

ORDER

8th Nov, 2023 1. Learned counsel for the appellant present. Mr. Asif Masood

Ali Shah learned Deputy District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, we dismissed the instant appeal being devoid of merits. Costs shall follow the event. Consign.

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



(Muhammad Akbar Khan)
Member (E)



(Rashida Bano)
Member (J)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1789/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Mst. Lubna Irum, CT (BPS-15) GGHS Razmak Camp, Razmak,
District North Waziristan. (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Civil Secretariat, Peshawar.
 2. Director Elementary & Secondary Education Department Peshawar.
 3. District Education Officer (F), North Waziristan.
- (*Respondents*)

Mr. Mir Zaman Safi
Advocate ... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney ... For respondents

Date of Institution.....06.09.2023
Date of Hearing.....08.11.2023
Date of Decision.....08.11.2023

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 this appeal, the impugned order dated 25.03.2023 may very kindly be set aside to the extent of appellant and the respondents may further



please be directed to not to transfer the appellant from GGHS Razmak Camp, North Waziristan.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was working as CT (BPS-15) in GGHS Razmak Camp, North Waziristan quite efficiently and upto the entire satisfaction of his superiors. Appellant submitted application for Ex-Pakistan leave for performance of umrah which was sanctioned and she went to Saudi Arabia, for performance of umrah, when she came back to Pakistan then she came to know that she has been transferred from GGHS Razmak to GGMS Pasham Kot Dossali. Feeling aggrieved, she filed departmental appeal on 05.03.2023, which was not responded to, hence the 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 Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the impugned order is against the law, facts, norms of natural justice, hence not tenable and liable to be set aside. He further argued that appellant has not been treated in accordance with law and rules and respondents violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan 1973. He contended that respondents violated clause-i and clause-x of transfer/posting policy of the Provincial Government by issuing impugned transfer order.



5. Learned Deputy District Attorney contended that the appellant neither applied nor avail NOC for ex-pakistan leave, moreover, she has presented NOC with fake signatures of the respondent No.3 and willfully absented herself till date. An explanation was called from her on 24.05.2023 but her reply was unsatisfactory, and she was constantly absent from duty, therefore, she was issued show cause notice. He further contended that she was transfer to GMS Pasham Kot after receiving complaints against her. An enquiry has also been conducted in which all the allegations were proved against the appellant.

6. Perusal of record reveals that appellant is working as Certified Teacher (BPS-15) at GGHS Razmak Camp North Waziristan. She after obtaining NOC from the competent authority and sanction of Ex-Pakistan leave went to perform Umrah but when she came back fell ill and obtain leave from authority. Appellant was transferred from GGHS Razmak to GGMS Pasham Kot Dossali during her ex-pakistan leave vide impugned order dated 25.03.2023. Appellant challenged her transfer order on the ground that her transfer order was not issued in public interest but just to victimize her as she is un-married female, therefore, she be posted near to the residence of her parents. Appellant relied upon clause i and x of posting/transfer policy Provincial Government which read as follows:

i. All the posting/transfer shall be strictly in public interest and shall not be abused/misused to victimize the Government Servants.



x. All the posting/transferring authorities may facilitates the posting/transfer of the unmarried female government servants at the station of the residence of their parents.

Respondents in his reply contended that the appellant is permanent resident of District Bunu. Appellant's counsel when asked to provide CNIC and domicile certificate of appellant to ascertain factum of parents residence of the appellant, he failed to provide it. Moreover, appellant was transfer within a same Tehsil and sent to other District. therefore, it would need no interference. Otherwise too, respondents are competent in accordance with Section 10 of the (Appointment Promotion and Transfer) Rules, 1989 to transfer a civil servant and scope of interference in the posting/transfer of a civil servant is highlighted by the apex court in CPLA No.1523/2022 which read as:

“This court has already highlighted the scope of interference with the executive function of posting and transfer of government officials. It has been held that the transfer of a government official from one place or post to another to meet the exigencies of service was within the exclusive domain and competence of the competent authorities of the executive organ of the State and, ordinarily, it is not amenable to interference except in extraordinary circumstances. This principle is subject to the condition that the terms and conditions of service are not adversely affected. Moreover, an official has not vested right


to claim to be posted/transferred to any particular place of his



choice, nor is there a vested right to continue to hold a particular post at a particular place.”

7. As a sequel to above discussion, we dismissed the instant appeal being devoid of merits. Costs shall follow the event. Consign.

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


(MUHAMMAD AKBAR KHAN)
Member (E)

Kaleemullah


(RASHIDA BANO)
Member (J)