

18/10/23

D-1-K

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL # 1796/2023

Mr Muhammad Hamayun SDEO (MC BPS-16).....Appellant

VERSUS

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

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Deponent

18-10-23

D-1-K

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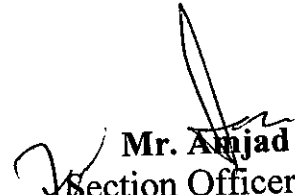
GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

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. 1796/2023 Case Titled, **Muhammad Hamayun Malak Khan (Bps 17)SDEO** , 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 HON'BLE SERVICE TRIBUNAL PESHAWAR

Service Appeal # 1796/2023

Mr Muhammad Hamayun (MC BPS-17).....Appellant

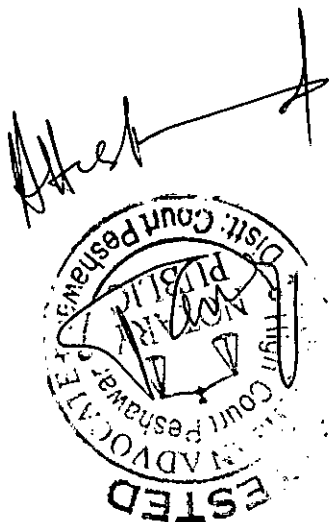
VERSUS

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

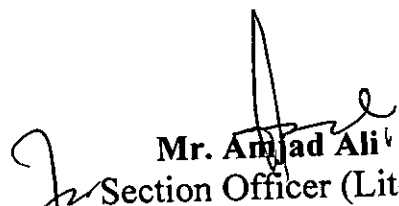
AFFIDAVIT

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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

In Service Appeal No. 1796/2023

Mr. Muhammad Hamayun.....Appellant.

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. 8301

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

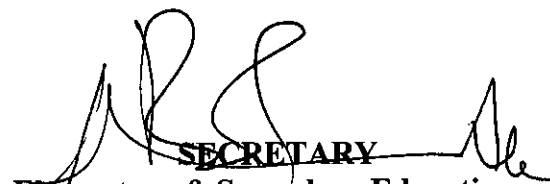
1. Pertains to record.
2. Pertains to record.
3. Incorrect, the transfer of the appellant is in accordance with law and u/s 10 of Civil Servant Act, 1973 in the best public interest.
4. Para No. 6 alongwith all grounds of present appeal is totally incorrect.

On Grounds:

- A. Pertains to record. However, in the present case the respondent has acted in accordance with law. According to Section-10 Civil Servant Act, 1973, 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 transfer/posting order, while the Civil Servant cannot refuse compliance. Moreover, the Central Administrative Tribunal Delhi in the case of Sh-Jawahar Thakur vs Union of India held on 19th June, 2015, that transfer is an incidence of service and it is for the executive/administration to decide how to and where to use its employees subject to the conditions of their appointment in the best interest of the organization and public service. It is not always possible and feasible to record strong reasons for allowing an officer to continue at a particular station for a few years or more or less.
- B. Pertains to record, the appellant is a Civil Servant and he has to obey the orders of his superiors. The detail reply has been given above.
- C. Incorrect, hence denied. The appellant has filed the appeal just to pressurize the respondent for getting illegal service benefits. As stated above that according to Section-10, every Civil Servant shall be liable to serve anywhere within or outside the province in any Post, wherever he has been given the task.
- D. Incorrect and misguidance towards this Honorable Tribunal. Pertains to record. However, in the present case the respondent has acted in accordance with law. According to Section-10 Civil Servant Act, 1973, desired posting is not the perpetual right of a Civil Servant and the department concerned can transfer and Civil Servant to serve at the given place as mentioned in the transfer/posting order, while the Civil Servant cannot refuse compliance. Moreover, the Central Administrative Tribunal Delhi in the case of Sh-Jawahar Thakur vs Union of India held on 19th June, 2015, that transfer is an incidence of service and it is for the executive/administration to decide how to and where to use its employees subject to the conditions of their appointment in the best interest of the organization and public service. It is not always possible and feasible to record strong reasons for allowing an officer to continue at a particular station for a few years or more or less.
- E. Incorrect, the transfer order of appellant is in accordance with law. The appellant is wrongly interpreting the rules and statute in his case. It is further stated again that desired posting is not perpetual right of a civil servant.

- F. Incorrect the judgment are not applicable in the case of appellant. Notification dated 25-05-2023 is in best public interest.
- G. Incorrect and not applicable in the present case. The detail reply has been given in the forgoing para's.
- H. Incorrect in not applicable in the present case the notification dated 25-05-2023 is in accordance with law and rules.
- I. Incorrect. Pertains to record. However, in the present case the respondent has acted in accordance with law. According to Section-10 Civil Servant Act, 1973, 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 transfer/posting order, while the Civil Servant cannot refuse compliance. Moreover, the Central Administrative Tribunal Delhi in the case of Sh-Jawahar Thakur vs Union of India held on 19th June, 2015, that transfer is an incidence of service and it is for the executive/administration to decide how to and where to use its employees subject to the conditions of their appointment in the best interest of the organization and public service. It is not always possible and feasible to record strong reasons for allowing an officer to continue at a particular station for a few years or more or less.
- J. Incorrect and not applicable in the present case.
- K. Incorrect hence denied.
- L. Incorrect and false. The competent authority has acted in public interest u/s 10 of Civil Servant Act, 1973.
- M. Para-M is not permissible, however the respondent seeks permission for additional grounds at the time of arguments.

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


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



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

Dated: 21st September, 2023

NOTIFICATION

NO.SO(MC) E&SED/ 4-16 /2023/ Posting/ Transfer/ SDEO-(F)-D.I.Khan/:- In light of Honorable Peshawar High Court Peshawar in COC No 283-P/2023 in Writ Petition No. 2937/2009. This department Notification of even number dated 26.05.2023 in respect of Muhammad Hamayun SDEO (M) Parova D.I.Khan is hereby withdrawn/ cancelled ab-initio.

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

Endst: of even No.& date:

Copy forwarded for information to the: -

1. Registrar Peshawar High Court Peshawar.
2. Accountant General, Khyber Pakhtunkhwa, Peshawar.
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 (Lit-III) E&SE Department.
6. District Education Officer (Male) D.I.Khan
7. District Accounts Officer D.I.Khan
8. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
9. Master file.

111 / 21.9.2023

(IMRAN ZAMAN)

SECTION OFFICER (Management Cadre)

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

Dated: 26th May, 2023

NOTIFICATION

NO.SO(MC)E&SED/4-16/2023/Posting/Transfer / SDEO (F) D.I.Khan/: The following postings/ transfers are hereby ordered with immediate effect, in the best public interest: -

Sr. No	Name & Designation	From	To	Remarks
1.	Muhammad Hamayun MC BS-17	SDEO (Male) Parova D.I.Khan	Services placed at the disposal of Directorate of E&SE	For further posting
2.	Muhammad Ishaq TC BS-16	SST GHS Sikandar Junubi D.I.Khan	SDEO (Male) Parova D.I.Khan in OPS	V.S.No.1

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. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
4. Section Officer (Schools Male/Female) E&SE Department.
5. District Education Officer (Male/Female) Concerned.
6. District Accounts Officer Concerned.
7. PS to Minister E&SE Khyber Pakhtunkhwa.
8. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
9. Master file.

Handwritten signature

Handwritten signature

(IMRAN ZAMAN)

SECTION OFFICER (Management Cadre)

Section Officer (Litigation-II)
Elementary & Secondary Edu. Depart
Govt. of Khyber Pakhtunkhwa