

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.276/2023

Date of Institution	...	23.12.2022
Date of Decision	...	06.04.2023

Engr. Muhammad Zubair, Executive Engineer, High Division, District
Khyber. ... (Appellant)

VERSUS

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

... (Respondents)

Muhammad Saleem Khan Marwat,
Advocate ... For appellant.

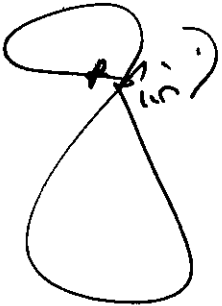
Asif Masood Ali Shah,
Deputy District Attorney ... For respondents.

Mrs. Rozina Rehman	...	Member (J)
Mr. Muhammad Akbar Khan	...	Member (E)

JUDGMENT

Rozina Rehman, Member(J): The appellant has invoked the jurisdiction of this
Tribunal through above titled appeal with the prayer as copied below:

“On acceptance of present Service Appeal and by setting
aside/cancelling Notification bearing No.SOE/C&WD/3-1/2022
dated 20.12.2022, the impugned transfer of appellant from the post
of XEN Highway Division Khyber to the post of Design Engineer
O/O Chief Engineer (South-I) C&W Peshawar may graciously be
cancelled and as result thereof the posting of appellant as XEN
Highway Division Khyber, may graciously be restored”.



2. Brief facts of the case are that appellant is serving in the C&W Department as Executive Engineer Highway Division District Khyber. He was transferred from the post of XEN Building Division to the post of XEN Highway Division Khyber vide Notification dated 28.01.2022 and after 11 months of his posting as XEN Highway Division Khyber, the respondent No.3 issued another Notification dated 20.12.2022 vide which appellant was transferred to the post of Design Engineer Peshawar. Feeling aggrieved, he filed departmental appeal which was dismissed, hence, the present service appeal.

3. We have heard Muhammad Saleem Khan Marwat Advocate learned counsel for appellant and Asif Masood Ali Shah learned Deputy District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Muhammad Saleem Khan Marwat Advocate, learned counsel for the appellant contended that impugned Notification dated 20.12.2022 is the outcome of malafide, the result of political victimization, against law and facts, hence, not tenable and liable to be set aside. He contended that the appellant was made a rolling stone by the official respondents just because of the political influence as a local MPA of Khyber Pakhtunkhwa who was also DDAC Chairman Khyber had submitted an application to the Chief Minister demanding the change/shifting of bridge already proposed at Kabul River at Mechni Area to his own constituency. The Additional Chief Secretary P&D Department marked the said application to C&W for comments and ultimately the same was marked to the appellant in capacity of XEN C&W Highway Division for comments; that he submitted his comments purely on merits but

the same annoyed the said MPA and consequently the impugned transfer notification was issued. Learned counsel argued that the impugned transfer order was never issued in the best interest of public service, hence, not tenable and that the same is violative of posting/transfer policy of the Government of Khyber Pakhtunkhwa. He, therefore, requested for acceptance of the instant service appeal.


5. Conversely, learned DDA submitted that the appellant was transferred from the post of XEN Highway Division Khyber and posted as Design Engineer C&W Peshawar on 20.12.2022 and that an officer was posted in his place who had already taken the charge of the post of XEN Highway Division Khyber and that as per Section-10 of Khyber Pakhtunkhwa Civil Servants Act, 1973, every civil servant shall be liable to serve anywhere within or outside the province in any post under the Federal Government or Provincial Government. He submitted that the appellant was treated as per law/rules and regulations laid down by the Government and there was no malafide intention of the respondents. The action taken by the respondents is strictly in accordance with law.

6. The crux of the claim of the appellant is that his transfer through impugned order was based on malafide and political favoritism and nepotism. Record shows that appellant was transferred from the post of XEN Building Division Khyber to XEN Highway Division Khyber on January 28th, 2022. One Engineer Shahzad Naseer was transferred from the post of XEN Highway Division to XEN Building Division Khyber. It was on December 20th, 2022 when appellant and Shahzad Naseer were once again transferred. Appellant was transferred from the post of XEN Highway Division Khyber to Design

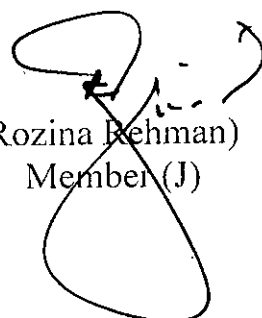
Engineer O/O Chief Engineer (South-I) C&W Peshawar while Shahzad Naseer was transferred from the post of XEN Mega Projects Mardan to XEN Highway Division Khyber. The respondents stated not a single word in respect of further transfer of Shahzad Naseer to XEN Mega Projects Mardan against the vacant post vide Notification dated January 17, 2023 and one Engineer Jamshaid Ali Khan transferred from the post of Superintending Engineer (Maintenance) Peshawar to the post of Superintending Engineer C&W Circle Khyber was authorized to hold the additional charge of the post of XEN Highway Division Khyber in addition to his own duty. It is on record that transfer of the appellant is premature which was made without any valid reason. Order of premature transfer of the appellant is violative of the posting/transfer policy. It has been held by superior fora that matter of tenure, appointment, posting/transfer and promotion of civil servants could not be dealt with in an arbitrary manner. Even otherwise, the appellant has annexed different documents in order to show that his transfer was politically motivated.

7. In view of the above discussion, instant service appeal is accepted as prayed for and the impugned transfer order dated 20.12.2022 is set aside. Parties are left to bear their own costs. File be consigned to the record room.

Announced
06.04.2023


(Muhammad Akbar Khan)
Member (E)

Mutazem Shah


(Rozina Rehman)
Member (J)