

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.2459-2023

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

Saima D/o Mufarikh Shah R/o Village Surizai Payyan, District Peshawar.
Lecturer in Law (BS-17), Khan Kohi, Nowshera GGDC.

.... (Appellant)

VERSUS

1. Secretary Higher Education Department, KPK, Peshawar.
 2. The Director, Higher Education, Department, KPK, Peshawar.
- (Respondents)

Syed Noman Ali Bukhari
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....20.11.2023
Date of Hearing..... 02.02.2024
Date of Decision..... 02.02.2024

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:

“It is, therefore, humbly prayed that on acceptance of this service appeal,

- a. Set aside the impugned office dated 26.07.2023 and be declared ass illegal, unlawful, without lawful authority and thus is of no legal effect and hence liable to be reversed.**
- b. An appropriate direction be issued to respondents to withdraw/recall the impugned office order No. SO(111)/HED/1-3/2023 DATED 26.07.2023.**
- c. The respondents be directed to restore-back the appellant at her previous posted station i.e GGDC**

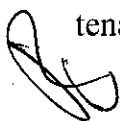


Bacha Khan or GGDC Gulshan Rehman Peshawar station along with all back benefits accrued to the appellant. Any other relief, not specifically prayed for in the circumstance of the case may be passed in favour of the appellant.”

2. Brief facts of the case, as given in the memorandum of appeal are that appellant was appointed as Lecturer BPS-17 upon the recommendation of Khyber Pakhtunkhwa Public Service Commission vide order dated 17.08.2018 and was performing her duty upto the entire satisfaction of his superior; that appellant was transferred from GGDC No.1 Charsadda to GGDC Zaryab Peshawar vide order dated 26.09.2019; that she was transferred from GGDC Zaryab Peshawar to GGDC Timergara vide order dated 30.11.2020; that she was again transfer from GGDC Timergara to GGDC Tangi vide order dated 20.01.2021; that she was again transferred GGDC Tangi to GHEC Pirpai Nowshera on 31.07.2021; that after spending s9ix months she was transfer to GGDC Bacha Khan Peshawar; and that once again for sixth time she was transferred from GGDC Bacha Khan Peshawar to GGDC Khan Kohi Nowshera on 26.07.2023. Feeling aggrieved, she filed departmental appeal on 03.08.2023 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 that the impugned office order dated 26.07.2023 is illegal, wrong, based on malafide, without cogent reason and against the fundamental rights of the appellant, hence liable to be set aside. He further argued that impugned transfer order was not in public interest as required under the posting/transfer policy, therefore, the same is not tenable and is liable to be set aside. He contended that impugned notification



has neither been issued in the public interest nor in the exigencies of public service rather issued on the basis of political interference, hence liable to be set aside.


5. Conversely, learned District Attorney contended that appellant had been treated in accordance with law and rules. He further argued that appellant was transferred from GGDC Bacha Khan to GGDC Khan Kohi Nowshera vide notification dated 26.07.2023 in the best public interest. He further contended that the posting/transfer at one's own choice is not the vested right of Civil Servant under Section 10 of Civil Servant Act, 1973, the civil servants is liable to serve anywhere where competent transferred/posted her/him.

6. Perusal of record reveals that appellant was appointed on 17.08.2018 and was posted at GDDC No.1 Charsadda, whereafter she was transferred to GGDC Zaryab Colony Peshawar vide order 26.09.2019. She was again transferred from GGDC Zaryab Colony Peshawar to GGDC Timergera vide order dated 30.11.2020, then the Tangi Charsadda vide order dated 20.01.2021, on 20.04.2021 from Pirpia Nowshera to GGDC Bacha Khan Peshawar. Now again vide impugned order dated 26.07.2023 appellant transferred to GGDC Khan Kohi, Nowshera. It is pointed out that one Ms. Busry was posted three months later from appellant when post of lecturer in Law was filled and occupied by the appellant. Ms. Busry used to teach Urdu to students and not Law which fact is confirmed by representative of respondents. So in our humble view, premature transfer of the appellant is not in the interest of students to whom the appellant was teaching. Here in this case public interest lies to allow appellant to continue teaching Law subject to the students. Ms. Busry will have to be adjusted at some other post in the said college or in some other college of Peshawar in her own subject of Law.



7. For what has been discussed above, we are unison to set aside impugned transfer order to the extent of appellant with direction to permit her to complete her normal tenure with further direction to adjust Ms. Busry at Peshawar. Costs shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 2nd day of February, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

*Kaleemullah


ORDER


02.02.2024

1 Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney alongwith Sohrab Khan, Lecturer for the respondents present.

2. Vide our detailed judgement of today placed on file, we are unison to set aside impugned transfer order to the extent of appellant with direction to permit her to complete her normal tenure with further direction to adjust Ms. Busry at Peshawar. 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 2nd day of February, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)