11.06.2018 Appellant Murad Ali in person present. Mr. Kabirullah Khattak, Addl. AG for the respondents present. Appellant made a verbal request that his counsel has gone abroad. Granted. To come up for preliminary hearing on 18.07.2018 before S.B.

Chairman

18.07.2018 Counsel for the appellant and Addl: AG for respondents present. Counsel for the appellant requested for withdrawal of the instant appeal. In this respect his signature also obtained on the margin of the order sheet. Request accepted and the appeal in hand is therefore, dismissed as withdrawn. File be consigned to the record room.

ANNOUNCED:
18.07.2018

(Ahmad Hassan)
Member

Service Appeal No. 538/2018

02.05.2018 Appellant in person and Mr. Kabirullah Khattak, Additional AG for the respondents present. The Tribunal is non-functional due to retirement of our Hon'ble Chairman. Therefore, the case is adjourned. To come up for same on 17.05.2018.

Reader

17.05.2018 Junior to counsel for the appellant Mr. Shumail Ahmad Butt, Advocate present and requested for adjournment. Granted. To come up for preliminary hearing on 04.06.2018 before S.B.

Chairman

04.06.2018 Appellant present. Learned Addl: AG also present. Appellant submitted an application for adjournment. Adjourned. To come up for arguments on 11.06.2018 before S.B.

Member

18.04.2018

Counsel for the appellant present. Preliminary arguments heard and case file perused. Learned counsel for the appellant argued that previously service appeal no. 458/2017 filed in this Tribunal was dismissed vide judgment dated 30.11.2017. On a query from this Tribunal learned counsel for the appellant confirmed that an appeal has been filed against the said judgment of this Tribunal in Supreme Court of Pakistan which is pending adjudication. He further contended that respondent no.2 decided departmental appeal of class-IV employees of the Lady Reading Hospital vide order dated 05.01.2018. Directions were conveyed for withdrawal of reliving orders and release of salary. On the same analogy order dated 01.02.2016,09.02.2016,10.02.2016 and 17.02.2016 pertaining to the case of the appellant was also withdrawn through order dated 24.01.2018. As a sequel to above the appellant submitted arrival report on 09.02.2018 and started performing duty at LRH. That astonishingly vide order dated 29.01.2018, order dated 24.01.2018 was withdrawn. Feeling aggrieved he filed departmental appeal on which date is not mentioned but the same was rejected on 2.03.218, hence, the instant service appeal. Learned counsel for the appellant when confronted on the point that this issue has already been decided by this Tribunal vide judgment dated 30.11.2017. The same order impugned in the previous service appeal was withdrawn by the competent authority on 24.01.2018, as such the present appeal is hit by Rule-23 of Khyber Pakhtunkhwa Service Tribunal Rules 1974 because it had become a closed and past transaction. In response he argued that order dated 24.01.2018 gave a fresh cause of action and valuable rights of the appellant had accrued. Hence, the principle of locus-poenitentiae is also attracted in this case. Through the present appeal impugned order dated 29.01.2018 has been challenged in this Tribunal. Let pre-admission notice be issued to the learned Adll: AG to assist the Tribunal. To come up for further preliminary hearing on 02.05.2018 before S.B.

(Ahmad Hassan)
Member

Form-A

FORMOF ORDERSHEET

Court of _____

Case No. **533/2018**

S.No.	Date of order proceedings	Order or other proceedings with **signature** of judge
1	2	3
1	16/04/2018	The appeal of Mr. Muhammad Riaz Burki presented today by Mr. Shamail Ahmad Butt Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please. REGISTRAR
2-	17/4/18	This case is entrusted to S. Bench for preliminary hearing to be put up there on 18/4/18. MEMBER

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No 533 /2018

Muhammad Riaz Barki

Versus

The Govt. of KPK and Others

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APPELLANT

Through

Shumail Ahmad Butt,
Advocate Supreme Court
&
H Bilal Khan
&
Haris Khan
Advocates, Peshawar
TF-39, Deans trade Center,
Cell#03018580077

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 533 /2018

Muhammad Riaz Barki,
Junior Clinical Technician (Pathology),
(General Secretary Paramedic Association, LRH),
Presently posted at MTI, LRH,
Peshawar.

.....Appellant

Versus

1. **Government of Khyber Pakhtunkhwa,**
   Through Secretary, Health Department,
   Civil Secretariat, Peshawar.

2. **Directorate General Health Services,**
   Through Director General,
   Attached Department Complex,
   Khyber Road, Peshawar.

3. **Secretary Establishment,**
   Government of Khyber Pakhtunkhwa,
   Peshawar.

4. **Hospital Director,**
   MTI, Lady Reading Hospital,
   Peshawar.

.....Respondents

Fixed to-day
Registrar

16/4/18

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED APPELLATTE ORDER NO. SOH-III/8-60/2018(ROIDAR SHAH & OTHERS) DATED 20/03/2018 BY VIRTUE OF WHICH THE APPEAL FILED BY THE APPELLANT DATED 06.02.2018 WAS REGRETTED.

May it please this Honorable Court

1. That the Appellant is a civil servant appointed against a vacant post at Lady Reading Hospital, Peshawar and has started his career with zeal and dedication and served the public at large on several positions since his appointment to the best of his abilities and full satisfaction of his superiors and since then he is performing his duties at the aforesaid hospital. Presently

he is working as Junior Clinical Technician (Pathology). It is pertinent to mention here that the **Appellant is General Secretary Paramedical Association LRH,** Peshawar, a representative body and the provincial chapter of Pakistan Para-Medic Association as well as the Appellant is elected President of Para Medical Association Lady Reading Hospital, Peshawar.

2. That the parent national level body is registered under the Societies Registration Act, 1960, the provincial chapter is also a duly recognized body since 09.09.1970, while its constitution has been approved by Respondent No. 1 Government w.e.f. 09.08.1992.

3. That upon promulgation of Khyber Pakhtunkhwa Medical Teaching Institutions Reforms Act, 2015 (Khyber Pakhtunkhwa Act No. IV of 2015), Para Medic Association, LRH, Peshawar filed a Writ Petition No. 2643-P/2015 questioning creation of surplus pool, asked for directorship for the Paramedics in the Boards of Governor of MTI and questioned the clause of "till further order".

4. That this Writ Petition was taken up for hearing alongside numerous other writ petitions by a larger Bench so specially constituted to deal with matters of vires of the Act, 2015 ibid and other related issues. It is a matter of record that while dismissing other Petitions against the vires of the Act, Writ Petition No. 2643-P/2015 was partially accepted in Judgment and Order of the Honorable Larger Bench dated 23.12.2015 as this Honorable Court while acknowledging and appreciating the merits of the matters agitated by paramedics, allowed their plea against "further orders" and their representation in Board of Governors.

5. That seeking enforcement of constitutional rights through a Constitutional Petition was not taken in good grace either by the Respondents or for that matter by the Chairman Board of Governor, LRH Peshawar, who is championing the cause of so-called reforms in MTIs and is acting as quasi advisor to the Respondent Government. He had been heard saying numerously that he would make sure that no one can stay in MTIs if he is challenging him or questioning his wisdom and authority.

6. That while momentarily parting from the discussion at hand, it is significant to point out that while misinterpreting a certain part of the Judgment of the larger Bench dated 23.12.2015, Respondent No. 1 Government through a Notification No. SO(R-II)/E&D/1-6/2009 dated 08.02.2016, while purportedly exercising powers under Section 4 of the West Pakistan Essential Services (Maintenance) Act, 1958 and in total defiance to the very intent and spirit of the Act, 2015 has issued direction to all the persons working or engaged in the Medical Teaching Institutes not to leave their place of duty without prior permission of the competent authority.

7. That meanwhile, Government took certain steps to dissolve Post Graduate Medical Institute (PGMI) that wound up concerned doctors. Demands were also being raised for grant of health professional allowance. In this backdrop, Respondent No. 1 issued the Notification under Essential Services Act. While displeased with this Notification and so-called imposition of emergency amongst other issues, Doctors working in these Hospitals and MTIs started protesting against the Government. This agitation aggravated further and some health professionals primarily led by doctors announced strike on 09.02.2016. The fact of strike, led by doctors was also widely reported both in print and electronic media.

8. That after a couple of days of negotiations, all the demands of doctors were acceded to and they were all let off, without any proceedings but the poor low-paid paramedics who had no visibility whatsoever in the so-called strike and had not been concerned with any ER or OTs are being punished without the mandate of law.

9. That while seized of an opportunity to get rid of office bearers and some of the members of Para Medical Association, and while actuated with clear mala fide and political agenda, Respondents instead of proceeding against doctors, chose to victimize low-paid employees while showing more loyalty to the Chairman Board of Governors LRH, issued an office order bearing No. **2017-24/E-V DATED 01/02/2016** wherein he transferred the appellant of his duties in absolute ignorance and violation of attending law and circumstances. It is important to point out that the appellant is a permanent civil servant and office bearer of the association therefore cannot be left at

the mercy of Respondents and there most influential political figure whom have no authority to issue any order or treat the appellant in any manner, in grave infraction and defiance of the law on question. Thus the Appellant, along with other office bearers, was thus ordered to be transferred out of his concerned MTI to a far flung place of the Province by virtue of Office Orders dated 01.02.2016 issued by Respondent No. 2.

(Copy of the transfer order is Annexure "A")

10. That the appellant, while was having no other remedy, filed departmental appeal bearing No. 341/16/PPMA-KPK dated **23.02.2016** to the Respondent. No.1 being Competent Authority in hope that he will get relief from that forum but in vain as over a year has been passed and yet no fruitful result has been given to the appellant and still his Departmental Appeals/Representations is pending before the Departmental Authority who was under legal obligation to decide the same within statutory period.

(Copy of the Departmental Appeal is annexure "B")

11. That the Appellant along with many others were aggrieved of the Transfer orders made under the garb of Essential Service (Maintenance) Act, 1958 or otherwise (hereinafter referred to as "impugned orders" for facility of reference only) challenged the same before the Honorable Peshawar High Court by way of ***W.P. No. 557-P/2016 titled as "Johar Ali and Others vs Government of Khyber Pakhtunkhwa etc"*** wherein interim relief was granted to the Appellant along with many others which remained intact for over a year or so but the case was heard by a Division Bench of the Peshawar High Court on 25.04.2017 wherein they have heard the arguments at length but unfortunately the aforesaid petition was dismissed while holding that the Appellant and others are civil servants and their grievances relate to the terms and conditions of the service therefore the appropriate remedy for seeking the redressal of their grievance is Services Tribunal.

12. That soon after the decision rendered by this Honorable Court in W.P 557-P/2016, the Respondent No.4 issued **relieving order No. 6308-15/HD/LRH** dated 05.05.2017 of the Appellant and directed him to report to the office of Respondent No.2. Further **on 10/05/2017** the

Respondent No.2 issued office order No. 6360-68/AE/VI and directed the appellant and others to report to their new place of work. It is of significance importance that Respondent No.4 is not a competent Authority to relieve the Appellant therefore his act of relieving the Appellant is in total defiance of the law and policy.

(Copy of the Relieving Order and Reporting to new place are Annexure "C")

13. That it is also worthwhile to point out that paramedical association LRH, was allotted a separate office by the then Chief Executive of the Aforesaid hospital wherein office bearers are easily accessible to all the association members as well as the Appellant use the place for office purposes. It is a policy of the provincial government, duly circulated in the Esta Code that Office Bearers shall not normally be transferred during the currency of their office therefore the Appellant rights are protected as per policy and is thus not transferrable outside Lady Reading Hospital but the Respondent No. 2 issued Transfer and Posting Order of Appellant, while ignoring the aforesaid policy and settled legal position qua union member employees, to far flung area of the province.

14. That it is also of great importance to mention here that paramedical association has been given due representation by the Government as vide letter No. SOH(III)/HD/3-5/Paramedics/2016 dated 17.10.2016 it has been circulated to several departments related to health that wherever there is a meeting related to paramedics so representation of at least two of their office bearers be ensured, which can be reflected from minutes of the meeting headed by Special Secretary for Health Department where two of the office bearers, including the Appellant, attended the meeting.

15. That it is also important to point out that due to the afore stated strikes etc 39 employees of Ayub Teaching Hospital were also transferred out to far flung areas of the province but due to the intervention of the Special Assistant to Chief Minister, Mushtaq Ahmad Ghani the transfer orders of all the 39 employees were recalled and they were remained at their earlier places of work.

16. That consequent upon the decision rendered by the Honorable Peshawar High Court, Appellant, who had bonfidely believed that their remedy was genuinely claimed before the High Court and thus he had sought remedy

(B)

before the wrong forum, consequently filed a Service Appeal No. 468-P/2017 before the honorable Service Tribunal along with application for condonation of delay but unfortunately the same was dismissed by this honorable Tribunal while not condoning the delay that too when the Appellant had bonafidely and diligently pursued his remedy before High Court as he was transferred in the garb of punishment allegedly for violation of KP Essential Services (Maintenance) Act, 1958, which is not terms and conditions ipso jure.

(Copy of the Appeal 468-P/2017 and Order thereupon is Annexure "D")

17. That, on the other side, the Honorable Peshawar High Court has intervened in a similar matter and has magnanimously passed a Judgment and Order dated 15.11.2017 in WP.555-D/2017, while rescued the Appellant and held as:

> **"it clearly indicates that for all intents and purposes, the Petitioner was a Government Servant according to his appointment order and was to be dealt with in accordance with the Government rules and MTI has nothing to do with his services particularly when the Petitioner has not joined MTI and thus, the impugned order dated 09.05.2017 is not sustainable.**
>
> **6. For the reasons mentioned above, we allow this petition and declare the impugned order dated 09.05.2017 as illegal, without jurisdiction and ineffective upon the rights of petitioner...".**

Besides, this Honorable Tribunal has also intruded and rescued the Appellant in a similar nature case through service appeal No. 480-P/2017 dated 15.12.2017 and consequently allowed the appeal and impugned transfer order was set aside.

18. That in addition to the above, the Respondent No.2 while deciding the departmental appeals of the class VI employees of the Lady Reading Hospital elaborately discussed all the above legal and factual points and thereafter accepted the appeal of the class VI employees. It is important to mention here that the Respondent No.2 also admits that the terms and conditions of civil servants are protected under section 16 of the MTI Act, 2015. He further admitted that if this practice continues so it will lead to unmanageable situation for the provincial exchequer.

19. That, subsequent to the above, a note was moved on departmental appeal of the Appellant for cancellation of the transfer order issued by the Respondent, wherein it has been mentioned that the civil servants are to be dealt in accordance with the government rules and MTI has nothing to do with them accordingly the para concerned was approved and resultantly Notification No. 1092-98/AE-VI dated 24.01.2018 was issued wherein the competent authority accepted the departmental appeals and cancelled the impugned transfer orders.

(Copy of the order dated 24.01.2018 is Annexure "E")

20. That thereafter the Appellant took a sigh of relief and believed that justice has prevailed thus started performing his duties with more zeal and enthusiasm then earlier but the above act was not taken in good grace by the Chairman BOG so he started pressurizing the Respondent. No.2 to undo the same which he can't being ***functus officio*** but most shockingly the Respondent No.2without having authority revoked the order dated 24.01.2018 vide illegal office order No. 18920-912 /E-V dated 29.01.2018.

(Copy of the order dated 29.01.2018 is Annexure "F")

21. That the Appellant while gravely aggrieved with the illegal order dated 29.01.2018 filed a departmental appeal to Respondent No.1 on 06.02.2018 but most unfortunately the same was regretted vide letter No. SOH-III/8-60/2018(Roidar Shah & Others) dated the Peshawar 20.03.2018 (hereinafter to be called as impugned order for facility of reference).

(Copy of the Departmental Appeal is Annexure "G")

(Copy of the Order dated 20.03.2018 is Annexure "H")

22. That the Appellant while feeling gravely dissatisfied and aggrieved of the impugned order dated 29.01.2018 and 20.03.2018.

Hence this appeal inter-alia on the following grounds:-

Grounds warranting this Appeal:

a. ***Because*** the impugned appellate orders dated 29.01.2018 and 20.03.2018 are illegal, unlawful, without lawful authority and thus of no legal effect.

b. ***Because*** the impugned ordersare passed without any legal or plausible justification and are therefore liable to be reversed.

c. **Because** the Respondent No.2 being ***Functus Officio*** has got no authority whatsoever to pass such an illegal order.

d. **Because** the departmental appeal of the Appellant has once been accepted thus its annulment on the whims of the Chairman BOG Lady Reading Hospital is illegal, unlawful and without lawful authority.

e. **Because** in similar nature case the Honorable Peshawar High Court, Peshawar in its Judgment and Order dated 15.11.2017 has rescued the Appellant therein while stating therein that the civil servants are to be dealt in accordance with the Government Rules and not under the MTI and by the MTI hierarchy.

f. **Because** similar stance has been adopted by this Honorable Tribunal in Service Appeal No. 480/2017 while rescuing the Appellant.

g. **Because** the impugned proceedings are due to malafide on the part of Respondents and are liable to be reversed on this score as well.

h. **Because** the Respondents are travelling way beyond the scope and approach adopted for others thus the approach adopted for the Appellant is hit by the Article 10-A and 25 of the Constitution.

i. ***Because*** the Appellant is an office bearer of the employees association and leaves no stone unturned for the betterment of their fraternity therefore he cannot be transferred at single stroke of pen.

j. ***Because*** 39 other employees of Ayub Teaching Hospital were transferred due to the same reason but there transfer order was cancelled on the next day because they realized that civil servants as well as office bearers cannot be transferred during their tenure as a punishment. The Chairman and BOG of the AMC Teaching Hospital MTI have not shown undue obduracy and vendetta whereas the Chairman of the MTI LRH has been abusing his position and close relationship with Mr. Imran Khan (Chairman PTI) and thus is browbeating and hoodwinking the government officials with impunity.

k. ***Because*** the Appellant is elected President of the Provincial Paramedical Association as well as President Paramedical Association Lady Reading Hospital therefore his rights are guaranteed and protected under the laws.

l. ***Because*** the misgivings of the Respondents against the Appellant is utterly out of place as the Appellant has not resorted to any illegal activities, so alleged against him.

m. ***Because*** no provision of the Essential Service (Maintenance) Act, 1958 mandates any transfer. In fact, the Respondents, while posting the Appellant out is committing an offense under the aforesaid Act, 1958.

n. ***Because*** once the Essential Services (Maintenance) Act, 1958 is notified, no employer can order transfers at all.

o. ***Because*** impugned orders are passed in tone and tenor of "punishment". No minor or major punishment can be imposed without due process of law.

p. ***Because*** the impugned orders are passed in total disregard of the KP Efficiency and Discipline Rules, 2011.

q. ***Because*** most surprisingly the Appellants who are neither doctors nor care-givers relating to emergency or for that matter operation theaters are being allegedly prosecuted and punished for so called patients crying for survival. How Office Assistants, Sweepers, Masalchi, bearers, lift operators and a few clinical technicians are answerable for strike staged and held under the leadership of doctors.

r. ***Because*** the very act of letting off the doctors and choosing to prosecute only low-paid employees and that too as a punishment for approaching this honorable court is not only smacked with partiality, unfairness and nepotism but is a clear violation of Article 4, 5, 25, 37 and 38 of the Constitution.

s. ***Because*** the Constitution of the Islamic Republic of Pakistan confers right on every citizen of forming of an association as well as grants freedom of assembly in the form of protest or otherwise thus the impugned order is violative of Article of 16 and 17 of the Constitution, 1973.

t. ***Because*** as held numerously by superior judiciary including the apex Supreme Court of Pakistan, no civil servant can be transferred except for public interest whereas the impugned transfer order is clearly having a color of punishment and is done on so called administrative ground rather than public interest.

u. ***Because*** as narrated in facts, appellant is office bearer of Para Medical Association. It is a policy of the provincial government, duly circulated in the Esta Code that Office Bearers shall not normally be transferred during the currency of their office to avoid unfair labour practices.

v. ***Because*** the Respondents are acting in a manner clearly reeking highhandedness, caprice and victimization.

w. ***Because*** the Respondents are bent to illegally discriminate amongst health care providers and paramedics without any reasonable justification or classification.

x. ***Because*** the impugned orders are made with sole purpose of creating terror and deterrence in heart of doctors by making the Appellant as mere guinea pig and scapegoat for no fault on their part.

y. ***Because*** recently the apex Supreme Court of Pakistan, while suspending a Judgment of the Honorable Balochistan High Court, has acknowledged the right of peaceful protest and agitation for rights of the government employees and declared any clog on it as excessive and illegal.

z. ***Because*** Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned

transfer order, which is unjust, unfair and hence not sustainable in the eyes of law.

aa. ***Because*** neither ESTA Code provisions does permit the Respondents to pass the impugned transfer order nor the Khyber Pakhtunkhwa Government Servants (Conduct) Rules, 1987.

bb. ***Because*** even otherwise, as is apparent on the face of records, impugned order is actuated with intent mala se as the Respondents are hell bent to get rid of the appellant at any costs solely on political considerations.

cc. ***Because*** since the Appellant is admittedly President of the PPMA who cannot be transferred out of his place of duty since completion of his office tenure as per Policy.

dd. ***Because*** the impugned transfer order is clearly motivated with mala fide rather than made in public interest. As the record suggests, the appellant and his colleagues are victimized for ulterior motives of the Chairman Board of Governors, Lady Reading Hospital.

ee. ***Because*** even the KP MTI Act, 2015 also protects the services of Appellant.

ff. ***Because*** in similar circumstances, the Honorable Peshawar High Court and Honorable Services Tribunal has allowed relief in aid of justice.

gg. ***Because*** neither the Khyber Pakhtunkhwa Government Servants (Conduct) Rules, 1987 nor the Essential Services (Maintenance) Act, 1958 empowers the Respondents to pass the impugned orders.

hh. ***Because*** the Appellate authority after accepting the appeal of the Appellant vide order dated 24.01.2018 had nullified the transfer orders earlier issued. Once deciding the appeal, the appellate authority was no more seized with the lis and had no legal authority whatsoever to again reverse the said orders on 29.01.2018 and once again decide the matter against the Appellant.

ii. ***Because*** the impugned order dated 29.01.2018 and that the consequent refusal of appeal/representation are illegal, unlawful, without lawful authority and thus of no legal effect.

jj. ***Because*** once the transfer orders were vacated upon accepting the appeal of the Petitioner and others, cancelling the appellate order amounted to transfer order afresh which was never made in the public interest but was clearly because of the pressure and duress exercised by the Chairman BOG MTI LRH.

kk. ***Because*** once the earlier transfer orders were cancelled, the Appellant was restored to his original position and could only be transferred in public interest. On the contrary, the Appellant was effectually retransferred without being do in public interest when the Appellate authority, under the duress and pressure of Chairman BOG MTI, cancelled and withdrawn his appellate order on 29.01.2018 which order is clearly smacked with mala fide of law and fact.

ll. ***Because*** the terms and condition of the Appellant and other civil servants are duly saved by virtue of Section 16 of the MTI Reforms Act, 2015 (as amended from time to time) and he cannot be adversely effected because of the revengeful attitude of the Chairman BOG.

mm. ***Because*** the impugned order dated 29.01.2018 is without jurisdiction and is clearly a colorful exercise of authority.

nn. ***Because*** appellant will raise other grounds at the time of arguments with the prior permission of the Court.

It is therefore most humbly prayed that on acceptance of the instant appeal, the impugned Appellate order NO. SOH-III/8-60/2018 (ROIDAR SHAH & OTHERS) Dated 20/03/2018 by virtue of which the Appeal filed by the appellant dated 06.02.2018 was regretted may graciously be set aside along with original impugned order dated 29.01.2018 and the Appellant may kindly be brought back to

his position prior to 09.02.2016.Any other relief not specifically asked for may also be granted to the appellant if deemed fit, just and appropriate.

Appellant

Through

Shumail Ahmad Butt,
Advocate Supreme Court of Pakistan,
&
H Bilal Khan
Advocate High Court,
Peshawar.

AFFIDAVIT

I, **Muhammad Riaz Barki,** Junior Clinical Technician (Pathology), (General Secretary Paramedic Association, LRH), Presently posted at MTI, LRH, **Peshawar**, Presently posted at MTI, LRH, Peshawar, do herby solemnly declare that the accompanying Appeal is true and correct to the best of my Knowledge and belief and nothing has been concealed from this Honorable Tribunal.

DEPONENT

KHALID MAHMOOD ADVOCATE
ATTESTED
NOTARY PUBLIC
PESHAWAR HIGH COURT

14

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No._____/2018

Muhammad Riaz Barki

Versus

The Govt. of KPK and Others

Addresses of the Parties

Appellant

Muhammad Riaz Barki,
Junior Clinical Technician (Pathology),
(General Secretary Paramedic Association, LRH),
Presently posted at MTI, LRH,
Peshawar.

Respondents

1. Government of Khyber Pakhtunkhwa,
   Through Secretary, Health Department,
   Civil Secretariat, Peshawar.

2. **Directorate General Health Services,**
   Through Director General,
   Attached Department Complex,
   Khyber Road, Peshawar.

3. **Secretary Establishment,**
   Government of Khyber Pakhtunkhwa,
   Peshawar.

4. **Hospital Director,**
   MTI, Lady Reading Hospital,
   Peshawar.

Appellant

Through

Shumail Ahmad Butt,
Advocate Supreme Court of
Pakistan

15

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No_____/2018

Muhammad Riaz Barki

Versus

The Govt. of KPK and Others

Application for Interim Relief in shape of suspension of Operation of Impugned Appellate order dated 29.01.2018 and 20.03.2018

May it please this Honorable Court

The Applicant/ Appellant very humbly submit as under:

1) That the Applicant/ Appellant has filed the above-titled Appeal before this honorable Tribunal today in which no date of hearing has yet been fixed.

2) That the Applicant/ Appellant has got a prima facie case and is very much sanguine of its success.

3) That balance of convenience has got a clear verge in favor of the applicant/ Appellant.

4) That content of the accompanying Appeal may kindly be considered as integral part and parcel of this application.

It is therefore most humbly prayed that on acceptance of this Application the impugned appellate orders date 29.01.2018 and 20.03.2018 may graciously be suspended till final decision of the Appeal.

Through

Appellant

Shumail Ahmad Butt,
Advocate Supreme Court of Pakistan,
&
H Bilal Khan
Advocate High Court

KHAIR RAHMOOD ADVOCATE
ATTESTED
NOTARY PUBLIC
PESHAWAR HIGH COURT

Affidavit

It is solemnly affirmed on oath that the contents of this application are true and correct and nothing has been concealed from this Honorable Tribunal.

Deponent

16

Annex 'A'

DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR

TRANSFER ORDER

Mr. Riaz Burki, JCT (Pathology) attached to MTI, LRH, Peshawar, is hereby accorded and posted in Sheikh Khalifa Bin Zayed Modern Hospital (A&E Department), Saidu Group Teaching Hospital Saidu Sharif Swat, against the vacant post of JCT (Pathology), with immediate effect in the interest of public service.

N.B Arrival/ Departure should be communicated to this Directorate.

Sd/xxxxxxxxx
DIRECTOR GENERAL HEALTH
SERVICES KPK, PESHAWAR
Dated Peshawar the 1/2/02/2016.

2017-24
/E-V

Copy forwarded to the: -

1. PS to Secretary Health, Khyber Pakhtunkhwa, Peshawar.
2. Medical Superintendent, Saidu Teaching Hospital Saidu Sharif Swat. He is requested to submit arrival report of concerned JCT (Pathology)
3. Hospital Director/ MTI, LRH Peshawar. The JCT Pathology should be relieved forthwith.
4. DAO, Swat.
5. DHIS Cell, DGHS, Peshawar.
6. Deputy promotion Cell, DGHS, Office, Peshawar.
7. Official concerned.
8. PA concerned.

For information and necessary action.

Attested

01/2/16
Director General Health Services,
Khyber Pakhtunkhwa, Peshawar.

1917
02.02.16

(17)

LADY READING HOSPITAL PESHAWAR
MEDICAL TEACHING INSTITUTION

No. 3143-49/LRH/E-III

Dated. 01/02/2016

Copy of above is forwarded to the:

1. Director General Health Services KPK Peshawar
2. DMS (Admn), LRH, MTI Peshawar
3. Director HR LRH, MTI Peshawar
4. Incharge I.T. Department LRH, MTI Peshawar
5. Incharge Pathology Department LRH, MTI Peshawar
6. Budget and Accounts officer LRH, MTI Peshawar

Mr. Riaz Burki, JCT Pathology LRH, MTI Peshawar is hereby relieved with immediate effect and with the remarks to stop his salary with immediate effect.

report to their place of posting.

For information and necessary action

for 01/2/16
HOSPITAL DIRECTOR
LRH, MTI Peshawar

(5)

PROVINCIAL PARAMEDICAL ASSOCIATION KHYBER PAKHTUNKHWA

Annex B (18)

Registration#: 12317-19-E III, Dated: 9th September 1970

President
IOHAR ALI
Bsc(H) Radiology
Cell: 0334-9105846

Chairman
SIRAJ-UD-DIN BURKI
Bsc(H) Dialysis, L.L.B
Cell:0333-9150606

Secretary General
SYED ROIDAR SHAH
Bsc(H) Physiotherapy,M.A
Cell:0333-9131180

Ref: # : 341/16/PPMA-KPK

Date: 23/02/2016.

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

Through: Proper channel.

SUBJECT: APPEAL FOR CANCELLATION OF TRANSFER ORDERS OF OFFICE BEARERS IN RESPECT OF VARIOUS CATEGORIES OF PARAMEDICS, NURSES, CLASS-IV, CLERKS AND SANITATION STAFF.

Respected Sir,

We, the cabinet members of Provincial Paramedical Association, Khyber Pakhtunkhwa have the honour to state that various categories of subject staff of Health Department, Khyber Pakhtunkhwa working in MTI's including Lady Reading Hospital and Khyber Teaching Hospitals, Peshawar have been transferred on 01-02-2016. & 11-02-2016 (majority of them are office bearers of various Associations), (copies attached), as a result of punishment on account of peaceful protest throughout the Province of all staff including teaching faculty, doctors etc. but only subject categories have been transferred including **Paramedics**, Nurses, Class-Iv, Clerks And Sanitation Staff.

Similarly above categories of 39 numbers of staff were also transferred from Ayub Teaching Hospital & Complex, Abbottabad (copies attached), but later on their transfers have been cancelled by the worthy Chief Minister, & Health Department. Khyber Pakhtunkhwa on recommendation of Mr. Mushtaq Ghani, Advisor to CM for Information & Higher Education, KPK (copies attached).

It is therefore, humbly requested to your good self to kindly cancel transfer orders of the above mentioned staff and office bearers of various associations in the best interest of employees, institution and public and for smooth functioning of health institutions.

Thanking you in anticipation.

Copy for information and n/a to:

1. Director General Health Services KPK.

D.No. 5703 24-2-16

P.T.O.

Sincerely yours,

S.R. Shah

Syed Roidar Shah
Secretary General, PPMA, KPK
President PMA, LRH
President Health Employees
Coordination Council LRH,
Cell # 0333-9131180

1- Johar Ali. Jauhar
2- Raidal Shah. S.P.H.C.
3- Isam Gul. Sayal.
4- Shamsut-Taj
5- M. Riaz Barki
6- M. Asim. Asim
7- Murad Ali. Murad
8- M. Ali
9- Sartaj
10- Shahid Masih Ghori.
11- Munawar Lal.
12- Mujahid Azam. Mujahid
13- Ishaq Bulla.
14- Imdad ullah. Imdad
15- Ziaat. Zia
16- Humayun. Humayoon.
17- Noor Rehman
18- Niaz. M.
19- Yaqoob Masih.
20- Roohul Amin
21- Gulshan Ara. Gulshan
22- Sajida Parveen - Sajida
23- Sumbal Firdus. Sumbal
24- Asler Shaheen. A. Shaheen
25- Balqees Rana. Balqees

Annex 'C' Annexure 20

OFFICE OF THE HOSPITAL DIRECTOR

Lady Reading Hospital Medical Teaching Institution Peshawar
Phone # 0092-91921 1402 Fax: 0092-91921 1401

OFFICE ORDER

Employees under transfer to DG Health Services but their cases were in court Now the Hon'ble Court dismissed their Writ Petitions No. 557-P/2016 and W.P No. 593-P/2016 being not maintainable (copy attached) thus the following employees are hereby relieved and directed to report to DG Health Services Khyber Pakhtunkhwa for further posting with immediate Effect.

1. Mr. Johar Ali, Clinical Technician (Radiology)
2. Mr. Roidar Shah, Clinical Technician (Pharmacy)
3. Mr. Sam Gul, Clinical Technologist (Surgical)
4. Mr. Shamsul Taj, Clinical Technician (Surgical)
5. Mr. Riaz Bari, Clinical Technician (Pathology)
6. Mr. Muhammd Asim, Clinical Technician (Cardiology)
7. Mr. Murad Ali, Office Assistant
8. Mr. Muhammad Ali, Ward Orderly
9. Mr. Sartaj, Lift Operator
10. Mr. Shahid Masih, Sweeper
11. Mr. Ishaq Buta, Sweeper
12. Mr. Munawar Laj, Sweeper
13. Mr. Faramosh, Ward Orderly
14. Mr. Tahir Khan, Dhobi
15. Mr. Muhammad Waris, Ward Orderly
16. Mr. Hayat Khan, Behishti
17. Mr. Fazle Moula, Attendant
18. Mr. Roald Khan, Ward Orderly
19. Mr. Noor Rahim, Ward Orderly
20. Mr. Manabat Khan, Ward Orderly
21. Ms. Fatima Bibi, Charge Nurse
22. Mr. Asif Khan, Naib Qasid
23. Ms. Aster Shaheen, Charge Nurse
24. Ms. Sumbal Firdous, Charge Nurse
25. Ms. Bilqees Rana, Charge Nurse
26. Ms. Sajida Parveen, Charge Nurse

—Sd—
HOSPITAL DIRECTOR
Lady Reading Hospital, MTI Peshawar

No. 6308-15/HD/LRH
Dated: 05/05/2017

Copy forwarded for information and necessary action to:-

1. Director General Health Services Khyber Pakhtunkhwa Peshawar
2. P.S to Senior Minister for Health Govt: of Khyber Pakhtunkhwa Peshawar
3. P.S to Secretary to Govt: of Khyber Pakhtunkhwa Health Department Peshawar
4. Director Finance, Lady Reading Hospital, MTI Peshawar
5. Budget and Accounts Officer, Lady Reading Hospital, MTI Peshawar
6. All of the Above mentioned officials, Lady Reading Hospital, MTI Peshawar
7. Secretary to BoG, Lady Reading Hospital, MTI Peshawar
8. P.A to Hospital Director, Lady Reading Hospital, MTI Peshawar

(21) (21)

TO BE SUBSTITUTED FOR THE SAME NUMBER AND DATE

DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUN KHWA PESHAWAR

E-Mail Address: nwfpdghs@yahoo.com office Phone 091-9210269 & Exchange# 091-9210187, 9210196 Fax # 091-9210230

OFFICE ORDER

In pursuance of office order No.6308-15/HD/LRH dated 05.05.2017, this Directorate Office Orders bearing No.2267-84/AE-VI dated 09.02.2016, No. 2308-20/AE-VI dated 10.02.2016, No.2017-24/E-V dated 01.02.2016, No. 2441-55/AE-VI dated 17.02.2016, No. SOH-III/1-1/2016 dated 15.02.2016, No.2456-69/AE-VI dated 17.02.2016 & No.1780-83/Personnel dated 11.03.2016 stand restored.

All the Officers/ Officials are hereby relieved and directed to report to their new place of posting immediately.

Sd/xxxxxxx
DIRECTOR GENERAL HEALTH
SERVICES, K.P.K PESHAWAR.
Dated: 10/05/2017

No. 6360-68/AE-VI

Copy forwarded to the:-

1. P.S to Senior Minister for Health Khyber Pakhtunkhwa Peshawar.
2. P.S to Secretary to Govt: of Khyber Pakhtunkhwa Health Department Peshawar.
3. Accountant General Khyber Pakhtunkhwa Peshawar.
4. Hospital Director MTI/LRH Peshawar w/r to his letter referred to above.
5. Hospital Director MTI/KTHPeshawar.
6. Medical Superintendents DHQ/Teaching Hospitals D.I.Khan, KDA Kohat, SGTH Swat, Battagram.
7. Medical Superintendent Govt: Naseerullah Khan Babar Memorial Hospital Peshawar.
8. Medical Superintendent Service Hospital Peshawar.
9. DHOs Swabi, Kohistan,
10. Accountant DGHS Khyber Pakhtunkhwa Peshawar.
11. P.A to DGHS Khyber Pakhtunkhwa Peshawar.
12. Officers/Officials concerned.

For information and necessary action.

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

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Annex 'D'

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Order

30.11.2017

Counsel for the appellant, Mr. Usman Ghani, District Attorney alongwith Mr. Javed Iqbal Gulbela, Legal Advisor and Mr. Muzammil Khan, Legal Advisor for respondents present. Arguments heard and record perused.

This appeal is also dismissed as per detailed judgment of today placed on file in connected service appeal No. 458/2017 entitled "Syed Roidar Shah-vs- The Govt: of Khyber Pakhtunkhwa through Secretary, Health Department, Civil Secretariat, Peshawar and 3 others". Parties are left to bear their own cost. File be consigned to the record room.

Ahmed Hassan
Member

Niaz Muhammad Khan
Chairman

Certified to be ture copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application	12/12/17
Number of Words	800
Copying Fee	6/-
Urgent	
Total	6/-
Name of Copyist	
Date of Complection of Copy	19/12/17
Date of Delivery of Copy	19/12/17

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUAL,PESHAWAR.

Appeal No. 458/2017

Date of Institution ... 12.05.2017

Date of Decision ... 30.11.2017

Syed Roidar Shah,
Clinical Technician(Pharmacy),
(President Provincial Paramedic Association as well as President Paramedical Association Lady Reading Hospital),
Presently posted at MTI,LRH, Peshawar.

... (Appellant)

VERSUS

1. The Govt: of Khyber Pakhtunkhwa through Secretary, Health Department, Civil Secretariat, Peshawar and 3 others.

... (Respondents)

MR. SHUMAIL AHMAD BUTT, Advocate --- For appellant.

MR. MUZAMMIL KHAN, Legal Advisor ... For respondent no.4

MR. JAVED IQBAL GULBELA, Legal Advisor --- For respondent no.4.

MR. USMAN GHANI, District Attorney --- For official respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. AHMAD HASSAN, ... MEMBER(Executive)

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN.- 16-

This judgment shall dispose of the instant service appeal as well as connected service appeals no. 465/2017 entitled Shams-Ut-Taj, no. 466/2017 entitled Murad Ali, no. 467/2017 entitled Muhammad Ali, no. 468/2017 entitled Muhammad Riaz Barki, no. 469/2017 entitled Shahid Masih Gharui, no. 470/2017 entitled Mujahid Azim, no. 532/2017 entitled Rooh-ul-Amin no. 533/2017 entitled Niaz Muhammad, no. 534/2017 entitled Yaqoob Masih, no. 535/2017 entitled Hamayun, no. 536/2017 entitled Noor Rehman, 537/2017 entitled Sartaj, no. 538/2017 Imdad Ullah, no. 539/2017 entitled Johar Ali, no. 540/2017 entitled Ms. Sajida Parveen, no. 541/2017 entitled Ms. Gulshan Ara, no. 542/2017 entitled Ms. Sumbal Firdous, no. 543/2017 entitled Ms. Aster Shaheen, no. 544/2017 entitled Bilqees Rana, no. 511/2017 entitled Muhammad Asim, no. 527/2017 entitled Isam Gul and no. 552/2017 entitled Farrukh Jalil as similar questions of law and facts are involved therein.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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2. Arguments of the learned counsel for the parties heard and record perused.

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FACTS

3. The appellants were transferred through an order dated 09.02.2016 against which they filed departmental appeals on 23.02.2016 and then the appellants filed writ petition on 17.02.2016 and the worthy Peshawar High Court, Peshawar through its judgment dated 25.04.2017 dismissed the writ petition on the ground of jurisdiction in view of Article-212 of the Constitution of the Islamic Republic of Pakistan and thereafter they filed the instant service appeals on 12.05.2017.

ARGUMENTS

4. Learned counsel for the appellant argued that delay in filing present service appeals was due to confusion qua jurisdiction of the Service Tribunal. As in the impugned transfer orders there was mention of a law i.e West Pakistan Essential Services (Maintenance) Act 1958, which misled the appellants in choosing the forum for redressal. That the appellants in good faith believed that the above mentioned Act did not fall within the terms and conditions of the civil

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EXAMINER

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servants and therefore, this Tribunal had no jurisdiction. That the appellants then bonafidely, in good faith and with due-diligence preferred writ petition for redressal of their remedy before the worthy Peshawar High Court but unfortunately the same could not hold good for their lordships of the Peshawar High Court and the Peshawar High Court vide order dated 15.07.2017 dismissed the writ petition for want of jurisdiction. He further argued that alongwith the memorandum of appeals before this Tribunal the appellants filed applications for condonation of delay under Section-14 of the Limitation Act 1908. He next contended that under Section-14 of the Limitation Act pursuing remedy before wrong forum with due diligence and good faith is an established ground for condonation of delay. He next contended that such good faith and due diligence can be gathered from the circumstances of the case argued by him above. The circumstances were such in nature which would result in presuming that the appellants were misled and then they knocked the door of the Hon'ble Peshawar High Court. The learned counsel for the appellants in order to augment his stance relied upon the judgments reported as 2017 PLC (C.S) 692 and 2007 PLC (C.S) 870. The learned counsel for

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the appellant then also argued the appeal on merits by highlighting that the Government was not authorized under the West Pakistan Essential Services (Maintenance) Act, 1958 to transfer the appellants as the said law was in force at that time. He particularly referred to Section-4 of the Act in this regard. He then went on to argue that in accordance with the transfers/postings policy of the Government, the office Bearers of the Association could not be transferred. That most of the appellants are Office Bearers. That some of the appellants are menials which could also not be transferred out of the District as per the Policy of the Provincial Government. That the impugned orders speak on their own that all transfers were made as punishment which is not approved by law and also by so many judgments of the Superior Courts. That the impugned orders are therefore, void orders and no limitation, at all, shall run against the void orders which is an admitted position of law at present.

5. On the other hand Legal Advisor for respondents argued that the present appeals are hopelessly time barred. That the judgment pressed into service by the learned counsel for the appellants reported as 2017 PLC (C.S) 692 was passed under dissimilar circumstances as in the same judgment the writ

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was sent back to the departmental authority for treating the same as departmental appeal which is not the case here. Learned Legal Advisor also relied upon judgment reported as 2010 SCMR 1982 in support of his arguments that limitation is an issue which should be taken seriously and not lightly. The learned Legal Advisor further argued that filing of departmental appeal by the appellants on 23.02.2016 itself manifests that the appellants knew that the matter was of one of the terms and conditions of civil servants and after the filing of that departmental appeal, appellants were bound to have had recourse to Section-4 of the Khyber Pakhtunkhwa Service Tribunal 1974 but instead the appellants filed the writ petition before the Peshawar High Court which was not allowed.

6. The learned District Attorney for official respondents argued that the very departmental appeal is defective as the same was filed by all the appellants jointly and under Rule-3(2) of the Khyber Pakhtunkhwa Government Servants (Appeal) Rules, 1986 joint appeal is not allowed. He further argued that the application for condonation of delay is moved under Section-14 of the Limitation Act 1908 but under section-9 of the Khyber Pakhtunkhwa Service Tribunal Act,

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1974 Section-14 is not applicable in the proceedings before this Tribunal. That this Tribunal has already given judgments in two appeals No. 1395/2013 entitled *"Momin Khan-vs-Government"* and No. 1396/2013 entitled *"Zaheerullah-vs-Government"* on 28.11.2017 in which the effect of judgment reported as 2017 PLC(C.S) 692 has been discussed and the period was not condoned due to pursuing the case before wrong forum. He further argued that the appellants were to explain each and every day delay which has not been done by the appellants.

CONCLUSION.

7. This Tribunal is first to decide whether the present appeals are within time and if not then this Tribunal cannot discuss the merits of the appeals. The pivotal question for determination to reach the conclusion is whether pursuing a case before a wrong forum is a valid ground for condonation of delay in appellate jurisdiction. The application for condonation of delay is moved under section-14 of the Limitation Act, 1908. Though Section-14 is not applicable in the proceedings before this Tribunal. The august Supreme Court of Pakistan in the judgment of Larger Bench reported as 2016 PLD 872 while discussing the applicability of Section-14

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of the Limitation Act has decided that provision of Section-14 of the Limitation Act are not applicable in all appeals even before the normal Civil Courts. But again in the said very judgment it is held that wherever Secion-5 of the Limitation Act is applicable then the reasons given in Sectiom-14 of the Act can be taken into consideration for deciding the sufficient cause. In the said very judgment the august Supreme Court of Pakistan while discussing many judgments of the august Supreme Court of Pakistan prior to 2016 has resolved the issue once for all by declaring many judgments as *per incurium*. In the judgment of the larger Bench the august Supreme Court of Pakistan has allowed the condonation on the ground of pursuing the remedy in good faith and due diligence and the august Supreme Court of Pakistan has further held in that very judgment that pursuing case in wrong forum *per se* cannot be presumed to be pursuing in good faith and due diligence unless the valid and sufficient reasons are given in the application for condonation of delay which misled the party or for that matter their counsel for choosing wrong forum. The judgment relied upon by the counsel for the appellant reported as 2007 PLC(C.S) 870 is also discussed in the judgment of larger Bench mentioned

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above. This judgment has now merged in to the judgment of the larger Bench. Now we are to see whether the appellants have mentioned any ground in the application for condonation of delay which misled them or their counsel to choose wrong forum. If we go through the applications for condonation of delay in these appeals there is only general mention of the appellants pursuing the case innocently and bonafidly. No particulars of the circumstances which misled the appellants to choose the wrong forum are mentioned. The learned counsel for the appellants today added the ground which misled the appellants for choosing the wrong forum but this ground is not available in the applications for condonation of delay. The august Supreme Court of Pakistan in that very judgment has also cited certain examples of misleading the counsel or his client by formulating two questions on this very subject. In question No.2 regarding wrong advice of the counsel for the appellant pursuing the remedy before the wrong forum their lordship have added that the person seeking condonation of delay must explain delay of each and every day and should establish that the delay was caused by reasons beyond control of that person (or counsel) and that he was not indolent, negligent or careless in initiating and

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pursuing the actionable right which had accrued in his favour. Mere incompetence of the counsel, inadvertence, negligence or ignorance of law is held to be no ground. One of such examples given by their lordships is that of drawing the wrong decree sheet by the trial court as to valuation for the purpose of appeal due to which a counsel was misled into choosing the appellate forum was a valid ground. In this very judgment *actus-curiae per se* has not been approved to be a sweeping ground for condonation of delay while answering question no. 3. So in the light the judgment of the Larger Bench the appellants have failed to mention the specific ground in the application for condonation which misled them or their counsel for approaching a wrong forum. Secondly, if the arguments of the learned counsel for the appellants are made part of this application then we are to see whether that ground really misled the appellants or their counsel to approach the proper forum. As discussed above the crux of the arguments of the learned counsel for the appellant is that the appellants/counsel were misled in believing because the impugned order had mentioned Act of 1958 which Act was not part of the terms and conditions of the civil servants and hence, they approached the worthy Peshawar High Court. If

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we go through the impugned order the said order has simply transferred the appellants. The transfers are very much part of the terms and condition of the civil servants under the Khyber Pakhtunkhwa Civil Servants Act 1973. If any civil servant is transferred wrongly or in exercise of any of the powers given other than the Khyber Pakhtunkhwa Civil Servants Act, 1973 the matter still remains that of transfer. There arises no question of any misleading that how transfer on the basis of a law/rules other than Civil Servants Act or Rules there-under fell outside the purview of this Tribunal. Every day the civil servants are transferred on the basis of wrong notifications, by applying wrong law or rules which give cause of action to the Civil Servants to challenge the same before this Tribunal. Mentioning of any right or wrong law never misleads any person if the net outcome of the order is transfer. So far as judgment reported as 2017 PLC (C.S) 692 is concerned that judgment has got no application to the present appeal for the reason that in the said judgment the departmental authority was directed to consider the writ petition as departmental appeal. Secondly in this judgment the judgment of larger Bench was not considered. And if there is any discordance between judgments of the august Supreme

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Court of Pakistan the one of larger Bench shall prevail. The learned counsel has also not been able to convince this Tribunal that how the transfer orders are void and no limitation shall run in these appeals. All illegal orders are not void orders as is jurisprudentially settled. The objection of learned District Attorney as to joint appeal is not fatal as no penal consequences are mentioned and at the most it is directory.

8. This Tribunal is therefore, of the view that no sufficient cause has been shown by the appellants in pursuing their cases before a wrong forum and the application for condonation of delay cannot be accepted. All these appeals being time barred are dismissed. Parties are left to bear their own costs. File be consigned to the record room.

(NIAZ MUHAMMAD KHAN)
CHAIRMAN

(AHMAD HASSAN)
MEMBER

ANNOUNCED
30.11.2017

Certified to be ture copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Approved For Reporting

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 468 /2017

Khyber Pakhtunkhwa Service Tribunal
Diary No. 510
Dated 16-5-2017

Muhammad Riaz Barki,
Junior Clinical Technician (Pathology),
(General Secretary Paramedic Association, LRH),
Presently posted at MTI, LRH,
Peshawar.

.....Appellant

Versus

1. Government of Khyber Pakhtunkhwa,
Through Secretary, Health Department,
Civil Secretariat, Peshawar.

2. Directorate General Health Services,
Through Director General,
Attached Department Complex,
Khyber Road, Peshawar.

3. Secretary Establishment,
Government of Khyber Pakhtunkhwa,
Peshawar.

4. Hospital Director,
MTI, Lady Reading Hospital,
Peshawar.

ATTESTED
Khyber Pakhtunkhwa Service Tribunal, Peshawar

Filed to-day
Registrar

.....Respondents

16/5/17 SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED TRANSFER ORDER. NO. 2017-24/E-V DATED 01/02/2016, RELIEVING ORDER No. 6308-15/HD/LRH DATED 05/05/2017 AND OFFICE ORDER NO. 6360-68/AE-VI DATED 10.05.2017 WHEREBY THE APPELLANT HAS BEEN TRANSFEERED FROM MTI, LRH, PESHAWAR TO SAIDU GROUP OF HOSPITALS, SAIDU SHARIF SWAT

May it please this Honorable Court

1. That the Appellant is a civil servant appointed against a vacant post at Lady Reading Hospital, Peshawar and has started his career with zeal and dedication and served the public at large on several positions since his appointment to the best of his abilities and full satisfaction of his superiors and since then he is performing his duties at the aforesaid hospital. Presently he is working as Junior Clinical Technician (Pathology). It is pertinent to mention here that the **Appellant is General Secretary Paramedical Association LRH,** Peshawar, a representative body and the provincial chapter of Pakistan Para-Medic Association as well as the Appellant is elected President of Para Medical Association Lady Reading Hospital, Peshawar.

(Copies of notification as General Secretary PMA etc are annexure "A")

2. That the parent national level body is registered under the Societies Registration Act, 1960, the provincial chapter is also a duly recognized body since 09.09.1970, while its constitution has been approved by Respondent No. 1 Government w.e.f. 09.08.1992.

(Copies of the documents of registration etc are Annexure "B")

3. That upon promulgation of Khyber Pakhtunkhwa Medical Teaching Institutions Reforms Act, 2015 (Khyber Pakhtunkhwa Act No. IV of 2015), Para Medic Association, LRH, Peshawar filed a Writ Petition No. 2643-P/2015 questioning creation of surplus pool, asked for directorship for the Paramedics in the Boards of Governor of MTI and questioned the clause of "till further order".

(Copy of the Writ Petition # 2643-P/2015 is Annexure "C")

4. That this Writ Petition was taken up for hearing alongside numerous other writ petitions by a larger Bench so specially constituted to deal with matters of vires of the Act, 2015 ibid and other related issues. It is a matter of record that while dismissing other Petitions against the vires of the Act, Writ Petition No. 2643-P/2015 was partially accepted in Judgment and Order of the Honorable Larger Bench dated

23.12.2015 as this Honorable Court while acknowledging and appreciating the merits of the matters agitated by paramedics, allowed their plea against "further orders" and their representation in Board of Governors.

5. That seeking enforcement of constitutional rights through a Constitutional Petition was not taken in good grace either by the Respondents or for that matter by the Chairman Board of Governor, LRH Peshawar, who is championing the cause of so-called reforms in MTIs and is acting as quasi advisor to the Respondent Government. He had been heard saying numerously that he would make sure that no one can stay in MTIs if he is challenging him or questioning his wisdom and authority.
6. That it is worth mentioning that Appellant being low paid staff working as Junior Clinical Technician(Pathology) at Medical Teaching Institute namely Lady Reading Hospital and has not opted MTI service and is thus working in direct control and supervision of Respondents No.1 to 3 as amended Section 16 of Khyber Pakhtunkhwa Medical Teaching Institutions Reforms Act, 2015 states that all civil servants serving in MTIs may within a period to be notified by the Government, opt for employment of MTI, their service structure, promotion and disciplinary matters etc but fortunately or otherwise the period has not been yet notified by the Government.

(Copy of the MTI Amended Act, 2015 is Annexure "D")

7. That while momentarily parting from the discussion at hand, it is significant to point out that while misinterpreting a certain part of the Judgment of the larger Bench dated 23.12.2015, Respondent No. 1 Government through a Notification No. SO(R-II)/E&D/1-6/2009 dated 08.02.2016, while purportedly exercising powers under Section 4 of the West Pakistan Essential Services (Maintenance) Act, 1958 and in total defiance to the very intent and spirit of the Act, 2015 has issued direction to all the persons working or engaged in the Medical Teaching Institutes not to leave their place of duty without prior permission of the competent authority.

(Copy of the Notification under Essential Services Act is Annexure "E")

(Copy of the WP Essential Services (Maintenance) Act, 1958 is Annexure "F")

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8. That meanwhile, Government took certain steps to dissolve Post Graduate Medical Institute (PGMI) that wound up concerned doctors. Demands were also being raised for grant of health professional allowance. In this backdrop, Respondent No. 1 issued the Notification under Essential Services Act. While displeased with this Notification and so-called imposition of emergency amongst other issues, Doctors working in these Hospitals and MTIs started protesting against the Government. This agitation aggravated further and some health professionals primarily led by doctors announced strike on 09.02.2016. The fact of strike, led by doctors was also widely reported both in print and electronic media.

(Copies of press clippings are Annexure "G")

9. That after a couple of days of negotiations, all the demands of doctors were acceded to and they were all let off, without any proceedings but the poor low-paid paramedics who had no visibility whatsoever in the so-called strike and had not been concerned with any ER or OTs are being punished without the mandate of law.

(Copies of the news reporting calling off of the strike are Annexure "H")

10. That while seized of an opportunity to get rid of office bearers and some of the members of Para Medical Association, and while actuated with clear mala fide and political agenda, Respondents instead of proceeding against doctors, chose to victimize low-paid employees while showing more loyalty to the Chairman Board of Governors LRH, issued an office order bearing No. 2017-24/E-V DATED 01/02/2016 wherein he transferred the appellant of his duties in absolute ignorance and violation of attending law and circumstances. It is important to point out that the appellant is a permanent civil servant and office bearer of the association therefore cannot be left at the mercy of Respondents and there most influential political figure whom have no authority to issue any order or treat the appellant in any

manner, in grave infraction and defiance of the law on question. Thus the Appellant, along with other office bearers, was thus ordered to be transferred out of his concerned MTI to a far flung place of the Province by virtue of Office Orders dated 01.02.2016 issued by Respondent No. 2.

(Copy of the transfer order is Annexure "I")

11. That the appellant, while was having no other remedy, filed departmental appeal bearing No. 341/16/PPMA-KPK dated 23.02.2016 to the Respondent. No.1 being Competent Authority in hope that he will get relief from that forum but in vain as over a year has been passed and yet no fruitful result has been given to the appellant and still his Departmental Appeals/Representations is pending before the Departmental Authority who was under legal obligation to decide the same within statutory period.

(Copy of the Departmental Appeal is annexure "J")

12. That the Appellant along with many others were aggrieved of the Transfer orders made under the garb of Essential Service (Maintenance) Act, 1958 or otherwise (hereinafter referred to as "impugned orders" for facility of reference only) challenged the same before the Honorable Peshawar High Court by way of *W.P. No. 557-P/2016 titled as "Johar Ali and Others vs Government of Khyber Pakhtunkhwa etc"* wherein interim relief was granted to the Appellant along with many others which remained intact for over a year or so but the case was heard by a Division Bench of the Peshawar High Court on 25.04.2017 wherein they have heard the arguments at length but unfortunately the aforesaid petition was dismissed while holding that the Appellant and others are civil servants and their grievances relate to the terms and conditions of the service therefore the appropriate remedy for seeking the redressal of their grievance is Services Tribunal.

(Copy of the WP.557-P/2016 and Judgment dated 25.04.2017 is Annexure "K")

13. That soon after the decision rendered by this Honorable Court in W.P 557-P/2016, the Respondent No.4 issued relieving order No. 6308-

15/HD/LRH dated 05.05.2017 of the Appellant and directed him to report to the office of Respondent No.2. Further on 10/05/2017 the **Respondent No.2 issued office order No. 6360-68/AE/VI** and directed the appellant and others to report to their new place of work. It is of significance importance that Respondent No.4 is not a competent Authority to relieve the Appellant therefore his act of relieving the Appellant is in total defiance of the law and policy.

(Copy of the Relieving Order and Reporting to new place are Annexure "L")

14. That it is also worthwhile to point out that paramedical association LRH, was allotted a separate office by the then Chief Executive of the Aforesaid hospital wherein office bearers are easily accessible to all the association members as well as the Appellant use the place for office purposes. It is a policy of the provincial government, duly circulated in the Esta Code that Office Bearers shall not normally be transferred during the currency of their office therefore the Appellant rights are protected as per policy and is thus not transferrable outside Lady Reading Hospital but the Respondent No. 2 issued Transfer and Posting Order of Appellant, while ignoring the aforesaid policy and settled legal position qua union member employees, to District Kohat.

(Copy of the allotment of the office to PMA is Annexure "M")

(Copy of the Government policy is Annexure "N")

15. That it is also of great importance to mention here that paramedical association has been given due representation by the Government as vide letter No. SOH(III)/HD/3-5/Paramedics/2016 dated 17.10.2016 it has been circulated to several departments related to health that wherever there is a meeting related to paramedics so representation of at least two of their office bearers be ensured, which can be reflected from minutes of the meeting headed by Special Secretary for Health Department where two of the office bearers, including the Appellant, attended the meeting.

(Copy of the notification and minutes are Annexure "O")

16. That even previously the Honorable Peshawar High Court as well as

this Honorable Forum has intervened and through interim relief prevented adverse action against Petitioner(s)/Appellant who are being victimized for their stance against the Government or who are office bearers of association.

(Copy of the Order of this Honorable Court is Annexure "P")

17. That it is also important to point out that due to the afore stated strikes etc 39 employees of Ayub Teaching Hospital were also transferred out to far flung areas of the province but due to the intervention of the Special Assistant to Chief Minister, Mushtaq Ahmad Ghani the transfer orders of all the 39 employees were recalled and they were remained at their earlier places of work.

(Copy of the Order pertaining to ATH is Annexure "Q")

18. That feeling gravely dissatisfied and aggrieved of the impugned order Hence this appeal inter-alia on the following grounds:-

Grounds warranting this Appeal:

a. *Because* the impugned order is illegal, unlawful, without lawful authority and thus of no legal effect.

b. *Because* the impugned transfer order is passed without any legal or plausible justification and is therefore liable to be reversed.

c. *Because* the Appellant and other office bearers have been allotted office at the Lady Reading Hospital for the betterment of their fraternity therefore he cannot be transferred at single stroke of pen.

d. *Because* 39 other employees of Ayub teaching Hospital were transferred due to the same reason but there transfer order was cancelled on the next day because they realized that civil servants as well as office bearers cannot be transferred during their tenure.

e. *Because* the Appellant is elected General Secretary of the Paramedical Association Lady Reading Hospital therefore his rights are guaranteed and protected under the laws.

f. *Because* the misgivings of the Respondents against the Appellant is utterly out of place as the Appellant has not resorted to any illegal activities, so alleged against him.

-34-

g. *Because* no provision of the Essential Service (Maintenance) Act, 1958 mandates any transfer. In fact, the Respondents, while posting the Appellant out is committing an offense under the aforesaid Act, 1958.

h. *Because* once the Essential Services (Maintenance) Act, 1958 is notified, no employer can order transfers at all.

i. *Because* impugned orders are passed in tone and tenor of "punishment". No minor or major punishment can be imposed without due process of law.

j. *Because* the impugned orders are passed in total disregard of the KP Efficiency and Discipline Rules, 2011.

k. *Because* most surprisingly the Appellant who is neither doctor nor care-giver relating to emergency or for that matter operation theaters are being allegedly prosecuted and punished for so called patients crying for survival. How Office Assistants, Sweepers, Masalchi, bearers, lift operators and a few clinical technicians are answerable for strike staged and held under the leadership of doctors.

l. *Because* the very act of letting off the doctors and choosing to prosecute only low-paid employees and that too as a punishment for approaching this honorable court is not only smacked with partiality, unfairness and nepotism but is a clear violation of Article 4, 5, 25, 37 and 38 of the Constitution.

m. *Because* the Constitution of the Islamic Republic of Pakistan confers right on every citizen of forming of an association as well as grants freedom of assembly in the form of protest or otherwise thus the impugned order is violative of Article of 16 and 17 of the Constitution, 1973.

n. *Because* as held numerously by superior judiciary including the apex Supreme Court of Pakistan, no civil servant can be transferred except for public interest whereas the impugned transfer order is clearly having a color of punishment and is done on so called administrative ground rather than public interest.

o. *Because* as narrated in facts, appellant is office bearer of Para Medical Association. It is a policy of the provincial government, duly circulated in the Esta Code that Office Bearers shall not normally be transferred during the currency of their office to avoid unfair labour practices.

p. *Because* the Respondents are acting in a manner clearly reeking highhandedness, caprice and victimization.

q. *Because* the Respondents are bent to illegally discriminate amongst health care providers and paramedics without any reasonable justification or classification.

r. *Because* the impugned orders are made with sole purpose of creating terror and deterrence in heart of doctors by making the Appellant as mere guinea pig and scapegoat for no fault on their part.

s. *Because* recently the apex Supreme Court of Pakistan, while suspending a Judgment of the Honorable Balochistan High Court, has acknowledged the right of peaceful protest and agitation for rights of the government employees and declared any clog on it as excessive and illegal.

(Copy of the press clippings reporting Supreme Court judgment are Annexure "R")

t. *Because* Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned transfer order, which is unjust, unfair and hence not sustainable in the eyes of law.

u. *Because* neither ESTA Code provisions does permit the Respondents to pass the impugned transfer order nor the Khyber Pakhtunkhwa Government Servants (Conduct) Rules, 1987.

v. *Because* even otherwise, as is apparent on the face of records, impugned order is actuated with intent mala se as the Respondents are hell bent to get rid of the appellant at any costs solely on political considerations.

w. *Because* since the Appellant is admittedly General Secretary, of the PMA LRH, who cannot be transferred out of his place of duty since completion of his office tenure as per Policy.

x. *Because* the impugned transfer order is clearly motivated with mala fide rather than made in public interest. As the record suggests, the appellant and his colleagues are victimized for ulterior motives of the Chairman Board of Governors, Lady Reading Hospital.

y. *Because* even the KP MTI Act, 2015 also protects the services of Appellant.

z. *Because* in similar circumstances, the Honorable Peshawar High Court and Honorable Services Tribunal has allowed relief in aid of justice.

aa. *Because* neither the Khyber Pakhtunkhwa Government Servants (Conduct) Rules, 1987 nor the Essential Services (Maintenance) Act, 1958 empowers the Respondents to pass the impugned orders.

bb. *Because* appellant will raise other grounds at the time of arguments with the prior permission of the Court.

55 (X) -37-

It is therefore most humbly prayed that on acceptance of the instant appeal, the impugned transfer order. No. 2017-24/E-V DATED 01/02/2016, RELIEVING ORDER No. 6308-15/HD/LRH DATED 05/05/2017 and OFFICE ORDER NO. 6360-68/AE-VI DATED 10.05.2017 may graciously be set aside. Any other relief not specifically asked for may also be granted to the appellant if deemed fit, just and appropriate.

Appellant

Through

Shumail Ahmad Butt,
Advocate Supreme Court of Pakistan,
&
H Bilal Khan
Advocate High Court,
Peshawar.

Dated: ____/05/2017

AFFIDAVIT

I, **Muhammad Riaz Barki,** Junior Clinical Technician (Pathology), (General Secretary Paramedic Association LRH, Peshawar, do herby solemnly declare that the accompanying Appeal is true and correct to the best of my Knowledge and belief and nothing has been concealed from this Honorable Tribunal.

DEPONENT

Annex 'E'

DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA. PESHAWAR.

Office Ph# 091 – 9210269 Exchange# 091 – 9210187, 091 – 9210196, Fax #091 – 9210230
All communications should be addressed to the Director General Health Services Peshawar and not to any Official by name.

96

OFFICE ORDER.

As approved by the competent authority, the transfer orders of the following officials issued vide this Directorate bearing Endorsement No.2017-24/E-V, dated 1/2/2016, No.2308-20/AE-VI, dated 10/02/2016, No.2267-84/AE-VI, dated9/2/2016, and No.2456-69/AE-VI, dated 17/2/2016, and No.2441-55/AE-VI, dated 17/02/2016, are hereby cancelled, in the interest of public.

1.	Muhammad Riaz Burki.	Clinical Technician Pathology.
2.	Muhammad Asim,	Clinical Technician Cardiology.
3.	Johar Ali,	Clinical Technician Radiology.
4.	Shams-ul-Taj,	Clinical Technician Surgical.
5.	Roidar Shah,	Clinical Technician Pharmacy.
6.	Mujahid Azam,	Clinical Technician Pharmacy.
7.	Imdadullah,	Clinical Technician Pathology.
8.	Murad Ali,	Office Assistant.

Arrival/ Departure reports should be furnished to this Directorate for record.

Sd/xxxxxxxxx
DIRECTOR GENERAL HEALTH
SERVICES KPK, PESHAWAR.

No. 1092-98 /AE-VI, Dated Peshawar the 24/01/2018.

Copy forwarded to the: -

1) Secretary to Government of Khyber Pakhtunkhwa Health Department Peshawar for information.
2) Hospital Director MTI/KTH/LRH Peshawar w/r to their office order No.1492-99/ dated 18/12/2017, No.1509-16/ dated 18/12/2017, No.1533-40/ dated 19/12/2017,1582-89/ dated 20/12/2017, No.1532-25/ dated 19/12/2017, No.51240–57/ dated 22/12/2017, No.51240-57/ dated 232/12/2017 and No.1549-56/ dated 19/12/2017. They are requested to withdraw the relieving orders of the above officials with the remarks that they are Civil Servants and according to their appointment orders and will be dealth with in accordance with Government rules. However, the MTI can recommend the Ci Servants for initiating disciplinary action against them if they are guiltuy of misconduct.
3) Accountant General KP Pesahawar.
4) DHIS Cell DGHS KPK Peshawar.
5) Supdt: Promotion Cell (to correct the place of posting of official concerned in the seniority list
6) DA concerned.
7) Officials concerned.

For information and necessary action.

DIRECTOR GENERAL HEALTH SERVICES,
KHYBER PAKHTUNKHWA PESHAWAR.

149 According to Para 05 of the attached Judgement of Peshawar High Court Peshawar in a ~~sel~~ similar case (Copy of (at Flag X) "Government Servants according to their appointment orders and were be dealt with in accordance with Government Rules and MTI has nothing to do with ~~the~~ their services particularly, when the petitioners have not joined MTI and thus the impugned order dated, is not sustainable"

(67)

150 In ~~the~~ light of the above, it is suggested that the transfer order (issued by this Directorate) may be cancelled and also the HD of MTI KTH/LRH Peshawar be directed ~~to~~ not to relieve them being civil servants?

151 For perusal/orders pl.

15/01

152 AD (Paramedics) for perusal and further orders pl?

15/1/18

153 D (HRM)

15/1..

154 ADG HR.

For approval M

16/1/18

155 DG HS

DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUN KHWA PESHAWAR

Annex "F"

E-Mail Address: nwfrdghs@yahoo.com office Ph#091-9210269
Exchange# 091-9210187, 9210196 Fax # 091-9210230

OFFICE ORDER

In compliance to order dated 25.04.2017, of Peshawar High Court Peshawar in writ petition 429-P/2016 and Khyber Pakhtunkhwa Service Tribunal Peshawar order dated 30.11.2017, in service appeal No. 458/2017, all the departmental appeals in respect of the following officers/ officials along-with similar placed other officers/officials are not maintainable on account of Principal of Res-juidicata under CPC Rule-11 in the eye of Law.

1. Mr. Isam Gul Clinical Technologist Surgical
2. Muhammad Riaz Barki C.T Pathology
3. Muhammad Asim C.T Cardiology
4. Johar Ali C.T Radiology
5. Shamsul Taj C.T Surgical
6. Roadar Shah C.T Pharmacy
7. Mujahid Azam C.T Pharmacy
8. Imdadullah C.T Pathology
9. Murad Ali office Assistant

Moreover, they belong to provincial cadre and have also completed their normal tenure in their respective MTIs institutions and this Directorate Office Orders and Government of Khyber Pakhtunkhwa Health Deptt: Notifications regarding their posting / transfer ultimately attained at its finality.

They are strictly directed to comply the office orders No. 2267-84/AE-VI dated 09.02.2016, No. 2308-20/AE-VI dated 10.02.2016, No. 2017-24/E-V dated 01.07.2016, and Govt: of KP Health Department Notification No.SOH(E-III)1-1/2016 dated 15.02.2016, without fail.

Consequently, this Directorate office order bearing Endst: No. 1092-98/AE-VI dated 24.01.2018, is hereby withdrawn ab-initio.

However, it is pertinent to mention here that the Class-IV staff relieved/repatriated by HD MTI/LRH/KTH shall remain in their respective institutions vide this Directorate letter No. 686-709/Personnel dated 05.01.2018 and No. 870-72/Admn/DGHS KP dated 10.01.2018 being low paid employees of Hospital cadre.

Sd/xxxxxxx
DIRECTOR GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR.
Dated 29/01/2018.

No 1898-912 /E-V

Copy forwarded to the:-

1. Secretary to Govt: Of Khyber Pakhtunkhwa Peshawar.
2. Hospital Director MTI LRH Peshawar.
3. Hospital Director MTI/KTH Peshawar.
4. M.S DHQ Hospital D.I Khan.
5. DHO Kohistan.
6. M.S Saidu Group of Teaching Hospital Swat.
7. DHO Swabi.
8. M.S DHQ Hospital Battagram.
9. DHO Torghar.
10. M.S DHQ Hospital KDA Kohat.
11. DHO Kohat.
12. PS to Minister for Health Khyber Pakhtunkhwa Peshawar.
13. Officers/officials concerned.

For information and necessary action.

DIRECTOR GENERAL HEALTH SERVICES,
KHYBER PAKHTUNKHWA PESHAWAR

Annex 'G'

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

Without Prejudice

49

Subject: - APPEAL/ REPRESENTATION FOR CANCELLATION OF THE OFFICE ORDER No. 1898-912/E-V DATED 29/01/2018

Respected Sir:

The Undersigned very earnestly submits his Appeal/ representation against the order dated 29.01.2018 passed by Director General Health Services, Khyber Pakhtunkhwa vide which the departmental appeals of various categories of employees, of the Health Department who are working in Medical Teaching Institution namely Lady Reading Hospital, have been termed as not maintainable. The Appellant would humbly submit his appeal against the order dated 29.01.2018, passed by Director General Health Services while lacking jurisdiction, on the following grounds amongst many others:

1. The Undersigned is a civil servant appointed against a vacant post at Lady Reading Hospital, Peshawar and has started his career with zeal and dedication and served the public at large on several positions since his appointment to the best of his abilities and full satisfaction of his superiors. . It is pertinent to mention here that the **Undersigned/ appellant is also General Secretary Paramedical Association LRH** Peshawar, a representative body and the prov. chapter of All Pakistan Paramedical Staff Association.
2. It is worth mentioning that the Undersigned being low paid staff working as Cl. Technician Pathology at Medical Teaching Institute namely Lady Reading Hospital and has not opted MTI service and is thus working in direct control and supervision of your good self and Director General Health Services.
3. Meanwhile, Government took certain steps to dissolve Post Graduate Medical Institute (PGMI) that wound up concerned doctors. Demands were also being raised for grant of health professional allowance. In this backdrop, your good self issued the Notification under Essential Services Act. While displeased with this Notification and so-called imposition of emergency amongst other issues, Doctors working in these Hospitals and MTIs started protesting against the Government. This agitation aggravated further and some health professionals primarily led by doctors announced strike on 09.02.2016. The fact of strike, led by doctors was also widely reported both in print and electronic media.**(Copies of press clippings are Attached)**
4. After a couple of days of negotiations, all the demands of doctors were acceded to and they were all let off, without any proceedings but the poor low-paid paramedics/clerks/nurses and class-IV who had no visibility whatsoever in the so-called strike and had not been concerned with any ER or OTs are being punished without the mandate of law.**(Copies of news reporting calling off strike is annexed)**
5. While seized of an opportunity to get rid of office bearers and some of the members of Para Medical Association, and while actuated with clear mala fide and political agenda, instead of proceeding against doctors, chose to victimize low-paid employees, issued an office order bearing No. **2017-24, DATED 01/02/2016** wherein DGHS transferred the appellant and several others of their duties in absolute ignorance and violation of attending law and circumstances. It is important to point out that the undersigned is a permanent civil servant and office bearer of the association, therefore cannot be left at the mercy of DGHS and their most influential political figure whome have no authority to issue any order or treat the appellant in any manner, in grave infraction and defiance of the law on question. Thus the Appellant, along with other office bearers, was thus ordered to be transferred out of his concerned MTI to a far flung place of the Province by virtue of Office Orders dated 09.02.2016 issued by DGHS.
6. It is a policy of the provincial government, duly circulated in the Esta Code that Office Bearers shall not normally be transferred during the currency of their office therefore the undersigned rights are protected as per policy and is thus not transferrable outside Lady Reading Hospital but the DGHS issued Transfer and Posting Order of Undersigned, while ignoring the aforesaid policy and settled legal position qua union member employees.

(57)

7. The Undersigned, while having no other remedy, filed departmental appeal bearing No. 341/16/PPMA-KPK dated 23.02.2016 to the DGHS, which was not entertained.

Recently I have been relieved from LRH, MTI, vide office order No. 1509-16/HD/LRH dated 18-12-2017, subsequently I have submitted another appeal vide diary No. 1606, dated 12-01-2018 to the DGHS being competent authority, which was accepted by the DGHS, being competent authority, The DGHS, issued office order No. 1092-98/AE-VI dated 24/01/2018, and cancelled the earlier transfer order thus the undersigned was remain to serve at his place of duty MTI, LRH. **(Copy of the appeal acceptance order is annexed).**

8. The undersigned started performing his duties with more zeal and excellence but astonishingly came to know that DGHS being ***Functus Officio,*** while pressurized by the Chairman Board of Governors LRH and in absolute ignorance and violation of attending law and circumstances again issued another order No. 1898-912/E-V dated 29/01/2018, by virtue of which he termed the appeals of the Undersigned and others as not maintainable while wrongly applying and interpreting the principle of ***Res-Judicata*** as none of the forums mentioned in the order dated 29/01/2018 have decided the matter on merit as Peshawar High Court dismissed the writ petition for want of jurisdiction whereas the Services Tribunal dismissed the same on limitation therefore it can be stated with certainty that the principle of ***Res-Judicata*** is not attracted in the instant matter.

9. Besides merit of the case it is also important to point out before this honorable Tribunal that due to the afore stated strikes etc. 39 employees of Ayub Teaching Hospital were also transferred out to far flung areas of the province but due to the intervention of the Special Assistant to Chief Minister, Mushtaq Ahmad Ghani the transfer orders of all the 39 employees were recalled and they were remained at their earlier places of work therefore the undersigned and others also needs the same treatment and shall not be discriminated.**(Copy of the Order pertaining to ATH is Annexed)**

10. The very act of letting off the doctors and choosing to prosecute only low-paid employees and that too as a punishment is not only smacked with partiality, unfairness and nepotism but is a clear violation of Article 4, 5, 25, 37 and 38 of the Constitution.

11. The Constitution of the Islamic Republic of Pakistan confers right on every citizen of forming of an association as well as grants freedom of assembly in the form of protest or otherwise thus the impugned order is in violation of Article of 16 and 17 of the Constitution, 1973.

12. It is held numerously by superior judiciary including the apex Supreme Court of Pakistan, no civil servant can be transferred except for public interest whereas the impugned order is clearly having a color of punishment and is done on so called administrative ground rather than public interest.

It is therefore most humbly prayed that on acceptance of this Appeal/ representation the order dated 29.01.2018 No. 1898-912/E-V may very kindly be recalled and set aside and consequently the Appellant may kindly be restored to their position prior to 09.02.2016 and oblige.

Appellant

Muhammad Riaz, Cl. Technician Pathology, LRH, MTI.
General Secretary Paramedical Association LRH, MTI.

Annex "H"

52

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

No. SOH-III/8-60/2018(Roidar Shah & Others)
Dated the Peshawar 20th March, 2018

To

Mr. Syed Roidar Shah,
Clinical Technician (Pharmacy), LRH, Peshawar,
President, Provincial Paramedical Association, Khyber Pakhtunkhwa,
& President Paramedical Association,
LRH, Peshawar & Others.

SUBJECT: **APPEAL FOR RESTORATION OF DGHS OFFICE ORDER NO. 1092-98/AF-VI, DATED: 24-01-2018 THROUGH CANCELLATION OF DGHS OFFICE ORDER NO. 1898-912/E-V, DATED: 29-01-2018.**

I am directed to refer to your appeal/application dated: 06-02-2018 on the subject noted above and to state that the subject appeals regarding restoration of DGHS office order No. 1092-98/AF-VI, dated; 24-01-2018 through cancellation of DGHS office No. 1898-912/E-V, dated: 29-01-2018 of the following officials/officers are hereby regretted.

1. Muhammad Riaz Barki, C.T Pathology.
2. Muhammad Asim C.T Cardiology.
3. Johar Ali, C.T Radiology.
4. Shamsul Taj, C.T Surgical.
5. Roidar Shah, C.T Pharmacy.
6. Mr. Isam Gul, Clinical Technologist Surgical.
7. Mujahid Azam, C.T Pharmacy.
8. Imdadullah, C.T Pathology.
9. Murad Ali, Office Assistant.

Section Officer-III

Endst: even no & date.

Copy forwarded to:-

1. Directorate General, Health Services, Khyber Pakhtunkhwa, Peshawar.
2. PS to Secretary Health, Khyber Pakhtunkhwa.

Section Officer-III

BUTT & SOHAIL
ATTORNEYS-AT-LAW

Memorandum of Authorization
For Representation as Legal Counsel/Lawyer
(Agreement for Legal Services)
عقد توکیل۔ اتفاقیہ خدمات قانونیۃ
وکالت نامہ

53

BEFORE THE K.P.K Service Tribunal, Peshawar

Judicial Stamp (Court Fees), If Required
(Affix Here)

Parties of the Proceedings (If Applicable)		
Muhammad Riaz Bacha	PETITIONER(S) / PLAINTIFF(S) / COMPLAINANT(S) / OBJECTOR(S) / APPELLANT(S)	
VERSUS		
The Govt. of K.P.K & others	RESPONDENT(S) / DEFENDANT(S) / ACCUSED	
Nature of the Proceedings or Legal Services to be rendered		

I/We, the Appelants (Executants on margins)

hereby appoint and constitute **Shumail Ahmad Butt & Sheraz Butt, Advocates**, H. Bilal of M/s Butt & Sohail LLP, Attorneys at Law, Haris Khan (Adv)

as my/our attorney(s)/counsel for me/us and on my/our behalf, to appear, plead in the said proceedings with powers to sign, file pleadings and all kinds of applications including appeal/revision, execution etc. up to apex court forum to withdraw and receive documents, to withdraw or compromise in the said proceedings or to refer to arbitration, bind me/us by oath, withdraw or receive any money(s) on my/our behalf and to give valid receipts and discharges, to do himself/themselves or through appointment of other lawyer(s) counsel for me/us & in my/our name and on my/ourbehalf, to do all acts, deeds, matters and things relating to the proceeding(s) in all its stages that I/we personally could do if this instrument had not been executed. The appointment is subject to the following special terms and conditions:

1. The fee paid, or agreed to be paid, to the aforesaid counsel is for his/their work at this forum alone. The retainer, however, shall continue and remain in the courts or fora through out; I/We shall however make separate arrangements as to his their fees in respect of appeals revisions, transfer proceedings and execution of decree or orders.
2. Unless the whole amount of fee is paid, the said counsel is/are not bound to prosecute my case nor is are he/they bound to do so (unless especially under separate arrangement) at any place other the courthouse/place of proceedings beyond the usual court hours, on public holiday or in any other court/forum. In addition, upon submission of proper documentation, I we shall reimburse the said counsel for all reasonable and customary expenses incurred while providing services for me/us.
3. No part of the said counsel's fee is returnable under any circumstances and cost of adjournments payable by the opposite party will be received and retained by him/them in addition to his/their fees payable by me/us.
4. At any time the said counsel is/are unable to attend the court/froum of proceedings because of illness, absence from station or other unavoidable reasons or preoccupation, he/they will make alternate arrangements for appearance on his their behalf. But he/they shall not be responsible for any loss caused to me/us should these arrangements fail.
5. I/we shall make my/our own arrangements for attending the court/forum on every hearing, to inform my/our said counsel when the case proceeding is called. The counsel shall in no way be responsible for any loss caused to me/us through my/our failure so to inform him/them or owing to a decision ex parte for any reason.
6. I/We also undertake to pay his full professional fees as per stipulation. In case his/their full professional fees are not paid the counsel can withdraw and/or suspend his/their services at any time. Additionally the said counsel enjoy(s) a lien over my/our assets in case of non-payment.
7. I/We have been told, recognize and understand that said counsel have made NO GUARANTEE promising the success or outcome of the proceedings in a particular way.
8. I/We have read/understood the contents of this document in full and thus put my/our respective hands to empower the said counsel as stated on this_____day of_____, 20 18 at Peshawar

Executant(s)

I/We accept this Assignment

گل رحمان

بخدمت جناب چیئرمین صاحب سروس ٹریبونل لاہور

درخواست برائے تاریخ تبدیلی محمد ریاض بنام حکومت

جناب عالی!

مودبانہ گزارش ہے کہ میرا کیس محمد ریاض بنام حکومت پنجاب معزز عدالت میں لگا ہے۔ چونکہ میرا وکیل اسلام آباد گیا ہے

اس لئے آپ صاحبان مہربانی کر کے میرے کیس میں تاریخ تبدیل کی جائے

مہربانی ہوگی

میری نوازش

العارض

4/6/18

محمد ریاض ولد عبدالرزاق

LRH

الشہر