

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO.1406/2024


Dr. Shahzad Ali Khan.....appellant

Versus

Govt: of Khyber Pakhtunkhwa and others Respondents

INDEX

S.NO.	Description of Documents	Annexures	Page
1	Para wise comments		01-04
2	Authority letter		05
3	Affidavit		06


Section Officer (Lit-II)
Government of Khyber Pakhtunkhwa,
Health Department

①

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO.1406/2024

Dr Shahzad Ali Khan..... Appellant

Versus

Govt. of Khyber Pakhtunkhwa through Chief Secretary and others..... Respondents

Khyber Pakhtunkhwa
Service Tribunal

File No. 17488

Date 01-11-24

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Respectfully Sheweth ;

PRELIMINARY OBJECTIONS:-

1. That the Appellant has got neither cause of action nor locus standi to file the instant Appeal.
2. That the Appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant Appeal is against the prevailing Law and Rules.
4. That the Appeal is not maintainable in its present form.
5. That the Appellant has filed the instant Appeal with mala-fide intention hence liable to be dismissed.
6. That the Appeal is badly time barred.
7. That the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.
8. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
9. The impugned transfer Notification has been issued in accordance with Section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973.
10. That the appellant has already been promoted from the post of member of service BPS-19 to member of service BS-20 therefore the instant appeal became infructuous.

competent authority to transfer a civil Servant even before completion of his normal tenure. Therefore the appellant was transferred in the public interest.

12. Pertains to record.

13. Incorrect. The judgment of the service Tribunal has already been complied vide notification dated 02/05/2023 as he was already restored as MS KATHM.

14. Correct to the extent of notification 27/05/2024 which was issued under section 10 of the Khyber Pakhtunkhwa Civil Servant Act, 1973. Furthermore the appellant has already been recommended for promotion to the post of BS-20 Management cadre and his further posting in BPS-20 will be made as and when the competent authority approved the recommendation as well as his posting order therefore the instant service appeal became infructuous.

15. Incorrect. Already replied in para-14 above.

GROUND:

i. Incorrect. The impugned Notification dated 27.05.2024 as well as the actions of the answering respondents are in accordance with law, rules and Principal of natural justice.

ii. Incorrect. Already replied in para-i above.

iii. Incorrect. The appellant being a member of Provincial cadre post is liable to be posted anywhere by the Competent Authority under law and he is bound to serve where he is posted. The impugned Notification is issued by the competent authority in the public interest the appellant has never obeyed any of the transfer order and is remained posted on the same post since 2020.

iv. Incorrect as stated in the above paras the appellant is a civil servant and the competent authority is empowered by law hence the competent authority transfer the appellant in accordance with law.

v. Incorrect the appellant has been transferred which is within the terms and conditions of his service. There is no political pressure or motivation behind issuance of the impugned Notification.

vi. Incorrect already explained in the preceding paras.

vii. Incorrect already replied in the preceding paras.

viii. As per paras above.

ix. Incorrect the competent authority has been empowered by Section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973 to transfer a civil servant at any time to any other post even outside his cadre or

FACTS

1. No comments.
2. Pertains to record.
3. Pertains to record however according to Section 10 of the Khyber Pakhtunkhwa civil servant Act 1973, being a Civil Servant he is to serve any where he is posted by the competent authority as and a civil servant is not entitled to be posted in accordance with his own whims and wishes.
4. Para Missing.
5. Para Missing.
6. Para Missing.
7. Misprinted with para-08 which is replied as pertains to record. However his performance was not satisfactory. As the pandemic of Covid 19 affected the whole world and all the hospitals in the Khyber Pakhtunkhwa as well as throughout Pakistan are highly alert to counter the pandemic however the performance of the appellant can best be judged from the fact that he failed to manage even a single bed for covid affected. No centralized oxygen is available Despite Ample Funds Available in HMB and was directed multiple times by the higher authorities to award the work for oxygen gas piping on top priority basis. The officer never participated in daily online meetings regarding Covid which shows inefficiency and lack of interest towards his responsibilities. Being a district level hospital it is the exclusive responsibility of the head of the hospital to establish High dependency unite (H₂O) however the same has not been established yet. During the pandemic of Covid -19 Anti-corruption department conducted an inquiry through Senior Auditor III ACE Peshawar on the basis on a source report containing allegations that Covid 19 equipment supplied by distributor above the market Rate in connivance with the officials of king Abdullah Hospital Mansehra therefore the appellant was transferred vide notification 09/07/2021 in the public interest.
8. Misprinted with para-07, however in reply to para-08 No comments.
8. Pertains to record.
9. Incorrect. The judgment of the Hon'ble Tribunal was compiled in its true letters and spirit.
10. Incorrect. Already replied in para-09.
11. Correct to the extent of notification dated 30/05/2022 whereby section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973 empowered the

province provided his terms & conditions of service is not affected .As per dictum, laid down by the apex court, in 2020 PLCCS 1207 Supreme Court,

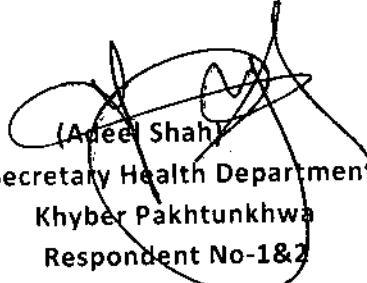
PLACE of servicePrerogatives of employer...Government servant was required to serve anywhere his employer wanted him to serve; it was not a choice or prerogative of the employee to claim a right to serve at a place that he chose to serve.

Similarly in another judgment reported as 2004 PLC (CS) 705 S.C. It has been laid down that civil servant could not claim posting at a particular station or at the place of his choice. Competent authority, under S 9 of the Punjab civil servant Act 1974, was empowered to transfer any civil servant from one place to other at any time in exigencies of service or on administrative ground.

- x. Incorrect already explained in para-14 of the facts.
- xi. Incorrect already replied in para-i above.
- xii. Incorrect already replied in para-i above.
- xiii. Incorrect already replied in para-i above.
- xiv. Incorrect. The impugned notification has been issued in the public interest.
- xv. Incorrect. Already explained in paras above.
- xvi. Incorrect already explained in the preceding paras.
- xvii. Incorrect already explained in the preceding paras.
- xviii. As per preceding paras.

Prayer

It is therefore requested that the appeal of the appellant may kindly be dismissed with cost.

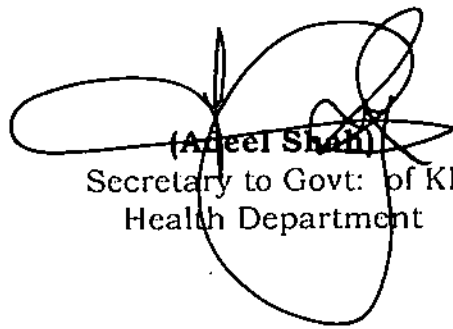

(Adeel Shah)
Secretary Health Department
Khyber Pakhtunkhwa
Respondent No-1&2



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

AUTHORITY LETTER

Mr. Shah Baz Khan, Section Officer (Litigation-II), Health Department Civil Secretariat Peshawar is hereby authorized to attend/defend the court cases and file comments on behalf of Secretary to Government of Khyber Pakhtunkhwa Health Department before the Service Tribunal and lower Courts.


(Ajeel Shah)
Secretary to Govt: of KPK
Health Department

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO.1406/2024

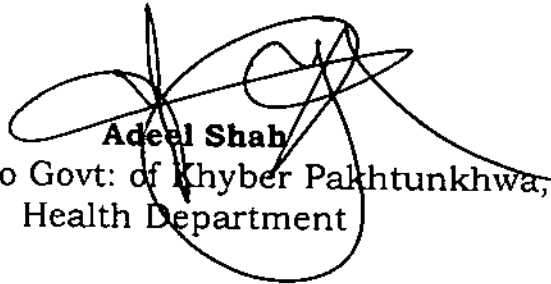
Dr. Shehzad Ali Khan.....appellant

Versus

Govt: of Khyber Pakhtunkhwa and others Respondents

Affidavit

I Adeel Shah, Secretary to Govt of Khyber Pakhtunkhwa Health Department is hereby, solemnly affirmed on oath that the contents of the Parawise Comments in Service Appeal NO.1406/2024 on behalf of respondents are true and correct to the best of my knowledge and belief as per information provided and nothing has been concealed from this Honorable Court. It is further stated that neither the respondents placed ex-parte nor their defense struck off or any cost imposed.


Adeel Shah
Secretary to Govt: of Khyber Pakhtunkhwa,
Health Department


NC
PI
31/12/24