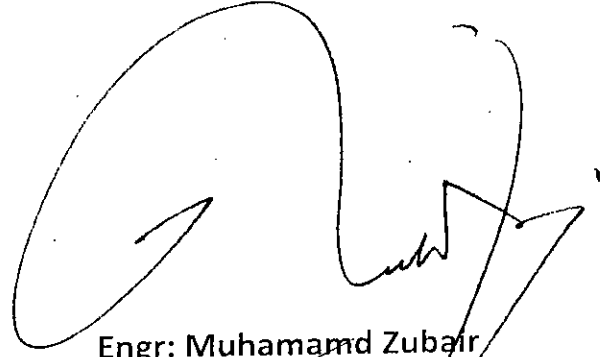




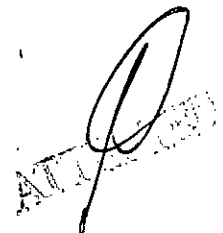
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It is therefore, your good self is most humbly requested to please implement the verdict /order dated: 04/04/2023 passed by the learned Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal no 276 of 2023 titled "Engr.Muhammad Zubair Vs Govt. Of KPK etc"

Dated: 04 /05/2023



Engr: Muhamamd Zubair  
Executive Engineer (BPS-18)  
Communication and Works Deptt:



(vi)

D.No: 3392 dt: 04/05/2023

8

(Reminder-I)

To

The Honorable Secretary,  
Communication and Works Deptt: Khyber Pakhtunkhwa.

Subject: Application For Implementation Of Order/ Final Verdict Dated: 04/04/2023 Passed By The Learned Khyber Pakhtunkhwa Service Tribunal Peshawar In Service Appeal No 276 Of 2023 Titled " Engr: Muhamamd Zubair Vs Govt: Of KPK Etc"

Respected Sir,

The applicant Engr: Muhammad Zubair Executive Engineer (BPS-18) humbly submits as under:

- 1- That the applicant is serving as Executive Engineer in C & W Deptt: Khyber Pakhtunkhwa and has always performed my duties with honesty, zeal and zest.
- 2- That due to political victimization and interference by the then political figures of the Khyber transferred the applicant from Highway Division District Khyber for which the applicant submitted proper departmental representation/appeal.
- 3- That thereafter the applicant preferred a service appeal u/s 4 of the KPK Service Tribunal Act 1974 before the Honorable KPK Service Tribunal against the political motivated transfer order No : SOE/C & WD/3-1/2022 Dated: 20/12/2022.
- 4- That the learned Service Tribunal was pleased to accept the genuine plea of the applicant and accepted the appeal by First suspending the operation impugned transfer order till further orders vide order dated: 06/02/2023 (Copy attached for ready reference Annex-I) and then on 04/04/2023 in its final verdict cancelled /set aside the transfer order.



(10)


6

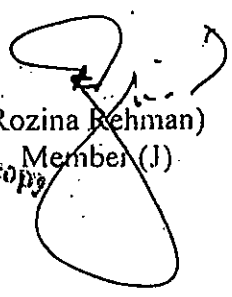
Engineer O/O Chief Engineer (South-I) C&W Peshawar while Shahzad Naseer was transferred from the post of XEN Mega Projects Mardan to XEN Highway Division Khyber. The respondents stated not a single word in respect of further transfer of Shahzad Naseer to XEN Mega Projects Mardan against the vacant post 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

~~ATTACHED~~

  
(Muhammad Akbar Khan)  
Member (E)

  
(Rozina Rehman)  
Member (J)

\*Mutazem Shah\*

verified to be true copy  
MEMBER  
Pakhtunkhwa  
Service Tribunal  
Peshawar

Dated: 07 /04/2023

Engr: Muhammad Zubair  
Executive Engineer (BPS-18)  
Communication and Works Deptt:

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 28<sup>th</sup>, 2022. One Engineer Shahzad Naseer was transferred from the post of XEN Highway Division to XEN Building Division Khyber. It was on December 20<sup>th</sup>, 2022 when appellant and Shahzad Naseer were once again transferred. Appellant was transferred from the post of XEN Highway Division Khyber to Design

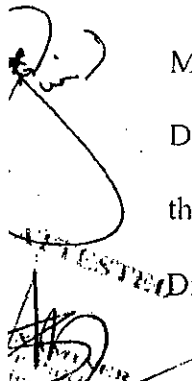
TESTED

FOR  
Khyber Pakhtunkhwa  
Government  
Secretary

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



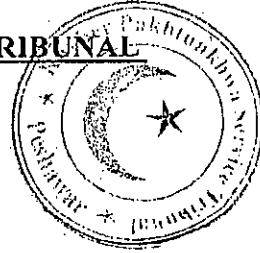
(1)

A 3

**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.


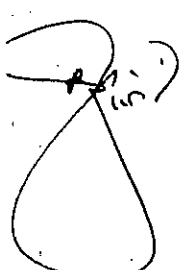
Asif Masood Ali Shah,  
Deputy District Attorney ... For respondents.

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

**JUDGMENT**

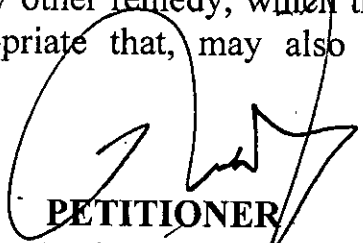
Rozina Rehman, Member(J): The appellant has invoked the jurisdiction of this  
Tribunal through above titled appeal with, the prayer as copied below:

“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-1) C&W Peshawar may graciously be  
cancelled and as result thereof the posting of appellant as XEN  
Highway Division Khyber, may graciously be restored”.

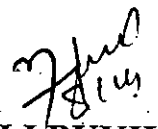
  
  
**ASIF MASOOD ALI SHAH**  
Deputy District Attorney  
Khyber Pakhtunkhwa  
Service Tribunal

- 3. That the appellant also filed application to respondents for the implementation of judgment. The respondents were totally failed in taking any action regarded the Hon'able Tribunal judgment dated 06-04-2023. Copy of application is attached as annexure-B.
- 4. That the respondents were totally failed in taking any action regarded the Hon'able Tribunal Judgment dated 06-04-2023.
- 5. That the respondent totally violated the judgment of Hon'able Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
- 6. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to implement the same in letter and spirit.
- 7. That the petitioner has having no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 06-04-2023 of this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/appellant.

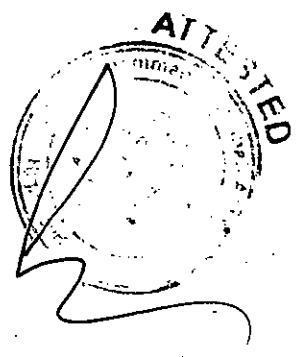
  
**PETITIONER**  
 Muhammad Zubair

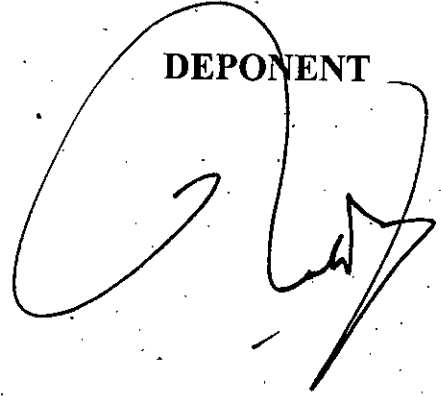
**THROUGH:**

  
**(SYED NOMAN ALI BUKHARI)**  
 ADVOCATE HIGH COURT.

**AFFIDAVIT:**

It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief.



  
**DEPONENT**



(1)

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

Execution Petition No. 302 /2023

In

Service Appeal No.276/2023

Mr. Engineer Muhammad Zubair, Executive Engineer  
Highway Division, District, Khyber.

VERSUS

**PETITIONER**

1. The Secretary to Govt of KP, C&W department, civil secretariat  
Peshawar.
2. The District Account Officer, District Khyber.

**RESPONDENTS**

.....

**EXECUTION PETITION FOR DIRECTING THE  
RESPONDENTS TO IMPLEMENT THE  
JUDGMENT DATED: 6/04/2023 OF THIS  
HONORABLE TRIBUNAL IN LETTER AND  
SPIRIT.**

.....

**RESPECTFULLY SHEWETH:**

1. That the applicant/Petitioner filed Service Appeal No-06/04/2023  
against the transfer order.
2. That the said appeal was finally heard by the Honorable Tribunal  
on 06-04-2023. The Honorable Tribunal is kind enough to accept  
this appeal of appellant as prayed and impugned transfer order was  
set-aside. (Copy of judgment is attached as Annexure-A).



BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR.

Khyber Pakhtunkhwa  
Service Tribunal

Execution Petition No. 302 /2023

Diary No. 5345  
Dated 16/5/2023

In

Service Appeal No.276/2023

Muhammad Zubair

V/S

C&W Deptt:


INDEX

| S.No. | Documents                  | Annexure | Page No.           |
|-------|----------------------------|----------|--------------------|
| 1.    | Memo of Execution Petition | -----    | 01-02              |
| 2.    | Copy of Judgment           | - A -    | 03-06              |
| 3.    | Copy of application        | -B-      | 07-08 <sup>a</sup> |
| 4.    | Vakalat Nama               | -----    | 09                 |

  
PETITIONER  
Muhammad Zubair

THROUGH:

  
SYED NOMAN ALI BUKHARI  
ADVOCATE, HIGH COURT

&  
  
(UZMA SYED)  
ADVOCATE, PESHAWAR

Cell No: 0306-5109438

Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Implementation Petition No. 302/2023


| S.No. | Date of order proceedings | Order or other proceedings with signature of judge  |
|-------|---------------------------|---|
| 1     | 2                         | 3   |
| 1     | 16.05.2023                | <p>The execution petition of Mr. Muhammad Zubair submitted today Syed Noman Ali Bukhari Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____ . Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman<br/><i>Amy.</i><br/>For REGISTRAR</p> |

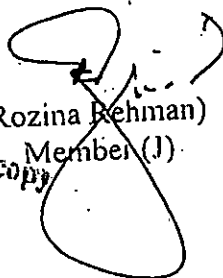
Engineer O/O Chief Engineer (South-I) C&W Peshawar while Shahzad Naseer was transferred from the post of XEN Mega Projects Mardan to XEN Highway Division Khyber. The respondents stated not a single word in respect of further transfer of Shahzad Naseer to XEN Mega Projects Mardan against the vacant post 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

~~ATTACHED~~

  
(Muhammad Akbar Khan)  
Member (E)

  
(Rozina Behman)  
Member (J)

\*Mutazem Shah\*

verified to be true copy  
SECRETARY  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar