

18-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO.917/2022

1256
14-9-2022

Dr. Jamil Ahmed

.....**APPELLANT**

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary and others

..... **RESPONDENTS**

REPLY ON BEHALF OF THE IMPLEADED PRIVATE
RESPONDENT NO.4 IN RESPONSE TO THE APPLICATION
SUBMITTED BY APPELLANT FOR THE GRANT OF STATUS
QUO

R/SHEWETH:

- 1- That the above mentioned appeal along with application for interim relief is pending for adjudication before this august Service Tribunal and is fixed for 14.9.2022.
- 2- That in the ibid appeal this august Tribunal granted interim relief in favour of the appellant by suspending the operation of the impugned Notification dated 18.5.2022.
- 3- That as the appellant has been officially relieved from the charge of Medical Superintendent DHQ Hospital Batkhela and as such the replying respondent No.4 took over the charge of the ibid post, therefore the status quo granted by this august Tribunal is ineffective in the case of appellant. Copy of the chatge report is attached as annexure **A.**
- 4- That the appellant cannot satisfy all the three necessary ingredients under order 39 rule 1 and 2 which is must according to the Supreme Court judgments.
- 5- That as the impugned Notification has been passed by a proper Government authority; therefor under 56 (d) of Specific Relief Act such orders cannot be stayed/suspended.

It is therefore most humbly prayed that on acceptance of this reply to the application the interim relief granted in favour of the appellant may kindly be vacated.

~~IRFAN~~
RESPONDENT NO.4



IRFANUDDIN

THROUGH:

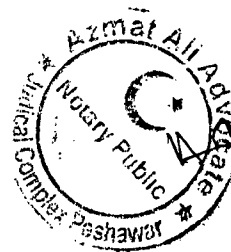

NOOR MOHAMMAD KHATTAK
ADVOCATE


AFFIDAVIT

9 DV Irfanuddin (Respondent No. 4), do hereby solemnly affirm and declare that the contents of the Reply to the application are true and correct and nothing concealed from this Honorable Tribunal.


Deponent.

ATTESTED




14-09-2022

"A"

[Handwritten signature]

GOVERNMENT OF KHYBER PUKHTOON KHWA
CERTIFICATE OF TRANSFER OF CHARGE

1. Certified that I, DR. IRFAN-UD-DIN Management Group (BPS-18) have this day Forenoon/Afternoon /Taking over/handing over charge of **MEDICAL SUPERINTENDENT** with reference to Govt. of Khyber Pakhtunkhwa Health Department Notification No. SOH(E-V)/4-4/2022 DATED 18TH MAY, 2022.

**(POSTING AS MEDICAL SUPERINTENDENT DHQ HOSPITAL BATKHELA
IN HIS OWN PAY & SCALE AGAINST THE POST OF BPS -20)**

2. Particular of cash and important/secret/confidential documents handed over/taken over are noted on the reverse.

Signature of relieved
Government Servant

[Handwritten signature]
Signature of Government
Servant receiving charge

Station: **DHQ: Hospital Batkhela**

Dated: 21.05.2022 (F.N)

OFFICE OF THE MEDICAL SUPERINTENDENT DHQ HOSPITAL BATKHELA
HOSPITAL BATKHELA

No. 5150-55 /PF

Dated 21 / 05 / 2022.

Copy forwarded for information to.

- P.S to Sectary Health Govt. of Khyber Pakhtunkhwa.
- P.A to Director General Health Services Khyber Pakhtunkhwa Peshawar
- District Accounts Officer Malakand.
- District Health Officer Malakand.
- Accountant of this office.
- Dr.Irfan-ud-Din Medical Superintendent DHQ: Hospital Batkhela for information

[Handwritten signature]
Medical Superintendent,
DHQ Hospital Batkhela

Copy

-1-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR



APPEAL NO.917/2022

Dr. Jamil Ahmed

.....**APPELLANT**

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary
and others **RESPONDENTS**

REPLY ON BEHALF OF THE IMPLEADED PRIVATE
RESPONDENT NO. 4.

R/SHEWETH:

PRELIMINARY OBJECTIONS:

- 1) That appellant has got neither cause of action nor locus standi to file the instant service appeal.
- 2) That the instant appeal of the appellant is not maintainable against the private respondent No.4 for the reason that through the instant appeal the appellant has challenged the notification dated 18.05.2022 however during the pendency of this appeal another transfer notification dated 05.09.2022 had been issued.
- 3) That the instant appeal is against the law and rules on the subject hence not maintainable.
- 4) That the instant appeal of appellant is badly time barred.
- 5) That the instant appeal has been filed with mala fide intention just to harass the private respondent No.4 therefore, is liable to be dismissed.
- 6) That the instant appeal is also not maintainable because the departmental appeal preferred against the impugned notification dated 18.05.2022 was addressed to the wrong authority/competent authority and not to the appellant authority.
- 7) That the impugned notification dated 18.05.2022 has been issued strictly in accordance with section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973, as per this section the appellant belonging to the management cadre is liable to serve anywhere in the province where the competent authority pleases so.

ON FACTS:

- 1- Pertains to record.
- 2- Pertains to record.
- 3- Pertains to record and not concerning the answering respondent.
- 4- Incorrect and misconceiving. That the appellant belonging to the management cadre hence in the interest of public at large he is supposed to serve anywhere in the province. That the replying respondent also belongs to the same cadre, therefore the appellant as well as the private respondent No. 4 are supposed to serve where the competent authority post them. That as per the mandate of section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973 and the judgments of the apex Court of Pakistan on the subject the appellant is liable to serve anywhere in the province. That the impugned notification dated 18.05.2022 is followed by another notification dated 05.09.2022 whereby the appellant as well as the private respondent No.4 have been transferred hence the appellant is supposed to challenge the notification dated 05.09.2022 and in the meanwhile the instant appeal becomes infructuous. Copy of the notification dated 05.09.2022 is attached as annexure **A.**
- 5- Incorrect and misconceiving.
- 6- Incorrect, concocted and fabricated, the answering respondent belongs to the management cadre and is competent to be posted on the subject post. That the competent authority has all the right to post a suitable person to a suitable post and the appellant is lacking the efficiency to perform the functions of the subject post, therefore, he was transferred vide impugned notification. That the allegations of the appellant to the extent of favoritism and personal benefits is baseless hence denied.
- 7- Incorrect. The detailed reply has been given in the preceding paras however, the statistics in the para are subject to prove. That it is the duty of a civil servant to perform his duty as per mandate of law and rules.
- 8- Pertains to records, not concerning with the replying respondent.
- 9- Incorrect, the departmental appeal has not been preferred before the appellate authority.
- 10- Incorrect, hence denied.
- 11- Pertains to record.
- 12- Incorrect, reply on the grounds are as under:

GROUND:

- A- Incorrect, the impugned notification is in accordance with law and rules and in the interest of public at large, no political victimization of the appellant has been made.
- B- Incorrect, the impugned notification is issued by the competent authority under the mandate of law and rules on the subject, therefore, the subject notification is legal, lawful and was issued with bona fide intention.
- C- Incorrect, the appellant is supposed to serve anywhere in the province according to section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973, since he belongs to the management cadre therefore, the policy of tenure do not attract to his post/case.
- D- Incorrect, detailed reply has been provided in the preceding paras.
- E- Incorrect, the subject appeal has also become anfractuous because the impugned notification is followed by another notification dated 05.09.2022.
- F- Incorrect, already explained in the above paras.
- G- Pertains to record, however on the subject issue the apex Court as well as the august Service Tribunal have issued a number of judgments against the appellant.
- H- Incorrect, already explained.
- I- Incorrect, already explained.
- J- Incorrect.
- K- Subject to proof.

It is therefore, most humbly prayed that on acceptance of this reply the appeal of the appellant may very kindly be dismissed with cost.

Dated: 13.09.2022

RESPONDENT NO. 4


DR. IRFAN UD DIN

THOROUGH:

-4-

NOOR MOHAMMAD KHATTAK

WALEED ADNAN

UMER FAROOQ

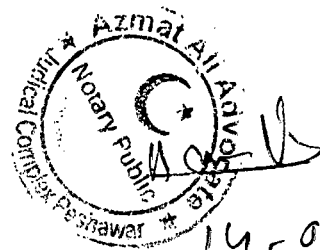
MUHAMMAD AYUB
ADVOCATES

AFFIDAVIT

I, Dr. Irfan ud din (Respondent No. 4), do hereby solemnly affirm and declare that the contents of the Reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable tribunal.

Dep^{osition} onent,

ATTESTED



14-09-2022



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

"A" - 4 - 5 -

Dated Peshawar the 20th May, 2022

NOTIFICATION

NO. SOH(E-V)/4-4/2022 Consequent upon promotion to the post of Member of Service (BS-19) vide this Department's Notification No. SOH(E-V)/4-4/2022/1652-1667 dated 19.04.2022, the following posting/ transfer of doctors are hereby ordered for actualization of their promotion, with immediate effect, in the best public interest:-

S.NO.	NAME OF DOCTORS	FROM	TO
FOR ACTUALIZATION UPON PROMOTION IN BS-19			
1.	Dr. Muhammad Shafiq S/O Akbar Gul, Management Cadre (BS-19)	Attached to DHO Office Nowshera	MS Cat-D Hospital Dag Ismail Khel, Nowshera against the vacant post
2.	Dr. Muhammad Azhar Shah S/O Israrul Arifeen, Management Cadre (BS-19)	MS Category-D Hospital Akora Khattak, Nowshera.	MS Cat-D Hospital Kaka Sahib, Nowshera. Vice S.No.34.
3.	Dr. Muhammad Riaz S/O Gohar Khan, Management Cadre (BS-19)	Senior Demonstrator, MTI/Gaju Khan Medical College, Swabi	Medical Superintendent, Cat-D Hospital Kalu Khan, Swabi against the vacant post
4.	Dr. Muhammad Usman Shah S/O Muhammad Zahir Shah, Management Cadre (BS-19)	Attached to DHQ Hospital, Abbottabad	District Health Officer, Kohistan Lower. Vice S.No.36.
5.	Dr. Uzma Habib D/O Taj Muhammad, Management Cadre (BS-19)	Deputy Director Directorate General Health Services, Khyber Pakhtunkhwa	Director (M&E) Provincial Health Services Academy, Peshawar
6.	Dr. Hammad S/O Said Badshah, Management Cadre (BS-19)	THQ Hospital Chakdara, Dir (Lower)	Medical Superintendent, THQ Hospital Chakdara Dir, Lower against the existing post

7.	Dr. Muhammad Munib S/O Sher Ali Khan, Management Cadre (BS-19)	Attached to Saidu Group of Teaching Hospital, Swat	Deputy Medical Superintendent, Saidu Group of Teaching Hospital, Swat against the vacant post
8.	Dr. Nazar Muhammad S/O Bakht Sar, Management Cadre (BS-19)	Coordinator (Public Health) DHO Office, Dir (Upper)	Deputy District Health Officer, Dir (Upper) against the vacant post
9.	Dr. Muhammad Farooq Gul S/O Gul Muhammad, Management Cadre (BS-19)	Coordinator (LHW) DHO Office, D.I.Khan	Deputy District Health Officer, DI Khan against the vacant post
10.	Dr. Zakir Hussain S/O Hakim Khan, Management Cadre (BS-19)	Attached to DHQ Hospital, Bajaur	He will actualize his promotion for one day as MS Cat-D Hospital Lal Qila, Dir (Lower) and then posted as District Health Officer, Dir (Lower). Vice S.No. 43.
11.	Dr. Jamaluddin S/O Muhammad Din, Management Cadre (BS-19)	Attached to Category-D Hospital Jamal Abad, Charsadda	Medical Superintendent, Category-D Hospital Jamal Abad, Charsadda against the vacant post
12.	Dr. Aurangzeb Afridi S/O Ghulam Hussain, Management Cadre (BS-19)	Deputy Medical Superintendent, Services Hospital, Peshawar	He will actualize his promotion for one day as MS Women & Children Hospital Rajarr District Charsadda and then be posted as PMO (BS-19) at Services Hospital, Peshawar
13.	Dr. Roshan Zada S/O Syed Latif, Management Cadre (BS-19)	Attached to DHO Haripur	Medical Superintendent, Cat-D Hospital Ghazi, Haripur against the vacant post
14.	Dr. Ali Asghar S/O Abdul Akbar Khan, Management Cadre (BS 19)	Deputy Director Malakand Region	Medical Superintendent, THQ Hospital Dargai, Malakand by relieving Dr. Irfan Ali from Additional Charge of the post of MS THQ Hospital Dargai, Malakand

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UNLISTED
COPY

15.	Dr. Naik Muhammad S/O Khawaja Muhammad, Management Cadre (BS-19)	Civil Hospital, Daraband Kalan D.I.Khan	Medical Superintendent, Cat-D Hospital, Kulachi, D.I. Khan
16.	Dr. Fazal Majeed S/O Muhammad Aslam, Management Cadre (BS-19)	Deputy Director, Nutrition Directorate General Health Services, Khyber Pakhtunkhwa, Peshawar	Director, Nutrition Directorate General Health Services, Khyber Pakhtunkhwa against the existing post
17.	Dr. Muhammad Umar S/O Haji Gul Muhammad Khan, Management Cadre (BS-19)	THQ Hospital, Sadda, Kurram (Lower)	Medical Superintendent, Cat-D Hospital, Thall Hangu against the vacant post
18.	Dr. Shahid Mehmood S/O Sardar Muhammad Aslam, Management Cadre (BS-19)	Coordinator (Public Health), DHO office Abbottabad	Deputy DHO Abbottabad against the vacant post
19.	Dr. Jamshed Saeed Sherani S/O Saeed Ahmad Sherani, Management Cadre (BS-19)	Deputy Director, Directorate General Health Services, Khyber Pakhtunkhwa Peshawar	Medical Superintendent, DHQ Hospital, Landikotal. Vice S.No.44.
20.	Dr. Wazir Khan S/O Rukam Khan, Management Cadre (BS-19)	District Health Officer, North Waziristan	District Health Officer, North Waziristan
21.	Dr. Qasim Abbas S/O Saifur Rehman, Management Cadre (BS-19)	Director (Admn) Directorate General Health Services, Khyber Pakhtunkhwa	Director (Admn) Directorate General Health Services, Khyber Pakhtunkhwa against the existing post
22.	Dr. Amir Rafiq S/O Muhammad Rafiq Khattak, Management Cadre (BS-19)	Deputy Director, SHPI, Khyber Pakhtunkhwa, Peshawar	Director, Directorate General Health Services, Khyber Pakhtunkhwa against the vacant post
23.	Dr. Muhammad Arif Khan S/O Gulbar Khan, Management Cadre (BS-19)	Director (EPI), Directorate General Health Services, Khyber Pakhtunkhwa, Peshawar	Director (EPI), Directorate General Health Services, Khyber Pakhtunkhwa against the existing post

24.	Dr. Ijaz Ahmad S/O Bashir Ahmad, Management Cadre (BS-19)	Director, SHPI, Khyber Pakhtunkhwa	He will actualize his promotion for one day as DDHO/ MS Cat-D Hospital Mattani District Peshawar and then be posted as Director SHPI, Khyber Pakhtunkhwa
25.	Dr. Shaukat Saleem Khan S/O Saleem Khan, Management Cadre (BS-19)	Deputy Medical Superintendent, Mian Abdul Haq Kidney Hospital, Swat	He will actualize his promotion for one day as MS, DHQ Hospital, Alpuri Shangla and then be posted as District Health Officer, Shangla. Vice S.No.38.
26.	Dr. Muhammad Ibrahim Khan S/O Abdul Halim Khan, Management Cadre (BS-19)	Coordinator (Public Health) DHO Office, Shangla	Medical Superintendent, DHQ Hospital, Alpuri Shangla. Vice S.N.39.
27.	Dr. Mushtaq Ahmad S/O Haji Fazal Khan, Management Cadre (BS-19)	Deputy Director, Directorate General Health Services, Peshawar	Director, Director General Health Services, Khyber Pakhtunkhwa against the vacant post
28.	Dr. Saeeda Bibi D/O Dawood Khan, Management Cadre (BS-19)	Deputy Director, SHPI, Khyber Pakhtunkhwa	Director, Directorate General Health Services, Khyber Pakhtunkhwa against the vacant post
29.	Dr. Sheraz Ahmad S/O Rashid Ahmad, Management Cadre (BS-19)	Vice Principal, Paramedical Institute, Swat	Principal, Paramedical Institute, Swat against the vacant post
30.	Dr. Erum Qayum D/O Syed Qayum, Management Cadre (BS-19)	Deputy Director, Directorate General Health Services, Khyber Pakhtunkhwa	Medical Superintendent, Cat-D Hospital, Gara Tajik, Peshawar. Vice S.No.42.
31.	Dr. Muhammad Ismail S/O Said Muhammad, Management Cadre (BS-19)	Deputy Program Manager Integrated Vector Control, Khyber Pakhtunkhwa	Director, (Admn) Provincial Health Services Academy, Peshawar
32.	Dr. Muhammad Naeem S/O Habibullah Khan, Management Cadre (BS-19)	Benazir Bhutto Shaheed Teaching Hospital, Abbottabad	Deputy District Health Officer, Battagram against the vacant post

33.	Dr. Khizar Hayat S/O Pir Muhammad Khan Management Cadre (BS-19)	11 -9- Attached to MTI/LRH, Peshawar	Director, General Services, Pakhtunkhwa against the vacant post	Director Health Khyber Pakhtunkhwa
34.	Dr. Farman Ali S/O Muhammad Nasim, Management Cadre (BS-19)	Medical Superintendent, Category-D Hospital Kaka Sahib district Nowshera	Medical Superintendent, Category-D Hospital Akora Nowshera. Vice S.No.02.	Hospital Khattak
35.	Dr. Kamran Zakria S/O Ghulam Zakria Khan, Management Cadre (BS-19)	Attached to MTI/DHQ Hospital, D.I.Khan	Medical Superintendent, Cat-D Hospital, Pahar Pur D.I.Khan against the vacant post	
ADJUSTMENT/ SUBSTITUTION				
36.	Dr. Muhammad Siddique, Management Cadre (BS-19)	District Health Officer, Kohistan (Lower)	Medical Superintendent, Government Mental & General Hospital, Dadar Mansehra. Vice S.No. 37.	
37.	Dr. Ahmad Faisal, Management Cadre (BS-19)	Medical Superintendent, Government Mental & General Hospital, Dadar Mansehra	District Health Officer, Abbottabad. Vice S.No.40.	
38.	Dr. Abdul Waheed Management Cadre (BS-19)	District Health Officer, Shanga	Report to Directorate General Health Services, Pakhtunkhwa	
39.	Dr. Rabia Waheed General Cadre (BS-19)	Medical Superintendent, DHQ Hospital, Shangla Alpuri	Report to Directorate General Health Services, Pakhtunkhwa	
40.	Dr. Shah Faisal Akhunzada, Management Cadre (BS-19)	District Health Officer, Abbottabad	Report to Directorate General Health Services, Pakhtunkhwa	
41.	Dr. Ihsan Ullah, Management Cadre (BS-19)	Waiting for posting at Directorate General Health Services, Khyber Pakhtunkhwa	Deputy District Health Officer, Tank. Vice S.No.45.	

42.	Dr. Zarin Khan, General Cadre (BS-19)	MS/ DDHO Cat-D Hospital Garra Tajik Peshawar -10-	Principal Medical Officer (BS-19), Cat-D Hospital Garra Tajik Peshawar against the vacant post
43.	Dr. Irshad Ali, Management Cadre (BS-18)	District Health Officer, Dir (Lower)	Deputy District Health Officer, Dir (Lower) in OPS against the vacant post
44.	Dr. Ehtisham, General Cadre (BS-18)	Medical Superintendent, DHQ Hospital Landikotal	Senior Medical Officer (BS-18) at DHQ Hospital Landikotal against the vacant post
45.	Dr. Imran, General Cadre (BS-17)	Deputy District Health Officer, Tank	AT the disposal of DHO Tank for further adjustment against the vacant post of Medical Officer (BS-17)

**SECRETARY HEALTH
GOVERNMENT OF KHYBER PAKHTUNKHWA**

No. _____ Endst. of even No. & Date

Copy forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. Director General, Provincial Health Services Academy Peshawar.
4. All concerned Deputy Commissioners in Khyber Pakhtunkhwa.
5. All concerned District Health Officers in Khyber Pakhtunkhwa.
6. All concerned District Accounts Officers in Khyber Pakhtunkhwa.
7. All concerned Medical Superintendents in Khyber Pakhtunkhwa.
8. All concerned Principals under the PHSA network.
9. Deputy Director (IT), Health Department, with the direction to upload the notification on official website.
10. PS to Minister for Health Department, Khyber Pakhtunkhwa.
11. PS to Secretary Health Department, Khyber Pakhtunkhwa.
12. All concerned doctors.
13. Personal files of all the concerned doctors.

(Signature) 20/5/2022.
(TEHMAS AYYUB)
SECTION OFFICER (E-V)

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO: 917 OF 2022

Dr. Jamil Ahmed (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt of KP & others. (RESPONDENT)
(DEFENDANT)

I/we Dr. Irfan ul din (Respondent No 4)

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, 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. 14 / 09 / 202

Dr. Irfan ul din
CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
(BC-10-0853)
15401-0705985-5

Umar Farooq
UMAR FAROOQ
&
WALEED ADNAN

M. Ayub
M. AYUB
ADVOCATES

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