

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No.423/2023

Mst.Abrisheema, DM (BPS-15) GGMS Aladhier District Swabi.. **Appellant**

VERSUS

1. Govt:of Khyber Pakhtunkhwa, through Secretary E&SED, Khyber Pakhtunkhwa.
2. Director E&SE, Khyber Pakhtunkhwa, Peshawar
3. District Education Officer (Female) Swabi & Others.
4. Mst. Nafeesa SDM (BPS-16) GGHS Lahor Sharqi Under transfer to GGHS Maneri Bala (District Swabi).
5. Mst.Zainab DM (BPS-16) GGHS Maneri Bala under transfer to GGMS Kandaro Swabi..... Respondents

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**DISTRICT EDUCATION OFFICER
(FEMALE) SWABI**

**District Edu. Officer
(Female) Swabi**

07

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No.423/2023

Mst.Abrisheema, DM (BPS-15) GGMS Aladher District Swabi.. **Appellant**

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1. Govt:of Khyber Pakhtunkhwa, through Secretary E&SED, Khyber Pakhtunkhwa.
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5. Mst.Zainab DM (BPS-16) GGHS Maneri Bala under transfer to GGMS Kandaro Swabi..... Respondents

PARA WISE COMMENTS ON BEHALF OF THE RESPONDENTS No. 1 TO 3

Respectfully Sheweth,

PRELIMINARY OBJECTIONS.

1. That the appellant has not filed departmental appeal at all, hence, the appeal in hand is not maintainable.
2. That the appellant desires to be adjusted against wrong post, hence the appeal is not maintainable.
3. That the service appeal is wrong, baseless and not maintainable, it shows no strong cause to be taken for adjudication, therefore, the same service appeal is liable to be rejected/ dismissed.
4. That the service appeal is unjustifiable, baseless, false, frivolous and vexatious. Hence the same is liable to be dismissed with the order of special compensatory cost in favour of respondents.
5. That no constitutional or legal right of the appellant has been violated, therefore, the appellant is not entitled to invoke the constitutional jurisdiction of this honourable Service Tribunal under Article 212 of the constitution of Pakistan.
6. That the appellant has not come to the Court/Tribunal with clean hands.
7. That the appellant has concealed the material facts from this Honourable Tribunal.
8. That the appeal is bad for misjoinder and non-joinder of the necessary party.
9. That the appellant has filed the instant appeal just to pressurize the respondents.


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10. That the appellant has no cause of action to file the instant appeal.
11. That the appeal is not maintainable in the eye of law.
12. That the instant appeal is not maintainable in the present form and also in the present circumstances of the issue.


Facts:-

1. That the appellant was appointed in Elementary & Secondary Education Department Khyber Pakhtunkhwa against DM BPS-15 post vide appointment order Endat: No. 864-9 dated Swabi the 31/12/2018, on adhoc/ contract basis under the existing policy of Provincial Government of Khyber Pakhtunkhwa. She took over charge on 01/01/2019 at GGMS Alladher (Swabi). It is mandatory for each and every Government servant to perform his/her duties up to the entire satisfaction of his/her superiors because he/she is paid for his/her services from the national exchequer.
2. That the Private respondent No.04 Mst: Nafeesa SDM, BPS-16 GGHS Lahor Sarqi (Swabi) was transferred to GGHS Maneri Bala (Swabi) vide order Endst: No.7145-49 dated 12/01/2023. This transfer order was withdrawn by the Director Elementary & Secondary Education Khyber Pakhtunkhwa vide order Endst: No. 8307-10/F.No.538/F/G Transfer dated Peshawar the 16/01/2023. After that vide order Endst:No. 156-G/File/DA-IV- Transfer dated Swabi the 21/01/2023, the private respondent No.05 Zainab DM, BPS-16, GGMS Kandaro was transferred to GGHS Maneri Bala and the appellant Abrisheema DM, BPS-15 , GGMS Aladher was transferred to GGMS Kandaro against the post of private respondent No.05. It is pertinent to mention that Mst:Nafeesa SDM, BPS-16 under transfer to GGHS Maneri Bala vide order Endst:No.7145-49 dated 12/01/2023 which was withdrawn vide order Endst:No. 8307-10 dated 16/01/2023, aggrieved and filed a departmental appeal to the Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa which was accepted and advised the Director Elementary & Secondary Education Khyber Pakhtunkhwa to withdraw the Directorate order No.8307-10 dated 16/01/2023 and the previous order to GGHS Maneri Bala, District Swabi may be restored. In the light of acceptance of appeal of private respondent No.4 Mst.Nafeesa SDM, BPS-16 (gazetted) , the District Education Officer (Female) Swabi vide order Endst:No. 498-506 dated 21/02/2023 cancelled the transfer order Endst:No. 156-G

[Signature]
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dated 21/01/2023 for S.No. 01 & 02 from the date of its issue in the best interest of public service. The most important point was the post of GGHS Maneri Bala was SDM (gazetted), while the post at GGMS Aladher and GGMS Kandaro were DM (Non gazetted). Thus the acceptance of the appeal of Mst.Nafeesa was in accordance with law, rules and policy. The appellant has been committed the concealment of facts. The stance of the appellant is conjectural, contemptuous, frivolous, surmise and ludicrous. It has no legal status. **Order dated 12/01/2023, 16/01/2023, 21/01/2023, 31/01/2023, 16/02/2023 and 21/02/2023 annexed as A, B, C D E & F.**

3. That the appellant has concealed the material facts from the honourable Service Tribunal which is a punishable act on part of the appellant
4. That the post at GGHS Maneri Bala was SDM (gazetted) post, while the posts at GGMS Aladher and GGMS Kandaro were DM (Non gazetted). The private respondent No.04 was SDM (gazetted) and she was rightly transferred to GGHS Maneri Bala vide order dated 12/01/2023. The withdrawal of order dated 12/01/2023 by order dated 16/01/2023 was a clerical/erroneous mistake; therefore, all the mistakes were corrected by the order dated 21/02/2023. Hence, it is requested that this order may please be kept intact for the administration of justice.
5. That the transfer order of private respondent No.05 and the appellant dated 21/01/2023 was against the wrong post. The private respondent No.04 was rightly restored on her original post vide order dated 21/02/2023, due to which transfer order dated 21/01/2023 was declared invalid to the extent of S.No.01 & 02 i.e. private respondent No.05 and the appellant. It is a settled law that no one can be adjusted against wrong post. It is also discretion of the competent/appellate authority to correct the mistake.
6. That the order dated 31/01/2023 was issued on the departmental appeal of the private respondent No.04. The appellant was aggrieved


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of that order and she did not prefer an appeal or application for review or representation to such departmental authority. Therefore, violated the section 04 of the Service Tribunal Act, 1973. Departmental appeal was not availed. So the appeal in the tribunal is not maintainable. Reliance is placed on PLJ 1991 Tr.C (Service) 153;1992 PLC (CS) 666; 1994 PLC (C.S) 1262;1994 PLC (C.S) 606;2002 SCMR 549 and 2002 SCMR 549 (D). The post at GGHS Maneri Bala was SDM Gazetted, while the post of private respondent No.04 was also SDM, Gazetted. Therefore, she was rightly restored there. In compliance of the appellate order dated 31/01/2023, the subsequent order dated 21/02/2023 was issued accordingly because, the private respondent No.05 was DM, non Gazetted , therefore, her transfer order against the gazetted post dated 21/01/2023 was rectified vide order dated 21/02/2023, The appellant was also DM non Gazetted, therefore, the order dated 21/01/2023 to the extent of private respondent No.05 and the appellant was rightly and legally cancelled by the official respondents, "Public authority which could pass an order is amply empower to vary, amend or rescind that order" Reliance is placed on 2011 PLC (C.S) 1645. The orders dated 16/01/2023 and 21/01/2023 were rectified and corrected by the respondents vide order dated 31/01/2023 and 21/02/2023. All i.e. the appellant and the private respondents No.04 & 05 were transferred against their original posts vide order dated 21/02/2023, hence, the transfer orders got through back door were rectified and corrected "If the basic is illegal then whole superstructure would be fall down." Reliance is placed on 2007 SCMR 818. The appellant is not an aggrieved person at all, therefore, she has no cause of action to file the instant appeal and the appeal in hand is liable to be dismissed on the above facts and circumstances.

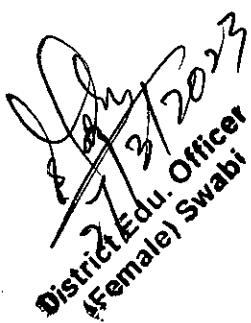
Grounds:-

- A. Incorrect, hence denied. The appellate order dated 31/01/2023 and the subsequent order dated 21/02/2023 whereby the transfer order dated 21/01/2023 has been cancelled are in accordance with law, facts, norms of natural justice and material on the record, hence tenable and is liable to be kept intact.

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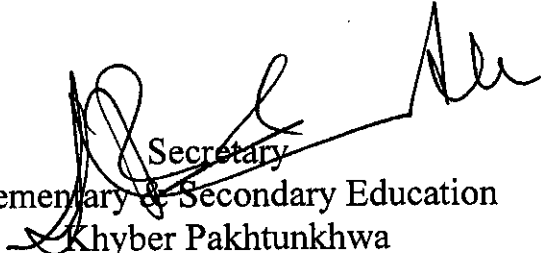
05


- B. Incorrect, hence denied. The appellant has not availed the remedy of departmental appeal/review; therefore, appeal in hand is not maintainable. The appellant has been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondents could not violate Article 04 and 05 of the constitution Islamic Republic of Pakistan 1973 in any shape.
- C. Incorrect, hence denied. The transfer order dated 21/01/2023 to the extent of private respondent No.05 and the appellant was incorrect, therefore, in the compliance of order dated 31/01/2023, vide order dated 21/02/2023 that was cancelled. No one can perform duty against wrong post.
- D. Incorrect, hence denied. The appellant misconceives the matter. The matter was of adjustment of private respondent No.05 against a wrong post. Actually the post at GGHS Maneri Bala was gazetted while the private respondent No.05 post was non Gazetted. The private respondent No. 04 post was gazetted and was rightly adjusted against her original post. The appellant stance of tenure is conjectural, surmise, contemptuous, frivolous unjustified, incompetent, wholly misconceive, baseless and ludicrous. The transfer policy did not violate in any shape but protected. The transfer order dated 21/01/2023 got through back door was rectified by the appellate authority accordingly.
- E. Incorrect, hence denied. The appellate order dated 31/01/2023 and the subsequent order dated 21/02/2023 whereby the transfer order dated 21/01/2023 has been cancelled to extent of appellant and private respondent No.05 was issued in the best public interest, in the form of correction and rectification. It is in accordance with law, facts, rules, and policy. Thus that cancellation is in accordance with law, rules and the transfer posting policy. The appellant has committed concealment of fact. She has not come to the court/tribunal with clean hands.



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(Female) Swabi

F. That the respondents seek permission to advance other grounds and proofs at the time of hearing.

In view of the above stated submissions, it is earnestly requested that the appeal in hand may very graciously be dismissed with special compensatory cost in favour of the respondents.

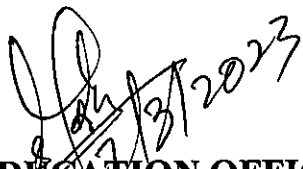

 Secretary
 Elementary & Secondary Education
 Khyber Pakhtunkhwa
 Respondent No. 01
SECRETARY
 Elementary & Secondary Edu: Deptt:
 Government of Khyber Pakhtunkhwa

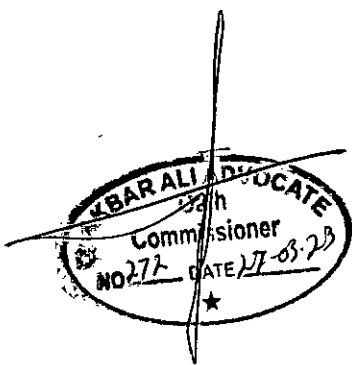

 Director
 Elementary & Secondary Education
 Khyber Pakhtunkhwa, Peshawar
 Respondent No. 02
Director
 Elementary & Secondary Education
 Khyber Pakhtunkhwa Peshawar


 District Education Officer
 (Female) Swabi
 Respondent No. 03
District Edu. Officer
 (Female) Swabi

Affidavit

I, Sofia Tabassum DEO(F) Swabi do hereby solemnly affirm and declare on oath that the contents of the comments submitted by respondents are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.


DISTRICT EDUCATION OFFICER
(FEMALE) SWABI
 District Edu. Officer
 (Female) Swabi





Annexure A (07)

**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER
PAKHTUNKHWA PESHAWAR.**

Office Order

Consequent upon the approval of Competent Authority Mst. Nafeesa, SDM (BPS-16), GGHS Lahor Sharf, District Swabi is hereby transferred/adjusted against vacant post of SDM (BPS-16) at GGHS Menrai Bala, District Swabi on her own pay & BPS due to administrative exigency in the interest of public service with immediate effect.

Note

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

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa.

Endst. No. 7145⁴⁹/F.No.538/(F)/G.Transfer Dated Peshawar the 12/01/2023.

Copy for information to the:

1. District Education Officers (Female) Swabi.
2. District Accounts Officers, Swabi.
3. Teacher Concerned.
4. PA Director E&SE Khyber Pakhtunkhwa Peshawar.
5. Master File.

Assistant Director (Estt/F)
Elementary & Secondary Education
Khyber Pakhtunkhwa.

District Education Officer
(Female) Swabi



**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR**

Annexure-B

08

OFFICE ORDER

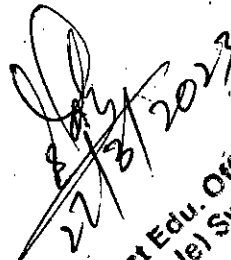
The posting/transfer order in respect of Mst. Nafeesa SDM, B-16 GGHS Lahor Shari District Swabi to GGHS Menrai Bala District Swabi issued vide this Directorate vide No. 7145-49 dated 12.1.2023 is hereby withdrawn.


**Director
Elementary & Secondary
Education Khyber Pakhtunkhwa**

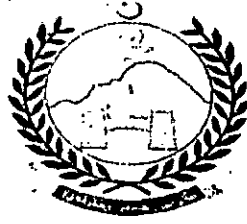
Endst: No. 8307-10 /F.No.538/F/G Transfer dated Peshawar the 16-1-2023

Copy for information to the:-

1. District Education Officer (Female) Swabi.
2. District Account Officer Swabi.
3. Teacher concerned.
4. PA to Director (E&SE) Khyber Pakhtunkhwa.
5. M/File.


27/3/2023
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(Female) Swabi


Assistant Director (Female)
Elementary & Secondary Education
Khyber Pakhtunkhwa,



Annexure-C
(64) (09)

DISTRICT EDUCATION OFFICE (FEMALE) SWABI
(Office phone Fax.No 0938280339, emisfswabi@yahoo.com)

TRANSFER ORDER.

The following Mistresses are hereby transferred on their own pay and BPS in the Schools noted against each name in the relaxation of ban in the best interest of public service with effect from the date of taking over charges.

S.No	Name with Designation	From	To	Remarks
1.	Zainab DM,B-16	GGMS Kandaro	GGHS Maneri Bala	AVP
2.	Abrishcema,DM,B-15	GGMS Aladher	GGMS Kandaro	Vice S.No.1
3.	Fahmeeda ,PET,B-15	GGHS Panjman	GGMS Beesak	AVP
4.	Miraj Bibi,S'IT,B-16	GGHS Parmoli	GGHS Tarakai	AVP
5.	Naveen Akhtar,PET,B-15	GGMS Pak Kaya	GGMS Kunda	AVP
6.	Farhat Deeba,SAT,B-16	GGHSS Maini	GGHS Zaida	AVP

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

(SOFIA TABASSUM)
DISTRICT EDUCATION OFFICER
(FEMALE) SWABI

Endst: No. 106-6 / File/ DA IV-Transfer/ Dated Swabi the 21/01/2023

- Copy forwarded for information and necessary action to the:-
1. District Accounts Officer Swabi.
 2. Principal/Head Mistress Concerned Schools
 3. ADEO Concerned
 4. Official Concerned
 5. Accountant Local Office

[Signature]
27/3/2023
District Edu. Officer
(Female) Swabi

[Signature] 24/01/2023
DY: DISTRICT EDUCATION OFFICER
(FEMALE) SWABI

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARITE PESHAWAR
(PHONE NO. 091-9223587)

Annexure -1
10

No. SO(P.F)/E&SED/5-1/ Gen-Misc/2023
Dated Peshawar the 31st January, 2023

The Director,
Elementary & Secondary Education,
Khyber Pakhtunkhwa

Subject: - APPEAL AGAINST THE OFFICE ORDER NO. 8307 DATED 16.01.2023 OF MISS. NAFEESA SDM (BPS-16) GGHS LAHOR SHARQI DISTRICT SWABI TO GGHS MANERI BALA DISTRICT SWABI AT VACANT POST OF SDM (BPS-16).

Dear Sir,

I am directed to refer to the subject noted above and to state that this Department has called personal hearing on 25.01.2023, personal hearing provided to Miss. Nafeesa D. Fazli Khaliq (SDM BPS-16) in the Chairmanship of Additional Secretary (Establishment) E&SE Department. The applicant has served for ten years and has completed her tenure at GHSS Lahore Sharqi District Swabi. She was transferred from GHSS Lahore Sharqi to GGHS Maneri Bala District Swabi vide office order No. 7145-49 dated 12.01.2023. Now her posting order has been withdrawn vide order No. 8309-10 dated 16.01.2023.

I am further directed, and to request that her appeal has been accepted and Directorate is advised to withdraw Directorate order No. 8307-10 dated 16.01.2023 and the previous order to GGHS Maneri Bala District Swabi may be restored, please.

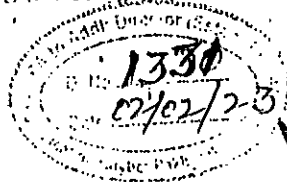
Encl. As above.

Yours Sincerely,

SECTION OFFICER (PRIMARY/F)

Copy forwarded to the:-

1. Miss. Nafeesa SDM (BPS-16) GGHS Lahor Sharqi District Swabi for information.
2. District Education Officer (Female) Swabi.
3. PS to Secretary, E&SE Department Khyber Pakhtunkhwa.



SECTION OFFICER (PRIMARY/F)

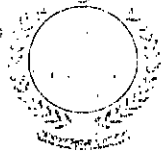
27/3/2023
District Edu. Officer
(Female) Swabi

DD-I

02/02/23

ADDE(P)

Am/2



DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR

Annexure-E

11

No. 337 /F-29/KC/Transfer

Dated Peshawar the 16/01/2023

DATE

To

The District Education Officer:
(Female) Swabi

718
4/3/23

Subject:-

APPEAL AGAINST THE OFFICE ORDER NO:8307 DATED 16.1.2023
OF Mst; NAFESA SDM BPS-16. GGHS LAHOR SHAROI DISTRICT
SWABI TO GGHS MANERI BALA DISTRICT SWABI AT VACANT
POST OF SDM B-16

Memo:

I am directed to refer to the subject cited above and to enclose herewith a copy of letter received from Section Officer (P/F) vide No. SO(P.F)/E&SED/5-1/Gen-Misc./2023 dated 31-01-2023 in respect of Mst; Nafesa SDM for further necessary action as per the latter attached please.

Assistant Director (Female)
E&SE Khyber Pakhtunkhwa.

Endst No. /

Copy of the above is forwarded to the:

1. Section Officer (Primary) Govt of Khyber Pakhtunkhwa E&SE Department w/r to his letter No. & dated cited above
2. PA to Director E&SE KPK Peshawar.

Assistant Director (Female)
E&SE Khyber Pakhtunkhwa.

22/3/2023
District Edu. Officer
(Female) Swabi

Annexure-F
01
12
12



Office of the District Education Officer (Female) Swabi
(Office Phone Fax No.0938280339), emisfswabi@yahoo.com)

OFFICE ORDER

Consequent upon the accepting of appeal of Mst. Nafeesa SDM B-16 GGHS Lahor (Sharqi) Tehsil Lahor District Swabi by the Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar vide No.SO (P.E)/E&SED/5-1/Gen-Misc/2023 dated 31-01-2023 and the endst No. of the Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar vide No.637/F-29/KC/Transfer dated 16-02-2023.

The transfer order issued vide this office Endst No.156-G dated 21-01-2023 is hereby cancelled for S.No.01 & 02 from the date of its issue in the best interest of public service.

(SOFIA TABASSUM)
DISTRICT EDUCATION OFFICER
(FEMALE) SWABI

498-506

Endst No. /File /DA IV-Transfer/ Dated 21/12/2023

Copy of the above is to the:-

- 1:- PA to Secretary E&SE Department Khyber Pakhtunkhwa Peshawar.
- 2:- Director Elementary & Secondary Education KPK Peshawar.
- 3:- Deputy Commissioner Swabi.
- 4:- Principal/Head Mistress Concerned schools.
- 5:- Educational Monitoring Authority Swabi.
- 6:- ADEO (Estab) Local Office.
- 7:- Miss: Nafeesa SDM (BPS-16) GGHS Lahor (Sharqi) District Swabi.
- 8:- Teachers Concerned.

22/3/2023
District Edu. Officer
(Female) Swabi

21/02/2023
DISTRICT EDUCATION OFFICER
(FEMALE) SWABI