


FORM OF ORDER SHEET

Court of

Appeal No. 1640/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	10/08/2023	The appeal of Mr. Malak Khan presented today by Mr. Khalid Mahmood Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on <u>11-08-2023</u>
		By the order of Chairman
		 REGISTRAR

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR**

Service Appeal No. ^{16/20} /2023

Malak Khan.Govt of KPK Etc.

INDEX

S/No.	Description of Documents	Annexure	Page Number
1.	Copy of Grounds of Appeal alongwith affidavit.		1-5
2.	CM with affidavit		6-7
3.	Copy of Notification Dated 17-02-2023	A	8-9
4.	Copy of Notification Dated 28-10-2021	B	10
5.	Copy of Judgement Dated 06-07-2022 in Service Appeal No. 09/2022	C	11-15
6.	Copy of Impugned Notification Dated 05-04-2023	D	16
7.	Copy of Departmental Appeal Dated 03-05-2023	E	17-18
8.	Relevant Page of PLD 2011 SC 963	F	19
9.	Relevant Page of 2013 SCMR 1	G	20
10.	Copy Statutory Provision for posting & Transfer & Copy of Proof of unattractive area	H&I	21-22
11.	Copy of Judgment Dated 18-11-2009 in writ WP No 2937-P/2009 and letter dated 08-02-2019	J&K	23-25
12.	Copy of Judgment Dated 07-08-2019 in service appeal No 409/2019	L	26-29
13.	Copy of Judgment Dated 10-03-2020 in service appeal No 345/2019	M	30-32
14.	Wakalat Nama		33-34

Yours Humble Appellant
(Malak Khan)
Through Counsel

Dated: 7 / 8 / 2023

Ahmad Ali ASC
&
Khalid Mahmood
Advocate High Court

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Service Appeal No. ¹⁶⁴⁰ /2023

Mr. Malak Khan Management Cadre (BPS 18) Ex Deputy DEO South Waziristan Tribal District Presently posted as OSD at Directorate of E&SE Peshawar.

.....*APPELLANT*

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary KPK, Peshawar.
2. Secretary to Govt. of Khyber Pakhtunkhwa, Elementary & Secondary Education Department, Peshawar Khyber Pakhtunkhwa Peshawar.
3. Director, Elementary & Secondary Education Department, Peshawar Khyber Pakhtunkhwa Peshawar.
4. District Education Officer (Male), South Waziristan.
5. Khyal Muhammad Teaching Cadre (BPS-17) Deputy DEO (M) South Waziristan

.....*Respondents*

SERVICE APPEAL U/S 4 OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT 1974, AGAINST THE
NOTIFICATION BEARING NO. SO(MC)E&SED/4-
16/2023/POSTING/TRANSFER/MC/Khyal Muhammad:
DATED 05/04/2023, ISSUED BY THE RESPONDENT NO.2.
AND NON DECIDING THE DEPARTMENTAL APPEAL
DATED 04/05/2023

PRAYER:

ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, THE OFFICIAL RECONDENTS MAY KINDLY BE DIRECTED TO CANCEL THE IMPUGNED ORDER BEARING NO. SO(MC)E&SED/4-16/2023/POSTING/TRANSFER/MC/Khayl Muhammad DATED 05/04/2023 BE DECLARED AS VOID AB-INITIO WITHOUT LAWFUL AUTHORITY, AGAINST THE NORMS OF NATURAL JUSTICE AND INEFFECTIVE UPON THE RIGHTS OF APPELLANT.

Note: The addresses of the parties given above are sufficient for the purpose of services.

Respectfully Sheweth,

Appellant through counsel humbly submits as under.

1. That appellant belongs to District South Waziristan and on promotion to BPS-18 (Management Cadre) as Deputy DEO was posted as Deputy DEO (M) South

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KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

Waziristan in place of Khyal Muhammad Teaching Cadre BPS-17 and Khyal Muhammad was adjusted in original Cadre (Teaching Cadre) as Head Master BPS-17 at GHS Shakai South Waziristan vice notification dated 17.02.2023. Copy of notification dated 17.02.2023 is annexed as Annexure-A.

- 2. That previously on 28-10-2021 Mr Khyal Muhammad BPS-17 Teaching Cadre was adjusted as Deputy DEO (M) South Waziristan on Management Post in OPS vice notification dated 28/10/2021 (Annexure-B) and was transferred and re-posted as Head Master (BPS-17) GHS Muhammad Nawaz Kot South Waziristan and Mehrab Gul was posted as Deputy DEO (M) South Waziristan (both belonged to teaching cadre) from this post vice notification dated 07.12.2021.
- 3. That aggrieved from order dated 7.02.2021 the respondent no 5 filed service appeal no 9/2022 which was decided in his favor vide judgement dated 06.07.2022. The operating para of judgement is reproduced as under:

“With the above observation in view, the instant appeal is accepted as prayed for. The impugned notification dated 07.12.2021 is set-aside and the appellant is allowed to complete his normal tenure as Deputy DEO (M) South Waziristan.”

Copy of judgement dated 06.07.2022 in service appeal no 09/2022 is annexed as Annexure C.

- 4. That the respondent no 5 filed execution petition no 104/2023 in appeal no 9/2022 before the Honorable Court, in compliance of court order dated 20.03.2023 the department issued impugned notification dated 05/04/2023 in which appellant was placed as OSD at Directorate. The copy of impugned notification dated 05.04.2023 is annexed as Annexure D.
- 5. That appellant filed departmental appeal dated 03.05.2023 against order dated 05.04.2023 in which appellant was placed as OSD at Directorate. (Annexure E) Which was not decided in statutory period, Therefore, The appellant has been left with no option but to file present service appeal before this honorable tribunal for cancellation of notification dated 05/04/2023 on inter alia, the following grounds:

GROUND:

- i. That the impugned Notification NO. SO(MC)E&SED/4-16/2023/POSTING/TRANSFER/MC/ Khyal Muhammad DATED 05/04/2023 to the extent of appellant (in which appellant was placed as OSD) is the outcome of mala-fide, result of political victimization, without jurisdiction, without lawful authority and having no binding effect upon rights of appellant.

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KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

Because placing as OSD is tantamount to penalizing the officer because the expression "OSD" is not known to either the Civil Servant Act, 1973 or the Civil servants Appointment, Promotion and Transfer Rulers, 1973---No officer can be posted as OSD. Which is Cleared from the judgment of honorable supreme count of Pakistan Bench of 6 Judges (relevant page of P L D 2011 Supreme Court 963 as **Annexure F**) and according to another judgment of Supreme Court of Pakistan" that government officials were required to be promoted or transferred on merit and that no one could be placed as officer on special duty (OSD) as a punishment (Relevant page of 2013 S C M R 1 as **Annexure G**) on this score too, the impagned notification to the extent of appellant is liable to be cancelled.

ii. That the normal tenure for an officer in unattracted area is 1 year and 6 Month (18 months) as per rules and policy (**Annexure H&I**). Responded No 5 was posted as DDEO on 28/10/2021 and his tenure expired on 27/04/2023. Hence in the presence and posting of MC officer, he should be removed and may be sent to his original Head Master post because Management post purely reserved for management Cadre. Teaching Cadre officers are posted Purely on temporary and stop-gap arrangements till the arrival regular MC officer. Responded No 5 is not eligible and fit to work as DDEO.

It is pertinent to mention here that according to para 8 of judgment dated 06/07/2022 in service appeal No 09/2022 titled Khyal Muhammad Vs Govt etc "it is a matter of the record the both the appellant as well as private respondent No 4 are in BPs-17 and belonging to teaching cadre. They were required to be posted on specified post reserved for teaching cadre as prescribed in their service ruled and laid down under the august Peshawar High Court judgment dated 18/11/2009 delivered in Writ Petition no. 2937/2009. When attention of the Learned AAG was invited to this fact, he contended that due to shortage of officers in management cadre, the respondents were compelled to resort to such stopgap arrangement in public interest" therefore according to judgment the tenure of responded No 5 was expired on 27/04/2023 and the grievance of the respondent no 5 has been redressed. Since the order of tribunal has been complied with, on this score to the notification dated 05/04/2004 is liable to be cancelled. further its is Pertinent to mention that judgment dated 18-11-2009 in writ Partition No. 2937/2009 of Peshawar High Court was implemented vide Notification dated 08.02.2019 (**Annexure J&K**).

iii. That in other judgement dated 07/08/2019 titled Muhammad Usman Vs govt of KPK etc in service appeal No 409/2019, the honorable Tribble decided in para 6,

ATTESTED

KHALID MEMMOOD
Advocate High Court
Stationed at D.I. Khan

"both the appellant and private respondent no 7 belong to teaching Cadre but were blessed with Administrative cadre post one after the other". and according to para 11. "In the light of above, the respondent department is directed to appoint suitable officer belonging to administrative cadre as ADEO (sports) District Tank. The posting order of both the appellant and private respondent No 7 against the administrative cadre post of ADEO (sports) tank shall be treated as cancelled. The respondent department is also directed to forth with recall, all the transfer orders of the teachers against the administrative post". On this score the notification dated 05/04/2023 is liable to be cancelled because the tenure of respondent has been expired therefore judgment of tribunal dated 06/07/2022 has been complied with. The copy of judgment dated 07/08/2019 is annexed as (Annexure L).

iv. That according to operating para no 9 of judgment dated 10/03/2020 in service appeal no 345/2019 titled Atlas khan Vs govt of KPK etc, "In the light of above the impugned posting transfer order dated 10-09-2018 is set aside and the respondent department is directed to fill up the vacant ADEO post to the Education Office Sub Division Daraziada by appointing a suitable officer belongs to administrative cadre" (Annexure M) impugned notification is not in the public interest whether in the interest of respondent no 5 only. Hence, a great injustice is being done to the appellant.

That despite the orders in writ petitions, declaration of this Honourable Court and the order COC passed by this Honourable Court the respondent has been continuing his Service as DDEO and in presence of MC officer, the teaching cadre were posted against the post of management cadre in D.I.Khan Division i.e Muhammad Asim (Teaching Cadre) working as Deputy DEO D.I.Khan, Zain Ullah Teaching Cadre Working as DEO Tank as well. which posting is Politically motivated and violations of the judgments this Honourable Court.

vi. That impugned notification has been issued to oblige the political figure of area and therefore the same is having no legal sanctity and not worth to be maintained.

vii. That public officers and public functionaries are bound to obey the laws, rules, procedures 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 dated 05.04.2023 is therefore nullity in the eyes of law and rights of appellant are required to be protected from the influence of political figures.

viii. That the counsel for appellant may be allowed to raise additional grounds at the time of arguments.

ATTESTED
KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

It is therefore, humbly prayed that the present service appeal may graciously be allowed as prayed for and thereby the impugned notification dated 05.04.2023 may kindly be cancelled and as result thereof the posting of appellant as DDEO (Male) South Waziristan vide notification dated 17.02.2023, may kindly be restored.

Dated: 7/8/2023

Appellant
Through Counsel

Ahmad Ali Khan ASC

&
Khalid Mahmood

Advocate High Court
Stationed at D.I.Khan

AFFIDAVIT

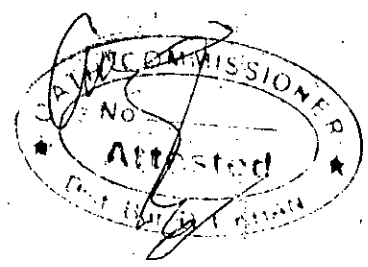
I, Malak Khan, MC (BPS-18) OSD Education department do hereby solemnly affirm and declare on oath that all the Para-wise contents of this appeal are true and correct to the best of my knowledge and nothing has been concealed deliberately from this Honorable Court.

[Signature]

Deponent

[Signature]

Identified by Counsel
Khalid Mahmood
Advocate High Court



6

BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA

CM Petition No. _____ /2023

in

Service Appeal No. _____ of 2023

Malak Khan.Govt of KPK.Etc.

APPLICATION WITH THE REQUEST TO SUSPEND THE OPERATION OF IMPUGNED NOTIFICATION No SO(MC)E&SED/4-16/2023/POSTING/TRANSFER/MC/ Khyal Muhammad :DATED 05/04/2023 ISSUED BY RESPONDENT NO 2, TILL FINAL DECISION OF SERVICE APPEAL AND IN THE MEANWHILE RESPONDENT MAY ALSO BE ABSATINED FROM TAKING ANY ACTION DETRIMENTAL TO THE SERVICE CAREER OF THE APPELLANT.

Respectfully Sheweth,

1. That a service appeal 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 appellant has got a good prima facie case on law as well as on facts and there is every likelihood of the success of the service appeal. Hence balance of convenience tilts in favor of appellant.
3. That the impugned Notification is on the basis of nepotism and favoritism because the tenure of respondent no 5 has been completed therefore in case of non-suspension of impugned notification, the appellant will suffer an irreparable loss.

It is, therefore, humbly prayed that on acceptance of the present CM petition, the operation of impugned Notification dated 05.04.2023 may please be suspended and respondents may please be desisted from taking any action detrimental to the service career of appellant till decision of service appeal.

Yours Humble Appellant

Malak Khan

Through Counsel

Dated: 7/8 /2023

Ahmad Ali Khan ASC
&
Khalid Mahmood,
Advocate High Court

ATTESTED

KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA

CM Petition No. _____ /2023

in

Service Appeal No. _____ of 2023

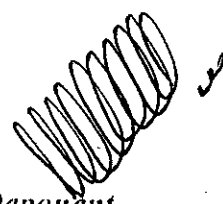
Malak Khan .Govt of KPK Etc.

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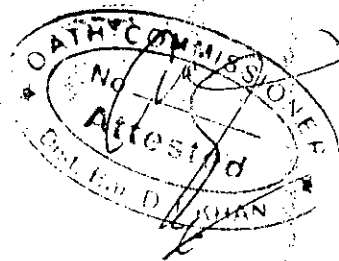
I, Malak Khan , MC BPS-18 OSD, Education Department, , the appellant, do hereby solemnly affirm and declare on oath that all the Para-wise contents of this CM petition are correct and true to the best of my knowledge & belief. I further solemnly affirm and declare that no part of above CM petition is false and nothing material has been deliberately concealed.



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



Deponent



Alex A

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated: 17th February, 2023

NOTIFICATION

NO.SO(MC)E&SED/2-3/2022/Promotion/MC(BS17to18)ACB: In pursuance of this Department's Notification of even number dated 12/12/2022, and subsequent approval from the Election Commission of Pakistan vide their letter No. F-3(1)/2023-Eis dated 10/02/2023, the following posting/adjustment of officers of the Management Cadre are hereby ordered, in the public interest, with immediate effect:-

S#	Name of Officer	From	To	Remarks
1	Aamir-ur-Rahman	SDEO (M) Hasanzai Torghar	Deputy DEO (Male) Battagram	Vice S No. 22
2	Luqman Haqim	SDEO(M) Kohat	Deputy DEO (Male) Karak	Vice S.No.18
3	Malik Khan	SDEO(M) Tank	Deputy DEO (Male) South Waziristan	Vice S.No 15
4	Shahid Hussain	Deputy DEO (M) Lower Chitral in OPS	Deputy DEO (Male) Lower Chitral	Against the already Occupied Post
5	Dilawar Khan	SDEO(M) Lachi Kohat	Deputy DEO (Male) North Waziristan	Vice S No. 19
6	Muqaddas Khan	Deputy DEO (M) Upper Chitral in OPS	Deputy DEO (Male) Upper Chitral	Against the already Occupied Post
7	Abdul Hanid	SDEO (M) Piry Thal-Hangu	Deputy DEO (Male) Kohat	Vice S.No.16
8	Kiramat Shah	SDEO (M) Babozai Swat	Deputy DEO (Male) Swat Upper	Vice S No 25
9	Maroof Khan	SDEO (M) Darban Mansehra	Deputy DEO (Male) Mansehra	Vice S.No.17
10	Naseer Ahmad	Deputy DEO (M) Abbottabad in OPS	Deputy DEO (Male) Abbottabad	Against the already Occupied Post
11	Ghulam Habib	SDEO (M) Samar Bagh Dir Lower	Deputy DEO (Male) Bajaur	Vice S No.20
12	Mehboob Ellahi	SDEO (M) Drosh Lower Chitral	Deputy DEO (Male) Dir Lower	A.V.P
13	Muhammad Farooq	SDEO (M) Karak	Deputy DEO (Male) Orakzai	Vice S No 14
Consequential Posting/ Transfer				
14	Zahid Khan TC BS-18	Deputy DEO (Male) Orakzai	Principal (BS-18) GHS Spin South Waziristan	A.V.P
15	Khyat Muhammad TC BS-17	Deputy DEO (Male) South Waziristan	FI (BS-17) GHS Shakai South Waziristan	A.V.P
16	Qaisar Khan MC BS-17	Deputy DEO (Male) Kohat in OPS	SDEO (Male) Lachi Circle Kohat	Vice S No 5
17	Shams Ur Rahman MC BS-17	Deputy DEO (Male) Mansehra in OPS	SDEO (Male) Balakot Mansehra	Services of Mr Ghulam Jilani (MC BS-16) are place at the disposal of DEO (M) Mansehra for further posting

Accepted 17-02-23

ATTESTED
KHALID MEHMAN
Advocate FIC
Stationed

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

18	Muhammad Hussain MC BS-17	Deputy DEO (Male) Karak in OPS	SDEO (Male) Karak	13/11/23
19	Said Muhammad TC BS-17	Deputy DEO (Male) North Waziristan in OPS	SS (Islamiyat) GHSS Eidak North Waziristan	A/P
20	Sher Nawab TC BS-18	Deputy DEO (M) Bajaur	Principal GHS Ghazi Baba Bajaur.	A/P
21	Saleh Muhammad MC BS-17	SDEO (M) Chakaiser	SDEO (M) Baboza Swat	A/P
22	Mr Gul Bad Shah TC BS-18	Deputy DEO (Male) Battagram	Principal (BS-18) GHS Bana Allai Battagram	A/P
23	Wali Ur Rehman MC BS-17	SDEO (Male) Kalkot Dir Upper	SDEO (Male) Allai Battagram	13/11/24
24	Zarif Khan MC BS-17	SDEO (Male) Allai Battagram	SDEO Tank	13/11/23
25	Nazr Ul Islam Bacha TC BS-17	Deputy DEO Swat Upper in OPS	SS (Islamiyat) BS-17 GHSS Kabal Swat.	A/P
26	Mr. Shandi Gul TC BS-17	SDEO (M) Landi Kotal Khyber	SS (Pashto) GHSS Paindi Cheena Khyber	A/P
27	Mr. Raees Khan MC BS-17	Asst. Director, E&SE Peshawar	SDEO (M) Landi Kotal Khyber	13/11/23
28	Sardar Irshad Ali MC BS-17	Awaiting Posting	SDEO (M) Darban Mansehra	13/11/23
29	Mr Misri Khan MC BS-18	Awaiting Posting	Deputy Director P&D-II Directorate of E&SE Peshawar	13/11/23
30	Abdul Shakoor TC BS-17	Deputy Director P&D-II, in OPS Directorate of E&SE Peshawar	SS (Urdu) GHSS Dherai (Alpuri), Shangla	A/P

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 website of the department.
4. Section Officer (Schools Male/Female) E&SE Department.
5. District Education Officer (Male) Concerned.
6. District Accounts Officer Concerned.
7. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
8. Master file.

ATTESTED

KHALID MAHMOOD
 Advocate High Court
 Stationed at D.I. Khan

Naseer
 17.02.24

(NASEER ASBAS KHALIL)
 SECTION OFFICER (Management Cadre)

Dated Peshawar the October, 28 2021

NOTIFICATION

NO.50(SM)E&SED/7-1/2021/PT/G/MC : The Competent Authority is pleased to order the transfer of the following Officers/Teachers of Elementary & Secondary Education Department, in the best public interest, with immediate effect:-

S#	Name of officer & designation	From	To
1.	Mr. Sher Muhammad (TC BS-18)	Deputy District Education Officer (M) South Waziristan	SS (History/Civics) BS-18 GHSS Doaba District Hangu against the vacant post.
2.	Mr. Khayal Muhammad (TC BS-17)	Headmaster (BS-17) GHS Nawaz Kot South Waziristan	Deputy District Education Officer (M) South Waziristan in OPS vice S.No. 01.
3.	Mr. Inayat Ullah (TC BS-17)	SS (Maths) BS-17 GHSS Ashkar Kot South Waziristan	SDEO (M) Sub Division Sarwakai South Waziristan against the vacant post.
4.	Mr. Abdul Samad (TC BS-17)	Headmaster (BS-17) GHS Sararogha South Waziristan	SDEO (M) Sub Division Ladha South Waziristan against the vacant post.

**SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT**

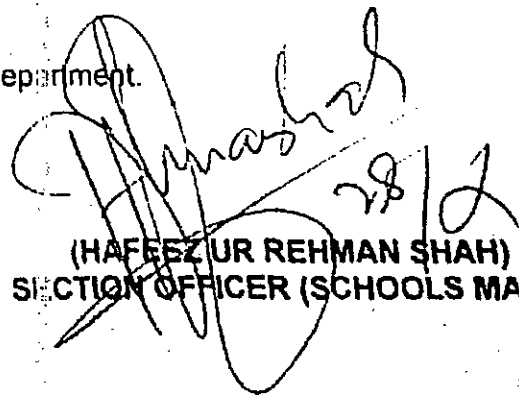
Endst: of even No. & Date

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) concerned.
4. District Account Officers, Concerned.
5. Director, EMIS E&SE Department.
6. PS to Minister for E&SE Department.
7. PS to Secretary E&SE Department.
8. PA to Deputy Secretary (Admn) E&SE Department.
9. Officers concerned.
10. Office order file.

ATTESTED

KHALID MEHMOOD,
Advocate High Court
Stationed at D.I.Khan


(HAFFEEZ UR REHMAN SHAH)
SECTION OFFICER (SCHOOLS MALE)

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 09/2021



BEFORE: SALAH-UD-DIN MEMBER(U)
MIAN MUHAMMAD MEMBER(E)

Khayal Muhammad S/o Muzamil R/o Village Maidan, Tehsil Laddah District South Waziristan, presently posted as Deputy District Education Officer (Male), District South Waziristan..... (Appellant)

VERSES

1. Government of Khyber Pakhtunkhwa through Secretary Education, Civil Secretariat, Peshawar
2. Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar
3. District Education Officer (Male), South Waziristan
4. Mr. Mehrab Gul, Headmaster, Govt. High School Azam, Waziristan South Waziristan..... (Respondents)

Present:

MR. AFRASLAB KHAN WAZIR, Advocate. For Appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL, Assistant Advocate General. For official respondents.

MR. TAIMUR ALI KHAN, Advocate. For private respondent No. 4

Date of Institution 30.12.2021
Date of hearing 06.07.2022
Date of Decision 06.07.2022

JUDGEMENT

MIAN MUHAMMAD, MEMBER(E)- The service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that "the impugned notification No. SO (SM) E&SED/7-1/2021/PT/GMC/DDEO, dated 07.12.2021 may kindly be set aside and notification No. SO (SM) E&SED/7-1/2021/PT/GMC, dated 28.10.2021 may kindly be restored."

ATTESTED

(KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

SECRETARY
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

02. Brief facts of the case are that the appellant was posted as Head Master (BS-17) GHS Muhammad Nawaz Kot, South Waziristan when transferred and posted as Deputy District Education Officer (Male) South Waziristan in his own pay and scale vide Notification dated 28.10.2021. However, he was subsequently transferred and reposted as Head Master (BS-17) GHS Muhammad Nawaz Kot South Waziristan and private respondent No. 4 was now posted in his place as Deputy District Education Officer (Male) South Waziristan vide Notification dated 07.12.2021. Feeling aggrieved the appellant submitted departmental appeal on 20.1.2022 which was not decided and thereafter the Service Tribunal was approached on 30.12.2021 pre-maturely.

03. On admission of the appeal, the respondents were put on notice to submit reply/Parawise comments. They submitted reply/Parawise comments denying and rebutting assertions made in the service appeal. We have heard arguments of the learned counsel for the appellant as private respondent No. 4 as well as learned Additional Advocate General for official respondents and have gone through the record with their assistance.

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04. Learned counsel for the appellant contended that the appellant had been prematurely transferred from the post of Deputy District Education Officer (Male) South Waziristan where he could only serve for about 40 days. This was a blatant violation of Clause I & IV of the Posting Transfer Policy of the Provincial government. The transfer had neither been made in the public interest nor after completion of normal tenure of posting but issued in an arbitrary manner with total disregard to norms of justice and service laws. The same is, therefore, liable to be set aside being not tenable under the canon of law and justice. To strengthen his arguments on the

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[Signature]
KHALID MEHMOOD
 Advocate High Court
 Stationed at D.I.Khan

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 Member
 Service Tribunal
 Peshawar

point of completion of normal tenure on a post and exercise of power by the competent authority in a just and judicious manner. He relied on PLD 2013 Supreme Court 195.

05. Learned counsel for private respondent No. 4 contended that the impugned order had been issued in public interest and could not be attributed to completion of tenure. If completion of tenure was a question then private respondent No. 4 had also not completed his normal tenure against his previous posting. GHS Aram Wazir, Sarda. In addition, the impugned order dated 07.12.2021 had been issued keeping in view the exigency of services from administrative point of view and this was done well in accordance with the spirit of Clause I of the Posting Transfer Policy of the Provincial government. To strengthen his arguments, he relied on 1996 SCMR 1649 and 2021 SCMR 1064.

06. Learned Assistant Advocate General argued that a civil servant is bound to serve anywhere in the province under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973. A civil servant is not entitled to be posted on his choice post and station. The impugned Notification dated 07.12.2021 is therefore legal, passed by the competent authority empowered with such authority as well as jurisdiction and with legal sphere and mandate. In support of his arguments, he relied on his Service Tribunal judgement delivered in service appeal no. 7259/2021 dated 26.01.2022 in the case titled "Noor Hassan, CTC BS-19 District Education Officer Mohmand versus the Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar and others". The impugned order might therefore be annulled in favour of the respondent department and the service appeal be graciously dismissed. He concluded.

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KHALID MEHMOOD
Advocate High Court
Stationed at D.I. Khan

ATTESTED
[Handwritten signature]
Secretary
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

07. Perusal of the record revealed that the appellant had been posted as Deputy District Education Officer (M) South Waziristan, in his own pay scale (OPS) vide earlier notification dated 28.10.2011 and he could only serve for about 40 days when re-transferred and posted as Head Master GHS Muhammad Nawaz Kot South Waziristan against the vacant post vide impugned notification dated 07.12.2021. Now, private respondent No. 4 who was earlier posted at GHS Azam Warsak South Waziristan is posted as substitute of the appellant as Deputy District Education Officer (M) South Waziristan vide the impugned notification,

08. It is also a matter of the record that both the appellant as well as private respondent No. 4 are in BS-17 and belonging to the teaching cadre. They were required to be posted on specified posts reserved for teaching cadre as prescribed in their service rules and laid down under the august Peshawar High Court judgement dated 11.11.2009 delivered in Writ Petition no. 2937/2009. When attention of the learned AAO was invited to this fact, he contended that due to shortage of officers in management cadre, the respondents were compelled to resort to such stopgap arrangements in public interest. It is, however, observed that the department could not make up the deficiency of officers in management cadre despite lapse of 13 long years since the judgement of honourable Peshawar High Court. The impugned notification dated 07.12.2021 did mention the word "in the public interest" but did not substantiate to establish as what necessitated respondent No. 2 to re-transfer the appellant after just 40 days? The posting/transfer policy of the provincial government determines and allows 02 years normal tenure to be completed by an officer on a particular post. In the instant case, there was neither complaint nor anything adverse against the appellant and

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ATTESTED

KHALID MEHMOOD
Advocate High Court
Stationed at D.I. Khan

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Examiner
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

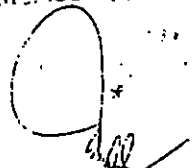
the respondents were obligated to have observed and honoured sanctity of their own posting/transfer policy by allowing him to complete his normal tenure of 02 years. The respondents are under obligation to address the issue of deficiency of management cadre officers immediately and stop the flood gate of posting of teaching cadre officers against the posts reserved for management cadre under the garb of stopgap management.

09. With the above observations in view, the instant appeal is accepted as prayed for. The impugned notification dated 07.12.2021 is set aside and the appellant is allowed to complete his normal tenure as Deputy District Education Officer (M) South Waziristan.

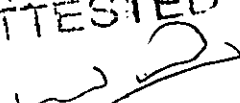
10. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 06th of July, 2022



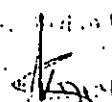

(SAJID-UD-DIN)
MEMBER (J)


(MEEN MUHAMMAD)
MEMBER (E)

ATTESTED


KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

21-7-2022


MEEN MUHAMMAD
Secretary
Service Tribunal
Peshawar

04/8/22
04/8/22



GOVERNMENT
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Amend (S)

16

Dated: 5th April, 2023

NOTIFICATION

NO.SO(MC)E&SED/4-16/2023/Posting/Transfer/IMC/Khyal Muhammad/ In compliance to Khyber Pakhtunkhwa Service Tribunal Peshawar Order in connection with Service Appeal No. 09/2022, in Execution Petition No. 104/2023. The Notification NO SO(MC)E&SED/2-3/2022/Promotion IMC (BS17to18) ACB dated 17.02.2023, to the extent of Sr.No.15 is hereby withdrawn/cancelled, in the best public interest, conditionally, till the final outcome of CPLA.

2- Consequent upon above, the services of Mr. Malak Khan, Deputy DEO (Male) South Waziristan appearing at Sr.No 3 is hereby placed at the disposal of Directorate of E&SE for further posting.

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. Registrar Service Tribunal Khyber Pakhtunkhwa
3. Director, E&SE Khyber Pakhtunkhwa, Peshawar
4. Director EMIS, E&SE Department with the request to upload the same on the official website of the department
5. Section Officer (Lit-II) E&SE Department
6. District Education Officer (Male) South Waziristan
7. District Accounts Officer South Waziristan
8. PS to Advisor to Chief Minister for E&SE Khyber Pakhtunkhwa
9. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa
10. Master file

ATTESTED

KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

(IMRAN ZAMAN)
SECTION OFFICER (Management Cadre)

To,

Worthy Chief Secretary
Govt of Khyber Pakhtunkhwa

874
315/23

Subject: Appeal for Adjustment as Deputy District Education Officer (M) South Waziristan TD

With great Respect

It is stated for your kind information that I was promoted to the post of DD/DDEO BPS:18 Management Cadre in E&SE Department vide Notification dated 12-12-2022 (Copy attached) (as Annex A) and adjusted as DDEO (M) South Waziristan vide Notification dated 17-02-2023 (Copy Annex as B). In compliance of the order, I took over charge as DDEO (M) South Waziristan on 20-02-2023 (Copy attached as Annex C) but due to service appeal

No. 09/2022 in execution Petition No: 104/2023, The notification No: SO(MC)E&SED/4-16/2023/Posting/Transfer/MC/Khyal Muhammad, Dated 05-04-2023, I was placed at the disposal of Directorate for further Posting (Copy attached as Annex D)

(2) I would like to bring into your kind notice that Khyal Muhammad is working as headmaster in BPS:17 and belongs to Teaching Cadre while the post he is occupying belongs to Management Cadre. He is in BPS:17 while the post is of BPS:18.

(3) Management Posts are purely reserved of Management Cadre. Teaching Cadre officers are posted purely on temporary and stop-gap arrangements till the arrival of regular MC officers. Being MC officer and in BPS:18 and regular officer, he is not eligible and fit to work as DDEO on arrival and Posting of regular MC officer.

(4) The normal tenure for an officer in unattracted area is 1 year and 6 months (18 months) as per rules and policy (Copy is attached as Annex E). He was posted as DDEO on 28-10-2021 and his tenure ^{expire on} 27-04-2023. (Copy attached as Annex F). Hence, in the presence and posting of MC officer, he should be removed and may be sent to his original Headmaster post and I should be retained/restored being an MC officer and being a right man for right post.

ATTESTED

KHALID NEFTHOON
Advocate High Court
Stationed at D.I. Khan

- (5) My, Khyal Muhammad HM BPS:17 is actually belongs to Teaching Cadre whose basic job description, duty and responsibility is work in a school and to teach students.
- (6) Working of Khyal Muhammad on Management Cadre post is against the ~~jud~~ judgments of honourable high court, service tribunal and is also clear violation of Establishment Department Notification No: SO (E-I) E&AD/9-88/2019, dated 08-02-2019 (Copy attached as Annex G).
- (8) Majority of High Schools in South Waziristan are without HMs and heavy shortage of HMs which has badly affected the teaching learning activities in school. In such a pathetic situation, his services are more needed in school instead to work on Management post inspite of the fact the management officer is available.
- (9) For many years, he has worked on administrative and never preferred to work in school. Hence, he now should be adjusted in a school. He has not brought any positive change in education of SWTD and never introduced any reforms, planning, strategy for improvement of education and indicators but perhaps the education standards and indicators are still worst in whole province.

R/Six
 In view of the above, you are humbly and kindly requested to remove him from the management post and to adjust him on his original post of headmaster to serve and teach the students according to his basic job description and the applicant be retained/restored or posted as DDEO BS:18 being a right person for right post according job description.

It is pertinent to mention that Khyal Muhammad period is expired on 27-04-2023 as per rules and policy for unattracted are which is 18 months.

I shall be indebted to you and hope to stand with rule of law and policy.

[Signature]
 yours obediently
 Malak Khan Ex-DDEO South Waziristan TD/ Now at the disposal of Directorate of E&SE KPK

Mob: No: 03439293921

ATTESTED
[Signature]
 KHALID MEHMOOD
 Advocate High Court
 Stationed at D.I.Khan

Present: Iftikhar Muhammad Chaudhry, C.J., Mian Shakirullah Jan, Mahmood Akhtar Shahid Siddiqui, Khilji Arif Hussain, Tariq Parvez and Amir Hani Muslim, JJ

CORRUPTION IN HAJJ ARRANGEMENTS IN 2010: In the matter of

Suo Motu Case No.24 of 2010 and Human Rights Cases Nos.57701-P; 57719-G, 57754-P, 58152-P, 59036-S, 59060-P, 54187-P, 58118-K of 2010, 1291-K and 1292-K of 2011, decided on 29th July, 2011.

(a) Civil Service---

---Placing an officer as "Officer on Special Duty" (OSD) is tantamount to penalizing him because the expression "OSD" is not known to either the Civil Servants Act, 1973 or the Civil Servants Appointment, Promotion and Transfer Rules, 1973---No officer can be posted as OSD.

Estacode at Serial No.23 ref.

(b) Constitution of Pakistan---

---Arts. 5 & 190---Once a judicial order is passed, it has binding effect on the executive as well as judicial functionaries in terms of Arts. 5 and 190 of the Constitution.

(c) Civil Service---

---Civil servant issued notification in terms of order of the Supreme Court which act on his part was in discharge of his Constitutional commitment as required under Art.190 of the Constitution---Such officer could not be penalized on the ground that he issued the notification in violation of Rules---If said Officer was made OSD, that will not send a good message to the country.

(d) Constitution of Pakistan---

---Arts. 190, 189 & 184(3)---Civil service---Posting and transfer---Judicial review---Scope--- Transfer and posting was the domain of the Executive Authority, however, in the present case, keeping in view the peculiar facts and circumstances, instead of passing orders by the Supreme Court itself, Supreme Court had sent the issue of transfer/reposting of a civil servant through Attorney General for Pakistan to the competent authority, but it did not work---Supreme Court, in circumstances, examined the administrative order in exercise of judicial review and passed orders of transfer/reposting and on compliance of said orders issued by the Supreme Court, competent civil servant issued the notification of transfer/reposting which had resulted in making the said civil servant (who issued the notification) as OSD, who had suffered for obeying the lawful order of the Supreme Court---Supreme Court observed that if such acts were allowed to continue, that will have serious impacts on the officials/authorities and will send message to them that if they comply with orders of Supreme Court, without seeking prior approval of the competent Authority, they will be posted out or they shall be proceeded against departmentally--- Such situation will discourage upright, honest and committed officers as well, therefore, under such circumstances, Supreme Court could not leave such officers at the mercy of the Executive to deal with them in a manner they like---Executive had to exercise powers under the Rules but such discretion had to be exercised judiciously---Manner in which the civil, servant who issued

ATTESTED

KHALID MEMMOOD
Advocate High Court

OSD
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Amir Hani Muslim
119

OSD

~~Handwritten~~
A. N. E. 9
20

2013 S C M R 1

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, C.J., Jawwad S. Khawaja and Khilji Arif Hussain, JJ

Syed MEHMOOD AKHTAR NAQVI and others---Petitioners

Versus

FEDERATION OF PAKISTAN and others---Respondents

Constitution Petitions Nos. 23, 11 of 2012, Criminal Original Petitions Nos. 23, 24, 27 of 2012, Human Rights Case No. 14427-P of 2012, C.M.As. Nos. 1539, 1557, 1581, 1611, 1792, 197-K, 231-K, 232-K of 2012 and Criminal Miscellaneous Application No. 587 of 2012, decided on 4th October, 2012.

(Petition by Anita Turab for Protection of Civil Servants).

(a) Civil Servants Act (LXXI of 1973)---

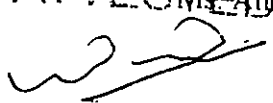
---Ss. 4, 5, 9 & 10---Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, Preamble--- Constitution of Pakistan, Art. 184(3)---Constitutional petition under Art. 184(3) of the Constitution for protection of rights and service structure of civil servants---Promotion, posting and transfer of civil servants---Posting as Officer on Special Duty (OSD)---Political and administrative influence over civil servants---Effect---Supreme Court observed that civil servants were required to implement/carry out lawful orders but they were invariably hindered not to follow the rules and regulations by the high-ups on account of their administrative or political influence; that such actions on part of high-ups resulted in arbitrary and frequent transfers of civil servants from one place to another or at times they were posted as Officer on Special Duty (OSD) or without caring about their merit-cum-seniority, they were not awarded due posting over junior officers or junior officers were given assignments of high responsibility, because of which many civil servants instead of performing independently started looking for favours in the administration as well as in the political arena as a result whereof good governance badly suffered; that fundamental rights of civil servants had to be recognized vis-a-vis their talent considering that they were responsible for running the affairs of the Government according to the Constitution and law; that Government officials were required to be promoted or transferred on merit, and that no one could be placed as Officer on Special Duty (OSD) as a punishment.

Corruption in Hajj arrangements in 2010: in the matter of PLD 2011 SC 963 ref.

(b) Constitution of Pakistan---

---Arts. 184(3) & 218(3)---Constitutional petition under Art. 184(3) of the Constitution for protection of rights and service structure of civil servants---Fair election, conducting of--- Government officers, role of---Scope---Supreme Court noted that for a fair election, the Election Commission required such Government Officers/Officials whose service was fully protected so that they might not succumb to administrative or political pressure of high-ups.

ATTESTED Anita Turab and Syed Mehmood Akhtar Naqvi, Petitioners (in person)


KHALID MEHMOOD
Advocate High Court
Stationed at D.I. Khan

Posting and Transfer

Statutory Provision.

Section 10 of the NWFP Civil Servants Act, 1973.

Posting and Transfer. Every civil servant shall be liable to serve anywhere within or outside the Province, in any post under the Federal Government, or any Provincial Government or Local authority, or a Corporation or body set up or established by any such Government:-

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region;

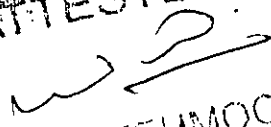
Provided further that, where a civil servant is required to serve in a post outside a service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

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
- ii) 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) Existing tenure of posting/transfer of three (03) years for settled areas and two (02) years for unattractive/hard areas shall be reduced to two (02) years for settled areas, 01½ years for unattractive areas and one year for hard areas.

v) ⁷⁹[]

⁷⁹ Para-1(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.

ATTESTED

 KHALID MEHMOOD
 Advocate High Court
 Stationed at D.I. Khan

Stationed at

Anex (I) (22)

Dist. Govt. KP-Provincial
District Accounts Office Tank-S.W. Agency
Monthly Salary Statement (March-2023)



Personal Information of Mr MALAK KHAN d/w/s of SHAHZAD KHAN

Personnel Number: 00585648 CNIC: 1220198832663 NTN:
 Date of Birth: 20.04.1973 Entry into Govt. Service: 24.09.2003 Length of Service: 19 Years 06 Months 00 Days

Employment Category: Active Temporary

Designation: DEPUTY DISTRICT EDUCATION 81028716-DISTRICT GOVERNMENT KHYBE

JDO Code: TW6056-Waziristan

Payroll Section: 002 GPF Section: 001

Cash Center:

JPF A/C No: 585648 GPF Interest applied

GPF Balance: 517,964.00 (provisional)

Vendor Number: 30488218 - wial shahzad

Pay and Allowances: Pay scale: BPS For - 2022 Pay Scale Type: Civil BPS: 18 Pay Stage: 6

Wage type		Amount	Wage type		Amount
0001	Basic Pay	82,440.00	1001	House Rent Allowance 45%	8,715.00
1528	Unattractive Area Allow	2,000.00	1947	Medical Allow 15% (16-22)	1,577.00
2148	15% Adhoc Relief All-2013	860.00	2199	Adhoc Relief Allow @10%	582.00
2315	Special Allowance 2021	7,670.00	2341	Dispr. Red All 15% 2022KP	7,316.00
2347	Adhoc Rel Al 15% 22(PS17)	7,316.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3018	GPF Subscription	-5,360.00	3501	Benevolent Fund	-1,500.00
3609	Income Tax	-5,481.00	3666	Turkis/Syria EQ Ded KPK	-3,380.00
4004	R Benefits & Death Comp.	-1,350.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 28,325.38 Recovered till MAR-2023: 11,885.00 Exempted: 0.67- Recoverable: 16,441.05

Gross Pay (Rs.): 118,476.00 Deductions: (Rs.): -17,071.00 Net Pay: (Rs.): 101,405.00

Payee Name: MALAK KHAN

Account Number: 3703-1

Bank Details: THE BANK OF KHYBER, 080021-THE BANK OF KHYBER THE BANK OF KHYBER: TANK

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address:

City: VILLAGE KETALITEH:

Domicile: -

Housing Status: No Official

Temp. Address:

City:

Email: mkmaseed1973@gmail.com

ATTESTED

KHALID MEHMOOD
 Advocate High Court
 Stationed at D.I Khan

Amr (S)

23

PESHAWAR HIGH COURT, PESHAWAR.

FORM OF ORDER SHEET

Court of

Case No. of

Serial No. of Order or Proceedings	Date of Order or Proceedings.	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary.
1	2	3
	18-11-2009	<p><u>W.P No.2937/2009 with I.R.</u></p> <p><u>Present:</u> Mr. Muhammad Amin Khattak Lachi, Advocate, for the petitioners.</p> <p>****</p> <p><u>DOST MUHAMMAD KHAN, J:-</u> As the Provincial Government has taken a firm decisions that all those teachers belonging to teaching cadre shall be posted in the Education Institution to teach the students according to their qualifications while those belonging to administrative cadre shall only hold the posts relating to administration. Therefore, the petitioners must deliver according to the policy of the Government and because they are highly qualified teachers, it is not befitting to hold administrative posts, because they are getting benefits, but the students are suffering thus, they shall go to their respective places, where they are required to do the job. The plea of the learned counsel for the petitioners that similarly placed Teachers/ Professors/Lecturers belonging to Colleges have been retained on administrative posts.</p>

ATTESTED

[Signature]

KHALID MEHMOOD
Advocate High Court
Stationed at D.I. Khan

[Signature]

Peshawar High Court

~~JAA~~

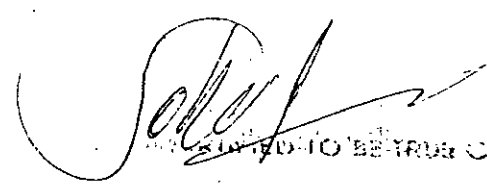
2. If such statement is correct then, it is clearly in violation of the policy laid down by the Provincial Government, therefore, copy of this order be sent to the Secretary Higher Education, Government of NWFP, and the learned Advocate General and it is directed that the policy so laid down must be implemented in full and no pick and choose policy shall be adopted in the matter.

Petition disposed of.

Announced.
Dated.18.11.2009.

~~JUDGE~~

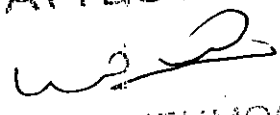
JUDGE



Advocate General
Advocate General, High Court, Peshawar
Stationed at D.I. Khan
Subordinate Under Article 23 of
the Constitution of Pakistan

14 JUN 2022

ATTESTED



KHALID NEHMOOD
Advocate High Court
Stationed at D.I.Khan

40877 14/6/2009

Date of Preparation 14/6/2009

No of Pages 4-9

Copying Fee 16/-

Total 16/-

Date of Delivery of copy 14/6/2009

Received By *[Signature]*

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20-11-09



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Amr

(K)

25

NO. SO (E-1)/E&AD/O-BB/2010
Dated Peshawar, the February 8, 2010

To

- 1) The Secretary to Government of Khyber Pakhtunkhwa, Higher Education Department.
- 2) The Secretary to Government of Khyber Pakhtunkhwa, E&SE Department.
- 3) The Secretary to Government of Khyber Pakhtunkhwa, Industries Department.

SUBJECT: - REQUISITIONING OF SERVICES.

Dear Sir,

I am directed to refer to the subject cited above and to say that the competent authority has observed that certain Teaching cadre officers are posted out of their cadre since long. Moreover, some teachers/professors are seeking requisitions from different Departments for posting against managerial or administrative posts, hindering deliverance of quality based education to the students. Consequently, competent authority has desired to invite your attention towards the following judgment of Peshawar High Court Peshawar (in WP No. 2937/2009) (Copy enclosed):-

✓
"As the Provincial Government has taken a firm decisions that all those teachers belonging to teaching cadre shall be posted in the Education Institution to teach the students according to their qualifications while those belonging to administrative cadre shall only hold the posts relating to administration.
Therefore, the petitioners must deliver according to the policy of the Government and because they are highly qualified teachers, it is not befitting to hold administrative posts, because they are getting benefits, but the students are suffering thus, they shall go their respective places, where they are required to do the job.

2. In view of the above, the competent authority has desired that the above mentioned judgment of the PHC be implemented, in letter and spirit, under intimation to this Department, for perusal of Competent Authority.

Yours faithfully.

(ISHTIAQ AHMAD)
SECTION OFFICER (Estt. I)

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TESTED

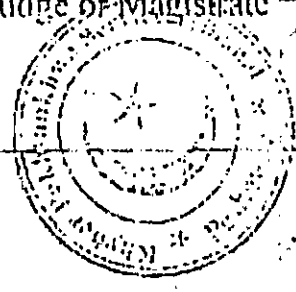
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9c
KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

✓ Teaching Extra should teach in school + in adm. room.

ANES (25) 26

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
		3

MC VSTC 10



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
Service Appeal No. 409/2019.

Date of Institution 01.04.2019
Date of Decision 07.08.2019

Muhammad Usman S/o Khat Gul District Tank presently
SST/ADEO (Sports), District Education Office, Tank.

Appellant.

Versus

ATTESTED
[Signature]
KHALID MEHMOOD
Advocate High Court
Stationed at D.I. Khan

- Government of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education Department, Peshawar.
- Deputy Secretary (Estant), Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.
 - Director, Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.
 - Assistant Director, Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.
 - District Education Officer, (Male) Tank.
 - Muhammad Farooq, SST, GHS Umar Adda, Tehsil & District Tank.

Respondents

07.08.2019

Mr. Muhammad Hamid Mughal-----Member(J)
Mr. Ahmad Hassan -----Member(E)

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: Appellan.

present. Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney for official respondents present. Private respondent No. 7 alongwith his counsel present.

2. Brief facts of the case are that Director Elementary &

8-2019

MC vs

27

Secondary Education Department Khyber Pakhtunkhwa, Peshawar (respondent No.3) vide order dated 16.08.2018 transferred the appellant Muhammad Usman (SST General) from GMS Kot Kat, District Tank and posted him as ADO (Sports) at the office of District Education Officer (Male) Tank. On the very next month of issuance of above mentioned order dated 16.08.2018, the respondent No.3 placed the services of the appellant at the disposal of DEO (Male) Tank for further adjustment at the vacant post of SST while private respondent No.7 (SST) was appointed in his place as ADEO (Sports) vide order dated 28.09.2018. Again on 06.11.2018 the previous transfer posting order dated 28.09.2018 regarding adjustment of the appellant as SST was withdrawn, resultantly the position of the appellant as ADEO (Sports) was restored. Finally on 17.12.2018 the above mentioned order dated 06.11.2018 was cancelled and the order in respect of private respondent No.7 as ADEO (Sports) was restored. This led to the present service appeal for restoration of transfer posting of the appellant as ADEO (Sports) Tank.

3. Learned counsel for the appellant argued that the impugned order dated 17.12.2018 is the outcome of malafide and a result of political victimization and that the same was issued to oblige the political figure.

4. As against that learned DDA assisted by the learned counsel for private respondent No.7 argued that the appellant has no vested right to claim posting of his choice; that the appellant being an

ATTESTED

KHALID MEHMOOD
Advocate High Court
Statement at

20/3

influential person, got himself transferred to the post of ADEO (Sports) by using political channel; that earlier the appellant filed civil suit to regain his position as ADEO (Sports) District Tank; that initially the appellant was appointed as Class-IV official who secured promotion on the basis of 3rd Division B.A Degree and thereafter the appellant submitted BA Degree of 2nd Division which is illegal; that on the complaint of private respondent No.7 inquiry was also initiated against the appellant.

5. Arguments heard. File perused.

6. Both the appellant and private respondent No.7 belong to teaching cadre but were blessed with administrative cadre post one after the other.

7. Hon'ble Peshawar High Court Peshawar vide its judgment dated 18.11.2009 in Writ Petition No. 2937/2009 has observed that it is not befitting for teachers to hold administrative posts because they are getting benefits; but the students are suffering thus, they shall go to their respective places

8. The above mentioned judgment of Hon'ble Peshawar High Court Peshawar was implemented vide Notification dated 08.02.2019.

9. From the arguments advanced by the parties and record particularly the posting transfer orders available on file, it appeared that the Director Elementary & Secondary Education concerned has no capability to face political pressure and that his actions, as made impugned in the pleadings of the parties, fall within the ambit of

ATTESTED

KHALID MEHMOOD
Advocate High Court
Peshawar

P 46
admission

8.02.2019

MC 45 TC (4)

misuse of authority.

10. The parties (SSTs) could not demonstrate any exigency due to which they were adjusted against the administrative cadre post.

11. In the light of above, the respondent department is directed to appoint suitable officer belonging to administrative cadre as ADEO (Sports) District Tank. The posting orders of both the appellant and private respondent No.7 against the administrative cadre post of ADEO (Sports) Tank shall be treated as cancelled. The respondent department is also directed to forthwith recall, all the transfer orders of the teachers against the administrative post. The present service appeal is disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

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Ahmad Hassan)
Member

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(Muhammad Hamid Mughal)
Member

Certified true copy

ANNOUNCED
05.08.2019

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Service Tribunal
Peshawar

*AS per
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KHALID MEHMOOD
Advocate High Court
Stationed at D.I. Khan

Order or other proceedings with signature of Judge of

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
Service Appeal No. 3452019

Date of Institution 08.01.2019
Date of Decision 10.01.2020

Atlas Khan son of Haseb Khan Resident of Darazinda District FR
Dera Ismail Khan

Appellant

Versus

1. Government of Khyber Pakhtunkhwa, through Secretary Administration and Coordination (FATA), Peshawar
2. The Director Education (FATA), Peshawar.
3. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
4. Naseeb Khan ADEO, Education Office Sub Division Darazinda D.I.Khan

Respondents


10.01.2020 Mr. Muhammad Hamid Mughal Member (A)
Mr. Hussain Shuh Member (B)

JUDGMENT
MUHAMMAD HAMID MUGHAL, MEMBER Appellant

with counsel present. Mr. Zia Ullah learned Deputy District Attorney for official respondents present. Private respondent No. 4 present.

2. The appellant has filed the present service appeal against the order dated 10.09.2018 whereby Mr. Naseeb Khan SST (private respondent No. 4) was transferred from Kohi Bahara Sub Division Darazinda District D.I.Khuni and posted against the ADEO post in

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KHALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

the Education Office Sub Division Darazinda on OPS Basis.

3. Learned counsel for the appellant mainly assailed the impugned order on the ground that being senior most, the appellant is entitled to be transferred and posted as ADEO instead of the private respondent No.4 and as such the respondents have violated the criteria by issuing the impugned order.

4. As against that learned Deputy District Attorney assisted by private respondent No.4 defended the impugned order. Learned Deputy District Attorney argued that posting at a certain post is not the vested right of a civil servant and the impugned order is legally correct, within the four corners of law and does not call for any interference; that it is the mandate of the respondent department to post any civil servant on the post; that the post of Assistant Sub Divisional Education Officers are to be filled by initial recruitment hence the appellant is not fit to be appointed on the said post.

5. Arguments heard. File perused.

6. Both the appellant and private respondent belong to teaching cadre and the Hon'ble Peshawar High Court Peshawar vide its judgment dated 18.11.2009 in Writ Petition No. 2937/2009 has observed that it is not befitting for teachers to hold administrative posts because they are getting benefits, but the students are suffering thus, they shall go to their respective places. The aforementioned judgment of Hon'ble Peshawar High Court Peshawar was implemented vide Notification dated 08.02.2019.

7. Learned DDA could not demonstrate any exigency due to

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KHALID MEHMOOD
Advocate High Court
Stationed at D...

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32

which the private respondent No. 4 was adjusted against the administrative cadre post.

8. In the identical nature Service Appeal bearing No 400/2019 filed by Muhammad Usman decided vide judgment dated 07.08.2019, the posting orders of the civil servants of teaching cadre against the administrative cadre post of ADEO (Sports) Tank were struck down by this Tribunal and the respondent department was directed to appoint suitable officer belonging to administrative cadre as ADEO (Sports) District Tank.

9. In the light of above the impugned posting transfer order dated 10.09.2018 is set aside and the respondent department is directed to fill up the vacant ADEO post to the Education Office Sub Division Daruzinda by appointing a suitable officer belonging to administrative cadre. The present service appeal is disposed of in

ATTESTED

KHALID MEHMOOD Advocate High Court Stationed at D... he above noted terms. Parties are left to bear their own costs. File be consigned to the record room

(Hussain Shah)
Member

(Muhammad Hamid Mughal)
Member

ANNOUNCED
10.03.2020

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Number
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Page
Index
Serial
Date of
Date of

27-04-2020
1200
14-00
14-00
03-06-2020
03-06-2020