

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

Appeal No. 767/2024

Mr. Zulfiqar Ahmad, Senior Clerk (BPS-14),
PHE 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.

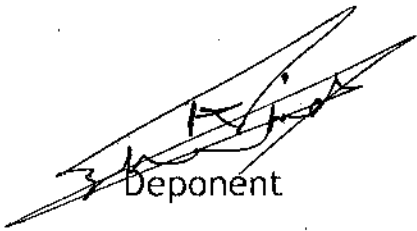
..... Respondents

I N D E X

S.No	Description of Documents	Annexure	Page
1	Joint Para wise comments	-	1-3
2	Authority Letter	-	4
3	Affidavit	-	5
4	Copy of promotion/posting of appellant.	A	6-9
5	Updated version of Khyber Pakhtunkhwa transfer/posting policy	B	10

Dated:

12-07-24


Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 767/2024

Mr. Zulfiqar Ahmad, Senior Clerk (BPS-14),
PHE Division Mardan, PHE Mardan.

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 14199

Dated 11-07-2024

..... 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 and misconceived. Hence denied. It is clarified that the appellant has been performing his duty since 01.04.2012 in PHE Division Mardan as Junior Clerk and upon his promotion on 01.12.2023 as Senior Clerk (BPS-14) was posted in PHE Circle Mardan with the remarks that salary would draw against the post of Junior Scale Stenographer (Copy promotion/posting order is attached as Annexure-A).

3. Incorrect and misconceived. The appellant is misleading this honorable Tribunal and concealed material facts as the appellant has been working in PHE Circle Mardan as Senior Clerk and withdraw his salary against the post of Senior Scale stenographer. The service history in light of service book of appellant reveals that the appellant was working as Junior Clerk in PHE Division/Circle Mardan since 01.04.2012 and after his promotion there was no original cadre post of the appellant, however, he was allowed to withdraw against the post of Junior scale Stenographer.

The appellant completed his normal tenure in PHE Division/Circle Mardan and the Chief Engineer (Center) being the competent authority transferred the appellant from PHE Mardan to PHE Division Bajaur in the best public interest vide office order No.13/CE-9/PHE dated 30.05.2024. However, due to status quo granted by this honorable Tribunal on 11.06.2024 the appellant did not act upon his posting orders and is still occupying the post in PHE Mardan.

4. Incorrect and misconceived, hence denied. The appellant has completed his normal tenure in PHE Division/Circle Mardan. In view of Section-10 of Khyber Pakhtunkhwa Civil Servant Act, 1973 the appellant is bound to serve anywhere in the province (updated version of Khyber Pakhtunkhwa posting / transfer policy is attached as Annexure-B), 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.
5. No comment.

GROUND: -

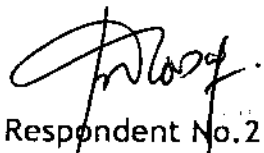
- A. Incorrect and misconceived. As discussed in the preceding paras.
- B. Incorrect and misconceived. As discussed in para-4 of the above.
- C. Incorrect and misconceived. As discussed in the preceding paras.
- D. Incorrect and misconceived. As discussed in the preceding paras.
- E. Incorrect and misconceived. As discussed in the preceding paras.
- F. Incorrect and misconceived. As discussed in the preceding paras.
- G. Incorrect and misconceived. The appellant upon his promotion to the post of Senior Clerk (BPS-14) on 01.12.2023 in PHE Circle Mardan, however, the appellant was allowed to withdraw his salary against the post of Junior Scale Stenographer,

The appellant has been transferred to PHE Division Bajaur. However, due to the status quo granted by this honorable Tribunal on 11.06.2024, the appellant is still occupying the post of in PHE Circle Mardan.

- H. 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 other district are working outside their districts. The ground of the appellant is not justified and is liable to be dismissed.
- I. Incorrect and misconceived. As discussed in the preceding paras.
- J. 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 in PHE Circle Mardan.


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



4

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. D2/IC/57 PHE,

Dated Peshawar, The _____ / _____ /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.767/2024 titled "Mr.Zulfiqar Ahmad 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. 767/2024

Mr. Zulfiqar Ahmad, Senior Clerk (BPS-14),
PHE 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.


DEPONENT

CNIC #: 12101-0926179-3





Annexure

A

6

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

No 071 CE-9 /PHE,

Dated Peshawar, the 01/12/2023

OFFICE ORDER

On the recommendation of the Departmental Promotion Committee (DPC) in its meeting held on 14.09.2023 at 11:00 AM under the Chairmanship of Chief Engineer (Center) PHED, the competent authority is pleased to promote the following 42-Nos Junior Clerk (BPS-11) to the post of Senior Clerk/SDA (BPS-14) on regular basis, in the best interest of public.

1.	Owais	15.	Mumtaz Ali	29.	Raza Ullah
2.	Khalid Khan	16.	Ijaz Ahmad	30.	Ikram Ullah
3.	Nasir Khan	17.	Mukamil Khan	31.	Naveed Ahmad
4.	Ali Rehman	18.	S.Rahim Badshah	32.	Tila Jan
5.	Anwar Zaib	19.	Muhammad Deyar	33.	Nadeem Jan
6.	Asfandiyar	20.	Nasir Ullah	34.	Kafeel Ahmad
7.	Naveed Jan	21.	Zulfiqar Ahmad	35.	Alam Zeb
8.	Umair Jamal	22.	Naeem Jan	36.	Fazal Naeem
9.	Zakir Ullah	23.	Naseer Muhammad	37.	Muhammad Riaz
10.	Wasif Ullah	24.	Muhammad Sheraz	38.	Babar Khan
11.	Aizaz Ahmad	25.	Nek Marjan	39.	Gul Fam
12.	Zaheer ud Din	26.	Mehmood-ul-Hassan	40.	Sardar Ali Khan
13.	Jamil Ahmad	27.	Nasir Khan	41.	Gul Rehman
14.	Shafi Raza	28.	Muhammad Ishaq	42.	Asif Iqbal

The above-named Junior Clerks (BPS-11) on promotion to the post of Senior Clerk (BPS-14), they will remain on probation for a period of one year, as per Civil Servants Act 1973, read with Rules-15 of Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion and Transfer) Rules 1989.

In order to actualize their promotion to the post of Senior Clerk (BPS-14) on regular basis, the following posting/transfer/adjustment are hereby ordered, with immediate effect.

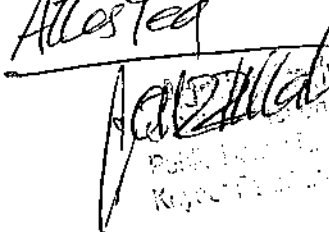
#	Name	From	To	Remarks
1.	Owais	Junior Clerk, O/o Chief Engineer (South) PHED Peshawar	Senior Clerk/SDA, PHE S/Divn: Bara, Khyber	Vice item No 14
2.	Khalid Khan	Junior Clerk, PHE Division Mardan	Senior Clerk, PHE Division Swabi	Salary will draw against the post of J.S. Stenographer
3.	Nasir Khan	Junior Clerk, PHE Division Charsadda	Senior Clerk, PHE Division Swat-I	Against the vacant post
4.	Ali Rehman	Junior Clerk, PHE Division Mardan	Senior Clerk/SDA, PHE S/Division Totali, Buner	-do-
5.	Anwar Zaib	Junior Clerk, PHE Division Mardan	Senior Clerk (Revenue) PHE Division Mardan	-do-
6.	Asfandiyar	Junior Clerk, PHE Division Charsadda	Senior Clerk PHE Division Charsadda	Salary will draw against the post of Accounts Clerk
7.	Naveed Jan	Junior Clerk, PHE Division Charsadda	Senior Clerk, PHE Division Khyber	Salary will draw against the post of J.S. Stenographer
8.	Umair Jamal	Junior Clerk, PHE Division Mardan	Senior Clerk/SDA, PHE S/Division Matta-II, Swat-II	Against the vacant post

Page 1 of 4

Attested

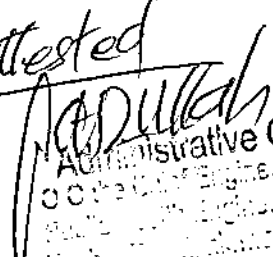
[Signature]
 Chief Engineer (Center)
 Public Health Engineering Deptt.
 Khyber Pakhtunkhwa, Peshawar

#	Name	From	To	Remarks
9.	Zakir Ullah	Junior Clerk, PHE Division Bannu	Senior Clerk/SDA, PHE S/Divn: Wazir, Bannu	Against the vacant post
10.	Wasif Ullah	Junior Clerk, O/o Chief Engineer (South) PHED Peshawar	Senior Clerk, O/o Chief Engineer (South) PHE Department Peshawar	Salary will Draw against the post of Accounts Clerk (BPS-14)
11.	Aizaz Ahmad	Junior Clerk, PHE Division Charsadda	Senior Clerk, PHE Division Peshawar-I	Salary will Draw against the post of Junior Scale Stenographer (BPS-14)
12.	Zaheer ud Din	Junior Clerk, PHE Division Nowshera	Senior Clerk/SDA, PHE S/Divn Hassan Khel, Peshawar-II	Vice item No.55
13.	Jamil Ahmad	Junior Clerk, PHE Division Chitral Lower	Senior Clerk/SDA, PHE S/Divn: Chitral Lower, Chitral	Against the vacant post
14.	Shafi Raza	SDA (OPS), PHE S/Divn Mardan, Mardan	Senior Clerk/SDA, PHE S/Divn: Mardan, Mardan	Post already occupied
15.	Mumtaz Ali	Junior Clerk, PHE Division Swabi	Senior Clerk, PHE Division Swabi	Against the vacant post
16.	Ijaz Ahmad	Junior Clerk, PHE Division Mardan	Senior Clerk, PHE Circle Mardan	Salary will draw against the post of S.S. Stenographer
17.	Mukamil Khan	Junior Clerk, PHE Division Mardan	Senior Clerk, PHE Circle Mardan	Salary will Draw against the post of ARO
18.	S. Rahim Badshah	Junior Clerk, PHE Division Peshawar-I	Senior Clerk, PHE Division Peshawar-I	Vice item No.43
19.	Muhammad Deyar	Junior Clerk, PHE Circle Mardan	Senior Clerk, PHE Division Swabi	Salary will Draw against the post of Accounts Clerk
20.	Nasir Ullah	Junior Clerk, PHE Circle Swat	Senior Clerk, PHE Circle Swat	Against the vacant post
21.	Zulfiqar Ahmad	Junior Clerk, PHE Division Mardan	Senior Clerk, PHE Division Mardan	Salary will Draw against the post of J.S. Stenographer
22.	Naeem Jan	Junior Clerk, PHE Division Charsadda	Senior Clerk PHE Division Buner	Against the vacant post
23.	Naseer Muhammad	Junior Clerk, PHE Division Mardan	Senior Clerk, PHE Division Swat-I	Against the vacant post
24.	Muhammad Sheraz	Junior Clerk, PHE Division Swabi	Senior Clerk, PHE Division Swabi	Salary will Draw against the post of Accounts Clerk
25.	Nek Marjan	Junior Clerk, PHE Division Lakki Marwat	Senior Clerk, PHE Division Lakki Marwat	Salary will Draw against the post of Accounts Clerk
26.	Mehmood-Ul-Hassan	Senior Clerk/SDA (OPS), PHE S/Divn: Takht-e- Nasratti, Karak-II	Senior Clerk/SDA, PHE S/Divn: Hangu, Hangu	Against the vacant post
27.	Nasir Khan	Junior Clerk, PHE Circle Bannu	Senior Clerk, PHE Division Kohat	Salary will Draw against the post of J.S. Stenographer
28.	Muhammad Ishaq	Junior Clerk, PHE Division Bathkela	Senior Clerk (Rev), PHE Division Bathkela	Vice item No.47
29.	Raza Ullah	Junior Clerk, PHE Division Dir Upper	Senior Clerk, PHE Division Dir Upper	Against the vacant post
30.	Ikram Ullah	SDA (OPS), PHE Sub Divn: No.2, Swat-I	Senior Clerk/SDA, PHE Sub Divn: No.2, Swat-I	Post already occupied

Attested

 Officer
 Peshawar (Center)
 Peshawar
 Project Peshawar

#	Name	From	To	Remarks
31.	Naveed Ahmad	Junior Clerk, O/o Chief Engineer (East) PHED Peshawar	Senior Clerk, O/o Chief Engineer (East) PHED Peshawar	Against the vacant post
32.	Tila Jan	Junior Clerk, PHE Division Mardan	Senior Clerk, PHE Division Buner	Salary will Draw against the post of Accounts Clerk
33.	Nadeem Jan	Junior Clerk, PHE Division Haripur	Senior Clerk/SDA, PHE S/Divn: Ghazi, Haripur	Against the vacant post
34.	Kafeel Ahmad	Junior Clerk, PHE Division Charsadda	Senior Clerk, PHE Division Mohmand	Salary will Draw against the post of Junior Scale Stenographer (BPS-14)
35.	Alam Zeb	SDA (OPS), PHE S/Division Kohistan (L)	Senior Clerk/SDA, PHE S/Division Kohistan (L)	Post already occupied
36.	Fazal Naeem	SDA (OPS) PHE Sub Division Warai, Dir Upper	Senior Clerk/SDA, PHE Sub Division Warai, Dir Upper	Post already occupied
37.	Muhammad Riaz	Junior Clerk, PHE Division Kohistan Lower	Senior Clerk PHE Division Kohistan Lower	Against the vacant post
38.	Babar Khan	Junior Clerk, PHE Division Mansehra	Senior Clerk/SDA, PHE S/Divn: Mansehra, Mansehra	Vice item No.45
39.	Gul Fam	Junior Clerk, PHE Circle Mansehra	Senior Clerk/SDA, PHE S/Divn: Balakot, Mansehra	Against the vacant post
40.	Sardar Ali Khan	SDA (OPS), PHE S/Divn Daggar-II, Buner	Senior Clerk/SDA, PHE S/Divn: Daggar-II, Buner	Post already occupied
41.	Gul Rehman	Junior Clerk, PHE Division Kohistan (Upper)	Senior Clerk/SDA, PHE S/Division Dasso, Kohistan Upper	Against the vacant post
42.	Asif Iqbal	SDA (OPS), PHE S/Divn: Samarbagh, Dir Lower	Senior Clerk/SDA, PHE S/Divn: Samarbagh, Dir Lower	Post already occupied
43.	Alamgir Khan	Senior Clerk, PHE Division Peshawar-I	Accounts Clerk (OPS), O/o Chief Engineer (North) PHED Peshawar	Against the vacant post
44.	Waheed Ullah	Senior Clerk/SDA, PHE S/Divn: Bara, Khyber	Accounts Clerk (OPS), PHE Circle Khyber	-do-
45.	Ajmal Khan	Senior Clerk/SDA, PHE S/Divn: Mansehra, Mansehra	Senior Clerk/SDA, PHE S/Divn: Oghi, Mansehra	Vice item No.46
46.	Asad Sarwar Junior Clerk	Senior Clerk/SDA (OPS), PHE S/Divn: Oghi, Mansehra	Junior Clerk, PHE Division Mansehra	Against the vacant post
47.	Zeeshan Khan Junior Clerk	Senior Clerk Revenue (OPS), PHE Division Batkhela	Junior Clerk PHE Division Swat-I	-do-
48.	Muhammad Kashif	Junior Clerk, PHE Division Hangu	Senior Clerk/SDA (OPS), PHE S/Divn: Takht-e-Nasratti, Karak-II	Vice item No.26
49.	Tahir Ali Khan	Senior Clerk/SDA, PHE Sub Divn: Tangi, Charsadda	Accounts Clerk (OPS), PHE Circle Mardan	Vice item No.50
50.	Muslim Khan	Accounts Clerk (OPS), PHE Circle Mardan	Senior Clerk/SDA, PHE Sub Divn: Tangi, Charsadda	Vice item No.49
51.	Mujahid Shah	Junior Clerk, PHE Division Swat-II	Junior Clerk PHE Division Batkhela	Vice item No.28

77

Attested

 Administrative Officer
 O/o the Chief Engineer (Center)
 Peshawar, Peshawar Deptt.
 Peshawar

#	Name	From	To	Remarks
52.	Kafeel Ahmad Junior Clerk	PHE Division Charsadda	PHE Division Hangu	Against the vacant post
53.	Farhan Ullah	Senior Clerk (Rev), PHE Division Hangu	Senior Clerk/SDA, PHE S/Divn Kohat, Kohat	Vice item No.54
54.	Faheem Ullah	Senior Clerk/SDA, PHE S/Divn Kohat, Kohat	Senior Clerk/SDA, PHE S/Divn: Shakardara	Against the vacant post
55.	Muneeb-Ur-Rehman	Senior Clerk/SDA, PHE S/Divn Hassan Khel, Peshawar-II	Computer Operator (OPS), PHE Division Peshawar-II	-do-

[Signature]
Chief Engineer (Center)

Endstt: No 07/CE-2/PHE,

Dated Peshawar, the 01/12/2023

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 Officers Concerned.
8. The official concerned.

[Signature]
Chief Engineer (Center)

Attested

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

UPDATED VERSION OF THE KHYBER PAKHTUNKHWA
POSTING / TRANSFER POLICY
(UPTO 31.1.2018)

Statutory Provision.

Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973.

Posting and Transfer. 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:-

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region;

Provided further that, where a civil servant is required to serve in a post outside a service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

Posting/transfer policy of the Provincial Government.

- i) All the posting/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants
- ii) All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities for seeking posing/transfers of their choice and against the public interest.
- iii) All contract Government employees appointed against specific posts, can not be posted against any other post.
- iv) Existing tenure of posting/transfer of three (03) years for settled areas and two (02) years for unattractive/hard areas shall be reduced to two (02) years for settled areas, 01½ years for unattractive areas and one year for hard areas.

v) 71[]

71 Para-1(v) regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No. SOB-VI (E&AD) 1-4/2008/Vol-VI, dated 3-6-2008. Consequently authorities competent under the NWFP Government Rules of Business, 1955, District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make Posting/Transfer subject to observance of the policy and rules.

Atsied
Admin. Officer
Chief Engineer (Center)
Public Health Engineering Deptt.
Khyber Pakhtunkhwa, Peshawar