

S.No. of proceedings	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	16.01.2017	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>CAMP COURT ABBOTTABAD</u> APPEAL NO. 705/2016</p> <p style="text-align: center;">Adeel Ayaz Versus Govt: of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and 6 others.</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:</u></p> <p style="text-align: center;">Syed Asif Shah, Advocate for appellant, M/S Naeem Gul, A.D(Lit) and Prof: Muhammad Siddique alongwith Ms. Shazia Mughal, Government Pleader for official respondents No. 1 to 6 and private respondent No. 7 with counsel present. Rejoinder and fresh Wakalatnama submitted:</p> <p>2. Adeel Ayaz, Director Physical Education (BPS-17) hereinafter referred to as the appellant has preferred the instant appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against transfer order dated 31.03.2016 vide which transfer order dated 09.03.2016 was withdrawn and where-against departmental appeal of the appellant dated 01.04.2016 was not responded and hence the instant service appeal on 04.07.2016.</p> <p>3. Brief facts of the case of the appellant are that the appellant was serving as Director Physical Education (BPS-17) at Government College of</p>

16.01.17

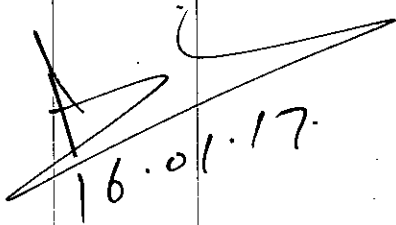
Management & Sciences Mansehra on the strength of notification dated 09.03.2016 when the same was withdrawn vide notification dated 31.03.2016 constraining the appellant to submit departmental appeal on 01.04.2016 which was not responded and hence the instant appeal on 04.07.2016.

4. Learned counsel for the appellant has argued that the impugned order is pre-mature as the same was passed after 21 days of transfer order of the appellant to the said college. That the same is against the spouse policy as wife of the appellant is serving at Govt: Girls Degree College No.2 Mansehra. That private respondent No. 7 was extended un-precedent favour as he was serving in the said college for about twenty years. That the impugned order is liable to be set aside.

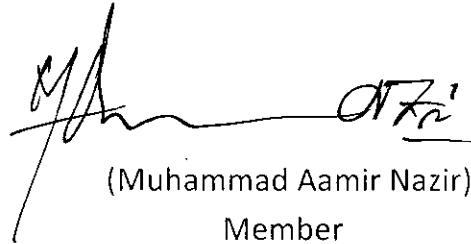
5. Learned Government Pleader as well as learned counsel for private respondent No.7 has argued that the impugned order was the prerogative of the respondents and that the appellant is obliged to serve against the post of D.P.E at Government College of Management & Sciences Abbottabad.

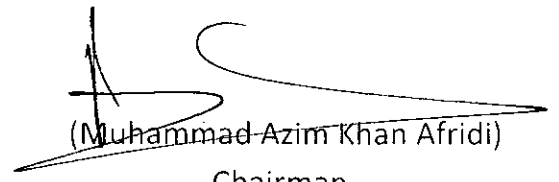
6. We have heard arguments of learned counsel for the parties and perused the record.

7. The appellant was transferred to Government College of Management & Sciences, Mansehra vide notification dated 09.03.2016. He resumed his duties at the said college on 11.03.2016. The said transfer order was withdrawn without any plausible reason vide impugned order

A handwritten signature and the date '16.01.17' are written in the left margin of the page.

dated 31.03.2016. It is not disputed before us that wife of the appellant is also serving as Lecturer at Government Girls Degree College No.2, Mansehra. Since the impugned transfer order is pre-mature and, prima-facie, against the spouse policy as such, appeal in hand is accepted and the same is set aside and as a consequence thereof notification dated 09.03.2016 stand restored. Parties are left to bear their own costs. File be consigned to the record room.


  
(Muhammad Aamir Nazir)  
Member

  
(Muhammad Azim Khan Afridi)  
Chairman  
Camp Court, Abbottabad  
16.01.17.

ANNOUNCED  
16.01.2017


19.12.2016

Appellant in person and Prof. Muhammad Siddique  
alongwith Mr. Muhammad Siddique, Sr.GP for the official  
present. Appellant requested for adjournment to submit  
rejoinder. Due to non-submission of rejoinder and  
incomplete bench arguments could not be heard. To come  
up for rejoinder and final hearing on 16.01.2017 before  
D.B at camp court, Abbottabad. The restraint order shall  
continue.

  
Chairman  
Camp court, A/Abad

22.09.2016

None for the appellant present. Mr. Naeem Gul, AD alongwith Mr. Muhammad Siddique Sr.GP for the official respondents and counsel for private respondent No. 7 present. Written reply by respondents No. 1 to 3 submitted. Learned Sr.GP relies on the same on behalf of respondents No. 4 to 6 while private respondent No. 7 already submitted written reply. The appeal is assigned to D.B for rejoinder and final hearing for 13.03.2017 at camp court, Abbottabad.

  
Chairman  
Camp court, A/Abad


24.10.2016

On application of private respondent No. 7 for early hearing, file requisitioned for to-day. Application is allowed. To come up rejoinder and final hearing before the D.B on 21.11.2016 instead of 13.03.2017 at camp court, Abbottabad. Notices be issued to appellant, his counsel as well as official respondents. Status quo be maintained.

  
Chairman

21.12.2016

Appellant in person and Mr. Naeem Gul. Assistant Director alongwith Mst. Bushra Bibi. Government Pleader for official respondents and private respondent No. 7 in person present. Rejoinder not submitted. Requested for adjournment. The Bench is also incomplete. therefore, case is adjourned to 19.12.2016 for rejoinder and final hearing before D.B at camp court, Abbottabad. The restraint order shall continue.

  
Chairman  
Camp court, A/Abad

21/12/2016  
Mst. Bushra Bibi  
Government Pleader  
for official respondents  
and private respondent No. 7  
in person present.

Appeal No. 705/2016  
Adeel Ayaz vs Govt of KPK

04.07.2016

Appellant with counsel present. Learned counsel for the appellant submitted that in pursuance of spouse policy, the appellant was transferred from Abbottabad to Mansehra vide order dated 9.3.2016 which order was unlawfully and without justification withdrawn vide impugned order dated 31.3.2016. He further submitted that in pursuance of his transfer order to Mansehra the appellant had already assumed charge on 24.3.2016 copy of which is on record. The learned counsel argued that the appellant is still in Government College of Management and Sciences Mansehra. He also stated that prior to his transfer to Mansehra, the appellant had already served for about 7 years at Abbottabad. It was agitated by learned counsel for the appellant that the impugned order is unlawful and based on malafide. He requested that the same may be suspended.

Point urged at the bar needs further consideration. Admit. Subject to deposit of security and process fee within 10 days, whereafter notices be issued to the respondents for written reply/comments for 26.07.2016 before S.B.

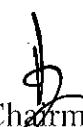
In view of the stated position the operation of impugned order dated 31.03.2016 is hereby suspended subject to notice till the date fixed.

  
Member

Appellant Deposited  
Security & Process Fee

26.07.2016

Counsel for the appellant, Dr. Amjad, AD (Litigation) alongwith Addl. AG for the official respondents No. 1 to 6 and counsel for private respondent No. 7 present. Written reply by respondent No. 7 submitted while remaining respondents requested for adjournment. The appeal pertains to territorial limits of Hazara Division, therefore, to come up for written reply/comments of official respondents No. 1 to 6 on ~~22-9-16~~ before S.B at camp court, Abbottabad. Status quo be maintained.

  
Chairman

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 705/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	04/07/2016	<p>The appeal of Mr. Adeel Ayaz presented today by Syed Noman Ali Bukhari Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2	04/7/16	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>04/7/16</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

Appeal No. 705 /2016

Mr. Adeel Ayaz

V/S

Education Department

I N D E X

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	----	01-04
2.	Stay Application along-with Affidavit		05-06
3.	Copy of appointment Order dated dt.30.7.2008	- A -	07
4.	Copy of transfer Order dated dt.4.11.2009	- B -	08
5.	Copy of transfer Order dated dt.9.3.2016	- C -	09
6.	Copy of Charge Report	- D -	10
7.	Copy of impugned Order dt.31.3.2016	E	11
8.	Copy of departmental Appeal	F	12-14
9.	Copy of order and service certificate of appellent wife	G & G1	15-16
10.	Copy of Nikah Nama	H	17-18
11.	Copy of ID Card	I	19-20
12.	Copy of Spouse policy	- J -	21-22
13.	Vakala Nama	----	23

APPELLANT

THROUGH:

*M. Asif Yousafzai*  
(M. ASIF YOUSAFZAI)

*Syed Noman Ali Bukahri*  
& *M. Asif Yousafzai*  
(SYED NOMAN ALI BUKAHRI)  
ADVOCATE, PESHAWAR.



①

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

**Appeal No. 705 /2016**

**Khyber Pakhtunkhwa  
Service Tribunal**

**Diary No. 689**

**Dated 04-07-16**

Mr. Adeel Ayaz, Director Physical Education (BPS-17),  
Government College of Management & Sciences, District Mansehra.

.....(**APPELLANT**)

**VERSUS**

1. The Govt: of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Higher Education, Archives and Libraries Deptt: Khyber Pakhtunkhwa, Peshawar.
3. The Director General Commerce Education & Management Sciences Chamkani Mure Near Government Polytechnic Institute Rano Ghari Peshawar.
4. Principle Government College Of Sciences and Management, District Mansehra.
5. Principle Government College Of Sciences and Management, District Abbottabad.
6. District Account Officer Mansehra.
7. Mr. Shams-ud-Din Director Physical Education ~~Mansehra~~ <sup>Govt: College of management & sciences</sup> ~~Mansehra~~ <sup>Abottabad</sup>.

.....(**RESPONDENTS**)

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA,  
SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED  
ORDER DATED 31.3.2016 WHEREBY THE TRANSFER ORDER OF  
THE APPELLANT DATED 9.3.2016 HAS BEEN WITHDRAWN  
WITHOUT SHOWING ANY REASON AND AGAINST NOT TAKING  
ACTION ON THE DEPARTMENTAL APEAL OF THE APPELANT  
WITHIN STATUTORY PERIOD OF NINTY DAYS**

**PRAYER:**

**THAT ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED  
ORDER DATED 31.3.2016 MAY KINDLY BE SET ASIDE, PASSED  
IN VIOLATION OF POSTING/TRANSFER POLICY. THE  
RESPONDENT DEPTT: MAY FURTHER PLEASE BE DIRECTED  
NOT TO TRANSFER THE APPELLANT FROM GOVERNMENT  
COLLEGE OF MANAGEMENT & SCIENCES, DISTRICT  
MANSEHRA TILL COMPLETION OF HS NORMAL  
TENURE. ANY OTHER REMEDY, WHICH THIS AUGUST  
TRIBUNAL DEEMS FIT AND PROPER THAT MAY ALSO BE  
AWARDED IN FAVOUR OF APPELLANT.**

**Filed to day**  
*[Signature]*  
**Registrar**  
*04/07/16*

**RESPECTFULLY SHEWETH:**

**FACTS**

1. That the appellant was appointed as Director Physical Education in Higher Education Department in year 2008. The appellant performing his duties with ALL Zeal and Zest at different station as per orders of authority. **(Copy of appointment order and transfers orders are attached as annexure- A & B).**
  
2. That the appellant was performing his duties at Mansabi Government College of Management Sciences Abbottabad since 2009 till transfer order dated 9-3-2016 whereby, the appellant was transfer to Government College of Management Sciences Mansehra at the place of Shams-ud-Din respondent No.7 and respondent no.7 was transfer in place of appellant i.e. Government of College management and Sciences Abbottabad. **(Copy of transfer order is attached as annexure- C).**
  
3. That in compliance to the order dated 9.3.2016 the appellant as submitted his charge report at the concern station and starting performing his duty quite efficiently and up to the entire satisfaction of his superiors. **(Copy of Charge report is attached as annexure- D).**
  
4. That astonishingly just after 21 days the respondent No.2 issued the impugned order dated 31.3.2106 whereby, the previous transfer order of the appellant dated 9.3.2016 Has been withdrawn in violation of the principle of Locus Poenetentiae.**(A copy of impugned Order is attached as Annexure-E).**
  
5. That the appellant feeling aggrieved from the impugned order dated 31.3.2016 filed departmental appeal against the impugned order dated 31.3.2016 on 05.4.2016 but no reply has been received so far. **(Copy of departmental appeal is attached as Annexure-F).**

6. That the appellant has no other remedy but to come this august Tribunal on the basis of following grounds amongst others.

**GROUNDS:**

- A) That the impugned order dated 31-3-2016 and not taking action on departmental appeal of the appellant is against the law, facts, norms of justice, premature, politically motivated, violation of Govt: circulars, therefore not tenable and liable to be set aside.
- B) That the appellant's tenure at Government College of Management Sciences Mansehra was only 21 days, Therefore, the order dated 31-3-2016 is premature and against the policy.
- C) That the appellant is resident of Mansehra and performed his duties at Government College of Management Sciences Abbottabad more than his normal tenure. The respondents No.7 from 20 years performing his duties at same station (Government College of Management Sciences Mansehra) against the law, rules and on the basis of political influence.
- D) That the appellant wife is also lecturer at the Government Girls Degree College NO.2 Mansehra and performing his duties and according to Spouse Policy appellant is also entitled for the transfer at same station Mansehra. Moreover, appellant and his wife is also resident of the Mansehra. Therefore the order dated 31.3.2016 is against the spouse policy hence liable to be set aside. **(Copy of order and service certificate of appellant wife, Nikah nama, ID Card and spouse policy are attached as annexure-G, G1, H & I).**
- E) That no reasons have been mentioned in the order dated 31-3-2016 which is the violation of Clause-24-A of the General Clauses Act 1897 and Supreme Court's Judgment reported as 1991 SCMR 2330.
- F) That the withdrawn order dated 31.3.2016 without any reason is also in violation of Government Posting/Transfer

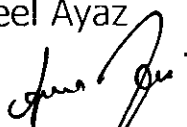

Policy. Thus, the withdrawn order is not sustainable in the eye of law.

- G) That once order passed and acted upon then that order could not be cancelled or withdrawn under the principles of Locus Poenitentiae.
- H) That the impugned order is not based on public interest nor any exigencies but rather to adjusted blue eyed person.
- I) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that the appeal of the appellant maybe accepted as prayed for.

  
**APPELLANT**  
Adeel Ayaz

**THROUGH:**

  
**(M. ASIF YOUSAFZAI)**  
&   
**(SYED NOMAN ALI BUKAHRI)**  
**ADVOCATE, PESHAWAR.**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

**Appeal No. \_\_\_\_\_/2016**

Mr. Adeel Ayaz

V/S

Education Department

.....

**APPLICATION FOR SUSPENDING THE  
OPERATION OF ORDER DATED 31.3.2016  
TILL THE DISPOSAL OF MAIN APPEAL.**

**RESPECTFULLY SHEWETH:**

1. That the appellant has filed an Appeal along-with application in which no date has been fixed so far.
2. That the appellant has good prema facie case and all the ingredients of stay is in favour of appellant.
3. That the grounds of main appeal may also be considered as integral part of this application.
4. That the impugned order has passed on favouritism and nepotism and has been passed in-violation of Posting, Transfer Policy.
5. That the appellant has not completed his tenure and the order dated 31.3.2106 is without any reasons.
6. That if the order dated 31.3.2016 is not suspended and charge will take from the appellant. It badly effect the right of appellant.

It is, therefore, most humbly-prayed that the order dated 31.3.2016 may be suspended till the disposal of main

appeal. Any other remedy, which this august tribunal deems fit that may also be awarded in favour of appellant.

*Adeel Ayaz*  
**APPELLANT**  
Adeel Ayaz

**THROUGH:**

*Asif Yousafzai*  
**(M. ASIF YOUSAFZAI)**  
& *Noman Ali Bukahri*  
**(SYED NOMAN ALI BUKAHRI)**  
**ADVOCATE, PESHAWAR.**

**AFFIDAVIT:**

It is affirmed and declared that the contents of this Application are true and correct to the best of my knowledge and belief.



*Javed Muhammad Khan*  
**DEPONENT**

Annex A

⑦  
DIRECTORATE GENERAL OF TECHNICAL  
EDUCATION AND MANPOWER TRAINING,  
NWFP, PESHAWAR.

Annex - A

OFFICE ORDER:

No. DGTE&MT/Admn/6-433/-

Consequent upon the recommendation of the NWFP, Public Service Commission, Mr. Adeel Ayaz S/O Muhammad Ayaz, Village Sheen Bagh, P.O. Baffa, District, Mansehra is hereby appointed as Director Physical Education in BPS-16 Plus usual allowances as admissible under the rules and posted at Government College of Management Sciences, Chitral against the vacant post with effect from the date of taking over charge and subject to the terms & conditions stated as under:-

TERMS & CONDITIONS:-

- 1- His appointment is subject to the condition that he is the domiciled of NWFP.
- 2- His inter-se-seniority shall be fixed according to the order of merit assigned by the NWFP Public Service Commission.
- 3- His service shall be liable to termination on one month's notice from either side. In case of resignation without notice, his one month's pay shall be forfeited to the Government.
- 4- No. TA/DA is allowed on his first appointment.
- 5- His character / antecedents are verified well by the police authorities.
- 6- He will be governed by such rules and regulations as may be issued from time to time by the Government for the category of Government Servant to which he belongs.
- 7- He will not contribute to G. P. Fund and shall not be entitled to pension, Gratuity benefits. He will for all intents and purposes be Civil servant except for the purpose of Pension and gratuity. In lieu of the same, he will be entitled to receive C.P. Fund. For the said fund 10% contribution will be made by the Provincial Government and 10% by the Civil servant concerned in the prescribed manner.
- 8- He should join the post within 30 days of the issue of this order otherwise the offer of appointment will be treated as cancelled.

(MUHAMMAD IQBAL SHAD)  
DIRECTOR GENERAL.

Endst.No.DGTE&MT/Admn/6-433/

4210 (1-4) Dated 30-7-2008.

Copy forwarded to

- 1- The District Accounts Officer, Chitral.
- 2- The Secretary, NWFP, Public Service Commission, Peshawar.
- 3- The Principal, Govt. Colleges of Management Sciences, Chitral.
- 4- Candidate concerned.

  
(ENGR: NASIR-UD-DIN KHATTAK)  
DEPUTY DIRECTOR (ADMN)

Attested  
A

Tele: 091-9213027



GOVERNMENT OF N.W.F.P.  
DIRECTORATE GENERAL TECHNICAL EDUCATION  
AND MANPOWER TRAINING, NWFP, PESHAWAR.

OFFICE ORDER:

No. DGTE&MT/Admn/Transfer/: - The Competent Authority is pleased to order transfer / posting of Mr. Adeel Ayaz, Director Physical Education, Government College of Management Sciences, Chitral to Government College of Management Sciences, Abbottabad against the vacant post with immediate effect in the public interest.

(MUHAMMAD IQBAL SHAD)  
DIRECTOR GENERAL.

Endst. No. DGTE&MT/Admn/Transfer/59038-50 Dated: 28/10/2009.

Copy forwarded for information & n/action to:-

- 1- P.S to the Honorable Minister for Technical Education & Manpower Training, Mines & Mineral Development NWFP w/r to his approval dated 28-10-2009 on the summary submitted to him.
- 2- The District Accounts Officer, Chitral.
- 3- The District Accounts Officer, Abbottabad.
- 4- The Principals, Govt. College of Management Sciences, Abbottabad/ Chitral.
- 5- Officer concerned.

Relieve Mr. Adeel Ayaz  
Please.

(MUNIR GUL)  
DEPUTY DIRECTOR (ADMN).

Attested  
A



Amraee 'C'

(9)

GOVERNMENT OF KHYBER PAKHTUNKHWA  
HIGHER EDUCATION, ARCHIVES AND  
LIBRARIES DEPARTMENT

DATED PESHAWAR, 09/03/2016

NOTIFICATION

No. SO(CE&MS)HED/1-8/16(1-8). The Competent Authority is pleased to order the following transfers with immediate effect.

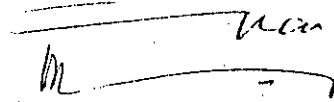
Sr. No.	Name, Designation, present posting	Posted at
1	Mr. Adeel Ayaz, DPE (BPS-17) Govt: College of Management Sciences, Abbottabad	Govt: College of Management Sciences, Mansehra vice S.No.2
2	Mr. Shams-ud-Din, DPE (BPS-17) Govt: College of Management Sciences, Mansehra.	Govt: College of Management Sciences, Abbottabad vice No.1

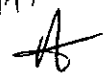
SECRETARY TO  
GOVT: OF KHYBER PAKHTUNKHWA,  
HIGHER EDUCATION, DEPARTMENT

Endst: No. & date even:

Copy of the above is forwarded to the:-

- 1- The Director General, Commerce Education, and Management Sciences, Chamkani Mure, near Govt. Polytechnic Institute, Rano Ghari Peshawar.
- 2- Principals, Government College of Management Sciences, Abbottabad & Mansehra
- 3- District Accounts Officer Abbottabad & Mansehra.
- 4- PS to Minister for Higher Education & Information Khyber Pakhtunkhwa.
- 5- Officers concerned.

  
(JEHANGIR KHAN)  
SECTION OFFICER (COMMERCE)

Attested  


Amexare "D" (10)  
GOVERNMENT OF KHYBER PAKHTUNKHWA  
CERTIFICATE OF TRANSFER OF CHARGE

Certified that I, MR. ADEEL AYAZ

Have this day before noon take over charge of the office of DIRECTOR  
after relinquished

PHYSICAL EDUCATION Government College of Management Sciences, Mansehra with reference to the Notification of Section Officer-(COMMERCE), Government of Khyber Pakhtunkhwa, Higher Education, Archives and Libraries Department, Peshawar Notification No. SO (CE&MS) HED/1-8/161(1-8) Dated 09-03-2016

Transferring Mr SHAMS-UD-DIN, DIRECTOR PHYSICAL EDUCATION BPS-17  
to Government College of Management Sciences, Mansehra

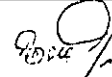
2. Particulars of cash/secret confidential documents handover/taken over are noted on the reverse.

Station: Mansehra.

Signature of relieved  
Government Servant  
Designation:

SHAMS-UD-DIN  
DIRECTOR PHY: EDUCATION

Signature of Government  
Servant receiving charge:  
Designation:

  
ADEEL AYAZ  
DIRECTOR PHY: EDUCATION

Dated: 11-03-2016. (F.N)

**GOVERNMENT COLLEGE OF MANAGEMENT SCIENCES,  
MANSEHRA, KHYBER PAKHTUNKHWA**

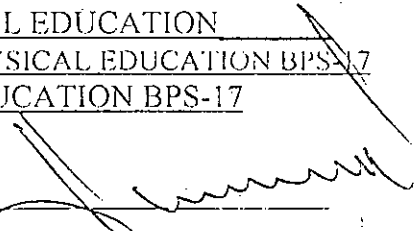
www.gcmman.org Email: gcmmansehra@gmail.com  
Phone # (092-0997-302186)

Reference No. GCC&MS/PF-28/138-141 Dated: 24 /March, 2016.  
To

- 1- The Section Officer-(Commerce), Government of Khyber Pakhtunkhwa, Higher Education, Archives and Libraries Department, Peshawar.
- 2- The Director General, Commerce Education and Management Sciences, Khyber Pakhtunkhwa, Peshawar.
- 3- The Principal, Govt College of Management Sciences, Abbottabad.
- 4- The District Accounts Officer, Mansehra & Abbottabad.
- 5- Officers concerned.

The charge of the Office of DIRECTOR PHYSICAL EDUCATION  
Was transferred from Mr. SHAMS-UD-DIN, DIRECTOR PHYSICAL EDUCATION BPS-17  
to Mr. ADEEL AYAZ, DIRECTOR PHYSICAL EDUCATION BPS-17  
On the Fore noon of the 11-03-2016 (F.N)  
After

Signature

  
(PROF: SHAH FAYYAZ KHAN)  
Designation: PRINCIPAL  
GOVERNMENT COLLEGE OF  
COMMERCE & MANAGEMENT  
SCIENCES, MANSEHRA.

*Attested  
for*



Annexure - E

(11)

GOVERNMENT OF KHYBER PAKHTUNKHWA  
HIGHER EDUCATION, ARCHIVES AND  
LIBRARIES DEPARTMENT

Dated Peshawar, 31/03/2016.

NOTIFICATION

No.SO(CE&MS)HE/1-8/

The Competent Authority is pleased to withdraw the transfer order of Mr. Adeel Ayaz, Director Physical Education (BPS-17) and Mr. Shams-ud-Din, Director Physical Education (BPS-17) issued vide this Department Notification No. SO(CE&MS)HED/1-8/161(1-8) dated 09-03-2016.

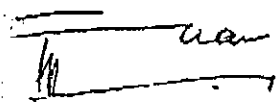
SECRETARY TO GOVT.  
OF KHYBER PAKHTUNKHWA,  
HIGHER EDUCATION, DEPARTMENT

Endst: No.SO(CE&MS)HE/1-8/177(1-8)

Dated 31-03-2016

Copy forwarded to:-

- 1- The Director General, Commerce Education, and Management Sciences, Chamkani Mure, near Govt. Polytechnic Institute, Rano Ghari Peshawar.
- 2- Principal Government College of Management Sciences, Abbottabad and Mansehra.
- 3- District Accounts Officer Abbottabad and Mansehra.
- 4- PS to Minister for Higher Education & Information Khyber Pakhtunkhwa.
- 5- Officers concerned.

  
(Jehangir Khan)  
SECTION OFFICER (CE&MS)

Transfer order

Attested  
for

5-4-16

9216 124  
Est 205

D.No 3466

بخدمت جناب چیف سیکرٹری صاحب خیبر پختون خوا ایشاور

اپیل برخلاف نوٹیفیکیشن / آرڈر نمبر SO(CE&MS)HE/1-8/177(1-8)

مجریہ 31.03.2016 جس کی رو سے ٹرانسفر آرڈر نمبری

SO(CE&MS)HED/1-8/161(1-8) مجریہ 09.03.2016 غلط، خلاف قانون،

خلاف واقع، بلا جواز و بلا اختیار Withdraw فرمایا گیا۔

جناب عالی! موجبات اپیل ذیل پیش ہیں۔

(۱) یہ کہ سائل محکمہ ہائیر ایجوکیشن میں بطور ڈائریکٹر فزیکل ایجوکیشن

سال 2008ء میں تعینات ہو کر حسب الحکم مجاز اتھارٹی مختلف

اسٹیشنز پر اپنے فرائض منصبی سرانجام دیتا چلا آ رہا ہے۔ (تائید میں

Transfer orders و Appointment Orders

وغیرہ لف ہیں)۔

(۲) یہ کہ سائل ٹرانسفر آرڈر مجریہ 09.03.2016 ہونے سے قبل گورنمنٹ

کالج آف مینجمنٹ سائنسز ایبٹ آباد اپنے فرائض منصبی سال 2009ء

سے سرانجام دے رہا تھا جو کہ اسی دوران مدعی کا باضابطہ طور پر بحوالہ

نوٹیفیکیشن نمبر SO(CE&MS)HED/1-8/161(1-8) مجریہ

09.03.2016 گورنمنٹ کالج آف مینجمنٹ آف سائنسز ایبٹ

آباد سے شمس الدین ڈائریکٹر فزیکل ایجوکیشن کی جگہ گورنمنٹ کالج

آف مینجمنٹ آف سائنسز مانسہرہ ٹرانسفر آرڈر جاری ہوا اور بعدہ

ٹرانسفر آرڈر سائل نے باقاعدہ طور پر حاضری و چارج لیتے ہوئے

باقاعدہ طور پر اپنے فرائض منصبی سرانجام دینا شروع کئے۔ (نقل

نوٹیفیکیشن / آرڈر مجریہ 09.03.2016 و حاضری رپورٹ لینے

چارج وغیرہ لف ہیں)۔

(۳) یہ کہ آرڈر مذکورہ مجریہ 09.03.2016 جاری ہوئے محض 20 دن

بھی نہیں گزرے تھے کہ محض ملی بھگت، ساز باز کرتے ہوئے، غلط،

خلاف قانون، خلاف واقعہ یعنی بر بدعتی، بلا جواز، بلا اختیار سیاسی

Accepted  
for

دباؤ، اثر و رسوخ کی بناء پر قانونی طور پر کیا گیا ٹرانسفر آرڈر مجریہ  
09.03.2016 خلاف قانون طور پر withdraw کر دیا  
جس سے حقوق سائل شدید طور پر متاثر ہو رہے ہیں بدیں وجہ اپیل  
ہذا کی ضرورت لاحق ہوئی۔

الف: یہ کہ سائل ضلع مانسہرہ کارہائشی سکونتی ہے اور گورنمنٹ کالج آف  
منیجمنٹ آف سائنسز ایبٹ آباد اپنے Tenure سے بھی کئی عرصہ  
زائد اپنے فرائض سرانجام دے چکا ہے جبکہ شمس الدین ڈائریکٹر  
فریکل ایجوکیشن زائد از عرصہ بیس سال سے غلط، خلاف قانون طور  
پر محض سیاسی وابستگی اور افسران کا من پسند ہونے کی وجہ سے بلا وجہ  
Tenure کے منافی ایک ہی اسٹیشن پر سروس دے رہا ہے جو کہ  
قانون اور قواعد و ضوابط کے صریحاً خلاف ورزی ہے اور اسی طرح  
سائل کی زوجہ گورنمنٹ گرلز ڈگری کالج نمبر 2 مانسہرہ میں بطور لیکچرار  
تعیینات ہے اور سائل تحت Spouse policy بھی گورنمنٹ  
کالج آف منیجمنٹ آف سائنسز مانسہرہ ٹرانسفر کئے جانے کا حقدار  
ہے۔ کیونکہ سائل اور زوجہ سائل نہ صرف بلفہ ضلع مانسہرہ کے مستقل  
رہائشی و سکونتی ہیں بلکہ ایک ہی ضلع اور علاقہ میں سروس سرانجام  
دینے کی وجہ سے قریب قریب واقع ڈیپارٹمنٹس میں اپنے فرائض  
منصوبی اور اسی طرح گھریلو امور بطریق احسن پورے کر سکتے ہیں۔  
اسلئے نوٹیفیکیشن مجریہ 31.03.2016 حقوق سائل پر کالعدم اور  
بے اثر اور قابل منسوخ ہے۔ بدیں وجہ اپیل ہذا دائر کی جا رہی  
ہے۔ (نقولات لف ہیں)۔

ب: یہ کہ افسران محکمہ و شمس الدین ڈائریکٹر فریکل ایجوکیشن آپس میں ملی  
بھگت اور ساز باز کرتے ہوئے غیر قانونی طور پر کئے گئے  
نوٹیفیکیشن/ آرڈر مجریہ 31.03.2016 پر عمل درآمد کرتے ہوئے  
سائل کے امور ملازمت میں مداخلت کرنے میں کامیاب ہو گئے یا  
سائل سے چارج لے لیا یا کوئی بھی غیر قانونی فعل/ افعال سرانجام

Assessed  
for

دینے میں کامیاب ہو گئے جیسا کہ وہ درپے ہیں تو سائل کو نقصان  
عظیم ہوگا اور مقصد اپیل فوٹ ہو جائیگا اسلئے متعلقہ مجاز افسران  
خصوصاً سیکرٹری ہائیر ایجوکیشن KPK پشاور و سیکشن آفیسر اس امر  
کے پابند ہیں کہ وہ غیر قانونی نوٹیفیکیشن مجریہ 31.03.2016 کو  
فی الفور کالعدم و منسوخ کرتے ہوئے قانونی طور پر کیا گیا آرڈر  
مورخہ 09.03.2016 فی الفور بحال کریں۔

ج: یہ کہ سائل کا ٹرانسفر آرڈر مجریہ 09.03.2016 بحوالہ نوٹیفیکیشن  
مورخہ 31.03.2016 سائل کی عدم موجودگی میں غیر قانونی طور  
پر Withdraw کیا گیا ہے اور نوٹیفیکیشن مجریہ  
31.03.2016 جاری کرتے وقت سائل کو کسی بھی مرحلہ پر طلب  
نہیں کیا گیا اور نہ ہی سائل کی گزارشات کو مد نظر رکھا گیا ہے جو کہ  
سائل بوقت ضرورت جناب کے روبرو گوش گزار کریگا۔

لہذا استدعا ہے کہ بمنظوری اپیل ہذا نوٹیفیکیشن/آرڈر نوٹیفیکیشن/آرڈر نمبر  
SO(CE&MS)HE/1-8/177(1-8) مجریہ 31.03.2016 جس کی  
رو سے ٹرانسفر آرڈر نمبری SO(CE&MS)HED/1-8/161(1-8) مجریہ  
09.03.2016 غلط، خلاف قانون، خلاف واقع، بلا جواز و بلا اختیار  
Withdraw فرمایا گیا کالعدم و منسوخ فرمایا جا کر سائل کا کیا گیا قانونی  
ٹرانسفر آرڈر از گورنمنٹ کالج آف مینجمنٹ اینڈ سائنسز ایبٹ آباد گورنمنٹ  
کالج آف مینجمنٹ اینڈ سائنسز مانسہرہ بحال فرمایا جائے اور سائل کو گورنمنٹ  
کالج آف مینجمنٹ اینڈ سائنسز مانسہرہ اپنے فرائض منصبی سرانجام دینے ک  
اجازت بخشی جاوے۔

المقوم یکم اپریل 2016ء

عدیل ایاز ڈائریکٹر تعلیم ایجوکیشن  
03335054223

Attested  
for

Amuacron - A

(15)

(17)

DIRECTORATE OF HIGHER EDUCATION

N.W.F.P Khyber Road Peshawar

Phone # 9210242/9211025/Fax No. 9210242

Dated 14/5/2008

NOTIFICATION

Exchange of posts between Miss. Samina Khalil D.P.E Govt; Girls College, No. 2 Mansehra and Miss Afshan Nisar DPE Govt; Girls College, Nawansher (Abbottabad) is hereby ordered in the interest of Public Service with immediate effect.

NOTE:-

1. Charge report should be sent to all concerned.
2. No T.A/D.A is allowed.

(Prof: Aftab Jehan)  
DIRECTOR HIGHER EDUCATION  
N.W.F.P, PESHAWAR.

Endst; No. 9520-25

Copy of the above is forwarded to the:-

1. Principal Govt; Girls College, No. 2 Mansehra
2. Principal Govt; Girls College, Nawansher (Abbottabad)
- 3-4. District Accounts Officer, Abbotabad/ Manserha.
5. D.P.Es concerned.

DY: DIRECTOR HIGHER EDUCATION  
N.W.F.P, PESHAWAR.

Attested  
dr

Annexure - 'G1'

16



Office of The Principal  
**GOVERNMENT  
GIRLS DEGREE COLLEGE**



**No. 2 Chitti Dheri Manshara**

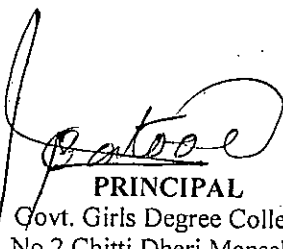
Ph: 0997-382054 Email: ggdc2manshara@yahoo.com

No: \_\_\_\_\_

Dated: 30/4/2016

**SERVICE CERTIFICATE**

Certified that Mrs. Afshan Nisar D/O Nisar Ahmad is a permanent Government Servant in Higher Education Department Since 03/10/2006 working as a Lecturer in Health and Physical Education BPS-17 at Govt. Girls Degree College No.2 Chitti Dheri Manshara.

  
PRINCIPAL  
Govt. Girls Degree College  
No.2 Chitti Dheri Manshara

**PRINCIPAL**  
Govt: Girls College No. 2  
Manshara.

Attested  
ofc



لکھنؤ والوں کے لیے

### نکاح نامہ

مسلم خاندانی قوانین کے آرڈی نٹس مجریہ ۱۹۶۱ء (۸ شتم ۱۹۶۱ء) کے تحت وضع کئے ہوئے قواعد کے قاعدہ نمبر ۸ اور نمبر ۱۰ کے تحت مجوزہ فارم (دیکھئے قاعدہ نمبر ۱۰۰۸)

۱۔ وارڈ اوضاع \_\_\_\_\_ ناؤن ایمن \_\_\_\_\_ جس میں شادی وقوع پذیر ہوئی \_\_\_\_\_

۲۔ ڈولہا اور اس کے والد کا نام مع ان کی سکونت بالترتیب \_\_\_\_\_

۳۔ ڈولہا کی عمر یا تاریخ پیدائش \_\_\_\_\_

۴۔ ڈہن اور اس کے والد کا نام مع ان کی سکونت بالترتیب \_\_\_\_\_

۵۔ آیا ڈہن کنواری ہے یا بیوہ یا مطلقہ \_\_\_\_\_

۵۔ (الف) اگر ڈہن بیوہ یا مطلقہ ہے اور اس کے بچے ہیں تو ان کی تعداد اور نام \_\_\_\_\_

۶۔ ڈہن کی عمر یا تاریخ پیدائش \_\_\_\_\_

۷۔ اگر ڈہن کی طرف سے کوئی وکیل مقرر کیا گیا ہے تو اس کا نام مع ولدیت و سکونت \_\_\_\_\_

۸۔ ڈہن کے وکیل کے تقرر کے بارے میں گواہوں کے نام مع ولدیت و سکونت اور ان کی ڈہن کے ساتھ رشتہ داری \_\_\_\_\_

۹۔ اگر ڈولہا کی طرف سے کوئی وکیل مقرر کیا گیا ہے تو اس کا نام مع ولدیت و سکونت \_\_\_\_\_

۱۰۔ ڈولہا کے وکیل کے تقرر کے بارے میں گواہوں کے نام مع ولدیت و سکونت \_\_\_\_\_

۱۱۔ شادی کے گواہوں کے نام مع ولدیت و سکونت \_\_\_\_\_

۱۲۔ شادی سرانجام پانے کی تاریخ \_\_\_\_\_

۱۳۔ مہر کی رقم \_\_\_\_\_

۱۴۔ مہر کی کتنی رقم معجل ہے کتنی غیر معجل \_\_\_\_\_

۱۵۔ آیا مہر کا کچھ حصہ شادی کے موقع پر ادا کیا گیا اگر کیا گیا ہے تو کس قدر \_\_\_\_\_

۱۶۔ آیا پورے مہر یا اس کے کسی حصہ کے عوض میں کوئی جائیداد دی گئی ہے اگر دی گئی ہے تو اس جائیداد کی صراحت \_\_\_\_\_

۱۷۔ قیمت جو فریقین کے مابین طے پائی ہے \_\_\_\_\_

۱۸۔ \_\_\_\_\_

۱۹۔ \_\_\_\_\_

۲۰۔ \_\_\_\_\_

۲۱۔ \_\_\_\_\_

۲۲۔ \_\_\_\_\_

Attested  
A



Annexure - J

(21)

GOVERNMENT OF PAKISTAN  
CABINET SECRETARIAT  
ESTABLISHMENT DIVISION

No.10/30/97-R.II

Islamabad, the 13<sup>th</sup> May, 1998.

OFFICE MEMORANDUM

Subject: POSTING OF SERVING HUSBAND / WIFE AT THE SAME STATION.


The undersigned is directed to state that Government has taken note of the socio-economic problems and hardships faced by husbands and wives in Government service due to posting at different stations of duty, and it has been decided to prescribe the following guidelines to facilitate posting of husband and wife at the same station:

- (i) Where a request is made for posting at a different station in the same department/service/cadre in which an employee is already serving, the request ~~may be accepted~~ *subject to* availability of a post in the same BPS.
- (ii) If a request involves temporary deputation to another department, it may be processed in consultation with the concerned department, and may be accepted on the prescribed terms of deputation subject to availability of a post in the same BPS.
- (iii) ~~When a request is made for~~ permanent transfer to/absorption in another department/agency, the request may be processed in consultation with the department concerned, subject to the condition that in the event of permanent transfer, seniority shall be determined in accordance with Rule 4 of the Civil Servants (Seniority) Rules, 1993.
- (iv) If there is a tie between two or more Government servants for posting at the same station in the same department/unit of an organization, the Government ~~servant with~~ *greater* length of service may be preferred.
- (v) Request for posting by a spouse facing serious medical problems may be accorded highest priority.
- (vi) Spouses already posted at one station, including those posted on deputation beyond the prescribed maximum period, may normally not be disturbed without compelling reasons of public interest. Requests for extension of

Attested  
A

deputation period beyond the permissible limit may be considered with compassion if interests of public service would permit.

2. The above guide-lines are subject to the following conditions:-
- (i) Posting of husband and wife at the same station should not be made by dislocation of any Government servant already serving at a particular station unless his transfer is necessitated by compelling reasons of public interest or within the frame work of general policy of postings and transfers.
  - (ii) The prescribed selection authority should be consulted in each case.
3. All Government servants whose spouses are in Government service may be asked to furnish at the end of every calendar year the particulars of their spouses to their controlling Ministries/Divisions so as to facilitate maintenance of ICP Charts and upto-date monitoring of the situation.
4. The above guidelines may be circulated to the autonomous bodies under the charge of Ministries / Divisions for adoption, with such modifications, as may be considered necessary.

  
(M. RAMIZUL HAQ) 13/5/95  
Senior Joint Secretary to the  
Government of Pakistan

All Ministries / Divisions  
Islamabad / Rawalpindi.

*Attested*  
*As*

قیمت  
10 روپے



45910  
پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب:

<p>منجانب: <u>Adeel Ayaz</u></p>	<p>دعویٰ: <u>Appeal</u></p>
<p>موضوع: <u>Educa. Deptt.</u></p>	<p>مطلب: <u>Appeal</u></p>
<p>بابت تحریر آنکہ</p>	

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام میں راجہ علی محمد صاحب نے اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقریر نمائندگی و فیصلہ برطاعت دینے جو جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق ذریعہ ہندو متحفظہ کرنے کا اختیار ہوگا، نیز ضرورت عدم پیروی یا غیر ذمہ داری یا اہل کی آزمائش اور منسوخی، نیز دائر کرنے اہل نگرانی و نظارتی و پیروی کرنے کا اختیار ہوگا اور ضرورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے مجاہدے قرار کا اختیار ہو گا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا سامنے ہر ذمہ منظر و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جہانہ التوائے مقدمہ کے حساب سے ہوگا وہ وکیل موصوف و متول کے لئے کا مختار ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیر ذمہ مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المرقوم:

\_\_\_\_\_

مقام \_\_\_\_\_

کے لئے منظور ہے۔

Accepted  
Accepted  
Name  
Fazal  
Advo Cafe

عبدل ایاز حیدر محمد ایاز  
13503-0529856-3

9/2021

**BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

In the matter of  
Service Appeal No. 705 / 2016

Mr Adeel Ayaz..... (Appellant)

**VERSUS**

Govt of Khyber Pakhtunkhwa and Others.

.....(Respondent)

**WRITTEN REPLY/ PARA WISE COMMENTS ON  
BEHALF OF THE RESPONDENT NO. 7**

Respectfully Submitted.

Para wise comments/reply on behalf of the Respondent  
No.7 is as under:

**PRELIMINARY OBJECTIONS:**

- a. That the appellant has got no cause of action and locus standi to file the instant appeal.
- b. That before filling the instant appeal, the appellant has also filed a civil suit in the Court of Senior Civil Judge Mansehra which has been rejected vide order dated 4.7.2016, i.e after approaching this Honorable Tribunal, thus the appellant has concealed fact from this Tribunal and has deceived the Honorable Tribunal, therefore is not entitled to any relief.
- c. That the impugned order is issued in the best interest of public hence cannot be interfered by this honorable Tribunal.
- d. That the appeal is barred by law and limitation.
- e. That the appellant has filed the instant appeal with malafide intention and with ulterior motive.
- f. That under Section 10 of the Civil Servant Act, every civil servant is liable to be transfer any where throughout the province and he cannot lawfully resist for choice posting.
- g. That the appellant has suppressed material facts from this Honourable Tribunal and has not come to the Tribunal with clean hands.

- h. That the appeal in hand is competent in its present form and under the present circumstances.
- i. That the appeal in hand is bad for non joinder /mis joinder of necessary parties.

### ON FACTS OF THE CASE

1. Contents need no reply. However the same subject is to prove.
2. Contents to the extent of transfer order is collect dated 09.03.2016, however the order being made in violation of transfer posting policy and against the public interest, therefore it was withdrawn on 31.03.2016 before its implementation.
3. Contents incorrect, the appellant was never handed over the charge and the charge remained with the replying respondent till the order was withdrawn on 31.03.2016.
4. Contents correct to the extent of order dated 31.03.2016, however rest of the para is misconceived and incorrect hence denied. The order dated 09.03.2016, was not implemented hence no rights of the appellant are violated and the principle of locus poenetentiae is not attracted to the case in hand. Besides the transfer order dated 09.03.2016, was made in violation of the policy and against the public interest hence rightly withdrawn vide order dated 31.03.2016.
5. Contents need no reply, however the same is subject to proof, moreover the appellant had also filed a civil suit in the Court of Civil Judge Manshera before the instant appeal which has been rejected vide order dated 04.07.2016, however this fact has been concealed by him and has thus not come to the court with clean hands. **(Copies of the Civil Suit and order dated 4.07.2016, is attached as Annexure R-I and R-II)**
6. Contents incorrect, the grounds taken in appeal are misleading and incorrect, the same are replied as under:

### ON GROUNDS


- A. Contents incorrect and misleading, the order date 31.03.2016 is well in accordance with law, facts and norms of Justice.
- B. Contents incorrect and misleading. The appellant has been treated in accordance with law and rules and there is no violation any of his rights and the impugned order is issued in the best interest of public.


- C. Contents incorrect and misleading hence denied. Moreover the replying respondent is also the resident of Mansehra and his mother is a cancer patient and the appellant being the only male member of his family has to look after his ailing mother, therefore he was also recommended to be retained at GCMS, Mansehra by the Principal vide letter dated 19.02.2016. **(Copy of order dated 19.02.2016 is attached as R-III)**
- D. Contents incorrect, no violation of the policy is made, moreover the spouse policy as referred is not attracted in the instant case as the wife of the appellant is posted at her home station i.e Mansehra, and moreover the appellant is also posted at Abbottabad which is hardly at a distance of 24 Km from his Mansehra. Therefore he cannot get the shelter of spouse policy.
- E. Contents incorrect and misleading hence denied.
- F. Contents incorrect and misleading hence denied. The order is issued well in accordance with the Policy and in the best interest of public.
- G. Contents incorrect and misleading, hence denied. The order dated 09.03.2016, was never acted upon the charge remained with the respondent No.7 till the withdrawal of the order on 31.03.2016.
- H. Contents incorrect and misleading hence denied. The order is issued well in accordance with the Policy and in the best interest of public.
- I. That the replying respondent also seeks permission to rely on additional grounds at the time of hearing of appeal.

**It is, therefore, humbly prayed that the appeal of the appellant may graciously be dismissed with costs.**

Through

  
Respondent No.7

  
**IJAZ ANWAR**  
Advocate Peshawar

&  
  
**SAJID AMIN**  
Advocate, Peshawar



**BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

In the matter of  
Service Appeal No. 705 / 2016

Mr Adeel Ayaz..... (Appellant)

**VERSUS**

Govt of Khyber Pakhtunkhwa and Others.

.....(Respondent)

**COMMENTS / REPLY TO THE APPLICATION FOR  
SUSPENSION OF THE IMPUGNED ORDER**

**PRELIMINARY OBJECTIONS:**

- A. That the appellant has got no cause of action to file the instant application.
- B. That the application in hand does not full fill the conditions necessary for temporary injunctions.
- C. That the applicant has also filed a civil suit in the Court of Senior Civil Judge Mansehra which has been rejected vide order dated 4.7.2016, i.e after approaching this Honorable Tribunal, thus the appellant has concealed fact from this Tribunal and has deceived the Honorable Tribunal, therefore is not entitled to any relief.
- D. That the relief sought through the instant application amounts to main relief, therefore the same cannot be granted at this stage of proceedings.
- E. That the impugned order cannot be suspended at this stage of the proceedings.

**ON FACTS**


1. Contents need no reply. However the appeal is fixed today for reply/comments.
2. Contents incorrect and misleading, neither there is any Prima facia exists in favor of the appellant nor there is any irreparable loss to the appellant. Moreover, balance of convenience also tilt in favour of the replying respondent. The

- application in hand lacks the basic ingredients of interim relief/temporary injunction.
3. Contents need no reply, however the reply/comments on the main appeal may also be read as integral part of the instant reply to the application.
  4. Contents incorrect and misleading, the impugned order is well in accordance with the policy and in the best interest of public.
  5. Contents incorrect and misleading the transfer order dated 09.03.2016 was withdrawn before the handing /taking over charge thus no question of tenure arise.
  6. Contents incorrect and misleading, the relief sought by the applicant amounts to main relief hence cannot be granted at such initial stage.


**It is, therefore, requested that the application may kindly be dismissed with costs.**

  
Respondent No. 7

Through

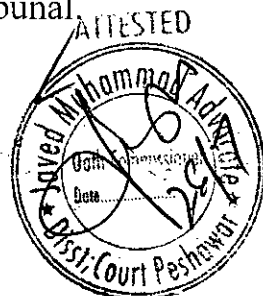
  
**IJAZ ANWAR**  
Advocate Peshawar

&

  
**SAJID AMIN**  
Advocate, Peshawar

**AFFIDAVIT**

I, do hereby solemnly affirm and declare on oath that the contents of the above reply to the main appeal as well as reply to the application are true and correct to best of my knowledge and believe and that nothing has been kept back or concealed from this Honourable Tribunal.



  
Deponent



8

خلاصہ واقعہ میں برابری، بلا جواز، بلا جواز اور منسب سیاست دباؤ اثر و رسوخ کا نتیجہ ہونے کی بناء پر حقوق مدعی پر کالعدم، بے اثر اور قابل واپسی ہے اور مدعی مدعا علیہم کے مذکورہ غیر قانونی نوٹیفیکیشن/ آرڈر نمبر 31.03.2016 یا کسی بھی دیگر غیر قانونی احکامات، فعل و افعال کا قطعاً پابند نہ ہے کہ جس سے مدعی کے مالیہ سروس اسٹیشن سے وابستہ حقوق اور امور ملازمت متاثر ہوں۔

ایٹ بزنس کورٹ فیس و اختیارات

51-4-01

200/- روپے

دعویٰ محدود و ڈگری حکم امتناعی و واجبی، ہدایتی و تا کی مدعی بر خلاف مدعا علیہم بدیں طور کہ وہ اپنا غیر قانونی جاری کردہ فیس نوٹیفیکیشن/ آرڈر نمبری SO(CE&MS)F/E/1-S/177(1-8) نمبر 31.03.2016 جس کی رو سے ٹرانسفر آرڈر نمبر 09.03.2016 Withdraw فرمایا گیا کی بناء پر کسی بھی قسم کا غیر قانونی فعل/ انشال کرنے، مدعی کے امور ملازمت متاثر کرنے، بھیڑ چھاڑ کرنے، چارج لینے، ٹرانسفر کرنے سے نہ صرف۔ نئی الودام باز رہیں بلکہ مذکورہ جاری کردہ غیر قانونی نوٹیفیکیشن/ آرڈر نمبر 31.03.2016 فی الفور کالعدم منسوخ و واپس کرتے ہوئے قانونی طور پر کیا گیا ٹرانسفر آرڈر نمبر 09.03.2016 فی الفور بحال کریں۔

2  
ATTESTED  
Signature  
Date

ایٹ بزنس کورٹ فیس و اختیارات

200/- روپے

بیان دعویٰ ذیل پیش ہے۔  
جناب عالی!

7

A T

2-11

Or... 13... Contd...  
04.07.2016

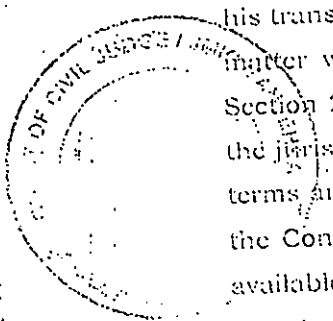
Defendants were summoned amongst whom defendant No.1 to 3 and defendant No.6 appeared. Defendants Nos.4 & 5 despite service did not attend the court, thus, they were proceeded against ex-parte. Petitioner/defendant No.5 filed the instant application for rejection of plaint under Order 7 Rule 11 CPC.

The application was resisted by plaintiff through a replication.

Arguments of the learned counsels for the parties heard and record of the case gone through.

Perusal of the case file shows that plaintiff who is the Director Physical Education and admittedly is a Civil Servant, through the suit in hand has challenged the order relating to his transfer. The posting and transfers of the Civil Servants is a matter which relates to the terms and conditions of service. Section 23(B) of the KPK Civil Servants Act, 1973 clearly bars the jurisdiction of the Civil Court in the matters relating to the terms and conditions of service of Civil Servants. Article 212 of the Constitution is also clear on the subject. The only forum available to the plaintiff is the Service Tribunal and plaintiff has chosen the wrong forum for the redressal of his grievances. The Civil Court has got no jurisdiction to entertain such type of suits. Wisdom in this respect is derived from 2007 SCMR page 54 where the August Supreme Court has held that:

*"Orders of the Departmental Authorities even though without jurisdiction or malafide could be challenged only before the Service Tribunal and jurisdiction of Civil Court including High Court was specifically ousted. Plea of malafide did not confer upon High Court jurisdiction to act in the matter in view of constitutional ouster as contained in Article 212 of the Constitution. Service Tribunal had full jurisdiction to interfere in such like matters."*



4-7-16

RESISTED  
Signature  
Date 7/16



GOVT COLLEGE OF MANAGEMENT SCIENCES  
MANSEHRA

Ph: 0997-302186

Email: [gcmsmns@gmail.com](mailto:gcmsmns@gmail.com)

[www.facebook.com/gcmsmsr](http://www.facebook.com/gcmsmsr)

No. GCMS/MSR/PE/81

Dated 19/02/2016

To

The Director General,  
Commerce Education & Management Sciences,  
Khyber Pakhtunkhwa, Peshawar.

Subject: APPLICATION OF TRANSFER

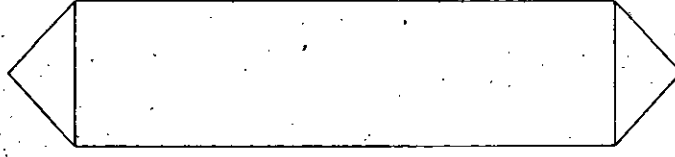
Please refer to your office letter No.  
DGCE&MS/Admn/Transfer/108(1-3) dated 28/01/2016.

The undersigned discussed the matter in detail with  
Mr. Shams-ud-Din (DPE of this College). His problem is that he  
is the only male of his family to look after his ailing mother  
who is a patient of cancer. Moreover, he is a dutiful and co-  
operative official.

Officially speaking, the undersigned would have no  
objection on Govt Policy, but on humanitarian grounds the  
undersigned would like to favour him.

PRINCIPAL

بعدالت CPIC سرسوس ٹریڈنگ کمپنی



محمد علی کھانہ  
جلانہ 2، پنجاب  
بنام

CPIC

سرسوس ٹریڈنگ

موزخہ

مقدمہ

دعویٰ

جرم

### باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام کے لیے ریگسٹرار انڈسٹریل سائیکل سروسز اور سروسز مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق و زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

Respectfully  
No 7  
CPIC

Accepted

المرقوم 26 ماہ 07 2016

Said Anwar

العہدہ گواہ العہدہ

عدنان ششتری مارت  
چوک مشنری شاہوش ٹون 2220193  
Mob: 0345-9223239

مقام کے لیے منظور ہے۔  
Said Anwar

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 705/2016

Adeel Ayaz.....Appellant.

Govt: of Khyber Pakhtunkhwa through Chief Secretary & Others.....Respondents

**Preliminary Objections:**

- 1) That the petitioner has neither cause of action nor locus standi to file this Service Appeal.
- 2) That the appellant have not come to the learned tribunal with clean hands.
- 3) That the appellant has suppressed/concealed material facts from the learned tribunal and hence the appeal is not maintainable on this score alone.
- 4) The appeal in hand is exaggerated and filed with gross misconceptions and is liable to be dismissed.

**Facts**

- 1- Pertains to record, hence no comments.
- 2- Correct
- 3- Correct
- 4- In correct, misleading posting transfer is the sole domain of the management/competent authority. Such arrangements are made in the best public interest without any other consideration. Posting/transfer of officials is a routine business that takes place in the larger public interest as has been done even in case of the appellant when he was posted at Chitral in 2008 and was transferred/posted at Abbottabad in 2009 just after one year that transpires the facts that Provincial Govt: strictly follows the prescribed parameters in the best public interest.
- 5- Departmental appeal though processed but being without sound footings, accordingly filed.
- 6- As prayed in the preliminary praying the appellant, got no cause of action to file the appeal.

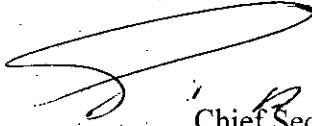
**Grounds**

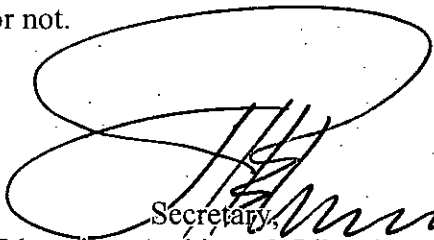
- A) In correct, misleading, the order of 31/03/2016 has been issued by the competent authority after fulfilling all codal formalities in the best public interest. The plea of the appellant is not based on facts, it is the lame excuse to term such lawful order as political motivated without any solid proof. The departmental appeal/presentation being found without sound footings, accordingly filed by the competent authority.
- B) The plea is not based on facts, Posting/Transfer is the sole domain of the management to make such arrangements on need basis in the best public interest. This is an admitted fact duly even testified by the appellant, as he himself when posted at Chitral in 2008 and transferred/posted at Abbottabad in 2009 just one after one year did not ask for any tenure/spouse policy. But keeps mum over the arrangements of the management, keeping in view personal interest, now agitating the present arrangements seems devoid of facts.




(.....2.....)

- C) In correct, misleading in the posting/transfer of official especially of teaching cadre the management/competent authority takes so many factors into consideration. The prime and the most important is the deliverance at that station, the second attitudinal harmony with the environment of that very institution. Thus agitating over transfer and re-transfer from Abbotabad to Mansehra and back is without any cause. The plea of the appellant is devoid of facts.
- D) During the long 07 years stay at Abbottabad the spouse policy not been addressed because the distance between Abbottabad and Mansehra (in the present day fast communication is ignorable and it just takes 30 to 40 minutes due to this fact the appellant did not make any claim to avail such facility thereby means that with full personal satisfaction appellant performed. Now agitating over the lawful arrangements of the competent authority the non-issue has been turned into an issue by making un-necessary litigation that not only kills the precious time of the appellant as well as of the Provincial Govt: There is no vested right available to any official with regard to his/her posting/transfer thus plea of the appellant is devoid of facts.
- E) No violation of any law has been made. The impugned order is issued in accordance with law.
- F) In correct as elaborated in Para (E) above
- G) In correct, as elaborated in receding Paras the said order issued in the best public interest without any other consideration
- H) In correct, misleading all posting/transfer is being made on the principle of public interest irrespective of its mentioning in the office order or not.
- I) No comments.

  
Chief Secretary  
Khyber Pakhtunkhwa  
Respondent No.1

  
Secretary,  
Higher Education, Archives & Libraries Deptt:  
Khyber Pakhtunkhwa  
Respondent No.2

  
Director General  
Commerce Education & Management Sciences  
Khyber Pakhtunkhwa,  
Respondent No. 3

# وکالت نامہ

کورٹ فیس قیستی

بعدالت جناب

Respondent No 7 منجانب

Adeel Hagan نام Govt of KPK etc

دعویٰ یا جہد Service Appeal باعث تحریک تقاضا M. Arshad Khan

مندرجہ بالا عنوان میں اپنی طرف سے پیروی و جوابدہی

مقام ~~Abbottabad~~ بدیں شرط وکیل مقرر کیا ہے میں ہر پیشی پر خود یا بذریعہ مختار خاص روبرو عدالت حاضر ہوتا رہوں گا اور بوقت پکارے جانے وکیل صاحب موصوف کو اطلاع دیکر حاضر کروں گا۔ اگر کسی پیشی پر مظہر حاضر نہ ہوں اور غیر حاضری کی وجہ سے کسی طور پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کسی اور جگہ پکھری کے مقررہ اوقات سے پہلے یا بروز تعطیل پیروی کر کے مجاز نہ ہوں گے۔ اگر مقدمہ مقام پکھری کے کسی اور جگہ سماعت ہونے پر یا بروز پکھری کے اوقات کے آگے یا پیچھے ہونے پر مظہر کو کوئی نقصان پہنچے تو ذمہ داریاں اسکے واسطے کسی معاوضہ ادا کرنے مختار نامہ واپس کرنے کے بھی صاف و موصوف ذمہ دار نہ ہوں گے۔ مجھے کل ساختہ پر داخنتہ صاحب مثل کردہ ذات خود منظور و قبول ہوگا اور صاحب موصوف کو عرضی دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی اپیل نگرانی دائر کرنے نیز ہر قسم کی درخواست پر دستخط تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے کا ہر قسم کا بیان دینے اور سپرد ثالثی و راضی نامہ و فیصلہ برخلاف کرنے و اقبال دعویٰ کا اختیار ہوگا اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یا یک طرفہ درخواست حکم امتناعی یا ڈگری قبل از فیصلہ اجراءے ڈگری بھی صاحب موصوف کو بشرط ادائیگی علیحدہ پیروی مختار نامہ کرنے کا مجاز ہوگا۔ بصورت ضرورت اپیل یا اپیل کے واسطے کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہوں گے جیسے صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا لہذا اختیار نامہ لکھ دیا ہے کہ سندر ہے۔ مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

الرقوم: 21/9/2016

Accepted

Muhammad Arshad Khan Tanali  
Advocate Hoga Court  
Abbottabad