

BEFORE THE KHYBER PAKTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 678/2024

Fayaz Hussain S.C.T GHSS Drush Khela Matta Swat (Village Langar Khawa

Khela Swat).

.....Appellant


Versus

1. The Director Elementary and Secondary Education, Khyber Pakhtunkhwa,
Peshawar & others

..... Respondents

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DISTRICT EDUCATION OFFICER (M)
SWAT AT GULKADA
(Respondent No.02)

02-08-24
S.B

Principal for Collection

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Service Appeal No. 678/2024

Fayaz Hussain S.C.T GHSS Drush Khela Matta Swat (Village Langar Khawa Khela Swat).
.....Appellant

Versus

1. The Director Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar & others
..... Respondents

Parawise Joint Comments on Behalf of the Respondents 1 to 3 Khyber Pakhtunkhwa Service Tribunal

Respectfully Shewith

Preliminary Objections

Diary No. 14641

Dated 02-08-24

1. That the Appellant is not an aggrieved person within the meaning of section 4 of the Service Tribunal Act, 1974.
2. That the Appellant has no cause of action / locus standi.
3. That the Appellant has not come to this Honorable Tribunal with clean hands.
4. That the Appellant has filed this instant Service Appeal just to pressurize the respondents.
5. The present Service Appeal is liable to be dismissed for non-joinder/misjoinder of necessary parties.
6. That the instant Service Appeal is against the prevailing law and rules.
7. That the Appellant has filed this instant Service Appeal on malafide motives.
8. That the instant Appeal of the Appellant is **badly time barred**.
9. That the instant Service Appeal is not maintainable in the present form, and above in the present circumstances of the issue.
10. That the Appellant has estopped by his own conduct by changing the position codes of the schools by surpassing the respondent no. 02.
11. That the Appellant has concealed the material facts from this Honorable Tribunal.

FACTS

1. Pertains to personal residence. No comments.
2. Pertains to record.
3. Pertains to record.
4. Pertains to record.
5. Incorrect and denied. That this para is controversial in nature. The Appellant has annexed with instant Service Appeal at page No. 11 as annexure "C" a copy of application from the Principal GHSS Dursh khela and Headmaster GHS Janu Swat wherein they requested the change of posts from SCT BPS-16 to CT BPS-15 at GHSS Dursh Khela having position code as 80294184 while the post of CT BPS-15 at GHS Janu Swat to the post of SCT BPS-16 at GHS Janu Swat having position code 80298046. It is further stated that the Appellant has annexed at page No.11A a transfer application and not a mutual transfer proforma. The above mentioned posts changing proforma application has neither been submitted before respondent No.02 (DEO) nor forwarded by respondent No.02 to the quarter concerned. On one hand, the Appellant wants to seek benefits of the application annexed as annexure "C" vide page No.11 and wants his salary

to be drawn from GHS Janu Swat and on the other hand he prayed for restoration of mutual transfer order to the effect that he may be retained at GHSS Chamtalai. How is it possible that a teacher/civil servant working at a station/DDO and claims his salary from another station/DDO?

6. Correct to the extent of mutual transfer order, the rest of the para is incorrect and denied. As far as mutual transfer dated 19.03.2024 is concerned, the mutual transfer was issued on the recommendation of both the Principals of the schools. However, after the issuance of the order dated 19.03-2024, the Principal GHSS Dursh khela sent a letter vide his office letter dated 22-03-2024 wherein he requested for cancellation of the order to the extent of mutual transfer of the Appellant and Mr. Shafaat Ali with the remarks that there is no vacant post of SCT BPS-16 at GHSS Dursh khela. In fact, the Appellant by surpassing the office of respondent No. 02 approached directly the Finance Department and changed the post of SCT BPS-16 at GHSS Dursh Khela to CT BPS-15 and changed the post of CT BPS-15 at GHS Janu to the post of SCT BPS-16. Office of the respondent No.02 was unaware of the fact of the changing of the posts, therefore, issued transfer order. When the Principal GHSS Dursh khela informed office of the respondent No. 2 about the actual/recent status of the post, the respondent No. 02 immediately withdrawn the mutual transfer order to the extent of the Appellant & Mr. Shafaat Ali as rectification. **(Letter of the Principal GHSS Dursh Khela annexed as annexure A)**
7. This para is ambiguous, controversial, unclear and not admitted. The detail of changing posts has already been discussed in pare 6 above. However, as far as consultation with Finance department is concerned, respondent No. 02 has not consulted any such changing of posts. Best reply could be sought from Finance Department. Similarly, the transfer of the salary of Appellant from GHSS Dursh Khela to GHS Janu has not been made by respondent No.02 and the respondent No.03 I,e Headmaster GHS Janu has rightly stopped his salary as the Appellant was not transferred to GHS Janu and was not performing his duty there.
8. That detail reply of this pare has already been given in above paras.
9. That this para incorrect and denied. The Appellant is not performing his duties at GHS Janu. Therefore, he is not entitled to receive his salary from GHS Janu.
10. That this para is correct to extent of applications. However the applications being meritless, incorrect and void, were not responded.
11. That this para is incorrect and not admitted. The Principal/DDO of the schools has categorically stated in his letter that there is no vacant post of SCT BPS-16 at GHSS Dursh Khela. As stated the foregoing paras, the Appellant without consulting the office of the respondent No. 02 approached Finance Department and changed the posts of GHSS Dursh Khela and GHS Janu. Therefore, no post of SCT BPS-16 was vacant at GHSS Dursh Khela. It is further worth to note that the Appellant has disputed the letter of the Principal GHSS Dursh Khela but did not make the said principal as necessary party in his Service Appeal. If the Appellant was

aggrieved of the letter of the Principal GHSS Dursh khela then he should have arrayed him in the respondent list but he failed to do so. Therefore, on this score alone, the instant Service Appeal is not maintainable.

12. That this para is incorrect and denied. Mr. Shafaat Khan SCT BPS-16 GHSS Chamtalai got retired on 31-03-2024 while the mutual transfer order of the Appellant and Mr. shafaat khan SCT was already withdrawn vide order dated 22-03-2024. Therefore, the Appellant has no concern with the vacant post of GHS Chamtalai.

13. That this para is irrelevant to the present issue, hence, no comment.

14. Correct.

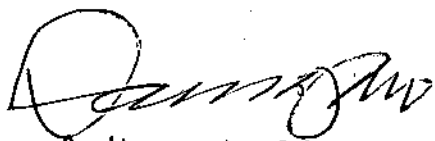
15. The instant Service Appeal of the Appellant is bereft of any merit, hence, liable to be dismissed inter-alia following grounds.

GROUND

- 1) Incorrect and denied. The order dated 22-03-2024 of the respondent No.02 is legal, lawful and in accordance with the principle of natural Justice.
- 2) Irrelevant.
- 3) Irrelevant.
- 4) That this para is irrelevant and misleading one. The present issue is not about disciplinary proceedings. Transfer and cancellation of transfer is not a penalty and it is the sole competency of the competent authority.
- 5) Irrelevant
- 6) Irrelevant
- 7) That the respondents also seek permission to raise further ground be at the time of the arguments.

It is therefore very humbly prayed that the instant Service Appeal of the Appellant may be dismissed with cost in favor of the respondents.

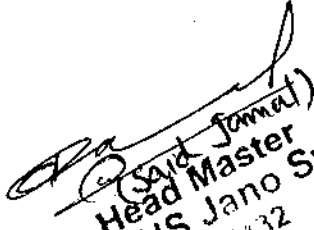
Samina Altay
Director



Authorized Officer
Abdu Samad
DEPUTY DIRECTOR, (Legal)
ELEMENTARY AND SECONDARY
EDUCATION KHYBER PAKHTUNKHWA
(Respondent No. 1)


(Muhammad Riaz)

DISTRICT EDUCATION OFFICER (M)
SWAT AT GULKADA
(Respondent No. 2)


(Said Jamal)
Head Master
GHS Jano Swat
EMIS 35432
(Respondent No. 3)



**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR**

NOTIFICATION

I, Samina Altaf, Director Elementary & Secondary Education Department Khyber Peshawar do hereby authorize, Mr. Abdus Sammad, Deputy Director (Legal) Directorate of Elementary & Secondary Education to sign parawise comments, replies, implementation report, objection petitions, civil miscellaneous application etc on my behalf for onward submission before the courts of law/tribunals as the case may be, with immediate effect in the interest of public service.

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Endst. No. 2633-L13 /F.No. AD(Lit-II)/E&SED/Office Correspondence/Vol-II/2024
Dated Peshawar the 26/07/2024.

Copy of the above is forwarded for information & n/action to the:

1. Chief Secretary Khyber Pakhtunkhwa.
2. Advocate General Khyber Pakhtunkhwa.
3. Secretary Law Department Khyber Pakhtunkhwa.
4. Learned Registrar High Court Peshawar (with one each spare copy for the Honorable Judges).
5. Learned Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar (with one each spare copy for the Honorable Chairman/Members).
6. All Section Officers E&SE Department Khyber Pakhtunkhwa, Peshawar.
7. All District Education Officer (Male/Female) Khyber Pakhtunkhwa.
8. PS to Secretary E&SE Department Khyber Pakhtunkhwa, Peshawar.
9. PA to Additional Secretary (General) E&SE Khyber Pakhtunkhwa, Peshawar.
10. PA to Director E&SE Department Khyber Pakhtunkhwa, Peshawar.
11. Master File.


(SAMINA ALTAF)
DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

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Service Appeal No. 678/2024

Fayaz Hussain S.C.T GHSS Drush Khela Matta Swat (Village Langar Khawa Khela Swat).

Appellant

Versus

1. The Director Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar & others

Respondents

AFFIDAVIT

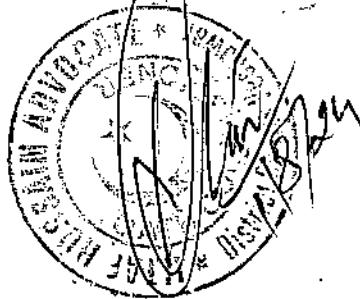
I, Muhammad Riaz, District Education Officer (M) Swat, do hereby solemnly affirm and declare on oath on the directions and on the behalf of the Respondents that the contents of the comments are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Honorable Tribunal. It is further stated on oath that in this appeal the answering respondent have neither been placed ex-parte nor their defense has been struck off.

(Muhammad Riaz)

DISTRICT EDUCATION OFFICER (M)
SWAT AT GULKADA

(Respondent No.02)

ATTESTED



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OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)
DISTRICT SWAT

Email: emisswat@gmail.com,

Phone No. 09469240228

AUTHORITY LETTER

It is certified that Hussain Ali, Legal Representative Office of District Education Officer (Male) Swat, Elementary & Secondary Education Department is hereby authorized to submit para-wise comments and attend the Service Tribunal Peshawar on behalf of the respondent in Service Appeal No. 678/2024 Title Fayaz Hussain Vs Director E&SE Peshawar and DEO Male Swat on the eve of each hearing till the disposal of the instant case.

DISTRICT EDUCATION OFFICER (M)
SWAT AT GULKADA

(Respondent No. 02)

Muhammad Riaz

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To

The DEO(M)

Distt Swat

Subject:

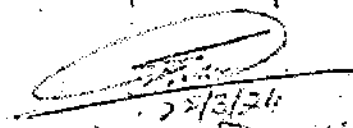
Cancellation of Transfer order of Mr. Shafiq Khan
Set BS-16 from G.H.Ss Chantalai to
G.H.Ss Diranish Khela

Sir,

Reference to your order no 2207-12-1- dated 19th 21,
may be cancelled. No post of BS-16 Set is
vacant at G.H.Ss Diranish Khela at the
moment.

Regards.

Principal



22/3/21
G.H.Ss Diranish Khela

Attested



District Education Officer (M)
SWAT.

(7)

LEGIBLE COPY

To

The DEO (M)
Distt Swat

Subject: Cancellation of Transfer order of Mr. Shafaat Khan SCT BPS-16 from GHSS Chamtalai to GHSS Dursh Khela

Sir,

Reference to your order No. 8107-121 dated 19-03-2024 may be cancelled. No post of BS-16 SCT is vacant at GHSS Dursh Khela at the moment.

Regards,

Principal

-SD-

22/3/2024

GHSS Durush Khela

Alley
District Education Officer (M)
SWAT.