
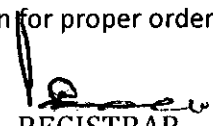



S.No.	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	2357
	25.1.2019	<p><u>Present.</u></p> <p>Mr. Muhammad Maaz Madni, .. For appellant Advocate</p> <p>Wide judgment of today in Service Appeal No. 1525/2018, the appeal in hand is dismissed in limine. File be consigned to the record room.</p> <p style="text-align: right;"> Chairman</p> <p><u>ANNOUNCED</u> 25.01.2019</p>

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1535 /2018


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/12/2018	<p style="text-align: center;">The appeal of Mr. Sami Ullah resubmitted today by Mr. Muhammad Maaz Madni 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 26/12/18</p>
2-	28/12/18	<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>25/01/2019</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Samiullah Pharmacy Technician District Headquarter Hospital N.W at Miranshah received today i.e. on 30.11.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of appointment order mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Copy of impugned order of stoppage of salary mentioned in the memo of appeal is not attached with the appeal which may be placed on it.

No. 2325 /S.T,

Dt. 3-12 /2018.



REGISTRAR -
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Muhammad Maz Madni Adv. Pesh.

R/Sir,

Deficiency at S#1 has been removed. Regarding deficiency at S#2 the salary has been stopped on verbal directions therefore no speaking order available.

- Re-submitted


28/12/18.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1535 /2018

SAMI ULLAH

VS


DHS (MERGED AREA)
& OTHERS

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1	Memo of appeal	1- 3.
2	Judgment dated 13-11-2017	A	4 - 7.
3	Correspondence date 12-01-2018	B	8
4	Departmental Appeal	C	9
5	Vakalat nama	-----	10

APPELLANT

Through:


MUHAMMAD MAAZ MADNI,
Advocate High Court, Peshawar.
0333-9313113, 0314-9965666

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

**Khyber Pakhtunkhwa
Service Tribunal**

APPEAL NO. 1535 /2018

Diary No. 1703

SAMI ULLAH, Pharmacy Technician (BPS-12),
District Headquarter Hospital, North Waziristan Tribal District, Miransha.

Dated 30/11/2018

..... APPELLANT

VERSUS

- 1- The Director Health Services (Merged Area), Warsak Road, Peshawar.
- 2- The District Surgeon, North Waziristan Tribal District Miransha.
- 3- The District Accounts Officer, North Waziristan Tribal District, Miransha.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST STOPPAGE OF PAY W.E. FROM 01-09-2012 TILL DATE AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL DATED 01-08-2018 OF THE APPELLANT WITHIN THE STIPULATED PERIOD OF 90 DAYS

PRAYER:

That on acceptance of this appeal the respondents may be directed to release the salary of the appellant stopped since 01-09-2012 till date. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

Filed to-day

Registrar

30/11/18 **R/SHWETH:**

ON FACTS:

1. That, appellant is the Law abiding & Peaceful citizen of Pakistan and is working as Pharmacy Technician (BPS-12) under the administrative control of respondent no. 2.
2. That after appointment the appellant submitted his arrival report and start performing her duty quite efficiently and to the best of her abilities.
3. That, while performing his duty under the control of respondent no. 2 the appellant received his salary for about 7 month but all of a sudden the respondents, illegally and without any justification stopped the monthly salary of the appellant w.e. from 01-09-2012.
4. That, other colleagues of the appellant filed service appeal for the release of salaries before this Honourable Tribunal with service appeal no. 679/2013 to 703/2013 with title Sherzada & others, which was remitted to the respondents on 13-11-2017 by treating it as Departmental Appeal. Copy of the judgment is attached as annexure A.

30/11/08
1702

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30/11/08

5. That, the appellant along with other colleagues filed a collective appeal before the respondents for acquiring the same treatment met out to other colleagues of the appellant in decision dated 13-11-2017, which was proper corresponded amongst the respondents but all in vein. Copy of the correspondence is attached as annexure B.
6. That, feeling aggrieved from the inaction of the respondents the appellant filed a separate Departmental Appeal for the release of his salary which is not responded within the statutory period of ninety (90) days. Copy of the Departmental Appeal is attached as annexure C.
7. That appellant feeling highly aggrieved and having no other remedy filed the instant appeal on the following grounds amongst the others.

GROUND:

- A- That the inaction of the respondents by not releasing the monthly salary of the appellant is against the law, facts and materials on record and norms of natural justice hence not tenable in the eye of law.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That, the appellant has been discriminated by the inaction of the respondents by not releasing the monthly salary to the appellant as the respondents have released the monthly salary to some of the colleagues of the appellant.
- D- That, action of the respondent is also a clear violation of the Article-11 of the constitution and falls in force labour.
- E- That, inaction of the respondents is a clear violation of Article 37 of the constitution of Islamic Republic of Pakistan.
- F- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 29-11-2018

Samirah
APPELLANT

THROUGH:



MUHAMMAD MAAZ MADNI
ADVOCATE, High Court, PESHAWAR

3/A

OFFICE OF THE AGENCY SURGEON
NORTH WAZIRISTAN MIRANSHAH.
PHONE & FAX:0928-300788

OFFICE ORDER:-

On the Department Selection Committee Mr. Samiullah
resident of North Waziristan Agency is hereby appointed as Pharmacy Tech.
in BPS-09(6200-380-17600) plus usual allowances as admissible under the rules.

His appointment shall be on the following terms & condition.

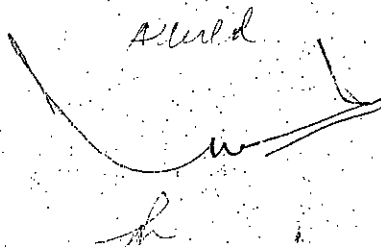
- 1- He is declared medically fit for this job.
- 2- His appointment will be for a period of 3 years on contract /temporary basis and are liable to be terminated without assigning any notice/reason.
- 3- He will be governed by such rules and orders issued by the Government from time to time for the category of staff to which they belongs.
- 4- If he wish to resign the services a prior notice of 30 days will be submitted otherwise one month pay should be deposited in Government treasury through proper challan.
- 5- If he accepts the offer on the above terms and condition he will have to report for duty within 15 days of the receipt of this offer, otherwise the order will be considered as cancelled.
- 6- No TA/DA will be admissible for joining the duties.


Agency Surgeon
North Waziristan Miranshah

No. 3486-83/ Apptt: dated Miranshah the 31/12/2011.

Copy forwarded to the:-

- 1- Agency Account Officer North Waziristan Miranshah for information and necessary action.
- 2- Account/Pay Bill Clerk of this office.
- 3- Malaria Superintendent for information and necessary action.
- 4- Officials concerned for information and necessary action.

A. U. D.



Agency Surgeon
North Waziristan Miranshah

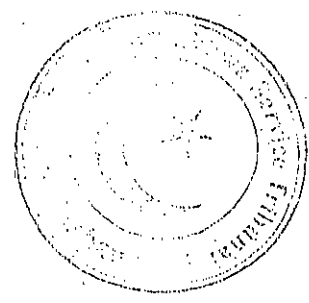
1 (4) Annex-A (9)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 678/2013

Date of Institution ... 18.04.2013

Date of Decision ... 13.11.2017



Sherzada Pharmacy Technician, North Waziristan Agency. ... (Appellant)

VERSUS

1. The Director Health (FATA) Department, Warsak Road, Peshawar and another. ... (Respondents)

MR. MUHAMMAD ASIF YOUSAFZAI, ... For appellant
Advocate

MR. KABBEERULLAH KHATTAK, ... For respondents.
Addl. Advocate General.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. MUHAMMAD AMIN KHAN KUNDI, ... MEMBER

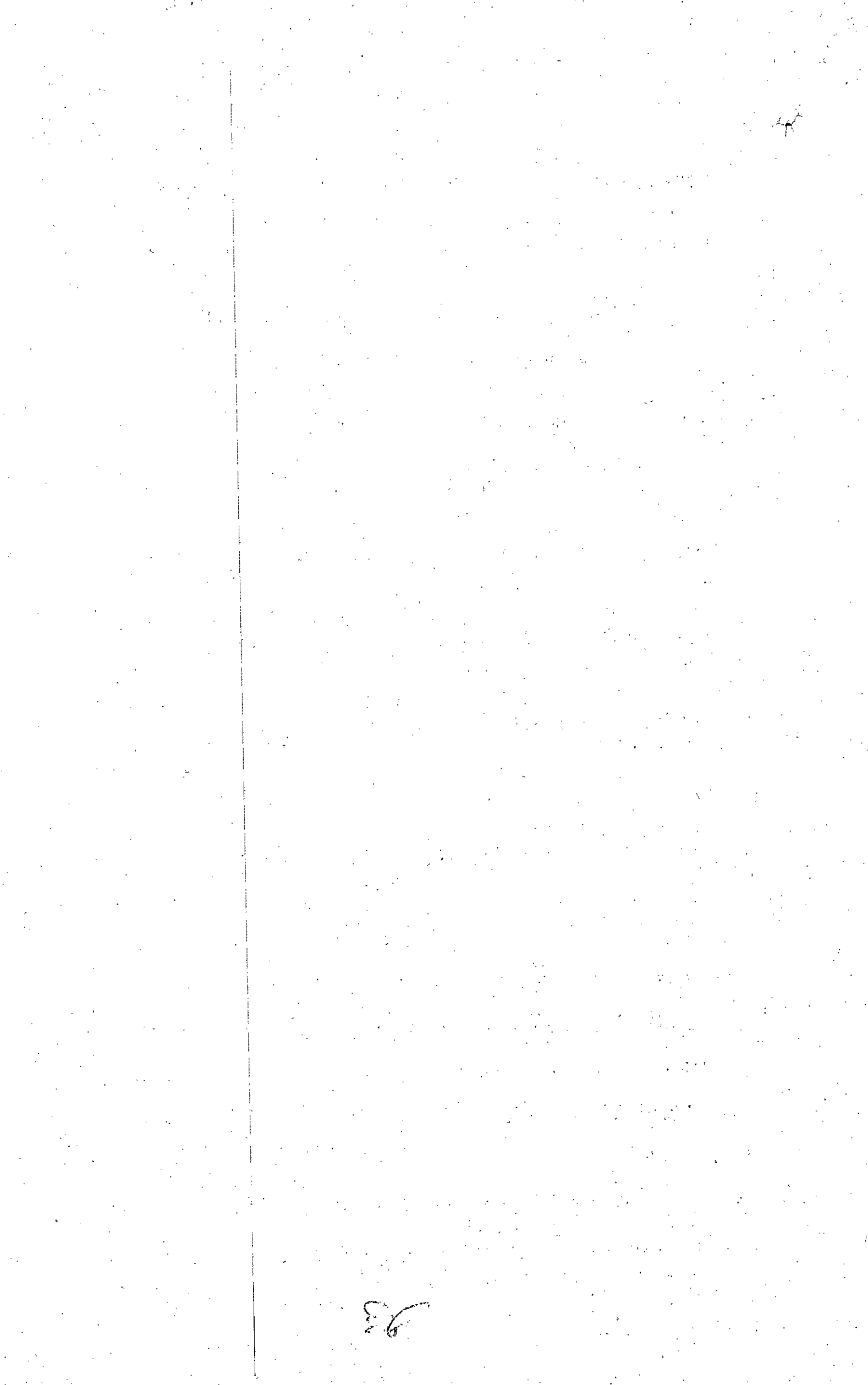
TESTED

Niaz Muhammad Khan
Chairman,
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN.- This judgment shall

also disposed of connected service appeals No.679/2013 Hafiz Ullah, No. 680/2013 Safeer Ullah, No. 681/2013 Asif Ullah, No. 682/2013 Hashim Faraz, No. 683/2013 Fida Ullah, No. 684/2013 Riaz Noor, No. 685/2013 Kaleem Ullah, No. 686/2013 Shahid Ullah, No. 687/2013 Shahan Zeb, No. 688/2013 Mst. Safia Bibi, No. 689/2013 Nek Zatullah, No. 690/2013 Haj Akbar, No. 691/2013 Zahid Noor, No. 692/2013 Saleem Ullah, No. 693/2013 Fateh Ullah, No. 694/2013 Farhat Ullah, No.



695/2013 Muhammad Yousaf, No. 696/2013 Azim Ullah, No. 697/2013 Fawad Khan, No. 698/2013 Amir Afghan, No. 699/2013 Nasrullah, No. 700/2013 Zain Ud Din, No. 701/2013 Said Awar Jan, No. 702/2013 Arshadullah, No. 703/2013 Zahib Ullah as in all the appeals common questions of law and facts are involved.

2. Arguments of the learned counsel for the parties heard and record perused.

FACTS

3. Pay of the appellants was stopped w.e.f. September, 2012 and now the appellants have approached this Tribunal for the release of their pay.

ARGUMENTS.

4. The learned counsel for the appellant argued that the appellants were appointed in the department and had been receiving pay for about one year and thereafter their pay was stopped on verbal orders of the department. That they have no written order, however, against the verbal order they filed a departmental appeal on 08.01.2013 which was not responded to and thereafter the present appeals. The learned counsel for the appellants further argued that the department may be directed to decide the departmental appeals of the appellants by taking into consideration a report of the Agency Surgeon, North Waziristan Agency dated 20.07.2016 addressed to the concerned Secretary in which the said officer had admitted the payment of pay to the appellants and the recruitments of new persons in their place.

5. On the other hand, the learned Addl. Advocate General argued that the present appeal is not maintainable because there is no original or appellate order. Secondly the department has disowned the appellants in their parawise comments.

B. A. A. A. A.

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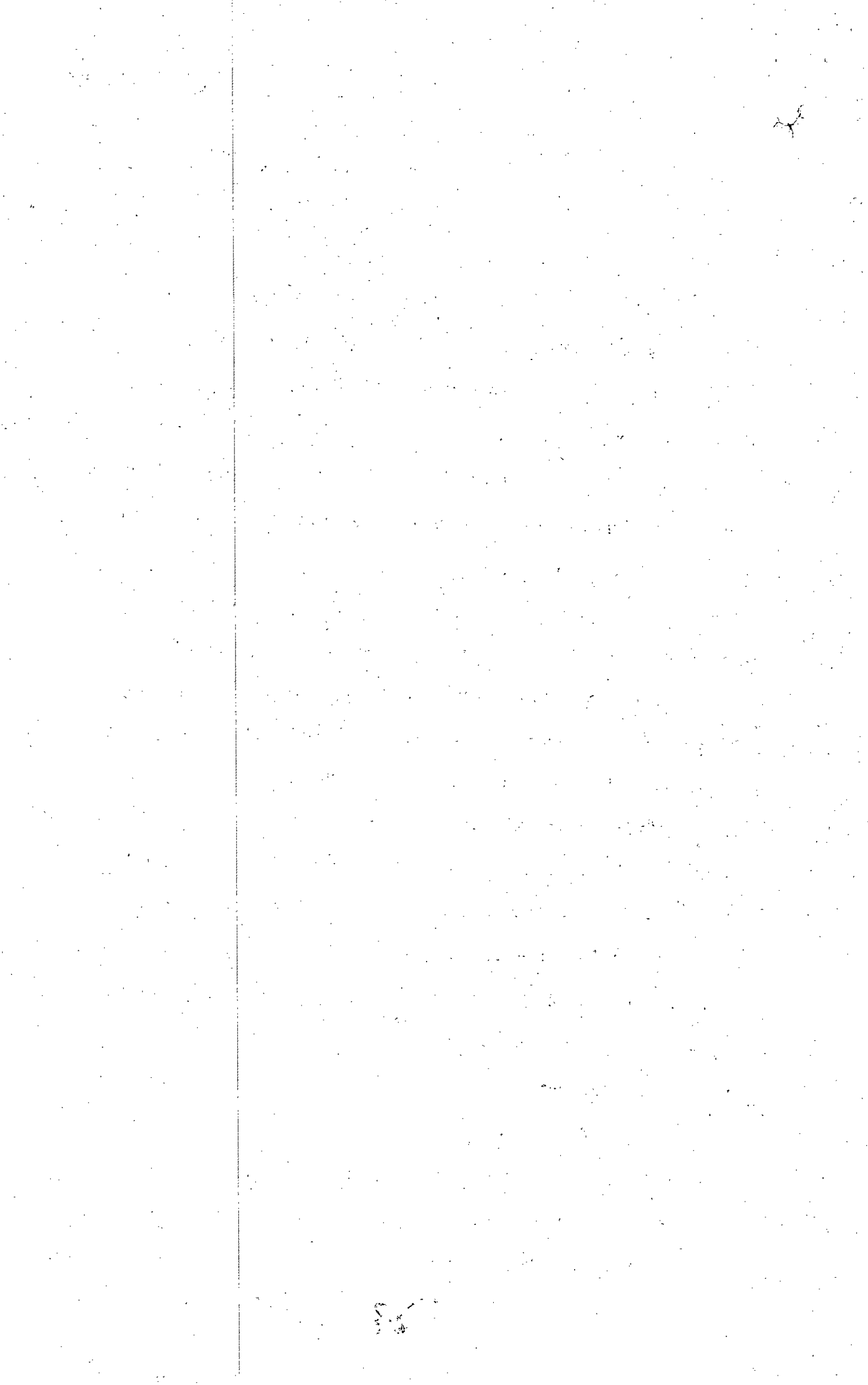
He also argued that no departmental appeal was ever filed as alleged by the appellants.

CONCLUSION.

6. The service books available on the files depict that the appellants were appointed as Pharmacy Technician on 01.01.2012, therefore, it cannot be believed that the appellants were not appointed in the department. According to the appellants they have been drawing their salaries for about one year. In the memorandum of appeals in para- 3 it has been clearly written that no proper order was passed by the department for the stoppage of their salary and that it was only stopped by the Agency Surgeon. It appears that in the parawise comments the department has tried to wriggle out from this scenario by raising technical grounds like appointment made without advertisement and non holding of Departmental Selection Committee, non production of appointment letters; But this Tribunal is of the view that how the appellants had been drawing their salary for a considerable period. Under the law this Tribunal has the jurisdiction only when there is original or appellate order but nowhere it is mentioned in the law that this order should be in written form. If this Tribunal is made to believe that there was some oral order whereby any civil servant is aggrieved then, of course, this Tribunal can seize the jurisdiction. Payment of pay, entry in service book and then stoppage of pay are ample proofs of the appellants being in service of the department, rightly or wrongly. The appellants allegedly filed departmental appeals against the oral order which have been denied by the department. At this stage, this Tribunal is not in a position to determine whether the stance of the appellant is correct or that of the department is correct regarding filing of department appeals. However, keeping in view the peculiar circumstances of the present appeals and in the interest of justice,

AT
B
D

Authenticated



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the present memo. of appeals can be treated as departmental appeals, if departmental appeals are not preferred by the appellants. The appeals are remitted back to the appellate authority to treat these memo. of appeals as departmental appeals and decide the same within a period of 90 days from the date of receipt of this judgment. They are also directed to pass a speaking order regarding the status of the appellants and how did they draw their salaries for a period of one year and how and why their salaries were stopped.

7. In view of the above, all these appeals are disposed of. Parties are left to bear their own costs. File be consigned to the record room.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

(NIAZ MUHAMMAD KHAN)
CHAIRMAN

ANNOUNCED
13.11.2017

Certified
into copy
K...
Fest...

attested



OFFICE OF THE AGENCY SURGEON NORTH WAZIRISTAN

Phone & Fax: (0928)300788-311662 Email: agencyurgeonwa@gmail.com

No. 6823 /C-2, Dated Miranshah the 12/1 /2018

To

The Director Health Services,
FATA, Warsak Road Peshawar.



Annexure - B

Subject: DEPARTMENTAL APPEAL TO EXTEND THE BENEFIT OF THE JUDGMENT OF SHERZADA AND OTHERS IN APPEAL NO.678/2013 BEING SIMILAR NATURE CASE IN THE LIGHT SUPRIM COURT DECISION MENTIONED IN SCMR 2009

Memo:-

Kindly refer your letter N6.23543 dated 12/12/2017 and on the subject noted above and to state that they were appointed under the control of this office in the year, 2011-2012 and were drawing their salaries up to 31/08/2012 regularly. They were not terminated up till now. But their salaries were stopped without any written orders, i.e. verbally.

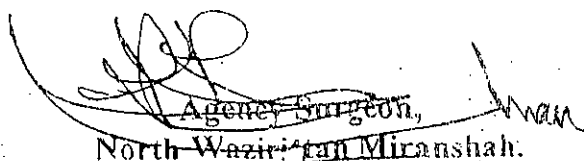
It is worthy mentioned that **Dr. Muhammad Sadiq** Ex-Agency has been stopped their salaries without valid reason and later on their salaries were released reason well known to him.

The newly posted Agency Surgeon **Dr. Azam Wazir** not only stopped their salaries but he appointed **11 blue eye persons** in place of the appellants, while the appellants had already lodged appeal against the discrimination of the said officers to DHS FATA.

When **Dr. Azam Wazir** was transferred and **Dr. Jahan Mir** was -posted as Agency North Waziristan Agency the remaining posts of the appellants were filled by the Agency Surgeon **Dr. Jahan Mir** by appointing their favorite persons in place of the appellants illegally. While he was well aware of the fact that the issue is under consideration in the appellate authority but he did not pay any heed to their request which is clear violation of law, rules and regulations.

It is further stated that this office has already submitted various detail report to your good office, and SSD FATA on 20/07/2016 but no action has been taken up till now, there is no vacant posts of paramedics, however 26 charge Nurses posts are lying vacant under the control of undersigned.

Therefore, it is requested that this office may kindly be guided to release their salaries or otherwise, to avoid more litigations.


Agency Surgeon,
North Waziristan Miranshah.

attested



To

The worthy Director Health Services
FATA Warsak road Peshawar.

(9)

Subject: Departmental appeal for releasing
of salary w.e.f. 1-9-2012 and adjustment
of his post. **Amazeer - C**

R/W, with great respect it is stated that I was
appointed during 2011-12 and drawing salary
August 2012 regularly to the entire satisfaction of
my superior. But suddenly my pay was stopped
without any written orders verbally. When a
new Agency Surgeon was posted but he did not only
stop my salary but appointed blue eye person
in my place without any codal formality which
is being their salaries regularly.

Therefore it is humbly requested in your kind honor
that the Agency Surgeon NWA may kindly be directed
to release my salary which have already delayed
it is further added that the pays of some our colleagues
were released by the Agency Surgeon NWA on your
kind directions. Some direction may also kindly be
issued to resolve my issue which is pending in
the office of Agency Surgeon NWA. I shall be extremely
beholden to you for this regards

Dated 1/8/018.

Yours obediently
Sami Ullah Pharmacy
Teh AHA Hospital
Mira Sheh NWA

5419
6-8-18

PA (S) / K. H. /
6/8/18

attested

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2018

Sami Ullah

(APPELLANT/PETITIONERS)

VERSUS

Director Health Services (Merged Area) & OTHERS
(RESPONDENTS)

I/We Sami Ullah

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

Dated. 29/11/2018

CLIENT:

Sami Ullah

ACCEPTED

MUHAMMAD MAAZ MADNI
ADVOCATE

OFFICE:

Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.
Phone: 091-2211391
Mobile No.0345-9090737, 0333-9313113