

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL # 1640/2023

Mr Malak Khan DDEO (MC BPS-18).....Appellant

VERSUS

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

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Deponent

17-10-23

D-I.K.

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

Service Appeal # 1640/2023

Mr Malak Khan DDEO (MC BPS-18).....Appellant

VERSUS

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

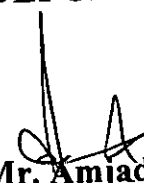
AFFIDAVIT

I, Mr. Amjad Ali, Section Officer (Litigation-II) Elementary & Secondary Education, Department do hereby solemnly affirm and declare that the contents of the accompanying para-wise comments, submitted by the respondents, are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

It is further, stated on oath that in this appeal the answering Respondents have neither been placed ex-parte nor has their defense been struck off.



DEPONENT


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



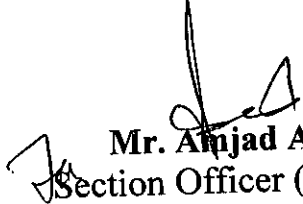
GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Block "A" Civil Secretariat, Peshawar

Phone No. 091-9211128

AUTHORITY LETTER

It is certified that **Mr. Fahim Ullah, Legal Representative (Litigation-II)** Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa, Peshawar is hereby authorized to submit parawise comments on behalf of Secretary Elementary & Secondary Education Department Peshawar in Service Appeal No. **1640/2023 Case Titled, Malak Khan (Bps 18) Deputy District Education Officer**, vs Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.


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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

In Service Appeal No. 1640/2023

Mr. Malik KhanAppellant.

VERSUS

Chief Secretary to Govt of KPK Peshawar..... Respondents.

PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS NO. 01.

**Khyber Pakhtunkhwa
Service Tribunal**

Respectfully Sheweth,

Diary No. 8302

Preliminary Objections:

Dated 13-10-23

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

On FACTS

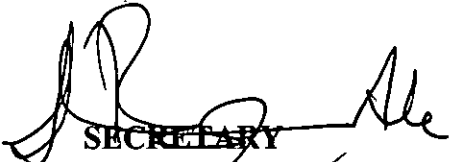
1. Pertains to record.
2. Pertains to record.
3. Pertains to record.
4. In response of para No. 04 that incompliance of Court order dated 20-03-2023 notification dated 05-04-2023 possession case issue u/s 10 Civil Servant Act, 1973 and the competent authority is empowered to place the services of applicant throughout the province. Wherever is needed in the best public interest. It is also pertinent to mention here that according to Section-10 desired posting is not the perpetual right of a Civil Servant and the department concerned can transfer any Civil Servant to serve at the given place as mentioned in the transferred/posting order, while the Civil Servant cannot refuse compliance.
5. The Central Administrative Delhi in the case Sh-Jawahar Thakur vs Union of India held on 19th June, 2015 that is more than stare decisis that transfer is an incidence of service and it is for the executive/administration to decide now to end, where to use if employees subject to the conditions of their appointment in the best public interest of the organization and public service. It is not always possible and feasible to record strong reasons for allowing an officer to continue at a particular station for a few years or more or less.
6. Para No. 6 alongwith all grounds of present appeal are incorrect.

On Grounds:

- A. Incorrect, furthermore according to various judgment of superior Tribunals and apex Court, it is not always possible and feasible to record strong reasons for allowing an officer to continue at a particular station for a few years or more or less.
- B. Incorrect and not applicable in the case of appellant. In response of para No. 04 that incompliance of Court order dated 20-03-2023 notification dated 05-04-2023 possession case issue u/s 10 Civil Servant Act, 1973 and the competent authority is empowered to place the services of applicant throughout the province. Wherever is needed in the best public interest. It is also pertinent to mention here that according to Section-10 desired posting is not the perpetual right of a Civil Servant and the department concerned can transfer any Civil Servant to serve at the given place as mentioned in the transferred/posting order, while the Civil Servant cannot refuse compliance.
- C. Incorrect and not applicable in the case of the appellant and detailed answer has been given in the forgoing para's.
- D. Incorrect. The notification dated 05-04-2023 is in accordance with law.
- E. Incorrect. Detailed reply has been above.

- F. Incorrect, and nothing is illegal in the notification dated 05-04-2023.
- G. Incorrect, the notification dated 05-04-2023 is in accordance with law & rules and procedure.
- H. Incorrect, respondent seek permission for additional grounds for the time of arguments.

It is therefore, requested that the appeal in hand may kindly be dismissed with heavy cost.


SECRETARY
Elementary & Secondary Education,
(Respondent No. 01)



GOVERNMENT
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated: 5th April, 2023

NOTIFICATION

NO.SO(MC)E&SED/4-16/2023/Posting/Transfer/MC/Khyal Muhammad/ In compliance to Khyber Pakhtunkhwa Service Tribunal Peshawar Order in connection with Service Appeal No. 09/2022, in Execution Petition No. 104/2023, The Notification NO SO(MC)E&SED/2-3/2022/Promotion IMC (BS17to18) ACB dated 17.02.2023, to the extent of Sr.No.15 is hereby withdrawn/cancelled, in the best public interest, conditionally, till the final outcome of CPLA.

2- Consequent upon above, the services of Mr. Malak Khan, Deputy DEO (Male) South Waziristan appearing at Sr.No 3 is hereby placed at the disposal of Directorate of E&SE for further posting.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of even No.& date:

Copy forwarded for information to the -

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

ATTESTED

WALID MEHMOOD
Advocate High Court
Stationed at D.I.Khan

(IMRAN ZAMAN)

SECTION OFFICER (Management Cadre)



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

Dated: 25th September, 2023

NOTIFICATION

NO.SO(MC)E&SED/2-3/2022/Promotion/MC(BS17to18)ACB: This Department's Notification of even Number dated 17-02-2023 in respect of Mr. Malak Khan appearing at Sr.No.3 and Mr. Khyal Muhammad appearing at Sr.No.15 is hereby **Restored.**

2. Consequent upon the above, the Notification No. SO (MC)E&SED/4-16/2023/Posting/Transer/MC/Khyal Muhammad dated 06.04.2023 in respect of Mr. Kyal Muhammad (TC BS-17) Deputy DEO (Male) South Waziristan is hereby **withdrawn /Cancelled** with immediate effect, in the best public interest.

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

Endst: of even No.& date:

Copy forwarded for information to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
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4. District Education Officer (Male) South Waziristan.
5. District Accounts Officer South Waziristan.
6. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
7. Officers concerned.
8. Master file.

111/25.9.2023
(IMRAN ZAMAN)

SECTION OFFICER (Management Cadre)

AK

Elementary & Secondary Education
Government of Khyber Pakhtunkhwa