

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.760/2024

BEFORE: MR. AURANGZEB KHATTAK... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Raj Wali S/O Firdous Khan Sweeper (BPS-1) GHS Wardaga, R/O
Charsadda, Tehsil and District Charsadda. (Appellant)

VERSUS

1. District Education Officer (Male) Charsadda.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa,
Peshawar.(Respondents)

Mr. Fazal Shah Mohmand,
Advocate ... For appellants

Mr. Asif Masood Ali Shah
Deputy District Attorney ... For respondents

Date of Institution..... 07.06.2024
Date of Hearing.....01.10.2024
Date of Decision..... 01.10.2024

JUDGMENT

FAREEHA PAUL, MEMBER (E): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 against the order dated 26.04.2024, whereby departmental appeal of the appellant filed against the order dated 28.03.2024 was regretted. It has been prayed that on acceptance of the appeal, the impugned orders dated 26.04.2024 and 28.03.2024 might be set aside and the appellant be posted as Sweeper at GHS Wardaga Charsadda.

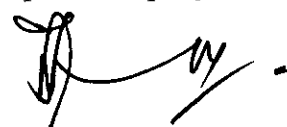
02. Brief facts of the case, as given in the memorandum of appeal, are that



the appellant was initially appointed as Sweeper (BPS- 1) at GHS Wardaga in the year 2013. He was transferred from GHS Wardaga to GHSS Dosehra Charsadda against the vacant post of Sweeper on administrative ground vide order dated 20.11.2023, which was later on withdrawn by the competent authority vide order dated 23.11.2023. He was again transferred on administrative ground to GHS Shakar Dhand Charsadda against the vacant post of Chowkidar vide order dated 28.03.2024. Feeling aggrieved, he filed departmental appeal on 03.04.2024 before respondent No. 1 which was rejected vide order dated 26.04.2024; hence the instant service appeal.

03. Respondents were put on notice. They submitted their joint written reply/comments. We heard the learned counsel for the appellant and learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

04. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned order was in violation of posting and transfer policy of the Provincial Government as the same was neither in public interest nor in the exigency of service. He argued that the appellant was appointed as Sweeper and could not be transferred against the post of Chowkidar under the rules but the appellant was transferred as Chowkidar GHS Shakar Dhand Charsadda and that too on administrative ground despite the fact that there was no concept of transfer on administrative ground under the rules. He argued that the impugned order was passed during the period when complete ban was imposed by the Provincial Government on posting/transfer. He requested that the appeal might be accepted as prayed for.



05. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was a habitual late comer, irresponsible official and took his duties of Sweeper from the school students. His attitude with Head Master and other staff members was not good and it was decided that he might be transferred to some other school for smooth running of the school affairs. He requested that the appeal might be dismissed.

06. Arguments and record presented before us transpired that the appellant was appointed as Sweeper in the Elementary and Secondary Education and was transferred against the post of Chowkidar at GHS Shakar Dhand on administrative ground vide the impugned order dated 28.03.2024. While presenting his arguments, learned counsel for the appellant emphasized on the point that the appellant was a Sweeper and could not be transferred on the post of Chowkidar by referring to a letter dated 28.11.1998 of the S&GAD (General Wing). As replied by the respondent department, the appellant was in the habit of coming late to the school for his duty and that they had served explanation to him also. When confronted about any action taken in the light of explanation and his response to it, learned DDA stated that the appellant was adjusted on administrative ground as Chowkidar in GHS Shakar Dhand. When further enquired why he was adjusted at the post of Chowkidar, the departmental representative stated that there was no post of Sweeper in that school.

07. In the light of the facts and arguments presented before us, there is no second opinion that the appellant was appointed on the post of Sweeper and



he had a specific job to perform and therefore, any adjustment on the post of Chowkidar, on administrative ground, was not sustainable in the eyes of law. Moreover if he was not attending to his duties properly, transfer from that position and school to some other position in another school was not a good solution. The respondents should have taken action against him under the relevant rules, but instead, he was transferred.

08. In view of the above discussion, the appeal in hand is allowed as prayed for. Cost shall follow the event. Consign.

09. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 01st day of October, 2024.*


(FAREEHA PAUL)
Member (E)


(AURANGZEB KHATTAK)
Member (J)

SA 760/2024

01.10.2024

01. Mr. Fazal Shah Mohmand, 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 04 pages, the appeal in hand is allowed as prayed for. 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 01st day of October, 2024.*


(FAREEHA PAUL)
Member (E)


(AURANGZEB KHATTAK)
Member (J)

Fazle Subhan, P.S