

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: KALIM ARSHAD KHAN, CHAIRMAN
MIAN MUHAMMAD, MEMBER (EXECUTIVE)

Service Appeal No.696/2021

Mukhtiar Ali, Office Assistant (BPS-16), District Health Officer,
Peshawar.....(**Appellant**)

Versus

1. **The Secretary** to the Government of Khyber Pakhtunkhwa Health Department,
Peshawar.
2. **The Director General Health Services**, Khyber Pakhtunkhwa, Peshawar.
3. **The District Health Officer**, Pakhtunkhwa,
Peshawar.....(**Respondents**)

Present:

Mr. Taimur Ali Khan, Advocate.....For appellant.

Mr. Nasir-ud-Shah, Assistant Advocate GeneralFor respondents.

Date of Institution.....27.01.2021

Date of Hearing.....21.04.2022

Date of Decision..... 22.04.2022

**APPEALS UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER DATED 29.10.2020,
WHEREBY THE APPELLANT WAS TRANSFERRED
FROM THE OFFICE OF THE DISTRICT HEALTH
OFFICER TO GOVERNMENT NASEERULLAH
KHAN BABER MEMORIAL HOSPITAL
PESHAWAR AND AGAINST NOT TAKING ACTION
ON THE DEPARTMENTAL APPEAL OF THE
APPELLANT WITHIN THE STATUTORY PERIOD
OF NINETY DAYS**

Service Appeal No.16158/2020

Naseem Khan, Office Assistant (BPS-16), Directorate Health Service, Merged
Area, Warsak Road,
Peshawar.....(**Appellant**)

Versus

1. **The Secretary** to the Government of Khyber Pakhtunkhwa Health
Department, Peshawar.
2. **The Director General Health Services**, Khyber Pakhtunkhwa, Peshawar.
3. **The District Health Officer**, Pakhtunkhwa, Peshawar.....(**Respondents**)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For appellant.

Mr. Nasir-ud-Shah, Assistant Advocate GeneralFor respondents.


Date of Institution.....18.12.2020

Date of Hearing.....21.04.2022

Date of Decision..... 22.04.2022

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF RESPONDENTS BY NOT POSTING/TRANSFERRING THE APPELLANT AT THE OFFICE OF THE DISTRICT HEALTH OFFICER PESHAWAR INSPITE OF THE AVAILABILITY OF VACANT POST OF THE OFFICE ASSISTANT AND AGAINST NO ACTION TAKEN ON THE APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

JUDGEMENT


KALIM ARSHAD KHAN CHAIRMAN. The appellant Mukhtiar Ali was serving as Assistant in the office of the District Health Officer, Peshawar when on 29.10.2020 he was transferred to the Government Naseerullah Khan Baber Memorial Hospital Peshawar against the post of Superintendent in his own pay and scale without allowing him to complete normal tenure at the office of respondent No.3; that against the premature transfer, the appellant filed departmental appeal on 29.10.2020, while on 09.11.2020, the Medical Superintendent of the Government Naseerullah Khan Baber Memorial Hospital Peshawar wrote a letter to the Director General Health Services Khyber Pakhtunkhwa, Peshawar saying that the appellant was not required because he was problematic and was used to create issues in the official business of the office and also created confrontation with his immediate officer when he remained posted; that the Medical Superintendent of the Government Naseerullah Khan Baber

Memorial Hospital Peshawar requested to post the appellant anywhere else; that in response the respondent No.2 asked the Medical Superintendent of the Government Naseerullah Khan Baber Memorial Hospital Peshawar to retain the appellant and in case any irregularity was found that should be reported for necessary action; that the Medical Superintendent of the Government Naseerullah Khan Baber Memorial Hospital Peshawar again requested vide letter No.8584/GNBMH dated 03.12.2020 that the post against which the appellant was transferred had already been filled and the appellant could not be adjusted there; that awaiting 90 days waiting period, the appellant filed this appeal on the 90th day i.e. on 27.01.2021.

2. The appellant then filed this appeal on the grounds that his transfer was made against the prevalent policy of the Government; that he was transferred against a post where already a Women Medical Officer (Dr. Syeda Alia Tariq) was working; that there was a post of Office Assistant, still vacant in the office of Respondent No.3 and appellant could be allowed to work against that post till completion of his tenure as per policy; that the order was passed on political pressure to adjust blue eyed; that allegation of creating problems were incorrect.
3. On receipt of the appeal, notices were issued to the respondents to file their reply. The respondents submitted reply. They mainly complained about the conduct of the appellant by stating some incidents and claimed that the appellant was transferred under Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 in the public interest.
4. During the pendency of appeal, one Naseem Khan submitted an application for his impleadment as private respondent on the grounds that vide the impugned transfer order dated 29.10.2020, the appellant was transferred and his post was kept vacant, while the applicant had already filed service appeal

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No.16158/2020 for his transfer to the office of respondent No.3. Reply to this application was sought. The respondents filed reply and contended that the applicant had no cause of action to file such application. However, arguments on the application could not have been heard until final arguments on the main appeal. The learned counsel for the applicant pointed out that the applicant had already filed separate appeal No.16158/2020 in this respect, which was fixed for 15.06.2020. The appeal file of the applicant was requisitioned and fixed for today.

5. Since, the applicant (appellant of SA No.16158/2020) vide his appeal sought transfer in the office of respondent No.3 and vide his application for impleadment in this appeal too, he prayed for his impleadment on the sole ground that in his appeal he had sought his transfer in the office of respondent No.3 and due to transfer of the appellant of this appeal on 29.10.2020, the post fell vacant and he could be transferred against the post fell vacant due to the transfer of the appellant (of this appeal), therefore, instead of impleading him as party in this appeal, his appeal is being decided through this single judgment as that would also serve the purpose of filing the application for impleadment of the applicant as party in this appeal.
6. In the appeal No.16158/2020, the appellant Naseem Khan contended that he was serving as Office Assistant (BPS-16) and had completed normal tenure of three years in the Directorate of Health Service, merged area, Peshawar; that under the placement policy, he submitted application through proper channel for his transfer but despite the fact that a post was lying vacant at the office of respondent No.3 and despite transfer of Mukhtiar Ali (appellant) vide order dated 29.10.2020, the respondents were not willing to transfer the appellant Naseem Khan against the post of Office Assistant at the office of respondent No.3, therefore, he filed the appeal.

7. Preliminary arguments on the appeal of Naseem Khan could not have been heard till date. However, his learned counsel has been heard today and since the official respondents have filed reply to his impleadment application in the appeal of Mukhtiar Ali, therefore, their arguments were also heard.
8. We have heard the learned counsel for the appellant Mukhtiar Ali and learned Additional Advocate General for the respondents. The learned counsel for the applicant Naseem Khan (appellant in SA No.16158/2020) was also heard on his own appeal.
9. It was argued by the learned counsel for the appellant that in view of the facts and grounds agitated in the appeal and enumerated above, this appeal might be accepted. Learned counsel for the appellant of appeal No.16158/2020 submitted that on dismissal of this appeal, the post of Office Assistant in the office of respondent No.3 would fall vacant against which the applicant/appellant Naseem Khan might be posted.
10. Conversely the learned Assistant AG for the respondents maintained the stance taken by the respondents in their replies in both the appeals and prayed for dismissal of both the appeals.
11. Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 requires that every civil servant shall be liable to serve anywhere within or outside the Province in any post under the Federal Government, or any Provincial Government or local authority, or a corporation or body set up or established by any such Government. This means that the civil servant has to serve anywhere at the pleasure of the authority. In the postings/transfers the malafide or other consideration except the merit or interest of public service, are normally interfered with. Request of civil servant seeking cancellation of transfer amounts to interference in the smooth functioning of the government and a civil servant could not claim to be posted at one place,

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rather the civil servant was required to serve anywhere against the post to which he is transferred. This is ruled by the august Supreme Court of Pakistan in a case titled "*Zakaullah Bajwa versus Chief Secretary*" reported as 2007 PLC (CS) 706.

12. The appellant Mukhtiar Ali seeks cancellation of transfer on the grounds that his transfer was against the posting/transfer policy of the government and that he was transferred with a premature tenure besides the post from which he was transferred, was still vacant. The only ground to be seriously considered could be a premature transfer. The department has alleged that the conduct of the appellant was not becoming of a good official and in this respect the respondents annexed some documents which show that the appellant was involved in some matters which speak about his conduct other than of a good official. The record also shows that the appellant remained posted in the office of respondent No.3 a number of times, therefore, the contention of the appellant that he was transferred with immature tenure, does not sound good as his stay as a whole at the office of respondent No.3 seems more than of a normal tenure. Moreover, it seems that the unbecoming conduct of the appellant became a reason of his transfer. In such a situation the judgement of the honourable Supreme Court referred to above fits in the circumstances of this especially the following ruling:

"4. We have considered the arguments of the petitioner and carefully perused the record available. The contentions of the petitioner are not borne out from the record rather it shows that his transfer from Gujrat took place not only due to the application but there were lot of complaints against him which were thoroughly probed in and finally it was found that the petitioner is not working according to the settled" principles of good governance and is creating hurdles in the ordinary functions of the department. According to section 9 of the Punjab Civil Servants Act, 1974, "every civil servant be liable to serve anywhere within or outside the Province in any post under the Government of the Punjab". The request of the petitioner seeking cancellation of the transfer orders

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actually amounts to the interference in the smooth working of the Government and the petitioner as a right cannot claim to be posted at one place rather he is required to serve anywhere against the post to which he is transferred. The orders of the authority as well as the impugned judgement of the Tribunal are entirely in consonance with the law laid down by this Court. It would be advantageous to reproduce here the relevant paragraph of the impugned judgement, which reads as under:


"(7) The reproduction of the relevant material in the preceding paragraphs would show that the District Coordination Officer became so fed up with the conduct of the appellant that he had no option but to surrender him to his parent department. For all intents and purposes it was not in the administrative interest to linger and cope with the appellant as Deputy District Officer (Revenue) Gujrat. To say that if the appellant was guilty of any act of misconduct departmental proceedings could have been launched and transfer was not the remedy to rectify such conduct may be true but the appellant has himself admitted that no disciplinary proceedings have yet been launched for any misconduct on his part, therefore, the instances quoted by the District Coordination Officer, Gujrat goes to show that appellant created an embarrassing situation in the District for his superiors and by and large with passage of time the District Coordination Officer felt that the administrative interests of his office got throttled every time a complaint came to him by the public against the appellant, therefore, the transfer of the appellant by asking him to report to Services and General Administration Department was for administrative reasons. No doubt, the Honourable Supreme Court has observed in the case of Zahid Akhtar v. Government of the Punjab, Secretary Local Government and Rural Development Department, Lahore and two others supra that Government servants repeated transfers from one place to another in a span of few months by the order of Minister concerned and carrying out such orders obediently by the Secretary of the Department concerned is highly unethical and undesirable and that normal period of posting of Government servant at a station as per policy decision of Government being for three years, has to be followed in ordinary circumstances unless for reasons of exigencies of service such policy has to be deviated from. The ruling given by the apex Court that normal period of posting of a Government servant has to be in ordinary circumstances for three years unless for reasons of exigencies of service such policy has to be departed from, gives sufficient room for movement in the present case for reasons which have been discussed. Moreover, a policy matter does not have the force of law and can be deviated if good reasons are forthcoming. There is no hard and fast rule that Government servant can in no case be transferred before he completes three years

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service at a particular station. To the contrary Section 9 *ibid* makes it a mandatory for a civil servant to be posted anywhere in the Province and he has no right as such to claim continuance of service at a particular station. So, the transfer policy is merely based on convenience but if such convenience is abused as in the present case the Government can always transfer the civil servant to avoid embarrassment to itself. It would be worthwhile to quote from an unreported judgment of the Honourable Supreme Court in Civil Petition for Leave to Appeals bearing Nos.2051-L/2004 to 2055-L/2004 and 2104-L/2004 titled District Coordination Officer etc. v. Mst. Parveen Shandi and others. The relevant portion is reproduced for facility of reference:---

"As far as question regarding the jurisdiction of the Service Tribunal to entertain appeals against the transfer and posting order is concerned it will be examined because we are, *prima facie*, of the opinion that in such-like matters in terms of Section 9 of the Punjab Civil Servants Act, civil servant is bound to serve anywhere in the province and Service Tribunal has no jurisdiction to entertain such appeals unless it is shown that there is some provision of law which binds of Government not to shift a civil servant from one place to another. For the above reasons, petitions stands disposed of."

13. In 1999 S C M R 2482 titled "Ehsan Elahi Cheema versus Secretary Health and 2 others", the august Supreme Court of Pakistan was pleased to hold as under:

 "Firstly, it is a case of mere transfer of a civil servant. Posting and transfer is the prerogative of the employer, therefore, no vested right is created in favour of a civil servant to claim that he should be posted at one station unless any rule creates any right in him to remain posted at one station or debars the administration from transferring him or the same suffers from *mala fides*. In this case, the allegations made by the petitioner in respect of the alleged irregularities were found to be false, therefore, it could not be urged that the order of transfer made for administrative reasons could be said to have suffered from *mala fides* particularly when the petitioner had already remained posted for more than eight years much above the normal tenure of posting of three years at a station under the rules."

14. The appellant Naseem Khan seeks direction that he may be transferred to the post of his choice i.e. Officer Assistant in the office of respondent No.3, which he says was lying vacant on transfer of the appellant Mukhtiar Ali.

This contention in itself is against the provisions of Section 10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, therefore, misconceived and not worth consideration.

15. From what has been discussed above, it can be gathered that the appellants of both these appeals are desirous to be posted at their choice posting as Office Assistant in the office of respondent No.3. It is incomprehensible why both the appellants are so desirous? The reason is obvious. Be that as it may the august Supreme Court of Pakistan has dealt with such a situation in a Judgement in the case of "Muhammad Mansha Javed versus Secretary to Government of Punjab & others" reported as 1998 SCMR 263, in the following manner:

"3. The Tribunal found that both the petitioner as well as respondent No.2 exercised undue influence in getting the above posting. In this view of the matter, the Tribunal disposed of the appeal in terms of para 20 of the impugned judgment, which reads as follows:--

"20. As is obvious in this case both the appellant and respondent No.2 tried to over-whelm the competent authority through their political influence by not allowing it to act independently and justly. This tendency on the part of the civil servants is paralysing the functionaries. The vested interests have to be discouraged for the sake of good governance, promoting public interest and for strengthening the institutions. We, therefore, cannot uphold the impugned order. At the same time, we are unhappy over the transfer of respondent No.2 to his present posting at Narowal made in the absence of exercise of powers in accordance with the law referred to above. Under the circumstances we feel that the Government should decide the whole matter de novo. It will be worth considering if both the officers are deprived of the posting at Narowal which has led to the present race inter se them and which was obviously for the purpose not activated with a desire for service to the people. Let others who are in this race of using political influence also take a lesson from the Government decision of depriving both of these of Narowal posting so that they are discouraged from using undue political influence, in the matter of their transfer."

The petitioner's grievance is that he should have been allowed to remain posted at Narowal in place of respondent No.2. He has, therefore, filed the present petition for leave to appeal.

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3. Mirza Masood-ur-Rehman, learned Advocate Supreme Court appearing for the petitioner, has vehemently contended that the Tribunal was not justified in not maintaining the posting of the petitioner. We are unable to subscribe to the above submission. perusal of the above quoted para from the impugned judgment indicates that the Tribunal, in order to discourage the tendency on the part of the civil servants to get posting of their choice by using illegal means, has passed a just and appropriate order. It "is for the department to decide fairly and justly, who should be posted as Chief Officer, Zila Council, Narowal. Neither the petitioner nor respondent No.2 has any vested right to remain or to get posted at the above place. Leave is refused."

16. While relying on the above judgement of the august Supreme Court of Pakistan, we dismiss both the appeals and would hold that it is for the department to decide fairly and justly, who should be posted where and when. Copy of this judgement be placed on the connected appeal file titled "Naseem Khan versus the Secretary Health etc". Consign.

17. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 22nd day of April, 2022.




KALIM ARSHAD KHAN
Chairman

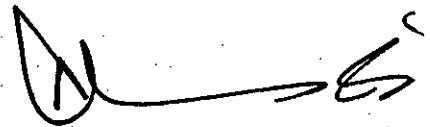

MIAN MUHAMMAD
Member Executive

22nd April, 2022

Counsel for the appellant present. Mr. Naseerud Din Shah,
Assistant A.G for the respondents present. Arguments heard and
record perused.

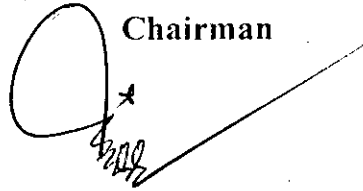
Vide our detailed judgment of today, containing 10 pages,
we dismiss the appeal and would hold that it is for the department
to decide fairly and justly, who should be posted where and when.
Consign.

3. *Pronounced in open court in Peshawar and given under our
hands and seal of the Tribunal this 22nd day of April, 2022.*



(KALIM ARSHAD KHAN)

Chairman



(MIAN MUHAMMAD)

Member (E)

18-2-22

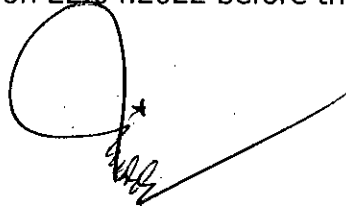
due to retirement of the Hon, ble Chairman
the case is adjourned to come up for the
same as before on 21-4-22

Justice
Reddy

21st April, 2022

Appellant alongwith counsel, Mr. Taimur Ali Khan,
Advocate present. Mr. Naseerud Din Shah, Assistant A.G for the
official respondents ~~present~~ ~~counsel~~ for private respondent ~~present~~
~~present~~

Arguments partly heard. Learned AAG seeks time to
properly assist the Court. To come up for further arguments/order
tomorrow on 22.04.2022 before the D.B.



(MIAN MUHAMMAD)
Member (E)

Chairman

21.09.2021

Appellant with counsel, Mr. Javaidullah, DDA alongwith Mastan Ali Shah, Assistant for official respondents and junior to counsel for the applicant present.

Counsel for the applicant seeking impleadment is not present due to illness; therefore, the matter is adjourned for arguments on impleadment application on 12.11.2021 before the D.B. The restraint order dated 01.02.2021 shall remain operative till next date.



(Rozina Rehman)
Member(Judicial)



Chairman

12.11.2021

Mr. Taimur Ali Khan, Advocate for the appellant present. Mr. Mastan Ali Shah, Litigation Assistant alongwith Mr. Muhammad Rasheed, Deputy District Attorney for official respondents No. 1 to 3 present. Mr. Kamran Khan, Advocate junior of learned counsel for private respondent No. 4 present.

Junior of learned counsel for private respondent No. 4 requested for adjournment on the ground that learned counsel for private respondent No. 4 is unable to appear before the Tribunal today due to illness. Adjourned. To come up for arguments before the D.B on 02.12.2021. The restraint order dated 01.02.2021 shall remain operative till next date.



(Atiq Ur Rehman Wazir)
Member (E)



(Salah-ud-Din)
Member (J)

2-12-21


due to non availability of D.B. The case is adjourned to 18-2-22.




Reader

16.07.2021

Appellant alongwith his counsel Mr. Taimur Ali Khan, Advocate, present. Mr. Mastan Ali Shah, Litigation Assistant alongwith Mr. Muhammad Rasheed, Deputy District Attorney for official respondents No. 1 to 3 present. Mr. Noor Muhammad Khattak, Advocate, for the intervener present and requested for adjournment on the ground that he has not gone through the record. Adjourned. To come up for arguments on impleadment application before the D.B on 16.08.2021. In the meanwhile, operation of the impugned order shall remain suspended to the extent of appellant till the date fixed.


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


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

16.08.2021

Since 16.08.2021 has been declared as Public holiday on account of Moharram, therefore, case is adjourned to 21/9.2021 for the same as before.


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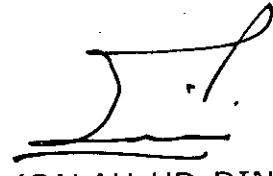
05.07.2021

Appellant alongwith his counsel Mr. Taimur Ali Khan, Advocate, present. Mr. Mastan Ali Shah, Litigation Assistant alongwith Mr. Kabirullah Khattak, for official respondents No. 1 to 3 present. Mr. Umer Farooq Mohmand, junior of Mr. Noor Muhammad Khattak, Advocate, learned counsel for intervener present.

Reply of the impleadment application submitted on behalf of official respondents No. 1 to 3, copies of which handed over to the other sides. Junior of Mr. Noor Muhammad Khattak, Advocate, requested for adjournment on the ground that learned counsel for the intervener has proceeded to his house due to some domestic engagements. Adjourned. To come up for arguments on impleadment application on 16.07.2021. In the meanwhile, operation of the impugned order shall remain suspended to the extent of appellant till the date fixed.



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




(SALAH-UD-DIN)
MEMBER (JUDICIAL)

24.06.2021

Appellant alongwith his counsel Mr. Taimur Ali Khan, Advocate, present. Mr. Mastan Ali, Litigation Assistant alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for official respondents present. Mr. Muhammad Maaz Madni, Advocate, junior of learned counsel for the intervener Naseem Khan present.

Learned counsel for the appellant submitted reply of the impleadment application, which is placed on file and copy of the same handed over to junior of learned counsel for the intervener. Learned Deputy District Attorney requested for further time for submission of reply on impleadment application. Adjourned. To come up for reply on impleadment application on behalf of Deputy District Attorney and arguments on the same before the D.B on 05.10.2021. In the meanwhile, operation of the impugned order shall remain suspended to the extent of appellant.


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


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

11.06.2021

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General alongwith Usman Assistant for respondents No.1 & 2 present and submitted reply.

An application for impleadment of one Naseem Khan in the panel of respondents was submitted. To come up for arguments and reply on the impleadment application on 24.06.2021 before D.B, with direction to the respondents for submission of their reply to application positively within two weeks. In case, the reply is not submitted within the stipulated time, the office shall record note on the margin of order sheet.



(Rozina Rehman)
Member (J)



Chairman

*stipulated period
passed, reply
is not been
submitted*

*copy
of order*



696/2021
25.05.2021

Stipulated time has
passed.
Reply of R1 & R2 has not
been submitted

Counsel for the appellant and Hasan Ali Shah, Litigation Asstt. for respondent No. 3 alongwith Mr. Kabirullah Khattak, Addl. AG for respondents No. 1 to 3 and Mr. Afrasiab Khan Wazir, Advocate/counsel for Naseem Khan, applicant present.

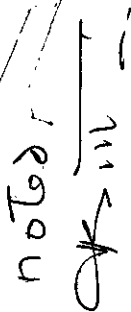
Parawise reply on behalf of respondent No. 3 has been filed. Rest of the respondents are required to submit written reply/comments in office within 10 days, positively. If the written reply/comments are not submitted within the stipulated time, the office is directed to submit the file with a report of non-compliance. File to come up for arguments on 11.06.2021 before the D.B.


Chairman

P.S
08.06.2021

Learned Addl. A.G be reminded about the omission and for submission of reply within extended time of 02 days.


Chairman


noted
11/6/21


26.03.2021

Appellant with counsel present. Mr. Kabirullah Khattak learned Addl. AG alongwith for respondents present.

Written reply/comments on behalf of respondents not submitted. Learned Additional Advocate General is required to contact the respondents and facilitate the submission of reply/comments.

Mr. Noor Muhammad Khattak submitted impleadment application of Mr. Naseem Khan, in the Array of respondents which is placed on file. Copy of the same is handed over to the learned counsel for the appellant and learned Additional Advocate General. To come up for reply on main appeal as well as reply/arguments on impleadment application on 13.04.2021 before S.B. In the meanwhile, the operation of impugned order shall remain suspended to the extent of appellant.


(Atiq Ur Rehman Wazir)
Member (E)


13.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 30.04.2021 for the same as before.


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30.04.2021

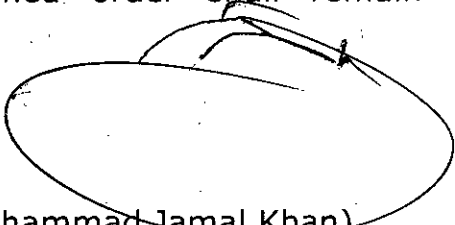
Due to demise of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 25.05.2021 for the same as before.


Reader

17.02.2021

Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present.

Neither written reply on behalf of respondent submitted nor representative of the department is present, therefore, learned Additional Advocate General is directed to contact the respondents and furnish written reply/comments on the next date of hearing. Adjourned to 10.03.2021 on which date file to come up for written reply/comments before S.B. In the meanwhile, the operation of impugned order shall remain suspended to the extent of appellant.


(Muhammad Jamal Khan)
Member

10.03.2021

Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Nisar Ahmad, Litigation Assistant, for the respondents present.

Written reply on behalf of respondents not submitted. Representative of the department is seeking time for submission of written reply/comments. Request is accepted and time allowed. Case to come up for written reply/comments on 26.03.2021 before S.B. In the meanwhile, the operation of impugned order shall remain suspended to the extent of appellant.


(MIAN MUHAMMAD)
MEMBER (E)

01.02.2021

Counsel for the appellant present.

Contends that the appellant was transferred and posted to DHO office Peshawar on 10.08.2020, where-against he took charge on subsequent date i.e. 11.08.2020. In utter disregard to the transfer/posting policy of the Provincial Government the appellant was again transferred to Government Naseerullah Khan Babar Memorial Hospital, Peshawar on 29.10.2020. Learned counsel also referred to memo. dated 25.11.2020 regarding office order/acceptance of arrival. The memo was sent by Addl. Director General (Admn) Director General Health Service Khyber Pakhtunkhwa Peshawar to the Medical Superintendent Government Naseerullah Khan Babar Memorial Hospital Peshawar, wherein, it was noted that the transfer/posting orders of the appellant were issued with the approval of Minister for Health Khyber Pakhtunkhwa. In the said manner, the political pressure/influence could not be ruled out, it was added.

In view of arguments of learned counsel and available record, instant appeal is admitted to regular hearing subject to all just exceptions. Appellant is required to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 17.02.2021 before S.B.

Alongwith the appeal ^{there is} an application for suspension of operation of impugned order dated 29.10.2020. Notice of the application be also given to the respondents for the date fixed. In the meanwhile, the operation of impugned order shall remain suspended to the extent of appellant.

Appellant Deposited
Security & Process Fee

08/2/21

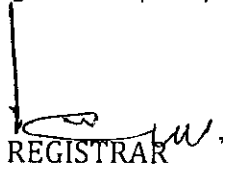

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 696 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/01/2021	<p>The appeal of Mr. Mukhtiar Ali presented today by Mr. Tamiur Ali Khan 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 S. Bench for preliminary hearing to be put up there on <u>01/02/2021</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p style="text-align: right;">2021-01-27 10:10:10 - 2021-01-27 10:10:10</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 696 /2021

Mukhtiar Ali

V/S

Health Department

INDEX

S.NO.	Documents	Annexure	Page No.
1.	Memo of appeal	-----	01-05
2.	Suspension application	-----	06-07
3.	Copy of order dated 10.08.2020	A	08
4.	Copy of charge report	B	09
5.	Copy of order dt: 29.10.2020	C	10-11
6.	Copy of departmental appeal	D	12-13
7.	Copy of letter dated 09.11.2020	E	14
8.	Copy of letter dated 25.11.202	F	15
9.	Copy of letter dated 03.12.2020	G	16
10.	Copy of placement policy dt. 06:07.2020	H	17-20
11.	Copy of posting/transfer policy	I	21-27
12.	Copy of Circular dated 27.02.2013	J	28-29
13.	Vakalat Nama	---	30

APPELLANT

THROUGH:

(TAIMUR ALI KHAN)

ADVOCATE HIGH COURT,

&

(ASAD MEHMOOD)

ADVOCATE HIGH COURT,

Room No. Fr-8, 4th Floor,
Bilour Plaza, Peshawar Cantt:
Contact No. 03339390916

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 696 /2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 11689

Dated 27/11/2021

Mr. Mukhtiar Ali, Office Assistant (BPS-16),
District Health Officer, Peshawar.

(APPELLANT)

VERSUS

1. The Secretary Health Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Director General Health Services Khyber Pakhtunkhwa, Peshawar.
3. The District Health Officer, Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 29.10.2020 WHEREBY THE APPELLANT WAS PREMATURELY TRANSFERRED FROM THE OFFICE OF DISTRICT HEALTH OFFICER PESHAWAR TO GOVERNMENT NASEERULLAH KHAN BABER MEMORIAL HOSPITAL PESHAWAR AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF NINETY DAYS.

Filed to-day

Registrar

27/11/2021

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 29.10.2020 MAY KINDLY BE SET-ASIDE TO THE EXTENT OF THE APPELLANT AND THE RESPONDENT MAY BE DIRECTED NOT TO TRANSFER THE APPELLANT PREMATURELY AND IN VIOLATION OF POSTING/TRANSFER POLICY, CIRCULAR DATED 27.12.2013 AND PLACEMENT POLICY DATED 06.07.2020. ANY OTHER REMEDY WHICH THIS HONOURABLE TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant is working in the respondent department as Office Assistant (BPS-16) and performing his duty with great devotion and honest whatsoever, assigned to him no complaint has been filed against him regarding his performance.
2. That the appellant, while working in the said capacity was transferred and posted at DHO Office Peshawar vide order dated 10.08.2020 and in compliance of order dated 10.08.2020, the appellant took charge on the said post on 11.08.2020 and performed his duty with the entire satisfaction of his superiors. **(Copies of order dated 10.08.2020 and charge report are attached as Annexure-A&B)**
3. That astonishingly just after two months, the appellant was transferred from the office of District Health Officer Peshawar to Government Naseerullah Khan Baber Memorial Hospital Peshawar against the post of Superintendent on his own pay and scale vide order dated 29.10.2020 without completing his normal tenure at DHO Office Peshawar. **(Copy of order dated 29.10.2020 is attached as Annexure-C)**
4. That against the premature transfer order, the appellant filed departmental appeal on 29.10.2020. **(Copy of departmental appeal is attached as Annexure-D)**
5. That in the response of order dated 29.10.2020, the Medical Superintendent of Government Naseerullah Khan Baber Memorial Hospital wrote a letter to Director General Health Services Khyber Pakhtunkhwa Peshawar on 9.11.2020 in which he mentioned that the appellant is not required to the undersigned because according to his previous record he is a problematic employee and always created issues in the official business of the offices and also create confrontation with his immediate officer when he remained posted and requested to posted the appellant anywhere in the Department. **(Copy of letter dated 9.11.2020 is attached as Annexure-E)**
6. That in the response of letter dated 9.11.2020, the Director General Health Services Khyber Pakhtunkhwa Peshawar (Respondent No.2) wrote a letter to Medical Superintendent, Government Naseer Ullah Khan Baber Memorial Hospital Peshawar on 25.11.2020 in which he mentioned that transfer/posting order of the appellant was issued with the approval of Minister for Health, Khyber Pakhtunkhwa therefore,

his arrival report may be accepted and keep him under consideration if any irregularity found it should be reported to Directorate for necessary action, however in response of that letter the Medical Superintendent of NKBMH wrote a letter dated 03.12.2020 to Respondent No.2 and stated that Dr. Syeda Alia Tariq Women Medical Officer BPS-17 has transferred to this Hospital vide letter dated 16.11.2020 and in respect of NOC issued by the undersigned on dated 19.10.2020 against the vacant post of Office Superintendent. She has submitted her arrival report on 16.11.2020. Therefore, it is requested that the post of Office Superintendent BPS-17 is filled and this office is not in position to adjust the under transferred office Assistant (appellant) in this office. **(Copies of letter dated 25.11.2020 and letter dated 03.12.2020 are attached as Annexure-F&G)**

7. That as the department has taken no action on the departmental appeal of the appellant within the statutory period of ninety days and now the appellant has no other remedy except to file the present service appeal for redressal of his grievances in this Honourable Tribunal on the following grounds amongst others.

GROUNDS:

- A) That not taking action on the departmental appeal of the appellant and the order dated 29.10.2020 are against the law, facts, norms of justice, posting transfer policy, circular dated 27.02.2013 and placement policy dated 06.07.2020, therefore, not tenable and liable to be set-aside to the extent of appellant.
- B) That the Health Department issued a placement policy of Human Resource for Human (HRH) BS 1-16 in Health Department, Khyber Pakhtunkhwa vide notification dated 06.07.2020, wherein different Principles are mention in which it is clearly mention in principle No. 1 that *minimum posting duration should not less than one year. Any exceptions should show compelling reasons* and principle No. 2 it is mention that *for positions (particularly those of Ministerial Staff that while Human Resource, Accounts Procurements, related activities) maximum posting durations shall be two years*. But the appellant was transferred only after just 02-months, which is clear violation of its placement policy dated 06.07.2020 of the Health Department, therefore, the impugned transfer order dated 29.10.2020 is liable to be set aside to the extent of the appellant on this ground alone. **(Copy of notification dated 06.07.2020 is attached as Annexure-H)**

- C) That the impugned transfer order dated 29.10.2020 was passed in violation of posting transfer/policy and circular based on Anita Turab case dated 27.02.2013, therefore, the impugned transfer order is liable to be set aside to the extent of the appellant. **(Copies of posting transfer policy and circular dated 27.02.2013 are attached as Annexure-I&J)**
- D) That the appellant was transferred against the post of Superintendent on OPS basis which has already been filled by transferring/working of one Women Medical Officer namely Dr. Syeda Alia Tariq and the appellant is still without posting for three months due to which his salaries has not been released for last three months and due to without salary the appellant and his family are effecting very badly financially.
- E) That the post of Office Assistant is still vacant at DHO Office Peshawar as no substitute has transferred on that post and it will be in the interest of justice to set aside the impugned order to the extent of the appellant and to allow the appellant to work on that post till his normal tenure as per posting transfer policy and placement policy of the Health Department.
- F) That the impugned transfer order is premature as the appellant has not completed his normal tenure according to posting transfer policy and placement policy dated 06.07.2020 of the Health Department. Therefore, the impugned transfer order is liable to be set-aside to the extent of the appellant.
- G) That the impugned transfer order was also passed on political basis as in the letter dated 25.11.2020, Respondent No. 2 clearly mentioned that the transfer/posting order of the appellant was issued with the approval of Minister for Health Khyber Pakhtunkhwa and such like order has been discouraged by the Honourable Apex Court in Plathora of Judgments.
- H) That no compelling reason has been shown by the authority of transferring the appellant as per placement policy dated 06.07.2020, but just to adjust blue eyed person on the post of the appellant which is not permissible under the under Circular dated 27.02.2013 and placement policy dated 06.07.2020.
- I) That the MS of Govt: NKBM Hospital mentioned in the latter dated that according to his previous record he is a problematic employee and always created issues in the official business of the offices and



also create confrontation with his immediate officer, but is pertinent to mention here that the appellant has neither remain/posted in Government Naseerullah Khan Babar Memorial Hospital Peshawar throughout his service carrier nor he worked under the supervision that MS anywhere in his carrier, then how can he judge the conduct of the appellant, but he wrote in letter dated 09.11.2020 just to accommodate blue person on the post.

- J) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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


APPELLANT
Mukhtiar Ali

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT,
&

(ASAD MEHMOOD)
ADVOCATE HIGH COURT,

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2021

Mukhtiar Ali

V/S

Health Department

**APPLICATION FOR SUSPENDING THE
OPERATION OF ORDER DATED 29.10.2020
TO THE EXTENT OF THE APPELLANT
TILL THE DECISION OF MAIN SERVICE
APPEAL.**

RESPECTFULLY SHEWETH:

- 1) That the appellant has filed an appeal against the order dated 09.08.2019, whereby the appellant was prematurely transferred just after 02 months, along with this application in this august Service Tribunal in which no date is fixed so for.
- 2) That impugned transfer order dated 29.10.2020 was premature and in violation of posting transfer policy, circular dated 27.02.2013 and placement policy dated 06.07.2020 of the Health department, therefore liable to be suspended to the extent of the appellant.
- 3) That the appellant has a good prima facie case and all the three ingredients are in favour of the appellant.
- 4) That the grounds of main appeal may also be considered as integral part of this application.

It is therefore most humbly prayed that the operation of the order dated 29.10.2020 may kindly be suspended to the extent of the appellant till the decision of main appeal.

THROUGH:

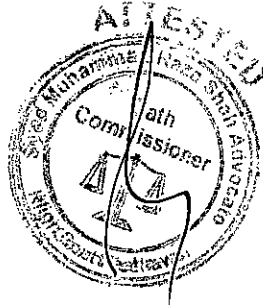

APPELLANT


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

AFFIDAVIT

It is solemnly affirmed that the contents of the application is true and correct to best of my knowledge and belief and nothing has been concealed from this Honourable Service Tribunal.

[Handwritten Signature]
DEPONENT





DIRECTORATE GENERAL HEALTH SERVICES KHYBER PAKHTUN KHWA PESHAWAR

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

A (8)

OFFICE ORDER

Mr. Mukhtiar Ali Office Assistant attached to Sifwat Ghayur Shaheed Memorial Hospital Peshawar is hereby transferred and posted to DHO Office Peshawar against the vacant post of Office Assistant in the interest of public service with immediate effect.

Nb: Arrival/ departure reports should be submitted to this Office for record.

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

Dated 10/08/2020

No 1061-65 / Personnel


Copy forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. P.S to Minister for Health Khyber Pakhtunkhwa vide D.O letter dated 10.08.2020.
- ✓ 3. DHO Peshawar.
4. MS Sifwat Ghayur Shaheed Memorial Hospital Peshawar.
5. Official concerned.

For information and necessary action.

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

10/8/2020


ATTACHED

9

OFFICE OF THE DISTRICT HEALTH OFFICER, PESHAWAR.

No. 13320-25/DHO/E-2

Dated Peshawar the 11/08 2020

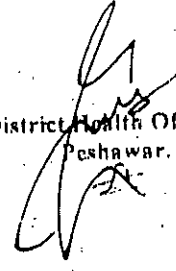
Reference: Directorate General Health Services, Khyber Pakhtunkhwa, Peshawar office order No. 1061-65/Personnel dated 10-08-2020, overleaf.

Copy forwarded to the:

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. Deputy District Health Officers Town - I, II, III, IV, Peshawar.
4. Coordinator DHIS Section DHO office Peshawar.
5. Accounts section of this office
6. Official concerned.

For information and necessary action please.

District Health Officer,
Peshawar.



B (9)

CERTIFICATE OF TRANSFER OF CHARGE

1. Certified that I have on the forenoon/afternoon of this day respectively made over and receive charge of this office as Office Assistant BPS -16 vide Director General Health Services, Khyber Pakhtunkhwa, office order No. 1061-65/Personnel dated 10-08-2020.

Signature of relieved
Government Servant _____

Station: DHO Office
Dated: 11-08-2020

Signature of relieving
Government Servant _____
Mr. Mukhtiar Ali Office Assistant BPS -16 11/8/2020

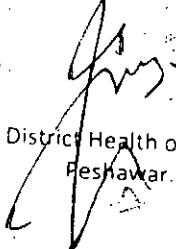
OFFICE OF THE DISTRICT HEALTH OFFICER, PESHAWAR.

No. 13326-31 DHO/P.F
Copy forwarded to the:-

Dated Peshawar the 11/08 /2020

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. Deputy District Health Officer Town - I, II, III, IV, Peshawar.
4. Coordinator, DHIS DHO Office Peshawar.
5. Account Section of this office.
6. Official concerned.

For information and necessary action.


District Health officer,
Peshawar.







DIRECTORATE GENERAL HEALTH SERVICES KHYBER PAKHTUNKHWA PESHAWAR

All communications should be addressed to the Director General Health Services Peshawar and not to any official by name.
DQ Office Ph. 091 - 9210269 Exchange 091 - 9210187 Fax 091 - 92102302. Mail dghealthkpk2014@gmail.com

OFFICE ORDER

As approved by the competent authority the following posting transfer of Ministerial staff is hereby ordered in the best public interest with immediate effect.

S.NO.	Name & Designation	From	To	Remarks
01.	Mr. Mukhtiar Ali Office Assistant	DHO Office Peshawar	Govt. NKBMH Hospital Peshawar	Against the vacant post of Supt. In his own pay and scale
02.	Mr. Munawar Khan Senior Clerk	DHO Office Orakzai	DHQ Hospital Parachinar	Against the vacant post.

THE DHO (H)
Diary No. 5142
Date 29/10/2020
R. Date
PESHAWAR

Sd/-----
Director General Health
Services, Khyber Pakhtunkhwa.

No. 134467-751

Dated Peshawar the, 29/10/2020.

Copy forwarded to :

- 1- Accountant General Khyber Pakhtunkhwa Peshawar.
- 2- DHO Peshawar.
- 3- MS Govt: Naseer Ullah Khan Babar Memorial Hospital Peshawar.
- 4- DHO Orakzai.
- 5- DAO Orakzai.
- 6- Medical Superintendent DHQ: Hospital Parachinar.
- 7- DAO Kurram
- 8- PS to Secretary Health, Khyber Pakhtunkhwa Peshawar.
- 9- Officials Concerned for information and compliance.

ATTESTED

Director General Health
Services, Khyber Pakhtunkhwa.

Estimate
OK. Endorse, pl.
(Good luck to him)
A

11

OFFICE OF THE DISTRICT HEALTH OFFICER, PESHAWAR.

No. 17164-68 /DHO/E-2

Dated Peshawar the 29/10 /2020

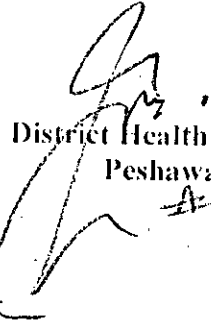
Reference: Director General Health Services, Khyber Pakhtunkhwa, Peshawar office order

No. 134467-75/ dated Peshawar the 29-10-2020, overleaf.

Copy forwarded to the: -

1. Accountant General Khyber Pakhtunkhwa, Peshawar
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. Coordinator DHIS.DHO office Peshawar.
4. Accounts section of this office
5. Office Assistant Concerned.

For information and necessary action please.


District Health Officer,
Peshawar.





SHAD No 13154
at 29/10/2020

D

(12)

To

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

Subject: Departmental appeal against the impugned vide DGHS Office order bearing No.134467-751, dated 29.10.2020 whereby the appellant has been pre-maturely transferred from the post of Office Assistant (BPS-16) in Office of the District Health Officer, Peshawar and posted against the wrong post of Superintendent (BPS-17) at Naseer Ullah Khan Babar Memorial Hospital, Kohat Road, Peshawar.

Respected Sir,

It is, most humbly stated that applicant is the employee of your good self Department and is serving as Office Assistant (BPS-16) at Office of the District Health Officer, Peshawar quite efficiently and upto the entire satisfaction of his superiors. That applicant while serving as Office Assistant at Sifat Ghayur Shaheed Memorial Hospital, Peshawar was transferred to Office of the District Health Officer, Peshawar, against the vacant post of Office Assistant vide DGHS Office order No.1061-65 dated 10.08.2020 and endorsed by the DHO vide endorsement No. 13320-25 dated 11.08.2020 in response to the aforementioned transfer order the applicant submitted his charge report and started performing his duty with all zeal and zest. That astonishingly just after the lapse of hardly two (2) months the applicant pre-maturely transferred from Office of the District Health Officer, Peshawar vide impugned vide DGHS Office order bearing No.134467-751 dated 29.10.2020 and posted against the wrong post of Superintendent (BPS-17). (Copies of the transfer orders are attached herewith). That the impugned order dated 29.10.2020, is pre-mature which is clear violation of Clause-IV of the transfer/posting policy promulgated by the Govt. of Khyber Pakhtunkhwa. That the impugned order dated 29.10.2020 has not been issued in the best interest of public service and as such the applicant has been made a rolling stone by transferring him from one place to another in a short span of time. That applicant feeling aggrieved from the impugned transfer order dated 29.10.2020 preferred this Departmental appeal before your good self for redressal of his grievances.

28/10/2020

ATTACHED

13

It is therefore, most humbly prayed that on acceptance of this Departmental appeal the impugned transfer order dated 29.10.2020 may very kindly be set aside and the concerned authority may please be directed not to transfer the applicant from Office of the District Health Officer, District Peshawar till completion of his normal tenure.

Dated: 29/10/2020.

APPLICANT

M 29/10/2020

MUKHTIAR ALI, Office Assistant (BPS-16),
O/O the District Health Officer, District Peshawar
Cell No.0333-9128985

[Signature]
ATTESTED



OFFICE OF THE
MEDICAL SUPERINTENDENT
GOVT NASEERULLAH KHAN BABAR
MEMORIAL HOSPITAL KOHAT ROAD PESHAWAR



Email. gnkbmhospital@gmail.com Fax 091-2324611 Tele; 091- 9212742

No. _____/GNBMH

Dated: 09/11/2020

To,

The Director General Health Services
Khyber Pakhtunkhwa
Peshawar.

Sub: OFFICE ORDER

R/Sir,

Reference your office letter No. 134467-75/DGHS dated 29/10/2020.

It is stated that services of Mr. Mukhtiar Ali Office Assistant is not required to the undersigned, because according to his previous record he is a problematic employee and always created issues in the official business of the offices and also create confrontation with his immediate officer where he remained posted.

Therefore, it is requested to your office to post him anywhere in the department accordingly.


MEDICAL SUPERINTENDENT

No. 7355-58/GNBMH

Copy to:

1. Accountant General Office
2. District Health Officer, Peshawar.
3. PS to Secretary Health Govt. of Khyber Pakhtunkhwa.
4. Official Concerned

For Information and Compliance


ATTACHED


MEDICAL SUPERINTENDENT

F (15)

DIRECTORATE GENERAL HEALTH SERVICES KHYBER PAKHTUNKHWA PESHAWAR

6/11/2020
No. 311 /Personnel Dated: 25/11/2020

To,

The Medical Superintendent
Govt. Naseerullah Khan Babar Memorial Hospital
Peshawar.

Subject:
Memo

OFFICE ORDER/ ACCEPTANCE OF ARRIVAL.

Reference to your letter No. 7354/GNBMH dated 09.11.2020 on the subject noted above.

It is to inform you that the transfer/ posting order of Mr. Mukhtiar Ali Office Assistant was issued with the approval of Minister for Health Khyber Pakhtunkhwa, therefore, his arrival report may be accepted and keep him under observation if any irregularity found it should be reported to this Directorate for necessary action.

[Signature]
ATTESTED

[Signature]
25/11
ADDITIONAL DG (ADMN)
DIRECTORATE GENERAL HEALTH
SERVICES, K.P.K PESHAWAR *[Signature]*
25/11/20



OFFICE OF THE
MEDICAL SUPERINTENDENT
GOVT NASEERULLAH KHAN BABAR
MEMORIAL HOSPITAL KOHAT ROAD PESHAWAR



Email. gnkbmhospital@gmail.com Fax 091-2324611 Tele; 091- 9212742

No. 8584 /GNBMH

Dated: 03/12/2020

To,

The Director General Health Services,
Khyber Pakhtunkhwa,
Peshawar.

Sub:

OFFICE ORDER/ACCEPTANCE OF ARRIVAL:

R/Sir,

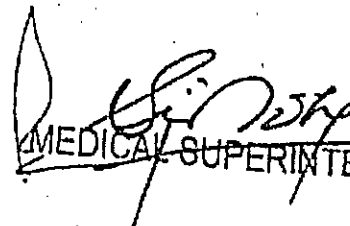
Kindly refer your office letter No. 3111/Personnel Dated 25/11/2020.

It is stated that Dr. Syeda Alia Tariq Woman Medical Officer BPS-17 has transferred to this hospital vide Notification No. SO(E)H-II/I-1/2020 Dated 16/11/2020 in respect of NOC being issued by the undersigned on dated 19/10/2020 against the vacant post of Office Superintendent (Copy Attached).

She is submitted her Arrival report on 16-11-2020. Therefore, it is requested that the post of Office Superintendent BPS-17 is filled and this office is not in a position to adjust the under transferred Office Assistant in this office.

Once again this office is requested to your good office to reconsider the previous letter and the concern Office Assistant may be adjust anywhere in the department.

ATTESTED


MEDICAL SUPERINTENDENT



Government of Khyber Pakhtunkhwa
Health department

Dated Peshawar the 06th July, 2020.

NOTIFICATION

No. SOG/HD/1-2/P&T/2020: 25 The Competent Authority in Health Department is pleased to notify the following placement policy of Human Resource for Health (HRH)-BS 1-16 in Health Department, Khyber Pakhtunkhwa:

HR PLACEMENT POLICY

KEY PRINCIPLES:

This interim policy aims to improve performance of health department by encouraging efficiency and effectiveness; act as a check against irregularities; and ensure that all postings and transfers are made on merit and consistent with good HR practices. The following principles constitute the essence of the policy.

1. Minimum posting duration shall not be less than 1 year. Any exceptions should show compelling reasons.
2. For positions (particularly those of ministerial staff that involves Human Resource, accounts, procurements, related activities), maximum posting duration shall be two (02) years.
3. For fresh recruitment, all these placements shall be determined by the order of merit as per merit list of selection/recruitment committee.
4. Mutual transfers may be considered, if not detrimental to service delivery, or unless there are other reasons, to be recorded by the committee. This principle is not applicable to any special batch of employees, such as new staff recruited.
5. Consistency and fairness should be maintained in the amount of time individuals spend in difficult areas.
6. Individuals should not be posted out of their home station in their year of retirement without their consent.
7. Employees should not be allowed to make on the same seat for more than two years to discourage stakes.

ATTESTED

18



Government of Khyber Pakhtunkhwa
Health department

PROCEDURE:

1. The Director General Health Service (DGHS) shall receive applications. Only complete applications submitted through email or post shall be considered by the Department. Additional Director General (HR) shall compile these applications. Applications received before 10th of each month will be considered in the same month.
2. Additional Director (HR) shall be the Secretary/ Convener of the Placement Committee.
3. Director Health Services, Merged Areas will be the member for posting/ transfer for Merged Areas.
4. After having received consolidated applications, the Additional Director General (HR) shall then be responsible for:
 - a. Vetting applications and preparing a working papers on the basis of vacant posts with the following details:
 - i. Tenure of applicant
 - ii. Qualification
 - iii. Relevance
 - iv. General reputation
 - v. Details for their last post
 - vi. Transferrable/ Non transferrable posts
 - vii. Service/ hard area
 - viii. Any other genuine reason i.e. domestic issues

The working paper shall thereafter be submitted to the DG Health Services before the 16th of each month.

5. This working paper shall be examined between 17th and 23rd of the month. Additional Director General (HR) shall thereafter call a meeting of Human Resource for Health Placement Committee II (HRHPC-II) by 24th and 25th of the month.

(Handwritten initials and signature)

ATTACHED

19



Government of Khyber Pakhtunkhwa Health department

6. Upon examination and discussion on the working papers, the committee shall then meet and discuss cases under consideration as per criteria given in para-2(a).
7. Once approved by the committee a report should be submitted to the Deputy Secretary (Admin) and then to the Secretary Health as a proper channel for onward submission to Minister Health for approval by 28th of the month. Upon approval, final transfer/posting orders shall be circulated by 29th and 30th of the month to all concerned sections for processing and implementation.
8. The HRHPC-II shall meet each month. Postings and transfers shall only be carried out within the reporting cycle below:

IMPORTANT DEAD LINES

Process -	Dates	Responsible
Receipt and consolidation of applications	1 st to 10 th	ADG-HR
Application consideration	11 th to 16 th	ADG-HR
Submission of working papers to secretariat	17 th	ADG-HR
Examination of working papers	18 th to 23 rd	DGHS
HRHPC Meeting	24 th and 25 th	HRHPC-II
Issuance of report to Secretary Health	On the same day	HRHPC-II
Final transfer/posting	After approval from Competent Authority	Secretary Health

INSTITUTIONAL ARRANGEMENT:

All transfers and postings of BPS 1-16 HRH falling under the jurisdiction of the Health Department will be reviewed and approved by HRHPC-II. The composition of HRHPC-II is as under:

DESIGNATION	POSITION
Director General Health Services	Chairperson
Additional DG (HR), DGHS.	Co-chairperson/Convener/ Member
Director Health Services, Merged Areas	Member
Deputy Secretary (Admin)	Member
Concerned Deputy Director HR, DGHS.	Member

ATTESTED

[Handwritten signatures and initials]

20



Government of Khyber Pakhtunkhwa Health department

Concerned Director	Member
Concerned Deputy Directors i.e. Nursing, Paramedics & Admin	Members

Any grievance/ violation of set criteria as per para-4(n) shall be referred to next meeting of the placement committee of Health Secretariat.

FEED BACK:

For transparency, the committee shall track indicators on transfer/postings and report to Minister and Secretary Health on a monthly basis. These indicators may include (but will not be limited to) number of transfers per quarter; average tenure, number of employees in position for more than 3 years, and number of postings made with less than one year etc.

A report on this process shall be submitted to the Health Minister monthly. This policy may be updated with approval of Minister Health at any time.

SECRETARY HEALTH
KHYBER PAKHTUNKHWA

Encl. No. & date even:

Copy forward to the:

1. Director General Health Services, Khyber Pakhtunkhwa
2. All DHOs and MSs in Khyber Pakhtunkhwa
3. All Section Officers, Health Department
4. PS to Minister for Health, Khyber Pakhtunkhwa
5. PS to Secretary Health, Khyber Pakhtunkhwa
6. PS to Spl Secretary-I, Health Department
7. PS to Spl Secretary-II, Health Department
8. PA to Addl: Secretary (Estab), Health Department
9. PA to Addl: Secretary (Dev), Health Department
10. PA to Addl: Secretary (A), Health Department

Fazl
6/7/2020

Section Officer (General)
Health Department

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GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(Regulation Wing)

POSTING / TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT

- i) All the posting/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants
- ii) All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities for seeking posing/transfers of their choice and against the public interest.
- iii) All contract Government employees appointed against specific posts, can not be posted against any other post.
- iv) The normal tenure of posting shall be three years subject to the condition that for the officers/officials posted in unattractive areas the tenure shall be two years and for the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.
- v) 1{
- vi) While making postings/transfer from settled areas to FATA and vice-versa, specific approval of Governor, NWFP needs to be obtained

²While making postings/transfers of officers/officials up to BS-17, from settled areas to FATA and vice-versa approval of the Chief Secretary NWFP needs to be obtained. Whereas, in case of posting/transfer of officers in BS-18 and above, from settled areas to FATA and vice versa, specific approval of the Governor NWFP shall be obtained.

- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for atleast eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.
- vii) Officers may be posted on executive/administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thaana) of his area/residence is situated.

1 Para-1(v) regarding months of March and July for posting/transfer and authorities for relaxation of ban deleted vide letter No: SOR-VI (E&AD) 1-4/2008/Vol-VI, dated 3-6-2008. Consequently authorities competent under the NWFP Government Rules of Business, 1985, District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make posting/transfer subject to observance of the policy and rules.

2 Added vide Urdu circular letter No. SOR-VI(E&AD)1-4/2003, dated 21-09-2004

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- viii) No posting/transfers of the officer's/officials on detailment basis shall be made.
- ix) Regarding the posting of husband/wife, both in Provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.
- x) All the posting/transferring authorities may facilitate the posting/transfer of the unmarried female government Servants at the station of the residence of their parents.
- xi) Officers/officials except DCOs and DPOs/SPs who are due to retire within one year may be posted on their option on posts in the Districts of their domicile and be allowed to serve there till the retirement
 DCOs and DPOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against non-administrative posts of equivalent scales;
- xii) In terms of Rule-17(1) and (2) read with Schedule-III of the NWFP Government Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against each officer in column 2 thereof:

Outside the Secretariat		
1.	Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above.	Chief Secretary in consultation with Establishment Department and Department concerned with the approval of the Chief Minister.
2.	Other officers in BPS-17 and above to be posted against scheduled posts, or posts normally held by the APUG, PCS(EG) and PCS(SG).	-do-
3.	Heads of Attached Departments and other Officers in B-19 & above in all the Departments.	-do-
In the Secretariat		
1.	Secretaries	Chief Secretary with the approval of the Chief Minister.
2.	Other Officers of and above the rank of Section Officers: a) Within the Same Department b) Within the Secretariat from one Department to another.	Secretary of the Department concerned. Chief secretary/Secretary Establishment.
3.	Officials up to the rank of Superintendent:	

¹ Added vide Urdu circular letter No: SOR-VI (E&AD)/1-4/2005, dated 9-9-2005.

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a) Within the same Department	Secretary of the Department concerned.
b) To and from an Attached Department	Secretary of the Dept in consultation with Head of Attached Department concerned.
c) Within the Secretariat from one Department to another.	Secretary (Establishment)

xiii) While considering posting/transfer proposals all the concerned authorities shall keep in mind the following:

- a) To ensure the posting of proper persons on proper posts, the Performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/officials be considered.
- b) Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

xiv) Government servants including District Govt. employees feeling aggrieved due to the orders of posting/transfer authorities may seek remedy from the next higher authority / the appointing authority as the case may be through an appeal to be submitted within seven days of the receipt of such orders. Such appeal shall be disposed of within fifteen days. The option of appeal against posting/ transfer orders could be exercised only in the following cases.

- i) Pre-mature posing/transfer or posting transfer in violation of the provisions of this policy.
- ii) Serious and grave personal (humanitarian) grounds.

2. To streamline the postings/transfers in the District Government and to remove any irritant/confusions in this regard the provision of Rule 25 of the North West Frontier Province District Government Rules of Business 2001 read with schedule - IV thereof is referred. As per schedule-IV the posting/transferring authorities for the officers/officials shown against each are as under:-

S. No.	Officers	Authority
1.	Posting of District Coordination Officer and Executive District Officer in a District.	Provincial Government.
2.	Posting of District Police Officer.	Provincial Government
3.	Other Officers in BPS-17 and above posted in the District.	Provincial Government
4.	Official in BPS-16 and below.	Executive District Officer in consultation with District Coordination Officer.

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3. As per Rule 25(2) of the Rules mentioned above the District Coordination Department shall consult the Government if it is proposed to:

- a) Transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure.
- b) Require an officer to hold charge of more than one post for a period exceeding two months.

4. I am further directed to request that the above noted policy may be strictly observed /implemented.

.....

All concerned are requested to ensure that tenures of the concerned officers/officials are invariably mentioned in summaries submitted to the Competent Authorities for Posting/Transfer.
 {Authority: Letter No: SOR-VI/E&AD/1-4/2003 dated 24-6-2003}.

.....

It has been decided by the Provincial Government that posting/transfer orders of all the officers up to BS-19 except Heads of Attached Departments irrespective of grades will be notified by the concerned Administrative Departments with prior approval of the Competent Authority obtained on the Summary. The Notifications/orders should be issued as per specimen given below for guidance.

All posting/transfer orders of BS-20 and above and Heads of Attached Departments (HAD) shall be issued by the Establishment Department and the Administrative Departments shall send approved Summaries to E&A Department for issuance of Notifications.

SPECIMEN NOTIFICATION.

GOVERNMENT OF NWFP
NAME OF ADMINISTRATIVE
DEPARTMENT

Dated Peshawar, _____

NOTIFICATION

NO. _____ The Competent Authority is pleased to order the transfer of Mr. _____ Department and to post him as _____ in the interest of public service with immediate effect.

CHIEF SECRETARY
GOVERNMENT OF NWFP

(Signature)

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Endst. No. and date even.
Copy forwarded

- 1.
- 2.
- 3.
- 4.

ATTESTED

(Signature)

5.

(NAME)
SECTION OFFICER
Administrative Department

{Authority: Letter No. SO (E-I)-E&AD/9-12/2006 dated 22-12-2006}.

The competent authority has been pleased to direct that Para 1(v) of the Posting/Transfer Policy contained in this Department letter No:SOR-I (E&AD) 1-1/85 Vol-II, dated 15-2-2003 shall stand deleted, with immediate effect, consequently allowing the authorities, competent under the NWFP Government Rules of Business, 1985 and the District Government Rules of Business, 2001 or any other rules for the time being in force, to make posting/transfers of Government servants, any time during the year, in genuinely deserving and necessary cases, in public interest, subject to strict observance of all other provisions of posting/transfer policy contained and notified vide circular letter under reference. Hence there will be no ban on posting/transfer of Government Servants in any part of the year while carrying out postings/transfers of Government Servants.

The authorities concerned will ensure that no injustice whatsoever is caused to any civil servant, public work is not suffered and service delivery is improved.

I am therefore directed to request that the provisions of posting/transfer policy, as amended to the extent above, may kindly be followed in letter and spirit in future so as to keep good governance standard in this regard.

{Authority: Letter No: SOR-VI (E&AD) 1-4/2008/Vol-VI, dated 3-6-2008}.

.....
According to the policy of the provincial Government, maximum tenure on a post is three years. Contrary to the Policy, Store Keepers, Cashiers, Accountants and other ministerial staff remains posted in their particular field for long time; which may result in misuse of this position, due to which not only public exchequer may sustain loss but general public also suffers. The Provincial Government has taken serious notice of this situation & decided that all Administrative Secretaries and DCOs may submit a certificate within one month to the effect that above mentioned officials, having completed three years on their posts, have been adjusted on posts other than those they held previously.

{Authority: Urdu circular No: SOR-VI (E&AD)/05 dated 28th Oct, 2005.}

.....
The Chief Minister NWFP has directed that:-

- i) Submission of summary would not be required in case of mutual transfer.
- ii) Posting/transfer shall be made according to the policy;
- iii) Government Servants shall avoid direct submission of applications to the Chief Minister;
- iv) In genuinely deserving case, they should approach the Administrative Secretaries who could process the case according to policy;

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- v) In case of direct submission of application to the Chief Minister Secretariat for Posting/ Transfer, the concerned govt servants shall be proceeded against under the prevalent rules and regulations.

{Authority: Urdu circular No; SOR-VI/E&AD/1-4/2003, dated 86-2004.
Urdu Letter No: SOR-VI/E&AD/Misc: /2005, dated 3-1-2005.}

It has been decided with the approval of the competent authority that:-

- i) Mutual transfer would be allowed if both the concerned employees agree; except the Government Servants holding Administrative posts;
- ii) NWFP Government Rules of Business 1985 shall be observed while issuing posting/transfer orders.

{Authority: - Urdu circular letter No: SOR (E&AD)/1-4/2005, dated 9-9-2005}

The competent authority has decided that in order to maintain discipline, enhance performance of the departments and ensure optimum service delivery to the masses, the approved /prevalent policy of the posting/transfer shall be strictly followed. Government Servants violating the policy and the NWFP Govt Servants (Conduct) Rules 1987 shall be proceeded against under the NWFP Removal from Service (Special Powers) Ordinance 2000. As required under the NWFP Govt Rules of Business 1985, the Administrative Secretaries shall ensure compliance with the policy and defaulting offices/officials be taken to task & entries to this effect shall be made in their PERs/ACRs. In case subordinate officers are working on sites or proceeding for the purpose of inspection, they shall submit inspection Report to their Administrative Secretaries. Administrative Secretaries shall ensure submission of such reports.

{Authority: - Urdu circular No: SOR-VI (E&AD)/1-4/06, dated, 29-6-2007}

1 PLACEMENT POLICY.

In order to utilize the expertise of the officers who have received foreign training in various fields, the provincial Government has decided to adopt the Placement Policy, approved by the Prime Minister of Pakistan, and make it a part of its Posting/Transfer Policy. Placement Policy as follows:-

- i) All placements would be made on the basis of merit and keeping in view the needs of the organization.
- ii) The first priority in placement must go to the parent organization of the participant from where the individual had applied. This will be in consonance with the concept of establishing the "Need" for the department and fulfilling the need through "capacity building for the organization.
- iii) In order to follow the "bottom up approach" for Devolution, the priority within departments must go to the Districts, the Provinces and than the Federal Government.
- iv) The second priority in placement should go to up-grading the existing training Institution within the country. The knowledge gained by the

1 Placement Policy has been made part of the posting/transfer policy vide Urdu circular No.SOR-VI(E&AD)1-4/06, dt 9-2-2007

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officers, will be of immense value to bring about a qualitative change in the training institutions. The following proposals are made in this regard:

- a) Permanent posting of an officer to the training institutions for 2-3 years;
 - b) Temporary attachment with the training intuitions for 3 to 6 months for some research project on helping in developing case studies;
 - c) Earmarked as a visiting faculty member for specific subject.
- v) Individuals posted to their parent organizations will also organize training for their subordinates within the department, in order to transfer the knowledge and bring about a qualitative change internally;
 - vi) The Normal tenure of posting as already provided in the policy would be ensured;
 - vii) No participant should be allowed to be posted on deputation to multinational donor agencies for at least 5 years;
 - viii) No participant will decline/represent against his/her posting.

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

(REGULATION WING)

NO. SOR.VI (E&AD)1 -4/2005/Vol-II

Dated Peshawar, 27th February, 2013

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Government Department
Khyber Pakhtunkhwa
Dated 28 Feb 2013

To: *Ejaz*

1. The Additional Chief Secretary (P&D) Khyber Pakhtunkhwa.
2. The Additional Chief Secretary (FATA) Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
4. All Commissioners in Khyber Pakhtunkhwa.

Subject: CONSTITUTION PETITION NO.23 OF 2012 OUT OF SUO MOTO CASE NO. 3/2012 (PETITION BY MS. ANITA TURAB FOR PROTECTION OF CIVIL SERVANTS REGISTERED UNDER ARTICLE 184 (3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973.)

Sir,

I am directed to refer to the subject noted above and to state that the Supreme Court of Pakistan vide the subject cited judgment has enunciated the following principles of Law with regard to protection and conduct of civil servants.

- (i) **Appointments, Removals and Promotions:** Appointments, removals and promotions must be made in accordance with the law and the rules made thereunder, where no such law or rule exists and the matter has been left to discretion, such discretion must be exercised in a structured, transparent and reasonable manner and in the public interest.
- (ii) **Tenure, Posting and Transfer:** When the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable.

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- (iii) **Illegal Orders:** Civil Servants owe their first and foremost allegiance to the law and the constitution. They are not bound to obey orders from superiors which are illegal or are not in accordance with accepted practices and rule based norms. Instead, in such situations, they must record their opinion and, if necessary, dissent.
- (iv) **OSD:** Officers should not be posted as OSD except for compelling reasons, which must be recorded in writing. If at all an officer is to be posted as OSD, such posting should not exceed 03 months. If there is a disciplinary inquiry going on against him/her such inquiry must be completed at the earliest. The officer on special duty may be posted against a post of his/her equivalent pay scale/grade within 03 months of his/her order as OSD.

2. I am, therefore, directed to request you to note the above principles of law for strict compliance.

Yours faithfully,

NAJAM
(NAJ-MUS-SAHAR)
SECTION OFFICER (REG-VI)

Encl: as above.

A copy is forwarded to:-

1. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. The Secretary Provincial Assembly, Khyber Pakhtunkhwa.
4. The Accountant General, Khyber Pakhtunkhwa.
5. The Registrar, Peshawar High Court, Peshwar.
6. The Secretary Khyber Pakhtunkhwa, Public Service Commission.
7. All Addl: Secretaries Establishment & Administration Department.
8. All Deputy Secretaries in Establishment & Administration Department.

NAJAM
SECTION OFFICER (REG-VI)

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بعدالت

مدروس ٹریڈ یونیورسٹی لہذا اور

مختصاً پہلی 2 منجانب
مختصاً اور مکینام محمد صحت

مورثہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیرس کے کاروبار کے متعلق
آن مقام لہذا اور
آئیے مجموعی خان اور اسد محمد اور
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب وہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم بیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و بیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ بیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

Accepted
&
Attested

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مقام

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

IMPLEADMENT APPLICATION
IN
APPEAL NO. 696 /2021

MUKHTIAR ALI

VS

HEALTH DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Application	1- 2.
2.	Memo of Appeal of the applicant	A	3- 5
3.	Copy of order sheet	B	6- 7

APPLICANT

THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE

OFFICE: Flat No.4, 2nd Floor,
Juma Khan Plaza,
Near FATA Secretariat,
Warsak Road, Peshawar.
0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

APPEAL NO. _____/2021

MUKHTIAR ALI

VS

HEALTH DEPTT:

APPLICATION FOR IMPLEADMENT OF THE APPLICANT MR.
NASEEM KHAN, IN THE ARRAY OF PRIVATE RESPONDENTS OF
THE ABOVE MENTIONED TITLED APPEAL.

R/SHEWETH:

- 1- That the abovementioned appeal is pending adjudication before this August Tribunal and is fixed for hearing on dated 26.03.2021.
- 2- That the appellant filed the above mentioned appeal against the transfer order dated 29.10.2020 whereby the appellant is transferred from District Health Officer to Nasreeullah Khan Baber Memorial Hospital Peshawar and is falling vacant since appellant transfer, while the applicant also filed an Appeal No. _____ Before this August Tribunal for transferring/posting the applicant at office of District Health Officer Peshawar in-spite of availability of vacant post of the office assistant at DHO Peshawar. Copy of the appeal of the applicant is attached as annexure.....**A**
- 3- That it is pertinent to mention here that the appellant acquired through this August tribunal suspension of order dated 29.10.2020 which needs to be vacated so that the applicant may be transferred/posted at DHO Peshawar when impleaded as private respondent. Copy of order sheet attached as annexure.....**B**
- 4- That the appellant has intentionally and malafidely avoided the present applicant by not making him party to the appeal as private respondent.
- 5- That as valuable rights of the applicant is attached to the abovementioned appeal; therefore it is essential that the applicant be impleaded as private respondents in the array of above mentioned appeal as name address given below:-

**"Mr. Naseem Khan, Office Assistant (BPS-16), Directorate
Health Service, Merged Area, Warsak Road, Peshawar".**

6- That propriety, fair play and justice demands that the applicant be impleaded as private respondents in the abovementioned appeal.

It is therefore most humbly requested that on acceptance of this application the applicant Mr. Naseem Khan may very kindly be impleaded in the array of private respondent of abovementioned appeal.

Dated: 26/03/2021

APPLICANT

Naseem Khan
NASEEM KHAN

THROUGH:

N
NOOR MUHAMMAD KHATTAK
ADVOCATE

Anxxure A (3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 16158 /2020

Mr. Naseem Khan Office Assistance (BPS-16),
Directorate Health Service, Merged Area, Warsak Road, Peshawar.

..... **APPELLANT**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director General Health Service Khyber Pakhtunkhwa Peshawar.
- 3- The District Health Officer Peshawar.

..... **RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE INACTION OF THE RESPONDENT BY NOT
POSTING/TRANSFERRING THE APPELLANT AT OFFICE
OF THE DISTRICT HEALTH OFFICER PESHAWAR
INSPIRE OF THE AVAILABILITY OF VACANT POST OF THE
OFFICE ASSISTANT AND AGAINST NO ACTION TAKEN
ON THE DEPARTMENTAL APPEAL OF APPELLANT
WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYERS:

That on acceptance of this appeal the appellant may very kindly be posted/ transferred at the office of the District health officer Peshawar as office Assistant (BPS-16). Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

1. That appellant is the employee of respondent Department and is serving as Office Assistance (BPS-16) quite efficiently and up to the entire satisfaction of his superiors.
2. That appellant had already completed his normal tenure of three years as office assistant (BPS-16) in the Directorate of Health Service, merged area, Peshawar. That under the HR placement policy of the respondent Department the appellant submitted an application through proper channel for his transfer/posting and as such the same was properly forwarded vide letter dated 25.06.2020 to the Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar i.e. respondent No.2. Copies of the policy, application dated

25.06.2020 and letter dated 25.06.2020 are attached as annexure.....A, B & C.

- 3. That it is pertinent to mention here that the District Health Officer Peshawar i.e. respondent No.3 vide letter dated 25.06.2020 (No objection certificate) informed the respondent No.2 that one post of Office Assistant (BPS-16) is lying vacant under the control of District Health Officer, District Peshawar and the undersign has no objection if the appellant has transferred to the said vacant post. Copy of the letter dated 25.06.2020 is attached as annexureD.
- 4. That the appellant was quite hopeful for his transfer to the office of District Health Officer, Peshawar but astonishingly the respondents vide order dated 10.08.2020, transfer one of the employee namely Mukhtiar Ali, Office Assistant. Copy of the order is attached as annexureE.
- 5. That appellant feeling aggrieved from the order dated 10.08.2020 preferred Departmental appeal followed by writ petition No. 4352-P/2020 before the Peshawar High Court, Peshawar. That the aforementioned writ petition was disposed of vide judgment dated 14.10.2020 with the view that **"As transfer, posting falls exclusively in the terms and conditions of civil service, therefore, this Court could not assume jurisdiction, in matter exclusively fall within the terms and conditions of service in view of explicit bar placed on jurisdiction of Islamic Republic of Pakistan, 1973"**. Copies of the Departmental appeal & judgment are attached as annexure.....F & G.
- 6. That it is pertinent to mention that the post of Office Assistant which was filled up through posting of Mr. Mukhtiar Ali is once again became lying vacant by transferring him from the Office of DHO, Peshawar to Naseer Ullah Khan Babar Mamorial Hospital, Kohat Road, Peshawar vide order dated 29.10.2020 but inspite of that the respondents are not willing to post/ transfer the appellant against the post of Office Assistant at Office of the District Health Officer. Copy of the order is attached as annexure.....H.
- 7. That the appellant waited for ninety days but no reply has been received so far from the quarter concerned on his Departmental appeal. Hence the present appeal on the following grounds amongst the others.

GROUND:

- A- That the inaction of the respondents by not transferring/posting the appellant against the post of Office Assistant (BPS-16) at Office of the District Health Officer is against the law, facts and norms of natural justice hence liable to be set aside .

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- B- That appellant has not been treated in accordance with law and Rules by the respondent on the subject noted above and as such the respondent violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondent acted in arbitrary and malafide manner by not transferring the appellant against the post of Office Assistant at Office of the District Health Officer.
- D- That the appellant has been discriminated by the respondents on the subject noted above and as such the respondents violated the existing rules and policy.
- E- That inspite of vacant position in Office of the District Health Officer the respondent Department is not willing to post the appellant against the said vacant post of Office Assistant, which is against norms of natural justice.
- F- That appellant has been completed his three years tenure in the Directorate of Health Services, merged area, Peshawar but inspite of that the respondents ignoring the repeated request of the appellant regarding his transfer.
- G- That petitioner seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 18.12.2020.

APPELLANT


NASEEM KHAN

THROUGH:


NOOR MOHAMMAD KHATTAK

AFRASIAB KHAN WAZIR

&

HAIDER ALI

Advocates

1 Annexure Bⁿ 6
**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. 696 /2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1429

Dated 27/11/2021

Mr. Mukhtiar Ali, Office Assistant (BPS-16),
District Health Officer, Peshawar.

(APPELLANT)

VERSUS

1. The Secretary Health Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Director General Health Services Khyber Pakhtunkhwa, Peshawar,
3. The District Health Officer, Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 29.10.2020 WHEREBY THE APPELLANT WAS PREMATURELY TRANSFERRED FROM THE OFFICE OF DISTRICT HEALTH OFFICER PESHAWAR TO GOVERNMENT NASEERULLAH KHAN BABER MEMORIAL HOSPITAL PESHAWAR AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 29.10.2020 MAY KINDLY BE SET-ASIDE TO THE EXTENT OF THE APPELLANT AND THE RESPONDENT MAY BE DIRECTED NOT TO TRANSFER THE APPELLANT PREMATURELY AND IN VIOLATION OF POSTING/TRANSFER POLICY, CIRCULAR DATED 27.12.2013 AND PLACEMENT POLICY DATED 06.07.2020. ANY OTHER REMEDY WHICH THIS HONOURABLE TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Certified to be true copy

27/11/2021
Filed to-day
Registrar
27/11/2021
Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

7



01.02.2021

Counsel for the appellant present.

3

Contends that the appellant was transferred and posted to DHO office Peshawar on 10.08.2020, where-against he took charge on subsequent date i.e. 11.08.2020. In utter disregard to the transfer/posting policy of the Provincial Government the appellant was again transferred to Government Naseerullah Khan Babar Memorial Hospital, Peshawar on 29.10.2020. Learned counsel also referred to memo dated 25.11.2020 regarding office order/acceptance of arrival. The memo was sent by Addl. Director General (Admn) Director General Health Service Khyber Pakhtunkhwa Peshawar to the Medical Superintendent Government Naseerullah Khan Babar Memorial Hospital Peshawar, wherein, it was noted that the transfer/posting orders of the appellant were issued with the approval of Minister for Health Khyber Pakhtunkhwa. In the said manner, the political pressure/influence could not be ruled out, it was added.

In view of arguments of learned counsel and available record, instant appeal is admitted to regular hearing subject to all just exceptions. Appellant is required to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 17.02.2021 before S.B.

Alongwith the appeal ^{there is} an application for suspension of operation of impugned order dated 29.10.2020. Notice of the application be also given to the respondents for the date fixed. In the meanwhile, the operation of impugned order shall remain suspended to the extent of appellant.

Appellant Deposited
Security & Process Fee
08/2/21

Chairman

Certified to be true copy
CHIEF CLERK
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2021

Muhammad Ali

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Health Dept

(RESPONDENT)
(DEFENDANT)

I/We Naseem Khan (Private Respondent)

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

Dated. _____/_____/2021

Naseem Khan
CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK

MIR ZAMAN SAFI

AFRASIAB KHAN WAZIR

&

HAIDER ALI
ADVOCATES

OFFICE:

Flat No.4, 2nd Floor, Juma Khan
Plaza, near FATA Secretariat,
Warsak Road, Peshawar.
Mobile No.0345-9383141

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No. 696/2021.

MukhtiyarAli

-----Appellant

Versus

- 1: Secretary Health, Govt of Khyber Pakhtunkhwa Peshawar.
- 2: Director General Health Services Peshawar .
- 3: District Health Officer, Peshawar.

-----Respondents

PARAWISE REPLY ON BEHALF OF RESPONDENTS No. 696/21

Respectfully Shewith

Preliminary Objections.

1. The appellant has neither cause of action nor locus standi to file the instant appeal.
2. The appellant has not come to the Tribunal with clean hands.
3. The appeal is bad for mis joinder and non joinder of the necessary parties.
4. That the appellant has been estopped by his own conduct to file the instant Appeal.

Reply on facts:-

Para No.1 No comments.

Para No.2 Correct to the extent that the appellant was transferred & posted at DHO Office Peshawar dated 10-08-2020 and took the charge on 11-08-2020.

Para No.3 The appellant was transferred from the office of District Health Officer Peshawar to Govt Naseer Ullah Khan Baber Memorial Hospital Peshawar dated 29-10-2021 because of his problematic behavior as he always created issues in the official matters of the office and creat confrontation with his immediate officer. The following paras will explain the appellant behavior.

- i. Mr Mukhtiyar Ali (appellant) was transferred from the post of Office Assistant Establishment section to LHW section & Mr Perviz Akhtar (Account clerk) had given the responsibility to look after both Administrative & Finance matter vide letter no 11318-30/DHO dated 23-12-2016 by the District Health Officer Dr. Ayub Rose Sahib ,because of his misbehavior which is attached as **Annexure-A**.
- ii. Mr Mukhtiyar Ali was transferred from District Health Office Peshawar vide Director General Health Services order No 100083-10140/personal /dated 28-11-2018 and posted in Sefwat Ghayoor Shaheed Memorial Hospital Peshawar .

But soon after taking his charge in the said hospital the appellant started to show his face & habits to the health staff as well as to the public .

He soon started confrontation with the Medical Superintendent of the said hospital. The appellant always intends to create gap between the immediate boss and lower staff.

As the Medical Superintendent have given duties to the lower staff of the said hospital vide letter no 10007-09, but the appellant kept the letter with him in order to create inconvenience between the staff , a copy of which is attached as **Annexure -B**.

Furthermore because of irresponsible behavior of the appellant the MS/DDHO-Town-I Peshawar called an explanation from the appellant dated 23-01-2020, a copy of which is attached **Annexure-C**. This was followed by an office order No 482-85 dated 29-01-2020 by the Medical Superintendent of the said hospital because of unsatisfactory reply from the appellant side ,which is attached as **Annexure-D**.

- iii. As a result of unsatisfactory reply to the explanation as well deliberately of not processing the salary of a principal Medical Officer in order to create problems the appellant was relieved & placed at the disposal of Director General Health Services Khyber Pakhtunkhwa in the best interest of the public ,a copy of which is attached as **Annexure-E**.
- iv. Furthermore the appellant was also warned & directed by the Additional Director General (Admin) DGHS Peshawar vide letter No 2277-19/personal dated 09-10-2020 to keep liaison with the staff of SGSMH Peshawar for preparation of replies of the audit observation pertaining to his period, as the appellant was under inquiry regarding Audit observation of his period, which is **annexure as F**
- v. An enquiry committee was conducted by the Additional Director General (Admin) Director General Health Services Khyber Pakhtunkhwa Peshawar to probe the matter regarding the appellant which is attached as **Annexure-G** ,in which he was warned to be careful ,work living& obedient to your seniors in future. The instant transfer order has been issued under section.10 of civil servant Act 1973.

Para No.4 Pertains to record.

Para No.5 Correct, as the Medical Superintendent of Naseer Ullah Khan Babar

Memorial Hospital previously working as DHIS Co- ordinator in District Health Office Peshawar & the appellant was also working as office assistant with him .So the Medical Superintendent know the appellant since lang from that time & appellant attitude was always problematic and still having confrontation behavior.

Para NO.6 No comments.

Para No.7 No comments.

Grounds:-

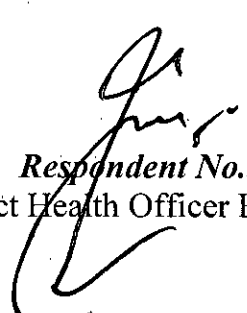
- A. Incorrect , as the act of respondent is in accordance with Law and Rules.
- B. The respondent believes that no one is above the law. Needless to mention that the appellant was transferred in the public interest and in according with section 10 of civil servant Act .
- C. As per para "B".
- D. Incorrect. The appellant is already getting his salary & his salary slip is annexed as **Annexure-H**.
- E. Already Honourble Service Tribunal order has been implemented & the appellant is working on that post.
- F. No comments, already explained in para/Grounds-B.
- G. Incorrect the impugned order has been issued in public interest.
- H. Incorrect as per para. B.
- I. Already explained in para -5, as both of them worked together in District Health Office.
- J. No answering on behalf of answering defendants.

It is pertinent to mention her that there many complaints have been registered /lodged against the appellant in various department by the public (i.e) .

- i. Complaint lodged against the appellant in Anti-corruption thana Peshawar by the residents of Mushazai Peshawar, which is attached as **Annexure- Ja & Jb** .
- ii. Similarly the National Accountability Bureau Peshawar also write a letter to the Secretary Health Govt of Khyber Pakhtunkhwa regarding about the appellant (Mr. Mukhtiyar Ali) which is attached annexure-I.

In short so many complaints /observation against the appellant are there on record which the respondent with present to the Honourble Service Tribunal at the time of Arguments.

Hence the appeal in hand is devoid of merit & may graciously be dismissed with cost.


Respondent No.3
District Health Officer Peshawar.



OFFICE OF THE DISTRICT HEALTH OFFICER, PESHAWAR.

Phone#; 091-9212911, Fax#; 0912572588

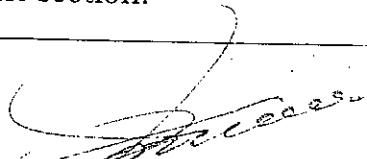
No. 11317 /DHO (Pesh)

Dated; ___/___/2016

OFFICE ORDER;

The following shuffling/adjustments of staff are hereby ordered in public/office interest with immediate effect.

S.#	Name of Staff	Designation	From	To	Remarks
1	Mr. Pervez Akhtar	Account Clerk	will look after both Administrative and Finance matters		
2	Mr. Mukhtiar Ali	Office Assistant	Office Assistant	LHW Section	will look after LHW program matters
3	Mr. Saleem Shah	Jr. Clerk	Establishment Section	Finance Section	
4	Mr. Faieed Ullah	Jr. Clerk	Will look after both development and establishment section.		


District Health Officer,
Peshawar.

No. 11317-30 /DHO (Peshawar); dated; 23/12/2016

Copy forwarded to;

- Deputy District Health Office Peshawar.
- Coordinator Public Health.
- Coordinator EPI
- Coordinator DHIS.
- Coordinator LHW Program
- Litigation officer DHO, Office Peshawar.
- Account Section of this office.
- Establishment section.
- Official Concerned


District Health Officer,
Peshawar.

جنرل صاحب میڈیکل سپرنٹنڈنٹ / ڈپٹی ڈی۔ ایچ۔ او ٹاؤن ون پر
جناب عالی!

نوڈیا نرسنگ سے ۸ بحوالہ ستمبر ۰۹-۱۵۵۶۷ مورفہ ۲۰۱۹

آفس آرڈر پورا گیا اس آفس آرڈر سے ہم ماک سٹاف بے خبر تھے اور نہ ہی ایم کو اس
سے آرڈر کی کاپی دی گئی تھی اور نہ ہی آٹا ہا سٹاف کو اس سے ۲۲ مئی ۲۰۲۰ تک
بیماری سہ ماہی ڈیوٹی میں دیا گیا تھی اس کی تفصیل مندرجہ ذیل ہے:

شمارہ ۱: سٹاف کی تخفیفیں / سٹاف کی چھٹی / دیوی پبلکیشن

رفان حیدر جو سٹریٹ: ڈائری اینڈ ڈبلیو / سٹاف ریفارڈ / باہری ہمارے ڈ

سوان جو سٹریٹ: سرگس بد تمام سٹاف ممبرز

ماہر سٹریٹ: ڈی۔ ایچ۔ آئی۔ ایس ڈی / ریفارڈ سیکشن میں بطور معاون ڈیوٹی
سرافخام دیہا ہوی

سیر داؤد شاہ سٹریٹ: کوئی ڈیوٹی بحوالہ نہیں لی گئی

محمد اسماعیل جو سٹریٹ: امانت سیکشن میں بطور معاون ڈیوٹی سرافخام دیہا ہوی

درخواست دیندگان

- (۱) شمارہ ۱
- (۲) رفان حیدر
- (۳) سوان
- (۴) ماہر سٹریٹ
- (۵) سیر داؤد شاہ
- (۶) محمد اسماعیل

مورفہ: ۲۰۲۰-۰۱-۲۲

OFFICE OF THE MS SEHWAT GHAYOUR SHAHEED
MEMORIAL HOSPITAL AND DEPUTY DISTRICT HEALTH
OFFICER, TOWN-I, PESHAWAR

091-2260343

No. 385 /MS-SGSMH/DDHO-T-I/Peshawar

Dated: 23 /01/2020

To
Mr. Mukhtiar Ahmad,
Office Assistant,

Subject: EXPLANATION.

On your arrival in the last month of 2018, the official environment of the hospital, particularly the working relation of the ministerial staff has become much uncooperative, as per their genuine verbal reservations that they have been pushed aside and not involved in the official deal, rather they have been restricted in direct contact with the undersigned, so your immoral and non-cooperative attitude has deprived the official business.

2. And Whereas, it has been recorded that you are being a controlling body for the ministerial staff deliberately concealed & missed an official record, including an arrival report of a Medical Officer and show-cause notice issued by the PNRA to the undersigned regarding the lack of fitness certificate, which created an embarrassing situation.

3. And Whereas, you are being a habitual of delaying tactics in official business, has disregarded a facility owner when he demanded for rent, who ultimately approached to the court and pushed District Health Officer, Peshawar in a swamp.

4. And Whereas, you failed to facilitate the respected audit team for the year 2018-19 and did not provide the record/files handed over to you by the then Office Assistant on 22/12/2018, rather created problems for this office through deliberate hypocrisy, although provision of files and facilitation was your prime responsibility vide this office orders No. 3672-73, dated 11/10/2018, 1353-55, dated 11/03/2019 and 1601-5, dated 27/03/2019...

5. And Whereas, you did not comply with this office order No. 2000-10, dated 13/04/2019 issued on your mismanagement; however the same was substituted after your excuse and commitment through a Jirga of your colleagues.

6. And Whereas, you willfully violated office order No. 3481-89, dated 01/07/2019 regarding preparing SNE and clearance of an audit for 2018-19, but you concealed the record/files instead of producing to the audit team, nor did you call/inform the then Office Assistant to support and ultimately the audit team placed unnecessary observations without consideration with the hospital incharge.

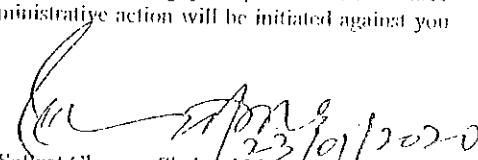
7. And Whereas, a contractor/supplier has requested several times for clearing the pending bills, but you have demanded for an amount of Rs. 0.900 million (evidence available).

8. And Whereas, although, you were asked for producing the registration book and file of a vehicle bearing registration No. 9403, but you did know nothing, although the POL bills have been cleared under your initial.

9. And Whereas, you were formally asked for producing the audit observations, but your response was disappointing and after repeated insistence, copies were retrieved from your mobile cell saved without any response given, which, no doubt shows your poor performance, insincerity and non interest in the official business.

10. And Whereas, the ministerial staff submitted in writing about the office order signed by the then MS bearing your initial regarding the job distribution; but they have not been communicated for compliance, so they feel hard when asked by the undersigned regarding any official assignment.

11. And Now, Therefore, keeping in view the above factual allegations relevant to your failure in assigned job and official responsibilities, you are given an opportunity for explaining in writing your position within three working days; otherwise in case of no or unsatisfactory response administrative action will be initiated against you under the E&D rules, Khyber Pakhtunkhwa.


MS-Seqwat Ghayour Shaheed Memorial Hospital &
Deputy District Health Officer, Town-I, Peshawar.

No. /MS-SGSMH/DDHO-T-I/Peshawar Dated: /01/2020

Copy for information to the:

- 1) Director General Health Services, Khyber Pakhtunkhwa.
- 2) Deputy Commissioner, Peshawar.
- 3) District Health Officer, Peshawar.
- 4) Accountant this office.

Received to
on 24/1/2020

MS-Seqwat Ghayour Shaheed Memorial Hospital &
Deputy District Health Officer, Town-I, Peshawar.



**OFFICE OF THE MS SIFWAT GHAYUR SHAHEED
MEMORIAL HOSPITAL AND DEPUTY DISTRICT HEALTH
OFFICER, TOWN-I, PESHAWAR**

091-2260343

OFFICE ORDER

Mr. Mukhtiar Ali, Office Assistant attached to the office of the undersigned is hereby directed to hand over the charge of complete official records, including movable/immovable assets in his office and under his control, to Mr. Irfan Haider, Junior clerk, in the presence of the following two members committee/witnesses, with immediate effect in the larger public interest.

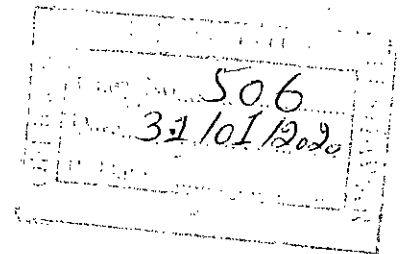
- | | |
|------------------------|----------------------------|
| 1. Mr. Wahid Gul | Senior Clinical Technician |
| 2. Mr. Muhammad Danish | DHIS Data Assistant |

.....SD.....
MS-Sifwat Ghayur Shaheed Memorial Hospital &
Deputy District Health Officer, Town-I, Peshawar.

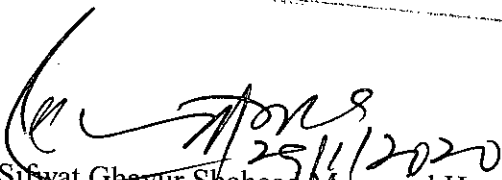
No. 482-85 /MS-SGSMH/DDHO-T-I/Peshawar Dated: 29 /01/2020

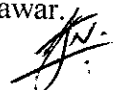
Copy for information to the:

- 1) Director General Health Services, Khyber Pakhtunkhwa.
- ✓ 2) District Health Officer, Peshawar.
- 3) Accountant this office.
- 4) Officials concerned for compliance.



Seen
Subl Dan
DHO


MS-Sifwat Ghayur Shaheed Memorial Hospital &
Deputy District Health Officer, Town-I, Peshawar.





(E)

(E)

**OFFICE OF THE MS SIFWAT GHAYUR SHAHEED MEMORIAL
HOSPITAL AND DEPUTY DISTRICT HEALTH OFFICER, TOWN-I,
PESHAWAR, 091-2260343**

OFFICE ORDER

On account of submission of unsatisfactory reply to the explanation (copy enclosed), non-compliance to the office order (copy enclosed), violation of the rules 22 and 34 of the NWFP Government Servants (Conduct) Rules, 1987, being inefficient & guilty of misconduct under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, deliberately did not process the salary of a Principal Medical officer after his transfer to the SGSM Hospital and nonavailability of post of the office assistant in the budget book for the year 2019-20; Mr. Mukhtiar Ali, Office Assistant attached to the Sefwat Ghayour Shaheed Memorial Hospital, Peshawar, is hereby relieved and his carrier is placed at the disposal of the Director General Health Services, Khyber Pakhtunkhwa for further administrative action, in the public interest, with immediate effect.

THE DISTRICT	
Diary No. 847	PESHAWAR
Date 18/02/2020	
K. Date	
OFFICE USE	

/

Medical Superintendent,
Sefwat Ghayour Shaheed Memorial,
Hospital, Peshawar.

No. 753-59 /MS-SGSMH/Peshawar

Dated: 18 /02/2020

Copy for information to the:

- 1) Director General Health Services, Khyber Pakhtunkhwa.
- 2) Deputy Commissioner, Peshawar.
- 3) Accountant General Khyber Pakhtunkhwa.
- 4) District Health Officer, Peshawar.
- 5) Accountant this office to stop and recover pay he has drawn during the year 2019-20.
- 6) Mr. Irfan Haider, Junior Clerk to comply to the above quoted office order immediately.
- 7) Official concern.

/ 18/2/2020

Medical Superintendent,
Sefwat Ghayour Shaheed Memorial,
Hospital, Peshawar.

Seen
19/2/2020

(F)

DIRECTORATE GENERAL HEALTH SERVICES

KHYBER PAKHTUNKHWA PESHAWAR

E-Mail Address: nwfpdghs@yahoo.com Office Ph# 091-9210269 Exchange# 091-9210187, 9210196 Fax # 091-9210230
No. 17778 Personnel Dated: 12/10/2020

To,

Mr. Mukhtiar Ali
Office Assistant
DHO Office Peshawar.

Subject: **WARNING**
Memo:

Reference to the subject noted above.

In the light of recommendations of the Enquiry Committee regarding non-handing over of record at Sifwat Ghayur Shaheed Memorial Hospital Peshawar, you are directed to keep liaison with the staff of SGSMH Peshawar for preparation of replies of the Audit observation till the settlement of Audit Paras pertaining to your period.

You are also hereby warned to be careful, work loving & obedient to your seniors in future.

ADDITIONAL DG (ADMN)
DIRECTORATE GENERAL HEALTH
SERVICES, K.P.K PESHAWAR. ✓

12/10/2020

C.C

1. District Health Officer Peshawar.
2. M.S Sifwat Ghayur Shaheed Memorial Hospital Peshawar.

THE DHO (U)	
No.	<u>4903</u>
Date	<u>20/10/2020</u>
R. Dir.	



DIRECTORATE G HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR

E-Mail Address: nwfpdghs@yahoo.com office Ph# 091-9210269 Exchange# 091-9210187, 9210196 Fax # 091-9210230
No. _____/Personnel Dated: _____/_____/2020

To,

Mr. Mukhtiar Ali
Office Assistant
DHO Office Peshawar.

Subject: **WARNING**
Memo:

Reference to the subject noted above.

In the light of recommendations of the Enquiry Committee regarding non-handing over of record at Sifwat Ghayur Shaheed Memorial Hospital Peshawar, you are directed to keep liaison with the staff of SGSMH Peshawar for preparation of replies of the Audit observation till the settlement of Audit Paras pertaining to your period.

You are also hereby warned to be careful, work loving & obedient to your seniors in future.

ADDITIONAL DG (ADMN)
DIRECTORATE GENERAL HEALTH
SERVICES, K.P.K PESHAWAR.

C.C

1. District Health Officer Peshawar.
2. M.S Sifwat Ghayur Shaheed Memorial Hospital Peshawar.

Mukhtiar

PZ
[Signature]

998
20/10/2020

5

RECORD
dated 23/11/20
for further use

Supervisor
Shaheed Memorial
Peshawar

(H)

Peshawar Dist.

S#: 1

P Sec:004 Month:June 2020
PW6160 -MS. SIFWAT GHAYUR SHAHEED
MS SIFWAT GHAYUR SHAHEED

Pers #: 00016844 Buckle: 0
Name: MUKHTIAR ALI
ASSISTANT
CNIC No.1730112985939
GPF Interest Applied

NTN:
GPF #: JM 014643
Old #:

16 Active Permanent

PW6160 -

PAYS AND ALLOWANCES:

0001-Basic Pay	43,230.00
1001-House Rent Allowance 45%	4,091.00
1210-Convey Allowance 2005	5,000.00
1947-Medical Allow 15% (16-22)	2,370.00
2148-15% Adhoc Relief All-2013	940.00
2199-Adhoc Relief Allow @10%	633.00
2211-Adhoc Relief All 2016 10%	3,252.00
2224-Adhoc Relief All 2017 10%	4,323.00
2247-Adhoc Relief All 2018 10%	4,323.00
Gross Pay and Allowances	72,485.00

DEDUCTIONS:

IT Payable	0.00	Deducted	12,997.00	TAX:(3609)	1,123.00
GPF Balance	128,506.00			Subrc:	3,340.00
4200-Professional Tax					1,200.00
3501-Benevolent Fund					1,500.00
4004-R. Benefits & Death Comp:					650.00
Total Deductions					7,813.00
					64,672.00

D.O.B

LFP Quota:

11.08.1964

THE BANK OF KHYBER GT ROAD BRANCH RAHIM
CD5709-017

35 Years 07 Months 015 Days

S#: 2

P Sec:004 Month:June 2020
PW6160 -MS. SIFWAT GHAYUR SHAHEED
MS SIFWAT GHAYUR SHAHEED

Pers #: 00016844 Buckle: 0
Name: MUKHTIAR ALI
ASSISTANT
CNIC No.1730112985939
GPF Interest Applied

NTN:
GPF #: JM 014643
Old #:

16 Active Permanent

PW6160 -

PAYS AND ALLOWANCES:

2264-Adhoc Relief All 2019 10%	4,323.00
Gross Pay and Allowances	72,485.00

DEDUCTIONS:

IT Payable	0.00	Deducted	12,997.00		
GPF Balance	128,506.00			Subrc:	
Total Deductions					7,813.00
					64,672.00

D.O.B

LFP Quota:

11.08.1964

THE BANK OF KHYBER GT ROAD BRANCH RAHIM
CD5709-017

35 Years 07 Months 015 Days

CONFIDENTIAL

(1)



GOVERNMENT OF PAKISTAN
NATIONAL ACCOUNTABILITY BUREAU
BLOCK-III, PDA COMPLEX, PHASE-V HAYATABAD
PESHAWAR

SAY NO TO CORRUPTION

Complaint Cell

No. 32/2/1743-20/CC/NABKP217513/4442
18/ Nov, 2020

To: The Secretary
Health Department, Government of KP,
Peshawar

Subject: PROVISION OF INFORMATION

This Bureau is verifying a matter regarding Corruption and corrupt practices in District Health Office Peshawar during the period of 01-01-2015 to 31-12-2018. In this regard, attested copies of following record/information are required:

- a. Complete record of procurement of medicine and other items made by DHO Peshawar during above mentioned period, along with list of medicine got expired mentioning quantity and cost of expired medicine.
- b. Calculation and amount of applicable tax on procured medicines and other items and detail/record regarding its deduction and further deposit to government treasury.
- c. Detail list of items procured during above mentioned period still available in store and could not be utilized mentioning its cost.
- d. Complaints/Report regarding theft/non-supply of items to the stores despite completion of procurement and payment.
- e. Complete record of funds allocated for polio workers, its withdrawal from relevant head and further disbursement to the polio workers.
- f. Detail list government houses along with list of employees availing government accommodations and record regarding deduction of relevant allowances liable to be deducted in case of availing such accommodations.
- g. Personal file of Mr. Mukhtiar Ali, Office Assistant bearing CNIC 17301-1298593-9 along with posting details and assets proforma submitted by him.
- h. Detail record of complaints lodged and departmental enquiry conducted against Mr. Mukhtiar Ali, Office Assistant bearing CNIC 17301-1298593-9.
- i. Any other relevant documents

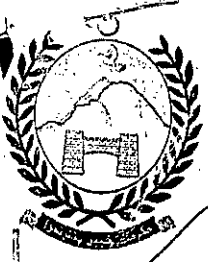
2. The certified copies of requisite information / record may kindly be furnished to Mr. Abdul Basit, DD/IO latest by 25-11-2020 through an officer who is well acquainted with facts, please.

*Estab/Accounts:
Provision of
Records*

5673
23/11/2020

[Signature]
Assistant Director (Staff)

J@



DIRECTORATE GENERAL HEALTH SERVICES KHYBER PAKHTUNKHWA PESHAWAR

E-Mail Address: nwfpdghs@yahoo.com office Ph# 091-9210269 Exchange# 091-9210187, 9210196 Fax# 091-9210230
No. 370-71 / Personnel Dated: 15 / 07 / 2021

To,

The District Health Officer
Peshawar.

Subject: **COMPLAINT/ OPEN ENQUIRY NO. 9044 DATED 27.07.2020**
AGAINST MR. MUKHTIAR ALI OFFICE ASSISTANT.

Memo:

Enclosed please find herewith a copy of Circular Officer Thana Anti-Corruption Peshawar letter PS/ACE No.5A dated 29.12.2020 which is self explanatory for further necessary action with the remarks to furnish your reply to the quarter concerned under intimation to this Directorate.

Estab / Peshawar
Endorse to Town I
DD 140
CC

THE DHO (H)	
Enquiry No. <u>370</u>	PESHAWAR
Date. <u>29/12/2020</u>	
R. Date.....	
OFFICER	

mp
15/01
ADDITIONAL DG (ADMIN)
DIRECTORATE GENERAL HEALTH SERVICES, K.P.K PESHAWAR.
10/01/2021

Circular Officer Thana Anti-Corruption Peshawar w/r to his letter referred quoted above with the remarks that there is no enquiry pending against the above named Official as per record of this Directorate.

933

(J) 1/10

27/04/2022

PS/ACE No : 5A Dated :

تھانہ انٹی کرپشن، پتھر 5 بلاک نمبر 19 سیکٹر B-2 ایشٹ RMI ہسپتال حیات آباد پشاور۔

کمپلیٹ نمبر اوپن انکوائری نمبر 9544 مورخہ 27-7-2022

برخلاف اختیار علی کلرک کے متعلق کیس نمٹانے کے لیے

بذریعہ ایڈمنسٹریٹو سوسائزٹی

بخدمت جناب ڈی جی ایچ ایف ہسپتال

مضمون۔ کہ بالا کمپلیٹ تھانہ ACE شمار میں انکوائری جاری ہے۔

- ① اختیار علی کلرک کے زیر سائبر ڈیپٹی سسر انجام دے رہا ہے مذکورہ ڈیپارٹمنٹ میں کرپشن کی کوئی انکوائری ہے یا نہیں ہے تحریری وضاحت
- ② مذکورہ اختیار علی کس نمبر وار کے والے ہے تحریری طور پر اندر دو دو روز تک تاکہ انکوائری میں آئے پیش رفت ملے

AD Mini

27/04/2022
سرکل ایفیسر

تھانہ انٹی کرپشن پشاور

نوٹ: ہر پوائنٹ پر عمل درآمد کے وقت اپنا نام، دستخط، عہدہ، تاریخ، ڈیوٹی نمبر، رابطہ نمبر ضرور لکھ کریں۔ اور دفتر کی آؤٹ آف آفیسر کے ایام میں تھانہ ڈاکو ریکارڈ بیان پیش کریں



MOST IMMEDIATE
COURT MATTER

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

NO. SOH (Lit-II)/1-3/2021
Dated Pesh: the, 11-06-2021

To

The Director General,
Health Services, Khyber Pakhtunkhwa.

Subject:- **SERVICCE APPEAL NO. 697 OF 2021 - MR. MUKHTIAR ALI**
VERSUS GOVT. OF KHTBER PAKHTUNKHWA HEALTH
DPEARTMENT & OTHERS.

I am directed to refer to the subject noted above and to enclose herewith four sets of joint Parawise comments (duly singed) by the Secretary Health with the request to submit it before the Service Tribunal Khyber Pakhtunkhwa immediately.

2- Being court matter, hence may please be treated as **MOST URGENT.**

Encls:As above.

Section Officer (Lit-II)

Endst. No. and date even:

Copy forwarded for information to :-

1. Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
2. PS to the Secretary Health Department, Khyber Pakhtunkhwa.
3. PA to Deputy Secretary (Litigation) Health Department Peshawar.

Section Officer (Lit-II)

24/6/21
BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 697/2021

Mukhtiar Ali..... Appellant

Versus

Govt. of Khyber Pakhtunkhwa and others..... Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Respectfully Sheweth:

Preliminary Objections:-

1. That the Appellant has got neither cause of action nor did locus standi to file the instant Appeal.
2. That the Appellant has filed the instant Appeal just to pressurize the respondents.
3. That the instant Appeal is against the prevailing Law and Rules.
4. That the Appeal is not maintainable in its present form and also in the present circumstances of the issue.
5. That the Appellant has filed the instant Appeal with mala-fide intention hence liable to be dismissed.
6. That the Appellant has not come to the Tribunal with clean hands.
7. That the Appeal is time barred.
8. That the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.
9. That the instant Appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.

ON FACTS:

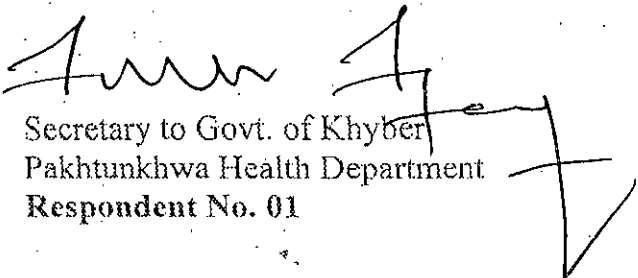
1. Pertains to record.
2. Pertains to record.
3. The Appellant was transferred by the competent Authority as per Para 10(4) of Khyber Pakhtunkhwa Civil Servant Act, 1973. It is worth mentioning that the dictum laid down by the apex court in 2017 SCMR 798 is that remaining posted on a post for specified period is not a vested right of a Civil Servant.
4. Pertains to record.
5. Pertains to record.
6. Pertains to record.
7. Pertains to record. However the appellant is not an aggrieved person as none of his vested rights has been violated by the replying respondents.

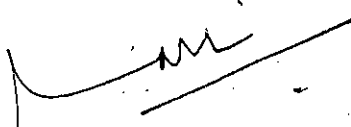
ON GROUNDS:

- A) Incorrect. He was transferred in the interest of public service by the competent authority and as per section 10 of Khyber Pakhtunkhwa Civil Servant Act, 1973: *"every civil. Servant should be posted anywhere in the Province"*.
- B) Incorrect as per dictum laid down by the apex court in 2017 SCMR 798 is that it was within the competence of the authority to transfer a civil servant from one place or post to another to meet the exigencies of service or administration.
- C) Incorrect as per paras above.
- D) Incorrect as per paras above.
- E) Detailed reply has already been furnished in preceding para. However due to suspension order of this honorable tribunal dated 09/02/2021 the same could not be filled by the competent authority.
- F) As already explained in Para-B.
- G) Incorrect. The transfer order was issued by the competent authority in the public interest.
- H) Incorrect. No blue eyed person has been posted against the post. Detail reply has been given in the paras above.
- I) Pertains to record, however it shows the conduct of the appellant towards performance of his duties.
- J) Needs no comments, being legal.

PRAYER:

It is therefore humbly prayed that on acceptance of the comments, the instant Appeal of the Appellant may very graciously be dismissed with costs.


Secretary to Govt. of Khyber
Pakhtunkhwa Health Department
Respondent No. 01


Director General Health Services,
Khyber Pakhtunkhwa.
Respondent No. 02
(Min)

Annex A

947

DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUN KHW A PESHAWAR

E-Mail Address: dgkps@yahoo.com Office Phn: 091-9210269 Exchange Phn: 091-9210187, 9210196 Fax # 091-9210230

OFFICE ORDER

In pursuance of the Khyber Pakhtunkhwa Service Tribunal order sheet in Service Appeal No. 696/21 dated 01.02.2021, the transfer order in respect of Mr. Mukhtiar Ali Office Assistant from DHO office Peshawar to Govt. Naseerullah Khan Babar Memorial Hospital Peshawar issued vide this Directorate office order bearing Endst: No. 134467-751/Personnel dated 29.10.2020 is hereby suspended till further order.

Sd/xxxxxxxxx

DIRECTOR GENERAL HEALTH
SERVICES, K.P, PESHAWAR.

Dated 09/10/2021.

No. 1145-49/Personnel

Copy forwarded to the:-

1. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. DHO Peshawar.
3. MS. Govt. Naseerullah Khan Babar Memorial Hospital Peshawar.
4. Assistant Director (Lit) DGHS Office Peshawar.
5. Official Concerned.

For information and necessary action.

Sd
ADDITIONAL DG (ADMN)
DIRECTORATE GENERAL HEALTH
SERVICES, K.P PESHAWAR. 13/10/2021

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 696/2021

Mukhtiar Ali

VERSUS

Health Deptt.

**REPLY TO IMPLEADMENT APPLICATION OF
THE APPLICANT MR. NASEEM KHAN FOR
ARRAYING HIS NAME AS PRIVATE
RESPONDENT.**

RESPECTFULLY SHEWETH:

1. No comments.
2. Correct to the extent that the appellant has filed above mentioned appeal against transfer order dated 29.10.2020, whereby the appellant was transferred to DHO office to Naseerullah Khan Baber Memorial Hospital Peshawar. That transfer order was challenged by the appellant in the above instant appeal which was suspended by the Honorable Service Tribunal on 01.02.2021 and in compliance of the suspension order dated 01.02.2021, the appellant took over charge on the post of Office Assistant in DHO Office and is not vacant. Moreover the applicant namely Naseem Khan has no cause of action to file the instant application for impleadment for his name in the penal of respondents in the instant appeal as the in impugned order dated 29.10.2020, the name of the applicant was not present and the applicant will not suffer by setting aside or maintaining that impugned transfer order by this Honourable Tribunal.
3. Correct to the extent that the order dated 29.10.2020 was suspended by this Honorable Court on 01.02.2021 which needs to be continued as the impugned order dated 29.10.2020, the appellant was transferred against the vacant post of Superintendent on OPS but that post was filled by posting of Dr. Syeda Alia Tariq WMO BPS-17.
4. Incorrect. The name of applicant was not mentioned in the impugned order dated 29.10.2020 and has no cause of action,

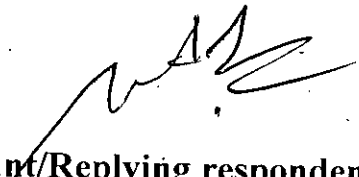
P.O.F.

24/06/21

therefore, the appellant did not make the applicant as a party in the panel of respondents in the instant appeal.

5. Incorrect. No valuable rights of the applicant is attached to the instant appeal as the applicant has no cause of action, therefore, there is no need to be impleaded the applicant as private respondent in the panel of respondents in the instant appeal.
6. Incorrect. No valuable rights of the applicant is attached to the instant appeal as the applicant has no cause of action therefore there is no need to be impleaded the applicant as private respondent in the panel of respondents in the instant appeal.

It is, therefore, humbly prayed that on the basis of above submission, the application of the applicant namely Mr. Naseem Khan may kindly be dismissed.

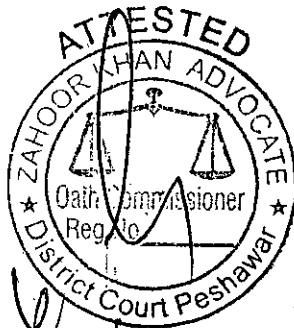

Appellant/Replying respondent
Mukhtiar Ali

Through:-

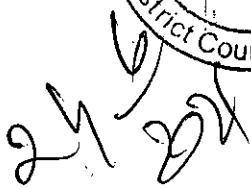

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT,

AFFIDAVIT:

It is solemnly affirm that the contents of reply to application are true and correct and nothing has been concealed from Hon'able Tribunal.




DEPONENT



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No. 696/2021.

Mukhtiyar Ali

Versus

Health Depatt:


**REPLY TO IMPLEADMENT APPLICATION OF THE APPLICANT MR
NASEEM KHAN FOR ARRAYING HIS NAME AS PRIVATE
RESPONDENT.**

PRELIMINARY OBJECTIONS.

1. The appellant has neither cause of action nor locus standi to file the instant appeal.
2. The appellant has not come to the Tribunal with clean hands.
3. That the Appeal is time barred.
4. That the appellant has been estopped by his own conduct to file the instant Appeal.

RESPECTFULLY SHEWETH:-

1. No comments.
2. Correct to the extent that the appellant has filed above mentioned Services Appeal against his transfer order dated 29-10-2020, whereby the appellant was transferred from District Health Office Peshawar to Naseer Ullah Khan Babar Memorial Hospital Peshawar by the competent authority as per para 10 (4) of Khyber Pakhtunkhwa civil service Act.1973.
3. No comments, already discussed in above para.
4. No comments on behalf of answering defendants.
5. As the newly fresh applicant (Mr Naseem Khan Office Assistant Director General Health Services, Merged Area Peshawar) has no cause of action, therefore no need to be impleaded in the instant appeal .
6. Already explained in para no 5.

P.O.F.

05/07/21


Respondent No. 01, 02 & 03
Through
District Health Officer Peshawar,



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 1022 /ST

Dated: 13-5- /2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To

The Director General Health Services,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 696/2021 MR. MUKHTIAR ALI & 1 OTHER.

I am directed to forward herewith a certified copy of Judgement dated 22.04.2022 of passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR