

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

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)  
**RASHIDA BANO** ... MEMBER (Judicial)

**Service Appeal No. 908/2024**

Date of presentation of Appeal.....27.06.2024

Date of Hearing.....26.09.2024

Date of Decision.....26.09.2024

**Muhammad Ibrahim**, Senior CT, Government Higher Secondary School No. 2, Haripur.....**Appellant**

Versus

1. Director, Directorate of Elementary & Secondary Education, Peshawar.
2. District Education Officer (M), Haripur.
3. Aizaz Ahsan, CT, GHSS No. 2, Haripur.

.....(**Respondents**)

Present:

Mr. Jehan Afsar Painsa Khel, Advocate, .....For appellant

Mr. Naseer-ud-Din Shah, Assistant Advocate General ...For official respondents.

**JUDGMENT**

**AURANGZEB KHATTAK, MEMBER (JUDICIAL):** The facts of the case, as narrated by the appellant in his memorandum of appeal, are that he was appointed in the respondent department on January 10, 1993. He was promoted from the post of Certified Teacher (CT) to the post of Senior Certified Teacher (SCT) on June 26, 2023. Following his promotion, he was transferred from GHS Kachi to GHSS No. 2, Haripur on April 8, 2023. However, vide adjustment order dated March 12, 2024, he was transferred from GHSS No. 2, Haripur to GHS Badhora. Feeling aggrieved, he filed departmental appeal on March 13, 2024, which remained undecided within the stipulated timeframe of 90 days. Subsequently, vide order dated March 21, 2024, private respondent No. 3 (Aizaz Ahsan CT) was transferred from GHS Khanpur to GHSS

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No. 2. The appellant has now contested the legality and propriety of the orders dated March 12, 2024 and March 21, 2024, through filing the instant appeal.

2. The respondents were summoned, however official respondents submitted their written reply/comments, while private respondent No. 3 was placed ex-parte vide order sheet dated 13.09.2024.

3. The learned counsel for the appellant contended that, after serving for nearly 30 years, it was unjust to transfer the appellant again to a far-flung area when he had recently been readjusted to his hometown. He next contended that the transfer orders had been issued without adherence to established criteria and regulations, resulting in an arbitrary decision that lacked a legitimate basis. He further contended that the appellant had been subjected to unnecessary discrimination and favoritism, allegedly violating his fundamental rights as enshrined in the Constitution of 1973. He also cited the appellant personal circumstances, including the illness of his elder brother and emphasized the premature nature of the transfer, given that he had just begun his tenure in his adjusted position GHSS No. 2, Haripur. He next argued the inconsistency in the respondents' claims regarding staff shortages, as they transferred a junior employee into the role of the appellant while stating that such shortages justified the transfer. He further argued that the impugned orders dated March 12, 2024 and March 21, 2024 were issued without a fair hearing, which violates procedural fairness and natural justice. In the last, he argued that the impugned orders dated March 12, 2024 and March 21, 2024, may be set aside, and the appellant may be posted at GHSS No. 2, Haripur.

  
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4. On the other hand, the learned Assistant Advocate General for the respondents contended that the appellant's transfer to GHS Badhora was legitimate due to an organization-wide shortage of staff in that institution and the appellant had not been relocated away from his home region, as he was now in his own union council (UC). He next contended that the appellant's claims regarding his tenure and promotion did not yield a legal right to remain in a specific post as under the Khyber Pakhtunkhwa Civil Servants Act, 1973, the civil servants are required to serve as directed by the government, voiding any claims based on expectations of tenure. He further contended that the transfer of private respondent No. 3 was a temporary arrangement, made in response to staffing needs, thus not infringing upon the appellant's rights or entitlements. He next argued that under Section 22 of the Khyber Pakhtunkhwa Civil Servant Act, the appellant had no right to file an appeal regarding the specific matter of his post retention. In the last, he argued that the appeal in hand may be dismissed being meritless.

5. We have heard the arguments of learned counsel for the appellant as well as learned Assistant Advocate General for official respondents and have perused the record.

6. The perusal of the record shows that the appellant vide adjustment order dated 08.04.2023 was adjusted to the post of CT (BPS-15) in his own pay and grade from GHS Kachi to GHSS No. 2 Haripur and was promoted from the post of Senior Certified Teacher (SCT) vide order dated June 26, 2023. On March 12, 2024, the appellant was transferred from GHSS No. 2, Haripur to GHS Badhora which according to him is pre-mature and the order dated March 21, 2024,

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whereby private respondent No. 3 was adjusted at GHSS No. 2, Haripur, is allegedly the result of favoritism.

7. Admittedly, the appellant is a civil servant and is governed by the terms and condition of a civil servant as mentioned in the Civil Servant Act, 1973 and section 10 of the ibid Act being the main ingredient that pertains to the posting and transfers of the civil servant is hereby reproduced as below for ready reference:-

*"10. Posting and transfers.--- 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 or body set up or established by any such Government:*

*Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:"*


8. The appellant, being a civil servant, is inherently bound by the terms and conditions set forth in the Civil Servant Act, 1973, which includes provisions related to his posting and transfer. Section 10 of Civil Servant Act, 1973 explicitly outlines the conditions under which civil servants can be posted or transferred, emphasizing their duty to serve at any location as required by the government. A pivotal finding is that civil servants do not hold a vested right to demand postings at locations of their choice. This principle underscores the need for adaptability within the civil service. The nature of a civil servant's employment involves acceptance of administrative decisions, including transfers. Such transfers are inherent to the role and an essential condition of service. The authority to transfer civil servants lies with the administrative structure, which is tasked with placing employees in positions where their skills can be utilized most effectively. This highlights the managerial prerogative of the administration and the

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necessity of prioritizing organizational needs over individual preferences. Furthermore, there is nothing on the record which could show that there is any malice or ill-will against the appellant in the decision to transfer him. The burden of proof to show that a transfer was based on mala-fide lies with the appellant and in this case, he failed to provide substantial evidence supporting such claims. The appellant's argument for being posted in Haripur City, described as his home town, is not valid in this case because the post of SCT (BPS-16) is classified as a district cadre post, not a Union Council post. Therefore, the appellant's reliance on home town proximity as grounds for a preferred posting lacks legal foundation, as the associated regulations do not prioritize location preferences for district cadre posts.

9. Consequently, the appeal in hand being devoid of merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

10. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 26<sup>th</sup> day of September, 2024.*

  
AURANGZEB KHATTAK  
Member (Judicial)


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2024


  
RASHIDA BANO  
Member (Judicial)

**ORDER**

26<sup>th</sup> Sept, 2024

1. Appellant alongwith his counsel present. Mr. Ghulam Habib, Superintendent alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for official respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the appeal in hand being devoid of merit stands dismissed. 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 26<sup>th</sup> day of September, 2024.*

  
(Rashida Bano)  
Member (Judicial)

  
(Aurangzeb Khattak)  
Member (Judicial) 26.09.2024.