

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR
AT CAMP COURT, ABBOTTABAD.

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No.7944/2021

Date of presentation of Appeal.....29.12.2021

Date of Hearing.....21.06.2023

Date of Decision.....21.06.2023

Mr. Khalid Mehmood SS (URDU) BS-17, GHSS Mohri Bed Bhen,
Abbottabad.....Appellant

Versus

1. **Government** of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. **The Secretary** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. **The Director** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
4. **The District Education Officer** Elementary & Secondary Education (Male), District Abbottabad.
5. **Mr. Muhammad Tanvir, SS (Urdu) BS-17, GHSS Muslim Abad**
District Abbottabad.....(Respondents)

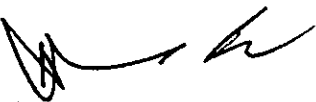
Present:

Mr. Arshad Khan Tanoli, Advocate.....For appellant

Mr. Asif Masood Ali Shah,

Deputy District Attorney.....For respondents.

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, 1974 FOR DECLARATION TO THE EFFECT THAT RESPONDENT NO.5 HAS BEEN TRANSFERRED FROM GHSS LORA TO GHSS MUSLIM ABAD VIDE IMPUGNED CORRIGENDUM ORDER DATED 07.12.2021 INSTEAD OF THE APPELLANT. THE APPELLANT IS SUFFERING FROM CHRONIC DEGENERATIVE DISORDER AND IS SEIVING IN FAR-FLUNG HILLY AREA IN GHSS MOHRI BED BHEN. HENCE THE APPELLANT WAS TO BE



TRANSFERRED FROM GHSS MOHRI BED BHEN TO GHSS MUSLIM ABAD ON THE BASIS OF MERIT AS WELL AS ON E-TRANSFER POLICY. HENCE, TRANSFER OF RESPONDENT NO.5 IS ILLEGAL AND AGAINST THE LAW AND IMPUGNED CORRIGENDUM ORDER DATED 07.12.2021 IS LIABLE TO BE SET ASIDE.

JUDGMENT

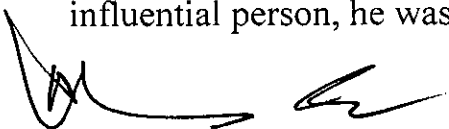
KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case are that appellant is serving in GHSS Mohri Bed Bhen District Abbottabad w.e.f 13.02.2019; that being a patient of chronic degenerative disorder, has to travel long journey. The appellant tried through many ways, to get his transfer from the said school but in vain. In the meanwhile the department issued transfer order dated 06.12.2012 wherein, one Muhammad Haroon SS was posted at the GHSS Muslimabad as SS against the vacant post and thereafter, issued corrigendum dated 07.12.2021 through which respondent No.5 was posted in the GHSS Muslimabad and the appellant was ignored. Feeling aggrieved, he filed departmental appeal which was not responded to, hence, this 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 defense setup was a total denial of the claim of the appellant.



3. We have heard appellant and learned Deputy District Attorney for the respondents.

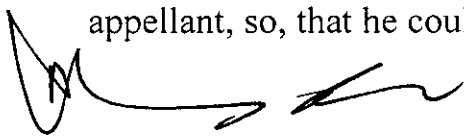
4. Learned counsel for the appellant argued that the impugned transfer order dated 07.12.2021 was illegal, malafide, discriminatory and against the posting/transfer policy; that the appellant had already completed two years service in hard area and had preferential right of posting in GHSS Muslimabad as per tenure and E-Transfer Policy as well as on medical grounds. He submitted that the only purpose of E-Transfer Policy was to avoid corrupt practices and political influence but inspite of the same, the appellant had not been transferred from GHSS Mohri Bed Behn To GHSS Muslimabad on medical grounds which conduct of the respondents was against law. Further submitted that when the appellant had tried through online portal, he had been informed that there is ban over transfers and the respondent No.5 was a blue eyed person, therefore, he was transferred despite ban over transfers. Lastly, he submitted that the respondent No.5 had not been included before the grievances redressel committee meeting and the said respondent had been on right post at GHSS Lora but being influential person, he was transferred to GHSS Muslimabad.



5. As against that learned Deputy District Attorney submitted that the Notification dated 07.12.32021 and corrigendum order dated 07.12.2021 issued by the competent authority was in accordance with law, rule in vague and liable to be remained in field for the best public interest. He submitted that the area where the appellant was posted was not falling within the definition of unattractive/hard area and the appellant was not trustworthy as he was constantly changing his stance regarding his alleged ailment. Further submitted that the appellant had not come to this Tribunal with clean hands and the respondent No.5 had been transferred in accordance with law and rules. Lastly, he submitted that the appellant was neither an aggrieved person nor he had locus-standi to file instant appeal, therefore, he requested for dismissal of the instant service appeal.

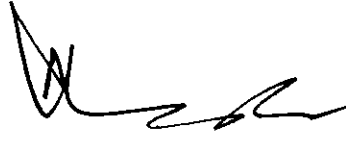
6. The prayer made in this appeal is that the transfer order dated 06.12.2021 and corrigendum order dated 07.12.2021 of private respondent No.5 might be set aside and respondents might be directed to post the appellant from GHSS Mohri Bed Bhen to GHSS Muslim Abad.

7. At the very outset, it is observed that neither order dated 06.12.2021 nor that of 07.12.2021 contained the name of the appellant, so, that he could be said to be an aggrieved person. Besides,



there is no original or appellate order which might have affected/violated/infringed any of the terms & conditions of service of the appellant, therefore, he does not have any cause of action and *locus standi* to challenge any of the two transfer orders, rendering this appeal not maintainable. As a resultant consequence, we dismiss this appeal with cost. Consign.

8. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 21st day of May, 2023.*



KALIM ARSHAD KHAN
Chairman
Camp Court Abbottabad



RASHIDA BANO
Member (Judicial)
Camp Court Abbottabad

Adnan Shah