

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1966/2023

Jamil Ur Rehman.....Appellant

Versus

The Govt. of Khyber Pakhtunkhwa etc.....Respondents

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Respondent No.3.
(Imran Khan)

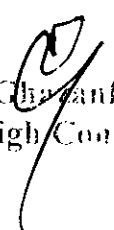
Through


Khaled Rehman,
Advocate Supreme Court

&


Muhammad Amin Ayub

&


Muhammad Ghazanfar Ali
Advocates, High Court

Dated: 15 /11/2023

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REPLY ON BEHALF OF RESPONDENT NO.3 (IMRAN KHAN)

Director of Peshawar
9022
Dated 15-11-23

Respectfully Sheweth,

Preliminary Objections:

- I. **That** every Civil Servant is liable to be transferred anywhere within the Province as per the mandate of Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the policies/Rules being subservient to the parent Statutes cannot override the same and the impugned transfer Notification dated 08.05.2023 was rightly passed by the official Respondents for the reason that appellant having no vested right to perform his duty on any particular place.
- II. **That** the appellant was assigned the duty of the Deputy Director on 01.02.2021 (*Page-11 of the appeal*) and according to the prevailing posting/Transfer Policy of the Government, the normal tenure of posting shall be for a period of two years thus it is an admitted fact that the appellant served for more nearly three years on the same post hence appellant has got no cause of action and locus standi to file the appeal in hand.
- III. **That** after the transfer Notification of the appellant on 08.05.2023, vide Notification dated 01.06.2023, the Answering Respondent No.3 was posted against the subject post after about one month, however, the appellant has never called in question his transfer Notification dated 01.06.2023 through Departmental Representation or service appeal. In this view of the matter, the instant appeal is not competent under the law.

- IV. **That** the instant appeal is defective in its present form and shape as it does not meet the requirement of Section 7 of the Khyber Pakhtunkhwa Services Tribunal Act 1974 and the Khyber Pakhtunkhwa Service Tribunal Rules 1974.
- V. **That** the appeal of the appellant is hit by the doctrine by estoppel and thus is liable to be dismissed in the very inception.
- VI. **That** appellant has not approached the Hon'ble Tribunal with clean hands. As a matter of fact he has concealed material facts from the Tribunal rendering the appeal in hand not maintainable.

Reply to Facts:

1. **Needs** no reply.
2. **Correct** to the extent of Notification dated 18.09.2019, however, the appellant has substantially served on the same post for 07 days 03 months and 02 years and thus has completed more than 80% tenure. The appellant cannot claim posting at one particular station for indefinite period of time. The competent authority is not debarred from posting and transferring an officer from one place to another in the public interest as well as in the exigency of service. Moreover, during the relevant days an inquiry was also pending against appellant which was subsequently finalized on 22.08.2023 vide Inquiry Report (*Annex;-R/1*) and thereafter an explanation of the appellant was also sought on the basis of same Inquiry Report vide letter dated 16.10.2023 (*Annex;-R/2*).
3. **Correct** to the extent of transfer Notification dated 08.05.2023, however, the same was issued by the competent authority in accordance with law to which no exception can be taken.
4. **Correct.**
5. **Correct** to the extent of Departmental Representation against the Notification dated 08.05.2023, however, no Departmental Representation has been preferred against the Notification dated 01.06.2023 which renders the appeal in hand as incompetent under the law.
6. **Incorrect.** The impugned Notification is very much in accordance with law and Rules.

Reply to Grounds:

A. **Incorrect.** The impugned Notification is in accordance with law to which no exception can be drawn as the same was passed under the law. Moreover, appellant was not prematurely transferred as under the law he is supposed to discharge his duty where the competent authority deems appropriate. Reliance is placed on **2020 SCMR 1432** wherein it was held that:

--- Place of service ---prerogative of employer--- Government servant was required to serve where his employer want him to serve; it was not a choice or prerogative of the employee to claim a right to serve at a place that he choose to serve.

B **Incorrect** hence not admitted. Appellant has nearly completed his tenure and moreover, a civil servant is liable to transfer at any time under Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the transfer posting/policy issued by the Government.

D. **Incorrect** hence not acceded. The Ban relaxation has been obtained from the Election Commission of Pakistan.

E. **Misconceived.** The impugned Notification is bonafide issued by the competent authority under the law and the plea of the appellant is ill-founded.

F. **Incorrect.** The matter has been explained hereinabove.

G&H. **incorrect** hence vehemently

It is, therefore, humbly prayed that on acceptance of this reply, the appeal of appellant may graciously be dismissed with costs.

Respondent No.3
(Imran Khan)

Through

Khaled Rehman
Advocate, Supreme Court

&

Muhammad Amin Ayub

&

Muhammad Ghazanfar Ali,
Advocate, High Court

Dated: 15 /11/2023

Affidavit

Imran Khan, Deputy Director (Monitoring) Directorate of Higher Education Khyber Pakhtunkhwa, do hereby solemnly affirm and declare on oath that the contents of this Reply are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Tribunal.

Deponent

*Imran
Khan*

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.

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Reply on behalf of Respondent No.3 in response to Stay Application**Respectfully sheweth**

1&2. Need no reply.

3&4. Incorrect. The appellant failed to fulfill the conditions for grant of stay. Furthermore the reply of the Answering Respondent No.3 may also be considered as integral part of the application.

5. Incorrect. The applicant has relinquished the charge while the answering Respondent has taken over it. No question of loss muchless irreparable can arise.

It is therefore, humbly prayed that the application may kindly be rejected being devoid of merits.

Respondent No.3
(Imran Khan)

Through

Khaled Rehman
Advocate, Supreme Court

Dated: 15/11/2023**Affidavit**

I, Imran Khan, Deputy Director (Monitoring) Directorate of Higher Education Khyber Pakhtunkhwa, do hereby solemnly affirm and declare on oath that the contents of this Replication are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Tribunal.

Imran Khan
Deponent





GOVERNMENT DEGREE COLLEGE BOI, ABBOTTABAD

No. 1177

Dated: 22/08/2023

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Reply 11

To,

The Director,
Higher Education Department,
Khyber Pakhtunkhwa Peshawar.

SUBJECT: Inquiry Report Regarding reinstatement and fact-finding of
Main Muhammad Azhar Ex-Class-IV Govt. Degree College
Oghi Manshera.

Memo:

Please find enclosed herewith an inquiry report regarding the reinstatement
and fact-finding of Main Muhammad Azhar Ex-Class-IV Govt. Degree College Oghi
Manshera.

Principal *Muhammad Azhar*
Govt. Degree College Boi
Abbottabad
22/8/23

CA-7
Put up
29/8

Directorate of Higher Education
Khyber Pakhtunkhwa
RECEIVED
28 AUG 2023
G.No. 11/103 Pesh. SSO

ATTESTED

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Inquiry Report Regarding reinstatement and fact-finding of Main hammad Azhar Ex-Class-IV Govt. Degree College Oghi Manshra.

Introduction	Inquiry entrusted by: The Director of Higher Education Khyber Pakhtunkhwa, Peshawar.
	Enquiry Officer: Prof. Azhar Latif Awan, Principal Govt Degree College Boi, Abbottabad.
	Background of the Enquiry: The Director of Higher Education Khyber Pakhtunkhwa Peshawar vide letter-1168/CA-VII/Estt: Branch/A-167/GDC Oghi Manshra M80 Vol-1 Dated 04.08.2023 entrusted an inquiry to the undersigned regarding the reinstatement and fact-finding of Main Azhar Ex-Class-IV of Govt. Degree College Oghi Manshra.

Process of Investigation and Facts established.	<p>The investigation process</p> <p>The undersigned informed the concerned Principal of GDC Oghi to conduct the inquiry on 15th August 2023. On the decided date undersigned visited the GDC Oghi. Ex-Principal Prof. Muhammad Sadiq was also requested to give his opinion and the actual status of the case, as the whole process of appointment and cancellation was carried out during his tenure. After checking the records and detailed discussion the written statement of Ex-Principal GDC Oghi was collected. After the promotion of two class-IV on 30.05.2022 two posts became vacant The Principal at that time completed all the codel- formalities for the appointment of new class-IV on the vacant posts.</p> <ul style="list-style-type: none"> • Intimation to Director HED & request for a nominee of the DHE • List from Employment exchange • N.O.C from DC Manshra. • Registered call letters to all the candidates for interview. • Formation of the appointment committee. <p>The interview was conducted on 03.09.2022. Each committee member marked marks on a separate merit list and two candidates were selected on purely merit. The nominee of the DHE DD monitoring was also present at the time of the interview, but he left without signing the minutes, claiming that he has some emergency at home. Verbally communicated to the Principal you are authorized to decide from my end, send me the minutes of the committee to Peshawar I will sign it.</p> <p>The Principal GDC Oghi sent minutes of appointment committee via special correspondent Mr. Shokat Lecturer in Mathematics on 12th September 2022 to Mr. Jameel ur Rehman Deputy Director Monitoring but he didn't sign the minutes and verbally told to the correspondent, Principal is authorised to decide he is competent authority.</p> <p>The appointment order of the Mian Muhammad Azhar Ex-Class-IV GDC Oghi was issued on 20-09-2022 and Mian Muhammad Azhar Ex-Class-IV GDC Oghi took charge on 21st September 2022 .</p> <p>On 30th September 2022 according to the statement of Ex Principal GDC Oghi Director HED telephonically ordered him to cancel the appointment order of Mian Muhammad Azhar Ex-Class-IV GDC Oghi.</p> <p>On 30th September 2022 Ex-Principal on the verbal directive of director HED cancelled the appointment order and conveyed to the DHE.</p> <p>The Director HED recommended two persons of MPA concerned for appointment and mentioned to the Ex Principal that these are the order of minister higher education to appointment these two persons recommended by the concerned MPA. The Ex Principal carried out the appointment procedure once again but before the completion of the</p>
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ATTESTED

process the Ex Principal was retired on superannuation
 Mian Muhammad Azhar Ex-Class-IV GDC Oghi Munsehra submitted the departmental
 appeal on 3rd October 2022 against the impugned cancellation of appointment order.
 The appeal of Mr Mian Muhammad Azhar Ex-Class-IV GDC Oghi was forwarded to
 Director HED vide letter No 1079 Dated 28.10.2022 again reminder was sent to DHE
 vide letter No 1215 Dated 30-12-2022.

<p>Conclusion</p>	<ol style="list-style-type: none"> 1. The appointment procedure was carried out in accordance with the rules and regulations all the codal formalities were completed by the college administration. 2. Mian Muhammad Azhar was selected on purely merit and he took charge on 21st September 2022 3. The nominee of the DHE didn't complete his duty although he has availed the TA/DA for this visit .furthermore on the verbal directive of the DHE Nominee, minutes of the appointment committee were sent to him through a special correspondent on 12.09.2022. The concerned Nominee received the minutes and issued attendance to the college correspondent with his own signature. Again verbally passed the directives to issue the order of the class-IV. . 4. On the assurance of Dy. Director monitoring nominee of DHE 5. Ex Principal issued the orders of two class-IV. Main Muhammad Azhar took charge on 21st September 2022 while the other person didn't take charge. 6. Mian Muhammad Azhar is working on local hiring from the private fund on different positions Lab Assistant /junior clerk for the last 10 years. He is a well-aware and trained person.
<p>Recommendations</p>	<ol style="list-style-type: none"> 1. Mian Muhammad Azhar was appointed on merit with proper legal procedure and he also took charge. It is strongly recommended that he may please be reinstated w.e.f his date of taking charge with all the financial benefits. 2. The Cancellation of his order was under political interference/ pressure. 3. As the nominee of the DHE proved himself inefficient and his wilful negligence caused a financial loss to the government as he availed TA/DA at the same time college suffered from a shortage of staff and the administrative issue has also been created and a deserving employee suffered financially and emotionally. 4. It is recommended that an inquiry may please be initiated against the nominee of DHE Ex-Dy. Director Monitoring (as per E&D rules 2011 3(a)). For inefficiency and wilful negligence.

ATTESTED

List of documents

attached
herewith.

1. Statement of the Ex- Principal GDC Oghi Manshera.
2. Statement of the current Principal.
3. Statement of Mia Muhammad Azhar Ex- Class-IV.
4. Attendance of the appointment committee members.
5. Attendance of the special correspondent sent to Dy Director Monitoring on 12-09-2022 Issued by the Dy Director Monitoring.
6. Promotion order of the previous class-IV on 30-05-2022 therefore two posts became vacant.
7. Appointment of Class-IV on two vacant posts on general quota.
8. NOC from DC Manshera appointment of Class-IV Servants.
9. Provision of list for appointment of Class-IV to Manger Employment Exchange Manshera on 06-07-2022.
10. Letter to Dy Director Monitoring nominee DHE for fixation of interview date.
11. Assesment sheet for the appointment of Class-IV.
12. Minutes of the departmental selection committee meeting regarding appointment of Class-IV employee on 03-09-2022.
13. Attendance list of candidate applied for the post of Class-IV.
14. Appontment Order on 20-09-2022.
15. Medical certificate and charge report of Mr. Mian Muhammad-Azhar.
16. Cancelation of appointment of Mr. Mian Muhammad Azhar.
17. Re initiation of appointment procedure list demanded from employment exchange.
18. Departmental appeal of Mr. Mian Muhammad Azhar against impugned cancellation of appointment send to DHE vide letter No 1079 dated 28-10-2022
19. (reminder) Departmental appeal of Mr. Mian Muhammad Azhar against impugned cancellation of appointment send to DHE vide letter No 1215 dated 30-12-2022.

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Dated: 22-August-2023

ATTESTED

Azhar Latif Awan
 22/08/2023
PRINCIPAL
 Enquiry Office Govt: Degree College
 Bol, Abbottabad
 Principal GDC Boi,

- 9 Reply/2



**DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA
RANO GHARI NEAR CHAMKANI MOR, PESHAWAR**



E-mail: dhkpkpeshawar@gmail.com Facebook.com/dhkppeshawar Twitter.com/dhkppeshawar1

No. 18077, CA-VII/Estt/ Branch/A-167A/GDC Oghi Mansohra M-80 Vo-1 Dated Peshawar the 16/12/2023

To: Mr. Jamil Ur Rehman,
Assistant Professor of Pak Study,
Government Degree College, Ring Road, Peshawar.
Address: Government Superior Science College, Peshawar.

Subject: INQUIRY REPORT REGARDING REINSTATEMENT AND FACT FINDING OF MAIN MUHAMMAD AZHAR EX-CLASS-IV GOVERNMENT DEGREE COLLEGE, OGI MANSEHRA.

Memo:

I am directed to refer to the subject noted above and to state that appointment of subject official was carried out at Government Degree College, Oghi, wherein you attended Departmental Selection Committee meeting as Departmental Representative, however, later on you refused to sign the minutes and also verbally directed Principal concerned to issue appointment order, which was subsequently withdrawn, on your verbal directions.

I am further directed to state that concerned employee lodged complaint whereby this office constituted fact finding inquiry, wherein Inquiry Officer made you liable for this whole episode and recommended formal inquiry against you, however, to treat you in accordance with law, you are hereby directed to submit written defense, if any, within 07 days to proceed further in the matter, please. (Copy of inquiry report enclosed for ready reference).

(Signature)
(AFRASEYAB) 12/23
ASSISTANT DIRECTOR (ESTT:)

Encl. No. 18078

CA-VII/Estt/ Branch/A-167/GDC Oghi Mansohra M-80 Vo-1

Copy of the above is forwarded to Deputy Director (IT), Local Directorate, with the request to circulate through Electronically, please.

(Signature)
ASSISTANT DIRECTOR (ESTT:)

TA Ishaq Khan/2023/TAde College /General Letter

~~ATTESTED~~