

16

16.03.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 08.06.2022 for the same as before.



Reader.

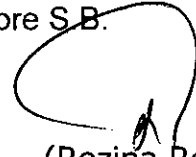
08.06.2022

Nemo for appellant. Lawyers are on strike.

Applicant's Fee
Security & Process Fee

16/6

File to come up alongwith connected Service Appeal No.7303/2021 titled Dr. Syed Sarwar Shah Vs. Government of Khyber Pakhtunkhwa on 28.07.2022 before S.B.

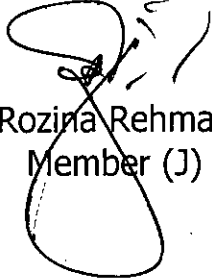


(Rozina Rehman)
Member (J)

15.10.2021

Appellant present through counsel. Preliminary arguments heard. Record perused.

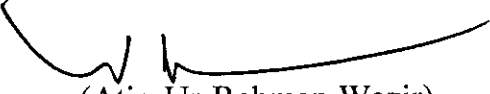
Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notice be issued to respondents for submission of written reply/comments in office within 10 days of the receipt of notices, positively. If the reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 13.01.2022 before D.B.


(Rozina Rehman)
Member (J)

13.01.2022

Nemo for the appellant.

Security & process fee not deposit, therefore, notice be issued to appellant and his counsel for 16/03/2022 before S.B




(Atiq-Ur-Rehman Wazir)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7305 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	20/08/2021	<p>The appeal of Dr. Adnan Taj resubmitted today by Mr. Habib Anwar Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>15/10/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

The appeal of Dr. Adnan Taj Director Curative DG Health Office Peshawar received today i.e. on 11.08.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- In the memo of appeal some texts are missing.
- 2- Check list is not attached with the appeal.
- 3- Copy of impugned deduction order of HPA mentioned in the memo of appeal is not attached with the appeal which may be placed on it.

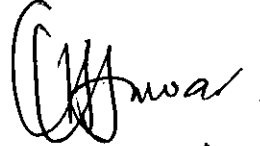
No. 1617 /S.T,

Dt. 12/08 /2021


REGISTRAR,
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Habib Anwar Adv. Pesh.

Re-submitted by removing all the objections.
The objection at Para-3, the requisite document is annexed as Page-25.


20/08/2021.

KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

CHECK LIST

Dr. Adnan Taj
..... Appellant

Versus

Govt of KPK
..... Respondents

S NO	CONTENTS	YES	NO
1.	This petition has been presented by: <u>Habib Anwar Advocate H. H. Court</u>	√	
2.	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	√	
3.	Whether appeal is within time?	√	
4.	Whether the enactment under which the appeal is filed mentioned?	√	
5.	Whether the enactment under which the appeal is filed is correct?	√	
6.	Whether affidavit is appended?	√	
7.	Whether affidavit is duly attested by competent Oath Commissioner?	√	
8.	Whether appeal/annexures are properly paged?	√	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	√	
10.	Whether annexures are legible?	√	
11.	Whether annexures are attested?		
12.	Whether copies of annexures are readable/clear?	√	
13.	Whether copy of appeal is delivered to AG/DAG?	√	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	√	
15.	Whether numbers of referred cases given are correct?	√	
16.	Whether appeal contains cutting/overwriting?	x	
17.	Whether list of books has been provided at the end of the appeal?	√	
18.	Whether case relate to this court?	√	
19.	Whether requisite number of spare copies attached?	√	
20.	Whether complete spare copy is filed in separate file cover?	√	
21.	Whether addresses of parties given are complete?	√	
22.	Whether index filed?	√	
23.	Whether index is correct?	√	
24.	Whether Security and Process Fee deposited? On _____		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	√	
26.	Whether copies of comments/reply/rejoinder submitted? On _____		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? On _____		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:- Habib Anwar

Signature:- [Signature]

Dated:- 20/08/2021

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

7305

In Re: Service Appeal No. _____/2021.

Dr. Adnan Taj

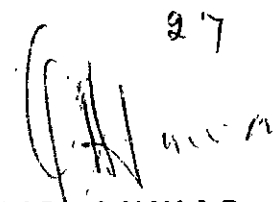
Vs.

Government of KPK etc.

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8.	<i>Copies of: Writ Petition No. 3218-P/2020</i>	E	13 - 17
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Wakalat Nama

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HABIB ANWAR

Advocate High Court, Peshawar.

0336-9987282

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IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Re: Service Appeal No. _____/2021.

Dr. Adnan Taj, Director Curative, Directorate General Health Services, Peshawar.

.....Appellant.

VERSUS

1. **Government of Khyber Pakhtunkhwa,**
Through Chief Secretary, Civil Secretariat, Peshawar.
2. **Government of Khyber Pakhtunkhwa,**
Through Secretary Health Department, Civil Secretariat, Peshawar.
3. **Government of Khyber Pakhtunkhwa,**
Through Secretary Finance Department, Civil Secretariat, Peshawar.
4. **Government of Khyber Pakhtunkhwa,**
Through Secretary Establishment Department, Civil Secretariat, Peshawar.
5. **Director General Health Services,** Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
6. **Accountant General Khyber Pakhtunkhwa, Peshawar.**

.....Respondents

Service Appeal Under Section 4 of KP Service Tribunal Act.

Respectfully Sheweth,

Brief but relevant facts warranting this Appeal:

1. That the appellants herein are the regular employee of Health Department who is now posted at the positions duly mentioned in the heading of this appeal. Ever since appointment, the appellant is performing his duties to his zeal and zest and has never been complained of regarding his duties which the appellant is performing since entering into service.
2. Ever since 2011 the appellants along with other similarly placed employees of the province are getting Health Professional Allowance (herein-after referred to as HPA) which was enhanced in 2016 at various rates for various categories keeping in view the

(2)

category of hospitals and its locality. (*Copy of Notification Dated. 07.01/2016 is Annex-A*).

3. Respondent No. 2 relieved the appellant vide **Notification dated. 06.03.2019 (Annex-B)** from the position of **Chief HSRU Merged Districts** and placed him at the disposal of Respondent No. 5/ DGHS consequence thereto, the appellant submitted his arrival report for further posting. (*Annex-C*).
4. The appellant being so transferred, keep on knocking the doors of respondent No. 5 for his further posting however, the respondent **DGHS vide application dated. 17.07.2019 (Annex-D)** forwarded his case to Respondent No. 2 for further posting. Finally, Respondent No. 5/ DGHS regularized his gap/ waiting period against the sanctioned and vacant post of Medical Superintendent District Health Officer, Mishti Mela Orakzai for the purpose of drawl of pay only without granting him HPA. It is pertinent to mention here that the appellant was then posted against the post mentioned in the heading in this appeal.
5. Consequent thereto, the appellant agitated the matter with respondents, that as the respondents has regularized his gap period against a sanctioned/ vacant posts and as the appellant is now deemed to be in continuous service against the said sanctioned post even in gap period, thus, his HPA also be granted for their services against the said sanctioned post from period between **01.04.2019 till 31.08.2019** but the respondents are now illegally denying the same.
6. Although the appellant obeyed all his transfer and posting orders right from relieving order and left no stone un-turn till his posting at his current place of posting, by showing complete respect to all the orders of his competent authorities but, to his utmost dismay, **the respondents deducted his HPA in clear violation of law on the subject.** It is pertinent to mention here that although the respondents have no policy of OSD as applied by establishment department, however, they burdened the appellant due to their own inability as delay in posting is the sole liability of respondents.
7. Thus, the appellant was constrained to file **Writ Petition No. 3218-P/2020 (Annex-E)** before the Hon'ble Peshawar High Court Peshawar. However, the Hon'ble Court vide

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Order dated. 21.04.2021 (Annex-F) disposed of the matter, treated the petition as departmental appeal and sent the same to Respondent No. 5 for decision. Now after lapse of more than 3 months, as the respondents failed to respond his departmental appeal therefore, the appellant has now left with no other option except to approach this honorable tribunal on the grounds inter alia:

Ground:

- a. ***Because*** the Respondents regularized the gap-period of the appellant against a sanction vacant post for the purpose of drawl of pay for their period of waiting, thus, denying HPA for the said period is illegal, unlawful, without lawful authority and of no legal effect.
- b. ***Because*** the respondents regularized the services of similarly placed employees, who were relieved in the like manner and further posted after certain gap-period. One such case is of Dr. Naik Dad, to whom HPA was allowed thus, denial of similar treatment to the appellant amounts to discrimination and as such violation of Article 4 & 25 of the Constitution of Islamic Republic of Pakistan.
- c. ***Because*** the appellant obeyed all orders quo his relieving/ transfer/ posting, made by respondents although belatedly thus, the appellant cannot be penalized for the fault of Respondents by delaying his posting order.
- d. ***Because*** the appellant never agitated for his relieving/ posting nor so relieved/ transferred as a result of any fault on his part, rather it is the petitioner who time and again requested respondents for his posting which was never listened to.
- e. ***Because*** the Notification dated 07.01.2016, on the very face of it, is a beneficial/ remedial instrument, admissible to the appellant at a rate commensurable to the hospital where he is posted and the area where the said hospital is located and as the services of the appellant is regularized against the named hospital, thus, he is entitled to HPA as per rate applicable and admissible to other employees placed/ posted in such hospitals.

4

- f. **Because** regularizing the gap-period against the sanctioned vacant post at a given place, entitled the appellant for grant of HPA during the regularized period of his services, which has not been so intended to denied with vide the notification of 07th January 2016, thus, denying the same to the appellant, being front-liner in the global pandemic of Covid 19, is against any rhyme, reason and logic.
- g. **Because** the posting of the appellant is the prerogative of health department and thus, as the respondents made default/ delay in posting his employee, therefore, employees/ appellant cannot be punished for the same.
- h. **Because** any office memo, circular or order so issued to the detriment of Notification of 7th January 2016, cannot restrict or put an embargo on the interpretation of ibid notification which is curative instrument in its very form and substance. Thus, the appellant is allowed to HPA as allowed to one Dr. Naik Dad Khan dealt with as such, a month prior from the appellant.
- i. **Because** the appellant is entitled to HPA as per Notification of 7th January 2016 for the period between his relieving order and regularization of his service against a sanctioned/ vacant post. Thus, denial of HPA to appellant during such period is unlawful, illegal and wrong and thus, cannot be allowed to remain in the field anymore.
- j. **Because** the Appellant seek leave to furnish further grounds at the main hearing of the instant Service Appeal.

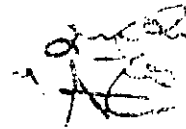
In view of the aforesaid submissions, it is very humbly prayed that on acceptance of this Appeal, this Hon'ble Tribunal may graciously be pleased to:

To allow the departmental Appeal of the Appellant as prayed and thus direct the respondents to allow HPA during the period between

3

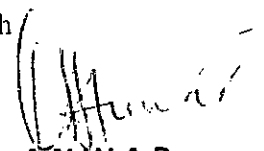
01/04/2019 till 31-08/2019; and to Grant: Any other relief, not specifically prayed, may also graciously be granted, if appears just, necessary and appropriate.

Cost throughout



APPELLANT

Through



HABIB ANWAR

Advocate High Court, Peshawar.

CERTIFICATE

It is certified that no such Appeal has earlier been filed by the petitioner on this subject matter before this or any other Hon`ble Court.

Take note that the Writ Petition so filed before the hon`ble Peshawar High Court Peshawar. on same subject-matter. has already been disposed of while treating the petition as departmental appeal


Counsel

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IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Re: Service Appeal No. _____/2021.

Dr. Adnan Taj


Vs.

Government of KPK etc.

AFFIDAVIT

I **Dr. Adnan Taj**, Director Curative, Directorate General Health Services, Peshawar, do hereby solemnly affirm on Oath that the contents of this Writ Petition are true and correct to the best of my knowledge and belief and that nothing has been kept concealed from this honorable court.

Deponent

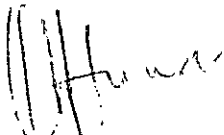


-1420913-3

CNIC No. 17301

Cell No. 0333-9285780

Identified by:



Habib Anwar

Advocate, Peshawar.

15/9-8-21

7

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Re: Service Appeal No. _____/2021.

Dr. Adnan Taj

Vs.

Government of KPK etc.

Addresses of the Parties:

A. Appellant:

Dr. Adnan Taj, Director Curative, Directorate General Health Services, Peshawar.

B. Respondents:

- 1. Government of Khyber Pakhtunkhwa,**
Through Chief Secretary, Civil Secretariat, Peshawar.
- 2. Government of Khyber Pakhtunkhwa,**
Through Secretary Health Department, Civil Secretariat, Peshawar.
- 3. Government of Khyber Pakhtunkhwa,**
Through Secretary Finance Department, Civil Secretariat, Peshawar.
- 4. Government of Khyber Pakhtunkhwa,**
Through Secretary Establishment Department, Civil Secretariat, Peshawar.
- 5. Director General Health Services, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
- 6. Accountant General Khyber Pakhtunkhwa, Peshawar.**


HABIB ANWAR

Advocate High Court, Peshawar.

0336-9987282



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar the 07/01/2016

NOTIFICATION

No.FD(SOSR-II)8-18/2016. In continuation of this Department Notification of even number dated 06/08/2011, the Provincial Cabinet of Khyber Pakhtunkhwa has been pleased to accord approval to the incentive for doctor (All the following cadres) excluding those working in MTIs on the basis of territory (Districts declared as Category A, B & C) / unattractive / attractive specialties and enhanced the Health Professional Allowance as under to ensure presence of doctors at all levels of health facilities, which is mandatory for the provision of minimum health services to the people of Khyber Pakhtunkhwa w.e.f. 01/01/2016:-

Cadre	Existing rates of HPA	Districts					
		Category-A		Category-B		Category-C	
Districts Specialists, Non-attractive specialties (radiology, Pathology, Anaesthesia)	Rs.10,000/-	Rs.80,000/-		Rs.100,000/-		Rs.140,000/-	
Districts Specialists, Attractive specialties	Rs.10,000/-	Rs.60,000/-		Rs.80,000/-		Rs.100,000/-	
Health Managers	Rs.15,000/- (BPS-17) Rs.10,000/- (BPS-18 & above)	Rs.56,000/-		Rs.76,000/-		Rs.96,000/-	
Medical officer / Dental surgeon	Rs.15,000/- (BPS-17) Rs.10,000/- (BPS-18 & above)	Urban 42,000	Rural 52,000	Urban 62,000	Rural 72,000	Urban 82,000	Rural 92,000

The categorization of districts on the basis of hard to reach area, geographic terrain, security situation and lack of development and infrastructure shall be as under:-

Districts Category-A

1. Peshawar
2. Abbottabad

Districts Category-B

- | | | |
|-------------|---------------------|--------------|
| 3. Nowshera | 7. Bannu | 11. Haripur |
| 4. Swat | 8. Charsadda | 12. Mansehra |
| 5. Kohat | 9. Dera Ismail Khan | 13. Malakand |
| 6. Mardan | 10. Dir Lower | 14. Swabi |

Districts Category-C

- | | | |
|---------------|------------------|-------------|
| 15. Buner | 19. Hangu | 23. Shangla |
| 16. Battagram | 20. Karak | 24. Tank |
| 17. Chitral | 21. Kohistan | 25. Torghar |
| 18. Dir Upper | 22. Lakki Marwat | |

The districts are internally further segregated into urban and rural settings for awarding incentives to ensure health services delivery in far flung and hard areas within districts.

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- 2 -

The above enhanced Health Professional Allowance will be admissible subject to the following conditions:

- i. The existing allowances for doctors (Anaesthesia allowance in district hospital hard & hardest. Special package / incentives at Civil Hospital garf Habibullah Manshera, incentives allowance to Gynaecologist and lady doctors at Districts Batagram Kohistan, Hangu, Tank, Buner, Dir Upper, Dir Lower, Shangla and Chitral) shall be discontinued except Non-practicing Allowance.
- ii. Will be admissible only during their period of posting against the sanctioned posts at Health Department.
- iii. Will not be admissible during earned leave, study leave & extra ordinary leave except casual leave.
- iv. Shall not be treated as part of emoluments for the purpose of calculation of pension and recovery of House Rent etc.
- v. Shall not be admissible to the employees posted/deputed outside the Health Department.

SECRETARY TO GOVERNMENT
OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Endst: No. & date even.

Copy for information and necessary action is forwarded to the:-

1. Secretary to Government of Khyber Pakhtunkhwa, Health Department.
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. Director FMIU, Finance Department.
4. The Director, Treasuries and Accounts, Khyber Pakhtunkhwa, Peshawar.
5. The District Comptroller of Accounts, Peshawar, Mardan, Kohat, Bannu, Abbottabad, Swat and D.I. Khan.
6. The All the District Accounts Officers in Khyber Pakhtunkhwa.
7. The Treasury Officer, Peshawar.
8. Budget Officer-VI, Finance Department


(WAZIR MUHAMMAD AFGAR)
SECTION OFFICER (SR.II)

SECTION OFFICI
(FAZAL ALI)



Accountant General (Kyber Pakhtunkhwa)
Dy. General Health Services, Kyber Pakhtunkhwa
Director Health Services Merged Districts
Chief HSRU Merged Districts
PS to Minister for Health Kyber Pakhtunkhwa
PS to Secretary Health Department
DHIS Cell DGHS Office, Peshawar
Computer Programmer Health Department
Dr. Abdul Qadir Coordinator HSRU Merged Districts

o the:-

No & Date Even

SECRETARY HEALTH
Govt of Kyber Pakhtunkhwa

own duties till further orders.

is hereby assigned the additional charge of the post of Chief HSRU in
Consequent upon the above Dr. Adnan Taj Management Cadre BS-19 Chief HSRU Merged Districts

with immediate effect in the public interest.
Special of Director General Health Services Kyber Pakhtunkhwa for
of Dr. Adnan Taj Management Cadre BS-19 Chief HSRU Merged Districts
The competent authority is pleased to place
OHC-VI-874/2014

ICATION

Dated Peshawar the 8th March, 2010

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT
611



624

To,

Director General Health Services,
Govt. of Khyber Pakhtunkhwa,
Peshawar.

11

2

Subject: **ARRIVAL REPORT**

Sir,

In compliance with notification No: SOH (E-V) 1-874/2014; dated: 06-03-2019, I hereby submit my arrival report to your good office in the forenoon of today (i-e 08-03-2019).

It is requested to kindly submit my arrival report for further posting.
Thanking you in anticipation.

Sincerely,

Dated: March 08, 2019 (FN)
Station: DGHS, KP, Peshawar

Dr. Adnan Taj
Management Cadre
Chief HSRU (BS-19)
DHS, Merged Districts
Peshawar.



**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 E-Mail Address K.P.Kdghs@yahoo.com
Office # 091-9210269 Exchange # 091-9210187, 9210196 Fax # 091-9210230
NO. 13542 /E-I Dated: 12/7 /2019

To

The Secretary to Government of
Khyber Pakhtunkhwa Health Department,
Peshawar.

Subject:- **ARRIVAL REPORT.**
Dear Sir,

In continuation of this Directorate General Health letter No. 5483/E-I dated 02.03.2019, on the subject noted above, stated that Dr. Nadeem Ahmad (Management Cadre) Addl: Director General (BPS-20) DGHS, office Peshawar is going to be retired from Govt. Service on 01.08.2019 on attaining the age of superannuation and Dr. Adnan Taj (Management Cadre) BPS-19 waiting for posting can be posted against the said vacant post in his own pay scale.

It is therefore requested that Dr. Adnan Taj BPS-19 Management Cadre (waiting for posting) may please be posted against the post of Addl: D.G DGHS, office Peshawar w.e from 01.08.2019.

**DIRECTOR GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR**

E
13

IN THE PESHAWAR HIGH COURT PESHAWAR

Writ Petition No. 3218/P 2020

CRH
= employees

GHAMIC

CRH

KMC

FILED TODAY
Deputy Registrar
13 JUL. 2020

1. Dr. Jalal Mohyuddin, Senior Medical Officer (BPS-18), at the disposal of Director General Health Services, Health Directorate, Khyber Pakhtunkhwa, Khyber Road Peshawar.
2. Dr. Syed Sarwar Shah, Principal Dental Surgeon (BPS-19), Type D Hospital Gara Tajak Peshawar.
- ✓ 3. Dr. Wali Khan, Senior Medical Officer (BPS-18), Police Services Hospital Peshawar.
- ✓ 4. Dr. Muhammad Sohail Khattak, Senior Medical Officer (BPS-18), at Director Health Services Merged Districts, Peshawar.
- ⇐ 5. Dr. Muhammad Shakeel, Senior Medical Officer (BPS-18), Instructor, Post Graduate Paramedics Institute, Dauranpur Peshawar.
- ✓ 6. Dr. Adnan Taj, Director Curative (BPS-19), at Director General Health Services, Health Directorate, Khyber Pakhtunkhwa, Khyber Road Peshawar.
- ✓ 7. Dr. Dost Muhammad, Medical Officer (BPS-17), District Headquarter Hospital Charsadda
- ✓ 8. Dr. Arif Jamal, Medical Officer (BPS-17) at THQ, Banda Daud Shah, Distt. Karak.....**Petitioners**

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
 2. Govt. of Khyber Pakhtunkhwa through Secretary, Finance Department Peshawar.
 3. Govt. of Khyber Pakhtunkhwa through Secretary, Health Department Peshawar.
 4. Director General, Health Services Khyber Pakhtunkhwa Peshawar.
 5. Govt. of Khyber Pakhtunkhwa through Secretary, Establishment Department Peshawar.
 6. Accountant General, Khyber Pakhtunkhwa, Peshawar.
-**Respondents**

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

Prayer In Writ Petition:-

On acceptance of this writ petition, an appropriate writ may please be issued declaring the impugned Office Orders dated 20-01-2020, 20-12-2019, 07-10-2019, 10-02-2020 and other orders issued in respect of petitioners to the extent of regularizing the gap/waiting for posting period of the petitioners without Health Professional Allowance, as illegal, unlawful, without lawful authority, discriminatory and of no legal effect, thereby setting aside the same and directing respondents to regularize the gap/waiting for posting period of the petitioners with Health Professional Allowance thereby allowing them Health Professional Allowance of the gap/waiting for posting period.

14

Any other remedy not specifically asked for and deemed appropriate in the circumstances case may also be granted in favor of the petitioners.

Respectfully Submitted:-

1. That the petitioners are the regular employees of the Health Department, Khyber Pakhtunkhwa who are serving on various positions in BPS-17 and above, duly mentioned in the heading of the petition. Since appointment petitioners have performed their duties with honesty and full devotion and to the entire satisfaction of their high ups.

2. That since 2011 the petitioners along with other employees of the Federal and provincial Govt. are granted Health Professional Allowance (herein after referred to as HPA) on fixed rate which was enhanced vide Notification dated 07-01-2016 at various rates for various categories of hospitals and areas. **(Copy of Notification dated 07-01-2016 is enclosed as Annexure A).**

FILED TODAY
Deputy Registrar
13 JUL 2020

3. That petitioner No 1 while posted at LRH (MTI) Peshawar, as SMO (BPS-18) was placed at the disposal of Director General Health Services Khyber Pakhtunkhwa Peshawar for further posting, petitioner No 2 while posted at LRH (MTI) as Principal Dental Surgeon (BPS-19) was transferred and his services were placed at the disposal of Director General Health Services Khyber Pakhtunkhwa Peshawar for further posting, petitioner No 3 while posted at LRH (MTI) Peshawar as Senior Medical Officer (BPS-18) was transferred and his services were placed at the disposal of Director General Health Services Khyber Pakhtunkhwa Peshawar for further posting, petitioner No 4 while posted at LRH (MTI) Peshawar as Senior Medical Officer (BPS-18) was transferred and his services were placed at the disposal of Director General Health Services Khyber

Pakhtunkhwa Peshawar for further posting, petitioner No 5 while posted at Nowshera Medical College MTI as Senior Medical Officer (BPS-18) was transferred and his services were placed at the disposal of Director General Health Services Khyber Pakhtunkhwa Peshawar for further posting, petitioner No 6 while posted as Chief Health Sector Reforms Unit at Directorate of Health Services, erstwhile FATA was transferred and his services were placed at the disposal of Director General Health Services Khyber Pakhtunkhwa Peshawar for further posting, while petitioner No. 7 posted at LRH (MTI) Peshawar was transferred and his services were placed at the disposal of Director General Health Services Khyber Pakhtunkhwa Peshawar, while petitioner No 8 Dr. Arif Jamal (BPS-17) was posted as Demonstrator Khyber Medical College, Peshawar and was transferred and his services were placed at disposal of Director General Health Services Khyber Pakhtunkhwa Peshawar.

(15)

4. That it is pertinent to mention here that there is no concept of OSD posts in the Health Department but even then services of the petitioners were placed at the disposal of Director General Health Services in violation of law and rules on the subject.

5. That the petitioners time and again approached respondents through written applications for their further posting but to no avail. **(Copies of Applications are enclosed as Annexure B).**

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6. That the petitioners were at last transferred and posted at various positions after various time period from the DGHS KP Peshawar.

7. That after being posted, the gap/waiting for posting period of the petitioners was regularized for the purpose of pay but without Health Professional Allowance vide various Office Orders against sanction positions of the health department. **(Copies of Office Orders are enclosed as Annexure C).**

8. That the petitioners requested respondents through written applications for revision of the impugned Office Orders thereby regularizing their gape/waiting for posting period with Health Professional Allowance but they were denied the same. **(Copies of Applications are enclosed as Annexure D).**

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9. That the impugned Office Orders are illegal, unlawful, without lawful authority and of no legal effect and the petitioners having no other efficacious and alternate remedy, approach this honorable Court by invoking its Constitutional Jurisdiction on the following, amongst other grounds:-

GROUND:

- A. That the impugned Office Orders to the extent of regularizing the gap/waiting for posting period of the petitioners without Health Professional Allowance are illegal, unlawful, without lawful authority and of no legal effect, hence needs the interference of this honorable Court.
- B. That the petitioners are denied treatment in accordance with law in violation of Article 4 of the Constitution and law of the land.
- C. That there is no omission or commission on part of the petitioners and they cannot be punished for the fault of others if any.
- D. That petitioners never requested for their transfer nor they were transferred in consequent to any fault on their part rather they time and again approached respondents for their further posting but they were not listened to.
- E. Those even otherwise respondents misinterpreted the Notification dated 07-01-2016, as petitioners even then were posted in Health Department and were awaiting their further posting.
- F. That for reasons other than fair and legal, the said Notification dated 07-01-2016 was misinterpreted by another impugned Notification bearing No: SOB-1/HD/5-7/Allowances/vol-VII; dated: 19-09-2019 by the Health Secretariat to the DGHS KP Peshawar.
- G. That the action of respondents and the impugned letter dated 19-08-2019 is discriminatory as prior to the said letter the HPA was admissible to the all employees for the gape/waiting for posting period. Even about a month prior to this letter dated: 19-09-2019 the HPA was allowed to DR Nek dad Khan BPS-18 for the gape/waiting for posting period vide Letter dated 27-08-

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2019. (Copy of Letter dated 27-08-2019 is enclosed as Annexure E)

17

H. That posting is the prerogative of the Health Department and the employee(s) could not be punished for the same.


I. It is pertinent to mention that HPA was not deducted for gap/waiting for posting period from all other doctors and employees before 19-09-2019 since issuance of original notification of HPA from Finance Department KP dated 07-01-2016.

J. That the petitioners seek the permission of this honorable Court for additional grounds at the time of arguments.

It is therefore prayed that writ petition of the petitioners may kindly be accepted as prayed for.

Any other relief deemed appropriate in circumstances of the case and not specifically asked for may also be granted in favor of the petitioners.

Dated:-20-06-2020

Petitioners
Through

Fazal Shah Mohmand
Advocate Supreme Court

LIST OF BOOKS

1. Constitution 1973.
2. Other Books as per need

Certificate

Certified that as per instructions of my clients, no Writ petition on the same subject and between the same parties has been filed previously or concurrently before this honorable Court.


ADVOCATE

FILED TODAY

Deputy Registrar

13 JUL 2020

PESHAWAR HIGH COURT, PESHAWAR
FORM OF ORDER SHEET

(F)
(18)

Date of Order of Proceedings	Order of other Proceedings with Signature of Judge.
1	2
21.04.2021	<p><u>WP No. 3218-P of 2020</u></p> <p>Present: Mr. Fazal Shah Mohmand, advocate, for the petitioners.</p> <p>Mr. Shumail Ahmad Butt, AG and Syed Sikandar Hayat Shah, AAG, for the respondents.</p> <p style="text-align: center;">*****</p> <p><u>QAISER RASHID KHAN, C.J.-</u> The petitioners Dr. Jalal Mohyuddin and four others have prayed as under;</p> <p style="text-align: center;">“On acceptance of this writ petition, an appropriate writ may please be issued declaring the impugned office orders dated 20.1.2020, 20.12.2019, 07.10.2019, 10.02.2020 and other orders issued in respect of petitioners to the extent of regularizing the gap/waiting for posting period of the petitioners without Health Professional allowance as illegal, unlawful, without lawful authority, discriminatory and of no legal effect, thereby setting aside the same and directing respondents to regularize the gap/waiting for posting period of the petitioners with Health Professional Allowance thereby allowing them Health Professional</p>

"younas"

(DB) Hon'ble Mr. Justice Qaiser Rashid Khan, CJ
Hon'ble Mr. Justice S.M. Attique Shah, J

Allowance of the gap/waiting for posting period".

2. On the previous date of hearing, comments were sought from the respondents but the same have not been submitted. Accordingly, the learned Advocate General present in the court in some other matters when put on notice about the failure of the respondents to do the needful, raised a preliminary objection viz the maintainability of the present petition and states the relief sought by the petitioners squarely falls within the terms and conditions of their service.

3. Such being the position, in view of the explicit bar contained in Article 212(2) of the Constitution of the Islamic Republic of Pakistan, 1973, this court lacks jurisdiction to adjudicate upon the matter in hand. However, in view of the request made by the learned counsel for the petitioners, this writ petition is treated as a departmental appeal and sent to the Director General Health Services, Government of Khyber Pakhtunkhwa to decide the same within a month after the receipt of the judgment of this court and thereafter the petitioners may have recourse to the

19

"younas"

(DB) Hon'ble Mr. Justice Qaiser Rashid Khan, CJ
Hon'ble Mr. Justice S.M Attique Shah, J

20

proper remedy available to them under the law. The office is directed to send this petition to the aforesaid authority by retaining a copy thereof for record. This petition stands disposed of in the above terms.

Announced
21.04.2021



CHIEF JUSTICE



JUDGE

"younas"

(DB) Hon'ble Mr. Justice Qaiser Rashid Khan ,CJ
Hon'ble Mr. Justice S.M Attique Shah,J

To,

Director General Health Services,
Health Department,
Govt. of Khyber Pakhtunkhwa, Peshawar.

38208
22/11/19
21
G

Subject: APPEAL AGAINST HPA DEDUCTION IN SALARY ADJUSTMENT FOR GAP PERIOD (WAITING FOR POSTING) W.E.F. 01-04-2019 TILL 31-08-2019 IN RESPECT OF DR. ADNAN TAJ, BS-19, MANAGEMENT CADRE, HEALTH DEPARTMENT, KP.

Sir,

It is stated that undersigned is BS-19, Management Cadre doctor working in Health Department, Khyber Pakhtunkhwa and I was working as Chief HSRU, Directorate of Health Services, Merged Areas Secretariat till March 2019 and I have received my last salary till 31st March 2019. From 1st April 2019, I had been placed on disposal of DGHS, Khyber Pakhtunkhwa for the purpose of further posting by the Competent Authority.

It is stated that now my salary has been adjusted for the period (Waiting for Posting) w.e.f. 01-04-2019 till 31-08-2019 (05-months) against sanctioned post of MS AHQ Mishti Mela Orakzai but HPA has been deducted that is injustice as:

- (i) Posting of an officer/official is done by Health Department and delayed posting is not fault of employee.
- (ii) Secondly, undersigned was neither OSD nor was transferred on my own choice to DGHS for further posting.
- (iii) Deduction of HPA during waiting for posting period is not reflected in original notification of Finance Department, KP regarding HPA (Copy attached).
- (iv) Even salary adjustment is notified for waiting for posting period against sanctioned and vacant post.

It is therefore humbly requested that at for purpose of salary adjustment for waiting for posting period vide DGHS notification containing deduction of HPA may be revised and HPA be allowed along with salary adjustment for waiting for posting period. I shall be grateful. **It is submitted that subject case may be sent to Finance Department KP for seeking expert opinion and guidance.**

Thanking you in anticipation.

Sincerely,

[Signature]
Dr. Adnan Taj
Vice Principal,
ZAB PGPI,
Duran Pur, Peshawar

Dated: 13-11-2019

[Handwritten notes]
1/11/19
JFA noted at
25/11/19

[Large handwritten notes]
get the opinion with
of Regulation
C.D. K.P.
22/11/19

To,

Secretary to the Govt. of Khyber Pakhtunkhwa,
Health Department,
Peshawar.

22

15858
24-10-19

Subject: **APPEAL AGAINST HPA DEDUCTION IN SALARY ADJUSTMENT FOR GAP PERIOD (WAITING FOR POSTING) W.E.F. 01-04-2019 TILL 31-08-2019 IN RESPECT OF DR. ADNAN TAJ, BS-19, MANAGEMENT CADRE, HEALTH DEPARTMENT, KP.**

Sir,

It is stated that undersigned is BS-19, Management Cadre doctor working in Health Department, Khyber Pakhtunkhwa and I was working as Chief HSRU, Directorate of Health Services, Merged Areas Secretariat till March 2019 and I have received my last salary till 31st March 2019. From 1st April 2019, I had been placed on disposal of DGHS, Khyber Pakhtunkhwa for the purpose of further posting by the Competent Authority.

It is stated that now my salary has been adjusted for the period (Waiting for Posting) w.e.f. **01-04-2019 till 31-08-2019** (05-months) against sanctioned post of MS AHQ Mishti Mela Orakzai but **HPA has been deducted** that is injustice as:

- (i) Posting of an officer/official is done by Health Department and delayed posting is not fault of employee.
- (ii) Secondly, undersigned was neither OSD nor was transferred on my own choice to DGHS for further posting.
- (iii) Deduction of HPA during waiting for posting period is not reflected in original notification of Finance Department, KP regarding HPA (Copy attached).
- (iv) Even salary adjustment is notified for waiting for posting period against sanctioned and vacant post.

It is therefore humbly requested that at for purpose of salary adjustment for waiting for posting period vide DGHS notification containing deduction of HPA may be revised and HPA be allowed along with salary adjustment for waiting for posting period. I shall be grateful.

Thanking you in anticipation.

Sincerely,



Dr. Adnan Taj
Vice Principal,
ZAB PGPI,
Duran Pur, Peshawar

Dated: 20-10-2019



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 E-Mail Address K.P.Kdghs@yahoo.com
Office # 091-9210269 Exchange # 091-9210187, 9210196 Fax # 091-9210230
NO. 219141/E-I Dated: 29/11/2019

661
23

To

The Secretary to Government of
Khyber Pakhtunkhwa Health Department,
Peshawar.

Subject:-

**APPEAL AGAINST HPA DEDUCTION IN SALARY ADJUSTMENT FOR
GAP PERIOD(WAITING FOR POSTING W.E.F 01.04.2019 TILL
31.08.2019 IN RESPECT OF DR ADNAN TAJ BPS.19 MANAGEMENT
CADRE HEALTH DEPARTMENT, KP.**

Dear Sir,

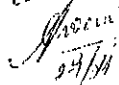
I have the honour to enclose herewith a copy of application alongwith its enclosures in respect of Dr Adnan Taj BPS-19 Management Cadre, Vice Principal Z.A.B PGPI Peshawar on the subject noted above, requesting for revision of office order issued by this Directorate and regularization of his waiting period for posting with HPA as well as submitting the case to Finance Department K.P for seeking expert opinion and guidance, for favour of further necessary action.

It is stated that the waiting period for posting from 1.04.2019 to 31.08.2019 in respect of Dr Adnan Taj BPS-19 Management Cadre, Vice Principal Z.A.B PGPI Peshawar has been regularized for the purpose of drawal of pay against the post of MS AHQ Hospital Misti Mela (District Orakzai) without HPA vide this Directorate office order bearing endostment No 18615-20/EI dated 07.10.2019, in the light of your letter No SO B-I/HD/5-7/Allowance /vol-VII dated 19.09.2019,(copy attached).

It is there for requested to take up the case with Regulation wing Finance Department Khyber Pakhtunkhwa for further order of the competent authority.


**DIRECTOR GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR**

IZHAR KHAN
November 26, 2019


29/11



**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 E-Mail Address K.P.K
Office # 091-9210269 Exchange # 091-9210187, 9210196 Fax #
NO. 10565 /E-I Dated: 16/7/2020

YES

24
/2020

To

The Secretary to Government of
Khyber Pakhtunkhwa Health Department,
Peshawar.

Subject:- **NOTIFICATION.**
Dear Sir,

I have the honour to state that Dr. Capt. Shad Ali BPS-20 (Management Cadre) was working as Addl. D.G (Admn) DGHS, office Peshawar. He has been transferred and directed to report to DGHS, KP Peshawar vide Notification No. SOH(HD)E-V/PT(MANGT/GEN/2020 dated 17.01.2020, and since that he is waiting for posting.

It is added that this Directorate General Health has already submitted his proposal for posting against the vacant post of CMO (BPS-20) Category "C" Hospital Lahor (Swabi) vide this Directorate General Health letter No. 6866/E-I dated 28.05.2020 (copya atched).

It is therefore requested to either post Dr. Capt. Shad Ali BPS-20 (Management Cadre) against the vacant post of CMO (BPS-20) Category "C" Hospital Lahor (Swabi) or adjust his pay against the vacant post of BPS-20 to release his family from financial pressure.


DIRECTOR GENERAL HEALTH SERVICES KHYER PAKHTUNKHWA PESHAWAR

16/7/2020



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 E-Mail Address K.P.K.dghs@yahoo.com
 Office # 091-9210269 Exchange # 091-9210187, 9210196 Fax # 091-9210230

OFFICE ORDER

The waiting period for posting w.e from 01.04.2020 to 03.11.2020 in respect of Dr. Capt: Shad Ali (Management Cadre BPS-20) working against the post of CMO (BPS-20) THQ Hospital Lahor (District Swabi) is hereby regularized against his existing post for the purpose of drawal of pay without HPA.

Sd/xxxx
 Director General Health Services
 Khyber Pakhtunkhwa, Peshawar

No. _____/E-I,

Dated Peshawar the: ____/____/2020

Copy is forwarded to the:

1. District Health Officer, Swabi.
2. District Account Officer, Swabi.
3. Doctor concerned.

For information and necessary action.

[Signature]
 16/11/2020
 Additional Director General (HRM)
 Directorate General Health Services
 Khyber Pakhtunkhwa

[Signature]
 16/11/2020



GOVERNMENT OF KHYBER PAKHTUNKHWA

HEALTH DEPARTMENT

26

Dated Peshawar the 17th December, 2020

NOTIFICATION

NO. SOH(E-V)4-4/2020

The Competent Authority has been pleased to adjust salary (waiting for posting period) in respect of Dr. Shad Ali (Management Cadre BS-20) at Cat-C Hospital Chota Lahore District Swabi against the vacant post of CMO (BS-20) at the same hospital w.e.f 18.01.2020 to 03.11.2020 for the purpose of drawl of pay & allowances admissible during waiting for posting period.

SECRETARY HEALTH
Govt. of Khyber Pakhtunkhwa

Endst. of even No. & Date.

Copy to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. District Health Officer, Swabi,
4. District Accounts Officer, Swabi.
5. Deputy Director (IT), Health Department for uploading on official website.
6. PS to Secretary Health, Government of Khyber Pakhtunkhwa.
7. Doctor concerned.


(Latif Ur Rehman)
SECTION OFFICER (E-V)

17-12-20

E-1



27

**POWER OF ATTORNEY/VAKALATNAMA
IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

In Re: Service Appeal No. _____/2021.

Dr. Adnan Taj

Vs.

Government of KPK etc.

On behalf of APPELLANT.

I/ we the **APPELLANT** hereby appoint **Mr. Habib Anwar** Advocate in the above-mentioned case, to do all or any of the following acts, deeds things.

1. To appear, act, sign, record Statement and plead for me/us in the above-mentioned case in this court /Tribunal or any other Court /Tribunal in which the same may be tried or heard, and other proceedings arising out of or connected therewith.
2. To sign, verify compromise and file or withdraw all proceedings, petitions, appeals, affidavits, and any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defense of the said case at its stages.
3. To receive payments of, and issue receipts for, all money that may be or become due and payable to us during the course or on the conclusion of the proceedings.
4. To do all other acts and things which may be deemed necessary or advisable during the proceedings.

AND HEREBY AGREE:

- a. To ratify whatever the said advocate may do in the proceedings.
- b. Not to hold the Advocate responsible if the said case be proceeded ex-parte or dismissed in default in consequence of absence from the Court/Tribunal when it is called for hearing.
- c. That the Advocate shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fees remains unpaid.

In witness whereof, I/We have signed this power of Attorney/ Vakalatnama hereunder, the contents of which have been read/ explained to me us and fully understood by me/ us this 30th day of July 2021, at Peshawar.

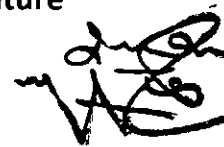
Terms Accepted

Signature

Accepted & Attested

Habib Anwar

Advocate Peshawar High Court, Peshawar



DR, Adnan Taj

“A”

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

APPEAL No. 7305 of 20 21 SB

Dr Adnan Taj

Appellant/Petitioner

Versus

The Chief Secy: Civil Secretariat Peshawar
RESPONDENT(S)

Notice to Appellant/Petitioner Dr. Adnan Taj Director
curative, Directorate General Health
Services Peshawar.

Take notice that your appeal has been fixed for Preliminary hearing,
replication, affidavit/counter affidavit/record/arguments/order before this Tribunal
on 16/3/2022 at 9:00 AM

You may, therefore, appear before the Tribunal on the said date and at the said
place either personally or through an advocate for presentation of your case, failing
which your appeal shall be liable to be dismissed in default.



Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

(For Security & Process Fee)