


FORM OF ORDER SHEET

Court of _____

Review Petition No. 67/2024

No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	15/01/2024	<p>The Review Petition of Mr. Fayaz Ahmad submitted today by Mr. Jawad Khan Advocate. It is fixed for hearing before Division Bench at Peshawar on _____. Original file be requisitioned. Parcha Peshi is given to the counsel for the petitioner.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Review Petition No. 67 /2024
IN
Service Appeal No.2215/2023

Fayaz Ahmad.....(Petitioner)

VERSUS

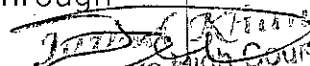
Gohar Khan, Assistant Professor of Law (BPS-18) Govt. College
Peshawar and others..... (Respondents)

I N D E X

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Petitioner

Through


Jawad Khan
Peshawar

Advocate High Court
Peshawar

Dated: 13.07.2024

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Review Petition No. 67 /2024

IN

Service Appeal No.2215/2023

Fayaz Ahmad

Deputy Director Establishment (BPS-18),
Directorate of Higher Education, Khyber Pakhtunkhwa, Peshawar
.....(Petitioner)

VERSUS

1. Gohar Khan, Assistant Professor of Law (BPS-18) Govt.
College Peshawar
2. Govt. of Khyber Pakhtunkhwa, through Chief Secretary, Civil
Secretariat, Peshawar.
3. Government of Khyber Pakhtunkhwa through Secretary,
Higher Education, Archives & Libraries Department,
Peshawar.(Respondents)

**REVIEW PETITION AGAINST ORDER/
JUDGMENT DATED 28.11.2023, WHEREBY
SERVICE APPEAL NO.2215/2023 FILED BY
THE RESPONDENT NO.1 WAS ACCEPTED
AND NOTIFICATION/ ORDER DATED
24.07.2023 WAS SET ASIDE**

Prayer:

On acceptance of this review petition order dated: 28.11.2023 passed by this Hon'ble Tribunal may very kindly be set aside and Notification dated 24.07.2023 may very graciously be upheld.

2

Interim relief

By means of interim relief the operation of impugned Judgment/ Order dated 28.11.2023 may kindly be suspended till the final disposal of the instant review petition.

Respectfully Sheweth:

1. That the responded No.1 filed Service Appeal No.2215/2023 against the respondents No.2, 3 and the Petitioner, wherein Notification dated 24.07.2023 was challenged before this Hon'ble Tribunal.
2. That after being put on notice as Respondent No. 3 in the aforesaid appeal; the petitioner appeared before this Hon'ble Tribunal and filed comments, wherein all the averments contrived in the appeal were refuted.
3. That after hearing the parties, this Hon'ble Tribunal vide impugned order dated: 28.11.2023 accepted the appeal filed by the Respondent and set aside Notification dated 24.07.2023.
4. That feeling highly aggrieved from the impugned order dated 28.11.2023 passed by this Hon'ble Tribunal, the Petitioner prefers the instant Review Petition on the basis of the following grounds inter alia.

GROUND:

- A. That the impugned order based on rules mentioned in para No.7 of the said order and relevant provision of the Khyber Pakhtunkhwa Civil Servant Act, 1973 has been completely ignored, which was relied upon by the Petitioner having got an overriding position as compared to the rules.
- B. That as per rules the maximum tenure is 3 years, but there is nothing regarding minimum period of posting, which clearly transpires that period of holding the office cannot exceed 3

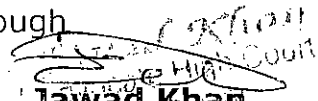
3

years, it does not mean that before expiry of 3 years transfer order cannot be passed.

- C. That transfer and posting of a public servant is not vested right upon which there are plethora of judgments. Thus Notification dated 24.07.2023 was very much legal and there is no illegality or irregularity in the said Notification, the Respondents No.2 and 3 had the authority of making the same order as per law.
- D. That the comments filed by the petitioner was completely neglected while passing the impugned order, in which the contention of the appellant was responded through cogent legal objections but those comments and the dictum relied upon by the Petitioner have not been discussed in the impugned order.

It is, therefore, humbly prayed that on acceptance of this review petition order dated 28.11.2023 passed by this Hon'ble Tribunal may very kindly be set aside and Notification dated 24.07.2023 may very graciously be upheld.

Petitioner

Through

Jawad Khan
Advocate High Court


CERTIFICATE

Certified that in view of the facts and grounds mentioned in the above noted petition, this is a fit case review.

Note:

Certified copies of grounds of service appeal and order of the Tribunal dated 28.11.2023 are enclosed.

No similar review petition has earlier been filed on behalf of petitioner.


Advocate
Peshawar

(A) (U)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Review Petition No. _____/2024

IN

Service Appeal No.2215/2023

Fayaz Ahmad.....(Petitioner)

VERSUS

Gohar Khan, Assistant Professor of Law (BPS-18) Govt. College
Peshawar and others..... (Respondents)


AFFIDAVIT

I, Fayaz Ahmad Deputy Director Establishment (BPS-18),
Directorate of Higher Education, Khyber Pakhtunkhwa, Peshawar
(appellant), do hereby solemnly affirm and declare on oath that
the contents of the accompanying **Review Petition** are true and
correct to the best of my knowledge and belief and nothing has
been concealed from this Honourable Tribunal.



Deponent

CNIC No.21204-9823745-3


13
24

(5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

C.M.No. _____/2024
IN
Review Petition No. _____/2024
IN
Service Appeal No.2215/2023

Fayaz Ahmad.....(Petitioner)

VERSUS

Gohar Khan, Assistant Professor of Law (BPS-18) Govt. College
Peshawar and others..... (Respondents)

APPLICATION FOR INTERIM RELIEF

Respectfully Sheweth;

1. That the above titled review petition is being filed before this Hon'ble Tribunal wherein no date has yet been fixed.
2. That grounds of main petition may kindly be read as part and parcel of this application.
3. That a prima facie an arguable case exists in favour of petitioner and is sanguine about its success.
4. That balance of convenience also lies in favour of petitioner.
5. That if the operation of the impugned order dated 28.11.2023 is not suspended, the petitioner/ appellant will suffer irreparable loss.

It is, therefore, humbly prayed that on acceptance of this application, operation of impugned Judgment/ Order dated 28.11.2023 may kindly be suspended till the final disposal of the instant review petition.

Petitioner

Through


Jawad Khan

Advocate High Court

(16)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

C.M.No. _____/2024

IN

Review Petition No. _____/2024

IN

Service Appeal No.2215/2023

Fayaz Ahmad.....(Petitioner)

VERSUS

Gohar Khan, Assistant Professor of Law (BPS-18) Govt. College
Peshawar and others..... (Respondents)

AFFIDAVIT

I, Fayaz Ahmad Deputy Director Establishment (BPS-18),
Directorate of Higher Education, Khyber Pakhtunkhwa, Peshawar
(appellant), do hereby solemnly affirm and declare on oath that
the contents of the accompanying **Application** are true and
correct to the best of my knowledge and belief and nothing has
been concealed from this Honourable Tribunal.

Deponent

CNIC No.21204-9823745-3

ATTEST
FOR

13/24

(7)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Review Petition No. _____/2024

IN

Service Appeal No.2215/2023

Fayaz Ahmad.....(Petitioner)

VERSUS

Gohar Khan, Assistant Professor of Law (BPS-18) Govt. College
Peshawar and others..... (Respondents)

ADDRESSES OF THE PARTIES

PETITIONER:

Fayaz Ahmad
Deputy Director Establishment (BPS-18),
Directorate of Higher Education, Khyber Pakhtunkhwa, Peshawar

RESPONDENTS:

1. Gohar Khan, Assistant Professor of Law (BPS-18) Govt.
College Peshawar
2. Govt. of Khyber Pakhtunkhwa, through Chief Secretary, Civil
Secretariat, Peshawar.
3. Government of Khyber Pakhtunkhwa through Secretary,
Higher Education, Archives & Libraries Department, Peshawar

Petitioner

Through
Jawad Khan
High Court
Jawad Khan
Advocate High Court

A m e l l - 1 A - 8

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 2215/2023

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Gohar Khan, Deputy Director Establishment (BPS-18), Directorate of
Higher Education, Khyber Pakhtunkhwa, Peshawar.....(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary, Higher Education, Archives & Libraries, Department, Peshawar.
3. Fayaz Ahmad, Assistant Professor of History (BPS-18), Govt. College, Peshawar.....(Respondents)

Present:-

FAZAL SHAH MOHMAND,
Advocate

For Appellant

MUHAMMAD JAN,
District Attorney

For official respondents No. 1 & 2

ZIA UR REHMAN TAJIK
Advocate

For private respondent No. 3

Date of Institution.....26.10.2023

Date of Hearing.....28.11.2023

Date of Decision.....28.11.2023

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

"That on acceptance of this appeal the impugned Notification dated 24.07.2023, may kindly be set aside and the appellant may kindly be allowed to perform his duties as Deputy Director

Khan
High Court

*(Establishment), at the Directorate of Higher Education,
Khyber Pakhtunkhwa, Peshawar."*

02. Brief facts of the case are that the appellant was performing his duty as Assistant Professor (BS-18) in the Higher Education Department Khyber Pakhtunkhwa, Peshawar. He was transferred from Government Degree College, Wadpagga, Peshawar and posted as Deputy Director (Establishment) Directorate of Higher Education vide order dated 23.02.2022; that according to the rules notified vide Notification dated 18.09.2019, the post of Deputy Director, at the Directorate of Higher Education is to be filled 25% by promotion on the basis of seniority cum-fitness from amongst the Assistant Directors (BS-17) and 75% by transfer from amongst the Assistant Professor from Government Post Graduate College for a period of three (03) years; that a proposal was moved regarding the Transfer/Posting of the various incumbents including the appellant on 28.04.2023, which was not approved by the Minister as well as respondent No. 2 vide Note dated 03.05.2023 on the ground that the tenure of the appellant was not completed on the said post; that on 29.05.2023 the Chief Minister of the Province of Khyber Pakhtunkhwa was pleased to impose complete ban on transfer; that on 13.07.2023 again a note was processed for the transfer of the appellant wherein it was mentioned that the appellant has completed his tenure of two years and the Election Commission of Pakistan was also approached for the NOC/Approval vide letter dated 14.07.2023 which was responded vide letter dated 20.07.2023 that the NOC has already been granted vide letter dated 31.05.2023. Thereafter the appellant was transferred and posted as Assistant Professor of

Law at Government College Peshawar vide impugned Notification dated 24.07.2023. Feeling aggrieved from the impugned Notification dated 24.07.2023, the appellant filed departmental appeal on 25.07.2023 which was not responded within the statutory period, hence preferred the instant service appeal on 26.10.2023.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned District Attorney for official respondents and learned counsel for private respondent No. 4 and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned Notification dated 24.07.2023 is illegal and void ab-initio; that the appellant has not been treated in accordance with law and rules and as such respondent violated Article 4, 10 & 25 of the Constitution of Islamic Republic of Pakistan, 1973; that the post against which the appellant was transferred is tenure post and the appellant could not be transferred before completion of three years tenure; that the impugned Notification dated 24.07.2023 has been issued during ban period, hence not tenable in the eyes of law; that the impugned Notification dated 24.07.2023 is in violation of Transfer/Posting policy of the Provincial Government; that the impugned Notification dated 24.07.2023 is based on malafide as the Election Commission of Pakistan has held the same as contrary to its directions vide letter dated 03.08.2023, therefore, the impugned Notification is liable to be set aside.

05. Learned District Attorney on behalf of official respondents No. 1 & 2 contended that a Note for Minister Higher Education Department Khyber Pakhtunkhwa was routed which was returned with certain observations to the Department, however it was resubmitted after removal of observations and was accordingly approved/notified; that proper NOC was granted by the Election Commission of Pakistan prior to transfer/posting of the appellant; that the Administrative Department exercises its authority conferred upon it under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and after observing all the codal formalities and proper NOC from the Election Commission of Pakistan, the appellant was transferred and posted within the same district. Learned counsel for the appellant relied on 2013 SCMR Supreme Court 195, 2017 SCMR 798 & 2021 SCMR 1064.

06. Learned counsel for private respondent No. 3 relied on the arguments advanced by learned District Attorney for official respondents.

07. Legal scrutiny of record reveals that the post of Deputy Director is a tenure post to be filled by way of transfer from amongst Assistant Professors (BS-18). The Service Rules in vogue provide the following mechanism for filling the post of Deputy Director in the Directorate of Higher Education, Libraries & Archives Department:

(a) Twenty-five (25%) by promotion on the basis of seniority-cum-fitness from amongst the Assistant Directors (BS-17) with at least five (05) years service in BS-17; &

(b) Seventy-five (75%) by transfer from amongst the Assistant Professor from Govt. Post Graduate College for a period of three (03) years.

08. It is admitted fact that the appellant was posted as Deputy Director in the Directorate of Higher Education vide order dated 23.02.2022 and much

before completion of his tenure a proposal for his transfer from the said post was moved through a Note for Minister Higher Education which was not approved by the Minister on the ground of non-completion of tenure and good performance of the appellant. However, the department through a letter dated 08.05.2023 took up case of Posting/transfer of 9 Assistant Professor and lecturers including the appellant with the Election Commission of Pakistan. Election Commission granted NOC and the respondent department issued order excluding the appellant. After lapse of two months the respondent department again initiated proposal for transfer of the appellant. The official Note submitted to the Minister Higher Education in this respect is misleading which states that the appellant has completed tenure of two years. Infact two years tenure is provided in the General Posting/Transfer Policy of Government Servants devised and followed by the Provincial Government whereas the post of Deputy Director in the Directorate of Higher Education is tenure post for the period of 3 years specified in the Service Rules. Moreover, the NOC from the Election Commission of Pakistan regarding transfer of the appellant is also not clear. In the first instance NOC for posting of the appellant to Government Degree College Ring Road, Peshawar was obtained which was not materialized. When the respondent department took up case for NOC with the Commission for transfer/posting of the appellant to Government College Peshawar in the month of July, 2023, the Commission referred back to the earlier NOC dated 31.05.2023 regarding transfer of the appellant to Government Degree College Ring Road, Peshawar and advised the respondent department to approach the Commission for NOC through the Chief Secretary/Establishment Department. Against this observation and advice of

Commission for
Higher Education
Peshawar

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the Commission the respondent department issued the impugned order dated 24.07.2023 which the commission took cognizance and asked the respondent department through letter dated 03.08.2023 to comply strictly with the NOC granted by the Commission.

09. Another ground advanced by the respondent department in their reply is the case of disciplinary proceedings against the appellant. Record available transpires that a fact finding inquiry against the Director Higher Education and the appellant was conducted and report submitted to the respondent No. 2 in the month of August, 2023 whereas the process of Posting/Transfer of the appellant was initiated in the month of May, 2023 and as such this cannot be made an administrative ground retrospectively for the transfer of the appellant.

10. In view of above findings of legal scrutiny we are constrained to intervene in the matter of Posting/Transfer of the appellant. The appeal in hand is accepted as prayer for and the impugned order dated 24.07.2023 stand set aside. Costs shall follow the event. Consign.

11. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 28th day of November, 2023.

(Rashida Bano)
Member (J)

(Muhammad Akbar Khan)
Member (E)

kamranulohi

10-11-23
10-11-23

10-11-23
10-11-23

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ORDER

28.11.2023 01. Learned counsel for the appellant present. Mr. Muhammad Jan,

District Attorney for official respondents present. Learned counsel for private respondent No. 3 also present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file, consisting of (06) pages, we are constrained to intervene in the matter of Posting/Transfer of the appellant. The appeal in hand is accepted as prayer for and the impugned order dated 24.07.2023 stand set aside. Costs shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 28th day of November, 2023.*

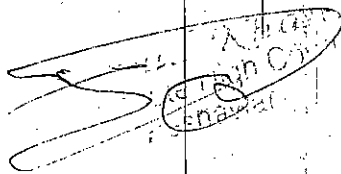


(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)

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Annexure B

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BEFORE THE SERVICE TRIBUNAL PESHAWAR

Gohar Khan VS Government and others

INDEX

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3.	Copy of CP No. 1532/2022	B	19-21
4.	Copy of Charge Assumption Reports	C to C/2	22-24
5.	Copy of Relevant Letters, NDC Dated: 31-05-2023, 14-07-2023, 20-07-2023, 24-07-2023	D to D/3	25-28
6.	Copy of Ombudsman Decision Dated: 02-08-2023, Order Dated: 02-08-2023, 22-08-2023, Inquiry Report and Letters Dated: 19-10-2023 and 20-10-2023	E to F/2	29-37
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Dated

Respondent No. 03

through

Zia-ur-Rahman Tajik

LLB, LLM, Sharia Law

Advocate

Supreme Court of Pakistan

Javed Khan
Advocate High Court
Peshawar

(16)

(D)

BEFORE THE KHYBER PAKHTUNKHAWA SERVICE TRIBUNAL PESHAWAR

GOHAR KHAN VS Government And OTHERS

Written reply on behalf of Respondent No 3

RESPECTFULLY SHEWETH;

Preliminary objections,

1. That The Appellant has not come To This Honorable Tribunal with clean hands And has no locus standi and cause of action to file the instant appeal.
2. That U/S 10 Of Civil Servant Act a Civil Servant can be transfer and posted anywhere, any time in the public interest and exigencies of service and no perpetual rights can be claimed by a civil servant.

(SERVICE APPEAL NO 1678/2022 PARA NO 8 TO 12 copy attached as annexure A)

3. That Transfer And Posting order can be issued before the expiration of completion of tenure and a civil servant shall hold a post till the pleasure of the competent authorities.

2017 SCMR 798 PARA NO 15,16

4. That Transfer is a part of service and it is for the competent authorities to determine that the service of a civil servant is required or not

2021 SCMR 1064 PARA NO 7.

5. That Transfer and posting of a civil servant from one post to another falls within the exclusive domain of the authorities and may not be interfere unless the terms and conditions had adversely affected.

(C P NO 1532/2022 PARA NO 5 copy attached as annexure B)

6. That the Instant appeal is bad for mis joinder of necessary parties and non joinder of proper parties.

7. That the instant appeal is liable to be dismissed with special exemplary cost being filed to cause mental torture to the answering respondent.

8. That the present appeal is based on concealment of facts and misrepresentation because on transfer both the appellant and respondent assume charge of their new assignment and have started performance of duties and the appellant illegally presented himself as Deputy Director.

(Copies of charge assumption report are attached as annexure C to C/2)

9. That the present transfer has been issued after performance of all legal and codal formalities including permission and NOC from the Election Commission of Pakistan.

Gohar Khan
Advocate High Court
Peshawar



(copies of relevant letters, NDC dated 31/5/2023, 14/7/2023, 20/7/2023, 24/7/2023 are attached as annexure D to D/3)

OBJECTION ON FACTS

- 1) That Para No 1 Correct To The Extent Of Appointment And Promotion And Rest Of Is Denied Because Presently Appellant Has Been Found Guilty Of Misconduct By A Fact Finding Inquiry Committee And Regular Inquiry Is Pending Against Him And Provincial Ombudsman Also Issued Direction For Initiation Of Inquiry Against Responsible Civil Servant.
(Copy Of Ombudsman Decision Dated 2/8/2023, And Order Dated 2/8/2023, 22/8/2023 And Inquiry Report And Letter Dated 19/10/2023, 20/10/2023 Are Attached As E To F/2)
- 2) That Para No 2 Need No Reply However Completion Of 3 Years Duration is Not Essential
- 3) That Para No 3 Need No Reply Being Not Relevant To The Answering Respondent.
- 4) That Para No 4 Amount To Misleading The Court Because NDC, Was Also Issued In Favor Of The Answering Respondent.
- 5) That Para No 5 needs no reply, not related to the answering Respondent, however proper permission and NDC was obtained by official respondent for the present posting and transfer of appellant/ Respondent NO 3.
- 6) That Para no 6 does not pertain to answering respondent, however proper permission was granted by election commission of Pakistan for transferring and posting, and completion of tenure is not the essential ingredient as explained in preliminary objections
- 7) That Para no 7 is illegal because the appellant transfer order was issued in public interest by official respondent being the competent authority for issuing the same
- 8) That Para No 8 needs no reply
- 9) That Para No 9 is incorrect because the transfer and posting order was issued in accordance with law and justice

Reply as to Grounds

- i. That ground A, B and C are incorrect, completely denied and the appellant has been treated in accordance with law, and completion of tenure by civil servant on particular post is not the requirement of law and under section 10 of civil servant act, A civil servant can be transfer, posted anywhere and at any time in the public interest.
- ii. That Ground D is incorrect, Because permission is obtained from election commission by official respondent before issuing the transfer order

- iii. That ground E is amount to misleading the court because the permission was given by the election commission of Pakistan in favor of appellatant which amount to concealment of facts
- iv. That ground F,G,H are incorrect completely denied, detailed reply has already been given in the above Paras

Its Therefore Humbly Prayed that On Acceptance Of instant Reply The Services Appeal May Kindly Be Dismissed With special Costs.

[Signature]
 Respondent No 3
 Through *[Signature]*
 Zia ur Rahman Tajik

Advocate Supreme Court of Pakistan

Verification

Its verified on oath that contents of the reply as true and correct to the best of my knowledge

[Signature]
 Deponent



[Handwritten signature]

BEFORE THE SERVICE TRIBUNAL PESHAWAR

Gohar Khan VS Government and others

Reply To The Application For Temporary Injunction

Respectfully Shweth.

Preliminary objection

- i. That the instant application is based on malafidy, concealment of facts, misrepresentation and cheating by personation because the applicant and respondent have already assume charge of respective posts but astonishingly the applicant represent himself before this honorable tribunal as a deputy director

Reply as to facts / grounds

1. That Para No 1 needs no reply
2. That Para NO-2 needs no reply
3. That para 3 is incorrect and false because from facts and circumstances the case of applicant is not fall within the prima facie ambit
4. That balance of conveniences is also not lies in favor of applicant
5. That para no 5 is incorrect and amounts to misleading the courts

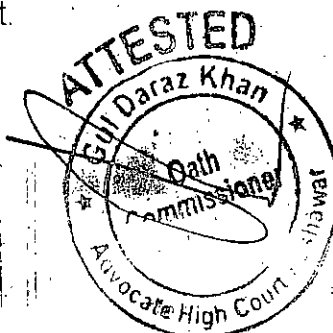
Its Therefore Humbly Prayed On Acceptance Of This Reply the temporary injunction application May Kindly Be Dismissed With Costs

Respondent through

Zia UR Rahman Tajik (ADVOCATE SUPREME COURT OF Pakistan)

Affidavit

I Fayyaz ahmad Respondent No-3, as per instruction of my client, do hereby solemnly affirm and declare on oath that the contents of the reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



Zia UR Rahman Tajik
Advocate High Court
Peshawar

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Service Appeal No 1678/2022 titled "Parveen Begum vs Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" decided on 05.01.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Mian Muhammad, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Annex - A

**BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
MIAN MUHAMMAD ... MEMBER (Executive)**

Service Appeal No.1678/2022

Date of Presentation of Appeal.....21.11.2022
Date of Hearing.....05.01.2023
Date of Decision.....05.01.2023

**Mst Parveen Begum, District Education Officer (F) (BPS-19),
Elementary & Secondary Education Department, Karak**
.....(Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary to the Government of Khyber Pakhtunkhwa Elementary and Secondary Education Department, Civil Secretariat, Peshawar.
3. Director Khyber Pakhtunkhwa Elementary and Secondary Education Department, Near Malik Saad Shaheed BRT Station, Firdos.
4. Mst Fanoos Jamal, Deputy DEO (F) (BPS-18) Elementary & Secondary Education Department, District Khyber

.....(Respondents)

Present:

Mr. Noor Muhammad Khattak,
Advocate.....For appellant.

Mr. Muhammad Adeel Butt,
Additional Advocate General.....For official respondents.

Mr. Muhammad Asif Yousafzai,
Advocate.....For Private respondent.

**SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, READ
WITH CLAUSE NO. XIV OF THE KHYBER PAKHTUNKHWA
GOVERNMENT TRANSFER POLICY AGAINST THE**

Attested
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Service Appeal No.1678/2022 titled "Parveen Begum vs-Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" decided on 03.01.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Aman Muhammad, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

IMPUGNED POSTING/TRANASFER ORDER ENDS. NO. SO(MC)E&SED/4-16/2022PT/TC DATED 20.10.2022 OF RESPONDNET NO.2 WHEREIN APPELLANT WAS TRANSFERRED AND POSTED AS A DISTRICT EDUCATION OFFICER (F) KOHISTAN UPPER AND AGAINST WHICH APPELLANT FILED DEPARTMENTAL APPEAL WHICH IS STILL PENDING WIHTOUT DISPOSAL.

JUDGMENT

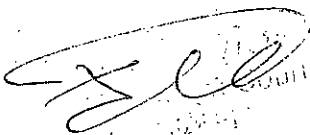
KALIM ARSHAD KHAN CHAIRMAN: Through this service appeal, the appellant has impugned posting/transfer order bearing Endst No.SO(MC)E&SED/4-16/2022PT/TC dated 20.10.2022, whereby the appellant was transferred from the post of District Education Officer (F) Karak and posted as District Education Officer (F) Kohistan Upper.


2. The prayers in the appeal are to:

- i. *Declare the impugned order of respondent No.2 bearing Endst No.SO(MC)E&SED/4-16/2022PT/TC dated 20.10.2022 as illegal, unlawful, without lawful authority, against the Posting Transfer Policy of Khyber Pakhtunkhwa and set aside the same.*
- ii. *Direct the respondents to allow the appellant to serve as a District Education Officer (F) Karak till the completion of her normal tenure as per Posting, Transfer Policy of Government of Khyber Pakhtunkhwa.*
- iii. *Any other reliefs deemed appropriate in the circumstances of the case and not specifically asked for may also be graciously granted to the appellant.*

3. According to the appeal, the appellant was serving as District Education Officer (F) Karak, having been posted there on 05.07.2022 vide Notification

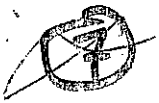
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Service Appeal No.1678/2022 titled "Parveen Begum-vs-Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" decided on 05.01.2023 by Division Bench comprising Kalun Arshad Khan, Chairman, and Mian Muhammad, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.



No. SO(MC)E&SED/4-16/2022/Posting/Transfers/MC, was transferred from the said post just after three months vide the impugned transfer Notification No. SO(MC)E&SED/4-16/2022PT/TC dated 20.10.2022 to Kohistan Upper purely on political motivation; that the appellant initiated departmental action against Wasiullah Driver, who was cousin of the sitting MNA Shahid Ahmad Khattak; that the appellant paid surprise visits and took actions against Mst. Mehwish Saeed PET along with two others, as they were found absent without leave application or prior approval; that Mst. Mehwish Saeed was wife of the said MNA; that the impugned order was also the result of non-compliance of the directions of the sitting MNA; that the private respondent was Deputy DEO (F) in BPS-18, who was transferred in place of the appellant, in her own pay and scale, which act was malafide; that the impugned order was against the Policy of the Government; that the appellant filed departmental appeal, which was not decided and she filed writ petition before the honourable Peshawar High Court; that the honourable Peshawar High Court, vide judgment dated 03.11.2022, directed respondent No.1 to decide the departmental appeal within 10 days and in case the departmental appeal is not decided within 10 days, the appellant might approach the competent forum directly, hence, this appeal.

4. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeals by filing written replies raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

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Asad Ali
Advocate High Court
Peshawar

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Service Appeal No.1678/2022 titled "Parveen Begim-vs-Governemint of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" decided on 05.01.2023 by Division Bench comprising, Kafil Arshad Khan, Chairman, and Mian Muhammad, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

It was specifically urged in the reply of the official respondents that after 37th day of the transfer the appellant went to the office of the District Education Officer (F) Karak and committed assault by breaking locks of the doors and illegally occupying the said office despite the fact that the private respondent had assumed the charge on 24.10.2022 and had drawn salary against the post of DEO(F) Karak; that the appellant had been treated as per law, rules, Transfer and posting policy and in terms of Section 10, of the Khyber Pakhtunkhwa Civil Servants Act, 1973 as the appellant, being a grade 19 officer, was liable to serve anywhere in the province, wherever her services are required by the competent authority in view of Section 2(b) of the said Act; that the appellant had been found guilty of willful absence from duty against the post of DEO(F) Kohistan Upper with effect from the date of transfer till 29.11.2022 without any formal leave sanction order and approval of the competent authority; that without waiting for the period prescribed by law, the appellant approached this Tribunal. The private respondent also submitted reply and contended that the impugned notification had already been acted upon by the private respondent as she had assumed the charge of the post of the DEO(F) Karak and had drawn salary against the same.

5. We have heard learned counsel for the appellants, learned Additional Advocate General for the official respondents and learned counsel for the private respondent.

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Service Appeal No.1678/2022 filed "Parveen Begum vs Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" decided on 03.01.2023 by Division Bench comprising Justice Arshad Khan, Chairman, and Mst. Muhammad, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.



6. The learned counsel for the appellant argued that the appellant was prematurely transferred; that the transfer order was result of political pressure; that the order was passed by incompetent authority and that the impugned transfer notification was in disregard of the policy of the Government. He also reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General and learned counsel for the private respondent refuted the arguments of the learned counsel for the appellant and supported the issuance of the impugned notification.

7. There is no denial of the fact that the appellant was transferred from the post of the DEO(F) Karak just after three months of her posting but while granting relief in favour of a party the conduct of that party is always seen and considered in perspective. In this case the official respondents, in their comments, have stated in categorical terms that the appellant had not only not complied with the order of the competent authority by not assuming the charge on the new assignment for quite long time but also presented herself as an undisciplined officer. The official respondents, in their reply/comments, leveled serious allegations on the appellant of her going to the office of the DEO(F) Karak, after 37th day of the transfer, breaking the locks and illegally occupying the office despite the fact that the incumbent private respondent No.4 (Mst. Fanoos Jamal) had already assumed the charge of the post of DEO(F) Karak on 24.10.2022. The factum of assumption of charge by Mst. Fanoos Jamal is supported by the charge assumption report annexed with the reply. Similarly, the allegations made in the reply regarding breaking the locks

Arshad Khan
Additional Judge
Peshawar

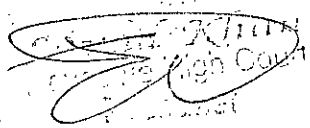
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Service Appeal No.1678/2022 titled "Parveen Begum-vs-Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" decided on 03.01.2023 by Division Bench comprising Justice Khatib, Chairman, and Justice Khan, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

and illegally occupying the office of DEO(F) Karak as well as assumption of charge by Mst. Fanoos Jamal have not been denied during the course of arguments. The appellant even failed to deny the allegations and assumption of charge by Mst. Fanoos Jamal by submitting any rejoinder in response to the reply/comments filed by the official respondents. The learned counsel for the private respondent produced some official documents all signed on different dates from 02.11.2022, 04.11.2022, 14.11.2022 and 22.11.2022 by the private respondent in her capacity as DEO(F) Karak, which were also not denied nor controverted by the appellant. These letters further strengthened the contention of the respondents that the private respondent had assumed the charge on 24.10.2022, had actualized and drawn her salary against the post of DEO(F) Karak and had also been performing duties. Therefore, the contents of the comments filed by the authorities as well as the official documents issued under the signature of private respondent had gone un rebutted/unchallenged. During the tug of war between the appellant and the private respondent, when once the appellant had approached this tribunal and when once the private respondent had assumed the charge it did not suit to the majesty of a grade 19 officer (the appellant) of education department and that too lady to have gone to the office of the District Education Officer (F) Karak and have broken the locks and occupied the office. Instead of indulging into unwanted activities, which appear to be those of an unbecoming officer, the appellant ought to have adopted legal way by moving/informing the tribunal about the wrong, if any, happened to her in performance of her duties, in case she was of the view that she was right to occupy the office of the DEO(F)



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Service Appeal No.1678/2022 titled "Parveen Begum vs-Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" decided on 05.01.2023 by Division Bench comprising Kalam Arshad Khan, Chairman, and Mian Muhammad, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Karak, after getting the impugned transfer order suspended from the tribunal on 28.11.2022. As against that there is charge assumption report dated 24.10.2022 of private respondent i.e. more than a month before the passage of the conditional suspension order by this Tribunal passed on 28.11.2022 that the operation of the impugned order stood suspended, if not already acted upon. In this case, the impugned order was admittedly acted upon before issuance of the suspension order by this Tribunal, which fact has otherwise rendered this appeal fruitless besides where was the appellant, during the period from her transfer made on 20.10.2022 till 28.11.2022, is also not known. Was she on leave or on duty, is an unanswered question which was required to have been answered by the appellant especially when she was issued show cause notice by the department regarding non-compliance of transfer order and of her absence from duty since her transfer. The copy of show cause notice was produced by the learned law officer during the course of arguments. Even the issuance of the show cause notice was not denied by the appellant's learned counsel during the arguments. Vide letter No.10-14 dated 29.11.2022, the private respondent had lodged a complaint to the Secretary Elementary and Secondary Education Khyber Pakhtunkhwa, against the appellant for her illegal interference in the official business. Copy of this letter has been annexed with the reply of the private respondent and a copy was also produced by the learned counsel for the appellant during the course of arguments. The letter stated that after issuance of the impugned transfer order, the private respondent assumed the charge of the post of DEO(F) Karak and continued office work, field visits and also attended official meetings with

*Advocate High Court
Peshawar*

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Service Appeal No.1678/2022 titled "Parveen Begum vs Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" decided on 03.01.2023 by Division Bench comprising Justice Arshad Khan, Chairman, and Munir Muhammad, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.



district administration, directorate and secretariat; that she visited 38 schools in 40 days at district Karak and all the reports were uploaded on PMRU website; that she also punched her salary as DEO(F) Karak; that the appellant remained absent/disappeared during that period and she also illegally occupied the official vehicle; that she (the private respondent) made a request vide letter No.4607-9 dated 11.11.2022 to direct the appellant to hand over the official vehicle to the private respondent as official business was being suffered badly; that the Secretary Elementary and Secondary Education Khyber Pakhtunkhwa directed the appellant vide letter No.SOG/E&SE/1-40/ACR/2022 dated 15.11.2022 to hand over the vehicle to the private respondent; that the official vehicle was handed over by the appellant to the private respondent on 16.11.2022 contending that owing to her medical leave, the vehicle was retained by her but as per the office record the appellant had not obtained any medical leave; that the appellant reoccupied the chair of the DEO(F) Karak on 29.11.2022 claiming that this Tribunal has suspended her transfer order; that she misinterpreted the order sheet; that the appellant had been trying to create hurdles in smooth official business; that the appellant illegally took into possession the diary and dispatch registers; that a few clerical staff provided her all the official record and they continued to facilitate her; that the appellant refused to obey the transfer order issued by the competent authorities; that such a trespass in the government office brought bad name and reputation for the department as a whole and would encourage the other officers to follow her footsteps. At the end a request was made for guidance. A letter bearing No.43-49 dated 01.12.2022 was also written by the private respondent to the

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Chief Justice
Khyber Pakhtunkhwa High Court
Peshawar

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Service Appeal No. 1678/2022 titled "Parveen Begum vs Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" decided on 03.01.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Mian Muhammad, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.



District Police Officer, Karak reporting that the appellant along with Mr. Tariq Senior Clerk and Mr. Asad Dispatcher entered the office of DEO (F) Karak and took away diary and dispatch registers and other official record; that the appellant along with the above named two officials on 01.12.2022, once again, disrupted the professional environment of DEO(F) office Karak; that the appellant encroached the office and broke the locks of the office; that they illegally took into possession office record and important files; that the appellant illegally occupied the office and chair of the DEO(F); that there was uncertain and tense environment in the office and the appellant had not only disrupted the professional environment but the non-professional and bullying attitude had created chaos in the office; that the appellant arrogated the authority of the competent authorities. These letters were also not denied by the appellant. So the conduct of the appellant by not complying with the order of the competent authority, her prima facie absence from duty, breaking the locks of the office of the DEO(F) Karak, occupying the same and suppressing the facts narrated above, have disentitled the appellant to the desired relief at least prayed in this appeal. Reliance is placed on 2000 SCMR 1117 titled "Akhtar Hussain versus Commissioner Lahore" regarding disentanglement of a party for the conduct of the party. 1988 PLC (CS) 844 titled "Ahmed Waqar versus Capital Development Authority, Islamabad" can also be referred in this regards.

8. Keeping in view the above conduct of the appellant, her contention of premature transfer against the provisions of the Posting and Transfer Policy, is

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Service Appeal No.1678/2022 titled "Parveen Begum vs Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" decided on 03.01.2023 by Division Bench comprising Justice Arshad Khan, Chairman, and Justice Muhammad, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.



untenable as in the circumstances described above, the exigency and public interest would be to keep the impugned order intact and in such a situation the powers of the authorities vested in them under section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 appear to have rightly and fairly been exercised. Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 pertains to the posting and transfers of the civil servant and is reproduced for ready reference:

"10. Posting and transfers.— Every civil servant shall be liable to serve anywhere within or outside the Province in any post under the Federal Government, or any Provincial Government or local authority, or a corporation or body set up or established by any such Government:

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:

Provided further that where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve."

According to section 10, desired posting is not the perpetual right of a civil servant and the department concerned can transfer any civil servant to serve at the given place as mentioned in the transfer/posting order, while the civil servant cannot refuse compliance. Though, a ground for malafide can be based and agitated against an arbitrary, fanciful posting order based upon ill-will and inherent biases of the superior authorities. (See judgment dated 16.08.2022 of the honorable Peshawar High Court in Writ Petition No.439-B of 2022 titled "Hayatulah Khan versus Secretary Communication and Works Khyber Pakhtunkhwa and another"). The facts and circumstances enumerated

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Service Appeal No.1678/2022 titled "Parveen Begum vs-Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" decided on 03.01.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Mian Muhammad, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.



above do not show any malice, arbitrariness, fancifulness and biasness of the official respondents/authorities.

9. The Central Administrative Tribunal - Delhi, in the case of Sh. Jawahar Thakur- vs- Union Of India held on 19 June, 2015 that it is more than stare decisis that transfer is an incidence of service and it is for the executive/administration to decide how to and where to use its employees subject to the conditions of their appointment in the best interest of the organization and public service. It is not always possible and feasible to record strong reasons for allowing an officer to continue at a particular station for a few years or more or less.

10. In the case of Laxmi Narain Mehar v. UOI & Ors., JT 1997 (1) 24 Page 460, Hon'ble Supreme Court of India viewed that in view of the express indication for need of experienced staff at the respective places, the transfer order cannot be said to be arbitrary. Therefore, services of the appellant, admittedly, because of her being a senior and experienced officer, might be needed by the authority at the new place of posting.

11. The Hon'ble Supreme Court in Mrs. Shilpi Bose and Others v. State of Bihar and Others 1991 Supp.(2) SCC 659 went into in the issue of guidelines and has upheld the authority of the employers to transfer the employee in the following words:-

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Service Appeal No.1678/2022 titled "Parveen Begum-vs-Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" decided on 05.01.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Ishaq Muhammad, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

"4. In our opinion, the Courts should not interfere with a transfer order which are made in public interest and for administrative reasons (unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide, A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the Competent Authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

12. In State of U.P. and Others v. Goverdhan Lal, : 2004 (3) SLJ 244 (SC)

it has been held thus:-

"8. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision of (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the Competent Authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

9. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they

Chief Justice
Khyber Pakhtunkhwa Service Tribunal
Peshawar

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Service Appeal No 1678/2022 titled "Parveen Begum vs Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" decided on 05.01.2023 by Division Bench comprising Justice Arshad Khan, Chairman, and Mian Muhammad, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.



are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of Competent Authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmise and except for strong and convincing reasons, no interference could ordinarily be made within an order of transfer.

From the aforementioned, it is evident that the posting to any particular place is not a legal right. Article 14 guarantees equality before law only. Right to equality is a positive concept. One can allege violation of Article 14 only where there is enforceable legal right. In the absence of such right, question of discrimination or violation of Article 14 does not arise."

13. The august Apex Court of India further goes ahead to the extent of holding that an employee is to obey the transfer order before he earns a right to challenge the same in Gujarat State Electricity Board versus Atma Ram Sunagomal Poshni (1989) 2 SCR 357 and further that even if there be non-compliance with the with the provisions of the posting norms, order of transfer will not be vitiated;

"2. Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would

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Service Appeal No.1678/2022 titled "Parveen Begum-vs-Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" decided on 05.01.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Mian Muhammad, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

expose himself to disciplinary action under the relevant Rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other."

14. Last but not the least, this appeal has been filed without waiting for 90 days' waiting period provided under the law for the appellate departmental authority to decide the departmental appeal but today copy of a Notification No. SO(MC)E&SE/4-16/2022/Posting/Transfer/MC dated 19.12.2022 was produced whereby the departmental appeal of the appellant was regretted. The appellate order regretting appeal passed by the appellate authority has also not been challenged.

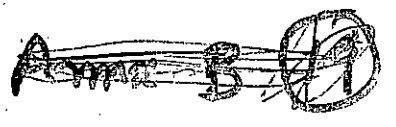
15. For the above stated reasons this appeal fails and is dismissed with costs. Consign.

16. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 5th day of January, 2023.*

MIAN MUHAMMAD
Member (Executive)

KALIM ARSHAD KHAN
Chairman

Accepted
Court
Peshawar



IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Umar Ata Bandial, HCJ
Mrs. Justice Ayesha A. Malik
Mr. Justice Athar Minallah

CIVIL PETITION NO. 1532 OF 2022
(Against the judgment dated 27.04.2022 of the Baluchistan Service Tribunal, Quetta passed in Service Appeal No.62 of 2022)

Dr. Muhammad Saleem ... Petitioner

Versus

Government of Baluchistan, and others ... Respondent(s)

For the petitioner: Mr. Kamran Murtaza, Sr.ASC
For respondent No.1: Mr.M.Ayaz Swati, Addl.AG Baluchistan.
For Respondent No.3: Ms. Gulzar Butt, ASC
Date of hearing: 20.01.2023

ORDER

Athar Minallah, J. Dr. Muhammad Saleem

(**petitioner**) has sought leave against judgment, dated 27.4.2022, of the Baluchistan Service Tribunal (**Tribunal**).

2. The controversy stems from the transfer order of Dr. Shamsullah Bazai (**respondent**) from the post of Principal, Loralai Medical College (**College**). The respondent was posted as Principal of the College vide notification, dated 04.12.2020. The competent authority, vide notification dated 17.10.2021, directed the respondent to report to the Specialized Healthcare and Medical Education Department, but the notification was later withdrawn vide notification, dated 26.10.2021. He was transferred from the post of the Principal of the College and to the post of Professor (B-20) and Head of Ophthalmology Department, Bolan Medical College, vide notification dated 11.02.2022, while the petitioner replaced him as

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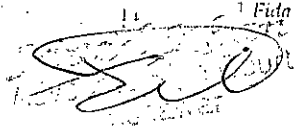
Principal of the College. The respondent filed a departmental appeal and it was rejected by the competent authority vide order dated 17.2.2022. He then preferred an appeal before the Tribunal which was allowed vide the impugned judgment dated 27.4.2022.

3. We have heard the learned counsels for the parties and the Additional Advocate General of Baluchistan.

4. The respondent had challenged his posting/transfer orders. He had taken the stance in his departmental representation that allowing him to continue to hold the post of the Principal of the College was in the public interest. Likewise, the Tribunal had concluded that the transfer of the respondent from the latter post was not in the public interest. The Tribunal had raised concerns regarding the status of governance, besides placing reliance on the judgments of this Court, so as to justify interference with the executive functions in connection with posting/transfer of employees. The judgments relied upon were distinguishable, while the principles enunciated in the context of the executive domain with respect to transfer and postings of employees/civil servants appears to have been excluded from consideration.

5. This Court has already highlighted the scope of interference with the executive function of postings and transfers of government officials.¹ It has been held that the transfer of a government official from one place or post to another to meet the exigencies of service was within the exclusive domain and competence of the competent authorities of the executive organ of the State and, ordinarily, it is not amenable to interference except in extraordinary circumstances. This principle is subject to the

¹ *Fida Husain Shah and others v. Government of Sindh and others* (2017 SCMR 798)



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condition that the terms and conditions of service are not adversely affected. Moreover, an official has no vested right to claim to be posted/transferred to any particular place of his choice, nor is there a vested right to continue to hold a particular post at a particular place. The transfer and posting of a government servant is limited to the given tenure, if any, or at the pleasure of the competent authority. The question of whether the posting and transfer made by the competent authority was in the public interest is not open to judicial review by a tribunal or court and utmost caution and restraint ought to be exercised in interfering with or encroaching upon the exclusive domain of the executive authorities. The decisions in connection with posting and transfer of government servants must not be subjected to judicial scrutiny unless a law has been clearly violated or mala fide and malice is established without the need for making an inquiry. The interference of the Tribunal or courts in matters relating to postings and transfers is, therefore, an encroachment upon the executive domain and in breach of the seminal principle of separation of powers embedded in the Constitution. The Tribunal was not justified in interfering with the posting/transfer orders of the respondent nor was it in consonance with the settled principles relating thereto. The impugned judgment is, therefore, set-aside and with leave of this Court the petition is converted into an appeal and allowed.

Chief Justice

Judge

Judge

Islamabad the,
 20th January, 2023
APPROVED FOR REPORTING
 (Aamir Sh.)

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Said Khan
 Advocate High Court
 Peshawar

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CERTIFICATE OF TRANSFER OF CHARGE

Certified that I have assumed the charge of **Assistant Professor of Law (BPS-18)** at Government College Peshawar today on 25/07/2023 (F.N) vide Notification No. So(C-II)/HED/2-5/2023/ Fayaz Ahmad dated 24 July 2023 by Government of Khyber Pakhtunkhwa, Higher Education, Archives and Libraries Department.

Station: - Peshawar

Signature of the:
Relieved Govt. Servant:
Name: **Fayaz Ahmad**
Designation **Assistant Professor (BPS-18)**

Fayaz Ahmad
25/07/2023 (F.N)

Signature of the:
Relieving Govt. Servant
Name: **Gohar Khan**
Designation: **Assistant Professor of Law (BPS-18)**

Gohar Khan
25/07/2023

Cell No: 0334-5335773
Dated: 25/07/2023 (F.N)

OFFICE OF THE PRINCIPAL GOVERNMENT COLLEGE PESHAWAR

Ends: No 2282-87

Dated Peshawar the 25/07/2023

Copy forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. Director Higher Education Department, Khyber Pakhtunkhwa, Peshawar.
3. PS to Secretary, Higher Education Department.
4. Deputy Director (IT) HEMIS, Peshawar.
5. Focal Person (HEMIS) Local College.
6. Officer Concerned.
7. File record.

[Signature]
Principal
Govt. College Peshawar

Abbas Khan
Advocate High Court
Peshawar

38

CERTIFICATE OF TRANSFER OF CHARGE

1. In pursuance of the Government of Khyber Pakhtunkhwa Higher Education Archives & Libraries Department Notification No.SO(C-II)/HED/2-5/2023/Fayaz Ahmad: dated 24.07.2023. We handed over /Taken over charge of the post of Deputy Director (Establishment) on 24.07.2023 (A.N).

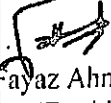
Signature of relieved
Government Servant
Station Peshawar. Designation

(Mr. Gohar Khan)
Deputy Director (Establishment) (BS-18)



Signature of relieving
Government Servant
Designation

(Mr. Fayaz Ahmad)
Deputy Director (Establishment) (BS-18)



Dated: - 24.07.2023 (A.N)

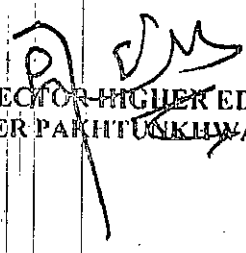
**OFFICE OF THE DIRECTOR, HIGHER EDUCATION, KHYBER
PAKHTUNKHWA, PESHAWAR.**

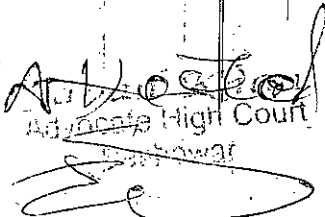
Endst: No. 1387-92 / Dated Peshawar the 24/07 /2023.

Copy forwarded to the: -

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. P.S to Secretary Higher Education Govt. of Khyber Pakhtunkhwa, Peshawar.
3. PA to Director. Higher Education Khyber Pakhtunkhwa, Peshawar.
4. Cashier. Local Directorate.
5. Officers concerned.

**DIRECTOR HIGHER EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR**




Advocate High Court
Peshawar

39

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Annex-C/2

UNIVERSITY OF HIGHER EDUCATION PESHAWAR DEPUTY DIRECTOR (ESTABLISHMENT)			
Sr.	NAME	FROM	TO
1.	MUHAMMAD SHAIS KHAN	22/2/2005	10/0/2007
2.	AMINULLAH KHAN	12/10/2007	11/9/2008
3.	GHULAM ALI	11/9/2008	2/3/2009
4.	SARDAR HUSSAIN	3/3/2009	6/9/2011
5.	GHULAM ALI	7/9/2011	
6.	STAHR SHAH	28/1/2013	30/5/2013
7.	MUHAMMAD ROZ KHAN	14/5/2013	15/12/2014
8.	MUHAMMAD DASHIR KHAN	9/1/2015	31/1/2022
9.	GOHAR KHAN	24/2/2022	24/7/2023
10.	FAYAZ AHMAD	24/7/2023	

Attested
3/2

Academy's Sign Count
Peshawar

90



NO.P. 10 (1)/2023-Elec-II
ELECTION COMMISSION OF PAKISTAN

“Secretariat”
 Constitution Avenue, G-5/2,
 Islamabad, the 31st May, 2023.

Annex - D

To.

Mr. Abdul Wali Khan,
 Section Officer (Colleges-II),
 Higher Education Archives & Libraries Department,
 Government of Khyber Pakhtunkhwa,
Peshawar.

Subject:

NOC FOR POSTING / TRANSFER OF DEPUTY DIRECTORS (BS-18).

Dear Sir,

I am directed to refer to your letter No. SO(C-II)/HED/2-5/2023/NOC dated 8th May, 2023 on the subject cited above and to say that the Hon'ble Commission has been pleased to accede your request for transfer / posting in respect of the following officers:

Sr. No	Name of Officers	From	To
✓ 1.	Mr. Fayaz Ahmad, Assistant Professor of History (BS-18)	Govt. College Peshawar.	Deputy Director (Establishment) at Directorate of Higher Education
✓ 2.	Mr. Gohar Khan, Deputy Director (Establishment) (BS-18)	Directorate of Higher Education.	Assistant Professor of Law (BS-18) at GDC Ring Road, Peshawar
3.	Mr. Imran Khan, Assistant Professor of Urdu (BS-18)	Govt. College Peshawar	Deputy Director (Monitoring) at Directorate of Higher Education
4.	Mr. Jamil Ur Rehman, Deputy Director (Monitoring) (BS-18)	Directorate of Higher Education.	Assistant Professor of Pak Study (BS-18) at Govt. Hakim Abdul Jalil Nadyi Degree, College, Peshawar
5.	Mr. Said Wali, Assistant Professor of Urdu (BS-18)	Govt. College Peshawar	BS Coordinator at Directorate of Higher Education
6.	Ms. Farrukh Naz, Assistant Professor of English (BS-18)	GGDC Nahaqi Peshawar	GGDC Chagarmatti, Peshawar
7.	Ms. Mussarat Huma, Assistant Professor of Law (BS-18)	GGDC Chagarmatti, Peshawar	GGDC Nahaqi Peshawar
8.	Mr. Zabiah Ullah, Lecturer in Islamiyat (BS-17)	Govt. College Peshawar	GDC Naguman, Peshawar
9.	Mr. Nasir Ali, Lecturer in HPE (BS-17)	GPGC Charsadda	Govt. College Peshawar.

Yours' faithfully,

(Tauqir Iqbal)
 Deputy Director (Election-II)

Copy forwarded for information to:

The Provincial Election Commissioner, Khyber Pakhtunkhwa, Peshawar.

(Tauqir Iqbal)
 Deputy Director (Election-II)

ELECTION
 628
 31-05-2023

Advocate High Court
 Peshawar

Attested
 32

IMMEDIATE



GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT

No.SO(C-II)/HED/2-5/2023/NOC
Dated Peshawar the July 14, 2023

To

The Election Commission of Pakistan,
Islamabad.

SUBJECT: NOC FOR POSTING OF DEPUTY DIRECTOR (ESTABLISHMENT) AT
DIRECTORATE OF HIGHER EDUCATION, KHYBER PAKHTUNKHWA

Dear Sir,

I am directed to refer to your notification No.F.No.2/(1)/2023-Cord dated 22-01-2023 and to state that the competent authority has approved posting/transfer of the following teaching staff of college cadre:-

S.no	Name & Designation	From	To	Remarks
1.	Mr. Gohar Khan, Assistant Professor/Deputy Director (BS-18)	Directorate of Higher Education	As Assistant Professor of Law (BS-18) at Govt. College Peshawar	Vice Sr.No.2
2.	Mr. Fayaz Ahmad, Assistant Professor of History (BS-18)	Govt. College Peshawar	As Deputy Director (Establishment) Directorate of Higher Education	Vice Sr.No.1

In view of the above, prior approval/NOC of the Election Commission of Pakistan is solicited/required for issuance of the said approved notification, please.

Encl: as Above.

Yours faithfully,

(ABDUL WALI KHAN)
SECTION OFFICER (COLLEGES-II)

ENDST: NO. & DATE EVEN.

Copy is forwarded to the:-

1. Provincial Election Commissioner, Khyber Pakhtunkhwa.
2. PS to Secretary, Higher Education Department.
3. PS to Special Secretary, Higher Education Department.

SECTION OFFICER (COLLEGES-II)

High Court
Peshawar

49

(27)

No.F.10 (I)/2023-Elec-II
ELECTION COMMISSION OF PAKISTAN



To,

Secretariat,
Constitution Avenue, G-5/2,
Islamabad, 20th July, 2023.

Annex-D/2

Mr. Abdul Wali Khan,
Section Officer (Colleges-II),
Higher Education Archives &
Libraries Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: - NOC FOR POSTING OF DEPUTY DIRECTOR (ESTABLISHMENT) AT
DIRECTORATE OF HIGHER EDUCATION, KHYBER
PAKHTUNKHWA.

Dear Sir,

I am directed to refer to your letter No. SO(C-II)HED/2-5/2023/NOC/4016-17 dated 14th July, 2023 on the subject cited above and to say that the Hon'ble Commission has already acceded to your request and NOC has been issued vide this office letter dated 31st May 2023 (copy enclosed). Furthermore, it has been decided by the Hon'ble Commission, "No case should be sent directly by the departments to the Commission, rather should be sent through Establishment or S&GAD departments".

2. In view of the above mentioned directions of the Hon'ble Commission, it is advised that all the cases of transfer / posting and recruitment may be sent through Chief Secretary/ Establishment or S&GAD departments.

Yours' faithfully.

MUKABER

(Mukaber Khan)
Assistant Director (Elections-II)

Abdul Wali Khan
Advocate High Court
Peshawar

Attested
382



GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT

Dated Peshawar the July 24, 2023

NOTIFICATION

Annex-D/3

NO.SO(C-II)/HED/2-5/2023/Fayaz Ahmad: Consequent upon approval/NOC of Election Commission of Pakistan vide letter No.F.10(1)/2023-Elec-II dated 20.07.2023, Posting/Transfer of the following Assistant Professors of college cadre are hereby ordered in the best public interest with immediate effect:-

S#	Name/Designation/BPS	From	To	Remarks
1.	Mr. Gohar Khan, Assistant Professor/Deputy Director Establishment (BS-18)	Directorate Higher Education Khyber Pakhtunkhwa, Peshawar	As Assistant Professor of Law (BS-18), at GC, Peshawar	Vice Sr. No.2
2.	Mr. Fayaz Ahmad, Assistant Professor of History (BS-18)	GC, Peshawar	As Deputy Director (Establishment) Directorate of Higher Education, Khyber Pakhtunkhwa	Vice Sr. No.1

-Sd-
SECRETARY TO
GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION DEPARTMENT

ENDST: NO. & DATE EVEN:

Copy is forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, Higher Education, Khyber Pakhtunkhwa, Peshawar.
3. Director-IT, HEMIS Cell, Higher Education Department.
4. Principal, Govt. College, Peshawar.
5. PS to Secretary Higher Education Department.
6. Officer concerned.
7. Master File.

pol
AM
SECTION OFFICER (COLLEGES-II)
24/7/23

Attested
32

[Signature]
PESHAWAR



OMBUDSMAN (مفتی) SECRETARIAT,
GOVERNMENT OF KHYBER PAKHTUNKHWA

Annex - E

CLOSURE FINDINGS	
1	COMPLAINT NO. PO/Complaint/351/02/2023
2	NAME & ADDRESS OF THE COMPLAINANT Mr. Irshad Ahmed s/o Wahid Gul r/o VPO Inzer Banda, Tehsil: Takht-E-Nasrati, District Karak. (Contact# (306-8088649).
3	NAME OF THE AGENCY COMPLAINED AGAINST 1. Secretary to Government of Khyber Pakhtunkhwa, Higher Education Department, Peshawar. 2. Director, Directorate of Higher Education Khyber Pakhtunkhwa Peshawar. 3. Principal, Government Degree College Takht-E-Nasrati Karak.
4	NAME OF THE INVESTIGATION OFFICER Mr. Zeeshan Ali, Investigation Officer-II
5	SUBJECT OF COMPLAINT VIOLATION OF MERIT.
6	DATE OF REGISTRATION 15/02/2023
7	DATE OF FINDINGS 02/08/2023

THE COMPLAINT

Mr. Irshad Ahmed r/o District Karak instituted the instant complaint contending that he was teaching in Government Degree College, Takhti-e-Nasrati, Karak on contract basis since 2019. In 2022, complainant appeared for demonstration and Interview before the Head of Department and Principal for renewal of his contract. Further stated that he secured 1st position in merit list and recommended by Local Selection Committee. However, the Directorate of Higher Education Department, Peshawar ignored him and selected 2nd position holder for the said post instead. He approached Directorate of Higher Education Department, Peshawar for rectification of the merit, but to no avail. Finally, complainant approached this Forum to probe into this matter.

REPLY OF THE AGENCY

Notices under section 10(4) of the Khyber Pakhtunkhwa Provincial Ombudsman Act, 2010 were issued to Secretary to Government of Khyber Pakhtunkhwa, Higher Education Department, Peshawar, Director, Directorate of Higher Education Khyber Pakhtunkhwa Peshawar and Principal, Government Degree College Takht-e-Nasrati Karak to address the allegations contained in the complaint and submit reply including rebuttal, if any. In response, Government Degree College (Boys) Takhti-e-Nasrati Karak submitted a written reply stating that the complainant's name was recommended by the then previous Principal for appointment to the Director of Higher Education Department (HED) Khyber Pakhtunkhwa, Peshawar. However, the Director HED rejected the same with the pretext that the hiring of the complainant is not covered under the rules. Furthermore, the reply of Directorate of Higher Education Department is yet to receive to this Secretariat.

Overseas Pakistanis Foundation Building, Phase -V, Hayatabad, Peshawar.
Office Phone # 091-9219531-32, Office Fax # 091-9219526
Website: www.ombudsmankp.gov.pk
Email: provincialombudsman@gmail.com

Attested
32

Peshawar



OMBUDSMAN (—) SECRETARIAT,
GOVERNMENT OF KHYBER PAKHTUNKHWA

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REJOINDER

Reply of the Agency was shared with the complainant for his feedback/rejoinder. In response, he reiterated his earlier stance. Further stated that he continued his teaching in the same college as he was not terminated by competent authority and also requested for his outstanding salaries.

HEARINGS

Due to divergent stance of both the parties, the case was fixed for hearing on 26/06/2023. Mr. Farhan Ahmed, Assistant of Directorate of Higher Education Khyber Pakhtunkhwa, Peshawar attended the hearing as representative of the Agency, while complainant appeared in person. During hearing the representative of the Agency explained that the Principal of the GDC Takhti-e-Nasrati, Karak forwarded/recommended two names for hiring of college teacher. The Director Higher Education Department Khyber Pakhtunkhwa, Peshawar being Competent Authority selected 2nd candidate by dropping the complainant's name. Thus, he was not selected for the said post. As far as, his salary case is concerned, the Principal of the said college will move his outstanding salary case to the Directorate for approval. After approval, salary would be released as per record. Statements of both the parties were recorded and placed on file.

FINDINGS

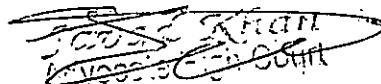
Perusal of record shows that the Principal GDC, Karak recommended the complainant and was placed at serial number 01 of the merit list. However, Director Higher Education Khyber Pakhtunkhwa, Peshawar in violation of the merit, selected the 2nd candidate instead of the complainant. Furthermore, He served the college regularly as per attendance record of the college. It is therefore recommended that;

1. The Secretary to Government of Khyber Pakhtunkhwa, Higher Education Department shall enquire into the matter of selection of 2nd candidate on merit instead of the complainant.
2. The Principal concerned shall submit the case of complainant's salary to the Directorate of Higher Education Khyber Pakhtunkhwa, Peshawar for release of the outstanding salaries.

These recommendations shall be implemented within 45 days of receipt of these findings under intimation to this Forum within the said period.

Overseas Pakistanis Foundation Building, Phase -V, Hayatabad, Peshawar.
Office Phone # 091-9219531-32, Office Fax # 091-9219526
Website: www.ombudsmankp.gov.pk
Email: provincialombudsman@gmail.com

Attested
32


Peshawar



OMBUDSMAN (—) SECRETARIAT,
GOVERNMENT OF KHYBER PAKHTUNKHWA

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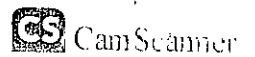


Note: Defiance/non-compliance shall warrant disciplinary/defiance proceedings in terms of Section 14. Sub section 6 & 7 of the Khyber Pakhtunkhwa Provincial Ombudsman act 2010, whereby, the Government will take necessary action for ensuring good governance.

Syed Jamalud din Shah
Provincial Ombudsman
2.8.2022

Overseas Pakistanis Foundation Building; Phase -V, Hayatabad, Peshawar.
Office Phone # 091-9219531-32, Office Fax # 091-9219526
Website: www.ombudsmanpk.gov.pk
Email: provincialombudsman@gmail.com

Attended
32



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OMBUDSMAN (مختص) SECRETARIAT,
GOVERNMENT OF KHYBER PAKHTUNKHWA

97

Amma - E/1

No: PO/Complaint/351/02/2023

Dated: Peshawar the, 02/08/2022

To,

1. Secretary, to Government of Khyber Pakhtunkhwa,
Higher Education Department, Peshawar.
2. Director,
Directorate of Higher Education, Khyber Pakhtunkhwa
Peshawar.
3. Principal,
Government Degree College Takht-E-Nasrati Karak.

Agency

Mr. Irshad Ahmad s/o Wahid Gul r/o VPO Inzer Banda,
Tehsil Takht-E-Nasrati, District Karak.
(Contact# 0306-8088649)

Complainant

SUBJECT: VIOLATION OF MERIT.

Copy of Findings issued by the Provincial Ombudsman, Khyber Pakhtunkhwa in Complaint No. 351/02/2023, filed by Mr. Irshad Ahmad r/o District Karak on the subject noted above is enclosed herewith for information and necessary action.

The Agency shall implement the Findings of Provincial Ombudsman within 45 days of the receipt of these Findings and submit compliance report to this Secretariat in terms of Section 12(1) or file Review Petition before the Provincial Ombudsman within the same period in terms of Section 12 (2) of the Khyber Pakhtunkhwa, Provincial Ombudsman Act, 2010 (Act No. XIV of 2010).

Note: Non-compliance shall warrant disciplinary/defiance proceedings in terms of Section 14 SubSection 6 & 7 of the Khyber Pakhtunkhwa Provincial Ombudsman Act, 2010, whereby, the Government will take necessary action for ensuring good governance.

This issues with the approval of the Provincial Ombudsman.

ENDS: OF EVEN NO. & DATE:

Copy forwarded to Incharge Computer Section, Provincial Ombudsman Secretariat for updating record (two copies enclosed).

AD/Dir

M. ZEESHAN ALI
Investigation Officer-II
Ombudsman, Secretariat

M. ZEESHAN ALI
Investigation Officer-II
Ombudsman, Secretariat

Overseas Pakistanis Foundation Building, Phase -V, Hayatabad, Peshawar.

Office Phone # 091-9219531-32, Office Fax # 091-9219526

Website: www.ombudsmaikp.gov.pk

Email: provincialombudsman@gmail.com

A Heated CamScanner
32

Associate High Court.
Peshawar



**DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA**



Rano Garhi, Peshawar

Tel # 091-2650025 / 9330496

E-mail:- dhekpkesht@gmail.com Facebook.com/dhekpkesht Twitter.com/dhekpkesht

No. **4386**

CA-II / Estt Branch / Adm / GDC / Talhase-Nazari

Dated Peshawar the **22** / **2** / 2023

To

Annex - E/2

The Secretary
Govt; of Khyber Pakhtunkhwa
Higher Education Department Peshawar.

SUBJECT VIOLATION OF MERIT
Respected Madam

I am directed to enclose herewith a copy of findings shared by the Provincial Ombudsman Secretariat, Govt; of Khyber Pakhtunkhwa vide letter No. PO/Complainant/351/02/2023/12794 dated 02.08.2023 on the subject cited above wherein Provincial Ombudsman has recommended that Secretary, Higher Education, Khyber Pakhtunkhwa shall initiate inquiry against the Director, Higher Education, Khyber Pakhtunkhwa for hiring the services of 2nd candidate in the merit list, leaving the candidate stood on the 1st position in the merit. for appropriate necessary action, please.

Yours Faithfully,

(Fayaz Ahmad)

BY: DIRECTOR (ESTABLISHMENT)

Encl: No. **4386** / **2** / **23**

Copy of the above is forwarded to the Investigation Officer-II, Provincial Ombudsman Secretariat, Govt; of Khyber Pakhtunkhwa with reference to the letter No. **351/02/2023/12794**.

BY: DIRECTOR (ESTABLISHMENT)

By: Director / Estt Branch / Adm / GDC / Talhase-Nazari

CS CamScanner

Attested
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(Signature)
Admission Court
Peshawar

49

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Annex-F

Subject: INQUIRY REPORT REGARDING VIOLATION OF MERIT IN THE APPOINTMENT OF MR. IRSHAD AHMAD, GOVT. DEGREE COLLEGE, TAKHT-E-NASRATI, KARAK.

A. Background:

Ombudsman Secretariat Govt. of Khyber Pakhtunkhwa vide letter PO/Complaint/351/02/2023, dated: Peshawar the 02/08/2022 forwarded a complaint filed by Mr. Irshad Ahmad resident of District Karak for information and necessary action within 45 days (F/A).

The recommendations of the Ombudsman are:-

- The Secretary to Government of Khyber Pakhtunkhwa Higher Education Department shall inquire into the matter of selection of 2nd candidate on merit instead of the complainant.
- The Principal concerned shall submit the case of complainant's salary to the Directorate of Higher Education, Khyber Pakhtunkhwa, Peshawar for release of the outstanding salaries.

B. Hearing/proceedings:-

Vide Higher Education Department letter dated: 13-09-2023, Deputy Director (Estab), Assistant Director (Litigation) alongwith Principal of GDC Takht-e-Nasrati, attended the office of the Inquiry officer. The following facts were discussed during the course of inquiry:-

Earlier, office of the Principal GDC, Takht-e-Nasrati, advertised for hiring teachers on a temporary basis in a local Newspaper for the subject of Chemistry and Urdu (F/B). Later on, it was changed to Chemistry and English (corrigendum of which is not available)

Handwritten signature and date: 7/9/23

The then principal GDC, Takht-e-Nasrati recommended two candidates to be hired for the purpose of teaching of English on a fixed pay from the Pupil fund (F/C). The then Principal asked both the recommendees to start classes immediately as formal approval from Director, Higher Education would take some time.

Handwritten signature and date: 7/9/23

Attested
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The candidate at Serial No. 1 i.e Mr. Irshad Ahmad, reported for duty and started teaching the students. However, the directorate of Higher Education accorded approval to Mr. Tariq Mehmood who was 2nd on the merit list (P/D).

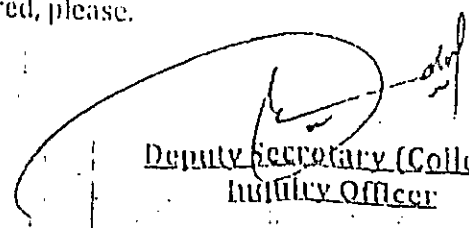
Litigation Section sought input from Establishment section of Directorate Higher Education asking reasons for hiring candidate at 2nd position instead of S No. 1, who was already performing duty. A fake letter was placed on file in the Directorate of Higher Education showing request of the Principal for hiring Mr. Tariq Mehmood (F/E) which has not been recorded in the Principal's record as stated by Mr. Falak Naz Khan, the current Principal of the said college. From Notepart of the relevant file it was revealed that the then Deputy Director (Establishment) Mr. Gohar Khan had suggested to the then Director Higher Education Mr. Khurshid to accord sanction to the appointment of candidate at S No. 2 "as desired" in light of that fake letter.

C. Recommendations:

Perusal of the record, statements of the Principal and representative of the Directorate of Higher Education suggest that the complainant Mr. Irshad Ahmad, was fraudulently deprived of his right being on top of the merit. The then Deputy Director (Estab) Mr. Gohar Khan and Director Higher Education Mr. Khurshid were involved in the whole process. Therefore, it is recommended to initiate formal inquiry against both the above mentioned officers.

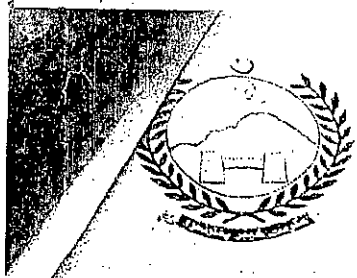
As far as, the second point is concerned the total outstanding amount may be paid to Mr. Irshad Ahmad as he had performed his duty as evident from attendance register (F/F).

Report is submitted as desired, please.


Deputy Secretary (Colleges)
Liaison Officer

Attested
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**GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT**

No.SO(C-II)/HED/2-2/2023/Irshad Ahmad/GDC Takht-e-Nasrati
Dated Peshawar the 19th October, 2023

To
The Director,
Higher Education Khyber Pakhtunkhwa,
Peshawar.

Amma - F/1

**SUBJECT: INQUIRY REPORT REGARDING VIOLATION OF MERIT IN THE
APPOINTMENT OF MR. IRSHAD AHMAD, GOVT. DEGREE COLLEGE TAKHT-E-
NASRATI, KARAK**

I am directed to refer to the subject noted above and to state that kindly submit a complete case containing Charge Sheets and Statements of Allegations against the then Deputy Director (Establishment) Mr. Gohar Khan and Director Higher Education Mr. Khushid in order to proceed further into the matter, please.

(ABDUL WALI KHAN)
SECTION OFFICER (COLLEGES-II)

19/10/2023

ENDST: NO. & DATE EVEN.

Copy is forwarded to the:

1. PS to Secretary, Higher Education Department.
2. PS to Special Secretary, Higher Education Department.

SECTION OFFICER (COLLEGES-II)

19/10/2023

DDE ADKE
 Directorate of Higher Education
 Khyber Pakhtunkhwa
 RECEIVED ON
 19 OCT 2023
 2534-463
 Page #

Necessary action please
19/10/23

Reguler

Attested
82

[Signature]
Peshawar

52



Annex-F/2
DIRECTORATE OF HIGHER EDUCATION

KHYBER PAKHTUNKHWA

NEAR NORTHERN BYPASS, RANO GARHI PESHAWAR

dhekpkesht@gmail.com Facebook.com/dhekpkesht Twitter.com/dhekpkesht

No. SBOS /CA-II Estt./GDC, Takht e Nasrati

Dated Peshawar 20/10/2023

To

The Secretary to Govt. of Khyber Pakhtunkhwa
Higher Education Archives & Libraries Department

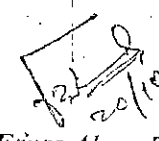
Subject:

INQUIRY REPORT REGARDING VIOLATION OF MERIT IN THE
APPOINTMENT OF MR. IRSHAD AHMAD, GOVT. DEGREE COLLEGE
TAKHT-E-NASRATI, KARAK



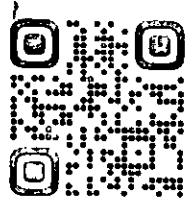
Dear Sir,

I am directed to refer to your letter No. SO(C-II)/HED/2-2/2023/Irshad Ahmad, Govt. Degree College Takht-e-Nasrati Dated: 19.10.2023 on the subject noted above and to enclose herewith draft charge sheets and statements of allegation against the then Deputy Director (Establishment); Mr. Gohar Khan and Director Higher Education, Mr. Khurshaed Ahmad, as desired, please.

Yours faithfully

dc 
(Fayaz Ahmad)
Deputy Director (Establishment)

Attested
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 <p>2745</p>	<p>پشاور بار ایسوسی ایشن، خیبر پختونخواہ</p>
<p>ایڈوکیٹ: <u>محمد عثمان</u></p>	<p>PESHAWAR BAR ASSOCIATION</p>
<p>11-1371 Peshawar</p>	 
<p>رابطہ نمبر: 03215778657</p>	

بعدالت جناب: معدود محمد علی خان صاحب

<p>منجانب: <u>میا خیر احمد ولد محمد علی خان</u></p>	<p>دعوی: <u>RV / 24</u></p>
<p><u>میا خیر احمد</u></p>	<p>تعلت نمبر:</p>
<p><u>بنام</u></p>	<p>مورخ:</p>
<p><u>گور خان اسٹریٹ فیروز خان</u></p>	<p>جرم:</p>
	<p>تھانہ:</p>

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

آن مقام پشاور کیلئے جو اد خان ایڈووکیٹ کی طرف سے

کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعوی اقبال دعوی اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جائز التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 15/1/2024 11-1371 17301.25824383

المقام پشاور

Attested
Advocate High Court
Peshawar

Fazal Ahmad s/o Mughlat
Sialkot