

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

**Service Appeal # 2339/2023**

**Mst. Shamim Akhtar.....Appellant.**

**VERSUS**

**Govt: of Khyber Pakhtunkhwa & others.....Respondents.**

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**Deponent**

26-02-2024

Peshawar.

**BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR**

Service Appeal # 2339/2023

Mst. Shamim Akhtar..... Appellant

VERSUS

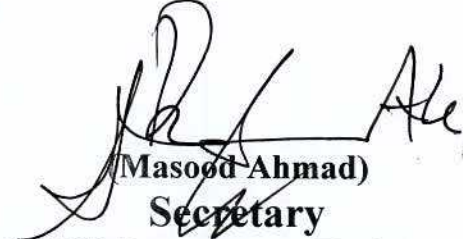
Govt. of Khyber Pakhtunkhwa & others..... Respondents

**AFFIDAVIT**

I, **Masood Ahmad**, Secretary, Elementary & Secondary Education, Department do hereby solemnly affirm and declare that the contents of the accompanying para-wise comments, submitted by the respondents, are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

**It is further, stated on oath that in this appeal the answering Respondents have neither been placed ex-parte nor has their defense been struck off.**



  
(Masood Ahmad)  
Secretary  
E&SE Department Peshawar




GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Block "A" Civil Secretariat, Peshawar

Phone No. 091-9211128

**AUTHORITY LETTER**

It is certified that **Mr. Sajid Ullah, Section Officer (Litigation-II)** Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa, Peshawar is hereby authorized to submit parawise comments on behalf of Secretary Elementary & Secondary Education Department Peshawar **Service Appeal # 2339/2023 Case Titled Mst. Shamim Akhtar** vs Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.

  
(Masood Ahmad)  
Secretary .  
E&SE Department Peshawar



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

**In Service Appeal No. 2339/2023**

**Mst. Shamim Akhtar.....Appellant.**

**VERSUS**

**Govt of KPK through Secretary E&SE ..... Respondents.**

**PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS NO. 01, 02 & 03.**

**Respectfully Sheweth,**

**Preliminary Objections:**

1. That the appellant has already completed her normal tenure on the said station, hence the appeal is not maintainable.
2. That the Respondent has adopted the proper law and procedure by exercising powers u/s 10 of Civil Servant Act, 1973, which is as under:-

**“10. Posting/Transfer 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 favorable than those to which he would have been entitled if he had not been so required to serve”**

In light of 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.

3. That according to Central Administrative Tribunal-Delhi in the case of Sh. Jawahar Thakur-vs-Union of India held on 19<sup>th</sup> 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.
4. The Honorable Supreme Court in Mrs. Shilpi Bose and Others vs State of Bihar and others 1991 Supp.(2)SCC-659 went into in the issue of guidelines and has upheld the transfer orders of the employee in the following words:-

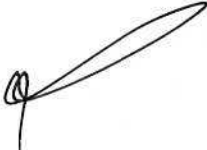
Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 11156

Dated 15-02-2024

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**“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 fid. 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 violated 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”**



Therefore, in light of the above sititation the present appeal is not maintainable and liable to be dismissed with costs.

5. The appellant has not come to this Tribunal with clean hands.
6. The appellant is not an aggrieved person nor has any locus standi to file the present appeal.
7. That the appellant has concealed material facts from this Tribunal.
8. That the appellant is estopped by her own conduct to file the present appeal. There are various complaints against the appellant regarding her plenty of absentees without prior permission or leave, un-seriousness towards her official duties, unprofessional way of official correspondence, willfully absentees from important meetings, not explaining her position to high-ups in various explanation called by the competent authority and above the all badly effecting the sub division and department.
9. That the present appeal is against the prevailing law and rules.
10. That the appellant is not entitled for any relief, she has sought from this Honorable Tribunal.
11. That the present appeal is liable to be dismissed being devoid of any merits.
12. That the present appeal is hopeless, time barred, hence liable to be dismissed.
13. That the present appeal is just filed by the appellant to pressurize the respondents for getting illegal and unlawful benefits.
14. That the appellant is just wasting the precious time of this Honorable Tribunal through the instant frivolous appeal.



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15. In an another famous case, The State of U.P. and Others vs Goverdhan Lal, : 2004 (3) SLJ 244 (SC) it has been held this:-

**“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 a 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”**

**On FACTS**

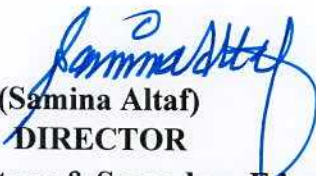
1. Pertains to record.
2. Pertains to record.
3. In response of para-03, it is stated that on completion of the tenure of the appellant on Kakki Bannu, she was transferred to parova DI Khan vide notification dated 10-11-2022. But due to distribution of work and smooth running of the departmental work the appellant was adjusted on the post of Daraband DI Khan dated 20-12-2023 in the best public interest.
4. Para-04 is incorrect, the appellant was transferred to Jandola District Tank through notification dated 26-05-2023 in the best public interest. There is nothing unlawful in the above notification. Furthermore, it is the prerogative of competent authority to place the service of any civil servant u/s 10 Civil Servant Act, 1973.
5. Para-05 alongwith all the grounds of appeal are incorrect, hence denied. Detail reply has been given above.
6. The appellant has got no cause of action to file instant appeal.

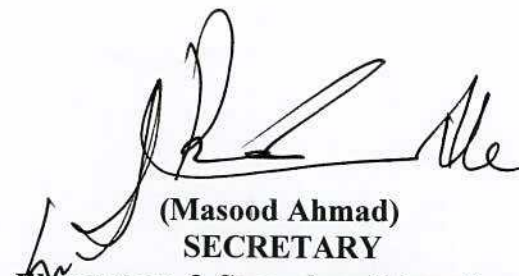
**On Grounds:**

- A. Incorrect, the transfer order dated 26-05-2023 is fully legal, in accordance with service Rules and Policy, therefore the appeal in hands is liable to be dismissed.
- B. Incorrect, the appellant is duty bound to serve anywhere throughout the Province where ever she may be given the task.
- C. Incorrect, hence denied. Transfer & Posting is part of service and the transfer order of the appellant is based on public interest.

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- D. Incorrect, hence denied. 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 transferred/posting order, while the civil servant cannot refuse compliance. Furthermore, it is not always possible and feasible for the competent Authority to record strong reasons for allowing an officer to continue at a particular station for a few years or more or less.
- E. Incorrect, hence denied. The detail reply has been given above.
- F. Incorrect, the appellant is duty bound to serve at the given place as mentioned in transfer/posting order and she cannot refuse the same.
- G. Incorrect, hence denied. The transfer order of the appellant is in accordance with law.
- H. That the respondents also seek permission for raising additional points at the time of arguments.

**It is therefore, most humbly requested that the appeal in hands may kindly be dismissed with heavy cost.**

  
(Samina Altaf)  
**DIRECTOR**  
Elementary & Secondary Education,  
(Respondent No. 02)

  
(Masood Ahmad)  
**SECRETARY**  
Elementary & Secondary Education,  
Department (Respondent No. 01 & 02)





GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT

Dated: 20<sup>th</sup> December, 2022

**NOTIFICATION**

**NO.SO(MC)E&SED/4-16/2022/Posting/Transfer/MC/:** The following posting/ transfer are hereby ordered with immediate effect, in the best public interest: -

Sr. No	Name of officer	From	To	Remarks
1.	Mst. Shamim Akhtar MC BS-17	SDEO Parova D.I.Khan	SDEO (Female) Daraband D.I.Khan	
2.	Mst. Nighat Shaheen MC BS-17	SDEO (Female) Kakki Bannu.	SDEO Parova D.I.Khan	Vice S.No.1

2. The above posting/transfer will take effect from the promotion of the present incumbent to Deputy DEO (Female BS-18).

SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA  
E&SE DEPARTMENT

**Endst: of even No.& date:**

Copy forwarded for information to the: -

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
4. District Education Officers (Female) Bannu/D.I.Khan.
5. District Accounts Officers Bannu/D.I.Khan.
6. PS to Minister E&SE Khyber Pakhtunkhwa.
7. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
8. Master file.

*Naseer*  
20.12.22  
(NASEER ABBAS KHALIL)  
SECTION OFFICER (Management Cadre)

*Naseer*  
Section Officer (Management Cadre)  
Elementary & Secondary Edu: Dept:  
Govt: of Khyber Pakhtunkhwa





GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT

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Dated Peshawar 23<sup>rd</sup> February, 2023

**NOTIFICATION**

**NO.SO(MC)E&SED/2-3/2022/Promotion/MC(BS17to18)ACB:** Consequent upon her engagement in census process, this Department's Notification of even number dated 20-12-2022 regarding posting / transfer in respect of **Mst. Shamim Akhtar SDEO (F) Parova D.I.Khan and Mst. Nighat Shaheen, SDEO (F) Kakki Bannu** is hereby withdrawn ab-initio, till the completion of census process.

**SECRETARY TO THE GOVT: OF KHYBER PAKHTUNKHWA  
E&SE DEPARTMENT**

**Endst: of even No.& date:**

Copy forwarded for information to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) D.I.Khan/Bannu.
4. District Account Officer D.I.Khan/Bannu.
5. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
6. PS to Minister E&SE Department, Khyber Pakhtunkhwa.
7. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
8. Officers concerned.
9. Master file.

11/1/2023  
23/2/2023

(IMRAN ZAMAN)

SECTION OFFICER (Management Cadre)

11/1/2023  
Section Officer (Management Cadre)  
Elementary & Secondary Edu. Deptt.  
Govt. of Khyber Pakhtunkhwa



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT  
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar  
Phone No. 091-9210626

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Dated: 26<sup>th</sup> May, 2023

**NOTIFICATION**

**NO.SO(MC)E&SED/4-16/2023/Posting/Transfer/MC/DIK:** The following postings/transfers are hereby ordered with immediate effect, in the best public interest: -

Sr. No	Name & Designation	From	To	Remarks
1.	Samina Shahnaz MC BS-17	SDEO Female Jandola Tank	SDEO Female Paharpur D.I.Khan	V.S.No.2
2.	Shamshad Bibi MC BS-17	SDEO Female Paharpur Dikhan	Report to Directorate of E&SE	
3.	Noor Khadija MC BS-17	SDEO (Female) Wana South Waziristan	SDEO (Female) Daraband Kalan D.I.Khan	V.S.No.4
4.	Shamim Akhtar MC BS-17	SDEO (Female) Daraband Kalan D.I.Khan	SDEO Female Jandola Tank	V.S.No.1

2. No TA/DA is allowed.

SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA  
E&SE DEPARTMENT

**Endst: of even No.& date:**

Copy forwarded for information to the: -

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
4. District Education Officer (Female) D.I.Khan.
5. District Accounts Officers D.I.Khan.
6. PS to Advisor to Chief Minister on E&SE Khyber Pakhtunkhwa.
7. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.

111  
Section Officer (Management Cadre)  
Elementary & Secondary Edu. Deptt.  
Govt. of Khyber Pakhtunkhwa

111  
IMRAN ZAMAN)  
SECTION OFFICER (Management Cadre)