

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

**BEFORE: KALIM ARSHAD KHANCHAIRMAN
MUHAMMAD AKBAR KHAN... MEMBER (E)**

Service Appeal No.1061/2023

Date of presentation of appeal.....09.05.2023
Date of Hearing.....20.09.2023
Date of Decision.....20.09.2023

Mr. Kashif Kanungo, Naib Tehsildar (OPS), Bannu.....Appellant

Versus

1. **The Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.**
2. **The Commissioner, Bannu Division, Bannu.**
3. **Mr. Turab Shah Kanungo BPS-11, Naib Tehsildar (OPS) Naurang, Lakki Marwat.**

Present:

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

Fazal Shah Mohmand
Additional Advocate General and

Muhammad Jan District Attorney.....For official Respondents

Mr. Muhammad Usman Khan Turlandi,
Advocate.....For private Respondent No.3

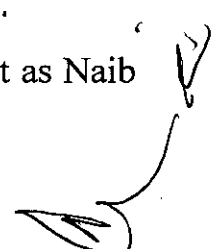
**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER DATED 09.03.2023 AND 24.03.2023
WHEREBY THE APPELLANT WAS PREMATURELY
TRANSFERRED AND AGAINST REJECTION ORDER
DATED 27.04.2023 WITHOUT SHOWING ANY REASON**



JUDGMENT

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KALIM ARSHAD KHAN CHAIRMAN: The facts gathered from the memorandum and grounds of appeal are that the appellant is employee of the Revenue Department and was Girdawar/Kanungo in BPS 11 but working in his own pay and scale as Naib Tehsildar Bannu vide order dated 29.09.2022; that vide order dated 09.03.2023, he was repatriated parent office, allegedly, on political basis; that he filed departmental appeal against the order dated 09.03.2023 and during the pendency of the departmental appeal, vide order dated 24.03.2023, the private respondent, who too was Kanungo, was transferred and posted in his own pay and scale, as Naib Tehsildar Bannu, against the post from where the appellant was transferred; that the appellant filed another representation in continuation of the earlier one but the departmental appeal was rejected on 27.04.2023, hence, this appeal, mainly, on the grounds that the impugned order was against the law, policy, rules and that the transfer was premature and politically motivated.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant. It was mainly contended by the official respondents that posting of the appellant as Naib

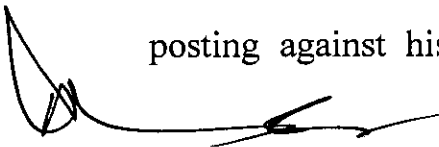


Tehsildar, was in his own pay and scale but he was not efficiently performing his duties; that the appellant was domicile holder of the same Tehsil, therefore, he was serving there in violation of the Board of Revenue instructions vide No.Estt:I/Posting/Transfer/Policy/1013-55 dated 09.01.2020. the private respondent contended that he was senior to the appellant; that posting/transfer was the domain of the government and thus that could not be challenged; that the appellant was not transferred rather repatriated and he has challenged the repatriation order, which could not be challenged.

3. We have heard learned counsel for the appellant and learned Additional Advocate General, learned District Attorney for the official respondents and learned counsel for private respondent.

4. The Learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned law officers and learned refuted the same by pressing their stances.

5. There is no ifs ands or buts about the fact that the appellant and private respondent, both are Kanungos/Girdawars, therefore, none of the two are having any locus standi to strive for posting in their own pay and scale, against a post in a higher grade. Even the civil servant, who is in the relevant grade cannot claim posting against his choice post rather it is the domain and



prerogative of the departmental authorities to post a Civil Servant against any post. Reliance is placed on 2018 SCMR 1411 titled "Khan Muhammad versus Chief Secretary Government of Balochistan and others", wherein the Supreme Court of Pakistan held that *"The impugned notification stipulates that the petitioner and the respondent No.3 were posted/transferred in their "own pay and scale". In the case of Province of Sindh v. Ghulam Fareed (above) it was held, that posting/transferring a civil servant on his own pay and scale (OPS) is not legally permissible:*

"11. We have inquired from the learned Additional Advocate-General to show us any provision of law and or rule under which a Civil Servant can be appointed on higher grade/post on OPS basis. He concedes that there is no specific provision in the law or rule which permits appointment on OPS basis. He, however, submitted that in exigencies the Government makes such appointments as a stop gap arrangement. We have examined the provisions of Sindh Civil Servants Act and the Rules framed thereunder. We do not find any provision which could authorize the Government or Competent Authority to appointment [of] any officer on higher grade on "Own Pay And Scale Basis". Appointment of the nature that, too of a junior officer causes heart burning of the senior officers within the cadre and or department. This practice of appointment on OPS basis to a higher grade has also always been discouraged by this Court, as it does not have any sanction of law, besides it impinges the self respect and dignity of the Civil Servants who are forced to work under their rapidly and unduly appointed fellow officers junior to them. Discretion of the nature if allowed to be vested in the

Competent Authority will offend valuable rights of the meritorious Civil Servants besides blocks promotions of the deserving officers." The Supreme Court further held that "18.

Under section 10 of the Act a civil servant cannot insist to be posted or transferred to a particular post but this does not mean that a civil servant can be made to serve under a subordinate. Moreover, while section 10 does not prescribe a minimum period during which a civil servant must serve at his post it does not mean that the Government without assigning any reason can move a civil servant from the place he was posted to after a month or subject the civil servant to repeated postings in a short period of time because this would amount to punishing him. Such postings also adversely affect the public interest and result in the wastage of scarce resources and constitute bad governance."

6. For the reasons we hold that neither the appellant nor private respondent but in view of the Posting/Transfer Policy clause xiii, the concerned authorities shall ensure the posting of proper person in grade 14 against the post of Naib Tehsildar. The appeal is disposed of in the above terms. Consign.
7. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 20th September, 2023.*



KALIM ARSHAD KHAN

Chairman



MUHAMMAD AKBAR KHAN

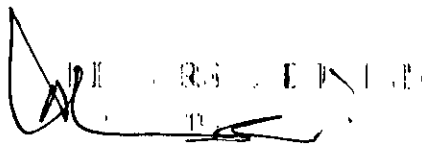
Member (Executive)

SA No.1061 of 2023
Titled Kashif versus SMBR etc

20th September, 2023.

1. Learned counsel for the appellant and private respondent and learned AAG & District Attorney for the official respondents are present.
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3. The learned counsel for the private parties and learned law officers have been heard. The learned counsel for the private respondent has requested for remission of costs imposed on the previous date saying that the private respondent was not served that is why he could not put appearance on the dates fixed. Let in the interest of justice the costs imposed upon the private respondent be remitted.
4. Vide our detailed judgment of the day, placed separately on file, we hold that neither the appellant nor private respondent but in view of the Posting/Transfer Policy clause xiii, the concerned authorities shall ensure the posting of proper person in grade 14 against the post of Naib Tehsildar. The appeal is disposed of in the above terms. Consigned
5. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 20th September, 2023.*


MUHAMMAD AKBAR KHAN
Member (Executive)


KALIM ARSHAD KHAN
Chairman