

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.55/2024

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

Mr. Asif Ali, Senior Cler/SDA, (BPS-11), XEN C&W Division, Sub
Division Wari Dir Upper.

.... (Appellant)

VERSUS

1. The Government of KPK through Secretary C&W Department, Civil Secretariat, Peshawar.
2. Chief Engineer (Center), C&W Department, KPK Police Lines Road, Peshawar.
3. Mr. Bashir Ahmad, Junior Clerk BPS-11, Office of the Executive Engineer C&W Division, Dir Upper.

.... (Respondents)

Mr. Noor Muhammad Khattak
Advocate

.... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

.... For respondents

Date of Institution.....02.01.2024
Date of Hearing.....19.03.2024
Date of Decision.....19.03.2024

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 the instant service appeal, the impugned transfer order dated 08.12.2023 of respondent No.2 and appellate order dated 01.01.2024 may very kindly be set aside and the respondents may kindly be directed, not to transfer the appellant from Senior Clerk/SDA (BPS-14) XEN C&W Division, Sub Division Wari Dir Upper. Any other remedy which this august tribunal deems fit that may also be awarded in favor of the appellant.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was promoted to the post Senior Clerk vide order dated 30.11.2022. After promotion he was transferred from the office of Executive Engineer Highway, Division Mardan to office of Executive Engineer C&W Division, Dir Upper vide order dated 05.10.2023. On 08.12.2023 appellant was prematurely transferred from the office of XEN C&W Division Dir Upper to the office of XEN Division, Buner-II. Feeling aggrieved, he preferred departmental appeal before the respondent No.1, which was regretted vide impugned order dated 01.01.2024, 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 appellant has not been treated in accordance with law and rules and respondents violated Article 218 (3) and 220 of the Constitution of Islamic Republic of Pakistan, 1973; that both the impugned orders are contrary to law and rules, hence not tenable and liable to be set aside; that both the impugned orders are issued in violation of clause i and iv of the transfer/posting policy of the Provincial Government. He, therefore, requested that appeal might be accepted as prayed for.

5. Conversely learned Deputy District Attorney contended that the appellant has been treated in accordance with law and rules; that appellant was posted in the office of Executive Engineer, C&W

 Division, Dir Upper against his original cadre post by relieving from

OPS as there was no vacant post available in Mardan; that the appellant is a civil servant, whereas transfer/posting of a civil servant comes within a purview of terms and conditions of service. A civil servant is bound to serve where he is posted by the competent authority. The competent authority has been empowered by Section 10 of Civil Servant Act, 1973 to transfer and post a civil servant in exigency of service, therefore, competent authority in exercise of the power under Section 10 issued the transfer notification of the appellant in best public interest.

6. Perusal of record reveals that appellant was promoted as Senior Clerk on 30.11.2022 and was posted at Senior Clerk at the office of Executive Engineer High way Division Mardan, wherefrom, he was transferred and posted as Senior Clerk SDA in the office of Executive Engineer C&W Division District Dir Upper vide order dated 05.10.2023. Appellant just after two months of his posting at Dir Upper was transferred and posted to the office of XEN Division, Buner vide impugned order dated 08.12.2023. Appellant challenged his posting/transfer order on the ground of being made prematurely in violation of policy and not being in the public interest. Government itself had introduced transfer/posting policy. Normal tenure of posting at one station is two years. Clause (iv) of the said policy reads as follow;

"The normal tenure of posting shall be three years subject to the condition that for the officer/officials posted in unattractive areas the tenure shall be two years and for the hard areas the tenure shall be on year. The unattractive and hard areas will be notified by the Government."

In the instant case appellant was transferred to Dir Upper on 05.10.2023 and impugned transfer order was issued on 08.12.2023, which means just after two months that too without mentioning any manifest public interest and

exigency. Comments of the respondents are also silent with regard to any public interest or exigency of service which compelled them to transferred out appellant. Government is bound to act upon and obey their own transfer/policy but they violated it, which is not warranted under the law and against the settled norms.

7. It is also important to note that after transfer/posting the appellant, additional charge of the post of Senior Clerk was given to a Junior Clerk, which means that no other suitable civil servant was available for posting to the post of Senior Clerk. There was no complaint against the appellant as nothing of the sort is mentioned in the comments by the respondents, then in such a situation, it will be in the interest of public that proper person should work on a proper post which is also mentioned in transfer/posting police in clause xiii (a) reads as;

“to ensure the posting of proper persons on proper posts, the Performance Evaluation Report/annual confidential report, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/officials be considered.”

8. For what has been discussed above, we are unison to accept appeal in hand with direction to respondents to allow appellant to complete his normal tenure. . Costs shall follow the event. Consign.

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


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)