

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No.2430/2023

Muhammad Zubair, District Attorney

.....Petitioner

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary and others.

.....Respondents.

INDEX

S. No.	Documents	Page No.	Annexure
1	Parawise comments.	1-09	A, B, C & D
2.	S&DGD Notification.	10	
2	Affidavit	11	
3	Authority Letter	12	



SULEMAN KHAN

Assistant Law Officer (Lit)

Law Department

NIC No. 0301-5907831-3

Cell# 0301-5932076

23-1-24

Peshawar

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.2430/2023

Muhammad Zubair, District Attorney.

**Khyber Pakhtunkhwa
Service Tribunal**

Matry No. 10645

Dated 18-1-2024.....Appellant

VERSUS

Government of Khyber Pakhtunkhwa through the Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar & others.

.....Respondents.

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS. 01 & 02.

Respectfully Sheweth.

PRELIMINARY OBJECTIONS:

1. That no cause of action or locus standi lies with Appellant for filing of the Service Appeal, therefore, the appeal may be dismissed.
2. That the instant service appeal is not maintainable in its present form.
3. That the present service appeal is not maintainable due to non-joinder and mis-joinder of necessary parties.
4. That the appellant has concealed the material facts from this Hon'ble Tribunal.
5. That this Hon'ble Tribunal has got no jurisdiction to entertain the instant service appeal.
6. That the appellant is estopped by his own conduct.
7. That upon permission from the Election Commission of Pakistan at "Annex-A" the Notification No. SO(E)/LD/15-11/2022, dated 31.07.2023 at "Annex-B" has been duly issued and as such the instant service appeal has become infructuous.
8. That the instant appeal has been filed in violation of Section 79 of Civil Procedure Code.
9. That the instant service appeal is hit by principle of *res judicata*, as his writ petition No.3118-P/2023 has been dismissed by the Hon'ble Peshawar High Court Peshawar vide judgment dated 01.11.2023 (Annex-C).
10. That the Deputy Commissioner Shangla has intimated that Muhammad Zubair, District Attorney (BPS-19), Shangla takes no interest deliberately in Government cases instead of defending Government cases, he misguides the Government Departments which leads to lose of the Government interest and Commissioner Malakand Division also shared the inquiry report and requested for Disciplinary action against the said officer. In this regard Disciplinary proceeding are being initiated and under process (Annex-D).
11. Moreover, the said officer was transferred from Shangla to Kohistan Lower after approval from the competent authority and NOC also obtained from the Election Commission of Pakistan. Furthermore, the officer concerned was mostly posted in District Shangla at his domicile District.

12. That the Appellant was transferred to District Shangla on 31.05.2022 and, thereafter, was transferred to Kohistan Lower on 31.07.2023 i.e. after completing reasonable tenure of posting at District Shangla.

It is further elaborated that the appellant has been transferred under section 10 (1) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 which states as under;

“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 or Local authority, or a corporation or body set up or established by any such Government”. Hence the instant appeal is liable to be dismissed.

On facts:

1. Para-01 is correct to the extent that the Appellant is employee of Law Department and as regards the assertion of the Appellant regarding legal rights, the Appellant has got no locus standi or cause of action to file the instant Service Appeal.
2. No comments, pertains to record.
3. No comments, pertains to record.
4. Incorrect, hence, denied.
5. No comments.
6. Incorrect, hence, denied.
7. Incorrect, hence, denied. the posting/transfers of District Attorneys have been made after obtaining proper Permission/NOC from the Election Commission of Pakistan at “**Annex-A**” and this procedure is in accordance with the instructions of the Election Commission of Pakistan. Furthermore, the Deputy Commissioner has no concern with the posting and transfer of District Attorneys i.e. appellant.
8. Incorrect, hence, denied.
9. Incorrect, hence, denied.

Grounds:

- a) Incorrect, hence denied. As the Competent Authority has transferred the Appellant in accordance with the provisions of Khyber Pakhtunkhwa Civil Servants Act, 1973 and the rules made thereunder.
- b) Incorrect, hence denied. The posting/transfers of District Attorneys have been made after obtaining proper Permission/NOC from the Election Commission of Pakistan at “**Annex-A**”. Furthermore, added that the appellant has completed reasonable tenure on the post.
- c) Incorrect, hence denied. As stated above, the Competent Authority has transferred the Appellant in accordance with the provisions of Civil Servants Act, 1973 and the rules made there under. Moreover, the option provided in the posting transfer policy of the Provincial Government is not attracted to the appellant (**Annex-E**).
- d) Incorrect, hence denied. As explained above in reply to ground “B”. The appellant has been treated in accordance with law and rules. No discrimination has been done by the respondents.
- e) Incorrect, hence denied.
- f) Incorrect, hence denied, the impugned notification of transfer has been issued with the approval of the Competent Authority.

3

- g) Incorrect, as explained above.
- h) Incorrect, hence denied. The posting/transfers of District Attorneys have been made after obtaining proper Permission/NOC from the Election Commission of Pakistan at "Annex-A".
- i) Incorrect, hence denied. As explained in Para-h above.
- j) Incorrect, hence, denied. Already explained in the above Paras.
- k) Incorrect, hence denied.
- l) Para l is incorrect. The competent authority has issued the notification under question in accordance with law and in public interest, as already explained in the above paras.

Prayer:

It is therefore, most humbly prayed that on acceptance of this Parawise Comments, the instant Service Appeal being devoid of legal footings and merits may graciously be dismissed with cost.



Secretary Law for
(Nadeem Aslam Chaudary)
Chief Secretary
Khyber Pakhtunkhwa,
Respondent No.01



(Akhtar Saeed Turk)
Secretary to Govt., of Khyber Pakhtunkhwa,
Law Department.
Respondent No.02

Annex (A)

(4)

secretariat

Constitution Avenue, G-5/2,

Islamabad, 26th July, 2023.

The Section Officer (Estab),
Parliamentary Affairs & Human Rights Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: - TRANSFER OF DISTRICT ATTORNEY (BS-19) OF LAW DEPARTMENT.

Sir,

I am directed to refer to your letter SO (E)/LD/5-3 / 2022 / 9028-30 dated 17th July, 2023, on the subject noted above and to say that the Hon'ble Commission has pleased to accede your request for transfer/ posting in respect of the following officers:-

Name & Designation	From	To
Mr. Salik Rauf, District Attorney, (BPS-19)	District Attorney, Abbottabad	District Attorney, Shangla
Mr. Noor Zaman, District Attorney, (BPS-19)	District Attorney, Kohistan Lower	District Attorney, Khyber
Muhammad Zubair, District Attorney, (BPS-19)	District Attorney, Shangla	District Attorney, Kohistan Lower
Mr. Masood-Ul-Hassan District Attorney, (BPS-19)	District Attorney, Dir Lower	Deputy Legislation Officer, Law Department
Mr. Anwer-Ul-Haq, District Attorney, (BPS-19)	District Attorney, Kurram	District Attorney, Labour Court Swat
Mr. Arshad Alam, District Attorney, (BPS-19)	District Attorney, Khyber	District Attorney, Mardan
Mr. Khursheed Ahmad, District Attorney, (BPS-19)	District Attorney, Mardan	District Attorney, Abbottabad

Yours sincerely,

Attested
[Signature]

Assistant Law Officer (Litigation)
Govt. of Khyber Pakhtunkhwa
Law Department

[Signature]

(Mukaber Khan)
Assistant Director (Election-II)

[Signature]
SO (E)



Annex B (5)
GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS & HUMAN RIGHTS
DEPARTMENT

Dated Peshawar the 31st July 2022

NOTIFICATION

SO(E)LD/15-11/2022/

The following posting / transfer of officers of Law, Parliamentary Affairs & Human Rights Department, is hereby ordered in the best public interest, with immediate effect:-

S.#	Name & Designation	From	To
1.	Mr. Salik Rauf, District Attorney, (BPS-19)	District Attorney, Abbottabad	District Attorney, Shangla
2.	Mr. Nōor Zaman, District Attorney, (BPS-19)	District Attorney, Kohistan Lower	District Attorney, Khyber
3.	Muhammad Zubair, District Attorney, (BPS-19)	District Attorney, Shangla	District Attorney, Kohistan Lower
4.	Mr. Masood-Ul-Hassan, District Attorney, (BPS-19)	District Attorney, Dir Lower	Deputy Legislation Officer, Law Department
5.	Mr. Anwar-Ul-Haq, District Attorney, (BPS-19)	District Attorney, Kurram	District Attorney, Labour Court Swat.
6.	Mr. Arshad Alam, District Attorney, (BPS-19)	District Attorney, Khyber	District Attorney, Mardan
7.	Mr. Khurshēd Ahmad, District Attorney, (BPS-19)	District Attorney, Mardan	District Attorney, Abbottabad

(12. Consequent upon the above, Mr. Imran Ullah, District Attorney, Hangu and Mr. Ajab Khan, Assistant District Attorney, Dir Lower will be authorized to look after the work of District Attorney Kurram and District Attorney Dir Lower, respectively, in addition to their own duties.

Secretary to Govt: of Khyber Pakhtunkhwa
Law, Parliamentary Affairs & Human
Rights Department

Endst: No. & Date Even/9802-32

Copy forwarded to the:-

1. Accountant General, Khyber-Pakhtunkhwa.
2. Director General, Law and Human Rights Khyber Pakhtunkhwa.
3. District & Session Judge(s) concerned.
4. Deputy Commissioner(s) concerned.
5. District Account Officer(s) concerned.
6. PS to Minister for Law, Khyber Pakhtunkhwa.
7. PS to Secretary Law, Parliamentary Affairs and Human Rights Department.
8. Officer(s) concerned.
9. Personal files.

Assistant Law Officer (Litigation)
Govt. of Khyber Pakhtunkhwa
Law Department

(Muhammad Bilal)
Section Officer (Estab)

Annex

(C)

(B)

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P. No.3118-P/2023

Muhammad Zubair

Vs.

**Government of Khyber Pakhtunkhwa through the Chief
Secretary, Peshawar and others**

Date of hearing 01.11.2023

Petitioner(s) by: **Mr. Asif Yousafzai, Advocate.**

Respondent(s) by: **Mr. Mubashir Manzoor, AAG, along with
Mr. Mohsin Kamran Siddique, Advocate.**

JUDGMENT

IJAZ ANWAR, J. This writ petition is filed under Article

199 of the Constitution of Islamic Republic of Pakistan, 1973,

with the following prayer:-

"It is, therefore, most humbly prayed that the appropriate writ under Article 199 (1)(a)(i)&(ii) may be issued against the Government (Writs of Certiorari and Mandamus) by holding the impugned summary dated 06.06.2023 as offensive to the mandate of Caretaker Government/Cabinet as held by the Honorable Supreme Court of Pakistan in judgments reported as 2021-PLC (SC) 519, 2013 SCMR 1205 & 2013 PLD (SC) 195 and as such liable to be struck down. The Caretaker Government may further please be restrained from taking policy decisions and permanent measures of appointment posting/transfer till the formation of regular permanent Government as per law. Any other deemed appropriate that may also be awarded in favour of petitioner".

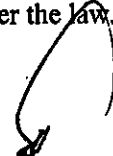
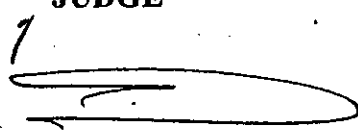
1

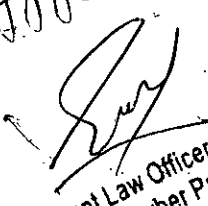
*Assistant Law Officer (Litigation)
Govt. of Khyber Pakhtunkhwa
Law Department*

2. In essence, petitioner is aggrieved of the
summary dated 06.06.2023 moved by the Secretary Law,

6. In view of the above, we are of the view that this Court lacks jurisdiction in the matters pertaining to terms and conditions of service, as such, this petition stands dismissed. The petitioner is, however, at liberty to approach the proper/competent forum as provided under the law.

Announced
Dt:01.11.2023


JUDGE

JUDGE

Amir Shehzad

Assistant Law Officer (Litigation)
Govt. of Khyber Pakhtunkhwa
Law Department
Amir Shehzad

(DB) Hon'ble Mr. Justice Ijaz Anwar and Hon'ble Mr. Justice Syed Muhammad Attique Shah



GOVERNMENT OF KHYBER PAKHTUNKHWA LAW,
PARLIAMENTARY AFFAIRS & HUMAN RIGHTS
DEPARTMENT

No. SO(E)/LD/1-15/2014/PF
Dated Peshawar the 25th September, 2022

To,

Mr. Muhammad Bakhtiar Khan (PMS BS-20),
Special Secretary, Agriculture Department.

Subject: DISCIPLINARY PROCEEDING AGAINST MUHAMMAD ZUBAIR,
DISTRICT ATTORNEY (BPS-19).

Dear Sir,

I am directed to refer to the subject noted above and to inform that the Competent Authority is pleased to appoint you as inquiry Officer to conduct inquiry under Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011 against Muhammad Zubair, District Attorney (BPS-19), Kohistan Lower. Moreover, Muhammad Bilal, Section Officer (Establishment) is nominated as Departmental representative to assist you in the subject inquiry during proceedings.

2. Copies of the Charge Sheet and statement of Allegations against the accused officer duly signed by the Competent Authority are enclosed for further necessary action.

3. It is, therefore, requested to kindly conduct the inquiry and submit report within the prescribed time as per rules, please.

Encl: As-Above.

Yours faithfully

(Muhammad Bilal)
Section Officer (Estab)

Endst. No. & Date Even:

Copy forwarded to:-

1. Muhammad Zubair, District Attorney (BPS-19), Kohistan Lower (copy of charge sheet and statement of allegation is enclosed). He is directed to appear before the inquiry Officer as and when called by the Officer.
2. PS to Secretary Law, Parliamentary Affairs & Human Rights Department.

Section Officer (Estab)

Assistant Law Officer (Litigation)
Govt. of Khyber Pakhtunkhwa
Law Department

9

CHARGE SHEET

I, Nadeem Aslam Chaudhary, Chief Secretary Khyber Pakhtunkhwa, as competent authority, hereby charge you, **Muhammad Zubair, District Attorney (BPS-19), Kohistan Lower** as follows:-

That you, while posted as **District Attorney (BPS-19) Shangla**, committed the following irregularities:-

i. That you, while pleading for the Government as defendant and simultaneously, were also the plaintiff in a civil suit against the government and thus failed to safeguard interest of the government which resulted in adverse monetary implications involving a sum of Rs. 1,021,981/- for government exchequer.

That you are involved in anti-state/anti-army activities by sharing objectionable contents on social media against the state and state institutions.

iii. That your conduct, as such, is prejudicial to good order/service discipline.

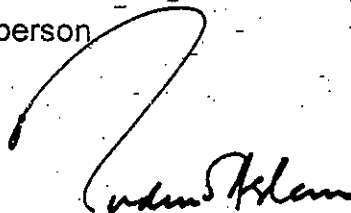
2. By reason of the above, you appear to be guilty of misconduct under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and have rendered yourself to all or any of the penalties specified in Rule-4 of the rules *ibid*.

3. You are, therefore, required to submit your written defence within Ten (10) days and not more than Fourteen (14) days from the date of the receipt of this Charge Sheet to the inquiry officer / committee, as the case may be.

4. Your written defence, if any, should reach the inquiry officer / inquiry committee within the specified period, failing which it shall be presumed that you have no defence to put in and in the case *ex-parte* action shall be taken against you.

5. Intimate whether you desire to be heard in person

6. A statement of allegations is enclosed.



(NADEEM ASLAM CHAUDHARY)
CHIEF SECRETARY, KHYBER PAKHTUNKHWA
COMPETENT AUTHORITY

Assistant Law Officer (Litigation)
Govt. of Khyber Pakhtunkhwa
Law Department

Better Copy

Govt. of NWFP,
Services and General Admn: Deptt;
(Regulation Wing).

No. SOR-I (S&GAD)4-2/82,
Dated: 15.01.1999.

To

1. All Administrative Secretaries to Government of NWFP.
2. Secretary to Governor, NWFP.
3. Secretary to Chief Minister, NWFP.
4. All Divisional Commissioners in NWFP.
5. All Heads of attached Departments in NWFP.
6. All Heads of Autonomous/Semi-Autonomous Bodies in NWFP.
7. All Deputy Commissioners/Political Agents In NWFP.
8. The Registrar, Peshawar High Court, Peshawar.
9. All District and Session Judges in NWFP.
10. The Registrar, NWFP Services Tribunal, Peshawar.
11. The Secretary, NWFP Public Service Commission.
12. The Director, Anti-Corruption Establishment, Peshawar:
13. The Secretary, Board of Revenue, NWFP.

AA Jaffer
[Signature]
Assistant Law Officer (Litigation)
Govt. of Khyber Pakhtunkhwa
Law Department

SUBJECT: - SIGNING OF PARA-WISE COMMENTS ETC. IN SERVICE APPEALS FILED IN THE NWFP SERVICES TRIBUNAL BY CIVIL SERVANTS.

Sir,

I am directed to refer to the subject noted above and to say that pursuant to Rule-12(2) of NWFP Services Tribunal Rules, 1974, the competent authority has been pleased to authorize the Administrative Secretaries concerned or a subordinate officer to be nominated by the Administrative Secretary to sign para-wise comments etc on behalf of the Chief Minister, NWFP and Chief Secretary, NWFP, as the case may be in cases of service appeals filed by the Civil Servants before the NWFP Services Tribunal.

Yours Obedient Servant,

Sd/xxx

SECTION OFFICER (REGULATION-I)
S&GAD.

Endst: Even No. and date.

A copy is forwarded for information to the: -

1. All Addl: Secretaries/Dy. Secretaries in S&GAD.
2. All Section Officers/Estate Officers in S&GAD.
3. P.S. to Chief Secretary, NWFP.
4. P.S. to Secretary S&GAD.

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Writ Petition No.2430/2023

Muhammad Zubair, District Attorney Appellant

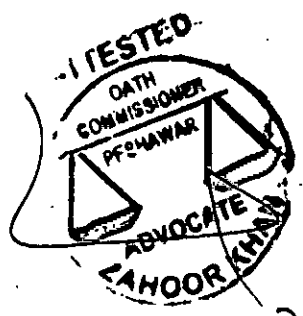
Versus

Government of Khyber Pakhtunkhwa through the Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar & others.

..... Respondents.

AFFIDAVIT

Mr. Suleman Khan, Assistant Solicitor (BPS-17), Law Department, do hereby solemnly affirm and declare on oath that the contents of the comments/reply on behalf of respondents No.01 & 02 is true and correct to the best of my knowledge and belief that nothing has been concealed from this Hon'ble Court.



18-01-2024

Deponent

CNIC No.17301-5907931-3

Cell# 03015932076

Identified By;

Assistant Advocate General Khyber Pakhtunkhwa Service Tribunal, Peshawar Services Tribunal Peshawar



GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS AND
HUMAN RIGHTS DEPARTMENT

Dated: 04.01.2024

AUTHORITY LETTER

Mr. Suleman Khan, Assistant Solicitor (BPS-17), of this Department is hereby authorized for filing of Parawise Comments in Service Appeal No.2430/2023 Muhammad Zubair, District Attorney Versus Government of Khyber Pakhtunkhwa through Chief Secretary and others on behalf of Respondents No.01 and 02 before the Service Tribunal Khyber Pakhtunkhwa, Peshawar.

Secretary
Law Parliamentary Affairs
and Human Rights Department
Govt. of Khyber Pakhtunkhwa

SECRETARY TO
GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS AND
HUMAN RIGHTS DEPARTMENT