

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 7574/2021

Date of presentation of Appeal.....27.09.2021
Date of Hearing..... 25.05.2023
Date of Decision.....25.05.2023

**Tahir Ali Shah, Junior Clerk Government Girls High School District
Nowshera Kalan.**

.....*Appellant*

Versus

1. **The District Education Officer (Female), District Nowshera.**
2. **The Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The Secretary, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.**
4. **Mr. Imad Ud Din Khattak Junior Clerk, Office of the SDEO Nowshera.**

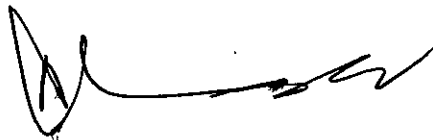
.....(*Respondents*)

Present:

Mr. Akhunzada Syed Parvez,
Advocate.....For the appellant

Mr. Fazal Shah Mohmand,
Additional Advocate General.....For respondents.

**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST
THE IMPUGNED OFFICE ORDER No.4838-43 dated 02.08.2021
OF RESPONDENT NO.2 AND OFFICE ORDER NO.3517-23 /
DATED 30.06.2021 OF RESPONDENT NO.1 WHEREBY THE
APPELLANT IS TRANSFERRED FROM SDEO (F) NOWSHERA
TO GGHS NOWSHERA KALAN.**

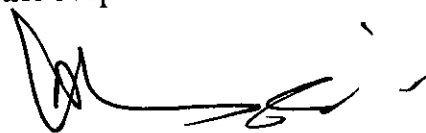


JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case are that appellant while posted as Junior Clerk GGHS Noudeh Nowshera was transferred and posted as Junior Clerk in office of SDEO (Female) Office Nowshara against the vacant post vide order dated 25.01.2021. Subsequently, he was again transferred from latter post and posted as Junior Clerk GGHS No.2 Wattar Nowshera against the vacant post. On appeal to the next higher authority against the subsequent transfer/posting, the Appellate Authority i.e. Director Elementary & Secondary Education Khyber Pakhtunkhwa cancelled the order dated 30.06.2021 vide order dated 14.07.2021. However, the cancellation order dated 14.07.2021 was withdrawn in pursuance of request of DEO (Female) Nowshera on 02.08.2021. Feeling aggrieved, he filed departmental appeal against the order dated 02.08.2021 which remained un-responded, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing their respective written replies raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.



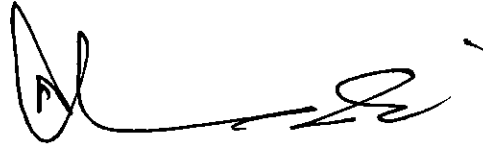
4. Learned counsel for the appellant contended that the impugned order was illegal, wrong, without cogent reasons, based on political high handedness and fundamental rights of the appellant, hence liable to be set aside; that the appellant was transferred without completion of tenure which order is the result of political intervention. He submitted that there were placement committees in different departments who recommended different officials to be posted and transferred against different posts but in the appellant's case, none had been contacted and consulted and the impugned order had passed in a hasty manner which was without any plausible justification and liable to be set aside. Further submitted that the appellant was condemned unheard and no inquiry was conducted, hence, the respondents had violated Articles 10-A & 25 of the Constitution of Islamic Republic of Pakistan, 1973. Lastly, he submitted that the impugned order was without jurisdiction and was clearly a colorful exercise of authority.

5. As against that learned Additional Advocate General argued that the impugned transfer order had been issued in accordance with law, rules and policy on the subject and the appellant had failed to comply with order of his transfer and remained absent and more so, signed attendance register forcefully; that the appellant had not performed his duty and the conduct of appellant had caused hurdles for smooth carrying of the office work. Lastly, he submitted that the respondents had provided him several opportunities to mend his ways but fiasco.



6. Learned counsel for the appellant submitted that the impugned order has been complied with by the appellant on assuming the charge at the new place of posting where too, his tenure is almost ripe. Therefore, the appeal might be disposed of with the finding that the respondents would follow their own posting/posting policy while making transfers. Disposed of accordingly. Consign.

7. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 25th day of May, 2023.*



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)

Mutazem Shah