29/2016

10.5.2016 Counsel for the appellant and M/S Muhammad Ali, Supdt. and Razi Rahman, S.Clerk alongwith Addl. AG for the respondents present. Written statement by respondents No. 1 to 4 submitted. Counsel for the appellant submitted application for withdrawal of appeal. In the light of application, the appeal is dismissed as withdrawn. File be consigned to the record room.

Chairman

10.05.16.

ANNOUNCED

10.05.2016

25.1.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as SDO PHE Department when transferred from the post of SDO PHE Sub-Division Karak to SDO PHE Division Lakki Marwat vide impugned order dated 5.10.2015 where-against he preferred departmental appeal on 6.10.2015 which was not responded and hence the instant service appeal on 7.1.2016.

Appellant Deposited
Security & Process Fee

That the appellant was posted against the post of SDO Sub-Division vide order dated 13.2.2015 and as such the impugned transfer order is premature and violative of the verdict laid down by the august Supreme Court of Pakistan in case of Aneeta Turab reported as PLD 2013 SC 195.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 28.3.2016 before S.B.

Chairman

28.03.2016

Counsel for the appellant, M/S Muhammad Ali, Supdt., Muhammad Yasin, Supdt., Razi-ur-Rehman, Senior Clerk and Zeeshan AD alongwith Assistant AG for official respondents No. 1 to 4 and private respondent No. 6 in person present. Application for deletion the names of respondents No. 5 and 6 submitted. In the light of the same, respondents No. 5 and 6 deleted from the panel of respondents. To come up for written reply/comments on 10.5.2016 before S.B.

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 29 /2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	07.01.2016	The appeal of Mr. Asif Farooq presented today by Shahzada Irfan Zia Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order. REGISTRAR
2		This case is entrusted to S. Bench for preliminary hearing to be put up thereon 25-1-16. CHAIRMAN

Before the Khyber Pakhtunkhwa service tribunal Peshawar

Service appeal No 29..../2016.

Asif Farooq.....Appellant.

Versus

Govt. of Khyber Pakhtunkhwa through secretary public health engineering department and others .....Respondents.

Index

s.#	Description of documents	Annexure	pages
1.	Appeal		1-4
2.	Copy of order dated:13-10-15.	"A"	5-7
3.	Copy of notification dated 13-02-15	"B"	8
4.	Copy of impugned order 05-10-15.	"C"	9
5.	Copy of receipt	"D"	10
6.	Departmental appeal	"E"	11
7.	Vakalatnama		12

Appellant

Dated : 07 /01/2016. **Through**

Shahzada Irfan Zia, Zahid Raza Malik

&

Marina Asif advocates

Peshawar.

Before the Khyber Pakhtunkhwa service tribunal Peshawar

Service appeal No 29 /2016.

Asif Farooq

Sub-Divisional Officer,

Public Health Engineering Department,

Sub Division karak .....Appellant.

Versus

1- Govt. of Khyber Pakhtunkhwa through secretary public health engineering department, civil secretariat Peshawar.
2- Chief engineer public health engineering, civil secretariat Peshawar.
3- Superintending Engineer, public Health Engineering, Department, Karak.
4- Executive Engineering Public Health Engineering, Department, karak.
5- Gul Sahib khan, MPA PK, 40 Karak.
6- District Nazim Karak.
7- Mr. Allah Nawaz SDO, Public Health Lakki Marwat Division, district Lakki Marwat.....Respondents.

Appeal u/s 4 of KPK Service Tribunal Act, 1974 against the impugned order dated: 05.10.2015 (No. SO(ESTt) Phed/1-44/2014-15), where in the services of the appellant were transferred from karak to lakki marwat with immediate effect.

Filed to-day
Registrar
7/1/2016.

Prayer in Appeal

On Acceptance of this instant service appeal the impugned order dated 05-10-2015, of respondent No. 1 may please be set-aside.

Respectfully sheweth: - brief facts of the instant appeal are as under:-

1- That previously appellant filed an appeal before this honorable tribunal prior to elapse of prescribed period of 90 days, which was returned to the appellant with direction for re-submitting the same after the decision of departmental appeal or lapse of prescribed period of 90 days, hence the present appeal is being filed inter alia on the following facts and grounds. (Copy of the order is attached as annexure A).

2- That the appellant was appointed as Sub-engineer in the Public Health Department in the year 1982 and was promoted as sub divisional Officer in 2015.(copy of the notification is attached as annexure B).

3- That the appellant was serving as sub Divisional Officer in Karak to the entire satisfaction of his high-ups and giving no chance of complaint to them, but quite astonishingly respondent No.1 issued a transfer order on 05-10-2015.of the appellant to district Lakki marwat assigning any valid reason. (Copy of the impugned order dated 05-10-2015 is attached as Annexure C).

4- That feeling aggrieved of the impugned notification dated 05-10-2015, the appellant preferred a Departmental representation to the respondent No.1, which is not responded yet. (Copy of said representation as well as receipt of the currier service is attached as annexure D).

5- That the appellant filed his departmental appeal on dated 06-10-2015, against the impugned order dated 05-10-2015, which remained un-responded. (Copy of the departmental appeal is attached as annexure E).

6- That feeling aggrieved from the departmental representation the appellant approaches this honorable tribunal, inter-alai, on the following grounds.

Grounds of appeal

a- That the impugned order of the respondent No.1 is against the settled procedure of service law and facts which is liable to be set-aside

b- That the impugned order dated 05.10.2012=5 itself speaks malafide on the part of respondent No 1 as well as respondent No 5 & 6.

c- That apparently the impugned order dated 05.10.2015 is against the pronouncement of the superior courts judgment regarding political involvements of the public Representative in the government departments.

d- That the appellant has only served 7 months and now has been transferred which is against the settled norms of the tenure of transfer of a civil servant.

e- That the appellant has till date served with full devotion and vigor and to the entire satisfaction of his high –ups but despite that fact his services been transferred without assigning any reason regarding the transfer/ posting order dated 05.10.2015.

Before the Court of Service Tribunal, Peshawar.

Asif Farooq ..... VS ..... Govt. (PHE;D).

Application for withdrawl of instant Appeal 29/16

Respected Sir, The Appellant humbly submits as under.

I. That the above titled appeal is pending adjudication before this honorable Court i.e. 10 5/16.

II. That the above titled appeal wants to withdraw in this stage.

III. That the appellant no need to carry on the instant appeal.

It is therefore may kindly be withdraw the instant appeal.

Appellant

Through

Advocate

f- That the impugned order is against the general procedure of transfer and posting envisaged in the transfer / posting policy of the civil servants.

g- That now it is the mid of the school & college Educational year, and the appellants children are in the mid of their educational year and it would adversely affect the educational year of the children of appellant, if the impugned transfer order is not cancelled.

h- That the impugned order of transfer has been issued on the recommendation of the present district Nazim who happens to be brother of the sitting MPA of the area, who verbally asked the appellant to carry out / issue illegal directions for unviable works in the area.

i- That the appellant may permit to raise any point not specifically pleaded in the instant appeal.

PRAYER: It is, therefore, humbly prayed that on acceptance of this appeal the impugned order dated 05-10-2015 of respondent No 1 may kindly be set-aside, directing the respondents to allow the appellant to perform his duties as SDO PHE Sub-Division Karak.

Appellant

Dated : / /2016. **Through**

Shahzada Irfan Zia, Zahid Raza Malik

&

Marina Asif

Advocates Peshawar.

Verification:

ATTESTED 1/11/16

Verified on oath that the contents of this appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable tribunal

M. RAFIQ KHALIL ADVOCATE OATH COMMISSIONER HIGH COURT PESHAWAR

Deponent

(5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No._____/2015

Asif Farooque
Sub-Divisional Officer,
Public Health Engineering Department,
Sub Division Karak.....Appellant

VERSUS

1) Govt. of Khyber Pakhtunkhwa through Secretary Public Health Engineering Department, Civil Secretariat Peshawar.

2) Chief Engineer Public Heath Engineering, Civil Secretariat Peshawar.

3) Superintending Engineer, Public Health Engineering, Department, Karak.

4) Executive Engineering Public Health Engineering, Department, Karak.

5) Gul Sahib Khan, MPA PK, 40 Karak

6) District Nazim Karak.

7) Mr. Allah Nawaz SDO, Public Health Lakki Marwat Division, District Lakki Marwat.

.....Respondents

Filed
9/10/15
to-day.

APPEAL u/s 4 of KPK Service Tribunal Act, 1974 against the impugned order dated 05.10.2015 (No.SO(ESTt)phed/1-44/2014-15), wherein the services of the appellant were transferred from Karak to Lakki Marwat with immediate effect.

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

13.10.2015
Asif Farooque

Counsel for the appellant present. Arguments on office objection heard and record perused.

Appellant was transferred vide impugned order dated 5.10.2015 from the office of SDO PHE Sub-Division Karak to the office SDO PHE Division Lakki Marwat. Aggrieved of the said transfer order, appellant has preferred departmental appeal to the Secretary, PHE Department on 6.10.2015. After lapse about three days appellant has preferred the instant service appeal on 9.10.2015.

Learned counsel for the appellant while referring to Article 10-A of the Constitution of Islamic Republic of Pakistan and observations of august Supreme Court of Pakistan recorded in the judgment reported as 2015 SCMR 456 (Supreme Court of Pakistan) argued that the appeal is entertainble by the Tribunal irrespective of the lapse of prescribed period of 90 days laid down in section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

A careful study of the relevant law including the judgment of the august Supreme Court of Pakistan would suggest that this Tribunal would be in a position to take cognizance of such an appeal when the relevant provision of law is either amended in the prescribed manners or struck down by any Constitutional Court including the Hon'ble High Court or august Supreme Court of Pakistan. Para-253 of the said judgment would suggest the august Supreme Court of Pakistan has taken up this issue in suo motu jurisdiction under Article-184 (3) of the Constitution and final verdict by the august Supreme Court of Pakistan on the said issue is yet to be delivered.

Since the proviso debarring the appellant from preferring an appeal before this Tribunal prior to elapse of prescribed period of 90 days is still a valid law and, furthermore, a full Bench of this Tribunal in

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

case of Miss. Tahmina Aslam etc (petitioners) –VS – Government of Khyber Pakhtunkhwa through Secretary E & SE and others vide judgment dated 14.5.2015 has resolved that an appeal would not be entertainable prior to elapse of the said specified period as such the office objection would sustain. The office shall return the appeal to the appellant for re-submitting the same after the decision of departmental appeal or lapse of prescribed period of 90 days.

Sd/-
Chairman

ANNOUNCED
13.10.2015

Certified to be ture copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 06-01-2016
Number of Words 1200
Copying Fee 8/-
Urgent 2/-
Total 10/-
Name of Copyist
Date of Delivery of Copy 06-01-2016
Date 06-01-2016

GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

Dated Peshawar, the February 13, 2015

NOTIFICATION

No.SO(Estt)/PHED/4-53-B/2014/AC: The competent authority, on the recommendations of the Departmental Promotion Committee, is pleased to appoint the following Diploma Holder Sub Engineers (BPS-11) of the Public Health Engineering Department to the posts of Assistant Engineers/Assistant Design Engineer/Sub Divisional Officers (BPS-17) on acting charge basis, with immediate effect:-

i. Mr. Karamat Ullah
ii. Mr. Laiq Zaman
iii. Mr. Asif Farooq

2. In order to actualize their appointment, the following postings/ transfers/adjustments are made henceforth:-

S.No	Name	From	To	Remarks
1.	Mr. Karamatullah, BPS-11	Sub Engineer PHE Division Peshawar	Assistant Design Engineer Office of the C.E (South) PHE on acting charge basis	Against the vacant post
2.	Mr. Laiq Zaman, BPS-11	SDO (OPS) PHE Sub Division Samar Bagh Dir Lower	SDO (BPS-17) PHE Sub Division Kohat on acting charge basis	Against the vacant post
3.	Mr. Asif Farooq, BPS-11	SDO (OPS) PHE Sub Division Karak	SDO (BPS-17) PHE Sub Division Karak on acting charge basis	Against the existing vacancy

SECRETARY
PHE DEPARTMENT

Endst: No.SO(Estt)/PHED/4-53-B/2014/AC Dated Peshawar, the February 13, 2015

Copy forwarded for information and necessary action to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Chief Engineer (South) PHE Khyber Pakhtunkhwa Peshawar.
3. Chief Engineer (North) PHE Khyber Pakhtunkhwa Peshawar.
4. Superintending Engineers PHE Circle concerned.
5. Executive Engineer PHE Division concerned.
6. District Accounts Officer concerned.
7. PS to Minister for PHE Khyber Pakhtunkhwa Peshawar.
8. PS to Secretary PHE Department Khyber Pakhtunkhwa.
9. Officers concerned.
10. Office Order / Personal Files.

Attested

SECTION OFFICER (ESTT)

GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

Dated Peshawar, the October 05, 2015

9

ORDER

No.SO(ESTT)/PHED/1-44/2014-15: The competent authority has been pleased to order the following transfers/postings of officers of the PHE Department, with immediate effect, in the public interest:-

S.No	Name	From	To	Remarks
1.	Mr. Allah Nawaz, BPS-17	SDO PHE Division Lakki Marwat	SDO PHE Sub Division Karak	Vice S.No.1
2.	Mr. Asif Farooq BPS-17 (acting charge)	SDO PHE Sub Division Karak	SDO PHE Division Lakki Marwat	Vice S.No.2

SECRETARY

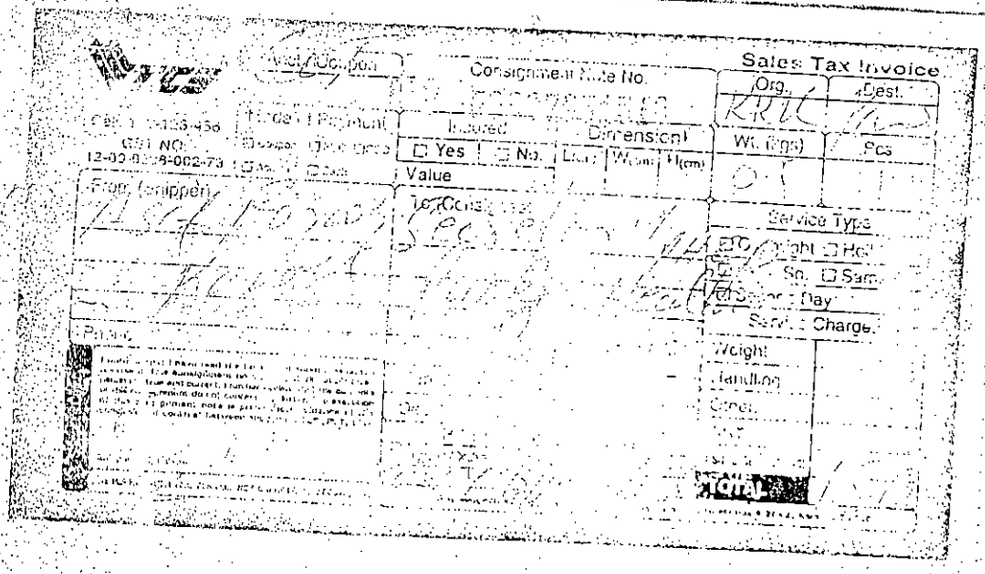
No.SO(ESTT)/PHED/1-44/2014-15: Dated Peshawar, the October 05, 2015

Copy forwarded for information & necessary action to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Chief Engineer (South) PHE Khyber Pakhtunkhwa Peshawar
3. Chief Engineer (North) PHE Khyber Pakhtunkhwa Peshawar
4. Superintending Engineer PHE Circle Bannu/Kohat
5. Executive Engineer PHE Division Lakki Marwat/Karak
6. District Accounts Officer Lakki Marwat/Karak
7. PS to Minister for PHE Khyber Pakhtunkhwa Peshawar
8. PS to Secretary PHE Department Khyber Pakhtunkhwa Peshawar
9. PA to Deputy Secretary (Admn) PHE Department Peshawar
10. Officers concerned.
11. Office Order/Personal Files.

Attested
Marwat

SECTION OFFICER (ESTT)


Sales Tax Invoice
Consignment Note No.
Org.
Dest.
Insured
Yes
No.
Dimension
Wt. (kg)
Pcs
Value
From (Shipper)
Service Type
Weight
Handling
Other
Total

10

Attested
Moorings

(11)

The Secretary
Public Health Engineering Department
Govt: of Khyber PaktunKhwa,
Peshawar

16-10-15

Subject: APPEAL ON COMPASSIONATE GROWDS AGAINST THE TRANSFER ORDER FROM KARAK TO LAKKI MARWAT

Respectfully,

I hare the honor to submit the following facts before your exalted great expectation that may requested & appeal may kindly be sympathetically considered.

1. That I have been working as SDO in Karak Sub Division since Feb 2015.
2. That I was performing my duties diligently & honestly to the entire satisfaction of my supervisors as well as public.
3. That now I have been transferred vide SO (Estt:)PHED/1-44/2014-15 dt: 05/10/2015 from Karak to Lakki Marwat.
4. That my children are studying in various schools at Karak. Thus their study will be automatically effected & their future will be at stack.
5. It is worth mentioning here that I have hardly served Hardly Seven months on this seat, and thus I have not completed my tenure here at Karak.

Keeping in view the above facts my transfer may kindly be cancelled and oblige.

I shall be thankful to you for this act of kindness as one hour in the execution of justice is better than seventy years of prayers.

Thanks

Date: 06/10/15

Yours Obediently
Asif Farooq
Sub Divisional Officer
PHE Sub Division Karak

16-10-15
District Karak

Attested
Marwat

(12)

20249

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

PBA — PESHAWAR BAR ASSOCIATION

اٹیڈوکیٹ/دستخط: M.A.Khan Naqing

بار کونسل/بار ایسوسی ایشن نمبر:

رابطہ نمبر: bc-14-4853 / bc-14-4852

0333-9119215

بعدالت جناب: چیئرمین سروس ٹریبونل

منجانب: سروس ٹریبونل	دعویٰ: سروس اپیل
آصف فاروق	علت نمبر:
بنام	مورخہ: 7-1-16
گورنمنٹ آف کے پی کے PHED	جرم:
	تھانہ:

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی کاروائی متعلقہ

آن مقام پشاور کیلئے شہزادہ عرفان، زاہد رضا، مرینہ آصف، ارباب علی ایڈوکیٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث وفیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی ونظرثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا وہ وکیل موصوف وصول کرنے کا حقدار ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہٰذا وکالت نامہ لکھ دیا تاکہ سند رہے۔

Accepted

Naqing

M. Akhan

المرقوم:

العبد — گواہ شد — العبد

مقام پشاور کے لئے منظور ہے۔

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 29/2016

Mr. Asif Farooq,
SDO (BPS-17 acting charge),
PHE Sub Division Lakki Marwat ..... Appellant

V E R S U S

1. Government of Khyber Pakhtunkhwa through Secretary Public Health Engineering Department, Civil Secretariat Peshawar.
2. Chief Engineer (South),
   PHE Khyber Pakhtunkhwa Peshawar
3. Superintending Engineer PHE Circle Kohat
4. Executive Engineer, PHE Division Karak
5. Mr. Gul Sahib Khan, MPA PK-40 Karak
6. District Nazim Karak
7. Mr. Allah Nawaz, SDO PHE Karak ..... Respondents

PARA WISE COMMENTS OF RESPONDENTS NO.1, 2, 3 & 4

AFIDAVIT

I, Muhammad Ali, Superintendent (Estt) PHED Peshawar, do hereby solemnly declare that contents of the Para-wise comments are correct to the best of my knowledge and record and nothing has been concealed from this honourable Tribunal.

Deponent

SUPERINTENDENT (ESTT)
PHE DEPARTMENT

Identified by

Senior Government Pleader
KPK Service Tribunal Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

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Mr. Asif Farooq,
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5. Mr. Gul Sahib Khan, MPA PK-40 Karak
6. District Nazim Karak
7. Mr. Allah Nawaz, SDO PHE Karak ..... Respondents

PARA WISE COMMENTS OF RESPONDENTS NO.1, 2, 3 & 4

Respectfully Sheweth,

Preliminary Objections

1. That appellant has got no locus standi.
2. That appellant has not come to this Hon'able tribunal with clean hands.
3. The appeal is time barred.
4. The appeal is barred by law.
5. The appeal is not maintainable in its present form.

Facts of the case

1. Pertains to record, hence no comments.

2. Pertains to record. The appellant has been appointed/ promoted as SDO (BPS-17) on acting charge basis on 13-02-2015. However, according to Sub Rule (6) of Rule 9 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rule, 1989, acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis.

3. Incorrect and not admitted. The appellant was transferred to Lakki Marwat in the public interest as he was due for the same upon his promotion on acting charge basis.

4. Correct to the extent that the appellant filed a departmental appeal which was not considered by the competent authority, being devoid of any merit.

5. Incorrect. As explained in Para-4 above.

6. Incorrect and not admitted. The appellant has got no cause of action to file the instant appeal.

GROUNDS:

a. That ground 'a' of the appeal is incorrect, not admitted and misconceived. The appellant has been transferred and posted to PHE Division Lakki Marwat in the public interest as his rotation after promotion was due. Hence this Department's Notification dated 05-10-2015 is quite legal, lawful and justified.

b. That ground 'b' of the appeal is incorrect and not admitted. Detail reply has been given above Para.

c. That ground 'c' of the appeal is incorrect, not admitted and misconceived. As already explained in Para-a above.

d. That ground 'd' of the appeal is incorrect and denied as the appellant has served at PHE Division Karak for more than one & half year. Moreover, he has been recently promoted and his rotation/transfer was inevitable. The appellant is pursuing posting of his choice which bodes his vested interest and hence, inconsistent to the provisions, contained in Posting/Transfer Policy of the Provincial Government.

e. That ground 'e' of the appeal is incorrect and not admitted. As explained in the preceding paras. The competent authority is not bound to assign any reasons for the transfer of a civil servant.

f. That ground 'f' of the appeal is incorrect, misconceived. Denied as the order dated 05-10-2015 was issued in the public interest and not against the posting/transfer policy of the government.

g. No comments.

h. Incorrect and not admitted. This accusation of the appellant requires evidence.

i. That the respondents seek leave of this Hon'ble Tribunal to raise additional grounds at the time of arguments.

PRAYERS

Keeping in view the position explained above, it is very humbly requested that the instant appeal being devoid of any merit, may graciously be dismissed in favour of the respondents with cost throughout.

CHIEF ENGINEER (SOUTH)
PHE PESHAWAR
(Respondent No.2)

SECRETARY TO GOVT. OF KPK
PHE DEPARTMENT
(Respondent No.1)

SUPERINTENDING ENGINEER
PHE CIRCLE KOHAT
(Respondent No.3)

EXECUTIVE ENGINEER
PHE DIVISION KARAK
(Respondent No.4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 29/2016

Mr. Asif Farooq,
SDO (BPS-17 acting charge),
PHE Sub Division Lakki Marwat ..... Appellant

V E R S U S

1. Government of Khyber Pakhtunkhwa through Secretary Public Health Engineering Department, Civil Secretariat Peshawar.
2. Chief Engineer (South),
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3. Superintending Engineer PHE Circle Kohat
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5. Mr. Gul Sahib Khan, MPA PK-40 Karak
6. District Nazim Karak
7. Mr. Allah Nawaz, SDO PHE Karak ..... Respondents

PARA WISE COMMENTS OF RESPONDENTS NO.1, 2, 3 & 4

AFIDAVIT

I, Muhammad Ali, Superintendent (Estt) PHED Peshawar, do hereby solemnly declare that contents of the Para-wise comments are correct to the best of my knowledge and record and nothing has been concealed from this honourable Tribunal.

Deponent

SUPERINTENDENT (ESTT)
PHE DEPARTMENT

Identified by

Senior Government Pleader
KPK Service Tribunal Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 29/2016

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6. District Nazim Karak
7. Mr. Allah Nawaz, SDO PHE Karak ..... Respondents

PARA WISE COMMENTS OF RESPONDENTS NO.1, 2, 3 & 4

Respectfully Sheweth,

Preliminary Objections

1. That appellant has got no locus standi.
2. That appellant has not come to this Hon'able tribunal with clean hands.
3. The appeal is time barred.
4. The appeal is barred by law.
5. The appeal is not maintainable in its present form.

Facts of the case

1. Pertains to record, hence no comments.

2. Pertains to record. The appellant has been appointed/ promoted as SDO (BPS-17) on acting charge basis on 13-02-2015. However, according to Sub Rule (6) of Rule 9 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rule, 1989, acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis.

3. Incorrect and not admitted. The appellant was transferred to Lakki Marwat in the public interest as he was due for the same upon his promotion on acting charge basis.

4. Correct to the extent that the appellant filed a departmental appeal which was not considered by the competent authority, being devoid of any merit.

5. Incorrect. As explained in Para-4 above.

6. Incorrect and not admitted. The appellant has got no cause of action to file the instant appeal.

GROUNDS:

a. That ground 'a' of the appeal is incorrect, not admitted and misconceived. The appellant has been transferred and posted to PHE Division Lakki Marwat in the public interest as his rotation after promotion was due. Hence this Department's Notification dated 05-10-2015 is quite legal, lawful and justified.

b. That ground 'b' of the appeal is incorrect and not admitted. Detail reply has been given above Para.

c. That ground 'c' of the appeal is incorrect, not admitted and misconceived. As already explained in Para-a above.

d. That ground 'd' of the appeal is incorrect and denied as the appellant has served at PHE Division Karak for more than one & half year. Moreover, he has been recently promoted and his rotation/transfer was inevitable. The appellant is pursuing posting of his choice which bodes his vested interest and hence, inconsistent to the provisions, contained in Posting/Transfer Policy of the Provincial Government.

e. That ground 'e' of the appeal is incorrect and not admitted. As explained in the preceding paras. The competent authority is not bound to assign any reasons for the transfer of a civil servant.

f. That ground 'f' of the appeal is incorrect, misconceived. Denied as the order dated 05-10-2015 was issued in the public interest and not against the posting/transfer policy of the government.

g. No comments.

h. Incorrect and not admitted. This accusation of the appellant requires evidence.

i. That the respondents seek leave of this Hon'ble Tribunal to raise additional grounds at the time of arguments.

PRAYERS

Keeping in view the position explained above, it is very humbly requested that the instant appeal being devoid of any merit, may graciously be dismissed in favour of the respondents with cost throughout.

CHIEF ENGINEER (SOUTH)
PHE PESHAWAR
(Respondent No.2)

SECRETARY TO GOVT. OF KPK
PHE DEPARTMENT
(Respondent No.1)

SUPERINTENDING ENGINEER
PHE CIRCLE KOHAT
(Respondent No.3)

EXECUTIVE ENGINEER
PHE DIVISION KARAK
(Respondent No.4)

Before the KPK Service Tribunal, Peshawar.

Appeal No. 29/2016

Asif Farooq VS Govt: of KPK through Secretary PHE Department, Peshawar etc.

Application for deletion of respondents No. 5 and 6 from the List of respondents, inadvertantly been impleaded as party.

Respectfully Sheweth:

1. That the above titled appeal is Subjudice before the Court in which next date is fixed for reply of respondents.

2. That in the above titled appeal resp: No. 5 and 6 were impleaded as respondents, which inadvertantly been impleaded as respondents, needs to be deleted.

28.03.16.

It is therefore humbly requested that respondents No 5 & 6 may kindly be deleted from the List of respondents.

Appellant

Through Shahzada Irfan Ali
Advocate Peshawar.

Dated: 28-3-2016

Before the KPK Service Tribunal, Peshawar.

Appeal No. 29/2016

Asif Farooq vs Govt: of KPK through Secretary PHE Department, Peshawar etc.

Application for deletion of respondents No. 5 and 6 from the List of respondents, inadvertantly been impleaded as party.

Respectfully Sheweth:

1. That the above titled appeal is Subjudice before the Court in which next date is fixed for reply of respondents.

2. That in the above titled appeal resp: No. 5 and 6 were impleaded as respondents, which inadvertantly been impleaded as respondents, needs to be deleted.

It is therefore humbly requested that respondents No 5 & 6 may kindly be deleted from the List of respondents.

Appellant

Through Shahzada Irfan Ali Advocate Peshawar.

Dated: 28-3-2016