

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, SWAT.

Service Appeal No. 1498/2022

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

Arif Iqbal Principal (BPS- 19) GHSS Bampokha, District Buner.
 (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. Accountant General, Khyber Pakhtunkhwa, Peshawar.
4. District Education Officer (Male) Buner. (Respondents)

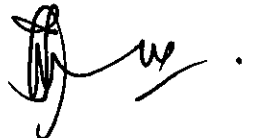
Mr. Roedad Shah,
 Advocate ... For appellant

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

Date of Institution.....13.10.2022
 Date of Hearing.....05.05.2023
 Date of Decision..... 05.05.2023

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 15.04.2022 alongwith its operation through which minor penalty of withholding of two annual increments for two years was imposed upon the appellant. It has been



prayed that on acceptance of appeal, the impugned order might be set aside and the respondents might be directed to release pay and allowances to the appellant and adjust him against a suitable post of Principal (BPS-19) to meet the ends of justice.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant, while serving as Principal BPS-19, was posted/adjusted against a wrong post i.e. Principal (BPS-19) Bampukha, Buner vide order dated 02.07.2020. He arrived at the new place of posting, assumed the charge and started his duties. At that time there was complete lockdown due to pandemic/Corona and all schools and offices were closed. In June 2021, on the perusal of the Finance Department letter dated 26.01.2017 and Budget copy for financial year 2021-22, it was revealed that there was neither any post of BPS-19 nor the budget allocated for the post of Principal BPS-19 in the said school. Thus, the posting/adjustment order dated 02.07.2020 in respect of appellant was found as wrong. The matter was shared with the DEO (Male) Buner and copies of Finance Department letter and Budget Book were provided to him but he showed his ignorance and verbally referred the appellant to Secretary, E&SE Khyber Pakhtunkhwa for reporting the matter of wrong posting. The DEO (Male) Buner instead of reporting the matter and showing the appellant as surplus, reported him as absent and stopped his pay through A.G's office immediately. The appellant reported to the Special Secretary, E&SE Khyber Pakhtunkhwa who ^{was} pleased to issue the orders for processing the



adjustment of appellant to a vacant post of Principal (BPS-19) at GHS Rajjar No. 1, which was vacant at that time. On the basis of baseless and malafide allegation of absence, leveled by the DEO (Male) Buner, respondent No. 1 ordered a departmental inquiry. The appellant appeared before the inquiry committee, replied to the charge sheet as well as the allegations leveled against him and explained all the relevant facts and matter. The inquiry committee recommended penalties against the appellant. Respondent No. 1, vide impugned order dated 15.04.2022, imposed minor penalty of withholding of two annual increments for two years upon him with immediate effect and the absence period w.e.f 01.07.2021 onwards was treated as leave without pay. Feeling aggrieved, he preferred representation/departmental appeal which was rejected vide order dated 27.09.2022, communicated to the appellant on 07.10.2022; hence the present 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 Additional 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 impugned order was illegal, void, baseless and based on malafide intentions. He further argued the impugned order was also violative of the law and policy governing the subject where it had been provided that an incumbent should be allowed to perform his duty at



his equal post or higher post but not on lower post. He requested that the appeal might be accepted as prayed for.

5. The learned Additional Advocate General while rebutting the arguments of the learned counsel for the appellant argued that the appellant concealed material facts from the Tribunal and that he was found absent so many times by District Monitoring Officer Buner and he was served with explanation time and again but he failed to reply the same, and consequently after proper inquiry, he was awarded with minor penalty of withholding of two annual increments. He further argued that the present appeal was baseless, false and was liable to be dismissed.

6. Arguments and record presented before us reveals that the appellant, who is a BS-19 officer in the Elementary and Secondary Education Department, was posted/adjusted against the post of Principal GHSS Bampukha, Buner vide order dated 02.07.2020. Status of the appellant as shown in the posting order is mentioned as "unadjusted". As the post of Principal GHSS Bampukha was vacant, he took over the charge on the day the order was issued. At some later stage, he came to know that the post of Principal in the school was in BS-18 as indicated in the budget of the provincial government. The copy of relevant portion of budget annexed with the appeal is the budget of GHS Bampukha, Buner whereas the transfer/posting order of the appellant shows that he was posted in GHSS Bampukha, Buner. When asked during the hearing that whether he was in receipt of salary in BS-18 or BS-19, he confirmed that



he was receiving salary in BS-19 while posted in GHSS Bampukha Buner, which indicates that there was no financial issue involved in his current posting. The matter was agitated by him before his high ups with the request to post him on a BS-19 position but no action was taken. In the meanwhile, he started absenting himself from his lawful duties and the matter was reported by the District Education Officer (Male) Buner to the Director E&SE based on the report of EMA. An inquiry was conducted based on a statement of allegations as follows:-

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- i. He was found absent on 03.03.2021 during an earlier visit of DEO (M) Buner, however the staff has said that he is absent since long.
 - ii. He was found absent on 01.07.2021 during visit of DEO (M) Buner.
 - iii. Log Book was written on the spot by the DEO concerned regarding his absence indicating his inefficiency and absence.
 - iv. He was reported absent so many times by the EMA.
 - v. No record of his presence on duty in the School is available.
 - vi. He is not taking interest in his official duties.
 - vii. He neither gets station leave nor bothers to inform the DEO (M) Buner.
 - viii. Due to his irresponsible attitude towards duty, the activities of the school are badly suffering.
 - ix. He neither attends monthly review meetings nor submits the requisite information sought from him time to time.”


7. His response to all the allegations mentioned above indicates that he was involved in the inquiry proceedings and every opportunity was provided to him to present and defend his case. His response to the allegations against him, annexed with the appeal, further indicates that his

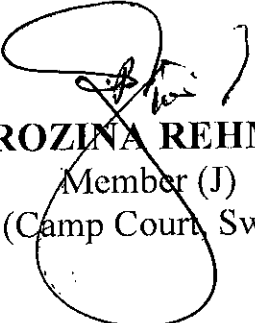


grievance was his posting against a BS-18 post, which according to him was a wrong posting. It further indicates that he frequently left his office by handing over the charge to Ghulam Farooq, Subject Specialist. When confronted during the hearing whether he had informed his competent authority today that he was leaving the school to attend the hearing in the Service Tribunal, his response was a simple "No". The respondent department's representative informed that his salary was stopped w.e.f. 01.07.2021 on the ground that he was absent from that date onwards and his absence was reported by the DEO (M) himself based on his visit to the school where the appellant was posted. The Inquiry Report presented by the departmental representative during the course of arguments also proves the allegations leveled against the appellant.

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 05th day of May, 2023.*


(FARREHA PAUL)
Member (E)
(Camp Court, Swat)


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