

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 1063/2024

Mr. Shad Muhammad Khan

--- Appellant

VERSUS

Govt of Khyber Pakhtunkhwa & Others

--- Respondent

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Deponent



Zeeshan,

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

(1)

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR
APPEAL NO.1063 OF 2024

Mr. Shad Muhammad --- Appellant
AE / SDO C&W Department
Presently waiting for Posting

VERSUS

1. Secretary to Govt of Khyber Pakhtunkhwa --- Respondent
C&W Department, Peshawar
2. Govt of Khyber Pakhtunkhwa through
Chief Secretary Peshawar

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. Pertains to record needs no comments.
2. Mr. Shad Muhammad was inducted as sub Engineer in C&W Department and subsequently promoted as AE /SDO (BS-17) on 20.01.2022.
3. As per record of this department, the date of Birth of the appellant is 16.04.1965. Hence, he shall stand retired from Govt. Service on attaining the age of superannuation i-e. 60 years w.e.f 15.04.2025.
4. Incorrect. In this regard, it is submitted that Mr. Shad Muhammad AE / SDO (BS-17) C&WD, while working as SDO O/O XEN C&W Division Torghar transferred and posted as SDO O/O XEN Highway Division Mansehra since 21.09.2023 (**Annex-I**). However, on 15.02.2024 the appellant was transferred and directed to report to C&W Secretariat Peshawar on Administrative Grounds (**Annex-II**), but the same order canceled by the Department on Administrative Ground on 16.02.2024 (**Annex-III**). Later on, the appellant has been transferred from Highway Division Mansehra and directed to report to C&W Department on 23.02.2024 on administrative ground (**Annex-IV**).
5. In Correct as Explained in Para-4 above.

- 2
6. In Correct as Explained in Para-4 above.
 7. In Correct as Explained in Para-4 above.
 8. In Correct as Explained in Para-4 above.
 9. C&W Department granted 60 days Ex-Pakistan leave in favor of Mr. Shad Muhammad w.e.f 21.02.2024 (**Annex-V**) in light of his written request.
 10. In Correct as Explained in Para-4 above
 11. The appellant was authorized to hold the charge of the vacant post of SDO O/O XEN C&W Division Torghar purely as internal stop gap arrangements on 23.04.2024 (**Annex-VI**).
 12. In Correct as Explained in Para-11 above.
 13. In Correct as Explained in Para-11 above.
 14. In Correct the appellant (Mr. Shad Muhammad Khan) AE/SDO (BS-17) C&W Department submitted Departmental Appeal with the request to set aside his transfer order dated 24.04.2024 and restore his transfer/order dated 23.04.2024 as SDO C&W Division Tor Ghar. In the mean while the appellant has also filed W.P. No. 455-A of 2024 in Peshawar High Court Bench with the same request. Peshawar High Court Abbottabad Bench has disposed of the said writ Petition on 30.04.2024 with the direction to decide the Departmental appeal of the petitioner within fifteen (15) days from the date of receipt of the departmental appeal and, thereafter, the petitioner shall be at liberty to approach the proper forum by filing an appropriate remedy. The same was processed and submitted a Note to Chief Secretary Khyber Pakhtunkhwa for appropriate order on 31.05.2024, which is not yet returned till date.
 15. Incorrect as explain in Para-14 above.
 16. Incorrect as explain in Para-14 above.
 17. No Comments.

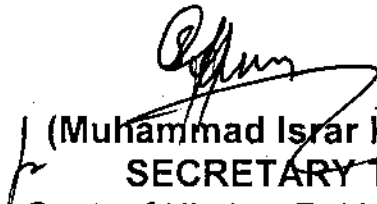
GROUNDS

- a. Incorrect, the appellant himself requested that he may be authorized for the purpose of pay. Accordingly he was authorized for the purpose of pay against the vacant post of SDO O/O Highway Division Haripur w.e.f 01.03.2024 till further order (**Annex-VII**).
- b. Incorrect as explained in Para-14 of the Facts.
- c. 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.
- d. Incorrect, as explained in Para-C of the grounds.
- e. Incorrect and misconceiving, as the appellant has been treated as per law / rules and regulation laid down by the Government.
- f. Incorrect. The transfer/posting of the appellant has been made in the best public interest, as there is no mala-fide intention of the

respondents, no discriminatory action and no violation of the rights of the appellant has been made.

- g. Incorrect, as explained in Para-C of the grounds.
- h. Incorrect, the appellant has been dealt with as per law & rules.
- i. 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
- j. Incorrect as explained in para-14 of the facts.
- k. Incorrect, the appellant has no inherent right for his choice posting.
- l. Incorrect, 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. 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”**.
- n. Incorrect, as per Para-L of the grounds.
- o. Pertains to record, needs no comments.
- p. The Respondents would like to seek permission of this Hon’able Tribunal to advance more grounds during the time of arguments.
- q. Pertains to record needs no comments.
- r. Incorrect as explained in above Paras.

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


 (Muhammad Israr Khan)
SECRETARY TO
 Govt. of Khyber Pakhtunkhwa
 Communication & Works Department
 (Respondents No. 1 & 2)

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 1063/2024

Mr. Shad Muhammad Khan --- Appellant

VERSUS


Govt of Khyber Pakhtunkhwa & Others --- Respondent

AFFIDAVIT

I, Muhammad Israr, Secretary to Govt of Khyber Pakhtunkhwa, C&W Department, Peshawar hereby affirm and declare that all the contents of the 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-parte nor their defense has been struck off.

Deponent


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

ATTESTED






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

NO. SO (Lit.)C&W/3-511/2024
Dated Peshawar, the August 28, 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. 1063 of 2024 Shad Muhammad Khan Vs Govt Of Khyber Pakhtunkhwa & Others" on behalf of Secretary C&W Department.


/ MUHAMMAD ISRAR
SECRETARY
to Govt of Khyber Pakhtunkhwa
C&W Peshawar.
(Respondent No.1 & 2)



Annex-I (6)
GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the September 21, 2023

NOTIFICATION:

No. SOE/C&WD/4-7/2022:

The Competent Authority (Secretary C&WD) 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. Shad Muhammad Khan SDO (BS17)	SDO O/O XEN C&W Division Tor Ghar	SDO O/O XEN Highway Division Mansehra	Vice # 2
2	Mr. Sajjad Ahmad Sub Engineer (BS-16)	SDO (OPS) O/O XEN H/W Division Mansehra	SDO (OPS) O/O XEN C&W Division Tor Ghar	Vice # 1

2. No (TADA) and transfer grant will be allowed to the aforesaid officers.

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Chief Engineer (Centre) C&W Peshawar.
3. Chief Engineer (East) C&W Abbottabad.
4. Superintending Engineer C&W Circle Mansehra.
5. Executive Engineer Highway Division Mansehra.
6. Executive Engineer C&W Division Tor Ghar.
7. District Accounts Officer Mansehra/Tor Ghar.
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.

all
21/09/2023
(ZAHOR SHAH)
SECTION OFFICER (Estb)

21.9.23^{5/c}
4.45 P.M

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

25.09.2023
SECTION OFFICER



Annex-II (7)

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

Dated Peshawar the February 15, 2024

NOTIFICATION:

No. SOE/C&WD/4-7/2024: The Competent Authority is pleased to transfer Mr. Shad Muhammad Khan AE/SDO (BS-17) C&WD, presently working as SDO O/O Executive Engineer Highway Division Mansehra and direct him to report to C&W Secretariat Peshawar on Administrative Ground.

2. Consequent upon above, the Competent Authority is further pleased to authorize Mr. Salah-Ud-Din (BS-17) SDO O/O Executive Engineer Building Division Mansehra to hold the additional charge of the post of SDO in O/O Executive Engineer Highway Division Mansehra to be vacated by Mr. Shad Muhammad Khan, purely on stop gap arrangement, with immediate effect, in the best public interest, till further order.

3. No TA/DA/Transfer grant will be allowed/paid to the aforesaid officers.

**SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department**

Copy is forwarded to the:-

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

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

15.02.2024
SECTION OFFICER (Estb)

15.02.2024
SECTION OFFICER (Estb)



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the February 16, 2024

NOTIFICATION:

No.SOE/C&WD/4-7/2024: The Competent Authority is pleased to cancel/withdraw this department posting/transfer notification of even number dated 15.02.2024. The Competent Authority is further pleased to allow Mr. Shad Muhammad Khan AE (BS-17) C&WD to continue work as SDO O/O Executive Engineer Highway Division Mansehra, in the best public interest.

2. No TA/DA/Transfer grant will be allowed/paid to the officers.

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Copy is forwarded to the:-

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

Secum
16.02.2024
SECTION OFFICER (Estb)

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

15.04.2024
SECTION OFFICER (Estb)



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the February 23, 2024

Amended

9

NOTIFICATION:

No.SOE/C&WD/4-7/2024: The Competent Authority is pleased to transfer Mr. Shad Muhammad Khan AE/SDO (BS-17) C&WD, presently working as SDO O/O Executive Engineer Highway Division Mansehra and direct him to report to C&W Secretariat Peshawar on Administrative Ground.

2. No TA/DA/Transfer grant will be allowed/paid to the aforesaid officer.

**SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department**

Copy is forwarded to the:-

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

Am

23-02-2024

SECTION OFFICER (Estb)

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

23-04-2024
SECTION OFFICER (Estb)



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the February 28, 2024

Annex-V

10

NOTIFICATION:

No.SOE/C&WD/1-7/2022: Sanction is hereby accorded, in terms of provision of Khyber Pakhtunkhwa Civil Servants Revised Leave Rules 1981 to the grant of 60 days Ex-Pakistan leave w.e.f. **21.02.2024** or from the date of availing in respect of Mr. Shad Muhammad Khan Assistant Engineer/SDO (BS-17) C&W Department, presently waiting for posting to visit abroad for domestic affairs.

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 (East) C&W Abbottabad.
3. Mr. Shad Muhammad Khan Assistant Engineer/SDO (BS-17) C&W Department presently waiting for posting.
4. PS to Secretary C&W Department Peshawar.
5. PA to Additional Secretary (Admn/Tech) C&W Department Peshawar.
6. PS to Deputy Secretary (Admn/Tech) C&W Department Peshawar.
7. Office order File/Personal File.

Shah
28-02-2024
(ZAHOR SHAH)
SECTION OFFICER (Estb)

C. J.
Section Officer (Litigation)
Khyber Pakhtunkhwa
C&W Department



Amnen - VI

(11)

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

Dated Peshawar the April 23, 2024

NOTIFICATION:

No. SOE/C&WD/4-7/2024: The Competent Authority is pleased to authorize Mr. Shad Muhammad Khan Assistant Engineer/SDO (BS-17) C&WD, presently waiting for posting to hold the charge of the vacant post of SDO in O/O Executive Engineer C&W Division Tor Ghar, purely as internal stop gap arrangement, by relieving Engr. Hilal Hussain Shah SDO from additional charge, with immediate effect, in the best public interest.

2. No TA/DA/Transfer grant will be allowed/paid to the aforesaid officers.

**SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department**

Copy is forwarded to the:-

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

Amnen
23.04.2024
SECTION OFFICER (Estb)

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

2
7/5



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the May 08, 2024

ORDER:

No.SOE/C&WD/1-7/2022: The Competent Authority is pleased to authorize Mr. Shad Muhammad Khan Assistant Engineer/SDO (BS-17) C&WD, presently waiting for posting, for the purpose of pay against the vacant post of SDO O/O XEN Highway Division Haripur w.e.f. 01.03.2024 till further order.

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Copy is forwarded for information to the:-

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

Alam
08.05.2024
SECTION OFFICER (Estb)

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

