

10.01.2023

Counsel for the appellant present and requested for adjournment. Request accepted. To come up for office objection on 01.02.2023 before S.B.



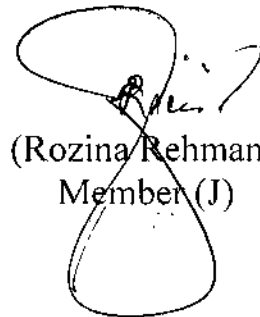
(Kalim Arshad Khan)
Chairman

01.02.2023

Counsel for the appellant present.

Preliminary arguments heard. Record perused.

Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security fee within 10 days. Thereafter, notice be issued to respondents for submission of written reply/comments. To come up for written reply/comments on 24.02.2023 before S.B. Annexed with the appeal there is an application for suspension of impugned transfer order dated 31.10.2022. The operation of impugned order dated 31.10.2022 shall remain suspended, if not acted upon earlier.




(Rozina Rehman)
Member (J)

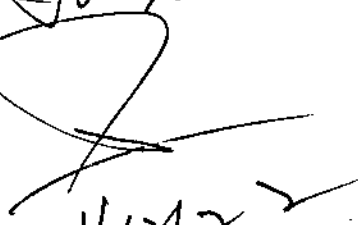
Sir,

The objection of this office and
reply of counsel for the appellant is
submitted for appropriate order please.

Humble Chairman

 W.
21/12/2022.
Registrar.

Only office objection
be filed after
winter vacation in the
second week of Jan, 2023



21/12/22

This is an appeal filed by Muhammad Raza Shah today on 05.12.2022 against the impugned transfer order dated 31.10.2022 against which he preferred/made a departmental appeal dated 04.11.2022 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 which is premature as laid down in an authority reported as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action and removing the following deficiencies.

No. /S.T,

DL. /2022


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Amanullah Pirzada

Note :- Inspite of objections appeal should be fixed before the honourable bench, because appellant ~~court~~ has submitted his departmental Appeal to the respondents and the respondents has dismissed the departmental Appeal of the Appellant and announced the order but the copy of the said order has not given to the Appellant regarding which the Appellant has moved an application to "RTI" and the section 10 sub sec 14 stated that the departmental Appeal of Posting, transfer shall be disposed within 15 days. (Sec 10 sub sec 14 of the NWFP civil servants Act 1973)

Handwritten note:
Amanullah Pirzada
Advocate

IF the said Appeal is not fixed before the learned bench so the Appellant will suffer irreparable loss.

Affidavit

Affirm on oath that the above mentioned Note is true & correct and nothing has been concealed.

Deponent/Applicant.

BEFORE THE COURT OF HON'BLE SERVICE
TRIBUNAL, KHYBER PAKHTUNKHWA
PESHAWAR


Appeal No. 267 /2022 2023


Muhammad Raza Shah.....Appellant
V E R S U S
Govt of KPK & othersRespondents

I N D E X

S.No.	Description of Documents	Annex	Pages
1.	Memo of appeal		1-4
2.	Affidavit		5
3.	Application for suspension		6-7
4.	Affidavit		8
5.	Copy of impugned order dated 31.10.2022	A	9-10
6.	Copy of departmental appeal	B	11-12
7.	Copy of Application to RTI	C	13-14
8.	Wakalatnama		15

Through


Appellant


AMAN ULLAH PIRZADA
Advocate, High Court,
Peshawar

Date: 25.11.2022

**BEFORE THE COURT OF HON'BLE SERVICE
TRIBUNAL, KHYBER PAKHTUNKHWA**

PESHAWAR

Appeal No. 267/2022 2023

Muhammad Raza Shah S/O Muhammad Hanif R/O Ouch,
Tehsil Adenzai, District Dir Lower. SDEO(M), MC, Adenzai,
Dir Lower.

Appellant

V E R S U S

1. Chief Secretary, Government of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.
2. Secretary Elementary and Secondary Education
Khyber Pakhtunkhwa, Peshawar.
3. Director ESED, KP Peshawar.
4. DEO (M), Dirbat Timergara/ Khar Bajour.
5. DAO, Dir Lower
6. Zaher ud Din _____ (M) Khar Bajour.

Respondents

**APPEAL UNDER SECTION 4 OF KP
SERVICES TRIBUNAL ACT 1974
AGAINST THE TRANSFER ORDER
NO. SO(MC)E&SD/4-
16/2022/POSTING/TRANSFER/MC
/ DATED 31.10.2022, VIDE WHICH
THE APPELLANT WAS
TRANSFERRED FROM SDEO (M)
ADENZAI DIR LOWER TO SDEO (M)
KHAR BAJOUR, AGAINST WHICH
THE DEPARTMENTAL APPEAL
ALSO FILED AND THE SAME WAS
DISMISSED BY THE
RESPONDENTS.**

Prayer in Appeal:

On acceptance of this service appeal, the order of
the respondents No. 2 may be set aside and the
appellant may please be restored to his prior position as
SDEO (M) Adenzai Dir Lower.

Respectfully Sheweth:

1. That the Appellant is a peaceful and law abiding citizen of Pakistan and is entitled for all the legal and fundamental rights constitution of Islamic Republic of Pakistan 1973.
2. That the Appellant is appointed in the respondents department and is presently serving as Sub-Divisional Education Officer (Male), PBS-17, Management Cadre at Adenzai, District Dir Lower.
3. That the appellant has been performing his duties as SDEO (M) Adenzai Dir Lower, with full zeal and was rewarded by many recognition certificates for good performance in improving educational service delivery.
4. That inspite of good performance and fully satisfaction of the high-ups, the respondent No 2 had illegally and unlawfully issued the impugned transfer order NO. SO(MC)E&SED/4-16/2022/POSTING/TRANSFER/MC/ DATED 31.10.2022, which is illegal, against the rules and unlawful. **(Copy of Impugned Transfer Order dated 31.10.2022 is attached as annexure A)**
5. That the said transfer order is based on political malice, because neither any committee for transfer of appellant made nor any minutes of the committee available.
6. That the appellant aggrieved from the above mentioned order filed departmental appeal to the respondent No.2 which was rejected by the respondents and the respondents had illegally and unlawfully not issuing the rejection / dismissal order of the said Appeal to the Appellant. **(Copy of the departmental appeal is attached as Annexure-B)**
7. That the Appellant had also filed an Application before Right to Information (RTI) for providing the Rejection Order to the Appellant, but without any

fruitful result. **(Copy of the Application to RTI is attached as annexure C)**

- 8. That under the law the respondents are bound to disposed of the departmental Appeal of the Appellant within 14 days, hence the department has decided the Appeal of the Appellant and had not handing over the same to the Appellant.
- 9. That the appellant belongs to District Lower Dir and his family also resided in District Lower Dir, it is also pertinent to mentioned here that the Appellant is going to be retired in the year 2023 and as per the law and rules no one shall be transferred who is going to be retired, but the respondents had issued the impugned order on the basis of political influence just to accommodate their blue eyed.
- 10. That the appellant aggrieved from the transfer order dated 31.10.2022, which is illegal, unlawful, void-ab-initio and liable to be set aside inter alia on the following grounds:

GROUND S:

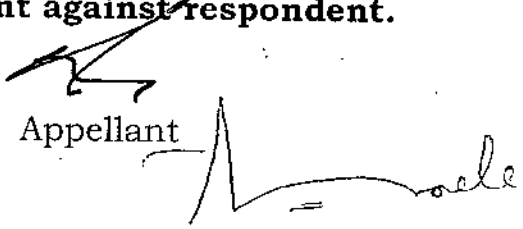
- A. That the respondent No. 2 acted illegally and in violation of KPK Services Rules by issuing the impugned transfer order dated 31.10.2022.
- B. That the appellant is the employee of the respondents department in Management Cadre and transferred to District Bajour without his consent which is against the rules and policy.
- C. That being an old age and is going to be retired in the next year 2023, moreover the appellant is belong to District Lower Dir and his family also resided in District Lower Dir, it is also pertinent to mentioned here that the Appellant is going to be retired in the next year 2023 and as per the law and rules no one shall be transferred who is going to be retired, but the respondents had issued the impugned order on the basis of political influence just to accommodate their blue eyed.

- D. That malafide and misuse of authority on the part of the respondents is very much clear that the impugned order is premature because the appellant is going to be retired after one month which is against the rules and policy.
- E. That the impugned order is illegal, unlawful and against the rules and policy.
- F. That the appellant has been subject to serve kind of discrimination and due to non-obeying the un-lawful and un-constitutional orders of the some pressure groups and their alliance.
- G. That the said transfer order is pre-mature and against the posting, transfer policy.
- H. That the transfer is neither made on vacant post nor in the public interest.
- I. That the impugned order of the respondent No.2 is illegal, unlawful and without lawful authority, liable to be set aside.
- J. That the counsel for appellant may kindly be permitted to explain his view on the points, which shall be raised at the time of arguments.

It is, therefore, most humbly prayed that On acceptance of this service appeal, the order of the respondents No. 2 may be set aside and the appellant may please be restored to his prior position as SDEO (M) Adenzai Dir Lower.

Any other relief may deemed fit in the circumstances of the law may also be granted in favour of the appellant against respondent.

Through


Appellant

AMAN ULLAH PIRZADA
Advocate, High Court,
Peshawar

Date: 05.12.2022

(5)

BEFORE THE COURT OF HON'BLE SERVICE
TRIBUNAL, KHYBER PAKHTUNKHWA
PESHAWAR

Appeal No. _____/2022

Muhammad Raza Shah.....Appellant
VERSUS
Govt of KPK & othersRespondents

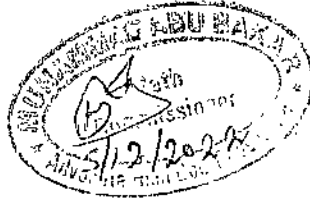
AFFIDAVIT

I, Muhammad Raza Shah S/O Muhammad Hanif R/O Ouch, Tehsil Adenzai, District Dir Lower. SDEO(M), MC, Adenzai, Dir Lower, do hereby solemnly affirm and declare on oath that the contents of accompanying **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.


DEPONENT

CNIC # 15307-4991619-7

Cell # 0345-9399360



(5)

BEFORE THE COURT OF HON'BLE SERVICE
TRIBUNAL, KHYBER PAKHTUNKHWA
PESHAWAR

CM No. _____/2022

IN Re:

Appeal No. _____/2022

Muhammad Raza Shah.....Appellant
VERSUS
Govt of KPK & othersRespondents

APPLICATION FOR SUSPENSION OF THE
IMPUGNED TRANSFER ORDER NO.
SO(MC)E&SED/4-16/2022/ POSTING/
TRANSFER/ MC / DATED 31.10.2022, TILL
THE FINAL DECISION OF THE SERVICE
APPEAL.

Respectfully Sheweth:-

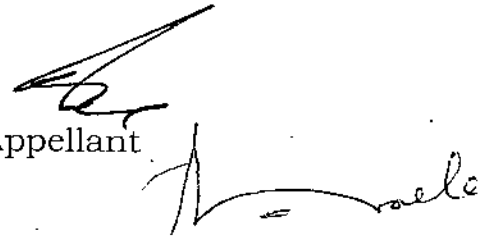
1. That the above noted service appeal is being filed before this Honourable Tribunal, in which no date of hearing has yet been fixed.
2. That the facts and grounds of the service appeal may kindly be read as an integral part of this application.
3. That the applicant has got a good prima facie case in her favour, and is sanguine about its success.
4. That the balance of convenience also lies in favour of the applicant.

- 5. That if the transfer order dated 31.10.2022 not suspended, than the applicant would suffer irreparable loss.

It is, therefore, respectfully prayed that on acceptance of this application, the impugned transfer order dated 31.10.2022 may kindly be suspended, till the final decision of the case.

Through

Appellant



AMAN ULLAH PIRZADA
 Advocate, High Court,
 Peshawar

Date: 25.11.2022

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

CM No. _____/2022

IN Re:

Appeal No. _____/2022

Muhammad Raza Shah.....Appellant

V E R S U S

Govt of KPK & othersRespondents

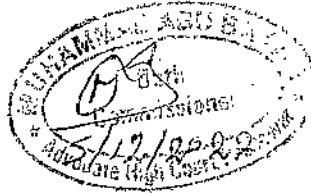
AFFIDAVIT

I, Muhammad Raza Shah S/O Muhammad Hanif R/O Ouch, Tehsil Adenzai, District Dir Lower. SDEO(M), MC, Adenzai, Dir Lower, do hereby solemnly affirm and declare on oath that the contents of accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.

D E P O N E N T

CNIC # 15207-4931619-7

Cell # 03115-9399260





GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar

Dated Peshawar 31st October, 2022

NOTIFICATION

NO. SO(MC)E&SE/4-10/2022/Post/Trn/Transfer/MC: The following posting/transfer are hereby ordered with immediate effect, in the best public interest: -

Sr. No	Name and designation	From	To
1.	Mr. Raza Shahi (MC BS-17)	SOEO (M) Adenzai Dir Lower	SDEO (M) Khar Bajaur Vico Sr. No- 2
2.	Mr. Zahoor Uddin (MC BS-17)	SDEO (M) Khar Bajaur	SDEO (M) Adenzai Dir Lower Vico Sr. No- 1

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Encl: of even No. & date:

Copy forwarded for information to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
4. District Education Officers (Male) Dir Lower/Bajaur.
5. District Accounts Officers Dir Lower/ Bajaur.
6. PS to Minister E&SE Khyber Pakhtunkhwa.
7. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
8. Master file.

Nawaz
31.10.22
(NASEER ABBAS KHALIL)
SECTION OFFICER (Management Cadre)

o/c

Handwritten signature

26/10/2022
27-11-2022

Khyber Pakhtunkhwa
Peshawar

Subject: DEPARTMENTAL APPEAL AGAINST THE TRANSFER ORDER NO. SDC/MC/ADENZA/10/2022 POSTING, TRANSFER MC, DATED 31-10-2022

Respected Sir,

It is stated that the appellant is a Sub-Divisional Education Officer (Male) PHS-7, Management Cadre at Adenza, District Dir Lower.

That the appellant has been a performer in the post of SDO, Adenza, Dir Lower with full zeal and was rewarded by many commendation certificates for good performance in improving educational service delivery.

In spite of good performance and satisfactory completion of the high-ups, the above subject transfer order (copy enclosed) has been issued which is illegal, against the rules and unlawful.

That the said transfer order is issued in violation of rules, because neither any committee for transfer of appellant was constituted nor any such committee available.

That the appellant being aggrieved from the order having no other adequate remedy approach in this departmental appeal as per the rules and provisions.

GRIDS:

- (a) That the transfer is against the rules and policy.
- (b) That the appellant has been a performer in the post of SDO, Adenza, Dir Lower with full zeal and was rewarded by many commendation certificates for good performance in improving educational service delivery.
- (c) That the transfer order is issued in violation of rules and against the posting transfer policy.
- (d) That the transfer is issued in violation of rules and against the public interest.
- (e) That the appellant being aggrieved from the order has no other adequate remedy approach in this departmental appeal.

It is, humbly prayed that on acceptance of this departmental appeal the impugned transfer order dated 31-10-2022 may kindly be cancelled being illegal, unlawful and against the policy and rules.

Applicant

Muhammad Raza Shah
S/O Muhammad Hanif
R/O Mach, Tehsil Adenza,
District Dir Lower
SISE, M.C. Adenza, Dir Lower

Handwritten notes:
7
CS 01/11/2022
4/11/22
9/02 0/2

Copy forwarded for information to the Secretary, Elementary & Secondary Education, Peshawar

Muhammad Raza Shah
M.C. Adenza Dir Lower

Handwritten notes:
SECRET
9/02

(12)

Better copy

To,

The Hon'ble Chief Secretary,
Khyber Pakhtunkhwa,
Peshawar.

Subject: **DEPARTMENTAL APPEAL AGAINST THE TRANSFER ORDER
NO. SO(MC)E&SED/4-16/2022/POSTING/TRANSFER/MC, DATED
31-10-2022.**

Respected Sir;

It is stated that the appellant is the Sub-Divisional Education Officer (Male), PBS-17, Management Cadre at Adenzai, District Dir Lower.

2. That the appellant has been performing his duties as SDEO, Adenzai, Dir Lower with full zeal and was rewarded by many recognition certificates for good performance in improving educational service delivery.

3. In spite of good performance and fully satisfaction of the high-ups, the above subject transfer order (copy enclosed) has been issued, which is illegal, against the rules and unlawful.

4. That the said transfer order is based on political malice, because neither any committee for transfer of appellant made nor any minutes of the committee available.

5. That the appellant being aggrieved from the order having no other adequate remedy approach in this departmental appeal on the following grounds:

GROUND:

- (a) That the impugned order is illegal, unlawful and against the rules and policy.
- (b) That the appellant has been subject to serve kind of discrimination and due to non-obeying the un-lawful and un-constitutional orders of the some pressure groups and their alliance.
- (c) That the said transfer order is pre-mature and against the posting, transfer policy.
- (d) That the transfer is neither made on vacant post nor in the public interest.
- (e) That the appellant is being aggrieved approach this office in above department appeal.

6. It is, humbly prayed that on acceptance of this departmental appeal the impugned transfer order dated 31-10-2022 may kindly be set-aside, being illegal, unlawful and against the policy and rules.

Appellant

Muhammad Raza Shah
S/O Muhammad Hanif
R/O Ouch, Tehsil Adenzai,
District Dir Lower.
SDEO(M), MC, Adenzai, Dir Lower.

Copy forwarded for information to the Secretary, Elementary & Secondary Education Department, Peshawar.

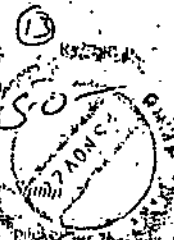
SESD
D-Adc 902
04/11/2022

(Muhammad Raza Shah)
SDEO(M), MC, Adenzai, Dir Lower.

No. 626

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Stamps are not to be affixed to insured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgment is due.



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Initials of Receiving Officer

Insured for Rs. (in figures)

RTT

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Insurance fee Rs.

Name and address of sender

insured.

To,

The learned Information Commissioner
Right to Information (RTI)
Khyber Pakhtunkhwa,
Peshawar

Subject:- APPLICATION FOR DIRECTING THE CHIEF SECRETARY KHYBER PAKHTUNKHWA PESHAWAR TO HANDOVER DISPOSAL ORDER OF THE DEPARTMENTAL APPEAL FILED BY THE APPLICANT.

Respected Sir,

1. That the Applicant is peaceful and law abiding citizen of Pakistan and is entitled for all the legal and fundamental rights constitution of Islamic Republic of Pakistan 1973.
2. That the Applicant is appointed in the respondents department and is presently serving as Sub-Divisional Education Officer (Male), PBS-17, Management Cadre at Adenzai, District Dir Lower.
3. That inspite of good performance and fully satisfaction of the high-ups, the respondent No 2 had illegally and unlawfully issued the impugned transfer order NO. SO(MC)E&SED/4-16/2022/POSTING/TRANSFER/MC/ DATED 31.10.2022, which is illegal, against the rules and unlawful.
4. That the Applicant aggrieved from the above mentioned order filed departmental appeal to the respondent No.2 which was disposed of by the respondents and the respondents had illegally and unlawfully not handing over the disposal order of the said Appeal to the Applicant.

It is, therefore, requested that directions may kindly be issued to the concerned Department Elementary & Secondary Education to provide the disposal Order of Departmental Appeal filed by the Applicant as per law.

Dated: 25.11.2022

Applicant



MUHAMMAD RAZA SHAH
S/O Muhammad Hanif
R/O Ouch, Tehsil Adenzai,
District Dir Lower.
SDEO(M), MC, Adenzai, Dir Lower.
Cell # 0346-9399360

15



PAKISTAN National Identity Card
ISLAMIC REPUBLIC OF PAKISTAN



Name
Muhammad Raza Shahi



Father Name
Muhammad Hanif

محمد رضا شاہ

محمد حنیف



Gender : Country of Stay
M Pakistan

Identity Number : Date of Birth
15307-4991619-7 18.12.1963

Date of Issue : Date of Expiry
22.11.2021 Lifetime

Holder's Signature

15307-4991619-7
گمشدہ کارڈ ملنے پر قریبی ایئر بس میں ڈال دیں

11/11



گمشدہ کارڈ ملنے پر قریبی ایئر بس میں ڈال دیں

Ministry of Information
Government of Pakistan

101621245376

گمشدہ کارڈ ملنے پر قریبی ایئر بس میں ڈال دیں