

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal # 2589/2023


Muhammad Yaseen Shah.....Appellant.

VERSUS

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

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Deponent

Next date
18/3/24
S.B D.I. Khan

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

Service Appeal # 2589/2023

Muhammad Yaseen Shah..... Appellant

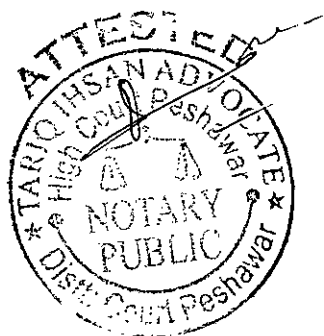
VERSUS

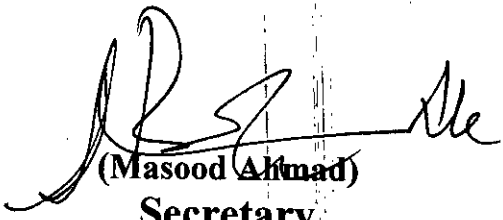
Govt. of Khyber Pakhtunkhwa & others..... Respondents

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# 2589/2023 Case Titled Muhammad Yaseen Shah vs Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.**

**(Masood Ahmad)
Secretary
E&SE Department Peshawar**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

In Service Appeal No. 2589/2023

Muhammad Yaseen Shah,.....Appellant.

Versus

Chief Secretary to Govt of KPK Peshawar..... Respondents.

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

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 11739

Dated 13/3/24

Respectfully Sheweth,

Preliminary Objections:

1. That according to Honorable Peshawar High Court Peshawar judgment on dated 18-11-2009 in writ petition No. 2937/2009. It has been observed that it is not befitting for teachers to hold administrative posts because they are getting benefits, but the students are suffering thus, they shall go to their respective places.
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. The Honorable Supreme Court in Mrs. Shilpis 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:-

“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 situation the present appeal is not maintainable and liable to be dismissed with costs.

4. That the appellant has got no cause of action against the respondents.
5. That the appellant is just wasting the precious time of this Honorable Tribunal.
6. That the appeal in hand is just filed to pressurize the respondents for getting unfair and undue service advantages.
7. That the appellant is estopped by his own conduct to file the present appeal.
8. That the appellant basically belongs to Teaching Cadre, while he has been placed in Management Cadre on needy bases whereas on the availability of suitable officer BPS-17 Notification dated 09-08-2023 was issued in public interest.
9. The appellant is BPS-16 officer and was entrusted with duties of SDEO on needy/temporary basis, the said notification was withdrawn on 09-08-2023 on the recommendation of the District Education Officer. Therefore, the appeal on this score alone is liable to be dismissed.
10. That the appellant concealed material facts from this Honorable Tribunal, therefore is not entitled for any relief.
11. That, according to the Central Administrative Tribunal Delhi in the case of Sh Jawahar Thakur vs Union of India held on 19th June, 2015 that 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 condition 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.
12. That according to the various judgments of this Honorable Tribunal, “The need of experienced staff at the respective places cannot be said to be arbitrary. Therefore, the Notification dated 09-08-2023 is in accordance with law.
13. That in case Mst. Parveen Begum vs Government this Honorable Tribunal in Service Appeal No 1678/2022 by DB discussed thoroughly the posting/transfer of wrong posting of Management/Teaching Cadre and dismissed the same nature appeal. **(Copy of Judgment is Annex-A)**
14. That according to section-10 desired posting is not perpetual right of a civil servant and department concerned can transfer any civil servant to serve at the given place as mention in the transfer/posting order, while the civil servant cannot refuse compliance.

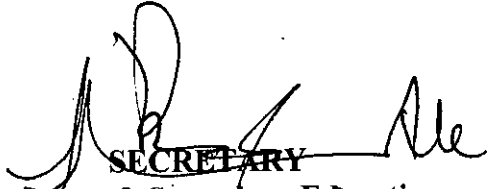
On FACTS

1. Pertains to record, however the appellant is basically a teacher in BPS-16.
2. That Para-2 is correct to the extent of transfer order. The appellant is a BPS-16 Teacher and was entrusted with duties of SDEO on temporary basis (OPS) due to non-availability of suitable officer
3. That Para-3 is incorrect hence denied. The Notification dated 24th July 2023 was withdrawn/canceled on 09-08-2023 on the request of the DEO (Male) South Waziristan with cogent reason and in the best interest of public and duty has been assigned suitable officer of BPS-17. (**Annex-B**)
4. That Para No-4 is incorrect and denied. The appellant has never filed Departmental Appeal before Competent Authority **Annex-C** alongwith the instant appeal is a forged documents and is just a draft to fulfil requirement of service appeal, however, from the perusal of the alleged departmental appeal the same is also time barred as apparent from the alleged document of Leopards Courier.
5. That Para-5 is incorrect and denied. That the appellant concealed material facts from this Honorable Tribunal due to fact that he never preferred Departmental Appeal before Competent Authority which is pre-requisite as per law and rules. Therefore the appellant is not entitle for any relief.

On Grounds:

1. Incorrect, hence denied. Notification order dated 09-08-2023 is in accordance with law already explained in Para No. 03 of the facts.
2. Para-2 is incorrect, hence denied. There is nothing unlawful in the notification dated 09-08-2023 as per law and rules. The appellant is actually a teaching cadre BS-16 officer and not suitable for the post of SDEO (BPS-17).
3. That Para-3 is totally incorrect, the appellant is BPS-16, while another suitable officer of BPS-17 duly qualified for the post was transferred against the post of SDEO (South Waziristan). It is pertinent to mention here that the appellant approached this Hon'ble Tribunal just to pressurize the respondents for getting unfair and undue service advantages.
4. That para-4 is incorrect, the appellant being having no locus standi and remain failed in approaching proper forum within statutory period therefore, the instant appeal is liable to be dismissed.
5. That Para-5 is incorrect hence denied already explained above.
6. Incorrect, and not permissible, therefore the appeal in hand is liable to be dismissed with cost summarily.

It is therefore, most humbly requested that the appeal in hand being devoid of any merits may kindly be dismissed with cost


SECRETARY
Elementary & Secondary Education,
(Respondent Nos.01 & 02)



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

NOTIFICATION

Dated: 24th July, 2023

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

Sr. No	Name & Designation	From	To	Remarks
1.	Zain Ud Din TC BS-16	SST GMS Poi Khel Shamiral SW	SDEO (M) SD Ladha Soth Waziristan	V.S.No.2
2.	Abdul Samad TC BS-17	SDEO (M) SD Ladha Soth Waziristan	Head Master GHS Shakai SW	AVP
3.	Muhammad Yasin Shah TC BS-17	SST GHS Sam SW	SDEO (M) SD Sarwakai Soth Waziristan	V.S.No.4
4.	Inayat Ullah TC BS-17	SDEO (M) SD Sarwakai Soth Waziristan	Head Master GHS Chalera Makin SW	AVP

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 (Male) Concerned.
5. District Accounts Officer Concerned.
6. PS to Advisor to Chief Minister on E&SE Khyber Pakhtunkhwa.
7. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.

111 / 24/7/2023
IMRAN ZAMAN)
SECTION OFFICER (Management Cadre)

Attested

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



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated 9th August 2023

NOTIFICATION

NO SO/INC/E&SED/4-16/2023/Posting/Transfer/SW: This Department's Notification of even number dated 24-07-2023 regarding posting / transfer of SDEOs/ Headmasters of South Waziristan, is hereby *withdrawn/ Cancel ab-initio*.

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.
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4. District Education Officer (Male) Concerned.
5. District Accounts Officer Concerned.
6. PS to Advisor to Chief Minister on E&SE Khyber Pakhtunkhwa.
7. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.

111 / 3rd 8. 2023
(IMRAN ZAMAN)
SECTION OFFICER (Management Cadre)

Attested.

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