

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1670 /2022

Muhammad Idrees.....Appellant.

Versus

The Director Education, (E & SED) & others.....Respondents.

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Through



us
Ashraf Ali Khattak
Advocate, Supreme Court.

Dated: ___ / ___ /2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Re-joinder to the inquiry report

In

Service Appeal No.1670 /2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7907

Dated 26-09-23

Muhammad Idress,
Ex-Junior Clerk,
R/o Ouch East, Tehsil Adenzai, Dir Lower Appellant.

Versus

1. The Director Education, (E & SED),
Near Malik Saad BRT, Terminal,
G.T. Road Firdous, Peshawar
Kohat Region, Kohat.
2. The District Education Officer (Male),
(E & SED), Dir Lower.
3. The District Education Officer (Female),
(E & SED), Dir Lower Respondents.

Respectfully Sheweth,

With due respect the undersigned humbly submits as under;

Back Ground:

It is humbly submitted that the Appellant has remained as a Junior Clerk, GGHS Kotigram from **October/21/2019** to **January/30/ 2022**. He was **relived** from GGHS Kotigram on **31-01-2022** in pursuance of the transfer order dated **20-01-2022** and his services were placed at the disposal of District Education Officer (Male), Dir Lower for further adjustment. Copies of the transfer and reliving order dated **20-01-2022** and **31-01-2022** attached with memo of Service Appeal.

On 26-11-2021 vide dispatch No.24 Mst: Zaitoon Begum, Head Mistress, GGHS Kotigram, who was going to be retired w.e.f02-04-2022 on attaining the age of superannuation, submitted an application for retirement so, as to obtain NDC before her retirement. The application was received on 10-12-2021 by the office of DEO (F) Dir Lower as evident from Annexure-Flag/1, and whereas the audit process was carried out on 27-11-2021 for the purpose of NDC. Now the question is as to why the application for retirement was submitted on 10-12-2021, when the audit process was already carried out on 27-11-2021. During the audit proceedings on 27-11-2021, it was unearthed that Mst: Zaitoon Begum has misappropriated Rs.150500/- of Pupil Fund. It is humbly submitted that Junior Clerk by virtue of his job description has nothing to do with the Pupil Fund. The fund is collected from the students directly by the Class Teacher and then is handed over to the Head Mistress, who further deposits the same into the Bank Account of the School. The Head Mistress misappropriated the Pupil Fund and failed to deposit the same in the concerned Bank Account. It is pertinent to note that the audit has been carried out on 27-11-2021 and whereas the Bank Statement of the concerned account shows that till 10-12-2021, no such amount was deposited in the Bank Account. The Bank Statement further shows that the Pupil Fund amount Rs.150500/- has been deposited on 30-12-2021 i.e. after the audit proceedings. Copies of application along with audit notes on the account of GGHS Kotigram Dir Lower dated 27-11-2021 and Bank Statements are attached already attached with memo of Service Appeal.

It is humbly submitted that the Head Mistress named above directed the undersigned to complete the documentary proof of the Pupil Fund and its expenditures. The undersigned requested the Head Mistress that *“since the questioned fund has been utilized by you (Head Mistress) directly and the undersigned has nothing to do with the said fund therefore, you (Head Mistress) may kindly provide necessary documentation regarding the utilization of subject fund so, that the undersigned could further processed the legal*

proceedings in respect of the fund but, she failed to provide any sort of document."

It is worth mentioning that the Head Mistress by herself deposited the Pupil Fund amount Rs.150500/- on 30-12-2021, which is evident from the Bank Statement.

This got the Head Mistress annoyed and she bent upon to penalize the appellant and in connivance with higher authorities primarily got the appellant transferred from the school vide order dated 20-01-2022 and placed the appellant at the disposal of DEO (Male). It is also worthy to note that the appellant was relieved by the said Head Mistress vide reliving order dated 31-01-2022. The pay of the appellant was also made inactive by the said Head Mistress on 31-01-2022. The appellant was then adjusted at SDEO (Male) Adenzai at Chakdara against the post of Computer Operator. It is also worth mentioning that the salary of the appellant for the month of February, 2022 has not been paid, which is still outstanding.

The enmity of the Head Mistress does not end and she lodged complaint before the District Education Officer (Female) Dir Lower, Timergara on 14-03-2022 wherein she leveled frivolous and baseless allegations against the appellant and resultantly a slipshod inquiry was initiated in the absence of appellant.

The ASDEO (Establishment Primary) Mr. Shahid Anwar Sahib called the appellant through Mr. Raza Shah, SDEO (Male) Adenzai to appear before him on 21-05-2022. The appellant appeared before the worthy ASDEO (Establishment Primary) Mr. Shahid Anwar Sahib on 21-05-2022. Wherein the appellant was informed that complaint has been received from Mst: Zaitoon Begum, the then Head Mistress, GGHS Kotigram. He showed copy of the complaint and directed to take picture of the same and submit answer to the complaint immediately at the spot. The appellant answered the allegations on the spot and denied the same in written form.

It is humbly *submitted that the appellant has never been served with any charge sheet / statement of allegations. The undersigned was unaware as to whether any inquiry/ order has been made and whether any inquiry officer or as the case may be, inquiry committee has been constituted on the complaint of Head Mistress. The appellant was later on came across the information that a report has been submitted before the worthy Director Education, E&SE wherein it has been proposed to penalize the undersigned with major penalty of compulsory retirement.*

The appellant immediately approached the respondent No.1 the worthy Director, E&SE, Khyber Pakhtunkhwa and submitted application in this behalf on 22-06-2022 wherein he requested that since, the appellant has been condemned unheard in the whole proceedings. Neither the appellant has been served with charge sheet and statement of allegations nor has he been associated with the alleged inquiry proceedings. The statement of the complainant and others, if any, were recorded. The same were at the back of appellant with no opportunity of cross examination and defense therefore the whole proceedings against the appellant were void ab initio and cannot be clothed with validity.

The respondent No.1 worthy Director Education was pleased to allow the application and marked the same to Additional Director on 22-06-2022 for further necessary action thereupon. It is also humbly submitted that the additional Director also marked the application of the undersigned to Assistant Director (Admn) for further process. Appellant was called by the respondent No.1 Worthy Director E & SE vide letter Endstt: No.2156-F.No./A-23/Complaint/Dir Lower Dated 01-08-2022 to appear before him at Peshawar for personal hearing on 04-08-2022. Appellant accordingly appeared on 04-08-2022 for personal hearing, questioner was served upon him and appellant replied the questioner on the same date. Copies of personal hearing attached with memo of Service appeal.

The appellant received Notification No.5364-67 dated 11-08-2022 from the office of respondent No.1 the Director E &SE on 12-08-2022 with the remarks that appellant is exonerated of the charges, however “the appellate authority, Respondent No.1 the Director E&SE Khyber Pakhtunkhwa has decided to issue “warning” to Muhammad Idress Junior Clerk to perform his duty regularly with the entire satisfaction of high-ups, otherwise strict action will be taken against him” copy of Notification attached as Flag-II

During this period respondent No.2 the District Education Officer Male Dir Lower issued show Cause Notice to the appellant vide Endstt: No.6101-03 Dated 18-07-2022 with the direction to submit the reply of show cause within 7 days of the delivery. Appellant accordingly submitted his reply. Copy of show cause notice and reply of show cause notice attached with memo of Service appeal.

It is very astonished that on one hand the appellant was exonerated by the worthy Director and whereas on the other hand; appellant was served with show cause notice on the same set of allegation upon which appellant was exonerated.

All relevant facts have been already elaborated by the appellant in his service appeal, which is worth perusal.

From the circumstances explain above it can be easily judged that the whole department proceedings were initiated with malafide intention to remove the appellant from his legal service.

Reply to the inquiry Report.

The undersigned humbly submit as under:-

Reply to allegation leveled against the undersigned in in the inquiry report.

Allegation in the show cause notice.

A. Allegation No.A...“You have submitted bogus/designed/fake application to the DEO (F) for the retirement of Headmistress GGHS Kotigram”

B. Allegations in inquiry report.

C. Whereas the inquiry officer in his report “Analysis of the statements” says as to the following:-

“The written statement and verble information shared by the HM and Teacher shows that the clerk concerned pralized irregular activities through fake and designed letters for which he has very known reputation and experty.

The Headmistress categorically that Mr.MuhammadIdress has submitted bogus /designed /fake application of her retirement to Secretary E & SEOffice with fake signature as he is expert in it.

In this respect, it is humbly submitted that:-

i. From the perusal of the show cause notice, it is evident that appellatant was blamed for submitting retirement application of the Head Mistress to DEO (F)Dir Lower and whereas the inquiry officer in his inquiry report says that appellatant has submitted bogus retirement application to the SecretaryEducation (E & SE), Khyber Pakhtunkhwa. Now the question is “which one is true”. Whether the prosecution could be allowed to approbate and reprobate in the same breath.

ii. It is universally accepted principle that an illegal act is done for the sake of some monetary or otherwise benefits. In the instant case the question arises that what was the motive of the undersigned in fabricating bogus/designed and fake application?.....Theanswer is negative.

As per rule application for retirement is submitted six month prior

to the date of retirement so, as to secure the NDC for the purpose of pension. The audit of the school Head Mistress was carried out on 27-11-2021 for the purpose of NDC, which was a legal requirement. The question is what was the purpose of appellant in submitting the so called bogus application for retirement. Headmistress was going to retirement on superannuation 02-04-2022. Complainant herself submitted application vide dated 26-11-2021 and received in the office of DEO (F) on 10-12-2021. An audit of the accounts of GGHS Kotigram was carried out by the office of Director of Elementary and Secondary Education Khyber Pakhtunkhwa, Peshawar 27-11-2021 i.e much before the date of receipt of retirement application by the Office of DEO (F), which was received by the EDO (F) on 10-12-2021. This is the routine practice of the department. The complainant was herself beneficiary of the whole audit proceedings. In case if any audit Para is endorsed against the complainant than how it can be presumed that it was unearthed due to the act of the undersigned.

iii. In case the undersigned has falsely fabricated the signature of the complaint on the application then the best course for the inquiry officer would be to send the signature to FSL for verification and then to determine the genuines or otherwise of the signature. In absence of any evidence, how it can be presumed that the undersigned has/had fabricated/designed bogus signature on the application.

iv. In order to burden the shoulders of the appellant with alleged accusation, the inquiry officer was legally bound to record the statement of the complainant in the presence of the appellant and provide opportunity to scrutinize her statement under the scrutiny of cross examination. The appellant has not been associated with inquiry proceeding and has been condemned unheard which

against the principle of natural justice and also against the provision of E & D Rules, 2011.

- v. It has been repeatedly held by the Hon'ble Supreme Court of Pakistan that in case of major penalty there must be regular inquiry. In the instant case no regular inquiry has been conducted. The appellant was neither been served with any sort of charge sheet and statement of allegation nor any regular inquiry has been conducted. Appellant was unaware of the inquiry proceeding. No inquiry was attached with the show cause Notice. The appellant was also denied with opportunity of personal hearing. The whole departmental proceeding was/is nullity in the eyes of law therefore, liable to set aside.

Allegation in the Show Cause Notice.

D. "You have submitted a fake letter to DEO (F) for cancellation of DDO ship of the Headmistress GGHS Kotigram"

Allegation in the inquiry report.

The inquiry officer vides its report "Analysis of the statements" says as under:-

"She (Complainant / Headmistress) also disowned the letter of DDO ship of Mst: RabiaAyoub SST as the clerk (appellant) has designed it without the approval of the Headmistress".

IN Response, it is humbly submitted that the undersigned has never submitted any application or letter for cancellation of DDO ship of the Headmistress GGHS Kotigram. It is the prerogative of the competent authority to appoint or nominate any person on the post of DDO ship. No evidence is available on record that the undersigned has ever submitted application for cancellation of

DDO ship of the complaint Headmistress. In case if there is any evidence the undersigned has right to be confronted with such type of evidence. In the instant case the undersigned has never been confronted with such type of evidence. In case of submission any such type of application; there must be initial of the appellant on the application.

The statement of Mst: RabiaAyub has not been recorded by the inquiry officer in the presence of appellant.

Allegation in the Show Cause Notice

E. "You also submitted a bogus transfer order of Mst: Rabia SST from Kotigram to GGHS NulMalakand Agency." ... (Show Cause).

Allegation in inquiry report.

The inquiry officer vide its report "Analysis of the statements" says as under:-

It is too astonishing that he (appellant) provided a bougus transfer order of one Mst: Sarwat Begum showing her transfer from GGHS Kotigram to GGHS Nul MKD signed by the Deputy Directress and on the basis of it submitted stoppage of pay source in the Account Office with Fake Signature of the Headmistress keeping the teacher concerned unaware just to torture her. The Transfer order was verified from the concerned signatory in Directorate, she disowned her signature.

In response it is humbly submitted that:-

- i. In Show Cause Notice, it has been provided that appellant has submitted a bogus transfer order of Mst: Rabia SST from Kotigram to GGHS NulMalakand Agency and where as in the inquiry report the name of Mst: Sarwat Begum has been mentioned.

Now the question is which statement is true. Whether prosecution could be allowed to approbate and re-probate in the same breath.

- ii. The undersigned was transferred from GGHS Kotigram on 20/01/2022 and was placed at the disposal of DEO Male Dir Lower at Timergara and was relieved by the complainant Head Mistress on 31/01/2022 and where is salary of the undersigned has also been withheld w.e. 31-01-2022 to 28-02-2022 which is still outstanding.
- iii. It has been already explained above that an illegal act is committed with certain ulterior motive or financial benefits. The first question which would likely to be raised in a prudent mind would be is to what was the interest of the appellant to fabricate/ prepare bogus transfer order of Mst: Sarwat Begum SST GGHS Kotigram. Mst. Sarwat Begum is neither relative of appellant nor the appellant has / had any sort of relation with the concerned teacher. It is also humbly submitted that the undersigned has no enmity what so ever, with the concerned teacher. In absence of such type of relationship the question would be as to why the appellant has prepared/ fabricated a bogus transfer order of the said teacher?
- iv. The inquiry officer was under legal obligation to record evidence of all concerned persons including Mst: Sarwat Begum SST GGHS Kotigram and that to in the presence of appellant with opportunity of cross examination. In the instant case no such evidence has been recorded by the enquiry officer and what to say of cross examination? In absence of compliance with mandatory provisions of law for the validity of accusation, how it can be presumed that the undersigned is guilty of submitting bogus transfer order of Mst: Sarwat Begum SST from GGHS Kotigram to GGHS NulMalakand

Agency. The appellant has never been confronted with such type bogus transfer order.

F. "You have also been removed from service on 30-10-2009 on similar charges"

The inquiry officer vide its report "Analysis of the statements" says as under:-

"His (appellant) previous service record is full of such devil incidence on the basis of which he was removed from service vide this Office No.6767-72 dated 30-10-2009 after legal formalities for such like bogus and designed practices.

Later on, when got his re-instatement order conditioned with De-Novo inquiry, but no one was ready to inquire him again.

The competent authority, Worthy Director E & SE (as EDO/DEO Dir Lower of that time) settled the matter through Oath, but the concerned clerk (appellant) did not himself reformed.

He (appellant) practiced such skills in SDEO (F) Office Adenzai, GGHS Osakai and now in GGHS Kotigram. The previous inquiries and personal files (huge Volume) of the junior clerk is full of such like practices for which he is well known to every one."

In response to this allegation, it is humbly submitted that the Hon'ble Service Tribunal Vide Judgments Dated 24-06-2009 and 09-08-201 re-instated the undersigned and declared all sort of such type of allegations as illegal, unlawful and without lawful authority. It is also worth mentioning that Denovo inquiry was conducted and the reinstatement order was withdrawn. The appellant again approached the Service Tribunal and filed Service Appeal No. 556/2010 and resultantly the appellant was again reinstated with all back benefits. The order of the Hon'ble Service Tribunal and that of competent authority is worth perusal. *Once a civil servant is*

honorably acquitted of the charges, the same cannot be made precedent for any subsequent allegation and no conviction can be made on the score of such type of allegations. It is also worth mentioning that the competent authority vide his comments dated 09-02-2011 has categorically admitted that the alleged accusations as flimsy in nature and have no nexus with the conduct of the appellant therefore, liable to be set at naught. Copies of Judgment of Hon'ble Service Tribunal dated 09-08-2010 along with reinstatement order, Service Appeal No.556/2010, Order Sheet dated 05-09-2011, and Comments of the competent authority dated 09-02-2011 and the reinstatement order with all back benefits dated 13-03-2014 are attached as **Flag III**.

Appellant has neither been confronted with such like alleged allegations nor has the inquiry officer bothered to record any evidence in this respect.

De novo inquiry was conducted through Mr. Hazar Hayat Principle GCMSS Timergara and Mukhtiar Khan Principal GHSS, Khall and it is false to say that no one was ready to conduct inquiry against the appellant. Copies attached as **Flag-IV**.

So far the **question of Oath** of the appellant is concerned; the same has no factual back ground, false and concocted. The Official respondents are under legal obligation to present any such type of stamp paper or other evidence before this Hon'ble Tribunal for perusal and scrutiny.

In view of the above explained humble submissions, the impugned Inquiry Report has no backup and nullity in the eyes of law therefore; this Hon'ble Tribunal may graciously be pleased to set aside the same and exonerate the appellant with all types of accusations and re-instate the appellant w.e.f 22-08-2022 with all back benefits accordingly.



Appellant

Through

As _____

Ashraf Ali Khattak
Advocate,
Supreme Court of Pakistan

Dated: ___/___/2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Rejoinder

in

Service Appeal No. 1670 /2022

Muhammad Idress,
Ex-Junior Clerk,
R/o Ouch East, Tehsil Adenzai, Dir Lower **Appellant.**

Versus

The Director Education,(E & SED),
Near Malik Saad BRT, Terminal,
G.T. Road Firdous, Peshawar & others..... **Respondents.**

Affidavit

I, Muhammad Idress, Ex-Junior Clerk, R/o Ouch East, Tehsil Adenzai, Dir Lower, do hereby solemnly affirm and declare on oath that the contents of the instant rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from the notice of this Hon'ble Tribunal.


DEPONENT

CNIC: 15302-0937058-9


(Humaira Rehman) Advocate
Oath Commission
Endst. No. 3, 70/75

26/9/2023

Flag - I

1
15 P-16 30
Ali Akbar 85
10/18

OFFICE OF THE HEAD MISTRESS GGHS KOTIGRAM DIRSTRIC DIR LOWER.

No. 24

Dated Kotigram the 26 / 11 / 2021.

To,

The Secretary Government of
Khyber Pakhtun Khwa E&SED Peshawar.


Through: - PROPER CHANNEL
SUBJECT: - APPLICATION FOR RETAIRMENT FROM SERVICE.

It is stated that I, am serving in Elementary and Secondary Education Department Khyber Pakhtunkhwa wef 03-11-1985 to 02-04-2022 (A.N) and presently working as Head Mistress BPS-17 at GGHS Kotigram Dir Lower.

My Date of Birth is 03-04-1962 and I, will be proceeded on retirement on completion of 60 years wef 02-04-2022 (A.N).

Therefore, you are requested that I may very kindly be retired from service wef 02-04-2022(A.N) Please.

Hoping that my application will receive due attention


(ZAITOON-BEGUM)
HEAD MISTRESS
GGHS KOTIGRAM DIR LOWER
HEAD MISTRESS
GGHS, Kotigram
Distt: Dir (Lower)



DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR.
Phone: 091-9225344 Email: ddadm.n.ese@gmail.com

Flag - II

18

NOTIFICATION

1. WHEREAS, The District Education Officer (Female) Dir Lower has submitted a complaint against Muhammad Idrees Ex-JC GGHS Kotigram Dir Lower vide letter No.1138 dated 18/3/2022, now service placed at the disposal of DEO (M) Dir Lower vide office order issued under Endst: No.7861-65 dated 20/01/2022.
2. WHEREAS, an enquiry has been conducted by this Office through DEO (M) Dir Lower vide Notification issued under Endst: No.4501-04 dated 30/03/2022.
3. WHEREAS, the District Education Officer (M) Dir Lower (Enquiry Officer) has conducted enquiry and submitted detail enquiry report to this Directorate vide letter No.3593 dated 11/06/2022 with clear cut recommendations of compulsory Retirement from service in r/o Muhammad Idrees J/C.
4. WHEREAS, an appeal has been received in r/o Muhammad Idrees JC against the enquiry report with the request that the enquiry officer has conducted an ex-parte enquiry against him.
5. WHEREAS, the appellate authority has accepted his appeal and called Muhammad Idrees JC for personal hearing on 4/8/2022 vide this office letter No.2156 dated 1/08/2022.
6. WHEREAS, a questioner was served upon Muhammad Idrees JC during personal hearing dated 4/8/2022.
7. AND WHEREAS, Muhammad Idrees JC has submitted written reply of the Questioner on the same date..
8. NOW, THEREFORE, the appellate authority, the Director E&SE Khyber Pakhtunkhwa has decided to issue **Warning** to Muhammad Idrees J/Clerk to perform his duty regularly with the entire satisfaction of the highups, otherwise strict action will be taken against him.

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Endst: No. 5264-67 /F.No. /A-23/MS/Complaint/ Dir Lower Dated: 11/08/2022

Copy of the above is forwarded for information and n/action to the:-

- 1- District Education Officer (M/F) Dir Lower.
- 2- District Account Officer Dir Lower.
- 3- Principal/HM concerned.
- 4- Official concerned.
- 5- PA to the Director E&SE Khyber Pakhtunkhwa Peshawar.

[Signature]
Deputy Director (F&A)
Directorate E&S Education
Khyber Pakhtunkhwa, Peshawar

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.



Flag - III

17

Appeal No.222/2009

Date of institution - 18.02.2009

Date of decision - 24-6.2009

Muhammad Idrees, Junior Clerk, GHSS Shawa, District Dir Lower under transfer to GHSS Samarbagh, District Dir Lower (Appellant)

VERSUS

1. The Executive District Officer, Elementary & Secondary Education, District Dir Lower.
2. The District Coordination Officer, District Dir Lower at Timergara.
3. Mr. Mukhtiar, Junior Clerk, GGHS Ouch under transfer to GHSS Shawa, District Dir Lower (Respondents)
(Respondent No. 3 proceeded against Ex-parte vide order dated 26.5.2009)

Service appeal under Section 4 of the NWFP Service Tribunals Act 1974 against the impugned order dated 27.9.2008 passed by Respondent No.1 whereby the appellant was unlawfully transferred from GGHS Shawa to GHSS Samar Bagh and Respondent No.3 was transferred and posted there against which appellant filed a departmental appeal/ representation on 23.10.2008 but the same was not disposed of within the statutory period of 90 days.

Mr. Ashraf Ali, Advocate..... For Appellant.
Mr. Ghulam Mustafa, A.G.P..... For Respondents.

MR. SULTAN MAHMOOD KHATTAK..... MEMBER.
SYED MANZOOR ALI SHAH MEMBER.

JUDGMENT

SULTAN MAHMOOD KHATTAK, MEMBER:- This appeal has been filed by the appellant against the impugned order dated 27.9.2008 passed by Respondent No.1 whereby he was transferred from GGHS Shawa to GHSS Samar Bagh and Respondent No.3 was transferred and posted there against. He prayed the impugned order may be set aside and appellant may be allowed to continue his duties at GGHS Shawa, Dir Lower.

2. Brief facts of the case as averred from the memo of appeal are that the appellant was appointed as Junior Clerk vide order dated 30.5.2006 and posted at GHS Shorshing, Dir Lower. After his appointment, the appellant had served at GHS Shorshing for hardly 3 months when he was transferred and posted at GGHS Shawa vide order dated 1.9.2006. The appellant assumed the charge at the new school. He was again transferred from GGHS Shawa to GHSS Samar Bagh and Respondent No.3 was posted vice the appellant vide the

ATTESTED
EXAMINER
NWFP Service Tribunal
Peshawar.

impugned order dated 27.9.2008. The impugned order is the result of political interference as is evident from the letter dated 15.9.2008, whereby the appellant was unlawfully transferred in violation of the Rules and policy. The impugned order is illegal hence appellant aggrieved thereof preferred a departmental appeal on 23.10.2008 but the same solicited no response, hence this appeal.

3. The respondents were summoned. They appeared through their representatives, submitted written reply, contested the appeal and denied the claim of the appellant, except Respondent No. 3 who has been proceeded against ex-parte..

4. Arguments heard and record perused.

5. The learned counsel for the appellant argued that Respondents No.1 & 2 have not treated the appellant in accordance with law, rules and policy on the subject and acted in violation of Article 4 of Constitution of the Islamic Republic of Pakistan, 1973 and unlawfully transferred the appellant through the impugned order which is illegal, unlawful and hence not sustainable in the eyes of law. The impugned order is politically motivated and as such is neither in public interest nor in exigency of service hence the same is not sustainable on this score alone. The impugned order is premature in as much as the normal tenure of posting of a civil servant to a post is three years which must be completed in all circumstances and any transfer deviation of the rules will render the order of transfer as without lawful authority. The impugned order is in violation of the transfer and posting, Policy, ethics of good governance and also violative of the instructions of the Government. Under the Government of NWFP Rules of Business, 2001, Respondent No.1 was bound to consult the Respondent No.2 before the transfer of the appellant but the same has not been done which is in violation of the rules, therefore the impugned order of Respondent No.1 is nullity in the eyes of law and hence liable to be set aside. He continued to argue that the respondent department failed to encounter the rejoinder submitted by the appellant through counter affidavit, and that the charges leveled against the appellant are frivolous and without any evidence. The impugned transfer order has passed during the period of ban and under the policy of transfer and posting no relaxation has been obtained from the competent authority, therefore the order is not tenable under the law. He prayed that the appeal may be accepted as prayed for.

F-111

18

[Handwritten signature]

ATTESTED
EXAMINER
NWFP Service Tribunal
Peshawar.

(19)

6. The learned A.G.P argued that whatsoever, had been done was under the law, Rules and prevailing policy. As under Section 4 of NWFP Civil Servant Act 1973, every Civil Servant shall hold office during the pleasure of the Governor/authority. However the order was made on the report of Headmistress and in light of inquiry committee report. He prayed that the appeal may be dismissed.

7. After hearing arguments on both sides, the Tribunal while agreeing with the arguments put forth by the learned counsel for the appellant holds that the impugned order envisaging the appellant's transfer from GGHS Shewa to GHSS Samar Bagh before completion of his normal tenure is based on malafide, political and extraneous consideration and as such not tenable under the law. The Respondent Department did not encounter the rejoinder submitted by the appellant through counter affidavit. The appellant has thus made out a case for interference of the Tribunal. Accordingly, this appeal is accepted. The impugned transfer order dated 27.9.2008 is set aside and the respondent department is directed to allow the appellant to continue his duties at GGHS Shawa, Dir Lower. The parties are, however, left to bear their own costs. File be consigned to the record.

Sd/- Sultan Mahmood Khattak
Member
Sd/- Syed Mansoor Ali Shah
Member

ANNOUNCED
24.6.2009.

NOTIFIED TO THE PUBLIC
SEARCHED
SERIALIZED
INDEXED

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Copying fee	8
Legal	
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Date of completion of copy	17.7.09
Date of delivery of copy	17.7.09



Appeal No. 556/2010

Date of institution 25.02.2010
Date of decision 09.08.2010

Muhammad Idrees, Ex-Junior Clerk, E&SE Department Dir Lower.....(Appellant)

VERSUS

1. EDO (E&SE) District Dir Lower.
 2. DCO Dir Lower.
 3. Director (E&SE) KPK Peshawar.
 4. Government of NWFP through the Secretary (E&SE) Peshawar.
-(Respondents)

Appeal u/s 10 of the NWFP RSO 2000 against the order dated 30.10.2009 whereby the appellant was dismissed from service.

M/S Khalid Rehman & Ashraf Ali Khattak Advocates..... For appellant.
Mr. Jamal Nasir A.G.P..... For Respondents

MR. ABDUL JALIL..... MEMBER.
SYED MANZOOR ALI SHAH..... MEMBER.

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

JUDGMENT.

ABDUL JALIL, MEMBER :- This appeal has been filed by the appellant against the order dated 30.10.2009 whereby he was dismissed from service.

2. Brief facts of the case are that the appellant was posted as Junior Clerk at GCHS Shawa District Lower Dir. The Headmistress handed over her bill to the appellant on 28.5.2009 which was sent to Respondent No. 1 but the same was returned with certain objections. The same annoyed the Headmistress and she blamed the appellant for the same. The Headmistress used her influence by writing against the appellant to Respondent No. 1 and also exerted political pressure on him to take action against the appellant as is evident from letter dated 15.9.2010. He was transferred as a punishment to GHSS Samar Bagh vide order dated 27.9.2008. He took over charge on 2.12.2008. The appellant challenged the same in Service Appeal No. 222/2009 in the Service Tribunal and the Tribunal was pleased to accept the appeal on 24.6.2009. Thereafter,

disciplinary proceedings were initiated against the appellant and he was dismissed from service vide the impugned order dated 30.10.2009 against which he preferred a departmental appeal but the same was dismissed on 23.2.2010. Hence, the instant appeal.

3. Arguments heard and record perused.

4. The learned counsel for the appellant argued that the appellant has been proceeded against under extraneous consideration only to penalize him for his struggle of his legal rights. No regular inquiry was conducted which is mandatory requirement under the law and no copy of inquiry report was provided to the appellant. An inquiry in the shape of questionnaire form was served upon the appellant which is illegal. No statement was recorded what to speak of the statements in the presence of appellant. The appellant has been condemned unheard.

5. The A.G.P argued that the appeal is time barred. The appellant embezzled Rs. 50,000/- of PTC fund and mis-placed the Service Books of the Teachers. He was given show cause notice, charge sheet and final show cause notice and he was heard in person. Proper inquiry was conducted. The appellant was found guilty of mis-conduct, corruption and embezzlement in the PTC Fund. He has also stolen Service Books and other record of Teachers which are still unreturned. He was removed from service after fulfilling the legal requirements.

6. In view of the above, the impugned order dated 30.10.2009 is set aside as the punishment is not commensurate to the guilt of appellant. The case is remanded for denovo inquiry. The inquiry committee shall verify the signatures of Head Mistress on documents from PSL in order to determine whether the signature on receipt of Rs. 50000/- was genuine or forged and ^{also} determine ~~if~~ who is responsible for maintaining record of the PTA expenditure etc and who is custodian of the PTA funds. No order as to cost. File be consigned to the record.

ANNOUNCED.
2.8.2010.

(SYED MANZOOR ALI SHAH)
MEMBER.

(ABDUL JALIL)
MEMBER.

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Annex - F

P-13

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (E&SE) DIR LOWER AT TIMERGARA.

OFFICER ORDER:

To honor the judgment of KPK Service Tribunal Peshawar dated 09/08/2010 in writ petition No.556/2010; Mr. Mohd Idrees Ex-Junior Clerk is hereby reinstated in service and further adjusted against Junior Clerk post at GHS Takoro in the interest of public service from the date of his taking over charge.

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Note:

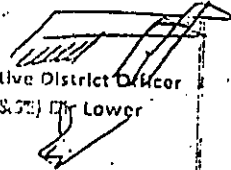
- 1. No TA/DA is allowed.
- 2. Charge Report should be submitted to all concerned.

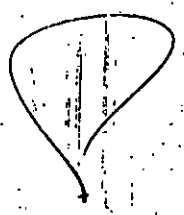
(Saeed Khan)
Executive District Officer
(E&SE) Dir Lower

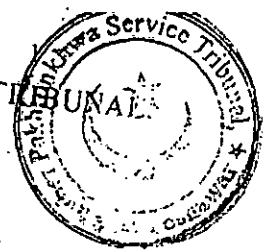
Endst. No. 15990-85 Dated Timergara the 20/09/2010.

Copy of the above is forwarded to:-

- 1. The Secretary (E&SE) KPK Peshawar.
- 2. The Registrar KPK Service Tribunal Peshawar.
- 3. The Director (E&SE) KPK Peshawar.
- 4. The District Coordination Officer Dir Lower.
- 5. The District Accounts Officer Dir Lower.
- 6. The Headmaster concerned.


Executive District Officer
(E&SE) Dir Lower





Flag III

Service Appeal No. 566 /2010

K.P.S. Province
Service Tribunal
Sitting No. 338
Date: 04-03-11

(28)

Muhammad Idrees J/C GHS, Takoro, Dir Lower.
.....Appellant.

Versus

1. The Executive District Officer, Dir Lower.
2. The District Co Ordination Officer, District Dir Lower..... Respondents.

SERVICE APPEAL UNDER SECTION-4 OF THE
KHYBER PAKHTOONKHWA SERVICE
TRIBUNALS ACT, 1974 AGAINST THE
IMPUGNED ORDER DATED.

PRAYER:

On acceptance of the instant appeal, this Honourable Tribunal, may graciously be pleased to set aside the impugned Order dated 31-12-2010, which was received by the appellant on 04-02-2011 and reinstate the appellant with back benefits.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:

1. That appellant was the employee of respondent No.1 department with 15 years service at his credit.
2. That primarily appellant was illegally transfer from GGHS Shawa, to GHSS, Samarbagh, Dir Lower,

ATTESTED

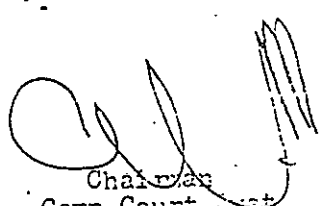
EXAMINER
Khyber Pakhtoonkhwa
Service Tribunal

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4/3/11

Flag-III

1 No. of Order or Proceedings	2 Date of Order or Proceedings	3 Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
8	5.9.2011	<p>Appellant in person and <u>Mr. Nisar-Ahmad, Supdt:</u> with <u>Mr. Arshad Alam, AGP</u> for respondents present. Reply/comments have not been received, and representative of the respondents requested for further time. The representative also stated that if the appellant moves application for appropriate correction in the reinstatement order, the authority would re-consider the same in the light thereof. To come up for reply/comments and further proceedings at camp court Swat on 3.10.2011.</p> <p style="text-align: right;">  Chairman Camp Court Swat </p> <p> Date of Registration of Application <u>22-9-2011</u> Number of Copies <u>8/2</u> Copying <u>6-00</u> Urgent <u>2-00</u> Total <u>8-00</u> Name of Applicant <u>[Signature]</u> Date of Completion of Copy <u>22-9-2011</u> Date of Delivery of Copy <u>22-9-2011</u> </p>

24

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

F-111

D.No. 488
26/9

To

The Executive District Officer
(E&Secy:) Dir Lower at Timergara.

25

Subject: -APPLICATION FOR REVISED RE-INSTATEMENT ORDER

R/Sir,

It is part anent to mention that Service Tribunal K.P.K directed on 05-09-2011 for the subject cited above. In this regard my application is hereby submitted for the following correction in the re-instatement order dated 11-06-2011 (Copy attached as Annex: A).

It is therefore humbly prayed that a Revised Re-Instatement Order may kindly be issued to me with effect from the date of Termination i.e dated 30-10-2009 with all Back Benefits and posted me at G.G.H.S Shawa Dir Lower as per direction of Service Tribunal in appeal No. 222/09 dated 24-06-2009 (Copy attached as Annex: B) and August High Court Peshawar in Writ Petition No.2064/09 dated 06-10-2009 (Copy attached as Annex: C).

Hence, Executive District Officer Dir Lower already implemented service appeal No. 825/10 dated 16.03.2011 in respect of Mr. Muhammad Nisar A.T vide this office ordered endorsement No.13570-76, dated 12.07.2011 (Annex: D), appeal No.709/10 and 898 /10 dated 02.02.2011 in respects of Aqal Zad PET and Muhammad Ilyas CT vide this office Endorsement No. 2469-77 dated 21.02.2011 (Annex: E).

Keeping the above particulars my application is hereby submitted for favour of further sympathetically consideration/Issuance of Revised Re-Instatement Order and posted me at GGHS Shawa as prayed for please.

Thanks

Your Obediently

Dated: 20-09-2011.

(MUHAMMAD IDREES)
Junior Clerk G.H.S Merakai
Maidan Dir Lowe.

~~11~~

Flag-11

28

OFFICE OF THE DISTT. EDUCATION OFFICER (M) DIR LOWER AT TIMERGARA.

OFFICE ORDER.

Reference direction of the Khyber Pakhtunkhwa Service Tribunal Peshawar, Mr. Muhammad Idrees J/Clerk is hereby adjusted at GHS Damtal for the period w.e.f 1/11/2009 to 20/09/2010 for the purpose of Pay only.


Note: - Necessary entry to this effect should be made in his Service Book accordingly.

(Muhammad Ibrahim)
District Education Officer
(M)Dir Lower at Timergara

Erldst: No, 3654-57 Dated Timergara the 13/03/2014.

Copy of the above is forwarded to:-

1. The Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. The Head Mastar GHS Damtal.
3. The District Accounts Officer Dir Lower.
4. The Official concerned.


District Education Officer
(M)Dir Lower at Timergara..

Reg-IV

OFFICE OF THE PRINCIPAL,
GCMHS (BOYS) TIMERGARA DIR LOWER
No. 261 dated. 07/10/2010

27

To:

Mt. Muhammad Idress Junior Clerk
GHS. Takaroo lower Dir

Subject:
Memo:

ENQUIRY

Reference Executive Distt: Officer (E&SE) lower Dir letter No.16123
dated. 20-09-2010.

The enquiry committee is going to conduct an enquiry against you :

You are hereby directed, to attend this School (Govt: Centennial Model
High School Timergara lower Dir) on 18-10-2010 at 10.00 A.M and reply of the attached
questioner may also be submitted on the spot.

Umayy 5/7/10/2010
Chairman/Principal,
GCMHS Timergara lower Dir

M. M. M.
7/10/2010

Member/Principal,
GHSS Khall lower Dir.

To,

The Chairman,
Enquiry Committee,
Principal, GCMHS Timengara
District Dir Lower.

Flag-IV

28

Subject: -STATEMENT.

Respectfully Sheweth,

Brief Facts:.

I have the honour to submit my statement for your consideration and favourable action on the following grounds:-

1. That it is pertinent to mention that being low paid and ~~xxxxxx~~ poor employee, the respected Headmistress GGHS Shawa Dir Lower used to Harass me by one way or the other. She pressurized me to get her medical bills sanctioned from the competent authority. She provided her medical bills to the appellant for further processing on 28-5-2009.
2. That it is pertinent to mention that the answering Civil Servant is neither the authority to sanction Medical Bills nor has any other mens. relation to get the medical bills sanctioned from the authority. He has the responsibility to obey the lawful directions/Orders of the superiors in its true spirits. The answering respondent did so. He after observing codal formalities placed the medical bills of my respected Head Mistress before the concerned competent authority vide letter dated 29-5-2008. But the same were returned to me with certain legal objections. I explained the whole situation before my respected Head Mistress, but might due to some misunderstanding created by some foreign and internal ~~xxxxxx~~ elements or for reasons best known to the Headmistress Sbi. She presumed that the bills have not been signed due to my negligence. This got my Headmistress annoyed and she bent upon to punish me. She through her status, political and extraneous means to bear upon the Executive Distt: Officer (E&SE) Dir Lower transferred and posted me to a very far-flung area, which is about 75/85 kilometers away from my native village. However, the applicant remained unaware of the entire episode nor he was provided an opportunity to explain his position. Resultantly by way of punishment and torture, the EDO E&SE: Dir Lower transferred the applicant to the desired far-situated school. The transferred order was issued with malafide intention and was in violation of rules, policy, natural justice, fair-play equity. Primarily I assailed the same in departmental representation and then before the Hon'able Service Tribunal in Service Appeal No. 222/2009.

Flag-IV

3. That it is also pertinent to mentioned that the Hon'able Service Tribunal was placed to issue Status-quo order in my favour vide order, but the same was not acted upon by the authority and has thus committed contempt of Court Order. The Headmistress refused to honour the order of the Hon'able Service Tribunal as well as EDO E&SE, Dir Lower and refused to allow me to serve on the post. (20)
4. That, The Hon'able service Tribunal was pleased to set-aside the impugned transfer order and directed to allow me to continue my duty at GGHS Shawa, Dir Lower vide order/judgement dated 24/6/2009. That after the judgment ibid, applicant obtained attested copy of judgment and applied to D.C.O Dir Lower for implementation which was referred for necessary action to the learned Executive Distt:Officer (E&SE), Dir Lower, however, instead of implementing the judgement the learned Executive Distt:Officer (E&SE) Dir Lower revengefully started disciplinary action against the appellant and sent letter for enquiry. I submitted numbers of application before the concerned competent authority for the implementation of the judgement/Order of the Hon'able Tribunal.
5. That authority categorically denied to adhere to the judgement of the Hon'able Service Tribunal which is not only of the Misconduct but also clear-cut contempt of court order. So, I the appellant was constrained to approach the august Peshawar High Court. Peshawar in writ petition No. 2064/2009 for implementation wherein the learned EDO (E&SE) Dir Lower was summoned by the Hon'able High Court to attend the court but he did not appear, however, went implementation order dated 7/9/2009. The appellant ~~do~~ appear on the same date in pursuance of which the ~~applicant~~ submitte charge report.
6. That the write petition again come for hearing before the august High Court Peshawar wherein the learned deputy Advocate General, informed the Court that the order has been implemented byt as the Charge was not handed over to the appellant there fore the Hon'able Court directed that "HANDING OVER THE CHARGE BE ENSURED TO THE APPELLANT ON HIS ARRIVAL VIDE ORDER" dated 06/10/2009. Appellant obtained attested copy of the order of the high court and applied to the headmistress, as well as to the learned EDO (E&SE) Dir Lower, but even the order of the august High Court Peshawar was not honoured.
7. That finally vide the impugned order dated 30-10-2009 appellant was imposed upon the major penalty of removal/dismissal from service under the NWFP Removal from service (Special powers) Ordinance, 2000.
8. That the appellant obtained copy of the order and submitted appeal/Representation against impugned orde dated 30-10-2009 to the DCO Dir Lower at Timergara on

Flag - tv

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18-11-2009, but the same was dismissed/fined
by the District Coordination Officer.

- 9. That the applient was agroved and submitted/Challend
the same in Service appeal No.556/2009 in the service
tribunal KPK peshawar.
- 10. The said impugnad order dated ~~23/9/2009~~ was set-aside
by the Hon'able Service Tribunal KPK vide judgement
dated 9-8-2010.

It is therefore requested that my statement in
this regard is hereby submitted for further sympethaticaly
consideration please.

Your's Obedient

[Handwritten Signature]
28/10/2010

(Muhammad Azees J/Clerk)
GHS Takoro Distt:Dir Lower.