

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 5797/2021

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

Mst. Noor Shad Begum, W/O Ahmad Nawaz. PST, GGPS Karak Sar,  
Karak City. .... (Appellant)

VERSUS

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Deputy Director (Establishment) Merged Areas, Education Directorate, Peshawar.
3. District Education Officer (Female), District Karak.
4. District Education Officer (Female), District North Waziristan, Meranshah.

.... (Respondents)

Mr. Ashraf Ali Khattak  
Advocate

For appellant

Mr. Muhammad Jan  
District Attorney

For respondents

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Date of Institution.....26.05.2021  
Date of Hearing.....03.08.2023  
Date of Decision.....11.08.2023

JUDGMENT

**RASHIDA BANO, MEMBER (J):** The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this appeal, both the impugned order dated 05.04.2023 of the respondent No. 2 wherein he rejected departmental appeal of the appellant filed for fixation of appellant’s pay in BPS-15 as illegal, unlawful and without lawful authority and set aside the same and directed the respondents to correct the wrong entry in transfer order dated 30.06.2020 to the extent of mentioning the post of appellant in BPS-12 instead of BPS-15 and re-fix the pay of the appellant in BPS-15 w.e.f date of her



**transfer/posting and charge assumption at GGPS Karak Sar i.e 30.06.2020 and release the outstanding pay since then with all back benefits.”**

2. Brief facts of the case, as given in the memorandum of appeal are, that appellant was appointed as PTC (BS-07) on contract basis vide order dated 19.05.2004 at GGPS Jahangir Kot Spulge District North Waziristan. Service of the appellant was regularized vide order dated 01.11.2005 with effect from the date of first appointment i.e 19.05.2004 in the light of judgment of Hon'ble Peshawar High Court. Later on, the post of appellant was up-graded from BPS-07 to BPS-09 with effect from 01.10.2007. The appellant was further up-graded from BPS-09 to BPS-12 w.e.f 01.07.2012 in pursuance of the notification dated 08.08.2016. In pursuance of the Elementary & Secondary Education Department Khyber Pakhtunkhwa Notification dated 11.07.2012 appellant was further promoted to the post of PSHT (BPS-15). Appellant filed application for her transfer to district Karak on Wedlock policy, which was not entertained. Feeling aggrieved she filed writ petition before Worthy Peshawar High Court, Peshawar which was allowed vide order 26.02.2020. In the light of order dated 26.02.2020, she was transferred to GGPS, Karak Sar vide order dated 30.06.2020 as PST (BPS-12) instead of PSHT (BPS-15). Felling aggrieved she filed departmental appeal which was rejected vide order dated 05.04.2021; hence instant service 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 District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellant had not been treated in accordance with law and rules and policy on the subject and

respondents acted in violation of Article 4 & 10-A of the Constitution of Islamic Republic of Pakistan. He contended that appellant has been downgraded without any fault or any misconduct on her part and without any show cause notice, which is nullity in the eyes of law and rules and the same is against the principle of natural justice. He, therefore requested for acceptance of instant service appeal.

5. The learned District Attorney contended that the appellant had been treated in accordance with law and rules. He further contended that she was promoted to BPS-15 with immediate effect which is according to promotion policy. He argued that according to policy the appellant was placed at the bottom of seniority of PST (BPS-12). Furthermore, the appellant was agreed/admitted the Para No. 3 of her transfer order to District Karak and she obtained LPC from the DAO North Waziristan in BPS-12 as the basic pay scale of PST is BPS-12.

6. Perusal of record transpires that appellant was enrolled as PTC (BPS-07) on 19.05.2004 in North Waziristan Agency. Service of appellant was regularized vide order dated 01.01.2005 with effect from its first appointment. Appellant, with the passage of time, was promoted to the post of PSHT (BPS-15) vide order 27.12.2018. She is resident of district Karak and her husband also belongs to district Karak and was serving at Karak as school teacher. Appellant requested respondent for her posting to District Karak on the basis of wedlock policy but her request was turned down. Appellant had approached Worthy Peshawar High Court, Peshawar by invoking its writ jurisdiction for redressal of her grievance. Writ petition before Worthy Peshawar High Court, Peshawar was allowed vide order dated 26.02.2020 for transfer to District Karak on the basis of wedlock policy. Resultantly, respondents transferred the appellant to District Karak vide order



dated 30.06.2020 but to the post of PST (BPS-12) instead of PSHT (BPS-15). Appellant filed departmental appeal on 15.03.2021 which was rejected vide order dated 05.04.2021. It is admitted position on the record that appellant was PSHT at the time of her transfer to District Karak from District North Waziristan on 30.06.2020. Respondents also admitted the fact of appellant as PSHT before her impugned transfer/posting order dated 30.06.2020 but they pleaded that PST (BPS-12) is district cadre post while PSHT (BPS-15) will be filled by promotion, therefore, appellant was rightly transferred on the post of PST (BPS-12) according to Section 8 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules 1989.


7. Admittedly appellant was simply transferred from North Waziristan to District Karak and she was not absorbed at District Karak. If she was permanently absorbed in District Karak then she will be posted as PST (BPS-12) and will be placed at the bottom of the seniority list of PST (BPS-12) of District Karak. No doubt PSHT is a post which had to be filled by promotion but appellant was just adjusted in the light of order of Worthy Peshawar High Court Peshawar. Prayer of appellant in writ petition bearing No. 763-B/2019 was, "It is therefore, most humbly prayed that on acceptance of this Writ Petition, respondents may very graciously be directed to implement the wedlock policy in case of petitioner and to adjust/transfer the petitioner as Primary School Head Teacher in District Karak in vacant school already existed in Government Girls Primary School Tarkha Koi Gharbi, GGPS Tarkha Koi or GGPS New Abadi Sabir Abad as the case may be". Operative para of Worthy Peshawar High Court, Peshawar order dated 26.02.2020 states, "in view of above, the instant writ petition is admitted and allowed with direction to the respondents to consider the case of appellant for her transfer as prayed for. Order accordingly". Appellant's prayer for transfer on


basis of wedlock policy to Karak from North Waziristan was accepted, therefore, respondents had to obey the direction of Worthy Peshawar High Court, Peshawar in its true letter and spirit. Respondents had not taken plea of district cadre and promotion post before Worthy Peshawar High Court, Peshawar and only plea taken by them before Worthy Peshawar High Court, Peshawar was of ban imposed upon transfer/posting. Now respondents are estopped by their own conduct to raise their plea of section 8 of APT Rules, 1989. Respondent can transfer back the appellant in case of a vacant post is required for promotion to the post of PSHT because it is a simple transfer and not absorption case.

8. For absorption, the respondents will to obtain consent of the appellant, which was not obtained from her. If she had consented for absorption at District Karak then she would have been posted on the post of PTC (BPS-12) instead of PSHT(BPS-15). So appellant remains successful to establish her case, therefore, respondents are directed to correct all related entries of PTC with PSHT(BPS-15) in the order dated 30.06.2020. As plea of the appellant for transfer as PSHT (BPS-15) is accepted, therefore, she is entitled for back benefits too.

9. As a sequel to above discussion, we allow appeal of the appellant. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 11<sup>th</sup> day of August, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)