

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

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

Service Appeal No.1508/2022

Date of presentation of Appeal.....20.10.2022
Date of Hearing.....01.06.2023
Date of Decision.....01.06.2023

Muhammad Shahid son of Sultan Muhammad, resident of Baffa Pakhal, Tehsil Baffa Pakhal, District Mansehra, Senior Research Officer (BPS-18).

.....*Appellant*

Versus

1. **The Government** of Khyber Pakhtunkhwa through Secretary Agriculture, Livestock, Fisheries and Cooperative Department, Peshawar.
2. **Director General** Agriculture research Department Peshawar.
3. **Director Agriculture Research Station Tehsil Baffa Pakhal, Manshera.**
4. **Tehseen Zeb son of Aurangzeb, Senior Research Officer (BPS-18), Agriculture Research Station Chitral.**

.....*(Respondents)*

Present:

Syed Asif Shah, Advocate.....For the appellant

Mr. Muhammad Jan, District AttorneyFor official respondents.

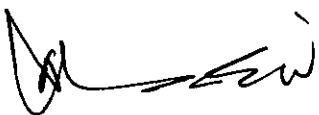
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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER NO. SOE (AD)3(3)POSTING TRANSFER/RW/22:/950 DATED 20.07.2022 PASSED BY THE RESPONDENT NO.1 WHEREBY THE APPELLANT WAS TRANSFERRED FROM BAFFA MANSEHRA TO CHITRAL WITHOUT COMPILATION OF TENURE/IMMATURE TRANSFER, BEING AGGRIEVED PREFERRED DEPARTMENTAL REPRESENTATION/APPEAL TO THE RESPONDENTS AGAINST THE IMPUGNED ORDER WHICH WAS STILL NOT RESPONDED, BOTH THE ABOVE

MENTIONED IMPUGNED ORDERS ARE WRONG, DISCRIMINATION MALAFIDE, POLITICAL MOTIVATED/INFLUENCE, ILLEGAL, UNLAWFUL, WITHOUT LAWFUL AUTHORITY, HENCE LIABLE TO BE SET ASIDE.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case are that the appellant was appointed as Research Officer (BPS-17) on 15.09.2009 and posted at Hazara Search Station, Abbottabad; that the appellant was later on promoted to the post of Senior Research Officer (BPS-18); that on 18.11.2009, the appellant was transferred from Hazara Agriculture Research Station, Abbottabad to Agriculture Research Station, Baffa, Mansehra; that on 28.12.2018, the appellant was transferred from Baffa, Mansehra to Agriculture Research Station, Chitral; that on 08.02.2022, the appellant was once again transferred from Chitral to Baffa, Mansehra; that on 28.02.2022 the transfer order dated 08.02.2022 of the appellant was withdrawn; that the appellant was again transferred from Chitral to Baffa on 25.05.2022; that after a short span of time, the appellant was once again transferred from Baffa to Chitral vide impugned order dated 20.07.2022; that feeling aggrieved, the appellant preferred departmental appeal on 21.07.2022, which was not responded within the statutory period of ninety days, hence, the present service appeal.

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 defense setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellants and learned District Attorney for the respondents.

4. Learned counsel for appellant contended that the impugned transfer order was the result of political motivation/pressure which smacked malafide and also the result of discrimination, arbitrary, perverse and without lawful authority; He further argued that the frequent transfer posting orders of the appellant was against the Transfer/Posting Policy of the Provincial Government which was liable to be set aside. At the end he requested that the instant appeal might be accepted.

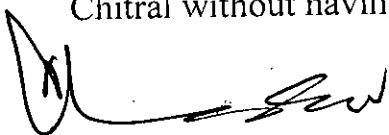
5. As against that learned District Attorney argued that the transfer order 20.07.2022 was issued in public interest, therefore, the appellant had been treated in accordance with law. Furthermore, posting/transfer is a part of service and the appellant was required under Section-10 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 to serve anywhere in the province.

6. The contention of the appellant is that he was successively being transferred within short spans of times. He stated that on 28.12.2018, he was transferred to the Agriculture Research Centre, Chitral, after spending more than three years at Chitral, the appellant was transferred to Baffa, District Mansehra on 08.02.2022. The order dated 08.02.2022 was withdrawn vide



order dated 28.02.2022 but on 25.05.2022 the appellant was again transferred as Senior Research Officer (Plant Pathology BS-18) Agriculture Research Center, Baffa, District Mansehra. Just within two months he was again transferred to Chitral vide impugned notification dated 20.07.2022. The contention of pre-mature transfer was controverted by the respondents in the manner that it was the government administration and jurisdiction to order transfer posting order of the Officer wherever their services were required in the best public interest. It was contended that the appellant had spent most of his service period in Baffa i.e. his home town.

7. The contention of the respondents that it was the prerogative of the government to utilize the services of its servants may be considered but when once the government has notified a posting transfer policy for the civil servants wherein a specific tenure has been fixed then in such an eventuality the government or the authority competent to transfer a civil servant had to have the regard of the term of policy notified by itself. There is no denial of the fact that the appellant after spending more than three years at Chitral, was transferred to Baffa on 08.02.2022, which order was withdrawn on 28.02.2022 and again the appellant was transferred on 25.05.2022. After 25.05.2022, it was just and appropriate that the appellant, who had spent more than three years at Chitral before his posting to Baffa, should have been allowed to complete at least two years at Baffa in view of the two years' tenure provided in the posting/transfer policy. As against that the appellant was transferred just within two months i.e. on 20.07.2022 to Chitral without having regard to the tenure provided in the policy. Therefore,



Service Appeal No.1508-2022 titled "Muhammad Shahid versus The Government of Khyber Pakhtunkhwa through Secretary Agriculture, Livestock, Fisheries and Cooperative Department Peshawar and others", decided on 01.06.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Salah Ud Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar

we will not maintain the impugned order and on allowing this appeal, we set aside the impugned transfer order dated 20.07.2022 thereby directing the respondents to allow the appellant to complete his normal tenure at Agriculture Research Center, Baffa district Mansehra. We direct that the cost of this appeal shall abide by the result. Consign.

8. ***Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 1st day of June, 2023.***



KALIM ARSHAD KHAN
Chairman



SALAH UD DIN
Member (Judicial)

Adnan Shah, P.A