ORDER

02.02.2022 Learned counsel for the appellant present. Mr. Naseer-Ud-Din, Assistant Advocate General alongwith Muhammad Zeeshan, Pharmacy Technician for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, passed in Service Appeal bearing No. 1006/2018 "titled Juniad Khan Versus Government of Khyber Pakhtunkhwa through Secretary Health Department, Peshawar and four others", we find no force in the present service appeal and is hereby dismissed with no order as to costs. File be consigned to the record room.

ANNOUNCED
02.02.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

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

16.12.21 DB is on Tour case to come up For the Same on Dated. 27-1-22

Reader

27.01.2022 Appellant alongwith his counsel Mr. Yasir Saleem Advocate present. Mr. Naseer-ud-Din Assistant Advocate General alongwith Mr. Muhammad Zeeshan Pharmacy Technician for respondents present.

Arguments heard. To come up for order before the D.B on 01.02.2022.

(Atiq-Ur-Rehman Wazir)
Member (E)

Chairman

09.09.2021 Junior to counsel for appellant present.

Kabir Ullah Khattak learned Additional A.G for respondents present.

Lawyers are on general strike. Therefore, case is adjourned. To come up for arguments on 20.10.2021 before D.B.

(Rozina Rehman)
Member (J)

Chairman

20.10.2021 Mr. Yasir Saleem, Advocate, for the appellant present. Mr. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Arguments were partially heard by a bench comprising of Hon'ble Chairman and Hon'ble Member Judicial (Ms. Rozina Rehman), therefore, a request was made for adjournment with a request to fix the case before the concerned bench for further arguments. Request is acceded to and case is adjournment to 01.11.2021 for further arguments before the concerned D.B.

(Salah-Ud-Din)
Member (Judicial)

Chairman

01.11.2021 Junior to counsel for appellant present.

Javid Ullah, learned Assistant Advocate General for respondents present.

The learned Member (Judicial) is on leave, therefore, case is adjourned. To come up for arguments on 16.12.2021 before D.B.

Chairman

23.06.2021 Appellant alongwith his counsel Mr. Yasir Saleem, Advocate present.

Mr. Muhammad Adeel Butt, learned Additional Advocate General alongwith Dr. Sher Khan, Director HR, Dr. Mir, Alam Durrani, Medical Officer and Mr. Qazi Naeem, AD(Litigation) for respondents present.

Arguments heard. To come up for order on 28.07.2021 before D.B.

(Rozina Rehman)
Member(J)

Chairman

28.07.2021 Appellant present through counsel.

Muhammad Adeel Butt learned Additional Advocate General for respondents present.

Due to paucity of time, order in the instant case could not be announced. Therefore, case is adjourned to 06.08.2021 for order, before D.B.

(Rozina Rehman)
Member (J)

Chairman

06.08.2021 Appellant present through counsel.

Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Dr. Mir Alam Durrani Medical Officer for respondents present.

File to come up alongwith connected Service Appeal No.1006/2018 titled Junaid Khan Vs. Government of Khyber Pakhtunkhwa on 09.09.2021 before D.B.

(Atiq-Ur-Rehman Wazir)
Member (E)

(Rozina Rehman)
Member (J)

28-12-2020 Due to summer vacation, case is adjourned to 15-3-2021 for the same as before.

Reader

15.03.2021 Appellant in person and Addl: AG alongwith Dr. Mir Alam Durrani, MO for the respondents present.

The appellant requests for adjournment as his learned counsel is indisposed today.

Adjourned to 10.06.2021before D.B.

(Mian Muhammad)
Member(E)

Chairman

10.06.2021 Appellant present through counsel.

Muhammad Adeel Butt learned Additional Advocate General alongwith Zia Ullah Law Officer (for respondent No.1) and Muhammad Zeeshan J.C.T (for respondent No.3) present. Nemo for respondent No.2.

File to come up alongwith connected Service Appeal No.1006/2018 titled Junaid Khan Vs. Health Department on 23.06.2021 before D.B.

(Rozina Rehman)
Member (J)

Chairman

08.06.2020 Clerk to counsel for the appellant present. Addl: AG for respondents present. Due to general strike of the Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for arguments on 17.08.2020 before D.B.

MEMBER MEMBER

17.08.2020 Due to summer vacations, the case is adjourned to 27.10.2020 for the same.

Reader

27.10.2020 Proper D.B is on Tour, therefore, the case is adjourned for the same on 28.12.2020 before D.B.

Reader

08.11.2019 Learned counsel for the appellant and Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 31.12.2019 before D.B.

Member Member

31.12.2019 Appellant in person and Mr. Usman Ghani, District Attorney for the respondents present. Appellant requested for adjournment as his counsel is not available today. Adjourned to 13.02.2020 for arguments before D.B.

(Hussain Shah) Member (M. Amin Khan Kundi) Member

13.02.2020 Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 30.03.2020 for arguments before D.B.

(Hussain Shah) Member (M. Amin Khan Kundi) Member

30.03.2020 Due to public holiday on account of COVID-19, the case is adjourned to 08.06.2020 for the same as before.

Reader

19.06.2019 Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Nazir Ullah, Superintendent for the respondents present. Representative of the department submitted para-wise comments on behalf of respondents No. 1 to 3 and he also stated at the bar that he will submit written reply on behalf of respondents No. 4 & 5 on the next date. Last chance is granted. Case to come up for written reply/comments on behalf of respondents No. 4 & 5 on 12.07.2019 before S.B.

(Muhammad Amin Khan Kundi)
Member

12.07.2019 Counsel for the appellant and Addl. AG alongwith Nazirullah, Superintendent for the respondents No. 1 to 3 present. Written reply of respondents No. 1 to 3 already submitted. Learned AAG requests for time to submit written reply on behalf of respondents No. 4 and 5. Last opportunity granted. To come up for written reply of respondents No. 4 & 5 on 06.09.2019 before S.B.

Member

06.09.2019 Counsel for the appellant and Mr. Usman Ghani District Attorney alongwith Nazirullah, PS-VI for the respondents present.

Respondents No. 4 & 5 have furnished their respective parawise comments which are placed on record. To come up for arguments on 08.11.2019. The appellant may submit rejoinder, within a fortnight, if so advised.

Chairman

04.2.2019 Junior to counsel for the appellant and Addl. AG alonhgwith Jafar Ali, Senior Clerk for the respondents present.

Representative of the respondents states that the requisite reply is being prepared and will positively be submitted on next date. Adjourned to 27.3.2019 before S.B.

Chairman

27.03.2019 Clerk to counsel for the appellant present. Written reply not submitted. Jafar Ali Assistant representative of the respondent No.2 present and seeks time to furnish written reply/comments. No one present on behalf of remaining respondents. Notice be issued to the remaining respondents with direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on 24.04.2019 before S.B.

Member

26.04.2019 Appellant in person and Addl. AG alongwith Nazirullah, District Superintendent for the respondents present.

Representative of respondents requests for adjournment. Adjourned to 19.06.2019 on which date written reply/comments shall positively be submitted.

Chairman

14.12.2018 Counsel for the appellant Mushtaq Khan present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was appointed as Ward Orderly in Health Department vide order dated 15.02.2008. He assumed the charge and was performing his duty however, after some period his salary was stopped therefore, the appellant filed service appeal in this Tribunal. During the pendency of service appeal it was brought to the notice of this Tribunal that the appointment of the appellant has been de-notified therefore, this Tribunal remitted the service appeal to the departmental authority to treat the same as departmental appeal and decide the same within a period of 90 days vide judgment dated 27.10.2017. It was further contended that the departmental authority rejected the departmental appeal of the appellant vide order dated 25.01.2018 which was communicated to the appellant on 01.02.2018 hence, the present service appeal on 02.03.2018. Learned counsel for the appellant further contended that all the codal formalities were fulfilled before the appointment of the appellant and neither any show-cause notice was issued to the appellant nor opportunity of hearing and defence was provided to the appellant therefore, de-notified the appointment order of the appellant is illegal and liable to be set-aside.

The contention raised by the learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days thereafter, notice be issued to the respondents for written reply/comments for 04.02.2019 before S.B.

Appellant Deposited
Security & Process Fee

(Muhammad Amin Khan Kundi)
Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. **1007 /2018**

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	13.08.2018	The present appeal was received on 02.03.2018 which was returned to the counsel for the appellant for completion and resubmission within 15 days. Today i.e. on 13.08.2018 he resubmitted the same late by 157 days. The same may be entered in the institution register and put up to the Worthy Chairman for appropriate order please.
2	15-8-2018	REGISTRAR 13/8/18 This case is entrusted to S. Bench for preliminary hearing to be put up there on 24-9-2018 CHAIRMAN
	24.09.2018	None present on behalf of the appellant. Case is adjourned to 30.10.2018 for preliminary hearing before S.B. Chairman
	30.10.2018	Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 14.12.2018. Reader

The appeal of Mr. Mushtaq Khan Ex-Ward Orderly office of the EDO Health Nowshera received today i.e. on 02.03.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Memorandum of appeal is unsigned.
2- Affidavit is not attested by the Oath Commissioner.
3- Annexures of the appeal are not flagged.
4- Annexures of the appeal are unattested.
5- Approved file cover is not used.
6- Copies advertisement of the post of Ward Orderly, Service appeal no. 328/12, termination order dated 26.02.2011 and judgment dated 27.10.2017 mentioned in the memo of appeal are not attached with the appeal be placed on it.
7- Copy of departmental appeal and its rejection order are not attached with the appeal
8- Copies of all the documents attached with the appeal are illegible which be replaced by legible/better one.
9- Annexures- J to N are missing.
10- Seven more copies/sets of the appeal along with annexures i.e. complete in all respect may be submitted with the appeal.

No. 464 /S.T,

Dt. 02/03 /2018

REGISTRAR 2/3/18
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Yasir Saleem Adv.Pesh.

Respected sir,

All the objections have been removed, Due to some Onavoidable circumstances, the files Couldnot be submitted within time, however, it is submitted today, kindly fixed the case for preliminery hearing.

Thanks

Yasir Saleem
Jawad ur rehman
Advocates.

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. 1007 /2018

Mushtaq Khan, Ex- Ward Orderly, Office of the EDO Health, Nowshehra. ..... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through secretary Health Khyber Pakhtunkhwa, Peshawar..... ***(Respondents)***

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2	Copy of the advertisement is attached as Annexure A	A	6
3	Copies of the Appointment letter,	B	7 - 8
4	Copies of service Appeal No. 333/2012 and the order dated 26-02-2011	C & D	9 - 11
5	Copy of order and judgment dated 27.10.2017	E	12 - 14
6	Copy of the order dated 25.01.2018	F	15
7.	Copy of the Order and Judgment of this Honorable Tribunal dated 19.08.2010	G	16 - 20
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Appellant

Through

. YASIR SALEEM

JAWAD-UR-REHMAN

Advocate High Courts

FR-3- 4, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt
Ph.091-5272154 Mobile-0331-8892589/0333-5369471

BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. 1007 /2018

Mushtaq Khan, Ex- Ward Orderly Office of the EDO Health, Nowshehra.

(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through secretary Health Khyber Pakhtunkhwa, Peshawar.
2. Director General Health Khyber Pakhtunkhwa, Peshawar
3. District Health Officer Nowshera.
4. Deputy Commissioner Nowshera.
5. District Account Officer, Nowshehra.

(Respondents)

Service Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the Office Order dated 26.11.2011, communicated to the Appellant on 27.10.2017, whereby the appointment order of appellant was de-notified against which the service appeal remitted by this honorable tribunal by treating the same as departmental appeal, has been rejected by Respondents vide order dated 25.1.2018 communicated to the appellant on 01-02-2018.

Prayer in appeal

On acceptance of this appeal, the impugned order dated 26.11.2011 and 25.1.2018 may please be set aside and the appellant may kindly be re instated in service with all back wages and benefits.

Respectfully submitted,

1. That the respondents invited applications for appointments in different posts in the Health department through newspaper. ***(Copy of the advertisement is attached as Annexure A)***

2. That the appellant being fit and eligible, duly applied for the post of Ward Orderly. The appellant, after appointment, was also medically examined and when found fit he duly submitted his arrival report, took over charge of his post and started performing his duties. It is pertinent to mention here that the service book of the appellant was also prepared for the purpose of pay and pension. ***(Copy of the Appointment letter is attached as Annexure B).***

3. That ever since his appointment the appellant continuously performed his duties with zeal and devotion without any complaint whatsoever regarding his performance and he has been paid his salaries up till July 2011.

4. That though the appellant had been continuously performing his duties, however he been not paid his salary since August 2011, the appellant time and again approached the respondents' office and submitted different applications for the release of his salary but he was only given verbal assurances that his case for the release of salary is in process and it will be released after fulfilling the codal formalities, therefore the appellant waited with hope that his salary will be released.

5. That as a last resort the appellant submitted his departmental appeal and then filed Service Appeal No. 320/2012 before this Honorable Tribunal. During the course of arguments, it was disclosed to the appellant that his appointment order has already been de-notified by the Respondent vide order dated 26-11-2011.***(Copies of service Appeal No. 320/2012 and the order dated 26-02-2011 is attached as Annexure C & D)***

6. That the appeal was then remitted by this Honorable Tribunal by treating the appeal as departmental appeal to the Respondents vide order and judgment dated 27.10.2017 in the following terms;

In view of the above, all these service appeals are remitted to the departmental authority for treating them as departmental appeals and decide the same within a period of 90 days. Thereafter, the appellants shall be at liberty to approach this tribunal. If so advised. All the appeals are disposed of in the above terms. Parties are left to bear their own costs file consigned to the record room.

(Copy of order and judgment dated 27.10.2017 is attached as Annexure E)

7. That the departmental appeals, however, has been regretted vide order dated 25.1.2018 by the respondents communicated to the appellant on 01-02-2018.
(Copy of the order dated 25.01.2018 is attached as Annexure F)

8. That both the impugned orders are illegal and liable to be set-aside inter alia on the following grounds:

GROUNDS OF DEPARTMENTAL APPEAL

A. That the appellant has not been treated in accordance with law, hence his rights secured and guaranteed under the law are badly violated.

B. That the appellant was appointed by the competent authority after observing all codal formalities, the appellant duly took over charge of his post and is performing his duties for more than 3 years, the order of the appointment is thus acted upon and valuable rights have been created in favor of the appellant the same cannot be undone or snatched away from him illegally.

C. That the appellant have never been proceeded against, nor any charge sheet or show cause notice has ever been served upon him before the de-notification letter dated 26-11-2011. Hence he was condemned unheard.

D. That this Honorable Tribunal in similar nature cases vide detail judgment given in case titled " Junaid bacha vs. EDO Health Nowshera and others" has already accepted the appeals of similarly placed employees with the directions to the respondents to release their salaries with arrears from the date of their appointment.***(Copy of the Order and Judgment of this Honorable Tribunal dated 19.08.2010 is attached as annexure G)***

E. That the appellant has never committed any act or omission which could be termed as misconduct, albeit the appellant has been initially deprived of his salary since August 2011 and lastly terminated from service.

F. That the Respondent No. 5 sent letter dated 16-04-2008 to the Respondent No,3 with certain observations and the Respondent No. 3 vide his reply dated 18-04-2008 confirmed all the appointments to have been made in accordance with law and procedure. So now the Respondent No.3 cannot be allowed to termed the appointment of the appellant as illegal.***(Copies of letter dated 16-04-2008 & 18-04-2008 are attached as Annexure H & I)***

G. That the appellant is also the resident of District Nowshera having the domicile and his post was duly advertised in the newspaper, therefore the appellant is also entitled for the same relief already given to the similarly placed employees.

H. That the appellant belongs to a poor family and has a large family dependent upon him, moreover the appellant have no other source of income, due to the withholding of his salary and subsequent de-notification order he is thus suffering.

I. That the appellant seeks permission of this Honorable court to rely on additional grounds at the time of hearing of the appeal.

It is, therefore, humbly prayed that on acceptance of this appeal on acceptance of this appeal, the impugned order dated 26.11.2011 and 25.1.2018 may please be set aside and the appellant may kindly be re-instated in service with all back wages and benefits.

Appellant

Through

YASIR SALEEM

&

JAWAD-UR-REHMAN

Advocate High Courts

AFFIDAVIT

I, ***Mushtaq Khan, Ex- Ward Orderly, Office of the EDO Health, Nowshehra,*** do hereby solemnly affirm and declare on oath that the contents of the above noted appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

Deponent

آسامیاں خالی ہیں

صحت ضلع نوشہرہ کو مندرجہ ذیل آسامیوں کو پر کرنے کیلئے ضلع نوشہرہ کے مستقل سکونتی باشندوں اور مقا
ں قابلیت کے حامل موزوں امیدواروں سے درخواستیں مطلوب ہیں۔ درخواست سادہ کاغذ پر مصدقہ نقا
اور پیشہ ورانہ دستاویزات کی کاپیاں' تجربہ' قومی شناختی کارڈ' ڈومیسائل کاپی' پاسپورٹ سائز تصویر زیر د
فتر کو مورخہ 5 ستمبر 2007ء تک پہنچ جانی چاہیے۔ نامکمل اور تاخیر سے موصول ہونے والی درخواستوں
نہیں کیا جائیگا۔ انٹرویو ایگزیکٹو سٹرکٹ ہیلتھ آفیسر نوشہرہ کے دفتر میں مورخہ 7 ستمبر 2007ء کو ہونگے۔

نمبر شمار	نام آسامی	تعداد	مطلوبہ قابلیت / اہلیت	تاریخ انٹرویو
1	ڈینٹل کلینیشن	9	متعلقہ ڈپلومہ	7 ستمبر 2007
2	X-Ray کلینیشن	9	متعلقہ ڈپلومہ	7 ستمبر 2007
3	فارمیسی کلینیشن	9	متعلقہ ڈپلومہ	7 ستمبر 2007
4	لیبارٹری کلینیشن	9	متعلقہ ڈپلومہ	7 ستمبر 2007
5	فزیوتھراپی کلینیشن	9	متعلقہ ڈپلومہ	7 ستمبر 2007
6	آپٹھلمک کلینیشن	9	متعلقہ ڈپلومہ	7 ستمبر 2007
7	کمپیوٹر آپریٹر	8	متعلقہ ڈپلومہ	7 ستمبر 2007
8	الیکٹریشن	6	متعلقہ ڈپلومہ	7 ستمبر 2007
9	سٹور کیپر	5	ایف اے/ایف ایس سی	7 ستمبر 2007
10	لیبارٹری اسسٹنٹ	5	متعلقہ ڈپلومہ	7 ستمبر 2007
11	ڈرائیور	4	ترجیحاً تعلیم یافتہ	7 ستمبر 2007
12	وارڈ اٹنڈنٹ	2	ترجیحاً تعلیم یافتہ	7 ستمبر 2007
13	دائی	2	ترجیحاً تربیت یافتہ	7 ستمبر 2007
14	لیبارٹری اٹینڈنٹ	نفس	ترجیحاً تعلیم یافتہ	7 ستمبر 2007
15	X-Ray اٹینڈنٹ	نفس	ترجیحاً تعلیم یافتہ	7 ستمبر 2007
16	مالی	نفس	تجربہ رکھنے والے کو ترجیح دی جائیگی	7 ستمبر 2007
17	چوکیدار	نفس	ترجیحاً تعلیم یافتہ	7 ستمبر 2007
18	سویپر	نفس	پیشہ ور کو ترجیح دی جائیگی۔	7 ستمبر 2007

JCT
DARK Room
Assist

JCT
Microscopist
Medical A

Pharmacy Tech

JCT
Dispenser

شرائط و ضوابط

م تقرریاں صوبہ سرحد کی وضع کردہ کنٹریکٹ پالیسی 2002ء کہ شمال مغربی سرحدی صوبہ کے سول سرونٹ
ٹ مجریہ 1972ء کی ترمیم شدہ 2005ء کی شق نمبر 10 بمطابق آفیسر میزانیہ تنظیم
(SO(S-5-8/2006-07/FD) مورخہ 13 ستمبر 2006ء کے تحت ہوگی۔

بل نمبر 2 کی تمام آسامیاں باقاعدہ بنیادوں پر ہونگی۔ اور ایسے ملازمین پنشن کی بجائے حکومت کی مقرر کردہ شرائط
لفایت شمار کے حقدار ہونگے۔ جس کیلئے متعلقہ ملازم اور حکومت دونوں جانب 10 فیصد ادائیگی کرینگے۔

مذ پوسٹ پر تقرری کی صورت میں ملازم کو صرف نفس تنخواہ -/4000 ہوار دی جائیگی اگر ان ٹرانسفر ہیل
تے۔ ابتدائی طور پر سلیکشن ایک سال کیلئے کی جائے گی۔ جو کہ تسلی بخش کارکردگی پر قابل توسیع ہوگی۔ سلیکشن
صورت میں امیدواروں کو ایک شوریٰ باطل دیا ہوگا۔ پالیسی سے ہٹ کر تقرری منسوخ کی جائے گی اور کسی کو
الت جانے کا اختیار نہیں ہوگا۔ ڈیوٹی کے دوران فوت شدہ ملازمین کے بچے اپنے والدین کے مکمل کوائف
درخواست کے ساتھ جمع کریں۔ نیز 60 سال اور میڈیکل بورڈ کے ذریعے ریٹائرڈ کا اس 4 ملازمین کے بچوں کیلئے
2 کوٹہ مختص ہے۔ ایسے امیدوار اپنے ریٹائرڈ والدین کے مکمل کوائف درخواست کے ساتھ منسلک کریں
ذہ دار افراد کیلئے حکومت کی مقررہ پالیسی کے مطابق کوٹہ مختص ہے۔ تقرری کی صورت میں امیدوار کو عمر کی حد
ں حکومت کی پالیسی کے مطابق رعایت دی جاسکتی ہے۔ انٹرویو کے دن امیدوار جملہ اسناد کی اصل کاپیاں ہمراہ لے
یں۔ امیدواروں کے اصل اسناد کی تصدیق متعلقہ افسران سے کی جائیگی۔ جعلی اسناد پیش کرنے والے امیدواروں
خلاف قانونی کاروائی کی جائیگی۔ انٹرویو کیلئے سفری خرچہ نہیں دیا جائیگا۔

ڈسٹرکٹ اکاؤنٹس آفیسر نوشہرہ

Also available on www.nwfp.gov.pk INF(P)3201

30/8/07

ATTESTED

OFFICE OF THE EXECUTIVE DISTRICT OFFCIER HEALTH NOWSHERA

No. 159 /Estt/2007-08/ Date: 15/2/08

B
Ameer
7

To,

Mr. / Mrs/Miss: Mushtaq Khan
S/O Nawar Khan

Subject: Appointment as

Refer your application for the post W/A you are hereby appointed as W/A in BPS (2) under the following terms and conditi... W/A

1. The appointment shall be on regular contract subject to the Medical fitness and initially on probation for a term of 2 years.
2. The services can be dispensed with during the probation period on unsatisfactory performance.
3. No TA / DA is admissible for Medical Examination and joining the posting place.
4. The appointment will be governed by such rules and orders Issued by the Government from time to time.
5. There will be no entitlement for pension or gratuity as laid down by Establishment Department vide notification No: E & A (1 – 3) / 2005 of 10-08-2005.
6. In case the appointee wishes to resign the post she / he will tender resignation one month in advance or deposit the one month salary in Government treasury.
7. The terms and condition mentioned above, if are accepted, you should report for duly at BDO Health NSR with in 14 days of the receipt of this letter to you.

Executive District Officer (Health)
Nowshera

C.C to
1. D.G Health N.W.F.P Peshawar
2. D.A.O Nowshera
3. Accounts Section Local
4. Appointment order File

Executive District Officer (Health)
Nowshera

ATTESTED

ATTESTED

بخدمت جناب ای ڈی او تعلیم نوشہرہ

جناب عالی!

(8)

مؤدبانہ گزارش ہے کہ فدوی کی تعیناتی محکمہ تعلیم میں بطور چوکیداری کے تعینات ہوا ہے لیکن تاحال فدوی کو تنخواہ کی ادائیگی نہیں ہوئی ہے جبکہ فدوی انتہائی غریب خاندان کا واحد کفیل ہے۔ لہٰذا آپ صاحبان سے درخواست کی جاتی ہے کہ فدوی کی تنخواہ جاری کرنے کے احکامات صادر فرمائیں

عین نوازش ہوگی

العارض

امجد اللہ ولد مشتاق احمد چوکیدار

25/10/12

ATTESTED

That the order of appointment is issued by the competent authority, the appellant has took over the charge of his post and started performing duties, thus valuable rights have been created in his favour, and the same cannot be snatched or with held. Hence the respondents are under obligation to release the salary to the appellant.

c) That while withholding the pay of the appellant, no right of hearing has been provided to him and thus virtually the appellant is condemned unheard.

d) That withholding of salary amount to punishment, albeit without holding any enquiry or proceeding the salary of the appellant is withheld, the order impugned is thus illegal and unlawful.

e) That the appellant has worked after his appointment and performed duties in relation to his post. The appellant is still performing his services in the respondent department. Hence, he is entitled for the salary/ pay and allowances for the post as he had performed the work. His salary and other emoluments could not be denied on any ground.

f) That this Hon'ble tribunal in similar nature cases, vide detailed judgment given in case titled "Junaid Bacha vs. EDO Health Nowshera" has already accepted the appeals of similarly placed employees with the direction to the respondents to release of their salary and that they also be paid arrears of their pay from the date of their appointment. (Copy of the order and judgment is attached as Annexure F).

g) That the appellant is also the resident of District Nowshera having the domicile and the post against which he was appointed was duly advertised in the newspaper, therefore the appellant is also entitled for alike treatment. (Copy of Domicile Certificate is attached as Annexure G).

h) That since the appellant has not been terminated from service and is performing his duties hence on no excuse his salary could be withheld or denied.

i) That the appellant is performing his duties hence the appellant is entitled to his salary and arrears.

It is therefore prayed that on acceptance of this appeal the respondents may please be directed to release the salary of the appellant and he be paid arrears w.e.f from the date of his appointment or any other remedy deemed proper may also be allowed.

Appellant,

Through YASIR SALEEM ANBAR Advocate High Court Courts Nowshera

Yasir Saleem,
Advocate High Court
At District Courts Nowshera

AFFIDAVIT

It is solemnly affirm and declare on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble court.

ATTESTED

DEPONENT (Mushtaq Khan)

PESHAWAR ADVOCATE COMMISSIONER DISTRICT COURTS NOWSHERA

Certified to be ture copy

Khyber Pakhtunkhwa Service Tribunal, Peshawar

Date of Presentation: 7-8-16

Number of Words: 650

Copying Fee: 6

Urgent: 2

Total: 8

Name of Client:

Date Required: 7-8-16

Date of Delivery: 7-8-16

Annex G

(1)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No 333 /2012

Mushtaq Khan, Malaria Supervisor, Office of the EDO Health, Nowshera

Versus

1. Executive District Officer (Health) Nowshera
2. District Co-ordination Officer Nowshera
3. District Account Officer Nowshera
4. Director General Health KPK Peshawar

No. 277
Dated 23/2/12

Appeal under Section 4 of KPK Service Tribunal Act, 1974 against the non granting of salary to the appellant w.e.f March 2008 against which the departmental appeal dated 25/10/2011 was not responded despite the laps Of 90 days

PRAYER IN APPEAL

On acceptance of this appeal the respondents may please be directed to the release the salary of the appellant and he be paid arrears w.e.f from the date of his appointment or any other remedy deemed proper may also be allowed.

Respectfully submitted

1) That the respondents have invited applications for appointments in different posts in the Health Department through newspaper. The appellant also applied for the post of Malaria Supervisor.

   (Copy of the advertisement is attached as Annexure A)

2) That the appellant was duly selected for appointment, he was medically examined and issued appointment order dated 01.03.2008.

   (Copy of the appointment order is attached as annexure B)

3) That the appellant took over the charge of his post, he thus submitted his arrival and started performing his duties, though he is performing his duties albeit was not paid his salary.

   (Copies of employees' master form and service book are attached as annexure C & D)

Filed to-day
23/2/12

4) That the appellant throughout agitated the matter of grant of monthly salary, however no positive response was given.

5) That as a last resort the appellant submitted his departmental appeal dated 25/10/2011 the departmental appeal was not replied despite the lapse of 90 days.

re-submitted to-day and filed.
8/3/12

(copy of the departmental appeal is attached as annexure E)

6) That the non-grant of salary to the appellant is illegal, unlawful, and discriminatory, in violation of rules inter alia on the following grounds

GROUNDS OF APPEAL:

a) That the appellant has not been treated in accordance with law and he has been denied his right to life/livelihood, which is violation of Article 4, read with Article 9 of The Constitution of Islamic Republic of Pakistan 1973.

Certified to be ture copy

Khyber Pakhtunkhwa Service Tribunal, Peshawar

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (HEALTH) NOWSHERA

OFFICE ORDER

As per recommendation of the enquiry committee the following peoples are hereby de-notified as a health staff with immediate effect.

1.	Alamgir Jan	Malaria Supervisor
2.	Mr. Syed Tahir Ali Shah	Microscopist
3.	Mr. Attizaz Udddin	Dark Room Assistant
4.	Mr. Arif Ullah	Dispenser
5.	Mr. Muhammad Zohaib	Malaria Supervisor
6.	Mr. Junid Khan	do
7.	Mr. Israr	do
8.	Mr. Mushtaq Khan	do
9.	Mr. Shahid Raja	Microscopist
10.	Mr. Mushtaq Ahmad	Ward Orderly
11.	Mr. Waqar Khan	Malaria Supervisor
12.	Mr. Nowshad	Dispenser
13.	Mr. Naved Ur Rehman	Malaria Supervisor
14.	Mr. Saif Ullah	Computer Operator

Sd_____
Executive District Officer
(Health) Nowshera.

No. 9902-07 / EDO (H) NSR, Dated: 26 / 11 /2019

Copy forwarded to:

1. District Coordination Officer Nowshera.
2. Senior District Accounts Officer Nowshera.
3. PA to DGHS Khyber Pakhtunkhwa, Peshawar.
4. Medical Officer / Incharge of all health facilities in district Nowshera.
5. People concerned.

Executive District Officer
(Health) Nowshera

ATTESTED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUAL, PESHAWAR

E
Annex
12

Appeal No. 334/2012

Date of Institution ... 23.02.2012

Date of Decision ... 27.10.2017

Shahid Raja, Miscroscopist, Office of the EDO (Health) Nowshera. (Appellant)

VERSUS

1. Executive District Officer (Health) Nowshera and 3 others. ... (Respondents)

MR. YASIR SALEEM, Advocate ... For appellant

MR. MUHAMMAD JAN, Deputy District Attorney. ... For respondents.

ATTESTED

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. AHMAD HASAN, ... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN.- This judgment shall dispose of the instant service appeal as well as connected service appeals No. 324/2012 Syed Tahir Ali Shah, No. 325/2012 Muhammad Zuhaib, No 326/2012 Israr Muhammad, No. 327/2012 Arifullah, No. 328/2012 Alamgir Jan, No. 329/2012 Junaid Khan, No. 330/2012, Mushtaq Khan, No. 331/2012 Aitiaz uddin, No. 332/2012 Naveed ur Rehman, No. 333/2012 Mushtaq Khan and No. 334/2012 Saifullah as in all the appeals common questions of law and facts are involved.

2. Arguments of the learned counsel for the parties heard and record perused.

ATTESTED

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FACTS

3. After sometime of their appointment, the pay of the appellants was stopped in the year, 2008. The appellants then filed departmental appeals on different dates against the order of stoppage of their salaries which was not responded to and thereafter they filed the present service appeals. During pendency of the appeals, the impugned order dated 26.11.2011 of denotification was passed by the competent authority but the same notification has not been challenged by the appellants.

ARGUMENTS.

4. The learned counsel for the appellant argued that the notification dated 26.11.2011 was never communicated to the appellants. That the same was passed after issuance of the present service appeals.

5. On the other hand, the learned Deputy District Attorney argued that the present appeals are not maintainable for the reason that the order dated 26.11.2011 has not been challenged. The Deputy District Attorney pressed into service a copy of dispatch register in order to prove that the order dated 26.11.2011 was dispatched to the appellant.

CONCLUSION.

6. The appellants were aggrieved from the stoppage of their salaries and they filed the present service appeals prior to the order dated 26.11.2011. During the pendency of the present service appeal, the order dated 26.11.2011 was passed. Regardless of the above proof of receipt of the order dated 26.11.2011 by the appellant, the appellant cannot be non suited on this technical ground as they had already litigated before this Tribunal in service appeals. But since the jurisdiction of this Tribunal is dependent on an original or appellate order, which has not been challenged by the present appellants. This Tribunals deems it fit in the interest of justice to remit the issue to the departmental authority for deciding the departmental appeals of the appellants within the statutory period of 90 days.

ATTESTED

7. In view of the above, all these service appeals are remitted to the departmental authority for treating them as departmental appeals and decide the same within a period of 90 days. Thereafter, the appellants shall be at liberty to approach this Tribunal, if so advised. All the appeals are disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

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SD/-
(NIAZ MUHAMMAD KHAN)
CHAIRMAN

SD/-
(AHMAD HASAN)
MEMBER

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Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ANNOUNCED
27.10.2017

Date of Presentation of Application 27-10-2017
Number of Words 1200
Copying Fee 8
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Total 8
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Date of Completion of Copy 06-11-17
Date of Delivery of Copy 06-11-17

ATTESTED

OFFICE OF THE DISTRICT HEALTH OFFICER NOWSHERA

Phone & Fax: 0923-580759 E-Mail: nowshera.edoh@gmail.com

No. 682-86 / DHO NSR Date: 25 / 01 /2018

To

1. Mr. Shahid Raja appeal No. 323/2012
2. Mr. Syed Tahir Ali Shah appeal No. 324/2012
3. Mr. Muhammad Zohaib appeal No. 325/2012
4. Mr. Israr Muhammad appeal No. 326/2012
5. Mr. Arif Ullah appeal No. 327/2012
6. Mr. Alamgir Jan. appeal No. 328/2012
7. Mr. Junaid Khan. appeal No. 329/2012
8. Mr. Mushtaq Khan appeal No. 330/2012
9. Mr. Aittiaz Uddin. appeal No. 331/2012
10. Mr. Naveed Ur Rehman appeal No. 332/2012
11. Mr. Mushtaq Khan appeal No. 333/2012
12. Mr. Saif Ullah appeal No. 334/2012

Subject: **REGRESSION OF DEPARTMENTAL APPEALS.**

Memo:

The above mentioned Departmental Appeals, remitted to Director General Health Services Khyber Pakhtunkhwa Peshawar (Appellant Authority) by the Honourbale Services Tribunal Peshawar on 27.10.2017 have been regretted vide Directorate General Health Services Khyber Pakhtunkhwa Peshawar letter No. 245-49/AD(Lit) dated. 18.01.2018.

District Health Officer
Nowshera

Even No. & Date:

Copy forwarded to.

1. The Honourbale Services Tribunal Peshawar.
2. Director General Health Services Khyber Pakhtunkhwa Peshawar.
3. Assistant Director Litigation, DGHS Office Khyber Pakhtunkhwa Peshawar.
4. PS to Secretary Health Khyber Pakhtunkhwa Peshawar.

District Health Officer
Nowshera

ATTESTED

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO.1473/NEEM/2008

Date of institution ... 09.10.2008
Date of decision 19.08.2010

Junaid Bacha, Microscopist /Junior Clinical Technician (Pathology), BHU Sheikh Yousaf, District Mardan. ... (Appellant)

VERSUS

1. Executive District Officer (Health) Nowshera.
2. Executive District Officer (Health) Mardan.
3. District Coordination Officer, Nowshera.
4. District Accounts Officer, Nowshera.
5. Director General Health Services, K.P.K, Peshawar. ... (Respondents)

Appeal u/s 4 of the NWFP Service Tribunals Act, 1974 against non-granting of salary to the appellant w.e.f March 2008 against which the departmental appeal dated 01.7.2008 was not responded despite the lapse of 90 days.

Mr.Ijaz Anwar, Advocate. .. For appellant
Mr.Sher Afgan Khattak,
Addl: Advocate General. For respondents

...

Mr.Qalandar Ali Khan. .. Chairman
Mr.Abdul Jalil Khan Member
Syed Manzoor Ali Shah. Member

JUDGMENT

QALANDAR ALI KHAN, CHAIRMAN:- Since not only questions falling for determination in this appeal by Junaid Bacha, appellant, as well as in the connected appeals by Umar Hayat (No.1156/Neem/08), Arif Gul (No.1158/Neem/08), Jawad Ali (No.1159/Neem/08), Atta-ur-Rehman (No. 1267/Neem/08) and Farman Ali (No. 1351/Neem/08) are common but all these six appeals have been dealt with jointly upto the august Supreme Court of Pakistan, this single order will dispose of all the said connected appeals.

2. The appellants have lodged separate appeals for release of their salary with effect from March 2008 on the ground of their selection for the respective posts after fulfillment of the requisite formalities of advertisement of the posts in the

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

newspaper & their appointment through due process, where-after they submitted their arrival reports and started performing their duties, but they were not being paid their monthly pay/salary. Junaid Bacha, appellant, further contended that on 28.6.2008 he was transferred to Mardan and adjusted at BHU Sheikh Younas but the order was subsequently cancelled on 8.8.2008, therefore, he again submitted his arrival at the erstwhile station i.e. RHC Kheshki.

3. The appeals were mainly contested by Executive District Officer (Health) Nowshera, who, inter-alia, alleged non-observance of proper procedure for recruitment and, as such, illegal appointment; copy of appointment order not carrying the dispatch number in accordance with dispatch register of the office; the medical fitness certificate not carrying the date; and that the posts were meant for other places and not for the stations where the appellants have been appointed. The respondents raised the plea that since the appellants were not civil servants, they were not entitled to the grant of salary on the basis of fake and forged appointment orders.

4. A learned Bench of the Tribunal heard these appeals as well as other connected appeals and accepted the appeals vide judgment/order dated 18.2.2009. However, a larger Bench comprising the then Hon'ble Chairman as well as two learned Members, vide judgment/order dated 03.7.2009, withdrew the earlier judgment/order dated 18.2.09 and dismissed all the appeals on the ground that fraud was played in securing the appointment orders because persons having domiciles of other districts were appointed in District Nowshera and the posts against which appointments were made were never advertised in the newspaper. The appellants preferred separate appeals against the order dated 3.7.2009 of the Tribunal, and the august Supreme Court of Pakistan dismissed and refused leave to appeal in the remaining appeals on 24.9.2009; and allowed the instant ~~appeals~~

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Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

appeals while setting aside the impugned judgment of the Tribunal to the extent of the appellants. Resultantly, the appeals were remanded for decision afresh after affording opportunity of hearing to all concerned, and also allowing the appellants to produce documents in their support.

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5. Accordingly, after remand of the appeals, the appellants produced copies of their respective domiciles, and arguments of the learned counsel for the appellants and the learned Additional Advocate General were heard. Record also perused.

6. It is now well settled that certain posts in the Health Department were advertised for District Nowshera. It is also not disputed that appellants were appointed against some of the posts. The record would show that the appellants were medically examined and they submitted their arrival reports, where-after, they started performing their duties, but they were not paid their pay/salary, therefore, they lodged appeals for release of their salary/pay. It is also borne out of record that no orders of withdrawal/ cancellation of appointment orders or termination of the services of the appellants have been issued so far. It was on the basis of these facts, coupled with reply of the Executive District Officer (Health) Nowshera to the District Accounts Officer Nowshera dated 18.4.2008 and statement of the EDO before the learned Bench whereby he confirmed the appointments, that the said Bench accepted the appeals on 18.2.2009. However, a larger Bench of the Tribunal arrived at different conclusion on the grounds that the posts were meant only for persons having domiciles of District Nowshera and appointments were made against posts which were never advertised, which view was also upheld by the august Supreme Court of Pakistan in the remaining appeals vide order dated 24.9.2009. The appeals in hand were, however, separated from the rest of the appeals on the grounds that the appellants belonged to District Nowshera and their cases were also covered by the publication of the advertisement which was made

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Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

for the appointment of different disciplines in the Health Department; and, finally, these appeals were remanded to the Tribunal for decision afresh.

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7. When examined in the light of judgment of this Tribunal as well as afore-mentioned judgment of the august Supreme Court of Pakistan, the case of Junaid Bacha was also found standing on different footing than the other five appeals; because not only Junaid Bacha is, admittedly, a resident of District Mardan and not District Nowshera for which the posts were meant but the post of Microscopist against which his appointment has been made was also not advertised. Therefore, his appeal is not maintainable in the light of judgment of this Tribunal, upheld by the august Supreme Court of Pakistan. Though the learned counsel for the appellants contended that in similar nature cases, he has filed review petition against the order dated 24.9.2009 of the august Supreme Court, which is still pending, yet in the absence of any stay order from the august Supreme Court of Pakistan staying proceedings in these remanded cases, these appeals are to be decided in accordance with the direction of the august Supreme Court. In view of the above, the appeal of Junaid Bacha (No.1473/Neem/08) is dismissed.

8. As regards the remaining five connected appeals, suffice it to say that they appellants not only belonged to District Nowshera, as per their domiciles, but the posts against which they have been appointed were also advertised in the newspaper, therefore, their cases are not covered by the afore-mentioned judgments of the Tribunal and august Supreme Court of Pakistan. The record would show that all the requisite formalities were observed for their appointment, where-after, they submitted their arrival reports and their service record was also prepared, but they were not paid salary/pay; though they performed their duty; and the validity of their appointment was not only affirmed by the EDO(H) Nowshera in his memo. to the District Accounts Officer Nowshera dated 18.4.2008 but the EDO also

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Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

confirmed the appointments before the learned Bench which initially decided the appeals on 18.2.2009. It was also brought to the notice of this Bench that the appellants are still performing the duties assigned to them. In any case, unless the appointment orders of these appellants are withdrawn/cancelled or their services are terminated, or their appointments are declared illegal by the legal forum, they will be deemed to be in service, and, as such, entitled to their salary/pay .

9. Consequently, all the remaining five appeals of Umar Hayat (No.1156/Neem/08), Arif Gul (No.1158/Neem/08), Jawad Ali (No.1159/Neem/08), Atta-ur-Rehman (No. 1267/Neem/08) and Farman Ali (No. 1351/Neem/08) are accepted with direction to the respondents to release their salary and they be also paid arrears of their pay from the date of their appointment.

10. Before parting with the order/judgment, we would like to observe that on the charge of securing fake/forged appointment orders, the persons who secured the jobs have been made to suffer, but the officer/official who made the appointments and thus abetted securing of illegal appointments does not seem to have been taken to task for his illegal acts. Therefore, copies of this order/judgment be also sent to the Secretary, Government of Khyber Pakhtunkhwa, Health Department and Director General; Health Services, Khyber Pakhtunkhwa, Peshawar for appropriate action, under intimation to this Tribunal.

ANNOUNCED
19.8.2010

(ABDUL JALIL KHAN)
MEMBER

(QALANDAR ALI KHAN)
CHAIRMAN

(SYED MANZOOR ALI SHAH)
MEMBER

Certified to be ture copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

(21)

Office of the Sr. District Accounts Officer Nowshera

No/DAO/NSR 390 Date 16-4-08

To

The E.D.O (Health)
Nowshera

Subject: - The claims of Freshly Recruited persons are returned With the following observations.

i. It may please be ensured in writing that no recruitment has been made over and above the sanctioned strength in any discipline. Clear vacancies may be shown by giving detail of sanctioned strength active employees, & on leave.

ii. A certificate to this effect that all prerequisites were fulfilled before issuance of these appointment orders, may be furnished alongwith these claims.

iii. Have vacant posts made duly published in National Newspapers documentary evidence may please be sent alongwith these claims.

iv. The appointment orders must clearly specify the place of posting of the fresh appointee.

v. The service books of the official may please be completed in all respect.

vi. The appointment orders may be sent in original. All the content should be cleared and legible as the appointment orders sent to this office ~~which~~ contain enormous cuttings which make the authenticity of the appointments order doubtful.

Sr. District Accounts Officer
Nowshera 16/4

ATTESTED

(BetterCopy)

29

Office of the Sr. District Accounts Officer Nowshera

No./DAO/NSR_____ **Date 16-04-2008**

To

The E.D.O (Health)
Nowshera

Subject: **The Claims Of Freshly Recruited Person Are Returned With The Following Observations.**

I. It may please be ensured in writing that on recruitment ha been made over and above the sanctioned strength in any discipline. Clear vacancies may be shown by giving detail of sanctioned strength active employees, & on leave.

II. A certificate to this effect that all prerequisites were fulfilled before issuance of these appointment orders, may be furnished alongwith these claims.

III. Have vacant post made duly published in National Newspapers documentary evidence may please be sent alongwith these claims.

IV. The appointment orders must clearly specify the place of posting of the fresh appointee.

V. The service books of the official may please by completed in all respect.

VI. The appointment orders, may be sent in original. All the content should be cleared and legible as the appointment orders sent to this office contain enormous cuttings which make the authenticity of the appointments order doubtful.

Sr. District Account Officer
Nowshera

No. 1387 /EDO(H) NOWSHERA DATED: 16/4/2008

From: The Executive Distt: Officer Health Nowshera.

To: The Distt: Accounts Officer Nowshera.

Subject: THE CLAIM OF FRESHLY RECRUITED PERSON OR RETURNED WITH THE FOLLOWING OBSERVATION

Memo:

With reference your letter No.390/DAO NSR dt. 16.4.2008 on the subject noted above.

The following parawise clearification are as under:-

1- It is certified that no recruitment has been made over and above the sanctioned strength in any dicipline, it is further certified no recruitment has been made against leave vacancy.

2- It is certified that all prer requisit over fullfiled before issuance of the appointment order .

3- All the posts against which the appointment were made published in national press (Cutting of the News papars is attached).

4- All the apprintee were directed in the appointment orders to report to the EDO (Health) with in 14 days and thereafter their posting were ordered separately.

5- All services books of the fresh appointee have been completed in all respect .

6- The needfull has been done by submitting the original appointment orders to your office.

EXECUTIVE DISTT: OFFICER
HEALTH NOWSHERA.

ATTESTED

(BetterCopy)

No.1387/EDO (H) Nowshera Date 18-04/2008

Form

The Executive Distt: Officer
Health Nowshera

To;

The Distt: Account Officer
Nowshera

Subject **THE CLAIM OF FRESHLY RECRUITED PERSON OR RETURNED WITH THE FOLLOWING OBSERVATION**

Memo:

With the reference you letter No. 390/DAO NSR dt. 16.4.2008 on the subject noted above.

The following parawise clarification are as under: -

1. It is certified that no recruitment has been made over and above the sanctioned strength in any discipline it is further/certified no recruitment has been made against leave vacancy.

2. it is certified that all prer requisite over fulfilled before issuance of the appointment order.

3. All the posts against which the appointment were made published in national press (Cutting of the News papers is attached).

4. All the appointee were directed in the appointment orders to report to the EDO (Health) with in 14 days and thereafter their posting were ordered separately.

5. All services books of the fresh appointed have been completed in all respect.

6. The needfull has been done by submitting the original appointment orders to your office.

EXECUTIVE DISTT; OFFICER
HEALTH NOWSHERA

ATTESTED

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR

25

Appeal No. 330

Mushtaq Khan (Ward Orderly)

VERSUS

1. EDO (HEALTH) AND OTHERS
2. District Coordination Officer, Nowshera
3. District Account Officer, Nowshera
4. Director General, Health Services, Khyber Pakhtunkhwa, Peshawar

REPLY ON BEHALF OF RESPONDENT NO. 1

Appeal under section 4 of Khyber Pakhtunkhwa, Service Tribunal Act 1974, against the non granting of salary to the appellant w.e.f March 2008 against the department appeal dated 25.10.2011was not responded despite the laps of 90 days.

Respectfully Sheweth:-

Preliminary objections:

1. The appeal is time barred.
2. The appellant has got no cause of action
3. The tribunal has got no jurisdiction.
4. The appeal is barred by law.

PARA WISE COMMENTS

ON FACTS

1. It is correct that on 30.08.2007 an advertisement for various posts were advertised in newspaper from BPS – 01 to BPS – 09. But the same was cancelled by District Nazim vide his letter No. 2830, dated. 05.09.2007 (Copy attached).
2. Para No 2 is incorrect.
3. Para No 3 is incorrect,
4. An application for the release of salary by the applicant has been received to the office, which is time barred. However, an enquiry conducted in this matter and dismissed the claims.
5. A detail enquiry has been conducted by the department in the matter (Copy attached).

ATTESTED

ON GROUNDS

A. The para is not applicable on the case of the applicant as he is not civil servant.

B. The then EDO (Health) Nowshera while he was transferred to District Mardan, he came to know through some cogent resources that some forged appointments in back dates has been made in District Nowshera using his signature. So, he wrote two letters immediately informed the concerned authorities one to Senior District Account Officer Nowshera vide letter No. 9273/EDO (H) Mardan dated. 10.06.2008 and other to Zilla Nazim Nowshera vide No. 11438 – 40/EDO (H) Mardan dated. 24.07.2008, in which he mentioned the appointment of 22 peoples who were fakely appointed on his signature while he left Nowshera, on 09.05.2008.

C. Needs no reply. Enquiry attached.

D. A detail enquiry has been conducted by the department in the matter (Copy attached).

E. This para needs no reply because appointment order of the appellant has been fake and bogus.

F. It is submitted that the applicant are of domicile of Nowshera and the nature of work of various posts are one in the same, e.g. microscopist and Laboratory Technician are equivalent and required same qualification with the new nomenclature JCT (Pathology). Similarly, the post of Dispenser and Junior Clinical Technician (Pharmacy) are of the same nature and requires similar qualification. Since then some nomenclature are composed as Junior Clinical Technician (Pathology) for Laboratory Technician / Laboratory Assistant / Microscopist / Blood Bank Technician and Junior Clinical Technician (Radiology) for X – Ray Technician / X – Ray Assistant / Radiographer / Dark Room Assistant.

It is therefore requested that the appeal may kindly be dismissed

Executive
District Officer (Health)
Nowshera

Verified

SHERAFGAN KHATTAK
Advocate General
Khyber Pakhtunkhuwa
Service Tribunal

ATTESTED

(29)

بعدالت خیبر پختونخوا سروس ٹریبونل پشاور

کورٹ فیس	

مورخہ: _____ 20ء منجانب

مقدمہ: مشتاق خان بنام: گورنمنٹ آف KPK

دعویٰ: _____

جرم: _____

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام ہلمند کے لئے ناصر سلیم اپیڈ جاوید اقبال ایڈووکیٹس

مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ وتقرر ثالث وفیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرانے اجراء اور وصولی چیک روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زراس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمد ہوگی اور منسوخی دائر کرنے کی اپیل نگرانی ونظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مذکور کے عمل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اسکا ساختہ برداختہ منظور وقبول ہوگا اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا وخرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا تا کہ سند رہے

المرقوم _____ ماہ _____ 20ء

العبد گواہ شدہ العبد

بمقام: محاذ کے لئے منظور ہے۔

Accepted

BEFORE THE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No.1007/2018

Mushtaq Khan (Ward Orderly) ..... Petitioner

Versus

Govt of Khyber Pakhtun Khwa ..... Respondent

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Nazir Ullah

Legal Representative for Respondent No. 3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

P-1

Appeal No 1007/2018

Mushtaq Khan Ward orderly..... Appellant

VS

Government of Khyber Pakhtunkhwa ..... Respondents and others.

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Sheweth,

Preliminary objection

i. That the appellant has neither cause of action nor locus standi.

ii. That the appellant has not come with clean hands to this Honorable Court.

iii. That the appellant is just pressuring the Respondents for an un Law full and illegal action.

iv. That the appellant has concealed the actual fact from this Honorable Courts.

v. That the appeal of the appellant is already been dismissed by this Honorable court.

vi. That the august Supreme Court of Pakistan has also dismissed the case of the appellants.

vii. That the appeal is not maintain able in present form and in present circumstances.

viii. The appeal is badly time barred and hit by laches.

FACTS:

1. Para is correct that the Respondents invited application for appointment of Different posts in the Health Departments District Nowshera through Newspapers.

   Furthermore, the same advertisement was cancelled by the District Nazim vide his letter No 2830 dated 05-09-2007 in the light of local Government ordnance 2001 article 18 of the said Ordnance as (Annexure A).

2. As above.

GROUNDS:

A. Incorrect the appellant has been treated in accordance with law and nothing is violated in this case.

B. Incorrect the appellant is not a Govt/civil servant while the appellant order is fake bogus and payments of salary will be a huge loss to the Govt exchequer.

C. The appellant has never been remained a civil servant as evident from official record therefore the appellant was not served by any kind of letter, notices by the respondents in connection of duty being a non Govt employee.

D. Incorrect the appellant was not appointed by the department and this decision of the court does not apply on the appellant.

E. As replied above.

F. Incorrect the letter was for the post mentioned in advertisement not for a fake and bogus appointee.

G. Incorrect the appellant was not appointed by respondents and is not employee of the respondent Department.

H. As replied above.

I. The respondents seek permission to raise additional ground at the time of arguments.

It is requested and prayed that the appeal may kindly be dismissed with cost.

Secretary Health KPK
Peshawar
Respondent No. 1

Respondent No.2
Director General Health
Services Peshawar

District Health Officer
Nowshera.
Respondent No. 3

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 1007/2018

Mushtaq Khan.....**Appellant**

Versus

Government of Khyber Pakhtunkhwa & others .....**Respondents.**

Affidavit

I, Nazeerullah, Assistant (Litigation Cell), office of the District Health Officer Nowshera under the directions of the Competent Authority, do hereby solemnly affirm that the contents of the parawise Comments on behalf of Respondent No. 1, 2 & 3(Secretary Health Khyber Pakhtunkhwa, Director General Health Services, Khyber Pakhtunkhwa & District Health Officer Nowshera) are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'able Court.

Deponent
17301-6374582-3

Identified by:

Addl: Advocate General,
Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar

OFFICE OF THE DISTRICT NAZIM, NOWSHERA.

No. 2830 /DN

5th September

The Executive District Officer (Health),
Nowshera.

Subject: - POSTPONEMENT OF RECRUITMENT AGAINST VARIOUS POSTS IN HEALTH FACILITIES IN DISTRICT NOWSHERA.

Reference your advertisement published in newspapers inviting applications for recruitment against various posts from BS –01 to BS –09 as well as fixed pay in the health department district Nowshera. As per Local Government Ordinance 2001, all posts from BS-01 to BS –15 in the devolved departments have been declared as district cadre post. The said advertisement is defective as it inherited the following deficiency.

1- Number of vacancies has not been mentioned in each category.
2- The upper age limit for each vacancy has not been mentioned.
3- The Quota mentioned for retired employees posts not according to rules.
4- The advertisement has been made without my consent.

It is worthy to mention that under Article 18 of the said ordinance the undersigned is responsible for maintenance for administrative and financial discipline in the district government. Besides, the responsibilities of implementation of the function assigned to the decentralized departments also vest in the office of Zilla Nazim and the undersigned is empowered to issue executive orders to the DCO and EDO for discharge of function decentralized to the District Government.

Owing to the above mentioned deficiencies you are directed to stop recruitment process against the said posts and submit compliance report.

District Nazim,
District Government,
Nowshera.

Endst. No. & Date.

Copy forwarded for information and necessary action to:-
1- The District Coordination Officer Nowshera.
2- The Director General Health Services, Peshawar.
3- PS to Secretary Local Government

EPI Coordinator
District Nowshera

B6

Office of the
Executive District Officer (H),
Mardan
No 11438/40
Dated 24/07/08

To

Zilla Nazim,
Nowshera.

Subject: APPOINTMENTS IN HEALTH DEPARTMENT NOWSHERA

Dear Sir,

I would like to bring it to your notice that certain appointments made by Health Department Nowshera are to be termed as forged as these were not actually ordered by the undersigned. The dealing person, Khan Raziq Junior Clerk committed some cheating tricks, which could not be sensed at that time. It is believed that he rubbed one of the 6 carbon copies bearing very dimmed contents and taking certain bribe used the same copies for other persons. Similarly duplicate service book of one person was used for another person by putting his name on it.

The following persons have been brought to my knowledge who were appointed on forged method.

1.	Gul Badshah	Dispenser
2.	Naseemullah	M Supervisor
3.	Shabir Mohammad	M Supervisor
4.	Adnan	Ward Orderly
5.	Arif	Chowkidar
6.	Mohammad Zohais	M Supervisor
7.	Saif ullah	M Supervisor
8.	Gohar Ali	Sweeper
9.	Shuja Mohammad	Behishti
10.	Alamgir	M Supervisor
11.	Israr Mohammad	M Supervisor
12.	Jawad Ali	Ward Orderly
13.	Mushtaq Khan	Ward Orderly
14.	Aitizaz Khan	M Supervisor
15.	Musanif	M Supervisor

I therefore, request you to please inform and direct District Accounts Office Nowshera and EDO (H) Nowshera not to honour any claims on account of their salary. Furthermore, the undersigned will keep informing you if come to know about other forgeries made in this regard.

Your's Truly,

EDO (Coordinator)
District Nowshera

Dr Arshad Ahmad Khan,
Executive District Officer (H),
Mardan.

Cc:

1. Executive District Officer (H) Nowshera for information please.
2. District Accounts Officer Nowshera for information and necessary action.

The respondent No.2 (Executive District Officer (Health) Mardan) submitted his written reply wherein it was mentioned that the Director General Health Services cancelled the order dated 28.6.2008 regarding the appellant, and posted him back to district Nowshera vide order dated 08.08.2008. He further contended that no salary was paid to the appellant at Mardan due to non-availability of his service record. The District Accounts Officer, Nowshera, submitted that the claim of the appellant for release of his pay and allowance and arrears from 01.3.2008 was not submitted to the District Accounts Officer, Nowshera, (respondent No.4), and the claim of the appellant, when so submitted, would be considered under the rules. Respondent No.1 (Executive District Officer (Health) Nowshera) submitted, through written reply, that dispatch number on the photocopy of the appointment order did not tally with dispatch register of the office, and no right for the grant of salary existed in the appellant due to the reason that chance of hearing was provided to him, and departmental inquiry was conducted in the matter by the Director General, Health Services. Respondent NO.5 (Director General Health Services), adopted the reply of Executive District Officer (Health) Nowshera. The representatives of the respondents did not submit any written reply on behalf of respondent No.3.

3. We heard the arguments in this Service Appeal No. 1473 of 2008 and Service Appeals mentioned below. We also perused the record.

4. Counsel for the appellant, as recorded in the order dated 16.3.2009, had contended on the previous date that the case in hand was similar to already decided cases in Service Appeals Nos. 1146 to 1164, 1266, 1267 and 1351 of 2008. It was seen, on requisitioning the record of those cases, that the posts of many appellants, including the present appellant, were not advertised, while the other appellants were shown to have not worked against the posts, on which they were allegedly appointed. It appeared, prima-facie, that mis-representation had been committed, and, probably, fraud was also committed, while achieving appointment orders of the appellants in those cases. As the position in the above mentioned Service Appeals had to be quoted as precedent cases decided by this Tribunal, a Larger Bench comprising of Mr. Justice (R) Salim Khan, Chairman, Mr. Abdul Jalil Khan, and Bismillah Shah (Hon'ble Members), was constituted. Notices were issued to the counsel for the appellants and others in the appeals mentioned in the order sheet dated 16.3.2009 and 26.3.2009, because the above mentioned appeals were also taken up for reconsideration by the Larger Bench. Cases of the

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ATTESTED

NWFP Service Tribunal
Peshawar

EPI Coordinator
District Nowshera

Service appeals mentioned in order sheet dated 27.5.2008 were also taken

5. The learned counsel for the appellant, after explaining the basic facts of these cases, contended that the posts were duly advertised, and salary was released to some of the appointees, while the prayer in this case and the other above mentioned Service Appeals, was for release of pay only. He contended that no adverse action/order regarding the appointment of the appellants of the cases in hand was, ever, issued and the appointment orders of the appellants were not in controversy.

6. He took up the issue of review in the light of the already decided cases, by this Tribunal. He contended that according to Section 5(4) of the N.W.F.P Service Tribunals Act, 1974, any decision made by the Bench shall be deemed to be the decision of the Tribunal, and the judgment/decision/order of a Bench could neither be reviewed by the same Bench, nor by any other Bench of the same Tribunal. His contention to this extent is correct. It can further be added that the decision of one Bench is binding on any other Bench of this Tribunal, and the Tribunal does not have the power to review the judgment/order of the equivalent Bench.

7. He contended that this Tribunal was the product of the law (The NWFP Service Tribunals Act, 1974), promulgated in accordance with the provisions of Article 212 of the Constitution of Islamic Republic of Pakistan. The Chairman, or any other Member of the Tribunal, did not have the power to take up an already decided case somoto for review, and the action to do so would create bad precedent. He contended that power to review was a substantial right which could not be exercised by a forum unless specially prescribed by law, and Section 7 of the above mentioned Act was only a deeming proviso. He quoted 2008 SCMR 656, 1997 SCMR 1590, 1992 SCMR 1748, 1999 CLC (C.S) 450 in this respect. He also relied on 2004 CLC (C.S) 527 for his contention that power of review cannot be exercised by this Tribunal unless specifically conferred on it, which was not so conferred. He contended that neither the same Bench has given any observation/ objection regarding the proceedings which culminated in the judgments/orders, nor the official respondents have shown their grievance, and an other Bench of the same Tribunal, even, including the Chairman, could not sit over the judgment of the Tribunal already delivered by one of its Benches. The learned counsel for the appellant further contended that there was no adverse order of the official respondents regarding the appointment of the appellants and the appeals were

E 10

...y for the purposes of release of pay. As for the question that the posts belonged to district Nowshera, but persons domiciled of the areas outside of that district, even, were appointed against those posts, the learned counsel for the appellant contended that the concept was against the provisions of Article 27 of the Constitution.

8. He submitted that re-organization/change of nomenclature of the posts had already taken place, and due to lack of knowledge of the concerned officers, posts with previous nomenclature were advertised on 30.8.2007 inspite of re-designation of posts on 10.05.2006. He also contended that the posts of Malaria Supervisor and Microscopist were inter-adjustable with the other equivalent posts, and the letter of the E.D.O (Health) Mardan (previously EDO (Health) Nowshera) to Zilla Nazim, Nowshera, was an after-thought, after his transfer from Nowshera to Mardan. The learned counsel for the appellant relied on 1996 SCMR 413, 2000 PLC (C.S) 803 NLR 2004 (Service) 12, NLR 2002 (Service) 85, 2007 PLC (C.S) 179, and 2000 PLC (C.S) 405, and contended that there was no fault of the appellants regarding obtaining their appointment orders, therefore, the appellants were entitled to retain their posts. He also relied on some documents vide which many other persons have been appointed in the Health Department, and the appellants could also be adjusted against those posts, or against many other available posts.

9. The Additional Government Pleader contended that the appellant, through his memo. of appeal and affidavit, was bound to accept that he had applied for the post of Microscopist as mentioned in the advertisement, on which the appellant had relied. The A.G.P submitted that the posts of Microscopist and Malaria Supervisor were never sanctioned in this case and such posts were not available. He was of the view that no appointment could be made against the posts which were either not advertised, or were not available for advertisement. The A.G.P further contended that the Service Tribunal had the additional powers as mentioned in Rule 27 of the North West Frontier Province Service Tribunals Rules, 1974, and as provided in Section 151 of the Code of Civil Procedure, 1908.

For the purpose of ready reference, the above mentioned Rule 27 and Section 151 are re-produced as follows:-

27.- Additional Powers of the Tribunal.- *Nothing in these Rules shall be deemed to limit or otherwise affect the powers*

ATTESTED
Examiner
N.W.F.P Service Tribunal
Peshawar

of a Tribunal to make such orders as may be necessary in the ends of justice or to prevent abuse of the process of the Tribunal."

"151.- Saving of inherent powers of Court: Nothing in this Code shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."

10. The A.G.P contended that the then E.D.O (Health) Nowshera had clearly mentioned that Khan Razaq, Junior Clerk had conducted cheating and tricks for appointment of the appellants. He referred to the letter NO. 11557-59, dated 28.7.2008 by Dr. Arshad Ahmad Khan E.D.O (Health) Mardan to Zilla Nazim, Nowshera, wherein it was clearly mentioned that the appointments of thirteen persons named in that letter were forged appointments. A reference was also made to previous list of the names of persons who had got forged appointments.

11. The appellants had submitted an application to the effect that the Chairman of this Tribunal was the resident of district Nowshera, and the cases also pertained to district Nowshera, and the Chairman had stated that he would not be in a position to face people if wrong appointments are declared proper by his forum. It was contended that the Chairman projected himself as an aggrieved person. This allegation is without any basis. It is the responsibility of every judicial/quasi judicial forum to see that decisions are given in accordance with law, and wrongs are not declared correct, while correct decisions are not declared wrong. In civilized human society, no one should expect that he may be in a position to face the fair members of his society, if he delivers decisions in favour of wrongs.

12. Payment of salary to some persons and non-payment of the same to other persons on the basis of the ill-gotten appointments is no discrimination. This Bench has never intended to review, ipso-facto, the judgments/orders already granted. The previous judgments did not appear to be standing on strong footings, and could not be accepted as precedents. Those judgments were given by a Bench comprising of two Members. The case in Service Appeal No. 1473 of 2008 (Junaid Bacha Versus E.D.O (Health) Nowshera and 4 others), was never decided by any other Bench, and was still pending disposal. A clearer judgment had to be given in

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EPI Coordinator
District Nowshera

case, and a Larger Bench had to be constituted due to the decisions in previous cases. In order to give an independent judgment/order in this case, keeping in view the judgments/orders by a two Members' Bench of this Tribunal, the present Larger Bench comprising of the Chairman and two Members was constituted. The provisions regarding review were not applied to the case in hand and the other Service Appeals mentioned in this case. The provisions of Section 114 and of Order XLVII (Review) of the Code of Civil Procedure, 1908 were not applied to the facts and circumstances of these appeals.

13. The provisions of Section 151 of the above mentioned Code, in the light of Section 7(2) of the NWFP Service Tribunals Act, 1974 and Rule 27 of the NWFP Service Tribunals Rules, 1974, were applicable in these circumstances.

14. Many posts of Microscopist/Malaria Supervisor etc. were not sanctioned and were never advertised. The re-organization of the department was not brought to the notice of the appellants by the mentioned advertisement, or by any other publication. It was not mentioned in the advertisement in question that the posts of Malaria Supervisor and Microscopist were already re-designated and the posts as re-designated were to be filled up. The re-designated posts were never advertised for the purposes of this case. The appellant of Service Appeal No. 1473 of 2008 has fairly admitted through his memo. of appeal and affidavit that he applied for the post of Microscopist in consequence of the advertisement. He, therefore, applied for a post which did not exist. The lack of knowledge of the concerned officer regarding the re-designation of the posts, could not create the advertised posts. Such lack of knowledge could not entitle any person for the post which had not been advertised, and no vested right of an appointee in such circumstances can be deemed to had been created. There is nothing on record to show that any proper departmental procedure was adopted for filling the posts of the appellants. The appellants have neither produced, nor demanded to be produced, any record regarding such proceedings. There are allegations of payment of huge amounts as the sale and purchase money. In these circumstances, the appointment orders are illegal gains which do not create any vested right, and the appellants cannot claim salary as of right. The appointment orders of the appellants are ab-initio void, and such void orders need no implementation.

15. The posts were reserved at district level. After promulgation of the NWFP Local Government Ordinance, 2001, the persons domiciled of an other

EPI Coordinator
District Nowshera

could not be appointed against the posts reserved for a certain district. The posts in questions were not provincial level posts after the promulgation of the 18th Amendment Act. Article 27 of the Constitution of the Islamic Republic of Pakistan did not bar reservation of quota for a certain period mentioned therein, as per amendment and judgments, and that Article does not prescribe that posts reserved, or created, for one district may be filled also from persons domiciled of any of the other districts. First proviso of Section 10 of the N.W.F.P Civil Servants Act, 1973 prescribed that "provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region." The civil servants recruited specifically to serve in a particular district are not liable to serve in any other district. Some of the appellants, who belonged to other districts, were recruited in district Nowshera, but they were transferred lateron, to their own districts in contravention of the above mentioned proviso. The mentioned Ordinance of 2001 was promulgated as consequence to 140-A of the Constitution, and that Ordinance was given protection under the 6th schedule of the Constitution.

16. These facts were either not brought to the notice of the previous Bench, or were not properly explained before it. Mis-representation regarding the posts was conducted by the advertisement given in the newspaper in (daily Mashriq), and fraud was made in obtaining appointment orders. It was clearly mentioned in the advertisement that the posts were to be filled from the eligible persons domiciled of district Nowshera. The appellants, who were not permanently domiciled of district Nowshera, in connivance with the persons, who obtained appointment orders for them, have committed mis-representation and fraud by suppressing the fact that they were not the residents of district Nowshera. This criterion mentioned in the advertisement in daily "Mashriq" itself was either not brought into the notice of this Tribunal, or was not properly explained, and fraud and mis-representation was conducted before the Bench. It was also not properly explained before that Bench that proper procedure was not adopted for appointments, and mis-representation/fraud was committed before the Bench.

17. It is the responsibility of this Tribunal, being a quasi judicial forum, and being deemed as civil court, to see that full justice is provided to the appellants as well as to the respondents and the processes of the Tribunal, including the processes of arguments and of the delivery of the judgment/order of the Tribunal, and the consequent process of execution/implementation, are not mis-used. The judgments already issued would have needed their implementation,

EDO Coordinator
District Nowshera

ATTESTED
EXAMINER
NWFP Service Tribunal
Peshawar

9 13

Ph: 9214450

Supreme Court

K-15

REGISTERED.
Nos.C.P.1564-1574
& 1577-1582/2009-SCJ
SUPREME COURT OF PAKISTAN
Islamabad, dated 28/9/ 2009.

From

The Registrar,
Supreme Court of Pakistan,
Islamabad.

To

The Registrar,
N.W.F.P. Service Tribunal,
Peshawar. c/c DKG

N.W.F.P. Service Tribunal
Diary No. 1188
Dated 8/10/09

Subject: CIVIL PETITION Nos.1564-1574 & 1577-1582 OF 2009.

1.	Mosse Muhammad.	In C.P.1564/2009
2.	Naveed Ahmed.	In C.P.1565/2009
3.	Iftikhar Ahmad.	In C.P.1566/2009
4.	Saifullah.	In C.P.1567/2009
5.	Muhammad Zuhaib.	In C.P.1568/2009
6.	Alamgir Jan.	In C.P.1569/2009
7.	Junaid Khan.	In C.P.1570/2009
8.	Mushtaq Khan.	In C.P.1571/2009
9.	Mst. Mubaira.	In C.P.1572/2009
10.	Tahir Ali Shah.	In C.P.1573/2009
11.	Arif Ullah.	In C.P.1574/2009
12.	Aitizaz-ud-Din.	In C.P.1577/2009
13.	Adnan Khan.	In C.P.1578/2009
14.	Adnan Ahmad.	In C.P.1579/2009
15.	Shah Faisal Jan.	In C.P.1580/2009
16.	Israr Muhammad.	In C.P.1581/2009
17.	Munsif Khan.	In C.P.1582/2009

(Petitioners.)

Versus

Executive District Officer Health, Nowshera & others.

In all cases.
(Respondents)

(On appeal from the Judgment/Order of the NWFP Service Tribunal, Peshawar dt.3.7.2009 in Appeal No.1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1157, 1160, 1161, 1162, 1163, 1164, 1266 of 2008.)

Dear Sir,

Contd: P/2:

Ali Raza/***

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I am directed to enclose herewith a certified copy of the Order of this Court dated 24.9.2009 dismissing the abstracted Civil Petitions for information and further necessary action.

Please acknowledge receipt of this letter along with its enclosure immediately.

Encl: Order.

Yours faithfully,

(NAZAR ABBAS)
ASSISTANT REGISTRAR (IMP.)
For REGISTRAR

Submit to note for strict Compliance.

10/10/09

Ali Raza/***

M 17

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Mr. Justice Iftikhar Muhammad Chaudhry.
Mr. Justice Mian Shakirullah Jan.

Civil Petitions No. 1564 to 1584 and 1715/2009.
(On appeal against the judgment dated 03.07.2009 passed by NWFP Service Tribunal, Peshawar, in Appeal No. 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 11.., 1160, 1161, 1162, 1163, 1164, and 1266/2008)

Mossa Muhammad.	(in C. P. 1564/09)	C/QS —
Naveed Ahmed.	(in C. P. 1565/09)	L. Asst "
Iftikhar Ahmed.	(in C. P. 1566/09)	MS. "
Saifull[illegible]	(in C. P. 1567/09)	MS MSR Contract
Muhammad Zuhaib.	(in C. P. 1568/09)	MS " " "
Alamg[illegible] Jan.	(in C. P. 1569/09)	MS
Junaid Khan.	(in C. P. 1570/09)	MS MSR " "
Mushtaq Khan.	(in C. P. 1571/09)	N.O "
Mst. [illegible]uhajara [illegible]	(in C. P. 1572/09)	
Tahir Ali Shah.	(in C. P. 1573/09)	MSR.
Arif [illegible]llah.	(in C. P. 1574/09)	MSR
Arif [illegible]l Bahishti.	(in C. P. 1575/09)	MSR C-IV / Served EDO (H)
Jav[illegible] Ali.	(in C. P. 1576/09)	MSR C-IV
Ai[illegible]-ud-Din.	(in C. P. 1577/09)	
Adnan [illegible]	(in C. P. 1578/09)	MSR MS
Adnan Ah[illegible]	(in C. P. 1579/09)	N.O MSR
Shah Faisal Jan.	(in C. P. 1580/09)	
Israr Muhammad	(in C. P. 1581/09)	MS
Munsif Khan.	(in C. P. [illegible]2/09)	MS
Atta-ur-Rehman.	(in C. P. [illegible]09)	MSR C-OP
Farman Ali	([illegible]09)	MSR 1o.S.H
Umar Hayat Male	([illegible]715/09)	MSR

Petitioner(s).

Versus

Executive District Officer, Health, Nowshera, etc. (in all cases) Respondent(s).

For the Petitioner(s) (in all cases): Mr. Ejaz Anwar, ASC.
Mr. M. S. Khattak, AOR.

For the Respondent(s): N.R.

Date of Hearing: 24.09.2009.

ORDER

Iftikhar Muhammad Chaudhry, CJ: - Listed petitions have been filed for leave to appeal against the judgment dated 03.07.2009 passed by NWFP Service Tribunal, Peshawar, in Appeal No. 1473/2008. In pursuance of a publication appeared in newspaper vacancies in different disciplines were

Attested
Superintendent
Supreme Court of Pakistan
Islamabad

announced by Executive District Officer, Health, Nowshera, details with conditions of which are mentioned therein. One of the conditions for appointment was that candidates must belong to district Nowshera being its permanent residents. Petitioners alongwith Junaid Bacha (Service Appeal No. 4173/08), which is not included in the above listed petitions, applied for appointment against the vacancies. Interestingly, some of them had also applied for Microscopist which is not mentioned in the advertisement, however, they succeeded somehow in getting appointment letters in their favour. Subsequent thereto they managed to get themselves transferred in different districts of NWFP but when the question of payment of salaries arose it transpired that some of them have succeeded in getting appointment orders by misrepresentation and by playing fraud and they were not domiciled in district Nowshera nor the appointments obtained by them are covered against any of the vacancies listed in the advertisement. At the first instance listed petitioners somehow succeeded in getting favourable order from the Service Tribunal for payment of salaries to them. Subsequently, one Junaid Bacha also approached the Service Tribunal for the same relief. At that time it transpired that remaining 22 persons have obtained orders from the Service Tribunal illegally as such a larger bench was constituted in the case of Junaid Bacha with a view to examine the cases of the listed petitions as well as on the point as to whether they have succeeded in getting favourable order by playing fraud with the Service Tribunal or otherwise and ultimately in Junaid Bacha's case impugned order dated 03.07.2009 was passed, concluding para therefrom is reproduced herein below: -

> "19. In the light of the above discussion, we do not find any merit in the present appeal and in the appeals mentioned above. We, therefore, withdraw the judgments/orders in the abovementioned appeals, obtained by fraud and misrepresentation, and we dismiss the present appeal and all the above mentioned Service Appeals with costs."

2. The learned counsel for the petitioners contended that as far as the Service Tribunal is concerned, it has got no power to review its earlier order passed in the

EPI Coordinator
District Nowshera

Attested
Superintendent
Supreme Court of Pakistan
Islamabad

cases of the petitioners except Junaid Bacha, therefore, on this score alone the judgment is not sustainable.

3. We have considered the arguments of the learned counsel for the petitioners and have gone through the impugned judgment, relevant paras therefrom are reproduced herein below: -

> "5. The learned counsel for the appellant, after explaining the basic facts of these cases, contended that the posts were duly advertised, and salary was released to some of the appointees, while the prayer in this case and the other above mentioned Service Appeals, was for release of pay only. He contended that no adverse action/order regarding the appointment of the appellants of the cases in hand was, ever, issued and the appointment orders of the appellants were not in controversy.
>
> 6. He took up the issue of review in the light of the already decided cases, by this Tribunal. He contended that according to Section 5 (4) of the N.W.F.P Service Tribunals Act, 1974, any decision made by the Bench shall be deemed to be the decision of the Tribunal, and the judgment/decision/order of a Bench could neither be reviewed by the same Bench, nor by any other Bench of the same Tribunal. His contention to this extent is correct. It can further be added that the decision of one Bench is binding on any other Bench of this Tribunal, and the Tribunal does not have the power to review the judgment/order of the equivalent Bench.
>
> 7. He contended that this Tribunal was the product of the law (The NWFP Service Tribunals Act, 1974), promulgated in accordance with the provisions of Article 212 of the Constitution of Islamic Republic of Pakistan. The Chairman, or any other Member of the Tribunal, did not have the power to take up an already decided case suo-moto for review, and the action to do so would create bad precedent. He contended that power to review was a substantial right which could not be exercised by a forum unless specially prescribed by law, and Section 7 of the above mentioned Act was only a deeming proviso. He quoted 2008 SCMR 656, 1997 SCMR 1590, 1992 SCMR 1748, 1999 CLC (C.S) 450 in this respect. He also relied on 2004 CLC (C.S) 527 for his contention that power of review cannot be exercised by this Tribunal unless specifically conferred on it, which was not so conferred. He contended that neither the same Bench has given any observation/objection regarding the proceedings which culminated in the judgments/orders, nor the official respondents have shown their grievance, and an other Bench of the same Tribunal, even, including the Chairman, could not sit over the judgment of the Tribunal already delivered by one of its Benches. The learned counsel for the appellant further contended that there was no adverse order of the official respondents regarding the appointment of the appellants and the appeals were only for the purposes of release of pay. As for the question that the posts belonged to district Nowshera, but persons domiciled of the areas outside of that

FPI Coordinator

Attested

Section Officer
Supreme Court of Pakistan
Islamabad

district, even, were appointed against those posts, the learned counsel for the appellant contended that the concept was against the provisions of Article 27 of the Constitution.

8. He submitted that re-organization/change of nomenclature of the posts had already taken place, and due to lack of knowledge of the concerned officers, posts with previous nomenclature were advertised on 30.8.2007 inspite of re-designation of posts on 10.05.2006. He also contended that the posts of Malaria Supervisor and Microscopist were inter-adjustable with the other equivalent posts, and the letter of the E.D.O (Health) Mardan (previously EDO (Health) Nowhera) to Zila Nazim, Nowshera, was an afte.thought, after his transfer from Nowshera to Mardan. The learned counsel for .he appellant relied on 1996 SCMR 413, 2000 PLC (C.S) 803, NLR 2004 (Service) 12, NLR 2002 (Service) 85, 2007 PLC (C.S) 179, and 2000 PLC (C.S) 405, and contended that there was no fault of the appellants regarding obtaining their appointment orders, therefore, the appellants were entitled to retain their posts. He also relied on some documents vide which many other persons have been appointed in the Health Department, and the appellants could also be adjusted against those posts, or against many other available posts."

4. It is to be noted that in the given circumstances of the case, the appointments in favour of the petitioners, except Junaid Bacha and the petitioners in Civil Petitions No. 1575, 1576, 1583, 1584 and 1715/2009, are illegal as such it does not create any vested right and the petitioners have been declared not entitled to claim salaries as of right because their appointment orders are ab-initio void and as such orders need no implementation. It is important to note that as far as the appointment orders are concerned those have been found void ab-initio and illegal on the basis of facts and circumstances which have been elaborately mentioned in the judgment. It is settled principle of law that as far as the fraud is concerned it vitiates the most solemn proceedings notwithstanding that whatever is the merit of the case of the petitioners. The Service Tribunal has established on the basis of the material produced before it that fraud was played by the petitioners and with the connivance of the persons who were responsible for making their appointments, therefore, on the basis of such consideration they have rightly been held not entitled for any relief.

5. It is next contended by the learned counsel for the petitioners that the Service Tribunal may have separated the cases of some of the petitioners

EP Coordinator
District Nowshera

mentioned herein above because they belong to district Nowshera and their cases are also covered by the publication of the advertisement which was made for the appointment of different disciplines in the Health Department.

6. With the assistance of the learned counsel for the petitioners we have carried out an exercise and have taken out the above five cases out of the listed petitions in which the appointments, according to the learned counsel, are based according to law but as far as the remaining cases are concerned we are not convinced that their appointment is illegal in view of the finding of the Service Tribunal, therefore, the remaining petitions noted herein above are dismissed and leave to appeal is refused. So far as Civil Petitions No. 1575, 1576, 1583, 1584 and 1715/2009 are concerned notices be issued in these cases to the respondents as well as to the Advocate General, NWFP. It is pointed out that a petition has also been filed against the said order by Junaid Bacha, Microscopist, which is pending before the Branch Registry of this Court at Peshawar. Office is directed to requisition the said petition from Peshawar and club the same with the remaining petitions for disposal. Notices to the respondents as well as Advocate General, NWFP be also issued in Junaid Bacha's case. Matter is adjourned to a date in office after two weeks to the extent of the petitions mentioned herein before as well as in the case of Junaid Bacha which shall be transferred from Peshawar.

sd/ Iftikhar Muhammad Chaudhry CJ

sd/ Mian Shakirullah J

Certified to be True Copy

Superintendent
Supreme Court of Pakistan
Islamabad

Not Approved for Reporting.

SUPREME COURT ISLAMABAD 24.09.2009 (Farrukh)

EPI Coordinator
District Nowshera

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (HEALTH) NOWSHERA

OFFICE ORDER

An enquiry committee comprising of the following officers working under the control of the undersigned is hereby constituted to probe / enquire the matter regarding the release of salaries of various applicants.

1. Dr. Ejaz Ahmad (Deputy EDO (H) NSR) — Chairman.
2. Dr. Abu Zar (Coordinator DHIS). — Member.
3. Dr. Muhammad Shoaib (Coordinator EPI). — Member.

Sd_____
Executive District Officer
(Health) Nowshera.

No. 9531 - 32 / EDO (H) NSR, Dated: 15 / 11 /2018

Copy forwarded to:

1. District Coordination Officer Nowshera.
2. All concerned for information.
3. Office record.

Executive District Officer
(Health) Nowshera

Coordinator
ict Nowshera

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (HEALTH) NOWSHERA.
Phone & Fax: 0923-580759
No. 9487-9500 **/EDO (H) NSR,**
Date: 05/11/**2011.**

To

1.	Alamgir Jan	Malaria Supervisor
2.	Mr. Syed Tahir Ali Shah	Microscopist
3.	Mr. Attizaz Udddin	Dark Room Assistant
4.	Mr. Arif Ullah	Dispenser
5.	Mr. Muhammad Zohaib	Malaria Supervisor
6.	Mr. Junid Khan	do
7.	Mr. Israr	do
8.	Mr. Mushtaq Khan	do
9.	Mr. Shahid Raja	Microscopist
10.	Mr. Mushtaq Ahmad	Ward Orderly
11.	Mr. Waqar Khan	Malaria Supervisor
12.	Mr. Nowshad	Dispenser
13.	Mr. Naved Ur Rehman	Malaria Supervisor
14.	Mr. Saif Ullah	Computer Operator

Subject: PERSONAL HEARING.

Reference to your application addressed to EDO (H) Nowshera, you all are hereby directed to appear before the undersigned on 10-11-2011 (Thursday) for personal hearing regarding your application.

EP Coordinator
District Nowshera

District Coordinator NP
EDO (H) Office Nowshera

due to non-ava
electrification a

To

The Executive District Officer Health,
Nowshera.

Subject: **ENQUIRY REPORT REGARDING THE VARIOUS APPLICATIONS RECEIVED TO THE EDO (H) OFFICE FOR THE RELEASE OF THEIR SALARIES.**

Sir,

This is submitted for your information that inquiry committee has gone through all the details of the available records and reached to the conclusion that those people actually produce bogus / fake appointment letters to the department claiming that they have been selected, while on the other hand the official record reveals that no such selection has ever been made by this office in the past. In this regard a very concrete proof can be obtained from these two letters of the than EDO (H) which he wrote to the then district Nazim and the then Senior District Accounts Officer Nowshera.

Hence the committee unanimously suggests that a clear cut de-notification of all these people may kindly be issued to the concerned quarter regarding their fake status.

Enquiry Committee

Dr. Ejaz Ahmad
DEDO (H) NSR

Dr. Abu Zar
DHIS Coordinator
Nowshera

Dr. Muhammad Shoaib
District Coordinator EPI
Nowshera

EPI Coordinator
District Nowshera

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (HEALTH) NOWSHERA

OFFICE ORDER

As per recommendation of the enquiry committee the following peoples are hereby de-notified as a health staff with immediate effect.

1.	Alamgir Jan	Malaria Supervisor
2.	Mr. Syed Tahir Ali Shah	Microscopist
3.	Mr. Attizaz Udddin	Dark Room Assistant
4.	Mr. Arif Ullah	Dispenser
5.	Mr. Muhammad Zohaib	Malaria Supervisor
6.	Mr. Junid Khan	do
7.	Mr. Israr	do
8.	Mr. Mushtaq Khan	do
9.	Mr. Shahid Raja	Microscopist
10.	Mr. Mushtaq Ahmad	Ward Orderly
11.	Mr. Waqar Khan	Malaria Supervisor
12.	Mr. Nowshad	Dispenser
13.	Mr. Naved Ur Rehman	Malaria Supervisor
14.	Mr. Saif Ullah	Computer Operator

Sd_____
Executive District Officer
(Health) Nowshera.

No. 9802-05 / EDO (H) NSR, Dated: 26 / 11 /2019

Copy forwarded to:

1. District Coordination Officer Nowshera.
2. Senior District Accounts Officer Nowshera.
3. PA to DGHS Khyber Pakhtunkhwa, Peshawar.
4. Medical Officer / Incharge of all health facilities in district Nowshera.
5. People concerned.

EP[illegible]ordinator
District Nowshera

Executive District Officer
(Health) Nowshera

OFFICE OF THE DIS[illegible] FFICER NOWSHERA

Phone & Fax: 0923-580755 Email: nowshera.edoh@gmail.com

No. 682-96 / DHO NSR Date: 25/01/2018

To

1.	Mr. Shahid Raja	appeal No. 323/2012
2.	Mr. Syed Tahir Ali Shah	appeal No. 324/2012
3.	Mr. Muhammad Zohaib	appeal No. 325/2012
4.	Mr. Israr Muhammad	appeal No. 326/2012
5.	Mr. Arif Ullah	appeal No. 327/2012
6.	Mr. Alamgir Jan.	appeal No. 328/2012
7.	Mr. Junaid Khan.	appeal No. 329/2012
8.	Mr. Mushtaq Khan.	appeal No. 330/2012
9.	Mr. Aittiaz Uddin.	appeal No. 331/2012
10.	Mr. Naveed Ur Rehman	appeal No. 332/2012
11.	Mr. Mushtaq Khan	appeal No. 333/2012
12.	Mr. Saif Ullah	appeal No. 334/2012

Subject: **REGRESSION OF DEPARTMENTAL APPEALS.**

Memo;

The above mentioned Departmental Appeals, remitted to Director General Health Services Khyber Pakhtunkhwa Peshawar (Appellant Authority) by the Honourbale Services Tribunal Peshawar on 27.10.2017 have been regretted vide Directorate General Health Services Khyber Pakhtunkhwa Peshawar letter No. 245-49/AD(Lit) dated. 18.01.2018.

District Health Officer
Nowshera

Even No. & Date:

Copy forwarded to.

1. The Honourbale Services Tribunal Peshawar.
2. Director General Health Services Khyber Pakhtunkhwa Peshawar.
3. Assistant Director Litigation, DGHS Office Khyber Pakhtunkhwa Peshawar.
4. PS to Secretary Health Khyber Pakhtunkhwa Peshawar.

District Health Officer
Nowshera

Received

EPI Coordinator
District Nowshera

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1007

MR MUSHTAQ KHAN..... APPEALLANT

VS

GOVT: OF KHYBER PAKHTUBKHWA..... RESPONDENT NO. 04

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS NO. 04

Respectfully Sheweth,

Preliminary objection

I. Para No.1 is correct to the extent that the posts were advertised in newspaper by the office of EDO Health Department Nowshera.

II. Para No. 2 relate to office EDO/Health and DAO Nowshera respondent No. 3 and 5 respectively.

III. No comments, the said Para is also relates to the EDO Health Nowshera Office and he will reply accordingly to the service record of the applicant.

IV. No Comments, the said Para relates to EDO Health Nowshera and DAO Nowshera Office.

V. No comments as the matter relates to Tribunal Court.

VI. No comments EDO Health Nowshera has already conducted departmental inquiry on the direction of Tribunal.

VII. No comments, as appeals of the appellants have already been regretted by D.G Health Services Khyber Pakhtunkhwa.

VIII. No comments.

FACTS:

1) Para is related to DHO (Respondent NO. 3)
2) Para is related to DHO (Respondent No. 3)
3) The respondents No. 4 not know about the performance of petitioner. Respondent No. 3 will be in the best position to reply.
4) Para No. 4 as above.
5) Related to respondent No. 3.
6) Para 6 as above.
7) Related to Respondent No. 3.
8) No reply.

GROUNDS:

A. The respondent will be in the best position to reply.
B. Relate to Respondent No. 3.
C. As above.
D. Need no comments.
E. Need no reply.
F. Its relates respondents No. 3 & 5. (District Accounts Office)
G. Its relates to Respondent No. 3.
H. Need no reply.
I. Need no reply.

It is humbly prayed that the appeal may kindly be dismissed with cost.

Respondent No.4
Deputy Commissioner
Nowshera

DEPUTY COMMISSIONER
NOWSHERA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICE APEAL NO .1007/2018

Mushtaq Khan Ward Orderly.....**Appellant**

Versus

Goverenment of Khyber Pakhtunkhwa & Other..... **Respondents**

Affidavit

I, Nazir Ullah DSV EPI DHO Office Nowshera do hereby the solemnly affirm that the contents of parawise comments on the behalf of Respondent No 4 Deputy Commissioner Nowshera are true and correct and best of my knowledge on this Honorable Court.

Deponent
17301-6374582-3

Identified by:

Addl: Advocate General,
Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar

BEFORE THE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No.1007/2018

Mushtaq Khan (Ward Orderly) ..... Petitioner

Versus

Govt of Khyber Pakhtun Khwa ..... Respondent

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Nazir Ullah

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No 1007.

Mushtaq Khan Ward Orderly ..... Appellant

VS

Government of Khyber Pakhtunkhwa ..... Respondents and others.

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS NO 5.

Respectfully Sheweth,

Preliminary objection

i. That the appellant has neither cause of action nor locus standi against the Respondents No 5.

ii. That the appellant has not come with clean hands to this Honorable Court.

iii. That the appellant is just pressuring the Respondent for an un Law full and illegal action.

iv. That the appellant has concealed the actual fact for this Honorable Courts.

v. That the appeal of the appellant is already been dismissed by this Honorable court.

vi. That the august Supreme courts of Pakistan is also dismissed the case of the appellants.

vii. That the appeal is not Maintainable in present form and present circumstances.

viii. The appeal is highly time barred and hit by laches.

FACTS:

1. Para is related to DHO (Respondents No 3).
2. Para is related to DHO (Respondents No 3).
3. Para is related to DHO (Respondents No 03).
4. The Respondents No 5 does not know about the performance of petitioner neither Respondents No 5 has paid any Salary to the petitioner.
5. Para 4 as Above.
6. Related to Respondents No 3.
7. No reply.
8. No reply.

GROUNDS:

A. The Respondents No 3 will be in the best position to reply.

B. Relate to Respondent No 3.

C. As Above.

D. No Comment.

E. No reply.

F. Respondents No 5 sent letter 16-04-2008 to Respondent No 3, about the post advertised in the newspaper as (an annexure4 & 5) not about the fake advertisement or non-advertise posts.

G. It relates to respondents No 3.

H. No reply

I. No reply

It is humbly prayed that the appeal may kindly be dismissed with cost.

Respondent No 5.
District Account Officer
Nowshera

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICE APEAL NO .1007/2018

Mushtaq Khan Ward Orderly.....**Appellant**

Versus

Goverenment of Khyber Pakhtunkhwa & Other..... **Respondents**

Affidavit

I, Nazir Ullah DSV EPI DHO Office Nowshera do hereby the solemnly affirm that the contents of parawise comments on the behalf of Respondent No 5 District Account Officer Nowshera are true and correct and best of my knowledge on this Honorable Court.

Deponent
17301-6374582-3

Identified by:

Addl: Advocate General,
Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar

اسامیوں کی تفصیل

صحت ضلع نوشہرہ کو مندرجہ ذیل آسامیوں کو پر کرنے کیلئے ضلع نوشہرہ کے مستقل سکونتی باشندوں اور ضلع
قابلیت کے حامل مرد/خواتین امیدواروں سے درخواستیں مطلوب ہیں۔ درخواست سادہ کاغذ پر مصدقہ نقل
اور پیشہ ورانہ دستاویزات کی کاپیاں، تجربہ، قومی شناختی کارڈ/ڈومیسائل/پاسپورٹ سائز تصاویر زیرو
فتر کو مورخہ 5 ستمبر 2007ء تک پہنچ جانی چاہیے۔ نامکمل اور تاخیر سے موصول ہونے والی درخواستوں
نہیں کیا جائیگا۔ انٹرویو/ٹیسٹ/مشترکہ ایجنسی آفیسر نوشہرہ کے دفتر میں مورخہ 7 ستمبر 2007ء کو ہونگے۔

نمبر شمار	نام آسامی	تعداد آسامی	کوالیفکیشن/ایجوکیشن	تاریخ انٹرویو
1	ڈینٹل ٹیکنیشن	9	متعلقہ ڈپلومہ	7 ستمبر 2007
2	X-Ray ٹیکنیشن	9	متعلقہ ڈپلومہ	7 ستمبر 2007
3	فزیوتھراپی ٹیکنیشن	9	متعلقہ ڈپلومہ	7 ستمبر 2007
4	لیبارٹری ٹیکنیشن	9	متعلقہ ڈپلومہ	7 ستمبر 2007
5	سٹیریلائزیشن ٹیکنیشن	9	متعلقہ ڈپلومہ	7 ستمبر 2007
6	آپٹھلمک ٹیکنیشن	9	متعلقہ ڈپلومہ	7 ستمبر 2007
7	کمپیوٹر آپریٹر	8	متعلقہ ڈپلومہ	7 ستمبر 2007
8	الیکٹریشن	6	متعلقہ ڈپلومہ	7 ستمبر 2007
9	سٹور کیپر	5	ایف اے/ایف ایس سی	7 ستمبر 2007
10	لیبارٹری اسسٹنٹ	5	متعلقہ ڈپلومہ	7 ستمبر 2007
11	ڈرائیور	4	ترجیحاً تعلیم یافتہ	7 ستمبر 2007
12	دارزاردلی	2	ترجیحاً تعلیم یافتہ	7 ستمبر 2007
13	دائی	2	ترجیحاً تربیت یافتہ	7 ستمبر 2007
14	لیبارٹری اٹینڈنٹ	فکس	ترجیحاً تعلیم یافتہ	7 ستمبر 2007
15	X-Ray اٹینڈنٹ	فکس	ترجیحاً تعلیم یافتہ	7 ستمبر 2007
16	مالی	فکس	تجربہ رکھنے والے کو ترجیح دی جائیگی	7 ستمبر 2007
17	چوکیدار	فکس	ترجیحاً تعلیم یافتہ	7 ستمبر 2007
18	سویپر	فکس	پیشہ ور کو ترجیح دی جائیگی۔	7 ستمبر 2007

JCT Dark Room Asst

JCT Microscopist Manual A

Pharmacy Tech

JCT Dispenser

شرائط و ضوابط

م تقرریاں صوبہ سرحد کی وضع کردہ کنٹریکٹ پالیسی 2002ء کے تحت شمالی مغربی سرحدی صوبہ کے سول سروسز
ٹ تجویز 1972ء کی ترمیم شدہ 2005ء کی شق نمبر 10 بمطابق آفیسر میزانیہ تعلیم
SO(I-S-8/2006-07/PD) مورخہ 13 ستمبر 2006ء کے تحت ہوگی۔

بل نمبر 2 کی تمام آسامیاں باقاعدہ بنیادوں پر ہونگی۔ اور ایسے ملازمین پنشن کی بجائے حکومت کی مقرر کردہ شرائط
فنڈ کے حقدار ہونگے۔ جس کیلئے متعلقہ ملازم اور حکومت دونوں حسب 10 فیصد ادائیگی کرینگے۔

ڈپوٹیشن پر تقرری کی صورت میں ملازم کو صرف فکس تنخواہ -/40000 روپے ادا کی جائیگی اگر ان ٹرانسفر ایبل
ہے۔ ابتدائی طور پر سلیکشن ایک سال کیلئے کی جائے گی۔ جو کہ تسلی بخش کارکردگی پر قابل توسیع ہوگی۔ سلیکشن
میں امیدواروں کو ایک شورٹی بانڈ دینا ہوگا۔ پالیسی سے ہٹ کر تقرری منسوخ کی جائے گی اور کسی کو
الت جانے کا اختیار نہیں ہوگا۔ ڈیوٹی کے دوران فوت شدہ ملازمین کے بچے اپنے والدین کے مکمل کوائف
خواست کے ساتھ جمع کریں۔ نیز 60 سال اور میڈیکل بورڈ کے ذریعے ریٹائرڈ/کلاس 4 ملازمین کے بچوں کیلئے
2 کوٹہ مختص ہے۔ اپنے امیدوار اپنے ریٹائرڈ والدین کے مکمل کوائف درخواست کے ساتھ منسلک کریں
مذہبی اقلیتوں کیلئے حکومت کی مقررہ پالیسی کے مطابق کوٹہ مختص ہے۔ تقرری کی صورت میں امیدوار کو عمر کی حد
حکومت کی پالیسی کے مطابق رعایت دی جاسکتی ہے۔ انٹرویو کے دن امیدوار جملہ اسناد کی اصل کاپیاں ہمراہ لائے
یں۔ امیدواروں کے اصل اسناد کی تصدیق متعلقہ افسران سے کی جائیگی۔ جعلی اسناد پیش کرنے والے امیدواروں
خلاف قانونی کاروائی کی جائیگی۔ انٹرویو کیلئے سفری خرچہ نہیں دیا جائیگا۔

ڈسٹرکٹ ایجوکیشن آفیسر (مرد)
ڈسٹرکٹ ایجوکیشن آفیسر (زنانہ) نوشہرہ

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[illegible] 30/8/07

ATTESTED
YASIR SALEEM AKBAR
Advocate
High Court
District Courts Nowshera

(Back copy)

Office of the Sr. District Accounts Officer Nowshera

No./DAO/NSR_____ Date 16-04-2008

To

The E.D O (Health)
Nowshera

Subject: **The Claims Of Freshly Recruited Person Are Returned With The Following Observations.**

I. It may please be ensured in writing that on recruitment ha been made over and above the sanctioned strength in any discipline. Clear vacancies may be shown by giving detai. of sanctioned strength active employees, & on leave.

II. A certificate to this effect that all prerequisites were fulfilled before issuance of these appointment orders, may be furnished alongwith these claims.

III. Have vacant post made duly published in National Newspapers documentary evidence may please be sent alongwith these claims.

IV. The appointment orders must clearly specify the place of posting of the fresh appointee

V. The service books of the official may please by completed in all respect.

VI. The appointment orders, may be sent in original. All the content should be cleared and legible as the appointment orders sent to this office contain enormous cuttings which make the authenticity of the appointments order doubiful.

Sr. District Account Officer
Nowshera