

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 55/2022

Date of Institution ... 14.01.2022

Date of Decision... 31.05.2023

Muhammad Ilyas Principal GHS (BPS-18) Dabgari Gate Peshawar.
... (Appellant)

VERSUS

The Chief Secretary Government of Khyber Pakhtunkhwa Peshawar and 04
others. ... (Respondents)

MR. HAMAD HUSSAIN,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- For official respondents.

MR. MIR ZAMAN SAFI,
Advocate

--- For private respondent No. 5.

MR. SALAH-UD-DIN
MR. MUHAMMAD AKBAR KHAN

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Brief facts giving rise to filing

of the instant appeal are that the appellant is serving in Elementary &

Secondary Education Department Peshawar and was posted as

Principal (BPS-18) in Government High School Dabgari Gate

Peshawar. Vide impugned Notification No. SO (SM) E&SED/7-

1/2021/PT/Principals dated 28.12.2021, the appellant was transferred

from Government High School Dabgari Gate Peshawar to

Government High School Bora No. 1 Hassan Khel Peshawar, while

private respondent No. 4 namely Shakeel Iqbal was transferred to the

post of appellant, whereas private respondent No. 5 namely Ameer

Muhammad was transferred to Government High School Gulshan



Rehman Colony Peshawar on the post which was being held by private respondent No. 4 namely Shakeel Iqbal. The appellant being aggrieved of the impugned posting/transfer Notification dated 28.12.2021, challenged the same through filing of departmental appeal, however of no avail, 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. 5 contested the appeal by way of filing respective para-wise comments, wherein they refuted the assertions raised by the appellant in his appeal. Private respondent No. 4 has been placed ex-parte vide order dated 01.02.2022.

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 private respondent No. 5 have controverted the arguments of learned counsel for the appellant and have supported the replies submitted by them.

4. Arguments have already been heard and record perused.

5. A perusal of the record would show that vide Notification No. SO(S/M)E&SED/1-3/2016/promotion BS-17 to BS-18 dated 01.12.2016, the appellant was promoted and posted as Principal Government High School Dabgari Gate Peshawar. Vide the impugned Notification dated 28.12.2021, the appellant has now been transferred to Government High School Bora Hassan Khel Peshawar. It has been categorically alleged by private respondent No. 5 in

para-4 of his reply that the appellant had remained posted in Government High School Dabgari Gate Peshawar since 01.12.2016. The above mentioned assertion of private respondent No. 5 has not been denied by the appellant by way of filing any rejoinder. Moreover, this Tribunal vide its order dated 14.01.2022 had suspended the impugned Notification dated 28.12.2021 and the appellant remained posted in the same school where-from he was transferred vide impugned Notification dated 28.12.2021. The appellant has thus availed a tenure of more than 06 years as Principal in Government High School Dabgari Gate. The appellant has though alleged that his transfer was due to ill will, mala-fide as well as political influence, however such assertions of the appellant are not supported through any cogent material. One of the contentions of the appellant is that, he was injured in a road accident and is unable to perform duty at Government High School Bora Hassan Khel, which as per his contention is at the distance of 35/40 Kilometers from his residence. The appellant could not substantiate the aforementioned plea by way of producing any medical document to show that he had sustained any injury in road accident.

6. Section-10 of Khyber Pakhtunkhwa Civil Servants Act, 1973 pertains to posting/transfer of civil servants, which is reproduced as below:

"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. In view of section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, 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 mala-fide or ill-will and inherent bias of the superior authorities. Nothing is available on the record, which could show that the transfer order of the appellant was outcome of any ill-will or mala-fide on part of the official respondents.

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. Consequently, the appeal in hand being devoid of merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
31.05.2023


(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)