

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
AURANGZEB KHATTAK...MEMBER (Judicial)

Service Appeal No.646/2024

Date of presentation of appeal.....08.04.2024
Dates of Hearing.....22.07.2024
Date of Decision.....22.07.2024

Farman Ali S/O Fareed Khan R/o Kulyari, Tehsil Gagra, District Buner.....Appellant

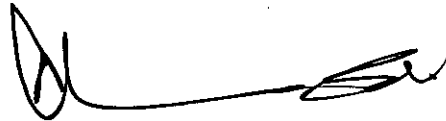
Versus

1. **The Director** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. **District Education Officer (Male)**, District Buner.
3. **Ahmad Ali (PET)** presently posted at Government Middle School Sangara Now posted to Government Higher Secondary School Kulyari.....(**Respondents**)

Present:

Mr. Fazal Hadi, Advocate.....For the appellant
Mr. Muhammad Jan, District Attorney...For respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST BOTH THE IMPUGNED ORDERS DATED 08.12.2023, WHEREBY THE APPELLANT HAS BEEN TRANSFERRED FROM GOVERNMENT HIGHER SECONDARY SCHOOL TO GOVERNMENT HIGH SCHOOL GUMBAT, AND RESPONDENT NO.2 (BPS-15) HOLD CHARGE OF APPELLANT POST AT GOVERNMENT HIGHER SECONDARY SCHOOL (GHSS) KULYARI, ORDER DATED 18.03.2024, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT IS STILL PENDING AND NO ORDER PASSED ON IT.



JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the memorandum and grounds of appeal, the appellant was serving as Senior Physical Education Teacher (SPET, BPS-16) at Government Higher Secondary School Kulyari; that vide order dated 08.12.2023, appellant was transferred from GHSS Kulyari to GHS Gumbat; that feeling aggrieved, he filed departmental appeal but the same was filed on 12.12.2023; that vide order dated 18.03.2024, private respondent was posted on the post of the appellant, therefore, he filed the instant service appeal.

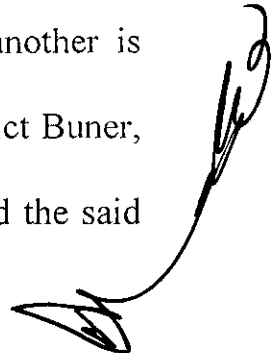
2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and submitted reply.

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

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order.

5. There are two points, urged by the appellant in the appeal. One is the transfer of the appellant, and the second is posting of private respondent on the post (from which he was transferred).

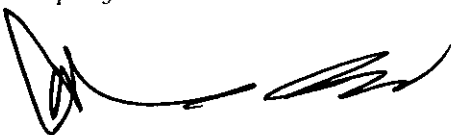
6. So far as the issue of his transfer from one school to another is concerned, he has been transferred in the same District i.e. District Buner, which is "inter-district transfer" and the appellant has challenged the said



transfer before this Tribunal. While 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

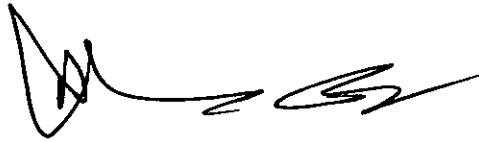


7. *The upshot of the above discussion is that no prejudice has been caused to any of the appellants vide the impugned transfer order, therefore, we find these appeals groundless and dismiss these accordingly. Costs shall follow the event. Copy of this judgment be placed in the connected file. Consign."*


7. As to the second point that private respondent was placed on his post, he has nothing to do with the transfer of any other official on his post from which he has already been transferred as he cannot occupy a post forever nor can anybody seek transfer to a post of his choice.

8. In view of the above circumstances, instant service appeal is dismissed with costs. Consign.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 22nd day of July, 2024.*



KALIM ARSHAD KHAN
Chairman



AURANGZEB KHATTAK
Member (Judicial)


Mutazem Shah


S.A #.646/2024

ORDER

22nd July, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Mr. Naseem Iqbal, ADEO for the respondents present. Heard.
2. Vide our detailed judgment of today placed on file, instant service appeal is dismissed with costs. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 22nd day of July, 2024.*


(Aurangzeb Khattak)
Member (J)


(Kalim Arshad Khan)
Chairman

Mutazem Shah