

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

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

Service Appeal No.150/2023

Date of presentation of appeal17.01.2023
Dates of Hearing.....03.05.2023
Date of Decision.....03.05.2023

Dr. Niaz Ali Khan, Deputy District Health Officer, Karak.
.....(*Appellant*)

Versus

1. **Government of Khyber Pakhtunkhwa** through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. **Government of Khyber Pakhtunkhwa** through Secretary Health, Khyber Pakhtunkhwa, Peshawar.
3. **Director General, Khyber Pakhtunkhwa, Peshawar.**
.....(*Respondents*)

Present:

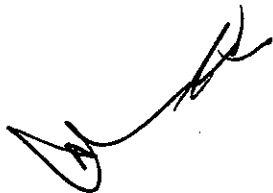
Mr. Naisr Mahmood, Advocate.....For appellant.

Mr. Asif Masood Ali Shah,
Deputy District Attorney.....For respondents.

.....
SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE TRANSFER ORDER DATED 06.10.2022, VIDE WHICH THE APPELLANT WAS TRANSFERRED FROM THE POST OF DEPUTY DHO KARAK, WHEREBY THE APPELLANT FILED DEPARTMENTAL APPEAL BEFORE THE RESPONDENT NO.2 ON 07.10.2022, WHICH WAS NOT RESPONDED TILL DATE, HENCE THE INSTANT APPEAL.
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Service Appeal No.151/2023

Date of presentation of appeal17.01.2023
Dates of Hearing.....03.05.2023
Date of Decision.....03.05.2023



Abdul Qadoos Son of Khan Zaman, Principal Dental Surgeon Takht Nasrati District Karak.

.....(**Appellant**)

Versus

1. **Government of Khyber Pakhtunkhwa** through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. **Government of Khyber Pakhtunkhwa** through Secretary Health, Khyber Pakhtunkhwa, Peshawar.
3. **Director General**, Khyber Pakhtunkhwa, Peshawar.
4. **District Health Officer**, Karak.

.....(**Respondents**)

Present:

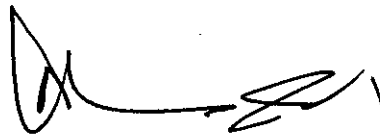
Mr. Hidayatullah Khattak, Advocate.....For appellant.

Mr. Asif Masood Ali Shah,
Deputy District Attorney.....For respondents.

.....
SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED TRANSFER ORDER NO.SOH(E-V)/2-2/2022/3530-37 DATED 06..10.2022 OF RESPONDENT NO.3 AND THAT OF UN-RESPONDED AND WAITING FOR THE STATUTORY PERIOD HENCE THIS APPEAL.

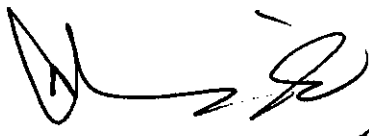
CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment this appeal and the connected service appeal No. 151/2023 titled "Abdul Qadoos-vs-Govt: of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others" are decided as both are against the same order and can conveniently be decided together.



2. According to the facts gathered from the record in service appeal No. 150/2023, the appellant was serving as Deputy District Health Officer, Karak since 29.07.2020; that an anonymous complaint was lodged against the appellant; that the respondents constituted a fact finding enquiry committee vide order dated 10.0.2021; that the enquiry committee recommended transfer of the appellant from the post of acting DHO; that on the recommendations of the fact finding enquiry committee, the appellant was relieved from the post of acting DHO vide order dated 23.09.2022; that the respondents had passed another order on 06.10.2022, whereby the appellant was removed from the post of Deputy District Health Officer and was directed to report to Director General Health Services, Khyber Pakhtunkhwa; that feeling aggrieved, he filed departmental appeal on 07.10.2022 which was not responded within the statutory period of ninety days and, hence, the instant service appeal.

3. In service appeal No. 151/2023, the appellant was appointed as Dental Surgeon in the respondent department and had been serving as Principal Dental Surgeon at Type-C Hospital, Takht Nasrati, Karak; that on an anonymous compliant regarding ghost Doctor in Type-C Hospital Takht Nasrati a fact finding inquiry was conducted on the order of Director General Health Services (respondent No.3) dated 10.10.2021 and the inquiry committee submitted a report; that on the recommendation of the enquiry committee, respondent No.3 issued impugned transfer order dated 06.10.2022; that the appellant being aggrieved filed departmental appeal on 12.10.2022, which was not responded within the statutory of ninety days, hence, the instant service appeal.



4. On receipt of the appeals and their admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeals by filing written replies raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellants.

5. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.

6. Learned counsel for the appellants argued that the impugned order dated 23.09.2022 and 06.10.2022 based on recommendations of enquiry committee are nullity in the eyes of law, rules of business and posting transfer policy of the Government on the subject. The enquiry committee has no locus standi to conduct enquiry against an officer who is equal in rank/scale thus liable to be set at naught. He further argued that as per judgment of the apex court that "no one shall be punished on anonymous complaint". They requested that the impugned orders might be set aside.


7. Learned Deputy District Attorney on the other hand argued that the appellants have been treated in accordance with law and rules. The transfer orders of the appellants have been issued by the Competent Authority in light of the recommendation of the inquiry committee and the appellants have not been complied with the orders of his Superior Officers/Competent Authority, so, the instant appeals are devoid of the merits and has no legal value, therefore, the same might be dismissed with cost.



8. The appellants have been transferred on the basis of recommendation of the fact finding enquiry committee. It is well settled principle that the civil servant could not be penalized solely on the basis of fact finding enquiry rather a regular enquiry under the relevant rules was a must for establishing any guilt/misconduct of the civil servant particularly when factual controversy is involved. Since apparently the impugned transfer order is issued only in the wake of the fact finding enquiry, therefore, it is not sustainable on this score alone. Besides no public interest was shown even in the reply of the respondents for transfer of the appellants. On the other side the posts which were occupied by the appellants were left vacant which could be said to be against the public interest. Therefore, on allowing these appeals, the impugned transfer order dated 06.10.2022 is set aside. The authority is however, at liberty to transfer the appellants, however, such order shall be specifying the public interest or the exigency of service of the appellant. Costs shall follow the event. Consign.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 3rd day of May, 2023.*


KALIM ARSHAD KHAN
Chairman


SALAH UD DIN
Member (Judicial)