

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 5805/2020

Date of Institution ... 04.06.2020

Date of Decision ... 26.01.2022

Mst Sheezan Haider, under transfer to GGHS (Kurvi) Nowshera.  
... (Appellant)

**VERSUS**

The Director, Elementary and Secondary Education, Khyber Pakhtunkhwa  
Peshawar and two others. ... (Respondents)

Naila Jan,  
Advocate ... For Appellant

Muhammad Adeel Butt,  
Additional Advocate General ... For official respondents

Ashraf Ali Khattak,  
Advocate ... For private respondent No. 3

**AHMAD SULTAN TAREEN** ... **CHAIRMAN**  
**ATIQ-UR-REHMAN WAZIR** ... **MEMBER (EXECUTIVE)**

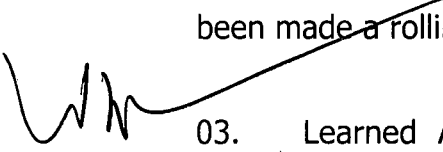
**JUDGMENT**

**ATIQ-UR-REHMAN WAZIR MEMBER (E):-** Brief facts of the

case are that the appellant is serving as drawing Master(DM) and was lastly posted at government girls middle school (GGMS) Mera Jalozei at district Nowshera, whereas respondent No. 3 was posted at Government High School Kurvi (Nowshera). Upon mutual consent, both the appellant and respondent No.3 were mutually transferred against their schools vide order dated 16-09-2019. The appellant submitted her arrival in her respective place of transfer, but respondent No. 3 backed out of her commitment and was not ready to relinquish charge of

the post, hence the transfer order dated 16-09-2019 was withdrawn vide order dated 07-10-2019. Feeling aggrieved, the appellant filed departmental appeal, which was not responded with in the statutory period, hence the instant service appeal with prayers that the impugned withdrawal order dated 07-10-2019 may be set aside and the appellant may be retained in GGHS Kurvi, District Nowshera.

02. Learned counsel for the appellant has contended that the impugned order is against law, facts and norms of natural justice, hence not tenable and liable to be set aside; that the impugned order is glaring example of misuse of authority by the respondents; that the respondents instead of implementation of its own order, illegally issued the impugned order of withdrawal; that the impugned order is based on political motivation and nepotism; that the impugned order is against the transfer policy; that the impugned order is pre-mature and the appellant has been transferred without completing her normal tenure, thus the appellant has been made a rolling stone.

 03. Learned Additional Advocate General for the official respondents has contended the appellant was transferred as DM to the present school in the month of February 2019, hence she is not entitled for her transfer on account of short tenure in such school; that transfer order dated 16-09-2019 was immediately withdrawn on 07-10-2019 being issued without public interest and the tenure policy; that competent authority under section 210 of General Clauses Act is competent to cancel/withdraw any order issued by him before implementation.

04. Learned counsel for private respondent No. 3 relied upon the arguments advance by learned Additional Advocate General.

05. We have heard learned counsel for the parties and have perused the record.


06. Record reveals that the appellant and respondent No. 3, upon their mutual written consent, were transferred against each other schools vide a valid order. The appellant relinquish her charge and assumed charge in her place of transfer, but respondent No. 3 refused to hand over charge to the appellant, hence the respondents had withdrawn such transfer order after 21 days of its issuance. Placed on record is an explanatory letter dated 16-03-2020 addressed to respondent No. 3 asking for explanation, as to why precious time of the office was wasted by not obeying the order, which was issued on consent of respondent No. 3. Record is silent as to what happened to such explanation but the respondents withdrew such transfer order without taking any further action. Stance of the appellant to the effect that she remained posted outside throughout her career and the school where she was transferred was the nearest station to her home and the other school is nearer to the house of respondent No. 3. By issuance of her transfer order, the appellant had developed vested right over the post, which cannot be taken back so easily, but the appellant spent almost two and half years in litigation in getting relief and by the time, she completed more than her tenure in that school. Now is the time for her to serve in the nearest school, being her vested right.

07. In view of the position explained above, the instant appeal is accepted. The impugned order dated 07-10-2019 is set aside and the appellant is allowed to be retained in GGHS Kurvi (Nowshera). Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

26.01.2022

  
(AHMAD SULTAN TAREEN)  
CHAIRMAN

  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (E)

ORDER

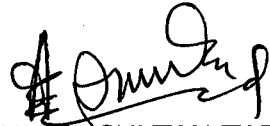
26.01.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for official respondents No. 1 & 2 present. Counsel for private respondent No. 3 present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted. The impugned order dated 07-10-2019 is set aside and the appellant is allowed to be retained in GGHS Kurvi (Nowshera). Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

26.01.2022



(AHMAD SULTAN TAREEN)  
CHAIRMAN




(ATIQ-UR-REHMAN WAZIR)  
MEMBER (E)

05.01.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith for official respondents present. None present on behalf of private respondent No. 3.

Respondent No. 2, i.e. District Education Officer (F) District Nowshera is directed to appear in person and apprise the Tribunal on the next date.

Notice be also issued to private respondents No.3 and her counsel for 14.01.2022 before D.B.

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

  
Chairman

14.01.2022

Appellant with counsel present.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present. Nemo for respondents.

Due to non-availability of Mr. Mian Muhammad Member (Executive), the case could not be heard. Adjourned. To come up for arguments on 26.01.2022 before D.B.

  
(Rozina Rehman)  
Member (J)

4.5.2021

Due to COVID-19 the case is adjourned  
to 2.9.2021 for the same.



02.09.2021

Appellant alongwith her counsel Ms. Naila Jan, Advocate, present. Mr. Riaz Ahmed Paindakheil, Assistant Advocate General for the respondents present and stated that as the brief of the instant appeal was assigned to Mr. Muhammad Adeel Butt, learned Additional Advocate General however, he has left for his home being not feeling well. Adjourned. To come up for arguments before the D.B on 11.10.2021.



(ATIQU-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

11.10.2021

Appellant in person present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned Members of the DBA are observing Sogh over the demise of Dr. Abdul Qadeer Khan (Scientist) and in this regard request for adjournment was made; allowed. To come up for arguments on 05.01.2021 before D.B.



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

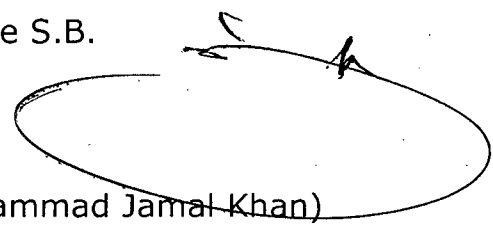


(Rozina Rehman)  
Member (J)

20.10.2020

The legal fraternity is observing strike today, therefore, learned counsel for appellant is not available today. Mr. Kabirullah Khattak, Additional Advocate General is present.

Neither written reply on behalf of respondents submitted nor any representative on behalf of the respondent-department is present, therefore, notices be issued to them for submission of written reply/comments. File to come up for written reply/comments on 08.12.2020 before S.B.


  
(Muhammad Jamal Khan)  
Member (Judicial)

08.12.2020

Junior counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Roheen ADEO for respondents No.1 & 2 present. Counsel for private respondent No.3 present.

Written reply on behalf of respondents submitted. To come up for rejoinder, if any and arguments on 08.03.2021 before D.B.

  
(Rozina Rehman)  
Member (J)

08.03.2021

Appellant in person present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Due to non-availability of D.B, case is adjourned to 04.05.2021 for the same as before.

  
Reater

31.08.2020


Appellant alongwith counsel present. Preliminary arguments heard.

The learned counsel referred to the impugned notification dated 07.10.2019 whereby the transfer order of the appellant dated 16.09.2019 was withdrawn without any justification & in violation of law & transfer posting policy. The appellant preferred a departmental appeal on 30.10.2019, but has not been responded by the respondents.

In view of the available record & arguments of the learned counsel, the instant appeal need consideration & is admitted to full hearing. The appellant is directed to deposit security & process fee within ten (10) days, thereafter notice be issued to the respondents for the written reply/comments for 24.09.2020 before S.B.

Appellant Deposited  
Security & Process Fee

31/8/20

  
Member (E)

24.09.2020

Junior to counsel for the appellant and Addl. AG alongwith Raheem Naz, ADEO for the respondents present.

Representative of the respondents seeks time to submit reply/comments. Adjourned to 20.10.2020 on which date the requisite reply shall be submitted positively.

  
Chairman



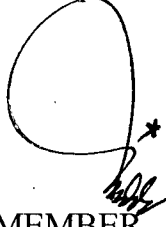


Form- A

# FORM OF ORDER SHEET

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

Case No.- 5895 /2020

1S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	18/06/2020	<p>The appeal of Mr. Shezan Haider resubmitted today by Naila Jan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	25.06.2020	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>25/06/2020</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>None for the appellant present. Notices be issued to the appellant and his counsel. Adjourned. To come up for preliminary hearing on 31.08.2020 before S.B.</p> <p style="text-align: right;"> MEMBER</p>

D

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA  
SERVICES TRIBUNAL PESHAWAR**

Khyber Pakhtunkhwa  
Service Tribunal  
Entry No. 4658  
Dated 24/6/2020

Appeal No. 5895 /2020

Mst. Sheezan Haider, under transfer to GGHS (Kurvi)  
Nowshera.

-----**(Appellant)**

**VERSUS**

1. The Director, Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. The District Education Officer (F), District Nowshera.
3. Mst. Ghazala (D.M) presently posted at GGHS (Kurvi) Nowshera.

-----**(Respondents).**

**APPEAL U/S 4 OF KHYBER  
PAKHTUNKHWA SERVICES  
TRIBUNAL ACT -1974 AGAINST  
THE IMPUGNED ORDER DATED  
07/10/2019 OF RESPONDENT  
NO.2, WHEREBY THE TRANSFER  
ORDER DATED 16/09/2019 WAS  
WITHDRAWN WITHOUT ANY  
JUSTIFICATION IN TOTAL  
VIOLATION OF LAW AND  
TRANSFER POSTING POLICY OF  
THE PROVINCIAL GOVERNMENT.**

Filed to-day  
Registrar  
04/06/2020  
  
1  
Filed to-day  
Registrar  
18/6/2020

**PRAYER IN APPEAL:-**

**ON ACCEPTANCE OF THIS  
SERVICE APPEAL THE IMPUGNED**

ORDER DATED 07/10/2019, MAY  
KINDLY BE SET ASIDE AND THE  
APPELLANT MAY KINDLY BE  
RETAINED AT GGHS (NSR).

Respectfully Sheweth;

*Appellant submits as under*

1. That the appellant is serving as DM and was lastly posted at Government Girls Middle School Mera Jalozai at District Nowshera, where the appellant served for a considerable period with great zeal zest and to the entire satisfaction of the department.
2. That the appellant and Mst Ghazala Tabassum posted at GGHS Kurvi (NSR) on mutual consent submitted an application for transfer before the DEO (F) which was accepted vide order dated 16/09/2019 and both the appellant and Mst Ghazala Tabssum was mutually transferred. (Copy of the application and order are annexure "A" & "B")
3. That the appellant relinquished charge and submitted her arrival at her new place of

3

posting in order to implement the order of the competent authority, however, Mst Ghazala DM refused to obey the order of the competent authority which amounts to misconduct.

4. That the appellant submitted several applications for implementation of the transfer order to the competent authority, however, being blue eyed and politically stronger, the competent authority failed to implement the transfer order. (Copy of application is Annexure "C").
5. That to the utter surprise, instead of initiating disciplinary proceedings against the said DM, Respondent No.3 for disobeying the order, the transfer order dated 16/09/2019 was withdrawn vide impugned order dated 07/10/2019 in total violation of law, rules and policy, which is not sustainable under the law. (Copy of Order is annexure "D").
6. That feeling aggrieved from the impugned order dated 07/10/19, the appellant filed a

N/S

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departmental appeal, however, despite expiry of statutory period, the same has not been decided by Respondent No.1. (Copy of Departmental Appeal is annexure "E")

7. That feeling aggrieved from above, the appellant filing the instant appeal on the following grounds:-

**GROUNDS:**

- A. That the impugned order is against the law, rules and principle of natural justice, hence void ab-initio.
- B. That the impugned order is a glaring example of misuse of powers by the respondents.
- C. That the respondents instead of implementation of his own transfer order quite illegally issued the impugned order dated 7/10/2019
- D. That the impugned order is based on political motivation nepotism and colourable exercise of powers.
- E. That the impugned order is against the transfer posting policy of the Provincial Government.



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F. That the impugned order is pre-mature and the appellant has been transferred without completing of his normal tenure of two years, thus the appellant has been made a rolling stone.


G. That the appellant seeks permission to adduce other grounds during the cause of arguments.

*It is therefore requested that the appeal of the appellant may kindly be accepted as prayed for.*

Dated: 04/06/2020

  
Appellant

Through

  
Naila Jan  
Advocate, High Court  
Peshawar.

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**BEFORE THE HONBLE KHYBER PAKHTUNKHWA**  
**SERVICES TRIBUNAL PESHAWAR**

Service Appeal No: \_\_\_\_\_/2020

Mst. Sheezan Haider

**VERSUS**

DEO Peshawar & Others

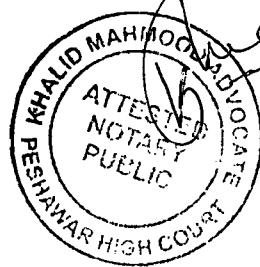
**AFFIDAVIT**

I, Mst: Sheezan Haider, under transfer to GGHS (Kurvi) Nowshera. do hereby solemnly affirm and declare that all the contents of the application for condonation of delay are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.

*Sheezan Haider*  
**DEPONENT**

**IDENTIFIED BY:**

*Naila Jan*  
**NAILA JAN**  
Advocate, High Court  
Peshawar.



The appeal of Mst. Sheezan Haider Under transfer to GGHS Kurvi Nowshera received today i.e. on 04.06.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

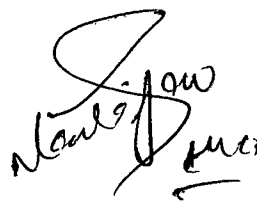
- 1- Memorandum of appeal is unsigned which may be got signed.
- 2- Affidavit may be got attested by the Oath Commissioner.
- 3- Annexures of the appeal may be attested.
- 4- Annexures of the appeal may be flagged.
- 5- Index of the appeal may be prepared according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 6- Annexures are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.
- 7- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1205 /S.T,

Dt. 05-06 /2020.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Naila Jan Adv. Peshawar.

Removed all  
the objections and  
Resubmitted my  
  
18/6/2020



**BEFORE THE HONBLE KHYBER PAKHTUNKHWA**  
**SERVICES TRIBUNAL PESHAWAR**

Service Appeal No: 5895 /2020

Mst. Sheezan Haider

**VERSUS**

DEO Peshawar & Others


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Dated: 04/06/2020

  
Appellant

Through

  
Naila Jan  
Advocate, High Court  
Peshawar.

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**BEFORE THE HONBLE KHYBER PAKHTUNKHWA**  
**SERVICES TRIBUNAL PESHAWAR**

Service Appeal No: \_\_\_\_\_/2020

Mst. Sheezan Haider

**VERSUS**

DEO Peshawar & Others

**ADDRESSES OF PARTIES**

**APPELLANT.**

Mst. Sheezan Haider, under transfer to GGHS (Kurvi)  
Nowshera.

**ADDRESSES OF RESPONDENTS**

1. The Director, Elementary and Secondary Education,  
Khyber Pakhtunkhwa, Peshawar.
2. The District Education Officer (F), District  
Nowshera.
3. Mst. Ghazala (D.M) presently posted at GGHS (Kurvi)  
Nowshera.


Dated: 04/06/2020



Appellant

Through

Naila Jan  
Advocate, High Court  
Peshawar.



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**BEFORE THE HONBLE KHYBER PAKHTUNKHWA**  
**SERVICES TRIBUNAL PESHAWAR**

Service Appeal No: \_\_\_\_\_/2020

Mst. Sheezan Haider

**VERSUS**

DEO Peshawar & Others

**APPLICATION FOR SUSPENSION OF THE**  
**IMPUGNED ORDER DATED 7/16/2019 TILL**  
**FINAL DISPOSAL OF THE APPEAL.**

Respectfully Sheweth:

Petitioner submits as under:-

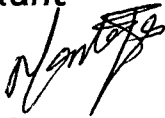
1. That the above mention appeal has been filing by the petitioner and no date is fixed.
2. That all the three ingredients for suspension of the impugned order are in favor of the petitioner.
3. That if the impugned order has not been suspended, the petitioner will suffer irreparable loss.
4. That grounds of main appeal may kindly be consider as part and parcel of this petition.

It is, therefore, requested that the impugned order may kindly be suspended till the final disposal of the appeal.

Dated: 04/06/2020

  
Appellant

Through

  
Naila Jan  
Advocate, High Court  
Peshawar

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**BEFORE THE HONBLE KHYBER PAKHTUNKHWA**  
**SERVICES TRIBUNAL PESHAWAR**

Service Appeal No: \_\_\_\_\_/2020

Mst. Sheezan Haider

**VERSUS**

DEO Peshawar & Others

**APPLICATION FOR CONDONATION OF DELAY**

Respectfully Sheweth:

Applicant submits as under:-

1. That the above mention service appeal is filing today before this Hon'ble Tribunal in which no date is fixed yet.
2. That the instant appeal is well within time, however if there is any delay the same is condonable on the following grounds.

**GROUND**

- A. That the Petitioner filed a departmental appeal within time, however, due to the pandemic of COVID-19, the whole country was in state of emergency and due to the lock-down, the courts were closed till 31 May 2020.
- B. That the impugned order is in violation of law, rules and principles of natural justice, hence void, ab-initio and as per dictum of

10

Supreme Court, no limitation runs against void order.

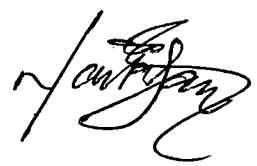
C. That as per principle lay down by Supreme Court, cases are to be decided on merits rather than technicalities.

*It is, therefore, requested that the delay in filing the Appeal may kindly be condoned.*

Dated: 04/06/2020

  
Appellant

Through

  
Naila Jan  
Advocate, High Court  
Peshawar.

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Amir

A 28  
26/8/19

To,

The District Education Officer (F)

Subject: Request for Mutual Transfer.

Respected Madam,

It is stated that we both the DM teachers want the mutual transfer. So it is requested that the transfer order may please be issued.

1. Sheezan Haider D.M G.G.M.S Mara Jalozi (NSR).
2. Ghazala Tabassum D.M G.G.H.S Kurvi (NSR).

Your's Obediently

Sheezan Haider 01-04-2015

12-04-2010 Ghazala Tabassum  
Ghazala

25-8-2019

i/e Head Mistress  
GGMS Mera Jalozi  
Distt. Nowshera

Amir 25-8-2019  
Head Mistress  
GGHS Kurvi  
Nowshera

Accepted

D.P.O. (F) Nowshera  
Distt. 2752  
Date: 26-8-19



(12)      *And*      "B"

**OFFICE OF THE  
DISTRICT EDUCATION OFFICER  
(FEMALE) NOWSHERA**

**OFFICE ORDER**

Mutual transfer of the following Teaching staff is hereby ordered to the school noted against their names on their own pay and BPS in the interest of the Public service with immediate effect.

S.#	Name of Official	Designation	Name of Original School	Allotted School	Period
1	Mst. Sheezan Haider	D.M	GGMS Mera Jallozai (NSR)	GGHS Kurvi (NSR)	Vice S.No 2
2	Mst. Ghazala Tabassum	D.M	GGHS Kurvi (NSR)	GGMS Mera Jallozai (NSR)	Vice S.No.

Note:- T.A / D.A is not allowed.

**(ATTIA SULTANA)  
DISTRICT EDUCATION OFFICER  
(FEMALE) NOWSHERA**

Endst: No. 6559-57

Dated Nowshera the 16/9 2012

Copy for information and necessary action to the:-

1. District Accounts Office Nowshera.
2. District Monitoring Officer Nowshera.
3. Head Mistress concerned schools.
4. Superintendent Establishment (Local Office).
5. Accountant local office.
6. Officials Concerned.
7. Office copy.

*Attia Sultana*  
16-09-2012  
**DISTRICT EDUCATION OFFICER  
(FEMALE) NOWSHERA**

(B)

Amir Tar 'C'

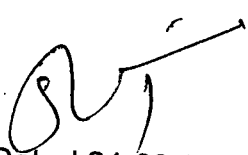
To: The District Education Officer (Female),  
Nowshera, Khyber Pakhtunkhwa.

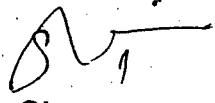
Subject: Implementation of mutual transfer order of the applicant

Kindly refer to your Ends: letter No. 6551-57 dated 16.09.2019 on the subject cited above.

It is submitted that in compliance with the directives of your office vide the above quoted memo: the petitioner was transferred from GGMS Mera Jalozai, NSR to GGMS Kurvi, NSR against the DM Mst Ghazal Tabasum. The applicant in response in above quoted memo: reported for duty to the concerned school but the Mst. Ghazal Tabasum is reluctant to hand over the charge of the post mentioned in the transfer order. The applicant made so many requests but, she turned down the request and insisted that she may be not be disturbed and not willing to obey the order.

The report is submitted for appropriate action at your end pleas.

  
Dated: 21.09.2019

  
(Mst. Sheezan Haider)  
DM  
GGMS, Kurvi, Nowshera.

D.E.O. (F) Nowshera

3257

23-9-09





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Autex D

**OFFICE OF THE  
DISTRICT EDUCATION OFFICER  
(FEMALE) NOWSHERA**

**OFFICE ORDER**

The mutual transfer in respect of Mst. Sheezan Haider (D.M) and Mst. Ghazala Tabassum (D.M) issued vide this office Endst.No.6551-57 dated 16-09-20198 is hereby withdrawn and directed to report their original stations in the best interest of public service with immediate effect.

(ATTIA SULTANA)  
DISTRICT EDUCATION OFFICER  
(FEMALE) NOWSHERA

Endst: No. 247-52 Dated 07/10-2019.  
Copy for information and necessary action to the:-

1. Director (E&SE) Khyber Pakhtunkhwa Peshawar.
2. District Accounts Office Nowshera.
3. Head Mistress GGHS Kurvi Nowshera.
4. Head Mistress GGMS Mera Jallozai Nowshera.
5. Officials concerned.
6. Office copy.

*Attia Sultana*  
07-10-2019  
DISTRICT EDUCATION OFFICER  
(FEMALE) NOWSHERA

15

Amir E

To,

The Director  
Elementary & Secondary Education  
Khyber Pukhtunkhwa.

Through Proper Channel

Subject: Departmental Appeal against the order dated 07/10/2019 Whereby the Transfer Order dated 16/09/2019 was withdrawn without any justification in total violation of transfer posting policy.

Dear Sir,

The appellant submits as under;

1. That the appellant is serving as DM and was lastly posted at Government Girls Middle School Mera jalozai at district Nowshera where the appellant served for a considerable period with great zeal and to the entire satisfaction of the department.
2. That the appellant and Mst Ghazala Tabassum posted at GGHS Kurvi (NSR) on mutual consent submitted an Application for transfer before the DEO(F) which was accepted vide order dated 16/09/2019 and both the appellant and mst Ghazala tabassum was mutually transferred.(copy of the application and order are annexure A & B)
3. That the appellant relinquished charge and submitted her arrival in her new place of posting in order to implement the order of the competent authority however Mst Ghazala DM refused to obey the order of the competent authority which amounts to misconduct.
4. That the appellant submitted several application for implementation of the transfer order to the competent authority however being blue eyed and politically stronger, the competent authority failed to implement the order.(copy of the applications is "C")
5. That to the utter surprise instead of initiating disciplinary proceedings against the said DM for disobeying the order, the transfer order dated 16/09/2019 was withdrawn vide impugned order dated 07/10/2019 in total violation of law rules and policy which is not sustainable under the law.(copy of the order is annexure "D")
6. That feeling aggrieved from the above the appellant filling his departmental appeal on the following grounds

**GROUND:**

- A. That the impugned order is against the law rules principles of natural justice void abinitio hence not sustainable in the eye of law.

F No 309

4053

D No 346

30/10/19

16

- B. That the impugned order is against the transfer posting policy of the provincial Government as the appellant transfer order dated 16/09/2019 has been illegally withdrawn within a month.
- C. That the impugned order is based on favoritism and nepotism as the Mst Ghazala tabasum disobeyed the transfer order dated 16/09/2019 and instead of initiating disciplinary proceedings for misconduct against her she was rewarded by cancelling the transfer order vide impugned order.
- D. That the appellant being citizen of Pakistan is entitled for equal treatment however by the impugned order the appellant has been subjected to discrimination which is clear violation of Article 25 of the constitution of Islamic Republic of Pakistan 1973.
- E. That the impugned order has not been issued in public interest but issued for rewarding blue eyed.

It is therefore requested that on acceptance of this appeal the impugned order dated 07/10/2019 may kindly be set aside and order dated 16/09/2019 may kindly be restored.

Appellant

Mst Sheezan Haider DM.




GCSMS near Jallorai (NSR)

30.10.2019

عادل

72  
-----  
30-10-19

17

50 روپے	47741			
ایڈویکٹ: <u>Aida Jau</u>		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر:				
رابطہ نمبر: 0312926571				

بعدالت جناب: محمد شریف مونس

مخاطب: <u>امیدانٹ</u>	دعویٰ:
<u>شہیناز صدر</u>	علت نمبر:
<u>بنام</u>	مورخہ:
<u>تصمیم</u>	جرم:
	تھانہ:

**باعت تحریر آگہ**

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام شہیناز صدر کے ایگزیکٹو مجسٹریٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 02/08/2020

العبد گواہ شد العبد

مقام شہیناز صدر کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فونو کاپی ناقابل قبول ہوگی۔

Accepted by

امیدانٹ (شہیناز صدر)

**BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

**Service Appeal # 5805/2020**

**Mst Sheezan Haidar and 2 others VS**

**District Education**

**Nowshera.....Appellant**

**Versus**

**The District Education Officer (Female),**

**District Nowshera and others.....Respondents**

**INDEX**

<b>S.N o.</b>	<b>Description of Documents</b>	<b>Date</b>	<b>Annexure</b>	<b>Pages</b>
1.	Para wise Comments			01-04
2.	Affidavit			05
3.	Authority Letter			06
4.				

**Deponent**

**BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

**Service Appeal # 5805/2020**

**Mst Sheezan Haidar and 2 others VS**

**District Education**

**Nowshera.....Appellant**

**Versus**

The District Education Officer (Female),

District Nowshera and others.....Respondents

Para wise comments on behalf of respondents No.1 to 2.

**Preliminary Objections:-**

- I. That Appellant has no cause of action and locus standi.
- II. That the Appellant has not come to the court with clean hands.
- III. That Appellant is bad for mis-joinder and non-joinder.
- IV. That the Appellant is not maintainable in the present form.
- V. That Appellant is hit by principle of laches.
- VI. That the principle of estoppel lies against the petitioner.
- VII. That Appellant has suppressed the material facts from the notice of this Honorable Court.
- VIII. That the Appellant is not an aggrieved person within the meaning of section 4 of the KPService tribunal ACT, 1974.

## Reply to Fact

2

The answering respondents no 1 and 2 is humbly submitted as under

- 1) That para NO 1 is incorrect, as pleaded by the appellant. Appellant was appointed as D.M on 31-03-2015. She was transferred and posted at GGMS Mera Jalozi present place of posting in February 2019. she is not entitled for transferred on account of her short tenure as well as on basis of public interest.
- 2) That Para No 2 of the appeal is correct to the extent of transferred order dated 16-09-2019, and rest of para is incorrect hence denied.
- 3) That para NO 3 does not relate to answering respondents therefore, no comments.

However it is Clarify that transferred order dated 16-09-2019 was immediately withdrawn on 07-10-2019, being issued without public interest and the tenure policy. The competent authority under section 210 of General clauses ACT, 1897 is competent to cancel/withdraw any order issued by him/her before its implementation. The impugned transferred order dated 16-09-2019 was withdrawn by competent authority before its execution/implementation; therefore the impugned withdrawal order dated 07-10-2019 is legal and according with law, rules and policy.

- 4) That para NO 4 is incorrect, hence denied. The impugned order dated 07-10-2019 was issued on merit without any extraneous consideration etc.
- 5) That para NO 5 is incorrect, hence denied. That transferred order dated 16-09-2019 was withdrawn vide order dated 07-10-2019 being pre-mature and being against public interest.
- 6) That para NO 6 is incorrect, hence denied. The appeal of appellant is badly time barred. More ever she cannot challenge the same for

the reason that it has not adversely affected her. It was an administrative order which was subsequently withdrawn by Competent authority under law, rules and policy.

3

### **Reply to Ground**


- A) That Ground A is incorrect, hence denied, the appellant was transferred and posted at GGMS Mera Jalozai in February 2019 it is against the tenure policy as well as against the public interest to transferred her in short span of time, therefore the impugned transferred order dated 16-09-2019 was withdrawn.
- B) That Ground B is incorrect, hence denied. The answering respondents are fully aware of their public function interest. It is moral duty of competent authority to discharge her function with zeal efficiency and fairness as per mandate of law, rules and policy. Appellant being short time of tenure therefore, the impugned order was withdrawn in public interest.
- C) That Ground C is incorrect, hence denied. The Government servant is required to serve anywhere, her competent authority wanted to serve; it is not a choice or prerogative of the employee to claim a right to serve at a place that he/she chooses to serve. Reliance is placed on the reported judgement of Honorable Supreme Court of Pakistan reported as 2020 SCMR page 1432(b).
- D) That Ground D is incorrect, hence denied. The impugned withdrawal has been passed on merit without any political etc consideration.
- E) That Ground E is incorrect, hence denied. The principle of locus poenitentiae does not attract the question order for the reason that the transferred order was withdrawn before the execution/implementation.



- F) That Ground 'f' is incorrect, hence denied. That impugned order is within legal frame work and competency.
- G) That Ground G is incorrect; hence denied. That answering respondents would also like to seek the permission of this Honorable tribunal court to share argument in rebuttal.

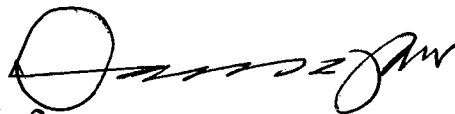
It is therefore, humbly requested that appeal of the appellant may kindly be dismissed with cost throughout.

1. Respondent No.1



The District Education Officer (Female),  
District Nowshera.

2. Respondent No.2



The Director,  
Govt: of Khyber Pakhtunkhwa,  
Elementary & Secondary Education Department,  
Peshawar.

IN THE PESHAWAR HIGH COURT PESHAWAR

5

**Service Appeal # 5805/2020**

**Mst: Sheezan Haider and 2 others VS**

**District Education District**

**Nowshera.....Appellant**

Versus

The District Education Officer (Female),

District Nowshera and others.....Respondents

**Affidavit:-**

I Miss Roheen ADO legal (E & SE)(Female) District, Nowshera do hereby solemnly affirms on Oath that the contents of this reply/comments are true and correct to the best of my knowledge and belief and nothing has been concealed from the Notice of this Honorable Court.

  
**Deponent**

**BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

**Service Appeal # 5805/2020**

**Mst Sheezan Haidar and 2 others VS**

**District Education**

**Nowshera.....Appellant**

**Versus**

**The District Education Officer (Female),**

**District Nowshera and others.....Respondents**

**INDEX**

<b>S.N o.</b>	<b>Description of Documents</b>	<b>Date</b>	<b>Annexure</b>	<b>Pages</b>
1.	Para wise Comments			
2.	Affidavit			
3.	Wakalatnama			
4.				

**Deponent**

Respondent # 3

through,

Abdul Qadir

Advocate

Advocate

**BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

**Service Appeal # 5805/2020**

**Mst Sheezan Haidar and 2 others VS**

**District Education**

**Nowshera.....Appellant**

**Versus**

The District Education Officer (Female),

District Nowshera and others.....Respondents

Para wise comments on behalf of respondents No. 1, 2 & 3

**Preliminary Objections:-**

- I. That Appellant has no cause of action and locus standi.
- II. That the Appellant has not come to the court with clean hands.
- III. That Appellant is bad for mis-joinder and non-joinder.
- IV. That the Appellant is not maintainable in the present form.
- V. That Appellant is hit by principle of laches.
- VI. That the principle of estoppel lies against the petitioner.
- VII. That Appellant has suppressed the material facts from the notice of this Honorable Court.
- VIII. That the Appellant is not an aggrieved person within the meaning of section 4 of the KP Service tribunal ACT, 1974.

## Reply to Fact

The answering respondents no 03 is humbly submitted as under

- 1) That para NO.1 is incorrect, as pleaded by the appellant. Appellant was appointed as D.M on 31-03-2015. She was transferred and posted at GGMS Mera Jalojai present place of posting in February 2019. she is not entitled for transferred on account of her short tenure as well as on basis of public interest
- 2) That Para No 2 of the appeal is correct to the extent of transferred order dated 16-09-2019, and rest of para is incorrect hence denied.
- 3) That para NO 3 of the appeal is incorrect 'hence denied. The transfer order dated order dated 16- 09-2019 was immediately withdrawn on 07-10-2019 being issued without public interest and tenure policy of the government .the competent authority under section 21 of general clause ACT '1897 is competent to cancel/ withdrawn any order issue by him/her before its implementation . the impugned order dated 07-09-2019 .was withdrawn by competent authority before its implementation , therefore the order dated 07-10-2019 is legal and is an accordance with law ' Rule and policy .
- 4) That para NO 4 is incorrect, hence denied. The impugned order dated 07-10-2019 was issued on merit without any extraneous consideration etc.
- 5) That para NO 5is incorrect, hence denied. That transferred order dated 16-09-2019 was withdrawn vide order dated 07-10-2019 being pre-mature and being against public interest.
- 6) That para NO 6 is incorrect, hence denied. The appeal of appellant is badly time barred. More ever she cannot challenge the same for the reason that it has not adversely affected her. It was an administrative order which was subsequently withdrawn by

Competent authority under law, rules and policy.

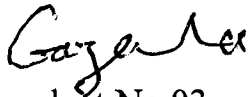
## **Reply to Ground**

- A) That Ground A is incorrect, hence denied, the appellant was transferred and posted at GGMS Mera Jalozai in February 2019 it is against the tenure policy as well as against the public interest to transferred her in short span of time, therefore the impugned transferred order dated 16-09-2019 was withdrawn.
- B) That Ground B is incorrect, hence denied. The answering respondents are fully aware of their public function interest. It is moral duty of competent authority to discharge her function with zeal efficiency and fairness as per mandate of law, rules and policy. Appellant being short time of tenure therefore, the impugned order was withdrawn in public interest.
- C) That Ground C is incorrect, hence denied. The Government servant is required to serve any where, her competent authority wanted to serve; it is not a choice or prerogative of the employee to claim a right to serve at a place that he/she chooses to serve. Reliance is placed on the reported judgement of Honorable Supreme Court of Pakistan reported as 2020 SCMR page 1432(b).
- D) That Ground D is incorrect, hence denied. The impugned withdrawal has been passed on merit without any political etc consideration.
- E) That Ground E is incorrect, hence denied. The principal of locus poenitentiae does not attract the question order for the reason that the transferred order was withdrawn before the execution/implementation.

F) That Ground 'f' is incorrect, hence denied. That impugned order is within legal frame work and competency.


G) That Ground G is incorrect; hence denied. That answering respondents would also like to seek the permission of this Honorable tribunal court to share argument in rebuttal.

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



1. Respondent No.03

The District Education Officer (Female),  
District Nowshera.



Ashraf ALI Khatak  
Advocate High Court Peshawar

# بعدالت

Khyber Pakhtunkhwa  
Service Tribunal, Peshawar  
Service Appeal # 5805/2020

Respondent #3  
Mst: Ghazala

2 مخائب  
بنام

Mst: Sheezan Haider — Appellant

Vs  
Dist: Education Officer and others  
respondents

موزخه  
مقدمه  
دعوی  
جرم

## باعث تحریر آئینک

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ  
آن مقام مشاور کیلئے اشرف علی خٹک

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز  
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالتہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی  
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار  
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ  
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے 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 لکھ دیا کہ سندر ہے۔

Attested & Accepted.

Ashraf Ali Khattak Advocate

B.C # 1046-05, 2020  
Cell # 0332-9931676.

المرقوم

العبد \_\_\_\_\_ واہ العبد \_\_\_\_\_

کے لئے منظور ہے۔

بمقام

Ghazala





**KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

No. 59 /ST

Dated: 11/01 /2021

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281  
Fax:- 091-9213262

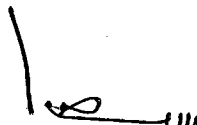
To

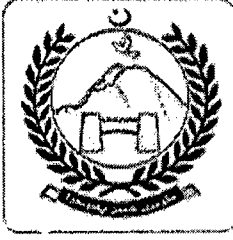
The District Education Officer Female,  
Government of Khyber Pakhtunkhwa,  
Nowshetra.

Subject: ORDER IN SERVICE APPEAL NO. 5805/2020 MR. SHEZAN HAIDAR.

I am directed to forward herewith a certified copy of order dated 05.01.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR,  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR



**KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR**

No. 564 /ST

Dated: 24-2- /2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281  
Fax:- 091-9213262

To

The District Education Officer Female,  
Government of Khyber Pakhtunkhwa,  
Nowshera.

Subject: JUDGMENT IN APPEAL NO. 5805/2020 MST. SHEEZAN HAIDER.

I am directed to forward herewith a certified copy of Judgement dated 26.01.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR

KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR