

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1509/2022

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
MISS FAREEHA PAUL ... **MEMBER (E)**

Mst. Ilina Sajjad (Subject Specialist Statistics BPS-18) W/O Sajjad Iqbal R/O
Kareem Pura, House No. 2560 Mohallah Malik Shahdad Peshawar.
..... (*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa Elementary and Secondary Education Department, Peshawar.
3. Director Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
4. Mst. Humaira Nasim, SS (Statistics BPS-17) Government Girls Higher Secondary School University Town Peshawar. (*Respondents*)

Mr. Zartaj Anwar, ... For appellant
Advocate

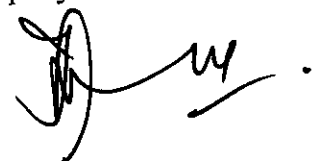
Mr. Fazal Shah Mohmand, ... For official respondents
Additional Advocate General

Miss Roceda Khan, ... For private respondent No. 4.
Advocate

Date of Institution..... 20.10.2022
Date of Hearing..... 27.07.2023
Date of Decision..... 27.07.2023

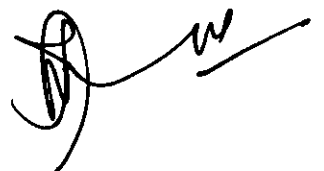
JUDGEMENT

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 inaction of the respondents by not adjusting the appellant on her due post of Subject Specialist BPS-18, against which she filed departmental appeal before the competent authority which was not responded within the statutory period of ninety days. It has been prayed that on



acceptance of this appeal, the appellant might be adjusted/transferred as Senior Subject Specialist Statistics BPS-18 at GGISS University Town Peshawar or any other school at Peshawar. It has further been prayed that the inaction of the respondents by adjusting the respondent No. 4 i.e. Humaira Nasim BPS-17 on the post of SSS Statistics BPS-18 vide order dated 04.07.2022 be declared as illegal, unlawful and violative upon the rights of the appellant, alongwith any other remedy which the Tribunal deemed fit and appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed on the recommendation of the Khyber Pakhtunkhwa Public Service Commission Peshawar on the post of Subject Specialist BPS-17 on 09.12.2009 and was adjusted against the vacant post at GGISS Harichand Charsadda. She was transferred and posted as SSS Statistics (BPS-17) at GGISS Umarzai District Charsadda vide office order dated 24.09.2011. She was again transferred to the post of SS Statistics BPS-17 at GGISS Taru Jabba Nowshera vide office order dated 20.06.2014 and was further transferred from GGHSS Taru Jabba to GGHSS Khyber Colony Peshawar vide order dated 24.11.2015. She was promoted to the post of SSS Statistics BPS-18 but due to non-availability of the post of SSS Statistics at Peshawar, she was posted and adjusted on the post of SS Maths BPS-18 at GGISS Shabqadar Charsadda against the vacant post as stop gap arrangement, vide notification dated 07.05.2020. In the meanwhile, through the impugned notification dated 04.07.2022, respondent No. 4 i.e. Humaira Nasim SS Statistics BPS-17 was illegally posted/adjusted against the post of SSS Statistics BPS-18 at GGISS University Town Peshawar and in remarks it was



clearly written "that she will assume charge after vacation of the said position of Mst. Shehla Nouman on account of her promotion to Principal BPS-19 in due course of time". Thereafter through notification dated 14.09.2022, the said Mst. Shehla Nouman was promoted to the post of Principal BPS-19. Aggrieved from the impugned notification dated 04.07.2022, the appellant filed a departmental appeal before the competent authority on 05.07.2022, which was not responded within the statutory period of ninety days; hence the instant service appeal.

3. Respondents were put on notice. They submitted their written replies/comments on the appeal. We heard the learned counsel for the appellant, learned Additional Advocate General for the official respondents as well as learned counsel for private respondent No. 4 and perused the case file with connected documents in detail.

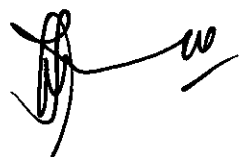
4. Learned counsel for the appellant, after presenting the case in detail, argued that the appellant had not been treated in accordance with law and her rights secured and guaranteed under the law were badly violated. He further argued that there existed no exigencies of service nor the order of posting/adjustment of BPS-17 on the post of BPS-18 was to be termed as in the public interest as it was a result of political pressure at the cost of the appellant and thus not tenable in the eyes of law. He further argued that according to the posting and transfer policy of the provincial government, all the postings and transfers should be strictly in public interest and should not be abused/misused to victimize the government servants. He further argued that the appellant had first right to be transferred to the post of SSS Statistics BPS-18 at GGHS



University Town Peshawar as she was a regular BPS-18 officer instead of adjusting the respondent No. 4, who was in BPS-17, on the post of BPS-18. He requested that the appeal might be accepted as prayed for.

5. Learned Additional Advocate General for the official respondents and learned counsel for private respondent No. 4 argued that a civil servant was bound to serve anywhere in the province as per Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973. They further argued that respondents had acted in accordance with law and there was no illegality or irregularity in the notification dated 04.07.2022. Moreover, the Education Department had thousands of teaching staff, and according to law and rules, all the staff was adjusted in the best public interest. They requested that the appeal might be dismissed.

6. From the record and arguments presented before us, it was found that the appellant was appointed as Subject Specialist, Statistics (BS-17) on the recommendation of Khyber Pakhtunkhwa Public Service Commission. On her promotion to BS-18, owing to the fact that there was no vacant post of Subject Specialist at Peshawar, she was adjusted against a vacant post of S.S (Maths) at GGHSS, Shabqadar Charsadda as a stop gap arrangement vide notification dated 07.05.2020. Record indicates that a post of Subject Specialist Statistics (BS-18), occupied by one Mst. Shehla Nouman, was about to become vacant on her promotion to BPS-19, which was notified on 14.09.2022, but through another notification dated 04.07.2022, Mst Humaira Nasim (respondent No. 4) was posted on that post with the remarks that she will assume the charge after vacation of the post by Mst. Shehla Nouman after her promotion. It has been



noted that respondent No. 4 was in BS-17 when she was posted on the BS-18 position. There is no second opinion on the fact that the provincial government is competent to post any civil servant anywhere in the province, under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act 1973, but it is felt that care should have been taken by the competent authority while making their adjustments in such a way that civil servants should be posted on positions according to their basic pay scales. This bench feels that the appellant is justified when she says that she should be adjusted against a post of SS Statistics in BS- 18.

7. In view of above, the instant appeal is disposed of with the direction to the respondent department to adjust the appellant preferably in Peshawar as soon as a post of Subject Specialist in BS-18 becomes vacant. Costs shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 27th day of July, 2023.*



(FAREEHA PAUL)

Member (I)

Fazle Subhan, P.S



(KALIM ARSHAD KHAN)

Chairman