

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 346/2024

Muhammad Zaka Khan
SDO C&W Department Khyber Pakhtunkhwa

--- Appellant

VERSUS

Secretary to Govt of Khyber Pakhtunkhwa
Through Chief Secretary Peshawar & Others

--- Respondent

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Deponent



ZEEZHAN
Section Officer (Litigation)
C&W Department, Peshawar.

10-05-2024
Peshawar

①

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR
APPEAL NO.346 OF 2024

Mr. Muhammad Zaka Khan --- Appellant
SDO C&W Department
Khyber Pakhtunkhwa

VERSUS

1. Govt of Khyber Pakhtunkhwa through --- Respondents
Chief Secretary Peshawar
2. Secretary to Govt of Khyber Pakhtunkhwa
C&W Department, Peshawar
3. District Accounts Officer
Abbottabad

Khyber Pakhtunkhwa
Service Tribunal

Entry No. 12633

Dated 08-05-2024

JOINT PARAWISE COMMENTS ON BEHALF OF
RESPONDENTS NO. 01 and 02

PRELIMINARY OBJECTIONS

- i. That the appeal is not maintainable.
- ii. That the appellant has no cause of action and locus standi.
- iii. That the appeal is liable to be rejected on ground of mis-joinder and non-joinder of necessary parties
- iv. That the appeal is barred by law and limitation.

FACTS

1. Mr. Muhammad Zaka Khan was appointed as Sub Engineer in C&W Department and subsequently promoted to BS-17 on 01.04.2022.
2. As explain in para-1 above.
3. As explain in para-1 above.
4. Incorrect. In this regard, it is submitted that Mr. Muhammad Zaka Khan (BS-17), while working as SDO O/O XEN Building Division Abbottabad transferred and posted as SDO O/O XEN C&W Division Kohistan Lower on 17.11.2023 on administrative grounds, as his tenure at the referred post is more than 02 ½ Years. However, the appellant filed writ petition in Peshawar High Court (Abbottabad Bench) to set aside his transfer order dated 17.11.2023 (**Annex-I**). The court has disposed of his writ petition with the verdict "so this petition is converted into appeal/representation and sent to respondent No.2 to decide the same within 30 days from receipt of this order" (**Annex-II**). On the direction of Peshawar High Court Abbottabad Bench, the

(2)

Appeal/Representation of the appellant processed and forwarded to Chief Secretary Khyber Pakhtunkhwa to decide the said appeal. The Chief Secretary Khyber Pakhtunkhwa has returned the case with the directions that as per rules of business the Posting/Transfer of the appellant is within the competency of the Administrative Secretary who may dispose this case on merit. Accordingly, the case was re-examined and the appellant (Muhammad Zaka Khan) SDO O/O XEN C&W Division Kohistan Lower has been transferred and re-posted as SDO O/O XEN Building Division Abbottabad on 08.03.2024 (**Annex-III**).

5. Pertains to Respondent No.3.
6. As explained in Para-4 above.
7. As explained above.

GROUNDS

- a. Incorrect and misconceiving, as the appellant has been treated as per law/rules and regulations laid down by the Government.
- b. As explained in Para-4 of the Facts.
- c. Incorrect, although, the appellant has no inherited right for his posting against the post of SDO (BS-17) O/O XEN Building Division Abbottabad as he has served in the said Sub Division w.e.f 28.04.2021 to 17.11.2023 as SDO (In his own pay & scale).
- d. Incorrect. As per section 10 of the Khyber Pakhtunkhwa Civil Servant Act, 1973, **“Every civil servant shall be liable to serve anywhere within or outside the province, in any post under the Federal Government, or any Provincial Government”**. Furthermore, Section-4 of the ibid Act is also provides that **“Every Civil Servant shall hold office during the pleasure of the Governor”**.
- e. Pertains to record needs no comments.
- f. Incorrect, as explained in para-4 of the Facts.
- g. Incorrect, as per Rules of Business as well as APT Rules, Secretary of the Department is vested with lawful authority to transfer staff in the Department. The appellant was transferred under the referred authority from Abbottabad to Kohistan Lower on 17.11.2023. However, the appellant has been again posted as SDO O/O XEN Building Division Abbottabad on 08.03.2024, as he filled W.P before the PHC (Abbottabad Bench).
- h. No comments.
- i. Pertains to record.
- j. Incorrect. The transfer/posting of the appellant has been made in the best public interest, as there is no mala-fide intension of the respondents, no discriminatory action and no violation of the rights of the appellant has been made.

- 3
- k. Incorrect. The impugned posting/transfer Notification has never violated any of the right of the Appellant, similarly he has got no right whatsoever to claim posting of his choice
- l. Incorrect as explained in para-d of the grounds. Furthermore, there is no mala-fide intension of the respondents, no discriminatory action and no violation of the rights of the appellant has been made. The action taken by the respondents are strictly in accordance with law/ regulations and under the existing rules.
- m. Incorrect, the appellant has been dealt with as per law & rules.
- n. Incorrect, as explained in para-4 of the Facts.
- o. Incorrect, although the Posting/Transfer policy provides for a tenure yet the section 10 of the Khyber Pakhtunkhwa Civil Servant Act, 1973, provides that **“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”**.
- p. Pertains to record..
- q. The aggrieved officer approached the Peshawar High Court Abbottabad Bench for cancellation of impugned/premature transfer. The court while hearing the case on 21.11.2023 converted the petition into appeal/representation and sent to Respondent No.2 to decide the same within 30 days from receipt of this order”. On the direction of Peshawar High Court Abbottabad Bench, the Appeal/Representation of the appellant processed and forwarded to Chief Secretary Khyber Pakhtunkhwa to decide the said appeal. The Chief Secretary Khyber Pakhtunkhwa has returned the case with the directions that as per rules of business the Posting/Transfer of the appellant is within the competency of the Administrative Secretary who may dispose this case on merit. Accordingly, the case was re-examined and the appellant (Muhammad Zaka Khan) SDO O/O XEN C&W Division Kohistan Lower has been transferred and re-posted as SDO O/O XEN Building Division Abbottabad on 08.03.2024.
- r. The Respondents would like to seek permission of this Hon’able Tribunal to advance more grounds during the time of arguments.

In view of the above, it is submitted that the Appeal may kindly be dismissed with cost.


(Muhammad Idrees Khan)

SECRETARY TO

Govt of Khyber Pakhtunkhwa

Communication & Works Department

(Respondents No. 1 & 2)

Secretary to Govt of
Khyber Pakhtunkhwa
C&W Department

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 346/2024

Muhammad Zaka Khan
SDO C&W Department Khyber Pakhtunkhwa

--- Appellant

VERSUS

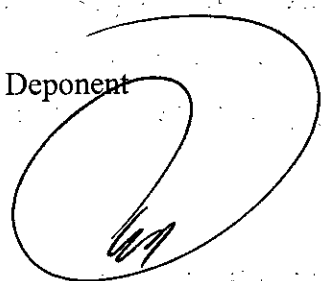
Secretary to Govt of Khyber Pakhtunkhwa
Through Chief Secretary Peshawar & Others

--- Respondent

AFFIDAVIT

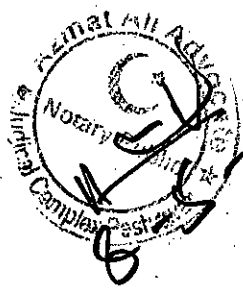
I, Muhammad Idrees Khan, Secretary to Govt of Khyber Pakhtunkhwa, C&W Department, Peshawar hereby affirm and declare that all the contents of the Joint Parawise comments are correct to the best of my knowledge and belief and nothing has been concealed.

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

Deponent


**MUHAMMAD IDREES KHAN
SECRETARY
to Govt of Khyber Pakhtunkhwa
C&W Peshawar.
(Respondent No.1 & 2)**

ATTESTED


Handwritten signature and date: 2024



**GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT**

NO. SO (Lit.)C&W/3-504/2024
Dated Peshawar, the May 07, 2024

AUTHORITY LETTER

Mr. Zeeshan, Section Officer (Litigation), C&W Peshawar having CNIC 17301-2418439-1 is hereby authorized to file the Joint Parawise Comments in case titled "Service Appeal No 346 Of 2024 – Muhammad Zaka Khan Vs Govt of Khyber Pakhtunkhwa Through Chief Secretary C&W Peshawar" on behalf of Secretary C&W Department.

**MUHAMMAD IDREES KHAN
SECRETARY**

**to Govt of Khyber Pakhtunkhwa
C&W Department Peshawar**

**(Respondent No.1 & 2)
Secretary to Govt of
Khyber Pakhtunkhwa
C&W Department**

BEFORE THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH

Writ Petition No. 1482 -A/2023

Muhammad Zaka Khan son of Muhammad Younas Khan, presently Sub-Divisional Officer (SDO) C&W Department Building Division Abbottabad.

...PETITIONER

VERSUS

Govt. of Khyber Pakhtunkhwa, through Chief Secretary, Peshawar & others.

...RESPONDENTS

WRIT PETITION

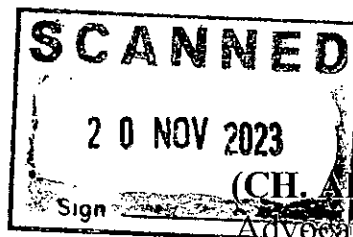
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| 4. | Copy of Service book | 13-16 | "A" |
| 5. | Copy of order | 17 - 18 | "B" |
| 6. | Copy of impugned order dated 17/11/2023 | 19 - 21 | "C" |
| 7. | Copy of the policy | 22-27 | "D" |
| 8. | Copies of medical reports | 28-34 | "E" |
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...PETITIONER

Through

Dated: 20/11 /2023



(CH. ABDUR RAUF CHOHAN)
Advocate High Court, Abbottabad

FILED TODAY

ADD REGISTRAR
PHC, ABBOTTABAD BENCH

Attested
Session Officer (Judicial)
Khyber Pakhtunkhwa
Government
2

(7)

BEFORE THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH

Writ Petition No. 1482 -A/2023

Muhammad Zaka Khan son of Muhammad Younas Khan, presently Sub-Divisional Officer (SDO) C&W Department Building Division Abbottabad.

...PETITIONER

VERSUS

1. Govt. of Khyber Pakhtunkhwa, through Chief Secretary, Peshawar.
2. Secretary to the Govt. of Khyber Pakhtunkhwa Works and Services Department, Peshawar.

...RESPONDENTS

WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN, 1973, FOR DECLARATION TO THE
EFFECT THAT TRANSFER ORDER OF THE
PETITIONER BEARING NO. SOP/C&W D/4-7/2023
DATED 17/11/2023 FROM C&W DEPARTMENT
ABBOTTABAD TO KOHISTAN WHICH IS
ILLEGAL, UNLAWFUL, WITHOUT LAWFUL
AUTHORITY; PERVERSE, ARBITRARY,

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REGISTRAR
PESHAWAR BENCH

Attested
Section Officer (Administrative)
Khyber Pakhtunkhwa
C&W Department

(8)

FANCIFUL, AGAINST THE RULES, POLICY AND
LAW ON THE SUBJECT. HENCE, INEFFECTIVE
UPON THE RIGHTS OF THE PETITIONER.

PRAYER: ON ACCEPTANCE OF THE INSTANT
WRIT PETITION, THE IMPUGNED TRANSFER
ORDER BEARING NO. SOP/C&W D/4-7/2023
DATED 17/11/2023 MAY GRACIOUSLY BE
ORDERED TO BE SET-ASIDE AND THE
RESPONDENTS BE DIRECTED TO ADJUST THE
PETITIONER AT HIS PREVIOUS POSITION.. ANY
OTHER RELIEF WHICH THIS HONOURABLE
COURT DEEMS FIT AND PROPER IN THE
CIRCUMSTANCES OF THE CASE MAY ALSO BE
GRANTED TO THE PETITIONERS.

Respectfully Sheweth;-

1. That the petitioner was initially appointed as Sub-Engineer in the respondents' Department in Abbottabad on 16/03/1988. Copy of Service book is annexed as annexure "A".

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ADH. REGISTRAR
ABBOTTABAD BENCH
C. M. A.

Attested
C. G.
Section Officer (Administration)
Khyber Pakhtunkhwa
G&W Department

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2. That on April 1st, 2022 the petitioner promoted from as SDO at District Abbottabad. Copy of order is annexed as Annexure "B"
3. That the petitioner has served the department more than 35 years with devotion, dedication and honestly for the satisfaction of his high-ups and has left no stone unturned for the betterment of the department during his service.
4. That the respondent No. 2 vide impugned order No. SOP/C&W D/4-7/2023 dated 17/11/2023 transferred and posted the present petitioner from C&W Department Building Division, Abbottabad to C&W Department Kohistan. Copy of impugned order dated 17/11/2023 is annexed as Annexure "C".
5. That, the petitioner has tried his best to convince the respondents for redressal of his grievances and for cancellation of the impugned order but in vain.
6. That, feeling aggrieved the petitioner seeks indulgence of this Honourable Court for setting-

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REGISTRAR
PHD
ABBOTTABAD BENCHAttested
Section Officer (In-charge)
Khyber Pakhtunkhwa
C&W Department

aside the impugned order dated 17/11/2023, inter-alia on the following grounds.

GROUND:-

- a) That, the impugned act/order dated 17/11/2023 is illegal, unlawful, without lawful authority, arbitrary, perverse, discriminatory and politically motivated, against the public interest consequently of no legal effects upon the rights of petitioner. Copy of the policy is annexed as Annexure "D"
- b) That the petitioner has served the department with zeal and zest and for the satisfaction of their superiors.
- c) That the petitioner has almost completed his service and is attaining the age of superannuation and is going to retire from service on 18/04/2025.
- d) That one Hilal Hussain adjusted on 03/11/2023 and soon after the adjustment he was transferred on his choice in his local area just because he is a blue-eyed of the concerned minister.
- e) That it is pertinent to mention here that petitioner has already served one and half year in a far-flung/unattractive area of District Kohistan, Mr. Muhamamd Naeem is Sub-Engineer BPS-16 who has been transferred at Abbottabad as SDO OPS and

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ADD. REGISTRAR
P.H.C. ABBOTTABAD BENCH

Q20/W

Alerted
Section Officer (Litigation)
Khyber Pakhtunkhwa
C&W Department

petitioner is senior most SDO BPS-17 and some important projects are under process under the supervision of petitioner. therefore, the impugned order is liable to be set-aside.

- f) That the petitioner is ill and his spinal cord is not stable, disk are dis-located therefore, the petitioner is unable to travel for far-flung area of District Kohistan. Furthermore, the doctor has advised the petitioner for complete rest. Hence, the impugned order is liable to be set-aside. Copies of medical reports are annexed as Annexure "E".
- g) That about 1710 leaves are on the credit of petitioner and the petitioner has availed only 35 leaves which was Ex Pakistan leaves.
- h) That it is well settled by now that Article 199 casts an obligation on the High Court to act in Aid of law, protect the rights of the citizens within frame work of the Constitution against infringement of law and constitution by the executive authorities, strike a rational compromise and fair balance between the rights of the citizens and action of the state functionaries, claimed to be larger interest of the society. A power is conferred on the High Court under the constitution and is to be exercised subject to constitutional controlled executive action so as to bring it in conformity with the law. Whenever, the executive acts in violation of

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 ADV. REGISTRAR
 P.O. SINGH SARGODHA
 27/11

Section Officer (Litigation)
 Khyber Pakhtunkhwa
 C&M Department
 Alested

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the law an appropriate order can be granted, which will relieve the citizen of effects of illegal action. It is an omnibus article under which relief can be granted to the citizen of the country against infringement of any provision of law or of the constitution. If the citizen of this country are deprived of the guarantee given to them under the constitution, illegally or, not accordance with law then Article 199 can always be invoked for redress.

- i) That even otherwise, there was no lawful justification with the respondent No.2 to transfer/adjust the petitioner. This act of the respondents depicts sheer misuse of powers on their part. Hence, the impugned office orders are liable to be set-aside.
- j) That, the respondent No.2 transferred/posted/ adjusted the petitioner without mentioning any reasons by ignoring all the rules, regulations and policy on the subject, hence, the impugned office order is liable to set-aside/cancelled.
- k) That the respondents have not treated the petitioner in accordance with law, rules and policy on the subject and acted in violation of Article-4 of the Constitution of Islamic Republic of Pakistan 1973 and unlawfully transferred/ adjusted the petitioner which is unjust, unfair, illegal, hence not sustainable in the eye of law.

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 ADD REGISTRAR
 PHC, ABBOLE, KARACHI BENCH
 amw

Ali Akbar
 Session Office, District
 Muzaffargarh
 Government

13

- l) That under Section 24-A of General Clauses Act, 1897, where any authority is vested with the power to make any order, such power shall be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment under which the power is conferred but in the case in hand the power was not exercised as such, rather, the same was misused arbitrarily to the detriment of petitioner without any rhyme or reason, therefore, the impugned act of respondents is not legally maintainable.
- m) That it is inalienable right of every citizen to be treated in accordance with law and especially when placed in similar position with the other persons, thus, the impugned act being nullity in the eye of law is liable to be struck down.
- n) That the impugned order if seen from any angle, both factually and legally is not maintainable, hence, liable to be set-aside.
- o) That there is no other efficacious, speedy or adequate remedy available to the petitioner except the instant constitutional petition.
- p) That the addresses of the parties are correctly mentioned in heading of writ petition.
- q) That the court fee stamp paper worth of Rs. 500/- is affixed.

FILED TODAY

ADJ. REGISTRAR
PHC, ARBO, KARACHI BENCH

[Handwritten signature]

Attest
Section Officer (Registrar)
Khyber Pakhtunkhwa
GDM Department

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- r) That notice of the instant writ petition has been sent to the respondents. Copies of notice and postal receipts are attached as Annexure "F".
- s) That the other grounds shall be urged at the time of arguments with the leave of this Honourable Court.

Under the circumstances it is respectfully prayed that on acceptance of the instant writ petition, the impugned transfer order bearing no. SOP/C&W D/4-7/2023 dated 17/11/2023 may graciously be ordered to be set-aside and the respondents be directed to adjust the petitioner at his previous position. Any other relief which this Honourable Court deems fit and proper in the circumstances of the case may also be granted to the petitioners.

INTERIM RELIEF:-

Till the final disposal of the writ petition impugned order dated 17/11/2023 may graciously be suspended.


...PETITIONER

Through

Dated: 20/11 /2023


(CH. ABDUR RAUF CHOCHAN)
Advocate High Court, Abbottabad

VERIFICATION:-

Verified on oath that the contents of foregoing writ petition are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court


...PETITIONER

FILED TODAY

REG. NO. 1000/2013
MIRAN MANSUR BENSCH

Accepted
Sector Officer (Litigation)
Khyber Pakhtunkhwa
G&W Department

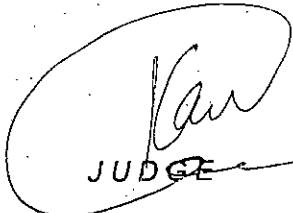
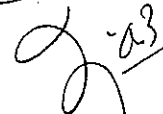
Annex-II

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PESHAWAR HIGH COURT,
ABBOTTABAD BENCH
FORM 'A'
FORM OF ORDER SHEET

| Date of Order or Proceedings. | ORDER OR PROCEEDINGS WITH SIGNATURE OF JUDGE/JUDGES |
|-------------------------------|---|
| 1 | 2 |
| 21.11.2023 | <p>WP No. 1482-A/2023</p> <p>Present:- Chaudhary Abdur Rauf Chohan, Advocate for the petitioner.</p> <p style="text-align: center;">***</p> <p><u>KAMRAN HAYAT MIANKHEL, J.</u>-Learned counsel for the petitioner argued the case at some length, but when confronted that petitioner is a civil servant, he stated that his petition be considered as appeal/representation and sent to respondent No. 2 for its decision according to law.</p> <p>2. So this petition is converted into appeal/representation and sent to respondent No. 2 to decide the same within 30 days form the receipt of this order.</p> <div style="text-align: right; margin-top: 20px;">  JUDGE </div> <div style="text-align: right; margin-top: 10px;">  JUDGE </div> |

Tufail/P

Hon'ble Justice, Kamran Hayat Miankhel
Hon'ble Justice Muhammad Ijaz Khan

Attested
C. G. (Section Officer)
Kyber Pakhtunkhwa
D&W Department

Annex-III

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GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the March 08, 2024

NOTIFICATION:

No.SOE/C&WD/4-7/2024: The Competent Authority is pleased to order the following posting/transfer amongst the officers of C&W Department, with immediate effect, in the best public interest.

| Sr. No. | Name & Designation | From | To | Remarks |
|---------|--|--|---|------------|
| 1 | Mr. Muhammad Zaka Khan AE (BS-17) | SDO O/O XEN C&W Division Kohistan Lower | SDO O/O XEN Building Division Abbottabad | Vice No.2 |
| 2 | Mr. Muhammad Naeem Sub Engineer (BS-16) | SDO (OPS) O/O XEN Building Division Abbottabad | SDO (OPS) O/O XEN C&W Division Kohistan Lower | Vice No.01 |

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Endst: Even Number & Date

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar
2. Chief Engineer (Center) C&W Peshawar.
3. Chief Engineer (East) C&W Abbottabad.
4. Superintending Engineer C&W Circle Abbottabad/Mansehra.
5. Executive Engineer Building Division Abbottabad.
6. Executive Engineer C&W Division Kohistan Lower.
7. District Accounts Officers Abbottabad/Kohistan Lower.
8. PS to Minister for C&W Department Khyber Pakhtunkhwa.
9. PS to Secretary C&W Department Peshawar.
10. PA to Additional Secretary (Admn/Tech) C&W Department Peshawar.
11. PA to Deputy Secretary (Admn/Tech) C&W Department Peshawar.
12. Officers concerned.
13. Office order File/Personal File.

08.03.2024
SECTION OFFICER (Estb)

Approved
Section Officer (Legal)
Khyber Pakhtunkhwa
C&W Department