

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
SALAH-UD-DIN ... MEMBER (Judicial)

Service Appeal No.1445/2023

Date of presentation of Appeal.....10.07.2023
Date of Hearing.....28.11.2023
Date of Decision.....28.11.2023

Saleem Khan son of Zareen Khan, resident of Dassu Kohistan presently Incharge Kamila Forest Sub Division of Upper Kohistan.....(*Appellant*)

Versus

1. **The Government** of Khyber Pakhtunkhwa Peshawar through Secretary Forest Peshawar.
2. **Chief Conservator of Forest Region-II**, Abbottabad.
3. **Conservator of Forest**, Upper Hazara Forest Circle Mansehra.
4. **Division Forest Officer**, Upper Kohistan Forest Division Dassu.
5. **Jameer Khan son of Ahmad** present Incharge Herband Forest Sub Division of Upper Kohistan Forest Division.....(*Respondents*)

Present:

Mr. Fazal Haq, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

.....
APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER NO.38 DATED 23.05.2023, PASSED BY RESPONDENT NO.3 WHEREBY APPELLANT IS TRANSFERRED FROM INCHARGE KOMILA FOREST SUBDIVISION OF UPPER KOHISTAN FOREST DIVISION TO INCHARGE HERBAN FOREST SUBDIVISION OF UPPER KOHISTAN FOREST DIVISION, WHEREBY THE RESPONDENT NO.5 IS ADJUSTED TO BE INCHARGE KOMILA FOREST SUBDIVISION OF UPPER KOHISTAN FOREST DIVISION WHICH IS AGAINST THE LAW, FACTS, CIRCUMSTANCES, VOID, ILLEGAL, UNDER THE POLITICAL PRESSURE, AGAINST THE RULES OF NATURAL JUSTICE AND AGAINST THE DEPARTMENTAL POLICY.



JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case, as enumerated in the memo and grounds of appeal are that appellant was serving as Incharge Komila Subdivision, Upper Kohistan. While serving on the said post, vide impugned order dated 23.05.2023, he was transferred from Komila Forest Subdivision to Harban Forest Subdivision, Upper Kohistan in his own pay & scale and private respondent No.5 was posted on his post in own pay & scale.

02. Feeling aggrieved, the appellant filed departmental appeal on 29.05.2023, which was rejected on 07.07.2023. Therefore, he filed the instant service appeal.

03. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

04. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

05. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).

06. The impugned order dated 23.05.2023 from which the appellant was aggrieved, is reproduced as under:



"As desired by Minister for Climate Change, FE&WD Khyber Pakhtunkhwa Peshawar and communicated through telephonic message of Chief Conservator of Forests Region-I, Peshawar and Chief Conservator of Forests Region-II Abbottabad dated 23.05.2023, the following posting/transfer amongst the Foresters is hereby ordered in the interest of public service with immediate effect till further orders:

S.#	Name of Forester	From	To
1.	Mr. Saleem Khan	Incharge Komila Forest Sub Division of Uper Kohistan Forest Division	Incharge Harban Forest Sub Division of Uper Kohistan Forest Division in his own pay scale
2.	Mr. Jamair Khan	Incharge Harban Forest Sub Division of Upper Kohistan Forest Division scale	Incharge Komila Forest Sub Division of Uper Kohistan Forest Division in his own pay and scale

*Sd/- (Farrukh Sair)
Conservator of Forests
Upper Hazara Forests Circle Mansehra
Memo:*

Copy forwarded to:-

- 1. The Chief Conservator of Forests, Central Southern Forest Region-I Peshawar for information with reference to telephonic message dated 23.05.2023.*
- 2. The Chief Conservator of Forests, Northern Forest Region-II Abbottabad for information with reference to telephonic message dated 23.05.2023. It is requested to kindly approach the competent authority to post suitable*



SDFOs on both Forest Sub-Divisions on urgent basis to ensure forest conservancy. The affairs of both Forest Sub-Divisions cannot be left at the mercy of Foresters.

3. *The Divisional Forest Officer Upper Kohistan Forest Division Dassu for information and necessary action.*

*Conservator of Forests
Upper Hazara, Forest Circle
Mansehra"*

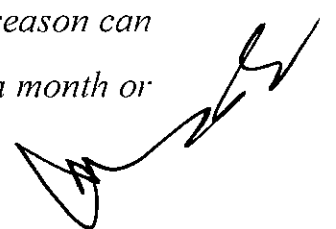
07. Perusal of impugned order in the start of which "*As desired by Minister for Climate Change, FE&WD Khyber Pakhtunkhwa Peshawar*" has been stated, would show that the Conservator of Forests Upper Hazara Forest Circle Mansehra was asked for transfer and posting of the appellant and private respondent, by the Minister for Climate Change who had nothing to do with transfer of employees. When the said point was confronted to the learned Deputy District Attorney, he could not rebut the stance of the appellant that the impugned posting transfer order was politically motivated.

08. The second flaw in the impugned order was that the appellant as well as the private respondent, both are Foresters of BPS-12, while they were posted against the post of SDFO (BPS-17), 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 SCMR 1411 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:

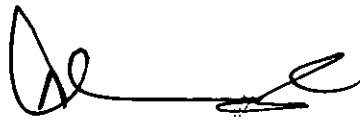
"11. We have inquired from the learned Additional Advocate-General to show us any provision of law and or rule under which a Civil Servant can be appointed on higher grade/post on OPS basis. He concedes that there is no specific provision in the law or rule which permits appointment on OPS basis. He, 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."

09. Therefore, the instant service appeal is disposed of with direction to the competent authority to make transfers in view of the Posting/Transfer Policy clause xiii, ensuring the posting of proper person in grade 17 against the post of Incharge of both the Forest Subdivisions. Consign.

10. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 28th day of November, 2023.*



KALIM ARSHAD KHAN
Chairman



SALAH-UD-DIN
Member (Judicial)


Muazem Shah


S.A #. 1445/2023

ORDER

28th Nov. 2023

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, the instant service appeal is disposed of with direction to the competent authority to make transfers in view of the Posting/Transfer Policy clause xiii, ensuring the posting of proper person in grade 17 against the post of Incharge of both the Forest Subdivisions. Consign.
3. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 28th day of November, 2023.*


(Salah-ud-Din)
Member (J)


(Kalim Arshad Khan)
Chairman
Camp Court, Abbottabad

Mutazem Shah