

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal # 863/2024

Mst. Saima Gul Appellant.

VERSUS

Govt: of Khyber Pakhtunkhwa & others Respondents.

INDEX

S#	Description of Documents	Annex	Pages
1.	Para-wise comments/reply	-	1-4
2.	Affidavit	-	5
3.	Authority Letter	-	6
4.	Annexures	-	7


Deponent

Filed on 22-8-2024

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

In Service Appeal No. 863/2024

Mst. Saima GulAppellant

VERSUS

Chief Secretary To Govt of Kpk Peshawar.....Respondents

PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS NO. 01, 02 & 03.

Respectfully Sheweth,

**Khyber Pakhtunkhwa
Service Tribunal**

Preliminary Objections:

Diary No. 15117

1. That the Respondent has adopted the proper law and procedure by exercising powers under Section 10 of Civil Servant Act, 1973, which is as under:-

Date 22/8/24

“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.

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 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 her 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, she 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”

Reply on Facts.

1. Pertains to record.
2. Pertains to record.
3. In response of para-03, it is stated that the appellant was transferred from GHSS No. 08 (Sherazi) DI. Khan to GGHSS Ghoriwala District Bannu by the respondents in light of 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.

4. Para No. 04 needs no comments.
5. Para No. 05. As replied in para No. 03 above.
6. Incorrect and denied. The appellant was earlier posted against the post of Principal GGHSS No. 08 Shirazi DI. Khan and vide the impugned notifications he was transferred/posted against his original post i.e. CIPE (BPS-19) at GGHSS Ghoriwala Bannu, therefore, he was treated as per prevailing laws, rules/policy. Moreover, the appellant has not annexed any substance/material which corroborate has assertions regarding Political pressures leading towards the impugned posting/transfer.
7. Para No. 07 pertains to appellant record regarding filing of writ petition against the impugned transfer notifications before the Peshawar High Court DI. Khan bench hence need no comments.
8. That the appellant is not aggrieved within the meaning of Section-04 of Khyber Pakhtunkhwa Civil Servant Act, 1974 read with Section-212 of the Constitution of Islamic Republic of Pakistan, 1974, therefore, has no local standi to file the instant service appeal.

On Grounds:

- A. Incorrect, the impugned transfer notifications 20-03-2024 is as per prevailing law, rules/policy and warrants no interference from this Honorable Tribunal.
- B. Incorrect, the impugned transfer notifications is issued under Section-10 of Civil Servant Act, 1973 by the competent authority. Moreover, the appellant has not annexed any substance/material which corroborate has assertions regarding Political pressures leading towards the impugned posting/transfer.
- C. Incorrect, the appellant was earlier posted against the post of Principal GGHSS No. 08 Shirazi DI. Khan and vide the impugned notification he was transferred/posted against his original post i.e. CIPE (BPS-19) at GGHSS Ghoriwala Bannu.
- D. Incorrect, as the case of appellant is different from notifications mentioned in the para, therefore, needs no comments.
- E. Incorrect, the appellant has not annexed any substance/material which corroborate his assertions regarding to Political pressures leading towards the impugned posting/transfer.
- F. Incorrect, the impugned transfer notifications is issued under Section-10 of Civil Servant Act, 1973 by the competent authority.

4

- G. Incorrect. The appellant is CIPE (BPS-19) which is Provincial Cadre and can be posted across the province.
- H. Incorrect as replied at Para-G above.
- I. Incorrect, the act of respondents is as per laws, rules/policy in field and liable to be maintained.
- J. Incorrect, needs no comments.
- K. Incorrect, the respondents counsel/AAG may please be allowed to raise additional grounds/submit documents during the course of arguments.

It is therefore, requested that the appeal in hand may kindly be dismissed with heavy cost.



(Mr. Fiaz Alam)
(Additional Secretary (Estab),
E&SE Department
On behalf of
✓ SECRETARY
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 01,02&03)

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

Service Appeal # 863/2024

Mst. Saima Gul Appellant

VERSUS

Secretary E&SE Govt. of Khyber Pakhtunkhwa & others..... Respondents

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

AFFIDAVIT

Service Appeal # 863/2024

I, **Fiaz Alam**, Additional Secretary (Estab), Elementary & Secondary Education, Department do hereby solemnly affirm and declare that

the contents of the accompanying para-wise comments, submitted by the Secretary E&SE Govt. of Khyber Pakhtunkhwa

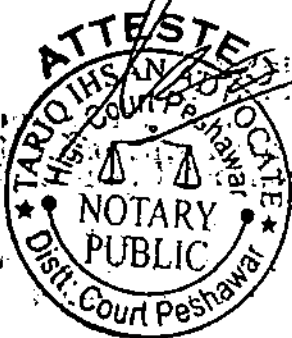
respondents, are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

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.

Secretary E&SE Govt. of Khyber Pakhtunkhwa

nothing has been concealed from this Honorable Court.



(Signature)
(Fiaz Alam)
Additional Secretary (Estab)
E&SE Department
on behalf of
SECRETARY E&SED
(Respondent No. 01,02&03)

nothing has been concealed from this Honorable Court.

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 # 863/2024 Case Titled Mst. Saima Gul vs Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar & Others.**

A handwritten signature in black ink, appearing to read 'Fiaz Alam'.

(Fiaz Alam)

**Additional Secretary (Estab)
E&SE Department**

on behalf of

SECRETARY E&SED

(Respondent No. 01,02&03)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Block "A" Civil Secretariat, Peshawar

Phone No. 091-9211128

Dated Peshawar, the 24-07-2024

NOTIFICATION

NO.SO(Lit-II)/E&SED/1-5/2021. The undersigned (Masood Ahmad, Secretary Elementary & Secondary Education Department) is pleased to authorize Mr. Faz Alam, Additional Secretary (Establishment), 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.

(MASOOD AHMAD)

SECRETARY


Elementary & Secondary Education
Department, Khyber Pakhtunkhwa

Endst: No. _____

Dated _____

Copy forwarded to the:-

1. Chief Secretary Khyber Pakhtunkhwa.
2. Advocate General Khyber Pakhtunkhwa.
3. Secretary Law Department.
4. Registrar Peshawar High Court Peshawar (with one each spare copy for the Honorable Judges).
5. Registrar Service Tribunal Peshawar (with one each spare copy for the Honorable Chairman/Members)
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.


SECTION OFFICER (Lit-II)