

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR

Khyber Pakhtukhwa  
Service Tribunal

APPEAL No. 381/2023

Diary No. 5398

Dated 18/5/2023

Zulfiqar Ul Mulk

V/S

Govt: of KP & Others.

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*Amid*  
RESPONDENT NO. 5

Through:-

*M. Asif Yousafzai*  
(M. ASIF YOUSAFZAI)  
ADVOCATE SUPREME COURT  
OF PAKISTAN.

*S. Noman Ali Bukhari*  
& *Noman Ali Bukhari*  
(S. NOMAN ALI BUKHARI)  
ADVOCATE HIGH COURT.

*Hilal Zubair*  
& *Hilal Zubair*  
HILAL ZUBAIR  
ADVOCATE

Room No.FR-08, 4<sup>th</sup> Floor,  
Bilour Plaza Peshawar Cantt:  
Cell # 03339103240

**BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.**

**APPEAL No. 381/2023**

Zulfiqar Ul Mulk

V/S

Govt: of KP & Others.

**REPLY ON BEHALF OF RESPONDENTS NO.05**  
**(ZAHID MUHAMMAD)**

\*\*\*\*\*

**RESPECTFULLY SHEWETH:**

**PRELIMINARY OBJECTIONS:-**

1. The appeal is misconceived and not tenable to the extent of order dated 10.02.2023.
2. That the prayer of appeal to the extent of order dated 10.02.2023 is not maintainable for the reasons that no Departmental Appeal has been made by the appellant against the transfer order which is mandatory as per Section-4 of KP Civil Servant Tribunal Act, 1974.
3. That the appeal is bad for non-joinder of necessary party (Election Commission of Pakistan).
4. That the appellant cannot claim choice posting keeping in view judgment reported **as 21-SCMR#1064.**
5. That the appeal is not maintainable and entertainable in its present form.
6. That the transfer order has been acted upon and to that extent the appeal is now infructuous.
7. The appellant cannot claim any remedy which is not prayed in the departmental appeal.

**REPLY to Facts:**

1. No comments.
2. Incorrect as evident from the penal action taken against the appellant.
3. Not related to the replying respondents and the matters pertains to record.

4. Not related to replying respondents.
5. Not related to replying respondents. However, the competent authority is empowered under the law to enquire about misconduct etc of employees.
- 6-8. Not related to replying respondents the matter of record.
9. That the order dated 29.11.2021 was in violation of instruction of the government wherein it was clearly mentioned that under inquiry officer cannot be transferred.
10. The appellant cannot claim any vested rights on the basis of order dated 29.11.2021.
11. Not related to replying respondents being matter of record.
12. Not related to replying respondents being matter of record.
13. Incorrect and misconceived. It is worth to be noted that prior to the order dated 20.01.2023 (*when the appellant was not in service*) proper summary of the posting/transfer of respondent No. 5 was approved by the Worthy Chief Minister, KP on 16.01.2023, and thereafter, due to interim set up, NOC was also obtained from the Election Commission of Pakistan. Thus the petitioner is mixing two separate events in a single appeal for ulterior motives.
- 14-15. Incorrect the respondent No. 05 is presently working against the posting of DEO (Male) Mardan. The malice of the appellant is also evident from the fact that he was wrongly shown as "In Service" while in fact he was not in service w.e.from 01.12.2022 till 20.01.2023 and prior to 20.01.2023 the approval of the transfer of Respondent No. 5 was done on 16.01.2023 and that is the reason that in the transfer order in the column of remarks **against the vacant Post** is mentioned.
16. Incorrect and misconceived to the extent of order dated 10.02.2023 because no representation has been filed against that order which is pre-requisite and mandatory under Section-4 KP Service Tribunal Act, 1974 and hence the appeal to date is not maintainable at all.

**Grounds.**

- A. Incorrect, the penalty imposed upon the appellant speak otherwise.
- B. Incorrect keeping in view the inquiry record and penalty orders.

- C. Incorrect and misconceived. After fact finding inquiry a regular inquiry was conducted, in consequence of which, major penalty was imposed upon the appellant.
- D. Incorrect. As per government instructions and notifications the inquiry committee cannot recommend any kind of penalty.
- E-I. Not related to replying respondents.
- J. Not related to replying respondent. But it is added the appellant has not objected on that type of proceeding at the relevant time.
- K-T. Not related to replying respondent.
- U. incorrect and misconceived as explained in Para-14 & 15 above.
- V. Incorrect. The tenure is not the sole criteria. And while approving the replying respondent's transfer summary, ( 16.01.2023) the appellant was not in service.
- W. Incorrect. The Honorable Supreme Court of Pakistan has held otherwise in the Judgment reported as 21-SCMR#1064.
- X. Incorrect. The issue mentioned in this para has no concern with the transfer order.
- Y. Incorrect and misconceived. The appellant was not in service at the time of approval of Respondent No. 05 (Transfer Proposal). Therefore, the appellant cannot claim the ground of tenure.
- Z. Incorrect and misconceived. Moreover as explained in Para-14, 15 & Y above.
- AA. Incorrect hence denied.
- BB. Incorrect, as explained in Para-14 & 15 above.
- CC. Incorrect as explained in 14 & 15 above. Moreover the appellant cannot take benefit of typographical mistakes.
- DD. Incorrect, hence denied.
- EE. Incorrect hence denied. The appellant was not in service from December, 2022 to 20<sup>th</sup> January, 2023, then how the appellant can be termed as "Now District Education Officer (M) Mardan
- FF. Incorrect hence denied.
- GG. Incorrect, presently the respondent No. 05 is performing his duties

HH. Incorrect hence denied.

II. Incorrect hence denied.

JJ. Incorrect. To the extent of order dated 10.02.2023 the appeal is not maintainable.

KK. Incorrect proper NOC was obtained from the Election Commission of Pakistan. As the Election Commission of Pakistan is not impleaded as respondent, therefore, the instant appeal is bad for non-joinder of necessary party.

LL. Incorrect and misconceived. Because after the Judgment of the Supreme Court of Pakistan, the Provincial Rules of Business were amended and the Chief Minister alone was declared as competent authority.

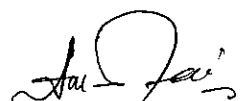
MM. Incorrect to the extent of order dated 10.02.2023 the instant appeal is not maintainable as no departmental appeal is made against that very order.

NN. Incorrect, misconceived hence denied.

It is, therefore, most humbly prayed that the appeal to the extent of order dated 10.02.2023 may be dismissed with cost being not maintainable and devoid of merit.

  
**RESPONDENT NO. 5**

Through:-

  
**(M. ASIF YOUSAFZAI)**  
**ADVOCATE SUPREME COURT**  
**OF PAKISTAN.**

**&**   
**(S. NOMAN ALI BUKHARD)**  
**ADVOCATE HIGH COURT.**

**&**   
**HILAL ZUBAIR**  
**ADVOCATE**

**BEFORE THE KP, SERVICE TRIBUNAL, PESHAWAR.**

**APPEAL No. 381/2023**

Zulfiqar Ul Mulk

V/S

Govt: of KP & Others.

**AFFIDAVIT**

I, Zahid Muhammad District Education Officer (Male) Bannu (Respondent No. 05), do hereby affirm that the contents of this para wise comments are true and correct and nothing has been concealed from this Honorable Service Tribunal.



**DEPONENT**

*Zahid Muhammad*

**IDENTIFIED BY:**

*M. Asif Yousafzai*

**(M. ASIF YOUSAFZAI)  
ADVOCATE SUPREME COURT  
OF PAKISTAN.**

**BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR**

**APPEAL No. 381/2023**

Zulfiqar Ul Mulk

V/S

Govt: of KP & Others.

**REPLY TO THE STAY APPLICATION.**

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**RESPECTFULLY SHEWETH:**

**PRELIMINARY OBJECTIONS:-**

1. The application is in hand and not maintainable as neither the order has been challenged through departmental appeal nor objected by the appellant departmentally till date.
2. The instant application is infructuous one because the replying respondent No. 05 is presently working as DEO (M) Mardan. (**2005 SCMR-442**)


**REPLY to Facts:**

1. No comments.
2. Incorrect, Incorrect the respondent No. 05 is presently working against the posting of DEO (Male) Mardan. The malice of the petitioner is also evident from the fact that he was wrongly shown as "In Service" while in fact he was not in service w.e.from 01.12.2022 till 01.20.2023 and prior to 20.01.2023 the approval of the transfer of Respondent No. 5 was done on 16.01.2023 and that is the reasons in the transfer order in the column of remarks against the vacant post IS mentioned.
3. Incorrect, rather, balance of convenience is lies in favour of respondent NO. 05 as he is presently working as DEO (M) Mardan.
4. Incorrect, there is no irreparable loss in posting/transfer matter.
5. The contents of replying may also be considered as integral part of this application.

It is, therefore, most humbly prayed that the application in hand may be dismissed with cost through out being not maintainable.

  
**RESPONDENT NO. 5**

Through:-

  
**(M. ASIF YOUSAFZAI)**  
**ADVOCATE SUPREME COURT**  
**OF PAKISTAN.**

  
**(S. NOMAN ALI BUKHARI)**  
**ADVOCATE HIGH COURT.**

  
**HILAL ZUBAIR**  
**ADVOCATE**



**BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.**

**APPEAL No. 381/2023**

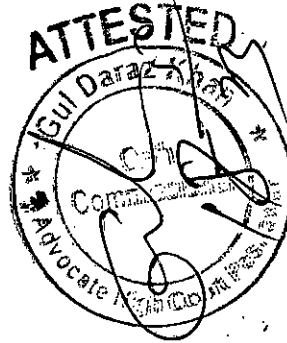
Zulfiqar Ul Mulk

V/S

Govt: of KP & Others.

**AFFIDAVIT**

I, Zahid Muhammad District Education Officer (Male) Bannu (Respondent No. 05), do hereby affirm that the contents of this application are true and correct and nothing has been concealed from this Honorable Service Tribunal.



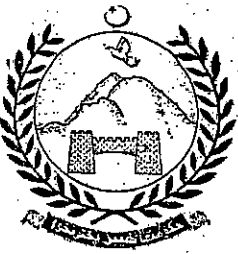
**DEPONENT**

*Zahid Muhammad*

**IDENTIFIED BY:**

*M. Asif Yousafzai*

**(M. ASIF YOUSAFZAI)  
ADVOCATE SUPREME COURT  
OF PAKISTAN.**



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME & TRIBAL AFFAIRS DEPARTMENT

No. PS/HS/HD/Misc/2022.  
Dated Peshawar, 24.05.2022.

9


To:

Mr. Zulfiqar-ul-Mulk,  
D.E.O. (M) Mardan.  
(Ex-DEO (M), Chitral).

SUBJECT: PERSONAL HEARING

I am directed to refer to the subject noted above and to inform you that date for personal hearing with Home Secretary, Khyber Pakhtunkhwa has been fixed for 31.05.2022 at 0900 hours (sharp) in the Office of Home Secretary, Home & Tribal Affairs Department, Civil Secretariat, Peshawar.

2. Please appear for personal hearing on the date, time and venue mentioned, above.

  
DS/Staff Officer to  
Home Secretary


C.c.


- Secretary, Elementary and Secondary Education, Education Department, Khyber Pakhtunkhwa with the request to depute a departmental representative to attend the personal hearing along with record, please.
- PSO to Chief Minister, Khyber Pakhtunkhwa.
- PS to Chief Secretary, Khyber Pakhtunkhwa.

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24/5

ASE  
in  
24/5

DS (Adm)  
  
25/5

SO (Adm)  
  
25/05/2022  
25/5

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GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT  
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar  
Phone No. 091-9223588

10

13-1181-01563

**SUMMARY FOR CHIEF MINISTER**

**SUBJECT: POSTING/TRANSFER FOR THE POST OF DEO (MALE) MARDAN**

The Elementary & Secondary Education Department proposes posting/ transfer of Mr. Zahid Muhammad (MC BS-19) from District Education Officer (Male) Bannu to the post District Education Officer (Male) Mardan.

2. In terms of Rule 17 (1) and (2) read with Scheduled-II of the Khyber Pakhtunkhwa Govt. Rules of Business 1985, the posting / transfers of the officers in BS-19 and above shall be made with the approval of the Chief Minister.

3. The Honorable Chief Minister, is requested to approve the proposal contained in para 1 of the summary, please.

MINISTER FOR E&SE

(MOTASIM BILLAH SHAH)  
SECRETARY E&SED

SECRETARY, ESTABLISHMENT DEPARTMENT

Minister For Elementary &  
Secondary Education  
Khyber Pakhtunkhwa

CHIEF SECRETARY

CHIEF MINISTER

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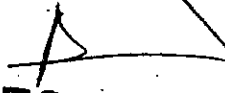
4- Summary for Chief Minister, Khyber Pakhtunkhwa moved by Elementary & Secondary Education Department regarding posting/transfer of Management Cadre Officer (BS-19) has been examined and observed that:-

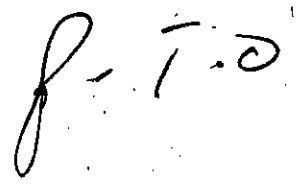
- i. As per Placement Committee Policy (F/A), the Management Cadre posting/transfer is to be recommended by the Placement Committee, however, the instant posting/transfer proposal is submitted without recommendation of the Placement Committee.
- ii. Domicile of the Management Cadre Officer has not been provided while as per Placement Committee Policy (F/A *ibid*), the officers shall not be posted in their home and domicile districts.
- iii. Tenure of the officer at present station has not been mentioned.

5- Summary is, therefore, returned to the Administrative Department for clarification of the above observations.

Secretary E&SE Department

  
Secretary Establishment  
December 22, 2022

  
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**GOVERNMENT OF KHYBER PAKHTUNKHWA**  
**ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT**  
 Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar  
 Phone No. 091-9223588

**SUMMARY FOR CHIEF MINISTER**

**SUBJECT: POSTING/TRANSFERS FOR THE POST OF DEO (MALE) MARDAN.**

**Reference Para- 5 of the summary: -**

6. The requisite reply to the observations raised in Para-4 (i,ii,& iii,) is as under:

Observations of Establishment Department	Reply of E&SE Department
I. As per Placement Committee Policy (F/A), the Management Cadre posting/ transfer proposal is submitted without recommendation of the placement committee.	I. Majority members of the Placement Committee have recommended the said posting transfer, however, no such minutes are usually recorded as it is a routine process on files.
II. Domicile of the Management Cadre Officer has not been provided while as per placement committee policy (F/A ibid), the officers shall not be posted in their home and domicile district.	II. Domicile of the proposed officer is "Peshawar" as desired.
III. Tenure of the officer at present station has not been mentioned.	III. The officer is working at the present station since 20.04.2022. However, he has been proposed for posting in Mardan on account of serious illness of his wife who is under treatment in Peshawar and the officer has to make frequent travelling which has negative impacts on the disposal of official work.

7. The Honorable Chief Minister, is requested to approve the proposal contained in para-1 of the summary, please.

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29/12/2022  
 (MOTASIM BILLAH SHAH)  
 SECRETARY E&SED

**SECRETARY, ESTABLISHMENT DEPARTMENT**

P.T.O

8- Summary for Chief Minister, Khyber Pakhtunkhwa moved by Elementary & Secondary Education Department regarding posting/transfer in respect of Mr. Zahid Muhammad (MC BS-19) from District Education Officer (M) Bannu to the post of District Education Officer (M) Mardan was earlier examined vide Para-4 ante and returned to the Administrative Department with observations mentioned therein.


9- The Administrative Department vide Para-6 ante has responded to the observations which has been examined and observed that:

- i. Minutes of the Placement Committee have not been provided rather it has been stated that no minutes are usually recorded as it is a routine process on files which is not convincing.
- ii. The officer is working at the present station since 20.04.2022 and has not completed three years normal tenure according to Posting/Transfer Policy of Education Officer at District Level (F/A).
- iii. The Administrative Department has proposed posting of the officer on account of serious illness of his wife, however, no medical report(s) as evidence has been provided.

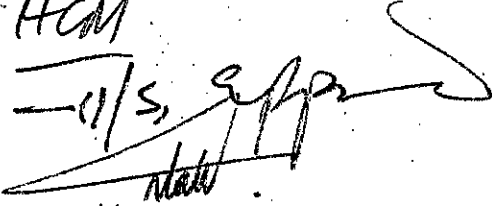
10- Proposal of the Administrative Department contained in Para-1 read with Para-9 of the Summary may be submitted to the Chief Minister, Khyber Pakhtunkhwa for appropriate orders being competent authority in terms of Schedule-III of the Khyber Pakhtunkhwa Govt. Rules of Business, 1985 (F/B).

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Chief Secretary Khyber Pakhtunkhwa

  
(ZULFIQAR ALI SHAH)  
Secretary Establishment  
10 January, 2023

11. Para 10 endorsed.

HCM  
12. Para - 11/5, approved  
  
16.1.2023

**CHIEF MINISTER**  
Govt. of Khyber Pakhtunkhwa

  
**CHIEF SECRETARY**  
Govt. of Khyber Pakhtunkhwa

C 1



To,

Secretariat  
Constitution Avenue, G-5/2,  
Islamabad. 8<sup>th</sup> February, 2023.

The Provincial Election Commissioner,  
Khyber Pakhtunkhwa,  
Peshawar.

Subject - RELAXATION OF BAN ON POSTING / TRANSFER.

Dear sir,

I have the honor to refer to your letter No. F3(1)/2023-Els (PEC) dated the 3<sup>rd</sup> February, 2023 and to say that the Hon'ble Commission has been pleased to allow all transfer/posting. The detail is as under: -

S. No	Department	Letter No. / Date
1.	Elementary & Secondary Education Department	No. SO (MC) E&SED/4-16/2023/Posting/transfer Dated: 30 <sup>th</sup> January, 2023
2.	Medical Teaching Institution Mardan.	No. 89/BOG/MTI Dated: 30 <sup>th</sup> January, 2023
3.	Establishment Department	No. SO (E-I) E&AD/3-1/2023 Dated: 30 <sup>th</sup> January, 2023
4.	University of Haripur	F.No.2(3) UH/Reg/Estb/2023/120 Dated: 30 <sup>th</sup> January, 2023
5.	University of Agriculture, D.I. Khan	No. 58/Reg/UAD/DIK/2023 Dated: 31 <sup>st</sup> January, 2023
6.	Elementary and Secondary Education Department	No. SO (SM) E&SE/5-17/2023/PT/SS Dated: 31 <sup>st</sup> January, 2023 No. SO (MC) E& SED/4-16/2023/Posting/transfer Dated: 31 <sup>st</sup> January, 2023
7.	Institute of Management Science, Director	No. IM Science/Est/2023/19/5 Dated: 2 <sup>nd</sup> February, 2023

2. It is therefore, requested that quarter concerned may be informed accordingly.

Yours sincerely,

ELECTION-II BRANCH  
Dy. No. 29  
Dated 09-02-2023

(Taqdir Iqbal)  
Deputy Director (Election-II)

Hon'ble Member (KPK)  
Infraix HOT PLAY

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**VAKALAT NAMA**

S.A. NO. \_\_\_\_\_/20

IN THE COURT OF KP Service Tribunal

Zulfiqar ul Mulk (Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Govt : KP etc. (Respondent)  
(Defendant)

I/We, Zehid Muhammad (Respt 5)

Do hereby appoint and constitute **Mr. M. Asif Yousafzai, ASC** 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 costs.

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. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated 18/5/2023

[Signature]  
(CLIENT)

ACCEPTED

[Signature]  
**M. ASIF YOUSAFZAI, ASC,**  
[Signature]  
**SYED NOMAN ALI BUKHARI**  
*Advocate High Court Peshawar*

[Signature]  
**Hilal Zubair Advocate**