

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

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

Service Appeal No.306/2023

Date of presentation of Appeal.....24.11.2022

Date of Hearing.....10.07.2023

Date of Decision.....10.07.2023

Liaqat Ali, Assistant (BPS-16), P&C Small Dams Division
Abbottabad.....*Appellant*

Versus

1. **The Secretary** to Government of Khyber Pakhtunkhwa Irrigation Department, Peshawar.
2. **The Chief Engineer** (SOUTH) Irrigation Department, Khyber Pakhtunkhwa, Peshawar.
3. **Muhammad Arshad**, Assistant O/o Chief Engineer Irrigation Office Peshawar.....(*Respondents*)

Present:

Syed Noman Ali Bukhari, Advocate.....For the appellant

Mr. Fazal Shah Mohmand,
Additional Advocate General.....For official respondents

Mr. Arshad Khan Tanoli, Advocate.....For private respondent No.3

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**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED APPELLATE/FINAL
TRANSFER ORDER DATED 08.11.2022 whereby the
transfer order dated 28.10.2022 HAS BEEN
WITHDRAWN IN UTTER VIOLATION TO THE
TRANSFER AND POSTING POLICY, WHICH UNDER
THE LAW IS ILLEGAL AND VOID**

JUDGMENT



KALIM ARSHAD KHAN CHAIRMAN: Facts of the case are that
appellant was performing his duties at Chief Engineer (South) Irrigation

Office Peshawar till 28.10.2022, whereby he was transferred to P&C Small Dams Division, Abbottabad at the place of private respondent No.3 and the private respondent No.3 was transferred in place of appellant i.e. office of Chief Engineer (South) Irrigation Peshawar; that the appellant submitted his arrival/charge report in compliance of order dated 28.10.2022 and quite astonishingly just after 11 days the transfer order dated 28.10.2022 was cancelled vide impugned order dated 08.11.2022 in response to departmental appeal filed by private respondent No.3; that feeling aggrieved, the appellant filed departmental appeal which was not responded, hence, the present service appeal.

02. 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.

03. We have heard learned counsel for the appellants, learned Additional Advocate General for official respondents 1 and 2 and learned counsel for private respondent No. 3.

04. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General and learned counsel for private respondent No.3 controverted the same by supporting the impugned order(s).

05. Case of the appellant is that, he was rightly transferred vide order dated 28.1.2022. he has preferred the instant appeal against the withdrawal

of transfer order dated 28.10.2022 which according to him had allegedly been withdrawn by respondent No.2 in utter violation of transfer/posting policy on the ground of pre-mature transfer. Learned counsel for the respondents argued that appeal in hand was incompetent and not maintainable because appellant had not availed departmental remedy by filing departmental appeal/representation. In our humble view, remedy of departmental appeal is provided against original order of departmental authority but in this case order impugned before us is passed by the appellate authority which can be challenged in service appeal before this Tribunal. Reliance is placed on civil petition No. 500 and 5001 page 2003, titled "Habib Ahmad versus Presiding Officer Revenue Appellate Court No.3 and others" decided on 27.04.2005 by august Supreme Court of Pakistan. Record further reveals that respondent No.3 challenged transfer/posting order dated 28.10.2022 by filing departmental appeal to respondent No.1 on 31.10.2022, on the ground of pre-mature transfer; the said representation of respondent No.3 was accepted vide impugned order dated 08.11.2022 passed by respondent No.2. The record transpires that vide office order dated 12.12.2019 respondent No.3 was transferred from Hydrology Irrigation Division Peshawar (SDA Hydrology Sub-Division, Abbottabad) to Small Dams P&D Division, Abbottabad whereas appellant was transferred from Budget Section, Chief Engineer (South) Office to SDA Hydrology Sub-Division, Abbottabad in place of respondent No.3. Respondent No.3 was posted to the Small Dams P&C Division, Abbottabad, the office from which he was transferred vide order dated 28.10.2022, which means that he was also posted there before transfer order dated 17.09.2021. It is also important

to note here that appellant in his appeal categorically mentioned that respondent No.3 had spent almost ten years at Abbottabad station and appellant at Peshawar which was although denied but evasively which amounts to admission on the part of respondents. Although respondents No.1 and 2 mentioned the details about all the transfer/posting of appellant but had not given details of transfer/posting order of respondent No.3. Record is silent that vide which order, respondent No.3 was transferred and posted to Chief Engineer (South) office Irrigation Department Peshawar and whether said transfer order was pre-mature or not and if pre-mature than whether same was also challenged by respondent No.3 on the same ground of being pre-mature or not? Moreover, when respondent No.3 filed departmental appeal then respondents No. 1 and 2 were required to summon the appellant and provide him opportunity of being heard but appellant was not summoned. Therefore, the impugned order dated 08.11.2022 is not sustainable in the eyes of law. The appeal is thus allowed and the impugned order dated 08.11.2022 is set aside. Cost shall follow the event. Consign.

06. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 10th day of July, 2023.


KALIM ARSHAD KHAN
Chairman


FAREEHA PAUL
Member (Executive)