

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1301/2022

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

Munir Ahmad, District Monitoring Officer BPS-17 District Karak under
transfer to District Tank. (Appellant)

VERSUS

1. The Secretary to Government of Khyber Pakhtunkhwa Health Department,
Peshawar.
2. The Director General Health Services, Khyber Pakhtunkhwa Peshawar.
3. Mr. Janzeb Khan, DMO/District Tank under transfer to District Karak.
..... (Respondents)

Mr. Noor Muhammad Khattak
Advocate ...

For appellant

Mr. Arbab Saiful Kamal
Advocate ...

For Private respondent

Mr. Muhammad Jan
District Attorney ...

For respondents

Date of Institution.....25.08.2022
Date of Hearing.....27.09.2023
Date of Decision.....27.09.2023

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:

**“That on acceptance of this service appeal the impugned
order dated 26.04.2022 may please be set aside and the
appellant may please be retained at District Karak.”**


2. Brief facts of the case, as given in the memorandum of appeal are that
appellant was initially a contract employee in a project and later on was
regularized in the respondent department. That upon regularization he

alongwith others adjusted in the Independent Monitoring Unit of the Health Department. The appellant was posted as District Monitoring Officer BPS-17 vide notification dated 15.01.2018, The appellant was transferred from District Karak to Tank vide order dated 17.09.2020. Completing normal tenure at hard area he was transferred from DMO Tank to DMO Karak vide order dated 15.04.2022 and assume charge of the post on 18.04.2022. On 26.04.2022 respondents illegally withdrew the transfer order of the appellant. Feeling aggrieved, he filed departmental appeal which was not responded to, During pendency of departmental appeal, he was again transferred from District Tank to District Kohat vide order dated 20.07.2022 and this order was withdrawn on 28.07.2022.

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 in action of the respondents by issuing the impugned order is against the law, facts and norms of natural justice, hence not tenable in the eye of law therefore, liable to be set aside. He further argued that appellant has not been treated in accordance with law and rules and respondents violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He submitted that impugned order dated 26.04.2022 is the violation of Clause I, IV and IX of the posting transfer policy of the government. He, therefore, requested for acceptance of the instant service appeal.

5. Learned counsel for private respondent assisted by learned District Attorney contended that the appellant was treated in accordance with law and



rules on the subject. He further contended that appellant is a civil servant whereas transfer/posting of a civil servant comes within the purview of terms and conditions of services. A civil servant is to serve where he is posted by the competent authority. The competent authority has been empowered by Section 10 of Civil Servant Act 1973 to transfer and post a civil servant in exigency of service.

6. Perusal of record reveals that appellant is serving in the respondent department in BPS-17 who vide order notification dated 15.01.2018 was posted as District Monitoring Officer at District Karak, appellant vide order dated 17.09.2020 posted as DMO Tank and after completion of his tenure at tank in unattractive area was transferred to DMO Karak vide order dated 15.04.2022. Appellant assumed charge of the post of DMO Karak on 18.04.2022. But within a week of charge assumption by the appellant posting/transfer order was withdrawn through impugned order dated 26.04.2022. Appellant filed departmental appeal on 15.05.2022. During pendency of departmental appeal appellant was again transferred/posted as DMO Kohat vide order dated 20.07.2020 and interestingly this transfer order was again withdrawn vide order dated 28.07.2022, just after one week. The Government of Khyber Pakhtunkhwa Posting Transfer Policy states that:

i. All the posting/transfer shall be strictly in public interest and shall not be abused/misused to victimize the Government Servants.

ii. All government servants are prohibited to exert political, administrative or any other pressure upon the posting/transfer authorities for seeking posting/transfer of their choice and against the public interest.

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

two years and for the hard areas the tenure shall be one year. The unattractive and hard areas will be notified 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. It is admitted fact on record that appellant had served in unattractive area of Tank for period specified by the government for said area. So his transfer order from District Tank was issued after completion of his normal tenure i.e mature one. It is also admitted fact that appellant assumed charge of the post of DMO Karak and started working as such so in such a situation cancellation of order by the authority without showing any reason ground/cause is not in accordance with spirit of section 21 of general clauses act and also in violation of government own transfer posting policy. It is also important to note here that private respondent No.3 who is also serving in BPS-17 in respondent department was posted DMO Karak vide order dated 15.01.2018. He was transferred from Karak-I to Karak-II vide order dated 17.09.2020. He was transferred vide order dated 15.04.2022 from Karak to Tank while appellant transferred to Karak from Tank and appellant assumed the charge of the post but again respondent No.3 by using his influence got withdrawn said transfer order vide impugned order dated 26.04.2022. It is also pertinent to mention that respondent No.3 remained posted at District Karak from 15.01.2018 till 15.09.2022 i.e four years and eight months at one


station without any break. No one should claim posting of his own choice and in the instant case it seems that respondent No.3 was given such posting of his choice by withdrawing of posting transfer order dated 15.09.2022. This withdrawal order is also in violation of clause ii of transfer/posting policy wherein all government servants are prohibited to exert all sorts of political, administrative or any other pressure upon the authorities for seeking of their own choice. All are equal in eyes of law and deserve equal treatment. Therefore, impugned withdrawal order is against the principle of law and justice. It is established on record that appellant is working as DMO Karak and almost period of one and half years elapsed and only six months as per existing policy left to complete his tenure at District Karak.

8. The nutshell of the above discussion is that, the 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, ii, iv and xiii (a) of posting/transfer policy.

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 27th day of September, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)


ORDER


27th September, 2023 1. Learned counsel for the appellant present. Mr.

Muhammad Jan, District Attorney for official respondents present. Learned counsel for private respondent No. 3 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 27th day of September, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)