

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 02/2024

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

Dr. Jamshed Saeed S/O Saeed Ahmad, Ex. Medical Superintendent District
Head Quarter Hospital Landi Kotal Khyber Agency.

(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Health, Civil
Secretariat Peshawar.

(Respondent)

Mr. Nazir Ahmad
Advocate ... For appellant

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

Date of Institution.....21.12.2023
Date of Hearing.....13.03.2024
Date of Decision.....13.03.2024

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 this Tribunal may set aside the
impugned order dated 21.09.2023 and order the respondents to
release the salary of the appellant without any further delay as
no disciplinary action is pending or taken against him.”



2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was a General Medical Doctor and vide notification dated 10.09.2018 he was inducted into Health Management Cadre. Then he served the department as Deputy Director General Health Services Khyber Pakhtunkhwa BPS-19. Appellant was transferred/posted as Medical Superintendent DHQ Hospital Ladi Kotal vide notification dated 20.05.2022. At the time of posting at DHQ Hospital Landi Kotal several complaints were lodge on Prime Minister Citizen Portal and reports in newspaper were published in respect of worst administration and management of the hospital including private practice of the doctors in duty hours, continuous absence and non-availability at the time of emergency. The appellant brought positive and beneficial reforms in the hospital by taking bold administrative actions against the delinquent employees and by improving its status for the public at large, which improved the number of patient visiting the OPD and increased the hospital income. Appellant was transferred and directed to report to Director General Health Service Khyber Pakhtunkhwa vide notification dated 21.09.2023 on administrative grounds. Feeling aggrieved, he filed writ petition before Peshawar High Court, Peshawar, which was disposed with direction to Chief Secretary Government of Khyber Pakhtunkhwa to decide the pending appeal of the petitioner within stipulated period, which was not responded to, 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 appellant argued that appellant has not been treated in accordance with law and rules and respondents violated Article 4 and 5 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that the reason of administrative ground for the transfer of the appellant and that too on the pressure of the employees on strike is arbitrary, discriminatory and unreasonable on the part of the respondent towards him and consequent thereof is illegal, tainted, malafide, without jurisdictionis ineffective upon the right of the appellant. He further argued that appellant tried his level best with full capacity of his ability and implemented the notifications, circulars and orders of the respondents which transpires the fairness and competence of the appellant and his dedication towards his duty.

5. Conversely learned Deputy District Attorney contended that the appellant has been treated in accordance with law and rules. He further contended that several complaints against the appellant were received, therefore, on the approval of competent authority vide notification dated 21.09.2023 whereby the appellant was transferred with the direction to report to Director General Health Services Khyber Pakhtunkhwa on administrative grounds in the public interest. The appellant is a civil servant, whereas transfer/posting of a civil servant comes within a purview of terms and conditions of services. A civil servant is to serve where he is posted by the competent authority. The competent authority has been empowered by Section



10 of Civil Servant Act, 1973 to transfer and post a civil servant in exigency of service, therefore, competent authority in exercise of the authority under Section 10 issued the transfer notification of the appellant in best public interest.

6. Perusal of record reveals that appellant was appointed as General Medical Doctor on 10.09.2018, who was later on inducted in Health Management Cadre. Appellant was serving as Deputy Director General Health Services Khyber Pakhtunkhwa, when on 20.05.2022 was transferred and posted as Medical Superintendent DHQ Hospital Landi Kotal Khyber and at the time of posting of the appellant he was specially called by the then Secretary Health and Director General Health and shown a number of complaints and reports in respect of the worst administration and management of the DHQ Hospital including private practice of the doctors in duty time and continuous absence and their non availability at the time of emergency with the demand of public to notice the situation. The respondent issued directions to appellant to prevent such practices which appellant accepted as challenge and acted upon. Appellant was nominated for training at Peshawar, when he received impugned transfer order on administrative grounds. Respondents in his reply took the plea that appellant is transferred upon complaints, Learned Deputy District Attorney referred to complaint dated 22.07.2022 in accordance with which one lady doctor Naheed complained about visit of the appellant that he entered to Gynea OPD and Labor Room without permission. If complaint is true then respondents would have to conduct inquiry independently to dig out



the truth and not to transfer/post out the appellant despite knowing the fact that said lady doctor was a habitual absentee and appellant had called her explanations and deducted her salary for the days of her absence. It is pertinent to mention here that all administrative steps/action taken by the appellant were stamped and endorsed by the worthy Peshawar High Court, Peshawar and District Judge Khyber. So, premature transfer of the appellant on administrative grounds is not warranted without conducting proper inquiry upon complaint against him because it will stigmatize his career.

7. For what has been discussed above, we are unison to set aside the impugned order with direction to respondents to conduct inquiry on complaint against the appellant by fully associating him with the inquiry and providing him the opportunity to cross examine also and if the complaint is genuine then proceed in accordance with rules. Cost shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day of March, 2024.*

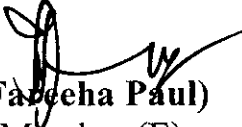

(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

ORDER

13.03.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney alongwith Mr. Safiullah Focal Person for the respondent present.
2. Vide our detailed judgment of today placed on file, we are unison to set aside the impugned order with direction to respondents to conduct inquiry on complaint against the appellant by fully associating him with the inquiry and providing him the opportunity to cross examine also and if the complaint is genuine then proceed in accordance with rules. 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 13th day of March, 2024.*



(Farceha Paul)
Member (E)



(Rashida Bano)
Member (J)