

**BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

Service Appeal No: 1761/2023


Raham Jan, SST (B/C) B-16 ADEO (Estab)DEO(F), HanguAppellant.

VERSUS

Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa &
others.....Respondents.

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Asstt: Director (Lit: II)
E&SE Department, Khyber
Pakhtunkhwa, Peshawar.

(1)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

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VERSUS

The Secretary (E&SE) Department, Khyber Pakhtunkhwa & others.....Respondents

JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS No:1-4.

Respectfully Sheweth :-

The Respondents No.1-4 submit as under: -

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 8057

Dated 3/10/23

PRELEMENARY OBJECTIONS.

- 1 That the appellant has got no cause of action/locus standi.
- 2 That the Appellant is not an aggrieved person within the meaning of Section-4 Khyber Pakhtunkhwa Service Tribunal Act 1974 read with Article-212 of the Constitution of Islamic Republic of Pakistan 1973.
- 3 That the instant Service Appeal is badly time barred.
- 4 That the appellant has concealed material facts from this Tribunal in the instant appeal.
- 5 That the instant Appeal is based on mala-fide intentions.
- 6 That the appellant has not come to this Tribunal with clean hands.
- 7 That the appellant is not entitled for the relief to the extent of cancellation/withdrawal orders dated 09-08-2023, whereby, the services of the appellant has been placed at the disposal of the Respondent No. 4 for his further adjustment against his original post of SST (B/C) BPS-16 TC in the Respondent Department.
- 8 That the instant Appeal is not maintainable in its present form.
- 9 That the instant Appeal is bad for mis-joinder & non joinder of the necessary parties.
- 10 That the instant Appeal is barred by law.
- 11 That the appellant is not competent to file the instant appeal against the Respondents.
- 12 That the impugned transfer orders/Notifications dated 09-08-2023 & 28-08-2023 of the Respondent Department are legally competent.

13 That transfer & posting a Civil Servant is the discretionary powers of the competent authority under section-10 of Civil Servant Act-1973.

ON FACTS

- 1 That Para-1 pertains to the residential status of the appellant.
- 2 That Para-2 is correct to the extent of the Notification dated 12-08-2022 with reference to S.No. 2, whereby, the appellant who was awaiting for posting was adjusted against the ADEO (M/P) in the office of the Respondent No. 3 on stop gap arrangements till the arrival of the management cadre officer for the post in question purely reserved for management cadre instead of teaching cadre in the Respondent Department. **(Copy of the order dated 12-08-2023 is attached as Annexure-A).**
- 3 That Para-3 is incorrect as the post of the appellant is primarily a teaching cadre post in the Respondent Department & was adjusted against the ADEO (M/P) in the office of the Respondent No. 3 on stop gap arrangements till the arrival of the management cadre officer for the post in question purely reserved for management cadre instead of teaching cadre in the Respondent Department, hence the claim of the appellant is in violation of the transfer & posting policy of the provincial government. **(Copies of the order dated 09-08-2023 & policy are attached as Annexure-B & C).**
- 4 That Para-4 is also incorrect as both the Notifications dated 09-08-2023 & 28-08-2023 of the Respondent Department are within legal sphere & liable to be maintained.
- 5 That para-5 is correct that aggrieved from the Notification dated 09-08-2023, the appellant has filed a Departmental appeal dated 15-08-2023 to the Respondent No. 2 which was regretted vide order dated 28-08-2023 on legal grounds. **Copies of the Departmental appeal & order dated 28-08-2023 are Annexure-D & E)**
- 6 That the Appellant is not an aggrieved person within the meaning of Section-4 Khyber Pakhtunkhwa Service Tribunal Act 1974 read with Article-212 of the Constitution of Islamic Republic of Pakistan 1973, the appeal in hand is liable to be rejected on the following grounds inter alia:-


ON GROUNDS.


- A. **Incorrect & not admitted.** The orders dated 09-08-2023 & 28-08-2023 of the Department are the result of due process of law & rules and even in the interest of justice, hence, liable to be maintained.
- B. **Incorrect & not admitted.** The plea of the appellant is against the law & rules, hence, liable to be rejected as the act of the Department with regard to orders as cited above within legal sphere having no violation of Article 04 & 25 of the constitution of 1973 by the Department.

- C. **Incorrect & not admitted.** The plea of the appellant is against the law & rules, hence, liable to be rejected as the act of the Department with regard to orders as cited above within legal sphere having no violation of Article 218 (3) 220 of the constitution of 1973 read with Sections-4,5, 8 (C) and 230 of Election Act 2017.
- D. **Incorrect & not admitted.** The act of the Department with regard to the orders cited above are legal having no question of discrimination favoritism and nepotism on the part of the Department.
- E. **Incorrect & not admitted.** The stance of the appellant is illegal is liable to be rejected in view of the above made submission by the Department.
- F. **Incorrect & not admitted.** Detail reply to this ground has already been given, hence, needs no further comments.
- G. **Incorrect & not admitted.** The statement of the appellant is against the law & rules as the orders dated 09-08-2023 & 28-08-2023 are in accordance with the provision of Clause-I, IV & VIII of the transfer/posting policy of the provincial Govt. Therefore, the plea of the appellant is liable to be rejected.
- H. **Incorrect & not admitted.** However, the Department is also seek leave of this Honorable Tribunal to submit additional grounds, record & case law at the time of arguments on the date fixed.

In view of the above made submissions, it is most humbly requested that this Honorable Tribunal may very graciously be pleased to dismiss the instant Service Appeal in favor of the Respondents in the interest of justice.

Dated: 12/09/2023


SECRETARY
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 1)


DIRECTOR
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 2,)

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BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No: 1761/2023


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VERSUS

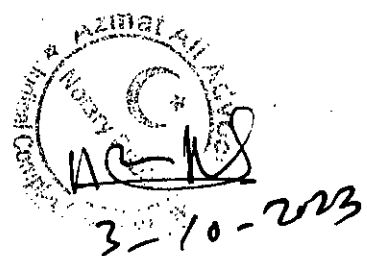
The Secretary (E&SE) Department, Khyber Pakhtunkhwa &
others.....Respondents

AFFIDAVIT

I, Dr. Hayat Khan Assistant Director (Litigation-II) E&SE Department Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents of the instant para wise Comments are true & correct to the best of my knowledge & belief. It is further stated on oath that in this appeal the answering Respondents have neither been placed Ex-Parte nor their defense has been struck off/cost.


Deponent

ATTESTED


3-10-2023



"A" - 5-

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

Phone: 091-9225344

Email: ddadmne.se@gmail.com

NOTIFICATION

The Competent Authority is pleased to order transfer/posting of the following officers (T.C) in their own pay scale, with immediate effect in the interest of public.

S#	Name & Designation	From	TO	Remarks
1	Mr. Ainullah SST(G)	ADEO (Sports) at O/O DEO(M)Hangu	ADEO (P&D) at O/O DEO(F)Hangu	AVP
2	Mr. Raham Jan SST(B/C)	Awaiting for posting	ADEO (Est-Primary) at O/O DEO(F)Hangu	AVP

TERMS & CONDITIONS

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

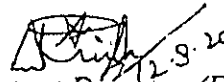
DIRECTOR

Elementary & Secondary Education
Khyber Pakhtunkhwa

Endst: No. 5568-72 F.NO.ADEOS/ (M) Transfers- Hangu
Copy forwarded to the:

Dated the Peshawar 19/08 2022

1. District Education Officer (M/F) Hangu.
2. District Accounts Officer Hangu.
3. Mr. Hidayat Ullah focal person IEMIS Local Directorate.
4. Officers Concerned.
5. Master Copy.


Assistant Director (Estab M-I)
Elementary & Secondary Education
Khyber Pakhtunkhwa



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

"B"

-6-

NOTIFICATION

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

S#	Name & Designation	From	To (posted as)	Remarks
1	Mr. Sami Ullah Khan SST (M/P) BPS-76	GCMHS No.1 Hangu	ADEO (Estab) O/O the DEO (F) Hangu	V. Sr. 2
2	Mr. Rahman Jan (B/C) BPS-16	ADEO (Estab) O/O the DEO (F) Hangu	Services placed at the disposal of DEO (M) Hangu.	

TERMS & CONDITIONS:

- 1- Posting/Adjustment of Teaching Cadre Officers shall be considered as stop-gap arrangement till the arrival of Management Cadre officers.
- 2- The order of the above named SSTs will be effective subject to the condition that they will give an undertaking/affidavit on legal paper/stamp paper to DEO (F) Hangu to the effect, not to claim seniority of Management Cadre.
- 3- Charge Report should be submitted to all concerned.
- 4- No TA/DA is allowed.

DIRECTOR

Elementary & Secondary Education
Khyber Pakhtunkhwa

Endst: No. 102 H-1/ADEOs (M) Transfer Haripur Dated. 09/08/2023

Copy forwarded to the:

1. District Education Officer (M/F) Hangu.
2. District Accounts Officer Hangu.
3. Officers Concerned.
4. PA to Director E&SE KPK Peshawar.

(Signature) 9/8/2023
Assistant Director (Estab M-D)
Elementary & Secondary Education
Khyber Pakhtunkhwa

Better Copy

DIRECTORATE OF ELEMENTARY & SECONDARY
EDUCATION KHYBER PAKHTUNKHWA PESHAWAR.

NOTIFICATION

Consequent upon the relaxation of ban on posting/transfer inside the district accorded by the Competent Authority as per para-3 of the letter issued vide No. SO(SM) E & SED/5-17/2023 Peshawar dated 12.06.2023 and approval of the Competent authority (Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar), the transfer/Posting of the following officers/officials are hereby ordered on their own pay & scales with immediate effect in the best interest of public Service.

S#	Name & Designation	From	To (Posted as)	Remarks
1	Mr Sami Ullah Khan SST (M/P) BPS-16	GCMHS No. 1 Hangu	ADEO (Estab) O/O the DEO (F) Hangu.	V. Sr. 2
2	Mr Rahim Jan SST (B/C) BPS-16	ADEO (Estab) O/O the DEO (F) Hangu	Services placed at the disposal of DEO (M) Hangu	

TERMS & CONDITIONS

1. Posting/Adjustments of Teaching Cadre Officers Shall be considered as stop-gap arrangements till the arrival of Management Cadre officers.
2. The order of the above named SSTs will be effective subject to the condition that they will give an undertaking/affidavit on legal paper/Stamp Paper to DEO (F) hangu to the effect not to claim seniority of management Cadre
3. Charge Report should be submitted to all concerned.
4. No TA/DA is allowed.

DIRECTOR
ELEMENTARY & SECONDARY EDUCATION KHYBER
PAKHTUNKHWA

Endst: No 100-4/H-1/A/DEOs 9M) Transfer Haripur Dated 09-08-2023



GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(Regulation Wing)

POSTING / TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT.

- i) All the posting/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants.
- ii) All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities for seeking posing/transfers of their choice and against the public interest.
- iii) All contract Government employees appointed against specific posts, can not be posted against any other post.
- iv) The normal tenure of posting shall be three years subject to the condition that for the officers/officials posted in unattractive areas the tenure shall be two years and for the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.
- v) { }
vi) While making postings/transfer from settled areas to FATA and vice-versa, specific approval of Governor, NWFP needs to be obtained.

While making postings/transfers of officers/officials up to BS-17, from settled areas to FATA and vice-versa approval of the Chief Secretary NWFP needs to be obtained. Whereas, in case of posting/transfer of officers in BS-18 and above, from settled areas to FATA and vice versa, specific approval of the Governor NWFP shall be obtained.
- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial services should compulsorily serve in FATA for atleast eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.
- vii) Officers may be posted on executive/administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thaana) of his area/residence is situated.
- viii) No posting/transfers of the officer's/officials on detailment basis shall be made.
- ix) Regarding the posting of husband/wife, both in Provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.
- x) All the posting/transferring authorities may facilitate the posting/transfer of the unmarried female government Servants at the station of the residence of their parents.

Para-1(v) regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No. SOR-VI (E&AD) 1-4/2008/Vol-VI, dated 3-6-2008. Consequently authorities competent under the NWFP Government Rules of Business, 1985, District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make posting/transfer subject to observance of the policy and rules. Added vide Urdu circular letter No. SOR-VI(E&AD)1-4/2003, dated 21-09-2004

- xi) Officers/officials except DCOs and DPOs/SPs who are due to retire within one year may be posted on their option on posts in the Districts of their domicile and be allowed to serve there till the retirement.
DCOs and DPOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against non-administrative posts of equivalent scales.
- xii) In terms of Rule-17(1) and (2) read with Schedule-III of the NWFP Government Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against each officer in column 2 thereof:

Outside the Secretariat		
1.	Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above.	Chief Secretary in consultation with Establishment Department and Department concerned with the approval of the Chief Minister.
2.	Other officers in BPS-17 and above to be posted against scheduled posts, or posts normally held by the APUG, PCS(EG) and PCS(SG).	-do-
3.	Heads of Attached Departments and other Officers in B-19 & above in all the Departments.	-do-
In the Secretariat		
1.	Secretaries	Chief Secretary with the approval of the Chief Minister.
2.	Other Officers of and above the rank of Section Officers: a) Within the Same Department b) Within the Secretariat from one Department to another.	Secretary of the Department concerned. Chief secretary/Secretary Establishment.
3.	Officials up to the rank of Superintendent: a) Within the same Department b) To and from an Attached Department c) Within the Secretariat from one Department to another	Secretary of the Department concerned. Secretary of the Dept in consultation with Head of Attached Department concerned. Secretary (Establishment)

- xiii) While considering posting/transfer proposals all the concerned authorities shall keep in mind the following:
- To ensure the posting of proper persons on proper posts, the Performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/officials be considered.
 - Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

xiv) Government servants including District Govt. employees feeling aggrieved due to the orders of posting/transfer authorities may seek remedy from the next higher authority / the appointing authority as the case may be through an appeal to be submitted within seven days of the receipt of such orders. Such appeal shall be disposed of within fifteen days. The option of appeal against posting/ transfer orders could be exercised only in the following cases:

- i) Pre-mature posing/transfer or posting-transfer in violation of the provisions of this policy.
- ii) Serious and grave personal (humanitarian) grounds.

2. To streamline the postings/transfers in the District Government and to remove any irritant/confusions in this regard the provision of Rule 25 of the North West Frontier Province District Government Rules of Business 2001 read with schedule - IV thereof is referred. As per schedule-IV the posting/transferring authorities for the officers/officials shown against each are as under:-

S. No.	Officers	Authority
1.	Posting of District Coordination Officer and Executive District Officer in a District.	Provincial Government.
2.	Posting of District Police Officer.	Provincial Government
3.	Other Officers in BPS-17 and above posted in the District.	Provincial Government
4.	Official in BPS-16 and below	Executive District Officer in consultation with District Coordination Officer.

3. As per Rule 25(2) of the Rules mentioned above the District Coordination Department shall consult the Government if it is proposed to:

- a) Transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure.
- b) Require an officer to hold charge of more than one post for a period exceeding two months.

4. I am further directed to request that the above noted policy may be strictly observed /implemented.

All concerned are requested to ensure that tenures of the concerned officers/officials are invariably mentioned in summaries submitted to the Competent Authorities for Posting/Transfer
(Authority: Letter No. SOR-VI/E&AD/I-4/2003 dated 24-6-2003).

It has been decided by the Provincial Government that posting/transfer orders of all the officers up to BS-19 except Heads of Attached Departments irrespective of grades will be notified by the concerned Administrative Departments with prior approval of the Competent Authority obtained on the Summary. The Notifications/orders should be issued as per specimen given below for guidance.

All posting/transfer orders of BS-20 and above and Heads of Attached Departments (HAD) shall be issued by the Establishment Department and the Administrative Departments shall send approved Summaries to E&A Department for issuance of Notifications.

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"E" -11-

The

Director
Elementary and Secondary Education

Khyber Pakhtoonkhwa.


Subject: APPEAL

I have the honour to state that

- (i) I have been posted / transfer to the office of DEO (F) Hangu as ADEO (Establishment) vide Directorate End No: (5568-71) Dated 12-08-2022. (Copy attached)
- (ii) During this Period I have performed my duty to the entire satisfaction of my senior officer.
- (iii) A versus transfer order was issue vide End No -100-4 on dated 09-08-2023, in which I my service are placed at the disposal of DEO (M) Hangu while Samee Ullah Khan SST (M/P) was adjusted as ADEO (Estab) in the office of DEO (F) Hangu.(copy attached)
- (iv) I did not complete my tenure.
- (v) No compliant / allegation had received to DEO (F) against me during this period.
- (vi) No comments/ recommendations were asked from DEO (F) regarding this transfer.

In view above it is humbly requested that my appeal may kindly be accepted and the order that wore issue on dated 09-08-2023 may be canceled please.

Dated: 15-08-2023


Yours Obediently, 15/8/23
Muhammad Raham Jan
Ex-ADEO (Female)
District Hangu.



11F 115 -12- (11)

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. (091) 922,1588

No. SO (MC)E&SED/4-18/2022/dept. Appeal/Raham Jan
Dated: 28th August 2023

To

Muhammad Raham Jan ADEO (Female)
District Hangu

Subject: - **DEPARTMENTAL APPEAL AGAINST THE POSTING/TRANSFER NOTIFICATION DATED 09.08.2023**

I am directed to refer to your appeal, on the subject noted above and to state that the competent authority has examined and regretted your appeal regarding cancellation of transfer order dated 09.08.2023.

Therefore, you are directed to comply the order of the Competent Authority.

(IMRAN ZAMAN)
SECTION OFFICER (Management Cadre)

Copy for information to the: -

PS to Secretary E&SE Department, Khyber Pakhtunkhwa.

SECTION OFFICER (Management Cadre)