IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT:

RAJA SAEED AKRAM KHAN, C.J.
RAZA ALI KHAN, J.

CIVIL PLA No. 791 OF 2025
CIVIL MISC. No. 550 OF 2025
(On appeal from the judgment of the Service Tribunal dated 17.12.2025, passed in service appeal No. 498 of 2025)

Shamim Akhtar, Principal Elementary College (Female), Muzaffarabad.

…Petitioner

VERSUS

Azad Government of the State of Jammu and Kashmir and others.

…Respondents

Appearances:

For the Petitioner:	Mr. Fayyaz Khan, Advocate.
For the Respondents:	Mr. Saqib Ahmed Abbasi, Advocate.
Date of hearing:	20.02.2026

JUDGMENT:

***Raza Ali Khan, J*:-** The petitioner, serving as principal at Government Elementary College (Female),

Muzaffarabad, was transferred to Government Girls High School, Authmuqam, District Neelum vide notification dated June 30, 2025,. The said transfer order assailed before the learned Service Tribunal on the ground that her daughter is a person with disability and that, pursuant to a Government notification issued in May 2024, a teacher whose child suffers from disability ought not to be posted to a far-flung area. The learned Tribunal, dismissed the appeal through judgment dated December 17, 2025.

2. Mr. Fayyaz Khan, learned counsel for the petitioner, reiterated that the impugned judgment suffers from misreading of record and non-consideration of material aspects. He relied upon a disability certificate issued by the Directorate of Social Welfare and asserted that the transfer was initiated at the behest of an unconcerned Minister. He maintained that the learned Tribunal failed to pass a categorical finding on this objection.

3. Conversely, Mr. Saqib Ahmed Abbasi, learned counsel for the respondents, supported the impugned judgment. He submitted that no binding statutory policy restricts transfer merely on the ground that an employee's child suffers from disability. He further pointed out that disability certificate was issued subsequent to the transfer notification and that the petitioner had remained posted at same station for nearly six years; thus, no legal right accrued in her favour.

5. We have heard learned counsel for the parties and examined the record. It is now well settled that transfer is an incidence of service and falls within the exclusive domain of the competent authority unless it is shown that the order of

transfer has been passed in violation of statutory provision, is tainted with mala-fide, or suffers from a jurisdictional defect, interference by this Court is not warranted. In the present case, the petitioner had admittedly remained posted at one station for approximately six years. No material has been placed on record to demonstrate that the impugned transfer order contravenes any statutory rule. The Government notification of May 2024, even if it exists in the terms as asserted, has not been shown to possess statutory force so as to confer an enforceable right. At best, such instructions are merely directory in nature and subject to administrative exigencies.

6. As regards the disability certificate, the record reflects that it was issued subsequent to the transfer notification. A document brought into existence after the impugned administrative action cannot invalidate an order that was otherwise lawful when made. Moreover, no material has been produced to establish that the competent authority was apprised of the alleged disability prior to issuance of the transfer order.

7. The contention that the transfer was initiated on the proposal of an unconcerned Minister also does not advance the petitioner’s case. It is not uncommon in administrative practice for recommendations to be made from various quarters. However, the determinative factor remains whether the competent authority applied its independent mind and issued the order in accordance with law. No cogent material has been produced to establish malafi-de or extraneous influence, therefore, we find no misreading or non-consideration of material evidence by the learned Service Tribunal. The

impugned judgment does not suffer from any legal infirmity warranting interference.

8. Before parting with the case, we deem it appropriate to observe that issues relating to transfer and posting of employees having disabilities require a structured, humane, and transparent policy framework. Disability is not merely a private hardship. It is a matter of collective social responsibility. The State, being under constitutional and moral obligation to protect vulnerable segments of society, must ensure that genuine cases receive meaningful facilitation without permitting misuse of concessionary measures. In the absence of a concrete and uniform policy, such matters are left to discretionary administrative handling, which leads to inconsistency, hardship, and unnecessary litigation.

9. We therefore express the expectation that the Government may consider formulating a comprehensive policy governing transfer and posting of employees whose children suffer from disabilities or serious medical conditions. Without entering into the policy domain, the following broad guidelines may be considered:

1. Disability certificates relied upon for seeking posting concessions shall be issued by the competent authorities or medical boards notified under the relevant laws. A centralized digital verification mechanism may be devised to ensure authenticity.

2. The certificate must reflect a subsisting medical condition at the time of seeking concession. Certificates obtained subsequent to transfer orders should be scrutinized carefully to avoid post facto protection claims.

3. Concession should be proportionate to the nature and extent of disability. Cases involving severe,

permanent, or multiple disabilities may receive priority consideration.

4. Posting protection should not translate into indefinite stationing at one place. A balanced tenure policy may be framed whereby reasonable accommodation is ensured without compromising administrative efficiency.

5. The benefit granted on the basis of disability should be subject to periodic review (every two or three years) to assess continuing necessity.

6. Any concealment, misrepresentation, or procurement of fraudulent certificates should entail departmental consequences. This is necessary to ensure that the concessions genuinely benefit deserving children rather than becoming a shield against routine transfers.

7. Where feasible, employees in such categories may be posted at district headquarters or locations having access to specialized medical and rehabilitation facilities.

8. A welfare-oriented framework based on objective criteria would strike a balance between compassion and administrative discipline. It would not only reduce avoidable litigation but also uphold the dignity of differently abled children by recognizing their needs within the service structure.

We trust that the competent authorities shall consider this aspect in earnest and take appropriate measures in accordance with law. A copy of this judgment shall be sent to the Chief Secretary for consideration.

The petition for leave to appeal, along with the application, stands disposed of.

JUDGE **CHIEF JUSTICE**

Mirpur,
23.02.2026