

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1367/2023

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Farid Ullah Shah son of Habib Rasool, Resident of Haji Fazal Shah
Mira Khel, Post Office Sarmast Mira Khel, Tehsil and District Bannu.
..... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa, through Chief Secretary
Khyber Pakhtunkhwa Peshawar.
2. Government of Khyber Pakhtunkhwa, through Secretary
Elementary & Secondary Education, Peshawar.
3. Shaleel Nawaz, presently working at Government High School,
Ismail Khel, Bannu and home address Sani Photostat Opp. Tehsil
Office Sarai Naurang District Lakki Marwat.
..... (Respondents)

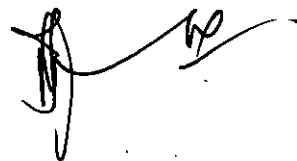
Mr. Afrasiab Khan Wazir
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution..... 19.06.2022
Date of Hearing..... 23.11.2023
Date of Decision..... 23.11.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has
been instituted under Section 4 of the Khyber Pakhtunkhwa Service
Tribunal Act, 1974 with the prayer that on acceptance of the appeal,
notification dated 21.02.2023 be declared as illegal, against the facts,
ineffective upon the rights of the appellant and to transfer the appellant to
GHSS Ismail Khel, Bannu, alongwith any other remedy which the Tribunal
deemed appropriate.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was serving as Subject Specialist (BIO) BPS-18, in the Elementary & Secondary Education Department, Khyber Pakhtunkhwa and posted at Government Higher Secondary School Nura, Bannu. Vide notification dated 27.12.2022, he was transferred to GHSS Ismail Khel, Bannu. Just after serving there for 50 days, he was again transferred to GHSS Nurar Bannu vide impugned notification dated 21.02.2023 on political grounds. Feeling aggrieved, he submitted departmental appeal on 24.02.2023 before respondent No. 1 which was pending till filing of the instant service appeal.

3. Respondents were put on notice. Respondents No. 1 & 2 submitted their joint reply/comments on the appeal. Respondent No. 3 was placed ex-parte vide order dated 10.11.2023. We heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned transfer order was premature and against the posting/transfer policy of the Provincial Government. He further argued that complete ban was imposed by the Election Commission of Pakistan and that NOC was not obtained. He further argued that the post of SS (Bio) in GHSS Ismail Khel was of BPS-18 while the person who was transferred on that post was in BPS-17. He further argued that the impugned notification was issued in a hasty and slipshod manner without assigning any cogent reason. He requested that the appeal might be accepted as prayed for



5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the Notification dated 21.02.2023 was in accordance with law and in the public interest and that there was no political involvement, illegality and malafide on the part of the respondents. He further argued that the appellant was a civil servant and the respondents had acted under section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973. He further argued that the appellant was transferred back to his previous place of posting after settlement and adjustment by filling all the vacant positions and it was done after getting the NOC of the ECP. He requested that the appeal might be dismissed.

6. Arguments and record presented before us transpire that the appellant had been transferred from Government Higher Secondary School, Ismail Khel Bannu to Government High Secondary School Nurar Bannu vide a notification dated 21.02.2023, impugned before us. The plea of the appellant is that he was transferred from GHSS Ismail Khel after serving for just fifty days and that too without getting the NOC of the Election Commission of Pakistan. Coming first to the point of NOC of Election Commission of Pakistan, it has been noted that necessary NOC was duly obtained by the provincial government before issuing the transfer order. As far as transfer of the appellant from Ismail Khel to Nurar is concerned, first, it is a transfer within the same District and the appellant was not even bothered to move out of the district to some other far flung area of the province, despite the fact that it is a provincial level position on which he is employed. Secondly, the learned District Attorney clarified that certain adjustments were made after promotions were notified and transfer of appellant from Ismail Khel to




Nurar was part of those adjustments. Moreover the appellant, being a civil servant, is bound to serve anywhere in the province where his competent authority wants him to serve in the best public interest.

7. In view of the above discussion, the service appeal in hand is dismissed, being groundless. Cost shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 23rd day of November, 2023.*


(FARZEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)


Fazle Subhan, P.S

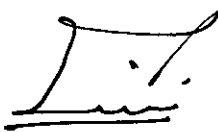
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23rd Nov. 2023. 01. Mr. Afrasiab Khan Wazir, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, the service appeal in hand is dismissed being groundless. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 23rd day of November, 2023.*


(FAREEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S