

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No. 1074/2024

Date of presentation of Appeal.....29.07.2024
Date of Hearing.....07.10.2024
Date of Decision.....07.10.2024

Abdur Rehman, Junior Clerk (BPS-11), O/O Sub-Divisional Education Officer, District Charsadda**Appellant**

Versus

1. The Secretary, Elementary & Secondary Education Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Director, Elementary & Secondary Education Officer, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Female), Charsadda.
4. Mr. Faiz Ur Rehman, Junior Clerk (BPS-11), O/O SDEO (Female), Charsadda.....(**Respondents**)

Present:

Mr. Mir Zaman Safi, Advocate.....For appellant
Mr. Naseer-ud-Din Shah, Assistant Advocate General.....For official respondents.
Mr. Fazal Shah Mohmand, Advocate.....For private respondent.

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case, as alleged by the appellant in his memorandum of appeal, are that he was serving as a Junior Clerk (BPS-11) in the Office of the Sub-Divisional Education Officer (Female), Charsadda, until his removal vide Notification on 08.11.2023. Following his removal, he filed departmental appeal, which was accepted and he was reinstated in service on 28.03.2024. On 08.04.2024, he was returned to his previous post at the SDEO (F) but this posting was later rescinded through an

order issued under Endst No. 4125-32 on the same date. Feeling aggrieved, he filed departmental appeal on 18.04.2024, however during the pendency of departmental appeal, he was placed at the disposal of District Education Officer (Male) Charsadda for further adjustment vide order dated 24.04.2024. On 30.04.2024, he was adjusted at GHS No. 3 Tangi, Charsadda vide order dated 30.04.2024. The departmental appeal filed by the appellant on 18.04.2024, was not responded within the statutory period of 90 days, hence, he has now approached this Tribunal through filing of instant appeal for redressal of his grievance.

2. The respondents were summoned, official respondents submitted their written reply but private respondent No. 4 has not submitted his written reply/comments.

3. The learned counsel for the appellant contended that the appellant served his duties efficiently and to the satisfaction of his superiors, which should dissuade any actions against him. He next contended the withdrawal of posting of the appellant on 08.04.2024 was executed with malafide intention, primarily to favor another individual (private Respondent No. 4). He further contended the order dated 08.04.2024 and subsequent orders on 24.04.2024 and 30.04.2024 were issued without regard for lawful process or in the interest of public service, thereby violating Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. He next argued that the later orders issued during the pendency of his departmental appeal were capriciously directed and not in the best interests of public service. In the last he argued that the appeal in hand may be accepted as prayed for.


07/10/2024.

4. On the other hand, learned Assistant Advocate General assisted by learned counsel for private respondent No. 4 contended that removal of the appellant from service was based on a credible inquiry report, which detailed his involvement in fraudulent cases that questioned his integrity as a public servant. He next contended that the appellant had a dubious service history, including prior transfers on administrative grounds, emphasizing a pattern of misconduct supporting his removal. He further contended that the subsequent orders to reassign the appellant were legally sound and conducted in compliance with the provisions of the General Clauses Act, demonstrating a due process of law. He also contended that the department's actions were in service of public interest, as there was significant reluctance from school heads and other administrative officers to retain the appellant due to prior complaints. He next argued that the appellant lacked the legal standing necessary to appeal, as he had not been adversely affected by the lawful orders and thus his appeal is liable to be dismissed

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

6. The available record shows that appellant was serving in the Elementary & Secondary Education Department, holding the post of Junior Clerk (BPS-11) in the Office of the Sub-Divisional Education Officer (Female) at Charsadda, contested multiple administrative actions concerning his employment status. Initially dismissed vide Notification dated 08.11.2023 due to alleged misconduct, the appellant subsequently found relief through an appellate decision dated 28.03.2024 reinstating

07/10/2024

him to his position. On 08.04.2024, the appellant was returned to his post at the SDEO (F) Office Charsadda but this posting was later rescinded through an order issued under Endst No. 4125-32 on the same date. Feeling aggrieved, the appellant filed departmental appeal on 18.04.2024, however during the pendency of departmental appeal, he was placed at the disposal of District Education Officer (Male) Charsadda for further adjustment vide order dated 24.04.2024. On 30.04.2024, he was adjusted at GHS No. 3 Tangi, Charsadda. The appellant through this appeal is seeking his posting at SDEO (F) Office Charsadda on his own choice. In such a situation the powers of the authorities vested in them under section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 appear to have rightly and fairly been exercised. Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 pertains to the posting and transfers of the civil servant and is reproduced 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:

Provided further that where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve."

07/10/2024

7. As per section 10, civil servants do not possess an inherent or perpetual right to a posting of their choice. Departments reserve the authority to transfer civil servants as deemed necessary for operational efficiency and administrative convenience. The concerned department holds the prerogative to issue transfer or posting orders and civil servants are obliged to comply with such orders unless legally exempted or provided with valid alternate directives. Civil servants can challenge the validity of a transfer or posting order if there are legitimate grounds to believe that the order was issued with malafide intention – characterized by arbitrariness, fancifulness or bias from the authorities. The onus lies on the appellant to provide substantive evidence indicating that the transfer was driven by personal ill-will or bias. After careful review of the facts and evidence presented, we found no indications of malice, bias, arbitrariness or fanciful reasoning on the part of the respondents responsible for the transfer order. The transfer order was determined to be within the legal and operational framework outlined in section 10, supporting the department's right to exercise discretion in matters of postings. Based on the documentation and testimonies considered, no evidence sufficiently supported claims of a mala-fide or prejudiced decision by the superior authorities in handling the appellant's transfer. Civil servants are reminded that while they have the right to seek redress against unjust orders, substantial proof is necessary to establish claims of arbitrariness or malicious intent in administrative decisions. This ruling underscores the balance of authority where departmental operational


07/10/2024.

needs must be respected while ensuring administrative fairness is maintained.

8. Consequently, the appeal in hand being meritless is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 07th day of October, 2024.*


AURANGZEB KHATTAK
Member (Judicial) 07/10/2024.


RASHIDA BANO
Member (Judicial)


ORDER


07th Oct, 2024

1. Learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General alongwith Miss. Ruqia Bahr, ADEO for official respondents and Mr. Fazal Shah Mohamand, Advocate on behalf of private respondent No. 4 present. Arguments heard and record perused.

2. Vide our judgment of today placed on file, the appeal in hand being meritless is hereby 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 07th day of October, 2024.*


(Rashida Bano)
Member (Judicial)


(Aurangzeb Khattak) 07/10/2024.
Member (Judicial)