

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1757/2023

BEFORE: MR. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Sher Dil Khan S/O Sher Khan, Drawing Master at GMS, Tora Watti,
Tehsil Thall, District Hangu. (Appellant)

VERSUS

1. Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa Peshawar.
2. Director Elementary & Secondary Education Department Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Male)Hangu.
4. Mr.RizwanUllah, Drawing Master, GHS, Drari Banda, District Hangu.
.... (Respondents)

Mr. Muhammad Ilyas Orakzai
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....28.08.2023
Date of Hearing.....20.10.2023
Date of Decision.....20.10.2023

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 instant appeal, the impugned transfer order dated 02.08.2023 may kindly be set aside, being illegal and against the posting/transfer policy of the Provincial Government and the appellant may kindly be transferred to GHS Darari Bandi, Hangu being




completed his tenure according to posting/transfer policy of the Provincial Government.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant is serving as Drawing Master at Government Middle School Tora Watti of District Hangu. Appellant submitted application for transfer against the vacant post at Government High School Darai Bandu, Hangu. Posting/transfer order was issued in which private respondent No.4 was transferred on that post. Feeling aggrieved from the impugned transfer order appellant filed departmental appeal, which was not responded; 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 the impugned transfer posting order is illegal, unlawful and against the posting transfer policy and is liable to be set aside. He further argued that normal tenure of posting/transfer is two years and appellant had spent four years while private respondent No.4 total tenure of service is two years, which is against the policy thus liable to be set aside.

5. Conversely, learned District Attorney contended that order passed by the respondent is legal, proper and in accordance with law and rules.

 He further contended that competent authority is empowered under

section 10 of Civil Servant Act 1973 to transfer civil servant anywhere in the district/province in the best public interest.

6. Perusal of record reveals that appellant while serving the respondent department came to know about vacant post of DM at GMS Tora Watti Hangu and submitted application on 10.07.2023 to respondent no. 2 for his transfer on said vacant post. Respondent No.4 application of appellant sought guidance from advisor to Chief Minister for Elementary and Secondary Education Khyber Pakhtunkhwa and accordingly ban was relaxed but instead of appellant respondent issued impugned posting/transfer order vide which private respondent No.4 was transferred/posted as Drawing Master to GHS Darai Banda Hangu. Appellant challenged transfer/posting order of respondent No.4 in departmental appeal dated 05.08.2023 filed before the respondent on the ground that he is serving and posted at same post at GMS Tora Watti for last four years since his appointment while respondent No. 4 on his previous post served only for two years because his total length of service is two years. Prayer of the appellant in the instant appeal is to set aside transfer/posting order of respondent No.4 to GHS Dararai Banda Hangu which is against section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973. Besides there is no original or appellate order enabling the appellant to file appeal before this Tribunal in accordance with Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974

 before this Tribunal.

7. As a sequel to above discussion, we are of the view that appeal in hand is devoid of merits, which is hereby dismissed. Costs shall follow the event. Consign.

8. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 20th day of October, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)