

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.**

Service Appeal No. 277/2023

Date of Institution ... 06.02.2023

Date of Decision... 09.03.2023

Mst. Bushra Masroor, District Youth Officer (BPS-17), Mardan.

... (Appellant)

**VERSUS**

Secretary Sports, Tourism, Archaeology, Youth Affairs and Museums  
Department, 13-A, Khyber Road, Peshawar and three others.

... (Respondents)

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SYED ASIF SHAH,  
Advocate

--- For appellant.

Mr. ASIF MASOOD ALI SHAH,  
Deputy District Attorney

--- For official respondents.

SYED NOMAN ALI BUKHARI,  
Advocate

--- For private respondent No.4.

MR. KALIM ARSHAD KHAN  
MR. SALAH-UD-DIN


--- CHAIRMAN  
--- MEMBER (JUDICIAL)

**JUDGMENT:**

**SALAH-UD-DIN, MEMBER:-** Precisely stated the facts

giving rise to filing of the appeal are that the appellant was appointed as District Youth Officer (BPS-17) vide order dated 09.04.2019 and was posted as (DYO) Mansehra vide order dated 17.04.2019; that the appellant was transferred from Mansehra to Battagram vide order dated 28.08.2019 and then transferred from Battagram to Abbottabad vide order dated 17.09.2019; that vide posting/transfer order dated 24.01.2022, the appellant was transferred from Abbottabad to Mansehra; that the appellant assumed the charge at Mansehra but

without completing her normal tenure, she was transferred from District Mansehra to District Torghar vide the impugned order dated 10.01.2023; that the appellant feeling aggrieved, preferred departmental appeal on 11.01.2023, followed by second appeal on 13.01.2023, however the same were not responded in time, therefore, she filed writ petition No. 96-A/2023 before the Hon'ble Peshawar High Court, Abbottabad Bench, which was disposed of vide order dated 26.01.2023 with the directions that the Writ Petition be sent to worthy Chief Secretary Khyber Pakhtunkhwa for treating it as departmental appeal and to decide the same within a period of 15 days. In the meanwhile, the departmental appeal of the appellant was regretted vide order dated 27.01.2023, hence the instant service appeal.



2. On admission of the appeal for regular hearing, notices were issued to the respondents. Official respondents No. 1 to 3 as well as private respondent No. 4 contested the appeal by way of filing respective comments, raising therein certain legal as well as factual objections.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Deputy District Attorney for official respondents No. 1 to 3 as well as learned counsel for private respondent No. 4 have controverted the arguments of learned counsel

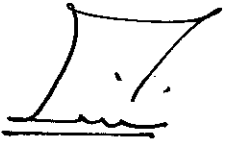
for the appellant and have supported the comments submitted by the respondents.

4. Arguments have already been heard and record perused.

5. A perusal of the record would show that the appellant was appointed as District Youth Officer (BPS-17) on 09.04.2019 and was posted in Mansehra, which is her home district. The appellant was though transferred from District Mansehra to District Battagram vide order dated 28.08.2019 but she did not assume the charge in District Battagram and was then transferred to District Abbottabad vide postings/transfers order dated 17.09.2019 allegedly on her own choice. The appellant then remained posted in District Abbottabad for more than 02 years and was then again transferred to her home District Mansehra vide postings/transfers order dated 24.01.2022. It is thus evident from the record that during tenure of her service, the appellant had been throughout accommodated in her postings/transfers and she has only served in her home district as well as adjoining district Abbottabad. Vide the impugned order dated 10.01.2023, the appellant has for the first time been transferred to an unattractive area, which too is an adjoining district to her home district Mansehra. On the other hand, private respondent No. 4 was posted in District Battagram vide postings/transfers order dated 30.04.2019 and remained posted there for almost 04 years. In view of letter No. SOR-VI/E&AD/1-4/2010/Vol-VIII, Dated, 10<sup>th</sup> April, 2010, the distinction between unattractive and hard area has

been done away with and both are now labeled as unattractive areas for which normal tenure of posting has been prescribed as 02 years. According to the aforementioned letter, District Battagram falls in unattractive area. Private respondent No. 4 has spent almost 04 years in an unattractive area and thus deserved to be given a posting in District Mansehra.

6. Keeping in view the facts and circumstances of the case, the contention of premature transfer of the appellant against the provision of the posting/transfer policy is not tenable. Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 pertains to the posting/transfer of civil servants and is reproduced as below for ready reference:



*"10. Posting and transfers.--- Every civil servant shall be liable to serve anywhere within or outside the Province in any post under the Federal Government, or any Provincial Government or local authority, or a corporation or body set up or established by any such Government:*

*Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:*

*Provided further that where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve."*

7. According to section 10, desired posting is not an inherent right of a civil servant and the department concerned can transfer a

civil servant to any place, which could though be challenged if the same is arbitrary, fanciful or is based upon any malafide or ill-will and inherent bias of the superior authorities. The facts and circumstances enumerated above do not show any malice, arbitrariness, fancifulness and biasness of the official respondents/authorities.

8. In State of U.P. and Others v. Goverdhan Lal, 2004 (3) SLJ 244 (SC) it has been held as below:-



*"8. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision of (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the Competent Authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.*

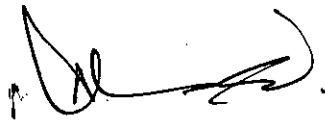
*9. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the*

*administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of Competent Authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmise and except for strong and convincing reasons, no interference could ordinarily be made within an order of transfer.*

*From the aforementioned, it is evident that the posting to any particular place is not a legal right. Article 14 guarantees equality before law only. Right to equality is a positive concept. One can allege violation of Article 14 only where there is enforceable legal right. In the absence of such right, question of discrimination or violation of Article 14 does not arise."*

9. In view of the above discussion, the appeal in hand stands dismissed being without merit. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
09.03.2023



(KALIM ARSHAD KHAN)  
CHAIRMAN



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

ORDER  
09.03.2023


Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for official respondents No. 1 to 3 present. Private respondent No. 4 alongwith his counsel present.


Learned counsel for the appellant requested that the appellant was posted at District Mansehra, however the same has inadvertently been mentioned as Mardan in heading of the appeal, therefore, the application of the appellant submitted for correction of address may be allowed. Request is genuine, therefore, application for correction of address is allowed and office is directed to do the needful accordingly.

Arguments have already been heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand stands dismissed being without merit. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
09.03.2023

  
(Kalim Arshad Khan)  
Chairman

  
(Salah-Ud-Din)  
Member (Judicial)

08<sup>th</sup> Mar, 2023

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present.

Arguments heard. To come up for order by tomorrow i.e. 09.03.2023 before D.B. PP given to the parties.



(Salah Ud Din)  
Member (J)



(Kalim Arshad Khan)  
Chairman