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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1924/2023

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

Engr. Shah Nawaz Khan S/o Taj Muhammad, Resident of Mohallah
Madina Street, Kababyan, Warsak Road Peshawar.....(*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary
Civil Secretariat, Peshawar.
2. Secretary Public Health Engineering Department, Civil Secretariat,
Technical Block, Peshawar.
3. Election Commission of Pakistan, through its Secretary, ECP
House, Islamabad.
4. Provincial Election Commissioner, Khyber Pakhtunkhwa
Constitutional avenue G-5/2, Islamabad.....(*Respondents*)

Present:-

SHUMAIL AHMED BUTT,
Advocate

--- For Appellant

MUHAMMAD JAN,
District Attorney

--- For respondents No. 1 & 2

Date of Institution.....19.09.2023

Date of Hearing.....02.11.2023

Date of Decision..... 02.11.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- Brief facts of the case
are that the appellant while posted as Executive Engineer (XEN) Mohmand,
was transferred and posted as Deputy Director Lab/Projects PHED,
Peshawar vide Notification dated 20.05.2022 but just after six months, he
was transferred from the post of Deputy Director Lab/Projects PHED,
Peshawar to the post of Executive Engineer PHE Division, Mardan vide

Notification dated 11.11.2022; that on 15.05.2023 the provincial government forwarded a letter to respondent No. 3 for relaxation of the ban on posting/transfer wherein the respondent department proposed transfer of the appellant from Executive Engineer PHE Mardan to Executive Engineer PHE, Swabi, however against the NOC obtained from the respondent No. 3, the respondent No. 2 issued the impugned Notification dated 18.05.2023 and posted the appellant at PHED Secretariat although the Election Commission of Pakistan conveyed NOC vide letter dated 29.05.2023 for posting/transfer of the appellant as Executive Engineer Swabi; that during posting of the appellant as Executive Engineer PHE Division Mardan, the spouse of the appellant was posted at THQ Hospital Dargai Malakand on 22.03.2023, wherein the husband and wife were posted in nearby area which was convenient to them. Feeling aggrieved from the impugned Notification dated 18.05.2023 the appellant filed Writ Petition No. 2430-P of 2023 before the Hon'ble Peshawar High Court, Peshawar which was dismissed in *limine* however, the petitioner was placed at liberty to approach the proper/competent forum for the redressal of his grievance vide judgment dated 13.06.2023. Thereafter the appellant filed departmental appeal on 15.06.2023 which was not responded within the statutory period, hence preferred the instant service appeal on 19.09.2023.

02. 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 respondents 1 & 2 and have gone through the record with their valuable assistance.

03. Learned counsel for the appellant contended that the impugned Notification dated 18.05.2023 being contrary to the Constitution is illegal, unlawful, without lawful authority and thus of no legal effect; that the appellant is a married person and his wife was posted at THQ Hospital Dargai District Malakand as Medical Officer (BS-17) and as per Wedlock Policy, the husband and wife were posted in nearby area which was convenient for them; that the respondent have not treated the appellant in accordance with law, rules and policy and also violated Article 4 of the Constitution of Islamic Republic of Pakistan, 1973; that the posting/transfer tenure shall be two years for officers/officials posted in unattractive areas but unfortunately the appellant has been transferred four times within the specified period; that the Supreme Court of Pakistan has repeatedly reaffirmed that the Constitutional mandate of a caretaker government is of a limited nature i.e. to ensure and conduct free and fair election but here the situation is otherwise thus on this score alone the impugned Notification dated 18.05.2023 required to be set aside.

04. Learned District Attorney on the other hand contended that the appellant was promoted from SDO (BPS-17) to the post of Executive Engineer (BPS-18) on regular basis; that after promotion of the appellant the respondent department carried out transfer/posting on administrative ground and till date the appellant has been serving as Technical Officer (BPS-18) in the office of Chief Engineer (Center) PHED; that the appellant is misleading this Tribunal, because he has been transferred from PHE Division, Mardan to PHE Secretariat on administrative ground and later on was posted as Technical Officer in the office of Chief Engineer (Center) PHED and the

appellant has not reported for duty; that the present service appeal being infructuous and is liable to be dismissed with cost, as the successor of the appellant has assumed the charge of the Executive Engineer PHE Division, Mardan; that being a civil servant, the appellant has to serve anywhere in the province of Khyber Pakhtunkhwa.


05. Perusal of record reveals that the appellant was transferred thrice within a span of one year. On 20.05.2022 he was transferred as Deputy Director Lab/Projects Peshawar but after six months he was transferred from the post of Deputy Director Lab/Projects Peshawar to the post of Executive Engineer PHE Division, Mardan vide Notification dated 11.11.2022. Again on 15.05.2023 he was posted out from the post of Executive Engineer PHE Division, Mardan to the PHE Department Secretariat, Peshawar. Record further reveals that the respondent department took up the case with the Election Commission of Pakistan for obtaining NOC for posting of the appellant from PHE Division, Mardan to PHE Division, Swabi vide letter dated 15.05.2023, however the respondent department issued his posting order to the PHED Secretariat Peshawar without waiting for response of the Election Commission of Pakistan. Election Commission of Pakistan vide their letter dated 29.05.2023 conveyed NOC which was earlier sought by the respondent for posting of the appellant from PHE Division, Mardan to PHE Division, Swabi. In the earlier hearing learned counsel for Election Commission of Pakistan appeared and stated at the bar that they have conveyed NOC for posting of the appellant from PHE Division, Mardan to PHE Division Swabi only and they have issued no NOC for his posting to PHED Secretariat, Peshawar.

06. The Posting Transfer Policy of the Provincial Government in-vogue, inter-alia, provide the following to be kept in mind while making posting transfer of Government officers/officials are; a) all posting transfer shall be made in the public interest and shall not be abused/misused to victimize government servants; b) normal tenure of posting shall be two years; c) in case the spouse of a civil servant is also a civil servant both the spouses facilitated by posting at the same or nearby station/district. We find that the impugned transfer/posting Notification dated 18.05.2023 of the appellant does not confirm to the aforementioned provisions of the Posting Transfer Policy of the Provincial Government. Moreover, the respondents have failed to place any tangible reasons on record for not respecting the above provisions of the policy and transfer the appellant on administrative grounds.

07. Forgoing in view we are constraint to allow the instant service appeal as prayed for and set aside the impugned Notification dated 18.05.2023. 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 02nd day of November, 2023.*


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)