

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CAMP COURT ABBOTTABAD.

Service Appeal No. 1149/2018

Date of Institution ... 14.09.2018

Date of Decision ... 20.11.2019

Mst. Shabana Aziz, PHC Technician (MP/FM), Health Department at District
Haripur. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Health, Khyber
Pakhtunkhwa Peshawar and two others. ... (Respondents)

MR. MUHAMMAD ASLAM TANOLI,
Advocate

For appellant.

MR. USMAN GHANI,
District Attorney

For respondents

MR. AHMAD HASSAN
MR. MUHAMMAD HAMID MUGHAL

MEMBER(Executive)
MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the
parties heard and record perused.

ARGUMENTS.

02. Learned counsel for the appellant argued that she was posted as PHC
Technician at BHU Shah Muhammad, District Haripur. A written complaint dated
23.04.2018 was lodged by the Incharge of the above BHU regarding alleged
misbehavior of the appellant with staff members and patients. That she was
suspended from service vide order dated 23.04.2018 and her pay was also stopped.
Respondents ordered an enquiry into the matter and thereafter minor penalty of
stoppage of one increment alongwith transfer to some other station etc. were
awarded vide impugned order dated 03.05.2018. She filed departmental appeal on
14.05.2018 which remained unanswered, hence, the present service appeal. Penalty

was awarded to the appellant without holding proper departmental enquiry under E&D Rules, 2011. The same was illegal and unlawful and order passed as a result of that was void ab-initio.

03. Learned District Attorney argued that proper enquiry was conducted against the appellant and thereafter penalty was awarded. All codal formalities were observed before passing the impugned order.

CONCLUSION

04. In the present service appeal, the Incharge BHU, Shah Muhammad through a written application dated 23.04.2018 leveled allegations of misbehavior with staff and patients against the appellant. She was placed under suspension and an enquiry committee was constituted to probe the matter. Respondents were required to conduct proper enquiry under E&D Rules 2011. However, the appellant was awarded minor punishment of stoppage of one increment etc. on the basis of fact finding enquiry through impugned order dated 03.05.2018. Impugned order was issued in utter violation of law and rules and the same was void ab-initio and also not tenable in the eyes of law. The same was required to be struck down.

05. As a sequel to the above, the appeal is accepted and impugned order dated 03.05.2018 is set aside. Parties are left to bear their own costs. File be consigned to the record room.



(MUHAMMAD HAMID MUGHAL)
Member



(AHMAD HASSAN)
Member
Camp Court Abbottabad.

ANNOUNCED
20.11.2019

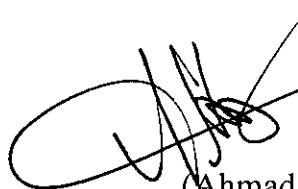
ORDER

20.11.2019

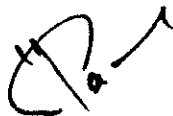
Appellant with counsel present. Mr. Usman Ghani, District Attorney alongwith Mr. Shujja Ali, ADO for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the appeal is accepted and impugned order dated 03.05.2018 is set aside. Parties are left to bear their own cost. File be consigned to the record room.

Announced:
20.11.2019



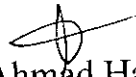
(Ahmad Hassan)
Member .
Camp Court Abbottabad



(Muhammad Hamid Mughal)
Member


17.06.2019

Counsel for the appellant and Mr. Muhammad Bilal, DDA for respondents present. Written reply/comment not submitted. Fresh notices be issued to the respondents for submission of written reply/comments. Case to come up for written reply/comments on 11.07.2019 before S.B at camp court Abbottabad.


(Ahmad Hassan)
Member
Camp Court A/Abad


11.07.2019

Counsel for the appellant and Mr. Muhammad Zaman, Assistant alongwith Mr. Muhammad Bilal Khan, Deputy District Attorney for the respondents present. Written reply on behalf of respondents not submitted. Representative of the department requested for further adjournment. Last opportunity is granted. Adjourned to 18.09.2019 for written reply/comments before S.B at Camp Court Abbottabad.


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

18.09.2019

Learned counsel for the appellant and Mr. Muhammad Bilal Khan, Deputy District Attorney alongwith Mr. Ahmad, Assistant Shujja Ali, ADO (Litigation) for the respondents present. Written comments on behalf of respondents No. 1 to 3 submitted which is placed on record. Case to come up for rejoinder and arguments on 20.11.2019 before D.B at Camp Court Abbottabad.


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

16.01.2019

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant P.H.C Technician (M.P/FM) has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against the order dated 03.05.2018 whereby she was transferred from Basic Health Unit Shah Muhammad to Basic Health Unit Bandi Sher Khan on administrative grounds, was awarded penalty of stoppage of one (01) increment with cumulative effect, and also warned to be careful in future.

Points urged consideration. The present appeal is admitted for regular hearing subject to all legal objections including the issue of limitation. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 21.03.2019 before S.B at camp court Abbottabad.

Appellant Deposited
Security & Process Fee



Member

Camp Court A/Abad

21.03.2019

Clerk of counsel for the appellant present. Mr. Muhammad Bilal Khan, Deputy District Attorney alongwith M/S Amjid Ali, Assistant & Jaffar Shah, Assistant for the respondents present. Written reply on behalf of respondents not submitted. Learned Deputy District Attorney requested for further adjournment. Adjourned. To come up for written reply/comments on 17.06.2019 before S.B at Camp Court Abbottabad.



(Muhammad Amin Khan Kundi)

Member

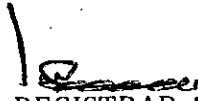

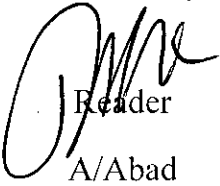
Camp Court Abbottabad

FORM OF ORDER SHEET

Court of _____

Case No. _____

1149/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	14/09/2018	<p>The appeal of Mst. Shabana Aziz presented today by Mr. Muhammad Aslam Khan Tanoli Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p>
2-	22-9-2018	<p style="text-align: right;"> REGISTRAR 14/9/18</p> <p>This case is entrusted to touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>13-11-2018</u>.</p> <p style="text-align: center;"> CHAIRMAN</p>
13.11.2018		<p>None for the appellant..Due to retirement of the Hon'ble Chairman the Service Tribunal is incomplete. Tour to Camp Court Abbottabad has been cancelled. To come up for the same on 16.01.2019 at camp court Abbottabad.</p> <p style="text-align: right;"> Reader A/Abad</p>

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1149/2018

Mst. Shabana Aziz, PHC Technician (MP/FM), Health Department at District Haripur.

Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Health KPK Peshawar.
2. Director General, Health Services, Khyber Pakhtunkhwa Khyber Road, Peshawar
3. District Health Officer, Haripur.

Respondents

SERVICE APPEAL

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Through

Dated: 14-09-2018


Appellant

(Mohammad Aslam Tanoli)
Advocate High Court
at Haripur

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No...1149/2018

Mst. Shabana Aziz, PHC Technician (MP/FM), Health Department at District Haripur.

Appellant Khyber Pakhtunkhwa Service Tribunal

VERSUS

Diary No. 1436

Dated 14/9/18
Secretary

1. Government of Khyber Pakhtunkhwa through Health KPK Peshawar.
2. Director General, Health Services, Khyber Pakhtunkhwa Khyber Road, Peshawar
3. District Health Officer, Haripur.

Respondents

SERVICE APPEAL UNDER SECTION-4 OF KPK SERVICE TRIBUNAL ACT 1974 AGAINST ORDER DATED 03-05-2018 OF THE DISTRICT HEALTH OFFICER HARIPUR WHEREBY THE APPELLANT HAS BEEN AWARDED WITH PENALTY OF STOPPAGE OF ONE INCREMENT WITH CUMULATIVE EFFECT, TRANSFER AND WARNING IN VIOLAION OF LAW, RULES & REGULATIONS AND PRINCIPLE OF NATURAL JUSTICE.

PRAYER: ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL BOTH THE IMPUGNED ORDERS DATED 03-05-2018-2018 OF RESPONDENT MAY GRACIOUSLY BE SET ASIDE AND APPELLANT BE RESTORED HIS INCREMENT, CANCELLED TRANSFER AND DECLARED WARNING ILLEGAL WITH GRANT OF ALL CONSEQUENTIAL SERVICE BACK BENEFITS.

Filed to-day

Registrar
14/9/18

Respectfully sheweth,

1. That while appellant posted as PHC Technician (MP/FM) at Basic Health Unit Shah Mohammad, District Haripur, as per District Health Officer Haripur, the

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Incharge BHU Shah Mohammad had written an application dated 23-04-2018 alleging therein that appellant had misbehaved with staff and patients whereupon without any probe into the matter the District Health Officer Haripur suspended the appellant the same day vide order dated 23-04-2018 and directed the Account Section (Local) to stop the pay of appellant. In the said order an Enquiry Committee was also constituted. **(Copy of the Order dated 23-04-2018 is attached herewith as Annex-"A")**.

2. That as per District Health Officer Haripur, the so-called Enquiry Committee submitted its report and on the basis of its recommendation the appellant was awarded with the following penalties:-

- (i) One increment sopped with cumulative effect.
- (ii) Transfer from Basic Health Unit Shah Mohammad to Basic Health Unit Bandi Sher Khan on administrative grounds.
- (iii) She is hereby strictly warned to be careful in future.
- (iv) Her suspension order is hereby withdrawn and her suspension period treated as on duty.

(Copy the impugned order dated 03-05-2018 is attached as Annex-"B").

3. That the appellant was transferred and relieved (under punishment according to punishment order

(3)

dated 03-05-2018) from BHU Shah Mohammad to BHU Bandi Sher Khan situated at a far flung area from her home place. She was relieved vide order dated 04-05-2018 to take over new assignment over there. **(Copy of relieving order dated 04-05-2018 is attached as Annex-"C").**

4. That on her forced transfer/relieving, the appellant had to join her new assignment at BHU Pandi Sher Khan vide report dated 05-05-2018. **(Copy of joining report dated 05-05-2018 is attached as Annex-"D").**
5. That no proper departmental inquiry was ever conducted. The appellant has been awarded the aforementioned penalties without any probe into the matter, reason or justification, without adhering to the inquired procedure as has been set forth by the law for dispersion of justice at preliminary stages of the departmental inquiries. She has been condemned unheard.
6. That the allegation as leveled in impugned order dated 03-05-2018 is incorrect and based on a false and fabricated so-called complained by Incharge BHU Shah Mohammad against the appellant. However, the appellant has always done her job with devotion, dedication and honesty.

7. That appellant aggrieved of the order dated 03-05-2018 preferred a departmental appeal dated 14-05-2018 (received by concerned branch vide Dairy No.15335 dated 16-05-2018) before the Director General Health Services, KPK, Peshawar. **(Copy of departmental appeal is attached as Annex-"E")**

8. That Appellant's aforementioned departmental appeal was never replied by the respondents; hence instant service appeal, inter alia, on the following:-

GROUND:

- a) That impugned order dated 03-05-2018 of the District Health Officer Haripur is non-speaking, illegal, unlawful, without lawful authority and passed perfunctorily, arbitrarily, whimsical, and slipshod in manner, against the facts and circumstances, without any reason and proof, hence liable to be set aside.
- b) That the impugned order dated 03-05-2018 has been passed by the District Health Officer Haripur against the law, departmental rules, and regulations and without adhering to the procedure set forth by law for dispensation of justice at preliminary stages during the course of departmental inquiries.
- c) That neither appellant was issued or confronted with the complaint of Incharge BHU Shah Mohammad on the

basis of which the District Health Officer Haripur initiated proceeding of suspension and stoppage of appellant's monthly salary.

d) That no Charge Sheet was ever issued to the appellant. Before awarding penalties neither findings of inquiry Committee nor any Show Cause Notice was issued of which provision was mandatory under the law, departmental rules and regulations.

e) That respondents have not treated the appellant in accordance with law, departmental rules & regulations and policy on the subject and have acted in violation of Article-4 constitution of Islamic Republic of Pakistan 1973 and unlawfully issued impugned order, which is unjust, unfair and hence not sustainable in the eyes of law.

f) That appellate authority has also failed to abide by law and even did not take into consideration the grounds taken in the memo of appeal and to respond the same.

g) That appellant has rendered more than 25 years service in the Health Department with unblemished record but has been awarded with multiple penalties and that too without any reason, justification and proof in sheer violation of law, departmental rules and regulations.

h) That appellant has not been provided with the opportunity of personal hearing thus principle of natural

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justice has been violated; hence impugned order need to be set aside straight away on this score alone.

PRAYER:

It is therefore, humbly prayed that on acceptance of instant service appeal the impugned order dated 03-05-2018 may graciously be set aside and the appellant be restored his increment with cancellation of his transfer and declaring warning as illegal, with grant of all consequential service back benefits.

Any other relief which this Honorable Tribunal deems fit in the circumstance of the case may also graciously be awarded.

[Signature]

APPELLANT

THROUGH

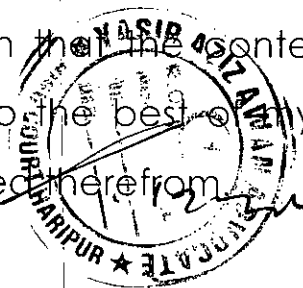
[Signature]

(MOHAMMAD ASLAM TANOLI)
ADVOCATE HIGH COURT
HARIPUR

Dated: 14-09-2018

AFFIDAVIT

I, Mst. Shabana Aziz appellant do hereby solemnly declare and affirm on oath that the contents of instant appeal are true and correct to the best of my knowledge and nothing has been concealed therefrom.



Dated: 14-09-2018

[Signature]

Deponent/Appellant

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BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Mst. Shabana Aziz, PHC Technician (MP/FM), Health
Department at District Haripur.

Appellant

VERSUS

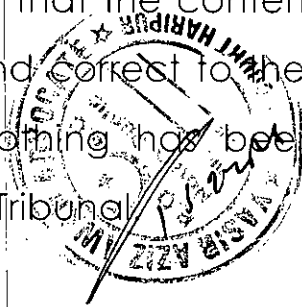
1. Government of Khyber Pakhtunkhwa through Secretary Health KPK Peshawar.
2. Director General, Health Services, Khyber Pakhtunkhwa Khyber Road, Peshawar
3. District Health Officer, Haripur.

Respondents

SERVICE APPEAL

AFFIDAVIT:

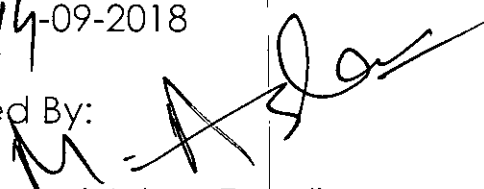
I, Mst. Shabana Aziz appellant do hereby solemnly declare and affirm on oath that the contents of the instant Service Appeal are true and correct to the best of my knowledge and belief and nothing has been suppressed from this Honorable Service Tribunal.




Deponent/Appellant

Dated: 14-09-2018

Identified By:


Mohammad Aslam Tanoli
Advocate High Court
At Haripur,


Appellant

8

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Mst. Shabana Aziz, PHC Technician (MP/FM), Health
Department at District Haripur.

Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary
Health KPK Peshawar.
2. Director General, Health Services, Khyber Pakhtunkhwa
Khyber Road, Peshawar
3. District Health Officer, Haripur.

Respondents

SERVICE APPEAL

CERTIFICATE

It is certified that no such Appeal on the subject has ever
been filed in this or any other court prior to the instant one.



APPELLANT

Dated: 14/09-2018

9

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Mst. Shabana Aziz, PHC Technician (MP/FM), Health
Department at District Haripur.

Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Health KPK Peshawar.
2. Director General, Health Services, Khyber Pakhtunkhwa Khyber Road, Peshawar
3. District Health Officer, Haripur.

Respondents

SERVICE APPEAL

APPLICATION FOR CONDONATION OF DELAY IN FILING THE
APPEAL BEFORE THIS HONOUR SERVICE TRIBUNAL.

Respectfully Sheweth:

1. That the Applicant/Appellant has today filed the Service Appeal, which may be considered as part and parcel of this application, against the order dated 03-05-2018 whereby appellant has been awarded the penalties of awarded the penalties of stoppage one increment with cumulative effect, transfer and warning by the District Health Officer Haripur and his departmental appeal has not been responded.
2. That impugned order passed by the departmental authority is illegal ab-initio, null & void, without jurisdiction, lawful authority, in sheer violation of mandatory statutory provisions of law thus are ineffective against the rights of Applicant/Appellant.
3. That Applicant/appellant for the review of the aforesaid illegal order submitted a departmental appeal to the Appellate Authority but the same has

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not been taken into consideration which causes tremendous loss in future of the appellant.

4. That as the order of departmental authority is void, being passed in sheer violation and derogation of the statutory provisions governing the terms and condition of service of the appellant, therefore the same is a nullity in the eyes of law and being a void and unlawful order, causing a recurring cause of action to the Applicant/Appellant can be challenged and questioned irrespective of a time frame and the appellant is rigorously perusing his case.
5. That the instant application is being filed as an abundant caution for the condonation of delay, if any.
6. That the impugned order is illegal, void ab-initio, a nullity in the eyes of law thus liable to be set aside in the interest of justice.

It is therefore respectfully prayed that on acceptance of the instant application the delay, if any, in the filing of the above titled appeal may graciously be condoned.

Through:

Applicant/Appellant

(Mohammad Aslam Tanoli)
Advocate High Court
At District Bar Haripur

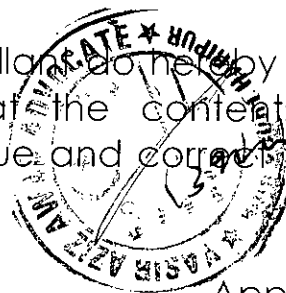
Dated: 14-09-2018

AFFIDAVIT:

I, Mst. Shabana Aziz appellant do hereby solemnly declare and affirm on oath that the contents of the instant application/appeal are true and correct to the best of my knowledge and belief.

Dated: 14-09-2018

Applicant/Appellant





(17)

Annex A

Office of the District Health Officer,
Haripur.

OFFICE ORDER.

As reported by the Women Medical Officer i/c BIU Shah Muhammad through vide her application dated 23.04.2018 that Mst. Shabana Aziz PIC Technician (MP) / Female Medical Technician attached to Basic Health Unit, Shah Muhammad. Her behavior is not suitable with the employee and me. She disobeys all my orders and record maintaining work. She quarrels with the patients and all other staff using abusive language, which shows great negligence on her part and violation of service rules. Her services are hereby suspended with immediate effect and her salary is stopped till further order, regarding the misconduct.

Moreover, an inquiry committee is hereby constituted comprising upon the following doctors to conduct an inquiry and submit report with recommendations for further necessary action a week time from the issuance of this communication:

1. Dr. Asad Mehmood Coordinator EPI.
2. Dr. Muhammad Raheem Zafar Addl; Coord: Polio

} DHO Office (11)

Sd/.....
District Health Officer,
Haripur.

No. 4581-84 /Distab/D/Suspension, dated Haripur, the

23/04/2018.

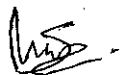
Copy forwarded to the:-

1. Inquiry Committee.
2. i/c BIU Shah Muhammad w/r to above for information and intimation.
3. Account Section (Local) with the direction to stop the pay of above named official with immediate effect.
4. Official concerned for compliance.


District Health Officer,
Haripur.

District Health Officer, Haripur.
Phone & Fax # 0995-610997
dho.haripur@punjab.gov.pk

Attested





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Annex

OFFICE OF THE DISTRICT HEALTH OFFICER
HARIPUR.

OFFICE ORDER:

On the recommendations of Inquiry Committee comprising upon, Dr. Asad Mahmood Coordinator EPI & Dr. Muhammad Rafiq Zafar Additional Coordinator Polio DHO Office Haripur, the following penalties are hereby imposed upon Mrs. Shabana Aziz PIC Technician (MP) / FMT Basic Health Unit, Shah Muhammad with immediate effect:

1. One (01) Increment stopped with cumulative effect.
2. Transfer from Basic Health Unit, Shah Muhammad to Basic Health Unit, Bandi Sher Khan on administrative grounds.
3. She is hereby strictly warned to be careful in future.
4. Her suspension order is hereby withdrawn and her suspension period treated as on duty.

Sd/....
District Health Officer,
Haripur.

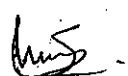
No. 4849-52 /Estab/D/Discp; Action: Dated Haripur, the 03 / 05 / 2018.

Copy forwarded to the:-

1. Women Medical Officer I/c Basic Health Unit, Shah Muhammad.
2. Medical Officer I/c Basic Health Unit, Bandi Sher Khan.
3. I/c Accounts Section undersigned office for n/action. He is directed to release the pay of above named official.
4. Official concerned.


District Health Officer, 03/5/18
Haripur.

District Health Officer, Haripur
Phone & Fax # 0995-610997
dhoharipur@yahoo.com

Attested


f



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(13)

Annex - 'C'

The DHO,
Haripur.

Subject: Relieving Report of Miss Shabana
Aziz FMT

Sir,
With due respect, it is stated that
according to your order NO 4849-52
dated on 03/05/18, I being the Incharge
relieve Miss Shabana Aziz on the post
of FMT from BHLI Shah Muhammad.
This is her relieving Report, today on
4/5/18, afternoon.

DNo 5/18 dated 4-5-18.
Forwarded to
the DHO,
Haripur.
[Signature]

Thanks.

Yours obediently,
Dr. Saima Gul
I/c BHLI Shah
Muhammad

Date: 4/5/18

Attested *[Signature]*

the DHO

(14)

Annex-1

Harjpur
Account Report

exchange Ritu Bhandari Sher Waman

App Month 2 -

Subject:

San

Respectfully it is noted that a

you forwarding the formal report at

Ritu Bhandari Sher Waman today person

on 5-5-2018.

under your office order No. 4849-52

ESTD/Disp: Action dated Harjpur in

03/05/2018.

Yash's Secretary
Ms.

Shobana A12(FM)

Ritu Bhandari Sher Waman

Dist Harjpur

@studios/2018

Attended

Ms.

for
to forward
to DHO
5/5/2018

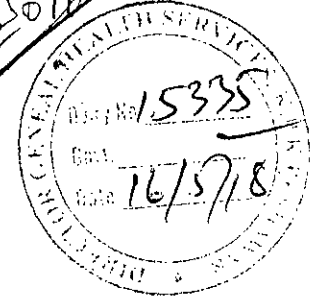
(15)

Annex-E

To

The Director General,
Health Services, Khyber Pakhtunkhwa,
PESHAWAR.

(Through Proper Channel).



SUBJECT:- DEPARTMENTAL APPEAL AGAINST ORDER DATED 03-05-2018 PASSED BY DISTRICT HEALTH OFFICER HARIPUR WHEREBY THE APPELLANT HAS BEEN AWARDED WITH DIFFERENT 04 PENALTIES AGAINST THE LAW, DEPARTMENTAL RULES, REGULATIONS, PROCEDURE AND CONTRARY TO THE FACTS IN AN ARBITRARY, WHIMSICAL AND CAPRICIOUS MANNER.

PRAYER: ON ACCEPTANCE OF INSTANT DEPARTMENTAL APPEAL ORDER DATED 03-05-2018 OF THE DISTRICT HEALTH OFFICER HARIPUR MAY KINDLY BE SET ASIDE AND THE APPELLANT BE PLACED IN HER ORIGINAL POSITION WITH ALL SERVICE BACK BENEFITS ON RENDITION OF ACCOUNT.

Respected Sir,

With reverence the following lines are laid down before your kind honour:-

1. That appellant has rendered more than 27 years service in the KPK Health Department. She always performed her assigned duties with dexterity, devotion, dedication and honesty to the entire satisfaction of his superiors. She never provided a chance of reprimand. Further appellant earned Excellent, Very Good and Good ACRs during his entire service. Thus she has meritorious service record at her credit.

Attested

MS

2. That through out her service in the Health Department the appellant was never served upon with a single

(12)

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"Explanation" with regard to her performance, behavior or attitude etc. Even there has been no complaint, what so ever may be, against the appellant from any corner i.e. either public or department.

3. That quite for some time, the Incharge BHU Shah Mohammad Haripur due to her personal grudge has created differences with the appellant and has been trying her utmost to create unnecessary problems and put her in great difficulties.
4. That as per DHO Haripur, the Incharge BHU Shah Mohammad wrote an application dated 23-04-2018 alleging therein that appellant misbehaves with staff and patients where-upon without any probe into the matter, reason, justification and calling for an explanation the DHO Haripur went on to issue an order dated 23-04-2018 by suspending the appellant and ordering stoppage of her Salary in an arbitrary, whimsical and capricious manner against the ground reality. In the said order an Enquiry Committee comprising upon Dr. Asad Mehmood and Dr. Mohammad Rafeh Zafar was also constituted. **(Copy of the order dated 23-04-2018 is attached as "A").**
5. That according to order dated 03-05-2018 of the District Health Officer Haripur the Enquiry Committee had submitted its report and on basis of its recommendations the appellant was awarded with the following penalties:-
 - a. **One (01) increment stopped with cumulative effect.**

Attested

MS

- (17)

- b. **Transfer from Basic Health Unit Shah Mohammad to Basic Health Unit Bandi Sher Khan on administrative ground.**
- c. **She is hereby strictly warned to be careful in future.**
- d. **Her suspension order is hereby withdrawn and her suspension period treated as on duty.**

(Copy of the order dated 03-05-2018 is attached as "B").

6. That since the appellant has been transferred and relieved under punishment from BHU Shah Mohammad and she has reported at her new place of duty i.e. BHU Bandi Sher Khan. **(Copy of reliving order dated 04-05-2018 is attached as "C").**
7. That no proper departmental inquiry was ever conducted. The appellant has been awarded with the aforementioned penalties without any probe into the matter, reason or justification, without adhering to the inquiry procedure set forth by law for dispersion of justice at preliminary stages of the departmental inquiries. Even she has been condemned unheard.
8. That the appellant is totally innocent and has committed no wrong on her part. The allegations as leveled in the order dated 23-04-2018 are incorrect and based on a false & fabricated complaint by Incharge BHU Shah Mohammad against the appellant. Appellant has always done her job honestly. The allegations are, therefore, vehemently denied.
9. That if the appellant is provided with the opportunity of personal hearing she will really prove herself as innocent

Attested



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by explaining facts and circumstances of the matter before your Highness.

It is, therefore, humbly requested that keeping in view the aforementioned facts the order dated 03-05-2018 of the District Health Officer Haripur may kindly be set aside and the appellant be restored in her original position with grant of all service back benefits on rendition of account for which act of kindness the appellant shall pray for you long life.

APPELLANT

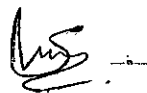


(SHABANA AZIZ)

PHC Technician (MP)/FM
BHU Bandi Sher Khan Haripur

Dated: 14-05-2018

Attested



19



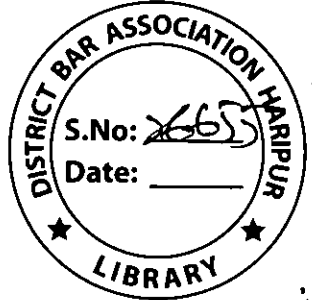
DBA No: 208
 BC No:

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 Name of Advocate: محمد ارشد منگھڑی

S.No: 26655

وکالت نامہ



بعدالت: صاحب مکرم من صاحب جبر بنجین خواہ سید سید بنجین
 عنوان: محامہ شہبانہ منگھڑی نام: سید منگھڑی سلیمہ کلثوم
 منجانب: ایملینڈ نوعیت مقدمہ: سروا کی تہمیل
 باعث تحریر آئیکہ: _____

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی برائے پیشی یا تصنیفہ مقدمہ بمقام الٹ آباد شہر کے لئے محمد ارشد منگھڑی کی ایدہ و تالیف کی گئی ہے۔

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو بر عدالت حاضر ہوتا ہوں گا اور بروقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا۔ اگر پیشی پر منظر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طور پر ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام کچہری کے علاوہ کسی جگہ یا کچہری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ کچہری کے علاوہ کسی اور جگہ سماعت ہونے پر یا بروز تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر منظر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا محتانہ کے واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر داختہ صاحب موصوف مثل کردہ ذات منظور و مقبول ہوگا اور صاحب موصوف کو عرض دعویٰ یا جواب دعویٰ اور درخواست اجراء کے ڈگری و نظر ثانی اپیل نگرانی و ہر قسم درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور اور کسی حکم یا ڈگری کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور اس کے ثالثی و راضی نامہ و فیصلہ بر حلف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا اور بصورت جانے بیر و نجات از کچہری صدر اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم اتناعی یا قزتی یا گرفتاری قبل از گرفتاری و اجراء ڈگری بھی صاحب موصوف کو بشرط ادائیگی علیحدہ محتانہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکور یا اس کے کسی جزو کی کاروائی کے یا بصورت اپیل کسی دوسرے وکیل کو اپنے بجائے یا اپنے ہمزاء مقرر کریں اور ایسے وکیل کو بھی ہر امر میں وہی اور ویسے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ جو کچھ ہر جانہ التوا پڑے گا وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

Accepted by
M. Arshad

مورخہ: 2018/09/14
 دن 14 / ماہ 09 / سال 2018

لہذا وکالت نامہ لکھ دیا ہے کہ سدر ہے۔
 مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

شہبانہ منگھڑی ایملینڈ

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SUB BENCH ABBOTTABAD

Appeal No. 1149 of 2018

Mst. Shabana Aziz VS Secretary Health & Others.

Written comments on the behalf of Respondents No. 1, 2, 3

Respectfully Sheweth

Preliminary Objection

1. That the appellant has no cause of action, or locus Standi to file the instant service appeal.
2. The Appellant has not come to this honourable Service Tribunal with clean hands because appellant is chronic problematic employee and she has remained involved in mollified, illegal activities throughout her service
3. That the Appellant has concealed material facts from this honorable service tribunal.
4. Appellant is bad due to misjoinder and non joinder of necessary and proper parties.
5. That the appellant is estopped by his own conduct to file instant appeal.

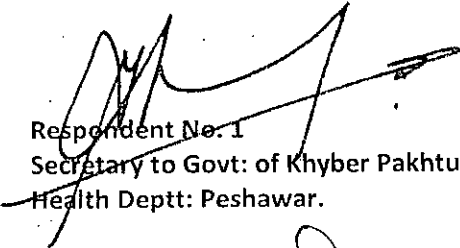
ON FACT:

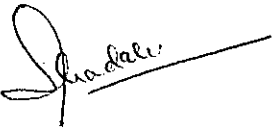
1. Incorrect, as reported by Women Medical Officer Incharge BHU Shah Muhammad dated 23/04/2018 District Health Officer Haripur suspended the appellant vide letter No. 4581-84 dated 23/04/2018 (copy enclosed). The enquiry committee was also constituted comprising upon Coordinator EPI and Additional Polio Coordinator District Health Office Haripur, to conduct an inquiry and submit report with recommendations for further necessary action from the issuance of this communication.
2. Incorrect, as reported Enquiry Committee submitted its report and on the basis of its recommendation, the appellant was awarded with the following penalties.
 - a. One increment stopped with cumulative effect.
 - b. Transfer from BHU Shah Muhammad to Bandi Sher Khan
 - c. She is hereby strictly warned to be careful in future.
 - d. Her suspension order is hereby withdrawn and her suspension period treated as on duty.
3. Incorrect, the order made by the recommendation of inquiry committee.
4. Pertains of record.
5. Incorrect, as per service record and statements of respective staff at BHU, the majority stated that appellant had been involved in the alleged activities i.e (performing her duties beyond her jurisdiction and overcharging of fee from the patients).
6. Incorrect. The enquiry committee was properly constituted under the rules by competent authority to investigate the irregularities committed by appellant.
7. Incorrect, the order made by the recommendation of inquiry committee, no need departmental appeal. As stated above.
8. As above para-7.

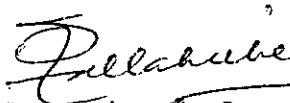
GROUND:

- a. Incorrect, the impugned order dated 03/05/2018 of respondent No. 3 is legal, lawful, correct and in accordance with law and rules.
- b. Incorrect and denied that the respondents have treated the appellant in accordance with law no prejudice has been caused to the appellant.
- c. An inquiry was conducted in compliance with incharge BHU.
- d. Incorrect, hence denied, that regular inquiry was conducted, proper charge sheet, show cause notice and statement of allegation were issued to appellant.
- e. Incorrect and hence denied, that the respondents have treated the appellant in accordance with law, no prejudice has been caused to the appellant.
- f. Incorrect, that acts/orders of respondent are fully supported by law. .
- g. In reply to para -G, it is submitted that in whole service of the appellant she remained controversial much problematic and poor service provider , in eyes of every superior, every time inquiry committees have recommended for disciplinary committees have recommended for disciplinary action against her and she always took political support at every stage whenever she was found guilty, the remaining para is incorrect hence denied.
- h. Incorrect hence denied, all codal formalities are fulfilled by the authority

Prayer: It is therefore, humbly prayed that appeal of the appellant is without merit hence the instant appeal may be dismissal with cost.


Respondent No. 1
Secretary to Govt: of Khyber Pakhtunkhwa
Health Deptt: Peshawar.


Respondent No. 2
Director General Health Services
Khyber Pakhtunkhwa Health deptt:


Respondent No. 3
District Health Officer
Haripur. 9

Office Of The District Health Officer,
Haripur.

OFFICE ORDER.

As reported by the Women Medical Officer i/c BIU Shah Muhammad through vide her application dated 23.04.2018 that Mst. Shabana Aziz, PIC Technician (MP) / Female Medical Technician attached to Basic Health Unit, Shah Muhammad. Her behavior is not suitable with the employee and me. She disobeys all my orders and record maintaining work. She quarrels with the patients and all other staff using abusive language, which shows great negligence on her part and violation of service rules. Her services are hereby suspended with immediate effect and her salary is stopped till further order, regarding the misconduct.

Moreover, an inquiry committee is hereby constituted comprising upon the following doctors to conduct an inquiry and submit report with recommendations for further necessary action a week time from the issuance of this communication:

1. Dr. Asad Mahmood Coordinator EPI;
2. Dr. Muhammad Rafiq Zafar Adil; Coord: Polio


} DHO, Office (II)

Sd/.....
District Health Officer,
Haripur.

No. 4581-84 /Estab/D/Suspension dated Haripur, the 23/04/2018.

Copy forwarded to the:

1. Inquiry Committee.
2. I/c BIU Shah Muhammad w/r to above for information and intimation.
3. Account Section (Local) with the direction to stop the pay of above named official with immediate effect.
4. Official concerned for compliance.


District Health Officer,
Haripur.

District Health Officer, Haripur.
Phone & Fax # 0995-610997
dho.haripur@punjab.gov.pk

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1290 /ST

Dated 28-11- / 2019

To


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

Subject: -

JUDGMENT IN APPEAL NO. 1149/2018, MST. SHABANA AZIZ.

I am directed to forward herewith a certified copy of Judgement dated 20.11.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.