

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
CAMP COURT SWAT

Service Appeal No. 468/2015

Date of Institution... 21.05.2015

Date of decision... 08.11.2017

Muhammad Ismail, currently Work Munshi office of the Deputy Director, Works and Services Department, Dir Lower. ... (Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others. ... (Respondents)

MR. IMDADULLAH, .  
Advocate

...

For appellant.

MIAN AMIR QADAR,  
District Attorney

...

For respondents.

MR. NIAZ MUHAMMAD KHAN,  
MR. MUHAMMAD HAMID MUGHAL,

...

CHAIRMAN  
MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was appointed as Work Munshi in the year 1996. He was later on given the charge of Sub-Engineer on stop gap arrangement firstly on 21.05.2008 and then extended on 29.10.2009 and on 18.02.2015 he was adjusted on his original cadre post i.e (Work Munshi) against this order he filed a departmental appeal on 03.03.2015 which was rejected on 28.04.2015 and thereafter he filed the present appeal on 21.05.2015.


### ARGUMENTS

3. The learned counsel for the appellant argued that the appellant was duly qualified to be promoted to the higher post (either as Road-Inspector or Sub-Engineer). That according to the method or recruitment some percentage was fixed for the promotion to the post of Sub-Engineer and also for the post of Road-Inspector. That the department adjusted the appellant against the vacant post of Sub-Engineer served for seven (07) years. That on 18.02.2015 he was readjusted to his original post. That this order of the department is violative of the basic principles of natural justice as the right of promotion had accrued to the appellant. That he was also not given the benefit of many laws of regularization enforced in between. He relied upon many judgments of the superior courts. the important judgments are reproduced as 2017 PLC ( C.S )373, 1993 SCMR 609, 2008 SCMR 1138 and 2016 SCMR 2125.

4. The learned District Attorney argued that the appellant was never promoted to the post of Sub Engineer. That it was a stop gap arrangement which by no way conferred any vested right. That the appellant was never appointed on acting charge basis or on current charge basis as per rules.

### CONCLUSION

5. The whole arguments of the Learned Counsel for the appellant revolved around eligibility of the appellant to be promoted to a higher post. He has not written a single word nor the appeal speaks about that what position he has or had held in the seniority list. It is also not mentioned that he was ever superseded/deferred or considered for promotion. Similarly memo of appeal and

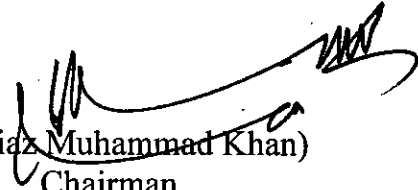


the departmental appeal are silent about any quota which has been violated. The only arguments of the learned counsel for the appellant read with departmental appeal and memo of appeal is that once the appellant was adjusted against the higher post then he could not have reverted back to his original post as the appellant was duly qualified to be promoted. It is beyond understanding that how the stop gap arrangement confer any vested right on the appellant to be promoted to a higher post and especially when no departmental Promotion Committee has been constituted for the purpose. The appellant was never appointed on acting charge basis nor he was appointed on current charge basis. Had his case been of any of the two categories mentioned above certainly he would have, atleast, pleaded that he was entitled for promotion before his juniors. But in the present case it has not been shown that any junior of the appellant has been promoted to the post of Sub Engineer against which the appellant is claiming. The judgments relied upon by the learned counsel for the appellants are just on the point that the department should not keep the vacancy on officiating basis for indefinite period. All these judgments have discouraged this practice of keeping vacancies on officiating basis but in none of these judgments it has been held that the person working on officiating basis must be promoted to the post against which he is officiating. So far as the arguments of the learned counsel for the appellant regarding regularization is concerned, this Tribunal is unable to understand that how regularization laws would help a person in promotion because the appellant is already a regular government servant.

6. As a sequel to the above discussion there is no merits in the present appeal which is dismissed. Parties are left to bear their own costs. File be consigned to the record room.



(Muhammad Hamid Mughal)  
Member



(Niaz Muhammad Khan)  
Chairman  
Camp Court, Swat

ANNOUNCED

08.11.2017


468/2015

08.11.2017

Counsel for the appellant and Mian Amir Qadar, District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, this appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

  
Member

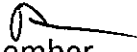
  
Chairman  
Camp Court, Swat


ANNOUNCED  
08.11.2017

468/2015

09.11.2016


Agent to counsel for the appellant and Mr. Muhammad Jamil, Senior Auditor alongwith Mr. Muhammad Zubair, Sr.GP for respondents present. Counsel for the appellant is not in attendance due to death of his relative. Requested for adjournment. Adjourned for rejoinder and final hearing to 06.03.2017 before D.B at Camp Court Swat.


  
Member

  
Chairman  
Camp court, Swat

06.03.2017


Appellant in person, M/S Rahman Ali, Sub Engineer and Jehanzeb, Senior Auditor alongwith Mr. Muhammad Zubair, Senior Government Pleader for the respondents present. Rejoinder submitted. Due to strike of the bar counsel for the appellant is not in attendance. To come up for final hearing on 05.07.2017 before the D.B at camp court, Swat.

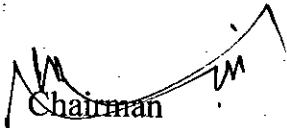
  
Member

  
Chairman  
Camp court, Swat


9 05.07.2017

Appellant in person and Mr. Muhammad Zubair, District Attorney for the respondents present. Appellant requested for adjournment as his counsel is not in attendance today. Adjourned. To come up for final hearing on 08.11.2017 before D.B at Camp Court, Swat.

  
Member

  
Chairman  
Camp Court, Swat

2.11.2015 Appellant in person, M/S Najmud Din, SDO for respondents No.1 to 4 and Jamil Shah, Senior Auditor for respondent No.5 alongwith Mr.Muhammad Zubair, Sr.GP present. Written reply on behalf of respondents No.1 to 4 submitted. Respondent No.5 requested for adjournment. Last opportunity granted. To come up for written reply/comments on behalf of respondent No.5 on 14.01.2016 before S.B at Camp Court Swat.


  
Chairman  
Camp Court Swat

14.01.2016 Appellant with counsel, M/S Abdul Majid, AO and Jamil Shah, Senior Auditor alongwith Mr. Muhammad Zubair, Sr. GP for respondents present. Written reply by respondent No. 5 also submitted. The appeal is assigned to D.B for rejoinder and final hearing for 12.7.2016 at Camp Court Swat.

  
Chairman  
Camp Court Swat

12.7.2016 Counsel for the appellant and Mr. Attiqur Rahman, SDO alongwith Mr. Muhammad Zubair, Sr.GP for the respondents present. Counsel for the appellant requested for adjournment. To come up for rejoinder and final hearing on 09.11.2016 before D.B at camp court, Swat.

  
Member

  
Chairman  
Camp Court, Swat

3 1.6.2015

Appellant with counsel present. Learned counsel for the appellant argued that the appellant was appointed as Work Munshi in C&W Department vide order dated 15.2.96 and was allowed to perform duties as Sub Engineer on stop gap arrangement on the strength of his diploma in civil engineering vide office order dated 21.5.2008 which was subsequently affirmed on 29.10.2009. The said order in favour of the appellant was cancelled without any lawful justification vide impugned order dated 18.2.2015 regarding which departmental appeal was preferred on 3.3.2015 which was rejected on 28.4.2015 and hence the instant service appeal on 21.5.2015.

That the appellant, a diploma holder in civil engineering is entitled to perform the duties of Sub Engineer and also entitled to be considered for regularization against the said post.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 7.9.2015 before S.B at camp court Swat.

  
Chairman  
Camp Court Swat

07.09.2015

Counsel for the appellant, M/S Jawad, Assistant and Muhammad Saeed, ATO alongwith Mr. Muhammad Zubair, Sr. GP for respondents present. Requested for adjournment. To come up for written reply/comments on 2.11.2015 before S.B at Camp Court Swat.

  
Chairman  
Camp Court Swat

Appellant Deposited  
Security & Process Fee







Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 468 /2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	21.05.2015	<p>The appeal of Mr. Muhammad Ismail presented today by Mr. Aiz-ur-Rehman Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p> REGISTRAR</p>
2	25-5-15	<p>This case is entrusted to Torung Bench Swat for preliminary hearing to be put up thereon <u>1-6-15</u>.</p> <p> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

Service Appeal No. 468 of 2015

Muhammad Ismail, currently Work Munshi Office of the Deputy Director Works and Services District Dir Lower.

...Appellant

VERSUS

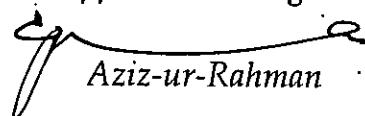
The Government of Khyber Pakhtunkhwa through Chief Secretary and Others.

...Respondents

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3.	Addresses of the parties	....	7
4.	Copy of the Order dated 21-05-2008	A	8
5.	Copy of the Order dated 29-10-2009	B	9
6.	Copy of the Order dated 18-02-2015	C	10
7.	Copy of the Departmental Appeal	D	11-12
8.	Copy of the Order 28-04-2015	E	13
9.	Vakalat Nama	....	14

Appellant Through



Aziz-ur-Rahman

Advocate Swat

Office: Khan Plaza, Gulshone Chowk,

Mingora Swat, Cell 0300 907 0671

①

BEFORE THE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 468 of 2015

F.W.P. Province  
Service Tribunal

Diary No. 522

Dated 21-5-2015

Muhammad Ismail, currently Work Munshi Office of the  
Deputy Director Works and Services District Dir Lower.

...Appellant

**VERSUS**

1. The Government of Khyber Pakhtunkhwa through  
Chief Secretary, Peshawar.
2. The Government of Khyber Pakhtunkhwa through  
Secretary Communication and Works Department  
Peshawar.
3. The Chief Engineer (North) Communication and  
Works Department Peshawar.
4. The Executive Engineer Communication and  
Works Division, Dir Lower.
5. The District Accounts Officer Dir Lower.

...Respondents

SERVICE APPEAL UNDER SECTION 4  
OF THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL ACT, 1974  
AGAINST THE ORDER OF THE  
RESPONDENT NO. 3 BEARING NO.  
1055/6-E DATED 18-02-2015 WHEREBY  
THE APPELLANT WAS REVERTED  
BACK TO THE POST OF WORK MNSHI  
FROM THAT OF THE SUB-ENGINEER  
AGAINST THE LAW, RULES AND  
SHARIAH. FEELING AGGRIEVED OF  
THE SAME THE APPELLANT FILED A  
DEPARTMENTAL APPEAL TO THE  
RESPONDENT NO. 2 WHO ALSO FILED

Filed to day  
Registrar  
21/5/15

THE SAME SUMMARILY VIDE ORDER  
NO. SOE/C&WD/11-270/2015 DATED  
PESHAWAR, THE APRIL 28, 2015  
AGAINST THE LAW, RULES AND  
SHARIAH, HENCE THIS APPEAL.

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PRAYER:

*That on acceptance of this  
appeal both the orders impugned  
may very kindly be set aside and the  
appellant restored to the post of  
Sub-Engineer with all  
consequential/back benefits.*

---

Respectfully Sheweth:

Facts:

- i. That the appellant joined the respondent department as work munshi on 15-02-1996.
- ii. That the appellant was having Diploma in DAE since the time of joining the respondent department.
- iii. That the appellant was performing his duties with great zeal and efficiently, without any complaints by the authorities till.
- iv. That it was on the basis of his efficiency and qualification that he was adjusted as Sub-Engineer by the respondent No. 3 vide order No. 18-E/555/CE/W&SD dated Peshawar the 21-05-2008. Copy of the order is enclosed as Annexure "A".

- v. That the appellant was performing his duties as Sub-Engineer efficiently and without any complaints either from the authorities concerned or the public, due to which reason the respondent No. issued another order bearing No. 18-E/1236/CE/W&SD dated Peshawar the 29-10-2009 whereby the appellant was kept as Sub-Engineer. Copy of the order is enclosed as Annexure "B".
- vi. That the respondent No. 3 vide order No. 1055/6-E dated 18-02-2015 reverted the appellant to the post of work-munshi without any reasons and that too after such a long period without adopting the due course of law. Copy of the order is enclosed as Annexure "C".
- vii. That the appellant feeling aggrieved of the order impugned filed a departmental appeal to the respondent No. 2, which was also filed summarily vide order No. SOE/C&WD/11-270/2015, dated Peshawar, the April 28, 2015 without giving any reasons, whatsoever, in violation of the law, rules and Shariah. That feeling aggrieved of the both the orders impugned this appeal on the following grounds. Copy of the appeal is enclosed as Annexure "D" and that of the order as Annexure "E", respectively.

Grounds:

- a. That the authorities are denying the appellant his fundamental rights and that too without any valid

and plausible reason at all, which act of the authorities is always discouraged by the Apex Court of Pakistan in plethora of judgments.

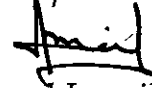
- b. That the authorities are not treating the appellant in accordance with law and rules.
- c. That appellant is made to suffer due to misuse of the official authority in a colorful and fanciful manner while at the same time the authorities are travelling beyond the authority vested in them, and that too in an autocratic manner.
- d. That in light of the dicta of the Apex Court if there is a clear vacancy and the employee is eligible so his service must be regularized.
- e. That the law never approves that a department should make its employee to suffer for any fault on its part.
- f. That neither the appellant has committed any act of commission or omission which may constitute any offence nor the authorities have any reason, whatsoever, for not considering the appellant as Sub-Engineers.

It is, therefore, very respectfully prayed that on acceptance of this appeal the orders impugned may very kindly be set aside and the appellant restored back as Sub-engineer along with all consequential/back benefits.

5

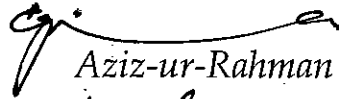
*Any other relief deemed appropriate may  
also very kindly be granted.*

*Appellant*



*Muhammad Ismail*

*Through Counsels,*



*Aziz-ur-Rahman*



*Imdad Ullah*

*Advocates Swat*

6

BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. \_\_\_\_\_ of 2015

Muhammad Ismail, currently Work Munshi Office of the  
Deputy Director Works and Services District Dir Lower.

...Appellant

**VERSUS**

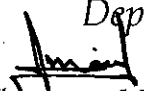
The Government of Khyber Pakhtunkhwa through Chief  
Secretary and Others.

...Respondents

AFFIDAVIT

It is stated on Oath that all the contents of this  
appeal are true and correct to the best of my knowledge  
and belief and nothing has either kept concealed or  
misstated thereto.

Deponent

  
Muhammad Ismail

Identified by:

  
Imdad Ullah

Advocate Swat

*AFFIDAVIT*





BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. \_\_\_\_\_ of 2015

Muhammad Ismail, currently Work Munshi Office of the  
Deputy Director Works and Services District Dir Lower.

...Appellant

**VERSUS**

The Government of Khyber Pakhtunkhwa through Chief  
Secretary and Others.

...Respondents

ADDRESSES OF THE PARTIES

Appellant:

Muhammad Ismail, currently Work Munshi Office of the  
Deputy Director Works and Services District Dir Lower.

Respondents:

1. The Government of Khyber Pakhtunkhwa through  
Chief Secretary, Peshawar.
2. The Government of Khyber Pakhtunkhwa through  
Secretary Communication and Works Department  
Peshawar.
3. The Chief Engineer (North) Communication and  
Works Department Peshawar.
4. The Executive Engineer Communication and  
Works Division, Dir Lower.
5. The District Accounts Officer Dir Lower.

Appellant

Through Counsel,

  
Imdad Ullah

Advocate Swat

Annexure "A"

8

OFFICE OF THE CHIEF ENGINEER  
WORKS & SERVICES DEPARTMENT  
NWFP PESHAWAR.

No. 18-E / 555 / CE / W&SD

Dated Peshawar the 21 / 05 / 2008

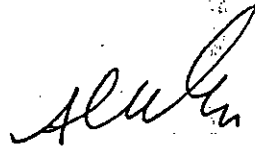
OFFICE ORDER

Mr. Muhammad Ismail Work Munshi attached to the Office of Deputy Director Works & Services District Dir Lower having Diploma of Associate Engineer Civil and sufficient experience in the field work is hereby adjusted against the existing vacancy of Sub Engineer (OPS) in the O/O Deputy Director Project Division Works & Services Dir Lower purely on stop gap arrangement in the public interest with immediate effect.

(ENGR:HABIB ALI)  
CHIEF ENGINEER

Copy forwarded to the :-

1. Executive District Officer W&S District Dir Lower.
2. Deputy Director Project Division W&S Dir Lower.
3. District Accounts Officer Dir Lower.
4. ✓ Official Concerned.

  
(AMINULLAH KHAN)  
ADMINISTRATIVE OFFICER

**ATTESTED**

  
ADVOCATE

Annexure B

OFFICE OF THE CHIEF ENGINEER  
WORKS & SERVICES DEPARTMENT  
NWFP PESHAWAR.

9

No. 18-E / 1236 / CE / W&SD

Dated Peshawar the 29 / 10 / 2009

**OFFICE ORDER**

Mr. Muhammad Ismail Work Munshi, adjusted against the existing vacancy of Sub Engineer (OPS) purely on stop gap arrangement, in the O/O Deputy Director Building & Works (Provincial) Project Division-II Peshawar, is hereby transferred in the O/O Deputy Director Works & Services District Dir Lower, against the existing vacancy of Sub Engineer (OPS), purely on stop gap arrangement, in the public interest, with immediate effect, till further orders.

(Engr. Ahmad Jan)  
Chief Engineer

Copy forwarded to the: -

1. Accountant General NWFP Peshawar.
2. Section Officer (E-I) W&S Department Peshawar w/r to his letter No. SOE-I/W&SD/11-270/2009 dated 03-10-2009.
3. Director Building & Works (Provincial) W&SD Peshawar.
4. Executive District Officer W&S District Dir Lower.
5. Deputy Director W&S District Dir Lower.
6. Deputy Director Building & Works (Provl.) Project Division-II Peshawar.
7. District Accounts Officer District Dir Lower.
8. Pay Clerk (Local).
9. Official Concerned.
10. Case file No: 52-E

(Aminullah Khan)  
Administrative Officer

**ATTESTED**

Indef  
ADVOCATE



COMMUNICATION & WORKS DEPARTMENT (NORTH WING)  
KHYBER PAKHTUNKHWA PESHAWAR

Block-C 3<sup>rd</sup> Floor, Attached Department Complex Near Khyber Road Peshawar  
091-9210456 FAX 091-9210478 E-mail: comnorthw@yahoo.com

TO BE SUBSTITUTED OF EVEN NO. AND DATE

Dated 18 / 02 / 2015

No. 1055 / 6-E

OFFICE ORDER:

The following transfers/postings of Sub Engineers of C&W Department (North Wing) are hereby ordered with immediate effect in the interest of public works:-

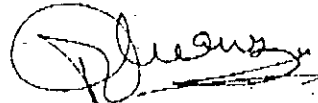
S#	Name of Official	From	To	Remarks
1.	Mr. Anwar Badshah	Under order of transfer to the Engineer C&W Building Division Swat.	O/O the Executive Engineer C&W Division Dir Lower.	Vice No.2
2.	Mr. Ismail Khan	O/O the Executive Engineer C&W Division Lower (Sub Engineer OPS).	Work Munshi O/O the Executive Engineer C&W Division Dir Lower.	Adjusted on his original cadre post

Note: Stop gap orders of Sl. No. 2 issued vide CE W&S Deptt. No. 18-E/1236/CEW&SD Dated 29-10-2009 stands cancelled with the issue of this orders.

(Engr. Muhammad Ijaz Yousafzai)  
Chief Engineer (North)

Copy forwarded to the:-

1. Chief Engineer (Centre) C&W Department Peshawar.
2. Superintending Engineer C&W Circle Swat.
3. Superintending Engineer C&W Circle Dir Lower.
4. Executive Engineer C&W Division Dir Upper.
5. Executive Engineer C&W Building Division Swat.
6. PA to Advisor to C.M for C&W Department Peshawar w/r to his Diary No. 241 dated 17-02-2015.
7. District Accounts Officer District Swat / Dir Upper.
8. Official concerned.

  
(Abdul Majid)

Administrative Officer

**ATTESTED**



**ADVOCATE**

E/AO+ .....6-E Sub Engineers

To

The Secretary Government of Khyber Pakhtunkhwa  
Communication and Works Department,  
Peshawar.

Subject: Departmental appeal against the order No. 1055/6-E dated 18-02-2015, whereby the appellant was reverted from the post of Sub-Engineer to that of Work Munshi against the law, rules and facts, hence the same is liable to be set aside.

Prayer:

That on acceptance of this appeal the order impugned may very kindly be set aside and the appellant be let as Sub-Engineer with all back benefits.

Respected Sir,

The appellant submits as under:

That the appellant joined the department in the year 1996 having the Diploma of DAE at the time of his appointment.

That the appellant served the department with great zeal and vigor and the authorities were satisfied from the performance of the appellant promoted him, being qualified and eligible, Sub-Engineer vide order No. 18-E/555/CE/W&SD dated Peshawar the 21/05/2008 and since then the appellant was performing his duties as such to the satisfaction of the authorities. Even the appellant received the pay as Sub-Engineer.

That now the appellant has been reverted to the post of Work Munshi vide the impugned order against the law, rules and facts. Moreover no reason, whatsoever, for the illegal reversion have been given.

That the appellant has been discriminated and deprived in utter violation of the law and rules on the subject.

ATTESTED

*[Signature]*

ADVOCATE

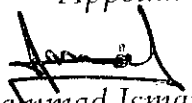
That the appellant is not been dealt with in accordance with the law.

That the appellant has not committed any act of commission or omission which may constitute any offence under any law.

That the appellant wants to heard in person.

It is, very humbly requested that on acceptance of this appeal the illegal order of reversion may be set aside and the appellant let to work rightly as Sub-Engineer with all back benefits.

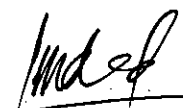
Appellant



Muhammad Ismail

3-3-2015

**ATTESTED**



**ADVOCATE**



Annexure "E"

GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

13

No. No. SOE/C&WD/11-270/2015  
Dated Peshawar, the April 28, 2015

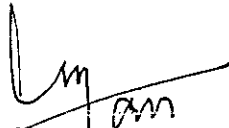
TO

Mr. Muhammad Ismail  
Work Munshi  
C&W Division Dir Lower

Subject: Department Appeal against the order No.1055/6-E dated 18.02.2015, whereby the appellant was reverted from the post of Sub Engineer to that of Work Munshi against the law, rules and facts, hence the same is liable to be set-aside

I am directed to refer your appeal/representation dated 03.03.2015, which was examined and submitted to the Competent Authority (Secretary C&WD). The Competent Authority has rejected your appeal/representation.

2. You are hereby informed accordingly.

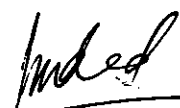
  
(USMAN JAN)  
SECTION OFFICER (Estb)

Endst even No. & date

Copy forwarded to PS to Secretary C&W Department, Peshawar

  
SECTION OFFICER (Estb)

**ATTESTED**



**ADVOCATE**



Office of the  
**District Accounts Officer**  
Dir Lower at Timergara.

No. DAO Dir Lower

1835

Dated 12-01-2016

To

The Registrar,  
Khyber Pakhtunkhwa Service Tribunal  
Peshawar.

Subject Service appeal No. 468 of 2015

Mr. Muhammad Ismail \_\_\_\_\_ appellant

VERSUS

The Govt: of Khyber Pakhtunkhwa & Others-----Respondents

Respectfully sheweth,

The comments offered by respondents No. 2,3,4 may also be  
considered comments of District Account Officer Dir Lower at Timergara  
respondent NO.5

  
DISTRICT ACCOUNTS OFFICER  
DIR LOWER AT TIMERGARA



BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

SERVICE TRIBUNAL NO. 468/2015

Mr. Muhammad Ismail

Work Munist

O/O Deputy Director (Now XEN C&W Division) Dir Lower \_\_\_\_\_ (Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary Peshawar.
2. Govt. of Khyber Pakhtunkhwa through Secretary C&W Department Peshawar.
3. Chief Engineer (North) C&W Department Peshawar.
4. Executive Engineer, C&W Division, Dir Lower.
5. District Accounts Officer Dir Lower.....(Irrelevantly Impleaded) .....(Respondent)

Comments on behalf of Respondents No. 01 to 04

Respectfully Shewet :!

PRELIMINARY OBJECTIONS

1. The instant appeal is not maintainable.
2. The appeal is mis-conceiving.
3. The appellant has got no locus standi and cause of action.
4. The appellant has not come to the court with clean hands.
5. The appellant claim and prayer is ambiguous at all.
6. The appellant has deliberately concealed the important material and the prevalent rules in this case from this honorable court.

FACTS

- i. Correct as per recorded entries in the Service Book.
- ii. Correct as per recorded entries in the Service Book.
- iii. Not need to comment, Every Government Servant should have to abide the rules and discipline as well.
- iv. Incorrect, the appellant was posted on STOP GAP arrangement in Own Pay Scale by the Chief Engineer W&S (Now Chief Engineer (Centre)) as at that time his office was administering the function as Head of an Attached Department in 05/2008 but it cannot be said this arrangement on the basis of his efficiency etc.

- v. Incorrect. Actually the appellant was posted on the STOP GAP basis at the O/O Executive Engineer Project Division (Floating Office) functioning at Dir Lower. Later the said office was shifted to Peshawar, renaming it as Project Division No. II Peshawar, (being floating Division) along with its all components and staff. The orders dated 29-10-2009, annexed as 'B' with the appeal, in fact is Transfer Order back to Dir Lower in the OPS, purely and on STOP GAP arrangement.
- vi. Correct to the extent, when original incumbent official (Sub-Engineer), Public Service Commission nominees reported, then repatriation order to his parent cadre post of Work Munshi in BPS-05 was ordered and the earlier orders dated 29-10-2009 were simultaneously stands cancelled. The Respondent-3 Chief Engineer (North)) is the Competent Authority under the Govt. of KPK Rules of Business, 1985 as notified vide E&A Department No. SO(O&M)E&AD/2-22/2006-VOL-III dated 24-11-2009 (Annexed-I).
- vii. The Departmental Appeal was rejected by the Appellant Authority (Secretary C&W) (Annex-II) after taking into account the relevant Appointment/Recruitment Rules, 1996 and 2010 of the C&W Department (Annexed-III/IV). No pave exist to induct or give promotion to Work Munshi to the cadre post of Sub-Engineer BS-11. Therefore no violation of Rules / Law prevalent to the cadre/class to which appellant belongs is exercised.

#### GROUNDS

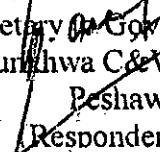
- A. Incorrect. As stated in the preceding paras of facts, the Authority shall have to observe the rules/regulations and policies of the Government and not to fulfill the whim and wishes of ones.
- B. Incorrect. The appellant is fully aware of his cadre post. He is at liberty to apply to the post of Sub-Engineer when published by the Public Service Commission and may compete alike others who have been selected and given employment as Sub-Engineer (BPS-11).
- C. Incorrect. This Para of Appeal is ambiguous and having no force thereto.
- D. Incorrect. In the instant case, it is not attracted. Of course others whom %age share as per Appointment/Recruitment Rules, 2010 of the C&W Department is available can be made eligible/Regularized, subject to their eligibility and fulfilling other relevant conditions prescribed thereto.

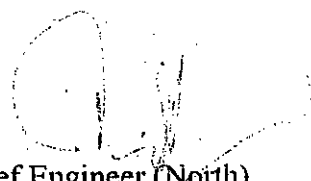
Incorrect/misconceiving. Appellant's status as Work Munshi, which he occupied with the qualification during 1<sup>st</sup> entry in service is not jeopardized.

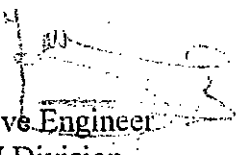
F. Incorrect baseless calculations. It is not a matter of offence or disciplinary case. Appellant is not coming under promotion criterion under the existing and prevalent, Appointment and Recruitment Rules, 2010 of the C&W Department to the post of Sub-Engineer (BPS-11).

In the wake of above submissions, the instant appeal is misconceiving. Appellant is not coming within the scope of promotion. The Appeal may please not be admitted, with further prayers of its dismissal in limine.

No other relief in the aforesaid circumstances may please be granted to the appellant.

  
Secretary to Govt. of Khyber  
Pakhtunkhwa C&W Department  
Peshawar  
(Respondent-1/2)

  
Chief Engineer (North)  
C&W Department  
Peshawar  
(Respondent-3)

  
Executive Engineer  
C&W Division,  
Dir Lower  
(Respondent-4)

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

Service Appeal No. 468 of 2015

*Muhammad Ismail.*

...Appellant

**VERSUS**

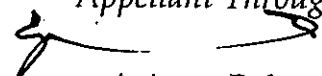
*The Government of Khyber Pakhtunkhwa through Chief Secretary and Others.*

...Respondents

INDEX

<i>S #</i>	<i>Description of documents</i>	<i>Annexure</i>	<i>Pages</i>
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2.	<i>Affidavit</i>	....	5
3.	<i>Copies of the Orders</i>	A	6-8

Appellant Through



Aziz-ur-Rahman  
Advocate Swat

Office: Khan Plaza, Gulshone Chowk,  
Mingora Swat, Cell 0300 907 0671

①

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

*Service Appeal No. 468 of 2015*

*Muhammad Ismail.*

*...Appellant*

**VERSUS**

*The Government of Khyber Pakhtunkhwa through Chief  
Secretary and Others.*

*...Respondents*

**REJOINDER BY THE APPELLANT**

*Respectfully Sheweth:*

*Preliminary Objections:*

*That all the preliminary objections are incorrect,  
baseless, against the law and rules and based on  
misstatements, hence are denied specifically.*

*On Facts:*

- i. Para 1 being admission, hence needs no  
comments.*
- ii. Para 2 also being admission, therefore, needs no  
comments as well.*
- iii. Para 3 also needs no comments.*
- iv. Para 4 of the comments as drafted is incorrect  
and baseless the appellant was kept to work as  
Sub-Engineer for such a long period on the basis*

of his qualification and length of service, therefore, the para is denied.

v. Para 5 of the comments as drafted is incorrect, baseless and devoid of merits. The appellant was otherwise fit for promotion, but was as the appellant was serving as Sub-Engineer, therefore, he was kept under the impression that he has already completed the length of service for promotion as Sub-engineer and thus was kept under the impression that the appellant, on his qualifying length of service, is kept as Sub-Engineer. Therefore, the para is specifically denied. Copies of the order of promotion as Road Inspectors and also that of fresh recruits are enclosed as Annexure "A".

vi. Para 6 of the comments as drafted is incorrect, baseless, devoid of merits and against the law and rules and against the principles of natural justice and is profound of discrimination. The appellant if at all was to be adjusted against his original cadre then he deserved to be adjusted as Road Inspector and not as Work Munshi as he by then qualified for Road Inspector on the strength of his qualification and length of service. Therefore, the para is denied specifically.

vii. Para 7 of the comments as drafted is also incorrect, vague and against the material facts on record. The appellant, through his length of service and required qualification, otherwise than stop gape is fit for the post of Sub-Engineer as per the rules relied upon by the respondents. Moreover the appellate order is silent and no

reason has been given for the rejection of the same, therefore, the para is denied specifically.

On Grounds:

A. Ground A of the comments as drafted is incorrect, vague, based on surmises and against the law and rules. The appellant through his qualification and length of service qualified to be promoted as Sub-Engineer, but the respondent department was adamant to the fact and ignored the length of service of the appellant, hence the para is denied.

B. Ground B of the comments as drafted is also incorrect, baseless and devoid of merits. The appellant though his qualification and length of service would have reached to the post of Sub-Engineer, but the respondent department kept him as such and deprived him of his vested rights, therefore, the para is denied.

C. Ground C of the comments as drafted is vague and evasive and amounts to admission, hence needs no comments.

D. Ground D of the comments as drafted is incorrect, baseless and devoid of merits. The appellant has got the required qualification as well as the length of service to be promoted as Sub-Engineer, but the act of the respondent department has made the appellant to suffer for no fault of his, therefore, the para is denied.

E. Ground E of the comments is incorrect, baseless, devoid of merits and against the law and rules. The

appellant right of promotion has otherwise been denied to him, hence the para is denied.

F. Ground F of the comments as drafted is misconstrued and is volt face, as the appellant has never been considered for promotion till date and thus his valuable and established rights have been denied to him. Therefore, the para is denied.

It is, therefore, very respectfully prayed that on acceptance of this rejoinder the appeal of the appellant may very kindly be decided as prayed for originally.

Appellant  
*[Signature]*

Muhammad Ismail  
Through Counsels,

*[Signature]*  
Aziz-ur-Rahman

*[Signature]*  
Imdad Ullah  
Advocates Swat



5

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

Service Appeal No. 468 of 2015

Muhammad Ismail.

...Appellant

**VERSUS**

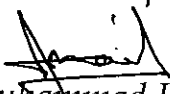
The Government of Khyber Pakhtunkhwa through Chief  
Secretary and Others.

...Respondents


**AFFIDAVIT**

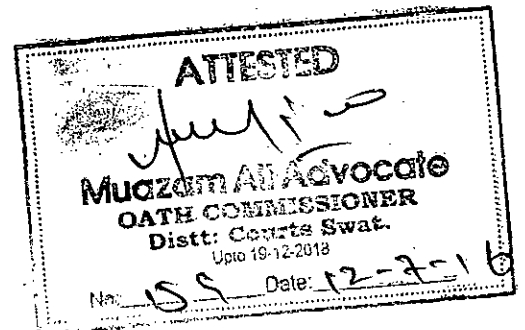
It is solemnly stated on Oath that all the contents of  
this rejoinder are true and correct to the best of my  
knowledge and belief and nothing has either been  
misstated or kept concealed before this Honourable  
Tribunal.

Deponent

  
Muhammad Ismail

Identified By:

  
Imdad Ullah  
Advocate Swat



Annex A

6

C&W CIRCLE DIR LOWER.

NO. 1155 / 1 DATED 20/12/2012  
4-E

**OFFICE ORDER**

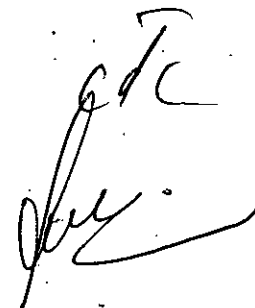
On the recommendation of Departmental Selection promotion Committee meeting held on, 19/02/2012 the committee decided in the minutes of the meeting that **Mr, Fazal Rehman work munshi** is attached to Executive Engineer C&W Division Dir Lower is hereby promoted to the vacant post of Road Inspector (BPS-6) under the Departmental rules vide No. SOE/C&WD/8-12/2009 dated, 25/03/2010 with immediate effect in the best interest of public work.

*O/C* SUPERINTENDING ENGINEER

Copy forwarded to:-

1. The District Coordination Officer Dir Lower at Timergara.
2. The Executive Engineer C&W Division Dir Lower.
3. The District Accounts Officer District Dir Lower.
4. The Sub-Divisional Officer C&W Sub-Division Timergara.
5. The official concerned.

SUPERINTENDING ENGINEER



7



COMMUNICATION & WORKS DEPARTMENT (NORTH WING)  
KHYBER PAKHTUNKHWA PESHAWAR

Block-C 3<sup>rd</sup> Floor, Attached Department Complex Near Khyber Road Peshawar

091-9210456 FAX 091-9210478 E-mail: [cenorthcnw@yahoo.com](mailto:cenorthcnw@yahoo.com)

No: 1017(i)/25-E

Dated 13/05/2013

OFFER OF APPOINTMENT.

As recommended by the Departmental Selection Committee, in its meeting held on 06-05-2013 You Mr. Zahir Ullah S/O Zahir Jan Resident of village Hassani Dheri Temergara District Dir Lower are hereby offered a Post of Road Inspector against the existing vacancy in C&W Circle Lower Dir in (BPS-06) Viz 5600-290-14300 plus usual allowances as admissible under the rules, on the following terms and conditions:-

1. You will get pay at the minimum of BPS-06 (Rs. 5600-290-14300) plus usual allowances as admissible under the Rules. You will also be entitled to the annual increment as per existing policy.
2. You shall, be governed by the Khyber Pakhtunkhwa Civil Servants Act 1973 and the Laws applicable to the Civil Servants and Rules made there under.
3. Your Employment in the Communication & Works Department is purely temporary and your services are liable to be terminated without assigning any reasons at fourteen days prior notice or on the payment of 14-days salary in lieu of the notice. In case you desire to resign, 14-days prior notice will be necessary or in lieu thereof 14-days pay will be forfeited.
4. You will, initially be on Probation for a period of ONE YEAR extendable up to 2-years.
5. To produce a Medical Certificate of Fitness from the Medical Superintendent Dir Lower, before reporting for duty as required under the rules.
6. You should join duty at your own expenses.
7. You will have to serve any where in Khyber Pakhtunkhwa Province.

If you accept the Post on the above terms and conditions, you should report to Superintending Engineer C&W Circle Dir Lower at Timergara within 14-days of the receipt of this offer and produce Original CV in support of your qualifications domicile, CNIC, Health & age certificate etc.

(Engr. Abdul Saboor Usmani)  
Chief Engineer. (North)

Copy forwarded to the :-

1. Secretary to Govt of Khyber Pakhtunkhwa C&W Department Peshawar.
2. Accountant General Khyber Pakhtunkhwa Peshawar.
3. Chief Engineer (Centre) C&W Department Peshawar.
4. Superintending Engineer C&W Circle Lower Dir.
5. Executive Engineer C&W Division Lower Dir.
6. District Accounts Officer Lower Dir.
7. Mr. Zahir Ullah S/O Zahir Jan Resident of village Hassani Dheri Temergara District Dir Lower
8. Personal file of the official.

H. C

For n. a.

Chief Engineer. (North)



COMMUNICATION & WORKS DEPARTMENT(NORTH WING)  
KHYBER PAKHTUNKHWA PESHAWAR

Block-C 3<sup>rd</sup> Floor, Attached Department Complex Near Khyber Road Peshawar

091-9210456 FAX 091-9210478 E-mail: [cenorthcnw@yahoo.com](mailto:cenorthcnw@yahoo.com)

No: 1017 /25-E

Dated 13/05/2013

OFFER OF APPOINTMENT.

As recommended by the Departmental Selection Committee, in its meeting held on 06-05-2013 You Mr.Haris Iqbal S/O Iqbal Javed having Diploma of Associate Engineering(Civil)2010-Annual Resident of H/No.2646 Street # 3 Sharif Abad Dora Road Kohat Road Peshawar, are hereby offered a Post of Road Inspector against the existing vacancy in C&W Circle Lower Dir in (BPS-06) Viz 5600-290-14300 plus usual allowances as admissible under the rules, on the following terms and conditions:-

1. You will get pay at the minimum of BPS-06(Rs.5600-290-14300) plus usual allowances as admissible under the Rules. You will also be entitled to the annual increment as per existing policy.
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(Engr.Abdul Saboor Usmani)  
Chief Engineer.(North)

Copy forwarded to the :-

1. Secretary to Govt of Khyber Pakhtunkhwa C&W Department Peshawar.
2. Accountant General Khyber Pakhtunkhwa Peshawar.
3. Chief Engineer (Centre)C&W Department Peshawar.
4. Superintending Engineer C&W Circle Lower Dir.
5. Executive Engineer C&W Division Lower Dir.
6. District Accounts Officer Lower Dir.
7. Mr.Haris Iqbal S/O Iqbal Javed Resident of H/No.2646 Street # 3 Sharif Abad Dora Road Kohat Road Peshawar.
8. Personal file of the official.

Chief Engineer.(North)

HC.  
for n.a.  
K.



Office of the  
**District Accounts Officer**  
Dir Lower at Timergara.

No. DAO Dir Lower 1835=

Dated 12-07-2016

To

The Registrar,  
Khyber Pakhtunkhwa Service Tribunal  
Peshawar.

Subject Service appeal No. 468 of 2015

Mr. Muhammad Ismail \_\_\_\_\_ appellant

VERSUS

The Govt: of Khyber Pakhtunkhwa & Others-----Respondents

Respectfully sheweth,

The comments offered by respondents No. 2,3,4 may also be  
considered comments of District Account Officer Dir Lower at Timergara  
respondent NO.5

  
DISTRICT ACCOUNTS OFFICER  
DIR LOWER AT TIMERGARA