

1

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Service Appeal No. 822/2018

BEFORE: **MR. KALIM ARSHAD KHAN, ... CHAIRMAN**
 MISS. FREEHA PAUL, ... MEMBER(E)

**Raz Ali S/O Gul Said R/O Khesghi Payan, EPI Technician,
recently with DD EPI, KPK, Peshawar.(Appellant)**

Versus

1. **Deputy Director EPI Khyber Pakhtunkhwa, Peshawar.**
2. **Director General Health Services, Khyber Pakhtunkhwa Peshawar.**
3. **District Health Officer, Kohistan at Dassu.**
4. **Government of Khyber Pakhtunkhwa Secretary Health, Peshawar.**
5. **District Health Officer, Peshawar DHO office, Peshawar.**
6. **Government of Khyber Pakhtunkhwa through Secretary Finance Peshawar. (Respondents)**

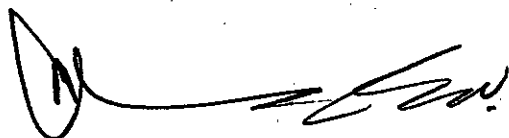
Mr. Gohar Ali Khesghi ... For appellant.
Advocate

Mr. Muhammad Riaz Khan Paindakhel,
Asstt. Advocate General ... For respondents.

Date of Institution.....21.06.2018
Date of Hearing.....10.05.2022
Date of Decision..... 12.05.2022

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN. Through the instant appeal appellant Raz Ali has prayed that on acceptance of the appeal, impugned order might be set aside and the appellant might be posted at Peshawar with all back benefits.

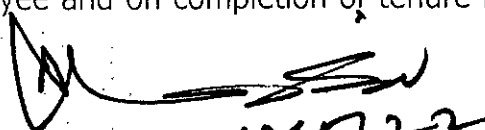


2. Brief facts gathered from the file of this appeal are, that the appellant was appointed as Junior EPI Technician for District Kohistan dated 15.12.1985; that the appellant performed his duty to the entire satisfaction of his seniors with unblemished service record; that the appellant was transferred to Peshawar vide order dated 08.05.1991; that the appellant after serving of 04 years, was again transferred to Kohistan vide order dated 05.10.1999; that Director General Health Service, Peshawar vide letter dated 22.09.1999 wrote a letter to Deputy Director (EPI) Khyber Pakhtunkhwa Peshawar to decide the issue of cancellation of transfer order of appellant being the competent authority but till date his case remained undecided, hence, the present appeal.

3. On receipt of the appeal, it was admitted for full hearing subject to all legal objections including limitation. The respondents were put on notice for submission of written reply/comments. Respondents No. 1, 2 and 4 have filed their joint parawise comments. Several legal and factual objections have been raised, therein. It was contended that the appellant was transferred from the DHO office Kohistan to DHO office Peshawar on 08.07.1991 and was again transferred to DHO Office Kohistan on 17.03.1999 where he was supposed to submit his arrival report but he did not submit his arrival report and absented himself. Resultantly, his salary was stopped. They requested that the appeal may be dismissed with cost.

4. Arguments of learned counsel for the parties have been heard and record perused.

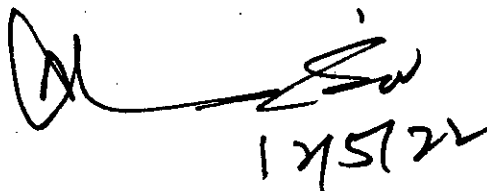
5. Learned counsel for the appellant argued that the appellant was low paid employee and on completion of tenure in far-flung/hard area, was entitled to


12/5/22

be posted near to his home district; that no charge sheet was served upon the appellant nor proper enquiry was conducted; that even show cause notice was not served upon the appellant; and that the appellant was still in service and no action was taken against him by the respondents. Learned counsel for the appellant requested that the appeal may be accepted as prayed for.

6. On the other hand, learned Law Officer while rebutting the arguments of learned counsel for the appellant contended that the appellant was transferred from DHO Office Kohistan to DHO office Peshawar vide order dated 08.07.1991. On 13.03.1999, he was again transferred to DHO office Kohistan but he did not submit his arrival report over there; that the appellant absented himself without any reason and resultantly, his salary was stopped by the respondents; and that the appellant has now come to this Tribunal after more than 20 years to regularize his service which is not permissible under the law. He requested that the appeal may be dismissed with cost.

7. From perusal of record, it is evident that the appellant, while serving as Jr. EPI Technician Peshawar was transferred to District Kohistan on 17.03.1999 but he did not obey the order on his own whims. Now after lapse of more than 20 years, how could he ask for cancellation of transfer order passed in the year, 1999. There is no application for condonation of delay. During the course of arguments, learned counsel for the appellant also could not explain the delay of more than 20 years in filing the present appeal. There is nothing on the record as to where he was during this prolonged period of 20 years. No record was produced by either side in this respect. It is pathetic that the department also remained mum in this regard. The appeal itself is vague and unclear regarding the relief/prayer as well as the grievance of the appellant. It is however, added that under Section 10 of the


17/5/22

Khyber Pakhtunkhwa Civil Servant is bound to serve anywhere in exigencies of service. The appeal being meritless and time barred is dismissed. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 12th day of May, 2022.*



(KALIM ARSHAD KHAN)
Chairman

(FARIEHA PAUL)
Member (E)

SA 822/2018

12th May, 2022

Mr. Gohar Ali Khesghi Advocate for appellant present. Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment of today, containing 04 pages, the appeal being meritless and time barred is dismissed. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 12th of May, 2022.*



(KALIM ARSHAD KHAN)
Chairman



(FAREEHA PAUL)
Member (E)

31.01.2022

Appellant present in person. Mr. Naseer ud Din Shah
Assistant Advocate General for the respondents present.

Appellant requested for adjournment on the ground that
his counsel is out of station. Adjourned. To come up for
arguments on 10.05.2022 before the D.B.



(Rozina Rehman)
Member (J)



(Salah-Ud-Din)
Member (J)

10.05.2022

Mr. Gohar Ali Keshgi, Advocate for the appellant present.
Mr. Riaz Khan Paindakheil, Assistant Advocate General for the
respondents present.

Argument heard. To come up for order before the D.B on
12.05.2022.



(Fareeha Paul)
Member (E)

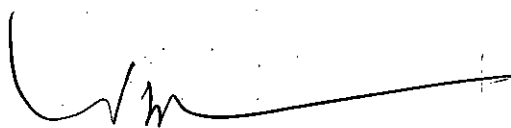


Chairman

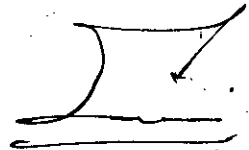
12.07.2021

Appellant in person present. Dr. Makhdoom, Deputy Director EPI, Mr. Jaffar Ali, Assistant and Mr. Mastan Ali Shah, Assistant (Litigation) alongwith Mr. Javed Ullah, Assistant Advocate General for the respondents present.

Para-wise comments on behalf of respondents No. 1, 2 & 4 submitted, which are placed on file and copy of same is also handed over to appellant, while written reply on behalf of respondent No. 3 has already been submitted. Adjourned. To come up for arguments before the D.B on 20.10.2021.



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



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

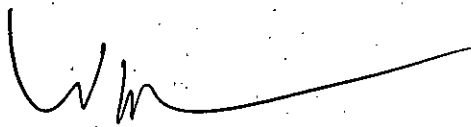
20.10.2021

Appellant present through counsel.


Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Former made a request for adjournment. Granted. To come up for arguments on 31.01.2022 before D.B.

R



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



(Rozina Rehman)
Member (J)

(2) Deleted.

(3) When officers recruited overseas, who are entitled to first class passages to Pakistan, are prevented from proceeding at once from the port of disembarkation in Pakistan to take up their appointment owing to either illness or private affairs, they should be granted 'leave not due' under F. R. 81 (c) (i) or (ii) as the circumstances of the case may require.

The phrase 'without avoidable delay' occurring in orders issued under F. R. 17 (2) *c.f.* Appendix 3 to F. Rs. and S. Rs. Vol. II refers only to delay on the part of the officer in reporting himself for duty (either at the local Government's headquarters or at the actual place of duty, as the case may be) and not a delay in actually taking up his duties thereafter. The stipulation underlying the phrase should be regarded as fulfilled if the officer reports for duty within the period allowed by the joining time rules with only one day (instead of 6 days) for preparation at the port of disembarkation, and any excess over that number of days should be treated as 'leave not due'.

The minimum of the officer's time-scale of pay (including overseas pay) may be treated as his average pay for the purpose of calculating half average pay for the period of 'leave not due' as well as for the purpose of allowing the minima of half average pay not exceeding the average pay under F. R. 90.

[Para. 31, Sec. II of Manual of Audit Instructions (Reprint)]

Overhead
F. R. 18. Unless the Governor-General in view of the special circumstances of the case, shall otherwise determine, after five years' continuous absence from duty, elsewhere than on foreign service in Pakistan whether with or without leave, a Government servant ceases to be in Government employ.

Government decision.—A question has been raised as to whether the provisions of F. R. 18 are attracted in the case of a Government servant who remains under suspension for more than 5 years on account of departmental or court proceedings pending against him. It has been decided that the above rule does not apply in such cases as a Government servant, who is under suspension, has no independent volition to resume duty and cannot be said to be absent from duty with leave or without leave within the meaning of F. R. 18.

[G.P., M.F.O.M. No. F. 16(6)-R2(RWP)/61, dated the 8th May, 1961.]

F. R. 19. The fixation of pay is within the competence of a local Government; provided that, except in the case of personal pay granted in the circumstances defined in rule 9(23) (a), the pay of a Government servant shall not be so increased as to exceed the pay sanctioned for his post without the sanction of an authority competent to create a post in the same cadre on a rate of pay equal to his pay when increased.

Audit instruction.—It is not the intention of Fundamental Rule 19 that it should give a local Government power to grant less pay than is permissible under Fundamental Rules 22 and 23.

[Para. I, Chap. IV, Sec. I of Manual of Audit Instructions (Reprint)].

Auditor General's decision.—The rule does not give a local Government power to grant pay in excess of what is permissible under other rules in the Fundamental Rules. Thus it does not enable a local Government to grant an initial pay higher than what is permissible under Fundamental Rule 22. But once an initial pay is fixed under Fundamental Rule 22, Fundamental Rule 27 enables an authority mentioned therein to grant advance increment immediately. Thus in fact, Fundamental Rules 22 and 27 read together enable an authority mentioned in Fundamental Rule 27 to fix initial pay in excess of the amount permissible by Fundamental Rule 22 only.

[Ar. G's No. 1164 -A/408-23, dated the 20th November, 1923.]

F. R. 20. When a Government servant is treated as on duty under rule 9(6) (b), the local Government may, at their option, authorise payment to him of the pay of his substantive appointment, or of any lower rate of pay which the local Government may consider suitable. If the duty consists in a course of training, or instruction; the pay admissible may, if the local Government so direct, be, instead of either of the rates just specified, the pay of any officiating appointment held by the officer at the time he was placed on such duty but this rate of pay shall not be allowed for a period longer than that for which the officer would have held the officiating appointment had he not been placed upon a course.

Government orders.—

(1) Deleted.

(2) Civilian Government servants, while undergoing training in the Army Reserve of Officers, will draw pay in accordance with the rule in paragraph 38, Appendix XXX, Regulations for the Army in India as adapted in Pakistan.

[G.I., F.D., No. F-III-R. 1/30, dated the 16th August, 1930.]

(3) Deleted.

26.10.2020

Junior to counsel for the appellant and Addl. AG for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 30.12.2020 for hearing before the D.B.




(Atiq-ur-Rehman Wazir)
Member



Chairman

30.12.2020

Due to summer vacation, case is adjourned to 01.04.2021 for the same as before.



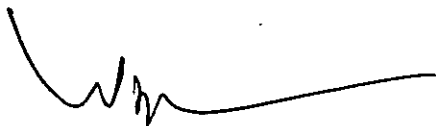
Reader

01.04.2021

Appellant with counsel present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Zia Ullah Law Officer, Dr. Salim Director and Dr. Salim Javid Litigation Officer for respondents present.


Cost of Rs. 3000/- was paid[@] to the appellant and in this regard, signature of learned counsel for appellant was obtained on the margin of order sheet. Last chance is given for submission of comments/reply for 12/07/2021 before D.B.



(Atiq ur Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

Received
dt-1/4/2021
Rs-3000


18.06.2020

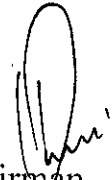
Nemo for the appellant. Mr. Muhammad Jan learned Deputy District Attorney alongwith M/S Salim Javid Litigation Officer and Mastan Ali Shah Litigation Assistant for the respondents present.

On the last date, instant matter was adjourned through reader's note. The appellant/counsel shall therefore, be put on notice.

Adjourned to 07.09.2020 before D.B.



Member



Chairman

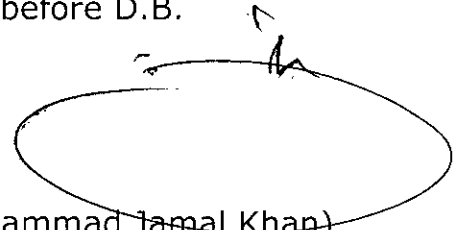
07.09.2020

Appellant is present alongwith his counsel. Mr. Usman Ghani, District Attorney alongwith representatives of the department Mr. Hazrat Shah, Section Officer and Mr. Saleem Javed, Legal Assistant, are also present.

Perusal of previous order sheet reveals that respondents have not submitted their respective reply up till now and are again seeking time for its submission whereas the appeal is pending adjudication since 26.06.2018, cost of Rs. 2000/- is imposed on the respondents on retrieval it has to be paid to the appellant. The representatives of the department are directed to submit their respective reply on or before next date of hearing and file to come up for reply as well as arguments on 26.10.2020 before D.B.



(Mian Muhammad)
Member (Executive)



(Muhammad Jamal Khan)
Member (Judicial)

27.11.2019

Counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Saleem, Javed, Litigation Assistant for respondent no.2 present. Representative of respondent no.2 seeks adjournment for submission of reply and proper assistance. Adjourned. To come up for written reply and arguments on 30.01.2020 before D.B.


Member


Member

30.01.2020

Clerk to counsel for the appellant present. Mr. Ziaullah, DDA for respondents present. Due to General Strike of the bar on the call of Khyber Pakhtunkhwa Bar Council, the instant case is adjourned. To come up for further proceedings/arguments on 30.03.2020 before D.B. Appellant be put on notice for the date fixed.


Member


Member

Due to public holiday on account of covid-19- the case is adjourned. To come up for the same on 18/6/2020


Reader

09.07.2019

Appellant in person and Addl: AG alongwith Mr. Saleem, Litigation Officer for respondent no.2 present.

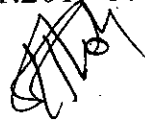
Representative of the respondent no.2 states that the said respondent is only proforma and would not prefer to submit reply to the brief.


On the last date of hearing, the respondents were allowed final opportunity for submission of written reply/comments, that too, on payment of cost of Rs.1000/- . Today none of the respondents except respondent no.2 is represented through a representative. The matter is, therefore, adjourned to 23.09.2019 for arguments before D.B.


Chairman

23.09.2019

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not in attendance. Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Adjourned. To come up for ~~arguments~~ arguments on 26.11.2019 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

20.03.2019

Clerk to counsel for the appellant and Mr. Kabirullah Khattak learned Addl; AG for the respondents present. Learned Addl; AG requests for time to submit written reply/comments. Last opportunity is granted. ~~Due to~~ ~~general strike of the bar, the case is adjourned.~~ To come up for written reply/comments on 18.04.2019 before S.B.


(Hussain Shah)
Member

18.04.2019

Clerk to counsel for the appellant present. Written reply not submitted. M/S Rehmat Khan Superintendent and Jafar Shah Assistant for respondents present and requested for time to furnish written reply/comments. Granted by way of last chance. To come up for written reply/comments on 12.06.2019 before S.B.


Member

12.06.2019

Appellant with counsel and Addl: AG alongwith Mr. Jafar Ali, Assistant for respondents present. Written reply not submitted despite last opportunities. Requested for further adjournment. Last opportunity further extended subject to payment of cost of Rs. 1000/- which shall be borne by respondents from their own pockets. Case to come up for further proceedings on 09.07.2019 before S.B.


(Ahmad Hassan)
Member

5-11-18

Due to retirement of Honorable
Chairman the Tribunal is now
functional therefore the case is
adjourned to come up for the same
on 20-12-2018.

[Signature]
Reader

20.12.2018

Appellant in person. Written not submitted. No one present on behalf of respondent department. Notice be issued to the respondents for 06.02.2019. To come up for written reply/comments on the date fixed before S.B.

[Signature]

Member

06.2.2019

Clerk for counsel for the appellant and Addl. AG for the respondents present.

Learned AAG requests for time to submit the requisite reply. Adjourned to 20.03.2019 before S.B.

Chairman

[Signature]

23.07.2018

Learned counsel for the appellant present.
Preliminary arguments heard.

The appellant has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, with the prayer that the respondent department be directed to post the appellant properly and pay him the dues with all back benefits.

Allegedly vide order dated 05.10.1999 the appellant was transferred from Peshawar to District Kohistan in the capacity of Junior EPI Technician however he has not performed any duty thereafter and failed to comply with the transfer order dated 05.10.1999. On 17.02.2018 the appellant has filed departmental appeal.

21/8/18
Learned counsel for the appellant argued that the appellant is neither charge sheeted nor any inquiry was conducted nor any show cause notice was served upon him. Learned counsel for the appellant stressed that the appellant is still in service but without any posting and salary.

Points raised need consideration. The present appeal is admitted for regular hearing subject to all just legal objections including the issue of limitation. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 10.09.2018 before S.B.


Member

10.09.2018

Clerk to counsel for the appellant present. Security and process fee has not been deposited. Appellant is directed to deposit the same within 7 days, thereafter notices be issued to the respondents for submission of written reply/comments on 05.11.2018 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 822/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/06/2018	<p>The appeal of Mr. Rad Ali resubmitted today by Mr. Gohar Ali Khesghi Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 26/6/18.</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>19/7/18</u>.</p> <p style="text-align: right;"><i>[Signature]</i> MEMBER</p> <p style="text-align: right;"><i>[Signature]</i></p>
2-		

The appeal of Mr. Rad Ali son of Gul Said r/o Khesghi Payan EPI Technician Peshawar received today i.e. on 21.06.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- ✓ 1- Copy of transfer order dated 5/10/1999 mentioned in para-3 of the memo of appeal is not attached with the appeal which may be placed on it. The annexure-D is the reply of the letter dated 22.9.1999 but not a transfer order.
- 2- Annexure-B of the appeal is illegible which may be replaced by legible/better one.

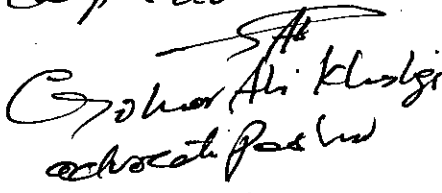
No. 1262 /S.T,

Dt. 21/6 /2018.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Gohar Ali Adv. Pesh.

Ses
The obj. No 1 is clear not not considered.
is correct one object is baseless. and Transfer order
is not available. as reference of letters of Respondent
No 1 & 2 is ready. and Annex B is legible one.
So re Submitted after completion.


Gohar Ali Khasgi
Advocate Peshawar
26/6/2018

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. 822/2018


Rad Ali(Appellant)

VERSUS

Deputy Director EPI Khyber Pakhtunkhwa, Peshawar and
others.....(Respondents)

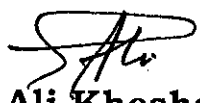
I I N D E X

S.No	Description of Documents	Annex	Pages
1.	Service Appeal		1-4
2.	Affidavit		5
3.	Addresses of the parties		6
4.	Copy of appointment letter	A	7-8
5.	Copy of Transfer letter	B	9
6.	Copy of departure letter	C	10
7.	Copy of cancellation of transfer order of appellant from Peshawar to Kohistan	D	11-12
8.	Copy of departmental appeal	E	13-15
9.	Wakalat Nama		16


Appellant

Through

Dated: 21/06/2018


Gohar Ali Khesghi
Advocate High Court,
Peshawar.
Cell No. 0345-9082942

Gohar Ali Khesghi
Advocate High Court
Peshawar

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 822/2018

Diary No. 1061

Dated 21-6-2018

Rad Ali S/o Gul Said R/o Khashgi Payan, E.P.I Technician,
Recently with DD. EPI KPK, Peshawar.....(Appellant)

VERSUS

- ✓ 1. Deputy Director EPI Khyber Pakhtunkhwa, Peshawar.
- ✓ 2. Director General Health Services, Khyber Pakhtunkhwa,
Peshawar.
- ✓ 3. District Health Officer Kohistan, at Dassue.
- ✓ ④ Government of Khyber Pakhtunkhwa Secretary Health,
~~Finance~~, Peshawar.
- ✓ 5. District Health Officer, Peshawar, DHO Office,
Peshawar.....(Respondents)

6 - Govt of KPK through Sec. Finance Peshawar

APPEAL U/S 4 OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974, FOR
PROPER POSTING OF THE APPELLANT AND
PAYMENT OF DUE WITH BACK BENEFIT.

Filed to-day

Registrar

21/6/18

Prayer in appeal:

On acceptance of this appeal, the impugned order may please be set aside and the appellant be properly posted at Peshawar with all back benefits.

Gohar Ali Khashgi
Advocate High Court
Peshawar

Respectfully Sheweth:

The facts giving rise to the following appeal:

- 1. That appellant was appointed by respondent No. 1 as Junior EPI Technician for District Kohistan dated 15/12/1985. (Copy of appointment order is attached as annexure "A").
- 2. That appellant performed duty with the entire satisfaction of the Seniors with unblemished record and the appellant was again transferred to Peshawar and left the departure report as annexure "B" & "C" dated 08/05/1991 and 11/07/1991.
- 3. That after serving of 4 years the appellant was again transferred to Kohistan dated 05/10/1999 as cancellation of the order of transfer from Kohistan to Peshawar ^{Returned} retirement to DD EPI as annexure "D".
Why the transfer order is not available to appellant
- 4. That the appellant is till at the disposal of DD EPI Peshawar and waiting for posting and salary since that.

Gohar Ali Kheshgi
Advocate High Court
Peshawar

5. That the appellant is neither Charge sheeted nor inquiry nor show cause notice served upon him, still in service.
6. That the appellant has a poor parents, who depends upon him as a sole hand of the family to earn.
7. That the whole family is suffering financially.
8. That the appellant has filed departmental appeal to respondent No. 2 who slept over it and 90 days have been elapsed, as annexure "E"
9. That the appellant is constraint to approach on the following grounds:

GROUND:

- A. That the dealing of the respondents with the appellant is illegal, unlawful, needs to be set aside.
- B. That appellant has a long service completed his tenure in far-flung area, hilly and hard area ~~and~~

hard area then no proper posting is, bias and against the cannon of justice.

- C. That no Charge Sheet, no inquiry and no Show Cause Notice served upon the appellant.
- D. That no explanation and no action has been taken against the appellant.
- E. That appellant is still in service and no action is taken by respondents against the appellant.
- F. That the appellant may also be allowed to rely on additional grounds at the time of arguments please.

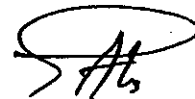
It is, therefore, prayed that on acceptance of this appeal, the respondents may please be directed to post the appellant properly and pay him the dues with all back benefits.



Appellant

Through

Dated: 21/06/2018



Gohar Ali Khashgi
Advocate High Court,
Peshawar.
Gohar Ali Khashgi
Advocate High Court
Peshawar

5

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. _____/2018

Rad Ali(Appellant)

VERSUS

Deputy Director EPI Khyber Pakhtunkhwa, Peshawar and
others.....(Respondents)

AFFIDAVIT

I, Rad Ali S/o Gul Said R/o Khesghi Payan, E.P.I
Technician, Recently with DD. EPI KPK, Peshawar, do hereby
solemnly affirm and declare, that the contents of the
accompanying **Service Appeal** are true and correct to the best
of my knowledge and belief and nothing has been concealed
from this Hon'ble Tribunal.

Rad Ali

DEPONENT
17201.2234294.7



Gohar Ali Khesghi
Advocate High Court
Peshawar

**BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR**

Service Appeal No. _____/2018

Rad Ali(Appellant)

VERSUS

Deputy Director EPI Khyber Pakhtunkhwa, Peshawar and
others.....(Respondents)

ADDRESSES OF THE PARTIES

APPELLANT:

Rad Ali S/o Gul Said R/o Khesghi Payan, E.P.I Technician,
Recently with DD. EPI KPK, Peshawar.

RESPONDENTS:

1. Deputy Director EPI Khyber Pakhtunkhwa, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa,
Peshawar.
3. District Health Officer Kohistan, at Dassue.
4. Government of Khyber Pakhtunkhwa Secretary Health,
Finance, Peshawar.
5. District Health Officer, Peshawar, DHO Office, Peshawar.

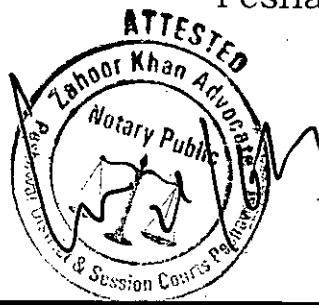
6- Govt of K.P.K. through Secretary Finance Peshawar

Appellant

Through

Dated: 21/06/2018

Gohar Ali Khesghi
Advocate High Court,
Peshawar.



Gohar Ali Khesghi
Advocate High Court
Peshawar

P. A. 7

LIST OF APPOINTED CANDIDATES FOR THE POST OF
JUNIOR EEE TECH: BPS-5

S.No.	Name of Candidates.	Father's Name	Address.
1. DISTT: KOHISTAN.			
1.	* Fazli Wadood	Amir Khan	
2.	Khurshid Anwar	Muhammad	
3.	Mohammad Nabi	Fazli Rabbi	
4.	Rad Ali	Gul Saif	
5.	Yousaf Ali	Fardosa Khan	
6.	Ruhai Amin	Afsar Khan	
7.	Nasir Khan	Misal Khan	
8.	Saidur Rehman	Fazli Subhan	
9.	Inayatpur Rehman	Habibur Rehman	
10.	Attullah	Shah Rahim	
11.	✓ Malik Aman	Wazir Mohammad	
12.	Khan Sher	Sher Gul	
13.	✓ Mohammad Daud Jan	Mohammadullah	Vill. P. Charsuella Tehsil - Charsuella
14.	Mohammad Salim	Khan Ebad	District - Mohmand Khan
15.	Yousaf Khan	Abdul Samad	Hospital, Charsuella
16.	Wali Khan	Muslim Khan	
2. DISTT: BANNU.			
1.	Atlas Khan	Mohammad Afzal	
2.	Qayum Nawaz	Sadullah Khan	
3.	Habibullah	Ubidullah	
4.	Hameed Khan	Sahar Jan	
5.	Hazrat Ali Khan	Shah Bahadar Khan	
6.	Rehmatullah	Rambel Khan	
7.	Nawab Khan	Sahar Jan	
8.	Mohammad Yousaf Khan	Gulu Khan	
9.	Sameeullah	Amanullah	
10.	Mohammad Raza Sani	Abdul Ghafer	
11.	Allahdad Shah	Mohammed Shah	
12.	Rehmanullah	Lal Shah Jehan	
13.	Fazal Karim	Mohammad Karim	
14.	Maqbool Khan	Mir Alam Khan	
15.	Mohammad Javed Iqbal	Alha Nar	
16.	Mohammad Younas	Said Khan	
17.	Nimatullah	Haji Abdul Hussan	
18.	Sher Abbass Khan	Sher Daraz Khan	
19.	Obidullah	Mirza Alam Khan	
20.	Umar Zada	Awal Mir	

A. H. Khan
Gohar Ali
Advocate Peshawar

A
P-8

OFFICE OF THE DEPUTY DIRECTOR, EXPANDED PROGRAMME ON IMMUNIZATION,
N.W.F.P. PESHAWAR.

OFFICE ORDER.

Consequent upon the approval of the Director Health Services, N.W.F.P. Peshawar letter No. 27/87/1-1, dated 12.12.1985. The following Candidates are hereby appointed as Junior E.P.I. Technicians/Vaccinators in BPS-5 plus other allowances as admissible under the rules purely on temporary basis against the vacant posts of Junior EPI Technicians/Vaccinators, as

Their appointment will be subject to the following terms and conditions.

1. They are domiciles of N.W.F.P.
2. They are declared Medically fit for Government Services,
3. They will be not entitled to any TA/DA for joining their first appointment and Medical Examination.
4. They will be liable to serve any where in N.W.F.P.
5. They will be governed by such Rules and orders as may be issued by the Government for the category of Govt: Servants to which they may belong.
6. If they wish to resign any time they will resign in writing by giving a prior notice of one month failing which one month pay will have to be forfeited.
7. Their appointment in the Health Department are purely on temporary basis and their services are liable to be terminated at any time without any reasons being assigned.
8. They will remain on one year probation starting from their date of arrival which is liable to be extended and if not extended through a written order shall be presumed to have been extended.
9. If they accept the offer on the above terms and conditions they should report for duty to the concerned District Health Officers in N.W.F.P.

Sd/-
Assistant Director,
Expanded Programme on Immunization
N.W.F.P. Peshawar.

*Gonia Adil Khan
Advocate High Court
Peshawar*

No. 5670-5973 EPI dated Peshawar 15th December, 1985.

Copy forwarded to :-

1. All District Health Officers, in NWFP, for information and necessary action. The list of Candidates are attached herewith for your perusal.
2. All concerned Candidates for information.

Not: Arrival Reports of the concerned should be submitted to this Office after the receipt of this Order.

hank
Assistant Director,

P. 9

OFFICE OF THE DEPUTY DIRECTOR EXPANDED PROGRAMME ON IMMUNIZATION,
N.W.F.P. PESHAWAR.

OFFICE OF DHE

As recommended by the Mr. Wali Mohammad Khan MPA and desired by the Health Minister N.W.F.P., Peshawar the following transferred junior EPI technician are hereby directed with immediate effect.

SNO.	NAME	FROM	TO	REMARKS
1.	Mr. Rad Ali Junior EPI Tech:	DHO Kohistan	DHO Peshawar	Novo first
2.	Mr. Bhtar, Shah Junior EPI Tech: EPI Centro Budnia	DHO Peshawar	DHO Kohistan	Visa Sr No. 1

Neto. TA/DA is allowed to Sr. No. 1.

Arrival & Departure reports should be submitted to this H/O in due course.

Deputy Director,
EPI N.W.F.P., Peshawar.

No. 4755-60/EPI Dated Peshawar The 8/5/1991.

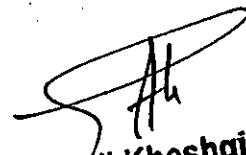
Copy forwarded to:-

1. The P.S. to Health Minister N.W.F.P. for information.
2. The District Health Officer Peshawar.
3. The District Health Officer ~~Rawalpindi~~ Kohistan.
4. The FMO, EPI Unit Peshawar / Kohistan.

The Accounts Section EPI H/O N.W.F.P., Peshawar.
for information and n/action.

M. Ishaq / ***

Deputy Director,
EPI N.W.F.P., Peshawar.


Gohar Ali Khesghi
Advocate High Court
Peshawar

P-10

No. 1026 /EPI, Dated Dassu the 11-7 /1991.

From, The District Health Officer,
Kohistan at Dassu.


To ✓ The Deputy Director,
EPI, NWFP, Peshawar.

Sub:- DEPARTURE REPORT.

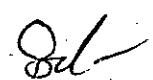
Memo;

Ref: your office order No. 4755-60/EPI, dated 8.7.91.

Mr. Rad Ali Junior ~~EPI~~ EPI Techn. reported his departure to day on the A/Noon of 11.07.1991 for n/a please.


District Health Officer,
Kohistan at Dassu. *R*

No. _____ /EPI,
Copy to EPI, Clerk for n/action.


District Health Officer,
Kohistan at Dassu.

Dr
P-11

DIRECTORATE GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

NO. : 30986 /E.V.
DATED: 22/09 /1999

To,

✓ The Deputy Director (EPI),
NWFP, Peshawar.

SUBJECT:

CANCELLATION OF TRANSFER ORDER.

Memo,

Reference your letter No.3555/EPI, dt: 16.9.1999.

Please decide the case at your end being Competent Authority keeping in view the recommendations of the Minister for Health NWFP, under intimation to this Directorate General.

FOR DIRECTOR GENERAL HEALTH SERVICES, NWFP, PESHAWAR.

20/9/99

aqeel99

Ghulam Ali Kheehgi
Advocate High Court
Peshawar
76

D
P-3
12

No. 3245
From,

/EPI: Dated Peshawar the

8/10

The Deputy Director, (EPI)
NWFP: Peshawar.

To:

The Director General Health,
Services NWFP: Peshawar.

Sub:-
Sir,

CANCELLATION OF TRANSFER ORDER.

With Ref: to your letter No. 30986/E-V
dated 22.9.99, on the subject cited above

I have the honour to state the case can
by the undersigned, as the transfer list of EPI: Staff w
your goodself as well as by the Minister for Health NWFP

Mr. Rad Ali JR:EPI:Tech: was transferred
to Distt Kohistan and Mr. Hamid Gul JR:EPI:Tech: was tran
Distt Kohistan to Distt Peshawar vide this office order
dated 17.3.99, on tenure Basis.

DEPUTY DIRECTOR, (EPI)
NWFP: PESHAWAR.

AS
Jm
Sub
5/10/99

5.10.99.

General Health
Advocate
Peshawar
A

'99.

ve.

not be decided
as approved by

..

from Distt Pesh:
ferred from
No. 1216-41/EPI:

I)

Handwritten signature

D
P- 3
12

No. 3245 /EPI: Dated Peshawar the 8/10/99.
From,

The Deputy Director, (EPI)
NWFP: Peshawar.

To:

The Director General Health,
Services NWFP: Peshawar.

Sub:- CANCELLATION OF TRANSFER ORDER.

Sir,

With Ref: to your letter No. 30986/E-V
dated 22.9.99, on the subject cited above.

I have the honour to state the case can not be decided
by the undersigned, as the transfer list of EPI: Staff was approved by
your goodself as well as by the Minister for Health NWFP:.

Mr. Rad Ali JR:EPI:Tech: was transferred from Distt Pesh:
to Distt Kohistan and Mr. Hamid Gul JR:EPI:Tech: was transferred from
Distt Kohistan to Distt Peshawar vide this office order No. 1216-41/EPI:
dated 17.3.99, on tenure Basis.

AS
DEPUTY DIRECTOR, (EPI)
NWFP: PESHAWAR.

[Handwritten signature]
5/10/99

5.10.99.

GOVT. NWFP
Advocate
[Handwritten signature]

[Handwritten signature]

محکمہ زمین و زرعی امور، ایف ڈی اے، اسلام آباد
 14-E-14

ایم ایل خورشید (محکمہ زمین و زرعی امور)
 ایف ڈی اے - 5
 1999

مذکورہ بالا کے متعلق - ایف ڈی اے کے متعلق درخواستیں

1 - یہ کہ جس نے ایف ڈی اے کے تحت زمینوں کی خرید و فروخت کی ہے اس کے متعلق درخواستیں
 15/12/1985 کو حکومت جوہن آباد کی تشکیل دینے اور
 1999 Dec 15th - ایف ڈی اے کے متعلق درخواستیں

2 - یہ کہ جس نے ایف ڈی اے کے تحت زمینوں کی خرید و فروخت کی ہے اس کے متعلق درخواستیں
 3/7/1991 کو حکومت جوہن آباد کی تشکیل دینے اور
 1999 Dec 15th - ایف ڈی اے کے متعلق درخواستیں

3 - یہ کہ جس نے ایف ڈی اے کے تحت زمینوں کی خرید و فروخت کی ہے اس کے متعلق درخواستیں
 5/10/1999 کو حکومت جوہن آباد کی تشکیل دینے اور
 1999 Dec 15th - ایف ڈی اے کے متعلق درخواستیں

4 - یہ کہ جس نے ایف ڈی اے کے تحت زمینوں کی خرید و فروخت کی ہے اس کے متعلق درخواستیں
 30986/E.V کو حکومت جوہن آباد کی تشکیل دینے اور
 1999 Dec 15th - ایف ڈی اے کے متعلق درخواستیں

5 - یہ کہ جس نے ایف ڈی اے کے تحت زمینوں کی خرید و فروخت کی ہے اس کے متعلق درخواستیں
 22-9-1999 کو حکومت جوہن آباد کی تشکیل دینے اور
 1999 Dec 15th - ایف ڈی اے کے متعلق درخواستیں

6 - یہ کہ جس نے ایف ڈی اے کے تحت زمینوں کی خرید و فروخت کی ہے اس کے متعلق درخواستیں
 1999 Dec 15th - ایف ڈی اے کے متعلق درخواستیں

Attested
 Gohar Ali Kheshgi
 Advocate High Court
 Peshawar

7- یہ کہ ایڈووکیٹ اربک عسریب نادار اور ڈوٹریج ڈاٹریج کا سہارا سے لیکر ہے اور زچاری اور زچریں عسریب نے بھی آئیڈیوٹریٹ اور ایٹ کوئی اسپر اسٹین نے۔

8- یہ کہ قرین و انہ تندر کوز ہے میں اور سزید ناقون ڈرنگڈارا ہوتا ہے جو اوہ کھی باؤکا سے



9- یہ کہ میں ایڈووکیٹ ذہنی بیماری کا شکار ہوں۔ یہ کہ زچاری کے تندر تانے

اس کے آسٹریٹ عسریب نے یہ کہ سزوری ایٹل جیڈا عسریب دوست کو سزید سہارا کے لئے
میں اور تندر اور 5/10/1999 سے تندر ادا کرنے کا حکم عسریب فرمایا جاتا ہے

2
17 فورم 2018

ایٹل ایڈووکیٹ راج علی اسی علی آئی سٹیشن ایٹادہ عسریبوں کے

Govt Advocate High Court
Peshawar

قیمت 50 روپے	Gohar Ali Khesghi Advocate High Court Peshawar			27790
ایڈووکیٹ: گوہر علی کھوشگئی		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: 107448				
رابطہ نمبر: 03459082942				

بعدالت جناب: سر جسٹری جنرل، سپریم کورٹ، اسلام آباد

مخانب: ایڈووکیٹ	دعویٰ:
راہداری دہلی دارالحکومت	علت نمبر:
بنام	مورخہ:
محمد سعید شمس بدایوں	جرم:
	تھانہ:

باعت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام کے لیے گوہر علی کھوشگئی (راہداری دارالحکومت) کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف 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 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 یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

Gohar Ali Khesghi
Advocate High Court
Peshawar

المرقوم: _____

بد _____ واہ شد _____ بد _____

مقام کے لیے منظور ہے۔

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No. 822/2018.



Ra'ad Ali,

-----Appellant

Versus

- 1: Deputy Director EPI Khyber Pakhtunkhwa, Peshawar.
- 2: Director General Health Services Peshawar near district courts Peshawar
- 3: District Health Officer, Dasse.
- 4: Secretary Health, Govt of Khyber Pakhtunkhwa Peshawar.
- 5: District Health Officer, Peshawar.


-----Respondents

Respected sir,

Regarding Service Appeal No.822/2018 Ra'ad Ali Vs Govt of KP is related to the transfer of junior EPI-Technician which is beyond the jurisdiction of undersigned. Furthermore the appellant appointment order, transfer order, cancellation order reveals that none of the above mentioned letters issued by the undersigned.

Moreover the para -4 of the appeal is crystal clear that the appellant is at the disposal of the Deputy Director E.P.I, who knows the factual position & can accurately reply the same.

As long as the undersigned is concerned, he is formal respondent/defendant (proforma respondent) in the instant appeal & is bound to implement the order of honourble Service Tribunal, if any on his part.


District Health Officer,
Peshawar

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

SERVICE APPEAL NO. 822/2018

Rad Ali.....Appellant

Versus

Government of Khyber Pakhtunkhwa & othersRespondents

Index

S. No.	Description	Annexure	Pages No.
1	Comments		1-2

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 822 OF 2018

Rad AliAppellant

Versus

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

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO 1, 2 & 4

Respectfully Sheweth:

Preliminary Objections:-

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

ON FACTS:

1. Pertains to record.
2. Correct to the extent of transfer and departure of the appellant.
3. Incorrect. It is pertinent to mention here that the appellant was transferred from DHO office Kohistan to DHO office Peshawar vide order dated 08.07.1991. On 17/03/1999 the appellant was again transferred to DHO office Kohistan but he did not submit his arrival report over there and absented himself. Resultantly, the salary of the appellant was stopped.
4. Incorrect. The appellant is misguiding the Hon'ble Court by stating that he is still under the control of Deputy Director EPI, when the appellant was transferred back to DHO office Kohistan, he was supposed to submit his arrival report but he neither reported to DHO office Kohistan nor continued his duty in DHO office Peshawar rather he absented himself without any intimation or approval. Resultantly his salary was stopped.
5. Correct to the extent that the appellant was not charge sheeted. However, the appellant was transferred to DHO office Kohistan vide order dated 17/03/1999 but he neither reported for duty to DHO office Kohistan nor continue his duty in DHO office Peshawar.
6. Pertains to record.
7. Pertains to record.
8. Pertains to record. However, the appellant was transferred to DHO office Kohistan vide order dated 17/03/1999 but he failed to submit report over there. The appellant has now reappeared after 20 years and claiming his service. Furthermore, it is important to mention here that the appellant neither attached his presence record nor performed his duty as he claims.
9. No comments being formal.

ON GROUNDS:

- A. Incorrect. The action of the respondents is according to law and rules as the appellant was transferred to DHO office Kohistan vide order dated 17/03/1999 but he neither reported to DHO office Kohistan nor continued his duty in DHO office Peshawar rather he absented himself without any intimation or approval. Resultantly his salary was stopped. It is also important to mention here that he has never applied for his salary or agitated the matter regarding his salary etc in past almost 20 years.
- B. Incorrect, as stated in above para.
- C. Correct to the extent that proper procedure was not adopted, however, the salary of the appellant was stopped since 1999.
- D. Incorrect, as stated in above para.
- E. Incorrect, as stated in above para.
- F. The department will also produce other grounds at the time of hearing.
- G. Incorrect, as explained in above paras.
- H. No comments.
- I. No comments being formal.

PRAYER:

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

Deputy Director (EPI)
DGHS office Peshawar
Respondent No. 01

Director General Health Services,
Khyber Pakhtunkhwa.
Respondent No. 02 & 04

OFFICE OF THE DEPUTY DIRECTOR EXPANDED PROGRAMME ON IMMUNIZATION
N.W.F.P. PESHAWAR.

OFFICE ORDER

directive

As per ~~order~~ by the Health Minister vide his endorsement No. Nil dated 10.4.1999 on the body of D.O. letter of Khan Iqbal Khan IPA, Mr. Rad Ali Jr. EPI Tech. has completed his tenure once in Kohistan, the posting/transfer order of Mr. Rad Ali Jr. EPI Tech. issued vide this office order No. 1216-41/EPI dated 17.3.1999 is hereby cancelled.

DEPUTY DIRECTOR
EXPANDED PROGRAMME ON IMMUNIZATION
N.W.F.P. PESHAWAR.

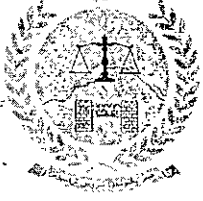
No. 1757-58 /EPI dated Peshawar the 15/4/1999

Copy forwarded to the :-

1. to Health Minister NWFP Peshawar for information w/r to his order dated 10.4.1999.
2. Director General Health Services NWFP Peshawar for information.
3. DHO Peshawar for information.
4. DHO Kohistan for information.
5. /file
6. Office copy.

A3
DEPUTY DIRECTOR
EXPANDED PROGRAMME ON IMMUNIZATION
N.W.F.P. PESHAWAR.

Sub



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

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

No: 1127 /SI Dated: 24/5 /2022

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

To

Deputy Director EPI Khyber Pakhtunkhwa,
Peshawar.

Subject: JUDGMENT IN APPEAL NO.822 Mr. Raz Ali

I am directed to forward herewith a certified copy of judgment dated 12.05.2022 passed by this Tribunal on the above subject for compliance please.

Encl:As above


REGISTRAR

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR