

5. That after the one month & ten days of issuance of said transfer, appellant was once again transferred from Govt: High School Chamhad Abbottabad to Govt: High School Ghori, Abbottabad and further deputed as Litigation Officer in the office of respondent No.3 vide order No.7129-34 dated 29-06-2017. (Copy of Transfer order dated 29-06-2017 is annexed herewith as annexure "C").
6. That after the six months of said transfer appellant was once again transferred from the post of Senior School Teacher Govt: High School Ghori Abbottabad to the office of respondent No.3 as Assistant District Education Officer (Establishment) vide order No. 4153-56 dated 18-12-2017. (Copy of Transfer order dated 18-12-2017 is annexed herewith as annexure "D").
7. That within the period of six months appellant was transferred thrice without giving any lawful and cogent justification.
8. That one Mr. Sardar Mehtab Ahmad Khan, Advisor to Prime Minister politically influenced the Chief Minister of Khyber Pakhtunkhwa vide letter No. Adv/PM/2018/1 dated 15-01-2018 regarding the cancellation of transfer order dated 18-12-2017 & CM issued the directives to respondent No.1 vide letter No. SO-1/CMS/KPK/3-15-2018 dated 25-01-2018 to cancel the order dated 18-12-2017 of the appellant. (Copy of letter No. Adv/PM/2018/1 dated 15-01-2018 & letter No. SO-1/CMS/KPK/3-15-

2018 dated 25-01-2018 is annexed herewith as annexure "E" & "F" respectively.

9. That on the said CM directives respondent No.2 issued an impugned order vide Endst: No.4646-48 dated 23/04/2018 whereby, transfer order No.4153-56 dated 18/12/2017 was withdrawn without any lawful justification. (Copy of impugned order dated 23-04-2018 is annexed herewith as annexure "G").
10. That feeling aggrieved from the said impugned order appellant filed departmental appeal before the respondent No. 1 on 26-04-2018 via registered post. (Copy of departmental appeal &, postal receipt are annexed herewith as annexure "H" & "I" respectively).
11. That on 09-05-2018 vide Notification No. SO(PE)E&SED/9,4/SST/2018 respondent No. 1 issued order/direction to respondent No. 2 for appropriate action against the departmental appeal filed by the appellant. (Copy of Notification dated 09-05-2018 is annexed herewith as annexure "J").
12. That in compliance with the direction of respondent No. 1 dated 09-05-2018, respondent No. 2 rejected the departmental appeal of the appellant vide Endst: No. 4576/F.No.436/Vol-31/ADEO(M) Transfers dated 23-05-2018. (Copy of the decision of the departmental appeal is annexed herewith as annexure "K").

Now appellant seeks indulgence of this Honourable Tribunal for setting aside the impugned order dated 23-04-2018 inter-alia on the following amongst many others:-

GROUNDS:-

- a) That the impugned order dated 23-04-2018 reflects high injustice weakness and yielding before political pressure without any regard to Rule & Law and Service Discipline.
- b) That the impugned order is illegal passed in highly capricious manner which is void abinitio and without legal authority as it has been issued under the political involvement.
- c) That the impugned order dated 23-04-2018 passed without lawful authority and clear cut violation of Transfer & Posting Policy of the provincial Government 2003, which is reproduce as under: -

“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.”

Therefore, the impugned order dated 23-04-2018 is against the prevailing Law & Policy hence, liable to be

struck down. (Copy of Transfer & Posting Policy 2003, is annexed herewith as annexure "L").

d) That on the same preposition of law, Honorable Service Tribunal Peshawar also set aside the transfers order in Service Appeal No.818/2015 dated 24-8-2017. (Copy of judgment of service Tribunal is annexed herewith as annexure "M").

e) That the impugned order dated 23-04-2018 issued by the respondent No.2 is against the norms of justice and principle laid down by the August Supreme Court of Pakistan in CP No. 23/12 announced on 18-10-2012 in case titled Anita Turab VS Govt: of Sindh, KP, Baluchistan & Punjab which is binding on the subordinate courts as well as other authorities of Federal Government & Provincial Government under Article 189 of the Constitution of Islamic Republic of Pakistan. Therefore, the impugned order passed by the respondent No.2 is against the above referred judgment hence, liable to be set-aside. (Copy of judgment is annexed herewith as annexure "N").

f) That on dated 28/02/2018 appellant had filed an application vide diary No.1708 to the respondent No.1 with the request to not implement the CM directives but all in vain. (Copy of application dated 28-02-2018 is annexed herewith as annexure "O").

- g) That in similar nature case this Honourable Tribunal also held in Service Appeal No. 304/2012 announced on 02-05-2013, wherein, this Honourable Tribunal accepted the appeal and the impugned order which was issued on malafide intentions, through political pressure was set-aside as such practice has been deprecated by the August Supreme Court of Pakistan in a judgment as reported in 2007 SCMR 599. (Copy of judgment dated 02-05-2013 is annexed herewith as annexure "P").
- h) That the appellant seeks leave of this Honourable Tribunal to raise additional grounds during the course of arguments with the permission of Honourable Tribunal.
- i) That the instant service appeal is well within time.

It is, therefore, very humbly prayed that on acceptance of instant appeal impugned order issued vide Endst: No. 4646-48 dated 23-04-2018, issued by respondent No.2 may graciously be set-aside and transfer order issued under Endst: No. 4153-56 dated 18-12-2017, may kindly be restored. And impugned order may kindly be suspended till the disposal of instant service appeal. Any other remedy as may be deemed fit and proper in the circumstances of the case.

Dated: 24/05/2018



Zubair Ali
 ADEO (Estb.)
 O/O DEO (M)
 Abbottabad
Appellant in Person

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

Appeal No. ____/2018

Zubair Ali, S/O Ali Bahadar, R/O Kassaki Kalan Tehsil & District
Abbottabad, presently posted as Assistant District Education Officer
Establishment (M) Abbottabad.....**APPELLANT**

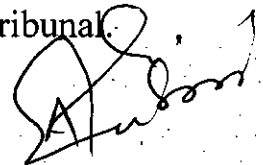
VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary Elementary &
Secondary Education Department, Khyber Pakhtunkhwa & Others

.....**RESPONDENTS**

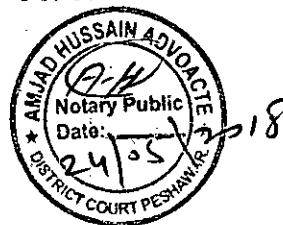
AFFIDAVIT

I, Zubair Ali, Assistant District Education Officer (Estab:) Male, Abbottabad do hereby solemnly affirm and declare that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.



ATTESTED

DEPONENT



(9)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Appeal No. ____/2018

Zubair Ali, S/O Ali Bahadar, R/O Kassaki Kalan Tehsil & District
Abbottabad, presently posted as Assistant District Education Officer
Establishment (M) Abbottabad.....**APPELLANT**

VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary Elementary &
Secondary Education Department, Khyber Pakhtunkhwa & Others

.....**RESPONDENTS**

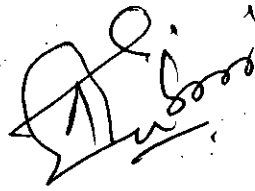
APPLICATION FOR SUSPENSION OF OPERATION
OF THE IMPUGNED ORDER NO. 4646-48 DATED 23-
04-2018 TILL THE DECISION OF THE ABOVE
TITLED SERVICE APPEAL.

Respectfully Sheweth:-

That the petitioner/appellant submits as under:-

1. That the above referred service Appeal is going to be filed in this Honourable Tribunal and instant application may please be considered as integral part of the appeal in hand.
2. That the service appeal of the petitioner /appellant is prima facie in nature as the impugned order dated 23/04/2018 was issued without lawful authority and clear cut violation of Transfer & Posting Policy of the provincial Government 2003 as well as judgment of Anita Turab case passed by August Supreme Court of Pakistan.
3. That the balance of connivance is also in the favour of appellant.
4. That in case of non suspension of operation of impugned order dated 23/04/2018 the appeal of the appellant would become infructuous and appellant would be suffered irreparable loss.
5. That all the basic ingredients regarding suspension of the operation of impugned order dated 23 /4/2018 temporary injunction are fulfilled under the law.

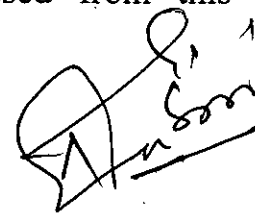
It is, therefore, respectfully prayed that on acceptance of instant application operation of the impugned order No. 4646-48 dated 23-04-2018 may kindly be suspended till the decision of titled Service Appeal.



....APPELLANT

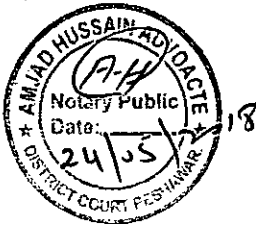
AFFADAVIT

I, Mr. Zubair Ali, Assistant District Education Officer (Est.) Abbottabad, do hereby affirm and declare on oath that the contents of forgoing application are correct and true according to the best of my knowledge and belief and nothing has been suppressed from this Honorable Tribunal.



DEPONENT

ATTESTED



Anx "A"
11

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER PAKHTUNKHWA,
PESHAWAR

NOTIFICATION

~~Mr. Zubair Ali SST GHS Chamhad District Abbottabad~~ is hereby transferred and posted against the vacant post of ADEO (Litigation) at DEO (M) Abbottabad in his own pay & BPS in the interest of public service with immediate effect subject to the following terms and conditions.

TERMS & CONDITIONS.

1. Charge report should be submitted to all concerned.
2. No TA/DA etc are allowed.
3. The order of the above named SST(teaching cadre) will be effective subject to the condition that he will give an undertaking/affidavit on legal paper/stamp paper to DEO (M) Abbottabad to the effect not to claim seniority of Management cadre.
4. His seniority will be intact in teaching cadre as per rules. He will not affect the promotion of any incumbent of that cadre.
5. The terms & conditions mentioned in his appointment order as SST:teaching cadre will intact.
6. He will not claim any kind of absorption in management cadre.

Endst: No. 495-97 /E.No. 436/ Vol-06/ADEO (M) KP.

DIRECTOR

Dated Peshawar the 9/11/2015

Copy of the above is to the:-

1. District Education Officer (M) Abbottabad.
2. District Accounts Officer. Abbottabad.
3. Principal GHS concerned.
4. SST concerned.
5. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
6. Master File.

JAR 11/15
Deputy Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

DDEO (M)

For information
and record please

10/11/15

Attested
S. A. Khan

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER
PAKHTUNKHWA, PESHAWAR.

OFFICE ORDER

~~Mr. Zubair Ali SST (Phy-Maths) working against the post of ADEO at the O/O DEO (M) Abbottabad is hereby transferred & posted against vacant post of SST (Phy-Maths) at Govt. High School Chamhad Abbottabad in his own pay & BPS in the interest of public service with immediate effect.~~

Note:-

1. Charge report should be sent to all concerned.
2. NO TA/DA etc are allowed.

DIRECTOR

Endst: No. ~~2555/56~~ / F.No.01/ SST (M) Transfers.

Dated Peshawar the ~~19/5~~ 2017

Copy of the above is to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. District Education Officer (M) Abbottabad.
3. District Accounts Officer Abbottabad.
4. Principal GHS, Chamhad District Abbottabad.
5. SST concerned.
6. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
7. Master File.

Attest
[Signature]

[Signature]
Deputy Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa

[Signature]
17/5/17

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) ABBOTTABAD.

OFFICE ORDER

Adjustment in respect of the following SST(G) BPS-16 is hereby ordered on his own pay and BPS in the interest of public service with immediate effect.

S #	Name.	Present School.	Remarks
1	Mr. Zubair Ali SST(G) posted against the post of SST(Math:Physics) at GHS Chamhad	GHS Ghori against vacant & original post of SST(G)	Deputed as Litigation Officer in the Office of DEO(M) Abbottabad

1. Charge Report should be submitted to all concerned.
2. No.TA/DA and is allowed.
3. He will draw his salary from GHS Ghori Abbottabad.

Sd/
DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD.

Endst.No. 139-34 / EB-I/15

Dated Abbottabad the 29/6/2017

Copy of the above is forwarded to:-

1. Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar with the remarks that the above named Officers has already been deputed/posted in this office as ADEO(Litigation) vide your Office Endst.No.1495-97/F.No.436/Vol.06/ADEO(M)KP dated 09-01-2015,hence it is further requested that necessary approval for his posting as Litigation Officer in this Office may please be accorded.
2. District Monitoring Officer Abbottabad.
3. District Comptroller of Accounts Abbottabad.
- ✓ 4. Head Master GHS Ghori, Abbottabad.
5. B&A officer Local Office.
6. Teachers Concerned.

DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD.

Scanned by CamScanner

RECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER
PAKHTUNKHWA, PESHAWAR.

Annex "D"
14

OFFICE ORDER.

The following posting/transfers are hereby ordered in their own pay & BPS in the larger interest of public service with immediate effect with the terms and conditions mentioned below:-

S/II	Name/Designation & Address	Where adjusted as.	Remarks
1	Mr. Rab Nawaz Khan ADEO (Estab) DEO (M) Abbottabad	ASDEO (M) Circle Berote Abbottabad.	Vice S.No.3
2	Mr. Zubair Ali SST GHS, Ghori Abbottabad.	ADEO (Estab) at DEO (M) Abbottabad.	Vice S.No. 1
3	Mr. Zulfiqar Ahmad SST/ASDEO (M) Circle Berote Abbottabad	His services placed at the disposal of DEO (M) Abbottabad	For further posting against vacant post.

Terms & Conditions

1. Charge report should be submitted to all concerned.
2. No TA/DA etc are allowed.
3. The order of SST (teaching cadre) at S.No.2 above will be effective subject to the condition that he will give an undertaking/affidavit on legal paper/stamp paper to DEO (M) Abbottabad to the effect not to claim seniority of Management cadre.
4. His seniority will be intact in teaching cadre as per rules. He will not affect the promotion of any incumbent of that cadre.
5. The terms & conditions mentioned in his appointment orders as SST teaching cadre will intact.
6. He will not claim any kind of absorption in management cadre.

DIRECTOR

Endst: No. 4153-56 /E.No.436/Vol-31/ADEO (M) Transfers cases.

Dated Peshawar the 14/12/2017

Copy of the above is forwarded to the:-

1. District Education Officer (M) Abbottabad.
2. District Accounts Officer Abbottabad.
3. Principal GHS concerned.
4. Officials concerned.
5. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
6. Master File.

Attest
Ali

[Signature]
Deputy Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa

14/12/17

Anx 4 E"
APR 15

~~Sardar Mehtab Ahmed Khan~~
~~Chief Minister, KPK~~
~~Government of Khyber Pakhtunkhwa~~
~~Education Division~~
Date: Jan 15, 2018
No: Adv/PM/Avn/2018/01

~~[Handwritten signature]~~
[Handwritten initials]

I hope this letter will find you in good health.

I am enclosing a copy of Director education KPK Office order no-415356/F.No-436/Vol-
WADEQ(M) dated 18th Dec, 2017 regarding posting/transfer of Mr. Zulfiqar Ahmed
SNA/SDEO at Abbotabad.

I would like to request that his transfer may please be cancelled/held-in-abeyance due
consistent performance, which of course is bringing good yield at school level.

Copy of transfer order is attached for your kind perusal and necessary action.

With profound regards

[Handwritten signature]

Sardar Mehtab Ahmed Khan

Mr. Parvez Khattak
Chief Minister, KPK

Attested
[Handwritten signature]

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[Handwritten initials]
19/1/18

[Handwritten initials]
19/1/18
[Handwritten initials]



CHIEF MINISTER'S SECRETARIAT
KHYBER PAKHTUNKHWA
PESHAWAR.

3-2/CMA

-P F
Amx
(16)

NO. SO-I/CMS/KPK/3-15/2018
Dated Peshawar, 25th January, 2018

w.e
1416-
-17
Amx F

To

The Secretary to Government of Khyber Pakhtunkhwa,
Elementary & Secondary Education Department.

Subject:-

Chief Minister's Directive: CANCELLATION OF POSTING/ TRANSFER.

Dear Sir,

I am directed to forward herewith copy of a DO letter No. Adv/PM/Avn/2018/01 dated 15/01/2018, received from Sardar Mehtab Ahmad Khan, Advisor to Prime Minister on Aviation Islamabad, wherein he stated that the transfer of Mr. Zulfiqar Ahmad SST/ ASDEO Abbottabad may be cancelled as DEO (M) Abbottabad and his services may be retained as ASDEO(M) Circle Berote, Abbottabad, whereupon the Hon'ble Chief Minister Khyber Pakhtunkhwa has been pleased to record the following remarks:

Sec: Edu:
"Form/a"

- Necessary action may be taken in the matter in light of above remarks of the Hon'ble Chief Minister, Khyber Pakhtunkhwa, under intimation to this Secretariat, please.

Encls: As above.

Yours faithfully,

(Hina Saeed)
Section Officer-I

Encls: No. and Date Even:
Copy for information to:

- Sardar Mehtab Ahmad Khan, Advisor to Prime Minister on Aviation Islamabad, 4th Floor, PIA Building, Fazal-e-Haq Road, Blue Area, Islamabad.
- Assistant Director, I.T. Chief Minister's Secretariat Peshawar.
- PS to Principal Secretary to the Chief Minister, Khyber Pakhtunkhwa.

Section Officer-I

3032
997
SS/Secy
29/1/18
attested
Shubmi

29/1/18

2018
29/1/18

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

OFFICE ORDER.

The office order issued vide this Directorate under endorsement No. ~~4153-56~~ dated ~~18-12-2017~~ is hereby withdrawn.

DIRECTOR

Endst. No. ~~h/b/h/48~~ /F.No. 436/Vol-31/ADEOs (M) Transfers
Dated Peshawar the ~~23/12~~ 2018

Copy of the above is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. District Education Officer (M) Abbottabad.
3. District Accounts Officer Abbottabad.
4. Officials concerned.
5. PA to Director Local Directorate.
6. Master File.

[Signature]
Deputy Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa

[Signature]
27/4/18

Attested
[Signature]

The Secretary,
E&SE, Khyber Pakhtunkhwa,
Peshawar.

Ann^u H¹⁷
(18)

Subject: DEPARTMENTAL APPEAL AGAINST THE CANCELLATION OF
TRANSFER ORDER NO.4646-48 DATED 23/04/2018 ISSUED BY THE
DIRECTOR E&SE.

Respected Sir,

With profound veneration it is submitted as under:

1. That the appellant is presently working against the post of ADEO (Estab) in the office of DEO (M) Abbottabad.
2. That the appellant was transferred from GHS Chamhad Abbottabad to DEO (M) Abbottabad as ADEO (Litigation) vide Notification No.1495-97 dated 09/01/2015. (Copy of the said Notification is annexed herewith as annexure "A").
3. That on dated 19/05/2017, appellant was once again transferred from ADEO to SST GHS Chamhad vide office order No.3455-56. (Copy of the said order is annexed herewith as annexure "B").
4. That after the one month & ten days of transfer, appellant was once again transferred from GHS Chamhad Abbottabad to GHS Ghori, Abbottabad and deputed as Litigation Officer in the office of DEO (M) Abbottabad vide order No.7129-34 dated 29/06/2017. (Copy of Transfer order dated 29/06/2017 is annexed herewith as annexure "C").
5. That after the six months, appellant was once again transferred from the post of SST GHS Ghori Abbottabad to DEO (M) Abbottabad as ADEO (Estab) vide order No. 4153-56 dated 18/12/2017. (Copy of Transfer order dated 18/12/17 is annexed herewith as annexure "D").
6. That within the period of six months appellant was transferred thrice.
7. That now the Mr. Sardar Mehtab Ahmed Khan adviser to Prime Minister politically influenced the Honorable Chief Minister vide letter No. Adv/PM/2018/01 dated 15-01-2018 regarding the cancellation of transfer order dated 18/12/2017 & Honorable CM issued the directives to Secretary E&SE vide letter NO. SO-1/CMS/KPK/3-15/2018 dated 25-01-2018 to cancel the above referred transfer order. (Copy of letter dated 15-01-2018 and CM Directive are annexed herewith as annexure "E" & "F").
8. That on the said CM directives Director E&SE issued an office order vide Endst: No.4646-48 dated 23/04/2018 whereby, transfer order dated 18/12/2017 was withdrawn without any lawful justification. (Copy of withdrawal order is annexed herewith as annexure "G").
9. That the directives of Honorable CM were issued on malafide intention through political involvement and such like practice has been deprecated by the August

*Attested
A.S. for*

Supreme Court of Pakistan in a judgment as reported in 2007 SCMR 599. Hence, directives of CM are liable to be set aside on this score alone.

10. That according to the Government of Khyber Pakhtunkhwa Posting Transfer Policy 2003, the normal tenure for posting is 2 years. If the ordinary tenure for a posting is specified in the law or Rules that cannot be violated except for compelling reasons which should be recorded in writing and justifiable. The same principle has been held by the August Supreme Court of Pakistan in Anita Turab's Case as the operative part of the judgment of para No.22 (ii) is reproduced as under:

"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." (Copy of judgment of Anita Turab's is annexed herewith as annexure "F").

11. That on the same preposition of law, Honorable Service Tribunal Peshawar also set aside the transfers order in Service Appeal No.818/2015 dated 24/8/2017. (Copy of judgment of service Tribunal is annexed herewith as annexure "G").

Under the above circumstances, it is humbly requested that on acceptance of instant departmental Appeal transfer order dated 18/12/2017 may graciously be restored and withdrawal order dated 23/04/2018 may please be set aside in order to avoid the multiplicity of litigation accordingly.

Zubair Ali
26/4/18

ZUBAIR ALI
ADEO (Estab)
O/O DEO (M)
Abbottabad
Cell # 03135904952

Dated: 26/04/2018

Attested
Director

Ann "I"
20

No. 66

For Insurance notices see reverse.
Stamps affixed except in case of
uninsured letters of not more than
the initial weight prescribed in the
Post Office Guide or on which no
acknowledgement is due.

Rs. 50
Ps.

Received a registered*
addressed to

Date-Stamp

Initials of Receiving Office Write here "letter", "postcard", "packet" or "parcel"
with the word "insured" before it when necessary.
(in words)

Insured for Rs. (in figures) 27 Apr 18

Weight (in words) Kilo Grams

If insured, Insuree's name and address of sender

Attested
[Signature]

Anx "J"
(21)

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
No: SO(PE)E&SED/9-4785/2018
Dated: Peshawar, 02/05/2018

To,
18/5/18

The Director
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar.

Subject: - DEPARTMENTAL APPEAL AGAINST THE CANCELLATION OF
TRANSFER ORDER NO: 4646-48 DATED 23/03/2018 ISSUED BY THE
DIRECTOR E&SE

Dear Sir,

I am directed to refer to the subject noted above and to enclose herewith an application No: 06 dated 02/05/2018 along with connected documents in respect of Mr. Zubair Ali, ADEO (Estab) O/O DEO (M) Abbottabad for appropriate action, please.

Yours faithfully,

7/c

SECTION OFFICER (PRIMARY)

Encl: as above:
Encl: No & date even
Copy to:

PS to Special Secretary, Elementary & Secondary Education Department, Peshawar.

Attested
Zubair

7/c

SECTION OFFICER (PRIMARY)

Directorate of Elementary & Secy: Education
Khyber Pakhtunkhwa, Peshawar
No. ~~531~~/F.No. 436/Vol-31/ADEO (M) Transfers.
Dated Peshawar the ~~23-03-2018~~

To


Mr. Zubair Ali SST/EX-ADEO
Office of the DEO (M) Abbottabad.

Subject: - DEPARTMENTAL APPEAL AGAINST THE CANCELLATION OF
TRANSFER ORDER NO. 4646-48 DATED 23-03-2018 ISSUED BY
THE DIRSECTOR E&SE KHYBER PAKHTUNKHWA, PESHAWAR.

Memo:

I am directed to refer to your appeal No. nil dated 26-04-2018
on the subject cited above and to inform you that your appeal can not be
entertained at this stage being devoid as substance

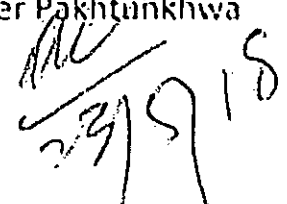
Hence your appeal is hereby rejected on the above grounds.


Deputy Director (Estab) / E
Elementary & Secondary Education
Khyber Pakhtunkhwa

Endst: No. _____

Copy of the above is to:-

1. District Education Officer (M) Abbottabad.
2. PA to Director L/Directorate.


Deputy Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa

*attested
Zubair*

...
...
...
...



Anx "2" 12
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32

NO.SOR-II (E&AD) 1-1/85 (VOL-II)
Dated Peshawar the 15th February 2003.

Subject: POSTING / TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT

I am directed to refer to the subject noted above and to say that in supersession of all policy instructions issued in this behalf, the competent authority has approved the following posting Transfer Policy.

i. All the postings / 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, cannot be posted against any other post.

iv. The normal tenure of posting shall be three years subject to the condition that for the officers officials posted in unattractive areas, the tenure shall be two years and for hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.

v. Months of March and July are fixed for posting / transfer of the officers / officials excluding the officers in B-19 and above in the Province. Posting / transfer in Education and Health Departments shall made in March while the remaining Departments shall make posting / transfers in July. There shall be a ban on posting / transfers throughout the year excluding the aforesaid two months. However, there shall be no restriction in cases where posting / transfer of Government employees become inevitable in other months due to promotion / retirement / creation of new posts / return from long leave / involvement in

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disciplinary proceedings and adjustment of surplus staff for which specific relaxation shall be obtained from the Chief Minister.

- vi. While making postings transfers from settled areas to FATA and vice versa specific approval of the Governor. NWFP need/is to be obtained.
- vii. Officers may be posted on executive /administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and Superintend of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thana) of his area /resident is situated.
- viii. No. posting/transfer/mutual transfer allowed within the radius of 16kms if any instant practice is made tenure will still be intact with last posting station.
- ix. No postings /transfers of the officers/officials on detailment basis shall be made.
- x. Regarding the posting of husband /wife, both in Provincial services, efforts where possible would be made to post such persons at one station and this will be subject to the public interest.
- xi. All the posting /transferring authorities may facilitate the postings /transfers of the unmarried female Government Servants at the station of the residence of their parents
- xii. Officers /officials except DCOs and 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 their till the retirement.
- xiii. In terms of Rules-17 (1) and (2) read Schedule-III of the Government of NWFP Rules of Business 1985, transfer of officers shown in column I of the following table shall be made by the authorities shown against.

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xiv. While considering Posting /Transfers proposals all the concerned authorities.

Shall-keep in mind the following:

- a. To ensure the posting of proper persons on proper posts.. the 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.
- ix) Governments servants including District Govt. employees feeling aggrieved due to the orders of posting/transfers 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 posting/transfer or posting/transfer in violation of the provisions of this policy.
 - ii) Serious and grave personal (humanitarian) grounds.

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 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 Officer 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.

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Outside the Secretariat

i. 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 the establishment department and the department concerned with the approval Of the chief minister.

ii. Other officers in BPS-17 and above to be posted against schedule posts, or posts normally held by the APUG, PCS (EG) and PCS (SG).

--do--

iii. Head of Attached Departments and other Officers in B-19 & above in all Departments.

--do--

In the Secretariat:

iv. Secretaries.
v. Other Officers of and above the rank of Section Officers:-

chief secretary with the approval of chief Minister.

a. Within the Same Department,
b. Within the Secretariat from one Department to another.

Secretary of the department concerned.
Chief Secretary/ Secretary Establishment

vi. Officials upto the rank of Superintendent:-

Secretary of the department concerned.

a. Within the same department.
b. to and from an attached Department.
c. within the secretariat from one Department to another.

Secretary of the department in consultation with Head of Attached Department concerned. Secretary (establishment)

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BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR



Service Appeal No. ~~8/8~~ / of 2015

Iftikhar Ahmad ADEO (Male) son of
Mumtaz Ahmad, Office of the District Education
Officer (M) Mansehra...

Appellant

VERSUS

1. Province of Khyber Pakhtunkhwa through
Secretary Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar.
2. Director of Elementary & Secondary Education,
Khyber Pakhtunkhwa, Peshawar.

S.W.F. Province
Service Tribunal
Diary No. 853
Dated 15-7-2015

~~Zulfiqar Ahmad son of Khan Zaman, S.S.T,
Circle Lora, Office of the District Education
Officer, Abbottabad~~ ...

Respondents

10 parties
4/12/15

(3)

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED
ORDER DATED 19.3.2015, WHEREBY THE APPELLANT HAS
BEEN PREMATURELY TRANSFERRED FROM CIRCLE LORA,
DISTRICT ABBOTTABAD TO THE OFFICE OF D.E.O
MANSEHRA AND RESPONDENT NO.3 HAS MALAFIDELY
BEEN ADJUSTED AGAINST THE POST OF APPELLANT AND
DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST
THE IMPUGNED ORDER ELICITED NO RESPONSE WITHIN
THE STATUTORY PERIOD.

Respectfully Sheweth:

FACTS OF THE CASE.

15/7/15

1. That the appellant was appointed/selected as A.S.D.E.O (M) in
Management Cadre on the recommendation of Public Service
Commission and adjusted in the Office of E.D.O, Haripur, vide order
dated 10.5.2011. (Annex: A).

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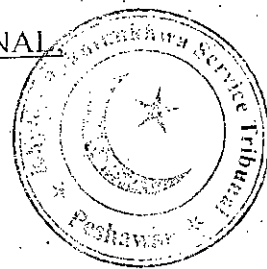
[Signature]
Khyber Pakhtunkhwa

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT ABBOTTABAD

Service Appeal No. 818/2015

Date of Institution... 15.07.2015

Date of decision... 24/08/2017



Ifrikhar Ahmad ADEO (Male) son of Muntaz Ahmad, office of the District Education Office (Male) Mansehra. (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Peshawar and 2 others. (Respondents)

Appellant

Pro Se

MR. MUHAMMAD BILAL
Deputy District Attorney

For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. MUHAMMAD HAMID MUGHAL

CHAIRMAN
MEMBER

JUDGMENT

~~NIAZ MUHAMMAD KHAN, CHAIRMAN~~ - Arguments of the appellant and learned Deputy District Attorney heard and record perused.

FACTS

2. The appellant has challenged his premature transfer from Circle Lora, Abbottabad to the office of the District Education Officer, Mansehra dated 19/3/2015, against which he filed a departmental appeal on 27.3.2015 which was not responded to and thereafter the appellant filed the present appeal on 15.7.2015.

3. During the pendency of the present appeal an order was passed by the Director, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar by posting the appellant back to his position on 23.08.2016 but again on 27.10.2016 he has been transferred as ASDEO Circle Sherwan-II.

ARGUMENTS

4. The appellant argued that he is in the Management Cadre whereas respondent No 3 belongs to Teaching Cadre and both the posts are not inter-transferable. That he had

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CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Attestal

spent 11 months in the days when he was transferred on 19.3.2015 without assigning any reason though the normal tenure is 2 years.

5. On the other hand the learned DDA argued that the Teaching Cadre and Management Cadre are inter-transferable. That the transfer of the appellant was made in the public interest.

CONCLUSION.

6. According to posting/transfer policy of the Provincial Government, the normal tenure of posting is 2 years and according to notification of the Establishment Department dated 27.2.2013, if the ordinary tenure for a posting is specified in the law or rules that cannot be violated except for compelling reasons which should be recorded in writing and are justifiable. The same principle has been held by the august Supreme Court of Pakistan in Anita Furab's case. As per the Government of Khyber Pakhtunkhwa posting/transfer policy, 2003, the normal tenure of posting is 2 years for areas other than unattractive areas and hard areas. District Abbottabad has not been declared as unattractive or hard area. Therefore, the normal tenure of the appellant should have been two years. No reason whatsoever has been given in the impugned order which was mandatory as discussed above.

7. Resultantly, this appeal is accepted and the impugned order is set aside. Parties are left to bear their own costs. File be consigned to the record room.

Announced *Self-Niaz Muhammad Khan, and*
24-08-2017 *Chairman*
Camp Court A/Abad.
Self M. Hamid Nughal
Alamdar

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Date of Presentation of Application	16-5-18
Number of Vols	1200
Copying Fee	8
Urgent	2
Total	10
Name of Copyist	<i>[Signature]</i>
Date of Completion of	16-5-18
Date of Delivery of Case	16-5-18

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IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Anx "N"
30

PRESENT:
Mr. Justice Iftikhar Muhammad Chaudhry, HCJ
Mr. Justice Jawwad S. Khawaja
Mr. Justice Khilji Arif Hussain

Constitution Petition No. 23/2012.

(Petition by Ms. Anita Turab for protection of Civil Servants).

AND

Const. Petition No. 11/2012.

(Syed Mahmood Akhtar Naqvi vs. Federation of Pakistan etc.)

AND

Crl. Original Petition No. 23, 24 & 27 of 2012 in Const. P. 11/2012.

(Syed Mahmood Akhtar Naqvi vs. Ghulam Haider Jamali etc)

AND

H.R. C. No. 14427-P/2012.

(Application of Rai Manzoor Nasir)

AND

CMA's Nos. 1575, 1611, 1792, 197-K, 231-K, 232-K of 2012

AND

Crl. Misc. Application No. 587/2012 in Crl. O.P. 24/2012 in Const. P. 11/2012.

For the Petitioner (s) : ~~Ms. Anita Turab~~ in person
Syed Mahmood Akhtar Naqvi, in person.

Amicus Curiae: Hafiz S. A. Rehman, Sr. ASC

For Govt. of Sindh: Mr. Abdul Fateh Malik, A.G.
Mr. Adnan Karim, AAG.
Mr. Ali Sher Jakhriani, AIG
Mr. Maqsood Ahmed, DSP

For Govt. of KPK: Syed Arshad Hussain Shah, AAG.

For Govt. of Balochistan: Mr. Azam Khattak, AAG.

For Govt. of Punjab: Mr. Jawad Hassan, AAG.

Date of Hearing : 18/10/2012

JUDGMENT

Jawwad S. Khawaja, J.- Many centuries before the term 'good governance' became a catch-phrase, we find a remarkably eloquent exposition of the principles of good governance in the Epistle of Hazrat Ali to Malik ibn Ashtar, the Governor of Egypt. The revered Khalifa, may Allah be pleased with him, is reported to have said: "....give careful consideration to the selection of ... officers. Confirm them in their appointments after approval, apprenticeship and probation. Never select men for responsible

attested
Arif Hussain

posts either out of any regard for personal connections or under any influence, for, that might lead to injustice and corruption.... select for higher posts men of experience, men firm in faith ... Such men will not fall an easy prey to temptations and will discharge their duties with an eye on the abiding good of others". The law and the Constitution of Pakistan, with the aim of furthering the welfare of the people of Pakistan, articulate the same principles. The truth is that principles pertaining to the setting up of a just and constitutional government are eternal, not peculiar to our times. Our law, Constitution and courts only apply these universal and time-tested principles to the prevalent situation. In this public interest case seeking elaboration of constitutional and legal safeguards relating to the working of civil servants, we reaffirm these eternal principles which have also been stressed by us in cases decided earlier.

2. The background to this matter is that *Suo Moto* Case No. 3 of 2012 was initiated on the basis of broadcasts on different TV channels on 25.2.2012. In these broadcasts, Syeda Wahida Shah, a candidate of the Pakistan Peoples Party for bye-election to PS-53 (Tando Muhammad Khan) was shown slapping a member of the polling staff. The *Suo Moto* case was concluded vide order dated 12.3.2012. Ms. Anita Turab, who is a civil servant in BS-19, presently working in the Ministry of Interior, filed an application in the aforesaid *Suo Moto* case. Since the case stood concluded, the application was ordered on 12.3.2012 to be registered as a petition under Article 184 (3) of the Constitution. It is this petition which is being decided through the present order.

3. The grievance of the petitioner set out in her petition can be summarized. Firstly, she seeks that the standing of the civil service be restored as service of the State and not the service of any transient government. To achieve this object, her submission is that unlawful political interference in the independent and legitimate functioning of civil servants be stopped. Secondly, the petitioner seeks corrective institutional measures to revert the civil service to rule-based management practices in accordance with the letter and spirit of applicable laws, rules and precedents of this Court.

4. On 12.3.2012, we had directed the Secretary Establishment Division, Government of Pakistan, the Chief Secretaries of the four Provinces and the Chief Commissioner, Islamabad Capital Territory to submit their comments. It was noted in

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A. Turab

the said order that civil servants who act according to law, at times, have to face hardship in the form of immediate transfer or posting as Officers on Special Duty (OSD) even before the completion of their tenure. It was also noticed that frequent transfers, postings and disciplinary proceedings are taken in violation of the law, rules and regulations.

5. The above referred functionaries comprised as a Committee, have submitted their report which includes tentative recommendations. Amongst other things, the Committee has recommended that "[p]ostings and transfers be made on merit", "tenures for various categories of posts be fixed" and that "[n]o civil servant should be posted as OSD for purposes of parking of officers who are unwanted, or, who are not susceptible to pressures." The Committee further recommends that "[a] civil servant should be placed under suspension only by the competent authority after initiation of disciplinary proceedings; and....Officers taken on deputation/borrowed from other tiers of the government should carry the requisite experience and seniority for specific jobs." According to the petitioner, many of the Committee's recommendations are already covered by existing law, rules and regulations, particularly in matters relating to tenure, appointment, transfer and posting of civil servants. There is no dispute or contention that such recommendations must indeed be implemented with immediate effect as a necessary concomitant to good governance. Some other recommendations made by the Committee require legislation or rule making which, necessarily will need to be undertaken by the legislature and/or the competent rule making authority and not by the Court.

6. The petitioner being a civil servant herself has requested revival of the independent, impartial and professional status of the civil service as an institution and to affirm its decision-making authority in furtherance of the rule of law. The petitioner's further grievance is that legal and constitutional safeguards meant to protect the civil service from excessive political interference are being systemically breached. With its safeguards thus withered, the service is growing inefficient and demoralized and with it, the machinery of the State, mandated to enforce good governance, rule of law and fundamental rights of the people of Pakistan, is failing.

attested
A. H. Khan

7. The petition has been held maintainable because the situation portrayed does raise a question of public importance with reference to the enforcement of fundamental rights. In our constitutional scheme of governance, the importance of such a civil service, which is law-abiding and itself legally protected, cannot be over emphasized. "Good governance", this Court has recently observed, "is largely dependent upon [an] upright, honest and strong bureaucracy. [The] Civil service is the back bone of our administration." per Chaudhry Ijaz Ahmad, J. in *Tariq Aziz-ud-din's case* (2010 SCMR 1301). Additionally, the fundamental rights of civil servants, *inter alia*, under Articles 9, 14 and 18 of the Constitution are also aspects arising in this Constitution Petition. The enforcement of fundamental rights is primarily the responsibility of the Executive branch of the State and civil servants constitute that essential component of the Executive who operate the executive machinery. A duty is thus cast both on the civil service and on the political executive to ensure the effectiveness (in all respects) of the civil service.

8. It is not in contention that civil servants are public servants and are, therefore, meant to take decisions only in accordance with law in the public interest. In their capacity as advisors in decision making or as administrators and enforcers of law, they are not subservient to the political executive. It is their obligation to remain compliant with the Constitution and law. Hence they are not obliged to be servile or unthinkingly submissive to the political executive. One of their prime duties is to give advice in the best public interest and to administer the law impartially being incharge of the machinery of the State. In this regard, the address made by Quaid-i-Azam Mohammad Ali Jinnah to the members of the civil service at Peshawar on 14th April, 1948 is most relevant. Quaid-i-Azam instructed them not to be "influenced by any political pressure, by any political party or individual politician." While urging them to loyally and faithfully serve whichever government came to power "in the ordinary constitutional course", he also reminded them of the need for "fearlessly, maintaining [their] high reputation, prestige, honour and the integrity of [their] service." Noting that pressurizing civil servants was, even in those early days, "a very common fault of politicians", he warned politicians that such behaviour would lead to "nothing but corruption, bribery and nepotism which is a

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A. Ijaz Ahmad

horrible disease..." Ultimately, he urged both politicians and civil servants to "understand [their] own sphere of duty and responsibility and act with others harmoniously and in complete cooperation." Yet, being fully aware that real life was never ideal, he forewarned the civil servants that "you may even be put to trouble not because you are doing anything wrong but because you are doing right. Sacrifices have to be made, and I appeal to you, if need be, to come forward and make the sacrifice..." (Quaid-e-Azam Mohammad Ali Jinnah, Speeches as Governor General of Pakistan 1947-48, Sang-e-Meel Publications, Lahore : 2004).

9. These should, indeed, be the guiding principles informing the relationship between the civil service and the political executive - the two limbs of the Executive branch of government, envisaged in the Constitution. Equally so, these principles should inform the judiciary's interpretation of the articles of the Constitution and legal provisions which relate to the employment of persons in the service of Pakistan. We reaffirm that while civil servants do have a duty to follow the policy guidelines and directions of the political executive yet, because of Article 5 of the Constitution, just like other citizens, their foremost duty is "obedience to the Constitution and the law", not unthinking obedience to all directives (right or wrong) issuing from the political executive. In this context, Rule 5(10) of the Rules of Business, 1973 framed by the Federal Government in accord with Articles 90 and 99 of the Constitution, may be examined: "When the Secretary submits a case to the Minister, the latter may accept the proposal or views of the Secretary or may over-rule him. The Secretary will normally defer to the decision of the Minister and implement it. In case, however, the Secretary feels that the decision of the Minister is manifestly wrong and will cause gross injustice or undue hardship, he may state his reasons and re-submit the case to the Minister. If the Minister still adheres to his earlier decision and the matter is important enough, the Secretary shall request the Minister to refer the case to the Prime Minister and the Minister shall so refer the case for orders of the Prime Minister. If the case is not referred to the Prime Minister, the Secretary shall submit it directly to the Prime Minister with observations of the Minister-in-Charge." In other words, implementation of policy or directives, in some cases may be required notwithstanding the considered views of a civil servant to the contrary. In such event, however, the civil servant should record his/her honest and considered opinion without fear. Decisions

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A. E. Khan

violating the law relating to appointment and terms and conditions of service of civil servants which are manifestly wrong and are likely to cause gross injustice or undue hardship should be considered important enough for the purpose of Rule 5(10) *ibid*.

10. It is worth noting that the Constitutions of 1956 and 1962 contained chapters outlining certain safeguards for the civil service. In the 1973 Constitution, the framers omitted a similar chapter from the constitution and shifted the onus to ordinary legislation. The Law Minister at the time, who was steering the Constitution Bill informed the Constituent Assembly that in the past, constitutional protection for civil servants had been granted "because those who served came from outside and they needed these protections in respect of service". However, since now "this country [was] being run by the leaders of the people" such protections were no more deemed necessary. The purpose of this change, therefore, was to "[break] away from the past colonial traditions" and to emphasize the point that civil servants were not entitled to "any superior or higher status" compared to other citizens. Another reason the Law Minister gave was that the "Constitution is the basic document providing the fundamentals and this matter was not so fundamental as to be provided in the Constitution." (Parliamentary Debates, 31st December, 1972 and 19th February, 1973). It was therefore decided that, as stated in Articles 240, 241 and 242 of the Constitution, the matter would be dealt with through statutes. Such statutes were subsequently passed and include the Civil Servants Act, 1973. It may be emphasized that whatever else the intent behind these changes may have been, it could not have been meant to subjugate of civil servants to constantly changing political imperatives. The intent of the Constitution cannot but be a fuller realization of the goal set out in the speech of the country's founding father quoted earlier: "fearlessly, maintaining [the] high reputation, prestige, honour and the integrity of [the civil] service."

11. It was in this spirit, i.e. providing meaningful legal guarantees to civil servants and doing away with arbitrariness, that Parliament enacted statutes such as the Civil Servants Act, 1973. The very object of this statute is to legally "regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of Pakistan" (Preamble). The rule of law is the key idea reflected in the whole scheme of the statute. This impression is textually reinforced by the express stipulation that appointment of

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A. R. Iqbal

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civil servants shall be made only "in the prescribed manner" (S. 5), that the terms and conditions shall be only such as are "provided in [the] Act and the Rules" [S. 3(1)] and not be "varied to his disadvantage" [S. 3(2)] and that promotions shall only be made on the basis of objective criteria such as "merit" [S. 9(2)(a)] and "seniority-cum-fitness". [S. 9(2)(b)].

12. This Court, in a number of precedents has, interpreted and emphasized these very principles, some of which need to be reiterated at this point. Before that, however, we may note the precept and rule of public trust which forms the basis of this area of the law. This court has repeatedly observed that "*functionaries of the State are fiduciaries of the people and ultimately responsible to the people who are their pay masters.*" [Syed Yousaf Raza Gillani v. Assistant Registrar, (PLD 2012 SC 466) affirming Muhammad Yasin v. Federation of Pakistan]. Most recently, in the case relating to dual nationality of Parliamentarian, we have reiterated that "*all state authority is in the nature of a 'sacred trust' and its bearers should therefore be seen as fiduciaries*" (Mehmood Akhtar Naqvi v. Federation of Pakistan, Const. P. 5/2012). One of the implications of this concept, highlighted in the case law considered below, is that the matter of tenure, appointment, posting, transfer and promotion of civil servants cannot be dealt with in an arbitrary manner; it can only be sustained when it is in accordance with the law. Moreover, the use of the words 'in the public interest' in such matters are not fatuous or pointless, but emphasise the fiduciary nature of orders relating to tenure, posting etc. Thus a proposed decision which deviates from the accepted or rule-based norm without proper justification, can be tested on the touchstone of a manifest public interest.

13. Tenure, appointment, promotion and posting/transfer are of utmost importance in the civil service. If these are made on merit in accordance with definite rules, instructions etc., the same will rightly be considered and treated as part of the terms and conditions of service of a civil servant. If, however, rules and instructions are deviated from and as a result merit is discouraged on account of favoritism, *sifarish* or considerations other than merit, it should be evident the civil service will not remain independent or efficient. It is necessary once again, to hark back to the considerations

Attested
A. I. Khan

set out in the speech of Quaid-i-Azam and the eternal wisdom reflected in the Epistle of Hazrat Ali, may Allah be pleased with him, cited at the start of this opinion. It is also relevant to note that the principles of good governance are already envisioned in the Constitution and are also encoded in statutes such as the Civil Servants Act, 1973, the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973 and other rules made under the aforesaid Act and in regulations and instructions given in the Civil Establishment Code (Estacode). It is, however, apparent from precedent and civil service matters coming up before Service Tribunals and this Court that problems/difficulties arise for civil servants when the rules of good governance so encoded are breached and the reason for such breach appears to be abuse of discretion. We are aware that matters relating to tenure etc. cannot be put in a strait-jacket and that there is to be an element of flexibility. A balance between the competing pulls of discretion and rule based decision making is a fine one where perception of fairness and even handed treatment is of utmost importance. It is for this reason that transparency in decisions relating to tenure etc. are required to be entrenched and cemented to assure the quality, effectiveness and morale of the civil service. Since executive decisions generally are subject to judicial review, the assurance of transparency is itself likely to eliminate decision making based on considerations other than merit. We have referred to accepted principles and rules above and may now advert to certain relevant rulings earlier rendered by this Court.

A - On the Issue of Appointments and Removals

14. In a number of judgments, the courts have clarified that whenever there are statutory provisions or rules or regulations which govern the matter of appointments, the same must be followed, honestly and scrupulously. In the Corruption of Hajj Arrangements' case (PLD 2011 SC 963) and Tariq Aziz-ud-din's case ibid, it has been clarified that even where there are no explicit rules governing the appointment process, and appointments are to be made in the exercise of discretionary powers, such discretion must be employed in a structured and reasonable manner and in the public interest. Appointing authorities cannot be allowed to exercise discretion at their whims, or in an arbitrary manner; rather they are bound to act fairly, evenly and justly

Attested,
A. I. Khan

and their exercise of power is judicially reviewable. And in Muhammad Yasin v. Federation of Pakistan (PLD 2012 SC 132), we have clarified that, when called upon to do so, the Courts are "duty bound to examine the integrity of the selection process", although they "will not engage in any exhaustive or full-fledged assessment of the merits of the appointee nor [...] seek to substitute [their] own opinion for that of the Executive." It may also be noted that just like the appointment of civil servants, their removal and dismissal from service has not been left to anyone's whims and caprice. It is governed by rules and regulations, amongst them the Civil Servants (Efficiency and Discipline Rules), 1973. Indeed, the anachronistic concept where government servants held office during the pleasure of the Crown has no place in a dispensation created and paid for by the people.

B - On the Matter of Promotions

15. In Tariq Aziz-ud-din's case, we have dealt with some important facets of the civil service including the exercise of discretion in matters of promotion. Such discretion must be exercised fairly and in a transparent manner. Discretion has to be understood within the four corners of the concept of rule of law upon which our system of governance is founded. Every authority in the State is bound to obey the dictates of the law and has no personal or absolute discretion. It was therefore held that "[t]he right [to be considered for promotion] contemplated under section 9 [of the Civil Servants Act] is neither illusionary nor a perfunctory ritual and withholding of promotion of an officer is a major penalty in accordance with the Civil Servants (Efficiency and Disciplinary) Rules, 1973, therefore, consideration of an officer for promotion is to be based not only on the relevant law and the rules but also to be based on some tangible material relating to merit and eligibility which can be lawfully taken note of."

C - On the Matter of Transfers and Tenure

16. In the Hajj Corruption Case, the Court reiterated its earlier ruling in Zahid Akhtar v. Government of Punjab (PLD 1995 SC 530), where it had been held that "the normal period of posting of a Government servant at a station, according to Rule 21 of the Rules of Business is three years, which has to be followed in the ordinary circumstances, unless for reasons or exigencies of service a transfer before expiry of the said period becomes necessary

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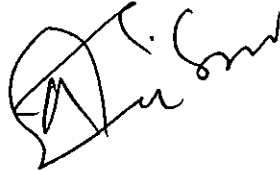
in the opinion of the competent authority. Furthermore, with regard to transfers of civil servants, this Court has stated that transfers by political figures which are capricious and are based on considerations not in the public interest are not legally sustainable.

Farrukh Gulzar vs. Secretary Local Government and Rural Development Department, Lahore and 2 Others (1998, SCMR-2222). These are principles of law enunciated by this Court and are to be followed in terms of Article 189 of the Constitution. We, however, repeatedly come across violations of such principles. This unnecessarily leads to litigation which, in turn, clogs Courts and Service Tribunals.

D - On the matter of obeying illegal orders from superiors

17. In Syed Nazar Abbas Jafri vs. Secretary to the Government of the Punjab and Another (2006 SCMR 606), this Court held that the duty of public officers is to independently discharge their functions and not be influenced by "dictatorial misuse of powers" at the hands of political figures. The Court has also emphasized that the appointment and removal of civil servants is not to be politically motivated. Province of Punjab vs. Azhar Abbas (2002 SCMR 1). These decisions highlight the concept of a civil service which enjoys certain legal protections and is thus capable of performing its envisioned role as a law-enforcing institution.

18. The compliance of illegal orders of superiors is not justified on the basis of having been issued from higher authority as it is the law and Constitution which must be obeyed. Here it would be relevant to cite the judgment of this Court in Samiullah Khan Marwat vs. Government of Pakistan (2003 SCMR 1140) where it was stated: "...the exercise of powers by the public functionaries in derogation to the direction of law would amount to disobey[ing] the command of law and the Constitution..." Furthermore, in the case of Iqbal Hussain vs. Province of Sindh (2008 SCMR 105) the Court held that "the compliance of any illegal and arbitrary order is neither binding on the subordinate forums nor valid in the eyes of law." In case the subordinates are directed to implement an illegal order "they should put on record their dissenting note" Human Rights Cases No. 4668 of 2006, 1111 of 2007 and 15283-G of 2010 (PLD 2010 SC 759). Similarly, illegal orders cannot be defended on the plea that these could expose the concerned government

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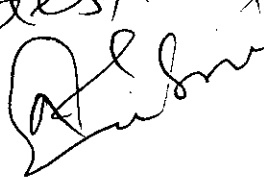
servant to the risk of disciplinary action. Zahid Akhtar vs. Government of Punjab (PLD 1995 SC 530).

E - On the matter of posting civil servant as Officers on Special Duty (OSD)

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19. Ordinarily, no government employee should be posted as OSD except under compelling circumstances. In the Hajj Corruption case, (PLD 2011 SC 963) the Court held: "It is well settled that placing an officer as OSD is tantamount to penalizing him because the expression 'OSD' is not known to either the Civil Servants Act, 1973 or the Civil Servants Appointment Promotion and Transfer Rules, 1973." Reference in this regard may also be made to the cases of Mir Shah Nawaz Marri vs. Government of Balochistan etc [2000 PLC (C.S) 533], Syed Ajmal Hussain Bokhari vs. Commissioner, Rawalpindi [1997 PLC (CS) 754], Sajjad Ahmad Javed Bhatti vs. Federation of Pakistan (2009 SCMR 1448) and Lt. Col. (R.) Abdul Wajid Malik vs. Government of the Punjab (2006 SCMR 1360).

20. The above referred precedents have shaped the contours of the law relating to civil servants and the civil service. In the established tradition of a common law jurisdiction, Article 189 of the Constitution stipulates that, "[a]ny decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan." As this Court has already held "... the interpretation of the various Articles by this Court becomes part of the Constitution". Al-Jehad Trust v. Federation of Pakistan (PLD 1997 SC 84). Specific to the law relating to civil servants and matters in respect of their service, we have enunciated a principle of law in the case titled Hameed Akhtar Niazi versus The Secretary Establishment Division (1996 SCMR 1185) holding that a decision given by this Court on a point of law will be binding on concerned departmental functionaries who will be obliged to apply such legal principle in other similar cases regardless of whether or not a civil servant has litigated the matter in his own case. We are conscious that in some instances the application of a legal principle enunciated in a precedent may be possible without difficulty or ambiguity, while in other cases there may be some uncertainty in determining if a legal principle is in fact applicable as precedent. It is, however, clear that in view of Articles 189 and 190 of the Constitution, a civil servant will be entitled

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to make a departmental representation or initiate legal proceedings before a competent forum to enforce a legal principle enunciated by this Court.

21. In appropriate cases the failure of a state functionary to apply a legal principle which is clearly and unambiguously attracted to a case, may expose him to proceedings also under Article 204(2)(a) of the Constitution. This article, it may be recalled, grants this Court the power to punish for contempt any person who "disobeys any order of the Court". In a recent judgment, the Court has clarified the significance of the law of contempt as an enforcement mechanism. It was held "...the Court, in and of itself, has to pass orders and to require the implementation of its orders; responsibility for implementation has been made obligatory on other organs of the state, primarily the Executive. However, in the unfortunate situation that a functionary of the Executive refuses to discharge his constitutional duty, the Court is empowered to punish him for contempt...Simply put, a government of laws cannot be created or continued with toothless courts and defiant or blithely non-compliant public functionaries". Baaz Muhammad Kakar vs. Federation of Pakistan (Const. P. No.77/2012). If there still remains any doubt, let us clarify that those executive functionaries who continue to ignore the Constitution and the law, do so at their own peril.

22. The principles of law enunciated hereinabove can be summarized as under:-

- 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.~~
- 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-

attested
A. I. Khan

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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 and are judicially reviewable. If at all an officer is to be posted as OSD, such posting should be for the minimum period possible and if there is a disciplinary inquiry going on against him, such inquiry must be completed at the earliest.

23. We are fully conscious that the aforesaid matters relate to decision-making and administration of the machinery of the State. As such the responsibility of deciding as to suitability of an appointment, posting or transfer falls primarily on the executive branch of the State which comprises of both the political executive and civil servants. Courts ordinarily will not interfere in the functioning of the executive as long as it adheres to the law and established norms and acts in furtherance of its fiduciary responsibility. However, while hearing this petition we have recognized the need for ensuring that decision making in relation to tenure, appointments, promotions and transfers remains rule based and is not susceptible to arbitrariness or absolute and unfettered discretion.

24. Copies of this judgment shall be sent to the Federal Secretary Establishment, the Chief Secretaries of the Provinces, the Commissioner Islamabad Capital Territory, and to the Secretaries of all Federal and Provincial government departments.

Chief Justice

Judge

Judge

ISLAMABAD.
A. Rehman

Announced on: 12-11-2012

APPROVED FOR REPORTING

Attested
A. Ismi

Anx "0"
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The Secretary,
E&SE, Khyber Pakhtunkhwa,
Peshawar.

Subject: APPLICATION FOR NOT IMPLEMENTING THE CM DIRECTIVES REGARDING
THE CANCELLATION OF TRANSFER ORDER NO. 4153-56 DATED 18/12/2017
ISSUED BY THE COMPETENT AUTHORITY.

Respected Sir,

With profound veneration it is submitted as under:

1. That the applicant is presently working as ADEO (Estab) in the office of DEO (M) Abbottabad.
2. That the applicant was transferred from GHS Chamhad Abbottabad to DEO (M) Abbottabad as ADEO (Litigation) vide Notification No.1495-97 dated 09/01/2015. (Copy of the said Notification is annexed herewith as annexure "A".
3. That on dated 19/05/2017, applicant was once again transferred from ADEO to SST GHS Chamhad vide office order No.3455-56. (Copy of the said order is annexed herewith as annexure "B".
4. That after the one month & ten days of transfer, applicant was once again transferred from GHS Chamhad Abbottabad to GHS Ghori, Abbottabad and deputed as Litigation Officer in the office of DEO (M) Abbottabad vide order No.7129-34 dated 29/06/2017. (Copy of Transfer order dated 29/06/2017 is annexed herewith as annexure "C".
5. That after the six months, applicant was once again transferred from the post of SST GHS Ghori Abbottabad to DEO (M) Abbottabad as ADEO (Estab) vide order No. 4153-56 dated 18/12/2017. (Copy of Transfer order dated 18/12/17 is annexed herewith as annexure "D".
6. That within the period of six months applicant was transferred thrice.
7. That now the Mr. Sardar Mehtab Ahmed Khan adviser to Prime Minister politically influenced the Honorable Chief Minister vide letter No. Adv/PM/2018/01 dated 15-01-2018 regarding the cancellation of transfer order dated 18/12/2017 & Honorable CM issued the directives to Secretary E&SE vide letter NO. SO-1/CMS/KPK/3-15/2018 dated 25-01-2018 to cancel the above referred transfer order. (Copy of letter dated 15-01-2018 and CM Directive are annexed herewith as annexure "E" & "F").
8. That the directives of Honorable CM were issued on malafide intention through political involvement of Mr. Sardar Mehtab Ahmed Khan adviser to Prime Minister and such like practice has been deprecated by the August Supreme Court of Pakistan in a judgment as reported in 2007 SCMR 599. Hence, directives of CM are liable to be set aside on this score alone.

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Attested
Division

That according to the Government of Khyber Pakhtunkhwa Posting Transfer Policy 2003, the normal tenure for posting is 2 years. If the ordinary tenure for a posting is specified in the law or Rules that cannot be violated except for compelling reasons which should be recorded in writing and justifiable. The same principle has been held by the August Supreme Court of Pakistan in Anita Turab's Case as the operative part of the judgment of para No.22 (ii) is reproduced as under:

"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." (Copy of judgment of Anita Turab's is annexed herewith as annexure "G").

10. That on the same preposition of law, Honorable Service Tribunal Peshawar also set aside the transfer order in Service Appeal No.818/2015 dated 24/8/2017. (Copy of judgment of service Tribunal is annexed herewith as annexure "H").

Under the above circumstances, your gracious is humbly requested to please look into the matter personally and necessary directions may please be issued to worthy Director not to implement the directives of CM being against the prevailing policy of the provincial Government as well as judicial precedents of the Apex Courts in order to avoid the multiplicity of litigation accordingly.

Zubair Ali
28/7/18

ZUBAIR ALI
ADEO (Estab)
O/O DEO (M)
Abbottabad
Cell # 03135904952

Dated: 28/07/2018

Copy to the following for information please:

Director, E&SE Khyber Pakhtunkhwa Peshawar.

attested
Zubair

Ans "P"
45

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR



Appeal No. 304/2012

Date of institution. 6.3.2012
Date of Decision. 25.2.2013

Naveed Iqbal AT, Government Middle School, Todo Maira,
Tehsil and District, Abbottabad.

(Appellant)

VERSUS

1. Executive District Officer (E&SE) Abbottabad.
2. District Coordination Officer, Abbottabad.
3. Amanullah AT Teacher, GMS Jabrrian, Abbottabad.
4. Abdur Rashid AT, GHS No. 3 Abbottabad.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE OFFICE ORDER NO. 12311-16/AE-AT(M) DATED 30.11.2011 ISSUED BY RESPONDENT NO. 1 VIDE WHICH THE APPELLANT WAS TRANSFERRED AS A.T TEACHER IN GOVT. MIDDLE SCHOOL TODO MAIRA ABBOTTABAD.

EXAMINER
ATTORNEY
AT THE SERVICE TRIBUNAL

Appellant in person.

MR. MUHAMMAD JAN,
Government Pleader

For official respondents.

MR. MUHAMMAD ARIF JAN,
Advocate

For private respondents
No. 3 and 4.

SYED MANZOOR ALI SHAH,
MR. NOOR ALI KHAN,

MEMBER
MEMBER

JUDGMENT

SYED MANZOOR ALI SHAH, MEMBER. This appeal has been filed by Naveed Iqbal, the appellant under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, against the order dated 30.11.2011, whereby he was transferred to GMS Todo Maira, Abbottabad. It has been prayed that on acceptance of the appeal, the impugned order may be set aside and the order dated 20.5.2010 may be restored.

2. Brief facts of the case are that the appellant while serving as Arabic Teacher in GHS No. 3 Abbottabad, respondent No. 4 offered the appellant for

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Arif

The appellant was transferred to GHS Jhangi Abbottabad and respondent No. 4 GHS No. 3 Abbottabad. After expiry of three months period, respondent No. 4 joined from his version and refused to join his previous station i.e. GHS Jhangi Abbottabad. After few days the appellant was further transferred from GHS Jhangi to GMS Jabrrian, Abbottabad and respondent No. 3 was transferred to GHS Jhangi vide order dated 12.9.2009. Appellant was again transferred from GMS Jabrrian to GHS No. 3 Abbottabad vide order dated 20.5.2010, but due to political influence of respondent No. 4 the said order was cancelled through the order dated 29.6.2010 and appellant was directed to perform his duties at GMS Jabrrian. On 30.11.2011, again due to political pressure exercised by respondent No. 4 appellant was transferred from Jabrrian to GMS Todo Maira. Feeling aggrieved, the appellant filed departmental appeal to respondent No. 2, which has not been decided within the statutory period, hence the present appeal.

3. The appeal was admitted to regular hearing on 27.3.2012 and notices were issued to the respondents. The respondents have filed their written replies and contested the appeal. The appellant also filed rejoinder in rebuttal.

Arguments heard and record perused.

Appellant argued that he while serving at GMS Jabrrian was transferred to GHS No. 3 Abbottabad in public interest on 20.5.2010. He served there for only 40 days that all of a sudden vide order dated 29.6.2010, he was again transferred to GMS Jabrrian and private respondent No. 4 was transferred in his place through political interference and private respondent No. 3 transferred from GMS Jabrrian to GHS Jhangi, Abbottabad. Vide order dated 30.11.2011, the appellant was further transferred to GMS Todo Maira and private respondent No. 3 transferred to GMS Jabrrian through political interference. Appellant further argued that the he has been victimized through political pressure as is evident from application dated 25.5.2010 of private respondent No.4, which has been recommended by Mr. Inayatullah Khan Jadoon, MPA PK-44, and copy of order dated 29.6.2010 has also been endorsed to P.S to the Chief Minister Khyber Pakhtunkhwa. He further argued that he has not completed his normal tenure at GHS No. 3 Abbottabad, hence the impugned order is premature and against the policy of the provincial government. He stated that private respondent No. 4 served in GHS No. 3 for more than 3 years and no one can ask for his choice posting for ever. On the point of learned counsel for the private respondents that the appellant was removed from service on production of forged stay order, the appellant stated that he has been reinstated into service vide order dated 2.11.2011. In case anyone is aggrieved from his reinstatement order, could

EXAMINER
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 [Signature]

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approach to the proper forum. He requested that the appeal may be accepted as prayed for.

6. The learned counsel for private respondent No. 4 stated that the appellant has been removed from service on production of bogus stay order. He further argued that it is correct that the appellant has been transferred repeatedly but on his own request. So far as the mutual transfer is concerned, it was made with the consent of the appellant without any external pressure. He stated that under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act 1973, every civil servant is bound to serve anywhere in public interest and no one can ask for his choice posting. He further stated that the appellant through bogus signature of private respondent No. 3, succeeded to transfer himself to GHS No. 3 Abbottabad, vide order dated 20.5.2010. The learned Government Pleader also relied on the arguments advanced by the learned counsel for private respondents No. 3 and 4. They both requested that the appeal may be dismissed.

7. Counsel for the private respondents mainly argued on the point that the appellant was removed from service on production of bogus stay order. But since the appellant has been reinstated into service by the departmental appellate authority, the matter has been settled. In case there was any allegations against the appellant, he could be dealt with in accordance with the law but he could not be transferred as a punishment. In a short span of time, the appellant has been repeated transferred through political pressure as is evident from application dated 25.5.2010 which has been recommended by the Mr. Inayatullah Khan, Local MPA PK-44. All these show that the impugned order as well as subsequent order dated 29.6.2011 issued on mala fide intentions, through political pressure and premature. Such practice has been deprecated by the august Supreme Court of Pakistan in a judgment as reported in 2007 SCMR-599.

8. In view of the above, the appeal is accepted, the impugned orders dated 29.6.2010 and 30.11.2011 are set aside and order dated 20.5.2010 is restored. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED

25.5.2013

Certificate to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Sd/- Syed Manzoor Ali Shah
Sd/- Noor Ali Khan

attested
[Signature]

کورٹ فیس

وکالت نامہ

Service Tribunal Kple Peshawar بعدالت

عنوان: Govt of Kple نام: Zubair Ali

منجانب: Appellant/ Responds

نوعیت مقدمہ: Service Appeal

باعث تحریر آنکہ

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب وہی کل کاروائی متعلقہ آن مقام

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل

صاحب موصوف کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف و دینے اقبال دعویٰ اور بصورت دیگر ڈگری

کرنے اجراء وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت

ضرورت مقدمہ مذکور کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی

بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا

ساختہ پر داختمہ مجھ کو منظور و قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب ہوگا اس کے

مستحق وکیل صاحب ہوں گے۔ نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا

حد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں

کوئی جز و بقایا ہو تو وکیل صاحب موصوف مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بمراد

استجارت نالاش بصیغہ مفلسی کے دائر کرنے اور اس کی پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کر دیا تاکہ سند رہے۔

المقوم:

بمقام:

Muhammad Arshad Khan Tanoli
Advocate High Court
Office No. 33 Adjacent to
Dist Bar Abbottabad

دکاس فوٹو شپٹ پچھری (ایبٹ آباد)

Tanoli Adv Hc Atd

BEFORE THE SERVICE TRIBUNAL PESHAWAR

Zubair Ali S/o Ali Bahadur R/O Kassaki Kalan Tehsil & District Abbottabad,
presently posted as Assistant District Education Officer Establishment (M)
Abbottabad..... **Appellant**

Versus

Govt, of Khyber Pakhtunkhuwa, through Secretary Elementary & Secondary
Education Department, Khyber Pakhtunkhuwa & others.

.....**Respondents**

**APPLICATION FOR IMPLEADMENT OF THE APPLICANTS IN THE
PENAL OF RESPONDENTS AS A NECESSARY PARTIES ZULFIQAR
AHMED SST GMS LONGAL & RAB NAWAZ ASDEO CIRCLET BIROTE,
ABBOTTABAD.**

Respectfully Sheweth,

1. That the captioned suit is pending before this honourable court and next date is fixed on 26-06-2018.
2. That the plaintiff challenged cancellation order NO.4646-48 Dated 23-04-2018 whereas, the applicants are necessary parties and said order issued in the favour of the applicants, but the plaintiff intentions did not arrayed the applicants as respondents.

3. That the applicants are to be added as necessary parties in the penal of respondents.

In view of the above it is prayed that the applicants may graciously be ordered to be impleaded as necessary parties in the penal of respondents.

Applicants

Zulfiqar Ahmed

&

Rab Nawaz

BEFORE THE HONOURABLE KHYBER PAKHTUNKHUWA
SERVICE TRIBUNAL PESHAWAR

Zubair Ali S/o Ali Bahadur R/O Kassaki Kalan Tehsil & District Abbottabad,
presently posted as Assistant District Education Officer Establishment (M)
Abbottabad..... **Appellant**

Versus

Govt, of Khyber Pakhtunkhuwa, through Secretary Elementary & Secondary
Education Department, Khyber Pakhtunkhuwa & others.

.....**Respondents**

AFFIDAVIT

I, Zulfiqar Ali s/o Khali Zaman R/o Riyaali Kukmang, Tehsil & District
Abbottabad, solemnly affirm on oath that the contents of foregoing
Application are true and correct and to the best of my knowledge and belief
and nothing has been concealed therein from this honorable court.



Deponent

19/6/18

کورٹ فیس

وکالت نامہ

Service Tribunal 10/10 Peshawar بعدالت

عنوان: Govt of 10/10 نام: Zubair Ali

منجانب: Appellant / Responds

نوعیت مقدمہ: Service Appeal

باعث تحریر آنکہ

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب دہی کل کاروائی متعلقہ آں مقام

Muhammad Arshad Khan Tanoli
Advocate High Court
Office No. 33 Adjacent to
Distt Bar Abbottabad
ATD M. Arshad Khan Tanoli Advr Hc 10/10

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل

صاحب موصوف کو کرنے راضی نامہ و تقرر ثالث و فیصلہ بر حلف و دینے اقبال دعویٰ اور بصورت دیگر ڈگری

کرانے اجراء وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت

ضرورت مقدمہ مذکور کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی

بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا

ساختہ پر داختمہ مجھ کو منظور و قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہر جانہ التوائے مقدمہ کے سبب ہوگا اس کے

مستحق وکیل صاحب ہوں گے۔ نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا

حد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں

کوئی جز و بقایا ہو تو وکیل صاحب موصوف مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بمراد

استجارت نالاش بصیغہ مفلسی کے دائر کرنے اور اس کی پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کر دیا تاکہ سند رہے۔

المقوم:

بمقام:

السید عبد

Acceptance

دقاس فونٹوشیٹ پکھری (ایبٹ آباد)

Muhammad Arshad Khan Tanoli
Advocate High Court
Office No. 33 Adjacent to
Distt Bar Abbottabad

Muhammad Arshad Khan
Tanoli Advr Hc 10/10

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**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR AT CAMP COURT ABBOTTABAD**

Zubair Ali

VS

Govt: of Khyber Pakhtunkhwa & Others

SERVICE APPEAL NO.708/2018

**REPLICATION TO APPLICATION FOR IMPLEADEMENT OF
THE APPLICANTS IN THE PENAL OF RESPONDENTS AS A
NECESSARY PARTIES ON BEHALF OF APPELLANT.**

Respectfully Sheweth,

It is submitted as under:-

PRELIMINARY OBJECTIONS:-

1. That the applicant namely Zulfiqar Ahmed has got no cause of action to file the instant application as he himself submitted an application to respondent No. 03 for transfer/adjustment against the vacant post of Govt. Middle School Longal, Abbottabad and he was adjusted against the vacant post of Secondary School Teacher at GMS Longal, Abbottabad vide office order No. 2927-31 dated 07-03-2018 and applicant took over the charge against the said post vide Endst No. 0012 dated 07-03-2018. Hence, applicant is not necessary party as he himself waived his right and he is estopped to file instant application. *Hence, application inhand has become infructuous.*
2. That the applicants have no locus standi/cause of action to file the instant application.
3. That the applicants concealed the material facts from this Honourable Tribunal and did not come to this Honourable Tribunal with clean hands.

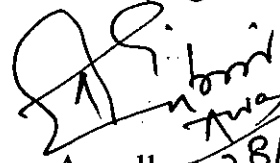
FACTUAL OBJECTIONS:-

1. That the Para No. 1 of the application as composed is incorrect as there is no suit pending before this honorable Tribunal.
2. That the Para No. 2 of the application is correct to the extent of challenging the withdrawal order dated 23-04-2018 while rest of the Para as composed is incorrect hence, denied. As appellant

challenged the order dated 23-04-2018 which was issued under the **Political involvement/interference and against the Khyber Pakhtunkhwa Posting Transfer Policy 2003**, as well as the **judgment of Anita Turab's case** passed by the Honourable Supreme Court of Pakistan. Moreover, applicant namely Zulfiqar Ahmed has got no cause of action to file the instant application as he himself submitted an application to respondent No. 03 for transfer/adjustment against the vacant post of Govt. Middle School Longal, Abbottabad and same was allowed and he was adjusted against the vacant post of Secondary School Teacher at GMS Longal, Abbottabad vide office order No. 2927-31 dated 07-03-2018 and applicant took over the charge against the said post vide Endst No. 0012 dated 07-03-2018. Hence, applicants are not necessary party and not to be impleaded as a party because it will prolong the litigation for no reason. (Copy of **application, transfer order & charge report** are annexed herewith as annexure "A", "B" & "C" respectively).

3. That the Para No. 3 of the application as stated is incorrect hence, denied as applicants do not fulfill the necessary conditions to be declared as necessary party.

It is therefore, humbly prayed that on acceptance of instant replication the application in hand may graciously be dismissed with cost.

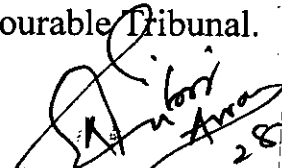

Appellant 28/6/18
IN PERSON

AFFIDAVIT:-

It is verified on oath that the contents of forgoing replication are true and correct to the best of my knowledge and belief and nothing has been suppressed therein from this Honourable Tribunal.



28/6/18


28/6/18
DEPONENT

کے لیے صاف - DEO - میں آئیے تاکہ

صاف علیا

تجربہ ہے کہ گزشتہ دو ماہ میں

کو فراہم میں اہل صحت کی جو جمعوں کے دوران

ماہ ذریعہ 2014 کی تجویز سے نہ کرنا چاہئے

کی تجویز سے صاف کی اور لہذا یہ ماہ ذریعہ کی

ادائیگی بھی نہ ہو

~~صاف کے ساتھ ساتھ~~

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الذکر

~~ذریعہ صاف کے ساتھ ساتھ~~

D/A
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789

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) ABBOTTABAD.

OFFICE ORDER

Mr. Zulfiqar Ahmad SST(G) GHS Khairagali Abbottabad is hereby adjusted

against the vacant post of SST(G) at GMS Longal Abbottabad in the interest of public service

with effect from date of taking over charge.

1. He is further allowed to draw his salary for the month of February 2018 from the above school.
2. Charge Report should be submitted to all concerned.
3. No TA/DA and is allowed.

DISTRICT EDUCATION OFFICER(M)
ABBOTTABAD. o/c

Endst.No. 2927-31 /EB-I/Tran/05

Dated Abbottabad the 07/2/2018

Copy of the above is forwarded to:-

1. Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
2. District Monitoring Officer (IMU) Abbottabad.
3. District Comptroller of Accounts Abbottabad.
4. Head Master Concerned.
5. Teacher Concerned.

DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD. o/c

GOVERNMENT OF K.P.K PROVINCE

CERTIFICATE OF TRANSFER/CHARGE

1. Certified that we have on the fore/afternoon of this day respectively made over and received charge of this office of the The Government Middle School Longal ~~Abbottabad in compliance with the order Of the District Education Officer (M) Under Endst: No.2927-31 dated 07-03-2018.~~
2. Particulars of cash and important secret and confidential documents handed over are noted on the revers:

Zulfiqar Ahmad SST GMS Longal

Abbottabad

Government Servant: _____

Designation: SST

dated 07/03/2018

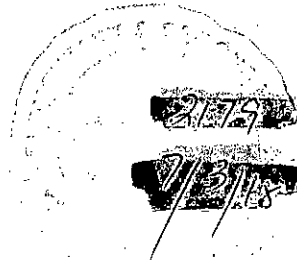
~~Endst No~~ 0012

Copy to the above is forwarded to the:-

1. DED (M) Abbottabad.
2. DAO Abbottabad
3. office copy.

HM GMS Longal
Abbottabad

B&AO
PI- Junya Pia
7/3/18



46

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No: 708/2018

Plu
17.8.2018
Zubair Ali ADEO(M) District Abbot Abad.

..... Appellant.

VERSUS

Secretary E&SE Department, Khyber Pakhtunkhwa & others.

..... Respondents

JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS No: 1-4.

Respectfully Sheweth :-

The Respondents submit as under:-

PRELIMINARY OBJECTIONS.

- 1 That the Appellant has got no cause of action locus/standi .
- 2 That the instant Service Appeal is badly time barred.
- 3 That the Appellant has concealed material facts from this Tribunal.
- 4 That the instant service appeal is based on mala fide intentions.
- 5 That the Appellant has not come to this Honorable Tribunal with clean hands.
- 6 That the appeal is not maintainable in its present form.
- 7 That the appeal is bad for mis-joinder & non-joinder of the necessary parties.
- 8 That the instant Service Appeal is barred by law.
- 9 That the Transfer & Posting is the discretionary powers of the competent authority in view of the judgment 2008, SCMR Page-531.
- 10 That the impugned transfer order dated 23/4/2018 is within legal parameter.
- 11 That the Respondent Department has acted in view of Sections-10 of Civil Servants Act- 1973, read with APT Rules, 1989.
- 12 That the appellant has been treated in accordance with law, rules & transfer / posting policy.
- 13 That the appellant hails from a teaching cadre post of SST(Sc:) in BPS-16 & cannot be adjusted against a Management Cadre post in the presence of regular ADEOM) as recommended by the Khyber Pakhtunkhwa, Public Service Commission in the year 2011.
- 14 That the appellant has been adjusted on his proper place of teaching.
- 15 That the cited reported judgment of the Apex Court is not applicable upon the case of the appellant.

45 ✓

ON FACTS.

- 1 That Para-1, needs no comments being pertains to the Service record of the appellant which is not disputed in the given circumstance of the case.
- 2 That Para-2 is incorrect & misleading on the grounds that the appellant has been recommended by the Khyber Pakhtunkhwa, Public Service Commission against the SST(Sc:) Post in BPS-16 for teaching cadre & cannot be posted & adjusted against the ADEO(M) Post in the office of the DEO(M) Abbot Abad /Respondent No: 3 except for the time being till the arrival of proper man for proper job/ Management Cadre. Therefore, the plea of the appellant is baseless in view of the recommendations of the ADEOS(M) Khyber Pakhtunkhwa, Public Service Commission for Management Cadre in the year 2011 for the entire formula in the Respondent Department.
- 3 That Para-3, is incorrect & denied on the grounds that although the appellant has been transferred & adjusted against the ADEO(M) Post in BPS-16 vide Notification No:1495-97 dated 09/01/2015 from GHS Chamhad District Abbot Abad with the conditions vide Para-3 & 4 of the said Notification dated 09/01/2015 that **"the order of the above named SST(Teaching Cadre) will be effective subject o the condition that he will give an undertaking/affidavit on Stamp-Paper to the DEO(M) Abbot Abad to the effect not to claim seniority of management cadre"** which shows that the appellant has been adjusted against the ADEO(M) Post in BPS-16 on temporary basis & even till the arrival of regular ADEO(M) Management Cadre Post. Hence, the claim of the appellant is baseless & liable to be stuck down in favour of the Respondents.
- 4 That Para-4 is correct that vide Notification dated 19/5/2017 the appellant has been directed to report for duty against the SST(Sc:) BPS-16 Post in the view of the terms & conditions vide Para-3 & 4 of the order dated 09/01/2015 of the Respondent No: 3 **.(Copies of the order dated 09/01/2015 & 19/5/2017 are annexed as Annexure-A&B).**
- 5 That Para-5 is also incorrect & denied on the grounds that the appellant being a regular civil servant against the SST(Sc:) in BPS-16 Post in the Respondent Department & has rightly been transferred & adjusted against the said Post at GHS Ghori District Abbot Abad. However, being a law graduate & upon his own request the appellant has adjusted in the office of the DEO(M) Abbot Abad as an In-charge Litigation Cell for dealing & pursuing cases on behalf of the DEO(M) Abbot Abad on acting charge basis with his actual place & Post of duty at GHS Ghori, District Abbot Abad. Hence, the order dated 29/6/2017 is not an adjustment or transfer order as the DEO(M) Abbot Abad is not competent to transfer & post an SST(Sc:) teacher in BPS-16 except with the formal approval of the Respondent No: 2/ Director E&SE Department Khyber Pakhtunkhwa.
- 6 That Para-6 is incorrect & denied on the grounds & submissions vide in Para-5 of the instant reply as the appellant is basically is an SST(Sc:) Teacher in BPS-16 & has been deputed to the office of the Respondent No: 3 for dealing Court cases on & for behalf of the DEO(M) Abbot Abad with his actual seniority & other service benefits against the SST(Sc:) BPS-16 instead of an ADEO (M) Management /Cadre Post.**(Copy of the said order is annexed as Annexure-C).**
- 7 That Para-7 is incorrect &denied on the grounds that the appellant is actually an SST(Sc) in BPS-16 teacher is liable to serve the E&SE Department against the teaching cadre post.

- 44
- 8 That Para-8 is incorrect & denied. The statement of the appellant is baseless & without any cogent reason as the withdrawal of the order dated 18/12/2017 is within legal sphere as the appellant belongs to the teaching cadre post against the SST(Sc:) BPS-16 & is liable to serve the Respondent Department in the said capacity. Hence, the claim of the appellant is baseless & liable to be struck down in favour of the Respondents.
 - 9 That Para-9 is incorrect & misleading. The appellant has been restored to his original position of teaching cadre vide order dated 23/4/2018 by the Respondent No: 2 under the mandatory Provisions of Section-10 of Civil Servants Act 1973 read with Section-21 of General Clauses Act 1897 in the best interest Public service. **(Copy of the order dated 23/4/2018 is attached as Annexure-D).**
 - 10 That Para-10 is correct. Hence, needs no further comments.
 - 11 That Para-11 is also correct. Hence, needs no further comments.
 - 12 That Para-12 is correct that the vide order dated 23/5/2018, the Departmental Appeal dated 24/6/2018 has been rejected by the Respondent No: 2 on merits of the case. **(Copies of the Department Appeal & rejections order dated 23/5/2018 are attached as Annexures-E&F).** However, the Respondent Department further submit on the following grounds inter alia :-

GROUNDS


- a Incorrect & not admitted. The impugned order dated 23/4/2018 is legally competent & liable to be maintained in favor of the Respondents having no question of exertion of Political pressure.
- b Incorrect & not admitted. The statement of the appellant is against the law, rules & circumstance of the case. Hence deserves to be rejected.
- c Incorrect & not admitted. The appellant is liable to service the E&SE Department against the SST(Sc:) Post in BP{S-16 & cannot claim the post of his choice in the office of the Respondent No: 3 which is purely a management cadre post for which the Khyber Pakhtunkhwa, Public Service Commission has already recommended ADEO(M/F) in the year 2011. Hence, the claim of the appellant regarding non-completion of his tenure is baseless & even without any reason & justification.
- d Incorrect & not admitted. The cited judgment dated 24/8/2017 of this Tribunal in Service Appeal No: 818/2015 case titled Iftikhar Ahmad VS Govt: is not applicable upon the case of the appellant of being different in question of law & facts of the case.
- e Incorrect & not admitted. The cited judgment dated 18/10/2012 of the August Supreme Court of Pakistan is also not applicable upon the case of the appellant. Hence, liable to be rejected to extent of the present case.
- f Incorrect & denied. The appellant is a habitual Litigant & wants to stick to the lucrative post of ADEO(M) in the office of the Respondent No: 3 & is always extorting illegal & even un warranted pressure upon the Respondent Department for his vested interest Hence, the case of the appellant is also liable to be rejected.


Incorrect & denied. The statement of the appellant is liable to be rejected on the grounds that as each & every case has its own merits and parameters & the instant case cannot be decided on the analogy of the cited judgment dated 02/5/2013 as reported in SCMR Page-599 being different in nature & question of law & even facts of the case as narrated in the foregoing paras of the instant reply.

- h Legal. However, the Respondents further seek leave of this Honorable Tribunal to submit additional grounds & case law/record at the time of arguments.
- i Incorrect & denied. The appeal of the appellant is badly time barred under the relevant provisions of law of limitation Act 1908 & is liable to be dismissed on this score in favour of the Respondents in the interest of justice.

In view of the above made submissions, it is most humbly prayed that this Tribunal may very graciously be pleased to dismiss the instant Service Appeal with cost in favour of the Respondent Department.

Dated ___ / ___ /2018.


Director
 E&SE Department Khyber
 Pakhtunkhwa, Peshawar.
 (Respondents No:2, 3&4)


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

AFFIDAVIT

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


 Deponent

37
GMA "A"
10/1/15

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER PAKHTUNKHWA,
PESHAWAR

NOTIFICATION

Mr. Zubair Ali SST GHS Chamhad District Abbottabad is hereby transferred and posted against the vacant post of ADEO (Litigation) at DEO (M) Abbottabad in his own pay & BPS in the interest of public service with immediate effect subject to the following terms and conditions.

TERMS & CONDITIONS.

1. Charge report should be submitted to all concerned.
2. No TA/DA etc are allowed.
3. The order of the above named SST(teaching cadre) will be effective subject to the condition that he will give an undertaking/affidavit on legal paper/stamp paper to DEO (M) Abbottabad to the effect not to claim seniority of Management cadre.
4. His seniority will be intact in teaching cadre as per rules. He will not affect the promotion of any incumbent of that cadre.
5. The terms & conditions mentioned in his appointment order as SST teaching cadre will intact.
6. He will not claim any kind of absorption in management cadre.

Endst: No: 1695-97 /F. No. 436/ Vol-06/ADEO (M) KP.

DIRECTOR

Dated Peshawar the 9/11 2015

Copy of the above is to the:-

1. District Education Officer (M) Abbottabad.
2. District Accounts Officer Abbottabad.
3. Principal GHS concerned.
4. SST concerned.
5. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
6. Master File.

YAR 8/11/15
Deputy Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

DEO (M)

For information
and record please

Mu
10/1/15

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

OFFICE ORDER

✓
Mr. Zubair Ali SST (Phy-Maths) working against the
of ADEO at the O/O DEO (M) Abbottabad is hereby transferred & posted
against vacant post of SST (Phy-Maths) at Govt. High School Cham
Abbottabad in his own pay & BPS in the interest of public service
immediate effect.

Note:-

1. Charge report should be sent to all concerned.
2. NO TA/DA etc are allowed.

DIRECTOR

Endst: No. 2455/86 / F.No.01/ SST (M) Transfers.

Dated Peshawar the 19/5 20

Copy of the above is to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. District Education Officer (M) Abbottabad.
3. District Accounts Officer Abbottabad.
4. Principal GHS, Chamhad District Abbottabad.
5. SST concerned.
6. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
7. Master File.

[Signature]
Deputy Director (Estab)

Elementary & Secondary Education
Khyber Pakhtunkhwa

[Signature]
17/5/17

39
Ann "C"
Ann

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) ABBOTTABAD.

OFFICE ORDER

Adjustment in respect of the following SST(G) BPS-16 is hereby ordered on his own pay and BPS in the interest of public service with immediate effect.

S. No.	Name.	Present School.	Remarks
	Mr. Zubair Ali SST(G) posted against the post of SST(Math:Physics) GHS Chamhad	GHS Ghori against vacant & original post of SST(G)	Deputed as Litigation Officer in the Office of DEO(M) Abbottabad

- Charge Report should be submitted to all concerned.
- He TA/DA and is allowed.
- He will draw his salary from GHS Ghori Abbottabad.

Sd
**DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD.**

Undst.No. 7129-34 / EB-I/15

Dated Abbottabad the 29/6 /2017

Copy of the above is forwarded to:-

- Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar with the remarks that the above named Officers has already been deputed/posted in this office as ADEO(Litigation) vide your Office Undst.No.1495-97/F.No.436/Vol:06/ADEO(M)KP dated 09-01-2015, hence it is further requested that necessary approval for his posting as Litigation Officer in this Office may please be accorded.
- District Monitoring Officer Abbottabad.
- District Comptroller of Accounts Abbottabad.
- Head Master GHS Ghori, Abbottabad.
- B&A officer Local Office.
- Teachers Concerned.

[Signature]
**DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD.**

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34) Ann "P" 11

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER

PAKHTUNKHWA, PESHAWAR.

OFFICE ORDER.

The following posting/transfers are hereby ordered in their own right in the larger interest of public service with immediate effect with the terms and conditions mentioned below:-

Sl. No.	Name/Designation & Address	Where adjusted as	Remarks
1	Mr. Rab Nawaz Khan ADEO (Estab) DEO (M) Abbottabad	ASDEO (M) Circle Berote Abbottabad.	Vice S.No.3
2	Mr. Zubair Ali SST GHS, Ghori Abbottabad.	ADEO (Estab) at DEO (M) Abbottabad	Vice S.No. 1
3	Mr. Zulfikar Ahmad SST/ASDEO (M) Circle Berote Abbottabad	His services placed at the disposal of DEO (M) Abbottabad	For further posting against vacant post.

Terms & Conditions

- Charge report should be submitted to all concerned.
- No TA/DA etc are allowed.
- The order of SST (teaching cadre) at S.No.2 above will be effective subject to the condition that he will give an undertaking/affidavit on legal paper/stamp paper to DEO (M) Abbottabad to the effect not to claim seniority of Management cadre.
- His seniority will be intact in teaching cadre as per rules. He will not affect the promotion of any incumbent of that cadre.
- The terms & conditions mentioned in his appointment orders as SST teaching cadre will intact.
- He will not claim any kind of absorption in management cadre.

DIRECTOR

Order No. 453-36 / F.No.436/Vol-31/ADEO (M) Transfers cases.

Dated Peshawar the 12/12/2017

Copy of the above is forwarded to the:-

- District Education Officer (M) Abbottabad.
- District Accounts Officer Abbottabad.
- Principal GHS concerned.
- Officials concerned.
- PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
- Master File.

[Signature]
Deputy Director (Estab)

Elementary & Secondary Education
Khyber Pakhtunkhwa

[Signature]
14/12/17

Annex 15
Annex 15

Services (Health & Personnel) Wing
Adv. Div. of P.I.M. (Supplies) & A. Div. of
Education Division Islamabad

Date: Jan 15, 2018
No: Adv/PIM/Avn/2018/01

Parvez Khattak
15/1/18

This letter will find you in good health.

Enclosing a copy of Director education KPK Office order no 415353.F No 436/Vol-
100(M) dated 18th Dec,2017 regarding posting/transfer of Mr Zulfiqar Ahirrec
SDEO at Abbotabad.

I like to request that his transfer may please be cancelled/held in abeyance due
to his consistent performance, which of course is bringing good yield at school level

A copy of transfer order is attached for your kind perusal and necessary action.

With profound regards

[Handwritten signature]

Mr. Mehtab Ahmed Khan

Mr. Parvez Khattak
Chief Minister KPK

[Handwritten initials]
14/1/18

[Handwritten signature]
19/1/18

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Appeal No. 708/2018

Zubair Ali

VERSUS

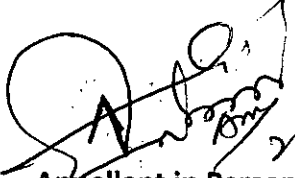
Govt. of KPK & Others

REJOINDER ON BEHALF OF APPELLANT AGAINST THE REPLY FILED
BY RESPONDENTS NO. 01 TO 04

INDEX

S #	Description	Page No's	Annexures
1	Rejoinder alongwith Affidavit	01 to 05	
2	Copy of the Notification dated 03-07-2018	06 to 08	"R1"
3	Copy of Transfer Orders of ADEOs of Management Cadre into Teaching Cadre as SST (G)	09 to 10	"R2-3"
4	Copy of Transfer Orders of Teaching Cadre SST (G) into Management Cadre ADEOs	11 to 15	"R4-8"

Dated: 25/08/2018


...Appellant in Person 25/8/18

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Appeal No. 708/2018

Zubair Ali

VERSUS

Govt. of KPK & Others

REJOINDER ON BEHALF OF APPELLANT AGAINST THE REPLY FILED
BY RESPONDENTS NO. 01 TO 04

Respectfully Sheweth:-

That the rejoinder on behalf of appellant is submitted as under:-

REJOINDER ON PRELIMINARY OBJECTIONS:-

1. That the Para No. 1, of the reply as composed is incorrect hence, denied.
2. That the Para No. 2, of the reply as composed is incorrect hence, denied as instant service appeal is well within time.
3. That the Para No. 3 to 9, of the reply as composed is incorrect hence, denied.
10. That the Para No. 10, of the reply as composed is incorrect hence, denied as order dated 23-04-2018, was issued in the result of political involvement which is clear cut violation of the Transfer Posting Policy of the Provincial Government 2003.
11. In reply to Para No. 11, of the reply it is submitted that Provincial Government has reshaping his Policy from time to time as the transfer order of the appellant has been withdrawn in violation of the prevailing Transfer Posting

Policy as well as against the precedents of the Apex Courts.

12. That the Para No. 12, of the reply as composed is incorrect hence, denied.
13. That the Para No. 13, of the reply as composed is incorrect hence, denied as the respondents are misleading and deliberately concealing the material facts from this Honourable Tribunal to the effect that respondent No. 6 is presently working as ASDEO circle Birote, Abbottabad against his original post of Management Cadre.
14. That the Para No. 14, of the reply as composed is incorrect hence, denied.
15. That the Para No. 15, of the reply as composed is incorrect hence, denied as the cited reported judgments of the Apex Court are applicable in the case of appellant as the same legal propositions of Law have been discussed and decided as well.

REJOINDER ON FACTS:-

1. That the Para No. 1, need no reply because this para of the amended appeal of the appellant has been admitted.
2. That the Para No. 2, as composed is incorrect hence denied. The plea of the respondents regarding the transfer of Teaching Cadre to the Management Cadre is against the Notification No. SO(SM)E&SED/3-2/2016/SSRC of M.C dated 03-07-2018, hence, plea is baseless and against their

own Notification. (Copy of the Notification dated 03-07-2018 is annexed herewith as annexure "R1").

3. That the Para No. 3, as composed is incorrect hence, denied.
4. That the Para No. 4, as composed is incorrect hence, denied as appellant was wrongly adjusted vide Notification dated 19-05-2017, against the wrong post.
5. That the Para No. 5, as composed is incorrect hence, denied as appellant never requested to the department to depute him as incharge of Litigation Cell.
6. That the Para No. 6, as composed is incorrect hence, denied.
7. That the Para No. 7, as composed is incorrect hence, denied.
8. That the Para No. 8, as composed is incorrect hence, denied as no cogent reason was mentioned in the impugned order. It is pertinent to mention here that respondent department itself annexed the copy of letter regarding political involvement with their comments which admit the stance of appellant that impugned order was issued in result of political involvement as well as malafidly. Furthermore, the post of appellant i.e SST (G) & the post of ADEO of Management Cadre are Inter-Transferable according to the Notification 03-07-2018 and Transfer Orders of Management Cadre into the Teaching Cadre and similarly Transfer Orders of Teaching Cadre into Management Cadre are annexed herewith as annexure "R2-3 & R4-8" respectively.

9. That Para No. 9, as composed is incorrect hence, denied order dated 23-04-2018 is the outcome of the Political victimization hence, authority cannot recall the same order where the rights have been accrued.
10. That Para No. 10, need no reply because this para of the amended appeal of the appellant has categorically been admitted by the respondent hence, it is well settled of proposition of Law facts which are admitted not need to be proved.
11. That Para NO. 11, also need no reply wherein, department has admitted that impugned order dated 23-04-2018 was withdrawn without any lawful justification as well as against the public interest.
12. That Para No. 12, as composed is incorrect hence, denied departmental appeal of the appellant was wrongly decided by the incompetent authority.

REJOINDER ON GROUNDS:-

- a. Para "a" to "g" as composed is incorrect hence, denied as respondents department did not follow the prescribe procedure.
- b. Para "h" need no reply.
- c. Para "I" as composed is incorrect hence, denied as instant service appeal is well within time.

In view of the above, it is prayed that, amended service appeal of the appellant may graciously be accepted as prayed for.

Dated: 25/8/18


.....APPELLANT IN PERSON

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

Appeal No. 708/2018

Zubair Ali

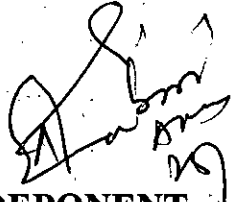
VERSUS

Govt. of KPK & Others

**REJOINDER ON BEHALF OF APPELLANT AGAINST THE REPLY FILED
BY RESPONDENTS NO. 01 TO 04**

AFFIDAVIT

I, Zubair Ali, Assistant District Education Officer (Estab.)
Male, Abbottabad do hereby solemnly affirm and declare that the contents
of foregoing rejoinder are true and correct to the best of my knowledge
and belief and nothing has been concealed from this Honourable Tribunal.


DEPONENT

Dated: 25-08-2018



25/8/18

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT



NOTIFICATION

Resolving Article 74 of the Constitution

Anne xure

R1

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NO. SO/GM/EE&SED/3-2/2016/SSIC of M.C. In pursuance of the provision contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of this Department's Notification No. SOE/M/EE&SE/1-76/08/AM&T dated 04.05.2009, the Elementary & Secondary Education Department, in consultation with the Establishment Department and the Finance Department, hereby lays down the method of recruitment, qualification and other conditions specified in Column No. 3 to 5 of the Appendix to the Notification which shall be applicable to the ~~posts of School Management Cadre~~ under the Directorate of Elementary & Secondary Education and Directorate of Curriculum & Teachers Education as specified in Column No. 2 of the said Appendix.

APPENDIX

Sl. No.	Nomenclature of the Post	Minimum Qualification for appointment by initial recruitment or by transfer	Age limit	Method of recruitment
1	2	3	4	5
	Director (BPS-20)			<p>By promotion, on the basis of seniority-cum-fitness, from amongst the District Education Officers and Additional Directors (Male and Female) with at least five year service in BPS-19 as such and having successful completion of Senior Management Course;</p> <p style="padding-left: 40px;">Provided that if no suitable officer is available for promotion then by transfer of BPS-20 officer.</p> <p>Notes: For the purpose of promotion, a joint seniority list of District Education Officers and Additional Directors (Male and Female) shall be maintained.</p>

PAABER/AM/11777
D. *[Signature]*
E. *[Signature]*

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2. District Education Officer/ Additional Director (BPS-19) (Male and Female)			By promotion, on the basis of seniority-cum-fitness, from amongst the Deputy District Education Officers and Deputy Directors (Male and Female) with at least seven year service in BPS-18 or twelve year service in BPS-17 and above and having qualified the Mid-Career Management Course: Provided that if no suitable officer is available for promotion then by transfer of BPS-19 officer.
3. Deputy District Education Officer/Deputy Director (BPS-18) (Male and Female)	<ul style="list-style-type: none"> (i) M.Phil in Education from recognized University with three years teaching or administrative experience in Government recognized educational institutions or offices; or (ii) at least Second Class Master's Degree or BS (four years) and Bachelor's Degree of Education from recognized University with five years teaching or administrative experience in BPS-17 and above in Government recognized educational institutions or offices; or (iii) at least Second Class M.A/M.Sc with Second Class M.Ed/M.A (Education Planning and Management) or equivalent qualification from a recognized University with at least five years teaching or administrative experience in Government recognized educational institutions or offices. 	25 to 45 years	<p>(a) Eighty Percent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Divisional Education Officers and Assistant Directors (Male/Female) with at least five year service as such and having qualified eight weeks mandatory training: Provided that if no suitable officer is available for promotion then by transfer of BPS-18 officer; and</p> <p>(b) twenty percent by initial recruitment.</p>
4. Sub-Divisional Education Officer/Assistant Director (BPS-17) (Male and Female).	<ul style="list-style-type: none"> (i) At least Second Class M.A/M.Sc or BS (four years) from recognized University; (ii) at least Second Class Bachelor's of Education from a recognized University; and (iii) three years teaching or administrative experience in Government recognized institutions or offices. 	21 to 40 years	<p>(i) Eighty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Sub-Divisional Education Officers and Assistant District Education Officers (Male & Female) with at least five years service: Provided that if no suitable officer is available for promotion then by transfer of BPS-17 officer; and</p> <p>(ii) Twenty percent by initial recruitment.</p>

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Assistant Sub-Divisional Education Officer/ Assistant District Education Officer (BPS-16) (Male and Female)	i. At least Second Class Bachelor's Degree or BS (four years) from a recognized University; ii. at least Second Class Bachelor's Degree of Education from a recognized University ; and iii. five years teaching or administrative experience in Government recognized institutions or offices.	25 to 35 years	By initial recruitment: Provided that if no suitable officer is available then by transfer of BPS-16 officer of Teaching Cadre.
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SECRETARY TO
GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT

Encl: of even No. & Date:-

Copy forwarded to the:

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. Secretary to Governor, Khyber Pakhtunkhwa.
3. Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. Chairman Khyber Pakhtunkhwa Public Service Commission, Peshawar.
5. Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
6. Directorate of Curriculum and Teachers Education Khyber Pakhtunkhwa Abbottabad.
7. All District Education Officers (Male/Female) in Elementary & Secondary Education Khyber Pakhtunkhwa.
8. Director Information Khyber Pakhtunkhwa Peshawar with the request to give vide publicity.
9. Manager Government Printing Press Peshawar for publication in the next issue of Govt. Gazette.
10. PS to Minister E&SE Khyber Pakhtunkhwa Peshawar.
11. PS to Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
12. PS to Special Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
13. PS to Additional Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
14. PA to Deputy Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
15. All Section Officers/Planning Officers E&SE Department Khyber Pakhtunkhwa, Peshawar.
16. Director EMIS E&SE Department with the request to upload the same on the web site of the Department.

Asan din

Asan din
(MIAN HUSSAIN DIN)
SECTION OFFICER (SCHOOLS MALE)
Section Officer (Schools)
Education Department
Civil Sect. Govt. Pakhtunkhwa

6A

BETTER COPY

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

NOTIFICATION

Peshawar, dated the July 03, 2018

NO.SO(SM)E&SED/3-2/2016/SSRC of M.C: In pursuance of the provision contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of this Department's Notification No. SOG/E&SE/176/08/M&T dated 04-05-2009, the Elementary & Secondary Education Department in consultation with the Establishment Department and the Finance Department, hereby lays down the method of recruitment, qualification and other conditions specified in Column No. 3 to 5 of the Appendix to the Notification which shall be applicable to the posts of Schools Management Cadre under the Directorate of Elementary & Secondary and Directorate of Curriculum & Teachers Education as specified in Column No. 2 of the said Appendix.

APPENDIX

S #	Nomenclature of the Post	Minimum Qualification for appointment by initial recruitment or by transfer	Age Limit	Method of recruitment
1	2	3	4	5
1	Director (BPS-20)			<p>By promotion on the basis of seniority-cum-fitness, from amongst the District Education Officers and Additional Directors (Male & Female) with at least five year service in BPS-19 as such and having successful completion of Senior Management Course.</p> <p>Provide that if no suitable officer is available for promotion then by transfer of BPS-20 officer.</p> <p>Note: For the purpose of promotion, a joint seniority first of District Education Officers and Additional Directors (Male & Female) shall be maintained.</p>

7A

2	District Education Officer/Additional Director (BPS-19) (Male & Female)			By promotion on the basis of seniority-cum-fitness amongst the Deputy District Education Officers and Deputy Directors (Male and Female) with at least seven year service in BPS-18 or twelve year service in BPS-17 and above and having qualification the Mid-Career Management Course: Provided that if no suitable officer is available for promotion then by transfer of BPS-19 officer.
3	Deputy District Education Officer/Deputy Director (BPS-18) (Male and Female)	(i) M.Phil in Education from recognized University with three years teaching or administrative experience in Government recognized education institutions or offices: (ii) At least Second Class Master's Degree or BS (Four years) and Bachelor's Degree of Education from recognized University with five years teaching or administrative experience in BPS-17 and above in Government recognized educational institution or offices; or (iii) At least Second Class M.A/M.Sc with second Class M.Ed./M.A (Education Planning and Management) or equivalent qualification from a recognized University with at least five years teaching or administrative experience in Government recognized educational institution or offices.	25 to 45 years	(a) Eighty Percent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Divisional Education Officers and Assistant Director (Male/Female) with at least five year service as such and having qualified eight weeks mandatory training: Provided that if no suitable officer is available for promotion then by transfer of BPS-18 officer; and (b) Twenty percent by initial recruitment.
4	Sub-Divisional Education Officer/Assistant Director (BPS-17) (Male and Female)	(i) At least second Class M.A/M.Sc or BS (four years) from recognized University: (ii) At least Second Class Bachelor's of Education from a recognized University; and (iii) Three years teaching or administrative experience in Government recognized institutions or offices.	21 to 40 years	(i) Eighty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Sub-Divisional Education Officers and Assistant District Education Officers (Male & Female) with at least five years service: Provided that if no suitable officer is available for promotion then by transfer of BPS-17 officer; and (ii) Twenty percent by initial recruitment.

8A

BETTER COPY

5	Assistant Sub-Divisional Education Officer/Assistant District Education Officer (BPS-16) (Male and Female)	i. At least Second Class Bachelor's Degree or BS (four years) from a recognized University; ii. At least Second Class Bachelor's Degree of Education from a recognized University; and iii. Five years teaching or administrative experience in Government recognized institutions or offices.	25 to 35 years	By initial recruitment Provide that if no suitable officer is available then by transfer of BPS-16 officer of Teaching Cadre.
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SECRETARY TO
GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT

Endst: of even No. & Date:-

Copy forwarded to the:

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. Secretary to Governor, Khyber Pakhtunkhwa.
3. Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. Chairman Khyber Pakhtunkhwa Public Service Commission, Peshawar.
5. Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
6. Directorate of Curriculum and Teachers Education Khyber Pakhtunkhwa Abbottabad.
7. All District Education Officers (Male/Female) in Elementary & Secondary Education Khyber Pakhtunkhwa.
8. Director Information Khyber Pakhtunkhwa Peshawar with the request to give vide publicity.
9. Manager Government Printing Press Peshawar for publication in the next issue of Govt. Gazette.
10. PS to Minister E&SE Khyber Pakhtunkhwa Peshawar.
11. PS to Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
12. PS to Special Secretary E&SE Department, Khyber Pakhtunkhwa Peshawar.
13. PS to Additional Secretary E&SE Department, Khyber Pakhtunkhwa Peshawar.
14. PA to Deputy Secretary E&SE Department, Khyber Pakhtunkhwa Peshawar.
15. All Section Officers/Planning Officers E&SE Department Khyber Pakhtunkhwa Peshawar.
16. Director EMIS E&SE Department with the request to upload the same on the web site of the Department.

-sd-

(MIAN HUSSAIN DIN)
SECTION OFFICER (SCHOOLS MALE)

ADJUSTMENT TRANSFER:

The following ASD/O/SSI working in the office/school/circle in this district are hereby transferred and posted in their own pay and scale in the school noted against each in the interest of public service with effect from the date of taking over charge.

Sr. #	Name	From	To	Remarks
1	Mrs. Tehseen Kousar	ASD/O Circle Nathi Gali	SSI GGMS Bandi Chimyali	Against Vacant post
2	Shaheen Bibi	SSI GGMS Mana Bala	ASD/O Circle Nathi Gali	Vice Serial 01

Note

1. No TADA is allowed.
2. Charge Report should be submitted to all concerned.

Jamuna Ali
District Education Officer
(Female) Abbottabad

Encls: No 7239-38 Dated 9-7-2015

Copy to the:

1. Director, Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar
2. District Account Officer Abbottabad
3. B&AO Local Office
4. Headmistress GGMS Bandi Chimyali
5. Headmistress GGMS Mana Bala
6. Master File

Jamuna Ali
DISTRICT EDUCATION OFFICER
(FEMALE) ABBOTTABAD

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

NOTIFICATION

The un availed portion of Ex-Pakistan leave in respect of ~~Mrs. Anis Fatima~~
ADO ~~Ahmedabad~~ w.e.f 1-11-2013 to 26-7-2015 sanctioned vide this office
notification No. 2786-90 dated 23-5-2013 is hereby cancelled.

~~She is advised against the availing of SST (FF) leave as per the~~
the availability of ADO post ~~subject to the condition that she will not claim seniority in teaching~~
~~and her seniority in management cadre will be remained intact~~


**DIRECTOR
ELEMENTARY & SECY. EDUCATION
KHYBER PAKHTUNKHWA**

Indst No 3700-9 F.No.197A-17/ SST (FF) Leave cases

Dated Pesh: the 29/11 2013

Copy of the above is to the -

1. District Education Officer (F) A/Abad w/r to her letter No.4575 dated 12/11/2013 with the remarks to obtain an undertaking regarding not claiming of seniority from the ADO concerned.
2. District Account Officer Ahhotrabad.
3. Officer Official concerned.
4. PA to Director (E & S) Khyber Pakhtunkhwa, Peshawar
5. M File.


 Deputy Director (Female)
 Elementary & Secondary Education
 Khyber Pakhtunkhwa, Peshawar

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

NOTIFICATION

Mst. Anjum Indoon SST(G) GGMS Pluck (Ander Sari) District Abbottabad, is hereby transferred in her own pay and BPS to ASDEO(F) Circle Binote Abbottabad, in the interest of public service against the vacant ASDEO(F) post.

Note:-

- 1- Charge report should be submitted to all concerned.
- 2- No TA/DA is allowed.
- 3- The transfer order in respect of Mst. Tehseen Kousar SST(G) GGCMS No.1 A.Abad issued vide this office Notification No.3742-46 dated 21-05-2018 is hereby cancelled.

**Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar**

Endst.No. 5393/97 /A-17/SST/F/Transfer /Proposal of ADEO/ASDEO
Dated Peshawar the 25/5/2018

Copy of the above is forwarded to the:-

- 1- District Education Officer(Female)Abbottabad
- 2- District Accounts Officer, Abbottabad
- 3- SDEO(F) concerned
- 4- Teacher concerned
- 5- PA to Director (E&SE) Local Office.
- 6- Master file.

[Signature]
Deputy Director Establishment(F)
(E&SE) Khyber Pakhtunkhwa.

/Noor/18

**DIRECTORATE OF ELEMENTARY AND SECONDARY EDUCATION KHYBER
PAKHTUNKHWA, PESHAWAR**

OFFICE ORDER

Mr. Muhammad Ihsan SST (General) GMS, Kunqrocha District Haripur is hereby transferred and posted against the vacant post of ASDEO (M) Circle Nara Amuzai District Haripur in his own pay and BPS in the interest of public service with immediate effect

- Note
- 1 No TA/DA etc are allowed.
 - 2 Charge report should be sent to all concerned.
 - 3 His terms and condition in appointment order as SST will impact.
 - 4 He will not claim the seniority of Management cadre.

DIRECTOR

Order No 575 /No 436/Vol-6/ADEO (M) Transfers

Dated Peshawar the 16/11 2018

Copy of the above is forwarded to the:-

1. District Education Officer (M) Haripur.
2. District Accounts Officer Haripur.
3. SDEO (M) Ghazi Haripur.
4. Official concerned.
5. PA to Director (E&SE) Local Directorate.
6. Master File.

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

[Signature]
17/11/18

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

NOTIFICATION

Amir R6

(13)

To be substituted with the same No. and date.

Mr. Jamil Ahmad Mushtaq SST (General) GHS, Barin Gall District Abbottabad is hereby transferred and posted against vacant post of ADEO (P&D) Office of the DEO (F) Abbottabad in his own pay and BPS with immediate effect with the following terms & conditions:-

The Office Order issued vide this Directorate under endorsement No. 3818-23 dated 17-08-2017 is hereby withdrawn.

TERMS & CONDITIONS

1. Charge report should be submitted to all concerned.
2. No TA/DA etc are allowed.
3. The order of the above named SST (Teaching cadre) will be effective subject to the conditions that he will give an undertaking/affidavit on legal paper/stamp paper to DEO (F) Abbottabad to the effect not to claim seniority of management cadre.
4. His seniority will be intact in teaching cadre as per rules. He will not affect the promotion of any incumbent of that cadre.
5. The terms & conditions mentioned in his appointment order as SST (teaching cadre) intact.
6. He will not claim any kind of absorption in management cadre.

DIRECTOR

Endst: No.698-700/F. No.436/Vol-30/ADEO (M) Transfers/KP.

Dated Peshawar the 07-09-2017.

Copy of the above is to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. District Education Officer (T&F) Abbottabad.
3. District Accounts Officer Abbottabad.
4. Principal GHS Barin Gall Abbottabad.
5. Official concerned.
6. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
7. Master File.

[Signature]
Deputy Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar
12/9/17
[Signature]
17/9/17

PCL XL error

Subsystem: JPEG

Error: InternalError 0x

Operator: ReadImage

Position: 20

(14)

(18)

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER PAKHTUNKHWA, PESHAWAR

NOTIFICATION

The services in respect of Muhammad Alan SCT (BPS 15) GHS No (Dassu) District Kohistan is hereby placed at the disposal of District Education Officer (M) Kohistan for further posting against a post of ADEO in his own pay and BPS with immediate effect with the following terms & conditions:

TERMS & CONDITIONS

1. Charge report should be submitted to all concerned.
2. No TADA etc are allowed.
3. The order of the above named SCT (teaching cadre) will be effective subject to the conditions that he will give an undertaking/affidavit on legal paper/stamp paper to DEO (M) Kohistan to the effect not to claim seniority of management cadre.
4. His seniority will be intact in teaching cadre as per rules. He will not affect the promotion of any incumbent of that cadre.
5. The terms & conditions mentioned in his appointment order as SCT (teaching cadre) will intact.
6. He will not claim any kind of absorption in Management cadre.

DIRECTOR

Endst: No. 1968 / F. No. 436/Vol-25/ADEO (M) Transfers/KP.
Dated Peshawar the 27/7/2017.

Copy of the above is to the:

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. District Education Officer (M) Kohistan w/r to your letter No. 6370 dated 12-07-2017.
3. District Accounts Officer Kohistan.
4. Principal GHS concerned.
5. SCT concerned.
6. PPA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
7. Master File:

*A/E
1. process the*

[Signature]
Deputy Director (E&S)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Annex R8
15
86

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

NOTIFICATION

In compliance with the order of Worthy Director, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar, bearing Endst. No. 4968-70/F.No. 436/Vol:-25/ADEO(M) Transfer / KP dated 22-8-2017.

Mr. Muhammad Alam SCT (BPS-16) Government High School Seo Kohistan is hereby adjusted against the vacant post of ADEO (Sport/Litigation) in the office District Education Officer (M) Kohistan on his own Grade and Pay in the interest of public service with immediate effect till further order.

TERMS & CONDITON

1. Charge Report shoul be submitted to all concerned.
2. No TA/DA ect are allowed.
3. The order of the above named SCT (Teaching Cader) will be effective, subject to the conditions that he will give under taking / Affidavit on legal Stamp paper to DEO(M) office Kohistan to effect not to claim seniority of Management cader.
4. His seniority will be intact in teaching cader as per rules. He will not effect the promotion of any incumbent of that cader.
5. The terms & conditions mentioned in his appointment order, as SCT (Teaching Cader) will intact.
6. He will not claim any kind of absorption in management cader.

DISTRICT EDUCATION OFFICER
(MALE) KOHISTAN

Endst. No. 7773-78 dated 23/8 /2017

Copy of the above is forwarded for information to the:

1. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar
2. Deputy District Education Officer (M) Kohistan.
3. Distrit Accounts Officer, Kohistan.
4. District Monitoring Officer (IMU) Kohistan.
5. Head Master GHS Seo.
6. Official Concerned.

DISTRICT EDUCATION OFFICER
(MALE) KOHISTAN

BEFORE THE CHAIRMAN KHYBER PAKHTUNKHUWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal. No 708 A/2018

Zubair Ali S/o Ali Bahadur R/o Kassaki Tehsil & District Abbottabad, presently posted as Assistant District Education Officer Establishment (M) Abbottabad.

Appellant

Versus

Govt. Of Khyber Pakhtunkhuwa through Secretary Elementary & Secondary Education Department (E&SED) Khyber Pakhtunkhuwa, Peshawar and others.

Respondents.

...RESPONDENTS

Service Appeal

Index

S.no	Description	Page#	Annexure
1.	Service Appeal on behalf of Appellant along with Affidavit & Certificate		
2.	Copy of the Adjustment letters		A
3.	Copies of Withdrawal order of Civil Judge VII Abbottabad		B
4.	Copy of Application of the appellant Dated 19-06-2017		C
5.	Copy of letter dated 06-12-2016		D
6.	Departmental Appeal, transfer order, transfer order - 2, withdrawal order (EFF)		

7- TA Bills

Through

Dated: 31/07/2018

Muhammad Arshad Khan Tanoli
Advocate High Court, Abbottabad

Muhammad Arshad Khan Tanoli
Advocate High Court
Office No 33 Adjacent to
Distt Bar Abbottabad

BEFORE THE CHAIRMAN KHYBER PAKHTUN KHUWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No: _____

Zubair Ali S/o Ali Bahadur R/o Kassaki tehsil & District Abbottabad,
presently posted as Assistant District Education Officer Establishment (M)
Abbottabad.

Appellant

Versus

Govt. Of Khyber Pakhtunkhuwa through Secretary Elementary &
Secondary Education Department (E&SED) Khyber Pakhtunkhuwa,
Peshawar and others

Respondents

COMMENTS ON BEHALF OF RESPONDENT NO. 5 & 6

Respectfully Sheweth;

Preliminary Objections:

1. That the Appellant belongs to the teaching cadre and is serving as ADO litigation for the last 7 years in the office of Respondents No. 3 . He was initially adjusted as ADO establishment in the office of DEO Abbottabad vide letter dated 22-04-2013 and since then; he is

serving against the post of management cadre in the said office. Therefore, amended appeal of the appellant is malafide against the law . Copy of 1st adjustment order dated 22-04-2013 and subsequent adjustment orders are attached as **Annexure A**.

2. That the appellant has not come to this honourable tribunal with clean hands. Respondent No 6 belongs to management cadre therefore the present appellant has no locus standi to challenge his of transfer order.
3. That respondent No.6 in the wake of status quo is suffering from irreparable loss being employee of management cadre.
4. That, the appellant willfully concealed some material facts from this honourable tribunal. Therefor, the appeal of the appellant is liable to be set aside.
5. That the appellant is estopped to file the instant appeal through his conduct .Transfer of the appellant from one branch of the office of DEO to another branch of the said office has caused no loss to the appellant. Hence, service appeal of the appellant is liable to be set aside.

6. That the appellant first got status quo from Civil Judge VII Abbottabad and in the meanwhile, filed service appeal before this Honourable tribunal and did not disclose the fact that the matter was sub judice before the civil court at the time of filing of service appeal. In this regard, order of civil judge VII Abbottabad dated 25-05-2018 this honourable tribunal on 24-05-2018. Copies of withdrawal order of civil judge VII are attached as Annexure B.

Comments on Facts:

1. Para No. 1 is correct.
2. Para No 2 of the appeal is correct.
3. Para No. 3 of the appeal is correct.
4. Para No.4 is incorrect and vehemently denied. It is submitted that the appellant was transferred from GHS Chammad Abbottabad as ADO establishment vide order NO. 3011-15 dated 22-04-2013. Thereafter, he was again adjusted on 12-12-2014 in the office of DEO male Abbottabad right from 2013 to till date. He is serving in

office of respondent No 3 on different seats. Copies of adjustment orders are already attached as Annexure B. It is further submitted that , as per application of the appellant dated 19-06-2017, wherein, the appellant , stated that “ *the undersigned has been posted / deputed as ADEO litigation since 2012 , in the office of DEO male Abbottabad and still working against the said post, due to some domestic problems undersigned is unable to perform his duties as ADEO litigation*”. Therefore, the appellant himself requested for transfer at GHS No.1 or GHS Jabrian Abbottabad vide application dated 19-06-2017. Copy of application of the appellant dated 19-06-2017 which was received by respondent No.3 vide diary No. 5451 Dated 19-06-2017. Copy of Application of the appellant dated 19-06-2017 is attached as Annexure C.

5. Para No 5 is correct to the extent of transfer of the appellant.at GHS Chammad Abbottabad. It is submitted that the appellant did not take over the charge in fact but in papers only and practically he remained on Job in the office of respondent No.3
6. Para No. 6 is correct to the extent of his transfer from GHS Chammad to GHS Ghorī but, as usual, he took

over the charge in papers but practically he remained associated with the office of respondent No.3.

7. Para No 7 is Correct.
8. Para No. 8 is incorrect and vehemently denied.
9. Para No. 9 of the Appeal is incorrect and denied. Infact, the appellant himself approached the then MNA Dr Azhar Jadoon for transfer of Respondent No.5 Copy of letter dated 06-12-2016 is attached as **Annexure D**.
10. Para No. 10 is incorrect and vehemently denied. Infact, the Appellant is sticking with different posts of management cadres in the office of DEO male since 2013. The Appellant has no locus standi to remain on the post of management cadre in the office of DEO male since 2013 to till date.
11. Reply of Para No.11 is already given in Para 10. Moreover, respondent no.6 was posted as ADEO Establishment vide order dated 7.06.2016 and thereafter the order dated 18.12.2017 was issued which was challenged by the respondent no.5 and filed departmental appeal against pre-mature transfer order. hence the on the basis of appeal of the appellant the said order was with drawn. Copy of order dated 7.6.2016

and departmental appeal is attached as annexure-E &

F.

12. Para No. 12 is incorrect. Moreover, the appellant till date from 2013 working against the post of ADEO Litigation at the office of DEO Male Abbotabad (R-3). Copy of TA Bills is attached as Annexure-G.

13. Para No. 13 is to be proved with cogent evidence.

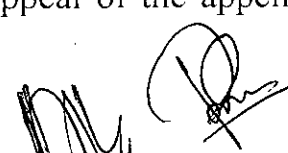
14. Para No. 14 is correct.

COMMENTS ON GROUNDS.

- a) Para No. a is incorrect and denied. The appellant has no locus standi to serve against the post of management cadre since 2013 to the date of his retirement.
- b) Para b is incorrect and reply has already been given in Para a.
- c) Para No c is incorrect and denied. As stated above, the Appellant Is serving in the office of respondent No.3 since 2013 onwards to till date. Therefore, transfer and posting policy 2003 is applicable in the case of the appellant.

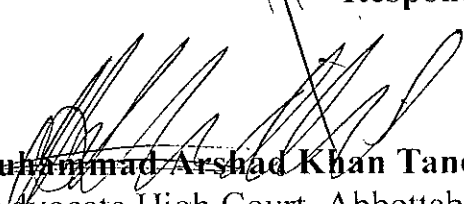
- d) That Para d is incorrect and denied. The judgment of honourable service tribunal is not applicable in the case of present appellant.
- e) Para No e is incorrect and denied. The appellant is not performing his duties as teacher but serving in the office of Respondent No.3 on managerial posts. Therefore, he has no right to be retained in the office of DEO male Abbottabad against the post of management cadre.
- f) Para No f is incorrect and denied.
- g) Para No g is correct to the extent of judgments of the superior courts. Rest of the Para is incorrect
- h) Para No. h is incorrect and denied.

In view of the above it is prayed that the appeal of the appellant may graciously be ordered to be set aside.


Respondents

Through

Dated: 31-07-2018


Muhammad Arshad Khan Tanoli
Advocate High Court, Abbottabad

Muhammad Arshad Khan Tanoli
Advocate High Court
Office No- 33 Adjacent to
Distt Bar Abbottabad

BEFORE THE, CHAIRMAN SERVICE TRIBUNAL

KHYBER PAKHTUNKHUWA PESHAWAR

Service Appeal No: _____

Zubair Ali S/o Ali Bahadur R/o Kassaki Tehsil & District Abbottabad,
presently posted as Assistant District Education Officer Establishment
(M) Abbottabad.

Appellant

Versus

Govt. Of Khyber Pakhtunkhuwa through Secretary Elementary &
Secondary Education Department (E&SED) Khyber
Pakhtunkhuwa, Peshawar and others.

Respondents

REPLY OF APPLICATION FOR SUSPENSION OF ORDER DATED

24-05-2018.

Respectfully Sheweth,

Para wise Reply/ Comments on application are submitted as under.

1. Para no 1 is correct.
2. Para No 2 is incorrect and denied. It is submitted that the Applicant is serving in the office of respondent No 3 since 2013 to till date and the

appellant used political tactics to remain in the office of respondent No 3 against the post of management cadre. As far as transfer and posting policy 2003 is concerned, it is applicable to the case of the appellant.

3. Para No. 3 is incorrect and denied.

4. Para No. 4 is incorrect and denied.

5. Para No. 5 is incorrect and denied. It is submitted that respondent No. 6 belongs to management cadre and due to the issuance of status quo, the respondent No.5 & 6 are suffering from irreparable loss.

It is prayed that application of the appellant/applicant may graciously be set aside.

Through

Dated:31-07-2018


Respondents
Applicants
Through

Muhammad Arshad Khan Tanoli
Advocate High Court, Abbottabad

Muhammad Arshad Khan Tanoli
Advocate High Court
Office No 33 Adjacent to
Distt Bar Abbottabad

**BEFORE THE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHUWA , PESHWAR**

Service Appeal. No. _____/2018

Zubair Ali S/o Ali Bahadur R/o Kassaki Tehsil & District Abbottabad, presently posted as Assistant District Education Officer Establishment (M) Abbottabad.

Appellant

Versus

Govt. Of Khyber Pakhtunkhuwa through Secretary Elementary & Secondary Education Department (E&SED) Khyber Pakhtunkhuwa, Peshawar and others.

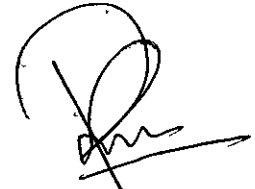
Respondents

SERVICE APPEAL

AFFIDAVIT

Rab Nawaz S/o Guldad Khan (ASDEO) R/o Lower Malikupura House No. LM 276 Mohallah Qazi, Abbottabad, do hereby solemnly affirm and declare that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.




DEPONENT

30/7/18

Annex - A

172

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) ABBOTTABAD

ADJUSTMENT

The following adjustment in respect of SST (General) BPS 16 is hereby ordered on their own pay and BPS in the interest of public service with immediate effect.

S/No	Name & Designation/station	To	Remarks
1	Zubair Ali SST(General)GHS Chamad Abbottabad	ADO(Establishment) Primary O/O DEO(M) Abbottabad	Vice Mr. Zafar Khan ADO (Establishment) Primary Abbottabad appointed as a Assistant Professor (BPS-19) at Gomal University Dera Ismail Khan vide No; 285 90/GU/Rec dated 18/4/2013.

- Note; 1. Charge report should be submitted to all concerned.
2. NO TA/DA is allowed.

92 -
DISTRICT EDUCATION OFFICER
(MALE) ABBOTTABAD

Endst No 3011-15 /EB-I (M) F/No _____ Dated Abbottabad the 22/4 2013

Copy of the above is forwarded for information and necessary action to
1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar with the request that the above named teacher has already deputed in Litigation Cell of this office vide this office order issue Endst No; 11861-65 dated 26/6/2012 being a Law graduate and practical experience of court matters. Necessary approval may be accorded.

2. District Accounts Officer Abbottabad.

3. Headmaster GHS Chamad Abbottabad.

4. Budget and Accounts Officer Local Office.

5. All other concerned.

Muhammad Arshad Khan Jallo
Advocate High Court
Office No 33 Adjacent to
Distt Bar Abbottabad

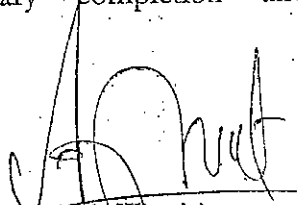
Order---07
25/05/2018

Plaintiff alongwith counsel present. Clerk of counsel for the defendants present. Counsel for the plaintiff submitted an application for withdrawal of instant suit which is placed on file, and statement of plaintiff is also recorded overleaf of application, wherein they stated that they are no more interested in further proceeding in the instant suit.

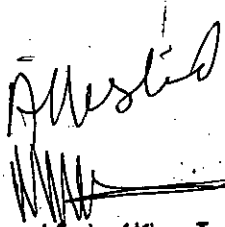
7.5 MAY 2018
EXAMINER
Sessions Judge
Abbottabad

Therefore, the instant suit is hereby dismissed as withdrawn. No order as to cost. File be consigned to record room after necessary completion and compilation.

Announced
25/05/2018


(Asmatullah Wazir)
CJ-VII/JM Abbottabad

12369 25/05/18
Application
25/05/18
25/05/18


Muhammad Arshad Khan Tanoli
Advocate High Court
Office No 33 Adjacent to
Distt Bar Abbottabad

Plaintiff Present and Submitted

CCH CASE SET

0-5
16.5.18

Plaintiff present and Submitted application for extension of Status-quo. In the meantime Counsel for petitioner of impleadment of Party appeared and Submitted v. name. Application for impleadment of party and early hearing is already placed on file. Copy of the said application given to the plaintiff for application and arguments on application for impleadment of party on 23.5.18. Status-quo be maintained till date fixed.

2257

27/04/18

25/05/18

Assigned to Mr. Justice
2018
Member
Sessalng Judges
Abbottabad

Asmatullah Wazir
Civil Judge/JM/JM
Abbottabad

Order--- 06
23/05/2018

Muhammad Arshad Khan Tanoli
Advocate High Court
Office No 33 Adjacent to
Dist Bar Abbottabad

Plaintiff through clerk of counsel present. Defendants No. 3 and 4 through counsel present, while counsel for plaintiff submitted reply for impleadment application. Counsel for petitioner also moved an application under order 7 rule 11 CPC. Same are placed on file. File to come up for arguments on all application 25/05/2018

(Asmatullah Wazir)
CJ-VII/JM, Abbottabad.

19

The District Education Officer (M)
Abbottabad

Subject: Application for Transfer/Adjustment Against the Vacant Post SST (General) at GHS No. 1 or GHS Gabrain Abbottabad.

Respected Sir,

It is stated that the undersigned has been posted / deputed as ADEO (Litigation) since 2012 in the office of DEO (M) Abbottabad and still working against the said post. Due to some domestic problems undersigned is unable to perform his duties as ADEO (Litigation).

It is therefore, very humbly requested that undersigned may please be transferred / adjusted against the vacant post of SST (General) at GHS No. 1 or GHS Gabrain Abbottabad.

Dated: 19-06-2017

** ADEO Exts
BB T
Pl. Prod and
for 5/10/1916*

*5451
19-6-17*

Zubair Ali
Zubair Ali
SST (General)
19/6/17

Att. Shad

Muhammad Arshad Khan Tanq.
Advocate High Court
Office No 33 Adjacent to
Distt Bar Abbottabad

Annexur - D

(109)

Directorate of Elementary & Secy: Education
Khyber Pakhtunkhwa, Peshawar
No. 1045/F.No.436/Vol-30/ADEO(M) Transfers.
Dated Peshawar the 7/12 2016

To

The District Education Officer
(Male) Abbottabad.

Subject: - POSTING/TRANSFER.

Memo:

I am directed to refer to the subject cited above and to state that Dr. Azhar Member National Assembly of Pakistan has desired the transfer in respect of Mr Zulfiqar Ahmad ASDEO from Male Circle Berote Abbottabad to Govt High School Majhooan in District Abbottabad.

In this regard, I am further directed to ask you to submit your comments to this office immediately so as to further proceed into the matter.

11/12/16
15/12/16

M. J. J. J.
Assistant Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa

Endst: No. _____

Copy of the above is to the:-

1. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.

6/12/16

Assistant Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa

Muhammad Arshad Khan Tanoli
Advocate High Court
Office No 33 Adjacent to
Distt Bar Abbottabad

Directorate of Elementary & Secy. Education
Khyber Pakhtunkhwa Peshawar
No 1115/F No.436/Vol-30/ADEO(M) Transfer
Dated Peshawar the 2/1/2016

The District Education Officer
Mardan

POSTING/TRANSFER

PA to Director of Elementary Education

Asst. Director of Elementary Education
Khyber Pakhtunkhwa