

ORDER

13.12.2023 01. Learned counsel for the appellant present. Mr. Habib Anwar,

Additional Advocate General for the respondents present. Arguments

heard and record perused.

02. Vide our detailed judgment of today separately placed on file,

consisting of (05) pages, we remit the instant appeal to the respondent

department to adjust/post the appellant against a post in accordance

with his Pay & Scale and Posting/Transfer Policy of the Provincial in

vogue. Costs shall follow the event. Consign.



(RASHIDA BANO)
Member (J)



(MUHAMMAD AKBAR KHAN)
Member (E)

remit the instant appeal to the respondent department to adjust/post the appellant against a post in accordance with his Pay & Scale and Posting/Transfer Policy of the Provincial in vogue. Costs shall follow the event. Consign.

08. *Pronounced in open Court at Peshawar and given under our hands and seal of the Tribunal on this 13th day of December, 2023.*



(RASHIDA BANO)
Member (J)



(MUHAMMAD AKBAR KHAN)
Member (E)

Establishment Department, Khyber Pakhtunkhwa, the private respondent No. 4 was relieved from the look after charge of the post of Section Officer (L & K). Therefore, he requested for dismissal of the instant service appeal.

06. Perusal of record reveals that the appellant was basically employee of Ex-FATA DC/FATA Secretariat. He entered into service on 22.01.1987 and until his adjustment in Home Department as a result of 25th Constitutional amendment was serving as Senior Scale Stenographer (BS-17 Personal). The appellant is amongst 103 employees of Ex-FATA Secretariat who alongwith their posts were shifted to various different relevant Departments of the Provincial Government. Since the terms & conditions of service of these employees were different from civil servants, therefore, Provincial Government has decided to retain their services on their respective pay scale till their retirement by creating supernumerary posts. Upon their retirement they will get gratuity instead of pension as per their terms and conditions of service and the post shall stand abolished.

07. We observe that the appellant for all intent and purpose is a Government employee and the law and rules and policy equally apply to him as long as he is in Government service. The appellant is required to be posted in accordance with his cadre and the Pay & Scale which he is holding at present. Record reveals that since April, 2020 to May, 2023 the appellant was transferred and posted against six different posts. The average tenure of the appellant comes to less than six months which is violation of Provincial Government Posting & Transfer Policy applicable in case of the appellant being employee of the Provincial Government. We are, therefore, inclined to

Additional Advocate General for official respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned order dated 14.04.2023 is against the law, facts, norms of natural justice, hence liable to be set aside; that the appellant has not been treated in accordance with law and rules and as such the respondent violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973; that the impugned order dated 14.04.2023 is violative of Clause-I and IV of the transfer/posting policy of the Provincial Government; that the impugned order dated 14.04.2023 has been issued by the respondents in arbitrary and malafide manner, therefore, the same is not tenable in the eyes of law and liable to be struck down; that the impugned order dated 14.04.2023 is nothing but just to harass the appellant and to accommodate blue eyed person; that the appellant has been transferred so many times in one year by the respondent department which is against the law and policy/rules, therefore, the impugned order dated 14.04.2023 is liable to be set aside.

05. On the other hand, learned Additional Advocate General contended that the appellant has been treated in accordance with provision of Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 and he has never been treated differently; that the appellant has not been posted by the Establishment Department nor he is the employee of the Establishment Department; that all the postings were made internally by the respondent department; that the high ups of the respondent department were not satisfied with the performance of the appellant; that on arrival of the officer from the

Notification No. E&A (HD)/PF dated 18.05.2023 and Notification dated 05.05.2023 may very kindly be set aside and the appellant be retained as SO (L&K). Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.”

02. Brief facts of the case are that the appellant was working as Section Officer in Home & Tribal Affairs Department. He was deputed to pursue litigation cases of merged areas before the courts vide Notification dated 11.01.2021; that the Notification dated 11.01.2021 was withdrawn vide Notification dated 12.02.2021. That vide Notification dated 09.04.2021, the appellant was posted as Section Officer (AR/NGOs); that just after two months the Notification was withdrawn by the department vide Notification dated 16.04.2021; that again the appellant was transferred as Section Officer (L & K) vide Notification dated 21.06.2022. Thereafter the appellant was prematurely transferred from SO (L & K) to report to SOG vide impugned order dated 14.04.2023; that vide Notification dated 05.05.2023, the private respondent No. 4 has been posted as Section Officer (L & K); that after a few days, the appellant was again transferred to Section Officer (Planning). Feeling aggrieved, from the impugned order dated 14.04.2023, the appellant filed departmental appeal on 17.04.2023 which was not decided within the statutory period, hence preferred the instant service appeal on 06.09.2023.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1792/2023

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Hakeem Jan (BPS-17), Report to SOG, Home and Tribal Affairs Department, Peshawar.....(*Appellant*)

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary Home and Tribal Affairs Department, Civil Secretariat, Peshawar.
3. Section Officer General Home and Tribal Affairs Department, Civil Secretariat, Peshawar.
4. Mr. Naiz Muhammad Senior Scale Stenographer (BPS-16) Section Officer (L&K) Home & Tribal Affairs Department Civil Secretariat Peshawar.....(*Respondents*)

Present:-

KAMRAN KHAN,
Advocate

--- For Appellant

HABIB ANWAR,
Additional Advocate General

--- For respondents

Date of Institution.....06.09.2023
Date of Hearing.....13.12.2023
Date of Decision..... 13.12.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

“That on acceptance of this appeal the impugned order dated 14.04.2023 to the extent of appellant and subsequent order