

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7595/2021

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

Rahat-ul-Ain, Charge Nurse, Government Liaqat Memorial Hospital,
Kohat.

.... (*Appellant*)

VERSUS

1. Director General, Health Services, Khyber Pakhtunkhwa, Peshawar.
2. Secretary, Government of Khyber Pakhtunkhwa, Health Department,
Peshawar.
3. Medical Superintendent, Government Naseerullah Khan Babar, Memorial
Hospital Kohat Road, Peshawar

.... (*Respondents*)

Mr. Arbab Saiful Kamal
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....24.09.2021
Date of Hearing.....18.12.2023
Date of Decision.....18.12.2023

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:

**“It is therefore most humbly prayed that on acceptance of
the appeal, withheld salaries since 17.08.2015 till
01.02.2018 be released to appellant with all consequential
relief, with such other relief as may be deemed proper and
just in circumstances of the case.”**



2. Brief facts of the instant case are that appellant while serving in the Government Naseerullah Khan Baber Memorial Hospital Kohat Road, Peshawar, was transferred to Lady Reading Hospital Peshawar. Accordingly, she arrived there but there was no vacant seat in the LRH, therefore, reported back to Government Naseerullah Khan Baber Memorial Hospital, but her salary was stopped from 17.08.2015. That the appellant filed Service Appeal No.1373/2015 before the Tribunal, and this Tribunal vide order dated 05.01.2016 granted interim relief in her favor. Later on, when the order of the Tribunal was not implemented, she filed COC before the Tribunal. That in the meanwhile, the impugned transfer order dated 17.08.2015 was withdrawn by the respondents. Accordingly, the appellant also withdrew her service appeal but she was not given the salaries from 17.08.2015 to 01.02.2018. For the purpose, she filed departmental appeals but no response was made on behalf of the respondents, therefore, she filed 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 was not treated in accordance with law and rules on the subject. He further argued that due to ill will of the then MS of the Hospital, appellant was transferred on 17.08.2015 to Lady Reading Hospital but no such vacant post was available, yet since 17.08.2015, her monthly salary were stopped which act of the respondents is against the law. He further argued that despite requests for release of withheld salaries no heed was paid to her rather she was transferred



to Children and Women Hospital Kohat. He, therefore, requested that monthly salaries of the respondents might be released.

5. Conversely, learned District Attorney contended that the appellant has been treated in accordance with law and rules. He further contended that appellant was transferred from Government Naseer Ullah Khan Babar Memorial Hospital Peshawar to LRH Peshawar against the vacant post but she did not submit her arrival report as stated by MS LRH Peshawar, so her salary was stopped. He further contended that she was transfer to Women Children Hospital/LMH Kohat on administrative grounds being her home district.

6. Perusal of record reveals that appellant was serving in the Government Naseer Ullah Khan Babar Memorial Hospital Kohat Road, Peshawar as charge nurse when on 17.08.2015 during ban period she was transferred to LRH Peshawar by respondent No.3 despite knowing the fact that no vacancy was laying vacant in LRH. Appellant when reported her arrival at LRH Peshawar for performing of her duty, same was not accepted on the ground that no vacancy is available. Therefore, she returned back to Government Naseerullah Babar Memorial Hospital for performing her duties but her salaries were stopped since 17.08.2015. She filed service appeal bearing No.1373/2015 on 09.12.2015 in this tribunal for setting aside transfer order upon which on 05.01.2016 stay was granted to her as she at that time was performing her duties at Naseerullah Babar Memorial Hospital Peshawar. That after submitting COC by the appellant for compliance of stay order, transfer order dated 17.08.2015 was withdrawn vide order dated 09.01.2017 upon which appellant withdrew her service appeal from this tribunal. Appellant submitted departmental appeal to respondent for release of withheld salaries on 23.02.2021 but same was not responded.



7. Appellant was again transferred vide order dated 15/10/2018 to women and children hospital, Kohat where she reported for duty and was regularly performing her duties over there. Respondent in their written reply contended that appellant was asked to provide duty performance certificate of period from 17/08/2015 to 01/02/2018 but she failed to produce it therefore she is not entitled for salaries of this period. Appellant contended that she performed her duties at Naseerullah Babar Memorial Hospital, Peshawar due to non-availability of vacant post at LRH, her this stance of performing duties at LRH gets support from the order dated 09.01.2017 vide which her transfer/posting order to LRH dated 17.08.2015 was withdrawn because in it, it is mentioned that;

"The transfer order of Mst. Rahat-ul-Ain D/o Gulzar Khan, Charge Nurse (BPS-16) Government Naseerullah Babar Memorial Hospital, Peshawar to Leady Reading Hospital, Peshawar issued vide this Directorate office order dated 17.08.2015 is hereby withdraw".


8. Moreover, when order was withdrawn and not cancelled it means that she was performing her duties at Naseerullah Babar Memorial Hospital regularly without obtaining charge at any other place. Moreover if she was not performing her duties and was absent, then why departmental proceeding was not initiated against her by the respondent. Non initiation of departmental proceeding in such a situation, when Medical Superintendent of Naseerullah Babar Memorial Hospital was against her, means that she had performed her duties at Naseerullah Babar Memorial Hospital. It will not be out of place to mention here that stay was granted to appellant at the time when she was performing her duties at Naseerullah Babar Memorial Hospital Peshawar on 05.01.2016 by this tribunal which means that she will perform her duties at place where she was on 05.01.2016 i.e Naseerullah Babar Memorial Hospital



and order of transfer of the appellant was withdrawn on 09.01.2017. Despite performance of her duties, salaries of the appellant for that period were withheld, which is unjustified and shows arbitrariness of the respondent.

9. For what has been discussed above, we accept the appeal in hand as prayed for. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18th day of December, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)


ORDER


18.12.2023 1. Learned counsel for the appellant present. Mr. Mohammad Jan

learned District Attorney alongwith Mr. Laeeq Ahmad, Computer Operator for the respondents present.

2. Vide our detailed judgment of today placed on file, we accept the appeal in hand as prayed for. Cost shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18th day of December, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)