

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

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

*Service Appeal No.664/2022*

Date of presentation of appeal .....24.03.2022  
Dates of Hearing.....10.05.2023  
Date of Decision.....10.05.2023

**Shah Zada**, District Public Prosecutor (BP-19) District Bajour Under transfer to Swabi, as Senior Public Prosecutor.

.....(*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. **The Secretary** to the Government of Khyber Pakhtunkhwa Khyber Pakhtunkhwa Home and Tribal Affairs, Department, Civil Secretariat, Peshawar.
3. **Director**, General Prosecution, Khyber Pakhtunkhwa Peshawar.

.....(*Respondent*)


Present:

Mr. Yasir Saleem, Advocate.....For appellant.

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

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**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE NOTIFICATION DATED 31.01.222 WHEREBY THE APPELLANT HAS BEEN TRANSFERRED FROM THE POST OF DISTRICT PUBLIC PROSECUTOR BPS-19 BAJAUR TO SWABI AS SENIOR PUBLIC PROSECUTOR BS-19 AGAINST WHICH HIS DEPARTMENTAL APPEAL/REVIEW DATED 03.02.2022 HAS NOT BEEN RESPONDED TILL DATE.**

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## **JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** According to the facts gathered from the memorandum and grounds of appeal are that the appellant was initially appointed as Additional Public Prosecutor (BPS-17) through Public Service Commission and was posted at Nowshera; that keeping in view his meritorious service, the appellant had been given promotion and currently he had holding the post of Senior Public Prosecutor (BS19); that the appellant out of his total service career, posted at hard areas for more than fifteen years i.e. District Buner, Shangal and Dir Upper; that lastly the appellant was posted as District Public Prosecutor (BPS-19) at Bajaur vide notification dated 06.01.2021 and he took over the charge of his new place of posting as District Public Prosecutor on 01.02.2021; that having hardly served for one year, the appellant had been transferred from Bajaur to Swabi as Senior Public Prosecutor (BPS-19) vide impugned notification dated 31.01.2022; that feeling aggrieved from the impugned notification dated 31.01.2022, the appellant preferred departmental representation which was not responded within the statutory period of ninety days, and then he filed 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, 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. The appellant had hardly served for one year at Bajaur and had not yet completed his normal tenure of posting thus the transfer order is illegal and unlawful. He further stated that he was purposely posted at a station where he is made junior to a station where he is made junior to a BPS-18 Officer. He requested that the appeal might be accepted.

5. On the other hand learned Additional Advocate General for the respondents argued that the appellant had completed the normal tenure at Bajaur, therefore, the ground taken in the memo and grounds of appeal that he was pre-maturely transferred no more remain. He requested that the appeal might be dismissed.

6. In the first instance, the appellant had filed writ petition No. 501-P/2022 which was decided on 11.02.2022. The judgment is reproduced below:

*"2. In essence, petition, who is serving as District Public Prosecutor (BPS-19) issued by the Secretary to Government of Khyber Pakhtunkhwa, Home & Tribal Affairs Department, whereby, his services were transferred from District Public Prosecutor, Bajaur to Senior Public Prosecutor, Swabi. In this regard, his review petition filed before the competent authority was not considered. It is further averred in the petition that*



*since the Khyber Pakhtunkhwa Service Tribunal is not functional; as such, he has filed the instant petition.*

3. *Learned counsel for the petitioner stated that petitioner has never been allowed to complete his normal tenure and is prematurely transferred vide the impugned order dated 31.01.2022. He further stated that he was purposely posted at a station where he is made junior to a station where he is made junior to a BPS-18 Officer. When questioned about the availability of alternate remedy, learned counsel for the petitioner stated that on the retirement of the incumbent Chairman, the Khyber Pakhtunkhwa Service Tribunal, Peshawar is not functional. In order to confirm the same, we called upon Mohammad Zeb Khan, worthy Member Inspection Team of this Court, who appeared and stated that summary pertaining to the appointment of Chairman, Khyber Pakhtunkhwa Service Tribunal is presently pending before Hon'ble the Chief Justice and that shortly the nomination will be made.*

4. *In view of the above and particularly when the Khyber Pakhtunkhwa Service Tribunal is not functional; besides, on tentative assessment, we find that prima facie case exists in favour of the petition, as such, it is directed that status-quo be maintained till the first hearing before the Khyber Pakhtunkhwa Service Tribunal. However, petitioner is directed to submit Service Appeal before the Khyber Pakhtunkhwa Service Tribunal in this regard, if not already filed.*

5. *This writ petition is disposed of in the above terms."*

7. The appellant then filed appeal before this Tribunal

8. It was at the very outset pointed out by the learned Law Officer that the appellant had completed the normal tenure at Bajaur, therefore, the ground taken in the memo and grounds of appeal that he was pre-maturely transferred no more remained. This contention of the learned Law Officer would not alone be sufficient to dismiss this appeal because the appellant had taken another plea that he was being victimized and humiliated on irrelevant considerations and that he was posted under a Junior Officer. The Tribunal gave sufficient time to the respondents to come up with resolution



so that grievance of the appellant, that he should not be posted under his juniors, could be redressed privately but they did not. Therefore, we dispose of this appeal with the observation that the appellant shall be allowed to complete his normal tenure at the place from where he was transferred vide impugned order dated 31.01.2022 and in case he has completed his normal tenure he may be posted anywhere at the discretion of the authority but having regard to his seniority so that discipline of the department may not disturb. 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 10<sup>th</sup> day of May, 2023.*



**KALIM ARSHAD KHAN**  
Chairman



**FAREEHA PAUL**  
Member (Executive)

*\*Adnan Shah, PA\**