

Service Appeal No.765/2024 titled "Shafi Raza. Versus The Secretary, Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar and 01 another". Service Appeal No. 766/2024 titled "Mukamil Khan Versus The Secretary, Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar and 01 another" and Service Appeal No. 767/2024 titled "Zulfiqar Ahmad Versus The Secretary, Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar and 01 another, decided on 13.09.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Mr. Muhammad Akbar Khan, Member Executive. Khyber Pakhtunkhwa Service Tribunal, Peshawar.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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

Service Appeal No. 765/2024

Shafi Raza, Senior Clerk (BPS-14), PHE Sub-Division Mardan, PHE Mardan.**Appellant**

Service Appeal No. 766/2024

Mukamil Khan, Senior Clerk (BPS-14), PHE Circle Mardan, PHE Mardan.**Appellant**

Service Appeal No. 767/2024

Zulfiqar Ahmad, Senior Clerk (BPS-14) PHE Division Mardan.....**Appellant**

Versus

1. The Secretary, Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Engineer (Centre), Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar.

.....(**Respondents**)

Date of presentation of Appeals.....07.06.2024

Date of Hearing.....13.09.2024

Date of Decision.....13.09.2024

Present:

Mr. Khushdil Khan, AdvocateFor appellants.

Mr. Asif Masood Ali Shah, Deputy District AttorneyFor respondents

CONSOLIDATED JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): This consolidated judgment is directed to dispose of all the three service appeals captioned above, as common questions of law and facts are involved in all the three appeals.

2. The appellants, Shafi Raza, Mukamil Khan and Zulfiqar Ahmad, were initially appointed as Junior Clerks in the respondent-department

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and were subsequently promoted to the posts of Senior Clerks/Sub Divisional Accountants (SDAs) (BPS-14) vide order dated 01.12.2023. They were posted at PHE Sub Division Mardan. However, after a period of five months, the appellants were administratively transferred to PHE Division Karak-II, PHE Division Lakki Marwat and PHE Sub-Division Nawagai, Bajaur, respectively. Feeling aggrieved, the appellants filed separate departmental appeals regarding their transfers on 31.05.2024, which were subsequently rejected vide order dated 03.06.2024. The appellants have now approached this Tribunal through filing of above-mentioned captioned service appeals for redressal of their grievance.

3. The respondents were summoned, who contested all the above-captioned 03 appeals by way of filing their respective written replies/comments.

4. The learned counsel for the appellants contended that the impugned transfer order is not only contrary to established legal principles but also in violation of the transfer/posting policy of the Government. He next contended that the transfer order of the appellants is in direct contravention of the explicit posting and transfer policy, which stipulates a normal tenure of two years. He further argued that the appellants have been unjustly transferred after only five months, which constitutes a clear breach of the transfer/posting policy stipulation. He also referred to the Supreme Court of Pakistan's ruling in the Anita Turab case (dated 27.02.2013), which establishes that any

*Amir
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specified tenure must be respected unless there are compelling reasons documented in writing for deviation, therefore, the lack of such documentation in the present case illustrates a failure to adhere to legal standards. He next argued that the transfer order lacks clarity regarding the purported "administrative grounds" cited for the transfers, thus, this vagueness contravenes established norms. He further argued that the transfer order of the appellants was executed without the necessary prior approval, which is a procedural requirement outlined in the transfer/posting policy. He argued that assigning the appellants the posts of Head Clerk at PHE Division Karak-II, PHE Division Lakki Marwat, and PHE Sub-Division Nawagai, Bajaur, is improper because the appellants hold the designation of Senior Clerks and have been posted to incorrect positions as Head Clerks. He added that the transfer of the appellants has resulted in a detrimental impact on the smooth operation of the PHE Sub-Division Mardan, the absence of substitutes for their roles has created unfilled vacancies, thereby disrupting functional workflow. He contended that the transfer of the appellants to distant areas, lack justifiable grounds and fail to demonstrate evidence of serving the public interest. In the last, he argued that the impugned orders may be set aside.

5. Conversely, the learned Deputy District Attorney for the respondents contended that the appellants were transferred in accordance with the authority vested in the Chief Engineer, as per Section 10 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 and

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that the transfer was made in the public interest. He next contended that the tenures of the appellants were incorrectly assessed, thereby undermining the appellant's claim regarding the completion of their normal tenure and referencing a prior transfer order dated September 16, 2022, which was not executed. He further argued that the transfer was necessary for organizational efficiency and fell within the discretion of the competent authority. He next argued that the judgment cited by the learned counsel for the appellants is distinguishable, the facts and circumstances differ significantly from those in the current matter. He further argued that as employees, the appellants were, by law, required to serve in any district within the province. In the last, he argued that the appeal in hand may be dismissed with costs.

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

7. The perusal of the record reveals that the appellants, while serving as Junior Clerks, were promoted to the posts of Senior Clerks/SDAs (BPS-14) vide order dated 01.12.2023 and they were assigned work at the PHE Sub-Division Mardan. However, vide order dated 30.05.2024, appellants Shafi Raza, Mukamil Khan, and Zulfiqar Ahmad were transferred to PHE Division Karak-II, PHE Division Lakki Marwat, and PHE Sub-Division Nawagai, Bajaur, respectively. In all three appeals, the appellants have argued that they have been transferred on administrative grounds, which are vague, contravene

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established norms and fail to meet the requisite standards. However,

Supreme Court of Pakistan, in its judgment reported as 2018 PLC

(C.S) Note 35, held as below:-

"13. Appellant cannot claim to be posted at one place as a right, he has to serve anywhere against the post to whom he is transferred. Transfer and posting orders are made for administrative reasons, in public interest which normally cannot be interfered under the constitutional jurisdiction, unless grave illegality or violation of statutory rule has been committed. It is for the administration to take appropriate decisions regarding the posting and transfer of an employee. Grounds of mala fide and political pressure urged by the appellant relates to the factual aspect of the case which cannot be looked into by this Court. Impugned order is well-reasoned and is result of proper appreciation of law and facts of the case which does not call for any interference by this Court. Reliance is placed on "Zaka Ullah Bajwa v. Chief Secretary, Government of Punjab Lahore and 2 others"(2005 PSC 1250)."

8. The appellants do not possess an inherent right to be stationed at a specific location. Government employees are subject to transfers based on administrative needs and considerations of public interest. Such decisions fall within the discretion of the relevant administrative authorities. Transfer and posting orders, being matters of administrative policy, are typically beyond the scope of judicial review under constitutional jurisdiction, except in situations where there is evidence of significant illegality or violation of statutory rules. In this

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instance, no such illegality or violation has been substantiated. The claims of malicious intent or political pressure are factual allegations. The Tribunal's jurisdiction does not extend to examining such factual disputes unless there is concrete evidence demonstrating that the actions were taken mala-fidely or were unlawful. If the respondents had any ill will or mala-fide against the appellants, they would have not been promoted. The decision in these cases aligns with the precedent set in "Zaka Ullah Bajwa v. Chief Secretary, Government of Punjab Lahore and 2 others" (2005 PSC 1250), which emphasizes that administrative decisions related to transfer and posting should not be interfered with by the courts unless there is clear evidence of misuse of power or violation of law. The impugned transfer order is found to be well-reasoned and based on a proper appreciation of both the legal framework and the factual context. Therefore, the Tribunal finds no grounds to interfere with the administrative decision.

9. In the matter concerning the premature transfer of the appellants, the Supreme Court of Pakistan addressed this issue in the judgment reported as 2017 SCMR 798, titled "Fida Hussain Shah and others Versus Government of Sindh and others." The Court held as below:-

"15. We believe that the term 'transfer' has been used with posting in section 10 of the Civil Servants Act, 1973, which is reproduced as under:

"10. Posting and transfer: - Every civil servant shall be liable to serve anywhere within or outside Pakistan, in any [equivalent or higher] post under the Federal Government, or any Provincial


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Government of local authority or a corporation or body set up or established by any such Government; Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region; Provided further that, where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favorable than those to which he would have been entitled if he had not been required to serve."


10. In conclusion, the interpretation of the term 'transfer' as used alongside 'posting' in Section 10 of the Civil Servants Act, 1973, necessitates a careful understanding of legislative intent and administrative functionality. The provision clearly establishes that every civil servant is liable to serve at any location. The inclusion of clauses specifying conditions for service outside one's cadre ensures the protection of civil servants' rights and maintains equity in terms of pay and service conditions. This reflects an attempt to balance administrative efficiency with career stability and fairness for the servants of the state. Therefore, the conjoint use of 'posting' and 'transfer' embodies the legislative aim of facilitating operational flexibility while safeguarding employee entitlements. Consequently, this duality should be interpreted as a means to promote seamless governance without compromising the welfare of civil servants. Through this interpretation, Section 10 of the Civil Servants Act, 1973,


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stands as a testament to the harmonization of state imperatives with individual rights in public administration.

11. In light of the above, all the above captioned 03 service appeals stand dismissed, being meritless. Parties are left to bear their own costs. File be consigned to the record room.

12. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 13th day of September, 2024.*



AURANGZEB KHATTAK
Member (Judicial)

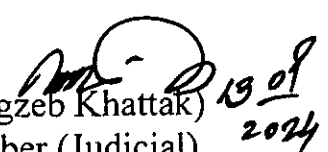

MUHAMMAD AKBAR KHAN
Member (Executive)

Naeem Amin

ORDER
13th Sept, 2024

1. Appellant alongwith his counsel present. Mr. Raheem Badshah, Sub-Divisional Assistant alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our consolidated judgment of today placed on file, the appeal in hand as well as Service Appeal No. 766/2024 titled "*Mukamil Khan Versus Secretary, Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar and 01 another*" and Service Appeal No. 767/2024 titled "*Zulfiqar Ahmad Versus Secretary, Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar and 01 another*, stand dismissed, being meritless. 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 13th day of September, 2024.*


(Muhammad Akbar Khan)
Member (Executive)


(Aurangzeb Khattak) 19 of
Member (Judicial) 2024.