

BEFORE THE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. 1328/2022

Tariq Khan S/o Abdul Wahid Khan
Ex-Sub Engineer,
Public Health Engineering Department,
KPK, Peshawar.

.....Appellant

V E R S U S

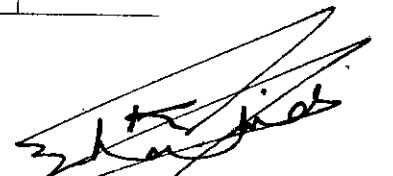
1. Government of Khyber Pakhtunkhwa through Secretary, Public Health Engineering Department Peshawar.
2. Chief Engineer(Center), Public Health Engineering Department, Khyber Pakhtunkhwa Peshawar.
3. Chief Engineer(Building), C&W Department, Khyber Pakhtunkhwa Peshawar.
4. Chief Engineer(Roads), C&W Department, Khyber Pakhtunkhwa Peshawar.
5. Accountant General, Khyber Pakhtunkhwa Peshawar.

.....Respondents.

I N D E X

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6	Copy of the Departmental appeal is attached	C	10-11
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Dated:


DEPONENT
0333-9111069

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. 1328/2022

Tariq Khan S/o Abdul Wahid Khan
Ex-Sub Engineer,
Public Health Engineering Department,
KPK, Peshawar.

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 6190

Date: 26/06/23

.....Appellant

V E R S U S

1. Government of Khyber Pakhtunkhwa through Secretary, Public Health Engineering Department Peshawar.
2. Chief Engineer(Center), Public Health Engineering Department, Khyber Pakhtunkhwa Peshawar.
3. Chief Engineer(Building), C&W Department, Khyber Pakhtunkhwa Peshawar.
4. Chief Engineer(Roads), C&W Department, Khyber Pakhtunkhwa Peshawar.
5. Accountant General, Khyber Pakhtunkhwa Peshawar.

.....Respondents.

JOINT PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 - 4.

RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS:

1. That the appellant has no cause of action nor locus standi.
2. That the appellant has not come to this Honorable Tribunal with clean hands.
3. That the present appeal in hand is not maintainable in its present form and also in the present circumstances of the issue.
4. That the present appeal is liable to be dismissed for miss joinder / non joinder of necessary parties.
5. That the appellant has filed the instant appeal on malafide motives.
6. That the instant appeal is against the prevailing laws and rules.
7. That the appellant is estopped by his own conduct to file the present appeal.
8. That the present appeal is barred by law and limitations.

[Handwritten Signature]


ON FACTS:

1. Pertains to record.
2. Pertains to record.
3. Pertains to record.
4. Pertains to record.
5. Correct. The parent department of the appellant is Local Government, Elections and Rural Development Department. On 11.07.2001, he was placed at the disposal of surplus pool of Establishment and Administration Department. It is clarified that the then Government of N.W.F.P Works and Services Department vide office order No. SOE-II/W&S/17-3/99 dated 13.03.2008 adjusted the appellant at serial No.13 on the post of Sub-Engineer (BPS-11) in the Public Health Engineering Works & Services Department in compliance with the decision of the August Supreme Court of Pakistan dated 25.08.2005 (**Copy of Office Order is attached as Annexure-A).** The appellant was adjusted in the then Works and Services Department and allowed him to draw the arrear of his pay and allowances with effect from 01.06.2007, which is already annexed by the appellant with his supporting documents at **Annexure-E** on page No 13.
6. Correct.
7. Pertains to record.
8. Correct. It is worth mentioning that the then Works & Services Department was bifurcated in 2009-10 into Communication & Works Department and Public Health Engineering Department with separate Administrative Secretaries and their staff. The appellant was repatriated to Public Health Engineering Department by the worthy Secretary Communication & Works Department vide notification No.SOE/C&WD/11-270/2014 dated 10.02.2014 (**Copy of the Notification is attached as Annexure-B).**
9. Correct.
10. Correct to the extent that the C&W Department once again repatriated the appellant vide order No. SOE/C&WD/11-270/2013 dated 28.03.2016, however, the appellant did not submit his arrival report in Public Health Engineering Department and he never acted upon the office order of C&W Department. Public Health Engineering Department traced out all his service record, however, service book in original is also in possession of the appellant. Since 2016 he remained absent and filed departmental appeal before the Chief Engineer (Center) PHED for retirement in August, 2022, wherein, he himself admitted in his departmental appeal in his prayers that the appellant served LG & RDD, C&W and PHE Department for almost 28 years. The appellant also admitted in his prayers of Departmental appeal that after 28 March, 2016 and onwards he did not perform his duty

due to ill health, however, neither medical certificate was produced by the appellant for leave nor medical leave was granted by the competent authority (Copy of Departmental appeal is attached as Annexure-C). Chief Engineer (Center) PHED being the competent authority regretted the departmental appeal with certain observations as mentioned above (Copy of reply of the Chief Engineer (Center) PHED is attached as Annexure-D). The appellant entertained willful absence for a long period. The appellant also not submitted his arrival report to PHED after he was repatriated by the C&W Department.

11. Incorrect and misconceived. As discussed in para-10 of the above.
12. Incorrect and misconceived. As discussed in para-10 of the above.
13. Incorrect and misconceived. As discussed in para-10 of the above.
14. Incorrect and misconceived. The respondent Department followed codal formalities in the discharge of official duties. As such, the appellant in his departmental appeal did not submit any evidence of ill health and wanted his retirement for the purpose of pension and other benefits.
15. The appellant is not an aggrieved person. He concealed material facts from this honorable Tribunal with regard to willful absence from government duty. He also not acted upon the office order of the competent authority of the C&W Department.

GROUNDS:

- A. Pertains to record.
- B. As replied in the preceding paras.
- C. Incorrect and misconceived. As discussed in para-10 of the above.
- D. Incorrect and misconceived. As discussed in para-10 of the above.
- E. Incorrect and misconceived. The appellant did not mention solid grounds for retirement and also not mentioned retirement on medical ground or on superannuation. As he did not annex any documental proof in his appeal mentioning his date of birth. As PHE Department is not in a position to clarify his date of birth, as service book in original is also in possession of the appellant. 
- F. Incorrect and misconceived. As discussed above.
- G. The respondent Departments seek permission from this Honorable Tribunal to raise additional grounds at the time of arguments, please.

PRAYERS:

In view of the above facts, it is prayed before this Honorable Tribunal that the appeal being vexatious and devoid of merit may please be dismissed with cost.



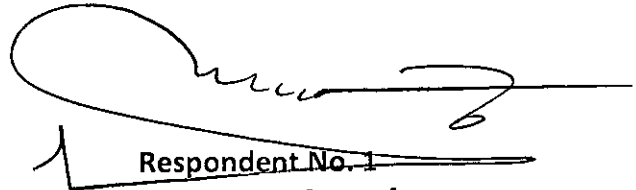
Respondent No. 2
Chief Engineer (Center)
Public Health Engg: Department
Peshawar



Respondent No. 3
Chief Engineer (Building)
C&W Department
Peshawar



Respondent No. 4
Chief Engineer (Roads)
C&W Department
Peshawar



Respondent No. 1
Secretary to Govt:of
Khyber Pakhtunkhwa
PHE Department
Peshawar



OFFICE OF THE CHIEF ENGINEER (CENTER)

PUBLIC HEALTH ENGG: DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR

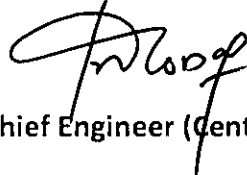
Ph: 091-9217528 E-mail:centrephe@gmail.com, Plot No. 40, Sector B-II, Phase-V, Hayatabad, Peshawar (ASO)

No. 19 CG7/PHE,

Dated Peshawar, The 12 / 05 /2023.

AUTHORITY LETTER

It is certified that **Mr. Kamran Shahid**, Assistant Social Organizer of Public Health Engineering Department Peshawar is hereby authorized to attend the court of Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No.1328/2022 titled "Tariq Khan VS Government of Khyber Pakhtunkhwa through Secretary PHED & (03) Others" on behalf of all the respondents of Public Health Engineering Department.


Chief Engineer (Center)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. 1328/2022

Tariq Khan S/o Abdul Wahid Khan
Ex-Sub Engineer,
Public Health Engineering Department,
KPK, Peshawar.

.....Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary, Public Health Engineering Department Peshawar.
2. Chief Engineer(Center), Public Health Engineering Department, Khyber Pakhtunkhwa Peshawar.
3. Chief Engineer(Building), C&W Department, Khyber Pakhtunkhwa Peshawar.
4. Chief Engineer(Roads), C&W Department, Khyber Pakhtunkhwa Peshawar.
5. Accountant General, Khyber Pakhtunkhwa Peshawar.

.....Respondents.

AFFIDAVIT

I, Kamran Shahid S/o Muslim Umer, Assistant Social Organizer of PHE Department do hereby solemnly affirm and declare that the joint Para wise comments with supporting documents filed by the Official Respondents are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.



[Handwritten Signature]
DEPONENT

CNIC #: 16101-6850506-9

Cell No. 0333-9111069

Annexure-A (7)

GOVERNMENT OF NWFP
WORKS & SERVICES DEPARTMENT

Dated Peshawar, the March-13, 2008

ORDER

No. SOE-11/W&S/17-3/92 In compliance with the decision of Supreme Court of Pakistan dated 25.08.2005 the competent authority has been pleased to absorb/adjust the following surplus Sub Engineers (BPS-11) of Local Govt. & Rural Devt. Department, Peshawar against the vacant posts of Sub Engineers (BPS-11) in the Public Health Engineering Works & Services Department with immediate effect.

1. Mr. Mohammad Khan
2. Mr. Amanullah
3. Malik Mohammad Irfan
4. Mr. Abdul Hamid Khan
5. Mr. Munawar Ahmed
6. Mr. Intizar Mohammad
7. Mr. Dilawar Khan.
8. Mohammad Ilyas Khan
9. Mr. Abdul Rahman
10. Mr. Mohammad Siddiq
11. Mr. Aziz-ur-Rahman
12. Mr. Mohammad Raees
13. Mr. Tariq Khan
14. Mr. Mistahuddin
15. Mr. Salim Javed.
16. Mr. Abdali Shah
17. Mr. Arif Qayum
18. Mr. Amin Gul
19. Mr. Asghar Hussain
20. Mr. Mohammad Nazif

Arrested
[Signature]
ASSISTANT SOCIAL ORGANIZER
PUBLIC HEALTH ENGG. DIVISION
PESHAWAR

Their services are placed at the disposal of Chief Engineer PHE Works & Services for further posting against the vacant posts.

They shall be placed at the bottom of seniority list of Sub Engineers in the PHE cadre Works & Services Department in accordance with their inter-se seniority in their parent department.

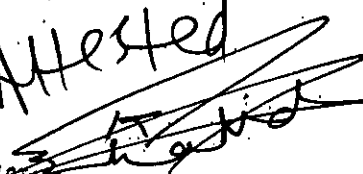
SECRETARY *[Signature]*

Endst of even number 17

Copy is forwarded to the:-

1. Accountant **General** NWFP, Peshawar:
2. Principal **Secretary** to Chief Minister NWFP, Peshawar.
3. Secretary to **Govt** of NWFP, Establishment & Admn Deptt, Peshawar.
4. Secretary to **Govt** of NWFP, Local Govt, & Rural Dev: Deptt, Peshawar.
5. Secretary **Local Council** Board, NWFP Peshawar.
6. Chief Engineer **Works & Services** Peshawar.
7. Chief Engineer **the** Works & Services Peshawar.
8. Chief Engineer **FATA** Works & Services Peshawar.
9. Section **Officer (Est-I)** W&S Department Peshawar.
10. Section **Officer (II)** W&S Department Peshawar.
11. Section **Officer su** plus Pool) Establishment Deptt: Peshawar.
12. Incharge **Complaint** Cell, Works & Services Department Peshawar.
13. PS to **Secretary** Works & Services Department, Peshawar.
14. PA to **Additional Secretary** W&S Department Peshawar.
15. Officials **concerned**.
16. Office **file** file

(SYED BAQAR SHAH)
SECTION OFFICER (ESTT-II)

Attested

 ASSISTANT SOCIAL ORGANIZER
 PUBLIC HEALTH ENGG: DIVISION
 PESHAWAR.

ANNEXURE-B

9



GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshwar the February 10, 2014

Notification:

No.SOE/C&WD/11-270/2014: The Competent Authority is pleased to repatriate Mr. Tariq Khan Sub Engineer (BS-11), presently working as Sub Engineer O/O XEN Highway Division Swat to his parent Department i.e. PHE Department, with immediate effect, in the best public interest.

Secretary to
Govt of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar
2. Secretary to Govt of Khyber Pakhtunkhwa PHE Department, Peshawar
3. Chief Engineer (Centre/North), C&W Peshawar
4. Chief Engineer PHE Department, Peshawar
5. Superintending Engineer C&W Circle Swat
6. Executive Engineer Highway Division Swat
7. District Accounts Officer Swat
8. Incharge Computer Cell, C&W Department, Peshawar
9. PS to Secretary, C&W Peshawar
10. Tariq Khan, presently working as Sub Engineer O/O XEN Highway Division Swat
11. Office order File/Personal File

They are directed to relieve the official with immediate effect under intimation to this Deptt

(USMAN JAN)
SECTION OFFICER (ESTT)

Attested
Assistant Social Organizer
Public Health Engg. Division
Peshawar

Annexure C

10

To

The Chief Engineer (Center)
Public Health Engineering Department
Peshawar

Subject:

DEPARTMENTAL APPEAL FOR GRANT OF PENSION AND OTHER BENEFITS ADMISSIBLE UNDER THE RULES IN RESPECT OF TARIQ KHAN SUB ENGINEER PHE DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR.

With humble submission for the above subject appeal, facts are discussed as under:

1. That the appellant is a law abiding citizen of Pakistan and permanent resident of Post Office Sijban Tehsil Matta District Swat bearing CNIC No.15601-8786405-7 *(Copy of CNIC is attached as Annexure-A).*
2. That the appellant was appointed as Sub-Engineer (BPS-11) on contract basis in the then Government of N.W.F.P Local Government, Elections and Rural Development Department on 03.11.1988 *(Copy of appointment is attached as Annexure-B).*
3. That the appellant joined the service with honesty and Zeal and all the officers were fully satisfied from his work at office as well as on site.
4. That the appellant also passed bachelor of Arts examination and one advance increment was granted with effect from 25.04.1989 and another advance increment was granted with effect from 01.06.1991 *(Copy of notification is attached as Annexure-C).*
5. That consequent upon the restructuring of the department, the provincial Government placed the services of the contract employees including the appellant appointed under the scheme "Strengthening of LG&RDD at the disposal of surplus pool of Establishment and Administration Department only for the purpose of payment of salary e.t.c with effect from 01.07.2001" *(Copy of notification is attached as Annexure-D)* as the LG&RDD was abolished in Musharaf era.
6. That the appellant was reinstated on 16.12.2005 in light of notification No. SO(LG-1)3-323/03 *(Copy of notification is attached as Annexure-E)*
7. That all the contract employees placed in surplus pool approached the court for reinstatement and the court announced its judgment in favor of the contract employees. As the appellant was employee of LG and RDD therefore the Provincial Government absorbed/adjusted all the contract employees of LG & RDD against the vacant post of Sub-Engineer (BPS-11) in Public Health Engineering Department the then Works and Services Department in 2008 *(Copy of notification is attached as Annexure-F)*
8. That the Works and Services Department adjusted the appellant as Sub-Engineer and posted at PHE Division Battagram. *(Copy of the office order is attached as Annexure-G)*
9. That the Chief Minister Secretariat of the then NWFP Peshawar posted the appellant as Sub-Engineer in Works and Services(Roads) In district Swat against the vacant post *(Copy of the office order is attached as Annexure-H)*

Cent
No. 11
254
8/2022
CG-7

AO
For No. 11
2/8/22

Amended
Assistant Social Organizer
Public Health Engineering Department
Peshawar

10. Works and Services Department of the then NWFP Government posted the appellant as Sub-Engineer In the office of the Deputy Director Project Division Works and Services Swat *(Copy of the office order is attached as Annexure-I)*
11. That the appellant was performing his duty with honesty and zeal in the office of the Executive Engineer Highway Division Swat, meanwhile a notification vide No. SOE/C&WD/11-270/2014 was issued wherein, the appellant was repatriated to his parent Department i.e. PHE Department *(Copy of notification is attached as Annexure-J)*
12. In light of the ibid notification, Executive Engineer C&W Highway Division Swat Directed the appellant for handing/taking of official record i.e. MB,PC1,TS etc. what so ever in his charge within two days. The appellant complied with the direction of the higher ups in letter and spirit and was relieved accordingly to his parent Department *(Copy of Executive Engineer letter is attached as Annexure-k)*
13. That after joining parent Department Section Officer Establishment PHE Department granted NOC to the appellant to work in the C&W Department *(Copy of NOC is attached as Annexure-L)*
14. That the appellant rendered two years' service in the Office of the Executive Engineer Highway Division Swat, however another notification was issued wherein the appellant was once again repatriated to his parent Department (PHE Department). *(Copy of repatriation is attached as Annexure-M)*
15. That the appellant was not posted in PHE Department due to non-availability of vacant post. Meanwhile the appellant faced health problems due to which the appellant could not continue his services further and submitted medical for leave. The appellant also submitted applications to the office of the Chief Engineer (South) PHE Department for premature retirement but all in vain. As the whole record of the appellant was misplaced due to shifting of Chief Engineer Offices from secretariat cantt area to Hayat Abad Phase-5.

PRAYERS

Keeping in view the above factual position the appellant served LG & RDD, C&W and PHE Department for almost 28 years and rendered valuable services. It is therefore requested to issue retirement order with effect from 28 March 2016 for the purpose of pension and all other benefits to whom the appellant is entitled as per policy. As the appellant could not get pension. The appellant also admits that after 28 March 2016 and onwards he didn't perform his duty due to ill health. And there will be no claim of arrears and back benefits of that period.



Yours's Sincerely
Tariq Khan S/O Abdul Wahid Khan
Sub Engineer PHE Department
Personal No. 00336947
Mob: 03429790659

Attested
[Signature]
ASSISTANT SOCIAL ORGANIZER
PUBLIC HEALTH
PESHAWAR



Annexure D 12

OFFICE OF THE CHIEF ENGINEER (CENTER)
PUBLIC HEALTH ENGG: DEPARTMENT KHYBER PAKHTUNKHWA
Plot No. 40, Sector: B-II Phase-V Hayatabad Peshawar

No: 10 / CE-7/PHE(C)

Dated Peshawar the: 03 /08/2022

To,

Mr. Tariq Khan
S/O Abdul Wahid Khan,
Sub Engineer,
Village Ronial, P.O. Sujbuna,
Tehsil Matta, District Swat.

Subject:

DEPARTMENTAL APPEAL FOR GRANT OF PENSION AND OTHER BENEFITS ADMISSIBLE UNDE THE RULES IN RESPECT OF TARIQ KHAN SUB ENGINEER PHE DEPARTMENT KHYBER PAKTUNKHWA PESHAWAR.

With reference to your application dated Nil, it is intimated that your departmental appeal is regretted with the following observations: -

- 1) That no sanction leave was granted to you and you entertained a willful absence for a long period.
- 2) That no Medical Certificate has been provided to the competent authority.
- 3) That you never submitted your arrival report after the notification of repatriation was issued by the C&W department.

 CHIEF ENGINEER (CENTER)

Attested

ASSISTANT SOCIAL ORGANIZER
PUBLIC HEALTH ENGG DIVISION
PESHAWAR