

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 101/2024

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

Muhammad Ishfaq Khan, Tehsildar (AC) under transfer from Commissionerate of Peshawar to Commissionerate of D.I.Khan, resident of Gulbahar Colony, Tehsil and District Peshawar.....(*Appellant*)

Versus

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa Peshawar.
2. Commissioner, Peshawar Division, Peshawar.
3. Commissioner, D.I.Khan Division, D.I.Khan.
4. Assistant Secretary (Establishment) Board of Revenue, Peshawar.
.....(*Respondents*)

Mr. Danish Khan Afridi,
Advocate

... For appellant

Mr. Umair Azam,
Addl. Advocate General

... For respondents

Date of Institution..... 09.01.2024
Date of Hearing..... 17.04.2024
Date of Decision..... 17.04.2024

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 06.12.2023 whereby services of the appellant, previously placed at the disposal of respondent No.2, were placed at the disposal of respondent No. 3. It has been prayed that on acceptance of the appeal, the impugned notification dated 06.12.2023 might be declared in violation of the posting/transfer policy of the Government of Khyber Pakhtunkhwa and the public interest and the same might be reversed by placing the services of the appellant back at the disposal of respondent No. 2.



2. Brief facts of the case, as given in the memorandum of appeal, are that services of the appellant, while posted as Tehsildar, City Peshawar, vide letter dated 25.05.2023, were surrendered by respondent No. 2, alongwith services of another officer, to respondent No. 1 with a request for initiating disciplinary action against them under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The appellant was issued charge sheet on 17.08.2023 for a proper inquiry under E&D Rules, 2011, which he faced but charges were not proved against him and he emerged innocent. The respondent No. 1, being competent authority, agreed with the findings of the inquiry officer namely Fazal Hussain, Additional Secretary, Elementary & Secondary Education Department. The appellant was waiting for posting in office of the respondent No. 2, when his services were placed at the disposal of the respondent No. 3 vide impugned notification dated 06.12.2023. Feeling aggrieved, he filed departmental appeal against that order which was rejected vide order dated 05.01.2024; 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 Additional Advocate General 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 order was premature and against the posting/transfer policy of the Government of Khyber Pakhtunkhwa. He argued that transfer of the appellant out of Peshawar Division was violative of the posting/transfer policy and that the same was not issued in public interest. He argued that there



was no compelling reason for respondent No. 1 to transfer the appellant through the impugned notification, particularly when a post of Tehsildar was vacant in Peshawar Division. He requested that the appeal might be accepted as prayed for.

5. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that being provincial cadre post, the services of the appellant were placed at the disposal of respondent No. 3 for further posting in the D.I.Khan Division. He argued that posting/transfer was a part of service and no officer/official could challenge order of the competent authority. He requested that the appeal might be dismissed.


6. Arguments and record presented before us transpire that the appellant was serving as Tehsildar in Peshawar Division when he was surrendered by the office of Commissioner Peshawar Division to the office of Senior Member Board of Revenue, Peshawar. There were allegations of corrupt practices against him for which an inquiry was conducted and the charges leveled against him could not be proved. Through a notification dated 22.11.2023, he was warned by the Senior Member Board of Revenue, being the competent authority, to be careful in future. As the appellant was awaiting posting in the office of SMBR, a notification dated 06.12.2023 was issued vide which he was transferred and his services were placed at the disposal of Commissioner D.I.Khan Division. The appellant has impugned the transfer order dated 06.12.2023 on the ground that the same had been issued in violation of the transfer/posting policy of the provincial government as he had not been allowed to complete his normal tenure of posting at Peshawar Division.



7. The appellant, in his appeal, has himself stated that his services were surrendered by the Commissioner Peshawar Division to the SMBR, which means that he was no more on the payroll of Commissioner Peshawar Division, rather he was in the office of SMBR, first under an inquiry and later on waiting for posting. There is no second opinion that under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act 1973, the competent authority is fully authorized to transfer a civil servant at any place in the province and that the civil servant is under obligation to act upon such orders. In this case, as the inquiry against the appellant had concluded and a proper notification had already been issued, therefore, the competent authority, i.e. the SMBR, transferred him by exercising the powers conferred upon him under the Civil Servants Act 1973 and placed his services at the disposal of Commissioner D.I.Khan Division. We do not see any violation of the transfer/posting policy of the provincial government, as claimed by the appellant. Moreover he, being a civil servant, cannot claim for a posting of his choice and is under obligation to act on the orders of his competent authority.

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

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 17th day of April, 2024.*


(FARZEEN PAUL)
Member (E)



(RASHIDA BANO)
Member(J)

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17th Apr. 2024 01. Mr. Danish Khan Afridi, Advocate for the appellant present. Mr. Umair Azam, Additional Advocate General for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, the appeal in hand is dismissed being groundless. 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 17th day of April, 2024.*


(FARIHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS