

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1217/2018

BEFORE: MR. KALIM ARSHAD KHAN, ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Mst. Dilara Staff Nurse District Hea Quarters Office, Charsadda.

..... (Appellant)

Versus

1. Secretary Health Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
2. Director General Health Services Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
3. Medical Superintendent District Headquarter Hospital, Charsadda.
..... Respondents)

Mr. Javed Iqbal Gulbela,
Advocate

For appellant

Mr. Muhammad Riaz Khan Paindakhel,
Assistant Advocate General

For respondents

Date of Institution..... 04.10.2018

Date of Hearing..... 09.12.2022

Date of Decision..... 09.12.2022

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 05.06.2018 whereby the appellant had been relieved/transferred from DHQ Hospital Charsadda, order dated 26.12.2018 whereby she had been retransferred on administrative grounds during pendency of the service appeal and against the order dated 09.04.2019 whereby she was again transferred to Women and Children Hospital Rajjar Charsadda



on administrative grounds. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the appellant might be allowed to serve as Staff Nurse at DHQ Hospital, Charsadda.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was inducted into service after going through the mandatory requirements on 02.06.2008 as Charge Nurse. She, while serving at District Headquarter Hospital Charsadda, was relieved from the said Hospital vide impugned order dated 05.06.2018 by the Medical Superintendent and was directed to report to Director General Health Services, Khyber Pakhtunkhwa on administrative grounds. She preferred a departmental appeal to Director General Health Services, Khyber Pakhtunkhwa against that order but it was not responded, instead vide order dated 08.06.2018 an inquiry was ordered to be conducted against her. Feeling aggrieved, she preferred service appeal No. 1217/2018 and interim relief was granted to her but the respondent retransferred the appellant vide impugned order dated 26.12.2018, against which she preferred departmental appeal in time but she was once again transferred to Women and Children Hospital Rajjar, Charsadda vide impugned order dated 09.04.2019. Again a departmental appeal was preferred by her which was not responded; hence the service appeal.

3. The Service appeal was first submitted on 04.10.2018 on which interim relief was granted but on 13.06.2019, learned counsel for the appellant produced copies of both the subsequent orders before the bench with the request that he wanted to challenge both the orders through amendment in

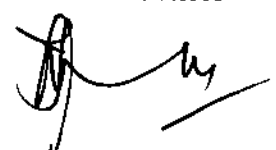


service appeal. Learned Assistant AG had no objection and hence on 10.07.2019, learned counsel for the appellant submitted amended service appeal.

4. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Assistant Advocate General for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellant after presenting the case in detail contended that transfer order on administrative grounds was always considered and declared as punishment by superior courts. He further contended that no penalty could be imposed without conducting proper inquiry, issuing charge sheet/statement of allegations, show cause notice and opportunity of personal hearing. He argued that neither any opportunity was ever extended to the appellant to defend her case against the alleged occurrence nor any notice was ever issued to her. According to him salary of the appellant had been stopped which was an infringement of her fundamental rights and that during pendency of the appeal, she was transferred twice on administrative grounds. Learned counsel for the appellant requested that the appeal might be accepted as prayed for.

6. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, contended that the appellant was transferred on administrative ground by the competent authority due to her misconduct, willful negligence and non-willingness to perform her duties. He further



contended that despite being a civil servant, she invited media personnel for highlighting and propagating a departmental administrative affair before general public in order to pressurize and blackmail her high-ups. According to him the appellant had been counseled on many occasions to improve her performance and behavior but no heed was paid to it by her. He further argued that after conducting proper inquiry, issuing show cause notice, statement of allegations and personal hearing, the appellant was relieved from her place of posting. Learned AAG invited the attention to Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 according to which every civil servant was bound to serve anywhere in the province in the best public interest. He requested that the appeal might be dismissed with cost.

7. Arguments presented before us and perusal of record reveals that the appellant was appointed as Charge Nurse in 2008 and she served in DHQ Charsadda since then. The Medical superintendent of DHQ Charsadda relieved the appellant, with the directions to report to Director General, Health Services, Khyber Pakhtunkhwa, on the grounds that she was not performing her duties. There were reports against her that she quarreled and used abusive language with her seniors. There was another report against her that she invited media personnel for a press conference against the hospital and its administration.

8. It has been noted that the appellant remained in the DHQ Charsadda for about ten years when she was first directed to report to the office of Director General Health Services from where she was later on transferred to Women



and Children Hospital Rajjar, Charsadda. There is no second opinion on the fact ^{that} she is a civil servant and as provided in the Khyber Pakhtunkhwa Civil Servants Act 1973, she was liable to serve anywhere as directed by her competent authority. Moreover she had to report to her place of posting immediately but in this case, in pursuance of order dated 26.12.2018, she submitted her arrival report on 09.04.2019. Moreover calling media persons for a press conference is also a violation of government instructions where a civil servant has been barred to interact with media personnel without prior approval of their competent authority.

9. From the above discussion, it appears that the appellant had been violating the law and rules governing her service. She was reluctant to act on the orders of her competent authority which is highly unsuitable for a civil servant. Keeping all these facts in view, the appeal is dismissed with costs. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 9th day of December, 2022.*



(KALIM ARSHAD KHAN)
Chairman



(FAREEHA PAUL)
Member (E)

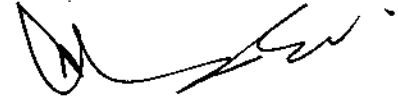
Service Appeal No. 1217/2018

09th Dec 2022

Mr. Javed Iqbal Gulbela, Advocate for appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgement containing 05 pages, the appeal is dismissed with costs. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 9th day of December, 2022.*



(KALIM ARSHAD KHAN)
Chairman



(FAREEHA PAUL)
Member (E)