

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

BEFORE: **AURANGZEB KHATTAK ... MEMBER (Judicial)**  
**MUHAMMAD AKBAR KHAN... MEMBER (Executive)**

**Service Appeal No. 1011/2024**

Date of presentation of Appeal.....22.07.2024  
Date of Hearing.....12.09.2024  
Date of Decision.....12.09.2024

**Sajad Khan, Patwari, District Charsadda.....Appellant**

Versus

1. The Commissioner Peshawar Division.
2. Deputy Commissioner, Charsadda.
3. Mr. Muhammad Ayaz, Patwari, District Charsadda.

.....(Respondents)

Present:

Ms. Nida Khan & Mr. Mati Ullah, Advocates.....For appellant.  
Mr. Asif Masood Ali Shah, Deputy District Attorney .....For official respondents  
Mr. Sultan Muhammad Khan & Zartaj Anwar, Advocates....For private respondent.

**JUDGMENT**

**AURANGZEB KHATTAK, MEMBER (JUDICIAL):** The appellant, Sajad Khan, serving as Patwari in the Revenue Department of District Charsadda, was transferred from Patwar Halqa Agra to Patwar Halqa Mera, Parang, while private respondent No. 3 namely Muhammad Ayaz Patwari was transferred at the place of the appellant (Patwar Halqa Agra) vide order dated 09.07.2024. Feeling discontented from the transfer order dated 09.07.2024, Muhammad Ayaz Patwari (Private respondent No. 3) filed departmental appeal before the Commissioner Peshawar Division (Respondent No. 1), which was accepted vide impugned

order dated 19.07.2024 by setting-aside the order dated 09.07.2024.

Dissatisfied from the order dated 19.07.2024 passed by Commissioner Peshawar Division (Respondent No. 1), the appellant filed the instant service appeal for redressal of his grievance.

2. The respondents were summoned, who contested the appeal by way of filing their respective written reply/comments.

3. The learned counsel for the appellant contended that the impugned order dated 19.07.2024 was issued hastily and without proper legal basis, allegedly contravening Article 10-A of the Constitution of the Islamic Republic of Pakistan. He next contended that the accusations against the appellant regarding undue postings in favorable locations were unfounded. He further contended that appellant's transfers were made under legitimate authority directives, which he dutifully complied with, serving across various Halqas, which demonstrated his commitment to his responsibilities and contradicted any claims of biased postings. He also contended that the impugned order dated 19.07.2024 was issued without affording the appellant an opportunity of hearing, nor were the para-wise comments from the District Collector considered, which is violation of the principles of natural justice. He next argued that Commissioner Peshawar Division (Respondent No. 1) acted arbitrarily and neglected to follow due procedural channels, undermining the fairness of the process. He further argued that the claim of private respondent No. 3 about a tenure policy violation, is baseless. He also argued that the Deputy Commissioner possessed

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the requisite administrative authority to affect such transfers, emphasizing that these decisions were taken in the interest of the department and the public. In the last he argued that the impugned order dated 19.07.2024 may be set aside and requested the restoration of previous order dated 09.07.2024, arguing that such an action would rectify the procedural and substantive injustices manifest in the current situation.

4. On the other hand, learned counsel for private respondent No. 3 assisted by learned Deputy District Attorney for official respondents, contended that the appellant and his brother have held positions in preferred Halqas continuously since the year 2014, which is violation of the Land Record Manual, which prescribes that a Patwari should serve a typical tenure of only two years. He next contended that prolonged tenure at a preferred location raises questions about favoritism and misuse of authority. He further contended that the appellant has persistently resisted reassignment orders, seeking to overturn transfers that do not align with his personal preferences, which behavior not only reflects poorly on the appellant's regard for official directives but also undermines the integrity of departmental guidelines meant to ensure fair rotation and service distribution among officers. He also contended that the appellant has not availed his legal remedy by way of filing departmental appeal before filing the instant appeal, therefore, under Section-04 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, the appeal in hand is not maintainable. He next argued that the order passed on 19.07.2024, was lawful and within jurisdiction

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and the same was passed after following all essential legal procedures, thereby making it resistant to legal challenge on procedural grounds. He further argued that the decision of official respondents, as pointed out, was in compliance with established service rules and principles of natural justice. He also argued that by presenting incomplete or misleading facts, the appellant's legitimacy in seeking redressal through the Tribunal is challenged and his alleged actions not only reflect negatively on his professional conduct but also raise doubts about the authenticity of his grievances. In the last he argued, that the appeal in hand may be dismissed with cost.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. The perusal of the record would show that the appellant transferred from Patwar Halqa Agra to Patwar Halqa Mera, Parang, vide order dated 09.07.2024. Concurrently, Muhammad Ayaz Patwari, private respondent No. 3, was transferred to the position vacated by the appellant. Following the appellant's transfer, Muhammad Ayaz Patwari (Private respondent No. 3) filed departmental appeal challenging the transfer order dated 09.07.2024 before the Commissioner Peshawar Division (Respondent No. 1). The departmental appeal of private respondent No. 3 was accepted by the Commissioner Peshawar Division through an impugned order dated 19.07.2024 by setting aside the order dated 09.07.2024. The primary issue under consideration is whether the appeal filed by the appellant before this Tribunal is maintainable as it is the

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contention of the respondents that the appeal of the appellant is incompetent on the grounds that the appellant did not exhaust the available departmental remedy by filing a departmental appeal or representation. It is pertinent to cite precedents set forth by the Supreme Court of Pakistan, particularly in Civil Petition No. 500 & 501-P/2003, titled "Habib Ahmad Versus Presiding Officer Revenue Appellate Court No. 3 and Others," decided on April 27, 2005. This judgment clarifies that decisions rendered by appellate authorities may be challenged directly in service appeals and there is no obligatory requirement for an appellant to seek further departmental remedies subsequent to an appellate adjudication. In light of the established legal precedence, it becomes clear that the objections raised regarding the maintainability of the present appeal—primarily the assertion that the appellant failed to exhaust departmental remedies, have got no force. The order in question, issued by the Commissioner Peshawar Division (Respondent No. 1), is recognized as a final decision within the administrative framework and has significant implications for the appellant's service conditions.


7. The matter of transfer/posting falls under the purview of administrative discretion. However, the manner in which the appellate authority exercises this discretion is subject to established legal standards and principles of natural justice. The principles of justice demand that all parties affected by administrative decisions be afforded a fair opportunity to be heard. In this case, the appellant was not summoned nor given any opportunity for representation


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before the Commissioner Peshawar Division during the departmental appeal process. This denial of the right to be heard constitutes a violation of natural justice principles, potentially rendering the impugned order illegal. The failure to consider the appellant's perspective or input prior to reaching a decision contravenes the principles of procedural fairness and accountability expected in administrative proceedings.

8. Consequently, the impugned order dated 19.07.2024 is set-aside and order dated 09.07.2024 is restored. Parties are left to bear their own costs. File be consigned to the record room.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 12<sup>th</sup> day of September, 2024.*


  
AURANGZEB KHATTAK  
Member (Judicial)


  
MUHAMMAD AKBAR KHAN  
Member (Executive)

**ORDER**

12<sup>th</sup> Sept, 2024

1. Appellant alongwith his counsel present. Mr. Yad Ullah Khattak, Additional Assistant Commissioner (Revenue) Charsadda alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for official respondents No. 1 & 2 and learned counsel for private respondent No. 3 present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the impugned order dated 19.07.2024 is set-aside and order dated 09.07.2024 is restored. Parties are left to bear their own costs. File be consigned to the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 12<sup>th</sup> day of September, 2024.*

  
(Muhammad Akbar Khan)  
Member (Executive)

  
(Aurangzeb Khattak) 12<sup>th</sup> of  
Member (Judicial) 2024.