

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1220/2022

BEFORE: **MR. KALIM ARSHAD KHAN CHAIRMAN**
MISS FAREEHA PAUL MEMBER(E)

Dr. Gulistan Khan, Senior Medical Officer (BS-18) presently posted as DHO, North Waziristan under Transfer to Directorate General Health Services, Khyber Pakhtunkhwa, Peshawar. (Appellant)

Versus

1. **The Government of Khyber Pakhtunkhwa through Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.**
2. **The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.**
3. **Mr. Wazir Khan Safi under transfer to the post of DHO, North Waziristan. (Respondents)**

Mr. Kamran Khan,
Advocate

... For appellant

Mr. Muhammad Jan,
District Attorney.

... For respondents No. 1 & 2.

Date of Institution.....12.08.2022
Date of Hearing.....23.05.2023
Date of Decision..... 23.05.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the notification dated 12.05.2022, whereby the appellant was transferred from District Health Office, North Waziristan to Directorate General Health Services against which no action was taken on the departmental appeal of the appellant within the statutory period of ninety days. It has been prayed that on acceptance of the appeal, the impugned

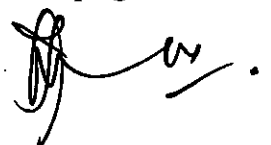


notification dated 12.05.2022 might be set aside to the extent of the appellant and private respondent No. 3 and the official respondents might be directed not to transfer the appellant from the post of DHO North Waziristan alongwith any other remedy which this Tribunal deemed fit.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was serving in the respondent department as Senior Medical Officer (BS-18). He was lastly transferred and posted as District Health Officer, North Waziristan vide notification dated 10.03.2022. He took over the charge of the said post and started performing his duty. Vide impugned notification dated 12.05.2022, he was transferred from the said post and was directed to report to the Directorate General Health Services, Khyber Pakhtunkhwa, Peshawar. Feeling aggrieved, he filed departmental appeal on 16.05.2022 which was not responded within the statutory period of ninety days; hence the present appeal.

3. Respondents were put on notice. Respondent No. 1 & 2 submitted their joint written reply/comments on the appeal whereas respondent No. 3 did not submit any response. We have heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant after presenting the case in detail argued that the notification dated 12.05.2022 issued by the respondents was against the law, facts, norms of natural justice and in utter violation of posting/transfer policy, hence liable to be set aside to the extent of the appellant and private respondent No. 3. He further argued that the impugned



order was premature and against the clauses I and IV of the posting/transfer transfer policy of the Provincial Government. He requested that the appeal might be accepted as prayed for.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that he was a member of General Cadre of doctors but was posted against the post of Management Cadre as DHO North Waziristan but performance of the appellant was not up to the mark. He further argued that the respondents issued the impugned notification dated 12.05.2022 in accordance with Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, whereby the appellant, being a Senior Medical Officer (BPS-18) of General Cadre, was asked to report to Director General Health Services and respondent No. 3 being a member of Management Cadre was posted as DHO North Waziristan in the public interest. He further argued that government servant was required to serve anywhere his employer wanted him to serve; it was not a choice or prerogative of the employee to claim a right to serve at a place of his choice. In support of his arguments, learned District Attorney relied on the judgments of the august Supreme Court of Pakistan reported as 2021-SCMR-1064 and 2020 PLC (CS) 1207. He requested that the appeal might be dismissed.


6. From the arguments and record presented before us, it transpires that the appellant is a doctor in general cadre. While serving as Senior Medical Officer (BS-18) at DHQ Hospital, North Waziristan, the appellant was posted as District Health Officer North Waziristan, a BS-19, in the Management Cadre position, on 10th March 2022. After a short span of two



months, he was transferred again on 12th May, 2022 and was directed to report to the Directorate General Health Services, Khyber Pakhtunkhwa. In his place a doctor of Management Cadre in BS-19, respondent No. 3, was posted, who was waiting for posting at the Directorate General Health Services. Being a civil servant, the appellant is bound to serve at any position and place where his competent authority desires. Judgments of various courts are available in which emphasis has been laid on the posting of right persons on specified positions. In this case the appellant has impugned the order of Health Department of the provincial government where he has been transferred from a management cadre post on the ground that it is against the posting/transfer policy as he has not been allowed to complete his tenure. We feel that being a doctor in general cadre, he was to be posted on a general cadre post and that too of his own pay scale i.e. BS-18. Any posting other than his own cadre and pay scale would be illegal and against the clear judgments of not only the august Supreme Court of Pakistan but of this Tribunal also.

7. In view of the above discussion, we find no merits in this appeal it is thus dismissed. Costs shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 23rd day of May, 2023.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman