KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1007 /ST Dated 16 /06 / 2021

To

The Mr. Khaliq Mir Medical Technician, Civil Dispensary Paindi Lalma District Khyber.

SUBJECT: -

ORDER IN APPEAL NO. 1200/2018, MR. KHALIO MIR.

I am directed to forward herewith Original appeal No. 1200/2018, Titled Mr. Khaliq Mir alongwith certified copy of order dated 09.06.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR , KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 1200/2018

Date of Institution

27.09.2018

Date of Decision

09.06.2021



Khaliq Mir, Medical Technician, Civil Dispensary, Paindi Lalma, District Khyber

... (Appellant)

VERSUS

Director General Health Service Department, Khyber Pakhtunkhwa, Peshawar and two others.

(Respondents)

Mr. NOOR MUHAMMAD KHATTAK,

Advocate

For appellant.

MR. KABIRULLAH KHATTAK, Additional Advocate General

For respondents.

STED

'eshawar

MR. SALAH-UD-DIN MR. ATIQ-UR-REHMAN WAZIR

MEMBER (JUDICIAL) MEMBER (EXECUTIVE)

ice Tribunat JUDGMENT:

> SALAH-UD-DIN, MEMBER:-The appellant Khaliq Mir has filed the instant Service Appeal against the order dated 24.06.2017, whereby the appellant was terminated from service and the departmental appeal filed by the appellant was also not responded to by the department within the statutory period of ninety days.

> Briefly stated the facts as alleged by the appellant in the appeal are that the appellant being employee as Medical Technician was serving his duty diligently, however his services were terminated vide order dated 24.06.2017 passed by Agency Surgeon Khyber; that the appellant assailed the aforementioned order through filing of departmental appeal, however the same was not responded to by the department; that the impugned order of termination is against law, facts, norms of natural justice and material available on the record; that neither any charge sheet nor statement of allegations were issued to the appellant prior to issuance of the impugned order of his termination; that neither any show-cause notice was issued to

the appellant nor any opportunity of personal hearing was afforded to him, therefore, the impugned termination order is nullity in the eye of law and is liable to be set-aside.

- 3. Respondents submitted their comments, wherein it was mainly alleged that the appellant was a project Employee, who was not working as Medical Technician, rather he was working as Dispenser under ADP Project "20 CHCs/CDs in Khyber District", therefore, the appellant is having no legal right to file the instant service appeal. It was also alleged that the transfer order annexed by the appellant with his appeal is bogus and fake and he has been removed from service after completion of all codal formalities.
- 4. Learned counsel for the appellant has contended that the appellant was not issued show-cause notice, charge sheet or statement of allegations and was also not afforded any opportunity of personal hearing, therefore, the termination order is nullity in the eye of law. He next contended that the word termination is alien to law and the impugned order was passed on a date, which was holiday. He further argued that whole of the proceedings were carried out in an illegal manner, rendering the termination order as void and illegal, which is liable to be set-aside by reinstating the appellant in service. Reliance was placed on 2007 SCMR 229, 2008 SCMR 609, 2007 SCMR 152, 2003 PLC (C.S) 365, 2008 SCMR 1369 and 2006 SCMR 60.
 - 5. On the other hand, Learned Additional Advocate General has contended that the appellant was serving as Dispenser being a project Employee under ADP Project "20 CHCs/CDs in Khyber District" on fixed pay basis, therefore, the appellant does not fall within the category of civil servant and this Tribunal lacks jurisdiction to entertain the instant appeal. He next contended that the photocopy of the appointment order, annexed by the appellant with his appeal is fake as the endorsement No. 2827-99/AS-Khy/PF dated 25.05.2013 mentioned in the appointment order is actually the dispatch number, vide which copy of monthly progress report was sent to Director Health Services Ex-FATA. He further contended that the appellant was a Project Employee and due to his continuous absence from duty, he was terminated from service after complying of all codal formalities. He relied upon 2000 SCMR 777.
 - 6. Arguments have already been heard and record perused.
- 7. The respondents are alleging that the appellant was working on The Pakhtukhwa fixed pay basis as Project Employee under ADP Project "20 CHCs/CDs in Service Tribunal fixed pay basis as Project Employee under ADP Project "20 CHCs/CDs in Service Tribunal fixed pay basis as Project Employee under ADP Project "20 CHCs/CDs in Service Tribunal fixed pay basis as Project Employee under ADP Project "20 CHCs/CDs in Service Tribunal fixed pay basis as Project Employee under ADP Project "20 CHCs/CDs in Service Tribunal fixed pay basis as Project Employee under ADP Project "20 CHCs/CDs in Service Tribunal fixed pay basis as Project Employee under ADP Project "20 CHCs/CDs in Service Tribunal fixed pay basis as Project Employee under ADP Project "20 CHCs/CDs in Service Tribunal fixed pay basis as Project Employee under ADP Project "20 CHCs/CDs in Service Tribunal fixed pay basis as Project Employee under ADP Project "20 CHCs/CDs in Service Tribunal fixed pay basis as Project Employee under ADP Project "20 CHCs/CDs in Service Tribunal fixed pay basis as Project Employee under ADP Project "20 CHCs/CDs in Service Tribunal fixed pay basis as Project Employee under ADP Project "20 CHCs/CDs in Service Tribunal fixed pay basis as Project Employee under ADP Project "20 CHCs/CDs in Service Tribunal fixed pay basis as Project Employee under ADP Project "20 CHCs/CDs in Service Tribunal fixed pay basis as Project Employee under ADP Project "20 CHCs/CDs in Service Tribunal fixed pay basis as Project Employee under ADP Project "20 CHCs/CDs in Service Tribunal fixed pay basis as Project Employee under ADP Project "20 CHCs/CDs in Service Tribunal fixed pay basis as Project Employee under ADP Pr

Khyber District" and in this respect, pay bill regarding salary is available as annexure-A. The termination order of the appellant would show that he was serving as Dispenser (ADP Scheme). Moreover, during the course of arguments, learned Additional Advocate General produced copy of letter No. 1468/DHO/Khyber dated 13.03.2020 of District Health Officer Khyber, addressed to the Director Health Services Merged Areas Peshawar, regarding the verification of status of Mr. Khaliq Mir Dispenser, which affirms that the appellant was drawing his salary from ADP Scheme "Opening of 20 CHCs/CDs" since 25.05.2013.

- 8. According to Section-4-of-the Khyber-Pakhtunkhwa Service Tribunal Act, 1974, any civil servant aggrieved by any final order, whether original or appellate, made by a departmental Authority in respect of any of the terms and conditions of his service can invoke the jurisdiction of the Service Tribunal through filing of an appeal. In view of material available on the record, the appellant is not a civil servant as defined in Section-2 (b) of Khyber Pakhtunkhwa Civil Servants Act, 1973, therefore, the appeal filed by the appellant is not competent before this Tribunal for the reason that this Tribunal lacks jurisdiction in the matter.
- 9. In light of the above discussion, it is held that this Tribunal lacks jurisdiction in the matter, therefore, the appeal in hand is returned to the appellant for seeking remedy from competent forum available under the law. Office is directed to return the original appeal alongwith it annexures to the appellant by retaining its copies and placing the same on the file. Parties are left to bear their own costs. File be consigned to the room.

ANNOUNCED 09.06.2021

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

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

Certified to be ture copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. | 200 /2018

KHALIQ MIR

VS

HEALTH DEPTT:

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S.NO.	DOCUMENTS	ANNEXURE	PAGE
1:	Memo of appeal	*****	1- 3.
2	Order dated 15.08.2016	Α	4.
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4.	Departmental appeal	C	6.
5.	Service appeal	.D	7- 9.
6.	Impugned order	E	10.
7.	Withdrawal order	F	11- 12.
8.	Departmental appeal	G	13.
9.	Vakalat nama	********	14.

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK, ADVOCATE

Flat No. 3, Upper Floor, Islamia Club Building, Khyber Bazar, Peshawar 0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1200 /2018

Khyber Pakhtukhwa Service Tribunai Diary No. 1481

Mr. Khaliq Mir, Medical Technician,

Civil Dispensary, Paindi Lalma, District Khyber..... APPELLANT

VERSUS

- 1- The Director General Health Service Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Health Services FATA, FATA Secretariat, Warsak Road, Peshawar.
- 3- The District Health Officer, Khyber at Jamrud.

..... RESPONDENTS

Filedto-day
Registrat

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT-1974 AGAINST THE IMPUGNED ORDER DATED 24.06.2017 COMMUNICATED TO THE APPELLANT DURING THE PROCEEDINGS BEFORE THIS AUGUST TRIBUNAL ON 17.05.2018 ACCORDING TO WHICH THE APPELLANT HAS BEEN TERMINATED FROM SERVICE AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER: That on acceptance of this appeal the impugned order dated 24.06.2017 communicated to the appellant on 17.05.2018 may very kindly be set aside and the respondents may be directed to re-instate the appellant into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

1- That appellant was the employee of the respondent Department and was performing his duty as Medical Technician in Civil Dispensary Kam Shilman, Khyber.

- 2- That during performing his duties in Civil Dispensary Kam Shilman the appellant was transferred and posted in the Civil Dispensary Paindi Lalma vide order dated 05.08.2016. That in response to the said order the appellant submitted his charge report and started performing duties quite efficiently and up to the entire satisfaction of his superiors. Copy of the order dated 05.08.2016 is attached as appeaure.
- **4-** That during the pendency of the above mentioned service appeal the respondent No.2 issued order dated 24.06.2017 whereby the appellant has been terminated from service. That it is pertinent to mention that the impugned order was communicated to the appellant during the proceedings before this august Tribunal on 17.5.2018. Copies of the impugned order & withdrawal order attached as annexure.
- 6- That appellant having no other remedy but to file the instant appeal on the following grounds amongst the others.

GROUNDS:

A- That the impugned order dated 24.06.2017 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.

B- That appellant has not been treated in accordance with law and rules by the respondents 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 no charge sheet and statement of allegation has been issued to the appellant before issuing the impugned order dated 24.06.2017.

D-That neither show cause notice was issued to the appellant nor chance of personal hearing was provided to the appellant before issuing the impugned order dated 24.06.2017.

E- That the respondents acted in arbitrary and malafide manner while issuing the impugned order dated 24.06.2017.

F- That 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:26.9.2018

APPELLANT

KHALIQ MIR

THROUGH:

NOOR MOHAMMAD KHATTAK

8.

MUHAMMAD MAAZ MADNT

ADVOCATES

OFFICE OF THE AGENCY SURGEON AT JAMRUD

_/AS/Khy NO:

Dated 15 / 68 /2016

OFFICE ORDER:

Posting / transfer order of Mr. Khaliq Mir from C.D Kam shelman to C.D Paindi lalma are hereby issued with immediate effect, in the best interest of public services:

> Sd/xxxxxx Agency Surgeon Khyber at Jamrud

Dated 15 / 08 /2016

No: 4427-3/AS/Khy

Copy forwarded to the:

- 1: Director Health Services FATA, Warsak Road, Peshawar.
- Assistant Political Agent Jamrud, Bara.
- 3: Incharge CD Paindi Lalma.
- Officials concerned.

Agency Surgeon Khyber at Jamrud

Attented ATTESTED



OFFICE OF THE AGENCY SURGEON KHYBER AT JAMRUD

No:/AS/Khy	Dated		/ 2017	
****************	******	******	******	*****

OFFICE ORDER:

Posting / transfer orders of the following paramedics are hereby issued with immediate effect, in the best interest of the public service:-

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	1	Mr. Walid Mir,	Medical	Civil	Civil	Till it is	
		-	Technician	Dispensary	Dispensary	deemphasized]
			,	Paindi Lalma	Shaheed		
			. N. 60		Maina		
	2	Mr. Akhtar Munir	Medical '-	Civil	BHU Ali		1
			technician	Dispensary	Masjid		
			\	Paindi Lalma			
[-	3)	Mr Khaliq Mir	Medical	Civil	Pak Army	S. Jana Salahana	1.
			Technician	Dispensary	BHU Tirah		
				Paindi Lalma	Maidan): 作》:
	4	Mr. Nizamuddin	Dispenser	Pak Army	Civil	Mr. Hidayat	Č.
				BHU Tirah	Dispensary	ullah, Dispenser	
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Sd/xxxxxx Agency Surgeon Khyber at Jamrud

Dated 20, 01 / 2017

No: 333-45/Khy

Copy forwarded to the :-

Director Health Services FATA, Warsak Read, Peshawar.

2. Assistant Political Agent Jamrud, Bara.

3. Incharge BHU Ali Mas€jid, CD Paindi Lalma.

4. Officials concerned,

Agency Surgeon Khyber at Jamrud

ATTACTED

و المرائع المرائع المرائع الموامر ما ما لساور 20.1.2017 De Stories : 2/6 aulg) مردد زاری ی مای کی کرسانی کری کری کری ما برلطور وسينت إمير لط وسينش اين صوبات الحاج رجا ہے۔ ۔ الم ای رکوئی الحنس مرجن جیبر کے ساتھ لگائی گئی اور الجنس سرحن نے سامی و کوئی سول ڈسیٹری بندی للمیم 1 x c, v x i & c, 2016 cmi 39-200 blog اب 10.0/ 20.0/ كوالجنس مرحن ملمت ن مرى فراق بالرن ليسر ریسنی میں فرے کے زیر گرانی مول دسینہی میں لیاری منا سائل کو بازه هیم ابجنس در بوشی سے سخت مسلم e boging of Novious billion of which 2, tid (fil de original a do la _ 1 2ml Movie of 20.01.2017 20.01.2017 20 16 1 2 26/100 /100/1000 (20/20/00) (20/20/00) (20/20/00) WHESTED John Melib 1 19/2017 19/2017 19/2017 19/2017

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL	NO.	657	1/2017
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D - (D)

Mr. Khaliq Mir, Medical Technician,

VERSUS

- 1- That Additional Chief Secretary FATA, FATA Secretariat, Warsak Road, Peshawar.
- 2- The Director Health Services FATA, FATA Secretariat, Warsak Road, Peshawar.
- 3- The Agency Surgeon Khyber Agency at Jamrud.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 20.01.2017 WHEREBY THE APPELLANT HAS BEEN PRE-MATURELY TRNASFERRED FROM CIVIL DISPENSARY PAINDI LALMA TO BHU TIRAH MAIDAN AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTARY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned order dated 20.01.2017 may very kindly be set aside the respondents may be directed not to transfer the appellant from Civil Dispensary Paindi Lalma till completion of his normal tenure. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

- **1-** That the appellant is the employee of the respondent Department and is serving as Medical Technician at Civil Dispensary Paindi Lalma quite efficiently and up to the entire satisfaction of his superiors.



- - 4- That feeling aggrieved from the impugned order dated 20.01.2017 the appellant preferred Departmental appeal on 19.02.2017 before the respondent No.2 but no reply has been received far. Hence the present appeal on the following grounds amongst the others. Copy of the Departmental appeal is attached as annexure.

GROUNDS:

- A- That the impugned order dated 20.1.2017 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That the appellant has not been treated in accordance with law and rules by the respondent Department 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 respondent Department acted in arbitrary and malafide manner while issuing the impugned order dated 20.1.2017.
- E- That the impugned order dated 20.1.2017 has not been issued in the public interest nor exigencies of service, therefore not tenable and liable to be set aside.
- F- That 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 kindly be accepted as prayed far.

Dated: 15.6.2017

APPELLANT

KHALIQ MIR

THROUGH:

ATTACTED

NOOR MOHAMMAD KHATTAK

ADVOCATE

BEFORE THE KHYBER PAKHTUNKHEWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO /2016

Khaliq Mir

VS

A.C.S FATA

APPLICATION FOR SUSPENTION OF OPERATION OF IMPUGNED ORDER DATED 20.1.2017 TILL THE DISPOSAL OF THIS APPEAL

R/SHEWETH:

ATTIMA

- That the appellant filed above mentioned appeal along with 1this application before this august service Tribunal in which no date has been fixed so for.
- That all the three ingredients necessary for the stay is in 2favor of the appellant.
- That the transfer of the appellant is against the transfer policy of the Government of Khyber Pakhtunkhwa and the impugned transfer order dated 20.1.2017 is also not issued in the public interest nor exigencies of public service.
- That the grounds of main appeal is also be considered as 4integral part of this application.

It is therefore humbly prayed that on acceptance of this application the impugned transfer order dated 20.1.2017 may very kindly be suspended till disposal of this appeal.

APPELLANT

KHALIQ MIR

THROUGH:

NOOR MOHAMMAD KHATTAK

ADVOCATE





OFFICE OF THE AGENCY SURGEON KHYBER AT JAMRUD

OFFICE ORDER

Consequent to prolonged absence from duties at Pak Army BHU Tirah Maidan, Khyber Agency and turning deaf ear to the call up notices etc, services of Mr. Khaliq Mir, Dispenser (ADP Scheme) are hereby terminated with immediate effect in the best interest of the public service.

> Sd/xxx Agency Surgeon Khyber at Jamrud Dated 24 / 06 / 2017

- 1. Director Health Services FATA, Warsak Road, Peshawar.
- 2. Political Agent Khyber Agency, Khyber House, Peshawar.
- 2. Agency Account Officer Khyber at Jamrud.
- 3. Assistant Political Agent Bara.
- 4. Accountant local office for necessary action.
- 4. Official concerned.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR Peshaw Khyber Pakhtukhwa Service Tribunal APPEAL NO. 673

Mr. Khaliq Mir, Medical Technician, Dated 16-6-2017

Civil Dispensary Paindi Lalma, Khyber Agency APPELLANT

VERSUS

- 1- That Additional Chief Secretary FATA, FATA Secretariat, Warsak Road, Peshawar.
- 2- The Director Health Services FATA, FATA Secretariat, Warsak Road, Peshawar.
- 3- The Agency Surgeon Khyber Agency at Jamrud.

.. RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 20.01.2017 WHEREBY THE APPELLANT HAS BEEN PRE-MATURELY TRNASFERRED FROM CIVIL DISPENSARY PAINDI LALMA TO BHU TIRAH MAIDAN AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTARY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned order dated 20.01.2017 may very kindly be set aside the respondents may be directed not to transfer the appellant from Civil Dispensary Paindi Lalma till completion of his normal tenure. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

1- That the appellant is the employee of the respondent Department and is serving to-day as Medical Technician at Civil Dispensary Paindi Lalma quite efficiently and up to the entire satisfaction of his superiors.

2- That appellant while serving as Medical Technician in Civil Dispensary Shalms an order dated 15.8,2016 was issued whereby the appellant was transferred Civil Dispensary Paindi Lalma. That in response the appellant took over charge and started performing his duty at the concerned station. Copy

order is attached as annexure

Appeal No. 657/2017 Khalier Mir V3 Got 1

17.05.2018

Counsel for the appellant and Mr. Riaz Paindakheil, Assistant Advocate General for the respondents present. Learned counsel for the appellant stated at the bar that the instant appeal has become infructuous therefore, he wants to withdraw the same. In this regard signature of learned counsel for the appellant was also obtained at the margin of order sheet as a token of proof. Accordingly the present appeal is dismissed as withdrawn. Fie be consigned to the record room.

ANNOUNCED

17.05.2018

M. Amin Khan Kunds (M. Hand Mughul)
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G- (3)

The Director Health Services FATA. FATA Secretariat, Warsak Road, Peshawar.

SUBJECT: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED 24.6.2017 WHICH WAS COMMUNICATED ME THROUGH AUGUST SERVICE TRIBUNAL. PESHAWAR ON 17.05.2018 WHEREBY I WAS TERMINATED FROM SERVICE.

Respected Sir,

It is most respectfully stated that I was the employee of your good self Department and was serving as Medical Technician at Civil Dispensary Paindi Lalma, Khyber Agency. During service I was transferred from Civil Dispensary Paindi Lalma to BHU Tirah Maidan vide order dated 20.01.2017. Feeling aggrieved from the order 20.01.2017 preferred Departmental appeal before your good self for cancellation of the above mentioned impugned order but no reply was received and then after I filed service appeal No. 657/2017 before the august Service Tribunal, Peshawar. During the pendency of service appeal the Agency Surgeon, Khyber issued my termination order dated 24.06.2017 which I received through august Service Tribunal on 17.05.2018 whereby my services has been terminated without any reason. I was feeling aggrieved from the impugned order dated 24.06.2017 preferred the instant Departmental appeal before your good self.

It is therefore, most humbly prayed that on acceptance of this Departmental appeal I may kindly be re-instated into service with all back benefits. Any other remedy which your good self deems fit that may also be awarded in my favor.

Dated 01.06.2018... Alsted

Your Obediently

KHALIQ MIR, (MT), CD Paindi Lalma, Khyber Agency.

VAKALATNAMA

Before the KP Service	Tribenal Posta
APPEAL No.	/2018
Khaliz Mis	(APPELLANT) (PLAINTIFF) (PETITIONER)
VERSUS	
Health Departmen	(RESPONDENT) (DEFENDANT)
I//e Khali's Mir Do hereby appoint and constitute	. · · · .
KHATTAK, Advocate, Peshawar compromise, withdraw or refer to my/our Counsel/Advocate in the without any liability for his default a engage/appoint any other Advocate I/we authorize the said Advocate treceive on my/our behalf all sums deposited on my/our account in the	to appear, plead, act, arbitration for me/us as above noted matter, and with the authority to Counsel on my/our cost. o deposit, withdraw and amounts payable or
Dated/2018	
NOO	CLIENT ACCEPTED R MOHAMMAD KHATTAK
OFFICE: Room No.1, Upper Floor, Islamia Club Building, Khyber Bazar,	HAMMAD MAAZ MADNI ADVOCATES
Peshawar City.	

Phone: 091-2211391 Mobile No.0345-9383141

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

APPEAL NO. 1200 / 2018

Mr. Khaliq Mir, Medical Technician......Petitioner

Versus

Director General Health Khyber PakhtunkhwaRespondents
& others

S NO.	DETAIL	PAGE NO.	Description
1	Para wise Comments	1-3	
2	Pay bill	4	А
3	Explanations	5-6	В
4	Show cause notice	7	. С
5	Order and enquiry report	8-10	D
6	Absence notice in daily newspaper	. 11	E
7	Termination order	12	F

BEFORE THE SERVICES TRIBUNAL

KHYBER PAKHTUNKHWA, PESHAWAR

APPEAL NO. 1200 / 2018

Mr. Khaliq Mir, Medical Technician......Petitioner

Versus .

Director General Health Khyber PakhtunkhwaRespondents & others

Para wise comments on behalf of respondent No. 1, 2 & 3.

Respectfully Sheweth;

100

Preliminary objections

- 1. That the appeal is incomplete in its present form and contractual obligations cannot enforced through constitutional jurisdictions.
- 2. That the appellant has got no locus standi to file the instant appeal before department appeal.
- 3. That the appellant has not come to this Honorable Court with clean hands as he is irregular in his Govt: duty.
- 4. That the appellant has not yet submitted his departmental appeal before the competent authority.

ON FACTS

- Incorrect. The appellant has concealed the facts because he was working as Dispenser not Medical Technician on fixed pay basis under ADP Project "20 CHCs/CDs in Khyber District". His monthly pay bill is attached at Annex-A.
- 2. Incorrect. The appellant is misguiding the Honorable Court because the transfer order submitted by the appellant is fake and bogus as the issue number on the body of the order does not match with the dispatch register of this office.
- 3. Incorrect, as already mentioned in Para-2 above that the appellant has submitted fake and bogus transfer order. It is submitted that:
 - ➤ The appellant had completed two years tenure in CD Paindy Lalma.

- When his services were required in emergency by the Pak Army at Tirah, he was transferred at Pak Army BHU Tirah vide order dated 20.01.2017 but the appellant refused to work there and did not obey the orders of the competent authority and absented himself from his legitimate duties.
- ➤ The Then Agency Surgeon called explanation, served absence notice at his home address but the appellant did not respond at **Annex-B**.
- > Show cause notice was also issued but the appellant did not resume duty at Annex-C.
- ➤ The then Agency Surgeon Khyber constituted an inquiry committee on 22.03.2017 which submitted its report with the recommendation to serve final show cause notice to the appellant before termination at **Annex-D**.
- In this regard, absence notice was advertised in the daily newspaper at **Annex-E**. Even then, the appellant neither appeared before the Agency Surgeon nor the inquiry committee, hence, the services of the appellant were terminated vide order at **Annex-F**.
- 4. Correct, because the appellant absented himself from his legitimate duties despite of advertisement of absence notice in the daily newspaper. Furthermore, due to his absenteeism, the poor and needy community of Tirah was badly affected.
- 5. Incorrect, the appellant has not yet submitted department appeal to the competent authority.
- 6. The appellant has no right to file the instant appeal being a project employee because the department has completed all codal formalities required in the termination process.

ON GROUNDS

- A. Incorrect, The appellant was transferred to Pak Army BHU, in emergency and critical situation in Tirah Maidan on the request of Pak Army, but he failed to obey the order and absented himself without any information and prior permission of the competent authority. Therefore, he was terminated after fulfilling all codal formalities under the rule.
- B. Incorrect as all codal formalities during his termination were fulfilled under the rules which is attached herewith for ready reference.
- **C.** Incorrect as proper charge sheet with statement of allegations were served during his termination process which is attached herewith on annexure **F**.
- D. Incorrect as during the termination of the appellant the show cause notice, personal hearing, explanation and enquiry were initiated which are attached herewith on annexure A to F.
- E. Incorrect, the appellant has been terminated after all codal formalities were fulfilled.
- F. The department will also produce other proofs in the time of hearing.

Keeping in view the above facts it is requested that the instant appeal may kindly be dismissed with cost.

Director Health Services, Merged areas, Peshawar For respondent No. 1 & 2

Tribal district Khybe Respondent No. 3

AGENCY STREECH

Government of KPK Health Department Pay Bills GovernmerkH1101

Khyber Agency

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OFFICE OF THE AGENCY SURGEON KHYBER AT JAMRUD.

NO	Dated /3/3 /2017.
Tos	

Mr. Kheliq Mir Dispensar.

Subjects

EXPLANATION.

You have already submitted your arrival report
for duty to this office but you have not been performing
your duty at Pak Army EHU: Tirch Miadan without any permission/
information to the competent authority.

Therefore you are hereby directed to explain your position within 03 days otherwise strict disciplinary action will be taken against you.

Agency Surgeon Kbyber, at Jamrud.

NO 1926.29

Copy forwarded to the :-

- 1. Director Health Services FATA Pesh:
- 2. Assistant Political Jamrud.
- 3. Agency Account Officer hybr.
- 4. Official Concerned.

Agency Surgeon Knyber. at Jamrui.



OFFICE OF THE AGENCY SURGEON KHYBER AT JAMRUD

N.	B	

No:	/AS/Khy	Dated:	/2017
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REMINDER - 1

Mr. Khaliq Mir, Medical Technician (ADP Scheme)
Khyber Agency

Subject:

ABSENCE FROM DUTY

It has been noticed with great concern that you neither reported to new duty station nor performing your duties and have turned deaf ear to the call up notices so far. This trend of you is detrimental to the service norms and deserve strict disciplinary action.

You are hereby directed to report to the office of the undersigned within 07 days and explain your position as to why strict disciplinary action may not be taken against you, which may result in your termination from service, under E.& D Rules in vogue.

Agency Surgeon Khyber at Jamrud

No: 2276 - 79 /AS/Khy

Copy forwarded to the:

- 1. Director Health Services FATA; Warsak Road, Peshawar.
- 2 Political Agent Khyber Agency, Khyber House, Peshawar.
- 3. Agency Accounts Officer Khyber at Jamrud.
- 2. Assistant Political Agent Bara, Jamrud & Landikotal.



OFFICE OF THE AGENCY SURGEON KHYBER AT JAMRUD

No: 4/32-34 /AS/Khy	- 4
10. 9/3 01 JAS/KNY	Dated: \(\frac{y}{y} / 2017 \)
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REMINDER - II

Mr. Khaliq Mir, Medical Technician (ADP Scheme) Khyber Agency

Subject:

SHOW CAUSE NOTICE

It has been noticed with great concern that you neither reported to new duty station nor performing your duties and have turned deaf ear to the call up notices and REMINDERS so far. This trend of you is detrimental to the service norms and deserve strict disciplinary action.

You are hereby directed to report to the office of the undersigned within 15 days and explain your position as to why strict disciplinary action may not be taken against you, which may result in your termination from service, under E & D Rules in vogue. For your non response to call up notices an ex-perte decision is immenent against you.

Agency Surgeon Khyber at Jamrud

No: 4/32-34AS/Khy

Dated / /2017

Copy forwarded to the:

- 1. Director Health Services FATA, Warsak Road, Peshawar.
- 2 Political Agent Khyber Agency, Khyber House, Peshawar.
- 3. Agency Accounts Officer Khyber at Jamrud.
- 2. Assistant Political Agent Bara, Jamrud & Landikotal.



OFFICE OF THE AGENCY SURGEON (KHYBER AT JAMRUD

No:	/AS/Khy	Dated:
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OFFICE ORDER

Consequent to suspension of services of Mr. Khaliq Mir, Medical Technician due to prolonged absence from the Pak Army BHU at Tirah Maidan, following Enquiry Committee is hereby constituted to probe into his reluctance in carrying out official orders etc:-

- 1. Hafeez Ullah, FSMO Khyber
- 2. Dr Ejaz, Medical Officer Civil Hospital Jamrud.

Enquiry Committee is compile detailed report of the facts for further submission to the Competent Authority for strict disciplinary action.

Sd/xxx Agency Surgeon Khyber at Jamrud

Dated 22 / 3 / 2017

No: 2/28 - 3/AS-KHY

Copy forwarded to the:-

- 1. Director Health Services FATA, Warsak Road, Peshawar
- 2. Political Agent Khyber, Khyber House, Peshawar.
- 3. Agency Account Officer Khyber at Jamrud.
- 4. Assistant Political Agent Jamrud.
- 5. Official concerned.

REPORT OF ENQUIRY COMMITTEE

Authority:

Agency Surgeon Khyber office order No: _2128-32/AS-Khy dated

22.3.2017.

Date & Place

ON 28.3.2017 & subsequent dates at Civil Hospital Jamrud

Purpose:

To probe into his reluctance in carrying out official orders etc.

Proceedings

The Committee personally visited the record available at the office of the Agency Surgeon Khyber on 28.3.2017 and subsequent days and found that:-

1. Mr. Khaliq Mir, Medical Technician (ADP Scheme) was transferred from CD Paindi Lalma to Pak Army BHU Tirah Maidan vide office order No: 333-45/AS/Khy dated 20.1.2017 towards which he showed reluctance. On 28.1.2017 he explained his position and gave signs of written reluctance. The same was not acceded to by the Agency Surgeon Khyber and ordered him to proceed to his new duty station.

2. On 7.2.2017 he finally gave his Arrival Report which was accepted.

3. He was served with an explanation vide letter No: 1926-29/AS-Khy dated 13.3.2017 due to the reasons that he was not performing his duties at new duty station. The letter was registered to his home address.

3. On 22.3.2017 another enquiry was ordered vide letter No: 2128-32/AS-Khy dated 22.3.2017 which is underway.

4. The Inquiry Committee has called upon the official to appear before it and give his written statement, reasons etc but to no avail. He failed to appear before the committee tilldate.

Findings

As the official has not appeared before the committee so an ex-parte, decision is made as follows:-

1. The Official may be suspended from service with immediate effect. He may be notified through the available means that such attitude towards service matter shall end into his termination from service under E & D Rules.

2. He is an ADP Employee and has very narrow option left to defend himself.

Recommendations: The Enquiry Committee is of the view that he may be served with other show cause notices to complete the codal formalities before final termination from service.

Medical Officer

Civil Hospital Jamrud

DR. HAFIZ ÜLLAH

FSMO Khyber

TO CO

(0/6/17)

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رہے ایں۔اس دفتر نے آپ کو متعدد بازلوس مجی ارسال کیے کہ زیولی پر طامس
ہوجا کمن مجزآت جا ضرن ہوئے۔ آت کی شین میں مطابع
آپ کواشتهار نزائے ڈریعے مطلع کیا جارہا ہے۔ کہ آپ فوراا بی ڈیوٹی پر ماضر
ا بوجا کیں۔ اور اندرون 15 یوم وفر ہذا ش اپن حاضری بیٹی بنا کیں۔ بضورت ا دنگر آپ کومزیدم بلت دیتے بغیر موجود و تو این کے تحت بروس سے برخاست
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OFFICE OF THE AGENCY SURGEON KHYBER AT JAMRUD

OFFICE ORDER

Consequent to prolonged absence from duties at Pak Army BHU Tirah Maidan, Khyber Agency and turning deaf ear to the call up notices etc, services of Mr. Khaliq Mir, Dispenser (ADP Scheme) are hereby terminated with immediate effect in the best interest of the public service.

> Sd/xxx Agency Surgeon Khyber at Jamrud

Dated 34 / 06/2017

No: 7239 - 44 IAS-KHY Copy forwarded to the:-

- 1. Director Health Services FAŤA, Warsak Road, Peshawar.
- 2. Political Agent Khyber Agency, Khyber House, Peshawar.
- 2. Agency Account Officer Khyber at Jamrud.
- 3. Assistant Political Agent Bara. Jamvud
- 4. Accountant local office for necessary action.
- 4. Official concerned.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No.1200/2018

KHALIQ MIR

VS

HEALTH DEPTT:

REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO THE REPLY SUBMITTED BY THE OFFICIAL
RESPONDENTS

R/SHEWETH:

(1 to 4):

All the objections raised by the respondents are in correct, baseless and not in accordance with law and rules, rather the respondents are estopped due to their own conduct to raise any objection at this stage of the appeal.

ON FACTS:

- 2- Incorrect and misconceived. That appellant was performing his duties at Civil Dispensary Kam Shilman was transferred to Paindi Lalma vide order dated 05.08.2016. That in response to the said transfer order dated 05.08.2016 the appellant submitted his charge report and started performing his duty quite efficiently and upto the entire satisfaction of his superiors.
- - 4- Correct to the extent of termination order of the appellant while the remaining para is incorrect. That it is pertinent to mention that the termination order dated 24.06.2017 shows clear malafide on the part the respondents because the termination order has been issued on weekend i.e. on Saturday.

- 5- Incorrect and not replied accordingly. That the appellant was submitted his departmental appeal against the impugned order dated 24.06.2017 before the respondent No.1 on 01.06.2018.
- 6- Incorrect and not replied accordingly. That appellant was appointed on regular basis in the respondent department, therefore being a civil servant the appellant filed service appeal before this august Tribunal.

GROUNDS:

All the grounds of main write petition are correct and in accordance with law and prevailing rules and that of the respondent are incorrect and baseless hence denied. That no notice has been served on the appellant before issuing the impugned order dated 24.06.2017. That neither charge sheet and statement of allegation has been issued to the appellant nor any show cause notice has been served on the appellant before issuing the impugned order dated 24.06.2017.

It is therefore, most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may kindly be accepted in favor of the appellant with all back benefits.

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK

« بسي الرالف الرفير · ٤٤ »

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for the month of October 2018

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for the month of February	2079

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for the month of APRIL

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## OFFICE OF THE DISTRICT HEALTH OFFICER **KHYBER AT JAMRUD**

## OFFICE ORDER

As recommended by the inquiry committee the following paramedic staff of CD Paindi Lalma are hereby directed to report for duty to the following health facilities with immediate effect in the best public interest.

S No	Name	From	То
1	Mr. Khan Mir Medical Technician	CD Paindi Lalma	CD Shaheen Haman.
2	Mr. Walid Mir Medical Technician	CD Paindi Lalma	CD Chappary
3	Mr. Khaliq Mir ex- Dispenser	CD Paindi Lalma	fop duty any war till further orders by the competent forum
4	Mr. Amanullah Medical Technician	CD Paindi Lalma	CHC Wazir Muhammad Killi
<del> </del> -	Mr. Akhtar Wat	CE Chappary	on Pr. di Lalora
6	Mr. Zaheer Abbas	CH Lowara Maina	CD Paindi Laima

No: 532/35/DHO/Khyber

Copy forwarded to the:-

Director Health Services merged areas.

Deputy Commissioner Khyber.

District Accounts Officer Khyber at Jamrud.

All incharges concerned

All above concerned.

District Health office Khyber at Jamrud Dated/