

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

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

*Service Appeal No.1242/2022*

Date of presentation of Appeal.....16.05.2022

Date of Hearing.....24.05.2023

Date of Decision.....24.05.2023

**Alamzeb Khan**, Principal (BS-19) GHS Shamshi Khan Dir Lower.

.....*Appellant*

Versus

1. **The Government** of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. **The Secretary** to Government of Khyber Pakhtunkhwa Elementary and Secondary Education Department Peshawar.

.....(*Respondents*)

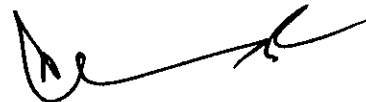
Present:

Ali Gohar Durrani,

Advocate.....For the appellant

Mr. Muhammad Jan,

District Attorney .....For respondents.



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**APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974  
AGAINST TRANSFER ORDERS DATED 29.04.2022  
WHEREBY HE HAS BEEN TRANSFERRED/POSTED  
PREMATURELY, ILLEGALLY AND WITHOUT  
LAWFUL AUTHORITY AND IN CONTRAVENTION OF  
E-TRANSFER POLICY, UNDER POLITICAL  
PRESSURE AND ALSO AGAINST THE TENURE  
POLICY AND THEREAFTER THE REGRET ON  
APPEAL DATED 30.04.2022 OF THE APPELLANT.**

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**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Brief facts of the case are that  
appellant was appointed as SET in Science vide notification dated

10.04.1994 by the Khyber Pakhtunkhwa Public Service Commission and was posted as SET at the Government High School Baden, Dir Lower; that the appellant remained posted at the Government High School Baden, Dir Lower for fifteen years, where-after he was promoted to (BPS-17) and posted to Government Higher Secondary School, Khaal Dir vide notification dated 17.02.2003; that again the appellant was promoted from BPS-17 to BPS-18 vide notification dated 16.04.2015 on regular basis and then on 26.05.2021, he was promoted from Principal/SSS (BPS-18) to Principal (BPS-19); that the appellant was transferred from GHSS, Badawn Dir Lower to GHS Shamshi Khan, Dir Lower on 13.01.2022; that the appellant however had been pre-maturely transferred from the post of Principal (BPS-19) GHS Shamshi Khan, Dir Lower to Principal (BPS-19), GHSS Saddo, Dir Lower on 29.04.2022; that the appellant filed departmental representation which was rejected; hence, the present 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 written reply 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 appellants and learned District Attorney for the respondents.



4. Learned counsel for appellant contended that transfer/posting order was based on malafide and was inherently illegal, unlawful and without jurisdiction on the score of the ill-will involved in the order of transfer/posting and was thus liable to be set aside. The appellant had not

been allowed to complete his normal tenure and thus the order impugned is violation of Transfer/Posting policy of the Government and the judgment of the apex court report in PLD 1995 SC 530 and PLD 2013 Supreme Court 195. The august Supreme Court of Pakistan had in its judgment report in 2013 PLD SC 195, decided a point of law and while committing upon the transfer and posting and other related matters of service held as under (relevant portion of the judgment has reproduced for ready reference):-

*"(ii) Tenure, posting and transfer: When the ordinary tenure for a posting has been specified in the law or rules made there under; such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable"*



He further contended that there were no exigencies of service nor could the order of transfer be termed to have been passed in the public interest rather the same had been issued in violation of the transfer and posting policy and in ban period. Learned counsel for the appellant argued that the transfer order are against the spouse policy and are against the prescribed period of three years for an incumbent to serve on such post. At the end he requested that the instant appeal might be accepted.

5. As against that learned District Attorney argued that the transfer order 29.04.2022 was issued in public interest, therefore, the appellant had been treated in accordance with law. Furthermore, posting/transfer is a part of service and the appellant was required under Section-10 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 to serve anywhere in the province.

6. It appears from the available record that the appellant has not been allowed to complete his normal tenure at a station. Vide notification dated

13.01.2022, he was transferred from GHSS Badwan and posted as Principal, GHS Shamshi Khan, Dir Lower, before that vide another notification dated 26.05.2021, he was posted as Principal, GHS, Badwan, Dir Lower. Similarly vide the impugned order dated 29.04.2022, he was are again transferred from GHS Shamshi Khan, Dir Lower to GHSS Saddo, Dir Lower. This last posting order of the appellant is made just after four months of his pension transfer. The impugned transfer order is in violation of the Posting/Transfer Policy of the Government as the appellant has not been allowed to complete his normal tenure. Besides the public interest or the exigency has not been explained, therefore, the impugned order is not sustainable.

7. In 2018 S C M R 1411 titled "Khan Muhammad Versus Chief Secretary, Government of Balochistan Quetta and others", the august Supreme Court of Pakistan was pleased to have found as under:---


*"18. Under section 10 of the Act a civil servant cannot insist to be posted or transferred to a particular post but this does not mean that a civil servant can be made to serve under a subordinate. Moreover, while section 10 does not prescribe a minimum period during which a civil servant must serve at his post it does not mean that the Government without assigning any reason can move a civil servant from the place he was posted to after a month or subject the civil servant to repeated postings in a short period of time because this would amount to punishing him. Such postings also adversely affect the public interest and result in the wastage of scarce resources and constitute bad governance.*

*19. The Rules designate certain posts as 'tenure posts' (rule 22 read with Schedule IV of the Rules) and prescribe a period of three years for an incumbent to serve on such posts. Such prescribed tenure may therefore be categorized as the ideal duration for which a civil servant should serve at a particular post. The post of Divisional Director however is not a tenure post but the principle of serving for a particular duration at this post should be followed. In the present case the petitioner was posted for a little over a month when he was again posted. Any civil servant posted to a particular post requires some time to familiarize himself with the workings of the office and the requirements of the post where-after he will be best placed to acquit himself of the responsibilities of the post. However, a one*

*month posting, as in the case of the petitioner, would not serve the interest of the people."*

8. The upshot of the above discussion is that impugned order dated 29.04.2022 was not issued in the public interest or exigencies of service and as such is not tenable in the eyes of law. Pre-mature transfer is clear violation of Clause I and IV of Posting and Transfer Policy notified by the provincial government. It is also violative of instructions circulated vide letter dated 27.02.2013 pertaining to tenure in posting/transfer. Ordinary tenure for posting has been specified in the law or rules made there-under, such tenure must be respected and cannot be varied, except for compelling reasons. It should be recorded in writing and are judicially reviewable.
9. As a sequel to the above, on allowing this appeal, the impugned order dated 29.04.2022 is set aside with the directions to the respondent-department to allow the appellant to continue on his present station of posting till completion of his normal tenure. The appeal is accepted in the above term. Costs shall follow the event. Consign.
10. ***Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 24<sup>th</sup> day of May, 2023.***

  
**KALIM ARSHAD KHAN**  
Chairman

  
**FAREEHA PAUL**  
Member (Executive)