

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 2456/2023

BEFORE: MISS FAREEHA PAUL ... MEMBER (E)

Dr. Kalim Ullah, Senior Medical Officer, DHQ Hospital, Miran Shah, District North Waziristan R/O Darmangi Garden, Khyber Colony, House No. 5 Warsak Road, Peshawar. (Appellant)

Versus

1. **The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.**
2. **The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.**
4. **Dr. Miraj Wazir General Cadre BPS- 17, Medical Officer DHO Office North Waziristan. (Respondents)**

Mr. Noor Muhammad Khattak, Advocate ... For appellant.

Date of Institution.....	23.11.2023
Date of Hearing.....	05.12.2023
Date of Decision.....	05.12.2023

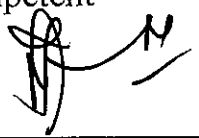
JUDGEMENT

FAREEHA PAUL, MEMBER (E): Instant appeal has been filed under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned notification dated 18.08.2023, whereby the private respondent who is serving as Medical Officer (BPS-17) has been posted against the post of DHO, North Waziristan District and against the inaction of the respondent by not implementing the proposal that the appellant be posted as DHO North Waziristan District and against the inaction of the respondent by not deciding the departmental appeal of the appellant within stipulated period of 90 days. It has been prayed that on

acceptance of the instant service appeal, the impugned notification dated 18.08.2023, to the extent of private respondent, might be set aside and the respondents be directed to implement the proposal for posting of appellant as DHO North Waziristan District alongwith any other remedy which the Tribunal deemed fit.

2. Preliminary arguments heard and the case file alongwith connected documents perused in detail.

3. The appellant has impugned the order dated 18.08.2023 vide which private respondent, Dr. Miraj Wazir, General Cadre (BS-17) has been transferred as District Health Officer (BS-18) North Waziristan in own pay scale. He has prayed that the impugned order be set aside and respondents may be directed to implement the proposal for his posting as DHO, North Waziristan. When asked about any proposal submitted to his competent authority for his transfer, learned counsel for the appellant referred to a letter of Election Commission of Pakistan dated 11.03.2023 vide which the ECP had conveyed its NOC on a transfer proposal forwarded to them by the Health Department of the Provincial Government. As a ban has been imposed by the ECP on posting/transfer, therefore, NOC has to be obtained from them before proceeding on the matter. Such NOC could not be construed as a proposal for approval because ECP is not an approving authority for transfer/posting. After getting the necessary NOC, the proposal has to be forwarded to the competent authority in the provincial government, which in this case is the Chief Minister, and after his approval, the order is issued. Moreover, as admitted by the learned counsel for the appellant himself, the competent



authority, i.e the Chief Minister in this case, is at liberty to agree or disagree to any proposal submitted by the department but he could not produce any documentary evidence that any proposal for his transfer was submitted to the Chief Minister through a summary and based all his arguments on the NOC of the ECP. Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 is extremely clear when it states that the competent authority is at liberty to post a civil servant at any place in the province. Moreover a civil servant cannot claim his posting for a specific position.

5. In view of all the facts narrated above, the appeal in hand is dismissed in *limine*, being groundless. Cost shall follow the event. Consign.

6 *Pronounced in open Court at Peshawar and given under my hand and the seal of the Tribunal this 05th day of December, 2023.*


(Fareeha Paul)
Member(E)


Fazle Subhan, P.S

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05th Dec. 2023 01. Mr. Noor Muhammad Khattak, Advocate for the appellant present. Preliminary arguments heard and record perused.

02. Vide my detailed judgment consisting of 03 pages, the appeal in hand is dismissed in *limine*, being groundless. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 05th day of December, 2023.*


(FAREEHA PAUL)
Member (E)

Fazle Subhan, P.S