

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1054/2023

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

Muhammad Amin S/O Said Nawab, Ex-DIO (M) Dir Lower, presently at the Disposal of Secretary E&SE, Khyber Pakhtunkhwa, Peshawar.
..... (*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar.
3. Director Elementary & Secondary Education, Peshawar.... (*Respondents*)

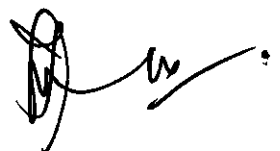
Mr. Noor Muhammad Khattak,
Advocate ... For appellant

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

Date of Institution.....08.05.2023
Date of Hearing.....14.06.2023
Date of Decision..... 14.06.2023

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 04.01.2023 whereby the appellant was transferred and directed to report to the Directorate of Elementary & Secondary Education Peshawar and the pay of the appellant was stopped without any lawful and legal justification. It has been prayed that on acceptance of the appeal, the impugned order dated 04.01.2023 and the notification dated 27.04.2023 might be set aside and the appellant might be



adjusted at his original station as District Education Officer (Male) Dir Lower, with all back benefits and his salary might be released, alongwith any other remedy, which the Tribunal deemed fit and appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was posted as District Education Officer (Male) Dir Lower, vide order dated 17.06.2022. Vide impugned order dated 04.01.2023, he was transferred and directed to report to the Directorate of Elementary & Secondary Education, Khyber Pakhtunkhwa. Feeling aggrieved, he filed departmental appeal/representation before the competent authority whereby it was proposed that the appellant might be retained as DIO (Male) Dir Lower but the same was not decided. During the pendency of the departmental appeal, the respondent department issued subsequent impugned notification dated 27.04.2023 whereby respondent No. 5 was assigned the additional charge of DIO (M) Dir Lower.

3. Respondents were put on notice. Respondent No. 2 submitted written reply on the appeal. Vide order dated 25.05.2023, respondents No. 1 & 3 were placed ex-parte while names of the private respondents No. 4 & 5 were deleted from the panel of respondents being unnecessary parties. 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 dated 14.01.2023 was biased, illegal,



unlawful, malafide and violative of Clauses I, IV and XIII of the Posting/Transfer Policy of the Government of Khyber Pakhtunkhwa as the appellant was transferred prematurely from the post of DEO(M) Dir Lower. He further argued that premature transfer and non-adjustment at any other station of the appellant was sheer disregard of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and a violation of the fundamental rights guaranteed by Article 24 of the Constitution of Islamic Republic of Pakistan. He requested that the appeal might be accepted 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 was obligated to serve at any place where he/she was posted by the competent authority in the provincial government. He further argued that the appellant was transferred by the competent authority on administrative ground in the best public interest. According to him, it was the prerogative of the competent authority to assign additional charge to any officer for smooth running of affairs of the department. He requested that the appeal might be dismissed.

6. From the record and arguments presented before us, it is found that the appellant was transferred as DEO(Male) Dir Lower vide order dated 17.06.2022. Through another order dated 04.01.2023, just after spending less than seven months as DEO M) Dir Lower, he was directed to report to Directorate of Elementary and Secondary Education. In order to run the affairs of the office, additional charge of that position was assigned to Mr. Liaqat Ali,




Deputy DEO (M) Dir Lower, respondent No. 4 in the instant appeal. Upon transfer of respondent No. 4 from Dir Lower, Mr. Mehboob Elahi, respondent No. 5, was posted as Deputy DEO (M) Dir Lower on 27.04.2023 and he was assigned the additional charge of the post of DEO also. On the departmental appeal of the appellant against the impugned order dated 04.01.2023, a summary for Chief Minister, Khyber Pakhtunkhwa was processed and forwarded with the proposal that Mohammad Amin, the appellant in the appeal in hand, may be retained on the post of DEO (M) Dir Lower. When the AAG was confronted with the decision on that summary, he informed that based on the statement of departmental representative, it was under process.

7. From the above discussion, it is evident that the post of DEO (M) Dir Lower is still vacant and the official work is being carried out by assigning additional charge to the Deputy DEO. Moreover, transfer of the appellant was made in sheer violation of the rules and transfer/posting policy of the provincial government, without allowing him to complete his normal tenure of posting at that position.

8. In view of the foregoing, the appeal in hand is allowed as prayed for with the directions to the respondents that the appellant be allowed to complete his normal tenure. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 14th day of June, 2023.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman