


Service Appeal No. 1471/2018

19.12.2018 As per direction of the worthy Chairman Khyber Pakhtunkhwa Service Tribunal, D.I.Khan tour dated 19.12.2018 has been rescheduled and the case is re-fixed for 28.12.2018.

Reader


28.12.2018 Husband of the appellant, on behalf of the appellant present and requested for adjournment on the ground that learned counsel for the appellant is not available today. Mr. Farhaj Sikandar, District Attorney for the respondents also present. Adjourned. To come up for preliminary hearing on 23.01.2019 before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

23.01.2019 Counsel for the appellant present.

Learned counsel for the appellant argued the matter at some length but when confronted with the prayer in the appeal to read in juxtaposition to Sections 4 and 7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, requested for withdrawal of instant appeal in order to seek remedy at appropriate forum/fora.

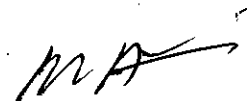
Dismissed as withdrawn. Instant withdrawal shall not preclude the appellant in case he, somehow, had to resort to a service appeal on the same cause of action.


Chairman
Camp Court, D.I.Khan

Announced:
23.01.2019

transfer respondent No. 7 i.e Mst. Farzana Bibi PHE Technician from the office of District Health Officer Tank to Principal Public Health School D.I.Khan on political basis despite the facts that she has not got any NOC from the concerned authority therefore, the appellant filed departmental appeal but the same was not responded hence, the present service appeal. It was further contended that the respondents was required to transfer the appellant from DHQ Tank to D.I.Khan on the basis of spouse policy therefore, the transfer of respondent No. 7 is illegal and the official respondents are bound to transfer the appellant in place of respondent No. 7.


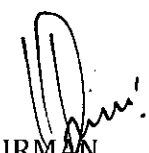
When, the learned counsel for the appellant was confronted that the official respondents has not passed any original or final order regarding transfer of the appellant and under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 if there is no original or final order than the service appeal is not maintainable. Learned counsel for the appellant contended that the present appeal is maintainable therefore, pre-admission notice be issued to Learned Additional Advocate General/District Attorney to assist the court on the next date. Adjourned. To come up for preliminary hearing on 28.12.2018 before S.B at Camp Court D.I.Khan.


Muhammad Amin Khan Kundi
Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1471/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	10/12/2018	<p>The appeal of Mst. Dilshad BBibi presented today by Mr. Saree-ul-Ehsan Baloch Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	10-12-2018	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>10/12/2018, if available.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	10.12.2018	<p>Counsel for the appellant Mst. Dilshad Bibi present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant is serving as L.H.V in the office of District Health Officer Tank. It was further contended that the husband of the appellant namely Muhammad Riaz is also government servant in the Health Department and is serving in the office of Principal Public Health School, D.I.Khan and she use travel daily to district Tank in connection with her official duties. It was further contended that the appellant on 25.03.2018 submitted an application to the respondent No. 3 for her transfer to D.I.Khan on the basis of spouse policy of the provincial government. It was further contended that Principal Public Health School D.I.Khan as well as Director General Health Services Academy Peshawar and District Health Officer Tank expressed no objection on the transfer of the appellant from Tank to D.I.Khan. It was further contended that in the meanwhile respondent No. 3 i.e Director General Health Services vide office order dated 09.05.2018</p>

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. 1471 of 2018

Mst. Dilshad Bibi Vs. Govt. of Khyber Pakhtunkhwa etc

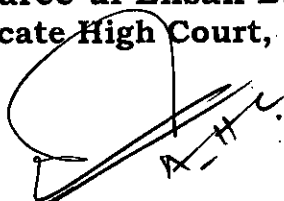
S#	Description of Documents	Annexure	Page Numbers
1.	Service appeal with Civil Misc.	---	1—7 (1-a)
2.	Copy of Service Certificate of the appellant	A	8
3.	Copy of Service Certificate of the husband of appellant	B	9
4.	Copy of the domicile certificate of the husband of appellant	C	10
5.	Copy of office order dated 27.04.2016 of the D.G. Health Services	D	11
6.	Copy of application dated 25.03.2018 of appellant	E	12
7.	Copy of NOC by Principal Public Health School D.I.Khan, vide letter dated 17.03.2018	F	13
8.	Copy of NOC by District Health Officer Tank, vide letter dated 12.04.2018	G	14
9.	Copy of NOC by Director General Health Services Academy, Peshawar, vide letter dated 26.03.2018	H	15
10	Copy of impugned office order bearing No.3714-23/AE-VI dated 09.05.2018 of respondent No.3	I	16
11	Copy of Writ Petition No.567-D/2018	J	17—23
12	Copy of Judgment dated 22.10.2018	k	24—26
13	Copy of departmental appeal	L	27—28
14	Copy of the application dated 08.04.2018 of respondent No.7 for her transfer	M	29
15	Vakalatnama	---	30—31

Yours Humble Appellant
(Mst. Dilshad Bibi)
Through Counsel



Dt. 10 .12.2018

Saree-ul-Ehsan Baloch
Advocate High Court, D.I.Khan.



Dil Awaiz Baloch
Advocate High Court, D.I.Khan.



**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. 1471 of 2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1738

Dated 10-12-2018

Mst. Dilshad Bibi, wife of Muhammad Riaz, L.H.V. of the Office of District Health Officer, Tank.

APPELLANT

VERSUS

1. Govt. of Khyber Pakhtunkhwa, through Secretary to Govt. of Khyber Pakhtunkhwa, Health Department Peshawar.
2. Secretary to Govt. of Khyber Pakhtunkhwa, Health Department Peshawar.
3. Director General, Health Services, Khyber Pakhtunkhwa, Peshawar.
4. Director General, Provincial Health Services Academy (PHSA), Khyber Pakhtunkhwa, Peshawar.
5. District Health Officer, Tank.
6. Principal, Public Health School, D.I.Khan.
7. Mst. Farzana Bibi, P.H.C. Technician, Public Health School, D.I.Khan.
8. District Health Officer, D.I.Khan.

RESPONDENTS

SERVICE APPEAL UNDER SECTION 4 OF THE K.P. SERVICE TRIBUNALS ACT, 1974, AGAINST THE OFFICE ORDER BEARING NO.3714-23/AE-VI DATED 09.05.2018 ISSUED BY RESPONDENT NO.2 WHEREBY THE RESPONDENT NO.7 HAS BEEN TRANSFERRED FROM TANK TO DISTRICT D.I.KHAN.

PRAYER:

ON ACCEPTANCE OF PRESENT SERVICE APPEAL, RESPONDENTS MAY PLEASE BE DIRECTED TO TRANSFER THE APPELLANT FROM DISTRICT TANK TO DISTRICT

Filed to-day

Registrar

10/12/18.



**D.I.KHAN ON THE BASIS OF SPOUSE POLICY, AGAINST
THE POST ARISING OUT OF THE CANCELLATION OF
TRANSFER OF RESPONDENT NO.7 OR AT ANY OTHER POST
OF LHV AT PUBLIC HEALTH SCHOOL D.I.KHAN.**

Respectfully Sheweth.

1. That the appellant has been serving in the Health Department District Tank as Lady Health Visitor (LHV) since last 18 years. Service Certificate of the appellant is enclosed as **Annexure A.**
2. That the husband of appellant, namely Muhammad Riaz, is also a government servant in the Health Department and is serving on the post of Cook in the office of Principal, Public Health School, D.I.Khan. Service Certificate of the husband of appellant is enclosed as **Annexure B.**
3. That the husband of appellant is permanent resident of District D.I.Khan, and the appellant too has been residing with him at District D.I.Khan and she use to travel daily to district Tank in connection with his official duties. For this purpose, she has to left for duty early in the morning and then she came back to home in the later evening.
4. That it is the settled policy of the provincial government known as 'Spouse Policy' that the husband and wife should be posted at same station for the purpose of government service. Besides presently, the appellant owing to the domicile of her husband has also domiciled in District D.I.Khan. Copy of the domicile certificate of the husband of appellant is enclosed as **Annexure C.**

5. That previously the appellant was transferred to Public Health School D.I.Khan vide office order dated 27.04.2016 (**Annexure D**) issued by the D.G. Health Services (respondent No.3), however, the same was cancelled after few months without any rhyme & reason.
6. That the appellant on 25.03.2018 submitted an application (**Annexure E**) to the respondent No.3 for her transfer to D.I.Khan on the basis of spouse policy of the provincial government. The Principal Public Health School D.I.Khan, vide letter dated 17.03.2018 (**Annexure F**) also expressed his no objection if appellant is transferred there. Similarly, the District Health Officer Tank, vide his letter dated 12.04.2018 (**Annexure G**), also expressed his no objection on the transfer of appellant from Tank to D.I.Khan.
7. That the Director General Health Services Academy, Peshawar, vide his office letter dated 26.03.2018 (**Annexure H**) informed the D.G. Health Services that he too has no objection if appellants is transferred from Tank to Public Health School, D.I.Khan.
8. That in the meanwhile the respondent No.3 vide office order bearing No.3714-23/AE-VI dated 09.05.2018 (**Annexure I**) transferred the respondent No.7 from the office of D.H.O. Tank to Public Health School D.I.Khan on the basis of ~~Political victims~~ ^{Political victims} ~~Zation~~ despite the fact that she did not obtain NOCs from any of the concerned offices.
9. That aggrieved of the transfer order of respondent No.7, the appellant called in question the vires of same in a Writ Petition No.567-D/2018 (**Annexure J**) before the Honourable Peshawar High Court, D.I.Khan Bench, however, vide Judgment dated 22.10.2018 (**Annexure K**) the same was dismissed being not

maintainable, leaving the appellant at liberty to seek her relief before appropriate forum if so desired.

10. That initially appellant preferred Departmental Appeal and thereafter in order to enforce the Spouse Policy of the provincial government, the appellant filed writ petition under the strong believe that the matter falls within the ambit of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973; however, the Honourable Peshawar High Court, D.I.Khan Bench, was disagree with the appellant and the writ petition was dismissed. As the earlier representation of appellant was kept pending due to filing of Writ Petition and interim relief granted thereby, therefore, appellant preferred departmental appeal to the respondent No.2. copies enclosed as **Annexure L.**

11. That still aggrieved of the office order bearing No.3714-23/AE-VI dated 09.05.2018 as to transfer of respondent No.7 and also discontented with her non-transfer to D.I.Khan, and as the Departmental Appeal of appellant has not been replied; therefore, the appellant has been left with only option to invoke the jurisdiction of this Honourable Tribunal on, inter alia, the following grounds:

GROUND:

- i. That the impugned office order bearing No.3714-23/AE-VI dated 09.05.2018 is the outcome of malafide, result of political victimization, against policy in vogue of the Provincial Government, without jurisdiction, without lawful authority and having no binding effect upon rights of appellant.
- ii. That the appellant is seeking her transfer on the basis of Spouse Policy as her husband too is serving in the Health Department but at District D.I.Khan. thus, she is entitled to

be transferred as LHV to D.I.Khan on the basis of spouse policy.

iii. That the appellant is entitled to her transfer to D.I.Khan in preference to respondent No.7 as the transfer case of appellant was moved prior in time. Besides in her application for transfer, neither the respondent No.7 has referred to the spouse policy nor the service of her husband was referred therein. Hence, a great injustice has been done to the appellant who is seeking her transfer on the basis of spouse policy. Copy of the application of respondent No.7 is enclosed as **Annexure M.**

iv. That the appellant has been transferred to Public Health School D.I.Khan without N.O.C. from the head of Department i.e. Director General, P.H.S.A. Peshawar. Induction/transfer of respondent No.7 without express NOC from the respondent No.4 is illegal, unlawful and is unwarranted.

v. That the appellant has been serving in the office of DHO Tank while her husband is serving with the respondent No.6 at D.I.Khan. Posting of appellant and her husband at two different stations is adversely affected the matrimonial life of appellant besides her children too are suffering a lot. The appellant has to left for duties at Tank early in the morning and, after performing official duties, she returns back to home at D.I.Khan in the late evening; and then she makes preparations so that she go to duties in the next early morning.

It would not be out of place to mention that the husband of appellant in order to perform his duties being a cook, left for his duties early in the morning so that he can prepare breakfast and he remains present on duty till late night and

came back to home after preparing dinner/night meal at Public Health School. This fact is adding more in the difficulties & problems of appellant.

- vi. That the counsel for appellant may be allowed to raise additional grounds at the time of arguments.

It is therefore, humbly prayed that the present service appeal may graciously be allowed as prayed for and thereby the appellant may please be ordered to be transferred to D.I.Khan as LHV on the basis of spouse policy.

Yours Humble Appellant



(Mst. Dilshad Bibi)
Through Counsel

Dt. 10.11.2018



Saree-ul-Ehsan Baloch
Advocate High Court, D.I.Khan.



Dil Awaiz Baloch
Advocate High Court, D.I.Khan.

VERIFICATION: I, the appellant, on this day of November-2018, herein mentioned above, do hereby verify that all the contents of this appeal are true & correct and also that it is the first appeal on the subject matter and no such appeal has earlier been filed.



Appellant

AFFIDAVIT: I, the appellant; do hereby solemnly affirm and declare on oath that all the Para-wise contents of above **Service Appeal** are true & correct to the best of my knowledge, belief and information; and that, nothing has been deliberately concealed from this Honourable Tribunal.



Identified by Counsel:
Saree-ul-Ehsan Baloch Advocate.



Deponent

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.**

Civil Misc. Petition No. _____ of 2018

In Service Appeal No. _____ of 2018

**Mst. Dilshad Bibi Vs. Govt. of Khyber Pakhtunkhwa etc
Service Appeal**

**APPLICATION FOR SUSPENSION OF THE OPERATION OF
IMPUGNED OFFICE ORDER BEARING NO.3714-23/AE-
VI DATED 09.05.2018 TILL FINAL DECISION OF
SERVICE APPEAL.**


Respectfully Sheweth,

1. That a Service Appeal is being filed before this august court and the grounds of same may please be considered as an integral part of this Petition.
2. That the petitioner/appellant has got a good prima case on law as well as on facts and there is every likelihood of the success of present Writ Petition; hence, balance of convenience tilts in favour of the appellant.
3. That the appellant has obtained NOCs from all the concerned offices for the purpose of her transfer on the basis of spouse policy whereas, respondent No.7 as per her application has not been transferred on the basis of spouse policy; therefore, in case of non-suspension of impugned order, the petitioner/appellant will suffer an irreparable loss.

It is, therefore, humbly prayed that on acceptance of the present Civil Misc. Petition, the operation of impugned transfer order may please be suspended till decision of Service Appeal in the interest of justice.

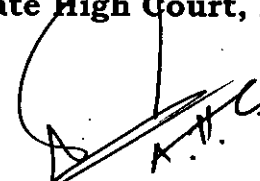
Yours Humble Appellant

(Mst. Dilshad Bibi)
Through Counsel



Dt. 10.11.2018

Saree-ul-Ehsan Baloch
Advocate High Court, D.I.Khan.

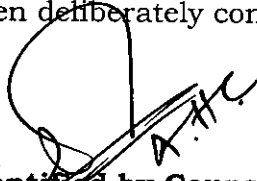


Dil Awaiz Baloch
Advocate High Court, D.I.Khan.



AFFIDAVIT

I, the appellant; do hereby solemnly affirm and declare on oath that all the Para-wise contents of above **application** are true & correct to the best of my knowledge, belief and information; and that, nothing has been deliberately concealed from this Honourable Tribunal.



Identified by Counsel:
Saree-ul-Ehsan Baloch Advocate



Deponent

8

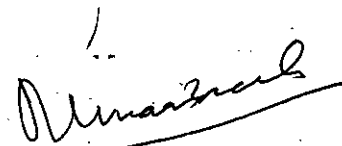
Annex A

OFFICE OF THE DISTRICT HEALTH OFFICE

NEAR CIVIL HOSPITAL DISTRICT TANK.

TO WHOM IT MAY CONCERN.

Certified that **Miss. Dilshad Begum W/O Muhammad Riaz LHV (BPS-12)**, is serving in District Health Office (DHO), Health Department Khyber Pakhtunkhwa, since 2001 till date on regular basis.



DISTRICT HEALTH OFFICER
District Tank.

Anx 'B' (9)

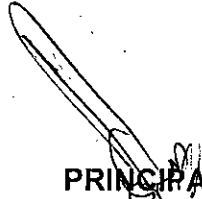
OFFICE OF THE PRINCIPAL PUBLIC HEALTH SCHOOL
SHIEKH YOUSAF ROAD, DERA ISMAIL KHAN.

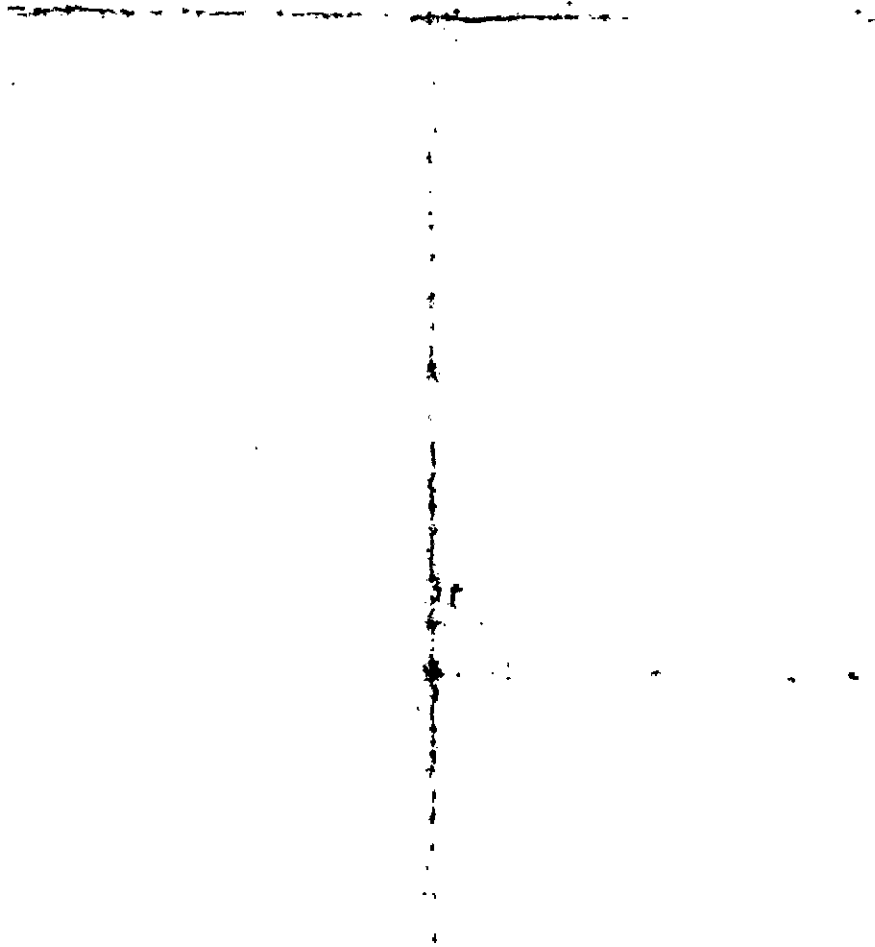
No 517 /PHS/DIK/PF:

Date: 30-11-2018

TO WHOM IT MAY CONCERN.

Certified that **Muhammad Riaz S/O Allah Bakhsh, Cook (BPS-04)**, is serving in Public Health School (PHS) Dera Ismail Khan, Allied Institute of Provincial Health Services Academy, Health Department Khyber Pakhtunkhwa, since 10-10-1990 till date on regular basis.


PRINCIPAL
Public Health School
Dera Ismail Khan.
Principal
Public Health School
Dera Ismail Khan



DOMICILE CERTIFICATE

I _____ Son / Daughter _____

here by declare that I was born of parents who are permanently domiciled in North-West Frontier Province having been born / settled* in this Province.

10
Annex C

I was born at Village / Mohallah _____

Tehsil _____ District Dera Ismail Khan

Signature of the applicant

Dated :- 2-9-84

Pursuance to the declaration dated _____ filed by

Mr/Ms _____ Son/Daughter _____

domiciled in North-West Frontier Province, it is hereby certified that the said _____ is born of parents who are permanent residents of the North-West Frontier Province having been born / settled* within it.

I have satisfied myself from _____ knowledge / verification* that the

_____ and certify accordingly

This _____ day of _____ 1984

Son

MAGISTRATE 1st CLASS

Attested

COUNTERSIGNED

Seal

DISTRICT MAGISTRATE

Dera Ismail Khan.

I have verified the contents and attested personally

Chairman, 21/8/84

Municipal Committee

D. I. KHAN

No 10995/HK

dt: 15/9/84 *Strike out which ever is not applicable

I have personally verified the contents and attested personally

Chairman, Municipal Committee, D. I. Khan.

Azizuddin Khan

1984

ISSUED BY MISS D. I. KHAN

Annexure # D4

DHS KP HEALTH DIR.

17

11

DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA, PESHAWAR.

0001



Handwritten signature and initials.

Office Ph# 091 - 9210269

Exchange# 091 - 9210187, 091 - 9210196.

Fax #091 - 9210230

All communications should be addressed to the Director General Health Services Peshawar and not to any Official by name.

OFFICE ORDER.

As approved by the competent authority, Mst. Dilshad Begum, PHC Technician (MCH)/ LHV, BPS-12 attached to DHO Tank is hereby transferred to Public Health School, D.I.Khan against her (original cadre) vacant post in the interest of public service with immediate effect.

Arrival/Departure reports should be submitted to this Directorate for record.

Sd/xxxxxxxx
DIRECTOR GENERAL HEALTH
SERVICES KPK, PESHAWAR.

No. 6445-53 /AE-VI

Dated Peshawar the 27/4/2016.

Copy forwarded to the:-

- 1) DHO, D.I.Khan.
- 2) DHO, Tank.
- 3) DAO, D.I.Khan.
- 4) DAO, Tank.
- 5) PA to DGHS KPK Peshawar.
- 6) DHIS Cell DGHS-KPK Peshawar.
- 7) Promotion Cell DGHS Office Peshawar.
- 8) DA concerned.
- 9) Official concerned.

For information and necessary action.

Director (HRM)
Directorate General Health Services,
Khyber Pakhtunkhwa, Peshawar.

OFFICE OF THE PUBLIC HEALTH SCHOOL DERA ISMAIL KHAN.
No: _____ /04/2017 dated: ___/04/2017

- Copy is Forwarded to:-
- 1. Director PHSA KPK Peshawar.
 - 2. District Health Officer, Tank.

Address

انٹرنیشنل اسکول
KPK

Ant - 8
Mishael

12

دوسرے بلیو آفسر 50 پرنسپل بلکہ سیکرٹری کے
 کے ساتھ ساتھ! کہاں سے؟
 خود ہائیڈریشن سے نہ صرف بلکہ لہذا H.A. ڈسٹریکٹ بلیو آفسر
 سے تقریباً 18 سال سے ڈیوٹی پر انجام دے رہے ہیں وہیں سے
 تھم رہا ہے بلکہ پرنسپل P.H.S. سکول - D.K. میں ڈیوٹی پر
 رہے ہیں یہاں سے بھی ہجرت ہوئی ہے اس لیے اس کے ساتھ
 مشکل بنی ہے اس کے علاوہ اس سے پہلے بھی TRANSFER پر نسیب
 رہے سکول D.K. میں ہوا ہے اور بغیر تینوں کے چارواہ ڈیوٹی
 کی ہے۔

Mishael

لیڈ اسٹاف کے ساتھ ساتھ دیگر
 اور پرنسپل بلکہ سکول D.K. میں H.A. کی پوسٹ پر
 ہر ایک کے ساتھ ساتھ D.K. - P.H. میں اسٹاف

Date 25-3-2018

H.A. ڈسٹریکٹ بلیو آفسر کے ساتھ ساتھ
 D.K. - P.H.S. -

Mishael

Annexure of F

~~11~~

13

OFFICE OF THE PRINCIPAL PUBLIC HEALTH SCHOOL D.I.KHAN.

NO. 117 /PHS/DIK.

Dated, 17/03/2018.

To,

The Director General
Provincial Health Services Academy
Khyber Pakhtoon Khwa Peshawar.

Alshad

SUBJECT:- NO OBJECTION FOR TRANSFER.

Memo:-

As per writing application for transfer submitted by Mrs. Dilshad Bibi LHV from DHO Tank.

This office has No Objection on the transfer of the above name LHV from DHO, Tank to the control of the undersigned against the vacant post of MCH (PHC) LHV BPS-12.

PRINCIPAL
PUBLIC HEALTH SCHOOL
DERA ISMAIL KHAN.

Handwritten signature

Annexure No. G/01

(2)

14

Muzamil

OFFICE OF THE DISTRICT HEALTH OFFICER DISTRICT TANK

No. 3495/D-I

Dated. 12/14/2018.

To.

The Director General Health Services
Khyber Pakhtunkhwa.

Subject:- APPLICATION.

Memo,

I have the honour to enclose please find herewith an Application in favour of Mrs. Dilshad Begum PHC Tech: MCH(LHV) B-12 Working under the control of undersigned with the remarks that this office has No Objection on transfer of concerned paramedic from District tank to home District D.I.Khan.

DISTRICT HEALTH
OFFICER DISTRICT TANK.

No. /

Dated. / /2017

Copy is forwarded to the:

1. District health officer D.I.Khan.
2. Concerned PHC Tech: MCH(LHV) BHU Mumraiz Pathan.
3. Office Assistan.

Mumraiz
DISTRICT HEALTH
OFFICER DISTRICT TANK.

Annexure

No. 549 /Admin/DGHS/ 549

15

Dated: 26/03/2018

To,

The Director General
Health Services Khyber Pakhtunkhwa
Peshawar.

Attended

Sub:

NO OBJECTION CERTIFICATE.

Enclosed please find herewith an application from Ms. Dilshad Bibi W/O Muhammad Riaz, LHV DHO Tank, requesting for transfer under spouse policy to public health School DI Khan against the vacant post of LHV.

This office has no objection on her transfer to Public Health School DI Khan against the vacant post.

DIRECTOR GENERAL
PHSA Peshawar

Cc.

1. Principal FHS DI Khan.
2. DHO Tank.

Annexure "I"

DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA, PESHAWAR.



Handwritten signature and initials.

16

Office Ph# 091-9210269 Exchange# 091-9210187, 091-9210196; Fax #091-9210230

All communications should be addressed to the Director General Health Services Peshawar and not to any Official by name.

OFFICE ORDER.

As approved by the competent authority, Mst. Farzana Bibi, PHC Technician (MCID)/LHV BPS-12, attached with DHO, Tank is hereby transferred/posted to Public Health School, D.I. Khan against the vacant post of PHC Technician (MCH)/LHV BPS-12, in the interest of Public Service with immediate effect.

Arrival/Departure reports should be furnished to this Directorate for record.

Sd/xxxxxxxxx
DIRECTOR GENERAL HEALTH
SERVICES KPK, PESHAWAR.

No. 3714-23 /AE-VI,

Dated Peshawar the 9/5 /2018.

Copy forwarded to the:-

- 1) Director General PHSA KP Peshawar.
- 2) DHO, Tank.
- 3) Principal, Public Health School, D.I. Khan.
- 4) DAO, Tank.
- 5) DAO, D.I. Khan.
- 6) P.A. to DGHS KP, Peshawar.
- 7) DHIS Cell DGHS KPK Peshawar.
- 8) Supdt: Promotion Cell (to correct the place of posting of official concerned in the seniority list)
- 9) DA concerned.
- 10) Official concerned.

For information and necessary action.

Additional Director General (H.R.M)
Directorate General Health Services,
Khyber Pakhtunkhwa, Peshawar.

Handwritten signature and date 09/5.

1000

DHS KP HEALTH DIR.

10/05 2018 10:15AM FAX 0919212076

Writ Petition No. 12345/2018



Mst. Dilshad Bibi, wife of Muhammad Riaz,
LHV of the office of District Health Officer,
Tank.

Petitioner

Versus

1. Government of Khyber Pakhtunkhwa through
Secretary to Govt. of K.P.K. Health Department,
Peshawar.

2. Secretary to Govt. of K.P.K.
Health Department, Peshawar.

3. Director General
Health Services, K.P.K. Peshawar.

4. Director General
PHSA, Peshawar.

5. Principal, Public Health School,
D.I. Khan.

6. District Health Officer,
Tank.

7. Mst. Yasmin Bibi,
PHC Technician, Public Health School,
D.I. Khan.

8. Mst. Farzana Bibi,
PHC Technician, Public Health School,
D.I. Khan.

Respondents

Writ Petition under Article 199
of the Constitution of Islamic Republic
of Pakistan, 1973.

Respectfully Sheweth:-

1. That the addresses of the parties
as given above are correct & sufficient for
the purposes of service.

Handwritten signature/initials

ATTEST
25-10-18
EXAMINER
Peshawar High Court
D.I. Khan Bench



2. That the Petitioner has passed the Midwifery Examination of the Nursing Examination Board MWFP Peshawar in the year, 1998 and has been considered qualified to attend cases of normal labour & was awarded Diploma in Midwifery Section -II from the Nursing Examination Board MWFP Peshawar. Copy is Annexure-A.

Annexure-A

3. That the Petitioner has also passed the Lady Health Visitor Examination of the Nursing Examination Board, MWFP Peshawar in the year, 1999 & was considered qualified to act as Health Visitor & Maternity Supervisor & was awarded Lady Health Visitors Diploma in 1st Division by the said Board. Copy is Annexure-B.

Annexure-B

4. That the husband of the Petitioner, namely Muhammad Riaz is also an employee of the Health Department & is serving as Cook in the office of Principal Public Health School, D.I. Khan. Copy of his service record is Annexure-C.

Annexure-C

5. That the Petitioner is an old employee of the Health Department & is serving as L.H.V. in the office of the District Health Officer, Tank since long & has got about 18 years qualifying service at her credit.

6. That the Petitioner has got School going minor children & in view of the tense law & order situation in the country & especially in the Tank district which is adjacent to the Tribal Area of S.W. Agency it is very difficult for the Petitioner to get her these minor children educated without the assistance of a guard & due care by their father.

ATTESTED
 25-10-18
 EXAMINER
 Peshawar High Court
 D.I. Khan Bench

7. That the Director General Health Services, K.P.K. Peshawar vide his office order dated 27/4/2016 had transferred the Petitioner to Public Health School, D.I. Khan but after interval of few months re-transferred the Petitioner to Tank without any rhyme & reasons. Copy is Annexure-D.

Annexure-B.

8. That it is worth mentioning to point out that the Govt. of K.P.K. has framed a policy whereby it has been said that husbands & wives who are serving either in Govt. Departments or Autonomous/Semi-Autonomous Bodies at different Stations should be posted at one & the same station so that their homes are not divided & there is no adverse effect on Education & Teaching of their children as long as in the year, 1995.

9. That in view of the aforesaid Spouse Policy of the Govt. of K.P.K. the Petitioner had approached the Director General, PHS Peshawar for her transfer to D.I. Khan District but her application dated 25/3/2018 has not been considered favourably although the Principal Public Health School, D.I. Khan has expressed no objection over the Transfer of the Petitioner from Tank to his office at D.I. Khan vide letter dated 17/3/2018. The copy of the application & the letter are enclosed as Annexures-E&F.

Annexures-E&F.

10. That the District Health Officer, Tank has also informed the Director General Health Service, Peshawar vide his office letter dated 12/4/2018 that he has got no objection if the Petitioner is transferred from Tank to D.I. Khan. Copy Annexure-G.

Annexure-G.

ATTESTED
25-10-18
EXAMINOR
Peshawar High Court
D.I. Khan Bench

11. That the Director General, PHSA, Peshawar vide his office letter dated 26/3/2018 has informed the Director General, Health Services, K.P.K. Peshawar that he has no objection for the transfer of the Petitioner from Tank to Public Health School, D.I.Kham. Copy Annexure-H.

Annexure-H.

12. That on the other hand, the Director General Health Services, K.P.K. Peshawar vide his office order dated 26/4/2018 has transferred Mst. Yasmin Bibi, PHC Technician (MP) from the office of DHO Tank to Public Health School, D.I.Kham on spouse policy basis. Copy enclosed as Annexure-I.

Annexure-I.

13. That similarly the Director General Health Services, K.P.K. Peshawar has also transferred Mst. Farzana Bibi PHC Technician from the Office of DHO Tank to Public Health School, D.I.Kham vide his office order dated 9/5/2018 on the basis of the spouse policy framed by the Govt. of K.P.K. Copy Annexure-J.

Annexure-J.

14. That although the case of the Petitioner is at par with both Yasmin Bibi & Farzana Bibi Respondents 7 & 8 but the Director General Health Services, K.P.K. Peshawar Respondent-3 is not going to consider the humble request of the Petitioner from her transfer from Tank district to D.I.Kham in accordance with the spouse policy framed by the Govt. of K.P.K. which shows malafide on his part.

15. That the Petitioner is left with no other adequate remedy but to invoke the extraordinary constitutional jurisdiction of this Honourable Court by way of present writ petition to direct the Director General Health, K.P.K. Peshawar

ATTESTED
25-10-18
EXAMINER
Peshawar High Court
D.I.Kham Bench

21

Respondent - 3 to transfer the Petitioner from the office of the District Health Officer, Tank to the office of Principal Public Health School D.I.Kham strictly in accordance with the spouse policy framed by the Govt. of K.P.K. especially the later as well as the Director General, PHS, Peshawar have expressed their no objection to this effect, on inter alia, the following grounds:-

GRUUMDS

- i. That it is an admitted fact that the Petitioner is an old employee of the Health Department of Govt. of K.P.K. & has got about 18 years qualifying service at her credit.
- ii. That the Petitioner is a married woman & has got minor School going children.
- iii. That it stands established from the material brought on record that the Petitioner is serving as LMV in the office of D.H.O. Tank while her husband Muhammad Riaz is serving as Cook in the office of Principal Public Health School, D.I.Kham & due to their posting at two different Stations the minor children of the spouse are feeling great inconvenience & they feel unsafe due to absence of their father.
- iv. That it is an admitted fact that the Govt. of K.P.K. has framed as policy that the husbands & wives who are serving either in Govt. Departments or in Autonomous/Semi-Autonomous Bodies at different stations should be posted to one & the same station so that their homes are not divided & there is no adverse effect

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25-10-18
EXAMINOR
Peshawar High Court
D.I.Kham Bench

on the Education & Training of their children.

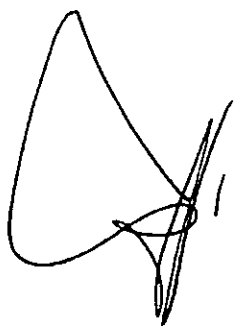
v. That keeping in view the aforesaid spouse policy of the Govt. of K.P.K. the Petitioner is very much entitled from Tank district to D.I.Kham as her husband is serving there at BIKham.

vi. That the Director General PMSA Peshawar as well as the Principal Public Health School, BIKham have expressed their no objection over the transfer of the Petitioner from Tank district to D.I.Kham district.

vii. That the two respondents viz Mst. Yasmin Bibi & Mst. Farzana Bibi have very recently been transferred from Tank district to BIKham in view of the spouse policy of the Govt. of K.P.K. & the case of the Petitioner is at par with them. Thus the Director General Health, Peshawar is legally required to transfer the Petitioner from Tank district to D.I.Kham district.

viii. That the education & training of the minor School going children of the Petitioner without the care of their father is very difficult for which the transfer of the Petitioner to D.I.Kham district is very much necessary where the husband of the Petitioner is serving so that the children of the spouse could get education freely.

In wake of the submissions made above, it is respectfully prayed that on acceptance of this writ petition, the Director General Health Services, K.P.K. Peshawar may graciously be directed to transfer the Petitioner from the office of D.H.O. Tank to the office



ACCEPTED
25-10-18
EXAMINOR
Peshawar High Court
D.I.Kham Bench

23

of Principal Public Health School, D.I.Khan
in view of the spouse policy of the Govt. of K.P.K.
so that the minor School going children of the
Petitioner could get education & training under
the supervision of their father who is serving
as Cook in the office of Principal Public Health
School, D.I.Khan & to minimise the difficulties
of the Petitioner.

Your humble Petitioner

(Signature)
(Mrs. Dilshad Bibi)
Petitioner.

Through Counsel.

(Signature)
(Sara-ul-Ahsan)
Advocate, High Court, D.I.Khan

(Signature)
(Bilwair Baloch)
Advocate, High Court, D.I.Khan

3/-12.5.2018

Certificate.

Certified that no other writ petition
on the subject has earlier been filed by the
Petitioner in this August Court.

3/-12.5.2018

(Signature)
Petitioner.

Books

1. Constitution of the Islamic Republic of
Pakistan, 1973.

2. Policy of the Govt. of K.P.K.

(Signature)
25-10-18
EXAMINOR
Peshawar High Court
D.I.Khan Bench

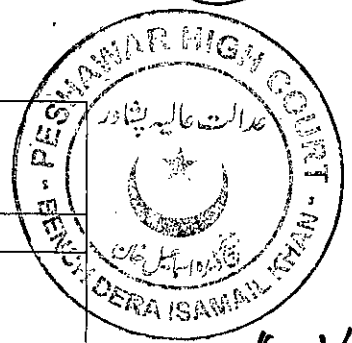
G.R.No. 3478
Application Received on 23-10-18
Copying Fee deposited Rs ---
No of Papers 07 Page
Copying Fee 0/-
Urgent Fee ---
Total Fee 28/-
Copy ready for delivery 25-10-18
Copy delivered on 25-10-18
Signature of Examiner: [Signature]
25-10-18

Certified to be true Cop.
[Signature]
25-10-18
EXAMINOR
Peshawar High Court Bench D.I Khan
Authorized Under Section 97 of
Qanoon-a-Shahadaat Act

24

FORM OF ORDER SHEET

Date of order or proceedings	Order or other proceedings with signature of Judge(s).
(1)	(2)
<p>22.10.2018</p>	<p><u>W.P. No.567-D/2018 with</u> <u>C.M. No.636-D/2018.</u></p> <p><u>Present:-</u> M/S Saree ul Ehsan and Dil Awaiz Baloch, Advocates for the petitioner.</p> <p>Mr. Adnan Ali Khan, Asstt: A.G. for official respondents.</p> <p>Muhammad Abdullah Baloch, Advocate for respondent No.7.</p> <p>Mr. Saleem Ullah Khan Ranazai, Advocate for respondent No.8.</p> <p align="center">***</p> <p><u>SHAKEEL AHMAD, J.-</u> Through this constitutional petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner Mst. Dilshad Bibi has sought the following relief:-</p> <p>“In wake of the submissions made above, it is respectfully prayed that on acceptance of this writ petition, the Director General Health Services, K.P.K. Peshawar may graciously be directed to transfer the petitioner from the office of D.H.O. Tank to the office of Principal Public Health School, D.I.Khan in view of the spouse policy of the Govt. of K.P.K. so that the minor school going children of the petitioner could get education and training under the supervision of their father who is serving as Cook in the office of Principal Public Health School, D.I.Khan and to minimize the difficulties of the</p>



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EXAMINOR
22-10-18
Peshawar High Court
D.I. Khan Bench

petitioner”

2. Brief facts of the case are that the petitioner is serving as LHV in the office of District Health Officer, Tank; that her husband is also an employee of the Health Department and is serving as Cook in the office of Principal Public Health School, D.I.Khan. Vide office order dated 27.4.2016, the petitioner was transferred from the office of District Health Officer, Tank to Public Health School, D.I.Khan, but after a few months she was re-transferred and posted to her original place. Not contented with the same, the petitioner submitted departmental representation under the umbrella of spouse policy but in vain, hence this constitutional petition.

3. It was mainly argued by the learned counsel for the petitioner that the husband of the petitioner is serving in District D.I.Khan while the petitioner is posted in the office of District Health Officer, Tank, therefore, the respondents are under legal obligation to transfer and post the petitioner at D.I.Khan.

4. On the other hand, the learned Asstt. A.G., appearing on behalf of the respondents, argued that the petitioner is a civil servant and the dispute relates to the transfer and posting of the petitioner, which falls within ambit of terms and conditions of

and

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95-10-18
-eshawar High Court
D.I.Khan Bench

26

service, therefore, the writ petition is not maintainable.

5. Arguments heard and record perused.

6. Admittedly, petitioner is a civil servant being posted as Lady Health Visitor in the office of District Health Officer, Tank and she has prayed for her transfer from the office of District Health Officer, Tank to the office of Principal Public Health School, D.I.Khan under the spouse policy introduced by the Government of Khyber Pakhtunkhwa. The dispute agitated before us, relates to the terms and conditions of a civil servant, therefore, this Court lacks jurisdiction to adjudicate upon the matter in view of embargo placed by Article 212 of the Constitution of Islamic Republic of Pakistan, 1973.

7. In view of the above, this petition alongwith C.M. No.636-D/2018, is dismissed being not maintainable, however, the petitioner shall be at liberty to seek her relief before the appropriate forum, if so desired.

Announced.
Dt: 22.10.2018.
Kifayat/*



JUDGE



JUDGE

(D.B) Hon'ble Mr. Justice Ijaz Anwar.
Hon'ble Mr. Justice Shakeel Ahmad

G.R.No.	3478
Application Received on	23-10-18
Copying Fee deposited Rs.	
No of Papers	03 page
Copying Fee	04
Urgent Fee	12
Total Fee	16
Copy ready for delivery	25-10-18
Copy delivered on	25-10-18
Signature of Examiner	[Signature]

Certified to be true Cop.

25-10-18 EXAMINER
Peshawar High Court Bench D I Khan
Authorized Under Section 10 of
Qanoon-a-Shahadaat Act 1919

24/x

25-10-18

خدمت جناب سیکرٹری ہیلتھ گورنمنٹ آف KPK پشاور

درخواست / ڈیپارٹمنٹل اپیل

Anx "L"

جناب عالی!

سائلہ حسب ذیل عرض رساں ہے۔


Handwritten signature/initials.

- 1- یہ کہ سائلہ نے 1998ء میں دینی گیری کی ڈگری حاصل کی اور اس کے بعد سائلہ نے لیڈی ہیلتھ ورسٹری کی ڈگری 1999ء میں حاصل کی۔
- 2- یہ کہ سائلہ کا شوہر مسی ریاض بن بھی اسی حکمہ کے ملازم ہیں اور پبلک ہیلتھ سکول ڈیرہ اسماعیل خان میں بطور کک (COOK) تعینات ہے اور سائلہ بھی عرصہ دراز سے اسی حکمہ میں ملازم چلی آرہی ہے اور ڈسٹرکٹ ہیلتھ آفیس ٹانک میں کام کر رہی ہے بطور LHV۔
- 3- یہ کہ سائلہ کے چھوٹے چھوٹے بچے ہیں جو کہ سکول جاتے ہیں۔ ڈیرہ اسماعیل خان کے حالات کو مدنظر رکھتے ہوئے سائلہ کے بچوں کی دیکھ بھال کرنا بہت مشکل ہے کیونکہ سائلہ ٹانک میں ڈیوٹی سرایم دے رہی ہے اور بچے ڈیرہ اسماعیل خان میں رہائش پذیر ہیں۔
- 4- یہ کہ ڈائریکٹر جنرل ہیلتھ سروس نے مورخہ 27/04/2016 کو سائلہ کو ڈیرہ اسماعیل خان ٹرانسفر کیا مگر کچھ ماہ بعد سائلہ کو اس بناء پر واپس ٹانک ٹرانسفر کر دیا کیونکہ ڈائریکٹر PHSA صاحب کا موقوف یہ تھا کہ میں یہاں Fresh Appointment کروں گا۔
- 5- یہ کہ سائلہ نے Spouses Policy کے تحت درخواست گزاری اور NOC سائلہ اور سہاۃ یا سہین کو دی گئی سہاۃ یا سہین کو

Spouses Policy کے تحت ڈیرہ اسماعیل خان ٹرانسفر کر دیا گیا مگر
 سائلہ کی حق تلفی کرتے ہوئے سماۃ خیزانہ بی بی کو سیاسی اثر و رسوخ
 کی بدولت ڈیرہ اسماعیل خان ٹرانسفر کر دیا گیا حالانکہ سماۃ خیزانہ
 نہ تو Spouses Policy کے تحت آتی ہے اور نہ ہی اُس کے
 پاس کوئی NOC ہے۔

لکھنؤ امیری جناب والا سے درخواست ہے
 کہ Spouses Policy کے تحت من سائلہ
 کو اپنے شوہر کے ساتھ ڈیرہ اسماعیل خان
 ٹرانسفر فرمایا جاوے!

Mil Shad Bhatti 10/5/2016

Through
 Council
 Imran Haider Adv.


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29

Ann "M"

دستِ خداوند بر سرِ خیرین سکنہ
راجہ خواجہ سید ابوالحسن علی



جن صاحبی
محض اور یہ ہے کہ میں سائنہ اسوقت ۵۶۱۰ ٹائٹ میں
مغور ۱۱۱۱ کا عرصہ ۵ سال سے ہم کمر میں ہوں۔ میں سائنہ زیادہ عرصہ
ٹائٹ میں گزارا ہے اور بچوں سے درد ہوتا ہے جس کی وجہ سے اپنے بچوں اور
گھر کے دیگر لوگوں سے کمر لیا ہے اور اب زیادہ شدت پڑھتی ہے۔ یہاں
بہت تک یہ سہارا سکتا ہے۔ ہم یہی - اچھے سسر ڈیرہ ایمنل خان
میں ۱۱۱۱ کا پوسٹ عالی ہو گیا ہے۔ اور اس میں سائنہ جاتی ہے۔
کہ گھر کو بند کرنا چاہتا ہے۔ ۱۱۱۱ سسر ڈیرہ ایمنل خان میں کمر لیا ہے اور
تا کہ میں سائنہ سے کمر اور بچوں کے ساتھ زیادہ وقت گزارا کروں
سید اسد علی سے کہ میں سائنہ کی ذمہ داری سہرا دینے میں مدد کروں گا
میں سائنہ کو ٹائٹ سے کمر لیا ہے اور کمر لیا ہے۔
تادم زینت دعا کو ہمیں دیں گے۔

۸-۴-۱۹۸۰

AD - Amamdia
The Princess
24/4

فرزادہ ابوالخیر طارق سلطان سکنہ
Farzana Bibi

03467875506

WAKALAT NAMA

(Power of Attorney)

30



KHYBER PAKHTUNKHWA
BAR COUNCIL

ADVOCATE HIGH COURT

SAREE UL EHSAN
Advocate High Court
bc-12-3357
Date of issue: 08-04-2018
Valid upto: 07-04-2018



Secretary
KP Bar Council

Before the Hon'ble Khyber Pakhtunkhwa Service Tribunal Peshawar

(Petitioner)
(Plaintiff)
(Applicant)
(Appellant)
(Complainant)
(Decree Holder)

Mst. Dilshad bibi

Versus

(Respondent)
(Defendant)
(Accused)
(Judgment Debtor)

Govt of Khyber Pakhtunkhwa

I, Dilshad bibi
in the above noted Service Appeal
do hereby appoint and constitute **Saree ul Ehsan, Advocate, High Court,**
District Bar, DIKhan to appear, plead, act in any Court, in compromise,
withdraw or refer to arbitration for me as my Courtsel in the above noted
matter without any liability for their default and with the authority to
engage/appoint any other Advocate/Counsel at my matter.

Attested & Accepted

CLIENT

Saree ul Ehsan,

Advocate High Court, New Hall,
District Bar, Dera Ismail Khan
Cell: 0300-579-2794
Mail ID: dilawaizbaloch56@gmail.com

WAKALAT NAMA

(Power of Attorney)

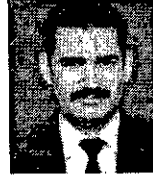
31



KHYBER PAKHTUNKHWA
BAR COUNCIL

ADVOCATE HIGH COURT

DIL AWAIZ BALOCH
Advocate High Court
bc-12-3386
Date of Issue: 08-04-2018
Valid upto: 07-04-2018



KP Bar Council

Before the Hon'ble Service Tribunal Peshawar

Mst Dilshad bibi

(Petitioner)
(Plaintiff)
(Applicant)
(Appellant)
(Complainant)
(Decree Holder)

Versus

Govt of Khyber Pakhtun Khwa

(Respondent)
(Defendant)
(Accused)
(Judgment Debtor)

I, Dilshad bibi
in the above noted Service Appeal
do hereby appoint and constitute **Dil Awaiz Baloch, Advocate, High Court,**
District Bar, DIKhan to appear, plead, act in any Court, in compromise,
withdraw or refer to arbitration for me as my Counsel in the above noted
matter without any liability for their default and with the authority to
engage/appoint any other Advocate/Counsel at my matter.

Attested & Accepted

CLIENT

Dil Awaiz Baloch,

Advocate High Court, New Hall,
District Bar, Dera Ismail Khan
Cell: 0300-909-0810
Mail ID: dilawaizbaloch56@gmail.com