

**THE FEDERAL TAX OMBUDSMAN
ISLAMABAD**

**COMPLAINT. Nos. 607, 608, 609, 725, 1071, 1073, 1074, 1075,
1193, 1197, 1201, 1202, 1206, 1207, 1208, 1209, 1371, 1373,
1375, 1376, 1390, 1391, 1392, 1393, 1394, 1503, 1505, 1507,
1508, 1585, 1586, 1803, 1804, 1806, 1807, 1808, 1809, 1810,
1811, 1813, 1854, 1855, 1856, 1857, 1858, 1860, 1862, 1864,
1866, 1867, 2054, 2061, 2062, 2063, 2064, 2065, 2067, 2068,
2069, 2070, 2072, 2075, 2077, 2079, 2081, 2133, 2134, 2135,
2136 & 2137/PWR/IT/2023**

Dated: 07.02.2023, 13.02.2023, 01.03.2023, 06.03.2023, 13.03.2023, 14.03.2023, 20.03.2023,
23.03.2023, 03.04.2023, 04.04.2023, 05.04.2023, 13.04.2023, 17.04.2023* R.O. Peshawar.

Mrs. Safina Mumtaz,

Principal (GGHSS) Usterzai Payan,
Kohat.

... Complainant

V e r s u s

The Secretary
Revenue Division
Islamabad.

... Respondent

Dealing Officer : Mr. Ziauddin Wazir, Advisor
Appraisal by : Mr. Muhammad Tanvir Akhtar, Advisor
Authorized Representatives : Mrs. Safina Mumtaz, Complainant
Departmental Representative : Mr. Tariq Aziz, DCIR, RTO, Peshawar.

FINDINGS/RECOMMENDATION

Complaint has been filed under Section 10 (1) of the Federal Tax Ombudsman, Ordinance, 2000 (FTO Ordinance) regarding tax rebate admissible to full time teacher or a researcher, under clause (2) Part-III of Second Schedule to Income Tax Ordinance, 2001.

2. Facts of the case are that the Complainant is presently posted as Principal in GGHSS, Usterzai Payan Kohat. Before posting as Principal, she was entitled to tax rebate, however, after posting as Principal, she has been deprived of said rebate and prayed to allow rebate in salary as she is still categorized in **Teaching Cadre** by Provincial Government despite being posted as Principal.

* Date of registration in FTO Sectt.,

3. Identical complaints have been filed by Principals, Vice Principals and Head Masters of Elementary & Secondary Education Khyber Pakhtunkhwa, tabulated below:

S.No.	COMPLAINT NO.	NAME OF COMPLAINANT	CNIC NO.	DESIGNATION/PLACE OF POSTING
1	607/PWR/IT/2023	Ms. Safina Mumtaz	14301-9205122-0	Principal/GGHSS Uster zai Payan, Kohat
2	608/PWR/IT/2023	Mr. Naveed Ahmad	17102-1174619-7	Principal/ GHS Ghazgi, Charsadda
3	609/PWR/IT/2023	Mr. Muhammad Tayeb	16201-3289844-1	Principal/Govt: High School Lahor, Swabi
4	725/PWR/IT/2023	Subhan Ullah	16202-0954897-9	Hear Master GHS Panjman District, Swabi
5	1071/PWR/IT/2023	Mr. Akhtar Hussain	17101-0257182-5	Principal/GHS Ibrahimzai, Charsadda
6	1073/PWR/IT/2023	Mr. Ajmir Khan	16101-7579372-9	Principal/GHS Behlola Charsadda
7	1074/PWR/IT/2023	Mr. Samiur Rahman	17101-0300277-9	Headmaster/GHS Wardaga Charsadda
8	1075/PWR/IT/2023	Mr. Shireen Khan	17102-1167762-1	Principal/GHS Navi Killi District, Mohmand
9	1193/PWR/IT/2023	Mr. Ihtisham Ullah	17102-5826073-9	Headmaster GHS, Shaukat Abad Tangi Charsadda
10	1197/PWR/IT/2023	Mr. Akbar Ali	16102-2329085-9	Principal/GHSS Khanjar Mardan
11	1201/PWR/IT/2023	Mr. Zia Ullah	16202-0946729-3	Principal/GHS Turlandi Swabi
12	1202/PWR/IT/2023	Mr. Nizar Ali	17102-1129734-3	Principal/Govt: Shaheed Rizwan Sareer HSS Utmanzai Charsadda
13	1206/PWR/IT/2023	Mr. Kausar Ali Shah	16202-0959807-5	Principal/ GHS No.3, Yar Hussain Swabi
14	1207/PWR/IT/2023	Mr. Arif Ullah	16202-0939692-5	Headmaster/GHS Maneri Bala Swabi
15	1208/PWR/IT/2023	Muhammad Javed Khan	17101-0254444-9	Principal/GHS Mian Isa District, Charsadda
16	1209/PWR/IT/2023	Muhammad Yousaf	16202-0993974-3	Vice Principal/GHSS Dagai Swabi
17	1371/PWR/IT/2023	Muhammad Riaz	17102-1140585-5	Head Master GHS Sher Pao, Charsadda
18	1373/PWR/IT/2023	Mr. Ihsan Ud Din	17102-1158356-7	Principal/GHSS Prang Ghar District, Mohmand
19	1375/PWR/IT/2023	Mr. Dolat Khan	21406-3240243-5	Headmaster/GHS Sro Killi Shabqadar, Charsadda
20	1376/PWR/IT/2023	Saeed Ullah Jan	17102-1147795-7	Headmaster GHS Bari Band, Charsadda
21	1390/PWR/IT/2023	Abdul Haleem	15702-2503732-5	Principal/GHSS Wari Dir Upper
22	1391/PWR/IT/2023	Akhtar Ali Shah	16202-0982151-5	Headmaster/GHS Kala Swabi
23	1392/PWR/IT/2023	Ghulam Khaliq	17102-7937864-5	Headmaster/GHS Gulabad Tangi, Charsadda

24	1393/PWR/IT/2023	Nauroz Khan	17102-1129713-9	Headmaster/GHS No.3 Tangi, District Charsadda
25	1394/PWR/IT/2023	Habib Ullah Khan	11201-2775255-3	Principal/GHS No.2, Tangi Charsadda.
26	1503/PWR/IT/2023	Mr. Irshad Ali	17101-0306121-1	Headmaster/GHS Mufti Abad, Charsadda
27	1505/PWR/IT/2023	Muhammad Shuaib	17101-0272562-9	Principal/GHS Garhi Hameed Gul, Charsadda
28	1507/PWR/IT/2023	Raj Wali Shah	17101-3095730-9	Head Master/GHS Dheri Hameed Mian District, Charsadda
29	1508/PWR/IT/2023	Ajmir Shah	17201-2315044-9	Principal/GHSS, No.4, Mardan
30	1585/ISB/IT/2023	Mrs. Sarwat Jehan	61101-1756781-6	Principal/GHSS Toru, District, Mardan
31	1586/ISB/IT/2023	Mrs. Naseem Akhtar	16101-1095393-6	Principal/GGCMHSS Katlang, District, Mardan
32	1803/PWR/IT/2023	Mr. Tariq Jamal	1601-6690284-7	Principal/GHSS Qasim Toru, Mardan
33	1804/PWR/IT/2023	Gul Muhammad	16102-2285447-5	Head Master/GHS Shah Baig, Mardan
34	1806/PWR/IT/2023	Muhammad Farid	16202-0858504	Principal/GHSS Kalabat, Swabi
35	1807/PWR/IT/2023	Dr. Gohar Zaman	16101-1133543-5	Principal/FG Public School No.1 Risalpur Cantt
36	1808/PWR/IT/2023	Mr. Ihsan Ullah	16202-3528854-3	Principal/GHSS No.1, Nowshera Kalan
37	1809/PWR/IT/2023	Shamim Raza	11201-0400563-5	Principal/GHSS Bachkan Ahmadzai Lakki, Marwat
38	1810/PWR/IT/2023	Ahmad Jan	21201-7505838-9	Head Master/GHS MadghaliAttarri Bara District, Khyber
39	1811/PWR/IT/2023	Mr. Zakir Ullah	16102-2321326-5	Head Master/GHS Kunj Katlang, Mardan
40	1813/PWR/IT/2023	Muhammad Ayub Khan	11201-0408319-9	Head Master/GHS Tabi Murad Lakki, Marwat
41	1854/PWR/IT/2023	Mr. Wahid Muhammad	16202-0997901-7	Head Master/GHS Beesak (Gadoon) District, Swabi
42	1855/PWR/IT/2023	Mr. Iftikhar Ahmad	17301-1630070-3	Principal/GHSS Gar Munara, Swabi
43	1856/PWR/IT/2023	Mr. Falak Niaz	16101-1237333-3	Principal/GHS Guli Bagh Hoti, Mardan
44	1857/PWR/IT/2023	Mr. Abdul Haq	15401-0695141-1	Principal/Govt Shaheed Farid Ahmad Higher Secondary School Ghani Dheri, Malakand
45	1858/PWR/IT/2023	Badshah Zamin	15501-2247860-7	Principal/GHSS Kotkay District, Shangla
46	1860/PWR/IT/2023	Mr. Noor Zada	16102-1583746-1	Principal/GHSS Sher Garh, Mardan
47	1862PWR/IT/2023	Mr. Shahid Ahmad	15502-0527576-7	Vice Principal/GHSS Butyal, Shangla

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48	1864/PWR/IT/2023	Abdur Rahman	22401-3088171-9	Principal/GHS Hashim Abad Jamrud District, Khyber
49	1866/PWR/IT/2023	Munhamir Khan	16202-0856950-3	Vice Principal/GHSS Kabgani (Gadoon) Swabi
50	1867/PWR/IT/2023	Muhammad Naeem	16202-1033548-7	Head Master/Govt High School Shera Ghund, Swabi
51	2054/PWR/IT/2023	Mohammad Bashir	16202-0843946-9	Principal/Govt Shaheed Adil Shaheed High School No.1, Thana Malakand
52	2061/PWR/IT/2023	Muhammad Sharif	15101-4515839-7	Principal/Regional Professional Development Center (M) Thana Malakand
53	2062/PWR/IT/2023	Noor Zaman	11101-1466661-1	Instructor RPDC Male Bannu
54	2063/PWR/IT/2023	Zain Ullah Khan	11101-1452326-3	Principal/GHS DeganTaji Kala, Bannu
55	2064/PWR/IT/2023	Noor UIBasar	15401-0720632-9	Principal/GHS Badragga, District Malakand
56	2065/PWR/IT/2023	Muhammad Tariq	16102-3425221-7	Principal/GHSS Manga, Mardan
57	2067/PWR/IT/2023	Sherin Zada	15101-3733405-5	Principal/GHSS Totalai, Buner
58	2068/PWR/IT/2023	Muhammad Zubair	16202-9273165-7	Principal/Govt: Cantonnial Model Higher Secondary School Marghuz Swabi
59	2069/PWR/IT/2023	Habib GUI	16101-7884936-7	Headmaster/GHS Sangao, Mardan
60	2070/PWR/IT/2023	Ashraf Ali	16101-1602811-9	Principal/GHSS Baghdada, Mardan
61	2072/PWR/IT/2023	Sana Ullah Khan	11201-0328346-5	Principal/GHSS Kot Kashmir District LakkiMarwat
62	2075/PWR/IT/2023	Muhammad Bashir	11201-0368715-7	Principal/GHS No.2, LakkiMarwat
63	2077/PWR/IT/2023	Amir UI Haq	15401-1205088-7	Head Master GHS Khari Dheri Malakand
64	2079/PWR/IT/2023	IhtishamUI Haq	15401-1392954-1	Principal/Govt High School Badwan Dir (L)
65	2081/PWR/IT/2023	Akram Khan Orakzai	14101-0782012-3	Principal/GHSS Togh Sarai Hangu
66	2133/PWR/IT/2023	Muhammad Laiq	15602-0467547-9	Principal/GHSS Chamtalai, District, Swat
67	2134/PWR/IT/2023	Afsar Ali	16101-1102810-7	Headmaster/GHS Garhi Daulat Zai, Mardan
68	2135/PWR/IT/2023	Hafeez Ud Din	17201-7198677-5	Principal/GHSS Mohallah Iqbal Abad, Shaidu, Tehsil & District, Nowshera
69	2136/PWR/IT/2023	Dr. Anwar UI Haq	15302-0850505-1	Principal/GHS Kambat Dir (L)
70	2137/PWR/IT/2023	Akbar Ullah	16102-2322065-7	Principal/GHS Lund Khwar, Mardan

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4. The Complaint was referred to Secretary Revenue Division for departmental reply/comments in terms of Section 10 (4) of the FTO Ordinance read with Section 9 (1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response thereto, the Chief Commissioner IR, RTO Peshawar vide letter No.1682 dated 24.02.2023, reproduced below:-

"Para wise comments on the subject complaint are furnished as under:-

S.No	Allegation leveled	Reply/Comments
1	I have been working in the Department of E&SE KPK since 2011. My first appointment was ordered as Headmistress. The facility of 75% rebate is granted to the teaching staff and Headmistresses are deprived of this facility inspite of being a part of the Teaching Cadre as per departmental bifurcation of teaching and management cadres.	The FBR has given relief through reduction in tax liability of full time teachers or researchers employed in nonprofit organization duly recognized by Higher Education Commissioner as duly explained through Circular No.3 of 2006 dated 11.07.2006 (Copy enclosed). However, rebate has been granted only to the Full Time Teacher and not to Headmasters, Principal etc who perform other managerial duties and not fall under the definition of full time teacher; therefore not eligible to claim relief.
2	Now I have been promoted to the post of Principal BS-18 in 2019, the facility of 75% rebate is still in the withdrawn status with the reason that the post of Principal/HM is counted in management cadre and rebate is granted to the teaching cadre only.	<p>Not correct, the reduction in tax liability has been reduced from 75% to 40% by Finance Act, 2013 and the term "Full Time Teacher" has been clarified through Circular No. 06 of 2013 dated 19.07.2013 which is reproduced as under;</p> <p>"(d) In Part-III in clause (2) reduction in tax liability of the tax payable on income from salary equal to 75% has been reduced to 40% in the case of:</p> <p>(i) It is further clarified that a full time teacher means a person employed purely for teaching and not performing any administrative or managerial jobs e.g. principals, headmasters, directions, vice chancellors, chairman, controllers etc. Similarly a full time researcher means a person purely employed for research job only in a research institution and such</p>

		<p>institution is purely performing research activities.”</p> <p>Moreover, the Supreme Court of Azad Jammu & Kashmir in Civil Appeal No.197 of 2016 dated 13.11.2017 has given a detailed decision with regard to reduction in tax liability for a full time teacher at para-5 and 6 of the order (Copy enclosed).</p> <p>Thus Principal/Headmaster does not fall in the category of full time teacher rather perform other administrative duties and not qualify for claiming rebate as envisaged in Clause 2 of Part-III of the 2nd Schedule to the Income Tax Ordinance, 2001.</p>
3	<p>Since the I have been paying the income tax without rebate facility. The truth is that all the Principals and Headmasters of from Teaching Cadre and according to the department job description, teaching the classes is mandatory for the school heads besides the administrative and financial job responsibilities.</p>	<p>As at Sr.No.02 above.</p>
4	<p>Now as this right has been given to Mr. Iftikhar Hussain of Rawalpindi in complaint no.44/SD/IT/(29)/379/2012 dated 21.03.2012 by FTO or Muhammad Shoaib Saddal in case of Mr. Iftikhar Hussain (Complainant) Vs Secretary Revenue Division Islamabad (Respondent) dated 21.01.2013 the decision states that:</p> <p>“A head master is primarily a teacher who additionally supervises the institutional staff and carried out other duties. Performance of administrative tasks does not detract his real profession. The FBR it appears, has also veered to this point of view in holding, in N.3(32)ITP/2001 dated 7th March, as follows;</p> <p>Anyfull time teacher or researcher also performing administration function is also entitled to 75%</p>	<p>Not correct. In the quoted judgment, there is a matter of discrimination on the issue of deduction of tax on Federal Govt Employee vis a vis Provincial Govt employees, therefore the quoted judgment is not applicable to the instant case. The taxpayer/complainant is not entitled to claim rebate as explained at Sr.No.02 above.</p>

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	rebate under clause 2 of Part-III of the 2 nd Schedule to the ITO, 2001”.	
5	Keeping in view of the mentioned reference and decision of the H/FTO, the applicant may also be granted 75% rebate from the date of my appointment 2011 till date please. The tax amount overdue may kindly adjusted in income tax of the coming years.	The complainant by designation as admitted herself was appointed as Headmistress in 2011 and promoted to the post of Principal in 2019. The complainant's entire carrier relates to administration type of work and not rendered services as a full time teacher, therefore not entitled to claim rebate as explained at Sr.No.2 above.

5. The case was fixed for hearing on 07.03.2023. The complainant via whatsapp from Kohat and Mr. Tariq Aziz, DCIR, RTO, Peshawar(DR) attended on behalf of the Department. The complainant in her application has submitted that Headmasters, Principals in teaching category are denied income tax rebate in salary on the ground that they are engaged in managerial duty and not teaching. According to complainant, Principal of College or Higher Secondary School should have been treated in Teacher Cadre and entitled to salary rebate. In support of her claim, the complainant contented that identical thirty (30) complaints are decided by Hon'ble FTO on 26.10.2022. Findings/Recommendation of FTO are upheld by Hon'ble President of Pakistan on 25.01.2023.

6. DR reiterated the contents of amendment vide Finance Act, 2013, clause (2) Part-III of 2nd Schedule to ITO 2001 which defines full time teacher as a person employed purely for teaching and not performing any administrative or management job i.e. Principal, Headmasters, Directors, Vice Chancellor, Chairman, Controller etc. After amendment, the complainant's case is not covered under facility of rebate in salary at the rate of 25%. DR did not know about the order of Hon'ble President of Pakistan of 25.01.2023, upholding the Findings/Recommendations of FTO dated 26.10.2022.

FINDINGS:

7. Complainant, DR heard, record perused. It is found that
- (i) The categorization in Management & Teaching Cadres are issued under KPK Province's Civil Servant (Appointments Promotion & Transfer) Rules 1989. As against categorization by KPK's Education Department, FBR's placing them in teaching category is strongly agitated by complainants being misconceived and discriminatory to treat same category's taxpayers differently. Moreover it is matter of fact that on tax matters FBR's laws being special laws override all other laws/instructions etc.
 - (ii) The complainant in similar complaints, previously disposed of by this office had compared the rates of deduction of income tax, from salary of Principal of F.G Schools in KPK and Principals of High School, KP, which reflected that while Principals of FG Schools are enjoying teaching rebate, the complainants were denied this concession. The instant complainant has also agitated against the discriminatory treatment vis-à-vis less deduction of income from Principals of F.G College. This discriminatory treatment of FBR and RTO, Peshawar tantamount to maladministration, defined under Section 2 (3) (i) (b) of FTO, Ordinance 2000.

This office has earlier disposed of identical thirty (30) complaints (Nos. 3667, 3669, 3672, 4115, 4128, 4130, 4131, 4132, 4133, 4215, 4216, 4217, 4218, 4219, 4255, 4256, 4257, 4258, 4259, 4288, 4289, 4290, 4291, 4292, 4387, 4389, 4390, 4391, 4392 & 4393/PWR/IT/2022), in respect of Principal, Vice Principal and Head Masters raising same issues vide Findings/Recommendation dated 26.10.2022, which was challenged by FBR before President of Pakistan under Section 32 of FTO Ordinance 2000. The Hon'ble President of Pakistan has been pleased to dispose of the representation of FBR on 25.01.2023 in the following terms:-

"The recommendation of the learned FTO (i) directing the "FBR to direct the Chief Commissioner RTO Peshawar to ensure that Principals, Vice-Principals and Head Masters of Elementary & Secondary Education, Khyber Pakhtunkhwa are treated at par with Principals FG institutions in matters relating to tax withholding u/s 149 of Income Tax Ordinance, 2001" is unassailable in the circumstances of the case. It may be observed that the complainants have produced credible evidence to prove that although the Principals of F.G. Educational Institutions draw more salary than KPK Principals but pay less income tax. This discriminatory treatment meted out to the KPK Principals, Vice Principals and Headmasters viz-a-viz their counterparts of the FGE Institutions needs to be rectified. In such circumstances, the FBR may be directed to look into the matter and treat the complainants at par with their

counterparts of the FGE Institutions regarding deduction of Income Tax payable u/s 149 of the Income Tax Ordinance, 2001. The FBR may submit a compliance report in this regard to the FTO Secretariat within 45 days of the receipt of this order. Thus, the representations are liable to be disposed of accordingly.


Accordingly, the Hon'ble President, as per his decision above, has been pleased to dispose of the representation of the FBR".

The instant seventy (70) complaints as tabulated in para 3 above are also disposed of in same manner.

RECOMMENDATIONS:

8. FBR to-

- (i) direct the Chief Commissioner RTO Peshawar to ensure that Principals, Vice-Principals and Head Masters, of Elementary & Secondary Education, Khyber Pakhtunkhwa are treated at par with Principals FG Institutions in matters relating to tax withholding u/s 149 of Income Tax Ordinance, 2001; and
- (ii) report compliance within 45 days.


(Dr. Asif Mahmood Jah)
(Hilal-i-Imtiaz) (Sitara-i-Imtiaz)
Federal Tax Ombudsman

Dated: 2:5: 2023

Approved for reporting