

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

**Service Appeal No. 1217/2023**

BEFORE: **MRS RASHIDA BANO** ... **MEMBER (J)**  
**MISS FAREEHA PAUL** ... **MEMBER (E)**

Ghulam Dastagir Patwari Halqa Wadpaga, Peshawar. .... (*Appellant*)

Versus

1. The Deputy Commissioner, Peshawar.
2. The Commissioner Peshawar Division, Peshawar.
3. Mr. Imran, Patwari Halqa Wadpaga, Peshawar. .... (*Respondents*)

Syed Numan Ali Bukhari,  
Advocate

... For appellant

Mr. Fazal Shah Mohmand,  
Addl. Advocate General

... For official respondents

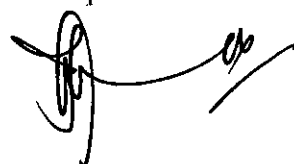
Mr. Amjad Nawaz,  
Advocate

... For private respondent No. 3.

Date of Institution.....	19.05.2023
Date of Hearing.....	07.08.2023
Date of Decision.....	07.08.2023

**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 impugned order dated 27.01.2023 whereby private respondent No. 3 was transferred against the post of the appellant in utter violation of the transfer & posting policy and order dated 14.03.2023, to the extent of report to Kanungo office, and not deciding the departmental appeal of the appellant within statutory period of ninety days. It has been prayed that on acceptance of the appeal, order dated 27.01.2023 to the extent of Serial No. 3 might be set aside being passed prematurely and in violation of posting/transfer policy and direct the respondent department not



to transfer the appellant prematurely and in violation of posting/transfer policy alongwith any 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 was serving as Patwari and was transferred from District Kanungo office to Halqa Wadpaga vide order dated 30.08.2022. Through an order dated 27.01.2023, the appellant was suspended with immediate effect and vide another order of even date private respondent No. 3 was transferred against the post held by him. Feeling aggrieved, the appellant filed departmental appeal against the impugned orders dated 27.01.2023. An inquiry was conducted and the appellant was exonerated from the charges and reinstated in service vide order dated 14.03.2022 but not on his post but was directed to report to District Kanungo office.. The departmental appeal of the appellant was not responded within the statutory period of ninety days; hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/ comments on the appeal. We heard the learned counsel for the appellant as well as the learned Additional Advocate General for the official respondents as well as learned counsel for private respondent No. 3 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 order dated 27.01.2023 was wrong, illegal unlawful and against the policy and was liable to be set aside. The appellant was suspended to accommodate a blue eyed person against the post where



the appellant was posted. He further argued that the appellant's tenure at Wadpaga was only five months, while according to the posting/transfer policy, normal tenure for posting was two years, hence the impugned order was premature and against the posting/transfer policy. According to him, the impugned transfer order was made in the period during which complete ban was imposed on all posting/transfers by the Election Commission of Pakistan, so the impugned order was in violation of notification of Election Commission of Pakistan and judgment dated 09.12.2021 of Hon'ble Peshawar High Court Peshawar in Writ Petition No. 5071-P/2021. He further argued that on his reinstatement into service, the appellant should have been adjusted against the Halqa in which he was posted prior to his suspension, i.e Halqa Wadpag, a but he was directed to report to District Kanungo office which was illegal and discriminatory. He requested that the appeal might be accepted as prayed for.

5. Learned Additional Advocate General and learned counsel for private respondent No. 3, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was suspended on the basis of revenue inspection and private respondent No. 3 was posted against his post in public interest who took over the charge on 18.02.2023 and started performing his duties. An enquiry was conducted against the appellant and on the recommendation of the enquiry officer, he was reinstated in to service and was directed to report to District Kanungo office, Peshawar for further posting. They further argued that the posting/transfer of the appellant was not a routine matter but it was due to his suspension and later on his



reinstatement into service that he was directed to report to Kanungo Office for further posting. They requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it transpires that the appellant, while serving as Patwari at Wadpaga, was suspended in consequence of an inspection of revenue record of that Mouza. An inquiry was ordered and in pursuance of its report, he was exonerated of the charges and reinstated into service on 14.03.2023 and directed to report to District Kanungo Office. After his suspension from the post of Patwar Halqa Wadpaga, Mr. Imran, private respondent No. 3, was transferred on that post vide a separate order on the same date. The appellant has impugned the transfer order of private respondent No. 3 with the prayer to set it aside on the grounds that it was passed in violation of posting/transfer policy of provincial government without letting him complete his normal tenure of posting.

7. The fact that comes to light from the above discussion is that the appellant was placed under suspension from the position he was holding on 27.01.2023 in pursuance of certain charges and hence he ceased to hold the post of Patwari Halqa Wadpaga. What the appellant fails to understand here is that it was not a transfer, to be dealt under the transfer/posting policy of the provincial government, rather it was suspension for the sake of an inquiry on certain charges against him. After issuance of his suspension order, the post he was holding became vacant and private respondent No. 3 was rightly transferred on that post, in order to fill it to keep the government business going. After completion of inquiry proceedings and his exoneration



from the charges leveled against him, he was reinstated and directed to report to District Kanungo office vide order dated 14.03.2022. He has termed that order as illegal but did not submit any departmental appeal against it, therefore, raising any objection against it before this Tribunal is not maintainable in the light of Section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974.

8. In view of above, the appeal in hand, being without merit, is dismissed. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 07<sup>th</sup> day of August, 2023.*

  
(FARIHA PAUL)  
Member (E)

*\*Fazle Subhan, P.S\**

  
(RASHIDA BANO)  
Member (J)