

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**  
**AT CAMP COURT SWAT**

Service Appeal No. 7605/2021

Date of Institution ... 13.10.2021  
Date of Decision ... 02.01.2023

Mr. Fazal Rabi, PSHT (BPS-15), Chano Langbar, Chakesar Sub Division,  
District Shangla.

... (Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa through Secretary Elementary &  
Secondary Education Department, Peshawar and two others.

... (Respondents)

Noor Muhammad Khattak  
Advocate

... For appellant

Muhammad Riaz Khan Paindakhel  
Assistant Advocate General

... For respondents

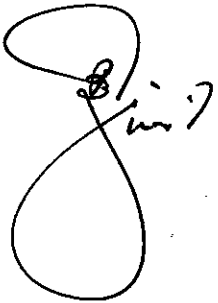
Mrs. Rozina Rehman  
Miss Fareeha Paul

... Member (J)  
... Member (E)

**JUDGMENT**

**ROZINA REHMAN, MEMBER (J):** The appellant has invoked the  
jurisdiction of this Tribunal through above titled appeal with the prayer as  
copied below:

“That on acceptance of this appeal the impugned notifications  
dated 22.09.2021 may very kindly be set aside and the  
respondents may kindly be directed not to transfer the  
appellant from GMPS Chano Langbar Sub Division Chakisar  
till completion of his tenure”.

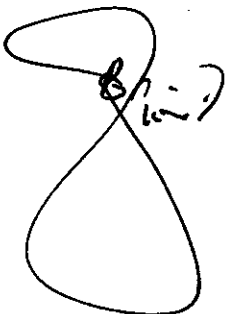


2. Brief facts of the case are that the appellant is employee of respondents department and serving as PSHT (BPS-15). He was transferred vide notification dated 08.10.2020 to GMPS Chano Langbar and was posted as PSHT at Chano Langbar. He submitted his arrival report and started performing his duty; that while performing his duties quite efficiently, he was prematurely transferred with direction to report at GPS Matai Lelonai vide notification dated 22.09.2021. Feeling aggrieved from the said notification, he preferred departmental appeal but the same was not responded to, hence the present service appeal.

3. We have heard Noor Muhammad Khattak Advocate learned counsel for the appellant and Muhammad Riaz Khan Paindakhel, learned Assistant Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Learned counsel for the appellant contended that the impugned order dated 22.09.2021 is against law, facts and norms of natural justice hence not tenable and liable to be set aside. He submitted that the appellant was not treated in accordance with law and rules and as such the respondents violated Article 4 & 25 of Constitution of Islamic Republic of Pakistan. It was further argued that the impugned notification is violative of transfer/posting policy of the provincial government as the same was issued in arbitrary and malafide manner just to harass the appellant and to accommodate blue eyed persons.

5. Conversely, the learned AAG submitted that the appellant was suspended on 18.06.2015 on the recommendation of the then SDEO (M). He was charge sheeted and an inquiry was also conducted. Report whereof clearly shows that appellant was in the habit of habitual absenteeism from his duties; that he was provided a chance of personal hearing but he failed to appear and



in the light of recommendations of the inquiry committee his annual increment was stopped on 31.08.2016. He submitted that the members of Parents Teachers Council (PTC) of GPS Shaheed Dehrai submitted an application against the appellant and in this regard an inquiry was conducted. Appellant was found absent, incompetent, embezzler, uninterested and non-professional. Show cause notices were issued to the appellant on various grounds from time to time but he did not take it seriously and failed to clarify his position. He was also warned by respondent No. 3, whereafter he was transferred to GPS Faizal on 28.06.2021 but he did not take charge of his duty. The residents of village Faizal submitted an application to respondent No. 3 against the appellant. He was also found absent from his duty on 19.06.2021 by Educational Monitoring Authority and his explanation was called on. He was then transferred from GMPS Chano Langbar to GPS Faizal but he did not take over charge. GMPS Chano Langbar was a mosque school and there was one vacant post of BPS-12, therefore, appellant was rightly adjusted at GPS Mattai Lilonai against the vacant post of PSHT (BPS-15) and that the notification was issued in accordance with law and rules.

6. We have heard learned counsel for the parties and perused the record. Record reveals that vide Endorsement No. 711-15 dated 08.10.2020 the present appellant was transferred from GPS Shaheed Dehrai to GMPS Chano Langbar against vacant post. He was then transferred from GMPS Chano Langbar to GPS Faizal on 28.06.2021, but he intentionally did not take over the charge of his duty which is evident from his departmental appeal available on page 8 of his service appeal wherein he admitted that he did not take over the charge of his duty on the verbal direction of the DEO. No such order is available on file rather it shows that he intentionally


avoided to assume his charge. Moreover, GMPS Chano Langber is a mosque school and there is only one post/vacancy/sanctioned of PST (BPS-12) whereas the appellant is a PSHT (BPS-15). He was therefore, adjusted at GPS Mattai Lilonai against vacant post of PSHT (BPS-15) vide office order dated 22.09.2021.

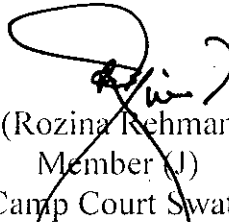
7. We are of the considered opinion that the appellant was transferred due to genuine reasons. We have also noticed that the appellant has already complied with the impugned order of transfer and has relinquished his charge as well as assumed the charge of new posting, as such his claim has become infructuous. Reliance is placed on 2005 SCMR 442.

8. In such a situation, we do not find any viable reason to interfere in the impugned order, resultantly this appeal having no substance is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

02.01.2023

  
(Faveeha Paul)  
Member (E)  
(Camp Court Swat)

  
(Rozina Rehman)  
Member (J)  
(Camp Court Swat)

ORDER

02.01.2023


Appellant present through counsel.

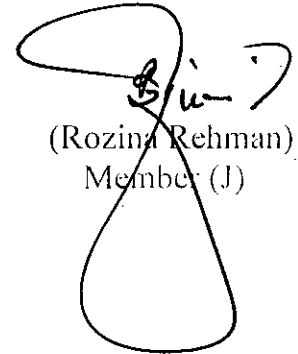
Muhammad Riaz Khan Paindakhel, learned Additional Advocate General for respondents present.

Vide our detailed judgment of today placed on file, we do not find any merit in the instant service appeal which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

02.01.2023

  
(Farzeha Paul)  
Member (E)

  
(Rozina Rehman)  
Member (J)