

05th July, 2022

Counsel for appellant present. Mr. Kabir Ullah Khattak,
Additional AG for respondents present.

Respondents have not submitted written
reply/comments. Learned AAG seeks time for submission of
written reply/comments. Last chance is given. To come up for
written reply/comments on 05.09.2022 before S.B.



(Kalim Arshad Khan)
Chairman

05.09.2022

Appellant present through counsel.

Kabir Ullah Khattak, learned Additional Advocate
General for respondents present.

Despite last, reply was not submitted. Therefore,
case is adjourned on payment of cost of Rs. 2000/- to be
paid on behalf of respondents. To come up for
reply/comments on 10.10.2022 before S.B.



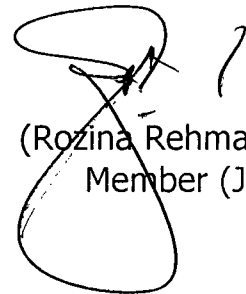
(Rozina Rehman)
Member(J)

22.12.2021 Appellant present through counsel.

Preliminary arguments heard. Record perused.

Points raised need consideration. Instant 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, notice be issued to respondents for submission of written reply/comments. To come up for written reply/comments on 08.03.2022 before S.B.

Appellant
Security & Process Fee
22/12/21


(Rozina Rehman)
Member (J)

08.03.2022

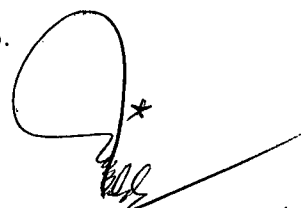
Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 26.05.2022 for the same as before.


Reader.

26.05.2022

Learned counsel for the appellant present. Mr. Noor Zaman Khattak, District Attorney for the respondents present.

Previous date was changed on the ~~strength~~ of Reader note, therefore, notice be issued to the respondents for submission of written reply/comments. Adjourned. To come up for written reply/comments on 05.07.2022 before S.B.


(Mian Muhammad)
Member (E)

27.05.2021

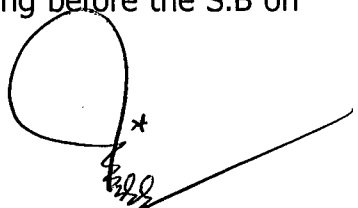
Mr. Haider Ali, Clerk of Syed Numan Ali Bukhari, Advocate, counsel for the appellant is present. Submitted an application for adjournment as learned counsel for the appellant is engaged before Hon'ble Peshawar High Court, Peshawar today. Allowed. To come up for preliminary hearing 08.09.2021 before S.B.


Chairman

08.09.2021

Learned counsel for the appellant present.

Learned counsel for the appellant requested for adjournment on the ground that has not made preparation for arguments. Adjourned. To come up for preliminary hearing before the S.B on 26.10.2021.


(MIAN MUHAMMAD)
MEMBER (E)

26.10.2021

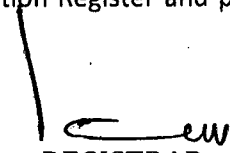


Junior to counsel for the appellant present. Learned senior counsel for the appellant is not available due to his engagement before the MTI Tribunal. Adjourned. To come up for preliminary arguments on 23.12.2021 before the S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No.- 16406 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	22/12/2020	<p>The appeal of Mr. Zeenat Ali presented today by Syed Noman Ali Bukhari Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>08/02/21</u></p> <p> CHAIRMAN</p>
	08.02.2021	<p>Junior to counsel for appellant present.</p> <p>He made a request for adjournment as senior counsel is not available. Adjourned. To come up for preliminary hearing on 27.05.2021 before S.B.</p> <p> (Rozina Rehman) Member (J)</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 16406/2020

Zeenat Ali

V/S

Health Deptt:

.....

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Zeenat

APPELLANT

Zeenat Ali

THROUGH:

Syed Noman Ali Bukhari

(SYED NOMAN ALI BUKHARI)

ADVOCATES, HIGH COURT

PESHAWAR

①

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2020

Zeenat Ali S/o Ameer Gul Ex-Electrician
Agency Head Quarter Hospital Parachinar.

.....(Appellant)

VERSUS

1. The Director General Health Services KP Peshawar.
2. The agency Surgeon Khurram Parachinar.

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER OF RESPONDENT NO. 1 DATED 16.12.2020 WHEREBY, DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE TERMINATION ORDER DATED 02.12.2008 HAS BEEN REJECTED FOR NO VALID GROUNDS.

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 16.12.2020 AND 02.12.2008 MAY PLEASE BE SET ASIDE BEING VOID-AB-INITIO AND THE APPELLANT MAY BE REINSTATED IN TO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

9

RESPECTFULLY SHEWETH:

FACTS:

Facts giving rise to the present service appeal are as under:

1. That the appellant was the employee of the Health Deptt and work with full zeal and devotion and even in ERA of Taliban appellant alone performing duties till 05.12.2007.
2. That thereafter, appellant due to illness of his wife didn't performed his duties because the treatment of the appellant's wife was only possible in Karachi and that days the situation of parachinar is so bad and talabinism is on peak and operation was also started the village of the appellant was also destroyed, so the absentia of the appellant was not willing full but due to above mentioned reasons.
3. That, thereafter, when situation of Parachinar became better in 2013 and transport was started, so the appellant came to office and report for duty but appellant was informed that the appellant was departmentally proceeded but without charge sheet, statement of allegation, regular inquiry and even without showcause notice, the impugned order dated 02.12.2008 (received by the appellant on 01.10.2013) was passed against the appellant under E&D Rules 1973 however at that time *RSO 2000* in Field whereby the appellant was terminated from service. So whole action taken against the appellant is void-ab-initio. The appellant has been aggrieved from the impugned dismissal order preferred departmental appeal, the same was also rejected vide order dated 16.12.2020. **(Copy of impugned order, departmental appeal and rejection order is attached as Annexure-A, B & C).**
4. That now the appellant come to this august Tribunal on the following grounds amongst others.

GROUND:

- A) That the impugned orders dated 02.12.2008 and 16.12.2020 is against the law, facts, norms of justice and void-ab-initio as has been passed under repealed law and material on record, therefore not tenable and liable to be set aside.
- B) That in the impugned order appellant was terminated from service and the termination is no penalty under relevant rules which was void in the eye of law and according to service tribunal judgment


titled as Faiz Muhammad vs Judiciary Appeal No. 1208/2017 decided on 18.07.2020 and no limitation run against the void order.

- C) That there is no order in black and white form to dispense with the regular inquiry which is violation of law and rules and without charge sheet, statement of allegation and proper inquiry the appellant was dismissed from the service vide order dated 02.12.2008, without given personal hearing which is necessary and mandatory in law and rules before imposing major penalty. So the whole procedure conducted has nullity in the eye of law and void ab initio. So the impugned order is liable to be set aside.
- D) That the appellant was proceeded under repealed law E&D rules 1973 because at that time RSO 2000 in field so the whole proceeding taken under repealed law is void according to latest judgment of service tribunal and no limitation run against the such orders which was passed under repealed law.
- E) That the appellant has been condemned unheard and has not been treated according to law and rules.
- F) That the appellant has not been treated under proper law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- G) That the absent of the appellant was not intentionally but due to some domestic problem and serious illness. So the penalty imposed upon the appellant was so harshed.
- H) That no chance of personal hearing was provided to the appellant and as such the appellant has been condemned unheard throughout.
- I) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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


APPELLANT
Zeenat Ali

THROUGH:


(SYED NOMAN ALI BUKHARI)
ADVOCATES, HIGH COURT
PESHAWAR

(9)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2020

Zeenat Ali

V/S

Health Deptt:

.....

**APPLICATION FOR CONDONATION
OF DELAY IN THE INSTANT APPEAL**

RESPECTFULLY SHEWETH:

1. That the instant appeal is pending before this Honourable Tribunal in which no date has been fixed.
2. That the impugned order was passed under repealed law which was not admissible and void order according to Supreme Court Judgment resportes as 2007 PLD (CS) 52(F) & 1985, SCMR, 1178.
3. That according to Superior Court Judgment there is no limitation run against the void order. So there is in interst of justice the limitation may be condoned.
4. That the august Supreme Court of Pakistan has held that decision on merit should be encouraged rather than knocking-out the litigants on technicalities including limitation. Therefore, appeal needs to be decided on merit (2003, PLD (SC) 724.
5. That, the appeal of the appellant on merit is good enough to be decided on merits.

It is therefore most humbly prayed that the instant appeal may be decided on merit by condoning the delay to meet the ends of justice.


APPELLANT

Zeenat Ali

THROUGH:


(SYED NOMAN ALI BUKHARI)

ADVOCATES, HIGH COURT

PESHAWAR

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AFFIDAVIT

It is affirmed and declared that the contents of appeal and application are true and correct to the best of my knowledge and belief and nothing has been concealed from Hon'able tribunal.


DEPONENT

Annexure: A

~~FF~~ (6)

DIRECTORATE OF HEALTH SERVICES FATA
FATA SECRETARIAT WARSAK ROAD PESHAWAR.

No. 19313 /DHS/FATA/Admn

Date: 18/10/08

To,

The Medical Superintendent,
AHQ:Hospital Parachinar.

Subject: - ABSENCE FROM DUTY.

Memo:-

Reference your letter No.2003/C-7 dated 7.8.2008, on the subject noted above.

The termination order of Mr:Zeenat Ali Electrician AHQ:Hospital Parachinar may be issued, if the required code formalities are fulfilled, at your own level under intimation to this Directorate. The post will be advertised in the press for fresh recruitment as and when the ban is released.

Director Health Services,
FATA, Peshawar.

Short
may

Handwritten signature at the bottom of the page.

OFFICE OF THE AGENCY SURGEON KURRAM PARACHINAR.
OFFICE ORDER.

The codal formalities have been completed by the Medical Superintendent Agency Head Quarter Hospital Parachinar vide his letter No 2579/C-7 dated 8/11/2008 and according to the instructions of Director Health & Population Welfare FATA Peshawar vide his letter No 19313/DHS/FATA/Admn dated 18/10/2008 to issue the termination order of Mr. Zeenat Hussain Electrician of Agency Head Quarter Hospital Parachinar due to his prolong wilful absence after fulfilling the codal formalities.

In view of the above the Services of Mr. Zeenat Hussain Electrician of Agency Head Quarter Hospital Parachinar is hereby terminated with immediate effect under Efficiency and Disciplinary Rules 1973.

Sd/ x x x
Agency Surgeon Kurram
Parachinar.

No. 5326-281 R-5 dated Parachinar the 2/12/2008.

Copy forwarded to:-

- 1 The Director Health and Population Welfare FATA Peshawar .
- 2 The Medical Superintendent Agency Head Quarter Hospital Parachinar.
- 3 ✓ Mr. Zeenat Hussain Electrician of Agency Head Quarter Hospital Parachinar for information.

Agency Surgeon Kurram
Parachinar.

رسید سند التسلیم

دانشگاه آزاد اسلامی - واحد تهران - دانشکده حقوق - شعبه حقوق کیفری

تاریخ: ۱۳۹۲/۰۵/۲۳

موضوع: بررسی حقوق کیفری در جرائم علیه امنیت

این گزارش در راستای انجام فرآیند تحقیق و تکمیل پرونده کیفری در خصوص ارتکاب جرم علیه امنیت ملی در تاریخ ۱۳۹۲/۰۵/۲۳ تنظیم گردید.

در خصوص ارتکاب جرم علیه امنیت ملی، باید به این نکته توجه داشت که این جرم از جرائم علیه امنیت است و در صورت ارتکاب آن، مرتکب مجرم است.

بر اساس ماده ۵۰۰ قانون مجازات اسلامی، هر کس که اقدام به ارتکاب جرم علیه امنیت ملی نماید، مجرم است و به حبس ابد محکوم خواهد شد.

در این مورد، با توجه به اقراریات متهم و شواهد موجود، می‌توان نتیجه گرفت که متهم مرتکب ارتکاب جرم علیه امنیت ملی شده است.

بنابراین، پیشنهاد می‌گردد که متهم به حبس ابد محکوم گردد.

تعداد صفحات: ۸ - تاریخ تنظیم: ۱۳۹۲/۰۵/۲۳

محل امضاء و مهر

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محل امضاء و مهر

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OFFICE OF THE
MEDICAL SUPERINTENDENT
AHQ HOSPITAL PARACHINAR.

NO _____/PF Dated _____/2014.



To

Agency Surgeon
Kurram Parachinar.

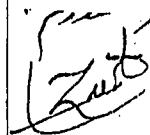
Subject; APPLICATION
Sir.

Enclosed please find herewith an original application in respect of Mr Zeenat Ali Ex Electrician of this office which is self explanatory for further necessary action please.

Encl; 1.


Medical Superintendent
Agency Head Quarter Hospital
 Parachinar

دوستی و ملہ فرزندہ بانہ اوسکے کو میں سکھانے اور ان کو کرم لکھی



Date 22/11/2020

Yours Sincerely
Teemat Ali s/o Ameer Ghum
(0344 9365 794)
(0206 00 95 663)

Sir I have done 14 years of service and has a very good reputation in Hospital. I accept my mistake and apologize for that please reinstate me as Electrician on vacant post in DH Hospital Kurram Parachinar.

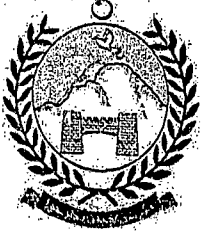
by DHO Kurram
Parachinar and when I came to know that I moved to Karachi for treatment of my wife and tuberculosis in 2013 when situation get better I came here and got terminated in the year 2008. It is stated that lost respectfully of my wife and tuberculosis in Karachi.

Sir:

Subject Request For Reinstatement as Electrician.
DH Hospital Parachinar on vacant post
Peshawar KPK
Director General Health Services

10

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(11)

DIRECTORATE GENERAL HEALTH SERVICES KHYBER PAKHTUNKHWA PESHAWAR

E-Mail Address: nwfdghs@yahoo.com office Ph# 091-9210269 Exchange# 091-9210187, 9210196 Fax # 091-9210230
No. 3158-59 / Personnel Dated: 30 / 11 / 2020

To,

Mr. Zeenat Ali S/O Ameer Ghulam
Cell No. 0344-9365794/ 0306-0095663.

Subject: **REQUEST FOR REINSTATEMENT AS ELECTRICIAN IN DHQ
HOSPITAL PARACHINAR ON VACANT POST.**

Memo

Reference to your appeal dated 22.11.2020 on the subject noted
above.

You are hereby directed to attend this Directorate for personal
hearing on any working day.


DIRECTOR GENERAL HEALTH
SERVICES, K.P.K PESHAWAR. *Rvt*



12

DIRECTORATE GENERAL HEALTH SERVICES KHYBER PAKHTUNKHWA PESHAWAR

E-Mail Address: nwfpdghs@yahoo.com office Ph# 091-9210269 Exchange# 091-9210187, 9210196 Fax # 091-9210230
No. 3761 /Personnel Dated: 16 / 12 /2020


To,

Mr. Zeenat Ali S/O Ameer Ghulam
Cell No. 0344-9365794/ 0306-0095663.

Subject: **REQUEST FOR REINSTATEMENT AS ELECTRICIAN IN DHQ
HOSPITAL PARACHINAR ON VACANT POST.**

Memo

Reference to your appeal dated 22.11.2020 on the subject noted above and to state that your appeal for reinstatement in to Government service has been considered but it is regretted be acceded to as all the codal formalities have been completed by the competent authority at the time of your termination & after 12-years it cannot be entertained as per rules.


DIRECTOR GENERAL HEALTH
SERVICES, K.P.K PESHAWAR. *Rit*

بعدالت

KD Service Pridal P...
 K.D. Service Pridal P...

2ء مخانب
 بنام

Zeena Ali

VS

Health Dept

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروں سے کارروائی متعلقہ

آن مقام پیش اور کیلئے سید نمان علی بخاری
 مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
 وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
 بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
 اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
 مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
 تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں
 اور اس کا ساختہ پرداخت منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
 سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
 گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

Syed Noman Ali Bukhari
 Advocate
 Attested
 Agent

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ماہ

المرقوم

العہدہ العہدہ
 کے لئے منظور ہے۔

213032-261108-5
 (Z)

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD S.B
PESHAWAR.

No.

Appeal No..... 16406 of 20 20

..... Zeenat Ali Appellant/Petitioner

Versus

Reqd

..... The Director General Health Respondent KPK

Respondent No..... 2

Notice to: — the Agency Surgeon Kurram Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on..... 8/3/22 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No..... dated.....

Given under my hand and the seal of this Court, at Peshawar this..... 29th

Day of..... Dec 20 21

(for Reply)



Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR. SB

No.

Appeal No. 16406 of 20 20

Zeenat Ali Appellant/Petitioner

Versus

The Director General Health KPK Respondent

Respondent No. 1

Notice to: —

The Director General Health
KPK Peshawar.

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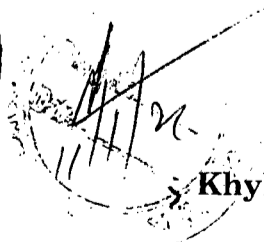
Copy of appeal is attached. Copy of appeal has already been sent to you vide this

office Notice No. dated

Given under my hand and the seal of this Court, at Peshawar this 29th

Day of Dec 20 21

(for Reply)



[Signature]
 Registrar,

Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

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"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

Recd

SB

Appeal No. 16406 of 2020

Zeenat Ali

Appellant/Petitioner

Versus

DG Health Services KP Peshawar

Respondent

Respondent No. (2)

Notice to: — The Agency Surgeon Khuyrom Parachinar

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 05/07/2022 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this 31.....

Day of May 2022

For Reply



Registrar,
 Khyber Pakhtunkhwa Service Tribunal,
 Peshawar.

- Note:**
1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.

“B”

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

SB

No.

16406

2.0

Appeal No. Zeenat Ali of 20

Appellant/Petitioner

DG Health Services ^{Versus} ICP Peshawar

Respondent

Respondent No.

The Director General Health Services ICP Peshawar

Notice to: —

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 05/07/2022 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No. dated

31

Given under my hand and the seal of this Court, at Peshawar this

Day of May 22 20

Fov Raj

[Signature]

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

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