

Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 493/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	14.07.2023	<p>The implementation petition of Mst. Shamshad Bibi received today by Courier Service through Mr. Khaled Mahmood Advocate. It is fixed for implementation report before touring Single Bench at D.I.Khan on _____. Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman</p> <p>REGISTRAR</p>

BEFORE THE COURT OF SERVICE TRIBUNAL, PESHAWAR

Implementation Petition No. 493 /2023

In line with Service appeal No. 137/2022 decided on 30-09-2022

**Shamshad Bibi etc.
Versus
Govt of KPK**

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 6478

Dated _____

**APPLICATION FOR FIXATION AT CAMP
COURT DIKHAN WHICH IS SCHEDULED
FROM 17/07/2023 TO 21/07/2023 OR
AT PRINCIPLE SEAT PESHAWAR.**

RESPECTFULLY SHEWETH,

1. That the above title implementation petition in being filed before this Honorable Tribunal.
2. That the case relates to jurisdiction of camp court D.I.Khan which is scheduled from 17-07-2023 to 21-07-2023 at DIKhan.
3. That it is urgent matter and if not fix then petitioner will suffer Irreparable lose and petition will become infructuous.

It is, therefore, very humbly requested that keeping in view the above facts, above titled implementation Petition maybe fixed before camp court DIKhan, in above schedule dated or fixed before principle seats as early as possible.

Dated: 13/07/2023

Petitioner
Through 
Khalid Mehmood
Advocate High Court D.I.Khan

Affidavit

Mob # 0336-4330001

That all the contents of the above application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.


Deponent

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECK LIST

Case Title: Shauqat Bib, vs Govt of KPK
(implemtn petition)

S.No	Contents	Yes	No
1.	This appeal has been presented by: <u>Khalid Mahmud AKC</u>		
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the requisite documents?	✓	
3.	Whether Appeal is within time?	✓	
4.	Whether the enactment under which the appeal is filed mentioned?	✓	
5.	Whether the enactment under which the appeal is filed is correct?	✓	
6.	Whether affidavit is appended?	✓	
7.	Whether affidavit is duly attested by competent oath commissioner?	✓	
8.	Whether appeal/annexures are properly pagged?	✓	
9.	Whether certificate regarding filing any earlier appeal on the subject furnished?	✓	
10.	Whether annexures are legible?	✓	
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/clear?	✓	
13.	Whether copy of appeal is delivered to A.G.D.A.G?		
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15.	Whether numbers of referred cases given are correct?		
16.	Whether appeal contains cuttings/overwriting?		✓
17.	Whether list of books has been provided at the end of the appeal?		
18.	Whether case relate to this Court?	✓	
19.	Whether requisite number of spare copies attached?	✓	
20.	Whether complete spare copy is filed in separate file cover?	✓	
21.	Whether addresses of parties given are complete?	✓	
22.	Whether index filed?	✓	
23.	Whether index is correct?	✓	
24.	Whether Security and Process Fee deposited? on		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule (1), notice along with copy of appeal and annexures has been sent to respondents? on		
26.	Whether copies of comments/reply/rejoinder submitted? on	✓	
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

Khalid Mahmud

Signature:

AKC

Dated:

13-7/2023

**BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA**

Implementation Petition No. 493 /2023

In line and with reference to

Service Appeal No. 137 of 2022

Mst Shamshad Bibi SDEO VS. Government of Khyber Pakhtunkhwa etc

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2.	CM with affidavit		10-11
3.	Copy of Notification dated 07.10.2021, Copy of Notification dated 12.01.2022, Judgment dated 30.09.2022 and Service appeal No 137 of 2022 of this Hon'ble Tribunal	A,B, C & D	12-27
4.	Copy of Impugned Notification dated 26.05.2023	E	28
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Yours Humble Petitioner

(Mst shamshad bibi)
Through Counsel

Khalid Mahmood
Advocate High Court
Stationed at D.I.Khan

Dated: 13/7 /2023

①

**BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA**

Implementation Petition No. 493 /2023

In line and with reference to

Service Appeal No. 137 of 2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6478

Dated 14/7/2023

Mst Shamshad Bibi, Sub Divisional Education
Officer (female) Tehsil Paharpur, District D.I.Khan.

Petitioner

VERSUS

1. **Government of Khyber Pakhtunkhwa** through, Chief Secretary
Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Govt of Khyber Pakhtunkhwa Elementary &
Secretary Education Department, Peshawar.
3. **Director**, Elementary & Secondary Education Department,
Khyber Pakhtunkhwa, Peshawar.
4. **District Education Officer (F)** Dera Ismail Khan, Education.
5. **District Education Officer (F)** Tank, Education.
6. **District Account Officer**, D.I.Khan.
7. **Samina Shahnaz MC BS-17**, SDEO Female Jandola Tank

Respondents

APPLICATION FOR IMPLEMENTATION OF
JUDGMENT DATED: 30.09.2022 PASSED
BY THIS HON'BLE TRIBUNAL IN SERVICE
APPEAL NO.137/2022, WHEREBY, THE
APPEAL OF PETITIONER WAS ACCEPTED
AND THE IMPUGNED NOTIFICATION
DATED: 12.01.2022 REGARDING
TRANSFER AND POSTING OF PETITIONER
WAS DECLARED ILLEGAL AND INVALID,
CONSEQUENTLY STANDS SET ASIDE AND
CANCELLED.

PRAYERS

**On acceptance of this implementation
Petition this Hon'ble Tribunal may please
be directed the respondents to fully and
effusively make compliance of the
Judgment dated 30.09.2022 of this
Honourable Tribunal in true letter & spirit
without any further delay.**

Respectfully Sheweth,

Concise Facts

1. That the petitioner filed service Appeal No. 137 of 2022 before this Honourable Tribunal with the prayer that on acceptance of present service appeal and by setting aside notification bearing no SO(MC)E&SED/4-16/2021/posting/transfer/MC dated 12.01.2022, the impugned transfer of appellant from the post for SDEO (female) Paharpur to the post of female Tank, being illegal, not sustainable in the eyes of law, arbitrary, perverse, tainted with malafide and of no legal effect and the appellant allowed to resume her duty at Paharpur D.I.Khan together with grant of any other appropriate remedy that this honorable tribunal may determine in the light of relevant circumstances. On fixation of the case, after having heard the appellant/petitioner at great length vide judgment dated: 30.09.2022 passed by this Hon'ble Tribunal, the impugned Notification dated 12.01.2022 was set aside/cancelled and thereby appeal of the petitioner was accepted. Copy of Notification dated 07.10.2021, Copy of Notification dated 12.01.2022, Judgment dated 30.09.2022 and Service appeal No 137 of 2022 of this Hon'ble Tribunal are annexed herewith as Annexure A,B,C&D.
2. That it is manifest that Judgement of this Hon'ble Tribunal passed on 30.09.2022 but in utter disregard and violation of Judgement of this Hon'ble Tribunal as well as posting/transfer policy of the Government of Khyber

Pakhtunkhwa, the respondent / Secretary Education, Peshawar has issued another Notification dated: 26.05.2023 shared with petitioner in WhatsApp Group of MC on 12th July 2023 i.e. after one month and 18 days, whereby the respondent No 7 Samina Shahnaz was posted to SDEO (female), Tehsil Paharpur District DIKhan and petitioner was directed to report to Directorate of E&SE. Copy of impugned Notification dated: 26.05.2023 (communicated to petitioner through WhatsApp Group of MC on 12th July 2023) is enclosed as Annexure E.

3. that it is far-fetched to mention here that despite clear and well explained judgment in favour of petitioner, the respondents/Department without any lawful reason have lurk in hesitation to fully implement the judgment of this Hon'ble Court, rather violated the essence and validation of the judgment whereas the law prohibit them to do as such, but the department/ respondents in careless manner, flatly denying the judgment of this Tribunal and in respect of which, they may be dealt with in accordance with law viz to comply with the subject judgment.

4. That it is pertinent to mention that Samina Shahnaz respondent No 7 was promoted as SDEO BPS-17 and posted at Munda Dir Lower vide notification dated 07.10.2021 and subsequently she was transferred herself to SDEO Drazinda D.I.Khan in place of Fozia Parveen MC SDEO Drazinda vide notification dated 10.03.2022. This notification was challenged by Fozia parveen before this Honorable Tribunal via service appeal no 1090 of 2022 and this Honorable Tribunal has suspended the operation of notification dated 10.03.2022 vide order sheet dated 06.07.2022. However respondent no 7 performed duty as SDEO Drazinda DIKhan for 4 months and subsequently this Honorable Tribunal set aside the notification dated 10.03.2022 and as regards the private respondent no 8 (presently respondent no 7), the department may adjust her at a nearer station if her request is found genuine vide judgement dated 30.09.2022. Copies of notification dated

07.10.2021, notification dated 10.03.2022, order sheet dated 06.07.2022 and judgement dated 30.09.2022 in service appeal no 1090 of 2022 are annexed as Annexure F, G, H, and I.

5. That Subsequently in compliance of judgement dated 30.09.2022 in service appeal no 1090/2022 respondent no 7 was adjusted from SDEO female Munda Dir Lower to SDEO Jandola Tank and within few months she was posted as SDEO Female Paharpur in place of petitioner due to her political backing and favoritism.

6. That the judgment dated 30.09.2022 in *service appeal no 137 of 2022*, the Department / respondents have not complied so far in true essence and spirit, despite various resorts of petitioner to the Secretary Education, Peshawar / Competent authority, rather issued impugned Notification dated: 26.05.2023 by posting the respondent No 7 to SDEO Female Paharpur DIKhan in utter disregard of the judgment of this Hon'ble Tribunal therefore, the petitioner approaches this Honourable Tribunal for implementation of judgment dated 30.09.2022 on inter-alia the following grounds.

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GROUND S

a. That the Judgment dated 30.09.2022 in the subject service Appeal is self-contained wherein was specifically stated that *"As a sequel to the above the service appeal is allowed with the direction to the respondent department to allow the appellant to continue on her present station of posting till completion of her normal tenure. The appeal is accepted in above terms."*but direction of this Hon'ble Tribunal has not yet been fully and wholly implemented.

b. That the judgment dated 30.09.2022 in the main service appeal of this Tribunal is self-explanatory, simple and clear and it did not require any further interpretation. But respondents tactfully, illegally and unlawfully twisted the same on technical grounds to smash the

essence of judgment in order to sabotage the rights of petitioner. As, *Quoties in verbis nulla est ambiguitas, ibi nulla exposition contra verba fienda est* which means "so long as there is no ambiguity in the words, there should be no interpretation contrary to the words" therefore, respondents have no lawful authority to go beyond the specific verdict of the ibid judgment.

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c. That the scheme of the law is that in one proceeding the court/Tribunal determines the liability of a party and the corresponding right of the other party and incorporates them in the judgment/order and in another proceeding it executes the said order /judgment, i.e. at the instance of one party specifically enforces the liability against the other. There can be no execution or specific enforcement of a liability without a previous determination of the liability by a Court and incorporated in a formal document called judgment. In the instant matter, the liability and corresponding rights of the parties have rightly been determined and after passing the judgment, the respondents/department have not in entirety honoured the decision of this Hon'ble Tribunal which act of respondents is nullity in the eye of law.

d. That the successive transfers of the petitioner to various stations within a span of one and half year are against the posting/transfer policy of the Provincial Government, which indicated that a Government servant should not be transferred, in ordinary circumstances, prior to completion of a period of three years at one place of posting. In this backdrop, the wisdom may also be derived from the judgment of Hon'ble Supreme Court 2011 P L C (C.S.) 935(Supreme Court of Pakistan), whereby it is held that:-

----- S. 30 (3) ----- Constitution of Pakistan
Art.212(3)--Successive Transfer -- Respondent
was patwari who was transferred to three stations

within a span of eight month--- Service Tribunal accepted appeal filed by respondent patwari and set aside his transfer orders --- Validity --- Successive transfer of respondent to three stations within a span of eight months were against posting/transfer policy of Provincial Government, which indicated that a government servant should not be transferred in ordinary circumstances, prior to completion of a period of three years at one place of posting --- Transfer order of respondent was passed during ban period, prematurely under political influence, as copy of the same was sent to private secretary to Provincial Minister for Revenue --- Tenure of posting of and officer or official of Government to a District Government was provided in S.30(3) of North-West Frontier Province Local Government Ordinance, 2001, as three years but any officer could be transferred earlier due to exigency of service or in public interest to an individual grievance and no substantial question of law of public importance was involved warrant interference by Supreme Court under Art.212 (3) of the Constitution---Supreme Court did not find any illegality or infirmity in the Judgment passed by Service Tribulal so as to justify interference by Supreme Court under Art.221(3) of the Constitution---Petition was dismissed.

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- e. That the respondent /department without any lawful reason willfully not implementing the order of this Hon'ble, albeit, in doing so, this Tribunal while exercising its jurisdiction may deal with the matter with iron hands because the matter of honour and integrity or order of Court.
- f. That it may not be out of place to mention here that order/Judgment or any Court or court shall be implemented/executed by the Tribunal concerned in its true essence and its implementation by the department /

authority concerned is the moral duty of that authority to obey it accordingly. For the sake of harmony amongst the functionaries of the state, it is imperative for all concerned to fully honour the order/judgment of competent Court/Court. In such view of the matter, denial of respondents to effusively implement the Judgment passed in service appeal is beyond the settled parameters of jurisprudence.

- g. That it is imperative to highlight that the respondents, in sheer violation of Rules and policy in vogue by the Government of Khyber Pakhtunkhwa, have posted the respondent No 7 to Tehsil Paharpur DIKhan who were not obliged to do so for the reason the petitioner has not completed the normal tenure of service at the incumbent position. In fact, the petitioner has no political legs to stand upon to make her transfer and posting according to her wish and whims, that's why, exploited at the hands of respondent despite having decision in her favour.
- h. That as no ambiguity in the judgment passed by this Hon'ble Tribunal and all the material aspect relating to the tenure and transfer policy in the light of provision in the Rules & Policy in vogue and judgment of apex Court were discussed properly. When this being the position in the judgment passed by this Tribunal, posted the respondent no 7 to Tehsil Paharpur DIKhan and that too by not completing the normal tenure i.e. three years (Annexure-J) by the petitioner, respondents are highly unjust and unwarranted under the law.
- i. That the impugned notification dated 26.05.2023 regarding posting of respondent no 7 is also illegal and liable to be cancelled ab initio on following grounds
- a. Firstly, the notification dated 26.05.2023 was shared on WhatsApp group(MC) on 12th July 2023 i.e. after 1 month and 18 days and as per law it stands cancelled automatically if not

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complied within 15 days. On this score, notification is no more in field.

b. Secondly, vide notification dated 10.03.2023 by election commission of Pakistan, it is clearly stated in para iii that transfer/posting of officers/officials of BS 17 and below, the copy of such order issued may be shared with commission. That impugned notification dated 25.05.2023 was not shared with commission. On this score order is liable to be set-aside. It is pertinent to mention that some order was issued without sharing to election commission therefore election commission directed to department reverse the transfer. Copy of notification dated 10.03.2023 and letter dated 20.02.2023 are annexed as **Annexure K & L**.

c. Thirdly, that according to article 224(1A) of constitution of Pakistan the care taker Government/Cabinet could not take policy decision and permanent measures including recruitments, making appointments, transfers and posting of government servant during the limited period that it held office. On this score too, the impugned notification is liable to be set-aside. In this regard judgement of supreme court of Pakistan is annexed as **Annexure M**.

d. Fourthly, according to section 230 of election act 2017, caretaker government shall perform its functions to attend to day to day matters which are necessary to run the affairs of Government.

Copy of the same is annexed as **Annexure N**.

j. That Counsel of the petitioner may please be allowed to raise additional grounds at the time of arguments.

It is therefore, humbly prayed that respondents may please be directed to make fully and effusively compliance of the Judgment dated

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30.09.2022 of this Honourable Tribunal in true
essence & spirit without any further delay.

Dated: 13/7/2023

Yours humble Petitioner
Through Counsel



Khalid Mahmood
Advocate High court.
Stationed at D.I.Khan

AFFIDAVIT

I, **Mst Shamshad Bibi**, Sub Divisional Education Officer (female),
Education Department, Paharpur, the petitioner, do hereby solemnly affirm
and declare on oath that all the Para-wise contents of this **Petition** are
correct and true to the best of my knowledge & belief. I further solemnly
affirm and declare that no part of above petition is false and nothing
material has been deliberately concealed.

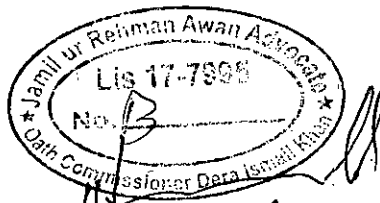


Identified by Counsel:

Khalid Mahmood AHC



Deponent



13/7/23.

**BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA**

Implementation Petition No. _____ /2023

In line and with reference to

Service Appeal No. 137 of 2022

Mst Shamshad Bibi

VS.

Government of Khyber Pakhtunkhwa through
Secretary Education, Peshawar and other.

**APPLICATION WITH THE REQUEST TO SUSPEND
THE OPERATION OF IMPUGNED NOTIFICATION
DATED 26.05.2023, WHEREBY, THE RESPONDENT
NO 7 WAS POSTED AS SDEO (FEMALE) TEHSIL
PAHARPUR IN UTTER DISREGARD OF THE SPIRIT
AND ESSENCE OF THE JUDGMENT DATED
30.09.2022 RENDERED BY THIS HON'BLE
TRIBUNAL TILL DECISION OF THE
IMPLEMENTATION PETITION**

Respectfully Sheweth,

1. That a implementation petition is being filed before this Tribunal and the grounds of same may please be considered as an integral part of the subject petition.
2. That the petitioner has not yet completed her ordinary tenure of the service and posting of respondent No 7 through impugned Notification is based on malafide and is due to the political victimization, and also there are no compelling circumstances for the impugned posting of respondent before completion of ordinary tenure of petitioner rather the respondents in defiance of the judgment of this Tribunal, issued the said Notification.
3. That posting of respondent No 7 to the Tehsil Paharpur District DIKhan is the outcome of political influence and the same was only to oblige the political figures of the area. Petitioner is having no political backing that's why he is victimize at the hands of

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respondent. Thus, grant of interim relief as prayed for would be in the best interest of justice.


It is, therefore, humbly prayed that on acceptance of the present petition for suspension of impugned Notification as prayed for, the respondent may please be directed to suspend the operation of impugned Notification dated: 26.05.2023 till decision of the subject petition, and in the meanwhile, status quo may please be ordered to be maintained.

Yours Humble Petitioner


Mst shamshad bibi


Through Counsel

Dated: 13/7/2023

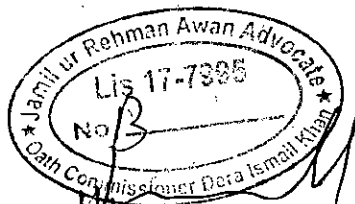

Khalid Mahmood,
Advocate High Court.
Stationed at D.I.Khan

AFFIDAVIT

I, **Mst shamshad bibi**, Sub Divisional Education Officer (female), Education Department, D.I.Khan, the petitioner, do hereby solemnly affirm and declare on oath that all the Para-wise contents of this **Petition** are correct and true to the best of my knowledge & belief. I further solemnly affirm and declare that no part of above petition is false and nothing material has been deliberately concealed.


Identified by Counsel:
Khalid Mahmood
Advocate High Court
Stationed at D.I.Khan


Deponent



13/7/23



GOVERNMENT
ELEMENTARY AND
Block-"A" Opposit

Amey (A)

R PAKHTUNKHWA
EDUCATION DEPARTMENT
Civil Secretariat Peshawar

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Dated Peshawar the, October 07th, 2021

NOTIFICATION

No.SO(S/F) E&SED/4-16/2021/POSTING/TRANSFERS/MC: The Competent authority, in compliance with the decision of the Provincial Cabinet, is pleased to order the posting / transfers of the following Sub Divisional Education Officers (SDEOs BS-17) of the Elementary & Education Department, Khyber Pakhtunkhwa, in the public interest, with immediate effect: -

Sr. No	Name & designation	From	To
1.	Mst. Shahida Parveen SDEO (Female BS-17)	Sub Divisional Education Officer (Female) Peshawar Town-IV vice No-15	Sub Divisional Education Officer (Female) Tangi Charsadda
2.	Mst. Zeenat Begum SDEO (Female BS-17)	Sub Divisional Education Officer (Female) Tangi Charsadda	Sub Divisional Education Officer (Female) Town-I Peshawar.
3.	Mst. Maryam Rashid SDEO (Female BS-17)	Sub Divisional Education Officer (Female) Town-I Peshawar.	Sub Divisional Education Officer (Female) Jehangira Nowshera.
4.	Mst. Syeda Nasra Azam SDEO (Female BS-17)	Sub Divisional Education Officer (Female) Jehangira Nowshera.	Sub Divisional Education Officer (Female) Lower Tanawal Abbottabad.
5.	Mst. Naila Naz SDEO (Female BS-17)	Sub Divisional Education Officer (Female) Swabi.	Sub Divisional Education Officer (Female) Chitral Lower.
6.	Mst. Musarat Jamal SDEO (Female BS-17)	Sub Divisional Education Officer (Female) Chitral Lower.	Sub Divisional Education Officer (Female) Torkhow Mulkhow Chitral Upper
7.	Mst. Arifa Bibi SDEO (Female BS-17)	Sub Divisional Education Officer (Female) Torkhow Mulkhow Chitral Upper	Sub Divisional Education Officer (Female) Soo Kohistan Upper AVP.
8.	Mst. Nancy Begum SDEO (Female BS-17)	Sub Divisional Education Officer (Female) Topi Swabi	Sub Divisional Education Officer (Female) Haripur
9.	Mst. Surriya Taj SDEO (Female BS-17)	Sub Divisional Education Officer (Female) Haripur	Sub Divisional Education Officer (Female) Pabbi Nowshera
10.	Mst. Nazia Anjum SDEO (Female BS-17)	Sub Divisional Education Officer (Female) Pabbi Nowshera	Sub Divisional Education Officer (Female) Balakot Mansehra.
11.	Mst. Adeela Rani SDEO (Female BS-17)	Sub Divisional Education Officer (Female) Balakot Mansehra.	Sub Divisional Education Officer (Female) Ghazi Haripur.
12.	Mst. Saeeda Bano SDEO (Female BS-17)	Sub Divisional Education Officer (Female) Ghazi Haripur.	Sub Divisional Education Officer (Female) Darband Mansehra.
13.	Mst. Sajida Sakhi SDEO (Female BS-17)	Sub Divisional Education Officer (Female) Darband Mansehra.	Sub Divisional Education Officer (Female) Pattan Kohistan Lower AVP.
14.	Mst. Fozia Parveen SDEO (Female BS-17)	Sub Divisional Education Officer (Female) Serai Naurang Lakk Marwat.	Sub Divisional Education Officer (Female) Takhti Nusrati Karak

Attended

Attended

[Handwritten signature]



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat, Peshawar
 Phone No. 091-923222



33.	Mst. Shagufta Nooran (MC BS-17)	Assistant Director of E&SE KP	Director, Sub Divisional Education Officer (Female) Garhi Kanoor, Mardan AWP
34.	Mst. Nazam Bukhan (MC BS-17)	Director of E&SE KP Waiting for posting in	Sub Divisional Education Officer (Female) Khyber AWP
35.	Mst. Azra Aftab ASDO (BS-16)	Assistant Sub-Divisional Education Officer (Female) Daggar Buner	Sub Divisional Education Officer (Female) - Osada Buner in OPS
36.	Mst. Saima ASDO (BS-16)	Assistant Sub-Divisional Education Officer (Female) Barkhan	Sub Divisional Education Officer (Female) Trans Batal Markand in OPS

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. District Education Officers (Female) concerned.
4. District Accounts Officers concerned.
5. Director EMS, E&SE Department with the request to upload the posting transfer notification on the official website of the department.
6. PS to Chief Secretary, Khyber Pakhtunkhwa.
7. PS to Minister for E&SE Department, Khyber Pakhtunkhwa.
8. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
9. Officers concerned.
10. Master file.

SECTION OFFICER (SCHOOLS FEMALE)
(HAFEZ UR REHMAN SHAH)

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Amir (B) 15

GOVERNMENT OF KHYBER
ELEMENTARY AND SECONDARY EDUCATION
Block-"A" Opposite MPA's Hostel, Chak No. 1, Peshawar
Phone No. 091-9223388

NKHW
ARTMENT

Dated Peshawar the January 12th, 2022

NOTIFICATION

SO(MC)E&SED/4-16/2021/POSTING/TRANSFER/MC: The Competent Authority is pleased to order the posting/transfer of the following Management Cadre officers of Elementary & Secondary Education, Khyber Pakhtunkhwa with immediate effect, in the public interest: -

Sr. No	Name & designation	From	To
1.	Mst. Shamsiash Bibi (MC BS-17)	SDEO (Female) Pharpur DI Khan	SDEO (Female) Tank (Vice No-2)
2.	Mst. Sonia Nawaz (MC BS-17)	SDEO (Female) Tank	SDEO (Female) Pharpur DI Khan (Vice No-1)

SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Indst: of even No.& date:

Copy forwarded for information to the: -

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officers (Female) DI Khan and Tank.
4. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
5. District Accounts Officers DI Khan and Tank.
6. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
7. Officers concerned.
8. Master file.

Attended

(HA FEEZ-UR-REHMAN SHAH)
SECTION OFFICER (Management Cadre)

Service Appeal No.137/2022 titled "Shamshad Bibi- vs-Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa Peshawar and others", decided on 30.09.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Salah- Ud-Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Camp Court Dera Ismail Khan.

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**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR CAMP COURT D.I.KHAN.**

SCANNED
KPST
Peshawar

BEFORE: KALIM ARSHAD KHAN --- CHAIRMAN
SALAH UD DIN --- MEMBER(J)



Service Appeal No.137/2022

Mst. Shamshad Bibi, SDEO (Female) Paharpur, Education Department, D.I.Khan.

.....(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
2. Chief Secretary, to government of Khyber Pakhtunkhwa Elementary & Secondary Education Department, Peshawar.
3. Secretary, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
4. Director Education, Department (E&SE) Khyber Pakhtunkhwa Peshawar.
5. District Education Officer (Female), Dera Ismail Khan.
6. District Education Officer (Female), Tank.
7. District Account Officer, D.I.Khan.
8. Mst. Sonia Nawaz, SDEO, (Female), Tank.

.....(Respondents)

Present:

Mr. Ahmad Ali,
Advocate.....For appellant.

Mr. Muhammad Adcel Butt,
Additional Advocate General.....For official respondents.

Mr. Noman Ali Bukhari,
Advocate.....For private respondent No.8

Date of Institution.....31.01.2022

Date of Hearing.....30.09.2022

Date of Decision.....30.09.2022

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AIMED AT TESTED AGAINST THE IMPUGNED NOTIFICATION BEARING NO. SO (MC)/E&SED/4-16/2021/POSTING/TRANSFER/MC DATED 12.01.2022 WHEREBY THE APPELLANT WAS

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MEMBER
Khyber Pakhtunkhwa
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TRANSFERRED TO DISTRICT TANK, WHEREAS RESPONDENT NO.8 ON THE BASIS OF FAVOURTISM, WAS BROUGHT TO PAHARPUR, D.I.KHAN IN VIOLATION OF LAW, RULES AND POLICY IN VOGUE BY THE PROVINCIAL GOVERNMENT.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Facts, to the extent necessary, are that the appellant is serving as Sub-Divisional Education Officer (SDIO) (Female) in the Education Department, Khyber Pakhtunkhwa and previously, she was posted as such at Munda, District Dir Lower vide notification dated 24.02.2019; that vide notification dated 09.08.2019, the petitioner was transferred from the post of SDIO(F) Munda Dir Lower to the post of SDIO(F) Tank; that thereafter on 07.10.2021, the appellant was transferred from the post of SDIO(F) Tank to the post of SDIO(F) Paharpur, District D.I.Khan; that, just after three months of transfer of the appellant to Paharpur, D.I.Khan, the respondents issued another impugned transfer notification dated 12.01.2022, vide which the appellant was transferred back to District Tank whereas private respondent No.8 was transferred in her place at Paharpur District D.I.Khan; that the appellant felt herself aggrieved from the order dated 12.01.2022 and filed departmental appeal, which was not responded and the appellant then filed this appeal in this Tribunal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeal by filing reply/comments mainly on the grounds that under section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, every civil servant was liable to serve anywhere within or outside the province; that the

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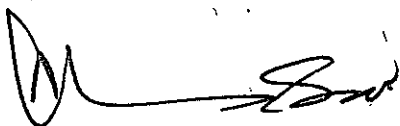
impugned order was acted upon, therefore, the appeal had rendered infructuous; that the private respondent No.8 was posted back to Paharpur on acceptance of her representation and totally on humanitarian grounds.

The defence setup was a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellant, learned Additional Advocate General for official the respondents and counsel for private respondent No.8.

04. Learned counsel for the appellant argued that the appellant was transferred back to the District Tank and consequent thereof respondent No.8, on the basis of favoritism, was brought back to the Paharpur D.I.Khan is against the law, rules and regulations framed there-under, thus is not maintainable and is liable to be declared void ab-initio. Learned counsel further argued that the impugned transfer order is pre-mature and against the posting/transfer policy of the Provincial Government. He contended that the impugned order is based on malafide and is due to the political victimization. At the end he requested that the impugned order is set aside the appellant might be allowed to complete her normal tenure as per policy.

05. Learned Additional Advocate General contradicted the arguments of learned counsel for the appellant and raised preliminary objection on the maintainability of the service appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. He further argued that as per Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, every civil servant shall be liable to serve anywhere within or outside the province. He requested that the appeal might be dismissed with cost.



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06. Learned counsel for private respondent No.8 submits that the instant appeal is not maintainable under Section-4 of the Service Tribunal Act 1974 on the ground that the statutory period of ninety days was not lapsed, hence premature which should be rejected. He further contended that the appellant has been treated in accordance with law and rules, therefore, the instant appeal is being devoid of merit might be dismissed.

07. In order to streamline and regulate the postings and transfers of the Civil Servants, the Government of Khyber Pakhtunkhwa introduced a posting/transfer policy. Main conditions of the same relevant to the instant appeal are as under:-

i. All the postings /transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants.

iv. The normal tenure of posting shall be three years subject to the condition that for the officers /officials posted in unattractive areas, the tenure shall be two years and for hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.

08. It is observed at the very outset that the reply of the official respondents has urged that the private respondent No.8 was transferred back on humanitarian grounds on acceptance of her departmental representation but neither such humanitarian ground was explained nor any public interest or exigency was stated in the reply of the respondents in transferring back the private respondent No.8.

09. The posting and transfer policy specifically fixes a normal tenure for the civil servants. In the case in hand it is two years but just in three months of the transfer of the appellant she was re-transferred to the previous place of posting without allowing her to complete normal tenure as per the Government's own decision found in the above policy.

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KALIM ARSHAD KHAN
CHAIRMAN
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR



10. Tenure was originally created to give teachers academic freedom. Civil Servants do not have stability of tenure, particularly and especially in the Education Department where transfers and postings are made frequently at the whims and fancies of the executive head for political and other considerations, and not in the public interest; a fixed minimum tenure would not only enable Civil Servants to achieve their professional targets, but also help them function as effective instruments of public policy; repeated shuffling/transfer of officers is deleterious to good governance; minimum assured service tenure ensures efficient service delivery, and increased efficiency; and Civil Servants can also prioritize various social and economic measures intended to implement for the poor and marginalized sections of society.

11. In 2018 S C M R 1411 titled "Khan Muhammad Versus Chief Secretary, Government of Balochistan Quetta and others", the august Supreme Court of Pakistan was pleased to have found as under:---

"18. Under section 10 of the Act a civil servant cannot insist to be posted or transferred to a particular post but this does not mean that a civil servant can be made to serve under a subordinate. Moreover, while section 10 does not prescribe a minimum period during which a civil servant must serve at his post it does not mean that the Government without assigning any reason can move a civil servant from the place he was posted to after a month or subject the civil servant to repeated postings in a short period of time because this would amount to punishing him. Such postings also adversely affect the public interest and result in the wastage of scarce resources, and constitute bad governance.

19. The Rules designate certain posts as 'tenure posts' (rule 22 read with Schedule IV of the Rules) and prescribe a period of three years for an incumbent to serve on such posts. Such prescribed tenure may therefore be categorized as the ideal duration for which a civil servant should serve at a particular post. The post of Divisional Director however is not a tenure post but the principle of serving for a particular duration at this post should be followed. In the present case the petitioner was posted for a little over a month when he was again posted. Any civil servant posted to a particular post requires some time to familiarize himself with the workings of the office and the

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requirements of the post whereafter he will be best placed to acquit himself of the responsibilities of the post. However, a one month posting, as in the case of the petitioner, would not serve the interest of the people."

12. The upshot of the above discussion is that impugned order dated 07.10.2021 was not issued in public interest or exigencies of service and as such is not tenable in the eyes of law. Pre-mature transfer is clear violation of Clause I and IV of Posting and Transfer Policy notified by the provincial government. It is also violative of instructions circulated vide letter dated 27.02.2013 pertaining to tenure in posting/transfer. Ordinary tenure for posting has been specified in the law or rules made there-under, such tenure must be respected and cannot be varied, except for compelling reasons. It should be recorded in writing and are judicially reviewable.

13. As a sequel to the above, the service appeal is allowed with the directions to the respondent-department to allow the appellant to continue on her present station of posting till completion of her normal tenure. The appeal is accepted in the above term. Costs shall follow the event. Consign.

14. *Pronounced in open Court at Camp Court D.I.Khan and given under our hands and the seal of the Tribunal on this 30th day of September, 2022.*



KALIM ARSHAD KHAN
Chairman
Camp Court D.I.Khan



SALAH UD DIN
Member Judicial
Camp Court D.I.Khan.

Certified to be true copy

SALAH UD DIN
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 17/8/23
Number of pages 6
Copying Fee 30/-
Urgent 57/-
Total 87/-
Name of C ---
Date of Completion of work 17/8/23
Date of Delivery of Copy 17/8/23

Annex (D)

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



Service Appeal No. 137 of 2022

Mst. Shamshad Bibi, SDEO (Female) Paharpur, Education
Department, D.I.Khan.

Appellant Date of filing 122

Versus

Date of hearing 31-01-2022

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary education Department, Khyber Pakhtunkhwa, Peshawar.
2. Chief Secretary, to Government of Khyber Pakhtunkhwa Elementary & Secondary education Department, Peshawar
3. Secretary, Elementary & Secondary education Department, Khyber Pakhtunkhwa, Peshawar.
4. Director, Elementary & Secondary education Department, Khyber Pakhtunkhwa, Peshawar.
5. District Education Officer (Female), D.I.Khan.
6. District Education Officer (Female) Tank.
7. District Account Officer, D.I.Khan.
8. Mst. Sonia Nawaz, SDEO, (Female), Tank

Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974 AIMED AGAINST THE IMPUGNED
NOTIFICATION BEARING NO. SO (MC)/E&SED/4-
16/2021/POSTING/TRANSFER/MC DATED 12.01.2022
WHEREBY THE APPELLANT WAS TRANSFERRED
TO DISTRICT TANK, WHEREAS RESPONDENT NO.

31/01/2022

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8, ON THE BASIS OF FAVOURTISM, WAS BROUGHT TO PAHARPUR, D.I.KHAN IN VIOLATION OF LAW, RULES AND POLICY IN VOGUE BY THE PROVINCIAL GOVERNMENT

PRAYER IN APPEAL

TO SET ASIDE/CANCEL THE IMPUGNED NOTIFICATION BEARING NO. SO (MC)/E&SED/4-16/2021/POSTING/TRANSFER/MC DATED 12.01.2022 WHEREBY THE APPELLANT WAS TRANSFERRED TO DISTRICT TANK BEING ILLEGAL, NOT SUSTAINABLE IN THE EYES OF LAW, ARBITRARY, PERVERSE, TAINTED WITH MALAFIDE AND OF NO LEGAL EFFECTS AND THE APPELLANT ALLOWED TO RESUME HER DUTY AT PAHARPUR, D.I.KHAN, TOGETHER WITH GRANT OF ANY OTHER APPROPRIATE REMEDY THAT THIS HONOURABLE TRIBUNAL MAY DETERMINE IN THE LIGHT OF RELEVANT CIRCUMSTANCES

Note:- Addresses given above shall suffice the object of service

Respectfully Sheweth,

The appellant prefers the instant appeal on the grounds hereinafter submitted apropos the following facts.

Concise Facts

1. **That** the appellant is serving as Sub-Divisional Education Officer (Female) in the Education Department, Khyber Pakhtunkhwa and previously, she was posted as such at Munda Dir Lower vide Notification dated 21.02.2019. However, vide Notification dated 09.8.2019, the petitioner stood transferred from the post of SDEO

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Khyber Pakhtunkhwa
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Munda Dir Lower to SDEO (F), Tank. Thereafter the in October 07, 2021, the appellant was transferred from the post of SDEO (F) Tank to SDEO (F) Tehsil Paharpur, District D.I.Khan. Copies of all transfers/posting Notifications of appellant are enclosed as Annexure A, B and C

2. That respondent No. 3, just within three months of the transfer of appellant to D.I.Khan, issued another impugned Notification bearing No. SO (MC)/E&SED/4-16/2021/posting/transfer/MC dated 12.01.2022 vide which the appellant was transferred back to District Tank whereas, respondent No. 8, on the basis of favoritism was transferred to the D.I.Khan. Copy of the impugned Notification bearing No. SO (MC)/E&SED/4-16/2021/posting/transfer/MC dated 12.01.2022 is enclosed as Annexure-D

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3. The under the law and policy of the provisional government, an ordinary tenure of service is minimum two years at a station and transfer of a civil servant before completion of ordinary tenure, without any legal exigency has been condemned by superior Courts of Pakistan. Thus, aggrieved of her transfer, the appellant filed a representation with the Respondents against her transfer order issued premature and in defiance of the Rules/ Instructions/ Policy of the government made and promulgated on the point. The representation remains unanswered till filing of the instant appeal due to inaction on the part of respondents. Copy of Departmental appeal/Revision dated 13.01.2022 is enclosed as (Annexure-E)

4. That disgruntled of the impugned Notification bearing No. SO (MC)/E&SED/4-16/2021/posting/transfer/MC dated 12.01.2022 whereby the appellant has been transferred back to District Tank and consequent thereof respondent No. 8, on the basis of favoritism, was brought back to the Paharpur, D.I.Khan whereby the representation preferred to respondents remains undecided, the

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Member Panchkhwa
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appellant approaches this Honourable Tribunal for redressal of her grievance on inter-alia the following grounds.

G R O U N D S

- a. That the impugned Notification bearing No. SO (MC)/E&SED/4-16/2021/posting/transfer/MC dated 12.01.2022 whereby the appellant has been transferred back to district Tank and consequent thereof respondent No. 8, on the basis of favoritism, was brought back to the Paharpur, D.I.Khan is against the law, rules & regulations framed thereunder, thus is not maintainable and is liable to be declared void ab-initio. Besides, the impugned actions taken against the appellant are against the settled principles of law and the appellant has been made an escape goat, thus the impugned actions are liable to be set aside by this Honorable Tribunal.
- b. That the appellant is within her right to remain posted at Paharpur D.I.Khan in light of the policy of the Government of Khyber Pakhtunkhwa regulating transfer/posting of government servants. It is worthwhile to mention that under the law and policy of the Provincial Government, an ordinary tenure of the service is minimum two years at a station and transfer of a civil servant before completion of ordinary tenure, without any legal exigency, has been condemned by the Superior Courts of Pakistan.
- c. That appellant has been made a rolling stone by official respondents just because of the fact she is not having any political backing. Besides, respondents are pressurizing the appellant to relinquish the charge of the post and handover the same to the respondent No. 8, thus, the appellant has been discriminated and victimized due to extraneous and political interference without any lawful Justification

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- d. That malafide and nepotism on the part of respondents is apparent through the fact that initially they, vide notification dated 07.10.2021 transferred appellant from Tank to Paharpur, D.I.Khan whereas soon after within three months, on 12.01.2022, the said transfer has been reversed only for the benefit of respondent No. 8 despite the fact that she has already completed her tenure at Tank.
- e. That the impugned transfer order/Notification has been issued to oblige political figures of the area and therefore the same is having no legal sanctity and no worth to be maintained.
- f. That public officers and public functionaries are bound to obey the law rules procedure and being a public servant they are required to serve the public and it is not in their duties to bow before the politicians. Impugned Notification is therefore nullity in the eye of law and rights of appellant are required to be protected from the influence of political figures.
- g. That transfer of respondent No. 8 to the Paharpur, D.I.Khan is the outcome of political influence and the same was only to oblige the political figures of the area. Respondent No. 8 is having political backing while the petitioner does not and that's why petitioner is suffering a lot. The Peshawar High Court in the case reported as 2016 PLR 1468 was pleased to take serious notice of the transfer on political basis.
- h. That the petitioner has not yet completed her ordinary tenure of the service and her transfer through impugned office order is based on malafide and is due to the political victimization, and also there are no compelling circumstances for the impugned transfer of petitioner before completion of her ordinary tenure.
- i. That it has been held by the superior courts that when the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing

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and are judicially reviewable. On this score too, the impugned transfer notification to the extent of appellant is liable to be held as illegal, void and tainted with malice on political basis.

- j. Counsel of the appellant may please be allowed to raise additional grounds at the time of arguments.

Dated: 30/1/2022

It is therefore, most humbly prayed that Service Appeal may please be allowed as prayed in the prayer clause of the instant Appeal.

Yours humble appellant
Through Counsel

Dated 30/1/2022

Ahmad Ali Khan
Advocate, Supreme Court

Khalid Mehmood Sigar
Advocate, D.I.Khan

Certified true & correct copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 17-3-23
 Number of Words 6-P
 Copying Fee 30/-
 Urgent 8/-
 Total 35/-
 Name of Officer _____
 Date of Completion of Application 17-3-23
 Date of Delivery of Copy 17-3-23

AN 27 (E) (28)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 091-9210626

Dated: 26th May, 2023

NOTIFICATION

NO.SO(MC)E&SED/4-16/2023/Posting/Transfer/MC/DIK: The following postings/transfers are hereby ordered with immediate effect, in the best public interest. -

Sr. No	Name & Designation	From	To	Remarks
1	Samina Shahnaz MC BS-17	SDEO Female Jandola Tank	SDEO Female Paharpur D.I.Khan	V S No 2
2	Shamahad Bibi MC BS-17	SDEO Female Paharpur Dikhan	Report to Directorate of E&SE	
3	Noor Khadija MC BS-17	SDEO (Female) Wana South Waziristan	SDEO (Female) Daraband Kalan D.I.Khan	V S No 4
4	Shamim Akhtar MC BS-17	SDEO (Female) Daraband Kalan D.I.Khan	SDEO Female Jandola Tank	V S No 1

2. No TADA is allowed.

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. District Education Officer (Female) D.I.Khan.
5. District Accounts Officers D.I.Khan.
6. PS to Advisor to Chief Minister on E&SE Khyber Pakhtunkhwa
7. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.

111 / 26-5-2023
IMRAN ZAMAN

SECTION OFFICER (Management Cadre)

AN 27



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

Dated Peshawar the, October 07th, 2021

NOTIFICATION

No.SO(S/F) E&SED/4-16/2021/POSTING/TRANSFERS/MC: Consequent upon their promotion to the post of Sub Divisional Education Officers (SDEOs BS-17) in Elementary & Education Department, Khyber Pakhtunkhwa as notified vide Notification No. SO(PE)/2-6/DPC.Promotion ADEO/ASDEO (BS-16) to SDEO/AD(BS-17) dated 14-09-2021, the Competent Authority is pleased to order the following posting / adjustment, in the public interest, with immediate effect:-

S. No	NAME & DESIGNATION	PROPOSED PLACE OF POSTING
1.	Mst. Samina Shahnaz	Sub Divisional Education Officer (Female) Munda Dir Lower AVP
2.	Mst. Khadija Bibi	Sub Divisional Education Officer (Female) Larjam Dir Upper AVP
3.	Mst. Nadia Anjum	Sub Divisional Education Officer (Female) Chota Lahore Swabi AVP
4.	Mst. Yasmin Akhtar	Sub Divisional Education Officer (Female) Warl, Dir Upper.
5.	Mst. Syeda Humaira Mehmood	Sub Divisional Education Officer (Female) Besham Shangla AVP
6.	Mst. Shaista Begum	Sub Divisional Education Officer (Female) Shabqadar Charsadda.
7.	Mst. Shamim Akhtar Khan	Sub Divisional Education Officer (Female) Chakesar Shangla AVP
8.	Mst. Seema Saleem	Sub Divisional Education Officer (Female) Mardan
9.	Mst. Zeenat Ferdos	Sub Divisional Education Officer (Female) Banda Daud Shah, Karak.
10.	Mst. Zobia Riaz	SDEO (Female BS-17) Balakot, Mansehra.
11.	Mst. Riffat Bano	Sub Divisional Education Officer (Female) Samarbagh Dir Lower AVP
12.	Mst. Shamim Akhtar	Sub Divisional Education Officer (Female) Martung Shangla AVP
13.	Mst. Shagufta Yasmeen	Sub Divisional Education Officer (Female) Nowshera AVP.

2- Consequent upon above, the following consequential posting / transfer amongst the SDEOs (Female BS-17) are hereby ordered: -

S. No	NAME & DESIGNATION	FROM	TO
1.	Mst. Salma Bashir SDEO (Female BS-17)	Sub Divisional Education Officer (Female) Banda Daud Shah, Karak.	Sub Divisional Education Officer (Female) Daraban DI Khan.
2.	Mst. Nayyar Sultana SDEO (Female BS-17)	Sub Divisional Education Officer (Female) Daraband Kalan DI Khan.	Sub Divisional Education Officer (Female) Gaggra Buner.

3.	Mst. Samina Yasmeen SDEO (Female BS-17)	Sub Divisional Education Officer (Female) Charbagh Swat.	Sub Divisional Education Officer (Female) Gumbat Kohat.
4.	Mst. Kalsoom Syed (MC BS-17)	Sub Divisional Education Officer (Female) Shabqadar Charsadda.	Report to Directorate of E&SE Khyber Pakhtunkhwa.
5.	Mst. Amber Saeed SST (G) (TC BS-16)	Sub Divisional Education Officer (Female) Gumbat District Kohat.	GGMS Darband District Hangu.

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. District Education Officers (Female) concerned.
4. District Accounts Officers concerned.
5. Director EMIS, E&SE Department with the request to upload the posting/
transfer notification on the official website of the department.
6. PS to Minister for E&SE Department, Khyber Pakhtunkhwa.
7. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
8. Officers concerned.
9. Master file.


(HAFEZUR REHMAN SHAH)
SECTION OFFICER (SCHOOLS FEMALE)



Aur (G) 31

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

Dated Peshawar the March 10th, 2022

NOTIFICATION

NO.SO(MC)E&SED/4-16/2021/POSTING/TRANSFER/MC: The following posting / transfers amongst the Management Cadre Officers of Elementary & Secondary Education Khyber Pakhtunkhwa, are hereby ordered, in the best public interest:

Sr. No	Name & designation	From	To
1	Mst. Fozia Parveen (MC BS-17)	SDEO (Female) Darazinda DI Khan	SDEO (Female) Ladha, South Waziristan (AVP)
2	Mst. Samina Shahnaz (MC BS-17)	SDEO (Female) Munda, Dir Lower.	SDEO (Female) Darazinda DI Khan (vice No-1)

The above posting / transfers will be effective from the date of conclusion of the Local Govt. Election in the above districts.

SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

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Copy forwarded for information to the:-

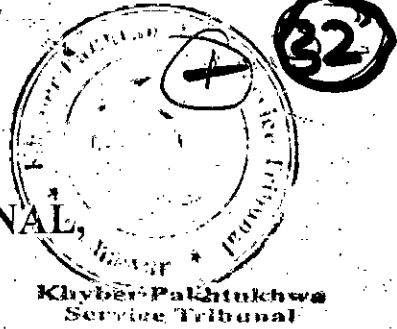
1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officers (Female) Dir Lower, DI Khan and South Waziristan.
4. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
5. District Accounts Officers Dir Lower, DI Khan and South Waziristan.
6. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
7. Officers concerned.
8. Master file.

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Handwritten signature and date 10/3/22

(JUNAID SHAH)
SECTION OFFICER (Management Cadre)

Anet (H)



BEFORE THE HONORABLE SERVICE TRIBUNAL,

KHYBER PAKHTUNKHWA, PESHAWAR

Service-Appeal No. 1090 of 2022

Diary No. 627

Dated 05/7/2022

Mst. Fozia Parveen, SDEO (Female) Darazinda, Dera Ismail Khan

Appellant

Versus

1. Govt Of Khyber Pakhtunkhwa Through Secretary Elementary And Secondary Education Department, Khyber Pakhtunkhwa Peshawar
2. Chief Secretary to Government of Khyber Pakhtunkhwa, Elementary And Secondary Education Department, Peshawar
3. Secretary Elementary And Secondary Education Department, Khyber Pakhtunkhwa Peshawar
4. Director Elementary And Secondary Education Department, Khyber Pakhtunkhwa Peshawar
5. District Education Officer (Female) D.I.Khan
6. District Education Officer (Female) South Waziristan
7. District Education Officer (Female) Dir Lower
8. District Accounts Officer D.I.Khan
9. Mst. Samina shahnaz, SDEO, (Female) Munda, Dir Lower

Respondents

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AIMED AGAINST THE IMPUGNED NOTIFICATION BEARING NO SO(MC)F&SED/4-16/2021/POSTING/TRANSFER/MC DATED 10.03.2022 WHEREBY THE APPELLANT WAS TRANSFERRED TO DISTRICT SOUTH WAZIRISTAN, WHEREAS RESPONDENT NO 9, ON THE BASIS OF FAVOURITISM, WAS BROUGHT TO DRAZINDA, D.I.KHAN IN VIOLATION OF LAW, RULES AND POLICY IN VOGUE BY THE PROVINCIAL GOVERNMENT

PRAYER IN APPEAL

TO SETASIDE/CANCEL THE IMPUGNED NOTIFICATION BEARING NO SO(MC)E&SED/4-16/2021/POSTING/TRANSFER/MC DATED 10.03.2022 WHEREBY THE APPELLANT WAS TRANSFERRED TO DISTRICT SOUTH WAZIRISTAN BEING ILLEGAL, NOT SUSTAINABLE IN THE EYES OF LAW, ARBITRARY, PERVERSE, TAINTED WITH MALAFIDE AND OF NO LEGAL EFFECTS AND THE APPELLANT ALLOWED TO ASSUME HER DUTY AT DRAZINDA, D.I.KHAN, TOGETHER WITH GRANT OF ANY OTHER APPROPRIATE REMEDY THAT THIS HONORABLE TRIBUNAL MAY DETERMINE IN THE LIGHT OF RELEVANT CIRCUMSTANCES.

Note: Addresses given above shall suffice the object of service.

Respectfully shewith,

The appellant prefers the instant appeal on the grounds hereinafter submitted apropos the following facts.

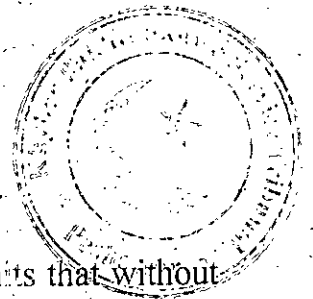
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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

6th July, 2022

Learned counsel for the appellant present.

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Learned counsel for the appellant submits that without allowing the appellant to complete the normal tenure, vide notification No. SO(MC) E&SED/4-16/2021/ Posting/ Transfer/ MC dated 10.03.2022, she was transferred from SDEO(F) Darazinda D.I. Khan and posted as SDEO (F) Ladha, South Waziristan (AVP). Appellant filed departmental representation on 04.04.2022, which was rejected on 09.06.2022, compelling her to file this appeal which is within time. This appeal is thus admitted to full hearing subject to all just and legal objections by the other side. Out district respondents be summoned through TCS, the expenses of which be deposited by the appellant within three days, while the local respondents be summoned through process serving agency of the learned Senior Civil Judge, Peshawar. To come up for written reply/comments on 28.07.2022 before S.B at camp court D.I. Khan. The appellant is also directed to deposit security fee within three days.

As to the application for suspension of the operation of the impugned order dated 10.03.2022, it is directed that the operation of the impugned order dated 10.03.2022, shall stand suspended till the next date subject to the notices to the other side.

(Kalim Arshad Khan)
Chairman

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Certificate of the Public Hearing
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Service Tribunal
Peshawar

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**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR CAMP COURT D.I.KHAN.**

BEFORE: KALIM ARSHAD KHAN --- CHAIRMAN
SALAH UD DIN --- MEMBER(J)



Service Appeal No.1090/2022

Mst. Fozia Parveen, SDEO (Female) Darazinda, D.I.Khan.
.....(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
2. Chief Secretary, to government of Khyber Pakhtunkhwa Elementary & Secondary Education Department, Peshawar.
3. Secretary, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
4. Director Education, Department (E&SE) Khyber Pakhtunkhwa Peshawar.
5. District Education Officer (Female), Dera Ismail Khan.
6. District Education Officer (Female), South Waziristan.
7. District Education Officer (Female), Dir Lower.
8. District Accounts Officer D.I.Khan (Deleted).
9. Mst. Samina Shahnaz, SDEO, (Female) Munda, Dir Lower.
.....(Respondents)

Present:

Mr. Ahmad Ali,
Advocate.....For appellant.

Mr. Muhammad Adeel Butt,
Additional Advocate General.....For official respondents.

Mr. Zia Ur Rehman,
Advocate.....For private respondent No.9

Date of Institution.....05.07.2022
Date of Hearing.....30.09.2022
Date of Decision.....30.09.2022

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AIMED AGAINST THE IMPUGNED NOTIFICATION BEARING NO. SO (MC)/E&SED/4-16/2021/POSTING/TRANSFER/MC DATED

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EXAMINER
Khyber Pakhtunkhwa Service Tribunal
Peshawar

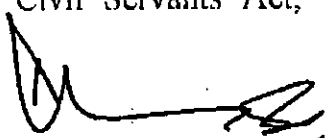
10.02.2022 WHEREBY THE APPELLANT WAS TRANSFERRED TO DISTRICT SOUTH WAZIRISTAN, WHEREAS RESPONDENT NO.9 ON THE BASIS OF FAVOURITISM, WAS BROUGHT TO DARAZINDA, D.I.KHAN IN VIOLATION OF LAW, RULES AND POLICY IN VOGUE BY THE PROVINCIAL GOVERNMENT.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: The appellant is serving as Sub-Divisional Education Officer (SDEO) (Female) in the Education Department, Khyber Pakhtunkhwa and was posted at Khwaza Khela District Swat vide notification dated 21.02.2019. Vide notification dated 29.08.2019, the appellant was transferred from the post of SDEO(F) Khawaza Khela to the post of SDEO(F) Sarai Naurang, Lakki Marwat. Then on 07.10.2021, the appellant was transferred from the post of SDEO(F) Sarai Naurang, Lakki Marwat to the post of SDEO(F) Newly Merged Area (NMA) Lakki Marwat. Again she was transferred from the post of SDEO(F) NMA Lakki Marwat to the post of SDEO(F) NMAs Darazinda, D.I.Khan. Just after four and half months of her transfer to D.I.Khan, the department issued another impugned transfer notification dated 10.03.2022, vide which the appellant was transferred to Ladha District South Waziristan, whereas private respondent No.9 was transferred to the D.I.Khan against her post. Not contented with the order dated 10.03.2022, she filed departmental appeal, which was not responded and the appellant then filed this appeal in this Tribunal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeal by filing reply/comments mainly on the grounds that under section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, every civil

ATTESTED
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servant was liable to serve anywhere within or outside the province; that the impugned order was acted upon, therefore, the appeal had rendered infructuous; that the private respondent No.9 was posted against the seat of the appellant because husband of respondent No.9 was posted in DIKhan in the same department, therefore, following the spouse policy the private respondent was posted to DIKhan. The defence setup was, however, a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellant, learned Additional Advocate General for official the respondents and counsel for private respondent No.9.

04. Learned counsel for the appellant argued that the impugned transfer order dated 10.03.2022 whereby the appellant had been transferred to District South Waziristan and consequent thereof respondent No.9, on the basis of favoritism, was brought to Darazinda D.I.Khan was against the law, rules and regulations framed there-under, thus was not maintainable and liable to be declared void ab-initio. Learned counsel further argued that the impugned transfer order was pre-mature and against the posting/transfer policy of the Provincial Government. He contended that under the law and policy of the Provincial Government an ordinary tenure of the service was minimum two years at a station and transfer of a civil servant before completion of ordinary tenure, without any exigency had been condemned by the Superior Courts of Pakistan. At the end he requested that the impugned order might be set aside and the appellant might be allowed to complete her normal tenure as per policy.

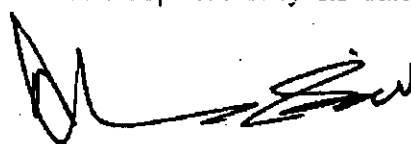
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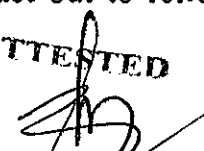
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05. Conversely the learned Additional Advocate General argued that as per Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, every civil servant was to serve anywhere within or outside the province. He requested that the appeal might be dismissed with cost.

06. Learned counsel for private respondent No.9 submitted that the appeal was not maintainable under Section-4 of the Service Tribunal Act 1974 on the ground that the final order dated 09.06.2022 of rejection of departmental appeal of appellant had not been assailed/challenged in the instant service appeal. He further contended that the appellant had been treated in accordance with law and rules, therefore, the instant appeal was devoid of merit and might be dismissed.

07. No doubt, a civil servant is bound to serve anywhere in the province under Section-10 of the Khyber Pakhtunkhwa Civil Servants 1973 yet there is specific provision regarding tenure of two years to be served against a post under serial (iv) of the Provincial posting/transfer Policy 2003 (amended and revised from time to time till 2010). Tenure of post of a civil servant is also protected under 2013 PLC-Supreme Court-195. Moreover, all postings/transfers should be issued strictly in the public interest and the authority in no way has to abuse or misuse it as a tool to victimize the government servants. This has been specifically mentioned at serial (i) of the said policy of the provincial government. Needless to mention that government policy has some same sanctity attached to it and the government is obligated to keep not only its sanctity intact but to follow



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Peshawar

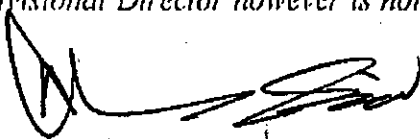
and implement it in letter and spirit whole heartedly without opting and resorting to pick and choose.

08. Tenure was originally created to give teachers academic freedom. Civil Servants do not have stability of tenure, particularly and especially in the Education Department where transfers and postings are made frequently at the whims and fancies of the executive head for political and other considerations, and not in the public interest; a fixed minimum tenure would not only enable Civil Servants to achieve their professional targets, but also help them function as effective instruments of public policy; repeated shuffling/transfer of officers is deleterious to good governance; minimum assured service tenure ensures efficient service delivery, and increased efficiency; and Civil Servants can also prioritize various social and economic measures intended to implement for the poor and marginalized sections of society.

09. In 2018 SCMR 1411 titled "Khan Muhammad Versus Chief Secretary, Government of Balochistan Quetta and others", the august Supreme Court of Pakistan was pleased to have found as under:---

"18. Under section 10 of the Act a civil servant cannot insist to be posted or transferred to a particular post but this does not mean that a civil servant can be made to serve under a subordinate. Moreover, while section 10 does not prescribe a minimum period during which a civil servant must serve at his post it does not mean that the Government without assigning any reason can move a civil servant from the place he was posted to after a month or subject the civil servant to repeated postings in a short period of time because this would amount to punishing him. Such postings also adversely affect the public interest and result in the wastage of scarce resources and constitute bad governance.

19. The Rules designate certain posts as 'tenure posts' (rule 22 read with Schedule IV of the Rules) and prescribe a period of three years for an incumbent to serve on such posts. Such prescribed tenure may therefore be categorized as the ideal duration for which a civil servant should serve at a particular post. The post of Divisional Director however is not a tenure post



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Service Tribunal
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GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(Regulation Wing)

POSTING / TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT

- (i) All the posting/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants
- i) All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities for seeking posting/transfers of their choice and against the public interest.
- iii) All contract Government employees appointed against specific posts, can not be posted against any other post.
- iv) The normal tenure of posting shall be three years subject to the condition that for the officers/officials posted in unattractive areas the tenure shall be two years and for the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.
- v) While making postings/transfer from settled areas to FATA and vice-versa, specific approval of Governor NWFP needs to be obtained.
- vi) While making postings/transfers of officers/officials up to BS-17, from settled areas to FATA and vice-versa approval of the Chief Secretary NWFP needs to be obtained. Whereas, in case of posting/transfer of officers in BS-13 and above, from settled areas to FATA and vice-versa, specific approval of the Governor NWFP shall be obtained.
- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for at least eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.
- vii) Officers may be posted on executive/administrative posts, in the Districts of their domicile, except District Coordination Officers (D.C.Os) and DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thaana) of his area/residence is situated.
- viii) No posting/transfers of the officer's/officials on detailment basis shall be made.
- ix) Regarding the posting of husband/wife, both in Provincial services, efforts where possible would be made to post such persons at one station, subject to the public interest.
- x) All the posting/transferring authorities may facilitate the posting/transfer of the unmarried female government Servants at the station of the residence of their parents.

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To be transferred
Advocate

Para (v) regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No. SOR-VI (E&AD) 1-4/2008/Vol. VI dated 3-6-2008. Consequently authorities competent under the NWFP Government Rules of Business, 1985, District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make posting/transfer subject to observance of the policy and rules, deleted vide Urdu circular letter No. SOR-VI(E&AD)1-4/2003, dated 21-09-2004.

Post-P/Transfer

Section 17 (NWFP)

41

ESTA CODE [Establishment Code Khyber Pakhtunkhwa]

101

- (i) The normal tenure of posting shall be three years subject to the conditions that for the officers/officials posted in unattractive areas, the tenure shall be two years and for the hard areas i.e (District Kohistan), it shall be 1-1/2 years at least.
- (ii) Months of March and August are fixed for posting/transfer of the officers/officials excluding the officers in BP-19 and above in the Province. There should be a ban on posting/transfers throughout the year excluding the aforesaid two months. However, there shall be no restriction in cases where:-
 - (a) Postings/transfers of Government employees become inevitable in other months due to promotion/retirement/ creation of new posts/return from long leave/involvement in disciplinary proceedings and adjustment of surplus staff.
 - (b) Postings of existing officers of the APUG, PCS(FG) and PCS (SG) and Heads of Attached Departments and other B-19 and above officers in all the departments as indicated in Schedule-III of the NWFP Government Rules of Business, 1985 as well as Field posts and ex-cadre posts by the Chief Secretary and Chief Minister NWFP.
 - (iii) While making postings/transfers from settled areas to FATA and Vice-versa, the approval of Governor, NWFP needs to be obtained.
- (iv) No officer shall be allowed to be posted in his own District of domicile.
- (v) No postings/transfers of the officers/officials on detailment basis shall be made.
- (vi) About the posting of husband/wife, both in Provincial Services, at one station, the over riding consideration will be the administrative position. It may be desirable to post such persons at one station and this will be subject to the public interest.

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2. It is requested that the above policy may please be implemented in letter and spirit.

(Authority: S&GAD's letter No.SOR-I(S&GAD)1-1/85, dt: 20.5.1998)

Posting/Transfer in Govt. Departments.

S.No.8

I am directed to refer to the subject cited above and to say that in supersession of all policy instructions issued in this behalf, the competent authority has inter-alia approved the following posting/transfer policy:-

- (i) The normal tenure of posting shall be three years subject to the condition that for the officers/officials posted in unattractive areas, the tenure shall be

two years and for the hard areas (i.e. District Kohistan), it shall be 1 1/2 years at least

3. (ii) Months of March and August are fixed for posting/transfer of the officers/officials excluding the officers in B2-19 and above in the Province. There should be a ban on posting/transfers throughout the year excluding the aforesaid two months. However, there shall be no restriction in cases where:-

(a) Postings/transfers of Government employees become inevitable in other months due to promotion/retirement/creation of new posts/return from long leave/involvement in disciplinary proceedings and adjustment of surplus staff.

3. (b) Postings of existing officers of the APUG, PCS(EG) and PCS(SG) and heads of Attached Departments and other B-19 and above officers in all the Departments as indicated in Schedule-III of the NWFP Govt. Rules of Business, 1982 as well as field posts and ex-cadre posts by the Chief Secretary and Governor, NWFP.

(iii) While making postings/transfers from settled areas to FATA and vice-versa specific approval of the Governor, NWFP needs to be obtained.

4. (iv) No officer shall be posted on executive/administrative posts in the District of their domicile.

(v) No postings/transfers of the officers/officials on deputation basis shall be made.

5. (vi) About the posting of husband/wife, both in Provincial Services, at one station, the overriding consideration will be the administrative position. It may be desirable to post such persons at one station and this will be subject to the public interest.

(vii) Officers/officials who are due to retire within two years may be posted on their option, on non-executive/non-administrative posts in the Districts of their domicile and be allowed to serve there till their retirement.

6. As already notified, all postings/transfers of officers/officials will be done on the recommendations of the placement scrutiny committees at the Provincial, Departmental and Divisional level, while keeping in mind the following:-

(i) Recommendations should be based on Annual Confidential Reports, past and present record of service, performance on post held presently and in the past and his general reputation with focus on integrity;

(ii) Tenure on present post should also be taken into consideration.

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No.F.10 (1)/2023-Elec-II
ELECTION COMMISSION OF PAKISTAN



"Secretariat"
Constitution Avenue, G-5/2,
Islamabad, the 10th March, 2023.

To,

The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: GRANT OF PERMISSION FOR TRANSFER/POSTING AND ALL KIND OF LEAVES.

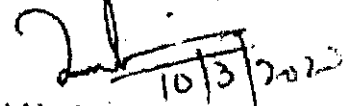
Dear Sir,

I have the honor to state that the Hon'ble Commission has been pleased to decide that following matters may be dealt at your own level:

- i. All kind of leaves.
- ii. Transfer/Posting of Additional Secretaries of BS-19 & below working in the Secretariat.
- iii. Transfer/Posting of officers/ officials of BS-17 and below of all other Departments besides officers/ officials of Police (posted in field or Head Quarters) and Administration. However, the copy of such orders issued against Para-iii, may be shared with this Commission.

2. Moreover, all other cases of transfer/posting of BS-20 and above of the officers of Secretariat & all BS-18 and above officers of the field including Police and Administration should be sent to this Commission for concurrence and approval.

Yours sincerely,


10/3/2023

(Syed Nadeem Haider)
Additional Director General (Elections-I)

Copy forwarded for information to:

The Provincial Election Commissioner, Khyber Pakhtunkhwa.


10/3/2023

(Syed Nadeem Haider)
Additional Director General (Elections-I)

Amr (C.3)

(14)

Amr (2)

(94)



No.F.1 (1)/2023-DRO (NA-38 Bye-Els) (REC)
OFFICE OF THE
DISTRICT RETURNING OFFICER/
REGIONAL ELECTION COMMISSIONER
DERA ISMAIL KHAN DIVISION

Dera Ismail Khan
February 20, 2023

To

The Director Land Record,
Inspector General of Registration,
Khyber Pakhtunkhwa.

Subject: BAN ON POSTING/TRANSFERS.

It is to inform you that the undersigned has received an application No. Nil, dated 20-02-2023, submitted by Syed Jameel Abbas Shah, (Sub-Registrar D.I.Ki-an), against your office order No.LR-IV/IIA/SR/Vol-III/2548-68, dated 17th February, 2023.

2. Keeping in view the Election Commission of Pakistan, Islamabad, instructions regarding ban on posting/transfers vide Election Commission of Pakistan Notification: F.No.2(1)/2023-Cord dated 22nd January, 2023 and No.F:8(2)/2023-Cord (2) dated 3rd February 2023, (copy enclosed) whereby you are not allowed to make transfer/posting of officers/officials till the culmination of election process and if inevitable prior permission has to be taken from Hon'ble Election Commission of Pakistan.

3. In light of the foregoing, you are hereby directed to reverse the transfer of the officials under intimation to this office, immediately, failing which case will be referred to the Election Commission of Pakistan for further necessary action.

4. However, if prior permission of Hon'ble Election Commission of Pakistan has been obtained, the copy of the same may be submitted to this office.

Encis: (As above)

(IJAZ AHMAD)

Regional Election Commissioner
Dera Ismail Khan Division/
DRC NA-38 D.I.Khan-I

Copy forwarded for information to the Provincial Election Commissioner, Khyber Pakhtunkhwa, Peshawar.

(IJAZ AHMAD) 20/2/23

Regional Election Commissioner
Dera Ismail Khan Division/
DRO NA-38 D.I.Khan-I

INRPI 2259/20

Any (M)

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P L D 2021 Supreme Court 313

Present: Gulzar Ahmed, C.J., Faisal Arab and Ijaz ul Ahsan, JJ

GOVERNMENT OF BALOCHISTAN through Secretary Services and General Administration Department and others---Appellants

Versus

ABDUL RAUF and others---Respondents

Civil Appeals Nos.433 to 438 and 596 of 2020, decided on 14th October, 2020.

(Against the judgment dated 03.01.2020 passed by the High Court of Balochistan, Quetta in C.Ps. Nos. 48, 363, 401, 656, 678 and 1173 of 2019).

Constitution of Pakistan---

---Art. 224 (1A)---Caretaker Government/Cabinet, powers of---Scope---Caretaker Government/Cabinet could not take policy decisions and permanent measures including recruitments, making appointments, transfers and postings of Government servants during the limited period that it held office.

In the present case, the process of recruitment may have been initiated by way of publication of advertisement before the Caretaker Government was put in place. However, all material steps including processing of applications, tests (if any) interviews (if any) and recommendations by the Recruitment Committee were taken during the Caretaker Government and the elected Government was practically presented with a fait accompli. The mandate of a Caretaker Government was to hold the mantle in the interregnum when the term of the sitting Government had expired and the new Government was yet to take charge. A caretaker Government was empowered only to carry out day to day affairs of the State with the help of available machinery/ resources/manpower. It could not take policy decisions and permanent measures including recruitments, making appointments, transfers and postings of Government Servants. It must leave such matters to the elected Government which took charge as a result of elections.

Khawaja Muhammad Asif v. Federation of Pakistan and others 2013 SCMR 1205 ref.

Decisions having far reaching consequences should only be taken by the elected government having the mandate to perform such functions as were required of it in exercise of powers conferred by the Constitution.

Nemat Ullah and others v. Chairman Governing Body, Worker Welfare Board/Secretary to Government of KPK, Labour Department and others 2016 SCMR 1299 ref.

Even otherwise, in the present case, there was no record whatsoever of any process of recruitment having been transparently conducted with a view to make merit-based appointments. The recommendations made by the Committee had ex facie been made arbitrarily and were neither based upon any test results nor interviews. There was not an iota of evidence available on the record that any test or interview was conducted or transparent and proper merit list was prepared showing marks obtained by each candidate in the NTS test or interview.

In the interest of being just and fair the Supreme Court directed that it would be appropriate if all those candidates who filed applications pursuant to the advertised posts were allowed to appear in fresh tests to be conducted by NTS. Appeals were allowed with further relevant directions.

Arbab M. Tahir, A.G. Balochistan, Ayaz Khan Swati, Addl. A.G., Balochistan for Appellants (in all cases).

Sardar Ahmed Haleem, Advocate Supreme Court for Respondents (in C.A. No. 433 of 2020).

Amanullah Kanrani, Advocate Supreme Court for Respondents (in C.As. Nos. 435-438 of 2020).

Kamran Murtaza, Senior Advocate Supreme Court for Respondents (in C.A. No. 596 of 2020) (via video-links from Quetta).

Syed Rifaqat H. Shah, Advocate-on-Record for Respondents (in C.As. Nos. 433, 435-438 and 596 of 2020).

Nemo for Respondents (in C.A. 434 of 2020).

Date of hearing: 25th September, 2020.

JUDGMENT

IJAZ UL AHSAN, J.---Through this common judgment, we intend to decide Civil Appeals Nos. 433, 434, 435, 436, 437, 438 and 596 of 2020 as they arise out of a single consolidated judgment of the High Court of Balochistan, Quetta dated 03.01.2020.

2. Briefly stated the facts necessary for disposal of these appeal are that in response to advertisements published in daily newspapers "Daily Mashriq dated 17.05.2017" and "Daily Express Century dated 18.02.2018" inviting applications for different posts on divisional quota basis, the Respondents filed applications. They alleged that tests and interviews were conducted by a Selection/Recruitment Committee which had been constituted by the Government of Balochistan under the Chairmanship of Director General Mines and Minerals Department, Government of Balochistan. After the applications had been processed the Committee through minutes of meetings

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held on 11.07.2018 and 12.07.2018 made recommendations for appointment of the Respondents against the respective posts for which they had filed applications. However, the department neither announced the results on the recommendations of the Committee nor published the merit list as required by the Recruitment Policy, 2009. Instead the entire process was scrapped and the posts were re-advertized. The Respondents were aggrieved of the inaction of the department and approached the Balochistan High Court through the constitutional petition. They sought relief to the effect that the department may be directed to produce the merit list and issue appointment letters accordingly. It was also prayed that the department may be restrained from undertaking the recruitment process afresh. The constitutional petition was allowed and the Appellants were directed to issue appointment letters to the Respondents after due verification of the credentials. The Government of Balochistan was aggrieved of such order and approached this Court by way of a civil petition for leave to appeal.

3. Leave to appeal was granted vide order dated 01.04.2020 which is reproduced below:

"Learned Additional Advocate General, Balochistan contends that advertisements were published on 17.05.2017 and 18.02.2018 for different posts by the Director General Mines and Minerals Department, Government of Balochistan. He contends that though the Departmental Recruitment Committee was constituted but actually, no transparent process whatsoever for making appointments was undertaken by the said Committee and even the minutes of the meeting dated 11 and 12.07.2018 are not in accordance with law, for that, no test and interview of any of the candidate was undertaken, as there is no record of such test and interview. He contends that no merit list was prepared and there is no existence of merit list on the record. He contends that as per guidelines issued under Para-5 of letter dated 15.03.2016, captioned, "the Observance of the Recruitment Policy, 1991 (Appointment, Promotion and Transfer) Rules, 2009 and Specific Quotas Fixed for Appointment Against Initial Recruitment". If a merit list is prepared, the same is required to be published but there is no publication of such merit list. He contends that as there was no transparent recruitment process and there was even no conclusion of the recruitment process, thus, no right accrued to the respondents for being appointed and in this manner, the petitioners were justified to re-advertise the posts. He contends that the recruitment process was to be completed within 120 days, with extension of 60 days, but the recruitment process was never completed even though 420 days had expired and thus, the whole process of recruitment itself had become infructuous, as per the policy.

2. The contentions raised by the learned AAG require consideration. Leave to appeal is granted to consider, inter alia, the same. The appeal shall be heard on the available record but the parties are allowed to file additional documents within a period of one month. As the matter relates to service, office is directed to fix the same expeditiously, preferably, after three months".

4. The learned Advocate General Balochistan has argued that the alleged process of test and interview was purportedly conducted during the period when a Caretaker Government was in place. There was a bar on fresh recruitments imposed by the Election Commission of Pakistan and the recruitment exercise was altogether illegal. He maintains that the constitution of the Committee and the alleged process was in itself illegal in so far as a Caretaker Government is not empowered to undertake any permanent steps other than day to day running of the Government. In this context he had relied upon *Khawaja Muhammad Asif v. Federation of Pakistan and others* (2013 SCMR 1205) where this Court has categorically held that the mandate of a Caretaker Government does not go beyond running day to day affairs till such time that duly elected Government takes charge. He has vehemently argued that no process either of testing or interview took place. There is neither record of testing or interview and the nominations were made without a transparent process on the whims of the Committee. He maintains that the alleged minutes of meetings of the illegally constituted Recruitment Committee dated 11 and 12.07.2018 are a sham as the recommendations made were neither based upon ability nor merit. Even otherwise, the recommendations of the Committee carry no legal validity or value. He finally submits that the Balochistan High Court fell in grave error in holding that the Committee held tests and interviews in a fair and transparent manner and prepared a merit list on the basis of marks obtaining by the candidates in test and interview. He points out that the said finding is clearly and patently contrary to the record as there is no material anywhere in the record that may even remotely support such finding.

5. The learned counsel for the Respondents on the other hand submits that initially there may have been a ban but the same was lifted by the Election Commission of Pakistan. The tests and interviews were conducted by a duly constituted Committee which recommended appointments and the new Government which came into place scrapped the process to accommodate their own cronies which action was ex facie illegal and unsupported by law. He further points out that by

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reason of completion of the process and recommendations made by the Committee a vested right had accrued in favour of the Respondents which cannot be taken away without lawful reason. The impugned judgment of the Balochistan High Court proceeds on correct appreciation of the legal principles on the subject in view of the fact that there was no justified or plausible reason for cancellation of recommendations of the Committee and re-advertisement of the same posts.

6. We have heard the learned Advocate General Balochistan as well as the learned counsel for the Respondents at considerable length. With their assistance we also scanned the record.

7. There is no denial of the fact that the process of recruitment may have been initiated by way of publication of advertisement before the Caretaker Government was put in place. However, all material steps including processing of applications, tests (if any) interviews (if any) and recommendations by the Recruitment Committee were taken during the Caretaker Government and the elected Government was practically presented with a fait accompli. The mandate of a Caretaker Government is to hold the mantle in the interregnum when the term of the sitting Government has expired and the new Government is yet to take charge, A caretaker Government is empowered only to carry out day to day affairs of the State with the help of available machinery/resources/manpower. It cannot take policy decisions and permanent measures including recruitments, making appointments, transfers and postings of Government Servants. It must leave such matters to the elected Government which takes charge as a result of elections. It was in this context that in a case reported as *Khawaja Muhammad Asif v. Federation of Pakistan and others (supra)* held that a Caretaker Government/Cabinet has to confine itself to running day to day administration of the State and to take decisions required for orderly running the affairs of the State. However, decisions having far reaching consequences should only be taken by the elected government having the mandate to perform such functions as are required of it in exercise of powers conferred by the Constitution. The above principle was reiterated in a later judgment of this Court reported in the case *Nemat Ullah and others v. Chairman Governing Body, Worker Welfare Board/ Secretary to Government of KPK, Labour Department and others (2016 SCMR 1299)*.

8. A perusal of the aforementioned judgments and the ratio of the same clearly settle the law that a Caretaker Government/Cabinet lacks the power to make appointments, transfers and postings during the limited period that it holds office. Therefore, we are in no manner of doubt that the refusal of the Appellants to implement the recommendations of the Recruitment Committee constituted by the Caretaker Government had legal backing and lawful justification. Consequently, the finding of the Balochistan High Court that the recommendations of the Committee were legally sound and valid and should have been implemented is not based upon or supported by legal principles settled by this Court. Further, the learned High Court misdirected itself in holding that by reason of appearing in written tests and interviews a vested right had accrued in favour of the Respondents. In the first instance, we are not convinced that any tests or interviews were held and even if the same had been held, no vested right to appointment accrues unless a merit list is displayed and appointment letters are issued. The Government can always stop or abandon the process or initiate a fresh one if there are valid reasons or justification to support such action. In the instant case, such valid reasons and justification were amply available.

9. We have also noticed that there is no record whatsoever of any process of recruitment having been transparently conducted with a view to make merit based appointments. The recommendations made by the Committee had ex facie been made arbitrarily and were neither based upon any test results nor interviews. The learned Advocate General Balochistan has categorically stated that no test let alone an impartial and transparent test in the form of NTS was ever conducted and there is no record of any candidate appearing in such test or a merit list having been prepared in order to test the ability of each candidate. Further, the entire process was completed with unholy haste in a matter of only ten days and vacancies in excess of about 600 posts were recommended to be filled without any process having been followed. This haste speaks volumes about the validity, credibility and genuineness of the process and its underlying intent, motive and purpose.

10. Despite the arguments of the learned counsel for the respondents that tests and interviews were conducted, there is not an iota of evidence available on the record that any test or interview was conducted or transparent and proper merit list was prepared showing marks obtained by each candidate in the NTS test or interview.

11. We further find that the recommendations made by the Committee are clearly and patently illegal as the Committee itself was illegally constituted for a purpose which was beyond the mandate of the Caretaker Government. We have asked the learned Advocate General Balochistan if tests and interviews are conducted for all grades. He has candidly conceded that tests and interviews are not conducted for employment against grades 1 to 6. However, all posts in grade 7 upwards are filled by the process of testing and interview in accordance with the Recruitment

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Policy of 2009. In this view of the matter, the learned Advocate General has conceded that he would not object if those already appointed to posts against grades 1 to 6 are not disturbed. However, he maintains that those who are required to undergo the process of testing and interview must go through the same in order to ensure that the most competent, qualified and able candidates fill the available posts.

12. We notice that the Respondents had filed applications for appointments against posts advertised on 17.05.2017 and 18.02.2018 in daily 'Mashriq' and daily 'Express'. It also appears that pursuant to the advertisement published in daily Jang on 16.02.2019 a number of applications have been received against the advertised posts. However, the process was stopped pursuant to the judgment of the High Court. We are therefore of the opinion that in the interest of being just and fair it would be appropriate if all those candidates who filed applications pursuant to advertisements dated 17.05.2017, 18.02.2018 and 16.02.2019 are allowed to appear in fresh tests to be conducted by NTS. Further, interviews must be conducted by competent and impartial Committee(s) and on the basis of marks scored in NTS tests and interviews, merit list/lists must be prepared for appointments against various posts strictly and purely on merit. The process must be fair and transparent and provide a level playing field to all candidates with a view that the best amongst the lot are selected. The learned Advocate General Balochistan submits that an effort is being made to fill these posts through the Balochistan Public Service Commission ("BPSC"). In case, the BPSC undertakes the exercise the same shall also be conducted in the same manner of impartial testing and interviews and preparation of a merit list which shall be displayed publicly as well as on the website of the Government of Balochistan as well as that of BPSC. On the basis of such merit list recommendations can be made to the Government for appointments against all available posts. We are sanguine that the aforesaid exercise shall be completed as expeditiously as possible and preferably within a period of three months. The merit lists prepared as a result of testing and interviews shall be placed before us for our examination in Chambers.

13. For the reasons recorded above, these appeals are accordingly allowed. The impugned judgment of the Balochistan High Court dated 03.01.2020 is set aside.

MWA/G-16/SC Appeals allowed



Annex (N)

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CHAPTER XIV—CARETAKER GOVERNMENT

230. Functions of caretaker Government. (1) A caretaker Government shall—

- (a) perform its functions to attend to day-to-day matters which are necessary to run the affairs of the Government;
- (b) assist the Commission to hold elections in accordance with law;
- (c) restrict itself to activities that are of routine, non-controversial and urgent, in the public interest and reversible by the future Government elected after the elections; and
- (d) be impartial to every person and political party. (2) The caretaker Government shall not—
 - (a) take major policy decisions except on urgent matters;
 - (b) take any decision or make a policy that may have effect or pre-empt the exercise of authority by the future elected Government;
 - (c) enter into major contract or undertaking if it is detrimental to public interest;
 - (c) enter into major international negotiation with any foreign country or international agency or sign or ratify any international binding instrument except in an exceptional case;
 - (e) make promotions or major appointments of public officials but may make acting or short term appointments in public interest;
 - (f) transfer public officials unless it is considered expedient and after approval of the Commission; and
 - (g) attempt to influence the elections or do or cause to be done anything which may, in any manner, influence or adversely affect the free and fair elections.

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(3) The Prime Minister, Chief Minister or a Minister or any other members of a Caretake. Governments shall, within three days from the date of assumption of office, submit to the Commission a statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding 30th day of June on Form B and the Commission shall publish the statement of assets and liabilities in the official Gazette.

(4) In this section, 'caretaker Government' means the caretaker Federal Government or a caretaker Provincial Government.

