

25th Sept. 2023

1. Learned counsel for the appellant present.
2. He made a request for adjournment in order to prepare the brief. Adjourned. To come up for preliminary hearing, by tomorrow i.e. 26.09.2023 before S.B. P.P given to the appellant.



(Kalim Arshad Khan)
Chairman
Camp Court, Abbottabad

*Adnan Shah *

Service Appeal No.303/2023 titled "Mian Shahid Ur Rehman Vs. Government of Khyber Pakhtunkhwa through Secretary Home Khyber Pakhtunkhwa, Peshawar, and others"

ORDER

26th Sept. 2023 **Kalim Arshad Khan, Chairman:** Learned counsel for the appellant present and heard.

2. The appellant has challenged the impugned transfer order dated 15.09.2022 on the ground that he was senior to the private respondent had was thus every right to be posted against the senior post on which the private respondent was posted vide the impugned order. The appellant rests his claim on Rule-9 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 which rule is reproduced as under:

"9. Appointment on Acting Charge or current Charge Basis.---(1) Where the appointing authority considered it to be in the public interest to fill a post reserved under the rules for departmental promotion and the most senior civil servant belonging to the cadre or service concerned, who is otherwise



eligible for promotion, does not possess the specified length of service the authority may appoint him to that post on acting charge basis. ¹[:

Provided that no such appointment shall be made, if the prescribed length of service is short by more than ²{three years}.]

³[:(2)]

(3) In the case of a post in Basic Pay Scale 17 and above, reserved under the rules to be filled in by initial recruitment, where the appointing authority is satisfied that no suitable officer drawing pay in the basic pay scale in which the post exists is available in the category to fill the post and it is expedient to fill the post, it may appoint to that post on acting charge basis the most senior officer otherwise eligible for promotion in the organization, cadre or service, as the case may be, in excess of the promotion quota.

(4) Acting charge appointment shall be made against posts which are likely to fall vacant for period of six months or more. Against vacancies occurring for less than six months, current charge appointment may be made according to the orders issued from time to time.

(5) Appointment on acting charge basis shall be made on the recommendations of the Departmental Promotion Committee or the Provincial Selection Board, as the case may be.

(6) Acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis."

The argument and claim of the appellant that he was justified in seeking posting against the post of Regional Director (BPS-20 post) on the strength of Rule-9 ibid is misconceived because Rule-9 speaks about promotion on acting charge basis,

whereas, the impugned notification is not a promotion rather a transfer notification, therefore, the appellant being equally placed with the private respondent in Grade-19, does not have any locus standi to challenge a posting order made on own pay & scale basis. However, this would not mean that the respondent was justified in holding a higher post on OPS basis. Since this Tribunal has decided a Service Appeal bearing No.1866/2022 titled "Hafiz Muhammad Haroon Vs. Government of Khyber Pakhtunkhwa through Chief Secretary & others" ^{decided today.} in similar manner, therefore, there is no need to put the other side on notice as the respondents in this appeal especially the private respondent is the same who has been heard in ^{that} the appeal filed against the same impugned order. It is, however, observed that the department should instead post proper person at the proper place at the earliest possible, so that the unrest amongst the officers of the same grade could be avoided. Thus, we dispose of this appeal in the above terms. Consign.

3. *Pronounced in open Court at Camp Court, Abbottabad and given under my hand and seal of the Tribunal on this 26th day of September, 2023.*



(Kalim Arshad Khan)

Chairman

Camp Court, Abbottabad