

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 2314/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mst. Nagina Bibi W/O Syed Abbas Hussain Shah SDEO (Female) Tehsil
Khanpur District Haripur R/O Tehsil Havalian District Abbottabad.
.....(*Appellant*)

Versus

1. Chief Secretary to Government of Khyber Pakhtunkhwa.
2. Secretary to Government of Khyber Pakhtunkhwa, Elementary & Secondary Education, Peshawar.
3. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.(*Respondents*)

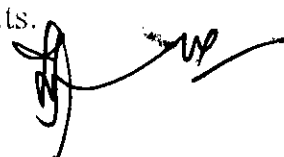
Mr. Kabirullah Khattak,
Advocate ... For appellant

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

Date of Institution.....	08.11.2023
Date of Hearing.....	19.03.2024
Date of Decision.....	19.03.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 02.08.2023 whereby the appellant was transferred from the post of SDEO (F) Khanpur by directing the appellant to report to District Education Officer (F) Haripur against which the appellant filed departmental appeal on 07.08.2023 which was not decided within the statutory period of 90 days. It has been prayed that on acceptance of the appeal, the impugned transfer order of the appellant dated 02.08.2023 might be set aside and she might be retained as SDEO Khanpur, with all back benefits.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as ASDEO (Female) BPS- 16 in District Haripur on 11.04.2011. She was promoted as SDEO (Female) BPS- 17 on 21.02.2019. She was transferred as SDEO (Female) to Khanpur on 26.10.2021. On 11.01.2022, she was prematurely transferred from SDEO (Female) Khanpur to SDEO (Female) Pabbi Nowshera. Feeling aggrieved, she filed service appeal No. 127/2022 which was disposed on 20.12.2022. While performing her official duty she was again prematurely transferred from SDEO (Female) Khanpur by directing her to report to District Education Officer (Female) Haripur vide order dated 02.08.2023. Feeling aggrieved from the order dated 02.08.2023, she submitted departmental appeal. She submitted a Writ Petition No. 1799-A/2023 also to decide the departmental appeal of the appellant, which was withdrawn on 17.10.2023. However, the respondent No. 1 was directed to decide the appeal of the appellant expeditiously but not later than fifteen days of the receipt of court orders, but the same was not decided; hence the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned transfer order was based on administrative grounds rather than public interest. He argued that the impugned order was premature and that the respondent department violated the posting/transfer policy of the Provincial Government. He further argued that no regular inquiry was



conducted against the appellant and as per law and rules no transfer order could be passed on the basis of any complaint and as a punishment. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that there were various complaints against the appellant regarding her plenty of absences without prior permission or leave, un-seriousness towards her official duties, unprofessional way of official correspondence, willful absence from important meetings and not explaining her position to high ups in various explanations called by the competent authority. He argued that her career was full of complaints and irregularities which shows no devotion towards her duty. He informed that the competent authority initiated proceedings against her on the allegation of misconduct which were under process. He further argued that posting/transfer was a part of service and the appellant was in the same district but with new assignment. He referred to Section 10 of the Civil Servants Act, 1973 and said that the desired posting was not the perpetual right of a civil servant and the department concerned could transfer any civil servant to serve at any place, while the civil servant could not refuse its compliance. He requested that the appeal might be dismissed.

6. Through this service appeal, the appellant has impugned her transfer order dated 02.08.2023, vide which she was transferred from the post of SDHO (Female) Khanpur, District Haripur, and directed to report to the District Education Officer (Female) Haripur. The transfer was ordered by the Secretary to Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department on administrative grounds and based on a complaint filed by the



District Education Officer (Female) Haripur. Record presented before us shows that various explanations of the appellant had been called on her absence, non-professional attitude and violation of official decorum. The concerned DEO (Female) brought the irresponsible attitude of the appellant in the notice of the Director on 23.08.2022 and the Secretary to Government of Khyber Pakhtunkhwa Elementary & Secondary Education also on 27.07.2023. Record further shows that the appellant issued a legal notice to the DEO (F) Haripur on 07.09.2022. From a letter dated 27.07.2023 of the DEO (F) Haripur addressed to the Secretary Elementary Education, it appears that the appellant, at some time, appeared before the Secretary in his office and ensured to show professionalism and commitment with her job. She also ensured to withdraw the legal notice and court case but at a later stage, she did not honor her words. When confronted, first the learned counsel for the appellant was in denial of any explanations or absence notices received by the appellant but at some latter stage during the hearing, he produced copies of two replies which the appellant had preferred in response to an explanation dated 30.04.2022 and an absence notice dated 06.09.2022.

7. After going through the entire record and arguments, it appears that the appellant is aggrieved of the impugned order being passed on administrative ground on a complaint of the DEO (F) Haripur. There is no second opinion that transfer/posting of a civil servant is the exclusive domain of the executive and the Tribunal should not interfere in this function of the executive unless there is any violation of the law or any malafide is established. In the case before us, it has been noted that the appellant ignored the standard norms and procedures of the government at many occasions, for which she was served with



explanations at various times. It also appears that she absented herself from official duty or proceeded for visiting the schools without informing her competent authority, which in her case was the DEO (F) Haripur. Resultantly the DEO (F) was not in the knowledge of the whereabouts of the appellant, as is clear from the two responses to the explanation and absence notice, produced before us by her learned counsel. This attitude and behavior is not acceptable for a civil servant. One must not forget that a civil servant is under obligation to follow a set of rules governing his/her service. Any deviation from those rules tantamounts to misconduct and may lead to initiating disciplinary proceedings against him/her. In case of the appellant, she showed a non-serious and unprofessional way in carrying herself and lost the pleasure of the competent authority and thus she was transferred and asked to report to the office of DEO (F) Haripur. In her case, she had not even been transferred out of the District, rather retained within the same district, with some different assignment, which means that a lenient view has been taken by the competent authority in her case, despite the fact that she was in constant violation of the standard procedures and practices and not giving any heed to the office decorum.

8. In view of the above discussion, the appeal in hand is dismissed. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 19th day of March, 2024.*


(FARIEHA PAUL)
Member (E)

FazleSubhan P.S



(RASHIDA BANO)
Member(J)

SA 2314/2023

19th Mar. 2024 01. Mr. Kabirullah Khattak, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the appeal in hand is dismissed. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19th day of March, 2024.*


(FARNIA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS