# KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

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

***Service Appeal No. 1212/2022***

Date of presentation of appeal.....04.08.2022
Date of Hearing.....09.03.2023
Date of Decision.....16.03.2023

**Anwar Ul Haq** S/O Hameed Ullah Shah R/O Shah Baz Azmat Khel Tehsil and District Bannu.

.....***Appellant***

Versus

1. **Government** of Khyber Pakhtunkhwa through Chief Secretary Peshawar.
2. **Secretary Agriculture,** Khyber Pakhtunkhwa Peshawar.
3. **Director General** On-Farm Water Management, Khyber Pakhtunkhwa Peshawar.
4. **Accountant General** Khyber Pakhtunkhwa Peshawar.
5. **District Director** On-Farm Water Management Bannu.
6. **District Director** On-Farm Water Management Kohat.
7. **Budget Officer VIII,** Government of Khyber Pakhtunkhwa Finance Department Peshawar.
8. **Mr. Rizwan Ullah** S/O Sher Bali Khan R/O Sokarri Karim Khan, Bannu at present On-Farm Water Management Bannu.

.....(***Respondents***)

Present:

Mr. Asghar Ali Khan Daim Khel,
Advocate.....For the appellant.

Mr. Muhammad Riaz Khan Paindakhel,
Assistant Advocate General .....For Official respondents.

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***APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 THROUGH WHICH NOTIFICATION NO. SOC (AD)/17/131/SURPLUS POOL/WM/2017-18 DATED***

***08.03.2022, THE APPELLANT WAS, AT S.NO.10, ADJUSTED/POSTED WITH RESPONDENT NO.5, BUT LATER ON THROUGH THE IMPUGNED NOTIFICATION NO. SOE (AD) 17-131/SURPLUS POOL/LW/2017-18 DATED 29.03.2022, HIS PLACE OF DUTY CHANGED TO ON-FARM WATER MANAGEMENT AGAINST VACANT POST AT THE OFFICIAL S.NO.10 KOHAT AND AGAINST NO ACTION TAKE ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.***

## JUDGMENT

**KALIM ARSHAD KHAN CHAIRMAN:** According to the memorandum and grounds of appeal, the appellant was working as a Rodman in the surplus pool office of Secretary Agriculture Department and vide notification No. SOG (AD)/17-131/Surplus Pool/WM/2017-18 dated 08.03.2022 he was transferred to Rodman office of the District Officer On-Farm Water Management Bannu against the newly created vacant post; that vide impugned order dated 29.03.2023 in partial modification of the above notification the appellant was transferred to District Officer On-Farm Water Management Kohat; that the appellant filed departmental appeal on 05.04.2022 but no response was given by the respondents within ninety days compelling the appellant to file this appeal on 04.08.2022.

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 defence setup was a total denial of the claim of the appellant. It was mainly contended in the reply that there are 7 posts of Class-IV in office of the District Officer On-Farm Water Management Bannu and all the staff working on these posts belong to District Bannu. Moreover, a number

of Class-IV having domicile of District Bannu are more in number than the sanctioned posts of Class-IV in District Bannu. Therefore, due to non-availability of posts the appellant and other employees have been posted in other District.

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

4. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General controverted the same by supporting the impugned order.

5. The appellant was working as Rodman in the surplus pool office of the Secretary Agriculture from where vide notification dated 08.03.2022 he was transferred as Rodman in the office of the District Officer On-Farm Water Managerment Bannu against the newly created post while private respondent No. 8 was posted in the office of the Deputy Director On-Farm Water Management Lakki Marwart. Just after twenty days the appellant was transferred, in partial modification of notification dated 08.03.2022, and posted as Naib Qasid in the office of the District Officer On-Farm Water Management Kohat and he was replaced by private respondent No.8. The appellant has challenged the same in this appeal on the grounds that the appellant was transferred on administrative ground without allowing him to complete normal tenure.

6. Justification given in the reply is that there were 7 posts of Class-IV in office of the District Officer On-Farm Water Management Bannu. That the number of Class-IV having domicile of District Bannu was more than the

sanctioned posts of Class-IV in District Bannu. Therefore, due to non-availability of posts the appellant and other employees had been posted in other Districts. This justification is not acceptable because vide the initial order of 08.03.2022 the appellant was posted in the office of District Officer On-Farm Water Management Bannu, which post was vacated from him and in his place private respondent No.8 was posted. There is nothing said about the exigency except the one stated in the reply, which is not acceptable as stated above, nor any public interest has been shown in the order or on the comments, therefore, we hold that the transfer order of the appellant was not justified having been passed in violation of the Posting/Transfer Policy as the appellant has not been allowed to complete his normal tenure. Besides the appellant is a low-paid employee, therefore too, his posting at another Division does not seem sound and appropriate. On allowing this appeal we set aside the impugned order dated 29.03.2022. Cost shall follow the events. Consign.

7. ***Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 16th day of March, 2023.***

**KALIM ARSHAD KHAN**
Chairman

**SALAH UD DIN**
Member (Judicial)

**Adnan Shah, P.A**