

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN** ...CHAIRMAN
MUHAMMAD AKBAR KHAN ...MEMBER (Executive)

Service Appeal No.167/2024

Date of presentation of appeal.....22.01.2024

Date of Hearing.....19.04.2024

Date of Decision.....19.04.2024

Mr. Fida Khan, S/O Eid Ahmad Khan R/O Tehsil Shiwa, District North Waziristan. ExSDEO Male Razmak
.....(*Appellant*)

Versus

1. **Chief Secretary**, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **Secretary** Elementary & Secondary Education Department Block-A, Opposite MPAs Hostel, Civil Secretariat.
3. **Director** Elementary & Secondary Education near GHSS No.1, GT Road, Peshawar.
4. **District Education Officer (Male)** North Waziristan.
5. **Habib Ullah Jan**, SDEO (Male) Razmak.....(*Respondents*)

Present:

Mr. Muhammad Ilyas Orakzai, Advocate.....For appellant

Mr. Muhammad Jan, District AttorneyFor respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED TRANSFER ORDER DATED 05.10.2023 OF RESPONDENT NO.2 BY WHICH THE APPELLANT HAS BEEN TRANSFERRED FROM SDEO (MALE) RAZMAK NORTH WAZIRISTAN AS HEAD MASTER GHS MANDEY KHEL NORTH WAZIRISTAN.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Appellant's case in brief is that he was serving as Head Master Government High School Mandey Khel, North Waziristan when he was transferred to Razmak, North Waziristan as Sub Divisional Education Officer (Male) North Waziristan on 31.03.2023. After serving for about seven months, he was again transferred to his



previous post of Head Master GHS Mandey Khel, North Waziristan vide impugned transfer order dated 05.10.2023 and the private respondent No.4 was posted against the post of SDEO (Male) North Waziristan. Feeling aggrieved, he filed departmental appeal but the same was not responded, hence, the instant service appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellant and learned District Attorney.

04. Grievance of the appellant is that he was transferred from the post of SDEO and was adjusted against the post of Head Master. It is undisputed that the transfer of the appellant was made within the District excluding all possibilities of dislodging inconvenience or any other issue of disturbance etc. also excluding the possibility of violation of posting the Posting/Transfer Policy of the Government. This Tribunal vide consolidated judgment dated 20.06.2023 passed in Service Appeals No. 657/2022 & 658/2022 titled "Haq Nawaz & other Vs. The Secretary (E&SE) Education Department, Khyber Pakhtunkhwa Peshawar" has already dealt with almost similar matter in the following manner:

"Both the appellants are from the Ministerial Staff. Vide the impugned transfer order, they were transferred and posted within the same district from one place to other. The projected ground of the appeals is that the appellants have prematurely



been transferred. This Tribunal has decided many appeals wherein the question of premature transfer was agitated. A number of such appeals have been allowed and some have been disallowed. The reason of different decisions in the appeals with the specific ground of premature tenure transfer is obviously the changed facts and circumstances. In each case, the peculiar facts and circumstances are to be seen and the matters are decided accordingly. In these appeals both the appellants have 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. The fact that the posts held by the appellants are of non-Executive duties is undisputed. Therefore, too the premature posting of the appellants within the station could not be interfered with normally because of clerical nature of job of the appellant which does not affect any affairs of the department causing no prejudice to the public interest as well as to the appellants. Such orders are not detrimental to the appellants because there is no change of station and Headquarter. That remains within District Battagram. The Pay, status, emoluments and perquisites remain the same. The appellants suffer no loss. All that happens is that the appellants report to different superiors at the offices within the city/suburban limits. Transfer is an incident of service and is made in administrative exigencies. Normally it is not to be interfered with by the courts. A transfer order is not cancelled at the throw of a hat by the court. Very compelling reasons must exist before a court of law to cancel the order of transfer of a government employee. We do not find any such compelling reasons in these appeals.

7. The upshot of the above discussion is that no prejudice has been caused to any of the appellants vide the impugned transfer order, therefore, we find these appeals groundless and dismiss these accordingly. Costs shall follow the event. Copy of this judgment be placed in the connected file. Consign."

05. Besides, there is no ifs ands or buts about the fact that the appellant and private respondent, both are from the Teaching Cadre, therefore, none of the two are having any locus standi to strive for posting in the Management Cadre i.e. for the post of SDEO (M). Even the civil servant, who is in the relevant grade cannot claim posting against his choice post rather it is the domain and prerogative of the departmental authorities to post a Civil

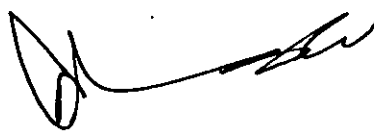


Servant against any post but proper person against the proper post should be posted. Reliance is placed on 2018 SCMR1411 titled "Khan Muhammad versus Chief Secretary Government of Balochistan and others".

06. This Tribunal and also the Supreme Court of Pakistan in a number of cases has held that proper persons should be posted against their proper cadre which in this case, is posting of an officer of Management Cadre against the Management Post. Proper person against proper post is also the spirit of clause-xiii of the Posting/Transfer Policy of the Government of Khyber Pakhtunkhwa.

07. For the reasons we hold that neither the appellant nor private respondent but in view of the clause xiii Posting/Transfer Policy, the concerned authorities shall ensure the posting of proper person against the post of SDEO i.e. Management Cadre and not from the Teaching Cadre. The appeal is disposed of in the above terms. Consign.

08. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 19th day of April, 2024.*



KALIM ARSHAD KHAN
Chairman



MUHAMMAD AKBAR KHAN
Member (Executive)

S.A #.167/2024

ORDER

19th Apr. 2024 1. Learned counsel for the appellant present. Mr. Muhammad

Jan, District Attorney for the respondents present.

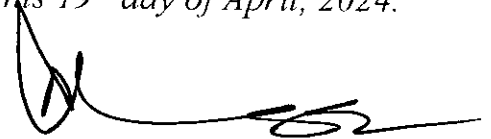
2. Vide our detailed judgment of today placed on file, we hold that neither the appellant nor private respondent but in view of the clause xiii Posting/Transfer Policy, the concerned authorities shall ensure the posting of proper person against the post of SDEO i.e. Management Cadre and not from the Teaching Cadre.

The appeal is disposed of in the above terms. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 19th day of April, 2024.*



(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman

Muazem Shah

