

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

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

*Service Appeal No.381/2023*

Date of presentation of Appeal.....15.02.2023  
Date of Hearing.....13.06.2023  
Date of Decision.....13.06.2023

**Zulfiqar Ul Mulk**(DEO (M) Mardan) S/O Ihsan Ud Din R/O Mohallah Ali Garh, post office Khas, Akora Khattak Tehsil and District Nowshera..

.....*Appellant*

Versus

1. **The Government** of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Civil Secretariat, Peshawar.
2. **Chief Secretary**, Khyber Pakhtunkhwa at Chief Minister Secretariat Peshawar.
3. **Chief Minister**, Khyber Pakhtunkhwa at Chief Minister Secretariat Peshawar.
4. **Secretary Elementary** and Secondary Education Civil Secretariat Peshawar.
5. **Zahid Muhammad** (District Education Officer Bannu).

.....(*Respondents*)

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Present:

Mr. Amjid Ali, Advocate.....For the appellant

Mr. Muhammad Jan, District Attorney.....For official respondents.

Mr. Muhammad Asif Yousafzai, Advocate.....For respondent No.5

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**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE NOTIFICATION/ORDER DATED 20<sup>TH</sup> JANUARY 2023 PASSED BY THE RESPONDENT NO.3 (I.E COMPETENT AUTHORITY) WHEREIN THE MAJOR PENALTY OF COMPULSORY RETIREMENT IMPOSED THROUGH ORDER DATED 01.12.2022 PASSED BY RESPONDENT NO.4 HAS BEEN REDUCED TO WITHHOLDING OF TWO ANNUAL INCREMENTS**

**FOR TWO YEARS ON REVIEW/APPEAL DATED 03.12.2022 OF APPELLANT AND POSTING/TRANSFER ORDER DATED 10.02.2023 WHEREIN RESPONDENT NO.5 IS POSTED AS DEO(M) MARDAN IN CONTRAVENTION OF THE NOTIFICATION/ORDER DATED 20.01.2023 ARE ILLEGAL AGAINST LAW AND FACTS WITHOUT LAWFUL AUTHORITY, VOID AB-INITIO AND LIABLE TO BE SET ASIDE AND APPELLANT IS LIABLE TO BE EXONERATED OF THE CHARGES LEVELED AGAINST HIM.**

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**JUDGMENT**

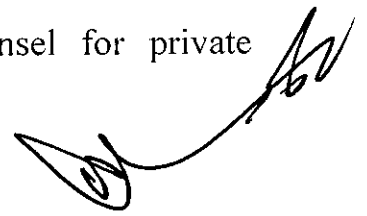
**KALIM ARSHAD KHAN CHAIRMAN:** Brief facts of the case are that appellant was serving as District Education Officer in the respondent-department; that a complaint dated 01.06.2020 was lodged against the appellant by a Member of the Provincial Assembly namely Maulana Hidayat Ur Rehman on his letter pad; that the appellant had not complied with his directions for appointment of Class-IV amongst the land donor in Chitral while serving as District Education Officer (M) Chitral; that a fact finding report was given on 16.11.2020, wherein minor penalty of warning to be careful for negligence in future was recommended against the appellant; that respondent No. 2 issued charge sheet to the appellant; that the appellant submitted a detailed reply to the charge sheet; that the enquiry was conducted; that during disciplinary proceedings, the appellant was posted as District Education Officer (M) Mardan vide order dated 29.11.2021; that a show cause notice was issued to the appellant on 28.02.2022; that the appellant properly replied to the show cause notice; that vide notification dated 1.12.2022, respondent No.3 imposed major penalty of compulsory retirement upon the appellant; that the appellant filed departmental appeal dated 03.12.2022, before respondent No.3, which was partially allowed and

the major penalty of compulsory retirement was modified into withholding of two annual increments for two years vide order dated 20.01.2023; that the appellant, while performing duties as District Education Officer (M) Mardan, private respondent No.5 was posted as District Education Officer (M) Mardan in place of the appellant vide order dated 10.02.2023, hence, he filed the present service appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. On 16.03.2023 official respondents were given last chance for submission of written reply and the case was fixed on 19.04.2023. On 19.04.2023 the respondents failed to submit written reply, therefore, they were placed exparte and their right to file reply stands struck off while the private respondent No.5 had submitted written reply vide order sheet dated 22.05.2023. Respondents put appearance and contested the appeal, raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

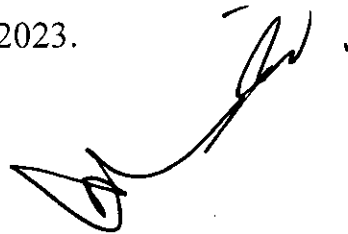
03. We have heard learned counsel for the appellant, learned District Attorney for the official respondents and learned counsel for private respondent No.5.

04. Learned counsel for appellant argued that the appellant has not been treated in accordance with law and rules. The appellant had not been afforded proper opportunity of hearing similarly no opportunity of cross examination had been given to the appellant. He further argued that the



Worthy Chief Minister had ordered appellant to be the DEO(M) Mardan in his order dated 20.01.2023 in the heading of the order, in the second para of the order and even in the last para of the order as DEO(M) Mardan with immediate effect then posting of respondent No.5 by respondent No.4 vide order dated 10.02.2023 against the post of DEO(M) Mardan which was held by the appellant is certainly illegal; that neither the appellant nor respondent had completed his normal tenure of posting as per transfer policy in their respective stations; that according to the transfer/posting policy of the Provincial Government, posting/transfer shall not be misused/abused to victimize a civil servant. He requested that the instant appeal might be accepted.

05. Learned District Attorney and learned counsel for private respondent No.5 controverted the arguments advanced by the learned counsel for the appellant and stated that the prayer of appeal to the extent of order dated 10.02.2023 is not maintainable for the reasons that no Departmental Appeal has been made by the appellant against the transfer order which is mandatory as per Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974; that the appellant could not claim choice posting. Learned counsel for private respondent No.5 argued that prior to the order dated 20.01.2023 (when the appellant was not in service) proper summary of the posting/transfer of respondent No.5 was approved by the worthy Chief Minister, Khyber Pakhtunkhwa on 16.01.2023.

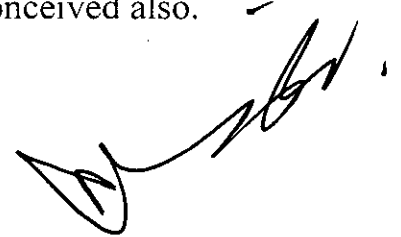


06. After the fact finding inquiry a regular inquiry was conducted, in consequence of which, major penalty was imposed upon the appellant. They requested that the instant appeal might be dismissed.

07. It appears from the enquiry report of the enquiry committee that charge (i), regarding filling of 23 posts falling in the share of disabled as well as minority candidates were also filled from the candidates of open merit, stood proved. The enquiry committee found that the allegations stood proved and in support of such findings the enquiry committee discussed in detail the entire episode with sound reasons which could not be rebutted by the appellant during the course of arguments. Similar is the situation with regard to charge (ii). As regard charge (iii) regarding appointment at serial No.3 in the merit list against an expected vacancy, again a detailed and well reasoned finding was given by the enquiry committee and the appellant could not utter a single word regarding this allegation in the memo and grounds of appeal or during the course of arguments. Likewise charge (iv) also went unrebutted during the arguments and nothing was said in the memo and grounds of appeal. The appellant had tried to attack the departmental proceedings on totally irrelevant considerations i.e. issuance of charge sheet by worthy Chief Secretary, Khyber Pakhtunkhwa and show cause notice by the worthy Chief Minister, Khyber Pakhtunkhwa. The learned District Attorney though argued that because of the busiest schedule of the worthy Chief Minister, he had delegated his powers to the officers for signatures on such matters, yet neither the learned Law Officer nor the learned counsel for the appellant could place on record any document to

show or support their respective pleas. Be that as it may, the enquiry appears to have been conducted in accordance with the relevant rules wherein the appellant was duly associated. The allegations against the appellant were proved during the course of enquiry and the penalty imposed by the Reviewing Authority seems to be quite lenient, which does not need any interference.

08. Now coming to the transfer order dated 10.02.2023, which is also impugned in this appeal, it appears that in the entire impugned transfer order the name of the appellant is not reflected. In such a situation challenging the transfer order of somebody else would not vest any cause of action or locus standi in the appellant. There is contention of the appellant that once the major penalty of compulsory retirement, awarded to the appellant, on 01.12.2022, was converted into withholding of two annual increments, for two years, vide notification dated 20.01.2023, wherein the designation of the appellant was mentioned as District Education Officer (M) Mardan at more than one places, which meant that the appellant was considered to be still posted as DEO(M) Mardan, no matter he was first compulsorily retired and then reinstated. This contention is not well founded as it is based on surmises and conjectures because by mere writing the words "District Education Officer (M) Mardan" in the impugned order would not of its own mean that the post of DEO(M) Mardan was still occupied by the appellant. The urge of the appellant is thus misconceived also.



Service Appeal No.381/2023 titled "Zulfiqar Ul Mulk versus The Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Civil Secretariat Peshawar and others", decided on 13.06.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Fareeha Paul, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

09. For the foregoing reasons this appeal fails and is dismissed. 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 13<sup>th</sup> day of June, 2023.*



**KALIM ARSHAD KHAN**  
Chairman



**FAREEHA PAUL**  
Member (Executive)

\*Adnan Shah, P.A\*