

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1182/2023

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

Muhammad Rashid Saced, Assistant Food Controller (BS-16) S&EO
Peshawar. (Appellant)

Versus

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. The Secretary, Food Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. The Storage & Enforcement Officer, I/C PRC, Peshawar.
4. Mr. Irfan Afridi, Food Grain Inspector BPS-09 AFC (OPS) PRC S&EO, Peshawar. (Respondents)

Syed Numan Ali Bukhari ... For appellant
Advocate


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

Mr. Noor Muhammad Khattak, ... For private respondent No.4
Advocate

Date of Institution.....26.05.2023
Date of Hearing..... 13.07.2023
Date of Decision..... 25.07.2023

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 orders dated 15.03.2023 & 24.03.2023 whereby the appellant was prematurely transferred and against order dated 16.05.2023 whereby his departmental appeal was rejected. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside to the extent of appellant and private respondent No. 4 and the respondent department be directed not to



transfer the appellant prematurely (without completing his normal tenure against the post of In-charge PRC Peshawar), and other remedy which the Tribunal deemed fit and appropriate.

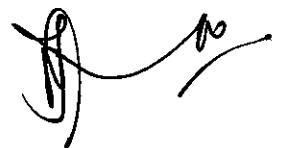
2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant had been serving in the Food Department of Khyber Pakhtunkhwa Peshawar for the last 27 years as an Executive Officer. He was previously posted at Godown Bannu from where he was transferred to the office of the S&SEO Peshawar vide office order dated 20.01.2022. After taking charge, he was performing his duty as Assistant Food Controller, In-charge Provincial Reserve Center (PRC) Peshawar. On 03.10.2022, the appellant was prematurely transferred from the post of AFC In-charge PRC Peshawar but the said order was withdrawn vide order dated 14.10.2022 and the appellant was retained as AFC in-charge PRC Peshawar. Another transfer/posting order was issued by the Section Officer Food (General) dated 15.03.2023, directing the appellant for report to the Food Directorate, which was politically motivated, premature and showed malafide on the part of the respondents and junior most employee was posted at place of the appellant on OPS basis which was not permissible under the law. Feeling aggrieved, the appellant filed departmental appeal on 17.03.2023 which was not decided and therefore he approached the Honorable Peshawar High Court Peshawar and his writ petition was disposed of with the direction to respondent No. 2 to decide the departmental appeal of the appellant within fortnight vide order dated 20.04.2023. The departmental appeal of the appellant was rejected by the authority vide order dated 16.05.2023, communicated to the appellant on



23.05.2023. The respondent department just after rejection of the departmental appeal of the appellant passed another order dated 24.03.2023 whereby the appellant was posted at AFC Azakhel in pursuance of the order dated 15.03.2023. As there was no need to file separate departmental appeal against the order dated 24.03.2023 for the reason that a departmental appeal was already filed against the original order, hence the instant service appeal on 26.05.2023.


3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard Syed Nouman Ali Bukhari, Advocate, for the appellant, Mr. Fazal Shah Mohmand, Additional Advocate General for the official respondents and Mr. Noor Muhammad Khattak, Advocate for respondent No. 4 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 impugned orders dated 15.03.2023, 16.05.2023 and 24.05.2023 were against the law, policy, norms of natural justice and verdict of the superior courts. He argued that junior most official of BPS-9 was posted in place of the appellant on OPS basis against the post of BPS-16 which caused heart burning for the present appellant and had no legal sanctity in the eyes of law and was in violation of judgment of the august Supreme Court of Pakistan reported as 2018 SCMR-1411 according to which posting/transfer on his own pay and scale was not legally permissible. He further argued that the authority for posting/transfer of employees up to BS- 16 was Director, Food Department Khyber Pakhtunkhwa whereas the impugned transfer order was issued by the



Section Officer (General), Food Department, Government of Khyber Pakhtunkhwa. According to him malafide of the concerned authorities could be gauged by the fact that the appellant was transferred twice in a span of one year. He said that the principle governing the subject matter had already been settled by the August Supreme Court of Pakistan in case of Anita Turab and that the impugned order was against clauses (i), (ii) and (iv) of the posting/transfer policy of the provincial government. He requested that the appeal might be accepted as prayed for.

5. Learned Additional Advocate General as well as learned counsel for private respondent No. 4, while rebutting the arguments of learned counsel for the appellant, referred to Section 10 of Khyber Pakhtunkhwa Civil Servants Act, 1973 according to which a civil servant was liable to serve anywhere in the province. According to them, the appellant was lawfully transferred to Food Directorate vide notification dated 15.03.2023. It was further argued that after arrival of his successor, the appellant submitted numerous medical leave applications to justify his non-compliance of government orders. It was further stated that he also concealed the facts from the Tribunal regarding non-relinquishing of charge. They further argued that the appellant also filed appeals before the learned Senior Civil Judge Peshawar as well as the learned District Judge, Peshawar which were withdrawn on 15.05.2023 and afterwards he filed writ petition No. 1519-P/2013 in Hon'ble Peshawar High Court Peshawar which was disposed of with the direction that respondent No. 2 which was the Secretary to Government of Khyber Pakhtunkhwa, Food Department might decide the fate of the departmental appeal of the appellant



within a fortnight. The learned Additional Advocate General informed that the competent authority, after affording personal hearing to the appellant and after thorough deliberation, decided that the appellant was rightly transferred. Learned Additional Advocate General as well as learned counsel for private respondent No. 4 requested that the appeal might be dismissed.

6. On the point raised by the learned Additional Advocate General regarding cases in the court of learned Senior Civil Judge, Peshawar and learned District Judge, Peshawar, the learned counsel for the appellant informed that both the cases had been withdrawn by the appellant before filing the service appeal and produced the orders of the respective courts dated 15.05.2023.

7. Arguments and record presented before us transpire that the appellant is Assistant Food Controller (BS-16) in the Food Department of provincial government. The instant service appeal is about cancellation of a transfer order, which has been issued without allowing the appellant to complete the normal tenure of transfer/posting as per transfer/posting policy. Not only the policy has been violated, but it has also been noted that a junior officer in BS-9, private respondent No.4, has been posted in his place as Assistant Food Controller against a higher post in BPS-16 in his own pay and scale. There is no doubt that transfer of a civil servant is the prerogative of his competent authority and that Section 10 of the Civil Servants Act, 1973 is very clear when it states that every civil servant is liable to serve anywhere in the province, but the tenure defined in the transfer/posting policy of the provincial government cannot be set aside unless there are valid grounds available against an



employee, which make him unsuitable for a specific post. In the case in hand, it has been noted that there was no reason attributed to the premature transfer of the appellant, when he was not allowed to complete his tenure as Incharge PRC Peshawar, and then the posting of a junior officer in his place, in his own pay and scale. There is a plethora of judgments of various honourable courts as well as this Tribunal where it has been clarified to allow the civil servants to complete their normal tenure of posting and to post the officers according to the scale of the post. There are clear judgments of the Honourable Supreme Court of Pakistan not to post junior officers on senior positions.

8. It is worth observing here that the departmental appeal filed by the appellant against the impugned transfer order was rejected on 16.05.2023 by the Secretary Food, saying himself as the appellate authority but nothing could be uttered regarding the plea of the appellant that the impugned order was passed without allowing him to complete his normal tenure, therefore, the appellate rejection order is also not sustainable for another reason also that the Secretary is not the appellate authority.


9. And finally, soon after the rejection of departmental appeal, the department proceeded to further transfer the appellant to the post of A/C Azakhel vide order dated 24.05.2023. The official respondents filed reply on 26.06.2023 but did not say anything regarding this further transfer of the appellant. The appellant filed an application under Order XXXIX rule 2 of the Code of Civil Procedure, 1908 for directing the respondents to implement the interim order of the Tribunal passed on 29.05.2023. In reply, the respondents annexed the order dated 24.05.2023. This further posting of the appellant



seems to be an effort of abuse and misuse of process of law and court and to thwart the legal proceedings initiated by the appellant, which were well within the knowledge of the department. So the subsequent order dated 24.05.2023 is also not sustainable.

10. In view of the above discussion, the appeal in hand is allowed as prayed for and the impugned transfer order, the appellate order and the subsequent transfer order dated 24.05.2023 are set aside to the extent of appellant with the direction that the appellant be allowed to complete his tenure as AFC Incharge PRC Peshawar from where he was transferred on 15.03.2023. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 25th day of July, 2023.*


(FARUQHA PAUL)
Member (I)


(KALIM ARSHAD KHAN)
Chairman

Fazle Subhan. P.S