

28.09.2017

Counsel for the appellant and Assistant A.G
alongwith Daud Jan, Superintendent for the respondents
present. Counsel for the appellant seeks adjournment.
Adjourned. To come up for arguments before this D.B on
21.11.2017 alongwith appeal No. 543/16.

28.09.2017

~~Member~~ Counsel for the appellant and ~~Chairman~~ Assistant A.G
alongwith Daud Jan, Superintendent for the respondents
present. Counsel for the appellant seeks adjournment.
Adjourned. To come up for arguments before this D.B on
21.11.2017 alongwith appeal No. 543/16.

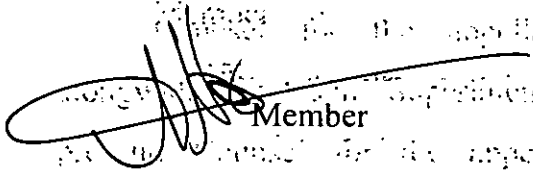
28.09.2017

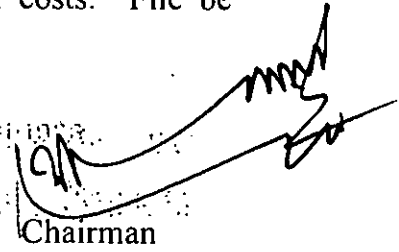
Counsel for the appellant and Assistant A.G
alongwith Daud Jan, Superintendent for the respondents.
present. ~~Member~~ Counsel for the appellant and ~~Chairman~~ Assistant A.G
alongwith Daud Jan, Superintendent for the respondents
present. Arguments heard. To come up for order on
29.09.2017 before this D.B.
present. Counsel for the appellant seeks adjournment.
Adjourned. To come up for arguments before this D.B on
21.11.2017 alongwith appeal No. 543/16.

29.09.2017

Counsel for the appellant and Asst: AG alongwith Mr.
Daud Jan, Supdt for the respondents present. Arguments
heard and record perused.

~~Member~~ Counsel for the appellant and ~~Chairman~~ Assistant A.G
alongwith Daud Jan, Superintendent for the respondents
present. This appeal is also accepted as per detailed judgment of
to-day in connected service appeal No543/2016 entitled
"Mohammad Yousaf Versus the Additional Chief Secretary,
FATA, FATA Secretariat, Warsak Road Peshawar and 2
others". Parties are left to bear their own costs. File be
consigned to the record room.


Member


Chairman

ANNOUNCED

29.09.2017

Service Appeal No. 547/2016

31.07.2017


Counsel for the appellant present. Mr. Daud Jan, Superintendent alongwith Mr. Muhammad Adeel Butt, Additional AG for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 18.08.2017 before D.B. The restraint order shall continue.



(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

18.08.2017


Counsel for the appellant present. Mr. Daud Jan, Superintendent alongwith Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 07.09.2017 before D.B.


(Muhammad Amin Khan Kundi)
Member (J)


(Muhammad Hamid Mughal)
Member (J)


07/09/2017


Due to general strike of the bar and bench is incomplete, the case is adjourned for arguments on 14/09/2017 before DB.


MUHAMMAD HAMID MUGHAL
MEMBER

14.09.2017

Learned Additional Advocate General alongwith Syed Daud Jan, Superintendent for the respondents present. Learned counsel for the appellant not present. Last opportunity granted for arguments. Adjourned. To come up for arguments on 28.09.2017 before D.B.


Member
(Executive)


Member
(Judicial)

20.03.2017

Counsel for the appellant and Addl: AG alongwith Mr. Daud Jan, Supdt for respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 24.04.2017 before D.B. The restraint order shall continue.

(AHMAD HASSAN)
MEMBER

24.04.2017

Counsel for the appellant is not in attendance. Mr. Daud Jan, Superintendent alongwith Additional AG for the respondents present. In view of order sheet dated 15.2.2017 appeal adjourned to 26.04.2017 for a short date before D.B. The restraint order shall continue.

MA
Member

Chairman

26.04.2017

Counsel for the appellant and Mr. Usman Ghani, Senior Government Pleader alongwith Mr. Daud Jan, Superintendent for the respondents present. Counsel for the appellant seeks adjournment. Adjourned for final hearing to 15.06.2017 before the D.B. The restraint order shall continue.

MA
Member

Chairman

15.06.2017

Counsel for the appellant present. Mr. Daud Jan, Superintendent alongwith Mr. Muhammad Adeel Butt, Additional AG for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 31.07.2017 before D.B. The restraint order shall continue.

(GUL ZEB KHAN)
MEMBER

MA
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

15.02.2017

Counsel for the appellant and Addl: AG alongwith Mr Daud Jan, Supdt for respondents present. Learned AAG informed the Tribunal that a C.O.C application is pending before august High Court, Peshawar and that since they had to submit the compliance report which has been halted by the order of this Tribunal by way of restraining order, so the status-quo application may kindly be dispose of urgently. Counsel for the appellant requested for a short adjournment as he was busy today before Peshawar High Court, Peshawar in other cases. In the circumstances, short date for next week is issued prior to C.O.C proceedings before august High Court for full hearing. To come up for arguments on 22.02.2017 before D.B.


(AHMAD HASSAN)
MEMBER


(ASHFAQUE TAJ)
MEMBER

22.02.2017

Clerk to counsel for the appellant and Mr. Daud Jan (Supdt) alongwith Addl: AG for respondents present. Argument could not be heard due to general strike of the bar. To come up for argument on 20.03.2017 before D.B. The restrain order shall continue.


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

07.10.2016

Counsel for the appellant and Addl: AG for respondents present. Counsel for the appellant requested for adjournment. Adjournment granted. To come up for arguments on 07.02.2016. The restraint order shall continue.


(MUHAMMAD AAMIR NAZIR)
MEMBER


(PIR BAKHSH SHAH)
MEMBER

07.02.2017

Clerk to counsel for the appellant and Mr. Usman Ghani, Sr. GP alongwith Mr. Daud Jan, Supdt for respondents present. Clerk to counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 15.02.2017. The restraint order shall continue.


(ASHFAQUE TAJ)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

21.06.2016

Appellant with counsel and Mr. Daud Jan, Supdt. alongwith Ziaullah, GP for respondents present. Requested for submission of written reply. Request accepted. To come up for written reply on 27.7.2016. Status-quo be maintained.

Member 

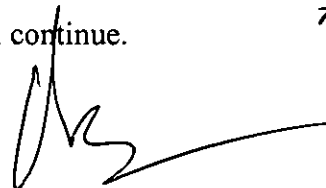
27.07.2016

Counsel for the appellant and Mr. Murtaza Khan, Steno alongwith Addl. AG for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 05.09.2016. The restraint order shall continue.

Chairman 

05.09.2016

Agent to counsel for the appellant and Mr. Murtaza Khan, Stenographer alongwith Mr. Usman Ghani, Sr.GP for respondents present. Rejoinder submitted, copy whereof handed over to learned Sr.GP. To come up for rejoinder arguments on 7-10-16 before D.B. The restraint order shall continue.

Member 

Member 

Appeal No. 547/2016
Qasim Khan vs Govt

24.5.2016

Counsel for the appellant present. Preliminary arguments heard and record perused.


Appellant is aggrieved of transfer/posting order dated 10.5.2016 vide which his earlier transfer order was prematurely withdrawn where-against he preferred departmental appeal on 13.5.2016 which was rejected on 16.5.2016 and hence the instant service appeal on 20.5.2016.

According to stance of the appellant the impugned order dated 10.5.2016 was passed on erroneous interpretation of the judgment of the august Peshawar High Court dated 19.2.2013 passed in Writ Petition No. 1087/2011 titled "Abdul Malik and others Versus Addl. Chief Secretary (FATA) and others". That according to the spirit of the said judgment the respondents were to implement policy of the government for appointment against post in Tehsil Prang Ghar by giving preference to the local of the area. That the appellant is also local of the area and was entitled to appointment against the said post as directed in the judgment of the august Peshawar High Court and as such the impugned order dated 10.5.2016 including final order dated 16.5.2016 are against facts and law and liable to be set aside.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 21.06.2016 before S.B. Notice of stay application shall also be issued to the respondents for the date fixed. Status quo be maintained.


Chairman

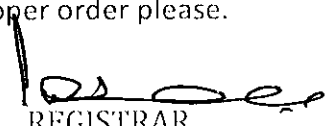

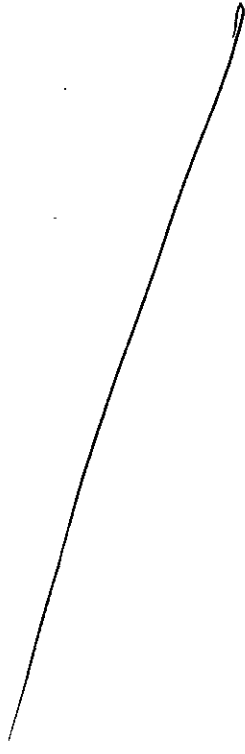
Appellant Deposited
Security & Process Fee


26/5/16

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 547/2015

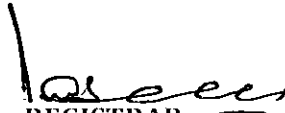
S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	24/05/2016	<p>As per direction of the worthy Chairman, the present appeal filed by Mr. Qasim Khan through Mr. Noor Muhammad Khatak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	24-5-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on. <u>24-5-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p> 

The appeal of Mr. Qasim Khan T.T GPS NO.2 Tehsil Prang Ghar Mohmand Agency received to-day i.e. on 20.05.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of proper rejection order of departmental appeal is not attached with the appeal which may be placed on it.
- 2- Memorandum of appeal is unsigned which may be got signed.

No. 840/S.T,

Dt. 23/5/2016


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Noor Muhammad Khattak Adv. Pesh.

Note:


R/Sir, That as no such separate order regarding rejection of Departmental appeal has been issued, therefore, the appeal in hand may kindly be place before the Honorable bench.

Sir,

The observation of this office a reply of counsel for the appellant is submitted for order please.

Hafiz
Chafic-aw.

Be fixed
for PH


23/5/16

24/5/16

BEFORE THE KHYBER PA KHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 547 /2016

QASIM KHAN

VS

A.C.S FATA

INDEX

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4.	Impugned order	B	6.
5.	Judgment	C	7- 13.
6.	Advertisement	D	14.
7.	Departmental appeal & rejection	E	15.
8.	Transfer/posting policy	F	16- 18.
9.	Vakalat nama	19.

APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 547 /2016

**A.W.F. Province
Service Tribunal**

Mr. Qasim Khan, Theology Teacher (BPS-15),
GPS Kirra No.2, Tehsil Prang Ghar, Mohmand Agency.

**Diary No. 518
dated 20/5/2016**

..... **Appellant**

VERSUS

- 1- The Additional Chief Secretary FATA, FATA Secretariat, Warsak Road, Peshawar.
- 2- The Director of Education FATA, FATA Secretariat, Warsak Road, Peshawar.
- 3- The Agency Education Officer, Mohmand Agency at Ghalani.

..... **Respondents**

APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974
AGAINST THE IMPUGNED ORDER DATED 10-05-2016
WHEREBY THE APPELLANT WAS PREMATURELY
TRANSFERRED TO GMS MATEEN KORE MOHMAND
AGENCY AND AGAINST THE APPELLATE ORDER DATED
16-05-2016 WHEREBY THE DEPARTMENTAL APPEAL OF
THE APPELLANT HAS BEEN REGRETTEED ON NO GOOD
GROUND

PRAYER:

That on acceptance of this appeal the impugned order dated 10-05-2016 and appellate order dated 16-05-2016 may be set aside and the respondents may be directed that not to transfer the appellant from GPS Kirra No.2, Prang Ghar, Mohmand Agency till completion of his normal tenure. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:


- 1- That appellant was appointed as Theology Teacher in the respondent Department on the proper recommendation of the Departmental Selection Committee and after proper advertisement issued/published in the leading News Paper. That right from appointment till date the appellant has served the respondent Department quite efficiently and up to the entire satisfaction of his superiors.

20/5/16
20/5/16

- 2- That after serving for considerable time at GMS Mateen Kore Mohmand Agency the appellant was transferred to GPS Kirra No.2 Prang Ghar, Mohmand Agency against the vacant post vide order 14-10-2015 by respondent No.3. Copy of the order is attached as annexure..... **A.**
- 3- That in response to the order dated 14-10-2015 the appellant submitted his charge report at GPS Kirra No.2 and started performing his duty with all zeal and zest.
- 4- That vide impugned order dated 10-05-2016 the respondent No.3 cancelled the transferred order dated 14-10-2015 by miss-interpreting the judgment dated 19-02-2013 passed in writ petition No.1087/2011 of the august Peshawar High Court Peshawar. Copies of the impugned order and judgment of the Peshawar High Court Peshawar are attached as annexure..... **B & C.**
- 5- That according to the said judgment dated 19-02-2013 Peshawar High Court Peshawar directed the respondent Department to implement the policy regarding initial recruitment of the cadres of PST and CT. That it is pertinent to mention that the petitioners in the said writ petition No.1087/2011 have questioned the selection process of the respondent Department which was conducted by the respondent Department in light of the advertisement issued in 2011. Copy of the advertisement is attached as annexure..... **D.**
- 6- That due to miss-reading of the said judgment dated 19-02-2013 the respondent No.3 pre-maturely transferred the appellant from GPS Dew Dheri, prang Ghar. That the appellant feeling aggrieved from the impugned order dated 10-05-2016 filed Departmental appeal before the respondent No.3 but the same was regretted by the respondent No.3 on no good grounds vide impugned appellate order dated 16-05-2016. Copy of the Departmental appeal and rejection order which has been written/drafted on the Departmental appeal is attached as annexure **E.**
- 7- That the appellant having no other remedy preferred the instant appeal inter alia on the following grounds.

GROUND:

- A- That the impugned orders dated 10-05-2016 and 16-05-2016 issued by the respondent No.3 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.

- B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the impugned order dated 10-05-2016 is against the clause I and IV of the transfer/posting policy of the Provincial Government of Khyber Pakhtunkhwa. Copy of the transfer/posting policy of the Government of Khyber Pakhtunkhwa is attached as annexure.....
- D- That the judgment of the august Peshawar High Court Peshawar has been mis interpreted by the respondents and as such the transfer order dated 10.5.2016 has been issued by the respondents in violation of the principle of Locus Poenitentiae.
- E- That the impugned order dated 10-05-2016 has not been issued by the respondent No.3 in the public interest nor exigencies of service.
- F- That the respondents acted in arbitrary and malafide manner while issuing the impugned order dated 10-05-2016.
- G- That the impugned order has been issued by the respondents on malafide basis by taking shelter of the august Peshawar High Court Peshawar.
- H- That the impugned order has been issued by the respondents with ulterior motives just to accommodate their blue persons.
- I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 16.5.2016

APPELLANT



QASIM KHAN

THROUGH:



**NOOR MOHAMMAD KHATTAK
ADVOCATE**

(0345-9383141)

BEFORE THE KHYBER PAKHTUNKHEWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO _____/2016

QASIM KHAN

VS

A.C.S FATA

APPLICATION FOR SUSPENSION OF OPERATION
OF IMPUGNED ORDER DATED 10.5.2016 TILL
THE DISPOSAL OF THIS APPEAL

R/SHEWETH:

- 1- That the appellant filed above mentioned appeal along with this application before this august service Tribunal in which no date has been fixed so for.
- 2- That all the three ingredients necessary for the stay is in favor of the appellant.
- 3- That the transfer of the appellant is against the transfer policy of the Government of Khyber Pakhtunkhwa and the impugned transfer order dated 10.5.2016 is also not issued in the public interest nor exigencies of public service.
- 4- That the grounds of main appeal is also be considered as integral part of this application.

It is therefore humbly prayed that on acceptance of this application the impugned transfer order dated 10.5.2016 may very kindly be suspended till disposal of this appeal.

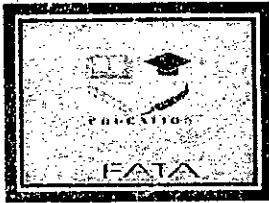
APPELLANT


QASIM KHAN

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

مستند نمبر 18128-30



OFFICE OF THE AGENCY EDUCATION OFFICER
MOHMAND AGENCY AT GHALLANAI
P.NO.0924290180 FAX:0924290180
NO. _____ /Dated: Ghallanai / _____ /10/2015

Subject: TRANSFER /POSTING.

A-5

Memo:

Following transfer/posting of Male TT teachers is hereby ordered to the School noted against their names on their own pay & scales in the interest of public service with effect from the date of their taking over charge.

S.No.	Name & designation	Present posting	Transferred to	Remarks
01.	Khan Zaman TT	GPS Rawili Kore	GPS Agrab Dag (Islam Gul)	Post vacated due to retirement of Telawat Khan TT.
02.	Qasam Khan TT	GMS Mateen Kore	GPS Kirra No.02	Against vacant post

Note:-

- 1:- No TA/DA and Transfer grant is allowed.
- 2:- Charge report should be submitted to all concerned.

(WALI MUHAMMAD)
Agency Education Officer,
Mohmand Agency at Ghallanai.

Endst: No. 18128-30 /dated: 14 /10/2015.

Copy to the:-

- 01:- Director of Education FATA K.P.K Peshawar.
- 02:- AAO Mohmand at Ghallanai.
- 03:- Teachers concerned.

ATTESTED

Agency Education Officer,
Mohmand Agency at Ghallanai.

Hd/

[Signature]



OFFICE OF THE AGENCY EDUCATION OFFICER
MOHMAND AGENCY AT GHALLANAI
P.NO.0924290180 FAX:0924290180

CANCELLATION OF TRANSFER ORDERS.

B-6

In pursuance of the decision of the Honorable High Court Peshawar, Transfer orders of the following teachers to the Schools Located in Tehsil Prang Ghar as noted against their names issued vide this office Endst. Nos and dates even are hereby cancelled with immediate effect.

The teachers are directed to assume charges in their original Schools under intimation to this office in stipulated period of time positively.

S.No.	Name	Desig:	School where transferred	Remarks.
1	Hassan Khan	CT	GMS Nao Killi	
2	Afzal Shah	CT	GHS Nivi Killi Prang Ghar	
3	Yousaf	DM	GMS Nao Killi	
4	Iqbal Shah	PST	GPS Prang Ghar	
5	Zubair Shah	PST	GPS Dew Dhery	
6	Fazli Subhan	TT	GPS Dew Dhery	
7	Merwas	TT	GPS Sra Shah	
8	Qasim	TT	GPS Kirra No.02	
9	Bacha Hassan	PST	GPS Prang Ghar	
10	Muhammad Raza	PST	GPS Sra Shah	
11	Zuhra Bibi	CT	GGMS Nivi Killi	

(SAEED GUL)

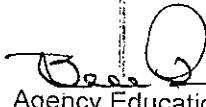
Agency Education Officer
Mohmand Agency at Ghallanai

Endst.No.Estab:II/Cancellation/ 24382-85 /dated: 10 /05/2016.

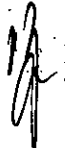
Copy to:-

1. Director Education FATA K.P.K Peshawar.
2. Political Agent Mohmand Agency.
3. AAEO (Concerned)
4. Teacher Concerned

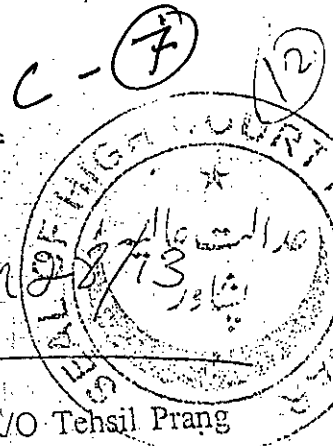
ATTESTED


Agency Education Officer
Mohmand Agency at Ghallanai

Hdi



IN THE PESHAWAR HIGH COURT PESHAWAR



Writ Petition No. 1087/2011

1. Abdul Malik S/O. Said Muhammad Shah R/O Tehsil Prang Ghar Mohmand Agency.
2. Secma Gul D/O Saeed ur Rehman R/O Tehsil prang Ghar Mohmand Agency.
3. Zaman Khan S/O Rasul Shah R/O Tehsil prang Ghar Mohmand Agency.
4. Muhammad Daud S/O Miras Khan R/O Tehsil prang Ghar Mohmand Agency.

.....(Petitioners)

Versus

1. Additional Chief Secretary FATA, Khyber Pakhtunkhwa FATA Secretariat Peshawar.
2. Director of Education FATA Secretariat, Peshawar.
3. Deputy Director of Education FATA, Khyber Pakhtunkhwa Peshawar.
4. Agency Education Officer, Mohmand Agency at Ghalanai.

.....(Respondents)

Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973

Prayer in Writ Petition:

ATTESTED

RECEIVED
28/7/13

On acceptance of this Writ Petition an appropriate writ may please be issued directing the respondents to stop forthwith filling the posts of PTC & CT in Tehsil prang Ghar through transfer, the petitioners are continuously denied appointment being resident of Tehsil Prang Ghar on no ground what so ever, malafidely vacant posts are created in other tehsils by transferring the teachers to Tehsil Prang Ghar, the Petitioners throughout remained in the top of merit lists for appointment against the post of CT & PTC, the transfers so made be declared as illegal, unlawful and without lawful authority and of no legal effect, the transfer orders so made in violation of law and ban imposed by the respondents on such transfers, be reversed and teachers so transferred in violation of law be sent back to their own Tehsil & the posts so vacated in Tehsil prang ghar be filled

ATTESTED

from amongst the eligible and fit residents of this Tehsil, the petitioners are eligible and fit for appointment against the posts of PTC & CT may be considered for appointment or any other remedy deemed proper may also be allowed.

Respectfully Submitted:

1. That the Mohmand Agency consists of 7 Tehsils namely
 - i. Halimzai.
 - ii. Yakaghond.
 - iii. Pandyali.
 - iv. Safi.
 - v. Ambar.
 - vi. Prang Ghar.
 - vii. Khwaizi- baizi.

The Petitioners belong to Tehsil prang ghar, this tehsil is adjacent of settled area, rather most of its area is considered to be part of settled area and due to its location is accessible and on road side. The Petitioners are highly qualified and at their credit Masters degrees in Art, besides have the professional qualifications of M. Ed, B.Ed. CT and PTC. (Copies of the degress & certificates are attached as Annexure A)

2. That as per Notification dated 13.7.2009, the posts CT, PET, DM, JET / AWI is to filled on 25 % Tribal Agency Level & 75 % on Tehsilwise open merit. While the post of PTC is to filled 100 % on open merit at Tehsil level basis. Similar policy was in vogue even prior to that. (Copy of the Notification dated 13.7.2009 is attached as Annexure B)
3. That in view of the location of Tehsil Prang Ghar, PTC/ CT teachers from other tehsils make every endeavour to get themselves transfer to tehsil prang ghar against any expected vacant posts, and when transferred on the one hand blocked appointments for the new entrant in Tehsil Prang Ghar and on the other hand created vacancies in other Tehsils.
4. That since the year 2007 the petitioners are applying against the advertised posts and remained in the top of meri lists, however non from Tehsil Prang Ghar get appointment in view of the fact that the vacants posts were filled through transfer. (Copies of the appointment letters are attached as Annexure C, D, E, F & G)
5. That vide letter dated 26.10.2009 even ban has been imposed on the transfer of teaching staff in BPS-15 and below, albeit it was never implemented or followed and frequently vacant posts have been filled through transfer in Tehsil Prang Ghar, quite recently when one teacher namely Ghani ur Rehman died on

ATTESTED

FILED TO PAV

30/11/2011

30/11/2011

9

18.2.2011 of Tehsil Prang Ghar, on the other day the post was filled through transfer from one Hassan Khan of Tehsil Halimzai, similarly one Qayum was transferred from another Tehsil to Prang Ghar Tehsil, there are a lot of such transfers, but the copies were not provided to the petitioners despite their best effort. The Petitioners throughout agitated this issue with the respondents; however no action was taken thereon, they also met with the Director of Education (ATA) but in vain. (Copies of the appeals & representations are attached as Annexure H)

6. That since the petitioners remained deprived of their appointment and have got no other adequate remedy available in law are constrained to invoke the constitutional jurisdiction of this honorable Court inter alia on the following grounds:

Grounds of Writ Petition:

- A. That the Petitioners are fit and eligible for appointment in accordance with the policy of the respondents for appointment against posts of PTC & CT however remained deprived of illegally and unlawfully.
- B. That the Petitioner have not been treated in accordance with law, the rights secured and guaranteed under the law have been violated.
- C. That in view of the location of Tehsil Prang Ghar, PTC/ CT teachers from other tehsils make every endeavour to get themselves transferred to Tehsil Prang Ghar against any expected vacant posts, and when transferred on the one hand blocked appointments for the new entrant in Tehsil Prang Ghar and on the other hand created vacancies in other Tehsils, thus the petitioners remained deprived of appointments illegally and unlawfully.
- D. That the transfers made in violation of law and policy of the respondent department are liable to be reversed and the petitioners be considered for appointment in accordance with law against the vacant posts.
- E. That the right for employment of the petitioners are secured under article 9, 18 and 25 of the Constitution, however it has been recklessly violated.
- F. That the respondents are bound to follow the law and implement the policy in letter and spirit, similarly any violation of the ban on transfer so imposed should entail reversal of the transfer orders.

ATTESTED

ATTESTED

Public Hearing Court

FILE

Dep

RECEIVED

20/11/2011

10

8

G. That the petitioners seek permission of this honorable Court to relay on additional grounds at the hearing of this petition.

It is therefore prayed that on acceptance of this Writ Petition an appropriate writ as prayed for may please be issued against the respondents and in favour of the Petitioners.

[Signature]

Petitioner

Through

[Signature]

IJAZ ANWAR
Advocate, Peshawar

List of Books:

- 1. Constitution 1973.
- 2. Civil Servants (Appointment, Promotion & Transfer) Rules 1989.
- 3. Civil Servant Act, 1973.

Certificate:

Certified that no writ petition the same subject and between the same parties has been filed previously or concurrently.

ATTESTED

[Signature]

[Signature]

FILED TODAY

Deputy Clerk

30/12/2011

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Court of,

Case No. of

11

Serial No. of Order of Proceedings	Date of Order of Proceedings	Order or other Proceedings with Signature of Judge
1	2	3
	<p><u>ORDER</u> 19.02.2013</p>	<p><u>Writ Petition No. 1087/2011</u></p> <p>Present: Mr. Ijaz Anwar, Advocate, for Abdul Malik etc., petitioners.</p> <p>Mr. Obaid Razzaq, Addl. AG, for the respondents.</p> <p>*****</p> <p><u>KHALID MAHMOOD, J.</u>-Abdul Malik etc., petitioners herein, through the instant constitutional petition, have asked for the issuance of an appropriate writ declaring that act of the respondents filling the posts of PTC / CT through the transfers in Tehsil Prang Ghar by ignoring them from appointments through initial recruitment being nullity in the eye of law is of no effect whatever. They have also asked for the issuance of an appropriate writ directing the respondents to consider them for appointments against the aforesaid posts besides being eligible and deserving persons are also the residents of Tehsil</p>

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EXAMINED
Peshawar High Court

Prang Ghar.

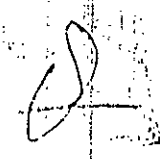
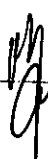
(12)

2. The main contention of the learned counsel for the petitioner was that when the petitioners besides being residents of Tehsil Prang Ghar are also eligible, how since 2007, from creation and vacation of the posts of PTC / CT, they have been deprived from appointments against the aforesaid posts by filling the same through transfer, which is totally based on mala fide and purely on political consideration. The learned counsel by referring to Notification bearing No. FS / E / 100-19 (Vol-27) / 6497-6508, dated 03.07.2009 and Circular letter dated 26.10.2009 further contended that when the government, by itself, formulated the recruitment policy in case of Agency Cadre posts in BS-1-15, how the respondents could go beyond it by filling the posts through transfer, that too, when this illegal act has been done in the period of ban on transfer.

3. As against that, the learned Additional Advocate General though tried his level best to controvert the allegations, levelled by the petitioners, but he was totally failed to do so.

4. We have gone through the available record

ATTESTED



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carefully and considered the submissions made by the learned counsel for both the parties.

5. Since the petitioners are eligible and deserving candidates being resident of Tehsil Parang, they, under the law and constitution, couldn't be deprived from their due right and also required to be considered for appointments against the posts of PTC / CT in Tehsil Prang Ghar because it is the right of the locals of the area, in which, the posts are created or vacated to be employed in the said posts. Therefore, we, direct the respondents to implement the policy qua appointments against the aforesaid posts in Tehsil Prang Ghar, in its letter and spirit by keeping in their mind that the locals of the said area, who are otherwise eligible and deserving, should not be deprived from their due right, which is guaranteed by the constitution. This writ petition is disposed of in the above terms.

Announced.
19. 02. 2013

sd/ Khalid M. Khan
sd/ Ghoshad Qureshi

CERTIFIED TO BE TRUE COPY

Peshawar
Authority
Article 37 of
the Constitution of Pakistan 1973

16-03-13

sd/ [Signature]

20/2/13

ATTESTED

[Signature]

(Fayaz)

F
D
D

درخواستیں طلبہ میں

حکومت سندھ ایجوکیشن ڈیپارٹمنٹ کے ایجنسیوں میں پوسٹل اور غیر پوسٹل ملازمتوں کے لیے درخواستیں قبول کرنے کے لیے 11-11-2012ء کو 11-11-2012ء تک درخواستیں قبول کی جائیں گی۔

شرائط

- 1- درخواستیں مندرجہ ذیل کی آئی آر کے مطابق ہونی چاہئیں۔
- 2- ہر ایک درخواست کے لیے عمر کی حد کا تعین اور اندراج گورنمنٹ فارم میں کیا گیا ہے۔ وہ طلبہ اور خواتین کے لیے ہے۔
- 3- تقرری ریکارڈوں پر ہونے والی ترقیوں اور تبدیلیوں کے متبادرتوں اور ان کے متعلقہ دستاویزوں کے ساتھ ہونی چاہئیں۔
- 4- تقرریوں کے متعلقہ دستاویزوں کے ساتھ ہونی چاہئیں۔
- 5- تقرریوں کے متعلقہ دستاویزوں کے ساتھ ہونی چاہئیں۔

تاریخ	تاریخ	موضوع	پوسٹ
12-11-2012	12-11-2012	میٹرک بعد شہادۃ العالیہ فی العلوم العربیہ و اسلامیہ سائنس ڈویژن از تنظیم الوقای المدارس یا ایم اے عربی سائنس ڈویژن (سٹورڈ ہاؤس ٹیچر)	AT (BPS-15) 18-35
12-11-2012	12-11-2012	میٹرک بعد شہادۃ العالیہ فی العلوم العربیہ و اسلامیہ سائنس ڈویژن از تنظیم الوقای المدارس یا ایم اے عربی سائنس ڈویژن بعد اسلامیات و عربیہ شہادۃ العالیہ از تنظیم الوقای المدارس	TT (BPS-14) 18-35
13-11-2012	13-11-2012	بی اے اے ای ایس ای بعد سی ای سٹوڈنٹ ٹیچر	CT (Gen.) BPS-09 18-35
13-11-2012	13-11-2012	بی اے اے ای ایس ای بعد سی ای سٹوڈنٹ ٹیچر	PET (BPS-09) 18-35
14-11-2012	14-11-2012	بی اے اے ای ایس ای بعد سی ای سٹوڈنٹ ٹیچر	DM (BPS-09) 18-35
14-11-2012	14-11-2012	میٹرک بعد شہادۃ العالیہ فی العلوم العربیہ و اسلامیہ سائنس ڈویژن از تنظیم الوقای المدارس	Qari (BPS-09) 18-35
14-11-2012	14-11-2012	میٹرک بعد شہادۃ العالیہ فی العلوم العربیہ و اسلامیہ سائنس ڈویژن از تنظیم الوقای المدارس	Assistant Store Keeper (BPS-07)

حکومت سندھ ایجوکیشن ڈیپارٹمنٹ کے ایجنسیوں میں پوسٹل اور غیر پوسٹل ملازمتوں کے لیے درخواستیں قبول کرنے کے لیے 11-11-2012ء کو 11-11-2012ء تک درخواستیں قبول کی جائیں گی۔

ATTESTED

No PST Post has been added.

درخواست/اپیل برائے منسوی ٹرانسفر اور

مذہب - حال

تعداد میں ہے کہ سابقین علیہ اساتذہ ان ٹرانسفر کے حق میں پٹرنڈ فارما سے جتنی کھینچوں

کو بوجھلی میں حسن و جم سے جملہ اساتذہ میں ہے جن کی اپیل کی ہے مذہب - والہ صبیحہ

تہہ انکو معلوم ہے کہ دھرم (اسلام آباد) میں لکھنا کا قیمت وقت صحیح ہو گیا ہے۔ اساتذہ کے ٹرانسفر کیوں سے فضاء کا خرید وقت صحیح ہو جائیگا

لہذا اب صحیح سے اس کی سہ ماہی طلبی اور اساتذہ کی حال پر مدد

ہمارے اس دردمندانہ اپیل کو منسوی ٹرانسفر اور دیگر منسوی اقدامات جاری کریں۔

13 مئی 2016

خبر

الحارمین!

عنا لوانتہن بیوہ

End/No

24382-96

1 حسن خان آف

2 افضل شاہ آف

3 محمد اسد آف

4 امتیاز شاہ آف

5 ناصر شاہ آف

6 فخر علی آف

7 میرویس آف

8 قاسم خان آف

9 قمر شاہ آف

10 زبیر آف

Seen and Filed

ATTESTED

AEO Mohammad
16/5/16

[Signature]



**GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(Regulation Wing)**

POSTING / TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT.

- i) All the posting/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants
 - ii) All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities for seeking posing/transfers of their choice and against the public interest.
 - iii) All contract Government employees appointed against specific posts, can not be posted against any other post.
 - iv) The normal tenure of posting shall be three years subject to the condition that for the officers/officials posted in unattractive areas the tenure shall be two years and for the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.
 - v) {
 - vi) While making postings/transfer from settled areas to FATA and vice-versa, specific approval of Governor, NWFP needs to be obtained
- ²While making postings/transfers of officers/officials up to BS-17, from settled areas to FATA and vice-versa approval of the Chief Secretary NWFP needs to be obtained. Whereas, in case of posting/transfer of officers in BS-18 and above, from settled areas to FATA and vice versa, specific approval of the Governor NWFP shall be obtained.
- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for atleast eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.
 - vii) Officers may be posted on executive/administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thaana) of his area/residence is situated.
 - viii) No posting/transfers of the officer's/officials on detailment basis shall be made.
 - ix) Regarding the posting of husband/wife, both in Provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.
 - x) All the posting/transferring authorities may facilitate the posting/transfer of the unmarried female government Servants at the station of the residence of their parents.

¹ Para-1(v) regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No: SOR-VI (E&AD) 1-4/2008/Vol-VI, dated 3-6-2008. Consequently authorities competent under the NWFP Government Rules of Business, 1985, District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make posting/transfer subject to observance of the policy and rules.

² Added vide Urdu circular letter No. SOR-VI(E&AD)1-4/2003, dated 21-09-2004

- xi) Officers/officials except DCOs and DPOs/SPs who are due to retire within one year may be posted on their option on posts in the Districts of their domicile and be allowed to serve there till the retirement
¹DCOs and DPOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against non-administrative posts of equivalent scales;
- xii) In terms of Rule-17(1) and (2) read with Schedule-III of the NWFP Government Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against each officer in column2 thereof:

Outside the Secretariat		
1.	Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above.	Chief Secretary in consultation with Establishment Department and Department concerned with the approval of the Chief Minister.
2.	Other officers in BPS-17 and above to be posted against scheduled posts, or posts normally held by the APUG, PCS(EG) and PCS(SG).	-do-
3.	Heads of Attached Departments and other Officers in B-19 & above in all the Departments.	-do-
In the Secretariat		
1.	Secretaries	Chief Secretary with the approval of the Chief Minister.
2.	Other Officers of and above the rank of Section Officers: a) Within the Same Department b) Within the Secretariat from one Department to another.	Secretary of the Department concerned. Chief secretary/Secretary Establishment.
3.	Officials up to the rank of Superintendent: a) Within the same Department b) To and from an Attached Department c) Within the Secretariat from one Department to another	Secretary of the Department concerned. Secretary of the Dept in consultation with Head of Attached Department concerned. Secretary (Establishment)

- xiii) While considering posting/transfer proposals all the concerned authorities shall keep in mind the following:
- To ensure the posting of proper persons on proper posts, the Performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/officials be considered.
 - Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

¹ Added vide Urdu circular letter No: SOR-VI (E&AD)/1-4/2005, dated 9-9-2005.

ATTESTED

[Signature]

xiv) Government servants including District Govt. employees feeling aggrieved due to the orders of posting/transfer authorities may seek remedy from the next higher authority / the appointing authority as the case may be through an appeal to be submitted within seven days of the receipt of such orders. Such appeal shall be disposed of within fifteen days. The option of appeal against posting/ transfer orders could be exercised only in the following cases.

- i) Pre-mature posing/transfer or posting transfer in violation of the provisions of this policy.
- ii) Serious and grave personal (humanitarian) grounds.

2. To streamline the postings/transfers in the District Government and to remove any irritant/confusions in this regard the provision of Rule 25 of the North West Frontier Province District Government Rules of Business 2001 read with schedule – IV thereof is referred. As per schedule-IV the posting/transferring authorities for the officers/officials shown against each are as under:-

S. No.	Officers	Authority
1.	Posting of District Coordination Officer and Executive District Officer in a District.	Provincial Government.
2.	Posting of District Police Officer.	Provincial Government
3.	Other Officers in BPS-17 and above posted in the District.	Provincial Government
4.	Official in BPS-16 and below	Executive District Officer in consultation with District Coordination Officer.

3. As per Rule 25(2) of the Rules mentioned above the District Coordination Department shall consult the Government if it is proposed to:

- a) Transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure.
- b) Require an officer to hold charge of more than one post for a period exceeding two months.

4. I am further directed to request that the above noted policy may be strictly observed /implemented.

.....


All concerned are requested to ensure that tenures of the concerned officers/officials are invariably mentioned in summaries submitted to the Competent Authorities for Posting/Transfer.

{Authority: Letter No: SOR-VI/E&AD/1-4/2003 dated 24-6-2003}.

.....

It has been decided by the Provincial Government that posting/transfer orders of all the officers up to BS-19 except Heads of Attached Departments irrespective of grades will be notified by the concerned Administrative Departments with prior approval of the Competent Authority obtained on the Summary. The Notifications/orders should be issued as per specimen given below for guidance.

All posting/transfer orders of BS-20 and above and Heads of Attached Departments (HAD) shall be issued by the Establishment Department and the Administrative Departments shall send approved Summaries to E&A Department for issuance of Notifications.

ATTESTED


F-16
1



**GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(Regulation Wing)**

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ATTES
[Signature]

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¹DCOs and DPOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against non-administrative posts of equivalent scales;
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2.	Other officers in BPS-17 and above to be posted against scheduled posts, or posts normally held by the APUG, PCS(EG) and PCS(SG).	-do-
3.	Heads of Attached Departments and other Officers in B-19 & above in all the Departments.	-do-
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1.	Secretaries	Chief Secretary with the approval of the Chief Minister.
2.	Other Officers of and above the rank of Section Officers: a) Within the Same Department b) Within the Secretariat from one Department to another.	Secretary of the Department concerned. Chief secretary/Secretary Establishment.
3.	Officials up to the rank of Superintendent: a) Within the same Department b) To and from an Attached Department c) Within the Secretariat from one Department to another	Secretary of the Department concerned. Secretary of the Dept in consultation with Head of Attached Department concerned. Secretary (Establishment)

- xiii) While considering posting/transfer proposals all the concerned authorities shall keep in mind the following:
- To ensure the posting of proper persons on proper posts, the Performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/officials be considered.
 - Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

ATTESTED

xiv) Government servants including District Govt. employees feeling aggrieved due to the orders of posting/transfer authorities may seek remedy from the next higher authority / the appointing authority as the case may be through an appeal to be submitted within seven days of the receipt of such orders. Such appeal shall be disposed of within fifteen days. The option of appeal against posting/ transfer orders could be exercised only in the following cases.

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2. To streamline the postings/transfers in the District Government and to remove any irritant/confusions in this regard the provision of Rule 25 of the North West Frontier Province District Government Rules of Business 2001 read with schedule – IV thereof is referred. As per schedule-IV the posting/transferring authorities for the officers/officials shown against each are as under:-

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2.	Posting of District Police Officer.	Provincial Government
3.	Other Officers in BPS-17 and above posted in the District.	Provincial Government
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3. As per Rule 25(2) of the Rules mentioned above the District Coordination Department shall consult the Government if it is proposed to:

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4. I am further directed to request that the above noted policy may be strictly observed /implemented.

.....

All concerned are requested to ensure that tenures of the concerned officers/officials are invariably mentioned in summaries submitted to the Competent Authorities for Posting/Transfer.
 {Authority: Letter No: SOR-VI/E&AD/1-4/2003 dated 24-6-2003}.

.....

It has been decided by the Provincial Government that posting/transfer orders of all the officers up to BS-19 except Heads of Attached Departments irrespective of grades will be notified by the concerned Administrative Departments with prior approval of the Competent Authority obtained on the Summary. The Notifications/orders should be issued as per specimen given below for guidance.

All posting/transfer orders of BS-20 and above and Heads of Attached Departments (HAD) shall be issued by the Establishment Department and the Administrative Departments shall send approved Summaries to E&A Department for issuance of Notifications.

ATTESTED

VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar

OF 2016

Qasim Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

A.C.S KATA

(RESPONDENT)
(DEFENDANT)

I/We Qasim Khan

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ___/___/2016

Q
CLIENT

N
ACCEPTED

NOOR MOHAMMAD KHATTAK
(ADVOCATE)

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No 0345-0383141

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 547/2016

Qasim Khan.....Appellant.

VERSUS

1. Additional Chief Secretary FATA, FATA Secretariat Peshawar.
2. The Director Education FATA, FATA Secretariat, Peshawar.
3. The Agency Education Officer, Mohmand Agency at Ghalani Respondents.

Para-wise comments on behalf of respondent No: 2 & 3.

Respectfully Sheweth:

Preliminary Objection

1. That the appellant has got no cause of action to file the instant appeal.
2. That the appellant has not come to this Honorable Tribunal with clean hands.
3. That the appellant has concealed material facts from this Honorable Tribunal.
4. That the appellant is estopped by his own conduct to bring the present appeal.
5. That the appeal is bad due to mis-joinder and non-joinder of necessary parties.
6. The appellant submitted joint departmental appeal which is not permitted hence, his appeal was not maintainable.
7. That this Honorable Tribunal has no jurisdiction to entertain the Appeal.
8. That the instant appeal is not maintainable and devoid of merits.

On Facts:

1. No comments. Subject to record.
2. The appellant transfer was made in violation of policy, whereby Agency cadre post i.e PST/CT can not be filled up by way of transfer.
3. No comments. As elucidated in para-2 above and paras below.
4. Incorrect. The previous transfer of the appellant was issued in violation of Law/policy. The judgment dated 19.2.2013 of Peshawar High Court directed the respondents department that "the local of the area should not be deprived from their due right" so the interpretation can be given to the Judgment, that a post vacated in one Tehsil should not be filled up by way of transfer from other Tehsil. The said judgment is intact being part of the policy of the respondents department. It is pertinent to mention, here that the petitioners in W.P. No. 1087/2011 have again approached the Peshawar High Court Peshawar through contempt petition No. 41-P/2016 photo copy attached as Annexure (A). So It is wrong to suggest that, the respondents have mis-interpreted the judgment dated 19.2.2013.
5. Incorrect. The main contention of the petitioners in Writ Petition No. 1087/2011 was, that the respondents department may be restrained from filling up posts of PST/CT by way of transfer. Copy of writ petition is attached as Annexure (B).
6. As elucidated in para-4 and 5 above.
7. That the appellant has got no cause of action to file instant appeal.

Grounds:

- A. Incorrect. The respondents department is bound by law and the impugned order 10/05/2016 has been issued as per law/policy.
- B. Incorrect. There is no violation of Article 4 and 25 of the constitution, the appellant transfer is actually issued keeping in view policy of the department and order of Peshawar High Court dated 19.2.2013.
- C. Incorrect. The appellant previous transfer order was issued in violation of policy. It has been rectified, in light of honorable court decision dated 19.2.2013.
- D. Incorrect. Principal of locus poenitentiae does not apply in appellant case, because, the competent authority has the power to pass an order, and also, has the power to rescind an order. The appellant could not benefited himself from the ibid principal, being himself standing at a wrong position.
- E. Incorrect hence denied. As replied above.
- F. Incorrect. The impugned order has been issued as per law.
- G. Incorrect. There is no malafide on the part of the respondents and he was treated as per policy.
- H. Incorrect. As stated in para-G above.
- I. Incorrect. As elucidated in para-G above.
- J. Incorrect. As stated in para-G above.
- K. The respondents also seek permission to raise additional grounds at the time of arguments.

In light of the above facts it is humbly requested to please dismiss the appeal having no legal grounds with cost.

Respondent No. 2.


Director Education FATA.

Respondent No. 3.


Agency Education Officer,
Mohmand Agency.

AFFIDAVIT

We the above respondents do hereby declare and affirm that the above comments are true and correct to the best of our Knowledge and belief that nothing has been concealed from this Honorable Tribunal.

Respondent No. 2.


Director Education FATA.

Respondent No. 3.


Agency Education Officer,
Mohmand Agency.

A

IN THE PESHAWAR HIGH COURT PESHAWAR

COC NO. 411-P/2016

In W.P No. 1087/2011

Decided on 19.2.2013

1. Zaman Khan s/o Rasul Shah R/O Tehsil Prang Ghar Mohmand Agency.
2. Seema Gul D/O Saeed ur Rehman R/O Tehsil Prang Ghar Mohmand Agency

(Complainants)

VERSUS

1. Additional Chief Secretary FATA, Khyber Pakhtunkhwa FATA Secretariat Peshawar.
2. Hameed Ullah Jan Director of Education FATA Secretariat, Peshawar.
3. Saeed Gul Agency Education Officer, Mohmand Agency at Ghalanai.

(Respondents)

Application for initiation of Contempt proceedings against the respondents for willfully violating/not complying and flouting the judgment & order dated 19.2.2013 of this Honourable Court

Respectfully Submitted:

1. That the complainant has filed Writ Petition No. 1087/2011 in this Honourable Court with the following prayer: -

“On acceptance of this petition an appropriate writ may please be issued directing the respondents to stop forthwith filling the posts of PTC&CT in Tehsil Prang Ghar through transfer, the petitioners are continuously denied appointment being resident of Tehsil Prang Ghar on no ground what so ever, malafidely vacant posts are created in other Tehsil by transferring the teachers to Tehsil Prang Ghar, the petitioners throughout remained in the top of merit lists for appointment against the post of CT & PTC, the transfers so made be declared as illegal, unlawful and without lawful authority and of no legal effect,

the transfer orders so made in violation of law and ban imposed by the respondents on such transfers, be reversed and teachers so transferred in violation of law be sent back to their own Tehsil and the posts so vacated in Tehsil Prang Ghar be filled from amongst the eligible and fit residents of this Tehsil, the petitioners are eligible and fit for appointment against the posts of PTC & CT may be considered for appointment or any other remedy deemed proper may also be allowed."

(Copy of writ petition is attached as annexure A).

3. That the writ petition came up for hearing on 19.2.2013, the writ petition was allowed in the following terms.

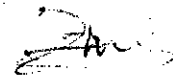
"since the petitioners are eligible and deserving candidates being resident of Tehsil Parang, they under the law and constitution, could not be deprived from their due right and also required to be considered for appointments against the posts of PTC/CT in Tehsil Prang Ghar because it is the right of the locals of the area, in which, the posts are created or vacated to be employed in the said posts. Therefore, we, direct the respondents to implement the policy qua appointments against the aforesaid posts in Tehsil Prang Ghar, in its letter and spirit by keeping in their mind that the locals of the said area, who are otherwise eligible and deserving, should not be deprived from their due right, which is guaranteed by the constitution. This writ petition is disposed of in the above terms."

(Copy of the judgment and order dated 19.2.2013 is attached as annexure B).

4. That the complainants thereafter approached the respondents for implementation of the Judgments and order of this Honorable Court, however, they gave a deaf ear.
5. That the respondents are willfully flouting and violating the Judgment and Order of this Honorable Court, and had made themselves liable to be proceeded against for the contempt of court.

6. That in the interest of justice and for the sake of rule of law, the respondents deserve exemplary punishment so that the dignity and honour of the Courts is maintained.

It is, therefore, prayed that on acceptance of this application appropriate contempt proceedings be initiated against the respondents for willfully flouting and violating the judgment and orders of this Honorable Court.



Complainants

Through



IJAZ ANWAR
Advocate Peshawar

(26) (31) (47) (B)

IN THE PESHAWAR HIGH COURT PESHAWAR

Writ Petition No. 1087/2011

Abdul Malik S/O Said Muhammad Shah R/O Tehsil Prang Ghar
Mohmand Agency and others.....(Petitioners)

Versus

Additional Chief Secretary FATA, Khyber Pakhtunkhwa FATA
Secretariat Peshawar and others.....(Respondents)

ADDRESSES OF PARTIES

Petitioner:

1. Abdul Malik S/O Said Muhammad Shah R/O Tehsil Prang Ghar Mohmand Agency.
2. Seema Gul D/O Saeed ur Rehman R/O Tehsil prang Ghar Mohmand Agency.
3. Zaman Khan S/O Rasul Shah R/O Tehsil prang Ghar Mohmand Agency.
4. Muhammad Daud S/O Miras Khan R/O Tehsil prang Ghar Mohmand Agency.

Respondents:

1. Additional Chief Secretary FATA, Khyber Pakhtunkhwa FATA Secretariat Peshawar.
2. Director of Education FATA Secretariat, Peshawar.
3. Deputy Director of Education FATA, Khyber Pakhtunkhwa Peshawar.
4. Agency Education Officer, Mohmand Agency at Ghalanai.

Petitioners *[Signature]*

Through *[Signature]*

IJAZ ANWAR
Advocate Peshawar

[Signature]

FILED IN

DATE

30/11

(32) (87) (B)

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Court of.....

Case No.....of.....

Serial No. of Order of Proceedings	Date of Order of Proceedings	Order or other Proceedings with Signature of Judge.
1	2	3
	ORDER 19.02.2013	<u>Writ Petition No.1087/2011</u> Present: Mr. Ijaz Anwar, Advocate, for Abdul Malik etc., petitioners. Mr. Obaid Razzaq, Addl. AG, for the respondents. ***** <u>KHALID MAHMOOD, J.</u> -Abdul Malik etc., petitioners herein, through the instant constitutional petition, have asked for the issuance of an appropriate writ declaring that act of the respondents filling the posts of PTC / CT through the transfers in Tehsil Prang Ghar by ignoring them from appointments through initial recruitment being nullity in the eye of law is of no effect whatever. They have also asked for the issuance of an appropriate writ directing the respondents to consider them for appointments against the aforesaid posts besides being eligible and deserving persona are also the residents of Tehsil

ATTESTED

EXAMINER
Peshawar High Court

13 MAY 2016

Prang Ghar.

2. The main contention of the learned counsel for the petitioner was that when the petitioners besides being residents of Tehsil Prang Ghar are also eligible, how since 2007, from creation and vacation of the posts of PTC / CT, they have been deprived from appointments against the aforesaid posts by filling the same through transfer, which is totally based on mala fide and purely on political consideration. The learned counsel by referring to Notification bearing No. FS / E / 100-19 (Vol-27) / 6497-6508, dated 03.07.2009 and Circular letter dated 26.10.2009 further contended that when the government, by itself, formulated the recruitment policy in case of Agency Cadre posts in BS-1-15, how the respondents could go beyond it by filling the posts through transfer, that too, when this illegal act has been done in the period of ban on transfer.

3. As against that, the learned Additional Advocate General though tried his level best to controvert the allegations, levelled by the petitioners, but he was totally failed to do so.

4. We have gone through the available record

ATTESTED

EXAMINER
Public High Court

10 MAY 2016

34

29

75

carefully and considered the submissions made by the learned counsel for both the parties.

5. Since the petitioners are eligible and deserving candidates being resident of Tehsil Parang, they, under the law and constitution, couldn't be deprived from their due right and also required to be considered for appointments against the posts of PTC / CT in Tehsil Prang Ghar because it is the right of the locals of the area, in which, the posts are created or vacated to be employed in the said posts. Therefore, we, direct the respondents to implement the policy qua appointments against the aforesaid posts in Tehsil Prang Ghar, in its letter and spirit by keeping in their mind that the locals of the said area, who are otherwise eligible and deserving, should not be deprived from their due right, which is guaranteed by the constitution. This writ petition is disposed of in the above terms.

Announced.
19. 02. 2013

Admitted

sd/ Khalid Mehmood Khan - J

sd/ Josted Qaisar - J

sd/ [Signature]

20/2/13

(Fayaz)

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Qanun-e-Shahadat Order 1984

13 MAY 2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL No.547/2016

QASIM KHAN

VS

A.C.S FATA

REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO THE REPLY SUBMITTED BY THE RESPONDENTS

R/SHEWETH:

All the preliminary objections raised by the respondents are incorrect, baseless and not in accordance with law and rules rather the respondents are estopped due to their own conduct to raise any objection at this stage of the appeal.

ON FACTS:

1 TO 7.

- 1- Admitted correct hence need no comments.
- 2- Incorrect and not replied accordingly. That there is no violation of policy. Further more that there is no such policy or criteria due to which any vacant post should be filled up on any initial recruitment rather than transfer.
- 3- Incorrect and not replied accordingly hence denied.
- 4- Incorrect and not replied accordingly. That the previous transfer order of the appellant has been issued in accordance with law/Policy. That the respondents misinterpreted the above mentioned judgment dated 19.02.2013.
- 5- Incorrect and not replied accordingly. That the petitioners in writ petition No. 1087/2011 questioned the selection process of the respondent Department which was conducted by the respondent Department in light of the advertisement issued in 2011.
- 6- Incorrect and not replied accordingly hence denied.
- 7- Incorrect and not replied accordingly hence denied.

GROUND:
(A to I):

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondent are incorrect, baseless and not in accordance with law and Rules. That the impugned transfer order dated 10.05.2016 is against the clause I and IV of the transfer/posting policy and has not been passed in public interest not exigencies of service. That the impugned transfer order has been issued by the respondent Department with ulterior motive just to accommodate their blue eyed persons.

It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may be accepted in favor of the appellant.

APPELLANT



QASIM KHAN

THROUGH:



NOOR MOHAMMAD KHATTAK
ADVOCATE