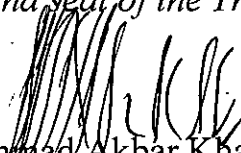


ORDER

25.06.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney, learned District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to accept the instant appeal by setting impugned order with direction to respondent to allow appellant to complete her normal tenure of posting at GGHSS Malago, Peshawar. 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 25th day of June, 2024.*

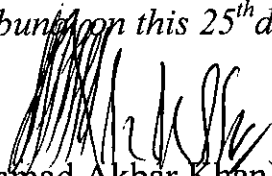

(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)

"The normal tenure of posting shall be two years subject to the condition that for the officers/officials posted in unattractive areas of tenure shall be one year and for the hard areas the tenure shall be one year. The attractive and hard areas will be notified by the Government."

8. For what has been discussed above, we are unison to accept the instant appeal by setting impugned order with direction to respondent to allow appellant to complete her normal tenure of posting at GGHSS Malago, Peshawar. Costs shall follow the event. Consign.

9. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 25th day of June, 2024.*


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)

order dated 20.12.2021. She was relieved from GGHSS Irrigation Colony, Peshawar. She filed Service Appeal No.1/2022 during pendency another general transfer order was issued on 14.09.2022, wherein she was transferred to GGHSS Malogo, Peshawar as Principal by wrongly showing same as vacant which post was already occupied by the appellant. As post was not vacant therefore Respondent No.3 filed application to competent authority on 15.09.2022 by mentioning there in that post of Principal (BPS-18) GGHSS Malogo, Peshawar has already filled by the appellant, but his counsel by misleading this Tribunal get passed order/direction dated 13.03.2023 for actualization of transfer/order dated 14.09.2022 which shows the conduct of the Respondent No.3. Based upon this direction impugned order was issued on 17.04.2023, wherein appellant was again transferred to Mian Gujar, Peshawar, where she remain posted for about four years, direction given by this Tribunal was against the vacant post not occupied which was given upon appellant's attorney statement, therefore, order obtained by suppressing the fact have no effect. So, the very foundation upon which building of impugned order is misleading and mis-representation, therefore could not be sustained.

7. Otherwise too appellant already served for about four years at Mian Gujar, Peshawar and completed more than her normal tenure over there, if respondent are going to adjust respondent No.3, they had the option of posting her to Mian Gujar instead of Malogo, Peshawar. Appellant was posted at GGHSS Malogo, Peshawar vide order dated 12.08.2022 and prematurely transferred vide order dated 17.04.2023 after about 8 months of her posting while as per posting/transfer policy of the provincial government normal tenure of posting in two years. So, this order was issued in violation of government own policy as clause (iv) of posting/transfer is given as below;

No.3, which was disposed of on 02.10.2023. On 24.11.2023 respondents issued another notification whereby the notification dated 17.04.2023 in respect of the transfer and posting of Respondent No.3 was restored to GGHSS Malogo, restoring posting of the appellant to GGHSS MianGujar. Appellant filed departmental appeal, which was not responded to, hence the present 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 appellants and learned District Attorney for the respondents.

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 controverted the same by supporting the impugned order(s).

6. Perusal of record reveals that appellant was appointed Principal (BPS-18) vide order dated 05.12.2019 and posted as Principal Mian Gujar vide order dated 15.02.2019, whereafter appellant serving for about four years and was transferred and posted as Principal to GGHSS Malogo, Peshawar vide notification dated 12.08.2022 against the vacant post, wherein she took the charge and started performing her duties. Respondent No.3 was appointed as Principal (BPS-18) vide order dated 08.02.2021 and was posted as Principal GGHSS Nodih, Nowshera vide order dated 13.07.2021 for actualization against the vacant post and then posted as Principal (BPS-19) at GGHSS Irrigation Colony was transferred to GGHSS Gul Abad Jamrud, Khyber vide



2. Brief facts of the case are that the appellant was appointed as Principal (BPS-18) upon the recommendation of Khyber Pakhtunkhwa Public Service Commission vide notification dated 15.02.2019 who was later on adjusted as Principal Mian Gujar vide order dated 05.03.2019. She was transferred and posted as Principal, GGHSS Malogo, Peshawar vide notification dated 12.08.2022. Respondent No.3 was appointed as Principal (BPS-18) vide order dated 08.02.2021 and was posted as Principal GGHSS Nodih, Nowshera vide order dated 13.07.2021 for actualization against the vacant post and then posted as Principal (BPS-19) at GGHSS Irrigation was transferred to GGHSS Gul Abad Jamrud, Khyber vide order dated 20.12.2021. She was relieved from GGHSS Irrigation Colony, Peshawar. She filed Service Appeal No.1/2022 during pendency another transfer order was issued on 14.09.2022, wherein she was transferred to GGHSS Malogo, Peshawar as Principal as wrongly showing same as vacant which post was already occupied by the appellant. As post was already filled, therefore, respondent No.3 filed application to competent authority on 15.02.2022 that the post of Principal (BPS-18) GGHSS Malogo, Peshawar has already occupied by the appellant. In the meanwhile, appeal of the respondent No.3 was disposed of on 13.03.2023 with direction for actualization of the notification dated 14.09.2022. Pursuant to the decision of this Tribunal, a notification dated 17.04.2023, whereby the appellant was prematurely transferred from GGHSS Malogoto Mian Gujar, Peshawar. Feeling aggrieved, she filed application u/s 12(2) CPC on 19.04.2023 which was allowed on 10.07.2023 and the Tribunal order dated 13.03.2023 was set aside whereas amended appeal was directed to be filed by respondent No.3 with appellant (Mst. Saima) as one of the respondent. Amended Service Appeal No. 01/2022 was filed by respondent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.615/2024

BEFORE: MRS. RASHIDABANO ... Member (J)
MR. MUHAMMAD AKBAR KHAN ... Member (E)

Mst. Saima, Principal, GGHSS Mian Gujjar, Peshawar.
... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary, Elementary & Secondary Education, Civil Secretariat, Peshawar.
3. Dr. Salma Sami, Principal, GGHSS Irrigation Colony, Peshawar, presently GGHSS Malogo, Peshawar.

... (Respondents)

Muhammad Amin Anwar
Advocate --- For appellant

Muhammad Jan
District Attorney --- For respondents.

Date of Institution.....26.04.2024
Date of Hearing.....25.06.2024
Date of Decision.....25.06.2024

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 under;

“On acceptance of the instant appeal, the impugned notification dated 24.11.2023 may graciously be set aside and appellant may be allowed to complete her tenure at GGHSS Malogo, District Peshawar.”

