

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 726/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

Wakeel Khan S/O Saeed Ullah Khan R/O Village Kalpani Tehsil  
Gagra District Buner/PSHT GPS Rega District Buner.

.... (Appellant)

VERSUS

1. Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. District Education Officer, District Buner.
3. Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
4. Sardar Ahmad, PSHT, Gagra Buner.

.... (Respondents)

Mr. Rahim Khan  
Advocate

... For appellant

Mr. Muhammad Jan  
District Attorney

... For respondents

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Date of Institution.....31.03.2023  
Date of Hearing.....19.07.2023  
Date of Decision.....19.07.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

**“On acceptance of instant appeal the impugned order dated 22.11.2022 passed by the respondent No. 1**



**on malafide intention and ill will in utter disregard of the relevant Rules and law, being illegal and arbitrary nature may be set aside from the date of its issuance.”**

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Primary School Teacher in respondent Department District Buner in the year 1999 and then was promoted to the post of Primary School Head Teacher (BPS-15). During service District Education Officer Buner, respondent No. 1, wrongly, on personal grudge and under political influence, deducted salary of the appellant which was later on withdrawn vide order dated 08.12.2018. Respondent No. 1 on personal grudge transferred the appellant from U.C Rega to U.C Tora Patay vide order dated 22.11.2022. Feeling aggrieved, appellant filed departmental appeal on 20.12.2022 which was not responded, hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant submitted that the appellant has not been treated in accordance with law and rules. He contended that the impugned order has been issued in utter violation of Khyber Pakhtunkhwa (E&D) Rules, 2011, hence liable to be set aside. He further contended that no charge sheet, statement of allegation and show cause notice was issued to appellant nor opportunity of personal



hearing was afforded to him. He, therefore, requested for acceptance of instant service appeal.

5. Conversely, learned District Attorney contended that the appellant frequently remains either absent or arrives the school late for which he was preceded against on various occasions. Apart from absence and proxy he was on leave without any prior approval which is not only illegal but is akin with the inefficiency and misconduct on his part. He further contended that the post of PSHT (BPS-15) is district cadre post and under Khyber Pakhtunkhwa (Appointment, Deputation Posting and Transfer of Teachers, Lecturers, Instructors and Doctors) Regulatory Act, 2011 they can be posted anywhere in the district.

6. Perusal of record reveals that appellant challenged his transfer order dated 22.11.2022 on the basis of malafide and political interference and personal grudges of respondent No. 1 with the appellant. He was serving as PSHT in Buner when respondent No.1 issued impugned order dated 22.11.2022 wherein it is mentioned that "consequent upon surprise visit by the undersigned on various dates to GPS Rega, the Competent Authority has been pleased to transfer Mr. Wakeel Khan PSHT, GPS Rega to GPS Tora Patay Tehsil Chaghazi on disciplinary grounds due to his absence, inefficiency, slackness, shirkness and day to day aggravating situation of school, in the best interest of public service with immediate effect." From this order three things are clear; one, no mention of day and dates of various visits by the DEO Buner; Secondly, this order was issued on the basis of disciplinary grounds by mentioning factum of offering slackness and



shirkness; thirdly direction was issued to make necessary entries in the service book of the appellant. This is first of its kind transfer order in which direction was given to the concerned to make necessary entries in the service book of appellant which is unusual and also injustice with the appellant. First, proper/regular inquiry will have to be conducted, by properly appointed inquiry officer, by providing opportunity of self defence and then if anything adverse came on the record then such like remark/direction would have been given to the concerned for its entries in service book of the appellant. Appellant alleged personal grudges on the part of respondent No. 1 and also annexed earlier order dated 08.12.2018 vide which inquiry initiated against him was ordered to be ceased by Bakhtzada Khan, DEO, Buner which was initiated upon the report of the respondent No. 5 as DDEO. Perusal of impugned transfer order gives an indication of personal grudge on the part of the respondent No. 1 otherwise it would have been a simply routine transfer. Moreover, under law and rules transfer is not mentioned as punishment and a civil servant cannot be transferred as punishment.


7. Furthermore, parawise comments submitted also speak a volume about the personal interest of the respondent No. 1 and obtaining of certificate from his subordinates about the conduct of the appellant. It is also important to note that in the impugned order no counter part of the appellant was transferred, which also gives smell of personal interest, hurriness and impatience of respondent No. 1. If appellant in fact is in the habit of getting himself absent from performance of duties, then before transfer, competent authority is duty bound to conduct proper



inquiry through independent and honest inquiry officer about the facts of his absence from duty.

8. For what has been discussed above, appeal of the appellant is accepted and impugned transfer order is declared as null being influenced by personal grudge and not based upon public interest rather is the result of interest of respondent No. 1. However, competent authority is at liberty to initiate proper independent inquiry and then proceed in accordance with law and issue order purely in public interest. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19<sup>th</sup> day of July, 2023.*

  
(FAREEHA PAUL)  
Member (E)

\*Kaleemullah

  
(RASHIDA BANO)  
Member (J)