

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.414/2022

Date of Institution	...	22.03.2022
Date of Decision	...	12.01.2023

Muhammad Arshad, PCS (SG-BS-20), Home Address: House No.11.
Provincial Civil Officers Colony, Dubgari Gardens (New), Opposite Habib
Medical Complex, Peshawar Cantt.

... (Appellant)

VERSUS

The Provincial Government through Chief Secretary, Khyber
Pakhtunkhwa Peshawar and two others.

... (Respondents)

Muhammad Arshad ... In person

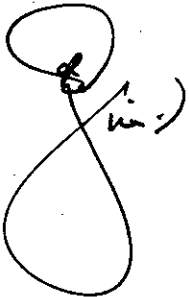
Muhammad Adeel Butt
Additional Advocate General ... For Respondents

Mrs. Rozina Rehman	...	Member (J)
Miss Fareeha Paul	...	Member (E)

JUDGMENT

Rozina Rehman, Member(J): The appellant has invoked the
jurisdiction of this Tribunal through above titled appeal with the
prayer as copied below:

**“That on acceptance of this appeal the impugned
posting/transfer notification dated 04.03.2022 being in**



violation of law may please be set aside with cost and any other relief which this hon'ble Tribunal deems just and proper in circumstance of the case may also be granted".

2. Brief facts of the case are that the Government of Khyber Pakhtunkhwa Establishment Department ordered the posting/transfer of the appellant from Director, Khyber Pakhtunkhwa Higher Education Academy of Research and Training (HEART), Peshawar to Establishment Department vide notification dated 09.07.2020 and he remained posted on the post of Officer on Special Duty (OSD) for more than a year, until posted against the post of Member-I, Board of Revenue, Revenue & Estate Department vide notification dated 19.07.2021. He was again transferred from the post of Member-I, Board of Revenue and was directed to report to Establishment Department after seven months and six days on that post without completing normal tenure of two years. He filed departmental appeal on 07.03.2022 which was not responded to, hence, the present service appeal.

3. We have heard Muhammad Arshad and Muhammad Adeel Butt learned Additional Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Appellant submitted that he was not treated according to law, which is the inalienable right of every citizen, as enshrined in Article 4 of Constitution of Islamic Republic Pakistan, 1973. He



contended that he was posted on the post of Member-I, Board of Revenue on 19.07.2021 and now posted out of it on 04.03.2022 which means that the total tenure spent on the post is seven months while the normal tenure on the post is two years for the settled areas which is in violation of law and rules. He further contended that making the appellant as OSD time and again without any reason is in violation of the judgment of the august Supreme Court of Pakistan in Constitutional Petition No. 23/2012 titled Anita Turab Vs. Federation of Pakistan and reported as PLD 2013 SC 195. Lastly, he submitted that making the appellant as an OSD is also in violation of the Provincial Government own instructions issued vide Establishment Department letter No. SOR.VI(E&AD)1-4/2005/Vol-II dated 27.02.2013 as a sequel to the above judgment. He, therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned Additional Advocate General contended that appellant was transferred from the post of Member-I, Board of Revenue and directed him to report to Establishment Department on 04.03.2022 in best public interest as the appellant had not satisfactorily performed his duties due to which the ratio of public service delivery decreased day by day. He further contended that appellant had requested for his further posting, however, due to non-availability of suitable post, request of the appellant could not be acceded to and is still under consideration. Lastly, he submitted that appellant is a (PCS SG



BS-20) officer and no (BS-20) officer is currently holding additional charge of any (BS-20) schedule post, he therefore, requested for the dismissal of the instant service appeal.

6. We have heard learned counsel for the parties and perused the record carefully. Admittedly, the appellant (Muhammad Arshad) is a PCS (SG BS-20) officer in the Establishment Department. The Government of Khyber Pakhtunkhwa, Establishment Department ordered his posting/transfer from Director of Khyber Pakhtunkhwa Higher Education Academy of Research and Training (HEART) Peshawar to Establishment Department vide notification dated 09.07.2020 and he remained posted on the post of Officer on Special Duty (OSD) for more than a year until posted against the post of Member-I, Board of Revenue, Revenue and Estate Department vide notification dated 19.07.2021. The Government of KP Establishment Department ordered the posting/transfer of appellant from the post of Member-I Board of Revenue and directed to report to Establishment Department just after seven months and 7 days. As per transfer/posting policy he had not completed his tenure. Appointment, promotion and posting/transfer are of utmost importance in the civil service. If these are made on merit in accordance with definite rules, instructions etc., the same will rightly be considered and treated as part of the terms and conditions of service of a civil servant. If, however, rules and instruction are deviated from and as a result merit is discouraged



on account of favoritism, safarish or considerations other than merit, it should be evident that the civil service will not remain independent or efficient. In a number of judgments, the august Supreme Court of Pakistan has clarified that whenever there are statutory provisions or rules or regulations which govern the matter of transfer/posting, the same must be followed honestly. In the Hajj corruption case, (PLD 2011 SC 963), the court reiterated its earlier ruling in Zahid Akhtar Vs. Government of Punjab (PLD 1995 SC 530), where it has been held that "normal period of posting of a government servant at a station, according to Rule 21 of the Rules of Business is 3 years which has to be followed in the ordinary circumstances, unless for reasons or exigencies of service a transfer before expiry of the said period becomes necessary in the opinion of competent authority." Furthermore, with regard to transfers of civil servants, the Hon'ble Supreme Court of Pakistan has stated that transfers by political figures which are capricious and are based on considerations not in the public interest are not legally sustainable. Ordinarily no government employee should be posted as OSD except under compelling circumstances. In the Hajj corruption case (PLD 2011 SC 963), it was held by the hon'ble Supreme Court of Pakistan: "It is well settled that placing an officer as OSD tentamounts to penalizing him because the impression OSD is not known either to the Civil Servants Act or Civil Servants (Appointment, Promotion and Transfer) Rules. Officers should not be posted as




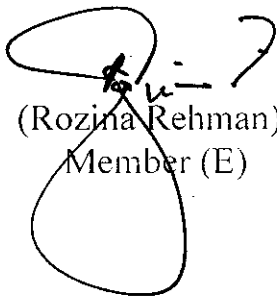
OSD except for compelling reasons which must be recorded in writing and are judicially reviewable. If at all an officer is to be posted as OSD, such posting should be for the minimum period possible and if there is any disciplinary inquiry going on against him, such inquiry must be completed at the earliest. The ordinary tenure for a posting has been specified in the law/rules made there under and such tenure must be respected and cannot be varied except for compelling reasons which should be recorded in writing. In the instant case all rules, regulations, and policies were ignored. Appellant did not complete his tenure and he was posted as OSD twice for no good reason and the same were also not recorded in writing. There is no inquiry pending against the appellant which could show that he was posted as OSD, twice, because the inquiry was pending. It merits a mention here that neither appellant nor the learned AAG brought into the knowledge of this bench that the appellant was transferred and posted as Chief Executive Officer, Khyber Pakhtunkhwa Charity Commission, Home & Tribal Affairs Department against the vacant post on deputation basis during pendency of this appeal vide notification dated Peshawar 13th December, 2022. This notification is available on file in the shape of a loose paper, therefore, this appeal is partially allowed. He has already been transferred and posted as mentioned above, however, in the interest of justice and equity it is held that the department failed to take into consideration the relevant rules/policies in respect of the



appellant. Neither his tenure was respected nor reasons were recorded in writing before posting him as OSD for no compelling reasons. The official respondents had been directed through various judgments to take care of rules/regulation, however, they have remained at loss in compliance thereof.

7. The appeal is disposed of in the light of above observation, with no order as to cost. File be consigned to record room.


(Fatma Pathan)
Member (E)


(Rozina Rehman)
Member (E)

ORDER

12.01.2023

Appellant present in person.

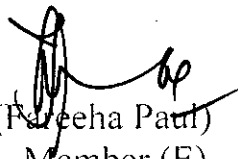
Muhammad Adeel Butt, learned Additional Advocate
General for respondents present.

Vide our detailed judgment of today placed on file, the
instant service appeal is disposed of, with no order as to cost.

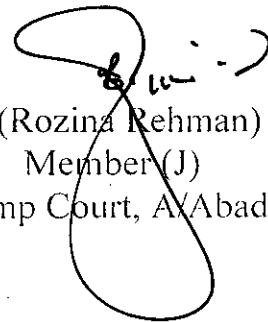
File be consigned to the record room.

ANNOUNCED.

12.01.2023



(Parvisha Paul)
Member (E)
Camp Court, A/Abad



(Rozina Rehman)
Member (J)
Camp Court, A/Abad