

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Amended Service Appeal No. 345/2024

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Muhammad Ayyaz S/O Muhammad Ashraf R/O Mohallah Rasoliyaan
House No. 044 P.O Nawanshehr Chatri Tehsil and District Abbottabad
(CT, GHS Jabbrian District Abbottabad).

.....(Appellant)

Versus

1. Director Elementary and Secondary Education Khyber Pakhtunkhwa,
Peshawar.
2. District Education Officer (Male) District Abbottabad.
3. Mr. Zubair Ahmad CT, Government Middle School Sando Gali,
Abbottabad presently CT, GHS Jabbrian, District Abbottabad.

.....(Respondents)

Malik Haider Ali Awan,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney.

... For respondents

Date of Institution.....	12.01.2024
Date of Hearing.....	04.06.2024
Date of Decision.....	04.06.2024

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 transfer/adjustment order dated 28.10.2023 issued by D.E.O (Male) Abbottabad and Transfer/adjustment order dated 07.12.2023. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and respondents be directed to transfer/adjust the appellant back to GHS Jabbrian where he was posted.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was serving in the Education Department since 09.04.2005. He was posted in Government High School Jabbrian District Abbottabad. He filed two complaints against one Ishtiaq Hussain, Naib Qasid. An enquiry was conducted in the school whereas another was conducted by the Deputy Director Education and last enquiry was conducted by the Principal GHSS No. 1 in that regard and Ishtiaq Hussain was found guilty. After the inquiries, DEO (Male) Abbottabad transferred the appellant to GMS Banda Qazi, Abbottabad vide an order dated 28.10.2023, which was against the law and circumstances. Feeling aggrieved, he filed departmental appeal before respondent No. 1 on 13.11.2023 which was not responded. He filed a writ petition before the honourable Peshawar High Court in which directions were issued to the respondent to decide the fate of the appeal pending before him within one month but the same was not done; hence the instant service appeal.

3. Respondents were put on notice. Official respondents No. 1 & 2 submitted written reply/comments on the appeal. Private respondent No. 3 despite proper service did not appear nor his written reply was received, hence he was placed ex-parte vide order dated 03.05.2024. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the official 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 Ishtiaq Ahmad, Naib Qasid was backed by Mr.



Muhammad Arshad, Head Master of the said school. He argued that the appellant, being complainant, was awarded the same punishment like accused who was found guilty during the inquiries, hence the impugned order was not maintainable. It was clearly mentioned in all the findings of the enquiry reports that Ishtiaq Hussain, Naib Qasid used to misbehave with the teachers of the school but the management (Head Master) did not take any action against him, instead the appellant was transferred from the said school through the impugned order dated 28.10.2023, which was premature and caused severe mental agony and damaged his reputation. He further argued that instead of considering the appeal filed by the appellant, respondent No. 2 deliberately transferred private respondent No. 3 to GHS Jabbrian vide order dated 07.12.2023, impugned through the amended service appeal. He requested that the appeal might be accepted as prayed for.

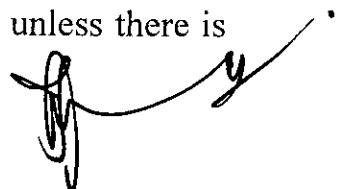
5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, the respondent department was empowered to transfer the appellant in the province and he could not refuse compliance and the desired posting was not his perpetual right. He requested that the appeal might be dismissed.

6. The appellant was transferred from Government High School Jabbrian Abbottabad to Government Middle School Banda Qazi Abbottabad vide impugned order dated 28.10.2023. Arguments and record presented before us show that some issue arose between the



appellant, while posted as C.T at GHS Jabbrian, and a Naib Qasid, Ishtiaq Hussain, of that school. The matter was inquired and it was found that both, the appellant and the Naib Qasid, created problems for the school administration and in view of that, both of them were transferred out of that school by the District Education Officer (Male) Abbottabad. Through the same order dated 28.10.2023, one Raja Khizar C.T was transferred to GHS Jabbrian, in place of the appellant. On 07.12.2023, Mr. Zubair Khan, respondent No. 3 (of amended appeal), was transferred as C.T at GHS Jabbrian, and the appellant has impugned that order also before us, with the prayer to set aside both the orders and direct the respondents to transfer him to GHS Jabbrian.


7. Here we refer to Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 according to which a government servant is bound to serve anywhere within the province, in this case the district, in the best public interest and without raising any objection. The appellant, being a civil servant, cannot claim transfer of his own choice, rather he has to serve where his competent authority wants him to serve in the best public interest and exigency of service. In case of the appellant, it has been noted that he was transferred not just within the same district, but he was not even transferred out of the city of Abbottabad, therefore, the point of completing tenure does not hold ground. Moreover, posting/transfer is an exclusive domain of the executive and the competent authority is fully empowered to transfer a civil servant anywhere according to the exigency of service. We feel that this Tribunal should not interfere in this domain of executive unless there is

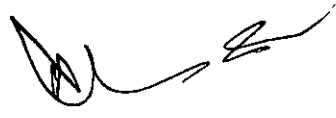


any breach of law. In the case in hand, we do not see any violation of law or rules.

8. In view of the above discussion, the appeal in hand is dismissed being devoid of merit. 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 04th day of June, 2024.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman


FazleSubhan. P.S

SA 345/2024

04th June, 2024 01. Malik Haider Ali Awan, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the appeal in hand is dismissed being devoid of merit. 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 04th day of June, 2024.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

Fazal Subhan PS