

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 7894/2021

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Samir Ullah ADEO, in the office of District Education Officer DDEO in OPS, North Waziristan. (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar.
2. Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
4. District Education Officer (Male), North Waziristan..... (Respondents)

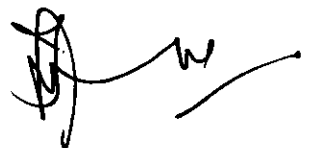
Mr. Yasir Saleem,
Advocate ... For appellant

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

Date of Institution.....20.12.2021
Date of Hearing.....25.05.2023
Date of Decision..... 25.05.2023

JUDGEMENT

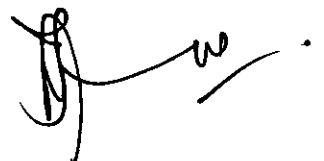
FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 25.11.2021 vide which the appellant was transferred from North Waziristan and his services were placed at the disposal of Directorate of Elementary & Secondary Education against which his departmental appeal dated 26.11.2021 was not responded. It has been prayed



that on acceptance of the appeal, the impugned order dated 25.11.2021, to the extent of appellant, might be set aside and he might be allowed to continue his duties as ADEO, North Waziristan with back and consequential benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as SST vide order dated 01.01.2009. During the course of service, he was transferred and posted as ADEO in the office of DEO North Waziristan vide order dated 10.08.2018. Thereafter, he was transferred to Government High School Paryat, District North Waziristan vide office order dated 30.04.2021. After performing his duties for 04 days, order dated 30.04.2021 was cancelled/withdrawn vide notification dated 05.05.2021. He was again transferred from North Waziristan and his services were placed at the disposal of Directorate of Elementary & Secondary Education, Peshawar vide notification dated 25.11.2021. Feeling aggrieved, he filed departmental appeal dated 26.11.2021 which was not responded; hence the present appeal.

3. The appeal was admitted for regular hearing on 23.12.2021 and the respondents were put on notice to submit reply/comments on 19.01.2022. In the meanwhile, operation of the impugned order was suspended, if not acted upon. The respondents did not submit written replies/comments on the appeal despite several opportunities including last opportunity; hence their right of submission of written reply/comments stood struck off on 26.05.2022. We have heard the learned counsel for the appellant as well as the learned Additional Advocate General for the respondents and perused the case file with connected documents in detail.



4. Learned counsel for the appellant after presenting the case in detail argued that the impugned order was passed during the period when ban on all kinds of postings/transfers was imposed by the Election Commission of Pakistan till the Local Government elections which were scheduled to be held on 19.12.2021. He further argued that the appellant had not completed normal tenure of his posting therefore, the impugned order was violative of posting/transfer policy of the provincial government and also against the judgments of the Apex Court reported in PLD 1995-Supreme Court page 530 and 2013 PLD Supreme Court Page 195. He contended that the impugned order was illegal and passed with malafide intention just to put the appellant in mental & physical torture and requested for allowing the appeal as prayed for.

5. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, every civil servant is obligated to serve at any place where he is posted by the competent authority in the provincial government. He requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it transpires that the appellant, while serving as ADEO in the office of DEO North Waziristan was transferred to Government High School, Paryat District North Waziristan, vide order dated 30.04.2021. That order was withdrawn on 05.05.2021 and later vide another order dated 25.11.2021, services of the appellant were placed at the disposal of Directorate of Elementary & Secondary Education. His departmental appeal against that order was not responded, therefore, the appellant preferred a service appeal, in which, though an order dated



23.12.2021 of this Tribunal, operation of the impugned order dated 25.11.2021 was suspended which indicates that the appellant remained posted in the office of DEO District North Waziristan as ADFO (P&D), where he had been posted since 10.08.2018. From the date the impugned order was passed, the appellant has spent almost one and a half year, upto now, on the same post, and if the period he spent before that order was issued is taken into consideration, it becomes almost five years, which is enough time to be spent on one post. In such a situation when premature transfer is not involved, the powers of the authority provided to it under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, can safely be said to have been exercised properly leaving no room for interference by the Tribunal. As far as the plea of the appellant that there was ban on transfer and posting by the Election Commission of Pakistan is concerned, the elections are now over for quite a long time and this plea is no more maintainable.

7. In view of the foregoing, the appeal in hand is dismissed with cost.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 25th day of May, 2023.*


(FARKEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman.