

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

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

Service Appeal No.670/2022

Date of presentation of appeal.....27.04.2022
Dates of Hearing.....16.03.2023
Date of Decision.....16.03.2023

Khan Zaman, District Food Controller, Karak.

.....*Appellant*

Versus

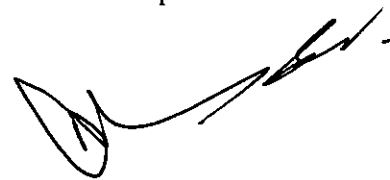
1. **The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
2. **The Secretary Government of Khyber Pakhtunkhwa, Food Department, Civil Secretariat, Peshawar.**
3. **Mr. Adil Badshah, District Food Controller, Kohat**
.....(*Respondents*)

Present:

Mr. Ashraf Ali Khattak,
Advocate.....For the appellant.

Fazal Shah Mohmand,
Additional Advocate GeneralFor official respondents

Nemo for private respondent No.3.



APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 READ WITH CLAUSE XIV KHYBER PAKHTUNKHWA GOVERNMENT POSTING/TRANSFER POLICY AGAINST THE IMPUGNED TRANSFER ORDER DATED 05.04.2022 OF RESPONDENT NO.2 THEREBY HE DIRECTED THE APPELLANT TO REPORT TO THE FOOD DIRECTORATE WITH IMMEDIATE EFFECT AND AUTHORISED MR. ADIL BADSHAH DISTRICT FOOD CONTROLLER, KOHAT (RESPONDENT NO.3) TO HOLD ADDITIONAL CHARGE OF THE POST OF DISTRICT FOOD CONTROLLER IN ADDITION TO HIS OWN

DUTIES (ADDITIONAL CHARGE) TILL FURTHER ORDER AND AGAINST THE WHICH THE APPELLANT FILED DEPARTMENTAL APPEAL BEFORE RESPONDENT NO.1 UNDER CLAUSE XIV OF THE KP POSTING TRANSFER POLICY, WHICH IS STILL PENDING

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the memorandum and grounds of appeal, since his appointment, the appellant was performing the duties of District Food Controller at various stations; he alleged that he was being subjected to frequent transfers for eight times within eight years; that lastly within two months of his posting on 18.01.2022 at Karak, he transferred on 05.04.2022 to the Food Directorate on malafide basis because he was confronted with internal and local deep rooted mafia with its master mind named Qaiser Nawaz Senior Clerk, who had been stationed at District Food Controller (DFC) Office Karak since his initial appointment in 2008 and had been steering the office as de facto DFC and go down AFC; that Mr. Qaiser Nawaz, in connivance with market mafia, was actively engaged in malpractices, which were against the interest of the department and had earned bad name; that the appellant being competent authority took serious notice of the illegal engagements and called explanation from the officer and also submitted representation to the Director Food highlighting the illegal activities of the officer and also recommended transfer and posting of the Senior Clerk but instead the appellant was directed vide the impugned order dated 05.04.220 to report to the Directorate of Food with immediate effect thereby authorizing Mr. Adil Badshah to hold additional Charge of the post



of DFC Karak; that the appellant filed departmental appeal against the impugned order which was not responded and he filed this appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. The 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. It was mainly contended that the appellant was transferred from the post of AFC Bannu to the post of DFC Karak but his un-official and un-ethical behavior destroyed the official decorum and all the staff of DFC Karak requested for his transfer from Karak, thus affecting the official day to day work and creating problems for Food Department, he was transferred from the post of DFC Karak to the Directorate of Food Peshawar in the public interest authorizing respondent No.3 to hold additional charge till further orders but the appellant did not relinquish the charge. It was added that a performance review meeting was held on 08.03.2022, and a follow up meeting was held under the chairmanship of the Deputy Commissioner Karak with all line departments wherein necessary instructions were issued to all concerned regarding improvement of PMRU indicators and establishment of Ramazan Sasta Bazar etc but the performance of the DFC Karak was not good; that the officer was used to misguide the District Administration by providing wrong information; that the following main indicators, were pending on the part of the appellant since long:



- i. The appellant performance regarding KP-Inspection (IPMS Dashboard) was not satisfactory after repeated directions.
- ii. Various complaints regarding daily price list from shopkeepers were received and all the directions issued from time to time went in vain.
- iii. The appellant did not provide daily data to the office of the Deputy Commissioner for uploading on Prime Minister National Food Security Dashboard, due to which report remained pending since his (appellant's) posting.
- iv. All the Assistant Commissioners in District Karak reported that the daily subsidized atta quota allocated to Sasta Bazar had not been provided as per Bazar allocation without prior approval of the Deputy Commissioner Karak which created embarrassing situation for the district administration.
- v. Response of the appellant with the District Administration as well as general public was not professional as a result the general public knocked the door of the District Administration in their activities i.e. distribution of subsidized atta, inspection bazar, display of price list etc.

The letter dated 13.04.2022 of the Deputy Commissioner Karak has been annexed with the reply as Annexure-II, wherein the above pending indicators were pointed out and it was also alleged that despite transfer of the appellant, he was not ready to relinquish the charge. A request was made to the Secretary to Government of Khyber Pakhtunkhwa Food Department to direct the appellant to relinquish the charge for smooth functioning of the official activities in the best interest of the general public.

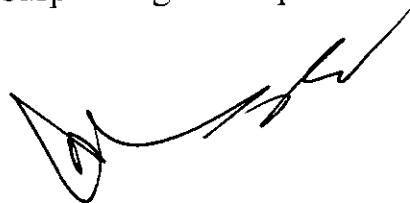
It is pertinent to mention here that no rejoinder was submitted by the appellant to rebut the above allegations.

3. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.



4. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order.

5. True that the appellant was transferred just within three months of his posting but the circumstances explained by the official respondents show that the conduct of the appellant was speaking volumes about the exigency which became the reason for his transfer before completion of the tenure provided in the posting/transfer policy of the Government of Khyber Pakhtunkhwa. Under section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, a civil servant has to serve anywhere at the pleasure of the competent authority. The competent authority knows well about the performance of its subordinates and then judges to assign duty to them in order to provide best facilitation to the general public. Refer 2023 PLC (CS) 292 titled "*Muhammad Sajjad versus Federation of Pakistan*". In the reply, the official respondents stated that the appellant started creating problems for the department as well as the District Administration soon after his posting. The allegations of the department, as aforesaid, could not be rebutted by the appellant either by filing counter-affidavit or rejoinder or even during the course of arguments. During the pendency of this appeal, the appellant filed an application on 25.07.2022 seeking suspension of Notification No.SOG/FOOD/1-2/2022/11400 dated 01.07.2022, whereby he was suspended and subsequently an enquiry was ordered serving him with charge sheet and statement of allegations. The appellant contended that in presence of the order of the Tribunal suspending the operation of the



impugned order, the department in violation thereof issued joining order of respondent No.3 and then vide order dated 24.06.2022, transferred one Hashim Khan as DFC Karak. It appears from the above that the appellant was suspended and after the impugned order another transfer order dated 24.06.2022 was issued by the department after suspension of the appellant. The conduct of the appellant explained in writing by none other than his own authority i.e Secretary to the Government of Khyber Pakhtunkhwa Food Department was not in the public interest. The conduct of the appellant explained could not be rebutted by the appellant, he was thus rightly transferred in the public interest. Therefore seeing no merits in this appeal, it is dismissed. We direct that the costs of the appeal shall follow the result. Consign.

6. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 16th day of March, 2023.*



KALIM ARSHAD KHAN
Chairman



SALAH UD DIN
Member (Judicial)