

BEFORE THE HONORABLE KHYBRPAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 1074/20

IHTIRAM KHAN.....Appellant.

VERSUS

Govt: of Khyber Pakhtunkhwa**Respondents.**

APPLICATION FOR VACATION OF ORDER DATED 04.07.2022 PASSED BY THIS HON'BLE COURT.

Respectfully Shewith


Preliminary Objections

1. That the appellant has got no cause of action to file this present appeal.
2. That the appellant is liable to be dismissed summarily .
3. That the petitioner is duty bound to obey the orders of the department in letter & spirits.
4. That the appellant has concealed the material facts from this Hon'ble court, thus enjoying the status quo issued by this Hon'ble Tribunal.
5. That both the schools where the petitioner was posted and then withdraw are in District Peshawar and there is no inconvenience to the petitioner on performing duties on his original post.
6. That balance of convenience lies in favour of the respondent/department.

GROUNDS

- a. That the petitioner has got no cause of action.
- b. That no prima facie case of the petitioner can be made from the present situation.
- c. That the petitioner is a public servant and is duty bound to obey the department and serve the nation wherever desired by the department concern.
- d. That there is no irreparable loss or inconvenience to the petitioner.

It is, therefore, very humbly prayed to this Hon'ble Court that the status quo order dated may kindly vacated.


Secretary
E&SE, Department
(Respondent No. 2)

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1305

Dated 15/9/2022

BEFORE THE HONORABLE KHYBRPAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 1074/20

IHTIRAM KHAN.....(APPELLANT)

VERSUS

GOVT OF KHYBER PAKHTUNKHWA THROUGH CHIEF SECRETARY AND OTHERS.....(RESPONDENTS).

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTE NO. 1 TO 4.

Khyber Pakhtunkhwa
Service Tribunal

Respectfully Shewith

Diry No. 1306

Para Wise Comments on behalf of Respondents are submitted as under

15/9/2022

Preliminary Objections

1. That the appellant has got no cause of action and locus standi to file the instant appeal.
2. That the appellant is not aggrieved person.
3. That appellant is estopped by his own conduct to approach this Hon'ble Tribunal
4. That the present appeal is against the relevant provision of law and rules.
5. That as per Section 10 of Civil Servant Act 1973, every Government servant is bound to serve anywhere within the province in the best interest of public service
6. That this instant appeal is not maintainable in its present form in preview of Section 10 of Civil Servant Act 1973.
7. That the transfer order of the appellant was issued in accordance to the rules as per Civil Servant Act, 1973.

- I. **Every Civil Servant shall hold office during the pleasure of the Governor.**
 - II. **"Every Civil Servant shall be liable to serve anywhere within or outside the province, in any post under the Federal Government, or any Provincial Government or Local Authority, or a corporation or body set up or established by any such Government.**
 - III. **As per 2020 SCMR1432 "Govt, servant were required to serve where his employer wanted him to serve, it was not a choice or prerogative of the employee to claim a right to serve at place that he chooses to serve"**
10. That all the proceedings have been done by the competent authority as per Law & Rule, hence, the appeal is liable to be dismissed without further proceeding.

FACTUAL OBJECTIONS:

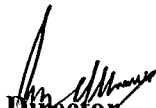
1. That Para 01 Pertains to record.
2. Incorrect and misleading. The act on the part of respondent is neither in violation of concerned law, nor relevant rule. Posting transfer of Civil Servant governed under Section-10 of Civil Servant Act, 1973. Every Government servant is bound to serve anywhere within the province in the best interest of public service without raising any objection in this regard.


3. That the appellant is working against provincial cadre/administrative post in the Respondent Department, as the aforesaid law and rule does not bar transfer at any time. However, tenure is provided in transfer policy, and the policy is inferior document than the law/rules ibid and provision of policy does not over rule the provision of Civil Servant Act 1973 and APT rules 1989. However in response to the departmental appeal, the appellant was provided opportunity of personal hearing by Additional Secretary (Establishment) E&SE Department, but he willfully not attended the office of Additional Secretary. So appellant is estopped by his own conduct.
4. That the appellant is not an aggrieved person. Hence the instant Service Appeal may be dismissed inter-alia on the following ground.

GROUNDS

- a. Incorrect and misleading. The act on part of respondent is neither in violation of concerned law, nor relevant rule. As per Section 10 of Civil Servant Act 1973, every Government servant is bound to serve anywhere within the province in the best interest of public service without raising any objection in this regard.
- b. Incorrect, comprehensive reply has already been given in foregoing Para. Criteria as part of criteria for posting/transfer as per above stated .Detail reply is given in Para a ibid.
- c. Incorrect, hence denied. The detailed reply has already given in forgoing.
- d. Incorrect this may be thought of appellant having no documentary evidence to support his claim.
- e. The action on the part of respondents as per law /rules, and they issued posting / transfer order under lawful Authority in public interest.
- f. Incorrect, hence denied. That the detail reply has already given in forgoing Paras.
- g. Incorrect, hence denied. That the detail reply has already given in forgoing as already explained in above.
- h. The Respondents may also be allowed to raise additional grounds at the time of arguments.
- i. Incorrect not admitted as explained in forgoing Para.
- j. Incorrect hence denied.
- k. The Respondents may also be allowed to raise additional grounds at the time of arguments.

It is, therefore, very humbly prayed that in the light of foregoing comments, the appeal may graciously be dismissed with cost throughout.


Director
E&SE Khyber Pakhtunkhwa.
(Respondent No. 4)


Secretary
E&SE, Department
(Respondent No. 1 to 3)

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

Service Appeal # 5791/2021

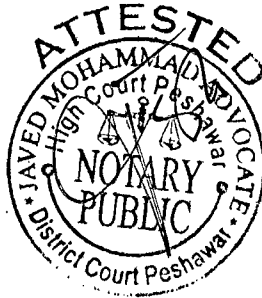
IHTIRAM KHAN ...Principal Petitioner

VERSUS

Govt. of Khyber Pakhtunkhwa & others..... Respondents

AFFIDAVIT

I, Muhammad Saleem Khan, Section Officer (Litigation-II) Elementary & Secondary Education, Department do hereby solemnly affirm and declare that the contents of the accompanying para-wise comments, submitted by the respondents, are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.



DEPONENT


Muhammad Saleem Khan
Section Officer (Lit-II)
E&SE Department Peshawar

only ①
9 have
capital

received ③

John
15/9/22