

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

SERVICE APPEAL NO.1433 OF 2023

Zahid Habib

VS

Chief Secretary & others

INDEX

Sl No.	Description of the documents	Annex	Pages
1	Parawise comments of impleaded respondent (Mehboob Ali)	-	01-04
	reply to suspension application		05-06
2	Copy of notification dated 31.03.2023	A	7
3	Copy of Charge assumption report	B	8
4	Copy of letter dated 10.03.2023	C	9
5	Copy of letter dated 26.07.2023	D	10-11


IMPLEADED RESPONDENT

THROUGH:


**TAIMUR ALI KHAN
ADVOCATE HIGH COURT**

26/07/23

Peshawar.

①

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

SERVICE APPEAL NO. 1433/ 2023

Diary No. 6710
Dated 25/07/23

Zahid Habib, Budget & Accounts Officer,
O/O CE (South) C&W Peshawar.

APPELLANT

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Secretary to Govt of Khyber Pakhtunkhwa C&W Department,
Peshawar.
3. Chief Engineer (South-I) C&W Department, Peshawar.

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PARAWISE COMMENTS ON BEHALF OF IMPLEADED
RESPONDENT (MEHBOOB ALI)

=====

RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS

1. That the appeal is not maintainable.
2. That the appellant has no cause of action and locus standi.
3. That the appeal is liable to be dismissed on ground of mis-joinder and non-joinder of necessary parties.
4. That the appellant has got no cause of action to invoke the jurisdiction of this Hon'able Tribunal.
5. That the impugned posting/transfer Notification has never violated any of the right of the Appellant, similarly he has got no right whatsoever to claim posting of his choice.
6. That the appellant has suppressed material facts from the Hon'able Tribunal, therefore the appeal in hand is liable for dismissal.

7. The appellant is transferred to office of the Chief Engineer (South-I) C&W Department Peshawar which is located in the same premises, hence the appellant has no cause of action to file the instant appeal being not aggrieved person.

FACTS

1. No comments.
2. Pertain to record need no reply.
3. Incorrect. The appellant has since been transferred from the position of Administrative Officer O/O Chief Engineer (Center) C&W Peshawar and directed to report to C&W Secretariat on 20.03.2023 and subsequently posted as Budget & Accounts Officer O/O Chief Engineer (South-I) C&W Peshawar on 31.03.2023 (**Annex-A**). Furthermore, the Impleaded Respondent (Mehboob Ali) was posted in his place who has already taken the charge of the post of Administrative Officer O/O Chief Engineer (Center) C&W Peshawar on 22.03.2023 (**Annex-B**) and also drawing his pay against the referred post.
4. Incorrect, the appellant while working as Administrative Officer O/O Chief Engineer (Center) C&W Peshawar was not found capable to handle the Establishment matters well in time. Administrative Officer (Center) is an important position. It deals with all the litigation cases pertaining to HR working under the Chief Engineer (Center) office. The appellant was unable to attend or respond to court matters well in time, issues were increasing day by day. Hence, he was transferred and directed to report to C&W Secretariat on 20.03.2023. Later on, the department adjusted/posted him as Budget & Accounts Officer O/O CE (South-I) C&W Peshawar on 31.03.2023 which is located in the premises of same building. Moreover, as per section 10 of the Khyber Pakhtunkhwa Civil Servant Act, 1973, **“Every Civil Servant shall be liable to serve anywhere within or outside the province, in any post under the Federal Government, or any Provincial Government”**. Moreover, the Impleaded Respondent (Mehboob Ali) has since been complied of the referred order dated 20.03.2023 as he assumed the charge of Administrative Officer O/O Chief Engineer (Center) C&W Peshawar on 22.03.2023. Besides this, the impleaded respondent (Mehboob Ali) is also drawing his pay from the post of Administrative Officer O/O Chief Engineer (Center) C&W Peshawar. So far, the transfer of the appellant in the period of ban is concerned, in this regard it is clarified that Election Commission of Pakistan has intimated through letter dated 10.03.2023 to decide matters, including Transfer/Posting of Officers of BS-17 and below. However, the copy of such order issued may be shared with the Commission (**Annex-C**), while the transfer notifications of Mr. Zahid Habib has been issued by the Department on 20.03.2023 & 31.03.2023, thus his transfer

notification was issued perfectly in accordance with the above referred notification of Election Commission of Pakistan.

- 5. Pertain to record.
- 6. Incorrect. The Section 4 of the Service Tribunal Act is clear on the point that any civil servant aggrieved can file service appeal after the lapse of 90 days and after the statutory period the appellant has filed the instant appeal.
- 7. Incorrect. The appellant has no cause of action to file the instant appeal as he has transferred in the premises of same building.

GROUNDS

- A. Incorrect. As per section 10 of the Khyber Pakhtunkhwa Civil Servant Act, 1973, **“Every civil servant shall be liable to serve anywhere within or outside the province, in any post under the Federal Government, or any Provincial Government”**.
- B. Incorrect, as explained in Para-4 of the Facts.
- C. Incorrect, as explained in Para-5 & 6 of the Facts.
- D. Incorrect, as explained in Para-4 of the Facts.
- E. Incorrect. Establishment Department of Khyber Pakhtunkhwa has clarified through letter dated 26.07.2013 that the Posting/Transfer of the officers upto BS-18 may be made at the level of the department concerned in consultation with Minister In-charge (**Annex-D**)
- F. Incorrect, as explained in Para-4 of the Facts. Furthermore, there is no mala-fide intension of the respondents, no discriminatory action and no violation of the rights of the appellant has been made. The action taken by the respondents are strictly in accordance with law/ regulations and under the existing rules.
- G. Incorrect, as explained in Para-4 of the Facts.
- H. Incorrect, as explained in Para-4 of the Facts. The impugned posting/transfer Notification has never violated any of the right of the Appellant, similarly he has got no right whatsoever to claim posting of his choice

It is therefore most humbly prayed that on the basis of above submission, the appeal of the appellant may kindly be dismissed with cost.

[Signature]
IMPLEADED RESPONDENT

Mehboob Ali

THROUGH:

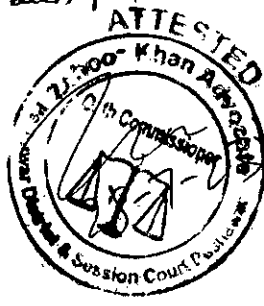
[Signature]
TAIMUR ALI KHAN
ADVOCATE HIGH COURT

AFFIDAVIT

I, Mehboob Ali, Administrative Officer (Centre) C&W Department, Peshawar(Impleaded respondent) do hereby solemnly affirm and declare that the contents of this para wise comments/written reply are true and correct and nothing has been concealed from this Honorable Tribunal.

It is further stated on oath that in this appeal, the opposing respondent neither has been placed ex-parte nor their defence has been struck off.

[Signature]
DEPONENT



5

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO.1433 OF 2023

Zahid Habib

VS

Chief Secretary & others

RESPECTFULLY SHEWETH:

1. No comments.
2. Incorrect, the appellant has transferred in premises of same building, hence not aggrieved due to the impugned order dated 20.03.2022. More so the transfer of the appellant in the period of ban is concerned, in this regard it is clarified that Election Commission of Pakistan has intimated through letter dated 10.03.2023 to decide matters, including Transfer/Posting of Officers of BS-17 and below.
3. Pertains to record.
4. The reply fact and grounds of the service appeal may kindly also be read as integral part of the accompanied application.
5. Incorrect, the appellant has not a good prime facie case, as appellant has transferred in the premises of same building.
6. Incorrect, the balance of convenience lies in favor of the impleaded respondent i.e. Mehboob Ali.
7. Incorrect. due to the suspension order, the impleaded respondent has suffered,

It is therefore most humbly prayed that the suspended order may kindly be recalled.


IMPLEADED RESPONDENT
Mehboob Ali

THROUGH:


TAIMUR ALI KHAN
ADVOCATE HIGH COURT

6

AFFIDAVIT

I, Mehboob Ali, Administrative Officer (Centre) C&W Department, Peshawar (Impleaded respondent) do hereby solemnly affirm and declare that the contents of this reply to suspension application are true and correct and nothing has been concealed from this Honorable Tribunal.


DEPONENT





GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the March 31, 2023

A (2)
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NOTIFICATION:

No.SOE/C&WD/24-60/2023 A.O: The Competent Authority (Secretary C&WD) is pleased to transfer Mr. Zahid Habib A.O/B&AO (BS-17) C&W Department, presently waiting for posting and post him as Budget & Accounts Officer O/O Chief Engineer (South-I) C&W Peshawar against the vacant post, with immediate effect, in the best public interest.

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Endst 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 (South-I) C&W Peshawar
4. PS to Additional Director General (Elections-I) Election Commission of Pakistan Islamabad
5. PS to Minister for C&W Department Khyber Pakhtunkhwa, Peshawar
6. PS to Secretary, C&W Department Peshawar
7. PA to Additional Secretary (Admn), C&W Department Peshawar
8. PA to Deputy Secretary (Admn), C&W Department Peshawar
9. Officer concerned
10. Office order File/Personal File

M. Ali
31-03-2023
SECTION OFFICER (Estb)

attested
M. Ali

Scanned with CamScanner

ATTSTED

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ASSUMPTION OF CHARGE

In pursuance of the Secretary to Government of Khyber Pakhtunkhwa C&W Department Notification No.SOE/C&WD/24-60/2023, AO dated 20.03.2023 I, Mehboob Ali, Administrative Officer/B&AO (BS-17), hereby assumed the charge of the post of Administrative Officer O/O Chief Engineer (Centre) C&WD Peshawar, today the A/Noon of 22/03/2023.

SOE
C/W
28.3.23
AS/A
Diary No: 2529
Date: 27/3/2023
Secretary C&W Deptt.

(Mehboob Ali)
Administrative Officer
O/O Chief Engineer (Centre)
C&W Department Peshawar

No. 192 /PF

Dated Peshawar, the 22/ 03/ 2023

Copy forwarded to the: -

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Chief Engineer (North) C&W Department Saidu Sharif at Swat
3. Section Officer (Estab) C&W Department Peshawar.
4. PS to Minister for C&W Department Khyber Pakhtunkhwa.
5. PS to Secretary C&W Department Peshawar.
6. PA to Chief Engineer (Centre) C&W Department Peshawar.
7. PA to Additional Secretary C&W Department Peshawar.
8. PA to Deputy Secretary (Admn) C&W Department Peshawar.
9. Personal file.

(Mehboob Ali)
Administrative Officer
O/O Chief Engineer (Centre)
C&W Department Peshawar

attested

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ATTSTED

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No.F.10 (1)/2023-Elec-II
ELECTION COMMISSION OF PAKISTAN



"Secretariat"
Constitution Avenue, G-5/2,
Islamabad, the 10th March, 2023.

To,
The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: GRANT OF PERMISSION FOR TRANSFER/POSTING AND ALL KIND
OF LEAVES.

Dear Sir,

I have the honor to state that the Hon'ble Commission has been pleased to decide that following matters may be dealt at your own level:

- i. All kind of leaves.
- ii. Transfer/Posting of Additional Secretaries of BS-19 & below working in the Secretariat.
- iii. Transfer/Posting of officers/ officials of BS-17 and below of all other Departments besides officers/ officials of Police (posted in field or Head Quarters) and Administration. However, the copy of such orders issued against Para-iii, may be shared with this Commission.

2. Moreover, all other cases of transfer/posting of BS-20 and above of the officers of Secretariat & all BS-18 and above officers of the field including Police and Administration should be sent to this Commission for concurrence and approval.

attached
7/12

Yours sincerely,

10/3/2023

(Syed Nadeem Haider)
Additional Director General (Elections-I)

Copy forwarded for information to:

The Provincial Election Commissioner, Khyber Pakhtunkhwa.

10/3/2023

(Syed Nadeem Haider)
Additional Director General (Elections-I)

ATTSTED

D 10
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Simplification of Rules,
Policies & Procedures - A Step Towards
Good Governance

Handwritten signature

Establishment & Administration Department
Government of Khyber Pakhtunkhwa

ATTSTEL

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The competent authority has decided that in order to maintain discipline, enhance performance of the Departments and ensure optimum service delivery to the masses, the approved/prevalent policy of the posting/transfer shall be strictly followed. Government Servants violating the policy and the Khyber Pakhtunkhwa Govt Servants (Conduct) Rules 1987 shall be proceeded against under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance 2000. As required under the Khyber Pakhtunkhwa Govt Rules of Business 1985, the Administrative Secretaries shall ensure compliance with the policy and defaulting offices/officials be taken to task & entries to this effect shall be made in their PERs/ACRs. In case subordinate officers are working on sites or proceeding for the purpose of inspection, they shall submit inspection Report to their Administrative Secretaries. Administrative Secretaries shall ensure submission of such reports.

(Authority: - Urdu circular No: SOR-VI (E&AD)/1-4/06. dated. 29-6-2007)

POSTING/TRANSFER

I am directed to refer to the subject noted above and to state that the Competent Authority has been pleased to direct that the posting/transfer of the officers upto BPS-18 may be made at the level of the Department concerned in consultation with Minister Incharge. However, the posting/transfer of the officers of BPS-19 and above may be made after seeking prior approval of the Chief Minister, Khyber Pakhtunkhwa.

I am, further, directed to request that the above directions of the competent authority should be strictly complied with.

No. SO(O&M)E&AD/3-15/2007 Dated Peshawar, the 26th July. 2013

Officers transferred from their positions to properly brief the incoming officers.

It has been brought to notice that officers transferred from their posts usually relinquish the charge without proper briefing the incoming officer which is not desirable.

I am accordingly directed to clarify that all officers shall properly brief the incoming transferred officers while vacating their position in future.

(Authority; No. SOR-VI/E&AD/1-4/2010/Vol-VII dated 18.06.2014)