(1)

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

**SERVICE APPEAL # 1732/2023**

**Mr. Muhib Ur Rehman, Management Cadre (BPS-18).....Appellant.**

**VERSUS**

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

**INDEX**

| 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 | 5-23 |

**Dependent**

# BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

**Service Appeal # 1732/2023**

**Mr. Muhib Ur Rehman, Management Cadre (BPS-18).....Appellant**

**VERSUS**

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

## AFFIDAVIT

I, **Mr. Amjad Ali,** Section Officer (Litigation-II) Elementary & Secondary Education, Department do herby 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.**

ATTESTED
TARIQ HASAN ADVOCATE
High Court Peshawar
NOTARY PUBLIC
Distt. Court Peshawar

**DEPONENT**

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

(3)

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. **1732/2023 Case Titled Mr. Muhib Ur Rehman, Management Cadre (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. 1732/2023**

**Mr. Muhib Ur Rehman.....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. That the appellant has got no cause of action and locus standi to file the present appeal.
2. That the appellant has just wasting the precious time of this Honorable Tribunal.
3. That the competent authority/respondent is empowered u/s 10 of Civil Servant Act, 1973 to place the service of the appellant, anywhere throughout the province in the best public interest
4. That the appellant has concealed the material facts from this Honorable Tribunal.
5. That the appellant has not approached to this Honorable Tribunal with clean hands.
6. That the appellant has filed this appeal just to pressurize the respondents for gaining illegal service benefits.
7. That the appeal is liable to be dismissed summarily along with the compensatory cost.
8. That the Central Administrative Tribunal Delhi in the case of Sh Jawahar Thakur vs Union of India held on 19th June, 2015 that is more than stare decisis that transfer is an incidence of service and it is for the Executive/Administration to decide how to and where to use its employees subject to the condition of their appointment in the best interest of the organization and public service. It is not always possible and feasible to record strong reasons for allowing an officer to continue at a particular station for a few years or more or less.
9. That the need of experienced staff at the respective places, the transfer order cannot be said to be arbitrary. Therefore, services of the appellant is needed by the authority at the new place of posting.
10. That in case Mst. Parveen Begum vs Government Service Appeal No 1678/2022 decided on 05-01-2023 in DB of this Honorable Tribunal the same nature case has been dismissed.
11. That according to section-10 desired posting is not perpetual right of a civil servant and department concerned can transfer any civil servant to serve at the given place as mention in the transfer/posting order, while the civil servant cannot refuse compliance.

(5) (4)

**On FACTS**

1. Pertains to record.
2. Pertains to record.
3. Incorrect, the notification dated 17-08-2023 is an accordance with law and there is no political influence in the said notification. It is also important to mention here that the competent authority has acted under section 10 of civil servant act 1973 in the best public interest. Furthermore, according to section-10 desired posting is not perpetual right of a civil servant and department concerned can transfer any civil servant to serve at the given place as mention in the transfer/posting order, while the civil servant cannot refuse compliance.
4. Incorrect, the appellant is performing his duties in administrative position/management cadre, therefore the competent authority while acting in public interest can place has services anywhere throughout the province.
5. Incorrect, the appellant is not an aggrieved person, therefore not entitle for any relief.
6. Para 06 alongwith grounds of appeal are totally incorrect.

**On Grounds:**

A. Incorrect, the competent authority/respondent is empowered u/s 10 of civil servant act 1973 to place the services of the appellant anywhere throughout the province in the best of public interest.
B. Incorrect the appellant has been treated by the respondent department in accordance with law and rules.
C. Incorrect, there is no discrimination with the appellant the above notification is issued in the best public interest.
D. Incorrect, the respondents has acted u/s 10 of civil servant act 1973 in the best public interest.
E. Incorrect, hence denied, the notification dated 17-08-2023 is in best public interest and nothing is unlawful in the said notification.
F. Incorrect, no fundamental rights of the appellant has been violated the appellant is a public servant and has to obey the orders of competent authority in true sense and in public interest.
G. Incorrect the notification dated 17-08-2023 is issued in the best public interest.
H. Incorrect there is no political interference in the impugned notification.
I. Incorrect the respondents seeks permission to advance other grounds at the time of arguments.

**It is therefore, most humbly prayed that the appeal of the appellant may kindly be dismissed alongwith cost.**

**SECRETARY**
**Elementary & Secondary Education,**
**(Respondents No. 01 & 02)**

(6)

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

Dated Peshawar the June 15th, 2022

## NOTIFICATION

**NO. SO(MC)E&SED/4-16/POSTING/TRANSFER/MC:** In compliance to the Judgment of Khyber Pakhtunkhwa Service Tribunal Peshawar dated 03-09-2021 in Service Appeal No. 1444/2019 *"Mohib-ur-Rehman, Principal (BS-18) Govt. High School, Saeed Khan Kot, South Waziristan VS Government of Khyber Pakhtunkhwa & Others"*, Mr. Mohib-ur-Rehman Principal (BS-18) is hereby allowed to rejoin **Management Cadre (BS-18) Elementary & Secondary Education Department** with immediate effect, conditionally, subject to the final decision in the CPLA, already filed in the Hon'able Supreme Court of Pakistan.

2- Consequent upon the above, the following posting / transfers are hereby ordered, in the public interest, with immediate effect: -

| Sr. No | Name & designation | From | To |
|---|---|---|---|
| 1. | Mr. Jadoon Khan, Principal (BS-19) | DEO (Male) North Waziristan | Report to Directorate of E&SE Khyber Pakhtunkhwa. |
| 2. | Mr. Mohib-ur-Rehman Principal / Conditional (BS-18 Management Cadre) | GHS Saeed Khan Kot South Waziristan | DEO (Male) North Waziristan in OPS (Vice Sr. No-1) |

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

**Endst: of even No.& date:**

Copy forwarded for information to the: -

1. Registrar Khyber Pakhtunkhwa Service Tribunal, Peshawar.
2. Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
4. District Education Officers (Male) South and North Waziristan.
5. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
6. District Accounts Officer South and North Waziristan.
7. Section Officer (Schools Male) E&SE Department.
8. Section Officer (Litigation-II) E&SE Department.
9. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
10. Officers concerned.
11. Master file.

Section Officer (Management Cadre)
Elementary & Secondary Edu: Deptt:
Govt of Khyber Pakhtunkhwa

15.6.22.

**(NASEER ABBAS KHALIL)**
SECTION OFFICER (Management Cadre)

(7) "C" -7- 6

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

Dated: 17th August, 2023

## NOTIFICATION

NO.SO(MC)E&SED/4-16/2023/Posting/Transfer//DEO(M)NW: Consequent upon the approval of the Competent Authority and subsequent NOC from the Election Commission of Pakistan, the following postings/ transfers are hereby ordered with immediate effect, in the best public interest: -

| Sr. No | Name & Designation | From | To | Remarks |
|---|---|---|---|---|
| 1. | Mr. Muhib Ur Rehman MC BS-18 | DEO (Male) North Waziristan in OPS | Deputy DEO (Male) Kohistan Upper | AVP |
| 2. | Mr. Dilawar Khan MC BS-18 | Deputy DEO (Male) North Waziristan | DEO (Male) North Waziristan in OPS | V.S.No.1 |

SECRETARY TO THE 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. Assistant Director (Election-II) ECP Constitution Avenue G 5/2 Islamabad.
5. District Education Officer (Male) North Waziristan.
6. District Accounts Officer North Waziristan.
7. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
8. Officers concerned.
9. Master file.

17.8.2023

SECTION OFFICER (Management Cadre)

21.9.2023

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

(8) "E" (7)

-11-

To,

The Honourable Chief Secretary,
Khyber Pakhtunkhwa, Peshawar.

Subject: **DEPARTMENTAL APPEAL AGAINST THE IMPUGNED TANSFERE NOTIFICATION DATED 17.08.2023**

Respected Sir,

That appellant is the employee of the E&SE Department and is serving as DEO, North Waziristan quite efficiently and up to the entire satisfaction of his superior including your good self. Previously the appellant was transferred & posted as DEO, North Waziristan vide Notification dated 15.06.2022. That in compliance the appellant assumed the charge of his post in pursuance to the mentioned notification.

Astonishingly vide impugned Notification dated 17.8.2023 the appellant was prematurely transferred from the post of DEO, North Waziristan and posted as Deputy DEO (Male) Kohistan upper. So much so a junior to the appellant was transferred and posted in place/vice of the appellant..

It is pertinent to mention here that the impugned notification is the violation of the transfer posting policy of the provincial government and also not tenable in light of the election commission of Pakistan Notification dated 22.1.2023.

It is therefore, most humbly prayed that on acceptance of this Departmental appeal the impugned notification dated 17.08.2023 may very kindly be cancelled and the appellant may not be transferred from the post of DEO, (male) North Waziristan and oblige.

Dated: 21.8.2023

APPELLANT

MUHIB UR REHMAN 18/8/23
DEO (M) NORTH WAZIRISTAN

21.9.2023
Section Officer (Management Cadre)
Elementary & Secondary Edu. Deptt:
Govt. of Khyber Pakhtunkhwa

(9)

"F" -12-

(8)

# 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/Muhib Ur Rehman
Dated: 25th August 2023

To

Muhib Ur Rehman
Ex-DEO (Male) North Waziristan
Under transfer to DDEO (M) Kohistan Upper

Subject: - **DEPARTMENTAL APPEAL AGAINST THE POSTING/TRANSFER NOTIFICATION DATED 17.08.2023**

I am directed to refer to your appeal dated 21.08.2023 on the subject and to state that the Worthy Secretary has passed the following remarks on your appeal.

*"This department cannot entertain this instant appeal"*

25.8.2023

(IMRAN ZAMAN)
SECTION OFFICER (Management Cadre)

*Copy for information to the: -*
PS to Secretary E&SE Department, Khyber Pakhtunkhwa.

SECTION OFFICER (Management Cadre)

21.9.2023

Section Officer (Management Cadre)
Elementary & Secondary Edu: Deptt:
Govt: of Khyber Pakhtunkhwa

(12)

# KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
**MIAN MUHAMMAD ...MEMBER (Executive)**

***Service Appeal No.1678/2022***

Date of Presentation of Appeal.....21.11.2022
Date of Hearing.....05.01.2023
Date of Decision.....05.01.2023

**Mst Parveen Begum,** District Education Officer (F) (BPS-19), Elementary & Secondary Education Department, Karak
.....(*Appellant*)

Versus

1. **The Government of Khyber Pakhtunkhwa through Chief Secretary,** Civil Secretariat, Peshawar.
2. **Secretary** to the Government of Khyber Pakhtunkhwa Elementary and Secondary Education Department, Civil Secretariat, Peshawar.
3. **Director** Khyber Pakhtunkhwa Elementary and Secondary Education Department, Near Malik Saad Shaheed BRT Station, Firdos.
4. **Mst Fanoos Jamal,** Deputy DEO (F) (BPS-18) Elementary & Secondary Education Department, District Khyber
.....(*Respondents*)

Present:

Mr. Noor Muhammad Khattak,
Advocate.....For appellant.

Mr. Muhammad Adeel Butt,
Additional Advocate General.....For official respondents.

Mr. Muhammad Asif Yousafzai,
Advocate.....For Private respondent.

---

**SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, READ WITH CLAUSE NO. XIV OF THE KHYBER PAKHTUNKHWA GOVERNBMENT TRANSFER POLICY AGAINST THE**

**IMPUGNED POSTING/TRANASFER ORDER ENDS. NO. SO(MC)E&SED/4-16/2022PT/TC DATED 20.10.2022 OF RESPONDNET NO.2 WHEREIN APPELLANT WAS TRANSFERRED AND POSTED AS A DISTRICT EDUCATION OFFICER (F) KOHISTAN UPPER AND AGAINST WHICH APPELLANT FILED DEPARTMENTAL APPEAL WHICH IS STILL PENDING WIHTOUT DISPOSAL.**

## JUDGMENT

**KALIM ARSHAD KHAN CHAIRMAN:** Through this service appeal, the appellant has impugned posting/transfer order bearing Endst No.SO(MC)E&SED/4-16/2022PT/TC dated 20.10.2022, whereby the appellant was transferred from the post of District Education Officer (F) Karak and posted as District Education Officer (F) Kohistan Upper.

2. The prayers in the appeal are to:

i. ***Declare the impugned order of respondent No.2 bearing Endst No.SO(MC)E&SED/4-16/2022PT/TC dated 20.10.2022 as illegal, unlawful, without lawful authority, against the Posting Transfer Policy of Khyber Pakhtunkhwa and set aside the same.***

ii. ***Direct the respondents to allow the appellant to serve as a District Education Officer (F) Karak till the completion of her normal tenure as per Posting, Transfer Policy of Government of Khyber Pakhtunkhwa.***

iii. ***Any other reliefs deemed appropriate in the circumstances of the case and not specifically asked for may also be graciously granted to the appellant.***

3. According to the appeal, the appellant was serving as District Education Officer (F) Karak, having been posted there on 05.07.2022 vide Notification

No. SO(MC)E&SED/4-16/2022/Posting/Transfers/MC, was transferred from the said post just after three months vide the impugned transfer Notification No. SO(MC)E&SED/4-16/2022PT/TC dated 20.10.2022 to Kohistan Upper purely on political motivation; that the appellant initiated departmental action against Wasiullah Driver, who was cousin of the sitting MNA Shahid Ahmad Khattak; that the appellant paid surprise visits and took actions against Mst. Mehwish Saeed PET along with two others, as they were found absent without leave application or prior approval; that Mst. Mehwish Saeed was wife of the said MNA; that the impugned order was also the result of non-compliance of the directions of the sitting MNA; that the private respondent was Deputy DEO (F) in BPS-18, who was transferred in place of the appellant, in her own pay and scale, which act was malafide; that the impugned order was against the Policy of the Government; that the appellant filed departmental appeal, which was not decided and she filed writ petition before the honourable Peshawar High Court; that the honourable Peshawar High Court, vide judgment dated 03.11.2022, directed respondent No.1 to decide the departmental appeal within 10 days and in case the departmental appeal is not decided within 10 days, the appellant might approach the competent forum directly, hence, this appeal.

4. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeals by filing written replies raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

It was specifically urged in the reply of the official respondents that after 37th day of the transfer the appellant went to the office of the District Education Officer (F) Karak and committed assault by breaking locks of the doors and illegally occupying the said office despite the fact that the private respondent had assumed the charge on 24.10.2022 and had drawn salary against the post of DEO(F) Karak; that the appellant had been treated as per law, rules, Transfer and posting policy and in terms of Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 as the appellant, being a grade 19 officer, was liable to serve anywhere in the province, wherever her services are required by the competent authority in view of Section 2(b) of the said Act; that the appellant had been found guilty of willful absence from duty against the post of DEO(F) Kohistan Upper with effect from the date of transfer till 29.11.2022without any formal leave sanction order and approval of the competent authority; that without waiting for the period prescribed by law, the appellant approached this Tribunal. The private respondent also submitted reply and contended that the impugned notification had already been acted upon by the private respondent as she had assumed the charge of the post of the DEO(F) Karak and had drawn salary against the same.

5. We have heard learned counsel for the appellants, learned Additional Advocate General for the official respondents and learned counsel for the private respondent.

6. The learned counsel for the appellant argued that the appellant was prematurely transferred; that the transfer order was result of political pressure; that the order was passed by incompetent authority and that the impugned transfer notification was in disregard of the policy of the Government. He also reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General and learned counsel for the private respondent refuted the arguments of the learned counsel for the appellant and supported the issuance of the impugned notification.

7. There is no denial of the fact that the appellant was transferred from the post of the DEO(F) Karak just after three months of her posting but while granting relief in favour of a party the conduct of that party is always seen and considered in perspective. In this case the official respondents, in their comments, have stated in categorical terms that the appellant had not only not complied with the order of the competent authority by not assuming the charge on the new assignment for quite long time but also presented herself as an undisciplined officer. The official respondents, in their reply/comments, leveled serious allegations on the appellant of her going to the office of the DEO(F) Karak, after 37th day of the transfer, breaking the locks and illegally occupying the office despite the fact that the incumbent private respondent No.4 (Mst. Fanoos Jamal)had already assumed the charge of the post of DEO(F) Karak on 24.10.2022. The factum of assumption of charge by Mst. Fanoos Jamal is supported by the charge assumption report annexed with the reply. Similarly, the allegations made in the reply regarding breaking the locks

and illegally occupying the office of DEO(F) Karak as well as assumption of charge by Mst. Fanoos Jamal have not been denied during the course of arguments. The appellant even failed to deny the allegations and assumption of charge by Mst. Fanoos Jamal by submitting any rejoinder in response to the reply/comments filed by the official respondents. The learned counsel for the private respondent produced some official documents all signed on different dates from 02.11.2022, 04.11.2022, 14.11.2022 and 22.11.2022 by the private respondent in her capacity as DEO(F) Karak, which were also not denied nor controverted by the appellant. These letters further strengthened the contention of the respondents that the private respondent had assumed the charge on 24.10.2022, had actualized and drawn her salary against the post of DEO(F) Karak and had also been performing duties. Therefore, the contents of the comments filed by the authorities as well as the official documents issued under the signature of private respondent had gone unrebutted/unchallenged. During the tug of war between the appellant and the private respondent, when once the appellant had approached this tribunal and when once the private respondent had assumed the charge it did not suit to the majesty of a grade 19 officer (the appellant) of education department and that too lady to have gone to the office of the District Education Officer (F) Karak and have broken the locks and occupied the office. Instead of indulging into unwanted activities, which appear to be those of an unbecoming officer, the appellant ought to have adopted legal way by moving/informing the tribunal about the wrong, if any, happened to her in performance of her duties, in case she was of the view that she was right to occupy the office of the DEO(F)

Karak, after getting the impugned transfer order suspended from the tribunal on 28.11.2022. As against that there is charge assumption report dated 24.10.2022 of private respondent i.e. more than a month before the passage of the conditional suspension order by this Tribunal passed on 28.11.2022 that the operation of the impugned order stood suspended, **if not already acted upon.** In this case, the impugned order was admittedly acted upon before issuance of the suspension order by this Tribunal, which fact has otherwise rendered this appeal fruitless besides where was the appellant, during the period from her transfer made on 20.10.2022 till 28.11.2022, is also not known. Was she on leave or on duty, is an unanswered question which was required to have been answered by the appellant especially when she was issued show cause notice by the department regarding non-compliance of transfer order and of her absence from duty since her transfer. The copy of show cause notice was produced by the learned law officer during the course of arguments. Even the issuance of the show cause notice was not denied by the appellant's learned counsel during the arguments. Vide letter No.10-14 dated 29.11.2022, the private respondent had lodged a complaint to the Secretary Elementary and Secondary Education Khyber Pakhtunkhwa, against the appellant for her illegal interference in the official business. Copy of this letter has been annexed with the reply of the private respondent and a copy was also produced by the learned counsel for the appellant during the course of arguments. The letter stated that after issuance of the impugned transfer order, the private respondent assumed the charge of the post of DEO(F) Karak and continued office work, field visits and also attended official meetings with

district administration, directorate and secretariat; that she visited 38 schools in 40 days at district Karak and all the reports were uploaded on PMRU website; that she also punched her salary as DEO(F) Karak; that the appellant remained absent/disappeared during that period and she also illegally occupied the official vehicle; that she (the private respondent) made a request vide letter No.4607-9 dated 11.11.2022 to direct the appellant to hand over the official vehicle to the private respondent as official business was being suffered badly; that the Secretary Elementary and Secondary Education Khyber Pakhtunkhwa directed the appellant vide letter No.SOG/E&SE/1-40/ACR/2022 dated 15.11.2022 to hand over the vehicle to the private respondent; that the official vehicle was handed over by the appellant to the private respondent on 16.11.2022contending that owing to her medical leave, the vehicle was retained by her but as per the office record the appellant had not obtained any medical leave; that the appellant reoccupied the chair of the DEO(F) Karak on 29.11.2022 claiming that this Tribunal has suspended her transfer order; that she misinterpreted the order sheet; that the appellant had been trying to create hurdles in smooth official business; that the appellant illegally took into possession the diary and dispatch registers; that a few clerical staff provided her all the official record and they continued to facilitate her; that the appellant refused to obey the transfer order issued by the competent authorities; that such a trespass in the government office brought bad name and reputation for the department as a whole and would encourage the other officers to follow her footsteps. At the end a request was made for guidance. A letter bearing No.43-49 dated 01.12.2022 was also written by the private respondent to the

District Police Officer, Karak reporting that the appellant along with Mr. Tariq Senior Clerk and Mr. Asad Dispatcher entered the office of DEO (F) Karak and took away diary and dispatch registers and other official record; that the appellant along with the above named two officials on 01.12.2022, once again, disrupted the professional environment of DEO(F) office Karak; that the appellant encroached the office and broke the locks of the office; that they illegally took into possession office record and important files; that the appellant illegally occupied the office and chair of the DEO(F); that there was uncertain and tense environment in the office and the appellant had not only disrupted the professional environment but the non-professional and bullying attitude had created chaos in the office; that the appellant arrogated the authority of the competent authorities. These letters were also not denied by the appellant. So the conduct of the appellant by not complying with the order of the competent authority, her prima facie absence from duty, breaking the locks of the office of the DEO(F) Karak, occupying the same and suppressing the facts narrated above, have disentitled the appellant to the desired relief at least prayed in this appeal. Reliance is placed on 2000 SCMR 1117 titled "*Akhtar Hussain versus Commissioner Lahore*" regarding disentitlement of a party for the conduct of the party. 1988 PLC (CS) 844 titled "Ahmed Waqar versus Capital Development Authority, Islamabad" can also be referred in this regards.

8. Keeping in view the above conduct of the appellant, her contention of premature transfer against the provisions of the Posting and Transfer Policy, is

untenable as in the circumstances described above, the exigency and public interest would be to keep the impugned order intact and in such a situation the powers of the authorities vested in them under section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 appear to have rightly and fairly been exercised. Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 pertains to the posting and transfers of the civil servant and is reproduced for ready reference:

> *"10. Posting and transfers.--- Every civil servant shall be liable to serve anywhere within or outside the Province in any post under the Federal Government, or any Provincial Government or local authority, or a corporation or body set up or established by any such Government:*
>
> *Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:*
>
> *Provided further that where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve."*

According to section 10, desired posting is not the perpetual right of a civil servant and the department concerned can transfer any civil servant to serve at thegiven place as mentioned in the transfer/posting order, while the civil servant cannot refuse compliance. Though, a ground for malafide can be based and agitated against an arbitrary, fanciful posting order based upon ill-will and inherent biases of the superior authorities. (See judgment dated 16.08.2022 of the honorable Peshawar High Court in Writ Petition No.439-B of 2022 titled "*Hayatulah Khan versus Secretary Communication and Works Khyber Pakhtunkhwa and another*"). The facts and circumstances enumerated

above do not show any malice, arbitrariness, fancifulness and biasness of the official respondents/authorities.

9. The Central Administrative Tribunal – Delhi, in the case of Sh. Jawahar Thakur- vs- Union Of India held on 19 June, 2015 that it is more than stare decisis that transfer is an incidence of service and it is for the executive/administration to decide how to and where to use its employees subject to the conditions of their appointment in the best interest of the organization and public service. It is not always possible and feasible to record strong reasons for allowing an officer to continue at a particular station for a few years or more or less.

10. In the case of Laxmi Narain Mehar v. UOI & Ors., JT 1997 (1) 24 Page 460, Hon'ble Supreme Court of India viewed that in view of the express indication for need of experienced staff at the respective places, the transfer order cannot be said to be arbitrary. Therefore, services of the appellant, admittedly, because of her being a senior and experienced officer, might be needed by the authority at the new place of posting.

11. The Hon'ble Supreme Court in Mrs. Shilpi Bose and Others v. State of Bihar and Others 1991 Supp.(2) SCC 659 went into in the issue of guidelines and has upheld the authority of the employers to transfer the employee in the following words:-

*"4. In our opinion, the Courts should not interfere with a transfer order which are made in public interest and for administrative reasons (unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide, A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the Competent Authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."*

12. In State of U.P. and Others v. Goverdhan Lal, : 2004 (3) SLJ 244 (SC)

it has been held thus:-

*"8. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision of (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the Competent Authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.*

*9. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they*

*are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of Competent Authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmise and except for strong and convincing reasons, no interference could ordinarily be made within an order of transfer.*

*From the aforementioned, it is evident that the posting to any particular place is not a legal right. Article 14 guarantees equality before law only. Right to equality is a positive concept. One can allege violation of Article 14 only where there is enforceable legal right. In the absence of such right, question of discrimination or violation of Article 14 does not arise."*

13. The august Apex Court of India further goes ahead to the extent of holding that an employee is to obey the transfer order before he earns a right to challenge the same in Gujarat State Electricity Board versus Atma Ram Sunagomal Poshni (1989) 2 SCR 357 and further that even if there be non-compliance with the with the provisions of the posting norms, order of transfer will not be vitiated;

> *"2. Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would*

*expose himself to disciplinary action under the relevant Rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other."*

14. Last but not the least, this appeal has been filed without waiting for 90 days' waiting period provided under the law for the appellate departmental authority to decide the departmental appeal but today copy of a Notification No. SO(MC)E&SE/4-16/2022/Posting/Transfer/MC dated 19.12.2022 was produced whereby the departmental appeal of the appellant was regretted. The appellate order regretting appeal passed by the appellate authority has also not been challenged.

15. For the above stated reasons this appeal fails and is dismissed with costs. Consign.

16. ***Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 5th day of January, 2023.***

**MIAN MUHAMMAD**
Member (Executive)

**KALIM ARSHAD KHAN**
Chairman