


FORM OF ORDER SHEET

Court of _____

Appeal No. 1796/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	07/09/2023	<p>The appeal of Mr. Muhammad Hamayun received today by registered post through Mr. Khalid Mahmood Advocate. It is fixed for preliminary hearing before touring Single Bench at D.I.Khan on</p> <p>By the order of Chairman</p>  <p>REGISTRAR</p>

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

Service Appeal No. ^{1796/}2023

Muhammad Hamayun

Vs

Govt of KPK Etc

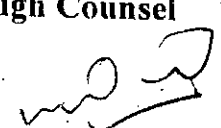
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Yours Humble Appellant

(Muhammad Hamayun)
Through Counsel

Dated: 5/9/2023


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

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Service Appeal No. 1796/2023

Mr. Muhammad Hamayun Management Cadre (BPS 17) Ex-SDEO(M) Paroa District D.I.Khan 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), Dera Ismail Khan.**
5. **Muhammad Ishaq SST (BPS-16) (Teaching Cadre) Government High School Sikandar Janubi D.I.Khan presently serving as SDEO(M) Paroa District D.I.Khan against management post.**

.....**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/SDEO(F) D.I.Khan: DATED 25/05/2023, ISSUED BY THE RESPONDENT NO.2. AND NON DECIDING THE DEPARTMENTAL APPEAL DATED 02.06.2023

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/SDEO (F) D.I.Khan DATED 25/05/2023 BE DECLARED AS VOID AB-INITIO WITHOUT LAWFUL AUTHORITY, AGAINST THE NORMS OF NATURAL JUSTICE AND INEFFECTIVE UPON THE RIGHTS OF APPELANT

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 the appellant is serving as SDEO (M) BPS-17 in education department and remained at different stations as and when directed.
2. That the appellant was lastly transferred and posted as SDEO (M) Paroa District DIKhan vide notification dated 18.11.2021, during his stay at the above-mentioned post, he left no stone unturned to improve the condition of

department. The copy of notification dated 18.11.2021 is annexed as 2

Annexure-A.

3. That while serving as such, the appellant has been prematurely transferred from the post of SDEO (M) Paroa District D.I.Khan vide impugned notification dated 25.05.2023 in which appellant was placed as OSD at directorate while one Mr. Ishaq BPS-16 (**Teaching Cadre**) has been posted vice the appellant as SDEO (M) Paroa District DIKhan. Copy of the impugned notification is annexed as **Annexure-B.**
4. That appellant filed departmental appeal dated: 02.06.2023 against order dated 25.05.2023 (**Annexure-C**) 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 25/05/2023 on inter alia, the following grounds:

GROUND:

- i. That there are two cadre in the education department of Khyber Pakhtunkhwa. First is management cadre who can only be assigned duties relating to management of department whereas the second is teaching cadre, whose duty is to teach student in the school only and they do not have any concern with management of department. In this context Honorable Peshawar High Court vide judgement dated 18/11/2009 in writ petition no 2937/2009 was pleased to observe:

“ As the provincial government has taken a firm decision that all those teachers belonging to teaching cadre shall be posted in education institution to teach the student according to their qualifications while those belonging to administrative cadre shall only hold the post relating to administration therefore, petitioners must deliver according to the policy of government and because they are highly qualified teachers, it is not befitting to hold administrative posts because they are getting benefits but students are suffering, thus they shall go to their respective places, where they are required to do the job- - -“

2. If such statement is correct, then it is clearly in violation of the policy laid down by provincial government, therefore copy of this order be sent to secretary higher education, Government of NWFP and 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.

Copy of the judgement dated 18.11.2009 is enclosed as **Annexure-D**

- ii. That in view of ibid judgement dated 18.11.2009 the establishment department Khyber Pakhtunkhwa Issued letter no SO(E-1)/E&AD/9-88/2019 dated

08.02.2019 (Annexure-E) directing the secretary E&SE and others to implement the said judgement in letter and spirit.

- iii. That the respondent no 2 in utter disregard of judgement dated 18.11.2009 in writ petition no 2937/2009 issued notification no SO(MC) E&SED/4-16/2023/Posting/Transfer/SDEO (F) DIKhan dated 25.05.2023 vide which respondent no 5 teaching cadre BPS-16 has been replaced with petitioner despite the fact that petitioner with BPS-17 belongs to management cadre and no inter-se transfer posting of management and teaching cadre can be made and similarly an employee of teaching cadre cannot be posted in the seat of management cadre.
- iv. That the impugned Notification NO. SO(MC)E&SED/4-16/2023/POSTING/TRANSFER/SDEO (F) D.I.Khan Dated:25/05/2023(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. 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 impugned notification is liable to be cancelled.
- v. That the normal tenure for an officer is 3 years as per rules and policy (Annexure-H) but appellant was prematurely transferred which is against the rules and policy of government. Responded No 5 was posted as SDEO(M)Paroa DIKhan being a teaching cadre official. Hence in the presence and posting of MC officer, he should be removed and may be sent to his original SST post because Management post purely reserved for management Cadre. Responded No 5 is not eligible and fit to work as SDEO (M) Paroa DIKhan.
- vi. 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, "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

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(4)

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 25/5/2023 is liable to be cancelled. The copy of judgment dated 07/08/2019 is annexed as (Annexure-I).

vii. 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 Darazinda by appointing a suitable officer belongs to administrative cadre"(Annexure-J) 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.

viii. That impugned order is violation of judgment 23.12.2022, in service appeal No. 950/2022, the operating pera of ibid Judgment is reproduce as under:

"It is important to note here that official respondent had been directed through various judgments not to intermingle the posts in two cadres and post officials from one cadre to other, the respondent however failed to comply with those directions which is a sorry state of affairs. Is has been noted that the responsible officer themselves defy the rules and policy of the Government. In the case in hand, the administrative department, after posting a teaching cadre employee against the management cadre post, realized that they have violated the policy and rules and hence they rectified it by placing the services of the appellant at the disposal of Directorate of Elementary and Secondary Education" copy of Judgment dated: 23.12.2022 is annexed as "Annexure-K"

ix. That impugned order is also violation of Judgment dated: 26.01.2022, in service appeal No. 7259/2021, the operating pera of ibid Judgment is reproduce as under:

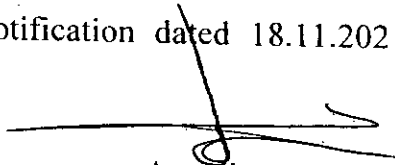
"during the course of arguments, the learned District Attorney was asked whether the appellant as well as private respondent No.4 belong to the teaching cadre or not, but the frankly conceded that both of them belong to teaching cadre, but the impugned transfer order was a stopgap arrangement. Attention of the learned District Attorney was invited to the judgment dated: 18.11.2009 of Peshawar High Court Passed in Writ Petition No: 2937/2009, which has held that it is not befitting for teachers to hold administrative posts because they are getting benefits, but students are suffering; thus they shall go to their respective places. In view of the situation, respondents No. 2 and 3

were put on notice to show cause as to why they have made the posting of officers from the teaching cadre against the post of management cadre, falling which why a formal complaint should not be sent to honorable High Court For initiation of contempt of court proceedings against the concerned authorities in accordance with law. In response, respondents No. 2 and 3 submitted their written stance that due to shortage of officers of management cadre the teaching cadre staff is posted against management cadre purely as a stopgap arrangement, as soon as the deficiency is met out, the management cadre posts will be filled in by the officers of management cadre.” But In instant case respondents have been appointed teaching cadre BPS-16 as SDEO, Paroa Dist: D.I.Khan in presence of management cadre BPS-17 cadre. copy of Judgment dated: 26.01.2022 is annexed as “Annexure-L”


- x. That despite the orders in writ petitions, declaration of this Honorable Court and the order COC passed by this Honorable Court the respondent has been continuing his Service as SDEO and in presence of MC Officer; the teaching cadre was posted against the post of management cadre.
- xi. 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.
- xii. 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 25.05.2023 is therefore nullity in the eyes of law and rights of appellant are required to be protected from the influence of political figures.
- xiii. That the counsel for appellant may be allowed to raise additional grounds at the time of arguments.

It is therefore, humbly prayed that the present service appeal may graciously be allowed as prayed for and thereby the impugned notification dated 25.05.2023 may kindly be cancelled and as result thereof the posting of appellant as SDEO (Male) Paroa D.I.Khan vide notification dated 18.11.2021, may kindly be restored.

Dated: 5/9/2023


Appellant

Through Counsel


Khalid Mahmood

Advocate High Court
Stationed at D.I.Khan

6

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Service Appeal No. /2023

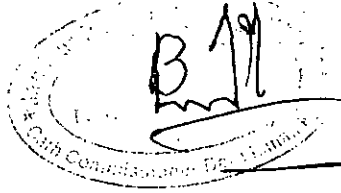
Muhammad Hamayun

Vs

Govt of KPK Etc

AFFIDAVIT

I, Mr. Muhammad Hamayun, MC (BPS-17) 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.



Deponent

5/9/23

1420215335381

Identified by Counsel
KHALID MAHMOOD
Advocate High Court
Stationed at D.I.Khan

(7)

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

CM Petition No. _____/2023

in

Service Appeal No. _____ of 2023

Muhammad Hamayun

Vs

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/SDEO (F) DIKhan:DATED25/05/2023
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 appellant has not been completed therefore in case of non-suspension of impugned notification, the appellant will suffer an irreparable loss.

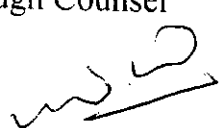
It is, therefore, humbly prayed that on acceptance of the present CM petition, the operation of impugned Notification dated 25.05.2023 may please be suspended and respondents may please be desisted from taking any action detrimental to the service career of appellant till decision of service appeal.

Yours Humble Appellant


Muhammad Hamayun

Through Counsel

Dated: 5 / 9 /2023


Khalid Mahmood,
Advocate High Court

BEFORE THE HONORABLE SERVICE TRIBUNAL,

KHYBER PAKHTUNKHWA

8

CM Petition No. _____/2023

in

Service Appeal No. _____ of 2023

Muhammad Hamayun

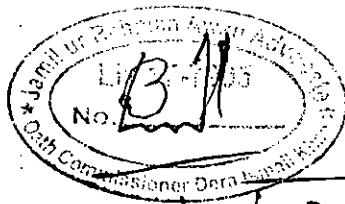
Vs

Govt of KPK Etc.

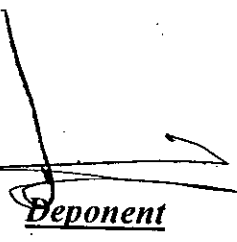
AFFIDAVIT

I, **Mr. Muhammad Hamayun**, MC BPS-170SD, 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.





5/9/23


Deponent

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

Anef (A) (9)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No (91-921111)

Dated Peshawar the November 18, 2021

NOTIFICATION

NO.S0(SME&SED/7-1/2021/PTM) Hamayun SDEO The Competent Authority is pleased to order the transfer of Mr. Muhammad Hamayun, (MC BS-17) SDEO (M) Daraband D.I Khan and post him as SDEO (M) Parova D.I Khan against the vacant post in the best public interest with immediate effect.


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

Ends 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) D.I.Khan
4. District Account Officers, D.I.Khan
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. Officer concerned.
10. Office order file.


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

ATTESTED

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

BETTER COPY

Annex (B)

10

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

Dated: 25th May 2023

Notification

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

Sr No	Name & Designation	From	To	Remarks
1	Muhammad Hamayun MC BS-17	SDEO (Male) Parova D.I.Khan	Services Placed at The disposal of Directorate of E&SE	For further Posting
2	Muhammad Ishaq TC BS-16.	SST GHS Sikandar Janubi D.I.Khan	SDEO (Male) Parove D.I.Khan in OPS	V.S No.1

SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of even No. & date:

Copy forwarded for information to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar
2. Director, E&SE Khyber Pakhtunkhwa Peshawar
3. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
4. Section Officer (Schools Male/Female) E&SE Department
5. District Education Officer (Male/Female) Concerned
6. District Accounts Officer Concerned
7. PS to Minister E&SE Khyber Pakhtunkhwa
8. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa
9. Master File

(Signature)

(IMRAN ZAMAN)
SECTION OFFICER (MANAGEMENT CADRE)

ATTESTED
KHALID MEHMOOD
Advocate High Court
Sialkot

GOVERNMENT OF KHYBER PAKHTUNKHWA
 ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
 MPA House, Civil Secretariat Peshawar
 Peshawar-25000

(W)

NOTIFICATION

Date: 25 May 2023

NO SOI/CE&SED/4-15/2023/Posting/Transfer / SDEO (F) D.I.Khan: The following postings/transfers are hereby ordered with immediate effect, in the best public interest:-

Sr. No	Name & Designation	From	To	Remarks
1	Muhammad Hamayun MO BS-17	SDEO (Male) Parova D.I.Khan	Services placed at the disposal of Directorate of E&SE	For further posting
2	Muhammad Ishaq TC BS-15	SST GHS Sander Jurali D.I.Khan	SDEO (Male) Parova D.I.Khan in OPS	V/S No 1

SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
 E&SE DEPARTMENT

Ends: of even No. & date:

Copy forwarded for information to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
4. Section Officer (Schools Male/Female), E&SE Department.
5. District Education Officer (Male/Female), Concerned.
6. District Accounts Officer Concerned.
7. PS to Minister E&SE Khyber Pakhtunkhwa
8. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa
9. Master file.

Atty. Genl.

(IMRAN ZAMAN)

SECTION OFFICER (Management Coordination)

ATTESTED

 KHALID MEHMOOD
 Advocate High Court
 Peshawar

Secretary, D.I.Khan.

The Chief Secretary,
Khyber Pakhtunkhwa
Peshawar

Amep (C)
12

Subject:

APPEAL AGAINST NOTIFICATION NO: SO(MC) E&SED/4-16/23 POSTING / TRANSFER / SDEO(F) D.I.KHAN DATED: 25.05.2023, WHEREIN THE APPELLANT WAS TRANSFER FROM THE POST OF SDEO (M) PAROA

Honorable Sir,

With profound respect and due veneration, it is very earnestly stated that I was working as SDEO (M) Paroa Management Cadre BS-17, when all of a sudden an SST BS-16 (Teaching Cadre) was transferred at my place, who was recently promoted from the post of TT. I therefore, wish to bring the following points under your kind notice.

1. That I have three times been displaced in the last 5 years before completing my tenure.
2. That this is my fourth time that I have been displaced before completing my tenure:
3. That it is quite unjust that a BS-16 person (Teaching Cadre) is adjusted at my place and I have been placed at the disposal of directorate just because of some political pressure. It is pertinent to mention here that adjustment of Teaching Cadre personal on the post of Management Cadre is violation of the Judgment of Peshawar High Court Writ No: 4274-P/2016, decided on 11.01.2018, Writ No: 3663-P/2012 decided 08.05.2013, Writ Petition No: 3737-P/2019 decided on 22.10.2019, Writ Petition No: 2937-P/2009 decided on 18.11.2009, as well as violation of Judgments of Honorable Service Tribunal in appeal No: 409/2019 decided on 07-08-2019 and Service Appeal No: 345/2019 decided on 10.03.2020.
4. That I have served as ASDEO for ten years and then after proper procedure I had been promoted to the post of SDEO.
5. That my wife is also a Govt Employee in Education department D.I.Khan as well, and due to spouse policy (Husband and wife will be posted in same District). It is really impossible for me to live outside Dera Ismail Khan because no one can take care of my family.
6. Moreover, there is no complaint or enquiries lodged against me, rather all the employees are very much happy with my sincere efforts for the children.
7. According to the Management cadre rules there is no space to adjust a lower scale teaching cadre employee on a post where a suitable management cadre employee is already working.
8. Honorable Court has already given its verdict about such an adjustment and this adjustment is also going against the decision of the Honorable Court and according to Article 224(A) of constitution of Pakistan.

It is therefore very earnestly requested that keeping in view the above-mentioned facts my services might be retained at the post of SDEO (M) Paroa to meet the end of justice. I believe that your good self will help me out and will not let me down.

Dated: 2/6/2023

TESTED
Muhammad Humayyoun Khan
Sub Divisional Education Officer
Stationed at D.I.Khan

Muhammad Humayyoun Khan
Sub Divisional Education Officer,
(Male) Paroa, Dera Ismail Khan.
Cell # 0345-2311133

13

Freight Bill

SHIPPER'S NAME: **DERAISMACHAN**

TO: **...**

WEIGHT: **...**

FEES: **...**

CHARGES

W. Charge: **...**

TOTAL: **...**

NO VALUE DECLARED

COLLECTION INFORMATION

DELIVERY INFORMATION

TERMS & CONDITIONS

ATTESTED

[Signature]

KHALID AL-HAMOOD
 Attorney at Law
 1000 ...

14

Ano

Ano (B)

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.
	18-11-2009	<p><u>W.P No.2937/2009</u> with I.R.</p> <p><u>Present:</u> Mr. Muhammad Amin Khattak Lachi, Advocate, for the petitioners.</p> <p style="text-align: center;">****</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>

RECEIVED

18-11-2009

ATTESTED

(Signature)

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

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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

[Signature]
JUDGE

[Signature]

14 JUN 2022

ATTESTED

[Signature]

KHALID MEHMOOD
Advocate High Court
Gulistan Road D.I. Khan

ATTESTED

[Signature]
KHALID MEHMOOD
Advocate High Court
Gulistan Road D.I. Khan

CC 277
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14/11/09

14/11/09
14/11/09
14/11/09



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Annex (E)
16

NO. SO (E-1)/E&AD/0-08/2010
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,

(SHTIAQ AHMAD)
SECTION OFFICER (Estt. I)

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KHALID AHMAD

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Present: Iftikhar Muhammad Chaudhry, C.J., Mian Shakirullah Jan, Mahmood 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 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

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WALID MEHMOOD
Advocate High Court
stationed at D.I.Khan

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[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, 251-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)

[Signature]

MEHMOOD
High Court
D. Khan

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GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(Regulation Wing)

POSTING / TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT.

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

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Advocate

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) 1-4/2003/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 added vide Urdu circular letter No. SOR-VI(E&AD) 1-4/2003, dated 21-09-2004

KHALID AHMED
Advocate
Stationer & D. L. W. Q.

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Government servants including District Govt. employees feeling aggrieved due to the orders of posting/transfer authorities may seek remedy from the next higher authority / the appointing authority as the case may be through an appeal to be submitted within seven days of the receipt of such orders. Such appeal shall be disposed of within fifteen days. The option of appeal against posting/ transfer orders could be exercised only in the following cases.

- i) Pre-mature posing/transfer or posting transfer in violation of the provisions of this policy.
- ii) Serious and grave personal (humanitarian) grounds.

To streamline the postings/transfers in the District Government and to remove any irritant/confusions in this regard the provision of Rule 25 of the North West Frontier Province District Government Rules of Business 2001 read with schedule - IV thereof is referred. As per schedule-IV the posting/transferring authorities for the officers/officials shown against each are as under:-

S. No.	Officers	Authority
1.	Posting of District Coordination Officer and Executive District Officer in a District.	Provincial Government.
2.	Posting of District Police Officer.	Provincial Government
3.	Other Officers in BPS-17 and above posted in the District.	Provincial Government
4.	Official in BPS-16 and below	Executive District Officer in consultation with District Coordination Officer.

3. As per Rule 25(2) of the Rules mentioned above the District Coordination Department shall consult the Government if it is proposed to:

- a) Transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure.
- b) Require an officer to hold charge of more than one post for a period exceeding two months.

4. I am further directed to request that the above noted policy may be strictly observed / implemented.

All concerned are requested to ensure that tenures of the concerned officers/officials are invariably mentioned in summaries submitted to the Competent Authorities for Posting/Transfer.
(Authority: Letter No. SOR-VI/E&AD/1-4/2003 dated 24-6-2003).

It has been decided by the Provincial Government that posting/transfer orders of all the officers up to ES-19 except Heads of Attached Departments irrespective of grades will be notified by the concerned Administrative Departments with prior approval of the Competent Authority obtained on the Summary. The Notifications/orders should be issued as per specimen given below for guidance.

All posting/transfer orders of BS-20 and above and Heads of Attached Departments (HAD) shall be issued by the Establishment Department and the Administrative Departments shall send approved Summaries to E&A Department for issuance of Notifications.

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KHALID MEHMOOD
Advocate High Court
Stationed

✓ Teaching Cadre should teach in schools + not in adm. posts.

(10)

B (a)

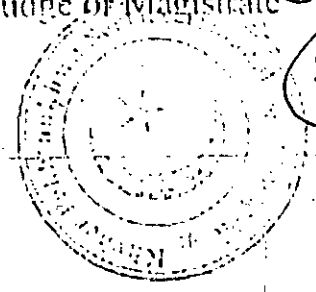
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Sr. No. Date of order/proceeding

Order or other proceedings with signature of Judge or Magistrate

MC vs TE



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 Khan Gul District Tank presently SST/ADEO (Sports), District Education Office, Tank.

Appellant:

Versus

1. Government of Khyber Pakhtunkhwa, through Secretary Elementary & Secondary Education Department, Peshawar.
2. Deputy Secretary (Estab), Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.
3. Director, Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.
4. Assistant Director, Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.
5. District Education Officer, (Maic) Tank.
6. Muhammad Farooq, SST, GHS Umar Adda, Tehsil & District Tank.

Respondents

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

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: Appellant

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 &

AMAZO Advocate High Court Sialkot at D. I. Tank

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07.08.2019

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MC vs TC

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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

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Muzaffar Khan
Relational at DDA Tank

8.10.2019

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

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

PHC
decision

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MC vs TCC

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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.

Ahmad Hassan)
Member

(Muhammad Hamid Mughal)
Member

Certified true copy

ANNOUNCED
05.08.2019

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

AS per
Immediately put up for
6/9/19

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KHALID
Advocate High Court
Stationed at D.I. Khan

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Date of order projecting Order or other proceedings with signature of Judge or Magistrate

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
Service Appeal No. 345/2019

Date of Institution 08.01.2019
Date of Decision 10.01.2020

Atlas Khan son of Habeb 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

10/03/2020 Mr. Muhammad Hamid Mughal ----- Member(A)
Mr. Hussain Shah ----- Member(E)

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 Bahura Sub Division Darazinda District D.I.Khau and posted against the ADEO post in

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KHALID MEHMOOD
Advocate High Court

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


8 In the identical nature Service Appeal bearing No 409/2019 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 Darazinda by appointing a suitable officer belonging to administrative cadre. The present service appeal is disposed of on the above noted terms. Parties are left to bear their own costs. File be consigned to the record room

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M. ALI D. METAWOOD
Advocate High Court
Stationed at P. N.

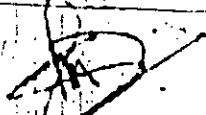

(Hussain Shah)
Member


(Muhammad Hamid Mughal)
Member

ANNOUNCED
10.03.2020

Date of
Number
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By
Date

27-04-2020
16-00
16-00

03-06-2020
03-06-2020


10/03/2020



Amep (K)
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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No. 950/2022

BEFORE: MRS. ROZINA REHMAN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Haleema Bibi (BPS-19) District Education Officer (Female) Chitral Lower, Tehsil and District Chitral Lower. (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa Elementary and Secondary Education Department at Civil Secretariat, Peshawar.
3. The Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar..... (Respondents)

Mr. Sher Hyder Khan, Advocate ... For appellant

Mr. Naseerul Din Shah, Assistant Advocate General ... For respondents

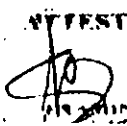
Date of Institution.....	23.06.2022
Date of Hearing.....	23.12.2022
Date of Decision.....	23.12.2022

JUDGEMENT

FAREHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 17.06.2022 whereby the appellant was transferred from District Education Officer (Female) Chitral Lower and her services were placed at the disposal of Directorate of Elementary & Secondary Education, Khyber Pakhtunkhwa. It has been prayed that on acceptance of the appeal, the impugned order to the extent of the appellant

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KHALID MEHMOOD
Advocate High Court

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 KHALID MEHMOOD

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might be set aside and she might be allowed to complete her tenure according to Posting/Transfer Policy, 2009.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant while performing her duties in the respondent department was posted as District Education Officer (Female) Chitral Lower in pursuance of Notification dated 08.02.2022. After assumption of charge, the same posting/transfer notification was held in abeyance vide office order dated 22.02.2022 and subsequently restored on 05.04.2022. After performing her duty for 4 months, the appellant was again transferred vide order dated 17.06.2022 and her services were placed at the disposal of Directorate of Elementary & Secondary Education, Khyber Pakhtunkhwa. Feeling aggrieved, she submitted departmental appeal before the appellate authority on 20.06.2022, which was turned down on 21.06.2022; hence the present appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Assistant Advocate General for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant after presenting the case in detail contended that the appellant throughout her career performed her duties honestly, fairly, efficiently and to the satisfaction of her superiors, specially her tenure of service on the subject post was exemplary and outstanding. Furthermore her excellent services as DEO (Female) Chitral Lower had been

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 KHALID AHMED
 Advocate
 Stationed at

highly appreciated by high ups of the department. He further contended that the impugned transfer order was in violation of Posting/Transfer Policy of the Provincial Government as the appellant was transferred three times within a short span of 04 months without observing the policy on the subject. He argued that the impugned order was against the principle of wedlock policy as husband of the appellant was serving in District Health Office, Chitral Lower. He requested that the appeal might be accepted as prayed for.

5. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, contended that the appellant was adjusted against the post of DEO(F) Chitral Lower for the purpose of smooth functioning of official business of the said district till the arrival of the incumbent from the management cadre for posting against the said post, as the appellant was basically working against the post of Principal in BPS-19, teaching cadre, and was liable to serve in the said capacity for which she had been recruited. He further contended that the post of the District Education Officer was purely a Management Cadre post while the appellant belonged to Teaching Cadre and she had been treated as per law and rules vide notification dated 17.06.2022. He further contended that the post of the appellant was provincial cadre post and as per Section 10 of Civil Servants Act, 1973, she was liable to serve anywhere in the province in exigencies of service. He requested that the appeal might be dismissed with cost

6. Arguments and record presented before us indicates that the appellant is a BPS-19 officer in the teaching cadre of Elementary & Secondary

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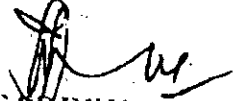
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Education Department. She was serving as Principal, Government Girls High School, Broze, Chitral Lower from where she was posted as District Education Officer (F) Chitral Lower, when that position became vacant, as a stop gap arrangement. The position of DEO (F) is a management cadre post and being an employee of Teaching Cadre, the appellant should not have been appointed against that post. It is important to note here that the official respondents had been directed through various judgments not to intermingle the posts in two cadres and post officials from one cadre to the other. The respondents, however, failed to comply with those directions which is a sorry state of affairs. It has been noted that the responsible officers themselves defy the rules and policy of the Government. In the case in hand, the administrative department, after posting a teaching cadre employee against the management cadre post, realized that they have violated the policy and rules and hence they rectified it by placing the services of the appellant at the disposal of Directorate of Elementary and Secondary Education.

7. For what has been discussed above, we dismiss the appeal in hand. Parties are left to bear their own costs. Consign.

8. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 23rd day of December, 2022


(FAREEHA PAUL)
Member (E)

Certified
true copy.


(ROZINA REHMAN)
Member (J)

ATTESTED

KHALID MEHMOOD
Advocate High Court
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7259/2021

Date of Institution ... 20.08.2021

Date of Decision ... 26.01.2022



Mr. Noor Hassan, (TC BS-19), District Education Officer Mohmand under transfer to Directorate of E&SE, Peshawar for further posting. ... (Appellant)

VERSUS

The Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar and three others. ... (Respondents)

Noor Muhammad Khattak,
Advocate

... For Appellant

Noor Zaman Khattak,
District Attorney

... For official respondents No. 1 to 3

Javed Iqbal Gulbela,
Advocate

... For private respondent No. 4

AHMAD SULTAN TAREEN
ATIQ-UR-REHMAN WAZIR

... **CHAIRMAN**
... **MEMBER (EXECUTIVE)**

ATTESTED

MUSLIM MESMOOD
Advocate High Court
Peshawar D.I. Khan

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are

that the appellant, while serving as Teacher in Education Department was transferred and posted as District Education Officer (DEO) District Mohmand vide order dated 22-09-2020. The appellant accordingly assumed the charge and started performing his duty, but in the meanwhile, the appellant was again transferred and his services were placed at the disposal of Directorate of education for further posting and respondent No. 4 was posted as DEO Mohmand vide order dated 29-06-2021. Feeling aggrieved, the appellant filed departmental appeal, which was not responded within the stipulated timeframe, hence the instant service appeal with prayers that the Impugned order dated 29-06-2021

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may be set aside and the appellant may not be transferred from the post of DEO District Mohmand.

02. Learned counsel for the appellant has contended that the impugned transfer order is against law, facts and norms of natural justice, hence not tenable and liable to be set aside; that the appellant has not been treated in accordance with law, as such the respondents violated Article-4 and 25 of the Constitution; that the impugned order has been passed in arbitrary and malafide manner, whereas the authority was bound to apply its judicial mind and the powers in this regard should not be exercised in an arbitrary manner. Reliance is placed on 2014 PLC (CS) 999; that the impugned order is politically motivated and was made on the recommendations of MNA of the constituency in violation of clause 2 of posting transfer policy; that whenever there were statutory provisions or rules or regulations which governed the matter of posting/transfer of employees, the same must be followed, honestly and scrupulously. Reliance was placed on PLD 2013 SC 195; that the impugned transfer order is pre-mature and in violation of clause 4 of posting/transfer policy, whereas the appellant was required to complete his normal tenure against the post of EDO Education, but the appellant was not allowed to complete his tenure, which shows malafide on part of the respondents; that the appellant is on the verge of retirement and as per rule, he was required to complete his tenure until his retirement; that transfer/posting shall be made in accordance with provisions of transfer/posting policy in the best interest of public service, whereas the impugned transfer order was not made in the public interest, rather it was made on whim and wish of the respondents and the respondents cannot justify their illegal, unlawful and motivated orders passed at the behest of influential persons and the apex courts has invariably viewed with disfavor the postings and transfer of public servants every few months. Reliance was placed on 2014 PLC (CS) 1045; that the appellant was transferred within a period of seven months, if there was any complaint against the appellant,

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authorities were competent under the law to proceed against appellant, but mere pre-mature transfers would not serve the purpose. Reliance was placed on 2015 PLC(CS) 1035.

03. Learned District Attorney for official respondents has contended that the appellant belong to teaching cadre and was posted against management cadre post as stop gap arrangement; that the appellant was transferred from the post of DEO through proper procedure without any political intervention; that in light of recommendations of placement committee issued vide order dated 25-10-2013, the department placed three candidates through summary to chief minister and in term of Rule-17(1) and (2) read with schedule-III of the Rule of Business, chief minister is the competent authority for posting/transfer of officers in BPS-18 and above; that departmental appeal of the appellant was processed and opportunity of personal hearing was afforded to the appellant, wherein he himself had withdrawn his appeal and has requested for adjustment elsewhere; that the impugned order has been issued in the interest of public service and respondent No. 4 has been adjusted due to his competency; that the appellant is in BPS-18, whereas the respondent No 4 is in BPS-19 and the post of DEO is in BPS-19, hence the respondent No 4 was rightly posted against the post of DEO; that as per section 10 of Civil Servant Act, 1973, the appellant is liable to serve anywhere in the province; that the appellant is not an aggrieved person, hence the instant appeal may be dismissed.

04. Learned counsel for private respondent No. 4 has contended that neither the impugned transfer order is politically motivated nor the said MNA has ever issued a letter in this regard for such transfer; that the MNA concerned has recorded his statement on affidavit that neither he has written down any letter, nor has ever signed the same, but the appellant has misused his letter head in an illegal manner just to mislead the august tribunal; that the appellant in his departmental appeal has never mentioned a single word about the transfer as

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SECRETARY

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politically motivated, but have mentioned the same in service appeal, which means that the letter so annexed is false and fabricated one; that ordinarily transfer and posting could not be claimed as a matter of right and only government could determine as to which officer was suitable for which place. Reliance was placed on 2013 PLC (CS) 864 and 1991 PLC (CS) 374; that as per section 10 of Civil Servant Act, 1973, the appellant was bound to serve anywhere within province as per discretion of the employer. Reliance was placed on 2016 PLC (CS) 920; that civil servant could not claim posting at a particular station or at the place of his choice. Reliance was placed on 2004 PLC (CS) 705.

05. We have heard learned counsel for the parties and have perused the record.

06. During the course of arguments, the learned District Attorney was asked whether the appellant as well as private respondent No. 4 belong to the teaching cadre or not, but he frankly conceded that both of them belong to teaching cadre, but the impugned transfer order was a stopgap arrangement. Attention of the learned District Attorney was invited to the judgment dated 18-11-2009 of Peshawar High Court passed in Writ Petition No. 2937/2009, which has held that it is not befitting for teachers to hold administrative posts because they are getting benefits, but students are suffering; thus they shall go to their respective places. In view of the situation, respondents No. 2 and 3 were put on notice to show cause as to why they have made the posting of officers from the teaching cadre against the post of management cadre, failing which why a formal complaint should not be sent to honorable High Court for initiation of contempt of court proceedings against the concerned authorities in accordance with law. In response, respondents No. 2 and 3 submitted their written stance that due to shortage of officers of management cadre, the teaching cadre staff is posted against management cadre purely as a stopgap arrangement, as soon as the

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KHALID MUHAMMAD
Advocate High Court

ATTENDED

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deficiency is met out, the management cadre posts will be filled in by the officers of management cadre. Reply to this effect was considered satisfactory.

07. Record reveals that the appellant as well as respondent No. 4 belong to teaching cadre. The appellant is in BPS-18, whereas the respondent No. 4 is in BPS-19. We have observed that posting of the appellant against the post of DEO was made as a stopgap arrangement and the appellant being a teaching cadre staff cannot claim his transfer against a management cadre post as a matter of right. On the other hand transfer of respondent No. 4 against the post of DEO was made after approval of the competent authority and the transfer order did not suffer from any infirmities nor had been passed in flagrant violation of any principle and same could not be struck down.


08. Departmental appeal of the appellant was processed by the respondents and the appellant was afforded appropriate opportunity of personal hearing. During personal hearing, the appellant had withdrawn his appeal and requested for his adjustment against vacant post at Becket Ganj No. 2 Mardan or Shahbaz Garhi Mardan. The appellant also repeated the same stance before the Tribunal. We have noticed that the appellant was transferred but was left without any posting, such matter would need consideration being a matter involving fundamental principles, hence the respondents are directed to post him in his home district, particularly keeping in view his health condition.

09. The instant appeal is disposed of on the above terms. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
26.01.2022

ATTESTED
KHAJANAH


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



KHALID MEHMOOD

Advocate
bc-15-5415
Date of issue: November 2022
Valid upto: November 2025



وکالت

Secretary
KP Bar Council

کورٹ فیس

بعدالت جناب جسٹس خواجہ سرور نے ٹریبلٹ اور
منجانب ریپبلک
شہیدوں بنام گورنمنٹ پاکستان
دعویٰ یا جرم
تفصیل دعویٰ یا جرم

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے پیرہی دستاویزی برائے پیشی یا تفسیر مقدمہ بمقام
حاکم کورٹ

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے، کہ میں ہر پیشی پر خود بذریعہ اختیار حاصل رو برو عدالت حاضر ہونا ہوں گا۔ اور ہر وقت پکارے جانے مقدمہ وکیل صاحب
موصوف کو اطلاع دیکر حاضر عدالت کروں گا، اگر پیشی پر منظر حاضر نہ ہوں اور نہ
انہ کی کسی طرح ذمہ دار نہ ہوں گے، نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کسی جگہ یا پکھری کے اوقات سے پہلے یا چھپے یا بروز تعطیل بیروی کرنے کے
ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کسی جگہ یا پکھری کے اوقات سے پہلے یا چھپے یا بروز تعطیل بیروی کرنے کے ذمہ دار نہ
ہوں گے۔ اور مقدمہ صدر پکھری کے علاوہ اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے چھپے پیش ہونے پر منظر کو کوئی نقصان پہنچے تو اس کے ذمہ
دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا عائدہ واپس کرنے کے بھی موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پروا خط صاحب موصوف مل کر وہ
ذات خود منظور و قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ، یا جواب دعویٰ یا درخواست اجراءے ڈگری و نظر جانی اپیل جمرانی و ہر قسم درخواست پر دستخط و تصدیق کرنے کا
بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور اس پر تائیدی یا راضی نامہ و فیصلہ بر
حلف کرنے، و اقبال دعویٰ کا بھی اختیار ہوگا۔ اور بصورت مقرر ہونے تاریخ پیشی مقدمہ مذکورہ ہیروان از پکھری صدر بیروی مقدمہ مذکورہ نظر جانی و اپیل و جمرانی و آبدکی
مقدمہ یا منسوخی ڈگری یکطرف یا درخواست حکم استثنائی یا قرقری یا گرفتاری قتل از فیصلہ اجراءے ڈگری بھی صاحب موصوف کو بشرط ادا ملکی علیحدہ عین بیروی کا اختیار ہوگا
اور تمام ساختہ پروا خط صاحب موصوف مل کر وہ ذات خود منظور و قبول ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکورہ یا اسکے کسی جزو
کی کارروائی یا بصورت درخواست نظر جانی اپیل یا جمرانی یا دیگر معاملہ مقدمہ مذکورہ کسی دوسرے وکیل یا پیر مشر کو اپنے بجائے یا اپنے ہمراہ مقرر کریں۔ اور ایسے مشیر قانون کو
بھی ہر امر میں وہی اور ویسے اختیارات حاصل ہوں گے، جیسے صاحب موصوف کو حاصل ہیں، اور دوران مقدمہ میں جو کچھ ہر جانہ التزام پڑے گا، وہ صاحب
موصوف کا حق ہوگا۔ مگر صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی بیروی نہ کریں اور ایسی
صورت میں میرا کوئی مطالبہ کسی حکم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

مورخہ 5 ستمبر 2022

مضمون وکالت نامہ من لیا ہے۔ اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

العبد العبد العبد

Accepted
شہیدوں - ایسٹرنٹ
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