


Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Implementation Petition No. 793/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	26.07.2024	<p>The implementation petition of Mr. Fida Khan submitted today by Mr. Bismillah Jan Advocate. It is fixed for implementation report before Single Bench at Peshawar on 30.07.2024. Original file be requisitioned. AAG has noted the next date. Parcha peshi given to counsel for the petitioner.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

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

Execution Petition No. 793 /2024

In

Appeal No.167/2024

Mr. Fida Khan.....(APPLICANT/ APPELLANT)

**VERSUS**

Chief Secretary, Government of Khyber Pakhtunkhwa, Civil  
Secretariat, Peshawar & another.....**RESPONDENTS**

**I N D E X**

<b>S.No</b>	<b>Description of Documents</b>	<b>Annex</b>	<b>Page</b>
1.	Execution Petition with affidavit		1-3
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3.	Application for the implementation		12
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Applicant/ Appellant  
Through

  
**BISMILLAH JAN**  
Advocate High Court  
Peshawar  
Cell: 0333-5105928

Dated: 14.05.2024

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

Execution Petition No. 793/2024

In

Appeal No. 167/2024

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 14840

Dated 26-07-2024

Mr. Fida Khan S/o Eid Ahmad Khan R/o Tehsil Shiwa,  
District North Waziristan, Ex SDEO Male,  
Razmak.....(Applicant/Appellant)

**VERSUS**

1. Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary Elementary & Secondary Education Department Block-A, Opposite MPAs Hostel, Civil Secretariat, Peshawar.
3. Director Elementary & Secondary Education Near GHSS, No. 1 G.T, Road, Peshawar.
4. District Education Officer (Male) North Waziristan.
5. Habib Ullah Jan, SDEO (Male) Razmak.....(Respondents)

**APPLICATION FOR EXECUTION TO EFFECT**  
**THE ORDER DATED 19/04/2024 OF THE**  
**KHYBER PAKHTUNKHWA SERVICE**  
**TRIBUNAL, PESHAWAR PASSED IN ABOVE**  
**TITLED SERVICE APPEAL NO. 167/2024.**

Respectfully Sheweth:

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1. That the applicant/appellant has filed Service Appeal No. 167/2024 under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned order dated 05/10/2023 whereby the appellant has been transferred from the post of SDEO (Male) Razmak North Waziristan to the Post of Headmaster GHS Mandi Khel North Waziristan service against which the applicant/ appellant filed the above titled appeal which was disposed of vide order dated 19/04/2024 with the direction to respondents to appoint the proper person against the post of SDEO as per Clause XIII Posting Transfer Policy from the Management Cadre and not from the Teaching Cadre. (Copies of service appeal and order dated 19/04/2024 are attached as annexure "A").
2. That thereafter the appellant approached the respondents for implementation of the order of this Hon'ble Tribunal, but in vain.
3. That the act of the respondents is clearly violation of the order of this Hon'ble Tribunal, hence needs implementation.

4. That any other ground will be raised at the time of arguments with the prior permission of this Hon'ble Tribunal.

It is, therefore most humbly prayed on acceptance of this Execution Petition, the order dated 19/04/2024 of this Hon'ble Court Tribunal passed in Service Appeal No. 167/2024, may kindly be implemented to the best interest of justice.

*[Handwritten Signature]*

Applicant/Appellant

Through

*[Handwritten Signature]*

**Bismiallah Jan**  
Advocate High Court,  
Peshawar.

Dated: 14/05/2024

**AFFIDAVIT:**

I, Mr. Fida Khan S/o Eid Ahmad Khan R/o Tehsil Shiwa, District North Waziristan, Ex SDEO Male, Razmak, do hereby solemnly affirm and declare that all the contents of the **Execution Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

*[Handwritten Signature]*  
*[Handwritten Signature]*

**DEPONENT**



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**BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHAWA  
PESHAWAR**



Service Appeal 167 /2024.

Mr. Fida Khan S/O Eid Ahmad Khan R/O Tehsil Shewa, District North Waziristan. Ex-SDEO-Male Razmak. Appellant

**Versus**

1. Chief Secretary, Government of Khyber Pakhtunkhawa civil Secretariat, Peshawar.
2. Secretary, Elementary and Secondary Education Department Block-A, opposite MPAs Hostel, Civil Secretariat.
3. Director, elementary and secondary department, near GHSS No. 1, G.T. Road, Peshawar.
4. District education officer (Male) North Waziristan.
5. Habib ullah jan, SDEO (Male), Razmak. Respondants


**SERVICE APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL ACT, 1974 AGAINST THE  
IMPUGNED TRANSFER ORDER DATED 05-10-  
2023 OF RESPONDANT NO.2 BY WHICH THE  
APPELLANT HAS BEEN TRANSFERRED  
FROM SDEO (Male) RAZMAK NORTH  
WAZIRISATAN AS HEAD MASTER GHS  
MANDEY KHEL NORTH WAZIRISTAN.**

**Prayer in appeal**

On acceptance of the instant service appeal of the appellant the impugned transferred order passed by the respondent no. 2 dated 5-10-023 may kindly be set aside and the order dated 31-3-2023, to the extent of appellant may kindly be restored in large interest of justice.

**Respectfully Sheweth:**

Brief facts giving rise to the instant appeal are as under;

**ATTESTED**  
  
 EXAMINER  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar  
 24-7-24

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1. That appellant is a law abiding citizen of the country hailing from District North Waziristan.
  2. That the appellant was posted as Head Master GHS Mandey khel North Waziristan.
  3. That vide Notification No SO MC E&SED/4-16-2022/posting transfer/MC dated 31-03-2023 the appellant was transferred to Razmak.


**(Copy of posting notification dated 31-03-2023 is Annexure A.**

4. That the appellant served as SDEO (Male) Razmak for a period of near about 08 months to the entire satisfaction of his immediate superior without any iota complaint.
5. That almost within a period of eight months the appellant was transferred and other person get posted at his place namely Habib ullah jan vide impugned transfer Notification No So (MC) E&SED/4-16-2023/Posting/Transfer/MC dated 05-10-2023 from SDEO (Male) Razmak North Waziristan to his previous post i.e Head Master GHS Mandey Khel, North Waziristan. **(Copy of the impugned transfer notification dated 05-10-2023 is Annexure "B")**.
6. That the transfer order is against the law, rules, mala fide and made for the extraneous consideration to accommodate some blue-eyed chip thus the present case fall within the jurisdictional domain of this Honorable Tribunal.
7. That the appellant being aggrieved and dissatisfied with the impugned premature transfer order within eight months preferred Departmental appeal to the competent authority, but it is not responded. Hence, the instant appeal. **(Copy of the memo of appeal petition is Annexure ("C"))**.
8. That being dissatisfied with the impugned transferred order/ notification dated 05-10-2023, is mala fide, made for the extraneous consideration to accommodate some blue eyed chip, thus the matter falls within jurisdictional domain of the Service Tribunal, appellant is constraint to approach this Hon'able Tribunal for redressal of his grievance on the following grounds among others.

**GROUND:**

- A. That the impugned transfer notification dated 05-10-2023 is violation of the mandatory clauses of Posting &

**ATTESTED**

  
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Khyber Pakhtunkhwa  
Service Tribunal

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Transfer Policy of the Provincial Government and various reported judgments of the Supreme Court of Pakistan.

B. That the appellant's premature transfer suggests that he has been transferred on the political pressure to secure the desire posting for ulterior motives which is a serious misconduct under relevant rules, which can't be ignored at all.

**"The entire concerned are requested to ensure that tenure of the concerned officers/officials is invariable mentioned in the summaries submitted to the competent authorities for posting/transfer"**

Despite clear cut posting and transfer policy of the government, the appellant was transferred in sheer violation of the above policy which is the cause of bad administration in educational institutions create despondency amongst the employees while adversely affect the education of the students as well.

C. That the mere reason for the illegal transfer of the appellant was that the respondents compelled to prepare the service record/ book and the salary being DDO, but appellant refused to do so, because in appointed order a reference of WP No. 839-B/2020 & WP No.516-B/2020 was given, but none of petitioner of both writ petitions were include in appointment order dated 01-01-2023 Endst; No. 3819-6. (Copies of writ petition and other relevant documents are attached as Annexure "D")

D. That the impugned transfer/posting order is mala fide against law and rules and made for extraneous consideration on political basis, just to accommodates the near and dears.

E. That the impugned transfer order is against the provision of section 230 of the Election Act, 2017 and Rules framed there under as no sanction has been obtained from the Election Commission of Pakistan. The interim government has no mandate to transfer the appellant.

F. That section 10 of Civil Servant Act, 1974 did not state that a Civil Servant could be posted or transferred moreover it does not empower the Government to cut short the normal tenure of a posted/transferred civil servant, and particularly without assigning any reason.

G. That the additional grounds will be raised at the time of arguments with the kind permission of this Hon'ble Tribunal at the time of hearing.

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Service Tribunal  
Peshawar



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It is, therefore, most humbly prayed that on acceptance of this appeal, the impugned Transfer Notification No. SO(MC) E&SED/ 4-16/2023 Posting/Transfer/ SDEO/ NW dated 05-10-2023 may kindly be set-aside on the ground that the petitioner has not completed his normal tenure in terms of Posting/Transfer Policy of the Provincial Government and he be allowed to perform his duties as SDEO (M) Razmak North Waziristan.

It is, further requested that the official respondents may kindly be restrained from taking any adverse action against the appellant till final disposal of this appeal.

Any other relief, whom the appellant found entitled, may also be granted.

Appellant

Through:

*[Signature]*

M. Ilyas Orkzai

Advocate, Supreme Court of Pakistan

*[Signature]*

Shabeer Khalil Advocate, High Court

*[Signature]*

Bismillah Jan Wazir Advocate High Court

Certificate

it is certified that, as per instruction of my client/ appellant no such appeal has been earlier been filed by the appellant in this Honorable Service Tribunal Peshawar.

*[Signature]*  
Advocate.

ATTESTED  
*[Signature]*  
EXAMINER  
Shabeer Khalil Wazir  
Service Tribunal  
Peshawar

Date of Presentation of Application	24/7/23
Number of Words	47
Copying Fee	20/-
Urgent	<i>[Signature]</i>
Total	<i>[Signature]</i>
Name of Copyist	
Date of Completion of Copy	24/7/23
Date of Delivery	24/7/23

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN** ...CHAIRMAN  
**MUHAMMAD AKBAR KHAN** ...MEMBER (Executive)

*Service Appeal No.167/2024*

Date of presentation of appeal.....22.01.2024

Date of Hearing.....19.04.2024

Date of Decision.....19.04.2024



**Mr. Fida Khan, S/O Eid Ahmad Khan R/O Tehsil Shiwa, District North Waziristan. ExSDEO Male Razmak**  
.....(*Appellant*)

Versus

1. **Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
2. **Secretary Elementary & Secondary Education Department Block-A, Opposite MPAs Hostel, Civil Secretariat.**
3. **Director Elementary & Secondary Education near GHSS No.1, GT Road, Peshawar.**
4. **District Education Officer (Male) North Waziristan.**
5. **Habib Ullah Jan, SDEO (Male) Razmak.....(*Respondents*)**

Present:

Mr. Muhammad Ilyas Orakzai, Advocate.....For appellant

Mr. Muhammad Jan, District Attorney .....For respondents

**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED TRANSFER ORDER DATED 05.10.2023 OF RESPONDENT NO.2 BY WHICH THE APPELLANT HAS BEEN TRANSFERRED FROM SDEO (MALE) RAZMAK NORTH WAZIRISTAN AS HEAD MASTER GHS MANDEY KHEL NORTH WAZIRISTAN.**

**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Appellant's case in brief is that he was serving as Head Master Government High School Mandey Khel, North Waziristan when he was transferred to Razmak, North Waziristan as Sub Divisional Education Officer (Male) North Waziristan on 31.03.2023. After serving for about seven months, he was again transferred to his

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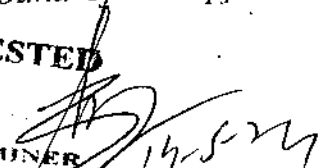
previous post of Head Master GHS Mandey Khel, North Waziristan vide impugned transfer order dated 05.10.2023 and the private respondent No.4 was posted against the post of SDEO (Male) North Waziristan. Feeling aggrieved, he filed departmental appeal but the same was not responded, hence, the instant service appeal.


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 and learned District Attorney.

04. Grievance of the appellant is that he was transferred from the post of SDEO and was adjusted against the post of Head Master. It is undisputed that the transfer of the appellant was made within the District excluding all possibilities of dislodging inconvenience or any other issue of disturbance etc. also excluding the possibility of violation of posting the Posting/Transfer Policy of the Government. This Tribunal vide consolidated judgment dated 20.06.2023 passed in Service Appeals No. 657/2022 & 658/2022 titled "Haq Nawaz & other Vs. The Secretary (E&SE) Education Department, Khyber Pakhtunkhwa Peshawar" has already dealt with almost similar matter in the following manner:

*"Both the appellants are from the Ministerial Staff. Vide the impugned transfer order, they were transferred and posted within the same district from one place to other. The projected ground of the appeals is that the appellants have prematurely*

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Khyber Pakhtunkhwa  
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been transferred. This Tribunal has decided many appeals wherein the question of premature transfer was agitated. A number of such appeals have been allowed and some have been disallowed. The reason of different decisions in the appeals with the specific ground of premature tenure transfer is obviously the changed facts and circumstances. In each case, the peculiar facts and circumstances are to be seen and the matters are decided accordingly. In these appeals both the appellants have been transferred from one place to the other but in the same station so all the questions of disturbance, dislodging, inconvenience or for that matter violation of any policy are totally ruled out. The fact that the posts held by the appellants are of non-Executive duties is undisputed. Therefore, too the premature posting of the appellants within the station could not be interfered with normally because of clerical nature of job of the appellant which does not affect any affairs of the department causing no prejudice to the public interest as well as to the appellants. Such orders are not detrimental to the appellants because there is no change of station and Headquarter. That remains within District Battagram. The Pay, status, emoluments and perquisites remain the same. The appellants suffer no loss. All that happens is that the appellants report to different superiors at the offices within the city/suburban limits. Transfer is an incident of service and is made in administrative exigencies. Normally it is not to be interfered with by the courts. A transfer order is not cancelled at the throw of a hat by the court. Very compelling reasons must exist before a court of law to cancel the order of transfer of a government employee. We do not find any such compelling reasons in these appeals.

7. The upshot of the above discussion is that no prejudice has been caused to any of the appellants vide the impugned transfer order, therefore, we find these appeals groundless and dismiss these accordingly. Costs shall follow the event. Copy of this judgment be placed in the connected file. Consign."

05. Besides, there is no ifs ands or buts about the fact that the appellant and private respondent, both are from the Teaching Cadre, therefore, none of the two are having any locus standi to strive for posting in the Management Cadre i.e. for the post of SDEO (M). Even the civil servant, who is in the relevant grade cannot claim posting against his choice post rather it is the domain and prerogative of the departmental authorities to post a Civil

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Servant against any post but proper person against the proper post should be posted. Reliance is placed on 2018 SCMR1411 titled "Khan Muhammad versus Chief Secretary Government of Balochistan and others".

06. This Tribunal and also the Supreme Court of Pakistan in a number of cases has held that proper persons should be posted against their proper cadre which in this case, is posting of an officer of Management Cadre against the Management Post. Proper person against proper post is also the spirit of clause-xiii of the Posting/Transfer Policy of the Government of Khyber Pakhtunkhwa.

07. For the reasons we hold that neither the appellant nor private respondent but in view of the clause xiii Posting/Transfer Policy, the concerned authorities shall ensure the posting of proper person against the post of SDEO i.e. Management Cadre and not from the Teaching Cadre. The appeal is disposed of in the above terms. Consign.

08. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 19<sup>th</sup> day of April, 2024.

Certified to be true copy

**KALIM ARSHAD KHAN**  
Chairman

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

  
14-5-24  
**MUHAMMAD AKBAR KHAN**  
Member (Executive)

Date of Presentation of Application 14-5-24  
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Date of Completion of Work 14-5-24  
Date of Delivery of Copy 14-5-24

\*Maazem Shair\*

The Secretary Elementary & Secondary Education Department Block-A, Opposite  
MPAs Hostel, Civil Secretariat, Peshawar.

Application for the implementation of order Dated 19-04-2024 of the Khyber  
Pukhtunkhwa Service Tribunal, Peshawar passed in the case Fida Khan son  
of Eid Muhammad Ex-SDEO Male, Razmak, appeal No 167/2024.

Dear Sir,

1. That the case titled in the subject above has been decided by the  
Service Tribunal in favor of the petitioner vide order dated 19-04-  
2024, (copy attached).

2. That the petitioner seeks the implementation of the said order as per  
direction passed in the order of Service Tribunal Khyber

It is therefore prayed that order of the service tribunal may kindly be  
implemented in letter and spirit.

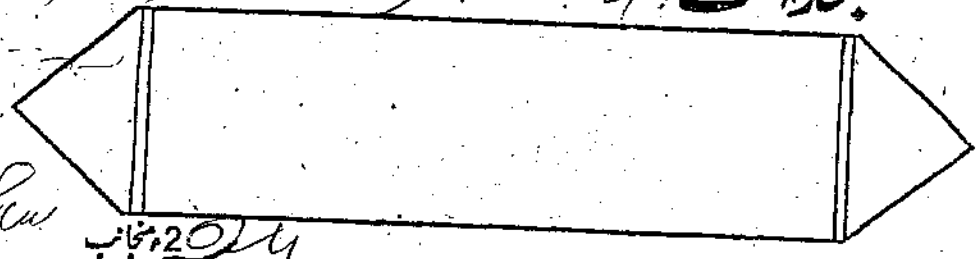
فیدان

Hope the above is useful,

Fida Khan Ex-SDEO, Male, Razmak  
District North Waziristan Tehsil Shewa

Dated 16/5/2024

# بعدالت جہت فیست کثوت فواہ سروس اور سول



2024 پنجاب سروس اور سول

فداخان بنام گورنمنٹ سروس

موزخہ  
مقدمہ  
دعوی  
جرم

## باعث تحریر آئیکہ

وزیر اعلیٰ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام کیلئے کیلئے کیلئے  
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز  
وکیل صاحب کو راضی نامہ کرنے و تقرر تالیت فیصلہ بر حلف دیے جواب دہی اور اقبال دعویٰ اور  
بسورت ڈگری کرنے اجراء اور صولی چیک دروپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی براندگی اور منسوخ  
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لایا اپنے بجائے تقرر کا اختیار  
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ  
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جان التوائے مقدمہ کے سبب سے وہوگا۔  
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی  
مذکورہ کریں۔ لہذا وکالت نامہ لکھ دیا کہ مندر ہے۔

فداخان ولد عبدالغنی  
گورنمنٹ سروس  
وزیر اعلیٰ

الرقوم 14 ماہ 2024

کے لئے منظور ہے۔

بمقام

Accepted  
[Signature]