

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
AT CAMP COURT SWAT.**

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**  
**SALAH UD DIN ...MEMBER (Judicial)**

*Service Appeal No.1147/2022*

Date of presentation of appeal.....22.07.2022  
Dates of Hearing.....05.04.2023  
Date of Decision.....05.04.2023

**Nisar Ahmad S/O Shahi Room Principal GHSS Munjai Dir Lower.**  
.....**Appellant)**

Versus

1. **Government of Khyber Pakhtunkhwa Secretary Elementary & Secondary Education Department, Peshawar.**
  2. **Chief Secretary Khyber Pakhtunkhwa, Peshawar.**
  3. **Chief Minister, Khyber Pakhtunkhwa through Principal Secretary at Peshawar.**
- .....**(Respondents)**

Present:

Mr. Muhammad Rahim Shah,  
Advocate.....For appellant.

Mr. Fazal Shah Mohmand,  
Additional Advocate General.....For respondents

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**APPEAL AGAINST THE OFFICE ORDER  
NO.SO(SM)E&SED/5-19/2022/PT/SS WHEREBY APPELLANT  
WAS TRANSFER FROM GHS MUNJAI DIR LOWER TO  
GHSS GARAM CHASHMA CHITRAL.**

**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** According to the memorandum and grounds of appeal, the appellant was appointed as Assistant (BPS-11) in the respondent-department in the year 20.12.1992; that on 27.04.2017 the appellant was promoted to the post of Principal GHS Munjai (BPS-19); that the appellant was transferred from GHS Munjai to GHSS Garam Chashma Chitral vide order dated

15.04.2022; that the appellant feeling aggrieved filed departmental appeal which was not responded within the statutory period of ninety days, hence the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.

4. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order(s).

5. It appears that the appellant was transferred after his spending several years at GHSS Munjai Dir Lower. The main grounds taken in the appeal are that no prior approval of the competent authority was obtained before issuing the impugned transfer order. This contention is not supported by any document. It was also contended in the grounds that the transfer of the appellant to award harsh punishment to him because son of the sitting MPA had lost Election of Tehsil Chairman and the allegation was leveled on the appellant. There is nothing annexed with the appeal by the appellant to substantiate this contention. It was also contended that there were thirteen posts of the Principal laying vacant but no heed was paid to fill those post.

6. Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 pertains to the posting and transfers of the civil servant and is reproduced for ready reference:

"10. Posting and transfers.--- Every civil servant shall be liable to serve anywhere within or outside the Province in any



*post under the Federal Government, or any Provincial Government or local authority, or a corporation or body set up or established by any such Government:*

*Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:*

*Provided further that where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve."*

According to section 10, desired posting is not the perpetual right of a civil servant and the department concerned can transfer any civil servant to serve at the given place as mentioned in the transfer/posting order, while the civil servant cannot refuse compliance. Though, a ground for malafide can be based and agitated against an arbitrary, fanciful posting order based upon ill-will and inherent biases of the superior authorities. (See judgment dated 16.08.2022 of the honorable Peshawar High Court in Writ Petition No.439-B of 2022 titled "Hayatulah Khan versus Secretary Communication and Works Khyber Pakhtunkhwa and another"). The facts and circumstances enumerated above do not show any malice, arbitrariness, fancifulness and biasness of the official respondents/authorities. Finding no merits in this appeal is stands dismissed. Costs shall follow the events. Consign.

7. *Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 5<sup>th</sup> day of April, 2023.*



**KALIM ARSHAD KHAN**

Chairman  
Camp Court Swat



**SALAH UD DIN**

Member (Judicial)  
Camp Court Swat