

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.276/2023

Khyber Pakhtunkhwa  
Service Tribunal

Petition No. 3750

Dated 23/2/2023

Engr. Muhammad Zubair  
The then XEN Highway Division Khyber

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Appellant

**Versus**

Govt of Khyber Pakhtunkhwa  
through Chief Secretary Peshawar & Others

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Respondents

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Deponent

Zahid Ullah

Section Officer (Litigation)  
C&W Department, Peshawar

(1)

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**  
**APPEAL NO.276 OF 2023**

Engr. Muhammad Zubair --- Appellant  
the then XEN Highway Division  
Khyber

**VERSUS**

1. Govt of Khyber Pakhtunkhwa through --- Respondents  
Chief Secretary Peshawar
2. Chief Secretary to Govt of Khyber Pakhtunkhwa  
Peshawar
3. Secretary to Govt of Khyber Pakhtunkhwa  
C&W Department, Peshawar
4. Chief Engineer (Centre)  
C&W Peshawar
5. Chief Engineer (South-I)  
C&W Peshawar
6. Superintending Engineer  
C&W Circle, Khyber

**JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 TO 6**

Respectfully Sheweth!

**PRELIMINARY OBJECTIONS**

1. That the appeal is not maintainable.
2. That the appellant has no cause of action and locus standi.
3. That the appeal is liable to be rejected on ground of mis-joinder and non-joinder of necessary parties
4. That the appellant has got no cause of action to invoke the jurisdiction of this Hon'able Tribunal
5. 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.
6. That the appellant has suppressed material facts from the Hon'able Tribunal, therefore the appeal in hand is liable for dismissal.

**FACTS**

1. Incorrect. The appellant has since been transferred from the position of XEN Highway Division Khyber and posted as Design Engineer O/O Chief Engineer (South-I) C&W Peshawar on 20.12.2022 (Annex-I). Furthermore, an officer was posted in his place who has already taken the charge of the post of XEN Highway Division Khyber.
2. Pertains to record

- (2)
3. Incorrect. In this regard, it is submitted that Engr. Muhammad Zubair (BS-18), while working as XEN Highway Division Khyber was transferred and posted as Design Engineer O/O Chief Engineer (South-I) C&W Peshawar on 20.12.2022 on administrative grounds (**Annex-I**). However as per section 10 of the Khyber Pakhtunkhwa Civil Servant Act, 1973, **"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"**. Furthermore, Section-4 of the ibid Act is also provides that "Every Civil Servant shall hold office during the pleasure of the Governor".
  4. Incorrect. It was quite clear that the plea taken by the appellant in the appeal was not justified nor based on facts. Hence, the Appellate Authority rejected the appeal having no weight-age (**Annex-II**).
  5. Incorrect. As per posting/transfer policy, the Government Servants aggrieved due to orders of posting/transfer, authorities may seek remedy from the next higher authority/the appointing authority as the case may be through an appeal to be submitted within seven days of the receipt of such orders. Such appeal shall be disposed of within fifteen days, while on the other hand, the appellant submitted departmental appeal to the Appellate Authority (Chief Secretary); rather the Authority has rejected his appeal but he did not wait for the response of Appellate Authority, meaning thereby he filed service appeal in the Service Tribunal without waiting for the outcome of his appeal.

### GROUNDS

- i. Incorrect. As per section 10 of the Khyber Pakhtunkhwa Civil Servant Act, 1973, **"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"**. Furthermore, Section-4 of the ibid Act is also provides that "Every Civil Servant shall hold office during the pleasure of the Governor".
- ii. Incorrect and misconceiving, as the appellant has been treated as per law/rules and regulations laid down by the Government.
- iii. Incorrect as explained in para-ii of the grounds. Furthermore, there is no mala-fide intension of the respondents, no discriminatory 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.
- iv. 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
- v. As explained in para-iv of the grounds.
- vi. As explained in para-i of the grounds.
- vii. Incorrect. the transfer/posting of the appellant has been made in the best public interest, as there is no mala-fide intension of the respondents, no discriminatory action and no violation of the rights of the appellant has been made.
- viii. The Respondents would like to seek permission of this Hon'able Tribunal to advance more grounds during the time of arguments. The appellant broke open the locks of the office after honorable Tribunal's orders dated 06.02.2023 against the all official norms and without informing the department.

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

**SECRETARY TO**  
Govt of Khyber Pakhtunkhwa  
Communication & Works Department  
(Respondents No. 1, 2 & 3)

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

**CHIEF ENGINEER (South-I)**  
C&W Peshawar  
(Respondent No. 5)

**SUPERINTENDING ENGINEER**  
C&W Circle Khyber  
(Respondent No. 6)

**BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.276/2023**

Engr. Muhammad Zubair  
the then XEN Highway Division Khyber --- Appellant

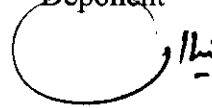
**Versus**

Govt of Khyber Pakhtunkhwa  
through Chief Secretary Peshawar & Others --- Respondents

**AFFIDAVIT**

I, Zahid Ullah, Section Officer Litigation (BS-17) C&W Department, Peshawar hereby affirm and declare that all the contents of the Parawise comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Deponent



Zahid Ullah  
Section Officer (Litigation)  
C&W Department, Peshawar

CNIC # 14203-2044698-7

Mob No# 0340-5012785



(5)

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**  
**APPEAL NO.276 OF 2023**

Engr. Muhammad Zubair  
the then XEN Highway Division  
Khyber

--- Appellant

**VERSUS**


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

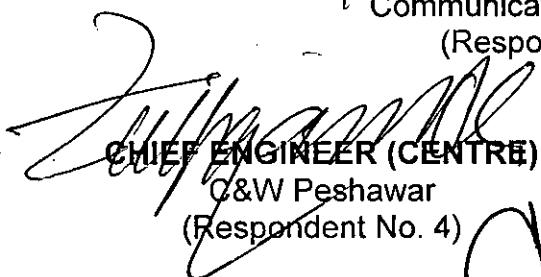
--- Respondents

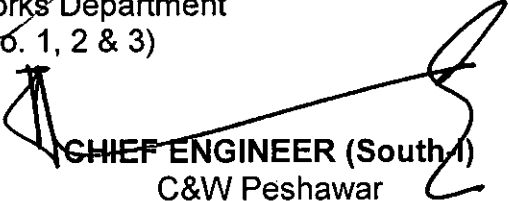
**APPLICATION FOR VACATION OF STATUS-QUO/INTERIM RELIEF**  
**ORDER DATED 06.02.2023 PASSED BY THIS HON'ABLE TRIBUNAL IN**  
**THE ABOVE TITLED SERVICE APPEAL**


1. That the above titled Service Appeal is pending adjudication before this Hon'able Tribunal.
2. That Hon'able Tribunal vide order dated 06.02.2023 has suspended this Department's Notification dated 20.12.2022 till further orders.
3. The Appellant has neither any prima facie case nor balance of convenience lying in his favour.
4. That it is in the interest of justice that the order dated 06.02.2023, whereby interim relief granted in favour of appellant, may kindly be vacated for the purpose of smooth running of the affairs of this Department.
5. That apart from the above mentioned submission, respondents may kindly be allowed to arise additional grounds during course of arguments with the permissible of this Hon'able Tribunal.

It is, therefore, humbly prayed that on acceptance of this application, the orders dated 06.02.2023 passed by this Hon'able Tribunal whereby interim relief granted, may graciously be vacated in the interest of justice.

  
SECRETARY TO  
for Govt of Khyber Pakhtunkhwa  
Communication & Works Department  
(Respondents No. 1, 2 & 3)

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

  
CHIEF ENGINEER (South)  
C&W Peshawar  
(Respondent No. 5)

  
SUPERINTENDING ENGINEER  
C&W Circle Khyber  
(Respondent No. 6)



(6) Annex-T

GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the Dec 20, 2022

**NOTIFICATION:**

**No.SOE/C&WD/3-1/2022:** The Competent Authority (Secretary C&WD) is pleased to order the following posting/transfer amongst the officers of C&W Department, with immediate effect, in the best public interest.

Sl. No	Name & Designation	From	To	Remarks
1	Engr. Muhammad Zubair XEN (BS-18)	XEN Highway Division Khyber	Design Engineer O/O Chief Engineer (South-I) C&W Peshawar	Against vacant post
2	Engr. Shahzad Naseer XEN (BS-18)	XEN Mega Projects Mardan	XEN Highway Division Khyber	Vice-No.1

SECRETARY TO  
Government of Khyber Pakhtunkhwa  
Communication & Works Department

Understand of even number and date

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar
2. Chief Engineer (Centre) C&W Peshawar
3. Chief Engineer (Mega Projects) Peshawar
4. Superintending Engineer C&W Circle Khyber
5. Superintending Engineer Mega Projects Mardan
6. Executive Engineer Highway Division Khyber
7. Executive Engineer Mega Projects Mardan
8. District Accounts Officer Mardan
9. PS to Advisor to Chief Minister Khyber Pakhtunkhwa for C&W Department
10. PS to Secretary, C&W Department Peshawar
11. PA to Additional Secretary C&W Department Peshawar
12. PA to Deputy Secretary (Admn), C&W Department Peshawar
13. Officers concerned
14. Office order File/Personal File

*Ijaz Khan*  
(IJAZ KHAN) 20/12/22  
SECTION OFFICER (Estb)



GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

No. No. SOE/C&WD/1-7/2008  
Dated Peshawar, the Feb 01, 2023

TO

Engr. Muhammad Zubair (BS-18)  
the then Executive Engineer  
Highway Division Khyber  
Now Design Engineer O/O  
Chief Engineer (South-I) C&W  
Peshawar

Subject: APPEAL AGAINST POLITICALLY MOTIVATED TRANSFER ORDER

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I am directed to refer your appeal/representation dated 21.12.2022, which was examined and submitted to the Competent Authority (Chief Secretary Khyber Pakhtunkhwa). The Competent Authority has been pleased to regret your appeal/representation.

2. You are hereby informed accordingly.

*Man*  
01.02.2023

SECTION OFFICER (Estb)

Endst even No. & date

Copy forwarded to:

1. PS to Secretary C&W Department, Peshawar
2. PA to Additional Secretary C&W Department Peshawar
3. PA to Deputy Secretary (Admn) C&W Department Peshawar

*Man*  
01.02.2023

SECTION OFFICER (Estb)

Received  
*[Signature]*  
02/21/2023