

4.
Appeal No. 1421/2013
Haji Rani Shubeer Ahmad

30.12.2013

Counsel for the appellant present and requested for withdrawal of the appeal due to fresh development. In this respect his statement also recorded. As such the appeal is dismissed as withdrawn in limine. File be consigned to the record.


ANNOUNCED
30.12.2013.


Member

3.

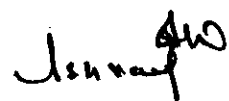
26.11.2013

No one is present on behalf of the appellant. To come up for preliminary hearing on 30.12.2013


Member

I Ashraf Ali Khattak counsel for the appellant do hereby withdraw the instant appeal on the ground that in view of fresh development ~~of the appellant department~~ ~~appeal~~ has been accepted and whereas again the order has been again withdrawn and which order has also been assailed/challenge by the appellant before this Honourable Tribunal in which 10-01-2014 has been fixed for preliminary hearing



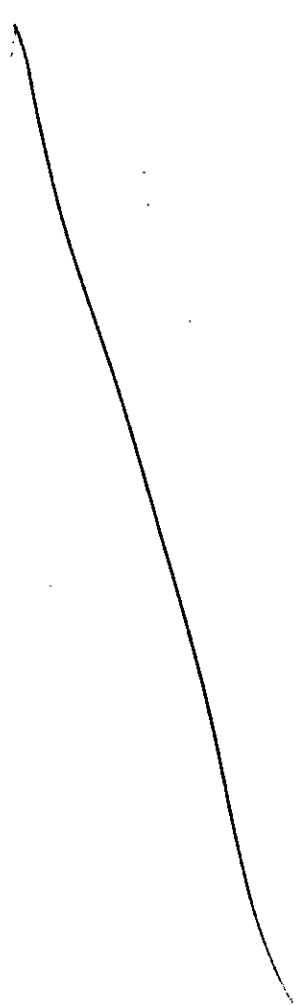
Dated:- 30-12-2013


Ashraf Ali Khattak
Counsel for appellant

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1421/2013


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	22/10/2013	<p>The appeal of Hafiz Qari Shabir Ahmad resubmitted today by Mr. Ashraf Ali Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	29-10-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on 26-11-2013</p> <p style="text-align: right;"> CHAIRMAN</p> 

The appeal of Hafiz Qari Shabir Ahmad son of Mir Akbar received today i.e. on 09.10.2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Heading of the appeal is incomplete which may be completed.

No. 1434 /S.T,

Dt. 10/10 /2013.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Ashraf Ali Khattak Adv. Pesh.

Re. submitted

Objection - completed

Ashraf Ali

BEFORE THE KPK SERVICE TRINUNAL, PESHAWAR

Service Appeal No. 1421/2013

Hafiz Qari Shabir Ahmad
S/o Mir Akbar GMS
Latamber
.....Appellant

Versus

The Director of Education
(E & SE) Govt: of KPK,
Peshawar and
others.....Respondents

INDEX


S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-5
2.	Application for suspension of the impugned order			6-8
3.	Copy of Notification	03-09-2012	A	9
4.	Copy of document relating to the tenure of respondent No.4		B	10-11
5.	Copy of Service Appeal No.1015/2012 alongwith reply of official respondents		C	12-18
6.	Copy of transfer Order	05-10-2012	D	19
7.	Copy of the impugned order	19-06-2013	E	20
8.	Copy of departmental appeal		F	21
9.	Copy of Order of the Honourblae High Court		G	22-25
10.	Copy of Ban Notification		H	26
11.	Stamp Paper			
12.	Wakalat Nama			


Appellant

Through


Ashraf Ali Khattak

and


Nawaz Khan Khattak
Advocates, Peshawar

Dated: _____ / 10/ 2013

Cell:0332-9931676

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1421 /2013

Hafiz Qari Shabir Ahmad S/o Mir Akbar GMS Latamber
Tehsil and District Karak..... Appellant.

Versus

1. The Director of Education (E & SE) Govt: of Khyber Pakhtunkhwa, Peshawar.
2. The District Education Officer, District Karak.
3. Rahmat Ullah Qari S/o Saad Ullah Khan Govt: MS Labamber. ~~Karak~~..... Respondents.

S. W. F. P. S. O.
Peshawar
Date: 14/5/13
09-10-13

Service Appeal under section 4 of the service Tribunal, Act, 1974 read with CSA, 1973 and Khyber Pakhtunkhwa (Appointment, Deputation, Posting and Transfer of Teachers, Lecturers, Instructors and Doctors) Regulatory Act, 2011, against the order of respondent No.2 dated 19-06-2013 and set aside the same.

Respectfully Sheweth,

Facts giving rise to the present Service Appeal are as under:-

1. That appellant has been serving as Qari for the last 22 years with unblemished and clean sheeted conduct record.
2. That appellant has served 22 years out of his home station.
3. That vide order dated 03-09-2012 (Annexure-A), appellant was transfer and posted at GMS-Latamber (Karak) and respondent No.3 was transferred and posted at the place of appellant.

re-submitted to ~~the~~
and filed.

[Signature]
9/10/13

4. That it is pertinent to mention here that respondent No.4 was transferred after almost 13 years (Annexure-B) long tenure.
5. That respondent No.4 challenged the afore mentioned transfer order before the Honorable Service Tribunal in Service Appeal No.1015/2012 which is still pending and has been fixed for 28-10-2013(Annexure-C).
6. That during the pendency of the appeal respondent No.3 secure his transfer to GHS-Mandawa (Karak) Vide Order dated 05-10-2012 (Annexure-D), but he concealed this fact from the Honorable Tribunal.
7. That respondent No.3 with active support of local MPA, Mr. Malik Qasim Khan managed his choice posting and under the political motivation and influence respondent No.2 vide impugned Order dated 19-06-2013 (Annexure-E) transfer the appellant from his place of posting to GHS-Madawa (Karak) and brought the respondent No.3 back to the station of his choice i.e GMS-Latamber (Karak).
8. That it is also pertinent to mention here that appellant has been subjected to unlawful transfer order just after 09 months which is against the spirit and provision of law and rules.
9. That being aggrieved from the impugned order appellant preferred departmental appeal (Annexure-F) before the respondent No.1, but till the date no heed has been paid to the legitimate claim of the appellant.
10. That under the Posting/Transfer policy, respondent No.1 was under the legal duty to decide the pending appeal of the appellant within 15 days, but he has delayed the matter under the influence of local MPA.

11. That respondent No.1 failed to decide the departmental appeal of the appeal within 15 days as per policy, therefore appellant filed writ petition No.277-B/2013 before the Peshawar High Court, Bannu for seeking directions to respondent No.1 for deciding the departmental appeal of the appellant, but respondent No.1 did not honour the lawful directions of the Honourable Court.
12. That By now the statutory period of 90 has been elapsed and appellant being aggrieved of the acts and actions of Respondents and having no other adequate and efficacious remedy, files the instant service appeal inter-alia on the following grounds:-

Grounds:

- A. That Respondents have not treated petitioner in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. The impugned transfer order is politically motivated and has been passed to accommodate the blue eyed chap of the local political boss.
- B. That the impugned transfer order has been issued to victimize the petitioner whereas Transfer and Posting Policy provide that posting and transfer should not be used as means to victimize a civil servant.
- C. That the impugned transfer order has been issued in violation of the almost all provisions of the Posting/Transfer Policy, particularly of Para No.1 (i),(ii),(iv),(xii),(xiii) and Para No.3.
- D. That the tenure policy of the Govt: has also been violated. Appellant has been subjected to transfer just only after 09 months.

- E. That the impugned transfer has been issued during the ban period (Annexure-G).
- F. That the impugned order has been issued on the directions of respondent No.3, who is local MPA, therefore, political motivated and is not liable to be maintained and sustained.

For the aforesaid reasons, it is therefore, humbly prayed that on acceptance of the instant Service Appeal, this Hon'ble Tribunal may graciously be pleased to declare the impugned transfer order dated 19-06-2013 as illegal unlawful, without lawful authority and set aside the same.

This Honourable Tribunal may also be graciously be pleased to direct the respondents to allow and permit the appellant to continue his lawful duty at GMS- Latamber, Karak.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to petitioner.

Through

Appellant

Ashraf Ali Khattak

and

Nawaz Khan Khattak

Advocates, Peshawar.

Dated: _____ / 10/ 2013

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

WRIT PETITION No. _____/2013

Hafiz Qari Shabir Ahmad S/o Mir Akbar GMS Latamber
Tehsil and District Karak.....Petitioner.

Versus

The Director of Education (E & SE) Govt: of Khyber
Pakhtunkhwa, Peshawar and others.....Respondents.

Affidavit

I, Hafiz Qari Shabir Ahmad S/o Mir Akbar GMS
Latamber Tehsil and District Karak, do hereby solemnly
affirm and declare on oath that the contents of the instant
service appeal are true and correct to the best of my
knowledge, and nothing has been concealed from this
Hon'ble Tribunal.

Deponent



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2013

Hafiz Qari Shabir Ahmad S/o Mir Akbar GMS Latamber
Tehsil and District Karak.....Petitioner.

Versus

The Director of Education (E & SE) Govt: of Khyber
Pakhtunkhwa, Peshawar and others.... Respondents.

**Application for suspending the operation of the impugned
order dated 19-06-2013 till the final disposal of the
instant appeal.**

Respectfully Sheweth,

1. That the above titled service appeal is being filed today which is yet to be fixed for hearing.
2. That the facts alleged and grounds taken in the body of main appeal may kindly be considered as an integral part of this application, which make out an excellent prima facie case in favour of the appellant.
3. That the balance of convenience also lies in favour of appellant and in case the impugned orders are not suspended the appellant will suffer irreparable loss.

It is, therefore, humbly prayed that on acceptance of this application, the operation of the impugned order


19-06-2013 may graciously be suspended till the final disposal of the appeal.

Through


Applicant

Ashraf Ali
Ashraf Ali Khattak,

and



Nawaz Khan Khattak
Advocate, Peshawar.

Dated: _____ / 10/ 2013

Affidavit

I, Hafiz Qari Shabir Ahmad S/o Mir Akbar GMS Latamber Tehsil and District Karak, do hereby affirm and declare on oath that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.




Deponent

Annexure - A

9

OFFICE OF THE EXECUTIVE DISTRICT OFFICER ELEMENTARY & SECONDARY EDUCATION KARAK.

TRANSFER/ADJUSTMENT

Transfer of the following officials/schools noted against each are hereby ordered in the best interest of public services with effect from the date of their taking over charge.

<u>S.NO</u>	<u>NAME/DESIG</u>	<u>FROM</u>	<u>TO</u>	<u>REMARKS</u>
1.	Bhabir Ahmad Qari	GHS Totaki	GMS Latambar	V.S 2
2.	Rahmat ullah Qari	GMS Latambar	GHS Totaki	V.S 1

Note:- NO TA/BA IS ALLOWED.

Charge Report should be submitted to all concerned.

EXECUTIVE DISTRICT OFFICER
ELEMENTARY AND SECONDARY EDUCATION
KARAK.

Order No 5930-39 AE-I dated Karak the 3/9 /2012.

Copy to the:-

- 1. Distt: Account Officer Karak.
- 2. Head Masters GHS TOTAKI.
- 3. Head Master GMS Latambar.

DISTT: OFFICER (Male)
ELEM: & SEC: EBU: KARAK.

Attested

[Signature]
To be true copy
Advocate

G.M.S. Latamber (2011)

991-9214092

Education Management Information System (EMIS)
Elementary & Secondary Education, Department
Government of Khyber Pakhtunkhwa.

(Annexure - B)

Annual Schools Census Questionnaire Regarding Middle, High & Higher Secondary Schools
(Academic Year 2011-12)

Note: All the information should be based on 31st October 2011

10

Section-A: Basic Information

1. District: KARAK 2. Tehsil: KARAK
3. Union Council Name: LATAMBER 4. UC No. 03 5. Post Office: LATAMBER
6. Village/City Name: LATAMBER 7. Location (1- Urban 2- Rural) 2
(1. Urban: Area in the jurisdiction of Municipal or Town Committee. 2. Rural: Not in the jurisdiction of Municipal or Town Committee)
8. National Constituency No. NA 15 9. Provincial Constituency No. PK 41

10. School EMIS Code 071C008
11. School Name (In Capital letters) G.M.S. LATAMBER

12. Gender: (1- Male, 2- Female) 1 13. Circle Office Name: _____
14. School Level: (1- Middle, 2- High, 3- H/Secondary) 1 15. Medium of Instruction: (1. Urdu 2. English 3-Both) 1
16. Phone No. of School NIL 17. Principal/HM Cell #. 03439323341

18. Only for Middle Schools i. Name of Cluster School _____
ii. EMIS Code of Cluster School: - - - - -

19. Year of Establishment as: 1. Primary 1908 2. Middle 1984 3. High - - - 4. H/Secondary - - -
(Note 1: For Middle Block 1 & 2, for High Block 1, 2 & 3 and for Higher Secondary of the three Blocks 1, 2, 3 & 4 should be filled in.)
(Note 2: Year of Establishment may be taken as that year in which first student admit in any class of that level while the Year of Upgradation may be taken as in which the SNE has been approved)

20. Type of Upgradation (1. Developmental, 2. Non Developmental) 2
21. Year of Upgradation as: Middle Block 1 1984 Block 2 - - - Block 3 - - -
High - - - H/Secondary - - -

22. Present Staff of the School: 1 (1-Functional, 2-Non-Functional, 3- Permanently Closed)
(Note: 1.Functional: Teacher exist and properly running, 2. Non-Functional: Closed due to zero enrolment, Non availability of teachers, Dispute, No access to the School; Discontinued Teaching/Learning process but building & facilities exists, etc, 3. Permanently Closed: (a) either merged or (b) permanently shifted (Closed officially through Notification).)

23. i. If School is permanently closed then write Notification No. _____ date of closure: ____/____/____
ii. Reason of Closure: _____

24. Ownership of the Building (1-Govt, 2- Rented, 3- Rent Free, 4-Running in other School, 5-Donated, 6-Tents, 7-Other) 1

25. If Rented, Monthly Rent in Rs. _____ 26. Date of Rental: ____/____/____

27. If running in other School then write its host School Name: G.P.S. No. 1, Latamber
EMIS Code: 071C008 and running in other school w.e.f. 8/4/1984

28. i. Is Public Private Collaboration (PPC) Organization working in the School? (1. Yes 2. No) 2
ii. If "Yes", then what is the level of PPC School: (1- Middle, 2- High, 3- H.Scy, 4- Prof. College/Institute) 1
iii. What is the Medium of Instruction of PPC School: (1. Urdu 2. English 3. Both) 1

Attested
to be true copy
Advocate

Section-B: Building Condition & Physical Facilities

29. Year of Construction as: 1. Primary 2. Middle 3. High 4. H/Secondary

(Note 1: For Middle Block 1 & 2, for High Block 1, 2 & 3 and for Higher Secondary all the three Blocks 1, 2, 3 & 4 should be filled in.)
 (Note 2: Year of Construction for the level may be taken as that year in which the construction takes place)

30. Total Covered Area of the Building (In Square Feet)
 31. Total Area available for Additional Construction excluding Play Ground (In Square Feet)
 32. If area is available for additional construction, it is (1-Within Premises, 2-Adjacent, 3-Away from the School)
 If away from the School, then write distance in meters 1500 meters

33. School Building is (1-Single Storey, 2-Double Storey, 3-Triplo Storey)
 34. No. of Rooms on (i) Ground Floor (ii) First Floor (iii) Second Floor

35. Nature of Construction:

Nature of Construction	No. of Class Rooms	No. of Other Rooms	Total
Pakka (Pakka where walls & roofs both are pakka/concrete)	4	1	5
Kacha (Kacha where both walls & roof are kacha/non concrete)	0	0	0
Total	4	1	5

36. Condition of Building: Whether the whole Building needs re-construction? (1-Yes, 2-No)
 If 'No' then mention that:-
 i. No. of Classrooms requiring re-construction ii. No. of Other Rooms requiring re-construction
 iii. No. of Classrooms requiring Major repair iv. No. of Other Rooms requiring Major repair
 v. No. of Classrooms requiring Minor repair vi. No. of Other Rooms requiring Minor repair

(Note: Minor repair can be made from school's own petty cash/account. While major repair can't be made from school's funds and where repairing work is involved)

37. Cleanliness condition of Building (1-Satisfactory, 2-Un-satisfactory)
 i. Floor of the Building ii. Lawn iii. Rooms iv. Toilets
 38. Whether the School has been affected either by Earthquake 2005 OR Flood OR Militancy (1-Yes, 2-No)
 If 'Yes' then mention i. whether affected by (1-Earthquake 2005, 2-Flood, 3-Militancy)
 and ii. Affected (1-Fully, 2-Partially)

39. Basic Facilities (1-Yes, 2- No) i. Electricity ii. Water iii. Boundary Wall
 If Yes then how is condition of the boundary wall (1. Satisfactory, 2. Partially Damaged, 3. Fully Damaged)
 iv. Toilet: v. If "YES" then write total number of Toilets vi. and write total number of usable Toilets

40. Other Facilities (1-Yes, 2- No) i. Gas ii. Play Ground iii. Canteen iv. Hostel
 v. If Hostel exists, then write total capacity?
 vi. No of Boarders

vii. Family Accommodations viii. If yes, then write total number of Family Accommodations
 41. Whether the following exist? (1. Yes, 2. No)
 i. Office ii. Store iii. Drawing room iv. Hall
 v. Workshop vi. Workshop Shed vii. Home Economics Lab viii. Maths Resource Room
 ix. Science Lab x. Others (Please specify) _____

42. Science Equipment: (1. Sufficient, 2. Appropriate, 3. Deficient, 4. Not Available)

43. Whether the School has Library Facility (1-Yes, 2-No)
 If 'Yes' then write number of books in the Library

	Repair and Maintenance of Building		
18	Financial Aid to Students		
19	Hot & Cold Weather expenses		
20	Special Messenger		
21	Utilities		
	1. Electricity		
	2. Gas		
	3. Water		
	4. Postage		
22	5. Telephone		
23	Other expenditures (Not elsewhere classified)		

Section-H: Commodities

67. Commodities (Write Numbers)

S#	Name of Commodities	Available (Write Number)		Number of New Required
		Useable	Un-Useable	
1	Office Chairs	5	2	06
2	Office Tables	01	-	01
3	Teacher Tables	01	03	03
4	Teacher Chairs	5	5	06
5	Students Desks/Two Seats	-	-	25
6	Students Desks/Three Seats	20	20	10
7	Students Benches	20	20	10
8	Students Chairs	-	-	-
9	Tablet Chairs	-	-	-
10	Computer Ta.	-	-	-
11	Computer Chairs	-	-	01
12	Jute Tals	-	-	10

S#	Name of Commodities	Available (Write Number)		Number of New Required
		Useable	Un-Useable	
13	Plastic Mats	-	-	06
14	Black/Green Board	-	-	02
15	Wooden Almira	-	-	02
16	Steel Almira	-	-	01
17	Teaching Kits & equipment	-	-	01
18	Teaching Guides and Hand Books	-	-	-
19	Teaching Aids	-	-	-
20	Maps/Charts	-	-	10
21	Reference Books	-	-	-
22	Fans	-	-	05
23	Water Tank	01	-	01
24	Any Other (Specify)	-	-	-

Section-I: Information regarding working Teachers

Name of Teacher: Rehmat Ullah Father's/Husband Name: Saadullah

Gender: Male BPS: 12 AG/Accounts Office Personal No. 00305331

Old N.I. Card No. 145-57-242148 New N.I. Card No. 14203-1317862

Date of Birth	District of Domicile	Post & Scale	Detail of Posting/Transfer	
			School/Office	From Date To Date
20/3/1960	Karak			
24/3/86	Marria Qazi	KK	GMS Tara Grand	3/4/95
07	Marria Qazi	KK	GHS Paloski	14/3/98
Qazi	Qirat Qazi	KK	GMS Latambokk	7/8/99
7-8-99		24/3/05		up to date

Attested
 To be true copy
 Advocate
 31/09/2012

(Annexure - C)

BEFORE THE K.P.K SERVICE TRIBUNAL, PESHAWAR.

12

APPEAL NO: 1015/2012

A.W.S. Peshawar
Case No. 1066
Date 17-9-12

Mohamud Ullah Qari, Govt: Middle School

Lalambur Distt: Karak

.....APPELLANT.

Ver sus

Govt: of K.P.K through Secretary
Elementary & Secondary Education, Peshawar.

Director Elementary & Secondary
Education, Peshawar.

Executive District Officer E&S, Karak.

Shabir Ahmad Qari, GMS Totaki, Karak.

.....RESPONDENTS.

Handwritten notes and markings on the left side of the page, including a large '10' and '3' with arrows pointing to the respondents' names.

APPEAL AGAINST THE IMPUGNED ORDER

DATED 3.9.2012 VIDE ANNEXURE 'A' WHEREBY

THE APPELLANT HAS BEEN TRANSFERRED FROM

LATAMBER TO TOTAKI (KARAK) AND ALSO AGAINST

THE FINAL ORDER DATED 14.09.2012 VIDE

ANNEXURE 'B' WHEREBY THE APPELLANT'S

REPRESENTATION DATED 5.9.2012 HAS BEEN REJECTED.

Handwritten signature and date '17/9/12' on the left side of the page.

PRAYER:-

On acceptance of appeal, the above referred two
impugned orders vide annexures A and B may be

Attested

To be true copy
Advocate

3. 27.9.2012

Counsel for the appellant present and heard.

Contended that the appellant has been transferred from Latamber Karak to GMS Totaki, Karak vide the impugned order dated 3.9.2012. The appellant preferred a departmental appeal but the same was rejected on 14.9.2012. Counsel for the appellant further contended that the impugned order has been passed on political pressure but such order is not available on file. Counsel for the appellant states that the same is available in the office of ADO Karak but he refused to provide a copy such order to the appellant. Points raised at the Bar need consideration.

This appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notice be issued to the respondents. Case adjourned to 7.11.2012 for submission of written reply.

4. 27.9.2012

This case be put before the Final Bench for

further proceedings.

Attested
To be true copy
Advocate

*As per Memo of Understanding
Dated 5.9.2012
As per Memo of Understanding
attached with file*

7.1.2012

Counsel for the appellant and Mr. Sheraifgan Khattak, AAG with Mosam Khan, AD for respondents No. 1 and 2 and Hamayun, ADO for respondent No. 3 and Mr. Ashraf Ali, Advocate for private respondent No. 4 present and Wakalatnama placed on file. Respondents need further time. To come up for written reply on 8.1.2013.

8.1.2013

Counsel for the appellant and AAG with Khurshid Ali, SO for respondent No. 1 and Muhammad Hamayun, ADO for respondents No. 2 and 3 present. Written reply of respondents No. 2 and 3 received and placed on file. Copy handed over to counsel for the appellant. Representative of respondent No. 1 failed to file written reply, hence placed ex-parte. On previous date, Mr. Ashraf Ali, Advocate was also present for private respondent No. 4 but to-day none is available on his behalf nor his written reply received, hence respondent No. 4 is also placed ex-parte. To come up for rejoinder on the written reply of respondents No. 2 and 3 on 26.2.2013.

26.02.2013.

Counsel for the appellant, Mosam Khan, AD and Khurshid Ali, SO with AAG for the respondents present. Rejoinder received on behalf of the appellant, copy whereof is handed over to the learned AAG. To come up for arguments on 03.07.2013.

Attested
[Signature]
To be true copy
Advocate

3.7.2013

Clerk to counsel for the appellant and Mr. Muhammad Jan, GP with Khursheed Khan, SO for the respondents present. The Tribunal is incomplete, therefore, case to come up for the same on 28.10.2013.

Attested
[Signature]
To be true copy/
Advocate

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTOONKHAWA
PESHAWAR.

Appeal No.1015/2012

Rehmat Ullah

Appellant/Petitioner.

Versus

1. Government of Khyber Pakhtoon khawa Through Secretary Elementary and Secondary Education.
2. Director Elementary and Secondary Education Khyberpakhtoon Khawa Peshawar.
3. Executive District Officer E & S E Karak.
4. Shabir Ahmed Qari GMS Totaki Karak.

RESPONDENTS.

REPLY ON BEHALF OF RESPONDENTS NO.1, 2 AND 3

PRELIMINARY OBJECTIONS.

1. The appellant is not competent to file the instant appeal against respondents.
2. The Appellant has got no cause of action /Locus Standi to file the present appeal.
3. The appellant has not come to the honourable Service Tribunal with clean hands.
4. The appellant has suppressed materials/facts from the honourable Service Tribunal.
5. The appeal is against law, rules and materials placed on file.
6. The appeal is bad for mis-joinder and Non-Joinder of unnecessary parties.
7. That this Honourable Service Tribunal has got no jurisdiction to entertain the present appeal.
8. That the instant appeal is barred by law and limitation.
9. That the Present appeal is bad in its present form, hence not maintainable and liable to be dismissed.

FACTS

1. Para No.1 is correct to the extent that the appellant while serving at GMS Latamber (Karak) Transfer to GHS Totaki (Karak) by the competent authority in the interest of Public Service.
2. Para No.2 Correct to the extent that appellant submitted Departmental Appeal against his Transfer Order but the said Departmental appeal was rejected by the authority being meritless and against the law
3. Para No.3 is incorrect the appellant has already completed thirteen Years at GMS Latamber (Karak) and after completion thirteen he Transfer to GHS Totaki (Karak) in the public interest and this honourable Tribunal has got no jurisdiction to entertain the present

Attested
[Signature]
To be true copy
Advocate

GROUNDS.

- A. Para A is incorrect; the appellant performing his duty at GMS Latamber Since 1999 and completed 13 Years in the home Station. There is ban on Transfer and the Minister is competent to relax the ban.
- B. Para B is also incorrect, According to the Monthly Staff Statement of the School his Date of Birth is 1960 and the appellant will be retired on 30.3.2020 after 8 years. According to the Set Rules of the Govt: a Government Servnt will not be Transferred from one Station to other Station Six month before the completion of 60 years. Further more GHS Totaki is situated on the bank of G.T Road and Twenty-Four hours conveyance is available on the Road. The Appellant is legally bound to obey the order of the competent authority.
- C. Para No.C is correct to the extent that the appellant has been Transferred from PK 41 to PK 40 but the school is situated on GT Road which is nearest Station to the appellant and there is not bar on Transfer from one PK to other PK even from one District to other District in the province. There is no legal ban on the Transfer Posting.
- D. Para No.D is also incorrect the Transfer order was issued in the best interest of Public Service according to the law and Policy of the Government and the Respondent No.3 is competent to issued such kind of orders.
- E. Respondent seeks leave of this honourable service Tribunal to advance more Grounds of the time of arguments; Transfer order of the appellant has been passed in the Public interest.

It is there for prayed that the appeal may kindly be dismissed with cost.

1. Secretary Elementary
and Secondary Education Khyber Pakhtoon
Khawa Peshawar.

2. Director Elementary and Secondary Education
Khyber Pakhtoonkhawa Peshawar.

3. Executive District Officer,
Elementary and Secondary Education Karak.

Attested
To be true copy
Advocate

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Rehmat Ullah **VERSUS** Secretary Elementary &
Secondary Education Peshawar
& others

APPELLANT'S REJOINDER

Respectfully Sheweth:

Preliminary objections:

That none of the objections revised by the respondents are sustainable.

Facts:

- 1) Needs no comments.
- 2) That the appellant's departmental appeal has incorrectly been rejected by the authority.
- 3) Incorrect. That the appellant has illegally been transferred and this Hon'ble Tribunal has the jurisdiction to entertain the instant appeal.

Grounds:

A 10 E) Incorrect. Grounds Atol: of appeal are correct and its replies are incorrect.

It is, therefore, prayed that on acceptance of appeal and rejoinder, the relief as prayed for may be granted to the appellant to meet the ends of justice.

Dated 25/02/2013

Rah
Appellant
Through

Aslam
Aslam Khan Khattak
Advocate, Peshawar.

Attested
Aslam
To be true copy
Advocate

Affidavit

Verified on oath that all contents of appeal and rejoinder are true and correct and nothing wrong has been stated by me in the matter.

Rah
DEPONENT

ATTESTED
Rehmat Ullah Khan Advocate
Oath Commissioner
District Court, Peshawar

OFFICE OF THE EXECUTIVE DISTT:OFFICER ELEMENTARY&SEC:EDU:KARAK.

TRANSFER

19

Mr Rahmatullah Qari Govt:High School Tataki is hereby transferred to Govt:High School Mandwa against the vacant post of Qari in the interest of public service with effect from the date of his taking over charge.

Note:- NO TA/DA is allowed.

Charge report should be submitted to all concerned.


Mr Rahmatullah Qari GHS, Totaki will take over charge at GHS Mandwa after relieving of Qari Razwan of GHS Mandwa.

(EXECUTIVE DISTT:OFFICER)
ELEMENTARY AND SECONDARY EDU:
KARAK.

Endst: NO: 6589-92 Dated Karak the 5/10 /2012.

Copy to the:-

1. Distt:Accounts Officer Karak.
2. Head Master GHS, Totaki.
3. Head Master GHS, Mandwa.
4. Official concerned.


Distt: Officer (Male)
E&SE, Karak.

Attested
To be true copy
Advocate

OFFICE OF THE DISTRICT EDUCATION OFFICER (M.A.E.) KARAK.

TRANSFER

Transfer of the following gari, is hereby ordered in the best interest of public service with effect from the date of their taking over charge.

S.NO	Name of Gari with School	Remarks
1.	Gari Pehrattullah, G.S. Mandawa GMS, Islamabad <i>Shahid Ahmad</i>	V.S. 20.2
2.	Gari <u>(Fahim)</u> , G.S. Islamabad G.S. Mandawa	V.S. 20.1

Note:- NO DA/DA is allowed.

Change report should be submitted to all concerned.

80 (DISTRICT EDUCATION OFFICER)
(M.A.E.) KARAK.

Order NO: 2477-80 / District Karak the 19/6 / 2013.

Copy to the:-

1. Distt. Education Officer Karak.
2. Head Master G.S. Mandawa/Head Master GMS, Islamabad.
3. Accountant local office.
4. Official concerned.

District Education Officer
(M.A.E.) Karak.

Attested
[Signature]
To be true copy
Advocate

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) KARARK

TRANSFER

Transfer of the following Qari is hereby ordered in the best interest of public service with effect from the date of their taking over charge.

<u>S.No</u>	<u>Name of Qari with School</u>	<u>To</u>	<u>Remarks</u>
1.	Qari Rehman Ullah GHS Mandwa	GMS Latamber	V.S.No.2
2.	Qari Shabir Ahmad GMS Latamber	GHS, Mandwa	V.S.No.1

Note:- No TA/DA is allowed.

Charge report should be submitted to all concerned.

Sd/-

DISTRICT EDUCATION OFFICER
(MALE) KARAK

Endst. No. 2477-80 /dated Karak the 19/06/2013

Copy to the

1. District Accounts Officer Karak
2. Head Master GHS, Mandwa/Head Master GMS Latamber
3. Accountant Local Office
4. Official concerned.

Sd/-

DISTRICT EDUCATION OFFICER
(MALE) KARAK

انٹیمپٹ کا ازالہ / حکمانہ اپیل

جناب عالی

گزارش ہے کہ سائل نے عمر بائیس سال تک سے فکسڈ تعلیم میں بحیثیت فارغ پوسٹ
 مختلف سکولوں میں فراغت منہج سرانجام دیا ہے۔ اس دوران سائل نے کبھی بھی
 افسران بالا کو شکایت کا موقع نہیں دیا۔ گھبراہٹ بچوں کی تعلیم و تربیت کی خاطر ان کو
 پہلے سائل کا تبادلہ گورنمنٹ ٹیچنگ سکول ناروٹالی سے گورنمنٹ مڈل سکول لکھنویہ
 چاہے جردت اللہ قاری نے عرصہ تیرہ سال سے سکول کو اپنے آباد اجداد کا سہارا
 سمجھ کر قبضہ جمالی کیا تھا۔ جسے مارکیٹ ڈرگھوسٹ کے ساتھ لیا ہے۔
 سائل نے اس سکول میں ایک سال بھر نہیں گزارا۔ جبکہ آئین و قانون کی رو سے
 ایک ٹینے میں تین سال Tenure مقرر ہے۔

ایک ٹوئی ہے کہ مقررہ مدت پوری کیے بغیر یعنی صرف نو مہینے بعد ملک ٹائم خان حلقہ
 M.P.A اور Pk 41 کے کہنے پر سائل کا تبادلہ گورنمنٹ ٹیچنگ سکول منڈوہ کر دیا گیا
 M.P.A کا Letter. D.O ایجوکیشن آفس کراچی میں موجود ہے۔ جو کہ سائل کو دکھایا گیا
 دوسری ٹوئی ہے کہ حکومت خیبر پختونخوا نے 2013ء کو ہر قسم کی تبادلوں پر پابندی
 عائد کی ہے۔ اور اسی تاریخ یعنی 19 جولائی کو اسے تبادلہ کر دیا گیا۔ ٹرانسفر آرڈر
 Attach ہے۔ جو آئین، قانون و حقوق النساء اور 1999ء کے خلاف ورزی کے ساتھ ظلم کی
 نتیجی ہے۔

لہذا آپہ کی خدمت میں شکایت کی ہے کہ اس کے تبادلے اور ظلم کا ازالہ
 کر کے منسوقی کا حکم جاری کر لیا جائے۔ تاکہ اسے اپنے تعلیمی اور مالی حالات بہتر
 تازہ دست دعا گورنمنٹ ٹیچنگ سکول منڈوہ میں منتقل کیا جائے۔

یہ خادم حافظ شہراہد قاری گورنمنٹ مڈل سکول لکھنویہ ضلع کراچی

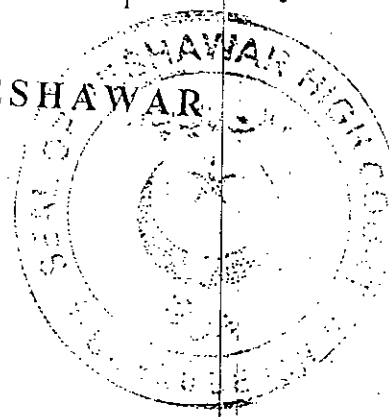
Attested
 To be true copy
 Advocate

22

Annexure 1

G

IN THE PESHAWAR HIGH COURT PESHAWAR



WRIT PETITION No. 277-B/2013

Hafiz Qari Shabir Ahmad S/o Mir Akbar GMS Latamber
Tehsil and District Karak.....Petitioner.

Versus

1. The Director of Education (E. & SE) Govt: of Khyber Pakhtunkhwa, Peshawar.
2. The District Education Officer, District Karak.
3. Malak Qasim Khan Khattak MPA PK-41 Khojaki Killa, Tehsil Takht e Nasrati, Districk Karak.
4. Rahmat Ullah Qari S/o Saad Ullah Khan Govt: MS Labamber.....Respondents.

WRIT PETITION UNDER ARTICLE, 199 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC
OF PAKISTAN, 1973.

Respectfully Sheweth;

Facts giving rise to the present writ petition are as under:-

1. That petitioner has been serving as Qari for the last 22 years with unblemished and clean sheeted conduct record.
2. That he has served 22 years out of his home station.

FILED TODAY
Deputy Registrar
29 AUG 2013

ATTESTED
Peshawar High Court,
Banna Bench

PESHAWAR HIGH COURT,
BANNU BENCH

FORM OF ORDER SHEET

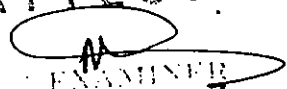
Date of Order or Proceedings	Order or other Proceedings with Signature of Judge (s)
1	2
24.09.2013	<p><u>W.P. No.277-B/2013</u></p> <p><u>Present:-</u> M/S Ashraf Ali Khan and Khush Amir Khattak, advocates, for the petitioner.</p> <p>****</p> <p><u>ROOH-UL-AMIN KHAN, J :-</u> Petitioner Hafiz Qari Shabir Ahmad, serving as Qari in the respondents' department is aggrieved from his transfer order passed by respondent No.2 (District Education Officer, Karak), dated 19.06.2013, whereby he has been transferred to GHS Mandawa (Karak) from GMS Latamber, alleging the same to be the result of political motivation and in violation of the tenure policy of the Government just to victimize him.</p> <p>2. Admittedly, the petitioner is a Civil Servant. Under section 10 of the NWFP Civil Servants Act, 1973, a civil servant can be transferred during</p>

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ATTESTED
Handwritten signature

period of his service, which is one of the incidents of service, squarely falling under the terms and conditions of service, as such, comes within the domain of Service Tribunal. In such like matters, the constitutional jurisdiction of the High Court is ousted by the explicit provision of Article 212 of the Constitution and even if the transfer order is the outcome of mala fide, coram non iudice or is in violation of any rules, the same could only be challenged before the Service Tribunal. It has been settled by the Apex court time and again that the matter regarding transfer of a civil servants is one of the incidents of terms and conditions of service, which could not be agitated before the High Court through constitutional petition under Article 199 of the Constitution. Article 212 of the Constitution, expressly bars the jurisdiction of the High Court in the matters exclusively triable by the Service Tribunal. When the learned counsel for the petitioner was confronted with the constitutional bar over the jurisdiction of this Court,

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ATTESTED

 EXAMINER
 Peshawar High Court
 Bannu Bench

contained in Article 212 of the Constitution, he fairly and frankly conceded, however, requested that direction may be given to respondent No.1 to decide the departmental appeal of the petitioner as early as possible.

3. For the reasons discussed above, this petition being not maintainable, stands dismissed in limine, however, respondent No.1 is directed to decide the departmental appeal of the petitioner within the statutory period, positively.

Announced:
24.09.2013.

Sd/ Rook ul. Amin Khan
Sd/ Syed Afsar Shah

CERTIFIED TO BE TRUE COPY

EAD
Registrar of High Court
Authorised Under Section 10 of
The Oath-Taking Act of 1964

26/9/13

S.No. 521
Date of Presentation of Application 24.9.13
No. of Pages 81
Copy Fee 1
Fees 16/-

Date 26.9.13
Date of 26.9.13
Shabir Ahmad

OFFICE OF THE DIRECTOR ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA, PESHAWAR

NOTIFICATION.

Annexure - ^H ②

26

The competent authority has been pleased to impose ban on all kind of posting/transfers in Elementary & Secondary Education Khyber Pakhtunkhwa with immediate effect till further order

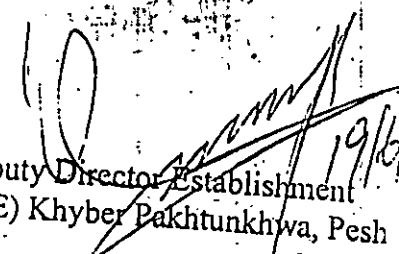
Director
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

1900-2009

Endst:No. _____ /F.No 69/Vol-II/P/Transfer G.Branch Dated 19/6 /2013

Copy forwarded to the:-

- 1-50 All the District Education Officers (M/F) in Khyber Pakhtunkhwa
- 51-100 All the SDEO (M/F) in Khyber Pakhtunkhwa,
- 101 PS to Minister Education (E&SE) Khyber Pakhtunkhwa
- 102 PS to Secretary to Govt. of (E&SE) Department Khyber Pakhtunkhwa
- 103 PA to Director E&SE Peshawar


Deputy Director Establishment
(E&SE) Khyber Pakhtunkhwa, Pesh
19/6/2013

ADD (Secy)
For 7/2013
25/06/2013

Attested
To be true copy
Advocate

بعدالت

K P K Service Tribunal, Peshawar

تیت ایک راجہ

کورت نہیں

Haftz Shabir Ahmad

vs

Dist Education Officer.

۲۰ منجانب

مقدمہ

مقدمہ

پروے

جرم

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے بیرونی وجوہات کی کل کارروائی متعلقہ آل مقام کے لئے پیشاوار کے لئے اشرف علی مہڈ ایڈ نواز خان مہڈ ایڈوکیٹ کی

مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا اختیار ہوگا۔ نیز وکیل صاحب کو کرنے راضی نامہ و تقریر ثالث و فیصلہ بر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک اور پیسہ و عیشی دعویٰ اور درخواست ہر قسم کی تصدیق زر اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم بیرونی یا ڈگری کی طرف یا اپیل کی بر آئیگی ابجد منسوخی و نیز دائر کرنے اپیل نگرانی نظر ثانی و بیرونی آگرنے کا اختیار ہوگا۔ اور بصورت ضرورت مقدمہ مذکور کے کل یہاں سے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو کبھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے۔ اور اس کا ساختہ پر دائرہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائے التوائے مقدمہ کے سبب سے ہوگا۔ اس کے مستحق کیا صاحب موصوف ہوں گے نیز بقایا خرچہ کی وصولی کرنے کا بھی اختیار ہوگا۔ اور کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر وکیل صاحب پابند نہ ہوں گے۔ کہ بیرونی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

حافظ شہاب احمد

المرقوم

کے لئے منظور ہے۔

Attested & Accepted

Jshafi
Advocate.

مقام