

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1046/2023

BESORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
RASHIDA BANO ... MEMBER (J)

Nadeem Khan, Driver, District Education Office (Female) District, Mohmand.

.... (Appellant)

VERSUS

1. **Secretary**, Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.
 2. **Director**, Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.
 3. **District Education Officer** (Female), District Mohmand.
- (Respondents)

Mr. Taimoor Ali Khan
Advocate

For appellant.

Mr. Asad Ali Khan
Assistant Advocate General

For respondents.

Date of Institution..... 05.05.2023
Date of Hearing.....06.07.2023
Date of Decision.....06.07.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the notification dated 31.03.2023 whereby the appellant was prematurely transferred from the office of District Education Officer (F) Mohmand to District Education Officer (M) Mohmand and against rejection order/memo dated 26.04.2023 whereby departmental appeal of the appellant was rejected for no ground.

2. Brief facts giving rise to the instant appeal are that appellant was serving

as Driver in District Education Office (M) Mohmand. He was performing his duties with the entire satisfaction of his superiors. That the appellant was transferred from the Office of DEO (M), Mohmand to the office of DEO (F) Mohmand vide order dated 18.09.2021. The appellant was again transferred to the office of DEO (M) Mohmand vide order dated 31.03.2023. Being aggrieved the appellant filed departmental appeal on 04.04.2023, which was rejected on 26.04.2023, hence the instant service appeal.

3. Respondents were put on notice who failed to submit written replies/comments on the appeal and was placed ex-parte. We have heard the learned counsel for the appellant as well as the learned Assistant Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that impugned order dated 31.03.2023 based on the recommendation of enquiry committee are nullity in the eyes of law, rules of business and posting/transfer policy of the government on the subject. He further argued that that as per judgment of the apex court that "no one shall be punished on anonymous complain". He requested that the impugned order might be set aside.

5. Learned Assistant Advocate General on the other hand argued that the appellant has been treated in accordance with law and rules. The transfer order of the appellant was issued by the Competent Authority in light of the recommendation of the inquiry committee and the appellant has not been complied with the order of Competent Authority, so, the instant appeal is devoid of the merits and has no legal value, therefore, the same might be dismissed with cost.



6. Record reflects that the appellant was transferred on the basis of recommendation of fact finding inquiry report. It is well settled principle of law that civil servant could not be penalized on the basis of fact finding inquiry as rather a regular inquiry under the relevant rules was must for establishing any guilt/misconduct of the civil servant particularly when factual controversy is involved. The impugned transfer order is issued only in the wake of the fact finding inquiry initiated upon anonymous complaint filed to education minister appears to be politically motivated/influenced one, therefore it is not sustainable on this score alone. Besides no public interest was even shown by the Learned AAG supporting respondent during course of arguments otherwise too transfer had not been manifested as punishment in the penalty list in the rules and regulation regarding the conduct of civil servant.

7. It is also pertinent to mention here that as per notification bearing No. SO (SF) E&SE/4-17/Complaints, anonymous communications must invariably be filed on their receipt and if definite allegation are made then antecedents and credentials of a complaint ought to have been verified before an inquiry is initiated against the official concerned. That fact finding inquiry, initiated upon anonymous complaint, without verification of complete antecedents and credentials, is just nullity in the eyes of laws, therefore, cannot be relied upon for transfer of the official i.e the appellant. Transfer of the appellant is also premature because as in accordance with clause (iv) of the Posting Transfer/Policy of Provincial Government normal tenure of posting shall be two years subject to condition that for the



officer/official posted on unattractive areas the tenure shall be one and a half year and for hard areas tenure shall be one year.

8. Therefore, we allow this appeal, the impugned transfer order dated 31.03.2023 to the extent of appellant is set aside . The authority is, at liberty to transfer the appellant, however; such order shall be specifying the public interest or the exigency of service of the appellant. Costs shall follow the event. Consign.

9. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 6th day of July, 2023.*



(RASHIDA BANO)
Member (J)



(KALIM ARSHAD KHAN)
Chairman