

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

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)  
**RASHIDA BANO** ... MEMBER (Judicial)

**Service Appeal No. 1413/2024**

Date of presentation of Appeal.....06.09.2024  
Date of Hearing.....11.10.2024  
Date of Decision.....11.10.2024

**Dr. Ghafoor Ahmad**, Senior Medical Officer (BPS-18) Presently posted as Medical Superintendent THQ Shaheed Pir Muhammad Khan Category C Hospital Puran, Shangla. ....*Appellant*

Versus

1. The Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Health Department Khyber Pakhtunkhwa, Peshawar.
3. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
4. Dr. Iftikhar Ahmad, Medical Officer, THQ Hospital Puran Shangla under transfer to the post of Medical Superintendent (SPMK) Category C Hospital Puran Shangla. ....(*Respondents*)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For appellant  
Mr. Muhammad Jan, District Attorney.....For official respondents  
Miss. Nila Jan, Advocate.....For private respondent.

**JUDGMENT**

**AURANGZEB KHATTAK, MEMBER (JUDICIAL):** The facts of the case, are that the appellant, serving as a Senior Medical Officer (BPS-18) at Shaheed Pir Muhammad Khan (SPMK) Category-C Hospital Puran, Shangla was adjusted as Medical Superintendent (BPS-19) at the same hospital in own pay & Scale (OPS) vide order dated 29.11.2022. However vide Notification dated 06/08/2024, private respondent No. 4 (Dr. Iftikhar Ahmad BPS-17) was directed to look after the work of Medical Superintendent (BPS-19) THQ Hospital Shaheed Pir Muhammad Khan (THQ) Category-C Hospital Puran Shangla, in addition to his own duties

till further orders. Feeling aggrieved, the appellant sought relief through departmental appeal on 09/08/2024, which was denied on 15/08/2024, prompting the current appeal.

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

3. Learned counsel for the appellant contended that the notification dated 06/08/2024 and the subsequent denial of his departmental appeal dated 15/08/2024 are contrary to law and the principles of natural justice.

He next contended that these actions violated Articles 4 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973, which mandate lawful treatment and equality. He further contended that there was political influence in issuing the impugned notification, contrary to the Provincial Government's Transfer Posting Policy and relevant Supreme Court precedents (PLD 2013 SC 195). He also contended that the appellant's transfer contravened specific clauses i, iv, and xiii of the Transfer Posting Policy, asserting it was not in the public interest. He next argued that assigning dual responsibilities to Dr. Iftikhar Ahmad (private respondent No. 4) was inappropriate, violating the Establishment Code and judicial precedents. He further argued that the impugned actions of the official respondents were discriminatory and taken with malafide intent, urging the Tribunal to set aside the impugned notification dated 06/08/2024 and order dated 15/08/2024.

4. Conversely, learned District Attorney for official respondents assisted by learned counsel for private respondent No. 4 contended that the appellant's position was on a temporary "look after" basis, conferring no

permanent right to the role of Medical Superintendent. He next contended that the appellant's tenure at at Shaheed Pir Muhammad Khan (SPMK) Category-C Hospital Puran, Shangla exceeded standard durations, justifying reassignment to ensure administrative efficiency. He further contended that according to Section 10 of the Khyber Pakhtunkhwa Civil Servant Act, 1973, the transfer and posting of civil servants is a prerogative of the government, ostensibly aligned with public service needs. He also contended that impugned notification was devoid of political interference and was legally compliant with institutional policies. He next argued that the impugned notification and departmental appeal denial were issued in good faith and were not discriminatory. He further argued that the transfer of responsibilities was characterized as provisional, pending formal assignment of roles to management cadre officers. In the last, he argued that the appeal in hand being devoid of merits 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 shows that the appellant was serving as Senior Medical Officer (BPS-18) in the THQ Hospital Puran Shangla and vide Notification dated 29/09/2022, he was adjusted as Medical Superintendent (BPS-19) in own pay scale at SPMK Category-C Hospital Puran Shangla. However, vide Notification dated 06/08/2024, private respondent No. 4 (Dr. Iftikhar Ahmad BPS-17) was directed to look after the work of Medical Superintendent (BPS-19) THQ Hospital Shaheed Pir Muhammad Khan (THQ) Category-C Hospital Puran Shangla, in addition to his own duties till further orders. The appellant is seeking setting-aside

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of the notification dated 06/08/2024 and subsequent appellate order dated 15/08/2024 on the ground of violation of Transfer/Posting Policy as well as political influence. The record indicates that the appellant had spent more than six years at Shaheed Pir Muhammad Khan (SPMK) Category-C Hospital Puran, Shangla in various capacities and the section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 act stipulates that civil servants can be posted or transferred according to the requirements set by the government, with no intrinsic right to hold any specific post. Exceptions exist only for those specifically recruited for a particular region or post. The core issue in the present appeal is the posting of appellant and private respondent No. 4 to a specific position—Medical Superintendent (BPS-19)—which the appellant asserted was made in contravention to pronounced legal frameworks. It has been observed that the appellant, who holds a post of Senior Medical Officer (BPS-18) in the General Cadre and private respondent No. 4, who hold the post of Medical Officer (BPS-17, both motivated for the post of Medical Superintendent (BPS-19), a role designed for the Management Cadre. This mismatching of cadres directly contradicts established pronouncements by the Supreme Court of Pakistan and the Tribunal, which mandate appropriate cadre alignments for specific posts. The record further reveals that the appellant and private respondent No. 4, both are ineligible with respect to the role of Medical Superintendent (BPS-19). They hold prior roles in BPS-18 and BPS-17, respectively, thereby not meeting the scale requirements for the BPS-19 position. We emphasize the need for proper scale alignment, reinforcing


*Dr. Ghafoor Ahmad  
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the principle that higher posts are intended for officers meeting specific service grades and cadre criteria.

7. Consequently, the appeal is disposed of with the direction to the concerned authority to rectify the misalignment by appointing a duly qualified officer from the Management Cadre into the Medical Superintendent (BPS-19) post within 15 days from the date of receiving of copy of this judgment. Until such a posting is completed, the appellant, who is currently serving the duties of Medical Superintendent on OPS basis, should continue in this interim capacity until a suitable appointment is finalized. Parties are left to bear their own costs. File be consigned to the record room.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 11<sup>th</sup> day of October, 2024.*

  
AURANGZEB KHATTAK  
Member (Judicial)

  
RASHIDA BANO  
Member (Judicial)


**ORDER**

11<sup>th</sup> Oct, 2024

1. Learned counsel for the appellant present. Mr. Safi Ullah, Focal Person alongwith Mr. Muhammad Jan, District Attorney for official respondents No. 1 to 3 and learned counsel for private respondent No. 4 are present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the appeal is disposed of with the direction to the concerned authority to rectify the misalignment by appointing a duly qualified officer from the Management Cadre into the Medical Superintendent (BPS-19) post within 15 days from the date of receiving of copy of this judgment. Until such a posting is completed, the appellant, who is currently serving the duties of Medical Superintendent on OPS basis, should continue in this interim capacity until a suitable appointment is finalized. 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 11<sup>th</sup> day of October, 2024.*



(Rashida Bano)  
Member (Judicial)



(Aurangzeb Khattak)  
Member (Judicial) 11<sup>th</sup> 10  
2024.