

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR.**

Khyber Pakhtunkhwa
Service Tribunal

In Service Appeal No.276/2023

Case No. 4638

Dated 3/4/2023

Engr. Muhammad Zubair VS. Govt. of Khyber Pakhtunkhwa etc

**REJOINDER TO COMMENTS OF
RESPONDENT NO.1 to 6**

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Yours Humble Appellant

(Engr. Muhammad Zubair)
Through Counsel

Dt. _____ .04.2023


Muhammad Saleem Khan Marwat
Advocate High Court, D.I.Khan.


Saleem Shahzad Kundi
Advocate High Court, D.I.Khan.

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA
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**REJOINDER TO COMMENTS OF
RESPONDENT NO.1 to 6**

RESPECTFULLY SHEWETH,

The petitioner humbly submits the following reply to the comments of respondents No. 1 to 6.

Reply to Preliminary Objections:

1. Incorrect. The appeal is very much maintainable before this worthy Tribunal.
2. Incorrect. Pre-mature transfer of appellant at political influence has provided him cause of action and locus standi to file the present appeal.
3. Incorrect. All the necessary parties have been impleaded in the appeal and no left-out party has been pointed out by respondents.
4. Incorrect. Pre-mature transfer of appellant at political influence has provided him cause of action to file the present appeal.
5. Incorrect. Petitioner is not claiming the posting of his choice rather he requested for completion of his ordinary tenure which has been upset due to political victimization.
6. Incorrect. All the material facts have been brought before this worthy Tribunal. In-fact respondents have concealed the material facts as the post of XEN Highway Division Khyber is currently lying vacant..

ON FACTS:

Para 1. This Para of comments is incorrect, misconceived and based on concealment of the material facts. In-fact after the transfer of respondent No.7 in the place of petitioner as XEN Highway Division Khyber, the respondent No.3 again posted him back as XEN Mega Projects Mardan vide Notification No.SOE/C&WD/3-2/2023 dated 17.01.2023 (**Annexure E**); and the Additional Charge of the post of XEN Highway Division has been assigned to the Superintending Engineer C&W Circle Khyber vide Notification No.SOE/C&WD/3-1/2023 dated 17.01.2023 (**Annexure F**). Hence, petitioner is entitled to serve and complete his ordinary tenure of service as XEN Highway Division Khyber.

Para 2. Needs no reply.

Para 3. Incorrect and misconceived therefore denied. In-fact, law of the land is subject to interpretation by the Superior Courts of the Country. In this context while discussing the Scope of Section 10 of K.P. Civil Servants Act, worthy Supreme Court in the **Anita Turab case (PLD 2013 Supreme Court 195)** observed:

Ss. 4 & 10---Constitution of Pakistan, Art. 184(3)---
tenure, posting and transfer of civil servants---
Principles---When the ordinary tenure for a posting had
been specified in the law or rules made thereunder,
such tenure must be respected and could not be
varied, except for compelling reasons, which should be
recorded in writing and were judicially reviewable---
Transfers of civil servants by political figures which
were capricious and were based on considerations not
in the public interest were not legally sustainable.

Hence, the scope and limitation of Section 10 of the K.P. Civil Servants Act vis-à-vis ordinary tenure has already been defined by the worthy Apex Court. Moreover, with regard to politically

motivated transfer, the worthy Supreme Court in the case of **'Muhammad Ilyas Khan vs. Senior Member, Board of Revenue, N.-W.F.P. Peshawar'** [2011 PLC (CS) 935 Supreme Court] was pleased to held:

Constitution of Pakistan, Art.212(3)---Successive transfers---Scope---Respondent was Patwari who was transferred to three stations within a span of eight months---Service Tribunal accepted appeal filed by respondent Patwari and set aside his transfer orders--
 -Validity---Successive transfers of respondent to three stations within a span of eight months were against posting/transfer policy of Provincial Government, which indicated that a government servant should not be transferred in ordinary circumstances, prior to completion of a period of three years at one place of posting---Transfer order of respondent was passed during ban period, prematurely under political influence, as copy of the same was sent to private secretary to Provincial Minister for Revenue---tenure of posting of an officer or official of Government to a District Government was provided in S.30(3) of North-West Frontier Province Local Government Ordinance, 2001, as three years but any officer could be transferred earlier due to exigency of service or in public interest---Dispute raised in petition for leave to appeal related to an individual grievance and no substantial question of law of public importance was involved to warrant interference by Supreme Court under Art.212 (3) of the Constitution---Supreme Court did not find any illegality or infirmity in the judgment passed by Service Tribunal so as to justify interference by Supreme Court under Art.212(3) of the Constitution--
 --Petition was dismissed.

Hence, the petitioner's pre-mature, politically motivated transfer is liable to be recalled.

Para 4. This Para of the comments is incorrect and thus denied. However, respondents have not denied the involvement of nepotism.

Para 5. Incorrect and misconceived thus vehemently denied. The appellant has preferred the instant appeal well within time per provisions of Section 4 of the K.P. Service Tribunal Act, 1974, which is very much competent and maintainable in its present form.

ON GROUNDS:

Para-i) Incorrect thus denied. Same reply as Para-3 of facts; however, it is added that the contention of petitioner as to 'political victimization' raised in corresponding para of appeal has not been denied.

Para-ii) This Para of comments is incorrect. Same reply as Para-3 of facts; however, it is submitted that ground No.ii, concerning political influence, has not been denied by respondents

Para-iii) Incorrect hence, denied. Reply as above.

Para-iv) The corresponding para of the appeal is self-contained and comprehensive. Malafide of respondents in replying this para as "Incorrect" is the proof of fact that they themselves are denying the rule of law and are not ready to eradicate the political involvement in the department.

Para-v) Needs no reply, corresponding para of the appeal is self-explanatory.

Para-vi) The corresponding para of appeal is obvious and explicit which has not been denied by respondents hence, political pressure has become an admitted fact.

Para-vii) Incorrect hence, denied. However, respondent did not advance any explanation for non-compliance of the provisions of Posting &

Transfer Policy and as such the reported judgment 2001 PLC (CS) 172 is very much relevant.

Para-viii) Incorrect. Respondents have no case on legal footings.

It is, therefore, humbly prayed that in the light of above submissions, the Service Appeal may kindly be allowed as prayed for.

Yours Humble Appellant

(Engr. Muhammad Zubair)
Through Counsel

Dt. _____.04.2023

Muhammad Saleem Khan Marwat
Advocate High Court, D.I.Khan.

Saleem Shahzad Kundi
Advocate High Court, D.I.Khan

AFFIDAVIT:

I, ***the appellant***, do hereby solemnly affirm and declare on oath that all the Para-wise contents of **Rejoinder** are true & correct to the best of my knowledge, belief & information and that, nothing has been deliberately concealed from this Honourable Court.

Identified by Counsel:
Muhammad Saleem Khan Marwat Adv.

Deponent



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the Jan 17, 2023

Annex-E

NOTIFICATION:

No.SOE/C&WD/3-2/2023: The Competent Authority (Secretary C&WD) is pleased to transfer Engr. Shahzad Naseer (BS-18) XEN Highway Division Khyber and post him as XEN Mega Projects Mardan against the vacant post, with immediate effect, in the best public interest.

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

(End of even number and odd)

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar
2. Chief Engineer (Central) C&W Peshawar
3. Chief Engineer (Mega Project) Peshawar
4. Superintending Engineer C&W Circle Khyber
5. Superintending Engineer Mega Projects Mardan
6. Executive Engineer Highway Division Khyber
7. District Accounts Officer Mardan
8. Accounts Officer Tribal District Khyber
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. Officer concerned
14. Office order File/Personal File

Zahoor
17.01.2023
(ZAHOOR SHAH)
SECTION OFFICER (Estb)



(7)
GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Annex-F

Dated Peshawar the Jan 17, 2023

NOTIFICATION:

No. SOE/C&WD/3-1/2023: 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. Jamshid Ali Khan SE (BS-19)	Superintending Engineer (Maintenance) Peshawar	Superintending Engineer C&W Circle Khyber	Vice No. 2
2	Engr. Amir Jan SE (BS-19)	Superintending Engineer C&W Circle Khyber	Superintending Engineer (Maintenance) Peshawar	Vice No. 1

2. Engr. Jamshid Ali Khan is also authorized to hold the additional charge of the post of XEN Highway Division Khyber, in addition to his own duty.

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

End 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 (Maintenance) Peshawar
4. Superintending Engineer C&W Circle Khyber
5. Superintending Engineer (Maintenance) Peshawar
6. Executive Engineer Highway Division Khyber
7. Accounts Officer Tribal District Khyber
8. PS to Advisor 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

17-01-2023
 (ZAHOOR SHAH)
 SECTION OFFICER (Esib)