

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1437/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Engineer Main Gul khan, Executive Engineer, Public Health Engineering  
Division Tank. .... (Appellant)

VERSUS

1. Chief Secretary to Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa Public Health Engineering Department Peshawar.
3. Chief Engineer South Public Health Engineering Department Peshawar.
4. Superintendent Engineer, Public Health Engineering Department D.I.Khan Circle D.I.Khan.
5. Abdur Rehman, SDO Public Health Engineering Department Sub-Division Tank. .... (Respondents)

Mr. Rashid Rauf Swati  
Advocate ... For appellant

Mr. Muhammad Asghar Khan  
Advocate ... For private respondent

Mr. Muhammad Jan  
District Attorney ... For respondents

Date of Institution.....05.07.2023

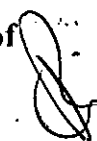
Date of Hearing.....25.09.2023

Date of Decision.....25.09.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this appeal by setting aside/cancelling  
Notification dated 27.03.2023 the impugned transfer of



**appellant from the post of Executive Engineer Public Health Engineering Division Tank to the post of Deputy Director Lab/Projects PHE Department, may graciously be cancelled and as a result thereof the posting of appellant as XEN PHE Division Tank, may graciously be restored.”**

2. Brief facts of the case, as given in the memorandum of appeal are, that appellant was promoted to the post of Executive Engineer/Deputy Director (BPS-18) ON 22.07.2022, and was posted as Executive Engineer Public Health Engineering Division, District Shangla. After a period of four months the appellant was transferred to the post of Designing Engineer in the office of Chief Engineer (East) Public Health Engineering Department, Peshawar vide notification dated 11.11.2022. After a month of previous order, appellant was again transferred to the post of Executive Engineer Public Health Engineering Division District Tank vide notification dated 15.12.2022. Again after period of four months appellant was transferred to the post of Deputy Director Lab/Projects PHE Department Peshawar vide order dated 27.03.2023. Feeling aggrieved appellant filed departmental appeal which was not responded to, hence, the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further argued that the impugned transfer order is not in the public interest rather on the basis of malafide and political victimization, therefore, liable to set aside. He submitted that under Khyber Pakhtunkhwa posting/transfer policy normal of

service is three years and transfer of appellant is in the violation of such policy need cancellation. He, therefore, requested for acceptance of instant service appeal.

5. Learned District Attorney contended that the appellant had been treated in accordance with law and rules. He further contended that the appellant on administrative grounds was transferred from PHE Division, Tank to Deputy Director Lab/Projects PHE Department after obtaining NOC from Election Commission of Pakistan. He submitted that appellant has acted upon the transfer/posting and relinquished his charge as Executive Engineer PHE Division, Tank therefore, he requested for dismissal of the instant service appeal.

6. Perusal of record reveals that appellant is serving in Public Health Engineering Department and was promoted to BPS-18 vide notification No. SO (Estt)PHED/1-17/2022 dated 22.07.2022 and posted as Executive Engineer PHE Division Shangla vide order date bearing No. SO(Estt)PHED/1-45/2022 dated 27.07.2022. He was transferred as Designing Engineer PHE Division vide order dated 15.12.2022 within one month. Again appellant was transferred as Deputy Director Lab/Projects PHE Department vide impugned order dated 27.03.2023. Government of Khyber Pakhtunkhwa introduced a Posting/Transfer Policy of civil servants, condition relevant to the instant appeal are;

i. All the posting/transfer shall be made in the public interest and shall not be abuse/misuse to victimize the government servants.

iv. The normal tenure of posting shall be three years subject to condition that for the officers/officials posted in unattractive areas, the tenure shall be two years and

for hard areas the tenure shall one year. The unattractive and hard area will be notify by the Government.

xiii. While considering posting/transfer proposals all the concerned shall keep in mind the following.

a. To ensure the posting of proper person on proper posts. the performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity the concerned officers/officials be considered.


7. So, in accordance with clause iv of posting/transfer policy mentioned above, normal tenure of posting of civil servants is two years as District Tank is unattractive area but after the three months and eleven days appellant was transferred without allowing him to complete normal tenure as per government own policy It is also important to mention here that junior in rank and basic pay scale officer of BPS-17 SDO PHE Subdivision Tank was authorized to hold charge of the post of Executive Engineer PHE Division Tank who is not the proper person to hold the post which in fact will have to be kept in mind by the authorities at the time of posting/transfer of the civil servants. Appellant was made rolling stone as in the short span of nine months his four posting/transfer orders were issued by the authority which is also violation of settled norms of justice. Respondents failed to point out any exigency which compel the authority to issue impugned posting/transfer order.

8. The nutshell of the above discussion is that above mentioned impugned order dated 27.03.2023 was not issued in public interest or exigencies of the service and as such is not sustainable in the eyes of law. This premature transfer is in violation of clause i, iv and xiii (a) of posting/transfer policy. It is also pertinent to


mention here that due to retirement of Mr. Abdur Rehman who was authorized to hold additional charge of the post of Executive Engineer Public Health Engineering Department Division Tank upon attaining age of superannuation vide notification dated 28.08.2023 the post of Executive Engineer PHE Division Tank is also lying vacant from 05.09.2023 and appellant is suitable for it.

9. As a sequel to above discussion, we allow the appeal as prayed for. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 25<sup>th</sup> day of September, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)


\*Kaleemullah


  
(RASHIDA BANO)  
Member (J)

**ORDER**

25<sup>th</sup> Sep, 2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Irfan Anjum for the respondents present.
2. Vide our detailed judgement of today placed on file, we allow the appeal as prayed for. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 25<sup>th</sup> day of September, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)