

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**CAMP COURT, SWAT.**

Service Appeal No. 358/2022

BEFORE: MRS. ROZINA REHMAN ... MEMBER(J)  
MISS FAREEHA PAUL ... MEMBER(E)

Abdur Rahim, PSHT (BPS-15), GPS Khan Sali Barang, District Bajaur. .... (Appellant)

Versus

1. The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer, District Bajaur.
4. The District Education Officer (M), District Malakand at Batkhela. .... (Respondents)

Mr. Umar Farooq,  
Advocate

... For appellant

Mr. Muhammad Riaz Khan Painsakhel, ...  
Assistant Advocate General

For respondents

Date of Institution.....03.03.2022

Date of Hearing.....04.01.2023

Date of Decision..... 04.01.2023

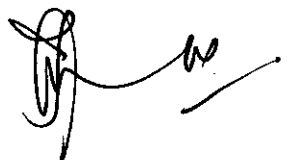
**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 10.06.2021 whereby the departmental appeal/representation of the appellant has been dismissed/rejected without justifiable reasons and in utter violation of the spouse policy of the Provincial Government. It has been prayed that on



acceptance of the appeal, the impugned order dated 10.06.2021 might be set aside and the respondents be directed to adjust the appellant in District Malakand in the light of spouse policy.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as PST (BPS-7, now BPS-12) vide order dated 16.08.2002 on contract basis. During the course of service, the appellant was regularized with effect from his first appointment. He, while performing his duty at GPS Kohai Barang, Bajaur Agency, was promoted to the post of PSHT (BPS-15) vide order dated 22.06.2018 and posted at GPS Khan Kalay, Bajaur. He, alongwith his family, was residing at Haryan Kot, Tehsil Dargai, District Malakand and his wife, namely Mst. Zeenat Begum, was also an employee of the Education Department and was serving as Certified Teacher (BPS-15) at GGHS Haryan Kot, District Malakand. The appellant in the light of spouse policy applied for his permanent transfer to District Malakand and in that regard the then Director Education, Merged Districts had already issued proper NOC to the appellant vide letter dated 02.02.2011. In spite of several requests the respondents were not willing to transfer the appellant to District Malakand in the light of spouse policy. Feeling aggrieved, he filed departmental appeal before the respondent No. 1 but the same was not responded. Having no other remedy, the appellant preferred Writ Petition No. 963-M/2019 before Honourable Dar-ul-Qaza, Mingora, Swat which was decided on 16.02.2021 with the direction to the respondent No.



2 to treat the Writ Petition as departmental appeal and decide it within a period of two months. When the judgment/order was not acted upon, the appellant filed COC No. 39-M/2021 and during pendency of that COC the impugned order dated 10.06.2021 was issued whereby departmental appeal of the appellant was rejected; hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Assistant Advocate General for the respondents and perused the case file with connected documents in detail.

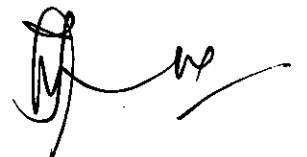
4. Learned counsel for the appellant presented the details of the case and contended that the action and inaction of the respondents by rejecting the departmental appeal of the appellant vide order dated 10.06.2021 was against the law, rules and norms of natural justice. He further contended that wife of the appellant was also an employee of the Education Department and was serving as Certified Teacher (BPS-15) at GGHS Haryan Kot, District Malakand and under the spouse policy of the provincial government, the appellant was entitled to be posted in district Malakand but the respondents violated the said instructions of the provincial government. He requested that the appeal might be accepted as prayed for.

5. The learned Assistant Advocate General while rebutting the arguments of the learned counsel for the appellant contended that as per



his record the appellant was a permanent resident of Barang, District Bajaur where he was appointed as PST. He further contended that copy of NOC annexed with the appeal was not clear and was doubtful because certain cuttings were made in it; likewise its date and signature of competent authority was also doubtful. He argued that after 7/8 years of his transfer, a Writ Petition was filed which was converted into departmental appeal by the Honourable Dar-ul-Qaza, Swat, which was considered and rejected on valid ground. Departmental appeal before the respondent No. 1 (Secretary, Elementary & Secondary Education Department) was also doubtful because neither a date had been mentioned on his application nor any complaint had been received from the office of Secretary E&SE, Peshawar to Director and DEOs of Districts concerned. He further argued that ban was imposed on transfers/postings and after its relaxation the case of appellant would be processed as per rules and policy. He requested that the appeal might be dismissed.

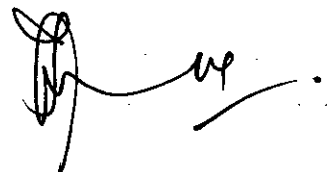
6. Arguments and record presented before us indicates that the appellant belonged to District Bajaur (previously Bajaur Agency) and based on his domicile, he was appointed as Primary School Teacher, which is a district cadre post, and was later on promoted to the post of PSHT. His wife is also an employee of provincial government and is serving at District Malakand. The appellant wanted to get himself transferred and adjusted in District Malakand in the light of spouse policy of the provincial government. A No Objection Certificate (NOC) of 2011



of FATA Secretariat, Directorate of Education addressed to the Director, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar has been attached with the appeal which indicates that the lending agency i.e the FATA Secretariat had no objection on the transfer of appellant, who was a PTC in Bajaur Agency at that time, to District Malakand, which was a district on the settled side. No further process on that NOC in the Directorate of Elementary and Secondary Education Khyber Pakhtunkhwa has been attached either with the appeal or with the reply to ascertain whether any action was taken on it or not. It is further not clear that on whose request that NOC was granted; whether it was the appellant himself or the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa? When asked, the learned AAG questioned the authenticity of that NOC and declared it fake and bogus.

7. If we look at the NOC available in the file, it is of 2011. The appellant filed the present service appeal in March 2022. A question that arises here is what took him so long to file this appeal after getting the NOC in 2011? It is felt that the NOC of 2011, even if we consider it genuine, has become too old to take any action based on that. For any further action regarding considering the transfer of appellant, a fresh NOC is required, from both the agencies, which are District Bajaur and District Malakand.

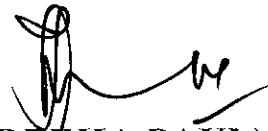
8. In view of the above discussion, the appeal in hand is dismissed. Parties are left to bear their own costs. Consign.



9. *Pronounced in open court at camp court, Swat and given under our hands and seal of the Tribunal this 04<sup>th</sup> day of January, 2023.*



**(ROZINA REHMAN)**  
Member (J)  
(Camp Court, Swat)




**(FAREEHA PAUL)**  
Member (E)  
(Camp Court, Swat)


04<sup>th</sup> Jan. 2023

Mr. Umar Farooq, Advocate for appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgement containing 06 pages, the appeal in hand is dismissed. Parties are left to bear their own costs. Consign.

3. *Pronounced in open court at camp court, Swat and given under our hands and seal of the Tribunal this 04<sup>th</sup> day of January, 2023.*

  
**(ROZINA REHMAN)**  
Member (J)  
(Camp Court, Swat)

  
**(FAREEHA PAUL)**  
Member (E)  
(Camp Court, Swat)