

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
FAREEHA PAUL ...MEMBER (Executive)

Service Appeal No.1669/2023

Date of presentation of appeal.....17.08.2023
Dates of Hearing.....21.02.2024
Date of Decision.....21.02.2024

Mr. Haji Muhammad, ADEO (BPS-16), Posted as ADEO North Waziristan under transfer to GHS Land, North Waziristan.

.....**Appellant**

Versus

1. **The Secretary to Government of Khyber Pakhtunkhwa**, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
2. **The Director** Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. **Mr. Ihsan Ullah**, SST GHS Land, North Waziristan under transfer as ADEO at District North Waziristan.(**Respondents**)

Present:

Mr. Mahmood Jan, Advocate.....For the appellant

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

Nemo for private respondents.

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED TRANSFER NOTIFICATION DATED 19.04.2023 WHEREBY THE APPELLANT HAS BEEN TRANSFERRED FROM THE POST OF ADEO NORTH WAZIRISTAN TO GHS LAND IN UTTER VIOLATION OF TRANSFER/POSTING POLICY AND AGAINST THE INACTION OF THE RESPONDENTS BY NOT DECIDING THE DEPARTMENTAL APPEAL WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the memorandum and grounds of appeal, the appellant was serving as ADEO at District North Waziristan. That vide Notification dated 19.04.2023 he was transferred from GHS Land District North Waziristan to ADEO at District



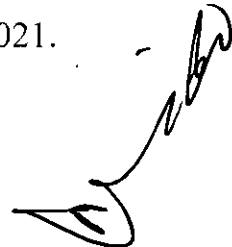
North Waziristan. Feeling Aggrieved, he filed departmental appeal which was not responded. Therefore, he filed Writ Petition before the Peshawar High Court for seeking redressal. That the Peshawar High Court vide order dated 09.05.2023, directed the appellate authority to decide the departmental appeal of the appellant, but the same was not decided within stipulated period, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and submitted reply.

3. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order.

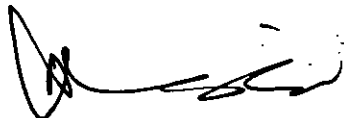
5. Initially, the appellant was transferred from the post of SST GHS Spinwam District North Waziristan to the post of ASDEO (Male) North Waziristan vide order dated 19.02.2021 and vide the impugned order dated 19.04.2023, he was transferred therefrom and was posted at GHS Land, District North Waziristan. The normal tenure in posting/transfer policy of the Provincial Government is two years, therefore, the grounds agitated by the appellant that he was transferred against the posting/transfer policy is not worth consideration as he had spent more than two years on the part of ASDEO North Waziristan since 19.02.2021.



6. This Tribunal vide consolidated judgment dated 20.06.2023 passed in Service Appeals No. 657/2022 & 658/2022 titled "Haq Nawaz & other Vs. The Secretary (E&SE) Education Department, Khyber Pakhtunkhwa Peshawar" has already dealt with almost similar matter in the following manner:

"Both the appellants are from the Ministerial Staff. Vide the impugned transfer order, they were transferred and posted within the same district from one place to other. The projected ground of the appeals is that the appellants have prematurely been transferred. This Tribunal has decided many appeals wherein the question of premature transfer was agitated. A number of such appeals have been allowed and some have been disallowed. The reason of different decisions in the appeals with the specific ground of premature tenure transfer is obviously the changed facts and circumstances. In each case, the peculiar facts and circumstances are to be seen and the matters are decided accordingly. In these appeals both the appellants have been transferred from one place to the other but in the same station so all the questions of disturbance, dislodging, inconvenience or for that matter violation of any policy are totally ruled out. The fact that the posts held by the appellants are of non-Executive duties is undisputed. Therefore, too the premature posting of the appellants within the station could not be interfered with normally because of clerical nature of job of the appellant which does not affect any affairs of the department causing no prejudice to the public interest as well as to the appellants. Such orders are not detrimental to the appellants because there is no change of station and Headquarter. That remains within District Battagram. The Pay, status, emoluments and perquisites remain the same. The appellants suffer no loss. All that happens is that the appellants report to different superiors at the offices within the city/suburban limits. Transfer is an incident of service and is made in administrative exigencies. Normally it is not to be interfered with by the courts. A transfer order is not cancelled at the throw of a hat by the court. Very compelling reasons must exist before a court of law to cancel the order of transfer of a government employee. We do not find any such compelling reasons in these appeals.

7. The upshot of the above discussion is that no prejudice has been caused to any of the appellants vide the impugned transfer order, therefore, we find these appeals groundless and dismiss



these accordingly. Costs shall follow the event. Copy of this judgment be placed in the connected file. Consign."

7. The facts and circumstances of this case are almost the same except that the appellant in this case is ADEO and the appellants of that cases were Senior Clerks. Besides, the same grounds, another appeal bearing No.2611/2023 was also dismissed yesterday, wherein, the appellant had been transferred within district which transfer order was challenged in the mentioned appeal. Similarly, the appellant of this appeal was transferred within the District.

8. For the above reasons, this appeal fails and is dismissed with costs. Consign.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 21st day of February, 2024.*


KALIM ARSHAD KHAN
Chairman


FAREEHA PAUL
Member (Executive)

Mutazem Shah


13th Feb. 2024

1. Learned counsel for the appellant and Mr. Muhammad Jan, District Attorney for the respondents present.

2. Former made a request for adjournment as he has not prepared the brief. Adjourned. To come up for arguments on 21.02.2024 before D.B.

P.P given to the parties.

**NED
IT
Peshawar**


(Salah Ud Din)
Member (J)


(Kalim Arshad Khan)
Chairman

Mutazem Shah

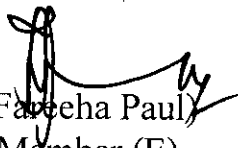
ORDER

21st Feb. 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Muhammad Rizwan A.D for official respondents present.

2. Vide our detailed judgment of today, placed on file, this appeal fails and is dismissed with costs. Consign.

3. *Pronounced in open Court at Peshawar under our hands and seal of the Tribunal on this 21st day of February, 2024.*


(Farzeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

Mutazem Shah