

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 7406/2021

Date of Institution ... 13.09.2021

Date of Decision... 07.12.2022

Dr. Khadija Akbar, District Specialist Gynae (BPS-18), Tehsil Headquarter,
Takht Bhai, District Mardan.

... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber
Pakhtunkhwa, Peshawar and 05 others.

... (Respondents)

MR. NOOR MUHAMMAD KHATTAK,
Advocate

--- For appellant.

MR. MUHAMMAD JAN,
District Attorney

--- For official respondents.

MR. SARDAR ALI KHAN,
Advocate

--- For private respondent.

SALAH-UD-DIN
MIAN MUHAMMAD

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise averments as raised by
the appellant in her appeal are that she was serving as Women Medical
Officer (BPS-17) and was transferred/posted as District Specialist
Gynae (BS-18) at THQ Hospital Gunjai Takht Bhai vide Notification
dated 13.08.2021; that the appellant assumed the charge as District
Specialist Gynae (BS-18) in THQ Hospital Takht Bhai and started
performing of her duty; that vide the impugned Notification dated

24.08.2021 issued by Secretary to Government of Khyber Pakhtunkhwa Health Department, private respondent No. 6 Dr. Fouzia Israr was transferred/posted as District Specialist Gynae (BS-18) in THQ Hospital Takht Bhai against the same post, which was already occupied by the appellant in the wake of transfer/posting Notification dated 13.08.2021; that the appellant being aggrieved of the Notification dated 24.08.2021, assailed the same by way of filing departmental appeal, however the same was not responded within the statutory period, hence the instant service appeal.

2. Notices were issued to the respondents for submission of reply/comments. Official respondents No. 1 to 5 as well as private respondent No. 6 contested the appeal by way of filing their respective replies/comments, wherein they denied the averments raised by the appellant in her appeal.

3. Learned counsel for the appellant has argued that the appellant was already working on the post of District Specialist Gynae (BS-18) in the wake of transfer/posting Notification dated 13.08.2021, whereby the appellant had been transferred to the said post, therefore, the impugned Notification dated 24.08.2021 regarding transfer of private respondent No. 6 to the post of District Specialist Gynae (BS-18) at THQ Hospital Takht Bhai is against law, facts and norms of natural justice; that the appellant has been treated by the respondents with discrimination and her rights guaranteed under Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973 have been violated; that the impugned Notification dated 24.08.2021 is also in

violation of clauses I, II & XIV of transfer/posting policy of the Provincial Government of Khyber Pakhtunkhwa; that the impugned Notification dated 24.08.2021 regarding transfer of the appellant to the post of District Specialist Gynae (BS-18) at THQ Hospital Takht Bhai has neither been issued in the interest of public nor in any exigency of public service, therefore, the same is liable to be set-aside; that the appellant was transferred to the concerned post vide Notification dated 13.08.2021 and she was entitled to complete her normal tenure as prescribed under Transfer/Posting Policy of the Provincial Government, however vide impugned Notification dated 24.08.2021 private respondent No. 6 has wrongly and illegally been posted at place of the appellant.



4. On the other hand, learned counsel for private respondent No. 6 has contended that she was appointed as District Specialist Gynecology (BS-18) vide Notification dated 08th January 2018 upon recommendations of Khyber Pakhtunkhwa Public Service Commission; that private respondent No. 6 was initially serving as DMS (BS-18) at Type-D Hospital Shahbaz Ghari Mardan, however when the relevant post of District Specialist Gynecologist (BS-18) became vacant at THQ Hospital Takht Bhai, she was adjusted against the same vide office order dated 02.08.2021 issued by the District Health Officer Mardan; that private respondent No. 6 assumed the charge of District Specialist Gynecologist (BS-18) at THQ Hospital Takht Bhai on 03.08.2021 and at the time of issuance of Notification dated 13.08.2021, regarding transfer of the appellant to the post of District Specialist Gynecologist (BS-18) at THQ Hospital Takht

Bhai, the said post was already occupied by private respondent No. 6; that the appellant is serving as Women Medical Officer (BPS-17) in general cadre of Health Department, while private respondent No. 6 had been appointed as District Specialist Gynecology (BS-18), therefore, posting of the appellant as District Specialist Gynae at THQ Hospital Takht Bhai was against law and rules as she was having no competency to work on the said post which is of BS-18; that the post of District Specialist Gynecologist (BS-18) at THQ Hospital Takht Bhai was already occupied by private respondent No. 6, therefore, arrival report of the appellant was not at all accepted by DHO Mardan and it has been wrongly alleged by the appellant in her appeal that she had assumed the charge of District Specialist Gynae at THQ Hospital Takht Bhai; that private respondent No. 6 was already performing her duties on the post of District Specialist Gynae at THQ Hospital Takht Bhai and upon recommendation of Departmental Placement Committee, she has rightly been transferred to the said post in the best interest of public.

5. Learned District Attorney for official respondents has relied upon the arguments advanced by learned counsel for private respondent No. 6.

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

7. A perusal of the record would show that upon recommendations of Khyber Pakhtunkhwa Public Service Commission, private respondent No. 6 Dr. Fouzia Israr was appointed as District Specialist

Gynecology (BS-18) on regular basis. Vide office order dated 02.08.2021, private respondent No. 6 Dr. Fouzia Israr was adjusted against the vacant of District Gynecologist (BS-18) at THQ Hospital Takht Bhai and copies of the said office order were forwarded to Director General Health Services Khyber Pakhtunkhwa Peshawar as well as others. In light of the said office order, private respondent No. 6 assumed the charge of her post as District Gynecologist (BS-18) at THQ Hospital Takht Bahi on 03.08.2021. It was vide Notification dated 13.08.2021 issued by Secretary to Government of Khyber Pakhtunkhwa Health Department, that the appellant was posted as District Specialist Gynae (BS-18) at THQ Hospital Gunjai Takht Bhai, in her own pay and scale i.e BS-17, while the post of District Gynecologist was that of BS-18. In the meanwhile, the impugned posting/transfer Notification dated 24.08.2021 was issued by Secretary to Government of Khyber Pakhtunkhwa Health Department, whereby private respondent No. 6 was transferred/posted as District Specialist Gynae in THQ Hospital Gunjai Takht Bhai. When the appellant submitted arrival report on 25.08.2021, the same was not accepted by District Health Officer Mardan, who endorsed following remarks on the arrival report of the appellant:-

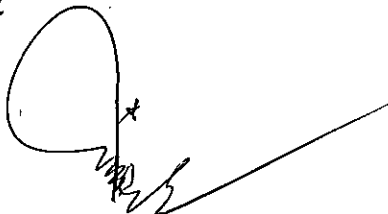
“Not accepted. Returned back to her original place of duty because the qualified Gynecologist (BS-18) is transferred/posted on the post of Gynecologist in THQ Hospital Takht Bhai.”

8. The appellant has not denied that private respondent No. 6 was appointed as District Gynecologist (BS-18) and the relevant post at THQ Hospital Gunjai Takht Bhai was also of District Gynecologist (BS-18), while the appellant was serving as Medical Officer (BS-17)

and was not District Specialist Gynae (BS-18). Clause- xiii (a) of the Posting/Transfer Policy of the Provincial Government specifically stipulates the posting of “proper persons on proper posts” which in the instant case seems to have been ignored at the time of issuing of Notification dated 13.08.2021 regarding transfer of the appellant to the post of District Specialist Gynae at THQ Hospital Gunjai Takht Bhai, which also hints towards lack of proper Human Resource Management in the respondent-department. While going through the record, we have observed with concern that appellant and private respondent No. 6 were transferred on the same post, which fact depicts a grim picture of the working in Health Department, which requires to be streamlined in order to avoid any loopholes in posting/transfer orders of officers/officials of the Health Department.

9. In view of the above, the appeal in hand stands dismissed, however it is expected that the competent Authority shall post the appellant on a suitable post of her qualification and experience in the relevant field. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
07.12.2022



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ORDER
07.12.2022

Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for official respondents present. Arguments have already been heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand stands dismissed, however it is expected that the competent Authority shall post the appellant on a suitable post of her qualification and experience in the relevant field. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
07.12.2022



(Mian Muhammad)
Member (Executive)

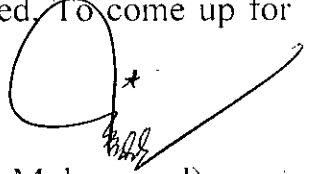


(Salah-Ud-Din)
Member (Judicial)

25.11.2022

Learned counsel for the appellant present. Mr. Muhammad Jan,
District Attorney for official respondents present.

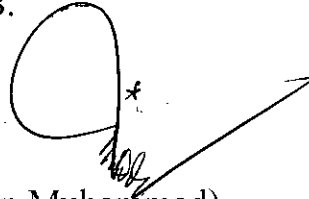
Learned Member Judicial Mr. Salah-ud-Din is on leave,
therefore, order could not be announced. Adjourned. To come up for
order on 29.11.2022 before the D.B.


(Mian Muhammad)
Member (Executive)

03.11.2022

Mr. Noor Muhammad Khattak, Advocate, for the appellant present. Mr. Amer Sultan Tareen, Secretary (Health), Mr. Atta-ur-Rehman, Special Secretary (Health) and Mr. Safiullah, Focal Person alongwith Mr. Muhammad Jan, District Attorney for official respondents No.1 to 5 present. Mr. Sardar Ali Khan, Advocate, for private respondent No. 6 also present.

Arguments heard. To come up for order on 22.11.2022 before the D.B.



(Mian Muhammad)
Member (E)



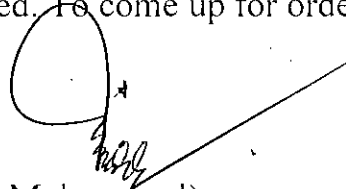
(Salah-Ud-Din)
Member (J)

SCANNED
PST
Peshawar

22.11.2022

Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for official respondents present.

Due to paucity of time, order could not be announced
Adjourned. To come up for order on 25.11.2022 before the D.B.



(Mian Muhammad)
Member (E)



(Salah-Ud-Din)
Member (J)


7406/2021

26th Oct., 2022

Clerk of learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for official respondents No. 1 to 5 present. Clerk of learned counsel for private respondent No. 6 present. Clerks of learned counsel for the appellant as well as private respondent No. 6 stated that their counsel are unable to appear before the Tribunal due to strike of lawyers.

Vide previous order dated 19.10.2022 directions were issued for personal appearance of Secretary to Government of Khyber Pakhtunkhwa Health Department, however, neither he nor any representative of the respondents appeared before the Tribunal today, therefore, salary of Secretary Health is attached till further orders. Registrar of the Tribunal is directed to send the copy of this order to the Accountant General, Khyber Pakhtunkhwa Peshawar for compliance. Adjourned. To come up for arguments before the D.B on 03.11.2022. In view of observations in order dated 19.10.2022, Secretary Health shall appear before the Tribunal on the date fixed.

SCANNED
KPST
Peshawar

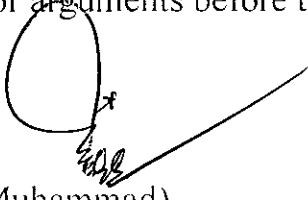

(MIAN MUHAMMAD)
Member(E)



(SALAH-UD-DIN)
Member (J)

19.10.2022

Learned counsel for the appellant present. Mr. Muhammad Tufail, Section Officer alongwith Mr. Muhammad Jan, District Attorney for official respondents No. 1 to 5 present. Learned counsel for private respondent No. 6 also present.

During the course of arguments, it was observed that vide Notification dated 13th August 2021, issued from the office of Secretary Health, the appellant namely Khadija Akbar Medical Officer (BPS-18) was transferred against the vacant post of District Specialist Gynae (BPS-18) at THQ Hospital Gunjai Takht Bhai. Another Notification dated 24th August 2021 was issued from the office of Secretary Health, whereby private respondent No. 6 namely Fouzia Israr was transferred to the same post against which the appellant was earlier transferred vide Notification dated 13th August 2021. On a query from representative of the respondents as well as learned District Attorney, they stated at the bar that nothing is available in record of the respondents regarding any cancellation of transfer order of the appellant dated 13.08.2021. In this scenario, Secretary to Government of Khyber Pakhtunkhwa Health Department shall personally appear before the Tribunal on the next date and to come up for arguments before the D.B on 26.10.2022.

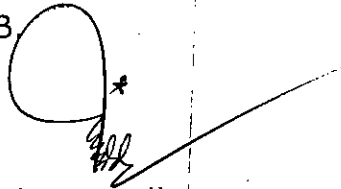

(Mian Muhammad)
Member (E)


(Salah-Ud-Din)
Member (J)

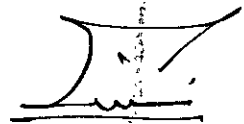
24.06.2022

Learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for official respondents No. 1 to 5 present. Learned counsel for private respondent No. 6 also present.

Learned counsel for the appellant requested for adjournment on the ground that he is unable to address the arguments today as the brief of the instant appeal has been misplaced. Learned counsel for private respondent No. 6 is having no objection on the adjournment. Adjourned. Last opportunity given. To come up for arguments on 20.07.2022 before the D.B.



(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

20.07.2022

Proper Bench is not available, therefore, case is adjourned to 19.10.2022 for the same as before.



Reader

6th June, 2022


Proper D.B is not available. Therefore, case is adjourned to 24.06.2022 for the same as before.


Reader

24.06.2022

Learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for official respondents No. 1 to 5 present. Learned counsel for private respondent No. 6 also present.

Learned counsel for the appellant requested for adjournment on the ground that he is unable to address the arguments today as the brief of the instant appeal has been misplaced. Learned counsel for private respondent No. 6 is having no objection on the adjournment. Adjourned. Last opportunity given to come up for arguments on 20.07.2022 before the D.B.

 an Muhammad)
Member (E)


(Salah-ud-Din)
Member (J)

7406/21

19.01.2022

Counsel for the appellant present. Mr. Asif Masood Ali Shah, DDA for official respondents and counsel for private respondent No. 6 present.

Due to paucity of time, arguments could not be heard. To come up for arguments on 04.02.2022 before the D.B. The restraint order dated 17.09.2021 shall remain operative till next date.


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


Chairman

04.02.2022


Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 16.05.2022 for the same as before.


Reader

16.05.2022

Junior of learned counsel for the appellant present. Mr. Naseer ud Din Shah Assistant Advocate General for official respondents No. 1 to 5 present. Counsel for private respondent No.6 also present.

Junior of learned counsel for appellant requested for adjournment on the ground that learned counsel for the appellant is not available due to some domestic engagements. Adjourned. To come up for arguments before the D.B on 06.06.2022.


(Rozina Rehman)
Member (J)


(Salah-Ud-Din)
Member (J)

03.12.2021


Counsel for the petitioner. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Safiullah, Focal Person for official respondents and counsel for private respondent No.6 present.

Written reply/comment on behalf of respondent No.6 has already been submitted. Representative of official respondents seeks time to submit the same on the next date. Adjourned. To come up for written reply/comments on 03.01.2022 before S.B. Operation of the impugned order is suspended till next date.


(MIAN MUHAMMAD)
MEMBER (E)

03.01.2022

Junior to counsel for the appellant present. Mr. Kabirullah Khattak, AAG alongwith Mr. Safiullah Focal Person for respondents present and submitted reply/comments which are placed on file. To come up for rejoinder if any, and arguments before the D.B on 19.01.2022. Operation of the impugned order is suspended till the next date.

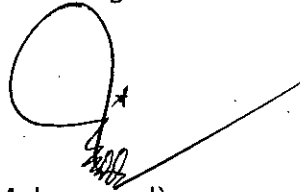

(Atiq-Ur-Rehman Wazir)
Member (E)

7406/21

05.10.2021

Junior to counsel for the appellant and Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

Reply/comments have not been submitted. Last chance is given to the respondents for submission of reply within 10 days in office, failing which the right of the respondents for reply shall be deemed as struck off. To come up for arguments on 01.11.2021 before the D.B.



(Mian Muhammad)
Member(Executive)



Chairman

01.11.2021

Junior to counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

The learned Member (Judicial) is on leave, therefore, case is adjourned. To come up for arguments on 03.12.2021 before D.B.



Chairman

17.09.2021

Counsel for the appellant present. Preliminary arguments heard. Record perused.

Appellant has submitted the instant appeal U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order dated 24.08.2021, whereby, private respondent No.5 has been transferred against the post already held by the appellant.

Points raised need consideration. Instant 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, notice be issued to respondents for submission of written reply/comments in office within 10 days of the receipt of notices, positively. If the reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 05.10.2021 before D.B.

Appellant Deposited
Security & Process Fee

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A request for interim relief seeking suspension of operation of the impugned order to the extent of appellant was made. Operation of the impugned order is suspended till next date subject to notice to the respondents.

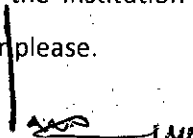

[Handwritten signature]
(Rozina Rehman)
Member (J)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7406 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	13/09/2021	<p>The appeal of Dr. Khadija Akbar presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>17/09/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECK LIST

Case Title: KHADIJA AKBAR

V/S

HEALTH DEPARTMENT

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

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

Name: **NOOR MOHAMMAD KHATTAK**

Signature: _____

Dated: 13/09/2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2021

KHADIJA AKBAR

VS

HEALTH DEPTT: & OTHERS

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Dated 13/9
21

APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 7406/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7551

Dated 13-09-2021

Dr. Khadija Akbar, District Specialist Gynae (BPS-18),
Tehsil Head Quarter, Takht Bhai, District Mardan.

..... **APPELLANT**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The District Health Officer, District Mardan.
- 5- The Medical Superintendent, THQ Hospital Takht Bhai.
- 6- Dr. Fouzia Israr D/O Muhammad Israr, Type-D Hospital Shahabz Ghari Mardan under transfer to THO Hospital Takht Bhai.

..... **RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 24-08-2021 WHEREBY PRIVATE RESPONDENT NO.5 HAS BEEN TRANSFERRED AGAINST THE POST ALREADY HELD BY THE APPELLANT AT THQ HOSPITAL TAKHT BHAI IN UTTER VIOLATION OF THE TRANSFER/POSTING POLICY OF THE PROVINCIAL GOVERNMENT AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE PERIOD PRESCRIBED BY THE TRANSFER/POSTING POLICY

File to-day
Registrar

3/9/21 **PRAYER:**

That on acceptance of this appeal the impugned notification dated 24.08.2021 may kindly be set aside to the extent of private respondent No.5 and the official respondents may kindly be directed not to transfer the appellant from THQ Hospital Takht Bhai till completion of her normal tenure. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That appellant is the employee of respondent Department and is serving as women medical officer (BPS-17) since from her appointment till date quite efficiently and up to the entire satisfaction of her superiors.

- 2- That lastly the appellant was transferred/ posted as District Specialist Gynae (BS-18) against the vacant post vide Notification dated 13.08.2021 at THQ Hospital Takht Bhai. Copy of the transfer order is attached is annexure **A.**
- 3- That in response to ibid transfer Notification the appellant relieved from her previous place of posting and accordingly took over the charge at her new place of posting i.e. THQ Hospital Takht Bhai and started her duty quite efficiently and up to the entire satisfaction of her superiors. Copies of the relieving certificate, arrival report and attendance sheets are attached as annexure **B, C, D & E.**
- 4- That astonishingly the respondent No.2 issued the impugned Notification dated 24.8.2021 whereby the private respondent No.6 has been transferred/posted as District Specialist Gynae (BS-18) i.e. against the post already held by the appellant at THQ hospital Takht Bhai. Copy of the impugned order is attached as annexure **F.**
- 5- That feeling aggrieved the appellant filed departmental appeal before the appellate authority i.e. respondent No.1 against the impugned order dated 24.08.2021 but the same has not been responded till date. Copy of the departmental appeal is attached as annexure **G.**
- 6- That appellants feeling aggrieved and having no other remedy but to file the instant appeal on the following grounds amongst the others.

GROUND:

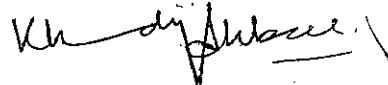
- A-** That the impugned notification dated 24.08.2021 issued by the respondent No.2 is against the law, facts, norms of natural justice and in utter violation of posting /transfer policy hence liable to be set aside to the extent of private respondent No.6.
- B-** That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C-** That the impugned notification dated 24.08.2021 is against the clauses I, II and XIV of the transfer/posting policy of the provincial Government of Khyber Pakhtunkhwa. Copy of transfer/posting policy is attached as annexure..... **H.**
- D-** That, the treatment meted out to the appellant is a clear violation of the Fundamental Rights of the appellant.

- E-** That the respondents acted in arbitrary and malafide manner by issuing the impugned notification dated 24.08.2021 against the appellant.
- F-** That, the appellant has been discriminated by the respondents on the subject noted above and as such the respondents violated the Principle of Natural Justice.
- G-** That neither the impugned order dated 24.08.2021 has been issued in the public interest nor the same have been issued in exigencies of public service.
- H-** That the appellant has been transferred pre maturely, therefore the impugned Notification dated 24.8.2021 is not tenable and liable to be set aside.
- I-** That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 13.9.2021

APPELLANT



DR. Khadija Akbar

THROUGH:


NOOR MOHAMMAD KHATTAK

ADVOCATE,
HIGH COURT, PESHAWAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

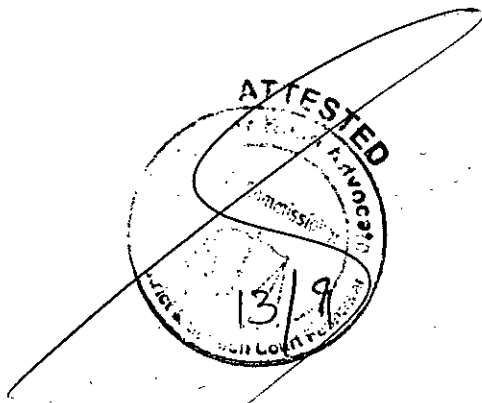
KHADIJA AKBAR

VS

HEALTH DEPTT:

AFFIDAVIT

Stated on oath that the contents of the accompanying service appeal are correct to best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal.



Kh. Khadija Akbar
DEPONENT

CERTIFICATE:

Certify that no earlier service appeal has been filed by the appellant in the instant matter before this Honorable Service Tribunal.

Kh. Khadija Akbar
CERTIFICATION

5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL No. _____/2021

DR. KHADIJA AKBAR

VS

HEALTH DEPT.

APPLICATION FOR SUSPENSION OF THE OPERATION OF
THE IMPUGNED NOTIFICATION DATED 24-08-2021 TO
THE EXTENT OF PRIVATE RESPONDENT NO. 6 AT SERIAL
NO. 7 OF THE NOTIFICATION.

R/SHEWETH:

- 1- That the above mentioned appeal along with this application has been filed by the appellant before this august service Tribunal in which no date has been fixed so far.
- 2- That appellant filed the above mentioned appeal against the impugned transfer notification dated 24-08-2021 whereby the private respondent No. 6 has been posted against the post held/ occupied by the appellant/ applicant.
- 3- That all the three ingredients necessary for the stay is in favor of the appellant.
- 4- That the impugned transfer notification dated 24-08-2021 had been issued by the respondents in utter disregard of law and prevailing Rules.

It is therefore, most humbly prayed that on acceptance of this application the operation of the impugned transfer notification dated 24-08-2021 to the extent of private respondent No. 6 may very kindly be suspended till the disposal of the above mentioned service appeal.

Dated: 13.09.2021

APPLICANT


KHADIJA AKBAR

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

ANNEXURE "A" 6



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar, the 13th August, 2021

NOTIFICATION

SOH-I/HD/7-53/Misc/2021:Dr. Khadija Akbar: The Competent Authority is pleased to post Dr. Khadija Akbar Medical Officer (BS-17) qualified (FCPS) Gynae DHQ Hospital Mardan against the vacant post of District Specialist Gynae (BS-18) at THQ Hospital Gunjai Takht Bhai in her own pay & scale with immediate effect, in the best public interest.

-SD-

Secretary to Govt. of Khyber Pakhtunkhwa
Health Department

Endst: of even No. & date:-

Copy forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa.
2. The Director General Health Services, Khyber Pakhtunkhwa.
3. The District Health Officer Takhti Bhai, Mardan.
4. The Medical Superintendent, DHQ Hospital Mardan.
5. The District Accounts Officer, Mardan.
6. The Deputy Director (IT) to upload this Notification on official website.
7. The PS to the Secretary Health Govt. of Khyber Pakhtunkhwa.
8. The Doctor concerned.
9. Master file.

Section Officer (Estab-I)

ATTESTED

ANNEXURE B.B

7

CERTIFICATE OF TRANSFER OF CHARGE.

1. Certified that I have on the fore/afternoon of this day respectively made over and receive charge of the office of the Medical Superintendent DHQ Hospital, Mardan Dr. Khadija Akbar, Woman Medical Officer BPS-17 hereby submitted departure report today on 16.08.2021 (Fore Noon) vide Secretary to Government of Khyber Pakhtunkhwa Health Department Notification No. SOH-I/HD/7-53/Misc/2021 dated 13th; August.2021.
2. Particulars of cash and important secret and confidential documents handed over are noted on the reverse.

Signature of relieved.....

Kh. Khadija Akbar

Govt servant Dr. Khadija Akbar
Woman Medical Officer BPS-17,
DHQ Hospital, Mardan

Station... DHC hospital, Mardan.

Dated: 16.08.2021(F.N)

OFFICE OF THE MEDICAL SUPERINTENDENT DHQ HOSPITAL, MARDAN.

No. 5885-90 /MS/PA.

Dated Mardan the 16 /08/2021

Copy forwarded to the: -

- 1- Secretary to Government of Khyber Pakhtunkhwa Health Department, Peshawar with reference to his order No. referred to above for information.
- 2- Director General, Health Services Khyber Pakhtunkhwa, Peshawar
- 3- District Comptroller of Accounts, Mardan..
- 4- Accountant / Bill Clerk DHQ Hospital, Mardan.
- 5- Personal file.

AS
Medical Superintendent,
D.H.Q Hospital, Mardan.

ATTESTED

GOVERNMENT OF KHYBER PAKHTUNKHWA
CERTIFICATE OF HANDING / TAKING OVER OF CHARGE

Certified that I Dr Khadija alibai
have this day before / afternoon taken over / relinquished charge of District
Specialist (gynae) with reference to the Order of KP Government
No. SOH-1/HD/7-53/MISC Dated 13th August 2021.

2. Particulars of Cash and Important/Sec. / Confidential documents handed over/taken over are noted on the reverse.

Station: Taluttakai
Signature of relieved Government Servant
Designation

Dated 16/08/2021 (PM)
Signature of Government Servant receiving Charge Khadija alibai
Designation Gynaecologist

OFFICE OF THE DISTRICT HEALTH OFFICER, MARDAN
PR: # (0937) 9230030 Fax: # (0937) 9230259 Email: mardandho@gmail.com

No. 14272-77 Dated 16/08 2021

- To
- 1. Secretary to Govt. of Khyber Pakhtunkhwa Health Department, Peshawar for information w/ref to Notification No. quoted above.
 - 2. Director General, Health Services, Khyber Pakhtunkhwa Peshawar.
 - 3. District Comptroller of Accounts, Mardan.
 - 4. Coordinator DHIS DHO Office, Mardan.
 - 5. Accounts Section, DHO Office, Mardan.
 - 6. Official / Officer concerned.

Signature: _____
Designation: Health Officer Mardan

ATTESTED

ANNEXURE

D

(7)

To

THE M.S.
THQ HOSPITAL, Gunjai.
TAKHT-BHAI.

2038
25-08-2021

SUBJECT :- ARRIVAL REPORT,

Respected Sir!

It is stated that I have been posted against the vacant post of district specialist (Gynaec) at THQ Hospital, Gunjai, Takht-Bhai. Kindly accept my arrival.

Thanking you in anticipation.

Yours sincerely,

Date:

Dr. Khadija Akbar.

FCPS Gynaec & Obs.

No. KSC/2021-26-08-2021

- Not accepted Return back to my original place as I did because the government is not giving me the post of Gynecologist in this hospital. T. Bhai.

For attn
DHO In
N/A

M.A.
DHO In
N/A

M.A.
M.A.

ATTESTED

10

ANNEXURE "E"

MONTH OF... Sep

- 1. DR FAUZIA ALI
Distt. Specialist
- 2. DR FAIZA ALAM
WMC PAKISTAN
- 3. DR KHADIJA ABBAS
Specialist
- 4. DR AFSHAH ALI
WMC
- 5. DR JAMILA QAYUM
WMC
- 6. DR AYESHA HARIQ
Dental
- 7. DR MAIMUNA
WMC
- 8. DR ROMANA
WMC
- 9. DR SARA
WMC
- 10. DR LUBNA ALAM
WMC
- 11. DR SANA
WMC
- 12. DR SADAF NAZ
WMC
- 13. DR AASIMA RAHMAN
WMC

ATTACHED

August

DATE	DESCRIPTION	AMOUNT	BALANCE
1
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ATTACHED



ANNEXURE "F"
GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

12

Dated: Peshawar, the 24th August, 2021

NOTIFICATION

No SOH/HD/3-5/2021: On the recommendation of Departmental Placement Committee meeting held on 04th August, 2021 under the Chairmanship of the Additional Secretary (E&A) Health Department which was examined all the online applications and the Competent Authority is pleased to order posting/transfer of the following doctors, in the best public interest, with immediate effect.

S. #	Name	From	To
1.	Dr. Abdul Hameed S/O Dr. Saadullah Senior Medical Officer (BS-18)	Lady Reading Hospital LRH, Peshawar	DHQ Hospital Khar at Bajaur as District Specialist Surgery (BS-18)
2	Dr. Zainab Mehboob D/O Mahboob Ali District Specialist Gynae (BS-18)	THQ Hospital Alizai L&C Kurram	Type-D Hospital Khanpur as District Specialist Gynae (BS-18)
3	Dr. Safina Mufti D/O Mufti Naveed-ul-Ansar WMO (BS-17) qualified FCPS in Gynae	DHQ Office Dir Lower	Cat-D Hospital at Talash. Dir Lower against the post, District Specialist Gynae in (OPS)
4	Dr. Nosheen Daud D/O Muhammad Daud District Specialist Paeds (BS-18)	DHQ Hospital Haripur	DHQ Hospital Haripur against her original post as District Specialist Paeds (BS-18)
5	Dr. Ijaz Rahim Bilal S/O Ghulam Rahim MO (BS-17) qualified Pathologist	THQ Hospital Shabqadar.	THQ Hospital Shabqadar as District Specialist Pathology in (OPS)
6	Dr. Naseem Ahmad S/O Ayaz Khan MO (BS-17) qualified FCPS in Surgery	THQ Hospital Takht Nasrati, District Karak	THQ Hospital Takti Nastri District Karak as District Specialist Surgery in (OPS)
7	Dr. Fouzia Israr D/O Muhammad Israr District Specialist Gynae (BS-18)	Type-D Hospital Shahbaz Ghari Mardan	THQ Hospital Takht Bhai Mardan as District Specialist Gynae (BS-18)

SD/-

**SECRETARY HEALTH
DEPARTMENT**

ATTACHED

ENDST: EVEN NO AND DATE

Copy forwarded for information/necessary action to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa.
3. District Health Officer, quarter concerned.
4. All Medical Superintendents, of quarter concerned.
5. District Accounts Officer, quarter concerned.
6. Section Officer (E-II) Govt of Khyber Pakhtunkhwa Health Department.
7. Section Officer (E-V) Govt. of Khyber Pakhtunkhwa Health Department.
8. Deputy Director (IT), Health Department with request to upload the instant notification on the official website of the Department.
9. PS to Minster for Health Department, Khyber Pakhtunkhwa.
10. PS to Secretary Health Department Govt. of Khyber Pakhtunkhwa, Peshawar
11. PS to Special Secretary (E&A) Health Department Govt. of Khyber Pakhtunkhwa .
12. PA to Deputy Secretary (Estab) Health Department Govt. of Khyber Pakhtunkhwa
13. Doctors concerned.
14. Personal file of the doctors concerned.
15. Master file.


SECTION OFFICER (ESTAB-I)

ATTESTED

097-9210124 = 205

To

The Chief Secretary,
Khyber Pakhtunkhwa, Peshawar.

① 4347
26-8-21

Subject:

DEPARTMENTAL APPEAL AGAINST THE IMPUGNED NOTIFICATION DATED 24-08-2021 WHEREBY ONE NAMELY DOCTOR FOUZIA ISRAR HAS BEEN TRANSFERRED ILLEGALLY AGAINST THE POST HELD BY THE APPELLANT.

Respected Sir,

It is most humbly stated that the appellant is performing her duties as Medical Officer in your good-self department quite efficiently, whole heartedly and up to the entire satisfaction of her high ups.

That while performing her duty as Medical Officer (BPS-17) in DHQ Hospital Mardan, the appellant was transferred to the post of District Specialist Gynae (BPS-18) at THQ Hospital Gunjai Takht Bhai vide order dated 13-08-2021.

That the appellant took over the charge of the mentioned post and started performing her duties quite efficiently and with zeal and zest.

That vide impugned order dated 24-08-2021 one Dr. Fouzia Israr has been transferred against the post held by the appellant in utter violation of the transfer posting policy of the government.

That it is important to mention here that the post upon which the mentioned doctor has been transferred vide impugned order has already been occupied/ held by the appellant through an order of the competent authority and by placing the mentioned doctor against the post held by the appellant vide impugned order is meant to violate the transfer posting policy of the government and the valuable rights of the appellant provided by the law and rules on the subject.

- It is, therefore, most humbly prayed that on acceptance of this Departmental appeal the impugned order dated 24.08.2021 may very kindly be set aside/ modified to the extent of serial No. 7 (Dr. Fouzia Israr) and the appellant may not be disturb through the impugned order.

Dated: 25.08.2021

APPELLANT

Khadija

Dr. Khadija Akbar

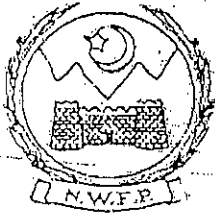
District Specialist Gynae

Tehsil Head Quarter, Takht Bhai, Mardan.

CNIC # 16101-9156510-4

0334 - 9027829

0344 - 9330866



**GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(Regulation Wing)**

POSTING / TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT.

- i) All the posting/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants
- ii) All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities for seeking posing/transfers of their choice and against the public interest.
- iii) All contract Government employees appointed against specific posts, can not be posted against any other post.
- iv) The normal tenure of posting shall be three years subject to the condition that for the officers/officials posted in unattractive areas the tenure shall be two years and for the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.
- v) {
- vi) While making postings/transfer from settled areas to FATA and vice-versa, specific approval of Governor, NWFP needs to be obtained
 While making postings/transfers of officers/officials up to BS-17, from settled areas to FATA and vice-versa approval of the Chief Secretary NWFP needs to be obtained. Whereas, in case of posting/transfer of officers in BS-18 and above, from settled areas to FATA and vice versa, specific approval of the Governor NWFP shall be obtained.
- vi (a) All Officers/officials selected against Zone-I/FATA quota in the Provincial Services should compulsorily serve in FATA for atleast eighteen months in each grade. This should start from senior most scales/grades downwards in each scale/grade of each cadre.
- vii) Officers may be posted on executive/administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and DPOs/Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thaana) of his area/residence is situated.
- viii) No posting/transfers of the officer's/officials on detailment basis shall be made.
- ix) Regarding the posting of husband/wife, both in Provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.
- x) All the posting/transferring authorities may facilitate the posting/transfer of the unmarried female government Servants at the station of the residence of their parents.

Para-1(v) regarding months of March and July for posting/transfer and authorities for relaxation of bar deleted vide letter No. SOR-VI (E&AD) 1-4/2008/Vol. I dated 3-6-2008. Consequently, authorities competent under the NWFP Government Rules of Business, 1985, District Government Rules of Business 2001, Posting/Transfer Policy and other rules for the time being in force, allowed to make posting/transfer subject to observance of the policy and rules. Added vide Urdu circular letter No. SOR-VI(E&AD)1-4/2008, dated: 21-09-2008.

16

- xi) Officers/officials except DCOs and DFOs/SPs who are due to retire within one year may be posted on their option on posts in the Districts of their domicile and be allowed to serve there till the retirement
 DCOs and DFOs who are due to retire in the near future may also be posted in the District of their domicile subject to the condition that such posting would be against non-administrative posts of equivalent scales;
- xii) In terms of Rule-17(1) and (2) read with Schedule-III of the NWFP Government Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against each officer in column 2 thereof:

Outside the Secretariat		
1.	Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above.	Chief Secretary in consultation with Establishment, Department and Department concerned with the approval of the Chief Minister.
2.	Other officers in BPS-17 and above to be posted against scheduled posts; or posts normally held by the APUG, PCS(EG) and PCS(SG).	-do-
3.	Heads of Attached Departments and other Officers in B-19 & above in all the Departments.	-do-
In the Secretariat		
1.	Secretaries	Chief Secretary with the approval of the Chief Minister.
2.	Other Officers of and above the rank of Section Officers: a) Within the Same Department b) Within the Secretariat from one Department to another.	Secretary of the Department concerned. Chief secretary/Secretary Establishment.
3.	Officials up to the rank of Superintendent: a) Within the same Department b) To and from an Attached Department c) Within the Secretariat from one Department to another	Secretary of the Department concerned. Secretary of the Dept in consultation with Head of Attached Department concerned. Secretary (Establishment)

xiii) While considering posting/transfer proposals all the concerned authorities shall keep in mind the following:

- a) To ensure the posting of proper persons on proper posts, the Performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/officials be considered.
- b) Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

xiv) Government servants including District Govt. employees feeling aggrieved due to the orders of posting/transfer authorities may seek remedy from the next higher authority / the appointing authority as the case may be through an appeal to be submitted within seven days of the receipt of such orders. Such appeal shall be disposed of within fifteen days. The option of appeal against posting/ transfer orders could be exercised only in the following cases.

i) Pre-mature posing/transfer or posting transfer in violation of the provisions of this policy.

ii) Serious and grave personal (humanitarian) grounds.

2. To streamline the postings/transfers in the District Government and to remove any irritant/confusions in this regard the provision of Rule 25 of the North West Frontier Province District Government Rules of Business 2001 read with schedule - IV thereof is referred. As per schedule-IV the posting/transferring authorities for the officers/officials shown against each are as under:-

S. No.	Officers	Authority
1.	Posting of District Coordination Officer and Executive District Officer in a District.	Provincial Government.
2.	Posting of District Police Officer.	Provincial Government
3.	Other Officers in BPS-17 and above posted in the District.	Provincial Government
4.	Official in BPS-16 and below	Executive District Officer in consultation with District Coordination Officer.

3. As per Rule 25(2) of the Rules mentioned above the District Coordination Department shall consult the Government if it is proposed to:

- a) Transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure.
- b) Require an officer to hold charge of more than one post for a period exceeding two months.

4. I am further directed to request that the above noted policy may be strictly observed /implemented.

All concerned are requested to ensure that tenures of the concerned officers/officials are invariably mentioned in summaries submitted to the Competent Authorities for Posting/Transfer.
{Authority: Letter No: SOR-VII/E&AD/1-4/2003 dated 24-6-2003}

It has been decided by the Provincial Government that posting/transfer orders of all the officers up to BS-19 except Heads of Attached Departments irrespective of grades will be notified by the concerned Administrative Departments with prior approval of the Competent Authority obtained on the Summary. The Notifications/orders should be issued as per specimen given below for guidance.

All posting/transfer orders of BS-20 and above and Heads of Attached Departments (HAD) shall be issued by the Establishment Department and the Administrative Departments shall send approved Summaries to E&A Department for issuance of Notifications.

18

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO: _____ OF 2021

Dr Khadija Akbar

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Health Department:

(RESPONDENT)
(DEFENDANT)

I/We Dr Khadija Akbar

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2021

Khadija Akbar
CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK

Kamran Khan
KAMRAN KHAN
&

Umar Farooq Mohmand
UMAR FAROOQ MOHMAND

Said Khan
SAID KHAN

Haider Ali
HAIDER ALI
ADVOCATES

OFFICE:

Flat No.4, 2ND Floor,
Juma Khan plaza near
FATA Secretariat, Warsak road
Peshawar City. Mobile No. 0345-9383141

Before The Khyber PukhtunKhwa Service Tribunal,
Peshawar

Service Appeal No.7406/2021

Dr.Khadija Akber

VS

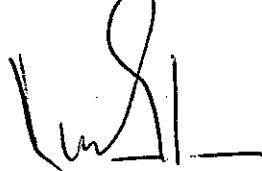
Health Department & others

I N D E X

S.No.	Particulars of documents	Exhibit	Page
1.	Reply/comments		1-3
2	Affidavit		4-
3.	Replication to application for injunction		5-
4	Copy of No.SOH-1/(HD)3-5/2017 dated January 8 th ,2018	" A "	6-
5.	Copy of order No.13362-69 and then on 04-08-2021	" B "	7-
6.	Copy of Notification # SOH/HD/3-5/21	" C "	8-
7.	Copy of joining report No.1643-48 /THQ dated 03-08-2021	" D "	9-
8.	Copy of letter No.1/HD/7-53/Misc/2021 dated 13-08-2021	" E "	10
9.	Joining Letter of appellant and NOC of DHO Mardan		11
10	Wakalatnama		12
11.			

Petitioners

Through



Haji Sardar Ali

Advocates High Court.

Cell No.0333-9873083

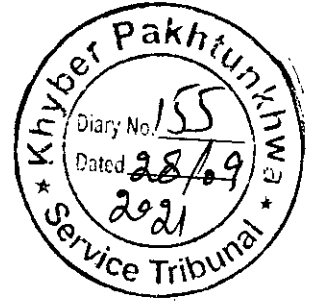
①

**Before The Khyber Pukhtunkhwa Service Tribunal,
Peshawar**

Dr.Khadija Akber

VS

Health Department



Written reply of respondent No.06

Respectfully Sheweth,

Preliminary objections,

- i. That the appeal filed by the appellant is not maintainable in present form and the same is libel to be dismissed.
- ii. That the instant appeal is incompetent and premature as the departmental appeal has yet not been finalized.
- iii. That the appellant is serving as women Medical officer (BPS-17) general cadre in health department while respondent No.6 is serving in specialist cadre i.e. gynecologist BPS-18 appointed as per Notification No.SOH-1/(HD)3-5/2017 dated January 8th,2018 by the recommendation of KPPSC, and the impugned post is reserved for the specialist /gynecologist, thus the appellant is not eligible for the said post and her transfer has not been made in accordance with law and justice, therefore the transfer order is a nullity in the eye of law. Copy of notification is attached as **annexure-A**.
- iv. That on 02-08-2021 the Respondent No.06 was transferred / adjusted against the vacant post of District Gynecologist (BPS-18) at THQ Hospital Takht Bhai vide office order No.13362-69 and then on 04-08-2021 the departmental placement committee duly constituted under the Chairmanship of the Additional Secretary (E&A) Health Department Notification No.SOH/HD/3-5/2021 was issued , which order is impugned by the petitioner through the instant appeal, which act of the appellant is wrong, illegal, baseless and not tenable in eye of law. Copy of office order No.13362-69 is **Annex-B**, while Notification # SOH/HD/3-5/21 is **Annex-C**.
- v. That Respondent No.6 in compliance of office order No.13362-69 dated 02-08-2021 had already joined her duties at THQ Hospital Takht Bhai vide her joining report No.1643-48 /THQ dated 03-08-2021 and the appellant deliberately concealed all these facts from this Hon'able Court, which act of the appellant by itself negate her plea and due to concealment of material facts from the Court, she is not entitled for any relief under the principles of equity. Copy of joining Report is **Annex-D**.
- vi. That the District Health Officer Mardan vide his letter No.14439/DHO dated 17-08-2021, addressed to the Secretary Health KP Peshawar, reiterated that adjustment of an un-qualified WMO of BPS-17 Dr.Khadija against the post District Gynecologist in THQ Hospital is not acceptable and he requested for the withdrawal of the Notification No.1/HD/7-53/Misc/2021 dated 13-08-2021 in the larger interest of public and department.
- vii. That the appellant also does not qualify the transfer and posting policy of the Provincial Government KPK because she has not completed her period

on previous post and more significantly she is not eligible for the post of District Gynecologist because never been she has appointed as gynecologist by competent authority ,rather a Women Medical Officer of BPS-17, while the Post in question is of a Specialist/ Gynecologist of BPS-18; so the appellant is not legally eligible for the post in question, hence her appeal also fails on this single score.

- viii. That appellant has got no cause of action to file the instant appeal.
- ix. That this Hon'able Tribunal lacks jurisdiction in the instant case.

Factual Objections :

1. Para No.01 needs no reply, however she is not eligible to be transferred on the post of District Gynecologist, because she is a Women Medical Officer BPS-17 of general cadre while the post is governed by a specialist i.e. Gynecologist of BPS-18.
2. Reply to Para No.02 is that respondent No.06 being a specialist Gynecologist (BPS-18) was adjusted as DMS at category-D hospital Shahbaz Ghari awaiting for her due seat , when the present impugned post became vacant she was transferred by DHO, Mardan to THQ Takht Bhai in the best public interest, despite of the fact that Respondent No.6 was already adjusted on the said post and was working against the said post before despite that the appellant violated all the rules and principles of Transfer/posting Policy of KPK Health Department and she fraudulently and through back door channel of political source obtained her transfer order, which conduct of the appellant is not only against the norms of justice but a stigma on the rights Public at Large because she is not a qualified and eligible person for the post of District Specialist Gynecologist, therefore Para No.2 is denied being wrong.
3. That Respondent No.6 after due process by public service commission was appointed as a specialist /Gynecologist, however was posted at type-D hospital Shabaz Ghari and was waiting for her due vacant post and when the said post of gynecologist became vacant after the promotion of Dr.Parveen shafi the respondent was transferred/adjusted to her due post by internal orders of district health Officer on 02.08.2021 in the best public interest whereupon she took her charge on 03.08.2021 and also getting her salary as gynecologist from THQ, Hospital Takht Bhai. Respondent after taking charge of District Gynecologist applied online for posting/adjusting as per transfer/posting policy and then through a proper order of Secretary Health , her transfer was recommended in meeting of concern committee and she was issued a proper order which order is now impugned by the appellant, by concealing all the facts from this Hon'able Court. Copy of salary slip is attached as annexure-F
4. Para No.04 is incorrect. Appellant although was relieved from her post of WMO,DHQ Hospital ,Mardan but the appellant did not even got NOC from concern authorities for her adjustment against the post of Gynecologist which is a procedural requirement for transfer/posting. DHO refused appellant's posting to THQ takht bhai and wrote a note on her arrival report NO.15040 dated 26.08.2021 in this regard directed her to return back to her original post as designated gynecologist has been transferred to the post. copy of arrival report is attached as annexure-G
5. Reply to Para No.05 is that respondent no.06 was already working on the post from 03.08.2021 when through an illegal order of Health Department the appellant was transferred to a post for which she was not eligible nor the post was vacant at that time, because the respondent was already adjusted on the said post and was getting her pay against the said post. Appellant is not

eligible for the post being WMO (BPS-17) of general cadre while respondent is a qualified Specialist Gynecologist of (BPS-18) and was properly adjusted on the vacant post at THQ Takht Bhi.

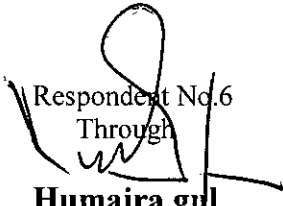
6. Para No.06 needs no reply.

7. Para no.07 needs no reply.

REPLY OF GROUNDS:

- A. Reply to Para A is that the order dated 24.08.2021 is issued by a competent authority after completion of due process, moreover the said order is still holding field because the impugned order has not withdrawn / replaced by another order, thus the appellat order is a nullity in the eye of law and justice and an incompetent, ineligible person cannot work on the post in the larger interest of Public and department.
- B. Para B is incorrect.
- C. Para c is incorrect hence denied.
- D. Para D is incorrect.
- E. Answer given as above.
- F. Incorrect hence denied.
- G. Incorrect hence denied.
- H. Para H is incorrect; appellat was transferred to the post which was already occupied by respondent No.06 since 03.08.2021.
- I. Not needs to reply.

It is therefore most humbly requested that the Transfer order passed in favor of appellat may please be declared as null and void while the transfer order dated 24-08-2021 may please be declared as right and the appeal in hand may may please be dismissed with heavy cost by concealing the real facts from this Hon'able Court and wasting the precious time of Court and Respondents.

Respondent No.6
Through

Humaira gul
Sardar Ali Khan
Advocates High court

Before The Khyber PukhtunKhwa Service Tribunal,
Peshawar

Service Appeal No.7406/2021

Dr.Khadija Akber VS Health Department& others

AFFIDAVIT

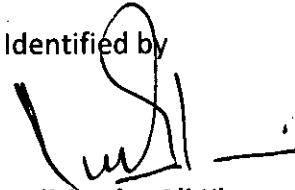
I, Dr.Fozia Gynecologist Specialist (BPS-18) THQ Takht Bhai do solemnly state that the contents of this reply / comments are true and correct and nothing has been concealed from this Hon'ableCourt.

Deponent

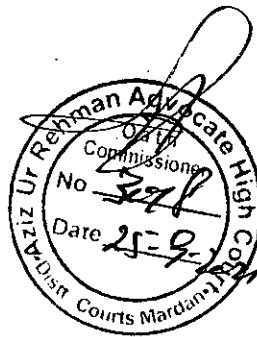


Dr.Fozia
NIC No. 1730182170816
Cell No. 03339185048

Identified by



Haji Sardar Ali Khan
Advocate High Court.
BC-10-5550



5

Before The Khyber Pukhtunkhwa Service Tribunal,
Peshawar

Dr.Khadija Akber

VS

Health Department

Written reply to application for injunction on behalf of respondent No.06

Respectfully Sheweth,

Preliminary objections,

- i. That the applicant has no prima facie case at all, which is the basic requirement for grant of injunction.
- ii. That the instant application has become in fructuous because the District Health Officer Mardan has already cancelled her transfer and declared it wrong and illegal because applicant is ineligible for the post of District Gynecologist Specialist as the said post is for grade 18 while applicant is of grade 17 WMO, thus the appeal is also became infructuous.
- iii. That the applicant will suffer with no irreparable losses, rather the public at large is suffering from the wrongful and illegal act of the applicant.

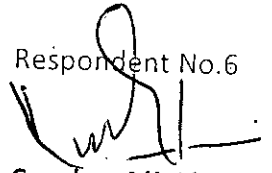
Factual Objections :

1. Para No.01 needs no reply, however the application is meritless and applicant is not entitled for any relief under the law because sshe has deliberately concealed the real facts from the Hon'able Tribunal.
2. Reply to Para No.02 is that respondent No.06 being a specialist Gynecologist (BPS-18) has been recommended by committee chaired by Secretary Health and was issued the impugned order as per guided principles of Transfer Posting rules, while applicant has bypassed all the rules and regulations and has fraudulently obtained her transfer order which order has no legal footing and the same has already been cancelled by the DHO Mardan as the applicant does not possess the required qualification and on the other hand the respondent No.6 being eligible for the said post is properly issued the impugned order, thus the applicant has no case at all and she is not entitled for any relief under the law.
3. That Para No.3 of the application negate the stance of the applicant because neither she possess the required qualification nor she could established a prima facie case nor any irreparable losses would be sustained by her, while on other hand the respondent No.6 has established through documentary proofs her case and this the established law that an incompetent, ineligible person can cause irreparable losses not only to department but to public at large, thus she is not entitled for any injunction and the order passed due to applicant malafide action is required to be withdrawn forthwith.
4. Para No.04 is incorrect. The issue has been discussed at length in aforementioned Paras and reply to appeal, hence this Para is denied.

6
5-A

It is therefore most humbly requested that the instant application may please be dismissed with heavy cost and order passed by this August Tribunal may please be withdrawn forthwith to save the department and public at large from further irreparable losses.

Through

Respondent No.6


Sardar Ali Khan
Advocates High court



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Annex - A

6

Dated Pesh: the 8th January 2018

NOTIFICATION

No SOH-I/(HD)3-5/2017

On the recommendations of Khyber Pakhtunkhwa Public Service Commission, the Competent Authority (Chief Minister, Khyber Pakhtunkhwa) is pleased to appoint the following doctors as District Specialist Gynaecology (BS-18) on regular basis with immediate effect. They will be on probation for a period of one year.

S.No.	Name of doctor	Service status of the appointees	Domicile
1	Dr. Nazia Khan D/O Saeed Ullah Khan	Distt: Specialist (adhoc) DHQH Daggar Buner	Buner
2	Dr. Hina Zuhra D/O Abid Raza	Distt: Specialist (Adhoc) W&C Hospital Kohat	Kohat
3	Dr. Maimoona Qadir Khan D/O Ali Qadir Khan	MMC Mardan	Mardan
4	Dr. Tanzila Pervez D/o Muhammad Pervez Khan	Distt: Specialist Adhoc Category 'D' Hospital Monki Sharif Nowshera	Nowshera
5	Dr. Nazia Wahid D/O Abdul Wahid Jan	Distt: Specialist Adhoc DHQH Timergara Dir lower	Bajaur Agency
6	Dr. Naseema Usman D/O Usman Khan	Distt: Specialist Adhoc DHQH Abbottabad	Peshawar
7	Dr. Uzma Zaman D/O Badi Uz Zaman	Distt: Specialist Adhoc DHQH Lakki Marwat	Lakki Marwat
8	Dr. Gulwish Salauddin D/O Salahuddin Khan	Fresh	Kohat
9	Dr. Sadia Nasir D/O Nasir Khan	Distt: Specialist Adhoc Mian Rashid Hussain Shaheed Memorial Hospital Nowshera	FR Kohat
10	Dr. Bibi Sara D/O Fazle Raziq	Distt: Specialist Adhoc, Civil Hospital Baffa Mansehra	Swabi
11	Dr. Shazia Tabassum D/O Roshan Khattak	Distt: Specialist Adhoc THQH Banda Daud Shah Karak	Karak
12	Dr. Madiha Iqbal D/O Iqbal Shah	WMO KTH Peshawar	Nowshera
13	Dr. Maria Zile e Huma D/O Ghulam Sarwar	Distt: Specialist THQH Sarai Naurang Lakki Marwat	Tank
14	Dr. Naila Khattak D/O Abdullah Shah	THQH Karak	Karak
15	Dr. Shabana Kokub D/O Fazal ur Rehman	Distt: Specialist Adhoc BBST Hospital Abbottabad	Abbottabad
16	Dr. Chaman Ara D/O Khona Gul	Distt: Specialist Adhoc DHQH Abbottabad	FR Bannu
17	Dr. Khyber Bibi D/O Shah Jehan Khan	WMO Naseerullah Khan Babar Memorial Hospital Peshawar	Buner
18	Dr. Saima Gul D/O Reedi Khan	WMO BKMC Swabi	Swabi
19	Dr. Saba Nasir D/O Muhammad Nasir	Distt: Specialist Adhoc Category 'D' Sarai Naimat Khan Haripur	Haripur
20	Dr. Sadia Dilawar D/O Dilawar Khan	DHQH Haripur	Haripur
21	Dr. Seema Gul D/O Fateh Khan	Distt: Specialist Adhoc THQH Tangi Charsadda	Peshawar
22	Dr. Najma Bibi D/O Sadullah Jan	Fresh	Bannu
23	Dr. Hemasa Gul D/O Sherin Khan	Distt: Specialist Adhoc MMC Mardan	Mohmand Agency
24	Dr. Shakira Noreen D/O Fazal e ilahi	Distt: Specialist Adhoc DHQH Charsadda	Peshawar



حکومت خیبر پختونخوا

**DISTRICT HEALTH OFFICER
MARDAN (Khyber Pakhtunkhwa)**

Ph: H (0937) 9230030 Fax: F (0937) 9230283
Email: mardandho@gmail.com

All communications should be addressed to the District Health Officer Mardan and not to any official by name

OFFICE ORDER:

Dr. Fouzia Israr, District Gynecologist (BS-18) working against the post of DMS (BPS-18) at TDH Shahbaz Garhi is hereby adjusted against the vacant post of District Gynaecologist (BS-18) at THQ Hospital Takht Bhai in the best interest of public with immediate effect.

Note: Arrival/Departure should be submitted to this office.

District Health Officer
Mardan

No. 13382-69/DHO

dated Mardan the 21/08/2021

Copy forwarded to the:

1. Director General Health Services Khyber Pakhtunkhwa Peshawar.
2. District Comptroller of Accounts, Mardan
3. DDHO Tehsil Takht Bhai/Rustam.
4. MS TDH Shahbaz Garhi.
5. Divisional Monitoring Officer, IMU-Health Mardan.
6. DHIS Cell, DHO Office Mardan.
7. Accountant DHO Office Mardan.
8. Doctor concerned.

For information & necessary action.

District Health Officer
Mardan



Annex-C

1-8

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar, the 24th August, 2021

NOTIFICATION

No SOH/HD/3-5/2021: On the recommendation of Departmental Placement Committee meeting held on 04th August, 2021 under the Chairmanship of the Additional Secretary (E&A) Health Department which was examined all the online applications and the Competent Authority is pleased to order posting/transfer of the following doctors, in the best public interest, with immediate effect.

S. #	Name	From	To
1.	Dr. Abdul Hameed S/O Dr. Saadullah Senior Medical Officer (BS-18)	Lady Reading Hospital LRH, Peshawar	DHQ Hospital Khar at Bajaur as District Specialist Surgery (BS-18)
2	Dr. Zainab Mehboob D/O Mahboob Ali District Specialist Gynae (BS-18)	THQ Hospital Alizai L&C Kurram	Type-D Hospital Khanpur as District Specialist Gynae (BS-18)
3	Dr. Safina Mufti D/O Mufti Naveed-ul-Ansar WMO (BS-17) qualified FCPS in Gynae	DHO Office Dir Lower	Cat-D Hospital at Talash, Dir Lower against the post District Specialist Gynae in (OPS)
4	Dr. Nosheen Daud D/O Muhammad Daud District Specialist Paeds (BS-18)	DHQ Hospital Haripur	DHQ Hospital Haripur against her original post as District Specialist Paeds (BS-18)
5	Dr. Ijaz Rahim Bilal S/O Ghulam Rahim MO (BS-17) qualified Pathologist	THQ Hospital Shabqadar.	THQ Hospital Shabqadar as District Specialist Pathology in (OPS)
6	Dr. Naseem Ahmad S/O Ayaz Khan MO (BS-17) qualified FCPS in Surgery	THQ Hospital Takht Nasrati, District Karak	THQ Hospital Takti Nastri District Karak as District Specialist Surgery in (OPS)
7	Dr. Fouzia Israr D/O Muhammad Israr District Specialist Gynae (BS-18)	Type-D Hospital Shahbaz Ghari Mardan	THQ Hospital Takht Bhai Mardan as District Specialist Gynae (BS-18)

SD/-

**SECRETARY HEALTH
DEPARTMENT**

GOVERNMENT OF KHYBER PAKHTOONKHWA

Annex-D

P-9

CERTIFICATE OF HANDING/TAKING OVER THE CHARGE.

Certified that I, Dr. Fouzia Israr D/O Muhammad Israr.

Have this day before / Fore noon taken over/relinquished charge of Gynecologist (BPS-18).

With reference to the Order of District Health officer order No. 13362 -69 dated 02/8/2021.

2. Particulars of Cash and Important/Sacral/Confidential documents handed over/taken over are noted on the reverse.

Station: THQ Hospital Takht Bhai.

Signature of relieved

Government Servant.

Designation

Dated: 03 / 07 / 2021 Fore Noon

Signature of Government: [Signature]

Servant receiving

Charge: Dr. Fouzia Israr

Designation: Gynecologist BPS-18

OFFICE OF THE DEPUTY DISTRICT HEALTH OFFICER TEHSIL TAKHT BHAI
Phone office 0937 - 551880 Email: Kachkol 667@ gmail.Com.

Dated 03/08/2021

To No. 1643-48 THQ

1. Secretary to Govt, of Khyber Pakhtoonkhwa Health Department, Peshawar.
2. Director General, Health Services, Khyber Pakhtoonkhwa Peshawar.
3. District Health Officer Mardan
4. District comptroller of Account Mardan.
5. Account Section THQ Hospital Takht Bhai.

[Signature]
Deputy DHO Tehsil Takht Bhai /
THQ Hospital Takht Bhai
Deputy D.H.O.
T.H.Q Hospital
Takht Bhai



DISTRICT HEALTH OFFICER
MARDAN (Khyber Pakhtunkhwa)

M. # (0917) 9230030 Fax: # (0917) 9230283
E-mail: mh@mdho@gmail.com

All communications should be addressed to the District Health Officer, Mardan and not to any official by name.

No. 1459 /DHO Dated: 17/08/2021

The Secretary Health,
Govt of Khyber Pakhtunkhwa,
Peshawar

SUBJECT: ADJUSTMENT OF DISTRICT SPECIALIST (GYNAE) BS-18 IN THE HOSPITAL TAKHT SHAI

In response to your Notification No. SOH-2/HD/03-02/2529 dated 23 September 2020, Dr. Fouzia Iqbal was adjusted against the vacant post as DWS in T, O & H Hospital, Mardan. On the promotion of Dr. Parveen Shafi to Assistant Professor, the post of Gynaecologist was vacant and then Dr. Fouzia Iqbal was transferred to her original post as District Gynaecologist (BS-18) at THQ Hospital Takht Shai vide this office order No. 1352-02/DHO dated 17/08/2021 (copy attached).

Now, recently a new un-qualified WMO (BS-17) Dr. Ghazija Arif was adjusted against District Gynaecologist (BS-18) at THQ Hospital Takht Shai, which is not acceptable due to filling of post of Gynaecologist in the said Hospital.

It is therefore requested to withdraw the posting transfer notification of Dr. Ghazija Arif vide this office order No. 1352-02/DHO dated 13th August 2021 of Dr. Ghazija Arif vide this office order No. 1352-02/DHO dated 13th August 2021 (copy attached).

(Signature)
District Health Officer
Mardan

Copy forwarded to the Director General Health Services, Government of Khyber Pakhtunkhwa.

Annex-2

P-10

BETTER COPY OF LETTER NO.14439/DHO

District Health Officer,
Mardan KPK
No.14439/DHO

dated 17/08/2021

To
The secretary Health,
Govt of Khyber Pakhtunkhwa Peshawar

Subject, ADJUSTMENT OF DISTRICT SPECIALIST (GYNAE) IN THQ Hospital Takht Bhai

Dear sir,

In response to your notification No.SOH-1/HD/03-02/2020 dated 15 September 2020 Dr. Fouzia Israr was adjusted against the vacant post as DMS in type-D hospital, Shahbaz Garhi. On the promotion of Dr. Parveen Shafi to assistant professor, the post of gynecologist (BS-18) was vacant and then Dr. Fouzia Israr was transferred to her original post as district Gynecologist at THQ Hospital Takht Bhai vide this office No. 13362-69/DHO dated 02/08/2021 (copy attached).

Now, recently a new un-qualified WMO (BS-17) Dr. Khadija Akbar was adjusted against district Gynecologist (BS-18) in THQ Hospital Takht Bhai, which is not acceptable due to filling of post of gynecologist in the said hospital.

It is therefore requested to withdraw posting/transfer Notification No. SOH-1/HD/7-53/Misc/2021 of Dr. Khadija Akbar dated 13 August 2021 of Dr. Khadija Akbar, WMO (BS-17).

District health Officer

Mardan

attested
[Signature]
Adnan

Copy forwarded to Director General Health service Khyber Pakhtunkhwa

(A)

To

THE
THE HOSPITAL, Gujrat
TAHT- BHAI.

DAIRY CLERK
NO. 123
22-08-22

SUBJECT:- ARRIVAL REPORT.

Respected Sir!

It is stated that I have been posted
against the vacant post of district specialist (Gynaec.)
at THE Hospital, Gujrat, TAHT- BHAI. Kindly accept
my arrival.

Thanking you in grateful terms

Yours sincerely

Dr. Khadija Akbar

F.C.P.S. Gynaec. & O.G.

No. K/20-100-20-22

Not accepted because
to be in original place of
because the original Gynaecologist
is not in the hospital
to be in original place of
to be in original place of

For file
DHO
N/A

N/A

BETTER COPY OF JOINING REPORT OF APPELLANT

Annex-F

P-11

To,
The MS
THQ Hospital, Ganjai
Takht Bhai.

Subject: ARRIVAL REPORT

Respected Sir,

It is stated that I have been posted against the vacant post of District Specialist (Gynecologist) at THQ Hospital Gunjai, Takht Bhai. Kindly accept my arrival.

Thanking you in anticipation.

Yours sincerely
Sd

Dr.Khadija
FCPS Gynai & WMO

Forwarded

DHO for N/A
signed

attested
[Signature]
noted

No.15040 dated 26.08.2021

Not accepted return to her original place of duty
Because the qualified Gynecologist BPS-18 is
transferred in to The post of gynecologist THQ
Hospital TakhtBhai.

DISTRICT HEALTH OFFICER
MARDAN

**Dist. Govt. KP-Provincial
District Accounts Office Mardan
Monthly Salary Statement (August-2021)**

Pay



Personal Information of **Ms. FOUZIA ISRAR (W/o of FAHEEM KHAN)**
 Personal Number: 0012708-4 CNIC: 1730182170816 NTN: 7491070-7
 Date of Birth: 10/08/1997 Entry into Govt. Service: 01/03/2006 Length of Service: 15 Years 07 Months 09 Days

Employment Category: Active Temporary
 Designation: DISTRICT SURCHAI,SI (CIVIL) 0000029-DISTRICT GOVERNMENT KHYBER
 DDO Code: MR646S-THE-ISH, HEADQUARTER HOSPITAL TARIK BHAI
 Payroll Section: 402 GPF Section: 005 Cash Center:
 GPF AC No: 320060 Interest Applied: Yes GPF Balance: 817,534.00

Vendor Number:
 Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 18 Pay Stage: 11

Wage type	Amount	Wage type	Amount
1001 Basic Pay	69,920.00	1004 House Rent Allowance 45%	8,719.00
1210 Convey Allowance 2005	5,000.00	1947 Medical Allow 15% (16-22)	2,501.00
1985 Health Professional Allow	80,000.00	2148 15% Adhoc Relief All-2017	1,300.00
2199 Adhoc Relief Allow 6 10%	906.00	2211 Adhoc Relief All 2016 10%	3,667.00
2224 Adhoc Relief All 2017 10%	6,992.00	2247 Adhoc Relief All 2018 10%	6,992.00
2300 Adhoc Relief All 2021 10%	6,992.00		0.00

Deductions - General

Wage type	Amount	Wage type	Amount
3018 GPF Subscription	-5,360.00	3501 Benevolent Fund	-1,500.00
4009 Income Tax	-14,146.00	4004 R. Benefits & Death Comp	-1,150.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 169,752.45 Recovered till AUG-2021: 28,293.00 Exempted: 0.05 Recoverable: 141,459.50

Gross Pay (Rs.): 194,065.00 Deductions: (Rs.): -22,356.00 Net Pay: (Rs.): 171,709.00

Payee Name: FOUZIA ISRAR
 Account Number: 0007010210547-1
 Bank Details: ASKARI BANK LIMITED, 100007 MALL BRANCH MARDAN MALL BRANCH MARDAN,

Leaves: Opening Balance: Availed: Earned: Balance:

Permanent Address: City: NSR Domestic Housing Status: No Official
 Temp Address: City: Email: fouziaisrar26@gmail.com

System generated document in accordance with APF/AT 6/12/91/1000025/09/2021/6/10
 *All amounts are in Pak Rupees
 *Errors & omissions excepted (SERVICES/2021/08/2021/11/11/10)

مورخہ 27-09-21ء 20ء منجانب: Respon no-6
 مقدمہ بعنوان ڈاکٹر خدیجہ اکبر بنام ڈاکٹر فوزہ سعید
 مقدمہ نمبر 1111 رجوعہ
 نوعیت مقدمہ
 مقدمہ علت نمبر
 جرم

50
روپے

باعث تحریر آنکہ

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



آن مقام پر کیے سر دار علی خان - حمید گل (مردان) کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل مقررہ کو راضی نامہ کرنے و تقرر ی ثالث و فیصلہ برحلف دینے عرضی دعویٰ، جواب دعویٰ، اقبال دعویٰ، جواب الجواب، عذر داری، درخواست زبردفعہ (2) 12 ض و، درخواست برآمد برآمدگی و سرسبزگی مقدمہ، درخواست برآمد منسوخی کاروائی و ڈگری یکطرفہ دائر کرنے جواب، جواب الجواب وغیرہ درخواست کاروائی اجراء دائر کرنے و وصولی چیک و رقم اور درخواست از ہر قسم کی تصدیق زر اس پر دستخط وغیرہ کرنے کا اختیار ہوگا۔ اپیل، اپیل در اپیل، نگرانی، نظر ثانی، رٹ و عذر داری وغیرہ دائر کرنے کا بھی اختیار ہوگا۔ اور بصورت ضرورت مذکورہ کے عمل یا جزوی کاروائی کے واسطے وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برداشت منظور و قبول ہوگا اور دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کا بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی پر وکیل موصوف مقام دورہ پر ہو یا حد سے باہر ہو یا بیمار ہو یا کوئی ضروری کام ہو۔ تو وکیل صاحب پابند نہ ہونگے کہ پیروی مقدمہ مذکورہ کریں لہذا وکالت نامہ لکھ دیا تاکہ سند رہے۔

المرقوم: 27-09-21

مقام کے لئے منظور ہے۔

نوٹ: اس وکالت نامہ کو نوکالی یا قابل قبول ہوگی۔

Advocate I.D:

Bar Council

bc-10-5550

Bar Association

Mardan

Contact #:

0333-9873083

Attested & Accepted
Advocate

Jana Advocate

Before The Khyber PukhtunKhwa Service Tribunal,
Peshawar

Dr.Khadija Akber

VS

Health Department

Written reply of respondent No.06

Respectfully Sheweth,

Preliminary objections,

- i. That the appeal filed by the appellant is not maintainable in present form and the same is liable to be dismissed.
- ii. That the instant appeal is incompetent and premature as the departmental appeal has yet not been finalized.
- iii. That the appellant is serving as women Medical officer (BPS-17) general cadre in health department while respondent No.6 is serving in specialist cadre i.e. gynecologist BPS-18 appointed as per Notification No.SOH-1/(HD)3-5/2017 dated January 8th,2018 by the recommendation of KPPSC, and the impugned post is reserved for the specialist /gynecologist, thus the appellant is not eligible for the said post and her transfer has not been made in accordance with law and justice, therefore the transfer order is a nullity in the eye of law. Copy of notification is attached as annexure-A.
- iv. That on 02-08-2021 the Respondent No.06 was transferred / adjusted against the vacant post of District Gynecologist (BPS-18) at THQ Hospital Takht Bhai vide office order No.13362-69 and then on 04-08-2021 the departmental placement committee duly constituted under the Chairmanship of the Additional Secretary (E&A) Health Department Notification No.SOH/HD/3-5/2021 was issued , which order is impugned by the petitioner through the instant appeal, which act of the appellant is wrong, illegal, baseless and not tenable in eye of law. Copy of office order No.13362-69 is Annex-B, while Notification # SOH/HD/3-5/21 is Annex-C.
- v. That Respondent No.6 in compliance of office order No.13362-69 dated 02-08-2021 had already joined her duties at THQ Hospital Takht Bhai vide her joining report No.1643-48 /THQ dated 03-08-2021 and the appellant deliberately concealed all these facts from this Hon'able Court, which act of the appellant by itself negate her plea and due to concealment of material facts from the Court, she is not entitled for any relief under the principles of equity. Copy of joining Report is Annex-D.
- vi. That the District Health Officer Mardan vide his letter No.14439/DHO dated 17-08-2021, addressed to the Secretary Health KP Peshawar, reiterated that adjustment of an un-qualified WMO of BPS-17 Dr.Khadija against the post District Gynecologist in THQ Hospital is not acceptable and he requested for the withdrawal of the Notification No.1/HD/7-53/Misc/2021 dated 13-08-2021 in the larger interest of public and department.
- vii. That the appellant also does not qualify the transfer and posting policy of the Provincial Government KPK because she has not completed her period

on previous post and more significantly she is not eligible for the post of District Gynecologist because never been she has appointed as gynecologist by competent authority, rather a Women Medical Officer of BPS-17, while the Post in question is of a Specialist/ Gynecologist of BPS-18, so the appellant is not legally eligible for the post in question, hence her appeal also fails on this single score.

- viii. That appellant has got no cause of action to file the instant appeal.
- ix. That this Hon'able Tribunal lacks jurisdiction in the instant case.

Factual Objections :

1. Para No.01 needs no reply, however she is not eligible to be transferred on the post of District Gynecologist, because she is a Women Medical Officer BPS-17 of general cadre while the post is governed by a specialist i.e. Gynecologist of BPS-18.
2. Reply to Para No.02 is that respondent No.06 being a specialist Gynecologist (BPS-18) was adjusted as DMS at category-D hospital Shahbaz Ghari awaiting for her due seat, when the present impugned post became vacant she was transferred by DHO, Mardan to THQ Takht Bhai in the best public interest, despite of the fact that Respondent No.6 was already adjusted on the said post and was working against the said post before despite that the appellant violated all the rules and principles of Transfer/posting Policy of KPK Health Department and she fraudulently and through back door channel of political source obtained her transfer order, which conduct of the appellant is not only against the norms of justice but a stigma on the rights Public at Large because she is not a qualified and eligible person for the post of District Specialist Gynecologist, therefore Para No.2 is denied being wrong.
3. That Respondent No.6 after due process by public service commission was appointed as a specialist /Gynecologist, however was posted at type-D hospital Shabaz Ghari and was waiting for her due vacant post and when the said post of gynecologist became vacant after the promotion of Dr.Parveen shafi the respondent was transferred/adjusted to her due post by internal orders of district health Officer on 02.08.2021 in the best public interest whereupon she took her charge on 03.08.2021 and also getting her salary as gynecologist from THQ, Hospital Takht Bhai. Respondent after taking charge of District Gynecologist applied online for posting/adjusting as per transfer/posting policy and then through a proper order of Secretary Health, her transfer was recommended in meeting of concern committee and she was issued a proper order which order is now impugned by the appellant, by concealing all the facts from this Hon'able Court. Copy of salary slip is attached as annexure-F
4. Para No.04 is incorrect. Appellant although was relieved from her post of WMO, DHQ Hospital, Mardan but the appellant did not even get NOC from concern authorities for her adjustment against the post of Gynecologist which is a procedural requirement for transfer/posting. DHO refused appellant's posting to THQ takht bhai and wrote a note on her arrival report NO.15040 dated 26.08.2021 in this regard directed her to return back to her original post as designated gynecologist has been transferred to the post. copy of arrival report is attached as annexure-G
5. Reply to Para No.05 is that respondent no.06 was already working on the post from 03.08.2021 when through an illegal order of Health Department the appellant was transferred to a post for which she was not eligible nor the post was vacant at that time, because the respondent was already adjusted on the said post and was getting her pay against the said post. Appellant is n

4

Before The Khyber PukhtunKhwa Service Tribunal,
Peshawar

Service Appeal No.7406/2021

Dr.Khadija Akber VS Health Department& others

AFFIDAVIT

I, Dr.Fozia Gynecologist Specialist (BPS-18) THQ Takht Bhai do solemnly state that the contents of this reply / comments are true and correct and nothing has been concealed from this Hon'able Court.

Deponent

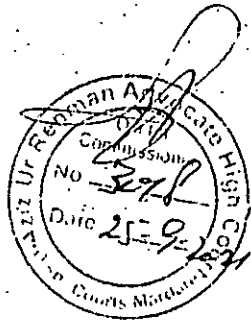


Dr.Fozia
NIC No. 1730182170816
Cell No. 03339185048

Identified by



Haji Sardar Ali Khan
Advocate High Court.
BC-10-5550



5

Before The Khyber Pukhtunkhwa Service Tribunal,
Peshawar

Dr. Khadija Akber VS Health Department

Written reply to application for injunction on behalf of respondent No.06

Respectfully Sheweth,

Preliminary objections,

- i. That the applicant has no prima facie case at all, which is the basic requirement for grant of injunction.
- ii. That the instant application has become infructuous because the District Health Officer Mardan has already cancelled her transfer and declared it wrong and illegal because applicant is ineligible for the post of District Gynecologist Specialist as the said post is for grade 18 while applicant is of grade 17 WMO, thus the appeal is also became infructuous.
- iii. That the applicant will suffer with no irreparable losses, rather the public at large is suffering from the wrongful and illegal act of the applicant.

Factual Objections :

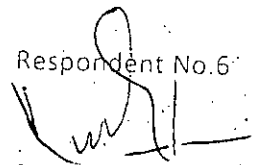
1. Para No.01 needs no reply, however the application is meritless and applicant is not entitled for any relief under the law because she has deliberately concealed the real facts from the Hon'able Tribunal.
2. Reply to Para No.02 is that respondent No.06 being a specialist Gynecologist (BPS-18) has been recommended by committee chaired by Secretary Health and was issued the impugned order as per guided principles of Transfer and Posting rules, while applicant has bypassed all the rules and regulations and has fraudulently obtained her transfer order which order has no legal footing and the same has already been cancelled by the DHO Mardan as the applicant does not possess the required qualification and on the other hand the respondent No.6 being eligible for the said post is properly issued the impugned order, thus the applicant has no case at all and she is not entitled for any relief under the law.
3. That Para No.3 of the application negate the stance of the applicant because neither she possess the required qualification nor she could established a prima facie case nor any irreparable losses would be sustained by her, while on other hand the respondent No.6 has established through documentary proofs her case and this the established law that an incompetent, ineligible person can cause irreparable losses not only to department but to public at large, thus she is not entitled for any injunction and the order passed due to applicant malafide action is required to be withdrawn forthwith.
4. Para No.04 is incorrect. The issue has been discussed at length in aforementioned Paras and reply to appeal, hence this Para is denied.

6
5-A

It is therefore most humbly requested that the instant application may please be dismissed with heavy cost and order passed by this August Tribunal may please be withdrawn forthwith to save the department and public at large from further irreparable losses.

Through

Respondent No.6


Sardar Ali Khan

Advocates High court



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Annex - A

6

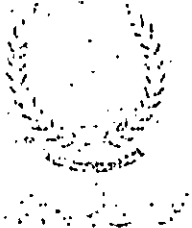
Dated Pesh: the 8th January 2018

NOTIFICATION

SOH-I/(HD)3-5/2017

On the recommendations of Khyber Pakhtunkhwa Public Service Commission, the Competent Authority (Chief Minister, Khyber Pakhtunkhwa) is pleased to appoint the following doctors as District Specialist Gynaecology (BS-18) on regular basis with immediate effect. They will be on probation for a period of one year.

S.No.	Name of doctor	Service status of the appointees	Domicile
1	Dr. Nazia Khan D/O Saeed Ullah Khan	Distt: Specialist (adhoc) DHQH Daggar Buner	Buner
2	Dr. Hina Zuhra D/O Abid Raza	Distt: Specialist (Adhoc) W&C Hospital Kohat	Kohat
3	Dr. Malmoona Qadir Khan D/O Ali Qadir Khan	MMC Mardan	Mardan
4	Dr. Tarizila Pevez D/O Muhammad Pevez Khan	Distt: Specialist Adhoc Category: 'D' Hospital Monki Sharif Nowshera	Nowshera
5	Dr. Nazia Wahid D/O Abdul Wahid Jan	Distt: Specialist Adhoc DHQHO Timergara Dir lower	Bajaur Agency
6	Dr. Naseema Usman D/O Usman Khan	Distt: Specialist Adhoc DHQH Abbottabad	Peshawar
7	Dr. Uzma Zaman D/O Badi Uz Zaman	Distt: Specialist Adhoc DHQH Lakki Marwat	DIKhan
8	Dr. Gulwish Satauddin D/O Salehuddin Khan	Fresh	Kohat
9	Dr. Sadia Nasir D/O Nasir Khan	Distt: Specialist Adhoc Mian Rashid Hussain Shaheed Memorial Hospital, Nowshera	FR Kohat
10	Dr. Bibi Sara D/O Fazle Raziq	Distt: Specialist Adhoc, Civil Hospital Baffa Manshera	Swabi
11	Dr. Shazia Tabassum D/O Roshan Khattak	Distt: Specialist Adhoc THQH Banda Daud Shah Karak	Karak
12	Dr. Madina Iqbal D/O Iqbal Shah	WMO KTH Peshawar	Nowshera
13	Dr. Maria Zile e Huma D/O Ghulam Sarwar	Distt: Specialist THQH Sarai Naurang Lakki Marwat	Tank
14	Dr. Naila Khattak D/O Abdullah Shah	THQH Karak	Karak
15	Dr. Shabana Kokub D/O Fazal ur Rehman	Distt: Specialist Adhoc BBST Hospital Abbottabad	Abbottabad
16	Dr. Chaman Ara D/O Khona Gul	Distt: Specialist Adhoc DHQH Abbottabad	FR Bannu
17	Dr. Khyber Bibi D/O Shah Jehan Khan	WMO Naseerullah Khan Babar Memorial Hospital Peshawar	Buner
18	Dr. Saima Gul D/O Reedi Khan	WMO BKMC Swabi	Swabi
19	Dr. Saba Nasir D/O Muhammad Nasir	Distt: Specialist Adhoc Category 'D' Sarai Naimat Khan Haripur	Haripur
20	Dr. Sadia Dilawar D/O Dilawar Khan	DHQH Haripur	Haripur
21	Dr. Seema Gul D/O Fateh Khan	Distt: Specialist Adhoc THQH Tangi Charsadda	Peshawar
22	Dr. Najina Bibi D/O Sadullah Jan	Fresh	Bannu
23	Dr. Harnasa Gul D/O Sherin Khan	Distt: Specialist Adhoc MMC Mardan	Mohmand Agency
24	Dr. Shakira Noreen D/O Fazaal e Ilahi	Distt: Specialist Adhoc DHQH Charsadda	Peshawar



DISTRICT HEALTH OFFICER
MARDAN (Khyber Pakhtunkhwa)

Phone (09132) 923073, 9230783
Email: mardan@pshp.gov.pk

All communications should be addressed to the District Health Officer Mardan and not to any other office.

OFFICE ORDER:

Dr. Farzana Khan, District Gynecologist (BS-18) working against the post of DMS (Gynecology) at Tashir Shaliba Tashir Hospital, adjustment against the vacant post of District Gynecologist (BS-18) at DHO Hospital Tashir that in the best interest of public with immediate effect.

Dr. Farzana Khan, Tashir Shaliba Tashir Hospital, submitted their resignation.

District Health Officer
Mardan

2021

No. 193/2021/1000

Date: 10/11/2021

- Copy forwarded to the:
1. Director General Health Services, Khyber Pakhtunkhwa Peshawar.
 2. District Commissioner of Agriculture, Tashir.
 3. DDHO Tashir Tashir Bhalay.
 4. DMS Tashir Tashir Bhalay.
 5. Divisional Monitoring Officer, Tashir Tashir Bhalay.
 6. DHIS Cell, DHO Office Mardan.
 7. Accountant DHO Office Mardan.
 8. Doctor concerned.

For information & necessary action.

District Health Officer
Mardan



Annex - C
GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

P-8

Dated Peshawar, the 24th August, 2021

NOTIFICATION

No SOH/HD/3-5/2021: On the recommendation of Departmental Placement Committee meeting held on 04th August, 2021 under the Chairmanship of the Additional Secretary (E&A) Health Department which was examined all the online applications and the Competent Authority is pleased to order posting/transfer of the following doctors, in the best public interest, with immediate effect.

S. #	Name	From	To
1.	Dr. Abdul Hameed S/O Dr. Saadullah Senior Medical Officer (BS-18)	Lady Reading Hospital LRH, Peshawar	DHQ Hospital Khar at Bajaur as District Specialist Surgery (BS-18)
2.	Dr. Zainab Mehboob D/O Mahboob Ali District Specialist Gynae (BS-18)	THQ Hospital Alizai L&C Kurram	Type-D Hospital Khanpur as District Specialist Gynae (BS-18)
3.	Dr. Safina Mufti D/O Mufti Naveed-ul-Ansar WMO (BS-17) qualified FCPS in Gynae	DHO Office Dir Lower	Cat-D Hospital at Talash, Dir Lower against the post District Specialist Gynae in (OPS)
4.	Dr. Nosheen Daud D/O Muhammad Daud District Specialist Paeds (BS-18)	DHQ Hospital Haripur	DHQ Hospital Haripur against her original post as District Specialist Paeds (BS-18)
5.	Dr. Ijaz Rahim Bilal S/O Ghulam Rahim MO (BS-17) qualified Pathologist	THQ Hospital Shabqadar	THQ Hospital Shabqadar as District Specialist Pathology in (OPS)
6.	Dr. Naseem Ahmad S/O Ayaz Khan MO (BS-17) qualified FCPS in Surgery	THQ Hospital Takht Nasrati, District Karak	THQ Hospital Takti Nastri District Karak as District Specialist Surgery in (OPS)
7.	Dr. Fouzia Israr D/O Muhammad Israr District Specialist Gynae (BS-18)	Type-D Hospital Shahbaz Ghari Mardan	THQ Hospital Takht Bhai Mardan as District Specialist Gynae (BS-18)

SD/-

**SECRETARY HEALTH
DEPARTMENT**

GOVERNMENT OF KHYBER PAKHTOONKHA

CERTIFICATE OF HANDING/TAKING OVER THE CHARGE.

Verified that I, Dr. Fouzla Israr D/O Muhammad Israr,

on this day before / For/ upon taken over/ relinquished charge of Gynecologist (BPS-18),

in reference to the Order of District Health officer order No: 13362 -69 dated 02/8/2021.

Particulars of Cash and Important/Sacral/Confidential documents handed over/taken over
are noted on the reverse.

at: THQ Hospital Takht Bhai

Signature of relieved

Government Servant.

Designation

date: 03/07/2021 Fore Noon

Signature of Government: J.B.S.

Servant receiving

Charge: Dr. Fouzla Israr

Designation: Gynecologist BPS-18

OFFICE OF THE DEPUTY DISTRICT HEALTH OFFICER TEHSIL TAKHT BHAI
Phone office 0937 - 551880 Email: Kachkol 667@gmail.Com.

No. 1643-48 /THQ

Dated 03/08/2021

1. Secretary to Govt, of Khyber Pakhtoonkhwa Health Department, Peshawar.
2. Director General, Health Services, Khyber Pakhtoonkhwa Peshawar.
3. District Health Officer Mardan
4. District comptroller of Account Mardan.
5. Account Section THQ Hospital Takht Bhai.

Deputy DHO Tehsil Takht Bhai /
THQ Hospital Takht Bhai
Deputy DHO
THQ Hospital
Takht Bhai

DISTRICT HEALTH OFFICER
MARWAN (Khyber Pakhtunkhwa)

All communication should be addressed to the District Health Officer Marwan and not to any official by name

PH: 6 (0917) 9230031 FAX: 6 (0937) 9230283
Email: marwanh100@gmail.com

No. 11439 /DHO Dated: 17/08/2021

The Secretary Health,
Govt. of Khyber Pakhtunkhwa,
Peshawar

ADJUSTMENT OF DISTRICT SPECIALIST (GYNAE) BS-18 IN THE HOSPITAL TANKI

In response to your Notification No. SOH-1/HO/03-02/2020 dated 15 September 2020, Dr. Farida Inayat was adjusted against the vacant post as DMS in Type-B Services, District Tanki. On the recommendation of Dr. Parveen Shah to Assistant Professor, the post of Gynaecologist was vacant and then Dr. Farida Inayat was transferred to her original post as District Gynaecologist (BS-18) in the Hospital Tanki vide DHO office order No. 33362-SS/PHO dated 12/06/2021 vide attached.

Now recently a new unqualified WMO (BS-17) Dr. Rashida Akram was assigned against District Gynaecologist (BS-18) in the Hospital Tanki. Since a far preferable candidate for the post of Gynaecologist in the said Hospital.

It is therefore requested to withdraw the posting transfer certificate No. 120/PH/22/SS/KH/2021 dated 13th August, 2021 of Dr. Rashida Akram (BS-17).

DISTRICT HEALTH OFFICER
MARWAN

Copy forwarded to the Director General Health Services, Government of Khyber Pakhtunkhwa.

Annex - E

P-10

BETTER COPY OF LETTER NO.14439/DHO

District Health Officer,

Mardan KPK

No. 14439/DHO

dated 17/08/2021.

To

The secretary Health,

Govt of Khyber Pakhtunkhwa Peshawar

Subject, ADJUSTMENT OF DISTRICT SPECIALIST (GYNAE) IN THQ Hospital Takht Bhai

Dear sir,

In response to your notification No. SOH-1/HD/03-02/2020 dated 15 September 2020 Dr. Fouzia Israr was adjusted against the vacant post as DMS in type-D hospital, Shahbaz Garhi. On the promotion of Dr. Parveen Shafi to assistant professor, the post of gynecologist (BS-18) was vacant and then Dr. Fouzia Israr was transferred to her original post as district Gynecologist at THQ Hospital Takht Bhai vide this office No. 13362-69/DHO dated 02/08/2021 (copy attached).

Now, recently a new un-qualified WMO (BS-17) Dr. Khadija Akbar was adjusted against district Gynecologist (BS-18) in THQ Hospital Takht Bhai, which is not acceptable due to filling of post of gynecologist in the said hospital.

It is therefore requested to withdraw posting/transfer Notification No. SOH-1/HD/7-53/Misc/2021 of Dr. Khadija Akbar dated 13 August 2021 of Dr. Khadija Akbar, WMO (BS-17).

District health Officer

Mardan

Attested
[Signature]
ADWAL

Copy forwarded to Director General Health service Khyber Pakhtunkhwa

Dist. Govt. KP-Provincial
District Account Office Mardan
Monthly Salary Statement (August 2021)

Pay



Personal Information of **MR. FOUZIA ISRAR** (Wife of **FATEH KHAN**)
 Pension Number: 1012094 / NIC: 17018110016
 Date of Birth: 10/08/1961 / Date of Retirement: 01/01/2009

SIN: 7501076 / Length of Service: 15 Years 07 Months 00 Days

Employment Category: **Service Temporary**
 Designation: **POST OFFICE SUPERVISOR (G)** / 8001013 / 10510001 / 10510001 / 10510001

Office: **Post Office Mardan** / 10510001 / 10510001 / 10510001 / 10510001

Section: **Post Office** / Office Section: **Post Office** / Cash Center: **Post Office**
 A/C No: 120004 / Invoiced Applied: **Yes** / GPP Balance: **817,634.00**

Grade Number: / Pay Scale: **IPS For 2017** / Pay Scale Type: **Civil - IPS-18** / Pay Stage: **11**

Sl.	Wage Type	Amount	Sl.	Wage Type	Amount
101	Basic Pay	699,000.00	1001	House Rent Allowance 45%	3,115.00
102	Convey Allowance 70%	8,400.00	1017	Medical Allow 15% (Up to 2%)	2,841.00
103	Health Professional Allow	80,000.00	2118	15% Adhoc Relief All 2017	1,000.00
109	Adhoc Relief Allow 10%	69,900.00	2211	Adhoc Relief All 2016 10%	6,990.00
111	Adhoc Relief All 2017 10%	69,900.00	2317	Adhoc Relief All 2018 10%	6,990.00
121	Adhoc Relief All 2021 10%	69,900.00			0.00

Deductions - General

Sl.	Wage Type	Amount	Sl.	Wage Type	Amount
1018	GPP Subscription	5,400.00	3501	Benevolent Fund	1,000.00
1060	Income Tax	1,110.00	1001	R. Benefits & Death Comp	1,300.00

Deductions - Loans and Advances

Sl.	Loan	Description	Principal amount	Deduction	Balance
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Deductions - Income Tax
 Exempt: 169,752.15 / Recovered till AUG 2021: 28,293.00 / Exempt: 0.00 / Recoverable: 611,352.50

Gross Pay (RS.): 194,065.00 / Deductions (RS.): 22,356.00 / Net Pay: (RS.): 171,709.00

Payee Name: **MR. FOUZIA ISRAR**
 Account Number: **100100021051003**
 Bank Details: **ASKARI BANK LIMITED / 10510001 / BRANCH MARDAN / BRANCH MARDAN**

Sl.	Leave	Opening Balance	Availed	Earned	Balance
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Permanent Address: / City: **Mardan** / District: / Housing Status: **Self Occupied**
 Contact Address: / City: / Email: **fooziasrar26@gmail.com**

This statement is generated by the system on 01/08/2021 at 12:00:00 PM. It is for information only and should not be used for any other purpose.
 If you have any query, please contact the District Account Office Mardan.

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BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO.7406/2021

Dr Khadija Akbar..... Appellant

Versus

Govt. of Khyber Pakhtunkhwa through Chief Secretary and others..... Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO 01 TO 03

Respectfully Sheweth;

PRELIMINARY OBJECTIONS:-

1. That the Appellant has got neither cause of action nor locus standi to file the instant Appeal.
2. That the Appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant Appeal is against the prevailing Law and Rules.
4. That the Appeal is not maintainable in its present form.
5. That the Appellant has filed the instant Appeal with mala-fide intention hence liable to be dismissed.
6. That the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.
7. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
8. The impugned transfer Notification has been issued in accordance with Section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973.
9. That the instant appeal has been prematurely filed in violation of section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 hence the same is not maintainable.

FACTS:-

1. No comments. However being a civil servant she is bound to perform her duty efficiently which is yet to be proved by the appellant.
2. Correct to the extent that the appellant being Medical Officer (BPS-17) was posted on OPS (Own Pay Scale) District Specialist Gynae which is a higher post of BPS-18, however, as per verdicts of Apex court such posting does not create vested right of a civil servant to remain posted as such.

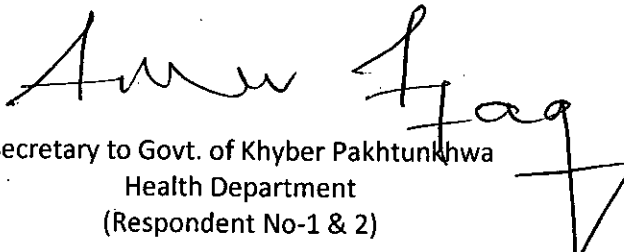
3. Pertains to record, however, according to Section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973, being a Civil Servant She has to serve any where he is posted by the competent authority as and a civil servant is not entitled to be posted in accordance with his own whims and wishes.
4. Correct to the extent of Notification dated 24/08/2021 whereby the appellant being Medical Officer (BPS-17) was transferred and private respondent No 6 being BPS 18 was posted on the post. As stated in Para 2 above she was posted on OPS as stop gap arrangement against a higher post of (BPS-18) vide impugned Notification private respondent No 6 being holder of BPS 18 was posted hence no vested right of the appellant has been violated.
5. Pertains to the court record, however, the instant appeal has been filed pre maturely in utter violation of Section-4 of Civil Servant Act 1974 and the dictum laid down by Apex Court as well as Service Tribunal in various judgments hence the same is not maintainable.
6. No comments, however, the appellant is not an aggrieved person however reply on the grounds is as under:-

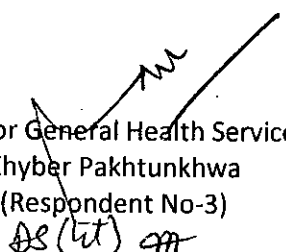
GROUND:

- A. Incorrect. The impugned Notification dated 24.08.2021 as well as the actions of the answering respondents are in accordance with law, rules and Principle of natural justice.
- B. Incorrect the impugned notification has been issued in accordance with law and transfer posting policy of the Provincial Government and in accordance with Section-10. As per Section-10 of the Khyber Pakhtunkhwa Civil Servant Act 1973 a Civil Servant may be posted any where even outside of his cadre or province where the Competent authority desires to utilize his services.
- C. Incorrect the appellant being a member of Provincial cadre post is liable to be posted anywhere by the Competent Authority under law and he is bound to serve where he is posted. The impugned Notification is issued by the competent authority in the public interest.
- D. Incorrect as stated in the above paras the appellant is a civil servant and the competent authority is empowered by law hence the competent authority transfer the appellant in accordance with law.
- E. Incorrect the appellant has been transferred which is within the terms and conditions of his service. There is no political pressure or motivation behind issuance of the impugned Notification.
- F. Incorrect already explained in Para A and D above.
- G. Incorrect already replied in Para E .so far as the minister health is concerned being head of the department such transfer posting of official is always communicated to the concerned ministers however it doesn't mean that the same has been issued on political motivation.

- H. As per paras above.
- I. Incorrect the competent authority has been empowered by Section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973 to transfer a civil servant at any time to any other post even outside his cadre or province provided his terms & conditions of service is not affected .As per dictum, laid down by the apex court, in 2020 PLCCS 1207 Supreme Court,
PLACE of servicePrerogatives of employer...Government servant was required to serve anywhere his employer wanted him to serve; it was not a choice or prerogative of the employee to claim a right to serve at a place that he chose to serve.
Similarly in another judgment reported as 2004 PLC (CS) 705 S.C. It has been laid down that civil servant could not claim posting at a particular station or at the place of his choice. Competent authority, under S 9 of the Punjab civil servant Act 1974, was empowered to transfer any civil servant from one place to other at anytime in exigencies of service or on administrative ground.
- J. Incorrect already explained in para 4 &5 of the facts.
- K. Incorrect already replied in para A above.
- L. Incorrect as explained in paras above the impugned Notification has been issued in public interest purely in exigencies of service by the competent authority.
- M. Incorrect as per paras above.
- N. Incorrect already explained in paras above.
- O. Incorrect already explained in para A of the grounds.
- P. Incorrect already explained in para 5 of the facts.
- P1. Incorrect the instant appeal is in violation of the section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 hence liable to be rejected.

Prayer: It is therefore requested that the appeal of the appellants may kindly be dismissed with cost.


Secretary to Govt. of Khyber Pakhtunkhwa
Health Department
(Respondent No-1 & 2)


Director General Health Services
Khyber Pakhtunkhwa
(Respondent No-3)


District Health Officer
Mardan

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

PROFORMA FOR EARLY HEARING

FORM 'B'

Inst#

Early Hearing 429 -p/2022

In case No. 7406 -p/2021

Dr. Khadija Akber vs Health Dptt.

Presented by Haji Sardar Ali Khan Adv. on behalf of Applicant. Entered in the relevant register.

Put up alongwith main case ✓

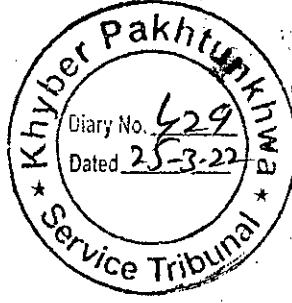
REGISTRAR

Last date fixed	<u>04-02-2022</u>
Reason(S) for last adjournment, if any by the Branch Incharge.	<u>Tribunal Defunct.</u>
Date(s) fixed in the similar matter by the Branch Incharge	<u>NFA</u>
Available dates Readers/Assistant Registrar branch	<u>NFA</u>

A 18/04/22
Assistant Registrar

REGISTRAR

Before The Chairman KPK Public Service Commission Peshawar



Dr. Khadija Akber

versus Health Department & others

Put up to the weekly chain with relevant app.

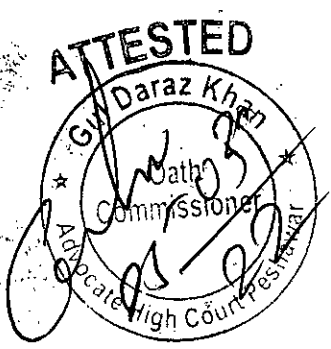
APPEAL NO. 7406/2021

25/3/2022

Subject: Application for fixation of early date of hearing in current month.

Reader.

1. That the above mentioned case is fixed on 16-05-2022.
2. That in the instant case, the appellant has challenged her transfer order dated 24-08-2021 and obtained the suspension / stay order from this Hon'able Tribunal On 13-09-2021, which order still holding the field.
3. That although the maximum period for interim order / stay order can be six month, which time has already been expired, but despite of that the appellant is enjoying the benefit of interim order.
4. That the appellant has concealed the real facts from this Hon'able Tribunal/Court, although she is not eligible for the post, which post is holding by the petitioner for the last six months.
5. That grounds taken in the reply to main appeal be considered as integral part of this application and grounds for fixation of early hearing of date are further elaborated as under:
 - i. That the appellant is appointed and working on the post of Women Medical Officer BPS-17, while the impugned post is " District Gynecologist BPS-18 " and present applicant is appointed on the post of District Gynecologist BPS-18 " and she has been rightly transferred to present post.
 - ii. That if the instant case is not heard early, then not only the present applicant will suffer but the public at large are being suffering because an ineligible and an incompetent person (Appellant) is posted / adjusted on the post of District Gynecologist , which is against the norms of justice and law.
 - iii. That the instant appeal is highly emergent and required to be decided as soon as possible to save the public at large and applicant.



It is therefore, humbly submitted that the date may please be accelerated and may please be fixed as early as possible for onward proceedings.

AFFIDAVIT

I Dr. Fouzia Israr (applicant) do solemnly state that the contents of this application are true and correct to the best of knowledge and belief.

[Signature]
Deponent

Through

Applicant
[Signature]
Haji Sardar Ali Khan
Advocate High Court

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. _____ /2021

Dr. Khadija Akbar, District Specialist Gynae (BPS-18),
Tehsil Head Quarter, Takht Bhai, District Mardan.

..... APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The District Health Officer, District Mardan.
- 5- The Medical Superintendent, THQ Hospital Takht Bhai.
- 6- Dr. Fouzia Israr D/O Muhammad Israr, Type-D Hospital Shahabz Ghari Mardan under transfer to THQ Hospital Takht Bhai.

..... RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 24-08-2021 WHEREBY PRIVATE RESPONDENT NO.5 HAS BEEN TRANSFERRED AGAINST THE POST ALREADY HELD BY THE APPELLANT AT THQ HOSPITAL TAKHT BHAI IN UTTER VIOLATION OF THE TRANSFER/POSTING POLICY OF THE PROVINCIAL GOVERNMENT AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE PERIOD PRESCRIBED BY THE TRANSFER/POSTING POLICY

PRAYER:

That on acceptance of this appeal the impugned notification dated 24.08.2021 may kindly be set aside to the extent of private respondent No.5 and the official respondents may kindly be directed not to transfer the appellant from THQ Hospital Takht Bhai till completion of her normal tenure. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That appellant is the employee of respondent Department and is serving as women medical officer (BPS-17) since from her appointment till date quite efficiently and up to the entire satisfaction of her superiors.

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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R/SHEWETH:

ON FACTS:

- 1- That appellant is the employee of respondent Department and is serving as women medical officer (BPS-17) since from her appointment till date quite efficiently and up to the entire satisfaction of her superiors.

That lastly the appellant was transferred/ posted as District Specialist Gynae (BS-18) against the vacant post vide Notification dated 13.08.2021 at THQ Hospital Takht Bhai. Copy of the transfer order is attached is annexure **A.**

3- That in response to ibid transfer Notification the appellant relieved from her previous place of posting and accordingly took over the charge at her new place of posting i.e. THQ Hospital Takht Bhai and started her duty quite efficiently and up to the entire satisfaction of her superiors. Copies of the relieving certificate, arrival report and attendance sheets are attached as annexure **B, C, D & E.**

4- That astonishingly the respondent No.2 issued the impugned Notification dated 24.8.2021 whereby the private respondent No.6 has been transferred/posted as District Specialist Gynae (BS-18) i.e. against the post already held by the appellant at THQ hospital Takht Bhai. Copy of the impugned order is attached as annexure **F.**

5- That feeling aggrieved the appellant filed departmental appeal before the appellate authority i.e. respondent No.1 against the impugned order dated 24.08.2021 but the same has not been responded till date. Copy of the departmental appeal is attached as annexure **G.**

6- That appellants feeling aggrieved and having no other remedy but to file the instant appeal on the following grounds amongst the others.

GROUND:

A- That the impugned notification dated 24.08.2021 issued by the respondent No.2 is against the law, facts, norms of natural justice and in utter violation of posting /transfer policy hence liable to be set aside to the extent of private respondent No.6.

B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.

C- That the impugned notification dated 24.08.2021 is against the clauses I, II and XIV of the transfer/posting policy of the provincial Government of Khyber Pakhtunkhwa. Copy of transfer/posting policy is attached as annexure..... **H.**

D- That, the treatment meted out to the appellant is a clear violation of the Fundamental Rights of the appellant.

That lastly the appellant was transferred/ posted as District Specialist Gynae (BS-18) against the vacant post vide Notification dated 13.08.2021 at THQ Hospital Takht Bhai. Copy of the transfer order is attached is annexure

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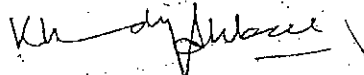
D- That, the treatment meted out to the appellant is a clear violation of the Fundamental Rights of the appellant.

- E- That the respondents acted in arbitrary and malafide manner by issuing the impugned notification dated 24.08.2021 against the appellant.
- F- That, the appellant has been discriminated by the respondents on the subject noted above and as such the respondents violated the Principle of Natural Justice.
- G- That neither the impugned order dated 24.08.2021 has been issued in the public interest nor the same have been issued in exigencies of public service.
- H- That the appellant has been transferred pre maturely, therefore the impugned Notification dated 24.8.2021 is not tenable and liable to be set aside.
- I- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 13.9.2021

APPELLANT



DR. Khadija Akbar

THROUGH:



NOOR MOHAMMAD KHATTAK

ADVOCATE,

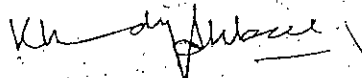
HIGH COURT, PESHAWAR.

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APPELLANT



DR. Khadija Akbar

THROUGH:


NOOR MOHAMMAD KHATTAK

ADVOCATE,
HIGH COURT, PESHAWAR

Before The Chairman KPK Public Service Commission Peshawar

Dr.Khadija Akber versus Health Department & others

APPEAL NO. 7406/2021

Subject: Application for fixation of early date of hearing in current month.

1. That the above mentioned case is fixed on 16-05-2022.
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Deponent

Through

Applicant


Haji Sardar Ali Khan
Advocate High Court