

SA 5749/2021

13th July, 2022


Appellant alongwith his learned counsel present. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

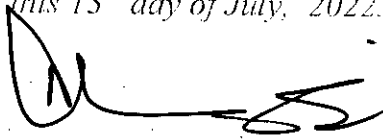
2. Learned counsel for the appellant has very clearly submitted that instant matter was a transfer appeal and during the pendency of this appeal, the appellant stood retired on attaining the age of superannuation. He further submitted that the department was not releasing the salaries of the appellant as a punishment for his filing appeal against the transfer order.

3. Since the appellant has retired and instant appeal is only against the transfer order, therefore, this appeal has rendered fruitless. As regards the request of the learned counsel for the appellant that the department was not only not releasing the salaries of the appellant for the period after his transfer till his retirement but his pension was also not being released.

4. In the backdrop of above situation, this appeal is disposed of being fruitless. The department is, however, directed to release the salaries and pension of the appellant provided there is no other departmental action involved/pending against the appellant making hurdle in such release. The appellant is also at liberty to approach the proper forum if his salaries and pension are not released for any departmental action. Consign.

5. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 13th day of July, 2022.*


(Farzana Paul)
Member (E)



(Kalim Arshad Khan)
Chairman

29.06.2022

Appellant alongwith his counsel present. Mr. Safi Ullah, Focal Person alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment. Adjourned. Last opportunity given. To come up for arguments on 04.07.2022 before the D.B.

(Rozina Rehman)
Member (J)


(Salah-ud-Din)
Member (J)

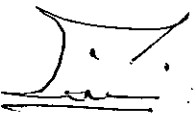
04.07.2022

Appellant alongwith his counsel present. Mr. Safiullah, Focal Person alongwith Mr. Riaz Ahmed Painsdakhel, Assistant Advocate General for the respondents present. Mr. Noor Muhammad Khattak, Advocate for the intervener present.

Learned counsel for the intervener namely Dr. Fazal Basir stated that he has submitted an application for impleadment of Dr. Fazal Basir as respondent in the instant appeal, however the said application is still pending adjudication and requires disposal prior to proceeding further in the instant appeal. Arguments on impleadment application heard and case file perused.

In order to reach a just and right conclusion of the appeal in hand, the impleadment of Dr. Fazal Basir as respondent, is necessary. Moreover, learned counsel for the appellant as well as learned Assistant Advocate General also stated at the bar that they are having no objection on the impleadment application. The impleadment application is, therefore, allowed and Dr. Fazal Basir is impleaded as respondent in the instant appeal. Office is directed to make necessary entry in this respect in the memo of appeal and relevant record accordingly. To come up for reply/comments on behalf of impleaded respondent as well as arguments before the D.B on 13.07.2022.


(Mian Muhammad)
Member (E)


(Salah-ud-Din)
Member (J)

12.11.2021

Appellant alongwith his counsel present. Mr. Muhammad Rasheed, Deputy District Attorney for official respondents present. Mr. Kamran Khan, Advocate junior of learned counsel for Dr. Fazal Baseer present and requested for adjournment on the ground that learned counsel is unable to appear before the Tribunal today due to illness. Adjourned. To come up for arguments before the D.B on 02.12.2021. In the meanwhile, the impugned notification will remain suspended, if not acted upon earlier.

(Atiq Ur Rehman Wazir)
Member (E)


(Salah-ud-Din)
Member (J)

02.12.2021. Proper D.B is on official tour,
therefore, case is adjourned to
31-01-2022 for the same as before.




31.01.2022

Appellant with his counsel present. Mr. Asif Masood Ali Shah, learned Deputy District Attorney for respondents present.

Learned counsel for appellant requested for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 11.02.2022 before the D.B.

(Rozina Rehman)
Member (J)


(Salah-Ud-Din)
Member (J)

24.09.2021

Appellant present through counsel.

Muhammad Rasheed learned D.D.A for respondents present.

Former made a request for adjournment; granted. To come up for arguments on 18.10.2021 before D.B. In the meanwhile, the impugned notification will remain suspended, if not acted upon earlier.

(Rozina Rehman)
Member (J)

Chairman

18.10.2021

Appellant in person present.

Javid Ullah, Assistant Advocate General alongwith Munawar Khan, ADEO for the respondents present.

Lawyers are on general strike, therefore, case is adjourned. To come up for arguments on 12.11.2021 before D.B. In the meanwhile, the impugned notification will remain suspended, if not acted upon earlier.

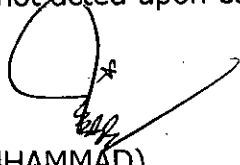
(Atiq Ur Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

24.08.2021

Appellant alongwith his counsel Mr. Malik Ahmad Javed, Advocate, present. Mr. Muhammad Rasheed, DDA alongwith Mr. Ziaullah, Law Officer for the respondents present.

Dr. Fazal Baseer alongwith his counsel Mr. Noor Muhammad, Advocate present and submitted an application for impleadment as respondents in the instant appeal, copy of the application is handed over to the learned counsel for the appellant. To come up for reply as well as argument on impleadment application before the D.B on 13.09.2021. In the meanwhile, the impugned notification is suspended, if not acted upon earlier.


(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

13.09.2021

Appellant with counsel present. Mr. Muhammad Riaz Khan, Asst: AG for official respondents and Mr. Noor Muhammad Khattak, Advocate for Dr. Fazal Baseer present.

Learned counsel for the appellant submitted reply on application for impleadment. Learned AAG seeks adjournment as he is not in possession of the application for impleadment submitted to the court on 24.08.2021. Adjourned. To come up for arguments on 24.09.2021 before the D.B. In the meanwhile, the impugned notification will remain suspended, if not acted upon earlier, as per order sheet dated 10.06.2021.


(Mian Muhammad)
Member(E)


(Atiq-Ur-Rehman Wazir)
Member(E)

28.07.2021

Appellant in person present. Mr. Habibullah Section Officer alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Appellant submitted rejoinder, which is placed on file and sought adjournment on the ground that his counsel is not available today due to strike of Lawyers. Adjourned. To come up for arguments before the D.B on 24.08.2021. In the meanwhile, the impugned notification is suspended, if not acted upon earlier.



(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

08.07.2021

Appellant alongwith his counsel Mr. Malik Ahmed Javed, Advocate, present. Mr. Jaffar Ali, Assistant alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Para-wise comments on behalf of respondents submitted, copy of which handed over to learned counsel for the appellant. Both the sides sought time for arguments. Adjourned. To come up for arguments before the D.B on 28.07.2021. In the meanwhile, the impugned notification is suspended, if not acted upon earlier.


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

08.07.2021

~~Appellant in person present. Mr. AS: Masood Ali Shah,
Member District Attorney present for respondents present.
Appellant submitted no order, which placed on file and
sought adjournment on both sides and his counsel is not
available today due to strike of lawyers. Adjourned. To come up
for arguments before the D.B on 28.07.2021. In the meanwhile,
the impugned notification is suspended if not acted upon earlier.~~

~~AS: Masood Ali Shah
MEMBER (EXECUTIVE)~~

~~AS: Masood Ali Shah
MEMBER (JUDICIAL)~~

Appeal No. 5749/2021
Dr. M. Fayaz Ali vs Govt

10.06.2021

Counsel for the appellant present. Preliminary arguments heard.

Points raised need consideration. The appeal is admitted to regular hearing. 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 08.07.2021 before the D.B.

Appellant Deposited
Security & Process Fee

10/6/21

The appeal is accompanied with an application for suspending the operation of impugned notification dated 12.02.2021. Notice of the application be also issued to the respondents. In the meantime, The impugned notification is suspended, if not acted upon earlier.




Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. - 5749 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	04/06/2021	<p>The appeal of Dr. Muhammad Fayaz Ali resubmitted today by Malik Ahmad Javed 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-	04/06/21	<p>This case is entrusted to S. Bench for preliminary hearing to be up there on <u>10/06/2021</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Dr. Muhammad Fayaz Ali D.G Health Service Office at Peshawar received today i.e. on 03.06.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Certificate be given to the effect that the appellant has not filed any service appeal earlier in the subject matter in this forum.

No. 939 /S.T,

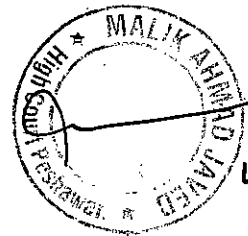
Dt. 04/06 /2021

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Malik Ahmad Javed Adv. Pesh.

Sir,

- (A) In response to para (1) all the relevant/required signs have been affixed.
- (B) In response to para (2) certificate has been attached vide "F"
re-submitted as desired please



URGENT FORM

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. _____/2021

Dr. Muhammad Fayaz Ali.....**Appellant**

VERSUS

Government of Khyber Pakhtunkhwa through Chief
Secretary, & others.....**Respondents**

Service Appeal No. _____

1. Will you kindly treat the accompanying **writ petition** as
urgent and in accordance with the provisions of Rules 9,
Chapter 3-A, Rules orders of the High Court Lahore
Volume V.

2. The Grounds of urgency are:

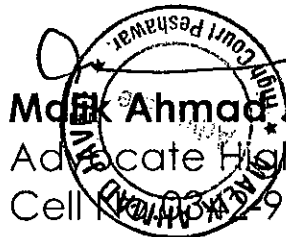
**"That the Appellant being senior Management Cadre
Doctor trained for Public Health Emergency/
acknowledge performance for covid-19 pandemic
containment in the Khyber Pakhtunkhwa by the Office
of Prime Minister of Pakistan and due to the impugned
notification dated 12.02.2021 has not been paid salaries
for three months and also made OSD, therefore the
captioned writ petition may kindly be fixed at earliest."**

Appellant

Through

Dated 03.06.2021

Maqam Ahmad Javed
Advocate High Court
Cell No. 29467550



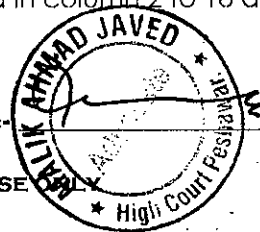
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

1.	Case Title	Muhammad Fayaz Ali Vs Govt. of KPK etc	
2.	Case is duly signed.	Yes	No
3.	The law under which the case is preferred has been mentioned.	Yes	No
4.	Approved file cover is used.	Yes	No
5.	Affidavit is duly attested and appended.	Yes	No
6.	Case and annexures are properly paged and numbered according to index.	Yes	No
7.	Copies of annexures are legible and attested. If not, then better copies duly attested have annexed.	Yes	No
8.	Certified copies of all requisite documents have been filed.	Yes	No
9.	Certificate specifying that no case on similar grounds was earlier submitted in this court, filed.	Yes	No
10.	Case is within time.	Yes	No
11.	The value for the purpose of court fee and jurisdiction has been mentioned in the relevant column.	Yes	No
12.	Court fee in shape of stamp paper is affixed. [For writ Rs. 500, for other as required]	Yes	No
13.	Power of attorney is in proper form.	Yes	No
14.	Memo of addressed filed.	Yes	No
15.	List of books mentioned in the petition.	Yes	No
16.	The requisite number of spare copies attached [Writ petition-3, civil appeal (SB-2) Civil Revision (SB-1, DB-2)]	Yes	No
17.	Case (Revision/ Appeal/petition etc) is filed on a prescribed form.	Yes	No
18.	Power of attorney is attested by jail authority (for jail prisoner only)	Yes	No

It is certified that formalities/documentations as required in column 2 to 18 above, have been fulfilled.

Signature: _____



FOR OFFICE USE

Case:- _____

Case received on _____

Complete in all respect: Yes/ No. (If No, the grounds) _____

Date in court:- _____

Signature _____
(Reader)

Date:- _____

Countersigned:- _____
(Deputy Registrar)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. _____/2021

Dr. Muhammad Fayaz Ali.....**Appellant**

VERSUS

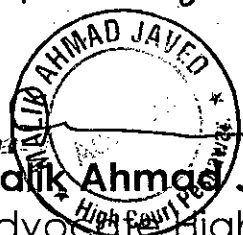
Government of Khyber Pakhtunkhwa through Chief Secretary, & others.....**Respondents**

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S#	Description of Documents	Annex	Pages
1.	Service Appeal		1-9
2.	Affidavit		10
3.	Application for Suspension alongwith affidavit		11-13
4.	Addresses of parties		14
5.	Copy of Notification dated 18.03.2020	A	15
6.	Copy of impugned notification dated 12.02.2021	B	16
7.	Copy of Arrival Report	C	17
8.	Copy of Appeal to Secretary Health	D	18-19
9.	Copy of judgment dated 20.05.2021	E	20-22
10.	Wakalatnama		27

Appellant 

Through



Malik Ahmad Javed
Advocate High Court
Cell No.0342-9467550

Dated 03.06.2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 5749/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5877

Dated 03/6/2021

Dr. Muhammad Fayaz Ali Son of Malik Abdur Rehman
Department of Health, Khyber Pakhtunkhwa
Director General Health Service,
Office at Peshawar.....**Appellant**

Service Appeal No. **VERSUS**

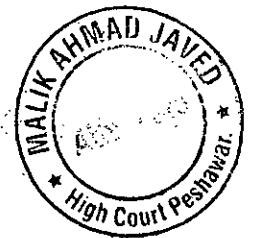
1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar
 2. The Secretary Health Department, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar
 3. Director General Health Service, Khyber Pakhtunkhwa, Peshawar
-**Respondents**

**SERVICE APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL ACT,
1974, AGAINST THE IMPUGNED
NOTIFICATION NO.SOH(HD)E-V/4-4/2021
DATED 12.02.2021 WHEREBY THE
APPELLANT WAS TRANSFERRED FROM DHO
DIR UPPER TO DIRECTOR GENERAL HEALTH
SERVICE, PESHAWAR AND PMO/GENERAL
CADRE DOCTOR WAS ASSIGN THE DUTY**

Filed to-day
Registrar
03/06/2021

**Re-submitted to -day
and filed.**

Registrar
4/6/2021

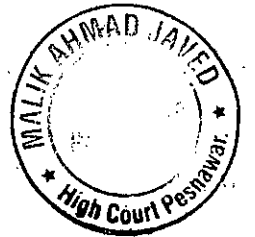


OF DHO, THE DEPRIVE THE APPELLANT FROM THE SAID POST PREMATURELY WHERE THE APPELLANT HAS NOT COMPLETED HIS NORMAL TENURE AND THE GENERAL DOCTOR IS NOT ENTITLED TO BE POST AGAINST THE SCHEDULE POST OF HEATH DEPARTMENT OF MANAGEMENT CADRE

PRAYER IN APPEAL

It is, therefore humbly prayed that on acceptance of this Service Appeal.

- a) The impugned Notification No.SOH(HD)E-V/4-4/2021 dated 12.02.2021 being illegal, unlawful, without lawful authority and thus is of no legal effect and hence liable to be set aside and reversed.
- b) An appropriate direction be issued to respondent to withdraw/recall the impugned Notification No.SOH(HD)E-V/4-4/2021 dated 12.02.2021.
- c) The respondents be directed to restore back the Appellant at his previous post alongwith all back benefits accrued to the appellant.

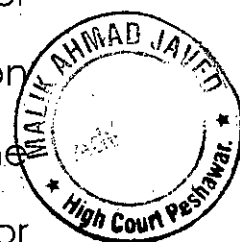


- d) Any other relief, not specifically prayed for in the circumstance of the case may also be passed in favour of the Appellant.

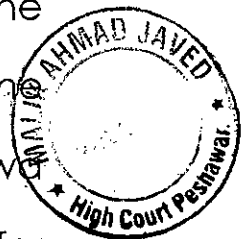
Respectfully Sheweth:

That the Appellant very implore for permission to plead his grievances at the hands of respondents and seeks solace thereto, as follows:

1. That the Appellant joined the Department of Health Khyber Pakhtunkhwa in the year 1997 as Medical Officer and thereafter has started career with zeal and dedication and served public at large and department of Health on various posts/positions to the best of abilities and full satisfaction of superior since appointment, it is also pertinent to mention here that since the appointment of Appellant he had never given any chance to even a minor complaint to his high-up's and has rendered his services with passion and keenness.
2. That, the Appellant being a BPS-19 civil servant, presently is working as DHO Dir Upper.



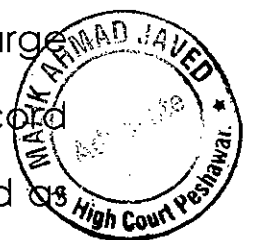
3. That the Appellant was transferred and posted as DHO Upper Dir vide notification No.SOH(HD)/E-V/4-4/2020 dated 18.03.2020. (Copy of Notification dated 18.03.2020 is attached as annexure "A").
4. That thereafter the Appellant was again transferred from DHO Dir Upper and directed to Report to Directorate of General Health Services, Khyber Pakhtunkhwa, Peshawar vide Notification No.SOH(HD)E-V/4-4/2021 dated 12.02.2021. (Copy of impugned notification dated 12.02.2021 is attached as annexure "B").
5. That the Appellant reported to DG Health for duty vide dairy No.6663-91 dated 22.02.2021. (Copy of arrival report is attached as annexure "C").
6. That after submitting the arrival report, the Appellant filed appeal before the respondent/secretary Health, Khyber Pakhtunkhwa Peshawar vide Dairy No.4055 dated 22.02.2021 for cancellation of posting/transfer order dated 12.02.2021. (Copy of Appeal to Secretary Health is attached as annexure "D").
7. That after the lapse of more than 90 days, no response from the competent authority has been



communicated, thus the Appellant is constrained to approach this Hon'ble Tribunal, while having no other adequate or efficacious remedy, hence, this writ petition on the following grounds amongst others:

GR OUN D S:

- A. That the impugned Notification No.SOH(HD)E-V/4-4/2021 dated 12.02.2021 is illegal, wrong, based on malafide, without cogent reasons based on political high handedness and fundamental rights of the Appellant, hence liable to be struck down and reversed.
- B. That vide the impugned notification, the Appellant has been transferred from said post and a general cadre doctor has been assigned the duty /charge of DHO Dir Upper. It is pertinent to place on record that General.Cadre Director cannot be posted as DHO, being schedule management post of health Department. Thus on this score alone, the impugned notification is liable to be set aside.
- C. That neither the Appellant has committed any wrong nor has completed his tenure as DHO Dir Upper, therefore, on this score alone the impugned



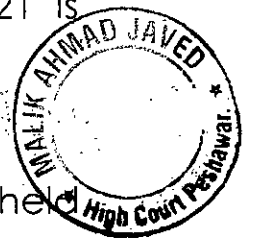
transfer order needs to be reversed as it was purely made on malafide and intervention of the local politicians whereas it is high time that the trend of seeking interference and intervention of such like political figures be discouraged in line with the dictum so laid down by the superior judiciary.

D. That, the transfer and posting policy approved by the competent authority says that all postings/transfers shall be strictly in public interest for **three years** and shall not be abused and misused to victimize the government servant however, most unfortunately, the government servants are always been made scapegoat so as to please the ruling party figures. It is important to mention the that the Appellant had hardly completed 10 months tenure on the same post whilst transferred on the behest of the political leaders.

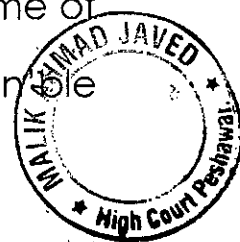
E. That there are placement committees in different departments who recommend different officers to be posted and transferred against different posts but most unfortunately in case of the Appellant none has been contacted and consulted about and all of a sudden in hasty and hefty manner impugned transfer order was issued.



- F. That it is pertinent to mention here that the appellant has been deprived of his monthly salary since 01.03.2021 and now has been posted as OSD in the Office of the Director General Health Service, Peshawar.
- G. That the impugned notification has resulted into visible injustice to the Appellant, as the impugned transfer dated 12.02.2021 has been passed without any legal or plausible justification, hence liable to be reserved and set aside on the aforementioned grounds.
- H. That in similar nature W.P. No.552-M/2021 titled Dr. Shukat Ali Vs Govt. of Khyber Pakhtunkhwa, the transfer order has been declared as illegal and unlawful by Hon'ble Court Mingora Bench (Dar ul Qaza). (Copy of judgment dated 20.05.2021 is attached as annexure "E").
- I. That the August Supreme Court of Pakistan has held in the case of Syed Mamood Akhtar Naqvi etc Vs Federation of Pakistan and others, reported as PLD 2013 Supreme Court 195 that matter of posting and transfer of civil servants cannot be allowed to be dealt with in an arbitrary manner.



- J. That the said respondent has got no authority whatsoever to issue such an illegal transfer order.
- K. That the respondents are travelling way beyond the scope and approach adopted for others thus the approach adopted for the Appellant is in violation of the Article-10-A and 25 of the Constitution of Islamic republic of Pakistan, 1973.
- L. That the impugned order is without jurisdiction and is clearly a colorful exercise of authority.
- M. That even, otherwise, this Hon'ble Tribunal being the constitutional court of the province is vested with the authority and jurisdiction to provide efficacious and appropriate remedy to the Appellant.
- N. That any other grounds will be raised at the time of arguments with the prior permission of this Hon'ble Tribunal.



It is, therefore humbly prayed that on acceptance of this Service Appeal.

e) The impugned Notification No.SOH(HD)E-V/4-4/2021 dated 12.02.2021 being illegal, unlawful, without lawful authority and thus is

of no legal effect and hence liable to be set aside and reversed.

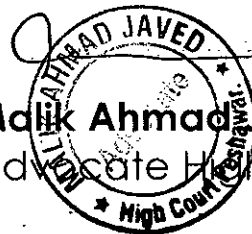
- f) An appropriate direction be issued to respondent to withdraw/recall the impugned Notification No.SOH(HD)E-V/4-4/2021 dated 12.02.2021.
- g) The respondents be directed to restore back the Appellant at his previous post alongwith all back benefits accrued to the appellant.
- h) Any other relief, not specifically prayed for in the circumstance of the case may also be passed in favour of the Appellant.

Appellant

Through

Dated 03.06.2021

Malik Ahmad Javed
Advocate High Court



Sd/- No other appeal has been submitted in this Honble Court



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. _____/2021

Dr. Muhammad Fayaz Ali.....**Appellant**

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, & others.....**Respondents**

Service Appeal No. _____/2021

AFFIDAVIT

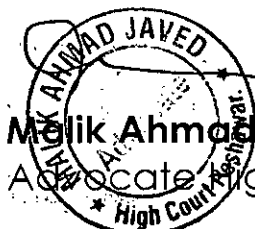
I, Dr. Muhammad Fayaz Ali Son of Malik Abdur Rehman Department of Health, Khyber Pakhtunkhwa DHO Dir Upper, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

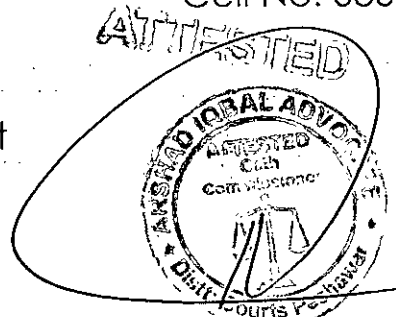
Identified by


DEPONENT

CNIC#:17301-0966902-1

Cell No. 0300-9036992


Malik Ahmad Javed
Advocate High Court


ATTESTED

03:06:2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

C.M. No. _____/2021

In

Service Appeal No. _____/2021

Dr. Muhammad Fayaz Ali.....**Appellant**

V E R S U S

Government of Khyber Pakhtunkhwa through Chief
Secretary, & others.....**Respondents**

**APPLICATION FOR SUSPENDING THE
OPERATION OF THE IMPUGNED
NOTIFICATION NO.SOH(HD)E-V/4-4/2021
DATED 12.02.2021 AND THE RESPONDENTS
MAY ALSO BE RESTRAINED FROM TAKING
ANY KIND OF ADVERSE ACTION AGAINST
THE APPELLANT, TILL THE FINAL DISPOSAL
OF THE MAIN SERVICE APPEAL.**

Respectfully Sheweth:

1. That the titled Service Appeal is being filed before this Hon'ble Tribunal in which no date of hearing is fixed.
2. That the grounds of main appeal may be considered as integral part of this application.

3. That the balance of convenience also lies in favour of the appellant.
4. That the appellant has a good prima facie case and all the three ingredients are in favour of the appellant.
5. That if the operation of the impugned Notification No.SOH(HD)E-V/4-4/2021 dated 12.02.2021 not suspended then the appellant would suffer irreparable loss.

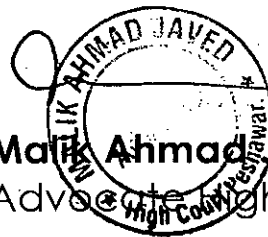
It is, therefore, most humbly prayed that by accepting this application, the interim relief as prayed for in the instant application may kindly be passed in favour of the appellant against the respondents

Appellant

Through

Malik Ahmad Javed
Advocate High Court

Dated 03.06.2021



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

C.M. No. _____/2021
In
Service Appeal No. _____/2021

Dr. Muhammad Fayaz Ali.....**Appellant**

V E R S U S

Government of Khyber Pakhtunkhwa through Chief
Secretary, & others.....**Respondents**

AFFIDAVIT

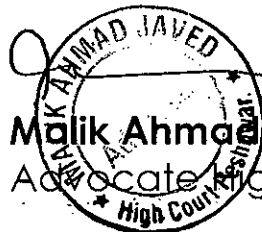
Dr. Muhammad Fayaz Ali Son of Malik Abdur
Rehman Department of Health; Khyber Pakhtunkhwa DHO
Dir Upper, do hereby solemnly affirm and declare on oath
that the contents of the accompanying **Application for
Suspension** are true and correct to the best of my
knowledge and belief and nothing has been concealed
from this Hon'ble Tribunal.

Identified by

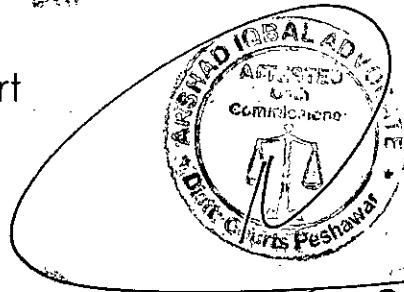

DEPONENT

CNIC#:17301-0966902-1

Cell No. 0300-9036992


Malik Ahmad Javed
Advocate High Court

ATTESTED



03:26:2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. _____/2021

Dr. Muhammad Fayaz Ali.....**Appellant**

V E R S U S

Government of Khyber Pakhtunkhwa through Chief Secretary, & others.....**Respondents**

ADDRESSES OF THE PARTIES

PETITIONER:

Dr. Muhammad Fayaz Ali Son of Malik Abdur Rehman
Department of Health, Khyber Pakhtunkhwa
DHO Dir Upper

RESPONDENTS:

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar
2. The Secretary Health Department, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar
3. Director General Health Service, Khyber Pakhtunkhwa, Peshawar

Through

Appellant

Malik Ahmad Javed
Advocate High Court
Cell No. 0042-9467550

Dated 03.06.2021



Afraz A (18)

**Government of Khyber Pakhtunkhwa
Health Department**

Dated Peshawar the 18th March, 2020

NOTIFICATION

NO. SOH(HD)/E-V/4-4/2020

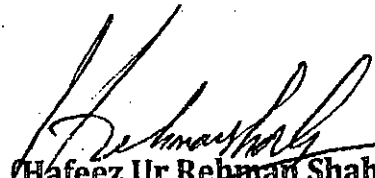
The competent authority is pleased to transfer Dr. Muhammad Fayyaz Ali (BS-19 - waiting for posting) and post him as District Health Officer Dir (Upper) in his own pay & scale, in the best of public interest, with immediate effect.

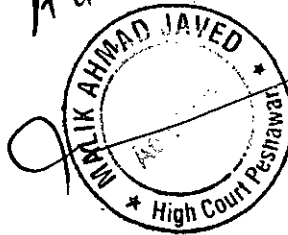
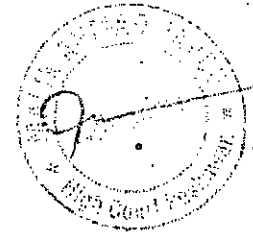
**Secretary Health
Government of Khyber Pakhtunkhwa**

Endst. Of even No. & Date.

Copy to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. District Health Officer, Dir (Upper).
4. DAO, Dir (Upper).
5. Deputy Director (IT), Health Department, with the direction to upload the notification on official website.
6. PS to Minister for Health Department, Khyber Pakhtunkhwa.
7. PS to Secretary Health Department, Khyber Pakhtunkhwa.
8. Doctor concerned.
9. Personal file of the doctor concerned.


(Hafeez Ur Rehman Shah)
Section Officer (E-V)





Government of Khyber Pakhtunkhwa,
Health Department

Amir - B

15

Dated Peshawar the 12th February, 2021

NOTIFICATION

NO. SOH(HD)/E-V/4-4/2021 The Competent Authority is pleased to order Posting/ transfer of the following doctors, in the best public interest, with immediate effect:-

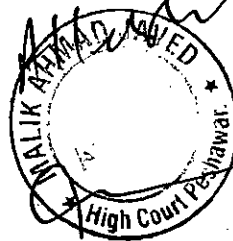
S/No	Name	From	To
1	Dr. Muhammad Fayyaz Ali, (Management Cadre BS-19)	District Health Officer (BS-20), Dir (Upper) in OPS	Report to Directorate General Health Services, Khyber Pakhtunkhwa Peshawar
2	Dr. Fazal Basir, Principal Medical Officer (BS-19)	Medical Superintendent, THQ Hospital Chakdara, Dir (Lower)	District Health Officer (BS-20), Dir (Upper) in his own pay & scale. Vice S.No. 1

Secretary Health
Government of Khyber Pakhtunkhwa

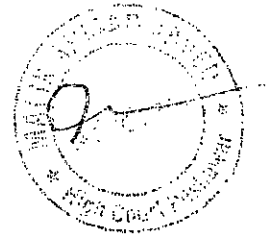
Endst. Of even No. & Date.

Copy to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Commissioner, Dir (Lower & Upper)
4. DHO, Dir (Upper).
5. DAO, Dir (Lower & Upper).
6. MS, THQ Hospital Chakdara, Dir (Lower).
7. Deputy Director (IT), Health Department, with the direction to upload the notification on official website.
8. PS to Minister for Health Department, Khyber Pakhtunkhwa.
9. PS to Secretary Health Department, Khyber Pakhtunkhwa
10. Doctors concerned.



(Latif Ur Rehman)
Section Officer (E-V)



Handwritten: *Ahmad C*
DG. Daily No: 6663
Dated: 22/2/2021

(17)

To

Director General Health Services,
Khyber Pakhtunkhwa Peshawar.

Subject: - ARRIVAL REPORT.

Dear Sir,

Kindly refer to Govt: of Khyber Pakhtunkhwa Health Department letter No. SOH (HD)E-V/4-4/2021 dated 12.02.2021, I hereby submit my arrival report today on 22.02.2021 (FN) for further necessary action please.

Thanks

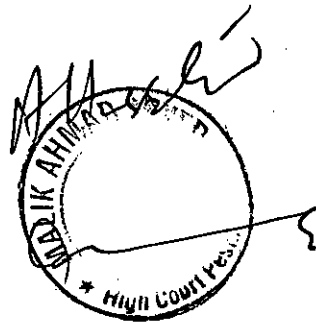
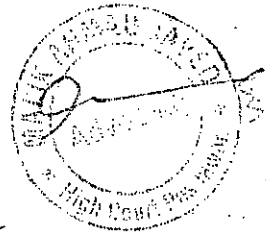
Yours Obediently,

Dated: - 22/02/2021.

[Signature]
Dr. Muhammad Fayaz Ali
Management Cadre (BS-19)
(Ex-DHO Dir Upper)

Cc:-

P.S, Secretary to Govt: of Khyber Pakhtunkhwa Health Department Peshawar for information please.



To,

The Secretary Health,
Govt of Khyber Pakhtunkhwa,
Peshawar

SH. Office 4055/

Date 22/02/21

Alex - D

18

Subject:

APPEAL FOR CANCELLATION OF POSTING/TRANSFER ORDER

Respected Sir,

Kindly refer to the notification No. SOH (HD)/E-V/4-4/2021 dated 12/02/2021. Wherein the undersigned has been transferred with the direction to report to DGH KP office.

1. The under signed posted to DHO Dir (Upper) on 18/03/2020 and has only serve about 10 months and not completed his tenure. (Copy attached)
2. The undersigned is member of management cadre Health Deptt wherein Dr. Fazal Basit PMO, under transfer to DHO Dir Upper, is from General Cadre and the said doctor is not eligible for Management post of Health Department including DHOs, MS etc on per policy. (Copy attached)

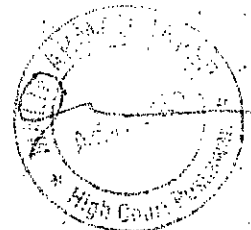
Keeping in view the above submission, that my transfer order may please be cancelled being not completed normal tenure according to the Govt tenure policy and also the under transfer Doctor to DHO post is not accordance to the Policy of government.

Dr. Mohammad Fayaz AR 13/2/21

(Member of Management Cadre BPS-19)

DHO Dir Upper

- C.C
1. Director General Health services Khyber Pakhtunkhwa Peshawar.
 2. Deputy Commissioner Dir Upper.
 3. PS to Commissioner Malakand Division at Saidu Sharif Swat.



P. (18-19)
Anwar D
A. D. E.

(18-A-19)

To
The Director General Health Services,
Khyber Pakhtunkhwa Peshawar.

Attention:- Additional Director General (HRM).

Subject:- REQUEST FOR RELEASING OF PAY FOR VARIOUS PERIODS OF WAITING FOR POSTING

Sir,


With due respect I have to say that the undersigned is a regular employee of Health Department since October, 1997 and perform duty as a member of management cadre in the Health Department K.P. During the course of service the undersigned was kept waiting for posting till adjusted against a regular posts.

The detail of waiting for posting periods are as under: -

1. Repratriated from Micro-nutrient Initiative/CIDA and was kept waiting for posting from 29-05-2007 to 27-07-2007 and has not been paid for mentioned period.
2. Transferred from the DHO Charsadda and was on waiting for posting from 01-01-2019 to 20-03-2019 and has not been paid for mentioned period.
3. Transferred from the post of DHO: Dir Upper and is not being paid from 01-03-2021 till date.

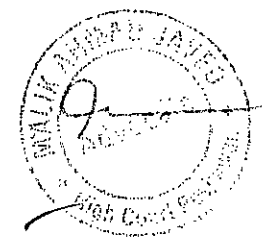
It is therefore requested to direct the quarter concerned, to release of pay against any vacant post of management cadre for the above mentioned period and obliged.

Sincerely


(Dr. Muhammad Fayyaz Ali)
BPS-19, Management Cadre,
DoH, K.P

Dated 18-05-2021

16602 / 157
18/5/2021



PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA), SWAT

FORM OF ORDER SHEET

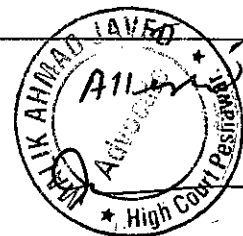
20

Court of

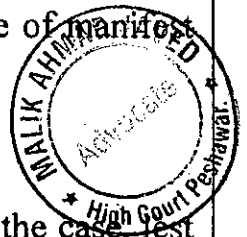
Case No..... of.....

1	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
1	2	3
	20-05-2021	<p><u>W.P No. 552-M/2021 with Interim Relief</u></p> <p>Present: Barrister Waqar All, Advocate for the petitioner.</p> <p style="text-align: center;">*****</p> <p><u>WIQAR AHMAD, J.-</u> Learned counsel for petitioner relied upon judgment of the Hon'ble Supreme Court of Pakistan given in the case of <u>Sarfraz Saleem vs. Federation of Pakistan and others</u> reported as 2014 PLC (C.S.) 884 and submitted that since a new Chairman has not been appointed for Khyber Pakhtunkhwa Service Tribunal and it has not been functional, therefore this Court could entertain the instant writ petition, despite the fact that the matter relates to terms and conditions of service. He added that transfer order of the petitioner has been motivated by political considerations for which the petitioner has also annexed documentary evidence along with his writ petition. He in this respect referred to a letter of Mr. Shaukat Ali Yousafzai, Minister Labour & Culture & Chief Whip PTI in the Provincial Assembly addressed to the Chief Secretary, Government of Khyber Pakhtunkhwa. Learned counsel also referred to hard</p>

SCANNED



copies of the extracts from official Facebook page of Dr. Sumera Shams another MPA, and contended that both the documents sufficiently established that transfer order of the petitioner had been motivated by political considerations and had been effected on the influence and prodding of the local MPA belonging to the ruling party. Learned counsel also relied upon judgment of the Hon'ble Supreme Court of Pakistan given in the case of Syed Mahmood Akhtar Naqvi and others vs. Federation of Pakistan and others reported as *PLD 2013 Supreme Court 195* and contended that matter of posting and transfer of civil servants cannot be allowed to be dealt with in an arbitrary manner and that a decision in this regard which deviated from the accepted or rule-based norm may be tested on the touchstone of ^{manifest} public interest.



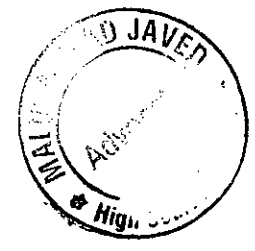
Without entering into merits of the case, lest it may prejudice case of either party, it is noticeable that petitioner has filed a grievance petition/representation before the competent authority for reconsideration of the transfer order. Said representation or departmental appeal has not yet been decided. We would not like to intervene in the matter at this stage. The competent authority is however directed to decide departmental representation

of the petitioner at the earliest, preferably within fifteen days of receipt of this order. Till decision of the competent authority, the impugned transfer order dated 06.05.2021 shall remain suspended.

With these observations, the instant constitutional petition stands disposed of.

Announced
D: 20.05.2021

[Handwritten signature]
JUDGE
[Handwritten signature]
JUDGE





PKB A/C 01782019

Cheque No. 39692730

THE BANK OF KHYBER
NAIB HAZAR (01782019) DIR PAKISTAN

Date 04/03/2021

Pay Dr. Fayaz Ali DHO District of Upper Dir

Rupees Sixteen thousand only

PKR=15000/-

POLIO
ERADICATION
PROGRAM



PKB0 KHYB 0126 0000 0178 2019
NISC A.C. DIR UPPER

Please do not write below this line.

DEPUTY COMMISSIONER
UPPER DIR


PKR=15000/-

ciation 2019-20

This certificate is awarded to *Mr./Miss.* Dr. Muhammad Fayaz Ali

for the outstanding performance in EPI/PEI activities & dedication to the noble cause of

**"ESSENTIAL IMMUNIZATION & POLIO ERADICATION IN
DISTRICT UPPER DIR"**

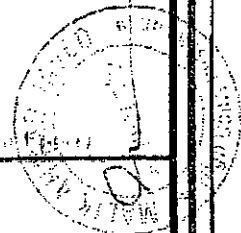

District Emergency Operation Center
Upper Dir


DPEC Chair/Deputy Commissioner
Upper Dir

صحت مجاڈو

Area F

97





DISTRICT HEADQUARTER HOSPITAL

DIR UPPER

This Certificate is Presented to:

Dr. Fayaz Ali DHO Dir Upper

For Participation in fight against **COVID 19** and in recognition for his outstanding accomplishments.

Khalid Iqbal Kamal
Deputy Commissioner
Dir Upper

Dr. Sanjiv Kumar
District Superintendent
DHO Hospital Dir Upper

Kh. M. Fayaz
District Administrator
Coordinator

Ans
18/11
27



CERTIFICATE

OF APPRECIATION



This certificate is awarded to

Dr. Muhammad Fayaz DHO due to his/her tireless efforts, devotion, dedication, active contribution and managing the response in fight against Polio.

We pay special tribute to your services in the field of fighting against Polio for the National cause.

Deputy Commissioner
Upper Dir

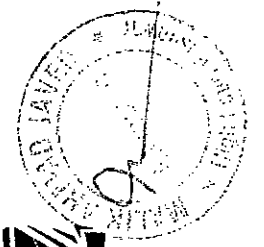
Amir F

18/11/21
25



عزیم و کوشش کے 100 دن

Ann. A
20/2



CERTIFICATE OF APPRECIATION

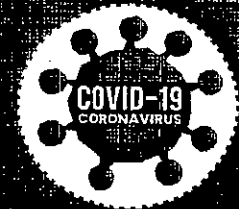
This certificate is awarded to front Line worker

Mr./Mst. Dr. Muhammad Fayaz DHO Dir due to his/her tireless efforts, devotion, dedication, active contribution and managing the response in fight against the COVID-19 Pandemic.

We pay special tribute to your services in the field of fighting against COVID-19 for the District.

Deputy Commissioner
Upper Dir Commissioner
Dir Upper

Date: 04-07-2020



OFFICE OF THE COMMISSIONER DIKHAN DIVISION DIKHAN
Email: commissionerdikhan@yahoo.com phone No.09669280351 Fax: 09669280352



Is hereby awarded to:

Mr Dr M. Fayyaz Ali DHO Tank.

In recognition of services rendered for the marginalized community of District Tank in connection with the conduction of free eye camps held in different areas of District Tank i-e DHQ Tank, category D Hospital Amakhel, RHC Gomal & BHU Dabbara.

I wish him success in his future endeavors

Barkat

Barkat Ullah Khan Marwat
Deputy Commissioner Tank

Date: ___/___/___

Dr Akhtar

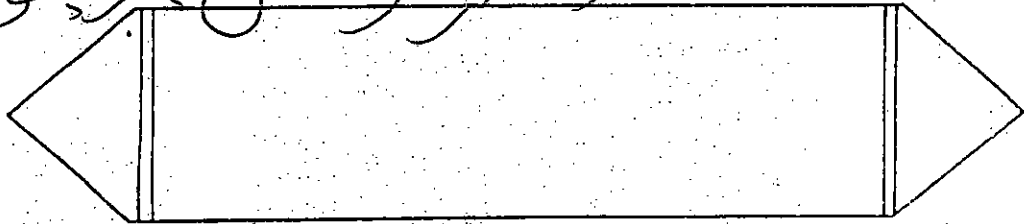
Dr Akhtar Nazir Warrach
Commissioner D.I.Khan Division

Date: ___/___/___

Ans F
21/21
26

بعدالت سرور سر بسوئل حیرت بخشو احوال

شماره



2021ء پنجاب

دا سر محمد رضا علی بنام حکومت حیرت بخشو
سر جو صیف سیکریٹری

مورخہ
مقدمہ
دعویٰ
جرم

Request to set aside
the suspension order
dl-12-2-2021 باعث تحریر آنکے

بدرست

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ
آن مقام شماره کیلئے ملک احمد خاوند اللہ رب
مقرر کرنے 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 ثالثتہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی 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 منسوخ
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار 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 یہی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے وہ 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 لکھدیا کہ سند ہے۔

Handwritten signature or mark on the right margin.

Accepted
MALIK AHMAD JAVED
Advocate
High Court Peshawar

المرقوم 3 ماہ جون 2021

بمقام شریف کے لئے منظور ہے۔

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 968 /ST

Dated 11/06 / 2021

To

The Secretary Health Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

SUBJECT: - ORDER IN APPEAL NO. 5749/2021, DR. MUHAMMAD FAYAZ ALI.

I am directed to forward herewith a certified copy of order dated 10.06.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above



REGISTRAR -

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

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

SERVICE APPEAL NO. 5749/2021

Dr. Muhammad Fayaz Ali.....Appellant

Versus

Government of Khyber Pakhtunkhwa & othersRespondents

Index

S. No.	Description	Annexure	Pages No.
1	Signed Comments		1-4
2	Affidavit		5

5

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

SERVICE APPEAL NO. 5749/2021

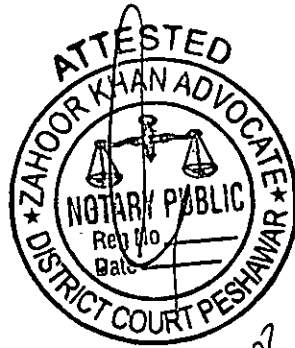
Dr. Muhammad Fayaz Ali.....Appellant

Versus

Government of Khyber Pakhtunkhwa & othersRespondents.

Affidavit

I, Jaffar Ali, Assistant (Litigation Section), office of the Director General Health Services, Khyber Pakhtunkhwa, Peshawar, under the directions of the Competent Authority, do hereby solemnly affirm that the contents of the parawise Comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'able Court.



[Handwritten Signature]
Deponent

[Redacted]

[Redacted]
Khyber Pakhtunkhwa Service Tribunal,
[Redacted]

①

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 5749/2021

Dr Muhammad Fayaz Ali Appellant

Versus

Govt. of Khyber Pakhtunkhwa through Chief Secretary and others.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 TO 3

Respectfully Sheweth; That the respondent submitted as under:

PRELIMINARY OBJECTIONS:-

1. That the Appellant has got neither cause of action nor locus standi to file the instant Appeal.
2. That the Appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant Appeal is against the prevailing Law and Rules.
4. That the Appeal is not maintainable in its present form.
5. That the Appellant has filed the instant Appeal with mala-fide intention hence liable to be dismissed.
6. That the Appeal is badly time barred.
7. That the Honourable Tribunal has no Jurisdiction to adjudicate upon the matter.
8. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
9. The impugned transfer Notification has been issued in accordance with Section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973.



**Government of Khyber Pakhtunkhwa,
Health Department**

Dated Peshawar the 12th February, 2021

NOTIFICATION

NO. SOH(HD)/E-V/4-4/2021 The Competent Authority is pleased to order Posting/ transfer of the following doctors, in the best public interest, with immediate effect:-


S/No	Name	From	To
1	Dr. Muhammad Fayyaz Ali, (Management Cadre BS-19)	District Health Officer (BS-20), Dir (Upper) in OPS	Report to Directorate General Health Services, Khyber Pakhtunkhwa Peshawar
2	Dr. Fazal Basir, Principal Medical Officer (BS-19)	Medical Superintendent, THQ Hospital Chakdara, Dir (Lower)	District Health Officer (BS-20), Dir (Upper) in his own pay & scale. Vice S.No. 1

**Secretary Health
Government of Khyber Pakhtunkhwa**

Endst. Of even No. & Date.

Copy to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Commissioner, Dir (Lower & Upper).
4. DHO, Dir (Upper).
5. DAO, Dir (Lower & Upper).
6. MS, THQ Hospital Chakdara, Dir (Lower).
7. Deputy Director (IT), Health Department, with the direction to upload the notification on official website.
8. PS to Minister for Health Department, Khyber Pakhtunkhwa.
9. PS to Secretary Health Department, Khyber Pakhtunkhwa.
10. Doctors concerned.


(Latif Ur Rehman)
Section Officer (E-V)



Health Department



Annex 'A' ⑨

Dated Peshawar the 12th February, 2021

NOTIFICATION

NO. SOH(HD)/E-V/4-4/2021

The Competent Authority is pleased to order Posting/ transfer of the following doctors, in the best public interest, with immediate effect:-

S/No	Name	From	To
1	Dr. Muhammad Fayyaz Ali, (Management Cadre BS-19)	District Health Officer (BS-20), Dir (Upper) in OPS	Report to Directorate General Health Services, Khyber Pakhtunkhwa Peshawar
2	Dr. Fazal Basir, Principal Medical Officer (BS-19)	Medical Superintendent, THQ Hospital Chakdara, Dir (Lower)	District Health Officer (BS-20), Dir (Upper) in his own pay & scale, Vice S.No. 1

Secretary Health
Government of Khyber Pakhtunkhwa

Endst. Of even No. & Date.

Copy to the:-

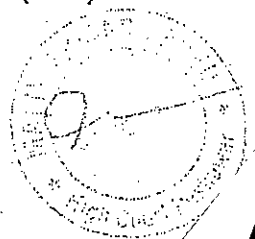
1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Commissioner, Dir (Lower & Upper)
4. DHO, Dir (Upper).
5. DAO, Dir (Lower & Upper).
6. MS, THQ Hospital Chakdara, Dir (Lower).
7. Deputy Director (IT), Health Department, with the direction to upload the notification on official website.
8. PS to Minister for Health Department, Khyber Pakhtunkhwa.
9. PS to Secretary Health Department, Khyber Pakhtunkhwa
10. Doctors concerned.

(Latif Ur Rehman)
Section Officer (E-V)

12.2.21

ATTESTED
TO BE TRUE COPY

Adviser





GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the December 14, 2021

NOTIFICATION

NO. SOH(E-V)/2-2/2021 / 233 The Competent Authority is pleased to order posting/transfer of the following doctors in the best public interest, with immediate effect:-

S.NO	NAME OF DOCTOR	FROM	TO
1.	Dr. Ikhtiar Ali Management Cadre (BS-19)	Waiting for posting	Central Jail Hospital, Peshawar against the vacant post of Principal Medical Officer (BS-19)
2.	Dr. Fazal Rehman Principal Medical Officer (BS-19)	Waiting for posting	DHO Hospital KDA, Kohat against the vacant post
3.	Dr. Muhammad Rafique Principal Medical Officer (BS-19)	Waiting for posting	Govt. Naseerullah Khan Babar Memorial Hospital Peshawar against the vacant post
4.	Dr. Tahira Inam Principal Medical Officer (BS-19)	Waiting for posting	Benazir Bhutto Shaheed Teaching Hospital, Abbottabad against the vacant post
5.	Dr. Najma Khatoor Principal Dental Surgeon (BS-19)	Waiting for posting	Police & Services Hospital Peshawar against the vacant Post

SECRETARY HEALTH
GOVERNMENT OF KHYBER PAKHTUNKHWA

Endst. of even No. & Date.

Copy to the -

1. Accountant General Khyber Pakhtunkhwa, Peshawar
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. All concerned District Health Officer, Khyber Pakhtunkhwa
4. All concerned Medical Superintendent, Khyber Pakhtunkhwa
5. All concerned District Accounts Officers, Khyber Pakhtunkhwa
6. Deputy Director (IT) Health Department, with the direction to upload the notification on official website
7. PS to Minister for Health Department, Khyber Pakhtunkhwa
8. PS to Secretary Health Department, Khyber Pakhtunkhwa.
9. Doctors concerned.
10. Personal file of the doctors Concerned


(TAHMAS AYYUB)
SECTION OFFICER (E-V)

14/12/2021

②

ON FACTS

1. Pertains to record.
2. Correct to the extent that the appellant was posted as DHO Dir Upper in his own pay and scale (OPS).
3. Correct to the extent that the appellant was posted as DHO (BPS-20) Dir Upper in his own pay and scale vide Notification dated 18.03.2020.
4. Correct to the extent that the appellant was transferred from the post of DHO with the direction to report to DGHS vide Notification dated 12.02.2021 by the competent authority in the public interest.
5. Correct.
6. Pertains to record.
7. Pertains to record however the appellant being posted on OPS having no right to remain on such post hence he having no remedy in law however reply to the grounds are as under:-

ON GROUNDS:

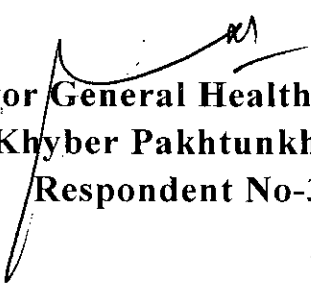
- A. Incorrect the impugned notification dated 12.02.2021 is in accordance with law rules and principal of natural justice.
- B. Incorrect as per Section-10 of the Khyber Pakhtunkhwa Civil Servant Act 1973 a Civil Servant may be posted any where even outside of his cadre where the Competent Authority want to utilize his services.
- C. The para is based on mala fide, misleading concocted hence denied. Normal tenure as per transfer posting policy is two years however the competent authority has been empowered by Section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973 to transfer a civil servant at anytime to any other post even outside his cadre or province provided his terms & conditions of service is not affected .As per dictum, laid down by the apex court, in 2020 PLCCS 1207 Supreme Court, PLACE of servicePrerogatives of employer...Government servant was required to serve any where his employer wanted him to serve; it was not a choice or prerogative of the employee to claim a right to serve at a place that he chose to serve.


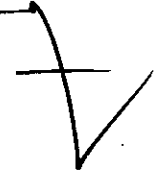
Similarly in another judgment reported as 2004 PLC (CS) 705 S.C. It has been laid down that civil servant could not claim posting at a particular station or at the place of his choice. Competent authority, under S 9 of the Punjab civil servant Act 1974, was empowered to transfer any civil servant from one place to other at anytime in exigencies of service or on administrative ground.

- D. Incorrect as per transferred posting policy of the Government normal tenure is two year however the appellant being a junior officer of BPS-19 was posted in his own pay and scale against a post of DHO (BPS-20) hence the same posting does not create any right in favor of the appellant to remain posted on the same post but it is within the domain/prerogatives of the provincial government to utilize his services. The Supreme Court laid down a dictum in a reported judgment 2018 SCMR page-1411"posting and transfer of Civil Servant on his own pay and scale basis (OPS) such posting/transfer was not legal permissible".
- E. Incorrect the impugn notification dated 12.02.2021 his been issued by the Competent Authority in accordance with Section-10 of the Civil Servant Act 1973.
- F. Incorrect as per paras above
- G. Incorrect as per para D.
- H. Incorrect as per judgment of the apex Court each case has different facts and circumstances and each is to be decided on its merits detail reply has been given in paras above.
- I. As per para H
- J. As per para A
- K. Incorrect the impugned notification in accordance with law and rules
- L. As per paras above
- M. Legal however no right of the appellant has been violated as posting on OPS against higher post is within competence of the Authority however the same does not create any vested right in favor of the incumbent
- N. Legal however the respondents also seek permission of this honorable tribunal to adduce other grounds during final hearing.

④
PRAYER:

It is therefore requested that the appeal of the appellant may kindly be dismissed with cost.


**Director General Health Services
Khyber Pakhtunkhwa
Respondent No-3**


**Secretary Health Department
Khyber Pakhtunkhwa
Respondent No-1&2** 

BEFORE THE HONOURABLE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In Re:
Service Appeal No.5749/2021

Muhammad Fayaz AliAppellant

Versus

Govt. of KPK through
Chief Secretary & others Respondents

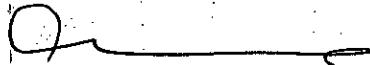
I N D E X

S#	Description of Documents	Annex	Pages
1.	Rejoinder		1-6
2.	Affidavit		7
3.	Copy of Order dated 13.09.2019		8-13

Through

Petitioner

Dated: 27.07.2021


Malik Ahmad Javed
Advocate,
High Court Peshawar



-1-

BEFORE THE HONOURABLE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In Re:
Service Appeal No.5749/2021

Muhammad Fayaz AliAppellant

Versus

Govt. of KPK through
Chief Secretary & others Respondents

REJOINDER/REPLY OF
PARAWISE COMMENTS

Respectfully Sheweth:

Preliminary Objections:

All the preliminary objections raised by the respondent department are irrelevant, Vexatious and are without putting, hence not tenable.

1. Appellant has cause of action and locus standi
2. The appellant for the redressal of their grievances which the appellant has been dealt without lawful authority by the respondent departments.

3. The appeal of the appellant is according to the prevailing law, Rules and regulation.
4. The appeal is maintainable in its present form furthermore the reply has not pinpoint any non-maintainability or found in the appeal.
5. The appeal is based on malafide intention.
6. The appeal is well within time.
7. The Hon'ble Tribunal has got the jurisdiction to adjudicate upon the matter.
8. The appeal of the appellant is not bad for misjoinder and non-rejoinder for necessary party.
9. The respondent department has not shown or pinpoint any misjoinder or non-joinder in their parawise comments.
10. The impugned transfer order/notification has been issued in violation of law, rules, regulation and posting transfer policy of Civil Servant, hence not tenable in the eyes of law. Furthermore on the strength impugned notification/transfer order the appellant deprived of his salary, since March 2021,

which is the fundamental rights of appellant to draw his salary.

REJOINDER TO COMMENTS ON FACTS:

1. Para No.1 need not rejoinder. Para of the appeal is correct and is according with rules kept in the office of respondent department.
2. In response to Para 2 it is submitted that the para has been admitted correct by the respondent department to the extent of posting as DHO Dir Upper. The appellant, being Management Cadre Officer was rightly posted as DHO Dir Upper, but on the extent of the impugned transfer order/ notification and General Cadre Officer of BPS-19 has been posted as DHO Dir Upper, which is clear cut violation of the rules and policy. It is pertinent to mention here that the respondent department is glowing hard and cold in one and he same breath as the respondent department on one hand is depriving BPS-19 Management Cadre Officer from the DHO post but on the other hand respondent department posting a BPS-18 officer of General

Cadre. Infact that the respondent stance in parawise comments is that

“DHO is BPS-20 post and the appellant posted as OPS, but a general cadre doctor of BPS-19 has been posted by the respondent department, which shows there malafidely and favoring a blue eyed officer on the behest of politician.

It is worthy to mentioning here that Hon'ble Service Tribunal in a judgment dated 09.08.2019 rendered in service Appeal No.823/2019 transfer of general cadre doctors against Management Cadre posts was held illegal and unlawful the respondent department was further directed to recall all the posting orders of Medical Officers/Senior Medical Officers of the General Cadre against Management Cadre. It is high time that this illegal practice is laid to rest once for all and those who mislead their superiors and violate the aforementioned policy should be proceeded under E&D Rules 2011 and thereafter be given exemplary punishment. (Copy of Order dated 13.09.2019 is attached).

3. In response to the Para 3 it is submitted that the detailed reply is given in Para No.2 of rejoinder, hence the respondent department is blowing hot and cool in the same way as mentioned above, which has been explain in para 2 above.
4. In response to Para 4 of the parawise comments it is submitted that appellant being management cadre officer has been transferred and substituted by BPS-19 grade officer of general cadre which is clear cut violation of the law, rules, regulation and transfer posting policy. Furthermore the appellant has also been deprived of his salary since March 2021 for no fault on his part.
5. Para No.5 need no rejoinder being already explain.
6. Para No.6 need no rejoinder as no comments in the para.
7. In response to Para No.7 it is submitted that stance of the appeal is self-explanatory and the appellant has the right to come to Hon'ble Tribunal for his

redressal of his grievance on the ground mention in
the appeal

GROUNDS:-

All the Parawise comments submitted are irrelevant
Various and without putting.

The ground mentioned in the appeal of the
appellant are lawful according to the rules and
dictum/authority provided by the superior judiciary
of the country.

It is therefore humbly requested that the appeal
of the appellant may please be accepted and beside
prayers made in the appeal the salary of the
appellant which has been withheld by the
respondent department since March 2021 with full
consequential benefit may also be released.


Petitioner

Through

Dated: 27.07.2021

Malik Ahmad Javed
Advocate,
High Court Peshawar



BEFORE THE HONOURABLE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In Re:
Service Appeal No.5749/2021

Muhammad Fayaz AliAppellant

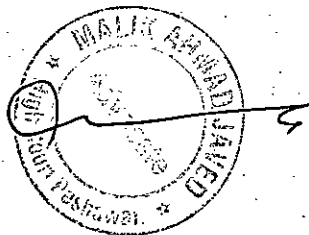
Versus

Govt. of KPK through
Chief Secretary & others Respondents

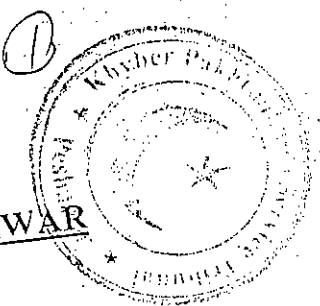
A F F I D A V I T

I, Dr. Muhammad Fayaz Ali Son of Malik Abdur Rehman
R/o Malik Abad, Landi Arbab Peshawar, do hereby
solemnly affirm and declare on oath that the contents of
the accompanying rejoinder/reply are true and correct to
the best of my knowledge and belief and nothing has
been kept concealed from this Hon'ble Court.


DEPONENT



BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR



Service Appeal No 390 /2019

Dr. Naqeeb Ur Rehman, Deputy DHO Sub Division Dara Zinda District Khyber Pakhtunkhwa
D. I KhanAppellant

Diary No. 336
Dated 13/3/2019

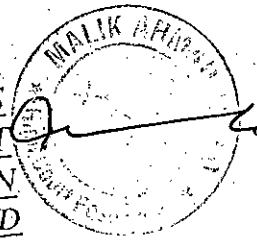
VERSUS

1. Government of KPK through Chief Secretary Civil Secretariat Peshawar.
 2. The Additional Chief Secretary FATA (Merged Areas).
 3. Secretary, Health Department, Govt. of KPK Peshawar.
 4. Director Health Services, FATA Khyber Pakhtunkhwa, Peshawar. (Merged Areas)
 5. Dr. Naik Muhammad Management Cadre under transfer as Deputy DHO Darazinda D.I Khan.
-Respondents

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 12-11-2018 WHEREBY RESPONDENT No. 05 of MANAGEMENT CADRE BPS-18 ATTACHED TO AGENCY SURGEON F.R TANK HAS BEEN POSTED / TRANSFERRED AGAINST THE POST OF DEPUTY DHO SUB DIVISION DARA ZINDA D.I KHAN WHICH HAS ALREADY BEEN OCCUPIED BY THE APPELLANT AND NEITHER THE APPELLANT HAS BEEN TRANSFERRED NOR RELIEVED FORM THE SAID POST AGAINST WHICH DEPARTMENTAL APPEAL DATED 19.11.2018 HAS NOT BEEN RESPONDED WITHIN THE STATUTORY PERIOD OF 90 DAYS.

Filed to-day

Registrar
13/3/2019



PRAYER:-

Re-submitted to and filed.

Registrar
21/3/19

ON ACCEPTANCE OF THIS SERVICE APPEAL ORDER 12-11-2018 MAY KINDLY BE SET-ASIDE AND THE APPELLANT MAY BE ALLOWED TO CONTINUE HIS DUTIES ON HIS ALREADY OCCUPIED POST AT SUB DIVISION DARA ZINDA D.I.KHAN.

Respectfully Submitted:-

I very humbly submit few lines for your kind and sympathetic consideration.

1. That the appellant has been initially appointed as Medical Officer (BPS-17) vide order dated 19-10-1987 and has been regularized vide order dated 23-01-1998. (Copy of appointment order dated 19.10.1987 is attached as annexure A).

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.



Appeal No. 390/2019

Date of Institution ... 13.03.2019

Date of Decision ... 13.09.2019

Dr. Naqeeb Ur Rehman, Deputy DHO Sub-Division Darazinda District D.I.Khan.
(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat
Peshawar and four others. (Respondents)

MR. YASIR SALEEM,
Advocate

For appellant.

MR. M. RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

For respondents.

MR. BILAL AHMAD DURRANI,
Advocate

For respondent no.5.

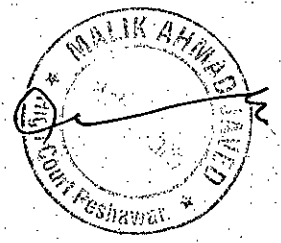
MR. AHMAD HASSAN,
MR. M. AMIN KHAN KUNDI

MEMBER(Executive)
MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the

parties heard and record perused.



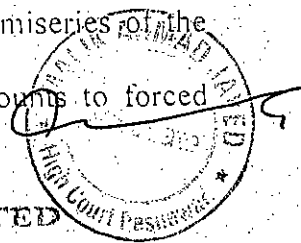
ARGUMENTS

02. Learned counsel for the appellant argued that his initial appointment as Medical Officer in the respondent-department on adhoc basis was notified on 19.10.1987 and regularized through order dated 23.01.1998. Since then he was performing duty with full zeal and devotion. That he was promoted as Senior Medical Officer (BPS-18) vide notification dated 16.04.2008 and posted at South Waziristan. Later on, the appellant was posted as Medical Superintendent in his

ATTESTED

[Signature]
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

own pay and scale vide order dated 24.12.2010 and was posted at Agency Headquarters Hospital, where he continued performing duty till 2013. Due to frequent transfers of the appellant, he knocked the door of Peshawar High Court and this Tribunal. Vide judgment of this Tribunal dated 21.09.2017 passed in service appeal no. 227/2017 his pre-mature transfer was cancelled. As the appellant was not assigned the charge of the said post, thereafter, he filed implementation petition in this Tribunal, where-under directions were conveyed to the respondents to accept his charge assumption report and was subsequently, accepted vide order dated 15.05.2018. In the meanwhile the government of Khyber Pakhtunkhwa through notification dated 30.07.2018, re-designated the post of Agency Surgeon of FRs as Deputy District Officer, due to merger of erstwhile FATA with Khyber Pakhtunkhwa. The appellant was still performing duty against the post of Dy: DHO Sub-Division Darazinda D.I.Khan. Recently, the respondents transferred private respondent no.4 belonging to Management Cadre against the post of Dy: DHO Sub-Division Darazinda, D.I.Khan vide order dated 12.11.2018. It is pertinent to point out that this post has already been occupied by the appellant. Feeling aggrieved, he filed departmental appeal on 19.11.2018, which remained un-answered, hence, the present service appeal. As the appellant was at the verge of retirement, therefore, the impugned transfer order was not tenable. Pre-mature transfer would adversely affect vested rights of the appellant. Impugned transfer was made in violation of Posting/Transfer Policy of the Provincial Government. Learned counsel for the appellant further contended that since long salary of the appellant had been stopped by the respondents without assigning any reason. It has added to miseries of the appellant. As he is performing duty and not being paid so it amounts to forced labor.



ATTESTED

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CLERK
Khyber Pakhtunkhwa
Services Tribunal
Peshawar

03. Learned counsel for private respondent no.5 argued that the post of Agency Surgeon (BPS-18) was earmarked for the doctors of Management Cadre, whereas the appellant hails from general cadre, that is why he was transferred to his original post of Senior Medical Officer (BPS-18) South Waziristan. He further stated that the appellant was promoted to the post of Principal Medical Officer (PMO)(BPS-19) in the General Cadre and his services were placed at the disposal of DHO D.I.Khan for further posting vide notification dated 05.06.2017 due to non-availability of vacant post of PMO(BPS-19) in merged areas. On the other hand Dr. Naik Muhammad (BPS-18) private respondent no.4 was transferred to the post of Dy: DHO Sub-Division Darazinda, D.I.Khan, being a Management Cadre post. He was treated according to law and rules.

04. Learned Assistant Advocate General relied on the arguments advanced by the learned counsel for private respondent no.5.

CONCLUSION

05. The present service appeal has been filed by the appellant being aggrieved of impugned transfer dated 12.11.2018 through which Dr. Naik Muhammad (BPS-18) (private respondent no.5) attached to Agency Surgeon F.R Tank was posted as Agency Surgeon F.R. D.I.Khan/Dy: DHO Sub-division Darazinda D.I.Khan. The main grievance of the appellant was that the post against which the said officer had been transferred was occupied by him. As a sequel to judgment of this Tribunal dated 21.09.2017 and order dated 29.02.2018 passed on the implementation report filed by him, he was performing duty against the post of Dy: DHO Sub-Division



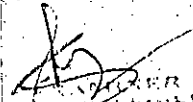
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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

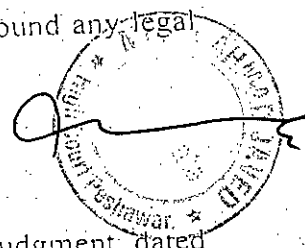
Dara Zinda, D.I.Khan regularly. Being at the verge of retirement, he should not have been dislocated. Transfer referred to above was made in violation of Posting/Transfer Policy notified by the Provincial Government.

06. To set the record straight, it is clarified that the appellant belongs to the General Cadre and in the first instance, he should not have been posted against the Management Cadre post, which was against the spirit of notification dated 11.12.2008 issued by the respondent-department. It is astonishing that respondents trample under their feet instructions issued by them, which is censurable. As regards the judgment of this Tribunal was concerned it was a closed and past transaction. As the newly re-designated post of Agency Surgeon of FRs as Dy: District Officer, as a sequel of merger of erstwhile FATA with Khyber Pakhtunkhwa vide notification dated 30.07.2018, the post referred to above was meant for officers belonging to the Management Cadre, therefore, any claim of the appellant on the said post was without any justification. Moreover, he was promoted as PMO (BPS-19) in the General Cadre and his services were placed at the disposal of DHO, D.I.Khan due to non-availability of vacant post of PMO (BPS-19) in the Merged Areas vide notification dated 05.06.2017. Even otherwise as officer of BPS-19 cannot work against a post carrying lower pay scale. We have not found any legal infirmity in the posting of private respondent no.5.

07. Even in the past in the recent pass this Tribunal in a judgment dated 09.08.2019 rendered in service appeal no823/2019 transfer of General Cadre doctors against Management Cadre posts was held illegal and unlawful. The respondent department was further directed to recall all the posting orders of

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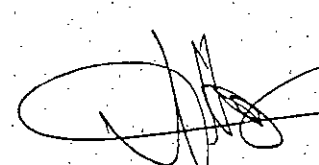
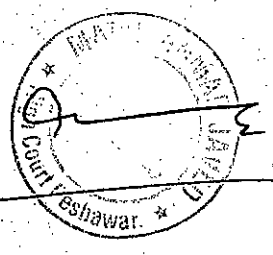

Khyber Pakhtunkhwa
Services Tribunal
Peshawar



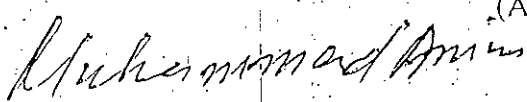
Medical Officers/Senior Medical officers of the General Cadre against Management Cadre. It is high time that this illegal practice is laid to rest once for all and those who mislead their superiors and violate the aforementioned policy should be proceeded under E&D Rules 2011 and thereafter be given exemplary punishment.

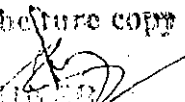
08. Learned counsel for the appellant further stated that there was no vacant post of PMO (BPS-19) under the administrative control of DHO, D.I.Khan, as was evident from letter dated 30.11.2017 which is placed on the case file. Reportedly salary has not been paid to him since long. No one has the right to deprive a civil servant of his/her monthly salary. It not only causes undue hardships to a civil servant but also smacks of malafide/victimization on the part of respondents.

09. In view of the foregoing, the appeal is dismissed. It is once again reiterated to recall the orders of posting of Medical Officers/ Senior Medical Officers belonging to General Cadre and posted against Management Cadre posts. The issue of salary of the appellant may be resolved without further loss of time. Parties are left to bear their own costs. File be consigned to the record room.

(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
13.09.2019
Certified to be true copy

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 14/6/21
Number of Vards 2400
Copying Fee 3126/-
Urgent 30/-
Total 30/-
Name of Copyist _____
Date of Completion of Copy 14/6/21
Date of Delivery of Copy 14/6/21

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

COC NO. 118 /2021

In

Service Appeal No. 5749/2021

Dr. Muhammad Fayaz Ali Vs Govt. OF Khyber Pakhunkhwa and others.

APPLICATION FOR IMPLEADMENT OF THE APPLICANT IN THE
ARRAY OF THE RESPONDENTS.

Respectfully sheweth:-

1. That the captioned COC petition is pending adjudication before this Tribunal and is fixed for today i.e 12/7/2021.
2. That in the instant COC petition the petitioner has obtained a stay order dated 10/6/2021 which is adversely affecting the private respondent No. 4.
3. That valuable right of the impleaded respondent is attached with the instant petition but he has not been in-listed in array of the respondent.
4. That impleadment of the private respondent no. 4 is as per law and rules.

It is therefore, most humbly prayed that on acceptance of this application applicant may be in listed in the array of respondents.

APPLICANT

(DR. FAZAL BASIR)

Through

NOOR MUHAMMAD KHATTAK
ADVOCATE

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

C.O.C
~~APPEAL~~ NO: 118 — OF 2021

Dr. Fayaz Ali (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Health Department & Others (RESPONDENT)
(DEFENDANT)

I/we Private respondent in main appeal / Fazal Basir,
Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. / / 2021



CLIENTS

ACCEPTED
NOOR MOHAMMAD KHATTAK


KAMRAN KHAN


UMER FAROOQ MOHMAND


SAID KHAN

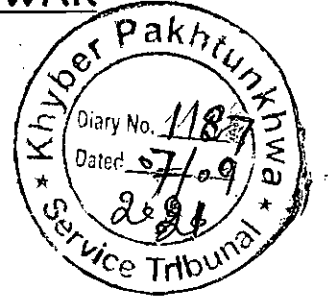

HAIDER ALI


ADVOCATES



BEFORE THE HONOURABLE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In Re:
Service Appeal No.5749/2021



Muhammad Fayaz AliAppellant

Versus

Govt. of KPK through
Chief Secretary & others..... Respondents

WRITTEN REPLY ON BEHALF
OF THE RESPONDENT/
APPELLANT TO THE
APPLICATION OF THE
IMPLEADMENT APPLICANT IN
THE COLUMN OF THE
RESPONDENTS.

Respectfully Sheweth:

Reference to the application submitted by Dr. Fazal
Basir (General Cadre/PMO) presently working
against the ex-cadre post of DHO Dir Upper for

the impleadment in the Service Appeal
No.5749/2021 (Annex-I).

Preliminary Objections:

- a. That the applicant has no cause of action to file the application.
- b. That the applicant is estopped by his own conduct to bring the present application.
- c. That the application in hand is not maintainable in its present form.
- d. That the applicant has come to the court with unclean hands, he has suppressed the material facts from the Honourable Court and has tried to mislead, hence the application deserves dismissal on this score alone.
- e. That the present application is pregnant with malafide intentions.
- f. That the applicant is trying to his level best to prolong the litigation and also the agony of the respondent/appellant.

- g. That the applicant is neither proper nor necessary party to be included in the case.
- h. That applicant is not aggrieved party.
- i. That in the service Appeal No.390/2019 titled Naqeeb ur Rehman Versus Govt. of KPK & others, wherein in Para No.7 of the said judgment, it is explicitly explained "*Even in the past in the recent pass this Tribunal in a judgment dated 09.08.2019 rendered in service Appeal No.823/2019 transfer of General Cadre doctors against Managing Cadre Post was held illegal and unlawful. The respondent department was further directed to recall all the posting orders of Medical Officer/Senior Medical Officers of the General Cadre against Management Cadre. It is high time that this illegal practice is laid to rest once for all and those who mislead their superiors and violate the aforementioned policy should be proceeded under E&D Rules and thereafter be given exemplary punishment*" (Annex-II).

Reply to the FACTS:

1. Para No.1 is correct.
2. In reply to Para No.2 that the applicant is still working on the DHO Dir Upper Post and has neither been removed nor suspended in accordance to the judgment of the Hon'ble Tribunal. Furthermore that if the applicant want to review the judgment of D.B of Hon'ble Service Tribunal he may have to approach to the appropriate forum.
3. In response to Para No.3 it is submitted that no legal or vested right have been accrued to the applicant, then what to speak of it intrusion.
4. Para No.3 is incorrect, hence denied. If the applicant want to be impleaded in the case, being a civil servant he has to approach to the competent forum by adopting the prescribed procedure, i.e. submitting departmental appeal to the Administrative Department and wait till their

12
4
NOC/permission, or wait for statutory period of
90 days to approach this Hon'ble Tribunal.

It is, therefore, prayed that on
acceptance of this written reply, the application for
impleadment of applicant being be devoid of
force, be dismissed with cost.

Appellant 

Through



Malik Ahmad Javed
Advocate,
High Court Peshawar

Dated: 07/09/2021

BEFORE THE HONOURABLE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In Re:
Service Appeal No.5749/2021

Muhammad Fayaz AliAppellant

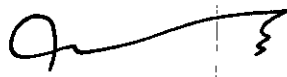
Versus

Govt. of KPK through
Chief Secretary & others Respondents

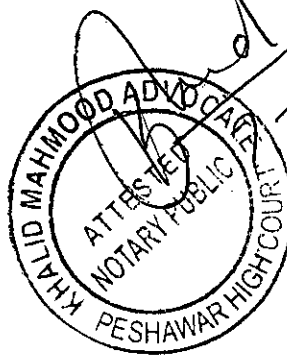
AFFIDAVIT

I, Dr. Muhammad Fayaz Ali Son of Malik Abdur Rehman R/o Malik Abad, Landi Arbab Peshawar, do hereby solemnly affirm and declare on oath that the contents of the accompanying reply are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Court.

Attested
by


MALIK Ahmad Javed
Advocate -


DEPONENT



Ames - D/A

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

COC NO. 118 /2021

In
Service Appeal No. 5749/2021

Dr. Muhammad Fayaz Ali Vs Govt. OF Khyber Pakhunkhwa and others.

APPLICATION FOR IMPLEADMENT OF THE APPLICANT IN THE
ARRAY OF THE RESPONDENTS.

Respectfully sheweth:-

1. That the captioned COC petition is pending adjudication before this Tribunal and is fixed for today i.e 12/7/2021.
2. That the in the instant COC petition the petitioner has obtained a stay order dated 10/6/2021 which is adversely affecting the private respondent No. 4.
3. That valuable right of the impleaded respondent is attached with the instant petition but he has not been in-listed in array of the respondent.
4. That impleadment of the private respondent no. 4 is as per law and rules.

It is therefore, most humbly prayed that on acceptance of this application applicant may be in listed in the array of respondents.

APPLICANT

(DR. FAZAL BASIR)

Through

NOOR MUHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Ann-1/B

Service Appeal No. 5749 /2021

Dr. Muhammad Fayaz Ali Vs Govt. OF Khyber Pakhunkhwa and others.

APPLICATION FOR IMPLEADMENT OF THE APPLICANT IN THE
ARRAY OF THE RESPONDENTS.

Respectfully sheweth:-

1. That the captioned appeal is pending adjudication before this Tribunal and is fixed for today i.e 12/7/2021.
2. That the in the instant appeal the appellant has impugned a notification dated 12/2/2021 in which impleaded respondent No. 4 has also been transferred an any action against the impugned order will adversely affect the private respondent No. 4.
3. That valuable right of the impleaded respondent is attached with the instant appeal but he has not been in-listed in array of the respondent.
4. That impleadment of the private respondent no. 4 is as per law and rules.

It is therefore, most humbly prayed that on acceptance of this application applicant may be in listed in the array of respondents.

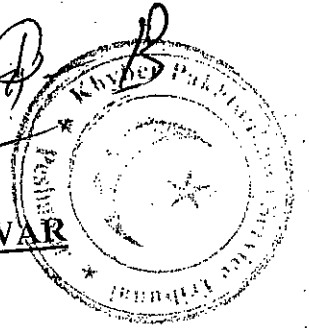
APPLICANT

(DR. FAZAL BASIR)

Through

NOOR MUHAMMAD KHATTAK
ADVOCATE

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR



Service Appeal No 390 /2019

Dr. Naqeeb Ur Rehman, Deputy DHO Sub Division Dara Zinda District Khyber Pakhtunkhwa
D. I KhanAppellant

Diary No. 336

Dated 13/3/2019

VERSUS

- ✓ 1. Government of KPK through Chief Secretary Civil Secretariat Peshawar.
2. The Additional Chief Secretary FATA (Merged Areas).
3. Secretary, Health Department, Govt. of KPK Peshawar.
4. Director Health Services, FATA Khyber Pakhtunkhwa, Peshawar. (Merged Areas)
5. Dr. Naik Muhammad Management Cadre under transfer as Deputy DHO Darazinda D.I Khan.

.....Respondents

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 12-11-2018 WHEREBY RESPONDENT No. 05 of MANAGEMENT CADRE BPS-18 ATTACHED TO AGENCY SURGEON F.R TANK HAS BEEN POSTED / TRANSFERRED AGAINST THE POST OF DEPUTY DHO SUB DIVISION DARA ZINDA D.I KHAN WHICH HAS ALREADY BEEN OCCUPIED BY THE APPELLANT AND NEITHER THE APPELLANT HAS BEEN TRANSFERRED NOR RELIEVED FORM THE SAID POST AGAINST WHICH DEPARTMENTAL APPEAL DATED 19.11.2018 HAS NOT BEEN RESPONDED WITHIN THE STATUTORY PERIOD OF 90 DAYS.

Filed to-day
Registrar
13/3/2019

[Signature]
Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

PRAYER:-

Re-submitted to-day
and filed.

[Signature]
Registrar
21/3/19

ON ACCEPTANCE OF THIS SERVICE APPEAL ORDER 12-11-2018 MAY KINDLY BE SET-ASIDE AND THE APPELLANT MAY BE ALLOWED TO CONTINUE HIS DUTIES ON HIS ALREADY OCCUPIED POST AT SUB DIVISION DARA ZINDA D.I.KHAN.

Respectfully Submitted:-

I very humbly submit few lines for your kind and sympathetic consideration.

1. That the appellant has been initially appointed as Medical Officer (BPS-17) vide order dated 19-10-1987 and has been regularized vide order dated 23-01-1998. (Copy of appointment order dated 19.10.1987 is attached as annexure A).

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 390/2019

Date of Institution ... 13.03.2019

Date of Decision ... 13.09.2019



Dr. Naqeeb Ur Rehman, Deputy DHO Sub-Division Darazinda District D.I.Khan.
... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat
Peshawar and four others. ... (Respondents)

MR. YASIR SALEEM,
Advocate

--- For appellant.

MR. M. RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

--- For respondents.

MR. BILAL AHMAD DURRANI,
Advocate

--- For respondent no.5.

MR. AHMAD HASSAN,
MR. M. AMIN KHAN KUNDI

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


JUDGMENT

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

ARGUMENTS

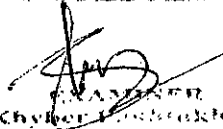
02. Learned counsel for the appellant argued that his initial appointment as
Medical Officer in the respondent-department on adhoc basis was notified on
19.10.1987 and regularized through order dated 23.01.1998. Since then he was
performing duty with full zeal and devotion. That he was promoted as Senior
Medical Officer (BPS-18) vide notification dated 16.04.2008 and posted at South
Waziristan. Later on, the appellant was posted as Medical Superintendent in his

ATTESTED


Ahmad Hassan
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

own pay and scale vide order dated 24.12.2010 and was posted at Agency Headquarters Hospital, where he continued performing duty till 2013. Due to frequent transfers of the appellant, he knocked the door of Peshawar High Court and this Tribunal. Vide judgment of this Tribunal dated 21.09.2017 passed in service appeal no. 227/2017 his pre-mature transfer was cancelled. As the appellant was not assigned the charge of the said post, thereafter, he filed implementation petition in this Tribunal, where-under directions were conveyed to the respondents to accept his charge assumption report and was subsequently, accepted vide order dated 15.05.2018. In the meanwhile the government of Khyber Pakhtunkhwa through notification dated 30.07.2018, re-designated the post of Agency Surgeon of FRs as Deputy District Officer, due to merger of erstwhile FATA with Khyber Pakhtunkhwa. The appellant was still performing duty against the post of Dy: DHO Sub-Division Darazinda D.I.Khan. Recently, the respondents transferred private respondent no.4 belonging to Management Cadre against the post of Dy: DHO Sub-Division Darazinda, D.I.Khan vide order dated 12.11.2018. It is pertinent to point out that this post has already been occupied by the appellant. Feeling aggrieved, he filed departmental appeal on 19.11.2018, which remained un-answered, hence, the present service appeal. As the appellant was at the verge of retirement, therefore, the impugned transfer order was not tenable. Pre-mature transfer would adversely affect vested rights of the appellant. Impugned transfer was made in violation of Posting/Transfer Policy of the Provincial Government. Learned counsel for the appellant further contended that since long salary of the appellant had been stopped by the respondents without assigning any reason. It has added to miseries of the appellant. As he is performing duty and not being paid so it amounts to forced labor.

ATTESTED

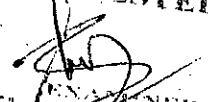

 JUDGE
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

03. Learned counsel for private respondent no.5 argued that the post of Agency Surgeon (BPS-18) was earmarked for the doctors of Management Cadre, whereas the appellant hails from general cadre, that is why he was transferred to his original post of Senior Medical Officer (BPS-18) South Waziristan. He further stated that the appellant was promoted to the post of Principal Medical Officer (PMO)(BPS-19) in the General Cadre and his services were placed at the disposal of DHO D.I.Khan for further posting vide notification dated 05.06.2017 due to non-availability of vacant post of PMO(BPS-19) in merged areas. On the other hand Dr. Naik Muhammad (BPS-18) private respondent no.4 was transferred to the post of Dy: DHO Sub-Division Darazinda, D.I.Khan, being a Management Cadre post. He was treated according to law and rules.

04. Learned Assistant Advocate General relied on the arguments advanced by the learned counsel for private respondent no.5.

CONCLUSION

05. The present service appeal has been filed by the appellant being aggrieved of impugned transfer dated 12.11.2018 through which Dr. Naik Muhammad (BPS-18) (private respondent no.5) attached to Agency Surgeon F.R Tank was posted as Agency Surgeon F.R. D.I.Khan/Dy: DHO Sub-division Darazinda D.I.Khan. The main grievance of the appellant was that the post against which the said officer had been transferred was occupied by him. As a sequel to judgment of this Tribunal dated 21.09.2017 and order dated 29.02.2018 passed on the implementation report filed by him, he was performing duty against the post of Dy: DHO Sub-Division

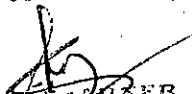
ATTESTED

 Khushnawaz Khan
 Service Tribunal
 Peshawar

Dara Zinda, D.I.Khan regularly. Being at the verge of retirement, he should not have been dislocated. Transfer referred to above was made in violation of Posting/Transfer Policy notified by the Provincial Government.

06. To set the record straight, it is clarified that the appellant belongs to the General Cadre and in the first instance, he should not have been posted against the Management Cadre post, which was against the spirit of notification dated 11.12.2008 issued by the respondent-department. It is astonishing that respondents trample under their feet instructions issued by them, which is censurable. As regards the judgment of this Tribunal was concerned it was a closed and past transaction. As the newly re-designated post of Agency Surgeon of FRs as Dy: District Officer, as a sequel of merger of erstwhile FATA with Khyber Pakhtunkhwa vide notification dated 30.07.2018, the post referred to above was meant for officers belonging to the Management Cadre, therefore, any claim of the appellant on the said post was without any justification. Moreover, he was promoted as PMO (BPS-19) in the General Cadre and his services were placed at the disposal of DHO, D.I.Khan due to non-availability of vacant post of PMO (BPS-19) in the Merged Areas vide notification dated 05.06.2017. Even otherwise as officer of BPS-19 cannot work against a post carrying lower pay scale. We have not found any legal infirmity in the posting of private respondent no.5.

07. Even in the past in the recent pass this Tribunal in a judgment dated 09.08.2019 rendered in service appeal no823/2019 transfer of General Cadre doctors against Management Cadre posts was held illegal and unlawful. The respondent department was further directed to recall all the posting orders of

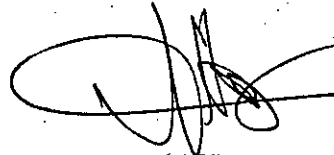
ATTESTED


 MEMBER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Medical Officers/Senior Medical officers of the General Cadre against Management Cadre. It is high time that this illegal practice is laid to rest once for all and those who mislead their superiors and violate the aforementioned policy should be proceeded under E&D Rules 2011 and thereafter be given exemplary punishment.

08. Learned counsel for the appellant further stated that there was no vacant post of PMO (BPS-19) under the administrative control of DHO, D.I.Khan, as was evident from letter dated 30.11.2017 which is placed on the case file. Reportedly salary has not been paid to him since long. No one has the right to deprive a civil servant of his/her monthly salary. It not only causes undue hardships to a civil servant but also smacks of malafide/victimization on the part of respondents.

09. In view of the foregoing, the appeal is dismissed. It is once again reiterated to recall the orders of posting of Medical Officers/ Senior Medical Officers belonging to General Cadre and posted against Management Cadre posts. The issue of salary of the appellant may be resolved without further loss of time. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
MEMBER

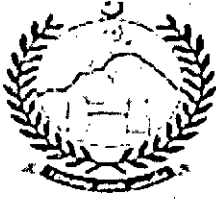
Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
13.09.2019

Certified to be true copy

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 14/6/21
Number of Words 2400
Copying Fee 26/-
Urgent 31/-
Total 30/-
Name of Copyist _____
Date of Completion of Copy 15/6/21
Date of Delivery of Copy 14/6/21



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the December 14, 2021

NOTIFICATION

NO. SOH(E-V)/2-2/2021/233 The Competent Authority is pleased to order posting/transfer of the following doctors, in the best public interest, with immediate effect -

S.NO	NAME OF DOCTOR	FROM	TO
1.	Dr. Ikhtiar Ali, Managemnet Cadre (BS-19)	Waiting for posting	Central Jail Hospital, Peshawar against the vacant post of Principal Medical Officer (BS-19)
2	Dr. Fazal Rehman, Principal Medical Officer (BS-19)	Waiting for posting	DHQ Hospital KDA, Kohat against the vacant post
3	Dr. Muhammad Rafique Principal Medical Officer (BS-19)	Waiting for posting	Govt. Naseerullah Khan Babar Memorial Hospital, Peshawar against the vacant post
4.	Dr. Tahira Ibrahim, Principal Medical Officer (BS-19)	Waiting for posting	Benazir Bhutto Shaheed Teaching Hospital, Abbottabad against the vacant post
5	Dr. Najma Khatoon Principal Dental Surgeon (BS-19)	Waiting for posting	Police & Services Hospital, Peshawar against the vacant Post

SECRETARY HEALTH
GOVERNMENT OF KHYBER PAKHTUNKHWA

Endst. of even No. & Date.

Copy to the:-

- 1 Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 2 Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
- 3 All concerned District Health Officer, Khyber Pakhtunkhwa
- 4 All concerned Medical Superintendent, Khyber Pakhtunkhwa
- 5 All concerned District Accounts Officers, Khyber Pakhtunkhwa
- 6 Deputy Director (IT), Health Department, with the direction to upload the notification on official website
- 7 PS to Minister for Health Department, Khyber Pakhtunkhwa
- 8 PS to Secretary Health Department, Khyber Pakhtunkhwa
- 9 Doctors concerned.
- 10 Personal file of the doctors Concerned


(TERMAS AYYUB)
SECTION OFFICER (E-V)



Government of Khyber Pakhtunkhwa
Health Department

8325/14.9.21

Dated Peshawar the September 09, 2021

NOTIFICATION

NO. SOH(E-V)/4-4/2021

WHEREAS, Dr Muhammad Fayyaz Ali, Management Cadre (BS-19), Ex-District Health Officer, Charsadda was proceeded under Khyber Pakhtunkhwa Govt Servants (Efficiency & Discipline) Rules, 2011 on account of negligence and mismanagement in the treatment of a six years old snake bitten child (girl) who expired due to non-availability of Anti-Snake venom culminating into the loss of precious life of human

AND WHEREAS, a Fact Finding Inquiry followed by Formal Inquiry under Health Department's and as per recommendations of the inquiry Committee Dr. Muhammad Fayyaz Ali, Management Cadre (BS-19), Ex-District Health Officer, Charsadda for imposition of major penalty of misconduct under Khyber Pakhtunkhwa, Civil Servants (E&D) Rules, 2011

AND WHEREAS, the Competent Authority (Chief Minister Khyber Pakhtunkhwa) issued him a Show Cause Notice vide letter No SOH (E-V)/4-4/2021 dated 10.02.2021 for imposing major penalty of "Removal from Service" tentatively.

AND WHEREAS, the opportunity of personal hearing was given to the accused on 03.08.2021, and was personally heard

NOW THEREFORE, In exercise of the powers conferred under Rule-14 of the Khyber Pakhtunkhwa Civil Servants (E&D) Rules, 2011 and all such powers in that behalf, the Competent Authority (Chief Minister, Khyber Pakhtunkhwa) is pleased to impose/confirm major penalty of "Reduction to a lower stage in a time scale" upon Dr Muhammad Fayyaz Ali, Management Cadre (BS-19), Ex-District Health Officer, Charsadda for his above mentioned acts of omission & commission, with immediate effect.

SECRETARY HEALTH
GOVERNMENT OF KHYBER PAKHTUNKHWA

Endst. Of oven No. & Date.

Copy to the:-

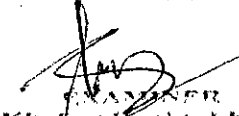
1. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
2. PSO to Chief Secretary, Khyber Pakhtunkhwa.
3. Accountant General, Khyber Pakhtunkhwa.
4. Director General Health Services, Khyber Pakhtunkhwa.
5. PS to Minister for Health Department, Khyber Pakhtunkhwa.
6. PS to Secretary Health Department, Khyber Pakhtunkhwa.
7. Doctor concerned.

(LATIF UR REHMAN)
SECTION OFFICER (E-V)

09/09/21

own pay and scale vide order dated 24.12.2010 and was posted at Agency Headquarters Hospital, where he continued performing duty till 2013. Due to frequent transfers of the appellant, he knocked the door of Peshawar High Court and this Tribunal. Vide judgment of this Tribunal dated 21.09.2017 passed in service appeal no. 227/2017 his pre-mature transfer was cancelled. As the appellant was not assigned the charge of the said post, thereafter, he filed implementation petition in this Tribunal, where-under directions were conveyed to the respondents to accept his charge assumption report and was subsequently, accepted vide order dated 15.05.2018. In the meanwhile the government of Khyber Pakhtunkhwa through notification dated 30.07.2018, re-designated the post of Agency Surgeon of FRs as Deputy District Officer, due to merger of erstwhile FATA with Khyber Pakhtunkhwa. The appellant was still performing duty against the post of Dy: DHO Sub-Division Darazinda D.I.Khan. Recently, the respondents transferred private respondent no.4 belonging to Management Cadre against the post of Dy: DHO Sub-Division Darazinda, D.I.Khan vide order dated 12.11.2018. It is pertinent to point out that this post has already been occupied by the appellant. Feeling aggrieved, he filed departmental appeal on 19.11.2018, which remained un-answered, hence, the present service appeal. As the appellant was at the verge of retirement, therefore, the impugned transfer order was not tenable. Pre-mature transfer would adversely affect vested rights of the appellant. Impugned transfer was made in violation of Posting/Transfer Policy of the Provincial Government. Learned counsel for the appellant further contended that since long salary of the appellant had been stopped by the respondents without assigning any reason. It has added to miseries of the appellant. As he is performing duty and not being paid so it amounts to forced labor.

ATTESTED

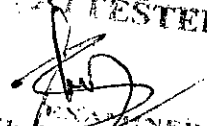

 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

03. Learned counsel for private respondent no.5 argued that the post of Agency Surgeon (BPS-18) was earmarked for the doctors of Management Cadre, whereas the appellant hails from general cadre, that is why he was transferred to his original post of Senior Medical Officer (BPS-18) South Waziristan. He further stated that the appellant was promoted to the post of Principal Medical Officer (PMO)(BPS-19) in the General Cadre and his services were placed at the disposal of DHO D.I.Khan for further posting vide notification dated 05.06.2017 due to non-availability of vacant post of PMO(BPS-19) in merged areas. On the other hand Dr. Naik Muhammad (BPS-18) private respondent no.4 was transferred to the post of Dy: DHO Sub-Division Darazinda, D.I.Khan, being a Management Cadre post. He was treated according to law and rules.

04. Learned Assistant Advocate General relied on the arguments advanced by the learned counsel for private respondent no.5.

CONCLUSION

05. The present service appeal has been filed by the appellant being aggrieved of impugned transfer dated 12.11.2018 through which Dr. Naik Muhammad (BPS-18) (private respondent no.5) attached to Agency Surgeon F.R Tank was posted as Agency Surgeon F.R. D.I.Khan/Dy: DHO Sub-division Darazinda D.I.Khan. The main grievance of the appellant was that the post against which the said officer had been transferred was occupied by him. As a sequel to judgment of this Tribunal dated 21.09.2017 and order dated 29.02.2018 passed on the implementation report filed by him, he was performing duty against the post of Dy: DHO Sub-Division

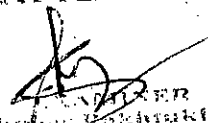
ATTESTED

 Attesting Officer
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Dara Zinda, D.I.Khan regularly. Being at the verge of retirement, he should not have been dislocated. Transfer referred to above was made in violation of Posting/Transfer Policy notified by the Provincial Government.

06. To set the record straight, it is clarified that the appellant belongs to the General Cadre and in the first instance, he should not have been posted against the Management Cadre post, which was against the spirit of notification dated 11.12.2008 issued by the respondent-department. It is astonishing that respondents trample under their feet instructions issued by them, which is censurable. As regards the judgment of this Tribunal was concerned it was a closed and past transaction. As the newly re-designated post of Agency Surgeon of FRs as Dy: District Officer, as a sequel of merger of erstwhile FATA with Khyber Pakhtunkhwa vide notification dated 30.07.2018, the post referred to above was meant for officers belonging to the Management Cadre, therefore, any claim of the appellant on the said post was without any justification. Moreover, he was promoted as PMO (BPS-19) in the General Cadre and his services were placed at the disposal of DHO, D.I.Khan due to non-availability of vacant post of PMO (BPS-19) in the Merged Areas vide notification dated 05.06.2017. Even otherwise as officer of BPS-19 cannot work against a post carrying lower pay scale. We have not found any legal infirmity in the posting of private respondent no.5.

07. Even in the past in the recent pass this Tribunal in a judgment dated 09.08.2019 rendered in service appeal no823/2019 transfer of General Cadre doctors against Management Cadre posts was held illegal and unlawful. The respondent department was further directed to recall all the posting orders of

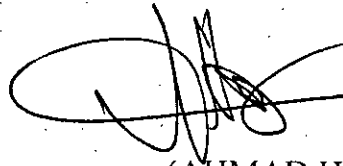
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Medical Officers/Senior Medical officers of the General Cadre against Management Cadre. It is high time that this illegal practice is laid to rest once for all and those who mislead their superiors and violate the aforementioned policy should be proceeded under E&D Rules 2011 and thereafter be given exemplary punishment.

08. Learned counsel for the appellant further stated that there was no vacant post of PMO (BPS-19) under the administrative control of DHO, D.I.Khan, as was evident from letter dated 30.11.2017 which is placed on the case file. Reportedly salary has not been paid to him since long. No one has the right to deprive a civil servant of his/her monthly salary. It not only causes undue hardships to a civil servant but also smacks of malafide/victimization on the part of respondents.

09. In view of the foregoing, the appeal is dismissed. It is once again reiterated to recall the orders of posting of Medical Officers/ Senior Medical Officers belonging to General Cadre and posted against Management Cadre posts. The issue of salary of the appellant may be resolved without further loss of time. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
MEMBER

Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
13.09.2019

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 14/6/21
Number of Vards 2400
Copying Fee 4/26/-
Urgent 30/-
Total 30/-
Name of Copyist _____
Date of Completion of Copy 14/6/21
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