

11.08.2022

Appellant info —
By Telephone

12-8-22

Nemo for petitioner. Mr. Riaz Khan Paindakhel, Assistant Advocate General alongwith Safi Ullah, Focal Person for respondents present.

Learned AAG sought time for submission for submission of implementation report. Notices be issued to appellant and his counsel. To come up for implementation report on 30.09.2022 before S.B.


(Fareeha Paul)
Member (E)

EP 35/2021

22.03.2022

None present on behalf of the petitioner. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Learned AAG seeks time to submit proper implementation report. Notice be issued to petitioner and his counsel for the next date. To come up for implementation report on 06.04.2022 before S.B.

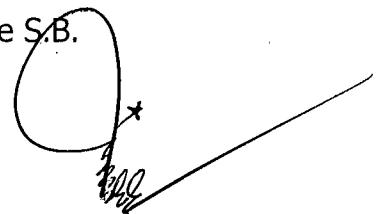


Chairman

06.04.2022

None for the petitioner present. Mr. Kabirullah Khattak, Addl: AG for respondents present.

Learned AAG seeks time to submit implementation report. Notices be issued to the petitioner and his counsel. Adjourned. To come up for implementation on 27.06.2022 before S.B.



(MIAN MUHAMMAD)
MEMBER(E)

27.06.2022

Learned Member (Executive), is on leave. Therefore, the case is adjourned to 03.08.2022 for the same as before.



READER

13.10.2021

Learned counsel for the petitioner present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Dr. Ijaz, DMS for respondents present.

Learned AAG produced copy of the bill submitted to the Account Office. A copy of the same is handed over to the learned counsel for the petitioner. Adjourned. To come up for further proceedings and conclusive implementation report before the S.B on 13.12.2021.


(MIAN MUHAMMAD)
MEMBER (E)

13.12.2021

Petitioner in person present. Mr. Kabirullah Khattak, Addl: AG for respondents present.

Learned AAG seeks time for submission of implementation report as same is under process. Adjourned. To come up for written reply/comments on 02.02.2022 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

02.02.2022


Junior to learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Add: AG for respondents present. Preliminary arguments could not be heard due to learned Member (Executive) Mian Muhammad is on leave. To come up for further proceedings on 22.03.2022 before S.B.


Reader

12.08.2021

Counsel for the petitioner and Mr. Kabirullah Khattak, Addl. AG alongwith Dr. Ijaz, DMS for the respondents present.

It was clearly observed in the previous order dated 23.06.2021 though presumptively that respondent No. 2 could not be so naive to fill the post from which the petitioner/appellant was relieved abortively. According to information furnished today by above named DMS, six appointments were made against all six posts which were occupied by the petitioners before their illegal relieving. The service appeal of the petitioners were instituted on 09.05.2019 while according to respective date of fresh appointments, the posts of the petitioners treating them as vacant were filled after institution of the Service Appeals. It would be better known to the appointing authority that what was the exigency to compel him to fill the posts despite the fact that the petitioners had challenged the order of their illegal relieving firstly through departmental appeal and then through service appeals well in time. The future of the said appointment and affixing the responsibility of making such appointments is the matter of departmental concern but those appointments could not be taken as defence to deny the payment of salaries to the petitioners for the period they were prevented from performing their duties after his illegal relieving. Copy of this order be sent to all respondents and the DMS in attendance has been apprise to get the notice of this order and no further excuse shall be accepted against non-payment of salaries to the petitioners. To come up for implementation report on 13.10.2021 before S.B.


Chairman

of the period during which they remained prevented from performance of the duty due to the orders of respondents as set aside by the judgment of this Tribunal. It is presumed that respondent No. 2 could not be so naive to fill the posts from which the petitioner/ appellants were relieved abortively; and drawal of salary as back benefit on lien of said posts for the period in between their relieving by the impugned order and the date of petitioner's come back on strength of the Tribunal's judgment shall be conveniently possible. So, they shall be paid salary for the said period against such post. The respondents are directed to come up with implementation report as to payment of salary to the petitioner positively on the next date. Adjourned to 12.08.2021 before S.B.



Chairman

23.06.2021

Counsel for the petitioner and Mr. Muhammad Adeel Butt, Addl. AG alongwith Dr. Ijaz Rahmatullah, DMS for the respondents present.

The petitioner seeks implementation of the judgment at his credit for release of salary for unpaid period. It has been observed in concluding part of the judgment that the respondent No. 2 (then posted in first quarter of 2019) miserably failed to have dispensed with his legal duties and responsibilities diligently, honestly and without bias in a befitting and professional manner. He therefore, whimsically, with self grudges and discrimination, single handedly and with a single stroke of pen got rid of appellants (present petitioners) by relieving them of their positions. They were treated like rolling stone between respondents, left not only in the lurch but virtually at the mercy of respondents to run from pillar to post for their due rights of posting and monthly pay. Obviously, there is no specific order as to back benefits as pointed out in objection of respondents pressed into service through learned AAG at the bar but the operative part r/w conclusion part of the judgment about the petitioners having been kicked around in their pursuit for posting and salary leave no room for said objection. The operative part cannot be read in isolation ignoring the observations in the conclusion part of the judgment. Accordingly, the petitioner, irrespective of the objections discussed before are entitled for the salaries

26.02.2021

Learned counsel for the petitioner present.

Notice of the present execution petition be issued to the respondents for submission of implementation report. To come up for implementation report on 04.05.2021 before S.B.



(Atiq Ur Rehman Wazir)
Member (E)

04.05.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 23.06.2021 for the same as before.





Reader

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 39 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	12.01.2021	<p>The Execution Petition submitted by Mr. Niaz Elahi through Mr. Sajid Ur Rehman Khan Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>2-</p> <p>This Execution Petition be put up before S. Bench on <u>29/02/21</u>...</p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

CM No. _____/2021

Niaz Elahi

V/S

DG Health etc.

SERVICE APPEAL

**APPLICATION FOR FIXATION OF THE CASE AT
PRINCIPAL SEAT PESHAWAR**

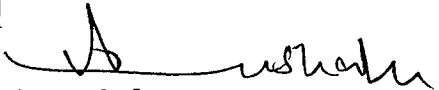
Most respectfully sheweth:-

1. That above titled service appeal was allowed by this Honourable Tribunal at Principal Seat Peshawar as well as the record of the appeal and other connected appeals is also available in the record room at Peshawar.
2. That as per law, the court who decide the appeal/matter has the authority to implement its judgment, hence the application for implementation of judgment will be heard by principal seat.

Therefore, it is humbly prayed that the application for implementation of the judgment may please be fixed at Principal Seat Peshawar

Dated: 18-1-2021

Appellant
Through Counsel


Azra Salman
Advocate High Court
Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

CM No. 32 /2020

IN

Service Appeal No. 611/2019

Niaz Ellahi V/S Director General Health etc

**SERVICE APPEAL
APPLICATION FOR IMPLEMENTATION OF ORDER/
JUDGMENT 30.09.2020 PASSED BY THIS HONOURABLE
TRIBUNAL IN THE TITLED SERVICE APPEAL.**

INDEX

S #	Description	Annexure	Pages
1	Application for implementation of order/judgment with affidavit		1-4
2	Attested copy of service appeal	"A"	5-10
3	Copies of order dated 30.09.2020	"B"	11-22
4	Copy of application	"C"	23
5	Copy of restoration order	"D"	24-25
6	Wakalat Nama		26-27

Dated 28-12-20

Appellant/petitioner

Through

Sajid ur Rehman Khan
Advocate High Court
Haripur

①

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

CM No. _____/2020

IN

Service Appeal No. 610/2019

Niaz Ellahi S/O Noor Ellahi resident of Haripur presently working
as Sweeper at DHQ Hospital District Haripur.

.....Appellant/Petitioner

VERSUS

- (1) Director General Health, Khyber Pakhtunkhwa Peshawar
- (2) Medical Superintendent DHQ Hospital Haripur
- (3) District Accounts Officer, District Haripur

....Respondents

=====
**APPLICATION FOR IMPLEMENTATION OF ORDER/
JUDGMENT OF THIS HONOURABLE TRIBUNAL DATED
30.09.2020 IN CAPTIONED SERVICE APPEAL.**
=====

**PRAYER: On acceptance of the instant application, the
respondents be directed to release the salary
of the petitioner/appellant for unpaid period
and implement the order of this Honourable
Tribunal in its true letter and spirit.**

=====
Respectfully Sheweth:-

1. That the appellant alongwith others filed service appeal
before this Honorable Tribunal against the impugned orders
regarding illegal acts of the respondents respective
positions. Copy of service appeal is enclosed as **Annexure**
"A".

2. That this Honourable disposed off the service appeal alongwith other service appeal on 30.09.2020 with the direction that ***"12. As a sequel to the above, we therefore, accept the present service appeal as well as connected (5) service appeals mentioned above and the impugned orders bearing No. 167-169 dated 03.01.2019 and No. 988 dated 06.02.2019 being illegal, ultra-vires and discriminatory are set aside. The respondents are directed to post the appellants against their original positions previously held by them, immediately. A compliance report to this effect shall be submitted to the service Tribunal within (30) thirty days of the receipt of this judgment, parties are left to bear their own costs. File be consigned to the record room"***. Copy of order dated 30.09.2020 is annexed as **Annexure "B"**.
3. That the appellant submitted application for implementation order of this Honourable Tribunal before the respondents. Copy of application is annexed as **Annexure "C"**.
4. That the respondents issued restoration order in the light of judgment dated 30.09.2020. Copy of restoration order is annexed as **Annexure "D"**
5. That as per direction of this Honourable Tribunal, the respondents were bound to consider the request of applicant and implement the order of this Honourable

Court, withheld the salary for a period of 22-month but the respondents ignored the order and request of applicant.


6. That the applicant visited the offices of respondent time and again but in vain.
7. That the conduct of the respondent is highly contemptuous, contumacious and regrettable in wilfully, knowingly and deliberately disobeying clear direction passed by this Honourable Tribunal in above service appeal and they be ordered to release unpaid salary.
8. That the valuable right of applicant/petitioner is involved.

It is, therefore, humbly prayed that on acceptance of the instant application, the respondents be directed to release the salary of the petitioner/appellant for unpaid period and implement the order of this Honourable Tribunal in its true letter and spirit.

Dated 28-12-20


Appellant/petitioner

Through


SAJID UR REHMAN KHAN
Advocate High Court
At Haripur

VERIFICATION

Verified on oath that the contents of contempt petition are true and correct to the best of my knowledge and nothing has been concealed from this Honourable Court.

Dated 28-12-20


Applicant/petitioner

4

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

CM No. _____/2020
IN
Service Appeal No. 611/2019

Niaz Ellahi V/S Director General Health etc

SERVICE APPEAL
**APPLICATION FOR IMPLEMENTATION OF ORDER/
JUDGMENT 30.09.2020 PASSED BY THIS HONOURABLE
TRIBUNAL IN THE TITLED SERVICE APPEAL.**

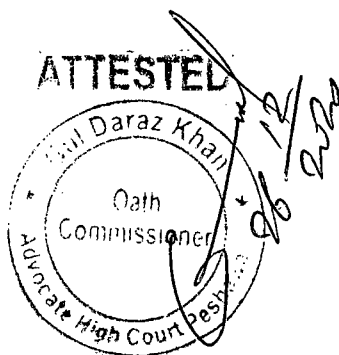
AFFIDAVIT: -

I, Niaz Ellahi S/O Noor Ellahi resident of Haripur presently working as Sweeper at DHQ Hospital District Haripur do hereby solemnly affirm and declare on oath that the contents of foregoing application are true and correct to the best of knowledge and belief and nothing has been concealed therein.

Dated 28-12-20

Deponent
Niaz Ellahi
CNIC # _____

نیا علی



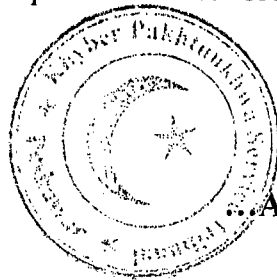
Ann "A"

(5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 608 /2019

Mohammad Safeer s/o Khan Afsar R/o Haripur present Ward orderly at DHQ Hospital Haripur.



...APPELLANT

VERSUS

- 1) DG Health Khyber Pakhtunkhwa, at Directorate General Health Services, Peshawar.
- 2) Medical Superintendent DHQ Hospital Haripur.
- 3) Deputy Medical Superintendent DHQ Hospital Haripur.

4) District Account Office Haripur.

vide order dated 11-3-19

5 District Health officers, Haripur.

...RESPONDENTS

=====

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDERS NO.167-69 DATED 03.01.2019, ISSUED BY RESPONDENT NO.2 VIDE WHICH THE APPELLANT WAS ILLEGALLY RELIEVED FROM HIS RESPECTIVE POSITION AND THEREAFTER THE APPELLANT FILED DEPARTMENTAL APPEAL BUT ALL IN VAIN HENCE THIS SERVICE APPEAL.

=====

Re-submitted to -day and filed.

Registrar

9/5/19.

ATTESTED

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

PRAYER:-

ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, THE IMPUGNED ORDERS NO.167-69 DATED 03.01.2019 AND ORDER NO.988 DATED 06.02.2019 ISSUED BY RESPONDENT NO.2 AND ORDERS NO.494 DATED 14.1.2019 AND ORDER NO.2274-78 DATED 08.02.2019 ISSUED BY RESPONDENT No.1 MAY KINDLY BE DECLARED NULL VOID AND APPLLENT MAY KINDLY BE RESTORED TO HIS PREVIOUS POSITION.


Respectfully Sheweth,

FACTS:

Following facts giving rise to the instant Service Appeal, are arrayed as under:-

1. That, the appellant has been serving in the Health Department at DHQ Hospital Haripur.
2. That, appellant is law abiding citizen and never been found in any illegal, unprofessional, immoral, unethical and corrupt practices.
3. That, due to discriminatory conduct of the Respondent No.3 the union announced the peaceful protest regarding

ATTESTED



MEMBER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

which due notice was served upon the respondent No.2 and other respondent of the district. **(Copy of the notice is attached as Annexure "A")**

4. That, upon assurance of eradication of Mal practice and discrimination the peaceful protest have been withdrawn.

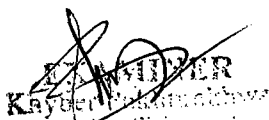
5. That, after sometime, Respondent No.2 without conducting proper enquiry relieved the appellant from his position. **(Copy of impugned order is annexed as Annexure "B")**

6. That, the appellant filed Departmental Appeal before the Respondent No.1 which was decided with the direction of proper enquiry should be conducted against the appellant if he is guilty of misconduct. **(Copy of Departmental Appeal order is annexed as Annexure "C")**

7. That the Respondent No.2 instead of complying the order of appellate authority again relived the Appellant. **(Copy of impugned order is attached as Annexure "D")**

8. That, thereafter, the appellant again filed the Departmental Appeal and respondent No.1 decided in negative hence this service appeal. **(Copy of**

ATTESTED


Kalyan Chandra
Service Tribunal,
Peshawar

Departmental appeal order is annexed as Annexure "E")


G R O U N D S :-

- a) That, the orders No.167-69 dated 03.01.2019, issued by Respondent No.2 is illegal, ultravires, arbitrary, fanciful, perverse, against the principle of natural justice and equity and liable to be set aside on the following grounds.
- i. That, no proper enquiry has been conducted and appellant has been punished in a brutal way.
 - ii. That the appellant approached this forum for the redressal of his grievance and appeal is well within time and the Court has the jurisdiction to entertain the same.
- b. That, the action/ order of the respondent No.2 is amounting to discourage the Public Servant from doing his legal functions as assigned to him under the Rules of Business of the Government.
- c. That the instant service appeal is well within time and Hon'ble Tribunal has the jurisdiction to entertain the same.

PRAYER:

It is, therefore, humbly prayed that on acceptance of the instant Service Appeal, the impugned orders No.167-69 dated 03.01.2019 and

ATTESTED


K. S. Srinivasan
Secretary Tribunal,
Puducherry

order No.988 dated 06.02.2019 issued by respondent No.2 and orders No.494 dated 14.1.2019 and order No.2274-78 dated 08.02.2019 issued by respondent No.1 may kindly be declared null void and Appellant may kindly be restored to his previous position.

M. S. Khan

...APPELLANTS

Through:

Habit Khan

(HABIT KHAN)

Advocate High Court, Abbottabad.

Dated:- 9-4 /2019

VERIFICATION:-

Verified that the contents of the instant Service Appeal are true and correct to the best of my knowledge and belief and that nothing material has been suppressed from this Honorable Court.

M. S. Khan

...APPELLANT

Dated:- 9/4 /2019

ATTESTED
[Signature]
WAZIR
Khan /or / Shakir / M. Khan
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. /2019

Mohammad Safeer

...APPELLANT

V E R S U S

DG Health Khyber Pakhtunkhwa and others

...RESPONDENTS

SERVICE APPEAL

AFFIDAVIT

I, *Mohammad Safeer s/o Khan Afsar R/o Haripur present Ward orderly at DHQ Hospital Haripur, Appellant*, do hereby solemnly affirm and declare on Oath that the contents of instant *Appeal* are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

DEPONENT

M Safeer
...APPELLANT

Dated:- 9-6 /2019

IDENTIFIED BY:-

(Signature)
(HABIB KHAN)
Advocate High Court &
Federal Shariat Court
Islamabad.



Certified to be true copy

(Signature)
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 05/10/20
Number of Words 2400
Copying Fee 26-
Vigent 1-
Total 26-
Name of Copyist (Signature)
Date of Completion of Copy 15/10/20
Date of Delivery of Copy 15/10/20

Annex "B"

11

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Service Appeal No. 608/2019

Date of Institution ... 09.05.2019

Date of Decision ... 30.09.2020



Mohammad Safeer s/o Khan Afsar R/o Haripur present Ward orderly at DHQ Hospital, Haripur. ... (Appellant)

VERSUS

Director General Health, Khyber Pakhtunkhwa, at Directorate General Health Services, Peshawar and four others. ... (Respondents)

MR. Sajid Ur Rehman,
Advocate

--- For appellant

MR. USMAN GHANI,
District Attorney

--- For respondents.

MIAN MUHAMMAD
ROZINA REHMAN

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

JUDGEMENT:

MIAN MUHAMMAD, MEMBER:-

This judgment shall dispose of the instant service appeal as well as five connected service appeals No. 609/2019 titled Iftikhar Ahmad -vs- Director General Health, Khyber Pakhtunkhwa, at Directorate General Health Services, Peshawar and four others, No. 610/2019 titled Anayatullah -vs- Director General Health, Khyber Pakhtunkhwa, at Directorate General Health Services, Peshawar and four others, No. 611/2019 titled Niaz Ellahi -vs- Director General Health, Khyber Pakhtunkhwa, at Directorate General Health Services, Peshawar and four others, No. 612/2019 titled Sajid Ali -vs- Director General Health, Khyber Pakhtunkhwa, at Directorate General Health Services, Peshawar and four others and No. 657/2019 titled Awais Tasleem -vs- Director General Health, Khyber Pakhtunkhwa, at Directorate General Health Services, Peshawar and four others as similar question of law, facts and circumstances are involved therein.

ATTESTED

Attested to be True Copy

Sajid ur Rehman Khan
Advocate

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

02. Gist of the impugned orders is that respondent No.2 (Medical Superintendent DHQ Hospital Haripur) vide letter No. 167-69 dated 03.01.2019 addressed to respondent No.1 (Director General Health Services Peshawar) relieved the following officials of their duties and directed them to report for further posting to respondent No.1.

- 1. Muhamamd Safeer, Ward Orderly.
- 2. Iftikhar, Ward Orderly.
- 3. Muhammad Farid, X-ray Attendant.

03. In response to the above correspondence, respondent No.1 through his letter bearing No. 494 dated 14.01.2019 advised respondent No.2 to withdraw the relieving order in respect of the mentioned officials and initiate disciplinary action against them under the E&D Rules-2011. Similarly, letter No. 988 dated 06.02.2019 written by respondent No.2 and is addressed to respondent No.1 vide which the following officials were relieved from the DHQ Hospital Haripur on grounds of creating administrative problems for the Hospital administration.

- 1. Muhammad Safeer, Ward Orderly
- 2. Muhammad Farid, X-Ray Attendant
- 3. Iftikhar, Ward Orderly.
- 4. Niaz Ilahi, Sweeper.
- 5. Anayat, Ward Orderly.
- 6. Sajid, Mali
- 7. Awais Tasleem, Ward Orderly.

ATTESTED
 EXAMINER
 Cyber Pakhankhwa
 Service Tribunal,
 Peshawar

04. Office order bearing endorsement No. 2274-78/personnel dated 05.02.2019 was issued by Respondent No.1 whereby the services of the above mentioned seven (7) officials were placed at the disposal of respondent No.5 (DHO Haripur impleaded later on vide order sheet dated 19.09.2019) for further posting against the vacant posts.

Attested to be True Copy
 Sajid-ur-Rahman Khan
 Advocate High Court Haripur

05. Brief facts and circumstances leading to institution of the instant service appeal and five other connected appeals are that the officials are Class-IV employees on the sanctioned strength of respondent No.2 (Medical Superintendent DHQ Hospital Haripur) who scheduled and were to stage a protest strike for their demands against the Hospital Administration on 08.12.2018. The Deputy Commissioner Haripur, on the face of "strike call" issued by Para Medical Association (Class IV Health Department Haripur), recorded "PI: send to Assistant Commissioner, Haripur for enquiry and report". The Assistant Commissioner, Haripur vide his letter No. Reader/09/1300-01/AC(H) dated 14.12.2018 assigned the task of enquiry to respondent No.2 with the direction "to inquire into the matter and detailed report". Respondent No.2 constituted a committee comprising Dr. Waseem Ahmad (PMO) and Dr. Rafique Tanoli (PMO) of DHQ Teaching Hospital Haripur. The enquiry committee submitted two pages inquiry report on 02.01.2019 with the following recommendations;

1. Disciplinary action against the culprit Class IV.
2. Uniform and caps be provided to all Class IV staff as is practicing in all teaching institutes.

06. Now taking the shelter of findings and recommendations of the inquiry Committee the appellants were relieved of their duties in DHQ Hospital Haripur vide the impugned letter/order: 06.02.2019 mentioned in the preceding para.

07. On institution of the Service Appeals, the respondents were asked to submit their replies and connected documents in support of their stance vis-à-vis the appellants. They submitted the documents and defended the case through the District Attorney where-after we heard the learned counsels for the parties and perused the available record minutely.

ATTESTED

Attested to be True Copy

Sajid-ur-Rahman Khan
Advocate High Court Haripur

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

14

ARGUMENTS:

08. Learned counsel for Appellants contended that the appellants have been serving in DHQ Hospital Haripur and have never been found in any illegal, unprofessional, immoral, unethical and corrupt practices. The discriminatory conduct of respondent No.3, (Deputy Medical Superintendent DHQ Hospital Haripur), the Union announced a peaceful protest regarding which due notice was served upon respondent No.2 and others. That upon assurance of eradication of malpractice and discrimination, the call for peaceful protest was withdrawn. It was vehemently argued that respondent No.2 without having conducted proper inquiry, initially relieved three (3) appellants of their positions vide letter dated 03.01.2019 and they were condemned unheard who submitted departmental appeal to respondent No.1 on 07.01.2019 and whereon respondent No.2 was directed to conduct proper inquiry against them, if they are guilty of misconduct because relieving/transferring unwilling workers is no remedy. However, instead of initiating proper enquiry by respondent No.2, now seven (7) appellants (3 earlier and 4 more) were relieved of their duties in DHQ Hospital, Haripur through a consolidated order dated 06.02.2019. Moreover, the impugned orders are discriminatory in nature particularly where one of their colleagues namely Fareed Khan, X-Ray Attendant has been restored on his position by respondent No.2 and the appellants relieved of their duties in DHQ Hospital Haripur. The impugned orders by respondent No.2 being illegal, ultra vires, fanciful, perverse, against the principle of natural justice and equity, are therefore, liable to be set aside. .

ATTESTED

[Signature]
 Syber Ahmad
 Service Tribunal,
 Peshawar

09. On the other hand, learned District Attorney representing the respondents contended that the very conduct of these appellants was itself responsible for their being relieved from their positions previously held by them. They were involved in

attested to be true copy
[Signature]
 Sajid-ur-Rehman Khan
 Advocate High Court Haripur

15

unprofessional and unethical activities not commensurate to their official position and were a constant source of trouble to the peaceful atmosphere and administration at DHQ Hospital, Haripur. So much so that one of them i.e Mr. Iftikhar Ahmad had attacked the attendant of respondent No.2 on 22.02.2019 for which FIR No. 243 was registered in Police Station City Haripur on 27.02.2019. They also instigated other staff of the hospital to stand up against the hospital administration and as a result of unpleasant incident dated 22.02.2019, they were not acceptable and once again directed to report to respondent No.1 for further posting, vide letter dated 23.02.2019. Since they were not performing their lawful duties and demanded exemption from duty taking the shelter of being representative of Class-IV Union. The appellants were, therefore, relieved of their positions after fulfillment of legal formalities including enquiry conducted against them by the inquiry committee.

CONCLUSION:

10. After having heard pro and counter arguments of the learned counsels for the parties and perused the record available on file with the assistance of learned counsels, it can safely be concluded that due course of law and rules has neither been observed nor adopted at all in the instant case. The enquiry conducted through two Doctors was basically a fact finding/preliminary enquiry on which the respondents did rely and the whole edifice of case has been built up by them. What actually the enquiry committee recommended was **"the enquiry committee recommends disciplinary action against the culprit Class-IV"**. Similarly,

ATTESTED


respondents no. 1 i.e the Director General Health Services Peshawar had advised respondent No.2 **"to initiate disciplinary action against them under E&D Rules 2011, if they are guilty of mis-conduct as relieving/transfer of unwilling worker is no remedy"**. Respondent No.2 was therefore not only duty bound and required

[Signature]
EXAMINER
 Khayber Pakhtunkhwa
 Service Tribunal,
 Peshawar

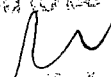
[Signature]
Sajid-ur-Rehman Khan
 Member, Court Haripur

but rightly expected to have initiated formal/proper enquiry under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011 by framing charges through a proper charge sheet and statement of allegations against them and simultaneously appointing an enquiry officer or inquiry committee to conduct formal inquiry. However, it is observed with great concern that being administrator who kept administration and discipline as paramount objectives in hospital, Respondent No.2 did miserably fail to have dispensed with his legal duties and responsibilities diligently, honestly and without bias in a befitting and professional manner. It is apprehended that he did not have knowledge of the disciplinary proceedings against the officials working under him and involved in activities falling in the meaning and parameters of mis-conduct. He, therefore, whimsically, with self grudges and discriminations, single handedly and with a single stroke of pen got rid of them by relieving them of their positions. These appellants were, therefore, treated like rolling stones between respondents, left not only in the lurch but virtually at the mercy of respondents to run from pillar to post for their due rights of posting and monthly pay. **"it is the wearer who knows where the shoe pinches"**. It is a classical case where the idiom is best suited as an example of victimization and injustices meted out to the appellants at the hands of respondents.

ATTESTED


 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

11. The appellants have, therefore, not being treated in accordance with law and canons of natural justice. They have not been given fair trial as enshrined under Article-4 and Article 25 as inalienable fundamental rights duly guaranteed by the 1973 constitution. They have been condemned unheard through one sided preliminary/fact finding enquiry. They have neither been issued proper charge sheet with statement of allegations nor show cause under the Khyber Pakhtunkhwa

Directed to be in copy

 Sajid-ur-Rahman Khan

17

Government Servants (Efficiency and Discipline) Rules, 2011. They have been discriminated when their one colleague nominated in FIR No. 243 by the Hospital Administration namely Fareed Khan was subsequently restored/posted on his original position at their sweet will having left the present appellants to knock the door of court for redressal of their grievances and legal rights.

12. As a sequel to the above, we therefore, accept the present service appeal as well as connected five (5) service appeals mentioned above and the impugned orders bearing No. 167-69 dated 03.01.2019 and No.988 dated 06.02.2019 being illegal, ultra-vires and discriminatory are set aside. The respondents are directed to post the appellants against their original positions previously held by them, immediately. A compliance report to this effect shall be submitted to the Services Tribunal within thirty (30) days of the receipt of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
30.09.2020

(MIAN MUHAMMAD)
Member(E)

Certified to be true copy
Khyber Pakhtunkhwa
Services Tribunal,
Peshawar

(ROZINA REHMAN)
Member(J)

Date of Presentation of Application 05/10/20
Number of Words 2800
Copping Fee 30/-
Deposit 30/-
Total 30/-
Name of Supplier [Signature]
Date of Completion of Copy 15/10/20
Date of Delivery of Copy 15/10/20

Attested to be True Copy

[Signature]
Sajid-ur-Rahman Khan
Advocate High Court Wazirpur

(8)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

611
Appeal No. /2019

Naiz Ellahi s/o Nor Ellahi R/o Haripur present Sweeper at DHQ Hospital Haripur.

...APPELLANT

VERSUS

- 1) DG Health Khyber Pakhtunkhwa, at Directorate General Health Services, Peshawar.
- 2) Medical Superintendent DHQ Hospital Haripur.
- 3) Deputy Medical Superintendent DHQ Hospital Haripur.
- 4) District Account Office Haripur.

...RESPONDENTS

SERVICE APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974 AGAINST THE ORDER NO.255-7 DATED
07.01.2019, ISSUED BY RESPONDENT NO.2 VIDE
WHICH THE APPELLANT WAS ILLEGALLY
RELIEVED FROM HIS RESPECTIVE POSITION
AND THEREAFTER THE APPELLANT FILED
DEPARTMENTAL APPEAL BUT ALL IN VAIN
HENCE THIS SERVICE APPEAL.

Attached to be True Copy

Signature: *[Handwritten Signature]*
Address: High Court Haripur

PRAYER:-

ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, THE IMPUGNED ORDERS NO.255-60 DATED 07.01.2019, ISSUED BY RESPONDENT NO.2 AND ORDERD NO. 769 DATED 21.01.2019 ISSUED BY RESPONDENT NO.1 & orderd no. 988 dated 06/02/2019, ISSUED BY RESPONDENT NO.2 AND ORDERD NO. 2274-78 DATED ~~03~~⁸.02.2019 ISSUED BY RESPONDENT NO.1 MAY KINDLY BE DECLARED NULL AND VOID & APPELLANT ME KINDLY BE RESTORED TO HIS POSITION.

Respectfully Sheweth,

FACTS:

Following facts giving rise to the instant Service Appeal, are arrayed as under:-

1. That, the appellant has been serving in the Health Department at DHQ Hospital Haripur.
2. That, appellant is law abiding citizen and never been found in any illegal, unprofessional, immoral, unethical and corrupt practices.

Attested to be True Copy

Signature
Advocate Rehman Khan
Advocate High Court Haripur

3. That, due to discriminatory conduct of the Respondent No.3 the union announced the peaceful protest regarding which due notice was served upon the respondent No.2 and other respondent of the district. (Copy of the notice is attached as Annexure "A")
4. That, upon assurance of eradication of Mal practice and discrimination the peaceful protest have been withdrawn.
5. That, after sometime, Respondent No.2 without conducting proper enquiry relieved the appellant from his position. (Copy of impugned order is annexed as Annexure "B")
6. That, the appellant filed Departmental Appeal before the Respondent No.1 which was decided with the direction of proper enquiry should be conducted against the appellant if he is guilty of misconduct. (Copy of Departmental Appeal order is annexed as Annexure "C")
7. That the Respondent No.2 instead of complying the order of appellate authority again relieved the Appellant. (Copy of impugned order is attached as Annexure "D")
8. That, thereafter, the appellant again filed the Departmental Appeal and respondent No.1 decided in

Attested to be True Copy

Signature: Rehman Khan
Advocate High Court Wazirpur

negative hence this service appeal. (Copy of Departmental appeal order is annexed as Annexure "E")

GRUNDS:-

- a) That, the orders No.255-60 dated 07.01.2019, issued by Respondent No.2 is illegal, ultravires, arbitrary, fanciful, perverse, against the principle of natural justice and equity and liable to be set aside on the following grounds.
- i. That, no proper enquiry has been conducted and appellant has been punished in a brutal way.
 - ii. That the appellant approached this forum for the redressal of his grievance and appeal is well within time and the Court has the jurisdiction to entertain the same.
- b. That, the action/ order of the respondent No.2 is amounting to discourage the Public Servant from doing his legal functions as assigned to him under the Rules of Business of the Government.
- c. That the instant service appeal is well within time and Hon'ble Tribunal has the jurisdiction to entertain the same.

PRAYER:

It is, therefore, humbly prayed that on acceptance of the instant Service Appeal, the

Attested to be True Copy

Sd/-
Sd/- *Rakman Khan*
Advocate High Court Hyderabad

impugned orders No.255-60 dated 07.01.2019, issued by Respondent No.2 may kindly be declared null and void.& appellant be restored to his respective position.

...APPELLANTS

Through:

Charli Khan
(HABIT KHAN)

Advocate High Court, Abbottabad.

Dated:- 9/4 /2019

VERIFICATION:-

Verified that the contents of the instant Service Appeal are true and correct to the best of my knowledge and belief and that nothing material has been suppressed from this Honorable Court.

Dated:- 9/4 /2019

...APPELLANT

سازالہ

Approved by the T. as Copy

Rahman Khan
Advocate High Court Abbottabad

بخدمت جناب میڈیکل سپرنٹنڈنٹ صاحب DHQ ہسپتال ہری پور

درخواست برائے عملدرآمد فرمائے جانے حکم عدالت سروس ٹریبونل خیبر پختونخواہ پشاور مورخہ

30.09.2020

جناب عالی!

۱۔ یہ کہ من سائل نے اپنی غیر قانونی ٹرانسفر اور سروسز کی ڈسپوزل بنام DG صاحب ہیلتھ و DHO صاحب ہری پور کو سروس اپیل میں بعدالت سروس ٹریبونل خیبر پختونخواہ پشاور میں چیلنج کیا۔ عدالت میں مقدمہ سماعت ہونے کے بعد مورخہ 30.09.2020 کو معزز عدالت نے من سائل / اپیلانٹ کی اپیل ذیل الفاظ کیس اتھ منظور فرمائی۔

12. As a sequel tot heabove, we therefore, accept the present service appeal as well as connected (5) servide apepals mentieond abvoe and the impugned orders bearing No. 167-169 dated 03.01.2019 and No. 988 dated 06.02.2019 being illegal, ultra-vires and discriminatory are set aside. The respondents are directed to post the appellants against their original positions previously held by them, immediately. A compliance report to this effect shall be submtited to the service Tribunal within (30) thirty days of the receipt of this judgment, parties are left to bear their own costs. File be consigned to the record room.

مصدقہ نقولات فیصلہ ہیں۔

۲۔ لہذا استدعا ہے کہ فیصلہ حکم معزز عدالت سروس ٹریبونل خیبر پختونخواہ پشاور مورخہ 30.09.2020 پر عملدرآمد فرماتے ہوئے سائل کو اپنی سابقہ سیٹ / پوسٹ پر بحال فرمائے جانے کا حکم صادر فرمائے جائیں۔

المرقوم 16/10/2020ء

نیاز الہی ولد نور الہی سوپر DHQ ہسپتال ہری پور
نمبر الزانی رابطہ نمبر 03345039244

کاپی برائے اطلاع و مزید کارروائی

ڈائریکٹر جنرل صاحب ہیلتھ سروسز KPK پشاور

Attested to be True Copy

Sybil Khan
Advocate High Court Haripur



24

Ann "D"



DIRECTORATE GENERAL HEALTH SERVICES KHYBER PAKHTUN KWA PESHAWAR

Address: Peshawar, Khyber Pakhtunkhwa office Ph# 091-9210169 Exchanges 091-9210187, 9210196 Fax # 091-9210230

OFFICE ORDER

In compliance of the decision of Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No. 608/2019 dated 30.09.2020 this Directorate office order bearing Endst: No. 2274-78/Personnel dated 25.02.2019 is hereby cancelled.

Subsequently, the following Class-IV staff are hereby directed to report back to DHQ Hospital Haripur against their original place of posting:-

1. Muhammad Safer Ward Orderly.
2. Muhammad Farid X-Ray Attendant.
3. Mr. Itikhar Ward Orderly.
4. Mr. Niaz Elahi Sweeper.
5. Mr. Anayat Ward Orderly.
6. Mr. Sajid Mali.
7. Mr. Awais Tasleem Ward Orderly.

Arrival/ departure report should be submitted to this Office for record.

Sd/xxxxxxx
DIRECTOR GENERAL HEALTH
SERVICES, K.P.K PESHAWAR.
Dated / / 2020

No. /Personnel
Copy forwarded to the:-

1. DHO Haripur.
2. MS DHQ Hospital Haripur with the remarks to adjust the above named Class-IV against their original posts to implement the decision of Hon'able Service Tribunal KP Peshawar.
3. DAO Haripur.
4. Assistant Director (Lit) DGHS Office Peshawar.
5. Officials concerned.

For information and necessary action.

u
3/11
ADDITIONAL DG (ADMN)
DIRECTORATE GENERAL HEALTH
SERVICES, K.P PESHAWAR.
03/11/2020

Attested to be True Copy
Sajid
Sajid
Address: High Court Haripur

25



**OFFICE OF THE MEDICAL SUPERINTENDENT
DHQ TEACHING HOSPITAL HARIPUR**

Ph: No. 0995-351016, Fax No. 0995-351017

No. 3676-76 / Dated 09.11.2020

OFFICE ORDER

Consequent upon the directives of Honourable Khyber Pakhtunkhwa services Tribunal Peshawar:

This hospital's office orders No. 167-69 dated 03-01-2019 & No. 988 dated 06-02-2019 are hereby withdrawn and following officials are directed to continue duties at their original positions in compliance of court orders:-

1. Muhammad Sateer, Ward Orderly
2. Illikhar, Ward Orderly
3. Niaz Ilahi, Sweeper
4. Anayat, Ward Orderly
5. Sajid, Mali
6. Awais Tasleem, Ward Orderly

It is appropriate to mention that Mr. Farid, X-Ray attendant is already working against his original position.


**MEDICAL SUPERINTENDENT
DHQ HOSPITAL HARIPUR**

Copy of the above is forwarded to the;




1. Honourable Khyber Pakhtunkhwa, Service Tribunal Peshawar for information please.
2. Director General Health Services Khyber Pakhtunkhwa Peshawar for information with reference to his subject office order dated 04.11.2020
3. District Accounts Officer, Haripur
4. Accounts Section local office for necessary action
5. Litigation focal person, DHQ Hospital Haripur
6. All concerned official


**MEDICAL SUPERINTENDENT
DHQ HOSPITAL HARIPUR**

Approved for the T. O. Haripur

Sajid Ali, Haripur, District
Accounts Section, Haripur

26

قیمت 50 روپے	70416			
ایڈووکیٹ: ساجد الرحمن خان		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل/ایسوسی ایشن نمبر: B=C-10-1693				
رابطہ نمبر: 0334-951-3025				

بعدالت جناب: سر و سسر ڈیمنو سٹار

منجانب: <u>ایڈووکیٹ ساجد الرحمن خان</u>	دعویٰ: <u>CM in</u>
بنام: <u>ڈیمنو سٹار</u>	علت نمبر: <u>سر و سسر ڈیمنو سٹار</u>
	مورخہ: <u>/</u>
	جرم: <u>/</u>
	تھانہ: <u>/</u>




باعث تحریر آئکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دینے والی متعلقہ
آن مقام سٹار کیلئے ساجد الرحمن خان کو وکیل 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 برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی، نیز
دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ 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 وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا
دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا احد سے
باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المقوم:

_____ مقام

(27)

قیمت 50 روپے	70418			
ایڈوکیٹ: <u>صالحہ</u>		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل/ ایسوسی ایشن نمبر: 16-7156				
رابطہ نمبر: 0335-5364440				

بعدالت جناب: سر و سلسلہ اور

منجانب: <u>مستتر / اظہار</u>	دعویٰ: <u>CM 11</u>
منذرا لکھی	علت نمبر: <u>سر و سلسلہ اور</u>
بنام	مورثہ
(دستخط و نمبر کا)	جرم:
	تھانہ

باعث تحریر آئکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ
آن مقام شاہد علیہ کے محمد علی خان کو دیل 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 بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت 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 اور بصورت ضرورت مقدمہ مذکورہ 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 وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا
دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سندر ہے

المقوم: صالحہ

الع بد گواہ شد الع بد

مقام کے لیے منظور ہے۔