

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 2044/2023

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

Amir Zada S/O Bahadar Khan Sub Divisional Officer (OPS) PHE Sub-Division Charsadda R/O Qasim (Toru) Tehsil & District Mardan.  
.....(Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa Peshawar.
2. The Secretary Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar.
3. Azhar Ali Khan SDO PHE Sub Division Tangi. ....(Respondents)

Mr. Yaqub Khan,  
Advocate

... For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney

... For respondents

Date of Institution..... 27.09.2023  
Date of Hearing..... 27.03.2024  
Date of Decision..... 27.03.2024

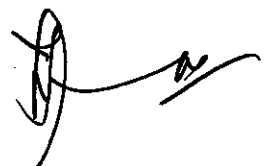
**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):**The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the notification dated 19.07.2023 whereby the appellant was transferred prematurely from the post of SDO PHE Sub Division, Charsadda to PHE Sub Division Tangi and against the order dated 29.08.2023 whereby his departmental appeal was considered and rejected. It has been prayed that on acceptance of the appeal, the impugned orders dated 19.07.2023 and 29.08.2023 might be set aside and respondent No. 2 be directed to withdraw the above stated order to the extent of appellant and he might not be transferred



from the post of SIDO (OPS) PHIE Sub-Division Charsadda till completion of tenure (03 years), alongwith any other relief which the Tribunal deemed appropriate.

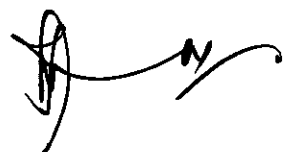
2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was performing his duty as Sub Divisional Officer at Public Health Engineering Sub-Division Charsadda. Earlier he was transferred from home station PHIE Sub-Division Mardan to PHIE Sub Division Totalai (Buner) vide notification dated 05.04.2022. He assumed the charge at the new place of posting on 06.04.2022, where he served for one month and twenty four days only, and he was transferred to PHIE Sub-Division Swabi vide notification dated 01.06.2022. He was again transferred from PHE Sub Divisional Swabi to PHIE Sub Division Charsadda vide notification dated 20.06.2022 where he stayed only for two months and nine days when vide notification dated 29.08.2022 he was transferred from PHIE Sub Division Charsadda to the office of the Chief Engineer (South) as ADIE against a vacant post. Feeling aggrieved, he filed departmental appeal before the competent authority on 30.08.2022, and the order dated 29.08.2022 was cancelled/withdrawn through notification dated 31.08.2022. A new notification dated 13.09.2022 was issued through which the notification dated 29.08.2022 was restored. A written complaint was submitted by the appellant to the Provincial Election Commission on 20.09.2022 accusing the respondents of ignoring the ban imposed through notification dated 05.08.2022 on transfer/posting in District Charsadda due to bye-election. On the same date i.e 20.09.2022, a second departmental appeal was submitted to the Secretary PHIE against the notification dated 13.09.2022.



The appellant then filed a Writ Petition before the Hon'ble Peshawar High Court, Peshawar for direction to the respondents to decide the departmental appeal of the appellant. The departmental appeal of the appellant was rejected on 19.10.2022. He then filed Service Appeal No. 1523/2022 before the Service Tribunal. On 03.07.2023, the appellant stated before the Bench that his grievance to the extent of his transfer had been redressed. The appeal was disposed of because the desired relief had been granted to the appellant. After 16 days, respondent No. 2 once again issued a transfer order of the appellant dated 19.07.2023 through which, he was transferred from the post of SDO PHB Sub Division Charsadda to PHB Sub Division Tangi. Feeling aggrieved, the appellant filed departmental appeal before respondent No. 1 on 27.07.2023 which was considered and rejected vide order dated 29.08.2023; hence the instant service appeal.

3. Respondents were put on notice. Official respondents No. 1 & 2 submitted their joint parawise comments on the appeal. Private respondent No. 3 submitted separate written reply on 15.02.2024 but on 05.03.2024, nobody was present on his behalf; hence he was placed ex-parte. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the official respondents and perused the case file with connected documents in detail.

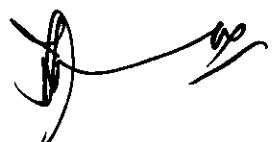
4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned order was illegal, against law & facts and based on malafide intention. He argued that just in a period of one year and four months, the appellant was transferred frequently without any reason and in violation of



posting/transfer policy of the provincial government. He argued that the appellant had not completed his normal tenure in Sub Division Charsadda which was against the posting/transfer policy of the provincial government. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was basically a Sub Engineer in BPS- 16 and was assigned the charge of Sub Divisional Officer in Public Health Engineering Division Charsadda in his own pay and scale while private respondent No. 3 was a Sub-Divisional Officer (BPS- 17) and posted there on regular basis. The appellant was posted at PIIE Sub-Division Tangi in the same District. He argued that the appellant instituted Writ Petition No. 3728-P/2022 for cancellation of posting/transfer. The said petition was dismissed in limine being not maintainable, however, the respondents were directed to decide the appellant's appeal within 07 days. In compliance, the respondent department considered the departmental appeal and regretted the same. He requested that the appeal might be dismissed.

6. The appellant is a Sub-Engineer (BS- 16), serving in the Public Health Engineering Department of the provincial government. Arguments and record presented before us transpire that he was posted as Sub-Divisional Officer, which is a BS- 17 post, in his own pay and scale, in April 2022 in PIIE Sub-Division Totalai Buner. After a short span of time, he was transferred to Swabi as SDO (OPS) and then Charsadda in June 2022. While in Charsadda, he was transferred to the office of Chief Engineer (South) as ADE and that order was later on withdrawn in August 2022 but he was again posted as ADE in the



office of Chief Engineer in September 2022. That order was held in abeyance because of elections in NA 24 Charsadda-II, after which he was transferred to Charsadda in November 2022. Later on, in July 2023, he was transferred from PHE Sub Division Charsadda to PHE Sub Division Tangi, Charsadda as SDO (OPS). Throughout this time, from June 2022 onwards, he remained in District Charsadda as SDO (OPS).

7. The transfer/posting policy of the provincial government is also clear when it states that the right person should be posted for the right job. We do not want to put any restriction on the competent authority in transfer/posting of officers, but just want them to stick to their own transfer/posting policy and the clear directions of the august Supreme Court of Pakistan in a case titled "Province of Sindh Vs. Ghulam Farid" reported as 2015 PLC (C.S) 151. The relevant para 11 of the judgment is reproduced as follows:

*"This practice of appointment on OPS basis to a higher grade has always been discouraged by this court, as it does not have any sanction of law."*


8. In case of the appellant, it has been noted that he is a Sub Engineer in BS- 16 but posted as Sub Divisional Officer which is a BS- 17 post. It would be a prudent approach by the competent authority to post him on the position for which he is meant for, which in his case is Sub-Engineer (BS- 16). While going through the documents presented before us, it was noted that it was not just the appellant but many other officers also have been posted in their own pay scales on higher posts. The competent authority should give due regard to the directions of the august Supreme Court of Pakistan and immediately revise



their transfer/posting orders and post them on the positions of their own pay scales.

9. The service appeal in hand is disposed of in the above terms. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 27<sup>th</sup> day of March, 2024.*

  
(FARZINA PAUL)  
Member (I)

  
(RASHIDA BANO)  
Member(J)

\*FazleSubhan P.S\*

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27<sup>th</sup> Mar. 2024 01. Mr. Yaqub Khan, Advocate for the appellant present.  
Mr. Asif Masood Ali Shah, Deputy District Attorney for the  
respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the  
appeal in hand is disposed of as per Para- 8 of the judgment.  
Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under  
our hands and seal of the Tribunal on this 27<sup>th</sup> day of March,  
2024.*

SCANNED  
KPST  
Peshawar

  
(FARIDA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*Fazal Subhan PS\*