

Service Appeal No. 55/2018

30.01.2019

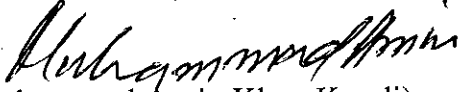
Appellant Mst. Abida Noreen alongwith her counsel Mr. Kamran Khan present. Mr. Kabirullah Khattak, Additional AG for the respondents present.

The appeal was fixed for written reply, however, today application was submitted by the appellant for withdrawal of the appeal on the ground that the respondent department has made verbal commitment with her for redressal of her grievance if she withdraw her appeal. Application is placed on file.

Keeping in view the application, the present appeal stand dismissed as withdrawn. In case, the grievance of the appellant was not redressed departmentally than she will be at liberty to file fresh appeal subject to all legal objections. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

30.01.2019


(Muhammad Amin Khan Kundi)
Member

12.10.2018

Mr. Muhammad Maaz Madni, Advocate for appellant present and made request for further time to file amended appeal. Addl. AG (Mr. Kabirullah Khattak) for the respondents present. Adjournment as requested by the learned counsel for the appellant is granted. To come up for filing of amended appeal on 06.11.2018 before S.B.


Chairman

06.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 24.12.2018. Written reply not received.


READER

24.12.2018

Nemo for the parties.

The last date of hearing was adjourned due to Reader Note. Let notices be issued to the parties for 30.01.2019 before S.B.


Chairman

13.08.2018

Counsel for the appellant and Mr. Kabirullah Khattak AAG, for the respondents present. Vide order sheet dated 03.08.2018 appellant was directed to amend the memo of the appeal, but the same has not been submit so far. Counsel for the appellant against directed to amend the same. Thereafter, notices be issued to newly impleaded respondents for written reply/comments on 04.09.2018 before S.B. Arguments on stay application will also be heard on the date fixed. In the meanwhile status-quo be maintained till the date fixed.

M.A.
(Muhammad Amin Kundi)
Member

04.09.2018

Learned counsel for the appellant present. The appellant has not furnished Amended appeal despite issuance of direction to this effect twice. Due to dis-interest of the appellant in pursuing the present service appeal, interim relief in the shape status-quo shall not be extended any further. Adjourned. Amended appeal be furnished with in a week and thereafter notices be issued to the respondents of the amended appeal for 20.09.2018. To come up for further proceeding on 20.09.2018

before S.B.
P.
Member

22.9.2018

Due to muharram ul haram
vacations the case was not
heard on 20.9.2018. Adjourned
for 12-10-2018

H. A.
READER

~~On 03.08.2018, the appellant's appeal was~~
~~not submitted despite the fact that last chance was given. As~~
~~such in view of the circumstances of the case, the salary of~~
~~representative Mr. S. B. Superintendent is hereby attached.~~
~~Adjourned. To come up with written reply/para-wise comments~~
~~on 03.08.2018 before S. B.~~

03.08.2018

M/S Noor Muhammad Khattak, Advocate and. Muhammad Maaz Madni, Advocate counsels for the appellant present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply not submitted and again made a request for some time. Granted.

On perusal of the memo of appeal the respondents under the old nomenclature do not exist anymore and therefore, most probably written reply/comments could not be submitted in time. As such, counsel for the appellant is directed to amend the memo of appeal to that extent and thereafter fresh notices be also given to the newly impleaded respondents for written reply/comments on 13.08.2018 before S.B. Arguments on stay application will also be heard on the date fixed. In the meanwhile status-quo be maintained till the date fixed.


Chairman

22.06.2018

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for the respondents also present. Written reply by respondents not submitted. Learned Additional AG requested for further adjournment. Last opportunity granted. Representative of the department is also not in attendance therefore, notice be issued to the respondents with the direction to direct the representative to attend the court and submit written reply on the next date. Adjourned. To come up for written reply/comments and cost of Rs. 1000/- on 06.07.2018 before S.B.

MA

(Muhammad Amin Khan Kundi)
Member

06.07.2018

Counsel for the appellant and Mr. Sardar Shoukat Hayat, Addl. AG alongwith Syed Daud Jan, Supdt for the respondents present. Representative of the respondents No. 2 & 3 is also not in attendance therefore, notice be issued to the respondents with the direction to direct the representative to attend the court and submit written reply on the next date positively. Written reply not submitted despite extension of last opportunity and cost of Rs. 3000/-. Another last opportunity is extended, subject to payment of further cost of Rs. 4000/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments and cost of Rs. 4000/- on 20.07.2018 before S.B. In the meanwhile status-quo be maintained till the date fixed.

MA
Member

20.07.2018

Learned counsel for the appellant present. Written reply not submitted despite imposition of cost time and again. As such this Tribunal is constrained to attach the salary of the respondent No.2, Warrant of attachment of salary be issued accordingly. Adjourned. To come up for written reply/para wise comments on 03.08.2018 before S.B.

MA
Member

55/2018

17.05.2018

Mr. Kamran Khan, husband of the appellant alongwith Mr. Mir Zaman, Advocate for appellant present. Mr. Kabirullah Khattak, Addl. AG on behalf of the respondents present. The later requested for adjournment for the reason that the department has not approached him. Request is accepted but the learned AAG to ensure submission of written reply/comments by the respondents on or before 30.05.2018 before S.B.


Chairman

30.05.2018

Counsel for the appellant, Addl: AG for respondent present. Written reply not submitted despite last opportunities. Requested for further adjournment. Last opportunity further extended subject to payment of cost of Rs. 1000/- which shall be borne by respondents from their own pockets. Notices be issued to the respondents. To come up for written reply/comments on 12.06.2018 before S.B.

(Ahmad Hassan)
Member

12.06.2018

Counsel for the petitioner present. Mr. Kabirullah Khattak, Additional AG for the respondents also present. Written reply not submitted despite extension of last opportunity at the cost of Rs. 1000/-. Today learned Additional AG requested for further adjournment. Granted. To come up for written reply/comments and costs of Rs. 1000/- on 22.06.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member

17.04.2018

Counsel for the appellant present. Mr. Riaz Ahmed Pinda Kheil, Assistant AG for the respondents also present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for further proceedings on 19.04.2018 before D.B.

(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

19.04.2018

Appellant with counsel present. Mr. Ziaullah, Deputy District Attorney alongwith Shah Nawaz, Litigation Assistant for the respondents also present. Record reveals that written reply has not been submitted by the official respondents so far and the case has been fixed vide order sheet dated 03.04.2018 for D.B. As written reply has not been submitted therefore, the case is fixed for S.B for written reply on behalf of official respondents. Last chance is given to the respondents for submission of written reply. Adjourned. To come up for written reply/comments on 02.05.2018 before S.B. In the meanwhile status-quo be maintained till the date fixed.


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

02.05.2018

Junior counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. The Tribunal is non-functional due to retirement of our Hon'ble Chairman. Therefore, the case is adjourned. To come up for same on 17.05.2018.


Reader

08.03.2018

Junior counsel for the appellant and Assistant AG alongwith Mr. Shah Nawaz Khan Legal Advisor for respondent No. 3 present. None present on behalf of respondent No. 1 & 2 therefore fresh notice be issued to the respondent department for attendance. To come up for written reply/comments on 21.03.2018 before S.B.


(Gul Zeb Khan)
Member

21.03.2018

Appellant absent. Junior counsel present on behalf of appellant. Mr. Kabir Ullah Khattak, Addl: AG for the respondents present. Representative of the respondent department is absent. Therefore, fresh notice be issued to the respondent department for attendance. Written reply not submitted. Learned Addl: AG requested for adjournment adjourned. Last opportunity is granted. To come up for written reply and comments on 03.04.2018 before S.B. Status-quo be maintained till the date fixed.


Member

03.04.2018

Appellant absent. Junior counsel present on behalf of appellant. Mr. Kabir Ullah Khattak, Additional Advocate General alongwith Mr. Shah Nawaz, Legal Advisor for the respondents present. Representative of the respondents seeks adjournment to furnish reply. In the present appeal the appellant has challenged her transfer and punishment vide order dated 06.10.2007 and status-quo order has also been issued by this Tribunal. Consequently, in order to avoid further delay in the disposal/decision of the present appeal the same be interested to D.B. To come up for further proceedings on 17.04.2018 before D.B. Representative of the respondents is directed to furnish reply ~~before~~ on the date fixed.


Member


24.01.2018

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (LHV BS-12) has made impugned the order dated 06.10.2017 whereby she was transferred from Khyber Agency and her services have been placed at the disposal of Agency Surgeon Lower and Central Kurram for further posting with stoppage of one (01) annual increment from her salary.


Points raised need consideration. Admitted for regular hearing. The appellant is directed to deposit security and process fees within 10 days thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 08.02.2018 before S.B. Annexed with memo of appeal is an application for interim relief. Notice of the same be also given to the respondents for the date fixed.

Appellant Deposited
Security & Process Fee


(Muhammad Hamid Mughal)


08.02.2018

Counsel for the appellant and Addl: AG for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply on 22.02.2018 before S.B.


(Ahmad Hassan)
Member(E)

22.02.2018

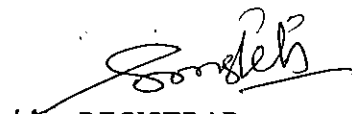


Clerk of the counsel for appellant and Assistant AG present. None present on behalf of respondent department. Therefore, fresh notice be issued to the respondent department for attendance. Written reply not submitted. Learned Assistant AG requested for further time adjournment. Request accepted. To come up for written reply/comments on 08.03.2018 before S.B. Status-quo be maintained till the date fixed.


(Gul Zeb Khan)
Member

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 55/2018


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	15/1/2018	<p>The appeal of Mr. Abida Noreen resubmitted today by Mr. Noor Muhammad Khattak Advocate, may be entered in the Institution Register and put up to Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	17/01/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>19/01/18.</u></p> <p style="text-align: right;"> MEMBER</p>
	19.01.2018	<p>Counsel for the appellant present and seeks adjournment. Adjourned. To come up for preliminary hearing on 24.01.2018 before S.B.</p> <p style="text-align: right;"> (Gul Zeb Khan) Member (E)</p>

This is an appeal filed by Mst. Abida Noreen today on 01/1/2018 against the order dated 06.10.2017 against which she preferred/made a departmental appeal dated 11.10.2017 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 which is premature as laid down in an authority reported as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action.

No. 12 /S.T,

Dt. 02/01 /2018



REGISTRAR 2/1/18
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Noor Muhammad khattak Adv. Pesh.

Note:

Sir,

That the statutory period of ninety days of Departmental appeal has been completed and the instant Service appeal has been mature now, therefore, the instant appeal may kindly be put up before the bench for hearing.


11/01/2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 55 /2018

ABIDA NOREEN

VS

ACS FATA & OTHERS

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APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 55 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 01

Dated 01-01-2018

Mst. ABIDA NOREEN, Lady Health Visitor (BPS-12),
O/O Agency Surgeon, Khyber at Jamrud.

..... APPELLANT

VERSUS

- 1- The Additional Chief Secretary (FATA), FATA Secretariat, FATA Secretariat, Warsak Road, Peshawar.
- 2- The Director Health Service (FATA), FATA Secretariat, Warsak Road, Peshawar
- 3- The Agency Surgeon, Khyber Agency at Jamrud.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 06-10-2017, WHEREBY THE APPELLANT HAS BEEN TRANSFERRED FROM HER HOME AGENCY AND PLACE AT THE DISPOSAL OF AGENCY SURGEON LOWER & CENTRAL KURRAM IN UTTER VIOLATION OF RULES & POLICY ALONG WITH MINOR PENALTY OF STOPPAGE OF ONE ANNUAL INCREMENT WITH CUMULATIVE EFFECT WITHOUT CONDUCTING REGULAR INQUIRY INTO THE MATTER AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL DATED 11-10-2017 OF THE APPELLANT WITHIN THE STIPULATED PERIOD INSPITE OF CLEAR DIRECTION ISSUED BY PESHAWAR HIGH COURT PESHAWAR IN ITS JUDGMENT DATED 23-11-2017 IN WRIT PETITION NO. 4434-P/2017.

Filed to-day

Registrar

11/1/18

PRAYER:

That on acceptance of this appeal the impugned order dated 06-10-2017 may very kindly be set aside by retaining the appellant against its original placed of posting at her home agency i.e. Khyber Agency with the further direction to restore the annual increment of the appellant with all back benefits. Any other remedy which this Honourable Tribunal deem fit may also be awarded to the appellant

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the instant appeal are
as under:-

Re-submitted to-day
and filed.

Registrar

13/1/18

- 1- That appellant is the bonafide resident of Tehsil Jamrud Khyber Agency, was appointed as Lady Health Visitor vide order dated 30-04-2001 and after transfer from Orakzai Agency to Khyber Agency was posted as ADC NP for FP & PHC in MCH Center Landikotal Khyber Agency. Copy of Appointment and Posting order is attached as annexure **A&B.**
- 2- That, the appellant is serving the Department quite efficiently, whole heartedly and upto the entire satisfaction of her high ups and as such the appellant has unblemished service record of more than 17 years. Copy of attendance register is attached as annexure**C.**
- 3- That, respondent No. 3 issued letter dated 10-08-2017 on the subject "INDENT OF NUTRITION ITEMS FOR FREE MEDICAL CAMPS IN KHYBER AGENCY" to Incharge Food Nutrition Distribution Centre Landikotal, Khyber with the direction to issued the items to Free Medical Camps of the Mobile Hospital Program Khyber Agency, which were properly issued to and received by a responsible person of Mobile Hospital Program. Copy of the letter is attached as annexure **D.**
- 4- That, on the very next day of the above mentioned letter the appellant was informed that the service of the appellant is suspended by respondent no. 2 vide order dated 11-08-2017 without any clear justification. Copy of suspension order is attached as Annexure **E.**
- 5- That all of a sudden the respondent no. 2 issued the impugned order dated 06-10-2017 whereby the appellant was not only transferred from Khyber Agency to Kurram Agency but minor penalty of Stoppage of One Year Increment was also imposed upon the petitioner. Copy is attached as Annexure **F.**
- 6- That feeling aggrieved from the impugned order dated 06-10-2017 the appellant filed Departmental Appeal dated 11-10-2017 before the competent authority respondent No. 1. Copy of Departmental Appeal is attached as annexure **G.**
- 7- That the appellant filed a writ petition no. 4434-P/2017 in the Peshawar High Court Peshawar, which was disposed of with the direction to respondent no. 1 to decide the Departmental Appeal according to the posting/transfer policy but in spite of the clear direction issued by Peshawar High Court Peshawar in its judgment dated 23-11-2017, respondent no.1 have not decided the Departmental Appeal within the specified period of 15 days.

Copy of Writ Petition & Judgment dated 23-11-2017 is attached as annexure **H.**

- 8- That appellant having no other remedy prefer the instant appeal on the following grounds amongst the others.

GROUND:

- A- That the impugned order dated 06.10.2017 issued by the respondents is against the law, facts, norms of natural justice and materials on the record hence not tenable and is liable to be set aside.
- B- That the Appellant has not been treated by the respondent Department in accordance with law and rules and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the impugned order dated 06-10-2017 has been issued in violation of clause- I, II & IV of the transfer/posting Policy of the Provincial Government. Copy of the transfer/posting policy is attached as annexure **I.**
- D- That the impugned order dated 06.10.2017 has been issued in arbitrary and malafide manner.
- E- That, transfer cannot be imposed as punishment as the transfer has not been mentioned in the list of Penalties provided in the E&D Rules 2011 or any other Law or Rules .
- F- That, no regular or fact finding inquiry was initiated in the matter while issuing the impugned order dated 06-10-2017 by the respondents.
- G- That, no chance of personal defense has been given to the appellant while issuing the impugned order dated 06-10-2017.
- H- That, the appellant is transferred out from one Agency to another one side and on the other side minor penalty of stoppage of One annual increment has been imposed upon the appellant which clearly falls within the ambit of Double Jeopardy.
- I- That, respondents have issued the impugned order dated 06-10-2017, just to harass the appellant and is penalized for the fault of others.
- J- That the impugned order dated 06.10.2017 has not been issued in the public interest nor exigencies of service.

- K- That, the act of the respondents by withholding one annual increment with cumulative effect of the appellant is a clear violation of the Rule FR-29 of the Fundamental Rules.
- L- That as the post of the appellant is an Agency Cadre post and the impugned order dated 06-10-2017 issued by the respondent is a clear violation of its own Agency Cadre policy. Copy of the policy is attached as Annexure J.
- M- That Appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that appeal of the appellant may be accepted as prayed for in the heading of the appeal.

Dated: 01-01-2018

APPELLANT

Abida Noreen

ABIDA NOREEN

THROUGH:

NM
NOOR MOHAMMAD KHATTAK

M
**MUHAMMAD MAAZ MADNI,
ADVOCATES, PESHAWAR.**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2018

ABIDA NOREEN VS ACS (FATA) & OTHERS

APPLICATION FOR SUSPENSION OF OPERATION
OF IMPUGNED ORDER DATED 06-10-2017 TILL
THE FINAL DISPOSAL OF THIS APPEAL

R/SHEWETH:

- 1- That the appellant filed above mentioned appeal along with this application before this august service Tribunal in which no date has been fixed so for.
- 2- That all the three ingredients necessary for the stay is in favor of the appellant.
- 3- That the impugned transfer order dated 06-10-2017 is against the transfer/ posting policy as laid down for the subject matter.
- 4- That the grounds of main appeal is also be considered as integral part of this application.

It is, therefore, most humbly prayed that on acceptance of this application the impugned order dated 06-10-2017 may very kindly be suspended till disposal of this appeal.

DATED: 01-01-2018

APPELLANT

Abida Noreen

ABIDA NOREEN

THROUGH:

[Signature]
NOOR MOHAMMAD KHATTAK

&

[Signature]
MUHAMMAD MAAZ MADNI,
ADVOCATES, PESHAWAR

DIRECTORATE OF HEALTH SERVICES
FATA, NWFP, PESHAWAR.

6

Appointment Letter.

Annexure - A

Consequent upon the approval of Departmental Selection Committee held on
21/3/2001 Miss. _____ D/O _____

Resident of _____
is hereby appointed as Lady Health Visitor in BPS No.9 plus usual allowance as
admissible under the rules.

Her appointment will be subject to the following terms and conditions:-

10. That her appointment is purely on temporary basis and her services is liable to be terminated at any time with out any notice or reasons being assigned.
11. That she is declared medically fit for government service.
12. That she will be governed by such rules and orders as may be issued by the government of NWFP, from time to time for the category of the government servant to which she belong.
13. That if she wishes to resign, at any time she will resign in written with 30 days notice or pay in lieu thereof and will continue to serve the government till the acceptance of her resignation by the competent authority.
14. That she will be posted any where in FATA and will serve at the place of posting at least for 5 years for which she will give an under taking on stamp paper duly attested by the oath commissioner.
15. She will not be entitled to any TA/DA for medical examination and joining the first appointment.
16. If she accept the post on above conditions she should report her self to _____ with in 15 days. The offer will be cancelled if she fail to report for duty with in above mention period.
17. The offer will be subjected to the availability of vacant post.
18. She will not be paid salary until she has not produced the requisite bond to _____
_____ Agency Surgeon/DHO and Medical Superintendent.

-----Sd-----
Director Health Services
FATA, Peshawar.

No 8952-54 /FATA/M&E.
Copy forwarded to the:-


Dated Peshawar the. 30/4/2001.

5. Accountant General AGPR. Peshawar.
6. Agency/Division Account officer _____
7. Agency Surgeon/DHO/Medical Superintendent. _____

He is also directed to submit the bond taken form the appointee dully countersigned by him to this Directorate .

8. Official concerned.

Director Health Services
FATA, Peshawar

ATTESTED


Better copy of Annexure - A
DIRECTORATE OF HEALTH SERVICES
FATA, NWFP, PESHAWAR.

Appointment Letter.

Consequent upon the approval of Departmental Selection Committee held on 21/3/2001 Miss. Abida Noreen D/O Muhammad Ali

Resident of Zakka Khail Landikotal - Upper Agency is hereby appointed as Lady Health Visitor in BPS No.9 plus usual allowance as admissible under the rules.

Her appointment will be subject to the following terms and conditions:-

10. That her appointment is purely on temporary basis and her services is liable to be terminated at any time with out any notice or reasons being assigned.
11. That she is declared medically fit for government service.
12. That she will be governed by such rules and orders as may be issued by the government of NWFP, from time to time for the category of the government servant to which she belong.
13. That if she wishes to resign, at any time she will resign in written with 30 days notice or pay in lieu thereof and will continue to serve the government till the acceptance of her resignation by the competent authority.
14. That she will be posted any where in FATA and will serve at the place of posting at least for 5 years for which she will give an under taking on stamp paper duly attested by the oath commissioner.
15. She will not be entitled to any TA/DA for medical examination and joining the first appointment.
16. If she accept the post on above conditions she should report her self to Agency Surgeon Orakzai with in 15 days. The offer will be cancelled if she fail to report for duty with in above mention period.
17. The offer will be subjected to the availability of vacant post.
18. She will not be paid salary untill she has not produced the requisite bond to concerned Agency Surgeon/DHO and Medical Superintendent.

-----Sd-----

Director Health Services
FATA, Peshawar.

No 8952-54 /FATA/M&E.

Dated Peshawar the. 30 /4/2001.

Copy forwarded to the:-

5. Accountant General AGPR, Peshawar.
6. Agency/District Account officer Orakzai at Hangu
7. Agency Surgeon/DHO/Medical Superintendent. Orakzai at Hangu
He is also directed to submit the bond taken form the appointee dully countersigned by him to this Directorate .
8. Official concerned.



Director Health Services
FATA, Peshawar

ATTESTAD

Annexure B

Annexure-B

The following passing/ orders of the Director of Health Services, Peshawar, are hereby ordered with immediate effect, in the interest of public service.

S.No.	Name of Official	From	To	Description
01.	Mt: Lt Col Legum 1977	MCH: Centre Landikotal	Mt: J. Javed, Landikotal	Be work as MCH in HP; for PHC/HP Landikotal
02.	Mt: Lt Col Legum 1977	Newly posted	MCH, Centre Landikotal	Visit to, L. Landikotal

Arrival/departure reports shall submit to this office for record.

[Signature]
Agency Surgeon
Landikotal

No. 746-50 /MCH/Adm/HP. Date: 05/04/77

Copies forwarded to the:

01. Director Health Services, Government Secretariat (MCH) Peshawar.
02. Agency Coordinator, HP: for PHC and HP: Khyber Agency.
03. Agency Accounts officer Khyber at Peshawar Cantt:
04. MCH: Centre, Landikotal.
05. Official concerned.

for information.

[Signature]

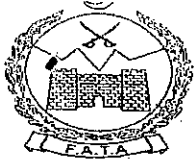
[Signature]
Agency Surgeon R
at Landikotal

١٠

١٠٠ - ١٠٠٠

١٠٠٠

١٠٠



OFFICE OF THE AGENCY SURGEON
KHYBER AT JAMRUD

9

No: 8447 /AS/Khy

Dated: 10 / 8 /2017

Incharge
Food Nutrition Distribution centre
Landikotal
Khyber Agency.

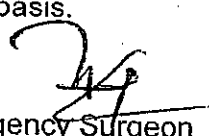
Annexure (D)

Subject: INDENT OF NUTRITION ITEMS FOR FREE MEDICAL CAMPS IN
KHYBER AGENCY

You are hereby directed to issue the following Nutrition item for distribution to the entitled patients during monthly scheduled Free Medical Camps of the Mobile Hospital Programme Khyber in far and wide of the agency including Tirah:-

S No	Nomenclature	A/U	Quantity demanded
1	MUMTA	Cartons	30
2	ACHA MUM	Cartons	10

Incharge of the Free Medical Camps is also directed to keep a record of all recipients and share with incharge of centre on monthly basis.


Agency Surgeon
Khyber at Jamrud

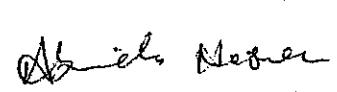
No: _____ /AS/Khy

Dated ____ / ____ /2017

Copy forwarded to the :

1. Director Health Services FATA, Warsak Road, Peshawar.
2. Political Agent Khyber Agency, Khyber House, Peshawar.
3. Assistant Political Agent Bara, Jamrud & Landikotal.
4. Agency Coordinator NP for FP & PHC Khyber.

Agency Surgeon
Khyber at Jamrud



Issue to A/S 10/08/17


ATTESTAD

Received
12/17

DIRECTORATE OF HEALTH SERVICES FATA

FATA SECRETARIAT WARSAK ROAD PESHAWAR

PH # 091-9210212

FAX # 091-9212110

9

OFFICE ORDER

Amex use - (E)

Mst. Abida LHV / ADC National Program attached to Agency Surgeon Khyber, is hereby suspended from service on the report of joint Surveillance Team constituted by Project Director WFP FATA with immediate effect.

--/--

Director Health Services,
FATA, Peshawar.

No. 16719/23 /DHS/FATA/Admin

Dated 11 / 8 / 2017

Copy forwarded to the:-

1. Project Director WFP, Directorate of Project, FATA Secretariat Peshawar.
2. Agency Surgeon Khyber at Jamrud.
3. PS to Additional Chief Secretary, FATA.
4. PS to Secretary Social Sector Department, FATA.
5. Officials concerned.

Director Health Services,
FATA, Peshawar.



ATTESTAD



DIRECTORATE HEALTH SERVICES FATA

(11)

FATA SECRETARIAT WARSAK ROAD PESHAWAR.

No _____/DHS/FATA/Admn Dated:-

Phone# 091-9210106

FAX# 091-9210212

Annexure - (F)

5

OFFICE ORDER:-

In light of recommendation of inquiry officer pertaining to "illegal transportation of world food programme items out of the Agency in official vehicle of Agency Surgeon, Khyber Agency on 10-08-2017, Mst: Abida Noreen, LHV attached to Agency Surgeon Khyber is hereby transferred and her services are placed at the disposal of Agency Surgeon Lower and Central Kurram for further posting with stoppage of one annual increment from her salary in the interest of public service with immediate effect.

Furthermore she shall not be engaged in activity/facilitation of World Food Programme/other-projects-activities in future.

Sd/-----

**Director Health Services,
FATA, Peshawar**

No. 18872-77/DHS/FATA/Admn, dated 06 /10/2017. ✓
Copy for information and necessary action to the:

- Agency Surgeon Khyber Agency.
- Agency Surgeon Central and lower Kurram at Sadda.
- Project Director (Nutrition) Directorate of Projects FATA.
- Agency Account office Khyber Agency and Kurram Agency
- Official concerned.

Attested

ATTESTAD

**Director Health Services,
FATA, Peshawar**

To

12
Annexure - (3)

The Honourable Additional Chief Secretary (FATA),
FATA Secretariat, Warsak Road, Peshawar.

Subject: **DEPARTMENTAL APPEAL AGAINST ORDER NO. 18972-77**
DATED 06-10-2017

R/Sir,

Most respectfully it is stated that I have been appointed as Lady Health Visitor (LHV) in the year 2001 and presently performing my duties in as LHV alongwith additional Duties of ADC National Program FATA. I am performing my duties quite efficiently, honestly with full devotion and upto the entire satisfaction of my high ups and have never given any one the chance of any complaint and as such I have an unblemished service record of more than 17 years.

I have been served with order dated 06-10-2017 upon which not only I have been transferred out of the Agency as well as a harsh punishment and major penalty of stoppage of One Annual Increment from salaries have also been imposed upon me.

In this connection it is stated that as per the above order "illegal transportation of World Food Programme items out of the Agency in official vehicle of Agency Surgeon, Khyber Agency" and is stated that inquiry is conducted which is against the facts, inquiry would have been conducted but it is a one sided inquiry as no chance of personal defense have been given to me. I am only the custodian of the items and not the carrier the items were properly handed over to a responsible person.

It is therefore, most kindly requested to cancel the order dated 06-10-2017 in which not only I have been transfer out from Khyber Agency but Major Penalty of Stoppage of One Year Increment is imposed upon me, which fall within the ambit of Double Jeopardy and also against the Rule & Regulation.

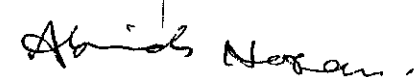
I shall be very thankful to you for this kindness.

Dated: 11-10-2017

Yours Obediently,

Attested

ATTESTAD


MST. ABIDA NOREEN,
LHV, Khyber Agency

13

Amexure - (H)

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No 44347 /2017



Abida Noreen,
LHV, Agency Surgeon,
Khyber Agency

.....Petitioner

Versus

1. Additional Chief Secretary FATA, FATA Secretariat, Warsak Road, Peshawar.
2. Director Health Services, FATA, FATA Secretariat, Warsak Road, Peshawar
3. Agency Surgeon, Khyber at Jamrud

.....Respondents

**Writ Petition under Article 199 of The
Constitution of Islamic Republic of Pakistan, 1973**

Respectfully Sheweth,

The Petitioner humbly craves permission to plead for solace of her grievance while invoking the constitutional jurisdiction of this Honorable Court as under:

Brief but relevant facts warranting this Writ Petition

1. That the Petitioner is serving as LHV at office of Agency Surgeon, Khyber at Jamrud.
2. That the Petitioner is transferred to Agency Surgeon Lower and Central Kurram, Khyber Pakhtunkhwa with immediate effect for further posting with stoppage of one annual increment from her salary vide office order dated 06-10-2017. (Copy of the office order is filed herewith and attached as Annex-A)

That it is pertinent to mention here that in the impugned order it has been clearly mentioned that the Petitioner is transferred on administrative grounds which is against the settled principles of service law because a civil servant cannot be transferred out merely as a punishment. Further

FILED TODAY

Deputy Registrar

03 NOV 2017

22 DEC 2017



7 DEC 2013
EXAMINER
OF THE COURT

14

is diabetics patient and her children are school going whose examinations are to be held in near future, hence not only the Petitioner but also her children will suffer in case the impugned order is not set aside. (Copy of medical prescription and school certificate is filed herewith and annexed as Annex-B)

3. That aggrieved of the aforesaid Office Order the Petitioner filed a Departmental Appeal for redress of her grievance but the same bore no fruit and the same is still pending with the respondents. (Copy of the Departmental Appeal is attached herewith as Annex-C).

Hence the Petitioner having no other adequate and efficacious remedy is constrained to approach this Honorable Court in its extra ordinary constitutional jurisdiction on the following amongst other grounds:

Grounds:

- a. That the impugned order is against the law, illegal, unlawful and without lawful authority, hence calling interference of this Honorable Court in its constitutional jurisdiction.
- b. That in the impugned order it has been clearly mentioned that the Petitioner is transferred on administrative grounds which is against the settled principles of service law because a civil servant cannot be transferred out merely as a punishment.
- c. That the Petitioner is diabetics patient and her children are school going whose examinations are to be held in near future, hence not only the Petitioner but also her children will suffer in case the impugned order is not set aside.
- d. That the impugned order is amounting to double jeopardy as not only the Petitioner is transferred on administrative grounds but also awarded stoppage of one annual increment from her salary.
- e. That the Petitioner has not been treated in accordance with law, rules and policy on the subject matter which is not only against the Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 but also the same is against the fundamental rights enshrined and protected under the Constitution of Islamic Republic of Pakistan, 1973.
- f. That the Posting of the petitioner is based on malafide and not in public interest or service exigency, rather the same is based on malafide, which is against the dictums of August Supreme Court of Pakistan and this Honorable Court.
- g. That the impugned posting order is not in public interest rather the same is issued to victimize, humiliate and harass the petitioner.

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ATTESTED
EXAMINER
Sindh High Court
22 DEC 2017

- h. That the Petitioner has undergone an insurmountable agony and has been facing irreparable loss due to the acts of the respondents.
- i. That the Petitioner craves permission of this Honorable Court to rely on other grounds at the time of arguments and produce any additional document if required in support of his writ petition.

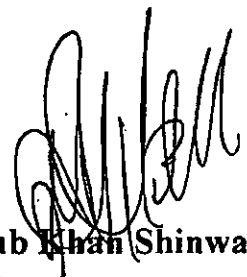
It is, therefore, prayed that on acceptance of the instant Writ Petition an appropriate Writ may kindly be issued to set aside the impugned Posting/Transfer order dated 06-10-2017 and furthermore the respondents may kindly be directed to allow the Petitioner to perform her duties at office of Agency Surgeon, Khyber Agency.

Any other relief deemed fit and appropriate by this Honorable Court in the circumstances of the case, which has not been specifically prayed for, may graciously be granted.

Interim Relief

Keeping in view the grounds mentioned in the instant Writ Petition, the Petitioner has got a *Prima Facie* case and is sanguine of its success, furthermore the balance of convenience also lies in his favor, therefore, by way of interim relief it is prayed that the impugned office order may kindly be suspended and status quo be maintained till the final disposal of the instant writ Petition.

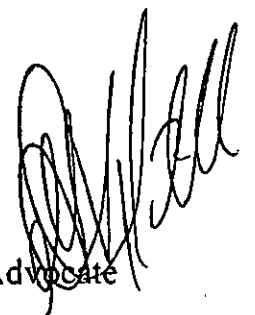
Petitioner,
Through



Muhammad Ayub Khan Shinwari
Advocate Peshawar

List of Books:

- 1. Constitution of Islamic Republic of Pakistan, 1973.
- 2. Any other law book as per need.



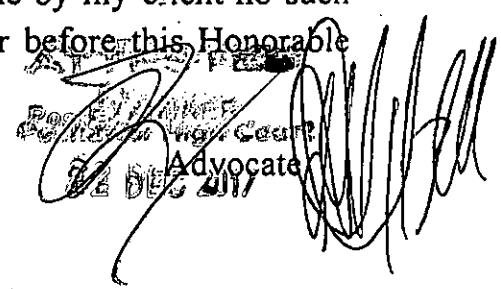
Advocate

Certificate

It is certified that as per information furnished to me by my client no such like Petition has earlier been filed by the Petitioner before this Honorable Court.

FILED TODAY
Deputy Registrar
03 NOV 2017

Advocate
22 DEC 2017



16

PESHAWAR HIGH COURT, PESHAWAR.

ORDER SHEET



Date of Order/ Proceedings	Order or other Proceedings with Signature of Judge.
<p><u>23/11/2017.</u></p>	<p><u>WP No. 4434-P/2017 with IR</u></p> <p><u>Present:</u> Mr. Muhammad Ayub Khan Shinwari, Advocate, for the petitioner.</p> <p style="text-align: center;">===</p> <p><u>WAOAR AHMAD SETH, J.-</u> Abida Noreen, petitioner herein, through the instant constitutional petition, has prayed for issuance of an appropriate setting aside the impugned posting/transfer order dated 6.10.2017 with further direction to the respondents to allow her to perform her duties at Office of Agency Surgeon, Khyber Agency.</p> <p>2. Learned counsel for the petitioner argued the case at length but lastly, he stated at the bar that the petitioner has also filed departmental appeal against the impugned order before respondent No.1, and he be directed to dispose of the same to the extent of transfer of petitioner within a period as specified by the Court.</p> <p>3. In view of the above, this Writ Petition is disposed of with direction to respondent No.1 to dispose of the</p>

ATTENED
EXAMINER
Peshawar High Court
22 DEC 2017



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departmental appeal of the petitioner to the extent of her transfer
as per transfer/posting policy in vogue preferably within fifteen
(15) days positively.



Justice Waqar Ahmad Seth

[Signature]

JUDGE

Justice Masood Hussain

[Signature]

JUDGE

No. 4870

Date of Presentation of Application 22/12/17

No of Pages 2

Copying Fee

Urgent Fee

Total 22-00

Date of Preparation of Copy 22/12/17

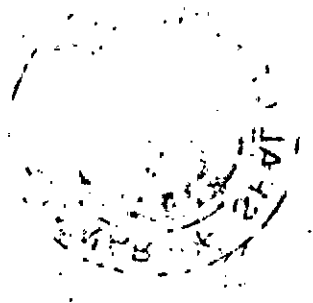
Date of Delivery of Copy 22/12/17

Received By [Signature]

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorized Under Article 67 of
the Constitution of Pakistan Order 1996

22 DEC 2017



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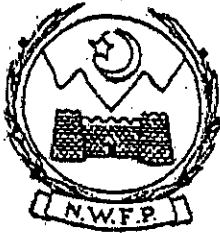
Date of Presentation of Application

25 DEC 2015

RECEIVED NO. 5211

18

Amexure-1



**GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(Regulation Wing)**

POSTING / TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT.

- i) All the posting/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants
- ii) All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities for seeking posing/transfers of their choice and against the public interest.
- iii) All contract Government employees appointed against specific posts, can not be posted against any other post.
- iv) The normal tenure of posting shall be three years subject to the condition that for the officers/officials posted in unattractive areas the tenure shall be two years and for the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.
- v) {
- vi) While making postings/transfer from settled areas to FATA and vice-versa, specific approval of Governor, NWFP needs to be obtained
²While making postings/transfers of officers/officials up to BS-17, from settled areas to FATA and vice-versa approval of the Chief Secretary NWFP needs to be obtained. Whereas, in case of posting/transfer of officers in BS-18 and above, from settled areas to FATA and vice versa, specific approval of the Governor NWFP shall be obtained.
- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for atleast eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.
- vii) Officers may be posted on executive/administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thaana) of his area/residence is situated.
- viii) No posting/transfers of the officer's/officials on detailment basis shall be made.
- ix) Regarding the posting of husband/wife, both in Provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.
- x) All the posting/transferring authorities may facilitate the posting/transfer of the unmarried female government Servants at the station of the residence of their parents.

ATTESTAD

Para-1(v) regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No: SOR-VI (E&AD) 1-4/2008/Vol-VI, dated 3-6-2008. Consequently authorities competent under the NWFP Government Rules of Business, 1985, District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make posting/transfer subject to observance of the policy and rules. Added vide Urdu circular letter No. SOR-VI(E&AD)1-4/2003, dated 21-09-2004

- xi) Officers/officials except DCOs and DPOs/SPs who are due to retire within one year may be posted on their option on posts in the Districts of their domicile and be allowed to serve there till the retirement
 'DCOs and DPOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against non-administrative posts of equivalent scales;
- xii) In terms of Rule-17(1) and (2) read with Schedule-III of the NWFP Government Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against each officer in column 2 thereof:

Outside the Secretariat		
1.	Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above.	Chief Secretary in consultation with Establishment Department and Department concerned with the approval of the Chief Minister.
2.	Other officers in BPS-17 and above to be posted against scheduled posts, or posts normally held by the APUG, PCS(EG) and PCS(SG).	-do-
3.	Heads of Attached Departments and other Officers in B-19 & above in all the Departments.	-do-
In the Secretariat		
1.	Secretaries	Chief Secretary with the approval of the Chief Minister.
2.	Other Officers of and above the rank of Section Officers: a) Within the Same Department b) Within the Secretariat from one Department to another.	Secretary of the Department concerned. Chief secretary/Secretary Establishment.
3.	Officials up to the rank of Superintendent: a) Within the same Department b) To and from an Attached Department c) Within the Secretariat from one Department to another	Secretary of the Department concerned. Secretary of the Dept in consultation with Head of Attached Department concerned. Secretary (Establishment)

xiii) While considering posting/transfer proposals all the concerned authorities shall keep in mind the following:

- a) To ensure the posting of proper persons on proper posts, the Performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/officials be considered.
- b) Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

ATTESTED

ATTESTED

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xiv) Government servants including District Govt. employees feeling aggrieved due to the orders of posting/transfer authorities may seek remedy from the next higher authority / the appointing authority as the case may be through an appeal to be submitted within seven days of the receipt of such orders. Such appeal shall be disposed of within fifteen days. The option of appeal against posting/ transfer orders could be exercised only in the following cases.

- i) Pre-mature posing/transfer or posting transfer in violation of the provisions of this policy.
- ii) Serious and grave personal (humanitarian) grounds.

2. To streamline the postings/transfers in the District Government and to remove any irritant/confusions in this regard the provision of Rule 25 of the North West Frontier Province District Government Rules of Business 2001 read with schedule – IV thereof is referred. As per schedule-IV the posting/transferring authorities for the officers/officials shown against each are as under:-

S. No.	Officers	Authority
1.	Posting of District Coordination Officer and Executive District Officer in a District.	Provincial Government.
2.	Posting of District Police Officer.	Provincial Government
3.	Other Officers in BPS-17 and above posted in the District.	Provincial Government
4.	Official in BPS-16 and below	Executive District Officer in consultation with District Coordination Officer.

3. As per Rule 25(2) of the Rules mentioned above the District Coordination Department shall consult the Government if it is proposed to:

- a) Transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure.
- b) Require an officer to hold charge of more than one post for a period exceeding two months.

4. I am further directed to request that the above noted policy may be strictly observed /implemented.

.....

All concerned are requested to ensure that tenures of the concerned officers/officials are invariably mentioned in summaries submitted to the Competent Authorities for Posting/Transfer.

{Authority: Letter No: SOR-VI/E&AD/1-4/2003 dated 24-6-2003}.

.....

It has been decided by the Provincial Government that posting/transfer orders of all the officers up to BS-19 except Heads of Attached Departments irrespective of grades will be notified by the concerned Administrative Departments with prior approval of the Competent Authority obtained on the Summary. The Notifications/orders should be issued as per specimen given below for guidance.

All posting/transfer orders of BS-20 and above and Heads of Attached Departments (HAD) shall be issued by the Establishment Department and the Administrative Departments shall send approved Summaries to E&A Department for issuance of Notifications.

ATTESTED



21

GOVERNMENT OF NWFP
HEALTH DEPARTMENT

Dated the Peshawar 25th May 2009

Annexure - (J)

NOTIFICATION.

No. SOH-III/8-90/2009 (FATA). The Governor of the North West Frontier Province (NWFP), in his capacity as agent to the President of Islamic Republic of Pakistan for FATA has been pleased to delegate powers of appointing authority to Director Health Services FATA, Political Agents and the Agency Surgeons for appointment against posts in the Health sector given hereunder:-

Sr.No.	Pay Scale	Appointing Authority
1.	Posts up to BPS-15 in the FATA Directorate.	Director of Health Services FATA.
2.	Posts in BPS-11 to BPS-15 in an Agency.	Political Agent of the concerned Agency.
3.	Posts in BPS-10 and below in an Agency.	Agency Surgeon of the concerned Agency.

Secretary to Govt. of NWFP,
Health Department.

Endst No. of even No and Date.

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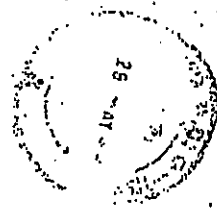


1. Secretary to Governor NWFP.
2. Principal Secretary to Chief Minister, NWFP.
3. Accountant General, NWFP.
4. Secretary to Govt. of NWFP, Establishment Department.
5. Secretary to Govt. of NWFP, Administration and Coordination Department FATA Secretariat NWFP Peshawar.
6. Director General Health Services, NWFP.
7. Director Health Services, FATA.
8. All Political Agents.
9. All Agency Surgeons in FATA.
10. PS to Chief Secretary NWFP.
11. PS to Secretary Health, NWFP.
12. Programmer, Health Department, NWFP.

Section Officer (H-III)

ATTESTAD

Sec.
21/5/09



VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2018

Mst. Abida Noreen

(APPELLANT)

VERSUS

ACS FATA & OTHERS

(RESPONDENT)

I/We ABIDA NOREEN

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

Dated. 01st Jan /2018

Abide Noreen

CLIENT

[Signature]
ACCEPTED

NOOR MOHAMMAD KHATTAK

[Signature]
&

**MUHAMMAD MAAZ MADNI
ADVOCATES**

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141

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Handwritten initials or a signature.

Before The Khyber Pakhtunkhwa Service Tribunal
Peshawar

Mrs. Abida Nooreen vs ACS, Fata & others

Application for withdrawal of the
mentioned appeal on the condition to
redress the grievances of the appellant.

Respectfully submitted:

- ① That the above mentioned appeal is pending before this honorable court and is fixed for today.
- ② That the Respondent department had made verbal commitment with the appellant that the respondent are redressing the grievances of the appellant if she withdraw her appeal.
- ③ That the appellant withdraw her appeal in light of para-2 of the instant application at ②, therefore, requested that by accepting this application the appeal may please be conditionally withdrawn.

Dated: 30/1/19

Appellant/ Applicant
Abida Nooreen

Mrs. Abida Nooreen

Tajb Noor ^{Adv} Advocate

Kamran Khan
Advocate

DFA

Abida Noreen

30.01.2019

Appellant Mst. Abida Noreen alongwith her counsel Mr. Kamran Khan present. Mr. Kabirullah Khattak, Additional AG for the respondents present.

The appeal was fixed for written reply, however, today application was submitted by the appellant for withdrawal of the appeal on the ground that the respondent department has made verbal commitment with her for redressal of her grievance if she withdraw her appeal. Application is placed on file. *and suggested*

*that the present appeal be not the answer to the question
to file fresh appeal of her file*

Keeping in view the application, the present appeal stand dismissed as withdrawn. In case, the grievance of the appellant was not redressed departmentally than she will be at liberty to file fresh appeal subject to all legal objections. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
30.01.2019

(Muhammad Amin Khan Kundi)
Member

His submission is that as far as awarding relief of considering the respondent to be on duty for the period he remained under suspension or dismissal, is against the law and facts because when the respondent has not attended the office physically nor he was assigned any duty/job, he cannot be held entitled to any remuneration on the principle 'no work, no salary' and thus the respondent has been awarded something which was not his entitlement.

The learned counsel submits that similarly, the relief of awarding two increments for two years i.e. 1999-2000 and 2000-2001 have wrongly been granted to the respondent against the fact that in these two years, he had not provided any services to the appellant and thus is not entitled to increment for the period, he has not worked.

The learned counsel has also challenged the relief of giving pro forma promotion to the respondent on the ground that when in the year 2002, the cases of batch mates of the respondent were placed before the competent authority for consideration for promotion, the respondent could not be promoted because of non-availability of his three previous ACRs, as during such period he was either under suspension or was dismissed by the order of competent authority, as such, according to the learned counsel, he cannot claim pro forma promotion. He has added that, however, when the right of promotion became due to the respondent in the year 2007, he was given promotion but he cannot be given promotion with retrospective effect.

The learned counsel has further argued that on the principle of laches, the learned High Court should have dismissed the case of the respondent at preliminary stage because the order of the competent authority fixing his pay, etc. was passed in the year 2001, which for the first time was challenged by the respondent through filing of the Constitution Petition before the High Court, subject matter of instant proceedings, after a lapse of 9/10 years. He submits that if a party approaches the Court after the period of limitation or whose case is barred by laches, the Court has no jurisdiction to entertain the claim which has become barred by time. His submission is that in view of above, the respondent was not entitled to equitable relief sought after almost 10 years from the High Court.

In support of his submission regarding limitation that the same could not have been condoned by consent of the parties and the question of filing petition with the delay and to be hit by principle of laches, reliance has been placed on Ali Muhammad v. Muhammad Shafi (PLD 1996 SC 292) and Chairman, State Life Insurance Corporation v. Hamayun Irfan (2010 SCMR 1495):

4. On the other hand, learned counsel appearing for the respondent submits that the question of laches cannot be raised by the appellant for more than one reason because it was never the case of the appellant before the learned Judge in Chambers of the High Court nor in the memo of the appeal as the same has been raised before this Court for the first time.

He submits that the respondent remained vigilant in pursuing his grievance though by making repeated representation both against his suspension/dismissal and later on, after his reinstatement regarding fixation of his emoluments, etc. He states that the respondent filed Constitution Petition No. 18629 of 2010 before the High Court, which came up for hearing on 25-3-2010 and it was observed by the learned Single Judge in Chambers of the High Court as under:-

- (2) Both the counsel agree that let the petitioner file a representation to the competent authority in this behalf, who shall examine the same and decide the matter fairly, justly and strictly in accordance with law after affording full opportunity of hearing to the petitioner including the right of producing evidence.
- (3) Disposed of in the above terms with direction that the competent authority shall decide the matter expeditiously within three months of the receipt of such representation."

The learned counsel submits that in view of consent order, the respondent was to file a representation to the competent authority, which was accordingly filed but his representation was not entertained and he was advised by the department itself that he shall file an appeal, as envisaged under Regulation No.33 of the State Life Employees Service Regulations, 1973; thus, according to the learned counsel, no question of limitation or laches arises when the department i.e. the appellant itself has been asking the respondent to prefer an appeal pursuant to the consent order referred to hereinabove.

Qua the relief of pro forma promotion given to the respondent of the date when his batch mates were promoted, the learned counsel has argued that same is his right because if the respondent was charged and was removed from service or if in the year 2002, his other colleagues were promoted, but because of deficiency of his ACR, his case was not considered, which fault could not be attributed to the respondent and relief in this regard has rightly been granted to him. He states that the order of the competent authority dated 2-3-2001 operating the respondent from the charges levelled against him vide charge sheets dated 28-8-1996 and 10-9-1996, is a clear chit in his favour and would be considered as if he was never suspended nor

NOT BE ASSU...
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