

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1269/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mst. Hurmat, LHV, BHU Qamber, Swat.

.... (Appellant)

VERSUS

1. The District Health Officer, Swat.
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. Ruqia, LHV, BHU Bishban Swat. (Respondents)

Mr. Abdul Nasir
Advocate ... For appellant

Mr. Zahid Kakakhel
Advocate ... For private respondent

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....05.06.2023
Date of Hearing.....17.10.2023
Date of Decision.....17.10.2023

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 transfer order dated 17.05.2023 passed by the respondent No. 1 and subsequent appeal dismissal order dated 29.05.2023 may kindly be set aside being based on malafide, political influence, against the law and rules, ineffective upon the rights of appellant.”



2. Brief facts of the case, as given in the memorandum of appeal are that initially the appellant was appointed as LHV BPS-9 and later on after confirmation as PHC Technician (MCH) LHV. On the basis of enquiry report, the appellant was transferred from BHU Qamber to BHU Bishban and private respondent No. 3 was transferred at the place of appellant vide order dated 17.05.2023. Feeling aggrieved appellant preferred departmental appeal on 22.05.2023, which was dismissed vide order dated 29.05.2023; 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 the appellant has not been treated in accordance with law and rules. He further argued that impugned transfer order was passed on the recommendation of inquiry report which is a stigma on her career and the order regarding transfer on such ground is not sustainable in the eyes of law; that posting/transfer order are required to be issued in exigency of service or in the interest of public but impugned order was issued on political influence which is violation of posting/transfer policy.

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. 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 and public interest.



6. Perusal of record reveals that appellant was serving as LHV in respondent department when she was transfer/posted at BHU Bishban from BHU Qamber. It is also pertinent to mention here that perusal of the impugned order date 17.05.2023 reveals that transfer of the appellant was made as per recommendation of inquiry report which means that appellant was transferred at the conclusion of inquiry on the basis of inquiry report. The most important aspect is that in accordance with law, posting/transfer cannot be ordered as punishment as nowhere in the definition of punishment/penalty transfer/posting is mentioned. Otherwise too, if there is inquiry against the appellant, the respondent will have to provide her opportunity of hearing to defend herself. Respondent also in the reply mentioned that appellant was transferred as a result of inquiry report which means impugned order was not passed in public interest or in exigency, therefore, same is not tenable. As per law, no posting/transfer be made as punishment, therefore, it is held that impugned order is not issued in public interest and is hereby set aside. However, respondents are at liberty to transfer the appellant in future in public interest or exigency. Costs shall follow the events. Consign.

7. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 17th day of October, 2023.*


(FAREEHA PAUL)
Member (E)

*Kaleemullah


(RASHIDA BANO)
Member (J)

ORDER

17th Oct, 2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the official respondents present. Learned counsel for private respondent No. 3 present.
2. Vide our detailed judgement of today placed on file, we allow the instant appeal as prayed for. Costs shall follow the events. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 17th day of October, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)