

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1659/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

**Ghulam Sadiq S/O Ghulam Noman SDEO (M) Sub Division Bahrain,
District Swat R/O Tehsil and Village Bahrain District Swat.**
..... (*Appellant*)

Versus

1. **The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education.**
2. **The Director E&SE Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The District Education Officer (M)Swat.**
4. **Shamshad Khan, SST(G) GHS Qandeel Tehsil Bahrain District Swat.**
..... (*Respondents*)

Mr. Muhammad Jamshed Kundi,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For official respondents

Mr. Imdad Ullah,
Advocate

... For private respondent
No. 4.

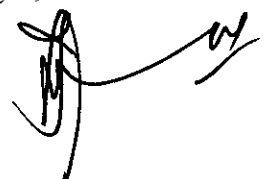
Date of Institution..... 15.08.2023

Date of Hearing..... 19.12.2023

Date of Decision..... 19.12.2023

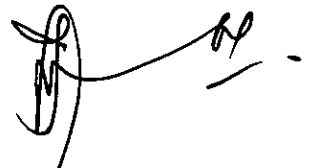
JUDGEMENT

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 order dated 04.05.2023, whereby the appellant was transferred from the post of SDEO Bahrain, District Swat. It has been prayed that on acceptance of the appeal, the impugned order dated 04.05.2023 and 15.05.2023 might be set aside and the same be declared as illegal, unlawful



and based on political motivation and malafide, 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 posted as SDEO (M) Bahrain vide notification dated 15.09.2021. A notification was issued by respondent No. 1 on 04.05.2023, whereby respondent No. 4 was transferred and posted as SDEO (M) Bahrain in OPS against vacant post. Another notification was issued by respondent No. 2 on 04.05.2023 whereby respondent No. 4 was transferred from GHS Qandeel and posted at Bahrain as ASDEO against Khadim Shah, the then ASDEO Bahrain. Another notification was issued from the office of respondent No.1 having no date and number, correcting the name of respondent No. 4 Shamshad Khan, while the services of the appellant were placed at the disposal of Directorate. They again made a mistake in writing the designation of respondent No. 4, mentioning as ASDEO Kabal instead of SST GHS Qandeel. Thereafter, corrigendum order was issued vide notification dated 15.05.2023 with partial modification of an early notification issued on 04.05.2023 in respect of respondent No. 4, correcting his designation and posting as SDEO (OPS) against the vacant post of SDEO (M) Baharain. The District Education Officer (M) Swat had also submitted a request to the Director and Secretary Elementary & Secondary Education vide letter dated 09.05.2023 to withdraw the transfer notification of respondent No. 4 by mentioning a reason of non-availability of vacant post of SDEO Bahrain. The appellant submitted departmental appeal in the

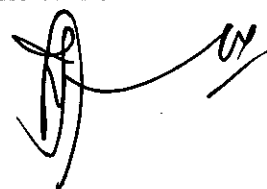


office of Secretary Elementary & Secondary Education for the cancellation of notification but no response was received till filing of the instant service appeal.

3. Respondents were put on notice who submitted their written reply/comments. We have heard the learned counsel for the appellant, learned Deputy District Attorney for the official respondents as well as learned counsel for private respondent No. 4 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 transfer notifications dated 04.05.2023 and 15.05.2023 were against the law and rules and based on political interference, which was against the principles of natural justice. He further argued that the appellant had past experience for the said post while respondent No. 4 had got no such experience for the post of SDEO. He further argued that the appellant was serving in BPS- 17 while respondent No. 4 was serving in BPS- 16 and was thus, not eligible for the said post. He requested that the appeal might be accepted as prayed for.

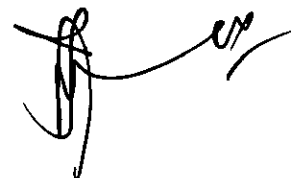
5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the transfer of the appellant was in accordance with law. The respondents had exercised their powers under section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, according to which the authority could transfer any civil servant to serve at



any place and that he could not refuse compliance of such order. He requested that the appeal might be dismissed. Learned counsel for private respondent No. 4 adopted the arguments of learned Deputy District Attorney and requested that the appeal might be dismissed.

6. The appellant has impugned a transfer order No. 4-16/2023 dated 4th May 2023 before us vide which respondent No. 4, among others, has been transferred from ASDEO Kabal Swat to SDEO (M) Baharain Swat in own pay scale. Record and arguments presented before us transpire that the appellant was holding the post of SDEO (Male) Bahrain, Swat since 15th September, 2021 and was posted from that position on 4th May 2023 and his services were placed at the disposal of Directorate for further posting. From the record provided by respondent No. 4, it further transpires that the appellant was transferred on 29.05.2023 to GHISS Madyan Swat as Subject Specialist.

7. Learned counsel for the appellant, while presenting his case, based his arguments on two grounds; one, that the tenure of the appellant was incomplete at the time of his transfer and second, he was in a senior grade as compared to the private respondent and hence more experienced. On both these grounds we are of the view that the appellant had completed more than one year and seven months on the post of SDEO Bahrain. Prior to that he had served in the same office in the capacity of ASDEO for more than four years, stated by the appellant himself in his service appeal. This shows that he had served at one station and in the same office for more than five years.



Another point that has been noted here is that the appellant, as well as respondent No. 4, is an employee of teaching cadre, serving against the position of Management Cadre, which is a clear violation of various orders and judgments of not only this Tribunal, but the august Supreme Court of Pakistan also. Upon that, the departmental representative informed that they are short of officers of Management Cadre therefore, in order to run the official business, officers from Teaching Cadre are posted against management cadre posts. There is no second opinion that under section 10 of the Khyber Pakhtunkhwa Civil Servants Act 1973, the competent authority is empowered to transfer a civil servant anywhere in the province where they think his services are required and being a civil servant, he is under obligation to serve there. Transfer/posting is not a perpetual right of a civil servant and it is the prerogative of his competent authority to decide how and where to use his services in the best public interest.

8. In view of the above discussion, the service appeal in hand is dismissed. Cost shall follow the event. Consign.

09. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 19th day of December, 2023.*


(FAREEHA PAUL)
Member (E)



(RASHIDA BANO)
Member (J)

SA 1659/2023

19th Dec. 2023 01. Mr. Muhammad Jamshed Kundi, Advocate Mr. Asif Masood Ali Shah, Deputy District Attorney for the official respondents and Mr. Imdad Ullah, Advocate for private respondent No. 4 present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the service appeal in hand is dismissed. 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 19th day of December, 2023.*


(FARIEHA PAUL)
Member (I)


(RASHIDA BANO)
Member (J)

Fazal Subhan PS