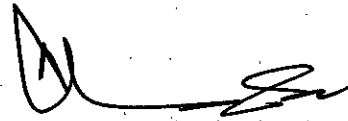


30th June, 2022

1. Petitioner alongwith his counsel present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Dr. Fakhar Zaman, District Specialist for respondents present.

2. Petitioner submits that his grievance has been redressed and does not want to further pursue this execution. The instant execution petition is disposed of being executed. Consign.

3. *Pronounced in open court in D.I.Khan and given under my hand and seal of the Tribunal on this 30th day of June, 2022.*



(Kalim Arshad Khan)

Chairman

Camp Court D.I.Khan

14.12.2021

Counsel for the petitioner and Mr. Muhammad Adeel Butt, learned Additional Advocate General alongwith Mr. Mishqatullah, DMS for the respondents present.

Learned AAG seeks short adjournment in order to contact DHO concerned to apprise the Tribunal about the steps taken towards implementation of the judgment under execution. Request is accorded. Case to come up on 15.12.2021 before S.B at Camp Court, D.I.Khan.



Chairman
Camp Court, D.I.Khan

15.12.2021

Counsel for the petitioner and Mr. Muhamad Adeel Butt, learned Additional Advocate General for the respondents alongwith Dr. Abbas Sherani, M.S (respondent No. 3) in person present.

According to correspondence produced by the respondent department and placed on file, the process for release of admissible salaries etc. to the petitioner and other similarly placed with him is underway in the higher quarter. The respondents are directed to pursue the case vigorously. Case to come up on 27.01.2022 for implementation report before S.B at Camp Court, D.I.Khan.

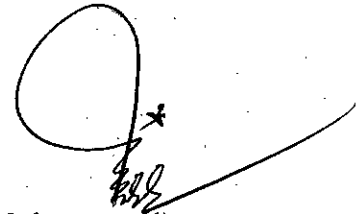


Chairman
Camp Court, D.I.Khan

25.03.2021 Counsel for the petitioner present. Mr. Muhammad Rashid, DDA alongwith Dr. Fakhar Zaman, MS, Tank for respondents present.

Representative of the respondents made a commitment that complete and conclusive implementation report will be produced on the next date of hearing.

Adjourned to 21.06.2021 before S.B at camp court D.I.Khan.



(Mian Muhammad)
Member(E)
Camp Court D.I.Khan

21.06.2021 Due to COVID-19, the case is adjourned to 25.10.2021 for the same.

READER

25.10.2021 Counsel for the petitioner present.

Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Dr. Fakhar Zaman, Litigation Officer for respondents present.

Implementation report not submitted. Representative of the respondents requested for time for submission of implementation report. Adjourned. To come up for implementation report on 14.12.2021 before S.B at Camp Court, D.I. Khan.




(ATIQU-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)
CAMP COUR D.I KHAN

28.10.2020

Petitioner is present in person. Mr. Usman Ghani, District Attorney alongwith Mr. Hazrat Shah, Section Officer and Dr. Fakhar Nawaz, D.M.S, for the respondents are also present.

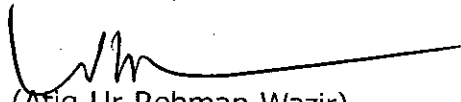
Petitioner requested for adjournment on the ground that the Members of the High Court as well as of the District Bar Association D.I.Khan are observing strike today, therefore, his counsel is not available today. Adjourned to 25.11.2020 on which date to come up for implementation report before S.B at Camp Court, D.I.Khan.


(MUHAMMAD JAMAL KHAN)
MEMBER
CAMP COURT D.I.KHAN

25.11.2020

Petitioner with counsel and Mr. Muhammad Jan, learned DDA alongwith Mishqat Ullah Superintendent for respondents present.

Representative of respondents submitted a letter dated 23.011.2020 addressed to the Director General Health Services, Peshawar, whereby guideline regarding arrears of reinstated employee was sought by the Medical Superintendent DHQ Hospital Tank. The list of reinstated employee has also been annexed with the letter. The respondent department is directed to expedite the matter and resolve the issue of arrears at earliest. To come up for implementation/progress report on 27.01.2021 before S.B at Camp Court, D.I Khan.


(Atiq-Ur-Rehman Wazir)
Member (E)
Camp Court, D.I.Khan

27.1.2021

*Due to COVID 19, the case is adjourned
to 25.3.2021 for the same.*



26/3/2020

Due to COVID-19 the case is adjourned. To come up for the same 22/4/2020 at Camp Court, D.I Khan


Reader

22/4/2020

Due to COVID-19 the case is adjourned. To come up for the same 23/9/2020 at Camp Court, D.I Khan


Reader

23.09.2020

Petitioner present through counsel.

Dr. FaKhar Nawaz D.M.S being representative of respondents, present. Mr. Usman Ghani, learned District Attorney present.


A request was made for adjournment by the respondents in order to apprise the Tribunal in respect of the implementation report as case of the petitioner is under process; allowed. To come up for implementation report on 28.10.2020 before S.B at Camp Court D.I Khan.



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

22.02.2018

Counsel for the petitioner present. Mr. Usman Ghani, District Attorney alongwith Dr. Khail Muhammad Barki, M.S (Tank) for the respondents also present. Representative of the department submitted implementation report/office order dated 24.01.2018 vide which the petitioner has been reinstated in service. Implementation report is placed on record. Learned counsel for the petitioner seeks time to examine the implementation report. Adjourned. To come up for further proceedings on 15.03.2018 before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan




15.03.2018

Counsel for the petitioner and Mr. Ziaullah, Deputy District Attorney for respondents present. Counsel for the petitioner argued that sufficient leave is available in the leave account of the petitioner. However, he was unable to produce any documentary evidence. He is directed to produce leave account of the petitioner on the next date of hearing. To come up for further proceedings on 28.06.2018 before S.B


(AHMAD HASSAN)
MEMBER
Camp Court D.I.Khan

FORM OF ORDER SHEET

Execution Petition No. 3 /2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	05.01.2018	<p>The Execution Petition of Mr. Muhammad Nisar submitted to-day by Sheikh Iftikhar-ul-Haq Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This Execution Petition be put up before Touring S. Bench at Dera Ismail Khan on <u>25-1-18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Counsel for the petitioner present. Notice be issued to the respondents for implementation report for 22.02.2018 before S.B at Camp Court D.I.Khan.</p> <p style="text-align: right;"> (Muhammad Amin Khan Kundi) Member Camp Court D.I.Khan</p>
	25.01.2018	

26.04.2018

Tour is hereby cancelled, Therefore the case is adjourned for the same on 30.07.2018 before S.B.


Reader
Camp Court D.I Khan


30.07.2018

None present on behalf of the petitioner. Tour is hereby cancelled. Therefore the Execution is adjourned for the same on 11.09.2018 before S.B.


Reader
Camp Court D.I Khan


11.09.2018

Counsel for the petitioner and Mr. Ziaullah, Deputy District Attorney for the respondents present. Learned counsel for the petitioner requested for adjournment. Adjourned. To come up for further proceedings on 28.11.2018 before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

28.11.2018

Counsel for the petitioner present. Mr. Usman Ghani, District Attorney for the respondents present. Learned counsel for the petitioner requested for adjournment. Adjourned. To come up for further proceedings on 21.01.2019 before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

21.01.2019

Junior to counsel for the petitioner and Mr. Farhaj Sikandar, District Attorney alongwith Samiullah, Data Entry Operator for the respondents present.

A request on behalf of petitioner is made for adjournment of the matter due to general strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourned to 22.04.2019 at camp court, D.I.Khan on which date the petitioner shall produce leave account as ordered on 15.3.2018.

Chairman
Camp Court, D.I.Khan

22.04.2019

Learned counsel for the petitioner and Mr. Farhaj Sikandar learned District Attorney alongwith M/S Ihsan Ullah Medical Superintendent (respondent No.2), Fakhar Zaman Pathologist and Sajjad Qureshi CT Pharmacy present. Learned District Attorney stated that respondent No.2 (Medical Superintendent) has not brought in the notice of high-ups that the appointments made by the then Medical Superinntendent Mr. Muhammad Khan Afridi, were subject to the outcome of the decision in service appeals under implementation. Respondent No.2 seeks adjournment to furnish the actual facts to the notice of respondent No.1. Adjourn. To come up for implementation report/further proceedings on 25.06.2019 before S.B at Camp Court, D.I.Khan.


Member
Camp Court, D.I.Khan.

23.09.2019

Mr. Farhaj Sikandar learned Deputy District Attorney alongwith Umār Zada M.S present. Learned DDA seeks adjournment to furnish reply. Adjourn. To come up for reply/arguments/further proceedings on 21.10.2019 before S.B at Camp Court, D.I.Khan.



Member

Camp Court, D.I.Khan.

21/10/2019

Since tour to D.I.Khan has been cancelled .To come for the same on 27/11/2019.



Reader

27.11.2019

Counsel for the petitioner and Mr. Ziaullah Deputy District Attorney alongwith Mr. Hazrat Shah, Superintendent for the respondents present. Learned counsel for the petitioner submitted objection petition to the implementation report which is placed on record. Case to come up for arguments on 29.01.2020 before S.B at Camp Court D.I.Khan.




(Muhammad Amin Khan Kundi)

Member

Camp Court D.I.Khan


29.01.2020

Clerk to counsel for the petitioner and Mr. Usman Ghani, District Attorney alongwith Dr. Fakhar Zaman, District Specialist for the respondents present. Clerk to counsel for the petitioner requested for adjournment on the ground that learned counsel for the petitioner is not available today due to general strike of Khyber Pakhtunkhwa Bar Council. Adjourned to 26.02.2020 for arguments before S.B at Camp Court D.I.Khan.


(M. Amin Khan Kundi)
Member
Camp Court D.I.Khan

26.02.2020

Counsel for the petitioner and Mr. Ziaullah, Deputy District Attorney for the respondents present. Learned Deputy District Attorney seeks adjournment. Adjourned to 26.03.2020 for arguments before S.B at Camp Court D.I.Khan.


(M. Amin Khan Kundi)
Member
Camp Court D.I.Khan

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

Implementation Petition No. 3/2018

In Service Appeal No. 861/2016

Decided on 25/10/2017

Muhammad Nisar

VERSUS

Govt; of KPK etc

INDEX

<u>S.NO</u>	<u>PARTICULARS</u>	<u>ANNEXURE</u>	<u>PAGE NO.</u>
1	Grounds of Implementation Petition along with affidavit.	-	1-3
2	Copies of the subject of the grounds of service appeal and order / judgment of this August Tribunal Court.	"A & A/1" Ann - A/1	4-8 9-15
3	Copy of application and postal receipt	"B"	16
4	Wakalatnama	-	17

Your Humble Appellant



Muhammad Nisar
Through Counsel

Dated: 01/01/2018


SHAIKH IFTIKHAR UL HAQ
Advocate High Court,
Dera Ismail Khan.

1

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

Implementation Petition No. 3 /2018

In Service Appeal No. 861/2016

Decided on 25/10/2017

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 23

Dated 05/01/2018

Muhammad Nisar S/o Mir Janan Ex-Clinical Technician
Pathology (BPS-12) District Headquarter Hospital Tank.

.....(Petitioner)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Health, Peshawar.
2. Director General Health Services Khyber Pakhtunkhwa, Peshawar.
3. Medical Superintendent District Headquarter Hospital Tank.
4. District Health Officer, Tank.
5. District Account Office, Tank.

.....(Respondents)

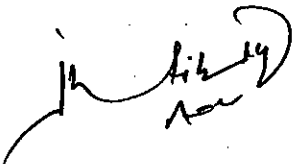
**IMPLEMENTATION PETITION UNDER
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT 1974 (SECTION -7) READ
WITH KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL RULES, 1974 (AS AMENDED)
FOR IMPLEMENTATION THE ORDER /
JUDGMENT IN SERVICE APPEAL NO.
861/2016 DECIDED ON 25/10/2017 BY
THIS HONOURABLE TRIBUNAL.**

Respectfully Sheweth:-

The petitioner humbly submits as under:-

1-

That the petitioner was appointed as Junior Clinical Technician Pathology (now Clinical Technical Pathology BPS-12) in DHQ Tank vide order dated 16/07/2012, wherein the petitioner / appellant was terminated from service vide order dated 09/05/2016. Therefore the petitioner filed the service appeal No. 861/2016 on 29/08/2016 well within time. Wherein this August Tribunal / Honourable Court were pleased to accept the



appeal by setting aside the impugned order dated 09/05/2016 and the petitioner was reinstated into service the intervening period may be treated of leave of the kind due. Copies of the subject of the grounds of service appeal and order / judgment of this August Tribunal are enclosed as Annexure "A & A/1".

2- That the petitioner submitted various application to the respondent but was not accepted. Hence the instant implementation petition amongst other on the following grounds, the copy of application along with postal receipts are enclosed as Annexure "B".

GROUNDS:-

- a) That the acts and omission of the respondents are clear cuts violations of law and statutes and constitutions.
- b) That the lame excuse on behalf of respondents authority not maintainable and the respondents were required to implement the judgments of this Honourable Tribunal in letter and spirits.
- c) That the Counsel of the petitioner may very graciously be allowed to add further grounds during the course of hearing.

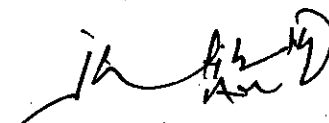
It is, therefore, humbly prayed that the respondents be directed to implement the judgments / order of this Honourable Tribunal in letter and sprit. Any other relief deem fit may kindly be given in favour of petitioner.

Your Humble Appellant



Muhammad Nisar
Through Counsel

Dated: /01/2018



SHAIKH IFTIKHAR UL HAQ
Advocate High Court,
Dera Ismail Khan.

3

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

Implementation Petition No. _____/2017

In Service Appeal No. 861/2016

Decided on 25/10/2017

Muhammad Nisar **VERSUS** Govt; of KPK etc

VERIFICATION:-

It is verified that it is first petition and no such petition has ever been preferred in this Honourable Tribunal by the Petitioner. And all the contents of above petition are true and correct.

(Signature)

Muhammad Nisar

AFFIDAVIT

I, **Muhammad Nisar** S/o Mir Janan Ex-Clinical Technician Pathology (BPS-12) District Headquarter Hospital Tank, the petitioner, do hereby solemnly affirm declared on oath that contents of the above **Implement Petition** are true and correct to the best of my knowledge and nothing has been concealed from this Honourable Tribunal.

(Signature)
17/11/18
ARBIAN... (ANLAGAH)

(Signature)
DEPONENT

Identified by
(Signature)
Sh: *(Signature)*

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Ann "A"

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 861 / of 2016

Muhammad Nisar son of Mir Janan
Ex. Junior Clinical Technician Pathology (BPS-12)
District Headquarter Hospital, Tank... .. Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa
through Secretary Health, Peshawar.
2. Director General Health Services
Khyber Pakhtunkhwa, Peshawar.
3. Medical Superintendent
District Headquarter Hospital, Tank.
4. District Health Officer, Tank... .. Respondents

APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974
AGAINST THE IMPUGNED ORDER DATED
09.05.2016 OF RESPONDENT NO.3, WHEREBY THE
APPELLANT HAS BEEN REMOVED FROM
SERVICE WITH EFFECT FROM 01.05.2016.

Prayer:

On acceptance of this Appeal the impugned order dated
09.05.2016, whereby the appellant has been removed
from service with effect from 01.05.2016 may be set aside
and the appellant may please be reinstated back to his
service with all his back benefits and emoluments.

Respectfully Sheweth:

- I. That respondent No.4 advertised some posts on 24.02.2012 with regard
to the Medical Profession, including the post of Junior Clinical
Technician Pathology (BPS-9). (Copy of the Advertisement dated
24.02.2012 is attached herewith as annexure 'A').

2. That the appellant being qualified/eligible for the said post duly applied through the procedure and process as prescribed and finally the appellant was issued an appointment letter for the post of Junior Clinical Technician Pathology (BPS-9). (Copy of the appointment letter dated 16.07.2012 is attached herewith as annexure 'B').
3. That the appellant has been serving the respondents department by heart and sole and in August 2015 the posts of Medical Employees were upgraded, hence all the posts of BPS-9 were upgraded to BPS-12. (Copy of the said Notification of Upgradation dated 11.08.2015 is attached herewith as annexure 'C').
4. That the appellant was serving the respondents department with all his ability and has never given any chance of complaint to his high-ups as well as to the general community of the patients.
5. That to the astonishment of the appellant an inquiry was held in the year 2013 with regard to the appointment of the appellant, however, the finally the recommendations of the inquiry were given in favour of the appellant. (Copy of the Inquiry Report is attached herewith as annexure 'D').
6. That another inquiry was conducted on 25.11.2015, whereby some allegations were enquired with regard to the appointment of the appellant. (Copy of the said inquiry Report dated 25.11.2015 is attached herewith as annexure 'E').
7. That to the astonishment of the appellant he was served with a Show Cause Notice, whereby some vague and baseless allegations were levelled against the appellant with regard to his appointment. (Copy of the Show Cause Notice dated 09.01.2016 is attached herewith as annexure 'F').
8. That the appellant duly submitted his reply to the Show Cause Notice within the stipulated time i.e. on 23.01.2016. (Copy of the Reply to

the Show Cause Notice dated 23.01.2016 is attached herewith as annexure 'G').

- 9. That to the astonishment of the appellant he was finally served with a Notification dated 09.05.2016, whereby it was revealed upon the appellant that he has been removed from service with effect from 01.05.2016. (Copy of the impugned letter dated 09.05.2016 is attached herewith as annexure 'H').
- 10. That being aggrieved with the above noted notification the appellant then submitted a Departmental Appeal before respondent No.2 on 21.05.2016, however, no heed whatsoever has been paid by the department to the appeal of the appellant. (Copy of the Departmental Appeal of the appellant dated 23.05.2016 is attached herewith as annexure 'I').
- 11. That there being no other adequate/efficacious remedy the appellant now approaches this Honourable Service Tribunal on the following grounds amongst the others:-

GROUND:

- a. That the order of removal from service of the appellant is illegal, unlawful, without authority/jurisdiction and being based on the malafide intentions of the respondent, is liable to be set aside.
- b. That the appellant has been serving the respondent department since 2012 till the date of his removal from service and has never given any chance of complaint to his high-up or to the General Community of the patients.
- c. That no complaint whatsoever has been filed throughout the service against the appellant and he has been serving his department upto his utmost skill and ability.
- d. That both the inquiries have been conducted before the issuance of the Show Cause Notice which is a great illegality on the part

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of the respondent department and which alone is sufficient for the success of the appeal of the appellant.

- e. That the appellant has been served with a single Show Cause Notice without serving upon him ~~any other~~ process of inquiry or any statement of allegations or any Second Show Cause Notice and he has been removed from the service in a simplicity manner without adopting the process and procedure as mentioned in the E&D Rules.
- f. That once the appellant has been appointed at the of Junior ~~Path~~ Pathology Technician and he has resumed his charge and has served on the said post for about 4 years, nobody has got any authority to challenge his appointment process or to may any objection on the appointment of the appellant.
- g. That the appellant has been honest in his approach, he has never given concealed any fact from the respondents at the time of his appointment and the inquiry conducted in the year 2013 also favours the appellant and it has been held by the apex Court that once an appointment is made and there is no misconduct on the part of the candidate the appointing authority cannot withdraw its appointment under the Shadow of his appointment being illegal or unlawful.
- h. That if there is any fault on the appointment it may be attributed to the respondents and there is no fault/misconduct under which the appellant could be punished without any fault at his part.
- i. That the appellant has missed so many chances of service advertised in the different Newspapers during the course of employment while serving in the respondent department and in the meantime when he is going to become over age he has been removed from service without mentioning any cogent and plausible reason.

j. That the appellant has not been given any chance of defense nor he has been personally heard and his case has been decided in a summary manner.

k. That the removal from service order of the appellant is not legal nor lawful, hence the appellant is legally eligible/entitled to be reinstated back to his service with all his back benefits/emoluments.

It is, therefore, most humbly prayed that on acceptance of this Appeal the removal from service order of the appellant dated 09.05.2016 issued by respondent No.3 may please be set aside and the appellant may very graciously be reinstated back to his service with all his service benefits/emoluments.

Any other relief deemed fit and proper under the circumstances which has not been specifically asked for may also be granted to the appellant very graciously.

[Signature]

Appellant

Through:

[Signature]
(Ghulam Nabi Khan)
Advocate,
Supreme Court of Pakistan
B-17, Haroon Mansion
Khyber Bazar, Peshawar
Cell # 0300-5845943

And

[Signature]
(Mian Tajammal Shah)
Barrister, Peshawar.

Dated: 24.08.2016

CERTIFICATE:

Certified that as per instructions of my client, no such Service Appeal on behalf of the Appellant has earlier been filed in this Honourable Service Tribunal on the subject matter.

[Signature]
Advocate

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Ann "A/1"

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR



Service Appeal No. 861 / of 2016

Diary No. 888
Dated 24-8-2016

Muhammad Nisar son of Mir Janan
Ex. Junior Clinical Technician Pathology (BPS-12)
District Headquarter Hospital, Tank...

Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Health, Peshawar.
2. Director General Health Services Khyber Pakhtunkhwa, Peshawar.
3. Medical Superintendent District Headquarter Hospital, Tank.
4. District Health Officer, Tank...

Respondents

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 09.05.2016 OF RESPONDENT NO.3, WHEREBY THE APPELLANT HAS BEEN REMOVED FROM SERVICE WITH EFFECT FROM 01.05.2016.

Prayer:

On acceptance of this Appeal the impugned order dated 09.05.2016, whereby the appellant has been removed from service with effect from 01.05.2016 may be set aside and the appellant may please be reinstated back to his service with all his back benefits and emoluments.

filed-to-day
Registrar
4/8/16

Respectfully Sheweth:

ATTESTED

That respondent No.4 advertised some posts on 24.02.2012 with regard to the Medical Profession, including the post of Junior Clinical Technician Pathology (BPS-9). (Copy of the Advertisement dated 24.02.2012 is attached herewith as annexure 'A').

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar



A. No - 861/2016
Muhammad Nisar vs Govt

Order

25.10.2017

Counsel for the appellant and Mr. Farhaj Sikandar, District Attorney alongwith Mr. Khair Muhammad, MS Tank for respondents present. Arguments heard and record perused.

This appeal is also accepted as per detailed judgment of today placed on file in connected service appeal No. 878/2016 entitled "Shafiqur-Rehman-vs-Govt: of Khyber Pakhtunkhwa through Secretary Health Department, Khyber Pakhtunkhwa Peshawar and 3 others". Parties are left to bear their own cost. File be consigned to the record room.

Certified to be true copy
Announced: 25.10.2017
EX AMINER
Khyber Pakhtunkhwa Service Tribunal
Peshawar

SD/ Ahmad Hassan, Member
Counsel for Appellant
SD/ M. Hamid Mughal,
Member

Date of Presentation of Application 15-11-17
Number of Words 800
Copying Fee 6-
Urgent 2-
Total 8-
Name of Copyist [Signature]
Date of Completion of Copy 15-11-17
Date of Delivery of Copy 15-11-17

11

6

Ann. 20/1/1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT D.I. KHAN.

Appeal No. 878/2016

Date of Institution ... 29.08.2016

Date of Decision ... 25.10.2017



Shafiq-ur-Rahman S/O Gul Rahman Caste Kundi,
R/O Village Nandoor Pai, Tehsil & District Tank.
JCT Multipurpose

(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Health Department,
Khyber Pakhtunkhwa Peshawar and Others. (Respondents)

MR. MUHAMMAD WAQAR ALAM
Advocate

MR. YOUSAF JAN
Advocate

SHAIKH IFTIKAHR-UL-HAQ
Advocate

--- For appellant.

MR. FARHAJ SIKANDAR,
District Attorney

... For respondents

MR. AHMAD HASSAN,
MR. MUHAMMAD HAMID MUGHAL

MEMBER (Executive)
MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.-

This judgment shall dispose of the instant service appeal as well as connected service appeal no. 860/2016 titled M. Iqbal, no. 861/2016 titled M. Nisar, no. 862/2016 titled M. Rizwan, no. 863/2016 titled Fazal Rehman, no. 874/2016 titled Wajid Munir Nasri, no. 875/2016 titled Sabir Khan, no. 876 of 2016 titled Naimat ullah, no. 877/2016 titled Sikandar Hussain, no. 879/2016 titled Shukat Khan, no. 880/16 titled Imran Khan, no. 881/2016 titled Bin Yamin, no. 882/2016 titled Naik Nawaz, no. 883/216 titled Irfanullah, no. 884/2016 titled Muhammad Ali, no. 885/2016 titled Waheed Khan, no. 886/2016 titled M. Imran, no. 887/2016 titled Hidayat Ullah, no. 888/2016 titled M. Daud, no. 889/2016 titled Ghulam Jafar Khan, no. 890/2016 titled Samiullah, no. 891/2016 titled

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Ullaud Din, no. 892/2016 titled Waqar Ahmad, no. 893/2016 titled Asmatullah, no. 894/2016 titled Meherban, no. 895/2016 Waris Khan, no. 896/2016 titled M. Waqas, no. 897/2016 titled Farhan Haidar, no. 898/2016 titled Munir Khan, no. 899/2016 titled Gulfam Hussain, no. 900/2016 titled Umer Hayat, no. 901/2016 titled M.Ayub, no. 968/2016 titled Fazal-Ur-Rehman, no. 969/2016 titled Fazal Nadeem and no. 1060/16 titled Shaukat Ullah, as similar question of law and facts are involved therein.

2. Arguments of the learned counsel for the parties heard and record perused.

FACTS

3. The brief facts are that the appellant was appointed as Junior Clinical Technician (Multipurpose) BPS-12 after observance of all codal formalities. Vide impugned order dated 09.05.2016 he was removed from service against which he preferred departmental appeal on 21.05.2016 but was not responded within the statutory period, hence, the instant service appeal

ARGUMENTS

4. Learned counsel for the appellant argued that after fulfillment of codal formalities the appellant was appointed as JCT (Multipurpose) vide order dated 30.09.2012. Thereafter vide order dated 26.08.2013 he was adjusted in DHO Hospital Tank. On 28.04.2015 respondent no. 6 wrote a letter to District Accounts Officer to stop the salary of the appellant and others. The appellant and others filed Writ Petition no. 418-D/2015 and Writ Petition no. 541-D/15 in Peshawar High Court Bench D.I.Khan for the redressal of their grievances. Divisional Bench of Peshawar High Court vide order dated 15.12.2012 disposed of the petition on the commitment of respondent no.6 M.S DHQ, Hospital Tank that salary of all employees will be released. Subsequently, on 09.01.2016 a show cause notice was issued to the appellant to which proper reply was submitted. Vide impugned order dated 09.05.2016 he was removed from service. Impugned order is against the law and rules, codal formalities were not completed before passing this order. Opportunity of personal hearing was also not provided to him and was condemned unheard. First enquiry

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Khyber Pakhtunkhwa
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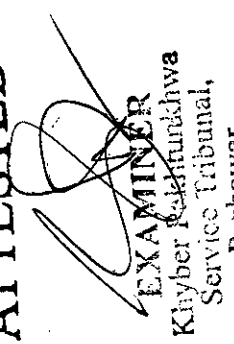
was conducted on the same allegations in 2013 and the enquiry officer declared these appointments valid. Though the merit list is maintained by the official respondents but one of the ground mentioned in the impugned order was that he failed to produce the same. After their termination these posts were again re-advertised and appointments made which clearly indicated that vacant posts were available. It is also amounts to discrimination as enshrined in Article-25 of the Constitution. Reliance was placed on case law as reported in 1996 SCMR 413, 1996 SCMR 1350, 2009 SCMR 412, 2006 SCMR 678, 2015 PLC (C.S) 1519, 2004 SCMR 468, 2004 SCMR 630, 2004 SCMR 49 and 2004 SCMR 158.

5. On the other hand learned District Attorney argued that sanctioned vacant posts were not available for appointment. Moreover, against the sanctioned strength of 117 posts of different categories DHQ, Hospital. Tank 139 officials were drawing salary. Thereafter enquiry was conducted and services of the appellant and others were terminated. Before passing the impugned order all codal formalities were observed.

CONCLUSION.

6. Careful perusal of record would reveal that the appellant was appointed after observance of all codal formalities. Moreover, it has not been disputed by the respondents or the enquiry officer that the appellant did not possess the required qualification for the post of JCT (Multipurpose). Main charge leveled in the show cause notice served on the appellant is that proper criteria contained in APT rules 1989 was not followed in its true spirit and the entire case of recruitment contained legal lacuna. It is a clear manifestation of incompetence, negligence, laxity and slackness on the part of respondents having failed to adhere to the criteria prescribed for recruitment in the said rules. However, to save their skin and shift responsibility appellant was made a escape goat. That Writ Petition no. 418-D/2015 was disposed of by the Peshawar High Court after commitment of M.S DHQ Hospital that salaries of appellant and others would be released in due course of time. But he failed to honor the commitment and subsequently vide order dated 09.05.2016 appellant was removed from service. Attention is also invited to para-6 of the impugned order that

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the appellant failed to produce original merit list. It is funny, flimsy and against the established norms of official business. Needless to emphasize that maintenance of merit list is the responsibility of the respondents. It clearly demonstrates that the respondents had no solid grounds/justification to remove the appellant from service. Moreover, a letter dated 06.02.2012 annexed with the appeal indicates that 57 posts of various categories were created in DHQ, Hospital Tank during the financial year 2011-12. Hence, allegation of non-availability of posts could not be substantiated. Learned District Attorney when confronted on this point to produce authentic documentary evidence was unable to present the same. Even the Medical Superintendent present during the hearing could not satisfy this Tribunal when asked to provide documents indicating details of sanctioned post in DHQ, Hospital Tank. Several opportunities were afforded to them but they failed to bring these documents in support of their claim. Enquiry in 2015 was not conducted in the mode and manner prescribed in the rules. It appears to be a fact finding inquiry. Had it been conducted under E&D Rules 2011 then charge sheet and statement of allegations were required to be served on the appellant. As the appellant was not associated with the inquiry proceedings, hence, he was condemned unheard. He aptly raised similar objections and valid concerns in para-4 of the reply to the show cause notice served on him. In addition to above if inquiry was not conducted under E&D Rules 2011 and direct show cause notice was served on the appellant then specific reasons should have been recorded for dispensing with regular inquiry. However, the show cause is completely silent on this account. As such show cause notice was not served according to the procedure laid down in E&D Rules 2011. Moreover, the inquiry committee failed to probe the case properly. Neither specific discrepancies were highlighted nor tailor made recommendations firmed up. The committee failed to fix responsibility and its only achievement was to have created more confusion. The committee miserably failed to address the vital question of non-availability of sanctioned posts. It is still a mystery that if the posts were not available and the terminated employees were drawing salary over and above then sanctioned strength then why these post were re-advertised and fresh appointments were made? This Tribunal vide order sheet dated 27.12.2016 had directed that fresh appointments if made by the respondents would be subject to the decision of instant service appeal. This condition has

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to been inserted in the appointment orders of newly appointed employees. Making fresh appointments against posts vacated due to termination of services of the appellant has proved beyond doubt that entire drama was staged by the respondents to accommodate their blue eyed candidates. Whenever an issue is subjudice in court of law government departments exercise extra care to avoid future complications. The respondents were not be able to justify undue haste shown in making these appointments.

7. Time and again it has been held by the superior courts in various judgments that in case illegal appointments are made then action should be taken against the authority who made these appointments instead of penalizing the employees. It is strange that no action was taken against those responsible for making these appointments against the rules. Reliance was placed on case law as reported in 1996 SCMR 413, 1996 SCMR 1350, 2009 SCMR 412, 2006 SCMR 678, 2015 PLC (C.S) 1519, 2004 SCMR 468, 2004 SCMR 630, 2004 SCMR 49 and 2004 SCMR 158.

8. As a sequel to above the appeal is accepted by setting aside the impugned order, dated 09.05.2016 and the appellant is reinstated in service. The intervening period may be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.

SD/-

(MUHAMMAD HAMID MUGHAL)
MEMBER

SD/-

(AHMAD HASSAN)
MEMBER
CAMP COURT D.I.KHAN

ANNOUNCED
25.10.2017

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application	15-11-17
Number of Words	2880
Copying Fee	12
Urgent	2
Total	14
Name of Copyist	<i>[Signature]</i>
Date of Completion of Copy	15-11-17
Date of Delivery of Copy	15-11-17

Administrative knowledge

16

Ann "B"

To,

The Medical Superintendent,
DHQ Hospital
District Tank.

Subject:

ARRIVAL REPORT / IMPLEMENTATION OF ORDER OF SERVICE
TRIBUNAL DATED 25/10/2017

Respected Sir,

The applicant humbly requests from your good self to accept my arrival report against the post of "CT Path" BPS-(12) in light of the order of reinstatement into senior by the honorable service tribunal K.P.K Peshawar dated 25/10/2017. Copy enclosed

Your Sincerely

M. Nisar

Dated 2/ 11/2017.

M. NISAR S/o Misjawan
CT Pathology
DHQ Hospital Tank



Before K.P.K Service Tribunal Court Peshawar

Petitioner: M. NISAR v/s Govt of K.P.K etc
Implementation petition

باعث تحریر آنکہ

DI Khan

مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے بروری و جواب دہی برائے پیشی یا تصدیقہ مقدمہ بنام

Shaiikh Fikhar ul Haq Advocate H.C

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں پیشی پر خود یا بذراستہ رو برو عدالت حاضر ہوتا رہوں گا اور ہر وقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا اگر پیشی پر منظر حاضر نہ ہو اور مقدمہ بروری غیر حاضری کی وجہ سے کسی طور میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام چکبری کے علاوہ یا چکبری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل بروری کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ صدر چکبری کے علاوہ اور جگہ سماعت ہونے یا بروز تعطیل یا چکبری کے اوقات کے آگے یا پیچھے پیش ہونے پر منظر کوئی نقصان پہنچے تو اس کے ذمہ دار یا اسکے واسطے کسی معاوضہ کے ادا کرنے یا منت نہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے مجھ کو کل ساختہ پر داخستہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہو گا اور صاحب موصوف کو عرض دعوی یا جواب دعوی یا درخواست اجراء اسمائے ذکرئی نظر ثانی اپیل گمرانی و ہر قسم درخواست ہر قسم کے بیان دینے اور پر تاشی یا راضی نامہ و فیصلہ برصفت کرنے اقبال دعوی کا بھی اختیار ہو گا اور بصورت مقرر ہونے تاریخ پیش مقدمہ مزکور ہجرون از چکبری صدر بروری مقدمہ مزکور نظر ثانی اپیل و گمرانی و برآمدگی مقدمہ یا منسوخی ذکرئی یک طرفہ یا درخواست حکم اتناہی یا قرتی یا گرفتاری قبل از فیصلہ اجراء ذکرئی بھی صاحب موصوف کو بشرط ادا ایگی علیحدہ مختص بروری کا اختیار ہو گا اور تمام ساختہ پروداختہ صاحب موصوف مثل کردہ از خود منظور و قبول ہو گا اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہو کہ مقدمہ مزکورہ یا اس کے کسی جزو کی کاروائی یا بصورت درخواست نظر ثانی اپیل گمرانی یا دیگر معاملہ و قدمہ مذکورہ کسی دوسرے وکیل یا جہ مزکورہ اپنے بہانے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کو بھی ہر امر میں وہی اور ویسے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانب التواء پڑے گا وہ صاحب موصوف کا حق ہو گا مگر صاحب موصوف کو ہری میں تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہو گا کہ مقدمہ کی بروری نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا

لہذا وکالت نامہ لکھ دیا ہے تاکہ مستدر ہے مورخہ 01 مارچ 2018ء

مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے

Attested & Accepted in testimony sh. Fikhar ul Haq

N. Nisari

OFFICE OF THE
MEDICAL SUPERINTENDENT DHQ HOSPITAL
DISTRICT TANK

Corrigendum/1

OFFICE ORDER

With reference Honourable Services Tribunal Khyber Pakhtunkhwa Peshawar (D.I. Khan Bench) decision on 25-10-2017 and reference Govt. Of Khyber Pakhtunkhwa Health Department No. SOH(Lit-II)13-4045/2016 dated 22-01-2018, the following paramedics are here by reinstated against the vacant post provisionally till the final decision of Supreme Court of Pakistan.

Sr#	Name	Designation with BPS	Adjusted against the vacant post with BPS
1	Fazal Rehman	PHC Tech MP BPS-12	PHC Tech MP/EPI BPS-12
2	Sikandar Hussain	CT Dental BPS-12	CT Dental BPS-12
3	Sabir Khan	PHC Tech MP BPS-12	PHC Tech MP/EPI BPS-12
4	Bihiyamin	CT Pharmacy BPS-12	CT Cardiology BPS-12
5	Muhammad Daud	CT Pharmacy BPS-12	CT Anesthesia BPS-12
6	Waqar Ahmad	Neonatal and child health tech BPS-12	CT Anesthesia BPS-12
7	Shafiq ur Rehman	PHC Tech MP BPS-12	CT Anesthesia BPS-12
8	Muhammad Inran	PHC Tech MP BPS-12	CT Anesthesia BPS-12
9	Ghulam Jaffar	CT Pharmacy BPS-12	CT Ophthalmology BPS-12
10	Farhan Haider	PHC Tech MP BPS-12	CT Ophthalmology BPS-12
11	Nek Nawaz	CT Pharmacy BPS-12	CT Surgical BPS-12
12	Muhammad Ayub	PHC Tech MP BPS-12	CT Ophthalmology BPS-12
13	Muhammad Rizwan	CT Pathology B-12	FCT Pathology B-12
14	Muhammad Nisar	CT Pathology B-12	CT Pathology B-12
15	Fazal Rehman	CT Pathology BPS-12	FCT Pathology BPS-12
16	Muhammad Iqbal	CT Cardiology BPS-12	CT Cardiology BPS-12

xxxxSDxxxxx

MEDICAL SUPERINTENDENT
DHQ HOSPITAL TANK

No. 237/SS / Dated Tank the 29/1 /2018.

Copy to the;

1. Deputy Commissioner, District Tank
2. Director General Health Service, Khyber Pakhtunkhwa Peshawar.
3. SO (Lit) Khyber Pakhtunkhwa Law Department.
4. SO (Lit-II) Govt. of Khyber Pakhtunkhwa Health Department Peshawar.
5. Registrar Khyber Pakhtunkhwa Service Tribunal, Peshawar (D.I Khan Bench).
6. PS to Secretary Health Peshawar.
7. DAO Tank.
8. All Concerned
9. Office file for record.


MEDICAL SUPERINTENDENT
DHQ HOSPITAL TANK

OFFICE OF THE
MEDICAL SUPERINTENDENT DHQ HOSPITAL
DISTRICT TANK

Corrigendum/1

OFFICE ORDER

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5	Muhammad Daud	CT Pharmacy BPS-12	CT Anesthesia BPS-12
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7	Shafiq ur Rehman	PHC Tech MP BPS-12	CT Anesthesia BPS-12
8	Muhammad Imran	PHC Tech MP BPS-12	CT Anesthesia BPS-12
9	Ghulam Jaffar	CT Pharmacy BPS-12	CT Ophthalmology BPS-12
10	Farhan Haider	PHC Tech MP BPS-12	CT Ophthalmology BPS-12
11	Nek Nawaz	CT Pharmacy BPS-12	CT Surgical BPS-12
12	Muhammad Ayub	PHC Tech MP BPS-12	CT Ophthalmology BPS-12
13	Muhammad Rizwan	CT Pathology B-12	FCT Pathology B-12
14	Muhammad Nisar	CT Pathology B-12	CT Pathology B-12
15	Fazal Rehman	CT Pathology BPS-12	FCT Pathology BPS-12
16	Muhammad Iqbal	CT Cardiology BPS-12	CT Cardiology BPS-12

xxxxSDxxxxx

MEDICAL SUPERINTENDENT
DHQ HOSPITAL TANK

No 232/SS / Dated Tank the 24/1 /2018.

Copy to the: -

1. Deputy Commissioner, District Tank
2. Director General Health Service, Khyber Pakhtunkhwa Peshawar.
3. SO (Lit) Khyber Pakhtunkhwa Law Department.
4. SO (Lit:-II) Govt. of Khyber Pakhtunkhwa Health Department Peshawar.
5. Registrar Khyber Pakhtunkhwa Service Tribunal, Peshawar (D.I Khan Bench).
6. PS to Secretary Health Peshawar.
7. DAO Tank.
8. All Concerned
9. Office file for record.

MEDICAL SUPERINTENDENT
DHQ HOSPITAL TANK

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER

PAKHTUNKHUWA, PESHAWAR.

Implementation Petition No: 21/2018

In service Appeal No: 861/2016

Decided on 25/10/2017

Muhammad Nisar S/o Mir Janan Ex-clinical Technician

Pathology (BPS-12) District Headquarter Hospital Tank.

.....(Petitioner)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Health, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. Medical Superintendent District Headquarter Hospital Tank.
4. District Health Officer, Tank.
5. District Account Officer, Tank.

.....(Respondents)

Subject: OBJECTION ON BEHALF OF PETITIONER ON
THE IMPLEMENTATION REPORT.

RESPECTED SIR,

1. That the above titled implementation petition is pending adjudication and is fixed today 26.11.2019.
2. That the petitioner was appointed as Junior Clinical Technician Pathology (now Clinical Technician Pathology BPS:12) in DHQ Hospital Tank vide order dated 16.07.2012, wherein the petitioner/appellant was terminated on lopsided and slipshod manner from services vide order dated 09.05.2016. Therefore the petitioner filed the service appeal No:861/2016 on 29.08.2016 well within time. Wherein the Tribunal/Honourable Court were pleased to accept the appeal on 25.10.2017.

3. That in the instant implementation petition the respondent department submitted the implementation report, wherein the petitioner was reinstated, but inspite of reinstatement the respondent are not releasing the monthly salaries of the intervening period from 01.05.2016 to 25.10.2017, although the petitioner has sufficient leave of 348 days balance in the leave account of petition. In this regard the account detail is enclosed.

It is there for humbly prayed that monthly salaries of intervening period may kindly be released.



Your humble petitioner

Muhammad Nisar

DHQ Hospital Tenke Health Dept KPX

Name of employee: Muhammad Nisar

Date of commencement of service: 16/07/2012 to 31/10/2019

Government/Department	Leave earned up to the date of commencement of service	Leave earned up to the date of termination of service	Leave taken up to the date of termination of service	Leave balance at the date of termination of service	Remarks

Per year $E/Leave = 48 \times 7 = 336$ Years

Per Month $E/Leave = 4 \times 3 = 12$ Months

Total Leave Balance = 348 days.