

16.12.2021

Counsel for the appellant and Mr. Noor Zaman Khattak, District Attorney alongwith Wajahatullah, Junior Clerk for the respondents present.

Learned counsel for the appellant submitted an application for withdrawal of the appeal on the ground that grievance of the appellant has been redressed. Application placed on file. The appeal in hand is, therefore, dismissed as withdrawn.. File be consigned to the record room.

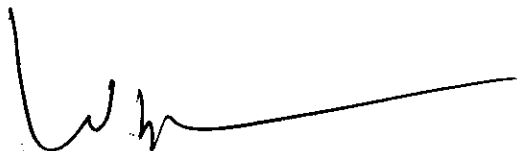
ANNOUNCED
16.12.2021


Chairman
Camp Court, D.I.Khan

29.09.2021

Nemo for the appellant. Mr. Usman Ghani, District Attorney for the respondents present and sought time for submission of written reply/comments. Respondents are directed to furnish reply/comments within 10 days. In case the respondents failed to submit reply/comments within stipulated time from today, they shall have to seek extension of time through written application citing sufficient reasons. Otherwise, their right for submission of reply/comments shall stand ceased. To come up for arguments before the D.B on 25.11.2021 at Camp Court D.I. Khan.

Previous date was changed on Reader Note, therefore, notice be issued to the appellant as well as his counsel for the date fixed.



(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)
CAMP COURT D.I.KHAN

25.11.2021

Appellant in person present. Learned District Attorney for the respondents present and seeks time to contact the respondents for submission of written reply/comments.

Last opportunity is granted to the respondents for submission of written reply/comments on next date. Case to come up on 17.12.2021 before S.B at camp court, D.I.Khan.

In case the last chance as given above is not availed, the next adjournment shall be subject to prior payment of cost of Rs. 5000/- to the appellant failing which the case shall be fixed before D.B for arguments without reply/comments deeming the same as waived off by the said respondents.



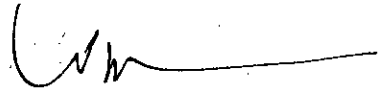
Chairman
Camp Court, D.I.Khan

24.11.2020

Counsel for appellant present.

Counsel for appellant submitted application for permission of deposit security and process fee. Application is allowed. Appellant is directed to deposit security and process fee within 10 working days, thereafter, notice be issued to respondents for submission of reply/comments. To come up for written reply/comments on 26.01.2021 before S.B at Camp Court, D.I.Khan.

Appellant Deposited
Security & Process Fee
01/12/20


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

26-01-2021

Due to Covid-19 case is
adjourned to 24.02.2021 for
the same as before.



Reeder

24.02.2021

Nemo for parties.

Muhammad Riaz Khan Paindakhel learned Asst. AG for respondents present.

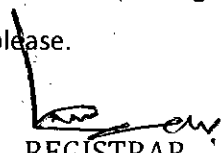

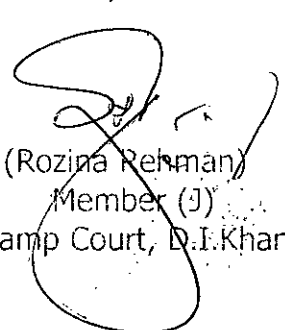
Written reply/comments on behalf of respondents not submitted, therefore, notice be issued to respondents for submission of reply/comments. To come up for reply/comments on 26.05.2021 before S.B at Camp Court D.I. Khan. Notice be also issued to appellant and his respective counsel.


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

FORM OF ORDER SHEET

Court of _____

Case No.- 6343 /2020

1S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	06/07/2020	<p>The appeal of Mr. Muhammad Ajrar received today by post through Muteeullah Rind 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-	14-9-20	<p>This case is entrusted to touring S. bench at D.I.Khan for preliminary hearing to be put up there on <u>25-9-2020</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	25.09.2020	<p>Counsel for appellant present. Preliminary arguments heard. File perused.</p> <p>Points raised need consideration. Admitted to regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to respondents for written reply/comments. To come up for written reply/comments on 24.11.2020 before S.B at Camp Court, D.I.Khan.</p> <p style="text-align: right;"> (Rozina Rehman) Member (J) Camp Court, D.I.Khan</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

In service Appeal No. 6343/2020

Muhammad Ajarar
(Appellant)

VERSUS

GOVT of KPK etc
(Respondents)

I N D E X

S.No.	Description of documents	Annexure	Page
1.	Memorandum of Appeal along with affidavit		1-8
2.	Copy of appointment order	A	9
3.	Copies of the service appeal and order dated 25/01/2017	B & C	10-20
4.	Copy of the impugned order No. 718-24 dated 05/03/2020	D	21
5.	Copy of departmental appeal and receipt	E	22-24
6.	Vakalatnama	--	25

Dated: 30/6/2020

Yours humble appellant

محمد اجرار

Muhammad Ajarar

Through Counsel

Muteer-ud-Din
Advocate High Court

Note (5) extra sets of file
are attached with appeal.

Muteer-ud-Din

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No. 6343/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6021

Dated 29-07-2020

Muhammad Ajar son of Muhammad Jan r/o Mohallah Sheikhanwala, City Tank. Presently working as Ward Orderly DHQ Hospital, Tank.

(Appellant)

VERSUS

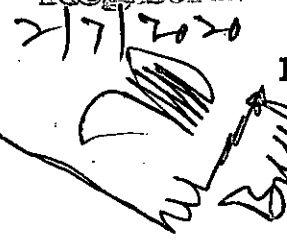
1. Government of Khyber Pakhtunkhwa, through Secretary Health Services Department Khyber Pakhtunkhwa Peshawar.
2. Director General Health Services Department Khyber Pakhtunkhwa Peshawar.
3. Medical Superintendent, District Headquarter Hospital Tank.

..... **(RESPONDENTS)**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974.

Prayer:

On acceptance/issuance of the instant service appeal under the following prayers;

Filed to-day
 Registrar
 2/7/2020


- I. To direct the respondents to withdraw/cancel the impugned order#718-24 dated 05/03/2020 issued by the respondent#3.
- II. To release the salaries of the appellant which are illegally stopped by the respondents vide impugned order#718-24 dated 05/03/2020.
- III. To direct the respondents to not take any kind of adverse action against the appellant and not to terminate the services of the appellant.

Any other relief which this honourable tribunal may deems appropriate may also be granted to the appellant.

Respectfully Sheweth:

The appellant humbly states and submits as under,

1. That the appellant was appointed as Ward Orderly (BPS-04) against the newly created post at District Headquarter Hospital Tank vide order bearing No. 4436 dated 08/08/2016 and since then the appellant has been serving the department with entire satisfaction of his superiors. Copy of appointment order is annexed as **Annexure-A**.
2. That the Medical Superintendent DHQ Tank issued a letter No. 2382-86 dated 09/05/2016 vide which the services of various employees including one Naimatullah (Ward Attendant BPS-2) were removed/terminated.
3. That the above said Naimatullah (Ward Attendant BPS-2), feeling aggrieved by the order dated 23-82-86 dated 09/05/2016, preferred a service appeal No. 876/2016 before this honourable Tribunal.
4. That this honourable Tribunal accepted the service appeal of Naimatullah vide order dated 25/10/2017 with the directions as under, "As a sequel to above the appeal is accepted by setting aside the impugned order dated 09/05/2016 and the petitioner is reinstated in service,". Copies of the service appeal and order dated 25/01/2017 are annexed as **Annexure-B & C** respectively.
5. That it is pertinent to mention here that the said Naimatullah was posted as Ward Attendant in DHQ Hospital Tank and the present appellant is serving as Ward Orderly and the post of petitioner was newly created as per order dated 4436 dated 08/08/2016 which has no concern whatsoever with the post of Naimatullah but the Medical Superintendent DHQ Tank issued the impugned order No. 718-24 dated 05/03/2020 vide which the salaries of appellant stopped with baseless allegations that

the appellant occupied the post of Naimatullah. Copy of the impugned order No. 718-24 dated 05/03/2020 is annexed as **Annexure-D**.

6. That the petitioner is a law abiding citizen and during his whole services in the department, he left no stones unturned towards his high-ups and allegations leveled against him are baseless and is the result of misconception.
7. That the appellant time and again requested the respondents to withdraw/cancel the impugned office order and release the salaries of the appellant but the respondents are reluctant to do so.
8. That feeling aggrieved by the impugned order No. 718-24 dated 05/03/2020, the appellant preferred a departmental appeal/representation to the respondent#2 being appellate authority and disclosed all the true facts and acknowledging the real happenings with the appellant but the appellate authority even did not bother to reply the same. Copy of departmental appeal is annexed as **Annexure-E**.
9. That impugned order No. 718-24 dated 05/03/2020 and subsequently impugned order of the appellate authority are based on mala fide and against the law, thus, the appellant left with no other remedy, the appellant approaches this honourable tribunal seeking reinstatement in service with all back benefits in consequence of setting aside impugned orders on gracious acceptance of the instant petition on grounds hereinafter preferred.

GROUND S

- i. That the act and omissions of the respondents by which they are not releasing the salaries of petitioner is purely discrimination and is without legal justification, hence, is liable to be declared as null and void.
- ii. That the appellant was appointed as Ward Orderly (BPS-04) against the newly created post at District Headquarter

Hospital Tank after fulfilling all the legal and codel formalities and since then the appellant is performing his duties with great zeal and zest left no stones unturned towards his high-ups which is evident from his service record.

iii. That from the attendance register, it is crystal clear that appellant is serving in the department and by not releasing his salaries is gross violation of the fundamental rights of the appellant.

iv. That the appellant served the department with no stones left unturned before high ups up-till now but the conduct of the respondents is highly condemnable.

v. That there are plethora of judgments of epics court of the country on the point that salary of civil servant cannot be stopped in the presence of appointment order and without showing any cause of stoppage of salary bypassing service laws, the very act the respondents is without authority. Moreover, the appellant have been serving the department since so many years, hence, appellant have secured vested rights.

vi. That appellant, being the citizens of Pakistan, deserves to be treated in accordance with law and the discrimination meted out to them without any rhyme or reason, deserves a matching judicial response.

vii. That this honourable Tribunal has got vast and ample powers and jurisdiction to entertain the instant appeal.

iii.

That any further ground, if needed, will be agitated during the course of arguments.

It is therefore, humbly prayed that the instant appeal may kindly be accepted as prayed in the headnote and contents of appeal.

Dated: 30/6/2020

Yours humble appellant


Muhammad Ajar


Muteeullah Rind
Advocate High Court

7

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In service Appeal No. 6343 /2020

Muhammad Ajrar
(Appellant)

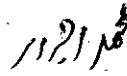
VERSUS

GOVT of KPK etc
(Respondents)

CERTIFICATE

Certified that appellant have not filed an appeal regarding the subject controversy, earlier in this august Tribunal.

Dated: 30 / 6 /2020


Appellant

NOTE

Appeal with enclosure along-with required sets thereof are being presented in separate file covers.

Dated 30 / 6 /2020


Appellant's counsel

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In service Appeal No. 6343/2020

Muhammad Ajarar
(Appellant)

VERSUS

GOVT of KPK etc
(Respondents)

AFFIDAVIT

I, **Muhammad Ajarar**, appellant herein, do hereby solemnly affirm on oath:-

1. That the accompanying appeal has been drafted by counsel following our instructions;
2. That all para-wise contents of the appeal are true and correct to the best of my knowledge, belief and information;
3. That nothing has been deliberately concealed from this Honourable Court, nor anything contained therein, based on exaggeration or distortion of facts.

Dated: 30 / 6 / 2020

11/21/20

DEPONENT

CNIC# 18201-69411867-9

Identified By:


Muteeullah Rind
 Advocate High Court

Annexure (A) (9) Page



OFFICE OF THE MEDICAL SUPERINTENDENT DHQ HOSPITAL TANK

No. 4436

Dated 08/08/2016

OFFICE ORDER

Consequent upon the recommendation of the Departmental Selection Committee, Mr. Muhammad Ajar S/o Muhammad Jan R/o District Tank is hereby appointed as "Ward Orderly" B-04 against newly created post at DHQ Hospital Tank plus usual allowances as admissible under the rules and subject to revision from time to time on the following terms and conditions according to the Government Police.

1. You have to join duty at your own expenses.
2. In case you wish to resign at any time, one month notice will be essential or in lieu thereof one month pay shall be forfeited.
3. You will be governed by such rules and orders related to TA, leave and MRC etc as may be issued by the Govt. from time to time for the category of Government servant to which you belong.
4. Your appointment will be subject to provision of Medical Fitness Certificate.
5. You will be on probation Period for Two years.
6. If you accept the terms and condition you are directed to report for duty to undersigned.

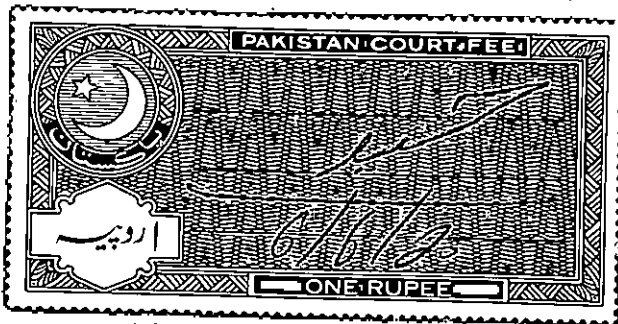
No. 4437-39

MEDICAL SUPERINTENDENT
DHQ HOSPITAL, TANK
Dated 08/08/2016

Copy to the:-

1. Director General Health Services, Khyber Pakhtunkhwa; Peshawar
2. District Accounts Officer Tank
3. Accountant DHQ Hospital Tank

MEDICAL SUPERINTENDENT
DHQ HOSPITAL, TANK



Attached to be
true copy.

Billal

Amendment (B)
page (10)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. _____/2016

Naimat Ullah s/o Saadullah r/o village Audal, Tehsil &
District Tank.

Ward Attendant (BPS-2)

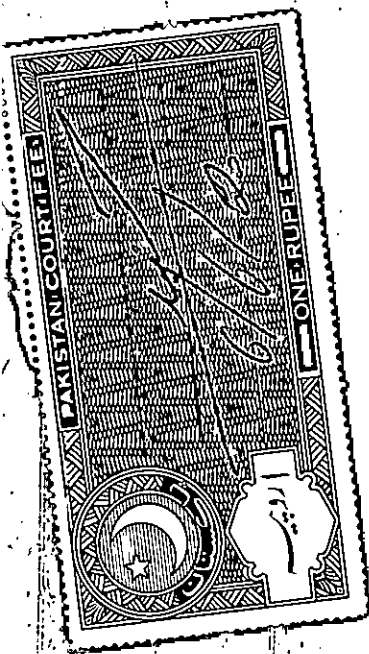
(Appellant)

VERSUS

1. Government of KPK, through secretary Health Department, KPK Peshawar.
2. Secretary to Govt: of KPK, Health Department, Peshawar.
3. Director General Health services, KPK Peshawar.
4. District Health officer (DHO), District Tank.
5. District Accounts Officer, District Tank
6. Medical Superintendent (DHQ Hospital), District Tank

..... (RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICES TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED ORDER No. 2382-86 DATED 09/05/2016 ISSUED BY RESPONDENT NO.6/M.S DHQ HOSPITAL, TANK, WHEREBY APPELLANT WAS REMOVED/TERMINATED FROM SERVICE AND AGAINST THE OMISSION ON THE PART OF RESPONDENT NO.3 FOR INDICISION OF THE DEPARTMENTAL APPEAL WHICH IS AGAINST THE



(11)

**RULES AND THE APPELLANT WAS CONDEMNED
UNHEARD WITH MALAFIDES.**

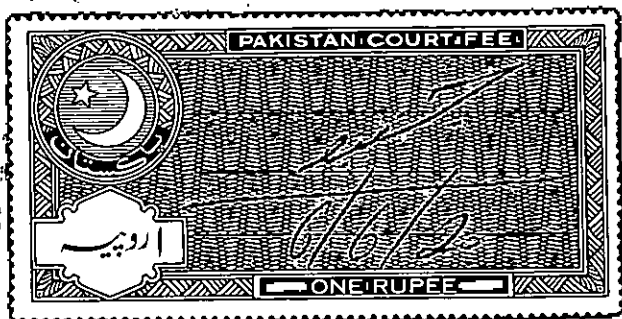
PRAYER

On acceptance of this appeal, impugned order No. 2382-86 DATED 09/05/2016 issued by respondent No.6 may please be reversed and set-aside and the respondents be directed to reinstate the appellant in service with all back benefits.

Note: Addresses given above shall suffice the object of service. All necessary and proper parties have been arrayed in the panel of respondents.

Respectfully Sheweth;

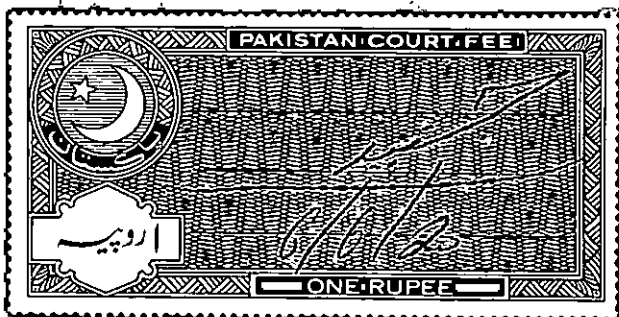
1. That the petitioner is law abiding citizen of Pakistan and is enjoying well reputation in the society. Copy of the CNIC of petitioner is annexed herewith.
2. That on 24/02/2012 an advertisement for the post of Ward Attendant was made in Daily Mashriq by the respondents. Copy of the advertisement is annexed herewith.
3. That petitioner being fully qualified for the post as per the advertisement made, applied in accordance with the advertisement, and was appointed as Ward Attendant after fulfilling all the code and departmental formalities. Copies of appointment order dated 15/05/2012 and Minutes of Meeting are enclosed herewith.
4. That after the appointment, the petitioner submitted his Medical Certificate to the office of respondent No. 6. Copies of Medical Certificate & salary slip are annexed herewith.
5. That on 28/04/2015, the respondent No. 6 wrote to District Account Officer to stop the pay of the employees along with appellant.



(12)

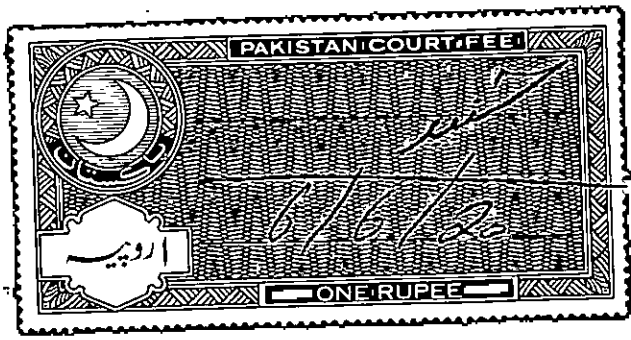
grievance by filing Writ Petition No. 418-D/2015 and WP No. 541-D/2015 which came up for hearing on 15/12/2015 and Honourable Divisional Bench of High Court has been pleased to dispose of the petition on the commitment of respondent No. 6/M.S DHQ Hospital Tank. That the salaries of the all the effectees will be released. Copies of Writ petitions and order dated 15/12/2015 are annexed herewith.

7. That on 09/01/2016, the respondent No. 6 issued a show cause notice to the appellant without compliance the orders of Honourable Peshawar High Court Bench D.I.Khan, hence, it is clear cut violation/counter blast of the valid order of the Court.
8. That on 23/01/2016 detail reply of show cause notice was submitted to the respondent No. 6. Copies of show cause notice and reply are enclosed herewith.
9. That on 09/05/2016 the appellant was illegally and without justification removed from service by the respondent No. 6. Copy of termination order dated 09/05/2016 is annexed herewith.
10. That Feeling aggrieved from the termination order, the appellant preferred departmental appeal to respondent No.3/Director General Health services being appellate authority on 21/05/2016. Copy of departmental appeal is annexed herewith.
11. That up-till now no response has been shown from the respondents and after the laps of statutory limitation of departmental appeal, cause of action has been accrued to the appellant for the instant appeal, Hence the instant service appeal.
12. That jurisdiction of this worthy service tribunal is being invoked in attending circumstances against the impugned termination order No. 2382-86 dated 09/05/2016, inter alia on the following grounds amongst others;



GROUNDS

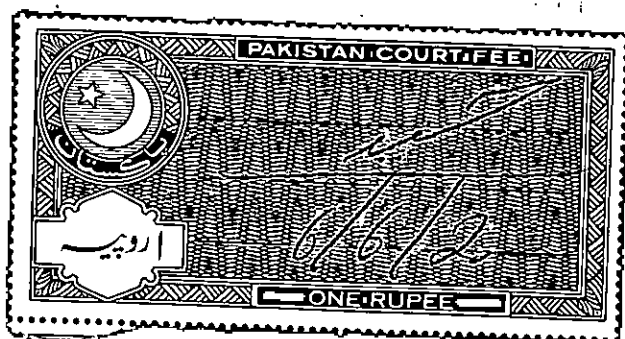
- a. That the impugned termination/removal order No. 2382-86 dated 09/05/2016 and indecision of appellant's departmental appeal is illegal, against services Law and rules, without jurisdiction, in violation of the precedents of Honourable apex courts of the country and is not justifiable for any reason whatsoever.
- b. That appellant was appointed against vacant post of Ward Attendant posted at DHQ Hospital Tank, after submission of all formalities, District Accounts officer Tank checked salary form, verified the same for activation of salary and personal computer salary Number was also allotted. Since then, Appellant has been serving health department and invested his full skill, energy and honesty in performance of his duties. But, act of respondents is injustice to with appellant and termination order is against Law.
- c. That reasons mentioned in impugned termination order are baseless and termination order was issued without adopting any codal formalities and without any giving personal hearing to the appellant. Hence, the appellant was condemned unheard.
- d. That in this regard at a number of occasions, it has been held by Supreme Court that if department feels certain prior appointments as illegal then instead of penalizing petty employees like Ward Ardali, Naib Qasid, Junior Clerks etc, who have to earn livelihood to support their families, action should be taken against the authority who had mis-exercised its powers. Reliance is placed on 2012 SCJ 780 for ready reference.
- e. The act/refusal/omission on the part of respondents is not grounded in reason nor does it smack of sensible or saner approach.
- f. That prior to the instant inquiry, another inquiry was conducted on the same facts and alleoations in the vear 2013 vide which



(13)

appointments were declared as in accordance with law and rules by the then inquiry officer. Copy of inquiry report is enclosed for kind perusal.

- g. That no doubt inquiry under the E&D Rules is conducted against the employees/officials provided such employee is at fault but in the present case, the appellant has neither committed any fault or misconduct but inquiry has been directed to be conducted against him and the inquiry officer/inquiry committee conducted the inquiry at the back and in the absence of without participation of appellant and no charge sheet and statement of allegations has been served upon the appellant.
- ii. That the impugned removal order and inquiry submitted against the appellant is illegal; against rules and fundamental rights and against principle of natural justice and is thus liable to be ignored and to be struck down.
- i. That after termination of the appellant, the respondents once again mala fidely advertised the same posts for X-Ray Attendant which shows the Department is in need of service but unfortunately after getting almost 04 year services from appellant terminated him is against law and natural justice.
- j. That it is very strange to note that in para 4 of the impugned order dated 09/05/2016, the Medical Superintendent has mentioned, "whereas you failed to produce any documentary proof (i.e. Original Merit List etc) whether the appellant was supposed to keep the merit list etc in his possession or it was the duty of the office to keep the record and whether the appellant can be penalized for non maintenance of the record by the record keeper?". This important aspect has been ignored by the respondent No. 6 M.S, whereas, in the earlier inquiry, held in 2013 all the record was available in the office, which was scrutinized by the inquiry officer and that is why the said inquiry was decided in favour of the appellant.
- k. That appellant was appointed by the approval accorded by the



(15)
then EDO, against a cadre post and respondent no. 6 has no authority whatsoever to terminate the appellant.

- i. That the respondent No. 6 discriminated the appellants because other employees who were appointed with appellant but still not removed from service and are still getting salaries from the department. Copies of salary slips of such employees are enclosed herewith.
- m. That appellant being citizen of Pakistan deserves to be dealt in accordance with law and the treatment meted out to him is in violation of Article 4 of our Constitution.

It is thus most respectfully prayed that on acceptance of this appeal, this worthy Tribunal may graciously be pleased to set-aside impugned termination/removal order No. 2382-86 dated 09/05/2016 and declare such order as illegal, void and devoid of merits. Consequently, appellant may please be reinstated in service with all back benefits. This appeal may please be allowed with costs. Any other relief deemed appropriate in circumstances of the case may also be allowed in favour of appellants as against respondents with costs.

___/08/2016

Your humble appellant

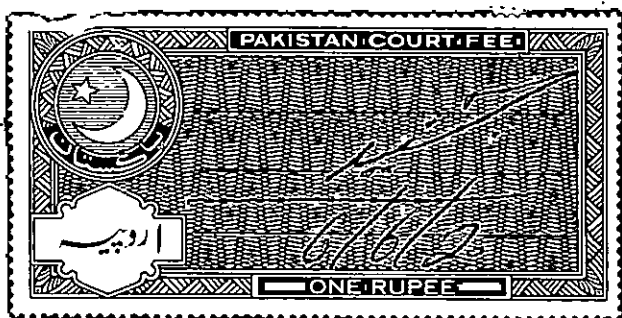
Naimat Ullah

Through counsel

Ijaz Anwar

Advocate Supreme Court of Pakistan
Peshawar

Muhammad Waqar Alam
Advocate High Court



Appeal No. 873/2016

Date of Institution 29.08.2016

Date of Decision 25.10.2017



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

(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Health Department,
Khyber Pakhtunkhwa Peshawar and 3 others.
(Respondents)

MR. MUHAMMAD WAQAR ALAM
Advocate

MR. YOUSAF JAN
Advocate

SHAIKH IFTIKAHU-UL-HAQ
Advocate

MR. FARHAJ SIKANDAR,
District Attorney

For appellant.

For respondents

ATTESTED
[Signature]

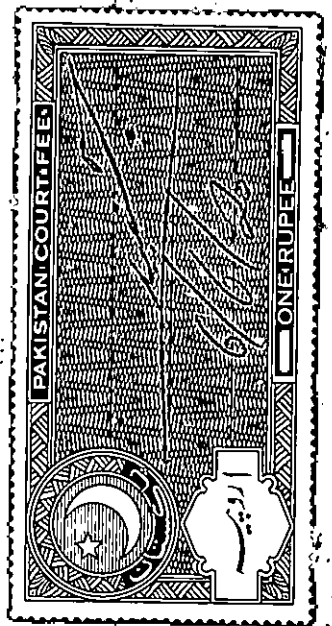
MR. AHMAD HASSAN,
MR. MUHAMMAD HAMID MUGHAL

MEMBER (Executive)
MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.

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



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

Argument of the learned counsel for the parties heard and record perused.

FACTS

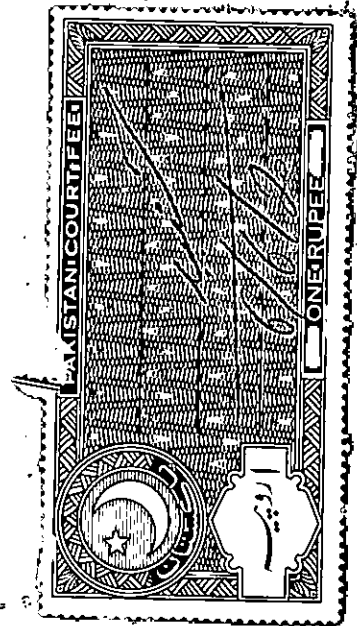
The brief facts are that the appellant was appointed as Junior Clinical Technician (Multipurpose) BPS-12 after observance of all codal formalities. Vide impugned order dated 09.05.2016 he was removed from service against which he preferred departmental appeal on 21.05.2016 but was not responded within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

ARGUMENTS

Learned counsel for the appellant argued that after fulfillment of codal formalities the appellant was appointed as JCT (Multipurpose) vide order dated 30.09.2012. Thereafter vide order dated 26.08.2013 he was adjusted in DHO Hospital Tank. On 26.04.2015 respondent no. 6 wrote a letter to District Accounts Officer to stop the salary of the appellant and others. The appellant and others filed Writ Petition no. 418-D/2015 and Writ Petition no. 541-D/15 in Peshawar High Court Bench D.I. Khan for the redressal of their grievances. Divisional Bench of Peshawar High Court vide order dated 15.12.2012 disposed of the petition on the commitment of respondent no.6 M.S DHQ, Hospital Tank that salary of all employees will be released. Subsequently, on 09.01.2016 a show cause notice was issued to the appellant to which proper reply was submitted. Vide impugned order dated 09.05.2016 he was removed from service. Impugned order is against the law and rules, codal formalities were not completed before passing this order. Opportunity of personal hearing was also not provided to him and was condemned unheard. First enquiry

ATTESTED

[Signature]
Clerk
District Tribunal
Peshawar



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

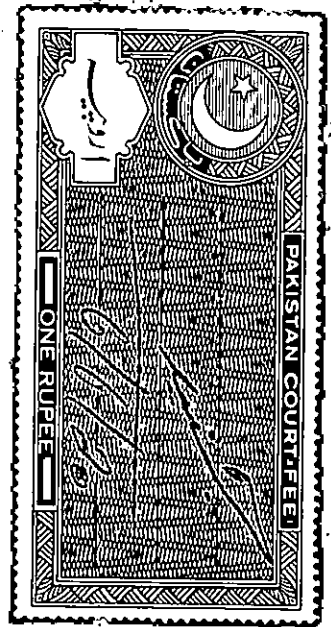
On the other hand learned District Attorney argued that sanctioned vacant posts were not available for appointment. Moreover, against the sanctioned strength of 117 posts of different categories DHQ, Hospital, Tank 139 officials were drawing salary. Thereafter enquiry was conducted and services of the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

CONCLUSION

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

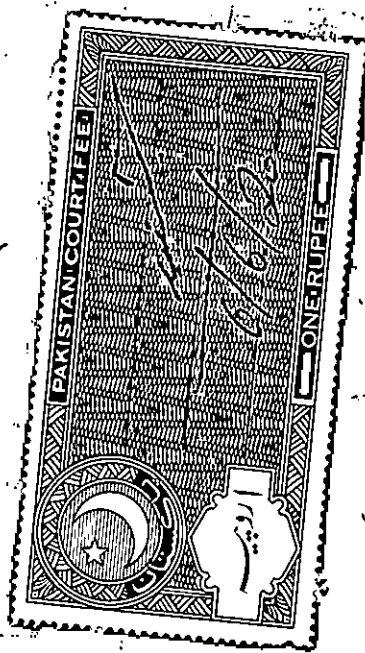
ATTESTED

Signature
Secretary
Tribunal



... failed to produce original merit list. It is funny, flimsy and against the established norms of official business. Needless to emphasize that maintenance of merit list is the responsibility of the respondents. It clearly demonstrates that the respondents had no valid grounds/justification to remove the appellant from service. Moreover, a letter dated 10.07.2012 annexed with the appeal indicates that 57 posts of various categories were created in DHQ Hospital Tank during the financial year 2011-12. Hence, allegation of non-availability of posts could not be substantiated. Learned District Attorney when confronted on this point to produce authentic documentary evidence was unable to present the same. Even the Medical Superintendent present during the hearing could not satisfy this Tribunal when asked to provide documents indicating details of sanctioned post in DHQ Hospital Tank. Several opportunities were afforded to them but they failed to bring these documents in support of their claim. Enquiry in 2015 was not conducted in the mode and manner prescribed in the rules. It appears to be a fact finding inquiry. Had it been conducted under E&D Rules 2011 then charge sheet and statement of allegations were required to be served on the appellant. As the appellant was not associated with the inquiry proceedings, hence, he was condemned unheard. He aptly raised similar objections and concerns in para-4 of the reply to the show cause notice served on him. In addition to above if inquiry was not conducted under E&D Rules 2011 and direct show cause notice was served on the appellant then specific reasons should have been recorded for dispensing with regular inquiry. However, the show cause is completely silent on this account. As such show cause notice was not served according to the procedure laid down in E&D Rules 2011. Moreover, the inquiry committee failed to probe the case properly. Neither specific discrepancies were highlighted nor tailor-made recommendations firmed up. The committee failed to fix responsibility and its only act evement was to have created more confusion. The committee miserably failed to address the vital question of non-availability of sanctioned posts. It is still a mystery that if the posts were not available and the sanctioned employees were drawing salary over and above then sanctioned strength then why these posts were re-advertised and fresh appointments were made? This Tribunal vide charge sheet dated 27.12.2016 had directed that fresh appointments if made by the respondents would be subject to the decision of instant service appeal. This condition has

ATTESTED

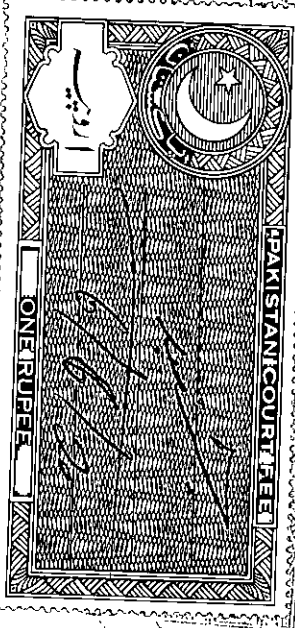
also been inserted in the appointment orders of newly appointed employees. Making fresh appointments against posts vacated due to termination of services of the appellant has proved beyond doubt that entire drama was staged by the respondents to accommodate their blue eyed candidates. Whenever an issue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

7. Time and again it has been held by the superior courts in various judgments that in case illegal appointments are made then action should be taken against the authority who made these appointments instead of penalizing the employees. It is strange that no action was taken against those responsible for making these appointments against the rules. Reliance was placed on case law as reported in 1996 SCMR 413, 1996 SCMR 1350, 2009 SCMR 412, 2006 SCMR 678, 2015 PLC (CS) 1519, 2004 SCMR 458, 2004 SCMR 630, 2004 SCMR 49 and 2004 SCMR 158.

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

(Signature)
(MUHAMMAD HAMID MUGHAL)
MEMBER

(Signature)
(ATIMAD HASSAN)
MEMBER
CAMP COURT D.I.KHAN



ANNOUNCED
25.10.2017

Certified to be a true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation 15-11-17
Number of Words 2560
Copying Fee 12
Urgent ✓
Total 14
Name of Copy [Signature]
Date of Stamp 15-11-17
[Signature]

OFFICE OF THE MEDICAL SUPERINTENDENT DHQ HOSPITAL DISTRICT-TANK

No. _____

Dated _____ / _____ / 2020.

To

The District Accounts Officer,
District Tank.

Subject:

REINSTATMENT / ADJUSTMENT OF 19 EMPLOYEES.

Memo,

It is stated that due to clerical mistake in this office letter No. 281 Dated 22-01-2020 in table format serial number 04, the pay & biometric attendance of Mr. Sadam Hussain Ward Orderly BPS - 04 was stopped and Mr. Naimatullah W/O was reinstated on the post of Mr. Sadam Hussain W/O.

Therefore, the services of Mr. Sadam Hussain W/O are hereby restored on his original post at DHQ Hospital Tank and requested to start the pay of Mr. Sadam Hussain W/O with effect from 1st January 2020.

Furthermore, the Honourable Services Tribunal Khyber Pakhtunkhwa Peshawar Camp Court D.I. Khan decision comes on Mr. Muhammad Ajar W/O.

Hence, the pay of Mr. Muhammad Ajar W/O may please be stopped and Mr. Naimatullah is hereby adjusted / reinstated on his original post occupied by Mr. Muhammad Ajar W/O.

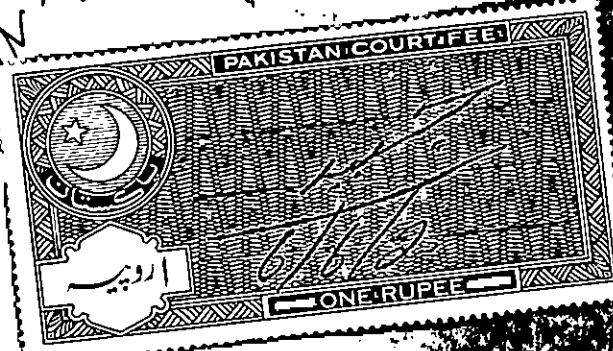
MEDICAL SUPERINTENDENT
DHQ HOSPITAL TANK

No. 718-24 / Dated 5 13 / 2020.

Copy to the:

1. Honourable Services Tribunal Khyber Pakhtunkhwa Peshawar Camp Court D.I. Khan.
2. Director General Health Services, Khyber Pakhtunkhwa Peshawar.
3. P.S to Secretary Health Khyber Pakhtunkhwa.
4. Mr. Sadam Hussain Ward Orderly BPS - 04.
5. Mr. Naimatullah W/O.
6. Mr. Muhammad Ajar W/O.
7. Office file for record.

MEDICAL SUPERINTENDENT
DHQ HOSPITAL TANK



*Attended to the
true copy*

Annexure (E)
page 22

To

The Director General,
Health Services,
Khyber Pakhtunkhwa, Peshawar.

Through Proper Channel

Subject: DEPARTMENTAL APPEAL/REPRESENTATION
AGAINST THE IMPUGNED ORDER#718-24
DATED 05/03/2020 ISSUED BY THE MEDICAL
SUPERINTENDENT, DISTRICT HEADQUARTER
HOSPITAL DISTRICT TANK VIDE WHICH THE
SALARIES OF PETITIONER ILLEGALLY STOPPED
DUE ^{to} MISCONCEIVED OF THE DECISION DATED
25/10/2017 OF THE HONOURABLE KPK
SERVICE TRIBUNAL PESHAWAR CAMP COURT
DERA ISMAIL KHAN.

Respected Sir,

Applicant humbly submits as under,

1. That the appellant was appointed vide order bearing No. 4436 dated 08/08/2016 as Ward Orderly (BPS-04) against the newly created post at District Headquarter Hospital Tank and since then the appellant has been serving the department with entire satisfaction of his superiors. Copy of appointment order is annexed.
2. That the Medical Superintendent DHQ Tank issued a letter No. 2382-86 dated 09/05/2016 vide which the services of various employees including one Naimatullah (Ward Attendant BPS-2) were removed/terminated.
3. That the above said Naimatullah (Ward Attendant BPS-2), feeling aggrieved by the order dated 23-82-86 dated 09/05/2016, preferred a service appeal No. 876/2016 before the honourable KPK Service Tribunal Peshawar Camp Court Dera Ismail Khan.
4. That the honourable KPK Service Tribunal Peshawar Camp Court Dera Ismail Khan accepted the service appeal of Naimatullah vide order dated 25/10/2017 with the directions as under, "As a

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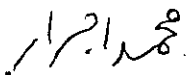
sequel to above the appeal is accepted by setting aside the impugned order dated 09/05/2016 and the appellant is reinstated in service.,.

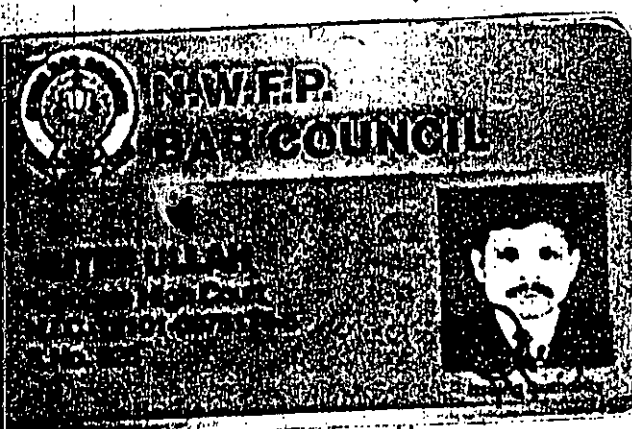
5. That it is pertinent to mention here that the said Naimatullah was posted as Ward Attendant in DHQ Hospital Tank and the present appellant is serving as Ward Orderly and the post of appellant was newly created as per order dated 4436 dated 08/08/2016 which has no concern whatsoever with the post of Naimatullah but the Medical Superintendent DHQ Tank issued the impugned order No. 718-24 dated 05/03/2020 vide which the salaries of appellant stopped with baseless allegations that the appellant occupied the post of Naimatullah. Copy of the impugned order No. 718-24 dated 05/03/2020 is annexed.
6. That the appellant is a law abiding citizen and during his whole services in the department, he left no stones unturned towards his high-ups and allegations leveled against him are baseless and is the result of misconception.
7. Now the appellant is aggrieved from the order No. 718-24 dated 05/03/2020 passed by the Medical Superintendent DHQ Tank and made request to your good self through this departmental representation/appeal to set the same aside by declaring it null & void, without any legal justification and has no effects upon the rights of appellant.

It is, therefore, most humbly prayed that on acceptance of instant departmental appeal the impugned order No. 718-24 dated 05/03/2020 may graciously be set aside and the salaries of appellant may kindly be resumed in the large interest of justice.

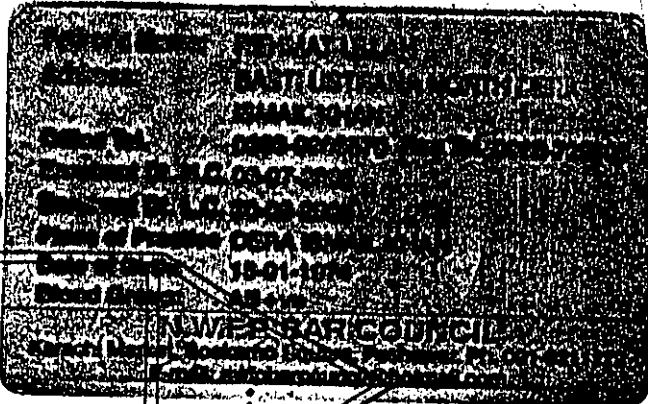
Dated: 14/03/2020

Yours' humble Appellant


Muhammad Jarar
Ward Orderly
District Headquarter
Hospital Tank.



وکالت نا



فیس

بعد از تصدیق صدر سروس ڈیپارٹمنٹ فیوچر پروفیشنل کے نام سے

محمد اجبرار
نام گورنمنٹ کالج کراچی

Service Appeal

باعث تحریر آنکے

مقدمہ درجہ بالا میں اپنی طرف سے درخواستوں اور جوابوں کی تاریخوں یا تہذیبیہ مقدمہ نام

محکمہ اعلیٰ عدالتوں اور عدالتوں کی طرف سے

کو حسب ذیل شرائط پر وکیل مقرر کیا گیا ہے کہ میں پیشی پر خود یا اپنا بڈیو رو برو عدالت حاضر ہونا ضروری ہے اور ہر وقت ہمارے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا اگر پیشی پر منظر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام کچہری کے علاوہ یا کچہری کے اوقات سے پہلے یا بیچے یا بروز قلیل ہیروڈی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ صدر کچہری کے علاوہ اور جگہ سماعت ہونے یا بروز قلیل یا کچہری کے اوقات سے پہلے یا بیچے ہونے پر منظر کوئی نقصان پہنچے تو اس کے ذمہ دار یا اسکے واسطے کسی معاوضہ کے ادا کرنے یا نمانت نہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے مجھ کو کسے ساتھ پر وادعت صاحب موصوف شمل کردہ ذات خود منظور قبول ہو گا اور صاحب موصوف کو عرض دہی یا جواب دہی یا درخواست اجراء اسمائے ذمیری نظر ثانی اپیل نگرانی و ہر قسم درخواست ہر قسم کے بیان دینے اور پر ثانی یا راضی نامہ و فیصلہ برائے کرنے اقبال دہی کا بھی اختیار ہو گا اور ہر صورت مقرر ہونے تاریخ پیشی مقدمہ و کور ہیران الا کچہری صدر ہاوی مقدمہ مقرر نظر ثانی اپیل و گرانٹی و برائی کی تہذیب یا پیشی کی تاریخ یا درخواستوں کے اقبالی یا اقبالی یا کر تادیبی قبل از فیصلہ اجراء ذمیری بھی صاحب موصوف کو بشرا ادا ہونگی علیحدہ نامہ ذمیری کا اختیار ہو گا اور تمام سائنس پر وادعت صاحب موصوف شمل کردہ از خود منظور و قبول ہو گا اور ہر صورت ضرورت صاحب موصوف کو یہ بھی اختیار ہو کہ مقدمہ مقررہ یا اس کے کسی جزو کی کاروائی یا ہر صورت درخواست نظر ثانی اپیل نگرانی یا دیگر معاملہ و مقدمہ مذکورہ کسی دوسرے وکیل یا ہیر مشرک کو اپنے ہجائے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کو بھی ہر امر میں دہی اور ویسے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانب التواء پڑے گا وہ صاحب موصوف کا حق ہو گا مگر صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہو گا کہ مقدمہ کی پروی نہ کریں اور ایسی صورت میں ہیرا کوئی وکیل کسی قسم کا صاحب موصوف کے بر خلاف نہیں ہوگا

لہذا وکالت نامہ لکھ دیا ہے تاکہ سند رہے
مورخہ 30 مارچ 2020

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

Accepted

محمد اجبرار

Signature

IN THE COURT OF SERVICE TRIBUNAL PESHAWAR
KHYBER PAKHTUKHWA CAMP OF DERA ISMAIL KHAN

S.T NO: 6343-D of 2020

CM No: _____ of 2021

Muhammad Ajarar

VERSUS

Govt of KPK & others

APPLICATION FOR WITHDRAWAL OF ABOVE TITLED
SERVICE APPEAL.

Respectfully Sheweth:-

That appellant humbly submits as under:-

1. That the above titled service appeal is pending adjudication before this Honourable court.
2. That as the grievance of the appellant has been redressed and the appellant does not want to proceed further this case. Hence, the above titled service appeal may kindly be treated as withdrawn. The copy order no 3888-3917 dated 13/10/2020 is append with.
3. That this honourable court has got vast and ample powers to withdraw the above said service appeal.

It is therefore, humbly requested that the above service appeal may graciously be dismissed as withdrawn.

Dated: 16/12/2021

Humble Petitioner

Muhammad Ajarar

Through Counsel

Mutee Ullah Rind
Advocate High Court

OFFICE OF THE MEDICAL SUPERINTENDENT DHQ HOSPITAL DISTRICT TANK

OFFICE ORDER:

As directed by the Director General Health Services, Khyber Pakhtunkhwa, Health Department letter No. 1934-37/Personnel Dated 28-09-2020, the following officials are hereby adjusted against the vacant posts mentioned against each for the purpose of drawl of pay with immediate effect in the best public interest:

S. No	Name of Official	Original Designation with BPS	Adjusted against the post with BPS
1.	Mr. Amjid Khan	Store Keeper BPS - 07	Charge Nurse BPS - 16
2.	Mr. Muhammad Arif	Store Keeper BPS - 07	Charge Nurse BPS - 16
3.	Mr. Muhammad Inam	Electrician BPS-07	Charge Nurse BPS - 16
4.	Mr. Iqbal Saeed	Plumber BPS - 07	Charge Nurse BPS - 16
5.	Mr. Hussain Bakhsh	Carpenter BPS - 06	Charge Nurse BPS - 16
6.	Mr. Mujeeb-ur-Rehman	Ward Orderly BPS - 04	Charge Nurse BPS - 16
7.	Mr. Ikramullah	Ward Orderly BPS - 04	Charge Nurse BPS - 16
8.	Mr. Saleem Nawaz	Ward Orderly BPS - 04	Charge Nurse BPS - 16
9.	Mr. Abdul Karim	Ward Orderly BPS - 04	Charge Nurse BPS - 16
10.	Mr. Muhammad Saleem	Ward Orderly BPS - 04	Charge Nurse BPS - 16
11.	Mr. Muhammad Ajjar	Ward Orderly BPS - 04	Charge Nurse BPS - 16
12.	Mr. Zafar Ali	X-Ray Attendant BPS - 03	Charge Nurse BPS - 16
13.	Mr. Sohail Jazbe	Sweeper BPS - 03	Charge Nurse BPS - 16
14.	Mr. Rameez	Sweeper BPS - 03	Charge Nurse BPS - 16
15.	Mr. Shoaib Khan	Chowkidar BPS - 03	Charge Nurse BPS - 16
16.	Mr. Javed Khan	Ward Orderly BPS - 04	CT (Dental) BPS - 12
17.	Mr. Naseebullah	Ward Orderly BPS - 04	CT (Pathology) BPS - 12
18.	Mr. Shabir Khan	Ward Orderly BPS - 04	CT (Cardiology) BPS - 12
19.	Mr. Touseef Khan	Ward Orderly BPS - 04	Lab Attendant BPS - 04
20.	Mr. Haman Jazbe	Sweeper BPS - 03	Sweeper BPS - 03 (Original Post)

S.D.x.x.x.x.x.x.x.x.x.x

**MEDICAL SUPERINTENDENT
DHQ HOSPITAL TANK**

No 3888-3917, Dated 13/10/2020.

Copy to the:

1. Director General Health Services, Khyber Pakhtunkhwa Peshawar.
2. Commissioner D.I. Khan Division D.I. Khan.
3. Additional DG (ADMN) DGHS Khyber Pakhtunkhwa Peshawar with reference your's office letter number mentioned above.
4. Deputy Commissioner, Tank.
5. District Health Officer, Tank.
6. Section Officer-III Govt. of Khyber Pakhtunkhwa Health Department, Peshawar.
7. Assistant Director (Lit) DGHS Khyber Pakhtunkhwa.
8. District Accounts Officer, Tank.
9. Above mentioned officials.
10. Office file for record.

**MEDICAL SUPERINTENDENT
DHQ HOSPITAL TANK**

[Handwritten Signature]