

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
SALAH-UD-DIN ... MEMBER (Judicial)

Service Appeal No. 1261/2023

Hafeez Ullah S/O Muhammad Ismail, R/O Mohallah Maqbool Abad,
Paharpur, Tehsil Paharpur, District Dera Ismail Khan.

(Appellant)

Versus

Government of Khyber Pakhtunkhwa through Secretary C&W
Department, Government of Khyber Pakhtunkhwa, Peshawar and 02
others. *(Respondents)*

Present:

Muhammad Mohsin Ali Khan, Advocate (via video link from D.I.Khan)

.....For the appellant

Mr. Asad Ali Khan, Assistant Advocate GeneralFor official respondents

Mr. Haji Shakeel, Advocate (via video link from D.I.Khan) & Mr. Jehanzeb Mehsood
Advocates.....For Private Respondent No.8

.....

Date of presentation of Appeal.....01.06.2023

Date of Hearing.....05.12.2023

Date of Decision.....05.12.2023


JUDGMENT

SALAH-UD-DIN, MEMBER: The facts surrounding the instant appeal are that the appellant while serving as Senior Clerk/SDA in the office of XEN Mega Projects South-II at D.I.Khan was transferred to the office of XEN Highway Division, South Waziristan at Tank vide order dated 14.03.2023. The appellant allegedly submitted his arrival report, however vide impugned order dated 20.03.2023, the posting/transfer order dated 14.03.2023 was cancelled/withdrawn. Feeling aggrieved, the appellant filed Writ Petition No.196-D/2023 before Peshawar



High Court, Dera Ismail Khan Bench, which was disposed of vide order dated 26.04.2023 by converting the same into departmental appeal/representation and was sent to respondent No. 2 i.e Chief Engineer (Centre), C & W Department, Khyber Pakhtunkhwa, Peshawar, however the same was filed vide order dated 10.05.2023. The appellant then approached this Tribunal through instant appeal for redressal of his grievance.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned. Official respondents put appearance through their representative, while private respondent No. 8 appeared personally and contested the appeal by way of filing their respective replies/comments raising therein numerous legal as well as factual objections.

 3. Learned counsel for the appellant contended that vide order dated 14.03.2023, the appellant was transferred from the office of XEN Mega Projects South-II at D.I.Khan to the office of XEN Highway Division, South Waziristan at Tank, however vide the impugned order dated 20.03.2023, transfer order dated 14.03.2023 was cancelled/withdrawn without mentioning any reason, which is against the Transfer/Posting Policy of the Provincial Government. He next contended that private respondent No. 8 had served in the office of XEN Highway Division, South Waziristan at Tank from 01.01.2018 to 08.10.2018 as a Junior Clerk and from 08.10.2019 to 14.03.2023 as a Senior Clerk and had already spent more period than normal tenure of 02 years as provided in posting/transfer policy of the provincial government. He further

contended that transfer of the appellant was withdrawn on account of political pressure being exerted by private respondent No. 8 to procure the desired posting. He also argued that there was no requirement of forwarding of copy of the impugned order dated 20.03.2023 to the Minister for C&W Department but the same was forwarded to him also, which clearly shows that the impugned cancellation/withdrawal order dated 14.03.2023 was the result of political influence. He next argued that the impugned cancellation/withdrawal order was issued in violation of Clauses i & iv of the Transfer/Posting Policy of the Provincial Government, therefore, the same is liable to be set-aside.

4. On the other hand, learned Assistant Advocate General for official respondents contended that the domicile of the appellant is from District D.I.Khan but he was inadvertently transferred vide order dated 14.03.2023 from the office of XEN Mega Projects South-II at D.I.Khan to the office of XEN Highway Division, South Waziristan at Tank, therefore, vide order dated 20.03.2023 the order dated 14.03.2023 was rightly withdrawn/cancelled. He next contended that the order dated 14.03.2023 was not a general order but was specifically made regarding the transfer of the appellant and private respondent No. 8. He further contended that as per Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 every civil servant is liable to serve anywhere within or outside the Province on any post under the Federal Government or any Provincial Government, therefore, the impugned order dated 20.03.2023 cannot be called as illegal or passed on any



ulterior motives and political pressure. He next argued that the question of forwarding copy of impugned order dated 20.03.2023 to PS to Minister for C&W Department is concerned, the same was forwarded in routine to keep his office informed about working of the department/office, therefore, the impugned order dated 20.03.2023 cannot be said to have been passed on political pressure. In the last he requested that the impugned orders may be kept intact and the appeal in hand may be dismissed with costs.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. A perusal of the record would show that vide office order dated 14.03.2023, the appellant, who was working as Senior Clerk/SDA in the office of XEN Mega Projects South-II at D.I.Khan, was transferred to the office of XEN Highway Division, South Waziristan at Tank, while private respondent No. 8 namely Samiullah was transferred to the post of the appellant. The appellant submitted his arrival report in compliance of the transfer/posting order dated 14.03.2023, however vide the impugned office order dated 20.03.2023, the transfer/posting order dated 14.03.2023 was cancelled/withdrawn. According to Clause-iv of the Posting/Transfer Policy notified by the Provincial Government, the normal tenure of posting shall be two years. Similarly, Clause-i of the said policy prescribes that all postings/transfers shall be made strictly in public interest and shall not be abused, misused to victimize Government servants. The appellant was not allowed to complete his normal tenure of two



years, while on the other hand, as per the available record, private respondent No. 8 had remained posted in the office of XEN Highway Division South Waziristan at Tank with effect from 01.01.2018 till 14.03.2023 and had thus spent five years in the said office. Supreme Court of Pakistan in its judgment reported as PLD 2013 Supreme Court 195 has held as below:-

"12. This Court, in a number of precedents has, interpreted and emphasized these very principles, some of which need to be reiterated at this point. Before that, however, we may note the precept and rule of public trust which forms the basis of this area of the law. This court has repeatedly observed that "functionaries of the State are fiduciaries of the people and ultimately responsible to the people who are their pay masters." [Syed Yousaf Raza Gillani v. Assistant Registrar, (PLD 2012 SC 466) affirming Muhammad Yasin v. Federation of Pakistan]. Most recently, in the case relating to dual nationality of Parliamentarian, we have reiterated that "all State authority is in the nature of a 'sacred trust' and its bearers should therefore be seen as fiduciaries" (Mehmood Akhtar Naqvi v. Federation of Pakistan, Const. P.5/2012). One of the implications of this concept, highlighted in the case-law considered below, is that the matter of tenure, appointment, posting, transfer and promotion of civil servants cannot be dealt with in an arbitrary manner; it can only be sustained when it is in accordance with the law. Moreover, the use of the words 'in the public interest' in such matters are not fatuous or pointless, but emphasize the fiduciary nature of orders relating to tenure, posting etc. Thus a proposed decision which deviates from the accepted or rule-based norms without proper justification, can be



tested on the touchstone of a manifest public interest.”


(Emphasis supplied)

7. It has further been held in the above referred judgment that when the ordinary tenure for a posting has been specified in the law or rules made there-under, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable.

8. Consequently, the appeal in hand is allowed by setting-aside the impugned orders. The posting/transfer order dated 14.03.2023 is restored and the respondents are directed to allow the appellant to complete his normal tenure as Senior Clerk/SDA in office of XEN Highway Division, South Waziristan at Tank. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

05.12.2023



(KALIM ARSHAD KHAN)
CHAIRMAN



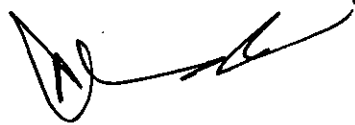
(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ORDER
05.12.2023

Learned counsel for the appellant (via video link from D.I.Khan) present. Mr. Asad Ali Khan, Assistant Advocate General for official respondents present. Learned counsel namely Mr. Haji Shakeel Ahmed, Advocate (via video link from D.I.Khan) and Mr. Jehanzeb Mehsood, Advocate for private respondent No. 8 present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed by setting-aside the impugned orders. The posting/transfer order dated 14.03.2023 is restored and the respondents are directed to allow the appellant to complete his normal tenure as Senior Clerk/SDA in office of XEN Highway Division, South Waziristan at Tank. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
05.12.2023



(Kalim Arshad Khan)
Chairman



(Salah-Ud-Din)
Member (Judicial)