

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1669/2022

Date of Institution ... 24.11.2022

Date of Decision... 07.03.2023

Muhammad Arif Khan, DIG Prisons, Regional Prison Office Mardan.

... (Appellant)

VERSUS

The Hon'ble Chief Secretary, Khyber Pakhtunkhwa, Peshawar and 03 others.

... (Respondents)

MR. MUHAMMAD ZAFAR TAHIRKHELI,
Advocate

For appellant.

MR. MUHAMMAD ADEEL BUTT,
Additional Advocate General

For official respondents.

MR. SADIQ ALI MOHMAND,
Advocate

For Private respondent No. 4.

MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

CHAIRMAN
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts surrounding the instant service appeal are that the appellant joined the Prison Department as Assistant Superintendent Jail (BPS-14) vide order dated 22.03.1993; that the appellant was promoted in the year 2018 as Deputy Superintendent Jail (BPS-17) and was then ultimately promoted as Superintendent Jail (BPS-18) in the month of April, 2022; that after promotion as Superintendent Jail (BPS-18) the appellant was transferred and posted as Superintendent Jail (BPS-18), Central Prison



Mardan in his own pay scale vide Notification dated 26.05.2022; that the appellant was once again transferred and posted as DIG Regional Prison Office Mardan in his own pay scale vide impugned order dated 12.08.2022; that the appellant was pre-maturely transferred just after two and a half months of his assumption of charge as Superintendent Jail, Mardan; that feeling aggrieved from the impugned transfer order, the appellant preferred departmental appeal on 17.08.2022 which was not responded within the statutory period, hence the instant service appeal.

2. On admission of the appeal for regular hearing, respondents were summoned. Official respondents put appearance through their representative and contested the appeal by filing written reply raising therein certain legal as well as factual objections. Private respondent No.4 failed to submit reply despite several opportunities being given to him.

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

4. We have heard the arguments of learned counsel for the appellant as well as learned Additional Advocate General for official respondents and learned counsel for private respondent No.4.

5. A perusal of the record would show that the appellant was transferred to the post of Superintendent Jail (BPS-18), Central Prison

Mardan on 26.05.2022 but within a period of two months and few days, he was prematurely transferred there-from and posted against the post of DIG Regional Prison Office Mardan vide Notification dated 12.08.2022, in violation of the posting/transfer policy of the Government of Khyber Pakhtunkhwa without allowing the appellant to complete his normal tenure. In their reply, the official respondents have not stated any exigency nor explained any public interest of transfer of the appellant within two months and few days of his posting. While going through the record, we have observed that vide order dated 26.05.2022, private respondent No.4, was transferred from Central Prison Mardan, on his promotion from the post of Deputy Superintendent Jail (BPS-17) to the post of Superintendent Jail (BPS-18) and within two months and few days, he was transferred back to the said prison through the impugned order. The afore-mentioned fact prima facie negates the stance of the respondents that the impugned transfer of the appellant was made in the public interest. During the course of arguments, learned counsel for private respondent No.4 produced copy of a letter No. 277 dated 18.01.2023 showing willingness of the appellant to be posted as DIG/AIG, submitted in response to letter No. 2359-73 dated 17.01.2023 of Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar. It seems strange as to what was the need to seek willingness especially from the appellant when he was already posted as DIG (BPS-19) Regional Prison Office Mardan in his own pay and scale. The explanation of the official respondents as contained in para-4 of their reply that the post of DIG was more prestigious than that of the Superintendent Jail being high in

hierarchy does not appear justified. If it were so, the appellant being admittedly junior to the private respondent ought not to have been posted on the higher post in preference to the private respondent No. 4.

6. In order to streamline and regulate the postings/transfers of the Civil Servants, the Government of Khyber Pakhtunkhwa introduced a posting/transfer policy. Main conditions of the same relevant to the instant appeal are as under:-

i. All the postings /transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants.

iv. The normal tenure of posting shall be three years subject to the condition that for the officers /officials posted in unattractive areas, the tenure shall be two years and for hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.

7. In 2018 S C M R 1411 titled "Khan Muhammad Versus Chief Secretary, Government of Balochistan Quetta and others", the august Supreme Court of Pakistan was pleased to have found as under:---

"18. Under section 10 of the Act a civil servant cannot insist to be posted or transferred to a particular post but this does not mean that a civil servant can be made to serve under a subordinate. Moreover, while section 10 does not prescribe a minimum period during which a civil servant must serve at his post it does not mean that the Government without assigning any reason can move a civil servant from the place he was posted

to after a month or subject the civil servant to repeated postings in a short period of time because this would amount to punishing him. Such postings also adversely affect the public interest and result in the wastage of scarce resources and constitute bad governance.

19. The Rules designate certain posts as 'tenure posts' (rule 22 read with Schedule IV of the Rules) and prescribe a period of three years for an incumbent to serve on such posts. Such prescribed tenure may therefore be categorized as the ideal duration for which a civil servant should serve at a particular post. The post of Divisional Director however is not a tenure post but the principle of serving for a particular duration at this post should be followed. In the present case the petitioner was posted for a little over a month when he was again posted. Any civil servant posted to a particular post requires some time to familiarize himself with the workings of the office and the requirements of the post whereafter he will be best placed to acquit himself of the responsibilities of the post. However, a one month posting, as in the case of the petitioner, would not serve the interest of the people."



8. We have observed that the impugned order dated 12.08.2022 was not issued in the public interest or exigencies of service and as such is not tenable in the eye of law. Pre-mature transfer is clear violation of Clause I and IV of Posting/Transfer Policy notified by the Provincial Government. It is also violative of instructions circulated vide letter dated 27.02.2013 pertaining to tenure in posting/transfer. Ordinary tenure for posting has been specified in the law or rules made there-under. Such tenure

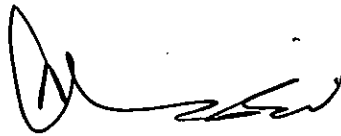
must be respected and cannot be varied, except for compelling reasons to be recorded in writing and are judicially reviewable.

9. As a sequel to the above, the appeal in hand is allowed by setting-aside the impugned transfer order dated 12.08.2022 to the extent of appellant and private respondent with the directions to the respondent-department to allow the appellant to continue with his service as Superintendent Jail at Central Prison Mardan till completion of his normal tenure. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
07.03.2023



(SALAH-UD-DIN)
MEMBER (JUDICIAL)



(KALIM ARSHAD KHAN)
CHAIRMAN