19th Sept 2022 Learned counsel for the appellant present and heard.

Let pre-admission notices be issued to the respondents for reply/comments. To come up for reply/comments as well as preliminary hearing on 14.11.2022 before S.B at camp court Abbottabad.



(Kalim Arshad Khan) Chairman Camp Court Abbottabad

Form- A

FORM OF ORDER SHEET

Court of			·
•	÷		•
Case No		927/ 2 0)22

•	Case No	927/ 2022
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1.	2	3
1-	20/06/2022	The appeal of Mr. Muhammad Shafique presented today by Mr. Muhammad Arshad Tanoli Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR
2-	14-7-22	This case is entrusted to touring Single Bench at A.Abad for preliminary hearing to be put there on 18-07-22 Metices be issued to appellant and his counsel for the date fixed. CHAIRMAN
	18.07.2022	Nemo for the appellant. Notice for prosecution of the appeal be issued to the appellant as well as his counsel through registered post and to come up for preliminary arguments on 19.09.2022 before the S.B at Camp Court Abbottabad. (Salah-Ud-Din) Member (J) Camp Court Abbottabad

BEFORE KHYBER PKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR CHECK LIST

Case Title: M. Shafique vs SN/F 07 le le

S.#	Contents	Yes	No
1.	This appeal has been presented by: M. Arshaf lelian B	ns"	
_	Whether Counsel / Appellant / Respondent / Deponent have signed the		
2.	requisite documents?		
3.	Whether Appeal is within time?		
4.	Whether the enactment under which the appeal is filed mentioned?	V.	
5	Whether the enactment under which the appeal is filed is correct?	~	
6.	Whether affidavit is appended?	1	
. 7.	Whether affidavit is duly attested by competent oath commissioner?	<i>\(\overline(\ov</i>	
8.	Whether appeal/annexures are properly paged?	レ	
9.	Whether certificate regarding filing any earlier appeal on the		
٦.	subject, furnished?	1	
10.	Whether annexures are legible?	V.	
11.	Whether annexures are attested?	~	, -
12	Whether copies of annexures are readable/clear?		
13.	Whether copy of appeal is delivered to A.G/D.A.G?	<u> </u>	-
1.4	Whether Power of Attorney of the Counsel engaged is attested and		
14.	signed by petitioner/appellant/respondents?	\ \(\begin{array}{c} \cdot \cd	
15.	Whether numbers of referred cases given are correct?	<i>\\</i>	
16.	Whether appeal contains cuttings/overwriting?	0	
17.	Whether list of books has been provided at the end of the appeal?		
. 18.	Whether case relate to this Court?		
19.	Whether requisite number of spare copies attached?	<u> </u>	
20.	Whether complete spare copy is filed in separate file cover?		
21.	Whether addresses of parties given are complete?		
22.	Whether index filed?		
23.	Whether index is correct?	<u></u>	<u> </u>
24.	Whether Security and Process Fee deposited? on		
	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974		
25.	Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on		<u> </u>
26.	Whether copies of comments/reply/rejoinder submitted? on		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on	:	

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

Signature:

Dated:

An Archael Class

14/6/22

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA, PESHAWAR

Service Appeal No. 127 /2022

Muhammad Shafique, Head Clerk, Public Health Engineering Department, Mansehra.

...APPELLANT

VERSUS

Govt. of Khyber Pakhtunkhwa, through Secretary Public Health Engineering Department, Peshawar & others.

...RESPONDENTS

SERVICE APPEAL

INDEX

S. #	Description	Page No.	Annexure
1.	Service appeal along with affidavit	1 to 9	
2.	Address of the party	10	
3.	Copy of promotion letter dated 14/12/2015 and office order dated 29/12/2015	11-15	"A" & "B"
4.	Copy of the order dated 01/01/2016	16	"C"
5.	Copy of judgment of service tribunal	17-21	"D"
6.	Copy of the enquiry report dated 25/01/2018	22-24	"E"
7.	Copy of order dated 02/02/2018, service appeal No.170/19 and order dated 17/05/2022		"F", "G" & "H"
8.	Copy of departmental appeal dated 18/08/2018	36-38	" <u>I</u> "
9.	Copy of proof letter	39-40	"J"
10.	Copies of execution petition No.57/18 and order dated 27/06/2018	41-48	"K" & "L"
11.	Wakalatnama	40	

Dated: 14/06 /2022

Through

(Muhammad Arshad Khan Tanoli)

Advocate High Court, Abbottabad

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA, PESHAWAR

Service Appeal No. /202

Muhammad Shafique, Head Clerk, Public Health Engineering Department, Mansehra.

...APPELLANT

VERSUS

- 1. Govt. of Khyber Pakhtunkhwa, through Secretary Public Health Engineering Department, Peshawar.
- 2. Chief Engineer (North), Public Health Engineering Department Khyber Pakhtunkhwa, Peshawar.
- 3. Chief Engineer (South), Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar.
- 4. Executive Engineer, Public Health Engineering Division, Mansehra.
- 5. District Accounts Officer, Mansehra.

...RESPONDENTS

SERVICE APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT 1974 FOR DECLARATION TO THE EFFECT THAT RESPONDENT'S DEPARTMENT DID NOT PAY SALARY TO THE APPELLANT W.E.F 01/01/2016 TO 31/07/2017. THE APPELLANT FILED SERVICE

APPEAL NO.170/19 DURING THE PENDENCY OF SERVICE APPEAL RESPONDENT NO.2 ISSUED ORDER NO.3/E-2/PHE DATED 02/02/2018 WHICH WAS RECEIVED BY THE APPELLANT ON 18/02/2021. THE HONOURABLE TRIBUNAL. DIRECTED TO IMPUGNED THE FINAL ORDER 02/02/2018 VIDE ORDER DATED 17/05/2022. THE APPELLANT IS ENTITLED FOR PAYMENT OF SALARY FOR THE SAID PERIOD AS THE APPELLANT WAS NOT AT FAULT, BUT THE RESPONDENT'S DEPARTMENT DID NOT ALLOW THE PETITIONER TO MARK PRESENT IN THE ATTENDANCE REGISTER.

PRAYER: ON ACCEPTANT OF THE INSTANT SERVICE APPEAL, THE RESPONDENT'S DEPARTMENT MAY GRACIOUSLY BE DIRECTED TO RELEASE SALARY OF THE PETITIONER W.E.F 01/01/2016 TO 31/07/2017 AFTER SETTING ASIDE OF IMPUGNED ORDER DATED 02/02/2018. ANY OTHER RELIEF WHICH THIS HONOURABLE TRIBUNAL DEEM APPROPRIATE IN THE CIRCUMSTANCES OF THE CASE MAY ALSO BE ALLOWED.

Respectfully Sheweth;-

That the facts forming the background of the instant service appeal are arrayed as under; -

- 1. That the appellant was promoted a Head Clerk and was posted at Public Health Engineering Division Mansehra. Copy of promotion letter dated 14/12/2015 and office order dated 29/12/2015 is annexed as Annexure "A" & "B".
- 2. That the appellant took over the change of the post on 31/12/2015 and after one day of assumption of change of the post, the appellant was posted from Mansehra to Public Health Engineering Division Kohistan, vide order dated 01/01/2016. Copy of the order dated 01/01/2016 is annexed as Annexure "C".
- 3. That the appellant filed service appeal No. 625/16 before his Honourable Tribunal, which was decided on 17/07/2017. Copy of judgment of service tribunal is annexed as Annexure "D".
- 4. That the Honourable Tribunal set-aside the impugned withdrawal order of appellant dated 01/01/2016 and left the issue of non compliance of

authority. Following this, the appellant was posted at Public Health Engineering Division Mansehra, but salary of the petitioner w.e.f 01/01/2016 to 17/07/2017 has not been paid. In this regard, an enquiry was ordered to look into the fact, that as to whether the appellant served the department w.e.f 01/01/2016 to 17/07/2017. The enquiry committee decided that the appellant did not joined duty at PHE Division Kohistan from 01/01/2016 to 31/07/2017. Copy of the enquiry report dated 25/01/2018 is attached as Annexure "E".

- 5. That during the inquiry and pendency of service appeal, respondent No.2 issued impugned order dated 02/02/2018, hence the Honourable Tribunal vide order dated 17/05/2022 issued direction to file / impugned the order dated 17/05/2022. Copy of order dated 02/02/2018, service appeal No.170/19 and order dated 17/05/2022 is attached as Annexure "F", "G" & "H".
- 6. That appellant filed the departmental appeal against the enquiry report on 18/08/2018 which is yet to be decided by the department. Copy of

departmental appeal dated 18/08/2018 is annexed as Annexure "I".

7. Hence, the instant service appeal is filed, inter-alia on the following grounds;-

GROUNDS:

- a) That the enquiry report is against the facts, arbitrary and one sided. The appellant has not been provided opportunities to defend his case. Therefore, enquiry report dated 09/08/2018 and impugned order dated 02/02/2018 are liable to be set-aside.
- Public Health Engineering Division

 Kohistan, for resumption of change of the post after 01/01/2016 but the appellant could not assume change of the post on the ground that there was no post of Head Clerk at Public Health Engineering Division Kohistan. Copy of proof letter is annexed as Annexure "J".

- c) That the appellant remained rolling stone between Kohistan Division and Mansehra Division. Therefore, both the division did not allow the appellant to mark him present in their attendance registers.
- d) That the appellant remained under political pressures as well as bureaucratic wrath. As a result, the poor and innocent appellant has been made a scapegoat due to no fault at his end.
- e) That when the appellant was not provided opportunities of serving either at PHE Kohistan or PHE Mansehra, he waited for decision of this Honourable Tribunal.

 Therefore, the appellant is entitled for release of salary w.e.f 01/01/2016 to 17/07/2017.
- f) That the department did not bother to conduct enquiry to the fact that as to whether the post of head clerk was available at PHE Kohistan or otherwise. But in a cursory manner, conducted arbitrary enquiry to give wrongful loss of service comes to the

appellant i.e monitory, seniority and length of service loss.

- g) That the appellant filed execution petition before the Honourable Tribunal vide execution petition No.57/18 in service appeal No.625/2016 which was decided on 27/06/2018 wherein the appellant was directed to agitate the mater before the authority. Therefore, the appellant filed departmental appeal on 17/08/2018. Copies of execution petition No.57/18 and order dated 27/06/2018 are attached as Annexure "K" & "L".
- h) That the matter relates to the terms and conditions of service. The question of salary of appellant is involved. Therefore, in such a case, the appellant has always a continuing cause of action.
- i) That the Honourable Tribunal has jurisdiction to entertain the appeal of the appellant under article 212 of the

constitution of Islamic Republic of Pakistan
1973.

j) That, other points shall be raised before the Honourable Tribunal at the time of arguments.

It is, therefore, humbly prayed that, on acceptant of the instant service appeal the respondent's department may graciously be directed to release salary of the petitioner w.e.f 01/01/2016 to 31/07/2017 after setting aside the impugned order dated 02/02/2018. Any other relief which this Honourable Tribunal deem, appropriate in the circumstances of the case may also be allowed

	•	
Dated:		/2022

Through

(Muhammad Arshad Khan Tanoli) Advocate High Court, Abbottabad

VERIFICATION:-

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

...APPELEANT

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA, PESHAWAR

Service	Appeal	No.	/2022

Muhammad Shafique, Head Clerk, Public Health Engineering Department, Mansehra.

...APPELLANT

VERSUS

Govt. of Khyber Pakhtunkhwa, through Secretary Public Health Engineering Department, Peshawar & others.

...RESPONDENTS

SERVICE APPEAL

AFFIDAVIT

I, Muhammad Shafique, Head Clerk, Public Health Engineering Department, Mansehra, do hereby solemnly affirm and declare that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA, PESHAWAR

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(Muhammad Arshad Khan Tanoli)
Advocate High Court, Abbottabad

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	22	Mr. Naushad Khan	Division Perhawae	Assistant PHE. Clicke Peshawar	Against the existing
	23	Mr. Afsar Khan	Accounts Clerk 2Hi. Division Kohat	Assistant PHE	Against the existing
•	. 24	Mr. Khashid Iqbal	Accounts Clerk office of	Circle Kehat f Assistant office of	· vacancy Against the existing
~ .	25.]	Accounts Clerk PHIL.	Chief Engineer South Head Clerk PHE.	Aucunch
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	20,	Control of the Contro	Accounts Clerk PHIL Division Hangili	Hezd Clerk PHE Division Tank	Against the existing
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Copy forwarded to:

The Scenetary to Govt of Khyber Pakhtunkhwa PHED Peshawar
 The Chief Engineer (North) Public Health Engg. Department Peshawar
 All Superintending Engineers (North/South) PHED.
 PS to Minister for PHED Khyber Pakhtunkhwa Peshawar

5. All Executive Engineers (North/South) PIED.

6. All District Accounts Officer concerned.
7. The official concerned/Master File.

Child Engineer (South)

Chief Engineer (South)

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Muhammad Arshad Khan Tanoli Advocate High-Court - P. Office No: 33 Adjacent to

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Jul. 2041 10:20AM

OFFICE ORDER

office of the chief engineer (south) UBLIC HEALTH ENGG; DEPARTMENT KHYBER PAKHTUNKHWA, PESHAW

Dated Peshawar, the 14

On the recommendation of the Departmental Promotion Committee (DPC) in its

meeting held on 18:11.2015, under the Chairmanship of Sccretary PHE Department, the Chief Engineer (North) competent authority is pleased to promote the following Accounts Clerks (BPS-9) to the rank PHE Department r Iread Clerk/Assistant BPS-16, in the best interest of public.

CHIO Om.

Hassan: Gul, 2) Abdul Ghani, 3) Muhammad Pervez, 4) Daud Khan, Siad Nawaz, 6) Rawail Khan, 7) Pio-ud-Din, 8) Siad Rehman, Muhammad Ishaque, 10) Munir Khan, 11) Sareer Ullah, 12) Sher All Baz, 13) Dector Khan, 14) Muhammad Shafique, 15) Noor-ur-Rehman, 16) Aftab Kamal, 17) Iqbaland Din, 18) Perviz Khan, 19) Nowshad Khan, 20) Afsar Khan,

21) Khurshid Iqbal, 22) Sadre Alam, 23) Sufi Sardar.

Consequent upon their promotion to the next rank, they will remain on probation for a period of one year, as per Civil Servants act 1973, read with appointment/promotion and ADE/Focal insfer rules 1989, as such, the following posting are hereby ordered, with inunediate offect.

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rom CD1	4	Mr. Abdul Ghani	Accounts Clerk PH	E	Head Clerk PHE		Vacancy
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mil	4.	Mr. Muhammad	Head Clerk PHE		Division Bunor		Against the existing vacancy
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Λ	5.	Mr. Muhammad	Accounts Clork PHE	-	Division Battagram	- 1	vacancy vacancy
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- '' '			Division Nowshern	1	Chief Engineer South	A	gainst the existing
<u> </u>	9. M	r. Paio Din -	Accounts Clerk PHE		Assistant PHE		Vacancy
ا بر	10 .M	e Calabi in	Division D.I.Khan		Circle D.I.Khan	A	gainst the existing
		r. Said Reliman.	Accounts Clerk PHE Division Swat		Head Clerk PHE		vacancy
*	ri j Mi	. Muhammad			Division Swat	'	Vice Item No.3
1		Irshad	Division Haripur	- 17	Assistant office of	· Ag	ainst the existing
	(2: Mr	Muhammad	Accounts Clerk PIJD	- 1-5	hief Engineer North		Vacancy
		ishaque	Division D.I.Kitani	.	lead Clerk PidE Division D.K. Khan	AN E	iinst the existing
\mathcal{M} :	3. Mr.	Munir Khan~	Accounts Clerk PHF		lead Clork PHE	 	vacancy
31	4 \4		Division Abbottabad	_ p	ivision Abbottabad	/ v	ice Item No.4
	4. Mr.	Sareor Ullah	Accounts Clerk PHE	H	ead Clerk PHE		·
11:	5. Mr	Sher Ali Baz	Division Peshawar Accounts Clerk PHE	<u>D</u>	ivision Peshawar	1.78	inst the existing
·	-	THE PART OF THE PA	Division Lakki Marwat	A	ssistant PHE	Aga	inst the existing
16	S Mo	No	Accounts Clerk (Head	4	relo Bannu		Yadancy
1		Doctor Khan	Clerk in (OPS) PHF	.H	ad Clerk PHE	,	
1 17	Mr	Muhammad	Ulvision Karnk	Di	vision Kohat	Уic	eitem No.30
		Shafique	Accounts Clerk PHE	He	ad Clerk PHE	400	
1119			Division Haripur	Di	vision Kohistan	vagan	ist the existing
Musle 17	· inte	loor-ur-Rehman	Accounts Clerk PHE Division Malakand	Fle	ad Clerk PHE	Agaii	vacancy est the existing
7 1010	·		- with tridiagaid	J Div	vision Malakand		Vacatrey
· IIILHAH	1 .		•	•			

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P-14

				
19.	. Mr. Aftab Kamal	Accounts Clark office of C.E (South)	Assistant office of Chief Engineer South	Against the existing vacancy
		Accounts Clerk PHE	Head Clerk PHE	Against the existing
20.	. Mr. Iqbal-ud-Din	Division Nowshera	Division Nowshera	vacancy
1		Accounts Clerk PHE	Assistant PHE Circle	Against the existing
21.	Mr. Pervez Khan	Division Mardan	Mardan	vacancy
22	Mr. Naushad Khan	Accounts Clerk PHE	Assistant PHE	Against the existing
	Wir. Willishad Khan	Division Peshawar	Circle Peshawar	vacancy
23.	Mr. Afsar Khan	Accounts Clerk PHF	Assistant PHE	Against the existing
ļ	THE CASE INITIAL	Division Kohat	Circle Kohat	vacancy
24.	Mr. Khurshid Iqbal	Accounts Clark office of	Assistant office of	Against the existing
	The second secon	C.E South	Chief Engineer South	yacancy
25.	Mr. Sadr-c-Alam	Accounts Clerk PHE	Head Clerk PHE	Vice Item No.27
 		Division Charsadda	Division Charsadda	
26.	Mr. Sofi Sardar	Accounts Clerk PHE	Head Clerk PHE	Against the existing
 	May C D'aglaid A1	Division Hangin	Division Tank	/ vacancy
27.	Mr. S.Rashid Ali Shah	Head Clerk PHE	Assistant PHE	Against the existing
-	**************************************	Division Charsadda	Circle Peshawar	vacancy
28.	Mr. Zahir Shah	Assistant PHE Circle Mardan	Head Clerk PHE	Against the existing
		Head Clerk PHE	Division Mardan	vacancy
29.	Mr. Asghar All	Division Bannu	Head Clerk PHE	Against the existing
	3.4 7.6 1.5	Head Clerk PHE	Division Dir Upper	YRCOINCY
30.	Mr. Kalim Khan	Division Kohat	Head Clerk PHE	Vice Item No.29
		A Clerk working	Division Bannu	
,.	Ma street	against the post of	Accounts Clerk PHE	A #
1.	Mr. Abdullah	Computer Operator PHE	Division Hangu	Adjusted Vice Item No.26
		Division Hangu	- erision craige	190.20
32.	Mr. Abdul Saboor	Account Clerk PHE	Accounts PHE	*/*
<u></u>		Division Bannu	Division Karak	Vice Item No.7
33.	Mr. Muhammad	Accounts Clerk PHE	Accounts Clerk PHE	3/: 1
	Aslam	Circle D.J.Khan	Division D.I.Khan	Vice Item No.9
! }				Against the existing
i .	Me Money		.	Vacancy with
. 34.	Mr. Maqsood-ur-	Accounts Clerk PHE	Accounts Clerk PHE	additional charge of
1	Refilman	Division Torghar	Division Mansehra	Head Clerk in
f				addition to his own
				duty.

Chief Engineer (South)

Endstt: No. 08 /E-2-B /PHE.

Dated Peshawar the, 14 / 13 /2015

Copy forwarded to:

- 1. The Secretary to Govt of Khyber Pakhtunkhwa PHED Peshawar
- 2. The Chief Engineer (North) Public Health Engg: Department Peshawar.
- 3. All Superintending Engineers (North/South) PHED.
- 4. PS to Minister for PHED Khyber Pakhtunkhwa Peshawar.
- 5. All Executive Engineers (North/South) PHED.
- 6. All District Accounts Officer concerned.
- . 7. The official concerned/Master File.

Chief Engineer (South)

Muhammad Grand Khan Janoli Advocate High Court 181 Office No. 33 Adjacent to



OFFICE OF CHIEF ENGINEER Public health engineering department KHYSER PAKKOTUNKHWA PESHAWAR

Ph#091-9211554, FAX#091-9211407, E-mail: northphed@gmail.com

No. 22 /E-2/PHE Dated Peshawar the, 3-9 /12/2015

OFFICE ORDER

Mr. Muhammad Shafiq Assistant/Head Clerk, PHE Division Haripur (under transfer to PHE Division Kohistan) is hereby posted against the vacant post of Head Clerk PHE Division Manschra, relieving Mr. Maqsood ne-Rehman Accounts Clerk of the Additional Charge of the post of Head Cierk.

Morcover Mr. Shafiq Semor Clerk PHE Sub Division Balaket is transferred & posted against the vacant post of Accounts Clerk in RHE Division Torghar, in the public interest with immediate effect.

Chief Engineer (North)

1. The Superintending Engineer Public Health Engineering Circle Abbottabad

2. The Executive Engineers Public Health Engineering Division Mansehra/Torghar

3. District Account Officer Manschra/Torghai

4. Official concerned.

WAdvocate High Court Office No: 33 Adjacent to

Distt Bor Abbottabad

fincer (North)



OFFICE OF CHIEF ENGINEER UBLIC HEALTH ENGINEERING DEPARTMENT KIIYBER PAKTITUNKHWA PESHAWAR

Ph//091-9211554, PAX//091-9211407, E-mails northphed@gmail.com

/ E-2 /PHE Dated Peshawar the, of 10/12015

OFFICE ORDER

The posting / transfer order of Muhammad Shafiq, Assistant issued vide this office No. 22/E-2/PHE dated 29.12.2015 is hereby cancelled / withdrawn in the public interest.

Chief Engineer (North)

Copy to:

- 1. PS to Secretary PHE Department Peshawar with reference to his letter No. SO(Estt)/PHED/24-58/2015 dated 29.12.2015 please.
- PS to Minister Public Health Engineering Department Peshawar please.
 The Superintending Engineer Public Health Engineering Circle Abbottabad
 The Executive Engineers Public Health Engineering Division Manselva/Torghar
 District Account Officer Manschra/Torghar
- 6. Official concerned.

Annex D

Annexum

BEFORETHE KITYBER PAKETUNKHWA SERVICE TRIBUNAL

CAMP COURT, ABBOTTABAD

Service Appeal No. 625/2016

Date of Institution ... -

30.05.2016

Date of decision. ...

1787-2017



Muhammad Shafique, Flead Clerk, Public Health Engineering Department,

YERSUS

1. Govt. of Khyber Pakhtunkhwa, through Secretary Public health Engineering

(Respondents)

MUIIAMMAD ARSHAD KHAN TANOLI.

MR. MULIAMMAD BILAI Deputy District Attorney For appealant.

For respondents,

MR. NIAZ MUHAMMAD KHAN. MR. AHMAD HASSAN.

CHAIRMAN MEMBER

JUDGMENT

NIAZ MUHAMMAD KIIAN, CHAIRMAN:

counsel for the appellant heard and record perused.

Arguments of the learner

Muhammadi/And Sad Khan Tanoli
Advocate High Court 1:
Office No 33 Adjacent to

FACTS

2. The appellant is aggriced from his transfer cancellation order dated 01.01.2016. He was promoted to the post of Head Clerk BPS-16 on 14.12.2015 and posted at Kohistan. After lifteen days he was transferred to Mansehra on 29.12.2015 against a vacual post and when the appellant assumed the charge at Mansehra on 31.12.2015, the said transfer order dated 29.12.2015 was withdrawn

Time I was

Model

the said post at Manschrift rather it was respondent No. 6 (BPS-9) to continagainst the post of BPS-16. There appears no compulsion on the part of a department which resulted in such hasty withdrawal of transfer order. T Tribunal is also conscious of the fact that so long as the impugned withdray order was in force the discipline and rules demanded that the appellant sho have followed that order and should have reported at Kohistan because thereno restraint order or stray order from any court of law. Though according to appellant he reported at Kohistan on 01.01.2016 but he failed to produce charge assumption report at Kohistan.

As a sequel to the above discussion this Tribunal set aside the impu withdrawn order dated 01.0).2016 by leaving the issue of non-compliance o said order to the concerned departmental authority in accordance with law rules. Parties are left to bear their own costs. File he consigned to the report

Date of Presentation of ...

Tillette

Mulantad Arshad Khan Karon Advocate High Court

Office No 33 Adjacent to

CAMP COURT, ABBOTTABAD

Service Appeal No. 625/2016

Date of Institution ...

30.05.2016

Date of decision ...

17.07.2017



Muhammad Shafique, Head Clerk; Public Health Engineering Department, (Appellant)

VERSUS

Govt. of Khyber Pakhtunkhwa, through Secretary Public health Engineering Department, Peshawar and others.

(Respondents).

MUHAMMAD ARSHAD KHAN TANOLI,

Advocate

For appellant.

MR. MUHAMMAD BILAL. Deputy District Attorney

For respondents.

MR. NIAZ MUHAMMAD KHAN,

MR. AHMAD HASSAN,

CIIAIRMAN MEMBER

Service Tribunal, $P_{Cshawar}$ Arguments of the learned

Office # 30 3

JUDGMENT .

NIAZ MUHAMMAD KIIAN, CHAIRMAN:counsel for the appellant heard and record perused.

<u>FACTS</u>

The appellant is aggrieved from his transfer cancellation order dated-01.01.2016. He was promoted to the post of Head Clerk BPS-16 on 14.12.2015 and posted at Kohistan. After lifteen days he was transferred to Manschra on 29.12.2015 against a vacant post and when the appellant assumed the charge at Manschra on 31.12.2015, the said transfer order dated 29.12.2015 was withdrawn

on 01.01.2016. The appellant then filed a departmental appeal against the withdrawal order on 27.01.2016 which was not responded to by the appellate authority and thereafter the appellant moved the present appeal on 30.05.2016.

ARGUMENTS

- The learned counsel for the appellant argued that when the appellant was transferred against a vacant post on 29.12.2015 and he had to comply with the order and assumed the charge on 31.12.2015, then there was no reason for cancellation of the transfer order. That the appellant in compliance thereof reported at Kohistan but his arrival report at Kohistan was not accepted for the reason that there was no vacant post at Kohistan.
 - On the other hand the departmental representative argued that the order of of the transfer order dated 01.01.2016 was made in the public interest. That private respondent No. 6 who was already working against this post withdrawal and he continued on this position on additional charge basis. That the appellant did not submit arrival report at Kohistan as alleged by him. That the appellant is bound to have followed the withdrawal order passed by the competent authority.

CONCLUSION.

After hearing arguments of the learned counsel for the parties and perusing the record, this Tribunal reaches the conclusion that there is no reason shown by the competent authority in the impugned transfer/withdrawal order which was against the provisions of postings/transfers policy of 2009. Mere insertion of the words "public interest" is not sufficient because under the said policy the reasons are justifiable giving right to the aggrieved person to go into review to the proper Forum. It is also on the record that there was no person in BPS-16 to work against

against the post of BRS-16. There appears no compulsion on the part of the department which resulted in such hasty withdrawal of transfer order. This Tribunal is also conscious of the fact that so long as the impugned withdrawal order was in force the discipline and rules demanded that the appellant should have followed that order and should have reported at Kohistan because there was no restraint order or stray order from any court of law. Though according to the appellant he reported at Kohistan on 01.01.2016 but he failed to produce any charge assumption report at Kohistan.

6. As a sequel to the above discussion this Tribunal set aside the impugned withdrawal order dated 01.01.2016 by leaving the issue of non-compliance of the said order to the concerned departmental authority in accordance with law and rules. Parties are left to bear their own costs. File be consigned to the record room.

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OFFICE OF THE SUPERINTENDING ENGINEER PUBLIC HEALTH ENGINEERING CIRCLE ABBOTTABAD

Dated Abbottabad the

The Chief Engineer (North) Public Health Engineering Department, Peshawar.

Subject:-

OFFICE ORDER

Reference:- Your office order No.06/E-2/PHE dated 09/08/2017.

As desired, detailed report/facts finding enquiry regarding absence of Muhammad Shafique, Assistant/Head Clerk from Government duty since 01/01/2016 to 17/07/2017 is submitted herewith for favour of further necessary action please.

11111

Clics I will and Markettage

SUPERINTENDING ENGINEER

Attested

Muhammad of Andrew Tank Advocate High Count
Office No: 33 Adjacent to

Distt Bar Abbottabad

ENQUIRY REGARDING ABSENCE PERIOD OF MUHAMMAD SHAFIQUE, ASSISTANT/HEAD CLERK FROM GOVERNMENT DUTY SINCE 01/01/2016 TO 17/07/2017

Authority:

Engineering Engineer (North) Public Health Department Peshawar Office order No.06/E-2/PHE dated 09/08/2017.

Introduction:-

Muhammad Shafique working as Accounts Clerk in the office of the Executive Engineer PHE Division Haripur was promoted to the post of Head Clerk and posted in the office of the Executive Engineer PHE Division Kohistan against the existing vacancy vide Chief Engineer (South) PHED Peshawar office order No.08/E-9/PHE dated 14/12/2015. Meanwhile Muhammad Shafique Head Clerk was under transfer to PHE Division Kohistan, he was posted against the vacant post of Head Clerk in PHE Division Mansehra vide Chief Engineer (North) PHED Peshawar office order No.22/E-2/PHE dated 29/12/2015, whereas after a few days the posting order at Mansehra District was withdrawn/cancelled by the Chief Engineer (North) PHED Peshawar vide office order No.04/E-2/PHE dated 01/01/2016. Seeing the order of cancellation, Muhammad Shafique, Head Clerk submitted an application/Departmental Appeal to the Chief Engineer (North) PHED Peshawar for restoration of his office order No.22/E-2/PHE dated 29/12/2015 in which the official was posted in PHE Division Mansehra. After submission of the application/Departmental Appeal to the Chief Engineer (North) PHED Peshawar, Muhammad Shafique, Head Clerk lodged a service Appeal No.625/2016 on 30/05/2016 before the Khyber Pakhtunkhwa Service Tribunal Camp Court, Abbottabad.

The Honourable Khyber Pakhtunkhwa Service Tribunal Camp Court Abbottabad decided the appeal on 17/07/2017 in favour of set aside Muhammad Shafique Head Clerk and the withdrawal/cancellation order No.04/E-2/PHE dated 01/01/2016 in which the official was again transferred to PHE Division Kohistan.

After decision of the Honourable Service Trinunal Camp Court Abbottabad, Muhammad Shafique Head Clerk was again posted as Head Clerk in PHE Division Mansehra vide Chief Engineer (North) PHED Peshawar office order No.06/E-2/PHE dated 09/08/2017 and the official assumed the charge of Head Clerk in PHE Division Mansehra on 27/07/2017.

As such Muhammad Shafique Head Clerk was absent from Government duty from 01/01/2016 to 17/07/2017.

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Contd: P/2

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Muhammad Shafique Accounts Clerk PHE Division Haripur was promoted to the post of Head Clerk and posted in the office of the Executive Engineer PHE Division Kohistan vide Chief Engineer (South) PHED Peshawar office order No.08/E-9/PHE dated 14/12/2015 (copy attached as Annexure-I). Later on the order of posting in the office of the Executive Engineer PHE Division Kohistan was withdrawn/cancelled vide Chief Engineer (North) Peshawar office order No.22/E-2/PHE 29/12/2015 (copy attached as Annexure-II) and the official was posted in PHE Division Mansehra. Soon after the order of cancellation from PHE Division Kohistan to PHE Division Mansehra, the same order was also cancelled/withdrawn by the Chief Engineer (North) PHED Peshawar vide office order No.04/E-2/PHE dated 01/01/2016 and the official was again posted in the office of the Executive Engineer PHE Division Kohistan whereas, Muhammad Shafique, Head Clerk did not comply with the order for posting at PHE Division Kohistan and lodged a suit before the Khyber Pakhtunkhwa Service Tribunal Camp Court Abbottabad. Meanwhile, Muhammad Shafique Head Clerk did not attend the office of the Executive Engineer PHE Division Kohistan for duty and was absent from 01/01/2016 till decision of the Honourable Service Tribunal Camp Court Abbottabad i.e 17/07/2017.

Recommendations:

In view of the above mentioned facts, Mr. Shafique Head Clerk did not join the duty at PHE Division Kohistan from 01/01/2016 to 17/07/2017. It is recommended that his absence from the service ranging upto one year six months and seventeen days (1 year, 6 months and 17 days) may be converted into Extraordinary leave

Advocate High Court * Office No. 33 Adjacent to

المحمد والمنافع والإستان فالأقال

(ABDUL ATIF KHAN) INQUIRY OFFICER/

SUPERINTENDING ENGINEER PUBLIC HEALTH ENGINEERING

CIRCLE ABBOTTABAD

Ufficial Probabilities

District Aubici



OFFICE OF CHIEF ENGINEER (NORTH) PUBLIC HEALTH ENGINEERING DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR

Ph#091-9211554, FAX#091-9211407, E-mail: northphed@gmail.com

No. 03 / E-2 /PHE Dated Peshawar the, 02 /02/2018

OFFICE ORDER

Whereas, Muhammad Shafiq Assistant has been posted as Head Clerk in PHE Division Mansehra as a consequent to Khyber Pakhtunkhwa, Service Tribunal judgment dated 17.07.2017 issued vide this office order No. 06/E-2/PHE dated 09.08.2017.

Whereas, regarding the issue of non compliance of the orders dated 14.12.2015. when posted as Head Clerk at PHE Division Kohistan, the Services Tribunal left the issue of noncompliance of the order dated 01.01.2016 to this department authority in accordance with Law & Rules. The Competent Authority, Chief Engineer PHED (North) appointed Mr. Abdul Latif Superintending Engineer PHE Circle Abbottabad as Inquiry Officer in the matter. The Inquiry Officer, after conducting the inquiry submitted his report, recommending converting his absence from duty with effect from 01.01.2016 to 17.07.2017 (i.e. one year 06 months and 17 days) into extra ordinary leave (leave without pay).

Therefore, the undersigned as Competent Authority, hereby agrees with the recommendations of the inquiry officer and decides to term the period of non-compliance by the said official i.e. from 01.01.2016 to 17.07.2017, as extra-ordinary leave (leave without pay).

Chief Engineer (North)

Copy to:

The Section Officer (Estt) Public Health Engineering Department Peshawar. 1. 2.

The Superintending Engineer Public Health Engineering Circle Abbottabad. 3.

The Executive Engineer Public Health Engineering Division Kohistan / Mansehra.

The District Accounts Officer Kohistan / Mansehra. 4.

The official goncerned.

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHUWA, PESHAWAR

Service Appeal No! 70 /2018

Muhammad Shafique, Head Clerk, Public Health Engineering Department, Mansehra.

APPELLANT Service Tribunal

VERSUS

Diary No. 37

Dated 08/01/2019

- 1. Govt. of Khyber Pakhtunkhwa, through Secretary Public Health Engineering Department, Peshawar.
- 2. Chief Engineer (North), Public Health Engineering Department Khyber Pakhtunkhwa, Peshawar.
- 3. Chief Engineer (South), Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar.
- 4. Executive Engineer, Public Health Engineering Division, Mansehra.
- 5. District Accounts Officer, Mansehra.

...RESPONDENTS

Fledto-day

Re-submitted to -day

Registrate, 4/2-/19

SERVICE APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT 1974 FOR DECLARATION TO THE EFFECT THAT RESPONDENT'S DEPARTMENT DID NOT PAY SALARY TO THE APPELLANT W.E.F 01/01/2016 TO

MATTESTED

Maybee Jakhroklives

North Fribanus

P. 27

31/07/2017 DURING THE PENDENCY OF SERVICE APPEAL NO. 625 OF 2016. THE APPELLANT IS ENTITLED FOR PAYMENT OF SALARY FOR THE SAID PERIOD AS THE APPELLANT WAS NOT AT FAULT, BUT THE RESPONDENT'S DEPARTMENT DID NOT ALLOW THE PETITIONER TO MARK PRESENT IN THE ATTENDANCE REGISTER.

PRAYER: ON ACCEPTANT OF THE INSTANT SERVICE APPEAL, THE RESPONDENT'S DEPARTMENT MAY GRACIOUSLY BE DIRECTED TO RELEASE SALARY OF THE PETITIONER W.E.F 01/01/2016 TO 31/07/2017. ANY OTHER RELIEF WHICH THIS HONOURABLE TRIBUNAL DEEM APPROPRIATE IN THE CIRCUMSTANCES OF THE CASE MAY ALSO BE ALLOWED.

Respectfully Sheweth;-

That the facts forming the background of the instant service appeal are arrayed as udner; -

1. That the appellant was promoted a Head Clerk and was posted at Public Health Engineering Division Mansehra. Copy of promotion letter dated 14/12/2015 and office order dated 29/12/2015 is annexed as Annexure "A" & "B". ATTESTED

Khyber Tradition Service Definition

- 2. That the appellant took over the change of the post on 31/12/2015 and after one day of assumption of change of the post, the appellant was posted from Mansehra to Public Health Engineering Division Kohistan, vide order dated 01/01/2016. Copy of the order dated 01/01/2016 is annexed as Annexure "C".
- 3. That the appellant filed service appeal No. 625/16 before his Honourable Tribunal, which was decided on 17/07/2017. Copy of judgment of service tribunal is annexed as Annexure "D".

4.

That the Honourable Tribural set-aside the impugned withdrawal order of appellant dated 01/01/2016 and left the issue of non compliance of order dated 01/01/2016 to the departmental authority. Following this, the appellant was posted at Public Health Engineering Division Mansehra, but salary of the petitioner w.e.f 01/01/2016 to 17/07/2017 has not been paid. In this regard, an enquiry was ordered to look into the fact, that as to whether the appellant served the department w.e.f 01/01/2016 to 17/07/2017. The enquiry committee decided that the appellant did not joined duty at



PHE Division Kohistan from 01/01/2016 to 31/07/2017. Copy of the enquiry report dated 25/01/2018 is attached as Annexure "E".

- 5. That appellant filed the departmental appeal against the enquiry report on 18/08/2018 which is yet to be decided by the department. Copy of departmental appeal dated 18/08/2018 is annexed as Annexure "F".
- 6. Hence, the instant service appeal is filed, inter-alia on the following grounds;-

GROUNDS:

- a) That the enquiry report is against the facts, arbitrary and one sided. The appellant has not been provided opportunities to defend his case. Therefore, enquiry report dated 09/08/2018 is liable to be set-aside.
- b) That the appellant properly reported to

 Public Health Engineering Division

 Kohistan, for resumption of change of the

 post after 01/01/2016 but the appellant could

 not assume change of the post on the ground

ATTESTED

ALAMINEE

Khyber Dikmakhwe

Skryich Tribung

that there was no post of Head Clerk at

Public Health Engineering Division

Kohistan. Copy of proof letter is annexed as

Annexure "G".

- between Kohistan Division and Mansehra
 Division. Therefore, both the division did
 not allow the appellant to mark him present
 in their attendance registers.
- d) That the appellant remained under political pressures as well as bureaucratic wrath. As a result, the poor and innocent appellant has been made a scapegoat due to no fault at his end.
- e) That when the appellant was not provided opportunities of serving either at PHE Kohistan or PHE Mansehra, he waited for decision of this Honourable Tribunal. Therefore, the appellant is entitled for release of salary w.e.f 01/01/2016 to 17/07/2017.

ATTESTED

Khyper Use btokhwa

Survivi Tribunal

- That the department did not bother to conduct enquiry to the fact that as to whether the post of head clerk was available at PHE Kohistan or otherwise. But in a cursory manner, conducted arbitrary enquiry to give wrongful loss of service comes to the appellant i.e monitory, seniority and length of service loss.
 - That the appellant filed execution petition before the Honourable Tribunal vide execution petition No.57/18 in service appeal No.625/2016 which was decided on 27/06/2018 wherein the appellant was directed to agitate the mater before the authority. Therefore, the appellant filed departmental appeal on 17/08/2018. Copies of execution petition No.57/18 and order dated 27/06/2018 are attached as Annexure "H" & "T".

g)

h) That the matter relates to the terms and conditions of service. The question of salary of appellant is involved. Therefore, in such a case, the appellant has always a continuing cause of action.

Pichtichwa Ervice Irbunad

- i) That the Honourable Tribunal has jurisdiction to entertain the appeal of the appellant under article 212 of the constitution of Islamic Republic of Pakistan 1973.
- j) That, other points shall be raised before the Honourable Tribunal at the time of arguments.

It is, therefore, humbly prayed that, on acceptant of the instant service appeal the respondent's department may graciously be directed to release salary of the petitioner w.e.f 01/01/2016 to 31/07/2017. Any other relief which this Honourable Tribunal deem, appropriate in the circumstances of the case may also be allowed

Dated:		 	/2014
	•		

Through

Muhammad Arshad Khan Tanoli)

Advocate High Court, Abbottabad

VERIFICATION:-

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

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Annex-

Eearned counsel for the appellant present. Mr. 17.05.2022 Muhammad Riaz Khan, Assistant Advocate General for

respondents present.

Learned counsel for the appellant arguing the case at some length when confronted whether the order No 03/E-2/PHE dated 02.02.2018 whereby the period from 01.01.2016 to 17.07.2017 was considered as Extra-Ordinary Leave without pay, was challenged by appellant or not, to which learned counsel for the appellant was very fair and frank and said that he would file fresh appeal if the Tribunal allowed the appellant to challenge the above order. This appeal is disposed of with the observations that the appellant may assail the above order subject to all limitations and restrictions etc. Consign.

Pronounced in open court in Camp Court Abbottabad and given under our hands and seal of the Tribunal this 17th day of May, 2022.

> (Kalim Arshad Khan) Chairman Camp Court Abbottabad cha Paul Pakhtunkhn

> > Shawar X

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vice Tribunai,

Member(E)

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BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No. 170/2019

Muhammad Shafique, Head Clerk, Public Health Engineering Department, Mansehra.

....APPELLANT

VERSUS

Govt. of Khyber Pakhtunkhwa, through Secretary Public Health Engineering Department, Peshawar. & others.

....RESPONDENTS

SERVICE APPEAL

APPLICATION FOR GRANT OF PERMISSION TO AMEND THE CAPTIONED APPEAL TO IMPUGNED THE ORDER NO. 03/E-2/PHE DATED 02/02/2018 RECEIVED BY THE APPELLANT ON 18/02/2021.

Respectfully Sheweth;-

- 1. That the appellant served the respondent Department with effect from 01/01/2016 to 17/07/2017. Copy of attendance sheets are attached as Annexure "A".
- 2. That the appellant challenged the inquiry report dated 25/01/2018 before this Honourable court but respondents produced the final order No. 03/E-2/PHE dated 02/02/2018 on 18/02/2021. Copy of final order dated 02/02/2018 is attached as Annexure "B".



It is, therefore, humbly prayed that in view of the above, it is submitted that the appellant may be permitted to impugned the final order dated 02/02/2018 after amending the service appeal No. 170/19 on court file.

Dated: _____/2021

Through

(Muhammad Arshad Khan Tanoli) Advocate High Court, Abbottabad

AFFIDAVIT;-

I, Muhammad Shafique, Head Clerk, Public Health Engineering Department, Mansehra, do hereby solemnly affirm and declare that the contents of forgoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

M. Shed of The PONENT.

Identified by;,

(Muhammad Arstrad Khan Tanol Advocate Fligh Court, Abbottabad 13 Van

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بخدمت جناب سيرترى صاحب ببلك ميلته أنجنير عك ويبار منه وجيبر يختونخوا وبيثاور

P-19 P.36

الپیش برائے منسوفی نام نہادا کلوائری/ادائیگی بقایا تنخواہ از مورخہ 01/01/2016 تا 31/07/2017 الپیش برائے منسوفی

جناب عالى! اليل سائل ذيل عرض ہے:۔

1۔ یہ کہ سائل کو بذریعہ چھی نمبر 08/E-9/PHE مورخہ 14/12/2015 کو پروموٹ کر کے بذریعہ چھی ہذاضلع ہری پورے ضلع کو ستان تعینات کردیا گیا۔

2۔ یہ کہ حسب ضابط ضلع کو ہتان حاضری کرنے کیلئے چلا گیا گروہاں پر بوجہ پوسٹ خالی نہ ہونے کے سائل دوبارہ جناب چیف انجنیئر صاحب ببلکہ ہملتھ انجنیئر نگ پشاور کے دفتر پشاور گیا اور بتلایا کہ ضلع کو ہتان بیں پوسٹ خالی نہیں ہے جس پر چیف انجنیئر (نارتھ) صاحب نے من سائل کو چھی نمبر 22/E-2/PHE مور ندہ 29/12/2016 کے تحت ضلع مانسم ہیں اسٹنٹ / ہیڈ کلرک کی پوسٹ پر چارج لینے تھم صادر کر دیا ۔ فدکورہ چھی کے مطابق سائل نے مور ندہ 31/12/2015 کو بطور ہیڈ اسٹنٹ/ ہیڈ کلرک کا بوسٹ پر چارج سنجال لیا۔

3۔ یہ کہ چیف انجنیئر (نارتھ) نے اپنے ہی جاری کردہ ندکورہ بالا آرڈر کو صرف تین بعد ہی / Withdraw کردہ ندکورہ بالا آرڈر کو صرف تین بعد ہی / Cancel کردیا مگر سائل کو کی دوسری جگہ پوسٹنگ کا آرڈر جاری نہیں کیا گیا۔

4۔ یہ کہ سائل نے مذکورہ بالا آرڈر کی منسوخی کے خلاف جناب سیرٹری صاحب/ چیف انجنیئر (نارتھ) کو محکماندا پیل کی مگر اُس پر بھی کوئی عمل درآ مدند ہوا جبد سائل نے محکماندا پیل کے دوران ضلع مانسمرہ میں اپنی حاضری / ڈیوٹی جاری رکھی جو کہ سائل کا قانونی حق بنیا تھا۔

5۔ یہ کہ سائل کی مثال'' آسان سے گرااور مجبور میں اٹکا'' والی ہوگی اور سائل کہیں کا بھی ندر ہا کیونکہ سائل کو کسی بھی دیگر جگہ پر نتیبنات کرنے کا با قاعدہ آرڈر جاری آب کی لا گیا جبہ سائل نے اس متعدد بار درخواست گزاری مگر سائل کی مثابت پر کوئی عمل درآ یہ منہ ہوا۔

**Muhammad Arshalr (Staff Janol)

**Advocate High Counting

**Office Not 33 Adlacos

6۔ یہ کہ سائل نے بعد ازال مجود ہور کر خیبر پختو نخوا سروس ٹر بیونل پیٹاور میں سروس اپیل دائر کی جس پر مجاز ٹر بیونل نے مور نہ سائل دائر کی جس پر مجاز ٹر بیونل نے مور نہ 17/07/2017 کو فیصلہ صادر فریاتے ہوئے چیف انجیئر (نارتھ) کے جاری کردہ فدکورہ بالا / Withdrawl مور نہ 17/07/2017 کو Set-aside کرتے ہوئے سائل کو ضلع ما نسبرہ میں اسٹنٹ / ہیڈ کلرک کی پوسٹ پر ملاز مت جاری رکھنے کا تھم دیا جبکہ معزز سروس ٹر بیونل نے کسی انکوائری وغیرہ کا تھم صادر نہیں کیا۔

7۔ یہ کہ محکہ نے ازخودالیک نام نہادانکوائر Conduct کی جسمیں سائل کوذاتی عناد کے تحت غیر قانونی طور پرمورخہ
17/07/2017 تک غیر حاضر طاہر کیا گیا جبکہ سائل اس دوران اپنی ڈیوٹی پر با قاعدہ حاضر رہاہے
جس کا جوت محکمہ کے حاضری رجٹر/ بائیومیٹرک سٹم میں لازی موجود ہوگا۔ نیز اگر من سائل مذکورہ عرصہ کے دوران غیر
حاضر تھا تو پھر محکمہ نے سائل کوکئی شوکا زنوٹس وغیرہ جاری کیوں نہیں کیا اورا گر کیا گیا ہے تو اس کار یکارڈ بمعدا خباری اشتہار
پیش کیا جائے۔

8۔ جناب عالی: بیا یک سلم حقیقت ہے کہ سائل نے از مور خد 31/12/2015 سے اپنی ڈیوٹی مسلسل سرانجام دی ہے۔ اور کوئی غیر حاضری وغیرہ نہیں کی جس کاریکارڈ انحکمہ کے حاضری رجٹر اور بائیومیٹرک سٹم میں چیک کیا جاسکتا ہے۔

9۔ بیک نام نہادا نکوائر کار پورٹ سراسر خلاف قانونی ، خلاف واقعات اور ذاتی عناد پر بنی ہے جو کہ سائل کے حقوق پر کالعدم وباطل ہے۔ لہذا سائل اپنی شخواہ از مور خد 01/01/2016 تا 31/07/2017 کی وصولی کا حقد ارہے جو کہ محکمہ دینے سے انگاری ہے۔

البذا اندرین حالات استدعائے کہ کھر کی طرف ہے گئ نام نہاد،خلاف حقائق اور جھوٹ پر بنی انگوائری کومنسوخ فرمایا جاکرسائل کی بقایا تنخواہ از 01/01/2016 تا 31/07/2017 کی ادائیگی کے احکامات صادر فرمائے جاویں اور انصاف کے نقاضے پورئے کئے جاکیں ۔سائل تاحیات آپ کے لئے دعا گورد ہے گا۔

المرقوم:17/08/2018

مرسفیق ولدمیاں دادخان (اسٹنٹ/ ہیڈکلرک) محرشفیق ولدمیاں دادخان (اسٹنٹ/ ہیڈکلرک) پیلک ہیلتھ انجنیئر یک ڈویژن، مانسمرہ

Advocate High Court | 10 Office No 33 Adjacent to

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بخدمت جناب سيرٹري صاحب بيلك ميلتھ انجئيئر سنگ ڈيپار ممنٹ خيبر پختو نخواپشاور۔

عنوان: این برائے منسوفی/نظر ٹانی برآفس آرڈرنمبر 03/E-2/PHE مورجہ 02/02/2018 جسکی رُوسے سائل کے غیر عاضری پیریڈاز 01/01/2016 01/01/2017 کو "Leave without pay" قرار دیا ہے جبکہ اس پیریڈ کے دوران سائل نے کوئی غیر حاضری نہیں کی ہے اورا پی ڈیوٹی بطریق احسن سرانجام دی ہے۔

جناب عالى! سائل ذيل رض گزار ب:

1- يدكر مائل محكمه بلك بيلته وفرين مانسمره مين البين فرائض منصى بطور "استنت ميز كلرك" بطريق احسن اواكرتار مها اورمور خد 14/03/2020 كوريثائر منك حاصل كرلي -

در ہے کہ خدکورہ بالا آفس آرڈرسراسر بدنیتی اور ذاتی عناد کی بنیا در جاری کیا گیا ہے جسکا حقیقت سے کوئی تعلق واسط نہیں ہے اور خدکورہ آرڈرکی کوئی قانونی حیثیت نہیں ہے۔ کیونکہ سائل نے اپنی تمام سروس کے دوران بھی اتن لیمی چھٹی کی ہے اور نہ ہی بی ڈیوٹی سے غیر حاضر رہا جبکہ نہ کورہ نوٹس میں جو مدت غیر حاضر کی گئی ہے سائل اُن تاریخوں پر با قاعدہ حاضر رہا اور اپنے فرائض منصی ادا کرتا رہا۔

4۔ یہ کہ اگر سائل نہ کورہ بالانوٹس میں درج کئے گئے پیریڈ میں غیر رہا تو پھر سائل کودوران سروس کی قتم کا کوئی شوکا زنوٹس وغیرہ کیوں جاری نہیں کیا اور آگر سائل ایک سال اور تقریباً 7 ماہ سلسل ڈیوٹی سے غیر حاضر رہا تو محکمہ نے کوئی قانونی کا روائی کیوں نہیں کی اور آگر کی ہواس بابت ریکارڈ فراہم کیا جائے۔

5۔ پیکہ قانونی قاضوں کے مطابق اگر کوئی گورنمنٹ ملازم 2/3 دن کیلئے بھی غیر حاضر ہوجائے تو اسکی بابت با قاعدہ شوکا زنوٹس بھیجا جاتا ہے اور اگر کوئی ملازم عرصہ ایک سال سے زائد غیر حاضر رہے تو اُس کے خلاف تو با قاعدہ شوکا زنوٹس ، چارج شیٹ اور آخر میں ایسا بھے نہیں کیا گہا۔

البذا استدعاہے کہ سائل کے خلاف جاری کردہ فہ کورہ بالا نام نہاد آفس آرڈ رنمبر 03/E-2/PHE مورخہ 02/02/2018 مورخہ 02/02/2018 کے خلاف جاری کردہ فہ کورہ بالا نام نہاد آفس آرڈ رنمبر 31/07/2017 کی ادائیگی کے احکامات صادر فرمائے منسوخ فرمایا جادی اور سائل کو اپنی بقایا تنخواہ از 02/03/2021 کی ادائیگی کے احکامات صادر فرمائے کا حیات دعا گور ہیگا۔ المرقوم: 02/03/2021

سائل/اییل کننده

من کرد کار کرد کار کار کرد) PHE دویژن مانسمره کرد PHE دویژن مانسمره

سكنه بانده جلال خان يوخيل تصل وضلع ايبث آباد

موبائل نمبر: 15ُ2986-0321



OFFICE OF THE EXECUTIVE ENGINEER,

PUBLIC HEALTH ENGINEERING DIVISION MANSEHRA Kenphemansehra@gmail.com Phone & Fax. No.0997-381246

/E-02

 T_0

Dated Mansehra the CI/11

The Chief Engineer (North), Public Health Engg: Department,

Annexas

Subject:-

PROVISION OF FUNDS ON ACCOUNT OF SALARY FOR THE FINANCIAL YEAR 2017-18.

It is stated that Mr. Shafique Assistant / Head Clerk of this Office has been re-instead by Honourable Service Tribunal and pay of the Official with effect from 01-01-2016 to 07-2017, amounting to Rs.800778/-(detail attached) is laying pending due to non availability of funds in current budget 2017-18.

It is therefore requested that Finance Department may kindly be approached to include the said amount in the current budget 2017-18 or to release and place at the disposal of this Office the requested amount so as to clear the outstanding pay bill of the Official.

DA/As above.

EXECUTIVE ENGINEER PUBLIC HEALTH ENGG: DIVISION MANSEHRA

1. The Superintending Engineer, PHE Circle Abbottabad. 2. The Divisional Account Officer (Local) for information.

> EXECUTIVE ENGINEER PUBLIC HEALTH ENGG: DIVISION MANSEHRA

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OFFICE OF CHIEF ENGINEER (NORTH) PUBLIC HEALTH ENGINEERING DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR

Ph#091-9211554, FAX#091-9211407, E-mail: northphed@gmail.com

No. 06 / E-2 /PHE Dated Peshawar the, 09 / 08/2017

OFFICE ORDER

In compliance of the Judgment of Service Tribunal, Khyber Pakhtunkhwa Peshawar dated 17.07.2017, in service appeal No. 625/2016, the posting / transfer order of Muhammad Shafique, issued vide this office order No.04/E-2/PHE (N) dated 01.01.2016 is hereby withdrawn and posted as Head Clerk in PHE Division Manschra relieving Mr. Maqsood-ur-Rehman from additional charge of Head Clerk with immediate effect in the public interest.

Furthermore, Mr. Abdul Latif Superintending Engineer Public Health Engineering Circle Abbottabad is hereby appointed as inquiry officer to probe into the matter and furnish a detailed report regarding absence of Muhammad Sahfique Assistant / Head Clerk from Government duty since 01.01.2016 to 17.07:2017 and submit his recommendation to the competent authority within 15 days positively.

Chief Ingineer (North)

Copy to:

- The Registrar Khyber Pakhtunkhwa Services Tribunal Peshawar with reference to judgment of honorable Service Tribunal Abbottabad bench dated 17.07.2017 for information.
- 2. The Chief Engineer (South) Public Health Engineering Department Peshawar.
- 3. The Superintending Engineer PHE Circle Abbottabad alongwith a copy of case file.

Mesle

Office No 33 Adjacent to

- 4. The Executive Engineer PHE Division Kohistan / Mansohra.
- 5. The Section Officer (Esti) PHE Department Peshawar.
- 6. The Section Officer (LIT) PIFE Department Peshawar.
- 7. The District Accounts Officer Kohistan / Manschra.
- 8. The official concerned.

Chief Phylineer (North

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mexil,

SÉRVICE TRIBUNAL.

Execution Petition No.

Service App at No. 625/2016

Muhammad Shafiq, Head Clerk Public Health Engineer Department, Mansehra.

1. Government of Khyber Pakhtunkhwa through Secretary Public Health Engineering Department, Peshawar.

2. Chief Engineer (North) Public Health Engineering Department, Peshawar.

3. Chief Engineer (South) Public Health Engineering Department, Peshawar. 4. Executive Engineer, Public Health Engineering Department, Mansehra.

5. District Accounts Officer, District, Mansehra.

PETITION IMPLEMENTATION OF JUDGMENT 17.07.2017 IN SERVICE APPEAL NO. 625/2016.

RESPECTIULLY SHEWETH

That the petitioner while serving as Accounts Clerk in P.H.E Division. Haripur was promoted as Head Clerk and transferred to P.H.E Division. Kohistan vide order dated 14.12.2015.

That when the petitioner came to the P.H.E Division. Kohistan it was 6. - informed that there was no vacant post of Head Clerk there. The petitioner was then transferred to PHE Division, Mansehra on 29.12.2015 where the appellant took over change on 31.12.2015.

Advocate High Court III Office No 33 Adjacent to That the order dated 29.12.2015 was cancelled on 01.01.2016 against which the petitioner filed service appeal No: 625/2016 before this Honble Tribunal.

- That after submission of written reply and detailed arguments, 8. was accepted on 17.07.2017, the impugned order dated 01.01.2016 was set aside. (Copy of judgment is attached as annexure-A).
- That on 27.7.2017, the petitioner assumed the charge at PHE Division, Mansehra in the light of the judgment of this Hon'ble Tribunal. (Annexure-
- 10. That so far as the intervening period from 01.01.2016 to 17.7.2017 is concerned the petitioner has not been paid salary for the said period despite the fact that he served the department in PHE Division, District Mansehra and the respondent No. 4 addressed a letter dated 01.11.2017 to respondent No. 2 for the release of funds so as to clear the outstanding pay bills of the petitioner for the period mentioned above. (Copy of letter dated 01.11.2017 is attached as annexure-C).
- 11. That a period of more than seven months elapsed but the appellant has not been paid arrears of monthly salaries.
- 12. That the petitioner cannot be suffered for the lapses not attributable to him because there was no vacant post of Head Clerk in P.H.E Division. Kohistan and his arrival report has not been accepted. Thereafter, he has been regularly serving in P.H.E Division, Mansehra.

That the petitioner is a poor person and pressing hard for the payment of 13. salaries/arrears for the above mentioned period.

> Advocate High Court Office Vo 33 Adjacent to

P-43

In view of the above, it is, most humbly prayed that on acceptance of this Execution Petition, the respondents may very kindly be directed to pay the petitioner salaries/arrears for the period from 01.01.2016 to 17.7.2017 to meet the ends of justice.

MENUAL G (MUHAMWAD SHAFIQUE) Petitioner

AFFIDAVIT

I Muhammad Shafique, Head Clerk PHE Division Mansehra do hereby solemnly affirm and declare that the contents of the execution petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

DEPONENT P

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE

Execution Petition No. 57

Service Appeal No. 625/2016

27/02/2018

Muhammad Shafiq, Head Clerk Public Health Engineer Department, Manschra. (Petitioner)

VERSUS

- 1. Government of Khyber Pakhtunkhwa through Secretary Public Health Engineering Department, Peshawar.
- 2. Chief Engineer (North) Public Health Engineering Department, Peshawar.
- 3. Chief Engineer (South) Public Health Engineering Department, Peshawar.
- 4. Executive Engineer, Public Health Engineering Department, Mansehra.
- 5. District Accounts Officer, District, Mansehra. (Respondents)

EXECUTION PETITION FOR PROPER IMPLEMENTATION OF JUDGMENT 17.07.2017 IN SERVICE APPEAL NO. 625/2016.

RESPECTFULLY SHEWETH

- That the petitioner while serving as Accounts Clerk in P.H.E Division, Haripur was promoted as Head Clerk and transferred to P.H.E Division, Kohistan vide order dated 14.12.2015.
- That when the petitioner came to the P.H.E Division, Kohistan it was 6. informed that there was no vacant post of Head Clerk there. The petitioner was then transferred to PHE Division. Mansehra on 29.12.2015 where the appellant took over charge on 31.12.2015.

ATTESTE EXALMINER Khyber Pakhiunkiwa Service Tribunal. esijawar

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27.06.*20*18

Execution Petition No. 57/2018 M. Shafrier VS P.H.E Defty

Petitioner Muhammad Shafique in person proferit. Mr. Shahid Saced, SDO, PHE alongwith Mr. Usman Gland District Attorney for respondents present.

above named representative respondents produced the posting order of the petitioner in the compliance of judgment of this Tribunal passed on 09.08.2017. The documents, on perusal, shows that the petitioner in the light of judgment of this Tribunal submitted arrival report to the department on 27.07.2017 whereas the respondents in compliance of the judgment of this Tribunal issued the posting order of the petitioner on 09.08.2017. In this way, the judgment of this Tribunal has been complied with by the respondents.

At this stage, it will be relevant to mention here that the petitioner agitated some matters which relate to his presence viz absence on duty but the same question has already been left open by this Tribunal in the same judgment. So the petitioner is advised to agitate his pleas before the authority whenever is is needed/asked.

In the light of above short discussion, the execution petition is filed. File be consigned to the record room.

Camp court

Office No. 33 Adjacent to

ANNOUNCED 27.06.2018

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Daily Attendance Register of the PHE DIVINION MANON HOUSES

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وكالث نامر

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نوعيت مقدمه:

باعث تحريراً نكه

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب دہی کل کاروائی متعلقہ آل مقام معلی میں اپنی طرف سے واسطے پیروی و جواب دہی کل کاروائی متعلقہ آل مقام میں معلی معلی مقرد کر کے افراد کرتا ہوں کہ صاحب موصوف کومقدمہ کی کل کاروائی کا کال اختیار ہوگا نیز و کیل صاحب موصوف کو کرنے راضی نامہ وتقر رثالث و فیصلہ برطف و دینے اقبال دعوی اور بصورت دیگر ڈگری کرانے اجراء وصولی چیک رو پیہ وعرضی دعوی کی تصدیق اوراس پر دیخو کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ نکور کی کل یا کی اور و کیل یا مختار صاحب قانونی کو این ہمراہ اپنی مقام دوران کا مقدمہ بوخر چرو ہرجاندا توائے مقدمہ کے سب ہوگا اس کے ساختہ پر داختہ جھے کومنظور و تبول ہوگا۔ دوران مقدمہ بوخر چرو ہرجاندا توائے مقدمہ کے سب ہوگا اس کے مشخص و کی اور اگر کئی نیشی مقام دورہ پر ہویا کہ کہ پیروی مقدمہ نکرور کریں اورا گرختی مقام دورہ پر ہویا کہ کہ بیروی مقدمہ نے کردہ کریں اورا گرختی مقام دورہ پر ہویا کہ کہ کی جز و بقایا ہوتو و کیل صاحب موصوف پابند ہوں گے کہ پیروی مقدمہ نہ کورہ کریں اورا گرختی رحواست ، ہمراد

استجارت نالش بصیغه مفلسی کے دائر کرنے اوراس کی پیروی کا بھی صاحب موصوف کواختیار ہوگا۔

الرقوم: 14 فرن 2022

Abbollars per.

لہذاوکالت نامة تحرير كياتا كەسندر ہے۔

M. Arshael Char Asc

وقاص فو ٹوسٹیٹ کچبری (ایبٹ آباد)

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You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.
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A / Abad Registrar, Khyber Pakhtunkhwa Service Tribunal,