

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1712/2023

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Mr. Ihtisham Ullah, Senior Clerk (BPS-14), O/O the DEO (F) Dir
Upper under Transfer to GHSS Saddo Dir
Upper.....(*Appellant*)

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Secretary (E&SE) Education Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director (E&SE) Education Khyber Pakhtunkhwa, Peshawar.
3. The DEO (F), District Dir Upper.
4. Mr. Zahid Hussain, Senior Clerk (BPS-14) GCMHSS Dir Upper under transfer to the O/O DEO (F) Dir Upper.....(*Respondents*)

Present:-

NOOR MUHAMMAD KHATTAK,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For official respondents No. 1 to 3

SAJEED KHAN AFRIDI,
Advocate --- For private respondent No. 4

Date of Institution.....21.08.2023
Date of Hearing.....03.11.2023
Date of Decision..... 03.11.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

“That on acceptance of this appeal the impugned transfer order dated 10.04.2023 and 19.04.2023 may very kindly be set aside

and the appellant be retained at the office of DEO (F) Dir Upper. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.”

02. Brief facts of the case are that the appellant was performing his duty as Senior Clerk in the office of District Education Officer (F) Dir Upper; that vide office order dated 10.04.2023, the services of the appellant were placed at the disposal of Directorate of Elementary & Secondary Education and vide office order dated 19.04.2023, the appellant was transferred to GHSS Saddo, Dir Lower. Feeling aggrieved from the impugned orders dated 10.04.2023 & 19.04.2023 the appellant filed departmental appeal before respondent No. 1 which was not responded. He approached the Hon'ble Peshawar High Court, Peshawar in Writ Petition No. 425-M/2023 which was disposed off on 06.07.2023. The appellant preferred the instant service appeal on 21.08.2023.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned District Attorney for official respondents and learned counsel for private respondent No. 4 and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned orders dated 10.04.2023 & 19.04.2023 are against the law, facts, norms of natural justice and material on record, hence liable to be set aside; that the impugned office orders dated 10.04.2023 & 19.04.2023 were passed in violation of Notification dated 22.01.2023 issued by Election Commission of Pakistan

wherein ban was imposed on transfer/posting in the province of Khyber Pakhtunkhwa and Punjab; that the impugned office orders dated 10.04.2023 & 19.04.2023 are in contravention of Clause I & IV of the posting/transfer policy of the provincial government as well as Article 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973, therefore, the same are liable to be set aside; that the posting/transfer orders are required to be issued in exigency of service or in the interest of public but the impugned posting/transfer orders of the appellant were passed in clear violation of judgments passed by this Honourable Tribunal as well as Peshawar High Court, Peshawar.

05. Learned District Attorney on the other hand contended that the plea of the appellant regarding his transfer during ban period in the province of Khyber Pakhtunkhwa & Punjab is not tenable as formal approval in the matter has already been obtained from the Election Commission; that the services of the appellant were placed at the disposal of the respondent No. 2 on administrative grounds and later on he was adjusted at GHSS Saddo Dir Lower vide order dated 19.04.2023; that the stance of the appellant his transfer is against the law & rules is also baseless as the impugned orders dated 10.04.2023 & 19.04.2023 are in accordance with the provision of Clause-I, IV & VII of the posting/transfer policy of the provincial government, hence liable to be rejected.

06. Learned counsel for private respondent No. 4 relied on the arguments advanced by learned District Attorney for official respondents No. 1 to 3.

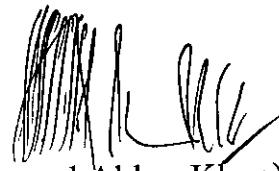
07. Scrutiny of record reveals that the appellant was working in the same office/station for years. After his promotion from the post of Junior Clerk to

the post of Senior Clerk he remained in the same office until his transfer ordered on 10.04.2023. His transfer order was issued after getting approval for ban relaxation from the Election Commission of Pakistan. He has been posted in lower Dir which is adjacent to his home district of Dir Upper. It is also not disputed that the post held by the appellant is non-executive, therefore, the premature posting of the appellant could not be interfered with normally because of clerical nature of job of the appellant which does not affect any affairs of the department causing prejudice to the public interest as well as to the appellant. The impugned orders are in consonance with the provisions of posting/transfer policy of the Provincial Government and as such we do not find any attraction of provisions of Khyber Pakhtunkhwa Civil Servants Act, 1973 and (Appointment, Promotion & Transfer) Rules, 1989 towards the impugned orders. Therefore, the instant appeal stands dismissed being devoid of any merit. Costs shall follow the event. Consign.

08. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 03rd day of November, 2023.



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)

ORDER

03.11.2023

01. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for official respondents No. 1 to 3 present. Learned counsel for private respondent No. 4 also present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file, consisting of (04) pages, we do not find any attraction of provisions of Khyber Pakhtunkhwa Civil Servants Act, 1973 and (Appointment, Promotion & Transfer) Rules, 1989 towards the impugned orders. Therefore, the instant appeal stands dismissed being devoid of any merit. Costs shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 03rd day of November, 2023.*



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)