

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1710/2023

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

Abbas Khan, Senior Office Clerk of the District Food Controller
Abbottabad.....(*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Food Department Peshawar.
2. Director Food Department, Khyber Pakhtunkhwa, Peshawar.
3. District Food Controller, Abbottabad.
4. District Food Controller, Mansehra.
5. Miss Nabila Khan Senior Clerk of the District Food Controller Abbottabad.....(*Respondents*)

Present:-

ARSIAD KHAN TANOLI,
Advocate (*through video link*) --- For Appellant

HABIB ANWAR,
Additional Advocate General, --- For official respondents

WAHID ULLAH KHAN SADOZAI,
Advocate --- For private respondent No. 5

Date of Institution.....21.08.2023

Date of Hearing.....08.11.2023

Date of Decision..... 08.11.2023

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 the instant service appeal, the impugned transfer order dated 24.05.2023 to the extent of

appellant may graciously be ordered to be set aside and respondent may further be directed to restore transfer order dated 21.12.2022 of the appellant. Any other relief which this honourable Tribunal deems fit and appropriate in the circumstances of the case may also be allowed to the appellant.”

02. Brief facts of the case are that the appellant was performing his duty as Senior Clerk in the office of District Food Controller, Abbottabad. The appellant was transferred from the office of Food Directorate Peshawar to the office of DFC, office Abbottabad vide order dated 22.12.2022, however, vide impugned order dated 24.05.2023, the appellant was transferred from the office of DFC Abbottabad to the office of DFC Mansehra and private respondent No. 5 (Miss Nabila Khan) Senior Clerk has been transferred at place of the appellant. Feeling aggrieved from the impugned order dated 24.05.2023, the appellant filed departmental appeal on 24.05.2023 which was not responded within the statutory period, hence 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 Additional Advocate General for official respondents and learned counsel for private respondent No. 5 and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned transfer order dated 24.05.2023 of the appellant is premature, malafide and an effort to accommodate the respondent No. 5 who is blue eyed; that as per transfer/posting policy of the provincial government, normal tenure of posting is two years but the

appellant was transferred from the office of DFC Abbottabad to the office of DFC Mansehra just after about five months, therefore, the impugned transfer order dated 24.05.2023 is illegal and liable to be set aside; that the impugned order dated 24.05.2023 was result of nepotism as private respondents No. 5 had previously served in the office of DFC Abbotabad for about 05 years; that the impugned order was not passed in the interest of public rather the same was passed on political basic, hence the same is liable to be set aside.

05. Learned District Attorney for official respondents No. 1 to 4 on the other hand contended that in the impugned transfer order there were 39 officers/officials who were transferred which is general posting transfer order issued for the whole province in the best interest of public service, but the appellant did not made party any of them except private respondent No. 5 because the appellant challenged the whole transfer order in his departmental appeal and under the law, the appellant cannot change/converse back legal document, hence the instant appeal of the appellant is liable to be dismissed; that the appellant could be transferred during period of his service anywhere which is covered under terms and condition of service and he cannot demand to be transferred on his desired station. No civil servant had a right to remain posted at a particular place, it is legally the right of government to post the employee in the best public interest; that the service appeal is premature, not maintainable and not continuation of departmental appeal, hence liable to be dismissed.

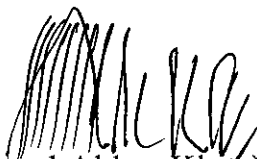
06. Learned counsel for private respondent No. 5 relied on the arguments advanced by learned Additional Advocate General for official respondents No. 1 to 4.

07. Scrutiny of record reveals that the appellant since his appointment as Junior Clerk in 19.05.2010 remained posted at Abbottabad as Junior Clerk for 10 years. Upon his first promotion as Senior Clerk on 16.09.2020 he was posted at Peshawar in the Directorate of Food and before completion of his normal tenure he was again posted in Abbottabad which speaks that out of his total 13 years service he served in Abbottabad for more than 10 years. On the other hand private respondent No. 5 has served in the DFC office Abbottabad for less than 05 years. Being a single lady she is residing with her mother in Abbottabad District and as per posting transfer policy of the provincial government single lady deserves facilitation for posting near the residence of her parents. Moreover, the appellant has also been facilitated by posting him in Manshra District which is contiguous to District Abbottabad which he belongs to. The impugned posting transfer order dated 24.05.2023 has been complied with by both the appellant and private respondent No. 5, as both are working and drawing salaries from their respective stations of duty. As the impugned order dated 24.05.2023 do not contravene any terms and conditions of service of the appellant being civil servant, we do not find any reason to intervene in the matter of posting transfer which is a routine matter.

08. Foregoing in view the instant appeal stands dismissed. Costs shall follow the event. Consign.

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


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)