

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN
SALAH-UD-DIN ... MEMBER (Judicial)**

Service Appeal No. 319/2023

Date of presentation of appeal13.02.2023
Dates of Hearing.....04.05.2023
Date of Decision.....04.05.2023

Arshad Anwar (ADEO Primary DEO (F) Office Mardan) S/o Raham Bahadar. R/o Ako Dheri Post Office Lund Khwar Tehsil Takht Bhai District Mardan.

.....(*Appellant*)

Versus

1. **Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Civil Secretariat Peshawar.**
2. **Secretary Elementary & Secondary Education Civil Secretariat Peshawar.**
3. **Director of Elementary & Secondary Education Khyber Pakhtunkhwa at Directorate of E&SED Hashtangari Chowk Qila Bala Hisar Peshawar.**
4. **Assistant Director (EstabM-I), Elementary & Secondary Education Khyber Pakhtunkhwa.**
5. **District Education Officer (Female) Mardan.**
6. **Muhammad Sulaiman (SST (G)) presently posted at GHSS Sawaryan Mardan.**

.....(*Respondent*)

Present:

Mr. Amjad Ali, Advocate.....For appellant.

Mr. Asif Masood Ali Shah,
Deputy District AttorneyFor official respondents.

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**APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT,
AGAINST THE OFFICE ORDER BEARING ENDST NO. 37-41
DATED 04.01.2023 PASSED BY RESPONDENT NO. 5 WHEREIN
THE SERVICES OF THE APPELLANT ARE PLACED AT THE
DISPOSAL OF DIRECTORATE OF ELEMENTARY &
SECONDARY EDUCATION ON ADMINISTRATIVE GROUND
AND NOTIFICATION BEARING ENDST NO. 8759-68 DATED
17.01.2023 PASSED BY RESPONDENT NO. 3 WHEREIN
RESPONDENT NO. 6 IS POSTED IN PLACE OF THE
APPELLANT AS ADEO PRIMARY DEO (F) OFFICE MARDAN
WHICH ORDERS/NOTIFICATIONS ARE ILLEGAL,**

PRE-MATURE AND AGAINST THE WEDLOCK TRANSFER POLICY AND THE REJECTION ORDER NO. 7604/F.NO14/ADEOS(M)TRANSFER MARDAN DATED 08.02.2023 PASSED BY THE RESPONDENT NO. 4 ON THE DEPARTMENTAL APPEAL OF THE APPELLANT ARE ILLEGAL AGAINST LAW AND FACTS WITHOUT LAWFUL AUTHORITY, VOID AB-INITIO AND LIABLE TO BE SET-ASIDE.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the facts gathered from the record are that the appellant was adjusted as ADEO (Establishment) at the office of District Education Officer (F) Mardan vide order dated 28.12.2020, however vide order dated 04.01.2023, the services of the appellant were placed at the disposal of Directorate of Elementary & Secondary Education on administrative grounds. Feeling aggrieved from the order dated 04.01.2023, the appellant preferred departmental appeal, however the same was rejected vide order dated 08.02.2023, hence this appeal.

2. On receipt of the appeal and admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeal by filing written replies raising therein numerous legal and factual objections.

3. Arguments of learned counsel for the parties have been heard and record perused.

4. Learned counsel for the appellant argued that the impugned order of transfer of the appellant has been made on administrative ground, which is a stigma and the order regarding transfer on such ground should reveal cogent reasons but no such reason has been mentioned in the impugned order dated 04.01.2023. He further contended that the

wife of the appellant is also a school teacher and is serving at GGHS Lund Khwar Mardan, therefore, the respondent-department has illegally passed the impugned transfer order of the appellant against the wedlock policy. He further contended that the impugned transfer order of the appellant is based on malafide and ulterior motive and the appellant has been treated with discrimination. He next argued that the impugned order has been passed in violation of Transfer/Posting Policy of the provincial government, therefore, the impugned orders are liable to be set-aside.

5. On the other hand, learned Deputy District Attorney for official respondents has argued that due to poor performance and poor service record of the appellant, his services were placed at the disposal of the Directorate of Elementary & Secondary Education vide order dated 04.01.2023. He further argued that in view of Section-10 of Khyber Pakhtunkhwa Civil Servants Act, 1973, the appellant is bound to serve anywhere in the province, therefore, his appeal being devoid of any merit may be dismissed with cost.

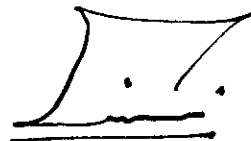
6. The grounds taken in the appeal are that the appellant was transferred prematurely, against the spouse policy and on administrative reasons but through a subsequent order, the appellant has again been posted in the same district vide order bearing Endorsement No. 1856-58 dated 25.03.2023, therefore, the grounds taken in the appeal regarding spouse policy and administrative reasons no more remained. As regards the frequent transfers of the appellant that too without completion of the tenure, it is found that the department may consider the further transfer of the appellant from the present posting purely in

the public interest and in case any exigency is found. The appellant though agitated that he was to be posted on the post from where he was transferred, however said request this per se does not seem sound in view of Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, which is prerogative of the authority to post any civil servant against any post. Before parting with, we may observe that the appellant and private respondent both belong to the teaching cadre and have been posted against the management cadre, which is apparently against the various pronouncements of the august Supreme Court of Pakistan as well as of this Tribunal, therefore, we direct that the directions contained in the pronouncements shall be observed while making posting/transfer. District Education Officer (Male) on whose disposal the service of the appellant has been placed is, however, directed to post him against a suitable post under his control. Costs shall follow the event. Consign.

7. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 04th day of May, 2023.



KALIM ARSHAD KHAN
Chairman



SALAH UD DIN
Member (Judicial)