

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL**  
**PESHAWAR**

BEFORE: RASHIDA BANO ... MEMBER (J)  
MUHAMMAD AKBAR KHAN ... MEMBER (E)

*Service Appeal No. 1560/2019*

Date of presentation of Appeal.....31.10.2019  
Date of Hearing.....24.06.2024  
Date of Decision.....24.06.2024

Mst. Nusrat Shaheen, PET (BPS-15), GGHS Shah Zaman Qilla, Tehsil Takht Bhai, District Mardan.....(Appellant)

**VERSUS**

1. The Secretary, E&SE Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director, E&SE Department, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Female), District Mardan.....(Respondents)

NOOR MUHAMMAD KHATTAK,  
Advocate

For appellant.

MUHAMAMD JAN,  
District Attorney

For respondents

**JUDGMENT**

**MUHAMMAD AKBAR KHAN, MEMBER (E):-**The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

*"That on acceptance of this appeal the impugned appellate order dated 03.10.2019 may very kindly be set aside and the respondents may kindly be directed to enlist the name of circulated/prepared for the cadre of PET's i.e. w.e.f. the date of her 1<sup>st</sup> appointment i.e. w.e.f 01.09.2004. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant."*

02. Brief facts of the case are that the appellant was initially appointed as PET (BPS-09 now BPS-15) vide order dated 31.05.2004. Later on her services were regularized w.e.f. the date of her 1<sup>st</sup> appointment i.e. 31.05.2004 in light of the NWFP Civil Servants (Regularization) Act, 2005. She was transferred from GGMS Shah Zaman Qala, District Mardan to GGHS Badaber, District Peshawar on her own request vide order dated 12.07.2008; that vide order dated 05.01.2011 the appellant was transferred back to her home District i.e. Mardan and posted at GGHS Kati Ghari, District Mardan; that the respondent department circulated final seniority list of Female PET mistresses dated 25.01.2017 wherein name of the appellant was enlisted at serial No. 106 and junior colleagues of the appellant have been promoted to the post of SPET (BPS-16) while the appellant has been ignored. Feeling aggrieved, the appellant filed departmental appeal on 29.01.2019 which was rejected vide order dated 03.10.2019, hence preferred the instant service appeal on 31.10.2019.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in her appeal. We have heard arguments of learned counsel for the appellant, learned District Attorney for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned appellate order dated 03.10.2019 by the respondent No. 3 is against the law, facts and norms of natural justice, hence not tenable and liable to be set aside; that the appellant has not been treated in accordance with law and rules and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973; that the inaction of the respondents by not

correcting/enlisting the name of appellant in the seniority list from the date of her 1<sup>st</sup> appointment in District Mardan is violative of Section 8 of the Civil Servant Act, 1973 read with Rule-17 of the Khyber Pakhtunkhwa Civil Servants (Appointment Promotion & Transfer) Rules, 1989; that the seniority of the appellant has not been affected for the reason of her transfer to district Peshawar which is not a valid reason, therefore, the seniority position is liable to be corrected.

05. Learned District Attorney on the other hand contended that the appellant was transferred on her own request, due to which the appellant has come at the bottom of Seniority list; that the respondents being government officers acted in accordance with law and no violation of Article 4 and 25 of the Constitution of Islamic Republic of Pakistan has been made by the respondents and the appellant has been treated by the respondents in accordance with law and rules.

06. Perusal of record reveals that the appellant was initially appointed as PET teacher (BPS-09) in District Mardan vide order dated 31.05.2004. Due to some domestic reasons the appellant submitted application for her transfer and accordingly her transfer application was allowed and she was transferred from GGMS Shah Zaman Qala, District Mardan to GGHS Badaber, District Peshawar vide order dated 12.07.2008 and as per policy in vague she was placed at the bottom of seniority list of PET in District Peshawar. After serving more than two years in district Peshawar the appellant was transferred back to district Mardan and was posted at GGHS Kati Ghari, District Mardan at her own request vide order dated 05.01.2011 and again placed at the bottom of seniority list of PET teacher district Mardan. The respondent department

circulated final seniority list dated 25.01.2017 of PET teachers wherein the name of the appellant was enlisted at serial No. 106. The present case is not a case of simple transfer but is a case of change of cadre from one district to another district. The orders have not been made in the public interest but at the request of the appellant. It is a well settled principle of fixation of seniority that whenever a change of cadre is involved at the request of the civil servant then he/she would be placed at the bottom of the seniority list of the new cadre because he/she cannot by pass the seniority of those who have already been inducted in that cadre. Moreover, the appellant could not claim the benefits of her previous period of service because she was transferred from district Mardan to District Peshawar. Another reason is that this case is not a case of transfer at all but is a case of appointment by transfer. Rule 8 (2) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 clearly states that a person so transferred shall be placed at the bottom of the cadre strength which he/she joins for the purposes of determining seniority viz a viz other members borne on the cadre.

07. As a sequel to the above discussion, the appeal is dismissed. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 24<sup>th</sup> day of June, 2024.*



(RASHIDA BANO)  
MEMBER (J)




(MUHAMMAD AKBAR KHAN)  
MEMBER (E)

ORDER

24<sup>th</sup> June, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our detailed judgment of today, separately placed on file, the appeal is dismissed. Costs shall follow the event. Consign.
3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 24<sup>th</sup> day of June, 2024.*

  
(RASHIDA BANO)  
MEMBER (J)

  
(MUHAMMAD AKBAR KHAN)  
MEMBER (E)