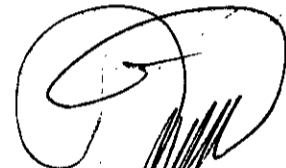


Cost of Rs. 2000/- received in Service Appeal No. 154/2024,

Titled Aizaz Ali VS. Education

in the office of Superintendent Vide Order 30-04-2024

Dated: 30 / 04 / 2024.



REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No.154/2024

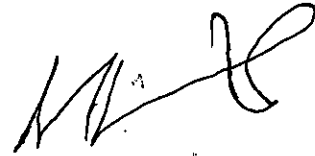
Mr. Aizaz Ali S/o Mushtaq Ali SST(M/P) BPS-16, Posted at GHS Dalori (G), R/O Village Kalu Khan, Mama Khel, Tehsil Razar, District Swabi **Appellant**

VERSUS

1. Govt. of KPK through Secretary Elementary and Secondary Education Civil Secretariat Peshawar.
2. Director E&SE, KP Peshawar, near GHSS No.1, Peshawar City.
3. District Education Officer (Male) Swabi.
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**DISTRICT EDUCATION OFFICER
(MALE) SWABI**

30-04-2024

S.B
Peshawar

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No.154/2024

Mr. Aizaz Ali S/o Mushtaq Ali SST(M/P) BPS-16, Posted at GHS Dalori (G), R/O Village Kalu Khan, Mama Khel, Tehsil Razar, District Swabi **Appellant**

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PARA WISE COMMENTS ON BEHALF OF THE RESPONDENTS No. 1 TO 3

Respectfully Sheweth,

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12493

Dated 30-04-24

PRELIMINARY OBJECTIONS.

1. That the appellant has no vested right to continue, to hold a particular post at a particular place, thus is liable to be transferred anywhere in exigencies of service, hence the appeal is not maintainable.
2. That the service appeal is filed before the expiry of stipulated period of ninety days after departmental appeal. Hence the service appeal is not maintainable.
3. That the service appeal is wholly incompetent, misconceived and untenable.
4. That the service appeal is wrong, baseless and not maintainable, it shows no strong cause to be taken for adjudication, therefore, the same service appeal is liable to be rejected/ dismissed.
5. That the service appeal is unjustifiable, baseless, false, frivolous and vexations. Hence the same is liable to be dismissed with the order of special compensatory cost in favor of respondents.
6. That no constitutional or legal right of the appellant has been violated, therefore, the appellant is not entitled to invoke the constitutional jurisdiction of this honourable Service Tribunal under Article 212 of the constitution of Pakistan.
7. That the appellant has not come to the Court/Tribunal with clean hands.
8. That the appellant has concealed the material facts from this Honourable Tribunal.
9. That the appeal is bad for misjoinder and non-joinder of the necessary party.
10. That the appellant has filed the instant appeal just to pressurize the respondents.
11. That the appellant has no cause of action to file the instant appeal.
12. That the appeal is not maintainable in the eye of law.
13. That the instant appeal is not maintainable in the present form and also in the present circumstances of the issue.

Facts:

1. That the para relates to the initial appointment of the appellant.
2. That the para relates to the regularization of the appellant.
3. That the appellant is working against Provincial Cadre post. He is performing his duties in the native District nearer his home station. The stance/plea of the appellant, that he has completed already his Tenure as per policy is quite ludicrous. According to the Section 10 of NWFP Civil Servants Act, 1973, "**Posting and transfer, every Civil Servant shall be liable to serve anywhere within or out side Province, in any post under the Federal Government, or any Provincial Government or Local Authority or a Corporation or Body setup established by such Government.**" "Civil Servant has no vested right to continue to hold a particular post at a particular place. Civil Servant was liable to be transferred anywhere in exigencies of service". Same is reported in 1999 SCMR 2155 (C), 1999 PLC 132 (C). The transfer of the appellant is not made under Section 10 of NWFP Civil Servants Act, 1973. The Supreme Court of Pakistan judgments are very much clear in this regard. Some reported judgments of Supreme of Pakistan are 1999 PLC 655, 1999 SCMR 755 etc.
4. That the documents annexed at page 24 of the memo of appeal is without any diary No. He did not apply for transfer a toll. He is talking argy brgy. He wants to lead department by its nose. The private Respondents No 4 is most senior in age than the appellant in service thus he was given preference due to his senior in age.
5. That the Government had every right to introduce its policy and the Court could not substitute the policy decision with its own opinion ordinarily, transfer and posting could not be claimed as matter of right, only the Government could determine as to which officer was suitable for which place. Same is reported in 2013 PLC (C.S) 864.
6. That the service appeal is wholly incompetent, misconceived, untenable, wrong, baseless, false, frivolous and unjustifiable. The transfer order dated 14-10-2023 is legal, in accordance with law and facts. The appellant is not an aggrieved person at all. The appellant wants to lead the department by its nose, which is illegal and immoral too. Thus the appellant has no cause of action to file the instant appeal and the appeal in hand is liable to be dismissed on the above facts and circumstance of the issue.

Grounds:


- A. Incorrect, hence denied. It is obligatory for each and every Govt Servant to perform his duties with full zeal and zest, because he his paid from the Govt exchequer.
- B. Incorrect, hence denied. The transfer order is fair, transparent, legal, just and is according to the principles of natural justice The Question of political pressure cannot arise.
- C. Incorrect, hence denied. It is the matter of rectification and not violation of any law, rules and policy. It is also the matter of transparency. According to the Section 10 of NWFP Civil Servants Act, 1973, "**Posting and transfer, every Civil Servant shall be liable to serve anywhere within or out side Province, in any post under the Federal Government, or any Provincial Government or Local Authority or a Corporation or Body setup established by such Government.**" "Civil Servant has no vested right to continue to hold a particular post at a particular place. Civil Servant was liable to be transferred anywhere in exigencies of service". Same is reported in 1999 SCMR 2155 (C), 1999 PLC 132 (C). The transfer of the appellant is not made under Section 10 of NWFP Civil Servants Act,

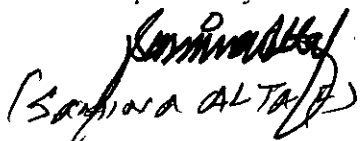
1973. The Supreme Court of Pakistan judgments are very much clear in this regard. Some reported judgments of Supreme of Pakistan are 1999 PLC 655, 1999 SCMR 755 etc. The tenure policy has not been violated in any shape, hence the question of malafide on part of respondents can not arise.

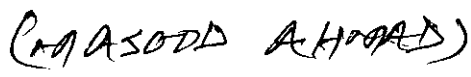
- D. Incorrect, hence denied. Civil Servant could be transferred and was liable to serve anywhere in Pakistan subject to rider that the terms and conditions of service as to his pay would not be less favorable than those which he was enjoying prior to his transfer. The same is reported in 1999 SCMR 755. The appellant wants to lead the department by its nose, which has no legal effect. The appellant is talking argy bargy. The appeal is misconceived/ unjustifiable, merit less and baseless. Thus the question of violating the tenure policy cannot arise.
- E. Incorrect, hence denied. The order dated, 14-10-2022 is fair, transparent, legal, just and is according to doctrine of natural justice. The question of political motivation can not arise, hence liable to be kept intact.
- F. Incorrect, hence denied. Civil Servant could be transferred and was liable to serve anywhere in Pakistan subject to rider that the terms and conditions of service as to his pay would not be less favorable than those which he was enjoying prior to his transfer. The same is reported in 1999 SCMR 755. According to the Section 10 of NWFP Civil Servants Act, 1973, " **Posting and transfer, every Civil Servant shall be liable to serve anywhere within or out side Province, in any post under the Federal Government, or any Provincial Government or Local Authority or a Corporation or Body setup established by such Government.**" "Civil Servant has no vested right to continue to hold a particular post at a particular place. Civil Servant was liable to be transferred anywhere in exigencies of service". Same is reported in 1999 SCMR 2155 (C), 1999 PLC 132 (C). The transfer of the appellant is not made under Section 10 of NWFP Civil Servants Act, 1973. The Supreme Court of Pakistan judgments are very much clear in this regard. Some reported judgments of Supreme of Pakistan are 1999 PLC 655, 1999 SCMR 755 etc. the transfer order is fair and transparent, hence the question personal like and disliked can not a rise.
- G. Incorrect, hence denied, the appellant could not apply for transfer, a toll thus the question the appellant not treated according to the law, fairness and equity and personal like and dislike can not arise. He did not file any transfer application to the competent authority, therefore pending of his application for consideration is contemptuous, wrong and baseless.
- H. Incorrect, hence denied. The impugned order is fair, transparent, legal, just and is according to the principles of natural justice. The question of political pressure can not arise.

The respondents seek permission to raise/argue additional points/grounds on the day of hearing the case.

In view of the above stated submissions, it is earnestly requested that the instant appeal may very graciously be dismissed with compensatory cost in favour of the department.



 (IRFAN ALI)
 DISTRICT EDUCATION OFFICER
 (MALE) SWABI


 (Bahara ALTAF)
 DIRECTOR (E&SE) DEPARTMENT
 KHYBER PAKHTUNKHWA
 PESHAWAR


 (MASOOD AHMAD)

SECRETARY (E&SE) DEPARTMENT
 KHYBER PAKHTUNKHWA

Additional officer


 Masood Ahmad
 Additional Secy (E&SE)

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

Service Appeal No.154/2024

Mr. Aizaz Ali S/o Mushtaq Ali SST(M/P) BPS-16, Posted at GHS Dalori (G), R/O Village Kalu Khan, Mama Khel, Tehsil Razar, District Swabi..... **Appellant**

VERSUS

- 1. Govt: of KPK through Secretary Elementary and Secondary Education Civil Secretariat Peshawar.
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- 3. District Education Officer (Male) Swabi.
- 4. Sajjad Ali Khan SST posted at GHS Ahad Khan Swabi..... **Respondents**

Affidavit

I Irfan Ali District Education Officer (Male) Swabi is hereby solemnly affirm and declare on oath that the contents of the comments submitted by respondents are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal. It is further, stated on oath that in this appeal the answering respondents have neither been ex-parte nor has their defense struck off.

CIRPANAHI


**DISTRICT EDUCATION OFFICER
(MALE) SWABI**

AUTHORITY LETTER

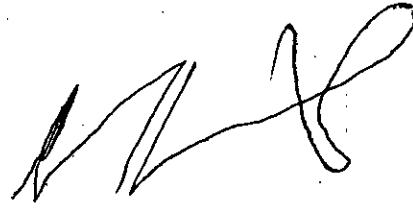
Mr. Fazal Hadi Litigation Officer BPS-17 is hereby authorized to submit the Para wise comments in service appeal No.154/2024 titled Aizaz Ali SST V/S Elementary & Secondary Education Department Khyber Pakhtun Khwa Peshawar on behalf of under signed. (16202-0846004-5)

His specimen signature are

1. F. Hadi

2. F. Hadi

3. F. Hadi



(IRFAN ALI)
DISTRICT EDUCATION OFFICER
(MALE) SWABI



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Block "A" Civil Secretariat, Peshawar

Phone No. 091-9211128

Dated Peshawar, the 15-03-2024

NOTIFICATION

NO.SO(Lit-II)/E&SED/1-5/2021. The undersigned is pleased to authorize Additional Secretary (General) Elementary & Secondary Education Department to sign parawise comments, replies, implementation reports, objection petitions, civil miscellaneous applications etc on my behalf for submission before various courts of law/tribunals in the best public interest.

SECRETARY
Elementary & Secondary Education
Department, Khyber Pakhtunkhwa

Endst: No. 2519-B

Dated 15-3-2024

Copy forwarded to the:-

1. Chief Secretary Khyber Pakhtunkhwa.
2. Advocate General Khyber Pakhtunkhwa.
3. Secretary Law Department.
4. Registrar Peshawar High Court Peshawar.
5. Registrar Service Tribunal Peshawar.
6. All Section Officers (Litigation) E&SE Department.
7. PS to Secretary E&SE Department.
8. PA to Additional Secretary (General) E&SE Department.
9. PAs to Deputy Secretary (Legal-I&II) E&SE Department.

*Attested
Procedural*

Sajid Ullah
(SAJID ULLAH)
SECTION OFFICER (Lit-II)