

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1444/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Suleman Khan Assistant Programmer (BPS-16) S/O Ajmal Nawaz R/O
Yarak Khel P.O Khawaja Mad Mandan, Tehsil & District Bannu.
..... (Appellant)

VERSUS

1. Chief Secretary to Government of Khyber Pakhtunkhwa Civil Secretariat,
Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa Elementary & Secondary
Education Department Peshawar.
3. Kiramat Ullah Saeed, Assistant Programmer BPS-17 presently working in
the office of DEO (Female) Bannu.

..... (Respondents)

Mr. Babar Hayat Khan
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....07.07.2023
Date of Hearing.....26.09.2023
Date of Decision.....26.09.2023

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 this service appeal the impugned
notification dated 14.03.2023 to the extent of appellant may
very kindly be declared as illegal, unlawful, void ab initio,
corum non iudice, ineffective upon the rights of the**

appellant and may very kindly be set aside to the extent of the appellant .”

2. Brief facts of the case, as given in the memorandum of appeal are, that appellant was appointed as Assistant Programmer (BPS-16) upon the recommendation of Khyber Pakhtunkhwa Public Service Commission vide order dated 30.05.2014. The appellant was transferred from the office of DEO (F) Bannu to the office of DEO (M) Lakki Marwat vide notification dated 24.09.2021. The appellant was transferred to DEO (F) Bannu vide order dated 24.02.2022 after lapse of five months. The appellant was again transferred to DEO (M) Karak vide impugned notification dated 14.03.2023. Feeling aggrieved, appellant filed departmental appeal 27.03.2023 which was not responded within statutory period of ninety days, hence, 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 argued that appellant has not been treated in accordance with law and rules. He further argued that impugned transfer notification is illegal, without lawful authority and void abinitio, hence liable to be set aside. He submitted that act of the respondents is against the constitution, orders of the Election Commission of Pakistan, established dictum of the apex court and blatant violation of the posting/transfer policy of the provincial government. He contended that impugned notification is also against wedlock policy as wife of the appellant is a Primary School Teacher in District Bannu. He therefore, requested for acceptance of instant service appeal.

5. Learned District Attorney contended that the appellant was transferred vide notification dated 14.03.2023 in accordance with law and in the best public interest and there is no violation of A-224 of Constitution of Islamic Republic of Pakistan. He further contended that respondents are empowered under Section 10 of Civil Servants Act, 1973 to place the services of appellant like all Civil Servants anywhere throughout the province in public interest.

6. Perusal of record reveals that appellant was appointed as Assistant Programmer BPS-16 in respondent department vide notification bearing No. EMIS/E&SE/1-15/IT Staff dated 30.05.2014 upon recommendation of Khyber Pakhtunkhwa Public Service Commission. It was on 14.03.2023 when vide impugned order appellant was transferred to DEO (M) Karak. Appellant filed departmental appeal on 27.03.2023 challenging said transfer/posting order which is not decided, hence instant service appeal. Appellant challenged impugned transfer/posting order on three grounds. Firstly, premature transfer, secondly in violation of spouse/wedlock policy and thirdly as a result of political/outside pressure interference. The Government of Khyber Pakhtunkhwa Posting Transfer Policy states that:

i. All the posting/transfer shall be made in the public interest and shall not be abuse/misuse to victimize the government servants.

iv. The normal tenure of posting shall be two years subject to condition that for the officers/officials posted in unattractive areas, the tenure shall be two year and for hard areas will be notify by the government.

xiii. While considering posting/transfer proposals all the concerned shall keep in mind the following.



a. To ensure the posting of proper person on proper posts. the performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity the concerned officers/officials be considered.

ix. Regarding the posting of husband/wife, both in provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.

7. Record transpires that appellant was earlier transferred to DEO (Female) Lakki Marwat vide order bearing NO. 4939-45/F-60/A-25/MS/Transfer/Bannu dated 24.02.2022 and appellant was again transferred vide impugned order dated 14.03.2023 just after one year while as per above mentioned transfer posting policy clause-vi normal tenure is two year. So appellant was transferred vide impugned order by the respondent without allowing him to complete his normal tenure at Bannu which is violation of clause vi of transfer/posting policy. It is also important to note here that wife of appellant Mst. Sadia Bibi is a Primary School Teacher (BPS-12) at Khwajamad Mandan District Bannu. Pay slip of his wife is attached with the appeal. Respondent did not denied from this fact and as per clause ix of mentioned above mentioned policy "Regarding the posting of husband/wife both in provincial service, efforts were possible would be made to post such persons at one station subject to the public interest" which is not taken into consideration by the respondents.


8. Furthermore, appellant annexed medical documents of his wife in accordance with which she has undergone brain surgery and she need intensive care. So, appellant being husband will look after her. Therefore, on


humanitarian ground too appellant will have to be posted at the station where her ailing wife is posted.

9. The nutshell of the above discussion is that impugned order dated 14.03.2023 was not issued in public interest or exigencies of the service and as such is not sustainable in the eyes of law. This premature transfer is in violation of clause i, iv, xiii (a) and ix of posting/transfer policy.

10. As a sequel to above discussion, we allow the appeal as prayed for. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 26th day of September, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)


ORDER


26th September, 2023 1. Learned counsel for the appellant present. Mr.

Muhammad Jan, District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, we dismiss the appeal being devoid of merits. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 26th day of September, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)