

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 517/2023

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

**Mr. Sheraz Ahmad, District Education Officer (Male) Mohmand (BS-19) Management Cadre, under transfer to Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar..... (Appellant)**

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar.
2. The Secretary (E&SE), Khyber Pakhtunkhwa, Peshawar.
3. The Director (E&SE), Khyber Pakhtunkhwa, Peshawar.
4. Mr. Liaqat Ali, Deputy DEO, Dir Lower (BPS-18) under transfer to District Education Officer (Male) Mohmand..... (Respondents)

Mr. Umar Farooq Mohmand,  
Advocate ... For appellant

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

Date of Institution..... 08.03.2023  
Date of Hearing..... 05.09.2023  
Date of Decision..... 05.09.2023

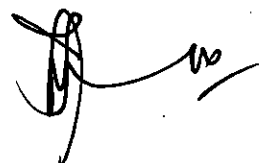
**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order dated 04.11.2022 whereby the appellant was transferred from District Education Officer (Male) District Mohmand and directed to report to Directorate of Elementary and Secondary Education Peshawar and against the order dated 10.02.2023 to the extent of Serial No. 06 whereby private respondent No. 4 was posted against the appellant's post of DEO (Male) Mohmand. It has been prayed that on acceptance of the appeal,



the impugned orders dated 04.11.2022 and dated 10.02.2023 to the extent of private respondent might be set aside and the respondents might be directed not to transfer the appellant from District Education Officer Male (BS-19) District Mohmand, alongwith any other remedy, which the Tribunal deemed fit and appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant belonged to Management Cadre and as a BS- 19 officer, he was serving in the respondent department as District Education Officer. Through notification dated 17.06.2022 he was transferred from DEO (Male) Karak and his services were placed at the disposal of Directorate of Elementary and Secondary Education Khyber Pakhtunkhwa. The respondent department, through notification dated 29.08.2022, posted him as DEO (Male) Mohmand. In response to the said transfer notification, he took over the charge of the said post on 01.09.2022 and started performing his duty. The respondent department issued the impugned order dated 04.11.2022, whereby he was transferred from the post of DEO (Male) District Mohmand and directed to report to the Directorate of E&SE. Feeling aggrieved from the order, the appellant preferred departmental appeal before the appellate authority. Through notification dated 18.11.2022, Mr. Abdul Manan Khan, Deputy Director (F&A), Directorate of E&SE was authorized to hold additional charge of the post of DEO (Male) Mohmand. Through subsequent impugned notification dated 10.02.2023, at serial No. 6, private respondent No. 4 was posted against the post of DEO (Male) Mohmand, despite the fact that the appellant had already preferred a departmental appeal before the appellate



authority. The departmental appeal was not responded till the expiry of statutory period; hence the instant service appeal.

3. Respondents were put on notice. Official respondents No. 1 to 3 submitted their joint written reply/comments on the appeal. Vide order dated 14.06.2023, private respondent No. 4 was proceeded against ex-parte. We heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the official respondents and perused the case file with connected documents in detail.

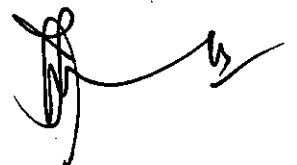
4. Learned counsel for the appellant, after presenting the case in detail, contended that the appellant was not treated in accordance with law and rules and the respondents violated Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan 1973. He further argued that the impugned transfer orders dated 04.11.2022 and 10.02.2023 were issued by the respondents in arbitrary and malafide manner, hence not tenable in the eyes of law and liable to be set aside. He further argued that the impugned transfer orders were neither in the best public interest nor exigencies of service. According to him the impugned orders were violative of clauses i, iv and xiii of the Posting and Transfer Policy of the Provincial Government as the appellant was transferred prematurely from his current post. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was transferred in the best public interest and he was bound to serve anywhere throughout the province. He further argued that under Section 10 of the Khyber Pakhtunkhwa



Civil Servant<sup>s</sup> Act, 1973; the respondents were empowered to place the services of the appellant anywhere throughout the province. He requested that the appeal might be dismissed.

6. Arguments and record presented before us transpire that the appellant, while serving in the respondent department i.e Elementary and Secondary Education Department, as District Education Officer, was transferred from District Mohmand, without completing his normal tenure of posting, and was directed to report to the Directorate of E&SE. Record further shows that prior to that posting, while serving as DEO (M) Karak, services of the appellant were placed at the disposal of Directorate of E&SE on 17.06.2022. Later on, vide order dated 29.08.2022, he was transferred as DEO (M) Mohmand and just after two months, he was directed to report to the Directorate vide the order dated 04.11.2022, impugned before us. When confronted, the learned Deputy District Attorney could not provide any cogent reason of the frequent transfers and then placing the services of the appellant at the disposal of the Directorate. The learned Deputy District Attorney was further asked to elaborate posting of an officer in BS-18 as DEO (M) Mohmand in own pay scale vide order dated 10.02.2023, impugned by the appellant before this Tribunal, despite clear directions of the August Supreme Court of Pakistan not to post any junior officer in own pay scale on a higher position. The learned DDA simply responded that it was done in the best public interest by the competent authority. Except for referring to Section 10 of the Khyber Pakhtunkhwa Civil Servants Act 1973, the learned DDA had no other point to put forth in his defence.




7. After going through the details of the case and keeping in view judgments as reported in 2018 SCMR 1411 and PLD 2013 SC 195, we arrive at a conclusion that the matter of posting/transfer and tenure of posting of a civil servant cannot be dealt in an arbitrary manner. The Khyber Pakhtunkhwa Civil Servants Act 1973 read with the Transfer/Posting Policy of the Provincial Government requires that the normal tenure of two years should have been adhered to by the respondent department while dealing with the posting of the appellant. Respondents failed to provide any reason to substantiate their action of placing the services of the appellant at the disposal of Directorate and posting a junior officer in his place.

8. In view of the above discussion, the appeal in hand is allowed as prayed for and the orders dated 04.11.2022 and 10.02.2023, to the extent of private respondent No. 4, are set aside with the directions to the respondents to restore the posting of the appellant as DEO (M) Mohmand and allow him to complete his normal tenure of posting. However in case of any exigencies of service, the respondents would be at liberty to transfer him from that position in the best 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 this 05<sup>th</sup> of September, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(SALAH-UD-DIN)  
Member (J)

*\*Fazle Subhan, P.S\**


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05<sup>th</sup> Sept. 2023 01. Mr. Umar Farooq Mohmand, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the official respondents present Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the appeal in hand is allowed as prayed for and the orders dated 04.11.2022 and 10.02.2023, to the extent of private respondent No. 4, are set aside with the directions to the respondents to restore the posting of the appellant as DEO (M) Mohmand and allow him to complete his normal tenure of posting. However in case of any exigencies of service, the respondents would be at liberty to transfer him from that position in the best public interest. Costs shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 05<sup>th</sup> of September, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(SALAH-UD-DIN)  
Member (J)

\*Fazle Subhan, P.S\*