

REGISTERED



GOVERNMENT OF THE PUNJAB
SPECIAL EDUCATION DEPARTMENT

ORDER

No. LO(Appeal)1-95/2023. WHEREAS, Mr. Shafiq Ahmad, Junior Clerk, (BS-11), Govt. Special Education Centre, Depalpur ('appellant') filed representation under Section 21 of the Punjab Civil Servants Act, 1974 against order dated 23.11.2023 ('Impugned Order') passed by Director General Special Education, Punjab ('DGSE') whereby he, *while temporarily adjusted at Directorate General of Special Education, Punjab, Lahore*, was directed to report to his original place of posting i.e., Govt. Special Education Centre, Depalpur.

2. AND WHEREAS, comments on the representation of the appellant were obtained from DGSE. Deputy Secretary, Special Education Department was appointed as Hearing Officer to submit a report after affording an opportunity of personal hearing to the appellant in the presence of the Departmental Representative of Directorate General of Special Education, Punjab, Lahore.

3. AND WHEREAS, after affording an opportunity of personal hearing, the Hearing Officer submitted the report of hearing proceedings stating therein that during the hearing proceedings, the appellant reiterated the stance already taken by him in his representation and *inter alia* contended that he while posted as Junior Clerk, at Government Institute for Slow Learners, Kasur, was departmentally proceeded against by the Director General Special Education/Competent Authority under the provisions of the Punjab Employees Efficiency Discipline and Accountability Act, 2006, on the charge of misconduct and corruption and he was also transferred from Govt. Institute for Slow Learners, Kasur to Govt. Special Education Center Depalpur District Okara vide order dated 01.08.2022. Against this, he filed a departmental appeal before the Secretary Special Education Punjab, Lahore which was rejected and after that, he filed service appeal No.4630/2022 before the learned Punjab Service Tribunal which was partially accepted vide judgment dated 29.03.2023, with the direction to the Competent Authority to accommodate him near to his hometown as he is a low paid employee. In pursuance of the said direction, the Competent Authority adjusted him in the Directorate of Special Education Lahore. Now, he has been again transferred from the Directorate of Special Education Lahore vide order dated 23.11.2023 and directed to report to Govt. Special Education Center Depalpur District Okara with immediate effect. He further stated that the impugned transfer order has been passed against the transfer policy as he was posted at the Directorate General recently whereas as per transfer policy, any civil servant cannot be transferred before passing the three years at one place of posting; that his parents are too old and ill; there is no one except him to look after them; he has two minor children and his pay is very less, therefore, he cannot afford travelling expenses. He, lastly, requested that he may be posted to his nearest hometown i.e. Kasur or Lahore in the light

of the judgment/order passed by the learned Punjab Service Tribunal and the impugned order may be recalled.

4. **AND WHEREAS**, conversely, the Departmental Representative apprised that upon receipt of a complaint against the appellant from the Headmistress of the Government Institute for Slow Learner Kasur, the then District Education Officer (Special Education), Lahore vide order No. DEO (Spl.Edu.) LHR /2022/1534 dated 14.06.2022 deputed Mr. Naseer Iqbal as probe officer to probe into the matter. The Probe Officer submitted his report and concluded that the environment of the school has been bitterly disturbed, in view of this, it is recommended that Mr. Shafiq Ahmad, Junior Clerk, Govt. Institute for Slow Learners, Kasur may be shifted from said Institute immediately and regular inquiry may be initiated to find out the real picture of the incident. Accordingly, disciplinary proceedings through a regular inquiry under Section 5 read with Section 9 of the PEEDA Act, 2006 were initiated against the appellant by the Director General, Special Education / Competent Authority vide order dated 07.07.2022 by appointing Mrs. Hanzla Ashfaq, Assistant Director (Psychology) Directorate General of Special Education Punjab, Lahore as an Inquiry Officer to proceed against the appellant on the following charges of misconduct:

- i. *That Shafiq Ahmad, Junior Clerk misbehaved with Headmistress during office hours and demanded Rs. 50,000/- from the school's budget without any reason.*
- ii. *Shafiq Ahmad, Junior Clerk changed the lock of clerical office on 13-06-2022 without the consent of Headmistress and to keep the keys of new lock by himself.*
- iii. *The said accused official indulged in misbehaving with other colleagues which caused undesirable environment in the school.*

On 01.08.2022, the appellant was transferred and posted against the vacant post of Junior Clerk (BS-11) at Govt. Special Education Centre, Depalpur District Okara on administrative grounds. Afterwards, he filed an appeal before Secretary Special Education. Simultaneously, he filed Service Appeal No. 3451/2022 in the Punjab Service Tribunal, Lahore and the Hon'ble Tribunal vide order dated 05.08.2022 disposed of the said appeal with direction to Secretary Special Education to decide the appeal. Pursuant to the direction of the Hon'ble Tribunal, after hearing the appellant, Secretary, Special Education Department / Appellate Authority, rejected the appeal of the appellant being devoid of merit and not covered under the law/rules/policy vide order dated 27.10.2022. Later on, the appellant filed Service Appeal No. 4630/2022 in the Hon'ble Punjab Service Tribunal, Lahore. The said Service Appeal was partially allowed by the Hon'ble Service Tribunal vide order dated 29.03.2023. The operative part of the above-said order is reproduced as follows.

"7. Resultantly, the appeal in hand is partially allowed and the impugned orders dated 01.08.2022 and 27.10.2022 are set

aside. However, the appellant shall remain serving at his new place of posting at Depalpur for 15 days from the receipt of this order. Meanwhile, respondent No. 1. i.e. Director General Special Education, Punjab shall accommodate the appellant near his hometown, so that he could participate in the inquiry proceedings being conduct at Lahore and also look-after his family."

5. **AND WHEREAS**, as per record, DGSE filed CPLA against the order of PST before the Supreme Court of Pakistan and thereafter, in compliance with the order dated 29.03.2023 passed by the Honourable Punjab Service Tribunal, Lahore in Service Appeal No. 4630/2023, the Director General / Competent Authority issued an order dated 12.05.2023. The operative part of the above said order is reproduced as follows;

"The services of Mr. Shafiq Ahmad, Junior Clerk (BS-11), Govt. Special Education Centre, Depalpur, District Okara are hereby placed at the disposal of Directorate General of Special Education, Punjab on temporary basis with immediate effect subject to final outcome of de-novo disciplinary proceedings initiated against him vide Inquiry Order dated 07.04.2023 and letter dated 02.05.2023 addressed to the Solicitor, Govt. of the Punjab for filing of CPLA in the Honourable Supreme Court of Pakistan "if CPLA is filed" whichever is earlier.

2. However, he will continue to draw his salary from Govt. Special Education Centre, Depalpur, District Okara."

Afterwards, the Inquiry Officer submitted her report on 08.02.2023 to Director General, Special Education, Punjab concluding therein that all the charges levelled against the appellant stood proved and she recommended the imposition of minor penalties of withholding of annual increments for a period of two years and a fine equivalent to one month's basic pay under Sections 4(1)(a)(ii)&(iii) of the PEEDA Act, 2006 upon the appellant. Upon receipt of the Inquiry Report, an opportunity of personal hearing was granted to the appellant by the Director General Special Education, Punjab / Competent Authority under Section 13(4) of the PEEDA Act, 2006 on 28.03.2023. After perusing and examining the Inquiry Report/record relating to this case, the Competent Authority initiated de-novo inquiry proceedings against the appellant under Section 13 (6) of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 by appointing Ms. Zarina Wahid, Headmistress (BS-18), presently posted as Vice Principal, Govt. National Special Education Centre, Johar Town, Lahore as Inquiry Officer to proceed against the appellant in terms of Section 5 read with Section 9 of the Act *ibid*. The Inquiry Officer conducted the de novo inquiry into the above-mentioned charges levelled against the appellant and submitted her report to Director General Special Education on 05.06.2023 concluding therein that all the charges levelled against the appellant stood proved and she recommended the imposition of minor penalties of withholding of annual increments

for a period of two years and withholding of promotion for a period of three years provided that this period shall be counted from the date when a person junior to the accused is considered for promotion and is promoted on regular basis for the first time under Sections 4(1)(a)(ii)&(v) of the PEEDA Act, 2006 upon the appellant. Upon receipt of the Inquiry Report, the Competent Authority / Director General, Special Education, Punjab issued Show Cause-cum Personal Hearing Notice to the appellant under Section 13(4) of the PEEDA Act, 2006 and after hearing minor penalty of "withholding of annual increment for a period of two years under Section 4(1)(a)(ii) of the PEEDA Act, 2006" was awarded to the appellant vide order dated 31.10.2023.

6. **AND WHEREAS**, in view of the order dated 12.05.2023 mentioned above, the then Director General Special Education / Competent Authority issued an order dated 23.11.2023 wherein the appellant was directed to report at his original place of posting. The operative part of the above said order is reproduced as follows.

"Mr. Shafiq Ahmad, Junior Clerk (BS-11) was placed at the disposal of Directorate General of Special Education, Punjab Lahore vide order No. 16/1241-Admn: 2013/2608 Dated 12.05.2023 till the final outcome of de-novo inquiry proceeding. Now, the inquiry proceedings have been finalized and order has been issued. No vacant post of Junior Clerk (BS-11) nearest to home station i.e., Kasur is available except at Govt. Special Education Centre, Depalpur, therefore, you are hereby directed to report at your original place of posting i.e., Govt. Special Education Centre, Depalpur with immediate effect."

The Departmental Representative of the representation of the appellant is liable to be rejected being devoid of merits.

7. **AND WHEREAS**, the Hearing Officer after hearing the appellant in the presence of the Departmental Representative of the Directorate General of Special Education observed that the appellant was transferred from Kasur and posted at Govt. Special Education Centre, Depalpur on administrative grounds and in compliance of the directions of PST he was adjusted at the Directorate General of Special Education, Punjab, Lahore till the finalization of his pending inquiry. After the culmination of the inquiry, keeping in view, the non-availability of the vacant post of Junior Clerk, he was directed to report to his original place of posting i.e., Govt. Special Education Centre, Depalpur. As far as the stance of the appellant that PST has already set aside, his transfer order and he cannot be directed to join duty at Govt. Special Education Centre, Depalpur is concerned, it is observed that PST ordered that the appellant may be adjusted near to his home station enabling him to associate in the inquiry proceedings but when the inquiry proceedings have been finalized then further retention of the appellant, who was temporarily adjusted in Directorate General of Special Education Department, subject to final outcome of the de novo disciplinary proceedings does not seem logical

and the Competent Authority was justified in directing the appellant to report back to his actual place of posting from where he is drawing salary. The stance of the appellant being unjustified does not merit consideration.

8. **AND WHEREAS**, after examining/perusing the relevant record available in the file and being mindful of the facts of the case, it has been observed that Section 9 of the Punjab Civil Servants Act, 1974 provides that every civil servant shall be liable to serve anywhere within or outside the province in any post. Moreover, it is the prerogative of the Competent Authority to post out any officer working under his jurisdiction. The instant representationist is also not tenable under proviso of sub-section (2) of Section 21 of the Punjab Civil Servants Act, 1974 which provides that no representation shall lie on matters relating to the determination of fitness of a person to hold a particular post. Furthermore, the employment carries an obligation to serve the employer at any place and the employee is required to be posted in accordance with the exigencies of service or administrative requirements. It is for the administration to take appropriate decision and such decision shall stand unless it is vitiated either by *mala fide* or by extraneous consideration without any factual background or foundation. The employees cannot choose their place of posting and the impugned transfer order also does not depict any impact on the designation or salary of the appellant nor any such like effect has been alleged by the appellant. Transfer of any employee is an incidence of service and no employee can claim as a matter of right to remain posted at a place of his choice. The Competent Authority can transfer an employee from one place to another on administrative grounds and such an order does not violate any right of the employee. It is further observed that the appellant was relocated from Kasur and assigned to the Government Special Education Centre, Depalpur on administrative grounds. Subsequently, in line with the progress of his pending inquiry, he was temporarily stationed at the Directorate General of Special Education, Punjab, Lahore. Upon the conclusion of the inquiry, due to the unavailability of a vacant Junior Clerk position, he was instructed to resume duty at his original assignment, namely, the Government Special Education Centre, Depalpur. Regarding the appellant's contention that the PST had already invalidated his transfer order, thereby precluding his return to duty at the Government Special Education Centre, Depalpur. It is noted that the PST's directive aimed to facilitate his participation in the inquiry proceedings being conducted at Lahore by assigning him near his residence. However, given the finalization of the inquiry proceedings, the continued retention of the appellant at the Directorate General of Special Education Department appears untenable. Therefore, the Competent Authority was justified in instructing the appellant to revert to his actual posting location, from where his salary is being disbursed. The appellant's argument lacks merit and is deemed unjustified. As per the stance of the Departmental Representative, no post of Junior Clerk is available in Lahore, therefore, no interference is required to set aside the impugned order of transfer, *which has even otherwise been passed in accordance with the law and applicable policy*, as no prejudice has been caused to the appellant for being transferred to any other institution. It is also matter of record that after passing of the impugned order and filing of instant representation, the appellant filed Service Appeal No. 5014/2023

before PST which was dismissed by PST vide order dated 24.11.2023 being devoid of force by holding that perusal of impugned order clearly shows that the appellant has been posted at Depalpur, after finalization of the departmental inquiry proceedings against him. While it has also been specified therein that no vacant post of Junior Clerk (BS-11) nearest to the appellant's Home station was available, other than at the Government Special Education Centre, Depalpur.

9. **NOW THEREFORE**, for reasons recorded above, instant representation filed by the appellant is hereby **rejected** as being not maintainable and devoid of merits.

Saima Saheed

(SAIMA SAEED)
SECRETARY to

GOVERNMENT OF THE PUNJAB
SPECIAL EDUCATION DEPARTMENT/
APPELLATE AUTHORITY

Dated Lahore the
February 12th 2024

No. & Date Even.

A copy is forwarded for information and necessary action to the:

1. Accountant General, Punjab, Lahore.
2. Director General, Special Education, Punjab, Lahore.
3. Director (Admn), Directorate General of Special Education, Punjab, Lahore.
4. District Education Officer (Special Education), Lahore.
5. Appellant concerned / **Mr. Shafiq Ahmad**, Junior Clerk, (BS-11), Govt. Special Education Centre, Depalpur.
6. PS to Secretary Special Education Department.

[Signature]
SECTION OFFICER (ESTT.)
SPECIAL EDUCATION DEPARTMENT