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Disposed of as withdrawn.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.

ollani E posited irity & Process Fee

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.

Chairmán

Form- A

FORM OF ORDER SHEET

Court of_

-	Court	UI
•	Case No	1265/ 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. Kamal Nasir presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register
		and put up to the Worthy Chairman for proper order please.
2-		This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>281619</u> . CHAIRMAN
	28.10.2019	Counsel for the appellant present. 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.
9 		
	30.10.2019 n	Counsel for the appellant present. Learned counsel requests for further time to do the eedful 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. 1265 /2019

Kamel Alesin Malaria Superist 15 at THE HOSpilie North roszinta Disi.

HEALTH DEPTT:

INDEX					
DOCUMENTS	ANNEXURE	PAGE			
Memo of appeal		1 – 3			
		4			
Letter dated 17.01.2019	Α	5			
Letter dated 31.01.2019	В	6			
Judgment dated 19.03.2019	С	7-8			
	D	9			
	E	10			
	F ,	11			
Observation	G	12			
Reply of observation	H	13			
	I	: 14			
	J	15			
		16			
	DOCUMENTS Memo of appeal Stay application Letter dated 17.01.2019 Letter dated 31.01.2019 Judgment dated 19.03.2019 Appeal Office order dated 23.04.2019 Pay bill	DOCUMENTSANNEXUREMemo of appealStay applicationLetter dated 17.01.2019ALetter dated 31.01.2019BJudgment dated 19.03.2019CAppealDOffice order dated 23.04.2019EPay billFObservationGReply of observationHDepartmental appealIAdvertisementJ			

Kanel

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 I	NO. 1265 /20)19 Kayber Pakhtukhwa Service Tribunal
Kamal	Nasir Malar	na Supervisor	Diary No. 1369
at THO	Hospital Nor	the rost iristan Dest	Dated <u>7-10-20</u> 19

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 KHYBER APPEAL UNDER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST INACTION OF THE RESPONDENTS BY NOT THE 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 DATED AGAINST THE 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:

Filed to day Filed to -dayadvertisement 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.

<u>R/SHEWETH:</u> <u>ON FACTS:</u> <u>Brief facts giving rise to the present appeal are as under:-</u>

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

- **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**D**.
- **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**.
- **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

Hanal APPELLANT

THROUGH: NOOR MOHĂ IMAD KHATTAK ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. ____/2019

Kamal Nasiv Malaria Super VISON VS at THO Hospital North WAZING the Dist

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.

Kam el. Appellant,

Through, **NOOR MOHAMMAD KHATTAK,** Advocate High Court, Peshawar

	AL-TE AL
Phone#.	091-9210106
FAX#.	091-9210212
****	^Ţ ŴġŢŴġŢŢŢŢŢŢŢŢŢŢŢŢŢŢŢŢŢŢŢŢŢŢŢŢŢŢŢŢŢŢŢŢ

MERGED AREAS WARSAK ROAD PESHAWAR, No_______/DHS/FATA/Admn Dated:-

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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.Zalid 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 infimated 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 reason.

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 is illegal.

No. 7/3;--/DHS/FATA/Admn Dated: 18

Director R ealth Services Tribal Districts, Peshawar[®] /01/2019 11

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 quoted above.
 - 3- PS to Minister Health, Khyber Pakhtunkhwa, Peshawar w/r orders dated 21-12-2018 on the application of appellants
- 4- DCO Tribal District NW

ALTESTER, Kanal

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

Director Health Services . . . Tribal Districts, Peshawad



DIRECTORATE OF HEALTH SERVICES

Phone#. 091-9210106 FAX#. 091-9210212

MERGED AREAS WARSAK ROAD PESHAWAR. No ___/DHS/FATA/Admn Dated:-

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.

No. 1/70-74 /DHS/FATA/Admn CC for information and necessary action to the:

Director Health Services Tribal Districts, Peshawar Dated: ____/01/2019

- 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.

ATTESTED.

Director Tribal Districts, Peshawat

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Order or other Proceedings

Writ Petition No.1241-P/2019

Case No.....

Date of Order of

Proceedings

2

ORDER

19.03.2019

Court of

Serial No. of

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Proceedings

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ATTESTED

Kand

Present: Mr. Muhammad Asif Yousafzai, Adv: for Zahid Noor etc., petitioners.

a Judge.

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 <u>31,01.2019</u> of the respondents, whereby, letter dated <u>17.01.2019</u> with regard to direction for releasing their salaries, has been withdrawn.

2. We have gone through the available record carefully and considered the submissions of the learned counsel for the petitioners.

3. 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

8. 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 6. T 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 Ð JUDGE 11589 Date of Presentation CERTIFIED TO BE TRUE COPY No of Pages Copying Fee mounter Urgent Feery 7.5r 1984 20 MAR 2019 Total Date of Preparation Date Deceiv ed By ATTESTED Kanal (Fayaz) (D.B. of Hon'ble Mr. Justice Syed Afsar Shah & Hon'ble Mr. Justice Abdul Shakoor)

D -ICPIC DESLAWARY Appeal Ar estoration of Subjet: order det \$7/1/0/9 with great suspect it is borught inthe your King K/an, Molice that Sur salarics mere stopped by the Ex. Agening Burgron with out any logent reason In this Connection the Minister Health scpie has been issued order to AHS FATA merged area gor kelouse & pay. In light of minister Direction the DHS path was land enough and issued belease order to Agang Surgionorwo But Buddenly the Dits pala with drawn his order on 31-1-019 without my logant reasion. In this regard Navious deports of the A surgion has also been submilled to DHS parts where in it is slated that they were neither levoninalid nor vehased our salaries. There are 47 Therefore, it is fundly appreced that the Aging bunger NIND may rady be directed to selease our Salary which was stopped with out any rection for the larger justice and also directed un DHS pater in order at 2/1/019. The posterwar High could has already been diended our case and divicelia the respondent to interest) dieide il within Fornighet 15 daugs. DHO NOTH WORSTOSSI Aren Posi anic Cahid noor and others -report the release to 200× Zaheen ullah & ottois ascentar and Allerlid missee e pro Jeep Annal 1 agree press. SNENC he minde ordent when Service States Nete Nanal

 OFFICE OF THE AGENCY SURGEON TRIBAL DISTRICT NORTH WAZIRISTAN

 Phone & Fax: 0928300788-311662
 email:agencysurgeonnwa@gmail.com

Miranshah Dated / /2019.

E-10

OFFICE ORDER:-

No.

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.

ATIESTEL. Kanal

- 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.

Reined.

Ageney Surgeon North Waziristan Triba District

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1 certified that the CNIC issued by NDRA has been verified and found correct. 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 profeeded abroad Pakistan.

ATTESTED, Vanal

District/Surgeon NWTD Mitan shah

District Accounts Officer



То,

DFFICE OF THE AGENCY ACCOUNTS OFFICER NORTH WAZIRISTAN AGENCY MIRAN SHAH No. AAO/MRN/NWA/2018-19/ 29 82 Dated 24/ 6, /2019

The District Surgeon, NWTD Miran Shah.

SUBJECT:- OBSERVATION.

i

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.

ecounts Agenc HNWA Miran

5-12

AL ESTED Kanal

NORTH WAZIRISTAN (TRIBAL DISTRICT) MIRAN SHAH No. D/S/MRN/NWA/2018-19/ Dated 34/6/2019 2353

DFFICE OF THE DISTRICT SUGGEON

The District Accounts Officer, NWTD Miran Shah.

SUBJECT:- OBSERVATION.

Memo,

Ţo,

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 an Shah

H - 12

ATTESTED

I-11 بحد صاب / المؤسس السرماحية المرتقان الحشري درواست عادد والمحالي مراح مع ماد الح متح ال Just NW Energy Erle aver Sing here في الألف الم مؤدم مزار مش می جایی ہے میں من DHO ناعد oljøg fung by BRS-12 Jucitizio 303 - mail 200 - 1 Sturl Company in the stand of the well of the second of the seco 26 5 pine. (10) [] ط و ما مردار ، ما *ما ما* lacent artested Miran Shah Kemil

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	يروزيده		متعلقه شعبه مين دوساله ويؤمه		
			میدداروں کوانٹرو یو کے لئے بلایا جائے گا۔ (2) انٹرو کو کے لئے		- 8
			ہوگا۔(4)درخواست کے ساتھ کمپید ٹرائزیڈتو می شاختی کارڈ، تج	•	- 0
			ن ردری لا نا ہوگا۔ (5) پہلے سے موجودہ سرکاری اہلکارا پنی درج		
			، دک جائے گی۔(7) مجاز القارق کوتمام یا کمبی الیک درخواست		
			بالكاحكومت كي مروجة تواعد وضوائط كي تحت عمل مثل لاكى جائ		
) پہلے ہے جنع شدہ	بقوركيا جائة كا-(10	۔ بصورت دیگر قمریجی اصلاع کے امید داردن کی درخواستوں ب وربید استر حرب		
	CON T	16	ې در تواکن کې لري. مې د موال کې لري.) دالول کوچا ښېخ کې ده د د باره ا س	. 8
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2220193 Min William 2010222 mni J. Frider -<u>ر</u>ا ۲ 11's J 4/1-61 OZ' 19 Maryno - بسارة مصرة ويت الادا بلا- رو الماري مي المار المراجر المدينية بسيمال ليرتي يمديد أحديد في مدين والتاريخ في المركم المحدة والمعار المعالية المحالية المحالية المحالية ور سايقه فيه ايمان لو بر شي رزو لشه مديقه والدو لا وزور لا بني ريك شخار پر شخال لا ساده کے کہ کہ کہ ایک ایک اور ور پر اور ہے، لکڑی کی میں کی میں کے میں کہ میں اور اور ایک کیا خداد فيداله المرجد المراب فالتعليل في الحد حرفان المراد، برل فحر مالك مقد ت، بر من با المحادث التحريف المراحية المراجي المالي المراجي المالية الحسر المراجية المحسر المراجية ال المدار (الجاد عنه وركرة الايد له من عنه يد ولام التعالاج الم الحية براران لي مهي كركمية مسايد الأعو، المحري المترة ماء سلية المعرة ماه الذاب كراد بحري المعرة ، الأيحني المجاري التربب الجاحية سلط بله يناف بلغ مكن المرابع المحاري المحاري المحاري المحارية المحالية المحالي بذ الأيد المعال لالألان لا لولاسة عرب مع مع مع المحر - و الولار الجال الحر الم Rimin In Dider Tout hison ي تقليت رأي، لاركن رد، ب ايج ورك، بند فشراء حد ف بحالي الما الأن المنافعة شبيد بدم مدينه مواتر کچچیوا لربخ izin. n 9/19 ~IY ښرانې *ک* ي المر Anone hi

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