

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal # 980/2024

Mr. Muhammad Zareef.....Appellant.

VERSUS

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

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Deponent

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 980/2024

Muhammad ZareefAppellant

VERSUS

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

PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS NO. 01

Respectfully Sheweth,

Preliminary Objections:-

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 15307
Dated 29.08.24

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”

2. The appellant has not come to this Tribunal with clean hands.
3. The appellant is not an aggrieved person nor has any locus standi to file the present appeal.
4. That the appellant has concealed material facts from this Tribunal.
5. That the appellant is estopped by his own conduct to file the present appeal.
6. That the present appeal is against the prevailing law and rules.
7. That the appellant is not entitled for any relief, he has sought from this Honorable Tribunal.
8. That the present appeal is liable to be dismissed being devoid of any merits.
9. That the present appeal is hopeless time barred, hence liable to be dismissed.
10. That the present appeal is just filed by the appellant to pressurized the respondents for getting illegal and unlawful benefits.
11. That the appellant is just wasting the precious time of this Honorable Tribunal through the instant frivolous appeal.

Reply on Facts.

1. Pertains to service record of the appellant.
2. Incorrect and denied. The respondents implemented the judgment of Peshawar High Court in Writ Petition No. 2937/2009 in letter and spirit. It is added that the ibid judgment was decided in favor of the respondents/government whereby the impugned orders regarding withdrawal of deputationists teachers appointed/posted in various BISE issued by the respondents were maintained. It is pertinent to mention here that Provincial Government of Elementary & Secondary Education Department Notification No. SO(SM)E&SED/3-2/2016/SSRC of M.C dated 27-03-2019, notified the service rules for Management Cadre of E&SE Department. The ibid Service Rules reflects that the posts of Management Cadre Officers shall be filled from the Management Cadre Officers, provided that if no suitable officers is available from Management Cadre Officers then by transfer (**Annexure-A**).

3. Para -03 is incorrect and denied. The service rules of Management Cadre has been notified dated 27-03-2019 which has not been impugned in the instant service appeal and still in field.
4. Incorrect and denied. The respondents/competent authority appoint/post Management Cadre Officers under Section-10 of Civil Servant Act, 1973 read with Service Rules of Management Cadre.
5. Incorrect and denied. The notification dated 25-06-2024 is accordance with Section-10 of Civil Servant Act, 1973 read with Service Rules of Management Cadre.
6. Incorrect and denied. As per Para-05 above.
7. Incorrect and denied. The petitioner admitted that the same posting/transfer notification was challenged in WP 273-D/2024 which was dismissed by Peshawar High Court DI. Khan. In view of this, the instant service appeal is rejudicata and liable to be dismissed on this ground too.
8. Incorrect and denied. As per Para-07 above.
9. Incorrect and denied. The petitioner is not aggrieved under Section-04 of Khyber Pakhtunkhwa Civil Servant Tribunal Act, 1974 read with Article-212 of the Constitution of Islamic Republic of Pakistan, 1973, as well as the petitioner not availed the alternate remedy available in the form of departmental appeal hence the instant service appeal are liable to be dismissed with the following grounds:-

On Grounds:

- A. Incorrect and denied. That the impugned actions/in actions of respondents including impugned notification dated 25-06-204 is 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. In light of the ibid Act, the Competent Authority are fully empowered to transfer a civil servant at any place as and when required, and no one should interfere in their authority as per as such action is taken in the best public interest. Moreover transfer and posting could not be claimed as matter of right and only 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) Incorrect, hence denied. Already explained above.
- B. Incorrect and denied. The petitioner has been treated in light of laws/policy/service rules of Management Cadre and the notification dated 25-06-2024 is not in violation of Article-201 of the Constitution of the Islamic Republic of Pakistan, 1973.
- C. Incorrect, hence denied. The petitioner transfer notification dated 25-06-2024 is in accordance with Section-10 of Civil Servant Act, 1973, read with service rules of Management Cadre notified dated 27-03-2019.
- D. Incorrect and denied. The respondent acts/transfer notification is in accordance with law/rules/policy.

- E. Incorrect and denied. As per reply at ground A.
- F. Incorrect and denied. The respondent may be permitted to advance other grounds/documents at the time of arguments.

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



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

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

Service Appeal # 980/2024

Mr. Muhammad Zareef..... Appellant

VERSUS

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

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

AFFIDAVIT

Service Appeal # 980/2024

Mr. Muhammad Zareef

I, **Fiaz Alam**, Additional Secretary (Estab), Elementary &

Secondary Education, Department do hereby solemnly affirm and declare that

the contents of the accompanying application regarding restoration of right

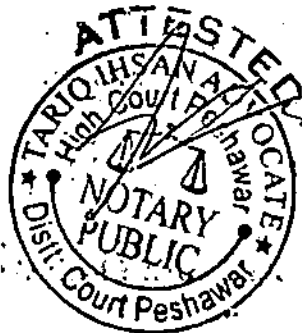
of defense/submission of parawise comments, submitted by the respondents,

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 not been find/cost imposed by this Honorable.



(Signature)
(Fiaz Alam)

Additional Secretary (Estab)
E&SE Department
on behalf of
SECRETARY E&SED
(Respondent No. 01&02)

5



**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 # 980/2024 Case Titled Muhammad Zareef 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)**



S- (A)

**GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT**

Block "A" Civil Secretariat, Peshawar

Phone No. 091-9211128

Dated Peshawar, the 27-08-2024.

NOTIFICATION

NO.SO(Lit-II)/E&SED/1-5/2021. I, Mr. Masood Ahmad, Secretary Elementary & Secondary Education Department is pleased to authorize Mr. Fiaz 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 TO THE
GOVERNMENT OF KHYBER PAKHTUNKHWA

Endst: of even No. & date.

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. PA to Deputy Secretary (Legal-I&II) E&SE Department.

Attested
MS
27/8/2024

SECTION OFFICER (Lit-II)



**GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT**

(Annex-A)


NOTIFICATION

Peshawar, dated the March 27, 2019

NO.SO(SM)E&SED/3-2/2016/SSRC of M.C: In pursuance of the provision contained in sub-rule (2) of rule-3 of the Khyber Pakhtunkhwa Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of this Department's Notification No. SO(SM)E&SED/3-2/2016/SSRC of MC dated 03-07-2018, the Elementary & Secondary Education Department, in consultation with the Establishment Department and the Finance Department, hereby lays down the method of recruitment, qualification and other conditions specified in Column No. 3 to 5 of the Appendix to the Notification which shall be applicable to the posts of Schools Management Cadre under the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar and Directorate of Curriculum & Teachers Education Khyber Pakhtunkhwa Abbottabad as specified in Column No. 2 of the said Appendix.

APPENDIX

S#	Nomenclature of the Post	Minimum Qualification for Appointment by Initial Recruitment or by Transfer	Age Limit	Method of Recruitment
	2	3	4	5
1	Director (BPS-20)	<p>By promotion, on the basis of seniority-cum-fitness, from amongst the <u>District Education Officers</u> and Additional Directors (Male and Female) with at least five year service in BPS-19 as such and having successful completion of Senior Management Course;</p> <p>Provided that if no suitable officer is available for promotion then by transfer of BPS-20 officer.</p> <p>Note: For the purpose of promotion, a joint seniority list of District Education Officers and Additional Directors (Male and Female) shall be maintained.</p>


 Secretary (Elementary & Secondary Education) Department
 Government of Khyber Pakhtunkhwa Peshawar

<p>..... District Education Officer/ Additional Director (BPS-19) (Male and Female)</p>			<p>.....</p> <p>“By promotion, on the basis of seniority-cum-fitness, from amongst the Deputy District Education Officers and Deputy Directors (Male and Female) with at least seven year service BPS-18 or twelve year service in BPS-17 and above and such officer shall undergo six weeks post promotion training on the following modules, namely:</p> <ol style="list-style-type: none"> i. Financial Management; ii. HR Management; and iii. Information Technology: <p>Provided that if no suitable officer is available for promotion then by transfer of BPS-19 officer”.</p>
<p>3 Deputy District Education Officer/Deputy Director (BPS-18) (Male and Female)</p>	<ol style="list-style-type: none"> i. M.Phil in Education from recognized University with three years teaching or administrative experience in Government recognized educational institutions or offices; or ii. at least Second Class Master's Degree or BS (four years) and Bachelor's Degree of Education from recognized University with five years teaching or administrative experience in BPS-17 and above in Government recognized educational institutions or offices; or iii. at least Second Class M.A/M.Sc with Second Class M.Ed./M.A (Education Planning and Management) or equivalent qualification from a recognized University with at least five years teaching or administrative experience in Government recognized educational institutions or offices. 	<p>25 to 45 years</p>	<p>✓</p> <p>(a) Eighty Percent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Divisional Education Officers and Assistant Directors (Male/Female) with at least five year service as such and such officers shall undergo six weeks post promotion training on following modules, namely:</p> <ol style="list-style-type: none"> i. Financial Management; ii. HR Management; and iii. Information Technology: <p>Provided that if no suitable officer is available for promotion then by transfer of BPS-18 officer”; and</p> <p>(b) twenty percent by initial recruitment.</p>
<p>Sub-Divisional Education Officer/Assistant Director (BPS-17) (Male and Female).</p>	<ol style="list-style-type: none"> i. At least Second Class M.A/M.Sc or BS (four years) from recognized University; ii. at least Second Class Bachelor's of Education from a recognized University; and iii. three years teaching or administrative experience in Government recognized institutions or offices. 	<p>21 to 40 years</p>	<p>(a) Eighty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Sub-Divisional Education Officers and Assistant District Education Officers (Male & Female) with at least five years' service:</p> <p>Provided that if no suitable officer is available for promotion then by transfer of BPS-17 officer; and</p> <p>(b) Twenty percent by initial recruitment.</p>


5	Assistant Sub-Divisional Education Officer/ Assistant District Education Officer (BPS-16) (Male and Female)	i. At least Second Class Bachelor's Degree or BS (four years) from a recognized University; ii. at least Second Class Bachelor's Degree of Education from a recognized University ; and iii. five years teaching or administrative experience in Government recognized institutions or offices.	25 to 35 years	"By initial recruitment: Provided that if no suitable officer is available then transfer of Secondary School Teacher (BPS-16) of Teacher Cadre. Note: On induction, all such officers shall undergo 8 weeks post induction training on the following modules, namely: i. Financial Management; ii. HR Management; and iii. Information Technology"
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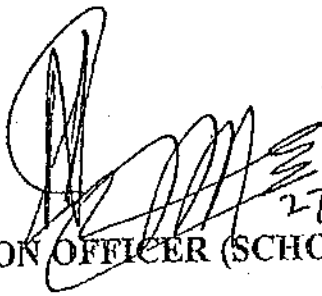
SECRETARY TO
GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT

Adst: of even No. & Date:-

Copy forwarded to the:

- All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
- Secretary to Governor, Khyber Pakhtunkhwa.
- Secretary to Chief Minister, Khyber Pakhtunkhwa.
- Chairman Khyber Pakhtunkhwa Public Service Commission, Peshawar.
- Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
- Directorate of Curriculum and Teachers Education Khyber Pakhtunkhwa Abbottabad.
- All District Education Officers (Male/Female) in Elementary & Secondary Education Khyber Pakhtunkhwa.
- Director Information Khyber Pakhtunkhwa Peshawar with the request to give vide publicity.
- Manager Government Printing Press Peshawar for publication in the next issue of Govt. Gazette.
- PS to Advisor to Chief Minister for E&SE Department Khyber Pakhtunkhwa Peshawar.
- PS to Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- PS to Special Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- PA to Additional Secretary (Estab) E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- PA to Deputy Secretary (Admn) E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- All Section Officers E&SE Department Khyber Pakhtunkhwa, Peshawar.
- Director EMIS E&SE Department with the request to upload the same on the web site of the Department.


 Secretary & Secondary Education
 Govt. of Khyber Pakhtunkhwa


 27-03-19
 SECTION OFFICER (SCHOOLS MALE)

(2)