

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR
AT CAMP COURT ABBOTTABAD.

Service Appeal No. 7711/2021

Date of institution 01.11.2021

Zahoor Elahi Baig, XEN (OPS) C&W Division Lower Kohistan.

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa, Peshawar and five others.


ORDER
18.01.2022

Mr. Muhammad Arshad Khan Tanoli, Advocate, for the appellant present. Mr. Zahid Masood, Section Officer (Litigation) alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present and produced copy of Notification No. SOE/C&WD/3-1/2021 dated 10.01.2022 whereby transfer order of the appellant has been withdrawn, which is placed on file.

Learned counsel for the appellant stated that the transfer order of the appellant has been withdrawn, therefore, the instant service appeal has become infructuous. In this regard, written endorsement of learned counsel for the appellant was obtained at the margin of order sheet.

In light of the above, the appeal in hand stands dismissed being infructuous. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
18.01.2022


(Salah-ud-Din)
Member (J)
Camp Court A/Abad

The copy order of the appellant has been withdrawn. S. appeal has gone infructuous



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the Jan 10, 2022

NOTIFICATION:

No.SOE/C&WD/3-1/2021: The Competent Authority is pleased to cancel/withdraw the posting/transfer order of the following officers of C&W Department issued vide this Department Notification of even number dated 14.10.2021, which is reproduced below:-

Sr. No	Name & Designation	From	To	Remarks
1	Engr. Hayatullah Noor AE (BS-17)	Awaiting posting	XEN (OPS) C&W Division Kohistan Lower	Vice No.2
2	Engr. Zahoor Ellahi Baig AE (BS-17)	XEN (OPS) C&W Division Kohistan Lower	Design Engineer (OPS) O/O Chief Engineer (Centre) C&W Peshawar	Against vacant post

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar
2. Chief Engineer (Centre) C&W Peshawar
3. Chief Engineer (East) C&W Abbottabad
4. Superintending Engineer C&W Circle Mansehra
5. Executive Engineer C&W Division Kohistan Lower
6. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar
7. District Accounts Officer Kohistan
8. PS to Special Assistant to Chief Minister Khyber Pakhtunkhwa for C&W Department
9. PS to Secretary, C&W Department Peshawar
10. PA to Additional Secretary, C&W Department Peshawar
11. PA to Deputy Secretary (Admn), C&W Department Peshawar
12. Officers concerned
13. Office order File/Personal File

Zahoor
10.01.2022
(ZAHOOR SHAH)
SECTION OFFICER (Estb)

23.12.2021

Learned counsel for the appellant present. Mr. Malik Muhammad Ali, S.O alongwith Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for official respondents No. 1 to 5 present. Private respondent No. 6 in person present and submitted in writing that he relies on the comments already submitted by official respondents.

Learned counsel for the appellant submitted an application for correction of name of respondent No. 6 which has inadvertently been mentioned as Hadayatullah Noor instead of Hayatullah Noor in the memo of appeal. Being a clerical mistake, the requests of the appellant is genuine, therefore, the application is allowed and office is directed to make necessary correction in the memo of appeal as well as relevant record accordingly. To come up for rejoinder, if any, as well as arguments on 18.01.2022 before the D.B at Camp Court Abbottabad. The restraint order dated 01.11.2021 shall remain operative till the date fixed.



(Salah-Ud-Din)
Member (J)

Camp Court Abbottabad

reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 01.12.2021 before the D.B at Camp Court, Abbottabad.

Alongwith the memorandum of appeal an application has also been submitted for suspension of the operation of the impugned Notification dated 14.10.2021. Notice of the application be also given to the respondents. The operation of impugned Notification is suspended till date fixed.


Chairman

01.12.2021

Appellant alongwith counsel and Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG alongwith Malik Muhammad Ali, S.O for official respondents present and submitted reply/comments. Placed on file. Notice has not been issued to respondent No. 6, therefore, notice be issued to him for the next date.

Case to come up for reply/comments of respondent No. 6 on 23.12.2021 before S.B at camp court, Abbottabad. The restraint order dated 01.11.2021 shall remain operative till date fixed.


Chairman
Camp Court, A/Abad

S.A No. 7711/2021

01.11.2021

Counsel for the appellant present. Preliminary arguments have been heard. The copies of record annexed with Memorandum of appeal have been perused.

According to copy of Notification dated 16.04.2021 as annexed with the appeal, the appellant was transferred and posted as XEN(OPS) C&W Division Kohistan Lower against a newly created post. He, vide impugned Notification dated 14.10.2021, has been transferred from the said post and posted as Design Engineer (OPS), Office of the Chief Engineer (Centre) C&W Peshawar against vacant post while respondent No. 6 has been posted in place of the appellant as XEN (OPS) C&W Division Kohistan Lower. The impugned Notification is shown to have been issued in the best public interest but the transfer of the appellant on the relevant post few months ago was also made in the best public interest, making the things incomprehensible as to what was the best public interest at the time of posting of the appellant as XEN(OPS) C&W Division Kohistan Lower and how that public interest has vanished necessitating the issuance of impugned transfer order against the tenure policy. Unless the respondents are heard for their justification as to issuance of impugned order, the appellant has got an arguable case. The appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written

Appellant Deposited
Security & Process Fee

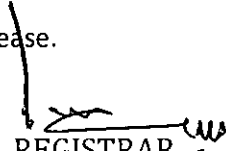

01-11-21

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 7711 /2021 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	01/11/2021	<p>The appeal of Mr. Zahoor Elahi presented today by Mr. Muhammad Arshad Khan Tanoli Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put up there on <u>01-11-2021</u></p> <p> CHAIRMAN</p>

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECK LIST**

Case Title: Zahoor Elahi Baig vs Govt of KPK Peshawar

S.#	Contents	Yes	No
1.	This appeal has been presented by: <u>M. Asghar Khan Tonal</u>	✓	
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the requisite documents?	✓	
3.	Whether Appeal is within time?	✓	
4.	Whether the enactment under which the appeal is filed mentioned?	✓	
5.	Whether the enactment under which the appeal is filed is correct?	✓	
6.	Whether affidavit is appended?	✓	
7.	Whether affidavit is duly attested by competent oath commissioner?	✓	
8.	Whether appeal/annexures are properly paged?	✓	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10.	Whether annexures are legible?	✓	
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/clear?	✓	
13.	Whether copy of appeal is delivered to A.G/D.A.G?	✓	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15.	Whether numbers of referred cases given are correct?	✓	
16.	Whether appeal contains cuttings/overwriting?	✓	✓
17.	Whether list of books has been provided at the end of the appeal?	✓	
18.	Whether case relate to this Court?	✓	
19.	Whether requisite number of spare copies attached?	✓	
20.	Whether complete spare copy is filed in separate file cover?	✓	
21.	Whether addresses of parties given are complete?	✓	
22.	Whether index filed?	✓	
23.	Whether index is correct?	✓	
24.	Whether Security and Process Fee deposited? on	✓	✓
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on	✓	
26.	Whether copies of comments/reply/rejoinder submitted? on		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

Zahoor Elahi Baig

Signature:

[Signature]

Dated:

1/11/21

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. 7711 /2021

Zahoor Elahi Baig, XEN (OPS) C&W Division Lower Kohistan.

...APPELLANT

VERSUS

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

....RESPONDENTS

SERVICE APPEAL

INDEX

<i>S. #</i>	<i>Description</i>	<i>Page #</i>	<i>Annexures</i>
1.	Service appeal alongwith affidavit	1 to 6	
2.	Application for suspension alongwith affidavit	7 to 8	
3.	Copy of transfer order dated 16/04/2021 of the appellant	9-11	"A"
4.	Copy of notification	12	"B"
5.	Copy of departmental appeal	13-14	"C"
6.	Wakalatnama		


...APPELLANT

Through

Dated: _____/2021


(Muhammad Arshad Khan Tanoli)
Advocate High Court, Abbottabad

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. 7711 /2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7844

Zahoor Elahi Baig, XEN (OPS) C&W Division Lower Kohistan.

Dated 01-11-2021

...APPELLANT

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. Secretary C&W Khyber Pakhtunkhwa, Peshawar.
3. Chief Engineer East (C&W), Abbottabad.
4. Chief Engineer Center (C&W), Peshawar.
5. Superintendent Engineer (C&W), Mansehra.
6. ~~Engineer Hidayatullah Noor, XEN, OPS, C&W Division Kohistan.~~

Eng: Hidayatullah Noor, XEN, OPS, C&W Division Kohistan

...RESPONDENTS

SERVICE APPEAL UNDER SECTION 4 OF KP
SERVICE TRIBUNAL ACT, 1974, FOR
DECLARATION TO THE EFFECT THAT THE
APPELLANT WAS POSTED FROM HIGHWAY SUB
DIVISION MARDAN TO THE POST OF XEN (OPS)
C&W DIVISION KOHISTAN LOWER VIDE ORDER
NO. SOE/C&WD/3-1/2021 AT SERIAL NO. 15 OF
THE ORDER DATED 16/04/2021 AND NOW, THE
APPELLANT HAS PREMATURELY BEEN
TRANSFERRED FROM C&W DIVISION LOWER

Filed to-day

ew
Registrar

01/11/2021

*vide order
dated
23-12-21*

KOHISTAN TO POST OF DESIGNED ENGINEER (OPS) IN THE OFFICE OF RESPONDENT NO. 4 ON 14/10/2021 WHICH IS PREMATURE, AGAINST THE TENURE POLICY, PERVERSE, DISCRIMINATORY, MALAFIDE AND THE SAME IS LIABLE TO BE SET ASIDE.

=====

PRAYER; ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, IMPUGNED TRANSFER ORDER DATED 14/10/2021 MAY BE SET ASIDE AND RESPONDENTS MAY BE DIRECTED TO RESTORE THE TRANSFER ORDER OF APPELLANT DATED 16/04/2021. ANY OTHER RELIEF WHICH THIS HONOURABLE TRIBUNAL DEEM APPROPRIATE IN THE CIRCUMSTANCES OF THE CASE MAY ALSO BE GRANTED TO THE APPELLANT.

=====

Respectfully Sheweth;-

That the facts forming the background of the instant service appeal are arrayed as under;-

1. That the appellant was posted from the post of S.D.O Highway Sub Division Mardan against the post of XEN (OPS) C&W Division Kohistan

Lower at serial No. 15 of the posting order No. SOE/C&WD/3-1/2021 dated 16/04/2021. Copy of transfer order dated 16/04/2021 of the appellant is attached as Annexure "A".

2. That after near about 06 months, the appellant has been transferred from C&W Division Kohistan to post of Designed Engineer in the office of Respondent No. 4 vide impugned notification No. SOE/C&WD/3-1/2021 dated 14th October 2021. Copy of notification is attached as Annexure "B".
3. That the appellant feeling aggrieved, filed departmental appeal against impugned transfer order dated 14/10/2021 to the next higher authority on 15/10/2021 which is pending decision before the respondent No. 1. Copy of departmental appeal is attached as Annexure "C".

Hence, the instant service appeal is filed inter-alia on the following grounds:-

GROUNDS:-

- a. That the impugned transfer order dated 14/10/2021 is perverse, discriminatory

against the tenure policy as well as premature. Hence the impugned transfer order dated 14/10/2021 of the appellant is not maintainable at law.

- b. That when law prescribe a thing which is to be done in a particular manner, that must be done in that manner and not otherwise. The respondents' department was supposed to follow the prescribe law as well as procedure which is sine quo non for transfer and posting of the employees.
- c. That the transfer order of respondent No. 6 in the place of appellant is politically motivated and illegal. Hence, the impugned transfer order is to be cancelled.
- d. That no stretch of the imagination disentitle the appellant to serve and complete his service tenure at C&W Division Kohistan Lower as per law. The respondents' department has led the appellant to the place which is utterly unknown to the principle of jurisprudence, good governance and fair play.

- e. That court should not fold-up its hand while granting relief to the aggrieved appellant. The law on the tenure has been violated and the petitioner is being victimized by the authorities.
- f. That there is no other prompt, efficacious remedy, available to the appellant except the instant appeal.

It is, therefore, humbly prayed that on acceptance of the instant service appeal, impugned transfer order dated 14/10/2021 may be set aside and respondents may be directed to restore the transfer order of appellant dated 16/04/2021. Any other relief which this Honourable Tribunal deem appropriate in the circumstances of the case may also be granted to the appellant.


...APPELLANT

Through

Dated: _____/2021


(Muhammad Arshad Khan Tanoli)
Advocate High Court, Abbottabad

VERIFICATION:-

Verified on oath that the contents of foregoing service appeal are true and correct to the best of our knowledge and belief and nothing has been concealed therein from this Honourable tribunal.


...APPELLANT

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. _____/2021

Zahoor Elahi Baig, XEN (OPS) C&W Division Lower Kohistan.

...APPELLANT

VERSUS

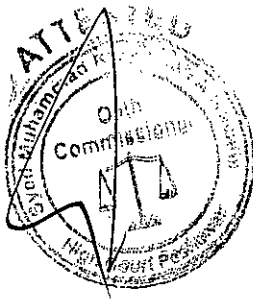
Govt. of Khyber Pakhtunkhwa through Chief Secretary Khyber
Pakhtunkhwa, Peshawar & others.

....RESPONDENTS

SERVICE APPEAL

AFFIDAVIT

I, *Zahoor Elahi Baig, XEN (OPS) C&W Division Lower Kohistan*, do hereby solemnly affirm and declare that the contents of foregoing service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.




DEPONENT

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. _____/2021

Zahoor Elahi Baig, XEN (OPS) C&W Division Lower Kohistan.

...APPELLANT

VERSUS

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

....RESPONDENTS

SERVICE APPEAL

**APPLICATION FOR SUSPENSION OF
IMPUGNED TRANSFER ORDER DATED
14/10/2021 AND GRANT OF STATUS QUO
TILL FINAL DISPOSAL OF THE MAIN
SERVICE APPEAL.**

=====

Respectfully Sheweth:-

1. That this application may be read as part and parcel of the main service appeal.

2. That the applicant/ appellant has brought a good prima facie case and balance of convenience also lies in favour of the appellant/ applicant.
3. That valuable rights of the applicant are involved.
4. That the respondents department did not follow the law on the ^{tenure} terms policy and the impugned transfer order dated 14/10/2021 is premature.

In view of the above, it is prayed that on acceptance of the instant application, impugned transfer order No. SOE/C&WD/3-1/2021 dated 14/10/2021 may ~~be~~ graciously be ordered to be maintained till final disposal of the main service appeal.



...APPELLANT

Through

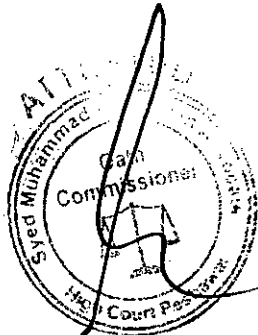
Dated: _____/2021



(Muhammad Arshad Khan Tanoli)
Advocate High Court, Abbottabad

AFFIDAVIT:-

I, *Zahoor Elahi Baig, XEN (OPS) C&W Division Lower Kohistan*, do hereby solemnly affirm and declare that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.




...DEPONENT



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the April 16, 2021

Anex - A

NOTIFICATION:

No.SOE/C&WD/3-1/2021: The Competent Authority is pleased to order the following posting/transfer amongst the officers of C&W Department, in relaxation of ban, with immediate effect, in the best public interest.

P-9

Sl. No	Name & Designation	From	To	Remarks
1	Engr. Hamraz Khan AE (BS-17)	XEN (OPS) C&W Division Bannu	XEN (OPS) Highway Division Bannu	Newly created post
2	Engr. M.Usman Yousaf Shinwari AE (BS-17)	XEN (OPS) C&W Division Chitral Lower	XEN (OPS) Highway Division No.II, Peshawar	--dq--
3	Engr. Muhammad Zubair XEN (BS-18)	Awaiting posting	XEN Building Division Tribal District Khyber	Vice No.58
4	Engr. Muhammad Shoaib XEN (BS-18)	XEN C&W Division Lakki Marwat	XEN C&W Division Karak	Vice No.53
5	Engr. Javed Iqbal AE (BS-17)	Assistant Research Officer RR&MT Lab Peshawar	Research Officer (OPS) RR&MT Lab, Peshawar	Against vacant post
6	Engr. Imad Ahmad AE (BS-17)	XEN (OPS) C&W Division Chitral Upper	XEN (OPS) Building Division No.II, Peshawar	Vice No.54
7	Engr. Allah Nawaz AE (BS-17)	XEN (OPS) C&W Division Charsadda	XEN (OPS) Highway Division Charsadda	Newly created post
8	Engr. Sami Ullah Kundi XEN (BS-18)	XEN C&W Division Kohat	XEN Building Division Swabi	Vice No.37
9	Engr. Khalid Usman AE (BS-17)	SDO C&W Sub Division Charsadda	XEN (OPS) Building Division Charsadda	Vice No.7
10	Engr. Riaz Wali Shah XEN (BS-18)	Senior Infrastructure Engineer KITE, C&W Peshawar	XEN Building Division Dir Lower	Vice No.28
11	Syed Mujtaba Hussain AE (BS-17)	SDO Highway Sub Division Tribal Sub Divn: Khar-I Bajaur	XEN (OPS) C&W Division Tribal District Kurram (UPPER)	Against vacant post
12	Engr. Mohsin Zaffar AE (BS-17)	Deputy Director (OPS) PKHA, Peshawar	XEN (OPS) C&W Division Chitral Lower	Vice No.2
13	Engr. Shah Nawaz Khan AE (BS-17)	Awaiting posting	XEN (OPS) C&W Division Chitral Upper	Vice No.6
14	Engr. Shah Faisal AE (BS-17)	SDO C&W Sub Division Hangu	XEN (OPS) C&W Division Kohistan Upper	Vice No.18
15	Engr. Zahoor Ellahi Baig AE (BS-17)	SDO Highway Sub Division Mardan	XEN (OPS) C&W Division Kohistan Lower	Newly created post
16	Engr. Fawad Ahmad Abbasi XEN (BS-18)	Awaiting posting	XEN Building Division Abbottabad	Vice No.19
17	Engr. Muhammad Bilal Afzal AE (BS-17)	XEN (OPS) C&W Division Mansehra	XEN (OPS) Highway Division Mansehra	Newly created post
18	Engr. Hafiz Muhammad Omair Anwar AE (BS-17)	XEN (OPS) C&W Division Kohistan	XEN (OPS) Building Division Mansehra	Vice No.17
19	Engr. Syed Hakim Shah AE (BS-17)	XEN (OPS) C&W Division Abbottabad	XEN (OPS) Highway Division Abbottabad	Newly created post
20	Engr. Waqas Khan AE (BS-17)	XEN (OPS) C&W Division Haripur	XEN (OPS) Highway Division Haripur	Newly created post
21	Engr. Abdul Tahir Jamil AE (BS-17)	XEN (OPS) C&W Division Buner	XEN (OPS) Highway Division Buner	Renamed

Muhammad

M

Attest
M. Ashraf Khan
Add

P.T.O.

22	Engr. Sayed Nasir Jehan AE (BS-17)	17	Design Engineer (OPS) O/O CE (North) C&W Peshawar	XEN (OPS) Building Division Buner	Newly shifted division
23	Engr. Mehdi Raza AE (BS-17)	18	Senior Engineer (OPS) Survey/RMU O/O CE (CDO) C&W Peshawar	XEN (OPS) Building Division Kohat	Vice No. 8
24	Engr. Sifat Ullah Khan AE (BS-17)	19	XEN (OPS) C&W Division Tribal District Mohmand	XEN (OPS) Highway Division Mohmand	Newly created post
25	Engr. Muhammad Naeem AE (BS-17)	20	Deputy Director (OPS) PKHA Peshawar	Senior Infrastructure Engineer (OPS) KITE C&W Peshawar	Vice No.10
26	Engr. Ghulam Moin-ud-Din XEN (BS-18)		Design Engineer O/O CE (MAs) C&W Peshawar	XEN Mega Projects-II Peshawar	Against vacant post
27	Engr. Maqoob-e-Azam AE (BS-17)	21	XEN (OPS) Building Division Tribal District Bajaur	XEN (OPS) Highway Division Dir Lower	Newly created post
28	Engr. Muhammad Arif-IV XEN (BS-18)		XEN C&W Division Dir Lower	XEN Building Division Tribal District Bajaur	Vice No.27
29	Engr. Javeria Nasim Golra AE (BS-17)	22	Assistant Director PRIP C&W Peshawar	Design Engineer (OPS) O/O CE (Centre) C&W Peshawar	Against vacant post
30	Engr. Waqas Arshad Tanoli AE (BS-17)	23	Deputy Director (OPS) PaRRSA/USAID Directorate Swat	Design Engineer (OPS) O/O CE (South-I) Peshawar	Vice No.26
31	Engr. Javeria Taimur AE (BS-17)	24	Assistant Engineer O/O CE (North) C&W Pesh:	Deputy Director (OPS) PaRRSA/USAID Directorate Swat	Vice No.30
32	Engr. Rabia Hanan AE (BS-17)	25	Assistant Director PKHA Peshawar	XEN (OPS) Provincial Maintenance-II C&W Peshawar	Newly created post
33	Engr. Shahana Mujeeb AE (BS-17)	26	Assistant Director PRIP C&W Peshawar	Design Engineer (OPS) O/O CE (Foreign Aid) Peshawar	--do--
34	Engr. Farmanullah AE (BS-17)	27	XEN (OPS) C&W Division Tribal District Orakzai	XEN (OPS) Highway Division Orakzai	--do--
35	Engr. Muhammad Asad AE (BS-17)	28	Awaiting for posting	Design Engineer (OPS) O/O CE (Foreign Aid) Peshawar	--do--
36	Engr. Naveed Khan XEN (BS-18)		Awaiting for posting	XEN Highway Division Kohat	Newly created post
37	Engr. Zeeshan Ahmad XEN (BS-18)		XEN C&W Division Swabi	XEN Highway Division Swabi	--do--
38	Engr. Adnan XEN (BS-18)		Deputy Director (RAMs) PRIP C&W Peshawar	Deputy Director (North) PKHA Swat	Vice No.52
39	Engr. Najm-ud-Din AE (BS-17)	29	SDO C&W Sub Division Dir Lower	XEN (OPS) C&W Division Dir Upper	Against vacant post
40	Engr. Abid Khan AE (BS-17)	30	Awaiting posting	XEN (OPS) Mega Projects Mardan	Newly created post
41	Engr. Abid Ali AE (BS-17)	31	Junior Engineer (Survey/ RMU) O/O CE (CDO) C&W Peshawar	Design Engineer (OPS) O/O CE (Mega Projects) C&W Peshawar	--do--
42	Engr. Muhammad Riaz XEN (BS-18)		XEN C&W Sub Division Tribal Sub Division Battani/Wazir	XEN Building Division Bannu	Vice No.1
43	Engr. Mushtaq Ahmad XEN (BS-18)		XEN C&W Division Tribal Sub Division Darazinda/ Jandola	XEN C&W Division Tank	Against vacant post
44	Engr. Afzal Khan AE (BS-17)	32	SDO O/O XEN Building Division No.1, Peshawar	Deputy Director (OPS) PaRRSA/USAID Directorate Swat	Vice No.45
45	Engr. Inayat-ur-Rehman AE (BS-17)	33	Deputy Director (OPS) PaRRSA/USAID Directorate Swat	Design Engineer O/O CE (North) C&W Swat stationed at Saidu Sharif	Vice No.22

Moin

Attested
M. Arshad
A.K.U.

46	Engr. Aamir Javed AE (BS-17) 34	Awaiting posting	XEN (OPS) Highway Division Tribal District Bajaur	Against vacant post
47	Engr. Shahroon Khalil AE (BS-17) 35	Assistant Research Officer RR&MT Lab, Swat	Research Officer (OPS) O/O CE (CDO) C&W Peshawar	--do--
48	Engr. Tahira Gul AE (BS-17) 36	SDO C&W Sub Division Haripur	XEN (OPS) O/O CE (East) C&W Abbottabad	--do--
49	Engr. M. Ikramullah Khan AE (BS-17) 37	SDO Highway Division Tribal Sub Division Mir Ali North Waziristan	XEN (OPS) Mega Projects (South-II) DIKhan	Newly created post
50	Engr. Muhammad Ali Khan XEN (BS-18)	XEN C&W Division Tribal Sub Division Darra Adam Khel/Hassan Khel at Kohat	XEN Mega Projects (South-I) Kohat	--do--
51	Engr. Hassan Jan AE (BS-17) 38	Assistant Director PRIP C&W Peshawar	Deputy Director (OPS) PKHA Peshawar	Vice No.25
52	Engr. Arsalan Zeb XEN (BS-18)	Deputy Director (North) PKHA Swat	Deputy Director (RMU) PKHA Peshawar	Vice No.12
53	Engr. Umer Hayat AE (BS-17) 39	XEN (OPS) C&W Division Karak	XEN (OPS) C&W Division Lakki Marwat	Vice No.04
54	Engr. Nouman Bashir AE (BS-17) 40	XEN (OPS) Building Division No.II, Peshawar	XEN (OPS) Building Division Mohmand	Vice No.24
55	Engr. Wahidullah AE (BS-17) 41	Waiting for posting	XEN (OPS) Building Division Orkazai	Vice No.34
56	Engr. Fazli Wahab AE (BS-17) 42	Environmentalist O/O Director (P&M) C&W Peshawar	Deputy Director-I (OPS) Technical C&W Deptt:	Newly created post
57	Engr. Shahab-ud-Din AE (BS-17) 43	Planning Officer O/O Director (P&M) C&W Peshawar	Deputy Director-II (OPS) Technical C&W Deptt:	--do--
58	Engr. Shahzad Naseer AE (BS-17) 44	XEN (OPS) Building Division Tribal District Khyber	XEN (OPS) Highway Division Tribal District Khyber	Against vacant post

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar
2. Chief Engineer (Centre/CDO) C&W Peshawar
3. Chief Engineer (North) C&W Swat stationed at Saidu Sharif
4. Chief Engineer (East) C&W Abbottabad
5. Chief Engineer (South-I) C&W Peshawar
6. Chief Engineer (South-II) C&W DIKhan
7. Chief Engineer (Mega Projects) Peshawar
8. Chief Engineer (Foreign Aid) Peshawar
9. Chief Engineer (Maintenance) Peshawar
10. Managing Director PKHA Peshawar
11. All Superintending Engineers concerned
12. Additional Secretary (Technical) C&W Department, Peshawar
13. Project Director PaRRSA/USAID Directorate Swat stationed at Peshawar
14. All Executive Engineers (Building/Highway) concerned
15. Executive Engineer (Mega Projects) concerned
16. Executive Engineer (Maintenance-II) Peshawar
17. District Accounts Officer concerned
18. Accounts Officer Tribal Districts concerned
19. PS to Secretary, C&W Department Peshawar
20. PS to Special Assistant to Chief Minister Khyber Pakhtunkhwa for C&W Department
21. PA to Additional Secretary, C&W Department Peshawar
22. PA to Deputy Secretary (Admn), C&W Department Peshawar
23. Officers concerned
24. Office order File/Personal File

M. Ashraf Khan
Adv

Tham
16.04.2021
(ZAHOR SHAH)
SECTION OFFICER (Estb)



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the October 14, 2021

Anex-B

P-12

NOTIFICATION:

No.SOE/C&WD/3-1/2021: The Competent Authority is pleased to order the following posting/transfer amongst the officers of C&W Department, with immediate effect, in the best public interest.

Sr. No	Name & Designation	From	To	Remarks
1	Engr. Hayatullah Noor AE (BS-17)	Awaiting posting	XEN (OPS) C&W Division Kohistan Lower	Vice No.2
2	Engr. Zahoor Ellahi Baig AE (BS-17)	XEN (OPS) C&W Division Kohistan Lower	Design Engineer (OPS) O/O Chief Engineer (Centre) C&W Peshawar	Against vacant post

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar
2. Chief Engineer (Centre) C&W Peshawar
3. Chief Engineer (East) C&W Abbottabad
4. Superintending Engineer C&W Circle Mansehra
5. Executive Engineer C&W Division Kohistan Lower
6. District Accounts Officer Kohistan
7. PS to Special Assistant to Chief Minister Khyber Pakhtunkhwa for C&W Department
8. PS to Secretary, C&W Department Peshawar
9. PA to Additional Secretary, C&W Department Peshawar
10. PA to Deputy Secretary (Admn), C&W Department Peshawar
11. Officers concerned
12. Office order File/Personal File

Attested

[Signature]

M. Ashraf Khan

Adv

[Signature]

14.10.2021

(ZAHOOR SHAH)
SECTION OFFICER (Estb)

To,

The Chief Secretary,
Khyber Pakhtunkhwa, Peshawar.

15-10-2021
ISSUE BRANCH
CHIEF SECRETARY
GOVT. OF KHYBER PAKHTUNKHWA
PESHAWAR

Aner. 21

P-13

Subject:

DEPARTMENTAL APPEAL AGAINST THE IMPUGNED NOTIFICATION DATED 14.10.2021 WHEREBY THE UNDERSIGNED HAS PRE-MATURELY BEEN TRANSFERRED FROM THE POST OF XEN (OPS) C&W DIVISION KOHISTAN LOWER TO THE POST OF DESIGN ENGINEER (OPS) AT THE OFFICE OF CHIEF ENGINEER (CENTRE) C&W, PESHAWAR IN VIOLATION OF THE TRANSFER/POSTING POLICY

Respected Sir,

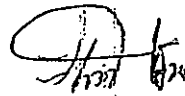
With due respect it is stated that the undersigned is the employee of C&W Department and is serving as XEN (OPS) C&W Division, Kohistan lower quite efficiently and upto the entire satisfaction of his superiors. That the appellatant while performing his duty as SDO Highway Division, Mardan was transferred and posted as XEN (OPS) C&W Division Kohistan Lower vide order dated 16.04.2021. That in response to the order dated 16.04.2021 the undersigned took over the charge against the said post and started performing his duty with all zeal and zest. That just after the lapse of hardly six (06) months the undersigned has pre-maturely been transferred from the post of XEN C&W Division, Kohistan Lower vide Notification dated 14.10.2021 by the concerned authority and posted one Mr. Hayatullah Noor (Assistant Engineer BPS-17) in place of the undersigned. That the impugned Notification dated 14.10.2021 issued by the concerned authority is violative of clause- I & IV of the transfer/posting policy promulgated by the provincial government. That the impugned Notification dated 14.10.2021 has also been issued by the concerned authority in violation of the principle of natural justice. That it is pertinent to mention here that the undersigned is the senior most employee of the C&W Department and is going to be retired in near future. That the impugned Notification dated 14.10.2021 has not been issued by the concerned authority in the best interest of public service. That the undersigned feeling aggrieved from the impugned Notification dated 14.10.2021 preferred the instant Departmental appeal before your goodself for redressal of grievances of the undersigned by setting aside the impugned Notification.

Asst. Secy
M. Asghar Khan
Adc

It is therefore, most humbly prayed that on acceptance of this Departmental appeal the impugned Notification dated 14.10.2021 may very kindly be set aside and the concerned authority please be directed not to transfer the undersigned from the post of XEN C&W division Kohistan Lower till completion of his normal tenure. Any other remedy which your good self deems fit that may also be awarded in favour of the undersigned.

Dated: 15.10.2021.

Your Obediently



ZAHOOR ELLAHI BAIG

Engineer (BPS-17),
EXECUTIVE ENGINEER
C&W Division, Kohistan Lower

Accepted
M. Ashraf Khan

M. Ashraf Khan
AD

کورٹ فیس

وکالت نامہ

بعدالت Before the Service Tribunal KPK Peshawar

عنوان: Govt of KPK & others بنام Zahoor Elahi Baig

منجانب: Applicant

نوعیت مقدمہ: Service Appeal

باعث تحریر آنکہ

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب دہی کل کاروائی متعلقہ آل مقام

M. Asghar Khan Tanali Advocate High Court

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل صاحب موصوف کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف دینے اقبال دعویٰ اور بصورت دیگر ڈگری

کرانے اجراء وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت

ضرورت مقدمہ مذکور کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی

بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا

ساختہ پرداختہ مجھ کو منظور و قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب ہوگا اس کے

مستحق وکیل صاحب ہوں گے۔ نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہویا

حد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں

کوئی جزو بقایا ہو تو وکیل صاحب موصوف مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بمراد

استجارت ناش بصیغہ مفلسی کے دائرہ کرنے اور اس کی پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کیا تاکہ سند رہے۔

المرقوم:

Accepted
بمقام


BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No.7711/2021

Zahoor Elahi Baig, XEN (OPS),
C&W Division, Lower Kohistan

Appellant

Versus

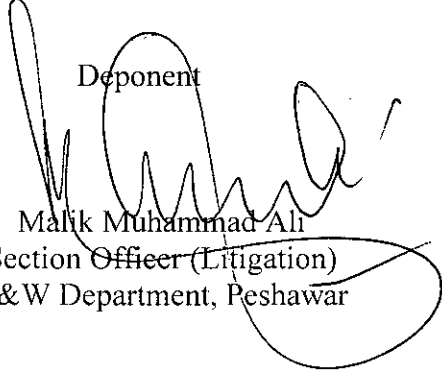
Govt of Khyber Pakhtunkhwa
through Chief Secretary, Peshawar and others

Respondents

INDEX

S.NO.	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGE
1	Parawise Comments on behalf of Respondent No.1 to 5	-	1-2
2	Application alongwith annexures for vacation of suspension of order dated 01.11.2021 passed by Khyber Pakhtunkhwa Service Tribunal Peshawar in S.A No. 7711/2021	-	3-11
3	Affidavit	-	12
4	Deputy Commissioner letter No. Etab:/Mics/14279-82/DC KH-L dated 08.10.2021	I	13

Deponent


Malik Muhammad Ali
Section Officer (Litigation)
C&W Department, Peshawar

(1)

BEFORE THE DIVISION BENCH KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL (CAMP COURT ABBOTTABAD)
APPEAL NO. 7711 OF 2021

Zahoor Ellah Baig
XEN (OPS) C&W Division
Kohistan Lower

--- Appellant

VERSUS

1. Govt of Khyber Pakhtunkhwa through
Chief Secretary Peshawar --- Respondents
2. Secretary to Govt of Khyber Pakhtunkhwa
C&W Department, Peshawar
3. Chief Engineer (East)
C&W Abbottabad
4. Chief Engineer (Centre)
C&W Peshawar
5. Superintending Engineer
C&W Circle Mansehra
6. Engr. Hayatullah Noor
XEN (OPS) C&W Division Kohistan Lower

Joint Parawise Comments on behalf of Respondents No. 1 to 5

Respectfully Sheweth!

Preliminary Objections

1. That the appeal is not maintainable.
2. That the appellant has never challenged in time any order in which his rights were ignored
3. That the appellant has no cause of action and locus standi.
4. That the appeal is liable to be rejected on ground of non-joinder and mis-joinder of necessary parties
5. That the appellant has got no cause of action to invoke the Constitutional jurisdiction of this Hon'able Tribunal
6. That the impugned posting/transfer Notification has never violated any of the right of the Appellant, similarly he has got no right whatsoever to claim posting of his choice.
7. That the appellant has suppressed material facts from the Hon'able Tribunal, therefore the appeal in hand is liable to summary dismissal.

FACTS

1. No comments pertains to record.
2. Incorrect. The appellant is basically Graduate Assistant Engineer/SDO (BS-17) and while working as SDO Highway Division Mardan transferred and posted him as XEN (OPS) C&W Division Kohistan Lower on 16.04.2021 after approval of competent authority. However, after receipt of written complaint from Deputy Commissioner Kohistan Lower, the said XEN was transferred and posted as Design Engineer (OPS) O/O CE (Centre) C&W Peshawar on 14.10.2021 on administrative grounds (**Annex-I**). Instead of compliance, he preferred an appeal before Khyber Pakhtunkhwa Service Tribunal.

- 3. Departmental appeal having no merit of the appellant addressed to Appellate Authority (Chief Secretary Khyber Pakhtunkhwa) received which is under process and is being submitted to Appellate Authority (Chief Secretary Khyber Pakhtunkhwa) for orders.

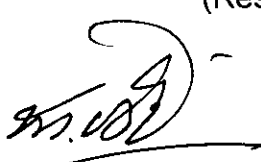
GROUND

- a. Incorrect and misconceiving, as the appellant has been treated as per law/rules and regulations laid down by the Government.
- b. Incorrect, as per Section-10 of Civil Servants Act, 1973) **“every civil servant shall be liable to serve anywhere within or outside the province, in any post under the Federal Govt, or any Provincial Govt or Local Authority, or a Corporation or body setup or establishment by any such Government”**. Therefore, the stance taken in the service appeal is not justified and valid.
- c. Incorrect, as explained in para-2 of the facts. Furthermore, there is no mala-fide intension of the respondents, no discrimination action and no violation of the rights of the appellant has been made. The action taken by the respondents are strictly in accordance with law/ regulations and under the existing rules.
- d. Incorrect. The impugned posting/transfer Notification has never violated any of the right of the Appellant, similarly he has got no right whatsoever to claim posting of his choice
- e. Incorrect. No discrimination to any individual, including appellant, was done nor any Rule or Principle of law infringed. The apprehension of the appellant is misplaced.
- f. Incorrect and misconceiving on the basis of his speculations. Furthermore, the Respondents would like to seek permission of this Hon’able Tribunal to advance more grounds during the time of arguments.

In view of the above, it is submitted that the Appeal may kindly be dismissed with cost.



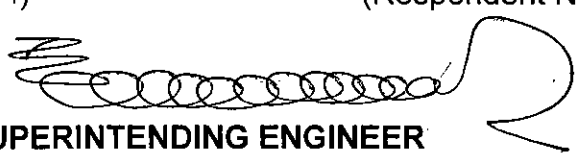
SECRETARY TO
Govt of Khyber Pakhtunkhwa
C&W Peshawar
(Respondent No. 1 &2)



CHIEF ENGINEER (CENTRE)
C&W Peshawar
(Respondents No. 4)



CHIEF ENGINEER (East)
C&W Abbottabad
(Respondent No. 3)



SUPERINTENDING ENGINEER
C&W Circle Mansehra
(Respondents No. 5)

(3)

BEFORE THE DIVISION BENCH KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL (CAMP COURT ABBOTTABAD)
APPEAL NO. 7711 OF 2021

Zahoor Ellah Baig
XEN (OPS) C&W Division
Kohistan Lower

--- Appellant

VERSUS

1. Govt of Khyber Pakhtunkhwa through
Chief Secretary Peshawar --- Respondents
2. Secretary to Govt of Khyber Pakhtunkhwa
C&W Department, Peshawar
3. Chief Engineer (East)
C&W Abbottabad
4. Chief Engineer (Centre)
C&W Peshawar
5. Superintending Engineer
C&W Circle Mansehra
6. Engr. Hayatullah Noor
XEN (OPS) C&W Division Kohistan Lower

APPLICATION FOR SUSPENSION OF ORDER DATED 01.11.2021 PASSED BY
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL (CAMP COURT ABBOTTABAD)

Respectfully Sheweth!


1. That the appellant filed service appeal along-with application for suspension of Notification dated 14.10.2021 before the Hon'able Tribunal
2. That the appeal was fixed for hearing before Khyber Pakhtunkhwa Service Tribunal at camp court Abbottabad on 01.11.2021.
3. That the Hon'able Tribunal suspended the operation of impugned Notification dated 14.10.2021 (**Annex-I**).
4. That the appellant was transferred from the post of XEN (OPS) C&W Division Kohistan Lower and posted as Design Engineer (OPS) O/O CE (Centre) C&W Peshawar on 14.10.2021 (**Annex-II**) in light of written complaint of the Deputy Commissioner Kohistan Lower due to poor performance of Engr. Zahoor Ellahi Baig (**Annex-III**).
5. Section-10 of Civil Servants Act, 1973) provides that **"every civil servant shall be liable to serve anywhere within or outside the province, in any post under the Federal Govt, or any Provincial Govt or Local Authority, or a Corporation or body setup or establishment by any such Government"** Annex-IV).

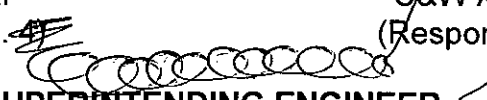
In view of the above, it is submitted that the status quo already granted to the appellant may kindly be vacated, please.


SECRETARY TO

Govt of Khyber Pakhtunkhwa
C&W Peshawar
(Respondent No. 1 & 2)


CHIEF ENGINEER (CENTRE)
C&W Peshawar
(Respondents No. 4)


CHIEF ENGINEER (East)
C&W Abbottabad
(Respondent No. 3)


SUPERINTENDING ENGINEER
C&W Circle Mansehra
(Respondents No. 5)

~~Amex-1~~

9

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR



Service Appeal No. 7711 /2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7844

Dated 01/11/2021

Zahoor Elahi Baig, XEN (OPS) C&W Division Lower Kohistan.

...APPELLANT

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. Secretary C&W Khyber Pakhtunkhwa, Peshawar.
3. Chief Engineer East (C&W), Abbottabad.
4. Chief Engineer Center (C&W), Peshawar.
5. Superintendent Engineer (C&W), Mansehra.
6. Engineer Hidayatullah Noor, XEN, OPS, C&W Division Kohistan.

...RESPONDENTS

SERVICE APPEAL UNDER SECTION 4 OF KP SERVICE TRIBUNAL ACT, 1974, FOR DECLARATION TO THE EFFECT THAT THE APPELLANT WAS POSTED FROM HIGHWAY SUB DIVISION MARDAN TO THE POST OF XEN (OPS) C&W DIVISION KOHISTAN LOWER WIDE ORDER NO. SOE/C&WD/3-1/2021 AT SERIAL NO. 15 OF THE ORDER DATED 16/04/2021 AND NOW, THE APPELLANT HAS PREMATURELY BEEN TRANSFERRED FROM C&W DIVISION LOWER

Filed to-day
 01/11/2021
 Registrar

Certified to be true copy
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

S.A No. 7711/2021

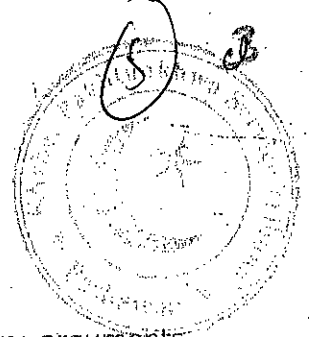
01.11.2021

Counsel for the appellant present. Preliminary arguments have been heard. The copies of record annexed with Memorandum of appeal have been perused.

According to copy of Notification dated 16.04.2021 as annexed with the appeal, the appellant was transferred and posted as XEN(OPS) C&W Division Kohistan Lower against a newly created post. He, vide impugned Notification dated 14.10.2021, has been transferred from the said post and posted as Design Engineer (OPS), Office of the Chief Engineer (Centre) C&W Peshawar against vacant post while respondent No. 6 has been posted in place of the appellant as XEN (OPS) C&W Division Kohistan Lower. The impugned Notification is shown to have been issued in the best public interest but the transfer of the appellant on the relevant post few months ago was also made in the best public interest, making the things incomprehensible as to what was the best public interest at the time of posting of the appellant as XEN(OPS) C&W Division Kohistan Lower and how that public interest has vanished necessitating the issuance of Impugned transfer order against the tenure policy. Unless the respondents are heard for their justification as to issuance of impugned order, the appellant has got an arguable case. The appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written

Certified to be true copy

Member (Administrative)
Service Tribunal



[Handwritten signature]


6

reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 01.12.2021 before the D.B at Camp Court, Abbottabad.

Alongwith the memorandum of appeal an application has also been submitted for suspension of the operation of the impugned Notification dated 14.10.2021. Notice of the application be also given to the respondents. The operation of impugned Notification is suspended till date fixed.


Chairman

Date of Presentation of Application 01/11/21
 Number of Sessions 1200
 Court 12/1
 District 12/1
 Name of the Applicant ---
 Name of the Advocate of Oppr 01/11/21
 Date of Delivery of Copy 01/11/21

Certified to be true copy

 Officer
 District Tribunal
 Peshawar

Annex-III

7



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the October 14, 2021

NOTIFICATION:

No.SOE/C&WD/3-1/2021: The Competent Authority is pleased to order the following posting/transfer amongst the officers of C&W Department, with immediate effect, in the best public interest.

Sr. No	Name & Designation	From	To	Remarks
1	Engr. Hayatullah Noor AE (BS-17)	Awaiting posting	XEN (OPS) C&W Division Kohistan Lower	Vice No.2
2	Engr. Zahoor Ellahi Baig AE (BS-17)	XEN (OPS) C&W Division Kohistan Lower	Design Engineer (OPS) O/O Chief Engineer (Centre) C&W Peshawar	Against vacant post

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar
2. Chief Engineer (Centre) C&W Peshawar
3. Chief Engineer (East) C&W Abbottabad
4. Superintending Engineer C&W Circle Mansehra
5. Executive Engineer C&W Division Kohistan Lower
6. District Accounts Officer Kohistan
7. PS to Special Assistant to Chief Minister Khyber Pakhtunkhwa for C&W Department
8. PS to Secretary, C&W Department Peshawar
9. PA to Additional Secretary, C&W Department Peshawar
10. PA to Deputy Secretary (Admn), C&W Department Peshawar
11. Officers concerned
12. Office order File/Personal File

Zahoor Shah
14.10.2021

(ZAHOOR SHAH)
SECTION OFFICER (Estb)



Annex-110
OFFICE OF THE DEPUTY COMMISSIONER KOHISTAN
LOWER AT PATTAN
NO. Estab: /Mics 14279-82 DC KH-L Dated 08/10/2021

(9)

Email: dckohistanlower@kp.gov.pk Website: dckohistanlower.kp.gov.pk

To

The Secretary,
Communication & Works Department
Govt. of Khyber Pakhtunkhwa Peshawar.

Subject: **REPORT.**

In continuation of this office letter No. Estab:/MICS 14251-54/DC KH-L dated 06-10-2021 on the subject cited above, and to submit that local of the area are attending this office and complaining about the non presence of the XEN C&W in the District, similarly general public requesting for addressal of the linking of the approach roads which are damaged due to heavy torrential rains in UCs of Kayal and Chawadara which ultimately creates law and order situations in the District.

In view of the above, an efficient and effective officer may kindly be posted in District Kohistan Lower for smooth running of official business in the public interest at large.

Alam
Deputy Commissioner
Kohistan Lower

No. & Date Even:

Copy forwarded to the:

- 1- Commissioner Hazara Division Abbottabad for information please.
- 2- Superintending Engineer C&W Hazara Division Abbottabad
- 3- ADC (F&P) Kohistan Lower.

Alam
Deputy Commissioner
Kohistan Lower

CHAPTER-1
CONSTITUTIONAL PROVISIONS REGARDING
TERMS AND CONDITIONS OF SERVICE OF CIVIL SERVANTS.

Appointments to service of Pakistan and conditions of service.

Article 240 of the Constitution of Islamic Republic of Pakistan, 1973.

Subject to the Constitution, the appointments to and the conditions of service of persons in the service of Pakistan shall be determined:-

- (a) in the case of the services of the Federation, posts in connection with the affairs of the Federation and All-Pakistan Services, by or under Act of Majlis-e-Shoora (Parliament): and
- (b) in the case of the services of a Province and posts in connection with the affairs of a Province, by or under Act of the Provincial Assembly.

Explanation:- In this Article, "All-Pakistan Service" means a service common to the Federation and the Provinces, which was in existence immediately before the commencing day or which may be created by Act of Majlis-e-Shoora (Parliament).

Existing rules etc. to continue.

Article 241. Until the appropriate Legislature makes a law under Article 240, all rules and orders in force immediately before the commencing day shall, so far as consistent with the provisions of the Constitution, continue in force and may be amended from time to time by the Federal Government or as the case may be, the Provincial Government.

THE KHYBER PAKHTUNKHWA Civil Servants Acts, 1973.
(KPK. Act No. XVIII of 1973)

An Act to regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of the Khyber Pakhtunkhwa.

Preamble- **WHEREAS** it is expedient to regulate by law, the appointment of persons to, and the terms and conditions of service of persons in, the service of the Khyber Pakhtunkhwa, and to provide for matters connected therewith or ancillary thereto;

It is hereby enacted as follows:-

1. **Short title, application and commencement:-** (1) This Act may be called the Khyber Pakhtunkhwa Civil Servants Act, 1973.

(2) This section and section 25, shall apply to persons employed on contract, or on work charged basis, or who are paid from contingencies, and the

(17)

(3) There shall be no confirmation against any temporary post
 (4) A civil servant who, during the period of his service, was eligible to be confirmed in any service or against any post retires from service before being confirmed shall not, merely by reason of such retirement, be refused confirmation in such service or post or any benefits accruing there from.

(5) Confirmation of a civil servant in a service or post shall take effect from the date of occurrence of permanent vacancy in that service or post or from the date of continuous officiation, in such service or post, whichever is later.

8. **Seniority:-** (1) For proper administration of a service, cadre or post, the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or post to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or post as the case may be.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or cadre whether serving in the same department or office or not, as may be prescribed.

(3) Seniority on initial appointment to a service, cadre or post shall be determined as may be prescribed.

(4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post;

Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se- seniority as in the lower post."]

"(5) The seniority lists prepared under sub -section (1), shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January".

9. **Promotion:-**(1) A civil servant possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post for time being reserved under rule for departmental promotion in service or cadre to which he belongs.

(2) A post referred to in sub-section (1) may either be a selection post or a non selection post to which promotion shall be made as may be prescribed-

(a) in the case of a selection post, on the basis of selection on merit; and

(b) in the case of non-selection post, on the basis of seniority-cum- fitness.

10. **Posting and Transfer:-** Every civil servant shall be liable to serve anywhere within or outside the province , in any post under the Federal Government, or any Provincial Government or Local authority, or a corporation or body set up or established by any such Government:-

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region;

Provided further that, where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

11. **Termination of service:-**

(1) The service of a civil servant may be terminated without notice-

(i) During the initial or extended period of his probation:

Provided that, where such civil servant is appointed by promotion on probation or, as the case may be, is transferred from one service, cadre or post to another service, cadre or post, his service shall not be so terminated so long as he holds a lien against his former post in such service or cadre, but he shall be reverted to his former service, cadre or post, as the case may be;

(ii) On the expiry of the initial or extended period of his employment; or

(iii) if the appointment is made adhoc terminable on the appointment of a person on the recommendation of the selection authority, on the appointment of such person.

(2) Where, on the abolition of a post or reduction in the number of posts in a cadre or grade, the services of a civil servant are required to be terminated, the person whose services are terminated shall ordinarily be the one who is the most junior in such cadre or grade.

(3) Notwithstanding the provisions of sub-section (1), but subject to the provisions of sub section (2), the service of a civil servant in temporary employment or appointed adhoc shall be liable to termination on fourteen days notice or pay in lieu thereof.

11-A. **Absorption of civil servants rendered surplus.**

Notwithstanding anything contained in this Act, the rules made there under, any agreement, contract or the terms and conditions of service, a civil servant who is rendered surplus as a result of reorganization or abolition of a post in pursuance of any Government decision may be appointed to a post, carrying basic pay scale equal to the post held by him before such appointment, if he possess the qualifications and fulfils other conditions applicable to that post:

Provided that, where no equivalent post is available, he may be offered a lower post in such manner and subject to such conditions as may be prescribed, and where such servant is appointed to a lower post, the pay being drawn by him in the higher post immediately preceding his appointment to a lower post shall remain protected.

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.7711/2021

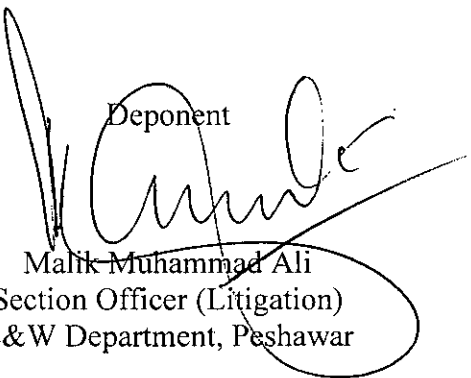
Zahoor Elahi Baig, XEN (OPS),
C&W Division, Lower Kohistan --- Appellant

Versus

Govt of Khyber Pakhtunkhwa
through Chief Secretary, Peshawar and others --- Respondents

AFFIDAVIT

I, Malik Muhammad Ali, Section Officer (Litigation), C&W Department, Peshawar hereby affirm and declare that all the contents of the Parawise comments are correct to the best of my knowledge and belief and nothing has been concealed.

Deponent

Malik Muhammad Ali
Section Officer (Litigation)
C&W Department, Peshawar



OFFICE OF THE DEPUTY COMMISSIONER KOHISTAN
LOWER AT PATTAN
NO. Estab: /Mics 14279-82 DC KH-L Dated 08/10/2021

201
(13)

Email: dekohistanlower@kp.gov.pk Website: dekohistanlower.kp.gov.pk

To

The Secretary,
Communication & Works Department
Govt: of Khyber Pakhtunkhwa Peshawar.

Subject:

REPORT.

In continuation of this office letter No Estab:/MICS 14251-54/DC KH-L dated 06-10-2021 on the subject cited above, and to submit that local of the area are attending this office and complaining about the non presence of the XEN C&W in the District, similarly general public requesting for addressal of the linking of the approach roads which are damaged due to heavy torrential rains in UCs of Kayal and Chawadara which ultimately creates law and order situations in the District.

In view of the above, an efficient and effective officer may kindly be posted in District Kohistan Lower for smooth running of official business in the public interest at large.

Saleem
Deputy Commissioner
& Kohistan Lower

No. & Date Even:

Copy forwarded to the:

- 1- Commissioner Hazara Division Abbottabad for information please.
- 2- Superintending Engineer C&W Hazara Division Abbottabad
- 3- ADC (F&P) Kohistan Lower.

Saleem
Deputy Commissioner
& Kohistan Lower

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BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal No. 7711-A/2021

Zahoor Elahi Baig, XEN (OPS) C&W Division Lower Kohistan.

...APPELLANT

VERSUS

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

...RESPONDENTS

SERVICE APPEAL

**APPLICATION FOR CORRECTION OF NAME
OF RESPONDENT NO.6 AS ENGINEER
HAYATULLAH NOOR INSTEAD OF
ENGINEER HIDAYATULLAH NOOR.**

Respectfully Sheweth;-

1. That the captioned service appeal of the appellant is pending adjudication before this Honourable Tribunal and the next date of hearing is fixed for today i.e. 23/12/2021


2. That correct name of respondent No.6 is Hayatullah Noor which has inadvertently written in the service appeal as Hidayatullah Noor which is to be corrected.

In view of the above is prayed that correct name of respondent No.6 may graciously be ordered to be written/read as Hayatullah Noor instead of Hidayatullah Noor in the service appeal.


...APPELLANT

Through

Dated: 23/12 /2021


(Muhammad Arshad Khan Tanoli)
Advocate Supreme Court of Pakistan