

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1556/2023

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Mr. Irshad Khan, Naib Tehsildar, Labor Kot, Settlement Operation Mansehra, Services placed at the disposal of Director Land Records, Khyber Pakhtunkhwa, Peshawar.....(*Appellant*)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Establishment, Khyber Pakhtunkhwa, Peshawar.
2. The Senior Member of Revenue, Khyber Pakhtunkhwa, Peshawar.
3. The Director Land Record, Khyber Pakhtunkhwa, Peshawar.
4. Mr. Muhammad Asad Ullah Naib Tehsildar, Under Transfer to Labor Kot Settlement Operation Mansehra.....(*Respondents*)

Present:-

NOOR MUHAMMAD KHATTAK,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For official respondents

Mr. RABNAWAZ KHAN,
Advocate --- For private respondent

Date of Institution.....31.07.2023
Date of Hearing.....28.09.2023
Date of Decision..... 28.09.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

“That on acceptance of this appeal the impugned order dated 10.05.2023 and appellate order dated 25.07.2023 may very

kindly be set aside and the respondents may kindly be directed to retain the appellant as Naib Tehsildar Labor Kot Settlement Operation Mansehra. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant."

02. Brief facts of the case are that appellant was working as Naib Tehsildar, in the Settlement Operation Mansehra. He was transferred from Girdawar Settlement, Mansehra to Naib Tehsildar, Settlement-II, Mansehra vide order dated 13.12.2022. That without completing his normal tenure he was again transferred from Naib Tehsildara Labor Kot Settlement Operation Mansehra and his services were placed at the disposal of Director Land Records vide order dated 10.05.2023. Feeling aggrieved, the appellant filed departmental appeal which was not responded and thereafter he approached the Peshawar High Court, Peshawar in Writ Petition No. 1804-P/20200 which was disposed of with the direction to respondent No. 2 to decide the departmental appeal of the appellant within a fortnight vide order dated 12.06.2023. The departmental appeal of the appellant was rejected vide order dated 25.07.2023, hence preferred the instant service appeal on 31.07.2023.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned District Attorney and learned counsel for private respondent and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned order dated 10.05.2023 and appellate order dated 25.07.2023 being contrary to law and rules and violation of the Notification dated 22.01.2023 of Election Commission of Pakistan, hence not tenable in the eye of law; that the appellant has not been treated by the respondents in accordance with law and rules; that the respondents have violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973; that the treatment meted out to the appellant is highly discriminatory violative of Clause-I, IV and XIII of the posting/transfer policy of the Government of Khyber Pakhtunkhwa as the appellant has been prematurely transferred.

05. Learned District Attorney on the other hand contended that the order dated 10.05.2023 was issued in the best public interest. Being an experienced Naib Tehsildar (BS-14) private respondent No. 4 was posted as Settlement Naib Tehsildar Mansehra; that no violation of any Article of the Islamic Republic of Pakistan 1973 nor any Section of Election Act 2017 has been made; that the remained posted in the Settlement Operation Mansehra for the last 8/10 years in capacity of Patwari, Girdawar and Naib Tehsildar (Own Pay Scale) but no fruitful result/progress was achieved regarding completion of Settlement activities.

06. Learned counsel for private respondent No. 4 contended that the appellant was appointed in the year 2012 in the Settlement Operation Mansehra and he served more than 11 years; that the appellant has completed his normal tenure of posting at one place; that the impugned order dated 10.05.2023 services of the appellant were placed at the disposal of the Director Land Records; that the posting/transfer is not a vested right of civil

servant and as per law, he can be posted at any place; that the appellant was working in OPS while the private respondent No. 4 was eligible under the law to be posted as Naib Tehsildar; that the posting/transfer was made by the official respondent at a time when ban was relaxed by the Election Commission of Pakistan, so no violation of any provision of Constitution of Islamic Republic of Pakistan, 1973 is made nor any departure is made of Election Act, 2017.

07. Materials available on record reveal that Settlement work in Mansehra district were going on for quite long time. Given slow of work in the District Mansehra the Board of Revenue set targets for completion of Settlement work in certain mouzas of the district. After retirement of Settlement Naib Tehsildar in Settlement Operation Mansehra, the appellant was posted as Naib Tehsildar Settlement Labor Kot Mansehra in his Own Pay & Scale vide order dated 13.12.2022. This was a stop gap arrangement taken in the public interest by the competent authority. Upon availability of regular Naib Tehsildar Mr. Muhammad Asadullah, Naib Tehsildar (BS-14) (respondent No. 4) was posted as Naib Tehsildar Labor Kot Settlement Mansehra vide order dated 10.05.2023. Record further reveal that the respondent No. 4 has already actualized his posting and working as Naib Tehsildar in his station of duty. As regard the question of ban on posting/transfer imposed by Election Commission of Pakistan, we find no violation as the impugned order dated 10.05.2023 has been issued after the Commission lifted ban on posting/transfer of officials from BS-17 and below vide communication dated 10.03.2023. Moreover, the speaking order of the appellate authority reveals that the appellant will be posted as Naib Tehsildar in any other

district where Settlement Operations are underway given the fact that the appellant has been appointed as Naib Tehsildar on acting charge basis during pendency of the appeal.

08. In view of the foregoing discussion we find no merit to intervene in the valid orders dated 10.05.2023 and 25.07.2023 passed by the respondents and as such the instant appeal stands dismissed. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 28th day of September, 2023.*



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)