


# FORM OF ORDER SHEET

Court of \_\_\_\_\_

## 12(2) CPC Petition No. 8/2023

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. 1525/2022 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. 8 /2023

In

Service Appeal No.1525/2022

Zulfiqar Ahmad. . . . . PETITIONER/APPELLANT

VERSUS

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

**I N D E X**

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Through

Petitioner/Appellant

**Adnan Khan Yousafzai**

Advocate High Court

Cell: 0342-9028803

Dated: 06.01.2023

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,**  
**PESHAWAR**

Petition 12(2) No. 8 /2023

In

Service Appeal No.1525/2022

Zulfiqar Ahmad, Junior Clerk (BPS-11), PHE 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.

.....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**  
**11.11.2022, IN SERVICE APPEAL NO.1525/2022 BEING**  
**OBTAINED THROUGH FRAUD AND MIS-**  
**REPRESENTATION 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  
ONE AND A HALF MONTH OF THE ORDER PASSED BY  
THIS HON'BLE TRIBUNAL ON 11.11.2022, 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 appellant is the employee of Public Health Engineering and recently serving at Mardan Division, as Junior Clerk and rendered commendable services throughout his tenure with unblemished reputation.

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 Rejection Order of respondent No.3 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 present petitioner/appellant withdrawn his appeal on 11.11.2022, as the respondents department withdrawn/cancelled the impugned transfer order dated 20.10.2022 by issuing cancellation/withdrawal transfer order issued on 27.10.2022. (Copies of Order Sheet/Withdrawal of Appeal dated 11.11.2022 is annexure "D", and Withdrawal of Transfer Order dated 27.10.2022 is annexure "D1").

5. That the respondent No.3 at the behest of local MPA, namely Abdul Salam, again transferred the petitioner/appellant from Junior Clerk PHE Division Mardan against the vacant post as Junior Clerk PHE Division, Swabi, vide office order No.01/CE-9/PHE, dated 04.01.2023. (Copy of Transfer Order dated 04.01.2023 is annexure "E").
6. That it is pertinent to mention that on the same date i.e. 04.01.2023, the present petitioner has been further transferred to PHE Sub-Division Malakand at Batkhela against the vacant post of SDA (OPS) PHE Sub-Division Batkhela, vide office order No.01/CE-9/PHE dated 04.01.2023. (Copy of Transfer 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;

**GROUNDS:-**

- 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 earlier on 17.01.2022, the appellant was transferred from PHE Circle Mardan to PHE Division Mardan at the behest of respondent No.5 just to adjust his blue-eyed employees who has supported and voted in favour of his political party. (Copy of Order dated 17.01.2022 is annexure "H").
- 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 petitioner was instigated and allured by the respondents department to withdraw his appeal by issuing cancellation transfer order dated 27.10.2022 and now they malafidely have again transferred the petitioner.
- 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 the blue-eyed employees of respondents department 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.

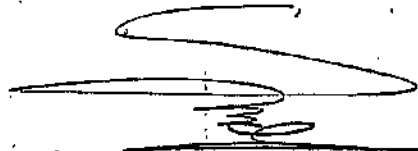
J. That the rapid and continuous transfer orders made by the respondents against the petitioner/appellant are sheer abuse of process of law, misuse of authority and against natural justice, hence is ineffective upon the rights of petitioner/appellant.

- 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.

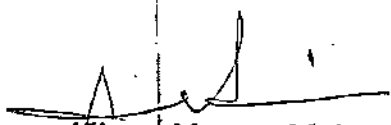
It is, therefore most humbly prayed that on acceptance of this 12(2) Petition, the impugned

order dated 11.11.2022 passed by this Hon'ble Tribunal in Service Appeal No.1525/2022 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. 1525/2022

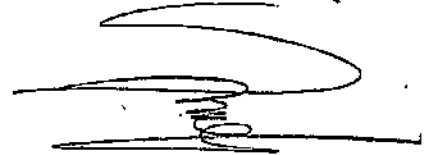
Zulfiqar Ahmad. . . . . **PETITIONER/APPELLANT**

**VERSUS**

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

**AFFIDAVIT**

I, Zulfiqar Ahmad, Junior Clerk (BPS-11), PHE 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: 16101-7732752-1

Cell: 0334-5615701

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,**  
**PESHAWAR**

In Re:

Petition 12(2) No. \_\_\_\_\_/2023

In

Service Appeal No.1525/2022

Zulfiqar Ahmad. . . . .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:**

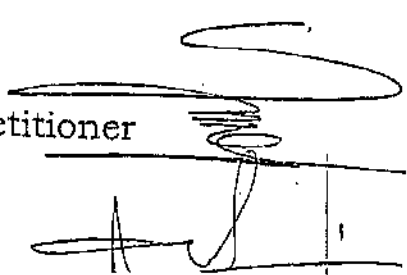
1. That the titled petition is being filed before this Hon'ble Tribunal in which no date of hearing has yet been fixed.
2. That the petitioner has a prima facie case in his favour and he is sanguine of its success.
3. That the balance of convenience also lies in favour of the petitioner.

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.

Through

Petitioner

  
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.1525/2022

Zulfiqar Ahmad. .... PETITIONER

VERSUS

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

AFFIDAVIT

I, Zulfiqar Ahmad, Junior Clerk (BPS-11), PHE 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: 16101-7782 752-1  
Cell: 0334-5615 701

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,**  
**PESHAWAR**

Petition 12(2) No. \_\_\_\_\_/2023

In

Service Appeal No.1525/2022

Zulfiqar Ahmad. . . . . PETITIONER/APPELLANT

VERSUS

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

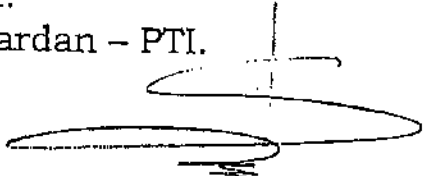
**ADDRESSES OF THE PARTIES**

**PETITIONER/APPELLANT:**

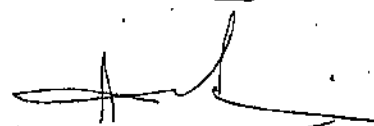
Zulfiqar Ahmad, Junior Clerk (BPS-11), PHE Division,  
Mardan.

**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.

  
Petitioner/Appellant

Through

  
Adnan Khan Yousafzai  
Advocate High Court

Dated: 06.01.2023





**OFFICE OF THE CHIEF ENGINEER (CENTER)**  
**PUBLIC HEALTH ENGG:DEPTT:KHYBER PAKHTUNKHWA, PESHAWAR**  
 Ph: 01-9217528, E-mail: ce@pheed.g.kp.gov.pk, PHE#40, Sector-II-II, Phase-V, Unyatabad, Peshawar (2712)

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 Junior Clerk	SDA (OPS) PHE Sub Division Mardan, PHE Mardan	Junior Clerk, PHE Division Buner	Against the existing vacancy
2	Mr. Zulfqar 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)

Encls: 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

مختصر - چیف ایگزیکٹو آفیسر، ایچ اے ایف ایف ڈیپارٹمنٹ، لہور اور  
 ایچ اے ایف ایف ڈیپارٹمنٹ، سی ڈی اے

جس کا نام فیلو ڈین کا منتقلی ہوا ہے۔  
 اور یہ ماہر اور ڈپٹی ایگزیکٹو ایف اے سے ہے  
 اور یہ سائلز کا تبادلہ فیلو ڈین سے ہونے اور جوائنٹ سروس  
 پورے 2022 کو No. 10/EE-9 ہے اور یہ سائلز  
 کا تبادلہ فیلو ڈین سے ہے اور یہ جوائنٹ سروس  
 کی تفصیل مندرجہ ذیل ہے

2019 سے 2022

20/10/2022

- 1. فیلو ڈین سے ماہر 2019-01-20
- 2. ماہر سے نوشہ 2019-01-31
- 3. نوشہ سے سائلز 2019-06-21
- 4. سائلز سے جوائنٹ سروس 2021-04-15
- 5. جوائنٹ سروس سے سائلز 2021-09-22
- 6. سائلز سے فیلو ڈین 2022-01-28
- 7. فیلو ڈین سے سائلز 2022
- 8. سائلز سے جوائنٹ سروس 2022-09-16
- 9. جوائنٹ سروس سے فیلو ڈین 2022-10-16

10۔ اب سائلز سے نوشہ 2022-10-20 اور یہ جوائنٹ سروس سے ہے اور یہ جوائنٹ سروس سے ہے  
 اور یہ جوائنٹ سروس سے ہے اور یہ جوائنٹ سروس سے ہے

سائلز سے فیلو ڈین کا منتقلی

سائلز سے فیلو ڈین کا منتقلی  
 ایچ اے ایف ایف ڈیپارٹمنٹ، سی ڈی اے

PUBLIC HEALTH ENGG. DEPARTMENT  
KHYBER PAKHTUNKHWA PESHAWAR

Annexure 'C'  
Pg-17

No 26 / CE-1 /PHHC

Dated Peshawar, the 21/10/2022.

To: Mr. Zulfiqar Ahmad Junior Clerk,  
PHHC Division Peshawar.

Subject: APPEAL/REPRESENTATION AGAINST ORDER NO.10/CE-1/PHHC  
DATED 20.10.2022 OF CHIEF ENGINEER CENTER.

Ref: Your Application/Appeal dated 21.10.2022

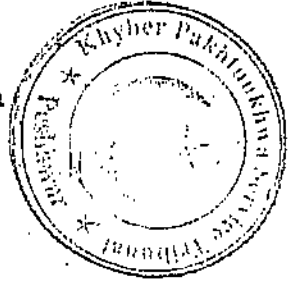
Refer to your application/appeal under referenced in this regard it is communicated that the subject order has been issued by the undersigned in the public interest. Therefore your appeal after examining thoroughly is hereby rejected due to the said reason.

(Chief Engineer (PHHC))

Annexure - D

1 Pg-18-19.

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,  
PESHAWAR



Service Appeal No. 1525 /2022

Zulfiqar Ahmad, Junior Clerk (BPS-11), PHE Division,  
Mardan. .... 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.

.....RESPONDENTS

SERVICE APPEAL U/S 4 OF THE KHYBER  
PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974,  
WHEREBY DEPARTMENTAL APPEAL FILED BY  
APPELLANT AGAINST HIS TRANSFER ORDER DATED  
20.10.2022, WAS REJECTED BY THE RESPONDENT  
NO.3 ON 21.10.2022.

PRAYER:

On acceptance of this Service Appeal, the order dated 20.10.2022 may kindly be set aside/set at naught and the appellant may kindly be allowed to perform his duties as Junior Clerk PHE Division, Mardan.

Certified to be true copy.

SECRETARY  
Khyber Pakhtunkhwa  
Services Tribunal,  
Peshawar



11.11.2022

Mr. Adnan Khan Yousafzai, Advocate for the appellant present and submitted an application for withdrawal of the instant service appeal on the ground that the appellant has been transferred back to PHE Division Mardan from PHE Division Swabi and as such his grievance stands redressed. Application is allowed and the instant service appeal is dismissed, as withdrawn. Consign.

02. Pronounced in open court at Peshawar and given under my hand and seal of the Tribunal this 11<sup>th</sup> of November, 2022

*(Handwritten signature)*

(Mian Muhammad)  
Member (E)

Certified to be true copy

*(Handwritten signature)*  
MEMBER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 05/01/23

No. of Copies 800

Copying Fee 10/-

Urgent 5/-

Total 14/-

Date of Delivery of Copy 05/01/23

Date of Delivery of Copy 05/01/23



**OFFICE OF THE CHIEF ENGINEER (CENTER)**  
**PUBLIC HEALTH ENGG. DEPT. KHYBER PAKHTUNKHWA, PESHAWAR**  
 Ph #021-9217428, E-mail: centernheid@gmail.com, Plot#30, Sector-B-II, Phase-V, Hayatabad, Peshawar (Aiz)

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:

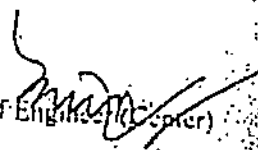
1. The Superintendent Engineer PHE Mardan/Peshawar.
2. The Executive Engineers PHE Division Mardan/Swabi/Charsadda.
3. The District Accounts Officer Mardan/Swabi/Charsadda.
4. The official concerned.

Chief Engineer (Center)

No. \_\_\_\_\_ / PHE,  
Dated Peshawar, the 04/01/2023.

CORRIGENDUM

Partial modification in this office order No. 01/CE-9/PHE, dated 04.01.2023, Mr. Zulfikar Ahmad, Junior Clerk (BPS-11), under transfer to the office of Executive Engineer Division Swabi as Junior Clerk, is hereby transferred and posted in the office of Executive Engineer PHE Division Malakand at Batkhela against the vacant post of SDA (OPS) PHE Sub Division Batkhela, with immediate effect, in the best public interest.

  
Chief Engineer (Center)

Ends: No. \_\_\_\_\_ / PHE

Dated Peshawar the \_\_\_\_\_ / 2023

Copy forwarded to:

1. The Chief Engineer (North) PHE Department Peshawar.
2. The Superintending Engineer PHE Circle Mardan/Swat.
3. The Executive Engineer PHE Division Mardan/Swabi/Batkhela.
4. The District Accounts Officer Mardan/Swabi/Batkhela.
5. The Officials Concerned.

Chief Engineer (Center)

Annexure - G

Pg- (29)

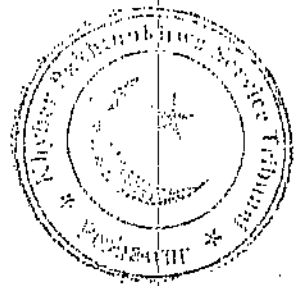
(10)

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 CHARSADDA.

..... 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 CHARSADDA.
- 5- MR. SHAKIL AHMAD, ACCOUNTS CLERK (OPS), PUBLIC  
HEALTH ENGINEERING DIVISION CHARSADDA.

..... 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  
Secretary  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



Pg - (24)  
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

*[Signature]*  
Secretary  
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 8<sup>th</sup> 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)

APPELLANT  
ADVOCATE GENERAL  
KHYBER PAKHTUNKHWA

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.

GROUNDS:

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  
[Signature]  
[Stamp]

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 whterein 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 Federation 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.

APPEALED  
 CHAIRMAN  
 SURVEILLANCE  
 TRIBUNAL

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

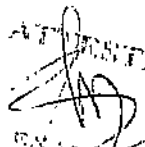
Through



Faheem Ullah Akhunzada  
Advocate High Court  
Peshawar.

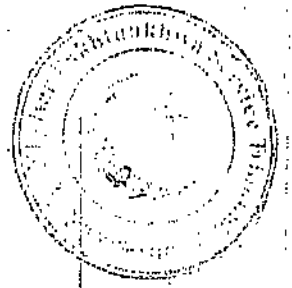
LIST OF BOOKS:

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

ATTESTED  
  
C. M. A. KHAN  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Annexure- G-1

Pg- 29



3<sup>rd</sup> 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.

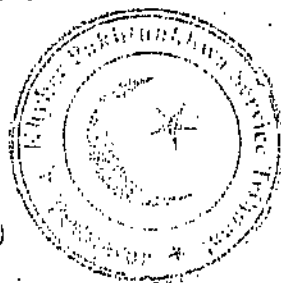
(Kalim Arshad Khan)  
Chairman

ATTESTED  
  
Khalid Arshad Khan  
Secretary  
Service Tribunal  
Karachi

15<sup>th</sup> 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.



(Kalim Arshad Khan)  
Chairman

AG PHE  
Sujid Hussain  
17/10/22  
10/10/2022

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

ATTENDED  
EXAMINER  
Service Tribunal  
Peshawar

Annexure - C-3

Pg - 3

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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 17<sup>th</sup> day of October, 2022.



(Kalim Arshad Khan)  
Chairman

Certified to be true copy  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 05/01/23  
Number of Words 3600  
Copying Fee 20/-  
Deposit 40/-  
Total 60/-  
Name of Applicant \_\_\_\_\_  
Date of Issuance of Copy 05/01/23  
Date of Delivery of Copy 05/01/23



Annexure - H  
Pg - (32)



**OFFICE OF THE CHIEF ENGINEER (CENTER)**  
**PUBLIC HEALTH ENGINEERING DEPARTMENT, KHYBER PAKHTUNKHWA, PESHAWAR**  
(P. 6191-92/2578, Kabul Centre, e-mail: phec@pnc.gov.pk, PHE/10, Sector-11/11, Phase-V, Hayatabad, Peshawar/2017)

No. 07/CE-9 /PHE,  
Dated Peshawar, the 17 /01/2022.

**OFFICE ORDER**

The following posting/transfer of Junior Clerks (BPS-11), are hereby ordered with immediate effect, in the best public interest.

#	Name	From	To	Remarks
1.	Mr. Zulfiqar Ahmad	PHE Circle Mardan	PHD Division Mardan	Vice item No.2
2.	Mr. Muhammad Deyar	PHD Division Mardan	PHE Circle Mardan	Vice item No.1

Chief Engineer (Center)

Encls: No. 07/CE-9 /PHE.

Dated 17 /01/2022

Copy forwarded to:

1. The Superintending Engineers PHE Circle Mardan.
2. The Executive Engineer PHE Mardan.
3. The District Accounts Officer Mardan.
4. The officials concerned.

Chief Engineer (Center)

4462			
ایڈویٹ: عدنان خان کوٹلی	پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: 1286-18-14	رابطہ نمبر:		

بعدالت جناب: مسروس لٹریچر پشاور

منجانب:	دعویٰ: Service Appeal
	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:
	باعث تحریر آگہ

خیبر پختونخواہ

اد الفقداء بعد

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ  
 آن مقام پشاور ایڈویٹ عدنان خان کوٹلی (ایڈووکیٹ) کو وکیل مقرر  
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی 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 ذکر کی یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز  
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی  
 کاروائی 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 اختیارات حاصل ہوں گے اور اس کا ساخو برداشتہ منظور و قبول ہوگا  
 دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا کوئی بارش پیش مقام دورہ یا حد سے  
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ مندرجہ  
 المرقوم: 31-1-2023

ایڈووکیٹ

شہاد

مقام: پشاور

نوٹ: اس وکالت نامہ کی کوئی تاخیر نہیں ہوگی۔