

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 117/2019

Date of Institution ... 25.01.2019

Date of Decision ... 27.12.2019

Muhammad Hashim, Junior Clerk O/O the District Education Officer, District North Waziristan. ... (Appellant)

VERSUS

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

MR. MIR ZAMAN SAFI,
Advocate

--- For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney

--- For respondents

MR. AHMAD HASSAN
MR. MUHAMMAD HAMID MUGHAL

--- MEMBER (Executive)
--- MEMBER (Judicial)

JUDGMENT:

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS:

02. Learned counsel for the appellant argued that he while serving at GHS, Dosalli was transferred/posted in the office of DEO erstwhile North Waziristan Agency, vice Mr. Shafiqullah vide order dated 30.06.2015. This order was challenged by Shafiqullah through service appeal no. 792/15 decided on 04.07.2017. The appeal was dismissed. The respondents implemented the judgment of this Tribunal through order dated 09.10.2017. However, again through another order dated 30.08.2018, the appellant was transferred from the office of Agency Education Officer, District North Waziristan to GHS Darpakhel, District North

Waziristan. This transfer was made prematurely in violation of Posting/Transfer Policy notified by the provincial government. It compelled the appellant to file departmental appeal on 26.09.2018, which remained un-responded, hence, the present service appeal. Reliance was placed on case law reported as PLD 2011 (Supreme Court) 963, 1999 SCMR 755, PLD 2013 (Supreme Court) 195 and 2014 PLC (C.S) 866.

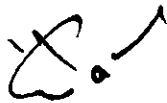
03. Learned Deputy District Attorney argued that tenure alone cannot be made a ground for cancellation of impugned transfer order. A civil servant under Section-10 of Khyber Pakhtunkhwa Civil Servants Act, 1973 was liable to serve anywhere in the province and cannot claim a post of his and her choice at a particular station. The competent authority is the best judge to post a civil servant at a particular post/station in the exigency of service. Reliance was placed on judgment of this Tribunal passed in service appeal no. 362/2018 dated 11.06.2018.

CONCLUSION:

04. Posting/transfer Policy was notified by the provincial government to regulate the matters pertaining to postings and transfers of civil servants Clause-1 of the said policy stipulates that all postings/transfers shall be strictly made in public interest and shall not be abused/misused to victimize the government servant. Class-IV deals with tenure of a civil servant against a particular post. If we judge the impugned transfer order dated 30.08.2018 on the above parameters, it becomes clear that the said provision of the aforementioned policy were violated by the respondents without any cogent reasons/justification. We are unable to understand what prompted the respondents to issue premature transfer of the appellant who got posted at the office of Agency Education Officer, District North Waziristan through

order dated 09.10.2017⁷. The record produced by the respondents was also silent that this transfer was made in the exigency of service. There is enough justification that the appellant may be allowed to complete normal tenure at the place of his present posting and thereafter the respondents would be at liberty to post a suitable official. We have also observed that a tug of war is going on between the appellant and private respondent by resorting to litigation for the purpose of getting posting in the office of Agency Education Officer, District North Waziristan. To put an end to this unending litigation, the respondents may also explore the option of posting other officials serving under their administrative control.

05. As a sequel to the above, the instant appeal is partially accepted. The impugned order dated 30.08.2018 is set aside and the appellant may be allowed to complete the normal tenure and thereafter he could be transferred against a suitable post. Parties are left to bear their own costs. File be consigned to the record room.



(MUHAMMAD HAMID MUGHAL)
Member



(AHMAD HASSAN)
Member

ANNOUNCED
27.12.2019

ORDER

27.12.2019 Counsel for the appellant present. Mr. Muhammad Jan, DDA
for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed
on file, the instant appeal is partially accepted. The impugned order
dated 30.08.2018 is set aside and the appellant may be allowed to
complete the normal tenure and thereafter he could be transferred
against a suitable post. Parties are left to bear their own cost. File be
consigned to the record room.

Announced:
27.12.2019



(Muhammad Hamid Mughal)
Member



(Ahmad Hassan)
Member

02.10.2019

Junior to counsel for the appellant present. Addl: AG
alongwith Mr. Fawad Afzal, Senior Clerk for respondents
present.


Respondents have not submitted reply/cometns
despite last opportunity. The appeal is posted to D.B for
arguments on 04.12.2019.



Chairman

04.12.2019

Appellant with counsel present. Mr. Usman Ghani
learned District Attorney alongwith Mr. Anwar Zeb
ADO for the respondents present.

The case was fixed for arguments but learned
District Attorney requested for submission of written
reply/comments. Learned counsel for the appellant
expressed no objection on submission of written
reply/comments. As such written reply/comments on
behalf of the official respondents No. 1 to 3 submitted
which is placed on file. None present on behalf of the
private respondents hence proceeded ex-parte.
Adjourned. To come up for rejoinder if any, and
arguments on 27.12.2019 before D.B


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

17.06.2019

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply on behalf of respondents not submitted. Learned Additional AG requested for adjournment. Adjourned to 11.07.2019 for written reply/comments before S.B.


(Muhammad Amin Khan Kundi)
Member

11.07.2019

Counsel for the appellant and Addl. AG present. No representative of the respondents is in attendance.

Fresh notices be issued to the respondents. To come up for written reply/comments on 04.09.2019 before S.B.

Chairman 

04.09.2019

Junior to counsel for the appellant present. Nemo for the respondents.

Fresh notices be issued to the respondents for submission of reply/comments by way of last chance on 02.10.2019 before S.B.


Chairman


117/19

28.05.2019

Counsel for the appellant present.

Contends that in pursuance to decision in Appeal No. 792/2015 made on 04.07.2017 an office order was issued on 09.10.2017 whereby the appellant was transferred from GHS Dosalli to A.E.O Office Miranshah. However, on 30.08.2018 the appellant was once again transferred and adjusted at GHS Darpa Khel District North Waziristan from Agency Education Office. The subsequent transfer was appealed against on 26.09.2018 which remained un-responded. It was the argument of learned counsel that the impugned order dated 30.08.2018 was passed even before the completion of one year of posting of appellant at AEO Office Miranshah which was in flagrant violation of the posting/transfer policy of the Provincial Government.

Instant appeal is admitted for regular hearing in view of the averments of learned counsel. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 17.06.2019 before S.B.

There is an application for suspension of operation of impugned order. Notice of the application be also given to the respondents for the date fixed. 


Chairman

Appellant Deposited
Security & Process Fee >

3/6/19

07.03.2019 Appellant absent. Learned counsel for the appellant absent. Adjourn. To come up for preliminary hearing on 19.03.2019 before S.B


Member

Note Below:

Later on, junior to counsel for the appellant appeared and P.P given.


Member

19.03.2019 Junior to counsel for the appellant present and request for adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for preliminary hearing on 17.04.2019 before S.B


(Hussain Shah)
Member



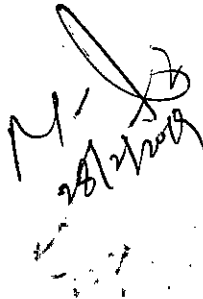

17.04.2019 Appellant absent. Learned counsel for the appellant absent. Adjourn. To come up for preliminary hearing on 29.05.2019 before S.B


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 117/2019

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|--|--|
| 1 | 2 | 3 |
| 1- | 25/1/2019 | <p>The appeal of Mr. Muhammad Hashim presented today by Mr. Noor Muhammad Khattak 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 25/1/19</p> |
| 2- | 4-2-19 | <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>8-2-19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> |
| | <p>08.02.2019</p> <p> 28/2/2019</p> | <p>Nemo for appellant.</p> <p>Notice be issued to appellant/counsel for preliminary hearing on 07.03.2019 before S.B.</p> <p style="text-align: right;"> Chairman</p> |

P-14

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 117 /2019

MUHAMMAD HASHIM

VS

EDUCATION DEPTT:

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| 11. | Vakalat nama | | 18. |

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK,
ADVOCATE

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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 117 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 108

Dated 25/01/2019

Mr. Muhammad Hashim, Junior Clerk,
O/O the District Education Officer, District North Waziristan

..... 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 Officer, North Waziristan Tribal District.
- 4- Mr. Falak Naz, Junior Clerk, GHS Darpa Khel, District North Waziristan

..... RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 30.08.2018 WHEREBY THE APPELLANT HAS BEEN TRANSFERRED FROM THE OFFICE OF DISTRICT EDUCATION OFFICER NORTH WAZIRISTAN TO GOVT: HIGH SCHOOL DARPA KHEL DISTRICT NORTH WAZIRISTAN PREMATURELY AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned order dated 30.08.2018 may very kindly be set aside and the respondents may be directed not to transfer the appellant from Office of the District Education Officer, District North Waziristan till completion of his normal tenure. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as follows:-

- 1- That appellant is the employee of the respondent Department and is serving as Junior Clerk in the Office of District Education Officer, District North Waziristan.
- 2- That appellant while serving at GHS Dosalli was transferred and posted in the Office of District Education Officer, District North Waziristan vice Mr. Shafiq Ullah vide order dated 30.06.2015. That

Filed to-day
Registrar
25/1/19

against the order dated ~~30.06.2015~~ 30.06.2015 Mr. Shafiq Ullah who was transferred from Office of the District Education Officer, North Waziristan, challenged the said order i.e. ~~30.06.2015~~ 30.06.2015 before this august Tribunal in service appeal No. 792/2015 and this august Tribunal granted Status Quo in favour of the above mentioned employee. Copies of the order dated ~~30.06.2015~~ 30.06.2015 and order sheet are attached as annexure.....**A & B.**

3- That vide judgment dated 04.07.2017 the above mentioned service appeal No. 792/2015 was dismissed by this august Tribunal. That after obtaining the judgment dated 04.07.2017 the appellant submitted the same before the respondent No.3 along with application for implementation and the respondent No. 3 issued order dated 09.10.2017 whereby the appellant has been posted in Office of the District Education Officer, District North Waziristan. Copies of the judgment, application and order dated 09.10.2017 are attached as annexure.....**C, D & E.**

4- That in response to the said order the appellant submitted his charge report and started performing his duty quite efficiently and up to the entire satisfaction of his superiors.

5- That appellant hardly served for ten (10) months in the Office of District Education Officer, District North Waziristan was pre-maturely transferred to GHS Darpa Khel, District North Waziristan vide impugned order dated 30.08.2018. Copy of the order dated 30.08.2018 is attached as annexure.....**F.**

6- That appellant feeling aggrieved from the impugned order dated 30.08.2018 filed Departmental appeal before the respondent No.2 but no reply has been received so far. Hence the present appeal on the following grounds amongst the others. Copy of the Departmental appeal is attached as annexure.....**G.**

GROUND:

A- That the impugned order dated 30.08.2018 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.

B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article-4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

C- That the respondents acted in arbitrary and malafide manner while issuing the impugned order dated 30.08.2018 whereby the appellant has been pre-maturely transferred from Office of the District Education Officer, District North Waziristan.

D- That the respondent Department Clause-I,II and IV of the transfer/Posting Policy of the Provincial Government. Copy of the transfer/posting policy is attached as annexure.....**H.**

E- That the pre-mature transfer of the appellant has been issued by the respondent No.3 just to accommodate his blue eyed person i.e. private respondent No.4.

F- That the impugned order dated 30.8.2018 has not been issued in the public interest not exigencies of public service, therefore not tenable and liable to be set aside.

G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated:23.01.2019

APPELLANT




MUHAMMAD HASHIM

THROUGH:



NOOR MOHAMMAD KHATTAK

SHAHZULLAH KHAN YOUSAFZAI



**MIR ZAMAN SAFI
ADVOCATES**

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

SERVICE APPEAL No. _____/2019

MUHAMMAD HASHIM VS EDUCATION DEPTT:

**APPLICATION FOR SUSPENSION OF OPERATION OF
THE IMPUGNED ORDER DATED 30.08.2018 TILL THE
DISPOSAL OF THE ABOVE MENTIONED APPEAL**

R/SHEWETH:

- 1- That the above mentioned service appeal along with this application has been filed by the appellant before this august Service Tribunal in which no date is fixed so far.
- 2- That appellant filed the above mentioned appeal against the impugned order dated 30.08.2018 whereby the appellant has been transferred from Office of the District Education Officer, District North Waziristan pre-maturely.
- 3- That all the three ingredients necessary for the stay is in favor of the appellant.
- 4- That the impugned order dated 30.08.2018 had been issued by the respondents in utter disregard of law and prevailing Rules.

It is therefore, most humbly prayed that on acceptance of this application the operation of the impugned order dated 30.08.2018 may very kindly be suspended to the extent of appellant till the disposal of the above mentioned service appeal.

Dated: 23.01.2019

APPLICANT


MUHAMMAD HASHIM

THROUGH:


NOOR MOHAMMAD KHATTAK


**MIR ZAMAN SAFI
ADVOCATES**



A-5

FATA SECRETARIAT
DIRECTORATE OF EDUCATION
KHYBER PAKHTUNKHWA, WARSAK ROAD PESHAWAR, PA
PHONE 091-9210166 FAX 091-9210216
No. / E-4 NWA / SWA
Vol-06
Dated Pesh: the 1 / 6 / 2015

CANCELLATION OF TRANSFER ORDER

The Transfer order issued between Mr. Muhammad Hashim Junior Clerk Agency Education Office North Waziristan Agency at Miranshah & Mr. Shafiq Ullah Junior Clerk of Govt. High School Dossali vide this Directorate order No.3234-38 dated 19.03.2015 is hereby cancelled with immediate effect in the best interest of public service, please

Director Education FATA

No. 3234-38 / 1

Dated 16 / 6 / 2015

Copy to the:-

1. Agency Education Officer, North Waziristan Agency
2. Agency Accounts Officer, North Waziristan Agency
3. Principal Govt. High School Dossali North Waziristan Agency.
4. Official Concerned.
5. P.A to Director Education FATA.

Deputy Director (F&A)

Attended
4

30-6-15
[Signature]

(3)
B - (6)

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

APPEAL NO. 792 /2015

K.W.P. Province
Service Tribunal

Diary No. 815

Date 09-7-2015

Shafiq Ullah, Junior Clerk,
O/O Agency Education Officer, NWA,
At Bannu City.



(Appellant)

VERSUS

1. The Secretary, Education (E&SE) Department, Government of KPK Civil Secretariat, Peshawar.
2. The Secretary Social Sector, FATA Secretariat Peshawar.
3. The Director of Education (FATA), FATA Secretariat, Warsak Road, Peshawar.
4. Agency Education Officer North Waziristan Agency at Bannu City
5. Muhammad Hashim J/clerk GHS Dosali, NWA.

(Respondents)

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED. 1.07.2015 WHEREBY APPEAL AGAINST THE ORDER DATED.30.06.2015 HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

THAT THE ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDERS DATED. 1.07.2015 AND 30.06.2015 MAY BE SET ASIDE BEING PASSED IN THE VIOLATION OF POSTING/TRANSFER INSTRUCTION, AND PREMATURE. THE RESPONDENT DEPTT: MAY FURTHER PLEASE BE DIRECTED TO RESTORE THE TRANSFER ORDER OF THE APPELLANT DATED. 19.03.2015 WITHOUT ANY DELAY. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filed to-day
9/7/15

re-submitted to-day
and filed:

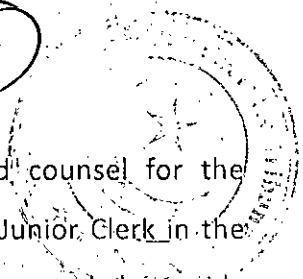
Registrar
10/7/15

ATTESTED

.....

Registrar
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

7



3

14.07.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Junior Clerk in the office of DEO, North Waziristan Agency as he was posted there vide office order dated 19.3.2015. That vide impugned order dated 30.6.2015 he was transferred from the said office to GHS Dossali regarding which he preferred departmental appeal on 1.7.2015 which was rejected without passing any appropriate orders on the same date and hence the instant service appeal on 9.7.2015.

That the impugned transfer order is pre-mature and made in violation of posting/transfer policy dated 27.2.2013.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 12.8.2015 before S.B. Notice of stay application for the date fixed be also issued. Status-quo be maintained.

Appellant Deposited Security & Process Fee

Chairman

4

12.08.2015

Counsel for the appellant and Assistant A.G for respondents present. Learned counsel for the appellant submitted application for directing the respondents No. 3 and 4 to allow the appellant to perform his duty at AEO Office. Since this Court has already issued status-quo order and the appellant was serving at the said office as such directions be issued to respondents No. 3 and 4 to abide by the orders of the Court. Fresh notices be also issued to respondents for submission of written statement for 15.10.2015 before S.B.

Chairman

Number of Pages: 800
 Copy to File: 26
 Sheet: 2
 Fee: 8
 Name of Officer:
 Date of Copy: 25-1-19
 Date of ...: 25-1-19

Certified to be true copy
 Khairpur
 Service Tribunal
 Pakistan

(8)

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

APPEAL NO. 792 /2015

G.W.P. Province
Service Tribunal

Diary No. 813

Dated 09-7-2015

Shafiq Ullah, Junior Clerk,
O/O Agency Education Officer, NWA,
At Bannu City.



(Appellant)

VERSUS

1. The Secretary, Education (E&SE) Department, Government of KPK Civil Secretariat, Peshawar.
2. The Secretary Social Sector, FATA Secretariat Peshawar.
3. The Director of Education (FATA), FATA Secretariat, Warsak Road, Peshawar.
4. Agency Education Officer North Waziristan Agency at Bannu City
5. Muhammad Hashim J/clerk GHS Dosali, NWA.

(Respondents)

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED. 1.07.2015 WHEREBY APPEAL AGAINST THE ORDER DATED 30.06.2015 HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

THAT THE ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDERS DATED. 1.07.2015 AND 30.06.2015 MAY BE SET ASIDE BEING PASSED IN THE VIOLATION OF POSTING/TRANSFER INSTRUCTION, AND PREMATURE. THE RESPONDENT DEPTT: MAY FURTHER PLEASE BE DIRECTED TO RESTORE THE TRANSFER ORDER OF THE APPELLANT DATED. 19.03.2015 WITHOUT ANY DELAY, ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

As-submitted to-day
and filed:

Registrar
10/7/15

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

| Sr. No | Date of order/proceedings | Order or other proceedings with signature of Judge or Magistrate |
|--------|---------------------------|--|
| 1 | 2 | 3 |



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 792/2015

Date of Institution ... 09.07.2015
 Date of Decision ... 04.07.2017

Shafiq Ullah, Junior Clerk, Agency Education Office, NWA,

Versus

04.07.2017

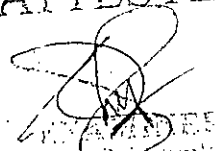
1. The Secretary Education (E&SE) Department, Govt. of Khyber Pakhtunkhwa Civil Secretariat, Peshawar and others.

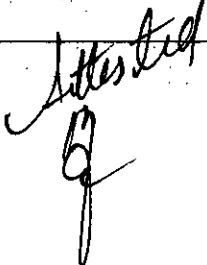
JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: - Learned

counsel for the appellant and Mr. Usman Ghani, District Attorney on behalf of the official respondent, present.

2. Brief facts of the case giving rise to the above the service appeal are that vide transfer order bearing endorsed No. 32/38 dated 19.03.2015 of the Director Education Fata appellant/ Junior Clerk Shafiq Ullah was transferred from GHS Dossali, North Waziristan Agency (NWA) and posted at Agency Education Office North Waziristan Agency (NWA). While Junior Clerk, namely Muhammad Hashim (respondent No. 5) was transferred from Agency Education Office NWA and posted at GHS Dossali, NWA.

ATTESTED

 MEMBER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

Attested


7. It may be mentioned that the appellant filed rejoinder against the Reply/Para Wise comments submitted by the respondent No. 5 wherein he did not specifically meet the above mentioned averment of the respondent No. 5 and as such did not elaborate the exact tenure spent by the appellant while posted at GHS Dossali, NWA.

8. It was also admitted, on behalf of the appellant that at this stage the appellant has succeeded to complete his normal tenure at Agency Education Office NWA for the reason that the appellant did not honor the impugned order in as much as orders of status-quo were issued by this Tribunal.

9. Since the appellant has not brought on record any cogent material to substantiate his aforementioned plea and to rebut the counter plea as taken by contesting respondent No.5 moreover allegedly the appellant, at this juncture, has already completed normal tenure at the place of posting of his choice i.e Agency Education Office NWA, the present appeal merits dismissal as such the same is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room after its completion.

Announced

04.07.2017

Sh. M. Hamid Mughal,
Member

(IAL)

Certified to be true copy

Sh. Gul Zeb Khan,
Secretary

Sh. Gul Zeb Khan,
Member

Attested
[Signature]

To

The Director Edu RATA
Warsaw road pesh


D-11

Subject: Implementation of Honourable
Court order dt. 4/7/017.
appeal no 792/015.

Sir, with great respect it is stated that
the Honourable Court has decided my case
in my favour on date mentioned above.
Therefore, it is humbly prayed that the
AEO RATA may kindly be directed to
implement the Honourable Court order in
letter & spirit for the larger interest
of justice.

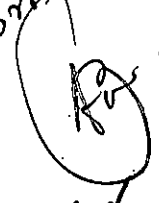

Thanks

Dated 7/9/017


Yours Sincerely

M. Hashim s/c.
RATA Miran Shah.

A.D (Lit)
Please put up
on file with
your valuable
comments.


20/9/2017


OFFICE OF THE AGENCY EDUCATION OFFICER NORTH WAZIRISTAN AGENCY

OFFICE ORDER

E-12

In pursuance of Director Education FATA Secretariat Warsak Road Peshawar letter No- 14933 dated Peshawar the 04-10-2017 regarding implementation of Khyber Pakhtunkhwa Service Tribunal/Court Decision No 792/2015 dated 04-07-2017, the following J/Clerks are hereby transferred/adjusted on their own pay scale & BPS to the school mentioned against each with immediate effect.

| S.No | Name & Designs | From | To | Remarks |
|------|----------------------|-------------------|-------------------|-------------|
| 1- | Muht: Hashim J/Clerk | GHS Dosalli | AEO Office M/Shah | Vice S.No-2 |
| 2- | Shafiq Ullah J/Clerk | AEO Office M/Shah | GHS Tali Village | Vacant Post |

NOTE:

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

AGENCY EDUCATION OFFICER
NORTH WAZIRISTAN AGENCY

Endstr: No: 6739-45 /Transfer/Adjustment/JC/NWA/Dated M/Shah the 09 /10/2017

Copy to the:

- 1-Director of Education (FATA) Khyber Pakhtoonkhwa Peshawar w/r to his No & date quoted above.
- 2-Agency Accounts Officer North Waziristan Agency at M/Shah.
- 3-AAEO Male circle concerned.
- 4- Principal GHS Dosalli NWA.
- 5- Head Master GHS Tali Village NWA
- 5-Clerks concerned
- 6-Accountant Local Office.

Attested
67

[Signature]
AGENCY EDUCATION OFFICER
NORTH WAZIRISTAN AGENCY
[Signature]

To,

The Secretary, (E&SE) Department,
Khyber Pakhtunkhwa, Peshawar.

G-14

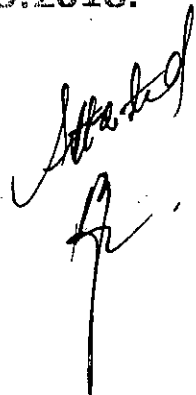
Subject: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED 30.08.2018 WHEREBY THE APPELLANT HAS BEEN PRE-MATURELY TRANSFERRED FROM O/O THE DISTRICT EDUCATION OFFICER, DISTRICT NORTH WAZIRISTAN.

Respected Sir,

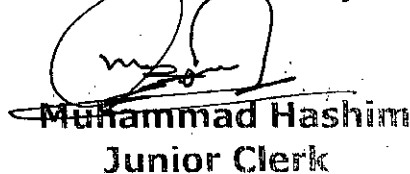
It is most humbly stated that I am serving as Junior Clerk in Office of the District Education Officer, District North Waziristan. During performing my duties at GHS Dosalli I was transferred and posted in Office of the District Education Officer, District North Waziristan in place of Mr. Shafiq Ullah (Junior Clerk) vide order dated 01.07.2015. Mr. Shafiq Ullah filed service appeal before the Khyber Pakhtunkhwa Service Tribunal Peshawar against the order dated 01.07.2015 which was dismissed vide judgment dated 04.07.2017 and in implementation of the above mentioned judgment the District Education Officer, North Waziristan issued the order dated 09.10.2017 whereby the appellant has been posted in office of the District Education Officer, District North Waziristan. I was hardly served for ten (10) months on the said station the Director Education Newly Merged District issued pre-maturely transfer order dated 30.08.2018 whereby I have been transferred to GHS Darpa Khel North Waziristan. I am feeling aggrieved from the impugned order dated 30.08.2018 filed this Departmental appeal before your good self.

It is therefore, most humbly prayed that on acceptance of this Departmental appeal the impugned order dated 30.08.2018 may very kindly be set aside and I may not be transferred from O/O the District Education Officer, District North Waziristan till completion of my normal tenure.

Dated: 26.09.2018.

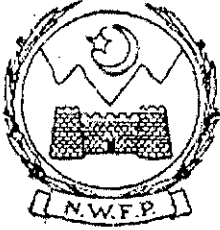


Your Obediently



Muhammad Hashim
Junior Clerk

O/O the District Education Officer,
District North Waziristan



H - (15)

**GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(Regulation Wing)**

POSTING / TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT.

- i) All the posting/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants
- ii) All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities for seeking posing/transfers of their choice and against the public interest.
- iii) All contract Government employees appointed against specific posts, can not be posted against any other post.
- iv) The normal tenure of posting shall be three years subject to the condition that for the officers/officials posted in unattractive areas the tenure shall be two years and for the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.
- v) ¹{ }
- vi) While making postings/transfer from settled areas to FATA and vice-versa, specific approval of Governor, NWFP needs to be obtained
- ²While making postings/transfers of officers/officials up to BS-17, from settled areas to FATA and vice-versa approval of the Chief Secretary NWFP needs to be obtained. Whereas, in case of posting/transfer of officers in BS-18 and above, from settled areas to FATA and vice versa, specific approval of the Governor NWFP shall be obtained.
- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for atleast eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.
- vii) Officers may be posted on executive/administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thaana) of his area/residence is situated.
- viii) No posting/transfers of the officer's/officials on detailment basis shall be made.
- ix) Regarding the posting of husband/wife, both in Provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.
- x) All the posting/transferring authorities may facilitate the posting/transfer of the unmarried female government Servants at the station of the residence of their parents.

Para-1(v) regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No: SOR-VI (E&AD) 1-4/2008/Vol-VI, dated 3-6-2008.

Consequently authorities competent under the NWFP Government Rules of Business, 1985, District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make posting/transfer subject to observance of the policy and rules.

² Added vide Urdu circular letter No. SOR-VI(E&AD)1-4/2003, dated 21-09-2004

16

- xi) Officers/officials except DCOs and DPOs/SPs who are due to retire within one year may be posted on their option on posts in the Districts of their domicile and be allowed to serve there till the retirement
¹DCOs and DPOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against non-administrative posts of equivalent scales;
- xii) In terms of Rule-17(1) and (2) read with Schedule-III of the NWFP Government Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against each officer in column 2 thereof:

| Outside the Secretariat | | |
|-------------------------|---|--|
| 1. | Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above. | Chief Secretary in consultation with Establishment Department and Department concerned with the approval of the Chief Minister. |
| 2. | Other officers in BPS-17 and above to be posted against scheduled posts, or posts normally held by the APUG, PCS(EG) and PCS(SG). | -do- |
| 3. | Heads of Attached Departments and other Officers in B-19 & above in all the Departments. | -do- |
| In the Secretariat | | |
| 1. | Secretaries | Chief Secretary with the approval of the Chief Minister. |
| 2. | Other Officers of and above the rank of Section Officers: a) Within the Same Department b) Within the Secretariat from one Department to another: | Secretary of the Department concerned. Chief secretary/Secretary Establishment. |
| 3. | Officials up to the rank of Superintendent: a) Within the same Department b) To and from an Attached Department c) Within the Secretariat from one Department to another | Secretary of the Department concerned. Secretary of the Dept in consultation with Head of Attached Department concerned. Secretary (Establishment) |

- xiii) While considering posting/transfer proposals all the concerned authorities shall keep in mind the following:
- a) To ensure the posting of proper persons on proper posts, the Performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/officials be considered.
- b) Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

¹ Added vide Urdu circular letter No: SOR-VI (E&AD)/1-4/2005, dated 9-9-2005.

(17)

xiv) Government servants including District Govt. employees feeling aggrieved due to the orders of posting/transfer authorities may seek remedy from the next higher authority / the appointing authority as the case may be through an appeal to be submitted within seven days of the receipt of such orders. Such appeal shall be disposed of within fifteen days. The option of appeal against posting/transfer orders could be exercised only in the following cases.

- i) Pre-mature posing/transfer or posting transfer in violation of the provisions of this policy.
- ii) Serious and grave personal (humanitarian) grounds.

2. To streamline the postings/transfers in the District Government and to remove any irritant/confusions in this regard the provision of Rule 25 of the North West Frontier Province District Government Rules of Business 2001 read with schedule – IV thereof is referred. As per schedule-IV the posting/transferring authorities for the officers/officials shown against each are as under:-

| S. No. | Officers | Authority |
|--------|--|--|
| 1. | Posting of District Coordination Officer and Executive District Officer in a District. | Provincial Government. |
| 2. | Posting of District Police Officer. | Provincial Government |
| 3. | Other Officers in BPS-17 and above posted in the District. | Provincial Government |
| 4. | Official in BPS-16 and below | Executive District Officer in consultation with District Coordination Officer. |

3. As per Rule 25(2) of the Rules mentioned above the District Coordination Department shall consult the Government if it is proposed to:

- a) Transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure.
- b) Require an officer to hold charge of more than one post for a period exceeding two months.

4. I am further directed to request that the above noted policy may be strictly observed /implemented.

.....


All concerned are requested to ensure that tenures of the concerned officers/officials are invariably mentioned in summaries submitted to the Competent Authorities for Posting/Transfer.

{Authority: Letter No: SOR-VI/E&AD/1-4/2003 dated 24-6-2003}.

.....

It has been decided by the Provincial Government that posting/transfer orders of all the officers up to BS-19 except Heads of Attached Departments irrespective of grades will be notified by the concerned Administrative Departments with prior approval of the Competent Authority obtained on the Summary. The Notifications/orders should be issued as per specimen given below for guidance.

All posting/transfer orders of BS-20 and above and Heads of Attached Departments (HAD) shall be issued by the Establishment Department and the Administrative Departments shall send approved Summaries to E&A Department for issuance of Notifications.

Attested


VAKALATNAMA

Before the KP Service Tribunal, Peshawar

No. _____/2019

Muhammad Hashim

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Deptt.

(RESPONDENT)
(DEFENDANT)

I/We *Muhammad Hashim*

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration 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. ____/____/2019



CLIENT


ACCEPTED

NOOR MOHAMMAD KHATTAK

SHAHZULLAH KHAN YOUSAFZAI


MIR ZAMAN SAFI
ADVOCATES

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.
Phone: 091-2211391

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 90 /ST

Dated 15-01-2020


To

The Director E&SE,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: - JUDGMENT IN APPEAL NO. 117/2019, MR. MUHAMMAD HASHIM.

I am directed to forward herewith a certified copy of Judgement dated 27.12.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No.....117/2019


Mr. Muhammad Hashim J/C office of the district Education Officer, North Waziristan Tribal District-----Appellant

VERSUS

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

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| 3 | Authority letter | | 4 |
| 4 | Cancellation order | Annexure -A | 5 |
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| 7 | Copy of transfer order | Annexure-D | 8 |


ASSISTANT DISTRICT EDUCATION OFFICER
NORTH WAZIRISTAN T.D
Asstt. District Education Officer
North Waziristan Tribal Distt

①

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service appeal No: 117/2019

Muhammad Hashim J/C District Education Officer, North Waziristan Tribal District.

-----Appellant

VERSUS


Secretary (E&SE) Department, Khyber Pakhtunkhwa & Others. -----Respondents

JOINT PARA WISE COMMENTS FOR & ON BEHALF OF THE RESPONDENTS No.1,2,3.

The Respondents submit as under:-

Preliminary Objections

1. That the appellant has got no cause of action/locus standi.
2. That the instant Service Appeal is badly time-barred. Hence is liable to be dismissed.
3. That the appellant has concealed material facts from this Honorable Tribunal in the instant service appeal.
4. That the instant service appeal is against the relevant provision of law.
5. That the appellant is not an aggrieved person under Article-212 of the constitution of the Islamic Republic of Pakistan 1973.
6. That the appellant has filed the instant appeal on mala-fide intentions just to put extra ordinary pressure on the Respondents for the grant of illegal & even unauthorized service benefits.
7. That the appellant has not come to this honorable Tribunal with clean hands.
8. That the instant appeal is liable to be dismissed for miss-joinder & non-joinder of the necessary parties to the present appeal.
9. That the appellant is estopped by his own conduct to file the instant appeal.
10. That the instant Service appeal is not maintainable in its present form.
11. That this Honorable Service Tribunal has got no jurisdictions to entertain the instant Service appeal.
12. That the appellant has been treated as per laws, rules & relevant policy in the instant case.
13. That the instant Service appeal is barred by law.
14. That the impugned Notification dated 30/08/2018 of the Respondent Department is legally competent.
15. That the appellant has been treated under the provision of section-10 of civil servants, Act 1973 by the competent authority.


And District Education Officer
North Waziristan Tribal Distt:

ON FACTS:

1. That Para-1 needs no comments, being pertains to the post & service record of the appellant in the Respondent Department against the Junior Clerk post.
2. That Para-2 is correct to the extant vide the order dated 30/06/2015 before this tribunal wherein, status quo has been granted by the Honorable Service Tribunal Peshawar **(Copies of the cancellation order & status Quo are annexed as Annexure A&B).**
3. That para -3 is correct to the extent that a Service Appeal 792/2015 case titled Shafiq Ullah Junior Clerk VS Govt has been dismissed by this Tribunal Vide judgment Order dated 04/07/2017 & upon which the appellant has been posted against the Junior Clerk post in the District Education Officer (M) vide order dated 09/10/2017 issued by the Respondent No.3 **(Copy of the said order is attached as Annexure-C).**
4. That para-4 needs no comments.
5. That para-5 is correct to the extent of the transfer vide order dated 30/08/2018 under the provision of section-10 of Civil Servant, Act 1973 by the Competent authority. As the post of the appellant is a provincial cadre post & appellant is liable to service anywhere in the province wherever his services are required by the authority. **(Copy of the Order dated 30/08/2018 is attached as Annexure-D).**
6. The para-6 is incorrect and denied on the grounds that no Departmental Appeal has been filed by the appellant against the impugned order dated 30/06/2018 before the appellant authority till dated Hence, the said order has got finality against the appellant under the mandatory provisions of law of limitation Act 1908 & the appeal of the appellant is badly time barred & is liable to be Dismissed on the following grounds inter alia:-

GROUND.

Alisud

[Signature]
Asstt. District Education Officer
North Waziristan Tribale Distt.

- A. incorrect & not admitted. The impugned order dated 30/08/2018 of the Respondent department is legally competent and is liable to be maintained.
- B. Incorrect & not admitted. The appellant has been treated as per law rules & relevant policy by the Respondent Department. Therefore, the stand of the appellant is without any cogent reason & justification & liable to be rejected having no question of violation of Articles 4&25 of the constitution of Islamic Republic of Pakistan 1973.
- C. Incorrect & not admitted. The appellant is baseless & exam without legal justification of being an employee of provincial cadre in the Respondent Department.
- D. Incorrect & not admitted. As the referred Classes-II & IV of transfer & posting policy is not applicable upon the cases of the appellant. Hence, descript to be rejected.
- E. Incorrect & not admitted. The Act of the Impugned transfer & Posting order dated 30/08/2018 is within the legal shape & Liable to be maintained.
- F. Incorrect & not admitted. The competent is entitled to transfer & Post a Regular Civil Servant wherever his Service against the post he holds has required. Hence, the plea of the appellant is illegal & liable to be rejected.

G Legal. However, the Respondents further seek leave of this Honorable Tribunal to submit additional grounds, case law & record at the time of arguments on the dated fixed before this Honorable Bench.

Prayer

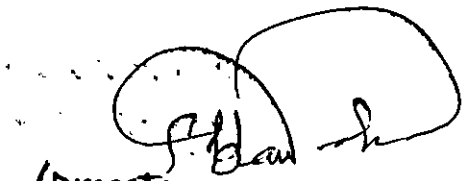
Therefore, it is most humbly prayed that on the acceptance of this reply, this Honorable Tribunal may very graciously be pleased to dismiss the appeal in hand in favor of the Respondent in the interest of justice.

Dated: 30 / 11 / 2019

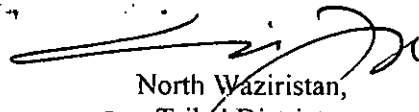


Secretary
(E&SE)Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No.1)

BEO


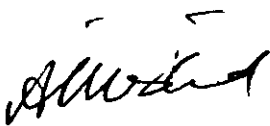



Director
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No. 2&3)


North Waziristan,
Tribal District.
District Education Officer
North Waziristan Tribal Distt:

AFFIDAVIT.

Muhammad Sharif ADEO Litigation District Education Office North Waziristan Tribal District do hereby solemnly affirm and declare on oath that: the contents of the instant Parawise Comments in the titled Service Appeal are true & Correct to the best of my knowledge & belief that nothing has been concealed from the ambit of this Honorable Tribunal.


DEPONENT.
Asstt: District Education Officer
North Waziristan Tribal Distt:
Asstt: District Education Officer
North Waziristan Tribal Distt:

(4)

BEFORE THE HONORABLE KHYBER-PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. ----117/ 2019-2020

Mr. Muhammad Hashim J/C Office of the District Education officer, North Waziristan Tribal
District. -----Appellant

VERSUS

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

AFFIDAVIT

I, Mr. Anwar Zeb Assistant District Education Officer North Waziristan do solemnly affirm and declare that the Comments of Respondent No.1, 2, 3 in the appeal No. 117/2019 is true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

Attested

Muhammad Hashim
Asstt. District Education Officer
North Waziristan Tribal Distt.



Anwar Zeb

Anwar Zeb
Asstt: district Education Officer
North Waziristan Tribal

AUTHORITY LETTER

This office has the honor to state that **Mr. Anwar Zeb** has been serving in the District Education Office as an ADEO. He has been given the authority to attend any kind of court case. So he may be considered as representative of the District Education officer, N.W.T.D


DISTRICT EDUCATION OFFICER
NORTH WAZIRISTAN AGENCY

District Education Officer
North Waziristan Tribal District