

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 678/2024

BEFORE: MR. AURANGZEB KHATTAK... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Fayaz Hussain SCT GHSS Drush Khela Matta Swat, village Lanagr
Khawaza Khel Swat.

.... (Appellant)

VERSUS

1. Director Elementary and Secondary Education, Khyber Pakhtunkhwa Peshawar.
2. District Education Officer (Male) Swat.
3. Headmaster Government High School Janno Khawaz Khela Swat.

....(Respondents)

Mr. Umar Khitab
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For respondents.

Date of Institution..... 20.05.2024

Date of Hearing.....25.10.2024

Date of Decision..... 25.10.2024

JUDGMENT

FAREEHA PAUL, MEMBER (E): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974, with the prayer that on acceptance of the appeal, the impugned order dated 22.03.2024 might be set aside being against the law, rules and posting/transfer policy and restore the order dated 19.03.2024 with further direction to respondent No. 2 to release the pay/salary of the appellant w.e.f. 01.03.2024.



02. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was performing his duty in Elementary and Secondary Education Swat. He was promoted from PST to CT (BPS- 15) and adjusted at Government Middle School Baboo Khawaza Khela, Swat. Vide order dated 27.06.2023, he was promoted as SCT (BPS- 16) and was adjusted at Government Higher Secondary School Drush Khela Matta Swat. Respondent No. 2 issued mutual transfer order dated 19.03.2024 on the written application of the high ups of both the schools. After few days, respondent No. 2, vide order dated 22.03.2024, cancelled the said mutual transfer order. Feeling aggrieved, the appellant submitted departmental appeal to respondent No. 1 on 26.03.2024 which was rejected on 16.05.2024; hence the instant service appeal.

03. Respondents were put on notice who submitted their joint written reply/comments. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

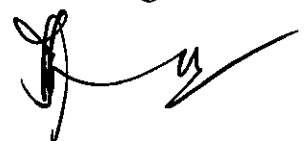
04. Learned counsel for the appellant, after presenting the case in detail, argued that the appellant was transferred from GHSS Drush Khela to GHSS Chamtalai vide order dated 19.03.2024 which was cancelled just after three days on political interference vide impugned order dated 22.03.2024. He argued that as a result, salary of the appellant was stopped despite the fact that he was performing his duties. Learned counsel for the appellant informed that Mr. Shafaat Khan SCT (BPS- 16) GHSS Chamtalai retired on 31.03.2024 and a post of SCT (BPS- 16) had become vacant in the said school and hence appellant could easily be adjusted against that post. He further argued that the appellant had not committed any wrong for which he should be punished. He



requested that the appeal might be accepted as prayed for.

05. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, referred to page 11-A of the appeal and argued that the appellant had not produced mutual transfer application and that document annexed with the appeal at page 11 was a proforma for change of post of SCT (BS- 16) and CT (BS- 15) at GHSS Drush Khela Swat and GHS Jano Swat respectively, which was neither forwarded to the competent authority nor approved. The appellant wanted to draw salary against the post of SCT at GHS Jano Swat and on the other hand he prayed for restoration of mutual transfer order to retain him at GHSS Chamtalai. He argued that order dated 19.03.2024 was cancelled on the request of Principal, GHSS Drush Khela on the ground that there was no vacant post of SCT in that school at the relevant time. He requested that the appeal might be dismissed.

06. The instant service appeal has been preferred before this Tribunal against an order dated 22.03.2024 vide which the mutual transfer order of the appellant and one Mr. Shafaat Khan issued on 19.03.2024 was withdrawn from the date of its issuance on the ground of non-availability of post of SCT BPS- 16 at GHSS Drush Khela Swat. Perusal of order dated 19.03.2024 showed that the appellant was SCT BPS- 16 and serving at Drush Khela. He was transferred to GHSS Chamtalai whereas Mr. Shaffaat SCT BPS- 16 was transferred from Chamtalai to GHSS Drush Khela. The appellant had already taken over the charge of the post at GHSS Camtalai in pursuance of order dated 19.03.2024 and had started drawing his salary also. It was strangely noted that both the appellant as well as Mr. Shafaat Khan were SCT (BPS- 16) serving at GHSS




Drush Khela and GHSS Chamtalai respectively before their transfer order was issued on 19.03.2024. It showed that the position in BS- 16 existed in both the schools on which both of them were serving at that time. After their transfer, it was realized that there was no post of SCT BS-16 at Drush Khela but vide cancellation order dated 22.03.2024, the appellant was transferred at GHSS Drush Khela. The question is why the appellant was transferred and how could he assume the charge when there was no post of SCT (BS- 16) at Drush Khela? When the point was highlighted during hearing, the respondents present before us produced office order dated 26.06.2024 vide which, in the light of order sheet dated 04.06.2024 of this Tribunal, the order dated 22.03.2024 was withdrawn and office order dated 19.03.2024 was restored to the extent of the appellant, till the final judgment of the present service appeal by this Tribunal. In view of the order dated 26.06.2024, the appellant stands posted against the post of SCT (BS- 16) at Chamtalai and his grievance stands redressed.

07. In view of the above discussion, the respondent department is directed to take note of the matter and avoid such orders which create confusion and unrest in its employees and hinders their performance. As the appellant has already been adjusted, the appeal is, therefore, allowed with direction to the respondents to amend their office order dated 26.06.2024, accordingly. Cost shall follow the event. Consign.

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


(FAREEHA PAUL)
Member (E)


(AURANGZEB KHATTAK) 25th 10
2024.
Member (J)

MEMO OF COSTS.
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 678/2024

Fayaz Hussain SCT GHSS Drush Khela Matta Swat, village Lanagr Khawaza Khela Swat.

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Mr. Umar Khitab
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For respondents.

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Date of Hearing.....25.10.2024

Date of Decision..... 25.10.2024

Appellant	Amount	respondents	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal.	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Services of processes	Rs. Nil	3. Services of processes	Rs. Nil
4. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
5. Security fee	Rs. 100	5. Security Fee	Rs. Nil
6. Profess fee	Rs. Nil	6. Process fee	Rs. Nil
7. Costs	Rs. Nil	7. Costs	Rs. Nil
Total	Rs. 100	Total	Rs. Nil

Note:- Counsel Fee is not allowed as the required certificate has not been furnished

Given under our hands and the seal of this Court, this 25th day of October, 2024.




(FAREEHA PAUL)
Member (E)


(AURANGZEB KHATTAK)
Member(J) 25/10/2024

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 678 of 2024

Fayaz Hussain Versus Director E&SE Khyber Pakhtunkhwa
Peshawar and two other.

S.No. of Order & Date of proceedings	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
Order-07 25 th October, 2024	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Umar Khitab Advocate for the appellant present.2. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. <p>01. Vide our detailed judgment consisting of 05 pages, the respondent department is directed to take note of the matter and avoid such orders which create confusion and unrest in its employees and hinders their performance. As the appellant has already been adjusted, the appeal is, therefore, allowed with direction to the respondents to amend their office order dated 26.06.2024, accordingly. Cost shall follow the event. Consign.</p> <p>02. <i>Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 25th day of October, 2024.</i></p> <p> (FAREEHA PAUL) Member (E)</p> <p> (AURANGZEB KHATTAK) Member (J)</p> <p>*Fazle Subhan, P.S*</p>