

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

C.O.C No.71/2023
IN
Service Appeal No: 24/2022

Syed Amjid Ali, (BS-19) (TC) Additional Director (CTR) DCTE Khyber
Pakhtunkhwa Abbottabad.....Appellant

VERSUS

Govt; of Khyber Pakhtunkhwa through the Chief Secretary &
others.....Respondents

**REPLY TO THE APPLICATION IN THE TITLED CONTEMPT OF COURT ON
BEHALF OF RESPONDENTS NO: 1-4.**

Respectfully Sheweth,

The Respondents submit as under:-

PRELIMINARY OBJECTIONS.

- 1 That the Appellant has got no cause of action/locus standi to file the instant appeal before this Honorable Tribunal.
- 2 That the appellant is not an aggrieved person within the meaning of Article 212 of the constitution of Islamic Republic of Pakistan.
- 3 That the appellant has concealed material facts from this Honorable Tribunal in the titled appeal with regard to the Judgment dated 21-07-2022 rendered in Service Appeal No.24/2021 under case titled Syed Amjid Ali VS Govt; of KPK & others, whereby, the case of the appellant has been decided on the basis of normal tenure by setting aside the Notification dated 23-12-2021 in favor of the appellant against the Respondent No.5 namely Zulfiqar Khan (BS-19) Teaching Cadre.
- 4 That the Appellant has not come to this Honorable Tribunal with clean hands on the grounds that he has filed a COC No.71/2023 in the Service Appeal No. 24/2021 by challenging the Notification dated 10-02-2023 to the extent of Mr. Jaffar Mansoor Abbasi an officer of (BS-19) (MC) posted against the Additional Director (DCTE) Abbottabad in view of the order dated 10-01-2022 of this Honorable Tribunal in service appeal No. 24/2021 under case titled Amjid Ali VS Govt; decided vide judgment dated 21-07-2022 against the Respondent No.5 Zulfiqar Khan & not against Mr. Mansoor Abbasi.
- 5 That the appeal in hand is based on mala fide intentions for illegal service benefits to the extent of his posting against the additional Director (DCTE) which is purely a Management Cadre post in the Respondent Department as validated vide order dated 10-01-2022 by this Honorable Tribunal.

- 6 That the Notification No.SO (SM)/E&SED/7-1/PT/MC/DCTE dated 23-12-2021 & Notification No. SO(MC)/E&SED/4-16/2022/posting/transfer/MC dated 10-02-2023 of the Respondent No.2/Secretary E&SE Department KP Peshawar are legal & even the result of due process of law & rules & Management Cadre policy of the Respondent Department.
- 7 That the appellant is not entitled for his posting against the Additional Director (DCTE), on the grounds being an officer of (BS-19) TC Cadre, in placed of the Respondent No.5/Jaffar Mansoor Abbasi an officer of (BS-19) (MC) on the analogy & compliance of the order dated 10-01-2022 of this Honorable Tribunal.
- 8 That the plea of the appellant regarding non-completion of the tenure is against the relevant provision of law with reference to Section-10 of Civil Servant Act, 1973 & even in accordance with law by placing reliance on reported judgments, 1996 SCMR P-1649 & 1999 PLC (CS) P-849 of the apex Court of Law.
- 9 That the judgment dated 21-07-2022 of this Honorable Tribunal is not applicable upon the case of the appellant on the grounds of being different in both question of law & facts of the case from the titled case.
- 10 That this Honorable Tribunal vide order dated 10-01-2022 has observed that the post of the Director/Additional Director (DCTE) is primarily reserved for the officers of the Management Cadre instead for Teaching Cadre.

ON FACTS.


- 1 That Para-1 is incorrect & denied on the grounds that vide Notification No.SO (SM)/E&SED/7-1/PT/MC/DCTE dated 23-12-2021 the appellant was transferred against the BS-19 Teaching Cadre post at the mentioned school under Section-10 of Civil Servant Act 1973 by the Respondent No.2 after due process of law & rules. However, in view of the order dated 10-01-2022 of this Honorable Tribunal, wherein, the post of the Director (DCTE) Abbottabad has been declared as a post of Management Cadre & in compliance whereof, the service of Mr. Jabbar Mansoor Abbasi, an officer of BS-19 (MC) has been placed as Additional Director (DCTE) Abbottabad vide Notification No. No. SO(MC)/E&SED/4-16/2022/posting/transfer/MC dated 10-02-2023 with reference to S.No.2. In this regard, it is worth to reproduce operative parrot of the order dated 10-01-2022 for ready reference: *Obviously, the Respondent are supposed to fill the post of the Additional Director from the management Cadre but if they have opted to fill the same by incumbents of the post of Teaching Cadre, they were supposed to follow the Tenure policy until a suitable person from the management cadre become available.* (Copies of which are attached as Annexure-A, B & C for ready reference.
- 2 That Para-2 is correct to the extent of the Notifications dated 04-06-2021, 24-08-2020 & 13-11-2020 respectively, whereas, rest of the para pertains to the record & subject to the production of proof by the appellant before this Honorable Tribunal with further submission that the matter has already been settled down by this Honorable Tribunal vide judgment dated 21-7-2022 in Service Appeal No. 24/2021 case titled Amjid Ali Vs Govt; between the appellant & Respondent No. 5/Zulfiqar Khan both are


the officers of (BS-19) in the Department, whereas, in Service Appeal 24/2022, the appellant has made Mr. Jaffar Mansoor Abbasi as Respondent No.5 on mala fide intention with the material facts that he is a Management Cadre officer BS-19 & has correctly been posted as an Additional Director (DCTE) vide Notification dated 10-02-2023 which has already been acted upon by all concerned, hence, the order dated 14-02-2023 has automatically no more in field against the Department. (Copies of the Notifications & order are attached as Annexure-D, E, & G).

- 3 That Para-3 is incorrect & denied as the stand taken by the appellant is subject to the cogent proof which is directly lies upon the shoulders of the appellant in the given circumstances of the case.
- 4 That Para-4 is also incorrect & misleading on the grounds that the act of the Department regarding the Notification No.SO (SM)/E&SED/7-1/PT/MC/DCTE dated 23-12-2021 & No. SO(MC)/E&SED/4-16/2022/posting/transfer/MC dated 10-02-2023 of the Respondent No.2/Secretary E&SE Department KP Peshawar is legal & even the result of due process of law, rules, policy & even in compliance of the order dated 10-01-2022 passed by this Honorable Tribunal, wherein, the post in question has already been declared as a post Management Cadre in BS-19 instead of a TC post in BS-19 in the Respondent Department & compliance, whereof, the Notification dated 10-02-2023 has been issued by the Respondent No.2 by posting Mr. Jaffar Mansoor Abbasi, a management Cadre officer of BS-19, upon the same after due process of law, rules & policy.
- 5 That Para-5 is correct that vide Notification dated 23-12-2021 the appellant was transferred from the post of additional Director (DCTE) to the post of Principal GHS Nathia Gali Abbottabad in view of the above made submission in the forgoing paras by the Respondent Department which is attached as Annexure-H.
- 6 That Para-6 is also incorrect as no Departmental appeal has been filed by the appellant against the legal Notification dated 23-12-2021 to the competent authority till date, nor any such record is available in the Respondent Department, hence got finality under the relevant provision of law of limitation Act 1908, against the appellant in favor of the Respondent Department.
- 7 That Para-7 is incorrect the appellant is not an aggrieved person within the meaning of Article 212 of the constitution of Islamic Republic of Pakistan nor he has got a valid cause of action to approached this Honorable Tribunal, hence, the appeal in hand is liable to be dismissed.
- 8 That Para-8 is incorrect, hence denied on the grounds that the stand of the applicant is without any cogent and legal justification and even irrelevant in the given circumstances of the title case as the Notification dated 10-02-2023 is in accordance with observations of this Hon'ble Tribunal made in the order sheet dated 10/01/2022.

Therefore, in view of the above made submissions, it is most humbly prayed that on the acceptance of the instant application, this Hon'ble Tribunal may kindly be pleased to dismiss the titled application in favor of the Respondent Department by vacating the stay order dated 10-01-2022 to the extent of restoration of the operation of the Notification dated 23-12-2023 & 10-02-2023 in the interest of justice.


Dated. ___/___/2023.


SECRETARY
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 1 & 3)


DIRECTOR
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 4)

AFFIDAVIT

I, Dr. Hayat Khan Assistant Director (Litigation-II) E&SE Department Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents of the instant para wise Comments to the titled application are true & correct to the best of my knowledge & belief.


Deponent



Dated Peshawar the December 23, 2021

NOTIFICATION

NO.S0(SME&SED/7-1/2021/AT/MC/DCTE): The Competent Authority is pleased to order the transfer of the following Officers of Elementary & Secondary Education Department, in the best public interest, with immediate effect:-

10-

S#	Name & designation	From	To
1.	Mst. Zohra Begum MC (BS-19)	District Education Officer (F) Baitagram.	Additional Director (Assessment & Evaluation), DCTE Abbottabad vice S No.04.
2.	Mr. Muhammad Athar, SS (Material Development) BS-19	Directorate of Curriculum & Teachers Education Abbottabad.	Additional Director (Standards) DCTE Abbottabad against the vacant post.
3.	Mr. Zulfiquar Khan TC (BS-19)	Principal GHS Sheikhu Bandi District Abbottabad	Additional Director (Curriculum & Textbook), DCTE Abbottabad vice S No. 05.
4.	Mr. Amin Dad, TC (BS-19)	Additional Director (Assessment & Evaluation), DCTE Abbottabad.	Principal (BS-19) GHSS Kakotri District Haripur against the vacant post.
5.	Syed Amjid Ali Shah, TC (BS-19)	Additional Director (Curriculum & Textbook), DCTE Abbottabad	Principal (BS-19) GHS Nathia Gali District Abbottabad against the vacant post.

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Ends: of even No. & Date

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. Director, Curriculum & Teachers Education Abbottabad
4. District Education Officer (Male) concerned.
5. District Account Officers concerned.
6. Director, EMIS E&SE Department.
7. PS to Minister for E&SE Department.
8. PS to Secretary E&SE Department.
9. PA to Deputy Secretary (Admn) E&SE Department
10. Officers concerned
11. Office order file.

Attested to be
True copy

(HAFEEZ UR REHMAN SHAH)
SECTION OFFICER (SCHOOLS MALE)

10.01.2022

Counsel for the appellant present. Preliminary arguments have been heard.

The appellant has invoked the jurisdiction of this Tribunal to impugn the transfer order dated 23.12.2021, whereby the appellant holding the post of Teaching Cadre (T.C) BS-19 has been transferred from the post of Additional Director, Curriculum & Textbook, Directorate Abbottabad to the post of Principal BS-19 GHS Nathia Gali, Abbottabad against the vacant post. In the same order respondent, No. 5 holding the post of Principal, BS-19 GHS Sheikhul Bandi Abbottabad has been transferred and posted as Addl. Director DCTE Abbottabad in place of the appellant. Needless to say that both the appellant as well as private respondent No. 5 belong to the Teaching Cadre and the disputed transfer has been made on the Management Cadre post. However, about seven months earlier vide order dated 04.06.2021, inter-se transfer of appellant and respondent No. 5 was made and the latter was posted as Addl. Director DCTE by his transfer from GHS Sheikhul Bandi Abbottabad and the former was transferred from the post of Addl. Director and posted as Principal, GHS Sheikhul Bandi. Obviously, the respondents are supposed to fill the post of Addl. Director from the Management Cadre but if they have opted to fill the same by incumbent of the post of Teaching Cadre, they were supposed to follow the tenure policy until a suitable person from the Management Cadre become available. Let the respondents come and explain as to what public interest lies in this exercise. The appeal is admitted for full hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 20.01.2022 before S.B at Camp Court, Abbottabad.

Alongwith the appeal an application for interim relief for suspension of the impugned letter dated 23.12.2021 has been filed. Notice of application be also given to the respondents. Operation of the impugned order shall remain suspended till date fixed.

Chairman



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated: 10th February, 2023

NOTIFICATION

NO.50(MC)E&SED/4-16/2022/Posting/Transfer/MC/: Consequent upon the approval of the Competent Authority and subsequent NOC from the Election Commission of Pakistan, the following posting/ transfer are hereby ordered with immediate effect, in the best public interest: -

S #	Name & Designation	From	To	Remarks
1.	Mr. Zahid Muhammad (MC BS-19)	DEO (Male) Bannu	DEO (Male) Mardan	A.V.P
2.	Mr. Jaffar Mansoor Abbasi (MC BS 19)	Awaiting Posting	Additional Director, Directorate (DCTE) Abbottabad.	V.S.No.3
3.	Syed Amjad Ali (TC BS-19)	Additional Director DCTE Abbottabad.	Principal (BS-19) GHSS Salabat Mansehra	A.V.P
4.	Mr. Aurangzeb (MC BS-18)	DEO (Male) Karak	DEO (Male) Lower Kohistan	Vice S.No.5
5.	Mr. Zahoor Khan (MC BS 19)	DEO (Male) Lower Kohistan	DEO (Male) Karak	Vice S.No.4
6.	Mr. Liaqat Ali (MC BS-18)	Deputy DEO Dir Lower	DEO Mohmand In OPS	By relieving Abdul Manan, Deputy Director, Directorate of E&SE. of the Additional Charge.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA.
E&SE DEPARTMENT

Endst: 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. Section Officer (Schools Male) E&SE Department
5. District Education Officer (Male) Concerned
6. District Accounts Officer Concerned.
7. PS to Minister E&SE Khyber Pakhtunkhwa
8. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
9. Master file.

*Attested
to be true
copy*

(NASEER ABBAS KHALIL)
SECTION OFFICER (Management Cadre)

- 18 -

Service Appeal No.24/2022 titled "Syed Anjad Ali vs Chief Secretary, Khyber Pakhtunkhwa and others" decided on 21.07.2022 by Division Bench comprising Kalim Arshad Khan, Chairman and Salah Ud Din, Member, Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
SALAH UD DIN ... MEMBER (JUDICIAL)

Service Appeal No.24/2022

Syed Anjad Ali, (BS-19) Additional Director (CTR) DCTE, Khyber Pakhtunkhwa, Abbottabad.

.....(*Appellant*)

Versus

1. Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Government Khyber Pakhtunkhwa, Elementary and Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
3. Deputy Secretary Admin, Khyber Pakhtunkhwa, Peshawar.
4. Director, Elementary and Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
5. Mr. Zulfiqar Khan, IC(BS-19) Principal GHS Sheikhu Bandi, District Abbottabad.

.....(*Respondents*)

Present:

Mr. Abdul Aziz Tanoli,
Advocate.....For appellant.

Kabirullah Khattak,
Additional Advocate GeneralFor official respondents.

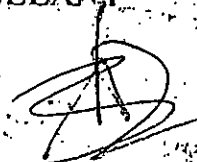
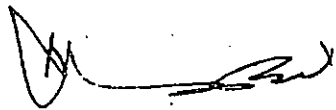
Mr. Arshad Khan Tanoli,
Advocate.....For private respondent No.5

Date of Institution.....10.01.2022

Dates of Hearing.....21.07.2022

Date of Decision.....21.07.2022

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION ISSUED BY RESPONDENT NO.2 BEARING NUMBER NO.SO(SM)E&SED/7-1/2021/PT/MC/DCTE DATED 23.12.2021, WHEREIN THE APPELLANT GOT TRANSFERRED, IN BLATANT VIOLATION OF LAW, RULES, AND POLICY OF THE DEPARTMENT AND THE APPEAL OF THE APPELLANT

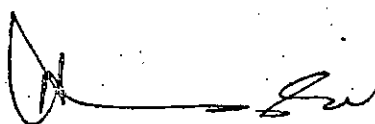


DATED 24.12.2021, WHICH IS UNDECIDED BY RESPONDENT NUMBER-1, SEVERLY AFFECTING THE RIGHTS OF APPELLANT.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN.: The facts surrounding the appeal are that the appellant was serving as Additional Director (BS-19) Curriculum & Textbooks Review at Directorate of Curriculum & Teacher Education (DCTE), Khyber Pakhtunkhwa Abbottabad since 21.06.2021; that the appellant was requested by private respondent No.5 for a mutual transfer which was duly allowed by the competent authority vide notification No. SO(SM)E&SED/7-1/Posting/Transfer/General dated 04.06.2021; that vide impugned transfer order on 23.12.2021, the appellant was transferred from the post of Additional Director(Curriculum & Textbook), DCTE, Abbottabad to the post of Principal (BS-19) GHS Natihia Gali, District Abbottabad against which he filed departmental representation on 24.12.2021 which was not responded, compelling the appellant to file this appeal on 10.01.2022.

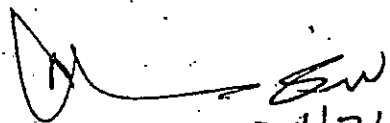
2. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

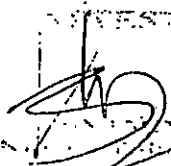


21.07.22



3. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.
4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned AAG controverted the same by supporting the impugned order.
5. There is no denial of the fact that the appellant and private respondent No.5 had made a request in writing for their mutual transfer and vide notification No. SO(SM)E&SED/7-1/Posting/Transfer/General dated 04.06.2021 they were mutually transferred, posting the appellant as Additional Director(Curriculum & Textbook) DCTE, Abbottabad and private respondent No.5 was transferred from the post of Additional Director(Curriculum & Textbook) DCTE, Abbottabad against the previous posting of the appellant as principal, GHS Sheikhu Bandi, Abbottabad. Just eight months thereafter, without allowing the appellant to complete his normal tenure and in violation of the transfer policy of the Government, the appellant was transferred from the post of Additional Director(Curriculum & Textbook) DCTE, Abbottabad to the post of Principal, GHS Natia Gali, District Abbottabad and private respondent No.5 was again posted as Additional Director(Curriculum & Textbook) DCTE, Abbottabad. In the parawise comments the respondents have mainly and strangely contended that mutual transfer was in fact not a mutual transfer because the posting/transfer of private


21/7/22


SECRETARY

Service Tribunal No. 24/2022 titled "Syed Anjum Ali-vs-Chief Secretary, Khyber Pakhtunkhwa and others",
December 21, 2022 by Division Bench comprising Kalim Arshad Khan, Chairman and Salah Uddin,
Member, Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad.

respondent No.5 as Additional Director(Curriculum & Textbook) DCTE, Abbottabad was issued vide notification No. SO(S/M)/E&SED/2-1/2016/Placement Committee for DCTE & PITE dated 1.11.2017 on the basis of recommendations of placement committee. Keeping in view the expertise of the officer who have received following foreign trainings in the field of Education:

Subject Area	Organization	Institution
Design and development of curriculum-based Assessment/Examination	Education Testing Service USE	Education testing Service Global Institute New Jersey USA
Item/Question writing for large scale educational testing/assessment & Examination	Australian Council for Educational Research (ACER)	Australian Council for Education Research International Institute Melbourne Australia
Observational study to early grade reading and curriculum assessment	EGRP (USAID)	Academy for professional development Cairo Egypt
Multi-lingual Education design of curriculum	Forum for Language Initiatives (FLI) UNESCO	Ministry of Education Bangkok Thailand
Quality Assurance Mechanism in Schools	South Asia Regional Conference	British Council Kathmandu Nepal

6. Keeping in view the expertise of the officer i.e., private respondent No.5 and needs of organization, he was posted as Additional Director(Curriculum & Textbook) DCTE, Abbottabad.

7. The foreign trainings of private respondent No.5 enumerated above were already there when the appellant and private respondent No.5 were mutually transferred so in case the private respondent No.5 was to be retained as Additional Director(Curriculum & Textbook) DCTE, Abbottabad for all time to come, in view of the department, then why the mutual transferred was ordered, is a question which is nowhere explained or answered in the reply.

Case No. 12 of 2022 titled "Syed Anjad Ali vs Chief Secretary, Khyber Pakhtunkhwa and others",
Decided on 21.07.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Salah Ud Din,
Members of Khyber Pakhtunkhwa Service Tribunal Camp Court Abbottabad.

8. The upshot of the above discussion is that the impugned transfer order was a premature transfer order whereby the appellant has not complete his normal tenure, thus there was no justification for premature transfer of the appellant, therefore, on acceptance of this appeal the impugned transfer order dated 23.12.2021 is set aside with the direction to the respondents to allow the appellant to complete his normal tenure. Costs shall follow the event. Consign.

9. Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 21st day of July, 2022.



KALIM ARSHAD KHAN
Chairman
Camp court Abbottabad

SALAH UD DIN
Member (Judicial)
Camp court Abbottabad

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C.O.C No. 71/2023
Syed Anjad Ali vs Govt



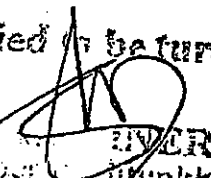
14.02.2023


Counsel for the petitioner present.

The application in hand is for initiating COC proceedings against respondents for willful disobeying judgment dated 21.07.2022 passed in Service Appeal No. 24/2021 by this Tribunal vide which appeal was accepted and impugned transfer order dated 23.12.2021 was set aside with direction to the respondents to allow the appellant to complete his normal tenure. Arguments heard and record perused.

Notice be issued to all the respondents for reply and arguments on 03.03.2023 before S.B. In the meanwhile, operation of impugned notification dated 10.02.2023 stands suspended till further orders, if not acted upon earlier.

Certified to be true copy


MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


(Rozina Rehman)
Member (J)