

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR AT CAMP COURT D.I.KHAN

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

Service Appeal No. 1635/2023

Muhammad Bilal SST (BPS-16), ADEO (P&D) at the O/O DEO
(Male) D.I.Khan under transfer to GMS Wanda Umar Khan, D.I.Khan.
(Appellant)

Versus

The Government of Khyber Pakhtunkhwa through Secretary
Elementary & Secondary Education Department, Khyber
Pakhtunkhwa, Peshawar and 03 others. (Respondents)

Present:

Mr. Ahsan Bilal Langra, Advocate.....For the appellant
Muhammad Jan, District AttorneyFor official respondents
Muhammad Abdullah BalochFor private respondent

Date of presentation of Appeal.....09.08.2023
Date of Hearing.....20.12.2023
Date of Decision.....20.12.2023

JUDGMENT

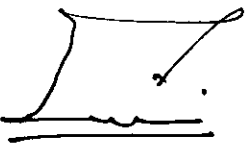
SALAH-UD-DIN, MEMBER: Precise facts giving rise to filing of the instant appeal are that the appellant was posted as ADEO (P&D) at the office of DEO (Male) D.I.Khan as stop-gap arrangement vide office order dated 16.11.2021. Vide the impugned posting/transfer Notification dated 14.07.2023, he was transferred to Government Middle School Wanda Umar Khan, while private respondent No. 4 namely Muhammad Rasheed was posted at the place of the appellant. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide order dated 09.08.2023, hence the instant appeal.

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. 4 appeared through counsel 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 argued that the appellant was prematurely transferred vide the impugned Notification dated 14.07.2023 without allowing him to complete his normal tenure as prescribed in Posting/Transfer Policy of the Provincial Government. He next argued that the transfer of the appellant was made during the ban imposed by Election Commission of Pakistan on postings/transfers. He further argued that the transfer of the appellant was not in public interest rather the same was result of political influence. In the last he argued that the impugned orders may be set-aside and the appellant may be allowed to continue his service on the post of ADEO (P&D) at the office of District Education Officer (Male) D.I.Khan.

4. On the other hand, learned counsel for private respondent No. 4 contended that the appellant was previously posted as ASDEO (Male) at the office of SDEO (Male) D.I.Khan vide order dated 04.02.2020 and was then posted as ADEO (P&D) at the office of DEO (Male) D.I.Khan. He next contended that the appellant was serving on management cadre posts for more than three years and has already completed his normal tenure of two years as prescribed in Posting/Transfer Policy of the Provincial Government. He further contended that in view of Section-10 of Civil Servants Act, 1973, the appellant is liable to serve anywhere within or outside of province. He next argued that it was the



appellant, who inserted political influence and enjoyed postings on management cadre posts since the year 2020. He further argued that the appellant belongs to teaching cadre and he is having no vested rights to remain posted on management cadre post for an indefinite period. In the last he requested that the impugned orders may be kept intact and the appeal in hand may be dismissed with cost.

5. Learned District Attorney for official respondents adopted the arguments advanced by learned counsel for private respondent No. 4.

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

7. A perusal of the record would show that both the appellant as well as private respondent No. 4 belongs to teaching cadre. It has, however been specifically mentioned in the terms and conditions of impugned posting/transfer Notification that posting/adjustment of teaching cadre officers shall be considered as stop-gap arrangement till the arrival of management cadre officers. The main grievance of the appellant is that vide the impugned posting/transfer Notification, he was prematurely transferred without allowing him to complete his normal tenure of two years as provided in Posting/Transfer Policy of the Provincial Government. While going through the record, we have observed that initially the appellant was adjusted on the post of ASDEO (Male) at the office of SDEO (Male) D.I.Khan vide order dated 04.02.2020. The appellant was then adjusted against the post of ADEO (P&D) at the office of DEO (M) D.I.Khan as stop-gap arrangement vide office order dated 16.11.2021. Vide the impugned posting/transfer

Notification dated 14.07.2023, the appellant was transferred from the said post, however on approaching this Tribunal through instant appeal, the operation of the impugned posting/transfer Notification was suspended vide order dated 11.08.2023, therefore, he is still serving on the post of ADEO (P&D) from which he was transferred vide the impugned posting/transfer notification. In such view of the matter, the appellant has completed his normal tenure of two years as provided in Posting/Transfer Policy of the Provincial Government.

8. Section-10 of Khyber Pakhtunkhwa Civil Servants Act, 1973 pertains to posting/transfer of civil servants, which is reproduced as below:

"10. Posting and transfers.--- Every civil servant shall be liable to serve anywhere within or outside the Province in any post under the Federal Government, or any Provincial Government or local authority, or a corporation or body set up or established by any such Government:

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:

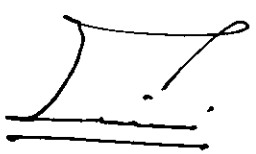
Provided further that where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve."

9. In view of section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, desired posting is not an inherent right of a civil servant and the department concerned can transfer a civil servant to any place, which could though be challenged if the same is arbitrary, fanciful or is based upon any mala-fide or ill-will and inherent bias of the superior authorities. Nothing is available on the



record, which could show that the transfer order of the appellant was outcome of any ill-will or mala-fide on part of the official respondents.

10. In State of U.P. and Others v. Goverdhan Lal, 2004 (3) SLJ 244 (SC) it has been held as below:-



"8. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision of (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the Competent Authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

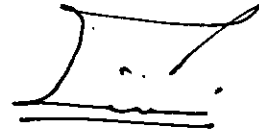
9. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of Competent Authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmise and except for strong and convincing reasons, no interference could ordinarily be made within an order of transfer.

From the aforementioned, it is evident that the posting to any particular place is not a legal right. Article 14 guarantees equality before law only. Right to equality is a positive concept.

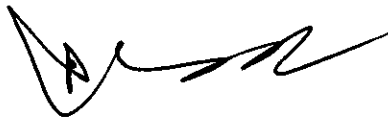
One can allege violation of Article 14 only where there is enforceable legal right. In the absence of such right, question of discrimination or violation of Article 14 does not arise."

11. Consequently, the appeal in hand being devoid of merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
20.12.2023



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT D.I.KHAN



(KALIM ARSHAD KHAN)
CHAIRMAN
CAMP COURT D.I.KHAN

ORDER
20.12.2023


Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for official respondents present. Learned counsel for private respondent No. 4 also present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand being devoid of merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
20.12.2023



(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan



(Salah-Ud-Din)
Member (Judicial)
Camp Court D.I.Khan