

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT ABBOTTABAD.

Service Appeal No. 1470/2023

Date of Institution ... 14.07.2023

Date of Decision... 25.09.2023

Arshad Masood SST (General), ASDEO (Male), Circle Boi, District
Abbottabad. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Elementary &
Secondary Education, Peshawar. ... (Respondents)

MR. MUHAMMAD ARSHAD KHAN TANOLI,
Advocate

For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

For official respondents.

MR. NOOR MUHAMMAD KHATTAK,
Deputy District Attorney

For private respondent
(through video link).

MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

CHAIRMAN
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts giving rise to filing of the instant appeal are that vide order dated 16.11.2022, the appellant was posted as ASDEO (Male) Circle Boi, Abbottabad, however vide the impugned order dated 22.06.2023, his services were placed at the disposal of District Education Officer (Male) Abbottabad, while private respondent No. 4 namely Asad Ali SST (Science) was posted at the place of the appellant. The appellant challenged the order dated 22.06.2023 through filing of departmental appeal, however the same was filed on 03.07.2023, hence the instant service appeal.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned. Official respondents put

appearance through their representative, while private respondent No. 4 also appeared and contested the appeal by way of filing their respective written replies, raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant contended that vide order dated 16.11.2022, the appellant was posted as ASDEO (Male) Circle Boi, Abbottabad, however just after 08 months, his services were placed at the disposal of District Education Officer (Male) Abbottabad vide order dated 22.06.2023 without completion of normal tenure of posting; that pre-mature transfer of the appellant was made on account of political pressure being exerted by private respondent No. 4 to procure desired posting; that the impugned orders are result of nepotism and the same have violated the rights of the appellant guaranteed under Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973; that the impugned order has been passed in violation of Transfer/Posting Policy of the provincial government, therefore, the impugned orders are liable to be set-aside.

4. On the other hand, learned Deputy District Attorney for official respondents assisted by learned counsel for private respondent No.4 through video link, argued that the appellant had previously remained posted as ASDEO (Male) Circle Boi Abbottabad with effect from 05.11.2018 till 22.06.2023, therefore, in light of clause-IV of Transfer/Posting Policy, the appellant has already completed his normal tenure. He further argued that in view of Section-10 of Khyber Pakhtunkhwa Civil Servants Act, 1973, the appellant is bound to serve

anywhere in the province, therefore, his appeal being devoid of any merit may be dismissed with cost.

5. We have heard the arguments of learned counsel for the parties and have perused the record with their valuable assistance.

6. It is an admitted fact that the appellant as well as private respondent No. 4 are serving in BPS-16 and belong to Teaching Cadre, while the post of ASDEO (Male) Circle Boi, Abbottabad is that of Management Cadre. In such a situation, none of them is having any vested right to be posted on the post of ASDEO (Male) Circle Boi, Abbottabad, which is a post of higher grade i.e BPS-17. Moreover, filling up of a post of higher scale through posting of an employee of lower scale in his own pay and scale (OPS) has also been deprecated by August Supreme Court of Pakistan in numerous judgments. On our query, learned Deputy District Attorney stated that as there is shortage of officers of Management Cadre and in compelling circumstances, Government has to post officers from the Teaching Cadre on the of Management Cadre as a stop-gap arrangement.

7. The issue in question arose when the appellant was transferred from the post of ASDEO (Male) Circle Boi, Abbottabad by placing his service at the disposal of DEO (Male) Abbottabad for further adjustment vide order dated 22.06.2023 and private respondent No. 4 was posted as ASDEO (Male) Circle Boi, Abbottabad in his own pay and scale (OPS). Private respondent No. 4 has specifically alleged in his reply that previously too, the appellant had remained posted as ASDEO (Male) Circle Boi with effect from 05.11.2018 till

22.06.2023, which assertion of private respondent No. 4 has gone un-rebutted. In such a situation, when the appellant had previously remained posted on the post of ASDEO (Male) Circle Boi, Abbottabad for considerable long period, his plea of pre-mature transfer holds no force. Even otherwise too, in view of Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, the appellant could not claim any right of posting on a particular post.

8. Consequently, the appeal in hand stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
25.09.2023



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD



(KALIM ARSHAD KHAN)
CHAIRMAN
CAMP COURT ABBOTTABAD

ORDER
25.09.2023

Appellant alongwith his counsel present. Mr. Sohail Ahmed Zeb, Assistant alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for official respondents No. 1 to 3 present. Mr. Noor Muhammad Khattak, Advocate on behalf of private respondent No. 4 appeared through video link. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
25.09.2023



(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad



(Salah-Ud-Din)
Member (Judicial)
Camp Court Abbottabad