

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No 577/2023

Date of presentation of Appeal.....16.03.2023
Date of Hearing..... 12.05.2023
Date of Decision.....12.05.2023

**Mr. Abdul Karim S/O Zarif Khan R/O Warsak Road, Street No.5
Mohallah Abshar Colony, Peshawar** presently Tehsildar, Tangi
District Charsadda (under transfer).

.....*Appellant*

Versus

1. **The Chief Secretary Health**, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** Board of Revenue, Govt. of Khyber Pakhtunkhwa , Civil Secretariat Peshawar.
3. **The Commissioner**, Peshawar Division, Peshawar.
4. **Mr. Arshad Iqbal**, Naib Tehsildar, Pabbi, District Nowshera.

.....(*Respondents*)

Present:

Mr. Rizwan Ullah,
Advocate.....For the appellant

Mr. Fazal Shah Mohmand,
Additional Advocate General.....For official respondents No.1 to 3

Mr. Farman Ullah,
Advocate.....For private respondent No.4

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED TRANSFER ORDER DATED 03.03.2023, WHEREBY DEPARTMENTAL APPEAL FILED BY THE APPELLANT BEFORE THE BOARD OF REVENUE & ESTATE DEPARTMENT WAS DISMISSED ON 09.03.2022 AND THE APPELLANT WAS PREMATURELY AND WITHOUT IN PUBLIC INTEREST TRANSFERRED FROM THE POST OF TEHSILDAR TANGI, DISTRICT CHARSADDA WITH THE DIRECTION TO REPORT TO THE OFFICE OF COMMISSIONER, PESHAWAR.



JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case are that appellant was serving as Tehsildar in Revenue Department on regular basis w.e.f 07.05.2021. He was posted as Tehsildar, Tangi District Charsadda from where he was transferred and was directed to report to the office of Commissioner, Peshawar Division vide impugned order dated 03.03.2023. Feeling aggrieved, he filed departmental appeal on 08.03.2023, which was dismissed vide order dated 09.03.2023. Thereafter, he filed instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing their respective written replies raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant, learned Additional Advocate General for official respondents No.1 to 3 and learned counsel for private respondent No.4.

4. Learned counsel for appellant contended that the order dated 03.03.2023 was against law, rules and principles of natural justice, hence, *ab-initio*; that the transfer order was illegal, without jurisdiction and without lawful authority as transfer posting in respect of BPS-16 and above were banned in Caretaker government and by virtue of letter dated 28.02.2023, transfer/posting below BPS-16 was allowed, hence, the impugned order was not sustainable and *void ab-*

initio. He submitted that as per Transfer/Posting Policy of the Provincial Government normal tenure on a post of a civil servant was two years, however, the appellant had been made a rolling stone and after serving four months, was prematurely transferred in violation of the transfer/posting policy; that the appellant was entitled to be treated equally in accordance with transfer/posting policy, however, he had been discriminated by transferring prematurely which was violation of Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. Learned counsel submitted that private respondent who was not even a regular Naib Tehsildar and was basically a Kanungo (BS-11) and appointed as Naib Tehsildar (acting charge basis) had been posted on own pay & scale (OPS) as Tehsildar, Tangi, which had no legal background; that the Tribunal had filed various appeals of OPS Tehsildars/Naib Tehsildars and directed for posting of regular Tehsildar/Naib Tehsildar against actual posting, however, the impugned order had been issued in violation and disregard of the judgments of the Tribunal. Lastly, he submitted that the impugned order was politically motivated and liable to be set aside. Reliance was placed on PLD 2011 Supreme Court 963; PLD 2013 Supreme Court, 195; 2014 PLC (C.S) 797 and judgments of this Tribunal in Service Appeals No.818/2015, 709/2018, 867/2019 and Service Appeal No.137/2022.

5. As against that learned Additional Advocate General, assisted by learned counsel for private respondent No.4, argued that the impugned transfer order had been issued in accordance with law



and no violation had been made in transfer/posting of the appellant; that no violation had been made to the letter of Election Commission of Pakistan, regarding ban over transfer/posting as Election Commission of Pakistan had empowered the caretaker Government vide letter dated 28.02.2023 for posting/transfer up to BPS-16 and the competent authority after that permission, ordered posting/transfer of the appellant. Further submitted that the impugned order had been issued in accordance with law and in the public interest as private respondent No.4 was a regular Naib Tehsildar promoted from Field Kanungo. Therefore, he requested for dismissal of the instant appeal. Reliance was placed on 1996 SCMR-645; 2004 PLC (C.S) 705; 2020 PLC (C.S) 759; 2023 PLC (C.S) 292 and judgment of this Tribunal in Service Appeal No.1074/2022.

6. The appellant is a Tehsildar in BPS-16 and was transferred vide office order dated 17.10.2022 and posted as Tehsildar, Tangi but within less than five months, he was transferred on 03.03.2023 from the post of Tehsildar, Tangi and was directed to report to the office of Commissioner. Respondent No.4, who is a Naib Tehsildar (BPS-14), was posted against the post of Tehsildar, Tangi in his own pay & scale. The appellant contends that the transfer was made against the posing transfer policy as he had not been allowed to complete the normal tenure provided in the notified policy of the Government and respondent No.4 who was basically a Kanungo in BPS-11, and not even a regular Naib Tehsildar, rather a Naib Tehsildar on acting charge had further been posted as Tehsildar, Tangi in his own pay &



scale. This contention has not been properly replied in the reply of the private respondent, however, the official respondents claim that private respondent was a regular Naib Tehsildar promoted from the Field Kanungo, but no promotion order is placed on the file to substantiate this claim. Be that as it may, there can be no denial of the fact that the appellant was transferred vide the impugned order within less than five months of his posting, therefore, the transfer order is in clear violation of the posting/transfer policy of the Government. Besides, the appellant has not been given any posting vide the impugned order and a Naib Tehsildar has been posted against the post of Tehsildar in preference to the appellant (Tehsildar), which *per-se* does not appear to us to be in the public interest. This appeal is thus allowed and the impugned order is set aside with direction to the respondents to allow the appellant to complete his normal tenure. Costs shall follow the event. Consign.

7. ***Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 12th day of May, 2023.***



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)