

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.154/2024

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Mr. Aizaz Ali S/o Mushtaq Ali, SST (M/P) (BPS-16) Posted at GHS Dalori Gadoon, District Swabi R/o Village Kalu Khan, Mama Khel, Tehsil Razar, District Swabi.

.... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education at Civil Secretariat, Peshawar.
2. Government of KPK, through Director Elementary & Secondary Education at Peshawar.
3. District Education Officer (Male), District Swabi.
4. Sajjad Ali Khan, SST, Posted at GHS Ahad Khan, Swabi.

... (Respondents)

Mr. Hafeez ul Asad Shangla ... For appellant
Advocate


Muhammad Jan
District Attorney ... For respondents

Date of Institution.....18.01.2024
Date of Hearing.....25.06.2024
Date of Decision.....25.06.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant appeal instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this service appeal the impugned order No.10007/dated 14.10.2023, may kindly be declared to the extent of respondent No.4 (Sajjad Ali, SST, GHS Ahad Khan, Swabi) being



an unlawful order passed without lawful authority in violation of transfer/posting policy, tenure policy and based on personal likes/dislikes, hence liable to be struck down and consequently respondents may kindly be directed to accept the transfer application of appellant and issue transfer order of appellant from GHS Dolari Gadoon, District Swabi to GHS Ahad Khan, District Swabi immediately. Any other remedy which this august Tribunal deems proper in the circumstances of the appeal, may also be granted in favor of appellant.

Departmental appeal against impugned order is pending since 18.10.2023 and yet not been decided, hence this appeal after the lapse of 90 days statutory period.”

2. Brief facts of the case are that appellant was appointed as Secondary School Teacher (BPS-16) on contract basis in Education Department vide order dated 13.05.2020. He was posted at GHS Dalori Gadoon, Swabi vide order dated 24.06.2020. Services of the appellant alongwith others were regularized under the Khyber Pakhtunkhwa Teachers (Appointment and Regularization of Services) Act 2022, through notification dated 01.12.2022; that on 14.11.2023 the post of SST was going to be vacant and appellant applied for his transfer to GHS Ahad Khan from GHS Dalori Gadoon; that on 14.10.2023 respondents transferred respondent No.4 to GHS Ahad Khan. Feeling aggrieved, he filed departmental appeal which was not responded, hence the instant service appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the



appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

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

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

6. Perusal of record reveals that appellant was appointed in respondent department as SST (Maths/Physics) on adhoc basis on contract through order dated 13.05.2020 and was posted at GHS Dalori Gadoon, District Swabi, through order dated 24.06.2020 and charge was handed over to appellant on 26.06.2020 and since he is performing his duties in aforementioned school. That services of the appellant were regularized along with other SST Teachers through notification dated 01.12.2022. The post of SST was going to be vacant on 14.11.2023 at GHS Ahad Khan, hence appellant applied for his transfer to GHS Ahad Khan from his present place of posting i.e. GHS Dalori Gadoon Swabi, because appellant was posted there immediately after his appointment on 24.06.2020 and has completed already his tenure as per policy but respondent still not decided appellant's application. Instead of deciding appellant's application for transfer, respondents transferred private respondent No.4 to GHS Ahad Khan, District Swabi through impugned order dated 14.10.2023 without completing his tenure on his place of posting i.e. GHS Batakara, where he was transferred/posted on 6.12.2022 after his promotion from CT to SST (M/P).




7. The appellant's stance is regarding his non transferring/posting at GHS Ahad Khan, District Swabi and posting of private respondent No.4 at the mentioned school. The appellant submitted application for his transfer/posting to GHS Ahad Khan, District Swabi, as he has completed his tenure on his place of posting but not responded, because it is the discretion of authority as to whom he wants to post/transfer/adjust at any place. As per Section 10 posting/transfer of the Khyber Pakhtunkhwa, Civil Servants Act, 1973, which is reproduced here:

“Every civil servant shall be liable to serve anywhere within or outside the province, in any post under the Federal Government, or any Provincial Government or Local authority, or a corporation body set up or established by such Government.”

So, the authority has right to accept or reject the application of the appellant for his desired posting/transfer and posting respondent No.4 at his mentioned place. There is no violation of rules and regulations in the posting/transfer order dated 14.10.2023.

8. The appellant is not aggrieved from the impugned order dated 14.10.2023, neither his name is mentioned in the transfer order nor have anything to do with the transfer order of someone else. Furthermore, none of the terms and conditions of services of the appellant were violated and as such the appeal of appellant does not fall within the ambit of Section-4 of the Civil Servants Act, 1974. The said Section is as under;

Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the




terms and conditions of his service may, within thirty days of the communication of such order to him, prefer an appeal of the appeal having jurisdiction in the matter.”

So, appellant is not aggrieved from impugned order or final order therefore the appeal in hand is not maintainable.

9. For what has been discussed above, we are unison to dismiss the appeal in hand being not maintainable. Cost shall follow the events. Consign.

10. *Pronounced in camp court at Abbottabad and given under our hands and seal of the Tribunal on this 25th day of June, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)



(RASHIDA BANO)
Member (J)


*M.Khan

ORDER

25.06.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney alongwith Mr. Fazal Hadi, ADEO for respondents present.
2. For what has been discussed above, we are unison to dismiss the appeal in hand. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 25th day of June, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

*M.Khan