

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

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

Service Appeal No.144/2022

Date of presentation of appeal01.02.2022
Dates of Hearing.....08.05.2023
Date of Decision.....08.05.2023

**Miss. Mehwish Adil D/o Adil Marjan Dental Surgeon R/o Phase 7,
Hayatabad, House No, 357, Street No.6, Sector E-7, Peshawar.**
.....(**Appellant**)

Versus

1. **Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.**
2. **The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.**
.....(**Respondent**)

Present:


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

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

.....
SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 09.12.2021 IN UTTER VIOLATION OF POSTING TRANSFER POLICY AND AGAINST SUPERIOR COURT JUDGMENT AND ALSO AGAINST NOT DECIDING THE APPEAL OF THE APPELLANT WITHIN FIFTEEN DAYS AS PROVIDED UNDER CLAUSE XIV OF THE POSTING TRANSFER POLICY.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the facts gathered from the memorandum and grounds of appeal are that the appellant was



working as Dental Surgeon (BPS-17) in the Health Department; that the appellant was posted at RHC Potowar Peshawar vide order dated 26.02.2021 and thereafter another notification dated 05.03.2021 had been issued wherein appellant was placed at the disposal of Social Health Protection Initiative (SHPI) Peshawar; that thereafter, the appellant was transferred from SHPI to District Head Quarter Hospital Hangu vide impugned order dated 09.12.2021 prematurely just after nine months; that feeling aggrieved from the impugned order dated 09.12.2021 filed departmental appeal which was not responded within the statutory period of ninety days, and then she 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 impugned order dated 09.12.2021 is against the law, facts and norms of justice. The appellant is unmarried and resident of Peshawar, so the transfer of the appellant out of district is against the law, rules and policy. He further argued that the appellant had transferred pre-maturely without completing her normal tenure. He requested that the appeal might be accepted.



5. On the other hand learned Additional Advocate General for the respondents argued that the appellant has been treated in accordance with law and rule. He further argued that a civil servant may be posted anywhere under Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, as it is competency of the Competent Authority to utilize services of the appellant. He requested that the appeal might be dismissed.

6. The grounds taken by the appellant in the appeal are that she was frequently transferred without allowing her to complete her normal tenure finds support from the various orders first passed on 25.02.2021, second on 05.03.2021 and third on 09.12.2021. The other ground taken is that the appellant is an unmarried woman has also not been controverted by the respondents. The respondents, however, contend that the authority has the power under Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 to transfer a civil servant anywhere in the province. The impugned order is found to be against the terms of the posting /transfer policy of the Government besides no public interest or exigency was mentioned in the impugned order or in the replies/comments of the respondents so as to warrant passage of the impugned order. This being so we are constrained to allow this appeal and set aside the impugned order directing the respondents to allow the appellant to complete her normal tenure at the station from where she was transferred vide the impugned order. 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 8th day of May, 2023.***



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)

Adnan Shah, PA