

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: KALIM ARSHAD KHAN --- CHAIRMAN
MUHAMMAD AKBAR KHAN--- MEMBER(E)

Service Appeal No. 249/2023

Iftikhar Khan S/o Umer Khobaz Khan R/o Khalil Bozi Daud Shah
LHC/599 District Police Bannu.....(*Appellant*)

Versus

1. The Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police, Bannu Range, Bannu.
3. The District Police Officer, Lakki Marwat.
4. SDPO Headquarter Circle Bannu.
5. Mr. Noor Jehan Shah Sub-Inspector/RI, Police Lines Bannu.
6. Mr. Javed Khan, Establishment Clerk, Regional Police Officer, (RPO)
Office Bannu.....(*Respondents*)

Present:

Mr. NIAZ KHAN,
Advocate..... For appellant

Mr. FAZAL SHAH MOHMAND,
Additional Advocate General.....For respondents

Date of Institution.....23.01.2023
Dates of Hearing.....02.06.2023
Date of Decision.....02.06.2023

Service Appeal No.250/2023

Shah Qiaz Khan S/o Muhammad Aslam Khan R/o House. 520/A
outside railway Gate Mal Mandi Bannu City (Presently) Posted as
Head Constable District Police Bannu.....(*Appellant*)

Versus

1. The Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police, Bannu Range, Bannu.
3. The District Police Officer, Lakki Marwat.
4. SDPO Headquarter Circle Bannu.
5. Mr. Noor Jehan Shah Sub-Inspector/RI, Police Lines Bannu.

6. Mr. Javed Khan, Establishment Clerk, Regional Police Officer, (RPO) Office Bannu.....**Respondents)**

Present:

Mr. NIAZ KHAN,
Advocate..... For appellant

Mr. FAZAL SHAH MOHMAND,
Additional Advocate General.....For respondents

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CONSOLIDATED JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER(E):- Through this single judgment the instant appeal and connected service appeals detailed above are decided as the two are against the same departmental proceedings and involve similar question and thus conveniently be decided together.

02. According to the facts gathered from the record, the appellants are aggrieved of the impugned transfer order dated 23.12.2022 whereby the appellants were transferred to District Lakki Marwat. In compliance with the transfer order the appellants reported for duty on 24.12.2022. As against the impugned order the appellant filed Writ Petition before the Hon'ble Peshawar High Court, Bannu Bench which was dismissed on the ground of jurisdiction on 10.01.2023, Feeling aggrieved, the appellants approached this Tribunal against the impugned order dated 24.11.2022 on 23.01.2023.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellants in

their appeal. We have heard arguments of learned counsel for the appellants and learned Additional Advocate General and have gone through the record with their valuable assistance.

03. Learned counsel for the appellant contended that the appellants are regular employee of District Police Bannu; that the appellant submitted application before the competent authority to allow them for getting admission in LLB/MSL HPE and the competent authority issued No Objection Certificate (NOC) vide order dated 10.08.2020 but unfortunately the appellants were transferred from District Police Bannu to District Lakki Marwat, despite the fact that the appellants had properly obtained NOCs and the respondent department allowed the appellants to get admission in LLB. Further contended that the appellants were discharging duty in District Bannu with zeal and zest and there is nothing on record that the appellants have been absented for duty or ever shown negligence in performance of official duty. Learned counsel for the appellants further contended that the appellants were regular employees of District Police Bannu and on the basis of ulterior motive on part of respondents they have been transferred to District Lakki Marwat without any cogent reason. That the appellant have not been treated in accordance with law and rules, hence respondents violated Article 4, 25 and 25A of the constitution of Islamic Republic of Pakistan, 1973.

04. Learned Additional Advocate General contended that the appellant did not obtain NOC from the competent authority i.e. Head of the Department (Inspector General of Police Khyber Pakhtunkhwa Peshawar) and the appellants used this NOC as lame excuse for not performing duty.

The appellants were appearing in person before respondent No. 2 but their request was not considered because they had not obtained NOC from the Head of the Department. That the appellants were transferred due to rise of militancy in District Lakki Marwat and paucity of Police. He further contended that no violation of Article 4, 25 and 25A of the Constitution of Islamic Republic of Pakistan, 1973 has been made and the appellants were transferred to District Lakki Marwat due to exigency of service.

05. After threadbare scrutiny of the matter, we have reached the conclusion that the appellants contention of obtaining NOC from the Regional Police Officer Bannu Region for admission in Higher Education put an embargo on their transfer outside the district of Bannu is not tenable. In fact NOC issued in their favour merely states that the Regional Officer has no objection over the desire of the appellants to get admission in a private Institution of higher studies. This type of NOC cannot bound the competent authority to make posting/transfer of the appellants, who are serving in a disciplined force responsible for maintenance of law and order and they are duty bound to be moved anywhere within the jurisdiction of the Region and the province at large for the purpose of maintenance of public order. Nowhere in the Police Rules or for that matter in the civil/government servants Rules it has been provided that once an NOC is granted to a Government Servant for admission in Educational Institutes they cannot then be transferred till completion of their studies. In fact higher studies like B.S LLB, which one of the appellants has undertaken, takes five years to complete. The standing instructions contained in West Pakistan S&GAD

circular NO. S(R) 3571/26/58/SOXII dated 21.06.1960 are quite clear which are reproduce as under;

(a) Government servants should not under any circumstances be allowed to attend any classes or courses during office hours

(b) Outside office hours, they may attend classes/courses. No formal permission is necessary in such cases. They may only inform the Head of their Department that they are attending such classes/courses. If, however, it is found that by attending such classes/courses, the work of the Government servant is suffering, the Head of the Department may, by an order, stop the Government servant from attending such classes/courses.

Likewise another circular bearing West Pakistan S&GAD NO-S(R) 153/1-26/58,SOXIII dated 04.02.1963, makes the issue more clear contents of which are as under;

(2) Since the public interest is paramount in all cases, the fact that a Government servant is attending evening classes cannot in itself be a reason for not transferring him. If his transfer can be avoided without causing any loss to the efficiency of the Department then such a Government servant may be allowed to continue at the station of his posting so long as his course of study requires.

(3) The competent authorities, while allowing officials serving under them to study in evening classes, should, however, carefully go into the question whether the official is likely to be transferred from his station. If so, permission in his case should be refused.

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06. In view of what has been discussed above, we are constrained to dismiss the appeals in hand having no legal cover. Costs shall follow the event. Consign.

07. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 2nd day of June, 2023.*



(KALIM ARSHAD KHAN)
CHAIRMAN



(MUHAMMAD AKBAR KHAN)
MEMBER (E)

Kamranullah