

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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

Service Appeal No.1700/2022

Date of presentation of Appeal.....29.11.2022
Date of Hearing.....13.07.2023
Date of Decision.....13.07.2023

Mr. Muhammad Tayyab Abbas, Chief Drug Inspector (BPS-19),
Health Department, Police Services Hospital, Peshawar.....*Appellant*

Versus

1. **The Chief Secretary**, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** to Government of Khyber Pakhtunkhwa Health Department.
3. **The Director General**, Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Service Appeal No.1748/2022

Date of presentation of Appeal.....06.12.2022
Date of Hearing.....13.07.2023
Date of Decision.....13.07.2023

Mr. Zia Ullah, Drug Inspector (BPS-17), Health Department Khyber Pakhtunkhwa Peshawar under transfer to District Bannu.....*Appellant*

Versus

1. **The Chief Secretary**, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** to Government of Khyber Pakhtunkhwa Health Department.
3. **The Director General**, Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Service Appeal No.1873/2022

Date of presentation of Appeal.....20.12.2022
Date of Hearing.....13.07.2023
Date of Decision.....13.07.2023

Mr. S.M Asad Halimi, Chief Drug Inspector (BS-19) District Kohat
.....*Appellant*

Versus

1. **The Chief Secretary**, Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
1. **The Secretary** to Government of Khyber Pakhtunkhwa Health Department.
2. **The Director General**, Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar.....(**Respondents**)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For the appellants
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 22.08.2022 ISSUED IN SHEET VIOLATION OF THE APEX COURT'S JUDGMENT REPORTED IN 2022 SCMR 439 READ WITH LETTER DATED 14.02.2022, JUDGMENT OF THE AUGUST PESHAWAR HIGH COURT DATED 28.09.2022 RENDERED IN W.P NO.3508-P/2022 RESPECTIVELY, WHILE PARTIALLY EXECUTING THE JUDGMENT OF THIS AUGUST TRIBUNAL DATED 06.12.2021 AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANTS WITHIN STATUTORY PERIOD OF NINETY DAYS.

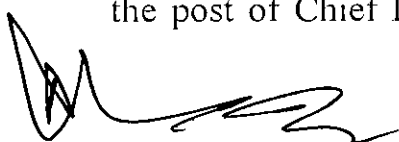
CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment the above three appeals are being decided as they are similar in nature and almost with the same contentions, therefore, can be conveniently decided together.

2. Facts of the appeals as enumerated in the memoranda and grounds are summarized as under:

a. **Muhammad Tayyab Abbas SA 1700 of 2022:**

Earlier against his transfer, vide order dated 30.04.2020, from the post of Chief Drug Inspector Mardan to the post of Chief



Pharmacist Services Hospital, Peshawar, the appellant Tayyab

Abbas filed SA No.10535/2020 with the following prayer:

"On acceptance of this appeal the respondents may kindly be directed to pass an order in favor of the appellant in the following terms:-

- i. Declare that the impugned Notification No. SOH-III/7-262/2020 DATED 30 APRIL, 2020 is void ab initio. Therefore, the respondents may kindly be directed to withdraw the impugned notification.*
- ii. The posting/transfer be done in a rational manner as per the prevailing laws, the appellant is redressed & to get his constitutional rights through this Hon'ble Service Tribunal.*
- iii. That the appellant order of illegal ex-cadre transfer/posting may kindly be revoked and continue his services in his own cadre i.e. Drug Inspector*
- iv. Grant any other relief which is deemed appropriate by this Hon'ble Service Tribunal in the circumstances of the case."*

b. **Ziaullah SA 1748 of 2022**

Against his transfer, vide order dated 06.10.2020, from the post of Drug Inspector Lower Dir to the post of Pharmacist DHQ Hospital, Lower Dir, the appellant Ziaullah filed SA No.16579 of 2020 with following prayer:

"That on acceptance of this appeal the impugned Notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from the post of Drug Control Unit, Temargara, District Dir Lower. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant."

c. **SM Asad Halimi SA 1873 of 2022**

Against his transfer, vide order dated 30.04.2020, from the post of Chief Drug Inspector Kohat to the post of Chief Pharmacist



DHQ Hospital, KDA, Kohat, the appellant SM Asad Halimi

filed SA No. 10301 of 2020 with the following prayer:-

"On acceptance of this appeal the respondents may kindly be directed to pass an order in favor of the appellant in the following terms:-

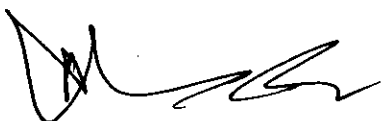
- j. Declare that the impugned Notification No. SOH-III/7-262/2020 DATED 30 APRIL, 2020 is void ab initio. Therefore, the respondents may kindly be directed to withdraw the impugned notification.*
- ii. The posting/transfer be done in a rational manner as per the prevailing laws, the appellant is redressed & to get his constitutional rights through this Hon'ble Service Tribunal.*
- iii. That the appellant order of illegal ex-cadre transfer/posting may kindly be revoked and continue his services in his own cadre i.e. Drug Inspector*
- iv. Grant any other relief which is deemed appropriate by this Hon'ble Service Tribunal in the circumstances of the case."*

3. The appeals of the appellants and others were decided on 06.12.2021 vide consolidated judgment passed in SA No.16578 of 2020 titled "Manzoor Ahmad versus Chief Secretary and others", in the following manner:

"For what has gone above, all the appeals with their respective prayers are accepted as prayed for.

Consequently, the impugned order is set aside and respondents are directed no to transfer the appellants from the post of Drug Inspector or Drug Analyst as the case may be."

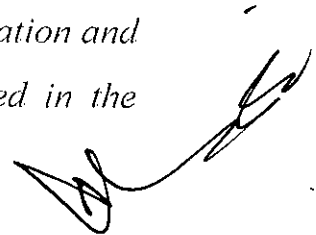
It is the contention of the appellants in these appeals that instead of compliance of the judgment dated 06.12.2021 to the respective prayers of the appellants, issued an impugned transfer Notification on



30.04.2022 (in cases of appellant Tayyab Abbas and SM Asad Halimi) & Notification dated 22.08.2022 (in the case of Ziaullah appellant), under the garb of compliance, transferring the appellants from their respective places of postings to other stations; that the appellants filed departmental appeals but those were not decided within 90 days compelling the appellants to file these appeals.

4. On receipt of the appeals and their admission to full hearing, the respondents were summoned. They put appearance and contested the appeals by filing written replies raising therein numerous legal and factual objections. The defense setup was a total denial of the claims of the appellants. It was mainly contended that the matters of transfer of the appellants had already been adjudicated by this Tribunal on 31.10.2022 in execution Petition No.4821/2021 and by the honourable Peshawar High Court in WP No.3508-P/2022, therefore, the appeals were hit by the principle of res-judicata; that after issuance of the Notifications dated 30.04.2022 and 22.08.2022, the appellants filed execution applications to get the above notifications set aside but the Tribunal decided the execution applications jointly through order dated 31.10.2022 in the following manner:

"In the above state of affairs when we see the notification dated 22.08.2022, issued in compliance of the judgment, it appears that the judgment had been implemented in its letter and spirit and we cannot allow anybody to exploit the terms by making self-beneficial interpretation and to get any relief which was not granted in the



judgment. Therefore, the contention of the petitioners that they could not be transferred from the stations they were previously posted, is not well founded."

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

6. The Learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned Deputy District Attorney controverted the same by supporting the impugned orders.

7. In the earlier round of litigation, the contention of the appellants was that they should not be posted against wrong cadres, which contention was allowed by the Tribunal in its Judgment dated 06.12.2021 and vide Notification dated 22.08.2022, in compliance with the said judgment, the appellants and others were posted against their original posts/assignments/cadre. The stance of the appellants in the execution petitions, filed by them, was to get implemented the judgment dated 06.12.2021 passed in SA No.16578/2021. According to them, their subsequent transfer, to other stations, vide Notification dated 22.08.2022, could not be made in lieu of the judgement. The prayers in these appeals are also the same as they want to set aside their transfer order made by the official respondents in compliance with the judgment dated 06.12.2021. The instant appeals are thus hit by rule 23 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974. Rule 23 of the above Rules is as under:

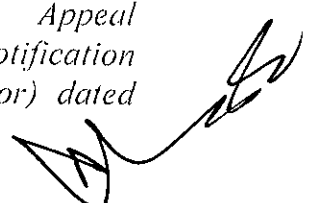


"23. No entertainment of appeal in certain cases:-No Tribunal shall entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a Court or a Tribunal of competent jurisdiction."

Word 'matter' has been used in the above rule. The matter of subsequent transfers and postings of the appellants from their previous places/stations, made vide the impugned Notification, is directly and substantially in issue in these appeals. The same issue was agitated by the present appellants in the execution applications when their subsequent transfer order was made on 22.08.2022. The appellants had urged in the execution applications that in view of the judgment dated 06.12.2021, they could not be transferred vide order dated 22.08.2022 from their previous place(s)/station(s) of posting, while, as aforesaid, in these appeals, their prayers are also the same. Therefore, the matter directly and substantially in issue in these appeals was decided by the Tribunal while deciding the execution applications on 31.10.2022. These appeals are thus hit by the principle of res-judicata.

The matters of the impugned transfer orders of the appellants were taken up and decided in the execution applications filed by the appellants prior to their filing of these appeals. The same were decided by the Tribunal on 31.10.2022 in detail. The relevant portion of the order deciding such matters, is as under:

"12. *During the pendency of the above petitions, respondents, in compliance with the judgment dated 06.12.2021, in Service Appeal No.16578/2020, produced a copy of Notification No.SOH-III/7-262/2022(Drug Inspector) dated*



22.08.2022, vide which the petitioners were dealt with in the following manner:-

S. No	Name of Officers & Designation	From	To	Remarks
1	Syed Muhammad Asad Halimi Chief Drug Inspector BS-19	Chief Pharmacist (BS-19), KDA, Kohat	Chief Drug Inspector (BS-19), District D.I. Khan	Against the vacant post
2	Tayyab Abbas Chief Drug Inspector BS-19	Chief Pharmacist (BS-19) Services Hospital Peshawar	Chief Drug Inspector (BS-19), District Abbottabad	Against the vacant post.
3	Amin ul Haq Senior Drug Inspector (BS-18)	Already under report to DG.DC&PS on account of disciplinary proceeding under E&D Rules, 2011		
4	Arif Hussain Analyst (BS-18)	Senior Pharmacist (BS-18), Services Hospital, Peshawar	Drug Analyst (BS-18), Drug Testing Laboratory (DTL), Peshawar.	Against the vacant post.
5	Manzoor Ahmad, Drug Inspector (BS-17)	Drug Inspector (BS-17), District Peshawar	Drug Inspector (BS-17), District Dir Lower.	Against the vacant post.
6	Zia Ullah Drug Inspector BS-17	Drug Inspector (BS-17) District Dir, Lower.	Drug Inspector (BS-17) District Bannu	Against the vacant post
7	Muhammad Shoaib Khan Drug Inspector (BS-17)	Already under report to DG. DC&PS on account of disciplinary proceedings under E&D Rules, 2011.		
8	Shazada Mustafa Anwar Drug Inspector BS-17	Waiting for posting at Directorate of Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar	Drug Inspector (BS-17) District Karak	Against the vacant post.

13. The above petitions were taken up for decision on 14.09.2022 when the learned counsel for the petitioners informed the Tribunal that he

had filed four (4) more execution petitions on 14.09.2022, so it was deemed appropriate that let all the petitions be decided together and, therefore, the above petitions were adjourned for 31.10.2022 for decision of the same.

14. In the newly instituted execution petitions No.533/2022, 534/2022, 535/2022 and 536/2022, the petitioners prayed that the judgment might be implemented in true letter and spirit without wasting the precious time of the Tribunal as well as to avoid unnecessary rounds of litigation. It is, however, urged in paragraph 6 of all the newly filed execution petitions that the respondent/department submitted compliance notification issued on 22.08.2022, which was totally in defiance of the judgment whereas proper compliance of the judgment as desired by the Tribunal was to be made and for which basically the appeals were accepted as prayed for.

15. The main stress of the learned counsel for the petitioners was that as all the appeals with their respective prayers were accepted as prayed for, therefore, the petitioners could not be transferred from the stations they were already posted.

16. It is cardinal principle that while judging the intention of a document, the construction of the document has to be seen and for the purpose not any portion but the whole/entire document has to be seen. Keeping in view the above principle, paragraph 10 of the judgment is worth reproduction, which reads as under:

"10. From the divergent pleadings of parties particularly discussed herein before, the main question wanting determination is, whether vice versa transfer of the holders of the post of Drug Inspector/Analyst and of Pharmacist is reasonably doable? "

17. The rest of the paragraphs of the judgment have answered the above, one and the only formulated question/point for determination in detail and the finding was in negative, which by all means very clearly speaks that the only issue before the Tribunal was whether vice versa transfer of the holders of the post of Drug Inspector/Analyst and of Pharmacist is reasonably doable and that was decided in negative. Thus by no stretch of imagination it could be inferred from the judgment that it also intended not to transfer the petitioners from one station to another. True

that all the appeals with their respective prayers were accepted as prayed for but with specific and quite clear resultant consequence of setting aside the impugned order and not transferring the appellants from the post of **DRUG INSPECTOR** or **DRUG ANALYST** as the case may be. This condition of the order, after acceptance of the appeals, has restricted the relief to the above extent only i.e. the Drug Inspectors should remain posted as Drug Inspectors while Drug Analyst should remain posted as such etc and none of the two or of any other category could be given posting against any other category. Therefore, this Tribunal, while executing the judgment and sitting as executing court, cannot extend the relief by giving that any other meaning or import, especially, to extract the meaning that the petitioners could not be transferred from the stations they are already posted.

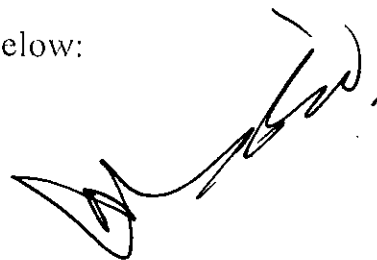
18. There is no denying the fact that the executing court cannot go beyond the terms of the decree/order/judgment it stands for and it cannot modify these terms or deviate from them in exercise of its power of execution rather it has to execute/implement the judgment/decreed/order strictly in the terms of the same.

19. In the above state of affairs when we see the notification dated 22.08.2022, issued in compliance of the judgment, it appears that the judgment had been implemented in its letter and spirit and we cannot allow anybody to exploit the terms by making self-beneficial interpretation and to get any relief which was not granted in the judgment. Therefore, the contention of the petitioners that they could not be transferred from the stations they were previously posted, is not well founded."

8. On merits, we see no good ground to set aside the impugned order/transfer Notification rather the same appears to us to be in conformity with the terms of the earlier judgment of the Tribunal handed down in Service Appeal No.16578 of 2021 as regards posting of the officers against their own cadre posts while as regards the contention of the appellants that they ought not to have been transferred from their previous places/stations of postings, it has no force being ill founded. It



may be added that the appellants Muhammad Tayyab Abbas and SM Asad Halimi, both, were Chief Drug Inspectors (BPS-19) and were transferred against the wrong cadre of Chief Pharmacists (BPS-19) while the appellant Ziaullah was Drug Inspector (BPS-17) and was transferred on 06.10.2020 against the wrong cadre of Pharmacist (BPS-17). Some others were also transferred in the same order. All the aggrieved persons, including the appellants, filed appeals that they should not be transferred against wrong cadre. Their pleas were accepted. They were consequently transferred vide the impugned Notification dated 22.08.2022 but the appellants are again aggrieved and contend that they should not have been transferred even from the stations they were earlier posted. The only ground taken by the appellants is that the impugned transfer Notification was against the terms of the Judgment dated 06.12.2021 of this Tribunal. When we peruse the judgment, it is not like that, rather the crux of the judgment is that the appellants of those appeals, including the present appellants, should not be posted against wrong cadres and this is what the respondents have done vide the impugned Notification. Now, for the transfer of a civil servant from one station/place, the Government of Khyber Pakhtunkhwa has devised/notified a posting/transfer policy setting out certain conditions but none of those conditions are pressed in the service appeals by either of the three appellants. Otherwise it is the prerogative of the Government under section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 to post a civil servant anywhere in the province. Section 10 is reproduced below:



"10. Every civil servant shall be liable to serve anywhere within or outside the Province in any post under the Federal Government, or any Provincial Government or local authority, or a corporation or body set up or established by any such Government"

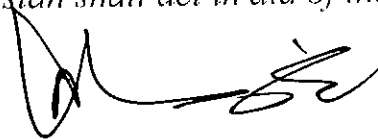
Therefore, in the absence of any ground much less convincing, the impugned transfer Notification is hardly open to any exception.

9. Now coming to the second contention of the appellants that the impugned Notifications of Transfer were in sheer violation of the judgment of the Supreme Court of Pakistan reported as "2022 SCMR 439", it is observed that before filing of these appeals, a writ petition No.3508/2022 was filed in the Peshawar High Court with the same contention. The Peshawar High Court decided the writ petition on 28.09.2022 with the observation that this Tribunal was very much clothed with the jurisdiction and authority to implement the decision of the august Apex Court in terms of Articles 189 and 190 of the Constitution and petitioners can validly agitate the same before this Tribunal. Article 189 of the Constitution of Islamic Republic of Pakistan, 1973 is as under:

"189. Decisions of Supreme Court binding on other Courts.-Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other Courts in Pakistan."

Article 190 is also reproduced:

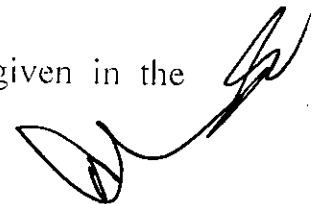
"190. Action in aid of Supreme Court.-All executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court."



Under Article 189 of the Constitution of Islamic Republic of Pakistan the decision of the Supreme Court of Pakistan to the extent that decides a question of law or is based upon or enunciates a principle of law has been made binding on all other courts in Pakistan yet in a case reported as *Shahid Pervaiz v Ejaz Ahmad and others 2017 SCMR 206*, the Supreme Court of Pakistan held as under:

"A fourteen Member Bench of this Court in the case of Justice Khurshid Anwar Bhinder v. Federation of Pakistan (PLD 2010 SC 483), has concluded that where the Supreme Court deliberately and with the intention of settling the law, pronounces upon a question of law, such pronouncement is the law declared by the Supreme Court within the meaning of Article 189 and is binding on all the Courts of Pakistan. It cannot be treated as mere obiter dictum. Even obiter dictum of the Supreme Court, due to high place which the Court holds in the hierarchy in the country enjoys a highly respected position as if it contains a definite expression of the Court's view on a legal principle, or the meaning of law".

Therefore, and especially when the Establishment Department of the Government of Khyber Pakhtunkhwa, vide letter No.SO(Lit-I)E&AD/1-1/2020 dated 14.02.2022 circulated the relevant part of the above judgment of the Supreme Court, amongst all the functionaries of the provincial government with the direction to comply with the orders/directions contained in the said judgment in letter and spirit in future, the mere mentioning of the words 'Competent Authority' and missing the name(s) of such Competent Authority in the impugned Notification dated 22.08.2022 besides not writing name under the signature of the Secretary to Government of Khyber Pakhtunkhwa Health Department, both, are not in compliance with the directions of the august Supreme Court of Pakistan. The directions given in the



Judgment was to issue requisite orders/directions to all the Courts and Departments/functionaries that they, semi-government and statutory organizations, whenever issuing notifications, orders, office memoranda, instructions, letters and other communications must disclose the designation and the name of the person issuing the same **to ensure that it is by one who is legally authorized to do so, and which will ensure that such person remains accountable.** The purpose of the direction of writing designation and name has been specified by the Supreme Court in the above underlined portion. Since the appellants have only prayed that the respondents might be directed to act upon/implement properly the judgment of the Supreme Court of Pakistan.

10. Therefore, while dismissing these appeals, we direct that the Judgment of Supreme Court of Pakistan shall be acted upon by modifying the impugned Notification accordingly within 15 days of receipt of this Judgment under intimation to the Tribunal through its Registrar. Costs to follow the event. Consign.

11. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 13th day of July, 2023.*



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)