

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

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

*Service Appeal No.1526/2022*

Date of presentation of appeal .....24.10.2022  
Dates of Hearing.....18.04.2023  
Date of Decision.....18.04.2023

**Mr. Zia Ullah Khan** S/O Hidayat Ullah Khan R/O Jamsheed Abad  
Babu Ghari Chowk Warsak Road Peshawar.

.....(*Appellant*)

Versus

1. **Government of Khyber Pakhtunkhwa** through Chief Secretary Civil Secretariat Peshawar.
2. **Secretary Establishment**, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. **Secretary Social Welfare**, Special Education & Women Empowerment Department, Khyber Pakhtunkhwa, Peshawar.

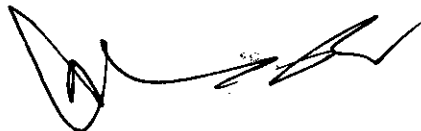
.....(*Respondent*)

Present:

Mr. Zartaj Anwar, Advocate.....For appellant.

Mr. Fazal Shah Mohman,  
Additional Advocate General.....For respondents.

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**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE OFFICE ORDER DATED 27.06.2022, WHEREBY THE APPELLANT HAS BEEN TRANSFERRED FROM PLANING OFFICER, DIRECTORATE OF SOCIAL WELFARE SPECIAL EDUCATION & WOMEN EMPOWERMENT KHYBER PAKHTUNKHWA, TO SOCIAL WELFARE OFFICER PESHAWAR, IS HIGHLY ILLEGAL, MALAFIDE, UNLAWFUL WITHOUT LAWFUL AUTHORITY, AGAINST THE RULES AND POLICY, AGAINST WHICH DEPARTMENTAL APPEAL WAS FILED ON DEPARTMENTAL APPEAL WAS FILED ON**



**30.06.2022, WHICH IS STILL NOT RESPONDED AFTER ELAPSE OF STATUTORY PERIOD OF NINETY DAYS.**

**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Brief facts as narrated in the memo and grounds of appeal are that the appellant was serving in the (Social Welfare) Department as Planning Officer (BPs-17); that the post of Planning Officer was created for the purpose to plan on evidence based facts, oversee the implementation of project and indicate bottlenecks in implementation process; that the government of Khyber Pakhtunkhwa published vide notification dated 22.02.2018 the service rules of the Khyber Pakhtunkhwa provincial planning service Rules, 2018 in which under Section-9 repeal serving: (1) on coming into force of these rules, the service rules of the concerned line department shall stand repealed to the extent of the posts as given in schedule-I; that post of the appellant clear reflects in the schedule-I and according to the rule-3 of the rules, which clearly says in constitution of the service, service shall consist of the posts as specified in schedule-I and such other posts as may be added it from time to time; that the petitioner has all the requisite eligibility criteria qualification, experience in accordance with new provincial planning cell rules 2018, furthermore, he is quite at par with officers of P&D department as well as planning cell of line department, who are administered under the provincial planning cell; that the respondent department vide notification dated 22.02.2018 promulgated the provincial planning cell whereas all the employees of the Provincial governemtn who born on the strength of the planning and Development department well



merged into one department/group will be known as PS group and for such purpose PPS service rules were framed who can run the affairs of the PPS groups; that the appellant is serving in scale of BPS-17, whereas under the rules and posting transfer policy the competent authority for the purpose of posting and transfer of officials of BPS-17 and above was the Chief Secretary of the province is the competent authority to issue such orders or with the approval of Chief Secretary but the same office/authority was superseded by the office of respondent No.3; that the respondent department issued impugned transfer order dated 27.06.2022 against which the appellant filed departmental appeal on 30.06.2022 which was not responded within the statutory period of ninety days, hence, the instant service appeal.

2. On receipt of the appeal and admission to full hearing, the respondents were summoned, who, on putting appearance, 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.

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

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules. That the notification of posting and transfer is illegally issued by the incompetent authority in the matter and also the appellant appointed through Public Service Commission particularly



against the post of Planning Officer could only be transferred and posted as a Planning Officer.

5. On the other hand learned Deputy District Attorney controvert the contention of learned counsel for the appellant and argued that the appellant has been treated in accordance with law and rules. He further submitted that the is an employee of the Directorate of Social Welfare and the Khyber Pakhtunkhwa Provincial Planning Service Rules, 2018 relates to Planning Cadre of the Secretariat Level, so the same is not applicable on the appellant. He requested that the appeal might be dismissed.

6. This Tribunal in appeal No. 16578/2021 titled "Manzoor Ahmad-vs-Chief Secretary, Khyber Pakhtunkhwa Peshawar and two others" regarding the same issue has held as under:-

" 9. For any reason but as matter of fact, the posts held by the appellants as Drug Inspector or Drug Analyst, as the case may be, were got vacated by transfer of the appellants and filled by posting of the individuals from the cadre of pharmacists. The appellants in consequence of their transfer have been posted against non-cadre posts. The main defense of the respondents lies in their reply to para-4 of the memorandum of appeal. It has been stated vide para-4 of appeal that by the service rules dated 09/04/2006, the cadre of the appellants is completely different from that of service rule assigned for pharmacists. The reply of the respondents to said para is copied below:

*"The Service Rules does not carry any kind of assignment to a cadre but it specifies the method of recruitment and promotion prospects which is otherwise protected after the merging of cadre. Although transfer is not a punishment but to make such like people punctual, subservient to the public and to overcome the deficiency of efficient of hardworking officer to post right person on right place, the three cadres. i.e.*



*hospital pharmacist, drug inspector and analyst having same basic qualification as required for induction through Public Service Commission, were merged to obviate the stagnancy in the cadre. By doing so any drug inspector or an analyst at DTL (who are the cadre of the 04 to 05 persons) can be transferred making them liable to work in hospital under the close supervision of hospital administration and vice versa. Those who are transferred from hospital to work in the field as drug inspector are tremendously working, removing the bottlenecks and highlighting a lot of malpractices previously done by their predecessor who have been sacked from field duty. In other similar cases, the drug inspectors who are sacked are under probe at Provincial Inspection Team and other fora".*

10. From the divergent pleadings of parties particularly discussed herein before, the main question wanting determination is, whether vice versa transfer of the holders of the post of Drug Inspector/Analyst and of Pharmacist is reasonably doable?

11. For answer to the formulated questions, prior determination of the legal status of the appellants and the respondents is necessary, as far as their functional duties are concerned. It is pertinent to observe that the Government of Khyber Pakhtunkhwa made the Khyber Pakhtunkhwa Drug Rules, 1982 in exercise of powers conferred by Section 44 of Drug Act, 1976. Rule-2 of ibid rules provides definitions of different words and phrases. The expression "Act" in the said rules means the Drug Act, 1976. Analyst means an Analyst appointed by the Government under the Act. Inspector means an Inspector appointed by the Government under the Act. Board means the Quality Control Board for the Khyber Pakhtunkhwa Province set up under Section 11 (of the Act). Pharmacy means a shop, store or place where drugs are compounded or prepared on prescription. Part-II of ibid rules relates to appointment and functions of enforcement staff. Sub Rule-(1) of Rule-3 in Part-II of the said Rules provides that an Inspector and Analyst shall submit monthly returns in Form-1 & Form-2 respectively, to the Board and a Summary on the overall situation of quality control in the area under their respective jurisdiction and the board shall maintain such information in a manner as to monitor the quality of all the drugs sold and to keep watch on the performance of all manufacturers. Rule-4 provides qualifications etc of Inspector and Analyst. Accordingly, no person shall be appointed as Inspector unless he possess the degree in Pharmacy from



University or other institutions recognized for this purpose by the Pharmacy Council of Pakistan and has at least one year experience in the manufacture, sell, testing or analysis of drugs or in Drug Control Administration or in hospital or pharmacy. Sub Rule-(2) of Rule-4 provides the qualification for appointment as Analyst which is similar to that of the Inspector except experience which in case of Analyst is 05 years. The same rules i.e. of 1982 provide for duties of Inspectors and Analysts. From the given statutory expositions relating to the position of Drug Inspector and Drug Analyst, we have no hesitation to hold that the posts of Drug Inspector/Drug Analyst are statutory positions with authority of appointment vested in the Provincial Government. The Government of Khyber Pakhtunkhwa vide notification dated 09/04/2006 bearing No. SOH-III/10-04/05 issued in pursuance to the provisions contained in sub rule-(2) of Rule-3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, laid down the method of recruitment, qualification and other conditions of service applicable to the posts specified in column-2 of the appendix. The qualification of Inspector in the appendix is similar to that of qualification provided under Sub-Rule-(1) of Rule-4 of Khyber Pakhtunkhwa Drug Rule, 1982. According to method of recruitment prescribed in column-5 of the appendix, the appointment to the post of Drug Inspector is to be made by initial recruitment while to the post of Chief Drug Inspector and Divisional Drug Inspector by promotion. The respondents in their reply vide para-4 as reproduced herein above have asserted with vehemence that there cadres i.e. Hospital Pharmacist, Drug Inspector and Drug Analyst having same qualification for induction through Public Service Commission, were merged to obviate the stagnancy in the cadre. By doing so Drug Inspector of Analyst at DTL (who are the cadre of 04 to 5 persons) be transferred making them liable to work in hospital under the close supervision of hospital administration. Those who are transferred from hospital to work in the field as Drug Inspector are tremendously working, removing the bottlenecks and highlighting a lot of discrepancies done by their predecessors who have been sacked from field duty.

12. The reply of the respondents as discussed above revolves around the expediency of filling the Drug Regulatory posts by *inter se* transfer of the holders of the post of Drug Inspector/Drug Analyst and of Pharmacists by merger of their cadre to ensure the discipline and quality of performance purportedly for the public good. We are not supposed to doubt the intentions of the respondents for such expediency but at the same time, we have to see that such an expediency is in conformity to the law and rules on the subject. Article 240 of



Constitution of Pakistan enshrines that subject to the Constitution, the appointments and conditions of service in the Service of Pakistan shall be determined by or under the Act of Parliament in case of the services of Federation and by or under the Act of Provincial Assembly in case of services of Province and posts in connection with affairs of the Province. In pursuance of this command of Constitution, the Provincial Service Laws i.e. the Khyber Pakhtunkhwa Civil Servants Act, 1973 and Rules made there-under are in place in general besides other Special Service laws for particular posts and services in connection with affairs of the Province. As already discussed above, the notification dated 09/04/2006 issued in pursuance to Sub Rule-(2) of Rule-3 of (APT) Rules, 1989 is there which laid down the method of recruitment, qualification and other conditions of service applicable to the posts of Drug Inspectors of different ranks. Thus, in presence of a legal instrument like notification dated 09/04/2006 having statutory barking, transfer of a Drug Inspector to an ex-cadre post to fill the resultant vacancy by transfer of a non-cadre officer is seemingly not credible. By the impugned order dated 06/10/2020, appellants holding the posts of Drug Inspector and one among them holding the post of Drug Analyst were transferred from their respective posts held by them in relevant cadre and posted as Pharmacist in a wrong cadre. The notification dated 06/04/2006 as far as column-5 of its appendix is concerned expressly provides for appointment of Drug Inspector through initial recruitment. With this position as to method of appointment of Drug Inspector, the post held by him cannot be filled by transfer or promotion from any other cadre albeit the person in the alien cadre may possess the qualification similar to the qualification of Drug Inspector. In holding so, we derive guidance from the law laid down by august Supreme Court of Pakistan in the case of **Muhammad Sharif Tareen...vs... Government of Balochistan (2018 SCMR 54)**. In the ibid case, it was held by the Hon'ble Supreme Court that a post which is required by the rules to be filled by Initial recruitment cannot be filled by promotion, transfer, absorption, or by any other method which is not provided by the relevant law and rules. Furthermore, after making reference to the law laid down in the case of **Ali Azhar Khan Baloch...vs...Province of Sindh (205 SCMR 456)**, it was held as follows:

*"8. The quintessence of the paragraphs reproduced above is that the appointments made on deputation, by absorption or by transfer under the garb of exigencies of service in an outrageous disregard of merit impaired efficiency and paralyzed the good governance*



*and that perpetuation of this phenomenon, even for a day more would further deteriorate the state of efficiency and good governance."*

7. Coming to this case, admittedly the appellant was appointed as Planning Officer and his grievance is that vide impugned order he was transferred from the post of Planning Officer to the post of Social Welfare Officer leaving the post of Planning Officer vacant. Transfer of an officer from his own designated/particular post/cadre against which he was specifically appointed, would not be appropriate nor could be said to be any exigency and as such not sustainable especially when even no exigency was stated nor the public interest explained. Therefore, the transfer order of the appellant is not found to be in the public interest. The instant appeal is accordingly allowed and the impugned order dated 27.06.2022 is set aside. Costs shall follow the event. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 18<sup>th</sup> day of April, 2023.*



**KALIM ARSHAD KHAN**  
Chairman



**SALAH UD DIN**  
Member (Judicial)

\*Adnan Shah, PA\*



**ORDER**

18<sup>th</sup> April, 2023

1. Appellant alongwith his counsel present. Mr. Fazal Shah Mohmand, Additional Advocate General for the respondents present.

2. Vide our detailed judgement of today placed on file, the instant appeal is accordingly allowed and the impugned order dated 27.06.2022 is set aside. Costs shall follow the events. Consign.

3. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 18<sup>th</sup> day of April, 2023.



(Salah Ud Din)  
Member(Judicial)



(Kalim Arshad Khan)  
Chairman

\*Adnan Shah, P.A.\*

22.03.2023

Learned counsel for appellant present.

Mr. Fazal Shah Mohmand, Additional Advocate General for respondents present.

SCANNED  
KPST  
Peshawar

Learned Member Judicial (Mrs. Rozina Rehman) is on leave, therefore, case is adjourned to 31.03.2023 for arguments before D.B. Parcha Peshi given to the parties.



(Muhammad Akbar Khan)  
Member (E)

31<sup>st</sup> Mar, 2023

Appellant in person present. Mr. Fazal Shah Mohmand, Addl: AG for the respondents present.

Appellant seeks adjournment on the ground that his counsel is not available today. To come up for arguments on 18.04.2023 before D.B. P.P given to the parties.

SCANNED  
KPST  
Peshawar



(Salah Ud Din)  
Member (Judicial)



(Kalim Arshad Khan)  
Chairman