

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 2607/2023

BEFORE: MR. AURANGZEB KHATTAK... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Abdullah Shah, Patwari, District Hangu..... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
3. Assistant Secretary Establishment, Board of Revenue, Peshawar.
4. Deputy Commissioner, Hangu.
5. Deputy Commissioner, Peshawar.
6. Commissioner, Peshawar Division, Peshawar.(Respondents)

Mr. Fazal Shah Mohmand,
Advocate

... For appellants

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For Official respondents

Date of Institution..... 18.12.2023
Date of Hearing..... 20.09.2024
Date of Decision..... 20.09.2024

JUDGMENT

FAREEHA PAUL, MEMBER (E): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 against the order dated 13.09.2023, whereby the appellant was relieved from the post of Patwari in District Peshawar and reverted back to the post of Patwari in District Hangu. It has been prayed that on acceptance of the appeal, the impugned order dated 13.09.2023 might be set aside and the appellant be allowed to serve on the post of Patwari at District Peshawar.



02. Brief facts of the case, as given in the memorandum of appeal, are that the appellant, after admission in Patwar Training School, appeared in examination and passed the Patwar examination in the year 2009 and was appointed as Patwari by respondent No. 4 in District Hangu vide order dated 21.10.2009. In the year 2019-20 some Patwaris, belonging from other Districts and appointed in District Hangu, upon application and after getting approval, were transferred to the Districts of their domicile. When the appellant came to know of vacant posts of Patwaris at District Peshawar, he submitted an application on 31.05.2022 for his transfer. Accordingly, NOC was granted by the competent authority, the appellant was relieved from District Hangu vide order dated 14.09.2022 and his services were placed at the disposal of Deputy Commissioner, Peshawar vide order dated 14.09.2022. He was adjusted as Patwari against the vacant post vide order dated 15.09.2022 and was posted at Patwar Halqa Mian Gujar vide order dated 01.12.2022. Against the posting and transfer of the appellant, some Patwar candidates, approached the Honourable Peshawar High Court, Peshawar by filing Writ Petition No. 4903-P/2022 and finally transfer order of the appellant was set aside and he was ordered to be reverted to his original post at District Hangu vide judgment dated 05.09.2023. He was reverted back against his original post of Patwari at District Hangu by respondent No. 5 vide order dated 13.09.2023. Feeling aggrieved, he preferred departmental appeal on 15.09.2023 which was not responded; hence the instant service appeal.

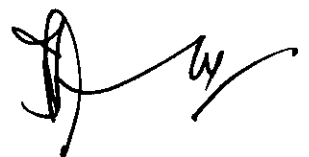
03. Respondents were put on notice who submitted their joint written reply/comments. We heard the learned counsel for the appellant and learned Deputy District Attorney, for the respondents, and perused the case file with connected documents in detail.



04. Learned counsel for the appellant, after presenting the case in detail, argued that the appellant was not treated in accordance with law and rules. The impugned order was void ab-initio as it was passed by an authority who was not vested with such powers. The appellant was transferred to District Peshawar by respondents No. 2 & 3 while the impugned order was passed by respondent No. 5, despite the fact that posts of Patwaris were vacant in District, Peshawar. He further argued that inter-district transfer was covered by the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989 and a number of such transfers were allowed, while the appellant was discriminated which was a violation of the Constitution and law of the land.

05. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that order dated 13.09.2022 was accordingly issued as per direction of Hon'ble Peshawar High in the judgment dated 05.09.2023 in Writ Petition No. 4903-P/2022 and no discriminatory treatment was meted out with the appellant. He requested that the appeal might be dismissed.

06. Arguments and record presented before us transpired that the appellant was appointed as Patwari in District Hangu and was later, on his own request, transferred and adjusted in District Peshawar. Against his transfer, some Patwar candidates approached the Hon'ble Peshawar High Court through a Writ Petition No. No. 4903-P/2022, which was allowed by the Honourable Court and transfer order of the appellant was set aside with the direction to the respondents that the appellant should be reverted back to his original post in District Hangu. Accordingly action was taken by respondent department and the appellant was

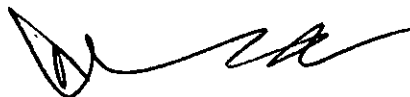


reverted back to the post of Patwari in District Hangu. Through the instant service appeal the appellant has impugned his reversion order dated 13.09.2022. It has been noted that his reversion order was issued in the light of judgment of Honourable Peshawar High Court dated 05.09.2023, therefore, this Tribunal does not find any reason to set aside an order which was passed in the light of judgment of the Honourable Peshawar High Court.

07. In view of the above discussion, the appeal in hand is dismissed, being devoid of merit. Costs shall follow the event. Consign.

08. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 20th day of September, 2024.*


(FARLEHA PAUL)
Member (E)


(AURANGZEB KHATTAK)
Member (J)


SA2607/23

20.09.2024

01. Mr. Fazal Shah Mohmand, 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 04 pages, the appeal in hand is dismissed, being devoid of merit. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar under our hands and seal of the Tribunal on this 20th day of September, 2024.*


(FAREEHA PAUL)
Member (E)


(AURANGZEB KHATTAK)
Member (J)

Fazle Subhan, P.S