

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 7035/2021

BEFORE: KALIM ARSHAD KHAN --- CHAIRMAN
FAREEHA PAUL --- MEMBER(E)

Dr. Ejaz Ahmed, District Surgeon Category "C" Hospital,
Karak.....(*Appellant*)

VERSUS

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

Present:

Ali Gohar Durrani, Advocate --- For Appellant.

Asif Masood Ali Shah,
Deputy District Attorney --- For respondents.

Date of Institution.....07.07.2021
Date of Hearing.....12.05.2022
Date of Decision.....24.05.2022

Service Appeal No. 7402/2021

Dr. Rizwan Ahmad son of Sanat Khan, Chief District Surgeon (BS-20), DHQ, Hospital, Karak.....(*Appellant*)

VERSUS

1. **The Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.**
2. **Govt: of Khyber Pakhtunkhwa through Secretary Health Department, Civil Secretariat, Peshawar.**
3. **Director General Health Services, Health Department, Govt: of Khyber Pakhtunkhwa main Warsak road, Peshawar...(*Respondents*)**

Present:

Hidayatullah Khattak, Advocate --- For Appellant.

Asif Masood Ali Shah,
Deputy District Attorney --- For respondents.

Date of Institution.....13.09.2021
 Date of Hearing.....12.05.2022
 Date of Decision24.05.2022

Service Appeal No. 7402/2021

Muhammad Nasir, son of Muhammad Tahir (late), Surgical Specialist, DHQ, Teaching Hospital KDA, Kohat.....(*Appellant*)

VERSUS

1. **The Government of Khyber Pakhtunkhwa**, through Chief Secretary, Civil Secretariat, Peshawar.
2. **The Health Department**, Govt: of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
3. **Director General Health Services**, Govt: of Khyber Pakhtunkhwa, Directorate Health, Peshawar.....(*Respondents*)

Present:

Tariq Altaf, Advocate --- For Appellant.
 Asif Masood Ali Shah,
 Deputy District Attorney --- For respondents.

Date of Institution.....14.09.2021
 Date of Hearing.....12.05.2022
 Date of Decision24.05.2022

Service Appeal No. 7447/2021

Dr. Tahir Saeed S/O Ghulam Sardar, District Surgeon, THQ Hospital, Banda Daud Shah, Karak.

.....(*Appellant*)

VERSUS

1. **The Government of Khyber Pakhtunkhwa**, through Chief Secretary, Civil Secretariat, Peshawar.
 2. **The Health Department**, Govt: of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
 3. **Director General Health Services**, Govt: of Khyber Pakhtunkhwa, Directorate Health, Peshawar.
-(*Respondents*)

Present:

Tariq Altaf, Advocate --- For Appellant.
 Asif Masood Ali Shah,
 Deputy District Attorney --- For respondents.


Date of Institution.....24.09.2021
 Date of Hearing.....12.05.2022
 Date of Decision24.05.2022

Asif Masood Ali Shah
 24.05.22

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN:- Through this single judgment the instant service appeal as well as the connected service appeal No.7402/2021 titled "*Dr. Rizwan Ahmad-vs-Govt: of Khyber Pakhtunkhwa and others*", service Appeal No. 7412/2021 titled "*Muhammad Nasir-vs- Govt: of Khyber Pakhtunkhwa and others*" and service appeal No.7447/2021 titled "*Dr. Tahir Saeed-vs- Govt: of Khyber Pakhtunkhwa and others*" are being decided as all the four appeals are preferred against notification No.SOH-I/HD/3-5/2020 dated 03.03.2021 vide which all the appellants were transferred from different stations.

02. According to service appeal No. 7035/2021 of Dr. Ijaz Ahmad, the appellant was appointed as Medical Officer (BS-17) in the respondent-department on 04.03.2003; that later on he was appointed as District Specialist Surgery (BS-18) on the recommendations of the then NWFP Public Service Commission vide order dated 10.09.2008; that based on a complaint against the appellant, an enquiry committee was constituted by the Director General Health Services vide letter No. SOH-I/HD/3-5/2018 dated 23.05.2019, wherein the enquiry officer recommended the punishment of censure/warning with the direction to improve his communication skills, documenting records wherever necessary and explaining prognosis of the patient to their relatives/attendants. That the respondent-department constituted yet another enquiry committee headed by


23.05.22

the Commissioner Bannu Division vide notification No.SOE-1/HD/1-45/2019 dated 01.07.2020 and the enquiry committee recommended minor punishment. That on the basis of the recommendation of the enquiry committee, the appellant was transferred vide impugned order dated 03.03.2021. That feeling aggrieved from the impugned order, the appellant filed representation on 05.03.2021, which was not responded within the statutory period, hence, the instant service appeal filed on 07.07.2021.

03. Arguing the appeal, learned counsel for the appellant contended that the appellant had not been treated in accordance with law and rules. He further contended that the law did not recognize transfer as a punishment. That it was a concept alien to the Civil Servants Act, 1974, therefore, transferring the appellant as a punishment was illegal. He requested that the appeal might be allowed.

04. In service appeal No. 7402/2021 of Dr. Rizwan Ahmad it was contended that the appellant was transferred vide impugned order dated 03.03.2021 from District Headquarters(DHQ) Hospital Karak, to D.H.Q Hospital Kohat as Chief District Surgeon against the vacant post. That the said transfer order was issued on the basis of an enquiry conducted against of his junior colleague. That the appellant preferred departmental appeal to the appellate authority on 02.04.2021, however, that was not responded within the stipulated statutory period, hence, the instant service appeal filed in this Tribunal on 13.09.2021.

Dr. Rizwan Ahmad
24.05.22

05. Learned counsel for the appellant argued that the impugned transfer order dated 03.03.2021, passed by the respondents was patently illegal, against facts and evidence. That the appellant had been punished for the alleged wrong act of another junior surgeon and the inquiry committee never associated the appellant in the proceedings; that there was no complaint against the appellant and punishment of the appellant for an offence which he had not committed was against law, justice equity and procedure, hence the impugned order is liable to be set aside.

06. According to Service Appeal No. 7447/2021, Dr. Tahir Saeed was transferred from DHQ Hospital Banda Daud Shah, Karak to THQ Hospital Lakki Marwat as District Surgeon (BS-20) vide impugned transfer order dated 03.03.2021, against which he preferred departmental appeal which was not responded within the statutory period, hence, the instant service appeal on 24.09.2021. That the transfer order was issued on the basis of an enquiry conducted against his junior colleague.

07. Learned counsel for the appellant further contended that the impugned transfer order dated 03.03.2021 passed by the respondents was patently illegal, against facts and evidence and that the appellant had never been associated with the enquiry proceedings.

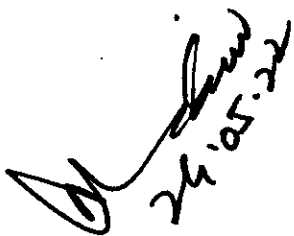
08. In service appeal No. 7412/2021 of Muhammad Nasir, it was alleged, he was transferred from the DHQ Hospital Kohat to

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24.05.22

the DHQ Hospital Karak as Chief District Specialist (BS-20) vide impugned transfer order dated 03.03.2021, against which he preferred departmental appeal, which was not responded within the statutory period, hence, the instant service appeal on 14.09.2021.

09. Learned counsel for the appellant contended that on the recommendation of an inquiry conducted against junior colleague of the appellant, the respondents had illegally and with *malafide* issued the impugned notification against the law and that the appellant had never been associated with the enquiry proceedings.

10. Learned Deputy District Attorney, on the other hand, vehemently argued that the appellant (Dr Ijaz Ahmad) was recommended for minor punishment by the inquiry committee, however, no such penalty was imposed on him. He further argued that under Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, every civil servant was to serve at the pleasure of the authority anywhere in the Province. That the impugned notification dated 03.03.2021 had been issued in the best public interest and was thus not open to any exception. He referred to the judgment of the august Apex Court reported as 2021 SCMR 1064, wherein it was held that transfer of an employee/public servant fell within the ambit of "terms and conditions" of service, which included transfer and posting. He went on saying that the transfer and posting were part of service and it was for the authority to determine where services of any

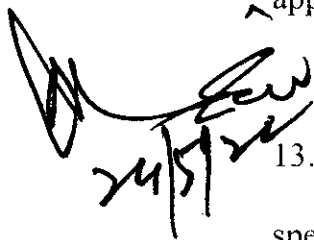

24.05.22

staff member were required. He, therefore, requested that the instant appeal as well as connected appeals might be dismissed.

11. The appellant (Dr Ijaz Ahmad) was posted as District Specialist in the Category "C" Women and Children Hospital, Karak vide notification No. SOH-II/HD/7-53/2018 dated 01.01.2019 as such he spent more than two years there. Similarly, appellant of appeal No. 7402/2021 titled Dr. Rizwan Ahmad was posted as Chief District Surgeon in the DHQ Hospital Karak, appellant of appeal No. 741/2021 titled Dr. Muhammad Nasir was posted as Chief District Surgeon in the DHQ Hospital Kohat and appellant of appeal No. 7447/2021 titled Dr. Tahir Saeed was posted as District Surgeon in the THQ Hospital Banda Daud Shah, Karak vide notification dated SOH-I/HD/7-53/2018 dated 30.05.2018.

12. Regarding Dr. Ijaz Ahmad he has not only spent more than two years at the station from where he was transferred but also his transfer was made as a result of enquiry and, therefore, the authority deemed it appropriate to post him out thus his appeal has no merit.

13. As regards the connected appeals, the appellants have spent more than the normal tenure at the stations and, therefore, their posting order being within the competence of the authority cannot be termed to be otherwise especially when they had completed their normal tenure at the station. After normal tenure all the appellants appear to get benefits from the spouse policy

 24/5/22

whereas being civil servants' spouse can be transferred to the station where the appellants were transferred after completion of the normal tenure. Unnecessary interference in the posting/transfer by the Tribunal may create disturbance in the discipline of the department yet in appropriate and justified cases it may be done.

14. The august Supreme Court of Pakistan in a case reported as 2017 SCMR 798 titled "*Fida Hussain Shah and others versus Government of Sindh and others*" observed that:

"15. We believe that the term 'transfer' has been used with posting in section 10 of the Civil Servants Act, 1973, which is reproduced as under:

"10. Posting and transfer:- Every civil servant shall be liable to serve anywhere within or outside Pakistan, in any [equivalent or higher] 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;

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region;

Provided further that, where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favorable than those to which he would have been entitled if he had not been required to serve."

16. From the above, the following inference can be drawn:

i. It is within the competence of the authorities to transfer a civil servant from one place or post to another to meet the exigencies of service or administration; provided his terms and conditions of service are not adversely affected;

ii. A civil servant has no vested rights to claim posting or transfer to any particular place of his choice,

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24/5/22

nor has he any right to continue to hold a particular post at a particular place;

iii. His transfer and posting is limited to the given tenure, or at the pleasure of the competent authorities;

iv. Normally, he is not required to acquire any specialized skill or professional training in order to serve at the new post or place;

v. His seniority and progression of career in terms of promotion and other benefits of the service are not affected by the transfer and he remains pegged to his batch or group to which he was initially appointed after completing the required common and specialized trainings and after passing the required departmental examinations conducted by the FPSC;

vi. He is posted and transferred routinely in the same grade or scale that he possesses in his service or group; unless the rule requires so or allows so."

15. In all the appeals, the appellants have urged that they had been transferred on administrative grounds. It is in this respect observed that in the above ruling the august Supreme Court of Pakistan, has held that transfer could also be made on administrative grounds. Therefore, all these appeals do not merit acceptance and are accordingly dismissed. Costs shall follow the event. Consign.

16. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 24th day of May, 2022.*



(KALIM ARSHAD KAHN)
CHAIRMAN



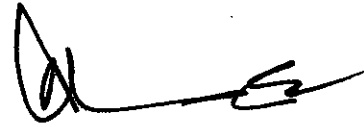
(FAREEHA PAUL)
MEMBER(E)

ORDER

24th May, 2022 Counsel for the appellant present. Mr. Asif Masood Ali Shah,
Deputy District Attorney for respondents present.

Vide our detailed judgement of today placed on file (containing 09 pages), the appellants have urged that they had been transferred on administrative grounds. It is in this respect observed that in the above ruling the august Supreme Court of Pakistan, has held that transfer could also be made on administrative grounds. Therefore, all these appeals do not merit acceptance and are accordingly dismissed. Costs shall follow the event. Consign.

Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 24th day of May, 2022.



(KALIM ARSHAD KHAN)
CHAIRMAN



(FAZEEHA PAUL)
MEMBER(E)

10.05.2022

Mr. Ali Gohar Durrani, Advocate for the appellant present.
Mr. Asif Masood Ali Shah, Deputy District Attorney for the
respondents present.

File to come up alongwith connected appeal No. 7402/2021
titled Dr. Rizwan Ahmad, before the D.B for order on 12.05.2022.



(Fareeha Paul)
Member (E)



Chairman

12th May, 2022

Counsel for the appellant present. Mr. Asif Masood Ali Shah,
DDA for the respondents present.

On 10.05.2022, learned DDA has concluded his arguments,
while learned counsel for the appellant requested to properly assist
the court. Today he concluded his arguments. To come up for
order/consideration alongwith connected appeals on 24.05.2022
before this D.B.


(Fareeha Paul)
Member(E)


(Kalim Arshad Khan)
Chairman



17.02.2022

The Hon'ble Chairman of the Council is directed to refer the case to the D.B on 09.03.2022 for the same as before.



09.03.2022

Due to retirement of the Hon'able Chairman, the case is adjourned to 18.04.2022 for the same as before.



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18.04.2022

Learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General alongwith Safiullah, Focal Person for the respondents present and submitted reply/comments, which are placed on file. To come up for arguments before the D.B on 10.05.2022. The appellant may submit rejoinder within a fortnight, if so advised. The operation of the impugned order to the extent of appellant shall remain suspended till next date.

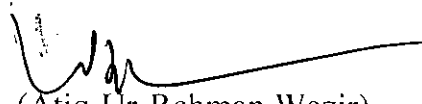


Chairman

09.01.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, AAG for respondents present.

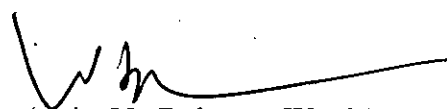
Reply/comments on behalf of official respondents are still awaited. Learned AAG sought time for submission of reply/comments. Last opportunity is granted to respondents to furnish reply/comments on or before next date, failing which their right to submit reply/comments shall be deemed as struck off by virtue of this order. To come up for arguments before the D.B on 26.01.2022. The operation of impugned order to the extent of appellant shall remain suspended till next date.


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

26.01.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Jaffar Ali, Assistant for respondents present.

Reply/comments on behalf of respondents are still awaited. Representative of respondents requested for time to furnish reply/comments. Granted. To come up for reply/comments before the S.B on 17.02.2022. The operation of the impugned order to the extent of appellant shall remain suspended till next date.



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

11.08.2021

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

A Request for adjournment was made on behalf of appellant; granted. To come up for arguments on 13 / 12 /2021 before D.B. The operation of impugned order to the extent of appellant shall remain suspended till next date.


(Rozina Rehman)
Member (J)


Chairman

13.12.2021

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG for respondents present.

Written reply/comment on behalf of respondent not submitted. Learned AAG seeks time to contact the respondents for submission of written reply/comments. Granted but as a last chance. To come up for written reply/comments on 04.01.2022 before S.B. The operation of impugned order to the extent of appellant shall remain suspended till next date.


(MIAN MUHAMMAD)
MEMBER (E)

19.07.2021

Appellant present through counsel.

Preliminary arguments heard. Record perused.

The appellant has impugned the order dated 03.03.2021 whereby he has been transferred from the Category-C Hospital Karak to D.H.Q Hospital Chitral against the vacant post. Subject to all just and legal objections including limitation, this appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 11 / 08 / 2021 before D.B.

An application has been submitted alongwith the memorandum of appeal seeking ad interim relief for suspension of the impugned order to the extent of appellant. Notice of the application be given to the respondents for the same date as already fixed. The operation of impugned order to the extent of appellant shall remain suspended till next date.

Appellant Deposited Security & Process Fee

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27/7/21

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(Rozina Rehman)
Member (J)

19.07.2021

~~Appellant present through counsel.~~

~~Kal... .. Additional Ad... .. General Job~~

~~Respondents present.~~

~~A request for adjournment was made on behalf of appellant, granted for non-upt for arguments on 11 / 08 / 2021 before D.B. The operation of impugned order to the extent of appellant shall remain suspended till next date.~~

~~(Rozina Rehman)
Member (J)~~

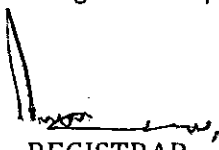

~~Signature~~

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7035 /2021


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	13/07/2021	<p>The appeal of Dr. Ijaz Ahmad resubmitted today by Mr. Ali Gohar Durrani 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>19/07/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Dr. Ejaz Ahmad District Surgeon Cat "C" Hospital Karak received today i.e. on 07.07.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Law under which appeal is filed is wrong.

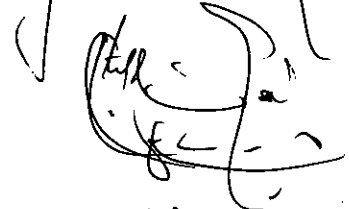
No. 1178 /S.T,

Dt. 08/07 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Ali Gohar Durrani Adv. Pesh.

Appeal has been rightly filed under Section 49 of the KP Service Tribunal Act, 1974. This is the primary law that regulates. Both the objections are unfounded and therefore the case be fixed for preliminary hearing at the earliest.



12/07/2021

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Appeal No. _____ 2021

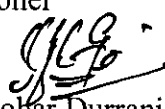
Dr. Ijaz Ahmad Versus.....Government of KPK and others

I N D E X

S.NO.	Description	Annexure	Page No.
1.	Appeal		1 - 5
2.	Affidavit		6
3.	Memo of Address		7
4.	Copy of Initial Appointment Orders	A	8
5.	Copy of the Orders as DSS (BPS-18)	A/1	9
6.	Copy of the Orders as SMO (BPS-18)	A/2	10
7.	Copy of Appointment of Dr. Tahira	A/3	11
8.	Copy of the First Inquiry Report	B	12 - 16
9.	Copy of the De-Novo Inquiry Committee	C	17 - 20
10.	Copy of the Transfer Order	D	21 - 22
11.	Copy of the Relevant Documents in respect of the High Court and Representation	E	23 - 37
12.	Vakalat Nama		38

Through

Petitioner


Ali Gohar Durrani
Advocate High Court

①

IN THE
HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL
PESHAWAR

Appeal No. 7035/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6827

Dated 07/7/2021

Dr. Ejaz Ahmed District Surgeon Cat "C" Hospital, Karak.
..... Appellant

Versus

1. The Government of Khyber Pakhtunkhwa,
Through Chief Secretary to the Government of Khyber Pakhtunkhwa,
Peshawar.
2. The Health Department, Government of Khyber Pakhtunkhwa,
through Secretary to the Government of Khyber Pakhtunkhwa, Health
Department, Civil Secretariat Peshawar.
3. Director General,
Health Services, Health Department, Government of Khyber Pakhtunkhwa.
..... Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA Service Tribunal's ACT, 1974 READ WITH ALL OTHERS LAW ENABLING JURISDICTION OF THIS HONORABLE TRIBUNAL UNDER ARTICLE 212 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973. TO WITHDRAW THE TRANSFER ORDERS OF THE APPELLANT DATED 03-03-2021 AND HE BE ALLOWED TO CONTINUE HIS SERVICES AS THE DISTRICT SURGEON AT THE CAT "C" HOSPITAL ALONGSIDE HIS SPOUSE.

RESPECTFULLY SUBMITTED:

The Appellant most earnestly request to submit as under:

BRIEF FACTS:

1. That the Petitioner joined the Health Department of Khyber Pakhtunkhwa Government in the year 2003 as Medical Officer (BS-17) after proper competitive selection process. Subsequently the petitioner was appointed as District Specialist Surgery (BS-18) on the recommendations of the then NWFP Public Service Commission. The recent most posting of the Petitioner was as District Surgeon at Cat "C" hospital Karak.
Copy of the Initial Appointment Orders are Annex-A.
Copy of the Orders as DSS (BS-18) are Annex-A/1.
Copy of the orders as SMO (BS-18) are Annex-A/2.
2. That the appellant has been performing his duties quite diligently and with utmost dedication since his initial appointment.
3. That the appellant attained his MBBS degree in the year 1996, and got qualification of FCPS surgery in the year 2002, needless to mention

Filed to-day

Registrar
07/07/2021

Re-submitted to-day
and filed.

Registrar
13/7/2021

that the qualifications supra are duly registered with the Pakistan Medical & Dental Council (now Pakistan Medical Commission).

4. That the appellant's spouse namely Dr. Tahira Rehman, is also a qualified surgeon and is working as District Gynecologist at Cat-"C" City Hospital Karak. The appellant and his spouse namely Dr. Tahira Rehman have been stationed at the same hospital for almost two years.

Copy of appointment of Dr. Tahira is Annex-A/3.

5. That based on a complaint against the petitioner, an inquiry committee was constituted by the Director General Health Services vide Letter No. SOH-I/HD/3-5/2018 dated 23-05-2019. The committee was headed by the Additional DG Health Services. The inquiry committee however recommended that a specialist needs to be added in the panel therefore another inquiry be conducted on the subject. It is with reverence stated that the said inquiry report or the constitution of the inquiry documents have not been provided to the petitioner.
6. That in the light of aforementioned an inquiry committee was constituted vide Notification No. SOH-I/(HD)3-59/Vol-I dated 15-10-2019. The said inquiry committee comprised of four members headed by the Director DHIS, Health Directorate. The petitioner joined the inquiry proceedings, which were held at the Hayatabad Medical Complex. The said inquiry committee issued its inquiry report (hereinafter first inquiry report) recommended issuance of censure/warning with the direction to improve his communication skills and documenting records wherever necessary. It is pertinent to mention herein that the petitioner is only in possession of the signed inquiry report, without any annexures/enclosures, which are in possession of the respondents and are not handed over to the petitioner, despite repeated requests. It is also important to state that the said inquiry report also wasn't shared with the petitioner officially.

Copy of the first inquiry report is Annex-B.

7. That in the scheme of things provided under the Civil Servants Employees Disciplinary and Efficiency Rules, 2011, the petitioner should have been issued a censure and the matter closed. However, that wasn't to be, as the Health Department constituted yet another inquiry headed by the Commissioner Bannu Division and having one other member vide Notification No. SOE-1/HD/1-45/2019 dated 01-07-2020. This committee also issued their inquiry report (hereinafter de-novo inquiry). The de-novo inquiry report in total negation of the first inquiry report whereby only warning/censure was recommended.

Copy of the de-novo inquiry committee is Annex-C.

8. That the de-novo inquiry in violation of all the norms of justice and fair-play issued the said report. The report amongst many other things adopted a new and novel method of punishment in form of transfer of the petitioner. It also recommended the infliction of minor punishment on the petitioner for "oversight/lapse". Clearly establishing that the petitioner did no such thing which warrants any imposition of penalty.
9. That the de-novo inquiry in violation of all the norms of justice and fair-play issued the said report. The report amongst many other things adopted a new and novel method of punishment in form of transfer of the petitioner. It also recommended the infliction of minor punishment on the

petitioner for "oversight/lapse". Clearly establishing that the petitioner did no such thing which warrants any imposition of penalty. The appellant was transferred vide transfer order dated 03-03-2021 to District Chitral.

Copy of the transfer order is Annexure-D

10. That the law recognizes no punishment in form of a transfer, which is what, has been done with the appellant.
11. That the fact of the matter is that the appellant did no wrong, and he is still being made to suffer that also through the novel mode of transfer. As transfer cannot be inflicted as a punishment. And when there is a spouse in government service of the same government and same district, then it is the responsibility of the Government to ensure that the spouses stay at the same station, if not the same station at least the same district, provided there is a vacancy. The travesty of justice in the instant case is that the post of the appellant from which he has been transferred is left to be vacant. How can the same be allowed to be kept vacant to the detriment of the appellant is something which the appellant isn't privy to. However, it is worth mentioning that it is the bounden duty of the Government functionaries to act in accordance with the law and ensure that no violation of the law takes place. The violation of the spouse policy clearly is illegal.
12. That the posting to Chitral is clearly unprecedented as the appellant is made to be work away from his spouse.
13. That the leaving of the posting at Cat "C" Hospital vacant through the transfer of the appellant is in itself against public interest for the people of Karak.
14. That the principles of natural justice and that of the law, rules and policy dictates and require that the appellant be allowed to work as the District Surgeon at Cat "C" Hospital, Karak, where his spouse is also currently performing her duties all diligently and with dedication.
15. That in respect of the illegality committed by the transfer orders of the appellant dated 03-03-2021, the appellant had moved a representation, but to no avail. He moved further applications/ representation however to no avail. Subsequently due to the dysfunctional-ness of the Honorable Tribunal, the Honorable Peshawar High Court Bannu Bench was approached, alongwith transfer for matters pertaining to an illegal, unlawful and without jurisdiction inquiry. The Honorable Bench was pleased to suspend all the disciplinary proceedings against the appellant. That the appellant case was subsequently fixed two times but on both occasions, the case was de-listed due to Covid-19 Pandemic. The appellant shall when the bench resumes working at Bannu, withdraw the petition to the extent of prayer for transfer. However the Appellant in respect of the transfer approach this honorable tribunal for indulgence of this tribunal amongst others on the following grounds:

Copy of the relevant documents in respect of the High Court and representation are Annex-E

4

GROUNDS:

- a. **Because** the Appellant is an aggrieved person within the meaning of Article 212 of the constitution of the Islamic Republic of Pakistan 1973.
- b. **Because** the Fundamental Rights of the Appellant have been violated in relation to Article 4, 8, 9, 18 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973. The said rights flow out of the terms and conditions of service of the appellant and this Honorable tribunal being the custodian of the Rights of Civil Servants as enshrined in the Civil Servants Act, the rules made thereunder as well as the protection afforded by the Constitution of Islamic Republic of Pakistan, 1973, is why the Appellant seeks the redress of their grievances and to bring to an end the ordeal the Appellant is going through due to the illegal, unlawful and unjust acts and inaction of the Respondents.
- c. **Because** the violation of the spouse policy also goes in straight conflict with judgments of the superior courts reported in:

2011 PLC (cs) 592 Lahore

2003 PLC (cs) 1322 Lahore

2015 PLC (cs) 1215 Balochistan Service Tribunal

2014 PLC (cs) 1032 Karachi High Court Sindh

2004 PLC (cs) 622 Lahore High Court

- d. Because the law doesn't recognize transfer as a punishment. This is a concept alien to the Civil Servants Act 1974, the rules made thereunder. Therefore transferring petitioner as a punishment is illegal.
- e. Because the Appellant has been discriminated under the law. The said deviation and negation is unwarranted and not recognized by the law.
- f. **Because** the Rights of the Appellant are secured under Article 8, and the entirety of Part II of the Constitution of the Islamic Republic of Pakistan, and its redress falls solely within the ambit of Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973.
- g. **Because** the Appellant have not been treated in accordance with law, and their right secured and guaranteed under Law and Constitution have been violated.
- h. **Because** the Appellant has suffered for no fault of their own and the entire premise of the case is based on the illegality of the respondents to the complete detriment of the Appellants.

5

- i. **Because** the deviation from settled law and adopting the novel principles of "inclusion" which aren't recognized by the Constitutional law nor the services law of the country is clearly in disregard of the law and the dictums of the Honorable Superior Courts of Pakistan.
- j. Because the Appellant has served the department with utmost honesty and clarity and must not be deprived of their due rights.
- k. Because the Respondents cannot be allowed under the law to pass any illegal order, as valuable Rights of the Appellants are involved, which are guaranteed under the Constitution of Islamic Republic of Pakistan 1973.
- l. Because the decisions of the provincial government by transferring the appellant by order dated 03-03-2021 is illegal, unlawful and without lawful authority.
- m. Because the order dated 03-03-2021 is vindictive and violative upon the rights of the Appellants and is liable to be strike down.
- n. **Because** the Appellant crave for leave to add further grounds at the time of his oral arguments before this Hon'ble Court highlighting further contraventions of the provisions of the Constitution & Laws.

PRAYER:

In view of the above, it is humbly prayed that this honorable Court may graciously be pleased to withdraw the transfer orders of the appellant dated 03-03-2021 and he be allowed to continue his services as the District Surgeon at the Cat "C" Hospital alongside his spouse.

Interim Relief:

For what has been stated in the body of the writ petition, which may so kindly be read as part and parcel for the grant of the Interim relief, may it please this Honorable Court to so kindly suspend the transfer orders dated 03-03-2021 till the final disposal of the instant writ petition.


Appellant

Through


(ALICHAH Durrani)

Advocate High Court

0332-9297427

khaneliegohar@yahoo.com

Shah | Durrani | Khattak

(a registered law firm)

House No. 231-A, New Shami Road, Peshawar.

Certificate:

6

IN THE
HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL
PESHAWAR

Appeal No. _____/2021

Dr. Ejaz Ahmed

Versus.

Govt of KP and others.

AFFIDAVIT:

I, Dr. Ejaz Ahmad, District Specialist Surgery, DHQ Karak, (Petitioner) do hereby affirm on oath that the contents of the enclosed appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this honorable tribunal.

Deponent

0333-9718541

13101-6734636-5

Identified by:



Ali Gohar Durrani
Advocate High Court.



7

**IN THE
HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL
PESHAWAR**

Appeal No. _____/2021

Dr. Ejaz Ahmed Versus. Govt of KP and others.

Memo Of Address:


**Dr. Ejaz Ahmed District Surgeon Cat "C" Hospital, Karak.
..... Appellant**

Versus

1. **The Government of Khyber Pakhtunkhwa, Through Chief Secretary to the Government of Khyber Pakhtunkhwa, Peshawar.**
2. **The Health Department, Government of Khyber Pakhtunkhwa, through Secretary to the Government of Khyber Pakhtunkhwa, Health Department, Civil Secretariat Peshawar.**
3. **Director General, Health Services, Health Department, Government of Khyber Pakhtunkhwa.**

Appellant

Through


Ali Gohar Durrani
Advocate High Court.

Better copy



8

Amir A

DIRECTOR GENERAL HEALTH,
SERVICES, NWFP, PESHAWAR
No. 4545/E.I.
Dated: 04-03-2003.

NOTIFICATION:

On the 1st appointment as OC (B-17) on regular basis through NWFP PSC Dr. Ejaz Ahmed s/o Said Badshah assumed charge of his duties on MC AHQH: Parachinar on 1.2.5.(RH)

Sd/-
FOR DIRECTOR GENERAL HEALTH
SERVICES, NWFP, PESHAWAR.

To
The Manager Govt: press NWFP, Peshawar
For publication in Govt: Gazette.

No. 4546/E.I.

Copy to the:

1. Secretary Health NWFP, Peshawar.
2. DSS, FATA, NWFP, Peshawar.
3. MS AHGH: Parachinar.
4. AAO, Kurram (Original (sic) attached)
5. AE.JY, AOHR, office Peshawar.

For information and n/ action.

Sd/-
FOR DIRECTOR GENERAL HEALTH
SERVICES, NWFP, PESHAWAR

ISHAQ KHAN
3.3.3

ATTESTED

HEALTH DEPARTMENT

Dated Peshawar the 10th Sept; 2008.

9

NOTIFICATION

NO.SOH-I/IHD13-2/08. The Competent Authority, on the recommendations of NWFP Public Service Commission is pleased to order the appointment of Dr. Ejaz Ahmad S/O Sali Badshah, Senior Registrar Surgery Khalifa Gul Nawaz Hospital Bannu as District Specialist Surgery (BS-18) on regular basis and to post him against a newly created post of Distt: Specialist Surgery (BS-18) in DHQH Karak with immediate effect.

Amex

AM



2. His service will be governed under NWFP Civil Servants Act 1973 as amended vide Civil Servants (Amendment) Act-2005 and rules made there under and other relevant laws and rules.

3. He is directed to assume charge within 30 days after the issuance of this notification failing which his appointment shall be treated as cancelled.

SECRETARY HEALTH

Endst No and date even

C.C

1. Director General Health Services, NWFP, Peshawar.
2. Medical Supdt; DHQH Karak..
3. Medical Supdt; Khalifa Gul Nawaz Hospital Bannu.
4. Distt: Accounts Officer Bannu/Karak.
5. Director Recruitment, NWFP, Public Service Commission, Scouts Building Hayatabad, Peshawar.
6. Computer Programmer, Health Department.
7. P.S to Secretary Health, NWFP.
8. P.As to Addl. Secretary/Deputy Secretaries, Health Deptt.
9. Doctor concerned.
10. Personal file of the doctor concerned.

HEALTH DEPARTMENT
PESHAWAR

Signature
ISAMIN JANI

SECTION OFFICER-I

Copy available on website www.healthnwfp.gov.pk



Office
ms
09/08

ATTESTED



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A2
GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Pesh: the 1st January 2019

NOTIFICATION

No.SOH-II/HD/7-53/2018


The Competent Authority is pleased to order the transfer of Dr. Ejaz Ahmad, Dist: Specialist Surgery (BS-18) from DHQH Karak and adjusted against the vacant post of SMO (BS-18) for the purpose of drawal of pay at Category 'C' Hospital/Women and Children Hospital Karak with immediate effect in the public interest.

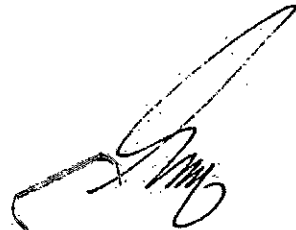
SECRETARY HEALTH DEPARTMENT

Endst No and date even

C.C

1. Director General Health Services, Khyber Pakhtunkhwa, Peshawar
2. Medical Supdt; DHQH Karak.
3. Medical Supdt; Category 'C' Hospital/Women and Children Hospital Karak.
4. Distt: Accounts Officer, Karak.
5. PS to Secretary Health Department.
6. Doctor concerned.
7. Personal file of the doctor concerned.


(Tasleem Khan)
Section Officer-I




ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Pesh: the 1st Jan; 2013

11

A/3



NOTIFICATION

No.SOH-I/(HD)3-15/2012. The Competent Authority, on the recommendations of Khyber Pakhtunkhwa Public Service Commission is pleased to order the appointment of Dr. Tahira Rehman D/O Abdur Rehman (presently working as Distt: Gynaecologist In her own pay and scale at Women and Children Hospital Karak) of Distt: Karak as Distt: Specialist Gynaecology (BS-18) on regular basis with immediate effect. She will be on probation for a period of one year extendable for another one year.

2. Consequent upon the above, she is hereby posted as Distt: specialist Gynaecology (BS-18) at Women and Children Hospital Karak.

3. Her services will be governed under Khyber Pakhtunkhwa Civil Servants Act 1973 as amended vide Civil Servants (Amendment) Act 2005 and rules made there under and other relevant laws and rules.

4. She is directed to assume charge within **30 days** after the issuance of this notification failing which her appointment shall be treated as cancelled.

SECRETARY HEALTH.

Endst No and date even

1. Director General, Health Services, Khyber Pakhtunkhwa, Peshawar.
2. Medical Supdt; Women and Children Hospital, Karak.
3. Distt: Accounts Officer, Karak.
4. Director Recruitment, Khyber Pakhtunkhwa, Public Service Commission, Peshawar.
5. Director Information Peshawar.
6. Computer Programmer Health Department.
7. Doctor concerned.
8. Personal file of the doctor concerned.

(Muhannad Jamil)
Section Officer-I

Copy available on the website www.healthkp.gov.pk

TESTED

12

Annex

(B)

INQUIRY REPORT

(S)

Subject: PROBE INTO THE ALLEGATIONS CONTAINED IN THE COMPLAINT
LODGED BY Mst. NAYYAB AFZAL, SISTER OF PATIENT YOUSAF
JAMEEL (LATE)

BACKGROUND:

Health department ordered an inquiry on the subject matter against Dr. Ijaz Ahmad, District Surgeon (BPS-18) Type C Hospital Karak with reference to letter No SOH-I/HD/3-5/2018 dated: 23-05-19 (Annex-I). This inquiry was completed by Additional DG Health Services and report was submitted to the Government wherein, it was recommended that as specialist were not included in the panel therefore an another inquiry may be conducted on the subject matter to encompass expert opinion (Annex-II along with enclosures).

AUTHORIZATION TO ENQUIRY:

Another inquiry was ordered vide Notification No. SOH-I/(HD) 3-59/Vol-I dated: 15-10-19 (Annex-III).

METHOD OF INQUIRY:

- i. Examination of record
- ii. Probe; Questions & counter questions by specialists & inquiry committee

STEP WISE APPROACH TO CONDUCT INQUIRY:

Registered letters were issued to inquiry committee as constituted by the department (Annex IV). Venue of inquiry was changed to Hayatabad Medical complex upon request of Hospital Director, HMC (Annex V); which later proved to be more beneficial as hospital record of the patient (late) related to HMC was retrieved there and then.

Directorate General Health Services


ATTESTED

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November 12, 2010 [INQUIRY REPORT]

13

Hospital records of Category C Hospital Karak were provided by the staff of same hospital accompanying Dr. Ijaz Ahmad District Surgeon (Annex-VI). Hospital record of HMC was retrieved from HMC record room (Annex-VII). Record provided by the complainant along with complaint routed by the department is at (Annex-VIII). All documents were analyzed by the committee.

Statements of the accused, Dr. Ijaz Ahmad District Surgeon, complainant, Mst. Nayab Afzal, Ward boy, surgical ward CAT C Hospital Karak, Mr. Israf Hussain, Pharmacy Technician, Mr. Bahadar Zaman of same hospital, Male Nurse, Mr. Farman Ullah, of same Hospital are at Annexure IX -XIII. Statements were cross checked with previous statements given in the foremost inquiry conducted; statements were found consistent both technically and in content though further elaborated.

DESCRIPTION:

The patient, Mr. Yousaf Jameel (Late) visited private setup (Clinic of Dr. Ijaz Ahmad) on 03-04-19 wherein, the patient was diagnosed as a patient of Cholelithiasis (gall stones). Pre-operative tests were conducted in a private laboratory in order to assess whether the patient was fit for surgery or not and then upon the request of the patient/ relatives, he was sent to CAT C hospital Karak where same surgeon performed surgery in government hospital. The patient was operated (cholecystectomy) on 04-04-19. Condition of OT in which surgery was carried out is satisfactory; few pictures of OT are at Annex XIV. As per hospital record progress was smooth and patient was discharged on will on 08-04-19. Dr. Ijaz was questioned that why he was discharged on will to which he replied that he is a family doctor of that family and has conducted many surgeries prior to this one and that he knew that they had some family issues and nobody will be available to take care of him at home; furthermore he added that he had planned to discharge the patient next day, as the patient showed normal recovery. The hospital record of the patient shows normal progress.

Inquiry committee member Dr. Ashfaq-ur Rahman, a surgeon, put many technical questions, related to surgery, to Dr. Ijaz (also a surgeon) that were important from surgery point of view e.g. pre-op measures (Response: tests were carried out), any adhesion seen during surgery - indicating difficulty in surgery right from the start (Response: not seen), output in the drain after surgery (Response: minimal), vital signs before during and after surgery (Response: normal/acceptable) etc.

Directorate General Health Services

ATTESTED

(17) (14)

November 12 2019

[INQUIRY REPORT]

(10)

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(3)

November 12, 2019 [INQUIRY REPORT]

On 10-04-19 the patient revisited Dr. Ijaz at his private setup with the complaint of left sided weakness. According to Dr. Ijaz he suspected pooling of blood in pelvis for which he admitted the patient in private setup and used ketamine (short acting anesthesia) and put a drain in pelvic area to drain the blood. Patient also visited Dr. Muhammad Yunus earlier, same day, who reported abdominal distention i.e. suspecting post operative complications including suspected internal bleeding. As mentioned earlier after giving short acting anesthesia, according to Dr. Ijaz, he put the drain and took out a stitch or 02 from the wound to assess whether there is fresh bleeding or clot in order to assess internal bleeding but to him it was not the case of internal bleeding from the place of surgery; rather complications or some other disease was initiated; as reflected in differential diagnosis, which he wrote in his statement. The procedure took around 45 minutes which according to inquiry committee member surgeon was not sufficient for re-exploration. Blood was transfused/given. As the platelets of the patient were depleting fast and the patient was not improving, he was referred to Peshawar.

HMC records, where the patient was admitted in Peshawar, shows that the patient had developed septicemia, DIC (disseminated Intra Vascular Coagulation) and MODS (multiple organs dysfunction syndrome); reciprocally his platelets and others lab tests were showing the picture of bleeding from various sites including visibly from gums and mouth - same observation was reported by Dr Ijaz before referring and similar statement was given by complainant that he was spitting blood when brought out of clinic OT few hours before coming to Peshawar. And the same was observed by the doctor who took history in HMC and has recorded during examination that there was nasal bleed and gingiva (gums); later, cause of death is recorded in death certificate as multi-organ failure, septic shock and DIC (Disseminated Intravascular coagulation). Comments on adverse effects of medication were also sought by specialist, Dr. Ashfaq ur Rahman which were not very specific as depicted of (Annex-XV)

Expert opinion of pathologist Dr. Azhar Yahqoob (member of inquiry committee) and surgeon Dr. Ashfaq ur Rehman are recorded as (Annex XVI & XVII) are noteworthy.

CONCLUSION:

It was concluded that technically Dr. Ijaz surgeon took the right steps but his communication skills (e.g. explaining the condition of patient to the relatives in an appropriate manner, taking written consent even if a procedure is small - as giving short acting anesthesia in clinic



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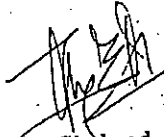
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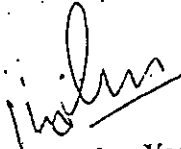
November 12, 2019 [INQUIRY REPORT]

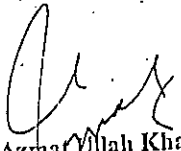
without written consent - though he claims that verbal consent was there otherwise he would not have carried out procedure of putting drain in pelvic area, then, taking patients' attendant into confidence when his situation was critical and he had multiple problems etc), and documentation skills (e.g not taking complete notes at clinic) are very poor. Furthermore, mixing up of private-setup-patient with public health facilities also created a fuss.

Hence, Dr Ijaz Ahmad should be given censure/warning with the directives to improve his communication skills, documenting records wherever necessary and explaining prognosis of the patient to their relatives/attendants.


Dr. Shahzad
Hospital Director
Hayatabad Medical Complex
(Member)


Dr. Ashfaq Ur Rehman
District Specialist Surgeon,
Naseer Ullah Baber Hosp
(Member)


Dr. Azhar Yaqoob
Pathologist (Bs-18)
Maulvi Ameer Shah Hosp
(Member)


Dr. Azmat Ullah Khan
Director DHIS,
Health Directorate
(Chairman)


ATTESTED

Annex

(17)

(C)

(S)

REPORT OF INQUIRY AGAINST Dr. IJAZ AHMAD CONSTITUTED BY HEALTH DEPARTMENT KHYBER PAKHTUNKHWA.

The Government of Khyber Pakhtunkhwa constituted the following inquiry committee to probe the charges levelled against Dr. Ijaz Ahmad, District Surgeon Type-C Hospital Karak City vide Notification No. SOE-1/HD/1-45/2019 dated 01st June, 2020 (ANNEX-I):

1. Mr. Shaukat Ali Yousufzal,
Commissioner Bannu Division
2. Dr. Muhammad Bilal,
District Surgeon, Charsadda.

The technical member of the committee Dr. Muhammad Bilal contracted COVID-19 and remained in self-quarantine for 20 days, which was communicated to the Secretary, Health Department Khyber Pakhtunkhwa with request for extension of the timeline (ANNEX-II).

The following charges have been levelled against Dr. Ijaz in the charge sheet and statement of allegations served on the accused:

- i. Poor communication skills i.e not explaining condition of the patient to the family of the patient.
- ii. Not getting written consent for administering short acting anesthesia to the patient.
- iii. Not getting written consent while putting drain in pelvic region of the patient.
- iv. Not taking relatives of the patient in confidence before carrying out surgery.

The contents of the complaint have already been probed by a 4-member committee of highly, technical, professional and senior officers of health department and on the basis of the findings and recommendations, this formal inquiry has been ordered to look into the charges levelled in the charge sheet served on Dr. Ijaz.

PROCEEDINGS:

On recovery of Dr. Bilal, District Surgeon Charsadda, the committee called Dr. Ijaz for personal hearing on dated 07/07/2020 in the office of Commissioner Bannu, Mr. Shaukat Ali Yousufzal (ANNEX-III).

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ATTESTED

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The accused was asked to explain the case before the committee and he elucidated its details in Pashtu language in a lucid and understandable manner. Then he was asked to give his written statement viz a viz the allegations, which he wrote down in his own handwriting in front of the committee (ANNEX-IV).

Record of the surgery department and of his private set up were checked and found it satisfactory. The only lapse, so identified is the failure of Dr. Ijaz in getting written consent of the family for putting drain on 8th day of the primary surgery and on 4th day of the patients discharge from the facility at his own request.

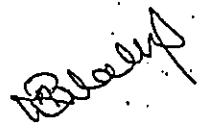
It is pertinent to mention here that during the first hearing, representative of Health department was not present, which was nominated vide Health Department Notification No. SOH-1/HD/3-5/19 dated 21/07/2020 (ANNEX-V) and the 2nd hearing of the accused officer was held in the office of Commissioner Barnu on dated 27/07/2020 in presence of the departmental representative.

FINDINGS:

The committee thoroughly inquired all aspects of the allegations and found the following viz a viz each charge/ allegation:

- i. Poor communication skills i.e not explaining condition of the patient to the family of the patient:

The committee discussed the case in detail with the accused and was asked different questions of procedures/ codes and professional competence during the discussion. The accused pleaded his case and gave satisfactory replies to the questions of the committee. The tone and way of talking of the accused was not so mumbling for understanding of the committee members. As per his discussion the accused informed the committee that he was family surgeon of the deceased and before him, he did many surgeries of the patients of his family. As for as this case is concerned, the patient's attendants were fully satisfied till discharge of the patient. When the patient was presented again with complaint, then the attendants were counselled by the surgeon that patient needs minor intervention (insertion of drain into the pelvis)




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and after counselling the patient verbally, drain was inserted into the pelvis to drain any collection.

The committee found the accused good in writing skills as well as the communication skills as he presented his case in a six-page narration on the spot.

- ii. Not getting written consent for administering short acting anesthesia to the patient:
The accused provided all record of his official and private facilities. It was observed that the same has been maintained well, except few oversights/ lapses. The major of these lapses is not taking written consent for the short acting anesthesia but instead got verbal consent of the patient's relatives. Proved.
- iii. Not getting written consent while putting drain in pelvic region of the patient:
The accused surgeon has not got written consent of the patient's relatives for surgical intervention though minor, but procedurally it was required. Proved.
- iv. Not taking relatives of the patient in confidence before carrying out surgery:
It is impossible to carry out surgery without consent of the patient and his relatives. It is a fact that Dr. Ijaz has taken the patient and his relative in confidence about the minor surgical procedure but he did not get consent in written. Partially proved.

CONCLUSION:

1. The recent unfortunate and despicable happenings in district Karak has tarnished the already damaged reputation of the sacred health profession. The professionals themselves are responsible for the blotted face of health profession. Healthy and positive competition is lifeline for development of all sectors especially health, but the professionals here compete for earnings, so, professional rivalries develop which sometimes result in unbearable events. The public is losing trust in health department and prefer to visit private set ups for their health problems.
It has been observed that strong professional rivalry exists among the District Surgeons in District Karak, which is not only affecting the reputation of the department but also results in failures in services delivery to the public.

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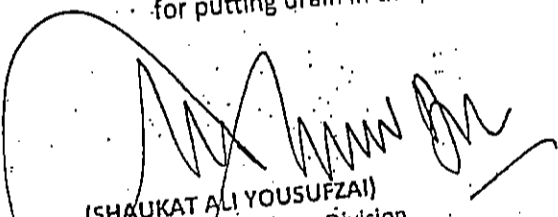
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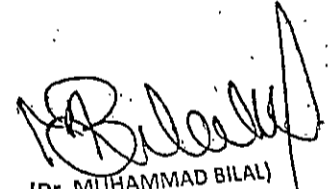
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Therefore, all or some of the district surgeons may be posted out from District Karak for the betterment of the department and public interest or at least Dr. Ijaz may be transferred to some other nearby district for putting an end to internal rivalries and departmental jealousies.

2. Among the four allegations, this committee found two allegations as proved; one as partially proved and one not proved. The proved allegations are procedural lapse on the part of the surgeon and not any professional incompetence. On the basis of findings of the 4-member committee of senior professionals, no major fault of the accused Dr. Ijaz was found in the case. However, he needs to be given minor punishment for the oversight/lapse in his professional obligations, by not taking written consent of the family for putting drain in the patient.


(SHAUKAT ALI YOUSUFZAI)
Commissioner, Bannu Division


(Dr. MUHAMMAD BILAL)
District Specialist, Charsadda


ATTESTED

Annex

D

21



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar, the 3rd March, 2021

NOTIFICATION

SOH-IHD/3-5/2020 The Competent Authority is pleased to order posting/transfer of the following doctors, in the best public interest, with immediate effect:-

S. #	NAME & DESIGNATION OF DOCTOR	FROM	TO	Remarks
1.	Dr. Rizwan Ahmad Chief District Surgeon (BS-20) DHQ Hospital Karak	DHQ Hospital Karak	DHQ Hospital Kohat as Chief District Surgeon	Against the vacant post
2.	Dr. Jamil Anwar Senior District Surgeon (BS-19) DHQ Karak	DHQ Hospital Karak	City Hospital Lakki Marwat as Senior District Specialist	Against the vacant post
3.	Dr. Tahir Saeed District Surgeon (BS-18) THQ Hospital Banda Daud Shah	THQ Hospital Banda Daud Shah	THQ Hospital, Lakki Marwat as District Surgeon	Against the vacant post
4.	Dr. Ijaz Ahmad District Specialist Surgry (BS-18) at Cat "C" Hospital Karak	Cat "C" Hospital Karak	DHQ Hospital Chitral	Against the vacant post
5.	Dr. Muhammad Nisar Chief District Surgeon (BS-20) DHQ Hospital Kohat	DHQ Hospital Kohat	DHQ Hospital karak as Chief District Specialist (BS-20)	Against the place of Dr. Rizwan
6.	Dr. Abdul Waheed Jan Senior District Specialist (BS-19) City Hospital Lakki Marwat	City Hospital Lakki Marwat	DHQ Hospital, Karak	Against the place of Dr. Jamil Anwar
7.	Dr. Arshad Aziz District Surgeon (BS-18) THQ Hospital Lakki Marwat	THQ Hospital Lakki Marwat	THQ Hospital, Banda Daud Shah	Against the place of Dr. Tahir Saeed

-SD-

Secretary to Govt. of Khyber Pakhtunkhwa
Health Department

Endst: of even No. & date:-
Copy forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa.
2. The Director General Health Services Khyber Pakhtunkhwa .
3. The Medical Superintendent/Incharge DHQ Hospital, Kohat, Karak, Banda Daud Shah & Lakki Marwat.
4. District Account Officer, Kohat, Karak, Lakki Marwat.
5. The Medical Superintendent City Hospital, Peshawar.
6. Deputy Director IT, with the request to upload the instant Notification in the official website of Health Department Govt. of Khyber Pakhtunkhwa.
7. PS to the Secretary Health Govt. of Khyber Pakhtunkhwa.
8. PA to the Deputy Secretary (E) Health Department.
9. Doctors Concerned.
10. Master file.

APPESTED

Section Officer (E-I) 03/03/2021

22



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

SOH-I/HD/3-8/2020
Dated Pesh: the 03rd March, 2021

To

The Director General Health Services,
Khyber Pakhtunkhwa, Peshawar.

SUBJECT:- DISCIPLINARY ACTION AGAINST DR. IJAZ AHMAD,
DISTRICT SURGEON (BS-10) TYPE-C HOSPITAL, KARAK.

I am directed to refer to the subject noted above and to forward herewith a show cause notice duly signed by the Competent Authority (Chief Minister, Khyber Pakhtunkhwa) which is self explanatory for favour of further necessary action with the request that the same may kindly be delivered to the accused doctor and acknowledge/token of receipt may kindly be intimated to this department for record, please.

Encl: As above

Section Officer E-1

Ednat No and date even

Copy forwarded to:-

1. The District Health Officer, Karak along with the copy of show cause notice for similar necessary action.
2. PS to the Secretary Health Khyber Pakhtunkhwa.
3. PA to the Special Secretary (E&A Health Department Khyber Pakhtunkhwa).

Section Officer E-1



OFFICE OF THE DISTRICT HEALTH OFFICER KARAK

Phone ☎ # Fax ☎ #: 0927-290537

Dated: 16/03/2021

No. 13941-96 /Admn:
Copy forwarded to:

1. Director General Health Services, Khyber Pakhtunkhwa, Peshawar for information please.
2. Medical Superintendent Type-C Hospital City, Karak.
3. Dr. Ejaz Ahmad General Surgeon Type-C Hospital City, Karak.

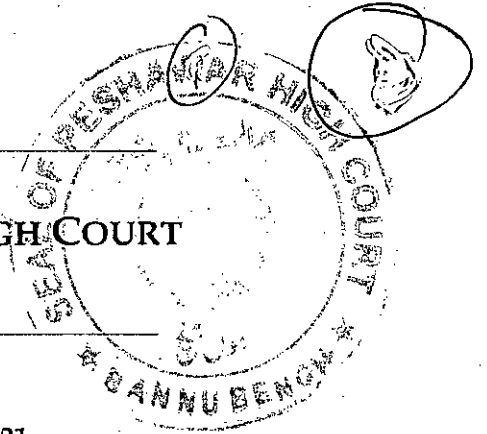
District Health Officer
Karak

ATTESTED

Annex E

23

IN THE
HONOURABLE PESHAWAR HIGH COURT
BANNU BENCH



Writ Petition No. 312-FB /2021

Dr. Ejaz Ahmed
S/o Said Badshah
District Surgeon Cat "C" Hospital, Karak.
..... Petitioner

Versus

1. **The Government of Khyber Pakhtunkhwa,**
Through Chief Secretary to the Government of Khyber Pakhtunkhwa,
Peshawar.
2. **The Health Department, Government of Khyber Pakhtunkhwa,**
through Secretary to the Government of Khyber Pakhtunkhwa, Health
Department, Civil Secretariat Peshawar.
3. **Director General,**
Health Services, Health Department, Government of Khyber
Pakhtunkhwa.

..... Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF
THE ISLAMIC REPUBLIC OF PAKISTAN, 1973.

RESPECTFULLY SUBMITTED:

The Petitioner most earnestly request to submit as under:

BRIEF FACTS:

ATTESTED

**EXAMINER
Peshawar High Court
Bannu Bench**

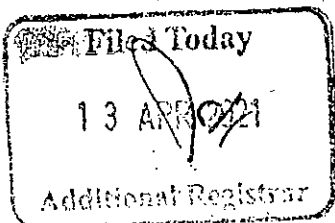
1. That the Petitioner joined the Health Department of Khyber Pakhtunkhwa Government in the year 2003 as Medical Officer (BS-17) after proper competitive selection process. Subsequently the petitioner was appointed as District Specialist Surgery (BS-18) on the recommendations of the then NWFP Public Service Commission. The recent most posting of the Petitioner was as District Surgeon at Cat "C" hospital Karak.

Copy of the Initial Appointment Orders are Annex-A.

Copy of the Orders as DSS (BS-18) are Annex-A/1.

Copy of the orders as SMO (BS-18) are Annex-A/2.

2. That the Petitioner has been performing his duties quite diligently and with utmost dedication since his initial appointment.



- 3. That the Petitioner attained his MBBS degree in the year 1996, and got qualification of FCPS surgery in the year 2002, needless to mention that the qualifications supra are duly registered with the Pakistan Medical & Dental Council (now Pakistan Medical Commission).
- 4. That the Petitioner's spouse namely Dr. Tahira Rehman, is also a qualified surgeon and is working as District Gynecologist at Cat-"C" City Hospital Karak. The Petitioner and his spouse namely Dr. Tahira Rehman have been stationed at the same hospital for almost two years.

Copy of appointment of Dr. Tahira is Annex-A/3.

- 5. That based on a complaint against the petitioner, an inquiry committee was constituted by the Director General Health Services vide Letter No. SOH-1/HD/3-5/2018 dated 23-05-2019. The committee was headed by the Additional DG Health Services. The inquiry committee however recommended that a specialist needs to be added in the panel therefore another inquiry be conducted on the subject. It is with reverence stated that the said inquiry report or the constitution of the inquiry documents have not been provided to the petitioner.
- 6. That in the light of aforementioned an inquiry committee was constituted vide Notification No. SOH-1/(HD)3-59/Vol-I dated 15-10-2019. The said inquiry committee comprised of four members headed by the Director DHIS, Health Directorate. The petitioner joined the inquiry proceedings, which were held at the Hayatabad Medical Complex. The said inquiry committee issued its inquiry report (hereinafter first inquiry report) recommended issuance of censure/warning with the direction to improve his communication skills and documenting records wherever necessary. It is pertinent to mention herein that the petitioner is only in possession of the signed inquiry report, without any annexures/enclosures, which are in possession of the respondents and are not handed over to the petitioner, despite repeated requests. It is also important to state that the said inquiry report also wasn't shared with the petitioner officially.

Copy of the first inquiry report is Annex-B.

- 7. That in the scheme of things provided under the Civil Servants Employees Disciplinary and Efficiency Rules, 2011, the petitioner should have been issued a censure and the matter closed. However, that wasn't to be, as the Health Department constituted yet another inquiry headed by the Commissioner Bannu Division and having one other member vide Notification No. SOE-1/HD/1-45/2019 dated 01-07-2020. This committee also issued their inquiry report (hereinafter de-novo inquiry). The de-novo inquiry report in total negation of the first inquiry report whereby only warning/censure was recommended.

Copy of the de-novo inquiry committee is Annex-C.

Filed Today
 13 APR 2021
 Additional Registrar

ATTESTED
 EXAMINER
 Pakistan High Court
 Bannu Bench

8. That the de-novo inquiry in violation of all the norms of justice and fair-play issued the said report. The report amongst many other things adopted a new and novel method of punishment in form of transfer of the petitioner. It also recommended the infliction of minor punishment on the petitioner for "oversight/lapse". Clearly establishing that the petitioner did no such thing which warrants any imposition of penalty.

25

9. That based on the de-novo inquiry the Petitioner has been transferred vide transfer orders dated 03-03-2021 of the Government of Khyber Pakhtunkhwa Health Department to DHQ Chitral. The transfer order was based on the de-novo inquiry. The said transfer of the Petitioner this is quite clearly being made in form of a punishment and not in the public interest and also is in violation of the Spouse Policy of the Government of Khyber Pakhtunkhwa. The fact that there was only one surgeon in the Hospital from where the petitioner is being transferred speak volumes about the impact of the transfer on public at large.

Copy of the transfer order dated 03-03-2021 is Annex-D.

10. That immediately after the transfer orders, other "blue-eyed" doctors were transferred back.
11. That the agony of the petitioner however didn't just end with the transfer orders. The petitioner was served with a show-cause notice dated 03-03-2021, received on 22-03-2021.

Copy of the show-cause notice is Annex-E.

12. That it is pertinent to mention herein that the petitioner was served with the show-cause notice without any supporting document. The petitioner immediately requested for all the relevant documents to be provided to him as he has been clearly made a scape-goat for no fault of his own.

Copy of the requests for supply of documents is Annex-F.

13. That the fact of the matter is that the Petitioner did no wrong, and he is still being made to suffer that also through the novel mode of transfer. As transfer cannot be inflicted as a punishment. And when there is a spouse in government service of the same government and same district, then it is the responsibility of the Government to ensure that the spouses stay at the same station, if not the same station at least the same district, provided there is a vacancy. The travesty of justice in the instant case is that the post of the Petitioner from which he has been transferred is left to be vacant. How can the same be allowed to be kept vacant to the detriment of the Petitioner is something which the Petitioner isn't privy to. The petitioner also requested for extension in joining duty due to Covid infection. The said request was endorsed on 17-03-2021 vide diary number 5784.

14. That as the Khyber Pakhtunkhwa Public Service Tribunal is dysfunctional due to the demise of the Honorable Chairman Khyber Pakhtunkhwa Service Tribunal therefore the petitioner cannot approach the worthy Services Tribunal. Therefore, based on the afore-mentioned narration of facts before this honorable court, the petitioner brings to challenge the Second Inquiry Report, the Inquiry Procedure, Show Cause Notice and transfer orders issued to the petitioner amongst others on the following grounds:

GROUND:

- a. Because the Petitioner is an aggrieved person within the meaning of Article 199 of the constitution of the Islamic Republic of Pakistan 1973.

Filed Today

13 APR 2021

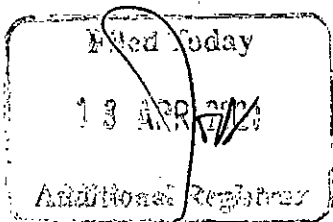
Additional Registrar

ATTESTED

EXAMINER
Peshawar High Court
Hassan Bhatti

96

- b. **Because** the Fundamental Rights of the Petitioner have been violated in relation to Article 4, 8, 9, 18 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973. The said rights flow out of the Constitution the terms and conditions of service of the Petitioner and this Honorable Court being the custodian of the Fundamental Rights of citizens of Pakistan, as well as the protection afforded by the Constitution of Islamic Republic of Pakistan 1973, is why the Petitioner seeks the redress of their grievances and to bring to an end the ordeal the Petitioner is going through due to the illegal, unlawful and unjust acts and inaction of the Respondents.
- c. **Because** the petitioner has been subjected to double jeopardy and made to suffer twice for the same issue which is illegal and unlawful.
- d. **Because** it is the bounden duty of the Government functionaries to act in accordance with the law and ensure that no violation of the law takes place.
- e. **Because** the violation of the spouse posting policy of the Government by the respondents is thus clearly illegal. The posting to Chitral is clearly unprecedented as the Petitioner is made to be work away from his spouse, who was posted at the same station.
- f. **Because** the leaving of the post at Cat "C" Hospital vacant through the transfer of the Petitioner is in itself against public interest for the people of Karak. The principles of natural justice and that of the law, rules and policy dictates and require that the Petitioner be allowed to work as the District Surgeon at Cat "C" Hospital, Karak, where his spouse is also currently performing her duties all diligently and with dedication.
- g. **Because** there has been no reasons given for the de-novo inquiry and as such the constitution of the inquiry committee in itself is illegal and unlawful alongwith all the further proceedings.
- h. **Because** the de-novo inquiry in negation of the facts and circumstances and in sheer malice have gone against the first inquiry report, without even remotely referring why such inquiry has been brought about.
- i. **Because** the first inquiry report has for all intents and purposes exonerated the petitioner and thus there needs to be a strong case made out by the respondents for going for a denovo inquiry, which hasn't materialized in the instant case.



ATTESTED
EXAMINER
Peshawar High Court
Hanna Bench

5

27

- j. **Because** even if the de-novo inquiry report was to be implemented, the sheer malice of the respondents is clear from the fact that the petitioner has not been transferred to nearby district rather to Chitral.
- k. **Because** no proper procedure is being followed before the issuance of the Show- Cause notice and as such the whole proceedings should be vitiated.
- l. **Because** the petitioner is under the law having the Right to access of information/documents which are to be used against him, the denial of grant of the same is illegal and unlawful.
- m. **Because** the petitioner cannot be left remediless and cannot be made to suffer for no fault of his.
- n. **Because** the charge sheets are based in malafide and beyond the frame work of E&D rules as there is no provision of action after the completion of formal/de-novo inquiries in respect of the same charges from the competent authority in the said rules.
- o. **Because** in-fact there exist no exigencies of service nor can the order of transfer be termed as in the public interest rather the same has been issued in violation of the transfer and posting policy
- p. **Because** the settled law as laid down in 1998 SCMR 305, 1998 PLC (CS) 888 Lahore, Anita Turab Case, I. H. Sherwani case have been violated vide the impugned actions of the respondents.
- q. **Because** the law doesn't recognize transfer as a punishment. This is a concept alien to the Civil Servants Act 1973, the rules made thereunder. Therefore, by transferring petitioner as a punishment and then also subjecting him to this illegal, unlawful and charge-sheet over the report of an inquiry committee which was illegally constituted and which functioned in negation of all the norms of justice.
- r. **Because** the Petitioner has been discriminated under the law. The said deviation and negation is unwarranted and not recognized by the law.
- s. **Because** the Petitioner have not been treated in accordance with law, and their right secured and guaranteed under Law and Constitution have been violated.

Filed Today
13 APR 2021
Additional Registrar

ATTESTED
EXAMINER
Principal High Court
Darya Bazar

- t. **Because** the Petitioner has suffered for no fault of their own and the entire premise of the case is based on the illegality of the respondents to the complete detriment of the Petitioners.
- u. **Because** this Honorable Court in light of 2014 PLC (CS) 1032 can grant the relief without having to wait for the statutory 90days time period when the tribunal is dysfunctional.
- v. **Because** the Petitioner has served the department with utmost honesty and clarity and must not be deprived of their due rights.
- w. **Because** the Respondents cannot be allowed under the law to pass any illegal order, as valuable Rights of the Petitioners are involved, which are guaranteed under the Constitution of Islamic Republic of Pakistan 1973.
- x. **Because** the decisions of the provincial government by transferring the Petitioner by order dated 03-03-2021 is illegal, unlawful and without lawful authority.
- y. **Because** the transfer order dated 03-03-2021 is vindictive and violative upon the rights of the Petitioners and is liable to be strike down.
- z. **Because** the Petitioner crave for leave to add further grounds at the time of his oral arguments before this Hon'ble Court highlighting further contraventions of the provisions of the Constitution & Laws.

PRAYER:

In view of the above, it is humbly prayed that this honorable Court may graciously be pleased:

- a. **Declare** that no proper procedure was adopted by the respondents while conducting the de-novo inquiry, the report thereof is thus based in malice, illegal and unlawful.
- b. **Declare** that the non-supply of documents to the petitioner in relation to the disciplinary proceedings against him to be arbitrary, illegal and unlawful.
- c. **Declare** further that the show-cause notice served on the petitioner on the basis of the inquiry report be declared to be illegal, unlawful and without jurisdiction. Furthermore, the first inquiry committee report be directed to be implemented in letter and spirit.

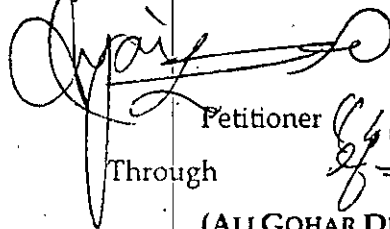

Filed Today
 13 APR 2021
 Additional Registrar

ATTESTED
 EXAMINER
 Provincial High Court
 Bahawalpur

- d. Declare that the transfer of the petitioner is in violation of the Spouse transfer/posting policy by the respondents, and transfer as a mode of punishment is illegal, unlawful and without jurisdiction.
- e. Direct the respondents to supply the petitioner with all the documents in relation to the disciplinary proceedings, forthwith withdraw the show-cause notice served on the petitioner and the transfer orders of the Petitioner dated 03-03-2021 and he be allowed to continue his services as the District Surgeon at the Cat "C" Hospital alongside his spouse.
- f. Grant any other relief deemed fit and appropriate in the circumstances of the case.

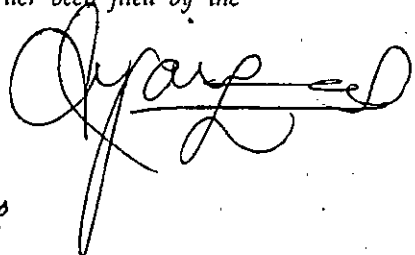

Interim Relief:

For what has been stated in the body of the writ petition, which may so kindly be read as part and parcel for the grant of the Interim relief, may it please this Honorable Court to so kindly suspend the show-cause notice alongwith the transfer orders dated 03-03-2021 till the final disposal of the instant writ petition.


 Petitioner
 Through 

(ALI GOHAR DURRANI)
 Advocate High Court
 0332-9297427
khaneliegohar@yahoo.com
 Shah | Durrani | Khattak
 (a registered law firm)
 House No. 231-A, New Shami Road, Peshawar.

Certificate:
 It is certify that no such like writ petition has earlier been filed by the Petitioner in this Honourable Tribunal.

Petitioner 
 Counsel 

- List of Books:
1. Constitution of Pakistan, 1973
 2. Establishment Code.

Filed Today
 13 APR 2021
 Additional Registrar

ATTESTED
 EXAMINER
 Peshawar High Court
 Banna Banch

(1) (30)

BEFORE THE PESHAWAR HIGH COURT, BANNU BENCH.

IN RE: *B*
CM No. *39* /2021
IN

WRIT PETITION No: -*B*/2021
32/B

Dr. Ejaz Ahmed

Vs.

Govt of KP and others

Fixed Before Division Bench on 26-04-2021

**AN APPLICATION FOR SUSPENSION OF THE TRANSFER
ORDER DATED 03-03-2021.**

Respectfully Submitted:

1. That the abovementioned petition is pending adjudication before this Honorable Court and is fixed for 26-04-2021.
2. That the respondents have illegally, unlawfully and with malafide intentions issued Transfer Order dated 03-03-2021 to the petitioner.
3. That unfortunately has contracted Covid-19 Virus.
4. That the Petitioner has already moved an application to the Secretary Health, KPK Peshawar for extension in time for joining due the Covid-19 Virus illness.
5. That the Transfer Order dated 03-03-2021 is against the Spouse Policy of the Government of KP.
6. That due to Ramzan it is difficult for Petitioner to join due to his illness.

PRAYER:

Therefore, it is must humbly prayed that this Honorable Court may graciously be pleased to suspend the Transfer Order Dated 03-03-2021 till the final disposal of the instant Writ Petition and any other remedy the Honorable Court deems fit

[Signature]
Applicant/Petitioner

Through

[Signature]
ALI GOHAR DURRANI
Advocate High Court
0332-9297427

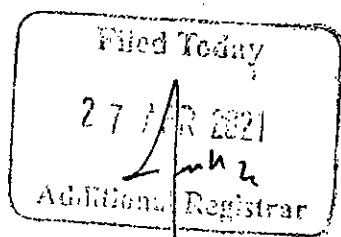
ATTESTED

EXAMINER
Peshawar High Court
Bannu Bench

[Signature]
ZARAK A. SHAH
Advocate High Court
03338335886

SHAH | DURRANI |
KHATTAK

231-A, Street No. 13, New
Shami Road, Peshawar.
Cantt



BEFORE THE PESHAWAR HIGH COURT, BANNU BENCH.

IN RE: *B*
CM No *140*/2021
IN
WRIT PETITION NO: *B*/2021
312/B

Dr. Ejaz Ahmed Vs. Govt of KP and others

Fixed Before Division Bench on 26-04-2021

AN APPLICATION FOR PERMISSION OF THIS HONORABLE COURT FOR PLACING ON FILE ADDITIONAL DOCUMENTS.

Respectfully Submitted:

That the Applicant/Petitioner earnestly craves the permission of this Honorable Court, to file the documents mentioned below for placing on file as the Petitioner will be relying on them in reference to their petition.

The list of documents is as follows:

- a. Copy of Laboratory Test Request Form dated 07-04-2021.
- b. Copy of Doctor Prescription Dated 14-04-2021.
- c. Copy of Request for Extension of joining Letter Diary No. 7083 Dated 15-04-2021.
- d. Copy of Request for Issuance of Inquiry Report Dairy No 7208 Dated 22-04-2021.

PRAYER:

It is therefore most humbly prayed that on acceptance of this application, the applicant/petitioner may so kindly be allowed to place the aforementioned documents on file.

[Signature]
Applicant/Petitioner
Through

ATTESTED
EXAMINER
Peshawar High Court
Bannu Bench

[Signature]

ALI GOHAR DURRANI
Advocate High Court
0332-9297427

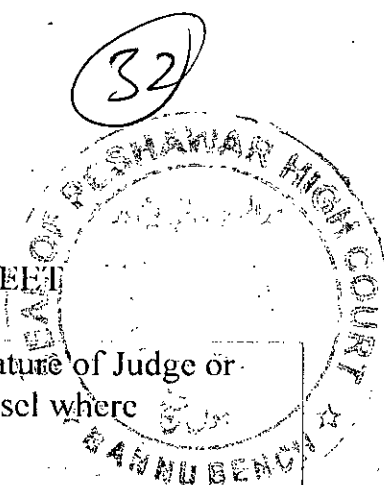
[Signature]

ZARAK A. SHAH
Advocate High Court
03338335886

SHAH | DURRANI |
KHATTAK
231-A, Street No. 13, New
Shami Road, Peshawar.
Cantt

Filed Today
27 APR 2021
[Signature]
Additional Registrar

FORM "A"
FORM OF ORDER SHEET



Date of order or proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties or counsel where necessary.
2. 13.4.2021	3. <u>W.P. No.312-B/2021.</u> <u>Present:</u> M/S. Ali Gohar Durrani & Zarak Shah advocates for petitioner. ***** Admittedly, due to demise of Chairman, Khyber Pakhtunkhwa Service Tribunal, it is dysfunctional. The petitioner is admittedly civil servant, but since the subject matter of the instant writ petition that could have been raised before the Service Tribunal could be now raised before this Court due to the vacuum created by the said demise. Issue pre-admission notice to respondents to submit para-wise comments so as to reach this Court within fortnight positively. <u>Interim Relief:-</u> Learned counsel for the petitioner states that despite application before RTI Commission, the

ATTESTED
EXAMINER
Peshawar High Court
District Bench

33

requisite documents of the inquiry and the annexures of inquiry have not been provided to him. Respondents are directed to provide all the inquiry documents pertaining to inquiry proceedings and its annexures before the date fixed.

Since two inquiry proceedings have been initiated against the petitioner and minor penalty has been imposed whereas in the show-cause notice withholding of two increments have been proposed which is not recommended by the inquiry, the same is, therefore, suspended till 27.4.2021:

Sd/ Mr Justice Muhammad Nasir Mahfooz, J
Sd/ Mr Justice Sahibzada Asadullah, J

CERTIFIED TO BE TRUE COPY

Examiner

Peshawar High Court Bannu Bench
Authorised Under Article 87 of
The Qanun-e-Shahadat Ordinance 1984

SCANNED

15 APR 2021

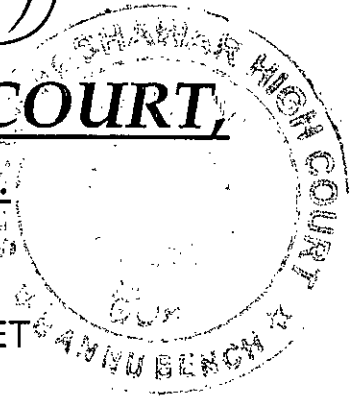
Khair Khan

14/04/2021

34

PESHAWAR HIGH COURT
BANNU BENCH.

FORM 'A'
FORM OF ORDER SHEET



Date of order or proceedings	Order or other proceedings with signature of Judge (s).
(1)	(2)
27.4.2021	<p><u>W.P No.312-B/2021.</u> Present:</p> <p>Mr. Ali Gohar Durrani Advocate for petitioner.</p> <p>***</p> <p>The requisite comments are still awaited. Office is directed to issue reminder to the respondents for filing the same within a week.</p> <p>Adjourned. To be fixed before first available D.B.</p> <p><i>Sd/ Mr. Justice Sahibzada Asadullah, J</i> <i>Sd/ Mr. Justice Muhammad Naeem Anwar, J</i></p> <p>CERTIFIED TO BE TRUE COPY</p> <p><i>[Signature]</i> Excuse.</p> <p>Peshawar High Court Bannu Bench Authorised Under Article 87 of The Qanun-e-Shahadat Ordinance 1984</p>

SCANNED
27 APR 2021
[Signature]
Khalid Khan

[Handwritten signature]

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

35

DAIRY NO: 5361
DATE 5/3/21
HEALTH DEPARTMENT

Subject: **APPEAL FOR SETTING ASIDE TRANSFER ORDERS DATED 03-03-2021; WHEREBY THE APPELLANT HAS BEEN TRANSFERRED FROM CAT "C" HOSPITAL KARAK TO DHQ HOSPITAL CHITRAL.**

Respected Sir,

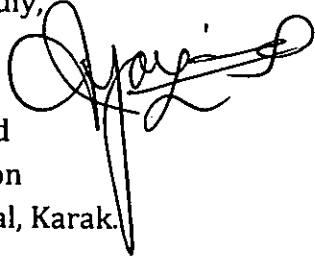
1. That the appellant joined the Health Department of Khyber Pakhtunkhwa Government in the year 2002 after proper competitive selection process. The recent most posting of the appellant was as District Surgeon at Cat "C" hospital Karak. The appellant was posted to the Cat "C" hospital, Karak almost two years back.
2. That the appellant has been performing his duties quite diligently and with utmost dedication since his initial appointment.
3. That the appellant attained his MBBS degree in the year 1996, and got qualification of FCPS surgery in the year 2002, needless to mention that the qualifications supra are duly registered with the Pakistan Medical & Dental Council (now Pakistan Medical Commission).
4. That the appellant's spouse namely Dr. Tahira Rehman, is also a qualified surgeon and is working as District Gynecologist at Cat-"C" City Hospital Karak. The appellant and his spouse namely Dr. Tahira Rehman have been stationed at the same hospital for almost two years.
5. That the appellant has been transferred vide transfer orders dated 03-03-2021 of the Government of Khyber Pakhtunkhwa Health Department to DHQ Chitral. This transfer was based on an inquiry, the report of which is yet to be shared with the appellant. The said transfer of the appellant this is quite clearly being made in form of a punishment and not in the public interest.
Copy of the transfer order dated 03-03-2021 is enclosed.
6. That the law recognizes no punishment in form of a transfer, which is what has been done with the appellant.
7. That the fact of the matter is that the appellant did no wrong, and he is still being made to suffer that also through the novel mode of transfer. As transfer cannot be inflicted as a punishment. And when there is a spouse in government service of the same government and same district, then it is the responsibility of the Government to ensure that the spouses stay at the same station, if not the same station at least the same district, provided there is a vacancy. The travesty of justice in the instant case is that the post of the appellant from which he has been transferred is left to be vacant. How can the same be allowed to be kept vacant to the detriment of the appellant is something which the appellant isn't privy to. However, it is worth mentioning that it is the bounden duty of the Government functionaries to act in accordance with the law and ensure that no violation of the law takes place. The violation of the spouse policy clearly is illegal.
8. That the posting to Chitral is clearly unprecedented as the appellant is made to be work away from his spouse.
9. That the leaving of the posting at Cat "C" Hospital vacant through the transfer of the appellant is in itself against public interest for the people of Karak.
10. That the principles of natural justice and that of the law, rules and policy dictates and require that the appellant be allowed to work as the District Surgeon at Cat "C"

36

Hospital, Karak, where his spouse is also currently performing her duties all diligently and with dedication.

It is therefore most humbly prayed that on the acceptance of this appeal may it please your good-self to so kindly withdraw the transfer orders of the appellant dated 03-03-2021 and he be allowed to continue his services as the District Surgeon at the Cat "C" Hospital alongside his spouse.

Yours Most Truly,



Dr. Ejaz Ahmed
District Surgeon
Cat "C" Hospital, Karak.
0333-9718541

Submitted this 5th day of March 2021.



(37)

To

The Secretary Health

No. 5784

17.3.21

KPK Peshawar

Suspect: Extension in joining time due to
Covid-infection.

Respected Sir,

I have got symptoms of Covid infection
and have sent my specimen for Covid testing.
Due to quarantine, I am not able to report
to my new arrival station at Chitral.

Kindly grant me one month extension
in joining time.

Thanks.

Enclosed: lab request
form for Covid testing.

Sincerely,
Dr Ejaz Ahmad
Surgeon

Type - C Hospital

Karake 17.03.2021

8333971857/1

ATTESTED

قیمت 50 روپے

88138

ایڈوکیٹ: *[Handwritten Signature]*

بار کونسل ایسوسی ایشن نمبر: PC-13-4247

رابطہ نمبر: 0332-9992427



پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: Service Tribunal Peshawar

<p>مخانب: <i>[Handwritten Name]</i></p> <p><i>[Handwritten Name]</i></p> <p>بنام</p> <p><i>[Handwritten Name]</i></p>	دعویٰ:
	علت نمبر:
	مورثہ:
	جرم:
	تھانہ:

باعث تحریر آئکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دی کاروائی متعلقہ

آن مقام *[Handwritten Name]* کے لیے *[Handwritten Name]* کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کر کے و تقریر ثالث و فیصلہ بر حلف دینے جو اب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لے جاسکے اور اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور ان کا سائنختہ پر داخلہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانب اتوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دروہہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

[Handwritten Signature]
 20 July 2021
 Peshawar Bar Association

مقام: *[Handwritten Name]*

کے لیے منظور ہے۔

[Handwritten Signature]

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 7035 OF 2021

Dr. Ijaz Ahmad.....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.
5. That the Appellant has filed the instant Appeal with mala-fide intention hence liable to be dismissed.
6. That the Appeal is badly time barred, and also barred by Law.
7. That the Honourable Tribunal has no Jurisdiction to adjudicate upon the matter.
8. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
9. The impugned transfer Notification has been issued in accordance with Section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973.

FACTS

1. Pertains to record.
2. Subject to proof.
3. No comments.
4. Pertains to record. However, as per this para both the spouses completed their normal tenure.
5. Pertains to record.
6. Pertains to record.
7. Pertains to record.
8. Pertains to record.

9. Incorrect. Though he was recommended for minor punishment by the inquiry committee, however, no such penalty was imposed on him. The appellant was transferred vide notification dated 03.03.2021 as the appellant being a Civil Servant is liable to be transferred by the competent authority from one post to other as the same comes with in terms and conditions of his service therefore, he was rightly been transferred by the competent authority under section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973.
10. Incorrect. Already replied in Para-9.
11. Incorrect. The replying respondent acted as per law and rules. Detail reply has been given in Para-9.
12. Incorrect. The appellant being a member of provincial cadre post is liable to be posted anywhere by the competent authority within the province or even outside of the province or cadre.
13. Incorrect. The impugned notification dated 03.03.2021 has been issued in the public interest.
14. Incorrect. The impugned notification dated 03.03.2021 is in accordance with law rules and principal of natural justice hence liable to be maintained.
15. Pertains to record, however, as per law only one representation is allowed where is there is no subsequent representation permissible under the law even approaching wrong forum does not extend period of limitation.

GROUND:

- A. Incorrect the impugned notification dated 03.03.2021 is in accordance with law rules and principal of natural justice hence liable to be maintained. The appellant is not an aggrieved person as he has no right to be posted at the place of his choice.
- B. Incorrect the impugned notification has been issued in accordance with law Rules and transfer and posting policy of the Provincial Government. The appellant has been treated in accordance with Article-4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C. Incorrect. As per dictum laid down by the apex court each and every case has different facts and circumstances and to be decided on its own merit. It is further to clarify that the impugned notification dated 03.03.2021 has been issued in accordance with law in the public interest. It is worth to mention that transfer and posting comes within terms and condition of a civil servant, therefore, the present appellant has been transfer as per their terms and condition. He has not been awarded any punishment.
- D. Incorrect. The Competent Authority has been empowered by Section-10 of the Civil Servant Act 1973 to utilize services of a Civil Servant by posting him against any post

even outside his cadre. The appellant has not been penalized as transfer comes with in terms and conditions of services.

- E. Incorrect. The appellant has not been discriminated rather treated in accordance with law and rules. It is worth mentioning that the Apex Court in a recent judgment reported is 2021 SCMR 1064 held that transfer of an employee / public servant fell within the ambient of "terms and conditions" of service, which included transfer and posting. Transfer and posting was part of service and it was for the authority to determine where services of any staff member were required.
- F. As per Para-A.
- G. As per Para-A.
- H. As per Para-E.
- I. Incorrect already replied in paras above.
- J. Subject to proof.
- K. As per Para-A above.
- L. As per Para-E above.
- M. As per Para-E above.
- N. Legal however the respondents also seek permission of this honorable tribunal to adduce other grounds during final hearing.

PRAY:

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



Secretary Health Department
Khyber Pakhtunkhwa
Respondent No-1&2

AFFIDAVIT:

It is hereby stated on oath that contents of para-wise comments is correct to best of knowledge and believe and nothing has been concealed from this Hon'ble Court/Tribunal.

DEPONENT





KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

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

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

No: _____/ST Dated: ____/____/2022

To,

Secretary Health, Govt. of Khyber Pakhtunkhwa
Peshawar

Subject: JUDGMENT IN APPEAL NO. 7035/2021 OF Dr. IJAZ AHMAD VS HEALTH.

I am directed to forward herewith a certified copy of Judgement dated 24.05.2022 passed by this Tribunal on the above subject for information.

Encl: As Above.


(WASEEMAKHTAR)

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR