

10.06.2021

Counsel for the petitioner present.

Learned counsel, on a query of this Tribunal as to the Contempt of Court Jurisdiction of the Tribunal under law, stated at the bar that the petitioner has filed Contempt of Court Petition but it may be converted into Execution Petition. Request is accorded and instant COC Petition is converted into Execution Petition. Notice be issued to the respondents. To come up for implementation report on 29.07.2021 before S.B.


Chairman

29.07.2021

Counsel for the petitioner and Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.




Learned counsel for the petitioner states that the respondents have issued another transfer order of the petitioner/appellant dated 16.03.2021 which has been impugned in Service Appeal No. 7067/2021 and requests for withdrawal of instant Execution Petition. Request is accorded. The execution petition at hands is filed and consigned to the record room.


Chairman

FORM OF ORDER SHEET

Court of _____

Application No. 88 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	24/03/2021	<p style="text-align: center;">The C.O.C application of Mr. Muhammad Zada submitted today by Mr. Noor Muhammad Khattak Advocate, may be entered in the relevant Register and put up to the Court for proper order please.</p> <div style="text-align: right; margin-right: 50px;">  REGISTRAR </div> <p style="text-align: center;">This C.O.C application be put up before S. -Bench on <u>16/04/21</u>.</p> <div style="text-align: right; margin-right: 50px;">  MEMBER-J </div>
16.04.2021		<p style="text-align: center;">Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 10.06.2021 for the same as before.</p> <div style="text-align: right; margin-right: 50px;">  Reader </div>

/

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

COC NO. _____/2021

IN

APPEAL NO.11009/2020

MUHAMMAD ZADA

VS

EDUCATION DEPTT

INDEX

S.NO	DOCUMENTS	ANNEXURES	PAGES
1	Memo of COC	1 - 2
2	Affidavit	3
3	Stay Application	4
4	Application, Judgment & Transfer/posting order dated 16.03.2021.	A, B & C	5 - 12
5	Vakalat Nama	13

APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

COC NO. 88 /2021

IN

APPEAL NO.11009/2020



Mr. Muhammad Zada, Presently Posted as ADEO (Primary) O/O DEO, Dir Upper, and under transfer/posted services placed at the disposal of DEO (M) Dir Upper.

.....**Petitioner**

VERSUS

- 1 Mr. Nadeem Afzal Chaudry, Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 2 Mr. Hafiz Muhammad Ibrahim, Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.

.....**Respondents/Contemnors**

APPLICATION UNDER ARTICLE- 204 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF
PAKISTAN, 1973 READ WITH SECTION 3 & 4 OF THE
CONTEMPT OF COURT ORDINANCE, 2004 FOR
INITIATING CONTEMPT OF COURT PROCEEDINGS
AGAINST THE RESPONDENTS/CONTEMNORS

RESPECTFULLY SHEWETH:

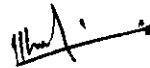
- 1- That the appellant filed the Appeal No.11009/2020 in this August Tribunal against the transfer/posting vide order dated 11.08.2020 & 16.09.2020 which was allowed vide dated 15.01.2021 setting aside the impugned transfer order, vis a vis operating para is reproduced as under:-

"In view of the above, the instant service appeals are accepted and the impugned notification in respect of transfer posting of the appellants, stand set aside".

- 2- That the appellant moved an application along with attested copy of judgment to the respondents/contemnors to sustain the appellant at the current post and may not be transferred but the respondents/contemnors time and again disobeyed the judgment by issuing another order of transfer/posting and placing services of the petitioner at the disposal of DEO (M), Dir upper vide dated 16.03.2021 despite that respondents/contemnors violating judgment of this August Tribunal. Copy of application and Judgment and transfer/posting order dated 16.03.2021 are attached as annexure**A, B & C.**

- 3- That it is pertinent to mention here that despite abovementioned judgment of this August Tribunal and then issuing transfer/posting through political indulgence by the respondents/contemnors falls in the contempt of Court.
- 4- That the acts and actions of the Respondents/Contemnors squarely fall within the ambit of the Contempt of the Court and as such they are liable to be proceeded for the Contempt and for the punishment under the law.

It is therefore, humbly prayed that on acceptance of this application, the Contempt of Court proceedings may graciously be initiated against the Respondents/Contemnors and they may be punished accordingly.



APPLICANT/ PETITIONER

MUHAMMAD ZADA

THROUGH:



NOOR MOHAMMAD KHATTAK

&



**AFRASIAB KHAN WAZIR
ADVOCATES**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

COC NO. _____/2021
IN
APPEAL NO.11009/2020

MUHAMMAD ZADA

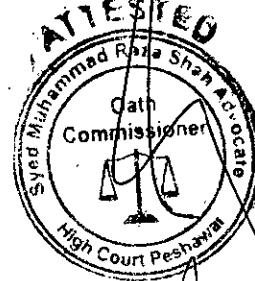
VS

EDUCATION DEPTT:

AFFIDAVIT

I Noor Mohammad Khattak, Advocate, on the instructions and on behalf of the petitioner do hereby solemnly affirm that the contents of this **Contempt of Court Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

NOOR MOHAMMAD KHATTAK
ADVOCATE



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

C.M NO. _____/2021

IN

COC No. _____/2021

MUHAMMAD ZADA

VS

EDUCATION DEPTT:

APPLICATION FOR SUSPENSION OF OPERATION OF
THE IMPUGNED TRANSFER/POSTING ORDER DATED
16.03.2021 TILL THE DISPOSAL OF THE ABOVE
MENTIONED CONTEMPT OF COURT PROCEEDINGS.

R/SHEWETH:

- 1- That the petitioner filed above-mentioned COC along with this application before this august Service Tribunal in which no date is fixed so far.
- 2- That the petitioner filed the above mentioned COC against the transfer/posting orders dated 16.03.2021 whereby again petitioner has been transferred/posted by the respondents placing the petitioner at the disposal of the DEO (M), Dir Upper.
- 3- That the petitioner had filed the service appeal No.11009/2020 which was allowed and set aside the transfer/posting order but till date the respondents are not obeying the same.
- 4- That all the three ingredients necessary for the stay is in favor of the appellent.
- 5- That the impugned transfer/posting orders dated 16.03.2021 have issued by the respondents in utter disregard of law and judgment of this August Tribunal.

It is therefore, most humbly prayed that on acceptance of this application the operation of the impugned transfer/posting orders dated 16.03.2021 may very kindly be suspended till the disposal of the above mentioned Contempt of court Proceedings.

APPLICANT

MUHAMMAD ZADA

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATES

Annexure A (5)

Sec, E & Sec. Education

K.P.K. Distt. Officer

Subject: Appeal for implementation of Court Judgment.

R/Sir,

It is stated that a judgment has been passed in favour of me by the honorable Service Tribunal with appeal no 11009 dated 15/01/2021. But Director Elementary & Secondary Education not implement that judgment and once again issued my transfer order with Encl no. 7544-46 dated 16.3.2021 which is against the spirit of Service Tribunal judgment.

It is therefore requested to please implement the judgment please

111/111
Dated: 17/03/2021

Muhammad Zada
Ex ADEO (ES&S) (P).

O/D E.O (M)

Distt. Officer

Anxxure "B" 6

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

APPEAL NO. 11009 /2020

Diary No. 10496

Dated 22-9-2020

Mr. Muhammad Zada, Presently posted as ADEO (Primary), O/O DEO (M),
Dir Upper Under transfer/posted as GHS Katan, Dir Upper.

..... APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officers Male & Female, District Dir Upper.
- 4- Mr. Abdul Aziz, SST (TC), GHS Seri Sultan Khel under transfer/posted as ADEO (Primary), O/O DEO (M), Dir Upper.



..... RESPONDENTS

**APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED TRANSFER ORDERS DATED
11.8.2020 & 16.9.2020 WHEREBY THE HAS BEEN
TRANSFERRED ON THE BASIS OF POLITICAL
INTERVENTION AGAINST TEACHING CADRE POST AND
AGAINST THE APPELLATE ORDER DATED 16.9.2020
WHEREBY THE DEPARTMENTAL APPEAL OF THE
APPELLANT HAS BEEN REJECTED ON NO GOOD
GROUNDS**

PRAYER:

That on acceptance of this appeal the impugned orders dated 11.8.2020, 16.9.2020 and appellate order dated 16.9.2020 may very kindly be set aside and the respondents may kindly be directed not to transfer the appellant from the post of Assistant District Education Officer (Primary) O/O the District Education Officer (M), Dir Upper. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

**R/SHEWETH:
ON FACTS:**

- 1- That appellant is the employee of the respondent Department and is serving as Assistant District Education Officer (Primary) in the office of District Education Officer (M), District Dir upper quite efficiently and up to the entire satisfaction of his superiors.

TESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

eww
22/9/2020

7

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.11009/2020



Date of Institution ... 22.09.2020
Date of Decision ... 15.01.2021

Muhammad Zada, presently posted as ADEO (Primary) Office of DEO (Male)
Dir Upper under transfer/posted as GHS Katan, Dir Upper.
... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary E&SE
Department, Khyber Pakhtunkhwa Peshawar and three others.
... (Respondents)

Present:

Noor Muhammad Khattak,
Advocate ... For appellant.
Riaz Khan Paindakheil,
Assistant Advocate General ... For official respondents.
Asad Zeb Khan
Advocate ... For private respondent.

ROZINA REHMAN ... MEMBER (J)
MIAN MUHAMMAD ... MEMBER (E)

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

JUDGMENT

ROZINA REHMAN, MEMBER: This judgment is intended to dispose of four
connected service appeals including the present one bearing No.11009/2020,
titled Muhammad Zada Vs. Education Department and others, as common
question of law and facts are involved therein.

15/1/21

2. Appellants Muhammad Zada, Muhammad Iqbal, Shahid Aziz and Peer Muhammad have assailed the notification dated 11.08.2020 and 16.09.2020 whereby they have been transferred allegedly on the basis of political intervention and in violation of transfer/posting policy.

3. Precisely stated facts of the case are that appellants are the employees of the respondents' Department. They were transferred vide impugned notification and order dated 11.08.2020. Private respondent has recently been appointed on Adhoc & School Based Policy and as such, under the transfer posting policy, they are non-transferable employees of the department but despite that, respondents posted Muhammad Riaz and Abdul Aziz against the Management Cadre, therefore, the impugned notification and order dated 11.08.2020 are violative of Clause-I, II, III and IV of the transfer posting policy of the Provincial Government. The appellants feeling aggrieved from the impugned notification submitted departmental appeals where-after filed Writ Petition before the Hon'ble Peshawar High Court and the said Writ Petition was disposed of with direction to respondent to decide the departmental appeals. In response, departmental appeals were accepted by the appellate authority and directions were issued for cancellation of the impugned order dated 11.08.2020. Accordingly, the impugned order was withdrawn but astonishingly, the said cancellation order dated 14.09.2020 was withdrawn and the original impugned transfer order was restored, hence, the instant service appeals.

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15/11/21

4. Learned counsel for appellants contends that the impugned notification and orders dated 11.08.2020 and 16.09.2020 are against law, facts and norms of natural justice, hence, not tenable. That the appellants were not treated by the Department in accordance with law and violated

ATTESTED
[Signature]
EXAMINER
Peshawar High Court
Peshawar

Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He argued that the impugned notifications are against Clauses-I, II, III and IV of the transfer/posting policy of the Government of Khyber Pakhtunkhwa. He submitted that private respondents are from Teaching Cadre while the post against which they were posted is of Management Cadre and thus the treatment meted out to the appellants is a clear violation of the fundamental rights of the appellants and lastly, he submitted that transfer orders of all the appellants are politically motivated and were never issued in the public interest, therefore, appeals were requested to be accepted.

5. Conversely learned A.A.G assisted by learned counsel for private respondents, strongly opposed the contention of learned counsel for appellants and fully supported the impugned notifications. He argued that the appellants were transferred under a general transfer posting policy and the order was passed in the best interest of the public. That neither the appellants were victimized nor there was any malafide on the part of the respondents. It was further argued that there was neither political nor other ulterior motive behind the posting transfer of the appellants.

6. We are conscious of the fact that transfer of any Government servant can be made by the competent authority in the exigency of service and public interest. No Government servant has a legal right to remain posted at a particular place but where transfer order is malafide and for an extraneous consideration to accommodate some blue eyed chap is justifiable. In such an eventuality, the matter would squarely fall within the jurisdictional domain of Service Tribunal. In the instant case, vide notification dated 11.08.2020, the present appellants were transferred in the interest of public service. They filed departmental appeals on 18.08.2020 and also filed Writ Petitions in the

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15/11/20

ATTESTED

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

august Peshawar High Court which was disposed of with direction to the Secretary E&SE Department to decide departmental appeals within a period of 14 days and it was on 31.08.2020, when their departmental appeals were accepted and directions were issued for cancellation of the transfer orders of the appellants. Accordingly vide office order dated 14.09.2020, posting transfer order dated 11.08.2020 was withdrawn in the best interest of public service but again, vide office order dated 16.09.2020, order dated 14.09.2020 was withdrawn. As per Clause-I of the transfer posting policy of the Provincial Government, all the posting transfers shall be strictly in public interest and shall not be misused to victimize the Government servant. As per Clause-II of the policy, all Government servants are prohibited to exert political, administrative, or any other pressure upon the posting transfer authorities for seeking posting transfers of their choice and against the public interest. In the instant case, certain documents were placed on file which clearly show that all these transfers are politically motivated. The proposal of transfer posting available on file, was properly mentioned in the letter dated 16.06.2020 addressed to the District Education Officer (Male) Dir Upper vide which the District Education Officer was required to submit report in the light of proposal dated 14.05.2020 and accordingly the impugned notification was issued vide which all four appellants were transferred. Despite the fact that their departmental appeals were accepted and the impugned notification was withdrawn even then, another office order was made and the notification vide which the impugned notification had been cancelled/withdrawn, was once again withdrawn and impugned earlier notification was restored. No best interest of public service was shown.

Handwritten signature and date: 15/11/21

ATTESTED
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

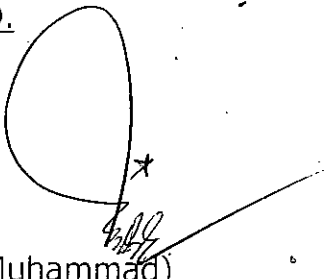
7. The Supreme Court of Pakistan in the case titled Zahid Akhtar v. Government of Punjab through Secretary, Local Government and Rural Development, Lahore and 2 others [PLD 1995 SC 530]; held that:

"The transfer of a civil servant by political figures which are capricious and are based on the considerations not in the public interest, are not legally sustainable"

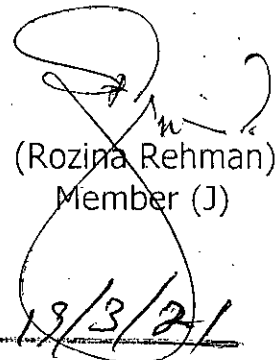
8. The Supreme Court of Pakistan has pronounced in various cases that the competent authority has power to pass a transfer order of a civil servant but such transfer order be passed fairly, justly, impartially, judiciously and shall not be passed arbitrarily, malafidely, motivated by political considerations and colourable exercise of the authority. The transfer order which is politically motivated, in colourable exercise of the authority, passed without wisdom and good sense, is not a judicious order, such an order is arbitrary and fanciful, which is not maintainable.

9. In view of the above, instant service appeals are accepted and impugned notification in respect of transfer posting of appellants, stands set aside. With no order as to costs. File be consigned to the record room.

ANNOUNCED.
15.01.2021



(Mian Muhammad)
Member (E)



(Rozina Rehman)
Member (J)

Certified to be true copy

OVER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 19/3/21

Number of Words 2400

Copying Fee 26-

Urgent 26

Total 52

Name of Copyist [Signature]

Date of Completion of Copy 19-3-2021

Date of Delivery of Copy 19-3-2021



DIRECTORATE OF ELEMENTARY & SECONDARY
EDUCATION KHYBER PAKHTUNKHWA PESHAWAR

46

NOTIFICATION

Annexure C (12)

The Competent Authority is pleased to order transfer/posting of the following officers in their own pay scale, with immediate effect in the interest of public service.

S#	Name & Designation	From	To (posted as)	Remarks
1	Ajeeb Ullah ASDEO(M.C)	ASDEO(F) Larjam	ADEO(Secondary)at O/O DEO(M) Dir Upper	V#2
2	Mr. Shahid Aziz SST (T.C)	ADEO(Secondary)at O/O DEO(M) Dir Upper	Services placed at the disposal of DEO(M) Dir Upper	-
3	Mr. Qayum Khan SST	GHS Panakot	ADEO(Primary)at O/O DEO(M) Dir Upper	V#4
4	Muhammad Zada SST (T.C)	ADEO((Primary)) at O/O DEO(M) Dir Upper	Services placed at the disposal of DEO(M) Dir Upper	-
5	Mr. Muzaffar Shah SST(T.C)	GHSS Barawal	ADEO(P&D)at O/O DEO(M) Dir Upper	AVP
6	Mr. Hazrat Luqman SST (T.C)	GHS Kattan Bala	ADEO(P&D)at O/O DEO(F) Dir Upper	AVP

Note:

1. Posting/Adjustment of Teaching Cadre Officers shall be considered as stop-gap arrangement till the arrival of Management Cadre officers.
2. The order of the above mentioned Teaching cadre officers will be effective subject to the condition that they will give an undertaking/affidavit on legal paper/stamp paper to DEO (M/F) Dir Upper to the effect, not to claim seniority of Management cadre.
3. Charge Report should be submitted to all concerned.
4. No TA/ DA is allowed.
5. The terms & conditions mentioned in their appointment order as teaching cadre will remain intact.

DIRECTOR

Elementary & Secondary Education
Khyber Pakhtunkhwa

7541-44
Endst: No. F.NO.32/Vol-4/ ADEOs (M) Transfers Dated the Peshawar 16/3/2021

Copy forwarded to the:

1. District Education Officer (M/F) Dir Upper.
2. District Accounts Officer Dir Upper.
3. Officers Concerned.
4. Master Copy.

Deputy Director (Estab)

o/c Elementary & Secondary Education
Khyber Pakhtunkhwa

16/03/2021 P

16/03/2021

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2021

Muhammad Jada

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Deptt

(RESPONDENT)
(DEFENDANT)

I/We Muhammad Jada

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitratio for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2021

[Signature]
CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK

[Signature]
AFRASIAB WAZIR

&
HAIDER ALI
ADVOCATES

OFFICE:
Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.
Mobile No.0345-9383141