

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 143/2022

Date of Institution ... 01.02.2022

Date of Decision ... 24.02.2022

Mr. Muhammad Naeem, SDEO (BPS-17) (Male), Takht-e-Nasrati, Karak.

... (Appellant)

VERSUS

The Chief Secretary, Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar and three others.

... (Respondents)

Taimur Ali Khan,
Advocate

... For appellant.

Muhammad Jan,
District Attorney

... For respondents.

Mrs. Rozina Rehman ... Member (J)

Mr. Muhammad Akbar Khan ... Member (E)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the jurisdiction of this Tribunal through above titled appeal with the prayer as copied below:

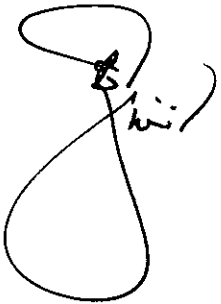
“That on acceptance of this appeal, the impugned transfer Notification dated 10.01.2022 may kindly be set aside to the extent of appellant and private respondent No.4 being premature and passed in violation of posting transfer policy. The respondents may kindly further be directed not transfer the appellant prematurely, in violation of posting transfer policy and circular dated 27.02.2013.”

2. Brief facts of the case are that the appellant was appointed as an ASDEO in the year 2011 and he was performing his duties with devotion. His wife was also working in Education Department as PSHT

at GGPS Gula Khan Korona Takht-e-Nasrati Karak. The appellant was promoted from ASDEO to SDEO and was posted at Takht-e-Nasrati vide Notification dated 30.12.2021. Just after 12 days, he was transferred and posted as SDEO (Male) North Waziristan and private respondent No.4 who was an ASDEO was posted as SDEO in his own pay & scale vide impugned Notification dated 10.01.2022. Feeling aggrieved, he filed departmental appeal which was not responded to, hence, the present service appeal.

3. We have heard Taimur Ali Khan Advocate, learned counsel for the appellant and Muhammad Jan, learned District Attorney for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Taimur Ali Khan Advocate, learned counsel for the appellant argued inter-alia that the appellant was not treated in accordance with law and rules on the subject and as such respondents violated Articles-4 & 25 of the Constitution of Islamic Republic of Pakistan. He contended that the impugned transfer notification was issued in violation of transfer/posting policy, therefore, the said notification is liable to be set aside to the extent of appellant and private respondent No.4. It was further argued that private respondent No.4 was transferred during the pendency of instant appeal as Deputy District Education Officer (Male) Karak in his own pay & scale against the vacant post vide Notification dated 31st August, 2022, therefore, appellant might be adjusted against the said vacant post. Lastly, he submitted that appellant was prematurely transferred as he had not completed normal tenure. His wife is also serving as PSHT there in Takht-e-Nasrati and the appellant being a chronic patient of kidneys, is not in a position to travel, therefore, he requested for acceptance of the instant service appeal.




5. Conversely, the learned District Attorney argued that all the codal formalities were fulfilled before notifying the transfer of appellant and that U/S-10 of Khyber Pakhtunkhwa Civil Servants Act, 1973, every civil servant is required to serve anywhere in the province.

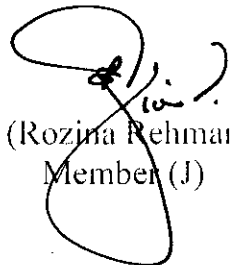
6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that Clause-I of the posting/transfer policy elucidates that all the posting transfers shall be strictly in public interest and shall not be misused to victimize Government servant. Clause-IV of the said policy has laid down specified tenure against various posts. Neither this transfer order was made in any public interest nor guidelines for normal tenure were observed. The respondents have violated their own instructions. Private respondent No.4 (Muhammad Hussain) has already been posted as Deputy DEO (Male) Karak vide Notification dated 31st August, 2022. Appellant has not completed his tenure. His spouse is also serving in the Education Department in the same district. Appellant is a chronic patient of kidneys and medical record also goes in his favor. It is otherwise a strong ground for considering his case even on humanitarian grounds.

7. For what has been discussed above, this appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

24.02.2023


(Muhammad Akbar Khan)
Member (E)


(Rozina Rehman)
Member (J)

ORDER
24.02.2023

Appellant present through counsel.


Muhammad Jan, learned District Attorney for respondents present.

Vide our detailed judgment of today of this Tribunal placed on file, instant service appeal is accepted as prayed for.

Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

24.02.2023


(Muhammad Akbar Khan)
Member (E)


(Rozina Rehman)
Member (J)

04.10.2022

Counsel for the appellant present. Mr. Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not prepared the brief. Adjourned. To come up for arguments on 09.11.2022 before D.B



(Fareeha Paul)
Member (B)



(Kalim Arshad Khan)
Chairman

9.11.2022

Since 9th November has been declared as public holiday, case is adjourned to 30.11.2022 for the same as before.

30/11/22

up on 24.2-23



Reader

Deleted from the list to come





GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
Block-"A" Opposite MPA's Hostel, Civil Secretariat Peshawar
Phone No. 091-9221588

Dated Peshawar the August 31st, 2022

NOTIFICATION

NO. SO(MC)E&SED/4-16/2022/PT/MC: Mr. Muhammad Hussain (MC BS-17)
SDEO (Male) Gumbat Kohat is hereby transferred and posted as Deputy DEO
(Male) Karak in his own pay & scale, against the vacant post, with immediate effect,
as a stop-gap-arrangement only, till arrival of regular incumbent of the post.

SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Ends: of even No. & date:

Copy forwarded for information to the: -

1. Accountant General, Khyber Pakhtunkhwa.
2. Director E&SE Khyber Pakhtunkhwa, Peshawar.
3. District Education Officers (Male) Kohat and Karak.
4. Director EMIS, E&SE Department with the request to upload the same on the official website of the department.
5. District Accounts Officers Kohat and Karak.
6. PS to Minister E&SE Khyber Pakhtunkhwa.
7. PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
8. Officer concerned.
9. Master file.

Naseer
31.8.22

(NASEER ABBAS KHALIL)
SECTION OFFICER (Management Cadre)