

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 564/2022

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

Sonia Ikhlas, daughter of Late Ali Abbas, Khan wife of Fawad, Village Tattar Khail, Tehsil Takht-e-Nasrati, District Karak..... (*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar.
2. Secretary Elementary & Secondary Education Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
3. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
4. District Education Officer(F), Karak.
5. District Education Officer (F) Miranshah. .... (Respondents)

Mr. Qamar Zaman Khattak,  
Advocate

... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney

... For respondents

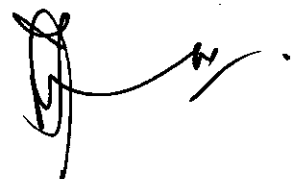
Date of Institution..... 25.10.2022  
Date of Hearing..... 11.10.2023  
Date of Decision..... 11.10.2023

**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 11.11.2021, whereby appellant was downgraded and her transfer order as well as her initial order of appointment as CT was withdrawn, and not taking any action on her departmental appeal. It has been prayed that on acceptance of the appeal, the impugned order dated 11.11.2021 might be set aside and the appellant might be reinstated and allowed to perform her duty at her place of posting i.e. GGMS Wagi Banda, District Karak.



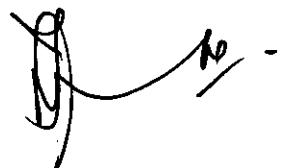
2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as CT on the basis of deceased son/daughter quota vide order dated 23.12.2016 by the Agency Education Officer North Waziristan and was posted at GGHS Gul Shin Kot Spulga North Waziristan. The initial appointment of the appellant as CT was made in BPS-09 but the post of CT was upgraded from BPS-09 to BPS-15, vide notification dated 28.07.2016, therefore, the pay of the appellant was also fixed in BPS-15. After about four years, the appellant was transferred from GGHS Gul Shin Kot Spulga to her native District Karak against the vacant post of CT and posted at GGHS Mandawa. The CT post against which the appellant was transferred and adjusted was occupied by another female, therefore, appellant was adjusted against CT post at GGMS Wagi Banda, District Karak by the competent authority vide order dated 08.09.2021. She assumed the charge and started her duty. In the meanwhile an inquiry committee was constituted to probe into the initial appointment order of the appellant and the inquiry was conducted but the appellant was not associated with it. It was recommended by the Inquiry Officer that the appellant might be downgraded as her initial appointment could not be made in BPS-15 on the basis of deceased son quota. The Director (E&SE) Khyber Pakhtunkhwa Peshawar, vide impugned order dated 11.11.2021, not only withdrew the transfer order of the appellant dated 24.07.2020 but also withdrew her initial appointment against CT post and issued direction for her re-appointment against any post of BPS-1 to 12 under the deceased son quota. The appellant submitted departmental appeal to the Secretary Elementary & Secondary



Education, Khyber Pakhtunkhwa, Peshawar but no response was received; hence the instant service appeal.


3. Respondents were put on notice who submitted their reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents 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 was not treated in accordance with law, rules and policy on the subject and the respondents acted in violation of Article 4 and 10-A of the Constitution of Pakistan, 1973. He further argued that the appellant was serving against CT post since her first entry into the government service i.e 2016 and served on that post for a period of more than 04 years and received her salary in BPS- 15 till the date the impugned order was issued and therefore, vested right of the appellant had accrued against the CT post which could not be snatched through a single stroke of pen. He invited the attention to the findings of the inquiry officer and stressed that appointment of the appellant against CT post in BPS-15 was not her fault rather it was the fault of the appointing authority and that could not be attributed to the appellant. He referred to the verdict of the august Supreme Court of Pakistan according to which in such a case no action should be taken against an employee who has no role in his/her appointment, rather the action should be taken against the officer who made the fault. Learned counsel for the appellant requested that the appeal might be accepted as prayed for.




5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was wrongly appointed on 23.12.2016 as CT in BPS-09 on the basis of deceased son quota by the then AEO North Waziristan. He stated that the post was upgraded to BS- 15 vide notification dated 28.07.2016. He further argued that in the light of the enquiry report, respondent No. 3 had withdrawn transfer order the appellant and also directed respondent No. 5 to re-appoint her against any post of BPS- 1 to 12 under deceased son/daughter quota as per existing Rules/Policy. He requested that the appeal might be dismissed.

6. An order dated 11.11.2021 issued by the Director Elementary and Secondary Education, Khyber Pakhtunkhwa has been impugned before us according to which the transfer order of the appellant issued on 24.07.2020 has been withdrawn. Vide the same order, the District Education Officer, North Waziristan has been directed to re-appoint the appellant against the post of BS-1 to BS-12 under deceased son/daughter quota as per existing rules/policy. Arguments and record presented before us transpire that the appellant was appointed as Certified Teacher in BS-09 by the Agency Education Officer, North Waziristan Agency vide order dated 23-12-2016 under the deceased son quota. The AEO, North Waziristan at the time of appointment, failed to take note of the fact that the post of CT had been upgraded to BS-15 vide a notification of FATA Secretariat dated 28-07-2016. On the very next day of her appointment as CT (BS-09), her post was upgraded to BS-15 on 24.12.2016, as is evident from a copy of her service book attached with the service appeal. After serving in North Waziristan



Agency for some time, the appellant was transferred/posted to District Karak vide an order dated 24-07-2020 of the Director, Elementary and Secondary Education, Khyber Pakhtunkhwa. It was during her posting in Karak that her appointment on deceased son/daughter quota was highlighted and it came to surface that under the rules, the appointment on deceased son quota was to be made on any post from BS-1 to BS-12, but the appellant was first appointed in BS-9 and later upgraded to BS-15, because the post of CT on which she was appointed was actually in BS-15, and that under the rules, she was not entitled to be appointed on that post. An inquiry was conducted, the report of which clearly mentioned these facts. The Inquiry Officer recommended that her appointment order might be declared null and void and she might be reappointed in a lower scale from BS-1 to BS-12 in her own district. The enquiry officer went to the extent of saying that the appellant was not guilty in that case rather it was the AEO, North Waziristan Agency who might be held responsible for the appointment. He has further stated in his report that the appellant is qualified and eligible in all respects to be appointed on the deceased son quota. In the light of the enquiry report, respondents issued the impugned order and cancelled the transfer of the appellant with the directions to DEO, North Waziristan to re-appoint her but as of today, no re-appointment order has been issued.


7. After going through the entire discussion and record, we are of the view that the appellant was appointed by the competent authority, which was the Agency Education Officer in this case, on deceased son/daughter quota in BS-9 and later upgraded to BS-15, knowing the fact that the post of CT was a BS-15 post, because she fulfilled the criteria and was eligible for



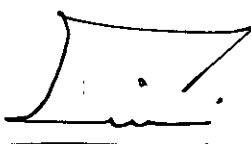
such appointment. The same fact has been proved in the Inquiry also, by the Inquiry Officer. There is no doubt that as per rules, appointment under the deceased son quota is to be made in BS-1 to BS- 12, but the question here is that why was she appointed on the post of CT which was a BS- 15 post and not meant for appointment under deceased son quota? Was the appointing authority not aware of this fact? If not, then in our opinion, it is a fault on the part of the appointing authority and not of the appellant. Why should she be penalized for a fault that has not been committed by her? In the light of the inquiry report, her transfer order has been cancelled and directions have been issued for her reappointment, but the authorities have not mentioned a single word about the then AEO, North Waziristan Agency who committed such a blunder, based on which the appellant suffered.

8. In view of the above discussion, the appeal in hand is allowed as prayed for. Costs shall follow the event. Consign.

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

  
(FAREEHA PAUL)  
Member (E)

*\*Fazle Subhan, P.S\**

  
(SALAH-UD-DIN)  
Member (J)

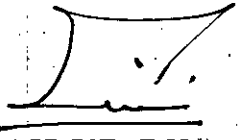
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11<sup>th</sup> Oct. 2023 01. Mr. Qamar Zaman Khattak, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the appeal in hand is allowed as prayed for. Costs shall follow the event. Consign.

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

  
(FAREEHA PAUL)  
Member (E)

  
(SALAH-UD-DIN)  
Member (J)

*\*Fazle Subhan, P.S\**