

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Restoration Appli. No. 217/2023
C.M NO. _____/2023

In

12 (2) NO 449 /2022

Sajjad Hussain

VS

GOVT. OF KPK & Others

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Petition for restoration of 12(2)	---	1 - 4
2.	Application for suspension of operation of the impugned order	---	5-6
3.	Affidavit	---	7
3.	Copies of the appeal along with order of the Hon'ble Tribunal dated: 02-02-2022	A & B	8-15
4.	Copy of order dated 25-07-2022	C	16-18
5.	Copies of 12 (2) application along with order of the Hon'ble Tribunal dated:17-10-2022	D	19-26
6.	Copy of order dated 12-10-2022	E	27
7.	Copy of order dated 17-03-2023	F	28
12	Wakalat Nama	-----	29

APPELLANT

Through:

Fahim Ullah
**FAHEEM ULLAH AKHUNZADA
ADVOCATE HIGH COURT**

Cell No.0315-9046202

Fahimgull541@gmail.com

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

C.M NO. _____/2023

In

12 (2) NO 449 /2022

**Mr. SAJJAD HUSSAIN, SDA/SENIOR CLERK O/O SUB DIVISION
PUBLIC HEALTH ENGINEERING DEPARTMENT CHARSAKDA.**

..... **APPELLANT**

VERSUS

- 1- THE GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH
CHIEF SECRETARY PESHAWAR.**
- 2- THE SECRETARY PUBLIC HEALTH ENGINEERING
DEPARTMENT PESHAWAR.**
- 3- THE CHIEF ENGINEER, (CENTER) PUBLIC HEALTH
DEPARTMENT PESHAWAR.**
- 4- THE EXECUTIVE ENGINEERS PHE DIVISION CHARSAKDA.**
- 5- MR. SHAKIL AHMAD, O/O CHIEF ENGINEER (EAST) PHE
DEPARTMENT.**

..... **RESPONDENTS**

**PETITION FOR RESTORATION OF THE 12 (2) PETITION NO.
449/2022 FILED IN SERVICE APPEAL NO. 7887/2021 WHICH
WAS DISPOSED OF 17-10-2022 ON THE STATEMENT OF THE
RESPONDENTS BEFORE THIS AUGUST TRIBUNAL THAT THE
PETITIONER WOULD BE ALLOWED TO COMPLETE HIS
NORMAL TENURE BUT IRONCICALLY THE RESPONDENTS
DEFRAUDED THIS HON'ABLE TRIBUNAL FOR THE SECOND
TIME AND VIOLATED THEIR AFFIRMATION IN ORDER SHEET
DATED 17-10-2022. THEREFORE PROCEEDINGS BE
INITIATED AGASINT THE RESPONDNETS DUE TO FRADULETN
ATTITUDE TOWARDS THIS HON'ABLE TRIBUNAL FOR WHICH
THEY BE PROCEEDED STRCIKLY IN ACCRODANCE WITH LAW.**

PRAYER:

On acceptance of the instant application, the impugned order dated 17-10-2022 in 12 (2) filed in service appeal no. 7887 /2021 may be recalled being obtained through fraud and misrepresentation and the same may please be proceeded on merits and according to law.

RESPECTFULLY SHEWETH

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

1. That earlier the petitioner filed service appeal no. 7887/2021 against illegal and politically motivated posting transfer order No.05/CE-9/PHE dated 02-12-2021, wherein this august tribunal was please to issued suspension order of the same. During pendency of the appeal, the departmental representative produced another transfer/posting order dated: 21-01-2022 of the appellant to redress his agony and compel him to withdraw the appeal, hence the appeal was withdrawn.

(Copies of the appeal and order are attached as annexure A & B)

2. That after withdrawal of the appeal of the appellant, the respondent department once again issued transferred order the appellant vide order No.32/CE-9/PHE. Dated 25-07-2022 and replaced him with the blue-eyed employee Mr. Shakil Ahmad Account Clerks PHE.

(Copy of order dated 25-07-2022 is attached as annexure C)

3. That against such fraud and blatant malafide, the appellant filed 12 (2) petition along with application for suspension of order dated 25-07-2022 whereby the respondents were called upon to submit comments/reply and the order so impugned was suspended.

(Copies of 12 (2) and order is attached as annexure D)

4. That on the date fixed i.e 17-10-2022, the respondent department appeared before this Hon'able Tribunal through Kamran Shahid, Assistant Social Organizer as departmental representative **who produced transfer/posting order dated 12-10-2022 showing that the appellant was posted against his earlier position with immediate effect** and assured this Hon,ble Tribunal that the appellant would be allowed to complete his normal tenure and would not be disturbed and on such statement/affirmation and production of order dated 12-10-2022, the 12 (2) petition was disposed of.

(Copy of order dated 12-10-2022 is attached as annexure E)

5. That on dated 17-03-2023, the respondent department again issued posting transferred order of the appellant without completing his normal tenure and replaced him once again with said blue-eyed Shakil Ahmad Clerk on the basis of political motivation and ulterior motives rather than on merits, which is against the public interest.

(Copy of order dated 17-03-2023 is attached as annexure F)

6. That the appellant has been scapegoated since long of political motivation personal whims of the respondents and becomes a rolling stone in the hand of the respondents and never let him to complete his tenure and even defrauded this Hon'able Tribunal time and again, therefore, the appellant being highly aggrieved form illegal and unjustified attitude of the respondents is having no other ways but to approach this Hon'able Tribunal for redressal of his grievance hence this petition for restoration of the 12-(2) petition No. 449/2022.

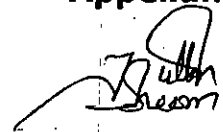
7. That it is evident from the transfer/posting history of the appellant that he has been subjected to frequent transfers/postings and was never let to complete his tenure rather he has been treated as shuttlecock throughout his career which act of the respondent department is not only illegal but is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

8. That contents of 12 (2) petition no 449/2022 and main service appeal No.7887/2021 be considered as part and parcel of this petition.

It is, therefore humbly prayed that on acceptance of the instant petition, the order dated 17-10-2022 may please be set aside and 12(2) petition of the appellant may be restored for disposal on merits.

Appellant

Through



Faheem Ullah Akhonzada
Advocate High Court
Peshawar.

LIST OF BOOKS:

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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

C.M NO. _____/2023

In

12 (2) NO 449 /2022

SAJJAD HUSSAIN

VS

GOVT. OF KPK & OTHERS

**APPLICATION FOR SUSPENSION OF OPERATION OF THE
IMPUGNED OFFICE ORDER NO. 04/CE-9/PHE DATED
17.03.2023 TILL THE FINAL DISPOSAL OF THE ABOVE
MENTIONED APPEAL.****RESPECTFULLY SHEWETH:**

- 1- That the above mentioned petition in 12 (2) No. 449/2022 is pending before this hon'able tribunal wherein no date of hearing is fixed.
- 2- That appellant filed the above mentioned appeal against the impugned order dated 25-07-2022 which has been issued after obtaining order dated 02-02-2022 by the respondent department from this hon'able tribunal through fraud and misrepresentation.
- 3- That on 17-10-2022 respondent department once again withdrawn their order and affirm before the court that the appellant will not be transfer before his normal tenure but after sometimes again transferred appellant vide office order no. 04/CE-9/PHE, dated 17-03-2023.
- 4- That if the impugned order dated 17-03-2023 has not been suspended the appellant will face irreparable loss and will declare the above-mentioned appeal infructuous.
- 5- That all the three ingredients necessary for the stay is in favor of the appellant.
- 6- That the impugned order dated 17-03-2023 had been issued by the respondents in utter disregard of law, affirmation before the court dated 17-10-2023 and prevailing Rules with melafide intentions.

It is therefore, most humbly prayed that on acceptance of this application the operation of the impugned dated 17.03.2023 may very kindly be suspended till the disposal of the above-mentioned service appeal.

Dated: 30-03-2023

APPELLANT

THROUGH:



FAHEEM ULLAH AKHUNZADA

ADVOCATE HIGH COURT
PESHAWAR.

7

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

C.M NO. _____/2023

In
12 (2) NO. 449 /2022

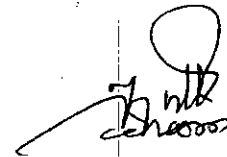
Sajjad Hussain

VS

GOVT. OF KPK & Others

AFFIDAVIT

I, Faheem Ullah Akhonzada Advocate High Court Peshawar as per instructions of my client, do hereby solemnly affirm and state, that the contents of petitions are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon' able Tribunal.



Deponent.

Dated; _

BC: 12-3780
Cell: 0333-9046202

Certificate:

It is certified that no petition has been pending or filed between the same parties and on same subject matter except the instant petitions.


Deponent

8

1

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



APPEAL NO. 7877 /2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 8057

Dated 20-12-2021

Mr. SAJJAD HUSSAIN, SDA/SENIOR CLERK O/O SUB DIVISION
PUBLIC HEALTH ENGINEERING DEPARTMENT CHARSADDA.

..... APPELLANT

VERSUS

- 1- THE GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH
CHIEF SECRETARY PESHAWAR.
- 2- THE SECRETARY PUBLIC HEALTH ENGINEERING
DEPARTMENT PESHAWAR.
- 3- THE CHIEF ENGINEER, (CENTER) PUBLIC HEALTH
DEPARTMENT PESHAWAR.
- 4- THE EXECUTIVE ENGINEERS PHE DIVISION CHARSADDA.
- 5- MR. SHAKIL AHMAD ^{Sr. Clerk} / O/O CHIEF ENGINEER (EAST) PHE
DEPARTMENT.

..... RESPONDENTS

File No. 18/2021
Registrar
20/12/2021

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED
OFFICE ORDER NO.05/CE-9/PHE DATED 02.12.2021
WHEREBY THE APPELLANT HAS PREMATURELY BEEN
TRANSFERRED FROM THE OFFICE OF PHE SUB DIVISION
CHARSADDA TO CHIEF ENGINEER (EAST) PESHAWAR AND
AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL
APPEAL OF THE APPELLANT WITHIN THE STATUTORY
PERIOD.**

ATTESTED

PRAYER:

On acceptance of the instant appeal the impugned office order No. 05/CE-9/PHE DATED 02.12.2021 may please be set aside and the same may be declared as illegal unlawful without lawful authority, void ab-initio and in sheer violation of ban imposed by election commission of Pakistan vide Notification No. F-16(1)/2021-LGE-KP dated 04/11/2021 and evidently an outcome of political motivation, therefore 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 the completion of his tenure. Any other remedy which this August Tribunal deems fit that may also be awarded 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.
(Copy of CNIC is attached as annexureA)
2. That the appellant is serving as SDA/Senior Clerk under the administrative control of Chief Engineer Public Health Engineering [Center] Khyber Pakhtunkhwa Peshawar. That the appellant has performed unblemished and satisfactory performance in the department and having no stigma or complaint against the appellant 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

ATTESTED
 MEMBER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

3

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.

(Copy of order is attached as Annexure.....B)

4. That after less than one month of tenure period the appellant once again was transferred from the post of Accounts Clerk PHE Division Mardan to PHE Division Charsadda and posted as SDA in PHE Sub Division Tangi by the Chief Engineer [Center] Khyber Pakhtunkhwa Peshawar vide Order No. 6/E-9/PHE dated 11/03/2021 but after [03] days the appellant once gain transferred was 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 implemented by the appellant.

(Copy of notifications are attached as Annexure – C and D)

5. That after mostly 8th months period of tenure the appellant again was transferred 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.

(Copy of transfer order is attached as Annexure..... E)

6. That the Election Commission of Pakistan vide Notification No. F-16(1)/2021-LGE-KP dated 04/11/2021 issued revised schedule for conduct Local Government Election in First Phase in Khyber Pakhtunkhwa and imposed ban on posting transfer / any kind of misuse of Government office for announcement of developmental projects but in violation of the said revised schedule of ECP the appellant was transferred to influence the result of Local Government Election in the shape of transfer of the appellant

(copy of notification is attached as Annexure..... F)

ATTESTED

CHIEF ENGINEER
Khyber Pakhtunkhwa
Peshawar

7. That feeling highly aggrieved from the impugned order dated 02-12-2021, The appellant filed a department appeal to the competent authority i.e the secretary to Government of Khyber Pakhtunkhwa Public Health Engineering Peshawar on dated: 03-12-2021, but till date no heed was paid to the appeal of the appellant.

(Copy of the departmental appeal is attached as annexure.....G)

8. That as the impugned order was issued not only in sheer violation of the posting/transfer policy but also during the ban imposed by the election commission of Pakistan therefore the appellant also made representation to the District Election Officer and District Administration, Charsadda.

(Copies of the appeal are attached as annexure.....H & I)


9. That the appellant having no other efficacious remedy but to file the instant appeal on the following grounds amongst the others.

Grounds:

1. 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.

2. 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.

3. That Likewise, the impugned order dated 02/12/2021 of the department / Chief Engineer [Center] qua transfer of the appellant being not permissible and the same being whimsical, arbitrary and punitive in nature and therefore, in violation of

ATTESTED

CHIEF CLERK
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

5

fundamental rights enshrined in Constitution of 1973 and in contravention of Rules and policy, therefore not tenable in the eyes of law.

4. 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.
5. That the transfer of the appellant is against the Tenure, appointment, promotion and posting/transfer are of utmost importance in the civil service, and the same will rightly be considered and treated as part of the terms and conditions of service of a civil servant. If, however, rules and instructions are deviated from and as a result merit is discouraged on account of favoritism, sifarish or considerations other than merit, it should be evident that civil service will not remain independent or efficient in this regard reliance upon Constitution Petition No. 23/2012. Petition by Ms. Anita Turab vs Government of Pakistan etc.
6. That act of the respondents department is based on of Political influence and without tenure policy transfers against the law and judgments of superior courts relied upon the relevant para of judgment of the Supreme Court of Pakistan 1996 SCMR 1185 titled Hameed Akhtar Niazi vs The Secretary Establishment Division, Government of Pakistan relevant part is reproduced here for ease of reference,

"If the Service Tribunal or Supreme Court decides a point of law relating to the terms of Service of a Civil Servant which covers not only the case of civil servant who litigated, but also

ATTESTED


Secretary
Service Tribunal

6

of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal/ Supreme Court be extended to other civil servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum".

7. 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.

8. That it is pertinent to mention that the impugned order dated 02-12-2021 and all the previous transfer/posting orders of the respondents are violative of clause-I and clause-IV of the transfer/posting policy as the throughout his tenure the appellant was never let to complete his tenure.

(Copy of transfer/posting policy is attached as annexure.....J)

9. That the impugned order dated 02-12-2021 is also against law & prevailing rules as the impugned order is issued during the ban period imposed by the election commission of Pakistan on all posting/transfer owing to local government election with aim to insure transparency.

10. That the impugned order dated 02-12-2021 is not passed in public interest which is a clear violation of judgments of passed by the apex supreme court of Pakistan hence the impugned order dated 02-12-2021 is void ab initio in its nature.

ATTESTED

EXAMINER
Syder Pakhtunkwa
Service Tribunal
Peshawar

7

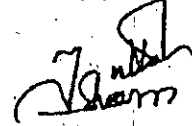
14

It is, therefore humbly prayed that the instant appeal may please be allowed in favour of the appellant against the respondents as prayed for in the heading of the appeal.



Appellant

Through

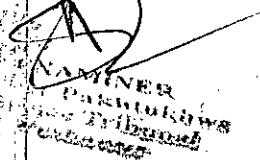


FAHEEM ULLAH AKHUNZADA
Advocate High Court
Peshawar.

LIST OF BOOKS:

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

ATTESTED



WITNESSES
Peshawar High Court
Peshawar

15




02.02.2022

Learned counsel for the appellant present
Muhammad Adeel Butt, Addl: AG for official
respondents present.

Learned counsel for the appellant submitted an
application for withdrawal of the instant service appeal
wherein he stated that the grievances of the appellant
have been redressed departmentally. Application is
allowed and the instant service appeal is therefore,
dismissed as withdrawn. File be consigned to the record
room.

Announced:
02.02.2022


(Atiq-Ur-Rehman Wazir)
Member(E)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application

22/03/2023

Number of ~~pages~~ page 8

Carrying Fee 40/-

Urgent 5/-

Fee 45/-

Project No

Date of Copy received

22/03/2023

Date of Delivery of Copy

22/03/2023



(16)

OFFICE OF THE CHIEF ENGINEER (CENTER)
PUBLIC HEALTH ENGG: DEPTT: KHYBER PAKHTUNKHWA, PESHAWAR
Ph #091-9217528, E-mail: centrephead@pmail.com, Plot#40, Sector-B-II, Phase-V, Hayatabad, Peshawar (Aziz)

No. 321/CE-9 /PHE,

Dated: Peshawar, the 25/07/2022

OFFICE ORDER

On the recommendation of the Departmental Promotion Committee (DPC) in its meeting held on 29.06.2022, at 10:00 AM under the Chairmanship of Chief Engineer (Center) PHED, the competent authority is pleased to promote the following 23-Nos Junior Clerks (BPS-11) to the post of Senior Clerks (BPS-14), on regular basis, in the best interest of public.

1.	Faheem Ullah	9.	Altaf Khan	17.	Asim Khan
2.	Beena Rani	10.	Asmat Ullah	18.	Shafi Raz Khan
3.	Aamir Saleem	11.	Aminullah	19.	Shafqat Ullah
4.	Tahir Ali Khan	12.	Syed Adnan Ali Shah	20.	Syed Azmat Shah
5.	Irfan Anwar	13.	Farhan Ullah	21.	Muhammad Rafiq Khan
6.	Abbas Rahim	14.	Adnan Ali	22.	Muhammad Tariq
7.	Naveed Ullah	15.	M. Azhar ud Din	23.	Farzand Ali
8.	Wahid Zaman	16.	Muhammad Javed		

Consequent upon their regular promotion to the next rank, they will remain on probation for a period of one year, as per Civil Servants act 1973, read with appointment/promotion and transfer rules 1989, as such the following posting/transfer are hereby ordered, with immediate effect.

#	Name	From	To	Remarks
1.	Faheem Ullah	Junior Clerk, PHE Division Lakki Marwat	Senior Clerk, PHE Division Lakki Marwat	Against the existing vacancy
2.	Beena Rani	Junior Clerk, O/o Chief Engineer (Center) PHED	Senior Clerk, O/o Chief Engineer (East) PHED	Against the existing vacancy
3.	Aamir Saleem	Junior Clerk, PHE Division South Waziristan	Senior Clerk, PHE Division South Waziristan at Tank	Against the existing vacancy
4.	Tahir Ali Khan	Junior Clerk, PHE Division Mardan	Senior Clerk/SDA, PHE S/Division Swabi	Vice item No.33
5.	Irfan Anwar	Junior Clerk, PHE Circle D.I.Khan	Senior Clerk, PHE Circle D.I.Khan	Against the existing vacancy
6.	Abbas Rahim	Junior Clerk, PHE Circle Malakand	Senior Clerk/SDA PHE S/Division Saidu Sharif-I District Swat-I	Against the existing vacancy
7.	Naveed Ullah	Junior Clerk, PHE Division D.I.Khan	Senior Clerk/SDA, PHE Sub Division Banda Daud Shah, Karak-I	Vice item No.35
8.	Wahid Zaman	Junior Clerk, PHE Division Bannu	Senior Clerk/SDA, PHE S/Division Bannu-I, Bannu	Vice item No.36
9.	Altaf Khan	Junior Clerk, PHE Circle Bannu	Senior Clerk, PHE Circle Bannu	Against the existing vacancy
10.	Asmat Ullah	Junior Clerk, PHE Division Lakki Marwat	Senior Clerk/SDA, PHE S/Division Kolachi, D.I.Khan	Vice item No.37
11.	Aminullah	Junior Clerk, PHE Division Malakand at Bathkela	Senior Clerk/SDA, PHE S/Division Dargai, Bathkela	Vice item No.27
12.	Syed Adnan Ali Shah	Junior Clerk, PHE Division Peshawar-I	Senior Clerk, O/o Chief Engineer (North) PHED	Against the existing vacancy
13.	Farhan Ullah	Junior Clerk, PHE Circle Peshawar	Senior Clerk, PHE Circle Peshawar	Against the existing vacancy
14.	Adnan Ali	Junior Clerk, O/o Chief Engineer (East) PHED	Senior Clerk, O/o Chief Engineer (South) PHED	Against the existing vacancy

15.	M. Azhar ud Din	Junior Clerk, PHE Division Peshawar-II	Senior Clerk/SDA No. II, PHE Division Peshawar-I	Against the existing vacancy
16.	Muhammad Javed	Junior Clerk, PHE Division Lakki Marwat	Senior Clerk/SDA, PHE S/Division No.2, I/Marwat	Against the existing vacancy
17.	Asim Khan	Junior Clerk, PHE Division North Waziristan	Senior Clerk/SDA, PHE S/Division No-1, Kurram	Vice item No.24
18.	Shafi Raz Khan	Junior Clerk, PHE Division North Waziristan	Senior Clerk/SDA, PHE S/Division Miranshah, North Waziristan	Vice item No.42
19.	Shafqat Ullah	Junior Clerk, PHE Division Bannu	Senior Clerk, PHE Division Bannu	Against the existing vacancy
20.	Syed Azmat Shah	Junior Clerk, PHE Division Bannu	Senior Clerk/SDA, PHE S/Division Kohat, Kohat	Against the existing vacancy
21.	Muhammad Rafiq Khan	Junior Clerk, PHE Circle Peshawar	Senior Clerk/SDA, PHE S/Division Khyber	Against the existing vacancy
22.	Muhammad Tariq	Junior Clerk, O/o Chief Engineer (Center) PHE/D	Senior Clerk, O/o Chief Engineer (Center) PHE/D	Against the existing vacancy
23.	Farzand Ali	Junior Clerk, PHE Division Shangla	Senior Clerk/SDA, PHE S/Division Alpuri, Shangla	Against the existing vacancy
24.	Riaz Hussain	Senior Clerk/SDA No.-1, PHE Division Kurram	Account Clerk (OPS) PHE Division Kurram	Against the existing vacancy
25.	Saeed Khan	Senior Clerk/SDA No.2 PHE Division Kurram	Junior Scale Stenographer (OPS) PHE Division Kurram	Against the existing vacancy
26.	Bashir Nawaz	Senior Clerk, PHE Division Kohat	Junior Scale Stenographer (OPS) PHE Division Kohat	Against the existing vacancy
27.	Waqar Anjum	Senior Clerk/SDA, PHE S/Division Dargai, Batkhela	Senior Clerk, PHE Circle Swat	Against the existing vacancy
28.	Qazi Muhammad Tariq	Senior Clerk, PHE Division Charsadda	Accounts Clerk (OPS) PHE Division Nowshera	Vice item No.32
29.	Abdul Waheed	Senior Clerk/SDA PHE S/Division-2, Bannu	Junior Scale Stenographer (OPS) PHE Division Bannu	Against the existing vacancy
30.	Ubaid Us Salam	Senior Clerk/SDA, PHE S/Division No.1, Abbottabad	Accounts Clerk (OPS), PHE Circle Abbottabad	Against the existing vacancy
31.	Tehsil Khan	Senior Clerk PHE Division Karak-I	Senior Clerk, PHE Circle Kohat	Against the existing vacancy
32.	Yousaf Khan Senior Clerk	Accounts Clerk (OPS) PHE Division Nowshera	Senior Clerk, PHE Division Charsadda	Vice item No.28
33.	Ijaz Hussain	Senior Clerk/SDA PHE S/Division Swabi	Junior Scale Stenographer (OPS), PHE Division Swabi	Against the existing vacancy
34.	Noor Hadi	Senior Clerk/SDA PHE S/Division Lahore,	Senior Clerk (Rev), PHE Division Swabi	Against the existing vacancy
35.	Hafiz-ur-Rehman	Senior Clerk/SDA, PHE Sub Division Banda Daud Shah, Karak-I	Senior Clerk PHE Division Karak-II	Against the existing vacancy
36.	Javed Ali Shah	Senior Clerk/SDA PHE S/Division No. I, Bannu	Junior Scale Stenographer (OPS) PHE Division Bannu	Against the existing vacancy
37.	Mohammad Shafiq	Senior Clerk/SDA PHE S/Division Kolachi, D.I.Khan	Assistant Research Officer (OPS), PHE Circle D.I.Khan	Against the existing vacancy
38.	Muhammad Haroon	Senior Clerk/SDA PHE S/Division Dir, Upper Dir	Senior Clerk (Rev), PHE Division Dir Upper	Against the existing vacancy
39.	M. Ejaz Khan	Senior Clerk/SDA PHE S/Division No.II, Abbottabad	Accounts Clerk (OPS), PHE Division Abbottabad	Vice item No.40
40.	Muhammad Munir Senior Clerk	Accounts Clerk (OPS), PHE Division Abbottabad	Senior Clerk/SDA PHE S/Division No.II, Abbottabad	Vice item No.39

41.	Abdus Salam	Senior Clerk/SDA PHE S/Division Battagram	Senior Clerk (Rev), PHE Division Battagram	Against the existing vacancy
42.	Syed Ali Shah	Senior Clerk/SDA, PHE S/Division Miranshah, North Waziristan	Senior Clerk/SDA PHE S/Division-2, Bannu	Vice item No.29
43.	Muhammad Imran Senior Clerk	PHE Division Bannu	Senior Clerk/SDA PHE S/Division Pahar Pur, District D.I.Khan	Against the existing vacancy
44.	Shakil Ahmad Senior Clerk	Accounts Clerk (OPS), PHE Division Charsadda	Senior Clerk/SDA, PHE Sub Division Charsadda	Vice item No.45
45.	Sajjad Hussain Senior Clerk	Senior Clerk/SDA, PHE Sub-Division Charsadda	Accounts Clerk (OPS), PHE Division Charsadda	Vice item No.44
46.	Shafi Raza Junior Clerk	PHE Division Mardan	Senior Clerk/SDA (OPS) PHE Sub Division Mardan	Against the existing vacancy
47.	Amin Ullah Junior Clerk	PHE Division Khyber	Senior Clerk/SDA (OPS), PHE S/Division Bajaur	Against the existing vacancy
48.	Mumtaz Ali Junior Clerk	PHE Division Swabi	Senior Clerk/SDA (OPS), PHE S/Division Samarbagh, Dir Lower	Against the existing vacancy
49.	Hamid Khan Junior Clerk	PHE Division Hangu	PHE Circle Peshawar	Against the existing vacancy
50.	Miss Shaista Junior Clerk	PHE Division Swabi	PHE Division Mardan	Vice item No.4
51.	Najeeb Ullah Junior Clerk	PHE Division Karak-I	PHE Circle Bannu	Vice item No.9
52.	Mst. Madiha Waheed	Junior Clerk, PHE Division D.I.Khan	Junior Clerk, PHE Circle D.I.Khan	Vice item No.5
53.	Habib Ullah Junior Clerk	PHE Division Kohistan Upper	PHE Division Shangla	Vice item No.23

Chief Engineer (Center)

Endstt: No 32/CE2/PHE,

Dated Peshawar, the 25/07/2022

Copy forwarded to:

1. The Accountant General Khyber Pakhtunkhwa Peshawar.
2. The Chief Engineer (North/South/East) PHE Department Peshawar.
3. All Superintending Engineers PHE Circle South/North/East/Center Khyber Pakhtunkhwa.
4. All Executive Engineers PHE Division South/North/East/Center Khyber Pakhtunkhwa.
5. The Section Officer (Estt) PHE Department Peshawar.
6. The Research Officer (W/Q) PHE Central Lab Peshawar.
7. The District Accounts Officer Concerned.
8. The official concerned.

Chief Engineer (Center)

0334-9166514

9210704

Scanned with CamScanner

(1) (19)

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 CHARSADEA.

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

..... 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.

ATTENDED

BY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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


 K. AMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

4. That after less than one month of tenure period the appellant was transferred from the post of Accounts Clerk, PHE Division, Mardan to PHE Division, Charsadda, and was posted as SDA in the PHE Sub Division, Tangi by the Chief Engineer [Center], Khyber Pakhtunkhwa, Peshawar vide Order No. 6/E-9/PHE dated 11/03/202, but after [03] days was transferred from PHE Sub Division, Tangi and posted in PHE Division, Charsadda vide office order No. 05/E-9 d/PHE dated 15/03/2021 issued by Chief Engineer [Center] PHE Peshawar, which order also complied by the appellant.
5. That after 8th months period of tenure the appellant was transferred again from PHE Division Charsadda and posted in the office of Chief Engineer (East) PHED on 02/12/2021 vide office order No. 05/CE-9/PHE in violation of tenure and posting transfer policy / APT Rules 1989 Government of Khyber Pakhtunkhwa.
6. That against no action on the departmental appeal of the appellant within the statutory period by the respondent department, the appellant filed service appeal before this Honable Tribunal along with application for suspension of the impugned order.
7. That the Hon'able Tribunal was pleased to suspend the impugned order dated 02-12-2021 and accordingly directed the respondent to file their respective comments vide order dated 21-12-2021.

(Copy of order dated: 21-12-21, is attached as Annex-A)

8. That the respondent department appeared before the Tribunal and seeks time for submission of their respective comments which was accordingly granted.
9. That after seeking further time on deferent dates of hearing the respondent department produced office order No. 06/CE-9/PHE dated 21-01-2022 wherein the appellant was reposted on his earlier position and on the basis of such order the appellant was asked to withdraw his appeal which was withdrawn by the appellant accordingly vide order dated 02-02-2022.

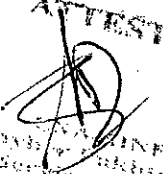
(Copy of order dated: 02-02-2022, is attached as Annex-B)

ATTENDED
EXAMINER
Khyber Pakhtunkhwa
Service Board

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

GROUND:

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

ATTESTED

 MEMBER
 SERVICE TRIBUNAL
 PAKISTAN

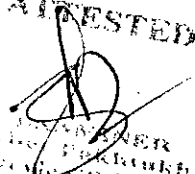
~~23~~

23

7. That after availing time for submission of reply by the respondent no.03, instead of filing of comments, produced office order no. 06/CE-9/PHE dated 21-01-2022 and the appeal was accordingly withdrawn by the appellant as his grievance were redressed.
8. That soon after obtaining order form the Hon'able Tribunal through fraud and misrepresentation, the respondent no. 03 vide office order No.32/CE-9/PHE dated 25-07-2022 again transferred the appellant form his post just to benefit respondent no.05 beside the fact the post and job description of the appellant and respondent no. 03 is not the same but even then they are always after the post of the appellant the reasons best known to respondents no. 03 and 05.
9. That the malafide of the respondent is evident form the fact that the office order No. 32/CE-9/PHE dated 25-07-2022 is promotion order wherein 23 employees were promoted from the post of Junior Clerks (BPS-11) to the post of Senior Clerks (BPS-14) but even then the name of the appellant has malafiedly and fraudulently been added in the list of the promotion just to achieve their motives.

(Copy of order dated: 25-07-2022, is attached as Annex-C)

10. That the appellant was transferred so many times just in the year 2021 without any reasons in violation of transfer posting and tenure policy which is also against the law rules and judgment of august Supreme Court of Pakistan enshrine in Anita Turab vs 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.

ATTESTED

ATTESTING OFFICER
Punjab and Federal Capital Territory
Tribunal

8

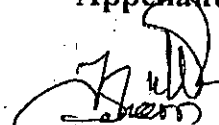
24

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

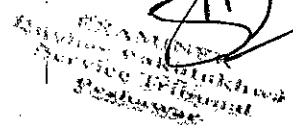


Faheem Ullah Akhuzada
Advocate High Court
Peshawar.

LIST OF BOOKS:

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

ATTESTED



Examiner
Service Tribunal
Peshawar

15th Sept, 2022

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

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

Q

(Kalim Arshad Khan)
Chairman

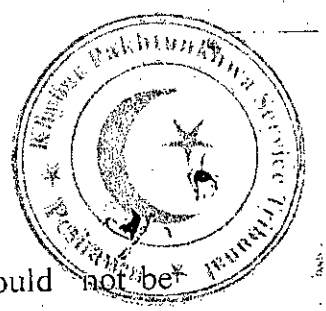
150 PHE
Sajid Hussain
17/10/22

Oct., 2022

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

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

TESTED
Sajid Hussain
Chairman



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

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

(Kalim Arshad Khan)
Chairman

Certified true & correct copy
EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application	<u>22/03/2023</u>
Number of words <u>page</u>	<u>8</u>
Copying Fee	<u>40/-</u>
Urgent	<u>5/-</u>
Total	<u>45/-</u>
Name of Copy	
Date of Completion of Copy	<u>22/03/2023</u>
Date of Delivery of Copy	<u>22/03/2023</u>



27

OFFICE OF THE CHIEF ENGINEER (CENTER)
PUBLIC HEALTH ENGG: DEPT: KHYBER PAKHTUNKHWA, PESHAWAR
Ph: 091-9217528, E-mail: centerphed@gmail.com, Plot-10, Sector-II-II, Phase-V, Hayatabad, Peshawar (Azir)

No. 071 CE-9 /PHE,

Dated Peshawar, the 12/10/2022

OFFICE ORDER

In continuation to this office order No.32/CE-9/PHE dated 25.07.2022 The following posting/transfer of SDA/Senior Clerks (BPS-14) are hereby ordered with immediate effect, in the best public interest subject to the final Judgment of the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar under section 12(2) No.449/2022 in service appeal 7887/2021.

#	Name	From	To	Remarks
1	Mr. Shakil Ahmad	Under transfer as SDA PHE Sub Division Charsadda, District Charsadda	PHE Division Charsadda against the post of Accounts Clerk in (OPS), (relieved from the post of SDA PHE Sub Division Charsadda)	Against the existing vacancy
✓	Mr. Sajjad Hussain	SDA PHE Sub Division Charsadda, District Charsadda	Retained as SDA in PHE Sub Division Charsadda	Against the existing vacancy

Keeping in view the direction of the Honorable Court in its order sheet dated 03.08.2022, the order dated 25.07.2022 was suspended and the official Mr. Sajjad Hussain was retained on the post of Sub Divisional Accountant/SDA in PHE Sub Division Charsadda.

Chief Engineer (Center)

Endstt: No. 71 CE-2 /PHE,

Dated 12/10/2022

Copy forwarded to:

1. The Superintending Engineer PHE Circle Peshawar.
2. The Executive Engineers PHE Division Charsadda.
3. The District Accounts Officer Charsadda.
4. The official concerned.

Chief Engineer (Center)



28

OFFICE OF THE CHIEF ENGINEER (CENTER)
PUBLIC HEALTH ENGG. DEPT. KHYBER PAKHTUNKHWA, PESHAWAR
Ph: 021-2217523, E-mail: ce@pheed.gov.pk, Peshawar, Khyber Pakhtunkhwa, Pakistan

No. 041 CE-9 PHE,
Dated Peshawar, the 17/03/2023

OFFICE ORDER

After completion of 2 years tenure granted in the service appeal No 7887/2021 by the honorable Service Tribunal Peshawar, the following posting/transfer of SDA/Senior Clerks (BPS-14) are hereby ordered with immediate effect, in the best public interest:-

#	Name	From	To	Remarks
1	Mr. Shakil Ahmad	Senior Clerk PHE Division Charsadda	SDA PHE Sub Division Charsadda, PHE Charsadda	Vice Item No.2
2	Mr. Sajjad Hussain	SDA PHE Sub Division Charsadda, District Charsadda	Senior Clerk PHE Division Charsadda	Vice Item No.1

/

Chief Engineer (Center)

Endstt: No. 041 CE-2 PHE,

Dated 17/03/2023

Copy forwarded to:

1. The Superintending Engineer PHE Circle Peshawar.
2. The Executive Engineer PHE Division Charsadda.
3. The District Accounts Officer Charsadda.
4. The official concerned.

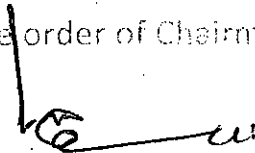
Chief Engineer (Center)

FORM OF ORDER SHEET

Court of _____

4.

Restoration Application No. 217/2023

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	03.04.2023	<p>The application for restoration of 12(2) CPC Petition No.449/2022 in appeal 7887/2021 submitted today by Mr. Faheem Ullah Akunzada Advocate. It is fixed for hearing before Single Bench at Peshawar on _____</p> <p>Original file be requisitioned. Notices be issued to applicant and his counsel.</p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p>