

29/9/2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

SERVICE APPEAL # 1367/2023

Diary No. 7559

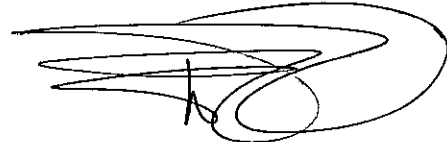
Mr. Farid Ullah Shah, SSS-Biology (BPS-18).....Appellant, Dated 15-9-2023

VERSUS

Govt: of Khyber Pakhtunkhwa & Others.....Respondents.

I N D E X

S#	Description of Documents	Annex	Pages
1.	Affidavit	A	1
2.	Authority Letter	B	2
3.	Para-wise comments/reply	C	3-4
4.	Annexures	D	5-10



Dependent

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BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

Service Appeal # 1367/2023

Mr. Farid Ullah Shah, SSS-Biology (BPS-18).....Appellant

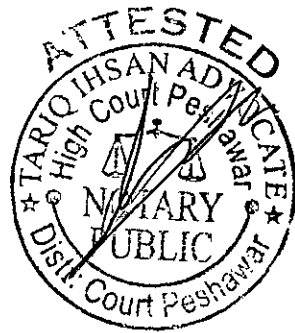
VERSUS

Govt. of Khyber Pakhtunkhwa & others..... Respondents

AFFIDAVIT

I, Mr. Amjad Ali, Section Officer (Litigation-II) Elementary & Secondary Education, Department do hereby solemnly affirm and declare that the contents of the accompanying para-wise comments, submitted by the respondents, are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

It is further, stated on oath that in this appeal the answering Respondents have neither been placed ex-parte nor has their defense been struck off.



DEPONENT

A handwritten signature in black ink, appearing to be "Amjad Ali", written over a horizontal line.

Mr. Amjad Ali
Section Officer (Lit-II)
E&SE Department Peshawar

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Block "A" Civil Secretariat, Peshawar

Phone No. 091-9211128

AUTHORITY LETTER

It is certified that **Mr. Fahim Ullah, Legal Representative (Litigation-II)** Elementary & Secondary Education Department, Govt: of Khyber Pakhtunkhwa, Peshawar is hereby authorized to submit parawise comments on behalf of Secretary Elementary & Secondary Education Department Peshawar in Service Appeal No. **1367/2023** Case Titled **Mr. Farid Ullah Shah, Senior Subject Specialist-Biology (BPS-18)** vs Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.

Mr. Amjad Ali
Section Officer (Lit-II)
E&SE Department Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

In Service Appeal No. 1367/2023

Mr. Farid Ullah Shah.....Appellant.

VERSUS

Chief Secretary to Govt of KPK Peshawar..... Respondents.

PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS NO.01 & 02

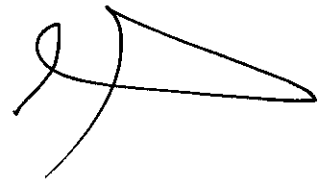
Respectfully Sheweth,

Preliminary Objections:

1. The appellant has not come to the Tribunal with clean hands.
3. The appellant is not an aggrieved person nor has any locus standi to file the present appeal.
4. That the appellant has concealed material facts from this Tribunal.
5. That the appellant is estopped by his own conduct to file the present appeal.
6. That the present appeal is against the prevailing law and rules.
7. That the appellant is not entitled for any relief, he has sought from this Honorable Tribunal.
8. That the present appeal is liable to be dismissed being devoid of any merits.
9. That the present appeal is barred by law and hence not maintainable.

On FACTS

1. Pertains to record.
2. Pertains to educated record of the appellant.
3. Incorrect, the application dated 21-02-2023 is an accordance with law and in public interest. There is no political involvement, illegality and malafide on the part of the respondents. The appellant is a public servant and the respondents has acted u/s 10 of the Civil Servant Act, 1973.
4. Para No-04 alongwith sub para (a) to sub para (b) are incorrect, hence denied. The appellant is duty bound to serve anywhere, wherever he may be given the task by the competent authority in the public interest.
 - a. Sub para (a) pertains to record.
 - b. Sub para (b) is incorrect hence denied. Proper approval has been taken from the Election Commission of Pakistan.
 - c. Sub para (c) is incorrect hence denied, the appellant has been sent back/transferred to his previous place of posting after settlement and adjustment by filling all the vacant positions.
 - d. Para (d) is incorrect, hence denied.

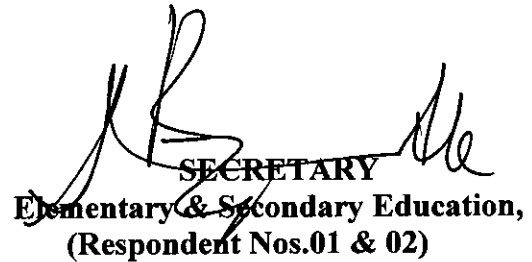


- 4
5. Para-05 is incorrect, the appellant is not an aggrieved person, therefore his representation has been regretted.
 6. Para-06 is incorrect, as replied above.
 7. Para-07 along all the grounds of appeal are incorrect.

On Grounds:

- A. Incorrect, the impugned order is an accordance with law and noting is unlawful and illegal in the said Notification.
- B. Incorrect, hence denied order dated 21-02-2023 is in best public interest.
- C. Incorrect, the order dated 21-02-2023 is issued after the approval of Election Commission of Pakistan.
- D. Incorrect and misleading hence denied.
- E. Incorrect, the detail reply has been given above.
- F. Incorrect, no wrong has been done to the appellant.
- G. Incorrect, there is no discrimination with appellant rather the appellant is duty bound to obey the orders of superiors in the best public interest.
- H. Incorrect, hence denied.
- I. Incorrect, the respondents seeks permission to raise grounds at the time of arguments.

It is therefore, most humbly requested that the appeal in hand may kindly be dismissed with cost.


SECRETARY
Elementary & Secondary Education,
(Respondent Nos.01 & 02)



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GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Block-A Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 991-9222222 Email: sschoolmale@gmail.com

Dated Peshawa 27th December 2022

NOTIFICATION

NO.SO(SM)E&SED/5-17/2022/PT/SS: The posting/transfer of the following Officers are hereby ordered with immediate effect. In the best public interest:-

S #	Name & designation	From	To
1.	Mr. Tariq Aziz Khan SS (Biology) BS-17	GHSS Lalozai Bannu	GHSS Landiwa Lakki Marwat
2.	Mr. Shalil Nawaz SS (Biology) BS-17	GHSS Ismail Khel Bannu	GHSS Lalozai Bannu
3.	Mr. Farid Ullah Shali SSS (Biology) BS-18	GHSS Norer Bannu	GHSS Ismail Khel Bannu
4.	Mr. Israr Khan SS (Biology) BS-17	GHSS Raniak D.I.Khan	GHSS Norer Bannu Vice S No 3.
5.	Mr. Khushdil Khan SS (Biology) BS-17	GHSS Landiwa Lakki Marwat	GHSS Naseeb Nawaz as V/Principal BS-18 in OPS

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst of even No & Date

Copy forwarded to the:

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

27/12/22
SECTION OFFICER (SCHOOLS MALE)



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**GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT**

Block "A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 071 5222522, Email: schoolmate@gmail.com

Peshawar, Dated: 21st February 2023

NOTIFICATION

NO SO(SM)ESSED/5-17/2023/PT/SS: Consequent upon the approval of the Competent Authority and subsequent NOC from the Election Commission of Pakistan, the following postings/transfer are hereby ordered with immediate effect, in the best public interest:-

S #	Name & designation	From	To
1	Mr. Shalil Nawaz SS (Biology) BS-17	GHSS Lalozai Bannu.	GHSS Ismail Khel Bannu
2	Mr. Tariq Aziz Khan SS (Biology) BS-17	GHSS Landiwa Lakki Marwat	GHSS Lalozai Bannu.
3	Mr. Farid Ullah Shah SS (Biology) BS-17	GHSS Ismail Khel Bannu	GHSS Norer Bannu
4	Mr. Israr Khan SS (Biology) BS-17	GHSS Norer Bannu	GHSS Ramak D.I. Khan

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

Encls of even. No & Date

Copy forwarded to the:

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

Handwritten signature and date
21.2.23

**(NASEER ABBAS KHALIL)
SECTION OFFICER (SCHOOLS MALE)**



Secretary,
Constitution Avenue, G-5/2
Islamabad, 9th February, 2023.



The Provincial Election Commissioner,
Khyber Pakhtunkhwa,
Peshawar.

Subject - **RELAXATION OF BAN ON POSTING / TRANSFER.**

Dear sir,

I have the honor to refer to your letter No. F3(1)/2023-Elc (PEG) dated the 3rd February, 2023 and to say that the Hon'ble Commission has been pleased to allow all transfer/posting. The detail is as under:-

S. No	Department	Letter No. / Date
1.	Elementary & Secondary Education Department	No. SO (MC) E&S ED/16/2023/Posting/transfer Dated: 30th January, 2023
2.	Medical Teaching Institution	No. E9/BOC/MTI January, 2023
3.	Establishment Department	No. SO/E-1/E&A/D3-1/2023 Dated: 30th January, 2023
4.	University of Haripur	F.No.2(1) UH/Rcg/Est/2023/120 Dated: 30th January, 2023
5.	University of Agriculture, D.I. Khan	No. SR/Est/UA/DIK/2023 Dated: 31st January, 2023 No. SO(SM)BAS/S-17/2023/P/SS
6.	Elementary and Secondary Education Department	No. SO (MC) E&S ED/16/2023/Posting/transfer Dated: 31st January, 2023
7.	Institute of Management Sciences, Director	No. IM Science/Est/2023/1915 Dated: 3rd February, 2023

2. It is therefore, requested that quarter concerned may be informed accordingly.

Yours sincerely,

(Taqdir Iqbal)
Deputy Director (Election-II)

ELECTION-II BRANCH
By No. 29
Date: 09-02-2023

Hon'ble Member (KPK)

(KASHIF ABBAS MALIK)
Deputy Director (Elections)

Sr. no	Letter no	Dated
01	No. SO (MC)/E&SSED/4-16/2023/posting/transfer	30 th January, 2023
02	No. SO (MC)/E&SSED/4-16/2023/posting/transfer	31 st January, 2023
03	No. SO (SM)/E&SSE/5-17/2023/PT/ISS	31 st January, 2023

I am directed to attach herewith Election Commission of Pakistan, Islamabad letter No.F.10 (1)/2023-Elec-II dated 9th February, 2023, wherein the Hon'ble Election Commission has been pleased to accede to your request of transfer/posting, as mentioned in your below mentioned letters.

RELAXATION OF BAN POSTING /TRANSFER - Subject:

The Section Officer (Management Cadre)
Elementary and Secondary Education Department,
Govt. of Khyber Pakhtunkhwa

To,



OFFICE OF THE
PROVINCIAL ELECTION COMMISSIONER
KHYBER PAKHTUNKHWA

Shaml Road Peshawar, Cantt.
February 10, 2023

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Subject: -

Main file is already under Submission

Pages 1-62 / (Corr... (PUC)

RELAXATION OF BAN ON POSTING / TRANSFER.

PUC is a letter received from Provincial Election Commissioner, Khyber Pakhtunkhwa, embodying letters & enclosures received from different quarters wherein he has submitted the requests for grant of NOC for transfer/posting/ promotion cases & appointments as per following detail:-

S. No	Department	Letter No. / Date	Details	Remarks
1.	Elementary & Secondary Education Department	No.SO.(MC) E&SED/4-16/2023/Posting/transfer Dated: 30 th January, 2023	Annex-A	(i) Request for actualization of 264 promotion cases of teaching cadre from BS-17 to BS-18 Male (ii) Request for actualization of 69 promotion cases of teaching cadre from BS-18 to BS-19 Male (iii) Request for actualization of 15 promotion cases of teaching cadre from BS-18 to BS-19 Female (iv) Request for actualization of 13 promotion cases of management cadre from BS-17 to BS-18 Male (v) Request for actualization of 15 promotion cases of management cadre from BS-17 to BS-18 Female (vi) Request for Posting/ Transfer of District Election officer (Male/ Female) (vii) Request for Posting/ Transfer of District Election officer (Male/female) (viii) Request for Posting/ Transfer of District Election officer (Male) Mardan.
2.	Medical Teaching Institution Mardan.	No: 89/BOG/MT I Dated: 30 th January, 2023	Annex-B	Already under submission for approval
3.	Establishment Department	No. SO(E-1)/E&AD/3-1/2023 Dated: 30 th January, 2023	Annex-C	Request for the services of Mr. Usman Yaqoob (SG BS-21) for posting under the Government of Khyber Pakhtunkhwa.
4.	University of Haripur	F.No.2(3) UH/Reg/Estb /2023/120 Dated: 30 th January, 2023	Annex-D	Request for lifting of Ban on appointments
5.	University of Agriculture, D.I. Khan	No. 58/Reg/UAD /DIK/2023 Dated: 31 st January, 2023	Annex-E	Permission to convene Selection Board/ Selector. Committee meeting (s) of Teaching and Non-Teaching Positions.

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6.	Elementary and Secondary Education Department	No.SO(SM) E&SE/S-17/2023/PT/SS Dated: 31 st January, 2023	Annex-F	NOC for Posting/ Transfer
		No. SO (MC) E& SED/4-16/2023/Post ing/transfer Dated: 31 st January, 2023	Annex-G	NOC for Posting/ Transfer
7.	Institute of Management Science, Director	No. IM Science/Estt/ 2023/1915 Dated: 2 nd February, 2023	Annex-H	Approval for continuing the selection process of faculty members and non-Teaching Staff

2. It is pertinent to mention here that ECP has imposed ban on transfer/posting in term of clause 2 (e) (f) of section 230 of the Elections Act, 2017 vide clause (c) & (d) of the notification dated 22nd January, 2023 in respect of province of Punjab & Khyber Pakhtunkhwa where caretaker setup is in field.

Section 230 (2) (e) "make promotions or major appointments of public officials but may make acting or short term appointment in public interest;

Section 230 (2) (f) "transfer public officials unless it is considered expedient and after approval of the Commission; and

3. In view of the above narration following two options are being proposed for consideration of the Hon'ble Commission: -

i The permission may be granted for promotion cases, NOC for posting/ transfer & appointments to concerned departments.

Or

ii Permission may not be granted.

4. Submitted for appropriate orders, please.


(Rizwana Latif)
Assistant Director (Election-II)
08-02-2023