BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal # 412/2024

Maroof Khan.....Appellant.

VERSUS

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

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Deponent

17-05-24

(5)

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

Service Appeal # 412/2024

Maroof Khan ..... **Appellant**

VERSUS

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

AFFIDAVIT

I, **Abdul Akram,** Additional Secretary (General), Elementary & Secondary Education, Department do herby 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.

(Abdul Akram)
Additional Secretary (G), E&SED
On behalf of
SECRETARY E&SED
(Respondent No. 01)

ATTESTED
TARJO IHSAN ADVOCATE
High Court Peshawar
NOTARY PUBLIC
Distt: Court Peshawar

(6)

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 **in Service Appeal # 412/2024 Case Titled Maroof Khan** vs Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.

(Abdul Akram)
Additional Secretary (G), E&SED
On behalf of
SECRETARY E&SED
(Respondent No. 01)

(11)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

In Service Appeal No. 412/2024

Maroof Khan, DDEO (BPS-18):.....Appellant.

VERSUS

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

PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS NOS. 01

Respectfully Sheweth,

Preliminary Objections:

1. 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"**

Therefore, 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.

2. That according to Central Administrative Tribunal-Delhi in the case of Sh. Jawahar Thakur-vs-Union of India held on 19th June, 2015 that it is more than stare decisis that transfer is an incidence of service and it is for the executive/administration to decide how to and where to use its employees subject to the conditions of their appointment in the best interest of the organization and public service. It is not always possible and feasible to record strong reasons for allowing an officer to continue at a particular station for a few years or more or less.
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 The appellant has also assume the charge of Deputy District Education Officer Torgur

4. The appellant has not come to this Tribunal with clean hands.
5. The appellant is not an aggrieved person nor has any locus standi to file the present appeal.
6. That the appellant has concealed material facts from this Tribunal.
7. That the appellant is estopped by his own conduct to file the present appeal.
8. That the present appeal is against the prevailing law and rules.
9. That the appellant is not entitled for any relief, he has sought from this Honorable Tribunal.
10. That the present appeal is liable to be dismissed being devoid of any merits.
11. That the present appeal is hopeless time barred, hence liable to be dismissed.
12. That the present appeal is just filed by the appellant to pressurize the respondents for getting illegal and unlawful benefits.
13. That the appellant is just wasting the precious time of this Honorable Tribunal through the instant frivolous appeal.
14. In an another famous case, The State of U.P. and Others vs Goverdhan Lal, : 2004 (3) SLJ 244 (SC) it has been held this:

"It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of a civil servant is an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service"

Therefore, the appeal in hand is liable to be dismissed.

<u>On Facts</u>

1 In response of Para-I, it is stated that the appellant cannot claim the terms & conditions of service as her fundamental constitutional rights. The appellant is duty bound to serve anywhere throughout the Province wherever he might be given the task.

2 Pertains to record.

3 Para 3 Needs no Comments.

4 Para 3 Needs no Comments.

5 In response of Para-5, it is stated that the competent authority always acts with the intention of best administration and public interest. There is no malafide or ill will on the part of respondent. Moreover, transfer & posting is a part of service the respondents are empowered u/s 10 of Civil Servant Act, 1973.

6 In response of Para-6, transfer & posting is a part of service, the respondents are empowered u/s 10 of Civil Servant Act, 1973.

7 Incorrect the appellant is not an aggrieved person and all the grounds of appeal are totally incorrect.

8 Incorrect, hence denied. The appellant was posted as a Deputy District Education Officer (Male) District Mansehra after has promotion from (BPS-17 to BPS-18) vide notification dated 12-12-2022.

9 Need no comments.

10 Transfer & posting is a part of service, the respondents are empowered u/s 10 of Civil Servant Act, 1973.

11 The post of Deputy District Education Officer is a Provincial Cadre Posts as per Section-10 of Civil Servant Act, 1973, the Competent Authority is empowered to transfer the Civil Servant anywhere in province in the best public interest.

12 Need no comments.

13 Need no comments.

On Grounds:

a. Incorrect, the order dated 06-12-2023 is in accordance with law.

b. Para-B is not admissible, hence denied. There is no excuse in the terms & conditions of a Civil Servant and all Civil Servants are equal in the eye of law.

c. Transfer & posting is a part of service, the respondents are empowered u/s 10 of Civil Servant Act, 1973.

d. As above.

e. The post of Deputy District Education Officer is a Provincial Cadre Posts as per Section-10 of Civil Servant Act, 1973, the Competent Authority is empowered to transfer the Civil Servant anywhere in province in the best public interest.

f. Pertains to record.

g. As replied in above paras.

h. Incorrect hence denied. As replied in above paras.

i. Transfer & posting is a part of service, the respondents are empowered u/s 10 of Civil Servant Act, 1973.

j. Needs no comments.

k. Incorrect, the instant appeal is based on mala-fide intention just to put pressure on the Respondents for the grant of illegal and even unauthorized service benefits.

i. Incorrect, transfer and posting could not be claimed as matter of right and only competent authority could determine as to which officer was suitable for which place (2013 PLC (CS) 864 and 1991 PLC (CS) 374:) & Civil Servant could not claim posting at a particular station or at the place of his choice (2004 PLC (CS) 705.

j. Para-I is Incorrect hence denied. As replied above.

k. The respondent seek permission for additional arguments at the time of hearing

It is therefore, most humbly requested that the appeal in hand being meritless may kindly be dismissed with cost.

(Abdul Akram)
Additional Secretary (G), E&SED
On behalf of
SECRETARY E&SED
(Respondent No. 01)

(7)

Annexure. A

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

Dated, 6th December, 2023

NOTIFICATION

NO.SO(MC)E&SED/4-16/2023/DDEO/SDEOs/Mansehra: The following posting/ transfer of Management Cadre officers are hereby ordered with immediate effect, in the best public interest.

Sr#	Name	From	To	Remarks
1	**Muhammad Maroof** (MC) BS-18	DDEO (Male) Mansehra	DDEO (Male) Torghar	A V P
2	**Mr. Shams Ur Rehman** (MC) BS-17	SDEO (Male) Balakot, Mansehra	Deputy DEO (Male) Mansehra in OPS	V S No 1
3	**Mr. Ghulam Jilani** (MC) BS-16	ASDEO (Male) Circle Hungrai, Mansehra	SDEO (Male) Balakot, Mansehra in OPS	V S No 2

SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of even No.& date:

Copy forwarded for information to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
3. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
4. District Education Officers (Male) Mansehra/Torghar.
5. District Accounts Officer Mansehra/Torghar.
6. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.

6.12.2023

(IMRAN ZAMAN)
SECTION OFFICER (Management Cadre)

Attested

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