

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.65/2024

Date of presentation of Appeal.....22.12.2023
Date of Hearing.....01.04.2024
Date of Decision.....01.04.2024

Ajmal Khan, PSHT BPS-15 Government Primary School No.2 Spin Kana Kalan District Nowshera.....(Appellant)

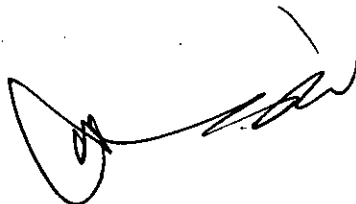
Versus

1. **Government** of Khyber Pakhtunkhwa Peshawar through Secretary Education, Civil Secretariat Peshawar.
2. **Director of Education**, Peshawar.
3. **District Education Officer (M)**, Nowshera.
4. **ASDEO (M)** Circle Pabbi, District Nowshera.
5. **Fazli Malik** PSHT BPS-15 Government Primary School No.2 Taru Jabba, Tehsil Pabbi, District Nowshera.....(**Respondents**)

Present:

Mr. Meher Gul, Advocate.....For the appellant
Mr. Muhammad Jan, District AttorneyFor respondents
Mr. Fazli Malik.....Private respondent No.4 (In Person)

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED TRANSFER ORDER DATED 12.06.2023 OF RESPONDENT NO.3 VIDE WHICH RESPONDENT NO.3 DECLARED HIS EARLIER TRANSFER ORDER ENDSTT NO.4115 DATED 30.03.2023 AS NULL AND VOID WITHOUT ADVANCING ANY PLAUSIBLE AND LEGAL JUSTIFICATION AGAINST WHICH DEPARTMENTAL APPEAL WAS PREFERRED BUT UN-RESPOND WITHIN STIPULATED PERIOD OF TIME.



JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case, as enumerated in the memo and grounds of appeal are that appellant was serving as Primary School Head Teacher (PSHT) at Government Primary School No.2 at Spin Kana Kalan District Nowshera since 28.07.2015; that on 30.03.2023 the DEO (Male) Nowshera issued transfer order of the appellant to GPS No.2 Taru Jabba, Tehsil Pabbi, District Nowshera with direction that the appellant shall take over charge of the said post after the retirement of one Malik Hidayat Ullah PSHT (BPS-15); that vide impugned transfer order dated 12.06.2023, instead of appellant, private respondent No.4 was ordered to be posted at GPS No.2 Taru Jabba, Tehsil Pabbi, District Nowshera.

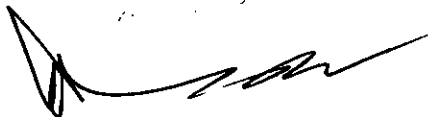
2. Feeling aggrieved of the impugned order dated 12.06.2023, the appellant filed departmental appeal, which was not responded, therefore, the appellant filed the instant service appeal.

3. 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.

4. We have heard learned counsel for the appellant and learned Deputy District Attorney for official respondents and private respondent No.4.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney assisted by private respondent No.4 controverted the same by supporting the impugned order(s).

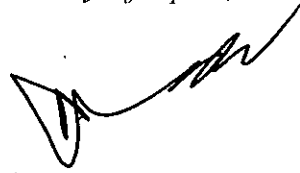
6. This appeal is against the order dated 12.06.2023, whereby, private respondent No.4 namely Fazli Malik PSHT (BPS-15) was transferred at GPS No.2 Taru Jabba, Tehsil Pabbi, District Nowshera. The order was though given immediate effect but in the note under it, it was mentioned that the same would be effective on retirement of one Malik Hidaytullah, within another line it was written that any other transfer order except the one dated 12.06.2023, would be considered as null and void. When confronted how the earlier order vide which the appellant was transferred to GPS No.2 Taru Jabba, that too was given immediate but with the same sentence that he would assume the charge on retirement of Malik Hidaytullah, would be declared null and void by the same authority, and especially, the subsequent order of 12.06.2023 was ambiguous, as if the DEO (Male) Nowshera was not knowing his earlier order, made by him. Be that as it may, there was no justification for issuance of second order when the earlier order was in the field and that was not cancelled or withdrawn. The private respondent No.4 present in the court, however, says that he was facing various problems because of which, he had requested for his posting at any nearby school. Therefore, while allowing this appeal and setting aside the impugned transfer order dated 12.06.2023, we direct the official respondents to accommodate the



private respondent No.4 at school nearer to his abode. Order accordingly.

Costs shall follow the event. Consign.

7. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 1st day of April, 2024.*



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)

Mutazem Shah



S.A #.65/2024

ORDER

1st Apr. 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Mr. Irfan Ul Haq, Subject Specialist for official respondents No.1 to 3 present. Private respondent No.4 in person present.
2. Vide our detailed judgment of today placed on file, while allowing this appeal and setting aside the impugned transfer order dated 12.06.2023, we direct the official respondents to accommodate the private respondent No.4 at school nearer to his abode. Order accordingly. Costs shall follow the event. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 1st day of April, 2024.*

(Rashida Bano)
Member (J)

(Kalim Arshad Khan)
Chairman