

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

BEFORE: **AURANGZEB KHATTAK** ... **MEMBER (Judicial)**  
**FAREEHA PAUL** ... **MEMBER (Executive)**

**Service Appeal No. 614/2024**

Date of presentation of Appeal.....18.04.2024  
Date of Hearing.....11.09.2024  
Date of Decision.....11.09.2024

**Nida Afreen**W/o Muhammad Adnan Cast Saddozai R/o Mohallah Ghari Saddozai D.I.Khan SST (IT) Education Department D.I.Khan.  
.....**Appellant**

Versus

1. Director, Elementary & Secondary Education Department, Peshawar, Khyber Pakhtunkhwa Peshawar.  
2. District Education Officer (F) D.I.Khan.  
3. Mst. Qurat-ul-Ain SST (IT) GHHS Yarik D.I.Khan.  
.....**(Respondents)**

Present:

Mr. Akbar Ali Khan Barkazi, Advocate.....For appellant  
Mr. Asif Masood Ali Shah, Deputy District Attorney .....For official respondents  
Mr. Sheikh Inam Ullah, Advocate.....For private respondent.  
.....

**JUDGMENT**

**AURANGZEB KHATTAK, MEMBER (JUDICIAL):** The appellant, Nida Afreen, is a permanent resident of District Dera Ismail Khan and is serving as SST (IT) in Education Department. Vide order dated 30.05.2023, she was transferred from Government Girls High School (GGHS) Rangpur Shumali to GGHS Hassa Dera Ismail Khan, however, pursuant to departmental appeal/application dated 28.02.2024 of the private respondent No. 3, without affording any opportunity of hearing to the appellant on the same vide order dated 28.02.2024, after a duration of

approximately ten months, the transfer order dated 30.05.2023, was withdrawn by the Director of the Elementary & Secondary Education Department (Respondent No. 1). In response to the withdrawal of the transfer order, the appellant filed a civil suit before the Court of Civil Judge-IV at Dera Ismail Khan, seeking redressal against the withdrawal of her transfer and the Civil Judge passed interim order in favour of the appellant. The appellant has now approached this Tribunal through filing of instant service appeal, seeking to resolve the grievance resulting from the withdrawal of her transfer.

2. The respondents were summoned, who contested the appeal by way of filing their respective written reply/comments.

3. The learned counsel for the appellant contended that the transfer of the appellant from Government Girls High School (GGHS) Rangpur Shumali to GGHS Hassa Dera Ismail Khan was executed pursuant to a valid order dated 30.05.2023. He next contended that the subsequent withdrawal of order dated 30.05.2023 after a mere ten-month period, vide order dated 28.02.2024, is to be a breach of the established transfer and posting policy of the Provincial Government. He further contended that impugned order dated 28.02.2024 demonstrates mala-fide intention, indicating that it was motivated by political considerations rather than genuine administrative necessities. He also contended that the abrupt reversal of the appellant's transfer is alleged to be an act of political victimization and this undermines principles of fairness and justice, suggesting that the decision was influenced by personal or political bias rather than objective criteria. He next argued that the action against the appellant reflects an intention to disadvantage her due to her lack of

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political patronage. He further argued that the appellant has been targeted precisely because she does not have the political support that other individuals may possess, further evidencing the unfair treatment and discriminatory practices in the decision-making process. He also argued that the order dated 28.02.2024 was issued without the requisite jurisdiction and lawful authority and according to established legal principles, actions taken beyond the scope of authority are rendered null and void. In the last he argued that the necessity of maintaining a transfer/posting's tenure unless there are valid, documented reasons for modification, however, in the instance case such valid reasons are absent, thus rendering the withdrawal of the transfer order indefensible and warranting annulment.

4. On the other hand, learned Deputy District Attorney for official respondents contended that the withdrawal of the transfer order dated 30-05-2023, made by the Director Elementary & Secondary Education, Khyber Pakhtunkhwa, on 28-02-2024, was in complete accordance with the Section 10 of the Civil Servants Act, 1973 and Section 21 of the General Clauses Act, 1897. He next contended that the Director of Elementary & Secondary Education, Khyber Pakhtunkhwa, holds the position of both the appellate and competent authority concerning such transfer matters, therefore, withdrawal of the transfer order was legal. He further contended that as per Section 10 of the Civil Servants Act, 1973, transfer/posting of a civil servant is not an inherent right, therefore, the department has the discretion to assign civil servants to any location as necessary. He also contended that the ongoing civil suit (Mst. Nadia Afreen vs. Mst. Qurrat Ul Ain, etc.) in the court of the learned Civil Judge-IV D.I. Khan, highlighting that a status quo order had been granted for only 14 days and the case was

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adjourned until 11-03-2024, there was a lack of records documenting the legal proceedings that occurred on that date, therefore, in absence of documentation suggests that the appellant's claims may lack substantive evidence. He next argued that the appellant does not meet the definition of an "aggrieved person" as outlined in Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 and Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973, therefore, lack of legal standing to pursue the appeal, thereby making her claim susceptible to dismissal. In the last he requested that the appeal in hand may be dismissed, proposing that costs be levied against the appellant as a result of the lack of a legal basis for her claims and the improper assertion of rights regarding the transfer order.

5. Learned counsel for private respondent No. 3 contended that private respondent No. 3 was posted on 14.04.2023 at GGHS Hassa against an already vacant position, therefore, the appellant, Nida Afreen, did not occupy a vacant post but took over a position that was already filled by private respondent No. 3. He next argued that private respondent No. 3 initially filed a departmental appeal followed by an application addressing her health condition, therefore, the order dated 28/02/2024 was issued by the official respondents in line with the law, taking into account the health issues and other relevant factors affecting private respondent No. 3. He further argued that private respondent No. 3 had an impressive service record of seven years and suffered from an accident that affected her ability to discharge her duties, therefore, this context supported the legitimacy of her transfer on 14/04/2023 to GGHS Hassa. He also contended that the appellant abused her influence to obtain a transfer from GGHS Rangpur

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Shumali to GGHS Hassa, ignoring the critical situation faced by private respondent No. 3. He next argued that the order dated 28/02/2024 was issued in the best interest of public service, emphasizing that the health condition of private respondent No. 3 was prioritized to ensure effective teaching under stable health conditions. He further argued that there were no instances of favoritism or political interference in the decisions made against the appellant, maintaining that the order dated 28/02/2024 was issued based on merit and was compliant with established regulations and ethical norms. He also argued that the appellant did not complete her normal tenure at GGHS Rangpur, while private respondent No. 3 dutifully fulfilled her commitments over seven years, suggesting a disparity in dedication and service. In the last he argued that he appeal in hand may be dismissed with costs, reinforcing the arguments made regarding the validity of private respondent No. 3's transfer and service history.

6. We have heard the arguments of learned counsel for the parties and have perused the record.

7. The perusal of the record would show that the appellant was initially transferred from Government Girls High School (GGHS) Rangpur Shumali to GGHS Hassa Dera Ismail Khan vide order dated 30.05.2023. Subsequently, after approximately ten months, the Director of the Elementary & Secondary Education Department (Respondent No. 1) issued an order on 28.02.2024, withdrawing the initial transfer order in violation of the posting/transfer policy of the Government of Khyber Pakhtunkhwa without allowing the appellant to complete her normal tenure. In their reply, respondents have not stated any exigency nor explained any public interest of transfer of the appellant within 10 months of her posting. In

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response to the withdrawal of her transfer, the appellant filed a civil suit before the Court of Civil Judge-IV at Dera Ismail Khan, seeking redressal for the withdrawal of the transfer. The Court has considered the submissions made by the appellant regarding the implications of the withdrawal of the transfer order. The Civil Judge-IV at Dera Ismail Khan has granted interim order in favour of the appellant, effectively suspending the effects of the withdrawal, therefore, the appellant remained in her position at GGHS Hassa Dera Ismail Khan.

8. To enhance the efficiency and oversight of Civil Servants' postings and transfers, the Government of Khyber Pakhtunkhwa introduced a transfer/posting policy. The key conditions pertaining to the current appeal are outlined as under:-

*i. All the postings /transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants.*

*iv. The normal tenure of posting shall be three years subject to the condition that for the officers /officials posted in unattractive areas, the tenure shall be two years and for hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.*

9. The policy asserts that all postings and transfers must strictly adhere to the principle of public interest. These provisions serve as a safeguard against the misuse or abuse of authority by ensuring that government servants are not subjected to arbitrary decisions that could lead to their victimization.

10. In 2018 S C M R 1411 titled "Khan Muhammad Versus Chief Secretary, Government of Balochistan Quetta and others," the Supreme Court of Pakistan has observed as below:---

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**"18. Under section 10 of the Act a civil servant cannot insist to be posted or transferred to a particular post but this does not mean that a civil servant can be made to serve under a subordinate. Moreover, while section 10 does not prescribe a minimum period during which a civil servant must serve at his post it does not mean that the Government without assigning any reason can move a civil servant from the place he was posted to after a month or subject the civil servant to repeated postings in a short period of time because this would amount to punishing him. Such postings also adversely affect the public interest and result in the wastage of scarce resources and constitute bad governance.**

**19. The Rules designate certain posts as 'tenure posts' (rule 22 read with Schedule IV of the Rules) and prescribe a period of three years for an incumbent to serve on such posts. Such prescribed tenure may therefore be categorized as the ideal duration for which a civil servant should serve at a particular post. The post of Divisional Director however is not a tenure post but the principle of serving for a particular duration at this post should be followed. In the present case the petitioner was posted for a little over a month when he was again posted. Any civil servant posted to a particular post requires some time to familiarize himself with the workings of the office and the requirements of the post whereafter he will be best placed to acquit himself of the responsibilities of the post. However, a one month posting, as in the case of the petitioner, would not serve the interest of the people."**

11. Under Section 10 of the Civil Servants Act, it is established that a civil servant cannot insist on a specific posting or transfer, it is equally imperative that a civil servant is not subjected to serve under subordinate officials unjustly. The statute aims to protect civil servants from arbitrary

administrative actions. The Court observes that the absence of a stipulated minimum period for which a civil servant remains at a post does not grant the Government the unfettered discretion to transfer an individual within an unreasonably short time frame. This practice serves only to undermine the efficiency of civil service, amounting to a form of punitive action against the civil servant and ultimately detracting from the public interest. The Rules in question designate certain posts as 'tenure posts' with a prescribed service duration of three years, providing a framework for continuity and stability within the roles. In examining the circumstances surrounding the transfer of the appellant, it is evident that a span of merely 10 month falls short of the time required for effective familiarization with the office dynamics and the responsibilities inherent to the position. Such abbreviated postings are not conducive to the welfare of public service and may hinder the overall effectiveness and efficiency of governance.

12. The order dated 28.02.2024 pertains to the transfer of the appellant was issued prematurely and without sufficient justification. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa has failed to demonstrate any compelling reasons for the premature transfer, thus indicating potential bias or administrative oversight. The impugned order dated 28.02.2024 was issued in violation of Clause I and IV of the Posting/Transfer Policy established by the Provincial Government. These clauses delineate the appropriate circumstances and procedures under which transfers may be executed, emphasizing adherence to established tenure requirements. Any deviation from the prescribed tenure is permissible only if compelling reasons are documented in writing. Furthermore, such reasons must be subject to judicial scrutiny to ensure



*Service Appeal No.614/2024 titled "Nida Afreen versus Director Elementary & Secondary Education Department, Peshawar Khyber Pakhtunkhwa Peshawar and other", decided on 11.09.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Miss. Fareeha Paul, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.*

transparency and accountability in administrative actions. Based on the observations and legal framework presented, it is evident that the impugned order dated 28.02.2024, lacks a foundation in public interest or exigency of service. The breach of established policies regarding posting and transfer not only undermines the regulatory framework but also sets a precedent for arbitrary administrative actions. Such tenure must be respected and cannot be varied, except for compelling reasons to be recorded in writing and are judicially reviewable.

13. Consequently, the impugned order dated 28.02.2024 is set-aside and order dated 30.05.2023 is restored. Parties are left to bear their own costs. File be consigned to the record room.

14. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 11 day of September, 2024.*

  
AURANGZEB KHATTAK 2024  
Member (Judicial)

  
Fareeha Paul  
Member (Executive)

\*Naeem Amin\*


**ORDER**

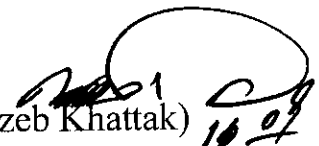
~~09~~<sup>11</sup> Sept, 2024

1. Appellant alongwith his counsel present. Mr. Muhammad Rizwan, Assistant Director (Litigation) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for official respondents No. 1 & 2 and Mr. Sheikh Inam Ullah, Advocate for private respondent No. 3 present.

2. Vide our judgment of today placed on file, the impugned order dated 28.02.2024 is set-aside and order dated 30.05.2023 is restored. Parties are left to bear their own costs. File be consigned to the record room.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this ~~09~~<sup>11</sup> day of September, 2024.*

  
(Fareeha Paul)  
Member (Executive)

  
(Aurangzeb Khattak)  
Member (Judicial) 11/09/2024