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

Service Appeal No: 170/2024

Fazal Ur Rehman, Senior Clerk District Kohat Appellant

VERSUS

Government of Khyber Pakhtunkhwa through the Secretary E&SE Khyber
Pakhtunkhwa & others..... Respondents

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Samina Altaf
DIRECTOR

E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 2)

29-03-2024

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**BEFORE THE HONORABLE KHYBER PAKHATUNKHWA
SERVICE TRIBUNAL PESHAWAR.**

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No: 170/2024

Diary No. 11999

Dated 29-03-2024

Fazal Ur Rehman, Senior Clerk District Kohat Appellant

VERSUS

Government of Khyber Pakhtunkhwa through the Secretary E&SE Khyber
Pakhtunkhwa & others..... Respondents

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS No: 1-9.

Respectfully Sheweth,

The Respondents as under.

PRELIMINARY OBJECTIONS.

- 1 That the Appellant has got no cause of action and locus standi to file instant appeal.
- 2 That the appeal is not maintainable and incompetent in the eyes of law in the present form.
- 3 That the appellant is estopped due to his own conduct to file this appeal.
- 4 That the appellant is not an aggrieved person within the meaning of Section-4 of Khyber Pakhtunkhwa Service Tribunal Act-1974 read with Article 212 of the constitution of Islamic Republic of Pakistan, 1973.
- 5 That the appellant has not come to this Honorable Tribunal with clean hands and has also concealed material facts from the ambit of this Honorable Tribunal to the extent of other Service Appeal No. 102/2023 under the said titled of the appellant against the Notification dated 15-11-2021.
- 6 That the appeal is bad for mis-joinder and non-joinder of necessary parties.
- 7 That the appeal in hand is pre mature, hence, not maintainable under the rules on the subject.
- 8 That the Honorable Tribunal has no jurisdiction to entertain the instant appeal in its present form and even fact & circumstances.
- 9 That the appeal has been mis-oriented, mis-constructed and mistakenly drawn and is incompetent in its present frame and context.
- 10 That the impugned Notification dated 22-09-2023, whereby, he has been transferred to the DEO (M) Kohat U/S-10 of Civil Servant Act, 1973 by the Respondent No. 2 being a competent authority in the titled matter which is legal & liable to be maintained.

- 11 That a Service Appeal No. 1473/2023 case titled Muhammad Tahir VS DEO (M) Kohat regarding the posting & transfer of the appellant has already been dismissed vide Judgment dated 28-08-2023 in favor of the Respondent Department.
- 12 That the titled appeal has been filed by the appellant in violation of the law & rules regarding the Res-Judicata of CPC, 1908.
- 13 That the appellant is not entitled to avail the benefit of the order No. 3905-8 dated 11-04-2023 being a closed transaction in the Respondent Department in compliance of the Judgment dated 28-08-2023 in the cited appeal.

ON FACTS.

- 1 That Para-1 pertain to the posting of the appellant in the office of the Respondent No. 3 against the Senior Clerk in BS-14 prior to the order dated 22-09-2023 of the Respondent No. 2, whereby, the appellant was adjusted in the said office under the cited provision of law & rules in vogue which is legal & liable to be maintained **attached as Annex-A**.
- 2 That Para-2 is also pertains to the service record of the appellant regarding his 1st appointment as J/C, where against he assumed duty on-18-02-1991 in the Department.
- 3 That para-3 pertains to the service record regarding promotion to the post of S/C in BPS-14 on dated 15-02-2021 by the competent authority.
- 4 That Para-4 is correct to the extent of the posting & transfer order dated 11-04-2023 **attached as Annex-B**, whereby the appellant was posted in the office of Respondent No. 3 from GHSS Muslim Abad Kohat in place of the Respondent No. 4, where against, Mr. Muhammad Tahir S/C (Respondent No. 4) has filed a Service Appeal No. 1473/2023 which was dismissed vide Judgment dated 28-08-2023 in favor of the Department **attached as Annex-C**.
- 5 That Para-5 is correct that vide order dated 15-09-2023 the original order dated 11-04-2023 was re-called by the Respondent No. 3 under the provision of Section-21 of the General Clauses Act, 1897 **attached as Annex-D**.
- 6 That Para-6 is also correct to the extent of the order dated 18-09-2023, whereby, the order dated 15-09-2023 was also re-called by restoring the order dated 11-04-2023 **attached as Annex-E**.
- 7 That Para-7 is also correct that vide order dated 22-09-2023, the appellant was posted to the post of S/C in BPS-14 in the office of the Respondent No. 3 under the cited provision of law & rules by the competent authority already attached as **Annex-A**.
- 8 That Para-8 is incorrect as no Departmental appeal against the order dated 22-09-2023 has been filed by the appellant till date, hence, got finality under the law, therefore, the appeal in hand is liable to the dismissed on the following ground inter alia: -

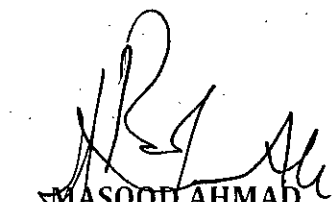
ON GROUNDS.

- A. Incorrect & not admitted, the appellant has been treated as per law vide order dated 22-09-2023 which is legal & liable to be maintained.
- B. Incorrect & not admitted. The plea of the appellant is illegal & liable to be rejected on the grounds that vide order dated 22-09-2023 the appellant has been posted in the office of the Respondent No. 3/DEO (M) Kohat, whereas the order dated 11-04-2023 is also regarding placing of the services of the appellant against the S/C in BS-14 post in the office of the Respondent No. 3/DEO (M) Kohat, hence the appeal in hand is liable to be rejected on this sole ground as the relief seeking by the appellant for his adjustment s S/C has already been extended to him vide order dated 22-09-2023 by the Respondent Department
- C. Incorrect & not admitted. As detail reply to this ground has already been given in Ground-B, by the Respondent Department
- D. Incorrect & not admitted. The plea of the appellant is illegal & liable to be rejected of being without cogent record in the custody of the appellant against the Respondent No. 4 till date.
- E. Incorrect & not admitted. The stand of the appellant is illegal & liable to be rejected on the grounds that posting & transfer is the jurisdiction of the competent authority under the law as cited above.
- F. Incorrect & not admitted. As detail reply to this ground has already been given in Ground-B, by the Respondent Department.
- G. Incorrect & not admitted. the appellant has been treated as per law vide order dated 22-09-2023 which is legal & liable to be maintained.
- H. Legal. However, the Respondent also seek leave of this Honorable bench to submit additional grounds record & case law at the time of arguments on the date fixed in the titled case.

PRAYER

In view of the above made submission it is requested that this Tribunal may very graciously be pleased to dismiss the instant service appeal with cost in favor of the Respondent Department.

Dated ___/___/2024


MASOOD AHMAD
 SECRETARY

E&SE Department Khyber
 Pakhtunkhwa, Peshawar.
 (Respondent No: 1)


Samina Altaf
 DIRECTOR

E&SE Department Khyber
 Pakhtunkhwa, Peshawar.
 (Respondent No: 2)

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

Service Appeal No: 170/2024

Fazal Ur Rehman, Senior Clerk District Kohat Appellant

VERSUS

Government of Khyber Pakhtunkhwa through the Secretary E&SE Khyber
Pakhtunkhwa & others..... Respondents

AFFIDAVIT

I, Samina Altaf, Director E&SE Department Khyber
Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents
of the instant para wise Comments are true & correct to the best of my
knowledge & belief. It is further stated on oath that in this appeal the
answering Respondents have neither been placed Ex-Parte nor their defense
has been struck off/cost.

Samina Altaf
Deponent
SAMINA ALTAF
E&SE Department Khyber
Pakhtunkhwa, Peshawar.

ATTESTED
29-3-22




**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR.**
Phone: 091-9225344 Email: ddadm.ee@gmail.com

Office Order.

Mr. Muhammad Tahir Senior Clerk DEO (M) Kohat under transfer to GHSS Muslim Abad Kohat is hereby retained in his original post in DEO (M) Office Kohat and Mr. Fazal Rehman Senior Clerk DEO (M) Kohat is hereby adjusted in the same office in place of Sajjad Ahmad Senior Clerk (who has proceeded on long leave) on his own pay and BPS in the interest of public service with effect from the date of his taking over charge.

Note:

1. Lien of Mr. Sajjad Ahmad S/C DEO (M) Kohat is hereby shifted to GHS Muslim Abad.
2. Charge report should be submitted to all concerned.
3. No TVDA is allowed.

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Endst: No. 8353-58 /F.No. / A-23/MS/Transfer Vol-III/ KPK 2020
Dated Peshawar the 22/09/2023.

- Copy forwarded to the: -
1. District Education Officer (Male) Kohat.
 2. District Accounts Officer Concerned.
 3. Principal/HM Concerned.
 4. Official concerned.
 5. Master File.
 6. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

[Signature]
Assistant Director (Admn)
Directorate of E&SE KPK, Peshawar

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[Handwritten signature]
Muhammad Tahir

ATTACHED



DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR.
Phone: 091-9225344 Email: ddadmneese@gmail.com

OFFICE ORDER

The Posting/transfer in respect of the following Ministerial Staff is hereby ordered on their own pay and BPS in the interest of public service with effect from the date of their taking over charge.

S. #	Name/Design:	Present Posting	Adjusted at	Remarks
1	Mr. Tahir Mehmood Senior Clerk	DEO (M) Kohat	GISS MuslimAbad KOHAT	V.S.No.2
2	Mr. Fazal Rehman Senior Clerk	GISS MuslimAbad Kohat	DEO (M) Kohat	V.S.No.1

Note:-

1. Compliance report should be submitted to all concerned.
2. No TA/DA etc is allowed.

Endst: No. 39105-8 F.No. /A-23/MS/Posting transfer/2021/Vol-I

Dated Peshawar the 11/04 2023

Copy forwarded to the:-

1. District Education Officer (Male) Kohat
2. District Accounts Officer concerned.
3. Principal Concerned.
4. Officials concerned.
5. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
6. Master File.

Attended
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ATTENDED
11/4/23
Assistant Director (Admn).
Directorate E& Secondary Education
Khyber Pakhtunkhwa, Peshawar
11/4/23

Service Appeal No. 1473/2023 filed by Mr. Muhammad Tahir against The District Education Officer (Male) Kohat and others decided on 28.08.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman and Mr. Salah Uddin Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

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**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN** ... CHAIRMAN
SALAH-UD-DIN ... MEMBER (Judicial)

Service Appeal No.1473/2023

Date of presentation of Appeal.....17.07.2023
Date of Hearing.....28.08.2023
Date of Decision.....28.08.2023

Mr. Muhammad Tahir Senior Clerk District Education Office (male)
KohatAppellant

Versus

1. The District Education Officer (Male), Kohat.
2. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
4. Mr. Fazal Rehman, Senior Clerk, GHSS Muslim Abad, Kohat..... Respondents

Present:
Mr. Muhammad Amin Khattak Lachi, AdvocateFor the appellant
Mr. Fazal Shah Mohraand, Additional Advocate General ...For respondents No.1 to 3
Mr. Hassan U.K Afridi, Advocate.....For Private respondent No.4

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE NOTIFICATION/OFFICE ORDER DATED 11.04.2023 WHEREBY APPELLANT WAS TRANSFERRED FROM THE OFFICE OF DISTRICT EDUCATION OFFICER (D.E.O) MALE KOHAT TO GHSS MUSLIM ABAD KOHAT AND ALL THE SUBSEQUENT ORDERS DATED 17.04.2023, 28.04.2023, ATTESTED 15.05.2023, 20.06.2023 & 04.07.2023.

ATTESTED

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JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Facts gleaned out from the memorandum of appeal are that appellant was appointed as Clerk (BP-07) in the office of District Education Officer (Male), Kohat. During service, he was promoted to the post of Senior Clerk (BPS-14). That on 04.03.2021 through mutual transfer, the appellant was transferred in the office of Respondent No.1; that on 11.04.2023, his services were struck off from the office of respondent No.1 and were handed over to GHSS Muslim Abad, Kohat; that being aggrieved from the impugned order dated 11.04.2023, he filed departmental appeal which was not responded to, therefore, he filed Writ Petition No.1580-P/2023 before the Hon'ble Peshawar High Court, Peshawar and on 03.05.2023 the respondents were directed to dispose of the departmental appeal of the appellant within 10 days, but fiasco; that in the meantime, vide corrigendum order dated 17.04.2023, the order dated 11.04.2023 was reverted. Therefore, the appellant approached the respondents and took charge as a Computer Operator in the office of respondent No.1 and again on 28.04.2023, the said corrigendum order was cancelled; that when the appellant approached the concerned school for taking charge on 15.05.2023, the corrigendum order was again restored; that when the appellant approached the Education Department for charge, then, again on 20.06.2023, previous order of 15.05.2023 was canceled and appellant was directed to approach the concerned school; that when the

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appellant approached the concerned school, again the impugned order dated

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16/05/2023

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11.04.2023 was restored on 04.07.2023. Therefore, he filed the instant service appeal before this Tribunal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellant, learned Additional Advocate General for official respondents and learned counsel for private respondent No.4.

04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General assisted by the learned counsel for private respondent No.4 controverted the same by supporting the impugned order(s).

05. The appellant has impugned the office order bearing endorsement No.3905-8 dated 11.04.2023. Only three grounds are urged by the learned counsel for the appellant before this Tribunal, one is that the appellant was successively being transferred as would be evident from the orders dated 1.04.2023, 17.04.2023, 28.04.2023, 15.05.2023, 20.06.2023 and 4.07.2023, secondly, that order dated 11.04.2023 (which is now in the field for its repeated cancellation and restoration), was premature and normal tenure of three years posting of the appellant was not yet completed and

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thirdly, that the appellant was transferred by the Director Elementary & Secondary Education, who had no power to transfer the appellant.

06. As to the first point mooted before us, we observe that successive transfers of the appellant i.e. from one place to other is not finding favor with us, as the above referred different orders show that the single order dated 11.04.2023 was being cancelled and restored time and again and there were no orders of transfer to different places. As to the second point of alleged premature transfer, admittedly, the appellant was transferred as Senior Clerk Education Office (Male), Kohat vide mutual transfer order dated 04.03.2021 and after completion of normal tenure of two years, he was transferred vide the impugned transfer order. According to the latest posting/transfer policy of the Provincial Government, the normal tenure of posting is now two years, therefore, this contention of the appellant could also not be given any weight. Now, coming to the last submission of the appellant that he was transferred by the Director Elementary & Secondary Education Khyber Pakhtunkhwa, who was not competent to transfer the appellant because the appellant was working against a district cadre post, the learned Additional Advocate General, representing the official respondents, has produced District Education Office (Male) Job Descriptions & Competencies and submitted that the post of the appellant was that of a provincial cadre post and the Director E&SE was very much competent to transfer the appellant. The above document could not be controverted by the

Appellant.



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Service Appeal No. 1473/2023 titled "Muhammad Tahir versus The District Education Officer (Male) Kohat and others", decided on 28.08.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Salah Ud Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

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17. The upshot of the above discussion is that the appellant could not make out a case, therefore, finding no merit in this appeal, we dismiss the appeal with costs. Consign.

08. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 28th day of August, 2023.

KALIM ARSHAD KHAN
Chairman

SALAH-UD-DIN
Member (Judicial)

2023 Shah

Certified to be true copy

SECRETARY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

TESTED

Date of Presentation of Application 29/8/23
 Number of Words Page 5
 Copying Fee _____

 Date of Completion of Copy 04/9/23
 Delivery of Copy 04/9/23



DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR.
Phone: 091-9225344 Email: ddadm.ese@gmail.com

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OFFICE ORDER

This office order issued vide Endst: No.3945-08 dated 11/04/2023 is hereby recalled in the interest of public service with immediate effect and Mr. Tahir Mehmood Senior Clerk under transfer to GHSS Muslim Abad Kohat is hereby retained in DEO (M) Office Kohat.

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar.

Endst: No. 4784-88 F.No.A-23/MS/ transfer/General/2023/

Dated Peshawar 15/09/2023.

- Copy of the above is forwarded to the: -
1. District Education Officer (Male) Kohat.
 2. District accounts officer concerned.
 3. Principal concerned.
 4. Official concerned.
 5. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
 6. Master File.

Assistant Director (ADMN)
Directorate E&SE Khyber Pakhtunkhwa
Peshawar.

15/9/2023

*Attended
Purwar*

ATTC



DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR.
Phone: 091-9225344 Email: ddadmnses@gmail.com

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OFFICE ORDER

The office order issued vide this office under Endst: No.4784-88 dated 15-09-2023 in respect of Mr. Fahir Mehmood S/Clerk GHSS Muslim Abad Kohat is hereby recalled in best interest of public service.

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar.

Endst: No. 6262-65 /F.No. /A-13/MS/General/2023 Dated Peshawar 18-09 /2023.

Copy of the above is forwarded to the: -

1. District Education Officer (Male) Kohat
2. District accounts officer Kohat
3. Principal/Headmistress concerned.
4. Official concerned.
5. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
6. Master File.

[Signature]
Assistant Director (ADMN)
Directorate E&SE Khyber Pakhtunkhwa
Peshawar.

18/9
2023

*Attested
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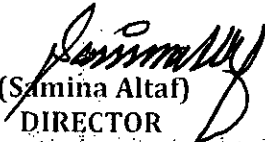
[Signature]



**DIRECTORATE ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA, PESHAWAR.**

AUTHORITY LETTER

I, Samina Altaf, Director (E&SE) Khyber Pakhtunkhwa Peshawar do hereby authorized Mr. Muhammad Rizwan, Assistant Director Litigation-II of this Directorate for submission of Joint Parawise Comments in Service Appeal No. 170/2024 case titled Fazal Ur Rehman Senior Clerk District Kohat Vs Government of Khyber Pakhtunkhwa & others, hence, an authority letter is hereby issued in favor of the above-named officer.


(Samina Altaf)
DIRECTOR

E&SE Department Khyber
Pakhtunkhwa, Peshawar