

25.10.2022

Appellant in person present.

Muhammad Jan, learned District Attorney for respondents present.

Comments on pre-admission notice were not submitted despite last chance. Therefore, case is adjourned for further proceedings till tomorrow i.e. 26.10.2022 before S.B at Camp Court, D.I Khan.



(Rozina Rehman)
Member (J)
Camp Court, D.I.Khan

26th Oct 2022

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

Neither representative of the respondents are present nor written reply on behalf of the respondents has been submitted, therefore, their right for submission of written reply is struck off. Counsel are on strike. To come up for Preliminary hearing on 23.11.2022 before S.B at camp court D.I.Khan. P.P given parties.



(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan

30th June 2022

Counsel for the appellant present.

Learned counsel for the appellant seeks time to prepare the case. Adjourned. To come up for preliminary hearing on 01.07.2022 before S.B at camp court D.I.Khan.



(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan

1st July 2022

Learned counsel for the appellant present.

Let pre-admission notice be issued to the respondents for reply. To come up for reply/preliminary hearing on 23.08.2022 before S.B at Camp Court, D.I. Khan.



(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan

27th Sept 2022

Counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

Written reply/comments on pre-admission notice not submitted. Last chance is given to the respondents for reply/comments. To come up for reply/preliminary hearing on 25.10.2022 before S.B at camp court D.I.Khan.






(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. - 548 /2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge.
1	2	3
1-	14/04/2022	<p>The appeal of Mr. Muhammad Khaled presented today by Mr. Qaiser Rahim Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to touring Single Bench at D.I.Khan for preliminary hearing to be put there on <u>29.04.2022</u>. Notices be issued to appellatant and his counsel for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p> <p><i>Due to retirement of the Hon'ble chairman to come up for the same as before on 30/6/2022</i></p> <p style="text-align: right;"></p>
2-	29/4/22	

BEFORE THE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No. ⁵⁴⁸ of 2022

Muhammad Khalid..... Appellant

Versus


**Government of Khyber Pakhtunkhwa through Secretary Health ,
Khyber Pakhtunkhwa Peshawar and Others Respondents**

INDEX

S #	Particulars	Annexure	Pages
1.	Copy of Service Appeal	---	01-07
2.	Memo of addresses of the parties	---	08-09
3.	Affidavit, Certificate & Referred Books	---	10-12
3.	Copy of the appointment Order No 347 Dated 01.11.2005	<u>A</u>	13
4.	Copy of Appointment Order as Tube Well Operator in BPS-03 Vide Order No 456-460 Dated 01/06/2007	<u>B</u>	14
5.	Copy of impugned Removal Order No 13236-37/Personnel Dated 31/7/2017	<u>C</u>	15
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Dated:-14.04.2022

**Muhammad Khalid Son of Karim Bakhsh
(Ex-Tube Well Operator), Mufti Mehmood
Memorial Hospital Dera Ismail Khan
Through Counsel**


Qaiser Rahim
Advocate High Court
Dera Ismail Khan

14/4/2022

1

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

Service Appeal No. ^{548/} of 2022

**Muhammad Khalid Son of Karim Bakhsh (Ex-Tube Well Operator),
Mufti Mehmood Memorial Hospital Dera Ismail Khan Resident of Chah
Jumma Sharif Near Margalla Shadi Hall Alishan City Grid Road Dera Ismail
Khan Cell No :- 0341-9639108**

Appellant

VERSUS

1. **Government of Khyber Pakhtunkhwa through
Secretary Health , Khyber Pakhtunkhwa Peshawar.**
2. **Director General Health Services Khyber Pakhtunkhwa
Peshawar.**
3. **Medical Superintendent/Hospital Director Mufti
Mehmood Memorial Hospital, Dera Ismail Khan.**
4. **District Account Officer, Dera Ismail Khan.**

Respondents

**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AIMED
AGAINST THE IMPOSITION OF MAJOR PENALTY OF
REMOVAL FROM SERVICE VIDE ORDER BEARING
ENDST: NO.13236-37/PERSONNEL: DATED PESH THE
31.07.2017 WITH REQUEST TO SET ASIDE/STRUCK DOWN
THE SAME AND ALSO AGAINST THE DEPARTMENTAL
APPEAL'S REJECTION ORDERS (IF ANY) AND TO DIRECT
THE RESPONDENTS TO RELEASE THE DUE SALARIES OF
THE PETITIONER ALONG WITH ALL CONSEQUENTIAL
BENEFITS.**

PRAYER IN SERVICE APPEAL

- a) On acceptance of instant service appeal, this Tribunal may be pleased to set aside impugned Order Bearing Endst:No.13236-37/Personnel: Dated 31.07.2017 along with departmental appeal's rejection orders (if any) and to direct the respondents to reinstate the appellant as on its original post with all consequential benefits.
- b) To grant any other relief *ex debito justitiae* due to the Appellant may please be extended in his favour as against the Respondents.

Note:- Addresses given above shall suffice the object of service

Respectfully Sheweth,

The Appellant humbly submits as under:-

1. That Appellant was appointed as Mali in Mufti Mehmood Memorial Hospital Dera Ismail Khan by the Respondent No 3 (Medical Superintendent Mufti Mehmood Memorial Hospital Dera Ismail Khan) vide Order No 347 Dated 01/11/2005. Copy of the Order Dated 01.11.2005 is enclosed as **Annexure "A"**.
2. That in recognition of services of Appellant, after two (02) Years appellant was appointed as Tube Well Operator in BPS-03 vide Order No 456-460 Dated 01/06/2007 by the Respondent No 3 (Medical Superintendent Mufti Mehmood Memorial Hospital Dera Ismail Khan). Copy of the Order Dated 01.06.2007 is enclosed as **Annexure "B"**.

3. That appellant has at his credit an unblemished service record of almost 16/17 years. During this entire long service career, the appellant performed his duties with zeal and zest and never gave any occasion of complaint to his Worthy high ups.
4. **That** as stated earlier the appellant served the esteemed institution of Mufti Mehmood Memorial Hospital Dera Ismail Khan with an unblemished and spotless career and there is no adverse entry during this long period in his service record.
5. **That** in the February 2017 due to reasons/grounds mentioned below, the appellant remained absent from his Services for the sake of his and his family lives whom were at stake due to life threats.
6. **That** as the appellant was not present in the city of Dera Ismail Khan, therefore the letter Dated 25/4/2017 of the Medical Superintendent Mufti Mehmood Memorial Hospital Dera Ismail Khan mentioned in the below Order was not received nor the notice published in Daily "Mashriq" was in the notice of appellant. Even at the moment the respondents are not providing the copy of the same to the appellant.
7. **That** later on, vide Order No 13236-37/Personnel Dated 31/7/2017 issued by your Respondent No 2, a major penalty of "Removal from Service" was imposed upon appellant. Copy of the Order Dated 31.07.2017 is enclosed as **Annexure "C"**.
8. **That** now, after when the life threat to appellant and his family is over and the life of the appellant is in normal mode, when the appellant came back to Dera Ismail Khan and visited his Office, the appellant came to know about the impugned Removal from Service Order which was dispatched to the Appellant on the address where the appellant was not living.

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9. That after knowledge of the impugned Order, the appellant assailed/question the same by filing departmental appeal vide appeal Dated 27.12.2021 within the stipulated period, however, the same has not been responded. Copy of the Departmental Appeal Dated 27.12.2021 is enclosed as **Annexure D**.
10. **That** feeling aggrieved from the impugned Departmental action as well as from impugned Removal from service order Dated 31.07.2017 and impugned Departmental Appeal's rejection order (if any) and having left with no other efficacious or alternate remedy, the instant service Appeal on the following grounds.

G R O U N D S

- a. **That** impugned Order No 13236-37/Personnel Dated 31/7/2017 by which the Appellant was removed from Service is against law, fact of the case and material available on the record, hence, not tenable in the eyes of law. Thus, the same needs to be set aside on this score alone.
- b. **That** impugned Removal from service Office Order No.13236-37/Personnel Dated 31/7/2017 along with the very act of initiation of disciplinary proceedings against the Appellant by the Respondent No 3 is against law, patently illegal, coram non iudice, fact of the case and material available on the record. The impugned disciplinary action and major penalty of Removal from service of the Appellant is liable to be reversed and set aside by this Hon'ble Tribunal.
- c. **That** impugned disciplinary action against the Appellant is inherently flawed right from its inception to finalization in the shape of passing the impugned removal from service order Dated 31.07.2017 because the Appellant has mainly been held

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liable for willful absence and not for any misconduct or corruption. Therefore, the impugned action is liable to be quashed and services of the Appellant needs to be restored.

- d. **That** the Respondent No 3 (Medical Superintendent Mufti Mehmood Memorial Hospital Dera Ismail Khan) has not made any efforts and adopted proper procedure to know that why the appellant was absent from his duties? rather he recommended the major penalty of removal from service for alleged will full absence and therefore, the impugned disciplinary action in the shape of passing Order for removal from service Dated 31.07.2017 of the Appellant is void ab-initio and services of the Appellant needs to be reinstated with all back benefits.
- e. **That** the very initiation of disciplinary proceedings in the shape of issuing the show cause notice to the Appellant directly in Newspaper shows that the matter was hurriedly disposed of without reaching the ends of Justice and passing removal from service Order in terms of the Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rule, 2011 is patently illegal, against the settled principles of law suggesting pre-determined penalty of the Appellant without holding regular inquiry into the absence of the appellant thus, having no legal sanctity and liable to be set aside.
- f. **That** 17 years long service of the Appellant has been extinguished by a single stroke of pen by the Respondent No 3 while on the other hand, no efforts had been made to procure the attendance of the Appellant , therefore, the impugned action against the Appellant is harsh and liable to be declared as non est.

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- g. **That** the appellant due to bankruptcy had left the city with his family as there were life threats not only to the appellant but also to his family and any kind of information of location of the appellant would have resulted in an irreparable loss to the appellant. Therefore, the impugned removal from Service Order is liable to be set aside and services of the Appellant needs to be restored with all back benefits.
- h. **That** after insertion of Article-10(A) through 19th Amendment of the Constitution of Islamic Republic of Pakistan, 1973, it was inalienable fundamental rights of the undersigned to be dealt with in accordance with law and due process along with fair trial/inquiry be given to the Appellant.
- i. **That** the Appellant rendered almost 16/17 years of service with unblemished service record and it is great injustice to vanish the services of the Appellant in such like summary and cursory manner. The impugned action amounts to convict a person without evidence and trial which is against the spirit of fundamental rights guaranteed in Chapter-1 by the Constitution of Islamic Republic of Pakistan, thus the impugned action needs to be reversed.
- j. **That** legal and factual aspect of the controversy have not been appreciated or dilated by the Respondent No 3, therefore, all the departmental proceedings right from initiation and conclusion in the shape of Removal from Service of the Petitioner from government service vide impugned Order are patently illegal, non-est, and coram non judice calling for interference by this Honorable Tribunal.
- k. **Counsel** for Appellant may please be allowed to urge additional grounds at the time of final hearing.

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It is therefore, most humbly prayed that on acceptance of instant Service appeal, all the impugned departmental actions along with Removal from Service of the Appellant from Government Service Office Order No 13236-37/Personnel Dated 31/7/2017 may please be struck down/set aside/reversed and to reinstate the Appellant on its original post with all consequential and back benefits.

Dated:- 14.04.2022

M. Khalid

Muhammad Khalid Son of Karim Bakhsh (Ex-Tube Well Operator),
Mufti Mehmood Memorial Hospital
Dera Ismail Khan Resident of Chah
Jumma Sharif Near Margalla Shadi
Hall Alishan City Grid Road Dera
Ismail Khan Cell No :- 0341-9639108

Through Counsel

Qaiser Rahim
14/4/2022

Qaiser Rahim
Advocate High Court
Dera Ismail Khan

08

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

Service Appeal No. of 2022

Muhammad Khalid..... Appellant

Versus

**Government of Khyber Pakhtunkhwa through Secretary Health ,
Khyber Pakhtunkhwa Peshawar and Others Respondents**

SERVICE APPEAL

MEMO OF ADDRESSES OF THE PARTIES

APPELLANT

**Muhammad Khalid Son of Karim Bakhsh (Ex-Tube Well Operator),
Mufti Mehmood Memorial Hospital Dera Ismail Khan Resident of Chah
Jumma Sharif Near Margalla Shadi Hall Alishan City Grid Road Dera Ismail
Khan Cell No :- 0341-9639108**

RESPONDENTS

- 1. Government of Khyber Pakhtunkhwa through Secretary Health ,
Khyber Pakhtunkhwa Peshawar.**
- 2. Director General Health Services Khyber Pakhtunkhwa Peshawar.**
- 3. Medical Superintendent/Hospital Director Mufti Mehmood
Memorial Hospital, Dera Ismail Khan.**
- 4. District Account Officer, Dera Ismail Khan.**

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Dated: 14/04/2022

Your Humble Appellant

M. Khalid

Muhammad Khalid Son of Karim Bakhsh
(Ex-Tube Well Operator), Mufti Mehmood
Memorial Hospital Dera Ismail Khan

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

Service Appeal No. of 2022

Muhammad Khalid..... Appellant

Versus

**Government of Khyber Pakhtunkhwa through Secretary Health ,
Khyber Pakhtunkhwa Peshawar and Others Respondents**

AFFIDAVIT

I, **Muhammad Khalid**, Ex-Tube Well Operator (BPS-03) the Appellant, do hereby solemnly affirm and declare on oath:-

- 1. **That** accompanying service appeal has been drafted by my Counsel following my instructions
- 2. **That** all Para wise contents of the service appeal are true and correct to the best of my knowledge, belief and information;
- 3. **That** nothing has been deliberately concealed from this August Tribunal nor anything contained therein is based on exaggeration or distortion of facts.

M. Khalid

Dated:- 14.04.2022

Deponent

(11)

BEFORE THE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR.

Service Appeal No of 2022

Muhammad Khalid..... Appellant

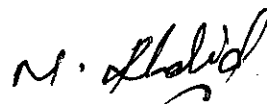
Versus

**Government of Khyber Pakhtunkhwa through Secretary Health ,
Khyber Pakhtunkhwa Peshawar and Others Respondents**

SERVICE APPEAL

CERTIFICATE

Certified that this is first ever service appeal involving the instant subject matter and that the Petitioner has not filed any other petition or service appeal earlier in this tribunal regarding the above stated controversy.



Appellant

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

Service Appeal No of 2022

Muhammad Khalid..... Appellant

Versus

**Government of Khyber Pakhtunkhwa through Secretary Health ,
Khyber Pakhtunkhwa Peshawar and Others Respondents**

SERVICE APPEAL

List of Books refereed:

1. The Constitution of Islamic Republic of Pakistan, 1973.
2. The K.P.K Civil Servant Act, 1973.
3. The Khyber Pakhtunkhwa Government Servant Efficiency and Discipline Rules 2011.
4. K.P.K Appointment, Promotion, Transfer Rules 1989.
5. K.P.K Service Tribunal Act, 1974.
6. Judicial Precedents, favouring the case of the Petitioners.


Counsel for Appellant

Note:-

Service Appeal with annexures along with Six sets thereof are being presented in Six separate enclosed covers.


Counsel for Appellant

ANNEXURE - A

(13)

OFFICE OF THE
MEDICAL SUPERINTENDENT
MUFTI MEHMOOD MEMORIAL
HOSPITAL DERA ISMAIL KHAN.

No. 347 DATED
DIKHAN THE 01/11/2005.

TO:

*Mr. Mohammad Khalid S/O
Haji Karim Baksh of Imamia Ghat
Dikhana*

SUBJECT: -
Memo:

OFFER OF APPOINTMENT.

The Govt hereby offers you a post of MAJ against the existing vacancy at MUFTI MEHMOOD MEMORIAL HOSPITAL DIKHAN on Fixed Charges Basis @ Rs. 3100/-PM.

1. Your appointment in Health Department is purely on Fixed Basis and your services are liable to be terminated at any time without giving notice or assigning irrespective of the facts that you may belong to a post other or in one to which you are recruited.
2. You have to join duty at your own expenses in case you wish to resign at any time one-month notice will be essential or in lieu thereof one month pay shall be forfeited.
3. You will be governed by such rules and orders relating to leave, TA, medical charges as may be issued by the Govt. from time to time for the category of Govt. servant to which you may belong.
4. If you accept the offer on the above noted conditions you should report to medical Superintendent, MAMM Hospital, DIKHAN for further duty within seven days of the receipt of this letter, failing which your services will be terminated.
5. You will produce Medical Fitness Certificate from Medical Superintendent, Mufti Mehmood Memorial Hospital, DIKHAN.

Certified
MEDICAL SUPERINTENDENT
MUFTI MEHMOOD MEMORIAL
HOSPITAL DERA ISMAIL KHAN.

No. _____

Copy forwarded to the:

1. District Accounts Officer, DIKHAN
2. Head Clerk of this office
3. Accounts Officer of this office
4. Account Clerk of this office

For information & intension

Soal
MEDICAL SUPERINTENDENT
MUFTI MEHMOOD MEMORIAL
HOSPITAL DERA ISMAIL KHAN.

OFFICE OF THE
MEDICAL SUPERINTENDENT
MUFTI MEHMOOD MEMORIAL
HOSPITAL DERA ISMAIL KHAN

No. 347/ Dated
DIKHAN THE 01.11.2005

To,

Mr Mohammad Khalid S/o
Haji Kareem Bakash o/s Imamia Gat D.I Khan

Subject: OFFER OF APPOINTMENT

Memo:

The Govt: hereby offers you a post of **MALI** against the existing vacancy at **MUFTI MEHMOOD MEMORIAL HOSPITAL DIKHAN on fixed Charges Basis @ Rs. 3100/-PM**

1. Your appointment in Health Department is purely on Fixed Basis and your services are liable to be terminated at any time, without giving notice or assigning irrespective of the facts that you may belong to a post other than one to which are recruited.
2. You have, to join duty at your own expenses in case you wish to resign at any time one month notice will be essential or in lieu thereof one month pay shall be forfeited.
3. You will be governed by such rules and orders relating to leave, TA Medical charges as may be issued by the Govt from time to time for the category of Govt Servant to which you may belong.
4. If you accept the offer on the above noted conditions you should report to Medical Superintendent, MMM Hospital, DIKhan for further duty within seven days of the receipt of this letter, failing which your services will be terminated.
5. You will produce Medial Fitness Certificate from Medical Superintendent, Musti Mehmood Memorial Hospital, DIKhan.

MEDICAL SUPERINTENDENT
MUFTI MEHMOOD MEMORIAL
HOSPITAL DERA ISMAIL KHAN

No. _____/

Copy forwarded to the :-

1. District Accounts officer DIKhan
 2. Head Clerk of this office.
 3. Accounts Officer of this office.
 4. Accounts Clerk of this Office
- For information & N/action

MEDICAL SUPERINTENDENT
MUFTI MEHMOOD MEMORIAL
HOSPITAL DERA ISMAIL KHAN

ANNEXURE - B

OFFICE OF THE
MEDICAL SUPERINTENDED
MUFTI MEHMOOD MEMORIAL
HOSPITAL DERA ISMAIL KHAN

(14)

OFFICE ORDER

Mr Muhammad Khalid SWEEPER of this institution is hereby appointed as Tube Well Operator in BPS-03-2275-85-4825. PM plus usual allowances admissible under the Rules against the exiting vacancy at Mufti Mehmood Hospital, D.I.Khan, (on contract basis) according to the Govt: Policy.

The appointment will be subject to the following terms and conditions:-

1. He is domiciled in NWFP.
2. He is declared medically fit for Govt: Service.
3. He will not be entitled to any TA/DA Medical examination and joining 1st Appointment.
4. He is liable to serve any where in NWFP.
5. He will be governed by such Rules and orders as may be issued by the Govt: for the category of Govt: Servant to which he belongs.
6. If he wishes to resign at any time he will resign in written by giving a prior notice of one month and will continue to serve the Govt: till the acceptance of his resignation by the competent authority.
7. His appointment in the Health Department purely on Contract Basis. His services may be terminated without any reasons being assigned at any time irrespective of the facts that he is holding the post other then to which he is originally recruited.
8. If the above offer is accepted he is produced Medical Fitness Certificate from Medical Superintendent, Mufti Mehmood Memorial Hospital, D.I.Khan.
9. His appointment will be subject to the verification of his documents by the concerned authorities. In case if found bogus and not verified, his services will be terminated and he will be refunded his all pay and allowances.

MEDICAL SUPRITENDENT
MMM HOSPITAL, D.I.KHAN.

No. 456-460 /Dated 11.6.2007

A copy is forward to the:

1. Director General Health Services, NWFP, Peshawar.
2. District Accounts Officer, D.I.Khan.
3. Mr. Muhammad Khalid S/OKareem Bakhsh R/O D.I.Khan.
4. Accounts Officer of this office.
5. Estab: Clerk of this office.

For information & n/action.

MEDICAL SUPRITENDENT
MMM HOSPITAL, D.I.KHAN.

ANNEXURE - C (18)

DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR



OFFICE ORDER

1. WHEREAS: Mr. Muhammad Khalid Tube Well Operator attached to DHQ/MMM Teaching Institute D.I. Khan, had absented himself from duty since February 2017.
2. WHEREAS: he was directed vide Hospital Director DHQ/MMM (MI) D.I. Khan letter No. 2139-35/4/17 dated 25.04.2017 to resume duty, but he did not respond.
3. As per rules-9 of Khyber Pakhtunkhwa Under E & D Rules 2011, an absence notice was published in Daily "Mashiq" Peshawar on 19.06.2017 directing him to resume duty within 15 days failing which ex parte action will be taken against him under E & D Rules 2011, but he did not respond to the said notice.
4. Therefore, I Dr. Shabina Raza Director General Health Services Khyber Pakhtunkhwa Peshawar being competent authority in exercise of powers conferred under Khyber Pakhtunkhwa E & D Rules 2011 am pleased to impose major penalty of "Removal from Service" upon Mr. Muhammad Khalid Tube well Operator attached to DHQ/MMM Teaching Hospital D.I. Khan on account of his willful absence from duty with immediate effect:

S/xxxxxxxxxx
DIRECTOR GENERAL HEALTH
SERVICES, KPK, PESHAWAR.
Dated: 12/07/2017

1223637 (unclassified)

Copy forwarded to the:-

1. Hospital Director DHQ/MMM Teaching Hospital D.I. Khan w/r to his letter No. 3479/7/2017/PF dated 12.07.2017.
2. Official Concerned.

For information and necessary action.
Sent to Home Address of Mr. Khalid Tube Well Operator
5/8

Shabina
DIRECTOR GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR.
12/7/17

**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR**

OFFICE ORDER

1. Whereas: Mr Muhammad Khalid Tube well Operator attached to DHQ/MMM Teaching institute DI Khan, had absented himself from duty since February 2017.
2. Whereas he was directed vide Hospital Director DHQ/MMM (MD) D.I Khan letter No. 2235-35/4/17 dated 25.04.2017, to resume duty, but he did not respond.
3. As per rule 9 of Khyber Pakhtunkhwa under E & D Rules 2011 an absence notice was published in Daily "Mashriq" Peshawar on 19.06.2017 directing him to resume within 15 days failing which exparte action will be taken against him under E & D Rules 2011, but he did not respond to the said notice.
4. Therefore, I Dr Shabina Raza Director General Health Services Khyber Pakhtunkhwa Peshawar being competent authority in exercise of powers conferred under Khyber Pakhtunkhwa E&D rules 2011 am pleased to impose major penalty of "Removal From Service" upon Mr. Muhammad Khalid Tube Well Operator attached to DHQ/MMM Teaching Hospital D.I Khan on account of his willful absence from duty with immediate effect:

**S/XXXXXXXXXX
DIRECTOR GENERAL HEALTH
SERVICE, KPK, PESHAWAR.**

No. 13236-37/Personnel

Dated 31.07.2017

Copy forwarded to the:-

1. Hospital Director DHQ/MMM teaching Hospital w/r to his letter No 3479/7/2017/PF dated 12.07.2017
 2. Official concerned.
- For information and necessary action.

**DIRECTOR GENERAL HEALTH
SERVICE, KPK, PESHAWAR.**

ANNEXURE - D

TM CARGO & LOGISTICS

D.I.Khan Ph: 0966-717906, 717907

Tracking SMS # 0336-6345662

www.tmcargo.net

Dated
27-DEC-21

CN No.	
711515	
Origin	Destination
DIK	DIK
PCS	Weight
1	0.5
Amount	200

From:
CASH-SALE
M KHALID
D.I.KHAN

03419639108

To:
MUFTI.MEHMOOD HOSPITAL
D.I.KHAN

ANNEXURE - D

To

16

The Worthy Director General
Health Services Khyber Pakhtunkhwa
Peshawar.

THROUGH PROPER CHANNEL

Subject:- DEPARTMENTAL APPEAL AIMED AGAINST THE
IMPUGNED IMPOSITION OF MAJOR PENALTY OF
REMOVAL FROM SERVICE VIDE ORDER BEARING
ENDST: NO.13236-37/PERSONNEL: DATED PESH
THE 31.07.2017 ISSUED BY YOUR ESTEEMED OFFICE

THROUGH REGISTERED A.D, TCS/BY HAND

Respectfully Sheweth,

The Appellant humbly submits as under:-

1. That Appellant was appointed as Mali in Mufti Mehmood Memorial Hospital Dera Ismail Khan by the Medical Superintendent, Mufti Mehmood Memorial Hospital Dera Ismail Khan vide Order No 347 Dated 01/11/2005. Copy of the Order Dated 01.11.2005 is enclosed as Annexure "A".
2. That in recognition of my services after two (02) Years appellant was appointed as Tube Well Operator in BPS-03 vide Order No 456-460 Dated 01/06/2007 by the Medical Superintendent Mufti Mehmood Memorial Hospital Dera

M. Khalid

Ismail Khan. Copy of the Order Dated 01.06.2007 is enclosed as **Annexure "B"**.

3. That appellant has at his credit an unblemished service record of almost 16/17 years. During this entire long service career, the appellant performed his duties with zeal and zest and never gave any occasion of complaint to his Worthy high ups.

4. That as stated earlier the appellant served the esteemed institution of Mufti Mehmood Memorial Hospital Dera Ismail Khan with an unblemished and spotless career and there is no adverse entry during this long period in his service record.

5. That in February 2017 due to reasons/grounds mentioned below, the appellant remained absent from his Services for the sake of his and his family lives whom were at stake due to life threats.

M. Mehmood

6. That as the appellant was not present in the city of Dera Ismail Khan, therefore the letter Dated 25/4/2017 of the Medical Superintendent Mufti Mehmood Memorial Hospital Dera Ismail Khan was not received nor the notice published in Daily "Mashriq" was in the notice of appellant.

7. That later on, vide Order No 13236-37/Personnel Dated 31/7/2017 issued by your good self, a major penalty of "Removal from Service" was imposed upon appellant. Copy of the Order Dated 31.07.2017 is enclosed as **Annexure "C"**.

8. That now, after when the life threat to appellant and his family is over and the life of the appellant is in normal mode, when the appellant came back to Dera Ismail Khan and when he visited his Office, the appellant came to know about the impugned Removal from Service Order which was dispatched

to the Appellant on the address where the appellant was not living.

9. That now after knowledge of the impugned Order, the appellant wants to assail/question the same by filing instant departmental appeal on the following grounds: -

G R O U N D S

M. Ahmad

- a. That impugned Order No 13236-37/Personnel Dated 31/7/2017 by which the Appellant was removed from Service is against law, fact of the case and material available on the record, hence, not tenable in the eyes of law. Thus, the same needs to be set aside on this score alone.
- b. That impugned disciplinary action against the Appellant is inherently flawed right from its inception to finalization in the shape of passing the impugned removal from service order Dated 31.07.2017 because the Appellant has mainly been held liable for willful absence and not for any misconduct or corruption. Therefore, the impugned action is liable to be quashed and services of the Appellant needs to be restored.
- c. That the Medical Superintendent Mufti Mehmood Memorial Hospital Dera Ismail Khan has not made any efforts and adopted proper procedure to know that why the appellant was absent from his duties? rather he recommended the major penalty of removal from service for alleged will full absence and therefore, the impugned disciplinary action in the shape of passing Order for removal from service Dated

31.07.2017 of the Appellant is void ab-initio and services of the Appellant needs to be reinstated with all back benefits.

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d. **That** the very initiation of disciplinary proceedings in the shape of issuing the show cause notice to the Appellant directly in Newspaper shows that the matter was hurriedly disposed of without reaching the ends of Justice and passing removal from service Order in terms of the Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rule, 2011 is patently illegal, against the settled principles of law suggesting pre-determined penalty of the Appellant without holding regular inquiry into the absence of the appellant thus, having no legal sanctity and liable to be set aside.

H. M. Malik

e. **That** the appellant due to bankruptcy had left the city with his family as there were life threats not only to the appellant but also to his family and any kind of information of location of the appellant would have resulted in an irreparable loss to the appellant. Therefore, the impugned removal from Service Order is liable to be set aside and services of the Appellant needs to be restored with all back benefits.

f. **That** after insertion of Article-10(A) through 19th Amendment of the Constitution of Islamic Republic of Pakistan, 1973, it was inalienable fundamental rights of the undersigned to be dealt with in accordance with law and due process along with fair trial/inquiry be given to the Appellant.

g. **That** the Appellant rendered almost 16/17 years of service with unblemished service record and it is great injustice to

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vanish the services of the Appellant in such like summary and cursory manner. The impugned action amounts to convict a person without evidence and trial which is against the spirit of fundamental rights guaranteed in Chapter-1 by the Constitution of Islamic Republic of Pakistan, thus the impugned action needs to be reversed.

- h.** That the instant departmental appeal is being preferred within statutory period after knowledge of the impugned Order as envisaged under the law, thus needs acceptance having sound and legal footings.

It is, therefore, most humbly prayed that on acceptance of instant departmental appeal, the impugned removal from Service Order bearing Endst: No. vide Order No 13236-37/Personnel Dated 31/7/2017 may please be struck down/set aside and to restore/reinstate the services of the Appellant, with all back benefits.

M. Khalid
Dated: 27.12.2021 Muhammad Khalid Son of Karim Bakhsh
(Ex-Tube Well Operator),
Mufti Mehmood Memorial Hospital
Dera Ismail Khan
Cell No :- 0341-9639108

KAISER RAHIM

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Date of issue: April 2021
Valid until: April 2024



Secretary
KPK Bar Council

WAKALATNAMA

In the Court of Honorable Service Tribunal Khyber Pakhtunkhwa
Pesh

In the Matter of Muhammad Khalid ...Petitioner/Plaintiff
Accused/Appellant/Applicant

Versus

Govt of KPK Through Secretary Health KPK
KAISER RAHIM & Others.

Advocate High Court

To be the advocate for the Appellant in the above mentioned case: to do all following acts, deeds and things or any of them that is to say:-

1. To act, appear and plead in the above-mentioned case in this Court or any other Court or Tribunal, Authority or Election Commission of Pakistan in which the same may be tried or heard in the first instance or in appeal or review or execution or in any other stage of its progress until its final decision.
2. To present pleadings, appeals, cross-objections or petitions for execution, review, revision withdrawal, compromise or other petitions or affidavits, or other documents as shall be deemed necessary or advisable for the prosecution of the said case in all its stages.
3. To withdraw or compromise the said case or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
4. To receive money and grant receipts thereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
5. To employ any other legal practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate whenever he may think fit to do so.

AND I hereby agree to ratify whatever the Advocate or his substitute shall do in the premises.

AND I hereby agree to ratify the result of the said case in consequence of his absence from the Court when the said case is called upon for hearing.

AND I hereby agree that in the event of the whole or any part of the fee agreed by me to be paid to the Advocate remaining unpaid he shall be entitled to withdraw from the prosecution/pursue as Counsel of the said until the same is paid.

In witnesses whereof, I hereby set my hand to these presents the contents of which have been explained to and understood by me on this 14th day of

April 2022

M. Khalid



Accepted by Counsel