

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR, AT CAMP COURT, ABBOTTABAD**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**  
**SALAH-UD-DIN ... MEMBER (Judicial)**

*Service Appeal No.1886/2022*

Date of presentation of Appeal.....21.10.2022  
Date of Hearing.....25.09.2023  
Date of Decision.....26.09.2023

**Hafiz Muhammad Haroon**, Regional Director Prosecution, Hazara Division Abbottabad (BPS-20) as Senior Public Prosecutor (BPS-19)  
.....*Appellant*

Versus

1. **The Government of Khyber Pakhtunkhwa** through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **Secretary to Government of Khyber Pakhtunkhwa, Home & Tribal Affairs Department**, Civil Secretariat, Peshawar.
3. **Director General Prosecution**, Khyber Pakhtunkhwa, Peshawar.
4. **Saqib Sultan Jadoon, Senior Public Prosecutor (BPS-19)**, Directorate of Prosecution, Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Present:

Mr. Muhammad Aslam Tanoli, Advocate.....For the appellant  
Mr. Asif Masood Ali Shah, Deputy District Attorney..For official respondents  
Mr. Arshad Khan Tanoli, Advocate.....For private respondent No.4

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**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE NOTIFICATION NO.SO(PROG)/HD/1-2/POST&TRANS/2022 DATED 15.09.2022, WHEREBY THE APPELLANT HAS BEEN TRANSFERRED FROM THE POST OF REGIONAL DIRECTOR PROSECUTION, HAZARA DIVISION ABBOTTABAD (BPS-20) TO KOHISTAN UPPER AS DISTRICT PUBLIC PROSECUTOR (BPS-19) AND RESPONDENT NO.4 HAS BEEN POSTED VICE THE APPELLANT AGAINST WHICH HIS DEPARTMENTAL APPEAL/REVIEW DATED 19.09.2022 HAS BEEN REJECTED BY RELIEVING THE APPELLANT VIDE ORDER DATED 27.09.2022.**



## **JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Relevant facts of the case in brief as narrated in the memo and grounds of appeal are that the appellant was initially appointed as Additional Public Prosecution (BPS-17) through Khyber Pakhtunkhwa Public Service Commission; that he was posted as Regional Director (a post in BPS-20) vide Notification dated 24.11.2020 in his own pay scale. That he took charge of the post on 07.12.2020 and after serving for one and half year, he was transferred and posted as District Public Prosecutor, Upper Kohistan vide impugned Notification dated 15.09.2022. Feeling aggrieved of the said notification, he filed departmental appeal/review petition on 19.09.2022, which was rejected, hence, the instant service appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellant, learned Deputy District Attorney for the official respondents and learned counsel for private respondent No.4.

04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy



District Attorney assisted by the learned counsel for private respondent No.4, controverted the same by supporting the impugned order(s).

05. The appellant claims that he was not allowed to complete his normal tenure of posting, therefore, his transfer was in violation of Posting/Transfer Policy of the Provincial Government and also against judgment of the Superior Court reported in PLD 1995 SC 530 and 2013 PLD SC 195. He further contends that there were no departmental proceedings pending against him nor the impugned order was passed in any exigency, therefore, the order was to humiliate and victimize the appellant because the Directorate of Prosecution was annoyed on inspection of DPP Office, Lower Kohistan, who (DPP) was given final show cause notice by the authority due to his continuous absence from duty for three years. That the appellant was senior most officer and was replaced with a junior officer. That the appellant was in the last leg of his service. On the other side, the contention of the official respondents is that the post of Regional Director Prosecution was a BPS-20 post and could only be filled by an officer of BPS-20, however, there was no officer of Grade-20 available in the department, therefore, post of Regional Director was filled in by posting of a Grade-19 officer in his own pay & scale. It was added that the appellant was posted as Regional Director 07.12.2020 and transfer vide order dated 15.09.2022 i.e. almost two years i.e. after completion of normal tenure of posting. It was also contended that during his posting as Regional Director, he was charge sheeted for non-reporting the long absence of the officer under his command. Private



respondent No.4 contended that the appellant had failed to supervise field formation and was proceeded under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

06. There is no denial of the fact that both the appellant and private respondent are officers in Grade-19 while the post of Regional Director, Directorate of Prosecution Hazara Division is of Grade-20. In disregard of various pronouncements of superior courts, it appears that the official respondents have not made any attempt to make promotions from amongst the officers of BPS-19, so that proper person could be posted against proper post. Resorting to filling the post on own pay & scale (OPS) basis has also been deprecated in a number of judgments by the Supreme Court of Pakistan. It is true that posting of a senior person under a junior colleague disturbs the discipline of the department but this does not mean that a senior, just by a number or so in the seniority list of equal grade persons, would have a permanent right to remain posted for years on a higher post and that too, on OPS basis, especially when the written contention of the department is that the appellant has spent almost two years as Regional Director and such contention was not rebutted by the appellant, therefore, his ground of premature transfer can also be safely said to be having no legs to stand upon.

07. This Tribunal in a recent judgment in Service Appeal No.1061/2023 titled "Kashif Vs. Senior Member Board of Revenue", in a matter of posting on OPS basis, has held as under:



"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 SCMR1411 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."

08. The last but not the least, the appellant had assumed the charge in compliance with the impugned transfer order and has spent a couple of months there, while private respondent has also assumed the charge as Regional Director.



09. For the reasons 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-20 against the post of Regional Director. The appeal is disposed of in the above terms. Consign.

10. *Pronounced in open Court at Camp Court, Abbottabad and given under our hands and the seal of the Tribunal on this 26<sup>th</sup> day of September, 2023.*



**KALIM ARSHAD KHAN**  
Chairman  
Camp Court, Abbottabad



**SALAH-UD-DIN**  
Member (Judicial)  
Camp Court, Abbottabad


*\*Mutazem Shah\**


S.A #.1886/2022

**ORDER**

26<sup>th</sup> Sept. 2023

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for official respondents No.1 to 3 and learned counsel for private respondent No.4 present.
2. Vide our detailed judgment of today placed on file, instant service appeal is disposed of. Consign.
3. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 26<sup>th</sup> day of September, 2023.*

  
(Salah-Ud-Din)  
Member (J)

  
(Kalim Arshad Khan)  
Chairman  
Camp Court, Abbottabad

\*Mutazem Shah\*




22<sup>nd</sup> June, 2023

1. Appellant alongwith his counsel present. Mr. Asad Ali Khan, Assistant Advocate General alongwith Mr. Zafar Abbas Mirza, District Public Prosecutor for the official respondents No.1 to 3 present. Private respondent No.4 in person present.

2. Private respondent No.4 submitted photocopy of the reply alongwith Wakalat Nama of Mr. Muhammad Arshad Khan Tanoli, Advocate. He is directed to produce original set of reply for scanning at Principal Seat, Peshawar before the next date. To come up for arguments on 25.09.2023 before the D.B at Camp Court, Abbottabad. P.P given to the parties.

**SCANNED  
KPST  
Peshawar**

  
(Kalim Arshad Khan)  
Chairman  
Camp Court, Abbottabad


*\*Mutazem Shah \**

25<sup>th</sup> Sept. 2023

1. Learned counsel for the appellant, Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Zafar Abbas Mirza, Deputy Public Prosecutor for official respondents No.1 to 3 and learned counsel for private respondent No.4 present.

2. Partial arguments heard. To come up for remaining arguments, by tomorrow i.e. 26.09.2023 before D.B at Camp Court, Abbottabad. P.P given to the parties.

(Salah-Ud-Din)  
Member (J)

  
(Kalim Arshad Khan)  
Chairman  
Camp Court, Abbottabad.

*\*Adnan Shah \**