

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1859/2023

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

Syed Sheraz Ali Shah, Senior Clerk (BPS-14), now Office Assistant Usher  
Section, Provincial Zakat Administration (HQ), Peshawar.  
.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Zakat, Ushr, Social Welfare, Special Education and Women Empowerment Department, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Director (Admin), Zakat, Ushr, Social Welfare, Special Education and Women Empowerment Department, Khyber Pakhtunkhwa, Peshawar.
3. Section Officer (Ushr), Zakat & Ushr, Peshawar.
4. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

.... (Respondents)

Mr. Kabir Ullah Khattak  
Advocate ... For appellant

Mr. Asad Ali Khan  
Assistant Advocate General ... For respondents

Date of Institution.....13.09.2023  
Date of Hearing.....07.11.2023  
Date of Decision.....07.11.2023

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 order dated 04.05.2021 and 11.09.2023 may please be set aside and the appellant may be allowed to continue as Senior Clerk now Office Assistant at Ushr Section, Provincial Zakat Administration (HQ), Peshawar as prior to the issuance**



**of the impugned transfer order on the basis of spouse policy and also on the reason that the terms and condition of the appellant is effected i.e salary.”**

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant joined the respondent department as Junior Clerk in the year 2008. While serving as Senior Clerk he was transferred from the office of Additional Secretary Zakat, Ushr to Deputy Secretary Social Welfare vide order dated 06.10.2020. Later on he was transferred back to parent department vide order dated 05.03.2021, and subsequently transferred from Provincial Zakat (HQ) Peshawar to District Zakat Committee Battagram vide order dated 04.05.2021. Feeling aggrieved, he filed departmental appeal on 07.05.2021 which was not decided, then he filed service appeal which was disposed of with direction to the respondents for deciding the departmental appeal of the appellant within two months. Respondents in the grab of deciding the departmental appeal of the appellant again transfer the appellant from Usher Section, Provincial Zakat Administration (HQ), Peshawar to Nowshera vide order dated 11.09.2023, 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 Assistant Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further argued that the impugned transfer orders dated 04.05.2021 and 11.09,2023 are against the law facts, norms of justice and material on record, therefore, not tenable and liable to be set aside. He further argued that the impugned transfer



order of the appellant to Nowshera is against the wedlock policy as wife of the appellant is serving as Charge Nurse at District Peshawar. He submitted that transfer of the appellant is also violation of circular bases on the Anita Turab case dated 27.02.2013 in which it was clearly mentioned that when the ordinary tenure for 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 but in the case of appellant the tenure was not respected and appellant was posted/transferred without completing his normal tenure and also in violation of spouse policy.

5. Learned Assistant Advocate General contended that the appellant was treated in accordance with law and rules. He further contended in the light of order of this Tribunal date 21.03.2023 the competent authority adjusted the appellant in adjacent district Nowshera instead of Battagram. He further contended that respondents were empowered under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 for placing the services of the appellant throughout the province in the best public interest and the appellant is duty bound to serve anywhere throughout the province wherever they posted in public interest.


6. Perusal of record reveals that appellant is serving in the respondent department in BPS-14 and was posted in the office of Additional Secretary Zakat and Usher Department Khyber Pakhtunkhwa was transferred to Secretary Social Welfare on 06.10.2020. Appellant was transferred on 05.03.2021 to his old position and was again posted out vide order 04.05.2021 to District Zakat committee Battagram. Appellant challenged order 04.05.2021 in departmental representation which was not decided within stipulated period of 90 days therefore, he filed service appeal


bearing No 6683/2021 which was decided by this Tribunal vide order 21.03.2023 by holding that in the peculiar circumstances of the present case where the grave grievance of the appellant require urgent redressal, we send the case to the departmental authority to decide the departmental appeal of the appellant in writing rendering valid reasons thereof to be made within a period of two months from the date of receipt of copy of this judgment. Respondent after receipt of order of this tribunal vide impugned order dated 11.09.2023 transferred and posted appellant to District Zakat committee Nowshera. There are two main grounds of the appellant one is normal tenure and second one is the violation of Spouse Policy. Record transpired that appellant since his appointment is remain posted on the post of BPS-16 in one building in his own pay scale at Peshawar and for the first he was posted out of Peshawar to Batagram vide order dated 04.05.2021 but appellant succeeded to get cancelled that order and did not performed his duties at Batagram even for one day. So when all the tenure of service of the appellant was at one building at Peshawar, then question of premature transfer is irrelevant. It is also pertinent to note that respondent after receipt of copy of Judgment consider appellant and posted him to nearby District Nowshera. Respondent in their reply mentioned that no post of Assistant is laying vacant in Peshawar District that's why appellant was transferred and posted to Nowshera appellant also confirm this fact upon query of this Tribunal. Furthermore, Worthy Supreme Court has held that transfer of a government official from one place or post to another to meet the exigency of service was within the exclusive domain and competence of the competent authority of the executive organ of the state and ordinarily, it is not amendable to interfere except in extra ordinary circumstance.



7. For what has been discussed above, we dismiss the appeal in hand. Moreover, impugned order is separate order against which no departmental appeal was filed by the appellant, therefore, instant appeal is also not maintainable. Costs shall follow the event. Consign.

8. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 7<sup>th</sup> day of November, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)


  
(RASHIDA BANO)  
Member (J)


**ORDER**  
07.11.2023

1. Learned counsel for the appellant present. Mr. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

2. Vide our detailed judgement of today placed on file, we dismiss the appeal in hand. Moreover, impugned order is separate order against which no departmental appeal was filed by the appellant, therefore, instant appeal is also not maintainable. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 7<sup>th</sup> day of November, 2023.*

  
(Muhammad Akbar Khan)  
Member (E)

  
(Rashida Bano)  
Member (J)