

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1067/2021

Date of institution 08.01.2021

Ijaz Ahmad S/O Sultan Ahmad, Sr. PHC Tech: (BPS-14), RHC, Takht Abad, District Peshawar. R/O Hussain Town, Yousaf Abad, Peshawar.

VERSUS

Government of Khyber Pakhtunkhwa, through Secretary, Health Department, Civil Secretariat, Peshawar and three others.

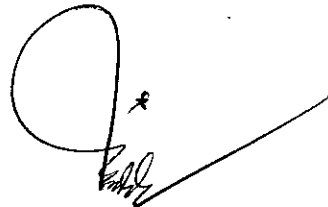
ORDER
16.06.2022

Mr. Muhammad Maaz Madni, Advocate, for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Learned counsel for the appellant stated at the bar that the grievance of the appellant has been redressed, therefore, he wants to withdraw the instant service appeal. In this respect, written endorsement of learned counsel for the appellant obtained at margin of order sheet.

In view of the above, the appeal in hand stands dismissed as withdrawn. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
16.06.2022



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

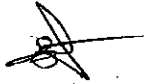


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


*Grievance has been redressed
Therefore wants to withdraw the
Case.*
CB
Counsel.
16.6.2022

25.11.2021

Proper DB is not available, therefore, the case is
adjourned to 3/3/22 for the same ^{at} before ~~DB~~.


Reader

3-3-22

Due to Retirement of the Hon'ble
chairman the case is adjourned to come
up for the same as before on 16-6-22

Reader

06.07.2021

Counsel for the appellant present. Preliminary arguments heard.

Points raised need consideration. The appeal is admitted to regular hearing, subject to all just and legal objections including limitation. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 25.11.2021 before the D.B.

Appellant Deposited
Security & Process Fee

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6/7/2021

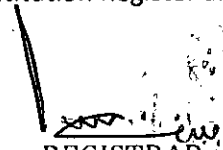
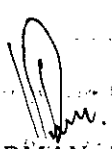

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Chairman

10/30

FORM OF ORDER SHEET

Court of _____


Case No.- 1067 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	15/01/2021	<p>The appeal of Mr. Ijaz Ahmad resubmitted today by Mr. Muhammad Maaz Madni Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	26.03.2021	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>26/03/21</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Junior to counsel for the appellant present and requested for adjournment as senior counsel for the appellant is not available today.</p> <p>Adjourned to <u>06/07/2021</u> for preliminary hearing before S.B.</p> <p style="text-align: right;"> (Rozina Rehman) Member (J)</p>

The appeal of Mr. Ijaz Ahmad son of Sultan Ahmad SPHC Tech. RHC Takht Abad Peshawar received today i.e. on 08/01/2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Copies of salary slips which show the deduction of professional & conveyance allowance are not attached with the appeal which may be placed on it.


No. 39 /S.T,
Dt. 11/01/2021


REGISTRAR,
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Maaz Madni Adv. Pesh.

R/Sir,

Deduction have been made for the suspended period for which salary slips were not issued. However, in respect of deduction entry have been made at page-11 Annexure-D in the service book.
Re-Submitted please


15/01/2021

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

SERVICE APPEAL No. _____/2020

IJAZ AHMAD

VS

GOVT. OF KP
& OTHERS

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08-01-2021

Appellant

Through:


MUHAMMAD MAAZ MADNI,
ADVOCATE

Khattak Law Associates,
Juma Khan Plaza,
WarsakRaod, Peshawar
0333-9313113, 0345-9090737
muhammad.m3adv@gmail.com

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

Khyber Pakhtunkhwa
Service Tribunal

SERVICE APPEAL No. 1067 /2021

Diary No. 505

Dated 08/11/2021

MR. IJAZ AHMAD S/O Sultan Ahmad, Sr. PHC Tech: (BPS-14),
RHC, Takht Abad, District Peshawar
r/o Hussain Town, Yousaf Abad, Peshawar.

.....APPELLANT

VERSUS

- 1- GOVERNMENT OF KHYBER PAKHTUNKHWA,
Through Secretary, Health Department,
Civil Secretariat, Peshawar.
- 2- THE DIRECTOR GENERAL HEALTH SERVICES,
Khyber Pakhtunkhwa, Warsak Road, Peshawar.
- 3- THE DISTRICT HEALTH OFFICER,
Hashnagri, District Peshawar.
- 4- THE ACCOUNTANT GENERAL, KHYBER PAKHTUNKHWA,
Fort Road, Peshawar Cantt:.

..... RESPONDENTS

APPEAL UNDER SECTION- 4 OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT 1974 AGAINST THE ILLEGAL
DEDUCTION OF HEALTH PROFESSIONAL ALLOWANCE @
OF RS. 240,000/- AND CONVEYANCE ALLOWANCE @ OF
RS. 68,544/- FOR THE PERIOD FROM JULY 2018 TO JULY
2020 WHEREBY THE APPELLANT WAS PLACED UNDER
SUSPENSION AND AGAINST NO ACTION TAKEN ON THE
DEPARTMENTAL APPEAL DATED 10-09-2020 OF APPELLANT
WITHIN THE STATUTORY PERIOD

PRAYER:

That on acceptance of this appeal the inaction of the respondents by illegally deducting:

- i. Health Profession Allowance @ of Rs. 240,000/-.
- ii. Conveyance Allowance @ of Rs. 68,544/-.

For the period from July 2018 to July 2020 whereby the salary of the appellant was stopped and was kept under suspension Any other remedy which this august Tribunal deems fit may also be awarded in favor of the appellant.

Filed to-day

Registrar

2/11/2021

Re-submitted to-day
and filed.

Registrar
15/11/2021

Respectfully Sheweth:,

FACTS:

Brief facts giving raise to the instant appeal are as under:

- 1- That, appellant is the Law abiding, Peaceful & bonafide citizen of Pakistan and is a civil servant working under the control of respondents.

Copy of the CNIC is attached as ANNEXUREA.

- 2- That, appellant is the employee of the respondents Department and was appointed as Medical Technician vide order dated 08-03-1986 and after serving for sufficient time was promoted to the post of Senior PHC Technician (BPS-14).

- 3- That, the appellant has served the Department quite efficiently, whole heartedly and upto the entire satisfaction of his superior and as such the appellant has an unblemished service record.

- 4- That appellant while performing his official duty at Category-D Hospital Gara Tajik District Peshawar salary of the appellant was stopped from July 2018 the reason of which would be best known to the respondents and where after the services of the appellant was suspended on account of items that were missing from the store of the hospital vide order dated 02-11-2018.

Copy of the Suspension Order dated 02.11.2018 is attached as ANNEXURE B.

- 5- That the appellant filed a writ petition no. 7056-P/2019 before the Peshawar High Court, Peshawar which was allowed vide judgment dated 18-06-2020 with the direction to the respondents to reinstate the appellant and released the outstanding salaries from the date when it was stopped.

Copy of the Judgment dated 18.06.2020 is attached as ANNEXURE C.

- 6- That the appellant was reinstated and all the salaries were released from the date of its stoppage but unfortunately when the appellant received the salary slip for the month July 2020 the appellant come to know that Health Professional Allowance & Conveyance Allowance for the period from July 2018 to July 2020 has been deducted from the outstanding and accordingly necessary entry had also been made in the service book of the appellant.

Copy of the relevant page of Service Book is attached as ANNEXURE D.

- 7- That, the appellant feeling aggrieved from the illegal deduction of Health Professional Allowance and Conveyance Allowance for the suspended period filed Departmental Appeal dated 10-09-2020 before the respondent no. 2 for tackling up the case of the appellant with respondent no. 4 which was properly allotted with diary number but no response has been received to the appellant within the statutory period of 90 (ninety) days.

Copy of Departmental Appeal dated 10.09.2020
& diary numbers is attached as ANNEXURE
..... E & F.

- 8- That, appellants feeling highly aggrieved from the act of the respondent and having no other adequate or efficacious remedy but to file the instant appeal before this Honourable Tribunal on the following grounds amongst other:

GROUND:

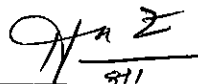
- A- That, the act of the respondents by illegally deducting Health Professional Allowance and Conveyance Allowance for the period from July 2018 to July 2020 is void ab-initio, unconstitutional, against the Law, fact, Rules, norms of Natural Justice and material available on record hence not tenable in the eye of Law.
- B- That, the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C- That, the treatment met out to the appellants is highly discriminatory while illegally deducting Health Professional Allowance and Conveyance Allowance for the period from July 2018 to July 2020 and not releasing the same.
- D- That, the respondent acted in an arbitrary and malafide manner while illegally deducting Health Professional Allowance and Conveyance Allowance for the period from July 2018 to July 2020.
- E- That according to Section-6 of the E&D Rule 2011 the period of suspension is only 90 days but the act of the respondents by keeping the appellant suspended illegally for such long was beyond the approach of the appellant hence deduction of Health Professional Allowance and Conveyance Allowance for the period from July 2018 to July 2020 is illegal and is liable to be released to the appellant.

- F- That the appellant was kept under suspension from 2018 till June 2020 and as per various judgment passed by the apex Supreme Court of Pakistan the employee is entitle for all the allowances during suspension period.
- G- That, act of the respondents is also a clear violation of Article-38 (e) of the Constitution of Islamic republic of Pakistan which states that:
- “to reduce disparity in the income and earning of the individual including the persons in Service of Pakistan”.
- H- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 08.01.2021

Appellant


8/1
IJAZ AHMAD

Through:


MUHAMMAD MAAZ MADNI 8/1
ADVOCATE,
HIGH COURT PESHAWAR

5



Annexure - A

حکومت پاکستان
قومی شناختی کارڈ
17301-1643334-5

اسحاق احمد
جنس: مرد
والد کا نام: سلطان احمد
شناختی ٹائپ: کالی
تاریخ پیدائش: 15/01/1968

امتیاز آجور
دستور ہسٹری جنرل

دستور مائل کارڈ





شناختی نمبر: 17301-1643334-5
نام ان نمبر: TY421C

موجودہ پتہ: ہسپتال کالونی ریزیڈنٹس نمبر 2، پینشن کیمپ، شان اہک
سنگل پتہ: حسین ٹاؤن، پینٹ آباد، دلہ زاک روڈ، پشاور

تاریخ اجراء: 10/12/2014
تاریخ ترمیم: 10/12/2024

گمشدہ کارڈ بننے پر قریبی لیٹر بکس میں ڈال دیں

135688518837



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Advocate

(6)

DIRECTORATE GENERAL HEALTH SERVICES KHYBER PAKHTUNKHWA PESHAWAR



OFFICE ORDER.

Amexuse - B

The services of Mr. Nouman Waheed Store Keeper and Mr. Ijaz Khan Medical Technician attached to Cat: D Hospital Gara Tajik are hereby suspended on account of missing item i-e worth Rs. 1912500/= from said Hospital with immediate effect till further orders.

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

No. 9115-19 /Personnel

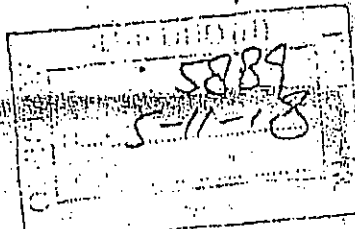
Dated 02/11/2018

Copy forwarded to the:-

1. Director Anti-Corruption Establishment Khyber Pakhtunkhwa Peshawar w/r to this Directorate letter No. 5041-42/personnel dated 14.06.2018. He is requested to pursue the case on urgent basis.
2. DHO Peshawar w/r to his letter No. 18010/DHO dated 04.1.2018. He is hereby directed to issue an Absence Notice to Mr. Ijaz Ahmad Medical Technician in light of MS Gara Tajik letter No. 271-18/Cat-D dated 17.1.2018 on account of absent from duty since 14.09.2018.
3. MS Type-D Gara Tajik Peshawar w/r to his letter No. 271-18/Cat-D dated 17.1.2018.
4. P.A to DGHS, KPK Peshawar.
5. Officials Concerned.

For information and necessary action.

DR. ARSHAD AHMAD
DIRECTOR GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR



ATTESTED
to *OB* by
Advocate

Attested

OB
to be
Advocate

*Law to
concur*

5/11/18

7

Judgment Sheet
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT.

Annexure - C

W.P.No.7056-P/2019

Ijaz Ahmad
 Versus
 Govt: of KPK through Secretary, Health
 Department and others.

Date of hearing 18.06.2020

Petitioners by: Mr. Muhammad Maaz Madani,
 advocate.

Respondents by: Mr. Atif Ali Khan, AAG with Mr.
 Safiullah, Focal Person DGHS, Mastan Ali Shah
 representative of DHO Peshawar.

JUDGEMENT

IJAZ ANWAR. J:- Through instant writ petition.

filed under Article 199 of the Constitution of

Islamic Republic of Pakistan, 1973, the petitioner

has made the following prayer:

“It is therefore, most humbly
 prayed that on acceptance of
 this writ petition this
 Honourable Court may very
 graciously issue an
 appropriate writ direction to
 the respondent:

1. To re-instate the petitioner
 as has already completed

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 Advocate

ATTESTED

EXAMINER
 Peshawar High Court

8

his period of suspension of 90 days since 02.11.2018.

2. To release the monthly salary of the petitioner stopped since October with all back benefits.

3. Any other remedy which this august Court deems fit and has not been specifically ask that may also be awarded in favour of petitioner."

2. Brief facts, as averred in the writ petition are that the petitioner while serving in the respondent department on the post of Senior PHC Technician, was suspended vide order dated 02.11.2018 on account of missing items from the store of the hospital. The monthly salary of the petitioner was also stopped against which he filed several applications before the competent Authority and finally filed an application/request before respondent No.2 but till date neither the petitioner has been re-instated nor his salary stopped since October 2018 has been released. Hence this writ petition.

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Advocate

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EXAMINER
Peshawar High Court

(9)

3. Arguments heard. Record perused.
4. Rule-6 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 deals with the matter of suspension. For the purpose of convenience, the same is reproduced below;

“6.Suspension.—A Government servant against whom action is proposed to be initiated under rule 5 may be placed under suspension for a period of ninety days, if in the opinion of the competent authority, suspension is necessary or expedient, and if the period of suspension is not extended for a further period of ninety days within thirty days of the expiry of initial period of suspension, the Government servant shall be deemed to be reinstated”

5. The impugned suspension order was passed on 02.11.2018 and since then sufficient time has been elapsed. Nothing is available on record to show that the said suspension was ever extended.

Therefore, under Rule-6 of the Khyber

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 Advocate

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 EXAMINER
 Peshawar High Court

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Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, petitioner has the right to be reinstated into service from the date of expiry of period of his suspension.

6. In view of the above, the instant writ petition is allowed with direction to respondents to reinstate the petitioner into service and also to release his salary from the date it was stopped. Moreover, the department is strictly directed to initiate and conclude the departmental inquiry positively within a period of three (03) months if they still desire so.

[Signature]
JUDGE

Announced.
Dated.18.06.2020

[Signature]

JUDGE

D.B Hon'ble Mr. Justice Lal Jan Khattak and Hon'ble Mr. Justice Ijaz Anwar

[Signature]
-CERTIFIED TO BE TRUE COPY
Examined
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Constitution of Pakistan Order 1984
02 JUL 2020

Amir
No. *29*
Date of Presentation of Application *02/07/20*
No of Pages *9/1*
Copying fee *36/-*
Total *36/-*
Date of completion of Copy *02/07/20*
Date of Delivery *02/07/20*
[Signature]

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Advocate
[Signature]

11

Annexure - D

9	10	11	12	13		14	15
Signature and designation of the head of the office or other attesting officer in attestation of columns 1 to 8	Date of termination of appointment	Reason of termination (such as promotion, transfer, dismissal, etc).	Signature of the head of the office or other attesting officer	Leave		Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure, or reward or praise of the Government servant.
				Nature and duration of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government		
					Per-iod		

TR 129 dt: 20/7/20

Drawn Rs. 1446975/- on A/c of pay & Allowances arrears w.e.f. 07/2018 to 31.7.2020 less CA-68544 + HPA 240000/-

[Signature]
21/7/20

[Signature]
21/7/20

[Signature]

[Signature]

ATTESTED

to be true copy Advocate

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The Director General Health Services,
Khyber Pakhtunkhwa, Peshawar.

Annexure - E

Through: Proper Channel

Subject: DEPARTMENTAL APPEAL AGAINST ILLEGAL DEDUCTION OF HEALTH PROFESSION ALLOWANCE & CONVEYANCE DURING SUSPENSION.

R/Sir,

Most respectfully it is stated that I am working as Senior PHC Technician (BPS-14), I have been suspended from duty vide order 02-11-2018 and my salary was also stopped against which I filed writ petition which was allowed in my favour vide judgment dated 18-06-2020 and according my salary was released from the date of stoppage of salary.

I received all the outstanding salaries from the date when it was stopped but when all received the Pay Roll I came to know that some allowance have been deducted from my salary. I inquired it from the Accountant General Office which was clarified that Health Professional Allowance & Conveyance Allowance that is admissible to me under the rules is deducted from me during the suspension period.

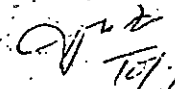
It is, therefore, requested that the case of deduction of Health Professional Allowance & Conveyance Allowance may kindly be tackle up with Accountant General Office Peshawar and outstanding deducted amount be released. I shall be very thankful to you for this kindness.

Attested


ATTESTED

to be true copy
Advocate

Obediently Yours,


10/9/20

IJAZ AHMAD
Sr. PHC Tech:
RHC Garra Tajik,
Peshawar


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Amexuse - F

~~DC/gp 4580p
179/20~~

3947
10/09/2020

DHD

Attested

Advocate
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VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

SERVICE APPEAL No. _____/2021

MR. IJAZ AHMAD Appellant

VERSUS

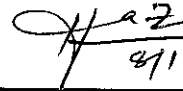
GOVT. OF KP & Others Respondents

I/We Ijaz Ahmad

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

Dated: 08/01/2021

CLIENT(S)



(Ijaz Ahmad)

ACCEPTED



MUHAMMAD MAAZ MADNI^{8/1}

ADVOCATE HIGH COURT, PESHAWAR

(BC-11-1460)

17101-9263898-1

OFFICE:

Juma Khan Plaza, Warsak Road, Peshawar
Mobile No.0345-9090737, 0333-9313113