

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO.577/2024

Mr. Zahir Shah

.....

(Appellant)

VERSUS

Govt. of Khyber Pakhtunkhwa,
Through Chief Secretary & Others

.....

Respondents

INDEX

S No.	Description of Documents	Annexure	Pages
1	Joint Parawise Comments alongwith Affidavit		1-4
2	<i>SERVICE RULES</i>	Annexure-A	5-8
3	Authority Letter		9


SECTION OFFICER (LITIGATION)
HIGHER EDUCATION DEPARTMENT

①

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

Service Appeal No 1751/2024 #
Assoc. Prof Zahir Shah (BS-19)

Khyber Pakhtunkhwa
Service Tribunal
Appellant

Versus

Govt. of Khyber Pakhtunkhwa
Through Chief Secretary,
Govt. of Khyber Pakhtunkhwa & Others

Diary No. 18112
Dated 20/1/24
Respondents

SUBJECT: PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 & 2

Respectfully Sheweth: -

PRELIMINARY OBJECTIONS: -

1. That the Appellant has got no cause of action/locus standi to file the instant Service Appeal.
2. That the appellant has not come to this Honorable Court with clean hands and is trying to conceal material facts.
3. That the appellant's service appeal is not maintainable being bad for misjoinder and non-joinder of necessary parties.
4. That the appellant is estopped by his own conduct to file the instant Service Appeal.
5. That the Hon'ble Tribunal lacks jurisdiction under section 4(B) of Service Tribunal Act, 1974, wherein no appeal shall lie to a tribunal against an order or decision of a departmental authority determining ;
 - i. The fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade.
6. Govt. servant is required to serve anywhere his employer wanted him/her to serve; it was not a choice or prerogative of the employee to claim a right to serve at place / post that he/she chose to serve.

Competent authority is empowered to transfer any civil servant from one place to other at any time of exigencies of service or on administration grounds. Reliance is placed on 2020 PLC (CS) 1207 and 2004 PLC (CS) 705.

FACTS: -

1. Pertains to record.
2. Pertains to record.
3. Pertains to record.
4. Pertains to record.
5. Incorrect. That the Appellant's Transfer was executed under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, which grants the government discretion to assign postings as according to departmental requirements. The transfer was made in the public interest to realign staffing needs within the Higher Education Department.

6. Incorrect. That the tenure policy suggests a two-year minimum for settled areas, exceptions are permitted, especially in cases where operational demands require personnel adjustments. The transfer decision is aligned with the department policy, considering these needs. Therefore, the Govt. exercised option of Section 10 of KP CSA by posting respondent No.3 as Additional Director (Academics) during the period of ongoing transition to introduce market oriented courses in the Colleges specifically in the field of Information Technology, wherein the experience, qualification and expertise of Respondent No.3 would be of added advantage to the department with a view to materialize his endeavors/energies. Furthermore, the said post is not a tenure post as evident from the Service Rules dated 18/9/2019, of the Higher Education Department where no tenure is mentioned. As the said post is of the administrative nature and posting/transfer on the said post is therefore made on the basis of administrative skills/expertise. (Relevant Rules as Annexure-A).
7. Incorrect. As Respondent No.3 was appointed as Associate Professor and was transferred to the post of Director HEMIS, for special purpose and can be reverted back to his original cadre as the said post is not a tenure based.
8. Incorrect. That Clauses IV and VIII outline standard tenure and discourage transfers influenced by non-departmental motives. However, the department asserts that this transfer was neither politically motivated nor based on any ulterior motives. It was an administrative necessity aimed at optimizing personnel placements and supporting organizational goals within the Higher Education Department. Furthermore, appellant has been transferred from one Administrative Post to another within the same district hence; no financial loss has been occurred to the appellant.
9. Incorrect. The respondent No.3 was holding the position of Director HEMIS having the required qualification associated with the post after fulfilling all the codal formalities. Moreover, fair treatment has been meted out to the appellant by providing him the Administrative post of the Principal, based on his past experience.
10. Incorrect. That a standard protocol adopted by Department to provide temporary adjustments to the officer(s) who are repatriated from other cadres, so as to avoid any break in their service. The same treatment has also been meted to Respondent No.3; A summary in this regard was initiated for approval of the Chief Minister, who is the competent authority for posting of officers in BS-19 and above.
11. Incorrect. That the appellant has been treated within the four corners of law and has failed to prove any unfair treatment with him in the instant service appeal.
12. That the instant service appeal is liable to be filed being devoid of merit and without any statutory backing.


GROUND: -

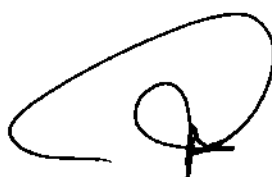
- a. Incorrect. As explained in preceding paras. The appellant has been transferred from one administrative post to another under Section 10 of Khyber Pakhtunkhwa Civil Servant Act, 1973 hence no unfair treatment has been made to the appellant

- b. Incorrect. That the fundamental rights of the appellant are not violated as the transfer has been made after fulfillment of all codal formalities.
- c. Incorrect. As already explained in preceding paras.
- d. Incorrect. That the said post is not a tenure post as evident for the service rules ibid wherein no tenure is mentioned. As the post is administrative post and posting / transfer on the said post is based on administrative skills/expertise.
- e. Incorrect. As already explained in preceding paras.
- f. Incorrect. As already explained in preceding paras. Posting/transfer is the prerogative of the Competent Authority and under section 10 of Civil Servant Act. The civil servant shall be liable to serve anywhere where the Competent Authority posting / transfer him/her.
- g. Incorrect. That the said order is issued in the best public interest and on administrative grounds after adopting all codal formalities.
- h. Incorrect. As already explained in preceding paras.
- i. Incorrect. As already explained in preceding paras.
- j. Incorrect. As already explained in preceding paras.
- k. Incorrect. As already explained in preceding paras. The appellant has been treated with in for corners of law.
- l. Incorrect. Posting/transfer at one's own choice is not the wested right of the appellant.
- m. Incorrect. That the posting/transfer is in accordance with law and in the best public interest.
- n. That the respondents may be allowed to raise the additional grounds at the time of arguments.

PRAYER: -

It is, therefore, most humbly prayed that the instant service appeal of the appellant is based on misstatement/misconception and hence, may graciously be dismissed with cost.


 (Nadeem Aslam Chaudhry)
 Chief Secretary,
 Govt. of Khyber Pakhtunkhwa
 Respondent No. 01


 (Capt. (R) Kamran Ahmed Afridi)
 Secretary,
 Higher Education, Archives
 & Library Department
 Respondent No. 02

(9)

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. 1751/2024

Mr. Zahir Shah

Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa,
Through Chief Secretary & Others

Respondents

Affidavit

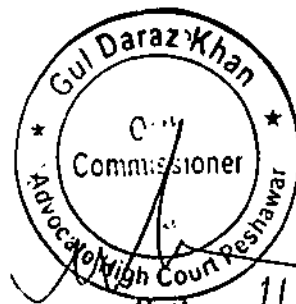
I, Capt (r) Kamran Ahmad Afridi Secretary, Higher Education, Archives & Libraries Department Government of Khyber Pakhtunkhwa as per instructions of the respondents do hereby solemnly affirm and declare that contents of the accompanying Joint Para-wise Comments are correct to the best of my knowledge and belief and nothing has been concealed therein from this Service Tribunal Khyber Pakhtunkhwa, Peshawar. Furthermore the respondents have neither been placed as ex-party nor right of defense struck-off.


(Capt (r) Kamran Ahmad Afridi)
Secretary,

Higher Education, Archives,
Libraries Department

CNIC- 17301-7027499-5

Secretary
Govt. Of Khyber Pakhtunkhwa
Higher Education,
Archives & Libraries
Department.



20/11/24

Seniority

	Superintendent (S-17)	—	—	—	By promotion, on the basis of seniority-cum-fitness, from amongst the Assistants and Senior Scale Stenographers having at least five (05) years' service as such. Note: - For the purpose of promotion, a joint seniority list of Assistants and Senior Scale Stenographers shall be maintained.
6	Assistant (BS-16)	At least Second-Class Bachelor's Degree or equivalent qualification from a recognized University.	—	20 to 32 years	(a) Seventy-five (75%) by promotion on the basis of seniority-cum-fitness from amongst the Senior Clerks with at least five (05) years as Junior Clerk & Senior Clerk; and (b) Twenty-five (25%) by initial recruitment.
7	Senior Scale Stenographer (BS-16)	—	—	—	By promotion, on the basis of seniority-cum-fitness, from amongst the Stenographers with at least five years (05) service as such.
8	Computer Operator (BS-16)	At least Second-Class Bachelor's Degree in Computer Science/Information Technology (BCS/BIT 04 years) from a recognized University or Second Class Bachelor's Degree from a recognized University with one-year (01) diploma in Information Technology from a recognized Board of Technical Education.	—	18 to 28 years	By initial recruitment
9	Stenographer (BS-14)	(i) At least Second Division Intermediate Certificate or equivalent qualification from a recognized Board; (ii) A speed of fifty (50) words per minute in shorthand in English and thirty-five (35) words per minute in typing; and (iii) Knowledge of computer in using MS Word & MS Excel.	—	18 to 30 years	By initial recruitment
10	Senior Clerk (BS-14)	—	—	—	By promotion on the basis of seniority-cum-fitness from amongst the Junior Clerk with at least two (02) years' service as such.

84

Attached
 By *[Signature]*
 Director
 20/05/2024
 Mr. *[Signature]*
 Mr. *[Signature]*

7

BS

	Junior Clerk (BS-11)	(i) At least second Division Secondary School Certificate or equivalent qualification from a recognized Board; and (ii) A speed of thirty (30) words per minutes in typing.	—	18 to 30 years	a. Thirty-three (33%) by promotion on the basis of seniority-cum-fitness from amongst the Naib Qasid, Chowkidar, Behishtis, Cook, Bearers and Laboratory Attendants other equivalent posts in the Directorate of Higher Education Khyber Pakhtunkhwa with two years (02) service as such who have Secondary School Certificate; and b. Sixty-seven (67%) by initial recruitment. Note: - For the purpose of promotion, there shall be maintained a joint seniority list of Naib Qasid, Chowkidar, Behishtis, Cook, Bearers and Laboratory Attendants including other equivalent posts with reference to the dates of their acquiring the Secondary School Certificate. Provided that: - a. If two or more officials have acquired the Secondary School Certificate in the same session, the inter-seniority in the lower post shall be maintained for the purpose of determining seniority in the higher post; and b. Where a senior official does not possess the requisite qualification at the time of filling up a vacancy, the official next junior to him possessing the requisite qualification shall be promoted in preference to the senior official or officials.
12	Library Clerk (BS-08)	At least Second Division Intermediate Certificate or equivalent qualification from a recognized Board	—	18 to 30 years	By initial recruitment
13	Store Keeper (BS-06)	At least Second Division Intermediate Certificate or equivalent qualification from a recognized Board	—	18 to 30 years	By initial recruitment
14	Driver (BS-06)	HTV/LTV License. Preference will be given to those who have sufficient experience in driving, repair and maintenance of Vehicles	—	18 to 40 years	By initial recruitment
15	Naib Qasid (BS-03)	Preferably Literate	—	18 to 40 years	By initial recruitment
16	Chowkidar (BS-3)	Preferably Literate	—	18 to 40 years	By initial recruitment
17	Behishti/Cook/Bearer (BS-03)	Preferably Literate	—	18 to 40 years	By initial recruitment

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Director of Higher Education
Khyber Pakhtunkhwa
Supreme Council of Education
Peshawar

8

Laboratory Attendant (PS-03)	Preferably Literate	-		By initial recruitment
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**SECRETARY TO
GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION ARCHIVES AND LIBRARIES DEPARTMENT.**

Encls: No. & Date as above.
Copy to forwarded to:-

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Law Department.
4. The Secretary Khyber Pakhtunkhwa Public Service Commission, Peshawar.
5. The Accountant General Khyber Pakhtunkhwa, Peshawar.
6. The Director Higher Education Department, Khyber Pakhtunkhwa.
7. The Manager Govt. Printing Press, Khyber Pakhtunkhwa.
8. The Deputy Director, HEMIS Cell.
9. All District Accounts Officers, Khyber Pakhtunkhwa.
10. PS to Chief Minister, Khyber Pakhtunkhwa.
11. PS to Chief Secretary, Khyber Pakhtunkhwa.
12. PS to Secretary, Higher Education Department.
13. Master File.

26

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SECTION OFFICER (C-IV)

Handwritten notes and signature

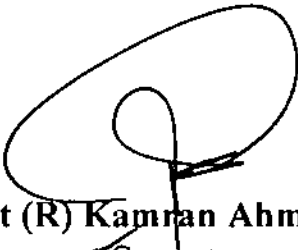


9

**GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES & LIBRARY DEPARTMENT**

AUTHORITY LETTER

Mr. Naeem Ahmed Kundi, Law Officer (BPS-17), Higher Education Department is hereby authorized to attend the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 1751/2024 Titled Mr. Zahir Shah Versus Govt. of Khyber Pakhtunkhwa through Chief Secretary and others on behalf of official respondents.


(Capt (R) Kamran Ahmed Afridi)
Secretary,
Higher Education, Archives,
Libraries Department
Secretary
Govt. Of Khyber Pakhtunkhwa
Higher Education,
Archives & Libraries
Department.