

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 263/2023

BEFORE: **MR. SALAH-UD-DIN** ... **MEMBER (J)**
MISS FAREEHA PAUL ... **MEMBER (E)**

Hussain Ahmad (BPS-19) Ex-District Director, Agriculture (Extension)
Kohat..... (*Appellant*)

Versus

1. Secretary Agriculture, Livestock Department, Government of Khyber Pakhtunkhwa, Peshawar.
2. Director General, Agriculture (Extension) Khyber Pakhtunkhwa, Peshawar...
3. Dr. Shakirullah (BS-19) now posted as District Director Agriculture (Extension) Kohat.....(*Respondents*)

Mr. Nazir Ahmad,
Advocate

... For appellant

Mr. Muhammad Jan,
District Attorney

... For official respondents

Mr. Zahir Shah Marwat,
Advocate

... For private respondent
No. 3.

Date of Institution..... 18.01.2023
Date of Hearing..... 23.06.2023
Date of Decision..... 23.06.2023

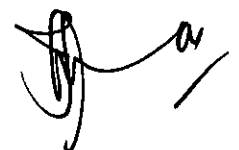
JUDGEMENT

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 notification dated 20.10.2022, whereby appellant was transferred from the post of District Director Agriculture (Extension) Kohat to District Director Agriculture (Extension) Tank before the expiry of his tenure, against which his departmental appeal dated 21.10.2022 was not



responded. It has been prayed that the impugned notification dated 20.10.2022 to the extent of appellant might be set aside and he might be transferred to his post from where he was transferred before the expiry of the tenure or to Director General Agriculture (Extension) Khyber Pakhtunkhwa or adjusted against one of the 10 posts in District Peshawar.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant after passing his master in agriculture was appointed in the respondent department as Agriculture Officer BPS-17 on 10.02.1991. On 09.01.2007, he was transferred to the post of Assistant Plant Officer BS-17 (Supervisory) D.I.Khan and on 29.07.2010 he was transferred to Bannu against the same post. On 12.12.2012, he was transferred to District Laki Marwat as District Officer (Agriculture) BPS-18, in his own pay scale. Due to restructuring and change of nomenclature, the post of appellant was designated as District Director Agriculture Lakki Marwat on 23.05.2013. The appellant was promoted to BPS-18 and was posted against the post of District Director Agriculture (Extension), BPS-19, District Lakki Marwat and then was transferred to District Bannu as District Director Agriculture (Extension) BPS-19 on 21.11.2014. Vide notification dated 10.11.2018, the appellant was posted as Subject Matter Specialist (Agriculture & Extension) (Plant and Protection), BPS-18, in the office of Director Agriculture Bannu. Just after 68 days of his posting vide notification dated 18.12.2018, he was again transferred to Tank as SMS (Plant Protection), BS-18, DDA. He assumed the charge on 23.01.2019. Vide notification dated 21.02.2019, he was first transferred as SMS-PP, BPS-18, Tank and posted as Deputy Director Farm instead of Director BS-18 Rakh Zandani, D.I.Khan. Feeling



aggrieved, he filed departmental appeal but it was not responded. On 16.06.2019, he was transferred as SMS-PP (BPS-18), DDA, Upper Dir against the vacant post. On 30.08.2021 he was again transferred as Director Model Farm Services Centre, BS-19, against the vacant post but just after 11 months on 07.07.2022, he was transferred to Kohat as District Director Agriculture (Extension) BPS-19 Kohat against the vacant post. The competent authority again through the impugned notification dated 20.10.2022 transferred him, through serial No. 12 of the said notification, from District Director Agriculture (Extension) Kohat to District Director Agriculture (Extension) Tank before the expiry of his tenure. Feeling aggrieved he filed departmental appeal which was not responded, hence the present service appeal.

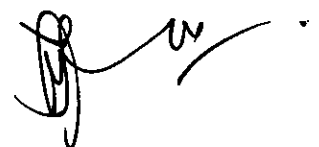
3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, contended that the impugned notification was against the law, posting/transfer policy of the provincial government and was tainted with mala fide intentions. He further contended that frequent postings/transfers of any civil servant were unwarranted in the eyes of law and the ruling of the august Supreme Court of Pakistan and was liable to be set aside. He requested that the appeal might be accepted as prayed for.



5. Learned District Attorney, while rebutting the arguments of the learned counsel for the appellant, argued that the same nature case of the appellant had already been under process in the Honourable Peshawar High Court, D.I.Khan Bench in Writ Petition No. 328-D/2019. He further argued that the appellant was regularly promoted to BS-18 and was posted as District Director Agriculture, Lakki Marwat BS-19 in his own pay scale. He was then posted as Subject Matter Specialist (Agronomy & Extension) BS-18 in the office of District Director Agriculture, Bannu. So far as his transfer as Subject Matter Specialist (Plant Protection) Tank was concerned, it was made on his own request. He was then posted as Deputy Director Farm (BS-18) Rakh Zandani D.I.Khan vide notification dated 21.02.2019 against which he filed Writ Petition No. 328-D/2019 in the Honourable Peshawar High Court D.I.Khan Bench, which was under process. The learned District Attorney further informed that the case of the appellant had been adjourned there to a date in office vide order sheet dated 15.02.2023. In the meanwhile he was transferred as District Director Agriculture (BS-19) Tank on 22.10.2022 and assumed charge of the said post on 26.10.2022 in accordance with his own request to settle the issue and dispose of the writ Petition pending before the Honourable Peshawar High Court, D.I.Khan Bench. According to him, no discrimination was made to the appellant and requested that the appeal might be dismissed.

6. Learned counsel for private respondent No. 3 drew the attention to a fact that the appellant belonged to one of the southern districts and managed to remain posted near his home district throughout his service career and requested to dismiss the appeal.



7. Arguments and record presented before us transpire that the appellant was appointed in the respondent department as a BS-17 officer. During his service, he was promoted to BS-18. Record presented before us shows that the appellant, alongwith other officers of the respondent department, got frequently transferred from one position and station to another. From perusal of transfer orders and facts of the case produced before us, it was found that he served in the higher grade also in his own pay and scale on many occasions. In the presentation of his entire case, the appellant as well as his learned counsel did not bring it to the notice of this bench that a Writ Petition in a similar nature case was pending before the Honourable Peshawar High Court, D.I.Khan Bench. It was from the perusal of reply of respondent department and the arguments put forth by the learned Deputy District Attorney that the matter of pending writ petition was revealed and it came to light that a Writ Petition No. 328-D/2019 was filed by the appellant against the order dated 21.02.2019 vide which he was transferred from the post of Subject Matter Specialist (Plant Protection) in the office of District Director Agriculture, Tank to D.I.Khan as Deputy Director Farm. In that Writ Petition, the appellant had prayed for setting aside the transfer order dated 21.02.2019 with direction to the respondents to retain him at Tank. When the learned counsel for the appellant was confronted on this concealment, he admitted that the matter was pending before the Honourable Peshawar High Court but further argued that it had become infructuous as the appellant had been transferred further to other positions also, after that.

8. Another point that was noted was that during the entire service, the appellant was posted in the southern districts of the province, and when




enquired, it was brought to our knowledge that he belonged to District Bannu. This indicates that throughout his service, he remained near his district of domicile and had never been posted far away from it. As far as his current transfer order dated 20.10.2022 is concerned, in which he has been transferred from District Director, Agriculture Extension, Kohat to District Director, Agriculture Extension Tank, as stated by the learned District Attorney, he has been transferred keeping in view his plea taken in the Writ Petition pending before the Honourable Peshawar High Court, D.I.Khan Bench. We also feel that the current posting to Tank is in line with the prayer taken by the appellant in his Writ Petition No. 328-D/2019, in which he had prayed to retain him at Tank, but as there was no stay granted by the Honourable Court, further transfer orders of the appellant were issued. Now that he has been transferred to Tank, according to his own wish, there seems no justification for this service appeal.

9. In view of the above discussion, the appeal in hand is dismissed. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 23rd day of June, 2023.*


(FAREEHA PAUL)
Member (I)


(SALAH-UD-DIN)
Member (J)