

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

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

Service Appeal No.6171/2021

Date of presentation of appeal16.06.2021
Dates of Hearing.....09.05.2023
Date of Decision.....09.05.2023

Mujahid Ali, Assistant Director (IT), Directorate of Transport & Mass Transit Benevolent Fund Building, Peshawar Cantt.

.....(*Appellant*)

Versus

1. **The Chief Secretary** to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary to Government of Khyber Pakhtunkhwa**, Transport & Mass Transit, Benevolent Fund Building, Peshawar Cantt.
3. **Director (E&SE)** Department, Khyber Pakhtunkhwa Peshawar.
4. **Mr. Malik Shah Muhammad Khan Wazir**, Minister Transport & Mass Transit, Civil Secretariat, Peshawar.

.....(*Respondent*)

Present:

Mr. Bashir Khan Wazir, Advocate.....For appellant.

Mr. Muhammad Jan,
District Attorney.....For official respondents.

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 10.06.2021, WHEREBY THE PRE-MATURE TRANSFER ORDER HAS BEEN ISSUED VIDE WHICH APPELLANT WAS TRANSFERRED FROM THE MOTOR LICENSING AUTHORITY KHYBER PAKHTUNKHWA TO THE DIRECTORATE OF TRANSPORT AND MASS TRANSIT, PESHAWAR.



JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Following was the admission note of this appeal recorded by my learned predecessor on 22.06.2021:-

"This appeal has been preferred to impugn the transfer order dated 10.06.2021. According to the copies of record annexed with the memorandum of appeal, the appellant was transferred and posted as Assistant Director (I.T) Motor Licensing Authority Khyber Pakhtunkhwa vide order dated 15.01.2021 and took over charge on 18.01.2021. In the capacity of A.D (IT), Driving License Branch Peshawar, the appellant vide his office letter No. DLB/PESHAWAR/21-23 dated 25.05.2021 addressed to the Director Transport and Mass Transit Khyber Pakhtunkhwa, pointed out some irregularities in record of Driving License Database including illegal editing. Statement of the appellant in pursuance to the said letter was obtained by the enquiry committee on 09.06.2021, copy whereof is also available on file. The appellant at the conclusion of his statement before the enquiry committee submitted some proposal in bullet points as copied below:-

- *Since there are solid evidence of forgery in the Driving License System and issuance of DIRECT driving licenses (which are used for acquiring jobs abroad and other such activities) for huge bribes, a high-level committee of technical IT experts hailing from intelligence agencies, crime investigation experts from intelligence agencies, and forensic experts may be formed to explore the complete system of the whole province, conduct formal investigations of the computer operators and catch the real culprits. It is important to catch and punish the main mastermind of this scam--- a person/officer who had been leading this all forgery in the system and was a main financial beneficiary of this forgery.*
- *Without catching the real culprit, all sorts of departmental inquiries will end with no tangible outcomes; and this will further encourage the real culprits and they will feel confident that they cannot be caught. They will continue to do this forgery with more confidence and courage. This will defame our system, department, and country at large.*
- *A formal committee may be constituted to carry out proper and formal handing/taking of the Driving License Assets with MIS Manager who was earlier incharge of the Driving License operations. All the assets that have been purchased for driving license operations till date may be handed over to me, through a formal stock register. Many equipments (computers, printers, RFID cards, ribbons, Lamination, laminators, etc.) that were purchased for*



driving license operations are physically missing and have not been provided to me.


- One old server is still in the possession of MIS Manager which should be handed over to me as I carry the sole responsibility of overseeing the driving license operations.
- A new web-based system has been developed for driving license operations under the project "Establishment of Transport Inspection Stations in Khyber Pakhtunkhwa". Since the undersigned is the incharge officer of the driving license operations, it is therefore requested that the new web-based system may be handed over to the undersigned to unify and streamline the new and the ongoing systems. It is again requested that a formal handing/taking of all the assets of the new system may be carried out through a committee while using the purchase order of the equipment and the equipment mentioned in the PC-I of the said project."

The impugned transfer order of the appellant was issued on the next day i.e. 10.06.2021 after the above mentioned statement was given by the appellant to the enquiry committee. According to the opening expressions of the notification of the appellant's transfer, the competent authority was pleased to order posting/transfer of the officers enumerated therein, in the best public interest. In peculiar circumstances as discussed before, there is a big question mark on the impugned order as its being in "Public interest". Let the respondents come up with their reply/comments that how they justify the impugned order in the realm of public interest. Consequently, this appeal is admitted for regular hearing in view of the said question. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days of the receipt of notices positively. If the written reply/comments are not submitted within the stipulated time, the office is directed to submit the file with a report of non-compliance. File to come up for arguments on 16.07.2021 before the D.B.

The appeal is accompanied by an application for suspension of the impugned order. Notice of the application be also given to the respondents. Needless to say that things surrounding the impugned order make it a befitting case for interim relief. Accordingly, the operation of impugned order shall remain suspended till final decision of this service appeal, if not recalled earlier. It is further directed that the respondents shall not prohibit the appellant from performance of his duty in the meantime."



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 District Attorney for the respondents present.
4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules. He further argued that the impugned transfer order is illegal, unlawful, without lawful authority and is against the Posting/Transfer Policy of the Government and the same is liable to be cancelled/set aside.
5. Learned District Attorney for the respondents argued that an inquiry has already in process against the appellant by the Anti-corruption department due to which the competent authority had transferred the appellant from his current posting for the completion of inquiry. He requested that the appeal might be dismissed.
6. Facts have been enumerated precisely in the above admission note, therefore, need not be reproduced. The appellant claims that vide order dated 15.01.2021 he was transferred from the post of Assistant Director (IT) Directorate of Transport and Mass Transit Department, Khyber Pakhtunkhwa Peshawar to the post of Assistant Director Motor Licensing Authority, Khyber



Pakhtunkhwa but just after few months, he was removed from the post of Assistant Director, Motor Licensing Authority, Khyber Pakhtunkhwa and was directed to report to the Directorate of Transport and Mass Transit, Khyber Pakhtunkhwa without allowing him to complete his normal tenure. Respondent No.4 has made a surprise visit to the Driving License branch and found some irregularities in the data base system, which led to the inquiry and transfer orders of the appellant. In fact respondent No.4 asked for the computerized record/verification of some Driving licenses, duly issued from the license branch, Peshawar but the appellant failed to provide a single record and stated that the data base system was heated up and server was down, therefore, the appellant was unable to provide any record. Similarly in ground-C the above fact was reiterated. It appears that the appellant has been transferred on the directions of the Minister Transport & Mass Transit (respondent No.4) and that too without allowing him to complete his normal tenure. Making transfer on a certain alleged lapse would tantamount to punishment This Tribunal in a number of judgments has already found that transfer could not be made as punishment. Like this Tribunal in an earlier judgment reported as 2012 PLC (CS) 187 titled "Shamshad Begum versus Chief Secretary, Khyber Pakhtunkhwa etc" has observed as under:-

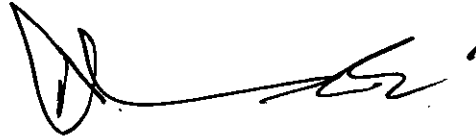
"Transfer of civil servant could not be made on the basis of complaint because transfer had not been mentioned as punishment in the penalty list in the Rules and Regulations regarding the conduct of civil servant"

7. Therefore, we allow this appeal and set aside the impugned transfer order dated 10.06.2021, thereby directing the respondents to allow the



appellant to complete his normal tenure on the post/station from where he was transferred vide the impugned order. 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 9th day of May, 2023.*



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)

Adnan Shah, PA