

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Appeal No. 7902/2021

BEFORE: ROZINA REHMAN --- MEMBER(J)
MUHAMMAD AKBAR KHAN--- MEMBER(E)

Mrs. Riffat Noreen Charge Nurse (BPS-16) DIHQ Hospital Nowshera
..... (*Appellant*)

VERSUS

1. The Chief Secretary to Govt: of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. The Secretary to Govt: of Khyber Pakhtunkhwa, Health Department Civil Secretariat Peshawar.
3. The Director General Health Service, Khyber Pakhtunkhwa, Peshawar.
4. The Medical Superintendent, DIHQ Hospital, Nowshera...(*Respondents*)

Present:

SYED NOMAN ALI BUKHARI,
Advocate --- For Appellant

ASIF MASOOD ALI SHAH,
Deputy District Attorney --- For respondents

Date of Institution.....06.12.2021
Date of Hearing.....07.04.2023
Date of Decision.....07.04.2023

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

“That on acceptance of this appeal the impugned order dated 30.07.2021 and 22.11.2021 may please be set aside being, passed prematurely and in violation of posting/transfer policy and the respondent department may please be directed not to transfer the appellant in



violation of posting/transfer policy. Any other remedy which this august Tribunal deems fit and appropriate that may also be awarded in favour of appellant.”

02. Brief facts of the case are that the appellant while performing her duty in Casualty at District Headquarter Hospital Nowshera was transferred from DHQ Hospital Nowshera to DHQ Hospital Hangu vide order dated 16.07.2021. Feeling aggrieved the appellant filed departmental appeal on 02.08.2021 which was accepted and the impugned transfer order of the appellant dated 16.07.2021 was withdrawn in pursuance of inquiry report. However, subsequently withdrawal order of the impugned order was also withdrawn by the departmental appellate authority vide order dated 22.11.2021 with placing the matter of transfer of the appellant at the disposal of the Director General Health Services for consideration in the light of the inquiry report forwarded to him. That the Director General Health Services has passed no order and the impugned order remained intact, hence the appellant filed the instant service appeal.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in her appeal. We have heard arguments of learned counsel for the appellant and learned Deputy District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the transfer order was made on the basis of external influence and not as a routine transfer; that the impugned transfer order is violation of Clause-I, IV and

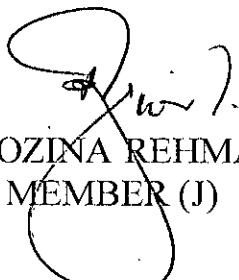
XIII of the transfer/posting policy of the Government of Khyber Pakhtunkhwa. He next contended that no reason has been mentioned in the impugned order which is also in violation of the General Clauses Act, 1987. That the transfer of the appellant is also violation of circular based on the Anita Turab case dated 27.02.2013 in which it was clearly mentioned that when the ordinary tenure for a posting has been specified in the law or rules made there under, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable. That the withdrawal order dated 22.11.2021 without any reason is also in violation of Government Posting/Transfer Policy. In the last he submits that the impugned orders dated 20.05.2021, 16.07.2021, 22.10.2021 and 22.11.2021 are against the law, facts, norms of justice, politically motivated, violation of government circulars, therefore, not tenable and liable to be set aside.


05. Learned Deputy District Attorney argued that the appellant has been transferred to DIIQ Hospital Hangu in public interest and not on person liking and disliking; that Ms. Sunny Gul Charge Nurse BPS-16 Qazi Hussain Ahmed Medical Complex Nowshera was transferred to DHQ Hopsital Nowshera against the vacant post. He next argued that the appellant has been transferred after completion of her tenure. That the transfer order issued on 22.11.2021 was correct because the competent authority for posting transfer of official/officer BPS-16 is Director General Health Services Khyber Pakhtunkhwa. The appellant has been transferred according to relevant law, and policy of the government.

06. Scrutiny of available record in the case file reveal that upon representation by the appellant before the appellate authority against her transfer order inquiry was conducted by Inquiry Committee comprising two senior health professionals. The said inquiry clearly brought out the facts and its findings were crystal clear. As per findings of the inquiry committee the appellant was performing her job in a professional way and according to the given standard operating procedures of the hospital. The abrupt transfer of the appellant (Charge Nurse) to far flung district of Hangu was externally and politically motivated. In the first instance the appellate authority accepted the appeal of the appellant through speaking order in light of the findings of the inquiry report which was withdrawn just after four days and the ball was thrown back to the court of Director General Health Services with whom it is still pending. The whole episode speaks loud of the pressure of external influences and interference in the management of the hospitals. Such meddling badly effects the service delivery. We do not find any merit to sustain the impugned transfer order of the appellant on any ground, be it ~~legal~~, administrative or moral.

07. Foregoing in view the appeal is accepted as prayer for and the impugned orders dated 30.07.2021 and 22.11.2021 is set aside. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 07th day of April, 2023.*


(ROZINA REHMAN)
MEMBER (J)


(MUHAMMAD AKBAR KHAN)
MEMBER (E)