

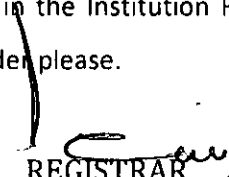



Form- A

FORM OF ORDER SHEET

Court of _____

Case No.-

16158 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	18/12/2020	<p>The appeal of Naseem Khan presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-	01.02.2021	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>01/02/2021</u>.</p> <p> CHAIRMAN</p> <p>Counsel for the appellant present.</p> <p>Requests for time to further prepare the brief.</p> <p>Adjourned to 18.05.2021 for hearing before S.B.</p> <p> Chairman</p>
	10.03.2021	<p>Mr. Afrasiyab Wazir, junior counsel for appellant is present. He requested for adjournment on the ground that learned senior counsel namely Mr. Noor Muhammad Khattak is indisposed of ^{appearance} today. Adjourned to 17.06.2021 on which date file to come up for preliminary hearing before S.B.</p> <p> (MIAN MUHAMMAD) MEMBER (E)</p>

Wf
Premeter

17.06.2021

Junior to counsel for the appellant present and states that Senior counsel is not in attendance due to general strike of the bar.

Adjourned to 21.09.2021 for preliminary hearing before S.B.


Chairman

21.09.2021

Learned counsel for the appellant present.

Learned counsel for the appellant sought time to further prepare the brief. Adjourned. To come up for preliminary hearing before the S.B on 09.11.2021.


(MIAN MUHAMMAD)
MEMBER (E)

09.11.2021

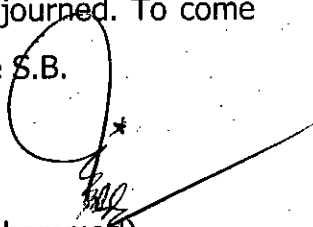
Counsel for the appellant seeks time for preparation. Request is accorded. To come up for preliminary hearing on 18.01.2022 before S.B.


Chairman

18.01.2022

Junior of learned counsel for the appellant present.

Junior of learned counsel for the appellant requests for adjournment on the ground that learned senior counsel is busy before the Peshawar High Court, Peshawar. Adjourned. To come up for preliminary hearing on 15.03.2022 before S.B.


(Mian Muhammad)
Member (E)

15.03.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 15.6.2022. for the same as before.


Reader.

21st April, 2022

Appeal No. 696/2021 titled Mukhtiar Ali Vs. Health Department was being argued when it was pointed out that relating to the same posting order impugned in that appeal, the instant appeal titled "Naseem Khan Vs. Health Department" was also pending and fixed for arguments on 15.06.2022. The said file was requisitioned as the appeal titled Mukhtiar Ali Vs. Health was adjourned for tomorrow, therefore, this appeal is also adjourned for the said date.


(MIAN MUHAMMAD)
Member (E)

Chairman

SA 16158/2020

22nd April, 2022

Counsel for the appellant present. Mr. Naseerud Din Shah,
Assistant A.G for the respondents present. Arguments heard and
record perused.

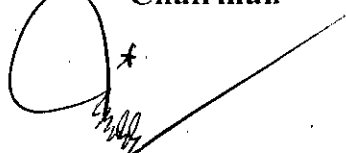
Vide our detailed judgment of today, containing 10 pages,
in connected Service Appeal No. 696/2021 titled "Mukhtiar Ali
Vs. The Secretary Health Department, Government of Khyber
Pakhtunkhwa Peshawar and others" we dismiss this appeal and
would hold that it is for the department to decide fairly and justly,
who should be posted where and when. Consign.

3. *Pronounced in open court in Peshawar and given under our
hands and seal of the Tribunal this 22nd day of April, 2022.*




(KALIM ARSHAD KHAN)

Chairman



(MIAN MUHAMMAD)

Member (E)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2020

NASEEM KHAN

VS

HEALTH DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1	Memo of appeal	1- 3.
2	Policy	A	4- 7.
3	Application	B	8.
4	Letter	C	9.
5	Letter	D	10.
6	Order	E	11.
7	Departmental appeal	F	12- 13.
8	Judgment	G	15- 19.
9	Order	H	20
10	Vakalat nama	21.

APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 16158 /2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1661

Mr. Naseem Khan Office Assistance (BPS-16),
Directorate Health Service, Merged Area, Warsak Road, Peshawar.

18/12/2020

..... **APPELLANT**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director General Health Service Khyber Pakhtunkhwa Peshawar.
- 3- The District Health Officer Peshawar.

..... **RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENT BY NOT POSTING/TRANSFERRING THE APPELLANT AT OFFICE OF THE DISTRICT HEALTH OFFICER PESHAWAR INSPITE OF THE AVAILABILITY OF VACANT POST OF THE OFFICE ASSISTANT AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYERS:

That on acceptance of this appeal the appellant may very kindly be posted/ transferred at the office of the District health officer Peshawar as office Assistant (BPS-16). Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

1. That appellant is the employee of respondent Department and is serving as Office Assistance (BPS-16) quite efficiently and up to the entire satisfaction of his superiors.
2. That appellant had already completed his normal tenure of three years as office assistant (BPS-16) in the Directorate of Health Service, merged area, Peshawar. That under the HR placement policy of the respondent Department the appellant submitted an application through proper channel for his transfer/posting and as such the same was properly forwarded vide letter dated 25.06.2020 to the Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar i.e. respondent No.2. Copies of the policy, application dated

Filed to-day

Registrar/

18/12/2020

25.06.2020 and letter dated 25.06.2020 are attached as annexure.....**A, B & C.**

3. That it is pertinent to mention here that the District Health Officer Peshawar i.e. respondent No.3 vide letter dated 25.06.2020 (No objection certificate) informed the respondent No.2 that one post of Office Assistant (BPS-16) is lying vacant under the control of District Health Officer, District Peshawar and the undersign has no objection if the appellant has transferred to the said vacant post. Copy of the letter dated 25.06.2020 is attached as annexure**D.**
4. That the appellant was quite hopeful for his transfer to the office of District Health Officer, Peshawar but astonishingly the respondents vide order dated 10.08.2020, transfer one of the employee namely Mukhtiar Ali, Office Assistant. Copy of the order is attached as annexure**E.**
5. That appellant feeling aggrieved from the order dated 10.08.2020 preferred Departmental appeal followed by writ petition No. 4352-P/2020 before the Peshawar High Court, Peshawar. That the aforementioned writ petition was disposed of vide judgment dated 14.10.2020 with the view that **"As transfer, posting falls exclusively in the terms and conditions of civil service, therefore, this Court could not assume jurisdiction, in matter exclusively fall within the terms and conditions of service in view of explicit bar placed on jurisdiction of Islamic Republic of Pakistan, 1973"**. Copies of the Departmental appeal & judgment are attached as annexure.....**F & G.**
6. That it is pertinent to mention that the post of Office Assistant which was filled up through posting of Mr. Mukhtiar Ali is once again became lying vacant by transferring him from the Office of DHO, Peshawar to Naseer Ullah Khan Babar Mamorial Hospital, Kohat Road, Peshawar vide order dated 29.10.2020 but inspite of that the respondents are not willing to post/ transfer the appellant against the post of Office Assistant at Office of the District Health Officer. Copy of the order is attached as annexure.....**H.**
7. That the appellant waited for ninety days but no reply has been received so far from the quarter concerned on his Departmental appeal. Hence the present appeal on the following grounds amongst the others.

GROUND:

- A-** That the inaction of the respondents by not transferring/posting the appellant against the post of Office Assistant (BPS-16) at Office of the District Health Officer is against the law, facts and norms of natural justice hence liable to be set aside .

- B-** That appellant has not been treated in accordance with law and Rules by the respondent on the subject noted above and as such the respondent violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C-** That the respondent acted in arbitrary and malafide manner by not transferring the appellant against the post of Office Assistant at Office of the District Health Officer.
- D-** That the appellant has been discriminated by the respondents on the subject noted above and as such the respondents violated the existing rules and policy.
- E-** That inspite of vacant position in Office of the District Health Officer the respondent Department is not willing to post the appellant against the said vacant post of Office Assistant, which is against norms of natural justice.
- F-** That appellant has been completed his three years tenure in the Directorate of Health Services, merged area, Peshawar but inspite of that the respondents ignoring the repeated request of the appellant regarding his transfer.
- G-** That petitioner seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly prayed that the appeal of appellant may very kindly be accepted as prayed for.

Dated: 18.12.2020.

APPELLANT


NASEEM KHAN

THROUGH:


NOOR MOHAMMAD KHATTAK

AFRASIAB KHAN WAZIR

&

HAIDER ALI

Advocates



Government of Khyber Pakhtunkhwa
Health department

A-4

Dated Peshawar the 06th July, 2020

NOTIFICATION

No. SOG/HD/1-2/P&T/2020: 1215 The Competent Authority in Health Department is pleased to notify the following placement policy of Human Resource for Health (HRH)-BS 1-16 in Health Department, Khyber Pakhtunkhwa:

HR PLACEMENT POLICY

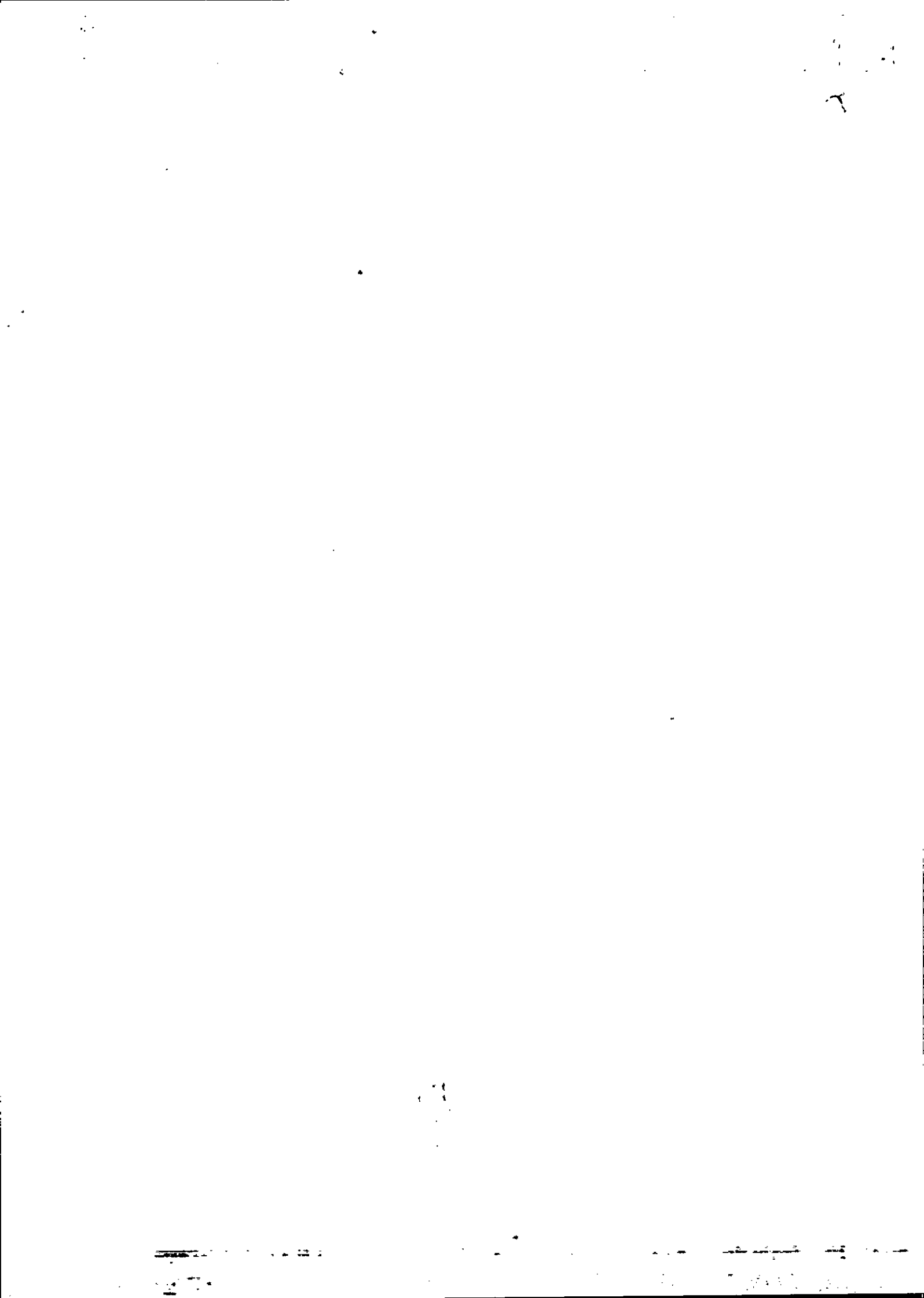
KEY PRINCIPLES:

This interim policy aims to improve performance of health department by encouraging efficiency and effectiveness; act as a check against irregularities; and ensure that all postings and transfers are made on merit and consistent with good HR practices. The following principles constitute the essence of the policy.

1. Minimum posting duration shall not be less than 1 year. Any exceptions should show compelling reasons.
2. For positions (particularly those of ministerial staff that involves Human Resource, accounts, procurements, related activities), maximum posting duration shall be two (02) years.
3. For fresh recruitment, all these placements shall be determined by the order of merit as per merit list of selection/recruitment committee.
4. Mutual transfers may be considered, if not detrimental to service delivery, or unless there are other reasons, to be recorded by the committee. This principle is not applicable to any special batch of employees, such as new staff recruited.
5. Consistency and fairness should be maintained in the amount of time individuals spend in difficult areas.
6. Individuals should not be posted out of their home station in their year of retirement without their consent.
7. Employees should not be allowed to make on the same seat for more than two years to discourage stakes.

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[Handwritten initials]





Government of Khyber Pakhtunkhwa
Health department

5

PROCEDURE:

1. The Director General Health Service (DGHS) shall receive applications. Only complete applications submitted through email or post shall be considered by the Department. Additional Director General (HR) shall compile these applications. Applications received before 10th of each month will be considered in the same month.
2. Additional Director (HR) shall be the Secretary/ Convener of the Placement Committee.
3. Director Health Services, Merged Areas will be the member for posting/ transfer for Merged Areas.
4. After having received consolidated applications, the Additional Director General (HR) shall then be responsible for:
 - a. Vetting applications and preparing a working papers on the basis of vacant posts with the following details:
 - i. Tenure of applicant
 - ii. Qualification
 - iii. Relevance
 - iv. General reputation
 - v. Details for their last post
 - vi. Transferrable/ Non transferrable posts
 - vii. Service/ hard area
 - viii. Any other genuine reason i.e. domestic issues

The working paper shall thereafter be submitted to the DG Health Services before the 16th of each month.

5. This working paper shall be examined between 17th and 23rd of the month. Additional Director General (HR) shall thereafter call a meeting of Human Resource for Health Placement Committee II (HRHPC-II) by 24th and 25th of the month.

11

11

11



Government of Khyber Pakhtunkhwa
Health department

6

6. Upon examination and discussion on the working papers, the committee shall then meet and discuss cases under consideration as per criteria given in para-2(a).
7. Once approved by the committee a report should be submitted to the Deputy Secretary (Admin) and then to the Secretary Health as a proper channel for onward submission to Minister Health for approval by 28th of the month. Upon approval, final transfer/posting orders shall be circulated by 29th and 30th of the month to all concerned sections for processing and implementation.
8. The HRHPC-II shall meet each month. Postings and transfers shall only be carried out within the reporting cycle below:

IMPORTANT DEAD LINES

Process	Dates	Responsible
Receipt and consolidation of applications	1 st to 10 th	ADG-HR
Application consideration	11 th to 16 th	ADG-HR
Submission of working papers to secretariat	17 th	ADG-HR
Examination of working papers	18 th to 23 rd	DGHS
HRHPC Meeting	24 th and 25 th	HRHPC-II
Issuance of report to Secretary Health	On the same day	HRHPC-II
Final transfer/posting	After approval from Competent Authority	Secretary Health

INSTITUTIONAL ARRANGEMENT:

All transfers and postings of BPS 1-16 HRH falling under the jurisdiction of the Health Department will be reviewed and approved by HRHPC-II. The composition of HRHPC-II is as under:

DESIGNATION	POSITION
Director General Health Services	Chairperson
Additional DG (HR), DGHS	Co-chairperson/Convener/ Member
Director Health Services, Merged Aras	Member
Deputy Secretary (Admin)	Member
Concerned Deputy Director HR, DGHS	Member

#

CP



Government of Khyber Pakhtunkhwa
Health department

7

Concerned Director		Member
Concerned Deputy Directors i.e. Nursing, Paramedics & Admin		Members

Any grievance/ violation of set-criteria as per para-4(a) shall be referred to next meeting of the placement committee of Health Secretariat.

FEED BACK:

For transparency, the committee shall track indicators on transfer/postings and report to Minister and Secretary Health on a monthly basis. These indicators may include (but will not be limited to) number of transfers per quarter; average tenure, number of employees in position for more than 3 years, and number of postings made with less than one year etc.

A report on this process shall be submitted to the Health Minister monthly. This policy may be updated with approval of Minister Health at any time.

SECRETARY HEALTH
KHYBER PAKHTUNKHWA

Endst. No. & date even:

Copy forward to the:

1. Director General Health Services, Khyber Pakhtunkhwa
2. All DHOs and MSs in Khyber Pakhtunkhwa
3. All Section Officers, Health Department
4. PS to Minister for Health, Khyber Pakhtunkhwa
5. PS to Secretary Health, Khyber Pakhtunkhwa
6. PS to Spl Secretary-I, Health Department
7. PS to Spl Secretary-II, Health Department
8. PA to Addl: Secretary (Estab), Health Department
9. PA to Addl: Secretary (Dev), Health Department
10. PA to Addl: Secretary (A), Health Department

Fazlul
6/7/2020

Section Officer (General)
Health Department

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To,

The Director General Health,
Services Khyber Pakhtunkhwa

Subject:-
Sir,

APPLICATION FOR TRANSFER.

31745
25/6/20
D-No. B-8

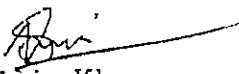
With due respect it is stated that I am working as Office Assistant BPS-16 in Merge Area for the last ^{4 month} 3 years and has completed my normal tenure. I have some domestic problem for which I am unable to continue my duty in the merge Area. Now a post of Office Assistant BPS-16 in District Health Office Peshawar is lying vacant due to the retirement of Mr. Aman Ullah Office Assistant.

Therefore, it is requested that I may kindly be posted to District Health Office against the vacant post to continue my service with my best satisfaction.

I shall be very thankful to this act of kindness.

N.O.C APP: Attached.

Sincerely Yours.


Nasim Khan
Office Assistant
Merge Area Peshawar.



Directorate of Health Services,

Merged Areas Warsak Road Peshawar

Phone # 091-9210212 Fax: 091-9210110

Email: dhsfata01@yahoo.com

(Handwritten scribbles)

No. 15442 /DHS/Admin

Dated 9/5 /06/2020

To

The Director General Health Services,
Khyber Pakhtunkhwa Peshawar.

31745
25/6/20

Subject:- APPLICATION FOR TRANSFER.

Sir,

Enclosed please find herewith an application in respect of Mr. Nasim Khan Office Assistant (BS-16) attached to this Directorate, requesting for transfer to District Health Office Peshawar, for further necessary action, please.

(Signature)
Deputy Director (Admin),
DHS Merged Areas, Peshawar

No. _____ /DHS/Admin

Dated _____ /06 / 2020

Copy to the :-

- 1. PA to DHS Merged Areas.
- 2. Record Keeper DHS.

(Signature)
Deputy Director (Admn),
DHS Merged Areas, Peshawar.

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D-10



OFFICE OF THE DISTRICT HEALTH OFFICER
PESHAWAR

No. 10635 /DHO dated Pesh 25/06/2020

To:-

The Director General Health,
Services Khyber Pakhtunkhwa, Peshawar.

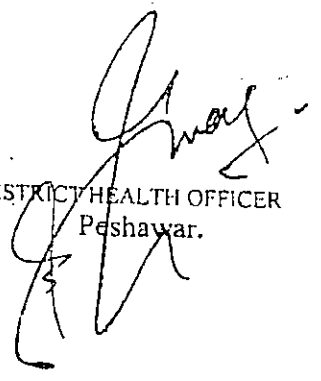
32089
25/6/2020

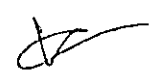
Subject:

NO OBJECTION CERTIFICATE.

Sir,

It is stated that a post of Office Assistant BPS-16 is lying vacant under the control of undersigned. The undersigned has no object if Mr. Nasim Khan Office Assistant attached to Directorate of Health Services Marged Area can be adjusted against this post.


DISTRICT HEALTH OFFICER
Peshawar.







DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUN KHW PESHAWAR

E-Mail Address: nwfpdghs@yahoo.com Office Ph# 091-9210269 Exchange# 091-92101R7, 9210195 Fax # 091-9210130

OFFICE ORDER

Mr. Mukhtiar Ali Office Assistant attached to Sifat Ghayur Shaheed Memorial Hospital Peshawar is hereby transferred and posted to DHO Office Peshawar against the vacant post of Office Assistant in the interest of public service with immediate effect.

Nb: Arrival/ departure reports should be submitted to this Office for record.

Sd/xxxxxxxx
DIRECTOR GENERAL HEALTH
SERVICES, K.P, PESHAWAR.
Dated 10 / 08 / 2020.

No. 10761-65 / Personnel

Copy forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. P.S to Minister for Health Khyber Pakhtunkhwa vide D.O letter dated 10.08.2020.
3. DHO Peshawar.
4. MS Sifat Ghayur Shaheed Memorial Hospital Peshawar.
5. Official concerned.

For information and necessary action.

DIRECTOR GENERAL HEALTH
SERVICES, K.P.K PESHAWAR.

10/8/2020

To: _____

The Secretary to Govt: Khyber Pakhtunkhwa,
Health Department Peshawar.

10824

dt 31/08/2020

Tenure of D.O. letter

Subject: -

DEPARTMENTAL APPEAL AGAINST OFFICE ORDER NO. 1061-65/PERSONAL DATED: 10/08/2020 WHEREIN MUKHTIAR ALI OFFICE ASSISTANT SIFAT GHAYUR SHAHEED MEMORIAL HOSPITAL TRANSFERRED TO DISTRICT HEALTH OFFICE PESHAWAR.

F-12

31/08/2020

Dear Sir,

1. That the applicant is Serving as Office Assistant (BPS-16) in the Directorate Health Services (New Merged Area) Peshawar from 28-03-2017 when I was promoted from Senior Clerk to Office Assistant (BPS-16).
2. That the applicant completed 3 years tenure in the Directorate Health New Merged Area Peshawar.
3. That the applicant came to know that one post of Office Assistant (BPS-16) is lying vacant in District Health Office Peshawar.
4. That the applicant hereby faced difficult situations to perform duty in the Directorate of Health Services newly merged area as being aged and long distance from the parent home of the applicant.
5. That the applicant submitted an application to the Director Health Services Merged Area Peshawar for transferred to District Health Office Peshawar sent application of the undersigned to Director General Health Services Khyber Pakhtunkhwa vide letter No. 15442/DHS/Admin dated: 25/06/2020 (Copies of application / letter are attached as annexure "A").
6. That in this regard vide Merged Area Directorate Letter dated: 25/06/2020 District Health Office Peshawar issued NOC to the applicant vide letter no. 10635/DHO dated: 25/06/2020 for transfer to District Health Office Peshawar from Directorate of Merged Area (Copy of NOC District Health Office is attached as annexure "B").
7. That one Mr. Mukhtiar Ali Office Assistant (BPS-16) of M/S Sifat Ghayur Shaheed Memorial Hospital Peshawar used political influence and obtained D.O Letter from PS to Minister Health dated: 10-08-2020 and on the recommendation of PS to Minister Health, The Director General Health Services issued transfer order

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(17)

(13)


vide No. 1061-65/Personal dated: 10-08-2020 of the above person namely Mukhtiar Ali and posted him in District Health Office Peshawar against vacant post; which is against the law, rules and judgments of the Honorable Tribunal as well as judgments of superior courts (Copies of D.O letter and transfer order dated: 10-08-2020 are attached as annexure "C").

8. That Mukhtiar Ali has not been completed tenure in his old placing of post i.e. MS Sifat Ghayur Shaheed Hospital Peshawar while made political influence and transferred to District Health Office Peshawar against Tenure Policy of KP Government.
9. That Mukhtiar Ali prior to this posting transfer almost remained in Service in District Health Office Peshawar.
10. That the applicant has been deprived from due right posting of place while Mukhtiar Ali was transferred illegally to District Health Office Peshawar.
11. That Mukhtiar Ali has not been relieved by M/S Sifat Ghayur Shaheed Memorial Hospital Peshawar and assumed charge at District Health Office Peshawar which is also against relevant law, rules and regulations.
12. That Director General Health Services and P.S to Minister Health expressly bypassed the newly framed policy "HR Placement Policy" vide notification No. SOG/HD/1-2/P&T/2020/215 dated: 06-07-2020 regarding postings and transfer of the employees (Copy of the HR Placement Policy is attached as annexure "D").

It is therefore, humbly requested that Departmental appeal of the applicant may kindly be accepted and the above subject office order dated: 10-08-2020 may be withdrawn and the applicant may very kindly be transferred from Directorate Health Services Merged Area to District Health Office Peshawar.

Dated: 26/08/2020

Yours' Faithfully,


Naseem Khan,
Office Assistant (BPS-16),
Directorate Health Services,
Merged Area Peshawar.
Cell# 0335-9191147

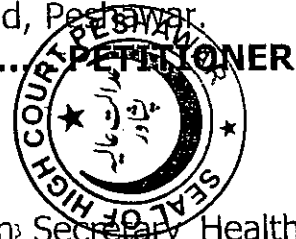


BEFORE THE PESHAWAR HIGH COURT PESHAWAR

9 (15)

WRIT PETITION NO. _____/2020

Mr. Naseem Khan Office Assistance (BPS-16),
Directorate of Health Services, Merged Area, Warsak Road, Peshawar.



VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Health Officer, Peshawar.
- 4- Mr. Mukhtiar Ali Office Assistance, O/O the District Health Officer, District Peshawar.

RESPONDENTS

**WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN 1973 AS AMENDED UP TO DATE**

R/SHEWETH:
ON FACTS:

Brief facts giving rise to the present writ petition are as under:-

- 1- That petitioner is the bona fide, law abiding and peaceful resident of District Peshawar. Copy of the CNIC is attached as annexure **A.**
- 2- That petitioner is serving the respondent Department as office Assistance (BPS-16), in the Directorate Health Services, Merged area, Peshawar.
- 3- That petitioner while serving as Office Assistance (BPS-16) in the Directorate Health Services, merged area, Peshawar has completed his three years tenure quit efficiently and to the entire satisfaction of his superiors. That under the HR placement policy of the respondent Department the petitioner submitted an application through proper channel for his transfer/posting and as such the same was properly forwarded vide letter dated 25-06-2020 to the Director General Health, Services Khyber Pakhtunkhwa i.e. respondent No.2. Copies of the policy, application dated 25-06-2020 and letter dated 25-06-2020 are attached as annexure **B, C & D.**

ATTESTED
EXAMINER
Peshawar High Court

16

- 4- That its pertinent to mention here that the District Health Officer Peshawar i.e. respondent No.3 vide letter dated 25-06-2020(NO Objection Certificate) informed the respondent No.2 that one post of Office Assistance (BPS-16) is lying vacant under the control of District Health Officer and the undersign has no objection if the petitioner has transferred to the said vacant post. Copy of the letter dated 25-06-2020 is attached as annexure E.
- 5- That the petitioner was quite hopeful for his transfer to the office of District Health Officer, Peshawar but astonishingly the respondents vide impugned order dated 10/08/2020, transfer the respondent No. 4 Namely Mukhtiar Ali Office Assistant. Copy of the impugned order dated 10-08-2020 is attached as annexure..... F.
- 6- That petitioner feeling aggrieved from the order dated 10-08-2020 of the respondents the petitioner filed Departmental appeal but the respondent No.1 is not willing to decide the Departmental appeal of the petitioner though in light of clause-XIV of the transfer/posting policy the respondent No.1 is bound to decide the Departmental appeal of the petitioner one way or the other. Copy of the Departmental appeal and transfer/posting policy are attached as annexure G and H.
- 7- Hence the petitioner prefers the instant writ petition on the following grounds amongst the others.

GROUND:

- A- That the impugned order dated 10/08/2020 issued by the respondents by transferring the private respondent from Sifwat Ghayur Shaheed Memorial Hospital Peshawar and posted in DHO is against the law, facts and norms of natural justice hence liable to be set aside .
- B- That petitioner has not been treated in accordance with law and Rules by the respondent on the subject noted above and as such the respondent violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondent acted in arbitrary and malafide manner by transferring the private respondent and ignoring the petitioner through impugned order dated from Sifwat Ghayur Shaheed Memorial Hospital Peshawar and posted in the office of respondent No.3.
- D- That the petitioner has been discriminated by the respondents on the subject noted above and as such the respondents violated the existing rules and policy.

ATTESTED
EXAMINER
Peshawar High Court



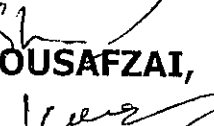
- E- That the impugned order dated 10.8.2020 is violative of transfer/posting policy as well as HR Placement policy of the respondent Department.
- F- That , the act of the respondent is also violative of Article-37 of the Constitution of Islamic Republic of Pakistan that guarantees promotion of Social Justice & eradication of Social Evils.
- G- That petitioner seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly prayed that on acceptance of this writ petition the inaction of the respondents by not deciding the Departmental appeal of the petitioner may kindly be declared as illegal, unconstitutional and ineffective upon the rights of the petitioner. That the respondent No.1 may kindly be directed to decide the Departmental appeal of the petitioner one way or the other in light of clause-XIV of the transfer/posting policy. Any other remedy which this august court deems fit that may also be awarded in favor of the petitioners.

INTERIM RELIEF: That the operation of the impugned order dated 10.8.2020 may kindly be suspended till the final disposal of the instant writ petition.

PETITIONER

 Naseem Khan

THROUGH:
NOOR MOHAMMAD KHATTAK

UMAR FAROOQ MOHMAND

SHAHZULLAH YOUSAFZAI,
 & 
KAMRAN KHAN,
 Advocates, HIGH COURT
 Peshawar

CERTIFIED TO BE TRUE COPY
 EXAMINER
 Peshawar High Court, Peshawar
 Authorized Under Article 87 of
 the Constitution of Pakistan Order 1994
 11 NOV 2020

VERIFICATION:
 It is verified that no other earlier writ petition was filed between the parties.

DEPONENT


- LIST OF BOOKS:**
1. CONSTITUTION OF PAKISTAN.
 2. SERVICES LAWS BOOK.
 3. ANY OTHER CASE LAW AS PER NEED.

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

18

WP No. 4352-P/2020

"Naseem Khan
Vs
Govt. of KPK etc"



JUDGMENT

Date of hearing. **14.10.2020**

Petitioner(s) by: Mr. Noor Muhammad Khattak, Advocate

Respondent(s) by: Mr. Rab Nawaz Khan, Addl: AG.

IKRAMULLAH KHAN, J.- Through the instant writ petition, petitioner has prayed for the following relief:-

"It is, therefore, most humbly prayed that on acceptance of this writ petition the inaction of the respondents by not deciding the departmental appeal of the petitioner may kindly be declared as illegal, unconstitutional and ineffective upon the rights of the petitioner. That the respondent No.1 may kindly be directed to decide the departmental appeal of the petitioner one way or the other in light of Clause-XIV of the transfer/posting policy."

2. In essence, petitioner has challenged the transfer of respondent No.4 and denial of respondents, to transfer the petitioner to the office of District Health Officer, Peshawar on vacant post, which was filled up by posting of respondent No.4.

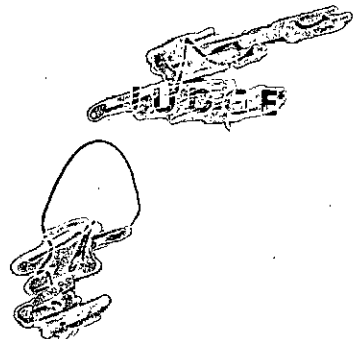
ATTESTED

EXAMINER
Peshawar High Court

(19)

3. As transfer, posting falls exclusively in terms and conditions of civil service, therefore, this Court could not assume jurisdiction, in matter exclusively fall within the terms and conditions of service in view of explicit bar placed on jurisdiction of this Court under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, as such this petition is dismissed accordingly.

Announced.
14.10.2020


JUDGE

hik

(DB) Hon'ble Mr. Justice Ikramullah Khan & Hon'ble Mr. Justice Ijaz Anwar

Ihsan PS

CERTIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 8.7 of
The Qanun-e-Shahadat Order 1984

11 NOV 2020

13058

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No of Pages *5/1*
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Date of Preparation of Copy *15/10/2020*
Date of Delivery of Copy *15/10/2020*
Received By *[Signature]*



DIRECTORATE GENERAL HEALTH SERVICES KHYBER PAKHTUNKHWA PESHAWAR

All communications should be addressed to the Director General Health Services Peshawar and not to any official by name.
DHO Office Ph: 091 - 9210249 Exchange: 091 - 9210187 Fax: 091 - 92102300 Email: dghealthkpk2014@gmail.com

OFFICE ORDER

As approved by the competent authority the following posting transfer of Ministerial staff is hereby ordered in the best public interest with immediate effect.

S.NO.	Name & Designation	From	To	Remarks
01.	Mr. Mukhtiar Ali Office Assistant	DHO Office Peshawar	Govt. NKBMH Hospital Peshawar	Against the vacant post of Supt. In his own pay and scale
02.	Mr. Munawar Khan Senior Clerk	DHO Office Orakzai	DHQ Hospital Parachinar	Against the vacant post.

Sd/-----

**Director General Health
Services, Khyber Pakhtunkhwa.**

No. 134467-751

Dated Peshawar the, 29/10/2020.

Copy forwarded to :

- ✓ 1- Accountant General Khyber Pakhtunkhwa Peshawar.
- 2- DHO Peshawar.
- 3- MS Govt: Nasser Ullah Khan Babar Memorial Hospital Peshawar.
- 4- DHO Orakzai.
- 5- DAO Orakzai.
- 6- Medical Superintendent DHQ: Hospital Parachinar.
- 7- DAO Kurram
- 8- PS to Secretary Health, Khyber Pakhtunkhwa Peshawar.
- 9- Officials Concerned for information and compliance.

**Director General Health
Services, Khyber Pakhtunkhwa.**

VAKALATNAMA

BEFORE FEDERAL SERVICE TRIBUNAL, ISLAMABAD

_____ OF 2020

Naseem Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Health Deptt.

(RESPONDENT)
(DEFENDANT)

I/We Naseem Khan

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2020

Signature
CLIENT

Signature
ACCEPTED
NOOR MOHAMMAD KHATTAK

Signature
AFRASIAB KHAN WAZIR

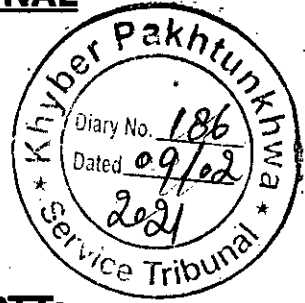
&

Signature
HAIDER ALI
ADVOCATES

OFFICE:

Flat No.4, 2nd Floor, Juma Khan
Plaza, near FATA Secretariat,
Warsak Road, Peshawar.
Mobile No.0345-9383141

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**



CM NO. _____/2021

IN

APPEAL NO. 16158 /2020

NASEEM KHAN

V/S

HEALTH DEPTT:

**APPLICATION FOR EARLY HEARING OF THE ABOVE
TITLED APPEAL**

R/SHEWETH:
ON FACTS:

- 1- That the above title appeal is pending adjudication before this Honourable Court which is fixed for pre-liminary hearing on 18-05-2021.
- 2- That case of the appellant is transfer matter that needs to be dispose of speedily but the date been fixed is too far.
- 3- That the case is of urgent nature in which the opponents are creating hurdles for the appellant which need to be heard as soon as possible.
- 4- That case of the appellant is a prima facie case in which all the three ingredients are in favor of the appellant hence, the case to be fixed at early.

It is, therefore, most humbly prayed that on acceptance of the instant Civil Miscellaneous the case of the appellant be fixed an at earlier to meet the ends of justice.

Dated: _____/_____/2021

APPELLANT

NASIM KHAN

THOROUGH:

NOOR MOHAMMAD KHATTAK

&

AFRASIAB KHAN WAZIR

*At PH stage.
Be accelerated to a
date in 1st week of
March 2021.*

*10/6/21
10/6/21*