

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1769/2023

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER (E)

Mr. Falak Naz, Instructor Physical Education (BPS-17), GHSS Mama Khel Banochi District Bannu transferred to GHSS Lachi District Kohat.
..... (Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
4. Mr. Muhammad Younis, Instructor Physical Education (BPS-17) transferred from GHSS Lachi Kohat to GHSS Mama Khel Banochi District Bannu. (Respondents)

Mr. Afrasiab Khan Wazir,
Advocate ... For appellant

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

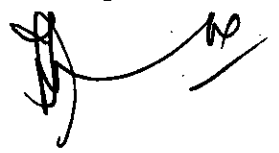
Date of Institution..... 22.08.2023

Date of Hearing..... 01.01.2024

Date of Decision..... 01.01.2024

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 orders dated 17.03.2023 and 17.04.2023 whereby the appellant was transferred prematurely from GHSS Mama Khel Banochi District Bannu to GHSS Lachi District Kohat and against no action taken on the departmental appeal of the appellant within the statutory period. It has been prayed that on acceptance of the appeal, the impugned orders might be set

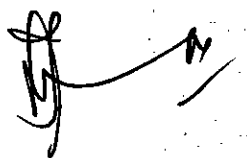


aside and the respondents be directed to restore the posting/adjustment order dated 15.03.2023 of the appellant at GHSS Mama Khel Bannu till the completion of his normal tenure, alongwith any other remedy which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was serving as Instructor Physical Education (BPS-17) in the Education Department. He moved an application to the respondent department for his transfer to District Bannu against a vacant post as he could not travel long distance from Bannu to Kohat due to his health issue. Vide order dated 15.03.2023, he was adjusted in GHSS Mama Khel, District Bannu by the respondent department where he took over the charge. Just after two days, vide order dated 17.03.2023, he was transferred to GHSS Lachi Kohat and was replaced by respondent No. 4. Respondents again cancelled that order on 11.04.2023 and placed the appellant at his previous place of posting at Bannu. He joined his duty again at GHSS Mama Khel, Bannu but after few days vide order dated 17.04.2023, the order dated 17.03.2023 was restored. Feeling aggrieved, he submitted a representation to the appellate authority which was not responded till filing of the instant service appeal.

3. Respondents were put on notice. Official respondents have submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the official respondents and perused the case file with connected documents in detail.

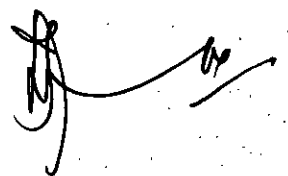
4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned orders dated 17.03.2023 and 17.04.2023 were



against the law, rules and natural justice. He further argued that the appellant was transferred from his place of posting just after 06 days which was premature and against the Posting/Transfer Policy of the Provincial Government. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the orders dated 17.03.2023 and 17.04.2023 were in accordance with law and there was nothing unlawful in those orders. He further argued that under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, the respondent department was empowered to transfer the appellant in the province and he could not refuse compliance and the desired posting was not his perpetual right. He requested that the appeal might be dismissed.


6. The appellant is an Instructor Physical Education (BS-17), and while serving as Senior Instructor Physical Education (BS-18) in his own pay and scale in GHSS Lachi, Kohat, he submitted an application to the Secretary Elementary & Secondary Education Department requesting for transfer to a post of IPE in GHSS Mamakhel Banochi, District Bannu. His request was honoured and he was transferred to GHSS Mamakhel Bannu vide order dated 15.03.2023. Record presented before us shows that he took over the charge on 16.03.2023, but on 17.03.2023, he was again transferred to GHSS Lachi, Kohat and private respondent No. 4 was transferred in his place at Bannu. That order was first withdrawn, to the extent of the appellant, on 11.04.2023 and later restored on 17.04.2023. The entire scheme adopted by the respondent department shows a complete confusion on their part. We fail to understand

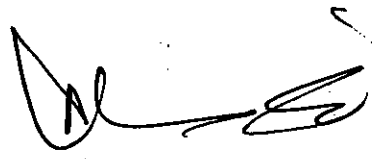


that how the transfer order of 17.03.2023, passed just after two days of the order of 15.03.2023, which had already been acted upon, and how first the cancellation and then restoration of the same order were bonafide? When confronted, the learned Deputy District Attorney had no argument other than referring to Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973. Even if we admit that the competent authority is authorized under the said Act to transfer a civil servant anywhere in the province and that such a civil servant is under obligation to act accordingly, it does not mean that the authority is allowed to pass four orders of transfer of a civil servant within a span of just one month. This shows the indecisiveness and lack of hold on official matters of the competent authority. We feel that due regard should have been given to the transfer/posting policy also of the provincial government in which tenure has been defined.

7. In view of the above discussion, the service appeal in hand is allowed as prayed for. Cost shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 01st day of January, 2024.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman


S.A 1769/2023

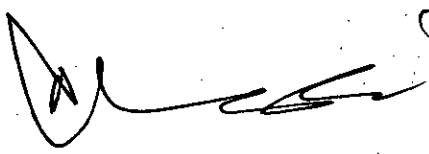
01st Jan, 2024. 01. Mr. Afrasiab Khan Wazir, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the official respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, the service appeal in hand is allowed as prayed for. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 1st day of January,*

2024.


(FARIS JIA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

Fazal Subhan PS