

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
AT CAMP COURT ABBOTTABAD

Service Appeal No. 1490/2023

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

Syed Ahsan Ali Shah, Junior Clerk O/o DEO (Female)
Mansehra.....(*Appellant*)

VERSUS

1. The Secretary (E&SE) Education Department, Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
2. The Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Female), Mansehra.
4. Mr. Usama Qazi, Junior Clerk GHS Kotli Bala, District Mansehra.....(*Respondents*)

Present:-

SYED NOMAN ALI BUKHARI,
Advocate --- For Appellant

ASIF MASOOD ALI SHAH,
Deputy District Attorney --- For official respondents No. 1 to 3

SYED ASIF SHAH,
Advocate --- For private respondent No. 4

Date of Institution.....18.07.2023

Date of Hearing.....23.01.2024

Date of Decision..... 23.01.2024

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 18.05.2023, 13.06.2023 and 13.07.2023 may be set aside being,

passed prematurely and violation of Posting/Transfer Policy. The respondent department may further be directed not to transfer the appellant prematurely without completing his normal tenure and in violation of Posting/Transfer Policy and politically motivated. Any other remedy which this august Tribunal deems fit and appropriate that may also be awarded in favour of appellant.”

02. Brief facts of the case are that the appellant was previously posted at GGHSS Oghi and after completion of two years tenure he applied to transfer to Mansehra on Humanitarian ground vide application dated 12.09.2021. He was transferred from GGHSS Oghi to the office of DEO (Female) Mansehra vide office order dated 22.09.2021. On 18.05.2023, the appellant was prematurely transferred on direction of Minister from the O/o the DEO (Female) to GGHS Narbeer and private respondent No. 4 was posted against the post of appellant without taking NOC from competent authority. Feeling aggrieved the appellant filed departmental appeal against the order dated 18.05.2023 which was withdrawn vide order dated 01.06.2023. Thereafter the respondent department issued impugned order dated 13.06.2023 whereby the order dated 01.06.2023 has withdrawn and order dated 18.05.2023 has been restored. Feeling aggrieved the appellant filed departmental appeal which was rejected vide order dated 13.07.2023, hence preferred the instant service appeal on 18.07.2023.

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 District Attorney for official respondents and learned counsel for private respondent No. 4 and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned orders dated 18.05.2023, 13.07.2023 & 13.06.2023 are against the law, policy, rules & norms of natural justice and material on record, hence liable to be set aside; that the private respondent No. 4 is employee of DEO (Male) Mansehra and posted in the office of DEO (Female) Mansehra without taking NOC from the competent authority, so the order dated 18.05.2023 has no legal sanctity in the eye of law; that the authority for Posting/Transferring of Junior Clerk is vested with DEO however, in the case of the appellant the transfer order was passed by the Director; that the appellant has been transferred prematurely and he has not been completed his normal tenure of two years. The non-completion of tenure and frequent transfers of appellant is blatant violation of Posting/Transfer Policy of the Provincial Government; that the appellant has not been treated in accordance with law, rules and the respondent have violated Article 4 and 25 of the Constitution as well as directions of the apex court in Civil Petition No. 23 of 2012 (Ms. Anita Turab-vs-State); that the impugned orders were passed in violation of Notification dated 22.01.2023 issued by Election Commission of Pakistan wherein ban was imposed on transfer/posting in the province of Khyber Pakhtunkhwa and Punjab; that the posting/transfer orders are required to be issued in exigency of service or in the interest of public but the impugned posting/transfer orders of the appellant were passed in clear violation of judgments passed by this Honourable Tribunal as well as Peshawar High

Court, Peshawar; that the impugned transfer orders/Notification was issued with mala-fide intention, therefore, the same is liable to be set aside.

05. Learned Deputy District Attorney as well as learned counsel for private respondent No. 4, while rebutting the arguments of learned counsel for the appellant contended that the transfer order of the appellant was issued on acceptance of appeal of private respondent No. 4 hence the transfer order is lawful and in accordance with the rules and policy in vogue by the Provincial Government; that respondent No. 4 taken NOC from DEO (M) Mansehr and submitted application for transfer to near to his home address on humanitarian grounds due to severe illness of his mother and serve at GHS Kotli Bala w.e.f 23.03.2021 to 18.05.2023 far flung area of District Mansehra; that the transfer order issued on 18.05.2023 on the basis of appeal filed by the private respondent No. 4 whereas the order was withdrawn by the respondent No. 2 on the basis of appeal filed by the appellant; that the respondent department issued transfer orders after completion of all the codal formalities; that the stance of the appellant his transfer is against the law & rules is also baseless as the impugned orders are in accordance with the posting/transfer policy of the provincial government, hence liable to be rejected.

06. Scrutiny of record transpires that the appellant was transferred from GGHS Oghi to the office of DEO (F) Mansehra vide office order dated 22.09.2021. Later on he was transferred from the office of DEO (F) Mansehra to GGHS Narbeer vide order dated 18.05.2023. The appellant made representation against premature transfer which was accepted vide order dated 18.05.2023. However, the order dated 18.05.2023 was withdrawn vide order dated 01.06.2023 and the earlier order dated

18.05.2023 was restored. In the absence of any administrative ground or public interest we find that the impugned orders are not in conformity with the Posting Transfer Policy of the Provincial Government which has the same sanctity of law. Clause II of the said policy provides that *“All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities for seeking posting/transfers of their choice and against the public interest”*. Similarly Clause IV of the policy ibid provides that *“The normal tenure of posting shall be three years subject to the condition that for the officers/officials posted in unattractive areas the tenure shall be two years and for the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.”*

The impugned orders have been issued on the recommendation of Minister for Culture, Tourism, Archeology and Museums Khyber Pakhtunkhwa. Similarly tenure of the appellant in the said post has not been taken into consideration and his transfer ~~is~~ is premature.

07. In view of above findings we are constrained to accept the appeal in hand and set aside the impugned orders 18.05.2023, 13.06.2023 & 13.07.2023. Costs shall follow the event. Consign.

08. *Pronounced in open at Camp Court, Abbottabad and given under our hands and seal of the Tribunal on this 23rd day of January, 2024.*



(Rashida Bano)
Member (J)
Camp Court Abbottabad



(Muhammad Akbar Khan)
Member (E)
Camp Court Abbottabad

ORDER

23.01.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for official respondents present. Learned counsel for private respondent No. 4 present. Arguments heard and record perused.
2. Vide our detailed judgment of today separately placed on file consisting of (06) pages, we are constrained to accept the appeal in hand and set aside the impugned orders 18.05.2023, 13.06.2023 & 13.07.2023. Costs shall follow the event. Consign.
3. *Pronounced in open at Camp Court, Abbottabad and given under our hands and seal of the Tribunal on this 23rd day of January, 2024.*



(Rashida Bano)
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