

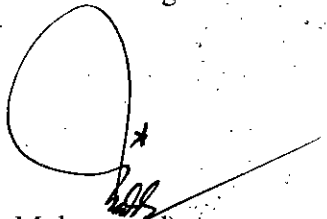
The appellant was retired on
2/9/2020 due to which the present
appeal is infructuous and wants
to withdraw present appeal

25.06.2019

Counsel for the appellant present. Mr. Kabirullah Khattak,
Addl: AG alongwith Mr. Kurram Sajjad Ali Khan, Pharmacist for
official respondents and counsel for private respondent No.4
present.

Learned counsel for the appellant submitted before the
court that the appellant has been retired from service w.e.f
02.04.2020 due to which the instant appeal has become
anfructuous and wants to withdraw. In this respect his signatures
also affixed on the margin of the order sheet. Since the appellant
has been retired from service as sated above, therefore, the instant
service appeal is hereby dismissed as withdrawn. File be consigned
to the record room.

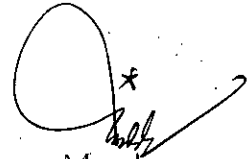
Announced:
25.06.2019


(Mian Muhammad)
Member(E)

04.03.2020

Appellant alongwith counsel and Addl. AG alongwith Sher Baz S.O for the respondents No. 1 to 3 present. Nemo for respondent No. 4.

Amended memo. of appeal alongwith copies submitted by the appellant. Copy handed over to representative of the respondents. Notice of amended appeal be given to respondent No. 4. To come up for written reply on main appeal as well as reply/arguments on stay application on 19.03.2020. The restraint order dated 19.02.2020 shall remain operative till the date fixed.



Member

19.03.2020

Junior counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for official respondents No. 1 to 3 present. Mr. Khurram Sajjad Ali Khan furnished Power of Attorney on behalf of private respondent No. 4 submitted. The same is placed on record. Learned Additional AG for official respondents No. 1 to 3 as well as attorney for private respondent No. 4 requested for further time to furnish written reply/comments. Adjourned to 02.04.2020 for written reply/comments before S.B. The restraint order dated 19.02.2020 shall remain operative till the next date.



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

02.04.2020

Due to public holiday on account of COVID-19, the case is adjourned for the same on 25.06.2020 before S.B.



Reader

19.02.2019

Appellant with counsel present and submitted amended appeal. Preliminary arguments heard.

Learned counsel for the appellant argued that through the present service appeal, the appellant has made impugned the order dated 16.09.2019 of his transfer from the post of MS DHQ Hospital KDA Kohat and posting of private respondent No.5 as Chief Medical Officer in the said hospital. Vide office letter dated 18.12.2019 it was conveyed that the departmental appeal filed by the appellant was rejected.

Learned counsel for the appellant while referring to the judgment of this Tribunal dated 09.02.2019 passed in Service Appeal No 823/2019, contended that since the private respondent No.5 is a Senior Medical Officer belonging to General Cadre, hence his appointment against Management Cadre post is illegal.

Submissions made by the learned counsel for the appellant, need consideration. The present service appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 04.03.2020 before S.B.

Annexed with the memo of appeal is an application for interim relief. Notice of the said application be also issued to the respondents. In the meanwhile operation of impugned order dated 16.09.2019 shall remain suspended till the next date i.e. 04.03.2020.



Member

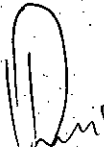
Appellant Deposited
Security & Process Fee

17/2/20

24.01.2020

Junior to counsel for the appellant present.

Requests for adjournment due to general strike of the Bar. Adjourned to 06.02.2020 before S.B.



Chairman

06.02.2020

Appellant alongwith his counsel present. Mr. Taimur Ali Khan, Advocate submitted Vakalat Nama on the behalf of the appellant. The same is placed on record. Learned counsel for the appellant also submitted application for amendment in the service appeal on the ground that the appellant filed departmental appeal against the impugned order on 23.09.2019 but the same was not decided at the time of institution of present service appeal i.e 02.12.2019. Later on, the departmental appeal was decided on 18.12.2019, therefore, he want to challenge the departmental authority order through amendment in the present service. The reason mentioned in the application appears to be genuine, therefore, the application is allowed. To come up for amended service appeal on 19.02.2020 before S.B.



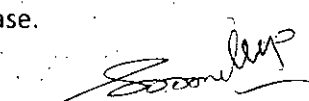


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 2229/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/12/2019	<p>The appeal of Dr. Farooq Shah resubmitted today by Mr. Ajoon Khan 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-	01.01.2020	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>01/01/20</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Appellant with counsel present. Learned counsel requests for time to further prepare the brief regarding the jurisdiction of this Tribunal in maintaining the appeal in hand. Adjourned to 24.01.2020 before S.B.</p> <p style="text-align: right;"> Chairman</p>

A-11


This is an appeal filed by Dr. Farooq Shah today on 02/12/2019 against the order dated 16.9.2019 against which he preferred/made departmental appeal/ representation on 23.09.2019 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, which is premature as laid down in an authority reported as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/Counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action.

- 1- Memorandum of appeal may be page marked according to the Index. ✓
- 2- Annexures of the appeal may be attested. ✓
- 3- Annexures of the appeal may be flagged. ✓
- 4- Annexures are not in sequence which may be annexed serial wise as mentioned in the memo of appeal. ✓
- 5- Copy of summary dated 08/01/2019 mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 6- One more copy/set of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

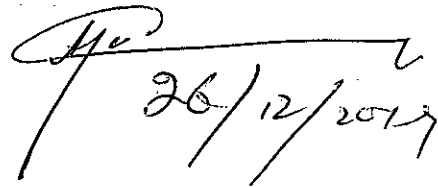
No. 2412 /ST,

Di. 3-12 /2019


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Ajoon Khan Adv. Pesh.

*objections has been removed
accordingly.*


26/12/2019

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

AMENDED APPEAL NO.2229/2019

Dr. Farooq Shah

V/S

Govt: of KP

INDEX

S. No.	Documents	Annexure	P. No.
01	Memo of appeal	-----	01-04
02	Suspension application	-----	05-06
03	Copy of the impugned notification along with departmental appeal	A&B	7-12
04	Copy of the order of Honorable Peshawar High Court	C	13-15
05	Copies of rejection order dated 18.12.2019, affidavit, application and order sheet dated 06.02.2020	D,EF&G	16-21
06	Copy of the order of this Honorable Tribunal in same like case 09/08/2019 along with clipping of newspaper	H	22-26
07	Vakatlama	-----	27

APPELLANT

THROUGH:

M. Asif Yousafzai
M. ASIF YOUSAEZAI
ADVOCATE SUPREME COURT

Taimur Ali Khan
(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Amended Appeal No. 2229/2019

Dr. Farooq Shah S/O Zewar Shah R/O Gulberg No. 2,
House No. 284, Muhammad Ali Street Peshawar Cantt.

APPELLANT

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
3. Director General (DG) Health Government of Khyber Pakhtunkhwa Khyber Road, Peshawar.
4. Dr. Raheem Khan, General Cadre of BPS-20, Medical Superintendent DHQ Hospital KDA, Kohat.

RESPONDENTS

AMENDED APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ACT OF RESPONDENT, UPON WHICH THE APPEAL OF APPELLANT REGARDING ILLEGAL, UNLAWFUL ORDER OF THE RESPONDENTS PERTAINS TO TRANSFER OF THE APPELLANT FROM DHQ HOSPITAL KDA KOHAT, BEING RETAINED MANAGEMENT CADRE BPS-20 TO OFFICE OF DIRECTOR GENERAL HEALTH SERVICE KPK PESHAWAR, BY CHANGING THE MANAGEMENT CADRE TO GENERAL CADRE, VIDE IMPUGNED DEPARTMENTAL ORDER/NOTIFICATION BEARING NO. SOH(E-V)I-5/2007/SUMMARILY DATED 16.09.2019 COUPLED WITH THE SUMMARY DATED 08.01.2019 APPROVED BY THE WORTHY CHIEF MINISTER OF KPK PESHAWAR, HAS YET NOT BEEN DECIDED, HENCE THIS SERVICE APPEAL FOR TO DECLARE THE ACT OF THE RESPONDENT THROUGH WHICH APPELLANT ILLEGALLY TRANSFERRED TO OTHER PLACE OF SERVICE, BUT WITH THE CHANGE OF HIS RETAINED CADRE AND AGAINST THE ORDER DATED 18.12.2019 RECEIVED BY THE APPELLANT ON 27.01.2020 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT WAS REJECTED.

PRAYER

THAT ON THE ACCEPTANCE OF THIS AMENDED APPEAL, THE NOTIFICATION BEARING NO. SOH(E-V)I-5/2007/SUMMARILY DATED 16.09.2019 COUPLED WITH THE SUMMARY DATED 08.01.2019 APPROVED BY THE WORTHY CHIEF MINISTER OF KPK PESHAWAR AND REJECTION ORDER DATED 18.12.2019 MAY GRACIOUSLY PLEASE BE SET ASIDE, AND THE APPELLANT MAY BE SUSTAINED TO HOLD HIS RETAINED MANAGEMENT CADRE INSTEAD OF GENERAL CADRE. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That retained BPS-20, specifically in the Management Cadre who was illegally, unlawfully treated by the respondents department, while passing their impugned department order/vidé notification SOH(E-V)I-5/2007/Summary dated 16.09.2019. Coupled with the summary dated 08.01.2019 approved by worthy Chief Minister of KPK, according to which the transfer of the appellant from DHO KDA Kohat in Management Cadre to office of respondent No. 3 in General Cadre is approved. **(Copy of the impugned notification along with departmental appeal are appended herewith as annexure-A & B respectively.**
2. It is the matter of the fact that appellant earlier released that it is the case of the quo-warranto issuance of writ against the respondents department, by observing constitutional jurisdiction therewith, it was thus the writ petition bearing No. 5506/2019, preferred to Honorable Peshawar High Court, which was pleased to disposed off vidé order dated 07.11.2019, according to which it was order that the writ petition is not maintainable in its present form, thus attract jurisdiction of this Hon'ble Tribunal. **Copy of the order of Honorable Peshawar High Court, on the writ petition of the appellant, is also enclosed herewith as Annexure-C).**
3. That appellant being still aggrieved with the above impugned notification of his with regard to the transfer matter of the appellant specifically on the basis of alter, change the cadre of management to cadre of General, filed service appeal in this august Service Tribunal, as before invoking of any constitutional jurisdiction or so of any appropriate forum whatsoever, it is the notable fact that on 23.09.2019, the legal requisition of preferring departmental appeal against the impugned order has already been placed before the competent authority of respondent Department but with the mum reply.
4. That the departmental appeal of the appellant was rejected on 18.12.2019 and received by the appellant on 27.01.2020, which is duly supported by

an affidavit and the rejection order dated 18.12.2019 was also necessary to challenge before this august Tribunal, therefore the appellant filed application for amendment in the instant appeal which was allowed on 06.02.2020. Hence the presents amended appeal on the following grounds amongst others. **(Copies of rejection order dated 18.12.2019, affidavit, application and order sheet dated 06.02.2020 are attached as Annexure-D,E,F&G)**

GROUND:-

- A. That the impugned notification dated 16.09.2019 coupled with the summary dated 08.01.2019 approved by the worthy Chief Minister of KPK Peshawar and rejection order dated 18.12.2019 are against law, facts against the norms of justice and confronted with the usual way of treatment of such practices on the transfer matter by the respondent department, hence tenable in the eye of the law, thus liable to be set aside.
- B. That It is the matter of the record that this Honorable Tribunal in such like same nature case bearing service appeal No. 823/2019 titled "Dr. Hameed Ali VERSUS Chief Secretary and others", passed its well speaking, well elaborated order/judgment dated 09.08.2019, according to which the change of the cadre while transferring of the aggrieved appellant their under was declined by declaring the act of the respondent as illegal, unlawful, hence that case has also enjoyed publication in the daily newspaper. Therefore being fall under the same flow of the earlier litigation, this case of the appellant can easily be determined by this Honorable Court on the score of above cited earlier case decided by this Honorable Tribunal. **(Copy of the order of this Honorable Tribunal in same like case 09/08/2019 alongwith clipping of newspaper are also appended herewith as Annexure-H)**
- C. It is the settled precedents duly preceded by the Supreme Court of Pakistan in its numerous consistent regular judgments on such like service matter that the cadre of the employee cannot be changed in any manner so the act of the respondent with regard to the change of the cadre from Management to General, while transferring the appellant from DHQ KDA Kohat to office of the respondents No. 3 is obviously illegal, unlawful cannot be warranted and sustainable in the eye of the law.
- D. That order passed by the respondent is illegal, void without lawful authority and without jurisdiction thus deserve to the set-aside.
- E. That any other ground may be raised at the time of arguments, with the kind permission of this Honorable Tribunal, if needed so.

It is, therefore, most humbly prayed that on acceptance of the appeal, on acceptance of the amended service appeal, the notification bearing No. SOH(E-V)I-5/2007/Summarily dated 16.09.2019 coupled with the summary dated 08.01.2007 approved by the worthy chief Minister of KPK Peshawar and rejection order dated 18.12.2019 may graciously please be set aside, and the appellant may be sustained to hold his retained management cadre instead general cadre.

Samir
APPELLANT

THROUGH:-

Amir
M. ASIF YOUSAFZAI
ADVOCATE SUPREME COURT
&

Ali
TAIMUR ALI KHAN
ADVOCATE, HIGH COURT

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

AMENDED APPEAL NO.2229/2019

Dr. Farooq Shah

V/S

Govt: of KP

**APPLICATION FOR SUSPENSION OF THE
OPERATION OF IMPUGNED NOTIFICATION
DATED 16.09.2019, TILL THE FINAL DECISION OF
THE SERVICE APPEAL.**

RESPECTFULLY SHEWETH:-

1. That the above noted service appeal is being filed before this Honorable Court, in which no date of hearing has yet been fixed.
2. That the respondent on the basis of the above impugned notification of transfer of the appellant from DHQ KDA Kohat to office of the respondent No. 03 while also changing the cadres of Management to General, is belt upon to take the charge of the above transfer seat and if so, the illegal, unlawful act of the respondent will attained sustainability.
3. That appellant has excellent and arguable case of its success, therefore specifically prayed for suspension of the impugned notification till the logical conclusions of the matter in hand.

It is, therefore, respectfully prayed that on acceptance of this application, the suspension of the impugned operation may kindly be suspended, till the fate of appeal in hand.

[Signature]
APPELLANT

THROUGH:-

[Signature]
M. ASIF YOUSAFZAI
ADVOCATE SUPREME COURT

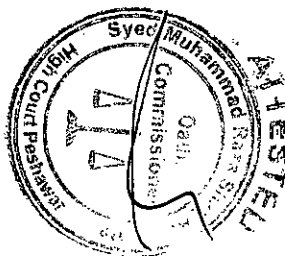
&
[Signature]
TAIMUR ALI KHAN
ADVOCATE, HIGH COURT

AFFIDAVIT

It is stated that the contents of the accompanying application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



DEPONENT



10
GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the 16th September, 2019

ADMINISTRATIVE

Ref: SOHIE-V/1-5/2007/Summary
The competent authority has been pleased to order the following posting/transfer of doctors hereby made with immediate effect in the best public interest:

No.	Name of doctor	From	To
1	Dr. Farooq Shah Management Cadre, BS-20	MS, DHQ Hospital KDA Kohat	Report to the Director General Health Services Khyber Pakhtunkhwa.
2	Dr. Raheem Khan, General Cadre, BS-20	Chief Medical Officer, BS-20 DHQ Hospital KDA Kohat	Medical Superintendent, DHQ Hospital KDA Kohat.

SECRETARY HEALTH
KHYBER PAKHTUNKHWA

dst. of even No. & Date.

Copy to the:

1. Accountant General Khyber Pakhtunkhwa.
2. Director General Health Services Khyber Pakhtunkhwa.
3. MS, DHQ Hospital KDA Kohat.
4. DHO Kohat.
5. PSO to Minister for Health, Khyber Pakhtunkhwa.
6. PS to Secretary Health, Khyber Pakhtunkhwa, Peshawar.
7. Doctors concerned.

(Fazal Rahim)
Section Officer (E-V)



20 19 20

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

8

SUMMARY FOR CHIEF MINISTER KHYBER PAKHTUNKHWA

Subject: POSTINGS/TRANSFERS OF DOCTORS IN HEALTH DEPARTMENT.

The post of District Health Officer Kohat falls to the share of Health Management Cadre in BS-20 and presently occupied by Dr. Mushraf Khan Management Cadre BS-20.

2. Similarly the post of Medical Superintendent DHQ Hospital KDA Kohat also falls to the share of Health Management Cadre in BS-20 and presently occupied by Dr. Farooq Shah Management Cadre BS-20.

3. Dr. Rahim Khan belongs to the General Cadre in BS-20 and presently working as Chief Medical Officer BS-20 DHQ Hospital KDA Kohat. It is pertinent to mention here that at present there is no spare Member of Service BS-20 officer to be posted as District Health Officer Kohat as well as Medical Superintendent DHQ Hospital KDA Kohat.

4. According to schedule-III of the Khyber Pakhtunkhwa Govt Rules of Business, 1985 the postings/transfers of Heads of attached Departments and other officers in (BS-19) and above in all Departments would be made with the approval of the Chief Minister (Annex-I).

5. In view of the above Health Department proposes the following posting/transfer of officers in the public interest.

Made by intention

S#	Name of Officer	Present Posting	Proposed Posting
1. X	Dr. Mushraf Khan Management Cadre BS-20	District Health Officer Kohat	Report to the Director General Health Services Khyber Pakhtunkhwa
2. X	Dr. Rahim Khattak Management Cadre BS-19	Waiting for posting	District Health Officer Kohat ✓
3.	Dr. Farooq Shah Management Cadre BS-20	MS DHQ Hospital KDA Kohat	Report to the Director General Health Services Khyber Pakhtunkhwa.
4. ✓	Dr. Raheem Khan General Cadre BS-20	Chief Medical Officer BS-20 DHQ Hospital KDA Kohat	Medical Superintendent DHQ Hospital KDA Kohat

6. Para-5 of the Summary is submitted for approval of the Chief Minister Khyber Pakhtunkhwa, please.

(Dr. Syed Farooq Jamil)
Secretary Health

08/01/2019

Minister for Health
Khyber Pakhtunkhwa

ATTENDED

(Signature)
09/01/2019
Minister for Health
Khyber Pakhtunkhwa

20 ~~21~~ 21

9



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

SUMMARY FOR CHIEF MINISTER KHYBER PAKHTUNKHWA

Subject: POSTINGS/TRANSFERS OF DOCTORS IN HEALTH DEPARTMENT.

Chief Secretary
Khyber Pakhtunkhwa.

Chief Minister
Khyber Pakhtunkhwa.

ATTACHED

20/8/18

07. Summary for Chief Minister, Khyber Pakhtunkhwa regarding posting/transfer of doctors has been examined. It is observed that the proposal of Health Department in Para-5 is self-contradictory to the facts mentioned in Para-3 of the Summary. The proposal is not only cross cadre posting but also involves posting of a junior officer against higher post. Moreover, tenure of the officers in their respective place of posting is not mentioned being one of the requirements of Posting/Transfer Policy of the Provincial Government (Annex-II).

08. The proposal contained in Para-6 read with Para-7 thereof may be submitted for orders of Honourable Chief Minister Khyber Pakhtunkhwa.

(ARSHAD MAJEED)
Secretary Establishment
January 21, 2019

9. ~~Chief Secretary, Khyber Pakhtunkhwa~~

Amir
22/1/19

CHIEF SECRETARY
Govt. Of Khyber Pakhtunkhwa

~~10- CHIEF MINISTER~~

Para 5 is approved.

4.2.2019
Chief Minister
Khyber Pakhtunkhwa

CS

23



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT



SUMMARY FOR CHIEF MINISTER KHYBER PAKHTUNKHWA

Subject: POSTINGS/TRANSFERS OF DOCTORS IN HEALTH DEPARTMENT.

Summary on the subject noted above is placed below for approval of the Chief Minister Khyber Pakhtunkhwa, please.

[Signature]
28/11/19
(Dr. Syed Farooq Janil)
Secretary Health

[Signature]
09/01/2019
Minister for Health
Khyber Pakhtunkhwa

Minister for Health
Khyber Pakhtunkhwa.

[Signature]
Chief Secretary
Khyber Pakhtunkhwa.

Principal Secretary to Chief Minister
Khyber Pakhtunkhwa.

[Signature]
ATTENDED

[Signature]

PS to Minister for Health
Dairy No: 01
Dated: 9-01-2019
Secretary Health

Ps / Secy (P) 3 AD
Diary No: 53
Dated: 10-01-2019

2. Views of Establishment Department may kindly be perused vide Para 7-8 of the Summary.

(Arshad Majeed)
Secretary Establishment
21 Jan., 2019

Chief Secretary KPK

Manat
22/1
CHIEF SECRETARY
Govt. Of Khyber Pakhtunkhwa

~~PSCM~~

Chief Secretary

~~_____~~
4.2.2019
Principal Secretary to CM
Khyber Pakhtunkhwa

Secy Health

15/5
CHIEF SECRETARY
Govt. of Khyber Pakhtunkhwa

Issue order of
the agency at S.No: (3) & (4)
is approved by the competent Authority.
SO-L
30/8/15

Office of the PSCM
Diary No. 189
Dated. 22/1/19
Office of the PSCM
Diary No. 331
Dated. 22-1-19

//

Appeal

To
The Secretary,
Government of Khyber Pakhtunkhwa,
Health Department, Peshawar

Subject: Request for Cancellation of Notification No.SOH(E-V)1-5/2007/
summary i.e Transfer order.

Respected Sir,

With due respect, it is submitted for your kind information that my transfer has been made form DHQ Hospital KDA Kohat to Director General Health Office Peshawar vide Notification No.SOH(E-V)1-5/2007/Summary dated 16-09-2019 (copy attached). My substitute is Dr. Raheem Khan, chief Medical Officer (BS-20) General Cadre KDA Hospital Kohat.

As per decision of the appeal No.823/19 by the Khyber Pakhtunkhwa Service Tribunal dated 08-09-2019, a Doctor of General Cadre cannot hold the post of Management Cadre (copy of decision attached).

Sir, I, Doctor Farooq Shah (BS-20) management Cadre MS DHQ Hospital KDA Kohat while my substitute is Dr. Raheem Khan, Chief Medical Officer (BS-20) General Cadre DHQ Hospital KDA Kohat.

It is therefore, requested that in the light of Khyber Pakhtunkhwa Service Tribunal, my transfer order/Notification No.SOH(E-V)/1-5/2007/summary dated 16-09-2019 may please be cancelled and obliged.

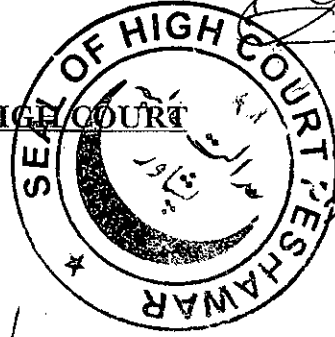
Sincerely Yours,

Farooq Shah
23/09/2019
(Dr. Farooq Shah BS-20)
Management Cadre,
MS DHQ Hospital KDA Kohat

23.9.19
23.12.19

BEFORE THE HONORABLE PESHAWAR HIGH COURT

PESHAWAR



Writ Petition No. _____-P/2019

Dr. Farooq Shah S/o Zewar Shah R/o Gulberg No. 02. House No. 284,
Muhammad Ali Street Peshawar Cantt.

.....Petitioner

Versus

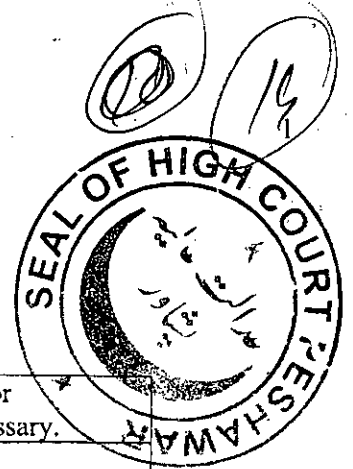
1. Government of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Health,
Civil Secretariat Peshawar.
3. Director General (DG) Health Government of Khyber
Pakhtunkhwa Khyber Road Peshawar.
4. Dr. Raheem Khan General Cadre of BPS-20, Medical
Superindent DHQ Hospital KDA Kohat (Private Respondent).

.....Respondents

**WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN
1973 READ WITH OTHER ENABLING PROVISIONS OF
APPLICABLE LAWS IN THE MATTER, FOR ISSUANCE
OF THE APPROPRIATE WRIT OF QUO-WARRANTO
AGAINST THE RESPONDENTS FOR DECLARE THE
ACT OF TRANSFER OF THE PETITIONER BEING
MANAGEMENT CADRE IN BPS-20 TO GENERAL
CADRE, IS ILLEGAL, UNLAWFUL, VOID AB-INITIO,
UNCONSTITUTIONAL, UNWARRANTED IN THE EYE
OF LAW, NOT SUSTAINABLE.**

ATTESTED

ATTESTED
EXAMINER
Peshawar High Court

PESHAWAR HIGH COURT, PESHAWARORDER SHEET

Date of order or proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties or counsel where necessary.
2.	3.
07.11.2019	<p><u>WP No.5506-P/2019 with I.R.</u></p> <p><u>Present:</u> Mr. Ajoon Khan, Advocate for the petitioner.</p> <p>Syed Sikandar Hayat Shah, AAG for the official respondents.</p> <p>Mr. Ali Azim Afridi, Advocate for the respondent No.4.</p> <p>*****</p> <p><u>QAISER RASHID KHAN, J.-</u> Through the petition in hand, the petitioner has prayed as under:-</p> <p>“On acceptance of this petition, the act of the respondents issuance of the impugned notification bearing No. SOH(E-V)1-5/2007/ Summary dated 16.09.2019 coupled with the summary dated 8.1.2019 approved by the worthy Chief Minister of KPK Peshawar may be declared as illegal, unlawful, unsustainable in the eye of law, ineffective upon the legal rights of the petitioner against the norms of relevant articles of constitution of Islamic Republic of Pakistan. Hence, liable to be recalled.”</p> <p>2. Arguments heard and the available record perused.</p> <p>3. In a situation, where the petitioner is a civil servant and where the matter relating to the</p>

Atif Hussain, PS

(DB) Justice Qaiser Rashid Khan
Justice Muhammad Naveem Amir


ATTESTED
EXAMINER
Peshawar High Court

H
15

posting and transfer obviously falls within the terms and conditions of service, then the grievance of the petitioner can only be looked into by the learned KPK, Service Tribunal. However, this court cannot intervene in such matters in view of the explicit bar contained in Article 212 (2) of the Constitution of the Islamic Republic of Pakistan, 1973.

4. Accordingly, this writ petition being not maintainable before this court is dismissed. However, the petitioner may seek his remedy before the proper forum, if so advised.

Announced.
Dated; 07.11.2019.


Senior Puisne Judge


Judge


CERTIFIED TO BE TRUE COPY

Examiner,
Peshawar High Court, Peshawar,
Authorized Under Article 67 of
the Qanun-e-shahadat Order 1987.

15 NOV 2019

No. 12975
Date of Presentation of Application 09/11/19
No of Pages 3-12
Copying fee 21/-
Total _____
Date of Preparation of Copy 15/11/19
Date of Delivery of copy 15/11/19
Received By [Signature]



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

No.SOH(E-V)/1-5/2007
Dated Peshawar the 18th Dec, 2019

[Handwritten signatures and initials]
15 16

To

The Director General
Health Services, Khyber Pakhtunkhwa
Peshawar.

Subject:- REQUEST FOR CANCELLATION OF NOTIFICATION NO. SOH(RV)1-5/2007/SUMMARY I.E TRANSFER ORDER

Dear Sir,

I am directed to refer to Dr. Farooq Shah (BS-20) Management Cadre (Ex-MS DHQ Hospital Kohat) appeal No. nil dated nil on the above captioned subject and to request that the applicant (now awaiting for posting in DGHS) may kindly be informed that his appeal was considered and regretted, as the orders were passed after obtaining approval of competent authority, please.

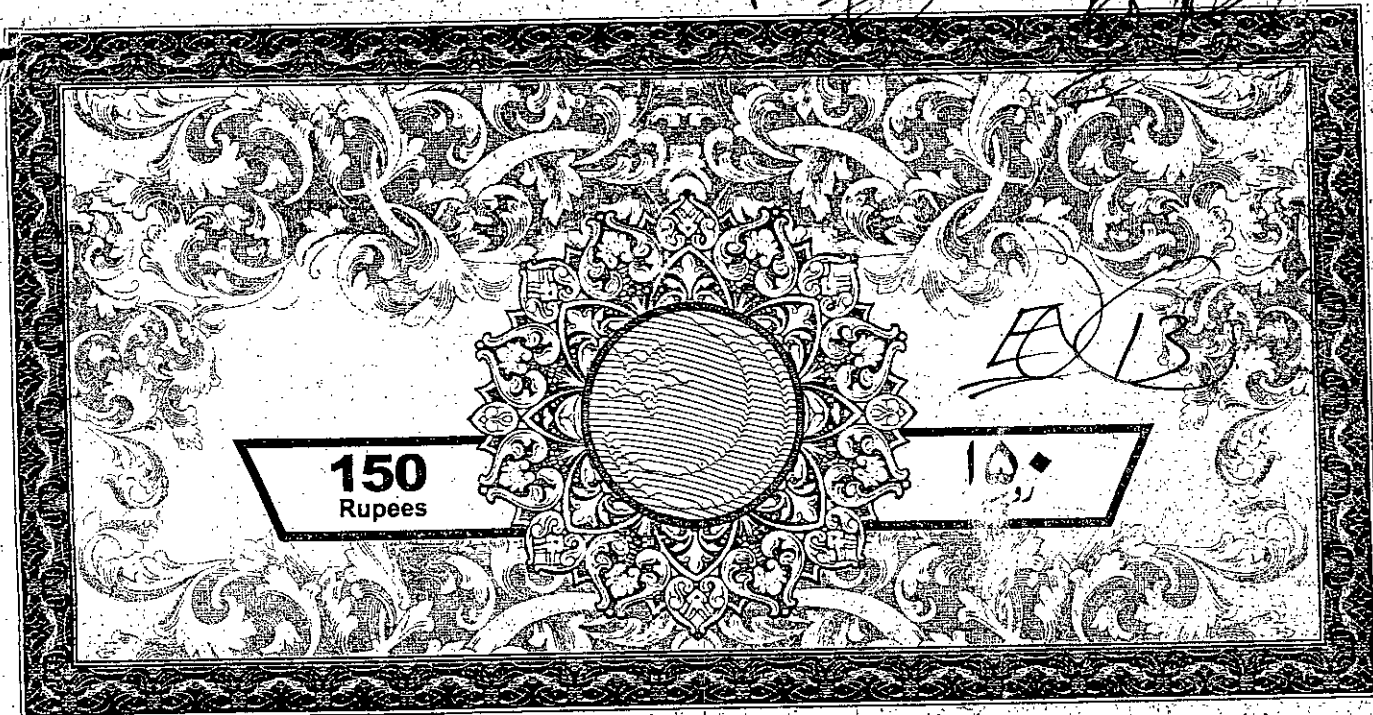
[Handwritten signature]
18/12/19.
**(MUHAMMAD IRFAN USMAN)
SECTION OFFICER-V
HEALTH DEPARTMENT**

Copy of the above is forwarded to the PS to Secretary Health Department for information.

*Recd. on 27/01/2020
27/01/2020*

**SECTION OFFICER-V
HEALTH DEPARTMENT**

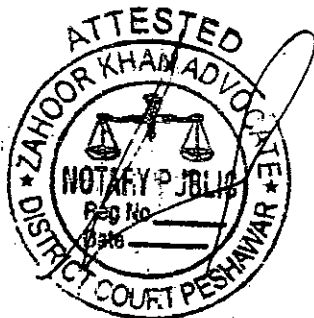
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ATTACHED



AFFIDAVIT

I, Dr. FAROQ-SHAH (Ex, M.S, District Head Peshawar Hospital Kohat, hereby solemnly declare that I have reviewed letter No SOH (E-U)/1-5/2007 dated Peshawar the 18/12/2019 addressed to Director General Health Services, K.P Peshawar on 27/01/2020 from concerned section of health secretariat, Govt of K.P

Farooq Shah
Dr. FAROQ-SHAH



6 FEB 2020

Handwritten signature or scribble, possibly containing the name 'Mansoor Ahmad'.

District Commissioner of P
04 FEB 2008
(Treasury Wing) Peshawar



PECHAWAR TREASURY
MANSOOR AHMAD
LICENSE NO: 30 DATE 04-08-2004
STAMP VENDOR

E 18

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

Appeal No. 2229/2019

Dr. Farooq Shah

V/S

Health department.


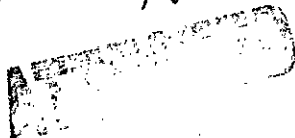
.....

**APPLICATION FOR AMENDMENT IN THE INSTANT APPEAL BY
CHALLENGING THE REJECTION ORDER DATED 18.12.2019
RECEIVED BY THE APPELLANT ON 27.01.2020**

.....

RESPECTFULLY SHEWETH:

1. That appellant has filed the instant appeal in this august Tribunal against the order dated 16.09.2019, whereby the appellant belonging to Management Cadre was transfer from the post of MS, DHQ Hospital KDA Kohat and report to DG Health Services and respondent No.4 belonging to General Cadre was posted on his post. The appellant filed departmental appeal against the order dated 16.09.2019 on 23.09.2019, which was rejected on 18.12.2019, however that rejection order was not communicated to the appellant and after lapse of statutory period. Then the appellant filed the present service appeal.
2. That the instant appeal is in reply stage which is fixed for today i.e 06.02.2020.
3. That as the departmental appeal was rejected on 18.12.2019, but was not communicated to the appellant and the now the rejection order dated 18.12.2019 was received by the appellant on 27.01.2020 which is duly supported by an affidavit on behalf of the appellant and which is necessary to be challenged before this august Tribunal, therefore the appellant wants to challenge the rejection order dated 18.12.2019 received on 27.02.2020 by amending the instant appeal. (Copies of order dated 18.12.2019 and affidavit are attached as Annexure-A&B)

18/12/19

It is, therefore, most humbly prayed that on acceptance of this application, the appellant may allow to amend the instant appeal by challenging the rejection order dated 18.12.2019 before this august Tribunal to meet the ends of justice.

Lawyer's mark

APPELLANT

THROUGH:

Lawyer's mark

M.ASIF YOUSAFZAI
ADVOCATE SUPREME COURT

& *Lawyer's mark*

TAIMUR ALI KHAN
ADVOCATE HIGH COURT

AFFIDAVIT

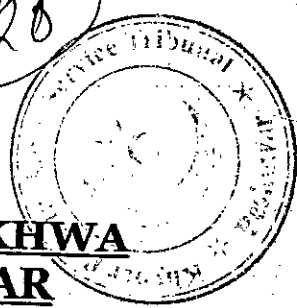
It is affirmed and declared that the contents of the above Application are true and correct to the best of my knowledge and belief:

Lawyer's mark

DEPONENT

Lawyer's mark
APPROVED

5 20



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 2229 /2019

Khyber Pakhtunkhwa Service Tribunal

Diary No. 1705

Date 02/12/2019

Dr. Farooq Shah S/o Zewar Shah R/o Gulberg No. 2,
House No. 284, Muhammad Ali Street Peshawar Cantt.

.....Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar
2. Government of Khyber Pakhtunkhwa through secretary health, Civil Secretariat, Peshawar
3. Director General (DG) health Government of Khyber Pakhtunkhwa Khyber Road Peshawar
4. Dr. Raheem Khan General Cadre of BPS-20 Medical superintendent DHQ Hospital KDA Kohat

.....Respondents

Filed to-day SERVICE APPEAL U/S 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE ACT OF RESPONDENT, UPON WHICH THE APPEAL OF PETITIONER REGARDING ILLEGAL, UNLAWFUL ORDER OF THE RESPONDENT PERTAINS TO TRANSFER OF THE PETITIONER FROM DHQ HOSPITAL KDA KOHAT, BEING

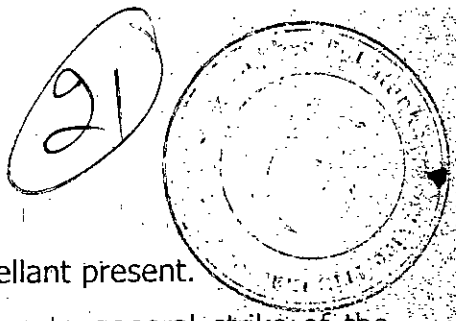
Registrar

02/12/19

Re-submitted to-day and filed.

Registrar
11/26/19

Certified to be true copy
Khyber Pakhtunkhwa Service Tribunal, Peshawar



24.01.2020

Junior to counsel for the appellant present.

Requests for adjournment due to general strike of the Bar. Adjourned to 06.02.2020 before S.B.

[Signature]
Chairman

06.02.2020

Appellant alongwith his counsel present. Mr. Taimur Ali Khan, Advocate submitted Vakalat Nama on the behalf of the appellant. The same is placed on record. Learned counsel for the appellant also submitted application for amendment in the service appeal on the ground that the appellant filed departmental appeal against the impugned order on 23.09.2019 but the same was not decided at the time of institution of present service appeal i.e 02.12.2019. Later on, the departmental appeal was decided on 18.12.2019, therefore, he want to challenge the departmental authority order through amendment in the present service. The reason mentioned in the application appears to be genuine, therefore, the application is allowed. To come up for amended service appeal on 19.02.2020 before S.B.

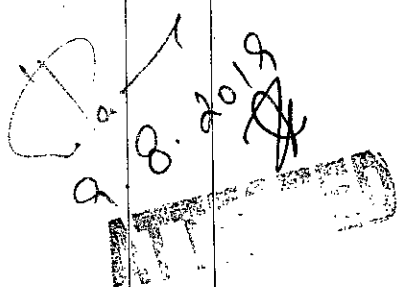
Certified true copy
[Signature]
Khalid Ishaq
Service Tribunal,
Peshawar

[Signature]
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Date of Presentation: 19-2-2020
Number of copies: 800
Copy to: 10-00
Urgency: 10-00
Name of: *[Signature]*
Date of: 19-2-2020
Date of: 19-2-2020

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	09.08.2019	<p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> Service Appeal No. 823/2019</p> <p>Date of Institution 24.06.2018 Date of Decision 09.08.2019</p> <p>Dr. Hameed Ali S/o Sadaf Ali Agency Surgeon/Merged Area District Kurram.</p> <p align="right">Appellant</p> <p align="center">Versus</p> <ol style="list-style-type: none"> Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar. Secretary Health Department Government of Khyber Pakhtunkhwa, Peshawar. Director General Health Services Government of Khyber Pakhtunkhwa, Peshawar. Dr. Moeen Begum AHQ Hospital Parachinar. <p align="right">Respondents</p> <p>Mr. Muhammad Hamid Mughal-----Member(J) Mr. Ahmad Hassan-----Member(E)</p> <p align="center"><u>JUDGMENT</u> <u>MUHAMMAD HAMID MUGHAL, MEMBER: - Appellant</u></p> <p>present. Learned counsel for appellant present. Mr. Muhammad Jan learned Deputy District Attorney for official respondents present. Private respondent No.4 alongwith counsel present.</p> <p>2. The appellant "Senior Medical Officer (BS-18)" has filed the</p>

9.8.2019



present service appeal being aggrieved against the order dated 14.03.2019 whereby his transfer from the post of Senior Medial Officer AHQ Hospital Parachinar to the post of Agency Surgeon Merged Area Kurram in place of private respondent No.4, was withdrawn.

3. Learned counsel for the appellant argued that vide order dated 07.03.2019 the appellant was transferred from the post of Senior Medical Officer AHQ Hospital Parachinar to the post of Agency Surgeon Merged Area Kurram however with in a few days of the issuance of the said order the same was withdrawn vide impugned order dated 14.03.2019. Further argued that the impugned order is premature and in utter violation of laws, rules and policy. Further contended that private respondent No.4 has already been posted as Agency Surgeon Merged Area Kurram since 2014 but she is not willing to leave the said post.

4. As against that learned Deputy District Attorney assisted by learned counsel for private respondent No.4, argued that the posting order of the appellant as Agency Surgeon Merged Area Kurram was issued by the incompetent authority. Further argued that the post of Agency Surgeon (BS-18) falls to the share of Health Management Cadre in BS-18 while the appellant belongs to General Cadre and that cross cadre posting is against the Health Management Cadre Service Rules, 2008. Next contended that the transfer posting order dated 07.03.2019 was illegal hence rightly withdrawn.

5. Arguments heard. File perused.

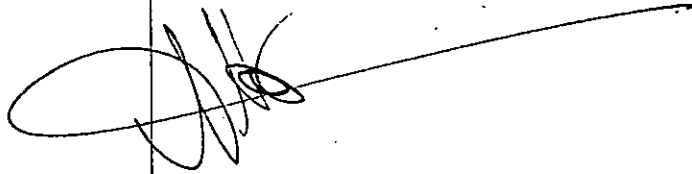
6. There is no dispute that the post of Agency Surgeon is a

9.8.2019
 ATTENDED

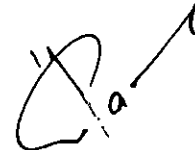
Management Cadre Post whereas both the appellant and private respondent No.4 belong to General Cadre.

7. Learned counsel for the appellant could not demonstrate that under the relevant rules, how a Medical Officer/Senior Medical Officer of General Cadre can be appointed against the Management Cadre post. Director Health Services Merged Areas Peshawar has exceeded his authority by issuing transfer posting order dated 07.03.2019 in relation to the appellant (BS-18) and private respondent No.4 (BS-19).

8. In the light of above, the appellant has not been able to seek indulgence of this Tribunal. Consequently the respondent department is directed to appoint suitable officer from Management Cadre, against the post of Agency Surgeon Merged Area Kurram, within 15 days of the receipt of this judgment. The respondent department is further directed to recall all the transfer posting orders of Medical Officer/Senior Medical Officers against the posts of Management Cadre. The present service appeal is disposed of in the above noted terms. Parties are left to bear their own costs. File be consigned to the record room.




(Ahmad Hassan)
Member



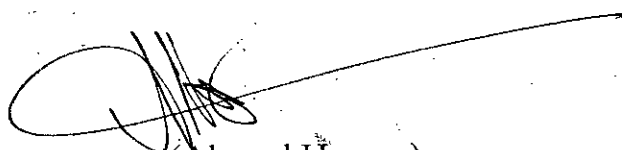
(Muhammad Hamid Mughal)
Member

ANNOUNCED.
09.08.2019

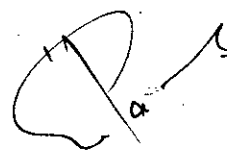

ATTENDED

09.08.2019

Appellant present. Learned counsel for the appellant present. Mr. Muhammad Jan learned Deputy District Attorney for official respondents present. Private respondent No.4 along with his counsel present. Vide separate judgment of today of this Tribunal placed on file, the appellant has not been able to seek indulgence of this Tribunal. Consequently the respondent department is directed to appoint suitable officer from Management Cadre, against the post of Agency Surgeon Merged Area Kurram, within 15 days of the receipt of this judgment. The respondent department is further directed to recall all the transfer posting orders of Medical Officer/Senior Medical Officers against the posts of Management Cadre. The present service appeal is disposed of in the above noted terms. Parties are left to bear their own costs. File be consigned to the record room.




(Ahmad Hassan)
Member



(Muhammad Hamid Mughal)
Member

ANNOUNCED

09.08.2019


ATTESTED

PRAYER

05:05
12:01
03:52
05:29
06:54
Starting time in Peshawar

ELECTIONS

WEALTH IS THE UNTAINTED HEAD OF MISERIES. — LAZRAT ALI (A.S.)

78AH427

What farmers want wild boars killed

FEAR: The residents of the outlying localities on the outskirts of the Kohat city have demanded of the wildlife department to kill wild boars destroying standing crops, vegetables and fruit trees. Muzaffar Hussain, president of the model farmers association, said the boars destroyed the standing crop and vegetables. Black and white pigs also become permanent menace for the city dwellers and motorists, crossing their cars while driving the Jarwanda and Saidu roads. Muzaffar Hussain said that he was crossing the Jarwanda road the day when a white boar suddenly came out from the orchards. "I tried to avoid it but the boar hit my vehicle, slightly damaging it," he said. A boar was killed by people in the Manaabad area after a wild beast entered the orchard area the other day near the orchards. The boar surrounded it and killed it. Two boars were killed by the watchman of a farm on the bypass road. Farmers on the Bannu plain complained that their orchards had been destroyed by the boars.



A SHOPKEEPER making a Chitrali cap, known as Pakol, at his shop in Peshawar on Saturday. — White Star

Health dept flouts tribunal's orders on management postings

Officials say general cadre medics continue to hold management cadre positions

By Ashfaq Yusufzai

PESHAWAR: The health department has failed to remove the doctors of general cadre from management positions in the province despite the services tribunal's orders. On Aug 9, the Khyber Pakhtunkhwa Services Tribunal delivered a verdict ordering the removal of all doctors, who don't belong to management cadre whether medical officers or senior medical officers, from the management seats. Though the tribunal ordered the appointment of only doctors from the management cadre to such positions, the health department continues to violate those orders by tasking the general cadre doctors with holding the management cadre positions. Sources said four general cadre doctors were posted to the department's management positions on Oct 14, while a doctor from general cadre was made the district health officer of Hangu early this month.

They said 18 BPS-18 and BPS-19 doctors from the management cadre were made officers on special duty lately, so they sat idle despite having vast experience and thus, adversely affecting the working of the department. The officials said the OSDs also didn't get salary until they weren't properly posted. They said a senior management cadre doctor got cash-strapped recently as his salary was withheld on him becoming an OSD, so his colleagues arranged money for him. The officials said the concept of OSD was wrongly used as it was basically meant to give a special task to an officer that others couldn't do. They said the departments couldn't make OSDs with the exception of the establishment department, which required the post creation for that period so that he or she could take salary. The officials said OSDs in the health department not only stayed without salary until their proper postings but they also weren't given health professional allowance for the period when they weren't posted to sanctioned positions. They said most OSDs had no place to sit and wandered from one office to another in the offices of the director general (health services) or health secretariat. The officials said some influential doctors managed to secure salary despite being OSDs. They said usually, the management cadre

doctors were made OSDs for illegal orders of their high-up superiors fell into line with them. The officials said many departmental charges of more than simultaneously though the law more than three months. They said majority of doctors (health) offices held positions to match their grades, in violation of the tribunal's orders, the department posted the general cadre doctors from management positions and instead, it posted such doctors to management positions. They said qualified and eligible doctors were not being posted to management posts like DHO, medical officers and project directors. The officials said under the management cadre doctors were to work in health posts, while the management cadre doctors were required to hold administrative posts. A senior official told Dawn that a committee had been formed to look into the matter. He said most OSDs were above, so their posting required the approval of the chief minister.

ATTACHED

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

Service Appeal No. 2229 /2019

Dr. Farooq Shah

.....Appellant

VERSUS

Government of Khyber Pakhtunkhwa through Chief
Secretary & others

.....Respondents

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1.	Service Appeal		1- 6
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3.	Addresses of Parties		07
4.	Application for suspension alongwith its affidavit		8-9
5.	Copy of the impugned notification alongwith departmental appeal	A & B	10-11
6.	Copy of the order of Hon'ble Peshawar High court, on the writ petition of the petitioner	C	12-14
7.	Copy of the order of this Hon'ble tribunal in same like case 09/08/2019 alongwith clipping of newspaper	D	15-18
8.	Wakalat Nama		

Through

Farooq Shah
Appellant

Date: 02-December-2019

Ajoon Khan
Ajoon Khan 2/12
Advocate, High court
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 2229 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1705

Dated 02/12/2019

Dr. Farooq Shah S/o Zewar Shah R/o Gulberg No. 2,
House No. 284, Muhammad Ali Street Peshawar Cantt.

.....Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar
2. Government of Khyber Pakhtunkhwa through secretary health, Civil Secretariat, Peshawar
3. Director General (DG) health Government of Khyber Pakhtunkhwa Khyber Road Peshawar
4. Dr. Raheem Khan General Cadre of BPS-20 Medical superintendent DHQ Hospital KDA Kohat

.....Respondents

Filed to-day SERVICE APPEAL U/S 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974, AGAINST THE ACT OF
RESPONDENT, UPON WHICH THE
APPEAL OF PETITIONER REGARDING
ILLEGAL, UNLAWFUL ORDER OF THE
RESPONDENT PERTAINS TO TRANSFER
OF THE PETITIONER FROM DHQ
HOSPITAL KDA KOHAT, BEING

Registrar

02/12/19

Re-submitted to-day
and filed.

Registrar
02/12/19

RETAINED MANAGEMENT CADRE (BPS-20) TO OFFICE OF DIRECTOR GENERAL HEALTH SERVICE KPK PESHAWAR, BY CHANGING THE MANAGEMENT CADRE TO GENERAL CADRE, VIDE IMPUGNED DEPARTMENTAL ORDER/NOTIFICATION BEARING NO. SOH(E-V)I-5/2007/ SUMMARILY DATED 16/09/2019 COUPLED WITH THE SUMMARY DATED 08/01/2019 APPROVED BY THE WORTHY CHIEF MINISTER OF KPK PESHAWAR, HAS YET NOT BEEN DECIDED, HENCE THIS SERVICE APPEAL FOR TO DECLARE THE ACT OF THE RESPONDENT THROUGH WHICH PETITIONER ILLEGALLY TRANSFERRED TO OTHER PLACE OF SERVICE, BUT WITH THE CHANGE OF HIS RETAINED CADRE.

Prayer:-

On acceptance of the service appeal, the notification bearing No. Soh(E-V)I-5/2007/ summarily dated 16/09/2019 coupled with the summary dated 08/01/2019 approved by the worthy chief Minister of KPK Peshawar may

RETAINED MANAGEMENT CADRE (RPS-20) TO OFFICE OF DIRECTOR GENERAL HEALTH SERVICE KPK PESHAWAR, BY CHANGING THE MANAGEMENT CADRE TO GENERAL CADRE. VIDE IMPUGNED DEPARTMENTAL ORDER/NOTIFICATION BEARING NO. SOH(E-VI-5/2007) SUMMARILY DATED 16/09/2010 COPIED WITH THE SUMMARY DATED 08/01/2010 APPROVED BY THE WORTHY CHIEF MINISTER OF KPK PESHAWAR, HAS YET NOT BEEN DECIDED, HENCE THIS SERVICE APPEAL FOR TO DECLARE THE ACT OF THE RESPONDENT THROUGH WHICH PETITIONER ILLEGALLY TRANSFERRED TO OTHER PLACE OF SERVICE. BUT WITH THE CHANGE OF HIS RETAINED CADRE.

17/07/2011

On acceptance of the service appeal the notification bearing No. SOH(E-VI-5/2007) summarily dated 16/09/2010 copied with the summary dated 08/01/2010 approved by the worthy chief Minister of KPK Peshawar may

graciously please be set aside, and the petitioner may be sustained to hold his retained management cadre instead of general cadre.

Respectfully Sheweth:-

1. That retained BPS-20, specifically in the Management cadre who was illegally, unlawfully treated by the respondents department, while passing their impugned department order/vide notification SOH(E-V)1-5/2007/summary dated 16/09/2019. Coupled with the summary dated 08/01/2019 approved by worthy Chief Minister of KPK, according to which the transfer of the petitioner from DHO KDA Kohat in management cadre to office of respondent No. 3 in general cadre is approved. **(Copy of the impugned notification alongwith departmental appeal are appended herewith as annexure A & B respectively)**
2. It is the matter of the fact that petitioner earlier released that it is the case of the quo-warranto issuance of writ against the respondents department, by observing constitutional jurisdiction therewith, it was thus the writ petition bearing No. 5506/2019, preferred to Hon'ble Peshawar High court, which was pleased to disposed off vide order dated 07/11/2019, according to which it was

ordered that the writ petition is not maintainable in its present form, thus attract jurisdiction of this Hon'ble tribunal. **(Copy of the order of Hon'ble Peshawar High court, on the writ petition of the petitioner, is also enclosed herewith as annexure C)**

3. That petitioner being still aggrieved with the above impugned notification of his own with regard to the transfer matter of the petitioner specifically on the basis of alter, change the cadre of management to cadre of Jannat, hence this service appeal inter alia on the following grounds amongst other, as before invoking of any constitutional jurisdiction or so of any appropriate forum whatsoever, it is the notable fact that on 23/09/2019, the legal requisition of preferring departmental appeal against the impugned order has already been placed before the competent authority of respondent Department but with the mum reply, hence this petition.

G R O U N D S :-

- A. That the impugned notification dated 16/09/2019 coupled with the summary dated 08/01/2019 approved by the worthy Chief Minister Of KPK Peshawar, are against law, facts against the norms of justice and confronted with the usual way of treatment of such

ordered that the writ petition is not maintainable in its present form, thus attract jurisdiction of this Hon'ble Tribunal. (Copy of the order of Hon'ble Peshwar High Court on the writ petition of the petitioner, is also enclosed herewith as

Annexure C)

3. That petitioner being still aggrieved with the above impugned notification of his own with regard to the transfer matter of the petitioner specifically on the basis of alleged change the cadre of management to cadre of Janat, hence the service appeal inter alia on the following grounds amongst other, as before invoking in any constitutional jurisdiction or so of any appropriate forum whatsoever, it is the notable fact that on 23/09/2019, the legal requisition of protesting departmental appeal against the impugned order has already been placed before the competent authority of respondent Department but with the main reply hence this petition.

GROUND 2-

A. That the impugned notification dated 15/09/2019 coupled with the summary dated 08/09/2019 approved by the worthy Chief Minister Of KPK Peshawar, are against law, facts against the norms of justice and confronted with the usual way of treatment of such

practices on the transfer matter by the respondent department, hence tenable in the eye of the law, thus liable to be recall.

- B. It is the matter of the record that this Hon'ble tribunal in such like same nature case bearing service appeal No. 823/2019 titled "Dr. Hameed Ali VERSUS Chief Secretary & others", passed its well speaking, well elaborated order/judgment dated 09/08/2019, according to which the change of the cadre while transferring of the aggrieved petitioner their under was declined by declaring the act of the respondent as illegal, unlawful, hence that case has also enjoyed publication in the daily newspaper. Therefore being fall under the same flow of the earlier litigation, this case of the petitioner can easily be determined by this Hon'ble court on the score of above cited earlier case decided by this Hon'ble tribunal. **(Copy of the order of this Hon'ble tribunal in same like case 09/08/2019 alongwith clipping of newspaper are also appended herewith as annexure D)**
- C. It is the settled precedents duly precendented by the supreme court of Pakistan in its numerous consistent regular judgments on such like service matter that the cadre of the employee cannot be changed in any manner so the act of the respondents with regard to the changing of the cadre from Management to General,

while transferring the petitioner from DHQ KDA Kohat to office of the respondents No. 3 is obviously illegal, unlawful cannot be warranted and sustainable in the eye of the law.

- D. That order passed by the respondent is illegal, void without lawful authority and without jurisdiction thus deserve to be set aside.
- E. That any other ground may be raised at the time of arguments, with the kind permission of this Honourable Tribunal, if needed so.

It is, therefore, most humbly prayed that on acceptance of the appeal, on acceptance of the service appeal, the notification bearing No. SOH(E-V)I-5/2007/ summarily dated 16/09/2019 coupled with the summary dated 08/01/2019 approved by the worthy chief Minister of KPK Peshawar may graciously please be set aside, and the petitioner may be sustained to hold his retained management cadre instead of general cadre.

[Signature]
Appellant

Through

Date: 02-December-2019

[Signature]
Ajoon Khan 2/12
Advocate, High court
Peshawar

W/2 ADU
02/12/19
ATTESTED
WALI KHAN MOHAMMAD
Cesh. Commissioner
Advocate High Court
Peshawar

while transferring the petitioner from DPO KDA Kobar
to office of the respondents No. 3 is obviously illegal.
unlawful cannot be warranted and sustainable in the eye
of the law.

D. That order passed by the respondents is illegal, void
without lawful authority and without jurisdiction, thus
deserve to be set aside.

E. That any other ground may be raised at the time of
arguments, with the kind permission of this Honorable
Tribunal, if needed so.

It is, therefore, most humbly prayed that
on acceptance of the appeal, on acceptance
of the service appeal, the notification
bearing No. 2011E-71-2/2007 summarily
dated 16/09/2019 coupled with the
summarily dated 08/01/2019 approved by
the worthy chief minister of KPK Peshawar
may graciously please be set aside, and the
petitioner may be sustained to hold his
retained management cadre instead of

General cadre.

Applicant

Through

Ajmal Khan -
Advocate, High Court
Peshawar

Date: 02-December-2019

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

Service Appeal No. _____/2019

Dr. Farooq Shah

.....**Appellant**

VERSUS

Government of Khyber Pakhtunkhwa through Chief
Secretary & others

.....**Respondents**

ADDRESSES OF PARTIES

APPELLANT

Dr. Farooq Shah S/o Zewar Shah R/o Gulberg No. 2,
House No. 284, Muhammad Ali Street Peshawar Cantt.

RESPONDENTS

1. Government of Khyber Pakhtunkhwa through Chief
Secretary, Civil Secretariat, Peshawar
2. Government of Khyber Pakhtunkhwa through
secretary health, Civil Secretariat, Peshawar
3. Director General (DG) health Government of Khyber
Pakhtunkhwa Khyber Road Peshawar
4. Dr. Raheem Khan General Cadre of BPS-2, Medical
superintendent DHQ Hospital KDA Kohat

Farooq Shah
Appellant

Through

Ajoon Khan
Ajoon Khan
Advocate, High court
Peshawar

Date: 02-December-2019

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

C.M No. _____/2019

IN

Service Appeal No. _____/2019

Dr. Farooq Shah

.....**Appellant**

VERSUS

Government of Khyber Pakhtunkhwa through Chief
Secretary & others

.....**Respondents**

**APPLICATION FOR SUSPENSION OF THE
OPERATION OF IMPUGNED
NOTIFICATION DATED 16/09/2019, TILL
THE FINAL DECISION OF THE SERVICE
APPEAL**

Respectfully Sheweth:

1. That the above noted service appeal is being filed before this Hon'ble Court, in which no date of hearing has yet been fixed.
2. That the respondent on the basis of the above impugned notification of transfer of the appellant from DHQ KDA Kohat to Office of the respondent No. 3 while also changing the cadres of Management to General, is belt upon to take

the charge of the above transfer seat and if so, the illegal, unlawful act of the respondent will attained sustainability

3. That appellant has excellent and arguable case of its success, therefore specifically prayed for suspension of the impugned notification till the logical conclusion of the matter in hand.

It is, therefore, respectfully prayed that on acceptance of this application, the suspension of the impugned operation may kindly be suspended, till the fate of appeal in hand.

Furqan Khan
Appellant

Through

Ajoo Khan
Ajoo Khan
Advocate, High court
Peshawar

Date: 02-December-2019

AFFIDAVIT

It is stated that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Furqan Khan
DEPONENT

Furqan Khan
ATTESTED
WALI KHAN MOHMAND
Oath Commissioner
Advocate High Court
Peshawar
2/12/19

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the 16th September, 2019

Summary The competent authority has been
ordered to order the following posting/transfer of doctors hereby made with
immediate effect in the best public interest:-

S.No.	Name of doctor	From	To
	Dr. Farooq Shah Management Cadre, BS-20	MS, DHQ Hospital KDA Kohat	Report to the Director General Health Services Khyber Pakhtunkhwa.
	Dr. Raheem Khan, General Cadre, BS-20	Chief Medical Officer, BS-20 DHQ Hospital KDA Kohat	Medical Superintendent, DHQ Hospital KDA Kohat.

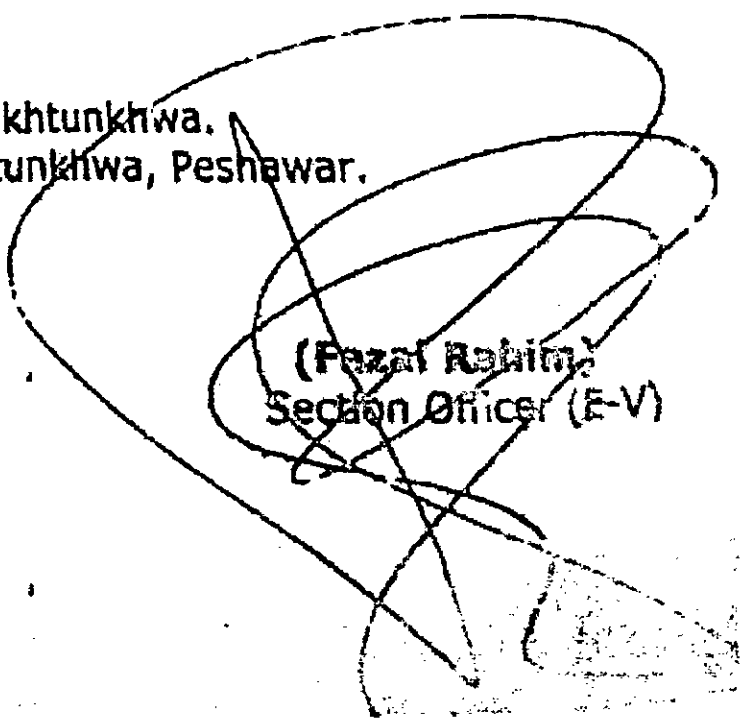
SECRETARY HEALTH
KHYBER PAKHTUNKHWA

List of even No. & Date.

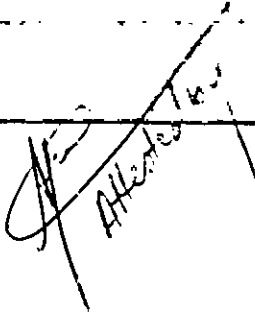
Copy to the:

1. Accountant General Khyber Pakhtunkhwa.
2. Director General Health Services Khyber Pakhtunkhwa.
3. MS, DHQ Hospital KDA Kohat.
4. DHO Kohat.
5. PSO to Minister for Health, Khyber Pakhtunkhwa.
6. PS to Secretary Health, Khyber Pakhtunkhwa, Peshawar.
7. Doctors concerned.

(Fazal Rahim)
Section Officer (E-V)



Attended



11
Appeal

S. 14
13822
23.9.19

To
The Secretary,
Government of Khyber Pakhtunkhwa,
Health Department, Peshawar

Subject: Request for Cancellation of Notification No.SOH(E-V)1-5/2007/
summary i.e Transfer order.

Respected Sir,

With due respect, it is submitted for your kind information that my transfer has been made from DHQ Hospital KDA Kohat to Director General Health Office Peshawar vide Notification No.SOH(E-V)1-5/2007/Summary dated 16-09-2019 (copy attached). My substitute is Dr. Raheem Khan, chief Medical Officer (BS-20) General Cadre KDA Hospital Kohat.

As per decision of the appeal No.823/19 by the Khyber Pakhtunkhwa Service Tribunal dated 08-09-2019, a Doctor of General Cadre cannot hold the post of Management Cadre (copy of decision attached).

Sir, I, Doctor Farooq Shah (BS-20) management Cadre MS DHQ Hospital KDA Kohat while my substitute is Dr. Raheem Khan, Chief Medical Officer (BS-20) General Cadre DHQ Hospital KDA Kohat.

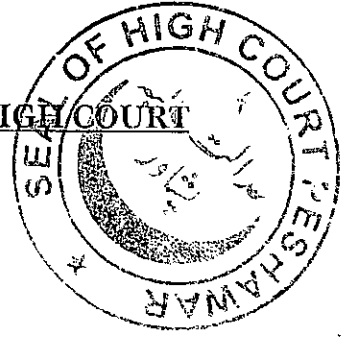
It is therefore, requested that in the light of Khyber Pakhtunkhwa Service Tribunal, my transfer order/Notification No.SOH(E-V)/1-5/2007/summary dated 16-09-2019 may please be cancelled and obliged.

9
allied
acc

Sincerely Yours,
Farooq Shah
23/09/2019
(Dr. Farooq Shah BS-20)
Management Cadre,
MS DHQ Hospital KDA Kohat

BEFORE THE HONORABLE PESHAWAR HIGH COURT

PESHAWAR



Writ Petition No. _____ -P/2019

Dr. Farooq Shah S/o Zewar Shah R/o Gulberg No. 02, House No. 284,
Muhammad Ali Street Peshawar Cantt.

.....Petitioner

Versus

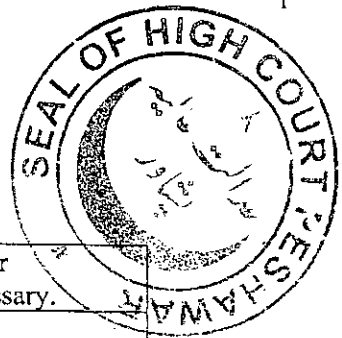
1. Government of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Health,
Civil Secretariat Peshawar.
3. Director General (DG) Health Government of Khyber
Pakhtunkhwa Khyber Road Peshawar.
4. Dr. Raheem Khan General Cadre of BPS-20, Medical
Superindent DHQ Hospital KDA Kohat (Private Respondent).

.....Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN
1973 READ WITH OTHER ENABLING PROVISIONS OF
APPLICABLE LAWS IN THE MATTER, FOR ISSUANCE
OF THE APPROPRIATE WRIT OF QUO-WARRANTO
AGAINST THE RESPONDENTS FOR DECLARE THE
ACT OF TRANSFER OF THE PETITIONER BEING
MANAGEMENT CADRE IN BPS-20 TO GENERAL
CADRE, IS ILLEGAL, UNLAWFUL, VOID AB-INITIO,
UNCONSTITUTIONAL, UNWARRANTED IN THE EYE
OF LAW, NOT SUSTAINABLE.

Attested by
[Signature]

ATTESTED
EXAMINER
Peshawar High Court

PESHAWAR HIGH COURT, PESHAWARORDER SHEET

Date of order or proceedings 2.	Order or other proceedings with signature of Judge or Magistrate and that of parties or counsel where necessary. 3.
07.11.2019	<p><u>WP No.5506-P/2019 with I.R.</u></p> <p><u>Present:</u> Mr. Ajoon Khan, Advocate for the petitioner.</p> <p>Syed Sikandar Hayat Shah, AAG for the official respondents.</p> <p>Mr. Ali Azim Afridi, Advocate for the respondent No.4.</p> <p>*****</p> <p><u>QAISER RASHID KHAN, J.-</u> Through the petition in hand, the petitioner has prayed as under:-</p> <p>“On acceptance of this petition, the act of the respondents issuance of the impugned notification bearing No. SOH(E-V)1-5/2007/ Summary dated 16.09.2019 coupled with the summary dated 8.1.2019 approved by the worthy Chief Minister of KPK Peshawar may be declared as illegal, unlawful, unsustainable in the eye of law, ineffective upon the legal rights of the petitioner against the norms of relevant articles of constitution of Islamic Republic of Pakistan. Hence, liable to be recalled.”</p> <p>2. Arguments heard and the available record perused.</p> <p>3. In a situation, where the petitioner is a civil servant and where the matter relating to the</p>

Attested by

Aarif Hussain, PN


(DB) Justice Qaiser Rashid Khan
Justice Muhammad Naveem Anwar


ATTESTED
EXAMINER
Peshawar High Court


posting and transfer obviously falls within the terms and conditions of service, then the grievance of the petitioner can only be looked into by the learned KPK, Service Tribunal. However, this court cannot intervene in such matters in view of the explicit bar contained in Article 212 (2) of the Constitution of the Islamic Republic of Pakistan, 1973.

4. Accordingly, this writ petition being not maintainable before this court is dismissed. However, the petitioner may seek his remedy before the proper forum, if so advised.

Announced.
Dated; 07.11.2019.


 Senior Puisne Judge



 Judge


 CERTIFIED TO BE TRUE COPY

Examiner
 Peshawar High Court, Peshawar
 authorized under Article 57 of
 the Qanun-e-shahadat Order 1988

15 NOV 2019


No. 12975
 Date of Presentation of Application 09/11/19
 No of Pages 3-P
 Copying fee 1-R
 Total.....
 Date of Preparation of Copy 15/11/19
 Date of Delivery of copy 15/11/19
 Received By Abdul Qadir


 Attest by

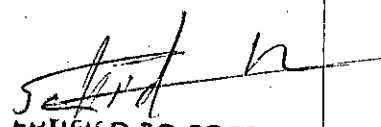
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4. Accordingly, this writ petition being not maintainable before this court is dismissed. However, the petitioner may seek his remedy before the proper forum, if so advised.

Announced.
Dated; 07.11.2019.


Senior Puisne Judge

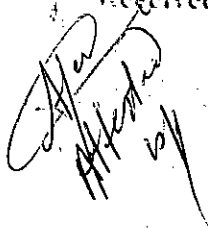

Judge


CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorized Under Article 57-C
of the Qanun-e-shahadat Order 1988

15 NOV 2019

No. 12975
Date of Presentation of Application 09/11/19
No of Pages 3-2
Copying fee 12
Total
Date of Preparation of Copy 15/11/19
Date of Delivery of copy 15/11/19
Received By [Signature]



Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
<p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> Service Appeal No. 823/2019</p> <p align="right">Date of Institution 24.06.2018 Date of Decision 09.08.2019</p> <p>Dr. Hameed Ali S/o Sadaf Ali Agency Surgeon/Merged Area District Kurram.</p> <p align="right">Appellant</p> <p align="center">Versus</p> <ol style="list-style-type: none"> Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar. Secretary Health Department Government of Khyber Pakhtunkhwa, Peshawar. Director General Health Services Government of Khyber Pakhtunkhwa, Peshawar. Dr. Moeen Begum AHQ Hospital Parachinar. <p align="right">Respondents</p> <p>Mr. Muhammad Hamid Mughal-----Member(J) Mr. Ahmad Hassan-----Member(E)</p> <p align="center"><u>JUDGMENT</u> <u>MUHAMMAD HAMID MUGHAL, MEMBER: - Appellant</u></p> <p>present. Learned counsel for appellant present. Mr. Muhammad Jan learned Deputy District Attorney for official respondents present. Private respondent No.4 alongwith counsel present.</p> <ol style="list-style-type: none"> The appellant "Senior Medical Officer (BS-18)" has filed the 		

ATP
Appellant
9.8.2019

present service appeal being aggrieved against the order dated 14.03.2019 whereby his transfer from the post of Senior Medical Officer AHQ Hospital Parachinar to the post of Agency Surgeon Merged Area Kurram in place of private respondent No.4, was withdrawn.

3. Learned counsel for the appellant argued that vide order dated 07.03.2019 the appellant was transferred from the post of Senior Medical Officer AHQ Hospital Parachinar to the post of Agency Surgeon Merged Area Kurram however with in a few days of the issuance of the said order the same was withdrawn vide impugned order dated 14.03.2019. Further argued that the impugned order is premature and in utter violation of laws, rules and policy. Further contended that private respondent No.4 has already been posted as Agency Surgeon Merged Area Kurram since 2014 but she is not willing to leave the said post.

4. As against that learned Deputy District Attorney assisted by learned counsel for private respondent No.4, argued that the posting order of the appellant as Agency Surgeon Merged Area Kurram was issued by the incompetent authority. Further argued that the post of Agency Surgeon (BS-18) falls to the share of Health Management Cadre in BS-18 while the appellant belongs to General Cadre and that cross cadre posting is against the Health Management Cadre Service Rules, 2008. Next contended that the transfer posting order dated 07.03.2019 was illegal hence rightly withdrawn.

5. Arguments heard. File perused.

6. There is no dispute that the post of Agency Surgeon is a

Attended

9.8.2019

REFLECTIONS

“WEALTH IS THE
FOUNTAINHEAD OF
PASSIONS.”

— HAZRAT ALI (A.S.)

78AH427

Kohat farmers want wild boars killed

KOHAT: The residents of various localities on the outskirts of the Kohat city have demanded of the wildlife department to kill wild boars for destroying standing crops vegetables and fruit trees.

Ifrikhar Hussain, president of the model farmers association, said the boars had destroyed the standing maize crop and vegetables.

The black and white pigs have also become permanent menace for the city dwellers and motorists, damaging their cars while crossing the Jarwanda and by-pass roads.

Mohammad Faisal, a local, told *Dawn* that he was crossing the Jarwanda road the other day when a white boar suddenly came out from guava orchards. “I tried my best to avoid it but the boar hit my vehicle, slightly damaging it,” he said.

A boar was killed by people in Manaabad area after the wild beast entered the populated area the other day from the nearby orchards. People surrounded it and beat it to death.

Similarly, two boars were killed by the watchman of a college on the bypass road. The farmers on the Bannu Road explained that their fields had been destroyed by the boars. — Correspondent



A SHOPKEEPER making a Chitrail cap, known as Pakol, at his shop in Peshawar on Saturday. — White Star

Health dept flouts tribunal's orders on management postings

Officials say general cadre medics continue to hold management cadre positions

By Ashfaq Yusufzai

PESHAWAR: The health department has failed to remove the doctors of general cadre from management positions in the province despite the services tribunal's orders.

On Aug 9, the Khyber Pakhtunkhwa Services Tribunal delivered a verdict ordering the removal of all doctors, who don't belong to management cadre whether medical officers or senior medical officers, from the management seats.

Though the tribunal ordered the appointment of only doctors from the management cadre to such positions, the health department continues to violate those orders by tasking the general cadre doctors with holding the management cadre positions.

Sources said four general cadre doctors were posted to the department's management positions on Oct 14, while a doctor from general cadre was made the district health officer of Hangu early this month.

They said 18 BPS-18 and BPS-19 doctors from the management cadre were made officers on special duty lately, so they sat idle despite having vast experience and thus, adversely affecting the working of the department.

The officials said the OSDs also didn't get salary until they weren't properly posted.

They said a senior management cadre doctor got cash-strapped recently as his salary was withheld on him becoming an OSD, so his colleagues arranged money for him.

The officials said the concept of OSD was wrongly used as it was basically meant to give a special task to an officer that others couldn't do.

They said the departments couldn't make OSDs with the exception of the establishment department, which required the post creation for that period so that he or she could take salary.

The officials said OSDs in the health department not only stayed without salary until their proper postings but they also weren't given health professional allowance for the period when they weren't posted to sanctioned positions.

They said most OSDs had no place to sit and wandered from one office to another in the offices of the director general (health services) or health secretariat.

The officials said some influential doctors managed to secure salary despite being OSDs. They said usually, the management cadre

doctors were made OSDs for not following the illegal orders of their high-ups, while their successors fell into line with their bosses.

The officials said many doctors held additional charge of more than three positions simultaneously though the law didn't that for more than three months.

They said majority of doctors at the DG (health) offices held positions, which didn't match their grades, in violation of the rules.

The officials said despite the services tribunal's orders, the department hadn't replaced the general cadre doctors from management positions and instead, it posted more and more such doctors to management posts.

They said qualified and eligible doctors of the management cadre were waiting for posting, while the general cadre enjoyed the privilege of additional charges of the health management posts like DHO, medical superintendents and project directors.

The officials said under the law, the general cadre doctors were to work in hospitals and see patients, while the management cadre ones were required to hold administrative positions.

A senior official told *Dawn* that a placement committee had been formed to assign new posts to OSDs. He said most OSDs held BPS-18 and above, so their postings required the approval of the chief minister.

Company has planned two more power feeders for Mansehra to address power outages and low voltage in the city and adjoining areas.

Currently, Mansehra has three power feeders.

Pesco superintendent engineer Waseem Abbas told an open kutcheri here on Saturday that the government had sanctioned Rs2 billion for installation of two power feeders.

“Work on one feeder is complete, while work on the other will begin on Nov 1,” he said. The residents complained to him about low voltage, excessive power cuts, long delay in the installation of power meters, and inflated bills.

The superintendent engineer said the Pesco had installed Rs440 million power transformers in three feeders of Mansehra city and its suburbs and removed 85 per cent old wires for smooth electric supply.

He said the company had also begun one-window operation for the speedy installation of power meters.

“We have tangibly reduced line losses and the

INJURED: A gunman injured his daughter and a man in the name of honour in Giyal village of Upper Kohistan district on Friday.

The two fled after the attack. Their whereabouts weren't known.

A resident said it would be premature to say if both man and woman were alive.

“The man's family searched for him in hospitals across Hazara division, but to no avail,” he said.

The Kamila police said FIR of the incident hadn't been registered as no one had approached police for it.

Meanwhile, deputy commissioner Arif Yousafzai on Saturday said the administration was striving to provide basic amenities to the people of Upper Kohistan district.

He told a group of residents during a meeting that the administration would address their problems effectively.

Mr Yousafzai said the Dasu hydropower project and Diamer-Basha, dam promised economic welfare of the residents. — Correspondent

Power to remain suspended

PESHAWAR: The Peshawar Electric Supply Company has announced power suspension from five to six hours on Oct 28 (Monday) in different localities due to maintenance work on the transmission lines.

According to a statement issued here on Saturday, the consumers of 11KV PAF and Tehkai, Commercial 1, 2, University Town, KTH, Islamia College, 11KV Gul Bela, Pakha Ghulam, Guluzai, 11KV Urmer, Baghbanan, Chamkani and Chughalpur, 11KV Urmer 2, New Hazar Khwani, Pandu Baba, Pandu Road, Ring Road, Kachori, Pandu Road 2, Surizai, Yakatoot and Chairman Daftar feeders will face inconvenience from 8am to 2pm.

In Charsadda, the people of Umerzai 2, Tangi Nusratzai, Tangi 2, Mera Tangi will suffer from 9am to 2pm.

In Mingora, the consumers of 11KV Marghuzar, Mingora 1, 2, 3, 4, Gulkada, Takhta Band, Sanger, Bandai, Bara Bandai, Saidu Sharif, Saidu Baba, Sinor, Qambar, Marguzar, Kabal 1, 2, 3, 4, Gogdara, Ajrang, Malam Jaba, Barikot, 11KV Manyar, Shamoza, Barikot and Musakhel feeders will face inconvenience from 8am to 2pm.

In Swabi, consumers of 11KV Totalai, Nawa Kallay, Gol Sher Khan, Rambhal Palodand, Maini Chakral



20

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

SUMMARY FOR CHIEF MINISTER KHYBER PAKHTUNKHWA

Subject: POSTINGS/TRANSFERS OF DOCTORS IN HEALTH DEPARTMENT.

The post of District Health Officer Kohat falls to the share of Health Management Cadre in BS-20 and presently occupied by Dr. Mushraf Khan Management Cadre BS-20.

2. Similarly the post of Medical Superintendent DHQ Hospital KDA Kohat also falls to the share of Health Management Cadre in BS-20 and presently occupied by Dr. Farooq Shah Management Cadre BS-20.

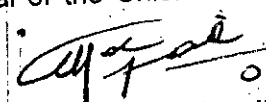
3. Dr. Rahim Khan belongs to the General Cadre in BS-20 and presently working as Chief Medical Officer BS-20 DHQ Hospital KDA Kohat. It is pertinent to mention here that at present there is no spare Member of Service BS-20 officer to be posted as District Health Officer Kohat as well as Medical Superintendent DHQ Hospital KDA Kohat.

4. According to schedule-III of the Khyber Pakhtunkhwa Govt Rules of Business, 1985 the postings/transfers of Heads of attached Departments and other officers in (BS-19) and above in all Departments would be made with the approval of the Chief Minister (**Annex-I**).

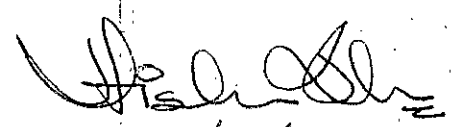
5. In view of the above Health Department proposes the following posting/transfer of officers in the public interest.

S#	Name of Officer	Present Posting	Proposed Posting
1.	Dr. Mushraf Khan Management Cadre BS-20	District Health Officer Kohat	Report to the Director General Health Services Khyber Pakhtunkhwa
2.	Dr. Rahim Khan Khattak Management Cadre BS-19	Waiting for posting	District Health Officer Kohat
3.	Dr. Farooq Shah Management Cadre BS-20	MS DHQ Hospital KDA Kohat	Report to the Director General Health Services Khyber Pakhtunkhwa.
4.	Dr. Raheem Khan General Cadre BS-20	Chief Medical Officer BS-20 DHQ Hospital KDA Kohat	Medical Superintendent DHQ Hospital KDA Kohat

6. Para-5 of the Summary is submitted for approval of the Chief Minister Khyber Pakhtunkhwa, please.


(Dr. Syed Farooq Jamil)
Secretary Health

Minister for Health
Khyber Pakhtunkhwa


09/01/2019
Minister for Health
Khyber Pakhtunkhwa



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

SUMMARY FOR CHIEF MINISTER KHYBER PAKHTUNKHWA

Subject: POSTINGS/TRANSFERS OF DOCTORS IN HEALTH DEPARTMENT.

Chief Secretary
Khyber Pakhtunkhwa.

Chief Minister
Khyber Pakhtunkhwa.

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07. Summary for Chief Minister, Khyber Pakhtunkhwa regarding posting/transfer of doctors has been examined. It is observed that the proposal of Health Department in Para-5 is self-contradictory to the facts mentioned in Para-3 of the Summary. The proposal is not only cross cadre posting but also involves posting of a junior officer against higher post. Moreover, tenure of the officers in their respective place of posting is not mentioned being one of the requirements of Posting/Transfer Policy of the Provincial Government (Annex-II).

08. The proposal contained in Para-6 read with Para-7 thereof may be submitted for orders of Honourable Chief Minister Khyber Pakhtunkhwa.

(ARSHAD MAJEED)
Secretary Establishment
January 21, 2019

9. ~~Chief Secretary, Khyber Pakhtunkhwa~~

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22/1/19

CHIEF SECRETARY
Govt. Of Khyber Pakhtunkhwa

~~10- CHIEF MINISTER~~

Attested by
CS

Para 5 is approved.

Handwritten signature
4.2.2019

Chief Minister
Khyber Pakhtunkhwa



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

HD-5843

SUMMARY FOR CHIEF MINISTER KHYBER PAKHTUNKHWA

Subject: POSTINGS/TRANSFERS OF DOCTORS IN HEALTH DEPARTMENT.

Summary on the subject noted above is placed below for approval of the Chief Minister Khyber Pakhtunkhwa, please.

[Signature]
28/1/19
(Dr. Syed Farooq Jamil)
Secretary Health

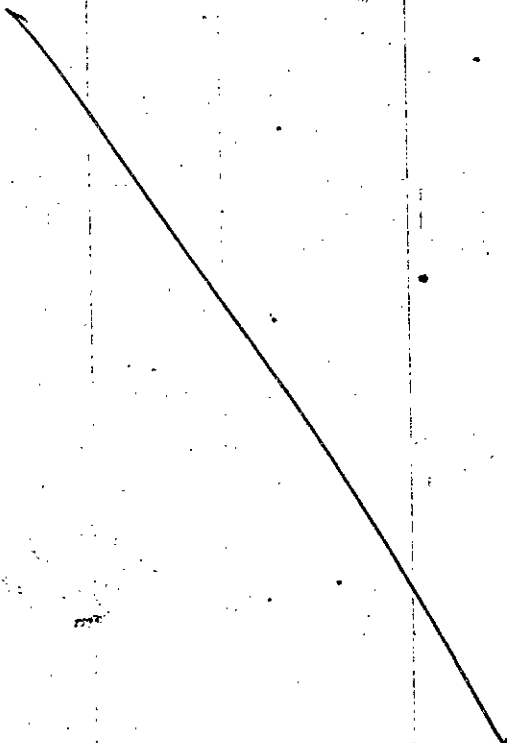
Minister for Health
Khyber Pakhtunkhwa.

[Signature]
Chief Secretary
Khyber Pakhtunkhwa.

Principal Secretary to Chief Minister
Khyber Pakhtunkhwa.

[Signature]
09/01/2019
Minister for Health
Khyber Pakhtunkhwa

[Signature]
Attended by



[Signature]

PS to Minister For Health
Dairy No: 01
Dated: 9-01-2019
Secretary Health

PS/Secy (P) AD
Dairy No: 53
Dated: 16-01-2019

2. Views of Establishment Department may kindly be perused vide Para 7-8 of the Summary.

(Arshad Majeed)
Secretary Establishment
21 Jan., 2019

Chief Secretary KPK

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22/1
CHIEF SECRETARY
Govt. Of Khyber Pakhtunkhwa

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PSCM

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4.2.2019
Principal Secretary to CM
Khyber Pakhtunkhwa

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Chief Secretary

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Secy H.A.R.I.K

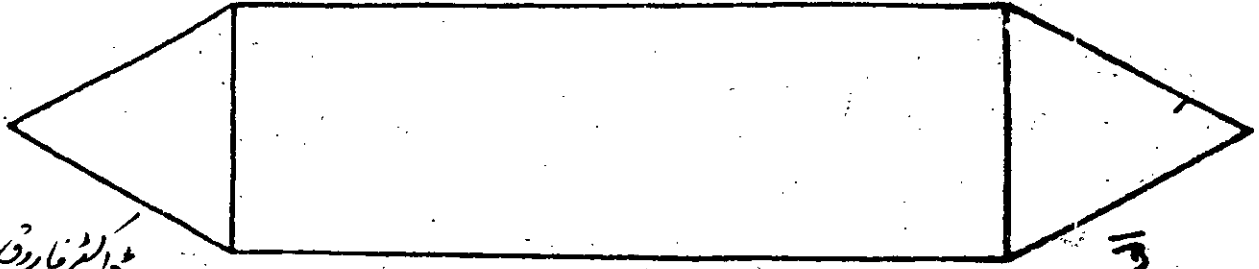
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15/5
CHIEF SECRETARY
Govt. of Khyber Pakhtunkhwa

Issue order of
the office at S.No: (3) & (4)
is approved by the competent Authority.

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30/8/15

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Attention SO-2

Office of the PSCM
Diary No. 189
Dated. 22/1/19
Diary No. 331
Dated. 22-1-19
PS / Secy (E) & AD



تاریخ 27-11/2019

مقدمہ

دعویٰ

جرم

ڈاکٹر فاروق شاہ
سیہ منجانب گورنمنٹ آف
کے پی ک پی
بنام

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کارروائی متعلقہ آن مقام پشاور کے لئے اجون خان مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا نیز ایکس صاحب کو کرنے راضی نامہ و تقررات و فیصلہ برطرف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک دروپہ اور طرہی دعویٰ اور درخواست ہرقم کی تصدیق و دراپس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکفرز یا اپیل کی برائگی اور منوعی نیز دائر کرنے اپیل ٹکرائی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے مقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پداختہ منظور و قبول ہوگا و دوران مقدمہ میں جو خرچہ و ہرجانہ اتوائے مقدمہ کے سب سے ہوگا۔ اس کے مستحق وکیل صاحب موصوف ہوں گے۔ نیز تقابلاً و خرچہ کی دھوا کرنے کا بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا نکات نامہ لکھد یا کہ سند رہے۔

2019

ماہ 11

27

المرقوم

الجانب دکنائنہ

کے لئے منظور ہے۔

مقام پشاور

Accepted
for
Signature

VAKALAT NAMA

NO. _____/2020

THE COURT OF RP Service Tribunal, Peshawar
~~Dr. Farooq Shah~~

Dr. Farooq Shah (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Health Deptt. (Respondent)
(Defendant)

I/We, Dr. Farooq Shah

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate Supreme Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

Farooq Shah
(CLIENT)

ACCEPTED

M. Asif Yousafzai
M. ASIF YOUSAFZAI
Advocate Supreme Court Peshawar.

& *Taimur Ali Khan*
TAIMUR ALI KHAN
Advocate High Court, Peshawar

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar
Cell: (0333-9103240)

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

Appeal No. 2229/2019

Dr. Farooq Shah

V/S

Health department.

.....
**APPLICATION FOR AMENDMENT IN THE INSTANT APPEAL BY
CHALLENGING THE REJECTION ORDER DATED 18.12.2019
RECEIVED BY THE APPELLANT ON 27.01.2020.**
.....

RESPECTFULLY SHEWETH:

1. That appellant has filed the instant appeal in this august Tribunal against the order dated 16.09.2019, whereby the appellant belonging to Management Cadre was transfer from the post of MS, DHQ Hospital KDA Kohat and report to DG Health Services and respondent No.4 belonging to General Cadre was posted on his post. The appellant filed departmental appeal against the order dated 16.09.2019 on 23.09.2019, which was rejected on 18.12.2019, however that rejection order was not communicated to the appellant and after lapse of statutory period. Then the appellant filed the present service appeal.
2. That the instant appeal is in reply stage which is fixed for today i.e 06.02.2020.
3. That as the departmental appeal was rejected on 18.12.2019, but was not communicated to the appellant and the now the rejection order dated 18.12.2019 was received by the appellant on 27.01.2020 which is duly supported by an affidavit on behalf of the appellant and which is necessary to be challenged before this august Tribunal, therefore the appellant wants to challenge the rejection order dated 18.12.2019 received on 27.02.2020 by amending the instant appeal. **(Copies of order dated 18.12.2019 and affidavit are attached as Annexure-A&B)**

It is, therefore, most humbly prayed that on acceptance of this application, the appellant may allow to amend the instant appeal by challenging the rejection order dated 18.12.2019 before this august Tribunal to meet the ends of justice.

Asif Yousef

APPELLANT

THROUGH:

Asif Yousef

M.ASIF YOUSAFZAI
ADVOCATE SUPREME COURT

& *Taimur Ali Khan*

TAIMUR ALI KHAN
ADVOCATE HIGH COURT

AFFIDAVIT

It is affirmed and declared that the contents of the above Application are true and correct to the best of my knowledge and belief.

Asif Yousef

DEPONENT





**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

A

No.SOH(E-V)/1-5/2007
Dated Peshawar the 18th Dec,2019

To

The Director General
Health Services, Khyber Pakhtunkhwa
Peshawar.

Subject:- REQUEST FOR CANCELLATION OF NOTIFICATION NO. SOH(RV)1-5/2007/SUMMARY I.E TRANSFER ORDER

Dear Sir,

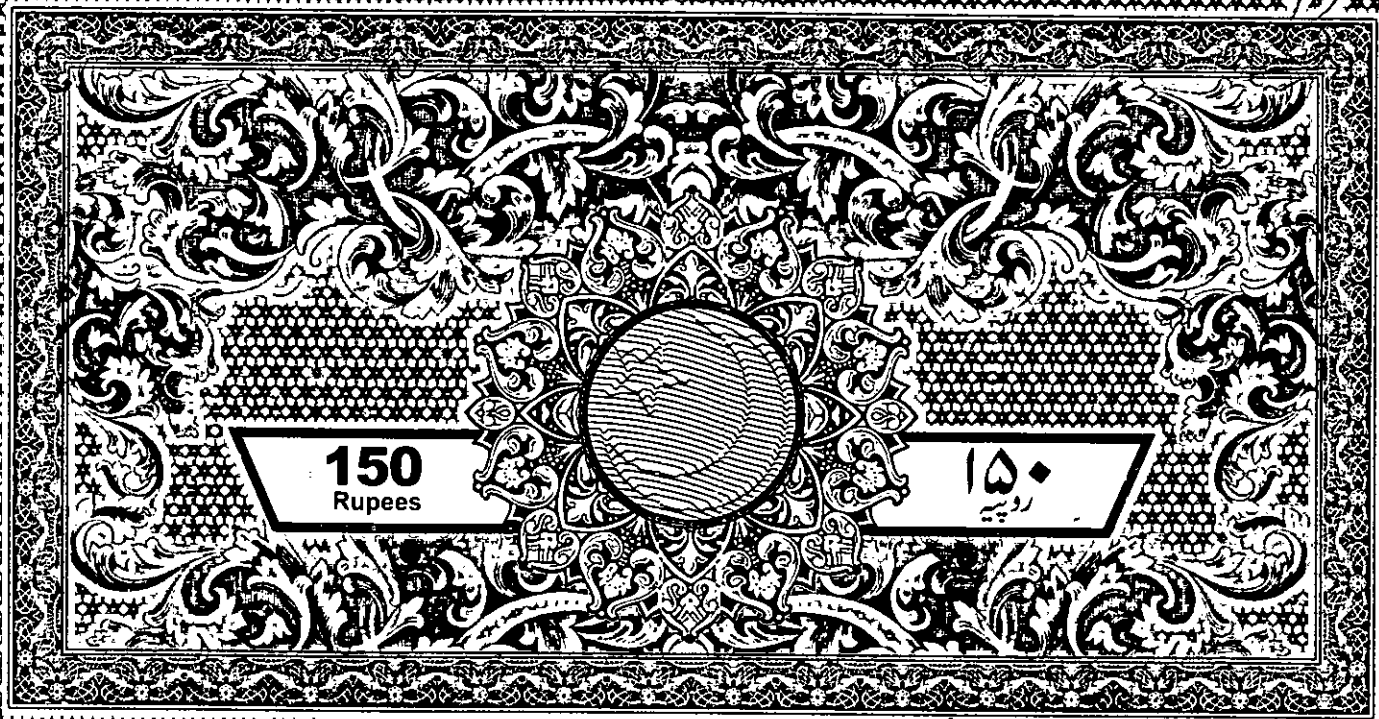
I am directed to refer to Dr. Farooq Shah (BS-20) Management Cadre (Ex-MS DHQ Hospital Kohat) appeal No. nil dated nil on the above captioned subject and to request that the applicant (now awaiting for posting in DGHS) may kindly be informed that his appeal was considered and regretted, as the orders were passed after obtaining approval of competent authority, please.

Muhammad Irfan Usman
18/12/19
(MUHAMMAD IRFAN USMAN)
SECTION OFFICER-V
HEALTH DEPARTMENT

Copy of the above is forwarded to the PS to Secretary Health Department for information.

SECTION OFFICER-V
HEALTH DEPARTMENT

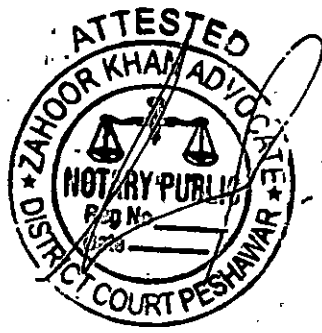
Recd on 27/01/2020
[Signature]
27/01/2020



AFFIDAVIT

I, Dr. FAROOQ-SHAH (Ex, M.S., District Head Physician Hospital Kohat, hereby solemnly declare that I have reviewed letter NO SOH (E-U)/1-5/2007 dated Peshawar the 18/12/2019 addressed to Director General Health Services, K.P. Peshawar on 27/01/2020 from concerned section of health secretariate, Govt. of K.P.

Farooq Shah
 Dr. FAROOQ-SHAH



6 FEB 2020

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

Appeal No. 2229/2019

Dr. Farooq Shah

V/S

Health department.

.....
**APPLICATION FOR AMENDMENT IN THE INSTANT APPEAL BY
CHALLENGING THE REJECTION ORDER DATED 18.12.2019
RECEIVED BY THE APPELLANT ON 27.01.2020.**

.....

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It is, therefore, most humbly prayed that on acceptance of this application, the appellant may allow to amend the instant appeal by challenging the rejection order dated 18.12.2019 before this august Tribunal to meet the ends of justice.

Saifullah
APPELLANT

THROUGH:

Saifullah
M.ASIF YOUSAFZAI
ADVOCATE SUPREME COURT

& *Taimur Ali Khan*
TAIMUR ALI KHAN
ADVOCATE HIGH COURT

AFFIDAVIT

It is affirmed and declared that the contents of the above Application are true and correct to the best of my knowledge and belief.

Saifullah
DEPONENT



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

A

No.SOH(E-V)/1-5/2007
Dated Peshawar the 18th Dec,2019

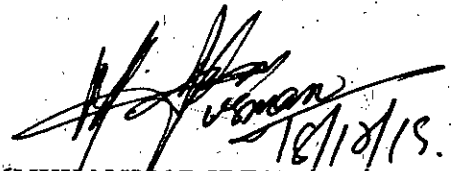
To

The Director General
Health Services, Khyber Pakhtunkhwa
Peshawar.

Subject:- REQUEST FOR CANCELLATION OF NOTIFICATION NO. SOH(RV)1-5/2007/SUMMARY LE TRANSFER ORDER

Dear Sir,

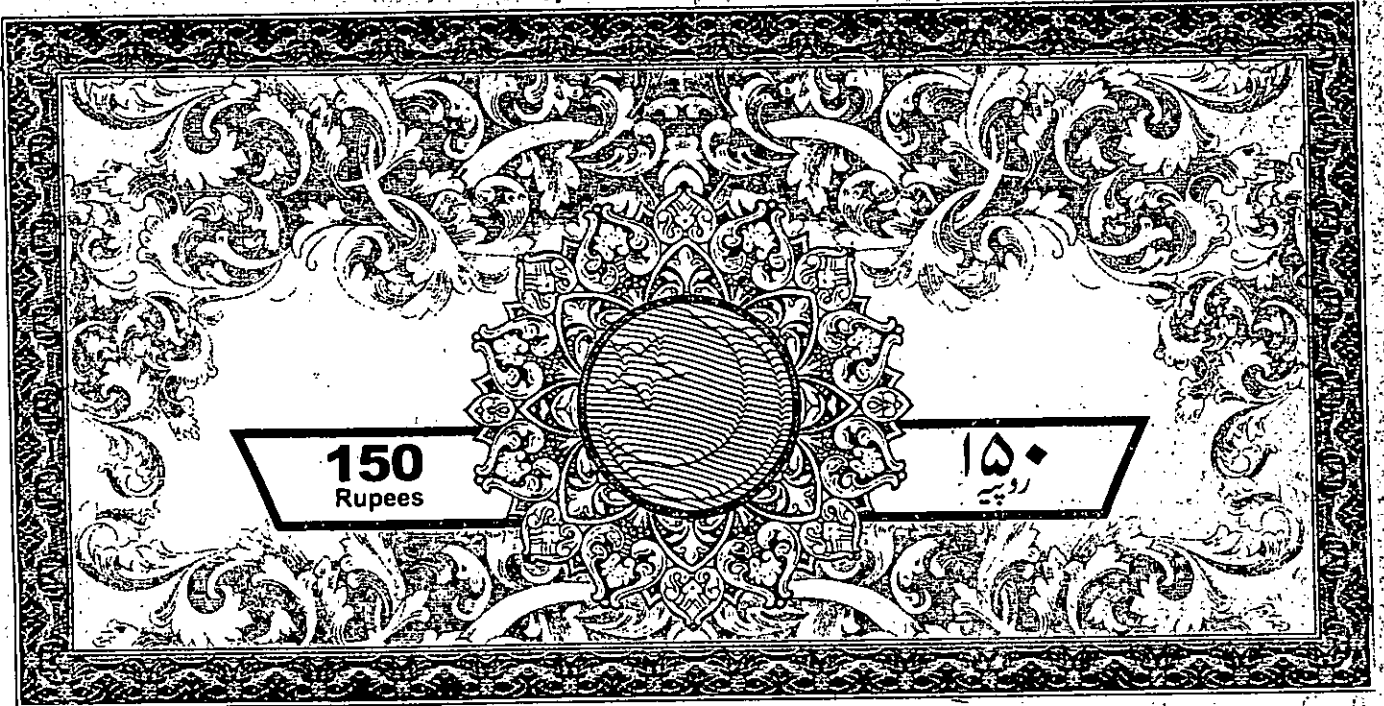
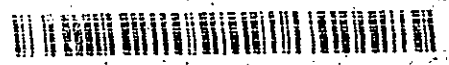
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(MUHAMMAD IRFAN USMAN)
SECTION OFFICER-V
HEALTH DEPARTMENT

Copy of the above is forwarded to the PS to Secretary Health Department for information.

*Recd. on, 27/01/2020
Fuzul
27/01/2020*

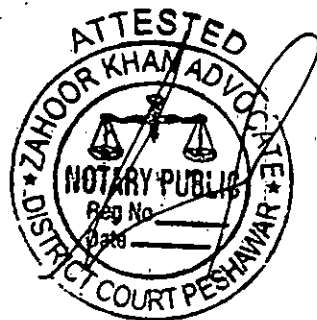
SECTION OFFICER-V
HEALTH DEPARTMENT



AFFIDAVIT

I, Dr. FAIZOOR-SHAH (Ex, M.S, District Head Peshawar Hospital ICobat, hereby solemnly declare that I have received letter No. SOH. (E-U)/1-5/2007 dated Peshawar the 18/12/2019 addressed to Director General Health Services, K.P Peshawar on 27/01/2020 from concerned section of health secretariat, Govt of ICOP.

Faizoor Shah
Dr. FAIZOOR-SHAH



6 FEB 2020

GOVERNMENT OF THE NORTH-WEST FRONTIER PROVINCE NWFP
HEALTH DEPARTMENT

NOTIFICATION

Peshawar, dated the 11th DECEMBER, 2008

No. SOH(EV)4 - 20 / 08 : In exercise of the powers conferred by section 26 of the North West Frontier Province Civil Servants Act, 1973 (N.-W.F.P. Act XVIII of 1973), the Governor of the North-West Frontier Province is pleased to make the following rules, namely:

THE NORTH-WEST FRONTIER PROVINCE
HEALTH (MANAGEMENT) SERVICE RULES, 2008.

PART - I
GENERAL

1. **Short title and commencement.** —(1) These rules may be called the North-West Frontier Province Health (Management) Service Rules, 2008.

(2) They shall come into force at once.

2. **Definitions.**— In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say -

- (a) "appointing authority" in relation to a post, means the respective authority specified in para 4 of the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989;
- (b) "Commission" means the North-West Frontier Province Public Service Commission;
- (c) "Cadre" means Health Management Cadre;
- (d) "Government" means the Government of the North-West Frontier Province;
- (e) "Governor" means the Governor of the North-West Frontier Province;
- (f) "Initial recruitment" means appointment made otherwise than by promotion or transfer;
- (g) "Member of Service" means officer belonging to health management cadre as reflected in schedule I, II & III;
- (h) "PHSA" means Provincial Health Services Academy;

- (i) "Post" means a post specified in the Schedule-I of the rule and such other posts as may, from time to time, be determined by the Government;
- (j) "Schedule" means the schedule appended to these rules; and
- (k) "Service" means the North-West Frontier Province Health (Management) Service.

PART-II RECRUITMENTS

3. Number and nature of posts.—The Service shall comprise the posts specified in the Schedule -I and such other posts as may be determined by Government from time to time.
4. Method of Appointment.—Method of appointment, qualifications and other conditions to applicable to a post in the Service shall be such as laid down in the column 3 to 5 of the Schedule - II.
5. Syllabus and examination for appointment by initial recruitment.—Syllabus and standard for competitive examination for appointment by initial recruitment to the post in BS-17 shall be, as laid down in Schedule-III.

PART-III CONDITIONS OF SERVICE

6. Pre-Service Training & Departmental Examinations.— (1) On appointment to a post borne on the service in BS-17, every officer so appointed shall complete six months mandatory training including attachment as specified in schedule -IV.

(2) The training shall be followed by departmental examination to be conducted by Provincial Health Services Academy, which will be part of probation period.

7. In-Service Training.—Selection for in-service trainings which are linked with promotion shall be done on seniority basis and those at verge of promotion shall be given priority.

8. Private Practice.— (1) No Member of Service shall be allowed private practice, in lieu he shall be entitled to non-practicing allowance, at such rate as may be prescribed by Government.

(2) In case of default, the Member shall be liable to disciplinary action under the law.

9. General rule.— In all matters not expressly provided for in these rules, Members of Service shall be governed by such rules as have been or may hereafter be prescribed by Government from time to time.

Provided that in case of a dispute the Government shall have the final authority to decide the matter in any manner it deems fit.

10. One time exercise. -- (1) Notwithstanding anything contained in the provision of these rules, Government shall, as one-time exercise, fill in posts in the Service described in Schedule-I by way of permanent transfer from amongst the Officers of General Cadre in equivalent basic pay scale who have the qualification of Master of Public Health or Postgraduate Diploma in Public Health or Postgraduate Diploma in Hospital Administration or Health Planning & Management or equivalent Master's Degree / Diploma in Health management or allied disciplines and opt for absorption;

Provided that the option once exercised shall be final.

(2) Where the number of officers opting for absorption in Management Cadre is more than the available positions in respective grade, the selection under one time exercise shall be done on the basis of seniority-cum-merit only in the respective grade;

Provided that for determining the suitability of the officers, additional relevant qualifications, trainings/courses in the relevant field and managerial experience, as such, shall be taken into consideration.

11. Deletion of posts.---Posts reflected in the schedule-I shall stand deleted from any other service rules for the time being in force and such rules shall be deemed to have been amended to the above extent:

SECRETARY TO GOVERNMENT OF NWFP
HEALTH DEPARTMENT

Endst. of even No & Date.

Copy to:

1. The Chairman, Public Service Commission, NWFP, Peshawar
2. PS to Minister for Health, NWFP.
3. PS to Chief Secretary, NWFP.
4. PS to Additional Chief Secretary, NWFP.
5. PS to Secretary E&A Department.
6. PS to Secretary Law Department.
7. PS to Secretary Finance Department.
8. PS to Secretary Health.
9. PA to DGHS NWFP.
10. Computer Programmer, Health Department.

(ADIL SAEED SAFI)
SECTOIN OFFICER - V

SCHEDULE – I
(Management Cadre)

Members of Service in BPS-20:

S.No.	Nomenclature of post	Number of post
1	Director General Health Services, NWFP, Peshawar	01
2	Director (Admn) DGHS NWFP Peshawar	01
3	Director Health Services DGHS NWFP Peshawar	01
4	Medical Superintendent Govt. LRH/KTH/HMC Peshawar	03
5	Medical Superintendent DHQ.Hospitals Kohat, Bannu, DIKhan, Mardan, Swat, Abbottabad	06
6	Medical Superintendent, Mufti Mehmood Memorial Hospital DIKhan	01
7	Medical Superintendent, Khalifa Gul Nawaz Hospital Bannu	01
8	Medical Superintendent, Govt. City Hospital Kohat Road Peshawar	01
9	Medical Superintendent, Sarhad Hospital for Psychiatric Diseases Peshawar	01
10	Medical Superintendent, Ayub Teaching Hospital Abbottabad	01
11	Executive District Officer (Health) Peshawar	01
12	Executive District Officer (Health) Swat	01
13	Executive District Officer (Health) Mardan	01
14	Executive District Officer (Health) Kohat	01
15	Director Provincial Health Services Academy, Peshawar	01
16	Principal Public Health School Hayatabad Peshawar	01
17	Principal Pubic Health School Abbottabad	01
18	MS Mardan Medical Complex	01
-	TOTAL:	25

OFFICE OF THE
MEDICAL SUPERINTENDENT
DHQ TEACHING HOSPITAL
KDA, KOHAT

No. 612 /PF

Dated Kohat the 02 /03/2018

To
The Director General Health Services
Khyber Pakhtunkhwa, Peshawar.

Subject:- **ARRIVAL REPORT IN RESPECT OF DR. FAROOQ SHAH (MEDICAL SUPERINTENDENT, BPS – 20)**



Kindly refer to the Government of Khyber Pakhtunkhwa Health Department Notification No. SOH(E-V)1-5/2007 dated 28.02.2018 regarding posting / transfer against the vacant post of Medical Superintendent (BS – 20) DHQ Hospital KDA Kohat.

I, Dr. Farooq Shah (Management Cadre; BS – 20) have submitted arrival report for duty as Medical Superintendent DHQ Teaching Hospital KDA Kohat on 01.03.2018 (F.N).

Arrival reports are enclosed herewith (in duplicate) for further necessary action.

Encl: As Above.



Even No. & Dated:


MEDICAL SUPERINTENDENT
DHQ TEACHING HOSPITAL
KOHAT


Copy forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Section Officer (E-V) Government of Khyber Pakhtunkhwa Health Department w/r to his Notification No. referred above.
3. District Comptroller of Accounts Kohat.

For information and further necessary action.


MEDICAL SUPERINTENDENT
DHQ TEACHING HOSPITAL
KOHAT


0323 9232174

Brix Tarif
APs cell

0323 923 2227

APs Tarif
cell.

OFFICE OF THE MEDICAL SUPERINTENDENT
DHQ TEACHING HOSPITAL KDA KOHAT


No. 433 /PF

Dated Kohat the: 19 /03/2020

POWER OF ATTORNEY

I, hereby authorized Mr. Khurram Sajjad Ali Khan (Pharmacist; BS – 17) attached to DHQ Teaching Hospital KDA Kohat, having CNIC No.14301-7419277-5, to attend the honourable court of Service Tribunal Peshawar on behalf of the undersigned into the case titled as “Service Appeal No.2229/2019 - Dr. Farooq Shah versus Government of Khyber Pakhtunkhwa, Health Department and others”.


He is directed to attend the honourable court regularly on the respective fixed dates of hearing till the final decision and to inform the undersigned about all proceedings, accordingly.


(DR. RAHIM KHAN)
MEDICAL SUPERINTENDENT
DHQ TEACHING HOSPITAL
KOHAT

Copy forwarded to the:-

- 3408
1. Secretary to Government of Khyber Pakhtunkhwa Health Department Peshawar.
 - ② Additional Advocate General Khyber Pakhtunkhwa Peshawar Services Tribunal Peshawar.
 - ③ Director General Health Services Khyber Pakhtunkhwa Peshawar.
 - ✓ 4. Mr. Khurram Sajjad Ali Khan (Pharmacist; BS – 17) DHQ Teaching Hospital KDA Kohat.

For information w/r to Notification No.SOH(LIT II)13-4461/2020 dated 26.02.2020.


10-3-20

7915
10-3-20

BEFORE THE HON'BLE PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR



Service Appeal No 2229 of 2019

Dr. Farooq Shah Appellant

Versus

Govt. of Khyber Pakhtunkhwa & Others Respondents

Written Statement

Written Statement on Behalf of Dr. Rahim Khan, Private Respondent No. 4 is respectfully submitted as follows;

Preliminary objections:-

1. That the appellant has got no cause of action against the answering respondent no. 4.
2. That the appeal is vague, premature, incompetent and not maintainable as the appellant has attached with appeal no order, whatsoever, signifying his transfer and posting against any post of General Cadre.
3. That the amended appeal is not maintainable as the appellant has changed his stance without seeking prior and express permission for such amendment from the Hon'ble Court.
4. That the appellant has not come to the Hon'ble Court with clean hands.
5. That the stance taken by the appellant in appeal is based on malafide.

On Facts

1. That para of the appeal is misconceived. It is very respectfully submitted that the appellant has concealed the facts as vide impugned order he not been transferred or posted against any post of General Cadre. According to impugned notification no. SOH (E-V) 1-5/2007/summary dated 16/09/2019 annexure "A" the appellant has been directed to report to the Director General Health Services Khyber Pakhtunkhwa.

That according to the norms of service the appellant is bound to report to the Director General Health Services Khyber Pakhtunkhwa (respondent no.3) either for further posting or for orders deemed appropriate by the competent authority.

That besides the above the summary dated 08/01/2019 was finally approved by the Chief Minister on 21/Jan 2019. That since the appellant has neither expressed any grievances against the posting of respondent no.4 as MS, DHQ Hospital KDA Kohat nor authorised to do so as such the grounds enumerated in the Summary dated 08/01/2019 for posting/transfer of respondent no. 4 have attained finality and the appellant is, therefore, debarred from seeking any relief which may affect the career and posting of the answering respondent as MS, DHQ Hospital KDA Kohat.

2. That para no. 2 of appeal needs no detailed discussion, however, it is acknowledged that the appellant is a government servant and according to the terms and conditions of service the appellant is first bound to report to DG Health as directed and in case his posting is made against a post of General Cadre then he may seek remedy in the manner prescribed by law.
3. That in response to para no. 3 of appeal it is submitted that the appellant has preferred no Departmental Appeal as prescribed by law. Furthermore grounds taken in the letter addressed to the Secretary captioned as "Appeal" are altogether different and inconsistent with the grounds taken in Service Appeal and as such the appeal is misconceived, incompetent and not maintainable.

4. That in response to para no. 4 of appeal it is submitted that rejection of letter captioned as "appeal" has neither transformed the said letter into a departmental appeal nor rejection of the same has converted the incompetent service appeal into a maintainable appeal. Moreover the appellant has made certain amendment in appeal without the express permission of the Hon'ble Court which has altogether changed the stance of the appellant taken in the earlier appeal as such the amended appeal is not maintainable.

Grounds

S. No	Grounds Taken by Appellant	Reply of Respondent
A	That the impugned notification dated 16/09/2019 coupled with the summary dated 08/01/2019 approved by the worthy Chief Minister of KPK Peshawar, and rejection order dated 18.12.2019 are against law, facts against the norms of justice and confronted with the usual way of treatment of such practices on the transfer matter by the respondent department, hence tenable in the eye of the law, thus liable to be set aside.	That the appellant has neither mentioned any reason nor has referred to any illegality. Moreover assertions made in ground "A" give no rise to any cause in favour of appellant.
B	It is the matter of the record that this Hon'ble tribunal is such like same nature case bearing service appeal No. 823/2019 titled "Dr. Hameed Ali VERSUS Chief secretary & others", passed its well speaking, well elaborated order/judgment dated 09/ 08/ 2019 according to which the change of the cadre while transferring of the aggrieved	That since the appellant has not yet been transferred and posted against any post of General Cadre as such the esteemed judgment of the Hon'ble Tribunal is not applicable to the case of the appellant. The appeal is

	<p>petitioner their under was declined by declaring the act of the respondent as illegal, unlawful, hence that case has also enjoyed publication in the daily newspaper. Therefore being fall under the same flow of the earlier litigation, this case of the petitioner can easily be determined by this Hon'ble Court on the score of the above cited earlier case decided by this Hon'ble tribunal.</p>	<p>premature. The requisites of law are that the appellant shall first report to DG Health for further posting and in case he is posted against a post of General Cadre then he may seek his remedy in accordance with the procedure laid down in law.</p>
C	<p>It is the settled precedent duly precedented by the Supreme Court of Pakistan in its numerous consistent regular judgments on such like service matter that the cadre of the employee cannot be changed in any manner so the act of the respondents with regard to the changing of the cadre from Management to General, while transferring the petitioner from DHQ KDA Kohat to office of the respondents No. 3 is obviously illegal, unlawful cannot be warranted and sustainable in the eye of the law</p>	<p>That the precedent either referred to or settled by the apex Court and relied on by the appellant has not been identified by the appellant. Moreover any such precedent is not attracted to the case of the appellant as the appellant has not yet been transferred and posted against any seat of General Cadre.</p>
D	<p>That order passed by the respondent is illegal, vid without lawful authority and without jurisdiction thus deserve to be set aside.</p>	<p>That the order is in consonance with law as the Government has the prerogative to direct such a civil servant to report to DG Health for further posting.</p>

E	That any other ground may be raised at the time of arguments, with the kind permission of this Honourable Tribunal, if needed so.	Needs no detailed reply.
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It is, therefore, very humbly prayed that since the appellant has failed to report to DG Health for further posting as such the appeal is premature and may, therefore, be very graciously dismissed.

Dated 20/03/2020



Dr. Raheem Khan

Respondent No. 4

Through



Muhammad Azim Khan Afridi,

Advocate High Court, Peshawar.

BEFORE THE HON'BLE PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No 2229 of 2019

Dr. Farooq Shah Appellant

Versus

Govt. of Khyber Pakhtunkhwa & Others Respondents

Affidavit

I, Dr. Rahim Khan do hereby solemnly affirm and declare that the averments of facts contained in the accompanying written statement are true and correct to the best of my knowledge and belief & that nothing has been concealed by the deponent from this Hon'ble Court.

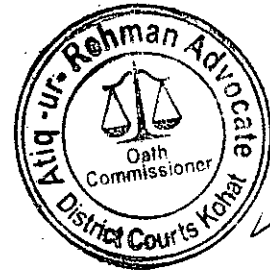
Dated 20.03.2020

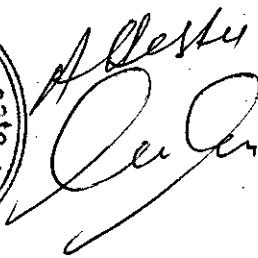


Deponent

Dr. Raheem Khan

Respondent No. 4





بعدالت جناب سرور سٹریٹ میونسپل کونسل لیسٹاور

کورت نمبر

مقدمہ اپیل ۱۹/۱۹۳۹

ڈاکٹر عالیوں شاہ بنام

صوبائی حکومت و غیرہ

علت نمبر
جرم زبردستی
مورخہ
تھانہ

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جوابدہی کل کارروائی متعلقہ آن مقام کے لیے لیسٹاور
محمد عظیم آسٹریڈی انٹرنیشنل کورٹ لیسٹاور
مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا اختیار ہوگا۔ نیز وکیل صاحب کو کرنے راضی نامہ و تقرر
ثالث و فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرانے اجرا اور وصولی چیک در روپیہ اور عرضی دعویٰ اور
درخواست ہر قسم کی تصدیق زر اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمدگی اور
منسوخی و نیز دائر کرنے اپیل نگرانی نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ اور بصورت ضرورت مقدمہ مذکور کے کل یا جزو کارروائی
کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا
اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا۔ دوران مقدمہ میں جو خرچہ و ہر جانہ التوائے مقدمہ کے
سبب سے ہوگا اس کے مستحق کیا صاحب موصوف ہوں گے نیز بقایا خرچہ کی وصولی کرنے کا بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی
مقام دورہ پر ہو یا حد سے باہر ہو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔ لہذا کالت نامہ لکھ دیا کہ سندر ہے۔

۱۹

ماہ

المرقوم

مقام لیسٹاور - منظور ہے ڈاکٹر عظیم خان UDHAMS

Accepted

19.3.20

**BEFORE THE HON'BLE PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Appeal No 2229 of 2019

Dr. Farooq Shah Appellant

Versus

Govt. of Khyber Pakhtunkhwa & Others Respondents

Application for Vacation of Interim Order

Very respectfully Sheweth;

1. That the appellant has instituted the instant appeal against his alleged transfer/posting against a seat of General Cadre in which next date of hearing has been fixed as 2nd April 2020.
2. That the appellant has secured an interim order against his alleged transfer and posting despite the fact that he has not been transferred and posted against any post of General Cadre.
3. That the said restraint order has been illegally obtained by the appellant by misrepresentation of facts.
4. That since the appellant has not been transferred and posted against a seat of general Cadre as such he has got no prima facie or arguable case for the purpose of grant of such restraint order.
5. That the appellant is avoiding submission of report to DG Health to avoid his further posting and to retain and serve against a post of his own choice which is not permissible in law.

6. That the respondent no. 4 is lawfully serving against the said post of MS DHQ KDA Kohat since 17/09/2019 and that on the strength of said restraint order, the appellant has placed the respondent no. 4 into a state of inconvenience.

(Copy of the charge assumption report is attached)

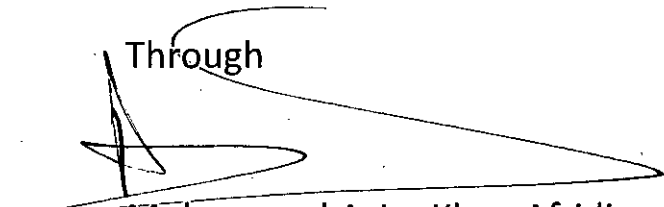
It is therefore very respectfully prayed that on acceptance of this application the interim restraint order may very graciously be vacated and the application of the appellant for the grant of temporary injunction and interim relief may please be dismissed.

Dated 20.03.2020



Dr. Raheem Khan
Respondent No. 4

Through



Muhammad Azim Khan Afridi,
Advocate High Court, Peshawar.

**BEFORE THE HON'BLE PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Appeal No 2229 of 2019

Dr. Farooq Shah Appellant

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Govt. of Khyber Pakhtunkhwa & Others Respondents

Affidavit

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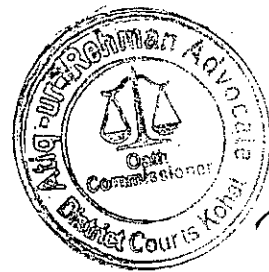
Dated 20.03.2020



Deponent

Dr. Raheem Khan

Respondent No. 4



Attested
[Signature]

CHARGE ASSUMPTION REPORT

I, Dr. Rahim Khan (Medical Superintendent) has assumed the charge of Office of the Medical Superintendent DHQ Teaching Hospital KDA Kohat on 17-09-2019 vide Government of Khyber Pakhtunkhwa Health Department Notification No.SOH(E-V)1-5/2007/Summary dated 16/09/2019.

All correspondences meant for the Medical Superintendent DHQ Teaching Hospital KDA Kohat may therefore be addressed to the undersigned.




SD/-
MEDICAL SUPERINTENDENT
DHQ TEACHING HOSPITAL
KOHAT

No. 7095-7110 /PF

Dated Kohat the 17 /09/2019

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MEDICAL SUPERINTENDENT
DHQ TEACHING HOSPITAL
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PESHAWAR

Service Appeal No 2229 of 2019

Dr. Farooq Shah Appellant

Versus

Govt. of Khyber Pakhtunkhwa & Others Respondents

Written Statement

Written Statement on Behalf of Dr. Rahim Khan, Private Respondent No. 4 is respectfully submitted as follows;

Preliminary objections:-

1. That the appellant has got no cause of action against the answering respondent no. 4.
2. That the appeal is vague, premature, incompetent and not maintainable as the appellant has attached with appeal no order, whatsoever, signifying his transfer and posting against any post of General Cadre.
3. That the amended appeal is not maintainable as the appellant has changed his stance without seeking prior and express permission for such amendment from the Hon'ble Court.
4. That the appellant has not come to the Hon'ble Court with clean hands.
5. That the stance taken by the appellant in appeal is based on malafide.

On Facts

1. That para of the appeal is misconceived. It is very respectfully submitted that the appellant has concealed the facts as vide impugned order he not been transferred or posted against any post of General Cadre. According to impugned notification no. SOH (E-V) 1-5/2007/summary dated 16/09/2019 annexure "A" the appellant has been directed to report to the Director General Health Services Khyber Pakhtunkhwa.

That according to the norms of service the appellant is bound to report to the Director General Health Services Khyber Pakhtunkhwa (respondent no.3) either for further posting or for orders deemed appropriate by the competent authority.

That besides the above the summary dated 08/01/2019 was finally approved by the Chief Minister on 21/Jan 2019. That since the appellant has neither expressed any grievances against the posting of respondent no.4 as MS, DHQ Hospital KDA Kohat nor authorised to do so as such the grounds enumerated in the Summary dated 08/01/2019 for posting/transfer of respondent no. 4 have attained finality and the appellant is, therefore, debarred from seeking any relief which may affect the career and posting of the answering respondent as MS, DHQ Hospital KDA Kohat.

2. That para no. 2 of appeal needs no detailed discussion, however, it is acknowledged that the appellant is a government servant and according to the terms and conditions of service the appellant is first bound to report to DG Health as directed and in case his posting is made against a post of General Cadre then he may seek remedy in the manner prescribed by law.
3. That in response to para no. 3 of appeal it is submitted that the appellant has preferred no Departmental Appeal as prescribed by law. Furthermore grounds taken in the letter addressed to the Secretary captioned as "Appeal" are altogether different and inconsistent with the grounds taken in Service Appeal and as such the appeal is misconceived, incompetent and not maintainable.

4. That in response to para no. 4 of appeal it is submitted that rejection of letter captioned as "appeal" has neither transformed the said letter into a departmental appeal nor rejection of the same has converted the incompetent service appeal into a maintainable appeal. Moreover the appellant has made certain amendment in appeal without the express permission of the Hon'ble Court which has altogether changed the stance of the appellant taken in the earlier appeal as such the amended appeal is not maintainable.

Grounds

S. No	Grounds Taken by Appellant	Reply of Respondent
A	That the impugned notification dated 16/09/2019 coupled with the summary dated 08/01/2019 approved by the worthy Chief Minister of KPK Peshawar, and rejection order dated 18.12.2019 are against law, facts against the norms of justice and confronted with the usual way of treatment of such practices on the transfer matter by the respondent department, hence tenable in the eye of the law, thus liable to be set aside.	That the appellant has neither mentioned any reason nor has referred to any illegality. Moreover assertions made in ground "A" give no rise to any cause in favour of appellant.
B	It is the matter of the record that this Hon'ble tribunal is such like same nature case bearing service appeal No. 823/2019 titled "Dr. Hameed Ali VERSUS Chief secretary & others", passed its well speaking, well elaborated order/judgment dated 09/ 08/ 2019 according to which the change of the cadre while transferring of the aggrieved	That since the appellant has not yet been transferred and posted against any post of General Cadre as such the esteemed judgment of the Hon'ble Tribunal is not applicable to the case of the appellant. The appeal is

	<p>petitioner their under was declined by declaring the act of the respondent as illegal, unlawful, hence that case has also enjoyed publication in the daily newspaper. Therefore being fall under the same flow of the earlier litigation, this case of the petitioner can easily be determined by this Hon'ble Court on the score of the above cited earlier case decided by this Hon'ble tribunal.</p>	<p>premature. The requisites of law are that the appellant shall first report to DG Health for further posting and in case he is posted against a post of General Cadre then he may seek his remedy in accordance with the procedure laid down in law.</p>
C	<p>It is the settled precedent duly precedented by the Supreme Court of Pakistan in its numerous consistent regular judgments on such like service matter that the cadre of the employee cannot be changed in any manner so the act of the respondents with regard to the changing of the cadre from Management to General, while transferring the petitioner from DHQ KDA Kohat to office of the respondents No. 3 is obviously illegal, unlawful cannot be warranted and sustainable in the eye of the law</p>	<p>That the precedent either referred to or settled by the apex Court and relied on by the appellant has not been identified by the appellant. Moreover any such precedent is not attracted to the case of the appellant as the appellant has not yet been transferred and posted against any seat of General Cadre.</p>
D	<p>That order passed by the respondent is illegal, vid without lawful authority and without jurisdiction thus deserve to be set aside.</p>	<p>That the order is in consonance with law as the Government has the prerogative to direct such a civil servant to report to DG Health for further posting.</p>

E	That any other ground may be raised at the time of arguments, with the kind permission of this Honourable Tribunal, if needed so.	Needs no detailed reply.
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It is, therefore, very humbly prayed that since the appellant has failed to report to DG Health for further posting as such the appeal is premature and may, therefore, be very graciously dismissed.

Dated 20/03/2020



Dr. Raheem Khan

Respondent No. 4

Through



Muhammad Azim Khan Afridi,

Advocate High Court, Peshawar.

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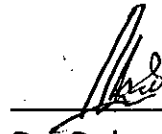
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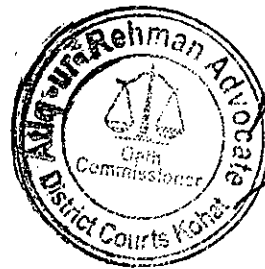
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