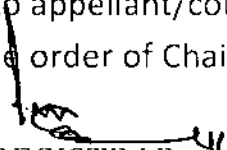




FORM OF ORDER SHEET

Court of _____

12(2) CPC Petition No. 9/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	06/01/2023	<p>The application U/S 12(2) CPC in appeal no. 1524/2022 submitted by Mr. Adnan Khan Yousafzai Advocate. It is fixed for hearing before Single Bench at Peshawar on _____. Original file be requisitioned. Parcha Peshi is given to appellant/counsel.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Petition 12(2) No. 02 /2023

In

Service Appeal No.1524/2022

Shafi Raza.PETITIONER/APPELLANT

VERSUS

Govt. of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat, Peshawar & others.RESPONDENTS

I N D E X

S.No.	Description of Documents	Annex	Pages
1.	Petition u/s 12(2) CPC		1-9
2.	Affidavit		10
3.	Application for Suspension with Affidavit		11-13
4.	Addresses of the Parties		14
5.	Copy of Office Order No.10/CE-9/PHE, dated 20.10.2022	A	15
6.	Copy of Departmental Appeal	B	16
7.	Copy of Order dated 21.10.2022	C	17
8.	Attested copies of Order Sheets of Service Appeal	D ¹ -D3	18-20
9.	Copy of Withdrawal Order dated 27.10.2022	E	21
10.	Copy of Order dated 21.12.2022	E1	22
11.	Copy of Office Order No.01/CE-9/PHE, dated 04.01.2023	F	23
12.	Copy of 12(2) Petition.	G	24-29
13.	Copies of Order Sheets of 12(2) Petition	G1-G3	30-32
14.	Wakalatnama		33

Petitioner / Appellant

Through

Adnan Khan Yousafzai
Advocate High Court
Cell: 0342-9028803

Dated: 06.01.2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Petition 12(2) No. 09 /2023

In

Service Appeal No.1524/2022

Shafi Raza, Junior Clerk/SDA (OPS) PHE Sub Division
Mardan.PETITIONER/APPELLANT

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary, Public Health Engineering, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Chief Engineer (Center), Public Health Department, Peshawar.
4. The Executive Engineer, Public Health Engineering Division, Mardan Division.
5. Mr. Abdul Salam, MPA Mardan - PTI.
6. Mr. Shakil Ahmad, SDA (OPS), Public Health Engineering Sub-Division, Tangi, PHE Charsadda.

.....RESPONDENTS

PETITION U/S 12(2) C.P.C, 1908, WITH ALL ENABLING
PROVISIONS OF LAW GOVERNING THE SUBJECT MATTER,
FOR SETTING ASIDE THE ORDER DATED 21.12.2022, IN
SERVICE APPEAL NO.1524/2022 BEING OBTAINED THROUGH
FRAUD AND MISREPRESENTATION FROM THIS HON'BLE

TRIBUNAL BY THE RESPONDENTS DEPARTMENT AS AFTER
SUCH FRAUD AN MISREPRESENTATION THE RESPONDENT
NO.3 HAS ONCE AGAIN TRANSFERRED THE
PETITIONER/APPELLANT AND THAT TOO JUST AFTER 13
DAYS OF THE ORDER PASSED BY THIS HON'BLE TRIBUNAL
ON 21.12.2022, VIDE OFFICE ORDER NO.01/CE-9/PHE, DATED
04.01.2023 ILLEGALLY AND CATEGORICALLY ON THE BASIS
OF POLITICAL MOTIVATION OF RESPONDENT NO.5 WITH
ACTIVE CONNIVANCE OF RESPONDENT NO.3. THE
TRANSFER ORDER BEING PASSED ILLEGALLY, AGAINST
MERIT AND BASED ON POLITICAL MOTIVATION MAY BE SET
ASIDE AND RESPONDENTS SHALL BE DIRECTED NOT TO
HARASS, HUMILIATE THE PETITIONER/APPELLANT IN
PERFORMING HIS DUTIES AND THE ORDER DATED
27.10.2022 ISSUED BY RESPONDENT NO.3 MAY KINDLY BE
RESTORED.

Respectfully Sheweth:

Brief facts giving rise to the present appeal are as
under;

1. That the petitioner/appellant was the employee of
Public Health Engineering and recently serving at
Mardan Sub-Division, as Junior Clerk/SDA (OPS)
and rendered commendable services throughout his
tenure.

2. That through Office Order No.10/CE-9/PHE, dated 20.10.2022 the petitioner/appellant was transferred from Junior Clerk/SDA (OPS) PHE Sub Division Mardan to Junior Clerk, PHE Division Buner. (Copy of Office Order is annexure "A").
3. That the petitioner/appellant as per the law, filed departmental appeal before the respondent No.3 on 21.10.2022, which was rejected on the same day, vide order dated 21.10.2022. (Copies of Departmental Appeal and Order dated 21.10.2022 are annexure "B" & "C" respectively).
4. That thereafter, the petitioner/appellant preferred an appeal against the rejection order before this Hon'ble Tribunal on 24.10.2022, whereby the appeal of petitioner/appellant was admitted and the operation of the impugned transfer order dated 20.10.2022 was suspended by this Hon'ble Tribunal on 02.11.2022 (Attested copies of Order Sheets of Service Appeal are annexure "D1" to "D3")
5. That it is pertinent to mention here that on 21.12.2022, the representative of respondents department appeared before this Hon'ble Tribunal

and submitted an application for withdrawal of the present appeal annexing therewith an office order No.04/CE-9/PHE dated 27.10.2022, whereby the impugned order dated 20.10.2022 was withdrawn/cancelled by the respondents' department and this Hon'ble Tribunal disposed of the said appeal in the light of the ibid order as the grievance of petitioner/appellant was addressed rendering the appeal fruitless. (Copies of Orders dated 27.10.2022 and 21.12.2022 are annexure "E" & "E1").

6. That the respondent No.3 at the behest of local MPA, namely Abdul Salam, again transferred the petitioner/appellant from his place of posting vide office order No.01/CE-9/PHE, dated 04.01.2023 to SDA (OPS) PHE Sub-Division Tangi, PHE Charsadda. (Copy of Office Order dated 04.01.2023 is annexure "F").
7. That it is very much pertinent to mention here that this Hon'ble Tribunal Chairman had entertained similar nature of 12(2) Petition and had suspended the transfer order. (Copies of 12(2) Petition is annexure "G" alongwith Order Sheets are annexure "G1", "G2" & "G3" respectively).

8. That having no other remedy, the petitioner/appellant is constrained to file the instant 12(2) Petition, on the following grounds;

G R O U N D S :-

- A. That the impugned transfer order and action/inaction of the respondents are purely politically motivated, based on malafide and in utter disregard to the fundamental rights as enshrined in the constitution of Pakistan, 1973.
- B. That it is very much pertinent to mention that the present petitioner/appellant has been transferred 09 times within a span of less than two years, made by respondent No.3 at the behest of respondent No.5 just to harass and torture mentally the present petitioner/appellant and to compel him to obey the illegal orders of respondent No.5.
- C. That the journey of violations of rules does not limited only to the extent of department but sadly the same continue when the petitioner/appellant filed appeal before this Hon'ble Tribunal.
- D. That interestingly at the department level the respondents were only dodging the petitioner/

appellant by subjecting him to illegal transfer orders but when he approached this Hon'ble Tribunal, then the department started dodging this Hon'ble Tribunal too, which fact is evident from the available record on file.

- E. That the respondents after availing time for submission of reply, instead of filing comments, produced office order No.04/CE-9/PHE dated 27.10.2022 alongwith application for withdrawal of the appeal, so the Hon'ble Tribunal disposed of the appeal of the petitioner/appellant, as the grievance of the petitioner was addressed.
- F. That soon after obtaining order from the Hon'ble Tribunal through fraud and misrepresentation, THE RESPONDENT No.3 vide office order No.01/CE-9/PHE dated 04.01.2023 again transferred the petitioner/appellant from his post just to benefit respondent No.6 and to punish the petitioner for not obeying illegal orders of respondent No.5 and by this way making frequent/continuous transfer/posting of petitioner is nothing but to take the revenge from the petitioner by not subduing to the illegal orders of respondent No.5.

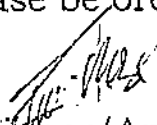
- G. That the petitioner was transferred so many times without any reason which is in violation of transfer posting and tenure policy and is also against the law, rules and judgment of Supreme Court of Pakistan.
- H. That the petitioner has not been completed his tenure on his place of posting in PHE Sub-Division, Mardan and the normal period of posting of a government service at a station, according to Rule 21 of the Rules of Business is three years, which has to be followed in the ordinary circumstances, unless for reasons or exigencies of service a transfer before expiry of the said period becomes necessary thus the said transfer without completion of tenure is against the law and rules, constitution and fundamental rights.
- I. That it is evident from the transfer/posting history of petitioner that since inception of his appointment he has been subjected to frequent transfers and was never let to complete his tenure rather he has been treated as shuttlecock throughout his career which act of respondents department is not only illegal, but a source of frustration for the petitioner and his family as well.

- J. That the rapid and continuous transfer orders made by the respondents against the petitioner/appellant are sheer abuse of process of law, misuse of authority and against natural justice, hence is ineffective upon the rights of petitioner/appellant.
- K. That in such like situation, the petitioner/appellant cannot perform his duties due to the mental stress and agony given by the respondents, which hamper the duties/job, of the petitioner/appellant towards his department.
- L. That in view of the above referred facts the petitioner/appellant has not been treated in accordance with law rather he has been discriminated in order to adjust the blue-eyed employees of respondent No.5 who are affiliated with his political party.
- M. That not obeying the illegal orders especially during the recent election held in Mardan of respondent No.5 by petitioner/appellant, which resulted in the instant transfer order, which is purely politically motivated and based on malafide in order to gain the ulterior motive.

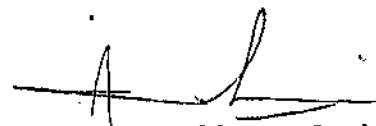
N. That the petitioner/appellant seeks permission to advance any other grounds and proof at the time of hearing.

It is, therefore most humbly prayed that on acceptance of this 12(2) Petition, the impugned order dated 21.12.2022 passed by this Hon'ble Tribunal in Service Appeal No.1524/2022 being obtained through fraud and misrepresentation may please be set aside/set, the office order dated 04.01.2023 issued by respondent No.3 after the impugned order of this Hon'ble Tribunal may kindly be declared as illegal, unlawful, without lawful authority and ineffective upon the rights of petitioner/appellant. The respondents may be directed to withdraw/cancel the impugned office order dated 04.01.2023 and the order dated 27.10.2022 may kindly be restored.

Any other remedy deem proper, in the circumstances of the case may please be ordered.


Petitioner/Appellant

Through


Adnan Khan Yousafzai
Advocate High Court

Dated: 06.01.2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Petition 12(2) No. _____/2023

In

Service Appeal No. 1524/2022

Shafi Raza. **PETITIONER/APPELLANT**

VERSUS

Govt. of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat, Peshawar & others. **RESPONDENTS**

AFFIDAVIT

I, Shafi Raza, Junior Clerk/SDA (OPS) PHE Sub Division Mardan, do hereby solemnly affirm and declare on oath that the contents of the accompanying **12(2) Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


DEPONENT

CNIC: 16101-4810246-5

Cell: 03239332733

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

In Re:

Petition 12(2) No. _____/2023

In

Service Appeal No.1524/2022

Shafi Raza. PETITIONER

VERSUS

Govt. of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat, Peshawar & others.RESPONDENTS

APPLICATION FOR SUSPENSION OF THE
IMPUGNED ORDER DATED 04.01.2023,
TILL THE FINAL DECISION OF INSTANT
PETITION.

Respectfully Sheweth:

1. That the titled petition is being filed before this Hon'ble Tribunal in which no date of hearing has yet been fixed.
2. That the petitioner has a prima facie case in his favour and he is sanguine of its success.
3. That the balance of convenience also lies in favour of the petitioner.

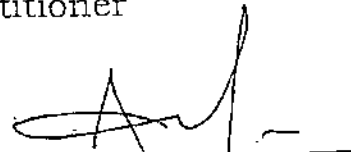
4. That if the impugned order is not suspended, the petitioner will suffer an irreparable loss.

It is, therefore, prayed that by accepting this application, the impugned order dated 04.01.2023 may please be suspended, till the final decision of instant petition.



Petitioner

Through



Adnan Khan Yousafzai
Advocate High Court

Dated: 06.01.2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

In Re:

Petition 12(2) No. _____/2023

In

Service Appeal No.1524/2022

Shafi Raza. PETITIONER

VERSUS

Govt. of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat, Peshawar & others. RESPONDENTS

AFFIDAVIT

I, Shafi Raza, Junior Clerk/SDA (OPS) PHE Sub Division Mardan, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


DEPONENT

CNIC: 16101-4810246-5

Cell: 8323-9333733

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Petition 12(2) No. _____/2023

In

Service Appeal No.1524/2022

Shafi Raza.PETITIONER/APPELLANT

VERSUS

Govt. of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat, Peshawar & others.RESPONDENTS


ADDRESSES OF THE PARTIES

PETITIONER/APPELLANT:


Shafi Raza, Junior Clerk/SDA (OPS) PHE Sub Division
Mardan.

RESPONDENTS:

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary, Public Health Engineering, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Chief Engineer (Center), Public Health Department, Peshawar.
4. The Executive Engineer, Public Health Engineering Division, Mardan Division.
5. Mr. Abdul Salam, MPA Mardan – PTI.
6. Mr. Shakil Ahmad, SDA (OPS), Public Health Engineering Sub-Division, Tangi, PHE, Charsadda.


Petitioner/Appellant

Through


Adnan Khan Yousafzai
Advocate High Court

Dated: 06.01.2023



OFFICE OF THE CHIEF ENGINEER (CENTER)
PUBLIC HEALTH ENGG: DEPT: KHYBER PAKHTUNKHWA, PESHAWAR
 Ph #091-9217528, Email: ce@pheed.gov.pk, P.O. Box 40, Sector D-II, Phase-V, Hayatabad, Peshawar (Aziz)

No. 10 / CE-9 / PHE,

Dated Peshawar, the 20 / 10 / 2022

OFFICE ORDER

The following posting/transfer of Ministerial Establishment are hereby ordered with immediate effect, in the best public interest.

#	Name	From	To	Remarks
1	Mr. Shafi Raza Joiner Clerk	SDA (OPS) PHE Sub Division Mardan, PHE Mardan	Junior Clerk, PHE Division Buner	Against the existing vacancy
2	Mr. Zulfiqar Ahmad Junior Clerk	PHE Division Mardan	PHE Division Swabi	-do-
3	Mr. Muslim Khan Senior Clerk	Under transfer as Accounts Clerk (OPS) PHE Division Mardan	SDA PHE Sub Division Mardan, PHE Mardan	Vice item No.1

Chief Engineer (Center)

Endst: No. 10 / CE-2 / PHE,

Dated Peshawar the 20 / 10 / 2022

Copy forwarded to:

1. The Chief Engineer (North) PHE Department Peshawar.
2. The Superintending Engineers PHE Circle Mardan/Swat.
3. The Executive Engineers PHE Division Mardan/Swabi/Buner.
4. The District Accounts Account Officer Mardan/Swabi/Buner.
5. The official concerned.

Chief Engineer (Center)

ATTESTED

PUBLIC HEALTH ENGG. DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR

Office of the Engineer in Charge, Peshawar, P.H. Department, Peshawar, P.K. No. 217529-15000

Annexure "C"
Pg-17

No 36 CE 1 (PH/EC)

Dated Peshawar, the 21/10/2022.

To,

Mr. Zulfiqar Ahmad Justice Clerk,
PH/EC Division Islamabad.

Subject: APPEAL/REPRESENTATION AGAINST ORDER NO 10/CE/PH/EC
DATED 20/10/2022 OF CHIEF ENGINEER CENTER.
Ref: Your Application/Appeal dated 21/10/2022

Refer to your application/appeal under reference, in this regard it is communicated that the subject order has been issued by the undersigned in the public interest. Therefore your appeal after examining thoroughly is hereby rejected due to the said reason.

Chief Engineer (Center)

REGISTER

Annexure - D-1

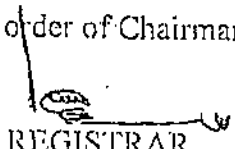

Pg - 18

Form-A

FORM OF ORDER SHEET

Court of _____

Case No. - 1524/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of Judge
1	24/10/2022	The appeal of Mr. Shafi Raza presented today by Mr. Adnan Khan Yousafzai Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on <u>25/10/22</u> . Notices be issued to appellant and his counsel for the date fixed.
	25 th Oct., 2022	<p>By the order of Chairman</p> <p> REGISTRAR</p> <p>Learned Counsel for the appellant present. Preliminary arguments heard and record perused.</p> <p>Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to respondents for submission of written reply/comments. To come up for written reply/comments on 02.11.2022 before S.B.</p> <p>ATTESTED</p> <p> (Fareeha Paul) Member(E)</p>

Annexure - D - 2
Pg - (19)

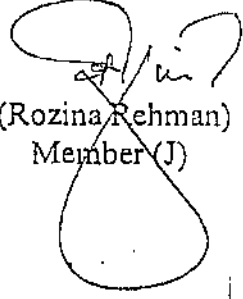
02.11.2022

Appellant present through counsel.

Kabir Ullah Khattak, learned Additional Advocate General for respondents present.


Reply not submitted. Learned AAG requested for time to submit reply/comments. Opportunity is granted. To come up for reply/comments on 01.12.2022 before S.B.

The appellant had already submitted an application for suspension of the impugned order dated 22.10.2022. Notice of this application be issued to the respondents. In the meanwhile, operation of impugned order shall remain suspended to the extent of appellant, if not acted upon earlier.


(Rozina Rehman)
Member (J)

01.12.2022

Appellant in person present. Mr. Kamran Shahid, Assistant Social Welfare Organizer alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present and requested for further time for submission of reply/comments. Last opportunity is given. In case the last chance as given is not availed, the next adjournment shall be subject to prior payment of cost of Rs. 5000/-. Adjourned. To come up for submission of written reply/comments on 21.12.2022 before the S.B.


(Salah-Ud-Din)
Member (J)

ATTACHED

Annexure - D-3

Pg - 20

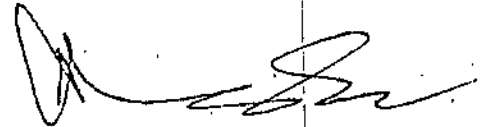
Service Appeal No. 1524/2022

21st Dec, 2022

1. Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Kamran Shahid, Assistant Social Welfare Officer for respondents present.

02. Representative of the respondents has submitted an application for withdrawal of the present appeal, annexing therewith an office order No. 04/CE-9/PHE dated 27.10.2022, whereby impugned order dated 20.10.2022 was withdrawn/cancelled rendering this appeal as fruitless, therefore, this appeal is disposed of accordingly. Consign.

3. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 21st day of December, 2022.*



(Kalim Arshad Khan)
Chairman

ATTESTED

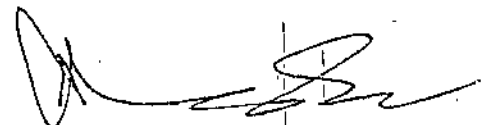
Service Appeal No. 1524/2022

21st Dec, 2022

1. Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Kamran Shahid, Assistant Social Welfare Officer for respondents present.

02. Representative of the respondents has submitted an application for withdrawal of the present appeal annexing therewith an office order No. 04/CE-9/PHE dated 27.10.2022, whereby impugned order dated 20.10.2022 was withdrawn/cancelled rendering this appeal as fruitless, therefore, this appeal is disposed of accordingly. Consign.

3. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 21st day of December, 2022.*



(Kalim Arshad Khan)
Chairman

ATTESTED

ATTESTED



OFFICE OF THE CHIEF ENGINEER (CENTER)
PUBLIC HEALTH ENGINEERING DEPT. KHYBER PAKHTUNKHWA PESHAWAR.
Ph: 9217328, E-mail: centrehhd7@gmail.com, Plot No. Sector-D-11 Phase-V, Hayatabad, Peshawar (A.D.)

No. 011 CE-9 /PHE,
Dated: Peshawar, the 04/01/2023.

OFFICE ORDER

The following posting/transfer of ministerial establishment are hereby ordered on with immediate effect, in the best public interest.

#	Name	From	To	Remarks
1.	Mr. Shafi Raza Junior Clerk	SDA (OPS) PHE Sub Division Mardan, PHE Mardan	SDA (OPS) PHE Sub Division Tangi, PHE Charsadda	Vice item No.2
2.	Mr. Shakeel Ahmad Junior Clerk	SDA (OPS) PHE Sub Division Tangi, PHE Charsadda	SDA (OPS) PHE Sub Division Mardan, PHE Mardan	Vice item No.1
3.	Mr. Zulfiqar Ahmad	Junior Clerk, PHE Division Mardan	Junior Clerk, PHE Division Swabi	Against the vacant post

Chief Engineer (Center)

Endstr: No. 011 CE-2 /PHE,

Dated 04/01/2023

Copy forwarded to:

1. The Superintendent Engineer PHE Mardan/Peshawar.
2. The Executive Engineers PHE Division Mardan/Swabi/Charsadda.
3. The District Accounts Officer Mardan/Swabi/Charsadda.
4. The official concerned.

Chief Engineer (Center)

ATTESTED

CamScanner

ATTESTED

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

12 (2) NO. 449 /2022

In

Service Appeal No 7887 /2021



Mr. SAJJAD HUSSAIN, SDA/SENIOR CLERK, PUBLIC HEALTH
ENGINEERING DEPARTMENT, SUB-DIVISION CHARSAJDA.

..... APPELLANT

VERSUS

- 1- THE GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH
CHIEF SECRETARY PESHAWAR.
- 2- THE SECRETARY PUBLIC HEALTH ENGINEERING
DEPARTMENT, GOVERNMENT OF KHYBER PAKHTUN KHWA,
PESHAWAR.
- 3- THE CHIEF ENGINEER, (CENTER) PUBLIC HEALTH
DEPARTMENT, PESHAWAR.
- 4- THE EXECUTIVE ENGINEERS, PUBLIC HEALTH ENGINEERING
DIVISION CHARSAJDA.
- 5- MR. SHAKIL AHMAD, ACCOUNTS CLERK (OPS), PUBLIC
HEALTH ENGINEERING DIVISION CHARSAJDA.

..... RESPONDENTS

PETITION U/S 12 (2) CPC FOR SETTING ASIDE ORDER DATED 02-02-2022 IN SERVICE APPEAL NO.7887/2021 BEING OBTAINED THOROUGH FRAUD AND MISREPRESENTATION FROM THIS HON'ABLE TRIBUNAL BY THE RESPONDNET DEPARTMENT AS AFTER SUCH FRAUD, THE APPELLANT HAS BEEN TRANSFERRED AGAIN VIDE OFFICE ORDER NO. 32/CE-9/PHE, DATED: 25-07-2022, ILLIGALLY AND CATEGORICALLY ON THE BASIS OF POLITICAL MOTIVATION OF RESPONDENT NO. 05 WITH ACTIVE CONNIVANCE OF RESPONDENT NO. 3. THE TRANSFER ORDER BEING PASSED ILLIGALALLY, AGAISNT MERIT AND BASED ON POLITICAL MOTIVATION MAY BE SET
ASIDE.

ATTESTED

[Signature]
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

P 9 - 25
(2)

PRAYER:

On acceptance of the instant application, the impugned Order dated 02-02-2022 of this Hon'able Tribunal being obtained through fraud and misrepresentation may please be set aside and the office order dated 25-07-2022 being issued after the impugned order of this Hon'ble Tribunal may also be declared as illegal unlawful and without lawful authority. The respondents may be directed to withdraw the above stated Office Order and appellant may not be transfer from his post of Senior Clerk at Sub Division, PHE, Charsadda, till completion of his tenure. Any other remedy which this August Tribunal deems fit, may also be granted in favor of the appellant.

RESPECTFULLY SHEWETH

ON FACTS:

Brief facts giving rise to the present appeal are as under:-

1. That the appellant is the law abiding, peaceful citizen of Pakistan and living with his family within the local jurisdiction of this Hon'able Tribunal.
2. That the appellant is serving as SDA/Senior Clerk , PHE, SUB-Division, Charsadda, under the administrative control of Chief Engineer, Public Health Engineering [Center], Khyber Pakhtunkhwa, Peshawar. He has been performing unblemished and satisfactory service in the department and having no stigma or complaint during entire service.
3. That earlier the appellant was transferred from PHE Sub Division Swabi to Mardan Division and posted as Accounts Clerk against vacant post in PHE Division Mardan, wherein the appellant assumed charged in compliance of the order No. 11/E-9/PHE dated 19/02/2021 issued by the Chief Engineer [Center] Khyber Pakhtunkhwa Peshawar.

ATTESTED
CHIEF CLERK
Khyber Pakhtunkhwa
Peshawar

4. That after less than one month of tenure period the appellant was transferred from the post of Accounts Clerk, PHE Division, Mardan to PHE Division, Charsadda, and was posted as SDA in the PHE Sub Division, Tangi by the Chief Engineer [Center], Khyber Pakhtunkhwa, Peshawar vide Order No. 6/E-9/PHE dated 11/03/202, but after [03] days was transferred from PHE Sub Division, Tangi and posted in PHE Division, Charsadda vide office order No. 05/E-9 d/PHE dated 15/03/2021 issued by Chief Engineer [Center] PHE Peshawar, which order also complied by the appellant .
5. That after 8th months period of tenure the appellant was transferred again from PHE Division Charsadda and posted in the office of Chief Engineer (East) PHED on 02/12/2021 vide office order No. 05/CE-9/PHE in violation of tenure and posting transfer policy / APT Rules 1989 Government of Khyber Pakhtunkhwa.
6. That against no action on the departmental appeal of the appellant within the statutory period by the respondent department, the appellant filed service appeal before this Honable Tribunal along with application for suspension of the impugned order.
7. That the Hon'able Tribunal was pleased to suspend the impugned order dated 02-12-2021 and accordingly directed the respondent to file their respective comments vide order dated 21-12-2021.
(Copy of order dated: 21-12-21, is attached as Annex-A)
8. That the respondent department appeared before the Tribunal and seeks time for submission of their respective comments which was accordingly granted.
9. That after seeking further time on deferent dates of hearing the respondent department produced office order No. 06/CE-9/PHE dated 21-01-2022 wherein the appellant was reposted on his earlier position and on the basis of such order the appellant was asked to withdraw his appeal which was withdrawn by the appellant accordingly vide order dated 02-02-2022.
(Copy of order dated: 02-02-2022, is attached as Annex-B)

APPEARED
BY
CHIEF ENGINEER
Khyber Pakhtunkhwa
Service

10. That after obtaining the above stated order from this Hon'ble Tribunal with fraud and misrepresentation, respondent No.03 vide order dated: 25-07-2022, has again transferred the appellant from his position which illegal act of the respondent No. 03 is challenged under the instant application on the following grounds interalia.

GROUND:

1. That conduct of the respondent department toward this Ho'able tribunal was not fair throughout the proceeding of the appeal which is against the principal of fair play therefore they be proceeded according to law and further strict departmental action be directed to be taken against the responsible person.
2. That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
3. That it is evident form the record that the appellant has been transferred by the respondent department on the basis of political motivation so many time just to benefit their dear ones and in this regard they adopted all illegal ways and violated each and every rules.
4. That the journey of violations of rules does not limited only to the extent of department but sadly the same continue when the appellant filed appeal before this august Tribunal.
5. That interestingly at the department level the respondents was only dodging the appellant by subjecting him to illegal transfer orders but when he approached this Hon'able Tribunal, then the department started dodging this Hon'able Tribunal too which fact is evident from the available record on file.
6. That it is pertinent to mention here that during the pendency of the appeal, respondent no. 03 had also issued another office order No. 11/CE-9/PHE dated 13/12/2021 and further transferred the appellant.

ATTESTED

EXAMINER
Service Tribunal
Peshawar



7. That after availing time for submission of reply by the respondent no.03, instead of filing of comments, produced office order no. 06/CE-9/PHE dated 21-01-2022, and the appeal was accordingly withdrawn by the appellant as his grievance were redressed.
8. That soon after obtaining order form the Hon'able Tribunal through fraud and misrepresentation, the respondent no. 03 vide office order No.32/CE-9/PHE dated 25-07-2022 again transferred the appellant form his post just to benefit respondent no.05 beside the fact the post and job description of the appellant and respondent no. 03 is not the same but even then they are always after the post of the appellant the reasons best known to respondents no. 03 and 05.
9. That the malafide of the respondent is evident form the fact that the office order No. 32/CE-9/PHE dated 25-07-2022 is promotion order wherein 23 employees were promoted from the post of Junior Clerks (BPS-11) to the post of Senior Clerks (BPS-14) but even then the name of the appellant has malafiedly and fraudulently been added in the list of the promotion just to achieve their motives.
- (Copy of order dated: 25-07-2022, is attached as Annex-C)**
10. That the appellant was transferred so many times just in the year 2021 without any reasons in violation of transfer posting and tenure policy which is also against the law rules and judgment of august Supreme Court of Pakistan enshrine in Anita Turab vs Fedcration of Pakistan reported as 2031 PLD SC Page 195.
11. That the appellant has not been completed his tenure in Charsadda sub Division and the normal period of posting of a Government Servant at a station, according to Rule 21 of the Rules of Business is three years, which has to be followed in the ordinary circumstances, unless for reasons or exigencies of service a transfer before expiry of the said period becomes necessary thus the said transfer without completion of tenure is against the law and rules, constitution and fundamental rights.

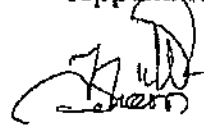
ATTESTED
 KUNDAN KUMAR
 Secretary
 Service Tribunal
 Peshawar

12. That it is evident from the transfer/posting history of the appellant that since inception of his appointment he has been subjected to frequent transfers and was never let to complete his tenure rather he has been treated as shuttlecock throughout his career which act of the respondent department is not only illegal but is a source of frustration for the appellant and his family as well.

It is, therefore humbly prayed that on acceptance of the instant petition, the order dated 02-02-2022 passed by this Hon'ble Tribunal and office order No. 32/CE-9/PHE, dated; 25-07-2022, may please be set aside.

Appellant

Through


Faheem Ullah Akhunzada
Advocate High Court
Peshawar.

LIST OF BOOKS:

1. CONSTITUTION OF PAKISTAN
2. SERVICES LAWS
3. TRANSFER POSTING POLICY
4. ANY OTHER LAWS AS PER NEED.

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Annexure- G-1
Pg- (30)



3rd August, 2022 Counsel for the petitioner present.


Learned counsel for the petitioner submitted that in view of 2022 SCMR 959 titled "Sindh Irrigation and Drainage Authority versus Government of Sindh and others" the application under Section 12(2) of the CPC was maintainable before the Tribunal

The petitioner has moved this application under Section 12(2) of the CPC for revival of the order dated 02.02.2022 passed in appeal No. 7887/2021. The said appeal was against transfer order dated 02.12.2021 of the petitioner. According to the petitioner, the respondents had fraudulently withdrawn the order dated 02.12.2021 to instigate the petitioner to withdraw the appeal, which he accordingly withdrew but few months thereafter the respondents again with malafide intention transferred the petitioner vide order dated 25.07.2022, hence, this application. Let notices of the application be given to the other side. Original record be also requisitioned. To come up for written reply on 15.09.2022 before S.B.

As to the application for suspension of the order dated 25.07.2022, the same is suspended till the date fixed to the extent of the petitioner and respondent No.5 subject to notice to the other side.

Q

(Kalim Arshad Khan)
Chairman

ATTESTED

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Khyber Pakhtunkhwa
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Peshawar

15th Sept, 2022

Counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Kamran Shahid, Assistant Social Organizer for official respondents present. Mr. Umer Zafran, Advocate present and submitted Wakalatnama on behalf of private respondent No. 5 which is placed on file.

Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 17.10.2022 before S.B. The impugned order dated 25.07.2022 is suspended till the date fixed to the extent of the petitioner and respondent No.5.

Q



(Kalim Arshad Khan)
Chairman

~~NO PHE~~
~~17/10/2022~~
Sajid Hussain
17/10/22

Oct., 2022

01. Petitioner present in person. Mr. Muhammad Adeel Butt, Addl. AG alongwith Kamran Shahid, Assistant Social Organizer for the respondents present.


02. Representative of the respondents produced copy of an office order dated 12.10.2022 retraining the petitioner as SDA in PHE Sub Division Charsadda against an existing vacancy. On such presentation of order, the petitioner is satisfied and withdraws this application on the assurance of the representative of the respondents that petitioner would be allowed to complete his normal tenure at the present posting. The representative present before the court has assured on behalf of the respondents that the petitioner would be

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
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Annexure - C-3
Pg - 32

allowed to complete normal tenure and would not be disturbed. As a token of admission of their submissions both the parties signed the margin of order sheet. Disposed of accordingly. Consign.

03. Pronounced in open Court at Peshawar and given under my hand and the seal of the Tribunal on this 17th day of October, 2022.


(Kalim Arshad Khan)
Chairman


Certified to be true copy
EXCISE OFFICER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application	05/01/23
Number of Words	3600
Copying Fee	20/-
Agent	477
Total	62/-
Name of Complainant	
Date of Completion of Copy	05/01/23
Date of Delivery of Copy	05/01/23

50	4461			
ایڈویٹ: عبدالرشید مسعودی				
بار کونسل ایسوسی ایشن خیبر پختونخواہ				
رابطہ نمبر:		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		

سروس لٹریچر بینونل پشاور

بعدالت جناب:

منجانب:	دعویٰ:
	12(2)
	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

باعث تحریر آنگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ
 آن مقام لٹریچر بینونل پشاور کے ایڈووکیٹ مسعودی کے ذریعے
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقریر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اپیل کمرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ یا اختیارات حاصل ہوں گے اور اس کا ساختہ برداشت منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 



لٹریچر بینونل پشاور کے لیے منظور ہے

نوٹ: اس وکالت نامہ کی فوٹو کاپی قابل قبول ہوگی۔

تفصیح دہا لٹریچر بینونل پشاور

مقام لٹریچر بینونل پشاور