

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1261 of 2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 9635

Dated 20/4/23

Hafeez Ullah S/O Muhammad Ismail,
Sub Divisional Accountant / Senior Clerk,
O/O the XEN Mega Projects South-II at D.I.Khan.

.....**APPELLANT**

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Communication and Works Department, Civil Secretariat, Peshawar.
2. Chief Engineer, Centre, Communication and Works Department, Civil Secretariat, Peshawar.
3. Private Respondent, Mr.Samiullah Khan S/O Muhammad Yaqoob, SDA / Senior Clerk O/O XEN Highway Division South Waziristan at Tank.

.....**RESPONDENTS**

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CHIEF ENGINEER (CENTRE)

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PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Respectfully Sheweth!

PRELIMINARY OBJECTIONS: -

1. That the instant Appeal in the present state is not entertainable due to the facts that the appellant on his own conduct failed to seek remedies at the proper time and proper forum, when he was aggrieved of the orders dated 20/03/2023 and directly went in a Writ Petition No.196-D/2023 (M) with IR, which was disposed of vide Peshawar High Court D.I.Khan Bench orders dated: 26/04/2023 in view of the bar contemplated under Article-212 of the Constitution of Pakistan, 1973.
2. The Appellant has concealed the material facts from the Court/Tribunal, hence tried to deceive the Court, here added that Appellant originally domiciled of D.I.Khan and as such he was inadvertently posted to the Office of the Executive Engineer, C&W Highway Division, South Waziristan at Tank, whereas the Private Respondent hails to Tank District.
3. The Appellant is estopped by his own conduct to prefer this Appeal before the Tribunal.
4. That the Appellant has got no locus standi and cause of action.
5. That the Appellant has not come to the Tribunal with clean hands.

ON FACTS: -

- i. Correct to the extent that posting order dated 14/03/2023 was procured by the Appellant from the office.
- ii. Pertains to record.
- iii. On realizing the factual position of both the officials, Appellant and the Private Respondent-8 it noticed that the Appellant having Domicile of D.I.Khan while the Private Respondent-8 hails to Tank, thus order were cancelled/withdrawn vide subsequent orders dated 20/03/2023 just after a week time, so these orders cannot be termed, illegal, void, politically motivated or against the Policy of Posting/Transfer. Further added that the orders dated 14/03/2023 were not General Orders but were specific to individuals i.e. one by one. So far the Service profile of the Appellant and the Private Respondent are **Annexed-I & II** which depicts their stay at one station and office since their entry into Service.
- iv. (i) The Appellant not represented / submitted application against the orders dated 20/03/2023, but that was he who went in a Writ Petition No. 196-D/2023(M) with IR on 29/03/2023 and the same was disposed of due to the Bar as contemplated under Article-212 of the Constitution of the Pakistan vide orders dated 26/04/2023 on the one and the others the matters relating to terms and conditions of services the proper forum was/is the Khyber Pakhtunkhwa Service Tribunal, hence deliberately tried to get verdicts in his favor from that forum, other than the Service Tribunal.

(ii) To add that if the Appellant was actually aggrieved of an order of the Appointing Authority, then he had to seek remedies within 07-days of the receipt of such orders from the next Higher Authority on the grounds set forth in the Posting/Transfer Policy of the Government since incepted under the letter of Establishment No. SOR-VI/E&AD/1-4/2003, dated 24/06/2003.

ON GROUNDS: -

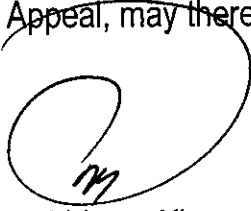
1. Incorrect, the orders dated 20/03/2023 with regard to withdrawal of earlier orders dated 14/03/2023 cannot be called or said illegal, malafide, unjust or having any ultra motives. Every Civil Servant is liable to serve anywhere within or outside the Province in any post under the Federal Government or any Provincial Government etc. as pre Section-10 of the Khyber Pakhtunkhwa Civil Servants, Act, 1973.

2. The same as per reply in para-1, above.
3. The same as per reply in para-1, above.
4. Incorrect, baseless preposition of the Appellant. From the Service profiles the position of Appellant since his induction in service by itself speak his service tenure in the Office of the Executive Engineer, C&W Highway Division, South Waziristan at Tank with different changes of the office of Tank. It is beyond to understand why the Appellant is so interested and stress for his posting in that office, while he hails to D.I.Khan and as such stands posted/deployed at his home D.I.Khan.
5. Both's position of their stay since their initial appointments has been annexed which gives clear picture. Any how the earlier orders as procured by the Appellant, individually in person, later just after six-days have been withdrawn / canceled under the hands of Appointing Authority. As expressed in above paras of reply these orders cannot be termed orders under General Posting / Transfer Policy but it shall have to be considered issued on the whim and wishes of the Appellant.
6. Incorrect speculations of the Appellant, orders dated 20/03/2022 have been issued on political basis rather to say a corrective orders with regard to the cancellation of earlier orders dated 14/03/2023, which the Appellant procured on the one pretext or the other and that too one by one. So far the question of its endorsement to Minister incharge of the C&W Department has been made in routine to keep his office informed about working of the department / office.
7. No doubt, Constitution of the Pakistan emphasis on the rights of all citizens and not to a particular person/class. Under the ibid Constitution, rights of others particularly who are earning Low Income as being the Private Respondent-8, any wrong can be recalled in order to safeguard the interest of other side too, thus the same situation prevailed and got made to good.
8. Incorrectly stated that he is victim by cancellation of his posting orders to his choice post and position, actually the other private Respondent-8 was actually victim of the earlier orders dated 14/03/2023, thus the Competent Authority managed to make good by other way and to withdraw orders of Posting / Transfer as such.


9. The respondents seek leave to raise additional grounds at the time of arguments.

10. Legal.

In the wake of above stated facts, it is respectfully prayed that there seems no merit in the instant Appeal, may therefore please be dismissed with cost.



Muhammad Idrees Khan
Secretary
Govt. of Khyber Pakhtunkhwa
C&W Department Peshawar
(Respondent No.1)



Engr. Muhammad Tariq
Chief Engineer (Centre)
C&W Department Peshawar
(Respondent No.2)

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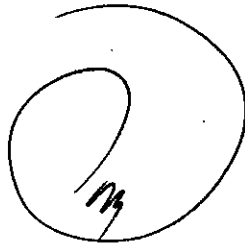
.....**RESPONDENTS**

AFFIDAVIT


We, the Respondents, do hereby solemnly affirm and state on Oath that the whole contents of these comments are true and correct to the best of my knowledge and belief that nothing has been concealed from this Khyber Pakhtunkhwa Service Tribunal Peshawar.

It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off.

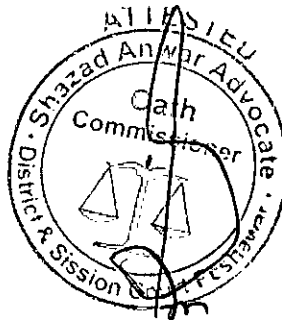
Deponents



Muhammad Idrees Khan
Secretary
Govt. of Khyber Pakhtunkhwa
C&W Department Peshawar
(Respondent No.1)



Engr. Muhammad Tariq
Chief Engineer (Centre)
C&W Department Peshawar
(Respondent No.2)



30-11-2023



Annex - I

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Government of Khyber Pakhtunkhwa
Communication & Works Department

Employee's Service Profile

Name of Employee:	HAFEEZ ULLAH
Father's Name:	Muhammad Ismail
Date of Birth:	01/01/1970 (53 Years - 10 Months)
Domicile:	<u>DI.Khan</u>
Qualification:	Matric
Designation:	Senior Clerk / Seniority No.120
Pay Scale:	BPS-14
Date of Appointment:	04/03/1990 (33 Years - 7 Months)
Retirement Date:	01/01/2030

Postings	Designation	From	To	Remarks
XEN Dev: C&W Division D.I.Khan	Naib Qasid	03/04/1990	31/03/2011	
XEN C&W Division FR Tank/DIKhan	Junior Clerk	01/04/2011	30/12/2019	
XEN C&W Division Tank	Junior Clerk	30/12/2019	06/11/2020	
XEN Highway Division, SWTD at Tank	Junior Clerk	09/11/2020	29/09/2021	
XEN Mega Project (South-II) at <u>D.I. Khan</u>	Senior Clerk	29/09/2021	14/03/2023	
XEN Highway Division South Waziristan ^{Tank}	Senior Celrk	14/03/2023	20/03/2023	order cancelled
XEN Mega Project (South-II) at <u>D.I. Khan</u> (0 Years - 7 Months)	Senior Clerk	20/03/2023		left an order for new pay scale order

M. A. Hashmi
Administrative Officer (Centre)
Communication & Works Deptt:
Khyber Pakhtunkhwa Peshawar.

Administrative Officer (Centre)
Communication & Works Deptt:
Khyber Pakhtunkhwa Peshawar.



Employee's Service Profile

Name of Employee:	SAMI ULLAH KHAN
Father's Name:	Muhammad Yaqoob
Date of Birth:	24/03/1983 (40 Years - 7 Months)
Domicile:	Tank
Qualification:	B.Sc (Comp.Science)
Designation:	Senior Clerk / Seniority No.163
Pay Scale:	BPS-14
Date of Appointment:	25/05/2005 (18 Years - 4 Months)
Retirement Date:	24/03/2043

Postings	Designation	From	To	Remarks
XEN C&W Division, Tank	Junior Clerk	27/05/2005	12/02/2012	
XEN Building Division, D.I.Khan	Junior Clerk	13/02/2012	13/06/2013	
XEN C&W Division, Tank	Junior Clerk	14/06/2013	31/03/2017	
XEN Building Division, SWA Tank	Junior Clerk	06/04/2017	31/12/2017	
XEN Highway Division SWA Tank	Junior Celrk	01/01/2018	08/10/2019	
XEN Highway Division, SWTD at Tank	Senior Clerk ✓	08/10/2019	14/03/2023	
XEN Mega Project (South-II) at D.I. Khan (0 Years - 7 Months)	Senior Celrk	14/03/2023		order cancelled left at old place at Tank

M.A. Khan
1
C
2



OFFICE OF THE CHIEF ENGINEER (CENTRE)
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA, PESHAWAR


8

No. CEC/C&WD/S.A No.1261/2023/55

Dated Peshawar the 30/10/2023

AUTHORITY LETTER

Mr. Zahid Habib, Administrative Officer (Centre) (BPS-17), C&W Department, Peshawar is hereby authorized to file the para-wise comments and attend the Honorable Service Tribunal Peshawar on behalf of Respondent No.2 in connection with Service Appeal No. 1261 of 2023 titled "**Hafeez Ullah vs Govt. of KPK**" on each date as and when fixed by the Honorable Service Tribunal.


CHIEF ENGINEER (CENTRE)

COPY FORWARDED TO THE:

1. Section Officer (Lit.), C&W Department, Peshawar w/r to his office No. SO(Lit)C&W/3-490/2023, dated 18/10/2023 above for information.
2. Mr. Zahid Habib, Administrative Officer (Centre) (BPS-17), C&W Department, Peshawar for information and necessary action.
3. PS to Secretary, C&W Department, Peshawar for information.
4. P.A. to Deputy Secretary, C&W Department, Peshawar for information.


CHIEF ENGINEER (CENTRE)