Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
		BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR Appeal No. 426/2016 Khalid Iqbal Versus Secretary Education Khyber Pakhtunkhwa Peshawar and 4 others. JUDGMENT
	26.04.2017	MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:- Appellant with counsel and Mr. Usman Ghani, Senior Government Pleader alongwith Fazle Khaliq, ADO and Hameedur Rahman, A.D (Litigation) for respondents present. 2. Khalid Iqbal son of Gharib Gul hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against order dated 04.11.2015 vide which he was transferred from GPS Baghe Haram Tordher Tehsil Lahor to GPS Saleem Khan Jadeed Tehsil & District Swabi and where-against his departmental appeal was also rejected vide order dated 04.04.2016 and hence the instant service appeal on 20.04.2016. 3. Brief facts giving rise to the present appeal are that the appellant was serving against the vacant PST post at GPS Baghe Haram, Tordher when transferred there-from to GPS Saleem Khan Jadeed constraining him to prefer departmental

26.04.17

appeal followed by the instant service appeal.

4. We have heard arguments of learned counsel for the parties and perused the record including case law produced and relied on by learned counsel for the appellant and reported as 1994-SCMR-413 (Supreme Court of Pakistan), 2000-SCMR-67 (Supreme Court of Pakistan), 2008-PLC (C.S) 949 (Lahore High Court), 2007-SCMR-599 and 2006-SCMR-1240 (Supreme Court of Pakistan).

5. The post against which the appellant was allowed to serve is a post of PST (BPS-12) while the appellant is SPST (BPS-14). A person earning perks and privileges of BPS-14 cannot be legally entitled to serve against a post in the lower scale. As such the appellant, a civil servant and serving as SPST BPS-14 cannot claim to serve against a post of PST BPS-12. We, therefore, hold that the appeal of the appellant is devoid of merit and the same is, therefore, dismissed, leaving the parties to bear their own costs. File be consigned to the record room.

(Muhammad Azim Khan Afridi)
Chairman
26.04.17

Muhammad Amin
(Muhammad Amin Khan)
Member

ANNOUNCED
26.04.2017

12.01.2017 Counsel for the appellant present and Fazale Khaliq alongwith Addl: AG for respondents present. Rejoinder is submitted which is placed on file. To come up for arguments on 26.04.2017.

(AHMAD HASSAN)
MEMBER

(MUHAMMAD AAMIR NAZIR)
MEMBER

09.06.2016 Appellant in person, M/S Khurshid Khan, SO for respondent No. 1, Hamed-ur-Rehman, AD (lit.) for respondent No. 2 alongwith Addl: AG for official respondents No. 1 to 4 and private respondent No. 5 in person present. Written reply not submitted and requested for further time. To come up for written reply/comments on 22.08.2016 before S.B.

MEMBER

22.08.2016 None present on behalf of the appellant. M/S Hameed-ur-Rehman, AD (lit.) & Fazle Khaliq, ADO alongwith Additional AG for official respondents No. 1 to 4 and private respondent No. 5 in person present. Para-wise comments on behalf of official respondents No. 2 and 3 submitted. The learned Additional AG relies on the para-wise comments submitted by respondents No. 2& 3 on behalf of respondents No. 1 & 4. Private respondent No. 5 requested for further time to file written reply. Last opportunity granted to private respondent No. 5 for submission of written reply/comments for 01.11.2016 before S.B.

Member

01.11.2016 Counsel for the appellant and Fazale Khaliq, ADO alongwith Mr. Ziaullah, GP for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing on 12.01.2017.

MEMBER

28.4.2016

Appellant with counsel present. Learned counsel for the appellant argued that the appellant was sering as PST and was posted at GPS Bakhe Haram, Tordher, Swabi when vide order dated 04.11.2015 transferred from the said school to GPS Saleem Khan Jadeed District Swabi where-against the appellant preferred departmental appeal on 14.11.2015 which was rejected on 04.04.2016 and hence the instant service appeal on 20.4.2016.

That the appellant was entitled to serve at GPS Bakhe Haram Tordher being senior to private respondent No. 5 (Zabeehullah) as PST who has been illegally favour by the respondents. That the impugned order is against facts and law is liable to be set aside.

Appellant Deposited Security & Process Fee

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 09.06.2016 before S.B. Notice of stay application should also be issued to the respondents for the date fixed.

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 426/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	20.04.2016	The appeal of Mr. Khalid Iqbal presented today by Mr. Haji Gharib Gul Kaskar Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR
2	25-04-2016	This case is entrusted to S. Bench for preliminary hearing to be put up thereon 28-04-2016 CHAIRMAN

IN THE COURT OF SERVICE TRIBUNAL, PESHAWAR

Appeal No. 426/2016

Khalid Iqbal **VS** Government of K.P.K

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6.	Transfer order No. 3100	C	9-10
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Dated: 20/04/2016

Appellant

Khalid Iqbal SPST

Through

Haji Gharib Gul Kasker

Advocate, Swabi

IN THE COURT OF SERVICE TRIBUNAL, PESHAWAR

Appeal No. 426/2016

Khalid Iqbal S/o Haji Gharib Gul Kaskar R/o Village Tordher, Tehsil Lahor District Swabi (Teacher GPS Saleem Khan Jadeed) Tehsil and District Swabi.

....Appellant

Versus

1. Secretary Education Khyber Pakhtunkhwa, Peshawar.
2. Director Education Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer Male Primary Swabi.
4. Sub Division Education Officer Male Primary Tehsil Lahor District Swabi.
5. Zabihullah SPST Govt. Primary School Mathani Changan, Tordher Swabi.

.....Respondents

U/S-4 of The Service Tribunal Act 1974

APPEAL AGAINST THE ORDER NO. 3200 DATED 04/04/2016 OF DEO, MALE SWABI WHEREBY THE APPEAL OF THE APPELLANT WAS DISMISSED AGAINST THE ORDER OF SDEO TEHSIL LAHOR, DISTRICT SWABI VIDE ORDER NO. 3100 DATED 04/11/2015 WHEREBY THE APPELLANT WAS TRANSFERRED FROM GPS BAGHE HARAM TORDHER, TEHSIL LAHOR TO GPS SALEEM KHAN JADEED TEHSIL & DISTRICT SWABI.

Respectfully Sheweth,

1. That the appellant was posted to GPS No. 1 Tordher, but on the basis of promotion from scale 12 to 14 he was transferred Abdul Malik Kothey Tehsil and District Swabi against the said order the appellant submitted in application/appeal to the DEO Male Swabi on 30/10/2013. (Copy of the application is attached).

2. That on acceptance of the appeal / application of the appellant he was transferred to GPS Baghe Haram Tordher against vacant PST post on 12/12/2013, No. 4644-G.

3. That the appellant performed his duties in GPS Baghe Haram for about 23 months.

4. That without showing any reasons suddenly the appellant was posted and transferred on the interference of a politician (MPA) to GPS Saleem Khan Jadeed Tehsil and District Swabi by cancelling the order of DEO Male, Swabi dated 12/12/2013 by the incompetent, sub-Division Officer Male, Tehsil Lahor, the SDO has got no Jurisdiction or power to transfer the appellant beyond his limit and jurisdiction (Copy of order enclosed).

5. Against the transfer dated 11/04/2015 bearing No. 3100 the appellant submitted an appeal/application to District Education Officer Male, Swabi, which was rejected vide No. 3200 dated 04/04/2016 without showing any cogent reasons (Copy enclosed).

6. That the order of the District Education Officer Male Swabi, Dated 04/04/2016 and that of SDEO Lahor, dated 04/77/2015 is wrong, illegal against the Khyber Pakhtunkhwa appointments, Deputation, Posting and Transfer of Teachers vide regulatory act 2011 on the following grounds.

GROUNDS:-

A. That the SDEO Lahor Tehsil Lahor is got no jurisdiction and therefore is not competent to transfer the appellant from Tehsil Lahor to Tehsil and District Swabi.

B. That the order of the SDEO Lahor is based on malafide and on Political grounds and he is got no jurisdiction or power to cancel the order of his immediate Officer, District Education Officer Swabi.

C. That under the act a Senior Teacher should be retained in his Union Council and the junior to him should be transferred.

D. That upon the transfer of the appellant to GPS Baghe Haram and then performing the duties for 23 months, if his posting was not in accordance to the law then why he kept for such long period.

E. That the appellant and Teachers Zabih Ullah both belong to the same village same Union Council and same Tehsil and District, but Zabih Ullah is apparently Junior to the appellant and is admitted by the DEO and has impugned order and instead of transferring the appellant Zabihullah being Junior should have been transferred and thus the transfer of the appellant is violation of the act 2011 above mentioned.

F. That the appellant being a low state servant has being transferred to a far flung area of Tehsil and District Swabi, which also smells of malafide and political interference in transfer of the appellant.

G. That the respondent No. 3 and 4 have unlawfully favoured respondent Zabihullah for certain Political reasons.

H. That in the previous order of my posting to Abdul Malik kotey the then DEO Male, Swabi has given his remarks that the application of the appellant is based on genuine grounds, accepted by my application and transferred me to Baghe Haram Tordher. But those remarks of his predecessor were also ignored by the respondent No. 3.

It is, therefore, humbly prayed that on acceptance of this appeal the order of DEO, Male Swabi and SDEO Male Lahor may graciously be set aside the appellant be transferred to GPS Mathani Changan Tordher and respondent No. 5 being Junior the transfer to GPS Saleem Khan Jadeed Tehsil and District Swabi.

Dated: 20/04/2016

Appellant
Khalid Iqbal SPST

Through
Haji Gharib Gul Kasker
Advocate, Swabi

CERTIFICATE-

That no such like appeal as earlier been submitted before this Hon'ble Tribunal.

Advocate

BEFORE THE COURT OF SERVICE TRIBUNAL PESHAWAR

Khalid Iqbal S/o Haji Gharib Gul Kaskar R/o Village Tordher, Tehsil Lahor District Swabi (Teacher GPS Saleem Khan Jadeed) Tehsil and District Swabi.

Petitioner

VERSUS

1. Secretary Education Khyber Pakhtunkhwa, Peshawar and 4 others.

Respondents

PETITION FOR SUSPENSION OF ORDER NO. 3200 DATED 04/04/316 OF DEO, MALE SWABI AND NO. 3100 DATED 04/11/2015 OF SDEO LAHOR IS SUBMITTED AS UNDER:-

RESPECTFULLY SHEWETH,

1. That the petitioner has submitted the attached appeal the grounds of which mentioned therein may be perused as ground of this petition also.

2. That the petitioner has been transferred in his own village Tordher School to District Swabi by an incompetent authority i.e SDEO Lahor, whose Jurisdiction is limited upto Tehsil Lahor only.

3. That in the order of SDEO, Lahor it is incorrectly been mention. That the petitioner has been transferred to his original post, actually the petitioner was first appointed in a GPS Tordher No. 2, so much the question of seniority of the petitioner is concerned it has been admitting even

by the DEO Swabi and his impugned order, also neither the previous transfer of the petitioner was of derailment or was illegal.

4. That the transfer of the petitioner is the result of use of political appears / interference of the local MPA. (Affidavit attached).

It is, therefore, humbly prayed that on acceptance of this petition and keeping in view the grounds of appeal the order of both DEO Health Swabi, No. 3200 dated 04/04/2016 and that of SDEO Male Lahor No. 3100 dated 04/11/2015 may very kindly be suspended to the procedure of the appeal.

Petitioner
Through
Haji Gharib gul Kaskar
Advocate, Swabi

AFFIDAVIT:-

I, Declare on Oath that all the contents of petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Advocate

20 APR 2016
ATTESTED
Syed Saif Ullah Advocate
NOTARY PUBLIC
High Court Peshawar

(7) Annexure-A

District Education Officer (Male) Swabi
Diary 3314
31/10/08

To

The DEO (S & L) Swabi.

Subject: Application/appeal for change of order.

R/S

It is to state that I (Khalid Iqbal) now working as PST at GPS #2 Tordher. According to promotion policy, I was given scale 14 and transferred to GPS Abdul Malik Kotey Swabi (27 Km). According to policy, I had to be adjusted near my U/C but my seniority was totally ignored and still my junior is working in U/C Tordher.

The details are as under.

S/No	E/L No	Name	School from where transferred	School where adjusted
1	1505	KHALID IQBAL	GPS MALTDR	GPS Abdul Malik Kotey
2	1516	ZAHID ULLAH	GPS M/Chagan Tordher	GPS M/Chagan Tordher

Domicile

Therefore it is requested that I may please be provided justice and merit.

Thankyou

Yours Obediently
KHALID IQBAL
SPST B-14
GPS Abdul Malik Kotey

Dated
30-10-08.

Attested

Annexure-B

8

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) SWABI

TRANSFER,

Mr, Khalid Iqbal S PST B-14 GPS Abdul Malik Kotey (Swabi) is hereby Transferred to GPS Baghi Haram Tordher against vacant PST Post on his own pay and BPS with effect from the date of taking Over charge.

Note, No TA/DA is allowed
Charge report should be submitted to all concerned.

(ABDUS SALAM)
DISTRICT EDUCATION OFFICER
(MALE) SWABI

Endst, No. 4644-6 Dated, 12-12- /2013

Copy of the above is forwarded to the:-

1) SDEO (Male) Lahor & Swabi.
2) District Accounts Officer Swabi.
3) Head teachers concerned Schools.

DISTRICT EDUCATION OFFICER
(Male) SWABI

Annexure-C

9

3100
4.11-2015

To

The teaching /non teaching staff

Sub division (M) Lahor

Sub: Cancellation of wrong adjustment/detailment

Memo:

Reference of the letter DEO (M) Swabi No-15243-48 Dated 21/10/15 In the light of minute secretary KPK no detailments/wrong adjustment is to be allowed under any circumstance

Therefore the following teaching/non teaching staff is directed to report to their original do, with immediate effect

In case of non compliance strictly disciplinary action will be taken against the concerned teacher/chowkidar

S.#	Name of Official	Desig	Original place of posting	Wrong/Detail	Ma
1	Khurshidar	SPST	Saleem Khan Jadeed	GPS Baghe Aram Tordher	Pa
2	Monera Shah	PST	GPS 5 Jalbai	GPS Noorse Dhok	ME
3	Khurshid Bilal	SPST	GPS Neerjan Dhok	GPS 5 Jalba	ME
4	Shah Mohammad	Chowkidar	GPS Bakakhail Dobian	DEO (M) Swabi	Pe
5	Shawar Ali	Chowkidar	GPS Bisadir Shah Kote Jalbai	GPS 1 Maan Changar Tordher	ME
6	Janeer Khan	Chowkidar	GPS Jamea	GPS 2 Balach	ME
7	Waqar	Chowkidar	GPS 2 Rokhani	GPS 3 KHOTO	Ma
8	Mohammad Zahid	Chowkidar	GPS Kalo Dheri	GES 2 Yar Hussain	Ma

Sub divisional Education Officer
Male'LA(Lahor Swabi)

n at
ondent
to the

Office of SDEO (Male) Lahor. Better copy Annexure-C
No 3100, Dated 4/11/016.

To, Teaching / Non Teaching staff (Sub division M - Lahor)

Subject: Cancellation of wrong adjustment/detailment.

Memo:

Reference of the letter DEO (M) Swabi No 15243-48 dated 21/10/15. In the light of minutes of Secretary KPK, no detailment/wrong adjustment is to allowed under any circumstances.

Therefore the following teaching/non-teaching staff is directed to report to their original post of duty with imidiate effect.

In case of non-compliance strick disciplinary action will be taken against the concerned teacher/chowkidar.

S No	Name of official	Disign	original place of posting	wrong/detail
1	Khalid Iqbal	SPST	Saleem Khan Jadeed	GPS Baghe Haman Tordher.
2	Momen Shah	PST	GPS 5 Jalbai	GPS Noor Jan Dhok.
3	Kifayat Ullah	SPST	GPS Noorjan Dhok	GPS 5 Jalbai.
4	Saleh Mohammad	Chowkidar	GPS Bakakhail Dobian	DEO (M) Swabi
5	Shahzad Ali	Chowkidar	GPS Bhadir Shah Kote Jalbai	GPS 1 Matani Changan Tordher.
6	Jameel Ahmad	Chowkidar	GPS Jamra	GPS 2 Bahaiti.
7	Wafadar	Chowkidar	GPS 2 Rokhani	GPS 3 KhoRO.
8	Mohammad Zahir	Chowkidar	GPS Balo Dheri	GES 2 Yar Hussain.

Sub Divisional Education officer
Male - LAHOR (SWABI)

Annexure D

Before the DEO (S & L) Swabi.

Khalil Iqbal SPST GPS Baghe Hiram Tordher Swabi (Appl)

VS

1) SDEO Male Lahor Swabi —— respdt -1

2) Zabihullah SPST GPS Mathani Changan -1 Tordher — respdt - 2

Appeal / Corrigendum against the order No 3100 - dated 4/11/2015 where by the appellant posting in GPS Baghe Hiram Tordher, Teh - Lahor distt - Swabi vide DEO (male) Swabi Endst No 4644-G, dated 12-12-013 was Cancelled and he was transfered and posted at GPS Saleen Khan Jadeed Teh - Distt - Swabi vide order No 3100 dated 4-11-2015.

PRAYER IN APPEAL (CORRIGENDUM OF ORDER)

1- That the illegal/wrong and beyond jurisdiction order of SDEO (male) Lahor be cancelled/withdrawn and appellant be posted in his previous station and respondent No 2 being junior to the appellant be transfered in place of the appellant -

GROUNDS OF APPEAL / CORRIGENDUM

1) That the order of the respondant No 1 is wrong, illegal, baselles and beyond jurisdiction.

2) Respondant No 1 who is SDEO (male) Lahor has got no jurisdiction to cancel the order of imidiate officer (DEO) Swabi and transfer the appellant to Teh & Distt - Swabi. Thus he has comitted strong illegality.

3) That the appellant was transfered on 12/12/013 by the DEO (male) Swabi against vacant post of PST on his own pay and BPS. (copy of the order is attached)

4) That the instructions of Secretary KPK, the reference of which is given in the letter by the respondent No 1 was also existing at the time of transfer to PST post on 12/12/013.

5) That, at the time of issuing, the so called order by the SDEO (male) Lahor, the seniority vide notification Endst No 1803 - G and 1805-G dated 29/05/2013 and 2233-G dated 1/7/2013 was and is available in the office of SDEO (male) Lahor in which my seniority No is 1505 while the seniority No of respondent No 2 is 1516 and thus the respondent No 1 was making arrangement with justice then at every cost, the appellant should have been in place of respondent No 2 and respondent No 2 should have been transfered to the

ce of appellant because it holds fields that the teacher who is senior to other be posted in the neares station and the juniour should be removed and posted at a far station in respect of the next - The contention of the SDEO as explained before is that a teacher who is senior in his own school should remain on SPST post is against the ethics of Law and justice and the seniority list because the seniority list has been prepared district vise and there is no mention of school vise.

6) Respondent No 2 and the appellant belongs to the same U/c where they reside. So, it becomes the right of the appellant to be posted at GPS Maithani Chayan-1 Tordher instead of respondent No 2 - And no other interpretation can be put to the Distt vise seniority list. (Copy available in the office for ready reference.)

7) There should be no pick and choose and like or dislike between the subordinates teachers as it is not advisable for an officer who is expected to be neutral always and his motto should be justice between the subordinate.

8) Similar occation arose, when I was transfered before on promotion from GPS No 2 Tordher to GPS Abdul Malik Kotay Swabi by the learned DEO and I raised objection against respondent No 2 on the above grounds and the learned DEO (your predecessor) made an arrangement and transfered me on the vacant post in my present school which was my right at that time and also now.

It is therefore humbly prayed that on acceptance of my this submittion, I may kindly be transfered and posted at GPS Mathani Chayan-1 and respondent No 2 be transfered to GPS Salam Khan Jadeed and oblige.

Submitted.

KHALID IQBAL
SPST GPS Baghe
Hasam Tordher.

Dated = 14/11/15.

The SDEO Lahore can explain it & then it will be decided.

(13)

Annexure-E

DISTRICT EDUCATION OFFICE (MALE) SWABI

(Office phone & Fax No 0938280239, emis_swabi@yahoo.com)

No. 3200 Dated Swabi the 4/4/2016

To,

Mr.Khalid Iqbal SPST.
GPS Bagh-e-Haram Tordher

Subject: APPEAL
Memo:

It is fact that Mr. Zabeeh Ullah SPST, GPS Mathani Changan No.1 Tordher is junior to you but as per promotion policy, He has been promoted in the same school on seniority basis. Policy states that if a teacher is eligible for promotion and post is lying vacant in his original school, where he works, then he would likely be promoted/adjusted in the same school and the department has followed policy.

DISTRICT EDUCATION OFFICER
(MALE) SWABI

Attested

respondent No 1 was making arrangement with justice then at
cost, the appellant should have been in place of respondent
2 and respondent No 2 should

(14)

بعدالت جناب سروس ٹریبونل لاہور

مورخہ 18 ماہ اپریل 2016ء منجانب

مقدمہ محمد خالد اقبال SST دفتر ضلعی ٹریبونل لشکر بنام سیکرٹری ایجوکیشن وغیرہ

دعویٰ سلنڈر لوئر ڈسٹ ضلع صوابی تحصیل لاہور

جرم سروس اپیل

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ آن مقام لاہور کیلئے ضلعی ٹریبونل لشکر ایڈووکیٹ صوابی 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 وتقرر ثالث وفیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور صولی چیک وروپیہ ارعرضی دعوی اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی وپیروی کرنے کا اختیار 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 بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ وہرجانہ 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 لکھدیا کہ سند رہے۔

المرقوم 18 ماہ اپریل 2016ء

العبد گواہ العبد

بمقام لاہور کے لئے منظور ہے۔

Advocate
Swabi
18/4/16

Cell: 03013036582

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No.426/2016

Mr. Khalid Iqbal SPST---------- **Appellant .**

VERSUS

Secretary to the Govt: of Khyber Pakhtunkhwa Edu: Deptt:Peshawar and others..... **Respondents.**

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DISTRICT EDUCATION OFFICER
(MALE) SWABI

Distt: Education Officer
(Male) Swabi

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.426/2016

Mr. Khalid Iqbal SPST---------- **Appellant .**

VERSUS

Secretary to the Govt: of Khyber Pakhtunkhwa Edu: Deptt:Peshawar and others..... **Respondents.**

PARAWISE COMMENTS ON BEHALF OF RESPONDEN NO. 2 TO 3

Respectfully Sheweth,

PRELIMINARY OBJECTIONS.

1. That the appellant has no locus standi or cause of action to file the instant appeal.
2. That the instant appeal is badly time barred.
3. That the appellant has filed the instant appeal just to pressurize the respondents.
4. That the appeal is bad for misjoinder and non joinder of necessary party.
5. That the appellant has not come to the Court with clean hands.
6. That the appellant concealed the material facts from Honourable Tribunal.
7. That the appellant is, estopped by his own conduct.
8. The Rule of 3 (2) of NWFP Civil servants (Apptt: & Promotion & Transfer) rules, 1989, authorize the department to lay down method of appointment qualification and other conditions applicable to post in consultation with S&GAD and Finance Department.
9. That, the appeal is not maintainable in the present form and also in the present circumstances of the issue.
10. That, the instant appeal is against the prevailing law and rules.
11. That, the appeal is not maintainable in eye of law and rules.
12. That, there is no District Education Officer (Male) Primary Swabi, there is only District Education Officer Elementary & Secondary Education (Male)Swabi.

FACTS.

1. That the appellant was posted at GPS No.2 Tordher and not GPS No.1 Tordher. Later on he was promoted from PST BPS-12 to SPST BPS-14 on merit and was transferred/adjusted at GPS Abdul Malik Kotey (Tehsil & District Swabi), under Section-10 of Civil Servant Act, 1973, that every civil servant shall be liable to serve any where and it is also policy of the department that senior most PSHT/SPST and PST (according to the Seniority list) may be retained in the same school in their present place of posting and junior most may be transferred to other needy school. As far as the adjustment of Mr.Zabeh Ullah who is junior to the appellant is concerned, a post was vacant in the school where Zabeh Ullah was already working and this is the policy of the department. If post exists in a school then incumbent of the said school may not be dislocated.

   Hence the appeal of the appellant dated 30.10.2013 is baseless. (Annexure- A attached).

2. That the appellant pressurized the then DEO Mr. Abdus Salam, he issued an illegal/ unlawful order of wrong adjustment at GPS Bagh-e-Haram Tordher being un-adequate order as the appellant was SPST and wrongly adjusted against PST. The said DEO cancelled the such like unlawful/illegal detail order on 02.05.2014 where the name of appellant exists at S.No.30. He did not comply with the departmental order and still sitting as wrong adjusted at GPS Bagh-e-Haram Tordher and drawing salary from Tehsil Swabi instead of Tehsil Lahor. It reveals that the adjustment is wrong PST is of BPS-12 while SPST is of BPS-14. PST is promoted as SPST then how can SPST be adjusted against lower PST post. (Annexure- B attached).
3. That the appellant unlawfully and illegally performing his duty at GPS Bagh-e-Haram Tordher by non compliance of departmental order.
4. Incorrect, the appellant did not comply the departmental order and he admitted that he is working at GPS Bagh-e-Haram Tordher about 23 months unlawfully and illegally which reveals his political engagement. (Annexure-C &D attached). when he remained away from his original place of posting i.e. GPS Abdul Malik Kotey by non compliance the post was filled in at this school and while canceling the wrong/ illegal order of detailment he was adjusted at GPS Salim Khan Jadeed. His plea of cancellation by SDEO is incorrect because the concerned SDEO sent to the DEO only his original place of posting.
5. That his appeal was baseless having no weight was rejected. Cogent reason of cancellation of appeal was that, vacant post at the school of Zabeeh Ullah was exist while there was no vacant post of SPST at the school of the appellant. (Annexure-E attached).
6. That the order of DEO (M) Swaib i.e. 04.04.2016 and that of SDEO (M) Lahor i.e. 04.11.2015 both are correct/legal and in accordance with the departmental policy. The appellant has no cause of action to file the present appeal and the appeal in hand is liable to be dismissed on the following grounds.

GROUNDS.

A. Incorrect and denied, the SDEO(M) Lahor did not issue transfer order but in written the wrong adjustee to resume duty at their original place of posting.
B. Incorrect and denied, DEO (M) Swabi already cancelled the order vide No.1743-G dated 02.05.2014. SDEO(M) Lahor has only ceased up the illegal occupation in the shape of wrong detailment.
C. Incorrect and denied, that under the act the senior most teacher may be retained in the school of his present posting and junior most may be transferred to an other school. As Mr. Zabeeh Ullah senior most teacher having vacancy at his school, was retained at his school i.e. GPS No.1 Matanichangan while the appellant having no vacant post at his school was transferred to GPS Abdul Malik Kotey.

The appellant remained for such as long period due to non compliance and disobey the departmental order was sitting at GPS Bagh-e-Haram Torderh on his own like and dislike.

D. That the time of promotion SPST post was vacant at the school of Mr.Zabeeh Ullah and under the rules and proper way he could not be dislocated and cause of dislocation of the appellant was not existing of vacancy of SPST at his school during promotion to SPST.

E. Incorrect, that Political smell comes from the appellant that at least for 23 months he turned down the departmental order.

F. Incorrect, that order of Mr. Zabeeh Ullah is legal and accordance to the rules and policy of the department.

G. Incorrect and denied, that the respondent No.3 have lawfully favoured the respondent Mr. Zabeeh Ullah for his lawful and legal order.

H. That father of the appellant is a Senior advocate and it is a hobby of him to make appeal after appeal. All process of him is novel and conceal the fact. He only done the same to waste the precious time of honourable tribunal and department.

In wake of the above submission, it is requested that this Honourable Tribunal may very graciously be pleased to dismiss the instant appeal with cost in favour of respondent department.

DIRECTOR (E& SE) KHYBER PAKHTUNKHWA PESHAWAR

Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

DISTRICT EDUCATION OFFICER (MALE) SWABI

Distt: Education Officer
(Male) Swabi

Affidavit

I do hereby solemnly affirm declare that the contents of the comments submitted by respondents is true and correct to the best of my knowledge and belief that nothing has been concealed from this Honourable Court.

DISTRICT EDUCATION OFFICER (MALE) SWABI

Distt: Education Officer
(Male) Swabi

Annexture – A

(4)

(W)

Directorate of Elementary and Secondary Education
Khyber Pakhtunkhwa Peshawar

PH No. 091-9201389, 9210938,
9210437,9210957, 9210468
Fax 091-9210936 0800-33857

No.24[illegible]/ /Promotion/Estab
Dated Peshawar the 23/01/2013.

To

All the District Education Officers,
(Male & Female), in Khyber Pakhtunkhwa.

Subject:- Guidelines for Posting of PST B-12 on Promotion to the post of Senior PST B-14 and PSHT B-15,Qari B-12 to B-15,CT B-15 to Senior CT B-16, AT B-15 to Senior AT B-16, TT-15 to Senior TT B-16, DM B-15 to Senior DM B-16 and PET B-15 to Senior PET B-16.

Memo:

I am directed to refer to the subject noted above and to clarify that posts of PST B-12 /Senior PST B-14/FSHT B-15 may be rationalized and re-distributed among the Primary schools in the following manner and on Promotion of PST B-12 to the post of Senior PST B-14 and PSHT B-15,may be posted as under:-

Up gradation of Posts in Primary Schools (Female) After Rationalization @ 1-40 ratio

S.No	School Code	Name of Primary School	Total Enrolment	Sanctioned Posts after Rationalization							
				SST B-16	CT-B-15	PSHT B-15	SPST B-14	PST B-12	NQ	Caller	Chow
1	25288	GGPMS A (JICA)	203	1	2	0	2	3	1	1	1
2	25648	GGPMS B (JICA)	306	1	2	0	2	6	1	1	1
3	25145	GGCS C	173	1	0	0	2	3	1	1	1
4	30056	GGPS D	50	0	0	1	0	1	0	0	1
5	25224	GGPS E	110	0	0	1	1	1	0	0	1
6	25244	GGPS F	160		0	1		2	0	0	
7	25277	GGPS G	198		0	1		3	0	0	
8	25221	GGPS H	240		0	1		3	0	0	
9	25012	GGPS I	285		0	1		4	0	0	
10	25097	GGPS J	320		0	1		5	0	0	
11	25135	GGPS K	360		0	1		6	0	0	
12	32600	GGPS L	400		0	1		6	0	0	
13	25271	GGPS M	440		0	1		7	0	0	
Total			3250	3	4	10	2	50	3	3	

Up gradation of Posts in Primary Schools (Male) After Rationalization @ 1-40 ratio

S.No	School Code	Name of Primary School	Total Enrolment	Sanctioned Posts after Rationalization			
				PSHT B-15	SPST B-14	PST B-12	Chow
1	30056	GPS A	50		0	1	1
2	25224	GPS B	110		1	1	1
3	25244	GPS C	160		1	2	1
4	25277	GPS D	198		1	3	1

Attested

District Education Officer
(Male) Swabi

5	25221	GPS E	240	1	2	3	1
6	32912	GPS F	285	1	2	4	1
7	25097	GPS G	320	1	2	5	1
8	25138	GPS H	360	1	2	5	1
9	32606	GPS I	400	1	3	6	1
10	25278	GPS J	440	1	3	7	1
Total			2563	10	17	38	10

Note:-

1. Each Primary School (except JICA & Community Model School where SST post is sanctioned) will have one post of PSHT B-15.
2. There will be no post of PSHT B-15 & SPST B-14 in MPS.
3. No of posts of PSHT B-15, SPST B-14 & PST B-12 will not exceed the already communicated sanctioned posts.

Posting on Promotion

4. On Promotion of PST B-12 to the post of Senior PST B-14 and PSHT B-15, may be posted in the same UCs Subject to the provisions of sanctioned post;
5. Senior most PSHT B-15, SPST B-14 & PST B-12 (According to the Seniority list) may be retained in the school of their present posting and junior most may be transferred to other schools.
6. In their promotion order, it should be mentioned that their Inter-se-Seniority on lower post will remain intact.
7. If anyone forego promotion, Entry to this effect may be made if his/her Service book.
8. Minimum qualifications for the above posts have already been prescribed in the Service Rules notified vide Government of Khyber Pakhtunkhwa Elementary and Secondary Education Department Notification No. SO (PE) 4-5/SSRC/Meeting/2012/Teaching Cadre Dated the November 13, 2012.

I am further directed to further clarify that:

1. On promotion Qari B-12 to the post of Senior Qari B-15, CT B-15 to Senior CT B-16, AT B-15 to Senior AT B-16, TT-15 to Senior TT B-16, DM B-15 to Senior DM B-16 and PET B-15 to Senior PET B-16, will be posted in High and Higher Secondary Schools
2. 1/3 Qari B-12 posts will be upgraded to Senior Qari B-15, CT B-15 to Senior CT B-16, AT B-15 to Senior AT B-16, TT-15 to Senior TT B-16, DM B-15 to Senior DM B-16 and PET B-15 to Senior PET B-16 in High and Higher Secondary Schools only in Elementary and Secondary Education Department at District Level.
3. No post of CT B-15, PET B-15, AT B-15, DM B-15, TT-15, will be upgraded to B-16 in Middle Schools.
4. Senior most Senior CT B-16, Senior AT B-16, Senior DM B-16, Senior PET B-16, Senior TT B-16 (According to the Seniority list) may be retained in the schools of their present posting and junior most may be transferred to other schools.
5.

Dy: Director (Estab)
Elementary and Secondary Education
Khyber Pakhtunkhwa Peshawar.

Endst: No____, File No.1/A-88/KC/S.list : Dated Peshawar the 18/01/2013.

Copy forwarded for information and necessary action to the:

1. PS to the Secretary to Govt: Khyber Pakhtunkhwa E&SE Department.
2. PA to the Director E&SE Khyber Pakhtunkhwa, Peshawar.
3. M/File

Dy: Director (Estab)
Elementary and Secondary Education
Khyber Pakhtunkhwa Peshawar

Annexure - B

(5)

DA Circulate to The concerned ASDEOs And report within Three days to The Under Signed Lahor 5/5/2014

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) SWABI.

CANCELLATION ORDER.

Consequent upon complaint No.ED.00003 "Most of primary teachers are illegal detailed" and as per list of those teachers enclosed by SDEO (M) Lahor from (S.No.01 to S.No.48) vide his letter No.1632/F.No.07/P.File dated 19-4-2014 is hereby cancelled in the interest of public service with immediate effect.

(ABDUS SALAM)
DISTRICT EDUCATION OFFICER
(MALE) SWABI.

Endst NO. 1743-G

Dated 2/5 /2014.

Copy of the above is forwarded to the:-

1. Assistant Director –EMIS Govt: of Khyber Pakhtoon Khwa (E&SE) Department Peshawar.
2. Director (E&SE) Khyber Pakhtoon Khawa Peshawar.
3. PA to Additional Secretary (E&SE) Department Peshawar.
4. Deputy Commissioner Swabi.
5. District Accounts Officer Swabi
6. Sub: Divisional Education Officer (Male) Lahor with the remarks that compliance report be submitted to this office with in a week time positively.
7. SDEO (M) Swabi/Topi are directed to submit the same nature cases immediately as asked by you vide No.1269-G dated 29-3-2014 other wise you will be personally held responsible.

DISTRICT EDUCATION OFFICER
(MALE) SWABI.

Endost 047 Dated 05/05/014

As Recieved & Forwarded to H/T & Teachers Concerned with the remarks that Report to the origional Station with immedial effect

Attested

Distt. Education Officer
(Male) Swabi

JAMSHED KHAN
A.D.O E&SE (M) Lahor
Swabi

5/05/014

151

PLAINT NO. 10008. MOST OF PRIMARY TEACHERS.

ILLEGAL DETAILED OF (MALE) LAHOR.

Name of Teacher	Designation	BPS	Name of Original School	Name of School where posted/Detailed	Issuing authority	Order No. & Dated
Abdus Salam	H/PST	15	GPS Jamra Bazargi	GPS-2 Sudher	DEO Swabi	904-G/26.02.2014
Rab Nawaz	PST	12	GPS-2 Sudher	GPS Langar Kot Jalbai	DEO Swabi	904-G/26.02.2014
Haidar Ali	H/PST	15	GPS-1 Tano	GPS Dheri Y/H	DEO Swabi	1301-G/31.03.2014
Asif Ali Shah	S/PST	14	GPS Sherdil koty swabi	GPS Karezo Sudher	DEO Swabi	891-G/26.02.2014
Mazhar Ahmad	SPST	14	GPS Naranji	GPS Islamia Lhaor	DEO Swabi	3961-G 06.11.2013
Arshad Khan	SPST	14	GPS Jamal Abad Swabi	GPS Samad Depo	DEO Swabi	3941-G 12.11.2013
Mehmood Khan	SPST	14	GPS No.1 Beka	GPS Tano Dheri	DEO Swabi	3812-G 31.10.2013
Mukhtiar Ali	SPST	14	GPS No.1 Beka	GPS Tano Dheri	SDEO (M) Lahor	1066-G 07.11.2013
Munawar Shah	PST	12	GPS Tano Dheri	GPS No.1 Tano	SDEO (M) Lahor	1066-G 07.11.2013
Nihar Ali	PST	12	GPS Gujrano Dhok	GPS No.2 Tano	DEO Swabi	4059-G 21.11.2013
Muqarab Khan	SPST	14	GPS Sher Dil Koty Swabi	GPS No.1 Bazar	DEO Swabi	973-G 01.03.2014
Sardar Shah	SPST	14	GPS No.1 Kunda	GPS No.1 Tordher	DEO Swabi	3739-G 28.10.2013
Zia Ullah	SPST	14	GPS Jalo Banda	GPS Sheikh Baba TRD	DEO Swabi	1080-G 15.03.2014
Shoukat Zeb	PSHT	15	GPS Sheikh Baba TRD	Gps Jalo Banda	DEO Swabi	-do-
Sajjad Ahmad	SPST	14	GPS Mian Killi Swabi	GPS Jamra Bazargi	DEO Swabi	904-G/ 26.02.2014
Afzal Shah	PST	12	GPS Babo Dheri	GPS No.1 Dobian	DEO Swabi	3886-G/ 08.11.2013
Fakhruz Zaman	PST	12	GPS No.1 Sard China	GPS No.2 Bazargi	DEO Swabi	1015-G/ 12.11.2013
Abid Ur Rahaman	PST	12	GPS Sher Ghari Ismaila	GPS No.2 Bazargi	DEO Swabi	148-G/ 11.01.2014
Sahar Muhammad	PSHT	15	GPS Baka Khel	GPS Ismaila Khurd	DEO Swabi	1065-G/ 14.03.2014
Hamraz Ahmad	PST	12	GPS Ismaila Khurd	GPS Beka Khel	DEO Swabi	1065-G/ 140.03.2014
Imtiaz Ahmad	PST	12	GPS No.2 Adina	GPS Hidayat Ullah Koty	DEO Swabi	4061-G/21.11.2013
Sardar Shah	SPST	14	GPS No.1 Kunda	GPS No.1 Tordher	DEO Swabi	2386-G 13.09.2013
Faqir Muhammad	SPST	14	GPS Naeem Shah Koroona Swabi	GPS No.1 Tordher0	DEO Swabi	679-G 08.02.2014

Attested

Distt: Education Officer
(Male) Swabi

	[illegible]	SPST	14	GPS Azeem Ghari	GPS No.2 Tordher	DEO Swabi	1080-G 15.03.2014
	[illegible] man	SPST	14	GPS 2 Swabi	GPS 3 Tordher	DEO Swabi	345-G 30.01.2014
	[illegible] teeb [illegible] ahman	SPST	14	GPS Sin khel swabi	GPS Wilayat khel	DEO Swabi	989-G 04.03.2014
	[illegible] faqir Hussain	SPST	14	GPS Azeem Ghari	GPS 3 Tordher	DEO Swabi	
	Fazal Khaliq	PSHT	15	GPS 2 M. Changan	GPS Sohbat Khel	DEO Swabi	3654-55 10.12.2013
	Fida Muhammad	PST	12		GPS 2 M. Changan		
0	Khalid Iqbal	SPST	14	GPS Abdul Malik koty Swabi	GPS Baghe Haram Tordher	DEO Swabi	4644-G 12.12.2013
31	Zahir Khan	SPST	14	GPS Gharib Abad Jehangira	GPS Aladher lar	DEO Swabi	1111-G 21.11.2013
32	Muhammad Ziaullah	SPST	14	GPS Jalo Banda	GPS Sheikh Baba Tordher	DEO Swabi	1080-G 15.03.2014
33	Hamid Ali	PSHT	15	GPS 1 Manki	GPS Sher Ghari Ismaila	DEO Swabi	4005-G 18.11.2013
34	Saeed Khan	PST	12	GPS Sher Ghari Ismaila	GPS 1 Manki	DEO Swabi	4006-G 18.11.2013
35	Majid Ali	PST	12	GPS Urmal Dheri	GPS 4 Manki	S.D.E.O (M) Lahor	1076-G 11.11.2013
36	Muhammad Ijaz	PSHT	15	GPS Rahem Abad	GPS 1 Sari Ismaila	DEO Swabi	445-G 25.01.2014
37	Faisal Rahman	PST	12	GPS 1 Tordher	GPS Afzal Khan Banda	DEO Swabi	679-G 08.02.2014
38	Ajmal Hussain	SPST	14	GPS Jalbai Shamali	GPS 3 Jehangira	S.D.E.O (M) Lahor	1111-G 21.11.2013
39	Ali Rahman	SPST	14	GPS 2 Swabi	GPS Wisal Abad Jehangira	DEO Swabi	554-G 31.01.2014
40	Ishtiaq Ahmad	SPST	14	GPS Azeem Ghari	GPS Wisal Abad Jehangira	S.D.E.O (M) Lahor	1202-G 17.12.2013
41	Zamid Ali	SPST	14	GPS Gulu Dheri	GPS Chountri	DEO Swabi	890-G/26.02.2014
42	Javed Hussain	PSHT	15	GPS Tajbar Koroona	GPS Caded college Ismaila	DEO Swabi	4715-16 9.12.2013
43	Rab Nawaz Bacha	SPST	12	GPS 2 Sudher	GPS Langer Kot	DEO Swabi	904-G 26.02.2014
44	Muhammad Ayaz	PSHT	15	GPS Mian Dand Jalbai	GPS 1 Adina	DEO Swabi	1080-G 15.03.2014
45	Kamran Ullah	PST	12	GPS Gohar Abad Ismaila	GPS Sherullah Banda	DEO Swabi	3503-G 11.10.2013
46	Zahid Hussain	SPST	14	GPS 1.Swabi	GPS Azeem Ghari		604-G 01.02.2014
47	Sheraz Muhammad	PST	12	GPS 2 Jehangira	GPS Aladher		
48	Fayaz Muhammad	PST	12	GPS 3 Jehangira	GPS Aladher		

SUB DIVISIONAL EDU:
OFFICER (M) LAHOR.

Distt. Education Officer
(Male) Swabi

Annexture - C

(8)

OFFICE OF THE SUB DIVISIONAL EDU:
OFFICER (MALE) LAHOR (SWABI).
NO. 175 /F.No.17/Leave
Dated. 10/12/ 2013.

To.

The District Education Officer
(Male) Swabi.

Subject:- *APPEAL/ADJUSTMENT.*
Memo:-

Reference DEO (M) Swabi Endost No. 4525 dated 03.12.2013 on the subject cited above the factual position is as under:-

Mr. Zabih Ullah SPST BPS-14 has been posted at GPS No.1 Matani Changan U/C Tordher according to the Director Khyber Pakhtoon Khwa Endst: No.2412 dated 27.01.2013. As the appeal of Mr. Khalid Iqbal PST GPS Abdul Malik Koty is concerned, there are so many senior teachers than the appellant. They will also appeal in this case and endless conflict will begin.

The following list is on the seniority base.

S#	Seniority No.	Name	School	Own U/C	Working U/c
1	952	Abdur Razzaq	GPS No.2 Tordher	Tordher	Matani Changan
2	1007	Gul SherPST	-do-	-do-	-do-
3	1261	Riaz Ameen	GPS No.1 Jehangira	-do-	Jehangira
4	1363	Husnul Maab	GPS Mera Jehangira	-do-	-do-
5	1364	Maqsood Ameen	GPS No.1 Tordher	-do-	Matani Changan
6	1452	Falak Zeb	GPS No.2 Bazzar	-do-	Beka
7	1453	Sardar Shah	GPS No.1 Kunda	-do-	Kunda
8	1469	Zia Ullah	GPS Jabbar	-do-	Beka
9	1470	Sardar Ali	GPS Tano	-do-	Beka
10	1482	Hafiz Zia Ullah	GPS Pak Keya	-do-	Kunda
11	1490	Taqweem Ul Haq	GPS No.2 Tano	-do-	Beka
12	1505	Khalid Ibal	GPS Abdul Malik Koty	-do-	Swabi
13-1	1516	Zabih Ullah	GPS No.1 Matani Chagan	-do-	Tordher

In view of the above, it is requested that the appeal of Mr. Khalid Iqbal may please be rejected.

Attested

Distt. Education Officer
(Male) Swabi

SUB DIVISIONAL EDU: OFFICER
(MALE) LAHOR

Annexture D

(9)

سرکل بوٹ دیکھیں

OFFICE OF THE SUB DIVISIONAL EDUCATION OFFICER (MALE) LAHOR.

Notification

As per DEO (M) Swabi cancellation order No. 1745-G dated 02.05.2014.

All ASDEO's & Head teachers of SDEO (M) Lahor are directed to report those teachers who are illegally transferred and have not insured their duty at the original stations.

Otherwise action will be taken against the disobedient/Absent teachers.

SUB DIVISIONAL EDUCATION

OFFICER (M) LAHOR.

Endst: No. 1917-G /dated 1-9 /2014.

Copy forwarded for information & necessary action to the:-

1. All ASDEO's in sub Division Lahor.
2. Head teachers concerned.

Attested

Distt. Education Officer
(Male) Swabi

SUB DIVISIONAL EDUCATION

OFFICER (M) LAHOR

Annexture-E

(18)

DISTRICT EDUCATION OFFICE (MALE) SWABI

(Office phone & Fax No 0938280239, emis_swabi@yahoo.com)

No. 3200 Dated Swabi the 4 / 4 /2016

To,

Mr. Khalid Iqbal SPST.
GPS Bagh-e-Haram Tordher

Subject: APPEAL
Memo:

It is fact that Mr. Zabeeh Ullah SPST, GPS Mathani Changan No.1 Tordher is junior to you but as per promotion policy, He has been promoted in the same school on seniority basis. Policy states that if a teacher is eligible for promotion and post is lying vacant in his original school, where he works, then he would likely be promoted/adjusted in the same school and the department has followed policy.

Distt. Education Officer
(Male) Swabi

DISTRICT EDUCATION OFFICER
(MALE) SWABI

Annexure-F

OFFICE OF THE SUB DIVISIONAL EDUCATION OFFICER (MALE) LAHOR
NO. 3100 /File Adjustment
Dated. 4-11- /2015.

To

The teaching /non teaching staff

Sub division (M) lahor

Subj: Cancelation of wrong adjustment/detailment

Memo:

Reference of the letter DEO (M) Swabi No-15243-48 Dated 21/10/15 In the light of minute of Chief secretary KPK no detailment/wrong adjustment is to be allowed under any circumstances.

Therefore the following teaching/non teaching staff is directed to report to their original station of duty with immediate effect.

In case of non compliance ~~stick~~ strict disciplinary action will be taken against the concerned teacher/chowkidar .

S.#	Name of official	Desig:	Original place of posting	Wrong/Detail	Remarks
1	Khalid Iqbal	SPST	Saleem khan Jadeed	GPS BagheHaram Tordher	Surplus
2	Momen Shah	Pst	GPS 5 Jalbai	GPS Noorjan Dhok	Against [illegible]
3	Kifayat Ullah	SPST	GPS Noorjan Dhok	GPS 5 Jalbai	Against [illegible]
4	Saleh Mohammad	Chowkidar	GPS Bakakhail Dobian	DEO (M) Swabi	Against [illegible] owner
5	Shehzad Ali	Chowkidar	GPS Bhadir Shah Kote Jalbai	GPS 1 Matani Changar Tordher	Against [illegible] owner
6	Jameel Ahmad	Chowkidar	GPS Jamra	GPS 2 Bahatti	Due to [illegible] GPS [illegible] Abad
7	Wafadar	Chowkidar	GPS 2 Rokhani	GPS 3 KHORO	Due to [illegible] of GPS [illegible] Rokhani
8	Mohammad Zahir	Chowkidar	GPS Kalo Dheri	GES 2 Yar Hussain	Due to [illegible] of his own school

Sub divisional Education office
Male LAhor (Swabi)

Annexture-G

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No.426/2016

Mr. Khalid Iqbal SPST---------- **Appellant .**

VERSUS

Secretary to the Govt: of Khyber Pakhtunkhwa Edu: Deptt:Peshawar and others..... **Respondents.**

Petition/Appeal for non-suspension of order No.3200 dated 04.04.2016 of DEO, Male Swabi and No.3100 dated 04.11.2015 of SDEO Lahor is submitted as under:-

Respectfully Sheweth,

1. That the respondents have submitted the attached Para wise comments, the grounds of which mentioned therein may be perused as ground of this petition/appeal also.

2. Incorrect, as the petitioner/appellant has been promoted/adjusted by the competent authority i.e. DEO (Male) Swabi, according to the Government/Department prevailing policy and the SDEO(Male) Lahor has only implemented the said order by giving directives to the appellant.

3. Incorrect, the order issued is adequate. The appellant was setting by an illegal detailment, which was ceased as per rules and departmental prevailing policy.

4. Incorrect, the order was made according to the Government/Department prevailing rules and policy and no interference was accepted/received by any one. He was setting on the eve of illegal detailment which was ceased and the appellant till now is reluctant to obey the departmental order. It seems that he is non obedient official.

It is humbly prayed that on the eve of acceptance the reply above, the appeal may very graciously be dismissed with cost.

DISTRICT EDUCATION OFFICER
(MALE) SWABI

Distt: Education Officer
(Male) Swabi

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 426/2016

Mr. Khalid Iqbal SPST _____ Appellant.

VERSUS

Secretary to the Govt. of Khyber Pakhtunkhwa Edu. Deptt: Peshawar and other..... respondents.

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 5

Respectfully Sheweth,

I have been promoted and adjusted by DEO (M) Swabi Endst-No.2548-G dated 30/07/2013 at GPS Mathani Changan No.1 tordher Swabi as Per Government Prevailing Policy. I rely on the parawise comments submitted by the DEO (M) Swabi. I may be exonerated from the court attendance. I also rely on the advocate general arguments.

ZABIH ULLAH
Respondent No. 5
SPST Mathani Changan
No. 1 Tordher

AFFIDAVIT

I do hereby solemnly affirm & declare that the contents of the comments submitted by me is true and correct to the best of my knowledge and belief that nothing has been concealed from this Honourable Court.

ZABIH ULLAH
Respondent No. 5
SPST Mathani Changan
No. 1 Tordher

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
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Service Appeal No. 426/2016

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SPST Mathani Changan
No. 1 Tordher

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HAZRAT MUHAMMAD ADVOCATE
Teh. Lahor (Swabi)
No: 1986
Date: 31.10.16
OATH COMMISSIONER

ZABIH ULLAH
Respondent No. 5
SPST Mathani Changan
No. 1 Tordher

BEFORE THE SERVICE TRIBUNAL PESHAWAR

Khalid Iqbal SPST ---------- Appellant

Versus

Secretary to Govt: Khyber Pakhtunkhwa Education Department Pesahwar and others ----------Respondents

.....

The appellant submits his para wise explanation as under :-

PRELIMINARY OBJECTION

1. Respondent No.1, 2 and 4 have not submitted their comments on the allegation of appellant so they are liable to be proceeded as ex-parte and their objection amounts to admission of the fact of the appeal. They have also not given any power of attorney in favour of the respondent No.3 or infavour of any person.

2. Respondent No.5 has also not controverted the factum of appeal which amount to admission.

3. The appellant submit his rejoinder as follow:-
   1. Incorrect.
   2. Incorrect, the appeal is well within time.
   3. Totally incorrect , subordinate teacher can never pressurizes his boss.
   4. Incorrect. All necessary party have been arrayed.
   5. Incorrect .Hands of the appellant are very much clean.
   6. Incorrect. The appellant has not concealed any fact from this Honourable Tribunal, rather the respondent No.3 has concealed the remarks of his predecessor dated 10-05-2014. (Annexure "D").
   7. Incorrect .
   8. Incorrect. The department has not followed the civil servant rules and had not mentioned the newly enacted act of Khyber Pakhtunkhwa

(appointment, deputation, posting and transfer of teachers etc. Regularity Act 2011.

9. Incorrect.
10. Incorrect
11. Incorrect.
12. Incorrect. There is District Education Officer (M) Swabi.

FACTS

1. The appellant was posted in GPS No.2 tordher who later on was promoted from PST BSP-12 to SPST BPS -14 on merit but illegally and against the prevailing law of seniority was transferred at G.P.S Abdul Malik Kotey Tehsil & District Swabi The SDEO Lahor cancelled the order of is immigrate boss DEO, Swabi . The department did not consider the seniority of the appellant which is based on district list of seniority of District Swabi. The appellant filed an appeal to the DEO (M) Swabi who accepted the appeal and transferred the appellant to GPS Bagh Haram Tordher against the vacant post where he performed his duty for about 23 months. (Annexure B and C of the appeal).

2. It is totally incorrect that the transfer to GPS Bagh Haram Todher was illegal or wrong ,as it was not order of detilment and also was not challenged by the respondents till 04.11.2015,the appellant has performed his duty in GPS Bagh Haram for 23 months under the proper order of the DEO (M) Swabi.

3. The appellant has performed his duties lawfully under the order of DEO Swabi dated 12.12.2013.

4. Incorrect, the appellant in compliance of the order of DEO , order No 4644 dated 12.12.2013, has performed his duties in GPS Bagh Haram Tordher. The political engagement is totally incorrect ,Where after he was transferred to GPS Saleem Khan Jadeed under a wrong order by SDEO (M) Lahor by

cancelling the order his immigrate officer , after the said DEO was transfer, which was as challenged by the appellant. It was not an order of detailment the appellant was wrongly adjusted at GPS Saleem Khan Jadeed , even there he is performing his duties nowadays , regularly, the department illegally and unjustifiably favouring respondent No.5.

5. The appeal of the appellant has got weight and was wrongly rejected, the seniority list was prepared which was shown to the DEO Mr Abdus Salam Khan but he rejected proposal saying that this is not an order of detailment, (Photostats copy of the remarks of the predecessor is annexed as annexure D) .The department did not challenge that order of DEO dated 10.05.2014 and kept quiet .When the DEO Abdus Salam Khan was transferred the appellant was transferred on the approach of local MPA vide order No 3100 , date d04-11-2015 .Why in the period of 10.05.2014 upto 04.11.2015 the appellant was allowed to perform his duties in GPS Bagh Haram , which also shows the malafide intension of the present DEO (M) Swabi with the connivance of local MPA.

6. Totally incorrect, the order of the DEO (M) Swabi dated 04.04.2016 is not a speaking order and has not considered the record of the case, as the order of the SDEO Lahor was incorrect, incompetent without jurisdiction as SDEO has got no jurisdiction in Tehsil and District Swabi, his jurisdiction is limited upto Tehsil Lahor only .The departmental policy is not above the law and act, therefore the appeal is worth acceptable.

GROUNDS

A. Incorrect, the transfer order was passed by SDEO (M) Lahor directly who has got no jurisdiction in Teshil Swabi, therefore his order of cancelling the order of immediate officer is defianitly not sustainable , may be set aside.

B. Incorrect, the order of DEO (M) Swabi still existed but it was malafidely ignored and concealed.

C. Incorrect , the order No 1743-G, dated 02.05.2014, is a collusive order which was not accepted by the DEO Mr . Abdus Salam Khan vide his order dated 10.05.2014, as the case of the appellant was not of detailment.(annexure – D).

D. Incorrect, the transfer of a senior teacher from his own union council by SDEO lahor and the retaining of the junior in his school is wrong and against the Act, the appellant was transferred by a competent authority to GPS Bagh Haram Tordher and appellant did not use his own like or dislike.

E. The explanation is not correct keeping in view the act of 2011 and other legal authorities which will be submitted at the time arguments , Mr. Zabeeh Ullah is working for the last 17/18 years against the policy of posting and transfer, that is a teacher shall be transferred after performing duties for 3 years to other school. Why the department has shut eyes on this fact.

F. Incorrect and false the appellant had performed his duties for 23 months under the order of DEO(M) Swabi, No 4644-G rather the transfer under appeal of the appellant very much gives smell of political hands approach ad malafide of respondent No.3.

G. Incorrect the order of Zabeeh Ullah is illegal , unlawful and against the rules of transfer and posting , policy can not override the law .The respondent No.3 has unlawfully favoured Mr. Zabeeh Ullah for the reason known to him and his order is illegal.

H. Correct that the father of the appellant is a senior advocate and thus he being a law knowing person cannot tolerate the injustice of the respondents in the society, the precious time of the Honourable Tribunal is wasted by the wrong, illegal and malafidely intension of the department.

It is, therefore very humbly submitted that the wrongly submitted written reply of the department be thrashed down and dismissed with cost in favour of the appellant and the appeal of the appellant may graciously be accepted and the transfer order No 3100 , dated 04.11.2015 of SDEO (M) Lahor and No 3200 dated 04.04.2016 of DEO (M) Swabi may kindly be set aside.

Dated :10-01-2017

Appellant

KHALID IQBAL SPST

Through :

Haji Ghareeb Gul Kaskar Advocate

Judicial Complex Swabi

BEFORE THE SERVICE TRIBUNAL PESHAWAR

Khalid Iqbal SPST ---------- Appellant

Versus

Secretary to Govt: Khyber Pakhtunkhwa Education Department Pesahwar and others ----------Respondents

.....

M Ibrar Khan Advocate
No
Date 11-1-17
Notary Public Swabi

AFFIDAVIT

I,**KHAILD IQABL SPST ,** do hereby solemnly affirm and declare that the contents of the **Para Wise Explanation** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Deponent _____

KHALID IQBAL

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(13)

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) SWABI

TRANSFER,

Mr, Khalid Iqbal S PST B-14 GPS Abdul Malik Kotey (Swabi) is hereby Transferred to GPS Baghi Haram Tordher against vacant PST Post on his own pay and BPS with effect from the date of taking Over charge.

Note, No TA/DA is allowed
Charge report should be submitted to all concerned.

(ABDUS SALAM)
DISTRICT EDUCATION OFFICER
(MALE) SWABI

Endst, No. 4644-6 Dated, 12-12-/2013

Copy of the above is forwarded to the:-

1) SDEO (Male) Lahor & Swabi.
2) District Accounts Officer Swabi.
3) Head teachers concerned Schools.

DISTRICT EDUCATION OFFICER
(Male) SWABI

This not Detail order Why proposal for Cancellation

10/5/14

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Dated :10-01-2017

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KHALID IQBAL SPST

Through :

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Judicial Complex Swabi

BEFORE THE SERVICE TRIBUNAL PESHAWAR

Khalid Iqbal SPST ---------- Appellant

Versus

Secretary to Govt: Khyber Pakhtunkhwa Education Department Pesahwar and others ----------Respondents

.....

M Ibrar Khan Advocate
No
Date 11-4-17
Notary Public Swabi

AFFIDAVIT

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Deponent _____

KHALID IQBAL

Through :

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(13)

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Note, No TA/DA is allowed
Charge report should be submitted to all concerned.

(ABDUS SALAM)
DISTRICT EDUCATION OFFICER
(MALE) SWABI

Endst, No. 4644-6 Dated, 12-12- /2013

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3) Head teachers concerned Schools.

DISTRICT EDUCATION OFFICER
(Male) SWABI

This is not Detail order why proposal for cancellation

10/5/14

(13)

Ann D

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) SWABI

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DISTRICT EDUCATION OFFICER
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This not detail order why proposal for cancellation
10/9/12

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DISTRICT EDUCATION OFFICER
(Male) SWABI

This not detail order why approval for cancellation
10/5/14

For APPELLANT
راجہ خالد اقبال ایڈووکیٹ

1994 S C M R 413

[Supreme Court of Pakistan]

Present: Nasim Hasan Shah, CJ., Saleem Akhtar and Manzoor Hussain Sial, JJ

Mst. SHAHEEN AKHTAR and another---Petitioners

versus

Mst. FARHAT YASMEEN and 9 others---Respondents

C.P.LA. Nos. 463 and 464 and Crl. Orig. Nos. 116 to 118 of 1993, decided on 23rd October, 1993.

(On appeal from the order of the Lahore High Court, Rawalpindi Bench dated 1-9-1993 passed in W.P. Nos. 922/1993 and 923/1993).

Constitution of Pakistan (1973)---

----Art. 185(3)---Transfer order of civil servants viz. petitioner and respondent---High Court in earlier round of litigation assuming jurisdiction and directing Authorities to transfer petitioner and respondent at places nearer to their homes in consequence of which civil servants were transferred to their original places from where they had been transferred before filing of earlier Constitutional petition---Respondent feeling aggrieved filed Constitutional petition against such transfers, whereupon High Court on the basis of its earlier order directed Authorities to post civil servants nearer to their houses---Validity---Petitioner and respondent although could not invoke Constitutional jurisdiction of High Court in service matters, yet orders were passed by High Court thereon---High Court by passing orders in question had placed both parties at equal footing and no injustice had been done to any of them---Department had been given option to make necessary orders for transfer of civil servants near to their homes---Leave to appeal was refused in circumstances.

Muhammad Munir Peracha, Advocate Supreme Court and Ch. Akhtar Ali, Advocate-on-Record for Petitioners (in Criminal Original No. 118 of 1993).

Sardar Ismatullah Khan, Advocate High Court (with permission) and Khan Imtiaz M. Khan, Advocate-on-Record for Respondent (in Criminal Original No. 118 of 1993).

Date of hearing: 23rd October, 1993.

ORDER

SALEEM AKHTAR, J: --Mst. Shaheen Akhtar, petitioner in CPLA No.463/1993, seeks leave to appeal against the order passed by the learned Judge in Chambers of the High Court in the Constitution Petition filed by respondent No.l. Petitioner is a PTC teacher and at the relevant time was posted in Government Girls Middle School, Dhodha, District Chakwal. She applied for leave which was allowed from 15-2-1993 to 14-6-1993 by order passed by DDEO (W); Chakwal. Respondent No.l was appointed against the afore-stated leave vacancy on 21-2-1993. On expiry of leave petitioner did not report on duty and during her absence she was transferred to another school and thus posting of respondent No.1 in place of petitioner was made permanent. After remaining

absent from duty for 45 days, petitioner reported for duty. In this new situation which she faced, s filed Constitution Petition in the High Court challenging the validity of the transfer order dat 10-7-1993. It seems that during the hearing Mr. Naeem Qureshi, Assistant Director (Schools), Rawalpindi Division had appeared in Court and assured that the petitioner and respondent No.l would be accommodated by posting them at places near to their home on or before 22-8-1§93. The petition was thus disposed of in these terms on 15-8-1993. In the wake of this order, DDEO (W) on 16-8-1993 withdrew the previous order dated 10-7-1993 and both petitioner and respondent No.l were directed to report back at their previous stations. Respondent No.l feeling aggrieved by this order, filed Constitution Petition in the High Court which was disposed of by the impugned order. The learned Judge noted that in matters relating to transfers and service disputes the High Court has no jurisdiction, but proceeded to dilate upon the facts and contentions raised by the learned counsel for the parties. He further noted that as the previous order was passed relating to service matter in a Constitution Petition, "interest of justice demands that the present petition too should not straightaway be dismissed, but should get similar treatment at the hands of this Court as had been done earlier". However, this could not be treated as a precedent for exercise of jurisdiction in service matters. With these observations and dilating upon the facts, allegations and counter-allegations, the petition was accepted and it was ordered that petitioner and respondent No.l must be accommodated near their home.

2. Mr. Muhammad Munir Peracha, learned counsel, for the petitioner contended that the order is without jurisdiction and should not be allowed to operate. We are conscious that the petitioner as well as respondent No.l could not have invoked jurisdiction of the High Court in service matters, but unfortunately they did so and orders were also passed by the High Court. By the impugned order both the parties seem to be at equal footing and no injustice has been done to any one of them. It has been left open for the Department to make necessary order for transfer to schools which may be near to their homes as assured by the representative of the Department earlier. In view of these facts, we are not inclined to interfere with the impugned order as no injustice has been perpetrated on any party. We refuse to grant leave.

3. C.P.LA. No.464/1993 filed by Mst: Shakila Akhtar is also l dismissed.

4. In view of the above, there is no force in the criminal original petitions which are also dismissed.

A.A./S-788/S

Petitions dismissed.

2000SCMR67

[Supreme Court of Pakistan]

Present: Muhammad Bashir Jehangiri and Abdur Rehman Khan, JJ

DIRECTOR-GENERAL HEALTH SERVICES, N.-W.F.P. PESHAWAR and others---Petitioners
versus
Dr. NIZAKAT IQBAL KARIM and another---Respondents

Civil Petitions Nos.28-P and 29-P of 1999, decided on 9th August, 1999.

(On appeal from the judgment dated 30-9-1998 of the N.-W.F.P. Service Tribunal, Peshawar, passed in Appeals Nos.538 and 539 of 1998).

North-West Frontier Province Service Tribunals Act (I of 1974)---

----S. 4---Constitution of Pakistan (1973), Art. 212(3)---Transfer of civil servant---Interference by Service Tribunal---Scope---Indiscriminate and repeated transfer orders and cancellation of such transfer orders of civil servants had been made by the Authorities irrespective of the consideration of public interest---Orders of transfer passed by Authorities indiscriminately without rhyme or reason were found to be mala fide, arbitrary, against the canons of justice, equity and fair play by Service Tribunal which were rightly cancelled---Leave to appeal against said orders of the Service Tribunal was declined by Supreme Court.

Transfer of a civil servant is an incidence of service. Nonetheless, if either it is the outcome of the mala fides, or is otherwise arbitrary, violative of the principle of policy governing the transfer of civil servants or is against the canons of justice, equity, fair play then it can be interfered with by the Tribunal inasmuch as the transfer is one of the terms and conditions of civil service. No doubt allegations of mala fides are easy to allege but difficult to prove. At the same, however, one should not lose sight of the fact that element of male fides can be inferred from the conduct of the functionary of the Government passing the order. In the present case, therefore, looking to the indiscriminate numerous transfer orders, the inference was rightly drawn by the Tribunal that the transfers were tainted with mala fides although the element of bad faith was not floating on the surface of the record. Nonetheless it could not be ignored by going through the record and taking note of indiscriminate transfer order after every 2/3 months.

It is disquieting to note that within a period of a year or two, the transfer orders and cancellation of such transfer orders had been made by the authorities irrespective .of the considerations of public interest. The orders of transfer passed indiscriminately without any rhyme or reason obviously were found to be mala fide, arbitrary, against the canons of justice, equity and fair play. The Service Tribunal had, therefore, rightly cancelled the transfer order.

Syed Afzal Ahmad Hydari v. Secretary, Defence Production Division, Ministry of Defence, Rawalpindi and 3 others 1991 SCMR 477; Nazir Hussain, Ex-Director Excise and Taxation, Administrator, Auqaf, N.-W.F.P., Peshawar v. N.-W.F.P. through the Chief Secretary, Services and General Administration Department, Government of N.-W.F.P., Peshawar and 2 others 1992 SCMR 1843; Managing Director, WASA, Lahore v. Muhammad Hanif Ijaz 1997 PLC 108 and Mst. Niaz Perveen v. Mst. Rukhsana Shaheen and 3 others 1995 SCMR 1844 ref.

Ejaz Muhammad Khan, Additional Advocate-General, N.-W.F.P. for Petitioners.

Memo for Respondents

Date of hearing: 9th August, 1999.'

ORDER

MUHAMMAD BASHIR JEHANGIRI, J.---The two titled Civil Petitions Nos. 28-P and 29-P of 1999 arise out of a common judgment dated 30-9-1998 by the learned N.-W.F.P. Service Tribunal, Peshawar, (hereinafter referred to as the Tribunal, and are, therefore, being disposed of together.

2. The facts of the two petitions are that the two respondents in the titled petitions are husband and wife. The respondent-husband was selected and appointed as Medical Officer, Rural Health Centre, Havelian, in the first week of November, 1995, in the Health Department. He was transferred and posted as Assistant District Health Officers, Abbottabad, vide order dated 25-1-1996 of petitioner No. 1. He was not allowed to work even there for normal tenure of 2 to 3 years and was transferred and posted as Medical Officer, D.H.Q., Hospital, Abbottabad, vide order dated 22-4-1996. He was then again transferred on 12-9-1997 and was posted as Medical Officer, Civil Hospital, Alpuri, Swat District, alongwith his respondent-wife. Both of them were again transferred and posted at Civil Hospital, Khanpur, District Haripur, vide order dated 11-12-1997. Having put in hardly about two months, their transfer order to Khanpur was cancelled on 28-1-1998 directing them, inter alia, to report at their original' post. The impugned transfer orders were challenged in Writ Petition No.16 of 1998 but later on they withdrew the writ petition and filed appeals under section 4 of the N.-W.F.P. Service Tribunals Act (1 of 1974) on the grounds (a) to (e) taken up in the Memorandum of their Appeals before the Tribunal including, mala fides, violation of the instructions and rules on the subject of transfer of civil servants, arbitrariness, without application of mind, violation of the standing instructions on the subject and against principles of equity justice and fair play.

3. In their parwaise comments, respondents Nos.l and 2 controverted the assertions made in the appeals both on factual and legal planes.

4. While accepting the two separate identified appeals of the respondents, the learned Tribunal observed:--

"A bare perusal of the reply of the respondent department will clearly show that they are making repeated transfers of the appellant on account of his conduct and they have referred to the remarks of the District Judge in some criminal cases and also to some other charges. It is to be noted that transfer is not a punishment and if an officer is inefficient or is charged for misconduct, the department is at liberty to proceed against him in accordance with the E & D rules and such type of repeated transfers are strongly condemned by the Hon'ble Supreme Court of .Pakistan. Moreover, this practice is against the established Government policy on the issue, according to which repeated transfers should not be made as it creates immense problems for the concerned officers in finding fresh accommodation and especially schooling for their children. If there is any complaint against the appellant he should not be punished through repeated transfers and the department is at liberty to proceed against him in accordance with the E & D Rules. As far as the connected appellant Dr. Abida Parveen is concerned, nothing is available on the record against her. Moreover, nobody is going to be affected if the impugned order is cancelled. So without going into further details, the impugned order is nothing but a nullity in the eye of law and is a clear cut violation of the verdict of the Supreme Court and the established Government policy, therefore, the same is hereby set aside and thus, the present appeal as well as the connected appeal are accepted as prayed for, leaving the parties to bear their own costs."

5. Mr. Ejaz Muhammad Khan, learned Additional Advocate-General N.W.F.P. contends, firstly, that the transfer of a civil servant being incidence of his service can neither be challenged by civil servant

for the Tribunal is competent to cancel it and, secondly, that no mala fides were established against the petitioners and, therefore, the impugned orders are not sustainable in law. In support of these two submissions reliance was implicitly placed on: (i) Syed Afzal Ahmad Hyderi v. Secretary Defence Production Division, Ministry of Defence, Rawalpndi and three others (1991 SCMR 477), (ii) Nazir Hussain, (Ex-Director Excise and Taxation), Administrator, Auqaf. N.-W.F.P. Peshawar v. N.-W.F.P. through the Chief Secretary, Services and General Administration Department, Government of N.-W.F.P. Peshawar and 2 others (1992 SCMR 1843) and (iii) Managing Director, WASA, Lahore v. Muhammad Hanif Ijaz, (1997 PLC 108).

6. We have no doubt in our mind that the transfer of a civil servant is an incidence of service. Nonetheless, if either it is the outcome of the mala fides, or is otherwise arbitrary, violative of the principle of policy governing the transfer of civil servants or is against the canons of justice, equity, fair play then it can be interfered with by the Tribunal inasmuch as the transfer is one of the terms and conditions of civil service. We concede to the proposition raised by the learned Additional Advocate-General that the allegations of mala fides are easy to allege but difficult to prove. At the same, however, we should not loose sight of the fact that element of mala fides can be inferred from the conduct of the functionary of the Government passing the order. In the instant case, therefore looking to the indiscriminate numerous transfer orders indicated above, the inference was rightly drawn by the learned Tribunal that the transfers of the respondents were tainted with mala fides although the element of bad faith was not floating on the surface of the record. Nonetheless it could not be ignored by going through the record and taking note of indiscriminate transfer order after every 2/3 months. In this context, we may refer to the case of Mst. Niaz Parveen v. Mst. Rukhasana Shaheen and 3 others (1995 SCMR 1844), which was also relied on by the learned counsel for the respondents before the learned Tribunal. We can do no better than reproduce hereunder the dictum in the case of Mst. Niaz Parveen (supra):--

"It is unfortunate that within a period of one year transfer orders and cancellation of transfer orders have been made by authorities in respect of the two L.H.Vs. Such practice adversely affects the efficiency of the incumbents and also reduce their confidence and faith. The act of respondents Nos.2 to 4 has, indeed, left a bad taste in our mouths. The Service Tribunal has rightly deprecated such practice. We duo not find any fault with its order. Leave to appeal is refused and the petition is dismissed accordingly."

7. In the instant case almost all the facts are identical. It is disquieting to note that within a period of a year or two, the transfer orders and cancellation of such transfer orders have been made by the petitioners irrespective of the considerations of public interest. The impugned orders of transfer passed indiscriminately without any rhyme and reasons obviously were found to be mala fide, arbitrary, against the canons of justice, equity and fair play. The learned Tribunal has, therefore, rightly cancelled the impugned orders.

8. We do not fired any infirmity of the kind in the impugned order calling for our interference under section 212(3) of the Constitution of Islamic Republic of Pakistan. Leave to appeal is accordingly declined and the petitions are dismissed.

M.B.A./D-18/S Petition dismissed.

(3) for appellant

2008 P L C (C.S.) 949

[Lahore High Court]

Before Hafiz Tariq Nasim, J

Brig. Retd. SAFDAR HUSSAIN AWAN

Versus

GOVERNMENT OF PAKISTAN through Principal Secretary to the Prime Minister and others

Writ Petition No.8556 of 2007, decided on 14th May, 2008.

(a) Evacuee Trust Properties (Management and Disposal) Act (XIII of 1975)---

----S. 4(2)(P)---Constitution of Pakistan (1973), Art.199---Constitutional petition---Civil service---Petitioner being a highly qualified Engineer was duly appointed as Director General (Technical) in B.P.20 in Evacuee Trust Properties Board---Decision to appoint petitioner was placed before full Board of Evacuee Trust Properties, which unanimously approved such appointment in its meeting---Secretary Minority Division, however, prepared a summary for Prime Minister describing petitioner's appointment as irregular with a proposal to regularize said appointment, but got issued a memorandum whereby petitioner's service was terminated---Validity---Once the government had granted an autonomous status to Evacuee Trust Properties Board, it was assumed and implied that it had stepped itself from interfering in the affairs of the Board, and that the Board having been given the autonomous status, was free to conduct its business according to its own independent decision---Any further interference by the government in the matter of autonomous body would tantamount to breach of its independent autonomy and such breach would be unwarranted and illegal---Was not at all obligatory upon autonomous body to appoint/remove employees at the whim of Federal Government/Prime Minister, when specific rules had been made for the appointment and for the removal of its employees---In the present case petitioner was appointed on contract by Board of Evacuee Trust Properties, which was an autonomous body, but termination of petitioner was made by the Prime Minister---Impugned order, in circumstances was passed by an incompetent authority, order of termination/removal passed by incompetent authority could not hold the field and same was declared without lawful authority and being an outcome of extraneous consideration, was set aside by High Court.

PLD 1987 SC 421 ref.

(b) Words and phrases---

----"Autonomous", defined and explained.

Dr. A. Basit for Petitioner.

Syed Iftikhar Hussain Shah, Deputy Attorney General for Pakistan for Respondents.

Qamar-uz-Zaman for Respondents Nos.3 and 4.

Date of hearing: 18th April, 2008.

JUDGMENT

HAFIZ TARIQ NASIM, J.---The backdrop of this writ petition is that the petitioner being a highly qualified Engineer is appointed as Director-General (Technical) in BS-20 in the Evacuee Trust Properties Board till further orders on 29-7-2005, however, another Notification dated 15-9-2005 was issued whereby the contract period of the petitioner was fixed initially for one year with effect from 4-1-2007 in MP-II at monthly salary of Rs.90,000. Needless to mention that the decision to appoint the petitioner as Director Projects was placed before the full board of E.T.P. Board on 14-12-2006 who unanimously approved as agenda Item No.13 in its 260th meeting, but surprisingly the Secretary, Minority Division Islamabad took it a matter of personal prestige and opted to perceive the petitioner's appointment by the Board by transgression of limits on the part of the Chairman, so the Secretary initialized a summary for Prime Minister describing the petitioner's appointment as irregular with a proposal to regularize the petitioner's appointment but got issued a memorandum dated 23-7-2007 whereby the petitioner was terminated and as well as the Chairman of E.T.P. Board was asked to explain the reasons for transgression of authority.

2. The learned counsel for the petitioner submits that the termination of contract is against the principle of audi alteram partem as admittedly before passing the said order neither the petitioner was served with a notice nor he was allowed to explain his case in person.

3. Further submits that the provisions of section 4(2)(P) of 1975 Act empowered the E.T.P. Board to appoint the petitioner on contract basis in its own assessment and discretion and no prior approval of the Federal Government was required for such appointment because the Board is a statutory Autonomous Body and is under a statutory duty to take all such actions as it deems fit for discharge of proper Management Function entrusted to it unless there is a prior restraint placed on these powers by means of any Rules, Scheme or direction made or issued in terms of E.T.P. (Management and Disposal Act) 1975 (Act No.XIII of 1975).

4. Further submits that the impugned memorandum was obtained by the respondent Secretary Minorities Affairs by presenting a distorted version of law and facts relating to the service status of the petitioner to the Prime Minister, particularly destroying the autonomy of the Board which otherwise is repugnant to the statute which governs the Functions of the Board.

5. On the other hand, the learned counsel for the respondents submits that practically the writ has become infructuous because the contract period started from 4-1-2007 has already been expired on 3-1-2008 being one year contract and it is just a frivolous litigation and nothing else. Further submits that the E.T.P. Board was constituted under the provisions of the E.T. Properties (Management

and Disposal) Act, 1975 (Act of XIII of 1975) and to regulate the Board, the Recruitment and Service Regulation E.T.P. Board were made in exercise of powers conferred under section 29 of the Act ibid, but with the approval of the Federal Government and according to rule 1(b)(ii) the said Rules are not applicable to the contract employees and despite the Rules ibid, the petitioner cannot agitate his grievance through this writ petition.

6. Further submits that as the petitioner's appointment was a violative of Office Memorandum dated 1-4-2006 (Annexure "VI" attached with the reply to the writ petition), hence it cannot sustain in the eye of law.

7. Arguments heard; record perused.

8. After hearing the learned counsel for the respondent, the petitioner's learned counsel at the very outset categorically stated that he will not insist for reinstatement, but he needs vindication because despite termination of contract the petitioner faced humiliation amongst family, colleagues and the society because the petitioner is highly qualified Engineer, served the Pakistan Army for a considerable long time, rose up to the level of Brigadier virtually put his blood to the E.T.P. Board by way of working day and night whereas he was rewarded by way of termination and that too by the order of Prime Minister who was not competent in that matter.

9. The petitioner's learned counsel submits that his client wants a decision on the core issue that "whether in such-like appointments the E.T.P. Board which is admittedly an Autonomous Body was competent to appoint/terminate the petitioner's category's officer without intervention of the Federal Government or the approval of Federal Government/Prime Minister is mandatory."

10. To resolve the present controversy first of all I have to advert the plain meaning of the Autonomous Body and its concept.

11. The word Autonomous is derived from the word Autonomy which is defined in Blank's Law Dictionary VIII addition in the following terms:-

(i) The right of self-Government.

(ii) A self-governing State.

12. This essentially means the key element in an "Autonomous Body" is its Autonomy and in other words its independence. An Autonomous Body is essentially such a Body that works and carries on its business independently without any impediment in its way.

13. Once the Government has granted an Autonomous status to the Body as in the present case to E.T.P. Board, it is assumed and implied that it had stepped back from any interference in that Body from that points on words and that the Body being given the Autonomous status was free to conduct its business according to its own independent decision. Any further interference by the Government in the matter of Autonomous Body tantamount to breach its independent Autonomy therefore, such breach would be unwarranted and illegal. It is not at all obligatory upon the Autonomous Body to appoint/remove employees at the whims of the

2007 S C M R 599

[Supreme Court of Pakistan]

Present: Sardar Muhammad Raza Khan and Nasir-ul-Mulk, JJ

ROSHAN KHAN, SET GOVERNMENT HIGH SCHOOL KUZ PAO, DISTRICT SHANGLA----Petitioner

Versus

DIRECTOR SCHOOLS AND LITERACY, N.-W.F.P., PESHAWAR and 4 others----Respondents

Civil Petition No.747-P of 2004, decided on 3rd October, 2006.

(On appeal from the judgment, dated 10-8-2004 passed by N.-W.F.P. Service Tribunal, Peshawar in Appeal No.205 of 2004).

North-West Frontier Province Civil Servants Act (XVIII of 1973)---

----S. 10---Rules of Business, (N.-W.F.P), 1974, R.21(2)---Transfer of civil servant---Political influence---Recommendation of Member of Provincial Assembly---Civil servant was a senior school teacher who assailed his transfer order before Service Tribunal but without any success---Plea raised by civil servant was that his transfer was politically motivated and on the recommendations of Member of Provincial Assembly---Validity---Transfer of civil servant under the orders of even a Minister was void and unlawful, being violative of R.21(2) read with Schedule V of Rules of Business, (N.-W.F.P.), 1974---Supreme Court, while condemning the role of Minister, that of tamed and subservient bureaucracy was also condemned and need for an upright, honest and strong bureaucracy was emphasized---Member of Provincial Assembly in view of background of political influence had been guilty of misconduct, unfair exploitation and malpractice that maligned the legislature and disrupted administration---Supreme Court converted petition for leave to appeal into appeal and set aside the transfer order of civil servant---Appeal was allowed.

Munawar Khan v. Niaz Muhammad 1993 SCMR 1287; Parwez Yunas Uppal's case PLJ 2000 (Tr.C) Service 473; Zahid Akhter's case PLD 1995 SC 530 and Sayyad Sikandar Ali Shah's case 2002 SCMR 1 124 fol.

Malik Shahzad Ahmed, Advocate Supreme Court, for Petitioner.

Khushdil Khan, Additional Advocate-General, N.-W.F.P. along with Respondents Nos.2 and 5.

Mir Adam Khan, Advocate-on-Record along with Pir Muhammad Khan, MPA and Hamid Iqbal, MPA on Court's call.

Date of hearing: 3rd October, 2006.

JUDGMENT

SARDAR MUHAMMAD RAZA KHAN, J.--- Roshan Khan, a Senior English Teacher of District

Shangla seeks leave to appeal against the judgment dated 10-8-2004 of learned N.-W.F.P. Service Tribunal, Peshawar, whereby, his appeal was dismissed and his transfer order dated 8-3-2003 from Shangla to Government High School Kuz Pao was considered valid, within the contemplation of section 10 of N.-W.F.P. Civil Servants Act, 1973. The plea of the petitioner that his transfer was void being politically motivated, was not taken into consideration.

2. The petitioner alleges and claims to have served Education Department for 30 years and currently belonged to the senior class of teachers. He was holding the post of Assistant District Officer (M) Inspection, since 12-3-2002. Due to his honest and bold action against the teachers, absent from duty, eight teachers who were proceeded against accordingly, nursed grudge and departmental rivalry against the petitioner. They approached Mr. Pir Muhammad Khan MPA whom they had allegedly favoured in elections and thus with the active role of the MPA aforesaid, petitioner was transferred vide order dated 8-3-2003.

3. He preferred departmental appeal, giving the aforesaid background, whereupon, on acceptance of such appeal on 28-2-2004, his transfer order dated 8-3-2003 was withdrawn. The political influence once again got spurred and, to the utter disappointment of the petitioner, the above mentioned order dated 28-2-2004 was cancelled on 11-3-2004. He knocked unsuccessfully at the door of Service Tribunal and hence this petition.

4. As, gross violation of repeated verdicts of this Court was prima facie noticed, a Full Bench of this Court issued notice to the respondents. Again, this Court on 23-5-2006, in view of the allegations levelled by the petitioner, issued notice to Pir Muhammad Khan, MPA to appear before the Court. On appearance he furnished written reply which forms paper book-III of this record.

5. At page 26 of the file there is a memo on the letter head pad of Pir Muhammad Khan MPA where he has given different directions for the postings and transfers of different civil servants. In his comments he stated that the endorsements on the letter head pad (P-26) are undated, unnumbered, unsigned by Pir Muhammad Khan and not addressed to any one. He never denied, in so many words, the endorsement having been made by him but still he said that "the same can only amount to proposals which were to be considered by the concerned authorities and such proposals do not amount to any order or directions or recommendations.

6. From the aforesaid remarks, the MPA who professes to be an Advocate as well, tried to interpret his endorsements at page-26 as mere proposals of recommendatory nature. This is factually incorrect because, the language used is indicative of direction and not proposals. A letter No.3131/F.No.72/ADO(M)/Shangla dated 22-1-2003 written by Directorate of Schools and Literacy to the Section Officer (Primary) Government of N.-W.F.P. Schools and Literacy Department Peshawar proves how Mr. Pir Muhammad MPA was involved in the transfer of the petitioner. A para reproduced therefrom would be self-explanatory:-

> "2. On 8-3-2003 Mr. Pir Muhammad Khan, MPA District Shangla visited this office and submitted a proposal for making transfer of some SET/ADOs of District Shangla and thus his recommendation was honoured and transfer order was issued (copy attached) wherein the appellant concerned was victimized/ suffered having immature tenure against the ADO(M) post at Shangla."

7. Another letter No.4454/F.No.72/ADO(Male)/Shangla dated 29-1-2004 would reinforce the charge that Mr. Pir Muhammad Khan MPA had pursued the matter. The relevant para of this letter by Deputy Director (Estt.) Schools and Literacy N.-W.F.P., as follows, is quite revealing:--

> "2. However it is further clarified that his transfer order was made on the request of Mr. Pir

Muhammad Khan MPA in March, 2003 and since this Directorate has issued his transfer order hence this Directorate is not in a position to cancel it rather the worthy Secretary, (S&L) N.-W.F.P. is the competent/appellate authority to consider his appeal regarding cancellation of his transfer order."

8. It is deplorable that the officers concerned invited the recommendations of MPAs for cancellation of transfer order, specially, Pir Muhammad Khan MPA, the one who opposed the petitioner. This very letter shows that even the department was aware that it was impossible for the petitioner to obtain recommendation of Pir Muhammad Khan MPA because it was he who victimized the petitioner. Anyhow, when the petitioner was asked to bring recommendations of an MPA, he produced one of Mr. Hamid Iqbal. It seems that Mr. Hamid Iqbal did not volunteer to make recommendation. It was probably arranged by the petitioner under the desire of the department, in order to balance the pressure. The relevant para is as follows:--

"3. As regards obtaining of recommendation/consent from Pir Muhammad Khan MPA Shangla as per your directions contained in your letter referred to the above, so it is not possible for him as he has been victimized through the said MPA, however, he has been got favourable/strong recommendation of Mr. Hamid Iqbal, MPA, also belongs to District Shangla (Annexure "B")."

9. Another letter would further clarify the persistent involvement of Mr. Pir Muhammad Khan MPA. The same is reproduced:--

"Directorate of Schools and Literacy N.-W.F.P. Peshawar.

No.1.1408/dated 2-12-2003.

The Section Officer (Primary)
Government of N.-W.F.P., Peshawar.

Sub: Transfer Cancellation

Memo.

Kindly refer to your office letter No.SO(PE)(S&L)EDO dated Peshawar the 10-11-2003 the following comments are hereby submitted for clarification of situation:

(1) The letter issued vide reference No.3131/F. No.72/ADO(M) Shangla dated 27-10-2003 by Director (S&L) Shangla, it is requested that the said proposal/view was submitted by the worthy MPA Mr. Pir Muhammad Khan. This officer has neither forwarded for said proposal nor is involved in this matter.

(2) The ADO Mr. Roshan Khan is an efficient and hardworking officer.

(3) The ADO concerned Mr. Roshan Khan had not completed his normal tenure on the said post.

Keeping in view the above facts if the transfer order of the officer concerned is cancelled this office will have no objection.

Executive District Office
Schools and Literacy"

2006 S C M R 1240

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, C.J. and Mian Shakirullah Jan, J

MUHAMMAD ILYAS KHOKHAR and 24 others----Petitioners

Versus

FEDERATION OF PAKISTAN and others----Respondents

Civil Petitions Nos.2002, 2023, 2024 to 2046 of 2004, decided on 20th March, 2006

(On appeal from the judgment, dated 8-7-2004 passed by the Federal Service Tribunal in Service Appeals Nos.269(P) CS of 2000 270(R) CS of 2000 61(P) CS of 2000, 62(P) CS of 2000, 718(R) CS of 2000 64(P) CS of 2000, 260(P) CS of 2000, 261(P) CS of 2000, 262(P) CS of 2000, 263(P) CS of 2000, to 268(P) CS of 2000, 60(P) CS of 2000, 714(R) CS of 2000, 717(R) CS of 2000, 63(P) CS of 2000, 719(R) CS of 2000, 720(R) CS of 2000, 736(R) CS of 2000, 737(R) CS of 2000, 738(R) CS of 2000 and 739(R) CS of 2000).

(a) Civil Servants Act (LXXI of 1973)---

----Ss. 3(ii) & 9(b)---Constitution of Pakistan (1973), Art.212(3)---Promotion---Terms and conditions of service---Departmental Circular varying the terms and conditions of service was in violation of and in conflict with Ss.3(ii) & 9(b), Civil Servants Act, 1973 as department had no lawful authority to lay down policy, unless the same was approved by the Establishment Division in accordance with the Rules of Business as well as the relevant law on the subject---Ex-post facto approval to such circular by the Establishment Division would not make the circular valid and legal which had no legal backing.

(b) Service Tribunals Act (LXX of 1975)---

----Ss. 4 & 5---Constitution of Pakistan (1973), Art.212(3)---Appeal to Service Tribunal was barred by time---Service Tribunal had the jurisdiction to condone the delay, if appeals were beyond the limitation---Supreme Court declined interference in the matter of condonation of delay by the Service Tribunal.

Managing Director, Sui Southern Gas Company Ltd., Karachi v. Ghulam Abbas PLD 2003 SC 724 ref.

Ch. Mushtaq Ahmed Khan, Senior Advocate Supreme Court with M.S. Khattak, Advocate-on-Record for Petitioners.

Mrs. Naheeda Mehboob Elahi, Dy. A.-G., Fazal Elahi Siddiqui, Advocate Supreme Court with Ch. Akhtar Ali, Advocate-on-Record for Respondents.

Date of hearing: 20th March, 2006.

JUDGMENT

IFTIKHAR MUHAMMAD CHAUDHRY, C.J.--- Petitioners seek leave to appeal against the judgment, dated 8-7-2004.

2. Facts necessary for disposal of the instant petitions are that as back as on 23-1-1974, the Establishment Division constituted Accounts Group. Later on the relevant O.M. was amended on 3-3-1976 wherein mode of induction in the I.D.C. was specified. The system of mode of induction/promotion as per the quota specified therein continued till 1999 when vide Circular No.1016-DIR(A)/3-1/Induction/97, dated 8-9-1999, the Auditor-General modified some of the conditions noted therein with regard to the promotion to the higher grade. As a result whereof, the officers of the office of Auditor-General who were not holding qualifications like I.C.M.A., I.C.A.P./MBA/M.Com./M.Sc. (Computer Science) had been denied the chance of promotion. Consequently, their juniors who were possessing such qualifications were inducted in the I.D.C. leaving behind some of the seniors though they had long service at their credit and age-wise they were also seniors.

3. Thus, being aggrieved from the decision of the department, they preferred appeals before the Service Tribunal which have ultimately been accepted vide impugned judgment, concluding para. therefrom is reproduced hereinbelow:-

> "24. For the aforesaid reasons, we are constrained to set aside the impugned circular of the Auditor-General dated 8-9-1999 read with Establishment Divisions' aforesaid letter dated 19-1-2001 and direct the respondents that induction in the I.D.C. should continue to be made in line with para.4 of the Accounts Group's O.M. dated 23-1-1974 as amended in 1976."

4. Learned counsel for the petitioners contended that the circular issued in 1999 was subsequently got approved by the Auditor-General from the Establishment Division, therefore, it has got a legal sanctity and any action taken under it, shall stand ratified. On the other hand, learned Deputy Attorney-General as well as the learned counsel appearing for the caveators stated that the Auditor-General had no lawful authority to change the terms and conditions to the disadvantage of the respondents, inasmuch as the Establishment Division also cannot give approval to a circular which has got no legal backing. Therefore, under the circumstances the Service Tribunal had rightly declared the said circular illegal.

5. We have heard the learned counsel and have gone through the impugned judgment. It is to be noted that the Tribunal proceeded to accept the appeals filed by the respondents for the following reasons:--

> "(i) The impugned circular has materially changed the service prospect of the appellants who were now almost barred from induction in the I.D.C. and subsequent promotion which will cause them to he stagnant and with obvious financial consequences.
>
> (ii) The change is in violation of section 3(ii) of the Civil Servants Act, 1973 which prescribes that terms and conditions of service shall not be varied to the disadvantage of a civil servant.
>
> (iii) The impugned circular is in violation and in conflict with section 9(b) of the Civil Servants Act, 1973 because the basic formula of 50:50 whereby departmental promotees are to be inducted into the I.D:C. has not been changed, induction/promotion in the IDC cannot be altered to the disadvantage of senior persons who have been considered on the basis of seniority-cum-fitness in accordance with Appointment. Promotion and Transfer Rules, 1973 with prospects of rising up posts in B-19 and above."

6. Learned counsel when called upon to explain as to whether the Auditor-General under the original O.M. No.1 /2/74-ARC dated 23-1-1974 or amended O.M. No.2/1-75/ARC, dated 3-1-1976 enjoys authority or the jurisdiction to change the policy by exercising the powers which have not been delegated to him by the Establishment Division, frankly stated that except the policy as well as the impugned circular, there is no other instrument on record conferring the authority on him, however, his argument was that the Establishment Division had subsequently given the approval of the impugned circular with ex post facto on 19-1-2001.

7. We have examined his arguments and also considered the letter of the Establishment Division dated 19-1-2001 but in our considered opinion the ex post facto approval of the Establishment Division would not make the circular valid and legal for the reasons that the circular itself is in conflict with the provisions of section 3(ii) read with section 9(b) of the Civil Servants Act, 1973. It may be noted that as far as the Auditor-General is concerned, he in his capacity has got no lawful authority to lay down the policy unless it is approved by the Establishment Division, its accordance with the Rules of Business as well as the relevant law on the subject.

8. Keeping in view these facts and circumstances, the Tribunal has rightly held that as far as the circular is concerned, it has got no legal backing or sanctity. Learned counsel conceded that subsequently the impugned circular issued in 1999 by the Auditor-General has been withdrawn. This fact itself proves that it had no legal value, therefore, the Government did not allow it to continue to hold the field. Learned counsel further contended that as for as the appeals filed by the respondents before the Tribunal are concerned the same were barred by time, in this behalf, it may be noted that the Service Tribunal had the jurisdiction to condone the delay if those were beyond the limitation and interference by Supreme Court in the order of the Service Tribunal, condoning the delay in filing appeal before it would not advance the cause of justice in view of the law laid down in the case of Managing Director, Sui Southern Gas Company Ltd., Karachi v. Ghulam Abbas PLD 2003 SC 724.

9. Thus, for the foregoing reasons, we see no substance in these petitions, therefore, the same are dismissed. Leave refused.

M.B.A./M-78/SC Leave refused.

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1001 /ST Dated 27 / 4 / 2017

To

The District Education Officer (M),
Government of Khyber Pakhtunkhwa,
Swabi.

Subject: - **JUDGMENT**

I am directed to forward herewith a certified copy of Judgement dated 26.4.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.