remain intact.

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa

Order No. F.NO. 101/Pol-4-ADEO(M) Transfers dated the Peshawar 11/3/2020

Copy forwarded to the:

1. District Education Officer (N/F) Dir Upper.
2. District Accounts Officer, Dir Upper
3. Officers Concerned.
4. Master Copy

Deputy Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa

ATTESTED

Handwritten signature

RECEIVED

Handwritten signature

11/3/20

ANNEXURE D

10

The Honorable Secretary E&SED,
Khyber-Pakhtunkhwa Peshawar.

Subject: APPEAL FOR WITHDRAWAL OF POSTINGS/TRANSFERS ORDER IN R/O ADEOs/ASDEOs
(M&F) OFFICES DISTRICT DIR UPPER.

R/Sir

With great profound I would like to invite your kind attention to the postings/transfers of ADEOs/ASDEOs (M&F) Offices Dir Upper have been issued vide office of Director E&SE Endst No: 29471-75/F: No: 32/Vol-4/ADEOs (M) Transfer Dated Peshawar the: 11/08/2020 (copy attached).

1-

In the instant order Serial No's 2,4 and 8 have been charged and transferred on administrative grounds, while before issuing orders no personal hearing etc have been made neither I was informed about the procedures, that what kinds of charges leveled against us.

2-

If any charges are proved against us in any inquiry then why proper action has not been taken against the beneficiaries who have been appointed/promoted, which is yet not been initiated. As a matter of fact, initial action is required against the beneficiaries and competent authority who are wholly responsible for such kinds of miss-use of powers or other negligence.

3-

Before issuing our transfer orders the director E&SED forwarded a letter to the District Education Officer (M) Dir Upper vide No:5003/F: No: 32/Vol-4/Dated 16/06/2020, seeking information about postings/transfers of ADEOs proper identification of teaching and management cadres officers along with proper proposal/recommendation duly signed by local MNA Dir Upper on specific letter pad (copy attached). The present situation indicate that proposal/recommendations submitted by local MNA is wholly implemented and eventually we have charged and transferred on administrative grounds, which is denoting that the orders has been issued only on the political pressure of local MNA for ulterior motives.

4

One Muhammad Riaz SST appointed through NTS on Sep, 2018 and still in a probation period and his appointment order has not yet been regularized, posted as ADEO(P&D) against Muhammad Iqbal (MC) which is against policy, while another one namely Iqman SST(IT) has also been posted as ADEO(S) which is technical one and not eligible for the post, so both the orders are against norms and rules and needs cancellation on merit.

Moreover, Abdul Aziz appointed as ADEO(p) is also NTS appointee.

It is pertinent to mention that one Muhammad Hanif SST has been adjusted as ASDEO against Pir Muhammad ASDEO (MC), which is clear violation of policy.

S

In view of the above quoted facts that our transfer orders have been issued on political influences having no legal status which is against the service Rules and therefore we are humbly requesting to please withdraw the aforementioned transfer orders and intact us on previous stations.

Hoping that my request will be decided on merit according to the prescribed manners please

In view of the above quoted facts that my transfer orders have been issued on political influences having no legal status which is against the service Rules and therefore I am humbly requesting to please withdraw the aforementioned transfer orders and intact me on previous station/ position.

I hope that my case will be decided on merit according to the prescribed manners please.

Thanks for yours kind anticipations.

Yours sincerely,

MUHAMMAD ZADA, SST GHS Katan
Ex-ADEO (Primary Establishment) Male Dir Upper.

18-08-2020

ATTESTED

[Handwritten signatures]

PESHAWAR HIGH COURT, MINGORA BENCH(DAR-UL-QAZA),SWATFORM OF ORDER SHEET

Court of

Case no,,of.....

	Date of order or proceeding	Order or other proceeding with signature of judge and that of partles or counsel where necessary
1	2	3

01.09.2020

W.P NO,829-M/2020 with interim relief

Present: Mr.Noor Muhammad khattak, Advocate for the petitioners.

WIQAR AHMAD ,J,-This order is directed to dispose`

Of the petition filed by petitioners. Under article 199 of the constitution of Islamic republic of Pakistan, 1973. with the following prayer;

It is therefore, most humbly prayed that on acceptance of this writ petition the inaction of the respondent no.1 by not deciding/dispose of the departmental appeals of the petitioners in light of Clause-XIV of the Transfer/ Posting Policy may be declared as illegal, unconstitutional and ineffective upon the rights of the petitioners in light of Clause-XIV of the Transfer/Posting Policy of The Provisional Government. Any other remedy which this August Court deems fit that may also be awarded in favour of the petitioners.

2 Learned counsel for petitioners at the outset requested that he would be satisfied, if respondent No. 1 is directed to decide departmental,appeals of petitioners within fortnight.

3 Request of lerned counsel for the petitioners seems genuine. Respondent NO.1 i.e Secretary E&SE Department ,Khyber Pakhtunkhwa is therefore directed to decide departmental appeals of petitioners within a period of fourteen days posively, after receipt of order of this court but strickly in accordance with law and rules.

4. the petition in in hand is disposed of accordingly.

Announced

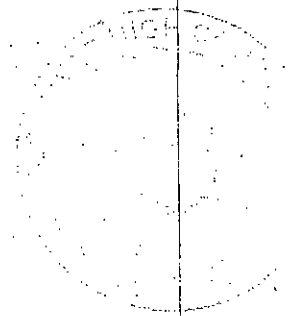
Dt. 01-09-2020

FORM OF ORDER SHEET

11

Court of
 Case No. of
 ANNEXURE E

Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
<p>01-09-2020</p>	<p><u>W.P No. 829-M/2020 with Interim Relief</u></p> <p>Present: Mr. Noor Muhammad Khattak, Advocate for the petitioners.</p> <p>*****</p> <p><u>WIQAR AHMAD, J.-</u> This order is directed to dispose of the petition filed by petitioners, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, with the following prayer;</p> <p>"It is therefore, most humbly prayed that on acceptance of this writ petition the inaction of the respondent No. 1 by not deciding/dispose of the departmental appeals of the petitioners in light of Clause-XIV of the Transfer/ Posting Policy may be declared as illegal, unconstitutional and ineffective upon the rights of the petitioners. That the respondent No. 1 may please be directed to dispose of the departmental appeals of the petitioners in light of Clause-XIV of the Transfer/Posting Policy of the Provincial Government. Any other remedy which this august Court deems fit that may also be awarded in favor of the petitioners."</p> <p>2. Learned counsel for petitioners at the outset requested that he would be satisfied, if respondent No. 1 is directed to decide departmental appeals of petitioners within fortnight.</p>



ATTESTED

(D.O.)
 HONBLE MR. JUSTICE IHTIAC JERAMIN
 HONBLE MR. JUSTICE WIQAR AHMAD

ATTESTED
 Examiner
 Peshawar High Court Bench
 Mingora Dar-ul-Qaza, Swat.

3. Request of learned counsel for petitioners seems genuine. Respondent No. 1 i.e. Secretary E&SE Department, Khyber Pakhtunkhwa is therefore directed to decide departmental appeals of petitioners within a period of fourteen days positively, after receipt of order of this Court but strictly in accordance with law and rules.

4. The petition in hand is disposed of accordingly.

Announced
Dt: 01.09.2020

[Handwritten signature]
JUDGE

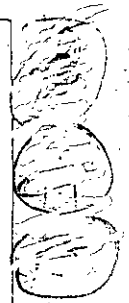
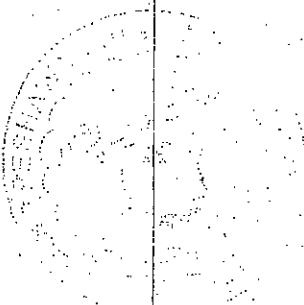
[Handwritten signature]
JUDGE

S.No. 62
 Name of Applicant [Handwritten]
 Date of Presentation of Application 10-09-2020
 Date of Completion of Copies 10-09-2020
 No. of Copies 06
 Urgent Fee _____
 Fee Charged 0241
 Date of Delivery of Copies 10-09-2020

Certified to be a true copy

[Handwritten signature]
10/09/2020

EXAMINE
 The Hon'ble High Court, Mingora/Jhelum/Jalalpur, Swat
 instituted Under Article 17 of Constitution of Pakistan Order 1974



Office
02/09

ATTESTED

[Handwritten signature]



ANNEXURE F

13

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
No. SO(PE)E&SED/2-1/General Transfer/Posting /2020
Dated Peshawar the 31.08.2020



To:

The Director,
Elementary & Secondary Education,
Khyber Pakhtunkhwa,
Peshawar.

Subject: - APPEAL FOR WITHDRAWAL OF POSTINGS/TRANSFERS ORDER IN
R/O ADEOs/ASDEOs (M/F) OFFICES DISTRICT DIR UPPER

Dear Sir,


I am directed to refer to the subject noted above and to intimate joint appeal of Mr. Shahid Aziz, SST GHS Kattan (B) Ex-ADEO (Secondary) Male Dir Upper, Muhammad Zada SST GHS Kattan (B) Ex-ADEO (Primary) Male Dir Upper, Muhammad Iqbal, ASDEO Brawal Ex-ADEO (P&D) Female Dir Upper and Peer Muhammad Ex-ASDEO Male Wari Circle Dir Upper, wherein they requested for withdrawal of transfer orders and restoration at their previous station/positions is accepted.

It is, therefore, directed to cancel the transfer orders of the above appellants immediately and submit compliance report for perusal of the competent authority.

Yours faithfully,

Encl: as above:


Endst: No & date even

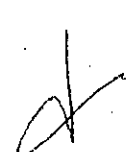

SECTION OFFICER (PRIMARY)

Copy forwarded to:-

1. The DEO (Male), District Dir Upper, for similar necessary action
2. PS to Secretary, Elementary & Secondary Education Department, Peshawar.
3. PS to Spl: Secretary, E&SE Department, Peshawar.

ATTESTED


SECTION OFFICER (PRIMARY)



DIRECTORATE OF ELEMENTARY & SECONDARY
EDUCATION KHYBER PAKHTUNKHWA PESHAWAR

OFFICE ORDER.

The Competent Authority is pleased to withdraw the Transfer/Posting Order bearing No. 29471-75 dated 11-08-2020 in respect of the following officers in the light of the Admin: Department letter No. SO (PE) E&SEED/2-1/General Transfer/Posting/2020 dated 31-08-2020, in the best interest of public service.

S.N	Name Designation	Previous Position
1	Mr. Shahid Aziz SST GHS Kattan	ADEO (M) Secondary at o/o DEO(M) Dir Upper.
2	Mr. Muhammad Zada SST SST GHS Kattan	ADEO (M) Primary at o/o DEO(M) Dir Upper.
3	Mr. Muhammad Iqbal ASDEO Barawal	ASDEO (M) Circle Barawal Dir Upper.
4	Mr. Peer Muhammad ASDEO Larjam	ASDEO (M) Circle Wari Dir Upper.

DIRECTOR.

Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Endst: No. 710-14 /F. No. 32-4/ ADEO's (M) Transfer.

Dated Peshawar the 14/05/2020.

Copy of the above is to the:-

1. Section Officer (Primary) w.r.t the letter No. SO (PE) E&SEED/2-1/General Transfer/Posting/2020 dated 31-08-2020.
2. District Education Officer (M/F) Dir Upper.
3. District Accounts officer Dir Upper.
4. Officer concerned.
5. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
6. Master File.

Deputy Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar



DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KHYBER PAKHTUNKHWA, PESHAWAR

OFFICE ORDER

The Comparative Evaluation of posts to be withdrawn in Transfer Posting Order bearing No. 2947/75 dated 21-08-2020 in view of the following posts in the light of the Admin. Department Order No. SO (PE) E&S/ED/2-1/General Transfer Posting/2020 dated 31-08-2020 in the best interest of public service.

Name & Designation	Previous Position
M. Akmal Aziz (ST. GIS) Kadian	ADEO (NO) Secondary (II) G.O. (AD) (D) Dir. Upper
M. Muhammad Zaki (ST. ST. GIS) Kadian	ADEO (NO) Primary (I) G.O. (AD) (D) Dir. Upper
M. Muhammad Iqbal (ASDEO) Barawal	ASDEO (AD) Circle Barawal Dir. Upper
M. Iqbal Muhammad (ASDEO) Layyah	ASDEO (NO) Circle Layyah Dir. Upper

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

F No. 31-3/ADEO's (A) Transfer

Dated Peshawar the 11/7/2020

Copy of the above is to the:-

1. Section Officer (Primary) w.r.t the letter No. SO (PE) E&S/ED/2-1/General Transfer Posting/2020 dated 31-08-2020.
2. District Education Officer (NWF) Dir Upper
3. District Accounts officer Dir Upper.
4. Officer concerned.
5. PA to Director (E&SE) Khyber Pakhtunkhwa Peshawar.
6. Master File.

Deputy Director (Ex-Off)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

ATTESTED



ANNEXURE A

15

DIRECTORATE OF ELEMENTARY & SECONDARY
EDUCATION KHYBER PAKHTUNKHWA PESHAWAR

OFFICE ORDER.

The Competent Authority is pleased to withdraw the Transfer/Posting Order bearing No. 210-14 dated 14-09-2020 in the light of the Admin: Department letter No. SO-(PE) E&SEED/2-1/General Transfer/Posting/2020 dated 16-09-2020, from the date of issuance, in the best interest of public service.

DIRECTOR

Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Endst. No. 751-05 F. No. 32-4/ ADEO's (M) Transfer. Dated Peshawar the 16/9/2020.

Copy of the above is to the:-

1. Section Officer (Primary) w.r.t the letter No. SO (PE) E&SEED/2-1/General Transfer/Posting/2020 dated 16-08-2020.
2. District Education Officer (M/F) Dir Upper
3. District Accounts officer Dir Upper.
4. Officer concerned.
5. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
6. Master File.

Deputy Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

ATTESTED

Anxure I

16

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

APPEAL NO. 11012 /2020

Diary No. 10499

Mr. Shahid Aziz, Presently posted as ADEO (Secondary), O/O DEO (M), Dir Upper Under transfer/posted as GHS Wari, Dir Upper.

..... APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officers Male & Female, District Dir Upper.
- 4- Mr. Hazrat Luqman, SST (IT), GHS Katan Bala under transfer/posted as ADEO (M), O/O DEO (M), Dir Upper.

..... RESPONDENTS

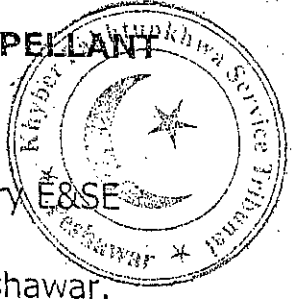
APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED TRANSFER ORDERS DATED 11.8.2020 & 16.9.2020 WHEREBY THE HAS BEEN TRANSFERRED ON THE BASIS OF POLITICAL INTERVENTION AGAINST TEACHING CADRE POST AND AGAINST THE APPELLATE ORDER DATED 16.9.2020 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS

PRAYER:

That on acceptance of this appeal the impugned orders dated 11.8.2020, 16.9.2020 and appellate order dated 16.9.2020 may very kindly be set aside and the respondents may kindly be directed not to transfer the appellant from the post of Assistant District Education Officer (Secondary) O/O the District Education Officer (M), Dir Upper. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

R/SHEWETH:
ON FACTS:

- 1- That appellant is the employee of the respondent Department and is serving as Assistant District Education Officer (Secondary) in the office of District Education Officer (M), District Dir upper quite efficiently and up to the entire satisfaction of his superiors.



ATTESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

Appeal No. 11012/2020
Shahid Aziz vs Govt



17

15.01.2021

Appellant present through counsel.

Riaz Khan Paindakheil learned Assistant Advocate General
alongwith Wahid Gul ADEO for official respondents No.1 to 3
present. Counsel for private respondent No.4 present.

Vide detailed judgment of today of this Tribunal placed on
file of service appeal.No.11009/2020 titled Muhammad Zada Vs.
Education Department, instant service appeal is accepted and
the impugned notification in respect of posting transfer of the
appellant, stands set aside. With no order as to costs. File be
consigned to the record room.

ANNOUNCED.
15.01.2021

(Mian Muhammad)
Member (E)

(Rozina Rehman)
Member (J)

Certified to be true copy

CLERK
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 19/3/21
Number of Words 800
Copying Fee 10.00
Urgent _____
Total _____
Name of Copyist _____
Date of Completion of Copy _____
Date of Delivery of Copy _____

ATTESTED

18



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.11009/2020



Date of Institution ... 22.09.2020
Date of Decision ... 15.01.2021

Muhammad Zada, presently posted as ADEO (Primary) Office of DEO (Male)
Dir Upper under transfer/posted as.GHS Katan, Dir Upper.
(Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary E&SE
Department, Khyber Pakhtunkhwa Peshawar and three others.
(Respondents)

Present:

Noor Muhammad Khattak,
Advocate ... For appellant.
Riaz Khan Paindakheil,
Assistant Advocate General ... For official respondents.
Asad Zeb Khan
Advocate ... For private respondent.

ROZINA REHMAN ... MEMBER (J)
MIAN MUHAMMAD ... MEMBER (E)

ATTESTED

EXAMINER,
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

JUDGMENT

ROZINA REHMAN, MEMBER: This judgment is intended to dispose of four
connected service appeals including the present one bearing No.11009/2020,
titled Muhammad Zada Vs. Education Department and others, as common
question of law and facts are involved therein.

ATTESTED

15/1/21

19



2. Appellants Muhammad Zada, Muhammad Iqbal, Shahid Aziz and Peer Muhammad have assailed the notification dated 11.08.2020 and 16.09.2020 whereby they have been transferred allegedly on the basis of political intervention and in violation of transfer/posting policy.

3. Precisely stated facts of the case are that appellants are the employees of the respondents' Department. They were transferred vide impugned notification and order dated 11.08.2020. Private respondent has recently been appointed on Adhoc & School Based Policy and as such, under the transfer posting policy, they are non-transferable employees of the department but despite that, respondents posted Muhammad Riaz and Abdul Aziz against the Management Cadre, therefore, the impugned notification and order dated 11.08.2020 are violative of Clause-I, II, III and IV of the transfer posting policy of the Provincial Government. The appellants feeling aggrieved from the impugned notification submitted departmental appeals where-after filed Writ Petition before the Hon'ble Peshawar High Court and the said Writ Petition was disposed of with direction to respondent to decide the departmental appeals. In response, departmental appeals were accepted by the appellate authority and directions were issued for cancellation of the impugned order dated 11.08.2020. Accordingly, the impugned order was withdrawn but astonishingly, the said cancellation order dated 14.09.2020 was withdrawn and the original impugned transfer order was restored, hence, the instant service appeals.

15/11/21

4. Learned counsel for appellants contends that the impugned notification and orders dated 11.08.2020 and 16.09.2020 are against law, facts and norms of natural justice, hence, not tenable. That the appellants were not treated by the Department in accordance with law and violated

ATTESTED
[Signature]
[Name]
[Title]

ATTESTED

20



Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He argued that the impugned notifications are against Clauses-I, II, III and IV of the transfer/posting policy of the Government of Khyber Pakhtunkhwa. He submitted that private respondents are from Teaching Cadre while the post against which they were posted is of Management Cadre and thus the treatment meted out to the appellants is a clear violation of the fundamental rights of the appellants and lastly, he submitted that transfer orders of all the appellants are politically motivated and were never issued in the public interest, therefore, appeals were requested to be accepted.

5. Conversely learned A.A.G assisted by learned counsel for private respondents, strongly opposed the contention of learned counsel for appellants and fully supported the impugned notifications. He argued that the appellants were transferred under a general transfer posting policy and the order was passed in the best interest of the public. That neither the appellants were victimized nor there was any malafide on the part of the respondents. It was further argued that there was neither political nor other ulterior motive behind the posting transfer of the appellants.

6. We are conscious of the fact that transfer of any Government servant can be made by the competent authority in the exigency of service and public interest. No Government servant has a legal right to remain posted at a particular place but where transfer order is malafide and for an extraneous consideration to accommodate some blue eyed chap is justifiable. In such an eventuality, the matter would squarely fall within the jurisdictional domain of Service Tribunal. In the instant case, vide notification dated 11.08.2020, the present appellants were transferred in the interest of public service. They filed departmental appeals on 18.08.2020 and also filed Writ Petitions in the

Handwritten signature
15/11/21

ATTESTED

Handwritten signature
S. A. KHAN
Member
Service Tribunal
Peshawar

ATTESTED

21



4

August Peshawar High Court which was disposed of with direction to the Secretary E&SE Department to decide departmental appeals within a period of 14 days and it was on 31.08.2020, when their departmental appeals were accepted and directions were issued for cancellation of the transfer orders of the appellants. Accordingly vide office order dated 14.09.2020, posting transfer order dated 11.08.2020 was withdrawn in the best interest of public service but again, vide office order dated 16.09.2020, order dated 14.09.2020 was withdrawn. As per Clause-I of the transfer posting policy of the Provincial Government, all the posting transfers shall be strictly in public interest and shall not be misused to victimize the Government servant. As per Clause-II of the policy, all Government servants are prohibited to exert political, administrative, or any other pressure upon the posting transfer authorities for seeking posting transfers of their choice and against the public interest. In the instant case, certain documents were placed on file which clearly show that all these transfers are politically motivated. The proposal of transfer posting available on file, was properly mentioned in the letter dated 16.06.2020 addressed to the District Education Officer (Male) Dir Upper vide which the District Education Officer was required to submit report in the light of proposal dated 14.05.2020 and accordingly the impugned notification was issued vide which all four appellants were transferred. Despite the fact that their departmental appeals were accepted and the impugned notification was withdrawn even then, another office order was made and the notification vide which the impugned notification had been cancelled/withdrawn, was once again withdrawn and impugned earlier notification was restored. No best interest of public service was shown.

15/11/21

ATTESTED

ATTESTED

[Signature]
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal

22



7. The Supreme Court of Pakistan in the case titled Zahid Akhtar v. Government of Punjab through Secretary, Local Government and Rural Development, Lahore and 2 others [PLD 1995 SC 530], held that:

"The transfer of a civil servant by political figures which are capricious and are based on the considerations not in the public interest, are not legally sustainable"

8. The Supreme Court of Pakistan has pronounced in various cases that the competent authority has power to pass a transfer order of a civil servant but such transfer order be passed fairly, justly, impartially, judiciously and shall not be passed arbitrarily, malafidely, motivated by political considerations and colourable exercise of the authority. The transfer order which is politically motivated, in colourable exercise of the authority, passed without wisdom and good sense, is not a judicious order, such an order is arbitrary and fanciful, which is not maintainable.

9. In view of the above, instant service appeals are accepted and impugned notification in respect of transfer posting of appellants, stands set aside. With no order as to costs. File be consigned to the record room.

ANNOUNCED.
15.01.2021

(Mian Muhammad)
Member (E)

(Rozina Rehman)
Member (J)

Certified to be true copy

AD
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application	19/3/21
Number of Words	2008
Copying Fee	22.00
Urgent	29
Total	
Name of Applicant	
Date of Completion of Copy	19-3-21
Date of Delivery of Copy	19-3-21

ATTESTED



DIRECTORATE OF ELEMENTARY & SECONDARY
EDUCATION KHYBER PAKHTUNKHWA PESHAWAR

23

NOTIFICATION

Arif

The Competent Authority is pleased to order transfer/posting of the following officers in their own pay scale, with immediate effect in the interest of public service.

S#	Name & Designation	From	To (posted as)	Remarks
1	Ajeeb Ullah ASDEO(M.C)	ASDEO(F) Larjam	ADEO(Secondary)at O/O DEO(M) Dir Upper	V#2
2	Mr. Shahid Aziz SST (T.C)	ADEO(Secondary)at O/O DEO(M) Dir Upper	Services placed at the disposal of DEO(M) Dir Upper	-
3	Mr. Qayum Khan SST	GHS Panakot	ADEO(Primary)at O/O DEO(M) Dir Upper.	V#4
4	Muhammad Zada SST (T.C)	ADEO((Primary)) at O/O DEO(M) Dir Upper	Services placed at the disposal of DEO(M) Dir Upper	-
5	Mr. Muzaffar Shah SST (T.C)	GHSS Barawal	ADEO(P&D)at O/O DEO(M) Dir Upper	AVP
6	Mr. Hazrat Luqman SST I (T.C)	GHS Kattan Bala	ADEO(P&D)at O/O DEO(F) Dir Upper	AVP

Note:

1. Posting/Adjustment of Teaching Cadre Officers shall be considered as stop-gap arrangement till the arrival of Management Cadre officers.
2. The order of the above mentioned Teaching cadre officers will be effective subject to the condition that they will give an undertaking/affidavit on legal paper/stamp paper to DEO (M/F) Dir Upper to the effect, not to claim seniority of Management cadre.
3. Charge Report should be submitted to all concerned.
4. No TA/ DA is allowed.
5. The terms & conditions mentioned in their appointment order as teaching cadre will remain intact.

DIRECTOR

Elementary & Secondary Education
Khyber Pakhtunkhwa

Endst: No. 7541-44 F.NO.32/Vol-4/ ADEOs (M) Transfers Dated the Peshawar 16/3 2021

Copy forwarded to the:

1. District Education Officer (M/F) Dir Upper.
2. District Accounts Officer. Dir Upper.
3. Officers Concerned.
4. Master Copy.

af
Deputy Director (Estab)

o/c Elementary & Secondary Education
Khyber Pakhtunkhwa

ATTESTED

16/03/2021

(24)

ANNEXURE K

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

COC NO. _____/2021

IN

APPEAL NO.11012/2020

Mr. Shahid Aziz, Presently Posted as ADEO (Scendary) O/O DEO, Dir Upper, and under transfer/posted services placed at the disposal of DEO (M) Dir Upper.

.....**Pétitioner**

VERSUS

- 1 Mr. Nadeem Afzal Chaudry, Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 2 Mr. Hafiz Muhammad Ibrahim, Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.

.....**Respondents/Contemnors**

**APPLICATION UNDER ARTICLE- 204 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF
PAKISTAN, 1973 READ WITH SECTION 3 & 4 OF THE
CONTEMPT OF COURT ORDINANCE, 2004 FOR
INITIATING CONTEMPT OF COURT PROCEEDINGS
AGAINST THE RESPONDENTS/CONTEMNORS**

RESPECTFULLY SHEWETH:

- 1- That the appellant filed the appeal No.11012/2020 in this August Tribunal against the transfer/posting vide order dated 11.08.2020 & 16.09.2020 which was allowed vide dated 15.01.2021 setting aside the impugned transfer order, vis a vis operating para is reproduced as under:-

"In view of the above, the instant service appeals are accepted and the impugned notification in respect of transfer posting of the appellants, stand set aside".

- 2- That the appellant moved an application along with attested copy of judgment to the respondents/contemnors to sustain the appellant at the current post and may not be transferred but the respondents/contemnors time and again disobeyed the judgment by issuing another order of transfer/posting and placing services of the petitioner at the disposal of DEO (M), Dir upper vide dated 16.03.2021 despite that respondents/contemnors violating judgment of this August Tribunal. Copy of application and Judgment and transfer/posting order dated 16.03.2021 are attached as annexure**A, B & C.**

ATTESTED

25



3- That it is pertinent to mention here that despite abovementioned judgment of this August Tribunal and then issuing transfer/posting through political indulgence by the respondents/contemnors falls in the contempt of Court.

4- That the acts and actions of the Respondents/Contemnors squarely fall within the ambit of the Contempt of the Court and as such they are liable to be proceeded for the Contempt and for the punishment under the law.

It is therefore, humbly prayed that on acceptance of this application, the Contempt of Court proceedings may graciously be initiated against the Respondents/Contemnors and they may be punished accordingly.

APPLICANT/ PETITIONER

SHAHID AZIZ

THROUGH:

NOOR MOHAMMAD KHATTAK

&

**AFRASIAB KHAN WAZIR
ADVOCATES**

ATTESTED



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT



NO. SO (E-I)E&AD/9-228/2021
Dated Peshawar, the April 23, 2021

To

The Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Subject: - CLOSURE AND DISINFECTION OF THE SERVICE
TRIBUNAL DUE TO COVID-19.

Dear Sir,

I am directed to refer to your office letter No. 676/st dated 08.04.2021 on the subject noted above and to state that the Competent Authority has been pleased to accord permission to close Khyber Pakhtunkhwa Service Tribunal as well as carry out disinfection in the premises to avoid further spreading of Corona Virus and loss of human life, till further orders.

Yours faithfully,

(ZIA.UL.HAQ)

SECTION OFFICER (ESTT. I)

BH. NO. 091-9210529

ATTESTED

ANNEXURE M

27

To

The Secretary (E&SE) Department,
Khyber Pakhtunkhwa, Peshawar.

**DEPARTMENTAL APPEAL AGAINST THE
IMPUGNED TRANSFER ORDER DATED 16-03-
2021 WHERE BY THE APPELLANT HAS BEEN
PREMATURELY TRANSFERRED.**

Respected sir,

It is stated with great respect that appellant is the employee of your good self Department has performed his duties with zeal and zest and up to the entire satisfaction of your good self.

That the appellant has time and again been transferred from one post to another and against which the appellant has preferred service appeal and the same has been accepted by the august service tribunal and the then transfer order has been set aside by the service tribunal.

That now again the appellant has been transferred prematurely from his post of Assistant District Education Officer (M) and my services has been placed at the disposal of DEO (M) Dir Upper.

It is therefore most humbly requested that by accepting of this departmental appeal the impugned order dated 16-03-2021 may very kindly be set aside and the appellant may not be disturb from his post.

Dated: 05-04-2021

APPELLANT



**SHAHID AZIZ
S S T (BPS-16) (T.C)**

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO: _____ OF 2021

Shahid Aziz (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Deptt. (RESPONDENT)
(DEFENDANT)

I/We Shahid Aziz

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2021

Shahid Aziz

CLIENTS

ACCEPTED

NOOR MOHAMMAD KHATTAK

Kamran Khan
KAMRAN KHAN

Umer Farooq Mohmand
UMER FAROOQ MOHMAND

&

Said Khan
SAID KHAN
ADVOCATES

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7068/2021


Mr. Shahid Aziz.....Appellant

Versus

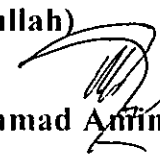
The Secretary, E&SE and others.....Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Reply with Counter Affidavit			1-6
2.	Reply to stay application			7
3.	Judgment in W.P. No.1775-P/2019	22.10.2019	Reply/1	8-9
4.	Letter	08.02.2019	Reply/2	10
5.	Judgments of this Hon'ble Tribunal passed in Service Appeal No.409/2019 & No.532/2019	07.08.2019 09.08.2019	Reply/3	11-18
6.	Wakalat Nama			19


Respondent No.4.
(Ajeebullah)

Through

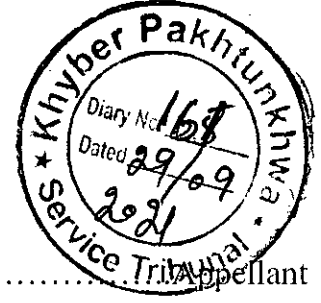

Muhammad Anin Ayub

&


Muhammad Ghazanfar Ali
Advocates, High Court

Dated: 31/08/2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7068/2021

Mr. Shahid Aziz.....Appellant

Versus

The Secretary, E&SE and others.....Respondents

REPLY ON BEHALF OF RESPONDENT NO.4 (MR. AJEEB ULLAH)

Respectfully Sheweth,

Preliminary Objections:

- I. That every Civil Servant is liable to be transferred anywhere within the Province as per the mandate of Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the policies being subservient to the parent Statute cannot override the same.
- II. The impugned transfer Notification dated 16.03.2021 was rightly passed by the official Respondents as the same was in accordance with Section xiii(a) which stipulates:-

“While considering posting/transfer proposals all the concerned authorities shall keep in mind the following:

- a) *To ensure the posting of proper person on proper posts.*

It is averred that appellant is from teaching cadre and cannot be posted against the management cadre which has been passed in light of the judgments of the Hon'ble Peshawar High Court Peshawar and this Hon'ble Tribunal as well. It is further expounded that by means of the Notification ibid services of the appellant were assigned to Respondent Department for

his adjustment against the proper post, therefore, no vested right of the appellant was infringed rather the competent authority exercised his powers in the best public interest and to the students who will suffer owing to the appointment of the management cadre in the schools.

- III. That the answering Respondent has wrongly been dragged into the instant litigation with which he has got no concern, therefore, the appellant is bound under Section-35A C.P.C. to pay compensatory cost to the answering Respondent.
- IV. That the appellant has got no cause of action and locus standi to file the appeal in hand.
- V. That the appellant having no vested right to perform his duty on a particular place. The impugned Notification reveals that:-

- 1. Posting/Adjustment of Teaching Cadre Officers shall be considered as stop-gap-arrangement till the arrival of the management cadre officers.*
- 2. The order of the above mentioned Teaching Cadre officers will be effective subject to the condition they will give an undertaking/affidavit on legal paper/stamp paper to DEO(M/F) Dir upper to the effect, not to claim Seniority.*

The above mentioned averments corroborates that Appellant being in the teaching cadre was rightly surrendered to the disposal of the Respondent Department for his further adjustment against the proper post, therefore, Appellant is estopped by his own conduct to file the instant service appeal before this Hon'ble Tribunal.

- VI. That Appellant has been performing his duties at the office of ADEO (Secondary), Dir Upper Since 2018. The Khyber Pakhtunkhwa Posting Transfer Policy envisaged that normal tenure of posting shall be for a period of two years thus, it is contended that he has rendered more than 4 years on the same station.
- VII. That the instant appeal is defective in its present shape as it doesn't meet the requirement of Section 7 of the Khyber Pakhtunkhwa Services Tribunal Act 1974.

VIII. The appellant has not approached the Hon'ble Tribunal with clean hands. As a matter of fact he has concealed material facts from the Hon'ble Tribunal rendering the appeal in hand not maintainable.

Reply to Facts:

1. Regarding para 1 of the Service Appeal it is narrated that appellant was rightly placed at the disposal of the Respondent Department for adjustment against the proper post. As Appellant being from the teaching cadre cannot be transferred on the post of Management Cadre, where he was adjusted on stop-gap-arrangement which does not confer any vested right upon the appellant to perform duty as per his choice. It is steadfast principle of law that stop-gap-arrangement is made for a specific period or the appointment/ transfer of the incumbent against the post who having the requisite qualification and experience. Moreover as advanced hereinabove that appellant has rendered more than 04 years service in the particular place as mentioned in the rules.

- 2&3. Not admitted as correct. Appellant concedes that he is from the teaching cadre but was posted against the Management cadre post. As expounded hereinabove that it was a stop-gap-arrangement which ceased to be existed upon the arrival of the suitable person. Moreover, the letter of the concerned MNA was infact in light of the law and rules and the judgments of this Hon'ble Tribunal because maximum civil servants who were from the teaching cadre were adjusted against the management cadre, the letter dated 16.06.2020 *Annexure-B Page 8* of the main Service Appeal reflects that the same was taken in to consideration by the Respondent Department by directing the concerned quarter “ *To submit your report and apprised this office which of them belongs to Management Cadre and which pertains to teaching cadre, So as to proceed further into the matter as per rules please.*” Thereafter, appellant was transferred from ADEO (Secondary) Dir Upper to GHS Wari vide Notification dated 11.08.2020. It is further elucidated that it is mentioned nowhere that the transfer of the appellant was made by the competent authority under the political influence of the MNA rather it was in accordance with law and rules.

- 4&5. Not admitted being not properly contended. Since the order dated 31.08.2020 *Annexure-F, Page-13* of the main service appeal was the clear negation of the posting/transfer policy thereby the office order dated 16.03.2020 (*Annexure-H page 15 of the main service appeal*) was issued in light of the General Transfer/Posting in the best interest of the public. Moreover, Posting/Transfer of a

civil servant is the domain of the competent authority who may transfer a civil servant anywhere in the best interest of the exigency of service and no limitation can be imposed in this scenario.

6. Regarding Para No.6 it is submitted that the actual facts at the time of arguments were not brought into the notice of this Hon'ble Tribunal. In order to explain the scenario it is elaborated that appellant is from Teaching Cadre and has to be adjusted against a proper post. It is momentous to aver here that by virtue of impugned Notification, the Answering Respondent No.4 belongs to Management cadre and was adjusted against the Management post i.e. ADEO (Secondary) at DEO (M) Dir Upper. The earlier Notification dated 11.08.2020 (*Annexure-C Page-9 of the Service appeal*) will further confirm that it was stop-gap-arrangement. It would absolutely be important to assert here that the description of the job of the answering Respondent No.4 is to observe the method of teaching in the Class Room of different Male Schools in the Division. In this in the backdrop it is submitted that the impugned order dated 16.03.2021 whereby private Respondents was posted against the Management Cadre was in accordance with law and rules. Moreover, through suspension order this Hon'ble Tribunal directed the answering Respondent No.4 to perform his duty as ASDEO (F) which is against the prevailed tradition of the society. It is further elaborated that the Service Appeals which were accepted vide Consolidated Judgment dated 15.01.2021 *page-18* of the main Service Appeal wherein it was conclusively held that the Transfer order was made upon the political influence and as per law adhoc appointees cannot be transferred, thus, both the cited observations of this Hon'ble Tribunal are out right lacking the same question in the instant service appeal as the same was passed in accordance with law and rules. An identical matter came for consideration before the Peshawar High Court, Peshawar in Writ Petition No.1775-P/2019 which was adjudicated in the light of earlier judgments passed in Writ Petitions bearing No.2937/2009 dated 18.11.2019, 3663/2012 dated 08.05.2013, 4274/2016 dated 11.01.2018, on 22.10.2019 (**Annex:-Reply/1**). Operative part of the Judgment is as under:-

3. *Perusal of the record would reveal that in pursuance of National Education Policy,2009, the Elementary & Secondary Education Department separated Management cadre from Teaching Cadre vide Notification dated 04.05.2009 and recently, in view of judgment of this court dated 11.01.2018 rendered in Writ Petition No.4274-P/2016, Respondents have also framed service Rules for Management cadre duly notified vide Notification dated 27.03.2019 but inspite of that, Respondents No.7&8, who belongs to teaching cadre have been adjusted in Management Cadre vide Impugned Notification, which is illegal, unlawful and in absolute; thus, the same is liable to be struck down/quashed.*

4. Resultantly, the Writ Petition is allowed and the impugned Notification 08.03.2019, whereby Respondent No. 7&8 have been transferred from Teaching Cadre to Management Cadre is set aside with the direction to the concerned Respondent(s) to strictly observe the law/policy by not adjusting the teaching Cadre staff in Management Cadre.

It is further elucidated that Respondent Department complied with the verdicts of the Peshawar High Court, Peshawar and issued directions by means of letter dated 08.02.2019 (Annex:-Reply/2) by holding that:-

“As the provincial government has taken a firm decisions that all those teachers belonging to teaching cadre shall be posted in the Education institution to teach the students according to their qualifications while those belonging to the Administration cadre shall only hold the posts relating to administration. Therefore, the petitioner must deliver according to the policy of the Government because they are highly qualified teachers, it is not befitting to hold administrative post, because they are getting benefits, but the students are suffering thus, they shall go to their respective places where they are required to do the job.

2. *In view of the above, the competent authority has desired that the above mentioned judgment of the PHC be implemented, in letter and spirit, under intimation to this department, for perusal of competent authority.*
7. Incorrect hence vehemently denied. Appellant was not prematurely transferred as under the law he is supposed to discharge his duty where the competent authority deems appropriate. Reliance is place on 2020 SCMR 1432 wherein it was held that:

--- Place of service ---prerogative of employer--- Government servant was required to serve where his employer want him to serve; it was not a choice or prerogative of the employee to claim a right to serve at a place that he choose to serve.

It is necessary to assert here that identical matter has already been adjudicated by this Hon'ble Tribunal in Service Appeal Nos.409/2019 decided on 07.08.2019 and 532/2019 decided on 09.08.2019 (Annex:-Reply/3) respectively. The operative part is as under:-

07. *As a sequel to the above, the appeal is accepted and the impugned order dated 08.02.2019 and 23.04.2019 are set aside. The respondents are directed to recall transfer orders of the appellant and private respondent No.5 within a period of one month and post suitable officers of the Management Cadre of the said posts.*

Therefore, the instant Service appeal is liable to be dismissed.

8&9. Regarding para No. 8&9 of the appeal it is submitted that under the law competent authority having exclusive power to transfer a Civil Servant anywhere in the Province.

Reply to Grounds:

A. Incorrect. The impugned order/Notification dated 16.03.2021 is in accordance with law to which no exception can be drawn. As already averred hereinabove as the same was passed under the policy and in light of the judgments of the Hon'ble Peshawar High Court, Peshawar and this Hon'ble Tribunal as well. The Apex Court time and again held in **2021 PLC (C.S) 420** that:-

---Where a law required doing of something in a particular manner it had to be done in the same manner and not otherwise.

Likewise, in **2021 PLC (C.S) 366** and **2020 PLC(C.S) 331**.


B-E. Incorrect hence not admitted. Appellant is from Teaching Cadre and was rightly transferred as per posting/transfer policy. The bare reading of the averments made by the appellant in the memo of service appeal reveals that he badly failed to point out any kind of violation of law and rule made by the answering department

F-H Incorrect hence not acceded. As detailed reply has already been advanced hereinabove

It is, therefore, humbly prayed that on acceptance of this reply, the appeal of appellant may graciously be dismissed with costs.


Respondent No.4

Through


Muhammad Amin Ayub,
Advocate, High Court

&



Muhammad Ghazanfar Ali,
Advocate, High Court

Dated: 31/08/2021

Affidavit

I, Ajeebullah, ASDEO, Upper Dir, do hereby solemnly affirm and declare on oath that the contents of this Reply are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Tribunal.

ATTESTED


Deponent

9-2021

10



11

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7068/2021

Mr. Shahid Aziz.....Appellant

Versus

The Secretary, E&SE and others.....Respondents

Reply on behalf of Respondent No.4 in response to Stay ApplicationRespectfully sheweth

1. Needs no reply.
2. Incorrect. Appellant has been performing his duty since 2018.
3. Incorrect.
4. Incorrect, the order impugned is according to law and hence unexceptionable.
5. Not admitted. The tenure of Respondent No.4 was incomplete rather when he was illegally transferred.
6. Incorrect. The appellant failed to fulfill the conditions for grant of stay. Furthermore the reply of the Answering Respondent No.4 may also be considered as integral part of the application.

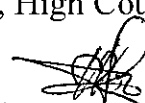
It is therefore, humbly prayed that the application may kindly be rejected being devoid of merits.


Respondent No.4

Through


Muhammad Amin Ayub,
Advocate, High Court


&


Muhammad Ghazanfar Ali,
Advocate, High Court

Dated: 31 /08/2021Affidavit

I, Ajeebullah, ASDEO, Upper Dir, do hereby solemnly affirm and declare on oath that the contents of this Replication are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Tribunal.

ATTESTED


Deponent



6

(P)

Reply/1

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

WP No. 1775-P/2019

JUDGMENT.

Date of hearing: 22.10.2019

Petitioner: Iftikhar Khan by: Mr. Amir Javed - Advocate.

Respondents: by: Sped. Officer Di. Teh. 004.

WAQAR AHMAD SETH, CJ:- Petitioners,

Iftikhar Khan and another, through the instant Writ Petition, seek issuance of an appropriate writ declaring the impugned Notification dated 08.03.2019, whereby respondents No. 7 & 8 belong to Teaching Cadre have been transferred/posted to Management Cadre/Administrative Cadre, is illegal, without lawful authority, having been issued in absolute disregard of law, judgments/orders passed by this Hon'ble Court in Writ Petition No. 2937/2009 dated 18.11.2019, Writ Petition No. 3663/2012 dated 08.05.2013, Writ Petition No. 4274/2016 dated 11.01.2018 and Notification dated 08.02.2019; thus, liable to be struck down/quashed. They further seek issuance

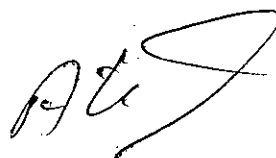
A.H.S.

of an appropriate writ declaring that any/all transfers/postings of respondents No. 7 and 8/Teaching cadre staff to the Management/Administrative Cadre posts within their home Districts is illegal, unlawful, in absolute disregard of law, judgments/orders passed by this Hon'ble Court and Notification dated 08.02.2019; thus, merits to be set aside/quashed with further direction to the respondents to follow and comply with the judgment of this Hon'ble Court passed in Writ Petition No. 2937/2009 dated 18.11.2009, Writ Petition No. 3663/2012 dated 08.05.2013, Writ Petition No. 4274/2016 dated 11.01.2018 and Notification dated 08.02.2019 issued in pursuance thereof and also issued direction to the respondents to act in accordance with law by transferring/posting/promotion officers of Management Cadre to the posts of District Education Officer and to restrain the respondents from taking any action/s in violation of law as

well as Government Policy duly notified vide Notification dated 08.02.2019.

2. Arguments heard and record perused.

3. Perusal of the record would reveal that in pursuance of National Education Policy, 2009, the Elementary & Secondary Education Department separated Management Cadre from Teaching Cadre vide Notification dated 04.05.2009 and recently, in view of judgment of this Court dated 11.01.2018 rendered in Writ Petition No. 4274-P/2016, respondents have also framed service rules for Management Cadre duly notified vide Notification dated 27.03.2019, but inspite of that, respondents No. 7 & 8, who belong to Teaching Cadre, have been adjusted in Management Cadre vide impugned Notification, which is illegal, unlawful and in absolute disregard of law; thus, the same is liable to be struck down/quashed.



4. Resultantly, the Writ Petition is allowed and the impugned Notification dated 08.03.2019, whereby respondents No. 7 & 8 have been transferred from Teaching Cadre to Management Cadre, is set aside with direction to the concerned respondent (s) to strictly observe the law/policy by not adjusting the teaching cadre staff in management cadre

ANNOUNCED.
Dated: 22.10.2019


Chief Justice


Judge

=====



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

NO. SO (E-I)/E&AD/0-88/2019
Dated Peshawar, the February 8, 2019

To

- 1) The Secretary to Government of Khyber Pakhtunkhwa, Higher Education Department.
- 2) The Secretary to Government of Khyber Pakhtunkhwa, E&SE Department.
- 3) The Secretary to Government of Khyber Pakhtunkhwa, Industries Department.

SUBJECT: - REQUISITIONING OF SERVICES.

Dear Sir,

I am directed to refer to the subject cited above and to say that the competent authority has observed that certain Teaching cadre officers are posted out of their cadre since long. Moreover, some teachers/professors are seeking requisitions from different Departments for posting against managerial or administrative posts, hindering deliverance of quality based education to the students. Consequently, competent authority has desired to invite your attention towards the following judgment of Peshawar High Court Peshawar (in WP No. 2937/2009) (Copy enclosed):-

"As the Provincial Government has taken a firm decisions that all those teachers belonging to teaching cadre shall be posted in the Education Institution to teach the students according to their qualifications while those belonging to administrative cadre shall only hold the posts relating to administration. Therefore, the petitioners must deliver according to the policy of the Government and because they are highly qualified teachers, it is not befitting to hold administrative posts, because they are getting benefits, but the students are suffering thus, they shall go their respective places, where they are required to do the job.

2. In view of the above, the competent authority has desired that the above mentioned judgment of the PHC be implemented, in letter and spirit, under intimation to this Department, for perusal of Competent Authority.

Yours faithfully,

(ISHTIAQ AHMAD)
SECTION OFFICER (Estt. I)

7c
Ate

(B)

Secondary Education Department Khyber Pakhtunkhwa, Peshawar (respondent No.3) vide order dated 16.08.2018 transferred the appellant Muhammad Usman (SST General) from GMS Kot Kat. District Tank and posted him as ADO (Sports) at the office of District Education Officer (Male) Tank. On the very next month of issuance of above mentioned order dated 16.08.2018, the respondent No.3 placed the services of the appellant at the disposal of DEO (Male) Tank for further adjustment at the vacant post of SST while private respondent No.7 (SST) was appointed in his place as ADEO (Sports) vide order dated 28.09.2018. Again on 06.11.2018 the previous transfer posting order dated 28.09.2018 regarding adjustment of the appellant as SST was withdrawn, resultantly the position of the appellant as ADEO (Sports) was restored. Finally on 17.12.2018 the above mentioned order dated 06.11.2018 was cancelled and the order in respect of private respondent No.7 as ADEO (Sports) was restored. This led to the present service appeal for restoration of transfer posting of the appellant as ADEO (Sports) Tank.

3. Learned counsel for the appellant argued that the impugned order dated 17.12.2018 is the outcome of malafide and a result of political victimization and that the same was issued to oblige the political figure.

4. As against that learned DDA assisted by the learned counsel for private respondent No.7 argued that the appellant has no vested right to claim posting...

8.2.2018

Handwritten signature and initials

influential person, got himself transferred to the post of ADEO (Sports) by using political channel; that earlier the appellant filed civil suit to regain his position as ADEO (Sports) District Tank; that initially the appellant was appointed as Class-IV official who secured promotion on the basis of 3rd Division B.A Degree and thereafter the appellant submitted BA Degree of 2nd Division which is illegal; that on the complaint of private respondent No.7 inquiry was also initiated against the appellant.

5. Arguments heard. File perused.

6. Both the appellant and private respondent No.7 belong to teaching cadre but were blessed with administrative cadre post one after the other.

7. Hon'ble Peshawar High Court Peshawar vide its judgment dated 18.11.2009 in Writ Petition No. 2937/2009 has observed that it is not befitting for teachers to hold administrative posts because they are getting benefits, but the students are suffering thus, they shall go to their respective places

8. The above mentioned judgment of Hon'ble Peshawar High Court Peshawar was implemented vide Notification dated 08.02.2019.

9. From the arguments advanced by the parties and record particularly the posting transfer orders available on file, it appeared that the Director Elementary & Secondary Education concerned has


2/10/2019
[Signature]

TESTED

14 (M)
misuse of authority.

10. The parties (SSTs) could not demonstrate any exigency due to which they were adjusted against the administrative cadre post.

11. In the light of above, the respondent department is directed to appoint suitable officer belonging to administrative cadre, as ADEO (Sports) District Tank. The posting orders of both the appellant and private respondent No.7 against the administrative cadre post of ADEO (Sports) Tank shall be treated as cancelled. The respondent department is also directed to forthwith recall, all the transfer orders of the teachers against the administrative post. The present service appeal is disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room.


(Ahmad Hassan)

18

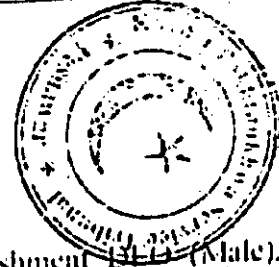
10

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 532/2019

Date of Institution ... 25.04.2019

Date of Decision ... 09.08.2019



Muhammad Tariq Shah, ADEO (BPS-16), ADEO Establishment (Male), Karak ... (Appellant)

VERSUS

The Secretary (E&SE) Education, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and four others. ... (Respondents)

MR. FAIMER ALI KHAN,
Advocate

--- For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney

--- For respondents.

MIR. SHAHID QAYUM KHATTAK,
Advocate

--- For respondent no.5.

MR. AHMAD HASSAN,
MR. MUHAMMAD HAMID MUGHAL

--- MEMBER (Executive)
--- MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

ATTESTED

ARGUMENTS

02. Learned counsel for the appellant argued that he was appointed as PST in 1999 and promoted to the post of SST on 28.10.2014. That after promotion, he was posted at GHS Turki Khel and continued performing duty satisfactory. That after completion of tenure at the above school, he was posted/transferred against the vacant post of ADO Establishment Primary at DEO(M) Office Karak vide order dated 20.11.2018. After lapse of one month his services were placed at the disposal

EX-33 MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Scanned with CamScanner
Karak for further posting, whereas respondent no.5 was posted at his



Handwritten signature

(Handwritten mark)

place vide order dated 15.01.2019 but was withdrawn on 08.02.2019. He further argued that respondent no.5 exerted political pressure through MINA concerned for cancellation of order dated 08.02.2019 and also produced relevant documentary evidence and in that shell transfer of the appellant was withdrawn due to political interference which was against the posting/transfer policy notified by the provincial government and instructions dated 27.02.2013 issued as a sequel to famous Anita Turak case.

03. Learned counsel for private respondent no.5 in rebuttal stated that initially the appellant challenged the original transfer order through Civil Suit filed in the court of Senior Civil Judge, Karak but this fact was concealed by him. He failed to file departmental appeal against original order dated 15.01.2019. Moreover, it was the appellant who exerted political pressure for withdrawal of transfer order dated 15.01.2019. Moreover, respondent no 5 was SSI (General), whereas the appellant belonged to SSI (Science Group) thus was not eligible to hold the post referred to

ATTESSED
 (Handwritten signature)
 (Official stamp)



Learned Deputy District Attorney argued that the appellant was transferred from GIS Turki Khel to GIS Paloosa Kamari due to poor law and order situation by the competent authority and thereafter adjusted against the post of ADO in BPS-17 in the office of DDO(M) Karak. That he had personal differences with the Headmaster Incharge, which was also a contributing factor in his transfer to the above office. That post of ADO (BPS-17) are earmarked for the officers of Management Cadre, therefore, official belonging to the teaching were not eligible to hold these posts. The can only be adjusted as stopgap arrangement in the exigency of service, thus the appellant cannot claim posting against the said post. He also

CS

Scanned with Section-10 of Khyber Pakhtunkhwa Civil Servants Act, 1973 and

AGJ

failure on the part of the appellant who assailed initial order dated 15.01.2019 before the appellate authority.

CONCLUSION

05. The appellant is aggrieved of withdrawal of initial posting transfer order dated 15.01.2019 through order dated 08.02.2019. It has been proved through the available record that this order was not assailed by the appellant before the competent departmental authority by way of filing departmental appeal. He knocked the door of Senior Civil Judge, Kurak by way of filing civil suit. After having succeeded in withdrawal of order dated 15.01.2019, he withdrew the civil suit. This fact was concealed by the appellant from this Tribunal and an ample proof to exhibit his conduct/behavior.

Instead of dilating on other aspects of the case, it would be in the interest of peace and fair play to highlight that the appellant and private respondent no.5 belonged to the same Cadre whereas this post was required to be filled from amongst the officials of Management Cadre. In these circumstances posting of both the officials against the Management Cadre was illegal and not sustainable in the eyes of law. It is regretted that respondent no.2 failed to discharge his duty in accordance with the law and rules. Silence on his part and by not agitating this important aspect of the case tantamount to culpable negligence. It also fell in the ambit of misuse of authority which constitutes misconduct thus he rendered himself liable to disciplinary proceedings under E&D Rules 2011. In order to sensitize the respondents about their duties/responsibilities attention is invited to judgment of Peshawar High Court, Peshawar dated 18.11.2009 passed in writ petition no.2957 of 2009 which was implemented vide notification dated 08.02.2019 issued by the

Handwritten signature and text: "Khayal Pakistan" and "Peshawar"

Handwritten signature



Establishment Department. If the respondents have no regard of inclusion...

Handwritten signature: A&C



18

superior courts and continue flouts their own instructions, then tall claims good governance would be nothing more than a cry in the wilderness.

07. As a sequel to the above, the appeal is accepted and impugned order dated 08.02.2019 and 23.04.2019 are set aside. The respondents are directed to recall transfer orders of the appellant and private respondent no.5 within a period of one month and post suitable officers of the Management Cadre against the said posts. Parties are left to bear their own costs. File be consigned to the record room.

Certified
True copy
Khyber Pakhtunkhwa
Service Commission
Peshawar

(MUHAMMAD HAMID MUGHAL)
MEMBER

(MAD HASSAN)
MEMBER



Scanned with
ANNOUNCED
09.08.2019

WAKALAT NAMA

IN THE COURT OF JKPK Service Tribunal Peshawar

Mr. Shahid Aziz

Appellant(s)/Petitioner(s)

VERSUS

Govt and others

Respondent(s)

I/We Respondent No 4 do hereby appoint **Mr. Muhammad Amin Ayub & Mr. Muhammad Ghazanfar Ali**, Advocates High Court in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by




Signature of Executants



Muhammad Amin Ayub
Advocate, High Court

&



Muhammad Ghazanfar Ali
Advocate, High Court

4-B, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7068/2021


Mr. Shahid Aziz.....Appellant

Versus

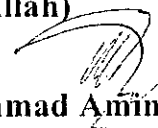
The Secretary, E&SE and others.....Respondents

INDEX


S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Reply with Counter Affidavit			1-6
2.	Reply to stay application			7
3.	Judgment in W.P. No.1775-P/2019	22.10.2019	Reply/1	8-9
4.	Letter	08.02.2019	Reply/2	10
5.	Judgments of this Hon'ble Tribunal passed in Service Appeal No.409/2019 & No.532/2019	07.08.2019 09.08.2019	Reply/3	11-18
6.	Wakalat Nama			19


Respondent No.4.
(Ajeebullah)

Through


Muhammad Amin Ayub

&


Muhammad Ghazanfar Ali
Advocates, High Court

Dated: 31/08/2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7068/2021

Mr. Shahid Aziz.....Appellant

Versus

The Secretary, E&SE and others.....Respondents

REPLY ON BEHALF OF RESPONDENT NO.4 (MR. AJEEB ULLAH)

Respectfully Sheweth,

Preliminary Objections:

- I. That every Civil Servant is liable to be transferred anywhere within the Province as per the mandate of Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the policies being subservient to the parent Statute cannot override the same.
- II. The impugned transfer Notification dated 16.03.2021 was rightly passed by the official Respondents as the same was in accordance with Section xiii(a) which stipulates:-

“While considering posting/transfer proposals all the concerned authorities shall keep in mind the following:

- a) To ensure the posting of proper person on proper posts.*

It is averred that appellant is from teaching cadre and cannot be posted against the management cadre which has been passed in light of the judgments of the Hon'ble Peshawar High Court Peshawar and this Hon'ble Tribunal as well. It is further expounded that by means of the Notification ibid services of the appellant were assigned to Respondent Department for

his adjustment against the proper post, therefore, no vested right of the appellant was infringed rather the competent authority exercised his powers in the best public interest and to the students who will suffer owing to the appointment of the management cadre in the schools.

- III. That the answering Respondent has wrongly been dragged into the instant litigation with which he has got no concern, therefore, the appellant is bound under Section-35A C.P.C. to pay compensatory cost to the answering Respondent.
- IV. That the appellant has got no cause of action and locus standi to file the appeal in hand.
- V. That the appellant having no vested right to perform his duty on a particular place. The impugned Notification reveals that:-

- 1. Posting/Adjustment of Teaching Cadre Officers shall be considered as stop-gap-arrangement till the arrival of the management cadre officers.*
- 2. The order of the above mentioned Teaching Cadre officers will be effective subject to the condition they will give an undertaking/affidavit on legal paper/stamp paper to DEO(M/F) Dir upper to the effect, not to claim Seniority.*

The above mentioned averments corroborates that Appellant being in the teaching cadre was rightly surrendered to the disposal of the Respondent Department for his further adjustment against the proper post, therefore, Appellant is estopped by his own conduct to file the instant service appeal before this Hon'ble Tribunal.

- VI. That Appellant has been performing his duties at the office of ADEO (Secondary), Dir Upper Since 2018. The Khyber Pakhtunkhwa Posting Transfer Policy envisaged that normal tenure of posting shall be for a period of two years thus, it is contended that he has rendered more than 4 years on the same station.
- VII. That the instant appeal is defective in its present shape as it doesn't meet the requirement of Section 7 of the Khyber Pakhtunkhwa Services Tribunal Act 1974.

VIII. The appellant has not approached the Hon'ble Tribunal with clean hands. As a matter of fact he has concealed material facts from the Hon'ble Tribunal rendering the appeal in hand not maintainable.

Reply to Facts:

1. Regarding para 1 of the Service Appeal it is narrated that appellant was rightly placed at the disposal of the Respondent Department for adjustment against the proper post. As Appellant being from the teaching cadre cannot be transferred on the post of Management Cadre, where he was adjusted on stop-gap-arrangement which does not confer any vested right upon the appellant to perform duty as per his choice. It is steadfast principle of law that stop-gap-arrangement is made for a specific period or the appointment/ transfer of the incumbent against the post who having the requisite qualification and experience. Moreover as advanced hereinabove that appellant has rendered more than 04 years service in the particular place as mentioned in the rules.

2&3. Not admitted as correct. Appellant concedes that he is from the teaching cadre but was posted against the Management cadre post. As expounded hereinabove that it was a stop-gap-arrangement which ceased to be existed upon the arrival of the suitable person. Moreover, the letter of the concerned MNA was infact in light of the law and rules and the judgments of this Hon'ble Tribunal because maximum civil servants who were from the teaching cadre were adjusted against the management cadre, the letter dated 16.06.2020 *Annexure-B Page 8* of the main Service Appeal reflects that the same was taken in to consideration by the Respondent Department by directing the concerned quarter "*To submit your report and apprised this office which of them belongs to Management Cadre and which pertains to teaching cadre, So as to proceed further into the matter as per rules please.*" Thereafter, appellant was transferred from ADEO (Secondary) Dir Upper to GHS Wari vide Notification dated 11.08.2020. It is further elucidated that it is mentioned nowhere that the transfer of the appellant was made by the competent authority under the political influence of the MNA rather it was in accordance with law and rules.

4&5. Not admitted being not properly contended. Since the order dated 31.08.2020 *Annexure-F, Page-13* of the main service appeal was the clear negation of the posting/transfer policy thereby the office order dated 16.03.2020 (*Annexure-H page 15 of the main service appeal*) was issued in light of the General Transfer/Posting in the best interest of the public. Moreover, Posting/Transfer of a

civil servant is the domain of the competent authority who may transfer a civil servant anywhere in the best interest of the exigency of service and no limitation can be imposed in this scenario.

6. Regarding Para No.6 it is submitted that the actual facts at the time of arguments were not brought into the notice of this Hon'ble Tribunal. In order to explain the scenario it is elaborated that appellant is from Teaching Cadre and has to be adjusted against a proper post. It is momentous to aver here that by virtue of impugned Notification, the Answering Respondent No.4 belongs to Management cadre and was adjusted against the Management post i.e. ADEO (Secondary) at DEO (M) Dir Upper. The earlier Notification dated 11.08.2020 (*Annexure-C Page-9 of the Service appeal*) will further confirm that it was stop-gap arrangement. It would absolutely be important to assert here that the description of the job of the answering Respondent No.4 is to observe the method of teaching in the Class Room of different Male Schools in the Division. In this in the backdrop it is submitted that the impugned order dated 16.03.2021 whereby private Respondents was posted against the Management Cadre was in accordance with law and rules. Moreover, through suspension order this Hon'ble Tribunal directed the answering Respondent No.4 to perform his duty as ASDEO (F) which is against the prevailed tradition of the society. It is further elaborated that the Service Appeals which were accepted vide Consolidated Judgment dated 15.01.2021 *page-18* of the main Service Appeal wherein it was conclusively held that the Transfer order was made upon the political influence and as per law and rules appointees cannot be transferred, thus, both the cited observations of this Hon'ble Tribunal are out right lacking the same question in the instant service appeal as the same was passed in accordance with law and rules. An identical matter came for consideration before the Peshawar High Court, Peshawar in Writ Petition No.1775-P/2019 which was adjudicated in the light of earlier judgments passed in Writ Petitions bearing No.2937/2009 dated 18.11.2019, 3663/2012 dated 08.05.2013, 4274/2016 dated 11.01.2018, on 22.10.2019 (**Annex:-Reply/**). Operative part of the Judgment is as under:-

3. *Perusal of the record would reveal that in pursuance of National Education Policy,2009, the Elementary & Secondary Education Department separated Management cadre from Teaching Cadre vide Notification dated 04.05.2009 and recently, in view of judgment of this court dated 11.01.2018 rendered in Writ Petition No.4274-P/2016, Respondents have also framed service Rules for Management cadre duly notified vide Notification dated 27.03.2019 but inspite of that, Respondents No.7&8, who belongs to teaching cadre have been adjusted in Management Cadre vide Impugned Notification, which is illegal, unlawful and in absolute; thus, the same is liable to be struck down/quashed.*

4. Resultantly, the Writ Petition is allowed and the impugned Notification 08.03.2019, whereby Respondent No. 7&8 have been transferred from Teaching Cadre to Management Cadre is set aside with the direction to the concerned Respondent(s) to strictly observe the law/policy by not adjusting the teaching Cadre staff in Management Cadre.

It is further elucidated that Respondent Department complied with the verdicts of the Peshawar High Court, Peshawar and issued directions by means of letter dated 08.02.2019 (Annex:-Reply/2) by holding that:-

“As the provincial government has taken a firm decisions that all those teachers belonging to teaching cadre shall be posted in the Education institution to teach the students according to their qualifications while those belonging to the Administration cadre shall only hold the posts relating to administration. Therefore, the petitioner must deliver according to the policy of the Government because they are highly qualified teachers, it is not befitting to hold administrative post, because they are getting benefits, but the students are suffering thus, they shall go to their respective places where they are required to do the job.

2. *In view of the above, the competent authority has desired that the above mentioned judgment of the PHC be implemented, in letter and spirit, under intimation to this department, for perusal of competent authority.*
7. Incorrect hence vehemently denied. Appellant was not prematurely transferred as under the law he is supposed to discharge his duty where the competent authority deems appropriate. Reliance is place on 2020 SCMR 1432 wherein it was held that:

--- Place of service ---prerogative of employer--- Government servant was required to serve where his employer want him to serve; it was not a choice or prerogative of the employee to claim a right to serve at a place that he choose to serve.

It is necessary to assert here that identical matter has already been adjudicated by this Hon'ble Tribunal in Service Appeal Nos.409/2019 decided on 07.08.2019 and 532/2019 decided on 09.08.2019 (Annex:-Reply/3) respectively. The operative part is as under:-

07. *As a sequel to the above, the appeal is accepted and the impugned order dated 08.02.2019 and 23.04.2019 are set aside. The respondents are directed to recall transfer orders of the appellant and private respondent No.5 within a period of one month and post suitable officers of the Management Cadre of the said posts.*

Therefore, the instant Service appeal is liable to be dismissed.

8&9. Regarding para No. 8&9 of the appeal it is submitted that under the law competent authority having exclusive power to transfer a Civil Servant anywhere in the Province.

Reply to Grounds:

A. Incorrect. The impugned order/Notification dated 16.03.2021 is in accordance with law to which no exception can be drawn. As already averred hereinabove the same was passed under the policy and in light of the judgments of the Hon'ble Peshawar High Court, Peshawar and this Hon'ble Tribunal as well. The Apex Court time and again held in **2021 PLC (C.S) 420** that:-

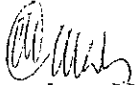
---Where a law required doing of something in a particular manner it had to be done in the same manner and not otherwise.

Likewise, in **2021 PLC (C.S) 366** and **2020 PLC(C.S) 331**.

B-E. Incorrect hence not admitted. Appellant is from Teaching Cadre and was rightly transferred as per posting/transfer policy. The bare reading of the averments made by the appellant in the memo of service appeal reveals that he badly failed to point out any kind of violation of law and rule made by the answering department

F-H. Incorrect hence not acceded. As detailed reply has already been advanced hereinabove

It is, therefore, humbly prayed that on acceptance of this reply, the appeal of appellant may graciously be dismissed with costs.


Respondent No.4

Through


Muhammad Amin Ayub,
Advocate, High Court

&



Muhammad Ghazanfar Ali,
Advocate, High Court

Dated: 31/08/2021

Affidavit

I, Ajeebullah, ASDEO, Upper Dir, do hereby solemnly affirm and declare on oath that the contents of this Reply are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Tribunal.

ATTESTED


Deponent

221

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7068/2021

Mr. Shahid Aziz.....Appellant

Versus


The Secretary, E&SE and others.....Respondents

Reply on behalf of Respondent No.4 in response to Stay Application


Respectfully sheweth

1. Needs no reply.
2. Incorrect. Appellant has been performing his duty since 2018.
3. Incorrect.
4. Incorrect, the order impugned is according to law and hence unexceptionable.
5. Not admitted. The tenure of Respondent No.4 was incomplete rather when he was illegally transferred.
6. Incorrect. The appellant failed to fulfill the conditions for grant of stay. Furthermore the reply of the Answering Respondent No.4 may also be considered as integral part of the application.


It is therefore, humbly prayed that the application may kindly be rejected being devoid of merits.


Respondent No.4

Through


Muhammad Amin Ayub,
Advocate, High Court

&



Muhammad Ghazanfar Ali,
Advocate, High Court

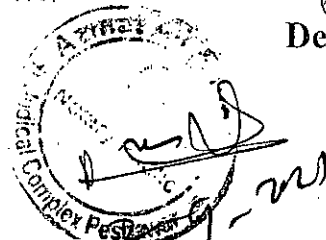
Dated: 31 /08/2021

Affidavit

I, Ajeebullah, ASDEO, Upper Dir, do hereby solemnly affirm and declare on oath that the contents of this Replication are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Tribunal.

ATTESTED


Deponent



8

(P)

Reply / 1

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

WP No. 1775-P/2019

JUDGMENT.

Date of hearing: 22.10.2019

Petitioner:

Iftikhar Khan by: *No. Amir Javed - Sheikh*

Respondents:

by: Sajid Qureshi Ali Shah O.A.

WAQAR AHMAD SETH, CJ:- Petitioners,

Iftikhar Khan and another, through the instant Writ Petition,

seek issuance of an appropriate writ declaring the impugned

Notification dated 08.03.2019, whereby respondents No. 7 &

8 belong to Teaching Cadre have been transferred/posted to

Management Cadre/Administrative Cadre, is illegal, without

lawful authority, having been issued in absolute disregard of

law, judgments/orders passed by this Hon'ble Court in Writ

Petition No. 2937/2009 dated 18.11.2019, Writ Petition No.

3663/2012 dated 08.05.2013, Writ Petition No. 4274/2016

dated 11.01.2018 and Notification dated 08.02.2019; thus,

liable to be struck down/quashed. They further seek issuance


of an appropriate writ declaring that any/all transfers/postings of respondents No. 7 and 8/Teaching cadre staff to the Management/Administrative Cadre posts within their home Districts is illegal, unlawful, in absolute disregard of law, judgments/orders passed by this Hon'ble Court and Notification dated 08.02.2019; thus, merits to be set aside/quashed with further direction to the respondents to follow and comply with the judgment of this Hon'ble Court passed in Writ Petition No. 2937/2009 dated 18.11.2009, Writ Petition No. 3663/2012 dated 08.05.2013, Writ Petition No. 4274/2016 dated 11.01.2018 and Notification dated 08.02.2019 issued in pursuance thereof and also issued direction to the respondents to act in accordance with law by transferring/posting/promotion officers of Management Cadre to the posts of District Education Officer and to restrain the respondents from taking any action/s in violation of law as


well as Government Policy duly notified vide Notification dated 08.02.2019.

2. Arguments heard and record perused.
3. Perusal of the record would reveal that in pursuance of National Education Policy, 2009, the Elementary & Secondary Education Department separated Management Cadre from Teaching Cadre vide Notification dated 04.05.2009 and recently, in view of judgment of this Court dated 11.01.2018 rendered in Writ Petition No. 4274-P/2016, respondents have also framed service rules for Management Cadre duly notified vide Notification dated 27.03.2019, but inspite of that, respondents No. 7 & 8, who belong to Teaching Cadre, have been adjusted in Management Cadre vide impugned Notification, which is illegal, unlawful and in absolute disregard of law; thus, the same is liable to be struck *h* down/quashed.

4. Resultantly, the Writ Petition is allowed and the impugned Notification dated 08.03.2019, whereby respondents No. 7 & 8 have been transferred from Teaching Cadre to Management Cadre, is set aside with direction to the concerned respondent (s) to strictly observe the law/policy by not adjusting the teaching cadre staff in management cadre

ANNOUNCED.
Dated: 22.10.2019


Chief Justice


Judge

=====



10

Reply/2

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

NO. SO (E-1)/E&AD/D-08/2019
Dated Peshawar, the February 8, 2019

To

- 1) The Secretary to Government of Khyber Pakhtunkhwa, Higher Education Department
- 2) The Secretary to Government of Khyber Pakhtunkhwa, E&SE Department.
- 3) The Secretary to Government of Khyber Pakhtunkhwa, Industries Department.

SUBJECT: - REQUISITIONING OF SERVICES.

Dear Sir,

I am directed to refer to the subject cited above and to say that the competent authority has observed that certain Teaching cadre officers are posted out of their cadre since long. Moreover, some teachers/professors are seeking requisitions from different Departments for posting against managerial or administrative posts, hindering deliverance of quality based education to the students. Consequently, competent authority has desired to invite your attention towards the following judgment of Peshawar High Court Peshawar (in WP No. 2937/2009) (Copy enclosed):-

"As the Provincial Government has taken a firm decisions that all those teachers belonging to teaching cadre shall be posted in the Education Institution to teach the students according to their qualifications while those belonging to administrative cadre shall only hold the posts relating to administration. Therefore, the petitioners must deliver according to the policy of the Government and because they are highly qualified teachers, it is not befitting to hold administrative posts, because they are getting benefits, but the students are suffering thus, they shall go their respective places, where they are required to do the job.

2. In view of the above, the competent authority has desired that the above mentioned judgment of the PHC be implemented, in letter and spirit, under intimation to this Department, for perusal of Competent Authority.

Yours faithfully,

(SHTIAG AHMAD)
SECTION OFFICER (Estt. I)

Secondary Education Department Khyber Pakhtunkhwa, Peshawar (respondent No.3) vide order dated 16.08.2018 transferred the appellant Muhammad Usman (SST General) from GMS Kot Kat, District Tank and posted him as ADO (Sports) at the office of District Education Officer (Male) Tank. On the very next month of issuance of above mentioned order dated 16.08.2018, the respondent No.3 placed the services of the appellant at the disposal of DEO (Male) Tank for further adjustment at the vacant post of SST while private respondent No.7 (SST) was appointed in his place as ADEO (Sports) vide order dated 28.09.2018. Again on 06.11.2018 the previous transfer posting order dated 28.09.2018 regarding adjustment of the appellant as SST was withdrawn, resultantly the position of the appellant as ADEO (Sports) was restored. Finally on 17.12.2018 the above mentioned order dated 06.11.2018 was cancelled and the order in respect of private respondent No.7 as ADEO (Sports) was restored. This led to the present service appeal for restoration of transfer posting of the appellant as ADEO (Sports) Tank.

3. Learned counsel for the appellant argued that the impugned order dated 17.12.2018 is the outcome of malafide and a result of political victimization and that the same was issued to oblige the political figure.

4. As against that learned DDA assisted by the learned counsel for private respondent No.7 argued that the appellant has no vested right to claim restoration.

17.12.2018

17.12.2018

17.12.2018

influential person, got himself transferred to the post of ADEO (Sports) by using political channel; that earlier the appellant filed civil suit to regain his position as ADEO (Sports) District Tank; that initially the appellant was appointed as Class-IV official who secured promotion on the basis of 3rd Division B.A Degree and thereafter the appellant submitted BA Degree of 2nd Division which is illegal; that on the complaint of private respondent No.7 inquiry was also initiated against the appellant.

5. Arguments heard. File perused.

6. Both the appellant and private respondent No.7 belong to teaching cadre but were blessed with administrative cadre post one after the other.

7. Hon'ble Peshawar High Court Peshawar vide its judgment dated 18.11.2009 in Writ Petition No. 2937/2009 has observed that it is not befitting for teachers to hold administrative posts because they are getting benefits, but the students are suffering thus, they shall go to their respective places

8. The above mentioned judgment of Hon'ble Peshawar High Court Peshawar was implemented vide Notification dated 08.02.2019.

9. From the arguments advanced by the parties and record particularly the posting transfer orders available on file, it appeared that the Director Elementary & Secondary Education concerned has

2/8/2019

TESTED

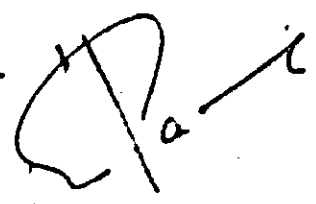
misuse of authority.

10. The parties (SSTs) could not demonstrate any exigency due to which they were adjusted against the administrative cadre post.

11. In the light of above, the respondent department is directed to appoint suitable officer belonging to administrative cadre, as ADEO (Sports) District Tank. The posting orders of both the appellant and private respondent No.7 against the administrative cadre post of ADEO (Sports) Tank shall be treated as cancelled. The respondent department is also directed to forthwith recall, all the transfer orders of the teachers against the administrative post. The present service appeal is disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room.



Ahmad Hassan

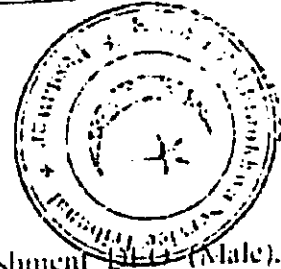


BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 532/2019

Date of Institution ... 25.04.2019

Date of Decision .. 09.08.2019



Muhammad Tariq Shah, ADEO. (BPS-16), ADEO Establishment (Male),
Karak ... (Appellant)

VERSUS

The Secretary (E&SE) Education, Government of Khyber Pakhtunkhwa, Civil
Secretariat, Peshawar and four others. ... (Respondents)

MR. FAIMUR ALI KHAN,
Advocate

--- For appellant.

MR. MUHAMMAD IAN,
Deputy District Attorney

--- For respondents.

MR. SHAHID QAYUM KHATTAK,
Advocate

--- For respondent no.5.

MR. AHMAD HASSAN,

--- MEMBER (Executive)

MR. MUHAMMAD HAMID MUGHAL

--- MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the
parties heard and record perused.

ATTESTED

ARGUMENTS

02. Learned counsel for the appellant argued that he was appointed as PST in 1999 and promoted to the post of SST on 28.10.2014. That after promotion, he was posted at GHS Turki Khel and continued performing duty satisfactory. That after completion of tenure at the above school, he was posted/transferred against the vacant post of ADO Establishment Primary at DEO(M) Office Karak vide order dated 20.11.2018. After lapse of one month his services were placed at the disposal

EN-MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



of Mr. ADEO(M) Karak for further posting, whereas respondent no.5 was posted at his
ComScanner

2

place vide order dated 15.01.2019 but was withdrawn on 08.02.2019. He further argued that respondent no 5 exerted political pressure through MNA concerned for cancellation of order dated 08.02.2019 and also produced relevant documentary evidence and in nut shell transfer of the appellant was withdrawn due to political interference which was against the posting/transfer policy notified by the provincial government and instructions dated 27.02.2013 issued as a sequel to famous Anita Turab case.

05. Learned counsel for private respondent no.5 in rebuttal stated that initially the appellant challenged the original transfer order through Civil Suit filed in the court of Senior Civil Judge, Karak but this fact was concealed by him. He failed to file departmental appeal against original order dated 15.01.2019. Moreover, it was the appellant who exerted political pressure for withdrawal of transfer order dated 15.01.2019. Moreover, respondent no 5 was SSI (General), whereas the appellant belonged to SSI (Science Group) thus was not eligible to hold the post referred to above.

ATTESTED
 [Signature]
 [Stamp]

Learned Deputy District Attorney argued that the appellant was transferred from GIS Turki Khel to GIS Paloosa Kamari due to poor law and order situation by the competent authority and thereafter adjusted against the post of ADO in BPS-10 in the office of DB-OM) Karak. That he had personal differences with the Headmaster Incharge, which was also a contributing factor in his transfer to the above office. That post of ADO (BPS-17) are earmarked for the officers of Management Cadre, therefore, official belonging to the teaching were not eligible to hold these posts. The can only be adjusted as stopgap arrangement in the exigency of service, thus the appellant cannot claim posting against the said post. He also

CS [highlighted] Section-10 of Khyber Pakhtunkhwa Civil Servants Act, 1973 and

25
17

Failure on the part of the appellant who assailed initial order dated 15.01.2019 before the appellate authority.

CONCLUSION

05. The appellant is aggrieved of withdrawal of initial posting transfer order dated 15.01.2019 through order dated 08.02.2019. It has been proved through the available record that this order was not assailed by the appellant before the competent departmental authority by way of filing departmental appeal. He knocked the door of Senior Civil Judge, Karak by way of filing civil suit. After having succeeded in withdrawal of order dated 15.01.2019, he withdrew the civil suit. This fact was concealed by the appellant from this Tribunal and an ample proof to exhibit his conduct/behavior.

EXCISE
Rajinder Pal Singh, Jhara
Peshawar

Instead of dilating on other aspects of the case, it would be in the interest of justice and fair play to highlight that the appellant and private respondent no 5 changed to the Team 1 whereas this post was required to be filled from amongst the officials of Management Cadre. In these circumstances posting of both the officials against the Management Cadre was illegal and not sustainable in the eyes of law. It is regretted that respondent no.2 failed to discharge his duty in accordance with the law and rules. Silence on his part and by not agitating this important aspect of the case tantamount to culpable negligence. It also fell in the ambit of misuse of authority which constitutes misconduct thus he rendered himself liable to disciplinary proceedings under E&D Rules 2011. In order to sensitize the respondents about their duties/responsibilities attention is invited to judgment of Peshawar High Court, Peshawar dated 18.11.2009 passed in writ petition no 2977-2009 which was implemented vide notification dated 08.02.2019 issued by the Establishment Department. If the respondents have no record of misconduct...

100



18

superior courts and continue flouts their own instructions, then tall claims good governance would be nothing more than a cry in the wilderness.

07. As a sequel to the above, the appeal is accepted and impugned order dated 08.02.2019 and 23.04.2019 are set aside. The respondents are directed to recall transfer orders of the appellant and private respondent no.5 within a period of one month and post suitable officers of the Management Cadre against the said posts. Parties are left to bear their own costs. File be consigned to the record room.

Certified true copy
Ayub Khan
Service Tribunal
Peshawar

(MUHAMMAD HAMID MUGHAL)
MEMBER

(JAD HASSAN)
MEMBER



Scanned with
ANNOUNCED
09.08.2019

WAKALAT NAMA

IN THE COURT OF ICRC Service Tribunal Peshawar

Mr. Shabid Aziz

Appellant(s)/Petitioner(s)

VERSUS

Govt and others

Respondent(s)

I/We Respondent No 4 do hereby appoint
Mr. Muhammad Amin Ayub & Mr. Muhammad Ghazanfar Ali,
Advocates High Court in the above mentioned case, to do all or any of the
following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us, this _____

Attested & Accepted by

Signature
Signature of Executants

Signature
Muhammad Amin Ayub
Advocate, High Court

&

Signature
Muhammad Ghazanfar Ali
Advocate, High Court

4-B, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458

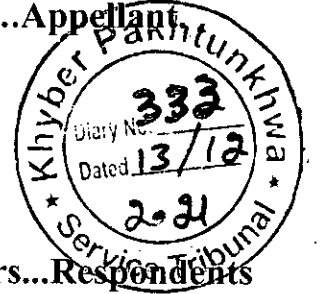
13/12
13/01/22

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

Service Appeal No: 7068/2021

Shahid Aziz SST District Dir Upper.....Appellant

VERSUS



Secretary (E&SE) Department, Khyber Pakhtunkhwa & others...Respondents

JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS No: 1-3.

Respectfully Sheweth:-

The Respondents submit as under:-

Preliminary Objections.

- 1 That the Appellant has got no cause of action/locus standi.
- 2 That the instant Service Appeal is badly time barred.
- 3 That the Appellant has concealed material facts from this Honorable Tribunal in the instant service appeal.
- 4 That the instant Service Appeal is based on mala-fide intentions.
- 5 That the Appellant has not come to this Honorable Tribunal with clean hands.
- 6 That the Appellant is not entitled for the relief he has sought from this Honorable Tribunal.
- 7 That the instant Service Appeal is against the prevailing law & rules.
- 8 That the instant Appeal is based on mala fide intentions just to put extra pressure on the Respondents for gaining illegal service benefits as the appellant is basically working against the SST B-16 (TC) post in the Respondent Department.
- 9 That the instant Service Appeal is not maintainable in its present form as the impugned orders & Notifications dated 16-03-2021 is legal & even in compliance of the Judgments dated 07-09-2019 in Service Appeal No.409/2019 Muhammad Usman Vs Govt; & Judgment dated 09-08-2019 in Service Appeal No.532/2019 Muhammad Tariq Shah Vs Govt; passed by this Honorable Tribunal. **(Copies of the Judgments are attached for ready reference).**

- 10 That the instant Service Appeal is bad for mis-joinder & non-joinder of the necessary parties.
- 11 That the instant Service Appeal is barred by law.
- 12 That no Departmental Appeal has been filed against above mentioned orders/Notification by the appellant to the Respondent Department, hence, got final.
- 13 That vide inquiry No.1120 dated 13-07-2020, the inquiry officer has strongly recommended not to post the appellant against a management cadre post in the District Dir Lower in view of his role in the fake & bogus appointments orders of Class-IV in District Dir Lower in the year 2018. **(Copy of the Inquiry report & appointment orders are attached for ready reference).**

ON FACTS.

- 1 That Para-1 is incorrect & denied on the grounds that the appellant is working against the SST B-16 in the Respondent Department as & has been posted vide the Notification dated 16-03-2021 against the SST BPS-16 (TC) post in the Respondent Department. **(Copy of the Notification dated 16-03-2021 is Annexure-A).**
2. That Para-2 is also incorrect & denied as the appellant has been reverted to his original post of SST B-16 post vide Notification dated 16-03-2021 by the competent authority in view of the availability of an officer of the management cadre to the Respondent Department & even in compliance of the aforesaid Judgments dated 07-08-2019 & 09-08-2019 of this Honorable Tribunal, hence, the plea of the appellant is liable to be rejected. **(Copies of the cited Judgments are attached as Annexure B & C).**
- 3 That Para-3 is incorrect hence denied on the grounds as agitated in para-2 of the present reply by the Respondents No. 1-3.
- 4 That Para-4 is also incorrect & denied as the competent authority has got powers & jurisdiction to transfer & post a civil servant under section 10 of civil servants Act 1973 wherever his services are required, hence, the claim of the appellant is without any legal force & justification, whereas, rest of para is relating to the record of the Honorable High Court, hence, needs no further comments on them.
- 5 That Para-4 is also incorrect & denied as the competent authority has got powers & jurisdiction to transfer & post a civil servant under section 10 of civil servants Act 1973 wherever his services are required, hence, the claim of the appellant is without any legal force & justification, whereas, rest of para is relating to the record of the Honorable High Court, hence, needs no further comments on them.
- 6 That Para-6 is correct to the extent of the impugned Notification dated 11-08-2020, whereby, the appellant has been transfer & posted against his original post of SST B-16 (TC), whereas, rest of para is relates to the record of the Honorable Tribunal, hence, needs no comments.

- 7 That Para-7 is correct that in compliance of the Judgment dated 01-09-2020 of the Honorable Court the impugned order dated 11-08-2020 has been withdrawn vide office order dated 14-09-2020 by the Respondent Department, however the appellant has been transferred & posted against his original post of SST in BPS-16 (TC) under the above cited provision of law as mentioned in para-4 of the present reply.
- 8 That Para-8 needs no comments being pertains to the record of this Honorable Tribunal, however, it is further submitted that the Notification dated 16-03-2021 is legal & liable to be maintained in view of the fore going submissions by the Respondents No.1-3.
- 9 That Para-9 is also incorrect & denied on the grounds that agitated in the fore going paras of the present reply, hence, needs no further comments, however, the Respondents further submit on the following grounds inter alia:-

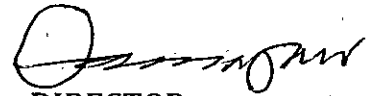
ON GROUNDS.

- A. **Incorrect & not admitted.** The appellant has been treated as per law & rules by the Respondent Department vide Notification dated 16-03-2021 in the instant case, hence, the stance of the appellant is baseless & liable to be rejected.
- B. **Incorrect & not admitted.** The appellant has been treated as per law, rules & policy by the Respondent Department in the instant case having no question of violating the provision of Articles-4 & 25 of the constitution of 1973 by the Respondents.
- C. **Incorrect & not admitted.** The statement of the appellant is without any cogent reason & justification on the grounds as agitated in the foregoing paras of the present reply by the Respondents having not violated the Clauses I, II, III & IV of the transfer/posting of the Khyber Pakhtunkhwa Govt; in the instant case, hence, the plea of the appellant is without any justification.
- D. **Incorrect & not admitted.** The stand of the appellant is without any cogent reason & legal justification & liable to be rejected as the notification dated 16-03-2021 is legal & liable to maintained.
- E. **Incorrect & not admitted.** The plea of the appellant is without legal justification & liable to be rejected as the appellant has been treated as per law, rules & policy by the Respondent Department in the instant case, hence, the stance of the appellant is baseless & liable to be rejected.
- F. **Incorrect & not admitted.** The plea of the appellant is without legal justification & liable to be rejected as the appellant has been treated as per law, rules & policy by the Respondent Department in the instant case, hence, the stance of the appellant is baseless & liable to be rejected as the notification dated 16-03-2021 is legal & liable to maintained.
- G. **Incorrect & not admitted.** The plea of the appellant is without legal justification & liable to be rejected as the appellant has been treated as per law, rules & policy by the Respondent Department in the instant case, hence, the stance of the appellant is baseless & liable to be rejected.

H. Legal. However, the Respondents also seek leave of this Honorable Tribunal to submit additional grounds, record & case law at the time of arguments on the date fixed.


In view of the above made submissions, it is most humbly requested that this Honorable Tribunal may very graciously be pleased to dismiss the instant Service Appeal in favor of the Respondents in the interest of justice.

Dated: ___/___/2021



DIRECTOR


E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 2 & 3)



SECRETARY
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 1)

AFFIDAVIT

I, Dr. Hayat Khan Asstt: Director (Litigation-II) E&SE Department Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents of the instant Parawise Comments are true & correct to the best of my knowledge & belief.



Deponent



NOTIFICATION

Annexure A

The Competent Authority is pleased to order transfer/posting of the following officers in their own pay scale, with immediate effect in the interest of public service.

S#	Name & Designation	From	To (posted as)	Remarks
1	Ajezb Ullah ASDEO(M.C)	ASDEO(F) Larjam	ADEO(Secondary)at O/O DEO(M) Dir Upper	V#2
2	Mr. Shahid Aziz SST (T.C)	ADEO(Secondary)at O/O DEO(M) Dir Upper	Services placed at the disposal of DEO(M) Dir Upper	
3	Mr. Qayum Khan SST	GHS Panokot	ADEO(Primary)at O/O DEO(M) Dir Upper	V#4
4	Muhammad Zada SST (T.C)	ADEO((Primary)) at O/O DEO(M) Dir Upper	Services placed at the disposal of DEO(M) Dir Upper	
5	Mr. Muzaffar Shah SST (T.C)	GHSS Barawal	ADEO(P&D)at O/O DEO(M) Dir Upper	AVP
6	Mr. Hazrat Luqman SST J (T.C)	GHS Kattan Bala	ADEO(P&D)at O/O DEO(F) Dir Upper	AVP

Note:

1. Posting/Adjustment of Teaching Cadre Officers shall be considered as stop-gap arrangement till the arrival of Management Cadre officers.
2. The order of the above mentioned Teaching cadre officers will be effective subject to the condition that they will give an undertaking/affidavit on legal paper/stamp paper to DEO (M/F) Dir Upper to the effect, not to claim seniority of Management cadre.
3. Charge Report should be submitted to all concerned.
4. No TA/ DA is allowed.
5. The terms & conditions mentioned in their appointment order as teaching cadre will remain intact.

DIRECTOR

Elementary & Secondary Education
Khyber Pakhtunkhwa

Endst: No. 7541-44 F.NO.32/Vol-4/ ADEOs (M) Transfers Dated the Peshawar: 16/3/2021

Copy forwarded to the:

1. District Education Officer (M/F) Dir Upper.
2. District Accounts Officer Dir Upper.
3. Officers Concerned.
4. Master Copy.

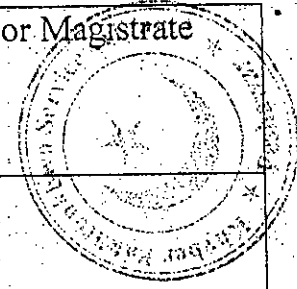
Deputy Director (Estab)

Elementary & Secondary Education
Khyber Pakhtunkhwa

ATTESTED

16/03/2021

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> Service Appeal No. 409/2019</p> <p style="text-align: right;">Date of Institution 01.04.2019 Date of Decision 07.08.2019</p> <p>Muhammad Usman S/o Khan Gul District Tank presently SST/ADEO (Sports), District Education Office, Tank.</p> <p style="text-align: right;">Appellant</p> <p style="text-align: center;">Versus</p> <ol style="list-style-type: none"> 1. Government of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education Department, Peshawar. 2. Deputy Secretary (Estab), Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar. 3. Director, Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar. 4. Assistant Director, Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar. 5. District Education Officer, (Male) Tank. 6. Muhammad Farooq, SST, GHS Umar Adda, Tehsil & District Tank. <p style="text-align: right;">Respondents</p> <p>07.08.2019 Mr. Muhammad Hamid Mughal-----Member(J) Mr. Ahmad Hassan -----Member(E)</p> <p style="text-align: center;"><u>JUDGMENT</u> <u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> Appellant present. Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney for official respondents present. Private respondent No.7 alongwith his counsel present.</p> <p>2. Brief facts of the case are that Director Elementary &</p>		



07.08.2019

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Secondary Education Department Khyber Pakhtunkhwa, Peshawar (respondent No.3) vide order dated 16.08.2018 transferred the appellant Muhammad Usman (SST General) from GMS Kot Kat, District Tank and posted him as ADO (Sports) at the office of District Education Officer (Male) Tank. On the very next month of issuance of above mentioned order dated 16.08.2018, the respondent No.3 placed the services of the appellant at the disposal of DEO (Male) Tank for further adjustment at the vacant post of SST while private respondent No.7 (SST) was appointed in his place as ADEO (Sports) vide order dated 28.09.2018. Again on 06.11.2018 the previous transfer posting order dated 28.09.2018 regarding adjustment of the appellant as SST was withdrawn, resultantly the position of the appellant as ADEO (Sports) was restored. Finally on 17.12.2018 the above mentioned order dated 06.11.2018 was cancelled and the order in respect of private respondent No.7 as ADEO (Sports) was restored. This led to the present service appeal for restoration of transfer posting of the appellant as ADEO (Sports) Tank.

3. Learned counsel for the appellant argued that the impugned order dated 17.12.2018 is the outcome of malafide and a result of political victimization and that the same was issued to oblige the political figure.

4. As against that learned DDA assisted by the learned counsel for private respondent No.7 argued that the appellant has no vested right to claim posting of his choice; that the appellant being an

7.8.2019

ATTACHED

influential person, got himself transferred to the post of ADEO (Sports) by using political channel; that earlier the appellant filed civil suit to regain his position as ADEO (Sports) District Tank; that initially the appellant was appointed as Class-IV official who secured promotion on the basis of 3rd Division B.A. Degree and thereafter the appellant submitted BA Degree of 2nd Division which is illegal; that on the complaint of private respondent No.7 inquiry was also initiated against the appellant.

5. Arguments heard. File perused.

6. Both the appellant and private respondent No.7 belong to teaching cadre but were blessed with administrative cadre post one after the other.

7. Hon'ble Peshawar High Court Peshawar vide its judgment dated 18.11.2009 in Writ Petition No. 2937/2009 has observed that it is not befitting for teachers to hold administrative posts because they are getting benefits, but the students are suffering thus, they shall go to their respective places

8. The above mentioned judgment of Hon'ble Peshawar High Court Peshawar was implemented vide Notification dated 08.02.2019.

9. From the arguments advanced by the parties and record particularly the posting transfer orders available on file, it appeared that the Director Elementary & Secondary Education concerned has no capability to face political pressure and that his actions, as made impugned in the pleadings of the parties, fall within the ambit of

ATTACHED

7.8.2018
 DIRECTOR
 Khayal Ahmad
 Service Tribunal,
 Peshawar

misuse of authority.

10. The parties (SSTs) could not demonstrate any exigency due to which they were adjusted against the administrative cadre post.

11. In the light of above, the respondent department is directed to appoint suitable officer belonging to administrative cadre, as ADEO (Sports) District Tank. The posting orders of both the appellant and private respondent No.7 against the administrative cadre post of ADEO (Sports) Tank shall be treated as cancelled. The respondent department is also directed to forthwith recall, all the transfer orders of the teachers against the administrative post. The present service appeal is disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

(Ahmad Hassan)
Member

(Muhammad Hamid Mughal)
Member

ANNOUNCED
05.08.2019

Certified to be true copy

Date of Presentation of Application 05-09-18
Number of Words 1600
Copying Fee 20/-
Urgent —
Total 20/-
Name of Copy [Signature]
Date of Completion of Copy 17-09-18
Date of Delivery of Copy 17-09-18



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 532/2019

Date of Institution ... 25.04.2019

Date of Decision ... 09.08.2019

Muhammad Tariq Shah, ADEO (BPS-16), ADEO Establishment DEO (Male),
Karak. (Appellant)

VERSUS

The Secretary (E&SE) Education, Government of Khyber Pakhtunkhwa, Civil
Secretariat, Peshawar and four others. (Respondents)

MR. TAIMUR ALI KHAN,
Advocate

--- For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney

--- For respondents.

MR. SHAHID QAYUM KHATTAK,
Advocate

--- For respondent no.5.

MR. AHMAD HASSAN,
MR. MUHAMMAD HAMID MUGHAL

--- MEMBER(Executive)
--- MEMBER(Judicial)

ATTESTED

EXCUTIVE MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the
parties heard and record perused.

ARGUMENTS

02. Learned counsel for the appellant argued that he was appointed as PST in 1999 and promoted to the post of SST on 28.10.2014. That after promotion, he was posted at GHS Turki Khel and contained performing duty satisfactory. That after completion of tenure at the above school, he was posted/transferred against the vacant post of ADO Establishment Primary at DEO(M) Office Karak vide order dated 20.11.2018. After lapse of one month his services were placed at the disposal of DEO(M) Karak for further posting, whereas respondent no.5 was posted at his

ATTESTED

Khyber Pakhtunkhwa
Service Commission
Peshawar

place vide order dated 15.01.2019 but was withdrawn on 08.02.2019. He further argued that respondent no.5 exerted political pressure through MNA concerned for cancellation of order dated 08.02.2019 and also produced relevant documentary evidence and in nut shell transfer of the appellant was withdrawn due to political interference which was against the posting/transfer policy notified by the provincial government and instructions dated 27.02.2013 issued as a sequel to famous Anita Turab case.

03. Learned counsel for private respondent no.5 in rebuttal stated that initially the appellant challenged the original transfer order through Civil Suit filed in the court of Senior Civil Judge, Karak but this fact was concealed by him. He failed to file departmental appeal against original order dated 15.01.2019. Moreover, it was the appellant who exerted political pressure for withdrawal of transfer order dated 15.01.2019. Moreover, respondent no.5 was SST (General), whereas the appellant belonged to SST (Science Group) thus was not eligible to hold the post referred to above.

04. Learned Deputy District Attorney argued that the appellant was transferred from GHS Turki Khel to GHS Paloosa Kamari due to poor law and order situation by the competent authority and thereafter adjusted against the post of ADO in BPS-16 in the office of DEO(M) Karak. That he had personal differences with the Headmaster Incharge, which was also a contributing factor in his transfer to the above office. That post of ADO (BPS-17) are earmarked for the officers of Management Cadre, therefore, official belonging to the teaching were not eligible to hold these posts. The can only be adjusted as stopgap arrangement in the exigency of service, thus the appellant cannot claim posting against the said post. He also highlighted Section-10 of Khyber Pakhtunkhwa Civil Servants Act, 1973 and

failure on the part of the appellant who assailed initial order dated 15.01.2019 before the appellate authority.

CONCLUSION

05. The appellant is aggrieved of withdrawal of initial posting/transfer order dated 15.01.2019 through order dated 08.02.2019. It has been proved through the available record that this order was not assailed by the appellant before the competent departmental authority by way of filing departmental appeal. He knocked the door of Senior Civil Judge, Karak by way of filing civil suit. After having succeeded in withdrawal of order dated 15.01.2019, he withdrew the civil suit. This fact was concealed by the appellant from this Tribunal and an ample proof to exhibit his conduct/behavior.

06. Instead of dilating on other aspects of the case, it would be in the interest of justice and fair play to highlight that the appellant and private respondent no.5 belonged to the Teaching Cadre, whereas this post was required to be filled from amongst the officials of Management Cadre. In these circumstances posting of both the officials against the Management Cadre was illegal and not sustainable in the eyes of law. It is regretted that respondent no.2 failed to discharge his duty in accordance with the law and rules. Silence on his part and by not agitating this important aspect of the case tantamount to culpable negligence. It also fell in the ambit of misuse of authority which constitutes misconduct thus he rendered himself liable to disciplinary proceedings under E&D Rules 2011. In order to sensitize the respondents about their duties/responsibilities attention is invited to judgment of Peshawar High Court, Peshawar dated 18.11.2009 passed in writ petition no.2937-P/2009 which was implemented vide notification dated 08.02.2019 issued by the Establishment Department. If the respondents have no regard of judgments of