

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1195/2024

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

Zakirullah Superintendent (BPS- 17) SDEO (M) Town-II, Peshawar.
.... (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Secretary Education E&SE Department, Government of Khyber Pakhtunkhwa Peshawar.
3. Marifat Shah (BS- 17) Office of DEO (F) Town-I, Peshawar.
4. Huma Nisar Superintendent SDEO (F) Town-I Peshawar.
....(*Respondents*)

Mr. Yousaf Khan Alizai,
Advocate

... For appellants

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents No. 1 & 2

Mr. Fazal Shah Mohmand,
Advocate

... For private respondent No. 3.

Huma Nisar, Respondent No. 4.

... In person

Date of Institution..... 13.08.2024
Date of Hearing.....04.10.2024
Date of Decision..... 04.10.2024

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 notification dated 25.04.2024, whereby the appellant was transferred from the post of Superintendent SDEO (F) Town-I Peshawar and against the notification dated 23.07.2024, whereby further order of mutual



transfer of respondents No. 3 and 4 was made. It has been prayed that on acceptance of the appeal, the impugned notifications might be set aside and the appellant be restored to the post of Superintendent SDEO (F) Town-I, Peshawar and allow him to complete his normal tenure in accordance with law.

02. Brief facts of the case, as given in the memorandum of appeal, are that the appellant, after promotion to the post of Superintendent BS- 17, was transferred and posted to SDEO (F) Town-I Peshawar vide notification dated 21.03.2024. He assumed charge of the post. He had hardly completed one month against the said post when all of a sudden, he was transferred to the office of SDEO (M) Town-II, Peshawar. Feeling aggrieved, he preferred departmental appeal on 10.05.2024 and during the pendency of the appeal, another notification was issued whereby private respondents No. 3 & 4 were mutually transferred. The departmental appeal was not responded within the statutory period, hence the instant service appeal.

03. Respondents were put on notice. Official respondents No. 1 & 2 and private respondent No. 3 submitted written reply/comments. Private respondent No. 4 was placed ex-parte vide order dated 23.09.2024. We heard the learned counsel for the appellant, learned Deputy District Attorney for the official respondents, learned counsel for private respondent No. 3 and respondent No. 4 in person and perused the case file with connected documents in detail.

04. Through the instant service appeal, the appellant had impugned a notification dated 25.04.2024, which was a corrigendum of an order dated 21.03.2024, through which he was transferred from the office of SDEO (F)



Town-I Peshawar to SDEO (Male) Town-II, Peshawar. The original order dated 21.03.2024 was issued consequent upon the promotion from Assistants to Superintendents and that order seemed to have been issued in order to actualize their promotion. As stated by the departmental representative, after the promotion and getting it actualized, further adjustments were made through the corrigendum dated 25.04.2024 and the same was done keeping in view of the exigencies of service. We were further informed that the appellant had already complied with the order/corrigendum dated 25.04.2024 as he got himself relieved on 30.04.2024 and had taken over the charge of his new assignment.

05. The appellant had also impugned an order dated 23.07.2024 vide which private respondents No. 3 and 4 were mutually transferred. It was noted that before impugning that order before the Service Tribunal, no departmental appeal had been preferred by the appellant before the competent authority. Here, we refer to Section 4 of the Service Tribunal Act, 1974 which is reproduced as follows: -

“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 to the Tribunal having jurisdiction in the matter.

Provided that--

(a) where an appeal, review or a representation to a departmental authority as provided under the Khyber Pakhtunkhwa Civil Servants Act, 1973, or any rules against any such order, no appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred an



appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application or representation was preferred.”


In the light of Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, the appellant could not challenge the order dated 23.07.2024 before the Tribunal as he had not challenged the same before the departmental competent authority.

06. The appellant has prayed that he might be restored to the post of Superintendent in the office of SDEO (F) Town-I, Peshawar and allow him to complete the tenure in accordance with law. Being a civil servant, he could not ask for any adjustment or posting of his choice, rather he was bound to serve at any place where he was adjusted by his competent authority.

07. In the light of the above discussion, the appeal in hand is liable to dismissal and the same is, therefore, dismissed. Cost shall follow the event. Consign.

08. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 04th day of October, 2024.*


(FAREEHA PAUL)
Member (E)


(AURANGZEB KHATTAK)
Member (J) 04/10
2024.

SA1195/2024

04.10.2024

01. Mr. Yousaf Khan Alizai, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents No. 1 & 2 present. Mr. Fazal Shah Mohmand, Advocate for private respondent No. 3 and private respondent No. 4 in person present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, the appeal in hand is liable to dismissal and the same is, therefore, dismissed. 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 04th day of October, 2024.*


(FARZEHA PAUL)
Member (E)


(AURANGZEB KHATTAK)
Member (J)

04/10
2024.

Fazle Subhan, P.S