

1540/13

27.1.2014

Junior to counsel for the appellant present and requested for time to deposit security and process fee. Request is accepted. Process fee and security be deposited within 7 days. To come up for written reply on 15.4.2014. After deposit, notice be issued to respondents.


MEMBER

15.4.2014.

Neither appellant nor his counsel present. Security and process fee have also not been deposited. Hence, the appeal is dismissed under Rule 10 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974. File be consigned to the record.

ANNOUNCED
15.4.2014.


MEMBER


MEMBER

Appeal No. 1540/2013
Mr. Sajunul Khan


3
28.11.2013

Counsel for the appellant present and submitted an application for early hearing. To come up for arguments on early hearing application on 02.12.2013.

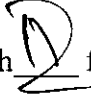

Member

4
02.12.2013

Appellant with counsel present and heard. Contended that the transfer order dated 11.11.2013 issued by respondent No.3 was not in accordance with law, hence the same is liable to be cancelled. Appellant filed departmental appeal on 23.11.2013, which was rejected on 25.11.2013, hence the present appeal on 26.11.2013. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply on 27.01.2014. Appellant also filed an application for grant of status-quo against the impugned order dated 11.11.2011, till final disposal of the instant appeal. Notice of application should also be issued to the respondents for reply/arguments on the date fixed.


Member

5
02.12.2013

This case be put before the Final Bench  for further proceedings.




Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1540/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	26/11/2013	<p>The appeal of Mr. Sajawal Khan presented today by Mr. Muhammad Saeed Zahir Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	27-11-2012	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>27-12-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. _____ /2013.

Sajawal Khan (SDM)... Vs. Secretary Elementary Education etc.

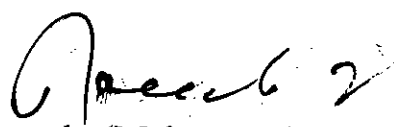
APPLICATION FOR EARLY HEARING

Respectfully Sheweth:

- 1- That the instant appeal along with stay application is fixed for hearing on 27/12/2013.
- 2- That in the instant appeal, urgent matter is involved and stay application is also filed with the instant appeal.
- 3- That if the stay application is not heard at an early date, then the appeal of the appellant will become infructuous.

It is, therefore, humbly prayed that the instant appeal may please be fixed at an early date.

Appellant,


Through: (Muhammad Saeed Zahir),
Advocate, Peshawar.
Muhammad Saeed Zahir
Advocate,
High Court Peshawar.

28-11-13

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHWAR.

Service Appeal No. 1540 /2013.

Sajawal Khan SDM GHSS Nagri Bala Tehsil & District
Abbotabad.....Appellant.

Versus

1. Secretary Elementary & Secondary Education, Khyber
Pakhtunkhwa Peshawar..... Respondents

SERVICE APPEAL

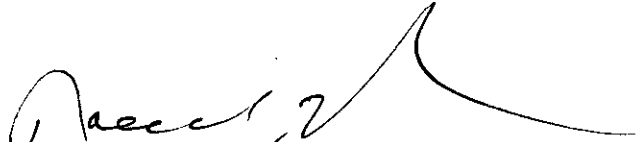
INDEX

S No.	Description	Page No.	Annexure
1	Service appeal along with affidavit	1 to 3	
2	Stay application	4-5	
3	Staff attendance register	6	"A"
4	Copy of cancelation order	7	B
5	Copy of order dated 11/11/2013	8	C
6	Copy of final order	9	D
7	Wakalat nama	10	

Dated 26/11/2013


(Appellant)

Through


Mohhamad Saeed Zahir
Advocate

①

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHWAR.

Service Appeal No. 1540 /2013.

Sajawal Khan SDM GHSS Nagri Bala Tehsil & District
Abbotabad.....App
ellant.

Versus

1583
26/11/13

1. Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
3. District Education Officer, Abbottabad.

Respondents

APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER NO.8650-53 DATED 11/11/2013 ISSUED BY RESPONDENT NO.3 VIDE WHICH THE APPELLANT WAS TRANSFERRED FROM GHSS NAGRI BALA AND ORDER NO. 2942 DATED 25/11/2013 WHICH WAS PASSED IN DEPARTMENTAL APPEAL OF THE APPELLANT.

PRAYER : ON ACCEPATNCE OF INSTANT APPEAL, BOTH THE IMPUNGNEED ORDERS MAY GRACIOUSLY BE SET ASIDE BEING ILLEGAL,UNLAWFUL,AGAINST THE LAW,POLICY AND MERIT, AND RSPONDENTS BE DIRECTED TO CANCELL THE IMPUGNEED ORDER OF THE APPELLANT IN THE BEST INTEREST OF JUSTICE.

RESPECTFULLY SHEWETH:

1. That the appellant was appointed on 25/01/1978 in GHSS Nagri Bala and served education department for long 36 years.

2. That in these long years of service no complaint was served upon the appellant from his higher officers and performed his duty well.
3. That on 23/08/2013, appellant attended the funeral of his near relative in Abbottabad and the appellant also lives in Abbottabad because of which the appellant sent an application to school and also called on phone to the in charge of the school on which a casual leave was marked in the staff attendance register against the appellant's name.(copy of staff attendance register annexed as Annexure A).
4. That on the said date ^SEDO (M) Abbottabad visited different schools including the appellant's school where ^SEDO Abbotabad malafidely transferred appellant to very far flung area.
5. Being aggrieved from the impugned order one of our colleague lodged complaint against the impugned transfer order to Commissioner Hazara Division, upon which additional deputy commissioner Abbotabad conducted inquiry and directed EDO Abbottabad to cancel the impugned order of transfer, upon which EDO (Male) Abbotabad cancelled these transfer orders and in the same order EDO (M) Abbotaabad ordered inquiry committee to probe into the matter.
(Copy of Cancellation order is attached as Anex B).
6. That the respondents with malafide and on the basis of political influence ,without any hearing of the appellant against the law and policy ,issued transfer of the appellant vide impugned order No.8650-53 dated 11/11/2013 (Copy of order dated 11/11/2013 is attached as Annex C).
7. That the appellant filed departmental appeal against the mentioned order dated 11/11/2013 of respondent No.3 before respondent no.2.
8. That respondent no.3 straight forward rejected the appeal of the appellant without any hearing of the appellant and against the merit vide order No.2942 dated 25/11/2013. (Copy of the final order, which was passed on departmental appeal of the appellant is annexed as Annexure D)

GROUND:

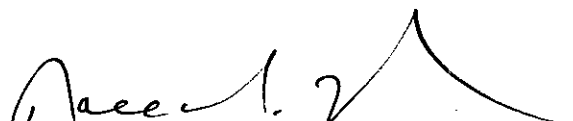
- A. That the appellant served education department for long 36 years and can not be transferred in his last year of service under the rules.
- B. That the impugned order was passed against the policy, merit, law and natural justice, therefore under the law is not sustainable and liable to be set aside.
- C. That the appellant according to the policy was entitled to retain the service at GHSS Nagri Bala, District Abbottabad being in the last year of his service.
- D. That the impugned order was passed with collusion; malafide and based on political influence, therefore liable to be set aside.

It is, therefore, respectfully prayed that on acceptance of instant appeal, both the impugned order may graciously be set aside and appellant may be allowed to perform his service at GHSS Nagri Bala, Abbottabad.

Dated 26/11/2013


(Appellant)

Through


Mohhamad Saeed Zahir


&

Yaseen Afridi
Advocates, Peshawar

AFFIDAVIT/ Verification

Verified on oath that the contents of the instant application are true and correct to the best of my knowledge and belief and nothing has been concealed from this hon`ble court.

Dated:26/11/2013


Deponent

4

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHWAR.**

Service Appeal No. _____/2013.

Sajawal Khan SDM GHSS Nagri Bala Tehsil & District
Abbotabad.....Appellant.

Versus

1. Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa
Peshawar.....Respondents

SERVICE APPEAL

APPLICATION FOR GRANT OF STATUS- QUO AGAINST THE
IMPUGNED ORDER DATED 11/11/2011, TILL FINAL DISPOSAL
OF INSTANT APPEAL.

RESPECTFULLY SHEWETH:

1. That the appellant filed titled appeal before this Hon`ble Tribnal and application of the appellant may be treated as an integral part of the main appeal.
2. That the appellant was transferred from GHSS Nagri Bala, district Abbottabad to GHS Chamahati after long 36 years of his service at this school thus has a good prima facie case to be retired at this school as the appellant has only one year more service and appellant hope for acceptance of instant appeal.
3. That balance of convenience is also in favour of appellant/petitioner.
4. That in case if status- quo order is not passed then the appellant will suffer irreparable loss and the purpose of filing appeal would become infructuous.

It is, therefore humbly prayed that on acceptance of instant application, status- quo order may kindly be granted till final disposal of main appeal.

5

Dated 26/11/2013

Through

(Appellant)

Mohhamad Saeed Zahir

&


Yaseen Afridi

Advocates, Peshawar

AFFIDAVIT:

I, Sajawal Khan(SDM) GHSS Nagri Bala, Tehsil & District Abbotabad ,do hereby solemnly affirm on oath that the contents of the instant application are true and correct to the best of my knowledge and belief and nothing has been concealed from this hon`ble court.

Dated: 26/11/2013


Deponent

Annex A

R.H.S.S. Nagri Bala
STAFF'S ATTENDANCE REGISTER

6

For the month of Aug Year 2013

NO. 4 NO. 10 NO. 11 NO. 12

Name: M. YASEEN ATTIQ I.R. REHMAN SRIJAWAL KHAN M. NASEEM
 Designation: CT SAT S. DM S. PET

Date	Arr.	Sig.	Dep.	Sig.	Arr.	Sig.	Dep.	Sig.	Arr.	Sig.	Dep.	Sig.	Arr.	Sig.	Dep.	Sig.
1	7:15	✓		✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓
2	7:15	✓		✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓
3	7:15	✓		✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓
4																
5	7:15	✓		✓	casual leave				casual leave				7:30	✓	1:00	✓
6	Casual Leave				7:30				7:30				7:30			
7	7:15	✓		✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓
8																
9																
10																
11																
12	7:15	✓		✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓	Casual Leave			
13	7:15	✓		✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓
14	7:15	✓		✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓
15	7:15	✓		✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓
16	7:15	✓		✓	7:30	✓	1:00	✓	casual leave				7:30	✓	1:00	✓
17	7:15	✓		✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓
18																
19	7:15	✓		✓	casual leave				casual leave				7:30	✓	1:00	✓
20	Casual Leave				7:30				7:30				7:30			
21	7:15	✓		✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓
22	7:15	✓		✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓
23	casual leave				casual leave				casual leave				7:30	✓	1:00	✓
24																
25																
26	7:15	✓		✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓
27	7:15	✓		✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓
28	7:15	✓		✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓
29	7:15	✓		✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓
30	7:15	✓		✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓	7:30	✓	1:00	✓
31	7:15	✓		✓	7:30	✓	1:00	✓	casual leave				7:30	✓	1:00	✓

STATEMENT OF LEAVES TAKEN

	Sick	Casual	Pri.	Total	Sick	Casual	Pri.	Total	Sick	Casual	Pri.	Total	Sick	Casual	Pri.	Total
This Month		04	00	04	03	00	00	03	04	11	15	09	00	07	11	09
Previous																
Total																

Dated: _____
 Attested
[Signature]

Head Of Department

①

A 259.02.12.12 A

Address C

②

13

14

Annex BHELD IN ABEYANCE/DENOVU INQUIRY

⑦

In pursuance to the report of SDEO (M) Abbottabad dated 23.8.2013, transfer order of six staff members standing at S.No.1,2,3,5,6&7 were issued on disciplinary ground through Endst: No. 7389-91 dated 10.9.2013 and subsequently corrigendum issued under Endst: No. 7439-44 dated 14.9.2013.

One Mr. Muhammad Naseem SPET under transfer lodged a complaint before the Commissioner Hazara Division regarding impugned transfer order and the Additional Deputy Commissioner Abbottabad conducted inquiry. In result of said inquiry, Deputy Commissioner Abbottabad directed the undersigned to cancel the said transfer order of complainant vide his office Memo: No. 5813-14/PS/2/Misc dated 27.9.2013.

In addition to the above, Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar forwarded the request of aggrieved teachers vide Memo: No. 2610/F.No.153/A-15/CT/DM/A.Abad dated 11.10.2013 regarding cancellation of said transfer order in the light of Parliament House Islamabad letter No. F-1-1/2013/DS/NA dated 18.9.2013.

It will be highly discriminatory and injustice to extend relief to the specific Recommendee of the higher authority as the Constitution of Islamic Republic of Pakistan 1973 enshrines equal opportunity of service benefits. Hence, the transfer order in respect of all those Civil Servants who were transferred in the result of inquiry dated 23.8.2013 issued vide this office Endst: No. 7389-91 dated 10.9.2013 is hereby kept held in abeyance with the direction to aggrieved civil servants to perform their duties as usual.

Moreover, denovo inquiry is hereby ordered. Inquiry Committee consisting of the following Senior Officers is constituted to probe the facts and submit report within fortnight for final decision.

1. Mr. Muhammad Javed, Principal, (B-20) GCMSS Abbottabad (Chairman).
2. Mr. Salahuddin Shah, Principal, (B-19) GHIS No.4 Abbottabad (Member)

M. Javed
DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD

Endst: No. 8821-30 /EB

Dated 21 / 10 /2013

Copy forwarded to:

1. Commissioner, Hazara Division, Abbottabad.
2. Deputy Commissioner, Hazara Division, Abbottabad.
3. Mr. Muhammad Javed, Principal, GCMSS Abbottabad along with copies of all relevant documents.
4. Mr. Salahuddin Shah Principal, GHIS No.4 Abbottabad.
5. District Accounts Officer, Abbottabad.
6. PS to Secretary to Government of Khyber Pakhtunkhwa, E&SE/D Peshawar.
7. PA to Director, E&SE, Khyber Pakhtunkhwa, Peshawar.
8. Principal, GHSS Nagri Bala, Abbottabad.
9. All the teachers concerned.

Attested
Q. Azeed U

M. Javed
DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD

ADJUSTMENT

In pursuance to the recommendation/report of Denovo Inquiry received vide No.226 dated 07.11.2013, the following adjustment/transfer on disciplinary grounds are hereby ordered with immediate effect.

8

S.No.	Name/designation/school	To	Remarks
1.	Mr. Muhammad Yousaf, SCT, GHSS Nagri Bala	GHS Nathia Gali	Against S.No .2 on disciplinary grounds.
2.	Mr. Muhammad Ramzan, SCT, GHS Nathia Gali	GHSS Nagri Bala	Vice S.No.1
3.	Mr. Atiqur Rehman, SAT GHSS Nagri Bala	GHS Ghambeer	Against vacant post on disciplinary grounds
4.	Mr. Sajawal Khan, SDM, GHSS Nagri Bala	GHS Chamahati	Against vacant post on disciplinary grounds
5.	Mr. Muhammad Nasim, SPET, GHSS Nagri Bala	GHS Pattan Khurd	Against vacant post on disciplinary

- Note: 1. As the wife of S.No.01 is Cancer Patient and he is also issue such he is adjusted at nearer Station i.e, GHS Nathia Gali on humanitarian/compensatory grounds.
 2. Charge report should be submitted to all concerned.
 3. This office adjustment order issued under Endst: 189-91 dated 10.09.2013 be treated as cancelled.

DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD

Endst: No. 2150-53 /N.Bala

Dated: 11 / 11 / 2013

Copy forwarded for information to:

1. The Principal, GHSS Nagri Bala, Berote, GHS Nathia Gali, Chamahatti, Bagan, Ghambeer and Pattan Khurd.
2. District Accounts Officer, Abbottabad.
3. PS to Minister E&SED Khyber Pakhtunkhwa, Peshawar.
4. PS to Secretary, Govt. of Khyber Pakhtunkhwa, E&SED Peshawar.
5. PA to Director E&SE Khyber Pakhtunkhwa, Peshawar.
6. PS to Commissioner, Hazara Division, Abbottabad.
7. PA to Deputy Commissioner, Hazara Division, Abbottabad.
8. Assistant programmer, EMIS, Local Office.
9. Teachers concerned

BY: DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD

Attested
[Signature]

مدیریت صاب ڈائریکٹریٹ صاب ایلمنٹری اینڈ سیکنڈری ایجوکیشن لیسٹریٹ ڈائریکٹریٹ

معدن - اپیل پیشوی تبادلہ -

صبا عالی -

مؤدیانہ گزارش ہے کہ مستمیان محمد یوسف S.C.T. شعیق الرضی SAT
سجاد خان SDM - کو گورنمنٹ ایلمنٹری اینڈ سیکنڈری سکول نگری بالہ سے
تبدیل کر دیئے گئے۔

چونکہ ہم 23⁰⁸/₂₀₁₃ کو چھٹی پریقے - حکمی تصدیق برائیل میں سکول
نے کردی ہے۔ اسکے باوجود ہمیں دور دراز سکولوں میں تبدیل کر
دیا گیا ہے۔ ہمیں ایک غلط انکوائری رپورٹ کے تحت (Disciplinary Grounds)
پر تبدیل کیا گیا ہے۔

لہذا جناب والا سے گزارش ہے کہ مورخہ 11¹¹/₂₀₁₃ کو مورخہ تبادلہ 58⁵⁸/₂₀₁₃
کو منسوقی کے احکامات جاری فرمائیں
ہم آپ کے لئے دعا گو ہیں۔

الغاصب

- 1- محمد یوسف S.C.T گورنمنٹ ایلمنٹری اینڈ سیکنڈری سکول نگری بالہ
- 2- شعیق الرضی SAT گورنمنٹ ایلمنٹری اینڈ سیکنڈری سکول نگری بالہ
- 3- سجاد خان SDM گورنمنٹ ایلمنٹری اینڈ سیکنڈری سکول نگری بالہ

Attest
Parent 21

Annex D

(9)

Directorate of Elementary and Secondary
Education Khyber Pakhtunkhwa, Peshawar.
No. 2442 /F.No. 153 /A-15/CT/DM/A/Abad/
Posting/Transfers.
Dated Peshawar the 25/11 /2013.

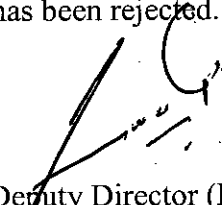
To

1. Mr. Muhammad Yousaf,
S.CT, Govt: Higher Secondary school,
Nagri Bala District Abbottabad.
2. Mr. Sajawal Khan,
S.DM, Govt: Higher Secondary School,
Nagri Bala, District Abbottabad.
3. Mr. Atiq ur Rehman,
S.AT, Govt: Higher Secondary School,
Nagri Bala, District Abbottabad.

SUBJECT:- Appeal for cancellation of transfer order.

Memo:

I am directed to refer to your appeal dated 23.11.2013 on the subject noted above and to inform you that under Section 10 of the Civil Servant act the civil servant is required to serve any where in District. So your appeal has been rejected.


Deputy Director (Establishment)
E&SE, Khyber Pakhtunkhwa Peshawar.

*Attestance
Received 24*

Govt

بعد الت ضد صدر كحتر فحوا كرادكي كاسم



2013ء منجانب
سني اول بنام كمر صر

مورخہ

مقدمہ

دعوی

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعوی اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعوی اور درخواست ہر قسم کی تصدیق

زرائں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یا کٹرفہ یا اپیل کی برآمدگی

اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے

اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے

سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

20

26 ماہ نومبر

المرقوم

العبد العبد العبد

کے لئے منظور ہے۔

مقام