


23.09.2022

Nemo for parties.

Muhammad Jan, learned District Attorney present.

As notices could not be issued due to none-availability of postal tickets. Office is directed to do the needful and to come up for further proceedings on 18.11.2022 before S.B at Camp Court, Abbottabad.



(Rozina Rehman)
Member (J)
Camp Court, A/Abad

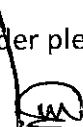


relates

FCIS 8-11

FORM OF ORDER SHEET

Court of _____

C.O.C application No. 330/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06/06/2022	<p>The C.O.C application of Dr. Shahzad Ali Khan submitted today by Mr. Jamshed Anwar Khan Advocate, may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;">  <u>REGISTRAR</u> </p>
2-	19.7.2022	<p>This C.O.C application be put up before touring Single Bench at A.Abad on <u>22/7/22</u> Original file be requisitioned. Notices to the parties be also issued for the date fixed.</p> <p style="text-align: right;">  CHAIRMAN </p> <p>22nd July 2022 None for the petitioner present. Mr. Kabirullah Khattak, Addl: AG for the respondents present.</p> <p>Notices be issued to the petitioner and his counsel as well as notices be also issued to the respondents for reply/arguments. To come up for further proceedings on 23.09.2022 before S.B at camp court Abbottabad.</p> <p style="text-align: right;">  (Kalim Arshad Khan) Chairman Camp Court Abbottabad </p>

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

Case Title: Dr Shahzad Ali vs Ameer Sultan

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

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

Name:

Junaid Anwar Khan

Signature:

[Signature]

Dated:

06/06/2020

BEFORE THE SERVICE TRIBUNAL KPK,
PESHAWAR

C.O. No. 330 /2022

In
Service Appeal No. 7294 of 2021

Dr. Shahzad Ali KhanPetitioner

Versus

Ameer Sultan Tareem, Secretary health Khyber
Pakhtunkhwa, Peshawar etc.

.....respondents

PETITION FOR INITIATION OF
CONTEMPT OF COURT

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2.	Correct addresses of the parties	10
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5.	Copies of the application for implementation	"C"	27- 32
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Dated: 04-06-2022

Through

Dr. Shahzad Ali Khan
.....petitioner

JUNAID ANWAR KHAN
Advocate Supreme Court
of Pakistan at

Mansehra

03439102020

①

BEFORE THE SERVICE TRIBUNAL KPK,
PESHAWAR

COC No. 330 /2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 183

In
Service Appeal No. 7294 of 2021

Dated 06/06/2022

Dr. Shahzad Ali Khan son of Muhammad Farid Swati
Resident of Farid Bagh, Mandian, Kotkay, Tehsil & District
Mansehra

.....Petitioner

Versus

1. Ameer Sultan Tareen, Secretary Health Khyber
Pakhtunkhwa, Peshawar
2. Dr. Shaheen Afridi, Director general health Services Khyber
Pakhtunkhwa, Peshawar.
3. Tehmas Ayub , Setion officer (V) health Department, Khyber
Pakhtunkhwa, Peshawar

.....Respondent

PETITION OF INITIATION OF CONTEMPT
OF COURT PROCEEDINGS AGAINST THE
RESPONDENT/CONTEMNER FOR
SHOWING DEFLANCE AND VIOLATING THE
JUDGMENT/ORDER PASSED BY THIS
HON'BLE COURT DATED 18-05-20212 IN THE
ABOVE MENTIONED SERVICE APPEAL.

1-2

PRAYER: -

On acceptance of the instant petition, the respondents/contemners herein may please be proceeded in accordance with law on the subject and get the judgment implement and the respondents may please be strictly directed to restore the petitioner at its previous position i.e. Medical Superintendent, King Abdullah Teaching Hospital, Mansehra.

Respectfully Sheweth!

1. That, the petitioner initially filed a service appeal before this Honourable Tribunal challenging his transfer order dated 09.07.2021 and the said appeal was listed before this Honourable Court on 09.11.2021 and this Honourable court while allowing the appeal filed by the petitioner and directed the respondents to do further needful to bring the position in place as per accepted prayer of the appellant.

(Attested copies of memo of appeal alongwith order are annexed as annexure "A&B").

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2. That, after the passage of the impugned order, the respondents refused to act upon the judgment/order of this Honourable Court constraining the petitioner to file application for implementation before this Honourable court and during the course of the proceedings upon the said application, the respondents issued notification dated 18.05.2022 whereby the impugned transfer of the petitioner was withdrawn and the petitioner was posted as Medical Superintendent, King Abdullah Teaching Hospital, Mansehra hence the application for implementation was disposed off accordingly vide order dated 18.05.2022.

(Copies of the application for implementation alongwith order dated 18.05.2022 and notification dated 18.05.2022 are annexed as annexure "C", "D" & "E").

3. That, as the petitioner did not relieved his charged on the basis of previous transfer order, therefore, the petitioner started to perform his duties accordingly.

- 4
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4. That, the respondents clearly and categorically redressed the grievances of the petitioner before this Honourable Tribunal but later on, after lapse of 11/12 days, the respondents issued another notification bearing No.SOH(E-V)/4-4/2022 dated 30.05.2022 whereby the petitioner was again transferred from the post of Medical Superintendent, KATH Mansehra to Directorate General Health Services, Khyber Pakhtunkhwa, Peshawar.

(Copy of the impugned notification dated 30.05.2022 is annexed as annexure "F").

5. That, the respondents were bound under the law to honour their notification dated 18.05.2022 by not passing/issuing any other order but the respondents while again transferring the appellant has willfully disobeyed, violated and flouted the order of this Honourable Tribunal.
6. That, the petitioner time and again visited the offices of the respondents for implementation of the order dated 18.05.2022 passed by this Honourable Tribunal in its true letter and spirit but the respondents straightway

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refused to act upon/implement the order passed by this Honourable court.

7. That, petitioner having no other remedy except to file the instant application for initiating contempt of court proceedings against the respondents, inter alia, on the following grounds: -

GROUNDS

- a. That, admittedly, the respondents produced the notification dated 18.05.2022 before this Honourable Tribunal whereby the respondents withdrawn the transfer order of the petitioner and thus the petitioner was again restored on his previous position i.e. Medical Superintendent, King Abdullah Teaching Hospital, Mansehra.
- b. That, the said notification dated 18.05.2022 for restoring the position of the petitioner at KATH, Mansehra was issued subject to the outcome of the CPLA and inquiry whereas neither the CPLA pending before the

Honourable Supreme Court of Pakistan was disposed off nor any inquiry was concluded hence no justification rests with the respondents for issuance of the impugned order dated 30.05.2022 but despite that fact, the respondents issued the impugned order and thus committed contempt of the order of this Honourable Court.

- c. That, as the notification dated 18.05.2022 was produced before this Honourable court hence the respondents were bound under the law to honour the same and to implement the same in its true letter and spirit but the respondents while passing the impugned notification has committed willful contempt of the order of this Honourable Court.
- d. That, the act of the respondents is not only against the relevant law, rules and regulations but also a mockery with the order of Honourable Tribunal and such act of the respondents is highly condemnable and deplorable.
- e. That, once the respondents have withdrawn the previous transfer of the

7
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petitioner till the outcome of the CPLA or inquiry then the respondents are bound under the law to wait for the fate of the CPLA or inquiry but neither the petitioner was called by the respondents for any inquiry nor any order of Honourable Supreme Court of Pakistan was intimated to the petitioner hence without any outcome of the CPLA or inquiry, the passage of the impugned order does not appeal to a prudent mind rather shows the stubborn behaviour of the respondents that they just on political influence, disturbed the services of the petitioner as well as violated the order of this Honourable Tribunal.

- f. That, no legal, lawful or valid justification has been given by the respondents to further transfer the service of the petitioner rather the impugned order speaks volume of malafide, political motivation of the respondents.
- g. That, valuable rights of the petitioner are involved in the matter in hand and as the respondents managed to get rid of the proceedings of application for implementation submitted before this Honourable

Tribunal, therefore, this Honourable Tribunal has been deceived by the respondents and also committed fraud with this Honourable Tribunal and such conduct of the respondents is to dealt with iron hands.

- h. That, respondents/contemners was left with no other legal option except to implement the direction given in the said judgment but they have badly failed to comply with the direction so given.
- i. That, the defiance shown by contemners towards the implementation of judgment passed by this Honourable Court dated 18.05.2022 clearly and squarely falls into the mischief of contempt of court and he is liable to be proceeded thereunder.

.....PRAYER


It is, therefore, most humbly prayed that on acceptance of the instant petition, the respondents/contemners herein may please be proceeded in accordance with law on the subject and get the judgment implement and the respondents may please be strictly directed to restore the petitioner at its previous position

9
-
i.e. Medical Superintendent, King
Abdullah Teaching Hospital, Mansehra.

Dated 04.06.2022

Dr. Shahzad Ali Khan
.....Petitioner

Through

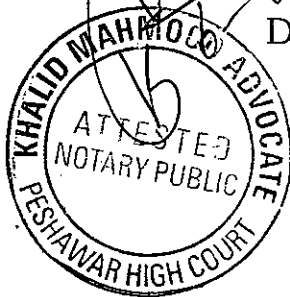

JUNAID ANWAR KHAN,
Advocate Supreme Court,
Of Pakistan. at

AFFIDAVIT.

Mansehra.
I, Dr. Shahzad Ali Khan son of
Muhammad Farid Swati resident of
Farid Bagh, Mandian, Kotkay, Tehsil
and District Mansehra, Petitioner, do
hereby solemnly affirm and declare on
oath that the contents of the foregoing
petition for contempt of court are true
and correct and nothing has been
concealed from this Honourable Court.

Dated 04.06.2022


Dr. Shahzad Ali Khan
(DEPONENT)



(10)

BEFORE THE SERVICE TRIBUNAL KPK,
PESHAWAR

Co CM No. _____/2022

In
Service Appeal No. 7294 of 2021

Dr. Shahzad Ali KhanPetitioner

Versus

Ameer Sultan Tareem, Secretary health Khyber
Pakhtunkhwa, Peshawar etc.

.....respondents

PETITION FOR INITIATION OF
CONTEMPT OF COURT

CORRECT ADDRESSES OF THE PARTIES

PETITIONER

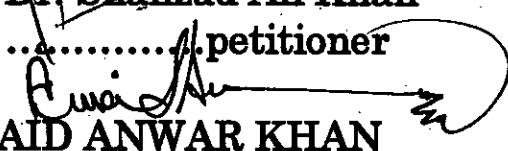
Dr. Shahzad Ali Khan son of Muhammad Farid Swati
Resident of Farid Bagh, Mandian, Kotkay, Tehsil & District
Mansehra

RESPONDENTS

1. Ameer Sultan Tareem, Secretary Health Khyber
Pakhtunkhwa, Peshawar
2. Dr. Shaheen Afridi, Director general health Services Khyber
Pakhtunkhwa, Peshawar.
3. Tehmas Ayub , Setion officer (V) health-Department, Khyber
Pakhtunkhwa, Peshawar

Dated: 04-06-2022

Dr. Shahzad Ali Khan
.....petitioner

Through 
JUNAID ANWAR KHAN
Advocate Supreme Court of
Pakistan at

Mansehra

03439102020

11

Annexure "A"



BEFORE THE HONOURABLE SERVICE TRIBUNAL, KPK PESHAWAR

DAIRY NO. 20726
DATE 29.11.21
HEALTH DEPARTMENT

72-94
Service Appeal No. _____ of 2021

Dr. Shahzad Ali Khan son of Muhammad Fareed Swati, resident of Fareed Bagh Mandian, post Office Kotkay, Tehsil and District Mansehra APPELLANT

Khyber Pakhtunkhwa Service Tribunal

Case No. 7503

Dated 27-8-2021

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
 2. Government of Khyber Pakhtunkhwa through Secretary Health, Peshawar.
 3. Chief Minister, Khyber Pakhtunkhwa, Peshawar.
 4. Minister Health Department, Khyber Pakhtunkhwa, Peshawar.
 5. Section Officer (E-v), Government of Khyber Pakhtunkhwa, Peshawar.
 6. Director General, Health Services, Khyber Pakhtunkhwa, Peshawar.
 7. Deputy Director (IT), Health Department, Peshawar.
 8. District Health Officer, Mansehra.
 9. Dr. Muhammad Tariq, Management Cadre, Deputy District Health Officer, Buner.
-RESPONDENTS.

Registrar
27/8/21

Amir Khan
ATTORNEY

Re-submitted on day 8 and filed.
Registrar
27/8/21

ATTESTED
EXAMINER
Khyber Pakhtunkhwa Service Tribunal
Peshawar

12

SERVICE APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL, 1974, READ
WITH CLAUSE XIV OF POSTING TRANSFER POLICY
AGAINST THE AGAINST THE IMPUGNED
PREMATURE TRANSFER AND POLITICALLY
MOTIVATED IMPUGNED NOTIFICATION BEARING
NO.SOH(E-V)/4-4/2021 DATED 09.07.2021 WHEREBY
THE APPELLANT WAS ORDERED TO BE
TRANSFERRED FROM MEDICAL SUPERINTENDENT
KING ABDULLAH TEACHING HOSPITAL,
MANSEHRA TO DEPUTY DISTRICT HEALTH
OFFICER, MANSEHRA AND ALSO AGAINST NOT
DECIDING THE APPEAL OF THE APPELLANT
WITHIN 15 DAYS AS PROVIDED UNDER CLAUSE
XIV OF THE POSTING TRANSFER POLICY.

PRAYER: -

On acceptance of the instant service appeal, the impugned notification bearing No.SOH(E-V)/4-4/2021 dated 09.07.2021 whereby the appellant was ordered to be transferred from Medical Superintendent King Abdullah Teaching Hospital, Mansehra to Deputy District Health Officer, Mansehra may please be set aside and the appellant may please be restored to its previous position i.e. Medical Superintendent King Abdullah Teaching Hospital, Mansehra or any other relief as this Honourable Tribunal deems fit and appropriate

Amir Khan

ATTESTED

[Signature]

Khyber Pakhtunkhwa
Service Tribunal
Mansehra

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-
in the circumstances of the case,
may also be issued/passed.

Respectfully Sheweth!

1. That, the appellant is bonafide resident of Fareed Bagh Mandian Kotkay, Tehsil and District Mansehra.

(Copy of the CNIC of the appellant is annexed as annexure "A").

2. That, the appellant is a qualified Doctor and is performing his duties in the Management Cadre of the respondents' department.

(Copies of the educational testimonials of the appellant alongwith service record are annexed as annexure "B" & "C").

3. That, the appellant was initially inducted in the Health Department, Government of Khyber Pakhtunkhwa who was later on transferred and lastly posted as Medical Superintendent, King Abdullah Teaching Hospital, Mansehra vide notification bearing No.SOH(HD)/E-V/4-4/2020 dated 18.03.2020.

Amir
ATTESTED

(Copy of the notification is annexed as annexure "D").

4. That, the appellant is performing his duties with great zeal and zest and never remained negligent in performance of his assigned duties.
5. That, the appellant is serving at King Abdullah Teaching Hospital, Mansehra from the last one year and four months whereas the tenure of the appellant is still incomplete because as per the service terms and conditions, at least tenure at any station is 03 years.
6. That, as per law, terms and conditions, the appellant cannot be transferred prior to completion of his tenure but very astonishingly, the appellant has illegally and unlawfully been transferred by the competent authority vide notification dated 09.07.2021.

(Copy of the impugned notification is annexed as annexure "E").

7. That, the appellant being aggrieved from the impugned notification, submitted departmental appeals before the respondents but the same

Amir Khan
ATTEST

before the respondents but the same have not been adhered to by the respondents.

(Copies of the departmental appeals are annexed as annexure "F").

8. That, the appellant time and again visited the offices of the respondents for the cancellation of the impugned notification and for the decision of departmental appeals but in vain rather the respondents are bent upon to take charge from the appellant hence the appellant being aggrieved from the impugned notification seeks the gracious

Amalendu

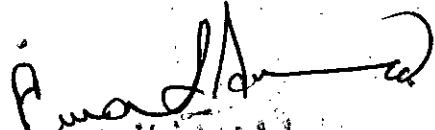
21/5/13

16

indulgence of this Honourable Tribunal by way of instant appeal, inter alia, on the following grounds:-

GROUNDS

- a. That, impugned notification bearing No.SOH(E-V)/4-4/2021 dated 09.07.2021 whereby the appellant was ordered to be transferred from Medical Superintendent King Abdullah Teaching Hospital, Mansehra to Deputy District Health Officer, Mansehra and non-deciding the fate of the departmental appeal filed by the appellant are wrong, illegal, against the law and facts, arbitrary, fanciful, perverse, against the relevant law, rules and regulations, politically motivated, based on malafide, against the fundamental rights of the appellant hence being unconstitutional, liable to be struck down.
- b. That, relevant law, rules and regulations have blatantly bypassed/ violated by the respondents and the


ATTESTED

relevant law, rules and regulations have never been taken into consideration by the respondents and thus the notification so passed by the respondents have no legal sanctity in the eyes of law.

c. That, no solid, valid, concrete or confidence inspiring reasons/justification has been given by the competent authority while transferring the appellant from King Abdullah Teaching Hospital, Mansehra.

d. That, it is also worth mentioning here that the Hospital Management Board of King Abdullah Teaching Hospital, Mansehra through minutes of the meeting dated 22.05.2014 held that in future transfer/posting on key positions of the Hospital may be done in consultation with the Management Board/Partner but in the instant case neither any consultation has been done by the competent authority nor any other legal procedure has been adopted by the competent authority while

A. Waheed
21/12/2014

transferring the services of the appellant.

(Copy of the minutes of the meeting are annexed as annexure "H").

e. That, the appellant has politically been victimized by the competent authority as all the process/proceedings have been carried out at the back of the appellant mere on the behest of the political figures of the area whereas the appellant has not been afforded opportunity of being heard hence all the proceedings are against the settled principle of natural justice.

f. That, relevant law, rules and regulations and even the decision of the Management Board has completely been bypassed by the competent authority while carrying out the impugned proceedings regarding transfer of the appellant.

g. That, it is also worthy to note that the transfer order of the appellant was communicated to the Minister for the Health Department, Khyber

18
-
A. Ahmad
ATTORNEY

19
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Pakhtunkhwa which shakens the veracity/genuineness of the impugned order and speaks loudly that the transfer was made on the basis of pure political motivation and there is clear cut malafide on the part of the department/political figures.

- h. That, it is well settled by now that the political figures have nothing to do with the transfer/posting of the civil servants whereas in the instant case, the competent authority while making himself pawn in the hands of the political figures, issued the impugned notification regarding transfer of the appellant which has no legal sanctity in the eyes of law.
- i. That, the competent authority failed to exercise its powers in accordance with the relevant law, rules and regulations rather travelled beyond the powers so vested in it under the law.
- j. That, the appellant has unblemished service career as the appellant is performing his duties with great zeal and zest and never remained

Awad
ATTORNEY

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negligent in performance of his assigned duties. Similarly, neither any departmental nor any public complaint is available against the appellant.

- k. That, it is an inalienable right of the appellant to enjoy the protection of law and to be treated in accordance with law, rules and regulations but such right of the appellant has been infringed in a sheer malafide manner.
- l. That, the impugned transfer order 09.07.2021 has neither been in the best interest of public service nor in exigencies of service, hence, not tenable and liable to be set aside.
- m. That, the impugned transfer order dated 09.07.2021 is nothing but to harass the appellant and to accommodate their blue eyed person.
- n. That, the impugned transfer order dated 09.07.2021 is violative of clause-I, IV and XIII of the transfer/posting policy of the Government of Khyber Pakhtunkhwa as the

Amir
ATTESTED

o. That, the powers or jurisdiction, are vested in authority to exercise it justly, fairly, honestly, judiciously and in accordance with law, rules and regulations but the respondents have transgressed upon their powers while dealing with the matter in hand.

p. That according to posting transfer policy, normal tenure for posting is 2 years, but the appellant transferred order was passed before completion of normal tenure, which is total violation of Govt: posting transfer policy. Thus the impugned transfer order is liable to be set-aside on this score alone. **Copy of posting transfer Policy is attached as Annexure-H.**

p. That in the special circumstances of the case and due to urgency in the instant appeal being transfer matter the appeal of the appellant may be heard in the light of posting policy and order dated 02.08.2021 of this Tribunal in appeal no.5338/2021. **Copy of order is attached as annexure-I.**

.....PRAYER.....

It is, therefore, most humbly prayed that on acceptance of the instant service appeal, the impugned notification bearing No.SOH(E-V)/4-4/2021 dated 09.07.2021 whereby the appellant was ordered to be transferred from Medical Superintendent King Abdullah Teaching Hospital, Mansehra to Deputy District Health Officer, Mansehra may please be set aside and the appellant may please be restored to its previous position i.e. Medical Superintendent King Abdullah Teaching Hospital, Mansehra or any other relief as this Honourable Tribunal deems fit and appropriate


[Handwritten Signature]
ATTEST

in the circumstances of the case,
may also be issued/passed.

Dated 25.08.2021

Dr. Shahzad Ali Khan
.....Appellant

Through

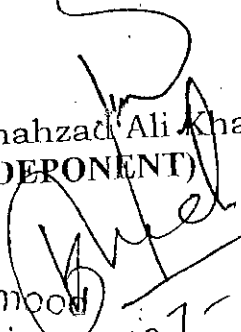

JUNAID ANWAR KHAN,
Advocate High Court
Mansehra.

AFFIDAVIT

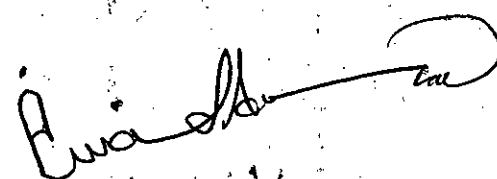
I, Dr. Shahzad Ali Khan son of
Muhammad Fareed Swati resident of
Fareed Bagh Mandian, post Office
Kotkay, Tehsil and District Mansehra,
appellant, do hereby solemnly affirm and
declare on oath that the contents of the
foregoing Writ Petition are true and
correct and nothing has been concealed
from this Honourable Court.

Dated 25.08.2021

Dr. Shahzad Ali Khan
(DEPONENT)


Khalid Mahmood
Oath Commissioner
Peshawar High Court

27-8-21


ATTEST

Annexure "B" 23

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.7294/2021

Date of Institution ... 27.08.2021
Date of Decision ... 09.11.2021



Dr. Shahzad Ali Khan son of Muhammad Fareed Swati resident of Fareed Bagh Mandian, post Office Kotkay, Tehsil & District Mansehra.

(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and eight others.

(Respondents)

Junaid Anwar,
Advocate

For appellant.

Muhammad Rasheed,
Deputy District Attorney

For respondents.

Ahmad Sultan Tareen
Rozina Rehman

Chairman
Member (J)

JUDGMENT

Rozina Rehman, Member(J): Brief facts of the case are that appellant is a qualified Doctor and is performing duties in the Management Cadre of the respondents' Department. He was posted as Medical Superintendent, King Abdullah Teaching Hospital Mansehra. He was performing his duties, when in the meanwhile he was transferred vide Notification dated 09.07.2021. Being aggrieved from the impugned notification, he submitted departmental appeal but to no avail, hence, the present service appeal.

We have heard Junaid Anwar Advocate learned counsel for appellant and Muhammad Rasheed learned Deputy District Attorney

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

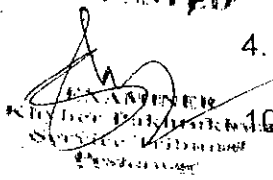
for the respondents and have gone through the record and the proceedings of the case in minute particulars.

3. Junaid Anwar Advocate, learned counsel for appellant submitted that impugned Notification dated 09.07.2021 whereby the appellant was transferred from the post of Medical Superintendent King Abdullah Teaching Hospital Mansehra to the post of Deputy District Health Officer is wrong, illegal, arbitrary and against the relevant law and rules being politically motivated and against the fundamental rights of the appellant. He submitted that relevant law and rules were blatantly bypassed by the respondents and relevant rules and regulations were not taken into consideration by the respondents. He contended that no solid and confidence inspiring reasons were given by the competent authority while transferring the appellant. He submitted that the appellant has been politically victimized by the competent authority as all the proceedings were carried out at the back of the appellant mere on behest of the political figures of the area and that the appellant was not afforded any opportunity of personal hearing, hence, all the proceedings are against the settled principles of natural justice. Lastly, he submitted that the transfer order of the appellant was communicated to the Minister for Health Department which has shaken the veracity of the impugned order and speaks loudly that the transfer was made on the basis of political motivation. He, therefore, requested that the impugned notification may kindly be set aside and the appellant may be restored to his previous position.

Junaid Anwar
Advocate



ATTESTED



Attesting Officer
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

4. Conversely, learned D.D.A submitted that according to Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, a civil servant has to serve anywhere and he is not entitled to be posted in

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accordance with his whims & wishes. He contended that the appellant failed to manage even a single bed for COVID-19 affected. No centralized Oxygen was available despite ample funds available in H.M.B and he was directed time and again by the higher authority to award the work for Oxygen gas piping on top priority basis. That the officer never participated in daily online meetings which shows inefficiency and lack of interest towards his responsibilities. He submitted that due to poor performance of the appellant, during Health Emergency due to COVID-19, he was not allowed by the competent authority to serve against the key position in the hospital at the cost of public health and it is the power of the competent authority to transfer a civil servant even before completion of his normal tenure under the Khyber Pakhtunkhwa Civil Servants Act, 1973.

5. Perusal of record would reveal that appellant was transferred and posted as Medical Superintendent, King Abdullah Teaching Hospital Mansehra vide Notification dated 18th March, 2020. It was on 9th July, 2021 when he was transferred from King Abdullah Teaching Hospital Mansehra to the post of Deputy District Health Officer, Mansehra. Principles of posting and transfer are based upon the criteria that it is within the domain of Government to utilize services of a civil servant anywhere it deemed fit in public interest. Even according to Civil Servants Act, 1973, right of posting vests in the exclusive jurisdiction of the competent authority and the said posting cannot be challenged unless it is against the law and rules or malafide. Section-10 of the Act also stipulates that every civil servant shall be liable to serve anywhere within or outside the province in any post under the Federal Government or in Provincial Government or local authority or a corporation or bodies setup or established by any

Amir
ATTES

8

ATTESTED

[Signature]
 Director
 Khyber Pakhtunkhwa
 Government

such Government. In the instant case, the appellant was transferred vide Notification dated 9th July, 2021 but no convincing reasons have been given by the authority in the impugned notification. According to transfer posting policy, normal tenure for posting is two years but the appellant was transferred before completion of normal tenure which is total violation of the Government Transfer/Posting Policy. Moreover, having the clue from the events brought into our notice through an interlocutory applications by the appellant complaining about the mistreatment of him to oust him from the office for accommodation of co-transferee in his place despite suspension of the impugned order, we cannot be oblivious of the hot pursuit of the respondents ridden with some hidden agenda. When the respondents after suspension of the impugned order did not wait for disposal of the appeal, in their pursuit against the appellant, their bias in dealing with him has become evident, which in particular circumstances of the case is not indicative of any public interest in transfer of the appellant.

6. For what has been discussed above, this appeal is allowed as prayed for with direction to the respondents No.1 & 2 to do further ^{as} needful to bring the position in place as per accepted prayer of the appellant. There is no order as to costs. File be consigned to the record room.

ANNOUNCED.
09.11.2021

Rozina Rehman
ATTESTED

Ahmad Sultan Tareen
(Ahmad Sultan Tareen)
Chairman

Rozina Rehman
(Rozina Rehman)
Member (J)

Certified to be true copy
E. TAYEB
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

**BEFORE THE HONOURABLE MEMBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

27

Annexure
"C"

CM No. _____ /2021

IN

Service Appeal No.7294/2021

Dr. Shahzad Ali Khan son of Muhammad Farid Swati, resident of Farid Bagh, Mandian, P.O Kotkay, Tehsil & District, Mansehra.

...APPELLANT

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa Peshawar.
2. Government of Khyber Pakhtunkhwa, through Secretary Health Peshawar.
3. Chief Minister, Khyber Pakhtunkhwa Peshawar.
4. Minister Health Department, Khyber Pakhtunkhwa, Peshawar.
5. Section Officer (E-V), Government Khyber Pakhtunkhwa, Peshawar.
6. Director General, Health Services, Khyber Pakhtunkhwa, Peshawar.
7. Deputy Director (IT) Health Department, Peshawar.
8. District Health Officer, Mansehra.
9. Dr. Muhammad Tariq Management Cadre, Deputy District Health officer, Buner.

...RESPONDENTS/

Amir
Amir

APPLICATION AGAINST THE RESPONDENTS FOR
IMPLEMENTATION OF ORDER/ JUDGMENT
DATED 09.11.2021 PASSED BY THIS
HONOURABLE TRIBUNAL IN SERVICE APPEAL
NO.7294/2021 IN ITS TRUE LETTER AND SPIRIT.

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Respectfully Sheweth: -

1. That the appellant has filed the above mentioned service appeal before this Honourable Tribunal. *(Copy of the service appeal is annexed as Annexure "A")*.
2. That the above mentioned service appeal was listed before this Honourable Tribunal on 09.11.2021 and this Honourable Tribunal vide its order/ judgment dated 09.11.2021 allowed the service appeal as prayed for and directed the respondents No.1 and 2 to do further needful to bring the position in place as per accepted prayer of the appellant. *(Attested Copy of the order/ judgment dated 09.11.2021 is annexed as Annexure "B")*.

Attested
Signature

3. That after getting the attested copy of the above mentioned order/ judgment, the appellant visited the offices of the respondents and placed the attested copy of the order before them and the copy of the said order was also officially communicated to the respondents by the office for compliance but the respondents are showing reluctance to implement the said judgment, rather, they have clearly refused to act upon the judgment/ order of this Honourable Tribunal and till now the matter is pending with the respondents without any legal and valid justification lingering on the matter.
4. That this Honourable Tribunal has clearly directed the respondents to do the needful and to implement the judgment/ order of this Honourable Tribunal in its true letter and spirit but after the lapse of considerable time, respondents have badly failed to implement the said judgment/ directions in its true letter and spirit.
5. That the appellant having no other remedy except to file the instant application against the

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A. L. D. S.

respondents for implementation of the judgment of this Honourable Tribunal, inter-alia, on the following grounds:-

GROUNDS:-

a. That in view of the judgment/ order passed by this Honourable Tribunal, respondents are/ were under constitutional and legal obligation to obey/ implement the judgment in its true letter and spirit because this Honourable Tribunal has clearly directed the respondents to implement the order but by not implementing the same or not giving any plausible reason in this regard, such conduct of the respondents is highly condemnable.

b. That for the ends of justice, it is mandatory, rather obligatory upon the respondents to implement the judgment of this Honourable Tribunal in its letter and spirit as the respondents were left

Quaishu
21/11/21

with no other legal option except to implement the directions given in the said judgment but they have badly failed to comply with the direction despite lapse of considerable time.

- c. That the appellant time and again visited the offices of the respondents to do the needful keeping in view the directions issued by the Honourable Tribunal who initially made lame excuses and later on straightway refused to obey/ implement the judgment of this Honourable Tribunal.
- d. That no contrary order is available against the passage of the order of the appellant by any higher forum and the judgment of this Honourable Tribunal is still in field, therefore, no reason rests with the respondents to refuse the implementation of the judgment of this Honourable Tribunal in favour of the appellant.

Awadh
ATTORNEY

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It is, therefore, most humbly prayed that on acceptance of the instant application, the respondents may please be strictly ordered/ directed to implement the order/ judgment dated 09.11.2021 passed by this Honourable Tribunal in its true letter and spirit.

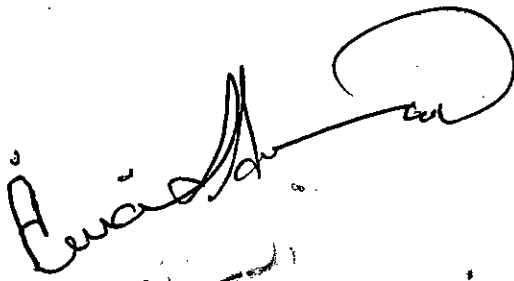
32

...APPELLANT

Through

Dated: 13.12.2021


(JUNAID ANWAR KHAN)
Advocate High Court, Mansehra


A. I. Q. I. I.

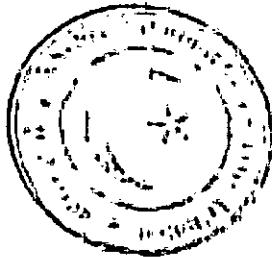
Annexure 33
"D"

18 05 2022

Petitioner in person present Mr. Aqil Mawad, Deputy District Attorney alongwith Mr. Tehmas Ayub, SO (V) and Safiullah, Focal Person for respondents present

Representative of the respondents submitted copy of notification No. SOH(E-V0/4-4/2022 dated 18 05 2022 wherein he stated that grievance of the petitioner has been redressed. Copy of order is handed over to the petitioner. The petitioner does not want to pursue the case further being satisfied. Disposed of accordingly. Consign.

Pronounced in open court in Abbotabad and given under my hand and seal of the Tribunal this 18th day of May, 2022.



(Kalim Arshad Khan)
Chairman
Camp Court Abbotabad

Received by the court copy

Aqil Mawad

Aqil Mawad

Better Copy No. 33

Dated: 18-05-2022

petitioner in present Mr. Asif Mehmood Deputy District Attorney along with Mr. tehmas Ayuv SO (V) and Saif Ullah. Focal person for respondent. Present.

Representative of the respondent submitted copy of notification No. SOH(E-Vo/4-4-2022 dated 18-05-2022 wherein he stated that grievances of petitioner has been redressed Copy of order is handed over to the petitioner the petitioner does not want to pursue the case further being satisfied disposed of accordingly .Consign

Pronounced in open court on Abbottabad and given under my hand an seal of the tribunal this 18th day of May 2022.

(Kalim Arshad Khan)
Chairman
Camp Court of Abbottabad



Government of Khyber Pakhtunkhwa,
Health Department

34

Dated Peshawar the 18th May, 2022

NOTIFICATION

Annexure "E"

NO. SOH(E-V)/4-4/2022

In pursuance to the Khyber Pakhtunkhwa, Services Tribunal judgement dated 09.11.2021, this department's notification of even No. dated 09.07.2021 regarding transfer and posting of Dr. Shahzad Ali Khan, Member of Service (BS-19) from the post of Medical Superintendent, King Abdullah Teaching Hospital Mansehra to Deputy District Health Officer, Mansehra, is hereby withdrawn and posted as Medical Superintendent of the said hospital, subject to the final outcome of the CPLA and inquiry, with immediate effect in the best public interest.

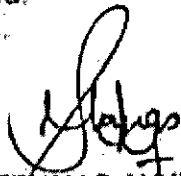
Consequent upon the above, Dr. Muhammad Tariq (BS-19), Medical Superintendent, King Abdullah Teaching Hospital Mansehra is hereby directed to report to Directorate General Health Services, Khyber Pakhtunkhwa, Peshawar.

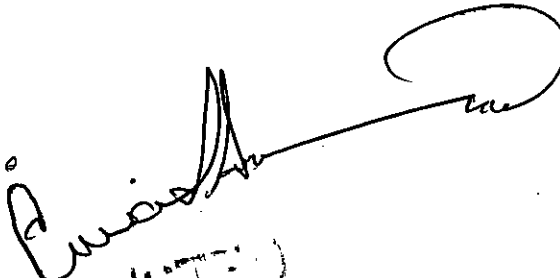
**SECRETARY HEALTH
GOVERNMENT OF KHYBER PAKHTUNKHWA**

Endst. No. 1021-32

Copy to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Commissioner, Mansehra.
4. District Health Officer, Mansehra.
5. MS, King Abdullah Teaching Hospital, Mansehra.
6. District Accounts Officer, Mansehra.
7. Deputy Director (IT), Health Department, with the direction to upload the notification on official website.
8. PS to Minister for Health Department, Khyber Pakhtunkhwa.
9. PS to Secretary Health Department, Khyber Pakhtunkhwa.
10. Doctor concerned.
11. Personal file of the doctor concerned.


18/5/2022
(IQBAL MAS AYYUB)
SECTION OFFICER


ATTESTED

Annexure
"F" 35



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated: Peshawar the 30th May, 2022

NOTIFICATION

NO.SOH(E-V)/4-4/2022

In continuation of this department's notification No. SOH(E-V)/4-4/2022/ 1089-1106 dated 20.2022 and No. SOH(E-V)/4-4/2022/1186-1204 dated 20.05.2022, the following posting/ transfer/ adjustment of doctors are hereby ordered, with immediate effect, in the best public interest:-

S.NO.	NAME OF DOCTORS	FROM	TO
1.	Dr. Muhammad Aurangzeb, Management Cadre (BS-20)	Medical Superintendent, DHQ Hospital Timergara	Chief Medical Officer (BS-20), DHQ Hospital Mardan against the vacant post
2.	Dr. Daud Khan, Management Cadre (BS-19)	Under transfer as Deputy Medical Superintendent, DHQ Hospital Timergara, Dir (Lower)	Retained as Medical Superintendent, DHQ Hospital Timergara, Dir (Lower)
3.	Dr. Imran Ayaz, Management Cadre (BS-20)	District Health Officer, Battagram	Chief Medical Officer (BS-20), King Abdullah Teaching Hospital, Mansehra against the vacant post
4.	Dr. Zakir Hussain, Management Cadre (BS-19)	Medical Superintendent, Cat-D Hospital Lal Qila, Dir (Lower)	District Health Officer, Battagram
5.	Dr. Ahmad Faisal, Management Cadre (BS-19)	Under transfer as District Health Officer, Abbottabad	Medical Superintendent, King Abdullah Teaching hospital, Mansehra
6.	Dr. Shah Faisal, Management Cadre (BS-19)	Under transfer to Directorate General Health Services, Khyber Pakhtunkhwa	Retained as District Health Officer, Abbottabad
7.	Dr. Shahzad Ali Khan, Management Cadre (BS-19)	Medical Superintendent, King Abdullah Teaching hospital, Mansehra	Report to Directorate General Health Services, Khyber Pakhtunkhwa, Peshawar
8.	Dr. Muhammad Naeem, Management Cadre (BS-19)	Under transfer as Deputy DHO Battagram	Medical Superintendent, Cat-D Hospital, Alai Battagram

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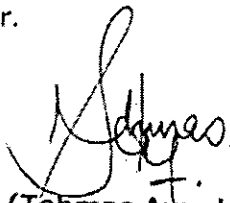
9.	Dr. Munawar Khan, General Cadre (BS-19)	Principal Medical Officer (BS-19), DHQ Hospital, Haripur	District Health Officer, Haripur against the vacant post
10.	Dr. Ehtisham, General Cadre (BS- 18)	Senior Medical Officer (BS-18), DHQ Hospital Landikotal	Incharge Type-D Hospital, Jamrud District Khyber

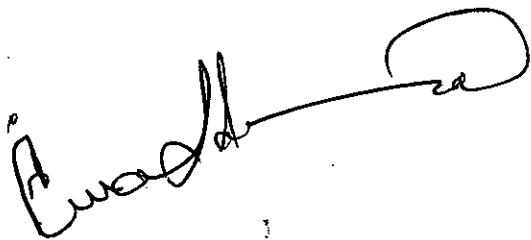
SECRETARY TO GOVT: OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

No. 1296-1307 / Notification of even No. & dated:

Copies forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa.
3. All concerned District Health Officers in Khyber Pakhtunkhwa.
4. All concerned Medical Superintendent, DHQ Hospitals in Khyber Pakhtunkhwa.
5. All concerned District Accounts Officer, in Khyber Pakhtunkhwa.
6. All concerned Medical Superintendents of Cat-D Hospitals in Khyber Pakhtunkhwa.
7. PS to Minister for Health, Khyber Pakhtunkhwa.
8. PS to Secretary Health Department Khyber Pakhtunkhwa.
9. Deputy Director (IT), Health Department, Peshawar.
10. All concerned doctors.
11. Personal files of the concerned doctors.


30/5/2022.
(Tehmas Ayyub)
SECTION OFFICER (E-V)



77 وکالت نامہ

سردار شہباز بھٹو

بمدالت جناب

ڈاکٹر شہباز بھٹو کی جانب سے
اقبیر سلیمان ترینی دہلی

دعویٰ یا جرم
درخواست نویسی عدالت

باعث تحریر آنگہ

مختار جہاں والا عنوان اپنی طرف سے پیروی و جواب دہی بنام **شہباز بھٹو** جسٹس انور زہان اردو دہلی

سبریم کورٹ آف پاکستان بدیں شرط وکیل مقرر کیا ہے میں ہر پیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا ہوں

گا اور بوقت پکارے جانے پر وکیل صاحب موصوف کو اطلاع دیکر حاضر کروں گا اگر کسی پیشی پر مظہر حاضر نہ ہو اور غیر حاضری

کی وجہ سے کسی طور پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب

موصوف صدر مقام کچہری کے علاوہ کسی اور جگہ کچہری کے مقررہ اوقات سے پہلے یا بروز تعطیل پیروی کرنے کے مجاز نہ ہوں

گے۔ اگر مقدمہ مقام کچہری کے کسی اور جگہ سماعت ہونے پر بروز کچہری کے اوقات کے آگے یا پیچھے ہونے پر مظہر کو کوئی

نقصان پہنچے تو ذمہ دار یا اس کے واسطے کسی معاوضہ ادا کرنے، مختار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ

ہونگے کہ مجھے کل ساختہ پر داخہ صاحب مثل کردہ ذات خود منظور قبول ہوگا اور صاحب موصوف کو عرضی دعویٰ اور درخواست

اجراء ڈگری و نظر ثانی اپیل نگرانی دائر کرنے نیز روپیہ وصول کرنے اور رسید دینے اور داخل کرنے کا ہر قسم کا بیان دینے اور سپرد

حاشی و راضی نامہ و فیصلہ برخلاف کرنے و اقبال دعویٰ کا اختیار ہوگا اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ

درخواست حکم اتناعی یا ڈگری قبل از فیصلہ اجراء ڈگری بھی صاحب موصوف کو بشرط ادا سنگی علیحدہ پیروی مختار نامہ کرنے کا

مجاز ہوگا اور بصورت ضرورت اپیل یا اپیل کے واسطے کسی دوسرے وکیل یا ایئر سٹو کو بجائے اپنے ہمراہ مقررہ کریں اور ایسے مشیر

قانونی کو بھی اس امر میں دہی اختیارات حاصل ہوں گے جیسے صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں

گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے

برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ دیا ہے کہ یہ سندر ہے۔ مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

مورخہ 04 جون 2022ء

ڈاکٹر شہباز بھٹو کی جانب سے
اقبیر سلیمان ترینی دہلی

50	9869			
ایڈویکٹ: جنید انور خان دیردیسٹ				
بار کونسل ایسوسی ایشن نمبر: BC 1016 32				
رابطہ نمبر: 03439102020		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		

بعدالت جناب: سر جسٹس عبدالرشید خان صاحب خیر پختونخواہ

منجانب: 	دعویٰ:
	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

باعت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ

آن مقام پشاور کے لیے جنید انور خان دیردیسٹ کے وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقریر حالت و فیصلہ بر حلف دینے، جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی ہراہنگی اور منسوخی، نیز دائر کرنے اپیل عمرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کارکن اپنے لیے آگے جانے کے لئے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور ان کا ساختہ پر داخست منظور و قبول ہوگا دوران مقدمہ میں جو فریج ہر جائزہ اتوائے مقدمہ کے سب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 06/06/2020

مقام _____ کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فونو کالی یا قابل قبول ہوگی۔

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No. *Col. 330/22* *TB A/Abad.*

APPEAL No. *7294* of 20 *21*

Dr Shahzad Ali Khan

Appellant/Petitioner

Versus

Ameer Soltan Tareen Secy: Health Pesh

RESPONDENT(S)

RESP NO I Ameer Soltan Tareen
Notice to Appellant/Petitioner *Secretary Health*
Peshawar

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on *25-9-22* at *9.00 AM*

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

at Camp Court
A/Abad.

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

07/09/2022

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No. *COC 330/22* *1/15 17/11/2021*
APPEAL No.....*7294*..... of 20 *21*

.....*Dr Shahzad Ali Khan*.....
Apellant/Petitioner

Versus

.....*Ameer Sultan Taroon Secy. Health Dept*.....
RESPONDENT(S)

RESPNO 3
Notice to Appellant/Petitioner.....*Tehmas Ayub Section*
.....*officer (U) Health Dept*
.....*reple Pesh*.....

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on *23-9-22* at *8.00 AM*

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

at camp court
At Abad.

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

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1/1
07/09/2022