

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1759/2023

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

Sajjad Rasheed (MC BPS-16), ASDEO (Male), Peshawar. Presently
SDEO (Male) OPS Town-III, Peshawar. (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Elementary
& Secondary Education Department, Civil Secretariat, Peshawar.
3. Director Elementary & Secondary Education Department
Peshawar.
4. Mr. Habib Ullah (MC) BPS-17, Assistant Director, Directorate of
Elementary & Secondary Education Department, Peshawar.

.... (*Respondents*)

Mr. Mir Zaman Safi
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Mr. Farhan Ullah
Advocate ... For private respondent No.4

Date of Institution.....28.08.2023

Date of Hearing.....01.11.2023

Date of Decision.....01.11.2023

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 impugned order dated 11.05.2023 may very kindly be set aside to the and the respondents may further please be directed not to transfer the appellant from the post of SDEO Town-III Peshawar till completion of his normal tenure. Any other relief which this august Tribunal deems fit that may also be awarded in favor of appellant.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant is serving the education department as ASDEO quite efficiently and upto the entire satisfaction of his superiors. The appellant while performing his duty as ASDEO was transferred and posted as SDEO Town III, Peshawar vide notification dated 07.10.2021. He was again transferred from SDEO Town III to the post of ADEO (P& D) Hasan Khel, Peshawar. Feeling aggrieved, he filed departmental appeal on 11.05.2023, which was not responded to, 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 District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the impugned order is against the law, facts, norms of natural justice, hence not tenable and liable to be set aside. He further argued that appellant has not been treated in accordance with law and rules and respondents violated Article 4 & 25 of the Constitution of Islamic Republic of

Pakistan 1973. He contended that respondents violated clause-i and iv of transfer/posting policy of the Provincial Government by issuing impugned transfer order.

5. Conversely, learned counsel for private respondent assisted by learned District Attorney contended that transfer/posting notification was issued in the best public interest. He further contended that the appellant belongs to teaching cadre while he has been placed in management cadre in the best public interest, as far as the private respondent No. 4 is concerned, he is senior and possessed the required qualification for the post of SDEO. He further contended that according to section 10 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 desired posting is not the perpetual right of a civil servant and department concerned can transfer any civil servant to serve at the given place as mention in the posting/transfer order, while the civil servant cannot refuse compliance.

6. Perusal of record reveals that appellant was performing his duties as SDEO Male town III Peshawar who was posted there vide order dated 07.10.2021. Appellant was transferred from the post of SDEO Male town III Peshawar and was posted as ADEO CP&D) Hassan Khel Peshawar despite ban imposed by the Election Commission vide letter dated 16.02.2023 (violation of section 230 of Election Act). Appellant was on training for the purpose of census till finalization of census duty of supervisor in 7th digital population & housing census vide order dated 11.05.2023. While, appellant also alleged that normal



tenure of a posting is two years while appellant was prematurely transferred without observing government own policy i.e clause IV of the transfer/posting policy. Record transpired that appellant had completed almost two and half year on the post of SDEO Male Town-III, Peshawar as he was transferred and posted in the same district. Transfer/Posting is the sole domain of the competent authority in accordance with section 10 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 and as per apex court verdict reported in CPLA No.1532/2022 which read as:

“This court has already highlighted the scope of interference with the executive function of posting and transfer of government officials. It has been held that the transfer of a government official from one place or post to another to meet the exigencies of service was within the exclusive domain and competence of the competent authorities of the executive organ of the State and, ordinarily, it is not amenable to interference except in extraordinary circumstances. This principle is subject to the condition that the terms and conditions of service are not adversely affected. Moreover, an official has not vested right to claim to be posted/transferred to any particular place of his choice, nor is there a vested right to continue to hold a particular post at a particular place.”


Moreover appellant is Assistant Sub-Divisional Education Officer (BPS-16) and was posted in his own pay & scale to the post of Sub-Divisional Education Officer Town-III, Peshawar which post is of

BPS-17 and respondent No. 5 is the relevant civil servant of BPS-17, who will serve better being of proper scale and qualified officer which is in the best public interest.


7 So far imposition of ban upon transfer/posting of trained staff for census purpose till finalization of census duty is concerned, process of digital census had already been completed which fact is evident from official gazette of digital census notification dated 07.08.2023 wherein result of digital census has been issued.

8. As a sequel to above discussion, we dismissed the instant appeal being devoid of merits. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 1st day of November, 2023.*



(MUHAMMAD AKBAR KHAN)
Member (E)

Kalecmullah


(RASHIDA BANO)
Member (J)

ORDER

- 1st Nov, 2023
1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Mr. Faheem Khan, Assistant for the respondents present. Learned counsel for private respondent No. 4 present.
 2. Vide our detailed judgement of today placed on file, we dismissed the instant appeal being devoid of merits. Costs shall follow the event. Consign.
 3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 1st day of November, 2023.*


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)