

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

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

Service Appeal No. 1001/2023

Muhammad Alam Din (wrongly mentioned as "Ilam Din") S/O
Muhammad Iqbal Din, Sub Divisional Education Officer, P.O Azcem
Kala, Landi Jhalandar, Bannu.(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar.
3. Mr. Tahir Ibrar (Teaching Cadre) (BS-17), SDEO (Male) Sub-Division (Wazir) Bannu (erstwhile FR Bannu) Taziri Chowk, Township Bannu.
4. Section Officer (Management Cadre), Elementary & Secondary Education, Civil Secretariat, Peshawar. (Respondents)

Mr. Babar Hayat,
Advocate

... For appellant

Mr. Fazal Shah Mohmand,
Additional Advocate General.

... For official respondents

Date of Institution.....03.05.2023
Date of Hearing.....13.07.2023
Date of Decision..... 25.07.2023

Service Appeal No. 1002/2023

Muhammad Irshad S/O Niaz Khan, Sub Divisional Education Officer,
Resident of Aimal Kala, PO Azcem Kala Khandar Khankhel Tehsil
Domel, Bannu.(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar.



3. Mr. Riaz Khan (Management Cadre) (BS-17), SDEO (Male), Bannu District Education Office (Male) outside Miryan Gate, Bannu.
4. Section Officer (Management Cadre), Elementary & Secondary Education, Civil Secretariat, Peshawar. (Respondents)

Mr. Babar Hayat,
Advocate

... For appellant

Mr. Fazal Shah Mohmand,
Additional Advocate General.

... For official respondents

Date of Institution.....05.05.2023
Date of Hearing.....13.07.2023
Date of Decision..... 25.07.2023

CONSOLIDATED JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of the instant appeal as well as the connected Service Appeal No. 1002/2023, titled “Muhammad Irshad Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others”, as in both the appeals common questions of law and facts are involved.

02. The service appeal No. 1001/2023 has been instituted by Muhammad Alam Din under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned notification dated 14.03.2023 whereby he was transferred without observing the rules/regulations/policy. It has been prayed that on acceptance of the appeal, the impugned notification dated 14.03.2023 and any other notification on its basis might be declared as illegal, unlawful, void ab-initio, coram non-judice, ineffective upon the rights of the appellant and might be set aside and the respondents be directed to allow the appellant



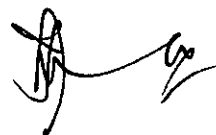
to serve on the present posting at Sub-Division Wazir till the completion of his normal tenure as per posting/transfer policy of Khyber Pakhtunkhwa alongwith any other remedy, which the Tribunal deemed fit and appropriate.

03. Brief facts, as given in the memorandum of appeal, are that the appellant was posted at District Hangu vide notification dated 12.03.2021 as Sub-Divisional Education Officer (Management Cadre) but without letting him complete the normal tenure under the policy/rules, he was transferred on 30.12.2021 to Sub-Division Wazir. The appellant was made a rolling stone in order to favour the blue eyed and again vide impugned notification dated 14.03.2023, after time span of 15 months approximately, he was transferred from SDEO (M) SD Wazir Bannu to SDEO (M) Razmak, despite the fact that there was a complete ban on posting/transfer in Khyber Pakhtunkhwa. Aggrieved from the impugned notification dated 14.03.2023, the appellant filed a departmental appeal to respondent No. 1 on 15.03.2023. Another transfer notification was issued on 27.03.2023, whereby the appellant was transferred to another district (Lachi) against which he submitted another departmental appeal on 31.03.2023. The appellant filed Writ Petition No. 1103-P/2023 against the impugned notification which was disposed of on 28.03.2023 with the direction to the respondent No.1 to decide the departmental representation/appeal of the petitioner within seven days positively after receipt of copy of that judgment. The departmental appeal was finally regretted vide order dated 17.04.2023 without any reason and providing any opportunity to the appellant to be heard in person; hence the present appeal on 03.05.2023.



04. The connected service appeal No. 1002/2023 has been instituted by Muhammad Irshad under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned notification dated 14.03.2023 whereby he was transferred without observing the rules/regulations/policy. It has been prayed that on acceptance of the appeal, the impugned notification dated 14.03.2023 and any other notification on its basis might be declared as illegal, unlawful, void ab-initio, coram non-judice, ineffective upon the rights of the appellant and might be set aside and the respondents be directed to allow the appellant to serve on the present posting at Sub-Division Bannu till the completion of his normal tenure as per posting/transfer policy of Khyber Pakhtunkhwa alongwith any other remedy, which the Tribunal deemed fit and appropriate.

05. Brief facts, as given in the memorandum of appeal, are that the appellant was posted at Serai Naurang, District Lakki Marwat vide notification dated 07.10.2021 as Sub-Divisional Education Officer (Management Cadre) but without letting him complete the normal tenure under the policy/rules, he was transferred on 02.11.2022 to Sub-Division Bannu. The appellant was made a rolling stone in order to favour the blue eyed and again vide impugned notification dated 14.03.2023, after time span of 04 months, approximately he was transferred from SDEO (M) Bannu to SDEO (Male) Bankad Lower Kohistan, despite the fact that there was a complete ban on posting/transfer in Khyber Pakhtunkhwa. Aggrieved from the impugned notification dated 14.03.2023, the appellant filed a departmental appeal to respondent No. 1 on 15.03.2023. The appellant filed Writ Petition No. 1102-P/2023 against the impugned notification, which was disposed of



on 28.03.2023 with the direction to respondent No.1 to decide the departmental representation/appeal of the petitioner within seven days positively after receipt of copy of that judgment. The departmental appeal was finally regretted vide order dated 17.04.2023 without any reason and providing any opportunity to the appellant to be heard in person; hence the present appeal on 03.05.2023.

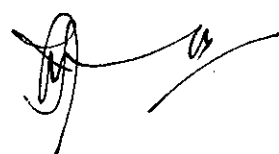
06. Respondents were put on notice who submitted written replies/comments on the appeals. We have heard the learned counsel for the appellant, the learned Additional Advocate General for the official respondents and perused the case file with connected documents in detail.

07. Learned counsel for the appellants after presenting the case in detail argued that the impugned transfer order was issued during the Care Taker government and as per Article 224(1A) of the Constitution of Islamic Republic of Pakistan 1973, the powers of Care Taker Government had been discussed that it could not take policy decisions and permanent measures including recruitment, making appointments, transfer and posting of government servants. He further argued that the impugned notification dated 14.03.2023 was issued by the respondents by completely disregarding the Constitution of Pakistan, orders of the Election Commission and established dictum of the Apex Court. He said that the impugned notification was against the Establishment Department notification dated 08.02.2019, wherein it was held that all those teachers belonging to the teaching cadre should be posted in the education institutions to teach the students according to their qualification while those belonging to administrative cadre should only hold the posts related to administration but in the cases under reference, in



violation of the judgment and said notification, the appellants belonging from Management Cadre were transferred and replaced by Teaching Cadre Officers. He further argued that the impugned notification was issued in blatant violation of the Posting/Transfer policy of the provincial government, wherein it had been clearly mentioned that normal tenure of posting should be three years but the appellants were transferred twice in the time span of 16 to 17 months, hence that ground alone was sufficient to set aside the impugned notification. According to him the impugned notification was withdrawn to the extent of serial No.3 and 14 vide notification dated 17.03.2023 in respect of Mst. Sonia Nawaz and Sobia Tabassum. He requested that the appeals might be accepted as prayed for.

08. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellants, argued that the transfer and posting orders of the appellants alongwith others had been made by the competent authority with the approval and getting proper NOC from the Election Commission of Pakistan in the best public interest. He further argued that the transfer order dated 14.03.2023 of the appellants was reviewed at the earliest possible by the competent authority and for the purpose of administration of justice and public interest, vide order dated 27.03.2023, the appellant Muhammad Alam Din was transferred to District Kohat (Lachi) against the vacant post while the appellant Muhammad Irshad was transferred to Thall, District Hangu vide order dated 07.04.2023. The adjustment and fair distribution of officers among the Province was the aim behind the transfer/posting order dated 27.03.2023 and 07.04.2023. He contended that respondents were empowered under Section 10 of the Civil Servants Act



1973, for placing the services of the appellants throughout the province in the best public interest. He requested that the appeals might be dismissed.

09. Arguments and record presented before us indicate that the appellant Muhammad Alam Din is Management Cadre employee in the respondent department. He has impugned the transfer order dated 14.03.2023 on the ground that he was not allowed to complete his normal tenure of posting under the Transfer/Posting policy of the provincial government. The appellant has raised an observation that there was a ban on posting/transfer imposed by the Election Commission of Pakistan on the care-taker government of Khyber Pakhtunkhwa but that point has been clarified by the respondents in their reply that NOC was obtained from the Election Commission of Pakistan by the provincial government before ordering the transfers in the department. Moreover, if any violation of the ban was done by the provincial government, the ECP could have raised its objection, which has not been done in this case which indicates that it was done after taking the necessary permission.

10. As regard the impugned notification dated 14.03.2023, the matter was clarified by the learned AAG by referring to para 7 of the reply. According to that the impugned order was reviewed by the competent authority at the earliest and for the purpose of administration of justice and in the best public interest vide order dated 27.03.2023 the appellant was, instead, transferred to Lachi District Kohat against a vacant post. According to him, the sole aim of the order of 27.03.2023 was adjustment and fair distribution of officers in the province and that too passed on acceptance of representations of the appellant of this appeal filed by him against the order dated 14.03.2023. These facts were not controverted by the appellant.



11. Arguments and record presented before us indicate that the appellant Muhammad Irshad, is Management Cadre employee in the respondent department. He has impugned the transfer order dated 14.03.2023 on the ground that he was not allowed to complete his normal tenure of posting under the Transfer/Posting policy of the provincial government. The appellant has raised an observation that there was a ban on posting/transfer imposed by the Election Commission of Pakistan on the care-taker government of Khyber Pakhtunkhwa but that point has been clarified by the respondents in their reply that NOC was obtained from the Election Commission of Pakistan by the provincial government before ordering the transfers in the department. Moreover, if any violation of the ban was done by the provincial government, the ECP could have raised its objection, which has not been done in this case which indicate that it was done after taking the necessary permission.

12. As regard the impugned notification dated 14.03.2023, the matter was clarified by the learned AAG that the impugned order was reviewed by the competent authority at the earliest and for the purpose of administration of justice and in the best public interest vide order dated 7.04.2023 the appellant was instead transferred to Thall District Hangu against a vacant post. According to him, the sole aim of the order of 7.04.2023 was adjustment and fair distribution of officers in the province and that too passed on acceptance of representation of the appellant of this appeal filed by him against the order dated 14.03.2023. These facts were not controverted by the appellant.

13. In view of the powers under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act 1973 for placing services of a civil servant anywhere in the

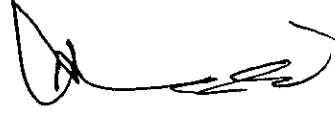


province by the competent authority and the above discussion, these appeals being devoid of merits, are dismissed with cost. Consign.

14. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 25th day of July, 2023.*



(FAREEHA PAUL)
Member(I)



(KALIM ARSHAD KHAN)
Chairman

Fazle Subhan, P.S