27.11.2019

Counsel for the appellant and Addl. AG for the respondents present.

Learned counsel requests for withdrawal of instant appeal with the reservation of right of appellant to pursue his further legal remedy, if need be.

Disposed of as withdrawn. File be consigned to the record.

Chairman

ANNOUNCED 27.11.2019

04.11.2019

Counsel for the appellant present.

Learned counsel has provided copy of a list issued by District Accounts Officer, North Waziristan Tribal District on 01.11.2019 which contains the name of appellant.

Contends that the appellant has not been paid any amount towards monthly salary from the date of appointment/taking over charge. After protracted correspondence and disposal of Writ Petition by the Honourable Peshawar High Court, an office order was issued by Agency Surgeon North Waziristan Tribal District on 23.04.2019, whereby the appellant was declared entitled to receive the subject salary as no order of termination /discontinuation of his service was ever passed. The respondents, despite the office order, were not inclined to actualize the payment. On the other hand, an advertisement was floated in the newspaper on 03.10.2019 whereby various posts, including that of the appellant, was advertised for filling up through applications by candidates. It is also the argument of learned counsel that the advertised posts are not available for filling up as the appellant is holding incumbency against one of those.

In view of available record and arguments of learned counsel, instant appeal is admitted for regular hearing subject to all just exceptions. The appellant is directed to deposit of security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 27.11.2019 before the S.B.

Alongwith the appeal an application praying for suspension of advertisement dated 03.10.2019 has also been preferred. Notice of the application be also given to respondents for the date fixed. Till next date the process, with regard to the advertisement dated 03.10.2019, shall not be finalized.

Appollant Process Fee

Form- A

FORM OF ORDER SHEET

Court of		
Case No	1247/ 2019	

		124//2019
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
;1	2	3
1-	07/10/2019	The appeal of Mr. Asif Nawaz presented today by Mr. Nooi Muhammad Khattak Advocate may be entered in the Institution Register
i.		and put up to the Worthy Chairman for proper order please.
		REGISTRAR 7/10/19
2-		This case is entrusted to S. Bench for preliminary hearing to be put up there on 281619.
28	10.2019	Counsel for the appellant present. CHAIRMAN
		Learned counsel requests for time to provide the list of officials as noted in the office order dated 23.04.2019 issued by
		Agency Surgeon North Waziristan Tribal District.
		Adjourned to 30.10.2019 before S.B. Chairman
!		
:	30.10.2019	Counsel for the appellant present.
; ,		Learned counsel requests for further time to do the needful as noted in the order dated 28.10.2019.
		Adjourned to 04.11.2019 before S.B.
:		Chairman
;		

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL No. 1247 /2019

A Six Naure Disposer or at V/S Civil Disposery Habibullah North 1098in ton Des H

HEALTH DEPTT:

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S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal		1 – 3
2.	Stay application		4
3.	Letter dated 17.01.2019	A	5
4.	Letter dated 31.01.2019	В	6.
5.	Judgment dated 19.03.2019	С	7- 8
6.	Appeal	D	9
7.	Office order dated 23.04.2019	Е	10
8.	Pay bill	F	11
9.	Observation	G	12
10.	Reply of observation	H	13
11.	Departmental appeal	. I	14
12.	Advertisement	J	15
13.	Vakalatnama		16

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK, ADVOCATE

ROOM NO. 3, UPPER FLOOR, NEW ISLAMIA CLUB BUILDING, KHYBER BAZAR, PESHAWAR CITY

0345-9383141

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

APPEAL NO. 1247 /2019

Khyber Pakhtukhwa

Asy Navaz Civil Despreamen pati butth Service Tribunal Diary No. 1392

North weigntan Dest

VERSUS

- 1- The Director General Health Services Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The District Health Officer, North Waziristan Tribal District.
- 3- The District Accounts Officer, North Waziristan Tribal District.

..... RESPONDENTS

SECTION OF THE APPEAL UNDER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST **INACTION** OF THE RESPONDENTS RELEASING THE MONTHLY SALARIES HAVING BEEN ALREADY APPROVED VIDE ORDER DATED 23-04-2019 **COMMUNICATED TO THE APPELLANT ON 26-06-2019 AND** IMPUGNED ADVERTISEMENT 3.10.2019 WHEREBY THE POST OF THE APPELLANT HAS BEEN RE-ADVERTISED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

Filedto-day 7 10 19

That on acceptance of this appeal the impugned advertisement dated 3.10.2019 may very kindly be set aside and the respondents may be directed to implement the order dated 23.4.2019 by releasing the monthly salaries of the appellant w.e.f 1.9.2012 till date. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH: **ON FACTS:**

Brief facts giving rise to the present appeal are as under:-

- That appellant is the employee of the respondent Department and 1had served the respondent department for quite considerable period efficiently and up to the entire satisfaction of his superiors.
- That appellant while performing his duty with respondent no. 2 2the monthly salaries of the appellant was stopped due to unknown reason against which the appellant filed departmental

	Appeal before the competent authority which was forwarded to respondent no. 2 for necessary action. The respondent no.2 after thorough scrutiny issued the letter dated 17-01-2019 whereby monthly salaries of the appellant were released. Copy of letter is attached as annexure
3-	That the same release order/letter dated 17-01-2019 was withdrawn without any cogent reason after 14 days vide office order dated 31-01-2019. Copy of the order dated 31.01.2019 is attached as annexure
4-	That the appellant feeling aggrieved from the action of respondent filed writ petition no. 1241-P/2019 which was disposed of in favour of the appellant and his colleagues vide judgment dated 19-03-2019. Copy of the judgment is attached as annexure
5-	That some of the colleagues of the appellant approached the appellate for the release of their monthly salaries the appellant. That on the said Departmental appeal the appellate issued directions to the respondent No.2 to release salaries forthwith. Copy of the appeal is attached as annexure
6-	That, in light of direction passed on appeal of the appellant respondent no. 1 issued released order dated 23-04-2019 which was communicated to the appellant on 27-06-2019 upon the order dated 23-04-2019 the bills for the monthly salaries which was outstanding was prepared. Copy of the order & Bill is attached as Annexure
7-	That the bills for monthly salaries were submitted before the respondent no.3 but instead of sanctioning the same the respondent no.3 returned the bills with observations vide letter dated 24-06-2019 which was properly resolved by the respondent no. 1 vide letter dated 24-06-2019 which is pending with respondent no. 2 till date. Copy letters are attached as annexure G&H .
8-	That in the meanwhile the post against which the appellant are working have been advertised by respondent no.2 inspite of knowing the fact the appellant are still working on the advertised post which is not vacant. Copy of the advertisement is attached as annexure
9-	That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others.

GROUNDS:

- A- That the act of the respondent no.2 by not sanctioning the bills for monthly salaries of the appellant is against the law, facts, norms of natural justice and materials on the record.
- 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 act of the respondent no.3 by not sanctioning the bills for monthly salaries of the appellant is violative of Law and Rules.
- D-That the respondents discriminated the appellant on the subject by not sanctioning the bills for monthly salaries of the appellant.
- E- That the respondents acted in arbitrary and malafide intentions by not sanctioning the bills for monthly salaries of the appellant.
- F- That act of the respondent no.2 by advertising the post of the appellant after having knowing the fact that the appellant is already working on the advertised post which is against the norms natural justice.
- G-That the respondents violated Article 38(e) of the Constitution of Pakistan, 1973 by not sanctioning the bills for monthly salaries of the appellant.
- H-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: 15.05.2019

THROUGH:

NOOR MOHAMMAD KHATTAK

ADVØCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL	NO.	· · ·	/2019

Aby havet Dispuser civil Dispusers Habitellah lest North wegin tan bus!

HEALTH DEPTT:

APPLICATION SUSPENSION OF OPERATION ON THE IMPUGNED ADVERTISEMENT DATED 03-10-2019

Respectfully Sheweth:,

- 1. That the appellant has filed the above titled appeal before this Honourable Tribunal in which no date has so far been fixed.
- 2. That all the three ingredient required for the grant of stay order are in favour of the appellant.
- 3. That contents of the instant application for suspension of the operation on advertisement may very kindly be consider as part and parcel of the main appeal.

It is therefore, most humbly prayed that on acceptance of this instant application the operation on the impugned advertisement dated 03-10-2019 as the respondent no. 1 has already announced the interview date i.e. 17-10-2019 & 18-10-2019 and if the same is not suspended the very purpose of the instant appeal would become infractuous.

Appellant,

Through,

NOOR MOHAMMAD KHATTAK,

Advocate High Court, Peshawar

MERGED AREAS WARSAK ROAD PESHAWAR, /DMS/FATA/Admo Dated:

Phone#. 091-9210106 091-9210212

To

The District Surgeon, Tribal District, NW.

Subject:

APPEAL FOR RELEASE OF SALARIES

It is in reference to a letter of Government of Pakistan, National commission for Human Rights vide No.08/18/COMP/FATA/NHCR dated 26-12-2018 pertaining to release of outstanding salaries of the appellant Mr.Zalud Noor and others, , wherein the commission has vividly referred the order of Supreme Court of Pakistan in captioned case No.16986-G OF 2018 IN THE MATTER OF REG, NON PAYMENT OF SALARIES TO THE STATE EMPLOYEES, the commission further stated that salaries of other 43 persons have already been released by your office vide No.8506-09 dated 10-05-2018..

It is further added that vide your letter No.938 dated 29-04-2016, No.19-10-2016,No.1715/C-2 dated 20-07-2016,6007/C-2 dated 19-12-2017 and No.6822-23/C-2 vacant position dated 02-01-2018, wherein you have categorically stated that the appellants have not been terminated from services, which has further endorsed by the Agency Accounts officer NW Agency vide his letter No.AAO/MRN/NWA/2018-19 3085 dated 17-09-2018 and intimated that no record of termination orders of the appellants is available at account office NW Agency.

It is pertinent to mention here that the Minister for Health Khyber Pakhtunkhwa has also been directed the undersigned to release the pay of the appellants i.e Mr. Zahid Noor and others, and zaheenullah and others if stopped without assigning any cogent

Consequent upon above you are hereby directed to give them the termination orders if they are terminated from services, and if not terminated then release their salaries from the date of stoppage without no further delay under intimation to this office in frame of General Financial Rules, as stoppage of pay without assigning cogent reason

> Tribal Districts, Peshawai /01/2019

/DHS/FATA/Admn Dated: CC for information and necessary action to the:

1- Registrar Services Tribunal, Peshawar.

2- Coordinator, National Commission for Human Rights w/s to his letter quoted above.

3- PS to Minister Health, Khyber Pakhtunkhwa, Peshawar w/r orders dated 21-12-2018 on the application of appellants

DCO Tribal District NW

'Medical Superintendent DHQ Hospital Miranshah request for same action please.

> Director Health Services Tribal Districts, Peshawar



Phonell. 091-9210106

091-9210212

FAX#

DIRECTORATE OF HEALTH SERVICES

MERGED AREAS WARSAK ROAD PESHAWAR. __/DHS/FATA/Adınn

OFFICE ORDER:

The competent authority is pleased to withdraw the letter vide No.713-18/DHS/FATA/Admn dated 17-01-2018 pertaining to "Appeal for release of salaries "addressed to District Surgeon NW, in the interest of public Service.

Director Health Services Tribal Districts, Peshawar No. 1/70-74 /DHS/FATA/Admn CC for information and necessary action to the:

- 1- Registrar Services Tribunal, Peshawar.
- 2- Coordinator, National Commission for Human Rights w/r to his letter
- 3- PS to Minister Health, Khyber Pakhtunkhwa, Peshawar
- 4- DCO Tribal District, NW.
- 5- District Accounts officer, Tribal District, NW.

Tribal Districts, Peshawa

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Serial No. of Date of Order of Order or other Proceedings Order of Proceedings Proceedings ORDER Writ Petition No.1241-P/2019 19.03.2019 Present: Mr. Muhammad Asif Yousafzai, Adv: for Zahid Noor etc., petitioners. SYED AFSAR SHAH, J .- Zahid Noor etc., the petitioners, through the instant constitutional petition, have asked for the issuance of an appropriate writ declaring that the order dated 31,01.2019 of the respondents, whereby, letter dated 17.01.2019 with regard to direction for releasing their salaries, has been withdrawn. We have gone through the available record carefully and considered the submissions of the learned counsel for the petitioners. Since the appeal of petitioners, as per statement

of the learned counsel for the petitioners and as is

evident from the record, is pending adjudication

before respondent No.1, therefore, we, at this stage, wouldn't like either to intervene or to touch / discuss merits of the case, lest it may prejudice the case of either party. However, we while disposing of this writ petition, direct the said authority to decide the appeal of petitioners one way or the other strictly in accordance with law through a speaking order within a fortnight positively, after receipt of this order by communicating the decision to them in a proper mode and manner. This writ petition is disposed of accordingly.

Announced. 19, 03, 2019

JUDGE

Date of Presentation of the Copy Copying Personal Control of Copying Personal Copying Perso

(Fayaz) (D.B. of Hon'ble Mr. Justice Syed Afsar Shah & Hon'ble Mr. Justice Abdul Shakoor)

10pic peshantan Appeal for ve storation of sale Subject: order at 57/1/0/9 with great suspect it is boought into your King notice that dur salaries were stopped by the Ex. Agent Surgion without any toget reason In this Connection the Minister Health office has been issued order to DHS PATA merged area for release of Pay In light of minister Directions the DHS pater was wound enough and issued belease order to Ageny surgion ours But Suddenly the DHS fall with drawn his order on 31-1-019 without my execut reasion. In this regard navious deponts of the A Sergion has also been submilled to DHS Rada where in it is stall that they were neither leveminaled nor released our salaries. There are 47 person s (Cap) There fore, it is Sambly Edgewill that the Agency tungerow NWDO may rady be carraled to release our salary which was stopped with out my reason for the larger justice and also directed in DHS sale in order dt 92/1/019. The postigues sign coult has already been divided our case and divided the respondent to interest 9 dieide it within zornighet is days. which noor and others Allerlid more at report to Takeen ullah & others proch SARY

OFFICE OF Phone & Fax:		•	•	**	•	ICT NORTI jencysurged			
No	*****	*****	*****	Miransl *****		Dated	****	<i> </i> ***:	/2019. ******

OFFICE ORDER:-

In pursuance to the directives /approval of Secretary Health ,Khyber Pakhtunkhwa and DHS Merged Areas Peshawar pertaining to release of salaries of the staff of Merged Area North Waziristan and to avoid the volume of the litigation and to esteem the honorable courts and appellants regarding release of outstanding salaries of the enlisted employees from the date of stoppage, as it is evident from the rerecord of this office that their terminations have not been made which has further rectify by the Agency Accounts officer NW vide his letter No.383DAO/MRN/NWD dated 12-03-2019 wherein it has been vividly intimated that no record of termination orders of the appellants is available at account office NW District hence stoppage of salaries without assigning cogent reason is illegal and violation of General Financial Rules.

Consequent upon above the outstanding salaries of enlisted staff is hereby released from the date of stoppage in the interest of public service.

Agency Surgeon North Waziristan Tribal District

CC 1433-37 /PF/AS/Miranshah dated: 23/04/2019. Copy forwarded for information and necessary action to the:-

- 1. District Accounts officer merged Area NW with request to release the outstanding salaries of enlisted employees/
- 2. Ps to Secretary Health, Khyber Pakhtunkhwa Peshawar.
- 3. PA to DHS Merged Areas, Peshawar.
- 4. Medical Superintendent DHQ Hospital Miranshah with request to release the outstanding salaries of enlisted employees.
- 5. Official concerned.

Agenly Surgeon
North Waziristan Tribal District

Rouned:



Employee Master File Creation Form

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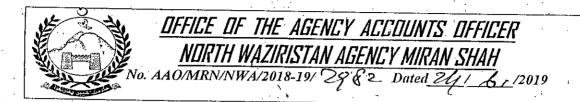
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- 2 Certifies that all the particular mentioned above are correct and the service Book atteched with the proforma is original and has been sined up-to date by the concerned Officer.
- 3 Certified that the employee mentioned above regular in attendance and has not been prodeeded abroad Rakistan.

AFTESTER

District Surgeon NWTD Mitan shah

District Accounts Officer



To,

The District Surgeon, NWTD Miran Shah.

SUBJECT:- OBSERVATION.

Memo,

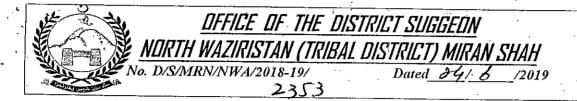
Kindly refer to your case pertaining drawn salary from the post of charge nurse with fowling observation returned.

- 1. The salary may be drawn from the regular budget otherwise.
- 2. Post available from the date of stoppage till date.
- 3. Secy: Health KPK orders may be attested.

Therefore the above observation may kindly be removed and resubmitted at early date for further processes the case in the best interest of general public.

ap.

Agency Account officer
NWA Miran Shah



To.

The District Accounts Officer, NWTD Miran Shah.

SUBJECT:- OBSERVATION.

Memo,

Kindly refer to your letter No.AAO/MRN/NWA/2018-19/2982 dated 24/06/2019 on subject noted above and stated that the observations is hereby removed and resubmitted to your good office

- 1. The salary may be drawn from the regular budget.
- 2. Post available from the date of stoppage till date.
- 3. Secy: Health KPK orders is duly attested.

Therefore you are requested to process the case as early as possible to resolve the issue once for all please

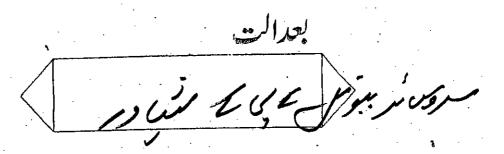
District Surgeon NWTO Minan Shah

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بنام في المحد

مورخه مقدمه **المیاکار.** دعوی

باعت تحريرانك

مقدمه مندرجه عنوان بالامين اپن طرف سے واسطے بیروی وجواب دہی وکل کاروائی متعلقه

النظام المرحد فله الله ومان

مقررکر کے اقرار کیاجا تا ہے۔ کرصاحب موصوف کو مقد مدگی کل کاروائی کا کال اختیار ہوگا۔ نیز وکیل صاحب کوراضی نامہ کرنے وتقر رہالت و نیصلہ پرحلف دیئے جواب دہی اورا قبال دعوی اور مصورت ڈگری کرنے اجراء اور وصولی چیک ورو بیارعرضی دعوی اور درخواست ہرتم کی تقدیق نرایس پردسخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیردی یاڈگری کی مطرفہ یا ایکل کی برامدگی اور منسوخی نیز دائر کرنے ایجل گرائی وفیار ٹائی و پیردی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ فیکور کے کل مختار ہوگا۔ از بصورت ضرورت مقدمہ فیکور کے کل یا جزوی کاروائی کے اسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے ہجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شادہ کو بھی وہی جملہ فیکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختہ منظور و تبول ہوگا دوران مقدمہ میں جوخر پیٹر ہم جانہ التوائے مقدمہ کی سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حدسے با ہر ہوتو و کیل صاحب پا بند ہوں سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حدسے با ہر ہوتو و کیل صاحب پا بند ہوں گئے۔ کہ پیروی مذکور کریں۔ الہٰ داد کالت نا ملکھ دیا کہ سندر ہے۔

Auchit . 20 19

بالزبر اه

المرثو

کے لئے منظور ہے۔

مقاما