

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No.2445/2023

Date of presentation of appeal22.11.2023
Dates of Hearing.....23.02.2024
Date of Decision.....23.02.2024

Miss. Rashida Begum, Nurse (BPS-16) DHQ Teaching Hospital KDA, Kohat.....(Appellant)

Versus

1. **The Government of Khyber Pakhtunkhwa, through Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.**
2. **Director General Health, Khyber Pakhtunkhwa, Peshawar.**
3. **Medical Superintendent, DHQ Teaching Hospital KDA, Kohat.**
4. **Miss. Najma Firdous, Charge Nurse, Shaheed Farid Khan DHQ Hospital, Hangu.....(Respondents)**

Present:

Mr. Noor Muhammad Khattak, AdvocateFor appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For official respondents
Mr. Muhibullah Tarichvi, Advocate.....For private respondent

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST BOTH THE IMPUGNED ORDERS DATED 03.10.2023, WHEREBY THE APPELLANT HAS BEEN TRANSFERRED FROM DHQ HOSPITAL KOHAT TO DHQ HOSPITAL KARAK AND THROUGH SUBSEQUENT ORDER, THE APPELLANT HAS BEEN RELIEVED FROM HER POST AT DHQ HOSPITAL KOHAT AND AGAINST THE APPELLATE ORDER DATED 20.11.2023, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS.
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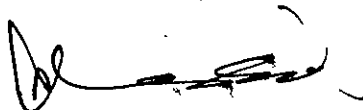
Service Appeal No.89/2024

Date of presentation of appeal05.01.2024
Dates of Hearing.....22.02.2024
Date of Decision.....22.02.2024

Mst. Najma Firdous, D/o Muhammad Suleman (RNO) (BPS-16), District Headquarter Hospital, KDA Kohat.....(Appellant)

Versus

1. **Secretary Health Services, Government of Khyber Pakhtunkhwa, Khyber Road, Peshawar.**
2. **Director General Health Services, Khyber Pakhtunkhwa, Warsak Road, Peshawar.**



3. Medical Superintendent, District Headquarter Hospital, KDA, Kohat.....(Respondents)

Present:

Mr. Muhibullah Tarichvi, AdvocateFor appellant

Mr. Asif Masood Ali Shah, Deputy District Attorney.....For the respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED ORDER DATED 03.10.2023 SERIAL NO.1 WHEREBY THE APPELLANT HAS BEEN TRANSFERRED FROM THE DHQ HOSPITAL KOHAT TO SHAHEED FARID KHAN DHQ HOSPITAL HANGU AGAINST THE VACANT POST.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment this appeal and the connected service appeal No.89/2024 titled "Najma Firdous Vs. Secretary Health, Khyber Pakhtunkhwa, Peshawar & others" are decided as both the appeals have been filed by the appellants aggrieved from the same order and can, thus conveniently, be decided together.

2. According to the facts gathered from the record, the appellants were serving in the DHQ Teaching Hospital KDA Kohat. Appellant namely Rashida Begum was Charge Nurse (BPS-16) and appellant namely Najma Firdous (who is private respondent in service appeal No.1445/2023 filed by Rashida Begum) was Registered Nurse Officer (RNO) BPS-16. Both were serving in the same hospital. That due to misconceptions and some problems with each other, appellant Rashida Begum moved an application against Najma Firdous to respondent No.3, who directed a fact finding inquiry into the matter. That in the meanwhile the appellant (Rashida Begum) filed another complaint against Najma Firdous. Consequently, the competent authority, vide order dated 03.10.2023, transferred both the appellants from the said Hospital i.e. DHQ Hospital Kohat. Feeling aggrieved, the appellant of appeal No.2445/2023 (Rashida Begum) filed departmental appeal on 09.10.2023, which was rejected vide order dated 20.11.2023



and the appellant of appeal No.89/2024 (Najma Firdous) filed departmental appeal on 05.10.2023, which was not responded. Therefore, both filed the instant service appeals.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written replies raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.

5. The learned counsel for the appellants 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).

6. From the record, it is evident that both the appellants were serving in the same hospital, wherein, due to their internal grudges, a complaint was made by one appellant against the other. In the matter, a fact finding inquiry was conducted, however, on the basis of complaint and their personal grudges, vide the impugned transfer order dated 03.10.2023, appellant Miss. Rashida Begum was transferred to DHQ Hospital Karak and the appellant Najma Firdous (who was also arrayed as private respondent in appeal No.2445/2023) was transferred to Shaheed Farid Khan DHQ Hospital, Hangu. Both filed departmental representations against the transfer order, however, appeal of Miss. Rashida Begum was rejected and the departmental appeal of Mst. Najma Firdous was not responded. The impugned transfer order was made on the basis of clashes/grudges between the appellants and seems to be a punishment because of the above.

7. This Tribunal in a case reported as 2012-PLC (CS) page-187 titled "Shamshad Begum Vs. The Chief Secretary Khyber Pakhtunkhwa" has already held that transfer of civil servant cannot be made on the basis of complaint which required a regular inquiry



in the matter because the transfer had not been mentioned as punishment in the penalty list in the rules & regulations regarding the conduct of civil servant. In the reply, the official respondents have contended that upon the complaint, inquiry was conducted and the appellants were transferred due to their grudges. The Department may proceed against the appellants under the relevant rules if it all they were found guilty of any misconduct which could not transfer the appellant solely as a punishment. Therefore, the impugned transfer order is not maintainable. In case the competent authority is of the view that the appellants had committed misconduct, which disturbed the discipline of service, the it may initiate disciplinary proceedings and transferring the appellant, was not a proper procedure covered under the Provincial Government, Posting/Transfer Policy.

8. As a resultant consequences, both the appeals are allowed and the impugned transfer order is set aside. The Competent Authority is, however, at liberty to initiate disciplinary proceedings against the appellants, if at all, it considers of any misconduct had been committed by the appellants. (Copy of this judgment be placed on file of Service Appeal No.89/2024 titled "Mst. Najma Firdous Vs. Government of Khyber Pakhtunkhwa"). Consign

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 23rd day of February, 2024.*



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)

09.02.2024

Junior of learned counsel for the appellant present.
Dr. Khan Aksar, Principal Medical Officer alongwith Mr.
Muhammad Jan, District Attorney for official respondents
present.

Comments as well as receipt of payment of cost of
Rs. 5000/- on behalf of respondents received through office.
Copy of the comments handed over to junior of learned counsel
for the appellant. To come up for arguments on 23.02.2024
before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar

(Salah-ud-Din)
Member (J)

ORDER *Reem Amin**

23rd Feb. 2024

1. Learned counsel for the appellant and Mr. Asif Masood Ali Shah,
Deputy District Attorney for official respondents present. Private respondent
No.4 present through counsel.

2. Vide our consolidated judgment of today placed on file, the appeal is
allowed and the impugned transfer order is set aside. The Competent
Authority is, however, at liberty to initiate disciplinary proceedings against
the appellant, if at all, it considers of any misconduct had been committed by
the appellant. (Copy of the judgment be placed on file of Service Appeal
No.89/2024 titled "Mst. Najma Firdous Vs. Government of Khyber
Pakhtunkhwa"). Consign.

3. *Pronounced in open Court at Peshawar and given under our hands
and the seal of the Tribunal on this 23rd day of February, 2024.*

(Fareeha Paul)
Member (E)

(Kalim Arshad Khan)
Chairman