

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1761/2023

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

Raham Jan, SST (BPS-16) ADEO (Estab), O/O the DEO (F) District
Hangu. (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Civil Secretariat, Peshawar.
2. Director Elementary & Secondary Education Department Peshawar.
3. District Education Officer (F), Hangu.
4. District Education Officer (M), Hangu.
5. Mr. Sami Ullah Khan, SST (M/P) BPS-16, GCMHS No. 1 Hangu under transfer to the post of ADEO (Estab) DEO (F), Hangu.

.... (Respondents)

Mr. Noor Muhammad Khattak
Advocate ...

For appellant

Mr. Muhammad Jan
District Attorney ...

For respondents

Date of Institution.....29.08.2023

Date of Hearing.....13.10.2023

Date of Decision.....13.10.2023

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 appeal, the impugned notification dated 09.08.2023 and impugned appellant order dated 28.08.2023 may kindly be set aside and the appellant may not be transferred from the post of DEO (Estab) at O/O DEO (F) Hangu till completion of his normal tenure.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was serving in the respondent efficiently and upto the entire satisfaction of his superior. Appellant was transferred against the post of ADEO (Estab) at the office of DEO (F) Hangu vide notification dated 12.08.2022. Vide impugned notification dated 09.08.2023 appellant was prematurely transferred on the basis of political interference from the post of ADEO (Estab) and his service were placed at the disposal of DEO (M) Hangu. Feeling aggrieved appellant filed departmental appeal which was rejected, 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 SST BPS-16 who was performing his duties as ADEO in the management cadre in BPS-16 in his own pay scale. Vide notification bearing No. 5568-71/F.No. ADEOS/(M)Transfers-Hangu dated 12.08.2022 was posted as ADEO (Estab-Primary) at DEO (F) Hangu. Service of the appellant was placed at the disposal DEO (M) Hangu vide impugned notification bearing No.100-4/H-1/ADEOs (M)/Transfer Hangu dated 09.08.2023. Appellant feeling aggrieved from it, filed departmental appeal on 28.08.2023 which was not responded. 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.

7. Record transpires that appellant was transferred to the post of ADEO Estab (Male) Hangu vide order 12.08.2022 and was again transferred vide impugned order dated 09.08.2023 just after one year 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 as ADEO at Hangu which is violation of clause-iv of transfer/posting policy. Appellant was transferred, as result of political pressure which is evident from letter/recommendation proposal dated 11.08.2023 annexed with the appeal vide which advisor to Chief Minister/political party leader directed the Director Elementary and Secondary Education to transfer one Sami Ullah Khan by replacing appellant which is violation of clause ii of transfer/posting policy.

8. The nutshell of the above discussion is that, the above mentioned impugned order was not issued in public interest or exigencies of the service and as such order is not sustainable in the eyes of law. This premature transfer is in violation of clause i, ii, and iv of posting/transfer policy.

9. As a sequel to above discussion, the appeal in hand is allowed 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 13th day of October, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)


ORDER


13th Oct. 2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Behramand Khan, Assistant Director for the respondents present.

2. Vide our detailed judgement of today placed on file, the appeal in hand is allowed 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 13th day of October, 2023.*


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)

Kaleemillah