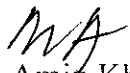



Service Appeal No. 886/2014

27.12.2017


Learned counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for rejoinder and arguments on 24.01.2018 before D.B. at Camp Court D.I.Khan.



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


(Muhammad Hamid Mughal)
Member
Camp Court D.I.Khan

24.01.2018

Junior counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney alongwith Dr. Jehanzeb for the respondents also present. Junior counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is busy in the Hon'ble Peshawar High ^{court} Bench D.I.Khan. Member copy of the instant appeal is also not available on record. Junior counsel for the appellant is directed to provide the Member copy of the instant appeal on or before the next date of haring. Adjourned. To come up for rejoinder and arguments on 20.02.2018 before D.B at Camp Court D.I.Khan.


(Ahmad Hassan)
Member
Camp Court D.I.Khan


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

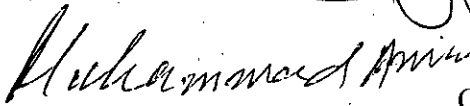
Order


20.02.2018

Counsel for the appellant and Mr. Usman Ghani, District Attorney for respondents present. Arguments heard and record perused.

Vide detailed judgment of today of this Tribunal placed on file, the appeal is dismissed. Parties are left to bear their own cost. File be consigned to the record room.

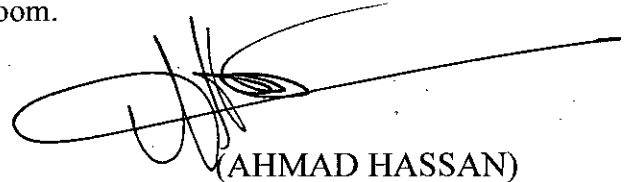
Announced:
20.02.2018


(MUHAMMAD AMIN KHAN KUNDI)
Member

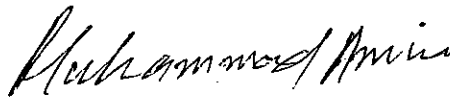

(AHMAD HASSAN)
Member
Camp Court D.I.Khan

order dated 03.04.2014 regarding rejection of his departmental appeal was not received by the appellant but when he was confronted on the point that instead of waiting for the said order the appellant should have followed Section-4 of the Service Tribunal Act 1974 but was unable to give a plausible explanation. No application for condonation of delay has been submitted by the learned counsel for the appellant. As the issue of limitation has been decided by the august Supreme Court of Pakistan through judgment PLD 2016 so we find no force in the present appeal being time barred. There are numerous judgments of Supreme Court of Pakistan that in case the departmental appeal of an aggrieved civil servant is time barred then the service appeal is also time barred.

6. As a nutshell to the above discussion, the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
MEMBER
CAMP COURT D.I.KHAN



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
20.02.2018

ARGUMENTS

3. Learned counsel for the appellant argued that he was appointed as Junior Clerk in Gomal Medical College, D.I.Khan on 26.11.2010 after observance of all codal formalities. Services of the appellant were terminated so he filed writ petition no.692/11 in Peshawar High Court which was decided on 19.09.2013. His plea was accepted but respondent no.3 was placed at liberty to proceed in accordance with law/rules. Again major penalty of removal from service was imposed on him vide impugned order dated 22.01.2014. He filed departmental appeal on 03.03.2014 which was rejected on 03.04.2014, hence the instant service appeal on 26.06.2014. He further contended that the impugned order is not according to law and rules and as such the appellant has been condemned unheard.

4. On the other hand learned District Attorney argued that before proceedings further first the Tribunal should decide the issue of limitation as both the departmental and service appeals are time barred. He also contended that the appellant in his departmental appeal has not taken the plea that impugned order was not provided to him in time. So far as rejection of his departmental appeal and its service upon the appellant is concerned it is immaterial and appears to be an attempt to take undue advantage of limitation period. He was required to pursue his case strictly in accordance with Section-4 of the Service Tribunal Act 1974. He relied on case law reported as 2012 SCMR 195 and PLD 2016 SC 872.

CONCLUSION.

5. Careful perusal of record would reveal that impugned order was passed on 22.01.2014 while departmental appeal was filed by the appellant on 03.03.2014 as such departmental appeal was not filed within time limit specified in Section-4 of the Service Tribunal Act 1974 and his departmental appeal was rejected on 03.04.2014 whereas he filed service appeal on 26.06.2014, hence, both the departmental and service appeals are time barred. Learned counsel for the appellant when confronted on the point of limitation argued that impugned order was not conveyed to him by the respondents. However, when his attention was invited to the departmental appeal submitted by the appellant wherein this issue was not raised he was unable to give a convincing reply. He also took the plea that

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT D.I.KHAN.

Appeal No. 886/2014

Date of Institution ... 26.06.2014

Date of Decision ... 20.02.2018

Shahid Masood S/o Khalid Masoo,
R/o Masood Town, Tank Road, Dera Ismail Khan.
Ex-Junior Clerk, Gomal Medical College, D.I.Khan.

... (Appellant)

VERSUS

1. Govt: of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 5
others. ... (Respondents)

MR. MUHAMMAD ISMAIL ALIZAI,
Advocate

--- For appellant.

MR. USMAN GHANI,
District Attorney

--- For respondents

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER(Executive)
--- MEMBER(Judicial)

JUDGMENT

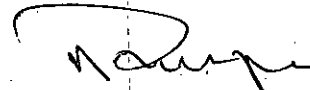
AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The brief facts are that the appellant was appointed as Junior Clerk in Gomal Medical College D.I.Khan on 26.11.2010. His services were terminated against which he filed writ petition in Peshawar High Court which was decided on 19.09.2013. His plea was accepted but respondent no.3 was placed at liberty to proceed in accordance with law/rules and observance of all codal formalities. Again major penalty of removal from service was imposed on him vide impugned order dated 22.01.2014. He filed departmental appeal on 03.03.2014 which was rejected on 03.04.2014, hence the instant service appeal on 26.06.2014.

27.12.2016

Appellant in person and Mr. Muhammad Asif, Junior Clerk alongwith Mr. Farhaj Sikander, Government Pleader for the respondents present. Written reply on behalf of respondents No. 1 to 5 have already submitted. Representative of respondent No. 6 is not in attendance today. Final notice be issued to respondent No. 6 for submission of written reply, otherwise he will be placed ex-parte. To come up for written reply/comments on 29.03.2017 before S.B at Camp Court D.I.Khan.


ASHFAQUE TAJ
MEMBER
Camp Court D.I.Khan


29.3.17

Since Taj is hereby cancelled, therefore, the case is adjourned for the date on 27.9.17



27.09.2017

Appellant in person present and Mr. Farhaj Sikandar, District Attorney present. ~~None present on behalf of respondent No. 6. Notice cancelled to the respondent No. 6 for attendance.~~ To come up for ~~rejoinder & arguments~~ 27.12.2017 before D.B at Camp Court D.I.Khan.


Member
(Judicial)
Camp Court D.I.Khan

23.2.2016

Counsel for the appellant, and Mr. Farhaj Sikandar, GP present and requested for time to contact the respondents, however, fresh notices should also be issued to them. Case to come up for written reply on 24.5.16 at Camp Court D.I.Khan.


MEMBER

Camp Court, D.I.Khan

24.05.2016

Appellant in person and Mr. Qaisar Nadeem, DPE

alongwith Mr. Farkhaj Sikandar, GP for respondents present.

Representative of the respondent requested for time to file reply.

To come up for written reply on 30.08.2016 at camp court D.I.

Khan.


Member

Camp Court D.I.Khan

30.08.2016

Counsel for the appellant and Mr. Qaiser Nadeem, DPE alongwith Mr. Farhaj Sikandar, GP for respondents present.

Written reply on behalf of respondents NO. 2,3,4 and 5 submitted.

To come up for written reply of respondent No.6 on 27.12.2016 at camp court D.I Khan.


Member

Camp court D.I. Khan

27.07.2015

Counsel for the appellant present and submitted that the respondent-department passed an unlawful and illegal order against the appellant which order was declared null & void by the hon'ble Peshawar High Court vide order dated 19.09.2013. But in retaliation of that order the respondent-department turned inimical and revengeful against the appellant and thus another illegal and unlawful and malafide order was passed on 22.1.2014. That the appellant challenged that order before the departmental appellate authority which was not responded till the expiry of statutory period, hence the present appeal. Counsel for the appellant stated that no opportunity of personal hearing or defence was provided to the appellant and thus the appellant has been condemned unheard. It was further submitted that no codal formalities were observed by the respondent department and the impugned order is nullity in the eyes of law. He also submitted that the appeal is within time.

Appellant Deposited
Security & Process Fee



Points raised need consideration. The appeal is admitted for regular hearing, subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. Case to come up for written reply/comments on 24-08-2015 at camp court, D.I.Khan.


MEMBER

Camp court, D.I.Khan

26.10.2015

Clerk of counsel for the appellant and Mr. Farhaj Sikandar, GP present. Fresh notices be issued to the respondents and case to come up for written reply at camp court, D.I.Khan on 29-12-15.


MEMBER

Camp court, D.I.Khan

31.3.2015

No one is present on behalf of the appellant and Mr Farhaj Sikander, GP for respondents present. Notice be issued to the appellant and his counsel. To come up for preliminary hearing on 26.5.15. at Camp Court D.I.Khan..



MEMBER
Camp Court, D.I.Khan

26.05.2015

Clerk of counsel for the appellant present. Due to general strike of the legal fraternity, counsel for the appellant is not available. To come up for arguments on 27.07.2015 at camp court, D.I.Khan.



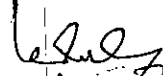
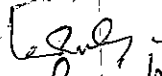


MEMBER
Camp court, D.I.Khan

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 886/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	26/06/2014	<p>The appeal of Mr. Shahid Masood presented today by Mr. Muhammad Ismail Alizai Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	16-10-14	<p>This case is entrusted Touring Bench D.I.Khan for preliminary hearing to be put up there on <u>27-10-14</u></p> <p style="text-align: right;"> CHAIRMAN</p>
3-	27-10-14	<p>Counsel for the appellant present. Case adjourned to 30-12-2014 for preliminary hearing due to non-availability of Bench at Camp Court, D.I.R.</p> <p style="text-align: right;"> Registrar Camp Court, D.I.R.</p>
4.	30-12-14	<p>No one is present on behalf of appellant. Case adjourned to 31-3-15 for preliminary hearing at Camp Court, D.I.Khan.</p> <p style="text-align: right;"> Registrar Camp Court, D.I.R.</p>

Before The Khyber Pakhtunkhwa Service Tribunal, Peshawar

Service Appeal No. 886 /2014.

Shahid Masood,

Appellant.

Versus

Govt of KPK, and others.

Respondents.

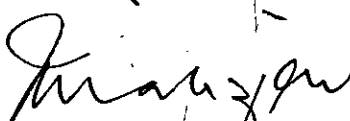
Service Appeal

I N D E X

<u>S.No.</u>	<u>Description of Documents</u>	<u>Annexure</u>	<u>Page.</u>
1.	Petition with Grounds of Appeal & affidavit.		02 — 04
2.	Copies of Appointment Order etc.	A	— 05
3.	Copies of WP 39/2012 & Judgment.	B	06 — 08
4.	Copy of Impugned Order.	C	09 — 12
4.	Copy of Departmental Appeal.	D	13 — 16
6.	Vakalat-Nama		— 17

Dated: 23.6 2014.


(Shahid Masood) Appellant
Through Counsel


(Muhammad Ismail Alizai)
Advocate High Court, D.Khan.

Before The Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Service Appeal No:.....886...../2014

Shahid Masood s/o Khalid Masood,
R/o Masood Town, Tank Road, D.I.Khan,
Ex-Junior Clerk, Gomal Medical College,
Dera Ismail Khan.

921
26/6/2014

(Appellant)

Versus

1. Government of Khyber Pakhtun-khwa, through Chief Secretary, Peshawar.
2. Secretary to Govt of KPK, Health Department, Peshawar.
3. Director General, Health Services, Khyber Pakhtunkhwa, Peshawar,
4. Chief Executive, Gomal Meical College, D.I.Khan,
5. Principal, Gomal Medical College, Dera Ismail Khan.
6. District Accounts Officer, Dera Ismail Khan,

(Respondents)

Note: The addresses given above are sufficient for the purpose of service upon respondents.

Appeal U/S 4 Of KPK Service Tribunal Act, 1974 Against Order Dated 22.1.2014 Of Respondent No.4 Conveyed Through Office No.306-11 & Finally Against Inaction By Appellate Authority On Representation Dated 3.3.2014 Of Appellant.

- PRAYER: - By setting-aside the impugned Order of Respondent No.4, declaring the same as Illegal, Void ab-initio, Ultra-virus, Nullity in law and of no consequence on the status / rights of the appellant and thereby direct the respondents to desist from discriminating / disturbing the appellant in violation of law, rules & instructions / policy of Government,
- To graciously reinstate the appellant in service with grant of all back benefits as may accrue,
 - To kindly impose cost on respondents, as may graciously be fixed.

Respectfully Sheweth: -

The appellant very humbly submits as follows: -

BRIEF FACTS:

1. That the appellant was appointed as Junior Clerk under the immediate control of respondents Nos. 4 & 5(BPS-7) latter, having tendered his joining report besides fulfillment of codal formalities, lastly posted at Gomal Medical College, DIKhan under respondents No. 4 & 5. Copies of appointment Order and relevant records are placed at Annexes-A.
2. That during 2011 respondent No.4 was required by respondent No.2 to cancel the appointment of the appellant, where after the matter was agitated by the appellant before Peshawar High Court through Writ Petition No.39/2012 which culminated in judgment dated 19.9.2013 whereby the order issued by respondent No.3 and consequential acts done by rest of respondents were set at naught, declaring the same as nullity in law and inoperable against the appellant. The court however, allowed respondents to proceed in the matter in accordance with the provisions of law and relevant rules, if they desired so. Copies attached herewith as Annexes B
3. That it was only for apparent political motivation and considerations on part of respondents, particularly No.3 to 5 that the appellant has since been relieved of his position under the fake, false and manipulated garb of departmental proceedings and has been deprived of his only source of earning through an order issued over No. 306-11 dated 22.1.2014 passed by respondent No.4. Copy thereof is attached at Annex-C.
4. That the appellant was compelled to move a representation/ departmental appeal with respondent No.3 against the apparent injustice. Though it was conveyed in due course yet neither the order is withdrawn nor the representation / departmental appeal of the appellant is decided by respondent No.3 i.e till expiry of limitation period, hence this petition. Copy of departmental appeal is placed herewith at Annex-D. It may be worth mentioning that entire records are in possession of respondents and appellant has not been allowed any access nor copies of the same hence the same may be requisitioned from respondents during the course of hearing of instant appeal.
5. That having no other remedy available within departmental hierarchy the appellant approaches this Hon'ble Tribunal against the impugned order and inaction on appeal of appellant by the respondents on the grounds, inter-alia, following,

GROUND:

- i. That the order impugned hereby is inconsistent with law, rules and regulations in vogue thus, is liable to be declared as void ab-initio, nullity in law, illegal and ultra virus / inoperable against the rights of the appellant.
- ii. That the impugned order having caused grave miscarriage of justice to the appellant, affecting the appellant adversely without any lawful excuse if left non-rectified.
- iii. That the impugned order is devoid of any legal force and issued to the detriment of legitimate rights of the appellant thus, is not maintainable in law and is liable to be set-aside.
- iv. That the order of Respondents No.4, impugned hereby, is prejudicial to the terms and conditions of service and the rights of the appellant thus call for interference by this Hon'ble Tribunal.
- v. That in absence of any thing to justify dismissal of the appellant in terms of the law, rules & instructions of the government on holding of departmental proceedings against government/civil servants and for apparent Extraneous, Political motives & influence the impugned order could not either be justified nor

sustained and allowed to continue & to operate against the constitutional rights of the appellant.

- vi. That the impugned order on removal of appellant & inaction on part of the respondents qua departmental appeal / representation of the appellant, being contrary to law, rules, regulations & instructions of the government *ab-initio*, ought be set aside & rectified in light of the principles as laid down by Hon'ble superior courts and Tribunals.
- vii. That the petition of appeal / appellant is duly supported by law, rules & instructions, besides the affirmation / affidavit annexed hereto.
- viii. That this Hon'ble Tribunal is competent and has ample powers to adjudge the matter and issue suitable orders in the ends of justice.
- ix. That the counsel for the appellant may very graciously be allowed to add to the grounds during the course of arguments, if need be.

PRAYER:

In view of the fore-given facts and grounds, it is requested that by setting-aside the impugned order of Respondents No.4, declaring same as illegal, void ab-initio, nullity in law and *ultra-virus* thus of no consequence on rights of the appellant. Further to kindly direct the respondents to desist from discriminating the appellant, desist from displacing the appellant through impugned order and to reinstate the appellant in service from the date of issuing of impugned order with allowance of all back benefits. Any other remedy deemed appropriate by the Hon'ble Tribunal in the circumstances of the matter is solicited, too.

Dated... 23.6.2014.

Humbly,

(Shahid Masood) Appellant.

Through Counsel.

(Muhammad Ismail Alizai)
Advocate High Court
Dera Ismail Khan.



Affidavit.

I, Shahid Masood, the appellant herein, solemnly affirm and declare on oath that contents of the petition of appeal are correct to the best of my knowledge and belief and per official records and that nothing is willfully concealed or kept from the Tribunal.

Dated: 23.6.14

Deponent.

1. D.F.A

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT D.I.KHAN.

Appeal No. 886/2014

Date of Institution ... 26.06.2014
Date of Decision ... 20.02.2018

Shahid Masood S/o Khalid Masoo,
R/o Masood Town, Tank Road, Dera Ismail Khan.
Ex-Junior Clerk, Gomal Medical College, D.I.Khan.

... (Appellant)

VERSUS

1. Govt: of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 5
others. ... (Respondents)

MR. MUHAMMAD ISMAIL ALIZAI,
Advocate

--- For appellant.

MR. USMAN GHANI,
District Attorney

--- For respondents

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER(Executive)
--- MEMBER(Judicial)

JUDGMENT

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

FACTS

2. The brief facts are that the appellant was/as Junior Clerk in Gomal Medical
College D.I.Khan on 26.11.2010. ^{appointed} He ^{His services were} was terminated ~~from service~~ against which he
filed writ petition in Peshawar High Court which was decided on 19.09.2013. His
plea was accepted but respondent no.3 ^{was} placed at liberty to proceed in accordance with law/^{rules and}
^{diservance of} and all codal formalities. Again major penalty of removal from service was imposed on
him vide impugned order dated 22.01.2014. He filed departmental appeal on 03.03.2014
which was rejected on 03.04.2014, hence the instant service appeal on 26.06.2014.

ARGUMENTS

3. Learned counsel for the appellant argued that he was appointed as Junior Clerk in Gomal Medical College, D.I.Khan on 26.11.2010 after observance of all codal formalities. Services of the appellant were terminated so he filed writ petition no.692/11 in Peshawar High Court which was decided on 19.09.2013. His plea was accepted but respondent no.3 ^{was} placed at liberty to proceed in accordance with law ^{rules} and ~~all codal formalities~~. Again major penalty of removal from service was imposed on him vide impugned order dated 22.01.2014. He filed departmental appeal on 03.03.2014 which was rejected on 03.04.2014, hence, the instant service appeal on 26.06.2014. He further contended that the impugned order is not according to law and rules and as such the appellant has been condemned unheard.

4. On the other hand learned District Attorney argued that before proceedings further first the Tribunal should decide the issue of limitation as both the departmental and service appeals are time barred. He also contended that the appellant in his departmental appeal has not taken the plea that impugned order was not provided to him in time. So far as rejection of his departmental appeal and its service upon the appellant is concerned it is immaterial. He was required to pursue his case strictly in accordance with Section-4 of the Service Tribunal Act 1974. He relied on case law reported as 2012 SCMR 195 and PLD 2016 SC 872.

and appears to be an attempt to take undue advantage of limitation period.

CONCLUSION.

5. Careful perusal of record would reveal that impugned order was passed on 22.01.2014 while departmental appeal was filed by the appellant on 03.03.2014 as such departmental appeal was not filed within time limit specified in Section-4 of the Service Tribunal Act 1974 and his departmental appeal was rejected on 03.04.2014 whereas he filed service appeal on 26.06.2014, hence, both the departmental and service appeals are time barred. Learned counsel for the appellant when confronted on the point of limitation argued that impugned order was not conveyed to him by the respondents. However, when his attention was invited to the departmental appeal submitted by the appellant where in

this issue was not raised he was unable to give a convincing reply. He also took the plea that order dated 03.04.2014 regarding rejection of his departmental appeal was not received by the appellant but when he was confronted on the point that instead of waiting for the said order the appellant should have followed Section-4 of the Service Tribunal Act 1974 but was unable to give a plausible explanation. No application for condonation of delay has been submitted by the learned counsel for the appellant. As the issue of limitation has been decided by the august Supreme Court of Pakistan through judgment PLD 2016 so we find no force in the present appeal being hopelessly time barred. There are numerous judgments of Supreme Court of Pakistan that in case the departmental appeal of an aggrieved civil servant is time barred then the service appeal is also time barred.

6. As a nutshell to the above discussion, the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

(AHMAD HASSAN)
MEMBER
CAMP COURT D.I.KHAN

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
20.02.2018

(5)
A

OFFICE OF THE PRINCIPAL GOMAL MEDICAL COLLEGE DERA ISMAIL KHAN

OFFICE ORDER

As recommended by the Khalifa Abdul Qayum M.P.A D.I. Khan that Mr. Shahid Masood S/O Khalid Masood R/O Masood Town Tank Road Distt: D.I. Khan is here by appointed as Junior clerk (BPS- 7) plus usual allowance as admissible under the Rules.

His appointment in the Health Department Govt: Khayber Pakhtunkhwa will be subject to the following terms and conditions.

1. He will be on probation initially for a period two (02) years extendable for a further period not exceeding one year.
2. His service can be dispensed with during the probation period. If his work and conduct found unsatisfactory.
3. His appointment will be subject to medical fitness and verification of character and antecedent.
4. He will not be entitled to any TA/DA for medical examination and joining the first appointment.
5. He will be governed by such rules and orders as may be issued by the government for the category of government servant to which he belongs.
6. The original documents will be verified from the concerned Board/University by this college.
7. As laid down vide Govt: of Khayber Pakhtunkhwa Establishment and Administration Department Notification No. E&A(1-3)/2005 dated 10.08.2005, he will not be entitled to pension or gratuity however in lieu thereof, will be entitled to receive such amount of contribution made by the Government to his account in the said fund.
8. If he wishes to resign from service he will have to submit resignation in writing one month in advance OR deposit one month's pay in the Govt: treasury. However, he will continue to serve the Govt, till his resignation is accepted by the competent authority.

If the above terms and conditions are acceptable to him he should report to the undersigned within fourteen (14) days of the receipt of this order.

Signature

Prof. Dr. Abdul Mateen Khan
Principle
Gomal Medical College, D I Khan

No. 3981 / PF

Copy is forwarded to the:-

1. The District Account Officer, D.I. Khan
2. Official Concerned
3. Personal File
4. Account Clerk Gomal Medical College D.I.Khan.

Dated the D I Khan 26/11/2010

For Information and Necessary actions

Signature
Principal
Gomal Medical College, D I Khan

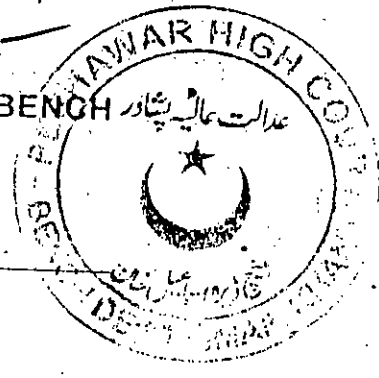
Signature
Advocate High Court
District Bar, D.I. Khan

6

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B

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)



W.P. No. 692 of 2011

JUDGMENT

Date of hearing 19-9-2013

Appellant-petitioner Mr. Ahmad Ali Khan Advocate

Respondent R.P.R. by Mr. Saman Ullah Shah
AAG

ABDUL LATIF KHAN, J.- Through this single judgment, we propose to dispose of W.P.Nos.692/2011, 802/2011 and W.P.No.39-D/2012) as common question is involved in all the three petitions.

2. Learned counsel for the petitioners contended that the impugned order dated 06.7.2011 has been passed without any lawful authority and observing all legal formalities as required under the law. It was argued that the petitioners were initially appointed in BPS-1 and later on adjusted as Junior Clerks (BPS-7), after observing all the legal formalities and the respondents have no authority to cancel the appointment of the petitioners. It is added that the petitioners were condemned unheard, as no opportunity of hearing was

[Handwritten signature]

ATTESTED
EXAMINOR
Peshawar High Court
D.I. Bench

26/9/13

34

⑦

afforded to them, which is against the principles of natural justice.

3. The learned A.A.G contended that the initial appointment of the petitioners was made at the instance of Health Minister, which was against law, therefore, the impugned order has been properly passed.

4. We have given our anxious thought to the arguments of learned counsel for the parties and perused the record with their valuable assistance.

5. Perusal of the record shows that the appointment of the petitioners was made initially in a lower grade and were later on appointed as Junior Clerks in BPS-7 by the Principal, Gomal Medical College, D.I.Khan. The impugned order has been passed by the respondents on 06.7.2011 and the reason given in the letter is the irregular appointment of Junior Clerks and directions were given to the District General Health Services by the Secretary Health that the appointment of petitioners be cancelled and the posts be re-advertised and re-filled after fulfilling the codal formalities.

[Handwritten signature]

ATTESTED

EXAMINOR

Strawberry High Court
Lahore Bench

26/9/13

6. It is apparent on the record that no show cause notice was served upon the petitioners nor any explanation available on file. Similarly, neither inquiry has been conducted nor opportunity of hearing has been

afforded to the petitioner, which is violently against the principles of natural justice. Admittedly, no codal formalities have been observed in taking proposed action against the petitioners. The learned A.A.G was confronted with the situation, who candidly accepted that no formalities have been observed and the impugned letter has been issued straightaway, directing the Director General Health Services to cancel the appointment of petitioners on the ground of being irregular appointees.

7. Without touching the merits of the case, we are of the view that without observing codal formalities, the respondents were not competent to issue impugned order directly, which amounts to illegality and thus on acceptance of the above mentioned three petitions, the impugned order is declared as of no legal effect, hence annulled. However, the respondents are at liberty to proceed in accordance with law, after observing the legal and codal formalities, by affording opportunity of being heard to the petitioners, if so advised.

Announced.
Dt: 19.9.2013.

[Signature]
JUDGE

[Signature]
JUDGE

ATTESTED

EXAMINER

[Signature]
26/9/13



(9)
'e'

**OFFICE OF THE PRINCIPAL/CHIEF EXECUTIVE GOMAL MEDICAL
COLLEGE/DHQ/MMM TEACHING HOSPITALS
DERA ISMAIL KHAN.**

No. 306-11 / 1 Dated DIKhan the 22/01/2014.

OFFICE ORDER.

1. I WHEREAS disciplinary proceeding under E & D Rules 2011, Section 2(l)(vi) read with section 3(b) Mr. Shahid Masood S/O Khalid Masood Junior Clerk Gomal Medical College DIKhan for his irregular appointment without observing codal formalities which is required under the appointment, promotion and transfer rules 1989 i.e advertisement in the news paper, departmental selection committee, proper interview etc, but the said irregular appointment has been made without adapting codal formalities by violation of rules regulations.
2. AND WHERE AS, an enquiry was conducted against him through enquiry committee as per provision of section-5 of E&D Rules 2011 and direction by the Honourable Peshawar High Court DIKhan bench.
3. AND WHERE AS opportunity for personal hearing has been given to you but in vain and no response by himself.
4. Therefore I Prof: Dr. Muhammad Saleem, Principal Gomal Medical College DIKhan competent authority in exercise of power conferred under Khyber Pakhtunkhwa Govt: E&D Rules 2011, impose major penalty of "removal from service" upon Mr. Shahid Masood S/O Khalid Masood Junior Clerk Gomal Medical College DIKhan with immediate effect.

[Signature]
Principal/Chief Executive

C.c:

1. The Secretary to Govt. of Khyber Pakhtunkhwa Health Department Peshawar.
2. The Director General Health Services Khyber Pakhtunkhwa Peshawar
3. The Vice Principal (Administration) Gomal Medical College DIKhan
4. The District Accounts Officer DIKhan
5. Accounts Officer Gomal Medical College DIKhan.
- ✓ 6. Official concerned

[Signature]
Principal/Chief Executive

[Signature]
Principal/Chief Executive
District Court
Dera Ismail Khan

SHOW CAUSE NOTICE

10

I, Professor Dr. Muhammad Saleem Khan Gandapur Principal Gomal Medical College Dera Ismail Khan as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you Mr. Shahid Masood Junior Clerk GMC DI Khan as follow-

1. i. That consequent upon the completion of inquiry conducted against you by the inquiry officer/inquiry committee for which you were given opportunity of hearing vide letter No. GMC/Estt:/4685-88 dated 28/10/2013
- ii. On going through the findings and recommendations of the inquiry officer/ inquiry committee, the material on record and other connected papers including your defense the inquiry officer/inquiry committee.

I am satisfied that the proper codal formalities were not observed during your appointment and you have committed the following acts/omissions specified in rule 3 of the said rules:

1. No any advertisement in the news paper.
 2. No Departmental Selection Committee was constituted.
 3. Proper Interview was not conducted.
 4. No any merit list was made
 5. No Call letter issued.
2. As a result therefore, I, as competent authority, have tentatively decided to Impose upon you the penalty of removal from service under rules 4 of the said rules.
 3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
- If no reply to this notice is received within 07 days after the receipt of this letter , it shall be presumed that you have no defense to put in and in that case an ex-parte action shall be taken against you.
4. A copy of findings of the inquiry officer/ inquiry committee is enclosed.


COMPETENT AUTHORITY

To

The Principal
Gomal Medical College
Dera Ismail Khan

11

SUBJECT: REPLY TO SHOW CAUSE NOTICE

Reference your office letter No.GMC/Estt/4869-70 dated 19-11-2013

In reply to the show cause notice served upon me on 19-11-2013 through the letter under reference, I humbly submit my reply as under:

Conclusion of inquiry committee:

Although the three clerks are highly qualified competent and hard workers upon the satisfaction of the superiors.

But this committee come to the conclusion that these appointments were irregular, under political pressure and no codal formalities above BPS-05 therefore the committee suggest cancellation of appointment orders and fulfilling these posts after observing codal formalities.

Perusal of the conclusion, the penalty recommended by the inquiry officer is quite illegal bylaws and unjustified and contrary against the E&D rules frame by the Government for the reasons that I was not appointed under the political pressure because the City MPA KPK has not directed the principal Gomal Medical College Dikhan in his recommendation not to observe the codal formalities as required under the rules. In the history of world there is no example that any appointee has been empowered to observe the codal formalities, for filling the vacant posts of scale No 07, will the inquiry officer please intimate under which rules the said power has been delegated to any appointee. The case has not been inquired on correct lines have been shifted to take shield behind the political pressure. The inquiry officer has not mentioned in his conclusion the culprit, who is responsible to observe the codal formalities for filling the vacant post. I am competent, capable and experienced hand to hold the post of junior clerk in basic pay scale 07.

In view of the above prevailing circumstances the recommendation made by the inquiry officer stands null and voids and not applicable to me under the E&D rules of the Government, therefore Show Cause notice issued to me is not acceptable to me.

However as mentioned in Show Cause notice that I have committed the said acts/ omissions, I would like to give parawise reply.

1. The issuance of advertisement in the news paper is the primary duty of the department/office hands and appointing authority as per rules regulations and criteria framed by government for appointment. Please quote the rules, under which the appointee is competent to perform any role in the issue of advertisement.

- (12)
2. It is utmost duty of the office hands appointing authority to form selection committee for the new appointment as per rules regulations and criteria. Please quote the rules, which I am competent to form selection committee as appointee is not authorized to do so.
 3. Conducting of proper interview purely rests with the office hands/authority and department as per rules. Please quote the rules, under which I am competent to conduct proper interview for appointment.
 4. Maintenance of merit list is the duty of office hands/appointing authority and department as per directive in the rules. I have no role to maintain merit list. Please quote the rules, under which I have been entrusted the job of maintenance of merit list.
 5. The call for appointment is issued by the appointing authority of the office/department as per rules. I have no power to issue call for appointment because I am not competent authority to do so. Otherwise quote the rules, under which the power of issue of call for appointment has been delegated to me.

It would highly be appreciated that copies of the rules as pointed by me may very kindly be supplied to me for further process of the case. In case, the requested copies of rules are not supplied to me for reference and record, then the case will be removed to the honourable courts and higher authority. There is no proof and evidence of the allegations levelled against me.

With regard to the Show Cause Notice, I humbly submit that 'K.P.K. Government Servants (Efficiency & Discipline) Rules, 2011' are absolutely not applicable and not attracted against me particularly when the Inquiry Committee himself admitted my efficient work in his Inquiry Report.

Sir, so far as the codal formalities as pointed-out in the referred show cause notice are concerned, the same do not cover under the *ibid* Rules of 2011. Let it not be gone un-noticed that my appointment was in accordance with law and procedure; however, had there been any deficiency in my appointment (although denied) the same would have been the fault on the part of the then appointing authority which were to be fulfilled/observed by the then Principal/Chief Executive GMC; and I, being a civil servant, cannot be held responsible or penalized or abused for the acts done or not done (which were required to be done) by the then authority. My rights being a Civil Servant is protected which cannot be subject to any objection under any rules, regulations or law of the land.

Dated 02-12-2013

Yours Obediently

Shahid Masood
J/C Estt: GMC
DIKhan

To

The Director General Health Services,
Khyber Pakhtunkhwa,
Peshawar

Subject: **DEPARTMENTAL APPEAL / REPRESENTATION
AGAINST THE TERMINATION LETTER NO 306-11
DATED 22-01-2014 ISSUED BY THE PRINCIPAL
GOMAL MEDICAL COLLEGE DIKHAN**

Respected Sir,

The applicant submits as under

I have the honour to submit few lines for your kind consideration as under:

1. That I, the applicant was appointed as Junior Clerk BPS -07 in Gomal Medical College DIKhan vide office order dated 26-11-2010 after being recommended by the Departmental Selection Committee as per Law.
2. That in the meanwhile, Secretary Health Department issued a letter No.SOH-III/8-89/2011 (Yasmin Bibi) dated 06-07-2011 directing the respondent Principal, Gomal Medical College DIKhan to cancel the appointment of applicant. The applicant challenged the said letter in writ petition No. 39 of 2012 and the honourable High Court vide Judgment dated 19-09-2013 was pleased to allow the writ petition and thereby cancelled the ibid letter dated 06-07-2011; however , the Department was set at liberty to proceed in accordance with law after fulfilling codal formalities.

3. That thereafter, a letter No.GMC/Estt:/4685-88 dated 28-10-2013 was issued requiring the applicant for personal hearing regarding appointment of applicant along with written statement on the points mention in the said letter. The applicant replied the letter. However, the principal Gomal Medical College DIKhan issued a Show-Cause notice under Khyber Pkahtunkhwa Government Servants (Efficiency & Discipline) Rule 2011 vide letter No. GMC/Estt:/ 4869-70 dated 19-11-2013 to the applicant showing intention to impose penalty of removal from Service under rule 4 of the said rules. The applicant also replied the same and justified his appointment, however, vide letter No.306-11 dated 22-01-2014 the applicant was removed from service.
4. That being aggrieved of the letter No 306-11 dated 22-01-2014 the applicant is filing present Department Appeal to please set aside the same on the following grounds, amongst others:

- a. That after taking-over the charge as Junior clerk applicant performed the official duties to the entire satisfaction of superiors with high Qualification of MBA which is providing the proof of efficiency , honesty and capability since last 03 years, which fact is admitted by the inquiry officer in the inquiry report.
- b. That the applicant is having prescribed qualification required for the post of junior clerk. There was no complainant against applicant with regard to his performance of duties.
- c. It is pertinent to mention here that no charge was leveled against the petitioner of any misconduct or misbehavior so therefore the KPK Government Servants (Efficiency

&Discipline) Rule 03 , 04 2011' are absolutely not applicable and not attracted against the applicant particularly when the applicant is admittedly "highly qualified competent and hard worker upto the satisfaction of the superiors" by the inquiry committee.

- d. That the codal formalities cannot be covered under E&D Rules of 2011 nor any Show-cause Notice with regard to the Appointment, Promotion & Transfer Rules, 1989 was given to the applicant and similarly the alleged inquiry was also violative of the ibid Rules of 1989 and Rules of 2011.
- e. That the rights of applicant being a Civil Servant are protected which can not be subjected to any objection under any rules, regulations or law of the land.
- f. That appointment of applicant was in accordance with law and procedure and the applicant can not be held liable for the fault (if any) on the part of the then appointing authority. The applicant being a Civil Servant, can not be held responsible or penalized or abused for the acts done or not done(which were required to be done) by the then authority.
- g. That if at all the very appointment of the petitioner was irregular then under the law the very person, who made appointment was responsible and not the petitioner because he never used any unlawful means to get appointment, as there is no charge against him of this nature but the petitioner has been victimized with out lawful justification.
- h. That it is a settled principal of law by now that in such like situation, where the appointee has no fault on his part and the

person, who appointed such like employee have if at all overlooked the rules and regulations then he should be penalized and the appointee should not be disturbed because he gained some lawful rights in the services.

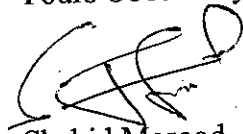
- i. That as mentioned above the very order dated 22-01-2014 is patently against the law, as a major penalty has been imposed against the petitioner, whereas during the entire process no such allegations have ever been leveled or proved against the petitioner, which could have compelled the appointing authority to remove the petitioner from services, therefore, the very order is not in accordance with law.

It is, therefore, humbly prayed that keeping in view the above facts and circumstances, I may kindly be reinstated in services with all back benefits.

Thanking you in anticipation.

03-03-2014

Yours Obediently



Shahid Masood
Ex. Junior Clerk
Gomal Medical College
Dera Ismail Khan

BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL CAMP AT DERA

ISMAIL KHAN.

In Service Appeal No. _____

Shahid Mahood

Versus

Govt: of Khyber Pakhtunkhwa etc

COMMENTS ON BEHALF OF RESPONDENTS NO.2,3,4,5.

RESPECTFULLY SHEWETH:

Respondents humbly submit the following reply to the above cited Service Appeal.

PRELIMINARY OBJECTIONS

1. That the appellant has weak locus standi to file present service appeal.
2. That the Service Appeal is not maintainable.
3. That the appellant has not come to the Court with clean hands.
4. That the appellant has concealed the material facts.
5. That the appeal is badly time barred.
6. That the appellant is estopped due to his own conduct.
7. That the appeal is bad for misjoinder/non-joinder of necessary parties.
8. That the appellant has concealed the material facts from Honorable Tribunal

PARA-WISE REPLY ON FACTS

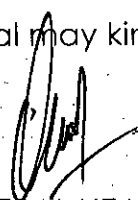
1. Incorrect. The Appellant was appointed without observance of codal formalities, test and interview etc.
2. The direction of respondent No.2 to respondent No.4 and judgment dated 19/09/2013 delivered by the august Peshawar High Court, DIKhan Bench, in Writ Petition No.39/2012, with observations that no codal formalities were followed in the termination of appellant and respondents are at liberty to proceed in accordance with law, after observing the legal and codal formalities.
3. Para No.3 is incorrect and strongly denied. There were no political elements in the departmental inquiry against appellant rather the departmental inquiry was conducted in a transparent manner by an impartial inquiry officer and appellant too did not raise any objection during said inquiry proceedings. In-fact it was the appellant who exerted political pressure for his appointment and he succeeded to get his appointment as Junior Clerk without any advertisement and test/interview etc. This fact is obvious through the contents of appointment letter of appellant that his appointment was made on the recommendation of MPA DIKhan.


4. This Para is incorrect. The departmental appeal of the appellant, was rejected by the competent authority vide letter No.2466-68/Personnel dated 03/04/2014.

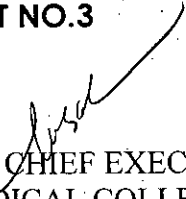
GROUNDS

- A. Para-A is incorrect thus denied.
- B. Para-B is misconceived and incorrect thus denied. As the appointment of appellant was without any advertisement, test, interview, merit list therefore, it cannot be sustained under the law. Moreover, the departmental appeal of the appellant was rejected by the competent authority.
- C. Incorrect thus denied. Detail reply has been given in above paras. Let it not be gone un-noticed that the appointment order of appellant bespeaks the exertion of political influence for his appointment.
- D. Incorrect therefore, strongly denied.
- E. Incorrect, misconceived and strongly denied. In-fact it was the appointment of appellant which was made without any legal and justified reason.
- F. Incorrect and vehemently denied.
- G. Incorrect and not admitted at all. The affidavit is not valid.
- H. Incorrect and thus denied.
- I. Appellant has no further legal grounds to urge.

It is therefore humbly prayed that in the light of above submission the Service Appeal may kindly be dismissed.


DIRECTOR GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA, PESHAWAR
RESPONDENT NO.3


SECRETARY TO GOVERNMENT
OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT PESHAWAR
RESPONDENT NO.2


PRINCIPAL / CHIEF EXECUTIVE
GOMAL MEDICAL COLLEGE
DHQ/MMM TEACHING HOSPITAL DIKHAN
RESPONDENT NO.4, 5

Recd
15-3-16



DIRECTORATE GENERAL HEALTH
SERVICES, GOVT: OF KHYBER
PUKHTUNKHWA, PESHAWAR.
NO 2466-68 /PERSONNEL
DATED 3 /04/2014.

To,

1. Shahid Masood Ex: Junior Clerk
GMC D.I Khan.
2. Mr. Raees Khan S/o Sagheer Khan
R/o Shah Alam Abad Tehsil and District
D.I Khan.

Subject: **APPEAL.**
Memo:

I am directed to refer to your appeal dated 03.03.2014, on the subject noted above.

The court verdict is not in your favour. Therefore, your termination orders issued by the Principal GMC D.I Khan are very much correct.

Your appeal for re-instatement in to Govt: service have therefore been considered by the competent authority and can not, it is regretted be acceded to.

07/4/14
ASSISTANT DIRECTOR (P-II)
DIRECTORATE GENERAL HEALTH
SERVICES, K.P.K PESHAWAR

Principal GMC D.I Khan
H. M. S. M. Ali Shah

434
13-04-14

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL CAMP AT DERA
ISMAIL KHAN.**

In Service Appeal No. _____

Shahid Mahood
Versus
Govt: of Khyber Pakhtunkhwa etc

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PARA-WISE REPLY ON FACTS


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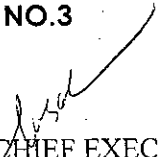
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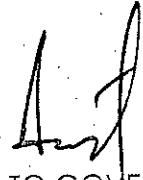
GROUNDS

- A. Para-A is incorrect thus denied.
- B. Para-B is misconceived and incorrect thus denied. As the appointment of appellant was without any advertisement, test, interview, merit list therefore, it cannot be sustained under the law. Moreover, the departmental appeal of the appellant was rejected by the competent authority.
- C. Incorrect thus denied. Detail reply has been given in above paras. Let it not be gone un-noticed that the appointment order of appellant bespeaks the exertion of political influence for his appointment.
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KHYBER PAKHTUNKHWA, PESHAWAR
RESPONDENT NO.3


PRINCIPAL / CHIEF EXECUTIVE
GOMAL MEDICAL COLLEGE
DHQ/MMM TEACHING HOSPITAL DIKHAN
RESPONDENT NO.4, 5


SECRETARY TO GOVERNMENT
OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT PESHAWAR
RESPONDENT NO.2



19/4/14

DIRECTORATE GENERAL HEALTH
SERVICES, GOVT: OF KHYBER
PUKHTUNKHWA, PESHAWAR.
NO 2466-68 /PERSONNEL
DATED 3 /04/2014.

To,

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GMC D.I Khan:
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19/4/14

ASSISTANT DIRECTOR (P-II)
DIRECTORATE GENERAL HEALTH
SERVICES, K.P.K PESHAWAR

Principal GMC D.I Khan

H.S.M Ali Shah