


Form-A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 588/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	
1	21.08.2023	<p>The implementation petition of Mr. Muhammad Naeem is submitted today by Mr. Taimur Ali Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition # 588/2023

Execution petition No. _____/2023
In Service Appeal No.143/2022

Muhammad Naeem

V/S

Education Deptt:

INDEX

S. No.	Documents	Annexure	P. No.
01.	Memo of Execution petition	-----	01-02
02.	Copy of memo of appeal Affidavit	A	03-07
03.	Copy of judgment dated 24.02.2023	B	08-11
04.	Vakalat Nama	-----	12

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT
Cell No. 03339390916

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition # 588/2023

Execution petition No. _____/2023
In Service Appeal No.143/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7094

Date 21/8/2023

Mr. Muhammad Naeem, SDEO (BPS-17) (Male),
Takht-e- Nasrati, Karak.

PETITIONER

VERSUS

1. The Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 24.01.2022* OF THIS
HONOURABLE SERVICE TRIBUNAL IN
LETTER AND SPIRIT.**

.....

RESPECTFULLY SHEWETH:

1. That the petitioner has filed an appeal bearing No.143/2022 in this Honorable Service Tribunal against the notification dated 10.01.2022, whereby the petitioner was prematurely transferred from SDEO (M) Takht-e-Nasrati Karak to SDEO (M) Mirali North Waziristan in utter violation of posting transfer policy and circular dated 27.02.2013 and against not taking action on the departmental appeal of the petitioner with the prayer that on the acceptance of the appeal of the petitioner, the impugned transfer notification dated 10.01.2022 may kindly be set aside to the extent of the petitioner being premature and passed in violation of posting transfer policy. The respondents may kindly further be directed not to transfer the petitioner prematurely, in violation of posting transfer policy and circular dated 27.02.2023. (Copy of memo of appeal is attached as Annexure-A)

2. That the said appeal was heard and decided by this Honorable Tribunal on 24.02.2022. The Honorable Tribunal was kind enough to accept the appeal of the petitioner as prayed for. **(Copy of judgment dated 24.02.2023 is attached as Annexure-B)**
3. That the Honorable Tribunal has accepted the appeal of the petitioner on 24.02.2023, but the department did not issue proper order of the petitioner on the post SDEO Takhti-e-Nasrati (Male) by implementing the judgment dated 24.02.2023 of this Honorable Tribunal till date.
4. That in-action and not fulfilling formal requirements by the respondents after passing the judgment of this august Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to implement the judgment of this Honourable Service Tribunal in letter and spirit.
6. That the petitioner has having no other remedy except to file this execution petition for Implementation of judgment dated 24.02.2023 of this Honorable Service Tribunal.

It is, therefore, most humbly prayed that the respondents may be directed to implement the judgment dated 24.02.2023 of this Honorable Service Tribunal in letter and spirit. Any other remedy which this august Service Tribunal deems fit and appropriate may also be awarded in favour of petitioner.



PETITIONER
Muhammad Naeem

THROUGH:



(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

AFFIDAVIT:

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this august Service Tribunal.



DEPONENT



A (3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. _____/2022

Mr. Muhammad Naeem, SDEO (BPS-17) (Male),
Takht-e-Nasrati, Karak.

(APPELLANT)

VERSUS

1. They Chief Secretary, Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
2. The Secretary, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. The Director, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
4. Mr. Muhammad Hussain, ASDEO (BPS-16) (Male), Takht-e-Nasrati District Karak.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT 1974 AGAINST THE NOTIFICATION DATED 10.01.2022, WHEREBY THE APPELLANT WAS PREMATURELY TRANSFERRED FROM SDEO (M) TAKHT-E-NASRATI KARAK TO SDEO (M) MIRALI NORTH WAZIRISTAN IN UTTER VIOLATION OF POSTING TRANSFER POLICY AND CIRCULAR DATED 27.02.2013 AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE PERIOD OF 15 DAYS AS PER POSTING TRANSFER POLICY.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE IMPUGNED TRANSFER NOTIFICATION DATED 10.01.2022 MAY KINDLY BE SET ASIDE TO THE

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(4)

EXTENT OF THE APPELLANT AND PRIVATE RESPONDENTS NO.4 BEING PREMATURE AND PASSED IN VIOLATION OF POSTING TRANSFER POLICY. THE RESPONDENT MAY KINDLY FURTHER BE DIRECTED NOT TRANSFER THE APPELLANT PREMATURELY, IN VIOLATION OF POSTING TRANSFER POLICY AND CIRCULAR DATED 27.02.2013. ANY OTHER REMEDY WHICH THIS HONOURABLE TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN THE FAVOUR OF THE APPELLANT.

**RESPECTFULLY SHEWETH:
FACTS:**

1. That appellant belong to Tehsil Takht-e-Nasrati District Karak and was appointed in Management Cadre as ASDEO (BPS-16) in the year 2011 and since his appoint the appellant is performing his duty with great devotion and honesty and no complaint has been filed against him by his superiors regarding his performance.
2. That the wife of the appellant is also working in education department as PSHT at GGPS Gula Khan Korona Takht-e-Nasrati Karak, which is evident from the service certificate issued by the SDEO (F) Takht-e-Nasrati. (Copy of service certificate is attached as Annexure-A)
3. That the appellant on promotion from ASDEO (BPS-16) to SDEO (BPS-17) was posted on the post of SDEO (M) Takht-e-Nasrati Karak vide notification dated 30.12.2021 and is performing his duty to best of his ability and capability as SDEO (M) Takht-e-Nasrati Karak. (Copy of notification dated 30.12.2021 is attached as Annexure-B)
4. That just after 12 days, the appellant was transferred and posted at SDEO (M) Mirali North Waziristan and private respondent No. 4 who is ASDEO (BPS-16), posted on the post of the appellant as SDEO (M) (BPS-17) Takht-e-Nasrati Karak vide impugned notification dated 10.01.2022. (Copy of notification dated 10.01.2022 is attached as Annexure-C)
5. That the appellant being aggrieved from the notification dated 10.01.2022 filed departmental appeal within 07 days as per posting transfer on 12.01.2022, which was not decided within the stipulated period of time frame of 15 days as per posting transfer policy. It is pertinent to mention here that Additional Assistant Commissioner/Returning Officer wrote a letter to DRO Karak on 12.01.2022 that Mr. Muhammad Naeem SDEO (M) Takht-e-Nasrati (appellant) was appointed as ARO with RO 194 Takht-e-Nasrati for

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conduct of local Govt. Election 2021 and requested to approach the Education Department to cancel the transfer of the Mr. Muhammad Naeem SDEO (M) Takht-e-Nasratti (appellant) till the finalization of Local Govt. Election 2021, which was further forwarded to District Election Commissioner Karak and District Education Officer (M) Karak for further necessary action on 14.01.2022. Similarly Deputy Director (LGE) also wrote a letter on 25.01.2022 to respondent No.2 in which he mentioned that the appellant has been appointed as ARO Takht-e-Nasratti and the election process in Karak has not yet been finalized and the Election Commission of Pakistan vide notification dated 25.10.2021 has directed that no transfer/posting Government Officer and officials shall be made without prior approval of the Commission till the publication of results and requested that the transfer order to the extent of the Mr. Muhammad Naeem ARO/SDEO Takht-e-Nasrati karak may kindly be rescinded or held in abeyance in larger national interest till the culmination of election process. (Copy of departmental appeal, letter dated 12.01.2022, letter dated 14.01.2022 and letter dated 25.01.2022 are attached as Annexure-D, E, F & G)

6. That the appellant has no other remedy except to file the instant appeal in this Honourable Tribunal for redressal of his grievance on the following grounds amongst others.

GROUND:

- A. That the impugned transfer notification dated 10.01.2022 is against the law, facts, material on record, norms of justice, premature and violation of posting transfer policy and circular dated 27.02.2013, therefore, not tenable and liable to be set aside to the extent of the appellant and private respondent No.4.
- B. That the impugned transfer notification dated 10.01.2022 has passed in violation of posting transfer policy and circular based on Anita Turab case dated 27.02.2013, therefore the impugned transfer notification is liable to be set aside to the extent of the appellant and private respondent No.4 on this ground alone. (Copy of posting transfer policy and circular dated 27.02.2013 are attached as Annexure- H&I)
- C. That impugned transfer notification dated 10.01.2022 is premature as the appellant has not completed his tenure as SDEO (M) Takht-e-Nasrati, therefore, the impugned transfer notification is liable to be set aside to the extent of the appellant and private respondent No.4.

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D. That the wife of the appellant is also working in the education department as PSHT in at GGPS Gula Khan Korona Takht-e-Nasrati Karak, which is evident from the service certificate issued by the SDEO (F) Takhti Nusrati and due to socio-economic problem and hardships faced by husbands and wives in Government service due to posting at different stations of duty, the Government issued circular dated 07.08.2012 to facilitate posting of husbands and wives at same station and through impugned notification dated 10.01.2022, the family of the appellant will be badly suffered and as such the impugned notification is liable to set aside to the extent of the appellant and private respondent No.4. **(Copy of circular dated 07.08.2012 is attached as Annexure-J)**


E. That the appellant is SDEO BPS-17 and working on the post of SDEO (M) Takht-e-Nasrati, while private respondent No.4 is ASDEO (BPS-16), who was transferred and posted on the wrong post of SDEO (M) Takht-e-Nasrati in the impugned transfer notification dated 10.01.2022 and such type of transfer was discouraged by the superior courts in plethora of judgments and as such the impugned transfer notification dated 10.01.2022 is liable to be set aside to the extent of appellant and private respondent No.4.

F. That Additional Assistant Commissioner/Returning Officer wrote a letter to DRO Karak on 12.01.2022 that Mr. Muhammad Naeem SDEO (M) Takht-e-Nasrati (appellant) was appointed as ARO with RO 194 Takht-e-Nasrati for conduct of local Govt. Election 2021 and requested to approach the Education Department to cancel the transfer of the Mr. Muhammad Naeem SDEO (M) Takht-e-Nasrati (appellant) till the finalization of Local Govt. Election 2021 which was further forwarded to District Election Commissioner Karak and District Education Officer (M) Karak for further necessary action on 14.01.2022. similarly Deputy Director (LGE) also wrote a letter on 25.01.2022 to respondent No.2 in which he mentioned that the appellant has been appointed as ARO Takht-e-Nasrati and the election process in Karak has not yet been finalized and the Election Commission of Pakistan vide notification dated 25.10.2021 has directed that no transfer/posting Government Officer and officials shall be made without prior approval of the Commission till the publication of results and requested that the transfer order to the extent of the Mr. Muhammad Naeem ARO/SDEO Takht-e-Nasrati Karak may kindly be rescinded or held in abeyance in larger national interest till the culmination of election process, but despite that the transfer order to the extent of the appellant has not been cancelled by taking action on that letters, which shows that arbitrary attitude of the respondents.

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- G. That according to posting/transfer policy, that posting/transfer orders of all the officers up to BS-19 except the Heads of the Attached Departments irrespective of the grade will be notified by the concerned Administrative Departments with the prior approval of the Competent Authority obtained on the Summary, but in the case of the appellant, no prior approval of Summary for transfer was obtained, which is violation of posting/transfer policy.
- H. That in passing of impugned transfer notification, no exigencies or public interest was shown by the authority, but just to adjust blue eyed person on the post of appellant.
- I. The appellant is Nephrology patient and has single function kidney and due to such far way transfer through impugned transfer notification dated 10.01.2022, the health condition of the appellant will be badly affected. (Copy of medical report is attached as Annexure-K)
- J. That the appellant seeks permission of this Honourable Tribunal to advance other grounds and proof at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may kindly be accepted as prayed for.


APPELLANT
Muhammad Naeem

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT


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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 143 /2022



Mr. Muhammad Naeem, SDEO (BPS-17) (Male),
Takht-e-Nasrati, Karak.

(APPELLANT)

VERSUS

1. They Chief Secretary, Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
2. The Secretary, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. The Director, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
4. Mr. Muhammad Hussain, ASDEO (BPS-16) (Male), Takht-e-Nasrati District Karak.

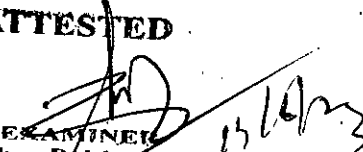
(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT 1974 AGAINST THE NOTIFICATION DATED 10.01.2022, WHEREBY THE APPELLANT WAS PREMATURELY TRANSFERRED FROM SDEO (M) TAKHT-E-NASRATI KARAK TO SDEO (M) MIRALI NORTH WAZIRISTAN IN UTTER VIOLATION OF POSTING TRANSFER POLICY AND CIRCULAR DATED 27.02.2013 AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE PERIOD OF 15 DAYS AS PER POSTING TRANSFER POLICY.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE IMPUGNED TRANSFER NOTIFICATION DATED 10.01.2022 MAY KINDLY BE SET ASIDE TO THE

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 143/2022

Date of Institution ... 01.02.2022
Date of Decision ... 24.02.2022



Mr. Muhammad Naeem, SDEO (BPS-17) (Male), Takht-e-Nasrati, Karakoram
... (Appellant)

VERSUS

The Chief Secretary, Government of Khyber Pakhtunkhwa Civil
Secretariat, Peshawar and three others.

... (Respondents)

Taimur Ali Khan,
Advocate

For appellant.

Muhammad Jan,
District Attorney

For respondents.

Mrs. Rozina Rehman

Member (J)

Mr. Muhammad Akbar Khan

Member (E)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the jurisdiction of this Tribunal through above titled appeal with the prayer as copied below:

“That on acceptance of this appeal, the impugned transfer Notification dated 10.01.2022 may kindly be set aside to the extent of appellant and private respondent No.4 being premature and passed in violation of posting transfer policy. The respondents may kindly further be directed not transfer the appellant prematurely, in violation of posting transfer policy and circular dated 27.02.2013.”

2. Brief facts of the case are that the appellant was appointed as an ASDEO in the year 2011 and he was performing his duties with devotion. His wife was also working in Education Department as PSHT

TESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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at GORS Gula Khan Korona Takht-e-Nasrati Karak. The appellant was promoted from ASDEO to SDEO and was posted at Takht-e-Nasrati vide Notification dated 30.12.2021. Just after 12 days, he was transferred and posted as SDEO (Male) North Waziristan and private respondent No.4 who was an ASDEO was posted as SDEO in his own pay & scale vide impugned Notification dated 10.01.2022. Feeling aggrieved, he filed departmental appeal which was not responded to, hence, the present service appeal.

3. We have heard Taimur Ali Khan Advocate, learned counsel for the appellant and Muhammad Jan, learned District Attorney for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Taimur Ali Khan Advocate, learned counsel for the appellant argued inter-alia that the appellant was not treated in accordance with law and rules on the subject and as such respondents violated Articles-4 & 25 of the Constitution of Islamic Republic of Pakistan. He contended that the impugned transfer notification was issued in violation of transfer/posting policy, therefore, the said notification is liable to be set aside to the extent of appellant and private respondent No.4. It was further argued that private respondent No.4 was transferred during the pendency of instant appeal as Deputy District Education Officer (Male) Karak in his own pay & scale against the vacant post vide Notification dated 31st August, 2022, therefore, appellant might be adjusted against the said vacant post. Lastly, he submitted that appellant was prematurely transferred as he had not completed normal tenure. His wife is also serving as PSHT there in Takht-e-Nasrati and the appellant being a chronic patient of kidneys, is not in a position to travel, therefore, he requested for acceptance of the instant service appeal.

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ATTESTED
EXAMINER
Kyber Pakhtunkhwa
Service Tribunal
Peshawar
14/6/23

5. Conversely, the learned District Attorney argued that all the codal formalities were fulfilled before notifying the transfer of appellant and that U/S-10 of Khyber Pakhtunkhwa Civil Servants Act, 1973, every civil servant is required to serve anywhere in the province.

6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that Clause-I of the posting/transfer policy elucidates that all the posting transfers shall be strictly in public interest and shall not be misused to victimize Government servant. Clause-IV of the said policy has laid down specified tenure against various posts. Neither this transfer order was made in any public interest nor guidelines for normal tenure were observed. The respondents have violated their own instructions. Private respondent No.4 (Muhammad Hussain) has already been posted as Deputy DEO (Male) Karak vide Notification dated 31st August, 2022. Appellant has not completed his tenure. His spouse is also serving in the Education Department in the same district. Appellant is a chronic patient of kidneys and medical record also goes in his favor. It is otherwise a strong ground for considering his case even on humanitarian grounds.

7. For what has been discussed above, this appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

24.02.2023

(Muhammad Akbar Khan)

Member (E)

(Rozina Rehman)

Member (J)

Certified to be true copy

CHIEF JUSTICE
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 14/6/23
Number of ~~W.O.~~ page 4
Copying Fee 20/-
Urgent 5/-
Total 25/-
Name of Copyist S. S. S. S.
Date of Completion 14/6/23
Date of Delivery of Copy 14/6/23

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VAKALAT NAMA

NO. _____/2023

IN THE COURT OF KP Service Tribunal, Peshawar

Mahammad Naeem (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

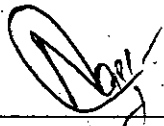
Education Department (Respondent)
(Defendant)

I/We, Muhammad Naeem

Do hereby appoint and constitute **TAIMUR ALI KHAN, ADVOCATE HIGH COURT**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.


I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/2023



(CLIENT)

ACCEPTED


TAIMUR ALI KHAN
Advocate High Court

BC-10-4240
CNIC: 17101-7395544-5
Cell No. 03339390916