

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

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

**Service Appeal No. 1192/2024**

Date of presentation of Appeal.....13.08.2024  
Date of Hearing.....07.10.2024  
Date of Decision.....07.10.2024

**Naimat Ullah**, Senior Clerk, O/O District Director Agriculture Extension, D.I.Khan, R/o Fazal Rahim Colony, D.I.Khan.

.....*Appellant*

Versus

1. Director General, Agriculture Extension, Khyber Pakhtunkhwa, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary, Agriculture, Civil Secretariat, Peshawar.
3. Deputy Secretary-II, Agriculture Department, Khyber Pakhtunkhwa, Peshawar. ....(*Respondents*)

Present:

Mr. Waseem-ud-Din Khattak, Advocate.....For appellant

Mr. Naseer-ud-Din Shah, Assistant Advocate General .....For respondents

**JUDGMENT**

**AURANGZEB KHATTAK, MEMBER (JUDICIAL):** The appellant, Niamatullah, has challenged the transfer order dated 31.07.2024, whereby he was transferred from the office of the District Director Agriculture (Extension), D.I. Khan to the District Director Agriculture, Dir Upper. The appellant filed departmental appeal against the impugned transfer order, which was regretted on 12.08.2024. The appellant has now approached this Tribunal through filing of instant appeal for redressal of his grievance.

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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 appellant has a lengthy and impeccable service record, demonstrating punctuality and dedication to his duties with no prior complaints. He next contended that the transfer of the appellant to the District Upper Dir is illegal, as it disregards the district cadre nature of the position and lacks legal basis or necessary approval. He further contended that the appellant's entire family resides in D.I. Khan and moving them will disrupt their stability, especially considering his children are enrolled in schools there. He also contended that the transfer order is politically motivated, lacking genuine administrative justification and amounting to favoritism against the appellant. He next argued that the post from which the appellant was transferred remains vacant, implying that the transfer was unnecessary. He further argued that the appellant was denied his right to an audience before his departmental appeal was rejected, undermining fairness. He also references Article 4 and Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 arguing that the appellant has not been treated in accordance with legal standards.

4. On the other hand, learned Assistant Advocate General for the respondents opposed the contention of learned counsel for the appellant and cited the Supreme Court's ruling in Muhammad Saleem V/S Government of Baluchistan, dated 20-01-2023, that the Tribunal's interference with transfer orders encroaches on executive authority and should be avoided. He next contended that the appellant has yet to assume the charge of the new position, resulting in the suspension of his

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services for non-compliance with government orders. He further contended that as per Section 10 of the Civil Servant Act, it is mandatory for civil servants to serve anywhere within the province, underlining that the transfer was lawful. He next argued that the transfer order of the appellant was conducted following the Appointment, Promotion, and Transfer Rules of 1989, thus asserting that the process complied with legal standards. He further argued that the respondents acknowledge the appellant's domicile in D.I. Khan but assert that this does not exempt him from being transferred to any part of the province as stipulated by law. In the last, he argued that the appeal in hand being meritless may be dismissed with costs.

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

6. The record show that the appellant, while serving as a Senior Clerk (BPS-14) under the District Director of Agriculture (Extension) in D.I. Khan, was transferred to the District Director of Agriculture, Dir Upper vide order dated July 31, 2024. The transfer and posting of civil servants, fall within the exclusive jurisdiction of the competent authority as stipulated under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973. This provision provides the authority to make postings in alignment with public interest, exigencies and the need to maintain discipline within the department. Such administrative actions are essential for the effective functioning and integrity of public service. The transfers are a part of routine administrative measures, intended not only for the redistribution of responsibilities but also for ensuring efficient service delivery. The competent authority is empowered to

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assess operational needs and assign duties accordingly to achieve optimal performance in the department. Furthermore, the appellant failed to present any substantive evidence to suggest that the transfer was carried out with mala-fide intention, ill will, or personal grudge against him. The absence of evidence pointing to any discriminatory motive undermines the appellant's claim. Administrative decisions are often made in the context of operational requirements rather than personal grievances. The findings suggest that maintaining discipline and public interest is paramount to ensuring a well-functioning department. The authority's decision to transfer the appellant is likely intended to address such concerns, which is well within their jurisdiction. Such decisions, while they may be inconvenient for the employee involved, are necessary for the overall efficiency and order of the department.


7. The appellant has served in various capacities within his service for a period of 36 years. The competent authority has the jurisdiction under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, to issue transfers. However, with jurisdiction comes the responsibility to administer justice fairly and equitably, considering the rights and welfare of civil servants, especially those with extensive service records and health concerns. The entrenched principle in administrative law is that while authorities possess wide powers, such powers must be exercised judiciously. In the case of the appellant, the extensive service period of 36 years demonstrates loyalty and commitment to the public service, meriting consideration for a transfer that accommodates his current situation. Judicial precedents emphasize the requirement to balance administrative discretion with humanitarian considerations, especially

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regarding aging civil servants who may be at risk of being placed in strenuous or inappropriate positions. Given the appellant's advanced age and lengthy service, we opine that the transfer to a position within the southern districts of Khyber Pakhtunkhwa would be more suitable and humane, facilitating the safe administration of justice while catering to the appellant's current condition.

8. Consequently, we partially accept the appeal with the direction to the respondents to re-evaluate the transfer of the appellant, ensuring that his placement is in the southern districts of Khyber Pakhtunkhwa, in consideration of his health and long-standing service. 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 07<sup>th</sup> day of October, 2024.*


  
**AURANGZEB KHATTAK**  
Member (Judicial) 07<sup>10</sup>/<sub>2024</sub>

  
**RASHIDA BANO**  
Member (Judicial)

**ORDER**  
07<sup>th</sup> Oct, 2024

1. Appellant alongwith his counsel present. Mr. Naseer-ud-Din Shah, Assistant Advocate General alongwith Mr. Asad-ud-Din Asif Ja, Superintendent on behalf of the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, we partially accept the appeal with the direction to the respondents to re-evaluate the transfer of the appellant, ensuring that his placement is in the southern districts of Khyber Pakhtunkhwa, in consideration of his health and long-standing service. 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 07<sup>th</sup> day of October, 2024.*

  
(Rashid Bano)  
Member (Judicial)

  
(Aurangzeb Khattak) 07-10-2024.  
Member (Judicial)