

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 2044/2023

Amir Zada S/O Bahadar Khan Sub Divisional Officer (OPS) PHE Sub Division Charsadda
R/O Qasim (Toru) Tehsil & District Mardan.

Versus

1. The Govt. of Khyber Pakhtunkhwa through Chief Secretary Peshawar.
2. Secretary, Public Health Engineering Department, Peshawar.
3. Asghar Ali Khan SDO PHE Division Tangi.

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DEPONENT
0300-5501880

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 2044/2023

Amir Zada S/O Bahadar Khan Sub Divisional Officer (OPS) PHE Sub Division Charsadda
R/O Qasim (Toru) Tehsil & District Mardan.

..... Appellant.

V E R S U S

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. The Secretary Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar.
3. Asghar Ali Khan SDO PHE Sub Division Tangi.

..... Respondents

JOINT PARA-WISE COMMENTS ON BEHALF OF RESPONDANTS NO. 1& 2.

PRELIMINARY OBJECTIONS:

1. That the appellant has no cause of action / 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 with cost 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 instant appeal is badly time-barred.

RESPECTFULLY SHEWETH,

1. Correct to the extent. It is clarified that the appellant is Sub Engineer (BPS-16) and he has been assigned the charge of Sub Divisional Officer (OPS) in Public Health Engineering Division Charsadda by the competent authority.

1. Pertains to record.
2. Pertains to record.
3. Pertains to record.
4. Correct. Hence no comment.
5. Pertains to record.
6. Pertains to record.
7. Pertains to record.
8. Pertains to record.
9. Pertains to record.
10. Pertains to record.

11. Incorrect and misconceived. The appellant instituted writ petition No.3728-P/2022 Peshawar High Court Peshawar for cancellation of posting/transfer order, however, the court directed that petitioner is a Civil Servant and posting and transfer is one of the terms and condition of service of his service and if any term and condition of service of a Civil Servant is violated by his department, than in that eventuality, he can approach the Service Tribunal established by the government for that purpose and on no count he can come to this court for enforcement of any term and condition of his service keeping in view the bar contained in article 212 of the constitution of Islamic Republic of Pakistan, 1973. The Honorable court dismissed the petition ibid being not maintainable with the direction to the respondent department to decide the departmental appeal of the petitioner within seven (07) days. The respondent department in compliance with the direction of Honorable Peshawar High court Peshawar regretted the appeal of the petitioner.

12. Pertains to record.

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 10712

Dated 22-1-2024

13. Incorrect and misconceived. It is clarified that the appellant is misleading this honorable Tribunal. The respondent No.2 posted the respondent No.3 as Sub Divisional Officer (BPS-17) PHE Sub Division Charsadda recommended by Khyber Pakhtunkhwa Public Service Commission on regular basis (Copy of posting/transfer dated 19.07.2023 is attached as Annexure-A). It is also worth to mention here that the appellant was assigned PHE Sub Division Tangi Charsadda under the administrative control of Executive Engineer PHE Division Charsadda. As the appellant was assigned the same district but in other Sub Division with the same DDO.

It is also added that the instant appeal was dismissed by the Khyber Pakhtunkhwa Service Tribunal Peshawar on 26.10.2023 for non-compliance of the court order and not depositing expenses of TCS as well as the appellant also not appeared before the Tribunal. The respondent department received the order sheet of 26.10.2023 (Copy of order sheet dated 26.10.2023 is attached as Annexure-B) and the respondent No.2 being the competent authority due to dismissal of the instant appeal on 26.10.2023 placed the appellant on 03.11.2023 at the disposal of Chief Engineer (Center) PHED for further posting as Sub Engineer (BPS-16), as the instant appeal was dismissed, hence status quo also remained inoperative.

It is to clarify that as per Service Rules of PHE Department the post of SDO is to be filled through initial recruitment by Public Service Commission/promotion from the post of Sub Engineer. Upon arrival of SDO on the recommendation of Public Service Commission against initial quota, the respondent No.3 has been posted as SDO (BS-17) PHE Division, Tangi, which is his due right.

Keeping in view the above factual position the respondent No.2 has never been and will never be a contemnor of the honorable Tribunal.

14. Correct. As discussed in para-13 of the above.

15. Incorrect and misconceived. As discussed in the preceding paras.

GROUNDS:

A. Pertains to record.

B. Incorrect and misconceived. As discussed in the preceding paras.

E. Incorrect and misconceived. As discussed in the preceding paras.

F. Incorrect and misconceived. As discussed in the preceding paras.

G. Incorrect and misconceived. As discussed in the preceding paras.

H. Incorrect and misconceived. It is also clarified before this honorable Tribunal that the appellant never acted upon order of the competent authority and instituted the instant appeal, as the appellant has been placed at the disposal of the Chief Engineer (Center) Public Health Engineer Department being the competent authority for further posting (Copy of letter is attached as Annexure-C). The Respondent No.3 Engr. Azhar Ali Khan acted upon the order of the respondent No.2 and assumed the charge of Sub Divisional Officer PHE Sub Division No.1 Charsadda. Another Sub Divisional Officer Engr. Haris Bakht was also awaited for posting recommended by Khyber Pakhtunkhwa Public Service Commission and he was also placed in PHE Sub Division No.2 Tangi PHE Division Charsadda, however the appellant did not act upon the order of the competent authority, in this regard section officer establishment Public Health Engineering Department also rejected the departmental appeal of the appellant with regard to his transfer/posting (Copy of letter is attached as Annexure-D). Keeping in view the above factual position how the respondent department can keep the appellant on the post of SDO in OPS where regular Sub Divisional Officer recommended by Khyber Pakhtunkhwa Public Service Commission was awaited for posting. As Public Health Engineer Department is executing agency in the sector of Water Supply and Sanitation in rural areas in the province of Khyber Pakhtunkhwa. The competent authority ordered the posting of the appellant in the best public interest and his services as SDO in OPS are no more required to this department.

- I. Incorrect and misconceived. As discussed in the preceding paras.
- J. Incorrect and misconceived. As the regular SDOs recommended by Khyber Pakhtunkhwa Public Service Commission have been inducted in the department (Copy of Public Service Commission recommendation is attached as Annexure-E). The appellant is placed at the disposal of Chief Engineer(Center) PHE Department for further posting, however, he could not be adjusted, as this honorable Tribunal granted status quo on 17.10.2023 to the appellant which was further extended on 29.11.2023. It is worth to mention here that in reply to the departmental appeal filed by the appellant the competent authority regretted the same on 28.11.2023 as already annexed, however, he did not act upon order of the competent authority. Keeping in view the above, this instant appeal is infructuous, as the recommended SDOs of Khyber Pakhtunkhwa Public Service Commission have already acted upon and assumed charge of PHE Sub Division No.I and PHE Sub Division No.II Tangi PHE Division Charsadda.
- K. Incorrect and misconceived. As the appellant is not a regular SDO and he was assigned the charge of SDO in OPS by the competent authority and after recommendation of Khyber Pakhtunkhwa Public Service Commission newly inducted SDOs have been posted / transferred to PHE Division Charsadda in the best public as well as government interest. The stance of the appellant is not justifiable as he is not a regular SDO.
- L. Incorrect and misconceived. As discussed in the preceding paras.
- M. Incorrect and misconceived. As discussed in the preceding paras. The respondent department seeks permission from this honorable Tribunal to raise additional grounds at the time of arguments, please.

PRAYERS:

In view of the aforementioned facts, it is, therefore, most humbly prayed before this honorable Tribunal to vacate the status quo granted on 17.10.2023 & 29.11.2023 in the best public interest. The present appeal being vexatious and devoid of merit may please be dismissed with cost and the respondent may be allowed for further posting of the appellant as Senior Scale Sub Engineer (BPS-16).

Respondent No.1&2



SHAHID SOHAIL KHAN
Secretary Public Health Engineering
Department Peshawar

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

Service Appeal No. 2044/2023

Amir Zada

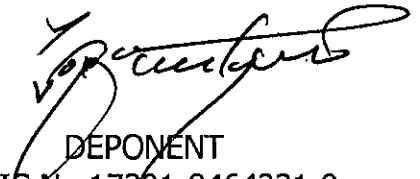
Versus

Government of Khyber Pakhtunkhwa, & Others

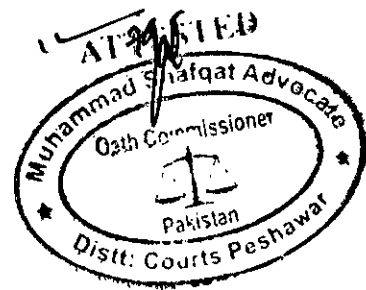
AFFIDAVIT

I, Mr. Shahid Sohail Khan, Secretary, Government of Khyber Pakhtunkhwa Public Health Engineering Department Peshawar do hereby affirm and declare on oath that the contents of the comments in Service Appeal No. 2044/2023 titled "Amir Zada Versus Government of Khyber Pakhtunkhwa & Others" are true and correct to the best of my knowledge and belief and nothing has been concealed from the Honorable Service Tribunal Peshawar.

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



DEPONENT
CNIC No.17301-8464231-9
Cell # 0300-5501880



5

GOVT. OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGINEERING DEPARTMENT

AUTHORITY LETTER.

No.SO(LIT)PHED/ST/40-106. Mr. Irfan Anjum, Superintendent, PHE Department is hereby authorized to attend & Submit Joint Parawise Comments in the Khyber Pakhtunkhwa Service Tribunal in S.A No.2044/2023 titled "Amir Zada Vs: Govt of KPK through Chief Secretary and others" on behalf of the Secretary Public Health Engineering Department.



SECRETARY
PHE DEPARTMENT
KHYBER PAKHTUNKHWA

Secretary to Govt. of
Khyber Pakhtunkhwa
P.H.E. Department

Annexure - A

GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

Dated Peshawar, the July 19, 2023

NOTIFICATION

No.SO(Estt)/PHED/1-44/2022: The competent authority is pleased to order the following posting/transfers of officers of Public Health Engg: Department, in the interest of public service:

S#	Name	From	To
1.	Engr. Azhar Ali Khan, (BPS-17)	SDO PHE Sub Division, Tangi Charsadda.	SDO PHE Sub-Division, Charsadda.
2.	Mr. Amir Zada, (BPS-16)	SDO (OPS) PHE Sub-Division, Charsadda.	SDO (OPS) PHE Sub Division, Tangi Charsadda.
3.	Mr. Rafiq Ayaz, (BPS-12)	Sub Engineer PHE Division, Peshawar.	SDO (OPS) PHE Sub Division, Pishtakhara, Peshawar-II

**SECRETARY
PHE DEPARTMENT**

No.SO(ESTT)/PHED/1-44/2022:

Dated Peshawar, the July 19, 2023.

Copy forwarded for information & necessary action to the:

1. Accountant General, Khyber Pakhtunkhwa.
2. Chief Engineer (Center) PHE Khyber Pakhtunkhwa Peshawar.
3. Director Technical PHE Department Peshawar.
4. Superintending Engineer PHE Circle, Peshawar.
5. Executive Engineer PHE Division, Peshawar-II & Charsadda.
6. District Accounts Officer, Charsadda.
7. Assistant Director I.T, PHE Department, Peshawar.
8. PS to Minister for PHE Khyber Pakhtunkhwa Peshawar.
9. PS to Secretary PHE Department Peshawar.
10. PA to Additional Secretary PHE Department.
11. Officers concerned.
12. Office Order / Personal Files.

Attested

Section Officer II
PHE Department
Peshawar.

(SHER AZAM KHAN)
SECTION OFFICER (EST)

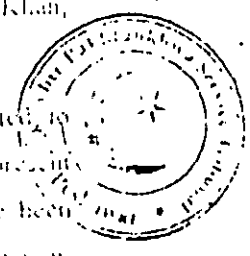
A. No. 2013/2013
Amended

26th Oct, 2023

1. None for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

2. On the previous date, the appellant was directed to deposit expenses of TCS but today neither anybody is present on behalf of the appellant nor expenses of TCS have been deposited, therefore, the instant appeal is dismissed for non-compliance of the court order. Consign.

3. Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 26th day of October, 2023.



(Signature)
(Kalim Arshad Khan)
Chairman

Certified to be true copy
(Signature)
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Adnan Shah

Date of Presentation: 26-10-23
Number of Words: 100
Copying Fee: 5/-
Urgent: _____
Total: 5/-
Name of Copy: *Shahjad*
Date of Completion: 30/10/23
Date of Receipt: 03/11/23

Attested

(Signature)
Section Officer (Lit)
PHE Department
Peshawar.



GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

Dated Peshawar, the November 03, 2023

NOTIFICATION

No.SO(ESTT)/PHED/1-44/2022: In continuation to this department notification No.SO(ESTT)PHED/4-1/2022 dated 28.09.2023 & 09.10.2023, the competent authority is pleased to order adjustment/posting of the following officers / officials of the Public Health Enng: Department as noted against each, in the best interest of public service, with immediate effect:

S#	Name	From	To
1.	Engr. Haris Bakht (BPS-17)	Awaiting for Posting	SDO PHE Sub Division, Tangi, Charsadda.
2.	Engr. Muhammad Haris Khan (BPS-17)	Awaiting for Posting	ADE O/o Chief Engineer (South) PHED, Peshawar.
3.	Engr. Muhammad Awais (BPS-17)	Awaiting for Posting	SDO PHE Sub Division, Swabi.
4.	Engr. Muhammad Fawad Khattak (BPS-17)	Awaiting for Posting	Assistant Technical Officer O/o Chief Engineer (North) PHED, Peshawar.
5.	Mr. Aurangzeb (BPS-17)	ADE O/o Chief Engineer (South) PHED, Peshawar.	SDO PHE Sub Division, Pishitkhara Peshawar-II.
6.	Mr. Amir Zada, Sub Engineer (BPS-16)	SDO (OPS) PHE Sub Division, Tangi, Charsadda.	Report to Chief Engineer (Center) PHED.
7.	Mr. Saqi Muhammad (BPS-16)	SDO (OPS) PHE Sub Division, Swabi.	Report to Chief Engineer (Center) PHED.
8.	Mr. Rafeeq Ayaz, Sub Engineer (BPS-12)	SDO (OPS) PHE Sub Division, Pishitkhara Peshawar-II.	Report to Chief Engineer (Center) PHED.

**SECRETARY
PHE DEPARTMENT**

ENDST: NO & DATE AS ABOVE:

Copy forwarded for information & necessary action to the:

1. Accountant General, Khyber Pakhtunkhwa.
2. All Chief Engineers, PHE Department Peshawar.
3. Executive Engineer PHE Divisions, Peshawar-II, Charsadda & Swabi.
4. District Accounts Officers, Charsadda & Swabi.
5. Assistant Director I.T Cell, PHE Department Peshawar.
6. PS to Minister PHE Department Peshawar.
7. PS to Secretary PHE Department Peshawar.
8. PA to Additional Secretary, PHE Department
9. PA to Deputy Secretary-I & II, PHE Department.
10. Officers/officials concerned.
11. Office Order / Personal Files.

Attested

**Section Officer (Lit)
PHE Department
Peshawar**

(SHER AZAM KHAN)
SECTION OFFICER (ESTT)



GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGINEERING DEPARTMENT

No.SO(Estt)/PHED/ 11-268/2010
Dated Peshawar, the November 28, 2023

Annexure - D
9

To

Mr. Amir Zada (BPS-16),
SDO (OPS) PHE Sub-Div: Tangi, Charsadda.


Subject: **NON COMPLIANCE OF SECRETARY PHED ORDERS.**

With reference to your appeal No. Nil dated 20.10.2023 on the subject noted above and to inform that your representation/appeal has been reviewed and subsequently rejected.

You have been transferred from PHE Sub-Division, Tangi Charsadda and reported to Chief Engineer (Center) PHED for further adjustment against your original position as a Sub Engineer vide this department notification No. SO(ESTT)PHED/1-44/2022 dated 03.11.2023 (**copy enclosed**). However, you have not relinquished your duties nor reported to Chief Engineer (Center)'s office, as required.

You are, hereby directed to promptly relinquish the charge of the post of SDO PHE Sub-Division, Tangi Charsadda and report for further adjustment at the C/o Chief Engineer (Center) PHED under intimation to this office in the best public interest. Failure to comply will result in disciplinary action being initiated against you under L&D Rules, 2011.

Encl: As above.



28/11/23
(SHER AZAM KHAN)
SECTION OFFICER (ESTT)


ENDST: NO & DATE AS ABOVE:

Copy forwarded for information to:

1. Chief Engineer (Center) PHE Department, Peshawar.
2. Executive Engineer PHE Division, Charsadda.
3. PS to Secretary, PHE Department, Peshawar.
4. PA to Deputy Secretary-I, PHE Department, Peshawar.

Attested


28/11/23
(SHER AZAM KHAN)
SECTION OFFICER (ESTT)


Section Officer (Lit)
PHE Department
Peshawar.



Phone : 091-9213551
 Ext : 179
 Website : www.kppsc.gov.pk

**KHYBER PAKHTUNKHWA
 PUBLIC SERVICE COMMISSION**
 2-Fort Road, Peshawar Cantt.

Annexure E
 (10)

No. PS/ SR VII 003490

Dated 02.02.2023

624
 02.02.2023

3473
 12-02-23

The Secretary to Govt. of Khyber Pakhtunkhwa,
 Public Health Engineering Department,
 Peshawar

Subject: **RECRUITMENT OF FIVE (05) ASSISTANT ENGINEERS / SDOs (BPS-17) IN PUBLIC HEALTH ENGINEERING DEPARTMENT (Advertisement No. 09/2021 Sr. 58).**

Dear Sir,

I am directed to refer to your letter No SO(ESTT)/PHED/4-1/2020-21 Dated 22.04.2022 Peshawar on the subject noted above and to state that the Commission recommends following candidates to the Government for appointment -

4th Block

Vacancy Rotation	Allocation	Merit Order	Name with Father Name	Domicile / Zone	Adjustment
6 th	Zone-4	01	Hassan Shahzad S/O Rasool Muhammad Shah	Karak / 4	Own Quota
7 th	Zone-5	11	Arsalan Ahmed S/O Abduslam	Mansehra / 5	Own Quota
8 th	Zone-1	05	Fahad Zaman S/O Gulab Zaman	Orakzai Agency / 1	Own Quota
9 th	Merit	02	Azhar Ali Khan S/O Gohar Ali Khan	Nowshera / 2	Merit Quota
10 th	Zone-2	03	Abdul Qadeer S/O Gul Muhammad	Peshawar / 2	Own Quota

2 Recommendation in favour of the recommendee is provisional subject to their medical fitness and verification of all essential documents by the department before appointment

3 Upto date zonal state will be as under

	Merit	Zone-1	Zone-2	Zone-3	Zone 4	Zone-5	Total
Share	21	14	14	13	10	10	82
Adjusted	21	14	14	13	10	10	82
Balance	--	--	--	--	--	--	Nil

4 Inter-se seniority of the above selectee is as under:-

Inter-se-Seniority	Total Marks	Interview Marks	Date of Birth	Name with Father Name	Domicile / Zone
01	73	21	08.07.1999	Hassan Shahzad S/O Rasool Muhammad Shah	Karak / 4
02	72	24	15.01.1996	Azhar Ali Khan S/O Gohar Ali Khan	Nowshera / 2
03	72	19	03.03.1996	Abdul Qadeer S/O Gul Muhammad	Peshawar / 2
04	69	20	28.10.1994	Fahad Zaman S/O Gulab Zaman	Orakzai Agency / 1
05	66	20	22.10.1996	Arsalan Ahmed S/O Abduslam	Mansehra / 5

5 Original applications (with enclosures) of the above recommendees are enclosed herewith for your record

A Hester

Yours faithfully,

Section Officer (Lit)
 PHE Department
 Peshawar.

(Ilyas Shah)
 Director Recruitment

Copy to:

1. PS to Hon. Chairman, Khyber Pakhtunkhwa PSC

Director Recruitment

Handwritten notes and signatures at the bottom of the page, including dates like 2/2/23 and initials like AS, SO(E), and others.

Phone : 091-9213551
Ext : 179
Website : www.kppsc.gov.pk



(11)

**KHYBER PAKHTUNKHWA
PUBLIC SERVICE COMMISSION
2-Fort Road, Peshawar Cantt.**

No. PSC/GR-VII/ 012300

Dated: 13.05.2023

To,

The Secretary to Govt. of Khyber Pakhtunkhwa,
Public Health Engineering Department,
Peshawar

Subject **RECRUITMENT OF FOUR (04) ASSISTANT ENGINEERS / SDO (C/L) [BPS-17] IN PUBLIC HEALTH ENGINEERING DEPARTMENT (Advertisement No. 01/2021 Sr. 53).**

Dear Sir,

I am directed to refer to your letter No. SO(Estt)/PHE/4-1/2022 dated 19.04.2023 on the subject noted above and to state that the Commission recommends the following candidates to the Government for appointment against the subject posts vacated by non-joiners:-

Sr.#	Name with Father Name	District/Zone	Adjustment
1	Haris Bakht S/O Bakht Zada	Dir Lower/3	Own Quota
2	Muhammad Fawad Khan S/O Muhammad Qaseem Jan	DI Khan/4	Mert Quota
3	Muhammad Haris Khan S/O Ghulam Nabi	Mardn/2	Own Quota
4	Tanveer Qaisar S/O Qaiser Khan	Mardna/2	Own Quota

2. Recommendation in favour of the recommendees is provisional subject to their medical fitness and verification of all essential documents by the department before appointment.

3. Revised Inter-se seniority and the non-joiner against the advertisement 09/2021 Sr. 58 will be communicated later on.

4. Original applications (with enclosures) of the above recommendees are enclosed herewith for your record.

Yours faithfully,

(Ilyas Shah)
Director Recruitment

Copy to:

1. PS to Honorable Chairman, Khyber Pakhtunkhwa Public Service Commission

Attended

Section Officer (Lit)
PHE Department
Peshawar

Director Recruitment