

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Appeal No. 765/2024

Mr. Shafi Raza, Senior Clerk (BPS-14),
PHE Sub Division Mardan, PHE Mardan.

..... Appellant.

V E R S U S

1. The Secretary Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar.
2. Chief Engineer (Center), Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar.

..... Respondents

I N D E X

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4	Copy of office order of appellant as SDA in OPS dated 25.07.2022	A	6-8
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Dated:


Deponent

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 765/2024

Mr. Shafi Raza, Senior Clerk (BPS-14),
PHE Sub Division Mardan, PHE Mardan.

..... Appellant.

V E R S U S .

1. The Secretary Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar.
2. Chief Engineer (Center), Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar.

..... 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.

RESPECTFULLY SHEWETH,

FACTS:

1. Pertains to record. Hence no comment.
2. Incorrect, hence denied. The appellant was serving as Sub Divisional Accountant (OPS) in PHE Division Mardan before his regular promotion to the post of Senior Clerk/Sub Divisional Accountant (SDA) on 01.12.2023. the appellant has been serving in Mardan since 25.07.2022 **(Copy is attached as Annexure-A)**.
Office of the Chief Engineer (Center) PHE Department transferred the appellant vide office order No.39/CE-9/PHE, dated 16.9.2022 from PHE Division Mardan to PHE Division Buner, however, the appellant under transfer to PHE Sub Division Buner Totalai was retained as SDA in PHE Sub Division Mardan, the order dated 16.09.2022 stand cancelled and also was not acted upon by the appellant **(Copy**

of Office order is attached as Annexure B&C). The appellant is misleading this honorable Tribunal and concealed material facts as the appellant has completed his normal tenure on the same post and the Chief Engineer (Center) being the competent authority transferred the appellant from PHE Division Mardan to PHE Division Karak-II in the best public interest vide office order No.13/CE-9/PHE dated 30.05.2024 (Copy of transfer/posting is attached as Annexure-D). The appellant did not act upon transfer/posting order of the Chief Engineer (Center) and he is still occupying the post of SDA in PHE Division Mardan due to the status quo granted by this honorable Tribunal on 11.06.2024.

3. Incorrect and misconceived. As discussed in para-2 of the above, that the appellant has been serving in Mardan as SDA since 25.07.2022.
4. Incorrect and misconceived, hence denied. The appellant has completed his normal tenure in PHE Division Mardan. In view of Section-10 of Khyber Pakhtunkhwa Civil Servant Act, 1973 the appellant is bound to serve anywhere in the province, therefore, the appeal being devoid of any merit may be dismissed with cost. The posting and transfer of the subordinate is the exclusive domain of the competent authority under Section of the Act *ibid*, which is to be made in the public interest. It is also the prerogative of the authority to assign any duty to the subordinate for better service delivery. It is also worth to mention here that the post of the appellant is clerical in nature and he is not dealing with any administrative power. The appellant also instituted Service Appeal No.1524/2022 titled "Shafi Raza versus Government" before this honorable Tribunal against his transfer/posting, since then the appellant is working on the same station i.e. PHE Division Mardan.
5. No comment.

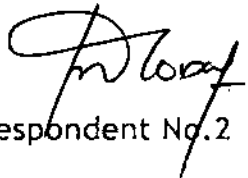
GROUNDS: -

- A. Incorrect and misconceived. As discussed in the preceding paras. However, it is important to mention here that this honorable Tribunal decided the same nature case of the respondent department in Service Appeal No. 1424/2022 titled "Wahid Zaman SDA versus Chief Engineer (Center) and 03 Others" in favour of the respondent department on 23.05.2023 (Copy of the judgment is attached as Annexure-E).
- B. Incorrect and misconceived. As discussed in the preceding paras.
- C. Incorrect and misconceived. As discussed in the preceding paras.
- D. 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. The appellant being Senior Clerk will withdraw his salary against the post of Head Clerk in PHE Division Karak-II. It is also added that the appellant was Junior Clerk and was working as SDA (OPS) in PHE Division Mardan which he never objected and now for the sake of his interest he raised this objection.
- H. Incorrect and misconceived. It is clarified that the respondent no.2 due to status quo could not be posted any other employee on the post of SDA till final decision of this Service Appeal.
- I. Incorrect and misconceived. In view of Section-10 of Khyber Pakhtunkhwa Civil Servant Act, 1973 the appellant is bound to serve anywhere in the province, therefore, the appeal being devoid of any merit may be dismissed with cost, as the employees of this department who are resident of the south are working in other district of the province. The ground of the appellant is not justified and is liable to be dismissed.
- J. Incorrect and misconceived. As discussed in the preceding para-2&4 of the above.
- K. 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 11.06.2024 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 on the post of SDA.



Respondent No.2

Muhammad Yousaf
Chief Engineer(Center)
Public Health Engineering
Department Peshawar



Respondent No.1

Khayyam Hassan Khan
Secretary
Public Health Engineering
Department Peshawar

OFFICE OF THE CHIEF ENGINEER (CENTER)

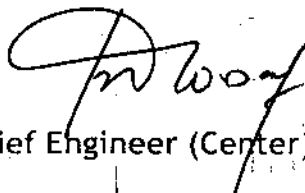
PUBLIC HEALTH ENGG:DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR
 Ph: 091-9217528 E-mail:centrephe@gmail.com, Plot No. 40, Sector B-II, Phase-V, Hayatabad, Peshawar

No. 03 / ICG-7 / PHE,

Dated Peshawar, The 28 / 06 / 2024.

AUTHORITY LETTER

It is certified that Mr. Kamran Shahid, Assistant Social Organizer of Public Health Engineering Division Peshawar is hereby authorized to attend the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No.765/2024 titled "Mr.Shafi Raza VS Government of Khyber Pakhtunkhwa through Secretary PHED & (01) Others" on behalf of all the respondents of Public Health Engineering Department.


 Chief Engineer (Center)

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

Appeal No. 765/2024

Mr. Shafi Raza, Senior Clerk (BPS-14),
PHE Sub Division Mardan, PHE Mardan.

..... Appellant.

V E R S U S

1. The Secretary Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar.
2. Chief Engineer (Center), Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar.

..... Respondents

AFFIDAVIT

I, Muhammad Yousaf, Chief Engineer (Center) Public Health Engineering Department Peshawar being official respondent No.2 do hereby solemnly affirm and declare on oath that the contents of accompanying Joint Para wise comments on behalf of respondents No. 1&2 are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off.



[Handwritten Signature]
DEPONENT

CNIC #: 12101-0926179-3

OFFICE OF THE CHIEF ENGINEER (CENTER)
PUBLIC HEALTH ENGG: DEPTT: KHYBER PAKHTUNKHWA, PESHAWAR
 Ph: 091-9217528, E-mail: centerphed@gmail.com, Plot#40, Sector-D-II, Phase-V, Hayatabad, Peshawar (Azad)

No. 32/CE-9 /PHH.
 Dated Peshawar, the 25/07/2022

OFFICE ORDER

On the recommendation of the Departmental Promotion Committee (DPC) in its meeting held on 29.06.2022, at 10:00 AM under the Chairmanship of Chief Engineer (Center) PHED, the competent authority is pleased to promote the following 23-Nos Junior Clerks (BPS-11) to the post of Senior Clerks (BPS-14), on regular basis, in the best interest of public.

1. Faheem Ullah	9. Altaf Khan	17. Asim Khan
2. Beena Rani	10. Asmat Ullah	18. Shafi Raz Khan
3. Aamir Saleem	11. Aminullah	19. Shafiqat Ullah
4. Tahir Ali Khan	12. Syed Adnan Ali Shah	20. Syed Azmat Shah
5. Irfan Anwar	13. Farhan Ullah	21. Muhammad Rafiq Khan
6. Abbas Rahim	14. Adnan Ali	22. Muhammad Tariq
7. Naveed Ullah	15. M. Azhar ud Din	23. Farzand Ali
8. Wahid Zaman	16. Muhammad Javed	

Consequent upon their regular promotion to the next rank, they will remain on probation for a period of one year, as per Civil Servants act 1973, read with appointment/promotion and transfer rules 1989, as such the following posting/transfer are hereby ordered, with immediate effect.

#	Name	From	To	Remarks
1.	Faheem Ullah	Junior Clerk, PHE Division Lakki Marwat	Senior Clerk, PHE Division Lakki Marwat	Against the existing vacancy
2.	Beena Rani	Junior Clerk, O/o Chief Engineer (Center) PHED	Senior Clerk, O/o Chief Engineer (East) PHED	Against the existing vacancy
3.	Aamir Saleem	Junior Clerk, PHE Division South Waziristan	Senior Clerk, PHE Division South Waziristan at Tank	Against the existing vacancy
4.	Tahir Ali Khan	Junior Clerk, PHE Division Mardan	Senior Clerk/SDA, PHE S/Division Swabi	Vice item No.33
5.	Irfan Anwar	Junior Clerk, PHE Circle D.I.Khan	Senior Clerk, PHE Circle D.I.Khan	Against the existing vacancy
6.	Abbas Rahim	Junior Clerk, PHE Circle Malakand	Senior Clerk/SDA PHE S/Division Saidu Sharif-I District Swat-I	Against the existing vacancy
7.	Naveed Ullah	Junior Clerk, PHE Division D.I.Khan	Senior Clerk/SDA, PHE Sub Division Banda Daud Shah, Karak-I	Vice item No.35
8.	Wahid Zaman	Junior Clerk, PHE Division Bannu	Senior Clerk/SDA, PHE S/Division Bannu-I, Bannu	Vice item No.36
9.	Altaf Khan	Junior Clerk, PHE Circle Bannu	Senior Clerk, PHE Circle Bannu	Against the existing vacancy
10.	Asmat Ullah	Junior Clerk, PHE Division Lakki Marwat	Senior Clerk/SDA, PHE S/Division Kolachi, D.I.Khan	Vice item No.37
11.	Aminullah	Junior Clerk, PHE Division Malakand at Batkhela	Senior Clerk/SDA, PHE S/Division Dargai, Batkhela	Vice item No.27
12.	Syed Adnan Ali Shah	Junior Clerk, PHE Division Peshawar-I	Senior Clerk, O/o Chief Engineer (North) PHED	Against the existing vacancy
13.	Farhan Ullah	Junior Clerk, PHE Circle Peshawar	Senior Clerk, PHE Circle Peshawar	Against the existing vacancy
14.	Adnan Ali	Junior Clerk, O/o Chief Engineer (East) PHED	Senior Clerk, O/o Chief Engineer (South) PHED	Against the existing vacancy

Attested
 [Signature]
 Officer
 Chief Engineer (Center)
 Public Health Engineering Deptt.
 Khyber Pakhtunkhwa, Peshawar

15.	M. Azhar ud Din	Junior Clerk, PHE Division Peshawar-II	Senior Clerk/SDA No. II, PHE Division Peshawar-I	Against the existing vacancy
16.	Muhammad Javed	Junior Clerk, PHE Division Lakki Marwat	Senior Clerk/SDA, PHE S/Division No.2, L/Marwat	Against the existing vacancy
17.	Asim Khan	Junior Clerk, PHE Division North Waziristan	Senior Clerk/SDA, PHE S/Division No-1, Kurram	Vice item No.24
18.	Shafi Raz Khan	Junior Clerk, PHE Division North Waziristan	Senior Clerk/SDA, PHE S/Division Miranshah, North Waziristan	Vice item No.42
19.	Shafiqat Ullah	Junior Clerk, PHE Division Bannu	Senior Clerk, PHE Division Bannu	Against the existing vacancy
20.	Syed Azmat Shah	Junior Clerk, PHE Division Bannu	Senior Clerk/SDA, PHE S/Division Kohat, Kohat	Against the existing vacancy
21.	Muhammad Rafiq Khan	Junior Clerk, PHE Circle Peshawar	Senior Clerk/SDA, PHE S/Division Khyber	Against the existing vacancy
22.	Muhammad Tariq	Junior Clerk, O/o Chief Engineer (Center) PHED	Senior Clerk, O/o Chief Engineer (Center) PHED	Against the existing vacancy
23.	Farzand Ali	Junior Clerk, PHE Division Shangla	Senior Clerk/SDA, PHE S/Division Alpuri, Shangla	Against the existing vacancy
24.	Riaz Hussain	Senior Clerk/SDA No.-1, PHE Division Kurram	Account Clerk (OPS) PHE Division Kurram	Against the existing vacancy
25.	Saeed Khan	Senior Clerk/SDA No.2 PHE Division Kurram	Junior Scale Stenographer (OPS) PHE Division Kurram	Against the existing vacancy
26.	Bashir Nawaz	Senior Clerk, PHE Division Kohat	Junior Scale Stenographer (OPS) PHE Division Kohat	Against the existing vacancy
27.	Waqar Anjum	Senior Clerk/SDA, PHE S/Division Dargai, Bathkela	Senior Clerk, PHE Circle Swat	Against the existing vacancy
28.	Qazi Muhammad Tariq	Senior Clerk, PHE Division Charsadda	Accounts Clerk (OPS) PHE Division Nowshera	Vice item No.32
29.	Abdul Waheed	Senior Clerk/SDA PHE S/Division-2, Bannu	Junior Scale Stenographer (OPS) PHE Division Bannu	Against the existing vacancy
30.	Ubaid Us Salam	Senior Clerk/SDA, PHE S/Division No.1, Abbottabad	Accounts Clerk (OPS), PHE Circle Abbotabad	Against the existing vacancy
31.	Tehsil Khan	Senior Clerk PHE Division Karak-I	Senior Clerk, PHE Circle Kohat	Against the existing vacancy
32.	Yousaf Khan Senior Clerk	Accounts Clerk (OPS) PHE Division Nowshera	Senior Clerk, PHE Division Charsadda	Vice item No.28
33.	Ijaz Hussain	Senior Clerk/SDA PHE S/Division Swabi	Junior Scale Stenographer (OPS), PHE Division Swabi	Against the existing vacancy
34.	Noor Hadi	Senior Clerk/SDA PHE S/Division Lahore,	Senior Clerk (Rev), PHE Division Swabi	Against the existing vacancy
35.	Hafiz-ur-Rehman	Senior Clerk/SDA, PHE Sub Division Banda Daud Shah, Karak-I	Senior Clerk PHE Division Karak-II	Against the existing vacancy
36.	Javed Ali Shah	Senior Clerk/SDA PHE S/Division No. I, Bannu	Junior Scale Stenographer (OPS) PHE Division Bannu	Against the existing vacancy
37.	Mohammad Shafiq	Senior Clerk/SDA PHE S/Division Kolachi, D.I.Khan	Assistant Research Officer (OPS), PHE Circle D.I.Khan	Against the existing vacancy
38.	Muhammad Haroon	Senior Clerk/SDA PHE S/Division Dir. Upper Dir	Senior Clerk (Rev), PHE Division Dir Upper	Against the existing vacancy
39.	M. Ijaz Khan	Senior Clerk/SDA PHE S/Division No.II, Abbottabad	Accounts Clerk (OPS), PHE Division Abbottabad	Vice item No.40
40.	Muhammad Munir Senior Clerk	Accounts Clerk (OPS), PHE Division Abbottabad	Senior Clerk/SDA PHE S/Division No.II, Abbottabad	Vice item No.39

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Attested
ADUllah

41.	Abdus Salam	Senior Clerk/SDA PHE S/Division Battagram	Senior Clerk (Rev), PHE Division Battagram	Against the existing vacancy
42.	Syed Ali Shah	Senior Clerk/SDA, PHE S/Division Miranshah, North Waziristan	Senior Clerk/SDA PHE S/Division-2, Bannu	Vice item No.29
43.	Muhammad Imran Senior Clerk	PHE Division Bannu	Senior Clerk/SDA PHE S/Division Pahar Pur, District D.I.Khan	Against the existing vacancy
44.	Shakil Ahmad Senior Clerk	Accounts Clerk (OPS), PHE Division Charsadda	Senior Clerk/SDA, PHE Sub Division Charsadda	Vice item No.45
45.	Sajjad Hussain Senior Clerk	Senior Clerk/SDA, PHE Sub Division Charsadda	Accounts Clerk (OPS), PHE Division Charsadda	Vice item No.44
46.	Shafi Raza Junior Clerk	PHE Division Mardan	Senior Clerk/SDA (OPS) PHE Sub Division Mardan	Against the existing vacancy
47.	Amin Ullah Junior Clerk	PHE Division Khyber	Senior Clerk/SDA (OPS), PHE S/Division Bajaur	Against the existing vacancy
48.	Mumtaz Ali Junior Clerk	PHE Division Swabi	Senior Clerk/SDA (OPS), PHE S/Division Samarbagh, Dir Lower	Against the existing vacancy
49.	Hamid Khan Junior Clerk	PHE Division Hangu	PHE Circle Peshawar	Against the existing vacancy
50.	Miss Shaista Junior Clerk	PHE Division Swabi	PHE Division Mardan	Vice item No.4
51.	Najeeb Ullah Junior Clerk	PHE Division Karak-I	PHE Circle Bannu	Vice item No.9
52.	Mst. Madiha Wahced	Junior Clerk, PHE Division D.I.Khan	Junior Clerk, PHE Circle D.I.Khan	Vice item No.5
53.	Habib Ullah Junior Clerk	PHE Division Kohistan Upper	PHE Division Shangla	Vice item No.23

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Chief Engineer (Center)

Endstt: No. 32/CE-2/PHE,

Dated Peshawar, the 25/07/2022.

Copy forwarded to:

1. The Accountant General Khyber Pakhtunkhwa Peshawar.
2. The Chief Engineer (North/South/East) PHE Department Peshawar.
3. All Superintending Engineers PHE Circle South/North/East/Center Khyber Pakhtunkhwa.
4. All Executive Engineers PHE Division South/North/East/Center Khyber Pakhtunkhwa.
5. The Section Officer (Estt) PHE Department Peshawar.
6. The Research Officer (W/Q) PHE Central Lab Peshawar.
7. The District Accounts Officer Concerned.
8. The official concerned.

Chief Engineer (Center)

Attested

Section Officer
Admin. Deptt.
Peshawar

CE-7

Annexure

OFFICE OF THE CHIEF ENGINEER (CENTER)
PUBLIC HEALTH ENGG. DEPT. KHYBER PAKHTUNKHWA, PESHAWAR
 Ph. # 091-9217328. E-mail: centcephed@gmail.com. Plot # 10, Sector: D-11, Phase-X, Hayatabad, Peshawar (aiz)

No. 39/ CE-9 /PHE.Dated Peshawar, the 16/09/2022

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9

OFFICE ORDER

The following posting/transfer of the officials are hereby ordered with immediate effect, in the best public interest.

#	Name	From	To	Remarks
1	Mr. Shafi Raza Junior Clerk	SDA (OPS) PHE S/Division Mardan, PHE Mardan	SDA (OPS) PHE S/Division Totali, PHE Buner	Against the existing vacancy
2	Mr. Abdul Malik	Accounts Clerk, PHE Division Mardan	SDA PHE S/Division Mardan, PHE Mardan	Vice item No.1
3	Muslim Khan	Under transfer as Senior Clerk (Revenue), PHE Division Swabi	Accounts Clerk (OPS) PHE Division Mardan	Vice item No.2

[Signature]
Chief Engineer (Center)

Endstt: No. 39/CE-2 /PHE,Dated Peshawar the, 16.09 /2022

Copy forwarded to:

1. The Chief Engineer (North) PHE Department Peshawar.
2. The Superintending Engineer PHE Circle Mardan/Swat.
3. The Executive Engineer PHE Division Mardan/Buner/Swabi.
4. The District Accounts Officer Mardan/Buner/Swabi.
5. The official concerned.

[Signature]
Chief Engineer (Center)

Attested
[Signature]
Administrative Officer
OIO the Chief Engineer (Center)
Public Health Engineering Deptt.
Khyber Pakhtunkhwa, Peshawar



(19)

Annex C
(10)

OFFICE OF THE CHIEF ENGINEER (Center)
PUBLIC HEALTH-ENGG; DEPTT, KHYBER PAKHTUNKHWA PESHAWAR
Ph: 091-9217788 Fax: 091-9217396, e-mail: cesphedpr5419@gmail.co, Plot/40
Sector B-11 Phase-V Hayatabad Peshawar

05/CE-9/PHE
Dated Peshawar, the 25/09/2022

OFFICE ORDER

The following posting/transfer of the officials are hereby ordered with immediate effect, in the best interest of public:

S.No	Name	From	To
1.	Shafi Raza	Under transfer to PHE Sub Division Buner Totalai	Retaind as SDA PHE Sub Division Mardan
2.	Abdul Malik	Under transfer as SDA to PHE Sub Division Mardan	Accounts Clerk PHE Circle Mardan
3.	Iftikhar Ali	Accounts Clerk PHE Circle Mardan	PHE Division Mardan

Chief Engineer (Center)

Erldstt: No. 05/CE-9/PHE:

Dated Peshawar, the September 20, 2022

Copy forwarded for information & necessary action to the:-

1. Chief Engineer (North) PHE Department Khyber Pakhtunkhwa Peshawar
2. Superintending Engineer PHE Circle Mardan/Malakand/Swat.
3. Executive Engineer PHE Division Mardan/Buner/Swabi.
4. District Accounts Officer Mardan/Buner/Swabi.
5. PS to Secretary PHE Deaprtment, Peshawar.
5. Officials concerned.

Chief Engineer (Center)

Attested

Administrative Officer
O/O the Chief Engineer (Center)
Public Health Engineering Deptt.
Khyber Pakhtunkhwa Peshawar



Annexure-D
11

OFFICE OF THE CHIEF ENGINEER (CENTER)
PUBLIC HEALTH ENGG: DEPTT: KHYBER PAKHTUNKHWA, PESHAWAR
Ph.#091-9217528, E-mail: centrephe@gmail.com, Plot#40, Sector-B-II, Phase-V, Hayatabad, Peshawar (Aziz)

No. 13/CE-9 /PHE,
Dated Peshawar, the 30/05/2024.

OFFICE ORDER

The following posting/transfer of SDA/Senior Clerk (BPS-14) are hereby ordered on administrative ground with immediate effect, in the best public interest.

#	Name	From	To	Remarks
1.	Zulfiqar Ahmad Senior Clerk	Working against the post of J.S. Stenographer, PHE Division Mardan.	PHE Division Kohat	Salary will draw against the post of J.S. Stenographer
2.	Shafi Raza Senior Clerk	SDA PHE Sub Division Mardan, PHE Mardan	Senior Clerk, PHE Division Karak-II	Salary will draw against the post of Head Clerk
3.	Mukamil Khan	PHE Circle Mardan	Senior Clerk, PHE Division Lakki Marwat	Salary will draw against the post of Head Clerk

Chief Engineer (Center)

Endstt: No. 13/CE-2 /PHE,

Dated 30/05/2024

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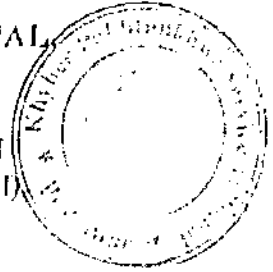
1. The Chief Engineer (South) PHE Department Peshawar.
2. The Superintendent Engineers PHE Bannu/Kohat/Mardan.
3. The Executive Engineers PHE Division Mardan/Kohat/Karak-II /Lakki Marwat.
4. The District Accounts Officer Mardan/Kohat/Karak/Lakki Marwat.
5. The official concerned.

Chief Engineer (Center)

Attested
Administrative Officer
O/O the Chief Engineer (Center)
Public Health Engineering Deptt.
Khyber Pakhtunkhwa, Peshawar

Service Appeal No 1424/2022 filed "Wahid Zaman vs. Chief Engineer (Centre) Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar" decided on 03.05.2023 by Division Bench comprising Judges Abdul Khaliq, Chairman, and Salah-ud-Din, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**



BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
SALAH-UD-DIN ... MEMBER (Judicial)

Service Appeal No. 1424/2022

Date of presentation of appeal03.10.2022
Dates of Hearing.....30.03.2023
Date of Decision.....03.05.2023

Wahid Zaman S/o Umer Niaz. Senior Clerk/SDA Public Health
Sub-Division, Bannu.
.....(Appellant)

Versus

1. Chief Engineer (Centre) Public Health Engineering Department, Khyber Pakhtunkhwa Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa Public Health Engineering Department, Peshawar.
3. The Section Officer (Estt) Public Health Engineering Department, Peshawar.
4. Mr. Javid Ali Shah, Senior Clerk Public Health Engineering Department, Sub-Division, Bannu.

.....(Respondent)

Attested
Attested
Administrative Officer
Chief Engineer (Center)
Public Health Engineering Deptt.
Khyber Pakhtunkhwa, Peshawar

Mr. Abdur Rauf Khan, Advocate.....For appellant.
Mr. Asad Ali Khan,
Assistant Advocate GeneralFor official respondents.
Syed Noman Ali Bukhari,
AdvocateFor private respondent.

ATTESTED
[Signature]
Administrative Officer
Khyber Pakhtunkhwa
Public Health Engineering
Department
Peshawar

SERVICE APPEAL UNDER SECTION 10 OF THE SERVICE TRIBUNAL ACT, WITH OTHER RELEVANT PROVISIONS AGAINST THE IMPUGNED ORDER DATED 21.09.2022 PASSED BY RESPONDENT NO. 1 (APPELLATE AUTHORITY) WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED/DISMISSED.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the facts gathered from the record are that the appellant while working as Junior

[Signature]

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Service Appeal No.174/2022 titled "Wahid Zaman vs. Chief Engineer (Centre) Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar" decided on 01.05.2023 by Division Bench comprising Kullar Arshad Khan, Chairman, and Salah-ud-Din, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Clerk in the office of the Chief Engineer (Centre) Public Health Engineering Division Bannu was promoted to the post of Senior Clerk (BPS-14) vide order dated 25.07.2022 and was retained in the Public Health Engineering Sub-Division Bannu. Vide order dated 15.09.2022, the appellant was transferred to the Public Health Engineering Division Lakki Marwat and private respondent No. 4 was posted in place of the appellant in Public Health Engineering Division Bannu, however, the said order was cancelled vide order dated 16.09.2022. Vide order dated 21.09.2022, the appellant was posted as Accounts Clerk (OPS) Public Health Engineering Division Bannu.

2. Feeling aggrieved from the order dated 21.09.2022, the appellant preferred departmental appeal on 26.09.2022 which was rejected on 27.09.2022 and hence this appeal.

3. On receipt of the appeal and admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeal by filing written replies raising therein numerous legal and factual objections.

4. Arguments have already been heard and record perused.

5. Learned counsel for the appellant argued that the appellant upon promotion of the appellant from the post of Junior Clerk to the post of Senior Clerk, he was posted as SDA in the office of Public Health Engineering Sub-Division Bannu-I vide order dated 25.07.2022. He argued that vide order dated 15.09.2022, the appellant was transferred from the post where he was posted to the post of Senior Clerk (Revenue) Public Health Engineering Sub-Division, Lakki Marwat and

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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Administrative Officer
Public Health Engineering Deptt
Khyber Pakhtunkhwa, Peshawar

on the next day i.e 16.09.2022, the order dated 15.09.2022 was

Service Appeal No. 117/2022 filed "Wahid Zaman vs. Chief Engineer (Centre) Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar" decided on 03.05.2023 by Division Bench comprising Enam-ur-Rahat Khan, Chairman, and Saleh-ud-Din, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar

withdrawn. He further argued that just after 05 days, the appellant was again transferred from the post of SDA Public Health Engineering Sub-Division Bannu to the post of Accounts Clerk (OPS) Public Health Engineering Sub-Division Bannu vide order dated 21.09.2022 without completing his normal tenure. He further argued that the impugned transfer order is against Clause I and IV of Transfer/Posting Policy. In the last, he argued that the appellant has not been treated by the respondent-department in accordance with law and rules on the subject as such the respondents have violated Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973, therefore, the impugned transfer/posting order of the appellant is liable to be set-aside.

6. On the other hand, learned Assistant Advocate General for official respondents has argued that the transfer order of the appellant was made in public interest and the allegations of the appellant regarding mala-fide are wrong and baseless. He next argued that in view of Section-10 of Khyber Pakhtunkhwa Civil Servants Act, 1973, the appellant is bound to serve anywhere in the province, therefore, his appeal being devoid of any merit may be dismissed with cost.

7. Syed Noman Ali Bukhari, Advocate representing private respondent No. 4 adopted the arguments advanced by learned Assistant Advocate General for official respondents.

8. The matter was heard on 30.03.2023 and was fixed for announcement to be made on 10.04.2023 but nobody put appearance on behalf of the appellant, therefore, notices were directed to be issued to the appellant and his counsel for 03.05.2023 for announcement. The office has reported that on 19.04.2023 learned counsel for the appellant

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Assistant Advocate General
Khyber Pakhtunkhwa
Peshawar

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Assistant Advocate General
Chief Engineer (Centre)
Public Health Engineering
Khyber Pakhtunkhwa, Peshawar

Service Appeal No.122/2022 titled "Wahid Zaman vs. Chief Engineer (General Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar" decided on 03.05.2023 by Division Bench comprising Jalla Arshad Khan, Chairman, and Saleh-ud-Din, Member, Juttelul, Khyber Pakhtunkhwa Service Tribunal, Peshawar

was telephonically informed for the date fixed but today neither the appellant nor private respondent are in attendance.

9. The record reflects that the appellant was posted as Senior Clerk/SDA Public Health Engineering Sub-Division Bannu-I vide order dated 25.07.2022. Vide order dated 15.09.2022, he was further transferred as Senior Clerk (Revenue) PHE Division Lakki Marwat and vide order dated 16.09.2022, the order of 15.09.2022 was cancelled, retaining the appellant as SDA Public Health Engineering Sub-Division Bannu-I. Thereafter vide order dated 21.09.2022 the appellant was transferred to the post of Accounts Clerk (OPS) Public Health Engineering Division Bannu. Aggrieved of the order dated 21.09.2022, the appellant preferred departmental appeal on 26.09.2022, which was rejected on 27.09.2022 and, hence, this appeal. It was agitated by the learned counsel for the appellant that the transfer of the appellant was frequent and unusual having been made at the behest of one Javed Ali Shah, therefore, the same was tainted with mala-fide. This allegation of mala-fide could not be supported by any documentary evidence. During the course of hearing, the learned counsel for private respondent referred to an office order dated 03.01.2023, whereby the appellant had further been transferred to the post of Senior Clerk Public Health Engineering Bannu Division. The posting and transfer of the subordinate is the exclusive domain of the competent Authority under Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, which is to be made in the public interest, any exigency or maintaining discipline within the department. It is also the prerogative of the Authority to assign any duty to the subordinate for better service delivery. In the case in hand, the

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Public Health Engineering
Khyber Pakhtunkhwa, Peshawar

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Service Appeal No.1424/2022 titled "Wahid Zaman vs. Chief Engineer (Center) Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar" decided on 03.05.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Salah-ud-Din, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

order dated 21.09.2022 shows that the appellant was under transfer as Senior Clerk (Revenue) Public Health Engineering Division Lakki Marwat, from where he was transferred to the post of Accounts Clerk (OPS) Public Health Engineering Division Bannu while previously, he was working as Senior Clerk SDA Public Health Engineering Sub-Division Bannu-I. Except one posting in Lakki Marwat, where too the appellant had not even assumed the charge, all the postings appear to be in one office i.e under one roof, therefore, the question of hardship is excluded/ruled out and does not arise. The appellant could not point out any mala-fide, illwill or grudge of the department except that within shortest span of time he was transferred from one seat to another but, as the aforesaid, in the same office. The post of the appellant is clerical in nature and he is not dealing with any administrative power so as to consider his case from that aspect that in case he is not allowed to complete tenure at the seat, which would disturb the working of the department. This being so we don't find any merit in this appeal. therefore, it is dismissed. Costs shall follow the event. Consign.

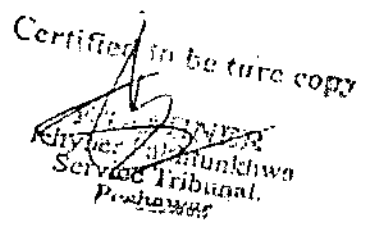
10. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 03rd day of May, 2023.*



KALIM ARSHAD KHAN
Chairman

Attested


Admini...
O/O the Chief Engineer (Center)
Public Health Engineering Deptt:
Khyber P...khtunkhwa, Peshawar

Certified in be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar



SALAH UD DIN
Member (Judicial)