

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 1966/2023

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

**Jamil Ur Rehman, Deputy Director Monitoring (BPS-18), Directorate of Higher Education, Khyber Pakhtunkhwa, Peshawar.**

..... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary, Higher Education, Archives & Libraries, Department, Peshawar.
3. Imran Khan, Assistant Professor (Urdu) (BPS-18) Government College Peshawar. .... (Respondents)

Fazal Shah Mohmand  
Advocate

... For appellant

Mr. Muhammad Jan,  
District Attorney  
Mr. Khalid Rehman,  
Advocate

... For official respondents

... For respondent No. 3.

Date of Institution..... 27.09.2023  
Date of Hearing..... 23.11.2023  
Date of Decision..... 23.11.2023

**JUDGEMENT**

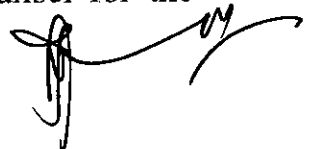
**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the notification dated 08.05.2023, to the extent of the appellant, and notification dated 01.06.2023 whereby the appellant has been transferred from the post of Deputy Director, Directorate of Higher Education to the post of Assistant Professor Pak Study at Government Hakim Abdul Jalil Nadvi Degree College, Peshawar and against which representation dated 31.05.2023 of the appellant was not responded despite



lapse of the requisite period. It has been prayed that on acceptance of the appeal, the impugned notification dated 08.05.2023, to the extent of the appellant, and notification dated 01.06.2023 might be set aside and the appellant might be allowed to perform his duties as Deputy Director (Monitoring) at the Directorate of Higher Education, Peshawar.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as Lecturer (BPS-17) on 16.09.2005 and was promoted to the post of Assistant Professor (BPS-18). According to the rules notified vide notification dated 18.09.2019, the post of Deputy Director (Monitoring), at the Directorate of Higher Education, was to be filled 25% by promotion and 75% by transfer from amongst the Assistant Professors from Government Post Graduate Colleges, for a period of three years. The appellant was transferred as Deputy Director (Monitoring), at the Directorate of Higher Education, Peshawar vide notification dated 14.01.2021 and he took over charge of his post on 01.02.2021. He was again transferred due to political orientation vide notification dated 08.05.2023 and posted as Assistant Professor of Pak Study at Government Hakim Abdul Jalil Nadvi Degree College, Peshawar. Respondent No. 3 was transferred in place of the appellant vide notification dated 01.06.2023. He preferred departmental appeal on 31.05.2023 which was not responded within the statutory period; hence the instant service appeal.

3. Respondents were put on notice who submitted their reply/comments on the appeal. We heard the learned counsel for the appellant, the learned District Attorney for the official respondents and learned counsel for the



private respondent 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 notification was illegal and void ab-inito and that he had not been treated in accordance with law and rules on the subject in violation of Article 4 & 25 of the Constitution. He argued that the post against which the appellant was transferred was a tenure post and he could not be transferred before completion of three years tenure. He further argued that the impugned notification was issued during ban period in violation of posting and transfer policy of the Provincial Government. 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 administrative department exercised its authority conferred under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, and after observing due codal formalities and soliciting NOC from the Election Commission of Pakistan, transferred the appellant within the same district. He further argued that the transfer had incurred no financial or other losses to the appellant. He further argued that the appellant was transferred after completion of two years tenure as defined in APT Rules and that posting/transfer on administrative position/posts did not require tenure which was applicable only to general transfer/posting related posts. He requested that the appeal might be dismissed. Learned counsel for private respondent No. 3 adopted the arguments advanced by the learned District Attorney.

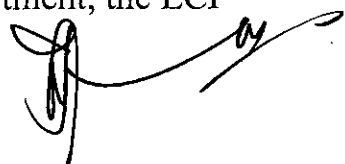


6. Appellant, while serving as Assistant Professor in the Higher Education Department, was transferred from Government Degree College Hayatabad, Peshawar to the Directorate of Higher Education on the post of Deputy Director (Monitoring) vide a notification dated 14.01.2021. The transfer was based on the service rules issued on 18.09.2019 according to which, for the post of Deputy Director (BS-18), the method of recruitment has been provided as follows:-

- (a) Twenty-five (25%) by promotion on the basis of seniority cum-fitness from amongst the Assistant Directors (BS-17) with at least five (05) years service in BS-17 &
- (b) Seventy-five (75%) by transfer from amongst the Assistant Professors from Govt. Post Graduate College for a period of three (03) years

The transfer of appellant was covered under sr.(b) of the above quoted rule. Vide another notification dated 08.05.2023, he was transferred from the post of Deputy Director to the post of Assistant Professor at Government Hakim Abdul Jalil Nadvi Degree College, Peshawar. The appellant has impugned the transfer order dated 08.05.2023 before us on the grounds that it is a premature transfer without allowing him to complete his tenure and that the notification has been issued during the period of ban imposed by the Election Commission of Pakistan.

7. First, we take the point of issuance of notification during ban period. It has been clarified before us that necessary NOC from the Election Commission of Pakistan had been obtained. It was further noted that if the required NOC had not been obtained by the respondent department, the ECP




could have raised its objection. Hence this ground of the appellant is not acceptable. As far as the point of premature transfer is concerned <sup>it</sup> is clear, without any doubt, that transfer on the position of Deputy Director in the Directorate of Higher Education from amongst the Assistant Professors is for a period of three years. In case of the appellant, he had completed a tenure of two years and four months when he was transferred, which means he was short of only eight months when he was transferred, if we strictly go by the tenure of the post, but one must not forget that it is the maximum tenure that has been mentioned in the service rules, and that there is no bar on the transfer before completing the tenure of three years. The competent authority is fully empowered under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 to transfer the civil servant anywhere in the province in the best public interest and the civil servant is bound to act accordingly to those orders. In case of the appellant, his competent authority has acted rightly and within the legal parameters. Moreover, it has been noted that he has been retained within District Peshawar and not transferred out of the city.

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

9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 23<sup>rd</sup> day of November, 2023.

  
(FAREEHA PAUL)  
Member (E)

  
(SALAH-UD-DIN)  
Member (J)

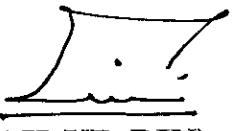
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23<sup>rd</sup> Nov. 2023 01. Mr. Fazal Shah Mohmand, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the official respondents and Mr. Khalid Rehman, Advocate for private respondent No. 3 present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 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 23<sup>rd</sup> day of November, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(SALAH-UD-DIN)  
Member (J)

*\*Fazle Subhan, P.S\**