

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.

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)

Appal
Soc
16/6
Fee

15.10.2021

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

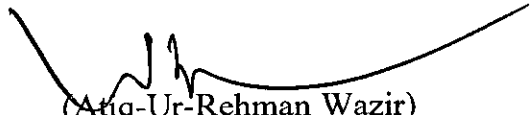
Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notice be issued to respondents for submission of written reply/comments in office within 10 days 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

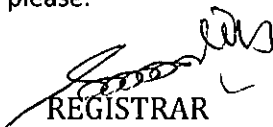


(Atiq-Ur-Rehman Wazir)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. - 7306 /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. Muhammad Sohail Khattak 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>
2-		<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>

The appeal of Dr. Muhammad Sohail Khattak SMO Deputy Director Curative 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.

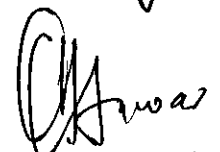
No. 1615 /S.T,

Dt. 12/08 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Habib Anwar Adv. Pesh.

objections removed. Regarding objection no.3,
the requisite document is at Page -15.
Re-submitted.


20/08/2020.

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Re: Service Appeal No. 7306/2021.

Dr. Muhammad Sohail Khattak

Vs.

Government of KPK etc.

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(Signature)

HABIB ANWAR

Advocate High Court, Peshawar.

0336-9987282

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Re: Service Appeal No. _____/2021.

Dr. Muhammad Sohail Khattak, Senior Medical Officer (BPS-18), Deputy 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



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

3. Prior to promulgation of the Medical Teaching Institutions Reforms Act of 2015 (hereinafter referred to as MTI Act), most of the sanctioned posts of health department were created in these MTIs which are available in all these MTIs even today, however, section 16 of the Act *ibid* granted them the status of deputationists and provide the MTIs to treat such civil servants in manner as provided under 11A of the Civil Servants Act 1973, for their future posting.
4. It is pertinent to mentioned here that the respondents have no any such *Surplus Pool Policy* in health department for handling such anomalies. Similarly, the concept of OSD is alien in health department. Thus, the treatment so inflicted upon the appellant, i.e. relieving health employees to Respondent No. 5 without sending the post back to the health department and thus keeping such employees without any further posting, that too, to the detriment of the appellant, in the form of deducting his HPA, is against all the principles of interpretation of a statute. This practice of relieving employees of health department without sending the incumbent post, is now seriously jeopardizing the smooth running of the respondent qua posting of its employees.
5. In the above backdrop, the appellant was relieved from MTI/ Lady Reading Hospital, Peshawar and vide **Order dated, 29.08.2019 (Annex-B)** his services were placed at the disposal of Respondent No. 5/ DGHS for further posting (*Annex-C*). In response, the appellant immediately submitted his arrival report. It is however due to above anomalous situations; the respondents were unable to find any vacant slot for the appellant. Thus, the appellant being so transferred, keep on knocking the doors of respondent No. 5 for his further posting but of no avail.
6. Consequent, after a delay of more than 4 months, **vide Office Order dated, 20.12.2019 (Annex-D)**, posted the appellant against the sanctioned/ vacant post of focal person, Mental Health, DHS Merged Districts Peshawar. And thus, his services were regularized for pay purpose, against the said post ever since **30.07.2019, i.e. from the date of his relieving from LRH**. However, his HPA was withhold vide the same order.

7. Although the appellant obeyed all his transfer and posting orders right from **relieving order on 29.07.2019** till his posting against the sanctioned post on **14.10.2019** and left no stone un-turned 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.** It is pertinent to mention here that the respondents have burdened the appellant due to their own inability as delay in posting is the sole liability of respondents.
8. The appellant requested the respondents that as his gap period has been regularized against the 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 **30.07.2019 till 14.10.2019** but the respondents are now illegally denying the same.
9. 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 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 hon'ble tribunal on the grounds inter alia:

Ground:

- a. ***Because*** the Respondent, No. 5 vide Order dated 20.12.2019, regularized the gap-period of the appellant against a sanctioned vacant post for the purpose of drawl of pay for their period of waiting, thus, denying HPA from 30th July till 14th October 2019 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.

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- 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 respondent no. 5 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.
- 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.

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- 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:

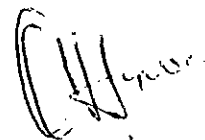
To allow the departmental Appeal of the Appellant as prayed and thus direct the respondents to allow HPA during the period between 30/07/2019 till 14/10/2019; and also Grant: Any other relief, not specifically prayed, may also graciously be granted, if appears just, necessary and appropriate.

Cost throughout



APPELLANT

Through



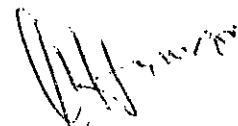
HABIB ANWAR

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. Muhammad Sohail Khattak

Vs.

Government of KPK etc.

AFFIDAVIT

I, Dr. Muhammad Sohail Khattak, Senior Medical Officer (BPS-18), Deputy 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.

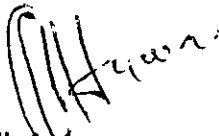
Deponent



CNIC No. 41304-2833971-9

Cell No. 0321-9003700

Identified by:



Habib Anwar

Advocate, Peshawar.

Handwritten:
9-8-21

7

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Re: Service Appeal No. _____/2021.

Dr. Muhammad Sohail Khattak Vs. **Government of KPK etc.**

Addresses of the Parties:

A. Appellant:

Dr. Muhammad Sohail Khattak, Senior Medical Officer (BPS-18), Deputy 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)

8

A

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	Rural	Urban	Rural	Urban	Rural
		42,000	52,000	62,000	72,000	82,000	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
4. Swat
5. Kohat
6. Mardan
7. Bannu
8. Charsadda
9. Dera Ismail Khan
10. Dir Lower
11. Haripur
12. Mansehra
13. Malakand
14. Swabi

Districts Category-C

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

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 gari Habibullah Manshra, 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)



LADY READING HOSPITAL
MEDICAL TEACHING INSTITUTION, PESHAWAR

10

B

OFFICE ORDER

As per directives of the competent authority, the following doctors of this hospital are hereby repatriated to Health Department, Government of Khyber Pakhtunkhwa, Peshawar, and relieved from LRH MTI with immediate effect (A.N). They are hereby directed to report to Health Department, Khyber Pakhtunkhwa, for further postings: -

S.NO.	S.No	Name	Father/Husband Name	Unit/Department Name
CHIEF MEDICAL OFFICER (BPS-20)				
1.	1.	Dr. Javed Iqbal Khattak	Muhammad Ashraf Khan	Emergency Department
PRINCIPAL MEDICAL OFFICER (BPS-19)				
2.	1.	Dr Huma Shireen	W/O Jehanzeb	OPD
3.	2.	Dr Sajjad Ahmad Malik	Muhammad Ahsan Malik	Endocrinology
4.	3.	Dr. Usman Ibrahim	Muhammad Ibrahim	Emergency Department
5.	4.	Dr. Shahnaz Ajmal	Ajmal Khan Khattak	Emergency Department
6.	5.	Dr. Sibghat Ullah Khan	Inayat Ullah Khan	Peds Surgery Unit
SENIOR MEDICAL OFFICERS (BPS-18)				
7.	1.	Dr Najma Sultana	W/O Naimat Ullah	Radiology Department
8.	2.	Dr. Sher Ali	Sher Gu. Khan	OPD
9.	3.	Dr. Asif Rahim	Abdur Rahim	OPD
10.	4.	Dr. Nadia Ashiq	Muhammad Ashiq Khan	Dermatology
11.	5.	Dr. Kamran Durrani	Bashir Ahmed	OPD
12.	6.	Dr. Zafar Ali Shah	Syed Badshah	Bolton Block
13.	7.	Dr. Alam Zeb	Aurangzeb	Orthopedic OPD
14.	8.	Dr. Abdul Wali	Izat Khan	Peds Emergency Assessment
15.	9.	Dr. Wali Khan	Mameer Khan	OPD
16.	10.	Dr. M. Sohail Khattak	Qamars Gul Khattak	OPD
17.	11.	Dr. Zarin Khan	Khanzallah Khan	Emergency Department
18.	12.	Dr. Naseer Hassan	Nazir Hussain	Emergency Department
19.	13.	Dr. Saeed Khan	Daud Khan	F.C. Room
20.	14.	Dr. Asghar Khan	Abdul Rasheed Khan	Emergency Department
21.	15.	Dr. Jamal Bahadar	Sher Bahadar	Emergency Department
22.	16.	Dr. Ghulam Qadir	Sohbat Khan	Emergency Department
23.	17.	Dr. Mohib-Ur-Rehman	Abdus Sattar	Surgical "D" Unit
24.	18.	Dr. Farid Ullah Shah	Niaz Bat Khan	Urology "A" Unit
25.	19.	Dr. Aimal Sattar	Zafar Ullah Khan	Orthopedic
26.	20.	Dr. Shahid Farid	Zain Khan	Emergency Department
27.	21.	Dr. Muhammad Samin	Wazir Muhammad	Anesthesia Department
JUNIOR REGISTRARS (BPS-17)				
28.	1.	Dr. Nooruliah Khan	Rambail Khan	Jr. Registrar (Medical A)
29.	2.	Dr. Sheikh M. Iqbal Azeem	Shiekh Muhammad Iqbal	Jr. Registrar (Emergency)

[Handwritten Signature]



LADY READING HOSPITAL
MEDICAL TEACHING INSTITUTION, PESHAWAR

18

MEDICAL OFFICERS (BPS-17)				
30.	1.	Dr Sadaf Qazi	Qazi Nasir Ud Din	Cardiology Unit
31.	2.	Dr. Muhammad Ibrahim	Muhammad Ismail	Pediatric "A" Unit
32.	3.	Dr. Dost Muhammad Khan	Abdus Samad Khan	Endocrinology Unit
33.	4.	Dr. Muhammad Iqbal	Pir Muhammad	Emergency Department
34.	5.	Dr. Aftab Hussain	Hidayat Ullah Khan	Emergency Department
35.	6.	Dr. Hidayat Ullah	Abdul Hameed	Cardiology Unit
36.	7.	Dr. Muhammad Faisal Khan	Muhammad Hussain	Emergency Department
37.	8.	Dr. Akhtar Muner	Muhammad Zada	Neurosurgery "A" Unit
38.	9.	Dr. Ghulam Younis Khan	Muhammad Awalia	Emergency Department
39.	10.	Dr. Alamgir Khan	Abdul Mateen Khan	Orthopedic
40.	11.	Dr. Muhammad Noor Khan	Ali Mar Khan	Emergency Department

Sd/-xxxx

Medical Director

Lady Reading Hospital-MTI,
Peshawar

Dated 29/07/2019

No. 19089-98/HR/LRH

Copy forwarded to the:-

1. Secretary to Govt. of Khyber Pakhtunkhwa Health Department, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. Head of the Department concerned, LRH.
4. Director Human Resources, LRH.
5. Secretary to BoG, LRH.
6. Director Finance, LRH.
7. HR MIS, LRH.
8. P.A to Medical Director, LRH.
9. Doctors concerned.

For information & n/a.

10. HR Mo.

Medical Director

Lady Reading Hospital-MTI,
Peshawar

OPD

Human Resources Department, Lady Reading Hospital - MTI, Peshawar
Tel: 091-09112211 Fax: 091-09112211 Email: hr@lrh.edu.pk

6



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: 2 /2020

To

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

Subject:-
Dear Sir,

NOTIFICATION.

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 (copy attached).

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

7/16/2020



GOVERNMENT OF KHYBER PAKHTUNHWA

13



**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

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

14

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

Handwritten signature/initials

Handwritten mark



**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

OFFICE ORDER

15

▷

The gap/waiting period for posting w.e from 30.07.2019 to 14.10.2019 in r/o Dr. Mohammad Sohail Khattak SMO (BPS-18) Focal Person Mental Health, DHS, Merged Districts Peshawar is hereby regularized against his existing post, for the purpose of drawal of pay without HPA.

Sd/xxxxxxxxxxxxxx
DIRECTOR GENERAL HEALTH
SERVICES, Khyber Pakhtunkhwa
PESHAWAR

No. 23454-SG/E-I,

Dated Peshawar the: 20 / 12 / 2019

Copy forwarded to the:

1. A.G Khyber Pakhtunkhwa Peshawar.
2. DHS, Merged District Peshawar.
3. Doctor concerned.

For information and necessary action.

M. Ghani
DEPUTY DIRECTOR (H.R.M)
DIRECTORATE GENERAL HEALTH SERVICES,
KHYBER PAKHTUNKHWAPESHAWAR

7/31/2/19



**LADY READING HOSPITAL
MEDICAL TEACHING INSTITUTION, PESHAWAR**

18

OFFICE ORDER

Whereas Dr. Muhammad Sohail Khattak, Senior Medical Officer (BPS-18) has been repatriated to Health Department, Government of Khyber Pakhtunkhwa, Peshawar and relieved from LRH-MTI, Peshawar vide Office Order No. 19089-98/HR/LRH, dated. 29-07-2019. Therefore, he submitted departure report with effect from 30-07-2019 (F.N) to join his new place of posting and subsequently his clearance from all concerned section has been completed.

Sd-xxx
Medical Director
Lady Reading Hospital-MTI,
Peshawar


No. 20439-41 /HR/LRH

Dated: 08/08/2019

Copy forwarded to: -

1. Director Finance, LRH.
2. P.A to Medical Director, LRH.
3. Doctor Concerned.

For information & n/action.


Director Human Resources
Lady Reading Hospital-MTI,
Peshawar

7

TO BE SUBSTITUTED BEARING SAME NO & DATE



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

17

Dated Peshawar the October 14, 2019

NOTIFICATION

NO.SOH (E-V)7-830/2019. The competent authority has been pleased to place the services of Dr. Muhammad Sohail Khattak, Senior Medical Officer (BS-18), (waiting for posting) at the disposal of Directorate Health Services, Merged Areas against the vacant post of Senior Medical Officer (BS-18) with immediate effect in the public interest.

**SECRETARY HEALTH
Govt. of Khyber Pakhtunkhwa**

Endst. No. & Date Even

Copy to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. Director General, Health Services, Khyber Pakhtunkhwa.
3. Director Health Services Merged Areas, Peshawar.
4. Hospital Director, MTI LRH, Peshawar.
5. PS to Secretary Health Department.
6. Computer Programmer Health Department
7. DHIS Cell DGHS Office, Peshawar.
8. Doctor concerned.

(FAZAL-UR-RAHIM)
SECTION OFFICER (E-V)

Amo E -1-

18

IN THE PESHAWAR HIGH COURT PESHAWAR

Writ Petition No. 3218/P/2020

CRH
employees

CRH/MC

CRH

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.

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).**
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

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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.

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).**

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

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13 JUL 2020

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)

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

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Deputy Registrar
13 JUL 2020

PESHAWAR HIGH COURT, PESHAWAR
FORM OF ORDER SHEET

Date of Order of Proceedings	Order of other Proceedings with Signature of Judge.
1	2
21.04.2021	<p>WP No. 3218-P of 2020</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, CJ.-</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>

23

F

[Signature]

"younas"

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

24

	<p>Allowance of the gap/waiting for posting period”.</p> <p>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.</p> <p>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</p>
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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



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

In Re: Service Appeal No. _____/2021.

Dr. Muhammad Sohail Khattak 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. Muhammad Sohail Khattak

"A"

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

No. 7306
APPEAL No. of 20 21.

Dr. Muhammad Sohail Khattak

Appellant/Petitioner

Versus


The Chief Secy: Civil Secretariat, Peshawar
RESPONDENT(S)

Notice to Appellant/Petitioner Dr. Muhammad Sohail Khattak
Senior Medical Officer (BPS-18) Deputy 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.

(For Security & Process Fee)


Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.