

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD.**

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
RASHIDA BANO ...MEMBER (Judicial)

Service Appeal No.657/2022

Date of presentation of appeal.....29.03.2022
Dates of Hearing.....20.06.2023
Date of Decision.....20.06.2023

Mr. Haq Nawaz, Senior Clerk BPS-14, District Education Officer
Female Battagram under transfer to District Education Officer (Male)
Battagram.

.....**Appellant**

Versus

1. **The Secretary (E&SE) Education Department, Khyber Pakhtunkhwa Peshawar.**
2. **The Director (E&SE) Education Department, Khyber Pakhtunkhwa, Peshawar.**
3. **Muhammad Sadiq**, Senior Clerk (BPS-14), O/O District Education Officer (Male) Battagram, under transfer to District Education Officer Female Battagram.

.....**(Respondents)**

Present:

Mr. Waleed Adnan, Advocate.....For the appellant.

Mr. Asif Masood Ali Shah,
Deputy District Attorney.....For respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED ORDER DATED 26.01.2022
WHEREBY THE APPELLANT HAS BEEN
TRANSFERRED FROM DISTRICT EDUCATION**

OFFICER (FEMALE) DISTRICT BATTAGRAM TO DISTRICT EDUCATION OFFICER (MALE) DISTRICT BATTAGRAM IN UTTER VIOLATION OF TRANSFER POSTING POLICY AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD.

Service Appeal No.658/2022

Date of presentation of appeal.....29.03.2022
Dates of Hearing.....20.06.2023
Date of Decision.....20.06.2023

Mr. Taj Ud Din, Senior Clerk BPS-14, District Education Officer Female Battagram under transfer to GHSS, Paimal Sharif Battagram.
.....**Appellant**

Versus

1. **The Secretary (E&SE) Education Department, Khyber Pakhtunkhwa Peshawar.**
2. **The Director (E&SE) Education Department, Khyber Pakhtunkhwa, Peshawar.**
3. **Muhammad Sadiq**, Senior Clerk (BPS-14), O/O District Education Officer (Male) Battagram, under transfer to District Education Officer Female Battagram.
.....**(Respondents)**

Present:

Mr. Waleed Adnan, Advocate.....For the appellant.

Mr. Asif Masood Ali Shah,
Deputy District Attorney.....For respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 26.01.2022 WHEREBY THE APPELLANT HAS BEEN TRANSFERRED FROM DISTRICT EDUCATION OFFICER FEMALE DISTRICT BATTAGRAM TO GHSS PAIMAL SHARIF BATTAGRAM IN UTTER

VIOLATION OF TRANSFER POSTING POLICY AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment the above two appeals are going to be decided as both are against the same impugned order, therefore, can conveniently be decided together.

2. Brief facts of the appeals are as under:

i. SA No.657/2022 Haq Nawaz:

That the appellant, while being in service, was transferred from office of the District Education Officer (Female) Battagram to the office of District Education Officer (Male) Battagram; that against the impugned order, the appellant preferred departmental appeal on 27.01.2022, which was not responded within the statutory period of ninety days; that this Tribunal was dysfunctional due to which the appellant filed a writ petition No. 544-P/2022, which was disposed of on 18.02.2022 with the direction to submit service appeal before the Khyber Pakhtunkhwa Service Tribunal, if not already filed. Lastly, the appellant approached this Tribunal.

ii. SA No.658 of 2022 Taj Ud Din:

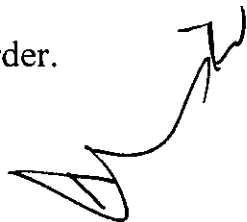
That the appellant was promoted to the post of Senior Clerk and transferred/adjusted from the office of the District Education Officer (Male) Battagram to the office of the District Education Officer (Female) District Battagram against the vacant post; that the appellant started performing duty but astonishingly the respondent/department issued the

impugned order dated 26.01.2022, whereby the appellant was transferred from the office of the District Education Officer (Female) Battagram to the Government High Secondary School Pamial Sharif Battagram; that against the impugned order, the appellant preferred departmental appeal on 27.01.2022, which was not responded within the statutory period of ninety days; that this Tribunal was dysfunctional due to which the writ petition No. 543-P/2022, which was disposed of on 18.02.2022 with the direction to submit service appeal before the Khyber Pakhtunkhwa Service Tribunal, if not already filed. Lastly, the appellant approached this Tribunal.

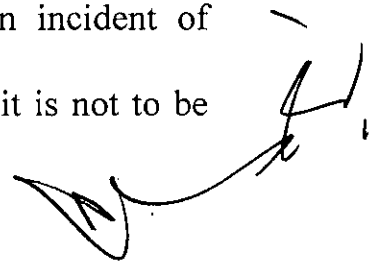
3. On receipt of the appeals and their admission to full hearing, the respondents were summoned. Respondents put appearance but they did not submit written reply despite numerous opportunities. On 21.11.2022 there was no representative of the respondents present, therefore, they were placed ex-parte and their right to file reply was stuck off.

4. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

5. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order.



6. Both the appellants are from the Ministerial Staff. Vide the impugned transfer order, they were transferred and posted within the same district from one place to other. The projected ground of the appeals is that the appellants have prematurely been transferred. This Tribunal has decided many appeals wherein the question of premature transfer was agitated. A number of such appeals have been allowed and some have been disallowed. The reason of different decisions in the appeals with the specific ground of premature tenure transfer is obviously the changed facts and circumstances. In each case, the peculiar facts and circumstances are to be seen and the matters are decided accordingly. In these appeals both the appellants have been transferred from one place to the other but in the same station so all the questions of disturbance, dislodging, inconvenience or for that matter violation of any policy are totally ruled out. The fact that the posts held by the appellants are of non-Executive duties is undisputed. Therefore, too the premature posting of the appellants within the station could not be interfered with normally because of clerical nature of job of the appellant which does not affect any affairs of the department causing no prejudice to the public interest as well as to the appellants. Such orders are not detrimental to the appellants because there is no change of station and Headquarter. That remains within District Battagram. The Pay, status, emoluments and perquisites remain the same. The appellants suffer no loss. All that happens is that the appellants report to different superiors at the offices within the city/suburban limits. Transfer is an incident of service and is made in administrative exigencies. Normally it is not to be



interfered with by the courts. A transfer order is not cancelled at the throw of a hat by the court. Very compelling reasons must exist before a court of law to cancel the order of transfer of a government employee. We do not find any such compelling reasons in these appeals.

7. The upshot of the above discussion is that no prejudice has been caused to any of the appellants vide the impugned transfer order, therefore, we find these appeals groundless and dismiss these accordingly. Costs shall follow the event. Copy of this judgment be placed in the connected file. Consign.

8. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 20th day of June, 2023.*



KALIM ARSHAD KHAN
Chairman
Camp Court Abbottabad



RASHIDA BANO
Member (Judicial)
Camp Court Abbottabad

Adnan Shah