

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	10.03.2020	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> Service Appeal No. 345/2019</p> <p style="text-align: center;">Date of Institution 08.03.2019 Date of Decision 10.03.2020</p> <p>Atlas Khan son of Habeb Khan Resident of Darazinda District FR Dera Ismail Khan.</p> <p style="text-align: right;">Appellant</p> <p style="text-align: center;">Versus</p> <ol style="list-style-type: none"> 1. Government of Khyber Pakhtunkhwa, through Secretary Administration and Coordination (FATA), Peshawar. 2. The Director Education (FATA), Peshawar. 3. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar. 4. Naseeb Khan ADEO, Education Office Sub Division Darazinda D.I.Khan. <p style="text-align: right;">Respondents</p> <p>Mr. Muhammad Hamid Mughal-----Member(J) Mr. Hussain Shah -----Member(E)</p> <p style="text-align: center;"><u>JUDGMENT</u> <u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> Appellant</p> <p>with counsel present. Mr. Zia Ullah learned Deputy District Attorney for official respondents present. Private respondent No.4 present.</p> <p>2. The appellant has filed the present service appeal against the order dated 10.09.2018 whereby Mr. Naseeb Khan SST (private respondent No.4) was transferred from Kohi Bahara Sub Division Darazinda District D.I.Khan and posted against the ADEO post in</p>

Handwritten signature and date:
10.3.2020

the Education Office Sub Division Darazinda on OPS Basis.

3. Learned counsel for the appellant mainly assailed the impugned order on the ground that being senior most, the appellant is entitled to be transferred and posted as ADEO instead of the private respondent No.4 and as such the respondents have violated the criteria by issuing the impugned order.

4. As against that learned Deputy District Attorney assisted by private respondent No.4 defended the impugned order. Learned Deputy District Attorney argued that posting at a certain post is not the vested right of a civil servant and the impugned order is legally correct, within the four corners of law and does not call for any interference; that it is the mandate of the respondent department to post any civil servant on the post; that the post of Assistant Sub-Divisional Education Officers are to be filled by initial recruitment hence the appellant is not fit to be appointed on the said post

5. Arguments heard. File perused.

6. Both the appellant and private respondent belong to teaching cadre and the Hon'ble Peshawar High Court Peshawar vide its judgment dated 18.11.2009 in Writ Petition No. 2937/2009 has observed that it is not befitting for teachers to hold administrative posts because they are getting benefits, but the students are suffering thus, they shall go to their respective places. The aforementioned judgment of Hon'ble Peshawar High Court Peshawar was implemented vide Notification dated 08.02.2019.

7. Learned DDA could not demonstrate any exigency due to

10.3.2020

which the private respondent No.4 was adjusted against the administrative cadre post.

8. In the identical nature Service Appeal bearing No.409/2019 filed by Muhammad Usman, decided vide judgment dated 07.08.2019, the posting orders of the civil servants of teaching cadre against the administrative cadre post of ADEO (Sports) Tank were struck down by this Tribunal and the respondent department was directed to appoint suitable officer belonging to administrative cadre as ADEO (Sports) District Tank.

9. In the light of above the impugned posting transfer order dated 10.09.2018 is set aside and the respondent department is directed to fill up the vacant ADEO post to the Education Office Sub Division Darazinda by appointing a suitable officer belonging to administrative cadre. The present service appeal is disposed of in the above noted terms. Parties are left to bear their own costs. File be consigned to the record room.



(Hussain Shah)
Member



(Muhammad Hamid Mughal)
Member

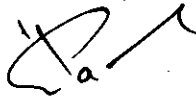
ANNOUNCED
10.03.2020

10.03.2019

Appellant with counsel present. Mr. Zia Ullah learned Deputy District Attorney for official respondents present. Private respondent No.4 present.

Vide separate judgment of today of this Tribunal placed on file, the impugned posting transfer order dated 10.09.2018 is set aside and the respondent department is directed to fill up the vacant ADEO post to the Education Office Sub Division Darazinda by appointing a suitable officer belonging to administrative cadre. The present service appeal is disposed of in the above noted terms. Parties are left to bear their own costs. File be consigned to the record room.


(Hussain Shah)
Member


(Muhammad Hamid Mughal)
Member

ANNOUNCED.

10.03.2020

28.10.2019

Counsel for the appellant and Addl. AG alongwith Fawad Afzal, Senior Clerk for respondent No. 3 and respondent No. 4 in person present.

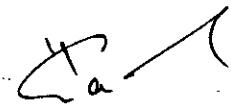
Respondent No. 4 has furnished comments. Placed on record. The appeal is assigned to D.B for arguments on 13.01.2020. The appellant may furnish rejoinder, within a fortnight, if so advised.

Chairman

13.01.2020

Appellant absent. Learned counsel for the appellant absent. Mr. Kabir Ullah Khattak learned Additional Advocate General for official respondents present. Private respondent No.4 in person present. Due to general strike of the Bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for further proceedings/arguments on 10.03.2020 before D.B. Appellant be put to notice for the date fixed.


Member


Member

08.07.2019

Appellant in person and Addl. AG alongwith Irfanullah, Legal Assistant for the respondents No. 1 to 3 present. Nemo for private respondent No. 4.

Representative of respondents No. 1 to 3 requests for time. Fresh notice be issued to respondent No. 4.

Adjourned to 03.09.2019 for submission of written reply/comments of all the respondents before S.B.

Chairman 

03.09.2019

Junior to counsel for the appellant present. M/S Irfanullah, Assistant on behalf of respondents No. 1 & 3, Fawad, Senior Clerk on behalf of respondent No. 2 alongwith Mr. Usman Ghani, District Attorney and private respondent No. 4 in person present.

Respondents No. 1 & 3 submitted joint para-wise comments while representative of respondent No. 2 as well as private respondent No. 4 request for further time to do the needful.

Adjourned to 01.10.2019 on which date written reply shall positively be submitted by respondents No. 2 & 4.

CHAIRMAN 

01.10.2019

Appellant in person and Addl. AG alongwith Irfanullah, Assistant for respondent No. 1 to 3 present.

Representative of respondent No. 1 to 3 has submitted comments on behalf of the said respondent. Fresh notice be issued to respondent No. 4 by way of last chance for submission of requisite reply/comments on 28.10.2019 before S.B.


Chairman 

19.04.2019

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (CT) has filed the present service appeal u/s 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 10.09.2018 whereby private respondent No.4 has been transferred to the Education Office Sub Division Darazinda against the vacant post of ADEO. Case of the appellant is that he should have been appointed as ADEO Education Office Sub Division Darazinda D.I.Khan instead of Private respondent No.4..


Points urged need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 10.06.2019 before S.B.


Appellant Deposited
Security & Process Fee


Member

10.06.2019




Appellant in person, Addl. AG for official respondents and private respondent no.4 in person present. Written reply not submitted. Requested for adjournment. Adjourned. Case to come up written reply/comments on 08.07.2019 before S.B.


(Ahmad Hassan)
Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 345/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	08/03/2019	<p>The appeal of Mr. Atlas Khan presented today by Mr. Muhammad Ayaz Majid Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	11/03/19 26.03.2019	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>26/03/19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Appellant in person present and seeks adjournment as his counsel is not in attendance. Adjourn. To come up for preliminary hearing on 19.04.2019 before S.B</p> <p style="text-align: right;"> Member</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No. 345 /2019

Atlas Khan Appellant

VERSUS

Govt of KPK & others Respondents

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4.	Appointment order AWI dated. 7.07.86	B	9-10
5.	Selection grade order in BPS- 17& 16	C	11-12
6.	Copy of W.P No. 161-P/2012	D	13-19
7.	Copy of Transfer of one Azim Khan dated 14.05.15	E	20
8.	transferred/posted one Mr. Rashid Khan as AAEO in the office of the AEO FR DI Khan	F	21
9.	Copy of Respondent No. 4 was transfer/appointed ADEO / AAEO Education Office Sub Division Darazinda vide Order dated. 10.09.2018	G	22
10.	Copy of application against the illegal transfer/posting order of the Respondent No.4, Writ Petition and order dated 15.01.2019	H & I	23-26
11.	Wakalat Nama		27

Appellant

Through Counsel

Dated: 08.03.2019

Mohammad Ayaz Majid

Advocate, High Court,
Peshawar.

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No. 345/2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 325

Dated 08/3/2019

Atlas Khan S/o Habeb Khan

R/o Darazinda District FR Dera Ismail Khan

..... **Appellant**

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Administration and Coordination (FATA) FATA Secretariat, Warsak Road, Peshawar.
2. The Director Education (FATA) FATA Secretariat, Warsak Road, Peshawar.
3. The Director, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
4. Naseeb Khan ADEO, Education Office Sub Division Darainda D.I. Khan

..... **(Respondents)**

Filed to-day

Q. A. Khan
Registrar

8/3/19

APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL ACT, 1974, AGAINST THE
IMPUGNED ORDER DATED 10.09.2018
WHEREBY THE JUNIOR OF THE

2

**APPELLANT HAVE BEEN PROMOTED AND
THE APPELLANT RIGHT OF PROMOTION
HAS BEEN VIOLATED THE SAME MAY
KINDLY BE DECLARED AGAINST THE LAW
AND RULES AND THE RESPONDENTS BE
DIRECTED TO PROMOTED THE APPELLANT
BEING SENIOR AND FIT FOR THE POST AS
PER CRITERIA BE ORDERED.**

Prayer in Appeal:

On acceptance of the instant appeal, the impugned order dated 10.09.2018 may kindly be declared illegal, unlawful, null & void in the eyes of law and the Respondents be directed to promoted the Appellant being senior and fit for the post as per criteria be ordered.

Respectfully Sheweth:

1. That the Appellant has been appointed as C.T, on 08.12.1985 and posted in Government High School Darazinda, FR D.I.Khan and being fit promoted / posted as AWI (Assistant Workshop Instructor) vide Order dated. 27.07.1986 and temporarily adjusted as W.I (Workshop Instructor) in BPS-15.

(Copies of the Orders annexed as " A" & "B" respectively)

3

2. That after earning selection grade on the grounds of seniority and fitness Appellant was granted selection grade BS-17 vide order dated. 16.05.2009 **(Copy of order annexed as "C")**

3. That a post of AAEO become vacant in the year 2012, and according to criteria / rules on upon the recommendation of criteria laid down in circular letter dated 06.10.2011 has to be filled. In violation of the Rules and criteria the Respondent No.2, appointed a person which was challenged before this honorable court which was allowed. That the Appellant name was among the three nominees, **(Appellant effort for obtaining the list of recommended person but was not provided, in this regard affidavit is attached)** out of whom the writ Petition challenging the illegal appointment by one Azim Khan was allowed vide order / judgment dated. 8.01.2014.

(Copy of W.P No. 161-P/2012 annexed as "D")

4. That once again on the eve of transfer on 14.05.2015 the post again fill vacant. **(Copy of Transfer of one Azim Khan annexed as "E")**

4

5. That due to long stay order of the honorable services tribunal and disposal of the Services appeal, the Respondents after vacation and disposal of the Services appeal, again in violation of criteria, transferred/posted one Mr. Rashid Khan as AAEO in the office of the AEO FR DI Khan vide order Dated. 25.08.2017, And after that once again in violation of the settled Rules and Criteria Respondent No. 4 was appointed ADEO / AAEO Education Office Sub Division Darazinda vide Order dated. 10.09.2018

(Copy of the orders annexed as "F" & "G" respectively)

6. That Appellant filed an application against the illegal transfer/posting order of the Respondent No.4, but of no avail, hence having no other efficacious, remedy the Appellant filed Writ Petition before the Hon'ble Peshawar High court Peshawar, which was dismissed on the ground of lack of jurisdiction vide order dated 15.01.2019. **(Copy of Application, Writ Petition and order dated 15.01.2019 annexed as "H & I" respectively)**

7. That the Appellant invokes the appellate jurisdiction of this Hon'ble Tribunal for the

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redressal of their grievances on the following grounds, inter alia:

GROUNDS:

- A. That the impugned transfer / posting of the Respondent is against the flagrant violation of the Criteria, required for the transfer / posting.
- B. That once a criteria endorsed by the apex courts by delivering judgment has the binding effect on the authority, once for all, unless altered.
- C. That the Appellant is the senior most and was entitled to be transferred / poste as AADEO FR DI Khan not only this but was also included in the list recommended for the post in the year 2012.
- D. That the respondents violated the Criteria laid down for filling the post, duly endorsed by the superior courts, and declared against the law.
- E. That the acts of Respondent / department have vanished the very purpose of the rules/service structure of the paramedics.
- F. That other point of law and fact shall be raised / argued if required for assistance of the honorable court.

6

It is therefore requested that the transfer / posting order dated. 10.09.2018 may be declared against the law, and appointment of the Appellant may be being senior and fit for the post as per criteria, be ordered.

Att ✓

Appellant

Through Counsel

Dated: 08.03.2019

M - S
Mohammad Ayaz Majid
Advocate, High Court,
Peshawar.

7

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. ____/2019

Atlas Khan Appellant

VERSUS

Govt of KPK & others Respondents

AFFIDAVIT

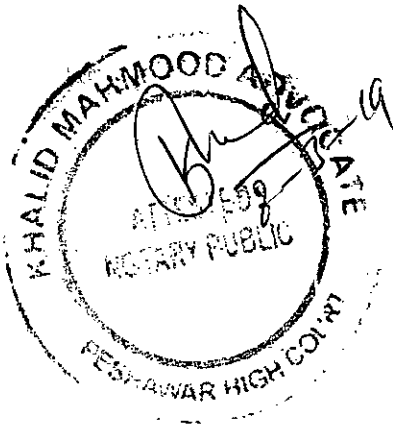
I, Atlas Khan S/o Habeb Khan R/o Darazinda District FR Dera Ismail Khan, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Att ✓

DEPONENT

CNIC # 22301-9278665-1

Cell no # 0337-7649053



BEFORE THE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL PESHAWAR

Service Appeal No. ____/2019

Atlas Khan Appellant

VERSUS

Govt of KPK & others Respondents

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth:

1. That the accompanied Appeal is being filed in this Hon'ble Court with no date of hearing as yet .
2. That the Appellant being employee of the FATA and it was such aware of the jurisdiction of the services tribunal being extended
3. That the Appeal is time barred.
4. That the delay was not intentional, rather due to the reason mentioned above.

It is, therefore, prayed that the delay if any in filling present petition may please be condoned.


Appellant

Through Counsel

Dated: 08.03.2019


Mohammad Ayaz Majid

Advocate, High Court,

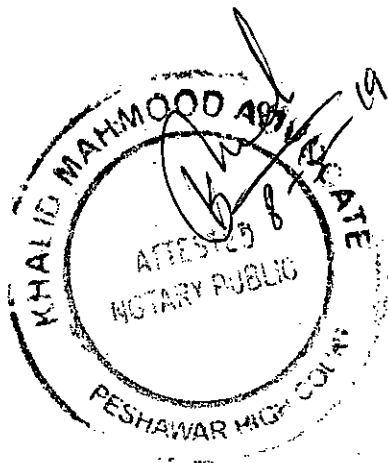
Peshawar.

AFFIDAVIT:

It is stated on oath that the contents of the instant application are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Court.


DEPONENT

22301-9278665-2



Am Hussain 'A'
8

APPOINTMENT

Mr. Atlas Khan F.Sc S/O Isap Khan

Candidate is hereby appointed temporarily as unt: teacher at High school Darazinda(FR DIKhan) on Rs. 620/- ~~Fixed~~ Fixed. plus usual allowances as admissible under the rules with effect from the date of his taking over charge against a vacant post of C.T.

Notes:-

- 1:- Charge reports should be submitted in duplicate to all concerned.
- 2:- The appointment of the candidate is being made purely on temporary basis and is liable to termination at any time without notice and without assigning any reason. In case he wishes to resign his post he shall have to give one month's prior notice or forfeit one month's pay in lieu thereof. His Services will be terminated if he is not selected by the Selection Committee.
- 3:- His original Educational qualification data of birth and Domicile certificates should be checked before he is handed over charge of the post and attested copies thereof be kept on record of the School/office.
- 4:- TA/DA etc is not allowed on first appointment.
- 5:- He should be sent to the Agency Surgeon concerned for Medical Examination the day on which he reports his arrival for duty and no pay should be drawn for him unless and until he produces his health and Age certificate from the said Surgeon.
- 6:- His verification roll of character and antecedents should be got completed and verified from the authorities concerned.
- 7:- The pay scale and service Rules, would be subject to revision in accordance with the orders to be passed by the Government of NWFP from time to time.
- 8:- He should not be handed over charge of the post if he is below 18 or above 30 years of age.
- 9:- If he fails to report his arrival within 15 days; report to this effect should be sent to this Directorate ATONCE.
- 10:- The candidate's knowledge in Islamic Education and Pakistan studies must be judge before handing over charge of the post.

(Mohammad Hussain)
DY: DIRECTOR OF EDUCATION
FATA. NWFP. PESHAWAR.

Endst: No. 38018-20

Dated Peshr: the 8/12/85

Copy forwarded for information & necessary action to the:-

1. A.I.S. FR D.I.Khan w/ref: to his endst.No.5677 dated 4.12.85.
2. Headmaster, G.H.S. Darazinda(FR DIK) with ref: to endst.No.nil dt. nil.
3. Candidate concerned.

Dy: Director of Education
FATA, N.W.F.P. Peshawar.

Ab.

ATTESTED

8/12/85

(8A)

BETTER COPY

DIRECTORATE OF EDUCATION (FATA) PESHAWAR

APPOINTMENT

Mr. Atlas Khan F.Sc S/o Isap Khan a candidate is hereby appointed temporarily as Unt: Teacher at Govt High School Darazinda (FR DI Khan) on Rs. 620/- fixed. Plus usual allowances as admissible under a vacant post of C.I.

NOTES:-

1. Charge reports should be submitted in duplicate to all concerned.
2. The appointment of the candidate is being made purely on temporary basis and is liable to termination at any time without notice and without assigning any reason. In case he wishes to resign his post he shall have to give one month's prior notice or forfeiting one month's pay in lieu thereof. His services will be terminated if he is not selected by the Selection Committee.
3. His original Educational Qualification date fo birth and Domicile certificates should be checked he is handed over charge of the post and attested copies thereof be kept on record of the School/ Office.
4. TA/DA etc is not allowed on first appointment.
5. He should be sent to the Agency Surgeon concerned for examination the day on which he reports his arrival for duty and no pay should be drawn for him unless and until he produce his health and age certificate from the said Surgeon.
6. His verification roll of character and (sic) should be got completed and verified from the authorities concerned.
7. The pay scale and service rules, would be subject to service in accordance with the orders to be passed by the Government of NWFP from time to time.
8. He should not be handed over charge of the post if he is below 18 or above 30 years of age.
9. If he fails to report his arrival within 15 days a report to this effect should be sent to this Directorate to once.
10. The candidates Knowledge in Islamic Education and Pakistan studies must be judge before handing over charge of the post.

**(MOHAMMAD HUSSAIN)
DY: DIRECTOR OF EDUCATION
FATA. NWFP, PESHAWAR.**

Endst No. 38018-20/

Dated Peshawar the 8.12.85

Copy forwarded for information & necessary action to the:-

1. A.I.S FR DI Khan W/ref: to his endst. No. 5677 dated 04.12.85.
2. Headmaster, GHS Darazinda (FR DIK) with ref: to endst. No. nil dat nil.
3. Candidate concerned, ↗

ATTESTED

**DY: DIRECTOR OF EDUCATION
FATA. NWFP, PESHAWAR.**

(9)

Annexure 15

Directorate of Education,
FATA, N.W.F.P. Peshawar.

No. _____ /A-1/ Apptt: /AWIs/
Dated Peshawar the _____ /7/1986.

To

1. Mr. Atlas Khan, S/O Asap Khan, Mat.
with Diploma of Associate Engineer.
2. Near Mohammad, S/O Karim Khan, Mat.
with three years Diploma in
Associate Engineer.
3. Mr. Taj Mohammad, S/O Bin Mohammad, Mat.
with three years of Associate Engineer.

Subject:- OFFER OF APPOINTMENT AS AWIs.

Memorandum:-

Please state if you are prepared to accept offer contained
in this Directorate office order issued under Endst: No. 17759-303/A-1/
AWIs/dated 19/6/86.

Your written reply should reach this Directorate within a
week of the receipt of this Memo.

sdl-

Dy: Director of Education,
FATA, N.W.F.P. Peshawar.

Endst: No. 26648 /Dated 27-7-1986.

Copy forwarded to the H/master, GHS.

Daulat Khan Koroma (FR. D. I. Khan) with ref: to
his ~~file~~ Endst: No. 626, dated 2/7/86, for information.
(Saeed)

Dy: Director of Education,
FATA, N.W.F.P. Peshawar.

27/7/88

ATTESTED

(9A)

BETTER COPY

**DIRECTORATE OF EDUCATION
FATA NWFP PESHAWAR
NO: _____/A-1/APPTT:/AWIS/
DATED PESHAWAR THE _____/7/1986.**

To,

1. Mr. Atlas Khan S/o Asap Khan, Mat.
With Diploma of associate Engineer.
2. Noor Mohammad S/o Karim Khan, Mat.
With three years Diploma in
Associate Engineer.
3. Mr. Taj Mohammad S/o Din Mohammad, Mat.
With three years of Associate Engineer.

Subject:- Offer of appointment as AWIs.

Memorandum:-

Please state if you are prepared to accept offer contained in this Directorate Office order issues under Endst No. 17759-803/A-1/AWIs/dated 19.6/86.

You written reply should reach this Directorate within a week of the receipt of this memo.

**DY: DIRECTOR OF EDUCATION
FATA. NWFP, PESHAWAR.**

Endst No. 26648/dated 27.7.1986.

Copy forwarded to the E/Master GHS.

Daulat Khan Karoona (Fr. DIKhan) with Ref: to his Endst: No. 626, dated 02.07.86, for information. (Saeed)

2 - 5
ATTESTED

**DY: DIRECTOR OF EDUCATION
FATA. NWFP, PESHAWAR.**

DIRECTORATE OF EDUCATION (FATA) N.W.F.P., PESHAWAR
Adjustment.

Mr. Athas Khan AWI, GHS, Darazinda (FR) D.I.Khan three years Diploma Holder of Associate Engineer is temporarily adjusted as W.I on Rs. 1165/-P.M fixed against EPS-15 plus usual allowances as admissible under the rules or on his own pay & EPS which ever is beneficial to him, w.e. from the date of his taking over charge against the vacant W.I post in the same school vice Mr. Sher Zaman W-I transferred.

Note:

1. Charge report should be submitted in duplicate to all concerned.
2. The appointment of the candidate as W-I is made purely on temporarily basis & is liable to service/termination at any time without notice & without assigning any reason. In case he wishes to resign, his post he shall have to give one month's prior notice or forfeit one month's pay in lieu thereof. His Services will be terminated if he is not selected by the selection committee.
3. His original Educational Qualification, date of birth & Domicile certificate should be checked before he is handed over charge of the post, attested copies thereof he kept on record of the school/office.

(Gauhar Mahmen Abbasi)
Director of Education
FATA, NWFP, Peshawar.

Endst.No. 35769-72

Dated Pesh the 29/8/1988.

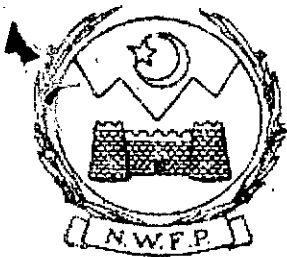
Copy forwarded for information & n/action to the:-

1. H/Master, GHS, Darazinda (FR) D.I.Khan w/r to his Endst.No. 14707, dated 21.7.1988.
2. P.A to D.E(FATA).
3. Personal file.
4. VAE in this office.
5. General file.

ATTESTED

Dy: Director of Education
FATA, NWFP, Peshawar.

Inayat.



(11) *Amirullah* 30

**GOVERNMENT OF NWFP
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT**

NOTIFICATION

Peshawar, Dated: 16-5-2009

No.SO(PE)2-6/E&SE/DPC/SET/Selection Grade(BS-16 to BS-17)/08:

Consequent upon the recommendations of the Departmental Promotion Committee, the competent authority is pleased to grant Selection Grade BS-17 to the following three SETs (Tech)(BS-16) according to their seniority with effect from dates noted against each :-

S.No.	Name ,Designation and Place of posting	Selection Grade Awarded with effect from
1.	Dildar Hussain SET(Tech), GHS Zeran, Kurram Agency	11-09-98
2.	Israj Khan SET (Tech) GHSS Takht Bhai Mardan	08-06-1999
3.	Atlas Khan SET (Tech) GHS Dara Zinda FR D.I.Khan	09-10-1999

**SECRETARY TO GOVT OF NWFP
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT**

Endst; of even No. & Date:

Copy is forwarded to: -

1. Secretary to Govt of NWFP, Establishment Department, Peshawar.
2. Special Secretary (Regulation), Establishment Department, Govt of NWFP Peshawar.
3. Secretary to Govt of NWFP, Finance Department, Peshawar.
4. PS to Chief Secretary NWFP.
5. All Directors in Elementary & Secondary Education Department NWFP.
6. All District Coordination Officers in NWFP
7. All Executive District Officers Elementary & Secondary Education in NWFP.
8. All Executive District Officers (Finance & Planning) in NWFP.
9. The Accountant General NWFP.
10. All District /Agency Accounts Officers in NWFP
11. Deputy Database Administrator (EMIS) Elementary & Secondary Education Department
12. PS to Secretary E&S Edu: Deptt Govt of NWFP.
13. Officers concerned.
14. Master file.

ATTESTED

(Signature)
**(ARIF JAMIL)
SECTION OFFICER
(PRIMARY)**

APPROVAL.

Consequent upon the approval given by the Departmental approval committee in their meeting held on 12.12.91 the following Senior English Teachers (whose cases were deferred for production of record) are hereby placed in BF-15 (1165-71-2585) and BP-16 (1875-1146-4065) from the dates noted against their names:-

S.No	Name with Father's Name Qualification/School.	Domicile	Date of approval
1.	Khadim Rasool S/O Abdul Qadir BA B.Ed 450/1000/90 G.M.S Kiriwan (FR D.I Khan).	FR D.I Khan	1.9.90
2.	Sayed Hussain Afridi S/O Haji Gulab Noor Afridi B.S.Ed, 1336/2600/91 G.H.S Dara Adam Khel(FR Kohat).	FR Kohat	22.4.91
3.	Sher Habib SET G.M.S Dashka (S.W. Agency) BA B.Ed 441/1000/90	S.W. Agency	9.8.90
4.	Abdul Sattar S/O Hussain Shah BA B.Ed 513/1000/91, G.H.S Illangudar(Khyber Agency).	Khyber Agency	27.7.91
5.	Atlas Khan S/O Isap Khan Diploma holder, B.Tech: 674/1200/91, SET(Tech) G.H.S Darazinda FR D.I Khan.	FR D.I Khan	19.8.91

Notes:-

1. Their inters Seniority will be determined with effect from the date of their approval made by the Deptt: Selection Committee according to the marks obtained in the B.Ed Examination in the year concerned.
2. They are liable to be Governed under the West Pakistan Education Subordinate Rules, 1962.
3. Their pay scale are subject to the revision by the Govt: from time to time.
4. The teachers concerned may be informed by the Head of the institutions concerned if he has been transferred from his school.
5. The marks obtained and year of B.Ed/Domicile of the above SETs may checked & confirmed before placing them in graded pay.
6. Any discrepancy noted by you may be brought in the notice of the undersigned for rectification.
7. The entry to this effect should be made in their Service Book before the preparation of their arrear bills.
8. The name of those trained SETs who are working in fixed pay may be sent to this Directorate immediately.
9. The B.Ed/ATTC/declaration of result may be entered in their Service Book.

(Dr. Sher Alam Khan)
Director of Education
FATA, NWFP, Peshawar.

ATTESTED

Next Page-2

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DIRECTORATE OF EDUCATION (FATA) PESHAWAR

APPROVAL.

Consequent upon the approval given by the Departmental approval committee in their meeting held on 12.12.91 the following Senior English Teachers (whose cases were deferred for production of record) are hereby plaed in BP-15 (1165-71-2585) and BP-16 (1875-1146-4065) from the dates noted against their names:-

S. No.	Name with Qualification/School	Father's name	Domicile	Date of approval
1.	Khadim Rasool S/o Abdul Qadir BA, B.Ed 450/1000/90 GMS Kiriwam (FR DIKhan)		DR DIKhan	1-9-90
2.	Sayed Hussain Afridi S/o Haji Gulab Noor Afridi B.S.Ed, 1336/2600/91 GHS Dara Adam Khel (FR Kohat)		FR Kohat	22.4.91
3.	Sher Habib SET GMS Dashka (S.W.Agency) BA B.Ed 441/1000/90		S.W Agency	9-8-90
4.	Abdul Sattar S/o Hussain Shah BA. B.Ed 513/1000/91, GHS Illamgudar (Khyber agency)		Khyber Agency	27.7.91
5.	Atlas Khan S/o Isap Khan Diploma holder, B.Tech: 674/1200/91, SET (Tech) GHS Darazinda DR DI Khan.		FR D I Khan	19.8.91

Notes:

1. Their inters Seniority will be determined with effect from the date of their approval made by the Deptt: Selection Committee according to the marks obtained in the B.Ed examination in the year concerned.
2. They are liable to be Governed under the West Pakistan Education Subordinate Rules, 1962.
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5. The marks obtained and year of B.ED / Domicile of the above SETs may checked & confirmed before placing them in graded pay.
6. Any discrepancy noted by you may be brought in the notice of the undersigned for rectification.
7. The entry of this effect should be made in their service Book before the preparation of their arrear bills.
8. The name of those trained SETs who are working in fixed pay may be sent to this Directorate immediately.
9. The B.Ed/ATTTC/declaration of result may be entered in their Service Book.

ATTESTED

(Dr. Sher Alam Khan)
Director of Education
FATA, NWFP, Peshawar

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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

Vol. No. 161 of 2009

JUDGMENT

Date 28th of July hearing-

Petitioner A. B. Khan vs. K. P. Khan
A.D.

Respondent M. Chaudhry & Sons A.D.

NISAR HUSSAIN KHAN, J.- Petitioner has filed

the instant petition with the following prayer:-

"It is therefore, humbly prayed that on acceptance of this writ petition, this Hon'ble Court may graciously be pleased to declare the acts and actions of respondents and the impugned

2-3-3
ATTESTED

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Respondents have not denied the criteria for selection as averred in the petition. While they have offered a vague reply to the merit of the petitioner.

4. *We have thoroughly scanned the material appended with the petition as well as the comments and have also considered the submissions made by the learned counsel for the petitioner and the learned AAG for official respondents, and counsel for respondent No.4.*

5. *Facts of the case are that Directorate of Education (FATA Secretariat) circulated a selection criteria for the post of Assistant Agency Education Officer(M/F) through Memo No.A-1/General/AAEO, dated 6.10.2011, according to which apart from other stipulations, it is provided in Clause-V that panel of atleast 3 SETs in order of seniority should be prepared for a single post for selection of one through interview. As per Clause(1), Seniority position of those to be considered for posting as AAEO/MF should be at the top 10 of the SETs' seniority list of the concerned Agency FR. In compliance with the criteria*

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accordance with law. As the selection criteria for the said post had been circulated by the FATA Secretariat, Directorate of Education (FATA), whereby such posts are to be filled in by transfer for a period of 5 years from amongst the SETs on the basis of seniority from the concerned Agency/FRs. On the date of interview, only two candidates, petitioner and one Jamshed Khan appeared before the Committee. However, selection committee also interviewed three other candidates including respondent No.4 who was not part of the proposed panel; that on finalization of the selection process, petitioner was on the top of the merit list securing 14.5 points but ignoring the result of the selection process, respondent No.4 was appointed who does not belong to F.R. DIKhan, rather belongs to F.R. Tank. As such respondents have not treated the petitioner in accordance with law and have illegally and arbitrarily appointed respondent No.4.

3. Respondents in their comments have raised an objection that this court has got no jurisdiction to entertain the instant petition.

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interview is conducted nor any merit list is prepared.

The whole exercise conducted in the selection of A-AEO(MF)FR DIKhan suggests that for appointment against the said post, merit was prime consideration to be ascertained after due evaluation of all aspects of

the candidates including the service record, their performance in the test and interview and seniority.

Had it been a simple case of transfer, there would have been no need of such hectic exercise and when the appointment was to be made according to the whims and wishes of the competent authority, there

was no need of holding test and interview. When the officers were put to go through the process of test and

interview, the person securing highest marks standing at the top of the merit list was legitimately expecting to be appointed against the post but the competent

authority by appointing respondent No. 4 standing second to him, has failed to advance reasons to justify his action in ignoring the petitioner.

7. So far as the question with regard to the jurisdiction of this court is concerned, suffice it to say that a Full bench of this court in W.P.No.969/2010

ATTESTED

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interview is conducted nor any merit list is prepared.

The whole exercise conducted in the selection of AAEO(MF)FR DIKhan suggests that for appointment

against the said post, merit was prime consideration to be ascertained after due evaluation of all aspects of

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interview, the person securing highest marks standing at the top of the merit list was legitimately expecting to

be appointed against the post but the competent authority by appointing respondent No. 3 standing

second to him, has failed to advance reasons to justify his action in ignoring the petitioner.

7. So far as the question with regard to the jurisdiction of this court is concerned, suffice it to say

that a Full bench of this court in W.P.No.969/2010

2-5-10
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titled "Hanif ur Rehman & others Vs Government of NWFP through Chief Secretary and others" decided on 7.11.2013, has assumed the jurisdiction and extended relief to the aggrieved employees of the FATA. As such by following the judgment of the Full Bench, referred to above, this objection of the respondents is repelled.

8. The authorities are vested with powers to exercise the same as a sacred trust. The authority passing an order in exercise of its discretion is required to follow all the principles and canons of justice including the equity, fair play, reasonableness, good conscience, openness and rationality. Any order passed or action taken in disregard of all these principles is termed as arbitrary, fanciful and passed in colourful exercise of powers, rendering itself without jurisdiction and without lawful authority, making it liable to be struck down. The impugned order of the respondent ignoring the petitioner and appointing the respondent does not qualify the test of good governance as enunciated herein above, thus the same is an arbitrary and fanciful order and as such is

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declared to have been passed without lawful authority and have no legal effect. Consequently, the respondents are directed to consider the petitioner for appointment against the post of AAEO(MF)FR DIKhan in accordance with the selection criteria, circulated by FATA Secretariat, Directorate of Education, to all the Agency Education Officers vide office Memo No.A-1/Geeral/AAEO, dated 6.10.2011.

[Signature]
 JUDGE

[Signature]
 JUDGE

Announced on
28th Jan., 2014

o/h
 20/12

[Signature]
 ATTESTED

Approved to be
This copy

ATTESTED

Answer/

DIRECTOR EDUCATION (FATA)

- 7 Teacher concerned
- 6 EKHS Local Directorate
- 5 Headmaster GHS Darazinda F.R O.I. Khan
- 4 District Accounts Officer, O.I. Khan
- 3 Agency Education Officer, F.R O.I. Khan
- 2 Section Officer (Estab) Admn. Infrastructure & Coord Deptt; FATA Secretariat Peshawar
- 1 Additional Registrar (J) Peshawar High Court Peshawar w/r to his No. 22064 dated 20/12/2014

Copy forwarded to the:-

Endst. No. /A-12/ Azim Khan SET

14664-20

DIRECTOR EDUCATION (FATA)

Dated Pesh: the 20/12/2014

2 TA/DA etc is not allowed

1 Charge report should be submitted to all concerned

NOTE:-

his taking over charge against vacant post in the interest of public service.
transferred/adjusted as AAEO F.R O.I. Khan in his own pay & scale with effect from the date of
W.P No. 181-P/2012, Mr. Azim Khan SET GHS Darazinda F.R O.I. Khan is hereby
Consequent upon decision of Peshawar High Court Peshawar CDC No. 218-P/2012

DIRECTORATE OF EDUCATION, FATA SECRETARIAT, PESHAWAR

Amir Khan "E"

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DIRECTORATE OF EDUCATION (FATA) PESHAWAR

TRANSFER/ADJUSTMENT

Consequent upon decision of Peshawar High Court Peshawar COC No. 263-P/2014 in W.P No. 161-P/2012. Mr. Azim Khan SET GHS Darazinda FRDI Khan is hereby transferred / adjusted as AAEO FR D.I Khan in his own pay & scale with effect from the date of his taking over charge against vacant post in the interest of public service.

Note:

1. Charge report should be submitted to all concerned
2. TA/DA etc is not allowed.

DIRECTOR EDUCATION (FATA)

Endst No. 14664-20/A-12/Azim Khan SET*

Dated Pesh: the 24.12.2014

Copy forwarded to the:-

1. Additional Registrar (J) Peshawar High Court Peshawar w/r to his No. 22064 dated 20.12.2014.
2. Section Officer (Estb) Admn: Infrastructure & Coord Deptt: FATA Secretariat Peshawar.
3. Agency Education Officer FR DI Khan
4. District Accounts Officer DI Khan
5. Headmaster GHS Darazinda DR DI Khan
6. EMIS Local Directorate
7. Teacher concerned.

DIRECTOR EDUCATION (FATA)

ATTESTED

Muzir Sanaat
2016

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ATTESTED

Stamp: 3/5/16

DEPUTY DIRECTOR (ESTAB)

- 5 P.A. to D.E. FATA
- 4 EMIS Local Directorate
- 3 Headmaster GHS Darazinda F.R. D.I. Khan
- 2 District Accounts Officer, D.I. Khan
- 1 Agency Education Officer F.R. D.I. Khan

Copy forwarded to the:-

Endst. No. /A-11/gen AAEO FR DIK

Date: Pesh. the 2016

DIRECTOR EDUCATION (FATA)

NOTE:-

1. Charge report should be submitted to all concerned.

2. TAVDA etc is not allowed.

Mr. Rasid Khan SET Government High School Darazinda F.R. Khan is hereby transferred/adjusted as AAEO at the Agency Education Office F.R. D.I. Khan in his own pay and scale with immediate effect against a vacant post in the interest of public service.

DIRECTORATE OF EDUCATION, FATA SECRETARIAT, PESHAWAR

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DIRECTORATE OF EDUCATION (FATA) SECRETARIAT PESHAWAR

TRANSFER/ADJUSTMENT

Mr. Rashid Khan SET Government High School Darazinda F.R D.I Khan is hereby transferred / adjusted as AAEO at the Agency Education Office F.R D.I Khan in his own pay & scale with immediate effect against vacant post in the interest of public service.

Note:

1. Charge report should be submitted to all concerned
2. TA/DA etc is not allowed.

DIRECTOR EDUCATION (FATA)

Endst No. 4983-87/A-12/Gen AAEO DIK

Dated Pesh: the 29.04.2016

Copy forwarded to the:-

1. Agency Education Officer F R D I Khan
2. District Accounts Officer D.I Khan
3. Headmaster GHS Darazinda FR DI Khan
4. EMIS Local Directorate
5. PA to D.E FATA

DIRECTOR EDUCATION (ESTAB)

7-5-5
ATTESTED



Am Xull 'G'

**DIRECTORATE OF EDUCATION
NEW MERGED DISTRICTS**

KMDER PAKHTUNKHWA, WARSAY ROAD PESHAWAR, PAKISTAN
PHONE 091 9210166 FAX 091 9210216

NO. _____
MR. NASEEB GUL SST

DATED

16/9/2018

TRANSFER ORDER:

Mr. Naseeb Khan SST GHS Kohi Bahara Sub Division Darazinda Tribal District DI Khan is hereby transferred in his own pay & scale to the Education Office Sub Division Darazinda against a vacant ADEO post w.e.f the date of his taking over charge in the interest of public service.

Note:

1. Charge report should be submitted to all concerned.
2. No TA/DA etc is allowed.

**Director Education
Newly Merged Districts**

Endst: No. *488-71* 1.

Copy to:

1. Education Officer Sub Division Darazinda Tribal District DI Khan.
2. Accounts Officer Sub Division Darazinda Tribal District DI Khan.
3. Head Master GHS Kohi Bahara Sub Division Darazinda Tribal District DI Khan.
4. PA to Director Education Newly Merged Districts.

7-5-3
ATTESTED

[Signature]
Deputy Director (Estab)

ARRESTED

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بخدمت جناب ڈائریکٹر ایجوکیشن نیوسرحد ڈسٹرکٹ پشاور

عنوان:- درخواست بمراد تعیناتی ADEO تحصیل روازندہ ڈیرہ اسماعیل خان

جناب عالی!

گزارش ہے کہ دو سال پہلے ADEO پوسٹ بارے باقاعدہ انٹرویو کا انعقاد ہوا تھا اسکا رزلٹ ابھی آنا تھا کہ عظیم خان SET نے Stay کورٹ کے ذریعے حاصل کیا ڈیڑھ سال مقدمہ کی وجہ سے انٹرویو ہوا کیس لٹکا رہا Stay Order کے خاتمے پر چوری چنے سے راشد خان کی تقرری کی گئی اب پوسٹ راشد خان کے خالی کرنے سے ایک دفعہ پھر اصول اور قانون بالائے طاق رکھ کر نصیب خان S&T کی تقرری انٹرویو کے کی گئی ہے جبکہ ہمارے پہلے سے انٹرویو جو کہ ہوئی ہے اصول اور قانون کے مطابق کسی انٹرویو سے کسی کو تقرر کیا جاتا اس انٹرویو میں سینئر ترین SST اس پوسٹ کا حق دار ہوں جبکہ نصیب خان کا ایئر یا کے بھی خلاف اور sic دفعہ پہلے اس پوسٹ بمع سائنس ٹیچر رہا ہے۔

اس لئے مہربانی فرما کر ADEO کے مذکورہ پوسٹ پر میرے تعیناتی کے آرڈر کر کے مشکور

مورخہ 3/10/2018

فرمائیں۔ نوازش ہوگی۔

رضی

گورنمنٹ ہائی سکول..... ڈیرہ اسماعیل خان

ATTESTED

Annexure Adv Old
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IN THE PESHAWAR HIGH COURT

PESHAWAR.



W.P No. _____/2018

Atlas Khan S/O Habeb Khan

R/O Darazinda, District FR Dera Ismael Khan.

.....(Petitioner)

Versus

1. Government of Khyber Pakhtonkhwa, through Secretary Administration and Coordination (FATA) FATA Secretariat, Warsak Road, Peshawar.
2. The Director Education (FATA) FATA Secretariat, Warsak Road, Peshawar.
3. The Director, Elementary & Secondary Education, Khyber Pakhtonkhwa Peshawar.
4. Naseeb Khan ADEO, Education Office Sub Division Darainda D.I. Khan

.....(Respondents)

WRIT PETITION U/A 199 F ISLAMIC

REPUBLIC OF PAKISTAN 1973.

WP6754-12018 Atlas Khan S/O Habeb Khan Govt KP P.H.C. PG 27 USB

ATTESTED
EXAMINER
Peshawar High Court

25 JAN 2019

PESHAWAR HIGH COURT, PESHAWAR.

25

FORM 'A'
FORM OF ORDER SHEET



Date of order.	Order or other proceedings with the order of the Judge
15.01.2019	<p><u>W.P.No.6754-P of 2018.</u></p> <p>Present: Mr.Muhammad Ayaz Majid, advocate for the petitioner.</p> <p>-----</p> <p><u>MUHAMMAD AYUB KHAN, J.-</u> This petition is with the prayer to declare the transfer/posting order dated 10.09.2018 as with direction to respondents to appoint the petitioner as AAEO FR D.I.Khan being senior and fit for the same.</p> <p>2. As per writ petition, petitioner was appointed as CT on 08.12.1985 and posted at Government High School Darazinda, FR D.I.Khan. Subsequently, he was promoted/posted as Assistant Workshop Instructor vide order dated 27.07.1986 and temporarily adjusted as Workshop Instructor BPS-15. Thereafter, he was granted selection grade (BPS-17) vide order dated 16.05.2009. A post of AAEO became vacant in the year 2012. According to criteria/rules on the subject, said post had to be filled upon the criteria laid down in circular letter dated 06.10.2011. However, in violation of rules/criteria, respondent No.2 appointed a person against the ibid post, which was challenged before this court by one Azim Khan through W.P.No.161-P of 2012. After hearing the parties, said petition was allowed vide judgment dated 08.01.2014. The ibid post again fell vacant due to</p>

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ATTESTED
EXAMINER
Peshawar High Court
25 JAN 2019

26

transfer of incumbent on 14.05.2015. Again one Rashid Khan was transferred/posted as AAEO in violation of criteria vide order dated 25.08.2017 followed by appointment of respondent No.4 as ADEO/AAEO Education Office Sub-Division Darazinda vide order dated 10.09.2018, which has necessitated the filing of instant petition.

3. Preliminary arguments heard and record gone through.

4. Admittedly, the petitioner is a civil servant whereas the relief sought i.e. appointment as ADEO is a matter relating to terms and conditions of his service. It is well settled that if any matter relating to term and condition of a civil servant is violated, then he can approach the Service Tribunal, constituted for that purpose. Not only the Service Tribunal has been established for dealing with cases relating to the terms and conditions of a civil servant but under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, jurisdiction of this court is barred to entertain any matter relating to the terms and conditions of service of a civil servant, therefore, this petition is not maintainable before this court.

5. For what has been discussed above, this petition is dismissed in limine.

JUDGE
JUDGE

Sadiq Shah, PS (DB) (Hon'ble Justice Musarrat Hissail and Hon'ble Mr. Justice Muhammad Ayub Khan)

CERTIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 8.7 of
The Qanun-e-Shahadat Order 1984

25 JAN 2019

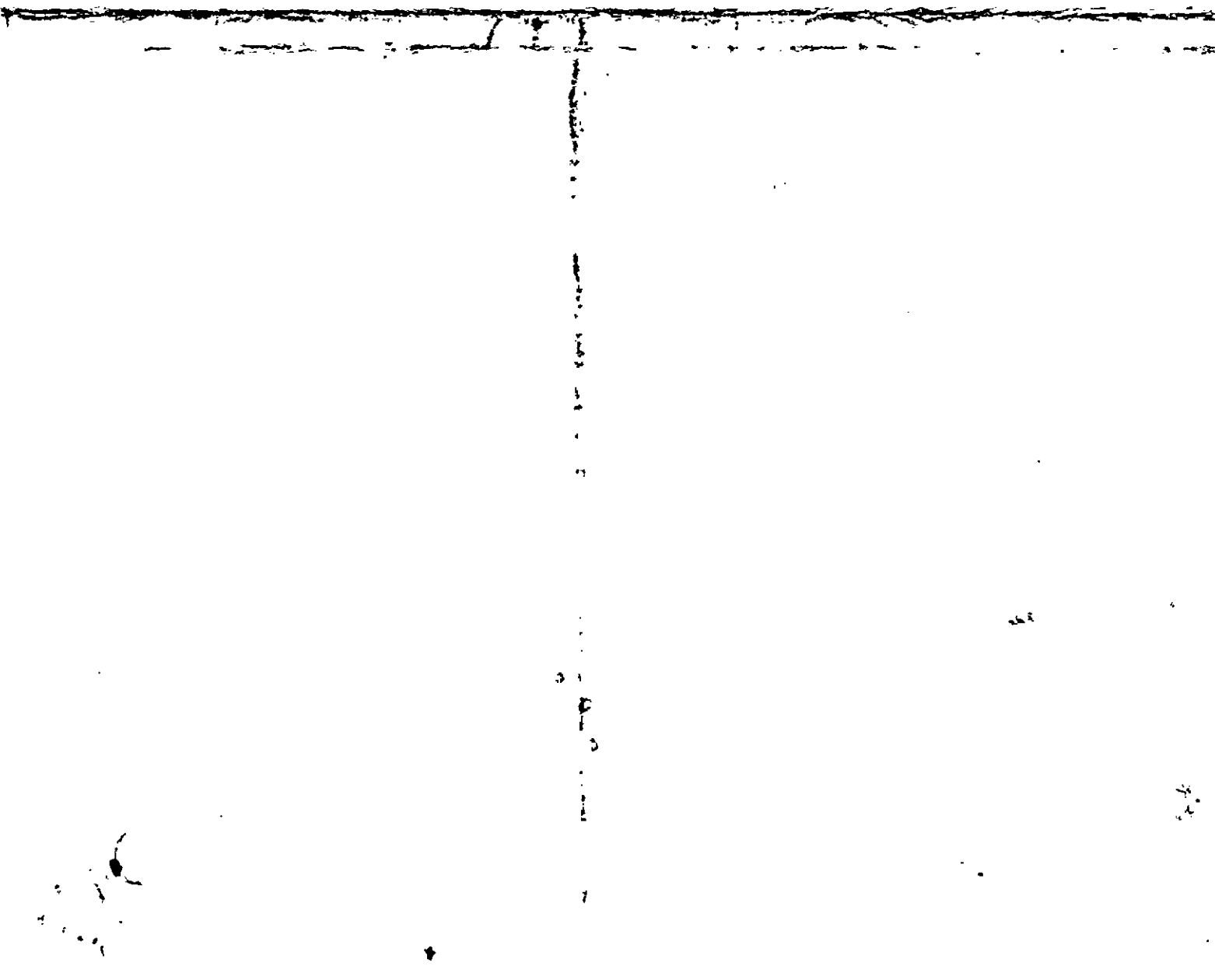
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Date of Presentation of Application 25-1-19
No of Pages 3
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Urgent Fee
Total 12
Date of Preparation of Copy 25-1-19
Date of Delivery of Copy 25-1-19
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THE OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301
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کے نام سے مندرجہ ذیل ہے۔

۲۲/۱۲/۱۹

۱۔ استاد
۲۔ وہاب
۳۔ الہیہ
۴۔ ۲۳/۱۲/۱۹
۵۔ الہیہ

۱۔ استاد کے نام سے مندرجہ ذیل ہے۔
۲۔ وہاب
۳۔ الہیہ
۴۔ ۲۳/۱۲/۱۹
۵۔ الہیہ

ولس جان ولد اسب خان

۱۔ ۲۲۳۶۱-۹۹۹۸۶۶۵۵۱

نام: _____

پتہ: _____

تعلقہ: _____

ضلع: _____

ریاست: _____

تاریخ: _____

مقام: _____

نام: _____

پتہ: _____

تعلقہ: _____

ضلع: _____

ریاست: _____

تاریخ: _____

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۵۳۳۶-۹۵۳۰۰۹۵

۱۸-۱۹۹۲

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۵۳۳۶-۹۵۳۰۰۹۵

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۵۳۳۶-۹۵۳۰۰۹۵

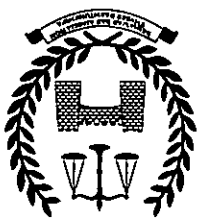
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۱۸-۱۹۹۲

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BEFORE THE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL

Service Appeal No. 345 of 2019

Atlas Khan

VERSUS

Govt of KP & Others

SERVICE APPEAL

COMMENTS FROM RESPONDENT NO. 4

INDEX

S#	Description of Documents	Annexure	Page Numbers
1.	Comments With Affidavit		1 to 4
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3.	Office letter of the Headquarters 5 Artillery Brigade, Dera Ismail Khan to the District Police Officer, DPO		8
4.	Copy of the said notification No.SO(SM)E&SED/3-2/2016/SSRC of M.C Peshawar, dated the March 27.2019		9 to 11


Yours Humble Respondent No. 4

Through Counsel



BEFORE THE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL

Service Appeal No. 345 of 2019

Atlas Khan

VERSUS Govt of KP & Others

SERVICE APPEAL

COMMENTS FROM RESPONDENT NO. 4

Respectfully Sheweth,

That the respondent No. 4 humbly submits the below comments;

PRELIMINARY OBJECTIONS:

- I. That the instant appeal is not maintainable in its present form thus is liable to be dismissed on legal as well as factual grounds.
- II. That the petitioner has neither any locus standi nor any cause of action to invoke constitutional jurisdiction of this Honourable Court.
- III. That the petitioner has not come to instant Honourable Court with clean hands and is estopped from filling the instant Appeal by his own conduct.
- IV. That the averments made through the Appeal and the prayer made thereby are misconceived, hence, cannot be granted as per law.
- V. That the instant appeal is badly time barred, hence liable to be rejected.
- VI. That the impugned notification dated 10.09.2018 is legally correct and in the four corners of law, hence, liable to be maintained.
- VII. That the appellant has intentionally concealed the material facts from this Honourable Court.
- VIII. That after the merger of FATA in Khyber Pakhtunkhwa province, the instant appeal is not maintainable. It is time and again reiterated by the August Supreme Court of Pakistan in its various landmark judgments that posting at a certain post is not the vested right of a government servant rather it is part and parcel of his/her job.
- IX. That the averments made by the appellant are wrong, hence are liable to be rejected, because the petitioner is not promoted in the impugned order.

(2)

However, the appellant has based his appeal on the pretext that the respondent No.4 is promoted in the impugned order.

- X. That after the merger of FATA in KP Province, the posts of Assistant Sub-divisional Education Officers are to be appointed by initial recruitment, hence, the appellant is no more fit for the instant post and all the unfit incumbents in the province are just for the stop-gap arrangement till the qualified persons come and fill the vacancies.

ON FACT:




1. Instant para is subject to record.
2. Instant para is subject to record.
3. Instant para is incorrect, hence not admitted. The appellant has not been recommended or nominated for promotion against the ADEO post by the competent authority. However, the said laws and notifications are no more in field after the merger of FATA in KP Province. Hence, these areas are subject to the same laws, rules, regulations and notifications which are in vogue in the province. The appellant was not a party to the cited writ petition neither the respondent No.4 was party to the same.
4. Instant para is subject to record. However, the instant appeal of the appellant is liable to be reject. Hence, be rejected. However, the respondent No.4 is validly posted after careful perusal of the record of the undersign. ***Copies of the various distinction certificates are attached.***
5. That the instant para is incorrect. Hence, denied. The respondent No.4 has been posted after fulfilling all the required criteria for the post. The appellant never challenged the posting of Rashid Khan, which means that he has waived off his right, if any. Even otherwise, the son of the respondent No.4 is serving in Pakistan Army and has got dire threats from non-state elements. ***The office letter of the Headquarters 5 Artillery Brigade, Dera Ismail Khan to the District Police Officer, DPO is attached.***
6. That the instant para is incorrect. Hence, denied. The appellant is a chronic litigant and trouble maker for the government. The appellant knows very well that after the merger of FATA into KP Province the provincial government has come under a hectic job of bringing things in line with the provincial statutes and notifications, thus he wants to cash this time and only to add to the troubles of the government has gone into litigations to blackmail the same. A writ petition No. 6754-P/2018 titled "Atlas Khan Vs Govt of KP & others" was also instituted by the petitioner before the Honourable Peshawar High Court, which was decided in favour of the respondent department and against the appellant.
7. That the appellant has no legal or factually valid ground to invoke the jurisdiction of this Honourable Court, hence, the instant appeal be rejected.

3

ON GROUNDS:

- A. Instant Para is incorrect. Hence, denied. Detail reply is given above. However, as per the KP Civil Servant Act, 1973 and KP Civil Servant (Appointment, Promotion & Transfer) Rules, 1989, it is the mandate of the respondent department to post any competent government servant on the post. To hold a post is not the vested right of any government servant. Instant appeal is badly time barred as well as barred by law.
- B. Instant Para is incorrect. Hence, denied. Detail reply is given above. After the merger of FATA into KP Province, the posts of Assistant Sub-divisional Education Officers are to be appointed by initial recruitment, hence, the appellants are no more fit for the instant post and all the unfit incumbents in the province are just for the stop-gap arrangement till the qualified persons come and fill the vacancies.
- C. Instant Para is incorrect. Hence, denied. Detail reply is given above. The criteria for the instant post has since 2012 changed substantially. Now the instant post is regulated under the laws, rules and notifications of the KP Province. Appellant is not fit for the post. The transfer / posting criteria for the instant post is published vide notification No.SO(SM)E&SED/3-2/2016/SSRC of M.C Peshawar, dated the March 27.2019. *Copy of the said notification No.SO(SM)E&SED/3-2/2016/SSRC of M.C Peshawar, dated the March 27.2019 is attached.*
- D. Instant Para is incorrect. Hence, denied. Detail reply is given above. The dicta of the Superior Court of the land are in favour of the respondents and not in favour of the appellant, and this was the reason that he has not annexed a single judgment & order favouring his appeal.
- E. Instant Para is incorrect. Hence, denied. Detail reply is given above. The appellant has intentionally tried not to disclose the fact that the FATA has merged into KP Province. Hence, appellant has not come to this Honourable Court with clean hands, thus, deserves no favour.
- F. Instant Para is incorrect. Hence, denied. Detail reply is given above. A party can't be allowed to raise a ground which can take the adverse party by surprise. This is the golden principle of law.

HENCE, IN THE LIGHT OF ABOVE PARAWISE COMMENTS THE INSTANT APPEAL MAY PLEASE BE DISMISSED WITH SPECIAL COSTS.


Yours Humble Respondent 4

Through Counsel

4

AFFIDAVIT

I, Naseeb Khan, Respondent No.4, do hereby solemnly affirm and declare on oath that the parawise contents of the instant comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

Deponent

CNIC# 12102-2155663-3

Mob# 0334-2727219.

Dated :- 28 / 10 / 2019

ATTESTED
28-10-2019
MIAN SIBGHAT ULLAH SHAH
ADVOCATE
Notary Public/Oath Commissioner
Peshawar High Court Peshawar



Academy of Educational Planning and Management (AEPAM)
Ministry of Federal Education and Professional Training

This Certificate is awarded to

Nasib Khan

in recognition of his/her successful participation in the 25th One Week National Training Workshop
on

"Financial Management for Good Governance" under FMGG Project, Phase-II

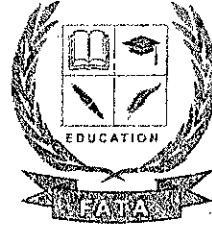
held at AEPAM's Campus, Islamabad from November 09 to 13, 2015

Dr. Dawood Shah
Director (Training)
AEPAM, Islamabad

Mohammad Khan Khichi
Director General
AEPAM, Islamabad

(5)

DIRECTORATE OF EDUCATION - FATA



[Handwritten signature]

Certificate of Appreciation

Presented to

Mr. NASEEB KHAN SST GMS KOI BAHARA

In sincere gratitude for dedicated services in conducting

Centralized Examination for the year 2015-16

[Handwritten signature]

Director Education FATA

6

7

DIRECTORATE OF EDUCATION FATA



Award of Best Principal

Mr./Mrs./Miss **NASEEB KHAN**

has been awarded with a Cash Prize of Rs. **=100000/-** from

CHIEF GUEST

MR. IQBAL ZAFAR JHAGRA

Governor Khyber Pakhtunkhwa

on 7th March 2017 at Governor House Peshawar


Hashim Khan
Director Education FATA

8

6742
11-6-19

RESTD

Headquarters 5 Artillery Brigade
Dera Ismail Khan
Telephone: Military - 20134084
20551 / General Staff
30 May 2019

To: District Police Officer, Dera Ismail Khan

Information: 12 Medium Regiment

Subject: Threat to Officer's Family

1. It is submitted that Lieutenant Saeed Khan serving in Pakistan Army and is resident of village Mangal, Post Office Kirri Shamoza, Tehsil Paroa, District Dera Ismail Khan. Family has received threats from TTP group.
2. It is requested that favorable security cover be extended to officer's family.
3. Forwarded for favorable action, please.

SHO/Chandhwan

for information report

[Signature]

Dera Ismail Khan

11/06

AS: [Signature]
[Signature]
SHO/
11-6

[Signature]

RESTD

P-1

9

(1)

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

NOTIFICATION

Peshawar, date 11th March 17, 2019

NO. SO(SM)E & SED/3-2/2016/SSRC of MLC: In pursuance of the provision contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Provincial Civil Servants (Appointment, Promotion and Transfer) Rules, 1939 and in supersession of the Department's Notification No. SO(SM)E & SED/3-2/2016/SSRC of MLC dated 03-07-2018, the Elementary & Secondary Education Department, in consultation with the Establishment Department and the Finance Department, hereby lays down the method of recruitment, qualification and other conditions specified in Column No. 3 to 5 of the Appendix to the Notification which shall be applicable to the posts of Schools Management Cadre under the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar and Directorate of Curriculum & Teachers Education Khyber Pakhtunkhwa Abbottabad as specified in Column No. 2 of the said Appendix.

APPENDIX

Sl#	Nomenclature of the Post	Minimum Qualification for Appointment by Initial Recruitment or by Transfer	Age Limit
		3	4
1	2 Director (BPS-20)		

3574
3-108118

ADo-1

Method of Recruitment

5

By promotion, on the basis of seniority-cum-fitness, from amongst the District Education Officers and Additional Directors (Male and Female) with at least five year service in BPS-19 as such and having successful completion of Senior Management Course:

Provided that if no suitable officer is available for promotion then by transfer of BPS-20 officer.

Note: For the purpose of promotion, a joint seniority list of District Education Officers and Additional Directors (Male and Female) shall be maintained

10

pr

District Education Officer/ Additional Director (BPS-19) (Male and Female)			"By promotion, on the basis of seniority-cum-fitness, from amongst the Deputy District Education Officers and Deputy Directors (Male and Female) with at least seven year service in BPS-18 or twelve year service in BPS-17 and above and such officer shall undergo six weeks post promotion training on the following modules, namely: i. Financial Management; ii. HR Management; and iii. Information Technology: Provided that if no suitable officer is available for promotion then by transfer of BPS-19 officer".
3 Deputy District Education Officer/Deputy Director (BPS-18) (Male and Female)	i. M.Phil in Education from recognized University with three years teaching or administrative experience in Government recognized educational institutions or offices; or ii. at least Second Class Master's Degree or BS (four years) and Bachelor's Degree of Education from recognized University with five years teaching or administrative experience in BPS-17 and above in Government recognized educational institutions or offices; or iii. at least Second Class M.A/M.Sc with Second Class M.Ed/M.A (Education Planning and Management) or equivalent qualification from a recognized University with at least five years teaching or administrative experience in Government recognized educational institutions or offices.	25 to 45 years	(a) Eighty Percent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Divisional Education Officers and Assistant Directors (Male/Female) with at least five year service as such and such officers shall undergo six weeks post promotion training on following modules, namely: i. Financial Management; ii. HR Management; and iii. Information Technology: Provided that if no suitable officer is available for promotion then by transfer of BPS-18 officer"; and (b) twenty percent by initial recruitment.
Sub-Divisional Education Officer/Assistant Director (BPS-17) (Male and Female).	i. At least Second Class M.A/M.Sc or BS (four years) from recognized University; ii. at least Second Class Bachelor's of Education from a recognized University; and iii. three years teaching or administrative experience in Government recognized institutions or offices.	21 to 40 years	(a) Eighty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Sub-Divisional Education Officers and Assistant District Education Officers (Male & Female) with at least five years' service: Provided that if no suitable officer is available for promotion then by transfer of BPS-17 officer; and (b) Twenty percent by initial recruitment.

P-3

By initial recruitment
 provided that if no suitable officer is available then by
 secondary recruitment other (BPS-16) of Teaching
 Note: On induction, all such officer shall undergo six
 weeks post induction training on the following
 modules, namely:
 i Financial Management,
 ii HR Management, and
 iii Information Technology

25 to 35
 years

At least Second Class Bachelor's Degree or
 B.S (four years) from a recognized University,
 at least Second Class Bachelor's Degree of
 Education from a recognized University, and
 five year teaching or administrative
 experience in Government recognized
 institutions or offices.

At least Second Class Bachelor's Degree or
 B.S (four years) from a recognized University,
 at least Second Class Bachelor's Degree of
 Education from a recognized University, and
 five year teaching or administrative
 experience in Government recognized
 institutions or offices.

SECRETARY TO
 GOVERNMENT OF THE KHYBER PAKHTUNKHWA
 ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT

Order No. & Date:-

- 077 forwarded to the
 All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa
 Secretary to Governor, Khyber Pakhtunkhwa,
 Secretary to Chief Minister, Khyber Pakhtunkhwa,
 Chairman Khyber Pakhtunkhwa Public Service Commission, Peshawar
 Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Abbottabad,
 Directorate of Curriculum and Teachers Education Khyber Pakhtunkhwa & Secondary Education Khyber Pakhtunkhwa,
 All District Education Officers (Male/Female) in Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar with the request to give wide publicity
 Director Information Khyber Pakhtunkhwa Peshawar with the request to give wide publicity
 Manager Government Printing Press Peshawar for publication in the next issue of Govt. Gazette.
 PS to Advisor to Chief Minister for E&SE Department Khyber Pakhtunkhwa Peshawar.
 PS to Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
 PS to Special Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
 PA to Additional Secretary (Admin) E&SE Department, Khyber Pakhtunkhwa, Peshawar.
 PA to Deputy Secretary (Admin) E&SE Department, Khyber Pakhtunkhwa, Peshawar.
 All Section Officers E&SE Department with the request to upload the same on the web site of the Department.
 Director E&SE Department with the request to upload the same on the web site of the Department.



27-03-19
 SECTION OFFICER (SCHOOLS MALE)

42

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

Service Appeal No: 345/2019

Atlas Khan ADEO office of the DEO FR D I Khan. Appellant.

VERSUS

Secretary E&SE Department, Khyber Pakhtunkhwa & others. Respondents

JOINT PARAWISE COMMENTS FOR& ON BEHALF OF RESPONDENTS No: 1-4&6.

Respectfully Sheweth :-

The Respondents submit as under:-

PRELIMINARY OBJECTIONS.

- 1 That the Appellant has got no cause of action/locus standi .
- 2 That the instant Service Appeal is badly time barred.
- 3 That the Appellant has concealed material facts from this Honorable Tribunal.
- 4 That the instant service appeal is based on mala fide intentions.
- 5 That the Appellant has not come to this Honorable Tribunal with clean hands.
- 6 That the instant Service Appeal is against the prevailing law & rules.
- 7 That the Appellant has been treated as per law, rules & policy.
- 8 That the appeal is not maintainable in its present form.
- 9 That the appeal is bad for mis-joinder & non-joinder of the necessary parties.
- 10 That the instant Service Appeal is barred by law.
- 11 That the Appellant is not competent to file the instant appeal against the respondents.
- 12 That the impugned notification dated 10/9/2018 is legally competent & liable to be maintained.

41

ON FACTS .

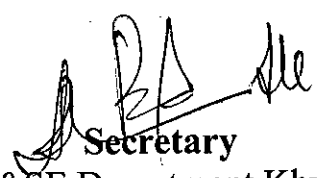
- 1 That Para-1, needs no comments, being relates to the Service Record of the appellant against the various Teaching/non-Teaching Cadres posts in the Respondent Department.
- 2 That Para-2 also needs no comments as it pertains to the award of selection grade to the appellant vide order & Notification 16/05/2019 issued by the Respondent Department.
- 3 That Para-3 is incorrect & denied the appellant has not been recommended or nominated for promotion against the ADEO post by the competent authority. Whereas rest of the para relates to the Record of the Honorable PHC wherein the petitioner namely Atlas Khan has challenged the circular dated 06/10/2011 before the Honorable Court under article 199 of the 1973 constitution of Pakistani & disposed off the Writ Petition vide judgment dated 28/01/2014 in favor of the said petitioner instead of the appellant. Therefore, the claim of the appellant is baseless & liable to be rejected. **(Copy of the judgment dated 28/01/2014 is attached as Annexure-A).**
- 4 That Para-4 is correct to the extent that in compliance of the judgment dated 28/01/2014 of the Honorable Peshawar High Court Peshawar rendered in W/P No 161-P/2012 Atlas Khan VS Govt, the petitioner has been adjusted against the AAEO FR D I Khan vide order dated 28/01/2014 issued by the Director FATA education. **(Copy of the cited order is attached as Annexure-B).**
- 5 That Para-5 is incorrect & misleading on the grounds that the AAEO post is a provincial cadre post & the holder of the same is liable to service anywhere in the Khyber Pakhtunkhwa, under the civil servant, Act 1973 is same in the case of Rashid Khan who has been adjusted against the AAEO post vide order & Notification dated 25/08/2017 issued by the competent authority after observing all the required criteria in the cited case. Hence, the plea of the appellant is without any cogent reason & legal justification. **(Copies of both the orders dated 29/6/17 & 10/09/2018 are attached as Annexures-C&D).**
- 6 That Para-6 is correct as the appellant being a habitual litigations & always seek the post & station of his own choice in the Respondent Department & has filed a Writ Petition No: 6754-P/2018 under titled Atlas Khan V/S Govt of Khyber Pakhtunkhwa & others before the Honorable PHC Peshawar against the above mentioned transfer & posting attached as Annexure C&D before the Honorable PHC Peshawar which was dismissed vide order dated 15/01/2019 by the Honorable court in favor of the Respondent Department on merits of the case (Copy of the order dated 15/01/2019 is attached as Annexure-E).
- 7 That Para-7 is legal However the Respondents Department further submit on the following grounds inter alia


GROUND.

- A Incorrect & not admitted. The impugned order dated 25/8/2017 & 10/09/2018 are within legal sphere & liable to be maintained in favor of the Respondents. Hence, the claim of the appellants is illegal & liable to be rejected.
- B Incorrect & not admitted. The Respondent Department has its criteria for promotion throughout the Khyber Pakhtunkhwa, including the NMD(newly merged Districts) for promotion & transfer postings. Therefore, the same cannot be over rided & violated for the appellant illegally.
- C Incorrect & not admitted. The appellant is seeking for the post & station of his choice which cannot be entertained under the promotion of sectioni-10 of Civil Servant, Act: 1973. Hence, the claim of the appellant deserves to be rejected.
- D Incorrect & not admitted. The Act of the Respondents Department with regard to the above cited orders in legal & within it competency & jurisdiction. Hence, deserves to be maintained.
- E Incorrect & not admitted. The Act of the Respondent Department is within legal sphere.
- F Legal. However, the Respondents also seek leave of this Honorable Tribunal to submit additional grounds record & case law at the time of arguments on the dated fixed. Please

In view of the above made submissions, it is requested that this Honorable Tribunal may very graciously be pleased to dismiss the instant service appeal with cost in favour of the Respondent Department.


Dated ___ / ___ /2019


Secretary
 E&SE Department Khyber
 Pakhtunkhwa, Peshawar
 (Respondents No:1)


Director
 E&SE Department Khyber
 Pakhtunkhwa, Peshawar.
 (Respondents No: 2&3)

AFFIDAVIT

I Hayat Khan Asstt: Director (Litigation-II) E&SE Department do hereby solemnly affirm and declare on oath that the contents of the instant Parawise Comments are true & correct to the best of my knowledge & belief.


 Deponent

A m. l. c. "D"

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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

No. 161 of 2013

JUDGMENT

Date 28 of 2014 hearing-

Petitioner Abdul Khaliq Khan

Respondent M. Chaudhry & Co. (Adv.)

NISAR HUSSAIN KHAN, J.- Petitioner has filed

the instant petition with the following prayer:-

"It is therefore, humbly prayed that on acceptance of this writ petition, this Hon'ble Court may graciously be pleased to declare the acts and actions of respondents and the impugned

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Attested to be True Copy

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Respondents have not denied the criteria for selection as averred in the petition. While they have offered a vague reply to the merit of the petitioner.

4. We have thoroughly scanned the material appended with the petition as well as the comments and have also considered the submissions made by the learned counsel for the petitioner and the learned AAG for official respondents, and counsel for respondent No.4.

5. Facts of the case are that Directorate of Education (FATA Secretariat) circulated a selection criteria for the post of Assistant Agency Education Officer(M/F) through Memo No.A-1/General/AAEO, dated 6.10.2011, according to which apart from other stipulations, it is provided in Clause-V that panel of atleast 3 SETs in order of seniority should be prepared for a single post for selection of one through interview. As per Clause(1), Seniority position of those to be considered for posting as AAEO/MF should be at the top 10 of the SETs' seniority list of the concerned Agency FR. In compliance with the criteria

ATTESTED

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accordance with law. As the selection criteria for the said post had been circulated by the FATA Secretariat, Directorate of Education (FATA), whereby such posts are to be filled in by transfer for a period of 5 years from amongst the SETs on the basis of seniority from the concerned Agency/FRs. On the date of interview, only two candidates, petitioner and one Jamshed Khan appeared before the Committee. However, selection committee also interviewed three other candidates including respondent No.4 who was not part of the proposed panel; that on finalization of the selection process, petitioner was on the top of the merit list securing 14.5 points but ignoring the result of the selection process, respondent No.4 was appointed who does not belong to F.R. DIKhan, rather belongs to F.R. Tank. As such respondents have not treated the petitioner in accordance with law and have illegally and arbitrarily appointed respondent No.4.

ATTESTED

3. Respondents in their comments have raised an objection that this court has got no jurisdiction to entertain the instant petition.

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interview is conducted nor any merit list is prepared.

The whole exercise conducted in the selection of AAEO(MF)FR DIKhan suggests that for appointment against the said post, merit was prime consideration to

be ascertained after due evaluation of all aspects of the candidates including the service record, their performance in the test and interview and seniority.

Had it been a simple case of transfer, there would have been no need of such hectic exercise and when the appointment was to be made according to the whims and wishes of the competent authority, there was no need of holding test and interview. When the officers were put to go through the process of test and interview, the person securing highest marks standing at the top of the merit list was legitimately expecting to be appointed against the post but the competent authority by appointing respondent No.1 standing second to him, has failed to advance reasons to justify his action in ignoring the petitioner.

7. So far as the question with regard to the jurisdiction of this court is concerned, suffice it to say that a Full bench of this court in W.P.No.969/2010

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interview is conducted nor any merit list is prepared. The whole exercise conducted in the selection of AAEO(MF)FR DIKhan suggests that for appointment against the said post, merit was prime consideration to be ascertained after due evaluation of all aspects of the candidates including the service record, their performance in the test and interview and seniority. Had it been a simple case of transfer, there would have been no need of such hectic exercise and when the appointment was to be made according to the whims and wishes of the competent authority, there was no need of holding test and interview. When the officers were put to go through the process of test and interview, the person securing highest marks standing at the top of the merit list was legitimately expecting to be appointed against the post but the competent authority by appointing respondent No.1 standing second to him, has failed to advance reasons to justify his action in ignoring the petitioner.

ATTESTED

7. So far as the question with regard to the jurisdiction of this court is concerned, suffice it to say that a Full bench of this court in W.P.No.969/2010

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[Signature]

titled "Hanif ur Rehman & others Vs Government of NWFP through Chief Secretary and others" decided on 7.11.2013, has assumed the jurisdiction and extended relief to the aggrieved employees of the FATA. As such by following the judgment of the Full Bench, referred to above, this objection of the respondents is repelled.

8. The authorities are vested with powers to exercise the same as a sacred trust. The authority passing an order in exercise of its discretion is required to follow all the principles and canons of justice including the equity, fair play, reasonableness, good conscience, openness and rationality. Any order passed or action taken in disregard of all these principles is termed as arbitrary, fanciful and passed in colourful exercise of powers, rendering itself without jurisdiction and without lawful authority, making it liable to be struck down. The impugned order of the respondent ignoring the petitioner and appointing the respondent does not qualify the test of good governance as enunciated herein above, thus the same is an arbitrary and fanciful order and as such is

ATTESTED

Attested by [Signature]

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declared to have been passed without lawful authority and have no legal effect. Consequently, the respondents are directed to consider the petitioner for appointment against the post of AAEO(MF)FR DIKhan in accordance with the selection criteria, circulated by FATA Secretariat, Directorate of Education, to all the Agency Education Officers vide office Memo No.A-1/Geeral/AAEO, dated 6.10.2011.

JUDGE

JUDGE

Announced on
28th Jan. 2014

o/h
28/12

ATTESTED

Original to be
This copy

ATTESTED

Answer

DIRECTOR EDUCATION (FATA)

- 7 Teacher concerned
- 6 EKHS Local Directorate
- 5 Headmaster GHS Darazinda F.R O.I. Khan
- 4 District Accounts Officer, O.I. Khan
- 3 Agency Education Officer, F.R O.I. Khan
- 2 Section Officer (Estab) Admn: Infrastructure & Coord Deptt: FATA Secretariat Peshawar
- 1 Additional Registrar (J) Peshawar High Court Peshawar w/r to his No. 22064 dated 20/12/2014

Copy forwarded to the:-

Dated Pesh: the 24/12/2014

Enlist No. /A-12/ Azim Khan SET

14664-20

DIRECTOR EDUCATION (FATA)

2 TA/DA etc is not allowed

1 Charge report should be submitted to all concerned

NOTE:-

his taking over charge against vacant post in the interest of public service.

transferred/adjusted as AAEO F.R O.I. Khan in his own pay & scale with effect from the date of W.P No. 181-P/2012. Mr. Azim Khan SET GHS Darazinda F.R O.I. Khan is hereby

DIRECTORATE OF EDUCATION, FATA SECRETARIAT, PESHAWAR

Amir H

Amir H

Amir H

Amir H

Amir H

Annex B

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BETTER COPY

DIRECTORATE OF EDUCATION (FATA) PESHAWAR

TRANSFER/ADJUSTMENT

Consequent upon decision of Peshawar High Court Peshawar COC No. 263-P/2014 in W.P No. 161-P/2012. Mr. Azim Khan SET GHS Darazinda FRDI Khan is hereby transferred / adjusted as AAEO FR D.I Khan in his own pay & scale with effect from the date of his taking over charge against vacant post in the interest of public service.

Note:

1. Charge report should be submitted to all concerned
2. TA/DA etc is not allowed.

DIRECTOR EDUCATION (FATA)

Endst No. 14664-20/A-12/Azim Khan SET

Dated Pesh: the 24.12.2014

Copy forwarded to the:-

1. Additional Registrar (J) Peshawar High Court Peshawar w/r to his No. 22064 dated 20.12.2014.
2. Section Officer (Estb) Admn: Infrastructure & Coord Deptt: FATA Secretariat Peshawar.
3. Agency Education Officer FR DI Khan
4. District Accounts Officer DI Khan
5. Headmaster GHS Darazinda DR DI Khan
6. EMIS Local Directorate
7. Teacher concerned.

DIRECTOR EDUCATION (FATA)

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Am. Xale F.

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DIRECTORATE OF EDUCATION, FATA SECRETARIAT, PESHAWAR
TRANSFER/ADJUSTMENT

Mr. Rashid Khan SET Government High School Darazinda F.R D.I. Khan is hereby transferred/adjusted as AAEO at the Agency Education Office F.R D.I. Khan in his own pay and scale with immediate effect against a vacant post in the interest of public service.

NOTE-

1. Charge report should be submitted to all concerned.
2. R/W/DA etc is not allowed

DIRECTOR EDUCATION (FATA)

1987

Encls: No. 1/A-1/Sen AAEO FR DIK

Date: Peshawar 20/1/87

- Copies forwarded to the
1. Agency Education Office: F.R D.I. Khan
 2. District Accounts Officer, D.I. Khan
 3. Headmaster GHS Darazinda F.R D.I. Khan
 4. EMI's Local Directorate
 5. P A to D.E FATA

DEPUTY DIRECTOR (ESTAB)

174
4/5/18

Anwar

ATTESTED

the copy
application are true
correct

Munir Khan

Muzafar Ahmad

[Signature]

Annexure

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(21A)

BETTER COPY

DIRECTORATE OF EDUCATION (FATA) SECRETARIAT PESHAWAR

TRANSFER/ADJUSTMENT

Mr. Rashid Khan SET Government High School Darazinda F.R D.I Khan is hereby transferred / adjusted as AAEO at the Agency Education Office F.R D.I Khan in his own pay & scale with immediate effect against vacant post in the interest of public service.

Note:

1. Charge report should be submitted to all concerned
2. TA/DA etc is not allowed.

DIRECTOR EDUCATION (FATA)

Endst No. 4983-87/A-12/Gen AAEO DIK

Dated Pesh: the 29.04.2016

Copy forwarded to the:-

1. Agency Education Officer F R D I Khan
2. District Accounts Officer D.I Khan
3. Headmaster GHS Darazinda FR DI Khan
4. EMIS Local Directorate
5. PA to D.E FATA

DIRECTOR EDUCATION (ESTAB)

ATTESTED



Amir Khan "G" 5



**DIRECTORATE OF EDUCATION
NEW MERGED DISTRICTS**

KHYBER PAKHTUNKHWA, WARSAP ROAD PESHAWAR, PAKISTAN
PHONE 091-9210166 FAX 091-9110216

NO. MR. NASEEB GUL SST

DATED 16/9/2018

TRANSFER ORDER:

Mr. Naseeb Khan SST GHS Kohi Bahara Sub Division Darazinda Tribal District DI Khan is hereby transferred in his own pay & scale to the Education Office Sub Division Darazinda against a vacant ADEO post w.e.f the date of his taking over charge in the interest of public service.

Note:

1. Charge report should be submitted to all concerned.
2. No TADA etc is allowed.

**Director Education
Newly Merged Districts**

Endst: No. 488-71 1-

Copy to:

1. Education Officer Sub Division Darazinda Tribal District DI Khan.
2. Accounts Officer Sub Division Darazinda Tribal District DI Khan.
3. Head Master GHS Kohi Bahara Sub Division Darazinda Tribal District DI Khan.
4. PA to Director Education Newly Merged Districts.

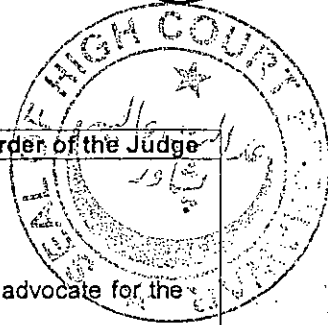
ATTESTED

Deputy Director (Estab)

PESHAWAR HIGH COURT, PESHAWAR.

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FORM 'A'
FORM OF ORDER SHEET



Date of order.	Order or other proceedings with the order of the Judge
15.01.2019	<p><u>W.P.No.6754-P of 2018.</u></p> <p>Present: Mr.Muhammad Ayaz Majid, advocate for the petitioner.</p> <p>-----</p> <p><u>MUHAMMAD AYUB KHAN, J.-</u> This petition is with the prayer to declare the transfer/posting order dated 10.09.2018 as with direction to respondents to appoint the petitioner as AADEO FR D.I.Khan being senior and fit for the same.</p> <p>2. As per writ petition, petitioner was appointed as CT on 08.12.1985 and posted at Government High School Darazinda, FR D.I.Khan. Subsequently, he was promoted/posted as Assistant Workshop Instructor vide order dated 27.07.1986 and temporarily adjusted as Workshop Instructor BPS-15. Thereafter, he was granted selection grade (BPS-17) vide order dated 16.05.2009. A post of AAEO became vacant in the year 2012. According to criteria/rules on the subject, said post had to be filled upon the criteria laid down in circular letter dated 06.10.2011. However, in violation of rules/criteria, respondent No.2 appointed a person against the ibid post, which was challenged before this court by one Azim Khan through W.P.No.161-P of 2012. After hearing the parties, said petition was allowed vide judgment dated 08.01.2014. The ibid post again fell vacant due to</p>

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ATTESTED
EXAMINER
Peshawar High Court
25 JAN 2019

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transfer of incumbent on 14.05.2015. Again one Rashid Khan was transferred/posted as AAEO in violation of criteria vide order dated 25.08.2017 followed by appointment of respondent No.4 as ADEO/AAEO Education Office Sub-Division Darazinda vide order dated 10.09.2018, which has necessitated the filing of instant petition.

3. Preliminary arguments heard and record gone through.

4. Admittedly, the petitioner is a civil servant whereas the relief sought i.e. appointment as ADEO is a matter relating to terms and conditions of his service. It is well settled that if any matter relating to term and condition of a civil servant is violated, then he can approach the Service Tribunal, constituted for that purpose. Not only the Service Tribunal has been established for dealing with cases relating to the terms and conditions of a civil servant but under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, jurisdiction of this court is barred to entertain any matter relating to the terms and conditions of service of a civil servant, therefore, this petition is not maintainable before this court.

5. For what has been discussed above, this petition is dismissed in limine.

JUDGE

JUDGE

Sd/ Sadik Shah, PS (DB) (Hon'ble Justice Musarrat Hameed and Hon'ble Mr. Justice Muhammad Ayub Khan)

CERTIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 8.7 of
The Quran-o-Shahadat Order 1994

25 JAN 2019

No. 3297
Date of Presentation of Application 25-1-19
No of Pages 3
Copying Fee
Urgent Fee
Tad 12
Date of Preparation of Copy 25-1-19
Date of Delivery of Copy 25-1-19
Received By

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 345/2019

Atlas Khan ADEO FR D I Khan Appellant.

VERSUS

Secretary E&SE Department, Khyber Pakhtunkhwa & others. Respondents

JOINT PARAWISE COMMENTS FOR& ON BEHALF OF RESPONDENTS No: 1-4&6.

Respectfully Sheweth :-

The Respondents submit as under:-

PRELIMINARY OBJECTIONS.

1. That the Appellant has got no cause of action/locus standi .
2. That the instant Service Appeal is badly time barred.
3. That the Appellant has concealed material facts from this Honorable Tribunal.
4. That the instant service appeal is based on mala fide intentions.
5. That the Appellant has not come to this Honorable Tribunal with clean hands.
6. That the instant Service Appeal is against the prevailing law & rules.
7. That the Appellant has been treated as per law, rules & policy.
8. That the appeal is not maintainable in its present form.
9. That the appeal is bad for mis-joinder & non-joinder of the necessary parties.
10. That the instant Service Appeal is barred by law.
11. That the Appellant is not competent to file the instant appeal against the respondents.
12. That the impugned notification dated 10/9/2018 is legally competent & liable to be maintained.

ON FACTS

(2)

- 1 That Para-1, needs no comments, being relates to the Service Record of the appellant against the various Teaching/non-Teaching Cadres posts in the Respondent Department.
- 2 That Para-2 also needs no comments as it pertains to the award of selection grade to the appellant vide order & Notification 16/05/2019 issued by the Respondent Department.
- 3 That Para-3 is incorrect & denied the appellant has not been recommended or nominated for promotion against the ADEO post by the competent authority. Whereas rest of the para relates to the Record of the Honorable PHC wherein the petitioner namely Atlas Khan has challenged the circular dated 06/10/2011 before the Honorable Court under article 199 of the 1973 constitution of Pakistani & disposed off the Writ Petition vide judgment dated 08/01/2014 in favor of the said petitioner instead of the appellant. Therefore, the claim of the appellant is baseless & liable to be rejected. **(Copy of the judgment dated 08/01/2014 is attached as Annexure-A).**
- 4 That Para-4 is correct to the extent that in compliance of the judgment dated 08/01/2014 of the Honorable Peshawar High Court Peshawar rendered in W/P No 161-P/2012 Atlas Khan VS Govt, the petitioner has been adjusted against the AAEO FR D I Khan vide order dated 14/05/2015 issued by the Director FATA education. **(Copy of the cited order is attached as Annexure-B).**
- 5 That Para-5 is incorrect & misleading on the grounds that the AAEO post is a provincial cadre post & the holder of the same is liable to service anywhere in the Khyber Pakhtunkhwa, under the civil servant, Act 1973 is

same in the case of Rashid Khan who has been adjusted against the AAEO post vide order & Notification dated 25/08/2017 issued by the competent authority after observing all the required criteria in the cited case. Hence, the plea of the appellant is without any cogent reason & legal justification. **(Copies of both the orders dated 25/08/2017 & 10/09/2018 are attached as Annexures-C&D).**

- 6 That Para-6 is correct as the appellant being a habitual litigations & always seek the post & station of his own choice in the Respondent Department & has filed a Writ Petition No: 6754-P/2018 under titled Atlas Khan V/S Govt of Khyber Pakhtunkwah & others before the Honorable PHC Peshawar against the above mentioned transfer & posting attached as Annexure C&D before the Honorable PHC Peshawar which was dismissed vide order dated 15/01/2019 by the Honorable court in favor of the Respondent Department on merits of the case (Copy of the order dated 15/01/2019 is attached as Annexure-E).
- 7 That Para-7 is legal However the Respondents Department further submit on the following grounds inter alia :-

GROUND

- A Incorrect & not admitted. The impugned order dated 25/8/2017 & 10/09/2018 are within legal sphere & liable to be maintained in favor of the Respondents. Hence, the claim of the appellants is illegal & liable to be rejected.
- B Incorrect & not admitted. The Respondent Department has its criteria for promotion throughout the Khyber Pakhtunkhwa, including the NMD(newly merged Districts) for promotion & transfer postings. Therefore, the same cannot be over rided & violated for the appellant illegally.

(4)

- C Incorrect & not admitted. The appellant is seeking for the post & station of his choice which cannot be entertained under the promotion of section 10 of Civil Servant, Act: 1973. Hence, the claim of the appellant deserves to be rejected.
- D Incorrect & not admitted. The Act of the Respondents Department with regard to the above cited orders in legal & within its competency & jurisdiction. Hence, deserves to be maintained.
- E Incorrect & not admitted. The Act of the Respondent Department is within legal sphere.
- F Legal. However, the Respondents also seek leave of this Honorable Tribunal to submit additional grounds record & case law at the time of arguments on the date fixed. Please.

In view of the above made submissions, it is requested that this Honorable Tribunal may very graciously be pleased to dismiss the instant service appeal with cost in favour of the Respondent Department.

Dated ___/___/2019

Secretary
E&SE Department Khyber
Pakhtunkhwa, Peshawar
(Respondents No:1)

Director
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 2&3)

DDA II
Please set.
[Signature]
23/07/19

*will be subject to correct
Annexure Affidavits and DA
Approved.*

AFFIDAVIT

I Hayat Khan Asstt: Director (Litigation-II) E&SE Department do hereby solemnly affirm and declare on oath that the contents of the instant Parawise Comments are true & correct to the best of my knowledge & belief.

24/7/19

Approved DDA
[Signature]
District Attorney
Khyber Pakhtunkhwa
Service Tribunal Peshawar

[Signature]
Deponent

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 1149 /ST

Dated 15-05 / 2020


To

The Director E&SE
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: - JUDGMENT IN APPEAL NO. 345/2019, MR. ATLAS KHAN.

I am directed to forward herewith a certified copy of Judgement dated 10.03 .2020 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.