

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 75/2023

5655

29/5/2023


Abdul Ghaffar, SST (G) GHS Karrhosam District Kohat

Versus

Government of KPK through secretary E&SE Depatt: KPK & Others

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Assistant Director (Lit:II)
E&SE Khyber Pakhtunkhwa
Peshawar.

1

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

Service Appeal No: 75/2023

Abdul Ghaffar, SST (G) GHS Karrhosam District Kohat.....Appellant

**Khyber Pakhtunkhwa
Service Tribunal**

VERSUS

**Diary No. 5655
Dated 29/5/2023**

**Govt. of Khyber Pakhtunkhwa through Secretary E&SE Department/Khyber
Pakhtunkhwa & others.....Respondents**

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS No: 1-3.

Respectfully Sheweth,

The Respondent 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.
- 4 That the Appellant has not come to this Honorable Tribunal with clean hands.
- 5 That the appeal in hand is based on mala fide intentions for illegal service benefits for posting/transfer against the SST (G) post at GHS Barakzai Kalan District Kohat in the respondent Department in violation of section-10 of Civil Servant Act 1973 .
- 6 That the appeal is barred by law and limitation.
- 7 That the case is bad for mis-joinder and non-joinder of the necessary parties.
- 8 That the Notification/order 31-08-2022 of the Respondent No.2 is within legal sphere & liable to be maintained.
- 9 That the plea of the appellant regarding non-Compilation of tenure is against the relevant of provision of law with reference to Section-10 of Civil Servant Act 1973.

ON FACTS.

- 1 That Para-1 pertains to the service record of the appellant.

- 2 That Para-2 is also pertains to the domestic issues of the appellat.
- 3 That Para-3 pertains to the proof & record to the extent of the retirement of Mr. Subhan-Ud-Din SST at GHSS Shakardara Kohat.
- 4 That Para-4 is correct that vide order No.2779-83 dated 31-08-2022 the service of Mr. Shaheryar SST (G) of GMS Barakzai Kalan Kohat has been placed at GHSS Shakardara Kohat against the SST post on stop gap arrangement by the competent authority under the provision of Section-10 of Civil Servant Act 1973 which is attached as *Annexure-A*.
- 5 That Para-5 is misleading on the grounds that all Teaching Staff inducted on School based policy were regularized, hence, the Notification regarding the appointment of the Respondent No.4 dated 14-09-2018 is legal & even falling within the ambit of Section-2 (b) of Civil Servant Act 1973. *(Copy of the Notification dated 14-09-2018 as Annexure-B)*.
- 6 That Para-6 is incorrect as reply to this para has been given in para-5 of the present reply.
- 7 That Para-7 is incorrect as no Departmental appeal against the Notification dated 31-08-2022 has been filed by the appellat till date, hence, got finality the law.
- 8 That Para-8 is correct that vide Judgment dated 18-10-2022 the petition No. 3660-P/2022 under titled Abdul Ghaffar VS Govt; has been dismissed by the Honorable High Court. *(Copy of the Judgment dated 18-10-2022 is Annex-C)*.
- 9 That Para-12 is also incorrect, hence, the appeal in hand is liable to be dismissed on the following grounds inter alia:-

ON GROUNDS.

- A. Incorrect & not admitted, on the grounds that the plea of the appellat is illegal as the Notification dated 31-08-2022 is legally competent.
- B. Incorrect & not admitted. The appellat has been treated as per Law & Rules & prescribed policy & criteria by the Department vide Notification dated 31-08-2022.
- C. Incorrect & not admitted. The plea of the appellat is illegal & even against the factual position of the case, hence, liable to be rejected.
- D. Incorrect & not admitted. The appellat has been treated as per law & Rules by the Department in the titled case..
- E. Incorrect & not admitted. The plea of the appellat is illegal as the Notification dated 31-08-2022 of the Respondent No.2 is within legal criteria having no violation of Article-38 (e) of the constitution of 1973 by the Respondent Department.
- F. Incorrect & not admitted. The stand of the appellat is illegal. Therefore, the Respondent also seek leave to this Honorable Tribunal to submit additional grounds record & case law at the time of arguments.

3

Therefore, in view of the above made submissions, it is most humbly prayed that on the acceptance of this reply, the appeal in hand may kindly be dismissed in favor of the Respondent Department in the interest of justice.

Dated. ___/___/2023.



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



DIRECTOR
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 2 & 3)

AFFIDAVIT

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


Deponent

ATTESTED



S-223

4

"B" - 5 -



DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KHYBER PAKHTUNKHWA PESHAWAR

Notification

The competent Authority has been pleased to transfer Mr. Shaher, an SST (C) GMS Braghzi Kalan Kohat and adjust him as SST (C) at GHSS Shakardar Kohat on stopgap arrangement as and when the post is vacated.

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

(Hafiz Dr. Muhammad Ibrahim)
DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa

Encls. No. 2-7-19-83 / 7/16/Transfers cases-Kp
Dated Peshawar the 31-10-2022

Copy for information to the

- 1. District Education Officers (Male) Kohat.
- 2. Principal/Head Master GMS Braghzi Kalan Kohat.
- 3. Principal/Head Master GHSS Shakardar Kohat.
- 4. Teacher Concerned.
- 5. PA Director E&SE Khyber Pakhtunkhwa Peshawar.
- 6. Master File.

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

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Better Copy

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER
PAKHTUNKHWA PESHAWAR

NOTIFICATION

The competent authority has been pleased to transfer Mr. Shaheryar SST (G) GMS Balaghazi Kalan Kohat and adjust him a SST (G) at GHSS Shakardar Kohat on stoppage arrangement and when the post is vacated.

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

Necessary entry to this effect should be in his S/book.

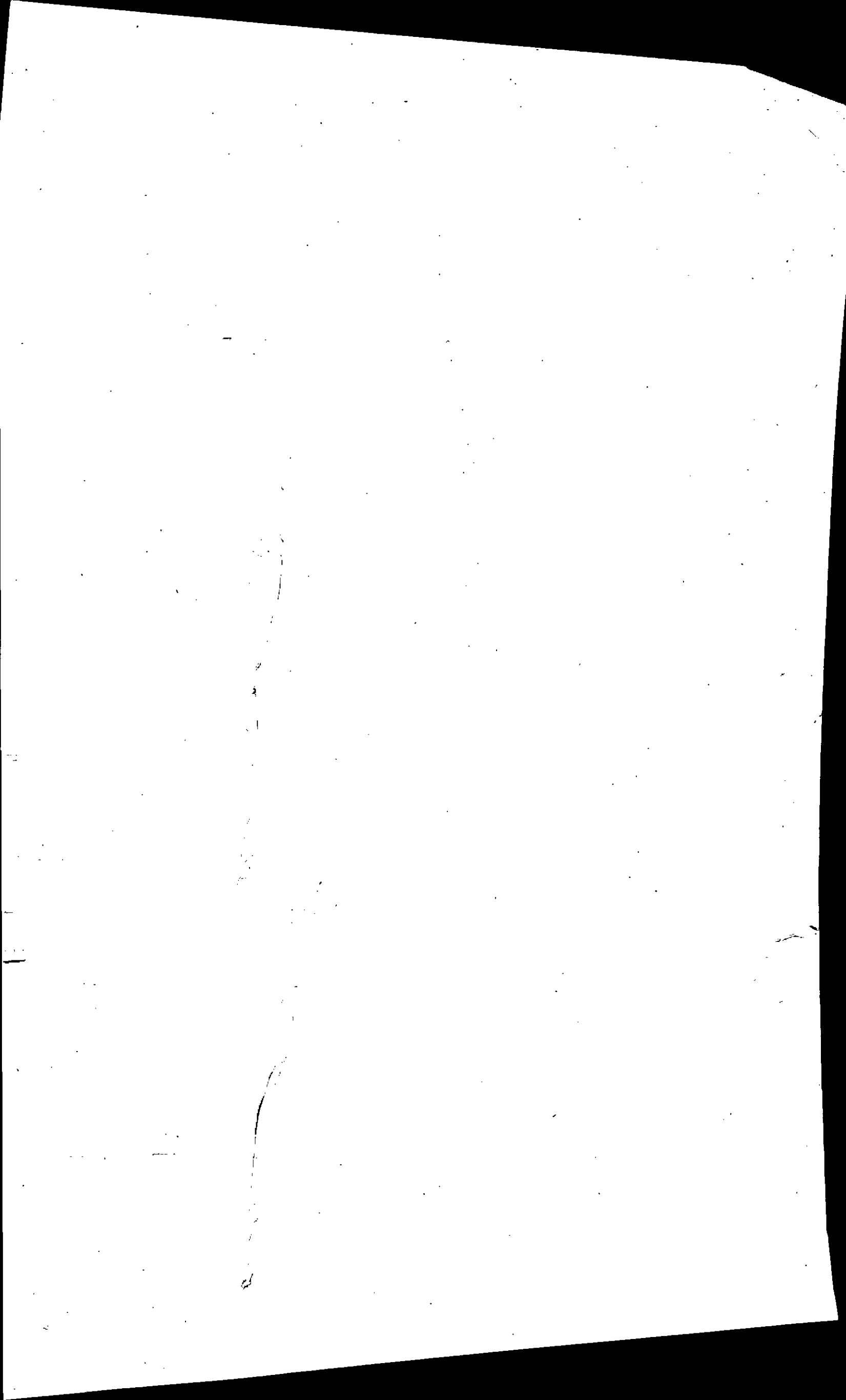
(Hafiz Dr. Muhammad Ibrahim)
DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa

st. No. 2779-83/F.No.-16/Transfers cases-KPK
Dated Peshawar the 31.08.2022

Copy for information to the:

1. District Education Officers (Male) Kohat
2. Principal / Head Master GMS Braghzi Kalan Kohat.
3. Principal/Head Master GMS Shakardar Kohat
4. Teacher concerned.
5. PA Director E&SE Khyber Pakhtunkhwa Peshawar.
6. Master File.

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



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APPOINTMENT

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Director of Elementary Education
Karnataka Government, Bangalore

(9)

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7-

NTS Teacher Order

Kohat Male Appointment Order SST Adhoc

19	214000559	AFZAN ULLAH	14302-2063727-3	MOH GHARIB ABAD VILAGE MANDOORITTEH AND PO LACHI DIST KOHAT	52.88	76	130.88	GHS MALGIN
20	213000451	MUZAFAR SHAH	14301-1372821-9	MOHALLAH SHEIKH ALI KHEL VILLAGE DHOQA DIST TEH KOHAT	53.84	77	130.84	GHSS DHAND SAGHRI
21	213000606	SHAHERYAR	14301-3697541-9	SHAKARDARA AYOH GHAKARKOT TEH LACHI DIST KOHAT	54.53	75	129.52	GNS BRAGHZIKALAN
22	214000581	AFZ MUHAMMAD KHAN	14301-1980819-7	GUL SHAH KHEL P/O KHADER KHEL TEH LACHI	59.38	70	129.38	GSZS HSS Shakerdara
23	213000785	MUHAMMAD ZUBAIR	17301-8079794-3	PARACHA TOWN RAWAL PINDI ROAD NEAR ALICARIN DAN MILLS	60.87	68	128.87	GHS TORASTANA

TERMS & CONDITIONS:

1. NO TA/DA etc is allowed.
2. Charge reports should be submitted to all concerned in duplicate.
3. Appointment is purely on temporary & contract basis initially for one year w.e.f 20th September 2018 to 19th September 2019.
4. He should not be handed over charge if he exceeds 35 years or below 19 years of age. Age relaxation cases may be submitted to competent authority.
5. If any candidate is over age less than two years, their upper age limit less than two years is hereby relaxed.
6. If any meritorious candidate is deprived from appointment by this order and the competent authority accepted his appeal, the appointment order of the junior candidate will be withdrawn and adjusment order will be reviewed according to merit.
7. Appointment is subject to the condition that the certificate/documents may be verified from the concerned authorities by the DEO (concerned); any one found producing bogus certificate will be reported to the law enforcing agencies for further action.
8. His services are liable to termination on one month's notice from either side. In case of resignation without notice his one month pay/allowances shall be forfeited to the Government.
9. Pay will not be drawn until and unless a certificate to the effect by DEO (concerned) is issued that his certificates are verified.
10. He should join his post within 15 days of the issuance of this notification. In case of failure to join the post within 15 days of the issuance of this notification, his appointment will expire automatically and no subsequent appeal etc shall be entertained.
11. The candidate concerned should produce Health & Age certificate duly signed by Medical Superintendent concerned before taking over charge.
12. He will be governed by the rules and regulations in the field and as may be issued from time to time by the Govt.
13. His contract shall be discontinued at any time, in case his performance is found unsatisfactory.
14. His appointment is made on School based. He will have to serve at the place of posting and his service is not transferable to any other station.
15. Before handing over charge once again, their document may be checked. If they have not the required relevant qualifications as per rules, they may not be handed over charge of the post.

(Farid Ahmad Khan) Director Elementary and Secondary Education Khuzdar District Peshawar

Endst: No. / File No. / SST/Adhoc/Applt./2018 Dated Peshawar the 11/09/2018. Copy forwarded for information and necessary action to the Accountant General Khuzdar Peshawar.

Signature

8

BETTER COPY 9-10

Kohat Male Appointment Order SST Adhoc
Directorate of Elementary and Secondary Education
Khyber Pakhtunkhwa Peshawar

APPOINTMENT.

Consequent upon the recommendation of the Departmental Selection Committee appointment of the following candidates are hereby ordered against the post of Secondary School Teacher (SST Bio Chem), (SST Maths Phy), (SST General) school based in BPS-16 (Rs.15880-1280-54280) @Rs.15880/-fixed plus usual allowances as admissible under the rules on adhoc basis on Contract under the existing policy of the Provincial Government, in Teaching Cadre on the Terms and Condition given below with effect from the date of their taking over charge:-

SN	Roll No	Name	NIC	Address	Academic Marks	NTS Marks	Total Marks	School Name
1	2110-0017-1	Mehmood ur Rehman	14301-2397086-3	Muzdalfa plaza Room No.10 Mian Khel Bazar Kohat	56.70	91	147.7	GHS GANDIALY PAYAN
2	2110-0037-9	Obaid Ullah Khan	14301-1086211-3	Dept of Bio Chemistry Quid E Azam University Islamabad	58.31	70	128.31	GHS KHWAJA KHEL
3	2110-0042-4	Kashif Waqar	14301-6366780-7	Dist Kohat Village Dora Garhi PO Mutang Kohat	63.69	63	126.89	GHS KOT
4	2110-0044-5	Tauhid Ali	14301-9917340-1	Village Kaizar Banda Post Office Marai Balla Tehsil And District Kohat	69.6	57	126.60	GJSS KHADIZAI
5	2110-0046-8	Mohammad Waqas	14301-2086750-7	Awais Khattak, Zeb enterprizes Bangash Abad Chowk Jarwand Road	61.05	64	125.05	GHS CHAKARK OT BALA
6	2110-0055-4	Muhammad Amir Khan	14301-8679122-5	Alam Afridi Office Assisatant Livestock Dairy Development Near Tehsil Gate Kohat City	57.00	65	122.00	GHS CHARGAI
7	2110-0061-8	Arsalan Rasheed	14201-5629174-7	GMS Jungle Khel	56.42	65	121.42	GHS KAGHAZAI
8	2110-0051-4	Muhammad Fahim	14301-3073638-7	Village and P/O Madoori Tehs and Lachi Dist: Kohat	63.23	58	121.23	GHS DARMALAK
9	2110-0048-7	Noor Muhammad	14301-5228230-7	Village Alizai Post Office Kahdizor Tehs & Dist Kohat	51.56	66	117.56	GHS DOSTERZAI PAYAN
10	2110-0053-0	Abdul Rehman	14301-9324654-7	Noman Medicose KDA Gate No.03 Peshawar Road, KOhat	59.56	78	117.56	GCMHS NO.4 KOHAT
11	2110-0056-2	Ahmed Rasheed	14301-3416786-7	Dawlat Khan Nawar Farosh Mustafa Bazar, Kohat	57.29	60	117.29	GHS PERSHAI
12	2110-0015-5	Faisal Rasheed	143016203053-3	Dawlat Khan Nawar Farosh Mustafa Bazar, Kohat	57.11	60	117.11	GHS LAL GARHI
13	2110-0042-3	Khurshid Alam	14301-3003867-7	CB House No.1699 Street No.4 Umar Farooq Coony Phone Churdrian Near Qasim Market	59.59	57	116.59	GHS SHADI KHEL
14	2110-0053-1	Nairmat Ullah Khan	14301-1285423-9	PO Biutant Tehs & District Kohat	67.56	49	116.56	GHS CHEECHANNA
15	2110-0054-5	Adil Shaheen	14301-1636573-3	Dist and Tehs Kohat Village PO Barh Kohat	58.4	58	116.54	GHS KAGHAZAI

[Handwritten Signature]

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PESHAWAR HIGH COURT, PESHAWAR.
FORM OF ORDER SHEET



Date of Order or Proceeding 2	Order or other proceedings with Signature of Judge 3
18.10.2022.	<p><u>W.P No. 3660-P of 2022.</u></p> <p><u>Present: -</u> Mr. Umar Farooq, Mohmand, Advocate for petitioner.</p> <p>***</p> <p><u>ROOH-UL-AMIN KHAN, J.-</u> Through this petition filed under Article-199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner, Abdul Ghaffar, seeks the following relief: -</p> <p><i>"That on acceptance of this writ petition the inaction of the respondents by not deciding the representation of the appellant through speaking order may vary kindly be declared as illegal, unconstitutional, void and effective upon the rights of the petitioner. That the respondents may please further be directed to decide the departmental appeal of the petitioner strictly in accordance with law.</i></p> <p><i>Any other remedy which this august Court deems fit and has not been specifically asked for, may also be awarded in favour of the petitioner".</i></p> <p>2. In essence, the petitioner seeks direction of this Court to the respondents that his departmental appeal filed against the transfer</p>

Rooh-ul-Amin Khan

Attested
Rooh-ul-Amin Khan

ATTESTED
EXAMINER
Peshawar High Court

970

-14-

order dated 31.08.2022 be decided at an early date. Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act, 1974 provides a mechanism for filing appeal before the Service Tribunal; according to which, the aggrieved person shall file department appeal/ representation/ review before the appellate authority and thereafter wait for its decision upto ninety days. Likewise, appeal shall lie to the Tribunal against the final order of the appellate authority within further thirty days from the date of decision of the appellate authority.

3. Since the statute provides a timeframe of ninety days for decision on departmental appeal dated 06.09.2022 filed by the petitioner; therefore, he shall wait for its decision upto ninety days as this Court will not pre-empt on the statutory powers and jurisdiction of the appellate authority.

4. Resultantly, this writ petition being not maintainable stands dismissed.

Announced:
18.10.2022.

Rooh-ul-Amin Khan
SENIOR PUISNE JUDGE
He
JUDGE

Zia*

D.B*

Hon'ble Mr. Justice Rooh-ul-Amin Khan, Senior Puisse Judge &
Hon'ble Mr. Justice Mohammad Frazim Khan, J.

54876

Presentation of Affidavit *29/10/2022*

Fees *7-9*

ag fee *28/-*

Preparation of Copy *29/10/2022*

Delivery of Copy *29/10/2022*

By *Azmat*

Rooh-ul-Amin Khan
CERTIFIED TO BE TRUE COPY
Examiner
Khyber Pakhtunkhwa High Court, Peshawar
Authorized Under Article 87 of
the Constitution of Pakistan Order 1973

29 DEC 2022

Abul Basit
Qureshi



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

AUTHORITY LETTER

I Director, Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar do hereby authorize Mr. Imran Assistant (Litigation) of this Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar to attend the Khyber Pakhtunkhwa Service Tribunal in connection with filing of para wise comments in Service Appeal No. 75/2023 Titled Abdul Ghaffar VS Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department.

Dated 29/5/2023


Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar.