


ORDER


06.05.2024 1

Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, the appeal in hand is referred to the respondent department to decide the matter within 30 days after receipt of this judgment by posting appellant at attractive area. Costs shall follow the event. Consign.

3. *Pronounced in Camp Court at Swat and given under our hands and seal of the Tribunal on this 6th day May, 2024.*


(FAREEHA PAUL)
Member (E)
Camp Court Swat

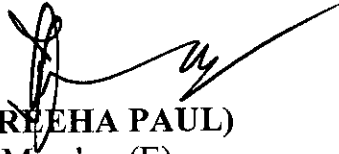

(RASHIDA BANO)
Member (J)
Camp Court Swat


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therefore, we refer the matter back to respondent for transfer of the appellant to settled area as he had already served and completed his hard/unattractive area tenure at Shangla and Kohistan Upper and now at lower Kohistan for a period of more than 10 months which is almost completion of his third hard area tenure.

8. Vide our detailed judgment of today placed on file, the appeal in hand is referred to the respondent department to decide the matter within 30 days after receipt of this judgment by posting appellant at attractive area. Costs shall follow the event. Consign.

9. *Pronounced in Camp Court at Swat and given under our hands and seal of the Tribunal on this 6th day May, 2024.*


(FARZEHA PAUL)
Member (E)
Camp Court Swat


(RASHIDA BANO)
Member (J)
Camp Court Swat

treated in accordance with law and rules. He further contended that posting/transfers of the appellant has been made after obtaining proper permission/NOC from the Election Commission of Pakistan and he has also been completed reasonable tenure on the said post. He further contended that according to section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, 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 mention in the posting/transfer order, while the civil servant cannot refuse compliance.

6. Perusal of record reveals that appellant is serving as District Attorney in respondent/department since 11.03.2005. Appellant was transferred and posted as District Attorney Kohistan Upper, vide notification dated 16.12.2020, where he performed his duties after completion of his tenure of hard area, he was transferred to District Shangla vide order dated 31.05.2022. Appellant assumed charge of his post at Shangla & was performing his duties when on March, 2023 he wrote a letter to Provincial Government about loss of Rs.36 2,050,163/22 due to involvement of officer/officials of District Collector Office, Shangla, for not taking interest in the official work in the courts of law. Deputy Commissioner/District Collector get annoyed on the report/letter sent by appellant and manage to transfer appellant from Shangla to Kohistan Lower vide order dated 31.07.2023.


7. As per transfer posting policy Kohistan Upper and Shangla are hard/unattractive areas where appellant already served and completed his tenure, therefore, it is demand of law and justice that appellant be transferred to settled/attractive area. Again transfer of the appellant to another unattractive area seems to be malafide on the part of the respondent department. No doubt transfer/posting is domain of the authority under section 10 of Khyber Pakhtunkhwa Civil Servant Acts, 1973, but it must be exercised fairly in an equitable manner in the urgency of service and public interest which is lacking in the instant case,

2. Brief facts of the case are that appellant is serving as District Attorney in Law, Parliamentary Affairs and Human Rights Department Khyber Pakhtunkhwa since 11.03.2005 and performing his duty with great zeal and zest. He was transferred from District Attorney Shangla to District Attorney Upper Kohistan vide notification dated 16.12.2020. He then transferred from District Attorney Kohistan Upper to District Attorney Shangla, vide notification dated 31.05.2022. Again he was transferred back as District Attorney Kohistan Upper vide notification dated 31.07.2023. Feeling aggrieved, he filed departmental appeal on 04.08.2023, which was not responded within statutory period of ninety days, hence the present service appeal.

3. Respondents were put on notice who submitted their comments on the appeal. We heard the learned counsel for the appellant as well as learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further argued that the impugned notification dated 31.07.2023 is against the law, principles of natural justice, hence void ab-initio and not sustainable under the law. He further argued that appellant was prematurely transferred which is violation of posting/transfer policy of provincial government. He submitted that the impugned notification is also against the mandate of the interim government as per Election Act, 2017. He further submitted that by issuing the impugned pre-mature, malafidely and politically motivated notification dated 31.07.2023, the respondents violated dictum of the apex court laid down in the case Anita Turab. He requested that instant appeal might be accepted as prayed for.

5. Conversely, learned District Attorney contended that appellant has been



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP COURT SWAT

Service Appeal No.2430/2023

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

Muhammad Zubair S/o Pir Dad R/o Munir Colony Alpuri, District Shangla,
working as District Attorney, Law Department, Khyber Pakhtunkhwa.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Law, Parliamentary Affairs & Human Rights Department, Peshawar.
3. Mr. Salik Rauf, District Attorney, Shangla at Alpuri.

.... (Respondents)

No Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....17.11.2023

Date of Hearing.....06.05.2024

Date of Decision.....06.05.2024

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:

“On acceptance of this instant appeal, the impugned notification No.SO(E)LD/15-11/2022, dated 31.07.2023 issued by respondent No.1 & 2 may very kindly be declared illegal, against law, rules, natural justice and tenure policy of the provincial government and the appellant may very kindly be allowed to continue his duty as District Attorney Shangla.”

