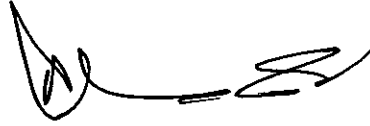


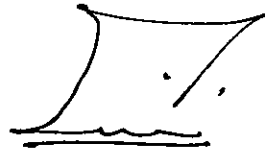
*subject the civil servant to repeated postings in a short period of time because this would amount to punishing him. Such postings also adversely affect the public interest and result in the wastage of scarce resources and constitute bad governance."*

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 grade 20 against the post of Medical Superintendent. However, it is expected that the appellant, being at the verge of retirement, he may be posted in the district of his domicile. The appeal is disposed of in the above terms. Consign.

7. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 7<sup>th</sup> day of December, 2023.*



**KALIM ARSHAD KHAN**  
Chairman



**SALAH UD DIN**  
Member (Judicial)

*\*Mutazem Shah\**

*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*



	<i>Khan General Cadre (BS-19)</i>	<i>Superintendent (BS-20), DHQ Hospital Charsadda in OPS.</i>	<i>General Health Services, Khyber Pakhtunkhwa</i>
3.	<i>Dr. Adil Khan, Specialist Cadre (BS-18)</i>	<i>District Specialist (ENT) DHQ Hospital, Charsadda</i>	<i>Medical Superintendent (BS- 19), Women &amp; Children Hospital Rajjar, Charsadda in OPS against the vacant post</i>

”

The fact that the appellant and private respondent, both are serving on OPS basis as is evident from the above notification, 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 or not relevant to their service cadre. 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*



reported to DG Health Khyber Pakhtunkhwa, Peshawar; that despite his arrival, his salary was stopped w.e.f 01.08.2023. Feeling aggrieved, he filed departmental appeal, which was not responded, hence, the instant service appeal.

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.

3. We have heard learned counsel for the appellant and learned Assistant

Advocate General 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 Assistant

Advocate General refuted the same by pressing their stances.

5. The impugned notification from which the appellant was aggrieved is

reproduced as under:

**“NOTIFICATION**

No.SO(E-V)/2-2/2023 The competent authority (Chief Minister, Khyber

Pakhtunkhwa) is pleased to order posting/transfer of the following doctors,

with immediate effect, in the best public interest:-

S.No.	NAME	FROM	TO
1.	Dr. Muhammad Shoaib, General Cadre (BS-19)	Medical Superintendent Cat-D Hospital Lachi, Kohat	Medical Superintendent (BS-20), DHQ Hospital Charsadda in OPS. Vice S. No.2
2.	Dr. Zahid Ullah	Medical	Report to Directorate



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR**

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

*Service Appeal No.2052/2023*

Date of presentation of appeal.....13.11.2023  
Date of Hearing.....07.12.2023  
Date of Decision.....07.12.2023

**Dr. Muhammad Zahid**, Directorate General of Health Services  
Khyber Pakhtunkhwa, Peshawar .....*Appellant*

Versus

1. **Government of Khyber Pakhtunkhwa**, through Chief Secretary, Civil Secretariat Peshawar.
2. **The Secretary Health**, Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
3. **Director General Health Services**, Old FATA Secretariat, Warsak Road, Peshawar.
4. **Dr. Muhammad Shoaib**, Medical Superintendent DHQ Charsadda.

Present:

Mr. Subhan Sher, Advocate, Advocate.....For the appellant.  
Mr. Asad Ali Khan, Assistant Advocate General ...For Respondents

----

***APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.***

**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** The facts gathered from the memorandum and grounds of appeal are that the appellant was serving as Medical Superintendent in DHQ Hospital Charsadda. That vide impugned transfer order dated 10.07.2023, private respondent No.4, Dr. Muhammad Shaoib was adjusted against his post while the appellant was directed to report to the Directorate General Health Services. Accordingly, he relinquished the charge of the post and

