

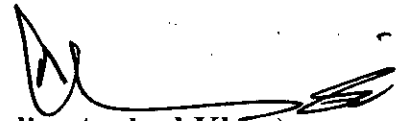
ORDER

07th Nov, 2022

1. Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Pindakhel, Assistant Advocate General for official respondents No. 1 and 2 and counsel for private respondent No.3 present.

2. Vide our detailed judgement of today placed on file (containing 04 pages), this appeal has no merits and is therefore, dismissed. Costs shall follow the event. Consign.

3. *Pronounced in open court at Swat and given under our hands and seal of the Tribunal on this 07th day of November, 2022.*



(Kalim Arshad Khan)
Chairman
Camp Court Swat



(Salah Ud Din)
Member(Judicial)
Camp Court Swat

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
AT CAMP COURT SWAT.**

BEFORE: **KALIM ARSHAD KHAN** .. CHAIRMAN
SALAH UD DIN .. MEMBER (Judicial)

Service Appeal No.796/2018

Dr. Salimullah S/o Hidayatullah R/o Qambar, Tehsil Babuzai, District Swat, presently posted at Nawaz Sharif Kidney Hospital, District Swat.
.....*Appellant*)

Versus

1. **Chief Secretary** Khyber Pakhtunkhwa at Peshawar.
2. **Secretary Health**, Khyber Pakhtunkhwa at Peshawar.
3. **Dr. Wasim Khan** presently posted at Sheikh Zaid Hospital, Swat.
.....*(Respondents)*

Present:

Mr. Sabir Shah,
Advocate.....For appellant.

Mr. Muhammad Riaz Khan Paindakhel,
Assistant Advocate General.....For official respondents No.1 &2

Mr. Iftikhar Ahmad (Senior),
AdvocateFor respondent No.3

Date of Institution.....13.06.2018

Dates of Hearing.....07.11.2022

Date of Decision.....07.11.2022

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE NON-POSTING OF THE APPELLANT IN ACCORDANCE WITH HIS OPTION AND MERIT POSITION.

JUDGMENT



KALIM ARSHAD KHAN CHAIRMAN: We will take the facts to be that the appellant had appointed as District Specialist Pathology (Adhoc),

but the respondent department not post him in accordance with his merit position and his option even directed him to take charge at DHQ Bakhela, wherein the post was already filled by another doctor, so, the appellant approached the respondent No.2 and requested for posting at Sheikh Zaid Hospital Swat, the proposal was approved by respondent No.2 but the same was not honored and respondent No.3 was transferred the appellant from Nawaz Sharif Kidney Hospital to Sheikh Zaid Hospital Swat; that in the meanwhile the Khyber Pakhtunkhwa Public Service commission had already advertised the post of District Pathologist, wherein the appellant was recommended and in this respect the respondent department issued notification on 08.01.2018 and the appellant submit his arrival report in the office of Section Officer-I at Health Department on 09.01.2018; that it was again astonishing that respondent department was posted one Dr. Waseem Khan at Sheikh Zaid Hospital Swat despite he was low in merit of the appellant while the appellant being meritorious was not posted at Sheikh Zaid Hospital Swat; that the appellant preferred departmental appeal which was not responded within the statutory period of ninety days and then the appellant filed this service appeal on 13.06.2018.

2. 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 defence setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant, learned Assistant Advocate General for official respondent No.1 and 2 and learned counsel for private respondent No.3.



4. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General learned counsel for private respondent No.3 controverted the same by supporting the impugned order(s).


5. At the very outset it is to be observed that there is no original or appellate order which might have infringed any of the terms and condition of service appellant the appellant enabling him to set in motion the service law. The appeal is, therefore, liable to dismissal on this score alone.

6. Through the instant appeal the appellant seeks directions to respondent No.2 i.e the Secretary to Government of Khyber Pakhtunkhwa Health Department to post the appellant in accordance with his option and merit position as District Pathologist at Sheikh Zaid Hospital Swat. Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 requires that is the prerogative of the government/Authority to direct him to serve anywhere within or outside the province. Section-10 is reproduced as under:-

"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."



7. The civil servant has no vested right to remain posted at a place of his own choice nor could he insist that he must be posted at one place or the other. The Civil Servant was liable to be transferred in the administrative exigencies from one place to another. The transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in absence of any specific indication to the contrary. One cannot claim the posting of his choice while remaining in government service and it is the administration of the concerned having the prerogative as to where an employee was to be posted to get maximum benefits of his capabilities. Thus the civil servant is bound to abide by the terms of condition of his service including transfer and posting.

8. For what has been discussed above this appeal has no merits and is therefore, dismissed. The cost shall follow the event. Consign.

9. *Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 07th day of November, 2022.*



KALIM ARSHAD KHAN
Chairman
Camp Court Swat



SALAH UD DIN
Member (Judicial)
Camp Court Swat