

Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	15.05.2015	<p data-bbox="621 456 1398 530" style="text-align: center;">KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, <u>PESHAWAR.</u></p> <p data-bbox="630 575 1409 692" style="text-align: center;">Service Appeal No. 1028/2013, Farmanullah Versus District Education Officer, District Dir Upper etc.</p> <p data-bbox="769 737 956 775" style="text-align: center;"><u>JUDGMENT</u></p> <p data-bbox="769 814 1511 852" style="text-align: center;"><u>PIR BAKHSH SHAH, MEMBER.-</u> Appellant</p> <p data-bbox="621 894 1511 1173">Farmanullah with counsel (Mr. Khalid Rahman, Advocate), Mr. Muhammad Jan, GP with Yousaf Khan, DDEO for the official respondents and private respondent No. 3 with counsel (Muhammad Javed Advocate) present.</p> <p data-bbox="621 1265 1511 2021">2. Appellant Farmanullah, according to para-3 of the memo: of appeal belongs to village Jelar, District Dir Upper where a vacant C.T post was available in GHS Jelar. That the appellant made an application to respondent No.1, to transfer him to that post. However, vide impugned order dated 15.03.2013, private respondent No.3 Mr. Zaib Ullah was posted against the same. Departmental appeal/representation of the appellant did not succeed with positive response, hence this appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.</p> <p data-bbox="621 2120 1511 2320">3. Mr. Khalid Rahman, Advocate learned counsel for the appellant, Mr. Muhammad Javed, Advocate, learned counsel for private respondent No. 3 and Mr. Muhammad Jan,</p>

GP for the official respondents heard and record perused with their assistance.

4. It was submitted by the learned counsel for the appellant that in his service career, the appellant has remained in far-flung areas, therefore, he was most deserving official to have been posted in his village Jelar. It was further submitted that transfer of private respondent No. 3 to GHS Jelar is politically motivated, therefore, the same may be set aside.

5. Arguments of the learned counsel for the appellant were rebutted on behalf of the respondents. It was submitted by the learned counsel for private respondent No. 3 that private respondent No. 3 had never exerted political interference and that there is no evidence at all in this respect except endorsement to this effect that relaxation of ban on transfer was necessary for any transfer. It was also submitted that the impugned order of posting/transfer of private respondent No. 3 has nothing to-do with the posting/transfer of the appellant, therefore, he has got no cause of action nor the appeal is maintainable.


6. Under Section 10 of the Civil Servants Act, 1973 a government servant is required to serve anywhere as directed by the competent authority. It further revealed that after institution of this appeal, the appellant has been transferred to Chappar on his own request and thus has been brought nearest to his native village. It is evident from record that the appellant

has not been transferred by way of the impugned order, and has got no cause of action and locus standi.

7. In the stated situation, this Tribunal does not seem violation of any government posting/transfer policy. Resultantly, the appeal is dismissed.

ANNOUNCED
15.5.2015


(ABDUL LATIF)
MEMBER


(PIR BAKHSH SHAH)
MEMBER

21.04.2015

Counsel for the appellant and Addl: A.G for official respondents No. 1 and 2 present. The learned Executive Member is on leave therefore, arguments could not be heard. To come up for same on 15.5.2015.

A handwritten signature in black ink, consisting of a stylized, cursive letter 'S' or similar symbol.

Member

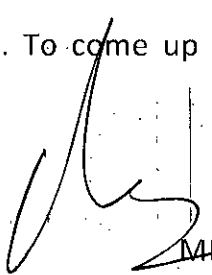
23.7.2014

Appellant in person and Mr. Muhammad Jan, GP with Sajjad Rashid, AD for official respondents and counsel for private respondent No. 3 present. Due to retirement of learned executive Member, the bench is incomplete. To come up for arguments on 03.09.2014.


MEMBER

03.09.2014

Appellant with counsel and Mr. Muhammad Jan, GP with Khursheed Khan, SO and Sajjad Rashid, AD and Peer Muhammad, ADO for the official respondents and private respondent No. 3 in person present. Due to ex-Pakistan leave of learned executive Member, the bench is incomplete. To come up for arguments on 02.12.2014.


MEMBER

2.12.2014

Junior to counsel for the appellant, and Mr. Muhammad Adeel Butt, AAG with Khaista Rahman, ADO for the official respondents and clerk to counsel for the private respondent No. 3 present. The Tribunal is incomplete. To come up for the same on 21.4.2015.


READER

1028/13

23.1.2014

Appellant with counsel, Mr. Muhammad Adeel Butt, AAG with Muhammad Inayatullah Rahman, Headmaster, GHS Panakot for the official respondents present and stated that the concerned official is under treatment in hospital and assured submission of written reply on the next date. Private respondent No. 3 with Mr. Javed Ali, Advocate present and wakalatnama placed on file. Reply on his behalf also received. Copy handed over to counsel for the appellant. To come up for written reply of official respondents on 14.4.2014.

MEMBER

MEMBER

14.4.2014.

Counsel for the appellant and AAG with Muhammad Iqbal, ADO for respondents No. 1 & 2 present and reply filed. Copy handed over to counsel for the appellant. Counsel for private respondent No.3 present who already filed written reply. To come up for rejoinder on 9.5.2014.

MEMBER

09.5.2014

Clerk to counsel for the appellant, AAG with Muhammad Iqbal, ADO for official respondents and Clerk to counsel for private respondent No.3 present. Rejoinder received. Copies handed over to opposite sides. To come up for arguments on 23.7.2014.

MEMBER

MEMBER

Appeal No. 1028/13
Mr. Paramurthi

4. 4.11.2013


Appellant present in person and requested for adjournment to produce his counsel. To come up for preliminary hearing on 21.11.2013.


MEMBER


5. 21.11.2013

Counsel for the appellant present and heard. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the impugned order dated 15.03.2013, he filed departmental appeal on 26.03.2013 which has not been responded within statutory period of 90 days, hence the present appeal on 02.07.2013. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply on 23.01.2014.

Appellant deposited
Process fee & Security
Rs. 200/- Receipt
attached with file.


Member.

6. 21.11.2013


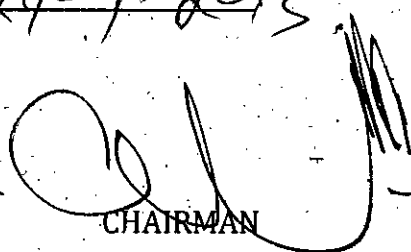
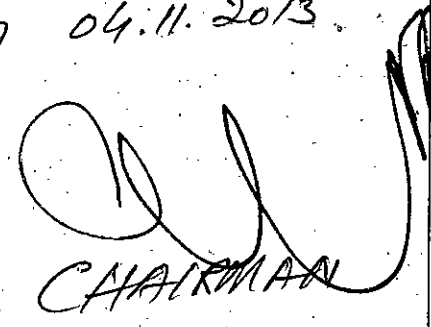
This case be put before the Final Bench  for further proceedings.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1028 /2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	02/07/2013	<p>The appeal of Mr. Farmanullah presented today by Mr. Khaled Rahman Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	15-7-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>24-9-2013</u></p> <p style="text-align: right;"> CHAIRMAN</p>
3	24.9.13.	<p>Appellant present in person. Preliminary arguments could not be heard due to strike of the Bar. To come up for PH on 04.11.2013.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1028 /2013

Farmanullah
.....Appellant

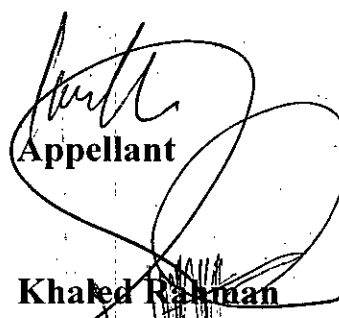
Versus

The DEO Dir Upper and
others
.....Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-4
2.	Appointment order	19.11.2008	A	5-6
3.	Transfer order	21.04.2012	B	0-7
4.	Application	24.01.2013	C	0-8
5.	Application	15.03.2013	D	0-9
6.	Impugned order	15.03.2013	E	0-10
7.	Departmental Representation		F	0-11
8.	Transfer/Posting Policy		G	12-14
9.	Wakalat Nama			

Through


Appellant
Khaleed Rahman
Advocate, Peshawar
9-B, Haroon Mansion,
Khyber Bazar, Peshawar.
Cell # 0345-9337312

Dated: 2 / 07 / 2013

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1083 /2013

K.W.P. Tribunal
Peshawar
1083
02/17/13

Farmanullah, C.T,
GHS Osorai, District Dir Upper.....Appellant.

Versus

1. The District Education Officer,
District Dir Upper.
2. The Director,
Elementary & Secondary Education,
Khyber Pakhtunkhwa, Peshawar.
3. Mr. Zaib Ullah,
C.T, GHS Jelar, District Dir Upper...Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 15.03.2013 WHEREBY RESPONDENT NO.3 WAS TRANSFERRED/POSTED AGAINST THE DISPUTED POST AT GHS JELAR AGAINST WHICH APPELLANT PREFERRED A DEPARTMENTAL APPEAL TO RESPONDENT NO.2 BUT THE SAME WAS NOT DISPOSED OF WITHIN THE STATUTORY PERIOD OF 90 DAYS.

Filed to file
[Signature]
2/7/13

PRAYER:

On acceptance of the instant appeal, the impugned order dated 15.03.2013 may graciously be set aside and Respondent No.1&2 be directed to post the appellant against the disputed post at GHS Jelar, District Dir Upper.

Respectfully Sheweth,

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

1. That the appellant joined the Education Department as Certified Teacher vide office order dated 19.11.2008 (*Annex:-A*) and since then has been performing his duties to the entire satisfaction of the high-ups.
2. That initially on his first appointment, appellant was posted at GMS Jandrai, District Dir Upper where he served till 21.04.2012 for a period of more than 04 years and then vide order dated 21.04.2012 (*Annex:-B*) appellant was transferred and posted against the vacant post at GHS Osorai, District Dir Upper where appellant has been serving till date. It is pertinent to mention here that GHS Osorai is at a distance of about 30 Kilometers from the native village of the appellant and due to poor means of transportation and hilly area it is hard to travel to the School on daily basis.
3. That a post of C.T. at GHS Jelar in the village of the appellant was going to become vacant, therefore, appellant made an application on 24.01.2013 (*Annex:-C*) to Respondent No.1 for his transfer to the same but the application was not heeded to, consequently another application was also moved on 15.03.2013 (*Annex:-D*) for the needful but in the meanwhile the impugned order dated 15.03.2013 (*Annex:-E*) was unlawfully issued whereby Respondent No.3 was transferred to GHS Jelar on the recommendation of the

Minister for Elementary & Secondary Education.

4. That being aggrieved of the impugned order, appellant preferred a departmental Representation (**Annex:-F**) on 26.03.2013 to Respondent No.2 against the impugned order but the same solicited no positive response within the statutory period of 90 days, hence this appeal inter-alia on the following grounds:-

Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned order, which is unjust, unfair and hence not sustainable in the eye of law.
- B. That the impugned order is neither in the public interest nor in exigency of service but is the result of political pressure, therefore, the same is void, unlawful, without lawful authority and thus liable to be set aside.
- C. That the transfer of Respondent No.3 to the disputed school is totally unjustified inas much as Respondent No.3 was not entitled to be posted against the same under the posting/transfer policy (**Annex:-G**) being under tenure, therefore, the impugned order is illegal and not sustainable under

the law.

- D. That appellant has served and is serving at far-flung stations since his initial appointment and because of the poor transportation facilities and rough hilly areas, appellant is facing a lot of hardships while traveling on daily basis to far-situated station.
- E. That appellant would like to offer other grounds at the time of arguments.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

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

Through


Appellant

Khaled Rahman,
Advocate, Peshawar.

Dated: 2 / 07 / 2013

Patelwala C.T (M)

5

LACHTLE DISTRICT OFFICER ELEMENTARY & SECONDARY EDUCATION DIR UPPER

ANNEX A²

OFFICE ORDER

Consequent upon their selection by the Departmental Selection Committee, the following Certificate candidates are hereby appointed in Basic Pay Scale No.9 (Rs. 3820-235-10720) plus usual allowance and admissible to them under the rules in the schools noted against each with immediate effect in the interest of service subject to the following terms and conditions.

S.No	Name	Father's name	Address	Session of C.T	No. of Merit	School where posted.
1	Sarfaraz Ali Shah	Abdul Wali Shah	Gandigar	1988	45.73	GHS Thall
2	Tali Mand	Tali Mand	Farpatar	1988	39.45	GMS Sunnai
3	Shahmirai	Muhammad Shuaib	Battal	1991	48.40	GHS Ganshal
4	Rahman Wali	Rahmat Said	Serai	1991	45.75	GHS Nasrat
5	Bahram Khan	Bahram Khan	Akhgram	1993	45.70	GMS Jandrai
6	Hafizullah	Azimullah	Jalabar	1993	42.61	GHS Beyar
7	Muhammad Haroon	Fazal Rahim	Gandand	1993	41.91	GMS Roghano Kalay
8	Asbar Khan	Ziarat Mian	Lamoti	1995	49.83	GHS Thall
9	Zaid Durrani	Mian Umar Zada	Gandigar	1996	53.92	GHS Nasrat
10	Muhammad Ismail Shaheed	Ghausur Rahman	Dir	1998	59.90	GMS Hayagai Sharqi
11	Sahibzada Khan	Gul Haiden	Babo	1998	49.06	GMS Sunnai
12	Muhammad Ishaq	Abdul Ghafoor	Patrak	1998	59.28	GHS Thall
13	Rasool Khan	Panoos Khan	Chapper	1998	56.34	GHSS Kalkot
14	Muhammad Saleem	Muhammad Zahir Shah	Hudu	1998	56.05	GMS Doon Sarai
15	Sherif	Fateh Sher	Ganorai	1998	55.61	GHS Shingara
16	Amir Bazar Khan	Shah Nisar Khan	Daskor	1998	54.93	GMS Doon Sarai
17	Ikrampullah	Ghulam Yousaf	Tekerkot	1998	54.37	GMS Shaltalo
18	Zahidullah	Fazli Subhan	Chapper	1998	53.78	GMS Hayagai Gharbi
19	Khajista Rahman	Fida Noor	Chapper	1998	53.70	GMS Doag Bala
20	Amir Muhammad	Nadar Khan	Wari	1998	53.37	GMS Roghano Kalay
21	Farmanullah	Fazal Subhan	Chapper	1998	52.63	GMS Jandrai
22	Amanullah	Gul Khan	Chapper	1998	47.50	GMS Kair Dara

TERMS AND CONDITIONS

1. The appointments will be on probation for a period of one year in terms of Rule-15(1) of NWFP Civil Servants (Appointment, Promotion and transfer) Rules 1989.
2. They will contribute C.P. fund, a Rs. 10% of the minimum of pay and 10% contribution will be made by the Government.
3. Certificates/Degrees of the appointees will be verified from the concerned Institutions on the expenses of the appointees. No pay etc. is allowed before the verification of Certificates and Degrees.
4. The appointment will be governed by such Rules, Regulations and policies, which may be prescribed by the Government from time to time.
5. Their services will be considered as regular but without PENSION AND GRATUITUY in terms of Section-19 of NWFP Civil Servants Act, 1973 as amended by NWFP Civil Servants Act 2005.
6. The appointees will provide Health and Age Certificate from the Medical Superintendent concerned.
7. Their age should not be less than 18 years and above 33 years.
8. Charge reports should be submitted to all concerned.
9. No T.A/D.A is allowed.
10. The appointees will strictly abide by the terms and conditions laid down therein.
11. The appointees will take over charge within fifteen days. In case of failure appointment will be automatically cancelled.
12. If violation of merit was pointed out at any stage the entire rectified and effective has nullum.

P-2

(Muji Fazli Malik Hassanzai)
Executive District Officer,
Elementary & Secondary Education
Dir Upper.

ATTESTED

8313-20

P-2

Endst. No. 12(A)/EDO, E&S, Dir(U)/Secondary Est; Branch Dated. Dir(U) the 19/11/2008.

Copy to:

- 1 The Director Elementary & Secondary Education, JWP Peshawar.
- 2 The District Coordination Officer, Dir Upper
- 3 The District Nazim Dir Upper
- 4 The District Accounts Officer, Dir Upper
- 5 The Principal/Headmaster concerned
- 6 The Accountant concerned.
- 7 The candidate concerned.

6

Executive District Officer,
Elementary & Secondary Education,
Dir Upper

9

ANNEX B: 7

OFFICE OF THE EXECUTIVE DISTRICT OFFICER ELEMENTARY & SECONDARY EDUCATION DIR UPPER.

OFFICE ORDER.

After obtaining necessary ban relaxation from the competent authority and approval by the District Coordination Officer, Dir Upper, the transfer of Certified Teachers (C.T) is hereby ordered on their own pay and grade with immediate effect in the interest of public service.

S#	Name & Designation	From	To	Remarks.
01.	Mr, Jehan Zada,CT	GHS, Badarkani	GMS, Mattar	Against vacant post
02.	Mr, Rahmanullah,CT	GMS, Bandi(B)	GMS, Kaskai Karpal	-do-
03.	Mr, Hedayatullah,CT	GHS, Thall	GMS, Bandi (B)	Against S.No.02.
04.	Mr, Sahib Zada,CT	GMS, Sonnai	GMS, Sheratkal	Against Vacant Post
05.	Mr, Amir Badshah,CT	GMS, Narkon	GMS, Shawoor	-do-
06.	Mr, Farmanullah,CT	GMS, Jandrai	GHS, Osorai	-do-
07.	Mr, Munawar Khan,CT	GHS, Janbatti	GMS, Dir Khan	Against S.No.13.
08.	Mr, Shah Hussain,CT	GMS, Sharmai	GHS, Ganori	Against vacant post
09.	Mr, Bakht Zamin Khan,CT	GMS, Sundrai	GMS, Sharmai	Against S.No.08.
10.	Mr, Mohammad Salim,CT	GMS, Shaltalow	GHS, Janbatti	Against S.No.07.
11.	Mr, Umar Wali,CT	GHS, Janbatti	GMS, Shaltalow	Against S.No.10.
12.	Mr, Yaqub Khan,CT	GMS, Hayagai (S)	GMS, Barkand	Against Vacant Post
13.	Mr, Umar Daraz,CT	GMS, Dir Khan	GMS, Surbat	-do-

Note:- 1) No. TA/DA is allowed.

2) Charge reports should be submitted to all concerned.

(Bakht Zamin Khan)
Executive District Officer,
Elementary & Secondary Education,
Dir Upper.

Endst: No. 12-23 /F.No.12/EDO (E&SE) Dir(U)/Secy: Estt: Branch Dated Dir(U) the 21/04 /2012.

Copy to:-

1. The District Coordination Officer, Dir Upper for information with reference to his memo:3109/DCO/Edu:/ST dated 19/04/2012 please.
2. The District Accounts Officer, Dir Upper.
3. The Headmasters concerned.
4. The Accountant Middle Schools (Male)local office.
5. EMIS local Office.
6. The teachers concerned.

(Bakht Zamin Khan)
Executive District Officer,
Elementary & Secondary Education,
Dir Upper.

21/04/12

ATTESTED

خدمت جناب EDO صاحب E/SE ضلع دیر بالا

سوال! درخواست برائے ٹرانسفر۔
ANNEX 8

جناب عالی! گزشتہ کی اجازت ہے کہ بندہ گوگرنٹ یانی سکول

اوسوڑی میں بحیثیت CT پوسٹ ایڈ فرائضی

منہرہ ایڈام آباد بندہ کے گاؤں گوگرنٹ

یانی سکول حیدرآباد میں 03/03/2013 کو ایک CT پوسٹ

خالی ہونا والا ہے۔ اسلئے آپ صاحبان میں یانی سکول بندہ کا ٹرانسفر

گوگرنٹ یانی سکول حیدرآباد کو کرنے کی احکامات صادر

فرمائیں۔ عین نوآزس ہوئی۔

فقط زیارہ آداب

24/01/2013 مورخہ

DEO Dira letter
May be Transferred to vacant post in relation

حکم عدس فرمان اللہ CT گوگرنٹ یانی سکول

اوسوڑی ضلع دیر بالا
ATTESTED
NPA

Private Secretary
Minister for Education
Secondary Education
Khyber Pakhtunkhwa

لکھی دست خط E-D-O سے مطلع دینے کے لئے

سوال درج ذیل کے متعلق

(9)

Answer D

دست خط

گزارش کی جاتی ہے کہ مدرسہ کو گورنمنٹ

کفالت سکول اور سونے میں کیفیت سے سی۔ ٹی۔ یو۔ سٹ

ڈیوٹی سرانجام دے رہا ہے۔ مدرسہ کے اپنے گاؤں

جیلڈ میں 2013-3-03 کو ایک سی۔ ٹی۔ یو۔ سٹ خالی

ہونے والے اس لئے آپ صاحبان سے رہائی کر کے

مدرسہ کا تبادلہ گورنمنٹ کفالت سکول جیلڈ کو

کرنے کا حکم صادر فرمائیں

میں لوہار سے ہوگی فقط زیادہ آدک

العارضہ آپ کا مشکور فرمان اللہ

DEO CM / D / 11

15-03-2013 مورخہ

May be transferred

ATTENDED

against vacant post
in relation of Govt

Private Secretary to
Minister for Elementary &
Secondary Education
Khyber Pakhtunkhwa

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) DIR UPPER

OFFICE ORDER.

ANNEX E (10)

After obtaining ban relaxation dated 15/2/2013 from Private Secretary to Minister for Elementary & Secondary Education, Khyber Pakhtunkhwa the following transfer of Certified Teacher is hereby ordered on his own pay and grade with immediate effect in the interest of public service.

S.No	Name & Designation	From	To	Remarks.
01.	Mr. Zaibullah, CT	GMS, Jandrai	GHS, Jelar	Against Vacant Pos.

- Note:-1. No T.A/DA is allowed.
2. Charge reports should be submitted to all concerned.

Sel
District Education Officer
Dir Upper.

Endst. No: 701-04 /F.No.12/DEO (M)Dir(U)/SEB Dated Dir(U) the 15/03/2013.

Copy to:

01. The District Accounts Officer Dir Upper.
02. The Headmasters/In charge concerned.
03. The Accountant Middle Schools (Male) local office.
04. The teacher concerned.

Sel
District Education Officer
Dir Upper.
Sel
2/3/13

ATTESTED

گذشت حساب ڈائریکٹریٹ میں خیر کھٹو ننگوان پشاور

عنوان: اپیل بر خلاف تبادلہ زب الہ سی ای جی.م.س مدرس
Deo (M) DW (11)
لیڈ نیا For n/a
پولسی/پالیسی Policy

تا جی.م.س حیدرآباد

مدرسہ کھٹو ننگوان پشاور کی ڈائریکٹریٹ میں اپیل 26/3/2013
ڈائریکٹریٹ میں اپیل 26/3/2013
جس کے بعد جی.م.س حیدرآباد سے تبادلہ جی.م.س اسٹریٹ ڈرہ پو اپنے اور وہاں
پر اب تک فرانسس منشی سرافح دہ ریا ہے جو کہ تبادلہ ایسے گاؤں سے تقریباً 30
کلو میٹر دور پر واقع ہے۔ اب چونکہ ڈائریکٹریٹ میں اپیل حیدرآباد میں ایک سی ای ڈائریکٹ
خالی ہوا ہے جس پر سخی زب الہ سی ای مدرسہ تبادلہ کیا گیا ہے جو کہ اندر لکھی
اور اسے تک تقریباً 20 سال سے ڈائریکٹریٹ میں جی.م.س حیدرآباد میں فرانسس سرافح دیا ہے۔
اس لئے آج وہاں سرافحی سران سخی زب الہ اور منیرہ بیگم کے درمیان تبادلہ کیا جائے۔
الفاظ فراموش کیا جائے۔

تدوین نڈارشی ہوئی

26/3/2013 حیدرآباد العارضی

رہنما تابع حکم مدرس فرانسس الہ سی ای ڈائریکٹریٹ میں اپیل اسٹریٹ ڈرہ پو
ضلع دہرا بادی -

ATTESTED

ANNEX 9

12



GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(Regulation Wing)

Annex A
P-21

POSTING / TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT.

- i) All the posting/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants.
- ii) All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities for seeking posing/transfers of their choice and against the public interest.
- iii) All contract Government employees appointed against specific posts, can not be posted against any other post.
- iv) 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 the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.
- v) While making postings/transfer from settled areas to FATA and vice-versa, specific approval of Governor, NWFP needs to be obtained
- vi) While making postings/transfers of officers/officials up to BS-17, from settled areas to FATA and vice-versa approval of the Chief Secretary NWFP needs to be obtained. Whereas, in case of posting/transfer of officers in BS-18 and above, from settled areas to FATA and vice versa, specific approval of the Governor NWFP shall be obtained.
- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for atleast eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.
- vii) Officers may be posted on executive/administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thaana) of his area/residence is situated.
- viii) No posting/transfers of the officer's/officials on detailment basis shall be made.

Para-1(v) regarding months of March and July for posting/transfer and authorities to relaxation of ban deleted vide letter No: SOR-VI (E&AD) 1-4/2008/Vol-VI, dated 3-6-2001. Consequently authorities competent under the NWFP Government Rules of Business, 198: District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make posting/transfer subject to observance of the policy and rules. Added vide Urdu circular letter No. SOR-VI(E&AD)1-4/2003, dated 21-07-2004

ATTESTED

- (x) Regarding the posting of husband/wife, both in Provincial services efforts where possible would be made to post such persons at one station subject to the public interest.
- x) All the posting/transferring authorities may facilitate the posting/transfer of the unmarried female government Servants at the station of the residence of their parents.
- xi) Officers/officials except DCOs and DPOs/SPs who are due to retire within one year may be posted on their option on posts in the Districts of their domicile and be allowed to serve there till the retirement of DCOs and DPOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against non-administrative posts of equivalent scales;
- xii) In terms of Rule-17(1) and (2) read with Schedule-III of the NWFP Government Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against each officer in column 2 thereof:

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

ATTESTED

c) Within the Secretariat from one Department to another	Secretary (Establishment)
----------------------------------------------------------	---------------------------

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

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

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

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

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

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

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

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

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

ATTESTED

WAKALAT NAMA

IN THE COURT OF

K.P.K Service

Tribunal, Peshawar

Farmenullah

Appellant(s)/Petitioner(s)

Govt

VERSUS

Respondent(s)

I/We _____ do hereby appoint
Mr. Khaled Rehman, Advocate in the above mentioned case, to do all or
any of the following acts, deeds and things.

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

AND hereby agree:-

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

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

Attested & Accepted by فارمن ڤلھ

Farmenullah
Signature of Executants

Khaled Rehman,
Advocate, Peshawar.

9-B, Haroon Mansion
Khyber Bazar, Peshawar

Nowab Zaidi
Advocate

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No.1028/2013

Farmanullah CT GHS Osorai District Upper Dir Appellant.

Versus

District Education Officer (M) Dir Upper and others..... Respondents.

Written reply on behalf of respondent. 3

Respectfully Sheweth:

PRELIMINARY OBJECTIONS.

01. That the appellant has no cause of action to file the instant Appeal.
02. That the petitioner/ appellant is not an aggrieved person under Section 4 of the Act and can not file the instant appeal before the Hon'ble Tribunal.
03. That the appellant has no locus standi in terms of transfer to the post of his choice nor this Hon'ble Court/ Tribunal has the jurisdiction to direct the authority to transfer a person to particular place/post.
04. That the appellant has not come to the tribunal with clean hands.
05. That the appellant has been estopped by his own conduct to file the instant appeal.
06. That illegal act cannot be legalized through courts as no violation whatsoever, was committed or done by the authority to set-aside the legal and lawful order of the respondents/ defendants.
07. That the appeal is bad due non joinder of necessary parties.
08. That the appellant has waived his right as he has not objected other Transfers of the same nature.

OBJECTIONS ON FACTS.

- 1- No comments.
- 2- Correct to the extent that the appellant was posted at GMS Jandrai and he served till 21.04.2012. But on 21.04.2012 he was transferred to GHS Osorai on his own application. The same station is about 22 KM from his home and he can easily traveled to the same school on daily basis. Furthermore, the said post are for district cadre post and can be posted anywhere in the district or otherwise by the department/ authority and it is not a rule or law for a person to hold a particular post for a particular period. However, mere non native or non local will not entitle a person for Transfer to his native village.
- 3- In correct, when the appellant made an application on 24.01.2013, at that time the post of CT a GHS Jelar was not vacant. The same post became vacant due to the retirement of Saeed Khan CT on 03.03.2013. Moreover on 15.02.2013 respondent No.3 also submitted his transfer application for the same post. As respondent No.3 was serving in a hard area GMS Jandrai (Kohistan) since 31.05.2011. It is pertinent to mention here that GMS Jandrai is about 150 KM from the home station of respondent No.3. So according to the transfer policy respondent No.3 was transfer to GHS Jelar on the basis of long tenure of about 2 years. While the tenure of the appellant in his new station was about 11 months. So the transfer of respondent No.3 was made on the basis of merit and long tenure as will as against the vacant post.
- 4- Correct to extent that the appellant made department appeal but was rejected heaving no merits. Rest of the para is incorrect.

OBJECTIONS ON GROUNDS.

- A- Incorrect. The appellant was treated according with law, rules and policy. The same order was issued according to rules and regulation, as the same

was posted against the vacant post and not by the transferring any person nor there is any aggrieved person against the impugned order including the Appellant.

- B- Incorrect, the impugned order was issued in the interest of public service. No political pressure was involved in this transfer order. It was on merit basis. It is pertinent to mention here that the appellant himself used political means which is clear from his transfer application dated 24.01.2013.
- C- Incorrect, respondent No.3 was more entitled to be transfer to the same post because he served about 2 years at GMS Jandrai in such a hard area while the tenure of appellant at GHS Osorai was about 11 months which is his home station. So the same transfer order is according to law and policy. Transfer is not a vested right of the Appellant. *to the post of his choice.*
- D- Incorrect, the appellant has now easily travel to GHS Osorai on daily basis because this station is about 22 KM from the appellant's home, while the old station of respondent No.3 (GMS Jandrai) was about 150 KM from his home, and he also fulfilled his tenure of about 2 years in this station.
- E- Incorrect, the Appellant can't offer other ground beyond pleading.

It is therefore humbly prayed that the instant appeal of the appellant may be dismissed with cost.

Reference: 2006 SCMR 1630

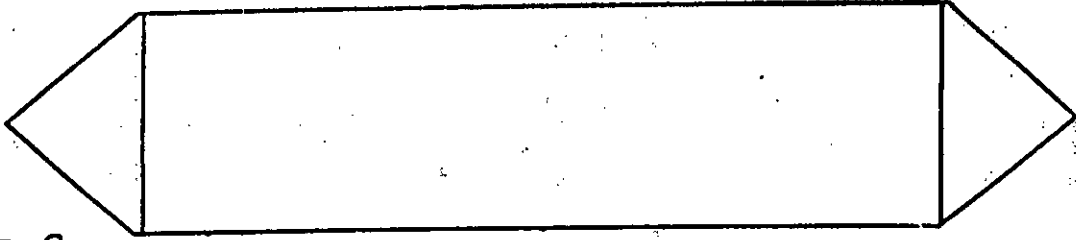
~~_____~~
~~_____~~
~~_____~~

~~_____~~
Respondent No.03

Through J
Javed Ali Adv.
High Court Peshawar.

[Handwritten signature]

Servies
Honorable Tribunal KAR بعدالت



Nupelt-3 2024ء منجانب

EDO بنام

مرزاں اللہ

مورخہ 20
مقدمہ
دعویٰ
جرم

باعث تحریر یا نکتہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی کے حوالے سے
آن مقام کے اتر کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے وہ ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

المرقوم 2024ء

واہ الع

کے لئے منظور ہے۔

مرزاں اللہ

بمقام

Attested by

مرزاں اللہ

زبیب اللہ ولد یار محمد
کنڈہ دیوانہ
C.T. Teacher at
GHS Jelan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Appeal No.1028/2013

Farmanullah CT GHS Osorai District Upper Dir Appellant.

Versus

District Education Officer (M) Dir Upper and others..... Respondents.

Written reply on behalf of respondent. 3

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- E- Incorrect, the Appellant can't offer other ground beyond pleading.

It is therefore humbly prayed that the instant appeal of the appellant may be dismissed with cost.

Reference: 2006 SCMR 1630

Respondent No.03

Through J
Javed Ali Adv.
High Court Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No.1028/2011

Farmanullah CT GHS Osorai Upper Dir.....Appellant.

Versus.

*1-District Education Officer Male Upper Dir.
2-Director (E&SE) Khyber Pakhtunkhwa.*

*Respondent.
-do-*

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01	Comments	-----	01 to 02
02	Affidavit	-----	03
03	Application of the appellant	A	04



Deponent
15702-2469226-3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No.1028/2013

Farmanullah CT GHS Osorai District Upper DirAppellant.

Versus.

01. District Education Officer (M) Dir Upper.Respondent.

02. Director Education Peshawar.-do-

Written reply on behalf of respondent.

Respectfully shewith.

PRELIMINARY OBJECTIONS.

01. That the appellant has no caused of action.
02. That the appellant has not come to the tribunal with clean hands.
03. That the appellant has been estopped by his own conduct to file the instant appeal.
04. That the appellant has no locus standi.
05. That the instant appeal is barred by law.
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- 3- In correct, when the appellant made an application on 24-1-2013, at that time the post of CT a GHS Jelar was not vacant. The same post became vacant due to the retirement of Saeed Khan CT on 3-3-2013. Moreover on 15-2-2013 respondent No.3 also submitted his transfer application for the same post. As respondent No.3 was serving in a hard area GMS Jandrai(Kohistan) since 31-5-2011. It is pertinent to mention here that GMS Jandrai is about 150KM from the home station of respondent No.3. SO according to the transfer policy respondent No,3 was transfer to GHS Jelar on the basis of long tenure of about 2 years. While the tenure of the appellant in his new station was about 11 months. So the transfer of respondent No,3 was made on the basis of merit and long tenure.
- 4- Correct to extent that the appellant made departmental appeal but was rejected heaving no weight.

OBJECTIONS ON GROUND.

- A- Incorrect. The appellant was treated according with law, rules and policy. The same order was issued according to rules and regulation.
- B- Incorrect, the impugned order was issued in the interest of public service, because respondent No,.3 was more deserved for transfer to GHS Jelar. The same school is his home station and he cant easily perform duties in his own station. No political pressure

EDO صاحب E/SE ضلع دیر بالا

سوال! درخواست گزار ٹرانسفر -

ANNEX C²

8

صفا عالی! گزارنده کی صحتی ہے کہ بندہ گورنمنٹ یابی سکول
گزارنده کی صحتی ہے کہ بندہ گورنمنٹ یابی سکول
اوسوڑی میں بحیثیت CT پوسٹ آف فرائضی
منہ بہ منہ ایسا ہے۔ بندہ کے گاؤں گورنمنٹ
یابی سکول حیدر پور میں 03/03/2013 کو ایک CT پوسٹ
خالی ہونے والا ہے۔ اسلئے آپ صاحبان سے یہ یابی کر کے بندہ کا ٹرانسفر
گورنمنٹ یابی سکول حیدر پور کو کرنے کی احکامات صادر

فرمائیں۔ عین توازن ہوگی۔

فقط زیارہ آراب

مورخہ 24/01/2013

DEO Dira Upper
May be Transferred to
vacant post in release

گورنمنٹ یابی سکول CT پوسٹ یابی سکول

۴۰
NPA

اوسوڑی ضلع دیر بالا - 9

Private Secretary
Minister for Education
Sindh
Khyber Pakhtunkhwa

Admitted
[Signature]

ADD

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**Service Appeal No. 1028 /2013**

Farmanullah.....Appellant

Versus

The DEO and others.....Respondents

**REJOINDER ON BEHALF OF APPELLANT IN
RESPONSE TO REPLY FILED BY
RESPONDENTS NO.1&2.**

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous, the detailed replies thereof are as under:-

I&IV. That valuable rights of the appellant have been infringed through the impugned order which has been challenged through the instant appeal under the law, therefore, appellant has got a strong cause of action and for that matter locus standi to file the instant appeal.

II. That appellant has approached the Hon'ble Tribunal with a bonafide claim inas much as he has been treated in violation of the law.

- III. That appellant has challenged the impugned order within the meaning of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Acts, 1974. It is a settled principle that estoppel does not operate against the law.
- V. That the appeal is within time.
- VI. That all necessary and proper parties have been arrayed as Respondents in the instant appeal, hence the question of mis-joinder and non-joinder is misconceived.

Facts:

1. Being not replied hence admitted.
2. Misconceived. As by then the post at GHS Osirai was available, therefore, the application was moved. The distance between the GHS Osirai from the home of the appellant is about 30 kilometers and not 22 kilometers. All along the appellant has been serving at far-flung stations.
3. Misconceived. The post was going to become vacant, therefore, the application was moved for the transfer of appellant to the post before hand. It has also been admitted that Respondent No.3 moved application on 15.02.2013 too before the date of retirement of Saeed Khan C.T., therefore, the application of appellant was prior in time and needed consideration. GHS Osirai was also a hard station but the application of appellant was ignored due to the political pressure exerted by Respondent No.3.

4. Misconceived. The appeal was rejected without any legal justification.

Grounds:

- A. Incorrect. Appellant was treated in violation of the law, rules and policy of the subject.
- B. Incorrect. The impugned order was not in the public interest but the same was politically motivated one.
- C. Incorrect hence denied.
- D. Incorrect. GHS Osirai is at a distance of 30 kilometers from the home station of the appellant.
- E. Needs no reply.

It is, therefore, humbly prayed that the reply of answering Respondents No.1&2 may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Appellant

Khaled Rahman
Advocate, Peshawar.

Dated: 9 / 04/ 2014

Affidavit

I, Khaled Rahman, Advocate, as per instructions of my client, do hereby affirm and declare on oath that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Deponent



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1028/2013

Farmanullah.....Appellant

Versus

The DEO and others.....Respondents

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- C. Incorrect hence denied.
- D. Incorrect. GHS Osirai is at a distance of 30 kilometers from the home station of the appellant.
- E. Needs no reply.

It is, therefore, humbly prayed that the reply of answering Respondents No.1&2 may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Appellant

Khaled Rahman
Advocate, Peshawar.

Dated: 9 / 04 / 2014

Affidavit

I, Khaled Rahman, Advocate, as per instructions of my client, do hereby affirm and declare on oath that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

ATTACHED



Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**Service Appeal No. 1028 /2013**

Farmanullah.....Appellant

Versus

The DEO and others.....Respondents

**REJOINDER ON BEHALF OF APPELLANT IN
RESPONSE TO REPLY FILED BY RESPONDENT
NO.3.**

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondent are erroneous and frivolous, the detailed replies thereof are as under:-

- I. That valuable rights of the appellant have been infringed through the impugned order which has been challenged through the instant appeal under the law, therefore, appellant has got a strong cause of action and for that matter locus standi to file the instant appeal.
- II. That the appellant is aggrieved within the meaning of Section-4 of the Khyber Pakhtunkhwa Service Tribunals Act, 1974.

- III. That the appellant has got locus standi to file the instant appeal while the Hon'ble Tribunal has got jurisdiction in the instant matter.
- IV. That the appellant has approached the Hon'ble Tribunal with a bonafide claim inas much as he has been treated in violation of the law.
- V. That appellant has challenged the impugned order within the meaning of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Acts, 1974. It is a settled principle that estoppel does not operate against the law.
- VI. That the policy of transfer and posting has been violated.
- VII. That all necessary and proper parties have been arrayed as Respondents in the instant appeal, hence the question of mis-joinder and non-joinder is misconceived.
- VIII. That appellant has objected on the impugned order which is in violation of the law.

Facts:

1. Being not replied hence admitted.
2. Misconceived. As by then the post at GHS Osirai was available, therefore, the application was moved. The distance between the GHS Osirai from

the home of the appellant is about 30 kilometers and not 22 kilometers. All along the appellant has been serving at far-flung stations.

3. Misconceived. The post was going to become vacant, therefore, the application was moved for the transfer of appellant to the post before hand. It has also been admitted that Respondent No.3 moved application on 15.02.2013 too before the date of retirement of Saeed Khan C.T., therefore, the application of appellant was prior in time and needed consideration. GHS Osirai was also a hard station but the application of appellant was ignored due to the political pressure exerted by Respondent No.3.
4. Misconceived. The appeal was rejected without any legal justification.

Grounds:

- A. Incorrect. Appellant was treated in violation of the law, rules and policy of the subject.
- B. Incorrect. The impugned order was not in the public interest but the same was politically motivated one.
- C. Incorrect hence denied.
- D. Incorrect. GHS Osirai is at a distance of 30 kilometers from the home station of the appellant.

E. Needs no reply.

It is, therefore, humbly prayed that the reply of answering Respondents No.1&2 may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Appellant

Through

Khaled Rahman
Advocate, Peshawar.

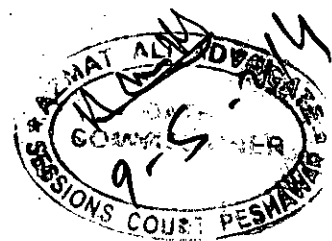
Dated: 9 / 04/ 2014

Affidavit

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Deponent

ATTESTED



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1028 /2013

Farmanullah.....Appellant

Versus

The DEO and others.....Respondents

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RESPONSE TO REPLY FILED BY RESPONDENT
NO.3.**

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Preliminary objections raised by answering respondent are erroneous and frivolous, the detailed replies thereof are as under:-

- I. That valuable rights of the appellant have been infringed through the impugned order which has been challenged through the instant appeal under the law, therefore, appellant has got a strong cause of action and for that matter locus standi to file the instant appeal.
- II. That the appellant is aggrieved within the meaning of Section-4 of the Khyber Pakhtunkhwa Service Tribunals Act, 1974.

- III. That the appellant has got locus standi to file the instant appeal while the Hon'ble Tribunal has got jurisdiction in the instant matter.
- IV. That the appellant has approached the Hon'ble Tribunal with a bonafide claim inas much as he has been treated in violation of the law.
- V. That appellant has challenged the impugned order within the meaning of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Acts, 1974. It is a settled principle that estoppel does not operate against the law.
- VI. That the policy of transfer and posting has been violated.
- VII. That all necessary and proper parties have been arrayed as Respondents in the instant appeal, hence the question of mis-joinder and non-joinder is misconceived.
- VIII. That appellant has objected on the impugned order which is in violation of the law.

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Grounds:

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It is, therefore, humbly prayed that the reply of answering Respondents No.1&2 may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Appellant

[Signature]
Khaled Rahman
Advocate, Peshawar.

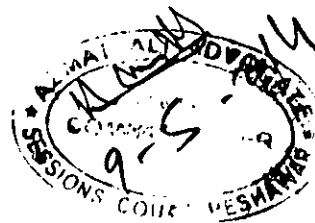
Dated: 9 / 04 / 2014

Affidavit

I, Khaled Rahman, Advocate, as per instructions of my client, do hereby affirm and declare on oath that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

[Signature]
Deponent

ATTESTED



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 757 /ST

Dated 20 / 05 / 2015


To

The DEO,
Dir Upper.

Subject: - APPEAL NO. 1028/2013 FARMAN ULLAH VS DEO DIR UPPER AND OTHERS.

I am directed to forward herewith a certified copy of Judgement dated 15.05.2015 passed by this Tribunal on subject appeal for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

FO8 Appellant
Fazmanullah

2007 S C M R 599

[Supreme Court of Pakistan]

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

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

Versus

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

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

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

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

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

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

Malik Shahzad Ahmed, Advocate Supreme Court, for Petitioner.

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

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

Date of hearing: 3rd October, 2006.

JUDGMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

No.1.1408/dated 2-12-2003.

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

Sub: Transfer Cancellation

Memo.

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

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

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

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

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

Executive District Office
Schools and Literacy"

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

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

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

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

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

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

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

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

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

M.H. /R-22/SC

Appeal allowed.

2007 S C M R 599

[Supreme Court of Pakistan]

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

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

Versus

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

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

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

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

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

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

No.1.1408/dated 2-12-2003.

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

Sub: Transfer Cancellation

Memo.

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

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

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

Executive District Office
Schools and Literacy"

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

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

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

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

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

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

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

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

M.H. /R-22/SC

Appeal allowed.