

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

Service Appeal No. 1067/2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6112

Dated 20/6/23


Hayat Muhammad Khan Senior Clerk BPS-14 District Battagram..... Appellant

VERSUS

**Govt of Khyber Pakhtunkhwa through the Secretary (E&SED) &
others..... Respondents**

INDEX SHEET

S/#	Description of document	Annexure	Pages No.
1.	Joint Para Wise Comments along with affidavit	-	1-3
2.	Copy of the order dated 31-03-2023	A	4
3.	Copy of the Notification dated 24-03-2023	B	5
4	Copy of the appeal dated 09-05-2023	C	6,7
5	() Authority letter .		8


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

BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 1067/2023

Hayat Muhammad Khan Senior Clerk BPS-14 District Battagram..... Appellant

Khyber Pakhtunkhwa Service Tribunal

VERSUS

Diary No. 6112

Govt of Khyber Pakhtunkhwa through the ^{Dated 20-06-23} Secretary (E&SED) & others..... Respondents

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS No: 1-5.

Respectfully Sheweth:-

The Respondents No.1-5 submit as under: -

Preliminary Objections.

- 1 ***That*** the appellant has got no cause of action/locus standi to file the titled appeal against the Respondent Department.
- 2 ***That*** the instant appeal is badly time barred under section-3 of law of limitation Act 1908.
- 3 ***That*** the Appellant has concealed material facts from this Honorable Tribunal in the titled appeal.
- 4 ***That*** the impugned orders dated 09-05-2023 & 31-03-2023 of the Respondent Department are legally competent.
- 5 ***That*** the instant Appeal is based on mala-fide intentions.
- 6 ***That*** the Appellant has not come to this Honorable Tribunal with clean hands in the titled case.
- 7 ***That*** transfer & posting of the appellant is the exclusive jurisdiction & competency of the competent authority under section-10 of Civil Servants Act-1973.
- 8 ***That*** the claim of the appellant against the Law & Rules, hence, liable to be rejected.
- 9 ***That*** the appellant is seeking the station of his choice in the Department illegally.
- 10 ***That*** the appellant is not an aggrieved person within the meaning of Section-4 of the Khyber Pakhtunkhwa service tribunal Act-1974.

ON FACTS.

- 1 ***That*** Para-1 pertains to the residential record of the appellant.
- 2 ***That*** Para-2 is correct that the appellant was serving in the Respondent Department as senior clerk in BPS-14 at GGHMSS Battagram & was transferred & posted at GHSS Thakol District Abbottabad vide office order No. 2455-60 dated 31-03-2023 under the mandatory provision of section-10 of Civil Servants Act-1973 attached as ***Annex-A***.
- 3 ***That*** Para-3 is also correct to the extent of the Notification dated 24-03-2023, whereby the services of Mr. Dr. Iqbal Khan setting Additional Director establishment BS-19 MC were placed against the Director E&SED KPK Peshawar by the competent authority attached as ***Annex-B***.
- 4 ***That*** Para-4 is incorrect as transfer & posting of a regular Civil Servant falling within the ambit of sections-2 (b) & 10 of Civil Servants Act-1973 is the competency of the Respondent No. 2 as evident from the Notification dated 24-03-2023 issued by the Respondent No, 1 upon the approval of the competent authority, hence, the plea of the appellant is illegal & liable to be rejected.
- 5 ***That*** Para-5 is also incorrect as the act of the Respondent No. 2 regarding the office order dated 31-03-2023 under the mandatory provision of section-10 of Civil Servants Act-1973 on the grounds that the appellant is a provincial ministerial staff employee in the Department & is liable to serve the Department anywhere in the province as & when directed by the competent authority under the cited law.
- 6 ***That*** Para-6 is correct to the extent of filing of a departmental appeal to the Respondent No. 1 against the order dated 31-03-2023 which was seen & filed on dated 09-05-2023 on the grounds of having no legal force by maintaining the original order dated 31-03-2023 attached as ***Annex-C***.
- 7 ***That*** Para-7 is incorrect as the order dated 31-03-2023 is legal & even within the frame work of jurisdiction, competency, hence the appeal in hand is liable to be dismissed on the following grounds inter alia: -

ON GROUNDS.


- A **Incorrect & not admitted.** The appellant has been treated as per law, rules & policy by the Respondent Department vide orders dated 31-03-2023 & 09-05-2023, hence the claim of the appellant is illegal & liable to be rejected.
- B **Incorrect & not admitted.** The act of the Department with regard to the cited orders is within legal sphere & even in accordance with the provision of section-10 of civil servants Act-1973 read with & even in compliance of Articles 4 & 25 of the constitution of 1973 hence the claim of the appellant is illegal & liable to be rejected.

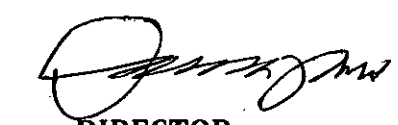
- C **Incorrect & not admitted.** The statement of the appellant is without any cogent reason & legal justification hence, the stand of the appellant is baseless & liable to be rejected.
- D **Incorrect & not admitted.** The appellant has not been discriminated by the Department in the titled case, hence, the stand of the appellant is baseless & liable to be rejected.
- E **Incorrect & not admitted.** The plea of the appellant is without justification & liable to be rejected in favor of the Department as the order^s dated 31-03-2023 & 09-05-2023 are legal.
- G **Incorrect & not admitted,** the act of the Department with regard to the cited orders is legal as transfer & posting of a Civil Servant is a part & parcel of the service.
- H **Incorrect & not admitted.** As replied above by the Department
- I **Incorrect & not admitted** However, the Respondents also seek leave of this Honorable Tribunal to submit additional grounds, record & case law at the time of arguments on the date fixed.

PRAYER:

Therefore, in view of the above made submissions, it is most humbly requested that this Honorable Tribunal may very graciously be pleased to dismiss the instant Service Appeal in favor of the Respondents in the interest of justice.

Dated ___/___/2023.

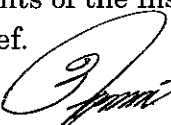

SECRETARY
 E&SE Department Khyber
 Pakhtunkhwa, Peshawar
 (Respondent No. 1)


DIRECTOR
 E&SE Department Khyber
 Pakhtunkhwa, Peshawar
 (Respondents No: 2 to 5)

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 are true & correct to the best of my knowledge & belief.

It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off.


Deponent





TO BE SUBSTITUTED WITH SAME NO. & DATE
DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR.
Phone: 091-9225344 Email: dees@kpk.gov.pk

Office Order

The Posting/Transfer in respect of the following Ministerial staff are hereby ordered on their own pay and scale in the interest of public service with immediate effect.

S.#.	Name & Designation	From	To	Remarks
1.	Mr. Taj Uddin S/Clerk BS-14	GHSS Patmal Sharif	DEO(F) Battagram	Vice S.No.2
2.	Mr. Muhammad Sharif S/Clerk BS-14	DEO(F) Battagram	GHSS Patmal Sharif	Vice S.No.1
3.	Mr. Haq Nawaz S/Clerk	SDEO(F) Aitai	DEO(F) Battagram	Vice S.No.4
4.	Mr. Abdul Majid S/Clerk BS-14	SDEO (F) Battagram	SDEO (F) Battagram Aitai	Vice S.No.3
5.	Mr. Zahoor Ahmad S/Clerk BS-14	GHS Khanis Pur Aid	GCHMSS Battagram	Vice S.No.7
6.	Mr. Muhammad Nooran BS-S/Clerk 14	GHSS Thakot	GHS Khanis Pur Aid	Vice S.No.5
7.	Mr. Hayat Muhammad Khan S/Clerk	GCHMSS Battagram	GHSS Thakot	Vice S.No.6
8.	Mr. Sharif Ullah J/Clerk	SDEO(F) Battagram	GHS Biland Kot Battagram	Vice S.No.11
9.	Mr. Hasham Khan J/Clerk	SDEO(F) Battagram	SDEO(F) Battagram	Vice S.No.9
10.	Mr. Shoukat Ali Khan J/Clerk	GHS Biland Kot Battagram	SDEO(M) Battagram	Vice S.No.12
11.	Mr. Niaz Ullah J/C	SDEO(M) Battagram	SDEO(F) Battagram	A.V.P
12.	Mr. Amir Ur Rehman Assistant B-16	DEO(M) Battagram	SDEO(F) Battagram	Vice S.No.2
13.	Mr. Shahideen Assistant Bs-16	SDEO(M) Battagram	DEO(M) Battagram	Vice S.No.01
14.	Mr. Abdu Razaq Assistant Bs-16	DEO(M) Battagram	DEO (F) Battagram	Vice S.No.04
15.	Mr. Syed Riaz Hussain Shah Assistant Bs-16	DEO(F) Battagram	DEO(M) Battagram	Vice S.No.03
16.	Mr. Murshid Alam Comp. Operator	DEO (F) Battagram	DEO (M) Battagram	A.V.P

Note:

1. Charge report should be submitted to all concerned.

DIRECTOR

Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Endst: No. /F.No. A-23/MS/posting Transfer/2021/Vol-1 Dated 12/03/2023

Copy forwarded to the:-

1. District Education Officer (Male/Female) Concerned
2. SDEO(M/F) concerned
3. District Accounts Officer Concerned.
4. Principal/HM Concerned.
5. Official concerned.
6. Master File.
7. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

ATTESTED

Assistant Director (Admn)
Directorate of E&SE KPK Peshawar



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated: 24th March, 2023

NOTIFICATION

NO.SO(MC)E&SED/4-16/2022/PT/MC/Director E&SE: Keeping in view the retirement of Director, Directorate of E&SE Peshawar on 15.03.2023 and to ensure the disposal of the routine office work, Dr. Iqbal Khan, Additional Director (Estab) Directorate of E&SE Peshawar is assigned the Look-After charge of the office of Directorate of E&SE Peshawar, in addition to his own duties, till further order, in the best public interest.

SECRETARY TO THE 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. PS to Advisor to Chief Minister for E&SE Khyber Pakhtunkhwa.
5. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
6. Officers concerned.
7. Master file.

ATTESTED

111 / 7 / 24/3/2023
(IMRAN ZAMAN)
SECTION OFFICER (Management Cadre)

Attested
Imran



**DIRECTORATE OF ELEMENTARY & SECONDARY
EDUCATION**

KHYBER PAKHTUNKHWA PESHAWAR.
No 3333 /F.No.61A-23/MS/Abbottabad Vol-VI

Dated 9/5 Peshawar the
/2023

To

Mr. Hayat Muhammad Khan
Senior Clerk GCMHS Battagram

Subject: **Request for Transfer Adjustment**

Memo:

I am directed to refer to the subject cited above and to inform you that your appeal alongwith others has been seen and filed by the Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

Assistant Director (Admn)
Directorate E& Secondary Education
Khyber Pakhtunkhwa, Peshawar

9/5/2023

Endst; No. _____

Copy forwarded to the: -

1. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Master File

Assistant Director (Admn)
Directorate E& Secondary Education
Khyber Pakhtunkhwa, Peshawar

ATTESTED



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

AUTHORITY LETTER

I Director, Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar do hereby authorize Mr. M. Tufail 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. 1067 / 2023 Titled Hayat Muhammad Khan VS Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department.

Dated 20 / 6 / 2023

Director

Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar.