

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

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

Service Appeal No.267/2023

Date of presentation of appeal05.12.2022
Dates of Hearing.....03.05.2023
Date of Decision.....03.05.2023

Muhammad Raza Shah S/O Muhammad Hanif R/O Ouch, Tehsil Adenzai, District Dir Lower. SDEO(M), MC, Adenzai, Dir Lower.
.....(*Appellant*)

Versus

1. **Chief Secretary**, Government of Khyber Pakhtunkhwa, Peshawar.
2. **Secretary Elementary and Secondary Education**, Khyber Pakhtunkhwa, Peshawar.
3. **Director (E&SE)** Department, Khyber Pakhtunkhwa Peshawar.
4. **District Education Officer (M)**, Dirbat Timergara/Khar Bajour.
5. **District Accounts Officer**, Dir Lower.
6. **Zaheer Ud Din**, SDO(M) Khar Bajour.
.....(*Respondent*)

Present:

Mr. Aman Ullah, Advocate.....For appellant.

Mr. Asif Masood Ali Shah,
Deputy District Attorney.....For official respondents.

Mr. Muhammad Ayub Khan Shinwari,
Advocate.....For private respondent No.6.

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE TRANSFER ORDER NO. SO (MC) E&SED /4-16/2022/ POSTING/TRANSFER/MC/DATED 31.10.2022, VIDE WHICH THE APPELLANT WAS TRANSFERRED FROM SDEO (M) KHAR BAJOUR, AGAINST WHICH THE DEPARTMENTAL APPEAL ALSO FILED AND THE SAME WAS DISMISSED BY THE RESPONDENTS.



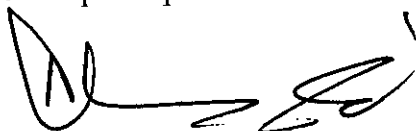
JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the facts gathered from the record the appellant was appointed in the respondent department and is presently serving as Sub-Divisional Education Officer (Male) (BPS-17) Management Cadre at Adenzai, District Dir Lower; that despite good performance and full satisfaction of the high-ups, the respondent No.2 had illegally and unlawfully issued the impugned transfer order dated 31.10.2022; that the appellant, feeling aggrieved, filed departmental appeal to respondent No.2, which was rejected No.2, and then he filed the instant service 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 reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

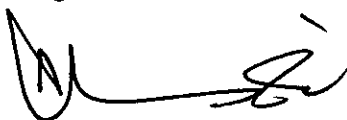
3. We have heard learned counsel for the appellant, learned Deputy District Attorney for the official respondents and learned counsel for private respondent No.6.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules. He further argued that the said transfer order is pre-mature and against the posting, transfer policy. He requested that the appeal might be accepted and the appellant might be restored to his prior position as SDEO(M)



5. Learned counsel for private respondent No. 6 argued that the instant appeal is premature and against the mandatory provision of Khyber Pakhtunkhwa Service Tribunal Act, 1974 i.e. Section-4 of the ibid Act, as no final order has been passed yet on the departmental appeal of the appellant. He further argued that as per Section-10 of the Khyber Pakhtunkhwa Civil Servant Act, 1973, a 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, thus posting and transfer cannot be claimed as a matter of right. He requested that the instant appeal might be dismissed.


6. The only ground taken in the appeal, which is worth consideration, is that the appellant was going to retire in 2023 and that his family are also residing in District Dir (Lower), therefore, transfer order was made on political basis. This ground is not sustainable because in the posting/transfer policy it is provided that the officers except DCs and DPOs, who were due to retire within one year may be posted on their option on the posts in the district of their domicile and be allowed to serve there till their retirement. As against that there was more than a year left in retirement of the appellant at the time of transfer of the appellant. Similarly there is no application whereby it could be assessed that the appellant had given any option for his posting in the district of his domicile during the last year of his service. Besides the appellant had spent more than the normal tenure at the place from where he was transferred. Therefore, this appeal is groundless and is dismissed. However, the appellant



may make an application to the competent authority giving an option in line with the transfer/posting policy, which, if moved, may be considered sympathetically and in accordance with policy of the government. 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 3rd day of May, 2023.*


KALIM ARSHAD KHAN
Chairman


SALAH UD DIN
Member (Judicial)

Adnan Shah, PA