

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal # 1694/2024

Mr. Masood Khan.....Appellant.

VERSUS

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

INDEX

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


Deponent

/

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

In Service Appeal No. 1694/2024

Mr. Masood Khan.....Appellant.

Versus

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

PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS NO. 162. Khyber Pakhtunkhwa Service Tribunal

Respectfully Sheweth,

Diary No. 17688

Preliminary objections

Dated 06-11-24

- 1) That the appeal is not maintainable and incompetent in the eyes of Law in the present form.
- 2) That the appellant is estopped due to his own conduct to file this appeal.
- 3) That the appellant has got no cause of action and locus standi to file instant appeal.
- 4) That the appellant has not come to the Tribunal with clean hands and has suppressed all relevant facts.
- 5) That the appeal is bad for mis-joinder and non-joinder of necessary parties.
- 6) That the Honorable Service Tribunal has no jurisdiction to entertain the instant appeal in its present form.
- 7) That the appeal has been mis-oriented, mis-constructed and mistakenly drawn and is incompetent in its present form and context, and is liable for Rejection.
- 8) That the appeal is weak having no force, fabricated, fictitious, based on ill will, malafide and having no footings in the eyes of law.
- 9) That as per Section 10 of Civil Servants Act, 1973, every Civil Servant shall be liable to serve anywhere within or outside the province.
- 10) That the Order Impugned has been acted upon and compliance has been made, therefore, the instant appeal is infructuous.
- 11) That proceeding with the instant appeal would be a futile exercise and just wastage of the precious time of this Honorable Tribunal.
- 12) That as stated in the objections supra, the appeal is bereft of cause of action and is liable for dismissal.

On Facts

- 1) This para pertains to the appointment of appellant as SDEO (BS-17) vide notification dated 13.12.2023. It is further added that the appellant was SST (Teaching Cadre Employee) and he was in BS-16, he was not employee of BS-17. This material fact was admitted by the appellant in para 01 of the departmental appeal dated 01.08.2024.
- 2) In this para appellant himself admitted that he was regularly promoted to BS-17 vide promotion order dated 13.07.2024. Hence, it is clear that at the time of his posting as SDEO

South Waziristan he was not in BS-17. He was SST (BS-16) and was posted as stopgap arrangement.

- 3) This para is correct and appellant was promoted to the post of Head Master and he was posted as Head Master BS-17 at GHS Tathi Totani SWTD vide notification dated 13.07.2024. Hence, it is clear that at the time of his posting he was not regularly promoted to the BS-17 therefore he was awarded that charge of the said post on stopgap arrangement.
- 4) Incorrect / not admitted. The District Education Officer (Male) South Waziristan did not have any authority to issue NOC to the BS-17 officer to continue his services as SDEO. The competent authority for the transfer/posting of BS-17 the worthy Secretary Elementary & Secondary Education Department (Respondent No. 02). Hence the NOC issued by the District Education Officer South Waziristan is against the law, rule and also against his competency.
- 5) Incorrect / not admitted. Strongly denied. The office of the respondent No. 02 is working according to the law, rule and policy of the Government. The office of the respondent No. 02 did not have any political influence; this office is working under the supremacy of Allah Almighty. The office of the respondent NO. 02 had rightly withdrawn the said order as the appellant was teaching cadre employee and he was posted against the teaching cadre post.
- 6) Incorrect / not admitted. The present appellant is not an aggrieved person. He was promoted to the post of Head Master BS-17 and was posted as HM GHS Tathi Totani SWTD. No discrimination had been made with the present appellant. The respondent No. 02 rightly dismissed the appeal of the appellant. Hence it is requested to this Honorable Tribunal to dismissed the present service appeal of the appellant. The Appellant is a Civil Servant and as per Section 10 of Civil Servants Act, 1973, "Any Civil Servant shall be liable to serve anywhere within or outside the province in any post under the Federal Government or any Provincial Government".
- 7) Incorrect / not admitted. The appellant has got no cause of action. The appellant was appointed as SDEO on stopgap arrangement. Therefore, the respondent No. 02 rightly transferred him to the post of HM GHS Tathi Totani SWTD. The service appeal of the appellant is an exercise in futility. Further proceeding in this regard would bear no fruit. It is, therefore, requested to this Honorable Tribunal to dismiss the Service Appeal of the appellant with cost.

On Grounds

- A. Incorrect / not admitted. The act of the respondents was according to law, based upon the natural principle of justice. No discrimination had been made with the present appellant. The present appellant was officer of BS-16 and he occupy post of BS-17, vide impugned Notification the respondent department appointed him on his actual post so that he may work properly. 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).

- B. Incorrect and not admitted. Strongly denied. The stance of the appellant is having no truth and is totally false and fictitious. This act of the respondents cannot be declared against the law on any ground whatsoever but the straight away rejection of present Service Appeal. That in the impugned notification, the present appellant was transferred from the post of Management Cadre post and he was posted as Head Master BS-17. Hence no discrimination had been made with the present appellant.
- C. Incorrect, strong denied. The impugned order was issued in best public interest as the appellant is BS-17 officer and he was posted Head Master BS-17. The appellant is interested to prolong his tenure at his choice station in-spice of past and closed transaction after assumption of charge on new place of posting.
- D. Incorrect/ not admitted and strongly denied. The Appellant was transferred to the post of Head Master in the best public interest by the Competent Authority after fulfilling all legal and codal formalities; therefore, the appellant has got no cause of action or locus standi to file the present service appeal for his grievances before this Honorable Tribunal.
- E. Incorrect / not admitted. The appellant seek posting of his choice station and this act of the appellant is against the law, rule and policy of the Government.
- F. Incorrect / not admitted. The present appellant was not make rolling stone. He was properly adjusted and he admitted this fact and he himself annexed his transfer posting Notification with the instant service appeal as annexure.
- G. The counsel for respondents may kindly be allowed to raise additional grounds at the time of arguments.

Pray

It is, further, requested to this Honorable Tribunal to dismiss the Service Appeal of the appellant because the Service Appeal of the appellants is only an exercise in futility as the appellant was transferred to the post of Head Master GHS Tathi Totani SWTD in the best public interest.


Mr. Fiaz Alam

Additional Secretary (General)
On behalf of
Secretary E&S Education Department
Khyber Pakhtunkhwa Peshawar
(Respondent No. 01 & 02)

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

In Service Appeal No. 1694/2024

Mr. Masood Khan.....Appellant.

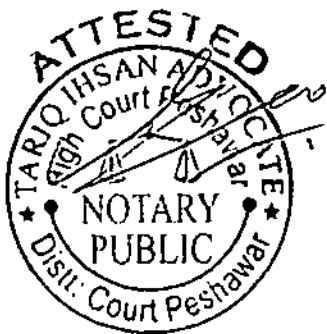
Versus

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

AFFIDAVIT

I, **Fiaz Alam**, Additional Secretary (Estab), 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.



(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 **Muhammad Shah Orakzai**, Superintendent (Litigation-II) Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa, Peshawar is hereby authorized to submit parawise comments on behalf of Respondent No. 01 & 02 in **Service Appeal No. 1694/2024** Case Titled **Mr. Masood Khan** vs Government of Khyber Pakhtunkhwa through Chief Secretary 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)**



**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. FA to Additional Secretary (General) E&SE Department.
9. PA to Deputy Secretary (Legal-I&II) E&SE Department.

*Attested
M.S.A.
06-11-2024*

SECTION OFFICER (Lit-II)