

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, SWAT.

Service Appeal No. 1148/2022

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

Muhammad Fayeen Khan PSHT (Primary School Head Teacher)
Government Primary School Jari Chinkolai/Dab, District Swat.
 (*Appellant*)

Versus

1. The Secretary Elementary and Secondary Education Department, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Director, Elementary and Secondary Education, Government of Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Male) District Swat.
4. Mr. Badar Munir, PSHT, Dab, Swat. (**Respondents**)

Mr. Imdadullah,
 Advocate

... For appellant

Mr. Fazal Shah Mohmand,
 Addl. Advocate General

... For respondents No. 1 to 3.

Date of Institution..... 22.07.2022

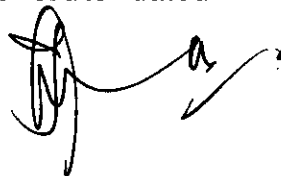
Date of Hearing..... 05.05.2023

Date of Decision..... 05.05.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant appeal as well as connected Service Appeal No.1149/2022, titled “Abdul Kabir PSHT, GPS, Faqira, District Swat Versus the Secretary Elementary & Secondary Education, Government of Khyber Pakhtunkhwa, Peshawar and others”, as common questions of law and facts are involved in both the appeals.

2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated



13.04.2022, whereby the appellant was promoted and subsequently posted at GPS Koz Kad against the clear policy of the Government with the prayer as follows:-

“That on acceptance of this appeal the order impugned may very kindly be modified to the extent of posting/adjustment of the appellant from GPS Koz Kad to his own Union Council i.e UC Janu as per the policy of the department.”

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the Education Department as PST and got promoted to Senior Primary School Teacher. While performing his duties as SPST at GPS, Jari Chinkolai/Dub, vide order dated 13.04.2022, he got promoted to the post of PSIIT (BPS-15) and was posted at GPS Koz Kad, outside the Union Council to which he belonged i.e. UC Janu. As per policy of the Provincial Government, a teacher whose post was available in his own Union Council would be adjusted/posted in the same Union Council, whereas in his case, the said policy was ignored. Feeling aggrieved, he preferred a departmental appeal for the redressal of his grievance which was not responded despite the lapse of statutory period; hence the instant appeal.

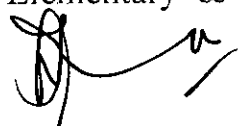
4. Respondents were put on notice. Official respondents No. 1 to 3 have submitted their joint written reply/comments on the appeal. Private respondent No. 4 did not submit reply despite proper service. We have heard the learned counsel for the appellant as well as the learned Additional Advocate General for the official respondents and perused the case file with connected documents in detail.



5. Learned counsel for the appellant, after presenting the case in detail, argued that treatment in accordance with the law was the vested right of the appellant but the same was denied to him for no good reasons. He further argued that the respondent department violated the policy made by itself in order to accommodate blue eyed person. According to him the appellant had legitimate expectations to be posted in his own U.C as per the policy which was denied to him. He requested that the appeal might be accepted as prayed.

6. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the appellant had not taken over charge as PSHT and was still working on the post of SPST, hence his stance lost its purpose and validity. He further argued that the letter of the Directorate of Elementary & Secondary Education had been explained by the appellant according to his own whims and wishes. According to note of the letter at serial no. 5, senior PSHT's might be retained and junior most might be transferred to other schools. The appellant was not senior most and the senior most had rightly been retained in the respective Circles/Sub-Divisions. In fact the appellant was at S. No. 1150 while the other teacher was at S. No. 643 of the seniority list and was posted at GPS Shaloon. He read out sr. no. 7 of the said letter and said that it was given that if anyone did not accept his order of promotion, entry to that effect might be made in his/her service book. He further argued that the appellant, by not taking over charge as PSHT (BPS-15), had even lost his entitlement to promotion. He requested that the appeal might be dismissed.


7. From the arguments and record presented before us, it transpires that the appellant was appointed as Primary School Teacher in the Elementary &

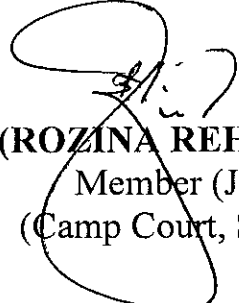


Secondary Education Department. As time passed, he was first promoted to the post of Senior Primary School Teacher and later on to Primary School Head Teacher. As Senior Primary School Teacher, he was posted in the Union Council of his domicile in the light of the provincial government's policy. By the time he got promoted to Primary School Head Teacher, BS-15, he was posted out of that Union Council i.e from U.C Janu to U.C Koz Kad. As informed by the learned AAG, the post of PSHI (BPS-15) is a district cadre post and the competent authority of the appellant had every reason to post him out of the union council to which the appellant belonged, under the rules and policy of the provincial government. The appellant when confronted whether he had ever served outside his U.C, informed that he was in U.C to which he belongs since 2019 which indicates that it was an enough time to serve at one place. Moreover, Section 10 of Civil Servants Act, 1973 is extremely clear according to which a civil servant is obligated to serve at any place where he is posted by the provincial government/competent authority.

8. In the light 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.*


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


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