

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL**  
**PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN** ... CHAIRMAN  
**MUHAMMAD AKBAR KHAN** ... MEMBER (E)

*Service Appeal No. 1961/2023*

Date of presentation of Appeal.....28.09.2023


Date of Hearing.....03.05.2024

Date of Decision.....03.05.2024

Muhammad Nauman, Assistant Director, Fisheries Department, Under Transfer to District Nowshera.....(Appellant)

**VERSUS**

1. The Govt. of Khyber Pakhtunkhwa through Secretary Agriculture, Livestock, Fisheries & Coop Department, Civil Secretariat, Peshawar.
2. Director General, Directorate General Fisheries, Khyber Pakhtunkhwa, Shami Road, Peshawar.
3. Mr. Tanveer Shehzad, Assistant Director Fisheries (BPS-17), Under Transfer to District Mardan.
4. Mr. Muhammad Israil, Assistant Director Fisheries (Acting Charge), Under Transfer to District Mardan. ....(Respondents)

  
KHALED REHMAN,  
Advocate

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--- For appellant.

MUHAMMAD JAN,  
District Attorney

--- For official respondents

NOOR MUHAMMAD KHATTAK  
Advocate

--- For private respondent No. 4

**JUDGMENT**

**MUHAMMAD AKBAR KHAN, MEMBER (E):-** The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

*"That on acceptance of the instant appeal, the impugned office order dated 26.05.2023 issued by respondent No. 2*

*may graciously be set aside and appellant may be allowed to complete his tenure at District Mardan."*

02. Brief facts of the case are that the appellant was serving as Assistant Director (BPS-17) in the Fisheries and Cooperative Department Khyber Pakhtunkhwa and was posted at Charsadda vide Notification dated 05.04.2021; that the appellant was transferred from District Charsadda to District Mardan vide order dated 30.11.2022; that after lapse of six months the appellant was transfer from District Mardan to District Nowshera vide another transfer order dated 26.05.2023, and the private respondent No.4 was transferred back from District Shangla to District Mardan. Feeling aggrieved, he filed departmental appeal on 01.06.2023 followed by Writ Petition No.2406-P/2016 before the Hon'ble Peshawar High Court, Peshawar; that vide order dated 15.06.2023, in the said Writ Petition, the respondents were directed to decide the departmental appeal in accordance with law and rules, however, the same was not responded within 90 days, hence, preferred the instant service appeal on 28.09.2023.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned District Attorney for official respondents as well as learned counsel for private respondent No. 4 and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended the respondents have not treated the appellant in accordance with law, rule and policy and Article-4 of the Constitution of Islamic Republic of Pakistan, 1973; that the impugned

order is unjust, unfair hence not sustainable in the eye of law; that an FIR was lodged by the authorities of Anti-Corruption against EX-MPAs and other state persons including private respondent No. 3 who was posted at District Mardan, the impugned Notification was circulated which depicts a sketch of political pressure and unfair preference and is violative of Transfer/Posting Policy; that the appellant was prematurely transferred within a short span of six months while private respondent No. 3 was reverted back to his former place of posting without completion of his normal tenure which is neither in the public interest nor in any exigency of service rules; that respondent No. 4 who is an acting charge Assistant Director Fisheries has been illegally transferred during the pendency of earlier service appeal No. 1961/2023 which is against the law and hit by the doctrine of the lis pendency. It is settled law that when an issue is seized of by any court of law then the matter should be left for the disposal of the court and the department cannot pre-empt the jurisdiction of the court.

05. On the other hand, learned District Attorney as well as learned counsel for private respondent No. 4 contended that according to Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 a civil servant was liable to serve anywhere in the province; that the private respondent No. 4 was transferred vide Notification dated 15.07.2022 after completion of his normal tenure and took over the charge of the said post; that the appellant was transferred from District Charsadda to District Mardan after completion of normal tenure, wherein the officer did not improve his efficiency due to which the appellant was transferred to adjacent District Nowshera under supervision of Deputy Director, Fisheries for improving his efficiency both in

administrative & financial in the best public interest; that the appellant himself actualized the posting/transfer order dated 26.05.2023, therefore, the instant appeal may be dismissed.

06. Scrutiny of record reveal that the appellant was the domicile holder of district Mardan and joined the respondent department as Assistant Director, Fisheries on 28.01.2021. He was posted as Assistant Director Fisheries Charsadda District where after completion of normal tenure he was transferred to Mardan District on 30.11.2022. Again the appellant was posted to the adjacent District Nowshera vide Notification dated 26.05.2023. The appellant relinquished the charge of Assistant Director, Fisheries Mardan on 14.06.2023 and took over the charge of his post in District Nowshera. From the three orders issued since first appointment of the appellant, it appears that he is enjoying the posting either in his home district or the adjacent districts. His stance is that he may be allowed to continue to hold the post of Assistant Director, Fisheries Mardan as he has not completed his tenure against the post in District Mardan. However, the Executive Authority in their reply have taken the stance that the appellant has been posted at the adjacent District of Nowshera, where the Headquarter of the field formation of the respondent department is situated, for improving the capabilities of the appellant in connection with the official work in the public interest. The civil servant, as provided under Section-10 of the Civil Servants Act, is required to serve and posted anywhere within the limits of the province or even outside the limits of the province. A civil servant has no vested right to claim his choice of posting. Similarly a civil servant has no vested right to continue or hold of particular post at a particular place.

*Handwritten signature/initials*

07. We did not find any malafide in the impugned order dated 26.05.2023 as such the impugned order does not require any interference by the Tribunal. The instant appeal, therefore, stands dismissed. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 03<sup>rd</sup> day of May, 2024.*



(KALIM ARSHAD KHAN)  
CHAIRMAN

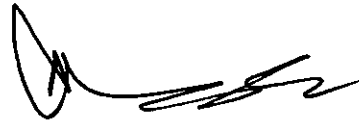


(MUHAMMAD AKBAR KHAN)  
MEMBER (E)

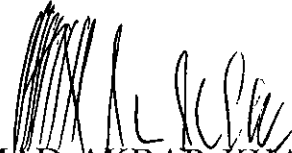
ORDER

03.05.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney for official respondents present. Learned counsel for private respondent No. 4 present. Arguments heard and record perused.
2. Vide our detailed judgment of today separately placed on file, we did not find any malafide in the impugned order dated 26.05.2023 as such the impugned order does not require any interference by the Tribunal. The instant appeal, therefore, stands dismissed. Costs shall follow the event. Consign.
3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 03<sup>rd</sup> day of May, 2024.*



(KALIM ARSHAD KHAN)  
CHAIRMAN



(MUHAMMAD AKBAR KHAN)  
MEMBER (E)