

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

Service Appeal No. 1663/2023

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

Mazhar Iqbal, Patwari Halqa Moza Kharash, District Hangu.  
..... (Appellant)

Versus

1. Commissioner Kohat Division, Kohat.
2. Deputy Commissioner, Hangu.
3. Abdul Wahab, Patwari Halqa Moza Samana, District Hangu.  
..... (Respondents)

Mr. Manzoor Qadir,  
Advocate

... For appellant

Mr. Asad Ali Khan,  
Assistant Advocate General

... For official respondents


Mr. Anwar Hussain,  
Advocate

... For private respondent No. 3.

Date of Institution..... 16.08.2023  
Date of Hearing..... 13.09.2023  
Date of Decision..... 13.09.2023

**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 order dated 15.08.2023 vide which appeal of the appellant has been rejected against the transfer order dated 08.08.2023. It has been prayed that on acceptance of the instant service appeal, the impugned orders of respondents No. 1 & 2 dated 15.08.2023 and 08.08.2023 respectively, might be set aside and declared as illegal and void-ab-initio and the appellant might be allowed to complete his tenure according to Posting/Transfer Policy, 2009.

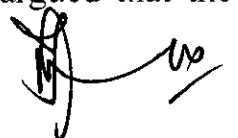


2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was transferred from Moza Kotki to Kharasha vide order dated 11.05.2023. He was again transferred from Kharasha to Samana vide order dated 08.08.2023. Feeling aggrieved, the appellant preferred appeal to respondent No. 1 which was rejected vide order dated 15.08.2023; hence the instant appeal.

3. Respondents were put on notice who submitted their reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Assistant Advocate General 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, argued that impugned transfer order was in violation of Posting/Transfer Policy, 2009 as the appellant was transferred just after 03 months without observing the policy in respect of tenure. He further argued that the appellant was not treated in accordance with law and rules and that his rights were guaranteed under the law and the act of official respondents was a clear violation of the provisions of law and rules governing the civil servants. He further argued that the impugned order was not backed by any legal or cogent reason and was a classic case of illegal and irregular exercise of power and misuse of authority. He requested that the appeal might be accepted as prayed for.

5. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was transferred in accordance with the procedure in vogue. He, being government servant, had no right/choice to perform his duty at his own will. He further argued that the



appellant was transferred on administrative urgency to Halqa Samana to ensure peaceful conduct of day to day official affairs particularly Independence Day celebrations of the instant year on the historical and visiting spot of Samana. He requested that the appeal might be dismissed. Learned counsel for private respondent No. 3 relied on the arguments of learned AAG. He added that the appellant had not explained the malafide of the respondents as claimed by him.

6. Arguments and record presented before us transpire that the appellant, who is a Patwari in the office of Deputy Commissioner Hangu, had been transferred from Patwar Halqa Kharasha to Patwar Halqa Samana vide order dated 08.08.2023, just after serving for three months there, and the same has been impugned before this Tribunal. Through the same order private respondent No. 3 has been transferred from Samana to Kharsasha. From the record, it appears that prior to the issuance of the impugned order, vide order dated 11.05.2023, appellant was transferred from Kotki to Kharasha and through the same order, private respondent No. 3 was transferred from Hangu to Samana. No transfer history, of both the appellant and private respondent No. 3, has been provided other than these two orders. During the course of arguments learned counsel for the appellant provided two orders, one dated 24.09.2020 through which private respondent No. 3 awaiting posting was transferred to Kharasha, and the second dated 11.11.2019 vide which appellant was transferred from Samana to Dallan and private respondent No. 3 was transferred from Barh Abbasskhel to Kharasha.

7. When confronted with the question as to why the appellant was not allowed to complete his normal tenure of posting at Kharasha, the learned




AAG could not provide any solid ground for this pre-mature transfer except for the response given in Ground D of the reply of official respondents wherein it is mentioned, "the appellant was transferred on Administrative urgency to Halqa Samana to ensure peaceful conduct of day to day official affairs particularly Independence Day celebration of the instant year on this historical/visiting spot i.e Samana."

8. From the above discussion, it is clear that the appellant was transferred from Patwar Halqa Kharasha to Patwar Halqa Samana without completing his normal tenure of posting which is violation of the posting/transfer policy of the Provincial Government. We feel that matters of posting/transfer and completing the tenure of any posting by a civil servant are not to be dealt in an arbitrary manner. The competent authorities should stick to the rules and policies that they themselves have drafted for smooth and efficient running of the official business. They should not, therefore, disregard those rules and policies except in case of any exigency in the matter. In the service appeal before us, we do not see any cogent reason assigned by the competent authority for premature transfer of the appellant from Kharasha to Samana.

9. In view of the above discussion, the appeal is allowed as prayed for with the direction to the respondents to allow the appellant to complete his normal tenure of posting at Kharasha. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 13<sup>th</sup> day of September, 2023.*

  
(FAREEHA PAUL)  
Member (E)


  
(SALAH-UD-DIN)  
Member (J)

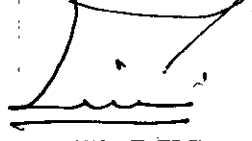
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13<sup>th</sup> Sept. 2023 01. Mr. Manzoor Qadir, Advocate for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the official respondents present. Mr. Anwar Hussain, Advocate for private respondent No. 3 present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, the appeal is allowed as prayed for with the direction to the respondents to allow the appellant to complete his normal tenure of posting at Kharasha. Costs shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 13<sup>th</sup> day of September, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(SALAH-UD-DIN)  
Member (J)

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