

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 186/2017

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

Wasima Jamil, Senior Government Pleader District Peshawar (BPS-19). (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Principal Secretary to Chief Minister of Khyber Pakhtunkhwa .
2. Government of Khyber Pakhtunkhwa through Secretary Law, Parliamentary Affairs & Human Rights Department.
3. Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Department.
4. Section Officer (General), Government of Khyber Pakhtunkhwa Law, Parliamentary Affairs & Human Rights Department.
.... (Respondents)

Ms. Sophia Noreen
Advocate ... For appellant

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

Date of Institution.....13.02.2017
Date of Hearing.....08.08.2023
Date of Decision.....08.08.2023

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 the instant service appeal the
impugned order dated 29.09.2016 passed by




respondent No.1 may kindly be set aside in favour of the appellant.”

2. Brief facts of the case, as given in the memorandum of appeal are, that appellant is working as Senior Government Pleader (BPS-19) at District Peshawar since 09.11.2016. The appellant, previously, was transferred to District Karak in November 2013 and since then she was working as Senior Government Pleader at District Karak till 09.11.2016. The appellant was served with explanation by respondent No. 2 which was replied by the appellant. Thereafter she was issued charge sheet alongwith statement of allegation which was also replied. Respondents initiated inquiry against the appellant but no opportunity of cross examination was afforded and final show cause notice was issued against which she submitted reply. The respondents without considering the replies submitted by her, passed impugned notification dated 29.06.2016 vide which minor punishment of censure was imposed upon her. Feeling aggrieved she filed review petition before the respondent No. 1 which was not decided within statutory period of 90 days, 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 Additional Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that impugned order passed by the respondent is against the law, facts and norms of natural justice hence liable to be set aside. She submitted that appellant had completed her



two years tenure at District Karak and was eligible under posting/transfer policy to be transferred but respondent did not bother to consider her request, which was against law/rules. She contended that the appellant made several requests to the competent authority for her transfer, which were ignored, and therefore, being disappointed, she moved her request before Hon'able Chief Minister Khyber Pakhtunkhwa under Section 22(2) of the Khyber Pakhtunkhwa Civil Servants Act, 1973, which was accepted. She further contended that member of inquiry committee was lower in scale from appellant which shows the deliberate malafide and preplanned intention of respondent No.2 to defame the official career of the appellant. She submitted that enquiry committee did not allow the appellant to cross examine the witness, which is violation of E&D Rules, 2011.

5. Conversely, learned Assistant Advocate General contended that the appellant has been treated in accordance with law and rules. He further contended that she made direct correspondence with the Chief Minister Khyber Pakhtunkhwa by violating rules and committed misconduct under E&D Rules, 2011 and she also denied to contribute to the translation of Laws as compared to her other counterparts. After fulfilling all the codal formalities the competent authority imposed minor penalty of censure.

6. Perusal of record reveals that appellant was posted as Senior Government Pleader Karak from November 2013 till 09.11.2016. She received explanation issued by the respondent No.2 which was replied by her. Appellant was served with charge sheet alongwith statement of allegations on 11.04.2016 which too was properly replied by her. The



Competent Authority constituted an inquiry committee comprising of Masood Ahmad (PCS SG BS-20) and Akbar Khan SO (G) Law Department. Inquiry committee submitted its report and the appellant was issued a final show cause notice. Competent authority imposed minor penalty of censure upon her vide impugned order dated 29.09.2016. Record transpired that two charges were levelled against appellant on the basis of statement of allegations. One was in respect of direct approach to the Chief Minister Khyber Pakhtunkhwa regarding her transfer to District Peshawar and other was her denial from contribution in translation of laws.

7. Record reveals that appellant was transferred/posted to District Karak in November 2013. She performed her duties there till issuance of charge sheet dated 14.04.2016. Appellant in her reply to charge sheet categorically mentioned that she commuted, daily, from Peshawar to Karak in connection with performance of her duties because her children were with her husband who is a practicing lawyer at Peshawar and resultantly she faced hardship. She had mentioned that despite so many requests and completion of about more than two years period at District Karak, authority had not accepted her request for transfer to Peshawar and that is why, as a last resort, she requested the Chief Minister Khyber Pakhtunkhwa for transfer to Peshawar on humanitarian grounds due to the hardship faced by her. She categorically denied from factum of approach to Chief Minister Khyber Pakhtunkhwa, who is the ultimate and appellate authority of the appellant, therefore, she placed her request to Chief Minister of the Khyber Pakhtunkhwa for transfer to Peshawar.



8. Misconduct is defined in Rule 2(1) of Khyber Pakhtunkhwa Civil Servants (E&D) Rules, 2011. The relevant rule 2 (1)(V) states, "any act to bring or attempt to bring outside influence directly or indirectly, to bear on the Governor, the Chief Minister, a Minister or any other Government officer in respect of any matter relating to the appointment, promotion, transfer or other conditions of service". Misconduct is an approach to bring outside influence but in the instant case Chief Minister is the ultimate/appellate authority of the appellant and is not an outsider and outside influence. So placing a request on humanitarian ground by mentioning one's hardship does not fall within the definition of misconduct. Second allegation is about denial towards contribution in translation of laws into urdu. It is mentioned that appellant contributed in translating two acts and showed her inability to translate the third one due to rush of work and being a pashto speaking person. It means that appellant had not denied, rather due to paucity of time and having no command on urdu language, she showed her inability to translate the laws. It cannot be termed as denial because if she had denied then she could not have translated the other two acts out of the total three assigned to her. Moreover, when a proper translator is already there in the law department, then it is his job to translate the acts and not that of the appellant. Record is silent about the fact that whether any other senior government pleader was assigned the duties/task of translating the acts into urdu or not. When nothing was produced, then it is presumed that appellant was burdened with extra duties just to tease her because she was requesting for her posting/transfer from Karak to Peshawar which was not honored/accepted

by the respondent due to which appellant put her request before the Chief Minister Khyber Pakhtunkhwa .

9. For what has been discussed above, we allow the appeal as prayed for. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 8th day of August, 2023.*


(FAREEHA PAUL)
Member (E)

*Kaleemullah


(RASHIDA BANO)
Member (J)