

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR
AT CAMP COURT, D.I.KHAN

BEFORE: **KALIM ARSHAD KHAN**
SALAH-UD-DIN

...CHAIRMAN
... MEMBER (J)

Service Appeal No.1505/2023

Date of presentation of appeal.....21.07.2023
Date of Hearing.....19.10.2023
Date of Decision.....19.10.2023

Mr. Qaisar Abbas Forester, D.I.Khan Division, D.I.Khan...Appellant

Versus

1. **Government of Khyber Pakhtunkhwa through Secretary Climate Change FE & WD, Khyber Pakhtunkhwa, Peshawar.**
2. **Chief Conservator of Forests, Central Southern Forest Region-I, Khyber Pakhtunkhwa, Peshawar.**
3. **Conservator of Forests, Southern Forest Circle, Bannu.**
4. **Divisional Forest Officer, D.I.Khan Division, D.I.Khan.**
5. **Amjad Ahmad, Incharge Forest Range on Sheikh Baddin Range, D.I.Khan.**

Present:

Mr. Saleem Ullah Khan Ranazai, Advocate.....For the appellant
Mr. Asad Ali Khan, Assistant Advocate GeneralFor Respondents

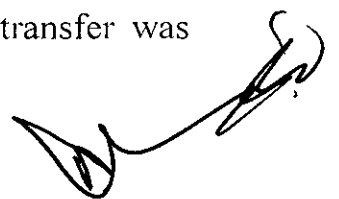
APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 18.07.2023 PASSED BY RESPONDENT NO.1, WHEREBY THE DEPARTMENTAL REPRESENTATION OF THE APPELLANT AGAINST HIS TRANSFER ORDER NO.299 DATED 09.06.2023 ISSUED BY CHIEF CONSERVATOR FOREST CENTRAL SOUTHERN FOREST REGION-I KHYBER PAKHTUNKHWA PESHAWAR VIDE WHICH THE APPELLANT HAS BEEN TRANSFERRED TO DIVISIONAL FOREST OFFICE, HAS BEEN DISMISSED.



JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: The facts gathered from the memorandum and grounds of appeal are that the appellant is Forester in BPS-10 but working in his own pay and scale as Incharge vide order dated 29.08.2022; that vide order dated 09.06.2023, he was relieved from the charge of Range, allegedly, on political basis; that he filed departmental appeal against the order dated 09.06.2023 vide which, the private respondent, who too was Forester, was transferred and posted in his own pay and scale, as Incharge Forest Ranger on Sheikh Buddin Range of D.I.Khan Forest Division, against the post from where the appellant was transferred, which was rejected on 18.07.2023, hence, this appeal, mainly, on the grounds that the impugned order was against the law, policy, rules and that the transfer was premature and politically motivated.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant. It was mainly contended by the official respondents that posting of the appellant as Incharge Sheikh Buddin Range of D.I.Khan Forest Division, was in his own pay and scale but he was junior to the private respondent (Amjad Ahmad); that posting/transfer was



the domain of the government and thus that could not be challenged; that the appellant was not transferred rather repatriated and he has challenged the repatriation order, which could not be challenged.

3. We have heard learned counsel for the appellant and learned Assistant Advocate General, learned for the respondents.

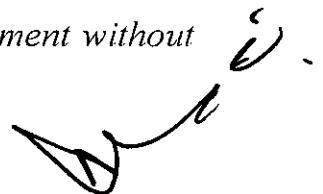
4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned law officer refuted the same by pressing their stances.

5. There is no ifs ands or buts about the fact that the appellant and private respondent, both are Foresters, 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



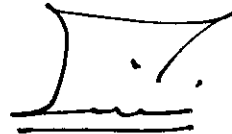
assigning any reason can move a civil servant from the place he was posted to after a month or subject the civil servant to repeated postings in a short period of time because this would amount to punishing him. Such postings also adversely affect the public interest and result in the wastage of scarce resources and constitute bad governance."

6. For the reasons we hold 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 the relevant grade against the post of Forester. The appeal is disposed of in the above terms. Consign.

7. *Pronounced in open Court at D.I.Khan and given under our hands and the seal of the Tribunal on this 19th day of October, 2023.*



KALIM ARSHAD KHAN
Chairman



SALAH UD DIN
Member (Judicial)