

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

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

Service Appeal No.7033/2021

Date of presentation of Appeal.....13.07.2021

Date of Hearing.....02.05.2023

Date of Decision.....11.05.2023

Mr. Said Afzal Clinical Technician (Pharmacy) BS-12, BBS Teaching Hospital Abbottabad.

.....*Appellant*

Versus

1. **The Secretary Health,** Government Of Khyber Pakhtunkhwa, Peshawar.
2. **The Director General** Health Services, Khyber Pakhtunkhwa, Peshawar.
3. **The Medical Superintendent,** BBS Teaching Hospital Abbottabad.
.....(*Respondents*)

Present:

Syed Noman Ali Bukhari,
Advocate.....For the appellant

Mr. Asif Masood Ali Shah,
Deputy District AttorneyFor respondents.

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 READ WITH CLAUSE XIV OF THE POSTING TRANSFER POLICY AGAINST THE IMPUGNED TRNASFER ORDER DATED 25.05.2021 AND 03.05.2021 AND ALSO AGAINST NOT DECIDING THE APPEAL OF THE APELLANT WITHIN 15 DAYS AS PROVIDED UNDER CLAUSE XIV OF THE POSTING TRANSFER POLICY.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case are

that appellant was serving in Benazir Bhutto Shaheed Teaching

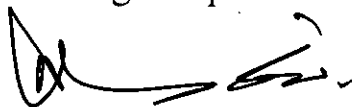
Hospital Abbottabad. During service, his wife who was serving in the same hospital, was transferred to District Haripur. She challenged that transfer order in this Tribunal by filing Service Appeal No.766/2021. During the pendency of that appeal, appellant was relieved from Abbottabad and was directed to report to DG Health Services vide order dated 03.05.2021. In the meanwhile, appeal of the wife of appellant was allowed by this Tribunal. Thereafter, appellant filed application for cancellation of the order dated 03.05.2021 by showing all the reasons regarding his responsibilities and spouse policy but no heed was paid and vide order dated 25.05.2021, appellant was transferred to DHO Kohistan Upper. Feeling aggrieved, he filed departmental appeal which was not responded to, hence, the present 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 written reply 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 appellants and learned Deputy District Attorney for the respondents.
4. Learned counsel for appellant contended that the orders dated 25.05.2021 and 03.05.2021 were against law, facts, norms of justice and material on record, therefore, not tenable and liable to be set aside; that the appellant had been condemned unheard and had not

been treated according to law and rules. He argued that the impugned transfer order of the appellant was against the wedlock policy as annunciated in the rules; that by violating the Article-35 (Protection of Family, etc.) of the Constitution of Islamic Republic of Pakistan, 1973, the respondents had stopped the salary of the appellant which was discriminatory and against the fundamental rights. Learned counsel contended that instead of giving the appellant medical leave, the department transferred him to another district which was illegal and irrational; that no opportunity was provided to the appellant for personal defense which was against the spirit of Article 10-A of the Constitution. Further submitted that the impugned transfer order of the appellant had immensely affected the family life of the appellant and being away from the wife in serious illness and from mother who was on bed, the respondents had troubled the life of appellant. Lastly, he submitted that the respondents passed the impugned order by violating the laws regarding Human Rights and the allegation leveled against the appellant was baseless. Reliance was placed on 2012-PLC (CS) 187..

5. As against that learned Deputy District Attorney argued that the orders dated 03.05.2021 and 25.05.2021 were in accordance with law and based on facts and norms of justice and the appellant was not entitled to any relief. He submitted that appellant was a habitual absentee as he was warned many a times but in vain. That the appellant was found wandering in the Benazir Bhutto Shaheed Teaching Hospital with hooligans which created terror among the



staff which act was a misconduct under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Further submitted that son of the appellant also harassed, abused and terrified respondent No.3 in office, therefore, appellant was relieved and the competent authority adjusted him placing his services at the disposal of DHO Kohistan Upper; that personal hearing was not necessary in case of transfer; that wife of the appellant had already been transferred out from Benazir Bhutto Shaheed Teaching Hospital Abbottabad; that the appellant had not performed his duty, therefore, salary was not paid. Lastly, he submitted that the appellant was transferred on administrative grounds and the appellant had served at BBS Teaching Hospital for the last 32 years. Therefore, he requested for dismissal of the instant service appeal.

6. Vide the impugned transfer order passed during the pendency of appeal of the wife of the appellant on administrative grounds (not disclosed in the order) rather in the reply of the respondents cannot be termed as an exigency or interest of public. This Tribunal in a case reported as 2012-PLC (CS) page-187 titled "Shamshad Begum Vs. The Chief Secretary Khyber Pakhtunkhwa" has already held that transfer of civil servant cannot be made on the basis of complaint which required a regular inquiry in the matter because the transfer had not been mentioned as punishment in the penalty list in the rules & regulations regarding the conduct of civil servant. In the reply, the respondents have contended that the appellant remained habitual absentee; that he was found wandering in the Benazir Bhutto Shaheed



Teaching Hospital, Abbottabad with hooligans which created terror amongst the staff. That the appellant held a press conference without the permission of the authority; that son of the appellant also harassed, abused and terrified respondent No.3. It was then he was transferred. The Department may proceed against the appellant under the relevant rules if it all he was found guilty of any misconduct which could not transfer the appellant solely as a punishment. Therefore, the impugned transfer order is not maintainable and is set aside. However, the department is at liberty to conduct regular inquiry into the allegations leveled against the appellant and may proceed against, if so required. In case the competent authority is of the view that the appellant had committed misconduct, which disturbed the discipline of service, then the same could have been enquired through an inquiry and transferring the appellant before any such inquiry, was not a proper procedure covered under the Provincial Government, Posting/Transfer Policy. Consign.

7. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 11th day of May, 2023.*



KALIM ARSHAD KHAN
Chairman



SALAH UD DIN
Member (Judicial)