

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 124/2024

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

Said Muhammad, Naib Tehsildar Mansehra-I, Circle Baffa.

.... (Appellant)

VERSUS

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
2. Director Land Records, Chief Settlement Officer, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
3. Muhammad Saleem, Kanungo (BPS-11) Posted at the place of Appellant (OPS) Naib Tehsildar Mansehra-I, Baffa Circle.

.... (Respondents)

Muhammad Amin Ayub
Advocate ... For appellantJabir Khan
Advocate ... For respondent No.4Mr. Asif Masood Ali Shah
Deputy District Attorney ... For respondentsDate of Institution.....12.01.2024
Date of Hearing.....14.03.2024
Date of Decision.....14.03.2024**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:

“On acceptance of this appeal, the impugned office order dated 13.12.2023 issued by Respondent No.2



and impugned appellate order dated 11.01.2024 passed by the respondent No. 1 may graciously be set aside and appellant be allowed to complete his normal tenure as per Khyber Pakhtunkhwa Posting Transfer Policy.”

2. Brief facts of the case, as given in the memorandum of appeal, are that initially the appellant was inducted into service in the respondent department as Patwaris in the year 1986. Since his appointment, he performed his duty up to the entire satisfaction of his superiors. He was transferred /posted as Settlement Naib Tehsildar Mansehra-I vide order dated 10.03.2023 where he started performing his duty at Circle Baffa. Vide impugned order dated 13.12.2023, he was prematurely transferred from post of Settlement Naib Tehsildar Mansehra-I and was directed to report the office of Commissioner Hazara Division for further posting. Feeling aggrieved, he preferred departmental appeal on 22.12.2023, which was filed vide order dated 11.01.2024, hence 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 Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules and respondent violated Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that that the appellant was



prematurely transferred which is against clause ii and iv of the transfer/posting policy of the provincial government. He further argued that impugned transfer order is against the posting/transfer policy as promulgated by the provincial government where in it has been held that the transfer/posting should be made from amongst similar basic pay scale while the impugned order reveals that respondent No.4, who is performing his duty in BPS-11, was posted against the post of BPS-14 (OPS) which is discouraged by superior courts.

5. Learned counsel for private respondent No.4 assisted by learned Deputy District Attorney contended that the appellant had been treated in accordance with law and rules. He further contended that appellant has been transferred because of delay of settlement operation in the same area, He further contended that in accordance with Section-10 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 desired posting is not the perpetual right of a civil servant and department concerned can transfer any civil servant to serve at the given place as mentioned in the posting/transfer order, while the civil servant cannot refuse compliance.

6. Perusal of record reveals that appellant was appointed as patwari in respondent department in year 1986 and was promoted as Naib Tehsildar who was posted as Tehsildar in his own pay scale vide order dated 21.12.2022 for some time and was directed to report to his original office where from appellant was posted as Naib Tehsildar Mansehra-I vide order dated 10.03.2023. Appellant was again directed to report to

Commissioner Hazara division vide impugned posting/transfer order dated 22.12.2023. Appellant impugned the transfer/posting order on the ground of being premature. There is no denial of the fact that vide impugned transfer/posting order appellant was transferred from the post of Settlement Naib Tehsildar Mansehra-1 just after nine months of his posting but respondents categorically in their reply had taken the plea that settlement operation Mansehra was initially approved for a period of one year, but it has crossed more than 12 years. The appellant was working in the settlement operation Manshera since long and has completed his normal tenure under existing transfer/posting policy. Posting history of the appellant reveals that he was initially appointed as Naib Tehsildar Settlement Manshera vide order dated 04.12.2022 of which he assumed charge on 08.12.2022 and relinquished charge on 14.12.2022 as he was posted in the same Office of Tehsildar Settlement Mansehra-II in his own pay and scale vide order dated 13.12.2022 and assumed charge of the same on 15.12.2023. Appellant was directed to report to Commissioner Hazara Division vide order dated 01.03.2023 and was again posted in the same settlement office vide order dated 10.03.2023 as Settlement Naib Tehsildar Manshera-1, wherefrom he was posted vide impugned order dated 22.12.2023 which means that appellant remained posted in settlement office Mansehra as Naib Tehsildar with the changed number and designation of Naib Tehsildar Manshera-1 and Manshera-II from 08.03.2022 till 22.12.2023 and had remained posted there for total 22 months. Official respondents also alleged that appellant failed to discharge his duties of settlement works



and is interested in attestation of mutation instead of settlement duties for which he was deputed due to which settlement program of Manshera District was lingering on and is not finalized despite lapse of 13 years. It is held by apex court in 2023 SCMR 2119 and 2024 PLC (C.S) 77 that:

Transfer of a government official from one place or post to another to meet the exigencies of service was within the exclusive domain and competence of the competent authorities of the executive organ of the State and ordinarily, it not amenable to interference except in extraordinary circumstance—said principle is subject to the condition that the terms and conditions of service are not adversely affected – moreover, an official has no vested right to claim to be posted/transferred to any particular place of his choice, nor is there a vested right to continue to hold a particular post at a particular place.


So non completion of settlement work is the exigency of service and public interest due to which appellant was transferred vide impugned order and respondents No. 3 was posted there in his own pay scale which is discouraged by the august Supreme Court of Pakistan in judgment reported in 2018 SCMR 1411 citation (c) of which reads as:


“Posting and transfer of civil servant on his own pay and scale basis (OPS)--- such posting/transfer was not legally permissible.”

7. So, posting of private respondent No.3 in OPS is also not in accordance with law which is unwarranted. Respondents are directed to place proper person to the post of Naib Tehsildar Settlement instead of private respondent No.3 who is not a proper person being in BPS-11 while post of Naib Tehsildar is of BPS-14.

8. For what has been discussed above, we are unison to dismiss the appeal in hand with observation that proper person be posted to the post of Naib Tehsildar immediately after receipt of copy of this judgment. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 14th day of March, 2024.*



(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER

14.03.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.
2. Vide our detailed judgement of today placed on file we are unison to dismiss the appeal in hand with observation that proper person be posted to the post of Naib Tehsildar immediately after receipt of copy of this judgment. 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 14th day of March, 2024.*



(FAREEHA PAUL)
Member (E)



(RASHIDA BANO)
Member (J)