

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 6650/2021

Date of Institution ... 01.07.2021

Date of Decision ... 30.07.2021

Muhammad Ismail S/O Muhammad Saeed, District Sports Officer (BPS-17), Lakki Marwat. ... (Appellant)

VERSUS

Director General, Sport, Directorate General of Sports, Sport Complex, Peshawar Cantt and two others. ... (Respondents)

MR. ARBAB SAIFUL KAMAL  
Advocate

... For Appellant

MR. ASIF MASOOD ALI SHAH  
Deputy District Attorney

... For Respondents

MR. SALAH-UD-DIN ...  
MR. ATIQ-UR-REHMAN WAZIR ...

MEMBER (JUDICIAL)  
MEMBER (EXECUTIVE)

**JUDGMENT**

**ATIQ-UR-REHMAN WAZIR MEMBER (E):-** Brief facts of the case are that the appellant was initially appointed as District Sports Officer vide recommendations issued by Provincial Public Service Commission. Vide order dated 03-12-2020, the appellant was transferred from the post of District Sports Officer Karak to the post of District Sports Officer Lakki Marwat. The appellant had hardly spent three months on the said post, when he was again transferred to the post of Administrator Kohat Sports Complex and one Mr. Khurshid Alam Khan, who was Subject Specialist Pushto in Education Department, was transferred in his place vide order dated 31-03-2021. The appellant being aggrieved of the said order, challenged the same through filing

of departmental appeal dated 01-04-2021, which was not responded to. The appellant then filed writ petition before the honorable Peshawar High Court, Bannu Bench, however the same was remitted to this Tribunal vide order dated 24.06.2021 passed by august Peshawar High Court, Bannu Bench, and the appellant was directed to appear before this Tribunal on 01.07.2021. The appellant is praying for setting aside of the impugned order dated 31-03-2021 and restoration of order dated 03-12-2020 with all consequential benefits.

02. Respondents were summoned, out of whom, official respondents contested the appeal by way of submitting Para-wise comments, wherein they resisted the claim of the appellant.

03. Learned counsel for the appellant has contended that the appellant had hardly served ~~three months~~ on his post in District Lakki Marwat and the respondents prematurely transferred the appellant to District Kohat with malafide intention. He further contended that respondent No. 3 is Subject Specialist in Pushto, however astonishingly, he has been posted on a seat which is exclusively relating to Sports activities, therefore, the impugned transfer/posting order cannot be considered to be an order in public interest by any cannon of justice. Learned counsel for the appellant argued that the impugned order was not issued in the public interest but the same was issued in the interest of respondent No. 3, as he belongs to teaching cadre and his posting to a non-cadre post was made on the basis of political maneuvering. He further argued that the impugned order is against the transfer policy, while respondent No. 1 has no powers to pick respondent No. 3 from Education Department and to post him against non-cadre post; that such type transfer order has repeatedly been condemned by the worthy apex courts. Learned counsel for the appellant has argued that the impugned order is based on favoritism, nepotism not based on law and not in the public interest, but in the interest of respondent No. 3, so is based on malafide and without lawful authority. He further explained that

appeal against pre-mature transfers shall be decided by the competent authority within fifteen days, but the respondents turned deaf ear over the departmental appeal, filed by the appellant. In the last, learned counsel for the appellant prayed that the impugned order dated 31-03-2021 may be set aside and the order dated 03-12-20 may be restored with all consequential benefits.

04. Learned Deputy District Attorney appearing on behalf of respondents has contended that as the appellant is a civil servant, therefore, in view of Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, he can be posted anywhere in the Province. He further contended that the transfer of appellant was made in accordance with the relevant rule and law, without any bias towards the appellant, therefore, the appeal in hand may be dismissed with costs.

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

06. A perusal of record would reveal that the appellant, while serving as District Sports Officer in Karak, was transferred as District Sports Officer, Lakki Marwat vide order dated 03-12-2020, but within a span of less than four months, the appellant was again transferred from District Lakki Marwat to Kohat vide the impugned order dated 31-03-2021, in sheer violation of the transfer/posting policy but was shown as transferred in the public interest. The learned attorney on behalf of the respondents, when confronted with the situation, as to what public interest was involved in his transfer, was unable to defend his stance, as such transfer was made in the interest of respondent No. 3, who had maneuvered to make his transfer possible through deputation, inspite of the fact that he belongs to a teaching cadre, is a subject specialist in pushto and he has to teach students and has got nothing to do with the management, therefore, his posting in Sports Department as a District Sports Officer on the basis of deputation is altogether illegal and against law. The

honorable Peshawar High Court vide its judgment rendered in writ petition No. 2937/2009 has held as below:-

"As the provincial government has taken a firm decision that all those teachers belonging to Teacher Cadre shall be posted in the Education Department to teach the students according to their qualifications, while those belonging to Administrative Cadre shall only hold the posts relating to Administration. Therefore the petitioner must deliver according to the policy of the government and because they are highly qualified teachers. It is not befitting to hold administrative posts, because they are getting benefits, but the students are suffering, thus they shall go to their respective places, where they are required to do the job."

Besides that, the Government of Khyber Pakhtunkhwa, Establishment Department, in pursuance of the above judgment, has issued instructions vide letter dated 08-02-2019, which speaks volumes of the commitment of provincial government to discourage postings of teachers on administrative posts, rather emphasized the need to implement the said judgment in letter and spirit. Likewise, the honorable Peshawar High Court in its another judgment dated 12-02-2014 in Writ Petition No 488-M of 2013 has categorically discouraged the practice of posting of teaching staff against the administrative positions.

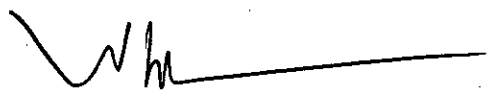
07. It was ironical to note that the respondents are making such transfers in violation of their own policies as well as against the judgments of the honorable Peshawar High Court, which is deplorable. Moreover, transfer on deputation is made on the basis of needs of borrowing department, for which the services of an officer, but not by name are requisitioned by the borrowing department along with justifications, but in the case in hand, the Elementary & Secondary Education Department, out of their own, have placed the services of respondent No. 3 at the disposal of respondent No. 2 without any requisition from the borrowing department, which clearly shows malafide on part of the respondents and that such order was not made in the public interest, rather it was made to appease respondent No. 3, which is illegal, unlawful and contrary to the norms of natural justice.

08. In order to sensitize the respondents, it would not be out of place to mention that Job description of a Sports Officer, though not available on record, would definitely be much different from the job description of a Teacher. Primarily the job description of a sports officer should be growth and promotion of sports and youth development with an aim to improve physical and mental fitness, for which the officers would have definitely gone through the process of training, so as to make him specialized for such job. In a situation, it would be difficult for a teacher also to perform efficiently. We are unable to understand as to how the Sport Department requires the services of a teacher, whose services could better be utilized in an educational institution, whereas services of the available lot of sports officers can be utilized in a better way to achieve the targets of growth and promotion of sports.

09. We are of the considered opinion that the respondents have made such transfer in violation of law and rule; hence, the impugned order dated 31-03-2021 is set aside, whereas the appellant is restored as District Sports Officer Lakki Marwat by restoring transfer order dated 03-12-2020 to the extent of appellant. In order to ensure compliance of the orders of the honorable Peshawar High Court as well as instructions of Establishment Department and to avoid future litigation, this judgment is equally applicable to all other similar cases of teachers on deputation to Sports Department. Parties are left to bear their own costs. File be consigned to record room.

**ANNOUNCED**  
**30.07.2021**

  
**(SALAH-U-DIN)**  
**MEMBER (JUDICIAL)**

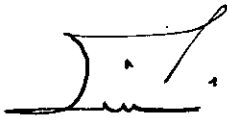
  
**(ATIQ UR REHMAN WAZIR)**  
**MEMBER (EXECUTIVE)**


ORDER  
30.07.2021

Appellant alongwith his counsel Mr. Arbab Saiful Kamal, Advocate present. Mr. Naeem Ullah Assistant alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present.

Vide our detailed judgment of today, separately placed on file, the impugned order dated 31-03-2021 is set aside, whereas the appellant is restored as District Sports Officer Lakki Marwat by restoring transfer order dated 03-12-2020 to the extent of appellant. In order to ensure compliance of the orders of the honorable Peshawar High Court as well as instructions of Establishment Department and to avoid future litigation, this judgment is equally applicable to all other similar cases of teachers on deputation to Sports Department. Parties are left to bear their own costs. File be consigned to record room.

**ANNOUNCED**  
**30.07.2021**


  
**(SALAH-U-DIN)**  
**MEMBER (JUDICIAL)**

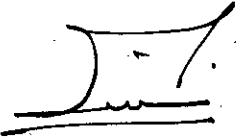
  
**(ATIQ UR REHMAN WAZIR)**  
**MEMBER (EXECUTIVE)**

27.07.2021

Appellant alongwith his counsel Mr. Arbab Saif-ul-Kamal, Advocate, present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

The learned Additional Advocate General requested for adjournment on the ground that the brief of the instant appeal was entrusted to Mr. Riaz Ahmed Paindakheil, Assistant Advocate General, however he is unable to appear before the Tribunal, being hospitalized due to illness. Adjourned. To come up for arguments before the D.B on 30.07.2021.

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

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

72/WP-Judl., dated 26.06.2021 and accordingly, the same was registered as Service Appeal No. 6642/2021. The same is also fixed for today. As the formal appeal has been filed, therefore, further proceedings in Appeal No. 4642/2021 converted from Writ Petition into service appeal will be a futile exercise. Therefore, the present appeal No. 6650/2021, filed in continuation of Appeal No. 4642/2021, is admitted for regular hearing subject to all just and legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 27.07.2021 before the D.B.

Appellant Deposited  
Security & Process Fee

27/7/21

The appeal is also accompanied by an application for suspension of the impugned office order till decision of the case. Let the notice of said application be also given to the respondents simultaneously with notice of the appeal.

  
Chairman



Form- A

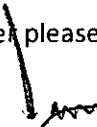
FORM OF ORDER SHEET

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

Case No.-

**6650**

/2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	01/07/2021	<p>The appeal of Mr. Muhammad Ismail presented today by Mr. Saadullah Khan Marwat 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> <p>2-</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>01/07/2021</u>.</p> <p style="text-align: right;">CHAIRMAN</p> <p>01.07.2021</p> <p>Appellant with counsel present. Preliminary arguments heard.</p> <p>It is obvious from Paragraph- 5 of the Memorandum of appeal that Writ Petition was filed before the Hon'ble Peshawar High Court, Bannu Bench and diverted to this Tribunal vide order dated 24.06.2021 treating the same as appeal.</p> <p>In compliance with the said order, the Addl. Registrar of the Peshawar High Court, Bannu Bench sent the file of the Writ Petition here vide his office letter No.</p>

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

**S.A No. /2021**

Muhammad Ismail versus Director General & Others

**INDEX**

<b>S. No</b>	<b>Documents</b>	<b>Annex</b>	<b>P. No.</b>
1.	Memo of Appeal		1-4
2.	Posting of appellant as DSO Lakki Marwat dated 03-12-2020	"A"	5
3.	Subsequent posting of appellant at Kohat Sports Complex dated 31-03-21	"B"	6
4.	Representation dated 01-04-2021	"C"	7
5.	Copy of Writ Petition dated 06-04-21	"D"	8-12
6.	Order Sheet dated 13-04-2021	"E"	13
7.	Order in Writ Petition dated 24-06-2021	"F"	14-15
8.	Transfer Posting Policy of Provincial Government	"G"	16
9.	Application for Interim Relief		17-18

Through

*M. Ismail*  
Appellant

*Saadullah Khan Marwat*

Saadullah Khan Marwat  
Advocate.  
21-A Nasir Mansion,  
Shoba Bazaar, Peshawar.  
Ph: 0300-5872676  
0311-9266609

Dated: 30-06-2021

**BEFORE KPK SERVICE TRIBUNAL PESHAWAR**

S.A No. **6652** / 2021

Khyber Pakhtukhwa  
Service Tribunal

Diary No. **6727**

Dated **01-7-2021**

Muhammad Ismail  
S/O Muhammad Saeed,  
District Sports Officer (B-17),  
Lakki Marwat . . . . . Appellant

**VERSUS**

1. Director General, Sport,  
Directorate General of  
Sports, Sports Complex,  
Peshawar Cantt.
2. Secretary, Govt. of KP,  
Sports, Culture Department,  
Peshawar.
3. Khurshid Alam, Subject Specialist,  
Govt. Higher Secondary School  
No. 02, Peshawar City . . . . . Respondents

⇄<=>⇄<=>⇄<=>⇄<=>⇄

Filed to-day  
Registrar  
01/07/2021

**APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974**  
**AGAINST OFFICE ORDER NO. 17 / UST / TT /**  
**2017 DATED 31-03-2021 OF R. NO. 01, WHEREBY**  
**APPELLANT WAS TRANSFERRED FROM THE POST**  
**OF DISTRICT SPORTS OFFICER LAKKI MARWAT**  
**TO THE POST OF ADMINISTRATION KOHAT**  
**SPORTS COMPLEX AND R. NO. 03 WAS POSTED AS**  
**THE POST OF APPELLANT:**

⇄<=>⇄<=>⇄<=>⇄<=>⇄

**Respectfully Sheweth;**

1. That since the date of appointment of appellant in service, he is performing his official duties to the best of his ability and to the entire satisfaction of superiors.
2. That on 03-12-2020, appellant at S. No. 07 was transferred from the post of District Sports Officer Karak to the post of District Sports Officer Lakki Marwat by the authority. (Copy as annex "A")
3. That appellant has hardly served the said station at Lakki Marwat for about three months, when on 31-03-2021 he was again transferred from the post District Sports Officer Lakki Marwat to the post of Administrator Kohat Sports Complex for no legal reason by R. No. 01 but to the post of R. No. 03 at the place of appellant. (Copy as annex "B")
4. That on 01-04-2021, appellant submitted representation before the authority for cancellation of the impugned order but without any response till date. (Copy as annex "C")
5. That on 06-04-2021, appellant filed Writ Petition before the hon'ble Peshawar High Court, Circuit Bench Bannu, which came up for hearing on 13-04-2021 and then the hon'ble court was pleased to issue pre-admission notice to respondents to submit comments within fortnight positively as at the same time, the hon'ble Tribunal was defunct. (Copies as annex "D" & "E")
6. That on 24-06-2021, the said case came up for hearing, wherein the same was remitted to the hon'ble court for decision to appear before the hon'ble Service Tribunal on 01-07-2021 as by then the hon'ble Tribunal became functional. (Copy as annex "F")
7. That on 08-02-2019, Govt. of KP, Establishment Department issued circular wherein in categorical manner it was observed that Teaching Cadre Officers shall not be posted in other departments except the education. The authority based such version on the direction of the Peshawar High Court Peshawar. (Copy as annex "G")

Hence, this appeal, Inter alia on the following grounds:-

**GROUND**S

- a. That appellant was made escape-goat by transferring him from one station to another.
- b. That three months have hardly elapsed when again, appellant was transferred from the post of District Sports Officer Lakki Marwat to the post of Administrator Kohat Sports Complex. In the impugned order R. No. 03 was posted as District Sports Officer Lakki Marwat.
- c. That R. No. 03 have no nexus with the said post as he was subject specialist and not District Sports Officer.
- d. That the impugned order is not in the interest of Public service but the same was in the interest of R. No. 03 as he belongs to teaching cadre.
- e. That the hon'ble apex court has condemned time and again repeated transfer orders when the same is in short span of time rather stressed upon the need to not comply with such like order.
- f. That the impugned order is against the Transfer Posting Policy, while R. No. 01 has no power to pick R. No. 03 from Education Department and to him against non cadre post.
- g. That the impugned order has based on favoritism, nepotism not based on law not in the interest of public service but in the interest of alien cadre, so is based on malafide and without lawful authority.
- h. That premature transfer shall be decided by the authority within fifteen days.

It is, therefore, most humbly prayed that the impugned order dated 31-03-2021 of R. No. 01 be set aside and order dated 03-12-2020 be restored with all service benefits

*M. Ismail*  
Appellant

Through

*Saadullah Khan Marwat*  
Saadullah Khan Marwat

*Arbab Saiful Kamal*  
Arbab Saiful Kamal

*Amjad Nawaz*  
Amjad Nawaz  
Advocates

Dated: 30-06-2021

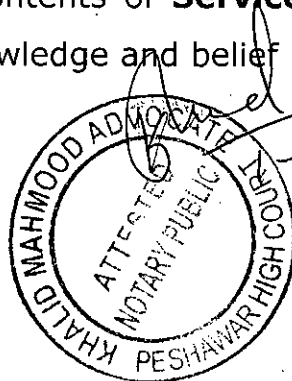
### **CERTIFICATE:**

As per instructions of my client, no such like Service Appeal has earlier been filed by the appellant before this Hon'ble Tribunal.

*Saadullah Khan Marwat*  
Advocate

### **AFFIDAVIT**

I, Muhammad Ismail S/O Muhammad Saeed, District Sports Officer (B-17), Lakki Marwat (appellant), do hereby solemnly affirm and declare that contents of **Service Appeal** are true and correct to the best of my knowledge and belief



*M. Ismail*  
DEPONENT



GOVERNMENT OF KHYBER PAKHTUNKHWA,  
SPORTS, TOURISM, ARCHAEOLOGY, MUSEUMS & YOUTH  
AFFAIRS DEPARTMENT.

DATED PESHAWAR 03<sup>RD</sup> DECEMBER 2020 / 3575-80

**NOTIFICATION:**

No. SO (Sports) 1-5/2020/- The Competent authority is pleased to order the following posting / transfer of officers of the Directorate General of Sports Khyber Pakhtunkhwa with immediate effect in the best public interest:-

S#	Name & Designated	From	To	Remarks
1.	Syed Saqlain Shah, Deputy Director (BPS-18)	Additional charge RSO Abbottabad		He will be relieved from the additional charge of the post of Regional Sports Officer, Abbottabad. Vice S.No. 1
2.	Mr. Mohammad Tanq, Deputy Director (BPS-18)	Deputy Director (Accounts) o/o DG Sports	Regional Sports Officer, Abbottabad	
3.	Mr. Mohammad Saleem Raza, Regional Sports Officer (BPS-18)	Regional Sports Officer, Peshawar	Director (Dev.)	Against the vacant post
4.	Mr. Mohammad Jamshid, District Sports Officer (BPS-17)	District Sports Officer, Nowshera	Regional Sports Officer, Peshawar (OPS)	He will be authorized to hold the additional charge of the post of DSO Nowshera in addition to his own duties.
5	Mr. Amir Zahid Shah, DSO (BPS-17)	RSO, Bannu (OPS)	DSO Karak	Vice S.No. 7
6	Mr. Anwar Kamal, DSO (BPS-17)	Awaiting posting	RSO Bannu.	Vice S.No. 5
7	Mr. Muhammad Ismael, DSO (BPS-17)	DSO Karak	DSO Lakki Marwat	Vice S.No. 11
8	Mr. Tariq Muhammad, DSO (BPS-17)	DSO Swabi	DSO Haripur	Vice S.No. 9
9	Mr. Ahmad Zaman, DSO (BPS-17)	DSO Haripur	DSO Swabi	Vice S.No. 8
10	Mr. Hazrat Ullah, DSO (BPS-17)	DSO Kohat	DSO Hangu	Against the existing vacant post
11	Mr. Adif Shah, Assistant	DSO Lakki Marwat (OPS)	Senior Coach, DSO Office, Bannu (OPS)	Against the existing vacant post
12	Mr. Muhammad Naveed SPET (BPS-16) on deputation from E&SE Department	Administrator DI Khan Sports Complex (OPS)	DSO Malakand (OPS)	Mr. Riaz Hussain, Superintendent will be relieved from the additional charge of the post of DSO Malakand.

-Sd-

Secretary to Sports, Tourism,  
Archaeology, Museums & Youth Affairs  
Department

Ends: No. & Date even:

Copy forwarded to:

1. Accountant General, Khyber Pakhtunkhwa.
2. Concerned District Accounts Officers.
3. Director General (Sports), Khyber Pakhtunkhwa.
4. PS to Minister Incharge, Sports & Youth Affairs Khyber Pakhtunkhwa.
5. PS to Secretary Sports and Tourism Department, Khyber Pakhtunkhwa.
6. Officers concerned.

*Handwritten signature*

*Large handwritten signature*

*Handwritten signature and date 10/12/2020*



Sports are essential for the development of a happy, healthy & vigorous society

## DIRECTORATE GENERAL OF SPORTS

KHYBER PAKHTUNKHWA  
PESHAWAR SPORTS COMPLEX, PESHAWAR CANTT.  
Ph. # 0212757, Fax # 0212755

Dated Peshawar, the 31<sup>st</sup> March 2021

### OFFICE ORDER

No. 17/QSC/Transfers/2017-Vol-I: The Competent Authority is pleased to order the following posting / transfer of officers, in the public interest, with immediate effect:-

No.	NAME & BPS	FROM	TO	REMARKS
1-	Mr. Mohammad Ismael, District Sports Officer (BPS-17)	District Sports Officer, Lakki Marwat	Administrator, Kohat Sports Complex.	Against the vacant post.
2-	Mr. Khurshid Alam Khan, Subject Specialist - GISS No.2 Peshawar City (BPS-17)		District Sports Officer, Lakki Marwat	Vice S.No. 1. The Sports Dept vide Notification No. SO(Sports)1-12/Deputation/ 2021/3014-20 dt 17-02-2021 placed his services on the strength of Directorate of Sports

DIRECTOR GENERAL

Copy forwarded for information to the:-

- 1- Secretary to Govt of Khyber Pakhtunkhwa, Sports Department vide Notification No. SO(Sports) 1-12/Deputation/ 2021/3014-20 dated 17-02-2021.
- 2- Deputy Commissioner, Lakki Marwat / Kohat.
- 3- District Accounts Officer, Lakki Marwat / Kohat
- 4- Regional Sports Officer, Kohat
- 5- Officers concerned.

DIRECTOR GENERAL



Scanned with CamScanner



5 7

**OFFICE OF THE  
DISTRICT SPORTS OFFICER  
DISTRICT HEADQUARTERS TAJAZAI SPORTS COMPLEX  
LAKKI MARWAT (KHYBER PAKHTUNKHWA)**

No. 173/DSO/LM

Date 01-04-2021

To

The Director General Sports  
Khyber Pakhtunkhwa Peshawar

Subject: **IMMATURE TRANSFER**

Respected Sir,

I have the honour to state that I have been transferred and posted as Administrator Kohat Sports Complex Kohat, vide your kind office Notification No. 17/QSC/Transfers/2017-Vol-1 dated 31-03-2021 at S. No. 1.

I took over charge as District Sports Officer in Lakki Marwat district on 09-12-2020 around four months ago. Without completing tenure at the incumbent post, I have been immaturely transferred to Kohat, which is against the prescribed rules and tenure policy.

Moreover, the sudden transfer order also shocked me as I was not expecting the same, being an official of a high esteemed Sports Department where rules and regulations are implemented with true spirit.

It is, therefore, requested that the above cited Notification regarding my transfer may please be withdrawn and I may be allowed to continue work/duties as District Sports Officer Lakki Marwat. I will be extremely obliged for this kindness.



Muhammad Ismail Khan  
District Sports Officer  
Lakki Marwat



BEFORE THE HONOURABLE PESHAWAR  
HIGH COURT BANNU BENCH



Writ Petition No. 300-B of 2021

Muhammad Ismail Khan son of Muhammad Saeed resident of Sando Kela  
Saiful Khel Post Office Kotka Muhammad Khan Tehsil & District Bannu.  
(District Sports Officer, BPS-17 Lakki Marwat)

(PETITIONER)

VS

1. Govt of Khyber Pakhtunkhwa through Secretary Sports, Culture,  
Tourism and Youth Affair, Peshawar.
2. Govt of Khyber Pakhtunkhwa through Secretary Education Khyber  
Pakhtunkhwa Peshawar .
3. Director General Sports Khyber Pakhtunkhwa Peshawar.
4. Khurshid Alam Subject Specialist Govt. Higher Secondary School No.2  
Peshawar City

(RESPONDENTS)

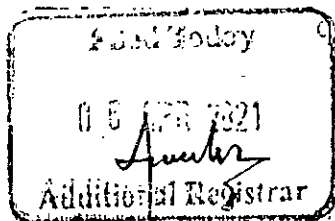
Writ Petition under Article 199 of the Constitution of Islamic  
Republic of Pakistan, 1973.

*Ha*  
*Amir*  
Respected Sir:-

The petitioner humbly submits as under:-

1. That the addresses of the parties mentioned in the caption of this  
writ petition are sufficient for the service of the parties.
2. That the petitioner is the permanent resident of district Bannu  
having good moral character and he is also educated and having

qualification of MSc Health and Physical Education. ( Copies of



**ATTESTED**  
EXAMINER  
Peshawar High Court  
Bannu Bench

CNIC and Educational record of the petitioner is annexed as annexure A)

3. That the petitioner was initially appointed as District Sports Officer through Provincial Public Service Commission Khyber Pakhtunkhwa and remained posted as a District Sports Officer in different districts of Khyber Pakhtunkhwa. (Copy of appointment order is annexed as annexure B)
4. That recently on 09-12-2020 the petitioner was posted as District Sports Officer in Lakki Marwat and after round about 4 months, notification No.17/QSC/Transfers/2017/Vol-1 dated 31-03-2021 was issued by the D.G Sports Khyber Pakhtunkhwa/respondent No.3 vide which the petitioner was transferred from District Lakki Marwat to District Kohat and to district Lakki Marwat Mr. Khurshid Alam Khan (Subject Specialist) was transferred from Govt. Higher Secondary School No.2 Peshawar on deputation basis. (Copy of notification dated 31-03-2021 is annexed as annexure C)
5. That as per the judgment of Peshawar High Court Peshawar passed in writ petition No. 2937 of 2009 decided on 18-11-2009 and as per policy/notification No. SO (E-1)/E &AD/0-88/2019 dated February 8, 2019, all those teachers belonging to teacher cadre shall be posted in the education institution to teach the students according to their qualification while those belonging to administrative cadre shall only hold the post relating to administration, therefore, the respondent No.4 who belongs to

*H. Ha*  
*Registrar*

Filed Today

08 APR 2021

Additional Registrar

ATTESTED

EXAMINER  
Peshawar High Court  
Banna Besh

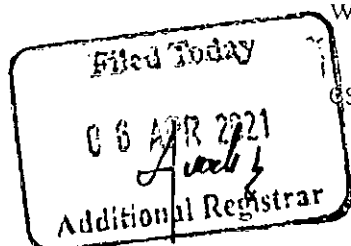
teaching cadre cannot be posted to the administrative post. (Copy of writ petition and notification dated 8 February 2019 are annexed as annexure D)

6. That the petitioner has also approached to the Director General Sport Khyber Pakhtunkhwa Peshawar by preferring an application for redressal of his grievance but of no avail. (Copy of the application is annexed as annexure E)
7. That as the petitioner has been substituted by a person who belongs to teaching cadre, therefore, the present petitioner has got no option but to invoke the constitutional jurisdiction of this honouable court on the following grounds inter alia:

### GROUND:-

1. That the present petitioner was initially appointed as District Sports Officer which is an administrative post and he served for some 15 years on the said post while the respondent No.4 belongs to a teaching cadre and he has to teach the students and has got nothing to do with the management and further he is M.A Pashto, therefore, as per the judgment rendered in writ petition No.2937 of 2009 as well as the policy vide No.SO(E-1)E &AD/0-88/2019 dated Peshawar the February 8, 2019. The petitioner cannot be substituted by the respondent No.4, thus, the order No.17/QSC/Transfers/2017-Vol-1 dated 31<sup>st</sup> March, 2021 vide which the petitioner has been substituted is against the law, well established principle of natural justice and is not sustainable in the

*Ha  
Fattah*

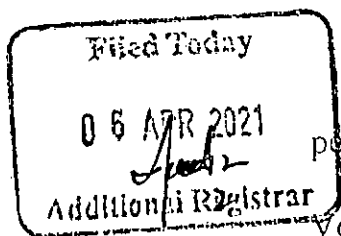


ATTESTED  
EXAMINER  
Peshawar High Court  
Bunay Branch

eyes of law, hence the same may kindly be declared as null and void and be set aside.

2. That the petitioner has got more than 15 years experience in management as a District Sports Officer while the respondent No.4 belongs to teaching cadre and has no experience in management/administration and his duties is to teach and impart the students in the institution, therefore, his posting in sports Department as a District Sports Officer on the basis of deputation is altogether illegal, against the law, court decision and policy referred above.
3. That as per Transfer and Posting Policy of the Provincial Govt, when an employee is posted against particular post then he shall ~~be~~ not be transferred from the said post unless he completes 2 years service on the said post but surprisingly, the petitioner has been transferred/Substituted after four months service on the post which is also against the law and well established principle of natural justice, therefore, on this score too his substitution/transfer is not sustainable and is against the Govt of Khyber Pakhtunkhwa Transfer and Posting Policy.
4. That the learned counsels for the petitioner may kindly be allowed to raise additional grounds at the time of arguments on this writ petition.

Ha  
H. H. H.



Therefore, it is humbly prayed that on acceptance of this writ petition the transfer/substitution order No.17/QSC/Transfers/2017-Vol-I dated 31<sup>st</sup> March, 2021 may kindly be declared as null and

**ATTESTED**  
EXAMINER  
Peshawar High Court  
Badli Bazar

void and be set aside and any other relief which this honorable court deems appropriate may also be granted to the petitioner.

Petitioner

Through Counsel



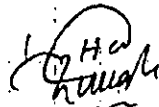
Hafeez Ullah Khan Advocate  
High Court Bannu Bench

**Interim Relief:**

In light of the above facts and circumstances, the operation of the impugned transfer order No.17/QSC/Transfers/2017-Vol-I dated 31st March, 2021 may kindly be suspended till final disposal of instant writ petition.

Petitioner

Through Counsel



Hafeez Ullah Khan Advocate  
High Court Bannu Bench

**CERTIFICATE**

It is certified that neither any such like petition has earlier been filed by the petitioner nor the same is pending in any other court.

Petitioner

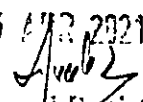
Through Counsel



Hafeez Ullah Khan Advocate  
High Court Bannu Bench

**Law Books:**

1. Constitution of Islamic Republic of Pakistan 1973.
2. Any other laws according to needs.

Filed Today  
 6 5 APR 2021  
  
 Additional Registrar

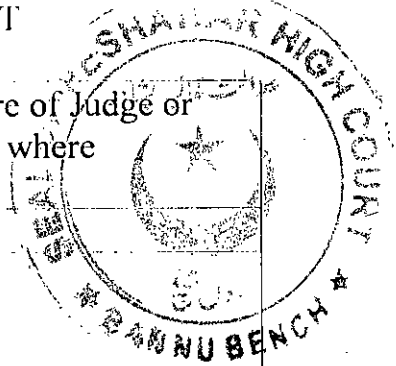
**ATTESTED**

EXAMINER  
Peshawar High Court  
Bannu Bench

E

13

FORM "A"  
FORM OF ORDER SHEET



Date of order or proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties or counsel where necessary.
2.	3.
13.4.2021	<p><b><u>W.P. No.300-B/2021.</u></b></p> <p><u>Present:</u></p> <p>Mr. Hafizullah Khan advocate for petitioner.</p> <p>*****</p> <p>Admittedly, due to demise of Chairman, Khyber Pakhtunkhwa Service Tribunal, it is dysfunctional. The petitioner is admittedly civil servant, but since the subject matter of the instant writ petition that could have been raised before the Service Tribunal could be now raised before this Court due to the vacuum created by the said demise. Issue <b>pre-admission notice</b> to respondents to submit para-wise comments so as to reach this Court within fortnight positively.</p> <p><b>Sd/Mr Justice Muhammad Nasir Mahfooz, J</b> <b>Sd/ Mr. Justice Sahibzada Asadullah, J</b></p> <p>CERTIFIED TO BE TRUE COPY</p> <p>Examiner 22/4/2021</p>

SCANNED  
14 APR 2021  
Khalid Khan

14/04/2021

F 124

**PESHAWAR HIGH COURT,**  
**BANNU BENCH.**

FORM 'A'  
FORM OF ORDER SHEET



Date of order or proceedings	Order or other proceedings with signature of Judge (s).
(1)	(2)
24.06.2021	<p><u>W.P No.300-B/2021.</u></p> <p>Present:</p> <p style="text-align: center;">Petitioner in person.</p> <p style="text-align: center;">Mr. Qudrat Ullah Khan Gandapur, Asstt: AG for official respondents.</p> <p style="text-align: center;">***</p> <p><b><u>SYED ARSHAD ALI, J.</u></b>--- The petitioner who is civil servant, through instant petition has approached this court, challenging his impugned transfer order. Since at the time of first hearing of this petition the worthy Khyber Pakhtunkhwa Service Tribunal was not functional, therefore, pre-admission notice was issued to the other side, however, the learned AAG present in court has informed that now the worthy Khyber Pakhtunkhwa Service Tribunal is functional and the chairman of the tribunal has been appointed, therefore, this petition be transferred to the worthy Khyber Pakhtunkhwa Service Tribunal for haring</p>

ATTESTED

High Court  
Bannu Bench



whereas copy of the petition be retained in the office. The petitioner is directed to appear before the worthy Khyber Pakhtunkhwa Service Tribunal on 07.07.2021.

**Announced.**  
24.06.2021.

Sd/Mr Justice Syed Arshad Ali, J  
Sd/ Mr. Justice Sahibzada Asadullah, J

CERTIFIED TO BE TRUE COPY

Examiner

Peshawar High Court Bannu Bench  
Authorized Under Article 87 of

The Qanun-e-Shahadat Ordinance 1984

*S. Arshad Ali* 6/04

SCANNED

24 JUN 2021

*M. Khalid Khan*  
Khalid Khan

*24/6/21*

10/1/10

No. 1184  
 Date of Presentation of Application 24-6-21  
 No of Pages 11  
 Copying Fee \_\_\_\_\_  
 Urgent Fee \_\_\_\_\_  
 Date of Receipt 24-6-21  
 Date of Delivery of Copy \_\_\_\_\_  
 Received By Dr. J. S. [Signature]

**GOVERNMENT OF KHYBER PAKHTUNKHWA**  
**ESTABLISHMENT DEPARTMENT.**

**NO. SO (E-I) E & AD /9-88/2019**  
**Dated Peshawar the February 8<sup>th</sup> 2019**

1. The secretary to Government of Khyber Pakhtunkhwa, Higher Education Department.
2. The secretary to Government of Khyber Pakhtunkhwa, E & SE Department.
3. The secretary to Government of Khyber Pakhtunkhwa Industries Department.

**SUBJECT:- REQUISITIONING OF SERVICES.**

Dear Sir,

I am directed to refer to the subject cited above and to say that the competent authority has observed that certain Teaching Cadre Officers are posted out of their cadre since long. Moreover, some teachers / professors are seeking requisitions from different department for posting against Managerial or Administrative posts, hindering deliverance of quality based education to the students. Consequently, competent authority as desired to invite your attention towards the following judgment of Peshawar High Court, Peshawar (In W. P. No. 2937/2009) (Copy enclosed)

"As the Provincial Government has taken a firm decisions that all those teachers belonging to Teacher Cadre shall be posted in the Education Institution to teach the students according to their qualifications while those belonging to Administrative Cadre shall only hold the posts relating to Administration. Therefore, the petitioners must deliver according to the policy of the government and because they are highly qualified teachers. It is not befitting to hold administrative posts, because they are getting benefits, but the students are suffering thus, they shall go their respective places, where they are required to do the job."

In view of the above, the competent authority has desired that the above mentioned judgment of the PHCP be implemented, in letter and spirit under intimation to this department for perusal of competent authority.

Your faithfully

Sd/-  
(Ishtiaq Ahmad)



**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR**

CM. No. \_\_\_\_\_ /2021

Muhammad Ismail                      versus                      Director General & Others

**APPLICATION FOR SUSPENSION OF NOTIFICATION  
DATED 31-03-2021 TILL THE DECISION OF THE  
CASE:**

**Respectfully Sheweth:**

1. That applicant filed the subject Appeal before this hon'ble Tribunal today.
2. That no reason in order of transfer is given but the same was made in the interest of R. No. 03.
3. That prima facie case exists, balance of convenience lies in favor of applicant and is hopeful of the success of the appeal.
4. That Teaching Cadre cannot be posted at Administrative position even in own department too.
5. That facts and grounds of the appeal be treated as integral part of this application for grant of Interim relief.

It is, therefore, requested that order dated 31-03-2021 be suspended till the decision of the case.

Through

*M. Ismail*  
Applicant

*Saadullah Khan Marwat*  
(Saadullah Khan Marwat)  
Advocate  
21-A Nasir Mension,  
Shoba Bazar, Peshawar.  
Ph: 0300-5872676

Dated: 30.06.2021

**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR**

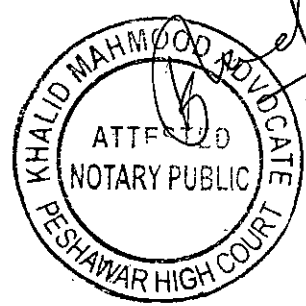
C.M. No. \_\_\_\_\_ /2021

Muhammad Ismail                      versus                      Director General & Others

**AFFIDAVIT**

I, Muhammad Ismail, Applicant, do hereby solemnly affirm and declare that contents of **Application** are true and correct to the best of my knowledge and belief.

*M. Ismail*  
DEPONENT



بعد الت چاپ سروس ٹریڈ مارک صورت پر سروس پلسٹا اور

مستجاب اسٹیشن

محمد اسماعیل خان بنام محمد سوری

دعویٰ اپیل

باعتبار اسٹیشن

⑤

⑤

مسترد مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی بمقتضیٰ ان مقام پلسٹا اور  
کیسٹ اسٹیشن اسٹیشن خان سرور سے ایڈووکیٹ ہانی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب  
موقوف کو مقررہ وکل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے دہنی نامہ و تقریر ثالثہ و فیصلہ بتلاف  
دینے جواب دہی اور اقبال دعویٰ اور لٹریٹری کرنے اجراء اور دوسری چیک در پیہ اور رضی دعویٰ اور درخواست  
برقیہ کی تقدیر اور اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا تاخیر یا کسی ایک طرف یا اپیل کی برآمدگی  
اور کسی بھی چیز پر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکورہ  
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقریر کا اختیار ہوگا  
اور اس سے مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساتھ پر واختہ مستطور  
قبول ہوگا و دوران مقدمہ میں جو خرچہ و ہرجانہ التوا مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب  
موقوف ہوں گے نیز بقایا و فریبہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دوسرہ  
پر ہو یا مد سے باہر ہو تو وکیل صاحب یا باند نہ ہوں گے کہ پیروی مذکور کریں  
لہذا رکالت نامہ دیکھ دیا کہ سند ہے۔

28-06-21

القصد القصد القصد

ارباب سینگ اسٹیشن  
ایڈووکیٹ

Mahesh  
محمد اسماعیل خان سرور سے  
ایڈووکیٹ

11 July 2021  
28/06/2021

محمد نواز  
ایڈووکیٹ



*Sports are essential for the development of a happy, healthy & vigorous society*

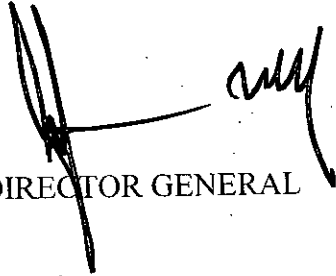
DIRECTORATE GENERAL SPORTS  
KHYBER PAKHTUNKHWA  
PESHAWAR SPORTS COMPLEX, PESHAWAR CANTT.  
Ph: # 9212767, Fax # 9212766

No. 1/Court Case/Muhammad Ismail /2021

Dated: 28-07-2021

**AUTHORITY LETTER**

Mr. Shakeel Ahmad, Assistant Director (Lit), is hereby authorized to attend the Khyber Pakhtunkhwa Service Tribunal Peshawar on behalf of Secretary Sports Department Khyber Pakhtunkhwa and Director General Sports Khyber Pakhtunkhwa regularly in the case titled Muhammad ismail Vs Govt. of Khyber Pakhtunkhwa & Others till the decision of the case.

  
DIRECTOR GENERAL

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

S.A 6650/2021

Mr. Ismail khan son of Muhammad Saeed  
Resident of Sando kela Saiful Kel post Office  
Kotka Muhammad Khan Tehsil & District Bannu.

.....

**Petitioner**

*VERSUS*

1. Govt of Khyber Pakhtunkhwa through Secretary Sports, Tourism, Archaeology, and Youth Affairs Department, Peshawar.
2. The Director General of Sports, Khyber Pakhtunkhwa, Peshawar.
3. Khurshid Alam Subject specialist Govt. Higher Secondary School No. 2 Peshawar City.

.....

**Respondents**

**INDEX**

<b>S.No</b>	<b>DOCUMENTS</b>	<b>ANNEXURE</b>	<b>PAGE</b>
1.	Joint Para-wise comments.	....	1 - 2
2.	Affidavit	....	3
3.	Upgraded to (BPS-17)	A	4
4.	KP Civil Servant Act, 1973	B	5-6
5.	Notification	C	7

**ASSISTANT DIRECTOR**



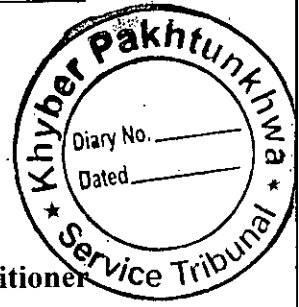
**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

S.A 6650/2021

Mr. Ismail Khan son of Muhammad Saeed  
Resident of Sando kela Saiful Kel post Office  
Kotka Muhammad Khan Tehsil & District Bannu.

.....

Petitioner



*VERSUS*

1. Govt of Khyber Pakhtunkhwa through Secretary Sports, Tourism, Archaeology, and Youth Affairs Department, Peshawar.
2. The Director General of Sports, Khyber Pakhtunkhwa, Peshawar.
3. Khurshid Alam Subject specialist Govt. Higher Secondary School No. 2 Peshawar City.

..... Respondents

JOINT PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 & 2

PRELIMINARY OBJECTIONS.

- (1) That the instant appeal is not maintainable in its present form.
- (2) That petitioner has no locus standi or cause of action to file instant appeal.

Respectfully Sheweth:-

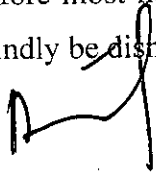
Facts: -

1. No comments.
2. No comments.
3. Correct to the extent that the Deputy District Sports Officer (BPS-16) were later on upgraded to (BPS-17) and re-designated as District Sports Officer (Annex-A).
4. Correct to the extent that the petitioner was transferred in the larger public interest. As per Section-10 of the KP Civil Servant Act, 1973 every Civil Servant is liable to serve anywhere within or outside the province, in any post under the Federal Government or Provincial Government or local authority or a Corporation or a body sit-up or established by any such Government (Annex-B).
5. In the larger public interest the Services of Mr. Khurshid Alam was placed at the disposal of the Directorate General of Sports for further posting vide Sports Department notification No.SO(Sports) 1-12/Deputation/2021/3014-20 dated 17-02-2021 (Annex-C).
6. The transfer of the petitioner was made under the rule in the large public interest.
7. The petitioner was transferred to Kohat in the large public interest having experience as various schemes are under construction in Kohat.

GROUNDS:

1. In correct. The Petitioner was appointed as Dy District Sports Officer in BPS-16. However, The post of Dy District Sports officer BPS-16 have been upgraded to BPS-17 and re-designated as District sports officer. The respondent No. 4 is not only MA Pashto, he bearing high qualification as MA(Political Science & Journalisim) LLB and M.Phil(literatine). Moreover he also remained as Assistant Director(Admin) in worker welfare Board in 2003 for one year, remained as Assistant Director in private Housing scheme in Peshawar Development Authority and also remained as superintended water Supply in Peshawar Development Authority His CV is attached. Annex- D
2. In correct. As explained para-1 above
3. In correct. As explained para-4 above of facts.
4. No comments.

It is, therefore most humbly prayed that keeping in view the above submissions, the instant appeal may kindly be dismissed with cost.



SECRETARY  
TO GOVT OF KHYBER PAKHTUNKHWA  
SPORTS DEPARTMENT, PESHAWAR  
RESPONDENT NO. 1



DIRECTOR GENERAL  
SPORTS  
KHYBER PAKHTUNKHWA/ RESPONDENT NO. 3

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

S.A 6650/2021

Mr. Ismail khan son of Muhammad Saeed  
Resident of Sando kela Saiful Kel post Office  
Kotka Muhammad Khan Tehsil & District Bannu.

..... **Petitioner**

*VERSUS*

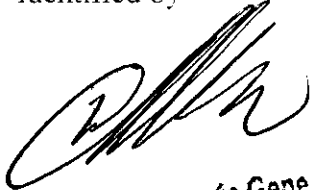
1. Govt of Khyber Pakhtunkhwa through Secretary Sports, Tourism, Archaeology, and Youth Affairs Department, Peshawar.
2. The Director General of Sports, Khyber Pakhtunkhwa, Peshawar.
3. Khurshid Alam Subject specialist Govt. Higher Secondary School No. 2 Peshawar City.

..... **Respondents**

**AFFIDAVIT**

I, Shakeel Ahmad, Assistant Director, Directorate of Sports & Youth Affairs Khyber Pakhtunkhwa, do hereby solemnly affirm and declare on oath that the contents of Para-wise comments on behalf of Respondents are true and correct to the best of my knowledge and belief that nothing has been concealed from this Hon'ble Court.

Identified by

  
**Additional Advocate General**  
**Khyber Pakhtunkhwa**  
**Service Tribunal Peshawar**

  
DEPENDENT  
CNIC No. 15101-7933922-1

**Asstt: Director**  
**Litigation Sports**  
**Khyber Pakhtunkhwa**  
**Peshawar.**

**ATTESTED**





GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT  
(REGULATION WING)

No.SO(FR)FD/7-34/2014/Sports Deptt./17434  
Dated Peshawar, the 08-03-2018

To

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Sports & Youth Affairs Department.

Subject: UPGRADATION OF THE POST OF DEPUTY DISTRICT  
SPORTS OFFICER BPS-16 TO DISTRICT SPORTS  
OFFICER BPS-17

Dear Sir,

I am directed to refer to your department letter No.SO(Sports)1-24/2018 dated 07-03-2018 on the subject noted above and to state that the competent authority has been pleased to upgrade the post of Deputy District Sports Officer/ District Sports Officer (BPS-16) to the post of District Sports Officer (BPS-17) in the Directorate General of Sports Khyber Pakhtunkhwa on permanent basis with immediate effect.

2. Audit copies may be prepared and sent to this department for authentication.

Yours faithfully,

Section Officer (FR)

Endt No. & Date even

Copy of the above is forwarded to Budget Officer-III, Finance Department for information and necessary action.

Section Officer (FR)

**THE NWFP CIVIL SERVANTS ACT, 1973.**  
*(N.W.F.P. Act No. XVIII of 1973)*

<sup>1</sup>An Act to regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of the North West Frontier Province.

**Preamble- WHEREAS** it is expedient to regulate by law, the appointment of persons to, and the terms and conditions of service of persons in, the service of the North West Frontier Province, and to provide for matters connected therewith or ancillary thereto;

It is hereby enacted as follows:-

**1. Short title, application and commencement:-** (1) This Act may be called the North West Frontier Province Civil Servants Act, 1973.

(2) This section and section 25, shall apply to persons employed on contract, or on work charged basis, or who are paid from contingencies, and the remaining provisions of this Act including this section, shall apply to all civil servants wherever they may be.

3) It shall come into force at once.

CHAPTER-I

PRELIMINARY

**2. Definitions:-** (1) In this Act, unless the context otherwise requires the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

- (a) "ad hoc appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment, pending recruitment in accordance with such method,
- (b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include-
  - (i) a person who is on deputation to the Province from the Federation or any other Province or other authority;
  - (ii) a person who is employed on contract, or on work charged basis, or who is paid from contingencies; or
  - (iii) a person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VIII of 1923);
- (c) "Government" means the Government of the North-West Frontier Province.

<sup>1</sup>Published in the NWFP Government Gazette Extraordinary dated 12-11-1973 at pages 287 N-287V

(3) Seniority on initial appointment to a service, <sup>7</sup>[cadre] or post shall be determined as may be prescribed.

<sup>8</sup>(4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post;

Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se-seniority as in the lower post.

<sup>9</sup>(5) The seniority lists prepared under sub-section(1), shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January.

**9. Promotion:-**(1) A civil servant possessing such minimum qualifications as may be prescribed, shall be eligible for promotion to a <sup>10</sup>[higher] post for the time being reserved under the rule for departmental promotion in <sup>11</sup>[ ] the service or cadre to which he belongs.

(2) A post referred to in sub-section (1) may either be a selection post or a non selection post to which promotion shall be made as may be prescribed-

- (a) in the case of a selection post, on the basis of selection on merit; and
- (b) in the case of non-selection post, on the basis of seniority-cum-fitness.

**10. Posting and Transfer:-** Every civil servant shall be liable to serve anywhere within or outside the province, in any post under the Federal Government, or any Provincial Government or Local authority, or a corporation or body set up or established by any such Government:

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:

Provided further that, where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

**11. Termination of service:-** (1) The service of a civil servant may be terminated without notice-

- (i) During the initial or extended period of his probation:

Provided that, where such civil servant is appointed by promotion on probation or, as the case may be, is transferred from one [service], cadre or post to another [service], cadre or post, his service shall not be so terminated so long as he

<sup>7</sup> The word "grade" substituted by NWFP Ordinance No. IV of 1985.

<sup>8</sup> Sub section (4) of Sec-8 substituted by NWFP Ordinance No. IV of 1985.

<sup>9</sup> Sub section (5) of Sec-8 added by NWFP Act No. I of 1989

<sup>10</sup> The word "higher" inserted by NWFP Ordinance No. IV of 1985.

<sup>11</sup> The words "the higher grade of" omitted by NWFP Ordinance No. IV of 1985.



88

GOVERNMENT OF KHYBER PAKHTUNKHWA  
SPORTS, TOURISM, CULTURE, ARCHAEOLOGY, MUSEUMS  
& YOUTH AFFAIRS DEPARTMENT

Dated Peshawar the 17<sup>th</sup> February, 2021

**NOTIFICATION**

p-90

No. SO (Sports) 1-12/Deputation/2021/3014-20 In pursuance of Elementary & Secondary Education department letter No. SO(SM) E&SED/5-1/ 2020/Deputation of Khurshid Alam dated 15-02-2021 the Competent Authority is pleased to place the services of **Mr. Khurshid Alam Khan**, Subject Specialist (Pashto), GHSS No. 2, Peshawar City on the strength of Directorate General of Sports, Khyber Pakhtunkhwa as District Sports Officer (BPS-17) on deputation basis for initial period of three (03) years.

Sd/

Secretary to Govt: of Khyber Pakhtunkhwa  
Sports, Tourism, Culture, Archaeology, Museums  
& Youth Affairs Department

No. 331 / 17/Posting & Transfer of Officers  
19/2/21  
Directorate General of Sports  
KPK Peshawar Cantt

Ends: No. & date even

Dated Peshawar, the 15<sup>th</sup> February, 2021

Copy to the:

1. Director General Sports, Khyber Pakhtunkhwa (with ref. to his letter No. 17/Posting & Transfer/2020 dated 11-01-2021).
2. Section Officer Schools (Male), E&SE Department, Peshawar (with ref. to his letter quoted above).
3. PS to Secretary, Sports and Youth Affairs Department, Peshawar.
4. PA to Additional Secretary-I, Sports Department, Peshawar.
5. PA to Additional Secretary-II, Sports Department, Peshawar.
6. PA to Deputy Secretary-II, Sports Department, Peshawar.
7. Officer concerned.

*[Handwritten signature]*

*AD posting on PA  
for further posting.*

SECTION OFFICER (SPORTS)

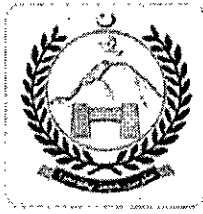
*17/02/2021*

*23/2*

*Asst.*

*23/2*

*Asst.*



**KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR**

No. 1571 /ST  
Dated: 09/08 /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 Director General Sports,  
Government of Khyber Pakhtunkhwa,  
Sports Complex Peshawar. *Contt*

Subject: JUDGMENT IN APPEAL NO. 6650/2021, MR. MUHAMMAD ISMAIL.

I am directed to forward herewith a certified copy of Judgement dated  
30.07.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR



GOVERNMENT OF NWFP  
SPORTS, CULTURE, TOURISM, ARCHAEOLOGY & MUSEUMS DEPARTMENT

D.O. Peshawar, the 16th June 2006

**NOTIFICATION**


NO. SOII(Sports)1-5/2003-04. Consequently upon their appointment in BPS-16 the competent authority, is pleased to post the following Deputy District Sports Officers of Directorate of Sports NWFP Peshawar in the districts mentioned against each with immediate effect.

S.No.	Name	District of Posting
1.	Mr. Muhammad Ismail	Dy. District Sports Officer - Bannagram
2.	Mr. Muhammad Sulaiman	Dy. District Sports Officer - Dir Lower
3.	Mr. Muhammad Jamshed	Dy. District Sports Officer - Manshera
4.	Mr. Raziullah Khan	Dy. District Sports Officer - Haripur

SECRETARY TO GOVERNMENT OF NWFP  
SPORTS CULTURE TOURISM ARCHAEOLOGY &  
MUSEUMS DEPARTMENT.

Indst: No. SOII(SPORTS)1-5/2003-04 Dated Peshawar the 16-6-2006

- Copy forwarded for information and necessary action to:-
1. The Director General Sports NWFP Peshawar with reference to his letter No. 177/SC/06 dated 15-6-2006.
  2. The District Coordination Officers, Bannagram Dir Lower Manshera/Haripur.
  3. The District Accounts Officers Bannagram Dir Lower Manshera/Haripur
  4. The Deputy District Sports Officers, Bannagram Dir Lower Manshera/Haripur
  5. The Manager, Govt. Printing Press NWFP Peshawar
  6. Officers concerned. 1/23-3-2006

  
SECTION OFFICER-II

GOVERNMENT OF NWFP,  
SPORTS, CULTURE, YOUTH AFFAIRS, TOURISM,  
ARCHAEOLOGY & MUSEUMS DEPARTMENT

Dated: 15/07/2005

NOTIFICATION

SC/SO/CS/1-6/2005. The competent authority in consultation with the NWFP Public Service Commission, Peshawar and in pursuance of the provisions contained in sub-section (2) of section 19 of the North-West Frontier Province Civil Servants Act, 1973 (NWFP Act No XVIII of 1973), as amended by the North-West Frontier Province, Civil Servants (Amendment) Act, 2005 (NWFP Act No IX of 2005) is pleased to order the appointment of the following candidates as Deputy District Sports Officer (DPS-16) (Rs.1375-349-14575) in the Directorate of Sports NWFP subject to the terms & conditions mentioned hereunder with immediate effect:-

Muhammad Ismat Khan, S/O Muhammad Saeed Khan, Village Saifal Kheh, P.O.AzimKilla, Tehsil & District Bannu.  <u>Postal Address:</u>  Shoukat Wazir Iron Store, Nizam Bazar Bannu.
Muhammad Suleman S/O M.Abdur Razzaq, Village Morani Payeen P.O.Rehanpur, Tehsil Balambat, District Dir (Lower).  <u>Postal Address:</u> Madina colony near Railway Station Taklu-Bhai, District Mardan.
Muhammad Jamshed S/O Ghulam Muhammad, New Islamia Colony Baloch Street, near Haseeb Ideal School and Asim Masjid, D.I.Khan.
Mr.Raziullah Khan S/O Nasrullah Khan, Chah Juma Wala Sheikh Yousif Road, P/O Ratta Kulach, D.I.Khan.

- (a) They shall, for all intents and purposes, be Civil Servants except for purpose of pension or gratuity. In lieu of pension and gratuity, they shall be entitled to receive such amount contributed by him towards Contributory Provident Fund (C.P.F) along with the contributions made by Government to their account in the said fund, in the prescribed manner.
- (b) They shall be governed by the NWFP Civil Servants Act 1973, all the laws applicable to the Civil Servants and Rules made thereunder.

- (c) They shall, initially, be on probation for a period of two years extendable upto 3 years.
- (d) Their services will be liable to termination at any time without assigning any reason thereof before the expiry of the period of probation / extended period of probation, if their work during this period is not found satisfactory. In such an event, they will be given a month's notice of termination from service or one month's pay in lieu thereof. In case they wish to resign at any time, a month's notice shall be necessary or in lieu thereof a month's pay shall be forfeited.
- (e) They will not be entitled to any TA/DA on their first appointment as Deputy District Sports Officer.

SECRETARY TO GOVERNMENT OF NWFP,  
SPORTS, CULTURE, TOURISM, YOUTH AFFAIRS,  
ARCHAEOLOGY & MUSEUMS DEPARTMENT.

Endst: No.SOIW(S)/1-6/2005.

Dated Peshawar the 13<sup>th</sup> June 2006

Copy forwarded to :-

- 1) Accountant General NWFP, Peshawar.
- 2) Director General Sports NWFP, Peshawar for information.
- 3) Deputy Secretary-II, NWFP Public Service Commission, Scout Building Phase-IV, near Police Station Hayatabad Peshawar for information with reference to his letters No.PSC-SRE/23235, dated 27.03.2006 and No.NWFP/PSC/SRE/25112, dated 08.4.2006.
- 4) Manager, Government Printing Press Peshawar.
- 5) Officers Concerned. *Mr. Mohammad Sulman*

(SAYYID AHMAD MOHAMMAD TAQI)  
SECTION OFFICER-II

UNIVERSITY GRANTS COMMISSION ISLAMABAD



**PAKISTAN UNIVERSITY SPORTS BOARD**  
Inter University Volleyball Championship

1998-99

**Certificate**

*C. J. Khan*  
No/ *11.500.1111*  
University *Amul University, P. S. D.*  
Place *Tarapur*

*M. Q. Khan*  
Vice Chancellor

*M. J. Khan*  
Director Sports

Secretary, PUSE

**This certificate:**

- is issued without any alteration or overwriting
- is invalid without authorised signature and embossed seal of PUSE
- may be referred to the UGC for verification, if required

*Per Appellant*

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT,**  
**MINGORA BENCH (DAR-UL-QAZA), SWAT**  
(Judicial Department)

W.P. No. 488-M of 2013.

**JUDGMENT**

Date of hearing: 12.02.2014.

**Petitioner** *(Mst. Dilshad Begum) by Mr. Aziz-ur-Rahman,*  
*Advocate.*

**Respondents:** *by Muhammad Javed, AAG.*

**MUHAMMAD DAUD KHAN, J.-** Petitioner Dilshad Begum, who is the District Education Officer (Female) in BPS-18, Management Cadre is aggrieved by the order of Secretary Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar (respondent No. 2) through notification No. SO(S/F)E&SE/4-16/2013/Perveen and Dilshad Begum dated 24.10.2013, vide which the petitioner has been transferred from Executive/Management Cadre to Teaching Cadre, thus seeks issuance of appropriate writ by declaring the above mentioned order to be illegal, without lawful authority and jurisdiction, malafide, hence liable to outright cancellation.

**2.** The brief facts of the case are that initially the petitioner was appointed as

District Officer/Deputy Director (Female) BPS-18 in the Management Cadre, on the recommendation of the Khyber Pakhtunkhwa, Public Service Commission vide notification No. SO/(S/F)E&SED/3-2/2011/DO(F) dated 30.05.2011. At present she was performing her duties as District Education Officer (Female) to the entire satisfaction of their superior ups. The Respondent No. 2, the Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar vide the impugned Notification No. SO(S/F)E&SE/4-16/2013/Parveen & Dilshad Begum dated 24.10.2013 transferred the petitioner and she was placed at the disposal of the Directorate Elementary & Secondary Education, Peshawar. Feeling aggrieved by the impugned notification, the petitioner has preferred the instant writ petition.

3. Mr. Aziz-ur-Rehman Advocate, learned counsel for petitioner argued that the petitioner has been subjected to sever kind of discrimination as she was performing her duties to the entire satisfaction of their superior ups but when she did not obey the unlawful and unconstitutional orders of the political elite, she was not only transferred vide the impugned notification but it is also irony of the matter that she

was posted at the disposal of Directorate of Elementary & Secondary Education, Peshawar in other words she was made O.S.D. He further argued that Superior Court of this country has laid-down principles that in case of stigma allegation or if a person became O.S.D, he or she must be given a fair opportunity of hearing to defend herself and mere provision of Article 212 regarding terms and conditions of civil servant cannot become a stumbling block, when the fundamental rights of an individual is infringed by the political elites for fulfillment of their unlawful acts, then the Court can assume jurisdiction and protect the fundamental rights of every individual in the society, but in the case in hand this Golden principle has been violated. He further submitted that the petitioner was duly appointed on the recommendation of Khyber Pakhtunkhwa, Public Service Commission in Management Cadre after fulfilling all the codal formalities as required under the law, while the transferee, who has been posted at her place is belonged to Teaching cadre, so, the precedents and judgments of this Hon'ble Court regarding bifurcation of Management and Teaching Cadres have also been totally ignored by the respondents. He lastly submitted that the impugned

notification may be set aside and the petitioner be allowed to perform her duties as before. Learned counsel for petitioner placed reliance on PLD 1995, Supreme Court 530, 2005 SCMR 589, 1976 SCMR 1786 & 2013 SCMR 1108.

4. Learned AAG appearing on behalf of the respondents vehemently defended the impugned order of respondent No. 2 by submitting that admittedly, the petitioner is a civil servant and the matter of transfer relates to her terms and conditions of service, for which the competent forum is the Khyber Pakhtunkhwa, Service Tribunal constituted under Service Tribunals Act, 1973, as the jurisdiction of all other Courts including the High Court was specifically ousted because of the provisions contained in Article 212 of the Constitution. He further argued that through subsequent amendment vide Notification dated 07.04.2012, in Sub Rule (2) of Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, the Management Cadre as well as Teaching cadre are inter-transferrable, so, besides, the above, on this score alone, the instant petition is not maintainable in the eye of law and is liable to be dismissed. Learned AAG



placed reliance on 2007 SCMR 54 & PLD 2008,

Peshawar, Page No. 868.

5. Lengthy arguments of learned counsel for the parties were heard and record of the case was thoroughly perused with their valuable assistance.

6. Vide notification dated 04.05.2009, separate Rules for Management Cadre have been formulated, wherein the following method of recruitments, qualification and other condition were laid down:-

**QUALIFICATION:** (1) Ph.D in Education and Seven years teaching/administrative experience in Govt: recognized educational institutions/Office; or (ii) M.Phil in Education and Nine years teaching/administrative experience in Govt: recognized educational institutions/office; or (iii) M.A/M.Sc in 2<sup>nd</sup> Div with M.Ed/M.A. (Education)/M.A (Education Planning & Management) or equivalent qualification with at least twelve years teaching/administrative experience in Govt: recognized educational institutions/office.  
Age Limit for appointment against the said post was prescribed as 35 to 50 years.

Under the Rules applicable to the posts of Schools Management Cadre in the Elementary and Secondary Education Department, the method for recruitment was provided as under:-

*By initial recruitments in the following manner:*

- (a) *Forty percent by initial recruitment from amongst open market;*  
*and*
- (b) *Sixty percent by initial recruitment from amongst the Teaching*

*Cadre having the qualification as mentioned in column No. 3.*

7. The purpose beyond formation of Management Cadre was to streamline the affairs in the offices of the then Executive District Officers now District Officers, and Directorate of the Elementary & Secondary School. Before bifurcation of two cadres, persons from teaching were used to be appointed as EDOs, who were regularly transferred from their posts back to the schools due to political influence. After the introduction of Management cadre, the government banned transfer of EDOs back to the school, as to remove the fear of transfer amongst them.

8. After the above narrated process, the Provincial Government sent the requisition to the Public Service Commission for appointment of twenty one (21) posts of District Officers/Deputy Directors (Female) (BPS-18), from the persons possessing the qualification mentioned above. After competitive test and interview, the successful, qualified persons were recommended by the Khyber Pakhtunkhwa, Public Service Commission. Consequently, the Provincial Government issued Notification No. SO/(S/F)E&SED/3-2/2011/DO(F) dated 30.05.2011, regarding appointment of the successful candidates

including the petitioner under the Policy & Rules of 2009.

9. As stated above, that the petitioner was duly appointed on the recommendation of Khyber Pakhtunkhwa, Public Service Commission in Management Cadre, whereas, the transferee, who has been posted at her place was admittedly belonged to Teaching Cadre, so, the precedents and judgments regarding bifurcation of Management and Teaching Cadres have been totally violated by the respondents. As far as, the argument of learned A.A.G that the petitioner is admittedly a civil servant and the matter of transfer relates to terms and conditions of her service, so, the jurisdiction of all other Courts including the High Court was specifically ousted because of the provisions contained in Article 212 of the Constitution, is concerned, we are fully agreed with the learned A.A.G to the extent that the petitioner is a civil servant and the matter of transfer relates to her terms and conditions of service but this Court has to see the facts and circumstances of each and every case and cannot become a mere spectator or bench-sitter and refuse the relief claimed against an illegal and void order on the question of want of jurisdiction, as the case in hand, the petitioner was

politically victimized by the ruling elite of the province, which is quite apparent from the photocopy of letter produced by the learned counsel for petitioner wherein transfer of petitioner was strongly recommended by Mehmood Khan, Minister for Sports, Culture, Tourism and Museum Departments K.P.K and Muhibullah Khan the local MPA to the higher authority because the petitioner was not ready to obey their unlawful and unconstitutional orders. The transfer of civil servants by the illegal recommendation and interference was declared void and unlawful by the superior Courts repeatedly. The Supreme Court vide its judgment in Civil Petition No. 747-P/2004 titled Roshan Khan Vs. Director Sports, on reliance on **PLD 1995 SC 530** has held as under.

*"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."*

This illegal action has also been condemned by the august Supreme Court of Pakistan in its judgment Syed Sikandar Ali Shah Vs. Auditor General of Pakistan and others **(2002 SCMR 1124)**

in which capricious and arbitrary directions of political bosses without raising the slightest protest by Competent Authority have been prohibited as the same depicts a cowardly and condemnable trend.

We fortify our view with the judgment of the apex Court reported in **1995 PLD 530** (supra). The transfer of civil servant under the orders or directions of a Minister of other department is certainly void, unlawful and violative of rules. The relevant dictum of the judgment 1995 PLD SC 530 is reproduced as under.

*"The fact that the transfers were made in violation of policy directive of the Government, which has the status of a Rule, and provisions of Rule 21(2) ibid were not followed strictly, opened the door for the Government servant concerned to bring in outside influence to obtain the desired transfers."*

The other defence taken by the learned A.A.G. is that the policy and Rules of 2009 have been changed by the Provincial Government in the year 2012 vide amended notification dated 07.4.2012, by virtue of that the management and teaching cadres are transferable inter se. He referred to the relevant portion of the amended Rules of 2012, which read as under:-

"We have noted with great concern that this amendment was necessitated and introduced, when this Court decided W.P 3519, titled "Abdul Malik VS Govt of K.P.K", whereby the transfer order of abovementioned Abdul Malik from management Cadre to the Teaching Cadre was set aside. It is an admitted fact that the petitioners have been appointed against their respective posts through Public Service Commission and mere endorsement of a foot-note would not change the terms and conditions of the service of petitioners. The afore-said note would never occupy the place of a statute and would not prevail upon or render redundant the parent statute. According to the well established principle of Interpretation of Statute and in particular, any proviso attached to the main section would not render redundant or ineffective the substantial provision of the main section. Reliance may be placed on case titled, "Enmay Zed Publications (Pvt) Vs Sindh Labour Appellate Tribunal" (2001 SCMR 565)."

In the instant case, the petitioner has been appointed through Public Service Commission after qualifying the competitive test and interview. The selection is purely on merit basis which has never

been denied by the respondents. It is not also controverted by the respondents that they have been appointed under the Rules 2009. In these eventualities the amended Rules would not operate retrospectively. Reliance in this regard can be placed on 2012 SCMR 965 titled WAPDA Lahore Vs. Haji Abdul Aziz. The relevant portion is reproduced as under.

“Rules operated prospectively and if a right was created in favour of an employee under the old rule, it could not be taken away on the ground that the amended rule had allowed others to compete.”

Moreover, the amended rules have also been nullified by the judgment of this Court in W.P. No. 3663-P/2012 decided on 08.5.2013. Operative part of the judgment is reproduced as under.

“ In wake of the above, the amendment notification dated 07.4.2012, being in contravention of the main policy/statute, is declared as illegal, arbitrary and against law, hence set aside. Likewise, the impugned orders of the respondents qua transfer of the petitioners from the Executive Cadre to the Teaching Cadre, being not permissible and the same being whimsical, arbitrary and punitive in nature and

therefore, in violation of fundamental rights enshrined in Constitution of 1973 and in contravention of Rules and policy, hence, are not sustainable”

12. Thus, keeping the above discussion, the instant petition is allowed and impugned notification dated 24.10.2013, being in contravention of the main policy, is declared as illegal, malafide and arbitrary, hence set aside.

The query of learned AAG that the policy and rule of 2009 has been reviewed by the Provincial Government in the year 2012, by virtue of that, the Management and Teaching Cadres are inter-transferrable is without force, as this aspect of the case was thoroughly explained by this Court in Writ Petition No. 3663-P of 2012 Titled “ Sultan Mahmood VS Government of Khyber Pakhtunkhwa & others”, which is self-explanatory and needs no reiteration.

In wake of the above discussion, the instant petition is allowed and the impugned Notification dated 24.10.2013 of respondent No. 2 is hereby set aside.

Announced.  
Dt: 12.02.2014.

J U D G E



~~17201 93000000~~

~~1101950~~

~~Madh Bajra Khet - Tharai.~~

~~Bar Khet Dist Malakand~~

youth development  
promotion.

growth & promotion  
of sports