

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 4823/2021

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

Syed Jalal Hussain S/O Syed Zarin Hussain, Presently Serving as SST (General) in GMS Mahora Tehsil Lower District Orakzai.

... (*Appellant*)

VERSUS

1. Director Elementary & Secondary Education Department Peshawar.
2. District Education Officer (Male), District Orakzai at Hangu.
3. Kausar Ali Shah, Presently serving as SST Science at GMS Starsam Lower Orakzai.
4. Khatib Ali, SST General GHS Suleman Khel.
5. Iqbal Hussain ADEO Lower Orakzai.

... (*Respondents*)

Mr. Safdar Iqbal Khattak
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution.....15.03.2021

Date of Hearing.....18.03.2024

Date of Decision.....18.03.2024

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:

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“On acceptance of this appeal, that in the impugned notification dated 07.12.2020 the transfer/posting of the appellant GMS Mahora instead of the nearest school i.e. Suleman Khel, Starsam is against the law and facts, hence liable be set aside.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as PST in GPS Kuraz and was performing his duty with the entire satisfaction of his superior. Appellant being ill, submitted an application to respondent No.2 for his transfer to nearest school i.e Suleman Khel. The post of the appellant was upgraded from BPS-15 to BPS-16 and was transferred from GPS Kuraz to GMS Mahura vide notification dated 07.12.2020. Feeling aggrieved, he filed departmental appeal, which was not responded, 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 the appellant argued that posting transfer notification of the appellant at GMS Mahura instead of GHS Starsang or Guleman Khel is against the law, facts, norms of natural justice, hence not tenable and liable to be set aside; that appellant is cardiac patient which fact was not considered by respondent while issuing posting/transfer order to far flung areas which show malafide on his part.



5. Learned Deputy District Attorney contended that the appellant has been treated in accordance with law and rules. He further contended that in accordance with Section-10 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 desired posting is not the perpetual right of a civil servant and department concerned can transfer any civil servant to serve at the given place as mentioned in the posting/transfer order, while the civil servant cannot refuse compliance. He further argued that the appellant was adjusted in his own Tehsil/District and no inconvenience is caused to him.

6. Perusal of record reveals that appellant was appointed as PST in respondent department on 1/07/2012 who was promoted as SST general BPS 16 vide notification dated 7/12/2022 and posted at GMS Mahora. Appellant submitted application to DEO Orakzai for his transfer to nearest school situated at Suleman Khel due to his illness being cardiac patient which was not responded. It is an admitted fact that appellant was promoted and his posting order was issued after his promotion for actualization of his promotion. It is also pertinent to mention that appellant was transferred not only with in district but in his own Tehsil. The appellant has 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.

7. Moreover the impugned transfer order was issued by Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar and as per rules appellate authority against orders issued by Director is the Secretary and not District Education Officer and hence the appellant filed departmental appeal to an incompetent authority. So, legally speaking, departmental appeal filed by the appellant is also incompetent. Therefore, appeal in hand is not maintainable in accordance with procedure provided in Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 as the requirement under the said section is not complied with in the instant appeal by the appellant.

8. For what has been discussed above, the appeal in hand is dismissed having no force in it. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18th day of March, 2023.*

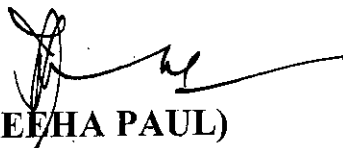

(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER

18.03.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.
2. Vide our detailed judgement of today placed on file, the appeal in hand is dismissed having no force in it. Cost shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18th day of March, 2023.*



(FAREEHA PAUL)
Member (E)



(RASHIDA BANO)
Member (J)

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