

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

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

Service Appeal No. 1424/2022

Date of presentation of appeal03.10.2022
Dates of Hearing.....30.03.2023
Date of Decision.....03.05.2023

Wahid Zaman S/o Umer Niaz. Senior Clerk/SDA Public Health
Sub-Division, Bannu.

.....(*Appellant*)

Versus

1. Chief Engineer (Centre) Public Health Engineering Department, Khyber Pakhtunkhwa Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa Public Health Engineering Department, Peshawar.
3. The Section Officer (Estt) Public Health Engineering Department, Peshawar.
4. Mr. Javid Ali Shah, Senior Clerk Public Health Engineering Department, Sub-Division, Bannu.

.....(*Respondent*)

Present:

Mr. Abdur Rauf Khan, Advocate.....For appellant.

Mr. Asad Ali Khan,
Assistant Advocate GeneralFor official respondents.

Syed Noman Ali Bukhari,
AdvocateFor private respondent.

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SERVICE APPEAL UNDER SECTION 10 OF THE SERVICE TRIBUNAL ACT, WITH OTHER RELEVANT PROVISIONS AGAINST THE IMPUGNED ORDER DATED 21.09.2022 PASSED BY RESPONDENT NO. 1 (APPELLATE AUTHORITY) WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED/DISMISSED.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the facts gathered from the record are that the appellant while working as Junior

Clerk in the office of the Chief Engineer (Centre) Public Health Engineering Division Bannu was promoted to the post of Senior Clerk (BPS-14) vide order dated 25.07.2022 and was retained in the Public Health Engineering Sub-Division Bannu. Vide order dated 15.09.2022, the appellant was transferred to the Public Health Engineering Division Lakki Marwat and private respondent No. 4 was posted in place of the appellant in Public Health Engineering Division Bannu, however, the said order was cancelled vide order dated 16.09.2022. Vide order dated 21.09.2022, the appellant was posted as Accounts Clerk (OPS) Public Health Engineering Division Bannu.

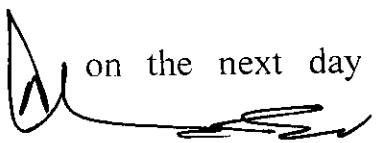
2. Feeling aggrieved from the order dated 21.09.2022, the appellant preferred departmental appeal on 26.09.2022 which was rejected on 27.09.2022 and hence this appeal.

3. On receipt of the appeal and admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeal by filing written replies raising therein numerous legal and factual objections.

4. Arguments have already been heard and record perused.

5. Learned counsel for the appellant argued that the appellant upon promotion of the appellant from the post of Junior Clerk to the post of Senior Clerk, he was posted as SDA in the office of Public Health Engineering Sub-Division Bannu-I vide order dated 25.07.2022. He next argued that vide order dated 15.09.2022, the appellant was again transferred from the post where he was posted to the post of Senior Clerk (Revenue) Public Health Engineering Sub-Division, Lakki Marwat and

on the next day i.e 16.09.2022, the order dated 15.09.2022 was

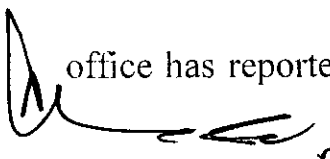


withdrawn. He further argued that just after 05 days, the appellant was again transferred from the post of SDA Public Health Engineering Sub-Division Bannu to the post of Accounts Clerk (OPS) Public Health Engineering Sub-Division Bannu vide order dated 21.09.2022 without completing his normal tenure. He further argued that the impugned transfer order is against Clause I and IV of Transfer/Posting Policy. In the last, he argued that the appellant has not been treated by the respondent-department in accordance with law and rules on the subject as such the respondents have violated Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973, therefore, the impugned transfer/posting order of the appellant is liable to be set-aside.

6. On the other hand, learned Assistant Advocate General for official respondents has argued that the transfer order of the appellant was made in public interest and the allegations of the appellant regarding mala-fide are wrong and baseless. He next argued that in view of Section-10 of Khyber Pakhtunkhwa Civil Servants Act, 1973, the appellant is bound to serve anywhere in the province, therefore, his appeal being devoid of any merit may be dismissed with cost.

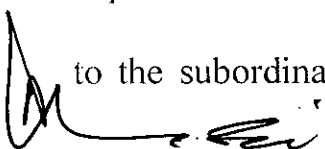
7. Syed Noman Ali Bukhari, Advocate representing private respondent No. 4 adopted the arguments advanced by learned Assistant Advocate General for official respondents.

8. The matter was heard on 30.03.2023 and was fixed for announcement to be made on 10.04.2023 but nobody put appearance on behalf of the appellant, therefore, notices were directed to be issued to the appellant and his counsel for 03.05.2023 for announcement. The office has reported that on 19.04.2023 learned counsel for the appellant



was telephonically informed for the date fixed but today neither the appellant nor private respondent are in attendance.

9. The record reflects that the appellant was posted as Senior Clerk/SDA Public Health Engineering Sub-Division Bannu-I vide order dated 25.07.2022. Vide order dated 15.09.2022, he was further transferred as Senior Clerk (Revenue) PHE Division Lakki Marwat and vide order dated 16.09.2022, the order of 15.09.2022 was cancelled, retaining the appellant as SDA Public Health Engineering Sub-Division Bannu-I. Thereafter vide order dated 21.09.2022 the appellant was transferred to the post of Accounts Clerk (OPS) Public Health Engineering Division Bannu. Aggrieved of the order dated 21.09.2022, the appellant preferred departmental appeal on 26.09.2022, which was rejected on 27.09.2022 and, hence, this appeal. It was agitated by the learned counsel for the appellant that the transfer of the appellant was frequent and unusual having been made at the behest of one Javed Ali Shah, therefore, the same was tainted with mala-fide. This allegation of mala-fide could not be supported by any documentary evidence. During the course of hearing, the learned counsel for private respondent referred to an office order dated 03.01.2023, whereby the appellant had further been transferred to the post of Senior Clerk Public Health Engineering Bannu Division. The posting and transfer of the subordinate is the exclusive domain of the competent Authority under Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, which is to be made in the public interest, any exigency or maintaining discipline within the department. It is also the prerogative of the Authority to assign any duty to the subordinate for better service delivery. In the case in hand, the



order dated 21.09.2022 shows that the appellant was under transfer as Senior Clerk (Revenue) Public Health Engineering Division Lakki Marwat, from where he was transferred to the post of Accounts Clerk (OPS) Public Health Engineering Division Bannu while previously, he was working as Senior Clerk SDA Public Health Engineering Sub-Division Bannu-I. Except one posting in Lakki Marwat, where too the appellant had not even assumed the charge, all the postings appear to be in one office i.e under one roof, therefore, the question of hardship is excluded/ruled out and does not arise. The appellant could not point out any mala-fide, illwill or grudge of the department except that within shortest span of time he was transferred from one seat to another but, as the aforesaid, in the same office. The post of the appellant is clerical in nature and he is not dealing with any administrative power so as to consider his case from that aspect that in case he is not allowed to complete tenure at the seat, which would disturb the working of the department. This being so we don't find any merit in this appeal, therefore, it is dismissed. Costs shall follow the event. Consign.

10. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 03rd day of May, 2023.*



KALIM ARSHAD KHAN
Chairman



SALAH UD DIN
Member (Judicial)