

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1968/2023

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

Mr. Muhammad Abid Hussain, Chief Head Warder (BPS-11), Central Jail,
Peshawar under Transfer to Central Prison D.I.Khan.....

... (Appellant)

VERSUS

1. The Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar.
2. The Superintendent, Headquarter Prison Peshawar.

... (Respondents)

Mr. Amir Zaman Safi
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution.....02.10.2023
Date of Hearing.....08.03.2024
Date of Decision.....08.03.2024

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:



“That on acceptance of this service appeal the impugned order dated 31.05.2023 may very kindly be set aside to the extent of appellant and the respondents may please be directed not to transfer the appellant from Peshawar Circle. 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 appellant is the employee of Prison Department and is serving as Chief Head Warder (BPS-11) at Central Prison D.I.Khan quite efficiently and up to the entire satisfaction of his superiors. That during service respondent department issued order dated 01.10.2019 whereby four circles were created and it was also held that duties of the employees will be placed within the circle and such employee serving in a circle could not be placed in another circle. That the appellant while performing his duty at Central Prison, Peshawar transferred to Central Prison, D.I Khan vide order dated 31.05.2023. Appellant feeling aggrieved, preferred departmental appeal, 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 Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for appellant argued that the impugned order dated 31.05.2023 is against the law, facts, norms of natural justice and material on



the record, hence not tenable and liable to be set aside. He further argued that appellant has not been treated in accordance with law and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan; that respondents acted in arbitrary and malafide manner while issuing the impugned order; that respondents violated clause-I of the transfer/posting policy of the government; that impugned order was issued during ban imposed by the Election Commission of Pakistan.

5. Conversely learned Deputy District Attorney contended that respondent department had issued order dated 01.10.2019 in order to streamline the Warder Establishment but there is nothing on record to show that Warder of any circle should perform duty at their own circle while it is upto the discretion of the competent authority to post and transfer any Warder/Head Warder from one place to another. He further argued that appellant was promoted to the post of Chief Head Warder (BPS-11) and respondent No.2 being competent authority issued posting/transfer order of all the promoted Chief Head Warder which is much prior to the ban period from Election Commission of Pakistan.

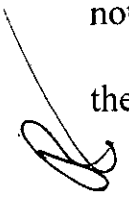
6. Perusal of record reveals that appellant is serving in the respondent/department as Head Warder who was promoted as Chief Warder (BPS-11) vide order dated 31.05.2023 and upon his promotion was transferred to Central Prison DI Khan from Central Prison Peshawar vide impugned order

which was assailed in a departmental appeal by the appellant which was not responded.

7. Appellant had taken two ground in his appeal first that respondent/department issued order dated 01.10.2019 whereby 04 circles have been created for the betterment of Warder Establishment and it has been held that duties of the employees will be placed within the circle and as such employee serving in a one circle could not be placed/posted in another circle and second, that impugned transfer order was issued during ban imposed upon transfer/posting of civil servants by Election Commission of Pakistan vide notification dated 29.05.2023.

8. Respondent issued notification dated 01.10.2019 wherein four circles were established to streamline the Warder Establishment. Perusal of said notification reveals that there was nothing of the sort that warders of one circle should perform duties in their own circles, therefore the authority can transfer any Warder from one circle to another. Moreover appellant was transferred to DI Khan upon his promotion. Authority is competent to transfer the appellant anywhere, and specially, when it was a case of promotion. that too in case of promotion.


Coming towards the second contention of the appellant that despite ban imposed upon transfer posting by the Election Commission of Pakistan vide notification dated 29.05.2024, posting of the appellant was ordered, we are of the view that transfer/posting order of the appellant was issued due to his




promotion which vide order dated 31.05.2024. Therefore, ban in such case was not applicable. Moreover, if there was any violation, the ECP could have taken notice of that violation. As it was not done, this means that the case was clear and no violation took place.

9. For what has been discussed above, we are unison to dismiss the appeal in hand, being groundless.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 8th day of March, 2024.*


(Fareeha Paul)
Member (E)


(RashidaBano)
Member (J)

ORDER

08.03.2024

1. Learned counsel for the appellant present. Mr. Asif Masaood Ali Shah learned Deputy District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to dismiss the appeal in hand, being groundless.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 8th day of March, 2024.*


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

*Kaleemullah