

BEFORE THE HONOURABLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 1635/2023

Diary No. 7561

Dated 15/9/23

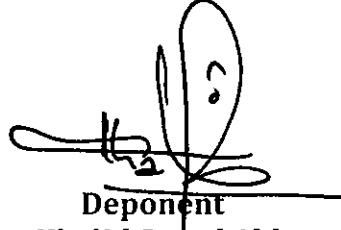
Muhammad Bilal

VS

Government of KPK

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Deponent

Dr. Khalid Saeed Akbar

12101-0899674-5

0343-903-3399

01

BEFORE THE HONOURABLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 1635/2023

Muhammad Bilal VS Government of KPK

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS

Respectfully Sheweth

- 1) That the appeal is not maintainable and incompetent in the eyes of Law in the present form.
- 2) That the appellant is estopped due to his own conduct to file this appeal.
- 3) That the appellant has got no cause of action and locus standi to file instant appeal.
- 4) That the appellant has not come to the Tribunal with clean hands and has suppressed all relevant facts.
- 5) That the appeal is bad for mis-joinder and non-joinder of necessary parties.
- 6) That the appeal filed by the Appellant is pre mature and the appellant has concealed the material facts from Honourable Tribunal.
- 7) That the Honourable Service Tribunal has no jurisdiction to entertain the instant appeal in its present form.
- 8) That the appeal has been mis-oriented, mis-constructed and mistakenly drawn and is incompetent in its present form and context, and is liable for Rejection.
- 9) That the appeal is weak having no force, fabricated, fictitious, based on ill will, malafide and having no footings in the eyes of law.
- 10) That as per Section 10 of Civil Servants Act, 1973, every Civil Servant shall be liable to serve anywhere within or outside the province.
- 11) That proceeding with the instant appeal would be a futile exercise and just wastage of the precious time of this Honourable Tribunal.
- 12) That as stated in the objections supra, the appeal is bereft of cause of action and is liable for dismissal.

Objections on Facts

- 1) This para is correct. That the appellant is employee of the respondents department and worked as ADEO (P&D) since 11.06.2021.

- 2) Incorrect / not admitted. The appellant was transferred from the post of ADEO(P&D) to the post of SST GMS Wanda Umer Khan. The appellant had completed his normal tenure on the post of ADEO(P&D). The appellant had worked as ADEO(P&D) more than 25 months. The worthy Director E&SE KP Peshawar had been please to transfer the appellant to the post of Head Master GMS Wanda Umer Khan. The act of the respondent department was according to the law, rule and policies of the Government. The Appellant is a Civil Servant and as per Section 10 of Civil Servants Act, 1973, "Any Civil Servant shall be liable to serve anywhere within or outside the province in any post under the Federal Government or any Provincial Government".
- 3) This para is correct. The present appellant filed departmental appeal before the worthy Secretary E&SE Department (respondent No. 1) and the respondent No. 01 had been pleased to dismiss the appeal of the appellant being devoid of merit. As discussed in the above para the appellant had completed his normal tenure about 25 months, therefore appellant was transferred vide Notification dated 14.07.2023.
- 4) This para need verification.
- 5) Incorrect / not admitted. The transfer order of the appellant was justified in eye of law; the appellant is not an aggrieved person. The service appeal of the appellant is an exercise in futility. Further proceeding in this regard would bear no fruit. It is, therefore, requested to this Honourable Tribunal to dismiss the Service Appeal of the appellant with cost.

Objections on Grounds

- A. Incorrect / not admitted. The act of the respondents was according to law, based upon the natural principle of justice. No discrimination had been made with the present appellant. The Notification dated 14.07.2023 was according to law and policies of the Government. The appellant was adjusted against the post of SST.
- B. Incorrect and not admitted. Strongly denied. The appellant did not have any right of posting as ADEO(P&D). The appellant was transferred to the post of SST/HM GMS Wand Umar Khan. As the appellant belong to the Teaching Cadre, hence appellant was rightly transferred vide Notification dated 14.07.2023.
- C. Incorrect / not admitted. Strongly denied as discussed above.

- D. Incorrect / not admitted. The appellant was transferred to the post of SST, the transfer of an officer is not discrimination with him. Therefore, no discrimination had been made with the present appellant. Transfer is the part of job, therefore, appellant should not have any objection on his transfer such like he was transferred to the post of ADEO(P&D) and he did not have any objection. Hence the claim of the appellant is against the law and did not sustainable in the eye of law.
- E. Incorrect, hence denied. The stance of the appellant is having no truth and is totally false and fictitious. This act of the respondents cannot be declared against the law on any ground whatsoever but the straight away rejection of present Service Appeal.
- F. Incorrect, and denied. The Appellant was transferred in the public interest by the Competent Authority after fulfilling all legal and codal formalities; therefore, the appellant has got no cause of action or locus standi to file the present service appeal for his grievances before this Honourable Tribunal.
- G. Incorrect / not admitted. The maximum tenure is three year, it is further added that any officer can be transferred to the any post within the province or outside the province.
- H. The counsel for respondents may kindly be allowed to raise additional grounds at the time of arguments.

Pray

It is, therefore, requested to this Honourable Tribunal to dismiss the Service Appeal of the appellant because the Service Appeal of the appellants is only an exercise in futility as the appellant was transfer to the post of SST/HM in the best public interest.

Secretary
 Elementary & Secondary Education Department
 Khyber Pakhtunkhwa Peshawar

Director
 Elementary & Secondary Education
 Khyber Pakhtunkhwa Peshawar

District Education Officer
 (M) Dera Ismail Khan

Verified
District Attorney
D.I. Khan

BEFORE THE HONOURABLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 1635/2023

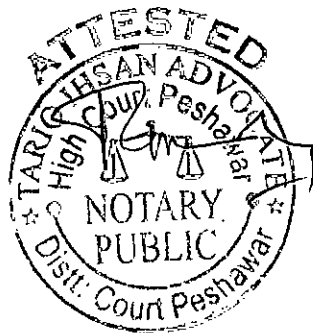
Muhammad Bilal

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Affidavit

I, Dr. Khalid Saeed Akbar representative of Elementary & Secondary Education Department KPK Peshawar do hereby solemnly affirm and declared on oath that the contents of above mentioned service appeal are correct to the best of my knowledge and nothing had been concealed from this Honourable Tribunal.



A handwritten signature in black ink, appearing to be "Dr. Khalid Saeed Akbar", written over a horizontal line.

Deponent
Dr. Khalid Saeed Akbar
12101-0899674-5
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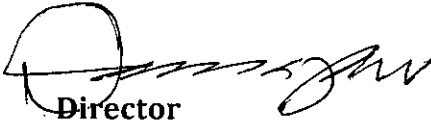
Authority

I, Director E&SE KP Peshawar Respondent No. 3 do hereby authorized Dr. Khalid Saeed Akbar representative of respondents department to attend this Honourable Service Tribunal KPK Peshawar on behalf of respondents in connection with submission of para wise comments and till the decision of the

service appeal.

It is further stated on other than in this appeal the answering respondent have neither been placed on part nor had been elefame struck off.

Respondent No.2



Director

Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 091-9223588

No. SO (MC)E&SED/4-16/2022/dept. Appeal/M.Bilal
Dated: 9th August 2023

To

Muhammad Bilal ADEO (P&D)
District D.I.Khan

Subject: - **DEPARTMENTAL APPEAL FOR CANCELLATION OF NOTIFICATION**
DATED 14.07.2023

I am directed to refer to your appeal, on the subject noted above and to state that the competent authority has examined and regretted your appeal regarding cancellation of transfer order dated 14.07.2023.

(IMRAN ZAMAN)

SECTION OFFICER (Management Cadre)

Copy for information to the: -

PS to Secretary E&SE Department, Khyber Pakhtunkhwa.

SECTION OFFICER (Management Cadre)

Section Officer (Management Cadre)
Elementary & Secondary Edu. Dept.
Govt. of Khyber Pakhtunkhwa



DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER PAKHTUNKHWA PESHAWAR

NOTIFICATION:

Consequent upon the relaxation of ban on posting/transfer inside the district accorded by the Competent Authority as per para-3 of the letter issued vide No. SO (SM) E&SE/D/5-17/2023 Peshawar dated 12-06-2023 and approval of the Competent Authority (Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar), the transfer/posting of the following officers/officials are hereby ordered in their own pay & scale (s) with immediate effect in the best interest of public service.

| SN | Name & Designation | From | To (posted as) | Remarks |
|----|--------------------------|--|--|-------------|
| 1 | Muhammad Ehsan Khan SST | Services placed at the disposal of DEO (M) D.I. Khan | ASDEO (M) Circle Chodwan D.I. Khan | Vice S.No.2 |
| 2 | Mr. Arjumand Khan SST | ASDEO (M) Circle Chodwan D.I. Khan | Services placed at the disposal of DEO (M) D.I. Khan | |
| 3 | Muhammad Rasheed SST (G) | GMS Wanda Umar Khan | ADEO (P&D) at the DEO (M) D.I. Khan | Vice S.No.4 |
| 4 | Muhammad Bilal SST | ADEO (P&D) at the DEO (M) D.I. Khan | GMS Wanda Umar Khan | Vice S.No.3 |

TERMS & CONDITIONS:

1. Posting/Adjustment of Teaching Cadre Officer shall be considered as stop-gap arrangement till the arrival of Management Cadre officer.
2. The order of the above named SSTs will be effective subject to the condition that they will give an undertaking/affidavit on legal paper/stamp paper to DEO (M) D.I. Khan to the effect, that he will not claim seniority of Management Cadre.
3. Charge Report should be submitted to all concerned.
4. No TA/ DA is allowed.
5. The terms & conditions mentioned in their appointment order as SST Teaching Cadre will remain intact.

DIRECTOR

Elementary & Secondary Education
Khyber Pakhtunkhwa

Encl: No. 7156-60 F.No.54/ADEOs/Transfer/ D.I. Khan

Dated. 14/07 2023

Copy forwarded to the:

1. District Education Officer (M) D.I. Khan.
2. District Accounts Officer D.I. Khan.
3. Officers Concerned.
4. PA to Director E&SE KPK Peshawar.
5. Master Copy.

Atsuh
[Signature]
14/7/2023
Assistant Director (Etab M-I)
Elementary & Secondary Education
Khyber Pakhtunkhwa



**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR.**

Phone: 091-9225344

Email: establishmentmale1@gmail.com

NOTIFICATION

In compliance of the order dated 11-08-2023 passed by the Honorable Service Tribunal in Service appeal No. 1635/2023 case Titled Muhammad Bilal versus Government, the Notification bearing Endst: No. 7156-60/F.No. 54/ADEO/Transfer/DI Khan dated 14-07-2023 is hereby held in abeyance to the extent of. Muhammad Bilal SST falling at S.No. 04 till final disposal of the Titled appeal by the Honorable Service Tribunal.

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Endst: No. 2598-2602 F.NO. 54/ADEOs (M) Transfers/D.I.Khan Dated 24/08/2023

Copy forwarded to the:

1. Learned Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. Learned Additional Advocate General Khyber Pakhtunkhwa Service Tribunal Peshawar.
3. District Education Officer (M) D.I.Khan.
4. District Accounts Officer D.I.Khan.
5. Section Officer (Lit-II) Elementary & Secondary Education Department.
6. Assistant Director (Lit-II) Local Directorate.
7. Officer Concerned.

AKS
Section Officer (Litigation-II)
Elementary & Secondary Edu. Deptt:
Govt. of Khyber Pakhtunkhwa

NA
Assistant Director (Estab-M1)
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Appellate # 1635/2023
M. Bilal vs Govt


11.08.2023

1. Appellant alongwith counsel present and submitted an application for placing on file necessary documents. Application is allowed and documents are placed on file.



2. Learned counsel for the appellant argued that appellant was transferred vide impugned order dated 14.07.2023 against which he filed departmental appeal on 24.07.2023 which was rejected on 08.08.2023. The appellant filed instant service appeal on 09.08.2023 under Section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974. He argued that despite ban imposed by Election Commission of Pakistan, appellant was prematurely transfer without completing normal tenure which is against the transfer/posting policy. He further argued that the appellant was transferred on political influence and not in the public interest. The appeal in hand is admitted to full hearing subject to all legal objections. The appellant is directed to deposit security fee within 10 days. Thereafter, notices be issued to respondents for submission of written reply/comments. Respondents be summoned through TCS the expenses of which be deposited by the appellant. To come up for written reply/comments on 25.08.2023 before S.B. P.P given to learned counsel for the appellant.

3. Alongwith the appeal there is an application of suspension of operation of impugned order dated 14.07.2023. In the meanwhile, operation of impugned order suspended till the date fixed, if not already acted upon.

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

*Kaleem Ullah


(Rashida Bano)
Member(J)