

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 4293/2020

Date of Institution ... 11.05.2020

Date of Decision ... 23.11.2020

Amjad Mehmood Junior Clerk, Government Girls High School Deli Mela, Karak.
... (Appellant)

VERSUS

The Secretary to Government of Khyber Pakhtunkhwa Elementary & Secondary
Education Peshawar and three others. ... (Respondents)

Present.

Mr. Abdul Hameed,
Advocate. ... For appellant

Mr. Muhammad Riaz Khan Paindakhel,
Asst. Advocate General ... For respondents.

MR. HAMID FAROOQ DURRANI,
MR. MIAN MUHAMMAD, ... CHAIRMAN
MEMBER

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. The necessary facts as gatherable from the record are, that the appellant is permanent employee of Education Department and is performing his duty as Junior Clerk. Similarly, the respondent No. 4 also has the same status. At the relevant time the appellant was posted at GGHS Deli Mela while respondent No. 4 had posting at GGHS Sabir Abad. On 06.02.2020, a transfer order was issued by respondent No. 3, whereby, the appellant and respondent No. 4 were transferred vice each other. Feeling aggrieved from the order, the appellant submitted a departmental appeal on 07.02.2020 which remained un-responded by the respondents, hence the present appeal was submitted on 11.05.2020.

2. Learned counsel for the appellant as well as learned Asst. A.G on behalf of the respondents heard and available record examined with their assistance.

3. Learned counsel for the appellant argued that the impugned transfer order was politically motivated in order to favour the respondent No. 4. As a consequence thereof, the appellant was also dislocated albeit, unlawfully. In support of his argument learned counsel referred to copy of a letter (Annexure-A with the appeal), claimed to have been sent by an MPA of Khyber Pakhtunkhwa Provincial Assembly to the DEO (F) Karak. In the letter, the transfer of respondent No. 4 to GGHS Deli Mela was urgently required. It was the stance of learned counsel that the impugned transfer was, therefore, not sustainable. He relied on judgments reported as PLD 2013 Supreme Court 195 and PLD 2016 Supreme Court 276. It was also contended that the appellant had yet to complete his normal tenure of posting, as provided in the Transfer/Posting Policy of Provincial Government, when the impugned order was issued. He was posted at Deli Mela Karak from 14.04.2018 till the issuance of impugned order on 06.02.2020.

Learned Asst. A.G attempted to oppose the appeal and stated that normal tenure of posting of appellant was completed on the crucial date. Besides, the appellant was not within his rights to ask for posting of his choice. He, however, could not lay hands on any document supporting his stance regarding completion of tenure by appellant.

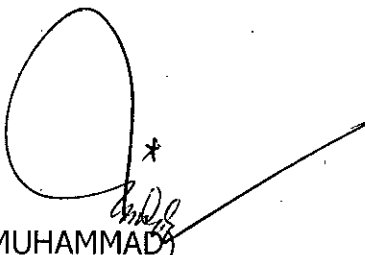
4. On the face of the record and in absence of rebuttal on the part of respondents, the letter dated 03.02.2020 by the MPA rendered the impugned transfer of appellant and respondent No. 4 squarely as politically motivated. It requires to be noted here that respondent No. 4, due to his non-appearance before the Tribunal, was placed ex-parte on 06.08.2020.

The interference by an MPA in the matter of transfer had no legal effect. Besides, the transfer itself does not appear to have been based on consideration in the public interest.

5. There is another aspect of the case in hand. In the impugned order the remarks column contained that the transfer of appellant vice the respondent No. 4 was on disciplinary ground. It is by now well-settled that transfer of a civil servant cannot be ordered due to disciplinary matter against him. On this score too, the impugned order is not sustainable. More-so, the respondents could not produce any record regarding the disciplinary proceedings against the appellant. The respondents also could not rebut the claim of appellant regarding his tenure of posting at Deli Mela Karak from 14.04.2018 till 06.02.2020 i.e less than two years.

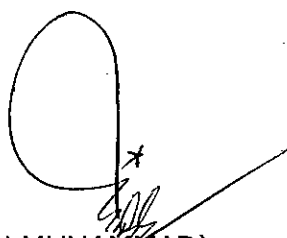

6. For what has been discussed above, the appeal in hand is accepted and impugned order dated 06.02.2020 is set aside. The respondents shall allow the appellant to perform his duty at GGHS Deli Mela Karak till completion of his normal tenure of posting. The transfer of appellant, thereafter, if necessitated in the public interest, shall be absolutely in accordance with law, rules and the Policy.

Parties are left to bear their respective costs. File be consigned to the record room.


(MIAN MUHAMMAD)
MEMBER


(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
23.11.2020

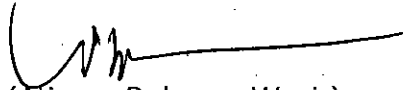
S.No.	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	23.11.2020	<p><u>Present.</u></p> <p>Mr. Abdul Hameed, ... For appellant Advocate</p> <p>Mr. M. Riaz Khan Paindakhel, Asstt. Advocate General, ... For respondents.</p> <p>Learned counsel for the appellant as well as learned Asstt. A.G on behalf of the respondents heard and available record examined with their assistance.</p> <p>Vide our detailed judgment, the appeal in hand is accepted and impugned order dated 06.02.2020 is set aside. The respondents shall allow the appellant to perform his duty at GGHS Deli Mela Karak till completion of his normal tenure of posting. The transfer of appellant, thereafter, if necessitated in the public interest, shall be absolutely in accordance with law, rules and the Policy.</p> <p>Parties are left to bear their respective costs. File be consigned to the record room.</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;">  (MIAN MUHAMMAD) Member </div> <div style="text-align: center;">  CHAIRMAN </div> </div> <p><u>ANNOUNCED</u> 23.11.2020</p>

4293/2020

29.10.2020

Junior to counsel for the appellant and Zara Tajwar,
DDA for the respondents present.

The Bar is observing general strike, therefore, the
matter is adjourned to 23.11.2020 for hearing before the
D.B.



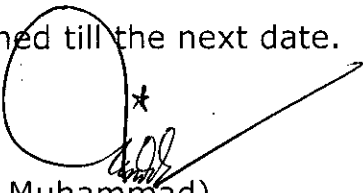
(Atiq-ur-Rehman Wazir)
Member

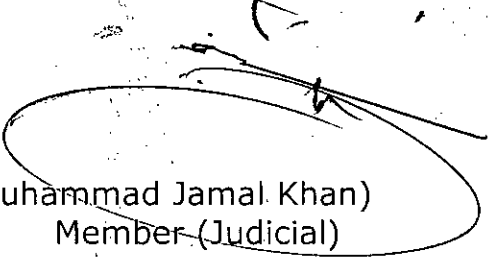


Chairman

21.09.2020

Appellant is present in person. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the respondent is also present. Appellant submitted power of attorney executed in favour of Mr. Abdul Hameed, Advocate and requested that he has engaged counsel afresh, therefore, he may be allowed time to take part in the proceeding. Power of attorney submitted today is placed on file. Request for adjournment is accepted. The case is adjourned to 28.09.2020 on which to come up for submission of rejoinder, if any, and arguments before D.B. in the meanwhile status-quo be maintained till the next date.


(Mian Muhammad)
Member (Executive)


(Muhammad Jamal Khan)
Member (Judicial)

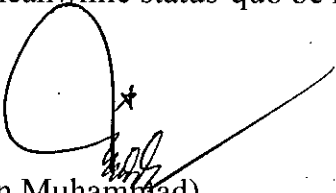
28.09.2020

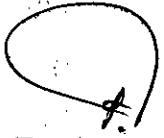
Appellant in person present.

Mr. Muhammad Jan, Deputy District Attorney alongwith Umer Daraz, Budget and Accounts Officer for respondents present.

Appellant seeks adjournment as his learned counsel is busy before the august Supreme Court of Pakistan.

Adjourned to 02.10.2020 for arguments before D.B. In the meanwhile status-quo be maintained till the next date.


(Mian Muhammad)
Member (E)


(Rozina Rehman)
Member (J)

02.10.2020

Counsel for the appellant and Miss Zara Tajbar, DDA for the respondents present.

Learned counsel for the appellant requests for adjournment in order to further prepare the brief. Adjourned to 29.10.2020 for hearing before the D.B. Status quo be maintained till the date fixed.


(Mian Muhammad)
Member (Executive)


Chairman

06.08.2020

Junior counsel for the appellant is present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Umer Daraz, Budget & Accounts Officer on behalf of official respondents No. 1 to 3 are also present.

Written comments on behalf of official respondents No. 1 to 3 have already been submitted. No one is present on behalf of private respondent No. 4 nor anyone on his behalf is present nor written reply on his behalf is submitted so far, therefore, he is proceeded ex-parte. To come up for arguments on 03.09.2020 before D.B. The appellant may submit rejoinder within a fortnight, if so advised. Status-quo be maintained till the next date.



(MUHAMMAD JAMAL KHAN)
MEMBER


03.09.2020

Appellant present in person.

Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Umar Daraz Budget & Account Officer on behalf of respondent No. 1 to 3 present.

Former requests for adjournment as his counsel is not available; request is acceded and case is adjourned. To come up for rejoinder, if any and arguments on 21.09.2020 before D.B. Status-quo be maintained till the next date.


(Attiq ur Rehman)
Member (E)


(Rozina Rehman)
Member (J)

03.07.2020

Counsel for the appellant and Addl: AG alongwith Umer Daraz, B&AO for respondents present. Written reply on behalf of respondents not submitted. Requested for further time. Last opportunity granted. Notice be issued to respondent No.4.

Adjourned to 20.07.2020 for written reply/comments before S.B. Status-quo be maintained till the next date.


MEMBER

20.07.2020

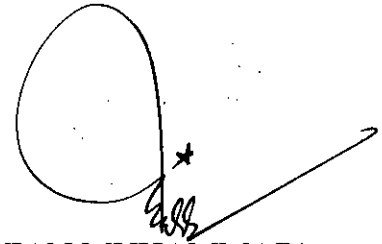
Appellant himself is present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Umer Daraz, Budget & Accounts Officer on behalf of official respondents No. 1 to 3 are also present.

Representative of official respondents No. 1 to 3 submitted written comments on behalf of respondents No. 1 to 3 which are placed on file. Neither written reply/comments on behalf of private respondent No. 4 submitted nor anyone on his behalf is present therefore, notice be issued to him for submission of written reply/comments. File to come up for written reply/comments on behalf of private respondent No. 4 on 06.08.2020 before S.B. Status-quo be maintained till the next date.


(MUHAMMAD JAMAL KHAN)
MEMBER

02.06.2020

Learned counsel for the appellant present. Addl: AG for respondents present. Written reply not submitted. Learned AAG requested for adjournment. Fresh notices be issued to the respondents for submission of written reply/comments on main appeal as well as written reply on stay application on 16.06.2020 before S.B. In the meanwhile status-quo be maintained till next date.

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a long horizontal stroke that ends in an arrowhead. There is a small asterisk-like mark above the signature.

(MIAN MUHAMMAD)
MEMBER

16.06.2020

Appellant in person and Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply on behalf of respondents not submitted. Learned Additional AG seeks time to furnish written reply/comments. Adjourned to 03.07.2020 for written reply/comments before S.B. In the meanwhile status-quo be maintained till the next date.

A handwritten signature in black ink, consisting of the letters 'M' and 'A' written in a stylized, cursive font.

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

18.05.2020


Counsel for the appellant Amjad Mehmood present. Preliminary arguments heard.

It was contended by the learned counsel for the appellant that the appellant is serving in Education Department as Junior Clerk. It was further contended that the concerned MPA issued letter dated 03.02.2020 to DEO(F) Karak in favor of respondent No.4 for transfer him from GGHS Sabir Abad to GGHS Deli Mela Karak on urgent basis. It was further contended that following the direction of the concerned MPA DEO(F) Karak transfer the private respondent from GGHS Sabir Abad to GGHS Deli Mela in place of the appellant and the appellant was transferred from GGHS Deli Mela to GGHS Sabir Abad in place of private respondent vide impugned order, dated 06.02.2020. It was further contended that the appellant filed departmental appeal on 07.02.2020 but the same was not responded, hence the present service appeal. It was Vehemently contended that the Chief Minister had imposed complete banned on transfer posting of teaching staff in Elementary & Secondary Education Department vide letter dated 16.09.2019 but the competent authority ignored the banned order of the Chief Minister and transfer the appellant on the influence of the concerned MPA on the basis of letter issued in favor of private respondent. It is also contended that the appellant has not relinquishing the charge and is performing his duty as Junior Clerk in GGHS Deli Mela, therefore, the impugned transfer order of the appellant on the basis of MPA direction and political influence is illegal and liable to be set aside.

The contentions raised by learned counsel for the appellant need consideration. The appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for submission of reply/comments on 02.06.2020 before S.B.

Counsel for the appellant has also submitted an application for suspension of impugned order. Notice of the same be issued to the respondents. In the meanwhile status quo be maintained till next date.


(M. AMIN KHAN KUNDI)
(MEMBER-J)


Appellant Deposited
Security & Process Fee



18/5

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 4293 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	11/05/2020	<p>The appeal of Mr. Amjad Mehmood presented today i.e 11.05.2020 by Mr. Rizwanullah Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR 11/5/2020.</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up on <u>18-05-2020</u></p> <p style="text-align: right;"> MEMBER</p>
2-		

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 4293/2020

1. Amjad Mehmood Junior Clerk, Government Girls High School Deli Mela, Karak.

APPELLANT

VERSUS

1. The Secretary to Government of Khyber Pakhtunkhwa Elementary and Secondary Education, Peshawar and others.

RESPONDENTS

I N D E X

S.No	Particulars	Annexure	Pages #
1	Service Appeal	—	1-8
2	Affidavit	—	9
3	Copy of recommendation letter of MPA (PK 85)	A	10
4	Copy of transfer order dated 06-02-2020	B	11
5	Copy of Departmental Appeal	C	12
6	Copy of order of chief Executive regarding Ban on Posting/transfer	D	13 & (37)
7	Stay Application	—	14-16
8	Wakalatnama	—	—

Amjad Mehmood
Appellant

Through

Rizwanullah

Rizwanullah
M.A. LL.B

Advocate High Court, Peshawar

Dated: 11-05-2020

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 4293/2020

Diary No. 3591

Dated 11-05-20

1. Amjad Mehmood Junior Clerk, Government Girls High School Deli Mela, Karak.

APPELLANT

VERSUS

1. The Secretary to Government of Khyber Pakhtunkhwa Elementary and Secondary Education, Peshawar.
2. The Director Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Female) District, Karak.
4. Ghulam Nabi Junior Clerk, Government Girls High School Sabir Abad, District Karak.

Filed to-day

Registrar

11/5/2020

RESPONDENTS

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
POLITICALLY MOTIVATED
TRANSFER ORDER DATED 06-02-2020
PASSED BY THE DISTRICT
EDUCATION OFFICER (FEMALE),
KARAK (RESPONDENT NO. 3) UNDER
THE RECOMMENDATION LETTER
DATED 03-02-2020 ISSUED BY "MIAN
NISAR GUL, MEMBER PROVINCIAL**

Annex-D



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

No. SO/SMA/1&SE/D/7-1/2019/Posting/Transfer/General
Dated Peshawar the September 16, 2019

To

All the District Education Officers (Male & Female),
Khyber Pakhtunkhwa, Peshawar

Subject: - COMPLETE BAN ON POSTING/TRANSFER

I am directed to refer to the subject cited above and to state that complete ban on posting/transfers of Teaching Staff in the Elementary and Secondary Education Department was imposed by the Hon'ble Chief Minister Khyber Pakhtunkhwa vide the Department notification dated 14.02.2019.

However, it has been observed by the Competent Authority that the DEOs (Male & Female) are issuing Posting/Transfers orders at their level which is sheer violation of ban imposed by Hon'ble Chief Minister Khyber Pakhtunkhwa. The Hon'ble Chief Minister, Khyber Pakhtunkhwa, has taken serious notice of the non-compliance of the order and has directed to observe complete ban in the entire province with no provision of relaxation of ban by any officer.

Encl: As Above:

S. Rafiq
16/09/2019

(SHAHID RAFIQ)
SECTION OFFICER (SCHOOLS MALE)

Encls: Even No. & Date:

Copy of the above is forwarded to the,

1. PSO to Chief Minister Khyber Pakhtunkhwa.
2. PSO to Chief Secretary Khyber Pakhtunkhwa
3. Director, E&SE Khyber Pakhtunkhwa, Peshawar for similar action.
4. Director Education, Merged Areas Districts, Peshawar for similar action
5. PS to Secretary, E&SE Department.
6. PA to Deputy Secretary (Admin), E&SE Department

S. Rafiq
16/09/2019

SECTION OFFICER (SCHOOLS MALE)

Attested
[Signature]
Appellant



BETTER COPY

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION (13-A)
DEPARTMENT

No. SMIE E&S D/7-1/2019/posting/transfer/general
Dated Peshawar the September 16, 2019

To

All the District education officers (Male and Female),
Khyber Pakhtunkhwa, Peshawar.

Subject: - COMPLETE BAN ON POSTING/TRANSFER

I am directed to refer to the subject cited above and to state that complete ban on posting/transfers of Teaching Staff in the Elementary and Secondary Education Department was imposed by the Hon'ble Chief Minister, Khyber Pakhtunkhwa vide this Department notification dated 14-02-2019.

However, it has been observed by the Competent Authority that the DEOs (Male and female) are issuing Posting/Transfers orders at their level which is sheer violation of ban imposed by Hon'ble Chief Minister Khyber Pakhtunkhwa. The Hon'ble Chief Minister Khyber Pakhtunkhwa has taken serious notice of the non-compliance of the order and has directed to observe complete ban in the entire province with no provision of relaxation of ban by any officer.

Encl; as above;

(SHAHID RAFIQ)
SECTION OFFICER (SCHOOLS MALE)

Endst; Even No. & Date;

Copy of the above is forwarded to the;

1. PSO to Chief Minister, Khyber Pakhtukhwa
2. PSO to Chief Secretary, Khyber Pakhtukhwa
3. Director, E&SE Khyber Pakhtukhwa, Peshawar for similar action.
4. Director Education, Merged Areas Districts, Peshawar for similar action.
5. PS to Secretary E&SE Department.
6. PA to deputy Secretary (Admn), E&SE Department

Attested
Appellant

SECTION OFFICER (SCHOOLS MALE)

To, The Director Elementary & Secondary
Education Khyber Pakhtun Khwa
(Peshawar).

Annex-C

Subject: Cancelation of Posting on Good Character Ground.

Memo: 1. It is stated that I Amjad Mehmood has been Serving at Govt Girls High School Deli Mela (Karak) as a Junior Clerk for Last Two Years.

2. During my tenure at this school I performed my duties with sense of devotion and dedication. I regularly indoor and outdoor official work and I enjoyed respect among seniors, juniors principal and my female staff.

3. Sir, I am under posting Vide DEO (F) Karak Letter No 585-89 Dated 06-02-2020 from Govt Girls High School Deli Mela To Govt Girls High School Sabir Abad (Karak).

4. It is Therefore requested my posting may please be cancelled as per Good character ground at present setup. I shall be very thankful to you for this favor of kindness.

Amjad Sr
Your Obediently
Amjad Mehmood Junior Clerk
GGHS Deli Mela (Karak).

Dated: 07:02:2020
Mobile No. 0346-9898353

Attested
Amjad Sr
Appellant

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2020

1. Amjad Mehmood Junior Clerk, Government Girls High School Deli Mela, Karak.

APPELLANT

VERSUS

1. The Secretary to Government of Khyber Pakhtunkhwa Elementary and Secondary Education, Peshawar and others.

RESPONDENTS

**APPLICATION FOR SUSPENDING
THE OPERATION OF THE
IMPUGNED ORDER DATED
06-02-2020 PASSED BY THE
DISTRICT EDUCATION OFFICER
(FEMALE), KARAK (RESPONDENT
NO. 3) TILL THE DISPOSAL OF
MAIN APPEAL.**

Respectfully Sheweth:-

1. That the appellant has filed service appeal along with this application in which no date has been fixed so far.
2. That the facts enumerated and grounds taken in the body of service appeal may kindly be considered as an integral part of this application,

ASSEMBLY KHYBER PAKHTUNKHWA
(PK-85) KARAK" IN FAVOUR OF
GHULAM NABI JUNIOR CLERK
(RESPONDENT NO. 4) TO POST HIM IN
PLACE OF APPELLANT AGAINST
WHICH A DEPARTMENTAL APPEAL
WAS FILED WITH THE DIRECTOR
EDUCATION (E&S) KHYBER
PAKHTUNKHWA PESHAWAR
(RESPONDENT NO. 2) ON 07-02-2020.
BUT THE SAME WAS NOT RESPONDED
WITHIN THE STATUTORY PERIOD OF
LAW.

Prayer in Appeal

By accepting this appeal, the impugned order dated 06-02-2020 passed by the District Education Officer (Female) Karak (respondent No. 3) may very graciously be set-aside being politically motivated, and also passed in violation of law laid down by august Supreme Court of Pakistan in various judgments.

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

Respectfully Sheweth,

Short facts giving rise to the present appeal are as under:-

1. That the appellant was the permanent employee of Education Department in-capacity as junior clerk. He was performing his duty with great zeal, zest and devotion. But strangely one Ghulam Nabi, Junior Clerk, GGHS Sabir Abad, Karak (Respondent No. 4) indescribably and shockingly able to prevail over the Competent Authority (Respondent No. 3) through political means and obtained a recommendation letter dated 03-02-2020 from Mian Nisar Gul,

Member Provincial Assembly, Khyber Pakhtunkhwa (PK-85) Karak for his posting in place of appellant and succeeded accordingly vide order dated 06-02-2020.

(Copy of recommendation letter and transfer order are appended as Annex-A & B)

2. That the appellant felt aggrieved, filed a departmental appeal with the Director Education (E&S) Khyber Pakhtunkhwa (Respondent No. 2) on 07-02-2020 praying therein that the impugned order may graciously be set aside on the grounds mention therein. But the same was not responded.

(Copy of Departmental Appeal is appended as Annex-C).

3. That it is abundantly clear from perusal of letter dated 16-09-2019 through which a complete ban was imposed on Postings/Transfers of Teaching staff in the Elementary and Secondary Education Department by the Chief Executive of the Province. But despite thereof the Competent Authority failed to comply with the said order and blatantly passed the transfer order of respondent No. 4 irrespective of Ban therefore, the impugned order is not tenable under the law.

(Copy of order of the Chief Executive regarding ban on transfer/posting is appended as Annex-D).

4. That the appellant now files this service appeal before this Hon'ble Tribunal inter-alia on the following grounds:

GROUND OF APPEAL

- A. That respondents have not treated appellant in accordance with law, rules and policy on the subject and acted in violation of Article 4 of

the Constitution of Islamic Republic of Pakistan, 1973. Therefore, the impugned order is against the spirit of administration of justice.

B. That every civil servant is legally bound to obey only those orders of his superiors which are legal and proper. Compliance of illegal order/direction will neither be justified on the plea of same having been issued by the superior officer, as held by august Supreme Court of Pakistan in various judgments but the respondent No.3 while passing the impugned order, totally ignored the said dictum of Apex Court of country and acted under the direction of concerned MPA. Thus, the impugned order has no sanctity under the law.

C. That the Ministers, MNAs and MPAs are not competent to make any interference in the appointment, posting and transfer or promotion of Civil Servants as they have taken oath to discharge duties and perform their functions honestly to the best of their ability, faithfully in accordance with the Constitution and law laid down by august Supreme Court of Pakistan reported in **2007-SCMR-page-599-citation-a & PLD-2016-Supreme Court-276**. The relevant citation of the judgments are reproduced herein for facility of reference:

2007-SCMR-page-599-citation-a

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

---S. 10---Rules of Business, (N.-W.F.P), 1974, R.21(2)---Transfer of civil servant--Political influence---Recommendation of Member of Provincial Assembly---Civil servant was a senior school teacher who assailed his transfer order before Service Tribunal but without any success---Plea raised by civil servant was that his transfer was politically motivated and on the recommendations of Member of Provincial Assembly---Validity---Transfer of civil servant under the orders of even a Minister was void and unlawful, being violative of R.21(2) read with Schedule V of Rules of Business, (N.-W.F.P.), 1974---Supreme Court, while condemning the role of Minister, that of tamed and subservient

bureaucracy was also condemned and need for an upright, honest and strong bureaucracy was emphasized---Member of Provincial Assembly in view of background of political influence had been guilty of misconduct, unfair exploitation and malpractice that maligned the legislature and disrupted administration--Supreme Court converted petition for leave to appeal into appeal and set aside the transfer order of civil servant---Appeal was allowed.

PLD-2016-Supreme Court-276

---S. 9(a)(vi)---Political appointments--- Misuse of authority---Appointment, posting, transfer or promotion of a person in a ministry, division or department---Federal/Provincial Ministers or a member of Parliament or Provincial Assembly, under the Federal and Provincial Rules and Business, had no direct role in such regard, and any interference by them in such matters would be unlawful and of no legal effect.

But despite thereof, the Provincial Minister has acted in utter violation of his oath by giving his recommendation letter to the respondent No.4 in order to dislodge the appellant. Therefore, the impugned order is not sustainable in the eye of law.

- D.** That the impugned order is the result of malafide action and colorable exercise of powers by the Competent Authority who did not apply its independent mind and merely acted under the direction of Provincial Minister who had no role under the Khyber Pakhtunkhwa Civil Servants Acts, 1973. The Competent Authority while passing the impugned order on the direction of Political Boss, acted without lawful authority. Therefore, the impugned order is not warranted by law and as such the same is liable to be set aside on this count alone.
- E.** That as the respondent No. 4 has used political influence through MPA and as such, he has committed misconduct by virtue of "Rule-22 A of the Khyber Pakhtunkhwa Government Servant (Conduct) Rules, 1986 and Rule-2 (V) of Khyber Pakhtunkhwa

Government Servant Efficiency and Discipline) Rules, 2011” which categorically refrains the members of National Assembly and Provincial Assembly to interfere in posting/transfer of Government Servant. It would be advantageous to reproduce the relevant Rules as under: -

Khyber Pakhtunkhwa Government Servant (Conduct) Rules, 1986

Rule 22.

Approach to Members of the Assemblies:-

No Government servant shall, directly or indirectly approach any member of the National Assembly or a Provincial Assembly or any other non-official person to intervene on his behalf in any matter.

Khyber Pakhtunkhwa Government Servant Efficiency and Discipline) Rules, 2011

Rule-2 (V)

Any Act to bring or attempt to bring outside influence directly or indirectly to bear on the Governor, Chief Minister, a Minister or any other Government Officer in respect of any matter relating to the appointment, promotion, transfer or other condition of service.

But the Competent Authority did not bother to adhere the above Rules by taking no action against the respondent No. 4 so as to secure the ends of justice. Therefore, the impugned order is liable to be reversed on this count alone.

- F.** That the Appellate Authority (respondent No. 2) was under statutory obligation to have decided the departmental appeal filed by the appellant after application of mind with cogent reasons within reasonable time as per law laid down by august Supreme Court of Pakistan reported in **2011-SCMR-page-1**. It would be advantageous to reproduce herein the relevant citation for facility of reference: -

2011-SCMR-page-1

Citation-b

**S. 24-A---Speaking order-Public
functionaries are bound to decide
cases of their subordinates after
application of mind with cogent
reasons within reasonable time.**

It is also well settled law that the decision of august Supreme Court of Pakistan is binding on each and every organ of the state by virtue of **Article 189 & 190 of the Constitution of Islamic Republic of Pakistan, 1973**. Reliance can be placed on the judgment of august Supreme Court of the country reported in **1996-SCMR-284 (citation-c)**. The relevant citation is mentioned below.

1996-SCMR-284

(citation-c)

**---Arts. 189 & 190---Decision of
Supreme Court---Binding, effect
of--Extent--Law declared by
Supreme Court would bind all
Courts, Tribunals and bureaucratic
set-up in Pakistan.**

But the Appellate Authority (respondent No. 2) has blatantly violated the above dictum of Apex Court of country by not disposing of the departmental appeal within the statutory period of law. Therefore, the impugned order is bad in law.

- G.** That the respondent No. 3 has passed the impugned order in mechanical manner and the same is perfunctory as well as non-speaking and also against the basic principle of administration of justice as it was passed on the direction of MPA during the course of Ban. Thus, the impugned order is not sustainable in the eye of law.
- H.** That the impugned order is based on conjectures and surmises. Hence, the same is against the legal norms of justice.

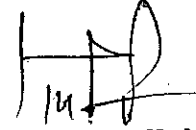
- I. That the appellant would like to seek the permission of this Hon'ble Tribunal to advance some more grounds at the time of arguments.

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned order dated 06-02-2020 passed by the District Education Officer (Female) Karak (respondent No. 3) may very graciously be set-aside being politically motivated, and also passed in violation of law laid down by august Supreme Court of Pakistan in various judgments.

Any other relief deemed proper and just in the circumstances of the case, may also be granted.

Through


Appellant



Rizwanullah
M.A. LL.B

Advocate High Court, Peshawar

Dated: 11-05-2020

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2020

1. Amjad Mehmood Junior Clerk, Government Girls High School Deli Mela, Karak.

APPELLANT

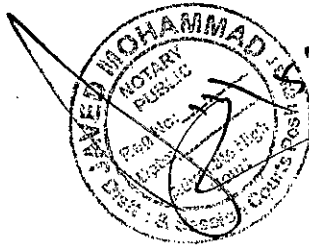
VERSUS

1. The Secretary to Government of Khyber Pakhtunkhwa Elementary and Secondary Education, Peshawar and others.

RESPONDENTS

AFFIDAVIT

I, Amjad Mehmood Junior Clerk, Government Girls High School Deli Mela, Karak, do hereby solemnly affirm and declare that the contents of the accompanied Service Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.



DEPONENT



MIAN NISAR GUL KAKA KHEL

Annex-A

10

Member of Provincial Assembly
Khyber Pakhtunkhwa
PK-85 Karak
Mob: 0333-9172968

Date: 3-2-2020

To,

The DEO (F) Karak.

Ghulam Nabi junior clerk of GGHS
Sabir Abad may be transferred from
the above mentioned school to
GGHS Dera Mela Karak on urgent
basis please.

Attested
Appellant

Mian Nisar Gul kaka khel
MPA PK-85
Karak.



OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) KARAK. Annex-B

11

Phone No 0927-291177
Email: emiskarak@yahoo.com

KDA KARAK

TRANSFER ORDER.

Transfers of the following junior clerk are hereby ordered on his own pay and EPS in the best interest of public service

S.No	Name & Designation	From	To	Remarks
1	Ghulam Nabi Junior Clerk	GGHS Sabir Abad	GGHS Deli Mela	Vice S.No 02
✓ 2	Amjad Mehmood Junior Clerk	GGHS Deli Mela	GGHS Sabir Abad	in the best interest of public service

Note:-

1. No TA/DA is allowed.
2. Charge report should be submitted to all concerned.

DISTRICT EDUCATION OFFICER
(FEMALE) KARAK.

Endst: no. 585-81 transfer Junior Clerks Dated Karak the 11/2/2020

Copy to the:-

1. Director of E&SE Khyber Pakhtunkhwa Peshawar
2. DAO Karak.
3. DMO Karak.
4. Principal/HM Concerned.
5. Office Copy.

DISTRICT EDUCATION OFFICER
(FEMALE) KARAK.

Attested
Appellant

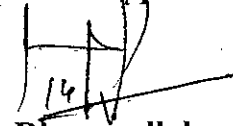
which make out an excellent prima facie case in favour of the appellant.

3. That the impugned order was passed on the basis of political interference under the recommendation of MPA (PK-85) Karak which was against the mandate of Constitution, Rules, Posting/Transfer Policy and also against the law laid down by august Supreme Court of Pakistan reported in **2007-SCMR-page-599-citation-a**.
4. That the impugned order was passed by the respondent No. 3 notwithstanding complete ban imposed on Postings/Transfers of Teaching staff in the Elementary and Secondary Education Department by the Chief Executive of the Province complete vide letter dated 16-09-2019 therefore, the same is not tenable under the law.
5. That the respondent No. 4 has used political influence through MPA and as such, he has committed misconduct by virtue of **“Rule-22 A of the Khyber Pakhtunkhwa Government Servant (Conduct) Rules, 1986 and Rule-2 (V) of Khyber Pakhtunkhwa Government Servant Efficiency and Discipline) Rules, 2011”** which contemplates that no Government Servant shall directly or indirectly approach any member of National Assembly, Provincial Assembly or any other non-official person to intervene on his behalf in any matter.
6. That in case the operation of the impugned order is not suspended, the very purpose of appeal would be badly defeated and it would become infructuous as well.

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned order dated 06-02-2020 may graciously be suspended till the disposal of main appeal.

Appellant/Applicant

Through



Rizwanullah
M.A. LL.B

Advocate High Court, Peshawar

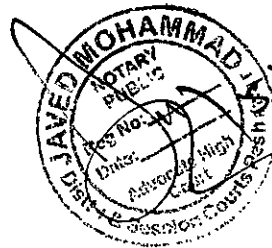
Dated: 11-05-2020

AFFIDAVIT

I, Amjad Mehmood Junior Clerk, Government Girls High School Deli Mela, Karak, do hereby solemnly affirm and declare that the contents of the accompanied Stay Application are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.



DEPONENT



Service Appeal

ب. 2 پنجاب ایڈووکیٹس
بنام

Amjad Mehmood
VS

مورخہ

مقدمہ

دعویٰ

جرم

Secretary Education
& Others.

باعث تحریر آنکہ

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

آن مقام Peshawar کیلئے Ragnanallah Adil

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی

اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے

اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے

سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

2021

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ماہ

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المیروم

Accepted
Asst. Secy

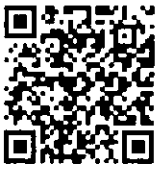
العبد گ

مقام کے لئے منظور ہے۔ Peshawar

مقام

قیمت
50 روپے

60750



ایڈووکیٹ: *Rahul*

بار کونسل ایسوسی ایشن نمبر: BC-10-7605

رابطہ نمبر: 0343-9025029

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: *حیدر بخش خواہ* کیس نمٹوانے کے لیے

منجانب: ایڈووکیٹ	دعویٰ: Appeal No 4243/20
محمد محمد نام حکومت (Junior Clerk)	علت نمبر: /
Fit's Deli Melak Karats	مورخہ: 21-9-2020
باعت تحریر آگے	م: /

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ ماستان
 آن مقام *پشاور ایڈووکیٹ* کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا، نیز ذیل صاحب کو
 راضی نامہ کرنے و تقریر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمزاد یا اپنے بجائے تقریر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور ان کا ساختہ پرداختہ منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المقوم: *21/9/20*
 PESHAWAR BAR ASSOCIATION
 خیبر پختونخواہ

1-56169925029-
 PBA
 142020-6697193-
 Peshawar Bar Association

مقام: *پشاور*
 کے لیے منظور ہے۔
 Noted & Accepted
 AS 0343-9025029
 0343-9025029
 BC-10-7605

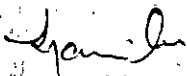
نوٹ: اس وکالت نامہ کی فونو کاپی ناقابل قبول ہوگی۔

OFFICE OF THE HEAD MISTRESS GGHS BAZID KHEL (KARAK).

Mr, Amjad Mehmood J/Clerk.

You are hereby relieved of your duties on the forenoon of this day i.e 14/04/2018. Vide Assistant Director (Admn) Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar Endst No 2963-68/F.No. 241/A -23/MS/ Karak Dated Peshawar the 13-04-2018.


You are directed to report for your further duties to the Head Mistress GGHS Deli Mela (Karak) as soon as possible.


Head Mistress
GGHS Bazid Khel
(Karak) Karak

Endst No 319 Dated 14/04/2018.

Copy Forwarded to the:

1. District Education Officer (Female) Karak.
2. District Accounts Officer Karak.
3. Head Mistress GGHS Deli Mela (Karak).
4. Office File.


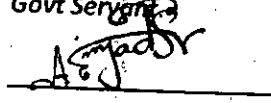

Head Mistress
GGHS Bazid Khel
(Karak)

** Amjad 0336=9646289**

Charge Report.

Certified that we have made and received charge of the Junior Clerk Post at GGHS Deli Mela (Karak) on this day i.e. 14/04/2018. Afternoon Endst No 2963-68 /F.No. 241/A-23/MS/Karak Dated Peshawar the 13.04.2018. Assistant Director (Admn) Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

Signature of
Govt Servant

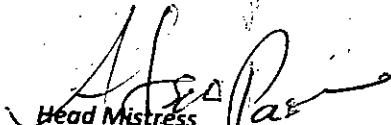


Head Mistress
GGHS Deli Mela
(Karak)
Deli Mella Karak

275-77
Endst No Dated 14/04/2018.

Copy to.

1. District Education Officer (Female) Karak.
2. District Account Officer (Karak).
3. Office file



Head Mistress
GGHS Deli Mela
(Karak)
Deli Mella Karak

Amjad 0336-9646289

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 3936 /ST

Dated 30 / 11 / 2020


To

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

Subject: - JUDGMENT IN APPEAL NO. 4293/2020, MR. AMJAD MEHMOOD.

I am directed to forward herewith a certified copy of Judgement dated 23.11.2020 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.