

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK ... MEMBER (Judicial)**
MUHAMMAD AKBAR KHAN ... MEMBER (Executive)

Service Appeal No. 998/2024

Date of presentation of Appeal.....15.07.2024
Date of Hearing.....17.10.2024
Date of Decision.....17.10.2024

Mst. Zahida Azeem D/o Azeem Afridi PSHT GGPS Tamar Khel
Akhurwal TSD Dara Adam Khel Kohat.**Appellant**

Versus

1. Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
2. District Education Officer (F) Kohat.
3. Nusrat Afzal GGPS Mazeed Khel SD, Dara Kohat.
.....(**Respondents**)

Present:

Mr. Kabir Ullah Khattak &
Miss. Roeeda Khan, Advocates.....For appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For official respondents
Mr. Muhammad Afaq Afridi, AdvocateFor private respondent
.....

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): Facts of the case as narrated by the appellant in her appeal are that, she was appointed as a PST on September 1, 2003 and subsequently promoted to PSHT in 2014. On October 25, 2023, she was transferred from GGPS Germany Kally to GGPS Tamar Khel Akhurwal TSD Darra. However vide impugned pre-mature transfer order dated June 11, 2024, she was transferred from GGPS Tamar Khel TSD Dara to GGPS Bazi Khel. Following the impugned transfer order dated June 11, 2024, she preferred departmental appeal on June 13, 2024, which was rejected on July 3, 2024. She has now

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approached this Tribunal through filing of instant appeal for redressal of her grievance.

2. The respondents were summoned, who contested the appeal by way of filing their respective written replies/comments.

3. The learned counsel for the appellant contended that the transfer order dated June 11, 2024 of the appellant, was issued without any valid reasons, contravening established transfer policies and rights guaranteed under the Constitution of 1973. He next contended that the impugned transfer order of the appellant infringed upon her rights under Articles 4 and 25 of the Constitution, which ensure fair treatment and non-discrimination. He further contended that the appellant was never informed of the cancellation order dated December 20, 2023, which influenced the transfer decision, emphasizing a breach of administrative protocol and communication. He next argued that the respondent's actions were illegal, unconstitutional and violated the transfer posting policy. In the last, he argued that the impugned orders dated 11/06/2024 & 03/07/2024 may be set-aside.

4. On the other hand, learned Deputy District Attorney for official respondents assisted by learned counsel for private respondent No. 3 contended that the transfer of the appellant was necessitated by an application from private respondent No. 3 due to serious health issues and operational requirements dictated the need for her transfer to GGPS Bazi Khel. He next contended that transfer orders are within the discretion of the administrators and that an individual does not have a vested right to remain in one position indefinitely; instead, transfers aim to optimize

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departmental efficiency. He further contended that the appellant's claims of ignorance regarding the cancellation order, stating that she was involved in the inquiry process concerning the issues raised about the vacant post, undermining her assertion. He next argued that under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 the authority has the discretion to transfer civil servants anywhere within the province. In the last, he argued that the appeal in hand may be dismissed being meritless.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. The perusal of the case file reveals that the appellant, by way of office order dated October 25, 2023, was transferred from GGPS Germany Kally TSD Darra to GGPS Tamar Khel Akhurwal TSD Darra. Subsequently, by an order dated December 20, 2023, this transfer was rescinded. On March 11, 2024, the respondent department temporarily adjusted private respondent No. 3, who was previously stationed at GGPS Bazi Khel SD Darra District Kohat to GGPS Tamar Khel SD Darra, effective from March 11, 2024, to May 11, 2024. An inquiry conducted by the respondent department recommended that the appellant should be allowed to remain at GGPS Tamar Khel, while private respondent No. 3 should be transferred to a station nearest due to health issues, specifically between GGPS Bazi Khel and GGPS Kami Khel. However, contrary to this recommendation, an impugned order dated June 11, 2024, was issued transferring the appellant to GGPS Bazi Khel and relocating private respondent No. 3 to GGPS Timar Khel. The appellant contested the

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impugned order before this Tribunal, leading to a ruling on July 23, 2024, which suspended the enforcement of the transfer order in regard to the appellant. In adherence to this ruling, the respondent department revoked the impugned order on September 28, 2024, allowing the appellant to continue her service at GGPS Tamar Khel TSD Darra Adam Khel and the appellant is serving in the said school now. The main stance of the respondent department is that under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, the authority has empowered to transfer civil servants anywhere within the province. Nevertheless, the examination of the impugned orders reveals substantial deviations from the established posting/transfer policy of the government. There is a significant breach of the governmental posting/transfer policy in the orders issued. The lack of a stated public interest or exigency in the impugned orders renders these transfers unjustifiable. The provisions mentioned in Clause I and IV of the Posting/Transfer Policy have not been adhered to, which outlines proper grounds and conditions under which transfers must occur. The instructions disseminated through the letter dated February 27, 2013, regarding tenure in postings and transfers explicitly dictate that ordinary tenures established by law or regulations must be respected. Any alterations to this tenure must be substantiated by compelling reasons, documented in writing and are subject to judicial review. Upon review, no compelling reasons have been documented that would necessitate the appellant's premature transfer from GGPS Tamar Khel. The inquiry's recommendations support the appellant's continuation in her current position, thereby casting doubt on the rationale provided for


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the transfer. Following the suspension of the impugned order and its subsequent revocation by the respondent department, it is clear that the appellant retains her position at GGPS Tamar Khel. Thus, the Tribunal acknowledges the restoration of the appellant's duties as per the findings. The transfer orders issued, specifically on June 11, 2024, were not only procedurally flawed but also substantively unjustified within the legal framework governing civil servant postings in Khyber Pakhtunkhwa. The respondent department is directed to adhere to the principles and policies governing transfer procedures and ensure that future actions comply strictly with the legal provisions aimed at protecting civil servants' rights and interests.

7. Consequently, the impugned orders are set-aside and respondents are directed to allow the appellant to continue her duty and complete her tenure at GGPS Tamar Khel Akhurwal TSD Darra. Parties are left to bear their own costs. File be consigned to the record room.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 17th day of October, 2024.*


AURANGZEB KHATTAK 17/10/2024
Member (Judicial)


MUHAMMAD AKBAR KHAN
Member (Executive)

- 03.10.2024
1. Learned counsel for the appellant present. Mr. Arshad Azam, Assistant Advocate for the respondents present. Private respondent No. 3 alongwith his counsel present.
 2. Reply/comments on behalf of private respondent No. 3 submitted through office, which are placed on file. Copy of the same handed over to learned counsel for the appellant. To come up for arguments on 17.10.2024 before D.B P.P given to the parties.

(Muhammad Akbar Khan)

Member (E)

ORDER

17th Oct, 2024

KAMRANULLAH

1. Learned counsel for the appellant present. Mr. Abdul Kareem, ADEO alongwith alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for official respondents No. 1 & 2 and learned counsel for private respondent No. 3 are present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the impugned orders are set-aside and respondents are directed to allow the appellant to continue her duty and complete her tenure at GGPS Tamar Khel Akhurwal TSD Darra. Parties are left to bear their own costs. File be consigned to the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 17th day of October, 2024.*

(Muhammad Akbar Khan)
Member (Executive)

(Aurangzeb Khattak)
Member (Judicial)

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