

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	09.09.2015	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>PESHAWAR.</u></p> <p style="text-align: center;">APPEAL NO.41/2014</p> <p style="text-align: center;">(Gohar Ali -vs- Secretary Education (E&amp;SE) Peshawar and others).</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>ABDUL LATIF, MEMBER:</u></p> <p>Counsel for the appellant (Muhammad Asif Yousafzai, Advocate), Mr. Ziaullah, GP for official respondents and counsel for private respondent No.6 (Mr. Ashraf Ali Khattak, Advocate) present.</p> <p>2. The instant appeal has been filed under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act-1974 against the order dated 08.01.2014 passed on appeal of the appellant made against the order dated 21.12.2013. The appellant has prayed that order dated 08.01.2014 may be declared as illegal without lawful authority and the same may be modified by setting aside the order dated 21.12.2013 and restoring the order dated 30.09.2013.</p> <p>3. Brief facts of the case are that the appellant was working at a far-flung area and he requested for transfer which was allowed and order of transfer to GCMHS, Chowkara was made on 30.09.2013. The order was however conditional in that appellant was to take over charge after retirement of private respondent No.5 on 11.01.2014. That meanwhile private respondent No.6 through political influence of MPA Malik Qasim</p>

got himself mutually transferred with private respondent No.5 vide order dated 21.12.2013 by cancellation the order of transfer of the appellant dated 30.09.2013. Appellant submitted departmental appeal on 24.12.2013 which was rejected on flimsy grounds on 08.01.2014, hence the instant appeal on 09.01.2014.

4. Learned counsel for the appellant argued that order dated 08.01.2014 and 21.12.2013 were against the rules, norms of justice, principle of fair play, therefore, liable to be set aside. That order dated 21.12.2013 was made on the interference of concerned MPA and such involvement of public representative had been strongly condemned by the Supreme Court of Pakistan in different judgments. He further contended that order dated 21.12.2013 was based on malafide because no reasons had been given therein for cancelation of the earlier order of transfer of the appellant dated 30.09.2013. He further submitted that private respondent No.5 was going to retire from service on 11.01.2014 and as per information of the appellant private respondent No.5 had sold the said vacancy by getting a huge amount of money from private respondent No.6 which practice was very dangerous for Government Institutions. He prayed that the order dated 08.01.2014 and 21.12.2013 were against the law, rules and principle of fair play which may be set aside and original order of transfer of the appellant dated 30.09.2013 may be restored. He relied on this Tribunal judgment in service appeal No. 2746/2010 titled Muhammad Raziq and service appeal No. 801/2004 titled Dr. Muhammad Yahya.

5. Learned counsel for private respondent No.6 argued that Executive District Officer (E&SE) was the relative of the appellant and the appellant secured his transfer from GHS Esaf khel after two months of his appointment in that school and that too in advance of the availability of

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vacancy on account of retirement of private respondent No.5. He further argued that appellant also made political influence to secure the said transfer to the station of his choice. He further argued that respondent No.6 was transferred to his home station after rendering 18 years service at outside station. That respondent No.5 and 6 had applied for their mutual transfer which was kept pending by the former EDO and the same was given effect on transfer out of the then EDO by his successor in office. He further contended that order dated 21.12.2013 was passed by the competent authority in accordance with law/rules and norms of justice therefore maintainable in the eyes of law. He further argued that an authority who passes an order was also competent to withdraw the same order before its implementation and in the instant case the order dated 30.09.2013 was not implemented at the time of order of mutual transfer of private respondent No.5 and 6 vide order dated 21.12.2013. He prayed that the order dated 08.01.2014 and 21.12.2013 had been issued as per law/rules and policy and may be maintained and the appeal of the appellant being misplaced may kindly be dismissed. He relied on 2007 SCMR 599.

6. The learned Government Pleader adopted the arguments advanced by the learned counsel for private respondent No.6.

7. Arguments of the learned counsels for the parties heard at length and record perused with their assistance.

8. From perusal of the record it transpired that the competent authority passed order of transfer of the appellant on 30.09.2013 which were to take effect on 11.01.2014 i.e the date of retirement of private respondent No.5. The said order was subsequently modified by the same authority vide his order dated 21.12.2013 wherein mutual transfer of private respondent No.5 and 6 was given effect. It is pertinent to note that the previous order was

not yet implemented meaning thereby that the appellant had no locus-standi nor could he make a claim over the particular post or place of duty. Since the order dated 21.12.2013 was made by an authority who was competent to make such order, hence the Service Tribunal is constrained not to interfere in the instant case and the appeal being devoid of merits is accordingly dismissed. Parties are left to bear their own costs. File be consigned to the record.



(PIR BAKHSH SHAH)  
MEMBER



(ABDUL LATIF)  
MEMBER

ANNOUNCED  
09.09.2015

Respondent # 6

2007 S C M R 599

[Supreme Court of Pakistan]

Present: Sardar Muhammad Raza Khan and Nasir-ul-Mulk, JJ

ROSHAN KHAN, SET GOVERNMENT HIGH SCHOOL KUZ PAO, DISTRICT SHANGLA----  
Petitioner

Versus

DIRECTOR SCHOOLS AND LITERACY, N.-W.F.P., PESHAWAR and 4 others----Respondents

Civil Petition No.747-P of 2004, decided on 3rd October, 2006.

(On appeal from the judgment, dated 10-8-2004 passed by N.-W.F.P. Service Tribunal, Peshawar in Appeal No.205 of 2004).

North-West Frontier Province Civil Servants Act (XVIII of 1973)---

---S. 10---Rules of Business, (N.-W.F.P), 1974; R.21(2)---Transfer of civil servant---Political influence--Recommendation of Member of Provincial Assembly---Civil servant was a senior school teacher who assailed his transfer order before Service Tribunal but without any success---Plea raised by civil servant was that his transfer was politically motivated and on the recommendations of Member of Provincial Assembly---Validity---Transfer of civil servant under the orders of even a Minister was void and unlawful, being violative of R.21(2) read with Schedule V of Rules of Business, (N.-W.F.P.), 1974---Supreme Court, while condemning the role of Minister, that of tamed and subservient bureaucracy was also condemned and need for an upright, honest and strong bureaucracy was emphasized---Member of Provincial Assembly in view of background of political influence had been guilty of misconduct, unfair exploitation and malpractice that maligned the legislature and disrupted administration--Supreme Court converted petition for leave to appeal into appeal and set aside the transfer order of civil servant---Appeal was allowed.

Munawar Khan v. Niaz Muhammad 1993 SCMR 1287; Parwez Yunas Uppal's case PLJ 2000 (Tr.C) Service 473; Zahid Akhter's case PLD 1995 SC 530 and Sayyad Sikandar Ali Shah's case 2002 SCMR 1 124 fol.

Malik Shahzad Ahmed, Advocate Supreme Court, for Petitioner.

Khushdil Khan, Additional Advocate-General, N.-W.F.P. along with Respondents Nos.2 and 5.

Mir Adam Khan, Advocate-on-Record along with Pir Muhammad Khan, MPA and Hamid Iqbal, MPA on Court's call.

Date of hearing: 3rd October, 2006.

**JUDGMENT**

SARDAR MUHAMMAD RAZA KHAN, J.--- Roshan Khan, a Senior English Teacher of District

Political  
motivation  
in Transfer

Shangla seeks leave to appeal against the judgment dated 10-8-2004 of learned N.-W.F.P. Service Tribunal, Peshawar, whereby, his appeal was dismissed and his transfer order dated 8-3-2003 from Shangla to Government High School Kuz Pao was considered valid, within the contemplation of section 10 of N.-W.F.P. Civil Servants Act, 1973. The plea of the petitioner that his transfer was void being politically motivated, was not taken into consideration.

2. The petitioner alleges and claims to have served Education Department for 30 years and currently belonged to the senior class of teachers. He was holding the post of Assistant District Officer (M) Inspection, since 12-3-2002. Due to his honest and bold action against the teachers, absent from duty, eight teachers who were proceeded against accordingly, nursed grudge and departmental rivalry against the petitioner. They approached Mr. Pir Muhammad Khan MPA whom they had allegedly favoured in elections and thus with the active role of the MPA aforesaid, petitioner was transferred vide order dated 8-3-2003.

3. He preferred departmental appeal, giving the aforesaid background, whereupon, on acceptance of such appeal on 28-2-2004, his transfer order dated 8-3-2003 was withdrawn. The political influence once again got spurred and, to the utter disappointment of the petitioner, the above mentioned order dated 28-2-2004 was cancelled on 11-3-2004. He knocked unsuccessfully at the door of Service Tribunal and hence this petition.

4. As, gross violation of repeated verdicts of this Court was prima facie noticed, a Full Bench of this Court issued notice to the respondents. Again, this Court on 23-5-2006, in view of the allegations levelled by the petitioner, issued notice to Pir Muhammad Khan, MPA to appear before the Court. On appearance he furnished written reply which forms paper book-III of this record.

5. At page 26 of the file there is a memo on the letter head pad of Pir Muhammad Khan MPA where he has given different directions for the postings and transfers of different civil servants. In his comments he stated that the endorsements on the letter head pad (P-26) are undated, unnumbered, unsigned by Pir Muhammad Khan and not addressed to any one. He never denied, in so many words, the endorsement having been made by him but still he said that "the same can only amount to proposals which were to be considered by the concerned authorities and such proposals do not amount to any order or directions or recommendations.

6. From the aforesaid remarks, the MPA who professes to be an Advocate as well, tried to interpret his endorsements at page-26 as mere proposals of recommendatory nature. This is factually incorrect because, the language used is indicative of direction and not proposals. A letter No.3131/F.No.72/ADO (M)/Shangla dated 22-1-2003 written by Directorate of Schools and Literacy to the Section Officer (Primary) Government of N.-W.F.P. Schools and Literacy Department Peshawar proves how Mr. Pir Muhammad MPA was involved in the transfer of the petitioner. A para reproduced therefrom would be self-explanatory:-

"2. On 8-3-2003 Mr. Pir Muhammad Khan, MPA District Shangla visited this office and submitted a proposal for making transfer of some SET/ADOs of District Shangla and thus his recommendation was honoured and transfer order was issued (copy attached) wherein the appellant concerned was victimized/ suffered having immature tenure against the ADO(M) post at Shangla."

7. Another letter No.4454/F.No.72/ADO(Male)/Shangla dated 29-1-2004 would reinforce the charge that Mr. Pir Muhammad Khan MPA had pursued the matter. The relevant para of this letter by Deputy Director (Estt.) Schools and Literacy N.-W.F.P., as follows, is quite revealing:--

"2. However it is further clarified that his transfer order was made on the request of Mr. Pir Muhammad Khan MPA in March, 2003 and since this Directorate has issued his transfer order hence this Directorate is not in a position to cancel it rather the worthy Secretary, (S&L) N.-W.F.P. is the competent/appellate authority to consider his appeal regarding cancellation of his transfer order."

8. It is deplorable that the officers concerned invited the recommendations of MPAs for cancellation of transfer order, specially, Pir Muhammad Khan MPA, the one who opposed the petitioner. This very letter shows that even the department was aware that it was impossible for the petitioner to obtain recommendation of Pir Muhammad Khan MPA because it was he who victimized the petitioner. Anyhow, when the petitioner was asked to bring recommendations of an MPA, he produced one of Mr. Hamid Iqbal. It seems that Mr. Hamid Iqbal did not volunteer to make recommendation. It was probably arranged by the petitioner under the desire of the department, in order to balance the pressure. The relevant para is as follows:--

"3. As regards obtaining of recommendation/consent from Pir Muhammad Khan MPA Shangla as per your directions contained in your letter referred to the above, so it is not possible for him as he has been victimized through the said MPA, however, he has been got favourable/strong recommendation of Mr. Hamid Iqbal, MPA, also belongs to District Shangla (Annexure "B")."

9. Another letter would further clarify the persistent involvement of Mr. Pir Muhammad Khan MPA. The same is reproduced:--

"Directorate of Schools and Literacy N.-W.F.P. Peshawar.

No.1.1408/dated 2-12-2003.

The Section Officer (Primary)  
Government of N.-W.F.P., Peshawar.

Sub: Transfer Cancellation

Memo.

Kindly refer to your office letter No.SO(PE)(S&L)EDO dated Peshawar the 10-11-2003 the following comments are hereby submitted for clarification of situation:

(1) The letter issued vide reference No.3131/F. No.72/ADO(M) Shangla dated 27-10-2003 by Director (S&L) Shangla, it is requested that the said proposal/view was submitted by the worthy MPA Mr. Pir Muhammad Khan. This officer has neither forwarded for said proposal nor is involved in this matter.

(2) The ADO Mr. Roshan Khan is an efficient and hardworking officer.

(3) The ADO concerned Mr. Roshan Khan had not completed his normal tenure on the said post.

Keeping in view the above facts if the transfer order of the officer concerned is cancelled this office will have no objection.

Executive District Office  
Schools and Literacy"

10. All documentary evidence has gone a long way to prove that Pir Muhammad Khan was persistently involved in getting the petitioner transferred. He dubbed it as mere proposal but, under the prevailing conditions, one can well contemplate as to what is meant by the proposal of an elected representative who carries a weight to throw.

11. As early as in 1993, this Court had sensed the malady. In *Munawar Khan v. Niaz Muhammad* 1993 SCMR 1287, a larger Bench had taken serious notice of allocation of appointment quota to the Ministers, MNAs and MPAs though with the blessings of the executive, and had declared them void ab initio, calling upon all Courts, Tribunals and Authorities to so declare. A healthy example of such compliance was Parwez Yunas Uppal's case PLJ 2000 (Tr.C.) Service 473, where the learned Federal Service Tribunal declared a transfer order void and mala fide because it was motivated by a privilege motion moved in the assembly and because the competent authority had passed it without the application of its own and independent mind.

12. Transfer of civil servant under the orders of even a Minister was held by this Court to be void and unlawful, being violative of Rule 21(2) read with Schedule V of Rules of Business 1974. While condemning the role of Minister, that of tamed and subservient bureaucracy was also condemned and need for an upright, honest and strong bureaucracy was emphasized. Zahid Akhter's case PLD 1995 SC 530 is the relevant reference.

13. Lately, in Sayyad Sikandar Ali Shah's case 2002 SCMR 1124, the role of competent/Administrative authorities was once again condemned when they yield and surrender to the dishonestly intruding political influence.

14. It is for quite a long time, that some of the peoples representatives, whose sacred and scholarly job it was to legislate while honourably confining themselves to the dignified mansions of the assemblies, have started undesirable, dishonest and corrupt interference into the purely Executive/Administrative domain of appointments, promotions and transfers of civil servants. By now it has turned into a mafia that does not care about Law, Rules, Regulations, Rules of Business and repeated deprecations by the Supreme Court of Pakistan and High Courts. All forces seem to have whittled down before the exploitation and blackmail by some people whose weight, and not legislation, matters. This is bound to destroy the institutions, if not already destroyed.

15. Despite the fact that there is no law in the country giving authority to MPAs or MNAs to interfere into the Executive and Administrative domain, even to the extent of recommendations and proposals; despite the fact that the Rules of Business are utterly to the contrary; despite the fact that such practice is highly deprecated and condemned by this Court on numerous occasions, Mr. Pir Muhammad Khan, on whose letter head pad word Advocate appears below his name, has flouted all Law, Rules and Regulations. As an Advocate he ought to have been aware of the verdicts of the superior Courts and if not, at least, he ought to have known the Rules of Business and above all, the nature of his own obligations towards legislation in the Assembly and not beyond.

16. Before this Court he appeared personally and held the rostrum to address. It was a short but eloquent speech where, instead of clarifying his position, he argued the case against the petitioner saying that he was beaten by the teachers, that law and order situation had arisen and that his transfer was, therefore, necessary, again not realizing, that law and order also was not his headache. It is quite interesting that he still kept venom against the petitioner. At the end he requested the Court, not that he be absolved but that the instant petition be dismissed. In view of the background of political influence, the background of the case in hand and the repeated verdicts of this Court, we are constrained to observe that Mr. Pir Muhammad Khan MPA has been guilty of misconduct, unfair exploitation and malpractice that maligns



the legislature and disrupts the administration.

17. It was for the reasons above that we had accepted the petitioner's claim after conversion into appeal through our short order dated 3-10-2006 that runs as follows:-

"For detailed reasons to be given later on, the impugned judgment dated 10-8-2004 of the learned N.-W.F.P. Service Tribunal is set aside, the transfer order # 1201-1206/F.No.72/DS&L/ADO(M)/Shangla, dated 8-3-2003 passed by Director Primary Education N.-W.F.P., Peshawar is hereby set aside as withdrawn and that Endst. No.1077-82/F.No.13/Vol: 1/DIE/ADO(M) Shangla, dated 12-3-2002 of the Director Primary Education, N.-W.F.P. Peshawar is restored.

M.H. /R-22/SC

Appeal allowed.

JUDGMENT

Service Appeal NO 801/2004  
DR. Mond Yahya VS Govt (Agriculture)

NOOR-UL-HAQ, MEMBER :- This appeal has been filed by the appellant against Notification dated 22.6.2006 passed by Respondent No.1 the recommendation of Respondent No.2 whereby instead of granting proforma promotion, pay and increment to the appellant with effect from 2004 as Senior Research Officer (BPS-18) he has been promoted with immediate effect. He has prayed that the impugned the impugned orders be set aside and he be given proforma promotion, pay and increments with effect from 7.5.2004 when he was illegally deferred and his juniors were promoted.

Brief facts giving rise to the instant appeal are that the appellant was serving as Research Officer (BPS-17-Supervisory) (BPS-18-Selection grade) in the Department of Respondent No.1 and when his case for promotion as Senior Research Officer (BPS-18) alongwith others was placed before Respondent No.2 i.e. the Provincial Selection Board (PSB) in March, 2004, he was illegally deferred on the pretext that the appellant's CRs for the years, 2001, 2002, and 2003 were not upto the mark while the others were promoted. In accordance with the policy of the Provincial Government as laid down in letter No.SORI.(S&GAD) 1-29/75 dated 13.04.1987, the Provincial Selection Board / Departmental Promotion Committee is only competent to consider the cases of eligible civil servants with due regard to seniority in accordance with procedure prescribed in Para 1 of the aforementioned letter, and may either recommend a civil servant for promotion to the next higher post, or recommend a civil servant for supercession, or defer consideration of a civil servant's promotion

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NWFP Selection Board  
Provincial

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DIRECTOR,  
Livestock Research & Development

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provided that this step will be taken only if the civil servant's inter-se seniority is under dispute/subjudice, disciplinary or departmental proceedings are pending against the civil servant, those promotion case comes up for consideration before the PSB/DPC. The CR dossier is incomplete or any other document /information required by the PSB/ DPC for determining a civil servant's suitability for promotion is not available for reason beyond the control of the person concerned. None of the above reasons for deferment was exciting and the appellant's promotion was deferred for no fault at all at his end. It has been further clarified in Para 4 of the above policy letter dated 13.4.1987 that if an officer who is eligible for promotion but has been inadvertently omitted from consideration in the original reference due to clerical error or plain negligence and is superseded, the case of such an officer should be considered for promotion as soon as the mistake is noticed. After exhausting departmental remedy, the notification dated 07.05.2004 was challenged before this Tribunal in Service Appeal No.801/2004 dated 05.10.2004 which was accepted on 03.08.2005. As evident for Paras 5 and 6 of the above judgment, this Tribunal was given assurance by the representative of Respondent No.1 that the appellant's case for promotion has since been placed before the PSB and he should be promoted like the others, hence this Tribunal directed the respondent department to consider the appellant for promotion as Senior Research Officer (BPS-18), being eligible for the post as average ACR was no hurdle in way of promotion unless it had been communicated to the appellant. Vide the impugned order dated 22.6.2006, the appellant has been promoted as Senior Research Officer (BPS-18) with immediate

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**DIRECTOR,**  
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Khyber Pakhtoonkhwa, Peshawar

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effect instead of the date of promotion of his juniors. The appellant challenged his promotion to be effective from 07.05.2004 when his juniors were promoted and not from 22.6.2006 which representation of the appellant was submitted by Respondent No.1 to Respondent No.4 on 31.7.2006. Respondent No.4 vide his letter No. SOR-III (E&AD) 1-4/05 dated 25.08.2006 directed Respondent No.1 to decide the case of the appellant in the light of his letter dated 13.4.1987. The appellant submitted departmental appeal dated 24.08.2006 before Respondent No.5 giving therein the factual and legal grounds. Respondent No 1 vide his letter No. SO (L&DD) AD-F,1 (355)/2005/KC dated 09.01.2007 delivered to the appellant on 18.01.2007 intimated the fate of appellant's departmental appeal in partial negative. Hence, the instant appeal.

3. The respondents were summoned. They appeared through their representatives, filed written reply, contested the appeal and denied the claim of the appellant.

4. Arguments heard and record perused.

5. The learned counsel for the appellant argued that the orders of the respondents to the extent of date of effectiveness of the notification of promotion of the appellant from 22.6.2006 instead of 07.05.2004 are against law and facts on record, hence not sustainable in the eyes of law. The orders/judgment dated 03.08.2005 of this Tribunal in Appeal No. 801/2004 passed on the assurance of representative of Respondent No.1 was not interpreted in its true perspective. The respondents could not differentiate between deferment and supersession. The appellant was not

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DIRECTOR,  
Livestock Research & Development,  
Khyber Pukhtoonkhwa, Peshawar.

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NWFP Service Tribunal  
Peshawar.

superseded but his promotion to BPS-18 was deferred. Thus his promotion from 22.6.2006 is illegal as the same should have been effective from 07.05.2004. The very point on which the promotion of the appellant was deferred no more in existence, hence the principle of law laid down by the superiors courts, he is lawfully entitled/eligible for promotion from 07.05.2004 when his juniors were promoted. The act of the respondents is not only discriminative and in utter violation of Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973 but also against the cardinal principle of natural justice and equity, which caused great miscarriage of justice to the appellant. He prayed that the appeal may be accepted.

6. The learned AGP argued that as evident from Para No.5 and 6 of the Service Tribunal judgment, it was only clarified by the departmental representative that the appellant was not superseded but he was differed and that the case of the appellant has been sent again for promotion to PSB after earning one good ACRs for the year 2004 and no such assurance was given to the Tribunal as claimed by the appellant in his appeal. He prayed that the appeal may be rejected.

7. The Tribunal holds that the claim of the appellant is bonafide. The promotion of the appellant was deferred only on the ground that the ACRs of the appellant for the years, 2001, 2002, and 2003 were not upto the mark whereas he earned average ACRs during the said period. The representative of respondent department stated that the appellant has earned

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one good ACR for the year ending 2004. Average ACR should not stand in the way of the appellant for his promotion as he was already allowed selection grade (BPS-18). In accordance with the policy of the Provincial Government as laid down in letter No. SOR.I. (S&GAD) 1-29/75 dated 13.04.1987, the Provincial Selection Board / Departmental Promotion Committee is only competent to consider the cases of eligible civil servants with due regard to seniority in accordance with procedure prescribed in Para 1 of the aforementioned letter, and may either recommend a civil servant for promotion to the next higher post, or recommend a civil servant for supercession, or defer consideration of a civil servant's promotion provided that this step will be taken only if the civil servant's inter-se seniority is under dispute/subjudice, disciplinary or departmental proceedings are pending against the civil servant, whose promotion case comes up for consideration before the PSB/DPC. The CR dossier is incomplete or any other document/information required by the PSB/ DPC for determining a civil servants suitability for promotion is not available for reason beyond the control of the person concerned. None of the above reasons for deferment was existing and the appellant's promotion was deferred for no fault on his part. It was been further clarified in Para 4 of the above policy letter dated 13.4.1987 that if an officer who is eligible for promotion but has been inadvertently omitted from consideration in the original reference due to clerical error or plain negligence and is superseded, the case of such an officer should be considered for promotion as soon as the mistake is noticed.

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*S. A. J. / [Signature]*

DIRECTOR,  
Livestock Research & Development,  
Khyber Pakhtoonkhwa, Peshawar

8. In view of the above discussion, the Tribunal accepts the appeal, sets aside the impugned order and directs the respondent department to consider the case of the appellant for promotion to BPS-18 being eligible, w.e.f. 7.5.2004 as prayed for. No order as to costs. File be consigned to the record.

ANNOUNCED.  
04.08.2008.

(SULTAN MAHMOOD KHATTAK)  
MEMBER.

  
(NOOR-UL-HAQ)  
MEMBER.

Date of presentation	28.08.08
Number of copies	16
Number of pages	16
Date of completion	22.11.08
Date of submission	28.11.08

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DIRECTOR,  
Livestock Research & Development,  
Khyber Pakhtoonkhwa, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 2746/2010

Muhammad Raziq, CT Teacher, GHS Rahmat Abad,  
Tehsil and District Karak.



VERSUS

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

S.No.	Date of proceedings	Order/proceedings of the court with signature of judge/Magistrate
1	14.6.2012	<p>3.</p> <p>Counsel for the appellant, Mr. Muhammad Zubair, AGP with Mashai Khan, Litigation Officer for the official respondents and counsel for private respondent No. 4 present. Arguments heard. Record perused.</p> <p>2. This appeal has been filed by Muhammad Raziq, the appellant under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, against the order dated 15.7.2010 whereby his transfer order dated 12.7.2010 has been withdrawn. It has been prayed that on acceptance of the appeal, the impugned order may be set aside, restore the order dated 12.7.2010 and allow the appellant to serve in GHS Rahmat Abad.</p> <p>3. The appeal was admitted to regular hearing on 7.12.2010. Despite of many notices, respondents No. 1 to 3 failed to file written reply and were placed ex-parte on 30.6.2011. On 26.9.2011 Private respondent No. 4 submitted an application for impleadment which was accepted on 13.10.2011 and he filed written reply on 27.12.2011. On 9.3.2012, respondents No. 1 to 3 filed an application for setting aside ex-parte proceedings which was accepted and ex-parte proceedings against them were set aside. The official respondents filed written reply on 29.3.2012.</p> <p>4. The learned counsel for the appellant argued that the appellant while serving as CT Teacher in GHSS Karak for the</p>

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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



دس سال بعد جو فراموش  
Native

last 10 years, applied for his posting to GHS Rahmat Abad, which is the native village of the appellant. The appellant was transferred to GHS Rahmat Abad vide order dated 12.7.2010. He took over charge on 13.7.2010 but vide impugned order dated 15.7.2010, order dated 12.7.2010 was withdrawn without any justifiable reason. The learned counsel for the appellant further argued that after serving for a long period of 10 years, the appellant was transferred to the school, situated near to his residence where the appellant had served only for two days, hence the impugned order is premature and against the policy of posting/transfers of the provincial government. She requested that the appeal may be accepted as prayed for.

5. The learned counsel for the private respondent No. 4 argued that the appellant managed to transfer himself to GMS Rahat Abad mutually with a teacher who was going to be retired. The department withdrawn mutual transfer order to discourage such practice. He further argued that private respondent No. 4 being more deserving than the appellant and having more stay out of his home station, has been transferred to GMS, Rehmat Abad, against the vacant post on 8.11.2010, which order has not been challenged by the appellant hence the present appeal is not maintainable and is liable to be dismissed on this score alone. The learned AGP while pressing for the preliminary objections raised in the written reply, agreed with the arguments of the learned counsel for private respondent No. 4 and added that under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, every civil servant shall serve anywhere in the exigencies of service. Both the learned counsel for private respondent No. 4 and AGP requested that the appeal may be dismissed.

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Khyber Pakhtunkhwa  
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Peshawar

6. The Tribunal observes that the appellant was transferred to GMS Rahmat Abad by the competent authority vide order dated 12.7.2010. The appellant took over charge of the post on 13.7.2010. Just after two days, the order dated 12.7.2010 has been withdrawn without any justifiable

reasons. The transfer order dated 8.11.2010 has been passed during the pendency of the appeal, hence has no legal effect.

In view of the above, the appeal is accepted, the impugned order dated 15.7.2010 and subsequent order are set aside. The appellant to continue at GHS Rahmat Abad with direction to the respondent No. 3 to consider the private respondent No. 4 for the post vacated by the appellant at GHS Karak as stated by him in the written reply that he is more deserving than the appellant and more stay outside his home station. Parties are left to bear their own costs. File be consigned to the record.

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14.6.2012

(NOOR ALI KHAN)  
MEMBER

(SULTAN MAHMOOD KHATTAK)  
MEMBER

Certified to be true copy  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application \_\_\_\_\_  
 Number of Words \_\_\_\_\_  
 Copying Fee \_\_\_\_\_  
 Urgent \_\_\_\_\_  
 Total \_\_\_\_\_  
 Name of Copyist \_\_\_\_\_  
 Date of Completion of Copy \_\_\_\_\_  
 Date of Delivery of Copy \_\_\_\_\_

Mutal Transfer order maintained.

whereas - other transfer order - that was made after 2 days were set aside.



Idalla Qasim Khan Khattak

Suggest: mutual transfer order:

Request mutual transfer order  
among Esu Khan PET CS/174  
School Chakara and Hamayun  
Khan, PET CS/174, Rahmat Akbar!  
may please be issued in the  
best interest of the public.

Application is already submitted.


*[Signature]*

3/12/13

Distt Education Officer  
Morad.

21.11.2014

No one is present on behalf of the appellant. Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for further arguments on 07.05.2015.

  
Reader

07.05.2015

Junior to counsel for the appellant and Mr. Ziaullah, GP for the respondents present. The learned Member (Judicial) is on leave, therefore, case to come up for arguments on 29.10.2015.

  
MEMBER

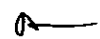
17.06.2015

Clerk of counsel for the appellant, M/S Khurshid Khan, SO and Javed Ahmed, Supdt. alongwith Assistant A.G for official respondents and private respondents No. 6 in person present. Arguments could not be heard due to non-availability of learned counsel for the appellant. To come up for arguments on 11.8.2015.

  
Member

11.08.2015

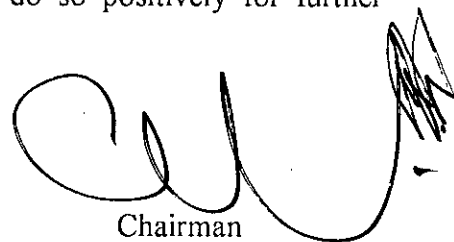
Counsel for the appellant, Mr. Ziaullah, GP for official respondents and counsel for private respondents No.6 present. Arguments heard. To come up for order on 09-9-2015

  
Member

  
Member

03.7.2014

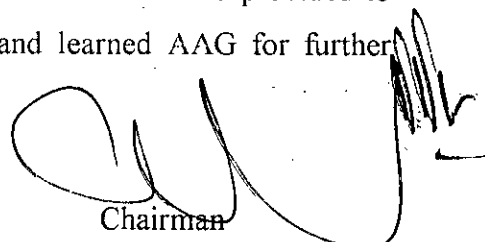
Appellant with counsel, M/S Khurshid Khan, SO for respondent No. 1, Mosam Khan, AD for respondents No. 2 and 3 with Mr. Usman Ghani, Sr. GP for official respondents and counsel for private respondent No. 6 present. Arguments on application for interim relief partly heard. The learned counsel for the appellant contended that the impugned mutual transfer order dated 21.12.2013 was politically motivated; while, on the other hand, the learned counsel for private respondent No. 6 pointed out that the private respondent has annexed with his written reply request for transfer dated 24.9.2013 by the Advisor to the Chief Minister for Prisons KPK at page 16 (annexure-C). On this, the learned Sr. GP requested for adjournment so that complete record of the case is procured from the office of DEO (M), E&SE, Karak (respondent No. 4) for further arguments. The learned Sr. GP may do so positively for further arguments on 22.9.2014.



Chairman

22.9.2014

Appellant with counsel, M/S Khurshid Khan, S.O for respondent No.1, Sajjad Rashid, A.D for respondents No.2 & 3 with Mr. Muhammad Adeel Butt, AAG for official respondents No.1 to 4 and private respondent No.6 with counsel present. Neither anyone is present on behalf of DEO (M) E&SE, Karak nor the requisite record, per direction contained in the order sheet dated 3.7.2014, has been produced; and the learned AAG stated that the office of DEO (M) E&SE, Karak has been contacted by the learned Sr. Govt. Pleader for the purpose but without any positive response. Therefore, the salary of DEO (M) E& SE, Karak (respondent No. 4) is attached, and order of attachment of his salary be sent to all concerned for implementation and compliance report before the date fixed. The DEO (M) E&SE, Karak (respondent No. 4) be summoned in person alongwith complete record of the case. The learned counsel for the appellant produced copy of letter with regard to mutual transfer order from Malik Qasim Khan Kattak, Advisor to Chief Minister for Prisons, Khyber Pakhtunkhwa dated 8.12.2013, which is placed on file and copies thereof are also provided to the learned counsel for private respondent and learned AAG for further arguments on 21.11.2014.



Chairman

41/2014

21.04.2014

Appellant with counsel, AAG with Khursheed Khan, SO and Muhammad Hamayun, ADO for official respondents present and submitted before the court that written reply already submitted on behalf of respondents No. 1 to 3 may also be considered on behalf of respondent No.4. Counsel for private respondent No. 6 present who already filed written reply. None is available on behalf of private respondent No.5 nor his written reply received, despite proper service, hence placed ex-parte. To come up for arguments on 21.5.2014. Rejoinder, if any, in the meantime. The operation of impugned order, as before, is suspended till the date fixed.

MEMBER

MEMBER

21.5.2014.

21.5.2014

Appellant alongwith counsel and Mr. Muhammad Jan, GP for the official respondents and private respondent No. 6 with counsel present. The learned Executive Member of the Bench expressed his inability to hear the case as the private respondent No. 6 submitted an application shown distrust upon him. Therefore, in the interest of justice, this case be put up before the learned Chairman for appropriate order. Parties are directed to appear before the learned Bench-I on 10.6.2014 for further proceedings.

MEMBER

10.6.2014

Appellant with counsel, Mr. Khurshid Khan, SO for respondent No. 1 with AAG for official respondents and private respondent No. 6 with counsel present. Arguments could not be heard due to incomplete bench. To come up for further proceedings/arguments on 3.7.2014. The operation of the impugned order, as before, is suspended till the date fixed.

Member

11.2.2014

Appellant with counsel, Mr. Muhammad Jan, GP with Khursheed Khan, SO for respondent No. 1, Mr. Sajad Rasheed, A.D for respondent No. 2 & 3 Muhammad Hamayun, ADO for respondents No. 4 and private respondent No. 6 in person present. None is available on behalf of private respondent No. 5. Appellant informed that private respondent No. 5 has been retired from service on the age of superannuation. Since the case was fixed for written replies/arguments on stay application but the respondents still needs time, hence the operation of the impugned order dated 21.12.2013 is suspended till the next date. To come up for written reply on main appeal as well as reply/arguments on 13.3.2014.

MEMBER

MEMBER

13.3.2014

Appellant with counsel, Mr. Usman Ghani, Sr.GP with Khursheed Khan, SO and Muhammad Hamayun, ADO for the official respondents present and requested for time to file joint written reply. Mr. Ashraf Ali, Advocate/counsel for private respondent No.6 present and filed written replies. Copies handed over to counsel for the appellant. The case was initially fixed for written reply of official respondents on main appeal as well as reply/arguments on stay application on 21.4.2014 but due to unnecessary and unwarranted attitude and interference of the counsel for respondent No. 6 in the court proceedings which affected the court's decorum, the next date is fixed now as 13.6.2014. The operation of impugned order, as before, is suspended till the date fixed.

MEMBER

Noted  
[Signature]

Appeal No. 411/2014  
Mr. Gabeer Ali

3. 10.01.2014

Appellant with counsel present and submitted an application for fixing an early dated of hearing instead of 28.01.2014. Application is accepted. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the order dated 21.12.2013, the appellant filed departmental appeal on 23.12.2013, which has been rejected on 08.01.2014, hence the present appeal on 09.01.2014. He further contended that the impugned final order is not a speaking order and has been issued in violation of Rule-5 of the Civil Servant (Appeal) Rules-1986. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents. Appellant has also filed an application for suspension of impugned order dated 21.12.2013 and 08.01.2014. Notice of application should also be issued to the respondents for reply/arguments. To come up for written reply on main appeal on 11.02.2014 as well as reply/arguments on application on 21.01.2014.

Appellant deposited  
Process fee & Security  
Rs. 240/- Bank Receipt  
attached with file

Member

10.01.2014

This case be put before the Final Bench II for further proceedings.

Chairman

21.1.2014

Counsel for the appellant and Mr. Muhammad Adeel Butt, AAG present. Notices have not been issued for today. Notices be issued to the respondents. To come up for written reply on main appeal as well as reply/arguments on 11.2.2014.

MEMBER


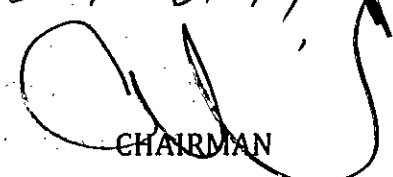
MEMBER



**Form- A**  
**FORM OF ORDER SHEET**

Court of \_\_\_\_\_

Case No. 41/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	09/01/2014	<p>The appeal of Mr. Gohar Ali presented today by Mr. M. Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	9-1-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>28-1-2014</u></p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

APPEAL NO. 41 /2014.

Gohar Ali, PET.

VS

Education Deptt:

**INDEX.**

S.NO	DOCUMENTS	ANNEXURE	PAGE
1-	Memo of appeal.	---	1-3
2-	Stay application.	---	4-5
3-	Order dt. 30.9.2013	A	6
4-	Order dt. 21.12.2013	B	7
5-	Appeal.	C	8
6-	Rejection order.	D	9
7-	Transfer policy.	E	10-17
8-	Vakalat nama	---	18

  
APPELLANT

Gohar Ali

Through

  
M. ASIF YOUSAFZAI

ADVOCATE

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

APPEAL NO. 41 /2014.

Gohar Ali, PET,  
GHS Esaf Khel, karak.....Appellant.

VERSUS

- 1- The Secretary Education (E&SE) Peshawar.
- 2- The Director Education (E&SE) Peshawar.
- 3- The Asstt: director (P&SE), (E&SE) Peshawar.
- 4- The DEO (male) E&SE, karak.
- 5- Esa Khan PET, GCMHS Chowkara, Karak.
- 6- Humayun PET, GHS Rehmat Abad, karak.....respondents.

34  
09/01-2014

**APPEAL UNDER SECTION 4 OF THE KPK  
SERVICE TRIBUNALS ACT 1974 AGAINST THE  
ORDER DATED. 8.1.2014 PASSED ON APPEAL  
OF APPELLANT AGAINST THE ORDER DATED.  
21.12.2013.**

**PRAYER:**

*That on acceptance of this appeal the order dated. 8.1.2014 may be declared as illegal, without lawful authority and the same may be modified by setting aside the order dated. 21.12.2013 and restoring the order dated. 30.9.2013. Any other remedy which this august tribunal deems fit that may also be awarded in favour of appellant.*

**R.SHEWETH.**

1. That the appellant has been serving in the Education Deptt; as PET and has good record at his credit.
2. That as the appellant was working at a very far flung area from his home station, therefore he submitted an application for

9/1/2014

transfer to a near a home station against the post which would be falling vacant on retirement of respondent No.5.

3. That the respondent Deptt; after observing proper procedure and approval passed an order on 30.9.2013 whereby the appellant has been transferred to GCMHS , Chowkara with the condition that he would take over charge there after the retirement of respondent No.5 on 11.1.2014. Copy of the order is attached as Annexure – A.
4. That in the mean while, respondent No.6, due to political interference through MPA Malik Qasim ( Whose DO letter is available on file with the official respondents) managed to get the order dated. 21.12.2013 by showing himself and respondent No.5 as mutually transferred and at the end note of the order, the order of appellant was cancelled without showing any reasons. Copy of order is attached as Annexure – B.
5. That the appellant submitted an appeal on 24.12.2013 but the same has also been rejected on flimsy grounds on 8.1.2014. hence the present appeal on the following grounds amongst the others. Copies of appeal and rejection order are attached as annexure – C&D.

**GROUND:**


- A- That the order dated. 8.1.2014 and 21.12.2013 are against the rules, norms of justice, principles of fair play, therefore, liable to be set-aside.
- B- That the order dated. 21.12.2013 has been passed due to political interference of Malik Qasim MPA and such involvement of MPAs/MNAs/Ministers has strongly been condemned by the Supreme Court of Pakistan in various judgments.

- C- That the order dated. 21.12.2013 is based on malafide because no reasons have been given as to why the order dated. 30.9.2013 has been cancelled which was passed after due approval of competent authority.
- D- That the ill intention and malafide on the part of the respondents is also evident from the facts that the respondent No.5 is going to retire from service on 11.1.2014 and he is the resident of Chowkara and as per Govt; instruction a retiring employee will not be transferred. Policy of the Govt; is attached as Annexure – E.
- E- That as per information of the appellant the respondent No.5 has sold the post by getting a huge amount of money from the respondent No.6 and such practice is also dangerous for Govt; institution and smooth running of the Govt; functions.
- F- That the orders dated. 8.1.2014 and 21.12.2013 are against the law rules and principles of fair play which also affected the rights of appellant, therefore the same are liable to be set-aside.
- G- 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 be accepted as prayed for.

APPELLANT  
  
GOHAR ALI

THROUGH;

  
M.ASIF YOUSAFZAI

ADVOCATE.

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

APPEAL NO. \_\_\_\_\_/2014.

Gohar Ali, PET.

VS

Education Deptt:

**APPLICATION FOR SUSPENSION OF IMPUGNED  
ORDER DATED 21.12.2013 AND 8.1.2014 TILL  
PENDING FINAL DECISION OF MAIN APPEAL.**

**Respectfully Sheweth,**

1. That the petitioner/ appellant has filed Appeal before this Hon,ble Tribunal in which no date hearing has been fixed so far.
2. That the impugned order dated.21.12.2013 is politically motivated, premature and passed in violation of Govt: instructions regarding posting/transfer.
3. That the order dt. 8.1.2014 is also in violation of appeals Rules 1986 and has been passed on flimsy grounds.
4. That the appellant has got a good prima facie arguable case, the impugned order is without lawful authority and unsustainable in law, balance of convenience lies in his favour and in case operation of impugned order is not suspended, the very purpose of appeal would be defeated and it would infructuous as well and the appellant would suffer irreparable loss.
5. That the grounds of main appeal may also be considered as integral part of this application.

It is, therefore, prayed that the operation of impugned order dated 21.12.2013 AND 8.1.2014 may graciously be suspended till final decision of appeal.

*Gohar Ali*

Petitioner  
Gohar Ali

Through

*M. Asif Yousafzai*

M. ASIF YOUSAFZAI  
ADVOCATE

**AFFIDAVIT:**

It is affirmed and declared that the contents of Application are true and correct to the best of my knowledge and belief.



*Gohar Ali*  
Deponent.

A  
⑥

OFFICE OF THE DISTRICT EDUCATION OFFICER(MALE) KARAK.

TRANSFER/ADJUSTMENT

Consequent upon as approved by the Competent authority  
Relaxation of ban Mr Gohar Ali PET GHS Esaf Khel (Karak) is hereby ordered  
w.e.f 11/1/2014 on his own pay and BPS in the interest of Public Service against  
the Post of Mr Esa Khan PET G .C.M.H.S Chokara (Karak) proceeding on retirement

Vacant

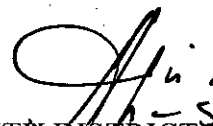
Note;- No TA/DA is allowed  
Charge report should be submitted to all concerned

Endst NO 3459-61 Dated Karak the 30/9 /2013

DISTRICT EDUCATION OFFICER  
(M) SECONDARY KARAK

Copy to the above

- 1 District Accounts Officer (Karak)
- 2 Head Master GHS Esaf Khel/G.C.M.H.S Chokara(Karak)
- 3 Official Concerned.


  
DEPUTY DISTRICT EDUCATION  
OFFICER (M) SECONDARY  
(K A R A K).





No: 162 - Dated 24/12/2013

Forwarded in original to The D.E.O (M)  
Karak with the remarks that the case  
is genuine one. Hence, strongly recom-  
mended for favourable consideration pl.

  
GOV. OF KERALA  
Esaf K...  
24/12/13



DIRECTORATE OF ELEMENTARY & SECONDARY  
EDUCATION KHYBER PAKHTUNKHWA,  
PESHAWAR

9


No. 1227 /F.No. 10/PET (M) Cases.  
Dated Peshawar the: 8/1/2014

To

Gohar Ali PET,  
GHS, Esaf Khel Karak.

Subject: - **APPEAL FOR CANCELLATION OF TRANSFER ORDER.**

I am directed refer to your appeal dated Nil dated. 08.01.2014 on the subject noted above and to inform you that under Section 10 of the Civil Servant act, the civil servant is required to serve anywhere in District. So your appeal has been rejected.

  
Assistant Director (PE&S)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

Endst No. \_\_\_\_\_/

Copy forwarded to the: -

1. PA to Director E&SE Khyber Pakhtunkhwa local office.

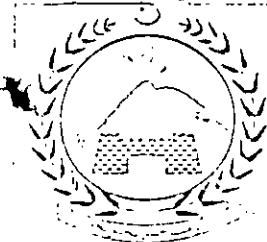
  
Assistant Director (PE&S)

*Legal with  
Sensitization  
Morden*

H

BA

10



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT  
(REGULATION WING)**

**POSTING/TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT**

- i) All the posting/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants
- ii) All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities for seeking posting/transfers of their choice and against the public interest.
- iii) All contract Government employees appointed against specific posts, can not be posted against any other post.

iv) Existing tenure of posting/transfer of three (03) years for settled areas and two (02) years for unattractive/hard areas shall be reduced to two (02) years for settled areas, 01 1/2 years for unattractive areas and one year for hard areas.

*(See P-06)  
as retained*

*2 years tenure retained  
vide P-06 for un-attractive/hard area*

v) }

(vi) "While making posting/transfers of officers/officials up to BS-17 from settled areas to FATA and vice versa approval of the Chief Secretary, Khyber Pakhtunkhwa needs to be obtained. Save Tehsildars/Naib Tehsildars within a division in respect of whom the concerned Commissioner will exercise the same power. Whereas, in case of posting/transfer of officers in BS-18 and above, from settled areas to FATA and vice versa, specific approval of the Governor, Khyber Pakhtunkhwa shall be obtained."

Provided that the power to transfer Political Tehsildars and Political Naib Tehsildars within FATA between different divisions shall rest in Additional Chief Secretary FATA.

- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for atleast eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.
- vii) Officers may be posted on executive/administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thaana) of his area/residence is situated.

1 Circular letter No. SOR-V/E&AD/1-4/2008/Vol-VII dated, the 11<sup>th</sup> September, 2009  
2 Para-1(v) regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No: SOR-VI (E&AD) 1-4/2008/Vol-VI, dated 3-6-2008. Consequently authorities competent under the Khyber Pakhtunkhwa Government Rules of Business, 1985, District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make Posting/Transfer subject to observance of the policy and rules.  
3 Para-VI added vide circular letter No. SOR-VI/E&AD/1-4/2010/Vol-VIII dated 20<sup>th</sup> March, 2010.  
4 Sub para-VI (a) added vide circular letter No. SOR-VI/E&AD/1-4/2008 dated 22<sup>nd</sup> October, 2008.

- viii) No posting/transfers of the officer's/officials on detailment basis shall be made.
- ix) Regarding the posting of husband/wife, both in Provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.
- x) All the posting/transferring authorities may facilitate the posting/transfer of the unmarried female government Servants at the station of the residence of their parents.
- xi) Officers/officials except DCOs and DPOs/SPs who are due to retire within one year may be posted on their option on posts in the Districts of their domicile and be allowed to serve there till the retirement

DCOs and DPOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against non-administrative posts of equivalent scales;

- xii) In terms of Rule-17(1) and (2) read with Schedule-III of the Khyber Pakhtunkhwa Government Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against each officer in column 2 thereof:

Outside the Secretariat		
1.	Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above.	Chief Secretary in consultation with Establishment Department and Department concerned with the approval of the Chief Minister.
2.	Other officers in BPS-17 and above to be posted against scheduled posts, or posts normally held by the APUG, PCS(EG) and PCS(SG).	-do-
3.	Heads of Attached Departments and other Officers in B-19 & above in all the Departments.	-do-
In the Secretariat		
1.	Secretaries	Chief Secretary with the approval of the Chief Minister.
2.	Other Officers of and above the rank of Section Officers: a) Within the Same Department b) Within the Secretariat from one Department to another.	Secretary of the Department concerned. Chief secretary/Secretary Establishment.
3.	Officials up to the rank of Superintendent: a) Within the same Department	Secretary of the Department concerned.

<sup>1</sup> Added vide Urdu circular letter No: SOR-VI (E&AD)/1-4/2005, dated 9-9-2005.

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b) To and from an Attached Department	Secretary of the Department in consultation with Head of Attached Department concerned.
c) Within the Secretariat from one Department to another	Secretary (Establishment)

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

- a) To ensure the posting of proper persons on proper posts, the Performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/officials be considered.
- b) ✓ Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

xiv) Government servants including District Govt. employees feeling aggrieved due to the orders of posting/transfer authorities may seek remedy from the next higher authority / the appointing authority as the case may be through an appeal to be submitted within seven days of the receipt of such orders. Such appeal shall be disposed of within fifteen days. The option of appeal against posting/ transfer orders could be exercised only in the following cases.

- i) ✓ Pre-mature posing/transfer or posting transfer in violation of the provisions of this policy.
- ii) Serious and grave personal (humanitarian) grounds.

2. To streamline the postings/transfers in the District Government and to remove any irritant/confusions in this regard the provision of Rule 25 of the North West Frontier Province District Government Rules of Business 2001 read with schedule - IV thereof is referred. As per schedule-IV the posting/transferring authorities for the officers/officials shown against each are as under:-

S. No.	Officers	Authority
1.	Posting of District Coordination Officer and Executive District Officer in a District.	Provincial Government.
2.	Posting of District Police Officer.	Provincial Government
3.	Other Officers in BPS-17 and above posted in the District.	Provincial Government
4.	Official in BPS-16 and below	Executive District Officer in consultation with District Coordination Officer.

3. As per Rule 25(2) of the Rules mentioned above the District Coordination Department shall consult the Government if it is proposed to:

- a) Transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure.
- b) Require an officer to hold charge of more than one post for a period exceeding two months.

4. I am further directed to request that the above noted policy may be strictly observed /implemented.

\*\*\*\*\*

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13

✓ All concerned are requested to ensure that tenures of the concerned officers/officials are invariably mentioned in summaries submitted to the Competent Authorities for Posting/Transfer.

{Authority: Letter No: SOR-I/E&AD/1-4/2003 dated 24-6-2003.

\*\*\*\*\*

✓ It has been decided by the Provincial Government that posting/transfer orders of all the officers up to BS-19 except Heads of Attached Departments irrespective of grades will be notified by the concerned Administrative Departments with prior approval of the Competent Authority obtained on the Summary. The Notifications/orders should be issued as per specimen given below for guidance.

All posting/transfer orders of BS-20 and above and Heads of Attached Departments (HAD) shall be issued by the Establishment Department and the Administrative Departments shall send approved Summaries to E&A Department for issuance of Notifications.

SPECIMEN NOTIFICATION.

GOVERNMENT OF KHYBER PAKHTUNKHWA  
NAME OF ADMINISTRATIVE  
DEPARTMENT

Dated Peshawar, \_\_\_\_\_

NOTIFICATION

NO. The Competent Authority is pleased to order the transfer of Mr. \_\_\_\_\_ Department and to post him as \_\_\_\_\_ in the interest of public service, with immediate effect.

CHIEF SECREARY  
GOVERNMENT OF KHYBER PAKHTUNKHWA

Encls. No. and date even.

Copy forwarded

- 1.
- 2.
- 3.
- 4.

(NAME)  
SECTION OFFICER  
Administrative Department

{Authority: Letter No. SO (E-1) E&AD/9-12/2006 dated 22-12-2006}.

The competent authority has been pleased to direct that Para 1(v) of the Posting/Transfer Policy contained in this Department letter No:SOR-1 (E&AD) 1-1/85 Vol-II, dated 15-2-2003 shall stand deleted, with immediate effect, consequently allowing the authorities, competent under the Khyber Pakhtunkhwa Government Rules of Business, 1985 and the District Government Rules of Business, 2001 or any other rules for the time being in force, to make posting/transfers of Government servants, any time during the year, in genuinely deserving and necessary cases, in public interest,

subject to strict observance of all other provisions of posting/transfer policy contained and notified vide circular letter under reference. Hence there will be no ban on posting/transfer of Government Servants in any part of the year while carrying out postings/transfers of Government Servants.

✓ The authorities concerned will ensure that no injustice whatsoever is caused to any civil servant, public work is not suffered and service delivery is improved.

✓ I am therefore directed to request that the provisions of posting/transfer policy, as amended to the extent above, may kindly be followed in letter and spirit in future so as to keep good governance standard in this regard.

{Authority: Letter No: SOR-VI (E&AD) 1-4/2008, Vol-VI, dated 3-6-2008.

\*\*\*\*\*  
According to the policy of the provincial Government, maximum tenure on a post is three years. Contrary to the Policy, Store Keepers, Cashiers, Accountants and other ministerial staff remains posted in their particular field for long time, which may result in misuse of this position, due to which not only public exchequer may sustain loss but general public also suffers. The Provincial Government has taken serious notice of this situation & decided that all Administrative Secretaries and DCOs may submit a certificate within one month to the effect that above mentioned officials, having completed three years on their posts, have been adjusted on posts other than those they held previously.

{Authority: Urdu circular No: SOR-VI (E&AD):05 dated 28<sup>th</sup> Oct, 2005.

\*\*\*\*\*  
The Chief Minister-Khyber PakhtunKhwa has directed that:-

- i) Submission of summary would not be required in case of mutual transfer.
- ii) ✓ Posting/transfer shall be made according to the policy;
- iii) Government Servants shall avoid direct submission of applications to the Chief Minister;
- iv) In genuinely deserving case, they should approach the Administrative Secretaries who could process the case according to policy;
- v) In case of direct submission of application to the Chief Minister Secretariat for Posting/ Transfer, the concerned govt servants shall be proceeded against under the prevalent rules and regulations.

{Authority: Urdu circular No; SOR-VI/E&AD/1-4/2003, dated 8-6-2004 & Urdu Letter No: SOR-VI/E&AD/Misc: 2005, dated 3-1-2006.}

It has been decided with the approval of the competent authority that:-

- i) Mutual transfer would be allowed if both the concerned employees agree; except the Government Servants holding Administrative posts;
- ii) Khyber PakhtunKhwa Government Rules of Business 1985 shall be observed while issuing posting/transfer orders.

{Authority: - Urdu circular letter No: SOR (E&AD)/1-4/2005, dated 9-9-2005}.

\*\*\*\*\*  
The competent authority has decide that in order to maintain discipline, enhance performance of the departments and ensure optimum service delivery to the masses, the approved /prevalent policy of the posting/transfer shall be strictly followed. Government Servants violating the policy and the Khyber PakhtunKhwa Govt Servants (Conduct) Rules 1987 shall be proceeded against under the Khyber PakhtunKhwa Removal from Service (Special Powers) Ordinance 2000. As required under the Khyber PakhtunKhwa Govt Rules of Business 1985, the Administrative Secretaries shall ensure compliance with the policy and defaulting offices/officials be taken to task & entries to this effect



shall be made in their PERS/ACRs. In case subordinate officers are working on sites or proceeding for the purpose of inspection, they shall submit inspection Report to their Administrative Secretaries. Administrative Secretaries shall ensure submission of such reports.

{Authority: - Urdu circular No: SOR-VI (E&AD)/1-4/06, dated, 29-6-2007}.

\*\*\*\*\*  
"In continuation of this Department circular letter No.SOR-VI/E&AD/1-4/2008/Vol-VII dated 11<sup>th</sup> September, 2009, I am directed to refer to the subject and to say that the Provincial Cabinet in its meeting held on 30<sup>th</sup> March, 2010 inter-alia approved the following for the purpose of Posting/Transfer Policy:-

Unattractive/Hard Areas

1. The distinction between unattractive hard areas should be done away with and both should be labeled as Unattractive areas. ✓

2. Existing list of FATA areas be retained.

3. The following areas were recommended/approved to constitute unattractive areas in NWFP:-

- a. Kohistan District.
- b. Tank District.
- c. Chitral District.
- d. Batgram District.
- e. Shangla District. ✓
- f. Hangu District.
- g. PATA areas of Mansehra (Kala Dhaka)

1) Tenure for settled area 03 yrs  
2) unattractive area is 02 yrs  
(P-I)

Tenure of posting:

- i. ✓ The erstwhile normal tenure of 2 years be retained. ✓
- ii. Existing tenure for unattractive areas be retained. However, in case of married civil servants, transfer should be made just at the beginning of school session and tenure should be one year instead of 1.5 year, so that academic disruptions are avoided.
- iii. At the time of entry in service, all civil servants be asked to give 4 options from unattractive areas.
- iv. After a stint of service in unattractive area, employees may be offered option to serve in district of choice.

PLACEMENT POLICY.

In order to utilize the expertise of the officers who have received foreign training in various fields, the provincial Government has decided to adopt the Placement Policy, approved by the Prime Minister of Pakistan, and make it a part of its Posting/Transfer Policy. Placement Policy is as follows:-

- i) All placements would be made on the basis of merit and keeping in view the needs of the organization.
- ii) The first priority in placement must go the parent organization of the participant from where the individual had applied. This will be in

consonance with the concept of establishing the "Need" for the department and fulfilling the need through capacity building for the organization.

- iii) In order to follow the "bottom up approach" for Devolution, the priority within departments must go to the Districts, the Provinces and than the Federal Government.
- iv) The second priority in placement should go to up-grading the existing training Institution within the country. The knowledge gained by the officers, will be of immense value to bring about a qualitative change in the training institutions. The following proposals are made in this regard:
  - a) Permanent posting of an officer to the training institutions for 2-3 years;
  - b) Temporary attachment with the training intuitions for 3 to 6 months for some research project on helping in developing case studies;
  - c) Earmarked as a visiting faculty member for specific subject.
- v) Individuals posted to their parent organizations will also organize training for their subordinates within the department, in order to transfer the knowledge and bring about a qualitative change internally;
- vi) The Normal tenure of posting as already provided in the policy would be ensured;
- vii) No participant should be allowed to be posted on deputation to multinational donor agencies for at least 5 years;
- viii) No participants will decline/represent against his/her posting.

\*\*\*\*\*  
 \*\*\*\*\*  
 \*\*\*\*\*

CI  
17

GOVERNMENT OF KHYBER PAKHTUNKHWA  
 ESTABLISHMENT DEPARTMENT  
 (REGULATION WING)  
 NO. SOR.VI (E&AD)1 -4/2005/Vol-II  
 Dated Peshawar, 27<sup>th</sup> February, 2013

Environment Department  
 Govt. of Khyber Pakhtunkhwa  
 Secy, D/101  
 Peshawar  
 Dated 27/2/2013

To  
*[Handwritten signature]*

1. The Additional Chief Secretary (P&D) Khyber Pakhtunkhwa.
2. The Additional Chief Secretary (FATA) Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
4. All Commissioners in Khyber Pakhtunkhwa.

Subject: CONSTITUTION PETITION NO.23 OF 2012 OUT OF SUO MOTO CASE NO. 3/2012 (PETITION BY MS. ANITA TURAB FOR PROTECTION OF CIVIL SERVANTS REGISTERED UNDER ARTICLE 184 (3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973.)

Sir,

I am directed to refer to the subject noted above and to state that the Supreme Court of Pakistan vide the subject cited judgment has enunciated the following principles of Law with regard to protection and conduct of civil servants.

- (i) Appointments, Removals and Promotions: Appointments, removals and promotions must be made in accordance with the law and the rules made thereunder, where no such law or rule exists and the matter has been left to discretion, such discretion must be exercised in a structured, transparent and reasonable manner and in the public interest.
- (ii) Tenure, Posting and Transfer: When the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable.

*[Handwritten initials]*  
 4/3

*[Handwritten signature]*

*[Handwritten signature]*  
 Secy

*[Handwritten signature]*  
 Secy Est  
 5/3

- (iii) **Illegal Orders:** Civil Servants owe their first and foremost allegiance to the law and the constitution. They are not bound to obey orders from superiors which are illegal or are not in accordance with accepted practices and rule based norms; instead, in such situations, they must record their opinion and, if necessary, dissent.
- (iv) **OSD:** Officers should not be posted as OSD except for compelling reasons, which must be recorded in writing. If at all an officer is to be posted as OSD, such posting should not exceed 03 months. If there is a disciplinary inquiry going on against him/her such inquiry must be completed at the earliest. The officer on special duty may be posted against a post of his/her equivalent pay scale/grade within 03 months of his/her order as OSD.

2. I am, therefore, directed to request you to note the above principles of law for strict compliance.

Yours faithfully,

*Wajam*  
(NAJ-MUS-SAHAR)  
SECTION OFFICER (REG-VI)

Encl: as above.

A copy is forwarded to:-

1. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. The Secretary Provincial Assembly, Khyber Pakhtunkhwa.
4. The Accountant General, Khyber Pakhtunkhwa.
5. The Registrar, Peshawar High Court, Peshwar.
6. The Secretary Khyber Pakhtunkhwa, Public Service Commission.
7. All Addl: Secretaries Establishment & Administration Department.
8. All Deputy Secretaries in Establishment & Administration Department.

*Wajam*  
SECTION OFFICER (REG-VI)

18

**VAKALAT NAMA**

NO. \_\_\_\_\_/20

IN THE COURT OF Service Tribunal Peshawar

Gohar Ali (Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

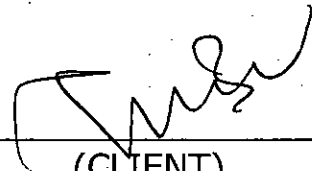
Education Dept. (Respondent)  
(Defendant)

I/We, Gohar Ali (Appellant)

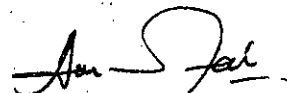
Do hereby appoint and constitute **M. Asif Yousafzai, Advocate, Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

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. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated 9-1- /2014.

  
\_\_\_\_\_  
(CLIENT)

ACCEPTED

  
**M. ASIF YOUSAFZAI**  
Advocate.

**OFFICE:**

Room # FR-8, 4<sup>th</sup> Floor,  
Bilour Plaza, Peshawar,  
Cantt: Peshawar  
Cell: (0333-9103240)

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

APPEAL NO. 41/2014.

Gohar Ali

VS

Education Deptt:

**APPLICATION FOR FIXING AN EARLY  
DATE OF HEARTING INSTEAD OF  
28.1.2014.**

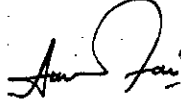
**R.SHEWETH.**

- 1- That the above noted appeal is pending in preliminary hearing and fixed for 28.1.2014.
- 2- That the main issue in appeal is regarding the posting and subsequent cancellation of previous in involved which has been done due to political consideration.
- 3- That the urgent hearing of the case is requested because the stay application has already been filed along with the main appeal.
- 4- That since the same issue is involved in the appeal and the date fixed for preliminary hearing is too far.


Therefore to meet the ends of justice, it is prayed that the appeal may be fixed on an early date instead of 28.1.2014.

APPELLANT

THROUGH:

  
M.ASIF YOUSAFZAI

ADVOCATE.

*For Party,*  
  
10/1/14

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. \_\_\_\_\_/2014

Gohar Ali, PET, Govt: High  
School Esaf Khel, Karak

.....Appellant

Versus

The Secretary Education (E &  
SE), Peshawar and others and  
others

.....Respondents

**INDEX**

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Repty with Affidavit			1-6
2.	Stay Replication with Affidavit with Annexures			7-13
3.	Copy of the promotion/appointment order of appellant and his posting.	23-04-2012	A	14
4.	Copy of appellant 1 <sup>st</sup> Transfer Order	21-06-2012	B	15
5.	Copy of Due Letter of Malik Qasim for transfer of the appellant addressed to EDO (E & SE) Karak		C	16
6.	Copy of appellant 2 <sup>nd</sup> Transfer Order	30-09-2013	D	17-18
7.	Wakalat Nama			

*H. Hussain*

Respondent No.6

Through

*Ashraf Ali*  
Ashraf Ali Khattak  
Advocate, Peshawar

Dated: \_\_\_\_\_ / 02/ 2014

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

Service Appeal No. \_\_\_\_\_/2014

Gohar Ali, PET, Govt: High School Esaf Khel, Karak .....  
.....Appellant.

Versus

The Secretary Education (E & SE) , Peshawar and others .....  
.....Respondents.

---

**Reply on behalf of Respondent No. 6 in response to the appeal  
filed by the appellate.**

---

- I. That the appeal is not maintainable in the present form.
- II. That the appellant has not come to the tribunal with clean hands.
- III. That the principle of estoppel is applicable against the appellant.
- IV. That appellant has no cause of action.
- V. That the appeal is barred by law of limitation.

Facts giving rise to the present appeal are as under:-

1. That Para No.1 of the appeal pertain to record, hence no comments.
2. That the Para No.2 of the appeal is incorrect, hence denied. Appellant was appointed as PET vide order dated 23-04-2012 (Annexure-R/I) and was posted at GHS, Hayat Abad, Melo



Karak. As the Executive District Officer of the time namely Mr. Haziq Ur Rehman was his relative and co-villager, therefore, appellant secured his transfer to Govt High School Esaf Khel (Karak) just after two months of his appointment in that too in relaxation of ban as a special case (Annexure-R/II). So far the question of submitting application for his transfer to nearest Station is concerned it has no factual support and based on misrepresentation. Appellant has secured all his transfer through extraneous and political means; the same is evident from his transfer orders. All his transfer order has been carried out in ban period with relaxation of ban! What it mean? In my humble view this shows that appellant was the blue eyed chap of the than EDO, who was his relative and co-villager and that is why he frequently secured his transfer orders in very short span of time.

3. That Para No.3 of the appeal is incorrect, hence denied. Appellant again by using his political means (Annexure-R/III) and the authority of his relative again secure his 3<sup>rd</sup> transfer and that too within the prohibitory period of his appointment and more so against the post which was to be vacated by respondent No.5 after a period of about 3 and a half month with special favour of relaxation of ban.
4. The impugned transfer order has been carried out in accordance with law and procedure and as per policy. Respondent No.6 has 18 years service at his credit with unblemished and clean sheeted conduct record. He has been transfer to his home station after rendering 18 years service out side of his home station. Respondent No. 6 has been transferred to home station after rendering about 5 years service at Govt: High School Rahmat Abad, whereas appellant has secure his transfer to the impugned station of posting just after just after 3 months of his

service at Govt: High School Esak khel karak. Appellant frequent transfer orders within short Spain of time with his consent itself speak the melody of political interference on his part.

Resondent No.6 does belive in law and procedure and has never been involved in any extraneous activity. Respondent No.6 and 5 had applied for their mutual transfer in early days of the year 2013 but the application was kept pending by the relative of the Appellant for reason best known to him. The relative of the appellant the than EDO was transferred on 23-10-2013 and thereafter Respondent No.6 and 5 again placed their grievances before the newly District Education Officer (Male) (E & SE) Karak, who was pleased to redress the grieviences of the respondents. The transfer order dated 21-12-2013 has been passed at the mutual consent of respondent No. 5 and 6. Mutual transfer is no wrong in law and the same has been safeguarded by posting transfer policy. It is pertinent to mention here that the order dated 21-12-2013 has issued after the transfer of the than EDO i.e the relative and co villager of appellant.

5. That Para No.5 pertains to record, hence no comments, however, the departmental appeal has been rejected on solid footing as being politically motivated.

**Grounds:**

- A. That Para No.1 of the ground of appeal is incorrect, hence denied. The order dated 8-1-2014 and 21-12-2013 has been passed by the competent authority in accordance with rules, norms of justice and fair play, therefore, maintainable in the eyes of law. Moreover, the order dated 30-09-2013 has no legal backing and was passed on extraneous means

and was politically motivated. The same has no weight in law. An authority that passes an order is also competent to withdraw the same before its implementation. As the order dated 30-12-2013 was not implemented at the time of respondent No.5 & 6 mutual transfer order. On this score appellant has no right and has no cause of action.

- B. That ground B of the appeal is incorrect, hence denied. There is no law, rules and policy to support the version of the appellant. The order dated 21-12-2013 is not politically motivated and has been passed on merit.
- C. That Para No.C of the grounds of appeal is incorrect, hence denied. There is no law, rules and policy to support the version of the appellant. The appellant has no concern with order dated 21-12-2013 as he has no locus standi against the same. On this score the departmental appeal was not competent.
- D. That Para No. D of the grounds of appeal is incorrect, hence denied. There is no ban for mutual transfer even at the last tenure of an employee.
- E. That Para No. E of the grounds of appeal is incorrect, hence denied. Appellant has used unwarranted language in the para without any sort of reason and evidence. Respondent No.5 & 6 reserve their right against the same. The appeal of the appellant is liable to be dismissed on this score

alone.

- F. That ground F of the appeal is incorrect, hence denied. The order dated 8-1-2014 and 21-12-2013 have been issued as per law, rules and policy.
- G. That respondent No.6 would also like to seek the permission of the Tribunal to advance some more grounds in rebuttle at the time of hearing.

For the aforesaid reasons, it is therefore, humbly prayed that on acceptance of this reply the appeal of the appellatant may kindly be dismissed with cost.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to petitioner.

  
Respondent No.6

Through

  
Ashraf Ali Khattak  
Advocate, Peshawar.

Dated: \_\_\_\_\_ / 02/ 2014

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

Service Appeal No. \_\_\_\_\_/2014

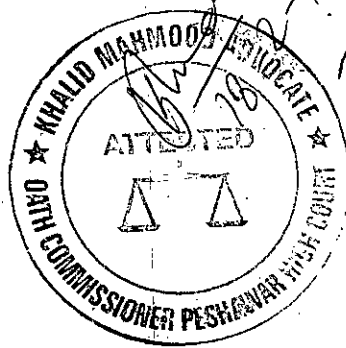
Gohar Ali, PET, Govt: High School Esaf Khel, Karak .....  
.....Appellant.

Versus

The Secretary Education (E & SE), Peshawar and others .....  
.....Respondents.

**Affidavit**

I, **Muhammad Humayun PET, Govt: Continental  
Higher Secondary School, Chowkedar, Karak** do  
hereby believe that the contents of the reply is true  
and correct to the best of my knowledge and belief  
and nothing has been concealed from the Honourable  
Tribunal.



*Muhammad Humayun*  
Deponent.

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

Service Appeal No. \_\_\_\_\_/2014

Gohar Ali, PET, Govt: High School Esaf Khel, Karak .....  
.....Appellant.

Versus

The Secretary Education (E & SE) , Peshawar and others .....  
.....Respondents.

**Replication on behalf of respondent No.6 in response to the application of the  
appellant filed for suspension of the order dated 21-12-2013 and 8-1-2014.**

**Respectfully Sheweth,**

**That Para No.1 of the application pertains to record.**

**That Para No.2 of the application is incorrect, hence denied. The order dated  
21-12-2013 has been passed on merit and is not politically motivated, whereas  
the order of appellant dated 30-09-2013 is illegal, politically motivated and  
was issued in disregard of the rules, policy, hence illegal and cannot be  
maintained.**

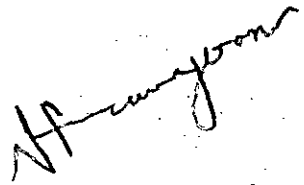
**That para No.3 of the application is incorrect hence denied. The appellant has  
no locus standi to file departmental appeal, hence rejected on merit.**

**That applicant has no locus standi and cause of action. Appellant application  
is devoid of merits. Neither he has prima facie case nor is balance of**

conveyence in his favour. The question of irreparable loss does not arise.

That the interim relief may kindly be withdrawn.

It is therefore, humbly requested that the application of the appellant may kindly be dismissed with cost.

  
Respondent No. 6

Through

  
Ashraf Ali Khattak

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

Service Appeal No. \_\_\_\_\_/2014

Gohar Ali, PET, Govt: High School Esaf Khel, Karak .....  
.....Appellant.

Versus

The Secretary Education (E & SE), Peshawar and others .....  
.....Respondents.

**Affidavit**

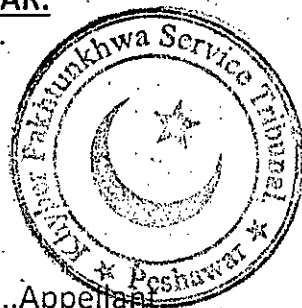
I, **Muhammad Humayun PET, Govt: Continental  
Higher Secondary School, Chowkedar, Karak** do  
hereby believe that the contents of the replications are  
true and correct to the best of my knowledge and  
belief and nothing has been concealed from the  
Honourable Tribunal.

*Muhammad Humayun*  
Deponent.



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 41 /2014.



Gohar Ali, PET,  
GHS Esaf Khel, karak.....

Appellant

VERSUS

- 1- The Secretary Education (E&SE) Peshawar.
- 2- The Director Education (E&SE) Peshawar.
- 3- The Asstt: director (P&SE), (E&SE) Peshawar.
- 4- The DEO (male) E&SE, karak.
- 5- Esa Khan PET, GCMHS Chowkara, Karak.
- 6- Humayun PET, GHS Rehmat Abad, karak:.....respondents.

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT 1974 AGAINST THE ORDER DATED. 8.1.2014 PASSED ON APPEAL OF APPELLANT AGAINST THE ORDER DATED. 21.12.2013.

Attested  
To be a copy

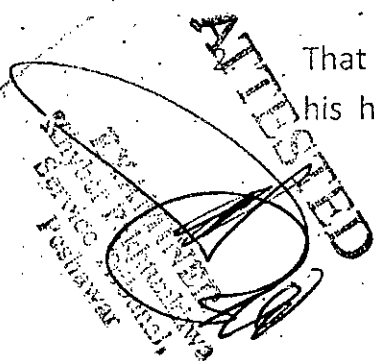
PRAYER:

*That on acceptance of this appeal the order dated. 8.1.2014 may be declared as illegal, without lawful authority and the same may be modified by setting aside the order dated. 21.12. 2013 and restoring the order dated. 30.9.2013. Any other remedy which this august tribunal deems fit that may also be awarded in favour of appellant.*

R.SHEWETH.

1. That the appellant has been serving in the Education Deptt; as PET and has good record at his credit.

That as the appellant was working at a very far flung area from his home station, therefore he submitted an application for



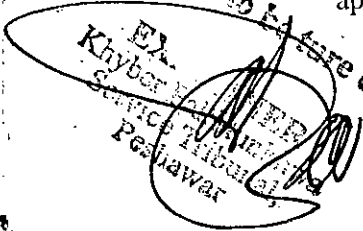
ADK Saey  
12/02/2014  
D20  
167  
12/2/2014



11.2.2014

Appellant with counsel, Mr. Muhammad Jan, GP with Khursheed Khan, SO for respondent No. 1, Mr. Sajad Rasheed, A.D for respondent No. 2 & 3 Muhammad Hamayun, ADO for respondents No. 4 and private respondent No. 6 in person present. None is available on behalf of private respondent No. 5. Appellant informed that private respondent No. 5 has been retired from service on the age of superannuation. Since the case was fixed for written replies/arguments on stay application but the respondents still needs time, hence the operation of the impugned order dated 21.12.2013 is suspended till the next date. To come up for written reply on main appeal as well as reply/arguments on 13.3.2014.

Certified to be true copy



Member

Member

Date of Presentation of Application 11-2-2014  
 Number of Pages 800  
 Copies of 6  
 Urgent 2  
 Total 8  
 Name of Case [Signature]  
 Date of Complaint 11-2-2014  
 Date of Delivery of Copy 11-2-2014

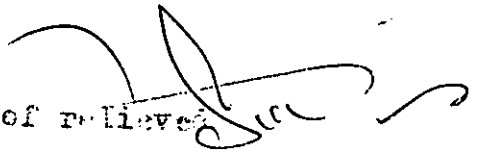
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to be true copy

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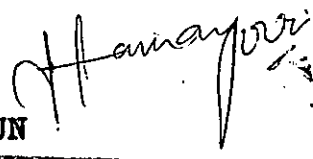
CERTIFICATE OF TRANSFER OF CHARGE.

Certified that we have on the Forenoon of this day 23-12-2013 respectively made over and receive charge of this office of the PET post Vide District Education Officer(Male)Secy:Karak Endst No. 4606-09/Dated Karak the 21-12-2013.

Particular of cash and important secret and confidential documents handed over and noted on the reverse.

Signature of relieved   
Govt: Servant MR. ISSA KHAN  
Designation PET


Station GCMHS, Chokara  
Dated 23-12-2013.

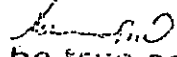
Signature of relieving   
Govt: Servant MR. EAMAYUN  
Designation PET

Endst No. 2260-61 Dated 23/12/2013

Copy of the above is forwarded for information to the:-

1. District Education Officer(Male)Secy:Karak.
2. District Accounts Officer Karak

  
Principal  
Govt: Centennial Model High School Chokara (Karak)  
Principal  
Govt: Centennial Model High School Chokara (Karak)

Attested  
  
To be true copy  
Advocate

S. No 0433536

Roll No. 50616

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

(13)

**BOARD OF INTERMEDIATE AND SECONDARY EDUCATION**



Peshawar N.W.F.P. Pakistan

Secondary School Certificate Examination

SESSION 1983 (ANNUAL)

THIS IS TO CERTIFY THAT HUMAYUN

Son/Daughter of MIR SHAH BAZ KHAN

and a student of GOVT HIGH SCHOOL, CHOKARA KARAK

has passed the *Secondary School Certificate Examination* of the Board of Intermediate and Secondary Education, Peshawar held in April 1983 as a *Regular candidate*. He/She obtained 495 Marks out of 850 and has been placed in Grade  C  Representing GOOD

The Candidate passed in the following subjects:

- |            |              |                |                |
|------------|--------------|----------------|----------------|
| 1. English | 3. Islamiyat | 5. PAK:STUDIES | 7. PHYSICS     |
| 2. Urdu    | 4. CHEMISTRY | 6. BIOLOGY     | 8. MATHEMATICS |

He/She has been awarded Grade  B  on the basis of internal assessment by the Institution concerned.

Date of birth according to admission form is FIFTH OCTOBER,  
one thousand nine hundred and SIXTY SIX (5-10-1966)

*Asstt. Secretary*

10th August 1983

This certificate is issued without alteration or erasure.

Secretary

Attested  
To be attested copy  
Advocate

**OFFICE OF THE EXECUTIVE DISTRICT OFFICER ELEMENTARY AND  
SECONDARY EDUCATION KARAK**

(A)

(Annex - A)

**PROMOTION ORDER OF PET (MALE)**

Consequent upon the approval of <sup>PSTs</sup> the District Recruitment/Selection/promotion Committee, the following ~~Teachers~~ Teachers are hereby promoted to the posts of PET BPS-9 @ Rs (6200-380-17600) PM plus usual allowances as due and admissible under the prescribed rules/quota (80%open merit and 20%Seniority-Cum-Fitness) on regular basis with effect from the date of their taking over charge on the terms and conditions as mentioned below and adjusted against the vacant PET post in the schools noted against each:-

14

**20 Seniority -cum-Fitness Merit (02 Posts)**

S.No.	Name	Father's Name	Desig	Address	Posted at
1	Zia Ullah	Inayat Hussain	Pst	GPS Toor Dahnd	GHS Biland Kala
2	Gohar Ali	Gul Nawaz	Pst	GPS Ganderi Khattak	GHS Hayat Abad Melo

**TERMS & CONDITIONS**

1. No TA/DA is allowed.
2. Charge report should be submitted to all concerned in duplicate.
3. They will take over charge with immediate effect as they have already given option of joining the promotion to the ~~AE~~ post.
4. They will be governed by such rules and regulations as may be issued from time to time by the Govt.
5. They will be returned to their original post if their seniority is erroneous.
6. DDO are directed to relieve the above mentioned teacher forthwith or with the arrival of fresh appointee.

Executive District Officer  
Elementary & Secondary Education  
Karak

Endst: No. 2785-90 I /AE-I (M) Dated Karak the 23/4/2012

Copy of the above is forwarded to the:-

1. Director Elementary & Secondary Education Deptt: Khyber Pakhtunkhwa Peshawar.
2. District Coordination Officer, Karak.
3. District Accounts Officer, Karak .
4. District Officer (M) Local Office.
5. All the concerned Principal/Headmasters of GHSS/GHS/GMS.
6. Candidates concerned.

**Attested**  
*[Signature]*  
To be true copy  
Advocate

Executive District Officer  
Elementary & Secondary Education  
Karak

*[Signature]*  
23/4/12

PET گور علی

( Annex - B )

( B )

OFFICE OF THE EXECUTIVE DISTRICT OFFICER ELEMENTARY & SECY:  
EDUCATION KARAK.

15

TRANSFER/ ADJUSTMENT.

Consequent upon as approved by competent authority relaxation of Man Mr; Ghosr Ali PET GHS. Hayat Abed is hereby ordered w.e.f. 7.7.2012 on his own pay and EPS in the interest of public service against the post of Mr; Zaheer ul Hassan PET GHS. Esaf Khel (Karak) proceeding on Transfer/ vacant.

**NOTE:-**

- No TA/DA is Allowed.
- Charge report should be submitted to all concerned.

Executive District Officer,  
Elementary Secy; Edu; Karak.

Endst: No. 4750-52 / Dated Karak the 21-6 / 2012.

Copy to the above:-

1. District Accounts Officer, Kar k.
2. Head Master, GHS. Esaf Khel/ GHS. Hay t Abed.
3. Official concerned.

Asstt; District Officer (M)  
Elementary Secy; Edu; Karak.

Attested  
To be true copy  
Advocate



Malik Qasim Khan Khattak

(F)

Amex - C

ADVISOR  
TO CHIEF MINISTER FOR PRISONS,  
KHYBER PAKHTUNKHWA

(16)

D.O. No. Adv/CM/Prison/1-30, 2013  
Dated. 24<sup>th</sup> September, 2013

Subject: **REQUEST FOR TRANSFER.**

Mr. Gohar Ali, Physical Education Teacher is serving in Government High School Aisaif Khel, District Karak. He is the bonafide resident of Ghandari Khattak, Tehsil Takht-e-Nasrati District Karak and request for transferred to either in GCMHS Chokara or GHS Takht-e-Nasrati in District Karak. His application is attached for perusal.

I strongly recommend him for transfer in any one of the above mentioned schools. *He may be posted on the retirement of The Present incumbent. Advance order see issued P1.*  
With regards.

Yours' sincerely,

(MALIK QASIM KHAN KHATTAK)

The District Education Officer(Male),  
Elementary and Secondary Education Deptt.  
District Karak.

Attested

To be attested copy  
Advocate

(D)

(S)

Annex - D

(A)

17

OFFICE OF THE DISTRICT EDUCATION OFFICER(MALE) KARAK.

TRANSFER/ADJUSTMENT

Consequent upon as approved by the Competent authority  
Relaxation of ban Mr Gohar Ali PET GHS Esaf Khel (Karak) is hereby ordered  
w.e.f 11/1/2014 on his own pay and BPS in the interest of Public Service against  
the Post of Mr Esa Khan PET G.C.M.H.S Chokara (Karak) proceeding on retirement

Vacant

Note;- No TA/DA is allowed

Charge report should be submitted to all concerned

DISTRICT EDUCATION OFFICER  
(M) SECONDARY KARAK

Endst NO 3459-61 Dated Karak the 30/9 2013

Copy to the above

- 1 District Accounts Officer (Karak)
- 2 Head Master GHS Esaf Khel/G.C.M.H.S Chokara(Karak)
- 3 Official Concerned.

*[Signature]*  
DEPUTY-DISTRICT EDUCATION  
OFFICER (M) SECONDARY  
(KARAK).

**Attested**  
*[Signature]*  
**To be true copy**  
**Advocate**



(18)

**OFFICE OF THE EXECUTIVE DISTRICT OFFICE SCHOOL & LITERACY KARAK**

Mutual / Transfer

No. 1849-52 /EDO (S&L)

The following mutual / transfer amongst the PET. School & Literacy Depot; Karak as hereby ordered with immediate effect in the interest of public services on the recommendation of DCO & District Nazim Karak.

S.No	Name of official	From	To	Remarks
	Muhammad Nasir Khan PET	GHSS. Karak	GHSS. T. Nasrati	Against vacant post of PET
	Noor Ali Shah PET	GHSS T. Nasrati	GHSS Karak	Vice S.No. 1
	Raja Ali Shah PET	GHS Rehmat Abad	GHS Biland Kala	Vice S. No 4
	Muhammad Hamayun	GHS Biland Kala	GHS. Rehmat Abad	Vice S. No 3

note:-

1. No TA/DA is allowed.
2. Charge report should be submitted to all concerned.

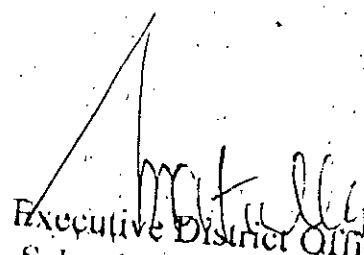
Executive District Officer  
School & Literacy Karak

Orderment No. \_\_\_\_\_

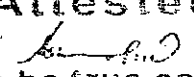
Dated Karak, 4-3-2008

By forwarded to:-

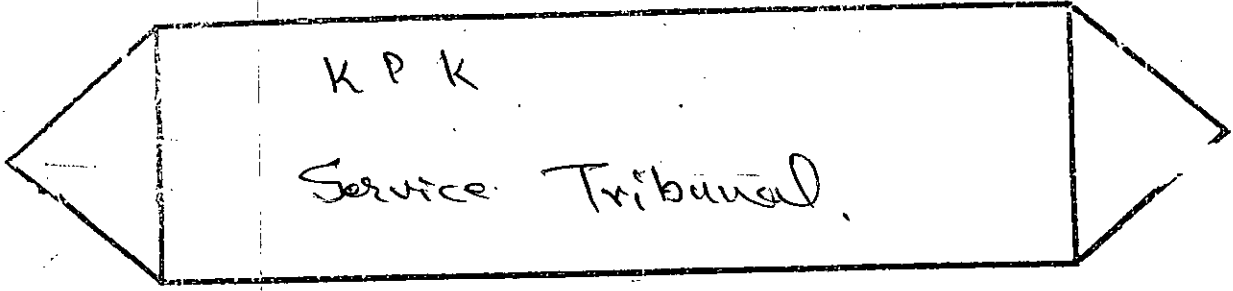
1. District Nazim Karak
2. DCO Karak
3. Deputy District Officer Male (Secondary Karak)
4. Head Master/Principal concerned
5. Official Concerned

  
Executive District Officer  
School & Literacy Karak

**Attested**

  
To be true copy/  
Advocate

بعد الت



2 منجانب  
Repondent  
No = 6

گد بر علی

بنام

سکریٹری ایجوکیشن

مورخہ

مقدمہ

دعویٰ

جرم

### باعث تحریر آئیکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ  
آن مقام دستاورد کیلئے اشرف علی صاحب  
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوفہ کے مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز  
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی  
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار  
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیار حاصل ہوں گے اور اس کا ساختہ  
پرواختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے دہوگا۔  
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وہ واجب پابند ہوں گے۔ کہ پیروی  
مذکورہ کریں لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

ASHRAF ALI KHAN  
ADVOCATE

2014ء

فوری ماہ 18

المرقوم

کے لئے منظور ہے۔

Attested & Accepted

Signature

To be the copy  
Advocate

بمقام

**OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) KARAK**

**BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR**

Appeal No. \_\_\_\_\_ 2014

**Gohar Ali PET**

**GHS Esaf Khel Karak. .... Appellant**

**V/S**

1. The Secretary Education (E&SE) Peshawar.
2. The Director Education (E&SE) Peshawar.
3. The Assistant Director (E&SE) E&SE Peshawar.
4. The DEO (Male) E&SE Karak.
5. Esa Khan PET GCMHS Chowkara Karak.
6. Hamayun PET, GHS Rehmat Abad Karak..... **Respondents.**

**PARAWISE COMMENTS ON BEHALF OF OFFICIAL RESPONDENTS.**

**Preliminary Objection:**

1. The appellant has no Locus standi.
2. The appeal is against Law, facts and material placed on file.
3. The appellant has not come to the Honourable Tribunal with clean hands.
4. The appellant has suppressed some important material/facts from the Honourable tribunal.
5. The appeal is time barred.
6. The appeal is not entertainable and maintainable at present form.
7. The appeal is liable to be dismissed.

**Facts:**

1. Pertains to Record.
2. Incorrect. Under section 10 of Civil Servant Act, the appellant is liable to serve anywhere wherever his services is required.
3. Pertains to record.
4. Incorrect. The respondent No 5&6 have been applied for their mutual transfer and order has been made in this respect, as both were agreed for their transfer. Moreover the order was issued in Public interest and there is no political interference.
5. Incorrect. The departmental appeal filed by the appellant was thoroughly examined and it was rejected on cogent reasons, hence the instant appeal is not maintainable and liable to be dismissed.

**Grounds:**

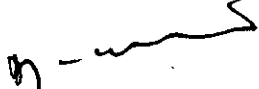
- A. Incorrect. The transfer order of the appellant is according to Law, Rules and Principal of fair play.
- B. Incorrect. The transfer order is not made on the interference of political figures, rather it was issued in Public interest.

- C. Incorrect. No malafide is involved. The order was issued in Public interest and in accordance with Law. Moreover the appellant is liable to serve any where, wherever his service is required.
- D. Incorrect. As replied in ground C.
- E. Irrelevant to answering respondent, however the appellant is liable to prove.
- F. Incorrect. No such kind of right of the appellant has been affected. The transfer order is lawful and legal.
- G. That respondent seek permission to raise additional grounds at the time of arguments.

It is requested that the appeal may be dismissed with cost.

  
DISTRICT EDUCATION OFFICER  
MALE KARAK

  
DIRECTOR  
ELEMENTARY & SECONDARY EDUCATION  
KHYBER PAKHTUNKHWA PESHAWAR.

  
SECRETARY  
ELEMENTARY & SECONDARY EDUCATION  
GOVT. OF KHYBER PAKHTUNKHWA PESHAWAR

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) KARAK  
BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Appeal No. \_\_\_\_\_ 2014

Gohar Ali PET

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3. The Assistant Director (E&SE) E&SE Peshawar.
4. The DEO (Male) E&SE Karak.
5. Esa Khan PET GCMHS Chowkara Karak.
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Grounds:

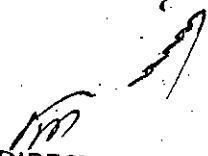
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- B. Incorrect. The transfer order is not made on the interference of political figures, rather it was issued in Public interest.


Incorrect. No malafide is involved. The order was issued in Public interest and in accordance with Law. Moreover the appellant is liable to serve any where, wherever his service is required.

- D. Incorrect. As replied in ground C.
- E. Irrelevant to answering respondent, however the appellant is liable to prove.
- F. Incorrect. No such kind of right of the appellant has been affected. The transfer order is lawful.
- G. That respondent seek permission to raise additional grounds at the time of arguments.

It is requested that the appeal may be dismissed with cost.

  
DISTRICT EDUCATION OFFICER  
MALE KARAK

  
DIRECTOR  
ELEMENTARY & SECONDARY EDUCATION  
KHYBER PAKHTUNKHWA PESHAWAR.

  
SECRETARY  
ELEMENTARY & SECONDARY EDUCATION  
GOVT: OF KHYBER PAKHTUNKHWA PESHAWAR

To

The Honourable Chairman "Khyber  
Pakhtunkhwa Service Tribunal, Peshawar.

**Subject: Departmental appeal**

Respected Sir,

With due respect I have the honour to submit the following few lines for your kind consideration and favourable action:-

1. The One Mr. Gohar Ali PET has filed service appeal No.41 of 2014, which has been pending adjudication before the Honourable Member Bench (Annexure-I), wherein the applicant has been arrayed as respondent No.6.

2. That the appeal cited above was fixed for written reply and replication and arguments on application for suspension of the impugned order.

That applicant/respondent No.6 has already submitted written reply along with replication.

That the case/appeal was called for hearing but the Honourable Member without hearing the contention of the counsel for the applicant adjourned the case initially to 21-04.2014 with further direction that the impugned order of the appeal shall remain suspended till next date.

5. That the counsel for the appellant requested the court that he may kindly be heard on suspension application as he has already filed his written reply along with replication, but the Honourable Member without just cause further adjourned the case for 13-06-2014.

6. That further adjournment on the part of the Honourable Member was not due to the reason that the counsel for the respondent No.6 portrayed any unwarranted attitude but due to the reason that the Honourable member was the relative and co villager of the appellant and therefore, this was the main

*Put up with the file.*

*[Signature]*

*14/3/14*

*Learned Member (Judicial)*

*Please look into the matter,*

*as we should not punish a party for the fault of any, or the part of the counsel*

*[Signature]*

*24/3/14*

*Notice be issued to the parties for 21/04/14 instead of 13/06/14.*  
*[Signature]*  
*24.03.14*

reason for such long adjournment and suspension of the impugned order without any sort of arguments on suspension application.

7. That the Honourable Member Mr. Sultan Mehmood Khattak is the relative and co villager of the appellant. The appellant has no case on merit and is liable to be dismissed on the score of political motivation as evident from bare perusal of the reply of the applicant.
  8. That the Honourable Member is not an independent and lawful judge in the case.
- 

It is, therefore, humbly requested that on acceptance of this application Your Honour may graciously be pleased to transfer the titled service application before the Chairman Bench.

Yours faithfully

  
Hamayun PET, GCMHS Chowkara, Karak

dated: 14/3/2014



21/5/14

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

Service Appeal No. 41/2014

Gohar Ali

VS

Education Deptt:

.....

**REJOINDER ON BEHALF OF APPELLANT**

.....

**RESPECTFULLY SHEWETH:**

**Preliminary Objections:**

(1-7) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

**FACTS:**

- 1 No comments.
- 2 Incorrect. if home station post is vacant then it is the right of the appellant to posted him at home station as if a teacher is easily accessible to School then he can also teach in good way and if a teacher come to school from very far flung area, then it also effect its teaching due to traffic problems, moreover the transfer of the appellant was made after observing proper procedure and approval and no extraneous and political means are involved in the transfer order dated 30.9.2013.
- 3 Incorrect. the transfer of the appellant on dated 30.9.2013 was made after observing proper procedure and approval and no extraneous and political means are involved in this transfer order.
- 4 Incorrect. the respondent Deptt: passed an order that the appellant has been transferred to GCMHS.

take over charge there after the retirement of the respondent No.5 on 11.12.2014, but in mean while respondent No.6 due to political interference managed to get the order dated 21.12.2013 by showing himself and respondent No. 5 as mutually transferred and the order of the appellant was cancelled with out showing any reason, while respondent No.5 is going to retire from service on 11.1.2014 and he is the resident of Chowkara and as per Govt: instruction a retiring employee will not be transferred and transfer of the respondent No. 5 on 21.12.2013 is against Govt: instruction.

- 5 Incorrect. the departmental appeal of the appellant was not rejected on solid ground, but on flimsy grounds.

**GROUND:**

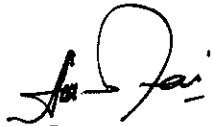
- A) Incorrect, while Para-A of appeal is correct.
- B) Incorrect, the order dated 21.12.2013 has not been passed in public interest but was passed due to political interference of Malik Qasim MPA and therefore liable to be set aside.
- C) Incorrect. The order dated 21.12 2013 was not issued in public but was passed due to political interference and no reason was given in cancellation order dated 30.9.2013 of the appellant. Hence malafide is involved in order dated 21.12.2013.
- D) Incorrect, the respondent No.5 is going to retire from service on 11.1.2014 and he is the resident of Chowkara and as per Govt: instruction a retiring employee will not be transferred and transfer of the respondent No. 5 on 21.12.2013 is against Govt: instruction. Hence the order dated 2.12.2013 was not issued in public interest but due to political interference which shows the ill intention and malafide on the part of

- 0
- E) Incorrect. hence denied.
  - F) Incorrect. The Para-F of appeal and contention of appellant is correct.
  - G) Legal.

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

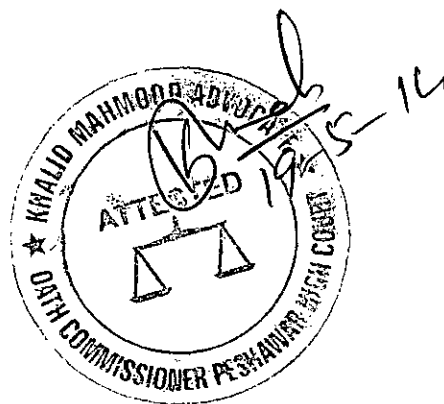
APPELLANT  
Gohar Ali

Through:

  
( M. ASIF YOUSAFZAI )  
ADVOCATE, PESHAWAR.

**AFFIDAVIT**

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.



  
DEPONENT

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) KARAK  
BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Appeal No. \_\_\_\_\_ 2014

Gohar Ali PET

GHS Esaf Khel Karak. .... Appellant

V/S

1. The Secretary Education (E&SE) Peshawar.
2. The Director Education (E&SE) Peshawar.
3. The Assistant Director (E&SE) E&SE Peshawar.
4. The DEO (Male) E&SE Karak.
5. Esa Khan PET GCMHS Chowkara Karak.
6. Hamayun PET, GHS Rehmat Abad Karak..... Respondents.

PARAWISE COMMENTS ON BEHALF OF OFFICIAL RESPONDENTS.

Preliminary Objection:

1. The appellant has no Locus standi.
2. The appeal is against Law, facts and material placed on file.
3. The appellant has not come to the Honourable Tribunal with clean hands.
4. The appellant has suppressed some important material/facts from the Honourable tribunal.
5. The appeal is time barred.
6. The appeal is not entertainable and maintainable at present form.
7. The appeal is liable to be dismissed.

Facts:

1. Pertains to Record.
2. Incorrect. Under section 10 of Civil Servant Act, the appellant is liable to serve anywhere wherever his services is required.
3. Pertains to record.
4. incorrect. The respondent No 5&6 have been applied for their mutual transfer and order has been made in this respect, as both were agreed for their transfer. Moreover the order was issued in Public interest and there is no political interference.
5. Incorrect. The departmental appeal filed by the appellant was thoroughly examined and it was rejected on cogent reasons, hence the instant appeal is not maintainable and liable to be dismissed.

Grounds:

- A. Incorrect. The transfer order of the appellant is according to Law, Rules and Principal of fair play.
- B. Incorrect. The transfer order is not made on the interference of political figures, rather it was issued in Public interest.

- C. Incorrect. No malafide is involved. The order was issued in Public interest and in accordance with Law. Moreover the appellant is liable to serve any where, wherever his service is required.
- D. Incorrect. As replied in Ground C.
- E. Irrelevant to answering respondent, however the appellant is liable to prove.
- F. Incorrect. No such kind of right of the appellant has been affected. The transfer order is lawful and legal.
- G. That respondent seek permission to raise additional grounds at the time of arguments.

It is requested that the appeal may be dismissed with cost.

  
DISTRICT EDUCATION OFFICER  
MALE KARAK

  
DIRECTOR  
ELEMENTARY & SECONDARY EDUCATION  
KHYBER PAKHTUNKHWA PESHAWAR.

SECRETARY  
ELEMENTARY & SECONDARY EDUCATION  
GOVT: OF KHYBER PAKHTUNKHWA PESHAWAR



Malik Qasim Khan Khattak

ADVISOR  
TO CHIEF MINISTER FOR PRISONS  
KHYBER PAKHTUNKHWA

20

Suggest: Material transfer order.

Re: Material transfer order  
among Est. No. P.E.T. G.S.P.H.  
School Chakara and Hamayun  
Wan, P.E.T. G.H. Rahmat Abad  
May please be issued in the  
best interest of the public.  
Application is already submitted.

3/12/2013

Distt. Education Officer  
Mardan.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 1402-05 /ST

Dated 24/9 /2014

To,

1. The Secretary Education,  
KPK, Peshawar.
2. The Director Education,  
KPK, Peshawar.
3. The DEO(M),  
E&SE, Karak.
4. The Accounts Officer,  
District Karak.

Subject:- APPEAL NO. 41/2014 GOHAR ALI VS SECRETARY EDUCATION  
AND OTHERS.

I am directed to forward herewith the following order dated 22.09.2014 passed by this Tribunal on the above appeal for strict compliance.

“Appellant with counsel, M/S Khurshid Khan, S.O for respondent No.1, Sajjad Rashid, A.D for respondents No.2 & 3 with Mr. Muhammad Adeel Butt, AAG for official respondents No.1 to 4 and private respondent No.6 with counsel present. Neither anyone is present on behalf of DEO (M) E&SE, Karak nor the requisite record, per direction contained in the order sheet dated 3.7.2014, has been produced; and the learned AAG stated that the office of DEO (M) E&SE, Karak has been contacted by the learned Sr. Govt. Pleader for the purpose but without any positive response. Therefore, the salary of DEO (M) E& SE, Karak (respondent No. 4) is attached, and order of attachment of his salary be sent to all concerned for implementation and compliance report before the date fixed. The DEO (M) E&SE, Karak (respondent No. 4) be summoned in person alongwith complete record of the case. The learned counsel for the appellant produced copy of letter with regard to mutual transfer order from Malik Qasim Khan Kattak, Advisor to Chief Minister for Prisons, Khyber Pakhtunkhwa dated 8.12.2013, which is placed on file and copies thereof are also provided to the learned counsel for private respondent and learned AAG for further arguments on 21.11.2014.”

Sd/--xxx  
Chairman

O/C

REGISTRAR

KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR.