

ORDER

7th Nov, 2022

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

2. Vide our detailed order of today placed in Service Appeal No. 402/2018 titled "Hidayat Ullah-vs-The Director General Health Services, Khyber Pakhtunkhwa, Peshawar and others" (copy placed in this file), this appeal is also disposed of as per para-6 of the judgment. Costs to follow the events. Consign.

3. *Pronounced in open court in Swat and given under our hands and seal of the Tribunal on this 7th day of November, 2022.*

SC
ST
Peshawar



(Kalim Arshad Khan)
Chairman
Camp Court Swat



(Salah Ud Din)
Member(Judicial)
Camp Court Swat

2021 SCMR 962

the order of reinstatement is conditional; either civil servant's dismissal from service is declared illegal for a defect in disciplinary proceedings or the penalty is modified to be on the lower side with the result that the civil servant is reinstated. In the former situation, the merits of the case and the determination of the fault of the employee go untouched, even though he stands reinstated. Here, an inquiry could still be made into the employee's conduct or his conduct may be considered such as to call for a departmental inquiry. The de novo proceedings could be initiated from the stage where the defect had crept in.²⁴ In such a situation, the entitlement with regard to back benefits is put off till the final determination with regard to the civil servant's conduct. If he is found at fault, the competent authority could justifiably deny him part of the back benefits.²⁵ And, in the latter situation, the civil servant is not declared blameless; rather, his penalty is reduced and, therefore, part of back benefits, as necessitated by the implications of reduced penalty, may justifiably be denied to him.

18. We also feel inclined to underscore that a civil servant cannot be burdened with the loss of service benefits without attributing any charge to him. Appellate authorities, without saying a word about the charge, often, as in two of these petitions, reinstate a civil servant taking a lenient view or on compassionate ground or on the ground of proportionality. This view usually becomes the ground to deny back benefits to the reinstated civil servant. It is underlined for the sake of clarity that the matter of 'leniency' or 'compassion' or 'proportionality' does not erode the charge rather it does not consider the award of penalty to be appropriate in the case. It may so happen that the charge stands established yet the authority or the court, applying leniency or compassion or proportionality as standard, feels inclined to extend concession of reinstatement to the civil servant. Notably the civil servant in such a case is not reinstated unconditionally and, therefore, he may be denied a portion of pay - while maintaining a proportion between the gravity of the fault of the civil servant and special/extenuating circumstances of the case - he would otherwise get on reinstatement. It would be in step with the second proviso to section 16 of the Act and would also be consistent with the spirit of FR 54(b) and CSR 7.3(b). If an employee is reinstated in such an eventuality, the authority or the court needs to clearly state that though the charge ascribed to the employee stood proved, concession is being shown to him to avoid the rigors of major penalty, which would otherwise be unwarranted in view of peculiar circumstances of the case.

Leave without pay or leave of the kind due

19. In case back benefits as of right are not awarded to the civil servant and he is served with any other penalty after reinstatement in service, the intervening period has to be counted for, otherwise the interruption in the service of a civil servant may entail forfeiture of his service²⁶, therefore, the intervening period has to be regularized by treating it as an extraordinary leave without pay or leave of the kind due or leave without pay, as the case may be. It is pointed out that the regularization of the intervening period is a totally separate matter and has no bearing on the penalty imposed upon the civil servant. The competent authority may condone interruptions in service provided that the gaps are not due to any fault or willful act of the employee.²⁷ The service gaps are usually regularized as extraordinary leave without pay or leave of the kind due. Terming absence period as extraordinary leave without pay is not a punishment, rather, a treatment given to regularize the period spent away from duty.²⁸ Nor could a concession given to a civil servant that his absence from duty be treated as extraordinary leave without pay mean that major penalty imposed in the same order is wiped off.²⁹ Nevertheless the powers given to treat the period of absence as extraordinary leave

without pay or leave of the kind due are to be exercised after due application of mind and considering the facts and circumstances of a case.

20. We, therefore, hold that a civil servant on unconditional reinstatement in service is to be given all back benefits and the only exception justifying part withholding of back benefits could be that he accepted gainful employment/engaged in profitable business during the intervening period. In case, the dismissal/removal of a civil servant is declared illegal for a defect in disciplinary proceedings without attending to the merits of the case, the entitlement to back benefits may be put off till the inquiry is conducted in the matter finally determining the fault of the civil servant. In case, where there is some fault of the civil servant, including a situation where concession of reinstatement is extended to the civil servant while applying leniency or compassion or proportionality as standard and where penalty is modified but not wiped off in a way that the civil servant is restored to his position, the back benefits will be paid as determined by the authority/court in the manner discussed above in this judgment. We, however, reiterate that "gainful employment/ profitable business" creates an overarching exception that would cover all cases involving the question of back benefits.

21. Turning to the petitions in hand, it is seen that the petitioner in C.P. 517-L of 2016, who was compulsorily retired from service by the departmental authority, was reinstated by the Tribunal observing that no evidence had been produced against him during the departmental proceedings and that the departmental action was devoid of merit and justification. Even so, the Tribunal chose to strip the civil servant of service benefits for the period he was kept at bay by relying on "the dictum set by the apex Court in 2011 PLC (C.S.) 1003". It has been noticed by us that the judgment reported as 2011 PLC (C.S.) 1003 was not rendered by this Court but refers to a decision of the Balochistan Service Tribunal delivered in the case of Dr. Abdul Naseer v. Government of Balochistan where the civil servant who remained suspended from 31.10.2002 to 14.04.2007 was eventually dismissed. The Balochistan Service Tribunal observed that the civil servant was entitled to benefits for the period of suspension though he was not given benefits for the period he was out of service on the principle of no work, no pay. Strangely, the Balochistan Service Tribunal directed the civil servant "to be reinstated in service with all back benefits from the date of his suspension till date" i.e. the date of decision. The period spent away from duty also fell within that period. In any case, the reliance of the Tribunal on the judgment of the Balochistan Service Tribunal in view of law laid down by this Court is misplaced and not sustainable. When the Tribunal did not ascribe any guilt to the petitioner, he should have been reinstated with all back benefits subject to the exception of not having remained gainfully employed during the intervening period. Therefore, C.P. 517-L of 2016 is converted into appeal and allowed and the intervening period between compulsory retirement and reinstatement be considered as if the petitioner were on duty. Consequently, C.P. 1062-L of 2016, preferred by the department against the same judgment of the Tribunal, is disposed of accordingly.

22. In C.P. 1019-L of 2016, the respondent was reinstated on compassionate grounds by the appellate departmental authority yet no responsibility was fixed on her and the Tribunal ordered that the period of her absence be treated as leave of the kind due. As the appellate authority accepted her explanation and did not impose any penalty on her, she could not be refused back benefits unless she remained gainfully employed during the period spent away from duty, which is not the case here. Therefore, C.P. 1019-L of 2016 is disposed of in the terms that the intervening period between dismissal and reinstatement be considered as if the

respondent were on duty.

23. In C.P. 1232-L of 2016, the respondent was reinstated by the appellate departmental authority though minor penalty of censure was awarded to him which was maintained by the Tribunal. The absence which was treated as leave without pay was converted by the Tribunal into leave of the kind due. It is true that the respondent was not exonerated of his guilt. Only the penalty was reduced. The Tribunal while affirming the penalty of censure failed to discuss the question of arrears of pay that would have become due to the respondent under the second proviso to section 16 of the Act. In the peculiar facts and circumstances of this case, we do not find it appropriate to remand the matter to the Tribunal at this late stage and, therefore, considering the nature of the penalty of censure, we dispose of C.P. 1232-L of 2016 in the terms that the intervening period between dismissal and reinstatement be considered as if the respondent were on duty.

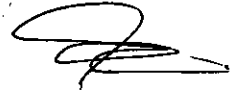
24. In C.P. 1929-L of 2017, the respondent was awarded major penalty of forfeiture of two years of service for absence which was reduced to forfeiture of one year in departmental appeal. The period of absence was to be treated as extraordinary leave without pay. The Tribunal accepted his appeal and decided that the period of absence be treated as earned leave. The absence of the respondent refers to the period for which he had sought leave on medical grounds, though his request remained undecided. On the other hand, disciplinary proceedings were initiated against him. The Tribunal accepted the respondent's appeal on merits with the end result that the absence be considered as earned leave. Here again, we find the decision of the Tribunal just and proper in the circumstances of the case and, therefore, the petition is dismissed and leave refused.

MWA/M-24/SC

Order accordingly.

4.8.22

Due to Respondent's Vacation the case is adjourned to 3.10.22 for the session.



03.10.2022

Appellant in person present. Mr. Muhammad Jan, District Attorney for the respondents present.

File to come up alongwith connected Service Appeal bearing No. 405/2018 titled "Irshad Ali Versus Director General Health Services, Khyber Pakhtunkhwa, Peshawar and two others" on 04.10.2022 before the D.B at Camp Court Swat.



(Rozina Rehman)
Member (Judicial)
Camp Court Swat



(Salah-Ud-Din)
Member (Judicial)
Camp Court Swat

04.10.2022

Appellant alongwith his counsel present. Dr. Mujeeb-ur-Rehman, Deputy DHO alongwith Mr. Muhammad Jan, District Attorney for the respondents present.

File to come up alongwith connected Service Appeal bearing No. 405/2018 titled "Irshad Ali Versus Director General Health Services, Khyber Pakhtunkhwa, Peshawar and two others" on 07.11.2022 before the D.B at Camp Court Swat.



(Rozina Rehman)
Member (Judicial)
Camp Court Swat



(Salah-Ud-Din)
Member (Judicial)
Camp Court Swat

**SCANNED
KPST
Peshawar**

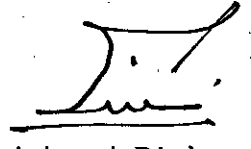
12.05.2022

Appellant in person present. Dr. Muneeb-ur-Rehman, Litigation Officer and Mr. Ahmad Jan, Junior Clerk alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his counsel is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 08.06.2022 before the D.B at Camp Court Swat.



(Mian Muhammad)
Member (E)
Camp Court Swat



(Salah-ud-Din)
Member (J)
Camp Court Swat

8th June, 2022

None for the appellant present. Mr. Kabirullah Khattak, Addl: AG for respondents present.

Counsel are on strike. To come up for arguments on 06.07.2022 before the D.B at camp court Swat.



(Mian Muhammad)
Member(E)



(Kalim Arshad Khan)
Chairman
Camp Court Swat

06.07.2022

Appellant present through counsel.

Noor Zaman Khattak, learned District Attorney for respondents present.

File to come up alongwith connected Service Appeal No.405/2018 titled "Irshad Ali Vs. Government of Khyber Pakhtunkhwa" on 04.08.2022 before D.B at Camp Court, Swat.



(Fareeha Paul)
Member (E)
Camp Court, Swat




(Rozina Rehman)
Member (J)
Camp Court, Swat

1st April, 2022

Counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

Former requests for adjournment in order to properly assist the court. Adjourned. To come up for arguments on 18.04.2022 before the D.B.



(MIAN MUHAMMAD)
Member (E)

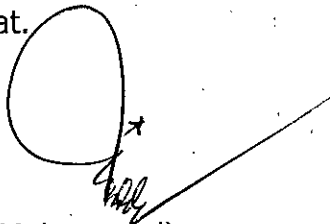


(KALIM ARSHAD KHAN)
Chairman

18.04.2022

Appellant in person present. Mr. Naseer-Ud-Din Shah, Assistant Advocate General for the respondents present.

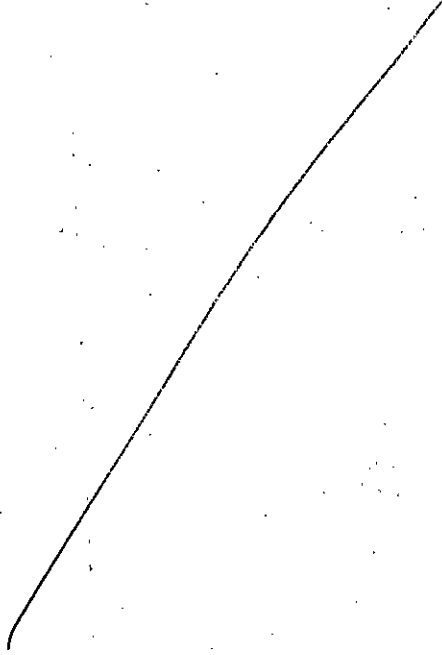
File to come up alongwith connected Service Appeal No.405/2018 titled Irshad Ali Versus Government, before D.B on 12.05.2022 at Camp Court, Swat.



(Mian Muhammad)
Member (E)



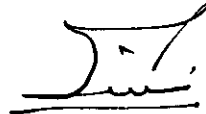
Chairman



21.10.2021

Counsel for the appellant and Mr. Javaidullah, Asstt. AG for the respondents present.

After having heard the arguments at certain length, it was found that the appeal is not documented with copy of the reinstatement/impugned order of the appellant against which departmental appeal was filed. The respondents have also not annexed such order with their comments. Let the respondents produce copy of the impugned order and service book of the appellant on next date. Case to come up on 28.01.2022 for arguments before the D.B.



(Salah-ud-Din)
Member(J)



Chairman

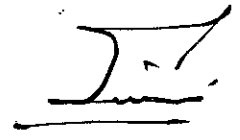
28.01.2022

Appellant in person present. Dr. Bilal, Medical Officer and Mr. Ahmad Jan, Junior Clerk alongwith Mr. Noor Zaman Khattak, District Attorney for the respondents present.

Appellant requested for adjournment on the ground that his counsel is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 01.04.2022 before the D.B.



(Rozina Rehman)
Member (J)



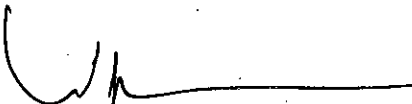
(Salah-ud-Din)
Member (J)

01.04.2021

Appellant present with counsel.

Kabirullah Khattak, Additional Advocate General for respondents present.

A request was made for adjournment. Therefore, the case is adjourned to 12-7-2021 for arguments before D.B.


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


(ROZINA REHMAN)
MEMBER (JUDICIAL)

12.07.2021

Appellant in person present.

Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his counsel is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments before the D.B on 21.10.2021.


(ROZINA REHMAN)
MEMBER (JUDICIAL)


CHAIRMAN

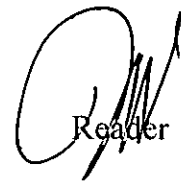
29.04.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 06.08.2020 before D.B.


Reader

06.08.2020


Due to summer vacation case to come up for the same on 26.10.2020 before D.B.


Reader

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

13.11.2019

Junior to counsel for the appellant present. Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Junior to counsel for the appellant seeks adjournment as senior learned counsel is not available. Adjourn. To come up for arguments on 15.01.2020 before D.B.


Member


Member

15.01.2020

Appellant absent. Learned counsel for the appellant absent. Due to general strike of the Bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for arguments on 13.03.2020 before D.B. Appellant be put to notice for the date fixed.

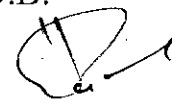

Member


Member

13.03.2020

Appellant in person present. Mr. Zia Ullah learned Deputy District Attorney present. Appellant seeks adjournment as his counsel is not available. Adjourn. To come up for arguments on 29.04.2020 before D.B.


Member


Member

14.05.2019

Learned counsel for the appellant present. Written reply not submitted. Jafar Ali Assistant (for respondent No.1) and Hazrat Shah Superintendent (for respondent No.3) absent. Notice be issued to respondents as well as to the absent representatives with direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on 01.07.2019 before S.B.


Member

01.07.2019

Junior to counsel for the appellant present. Mr. Kabirullah Khattak learned Additional Advocate General alongwith M/S Saleem Superintendent for the respondents present. Representative of the respondent department seeks time to furnish written reply/comments. Adjourned. To come up for written reply/comments on 27.08.2019 before S.B.


Member

27.08.2019

Junior to counsel for the appellant and Addl. AG alongwith Dr. Jamal Nasir, Coordinator for the respondents present.

Parawise comments on behalf of respondents submitted. The appeal is assigned to D.B for arguments on 13.11.2019. The appellant may submit rejoinder within a fortnight, if so advised.


Chairman

13.11.2019

Junior to counsel for the appellant present. Mr. Riaz Khan Paindakheil learned Assistant-Advocate General present. Junior to counsel for the appellant seeks adjournment as senior learned counsel is not available. Adjourn. To come up for arguments on 15.01.2020 before D.B.

Member

Member

~~13.11.2019~~

~~Junior to counsel for the appellant present. Mr. Riaz Khan Paindakheil learned Assistant-Advocate General present. Junior to counsel for the appellant seeks adjournment as senior learned counsel is not available. Adjourn. To come up for arguments on 15.01.2020 before D.B.~~

13.11

13.11.2019

21.01.2019 No one present on behalf of appellant. Security and process fee not deposited. To come up on 22.02.2019 before S.B.


Member

22.02.2019 Clerk to counsel for appellant present and requested for time to deposit security and process fee. Request accepted with direction to deposit security and process fee within 3 days, thereafter, notices be issued to the respondents for written reply/comments. Adjourn. To come up for written reply/comments on 09.04.2019 before S.B


Appellant Deposited
Security & Process Fee


Member

09.04.2019 Counsel for the appellant and Addl. AG on behalf of the respondents present.

Learned AAG requests for time to procure reply of the respondents. The respondents shall positively submit the requisite reply/comments on next date of hearing.

Adjourned to 14.05.2019 before S.B.


Chairman

02.10.2018

Appellant in person present and made a request for adjournment. Adjourned. To come up for preliminary hearing on 16.10.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member

16.10.2018

Counsel for the appellant present and seeks adjournment. Granted. Case to come up for preliminary hearing on 29.11.2018 before S.B.


(Ahmad Hassan)
Member

29.11.2018

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (Ward Ordarli) has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, for back benefits on the ground that the appellant was appointed as Class-IV employee vide order dated 22.07.2014, however on 24.07.2014 his appointment order was cancelled; that the service appeal of the appellant for his reinstatement was allowed and resultantly the appellant was reinstated but the respondent department refused to give back benefits.

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. 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 21.01.2019 before S.B.


Member

27.04.2018

Appellant with counsel present. The Tribunal is non-functional due to retirement of our Hon'ble Chairman. Therefore, the case is adjourned. To come up for same on 26.06.2018.



Reader

26.06.2018

Clerk of the counsel for appellant present and requested for adjournment on the ground that learned counsel for the appellant is not available today. Adjourned. To come up for preliminary hearing on 20.07.2018 before S.B.

Handwritten note



(Muhammad Amin Khan Kundi)
Member

20.07.2018

None for the appellant present. Adjourned. To come up for preliminary hearing on 08.08.2018 before S.B.

Handwritten note



(Ahmad Hassan)
Member

08.08.2018

Learned Counsel for the appellant present and seeks adjournment. Adjourned. To come up of preliminary hearing on 02.10.2018 before S.B






(Muhammad Amin Kundi)
Member

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 404/2018


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	21/03/2018 A. SA	The appeal of Mr. Ikram Ullah resubmitted today by Mr. Arbab Yasir Arafat Khan Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.  REGISTRAR
2-	21/03/18. A	This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>02/04/18.</u>  MEMBER
	02.04.2018 A SA	Due to general strike of the bar, the case is adjourned. To come up for preliminary hearing on 27.04.2018 before S.B  Member

The appeal of Mr. Ikramullah son of Abdul Ghafoor Khan Class-IV Ward Orderly THQ Hospital Sammar Bagh received today i.e. on 26.02.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal is not signed by the appellant.
- ②- Copy of impugned order dated 05.10.2016 mentioned in the heading of the appeal is not attached with the appeal which may be placed on it.
- 3- Annexures-A, B and C of the appeal are illegible which may be replaced by legible/better one.

No. 411 /S.T,

Dt. 27/02 /2018


REGISTRAR 27/2/18
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Arbab Yasir Arfat Khan Adv.Pesh.

Sir
Note: All the objections are removed.





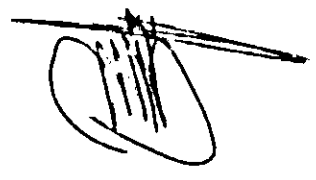
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11/18/2011

11/18/2011

More: All the objects are

answers.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

In Ref
Service Appeal No. 404 2018

Ikram Ullah

SCANNED
KPST
Peshawar

VERSUS

*The Director General Health Services, Khyber Pakhtunkhwa,
Peshawar and 2 others*


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S.No.	Description of documents	Annexure	Pages
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2.	Addresses of the parties		5
	Copy of appointment order dated 22/07 2014	"A"	6-7
3.	Copy of cancellation order dated 24/07/2014	"B"	7-8
	Copy of departmental appeal	"C"	
5.	Copy of Judgment dated 05/10/2016		8-9
6.	Copy of DG Health order dated 06/09/2017		13
7.	Wakalat Nama		In original

Dated 24/02/2018


Appellant

Through


Arbab Yasir Arfat Khan
Advocates, High Court,
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

In Ref
Service Appeal No. 404/2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 274

Dated 26-2-2018

SCANNED
KPST
Peshawar

*Ikram Ullah S/o Abdul Ghafoor Khan Class-IV
Employee (Ward Ordarli), THQ hospital Samar
Bagh, R/o Village Sabar shah, P.O & Tehsil
Samarbagh District Lowar Dir.....(Appellant).*

VERSUS

- 1) *The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.*
- 2) *District Health Officer, District Dir.*
- 3) *Secretary Health Government Of Khyber Pakhtunkhwa, Peshawar.....(Respondents).*

APPEAL UNDER SECTION 4, SERVICE TRIBUNAL ACT, 1974.

1). AGAINST THE IMPUGNED ORDER OF REINSTATEMENT DATED 05/10/2016 TO THE EXTENT OF NOT ALLOWING / AWARDING BACK BENEFITS FROM 24/07/2014 TO 05/10/2016 TO THE APPELLANT.

Filed to-day

Registrar
27/2/18

2). AGAINST THE INACTION OF THE RESPONDENT NO. 1 WHEREBY THE APPEAL OF THE APPELLANT HAS NOT BEEN ADMITTED ON 06/09/2017.

Prayer in Appeal:

On acceptance . of this appeal the respondents may kindly be directed to give/ issued back benefits/ service benefits to the appellant by modifying the reinstatement order dated 05/10/2016, any other remedy/relief available in the circumstances of the case may also kindly be granted to the appellant.

Re-submitted to-day
and filed.

Registrar
21/3/18

Respectfully Sheweth:

The appellant humbly submits as under:

- 1) That the appellant is appointed as Class IV employee vide order dated 22/07/2014 and in pursuance of said order appellant resumed their duty. (Copy of order is attached as Annexure "A").
- 2) That later on said appointment order was cancelled vide order 24/07/2014 on account of non-observation of codal formalities of appointment of the appellant. (Copy of order is attached as annexure "B").
- 3) That been aggrieved the appellant submit departmental appeal on 24/07/2014 which was rejected on vide order dated 17/02/2015. ~~(Copy of departmental appeal is attached as annexure "C").~~
- 4) That the appellant submit service appeal before the August KPK, Service Tribunal at swat for his reinstatement which has been allowed, the appellant as prayer for on 05/10/2016. (Copy of order is attached as annexure "D").
- 5) That in pursuance of judgment dated 05/10/2016 the appellant is reinstated but the local authorities refused to give back benefits to appellant in the light of order Director General Health on dated 06/09/2017. (Copy of order is attached as annexure "E").
- 6) That feeling aggrieved by the above impugned notifications/order the appellant filed the instant appeal on the following amongst other grounds:

Grounds:

- A) That the act and omission of the respondent /department is illegal, unconstitutional, without jurisdiction, without lawful authority against facts and materials on the record therefore, need the interference of this Hon'ble Tribunal.

- B) *That the act and omission of the department is not only factually incorrect and legally untenable but also is against the principles of natural justice.*
- C) *That the KPK, Service Tribunal reinstated the appellant as prayer for in the instant appeal but the respondents are given remedy that is reinstatement while not given second remedy i.e back benefits which is again the natural justice.*
- D) *That at the time of the impugned notification /order the long service period of the appellant has been ignored due to which the appellant has not only sustained loss but has also been deprived of his legal right of pay of the back benefits of appellant.*
- E) *That the appellant has performed duties, efficiently honestly and without giving any chance of complaint to his superior which fact also goes in his favor and there is no law which permit the respondents to deprive him from the service benefits.*
- F) *That the appellant is /was a Government / Civil Servant and legal and constitutional guarantee is available to him to be dealt with in accordance with law he however, has not been treated as such.*
- G) *That the act and omission of the department is not effective on the right of the appellant and the same has caused gross miscarriage of justice to the appellant.*


H) That the respondents have failed to apply their independent/administrative mind to the matter and therefore have reached to an erroneous conclusion which is not sustainable in the eye of law.

It is, therefore, humbly prayed that on acceptance of this appeal the respondents may kindly be directed to issue back benefits to the appellant from 24/07/2014 to 05/10/2016 any other remedy /relief available in the circumstances of the case may also kindly be granted to the appellant.

Dated 24/02/2018

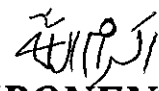

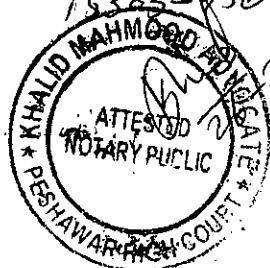

Appellant

Through


Arbab Yasir Arfat Khan
Advocates, High Court,
Peshawar.

Affidavit.

I, Ikram Ullah S/o Abdul Ghafoor Khan R/o Village sabar Shah, P.O Tehsil Samar Bagh District Dir Lower, do hereby solemnly affirm and declare on oath that the contents of this appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

15363-856d61-9 
DEPONENT 


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

In Ref
Service Appeal No. ___ / 2018

Ikram Ullah

VERSUS

*The Director General Health Services, Khyber Pakhtunkhwa,
Peshawar and 2 others*

ADDRESSES OF THE PARTIES

Appellant;

*Hidayat Ullah S/o Nasarullah Class-IV
Employee (Ward Ordarli), THQ hospital
Samar Bagh, R/o Village Sabar shah, P.O &
Tehsil Samarbagh District Lower Dir.*

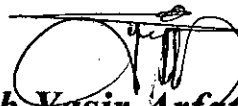
Respondents;

- *The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.*
- *District Health Officer, District Dir.*
- *Secretary Health Government Of Khyber Pakhtunkhwa, Peshawar*

Dated 24/02/2018


Appellant

Through


***Arbab Yasir Arfat Khan
Advocates, High Court,
Peshawar.***

OFFICE OF THE DISTRICT HEALTH OFFICER
LOWER DIR AT TIMERGARA.

OFFICE ORDER.

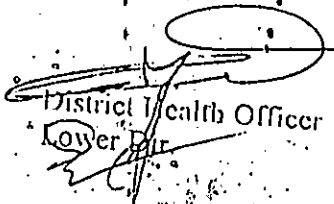
A Committee consisting on the following members is hereby constituted for the selection/appointment of newly created posts of Class-IV at THQ Hospital Samaebagh Dir Lower. The Committee members are requested to attend the meeting in the office of the undersigned on dated 23/07/2014 AT 10.30 AM for the purpose.

- 1. Dr. Mohammad Rehman (Shaheen) DHQ Lower Dir. Chairman.
- 2. Medical Superintendent DHQ Hospital Timergara. Member.
- 3. Dr. Irshad Ali Team Leader (Merlin) Dir Lower. Member.

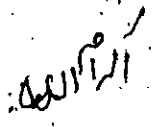
Sd/-x-x-x-x-x
District Health Officer
Lower Dir.

No. 8328 / Dated Timergara the 23 / 07/2014.

- Copy to :-
- 1. Medical Superintendent DHQ Hospital Timergara.
 - 2. Team Leader (Merlin) Dir Lower at Timergara.
 - 3. Candidates concerned.
- For information & necessary action please.


District Health Officer
Lower Dir.

C F C



Amraz - "B"

8

OFFICE OF THE DISTRICT HEALTH OFFICER
LOWER DIR AT TIMERGARA.

OFFICE ORDER:


The appointment order of the following Ward Orderly BPS-02 & Chowkidar BPS-01 against the newly created posts at PHO Hospital, Samarbagh District Dir Lower is hereby cancelled with immediate effect because of lack of formalities.

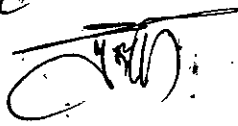
S.No	Name of Candidates with address.	Name of Post.
2	Mr. Sirajul Mulk S/O Shajaul Mulk Village Kumbet Tehsil, Samarbagh Dir Lower	Ward Orderly BPS-02
3	Mr. Faizul Din S/O Mr. Alauddin Village P/O & Tehsil Samarbagh Dir Lower	Ward Orderly BPS-02
4	Mr. Nisar Mohammad S/O Mohammad Wajid Village Sh. pano Kasai Tehsil Samarbagh Dir Lower.	Ward Orderly BPS-02
5	Muhammad Yasir S/O Jan Shahzada Village, P/O & Tehsil Samarbagh Dir Lower.	Ward Orderly BPS-02
6	Mr. Arshad Ali S/O Mr. Muhammada Jan Village, P/O & Tehsil Samarbagh Dir Lower.	Ward Orderly BPS-02
7	Mr. Akbar Khan S/O Mr. Hakim Khan Village, P/O & Tehsil Samarbagh Dir Lower.	Ward Orderly BPS-02
8	Mr. Hidayatullah Khan S/O Mr. Masrullah Khan Village, P/O & Tehsil Samarbagh Dir Lower.	Ward Orderly BPS-02
9	Mr. Fazal Akbar S/O Mr. Fazal Rauf Village, P/O & Tehsil Samarbagh Dir Lower.	Ward Orderly BPS-02
10	Mr. Samiur Rehman S/O Mr. Khalid Rehman Village, P/O & Tehsil Samarbagh Dir Lower.	Ward Orderly BPS-02
11	Mr. Ikramullah S/O Abdul Ghaffoor Village, P/O & Tehsil Samarbagh Dir Lower.	Chowkidar BPS-01

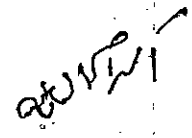
Sd/-
District Health Officer
Lower Dir

No. 861-64 Dated Timergara the 24/07/2014.
Copy forwarded to

- The District Account Officer Lower Dir
- The Medical Officer Incharge PHO Hospital Samarbagh
- The Team Leader (Merlin) Dir Lower.
- The Deputy Technical (Merlin) Dir Lower.
- The Accounts Clerk of this office.
- The Officials concerned.


District Health Officer
Lower Dir.

C.T.C




OFFICE OF THE DISTRICT HEALTH OFFICER
LOWER DIR AT TIMERGARA

OFFICE ORDER

The appointment order of the following Ward Order BPS-02 & Chowkidar BPS-01 against the newly created posts at THQ Hospital Samarbagh District Dir Lower issued vide this office order No...8536-41...dated 23/07/2014 is hereby cancelled with immediate effect...*because of lack of codal formalities.*

S.No.	Name of Petitioners	Name of Post
1	Mr. Sirajul Mulk S/O Shajaul Mulk Village Kambat Tehsil Samarbagh Dir Lower	Ward Orderly BPS-02
2	Mr. Fakhrud Din S/O Mr. P.O. & Tehsil Samarbagh Dir Lower	Ward Orderly BPS-02
3	Mr. Nisar Muhammad S/O Muhammad Wahid Village Shapano Kasai Tehsil Samarbagh Dir Lower	Ward Orderly BPS-02
4	Muhammad Yasir S/O Jan Shahzada Village P/O & Tehsil Samarbagh Dir Lower	Ward Orderly BPS-02
5	Mr. Arshad Afri S/O Mr. Muhammad Jan Village P/O & Tehsil Samarbagh Dir Lower	Ward Orderly BPS-02
6	Mr. Akbar Khan S/O Mr. Hakim Khan Village P/O & Tehsil Samarbagh Dir Lower	Ward Orderly BPS-02
7	Mr. Hidayatullah Khan S/O Mr. Nasrullah Khan Village P/O & Tehsil Samarbagh Dir Lower	Ward Orderly BPS-02
8	Mr. Fazal Akbar S/O Fazal Rauf Village P/O & Tehsil Samarbagh Dir Lower	Ward Orderly BPS-02
9	Mr. Samiur Rehman S/O Mr. Khalilur Rehman Village P/O & Tehsil Samarbagh Dir Lower	Ward Orderly BPS-02
10	Mr. Ikramullah S/O Abdul Ghafoor Village & Tehsil Samarbagh Dir Lower	Chowkidar BPS-01

Sd/-x-x-x

District Health Officer
Lower Dir

No. 8761/61 / Dated Timergara the 24/07/2014
Copy Forwarded to:-

1. The District Account Officer Lower Dir.
2. The Medical Officer Incharge THQ Hospital Samarbagh.
3. Team Leader (Merlin) Dir Lower at Timergara.
4. The Deputy Technical (Merlin) Dir Lower.
5. The Account Clerk of this office.
6. The Officials concerned.

District Health Officer
Lower Dir

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 167 /2015K.W.F. Provincial
Service TribunalDiary No. 166Dated 02-03-2015

Arshid Ali S/o Muhammad Jan

Ex-Ward Orderly, THQH Samarbagh, District Dir Lower.....Appellant

VERSUS

1. The Director General
Health Services, Khyber Pakhtunkhwa,
Peshawar2. The District Health Officer,
District Dir Lower.

.....Respondents



SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED OFFICE ORDER DATED 24.07.2014 ISSUED BY RESPONDENT NO.2, WHEREBY THE APPOINTMENT ORDER OF THE APPELLANT WAS UNLAWFULLY CANCELED AGAINST WHICH APPELLANT PREFERRED A DEPARTMENTAL APPEAL TO RESPONDENT NO.1 ON 06.08.2014 BUT THE SAME WAS REJECTED VIDE IMPUGNED ORDER COMMUNICATED THROUGH LETTER DATED 17.02.2015.

PRAYER:

On acceptance of the instant appeal, the impugned office order dated 24.07.2014 issued by Respondent No.2 and the impugned appellate order issued by Respondent No.1 dated 17.02.2015 may graciously be set aside by reinstating the appellant into service with all back benefits.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

That appellant is the permanent resident of District Dir Lower and has obtained B.A. qualification (Credentials Annex-A) and is registered with

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Filed to-day

Registrar

2/3/15



S.No of proceed ings	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
-------------------------------	-------------------------------------	--

1

2

3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

CAMP COURT SWAT

1. Appeal No. 167/2015 Arshid Ali,
2. Appeal No. 168/2015, Siraj-ul-Mulk,
3. Appeal No. 169/2015, Muhammad Yasir,
4. Appeal No. 170/2015, Ikramullah,
5. Appeal No. 171/2015, Fakhr-ud-Din,
6. Appeal No. 172/2015, Hidayatullah Khan,
7. Appeal No. 173/2015, Akbar Khan,
8. Appeal No. 174/2015, Nisar Muhammad and
9. Appeal No. 175/2015, Sami-ur-Rahman
Vs. Director General Health Services, Khyber Pakhtunkhwa,
Peshawar and another.

JUDGMENT

MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-

05.10.2016

Counsel for the appellants and Mr. Muhammad Zubair, Senior
Government Pleader for respondents present.

2. This judgment shall dispose of the instant service appeal No.
167/2015 as well as connected service appeals No. 168/2015 to
175/2015 as identical questions of facts and law are involved therein:

3. Brief facts of the case of the appellants are that they were
appointed as Class-IV employees vide office order dated 22.07.2014. In
pursuance of the appointment orders appellants resumed their duties but
vide impugned orders dated 24.07.2014 the said appointment orders
were cancelled on account of non-observance of codal formalities
constraining the appellant to prefer departmental appeals on 06.08.2014

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

which were rejected vide orders dated 17.2.2015 and hence the instant service appeals on 02.03.2015.

4. Learned counsel for the appellants has argued that the appellants were appointed as Class-IV employees in the prescribed manners as their names were requisitioned from the Employment Exchange and the said appointment orders were passed by the competent authority after considering the recommendations of the Departmental Selection Committee. That the impugned orders were passed without affording any opportunity of hearing to the appellants.

5. Learned counsel for the appellant has placed reliance on case-law reported as 2004-SCMR-468 (Supreme Court of Pakistan) and 2003-SCMR-1126 (Supreme Court of Pakistan).

6. Learned Senior Government Pleader has argued that the appointment orders were made by violating the settled procedure for such appointments and as such the same were rightly withdrawn. Regarding show cause notice he argued that no such notice was issued to the appellants.

7. We have heard arguments of learned counsel for the parties and perused the record.

8. It is a well settled proposition of law that no one is to be condemned unheard. The August Supreme Court of Pakistan has also ruled in the judgments referred to above and relied on by the learned counsel for the appellants that opportunity of hearing would be a pre-requisite before passing such orders. In view of the afore-stated

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

circumstances we are constrained to set aside the impugned orders referred to above and reinstate the appellants in service with directions to the respondents that in case they intend to proceed against the appellants on any ground including non-observance of codal formalities during process of their appointments then the appellants be afforded opportunity of hearing in the mode and manners prescribed by rules and there-after pass any order deem appropriate. All the appeals are accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

Sd/- M. Azim Khan Afridi
Chairman
Conf. Const. Staff

05.10.2016

Sd/-

Certified to be true copy

[Signature]
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

Date of Presentation of Application 19-3-18
 Number of Words 1600
 Copying Fee 10
 Urgent _____
 Total 10
 Name of Applicant [Signature]
 Date of Completion 20-3-18
 Date of Delivery of Copy 20-3-18

Secretary health Govt of KP

From 1) Mr Ikram Ullah Class IV Employee THQ Hospital Samar Bagh Dir lower

Subject: Appeal against the decision of D G Health Dated 06-09-2017 refusing Back benefits to the appellant.

Respectfully Shewth

1. That appellant is appointed as class iv employee vide order dated 22-07-2014 and in pursuance of said order appellant resumed their duty (Copy of order is attached as annexure A)
2. That later on said appointed order was canceled vide order dated 24-07-2014 on account of non-observation of codal formalities (copy of order dated 24-07-2017 is attached as annexure B)
3. That from said cancelation order dated 24-07-2017 appellant filed departmental appeal which was rejected vide orders dated 17-02-2015 (Copy of order 17-02-2015 is attached as annexure C)
4. That after the rejection of departmental appeal appellant filed appeal against cancelation order dated 24-07-2014 and appellant order dated 17-02-2015 before honorable service tribunal KP with the prayer "On Acceptance of the instant appeal the impugned office order dated 24-07-2014 issued by respondent No.2 (Distinct Health Officer Dir Lower) and the impugned appellant order issued by Respondent No.1 (Director General Health services KP) Dated 17-02-2015 may graciously be set aside by reinstating the appellant into service with all back benefits (Copy of appeal is attached as annexure D)
5. That Honorable service tribunal KP on 05-10-2016 Decided appeals infavour of appellant and accepted the prayer as mentioned above (Copy of Judgment order is attached as annexure E)
6. That in the pursuance of judgment dated 05-10-2016 appellant is reinstated but the local authorities refused back benefits to appellant in light of order decision D G Health dated 06-09-2017. Therefore this appeal on the following grounds (Copy of the order dated 06-09-2017 is attached as annexure F)

with
C.T.C.
[Signature]

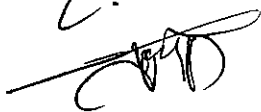
- i. That the order /decision of D G Health is not in line of judgment of honorable service tribunal dated 05-10-2016.
- ii. That the service Tribunal declared cancelation order dated 24-07-2014 and Appellate order Dated 17-02-2015 against law.
- iii. That the appellatant claimed two remedies through appeal from service Tribunal KP i-e Reinstatement and back benefits as mentioned in pare 4 Of this appeal. And Said Tribunal accepted appeals of appealant i-e. Both remedies as claimed by appealant is allowed by service Tribunal.
- iv. That in the Said judgment of service Tribunal never stated that Appealant are not entitled to back benefits
- v. That appealant is serving as class IV employee on basic of Appointment order dated 22-07-2017 and there is no order or judgment Which deprive appealant from back benefits from their appointment.

It is therefore Requested that
Decision of D G Health dated
06- 09-2017 may be set aside and
Back benefits are allowed to appealant

Appellant

1) Mr Ikram Ullah Class IV Employee THQ Hospital Samar Bagh Dir lower

امیر

C.T.C


15

**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUN KHWA PESHAWAR**

E-Mail: dg@kpk.gov.pk Office Ph# 091 9 10269 Exchange# 091-9210187, 9210196 Fax # 091-9210230
No. 14035 - /Personnel/W.O/634 Dated: 6/08/2017

To,

The District Health Officer
Lower Dir.

Subject:

OPINION OF COURT JUDGEMENT REGARDING REINSTATMENT OF
HEALTH DEPARTMENT EMPLOYEES

Memo:

I am directed refer to your letter No. 6161/S.B dated 10.07.2017 on the subject noted above and to state that in the instane case the Judgement is very clear, the appeals of the appellants were accepted on the terms mentioned in para-8 of the judgment.

It was no where mentioned in the judgement that the appellart are entitled for any back benefits.

[Signature]
**DIRECTOR (HRM)
DIRECTORATE GENERAL HEALTH
SERVICES, K.P.K PESHAWAR.**
[Signature]
05/08/17

[Signature]
[Signature]
[Signature]

District Health Officer
Dir Lower Dir Peshawar

No. 6161/3.A /Dated. 10/07/2017.

Phone No. 0945-9250098.

To,

The Director General Health Services
Khyber Pakhtunkhwa Peshawar.

Subject:- OPENION ON COURT JUDGEMNT REGARDING REINSTATEMENT OF HEALTH DEPARTMENT EMPLOYEES.

Memo:-

With reference to Judgment of worthy Khyber Pakhtunkhwa Service Tribunal in response to Service Appeal No. 167/2015 dated 05-10-2016, 09 number of Class-IV employees were reinstated into service from the date of their appointment with all back benefits, by the office of the undersigned vide office order No. 897-901, dated 27-01-2017.

Their salary bills were sent to District Accounts Office Dir Lower claiming the above mentioned status of issuing their salaries from the date of their appointment. The District Accounts Office released the current salaries but refused to entertained the back benefits thus returning all the 09 No. cases stating that "*Departmental reinstatement order is incorrect due to the fact that there is no mention of back benefits in the court decision*".

While reading the court decision, office of the undersigned considers it appropriate to provide the said employees with reinstatement and all back benefits as it is mentioned in the court decision that "*we are constrained to set aside the impugned orders referred to above and reinstate the appellants in service.....*" and "*..... all appeals are accepted in the above terms*"

Since the employees are repeatedly requesting this office and the elected representative are also putting hard for the needful in the aforementioned matter.

It is therefore, requested to your office to kindly guide office of the undersigned on the said matter enabling this office to proceed further accordingly.

A prompt reply in this regard is requested, please.

Encl:

- Court decision of worthy KP Service Tribunal.
- Office order of DHO office Dir Lower.
- Returned Remarks of DAO Dir Lower.

[Signature]
District Health Officer,
Dir Lower at Timergara.

No. _____/

Copy forwarded for information to:-

1. P.S to Secretary to Govt: of Khyber Pakhtunkhwa Health Department Peshawar.
2. Examiner Khyber Pakhtunkhwa Service Tribunal Peshawar.
3. Deputy Commissioner Dir Lower.
4. District Nazim Dir Lower.
5. District Accounts Officer Dir Lower.

[Signature]
District Health Officer,
Dir Lower at Timergara.

C.T.C
[Signature]

[Signature]

Retard:-

The attached E-M (8) on S/Books with the remarks that Departmental re-instatement order is incorrect due to the fact that there is no mention of teacher benefits in the Court Decision.

23/2/24
23/2/24

Re-submitted with the remarks that:-
pay may be active only.

- The current salaries of 09 Nos. officials may kindly be released, Keeping the decision regarding back benefit pending until proper guidance from concerned quarter.

Dist. Health Officer
Dist. ...

...

C.T.C
...

OFFICE OF THE DISTRICT (HEALTH) OFFICER DIR LOWER.

OFFICE ORDER.

In compliance with the honourable Khyber Pakhtunkhwa Service Tribunal Peshawar Service Appeal No. 167-175/2015 dated 05-10-2016, the following appellant are hereby re-instated into service from the date of their appointment with all back benefits against the vacant posts noted against their names at THQ Hospital Samarbagh Dir Lower.

1	Mr. Arshad Ali S/O Muhammad Ajan Village & PO Samarbagh Dir Lower.	Ward Orderly (BPS-04)
2	Mr. Siraj-ul-Mulk S/O Shafa-ul-Mulk Village Kambat PO Samarbagh Dir Lower.	Ward Orderly (BPS-04).
3	Mr. Muhammad Yasir S/O Jan Shahzada Village & PO Samarbagh Dir Lower.	Ward Orderly (BPS-04)
4	Mr. Ikram Ullah S/O Abdul Ghafoor Khan Village Kotkai Cham PO & Tehsil Samarbagh Dir Lower.	Chowkidar (BPS-03).
5	Mr. Fakhr-ud-Din S/O Ala Uddin Village & PO Samarbagh Dir Lower.	Ward Orderly (BPS-04)
6	Mr. Hidayat Ullah Khan S/O Nasrullah Khan Village Sabar Shah PO & Tehsil Samarbagh Dir Lower.	Ward Orderly (BPS-04)
7	Mr. Akbar Khan S/O Hakim Jan Mohallah, Qaso Cham PO & Tehsil Samarbagh Dir Lower.	Ward Orderly (BPS-04)
8	Mr. Nisar Muhammad S/O Muhammad Wahid Village Shpano Kasy PO & Tehsil Samarbagh Dir Lower.	Ward Orderly (BPS-04)
9	Mr. Sami-ur-Rahman S/O Khalil-ur-Rahman Village & PO Samarbagh Dir Lower.	Ward Orderly (BPS-04)

[Signature]
District Health Officer,
Dir Lower.

No. 897-901 / Dated Timergara the 27/11/2017.

Copy forwarded to:-


1. The Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar with reference to Service Appeal No. 167-175/2015 dated 05-10-2016.
2. The Director General Health Services Khyber Pakhtunkhwa Peshawar.
3. The District Accounts Officer Dir Lower.
4. The Accounts Clerk of this office.
5. The Appellants concerned.

For information and necessary action please.

[Signature]
District Health Officer,
Dir Lower.

[Handwritten initials]
C.T.C.
[Handwritten initials]

W.P.K.

		Consignment Note No. 470 7561061			Sales Tax Invoice	
		Acct / Coupon	Insured	Dimension		Org
Call: 141-123-456 GST NO. 12-00-9808-002-73		<input type="checkbox"/> Yes <input type="checkbox"/> No	L (cm)	W (cm)	H (cm)	(kg) * Pcs
Mode of Payment <input type="checkbox"/> Coupon <input type="checkbox"/> POC <input type="checkbox"/> CDO <input type="checkbox"/> Account <input type="checkbox"/> Cash		Value			Service Type <input type="checkbox"/> Overnight <input type="checkbox"/> Holiday <input type="checkbox"/> Extra Sp. <input type="checkbox"/> Same Day <input type="checkbox"/> Second Day	
From (Shipper)		To (Consignee)			Service Charges	
Phone		Phone			Weight	
E-mail		E-mail			Handling	
Description		Description			Other	
PICKUP INFORMATION		PICKUP INFORMATION			GST	
Customer Code		Date			Insurance Premium	
<small>I warrant that I have read the Terms and Conditions on the reverse of this consignment note and that all details given herein are true and correct. I further declare that the contents of this consignment do not occur on any other. The recipient of this consignment, made in accordance with evidence of the substance of contract between Shipper & VTES (PVT) LTD.</small>		<small>48 FOR R.O. AND 1944. TOPWELL AND CAHILL LETTER POSTCARD. Any other goods, complete, and 3 services may be provided by VTES (PVT) LTD. 2042, Kowloon, 75488.</small>				

4582-
 24/10/17
 9.31

W.P.K.
 C.T.C
[Signature]



دستخط مال کارڈ

حکومت پاکستان

قومی شناختی کارڈ

15303-9560161-9

نام : اکرام اللہ

جنس : مرد

والد کا نام : عبدالغفور خان

شناختی عیادت : کوئی نہیں

تاریخ پیدائش : 01/01/1985



عثمان یوسف عیوب

دستخط جسٹس جنرل

20

19



شناختی نمبر: 15303-9560161-9 خان ان سیر: T1285L

موجودہ پتہ: محلہ کوٹلی، ہم، سرسبز، ہرما، ڈاکخانہ، ٹریا، سسٹل، ٹریا، ضلع، ڈاکخانہ

سستل پتہ: ایف ۱

تاریخ اجراء: 01/11/2015 تاریخ ترمیم: 01/11/2025

گمشدہ کارڈ طلبہ پر ترمیمی میٹرکس میں ڈال دیں



اللہ اعلم

C-10-C

26

IKRAMULLAH

HEALTH SERVICES KP

Blood Group: A +ve

Father's Name: Abdul Ghafoor

Village: Samar Bagh F.O and Tehsil Samar Bagh Dir (Lower)



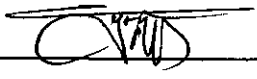
+92 306 85830 10
+92 306 80550 10

CHAWKIDAR

1. This Card is not transferable
2. This Card is to be submitted to the Hospital Administration or Health Department Dir (L)

Handwritten signature in Urdu.

Handwritten initials and signature.

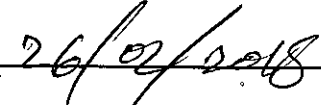
قیمت 50 روپے	 	23881
 ایڈووکیٹ:	پشاور بار ایسوسی ایشن، خیبر پختونخواہ	
بار کونسل ایسوسی ایشن نمبر: 11-1452-BC		
رابطہ نمبر: 0315-8324302		

بعدالت جناب: Before KPR Service Tribunal, Peshawar

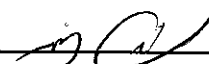
مخانب: Appellant	دعویٰ: Appeal
اگر اللہ بنا نام D.G - Health	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

باعت تحریر آنگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام میں جو کہ کیلئے ارباب یا مسعود علیہ السلام کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی 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 باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المقوم: 

بداً واداً شد العبد

مقام: 

IN THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

In Ref
Service Appeal No. 404,/2018,

Ikram Ullah

.....Appellant

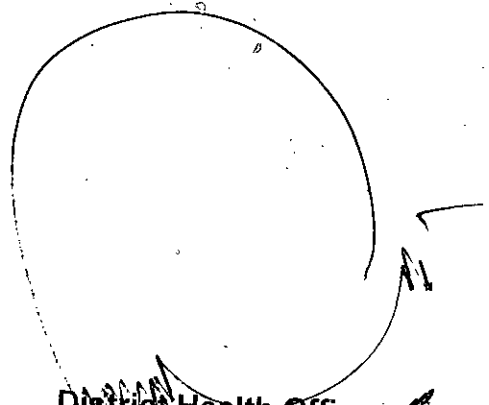
Versus

Govt. of Khyber Pakhtunkhwa through DGHS & Others.....Respondents.

PARAWISE COMMENTS ON BEHALF OF DISTRICT HEALTH OFFICER DIR LOWER (RESPONDANT NO. 2 & OTHERS)

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District Health Officer
Dir Lower at Timergara
District Health Officer
Dir Lower at Timergara

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IN THE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL, PESHAWAR

In Ref

Service Appeal No. 404/2018

Ikram UllahAppellant

Versus

Govt. of Khyber Pakhtunkhwa through DGHS & Others.....Respondents.

PARAWISE COMMENTS ON BEHALF OF DISTRICT HEALTH OFFICER DIR
LOWER (RESPONDANT NO. 2 & OTHERS)

Respectfully Sheweth

Preliminary Objections

1. that the appellant has got no cause of action to file instant appeal
2. that the instant appeal is bad for misjoinder and non joinder of parties.
3. That the appellant has not come to this honorable tribunal with clear hands.
4. That the appeal is barred by Law.

The Respondent humbly submitted as under:-

1. True as per record.
2. True as per record.
3. True as per record.
4. True in its contents.
5. True to the extent that in pursuance to the Judgment dated 05-10-2016, the appellant were reinstated as according to the Judgment of Honourable Khyber Pakhtunkhwa Service Tribunal announce on 05-10-2016 in the instant appeal. But It stands beyond the facts that local authority including respondent No. 2 refuse to give back benefits to the appellant as in the judgment of the honorable Khyber Pakhtunkhwa Service Tribunal, it was never mentioned to give back benefits to the appellants. It is pertinent to mention that the initial appointment order No. 8536-41 dated 23-07-2014 was hereby cancelled because of lack of codal formalities on the very next day, with in a time span of 24 hours vide office order No. 8561-64, dated 24-07-2014. The appellant neither submitted any arrival for the duty nor joined the job during this period. It is important to apprise the honorable court that none of the appellant have performed any duty under the control of office of the undersigned, until their reinstatement vide office order No.897-901, dated 27-01-2017 as in compliance with the honorable Khyber Pakhtunkhwa Service Tribunal Peshawar Service Appeal No. 167-175/2015, dated 05-10-2016.
6. The appellant ^{has} got no cause of action to file the instant service appeal

GROUNDS

- A. As described in Para-No. 5 of facts. The Department has always been working in its legal frame, constitutional vicinity, authorized jurisdiction, lawful authority and materials on the record as in compliance with the decision of the honorable Service Tribunal.
- B. Incorrect the act and omission of the Department has been in line with the spirit of the decision of the Honourble Service Tribunal.
- C. Incorrect; The Department as in line with the Judgment of Service Tribunal has reinstated the appellant as prayer for the instant appeal but the appellants have never been performed any duty nor have submitted arrival for the duty and the honorable Tribunal has also not mentioned it anywhere to give them back benefits just for nothing, which is a waste of Govt exchequer.
- D. False in its content that there has been no service period it all on behalf of the appellant and they were even unable to submit the arrival reports for their duties.
- E. False as per the available record of the Department. As expressed earlier none of them has performed any duty in the statement of claiming that they have performed duty efficiently and honestly is just misleading of this honorable Tribunal.
- F. ~~INCORRECT~~ The appellant was never a Govt: Servant until the judgment of this honorable Tribunal as announced on 05-10-2016 and after that the appellant have been treated in accordance with the law.
- G. Act and omission of the Department is always been effective on the right of the appellant and their stand no question of causing gross miscarriage of justice to the appellant.
- H. The respondents have been efficient in applying their administrative roll to the matter and have been in line with the judgment of the honorable Tribunal with no erroneous conclusion as stated by the appellant.

Prayer

In view of the above explanation and factual position being brought to the eyes of this honorable Tribunal, it is humbly prayed that on acceptance of these para-wise comments the instant ~~writ~~ ^{Services} Appeal being devoid of merits may be dismissed with cost.

Respondent No. 1

[Signature]
Director General Health Services
Khyber Pakhtunkhwa Peshawar

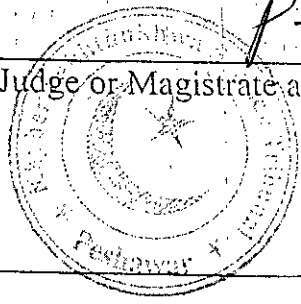
Respondent No. 2

[Signature]
District Health Officer,
Dir Lower at Timergara.
District Health Officer
Dir Lower at Timergara.

Respondent No. 3

[Signature]
Secretary to Govt: of
Khyber Pakhtunkhwa
Govt: of Khyber Pakhtunkhwa
Health Department

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1.	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
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	2	3
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT SWAT

1. Appeal No. 167/2015 Arshid Ali,
2. Appeal No. 168/2015, Siraj-ul-Mulk,
3. Appeal No. 169/2015, Muhammad Yasir,
4. Appeal No. 170/2015, Ikramullah,
5. Appeal No. 171/2015, Fakhr-ud-Din,
6. Appeal No. 172/2015, Hidayatullah Khan,
7. Appeal No. 173/2015, Akbar Khan,
8. Appeal No. 174/2015, Nisar Muhammad and
9. Appeal No. 175/2015, Sami-ur-Rahman
Vs. Director General Health Services, Khyber Pakhtunkhwa,
Peshawar and another.

JUDGMENT

MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-

05.10.2016

Counsel for the appellants and Mr. Muhammad Zubair, Senior Government Pleader for respondents present.

~~2~~ This judgment shall dispose of the instant service appeal No. 167/2015 as well as connected service appeals No. 168/2015 to 175/2015 as identical questions of facts and law are involved therein.

3. Brief facts of the case of the appellants are that they were appointed as Class-IV employees vide office order dated 22.07.2014. In pursuance of the appointment orders appellants resumed their duties but vide impugned orders dated 24.07.2014 the said appointment orders were cancelled on account of non-observance of codal formalities constraining the appellant to prefer departmental appeals on 06.08.2014

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which were rejected vide orders dated 17.2.2015 and hence the instant service appeals on 02.03.2015.

4. Learned counsel for the appellants has argued that the appellants were appointed as Class-IV employees in the prescribed manners as their names were requisitioned from the Employment Exchange and the said appointment orders were passed by the competent authority after considering the recommendations of the Departmental Selection Committee. That the impugned orders were passed without affording any opportunity of hearing to the appellants.

5. Learned counsel for the appellant has placed reliance on case-law reported as 2004-SCMR-468 (Supreme Court of Pakistan) and 2003-SCMR-1126 (Supreme Court of Pakistan).

6. Learned Senior Government Pleader has argued that the appointment orders were made by violating the settled procedure for such appointments and as such the same were rightly withdrawn. Regarding show cause notice he argued that no such notice was issued to the appellants.

7. We have heard arguments of learned counsel for the parties and perused the record.


8. It is a well settled proposition of law that no one is to be condemned unheard. The August Supreme Court of Pakistan has also ruled in the judgments referred to above and relied on by the learned counsel for the appellants that opportunity of hearing would be a pre-requisite before passing such orders. In view of the afore-stated

APPROVED
[Signature]
[Stamp]

circumstances we are constrained to set aside the impugned orders referred to above and reinstate the appellants in service with directions to the respondents that in case they intend to proceed against the appellants on any ground including non-observance of codal formalities during process of their appointments then the appellants be afforded opportunity of hearing in the mode and manners prescribed by rules and there-after pass any order deem appropriate. All the appeals are accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

Sd/- M. Azim Khan Abrodi,
Chairman

Sd/- Abdul Latif,
Member

Certified to be a true copy


Announced
05.10.2016

Date of completion 10-10-2016
 Number of files 1600
 Copying Fee 10/-
 Urgent
 Total 10/-
 Name of Copyist *[Signature]*
 Date of Completion 14-10-2016
 Date of Delivery 14-10-2016

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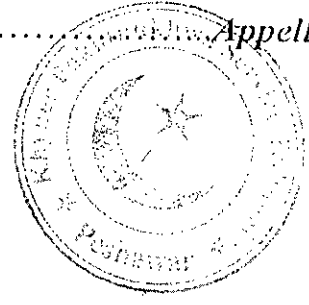
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 167 /2015

G.W.F. Provincial
Service Tribunal
Diary No. 166
Dated 02-03-2015

Arshid Ali S/o Muhammad Jan
Ex-Ward Orderly, THQH Samarbagh, District Dir Lower..... *Appellant*

VERSUS



1. The Director General
Health Services, Khyber Pakhtunkhwa,
Peshawar
2. The District Health Officer,
District Dir Lower.

.....*Respondents*

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED OFFICE ORDER DATED 24.07.2014 ISSUED BY RESPONDENT NO.2, WHEREBY THE APPOINTMENT ORDER OF THE APPELLANT WAS UNLAWFULLY CANCELED AGAINST WHICH APPELLANT PREFERRED A DEPARTMENTAL APPEAL TO RESPONDENT NO.1 ON 06.08.2014 BUT THE SAME WAS REJECTED VIDE IMPUGNED ORDER COMMUNICATED THROUGH LETTER DATED 17.02.2015.

PRAYER:

On acceptance of the instant appeal, the impugned office order dated 24.07.2014 issued by Respondent No.2 and the impugned appellate order issued by Respondent No.1 dated 17.02.2015 may graciously be set aside by reinstating the appellant into service with all back benefits.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

Filed to ~~day~~ That appellant is the permanent resident of District Dir Lower and has obtained B.A qualification (Credentials *Annex:-A*) and is registered with

Registered
2/3/15

[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar