

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.810/2018

Date of Institution: 21.06.2018

Date of Decision: 22.01.2021

Pirzada Muhammad Ismail S/o Pir Muhammad Sufaid Ex-Computer Operator type-D  
Hospital Shahbaz Ghari Mardan.

... (Appellant)

**VERSUS**

District Health Officer Mardan and two other.

... (Respondents)

Roeeda Khan and Taimour Ali Khan  
Advocate

... For Appellant

Riaz Ahmed Painsa Khel  
Assistant Advocate General

... For Respondents

MUHAMMAD JAMAL KHAN  
ATIQU UR REHMAN WAZIR

... MEMBER (J)

... MEMBER (E)

**JUDGEMENT: -**

**ATIQU UR REHMAN WAZIR:** - Brief facts of the case are that while serving as Junior Clerk (BPS-7) in the office of District Health Officer Mardan, post of the appellant was converted to that of Computer Operator (BPS-12), but was again withdrawn dated 07-04-2014, against which the appellant filed departmental appeal dated 10-04-2014, which was rejected at a belated stage dated 22-05-2018. Against the rejection order, the appellant filed the instant service appeal dated 21-06-2018 with prayers that the both the impugned orders dated 07-04-2014 and 22-05-2018 may be set aside and position of the appellant may be restored to his original post i.e. Computer Operator with all back benefits.

02. Written reply/comments were submitted by respondents.

03. Arguments heard and record perused.

04. Learned counsel for the appellant contended that post of the appellant was converted from Junior Clerk to that of Computer Operator by the competent authority, but was illegally withdrawn without assigning any reason. That such order cannot be withdrawn or rescinded once it has taken legal effect and created certain rights in favor of the appellant. Reliance was placed on PLD 1991 SC 973. That no opportunity of defense was afforded to the appellant, nor he was consulted before withdrawal of his conversion order, he however, was a civil servant and was required to be dealt with under the provisions of law and rules. That the apex court vide judgment in 1997 SCMR 1552 has held that even if the person is employed as temporary or on contract basis or even probationer, he is entitled to a fair opportunity to clear his position. The learned counsel added that the appellant was condemned unheard and without observing the mandatory provisions of law. That order passed in violation of mandatory provisions of law is void and no limitation would run for challenging such order. Reliance was placed on 2007 SCMR 834. That where a civil servant is not afforded a chance of personal hearing before passing an order, such order would be void ab initio. Reliance was placed on 2003 PLC (CS) 365. On the question of limitation, the learned counsel added that the appellant preferred departmental appeal well within time, but such appeal was rejected at a belated stage on 22-05-2018, which created a fresh cause of action for the appellant and on the basis of which the appellant filed the instant service appeal within the statutory period of thirty days. That where within the stipulated period of ninety days, decision of departmental authority was not communicated to the civil servant, he had an option to either file appeal without waiting for decision of departmental authority within stipulated period or he could wait till the date of communication of decision of departmental authority and from said date he could file appeal within the next thirty days. The appellant did the same in light of such proposition. Reliance was placed on 2013 SCMR 1053 and 1995 SCMR 16. That the apex court vide judgment in PLD 2002 SC 84 has held that where on merit the

respondent had no case, then limitation would not be a hurdle in the way of appellant for getting justice, further observed that the court should not be reluctant in condoning the delay depending upon facts of the case under consideration. That the apex court vide judgment in 1999 SCMR 880 has held that condonation of delay being in the discretion of the Tribunal, the findings cannot be set aside on technical grounds alone, where nothing contrary to the contention for condonation of delay was produced before the Tribunal, Supreme Court refrained from disturbing the findings of the Tribunal on the question of limitation as well. The learned counsel prayed that since the appellant was condemned unheard without observing the mandatory provisions of law, hence both the impugned orders dated 07-04-2014 and 22-05-2018 may be set aside and position of the appellant may be restored to that of computer operator.

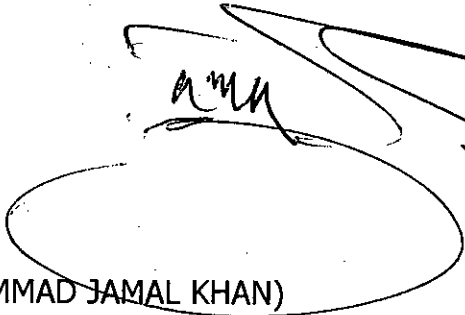
05. Learned Assistant Advocate General appeared on behalf of official respondents ~~contended~~ that the instant service appeal is time barred by four years and two months in the first place as the impugned order was issued on 07-04-2014, whereas he filed the instant service appeal on 21-06-2018. He further added that conversion of post of the appellant to that of computer operator as well as its withdrawal was done by the orders of Chief Minister, which was not a legitimate order and in a situation, besides proceedings against the beneficiary of illegal appointments, the officers who were responsible for implementing such order should also be held equally responsible. Reliance was placed on S.A No 289/2016. The learned Assistant Advocate General added that the instant appeal being devoid of merit may be dismissed.

06. We have heard learned counsel for the parties and perused the record. Record reveals that the appellant was initially appointed as Junior Clerk on the express orders of Chief Minister Khyber Pakhtunkhwa by the District Health Officer Mardan, which was again cancelled by the same authority on the grounds of validity of the directives of the Chief Minister. This Tribunal however, re-instated the appellant vide judgment dated 26-04-2017 in SA No 638/2016 on the grounds that the appellant was condemned

unheard without conducting any inquiry, which has established a proposition that order issued in any manner by a competent authority cannot be undone without adopting the legal course. Similarly, the order of conversion of his post to that of computer operator was also issued by the competent authority on the directives of Chief Minister, which was again withdrawn without affording opportunity of defense to the appellant and without observing the legal course. We are conscious of the fact that the order of conversion of his post to that of computer operator issued in any manner has taken a legal effect and created vested rights in favor of the appellant, which cannot be withdrawn out rightly without assuming legal course. The question of limitation as pointed out by the learned attorney was thoroughly examined and it was found that the appellant filed departmental appeal against the impugned order dated 07-04-2014 well in time, but the same was rejected after lapse of four years on 22-05-2018, which however created a fresh cause of action for the appellant and on the basis of such rejection, the appellant filed the instant appeal within statutory period of thirty days, which is in consonance with Judgment of the Supreme contained in 2013 SCMR 1053 and 1995 SCMR 16. The learned attorney when confronted with the proposition was also unable to defend his stance.

07. In a situation, we are left with no option, but to set aside the impugned orders dated 07-04-2014/22-05-2014 and accept the instant appeal as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
22.01.2021

  
(MUHAMMAD JAMAL KHAN)  
MEMBER (J)

  
(ATIQ UR REHMAN WAZIR)  
MEMBER (E)

22.01.2021

Appellant with counsel present. Mr. Riaz Ahmed Paindakhel, learned Assistant Advocate General alongwith Mr. Ziaullah Law Officer for respondents present.

Vide our detailed judgment of today of this Tribunal placed on file, we are left with no option, but to set aside the impugned orders dated 07-04-2014/22-05-2014 and accept the instant appeal as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
22.01.2021

  
(MUHAMMAD JAMAL KHAN)  
MEMBER (J)

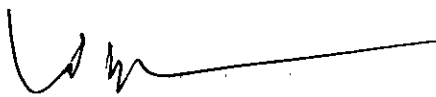
  
(ATIQ UR REHMAN WAZIR)  
MEMBER (E)

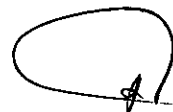
16.11.2020

Junior counsel present on behalf of appellant.

Zara Tajwar learned Deputy District Attorney for respondents present.

Former made a request for adjournment. Adjourned. To come up for arguments on 08.12.2020 before D.B.

  
(Atiq ur Rehman Wazir)  
Member (E)

  
(Rozina Rehman)  
Member (J)

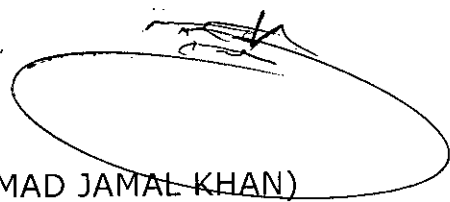
08.12.2020

Appellant is present in person. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General and Mr. Ziaullah, Law Officer, for the respondents are also present.

According to appellant his counsel is pre-occupied in the Hon'ble Peshawar High Court, Peshawar, and could not spare time today to appear before this Tribunal for arguing the appeal and requested for adjournment.

The perusal of preceding order sheets reveal that almost thirteen adjournments have already been granted to learned counsel for appellant, therefore, last chance is provided to learned counsel for advancement of his arguments on 22.01.2021 before D.B.


  
(MIAN MUHAMMAD)  
MEMBER (EXECUTIVE)

  
(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

15-5 .2020

07/8/2020

Due to COVID19, the case is adjourned to  
for the same as before.

  
Reader

07.08.2020

Due to summer vacation case to come up for the same on  
08.10.2020 before D.B.

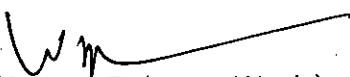
  
Reader


08.10.2020

Mr. Taimur Khan, Advocate present and submitted Vakalat  
Nama in favor of appellant.

Zara Tajwar, learned Deputy District Attorney alongwith  
Ziaullah Legal Officer for respondents present.

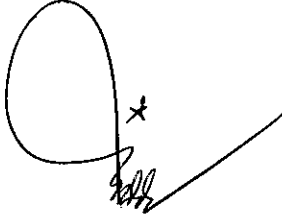
Being freshly engaged learned counsel for appellant  
requested for adjournment. Adjourned. To come up for  
arguments on 16.11.2020 before D.B.

  
(Atiq ur Rehman Wazir)  
Member (E)

  
(Rozina Rehman)  
Member (J)

16.03.2020

Clerk to counsel for the appellant present. Asst: AG  
alongwith Mr. Atif Ahmad, Assistant for respondents present.  
Due to general strike on the call of Peshawar Bar Council, the  
instant case is adjourned. To come up for arguments on  
15.05.2020 before D.B.

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(MAIN MUHAMMAD)  
MEMBER

A handwritten signature in black ink, consisting of several overlapping, cursive loops.

(M.AMIN KHAN KUNDI)  
MEMBER



05.11.2019

Appellant in person present. Mr. Usman Ghani, District Attorney alongwith Mr. Saleem Khan, Supdt for respondents present. Appellant submitted an application for adjournment wherein he stated that his counsel was not available today. Adjourn. To come up for arguments on 04.12.2019 before D.B.

  
Member

  
Member

04.12.2019

Learned counsel for the appellant present. Mr. Usman Ghani learned District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 04.02.2020 before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

04.02.2020

Due to general strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Atif, Assistant for the respondents present. Adjourned to 16.03.2020 for arguments before D.B.

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

11.07.2019

Appellant with counsel and Mr. Usman Ghani learned District Attorney alongwith Muhammad Atif Assistant present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 20.08.2019 before D.B.


  
Member

  
Member

20.08.2019

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Atif Ahmad, Assistant for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 01.10.2019 for arguments before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

01.10.2019

Appellant in person and Mr. Riaz Ahmad, Paindakheil, Assistant AG alongwith Mr. Muhammad Atif, Assistant for the respondents present. Appellant requested for adjournment on the ground that his counsel is busy before the Worthy Peshawar High Court and cannot attend the Tribunal today. Adjourned to 05.11.2019 for arguments before D.B.

  
(AHMAD HASSAN)  
MEMBER

  
(M. AMIN KHAN KUNDI)  
MEMBER

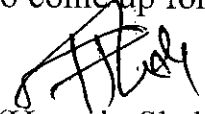
21.03.2019 Appellant in person and Addl. AG for the respondents present.

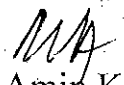
Due to second day of the strike on the call of Bar Council, instant matter is adjourned to 18.04.2019 before the D.B.

  
Member

  
Chairman

18.04.2019 Appellant in person present. Mr. Riaz Painadkhel learned Assistant Advocate General for the respondents present. Due to general strike of the bar council learned counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 14.06.2019 before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

14.06.2019 Due to general strike by the Pakistan Bar Council, the case is adjourned. To come up for arguments on 11.07.2019 before D.B.

  
Member

  
Member

21.12.2018

Junior to counsel for the appellant and Mr. Kabirulah Khattak learned Additional Advocate General for the respondents present. Junior to counsel for the appellant requested for adjournment as senior counsel for the appellant is not available today. Adjourned. To come for arguments on 18.01.2019 before D.B.

  
(Hussain Shah)  
Member

  
(Muhammad Amin Kundi)  
Member

18.01.2019

Counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 13.02.2019 before D.B.


  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

13.02.2019

Learned counsel for the appellant and Mr. Riaz Painsdakhel learned Assistant Advocate General for the respondents present. It was stated to the tribunal that the appellant was appointed as Junior Clerk in BPS- 07 but the same order was cancelled. However the appellant filled service appeal which was partially accepted and the impugned order was set aside but after decision of the service appeal, the implementation order i.e. appointment of appellant as junior clerk is not available on record. Representative of the respondent department is directed to furnish appointment order of the appellant of Junior Clerk. To come up for argument/appointment order on 21.03.2019 before D.B.

  
(Hussain Shah)  
Member

  
(Muhammad Amin Kundi)  
Member


01.10.2018

Appellant alongwith her counsel present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Hazrat Shah, Superintendent for the respondents present. Written reply submitted. To come up for rejoinder and arguments on 02.11.2018 before D.B.

  
(Muhammad Amin Khan Kundi)  
Member

02.11.2018


Neither appellant nor his counsel present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Due to retirement of Hon'ble Chairman, the Tribunal is incomplete. Therefore, the case is adjourned. To come up for the same on 05.12.2018.

  
Reader

05.12.2018

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant submitted rejoinder, copy of the same is handed over to learned Additional AG. Adjourned. To come up for arguments on 26.12.2019 before D.B.

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member


Service Appeal No. 810/2018

04.09.2018

Counsel for the appellant Pirzada Muhammad Ismail present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Health Department as Computer Operator, however, during service the respondent-department withdrawn the said order of the appellant vide order dated 07.04.2014 and he was posted as Junior Clerk instead of Computer Operator. The appellant filed departmental appeal but the same was rejected, hence, the present service appeal. It was further contended that neither proper inquiry was conducted nor respondent-department has mentioned any reason in the impugned order nor any show-cause notice was issued to the appellant nor opportunity of personal hearing and defence was provided to the appellant therefore, the impugned order is illegal and liable to be set-aside.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 01.10.2018 before S.B.

Appellant Deposited  
Security & Process Fee

  
(Muhammad Amin Khan Kundi)  
Member

16.07.2018

Clerk to counsel for the appellant present and seeks adjournment due to general strike of the Bar. Adjourned. To come up for preliminary hearing on 27.07.2018 before S.B.



(Ahmad Hassan)  
Member

27.07.2018

Appellant Mr. Pirzada Muhammad Ismail alongwith his counsel Miss. Roeeda Khan Advocate present and heard in limine.

Contends that the appellant was illegally removed from service. However, on perusal of his appointment order, it appears that he was appointed on the direction of the Chief Minister, Khyber Pakhtunkhwa and in this way his appointment as well as removal order were not passed in the light of the recruitment policy. In the circumstances, yet pre-admission notice be given to the respondents for 04.09.2018 for preliminary hearing before S.B.






Chairman

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 810/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	21/06/2018	<p>The appeal of Mr. Pirzada Muhammad Ismail presented today by Roeda Khan Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR 21/6/18</p> <p>2-</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>25/6/18</u>.</p> <p style="text-align: right;"> MEMBER</p> <p><b>25.06.2018</b></p> <p>Appellant absent. Learned counsel for appellant also absent. Adjourned. To come up for preliminary hearing on <b>16.07.2018</b> before S.B.</p> <p style="text-align: right;"> Member</p>



**BEFORE THE HONBLE KHYBER PAKHTUNKHWA  
SERVICES TRIBUNAL PESHAWAR**

In Re Service Appeal 810 /2018

Mr. Pirzada Muhammad Ismail

**VERSUS**

District Health Officer Mardan and others

**INDEX**

<i>S#</i>	<i>Description of Documents</i>	<i>Annex</i>	<i>Pages</i>
1.	Grounds of Appeal		1-6
2.	Affidavit.		7
3.	Addresses of Parties.		8
4.	Copy of appointment order	"A"	9
5.	Copy of arrival report	"B"	10
6.	Copy of order dated 28/05/2014	"C"	11
7.	Copy of Service appeal	"D"	12-13
8.	Copy of Converted order	"E"	14
9.	Copy of withdrawal	"F"	15
10.	Copy of departmental appeal	"G"	16
11.	Copy of rejection order	"H"	17
12.	Other documents / <i>Applicator for condonation</i>	"I"	18
13.	Wakalatnama		

Dated: 05/06/2018



*Appellant*

Through



*Roeeda Khan*

&



*Afshan Manzoor*

Advocates, High Court  
Peshawar

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA  
SERVICES TRIBUNAL PESHAWAR**

Khyber Pakhtunkhwa  
Service Tribunal

In Re S.A 810 /2018

Diary No. 1063  
Dated 21-6-2018

Mr. Pirzada Muhammad Ismail S/o Pir Muhammad Sufaid  
Ex-Computer Operator BPS 12 type-D Hospital Shahbaz  
Gari.

-----*(Appellant)*

**VERSUS**

1. District Health Officer Mardan
2. Director General Health Services Khyber Pakhtunkhwa.
3. Secretary Health Khyber Pakhtunkhwa.

-----*(Respondents)*

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT  
1974 KHYBER PAKHTUNKHWA AGAINST THE  
ORDER DATED 07-04-2014 WHERE BY THE  
APPELLANT HAS BEEN WITHDRAWN FROM  
THE POST OF COMPUTER OPERATOR AND  
AGAINST WHICH THE DEPARTMENTAL  
APPEAL DATED 10/04/2014 HAS BEEN  
REJECTED ON 23/05/2018 ON NO GOOD  
GROUNDS**

Filed to-day  
Registrar  
21/6/18

Prayer:-

ON ACCEPTANCE OF THIS APPEAL  
BOTH THE IMPUGNED ORDER DATED  
07/04/2014, 20~~0~~<sup>5</sup>/05/2018 MAY KINDLY BE  
SET-ASIDE AND APPELLANT MAY  
KINDLY BE RE-INSTATED <sup>Adjusted</sup> INTO HIS  
ORIGINAL POST I.E. COMPUTER  
OPERATOR WITH ALL BACK BENEFITS  
OF SERVICE AND ANY OTHER RELIEF  
MAY KINDLY BE GRANTED DEEMED  
FIT IN THE CIRCUMSTANCES

Respectfully Sheweth:-

1. That the appellant is initially appointed as Junior Clerk BPS-7 on ~~dated~~ 22/04/2014 (Copy of appointment order is attached as Annexure "A").
2. That the appellant take the charge of the said office order on 23/04/2014. (Copy of arrival report is attached as annexure "B")
3. That the ~~Respondent's~~ has been cancelled the order dated 22/04/2018 on 28/05/2014 without any

reason by the Respondent department. (Copy of order dated 28/05/2014 as annexure "C")

4. That the appellant filed S/A No.638/16 before the Hon'ble Tribunal which has been decided on 27/04/2017.(Copy of Service appeal is attached "D")
5. That the Respondent No. 1 converted the appellant to the post of Computer operator BPS-12 on 05/05/2014 from the post of Junior Clerk (Copy of Converted order is attached as annexure "E")
6. That on 07/04/2014 the appellant has been withdrawn from the post of Computer operator BPS-12 by the Respondent department without adopted proper procedure of law.(Copy of withdrawal is attached as annexure "F")
7. That the improper withdrawn/cancellation order creator a lot of doubts because the appointment order of the appellant as computer operator was

issued on 05/05/2014 while the cancellation order was issued on 07/04/2014.

8. That the appellant had filed Departmental appeal on dated 10/04/2014 against the impugned order dated 07/04/2014. (Copy of Departmental appeal is annexed as annexure "G")
9. That the said departmental appeal has been rejected on ~~28~~<sup>5</sup>/05/2018. (Copy of rejected order is annexed as annexure "H")
10. That the order impugned is liable to be set aside on the following grounds.

Grounds:

- A. That the impugned order is illegal, void and being passed in utter violation of law and rules on the subject.

B. That the appellant has not been treated according to law and mandatory provisions of law have been violated by Respondents.

C. That no charge sheet <sup>stand</sup> of allegation has been served and received by the appellant no final show cause Notice has been issued by the Respondent Department which is a mandatory provision.

D. That no illegality has been created in part of the appellant.

E. That no regular inquiry has been conducted into the matter to find out the true facts and circumstances and prove the allegations leveled against the appellant, which department admitted in their impugned order.

F. That even the appellant was not provided the opportunity of personal hearing.

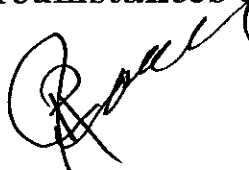
G. That the appellant was not provided the opportunity of cross examination.

H. That he appellant seeks permission of this Hon'ble Tribunal for further additional grounds at the time of arguments.

*It is, therefore, most humbly prayed that on acceptance of this appeal both the impugned order dated 07/04/2014, 29/05/2018 may kindly be set-aside and appellant may kindly be re-instated into his original post i.e. computer operator with all back benefits of service and any other relief may kindly be granted deemed fit in the circumstances.*

*Any other relief not specifically asked for may also graciously be extended in favour of the appellant in the circumstances of the case.*

Dated: 05/06/2018

  
Appellant

Through

  
Roeeda Khan

  
Afshan Manzoor

Advocates, High Court  
Peshawar.

NOTE:-

No such like appeal for the same appellant, upon the same subject matter has earlier been filed by me, prior to the instant one, before this Hon'ble Tribunal.

Advocate.

BEFORE THE HONBLE KHYBER PAKHTUNKHWA  
SERVICES TRIBUNAL PESHAWAR

In Re Service Appeal \_\_\_\_\_/2018

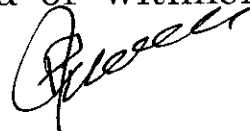
Mr. Pirzada Muhammad Ismail

VERSUS


District Health Officer Mardan and others

AFFIDAVIT

I, Mr. Pirzada Muhammad Ismail S/o Pir Muhammad Sufaid Ex-Computer Operator BPS 12 type-D Hospital Shahbaz Gari, do hereby solemnly affirm and declare that all the contents of the accompanied appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.



**DEPONENT**

Identified By:   
Roeeda Khan  
Advocate High Court  
Peshawar.

04 JUN 2018





**BEFORE THE HONBLE KHYBER PAKHTUNKHWA  
SERVICES TRIBUNAL PESHAWAR**

In Re Service Appeal \_\_\_\_\_/2018

Mr. Pirzada Muhammad Ismail

**VERSUS**

District Health Officer Mardan and others

**ADDRESSES OF PARTIES**

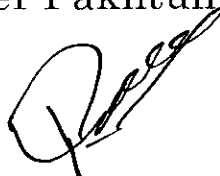
**APPELLANT.**

Mr. Pirzada Muhammad Ismail S/o Pir Muhammad Sufaid  
Ex-Computer Operator BPS 12 type-D Hospital Shahbaz  
Gari.

**RESPONDENTS:**

1. District Health Officer Mardan
2. Director General Health Services Khyber  
Pakhtunkhwa.
3. Secretary Health Khyber Pakhtunkhwa.

Dated: 05/06/2018



*Appellant*

Through



*Roeeda Khan*

*&*

*Afshan Manzoor*

Advocates, High Court  
Peshawar.

**OFFICE OF THE DISTRICT HEALTH OFFICER, MARDAN**Ph: # (0937) 9230030 Fax: # (0937) 9230349 Email: [edohmr@yahoo.com](mailto:edohmr@yahoo.com)**APPOINTMENT ORDER**

As per written direction of the Hon: Chief Minister Khyber Pakhtunkhwa by relaxing all the codal formalities as a special case. Mr. Pirzada Muhammad Ismail S/O Pir Muhammad Sufaid Village Arzi Abad Muhib Road Tehsil & District Mardan is hereby appointed Junior Clerk BPS-7 Plus usual allowances as admissible under the rules and posted at DHO Office, Mardan on the following terms and conditions:-

**Terms & Conditions:-**

1. He is domiciled in District Mardan.
2. His appointment is purely on temporary basis for a probation period of initially one year and is liable to terminate at any time without assigning any notice or reason.
3. He will not be entitled to any TA/DA for Medical examination and joining the first appointment.
4. His appointment will be subject to medical fitness for Govt: service.
5. He is liable to serve anywhere in District as well as in Khyber Pakhtunkhwa.
6. He will be governed by such service rules and order as framed by the Government from time to time for the category of government servants to which he belongs.
7. His services can be dispensed with during the probation period, if his work and conduct found unsatisfactory.
8. If he wishes to resign his service, he will submit his resignation two months notice in advance in writing or deposit one month salary in lieu thereof to Govt: Treasury, however he will continue to serve the Govt: till her resignation is accepted by the competent authority.

If he accepts the above-mentioned terms and conditions, he should report to the DHO Mardan for duty on his own expenses within seven days after the receipt of this letter, otherwise his appointment order will be considered as cancelled.

N.B:- you will have no legal rights to challenge your termination in case if your Academic & Professional documents have been found fake.

District Health Officer  
Mardan

No. 740-44 /DHO

dated Mardan the 22 / 4 /2014

A copy is forwarded to the:-

1. District Comptroller of Accounts, Mardan.
2. Deputy DHO Mardan
3. Accountant DHO Office Mardan
4. Computer Cell, DHO Office Mardan.
5. Mr. Pirzada Muhammad Ismail S/O Pir Muhammad Sufaid Village Arzi Abad Muhib Road Tehsil & District Mardan

ATTESTED

Ann-1/B

(10)

To

District Health Officer  
Mardan

Subject: ARRIVAL REPORT

*Respected Sir,*

With due respect it is stated that I am appointed as Junior Clerk vide Office Order issued by the District Health Officer, No. 7140-44, dated 22/04/2014; I have the honour to submit my Arrival report today on 23/04/2014 (Fore Noon).

It is therefore requested to please accept my Arrival report and oblige.

Thanks.

Yours Obediently,

*Ismail*

**Pirzada Muhammad Ismail**  
Junior Clerk DHO Office, Mardan  
Son of  
Pir Muhammad Sufaid (Gharib Nawaz)

*Accountant*  
*23/4*  
*[Signature]*

**ATTESTED**

Ann (C) (11)

# OFFICE OF THE DISTRICT HEALTH OFFICER, MARDAN

Ph: # (0937) 9230023, Fax: # (0937) 9230349, Email: [edohmr@yahoo.com](mailto:edohmr@yahoo.com)

## OFFICE ORDER

The office order bearing No. 7140 - 44/DHO, dated Mardan the 22/04/2014, regarding the appointment of Mr. Pirzada Muhammad Ismail S/o Pir Muhammad Sufaid, resident of village Arzi Abad, Muhib Road, Tehsil & District Mardan, as a Junior Clerk BPS - 07, plus usual allowances is hereby cancelled with immediate effect, due to the personal observation of the undersigned regarding the validity of the directives of the Honourable Chief Minister of Khyber Pakhtunkhwa, and also the verbal directives of MPAs of District Mardan.

However, Mr. Pirzada Muhammad Ismail S/o Pir Muhammad Sufaid, can apply for the same post through proper channel as per laid down policy of the government.

Moreover, Mr. Pirzada Muhammad Ismail S/o Pir Muhammad Sufaid, Junior Clerk, BPS - 07, is hereby directed to immediately deposit the entire amount into the government exchequer regarding the salary and allowances which he has received against the mentioned post from the date of appointment till date and submit the receipt in original to the account section of the office of the undersigned, failing which the undersigned is liable to proceed against Mr. Pirzada Muhammad Ismail, as per rules and regulations.

Sd \_\_\_\_\_  
District Health Officer  
Mardan

Date: 28/5/2014

No. 9521-26 / DHO MRD

Copy forwarded to the:

1. Director General, Health Services, Khyber Pakhtunkhwa, Peshawar.
2. PW to Secretary to Govt, Khyber Pakhtunkhwa, Health Department, Peshawar.
3. District Account Officer, Mardan.
4. Accountant, DHO Office, Mardan.
5. Computer Cell, DHO Office, Mardan.
6. Mr. Pirzada Muhammad Ismail S/o Pir Muhammad Sufaid, village Arzi Abad, Muhib Road, Tehsil & District Mardan, for information and strict compliance.

District Health Officer  
Mardan

**ATTESTED**

Ann "D"

(12)

6

Sr  
No

Date of  
order/  
proceedings

Order or other proceedings with signature of Judge or  
Magistrate

2

3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR

Appeal No. 638/2016

Pir Zada Muhammad Ismail Versus Director General Health  
Services, Khyber Pakhtunkhwa, Peshawar and another.

JUDGMENT

MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-

26.04.2017

Counsel for the appellant and Mr. Usman Ghani, Senior  
Government Pleader for respondents present.

2. Pir Zada Muhammad Ismail son of Pir Muhammad Sufaid  
hereinafter referred to as the appellant has preferred the instant  
service appeal under Section 4 of the Khyber Pakhtunkhwa  
Service Tribunal Act, 1974 against order dated 28.05.2014 vide  
which his appointment order was withdrawn and where-against  
his departmental appeal dated 16.02.2016 was not responded  
constraining him to prefer the instant service appeal on  
13.06.2016.

3. We have heard arguments of learned counsel for the  
appellant as well as learned Senior Government Pleader for  
respondents and perused the record.

4. A careful perusal of record would suggest that the  
impugned order was passed without affording an opportunity of  
hearing to the appellant as neither any notice was served nor any

*[Handwritten signature and stamp]*

APPROVED

*M. H. Khan*  
*Chairman*

*M. H. Khan*  
*Chairman*

*26.04.17*  
*M. H. Khan*  
*Chairman*

record room.

Parties are left to bear their own costs. The be assigned to the appellant subject to affording an opportunity of hearing to the appellant.

at liberty to proceed against the appellant in accordance with law. The appellant is reinstated in service while the respondents are placed

consequence thereof the impugned order is set aside. The

5. In view of the above the appeal is accepted and as a

tenable in the eyes of law.

opportunity of hearing to the appellant the impugned order is not  
enquiry was conducted. In the absence of any such notice or

①

131

Ann. R. E. 12

**OFFICE OF THE DISTRICT HEALTH OFFICER, MARDAN**

Ph: # (0937) 9230030 Fax: # (0937) 9230349 Email: [edohmr@yahoo.com](mailto:edohmr@yahoo.com)

**OFFICE ORDER:**

In pursuance of the Honourable Chief Minister Directive recorded on the application received through Director General Health Services Khyber Pakhtunkhwa, Peshawar vide letter No. 322/Personnel Dated Peshawar the 30/04/2014. (Copies attached) The post of Mr. Pirzada Muhammad Ismail S/O Pir Muhammad Sufaid Junior Clerk BPS-07 of this office is hereby converted to the post of Computer Operator BPS-12 against the vacant post at Type-D hospital Shahbaz Garhi

District Health Officer  
Mardan

No. 8077-84 /DHO dated Mardan the

05/05/2014 ✓

Copy to the:

1. PS to Chief Minister Khyber Pakhtunkhwa, Peshawar
2. PS to Secretary Health, Govt: of Khyber Pakhtunkhwa, Peshawar.
3. Director General Health Services, Khyber Pakhtunkhwa, Peshawar vide his letter No. quoted above.
4. Incharge Type-D Hospital Shahbaz Garhi
5. District Comptroller of Accounts, Mardan
6. Accountant, DHO Office, Mardan
7. Computer Cell, DHO Office, Mardan
8. Official concerned

District Health Officer  
Mardan P

ATTESTED

Am "E"

(15)



District Health Department - Mardan  
DISTRICT HEALTH OFFICER  
Mardan (Khyber Pakhtunkhwa)  
Ph: # (0937) 9230030 Fax: # (0937) 9230345  
Email: [edohm@yahoo.com](mailto:edohm@yahoo.com)

OFFICE ORDER

As directed by the Director General Health Services, Khyber Pakhtunkhwa, Peshawar vide telephonic direction at 09:00 PM dated 28/05/2014, the office order issued by this office vide No. 8077-84/DHO, Mardan dated 05/05/2014 in respect of Mr. Pirzada Muhammad Ismail S/O Pir Muhammad Sufaid for the post of Computer Operator BPS-12 is hereby withdrawn with immediate effect.

District Health Officer  
Mardan

No. 8152-58/DHO dated Mardan the

704/2014

7/5/2014

Copy to the:

1. PS to Hon: Chief Minister, Khyber Pakhtunkhwa, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar w/r to his letter No. 3222/Peshawar dated 30/04/2014
3. District Comptroller of Accounts, Mardan
4. Incharge TDEI- Shahbaz Garhi
5. Accountant, DHO Office, Mardan
6. Computer Cell, DHO Office, Mardan
7. Official Concerned

District Health Officer  
Mardan

ATTESTED



To

The DHO,

Mardan.

16

Caption: Departmental Appeal against the order dated 07-04-2014.

Honourable Sir,

With extreme feeling of respect, it is stated that I was appointed as Junior Clerk BPS-7, vide Order No.7140-44/DHO, dated 22/04/2014 (Annex-A). Belatedly, my Cadre change/conversion was allowed vide office order No.8077-84/DHO dated Mardan the 05/05/2014 (Annex-B) from Junior Clerk BPS-07 to the post of Computer Operator BPS-12, as per the written directive of Honorable Chief Minister KPK. However, due to unknown reason this order was withdrawn without any written directive of competent Authority arbitrarily, without providing me any opportunity of hearing, vide Office Order No.8152-58/DHO dated Mardan the 07/04/2014 (Annex-C). All this was done in such a hurry that my appointment as Computer Operator was issued on 05/05/2014 but the so called cancellation order was issued on 07/04/2014, which created a lot of doubts.

Foregoing in view it's beseeched that kindly issue an order of my reinstatement and to adjust me on my erstwhile position i.e. Computer operator as ex debito justitiae. It is worth mentioning that the applicant is duly qualified for the post.

I hoped that your goodself shall give due weightage to my humble request. Thanks in anticipation.

Your Sincere,

Pirzada Muhammad Ismail,

NIC: 16101-9307873-1

Dated: 10-04-2014

CLERK  
DHO OFFICE MARDAN

NO. 638  
DATE 10-04-2014

*Pirzada*

*Is*

*U129610, DHO*

Amr 'H' (17)



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT**

No. SOH-III/8-89/2018((Pirzada Ismail))  
Dated the Peshawar 22<sup>nd</sup> May, 2018

To

The District Health Officer,  
Mardan.

SUBJECT: **REQUEST REGARDING CORRIGENDUM IN REINSTATEMENT ORDER  
NO.12428/PERSONAL DATED 22 JUNE,2017**

I am directed to refer to your letter No. 7327/DHO dated 11-04-2018 and to state that the subject appeal/request regarding re-instatement as computer operator in respect of Pirzada Muhammad Ismail. Junior Clerk attached to your office is hereby regretted on account of being time barred.

DAIRY CLERK  
DHO OFFICE MARDAN  
NO. 346  
DATE 25-5-2018

  
Section Officer-III

**Endst: of even no & date.**

Copy forwarded to:-

PS to Secretary Health, Khyber Pakhtunkhwa.

  
Section Officer-III

ATTESTED

(18)

Am I

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA  
SERVICES TRIBUNAL PESHAWAR**

In Re S.A \_\_\_\_\_/2018

Mr. Pir Zada Muhammad Ismail

**VERSUS**

Health Department

**APPLICATION FOR CONDONATION OF DELAY (if any)**

***Respectfully Sheweth,***

Petitioner submits as under:

1. That the above mentioned appeal is filing before this Hon'ble Tribunal in which no date is fixed for hearing so far.
2. That the the departmental appeal of the appellant has been rejected on 25/05/2018 then filed the instant service appeal.

***Grounds:***

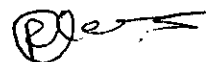
- A. That the impugned orders are void order and no limitation run against the void orders.

- b. That the final order was communicated to the appellant in the year 2018.
- c. That the appellant has been withdrawn from the post of computer operator without any reason and without fulfilling the codal formalities i.e. no charge sheet, no statement of allegation, no show cause notice has been served to the appellant so the impugned order is void and no limitation run against the void order.
- d. That there are number of precedents of the Supreme Court of Pakistan which provides that the cases shall be decided on merits rather than technicalities.

**It is, therefore, requested that the limitation period (if any) may kindly be condone in the interest of justice.**

Through

*Appellant*



**Roeeda Khan**  
Advocate, High Court  
Peshawar.

**BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR**

Review Service Appeal No. 810/2018 in Service Appeal No. 638/2016

Mr. Pirzada Muhammad Ismail..... (Appellant)

Versus

District Health Officer Mardan

& Others..... (Respondents)

**Preliminary Objections:-**

1. That Appellant did not come with clean hands.
2. That Appellant has got no cause of action and local standi.
3. That Appeal is time Barred for about 04 years & two months.
4. That Computer Operator post is BS-16 and does not come under the Jurisdiction of Respondent No.1.
5. That Computer Operator post is BS-16 and shall be appointed through NTS as per policy of Health Department Govt of KPK.
6. That appellant was appointed/ adjusted as Junior Clerk BS-7 on the compliance of Judgment of Service Tribunal Peshawar.
7. That the appellant order of Computer Operator No. 8077-84/DHO Mardan dated 05-05-2014 is correct. Moreover the date of cancellation order 07-04-2014 is a clerical mistake and requested to neglect this error. It was confirmed from dispatch register. The cancellation order was issued on 07-05-2014 No. 8152-58/DHO.
8. That the respondent No. 1 has got no authority to appoint appellant without NTS Test as the right of other deserving candidates being involved in the matter.
9. It is therefore requested to dismiss appeal of the appellant with cost.

**ON FACTS**

1. Pertains to record hence no comments.
2. Pertains to record hence no comments.
3. Pertains to record hence no comments.
4. Correct: An compliance of Service Tribunal order dated 26-04-2017, the appellant was adjusted against the post of BS-7 as Junior Clerk.
5. Incorrect: Ex-DHO had got no authority to convert the post of BS-7 to BS-16, which was against the policy of Health Department KPK, which was then withdrawn by EX-DHO as it was against the Health Policy and codal formalities was not followed. Reply also given in Supra Paras Preliminary Objection

6. Incorrect: Reply as given in Supra Paras Preliminary and Supra Para No. 5. Furthermore the withdrawn / cancellation of Computer Operator BS-16 was justified, because the rights of deserving candidate with requisite qualification was at stake, so to save the rights of other candidate was saved, other reply has been given Supra Para Preliminary objections.
7. Incorrect: Cancellation order which was issued on 07-04-2014 may be read as 07-05-2014 which was a Computer / Clerical mistake and may be ignored.
8. Incorrect: As per policy of Health Department BS-16 post of Computer Operator shall be advertised and selection shall be made through NTS in the best interest of public. The appeal was then regretted on account of being Health Policy.
9. Incorrect: The appeal may be dismissed on above discussion with cost.

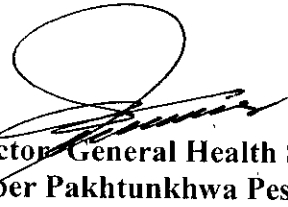
**ON GROUNDS:**

- A. Incorrect: Reply as given in Supra Paras.
- B. Incorrect: Reply as given in Supra Paras.
- C. Incorrect: Appellant was adjusted against the vacant post of Junior Clerk BS-7 in compliance of Court order.
- D. No Comments:
- E. Incorrect: There is no need of enquiry because respondent No. 1 Ex-DHO had got no jurisdiction, discretionary power to convert the post of Junior Clerk BS-7 to Computer Operator BS-16 as per policy of Health Department Govt of KPK.
- F. Incorrect:
- G. Incorrect:
- H. Incorrect: The appellant shall be stopped and dismissed the appeal in favour of Health Department and to save the rights of other deserving & eligible candidates.

It is therefore request that the appeal of the appellant may please be dismissed.



1. Secretary to Government  
Khyber Pakhtunkhwa Health Deptt;



2- Director General Health Services  
Khyber Pakhtunkhwa Peshawar



3- District Health Officer  
Mardan

**BEFORE THE SERVICE TRIBUNAL KHYBER**  
**PAKHTUNKHWA PESHAWAR**

In S.A # 810/2018

Mr. Pirzada Muhammad Ismail

**Versus**

Health Department

**REJOINDER ON BEHALF OF**  
**APPELLANT**

**Respectfully Sheweth,**

All the Preliminary objection raised by the Respondents are incorrect and baseless and not in accordance with law and rules because the appointment order of appellant as Computer operator BPS-12 properly approved from director General Health Services through proper channel, moreover there is no NTS policy existed at that time furthermore when a clerical mistake has been made by Respondent department then corrigenda has been issued by the Respondent department but there is no corrigenda has been issued by Respondent department.

## Facts

1. Para 1 of the appeal is correct.
2. Para 2 of the appeal is correct.
3. Para 3 of the appeal is correct the appointment order dated 22/04/2014 has been cancelled by the Respondent department on 28/05/2014 without any reason.
4. Para 4 of the appeal is correct.
5. Para 5 of the appeal is correct while para 5 of the reply is incorrect, moreover the conversion order dated 05/05/2014 of the appellant as computer operator (BPS-12) has been approved from DG Health services by the DHO through Proper channel so the withdrawn order of the said post by DHO is against the law, moreover the Respondent department without any reason and without fulfilling codal formality with drawn the appellant from the said post. **(Copy of application approved from the DG Health is attached)**



6. Para 6 of the appeal is correct while reply is incorrect. The Respondent department without fulfilling codal formality withdrawn the appellant from the post of computer operator BPS-12 although the appellant received salary for the said post from Respondent department
7. Para 7 of the appeal is correct while reply is incorrect already explained in reply of preliminary paras.
8. Para 8 of the appeal is correct while reply is incorrect already explained in reply of preliminary paras.
9. Para 9 of the appeal is correct while reply is incorrect the departmental appeal of the appellant has been rejected on no good grounds.

**ON GROUNDS:-**

All the grounds of the appeal are correct and accordance with law and prevailing rules and that of the Respondents are incorrect baseless and not in accordance with law and rules hence denied, because the appointment order of appellant as Computer operator

BPS-12 properly approved from director General Health Services, moreover there is no NTS policy existed at that time, furthermore when a clerical mistake has been made by Respondent department then corrigendam has been issued by the Respondent department but there is no corrigendam has been issued by the Respondent department .

*It is, therefore, requested that the appeal may kindly be accepted as prayed for.*

Dated 02/11/2018



**Petitioner**

Through



**Roeeda Khan**

Advocate, High Court  
Peshawar.

**VAKALAT NAMA**

A. NO. 810 /2018

IN THE COURT OF KP Service Tribunal, Peshawar.

Pirzada Muhammad Ismail (Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Health Dept. (Respondent)  
(Defendant)

I/We, Pirzada Muhammad Ismail

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate Supreme Court 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 costs.

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. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated \_\_\_\_\_/20

Pir  
(CLIENT)

Taimur Ali Khan  
Adv  
S. Khan  
Shah Kar Khan Yousafzai  
Adv

ACCEPTED

M. Asif Yousafzai

**M. ASIF YOUSAFZAI**  
Advocate Supreme Court  
Peshawar.  
B.C NO# 10-7327  
CNIC # 17301-5106574-3

**OFFICE:**

Room # FR-8, 4<sup>th</sup> Floor,  
Bilour Plaza, Peshawar,  
Cantt: Peshawar  
Cell: (0333-9103240)

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 249 /ST Dated 22/02/2021


To

The District Health Officer,  
Government of Khyber Pakhtunkhwa,  
Mardan.

Subject: - JUDGMENT IN APPEAL NO. 810/2018, PIRZADA MUHAMMAD ISMAIL.

I am directed to forward herewith a certified copy of Judgement dated 22.01.2021 passed by this Tribunal on the above subject for strict compliance.

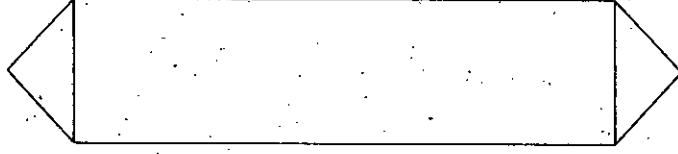
Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.

KH

To

بعدالت جناب جج سوسس ٹریبیونل ہاؤس



2018ء منجانب

مقدمہ  
دعویٰ  
جرم

مورخہ  
مقدمہ  
دعویٰ  
جرم

## باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام حسٹس کیلئے روٹیکسٹیفیکیشن

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

2018

ماہ جنوری

S

المرقوم

*(Signature)*

کے لئے منظور ہے۔

مقام حسٹس

PLD 2006 Supreme Court 572

Present: Mian Shakirullah Jan, Ch. Ijaz Ahmed and Syed Jamshed Ali, JJ

**GOVERNMENT OF BALOCHISTAN through Secretary, Services and General Administration Department and another---Petitioners**

Versus

**Khawaja MUHAMMAD NASEER---Respondent**

Civil Petition No.53-Q of 2004, decided on 21st April, 2006.

Against the judgment dated 25-3-2004 passed by Balochistan Service Tribunal Quetta in S.A.No.21 of 2000).

**Balochistan Service Tribunals Act (V of 1974)---**

---S. 4---Appeal before Service Tribunal---Implied condonation of delay---Question of limitation---Waiver---Departmental appeal was filed with a delay of 5 1/2 years, which appeal was dismissed by competent authority---Service Tribunal without deciding question of limitation as raised by the authorities, partially allowed appeal of civil servant---Validity---Unless competent authority had condoned the delay with conscious application of mind, question of limitation would remain open for consideration of Service Tribunal---No waiver on question of limitation, particularly if question of limitation in filing appeal or representation before departmental authority was raised before Service Tribunal---Service Tribunal was bound to examine such question and record its decision---Concept of implied condonation of delay did not fit in the scheme of law of limitation because application had to be made for seeking condonation, showing sufficient cause to the satisfaction of the forum concerned, who might grant or decline the same---Discretion had to be exercised in a just and legal manner and it could not be exercised arbitrarily or fancifully---Vice of accepting implied condonation of delay was that in absence of grounds and reasons for condonation of delay, it was not possible for Court of appeal to examine the question as to whether delay was rightly condoned---Service Tribunal in assuming that the delay stood condoned impliedly was clearly in error---Supreme Court converted petition for leave to appeal into appeal and set aside judgment passed by Service Tribunal---Appeal was allowed.

Muhammad Younis and 3 others v. The Chairman, WAPDA, Lahore and another 1989 SCMR 174; The Chairman PIAC and others v. Nasim Malik PLD 1990 SC 951; Anwarul Haq v. Federation of Pakistan through Secretary Establishment Division, Islamabad and 13 others 1995 SCMR 1505; State Bank of Pakistan v. Khyber Zaman and others 2004 SCMR 1426; Inayatullah and others v. Director-General and others 2006 SCMR 535; Zafer Mahmood, Ex-line Superintendent, WAPDA v. WAPDA through Superintending Engineer (Electricity) and another 1991 SCMR 640; Anwar Muhammad v. General Manager, Pakistan Railways, Lahore and another 1995 SCMR 950; Israr Ahmad Khan v. Government of N.-W.F.P. and others 1990 SCMR 1356 and Ahsan Ali and others v. District Judge and others PLD 1969 SC 167 fol.

Salah ud Din Mengal. A.-G. for Petitioners.

Mushtaq Ahmad Anjum, Advocate Supreme Court for Respondent.

Date of hearing: 21st April, 2006.

## JUDGMENT

SYED JAMSHED ALI, J.—The Government of Balochistan and another seek leave to appeal against the judgment dated 25-3-2004 of the learned Balochistan Service Tribunal whereby appeal of the respondent was partly allowed and he was held entitled to pro forma promotion as Director, Primary Education (BS-20) with effect from 17-11-1992. The brief facts of the case are noted hereunder.

2. The respondent started his career as J.V. Teacher on 16-9-1949, in the Education Department of Government of Balochistan, earned due promotions and was awarded BS-19 on 30-5-1991. Vide order dated 6-3-1993, he was appointed as Acting Director, Primary Education, a post in BS-20, and was allowed to draw the pay of the said post with effect from 1-7-1992. On reaching the age of superannuation, he retired on 13-3-1993. However, vide order dated 4-8-1993, he was allowed move-over to BS-20 with effect from 1-12-1992.

3. After his retirement, case for his regular promotion as Director, Primary Education, was placed before the Provincial Selection Board. Besides, the respondent one Ijaz Ahmad Malik was also a contender for the said post. The said Board in its meeting held on 21-3-1993, approved Ijaz Ahmad Malik for promotion to the said post. A formal notification was issued to this effect on 24-10-1993.

4. On 17-10-1998, the respondent filed a representation for pro forma promotion to BS-19 with effect from 1-7-1989, in BS-20 with effect from 1-7-1991 and as Director, Primary Education with effect from 1-7-1992. The appeal was contested by the petitioners but was partly allowed by the learned Balochistan Service Tribunal vide judgment dated 25-3-2004 inasmuch as that the claim of the respondent for pro forma promotion to BS-19 was dismissed but it was allowed for pro forma promotion to BS-20 with effect from 17-11-1992, the date when the case was referred to the Provincial Selection Board.

5. The learned Advocate-General, representing the petitioners, submits that the appeal of the respondent before the learned Service Tribunal was not competent because the departmental representation was hopelessly barred by time and even on merits the learned Tribunal only undertook an unwarranted academic exercise for the reasons that the respondent was allowed the pay and all other benefits of grade 20 on account of move over to BS-20, with effect from 1-7-1992 and even if he had to be promoted with effect from 17-11-1992 to grade 20 he would not be entitled to any further benefit such as the increment because of the bar contained in the policy circular of the Finance Department of the Government of Balochistan bearing No.FD(R-III-40/99/451-551, dated 21-3-2000. He also vehemently contended that the respondent received all the retirement benefits of Grade-20 and, therefore, in the circumstances, the learned Service Tribunal should not have interfered to create a precedent which is likely to cause serious administrative problems for the Provincial Government.

6. On the other hand, the learned counsel for the respondent, has defended the impugned judgment for the reasons noted therein. According to him, on promotion, the respondent would have been entitled to the fixation of pay in Grade-20 along with an increment.





7. We have considered the submissions made by the learned counsel for the parties. It is not denied that the respondent has received all the terminal benefits on the basis of his retirement in Grade-20. Another significant feature to be noted is that vide notification dated 24-10-1993, Mr. Ijaz Ahmad Malik was promoted as Director, Primary Education who was, however, not impleaded to this appeal. We have seen the, circular dated 21-3-2000 in which it has clearly been stated that the annual increment in the basic scale of pay will accrue on first day of December following the completion of at least six months of such service at the relevant stage in that scale under the ordinary rules. It is further stated therein that a retiring civil servant shall be entitled to the usual increment for the purpose of calculation of his pension only on completion of six months in the year of his retirement irrespective of due date of first December, following the completion of six months. Thus, it is clear that on his promotion to BS-20 on 17-11-1992, the respondent would not have been entitled to an increment.

8. The learned counsel for the respondent has not been able to satisfy us as to what tangible benefits would accrue to the respondent in case of his regular promotion to BS-20 with effect from 17-11-1992.

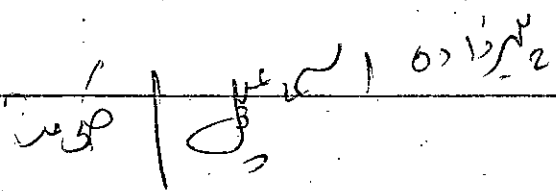
Another important feature of the case is that the learned Service Tribunal held that the respondent was entitled to pro forma promotion. We may like to observe here that the question of pro forma promotion i.e. ante-dating promotion, would only arise in case the respondent was already promoted to Grade-20. This was not the case because vide order dated 6-3-1993, he was appointed as Acting Director, Primary Education, and vide order dated 4-8-1983, he was granted move over in BS-20. None of the two eventualities amounted to regular promotion to Grade-20.

9. Another crucial aspect is that the respondent retired on reaching the age of superannuation on 13-3-1993, but on 17-10-1998, filed a representation before the departmental authority which was rejected (on merits) on 26-6-1999 and the order was communicated to him on 30-3-2000 while the appeal before the learned Service Tribunal was filed on 19-4-2000. Thus, while the grievance had arisen as a result of promotion of Ijaz Ahmad Malik to BS-20 on 14-10-1993, it was agitated before the departmental authority after more than 5-1/2 years. Thus, the departmental remedy availed by the respondent was hopelessly barred by time. The petitioners had pressed the question of limitation before the learned Service Tribunal. The plea of the department to the extent of grant of BS-19 was accepted while it was rejected in respect of respondent's promotion to BS-20 on the ground that the departmental authority had dismissed the appeal of the respondent on merits and it was, thus, accused by the learned Tribunal that if the departmental authority did not dismiss the appeal as barred by time, the learned Tribunal could not examine the question of delay before the departmental authority.

10. There are a number of decisions of this Court in which the issue was examined and decided. The first to be noted is Muhammad Younis and 3 others v. The Chairman, WAPDA, Lahore and another 1989 SCMR 174. In this case, the departmental appeal was dismissed on merits. The learned Service Tribunal, however, dismissed the appeal of the civil servant on the ground that appeal before the departmental authority as barred by time and the order of the learned Tribunal was maintained by this Court with the observation that the order of the learned Service Tribunal did not suffer from any infirmity. In the Chairman, P.I.A.C. and others v. Nasim Malik PLD 1990 SC 951 the PIAC official had resigned which was accepted on 15-8-1983 and on his request the resignation was converted into termination of his service vide order dated 28-3-1984. He received monitory benefits as a result of his termination but filed departmental appeal on

Time barred - Appeal dismissed.

9/10/2019

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	
29.01.2018	JW	<p>Respectful DDA</p> <p><b><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></b></p> <p>Appeal No. 1662/2013</p> <p>Date of Institution ... 23.12.2013 Date of Decision ... 29.01.2018</p> <p>Muhammad Wasim Khan, Junior Clerk, Provincial Health Service Academy (PHSA), Peshawar.</p> <p>Versus</p> <ol style="list-style-type: none"><li>1. The Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat Peshawar.</li><li>2. Director General Health Services Khyber Pakhtunkhwa, Peshawar.</li><li>3. Director, Provincial Health Service Academy, Health Department, Budhni Road Duranpur, Khyber Pakhtunkhwa, Peshawar.</li></ol> <p><b><u>JUDGMENT</u></b></p> <p><b><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u></b> - Learned counsel for the appellant and Mr. Riaz Painsa Kheil, learned Assistant Advocate General on behalf of the official respondents present. Learned counsel for private respondents also present.</p> <ol style="list-style-type: none"><li>2. This common judgment shall also dispose of appeal bearing No.1637/2012 filed by Qadeem Khan being identical in nature, having arisen out from the same law, facts and circumstances.</li><li>3. The appellants have filed the present service appeals u/s 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974 against the respondents and made impugned the order dated 20.11.2012 by</li></ol>

alleging that by means of the impugned order the appellants were relieved from Provincial Health Service Academy (PHSA), Health Department Khyber Pakhtunkhwa and repatriated to the office of D.G Health Services for further adjustment.

4. At the very outset learned AAG raised objection that the present appeals are hopelessly time barred as the impugned final order was issued on 20.11.2012 while the present service appeals were preferred on 23.12.2013.

5. As against that learned counsel for the appellants argued that against the impugned order dated 20.11.2012 the appellants filed departmental appeals on 29.11.2012 which were not responded and consequently the appellants resorted to litigation in the court of Civil Judge Peshawar and after return of plaint from the court of Civil Judge and dismissal of appeals by the court of Additional District Judge Peshawar, the appellants have approached the Service Tribunal.

6. Arguments heard. File perused.

7. It has now become a settled proposition of law that time spent in litigation before the wrong forum would neither extend period of limitation nor the delay in filing the appeal can be condoned for such reason. Judgment dated 29.06.2017 in service appeal bearing No 189/2015 of this Tribunal may be quoted as a reference. The appellants are aggrieved from the order dated 20.11.2012 against which they approached this Tribunal on 23.12.2013 i.e. after more than one year of the issuance of the impugned order, hence the

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Appeal No. 289/2016

Date of Institution ... 28.03.2016

Date of Decision ... 24.07.2017

Amir Muqtada Qureshi, Ex-Sub-Engineer, Office of the Sub Engineer, Public Health Engineering Division, Mansehra.

1. The Secretary, Public Health Engineering Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Chief Engineer (South), Public Health Engineering, Khyber Pakhtunkhwa, Peshawar.
3. The Executive Engineer, Public Health Engineering Circle, Abbottabad.

24.07.2017

**JUDGMENT**

**MUHAMMAD HAMID MUGHAL, MEMBER:** - Clerk of the counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney on behalf of the official respondents present.

2. This single judgment in the above captioned appeal, shall also dispose of appeals (1) bearing No.290/2016 filed by Muslim Shah Ex-Sub Engineer,(2) bearing No. 291/2016 filed by Qaiser Khan Ex-Sub Engineer, (3) bearing No.292/2016 filed by Zohaib Khan Ex-Sub Engineer, (4) bearing No.321/2016 filed by Murtaza Ali Ex-Sub Engineer, (5) bearing No.322/2016 filed by Syed Ashfaq Ahmad Shah Ex-Sub Engineer, (6) bearing No.323/2016 filed by Waqas Ali Ex-Sub Engineer, (7) bearing No.324/2016 filed by Hussain Zaman Ex-Sub Engineer,(8) bearing No.325/2016 filed by Abdus Samad Ex-Sub Engineer, (9) bearing No.326/2016 filed by Syed Hassan Ali Ex-Sub Engineer, (10) bearing No.327/2016 filed by Ashfaq Ahmad Ex-Sub Engineer, (11) bearing No.328/2016 filed by Abdul Shahid Ex-Sub Engineer, (12) bearing No.329/2016 filed by Farman Ali Ex-Data Entry Operator, (13) bearing No. 351/2016 filed by Shaukat Ali Ex-Sub Engineer, (14) bearing No.352/2016 filed by Khasif Raza Ex-Sub Engineer, (15) bearing No.353/2016 filed by Irshad Elahi Ex-Sub Engineer, (16) bearing No.354/2016 filed by Muhammad

*Handwritten notes and signatures in the left margin, including '10/11/12' and 'DDA'.*

Sajjad Ex-Sub Engineer, (17) bearing No.355/2016 filed by Syed Muhammad Ali Sajjad Ex-Sub Engineer, , (18) bearing No.356/2016 filed by Mohsin Ali Ex-Sub Engineer, , (19) bearing No.357/2016 filed by Muhammad Ahsan Shah Ex-Sub Engineer, , (20) bearing No.358/2016 filed by Muhammad Ali Noor Ex-Sub Engineer against the respondents being identical in nature, arising out of the same law, facts and circumstances

3 The appellant has filed present appeal u/s 4 of Khyber Pakhtunkhwa Service Tribunal Act-1974 against the respondents wherein he made impugned order dated 03.03.2016 passed by the respondent No.1 whereby the departmental appeal of the appellant against his termination order dated 14.02.2014 was dismissed.

4. Brief facts of the case are that the appellant was offered post of Sub-Engineer (BPS-11) vide order dated 22.12.2009 of the Chief Engineer Public Health Engineering Department Khyber Pakhtunkhwa Peshawar.

5. On 15.01.2014 during the hearing of C.Ps No. 2026 & 2029 of 2013, the august Supreme Court of Pakistan directed Chief Engineering Public Health Engineering Department Khyber Pakhtunkhwa to finalize the action against illegal appointees in his department within one month and submit his report through registrar of the august Supreme Court.

6. On 21.01.2014 Show Cause Notice was issued to 25 Sub-Engineers, 01 Senior Scale Stenographer, 06 Steno-typists and 02 Data Entry Operators, including the appellant regarding their illegal appointments and vide order dated 14.02.2014 the appellant was terminated from the post of Sub-Engineer with immediate effect on the ground that he was illegally appointed. The appellant preferred departmental appeal against his termination order but received no response. The appellant than filed appeal before this Tribunal and this Tribunal vide common judgment dated 30.12.2015 passed in appeals 31 in number, remit the case of the appellant to the appellate authority of the Department, without interfering in the impugned order dated 14.02.2014 and issued directions for the decision of departmental appeal strictly in accordance with law/rules considering merits and fulfilling the requirement of opportunity

of personal hearing. Resultantly opportunity of hearing was given to the appellant and order dated 03.03.2016 by the appellate authority was issued whereby the departmental appeal of the appellant was dismissed. This led to the present appeal by the appellant.

7. Learned counsel for the appellant argued that the termination order dated 14.02.2014 as well as the order of the appellate authority dated 03.03.2016 are against the law, facts, and norms of justice on the ground that the appellant possesses the required qualification and was appointed by the competent authority after the fulfillment of all the codal formalities. Further argued that after appointment the appellant has accrued vested right and therefore cannot be terminated and thereby allowed to suffer hardship for the lapse/irregularities committed by the department. In support of his case the learned counsel for the appellant referred the judgments reported in 1985 PLC (C.S) 478 ,1985 PLC(C.S) 528, 2004 PLC(C.S)1028,1996 SCMR 4813,1996 SCMR 4813, 1997SCMR 1552, 2004 SCMR 1077,2005SCMR 678,2005PLC(C.S)240,2006 SCMR 678,2007PLC(C.S)179,2009SCMR 663,2011SCMR 1618,2011PLC(C.S)331,2014PLC(C.S)479 and 2015SCMR 74.

8. On the other hand learned Deputy District Attorney while controverting the arguments of the learned counsel for the appellant defended the impugned orders on the grounds mentioned therein and maintained that the appellant was appointed illegally on political considerations. Further contented that the post earlier occupied by the appellant has now been filled, upon the recommendation of Public Service Commission on merits. Further argued that some other affectees/illegal appointees also took part in the examination held by Public Service Commission and few of them also succeeded to re-occupy their posts.

9. Arguments of learned counsel for the appellant and Deputy District Attorney heard. Record perused with their valuable assistance.

10. It is not disputed that the vacancies/posts against which the appellant was appointed, were not advertised at all in the newspapers rather the then Chief Minister of Khyber Pakhtunkhwa provided a list of applicants through his political secretary for appointments against such posts by the departmental

authority and in the said list the name of the appellant is also mentioned, more so the appellant has not gone through any test. Hence the appointment was not made on the basis of eligibility cum merit criteria but otherwise due to political pressure etc. It may also be mentioned that neither the appointment was made in accordance with recruitment procedure applicable to the district cadre post, nor through the recommendation of Public Service Commission.

11. It is by now settled that all the appointments to the Government Institutions must be based on a transparent/fair process within the parameter of its applicable rules, regulation etc. but the fact remains that the bureaucracy can be so susceptible to the whims and wishes of the ruling elite class etc which results in an obvious weakening of the state institutions.

12. The argument on behalf of appellant that he met the requisite qualification for the post and as such rightly appointed has no force in it as other persons having requisite qualification and might have been more meritorious were kept out of the whole process of the recruitment. Learned counsel for the appellant remained unable to demonstrate that the judgments referred by him are of any help to the illegal appointee for the purpose of his reinstatement.

13. The appellant must have gone through hardship due to his termination from service but the ill-gotten gains cannot be defended/protected under any canon of law are even on humanitarian consideration in as much as such gains availed by the illegal appointees were at the cost of other deserving citizen of the country with a legitimate expectation that they would be able to seek appointment on the basis of open merit/eligibility cum merit criteria. Wisdom in this regard is gained from judgment of the august Supreme Court of Pakistan titled Syed Mubashir Raza Jaffri and others -----Petitioners Versus EMPLOYEES OLD-AGE BENEFITS INSTITUTIONS (EOBI) through President of Board, of Trustees and others-----Respondents (2014 SCMR Page 949).

14 The august Supreme Court also observed in number of cases that in such situation besides proceedings against the beneficiaries of illegal



appointments, the officers who were responsible for implementing illegal directives should also be held equally responsible and severe action should be taken against them so in future it may serve as deterrent for other likeminded persons.

15. As a sequel to above we see no merits in the present appeal. Hence the same is dismissed. Parties are left to bear their own costs. File be consigned to the record room after its completion.

(MUHAMMAD HAMID MUGHAL)  
MEMBER

(AHMAD HASSAN)  
MEMBER

ANNOUNCED  
24.07.2017

**DIRECTORATE GENERAL HEALTH SERVICES  
KHYBER PAKHTUNKHWA PESHAWAR.**

No. 3272 /Personnel

Dated Peshawar the 30/4 /2014

To


The District Health Officer,  
Mardan.

Subject: - **APPLICATION FOR THE POST OF COMPETETER OPERATOR  
BPS-12- CHIEF MINISTER'S DIRECTIVE.**

Memo:

Please find enclosed an application of Pirzada Muhammad Ismail Junior Clerk of your office alongwith its enclosures containing directive of the Honourable Chief Minister's Khyber Pakhtunkhwa Peshawar for further necessary action immediately.

The matter may please be given Top Priority ~~basis~~.

  
Director General Health Services  
Khyber Pakhtunkhwa Peshawar

No. \_\_\_\_\_ /Personnel.

Copy alongwith copy of application of Mr. Pirzada Muhammad Ismailil Junior Clerk DHO office Mardan containing directives of the Honourable Chief Minister's Khyber Pakhtunkhwa Peshawar is forwarded to the: -

1. Secretary to Govt. of Khyber Pakhtunkhwa Health Department Peshawar.
2. Private Secretary to Chief Minister Khyber Pakhtunkhwa Peshawar.

Director General Health Services  
Khyber Pakhtunkhwa Peshawar.

22/1/2017

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Appointment letter 22/4/2014.

Arrival Report 23/4/2014.

order cancelled. 28/5/2014.

S.A 638/2016. Decided 26/4/2017

~~commission order~~ 5/5/2014.

PL15 - impugned order. 7/4/2014.

Dept appeal. 10/4/2014.

Rejected. 25/5/2014.

Limitation.

2013 SC MR 7053

1999 SC MR 880

Appeal is a civil suit. Not treated as per law. No defence was provided. vested right:- bars precedent.  
PLD 1991-SC 1973.

apparently 1997 SC MR 1582.

No. void for nullity - case law?

viability apart from Dept. case law?

limitation 1995 SC MR-18.

DDA /  
PL9

impugned order 7/4/2014

Service appeal time barred. 4 years 2 months

PLJ 2009 SC 1099:-

SA 1882/2013 - 29/1/2018.

PLD 2006 SC 572.



present service appeals are hopelessly time barred and consequently the same are dismissed as such. Parties are left to bear their own costs. File be consigned to the record room after its completion.

ANNOUNCED

29.01.2018

(Muhammad Amin Kundi)  
MEMBER

(Muhammad Hamid Mughal)  
MEMBER