

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1732/2023

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

Muhib-ur-Rehman, Management Cadre (BPS-18) District Education Officer
(M), North Waziristan.

.... (Appellant)

VERSUS

1. The Chief Secretary to Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department Peshawar.
3. The Director Elementary & Secondary Education Department Peshawar.
4. Mr. Dilawar Khan, MC (BPS-18), Deputy DEO (M), North Waziristan under transfer to the post of DEO (M), North Waziristan.

.... (Respondents)

Mr. Noor Muhammad Khattak
Advocate

...

For appellant

Mr. Muhammad Jan
District Attorney

...

For respondents

Date of Institution.....28.08.2023
Date of Hearing.....27.09.2023
Date of Decision.....27.09.2023

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:

“That on acceptance of this service appeal the impugned notification dated 17.08.2023 and impugned appellant order dated 25.08.2023 may kindly be set aside and the appellant may not be transferred from the post of DEO (M), North Waziristan till completion of his normal tenure.”



2. Brief facts of the case, as given in the memorandum of appeal are; that appellant is serving the respondent department quite efficiently and up to the entire satisfaction of his superior. Vide notification dated 15.06.2022 the appellant was transferred to the post of District Education Office District North Waziristan and assumed the charge of the post. That on 17.08.2023 appellant was again transferred to the post of Deputy DEO (M) Kohistan Upper. Feeling aggrieved appellant preferred departmental appeal, which was regretted by the appellate authority vide order dated 25.08.2023, 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 argued that appellant has not been treated in accordance with law and rules and respondents violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan 1973. He further argued that impugned notification and appellate order are contrary to law and rules and in utter violation of transfer/posting policy of the government, hence not tenable in the eyes of law. He submitted that act of the respondents is discriminatory and in utter violation of the order of Election Commission of Pakistan. He contended that impugned notification has neither been issued in the public interest nor exigencies of public service rather issued on the basis of political interference, therefore, not tenable and liable to be set aside.

5. Learned District Attorney contended that the appellant was treated in accordance with law and rules. He further contended that respondents were empowered under Section 10 of the Civil Servants Act 1973, for placing the

services of the appellant throughout the province in the best public interest and the appellant is duty bound to serve anywhere throughout the province wherever they posted in public interest. He argued that competent authority always acted with the intention of best administration and in best public interest and that there is no ill-will on the part of the respondents.

6. Perusal of record reveals that appellant is serving in the respondent department management cadre BPS-18 vide order dated 15.06.2023 was posted as DEO (Male) North Waziristan. It was on 17.08.2023. When appellant vide impugned notification bearing No. SO(MC)/E&SED/4-16/2023/posting /transfer /DEO (M) NW was transferred to Kohistan Upper . Appellant feeling aggrieved from it filed departmental appeal on 21.08.2023 which was not entertained by the authority vide order dated 25.08.2023. The Government of Khyber Pakhtunkhwa Posting Transfer Policy states that;

i. All the posting/transfer shall be strictly in public interest and shall not be abused/misused to victimize the Government Servants.

ii. All government servants are prohibited to exert political , Administrative or any other pressure upon the posting/transfer authorities for seeking posting/transfer of their choice and against the public interest.

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

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



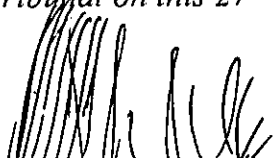
a. To ensure the posting of proper person on proper posts, the performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity the concerned officers/officials be considered.

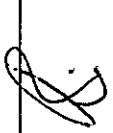
7. Record transpires that appellant was transferred to the post of DEO (Male) North Waziristan vide order 15.06.2022 and was again transferred vide impugned order dated 17.08.2023 just after thirteen months while as per above mentioned transfer/posting policy i.e clause-iv normal tenure is two year. So appellant was transferred vide impugned order by the respondent without allowing him to complete his normal tenure at North Waziristan which is violation of clause-iv of transfer/posting policy. Appellant was transferred, as result of political pressure which is evident from letter dated 05.07.2023 annexed with the appeal vide which political party leader directed the Education Minister to transfer out the appellant from North Waziristan which is violation of clause ii of transfer/posting policy.

8. The nutshell of the above discussion is that, the above mentioned impugned order dated 27.03.2023 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, ii, iv and xiii (a) of posting/transfer policy.

9. As a sequel to above discussion, 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 27th day of September, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)


ORDER


27th Sep, 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 allow the appeal as prayed for. 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 27th day of September, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)