

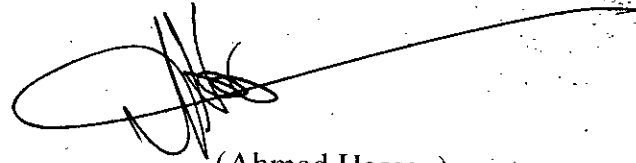
Order

08.02.2019

Counsel for the applicant present. Mr. Taimur Ali Khan, Advocate for respondent no.1 and Mr. Muhammad Jan, DDA for respondents no. 2 and 3 present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the application is dismissed. Parties are left to bear their own cost. File be consigned to the record room.

Announced:
08.02.2019



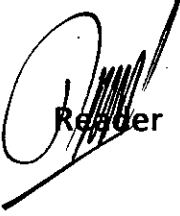
(Ahmad Hassan)
Member



(Muhammad Amin Khan Kundi)
Member

22.10.2018

Neither applicant nor his counsel present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Due to retirement of Hon'ble Chairman, the Tribunal is incomplete. To come up for same as before on 06.12.2018.


Reader

06.12.2018

None present on behalf of the applicant. Mr. Kabirullah Khattak, Addl: AG for the respondents no. 2 to 4 and counsel for respondent no. 1 present. Counsel for respondent no.1 submitted written reply which is placed on file. To come up for further proceedings on 17.01.2019 before D.B.



(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

17.01.2019


Counsel for the applicant Mr. Khaled Rahman, Advocate present. Respondent No. 1 in person and Mr. Riaz Ahmad Paindakheil, Assistant AG for respondents No. 2 to 4 present. Respondent No. 1 requested for adjournment on the ground that his counsel has gone to Swat. Adjourned. To come up for further proceeding on 08.02.2019 before D.B.



(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

12.06.2018

Counsel for the applicant, Addl. AG for official respondents and private respondent no. 1 in person present. Original record may be requisitioned. To come up for further proceedings on 11.07.2018 before D.B.

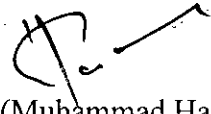

(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

11.07.2018


Clerk to legal advisor for legal advisor present. Mr. Muhammad Jan, Learned Deputy District Attorney present. Subhan Ullah litigation Assistant on behalf of KTH Peshawar present. Respondent Dr. Jamshaid Saeed also present. Due to general strike of the bar, the case is adjourned. To come up on 31.08.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

31.08.2018

Clerk to counsel for applicants present. Mr. Ziaullah, Deputy District Attorney for respondents No. 2 to 4 present. Clerk to counsel for applicants requested for adjournment on the ground that learned counsel for the applicants is busy before the Hon'ble Peshawar High Court. Adjourned. To come up for further proceedings on 22.10.2018 before D.B.


(Ahmad Hassan)
Member




(Muhammad Amin Khan Kundi)
Member

Form -A

FORM OF ORDER SHEET

Court of _____

Misc. Application No. 159/2018

S.No.	Date of Order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	28/05/2018 31/05/18 31.05.2018	<p>The application U/S 12(2) CPC submitted by Hospital Director MTI KTH through Mr. khaled Rehman Advocate, may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This application be put up before D. Bench on <u>31/05/18</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Counsel for the petitioners present and heard. Notice and record for 11.06.2018 before the D.B.</p> <p>(Ahmad Hassan) Member</p> <p>(M. Amin Khan Kundi) Member</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

MISC: APPLICATION No. 159 /2018

IN

S.A No. 480/2017

Hospital Director etc.....Applicants

Versus

Dr. Jamshed Saeed Respondents

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S.No.	Description of case	Date	Annexure	Page
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2.	Stay Application with Affidavit			6
3.	Judgment of the Hon'ble High Court, Peshawar	25.04.2017	A	7-16
4.	Appeal of Respondent No.1		B	17-21
5.	Replies of applicants		C	22-34
6.	Cause List	30.11.2017	D	35
7.	Consolidated judgment of this Hon'ble Tribunal	30.11.2017	E	36-47
8.	Impugned judgment	05.12.2017	F	48-50
9.	Promotion Notification of Respondent No.1	15.11.2017	G	51-54
10.	Order Sheet	20.11.2017	H	55
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Through

Applicants

Khaled Rahman
Advocate,
Supreme Court of Pakistan

3-D, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458
Cell # 0345-9337312

Dated: 28 /05/2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

MISC: APPLICATION No. 159 /2018

IN

S.A No. 480/2017

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 591

Dated 28/05/2018

1. **The Hospital Director**
Medical Teaching Institution/KTH/KMC/KCD
Peshawar.
2. **The Medical Director,**
Medical Teaching Institution/KTH, Peshawar.
3. **Nursing Director,**
Medical Teaching Institution/KTH, Peshawar..... **Applicants**

VERSUS

1. **Dr. Jamshed Saeed,**
Medical Officer,
Khyber Teaching Hospital, Peshawar
2. **The Secretary**
Govt. of Khyber Pakhtunkhwa
Health Department,
Civil Secretariat, Peshawar.
3. **The Director General Health Services**
Khyber Pakhtunkhwa, Peshawar
4. **The Secretary**
Govt. of Khyber Pakhtunkhwa
Finance Department,
Civil Secretariat, Peshawar..... **Respondent**

Application U/S 12(2) CPC for setting aside the Judgment of this Hon'ble Tribunal dated 15.12.2017 passed in Service Appeal No.480/2017 being procured by Respondents on the basis of misrepresentation.

Respectfully Sheweth,

Facts giving rise to the present application are as under:-

1. That earlier Respondent No.1 had filed Writ Petition No.480-P/2017 against her relieving order issued by the applicants. Other colleagues of Respondent No.1 had also filed similar Writ Petitions challenging identical relieving orders. All those Writ Petitions were clubbed together and dismissed on the ground of jurisdiction/

maintainability vide consolidated judgment dated 25.04.2017 (*Annex:-A*). The concluding para of the cited judgment is reproduced herein below:-

11. *Admittedly, the petitioners are civil servants and their grievances relates to the terms and conditions of service, the appropriate remedy for seeking their redressal would surely be the Service Tribunal.*
12. *This Court is barred under Article-212 of the Constitution of the Islamic Republic of Pakistan, 1973 to take cognizance in the matter relating to the terms and conditions of service of civil servant. The Apex Court in the case of I.A. Sherwani and others ..VS.. Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041) and recently in Ali Asghar Khan Balch's case (2015 SCMR 456), has again laid down that the issue relating to the 'terms and conditions' of Service cannot be entertained by High Court either in its constitutional jurisdiction or in its original civil jurisdiction being barred under Article-212 of the Constitution.*
13. *In view of the above, all these Writ Petitions being not maintainable are hereby dismissed."*

2. That pursuant to the order of the Hon'ble Peshawar High Court Peshawar Respondent No.1 and his other colleagues invoked the Jurisdiction of this Hon'ble Tribunal by way of Service Appeals (Appeal of Respondent No.1 *Annex:-B*) which were contested by the applicants (then Respondent No.1) by filing Replies (Replies of applicants *Annex:-C*).
3. That all the appeals including that of Respondent No.1 were enlisted for hearing on 30.11.2017 before a Bench comprising of the worthy Chairman and another Hon'ble Member as is evident from the Cause List dated 30.11.2017 (*Annex:-D*). After lengthy arguments and discussing all the legal aspects of the cases vide consolidated judgment dated 30.11.2017 (*Annex:-E*), all the appeals were dismissed. The concluding para of the consolidated judgment is reproduced herein below:-

"8. This Tribunal is therefore, of the view that no sufficient cause has been shown by the appellants in pursuing their cases before a wrong forum and the application for condonation of delay cannot be accepted. All these appeals being time barred are dismissed. Parties are left to bear their own costs. File be consigned to the record Room."

4. That to the utter surprise of the applicants, subsequently the service appeal of the Respondent No.1 was again heard on 05.12.2017 by another Bench of this Hon'ble Tribunal comprising of the worthy Members as by then the worthy Chairman had

gone for Camp Court at Mingora Swat and without hearing and in absence of the applicants, the appeal was allowed vide impugned judgment dated 05.12.2017 (*Annex:-F*). The Respondent No.1 deliberately failed to bring into the Notice of the Hon'ble Tribunal regarding the earlier judgment on the point and that the applicants being necessary and contesting Respondent No.1 be provided opportunity of hearing. It is also important to add that the applicants are an autonomous institution constituted under the Khyber Pakhtunkhwa Medical Teaching Institutions Reforms Act, 2015 and is represented through a counsel, therefore, the learned Govt. Pleader/Additional Govt. Pleader have no role in the cases of autonomous Institutions. It is also further added being essential that Respondent No.1 during the pendency of appeal has been promoted to BPS-18 by the Khyber Pakhtunkhwa Health Department vide Notification dated 15.11.2017 (*Annex:-G*) being civil servant and thus in that context his appeal before the Hon'ble Tribunal stood infructuous as after the promotion he had to be posted/adjusted and this issue was brought into the notice of the Hon'ble Tribunal and proper recorded in Order Sheet dated 20.11.2017 (*Annex:-H*).

5. That consequently, the Respondent No.1 procured the impugned judgment of this Hon'ble Tribunal dated 05.12.2017 under a patent and deliberate misrepresentation etc. by concealing the crucial facts having bearing on the decision of the case, therefore, the impugned is liable to be reversed in the interest of justice.
6. That had the Respondent brought into the notice of the Hon'ble Tribunal the earlier judgment on the same point of view, then definitely the result in the instant case would have been otherwise and the appeal of the Respondent No.1 would have been dismissed.
7. That the element of misrepresentation etc. on the part Respondent is quite apparent on the face of the record and he was supposed to bring into the notice of the Hon'ble Tribunal the updated position on the subject matter but he has failed in his duty and thus misled the Hon'ble Court by relying on his arguments.

For the aforesaid reasons, it is therefore respectfully prayed, that on acceptance of this application, this Hon'ble Tribunal may kindly be pleased to recall the impugned judgment dated 05.12.2017 and by restoring appeal of Respondent No.1 the same may be decided in the light of earlier judgment passed by this Hon'ble Tribunal in Consolidated judgment dated 30.11.2017 and dismiss the appeal of Respondent No.1.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to applicant.

Through

Applicants


Khaled Rahman

Advocate,

Supreme Court of Pakistan

Dated: 28/05/2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

MISC: APPLICATION No. _____/2018

IN

S.A No. 480/2017

Hospital Director etc.....Applicants

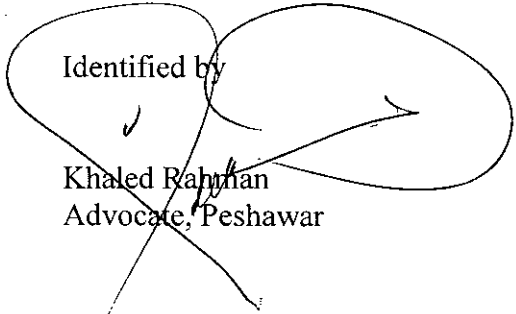
Versus

Dr. Jamshed Saeed Respondents

AFFIDAVIT

I, Dr. S. Muhammad Zahir Shah I/c Litigation MTI, KTH do hereby solemnly affirm and declare on oath that the contents of this Application are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Court.

Identified by



Khaled Rahman
Advocate, Peshawar

Shah
Deponent

**Incharge Litigation,
MTI KTH Peshawar**

6

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

MISC: APPLICATION No. _____/2018
IN
S.A No.480/2017

Hospital Director etc..... Applicants
Versus
Dr. Jamshed Saeed Respondents

Application for suspending the operation of the impugned judgment dated 15.12.2017 till the final disposal of the main application.

Respectfully Sheweth,

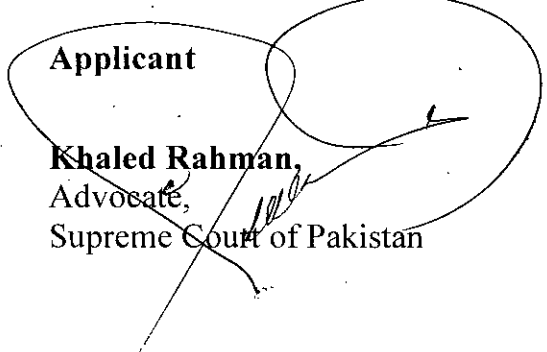
1. That the above titled application is being filed today which is yet to be fixed for hearing.
2. That the judgment called in question was obtained by misrepresentation and without hearing applicants and even that earlier identical cases under similar circumstances have been dismissed on 30.11.17.
3. That the facts alleged and grounds taken in the body of main Application may kindly be as an integral part of this application, which make out an excellent prima facie case in favour of the applicants.
4. That the balance of convenience also lies in favour of applicants and in case the impugned Judgment is not suspended the applicants will suffer irreparable loss.

It is, therefore, humbly prayed that on acceptance of this application, the operation of the impugned judgment dated 15.12.2017 may graciously be suspended till the final disposal of the appeal.

Through

Applicant

Khaled Rahman,
Advocate,
Supreme Court of Pakistan



Dated: 28 / 05/ 2018

Affidavit

Verified that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Jamshed Saeed
Deponent

**Incharge Litigation,
MTI KTH Peshawar**

Annex-A

(7)

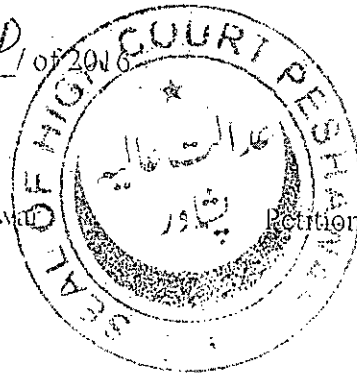
Attention: H.D. ss

IN THE PESHAWAR HIGH COURT, PESHAWAR

W.P. No.

429-P/1 of 2016

Farrukh Jalil son of Gulzar Masih Naz
Male Nurse, Lady Reading Hospital, Peshawar



Petitioner

VERSUS

1. Director General Health Services
Khyber Pakhtunkhwa, Peshawar.
2. Secretary Health, Khyber Pakhtunkhwa,
Peshawar.

Respondents

WRIT PETITION UNDER ARTICLE 199
OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN, 1973.

Respectfully Sheweth:

1. That the petitioner belongs to Christian Minority of the Khyber Pakhtunkhwa and hails from a very respectable family.
2. That the petitioner was appointed as a Male Nurse in Lady Reading Hospital Peshawar, way back and his services are governed by Medical Teaching Institutions Act (MTI) 2015. He, therefore, is an Institutional Employee.
3. That the recent unrest and protest of the Doctors on 30.01.2016 a meeting was held by the petitioner and other staff and some Doctors

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Peshawar High Court
25 APR 2017

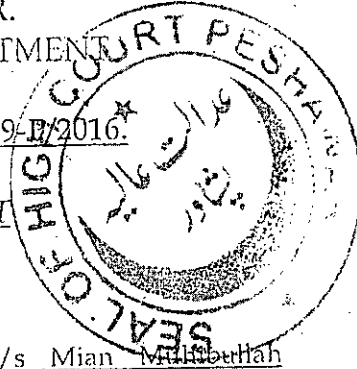
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JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
PESHAWAR.
JUDICIAL DEPARTMENT

Writ Petition No. 429-P/2016.

JUDGMENT



Date of hearing: 25.4.2017

Petitioner (Farrukh Jalil) by M/s Mian Mubtullah Kakakhel & Saifullah Muhib, Advocates.

Respondent (Director General Health Services, Peshawar and another) by Mian Arshad Iqbal, AAG.

WAQAR AHMAD SETH, J.- Through this single judgment, we propose to dispose of instant Writ Petition as well as connected Writ Petitions No. 557-P, 593-P, 4193-P/2016, 184-P, 517-P & 667-P/2017 as common questions of law and facts are involved therein.

Writ Petition No. 429-P/2016

2. In essence, case of the petitioner is that he was appointed as Male Nurse in Lady Reading Hospital, Peshawar, however, vide impugned order dated 1.2.2016, he was transferred and posted at DHQ Hospital KDA, Kohat against the vacant post, which

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Peshawar High Court
25 APR 2017

order has now been impugned through the instant Writ Petition and prayed for setting aside of the same being illegal, without jurisdiction and without lawful authority.

Writ Petition No. 557-P/2016

3. In essence, petitioners No. 1 to 3 are the President, General Secretary and Senior Vice President of Provincial Paramedical Association, Peshawar while petitioners No. 5 & 6 are the General Secretary & Vice President of Paramedic Association of LRH whereas petitioner No. 4 is the Secretary Finance of Provincial Para Medie Association and petitioners No. 7 to 20 are para-medical staff working in different low-paid categories at Medical Teaching Institutes, namely, Lady Reading Hospital and Khyber Teaching Hospital, however, vide impugned orders dated 1.2.2016 & 9.2.2016, they were transferred to far flung places of the Province; which orders have now been impugned through the instant Writ Petition and sought the

following prayer:-

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29 APR 2017
Peshawar High Court

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petitioners were to DHQ Hospital, Nowshera vide transfer orders dated 24.2.2016; hence, the learned counsel for the petitioners sought adjournment to amend the Writ Petition. Subsequently, the petitioners have filed the instant amended writ petition by challenging the aforesaid modification notification dated 24.2.2016, whereby they were transferred to DHQ Hospital, Nowshera and prayed that the impugned transfer orders and its modification notifications dated 24.2.2016 be set aside being illegal, without jurisdiction and without lawful authority.

Writ Petition No. 4193-P/2016

5. In essence, case of the petitioner is that he is serving as Medical Officer, Khyber Teaching Hospital, Peshawar, however, vide impugned orders dated 3.11.2016 & 5.11.2016, not only the petitioner's services were repatriated to his parent department but also allotted his Room No. 13 Old Doctor Hostel to Dr. Tahira Iqbal Trainee Registrar (Gynae-A Unit); hence, the petitioner has impugned the above said orders

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Peshawar High Court
29 APR 2017

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through the instant Writ Petition and prayed for setting aside of the same being illegal, without jurisdiction and without lawful authority.

Writ Petition No. 184-P/2017

6. In essence, case of the petitioner is that he is serving as Medical Officer in the Khyber Teaching Hospital, Peshawar since 8.8.1994 till date, however, he was received an office order dated 29.12.2016, whereby his services were rendered back to Health Department; hence, the petitioner has filed the instant Writ Petition by impugning the above said office order and prayed for setting aside of the same being illegal, without jurisdiction and without lawful authority.

Writ Petition No. 517-P/2017

7. In essence, case of the petitioner is that he is serving as Medical Officer in Khyber Teaching Hospital, Peshawar, however, vide office order dated 30.1.2017, the services of petitioner were rendered back to Health Department, which order has now been

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Peshawar High Court
29 APR 2017

impugned through the instant Writ Petition and sought the following prayer:-

- i. To declare the impugned Office Order No. 3497-3510/KTH/E dated 30.1.2017 of respondent No.1 (Annex "A") as without lawful authority and of no legal effect.
- AND
- ii. To restore the Office Order No. 23097-106/KTH/E dated 18.10.2016 of respondent No.1 (Annex "B").
- iii. To restrain the respondents from implementing the impugned order and to stop the salary of the petitioner and to eject him from his allotted accommodation of Room No. 09 Old Doctors Hostel, KTH, Peshawar.
- iv. To direct the respondents to frame fair and transparent policy regulating the relieving of civil servant from KTH to Health Department.
- v. To restrain the respondents from arbitrary exercise of powers, and policy based on making pick and choose, discrimination in relieving/transfer of the civil servants from KTH to Health Department.
- vi. Any other remedy which this august court deems fit and just in the circumstances of the case, may also be granted in favour of petitioner".

Writ Petition No. 667-P/2017

8. In essence, case of the petitioner is that she is serving as Charge Nurse (BPS-16) in Khyber Teaching Hospital, Peshawar since 13.3.1993, however, vide office order dated 14.11.2016, her services were

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Peshawar High Court
29 APR 2017

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rendered back to Health Department Khyber Pakhtunkhwa for further posting. Subsequently, on 2.1.2017, respondent No.3 wrote a letter to respondent No. 1 to withdraw the above said office order and allow the petitioner to continue her duties as Charge Nurse in KTH Peshawar on humanitarian grounds. In response thereof, respondent No.1 vide letter dated 14.1.2017 communicated that all the post of Charge Nurses in BPS-16 have been filled through advertisement and presently there is no vacant post to adjust the petitioner; hence, the petitioner has filed the instant Writ Petition by impugning the transfer order dated 14.11.2016 and refusal order dated 14.1.2017 of respondent No.1 and prayed for setting aside of the same being illegal, without jurisdiction and without lawful authority.

Writ Petition No. 1167-P/2017

9. In essence, case of the petitioner is that he is serving as Medical Officer in Khyber Teaching Hospital, Peshawar since 8.8.1994 till date. however, he was received an office order dated 29.12.2016, whereby

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Peshawar High Court
29 APR 2017

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his services were rendered back to Health Department, Khyber Pakhtunkhwa: hence, the petitioner having no other remedy has filed the instant Writ Petition by impugning the office order dated 29.12.2016 and prayed for setting aside of the same being illegal, without jurisdiction and without lawful authority.

10. Arguments heard and record perused.

11. Admittedly, the petitioners are civil servants and their grievances relate to the terms and conditions of service, the appropriate remedy for seeking their redressal, would surely be the Services Tribunal:

12. This Court is barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 to take cognizance in the matter relating to the terms and conditions of service of a civil servant. The Apex Court in the case of I.A. Sharwani and others vs. Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041) and recently in Ali Azhar Khan Baloch's case (2015

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Peshawar High Court
29 APR 2017

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SCMR 456), has again laid down that the issue relating to the 'terms and conditions' of service cannot be entertained by a High Court either in its constitutional jurisdiction or in its original civil jurisdiction being barred under Article 212 of the Constitution.

13. In view of the above, all these Writ Petitions being not maintainable are hereby dismissed.

Sgt. Muzeyy Khan

Sgt. Muzeyy Khan
JUDGE

JUDGE



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29 APR 2017

Q. Khan
29/4/17

No. 26624
Date of Presentation of Application 28/4/17
No of Pages 10
Copying fee
Urgent Fee
Total 10000
Date of 28/4/17
Date of 28/4/17
Date of 28/4/17

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Annex-B

17



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 480 /2017

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 523

Dated 18/5/2017

Dr. Jamshed Saeed, Medical Officer
KTH, Peshawar

.....(Appellant)

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VERSUS

- 1. The Secretary Health K.P.K, Peshawar.
- 2. The Director General Health K.P.K, Peshawar.
- 3. The Secretary Finance, KPK, Peshawar.

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST ILLEGAL RELIVING ORDER DATED 03.11.2016 WHEREBY THE APPELLANT WAS ILLEGALLY RELIVED FROM THE SERVICE AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITH IN STATUTORY PERIOD OF 90 DAYS.

PRAYER:

Filed to-day
Registrar
18/5/2017

THAT ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 03.11.2016 MAY BE SET ASIDE AND ALSO DECLARE THE ORDER 03.11.2016 AS UNLAWFUL, POLITICALLY MOTIVATED AND NOT PASSED BY THE COMPETENT AUTHORITY AND MAY ALSO BE DIRECTED TO RELEASE THE PAY OF THE APPELLANT. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant is serving as medical officer, Khyber Teaching Hospital and work with full zeal and zest. (Copy of the order dated 03.05.2007 is attached as Annexure-A).
2. That some administrative issue was raised and matter was politicized. Then the appellant was illegally relived by the incompetent authority and the pay of the appellant was illegally stopped and the authority who relived appellant was incompetent and already resigned from the service from 5.10.2016 and order was passed on 03.11.2016. This order dated 03.11.2016 is illegal, unlawful and politically motivated. (Copy of impugned order and Article dated 5.10.2016 are attached as Annexure-B & C).
3. That appellant filed departmental appeal against the order dated 03.11.2016 and the appellant also filed writ petition and the matter was sub-judice before the Apex Court of Province and the stay was granted to the appellant and comments was filed by the respondents but the writ petition of the appellant was dismissed under Article 212 vide judgment dated 25.04.2017. After the decision of Peshawar High Court Peshawar the respondent also issued vacation notice dated 6.5.2017. (Copy of departmental appeal, writ petition and Judgment Comments are attached as Annexure-D, E, F, G & H).
4. That thereafter, the appellant has no other remedy but come to this august Tribunal with in time after the judgment of high court on the basis of following grounds amongst others.

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GROUNDS:

- A) That the impugned order dated 03.11.2016 and not taking any action on the department appeal, is against the law, facts, norms of justice and material on record, therefore, not tenable and liable to be set aside.
- B) The appellant was illegally relived by the incompetent authority and the authority who relived appellant was incompetent and already resigned from the service from 5.10.2016 and order was passed on 03.11.2016. This order dated 03.11.2016 is illegal, unlawful and politically motivated.
- C) That the impugned order has been passed on political consideration to accommodate some other doctor belonging to the ruling party as

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

- D) That no summary was moved regarding the transfer of the appellant which is violation of rule and policy.
- E) That the appellant was not on deputation and therefore his repatriation order is illegal, similarly doing away with the service of the appellant by the words "Your services are no longer required".
- F) That the impugned relieving order is basis on administrative ground which is against the law, rules, and policy.
- G) That no reasons were given the impugned relieving order and even no proper summary was moved for the said purpose under the rules/ instructions of the Govt:
- H) That the impugned relieving order was passed by the incompetent authority (Director) in the matter the competent authority is Director General Health/Secretary Health so the impugned order is illegal and unlawful.
- I) That the appellant has not been treated according to law and rules.
- J) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Certified to be true copy
 ENJOYNER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

THROUGH:

[Signature]
 Appellant
 Dr. Jamshed Saeed

[Signature]
 (M.ASIF YOUSAFZAI)
 ADVOCATE SUPREME COURT
[Signature]
 (TAIMUR ALI KHAN)
[Signature] &
 SYED NOMAN ALI BUKHARI
 (ADVOCATES PESHAWAR)

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Date of Presentation of Petition _____
 Number of Petitions _____
 Copying Fee _____
 Urgent _____
 Total _____
 Name of Counsel _____
 Date of Completion _____
 Date of Delivery of Petition _____

5-6-17
6-12-00
2
8
5-6-17
5-6-17

20

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No. _____ /2017

Dr. Jamshed Saeed

V/S

Health Deptt.

APPLICATION FOR CONDONATION
OF DELAY IF ANY IN THE INSTANT APPEAL

RESPECTFULLY SHEWETH:

1. That the instant appeal is pending before this Honorable Tribunal in which no date has been fixed.
2. That appellant filed departmental appeal against the order dated 03.11.2016 and the appellant also filed writ petition and the matter was sub-judice before the Apex Court of Province and the stay was granted to the appellant and comments was filed by the respondents but the writ petition of the appellant was dismissed under Article 212 vide judgment dated 25.04.2017.
3. That the appellant file service appeal within time after the judgment dated 25.4.2017.
4. That the appeal of the appellant on merit is good enough to be decided on merits.

It is therefore most humbly prayed that the instant appeal may be decided on merit by condoning the delay to meet the ends of justice.

Appellant
Dr. Jamshed Saeed

THROUGH:

(M.ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT

(TAIMUR ALI KHAN)

&

SYED NOMAN ALI BUKHARI

AFFIDAVIT.

The contents of application
are true and correct.

Deponent

TESTED BE TRUE
Original

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~~21~~



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 480/2017

Dr. Jamshid Saeed

vs

Health Department.

432

24-05-2017

APPLICATION FOR IMPLEADMENT OF HOSPITAL DIRECTOR AS RESPONDENT NO. 4 AS NECESSARY PARTY IN THE INSTANT APPEAL.

RESPECTFULLY SHWITH

1. That the above mentioned appeal is pending before this august Tribunal and filed for reply on dated 20-6-2017
2. That impugned relieving order of the appellatant was passed by Hospital Director Khyber Teaching Hospital which was inadvertently left as respondent No. 4 in the present appeal, and wants to implead as respondent No. 4 in the instant appeal.
3. That correct address of the Hospital Director is as Hospital Director MTI, KTHI, Peshawar.
4. It is interest of justice to implead the Hospital Director Respondent No. 4 as necessary party to meet the end of justice.

It is therefore most humbly prayed that on acceptance Hospital Director may be Impleaded as respondent No. 4 as party and notice may be issued to meet the end of justice. Any other remedy which this august Tribunal may also be awarded in favour of the appellatant.

to the court
favout appant.
adw
24/5/17

APPELLANT

THROUGH

(MUHAMMAD ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,

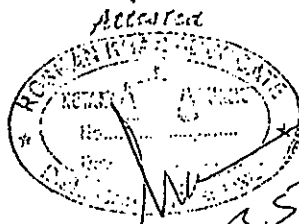
TAIMUR ALI KHAN
ADVOCATE HIGH COURT.

AFFIDAVIT

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

Certified to be true copy

E. [Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar



DEPONENT

23.5.17

Annot - E

BEFORE THE KPK SERVICE TRIBUNEL PESHAWAR

Appeal NO.480 /2017

Dr. Jamshed saeed Petitioner

Versus

The secretary health KPK, Peshawar and others Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT No.1&2

Preliminary objections:-

1. The petitioner has got no cause of action and the Appeal is not maintainable.
2. The petitioner is civil servant and posting transfer is terms and condition of service has no locus standi to invoke jurisdiction of this Hon'ble in simple case of transfer
3. Section 10 of civil servant Act 1973 every civil servant shall be liable to serve anywhere within or outside the province at any time, hence the appeal is liable to be dismiss.
4. The petitioner is a civil servant of Health department and is not immuned from transfer to his parent department after completion of his tenure.

Replay to the Facts:-

1. The petitioner is civil servant and employee of Health Department his services of the petitioner was transferred to KTH Vide Health Department Notification No. 10/2/SO (E)-II/2007 dated 03.05.2007 and was rightly relieved after completion of more than required length of his tenure service at KTH.
2. This Para is incorrect and misconceived. Under MTH Act 2015 Hospital Director is the Head of institution and fully competent under the Act.
3. This Para is incorrect hence denied. The appellant has not filed any appeal to the replying respondents. The factual position is that appellant filed Writ petition No. 4193-P/2016 before Peshawar High court Peshawar which was dismissed on 25-04-2017 then he filed the present appeal. After the dismissal of Writ petition the appellant is transferred Vide government of Khyber Pakhtankhwa Notification No. SO(E)H-11/411/2017 and the

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appellant services are placed at the disposal of DHS FATA for further posting. Annexure "A".

4. In reply to this Para it is submitted that the appellant chronic litigant, unwilling worker and thus wants to waste the time of the replying respondents and this Honorable Court on a simple matter of transfer.

Grounds:

- A. Incorrect, the appellant is Civil servant of Health department and was rightly relieved by the competent authority of the Hospital to parent department hence no illegality or irregularity is committed.
- B. Incorrect and misconceived, Under MTI Act 2015 the Hospital Director is fully empowered in the MTI institutions hence is orders or quiet legal and lawful.
- C. Incorrect hence denied, the appellant was transferred after completion of tenure as his services were no longer required.
- D. Not correct, no violation of rule and policy is committed by the respondents and being civil servant was relieved to the parent department after completion of tenure (9 years & 6 months).
- E. The appellant was relieved along with other civil servants after completion of tenure (annexure "B") the appellant is civil servant and the respondent (Hospital Director) are fully competent to transfer or repatriate civil servants whose services are not required in the institution.
- F. The appellant is a civil servant and was transferred/relieved to his parent department along with other employees and is liable to be transferred anywhere in the province or outside the province is provided U/S 10 in the civil servant Act 1973, hence the grounds and reply or mere and lame excuses just to confuse the matter and to waste time of this Hon'ble Court and just to grind his own axe.
- G. As per para-F above.

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H. As per para-F above.

I. As per para-F above.

J. As per para-F above.

Prayer:

Keeping in view of the above, it is prayed that on acceptance of the above reply, the appeal may please be dismissed and stay order if any favour of the appellant, be vacated in the interest of Justice.

Shahina
Director General Health Services,
Khyber Pakhtunkhwa, Peshawar.
Respondent No. 02

[Signature]
Secretary, Health Department,
Khyber Pakhtunkhwa, Peshawar.
Respondent No. 01

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the June 14, 2017

NOTIFICATION

No. SO(E)H-II/4-1/2017/P. WHEREAS, Dr. Jamshed Saeed, Medical Officer BS-17 was serving as Medical Officer in MTI KTH Peshawar since 2007;

AND WHEREAS, Medical Director MTI KTH, Peshawar has relieved him from the institution vide letter No.28495-505/KTH/E dated 02.11.2016. He belongs to FR D.J.Khan FATA;

AND WHEREAS, DGHS Khyber Pakhtunkhwa has proposed him for posting at the disposal of DHS FATA vide his letter No.18083/E-1(J-27) dated 05.12.2016;

NOW THEREFORE, the competent authority is pleased to post Dr. Jamshed Saeed, Medical Officer, BS-17, at the disposal of DHS FATA for further posting against the vacant post of Medical Officer BS-17 with immediate effect.

SECRETARY HEALTH
KHYBER PAKHTUNKHWA

Endst. of even No. & Date.

Copy to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General, Health Services, Khyber Pakhtunkhwa.
3. Medical Director, MTI KTH Peshawar.
4. Director Health Services FATA Peshawar.
5. PS to Secretary Health, Khyber Pakhtunkhwa.
6. Doctor concerned.

(Jibreel Raza)
Action Officer (E-II)

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MEDICAL TEACHING INSTITUTION
KHYBER TEACHING HOSPITAL, PESHAWAR
Office of the Hospital Director

12
15
Annex 48

No: 30002 /KTH/E

Dated 22 / 11 /2016

LIST OF GENERAL CADRE DOCTORS (CIVIL SERVANT) (MCs, SMOs, PMOs) TRANSFERED/RELIEVED FROM KTH TO HEALTH DEPTT: AFTER COMPLETION OF TENURE.

S. No.	Name of Doctor	Designation	Date of transfer/relieving
1	Dr. Sultana Azmat Barlas,	Principal Medical Officer, BPS-19	05-11-2016
2	Dr. Qazi Farman Ali Shah,	Principal Medical Officer, BPS-19	03-11-2016
3	Dr. Asghar Ullah	Senior Medical Officer, BPS-18	05-11-2016
4	Dr. Jamsheed Saeed	Medical Officer, BPS-17	05-11-2016
5	Dr. Abdul Karim	Medical Officer, BPS-17	09-11-2016
6	Dr. Muhammad Arif	Medical Officer, BPS-17	22-10-2016
7	Dr. Watan Muhammad	Medical Officer, BPS-17	25-07-2016
8	Dr. Shakir Ali	Medical Officer, BPS-17	03-08-2016
9	Dr. Zahid Hanif	Medical Officer, BPS-17	15-09-2016
10	Dr. Uzma Rasool	Medical Officer, BPS-17	06-10-2016

Handwritten signature

Hospital Director
MTI, KTH, Peshawar

22/11/16

attested
S. B. B. B.

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BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal NO. 480/2017

Dr. Jamshed Saeed

Appellant

VS

MTI KTH and others.

Respondents

WRITTEN REPLY ON BEHALF OF IMPLEADED RESPONDENT MTI KTH.

Preliminary Objections:-

1. The appellant has got no cause of action and the Appeal is not maintainable.
2. The appellant has no locus standi to invoke jurisdiction of this Hon'ble in simple case of transfer.
3. The appellant has concealed material facts from this Hon'ble Tribunal.
4. The appellant is a civil servant of health department & is immune from transfer to his parent department after completion of his tenure.
5. That the instant appeal is time barred.
6. That the matter relates to terms and condition of service.
7. The appellant has not made any representation with the replying respondents.

Reply to the Facts:-

1. Para no: 1 is incorrect, false & misconceived , hence denied. The appellant is civil servant and was transferred to KTH vide health department notification No 10/2/SO(E)-II/2007 Dated 03-05-2007 till 03-11-2016. His performance in the institution was not satisfactory and was badly involved in politics and creating hurdles in the smooth Function on institution under MTI Act 2015.
2. Para no. 2 is false, misconceived & concocted, hence denied with vehemence. He is civil servant and was rightly relieved from KTH after completion of tenure. Presently the hospital is performing function under MTI Act 2015 & option was given to the civil servant for absorption in the institution, but the appellant

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(A) (28)

preferred to be employee of health department he was rightly relieved by competent authority as his service were no more required to KTH. Moreover after the dismissal of the Writ Petition the appellant is transferred and placed at the disposal of DHs FATA for further posting by the competent authority vide Secretary Notification No.SO.(E)/H-II/4-1/2017/P dated 14.06.2017 to Director FATA for further posting (Annexure "A").

3. Para no 3 is incorrect, hence denied. The appellant has neither opted for absorptions nor approached to any proper forum in time as the appellant has never made any representation to the replying respondent. Therefore the instant appeal is not maintainable. Moreover the appellant has illegally occupied room in Doctor hostel & inspite of several notification for vacating the same to the legal allottee.
4. Para No. 4 is incorrect, hence denied. The appellant has not filed the instant appeal in accordance with law therefore the same is not maintainable. Detail reply has already been given in the preceding paras.

On-Grounds

- a. Incorrect, hence denied. Being a civil servant Medical Officer BPS 17, after completion of the tenure, the appellant was relieved by the competent authority to the parent department hence no irregularity or any illegality whatsoever has been committed by the respondents. Hospital director being head of the institution is very much competent to transfer the service of medical officer (civil servant) to the provincial govt. Moreover the appellant has not opted for the same.
- b. Incorrect, hence denied. The appellant has legally relieved by the competent authority moreover repatriation or transfer is competency of the hospital authority and the appellant is a civil servant and transfer is the term & condition of the service under civil servant Act.
- c. Incorrect, hence denied the appellant was transferred after completion of tenure as his service under ware no longer required.
- d. Incorrect, hence denied no violation of rule and policy is committed by the respondents and being civil servant was relieved to the parent department after completion of tenure (9 year & 6 months).
- e. The appellant was relieved along the other civil servants after completion of his tenure (annexure "B") Not correct, hence denied, Appellant has civil servant and

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the respondent (hospital Director) are fully competent to transfer or repatriate civil servants whose services are not required in the institution.

f-j. These grounds are totally incorrect and misconceived. The transfer of appellant has been made in accordance with law, after completion of 10 years in the MTI KTH and health department being his parent department has rightly been repatriated/posted by the authority, because his services were no more required. Appellant is Civil Servant and as provided u/s 10 of the Civil Servant Act 1973 applicable to the case of appellant, that he is liable to serve anywhere within the province or outside the province hence, he can't claim any exemption there from on the only ground that he has spent some time in MTI KTH and now he will be there without offering any option for absorption.

It is, therefore humbly prayed that on acceptance of the above reply, the appeal may please be dismissed and stay order if any granted in favour of the appellant be vacated in the interest of justice.

Impleaded Respondent MTI KTH

Through


Muzammil Khan,
ASC, Peshawar.

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BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal NO. 480/2017

Dr. Jamshed Saeed

Appellant

VS

MTI KTH and others.

Respondents

AFFIDAVIT.

I, Dr. Inayat Ullah Incharge Letigation MTI KTH Peshawar, do hereby solemnly affirm and declare that the content of the accompanying reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Identified by:

(Muzammil Khan)
ASC, Peshawar.

deponent

24/8/17

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Peshawar the June 14, 2017

NOTIFICATION

No.SO(E)H-II/4-1/2017/P. WHEREAS, Dr. Jamshed Saeed, Medical Officer BS-17 was serving as Medical Officer in MTI KTH Peshawar since 2007;

AND WHEREAS, Medical Director MTI KTH, Peshawar has relieved him from the institution vide letter No.28495-505/KTH/E dated 03.11.2016. He belongs to FR D.I.Khan FATA;

AND WHEREAS, DGHS Khyber Pakhtunkhwa has proposed him for posting at the disposal of DHS FATA vide his letter No.18083/E-I(J-27) dated 05.12.2016;

NOW THEREFORE, the competent authority is pleased to post Dr. Jamshed Saeed, Medical Officer, BS-17, at the disposal of DHS FATA for further posting against the vacant post of Medical Officer, BS-17 with immediate effect.

SECRETARY HEALTH
KHYBER PAKHTUNKHWA

Endst. of even No. & Date.

Copy to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General, Health Services, Khyber Pakhtunkhwa.
3. Medical Director, MTI KTH Peshawar.
4. Director Health Services FATA Peshawar.
5. PS to Secretary Health, Khyber Pakhtunkhwa.
6. Doctor concerned.

(Dibreel Raza)
Section Officer (E-II)

Attested

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BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

32

Service Appeal No. 480/2017

Dr. Jamshed Saeed

VS

Govt: of KPK.

.....
REJOINDER ON BEHALF OF APPELLANT
.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

- (1-7) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

1. Incorrect. the appellant was wrongly relieved by the Hospital Director which is not only incompetent authority for the appellant but also resigned from his post before passing the impugned order of relieving of the appellant as the appellant is the civil servant and the competent authority for the appellant is the Secretary Health and not the Hospital Director as per letter dated 6.10.2017 of Health Deptt: KPK Civil servant working in MTIs cannot be dislodged from MTIs by the Medical Director/Hospital Director/ Dean but can be repatriated by the Health department only with the approval of the competent authority. Moreover he was not relieved on the basis of tenure as other officials have served more than appellant in KTH but he was politically victimized as the appellant has filed Writ in the Honourable Peshawar High Court Peshawar for the Professional allowance on which the Hospital Director became annoyed and relieved him the KTH without lawful authority. Furthermore the appellant is performing his duty to best of his ability and as the Chief Convener of All Medical Officers Forum he is working for the legal rights of MOs and did not create any hurdles in the smooth function on Institution. (Copy of documents are attached as annexure-R1)
2. Incorrect. the appellant was wrongly relieved by the Hospital Director which is not only incompetent authority for the appellant but also resigned from his post before passing the impugned order of relieving of the appellant as the appellant is the civil servant and the competent authority for the appellant is the Secretary Health and not the Hospital Director as per letter dated 6.10.2017 of Health Deptt: KPK Civil

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servant working in MTIs cannot be dislodged from MTIs by the Medical Director/Hospital Director/ Dean but can be repatriated by the Health department only with the approval of the competent authority. Moreover the writ petition No.4193-P/2016 was not dismissed on merit but as the term and condition of the appellant was involved in the that writ petition due to which the writ petition was dismissed under Article-212 on which the appellant filed Service Appeal No. 480/2017 in the proper forum i.e Service Tribunal and as the reliving order dated 3.11.2016 was passed by the incompetent authority therefore august Tribunal suspended the impugned order on dated 18.5.2017 and further posting order dated 14.6.2017 during the suspension of impugned order 3.11.2016 is amount to Contempt of Court of this august Tribunal.

- 3. Incorrect. The appellant has filed proper departmental appeal which is annexed as Annexure-D with the appeal. Moreover the appellant did not occupy the room illegally but he is performing his duty in the Institution and staying in Doctor Hostel is his right as the room was legally allotted to the appellant.
- 4. Incorrect. The appellant has good cause of action to file the instant appeal.

GROUNDS:

A. Incorrect. The appellant was not relived on the basis of tenure as other officials have served more than appellant in KTH but he was politically victimized as the appellant has filed Writ in the Honourable Peshawar High Court Peshawar for the Professional allowance on which the Hospital Director became annoyed and relieved him the KTH without lawful authority. Moreover the appellant was wrongly relieved by the Hospital Director which is not only the incompetent authority for the appellant but also resigned from his post before passing the impugned order of relieving of the appellant as the appellant is the civil servant and the competent authority for the appellant is the Secretary Health and not the Hospital Director.

B. Incorrect. the appellant was wrongly relieved by the Hospital Director which is not only the incompetent authority for the appellant but also resigned from his post before passing the impugned order of relieving of the appellant as the appellant is the civil servant and the competent authority for the appellant is the Secretary Health and not the Hospital Director.

C. Incorrect. While para C of the appeal is correct.

D. Incorrect. While para D of the appeal is correct.

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- E. Incorrect. the appellant was wrongly relieved by the Hospital Director which is not only the competent authority for the appellant but also resigned from his post before passing the impugned order of relieving of the appellant as the appellant is the civil servant and the competent authority for the appellant is the Secretary Health and not the Hospital Director.
- F. Incorrect. The appellant was wrongly relieved by the incompetent authority which has no legal effect at all.
- G. As per para-F above.
- H. As per para-F above.
- I. As per para-F above.
- J. As per para-F above.

It is, therefore, most humbly prayed the appeal of appellant may kindly be accepted as prayed for.

[Signature]
 APPELLANT

Through:

[Signature]
 M.ASIF YOUSAFZAI
 ADVOCATE SUPREME COURT
 & *[Signature]*
 (TAIMUR ALI KAHN)
 ADVOCATE HIGH COURT

AFFIDAVIT

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

[Signature]
 DEPONENT

ATTESTED
 Oath Commissioner
 Zahoor Khan Advocate
 Distt: Court Peshawar

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List of D.B.-I Cases fixed for 30.11.2017, before the Chairman and Mr.
Ahmad Hassan(E) KPK Service Tribunal Peshawar.

Annex-D

ARUGMENTS

1. 640/15	Issa Dad (29)	Education
2. 537/17	Sartaj (8)	Health
3. 465/17	Shams ul Taj (5)	do
4. 532/17	Rooh ul Amin (5)	do
5. 480/17	Dr. Jamshed Saeed	do
6. 479/10	Dr Rashid Ahmad (1)	do
7. 458/17	Syed Roidar shah	do
8. 1104/16	Mehnaz Begum	Health
9. 723/15	Neelam	do
10. 1384/15	Fazal-I- Qadir	do
11. 846/15	Dr Qaser Zaman (1)	do
12. 284/04	Sher Kamal (2)	Education
13. 673/15	Umbaras khan	SMBR
14. 1942/11	Muhammad Nawaz	Education
15. 640/11	Ghazala Abreen (4)	Education
16. 349/14	Mashaal khan	do
17. 693/14	Din Mohammad	do
18. 1356/09	Mumlikat	Education
19. 20/14	Zabta Khan	Education
20. 1160/10	Noor Rahim	do
21. 1830/11	Awal Badshah	Health
22. 850/13	Dr Ali Raza	do
23. 1380/13	Amina Jan	do
24. 1498/13	Dr Misal khan (1)	do
25. 150/14	Dr Abdul Ghafoor	Fiance
26. 704/16	Hazrat Younas	Health
27. 805/16	Amir Hussain	do
28. 1134/14	Dr Rizwan Ullah	Health
29. 1388/14	M Ijaz	SMBR
30. 1178/16	Sajid Saleem	Education
31. 512/17	Ikram Ullah	
32. 620/17	Shanabaz khan	Evormt
33. 694/17	Dr Hussain Ahmad	Education
34. 667/16	Zenat Ara	Health
35. 304/17	Khan Mir	Education
36. 262/17	Mahajra	Police
37. 284/17	Muhammad Zaman	Education
38. 1071/12	Mujeeb ur Rehman (1)	

Reader

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30/11/2017

Annex - E

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

36



Appeal No. 458/2017

Date of Institution ... 12.05.2017

Date of Decision ... 30.11.2017

Syed Roidar Shah,
Clinical Technician(Pharmacy),
(President Provincial Paramedic Association as well as
President Paramedical Association Lady Reading Hospital),
Presently posted at MTI,LRH, Peshawar.

... (Appellant)

VERSUS

1. The Govt: of Khyber Pakhtunkhwa through Secretary,
Health Department, Civil Secretariat, Peshawar and 3
others. ... (Respondents)

MR. SHUMAIL AHMAD BUTT,
Advocate

--- For appellant.

MR. MUZAMMIL KHAN,
Legal Advisor

... For respondent no.4

MR. JAVED IQBAL GULBELA,
Legal Advisor

--- For respondent no.4.

MR. USMAN GHANI,
District Attorney
respondents.

--- For official

MR. NIAZ MUHAMMAD KHAN,
MR. AHMAD HASSAN,

ATTESTED BY TRUSTEE CHAIRMAN
Copy of Original MEMBER(Executive)

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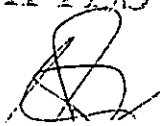
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JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN.-

This judgment shall dispose of the instant service appeal as well as connected service appeals no. 465/2017 entitled Shams-Ut-Taj, no. 466/2017 entitled Murad Ali, no. 467/2017 entitled Muhammad Ali, no. 468/2017 entitled Muhammad Riaz Barki, no. 469/2017 entitled Shahid Masih Gharui, no. 470/2017 entitled Mujahid Azim, no. 532/2017 entitled Rooh-ul-Amin no. 533/2017 entitled Niaz Muhammad, no. 534/2017 entitled Yaqoob Masih, no. 535/2017 entitled Hamayun, no. 536/2017 entitled Noor Rehman, 537/2017 entitled Sartaj, no. 538/2017 Imdad Ullah, no. 539/2017 entitled Johar Ali, no. 540/2017 entitled Ms. Sajida Parveen, no. 541/2017 entitled Ms. Gulshan Ara, no. 542/2017 entitled Ms. Sumbal Firdous, no. 543/2017 entitled Ms. Aster Shaheen, no. 544/2017 entitled Bilqees Rana, no. 511/2017 entitled Muhammad Asim, no. 527/2017 entitled Isam Gul and no. 552/2017 entitled Farrukh Jalil as similar questions of law and facts are involved therein.

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

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FACTS

3. The appellants were transferred through an order dated 09.02.2016 against which they filed departmental appeals on 23.02.2016 and then the appellants filed writ petition on 17.02.2016 and the worthy Peshawar High Court, Peshawar through its judgment dated 25.04.2017 dismissed the writ petition on the ground of jurisdiction in view of Article-212 of the Constitution of the Islamic Republic of Pakistan and thereafter they filed the instant service appeals on 12.05.2017.

ARGUMENTS

4. Learned counsel for the appellant argued that delay in filing present service appeals was due to confusion qua jurisdiction of the Service Tribunal. As in the impugned transfer orders there was mention of a law i.e West Pakistan Essential Services (Maintenance) Act 1958, which misled the appellants in choosing the forum for redressal. That the appellants in good faith believed that the above mentioned Act did not fall within the terms and conditions of the civil

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servants and therefore, this Tribunal had no jurisdiction. That the appellants then bonafidely, in good faith and with due-diligence preferred writ petition for redressal of their remedy before the worthy Peshawar High Court but unfortunately the same could not hold good for their lordships of the Peshawar High Court and the Peshawar High Court vide order dated 15.07.2017 dismissed the writ petition for want of jurisdiction. He further argued that alongwith the memorandum of appeals before this Tribunal the appellants filed applications for condonation of delay under Section-14 of the Limitation Act 1908. He next contended that under Section-14 of the Limitation Act pursuing remedy before wrong forum with due diligence and good faith is an established ground for condonation of delay. He next contended that such good faith and due diligence can be gathered from the circumstances of the case argued by him above. The circumstances were such in nature which would result in presuming that the appellants were misled and then they knocked the door of the Hon'ble Peshawar High Court. The learned counsel for the appellants in order to augment his stance relied upon the judgments reported as 2017 PLC (C.S) 692 and 2007 PLC (C.S) 870. The learned counsel for

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the appellant then also argued the appeal on merits by highlighting that the Government was not authorized under the West Pakistan Essential Services (Maintenance) Act, 1958 to transfer the appellants as the said law was in force at that time. He particularly referred to Section-4 of the Act in this regard. He then went on to argue that in accordance with the transfers/postings policy of the Government, the office Bearers of the Association could not be transferred. That most of the appellants are Office Bearers. That some of the appellants are menials which could also not be transferred out of the District as per the Policy of the Provincial Government. That the impugned orders speak on their own that all transfers were made as punishment which is not approved by law and also by so many judgments of the Superior Courts. That the impugned orders are therefore, void orders and no limitation, at all, shall run against the void orders which is an admitted position of law at present.

5. On the other hand Legal Advisor for respondents argued that the present appeals are hopelessly time barred. That the judgment pressed into service by the learned counsel for the appellants reported as 2017 PLC (C.S) 692 was passed under dissimilar circumstances as in the same judgment the writ

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was sent back to the departmental authority for treating the same as departmental appeal which is not the case here. Learned Legal Advisor also relied upon judgment reported as 2010 SCMR 1982 in support of his arguments that limitation is an issue which should be taken seriously and not lightly. The learned Legal Advisor further argued that filing of departmental appeal by the appellants on 23.02.2016 itself manifests that the appellants knew that the matter was of one of the terms and conditions of civil servants and after the filing of that departmental appeal, appellants were bound to have had recourse to Section-4 of the Khyber Pakhtunkhwa Service Tribunal 1974 but instead the appellants filed the writ petition before the Peshawar High Court which was not allowed.

6. The learned District Attorney for official respondents argued that the very departmental appeal is defective as the same was filed by all the appellants jointly and under Rule-3(2) of the Khyber Pakhtunkhwa Government Servants (Appeal) Rules, 1986 joint appeal is not allowed. He further argued that the application for condonation of delay is moved under Section-14 of the Limitation Act 1908 but under section-9 of the Khyber Pakhtunkhwa Service Tribunal Act,

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1974 Section-14 is not applicable in the proceedings before this Tribunal. That this Tribunal has already given judgments in two appeals No. 1395/2013 entitled "Momin Khan-vs-Government" and No. 1396/2013 entitled "Zaheerullah-vs-Government" on 28.11.2017 in which the effect of judgment reported as 2017 PLC(C.S) 692 has been discussed and the period was not condoned due to pursuing the case before wrong forum. He further argued that the appellants were to explain each and every day delay which has not been done by the appellants.

CONCLUSION.

7. This Tribunal is first to decide whether the present appeals are within time and if not then this Tribunal cannot discuss the merits of the appeals. The pivotal question for determination to reach the conclusion is whether pursuing a case before a wrong forum is a valid ground for condonation of delay in appellate jurisdiction. The application for condonation of delay is moved under section-14 of the Limitation Act, 1908. Though Section-14 is not applicable in the proceedings before this Tribunal. The august Supreme Court of Pakistan in the judgment of Larger Bench reported as 2016 PLD 872 while discussing the applicability of Section-14

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of the Limitation Act has decided that provision of Section-14 of the Limitation Act are not applicable in all appeals even before the normal Civil Courts. But again in the said very judgment it is held that wherever Section-5 of the Limitation Act is applicable then the reasons given in Section-14 of the Act can be taken into consideration for deciding the sufficient cause. In the said very judgment the august Supreme Court of Pakistan while discussing many judgments of the august Supreme Court of Pakistan prior to 2016 has resolved the issue once for all by declaring many judgments as *per incurium*. In the judgment of the larger Bench the august Supreme Court of Pakistan has allowed the condonation on the ground of pursuing the remedy in good faith and due diligence and the august Supreme Court of Pakistan has further held in that very judgment that pursuing case in wrong forum *per se* cannot be presumed to be pursuing in good faith and due diligence unless the valid and sufficient reasons are given in the application for condonation of delay which misled the party or for that matter their counsel for choosing wrong forum. The judgment relied upon by the counsel for the appellant reported as 2007 PLC(C.S) 870 is also discussed in the judgment of larger Bench mentioned

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above. This judgment has now merged in to the judgment of the larger Bench. Now we are to see whether the appellants have mentioned any ground in the application for condonation of delay which misled them or their counsel to choose wrong forum. If we go through the applications for condonation of delay in these appeals there is only general mention of the appellants pursuing the case innocently and bonafidly. No particulars of the circumstances which misled the appellants to choose the wrong forum are mentioned. The learned counsel for the appellants today added the ground which misled the appellants for choosing the wrong forum but this ground is not available in the applications for condonation of delay. The august Supreme Court of Pakistan in that very judgment has also cited certain examples of misleading the counsel or his client by formulating two questions on this very subject. In question No.2 regarding wrong advice of the counsel for the appellant pursuing the remedy before the wrong forum their lordship have added that the person seeking condonation of delay must explain delay of each and every day and should establish that the delay was caused by reasons beyond control of that person (or counsel) and that he was not indolent, negligent or careless in initiating and

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pursuing the actionable right which had accrued in his favour. Mere incompetence of the counsel, inadvertence, negligence or ignorance of law is held to be no ground. One of such examples given by their lordships is that of drawing the wrong decree sheet by the trial court as to valuation for the purpose of appeal due to which a counsel was misled into choosing the appellate forum was a valid ground. In this very judgment *actus-curiae per se* has not been approved to be a sweeping ground for condonation of delay while answering question no. 3. So in the light the judgment of the Larger Bench the appellants have failed to mention the specific ground in the application for condonation which misled them or their counsel for approaching a wrong forum. Secondly, if the arguments of the learned counsel for the appellants are made part of this application then we are to see whether that ground really misled the appellants or their counsel to approach the proper forum. As discussed above the crux of the arguments of the learned counsel for the appellant is that the appellants/counsel were misled in believing because the impugned order had mentioned Act of 1958 which Act was not part of the terms and conditions of the civil servants and hence, they approached the worthy Peshawar High Court. If

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we go through the impugned order the said order has simply transferred the appellants. The transfers are very much part of the terms and condition of the civil servants under the Khyber Pakhtunkhwa Civil Servants Act 1973. If any civil servant is transferred wrongly or in exercise of any of the powers given other than the Khyber Pakhtunkhwa Civil Servants Act, 1973 the matter still remains that of transfer. There arises no question of any misleading that how transfer on the basis of a law/rules other than Civil Servants Act or Rules there-under fell outside the purview of this Tribunal. Every day the civil servants are transferred on the basis of wrong notifications, by applying wrong law or rules which give cause of action to the Civil Servants to challenge the same before this Tribunal. Mentioning of any right or wrong law never misleads any person if the net outcome of the order is transfer. So far as judgment reported as 2017 PLC (C.S) 692 is concerned that judgment has got no application to the present appeal for the reason that in the said judgment the departmental authority was directed to consider the writ petition as departmental appeal. Secondly in this judgment the judgment of larger Bench was not considered. And if there is any discordance between judgments of the august Supreme

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Court of Pakistan the one of larger Bench shall prevail. The learned counsel has also not been able to convince this Tribunal that how the transfer orders are void and no limitation shall run in these appeals. All illegal orders are not void orders as is jurisprudentially settled. The objection of learned District Attorney as to joint appeal is not fatal as no penal consequences are mentioned and at the most it is directory.

8. This Tribunal is therefore, of the view that no sufficient cause has been shown by the appellants in pursuing their cases before a wrong forum and the application for condonation of delay cannot be accepted. All these appeals being time barred are dismissed. Parties are left to bear their own costs. File be consigned to the record room.

SD/-
(AHMAD HASSAN)
MEMBER

SD/-
(NIAZ MUHAMMAD KHAN)
CHAIRMAN

ANNOUNCED
30.11.2017

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Approved For Reporting

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 480/2017

Date of Institution ... 18.05.2017

Date of Decision 15.12.2017



Dr. Jamshed Saeed, Medical Officer, KTH, Peshawar.

... (Appellant)

VERSUS

1. The Secretary Health Khyber Pakhtunkhwa, Peshawar and 3 others.

... (Respondents)

MR. TAIMUR ALI KHAN,
Advocate

--- For appellant.

MR. USMAN GHANI,
District Attorney

--- For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI... MEMBER(Executive)
... MEMBER(Judicial)JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The brief facts are that the appellant is serving as Medical Officer in KTH. Due to some administrative issues the appellant was illegally relieved by the incompetent authority vide order dated 03.11.2016 and his pay was also illegally stopped. Hospital Director tendered resignation on 05.10.2016, while transfer order was issued on 03.11.2016, despite the fact he was not competent to pass such orders. He preferred departmental appeal on 10.11.2016 and also filed Writ Petition on 4193-P/2016 in Peshawar High Court, Peshawar which was

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EXAMINER
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 Service Tribunal,
 Peshawar

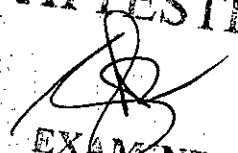
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dismissed vide judgment dated 25.04.2017 for want of jurisdiction. hence, the instant service appeal on 24.05.2017.

ARGUMENTS

3. Learned counsel for the appellant argued that vide impugned order dated 03.11.2016 he was relieved of his duties from KTH Peshawar by Hospital Director MTI, KTH. He further argued that the Hospital Director was not competent to pass such orders. Being a civil servant posting/transfer of the appellant was the domain of Health Department. It is further substantiated by the fact that initial posting order of the appellant dated 03.05.2007 was issued by the Health Department. Moreover, under Section-13 of the Khyber Pakhtunkhwa Medical Teaching Institution Reforms Act, 2015 the Hospital Director does not enjoy powers of postings/transfers. He also relied on Section-16 of the above Act. In addition to above the Health Department vide order dated 06.10.2017 clarified that civil servants working in MTIs, cannot be dislodged from MTIs by Medical Director/Hospital Director/Dean but can be repatriated by Health Department only with the approval of the competent authority.

4. On the other hand learned District Attorney argued that through impugned order dated 03.11.2016 service of the appellant were placed at the disposal of the Health Department being a civil servant as such it is not posting/transfer order. As his services were more required in KTH and after having completed normal tenure of posting was repatriated to his parent department. That he has not been absorbed in MTI, KTH. Under Section-10 of Civil Servant Act, 1973, a civil servant is required to serve anywhere in the province, hence, there is no illegality in the said order.

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 Service Tribunal
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5B

CONCLUSION.

5. Careful perusal of record would reveal that vide order dated 03.05.2007 the appellant was posted as Medical Officer by respondent, no.1. There is hardly any confusion about the status of the appellant being a civil servant and respondent no.1 is competent to issue posting/transfer order. It has not been disputed by the learned counsel for the respondents. Moreover, under Section-13 of the Khyber Pakhtunkhwa Medical Teaching Institution Reforms Act, 2015 Hospital Director does not enjoy powers of posting/ transfer. As order has been issued by the incompetent authority so the same is void ab-initio. Hence, no limitation runs against a void order. Our stance is further substantiated by the Health Department letter dated 06.10.2017. Moreover, powers pertaining to appointment terms and conditions of service etc. of employees borne on the strength of the MTI are vested in Board of Governors as provided in Section-7 of the above Act.

6. As a sequel to above, the appeal is accepted and the impugned order is set aside. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
MEMBER

Muhammad Amin Khan Kundi
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

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15.12.2017

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[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Annex-B
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NOTIFICATION

Dated Peshawar, the 15th November, 2017

NO. SOH(E-V) 4-22/2017

The Government of Khyber Pakhtunkhwa on the recommendations of the Provincial Selection Board is pleased to promote the following doctors of General Cadre from BS-17 to BS-18 on regular basis with immediate effect:-

S.No.	NAME OF DOCTOR	S.NO.	NAME OF DOCTOR
1	Dr Farida Mujahid	28	Dr Nisar Ahmad
2	Dr Iqbal Hussain	29	Dr. Shohia Aman
3	Dr. Niaz Muhammad	30	Dr. Zuhra Nasir D/O Nasir Shah
4	Dr. Noor Hanan	31	Dr. Afshan Saleem D/O Muhammad Saleem
5	Dr. Noor Muhammad	32	Dr. Aneela Azam
6	Dr. Muhammad Tahir Jan	33	Dr. Saima Gullam D/O Gullam Khan
7	Dr. Jan Hussain	34	Dr. Saeeda Rabbani D/O Muhammad Hussain
8	Dr. Muhammad Khalid Akhtar	35	Dr. Hamida Nasir Shan W/O Dr. Syed Nasir Shah
9	Dr. Akbar Khan	35	Dr. Sanuna Karim D/O .Abdul Karim
10	Dr. Muhammad Naeem	37	Dr. Ghazala Shahcen D/O Syed Muhammad Shah
11	Dr. Aizal Hussain	38	Dr. Sabina Noz D/O Salimullah Khan
12	Dr. Gul Nawaz	39	Dr. Falak Naz D/O Jallur Khan
13	Dr. Waseem Kashif	40	Dr. Syeda Nusrat Shah D/O Saad Badshah
14	Dr. Akhtar Ali Shah	41	Dr. Rabia Mehar (Waheed) D/O Mehar Dil Khan
15	Dr. Aminullah	42	Dr. Zakia Abid D/O Abid Ali
16	Dr. Shabir Ahmad	43	Dr. Sofia Khan
17	Dr. Oaizer Zaman	44	Dr. Zahida Parveen D/O Amir Nawaz
18	Dr. Munir Muhammad	45	Dr. Zahida Bibi D/O Shamsul Abrar
19	Dr. Muhammad Ayub	46	Dr. Syeda Shahnaz Jabeen D/O Syed Isratullah Shah
20	Dr. Yasir Murad	47	Dr. Muhammad Nazer S/O Muhammad Yousaf
21	Dr. Nasir Hussain	48	Dr. Manzoor Ahmad Khan S/O Bahadar Khan
22	Dr. Hamid-ur-Rehman	49	Dr. Liaqat Ali S/O Mir Alam
23	Dr. Abdul Malik	50	Dr. Jamshed Saeed Sherani S/O Saeed Ahmad Shisani
24	Dr. Ihsan-ul-Haq	51	Dr. Fazal Ghalib S/O Muhammad Amin
25	Dr. Syed Gul Syed Hussain	52	Dr. Muhammad Haroon Shaheed S/O Hasham Khan
26	Dr. Fazal-ur-Rehman	53	Dr. Syed Tahir Ali Shah S/O Syed Mehtab Hussain
27	Dr. Farooz	54	Dr. Tariq Muhammad Saeed S/O Muhammad Saeed

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55	Dr. Abdul Karim S/O Mir Abbas Khan	92	Dr. Muhammad Jamil Khan s/o Fazal Mabeed
56	Dr. Alamzeb S/O Aurangzeb	93	Dr. Dildar Khan S/O Abdul Ghaffar
57	Dr. Abdul Hameed S/O Saadullah	94	Dr. Abdur-Rehman S/O Abdullah Khan
58	Dr. Gul Nawaz Khan S/O Sarfraz Khan	95	Dr. Raz Muhammad S/O Mehib Ali Khan
59	Dr. Haroon Zaffar S/O Muhammad Zaffar	96	Dr. Ejaz Ahmad S/O Muhammad Aslam
60	Dr. Khalid Ur Rehman	97	Dr. Ghulam Farooq S/O Prof: Aziz ur Rehman
61	Dr. Nazar Muhammad S/O Bakht Sar	98	Dr. Muhammad Ishaq Khan S/O Junaid Khan
62	Dr. Tariq Khan S/O Adalat Khan	99	Dr. Habib Gul S/O Haji Inzar Gul
63	Dr. Rehmat Saleem Khan S/O Khan Muhammad	100	Dr. Rashid Ahmad S/O Haji Taj Muhammad
64	Dr. Alam Khan S/O Feroz Khan	101	Dr. Iftikhar Ali S/O Prof: Rehman Gul
65	Dr. Malik Knushi Muhammad S/O Malik Faiz Muhammad	102	Dr. Muhammad Dost Khan s/o Zahir Gul
66	Dr. Rizq Shahid S/O Rahmat Khan	103	Dr. Ghulam Farooq s/o Sultan Jan
67	Dr. Zahir Shah S/O Sarwar Khan	104	Dr. Muhammad Hayat s/o Meen Akbar
68	Dr. Taj Muhammad S/O Nurab Din	105	Dr. Nasruminallah s/o Sarfraz Khan
69	Dr. Muhammad Tahir Aziz S/O Azizur Rehman	106	Dr. Syed Touseef Ali Shah s/o Syed Farman Shah
70	Dr. Khalid Ur Rehman s/o Ali Rehman	107	Dr. Shahid Alam S/O Abdul Hanan
71	Dr. Inayatullah s/o Khalid Khan	108	Dr. Khalid Rehman S/O Abdul Hamid
72	Dr. Mansoor Ahmad Khan s/o Muhammad Sehrab Khan	109	Dr. Sahib Gul Orakzai S/O Malik Deen Orakzai
73	Dr. Shaikal Ali s/o Khan Bahadar	110	Dr. Insanul Haq S/O Samiullah
74	Dr. Naseer Hassan s/o Nazir Hussain	111	Dr. Matullah S/O Fazal-E-Moula
75	Dr. Jamaluddin s/o Rahim Din	112	Dr. Saïd Zaman S/O Bakht Zaman
76	Dr. Muhammad Rehman s/o Bacha Khan	113	Dr. Syed Sharda Hussain Bukhari S/O Fida Hussain Shah
77	Dr. Rafiullah Khan s/o Balqees Khan	114	Dr. Sheikh Muhammad Farooq Azam S/O Sheikh Muhammad Bashir Gohar
78	Dr. Akmal Khan s/o Ayub Khan	115	Dr. Syed Imtiaz Ali Shah S/O Syed Sikandar Shah
79	Dr. Fawad Aslam s/o Muhammad Aslam Khan	116	Dr. Zarin Khan S/O Khan Zaliha Khan
80	Dr. Imtiaz Khan s/o Aman Khan	117	Dr. Najibullah Khan S/O Zabardast Khan
81	Dr. Nisar Ahmad	118	Dr. Ashfaq Hussain Bangash S/O Khadim Hussain
82	Dr. Meusa Khan	119	Dr. Shafiqullah Khan S/O Sndul Wahab
83	Dr. Muhammad Tariq s/o Saleem Khan	120	Dr. Nazir Ahmad S/O Shah Jehan
		121	Dr. Muhammad Ajmal Khalil s/o Khalidur Rehman
84	Dr. Naveed Iqbal s/o Muhammad Ghulam	122	Dr. Muhammad Hashim S/O Ghazi Marjan
85	Dr. Wejhd Ahmad s/o Rehman Gul	123	Dr. Rafiullah S/O Haji Khan Zada
86	Dr. Zakaullah Khan s/o Meher Dil	124	Dr. Ijaz Akber S/O Mir Akbar
87	Dr. Muhammad Akmal Raul s/o Abdur Raul	125	Dr. Javed Iqbal S/O Muhammad Qasim
88	Dr. Waqas Khalil s/o Asadullah Khalil	126	Dr. Sher Aslam Shah S/O Pir Salim Khan
89	Dr. Khalid Mehmood Aindi s/o Khan Was	127	Dr. Jamshed Qadar S/O Mir. Qadar Gul
90	Dr. Kamran Durani s/o Bashir Durani	128	Dr. Muhammad Sadiq S/O Haji Daraz Gul
91	Dr. Rizwan ullah Khan s/o Habibullah	129	Dr. Ajmal Khan S/O Sultan Khan

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205	Dr. Kholim Jan S/O Abdul Ghaffar Khan	242	Dr. Masood Jalal S/O Khushlim Khan
206	Dr. Tikka Khan Orakzal S/O Gul Khan	243	Dr. Saghir Ahmad S/O Noor Elahi
207	Dr. Ali Shah S/O Fazli Ghaffoor	244	Dr. Jamaluddin S/O Muhammad Din
208	Dr. Mujahid Hussain Bangash S/O Iqbal Hussain Bangash	245	Dr. Khalid Mahmood S/O Rohmatullah
209	Dr. Shakeel Ahmad S/O Ghulam Murtaza Tahir	246	Dr. Yousaf Jan s/o Karam Khan
210	Dr. Gul Nazar S/O Samandar	247	Dr. Bakht Zada S/O Gul Muhammad
211	Dr. Jamshed Ali S/O Liaqat Ali	248	Dr. Fazal Subhan S/O Ghulam Nabi
212	Dr. Nadar Khan S/O Qadar Khan	249	Dr. Bakht Zamin S/O Wali Dad
213	Dr. Muhammad Faheem S/O Muhammad Shafiq	250	Dr. Ajmal Khan s/o Zulqadar Khan
214	Dr. Sanullah Khan S/O Shawaar Khan	251	Dr. Sharifullah s/o Muhammad Zaman Khan
215	Dr. Abdul Wahab S/O Abdul Ghaffar (late)		
216	Dr. Pir Muhammad S/O Habibur Rehman	252	Dr. Kamran Yousaf s/o Yousaf Khan
217	Dr. Farman Ali S/O Muhammad Nasim	253	Dr. Khairun Nabi
218	Dr. Muhammad Sayyar S/O Mukaram Shah	254	Dr. Amjad Ali Shah S/O Mian Muhammad Ali Shah
219	Dr. Muhammad Noman Yousaf S/O Muhammad Yousaf	255	Dr. Tahir Hussain S/O Ghulam Hussain
220	Dr. Saood Anwar S/O Shah Hussain	256	Dr. Muhammad Tariq S/O Wazir Jang
221	Dr. Muhammad Tufail S/O Sahib Jan	257	Dr. Mustafa S/O Behramand
222	Dr. Muhammad Zaib S/O Haji Said Ghani	258	Dr. Muhammad Noor S/O H.M. Islam Khan
223	Dr. Sajjad Ahmad S/O Waheedullah	259	Dr. Ibrahim Iqbal S/O Saleh Khan, MBBS
224	Dr. Saeedur Rehman S/O Haji Fazli Rehman	260	Dr. Zaffar Ali Shah s/o Said Badshah
225	Dr. Muhammad Tahir Khan S/O Faiz Muhammad Khan	261	Dr. Fida Muhammad S/O Zarin Khan, MD
226	Dr. Aminullah S/O Bawar Khan	262	Dr. Aziz Khan s/o Jaffar Khan
227	Dr. Ghani Khan S/O Abdul Qayyum	263	Dr. Rab Nawaz S/O Muhammad Nawaz
228	Dr. Inayat Khan S/O Sarwar Khan	264	Dr. Muhammad Kamal S/O Muhammad Sharif
229	Dr. Amir Sher S/O Pir Muhammad Khan	265	Dr. Sher Jan s/o Musharaf Khan
230	Dr. Muhammad Anif Khan S/O Gulbar Khan	266	Dr. Riaz Ali S/O Ser Bahadar
231	Dr. Anwar Ali Khan S/O Sardar Ali Khan	267	Dr. Muhammad Parvez Khan s/o Muhammad Nasir
232	Dr. Ijaz Ahmad S/O Bashir Ahmad	268	Dr. Noor Muhammad s/o Ahmad Saeed
233	Dr. Nadar Ali Shuja S/O Shujaud Dullah	269	Dr. S.M. Taimur Shah s/o Pir Feroz Shah
234	Dr. Niaz Ahmad S/O Bakhtiyar	270	Dr. Sajid Khan s/o Ghaffoor Khan
235	Dr. Ikramullah Khan S/O Khuda Bukhash	271	Dr. Muhammad Azhar Shah S/O Israrul Arifeen
236	Dr. Muhammad Zubair S/O Ghuncha Gul	272	Dr. Farid Hassan S/O Wazir Hassan
237	Dr. Muhammad Shafiq Afridi S/O Haji Fazal Karim	273	Dr. Izzat Khan S/O Rasool Khan
238	Dr. Rehmat Elahi S/O Muhammad Qasim	274	Dr. Muhammad Zahid s/o Qaiser Ahmad
239	Dr. Fazalur Rehman Bangash S/O Amir Rehman Bangash	275	Dr. Abdul Jalil S/O Mohibullah

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423	Dr. Nizamuddin s/o Qaandar Khan	446	Dr. Shahzad Gul s/o Muhammad Sharfeer
424	Dr. Nisar Ahmad s/o Amir Muhammad	447	Dr. Mast Ali Khan s/o Majani
425	Dr. Khizar Hayat s/o Pir Muhammad	448	Dr. Loizada Khan s/o Umar Gul
426	Dr. Rukhsana d/o Malik Forukh Sair Khan	449	Dr. Abdul Aziz s/o Abdur Rashidn
427	Dr. Ajab Khan s/o Ismail Khan	450	Dr. Sher Umar Khan s/o Fateh Khan
428	Dr. Khalid Javed s/o Zuifqar Khan	451	Dr. Abdul Haleem Afridi s/o Fazal Shah
429	Dr. Abdul Sattar Khan s/o Rukem Khan	452	Dr. Saif Ameen Shah s/o Abdullah Shah
430	Dr. Ayub Khan s/o Umar Gul	453	Dr. Ijaz Ajmal Khan s/o Ajmal Khan
431	Dr. Muhammad Farooq s/o Muhammad Raziq Mehmood	454	Dr. Mursaha d/o Muhammad Afzal
432	Dr. Naeemullah s/o Abdullah	455	Dr. Manzoor Ahmad s/o Abdul Wadood
433	Dr. Khalid Hafeez s/o Hibzur Rehman	456	Dr. Shazia Gul d/o Masood Ahmad
434	Dr. Irshat Jehan d/o Shamsul Wahab	457	Dr. Roobina Gul d/o Badshah Gul
435	Dr. Nazar Wali s/o Syed Awaiz	458	Dr. Rifat Shaheen d/o Qazi Ahmad
436	Dr. Naseerullah s/o Umar Kabal	459	Dr. Shaheen Mehtab d/o Mumtaz Khan
437	Dr. Muhammad Ayaz Khan s/o Haji Amir Nawab	460	Dr. Farideen Mehmood Khan s/o Mehmood Khan
438	Dr. Saleemuddin s/o Haji Shah Bakht Rawan	461	Dr. Syed Badshah s/o Musafar Khan
439	Dr. Fazal Hadi s/o Juma Gul	462	Dr. Abdul Ghafoor s/o Badshah Khan
440	Dr. Qasim Abbas s/o Saitur Rehman	463	Dr. Fazal Raziq s/o Fazal Maula
441	Dr. Hakim Zada s/o Purdas Khan	464	Dr. Nabeed Sultana d/o Muhammad Akram
442	Dr. Nusrat Begum d/o Qazi Abdul Mateen	465	Dr. Saeedur Rehman s/o Ashraf Khan
443	Dr. Nasreen Begum d/o Awal Saddam	466	Dr. Fayyaz Ali s/o Qaiser Khan
444	Dr. Muhammad Shaleeq s/o Raza Khan	467	Dr. Shakirullah s/o Fazal Ghafoor s/o Muhammad Amin
445	Dr. Wafi Khan s/o Mameer Khan	468	Dr. Faheem Ul Haq s/o Muhammad Ishaq
		469	Dr. Fahad Khalid Umerzai s/o Khalid Khan Umerzai

2. In term of Rule 6 (3) of Civil Servants Act, 1973 and Rule 15 (1) of Appoi230nlment, Promollon and Transfer Rules, 1989, they will be on probation for a period of 231one year extendable for another year.

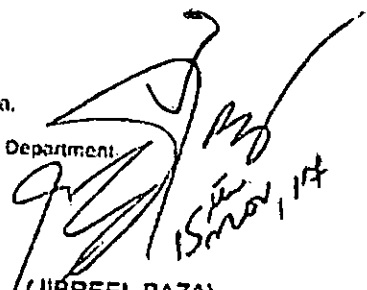
3. The postings/transfers of the above named doctors shall be notified later on.

SECRETARY HEALTH
Govt of Khyber Pakhtunkhwa

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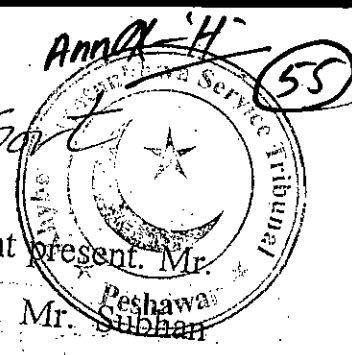
1. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
2. Principal Secretary to Governor, Khyber Pakhtunkhwa.
3. Secretary to Govt of Khyber Pakhtunkhwa, Establishment Department.
4. Director General Health Services, Khyber Pakhtunkhwa.
5. Director Health Services FATA, Peshawar
6. PS to Minister Health, Khyber Pakhtunkhwa, Peshawar
7. PS Secretary Health, Khyber Pakhtunkhwa, Peshawar
8. Officers/doctors concerned.


(JIBREEL RAZA)
SECTION OFFICER (E-V)

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20.11.2017

Appeal No. 480/2017
Dr. Jamshed Saeed vs Govt



Learned counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Ullah, Assistant for the respondents present. Representative of the respondents department stated that the present appeal has become infructuous on the ground of promotion of the appellant From BS-17 to BS-18 on regular basis. Learned counsel for the appellant submitted rejoinder and seeks adjournment. Adjourned. To come up for further proceedings/argument on 30/11/2017 before D.B.

self (Gulzeb Khan) *self* (M. Hamid Nughal)
Name Name

Certified to be true copy
MEMBER
Peshawar Service Tribunal,
Peshawar

ATTESTED BE TRUE
Original

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Misc: Application No. _____ 2018

IN

Service Appeal No. 480/2018

Hospital Director & others

VS

Dr. Jamsheed Saeed and others

**WRITTEN STATEMENTS / REPLY ON BEHALF OF
RESPONDENT NO. 1 (DR. JAMSHEED SAEED)**

Respectfully Sheweth;

PRELIMINARY OBJECTION:-

- 1) That the applicant has locus standi to file an application under 12(2) CPC.
- 2) That the remedy under 12(2) CPC available under KPK Service Tribunal 1974 .
- 3) That under 12(2) CPC is barred by law and liable to be rejected.
- 4) That the applicant should challenged the judgment dated 15/12/2017 before the Supreme Court of Pakistan in time, but intentionally the applicant filed the instant application in order to enhance the period of limitation

for filing appeal before Supreme Court of Pakistan in case the instant application is dismissed and just to avoid the implementation judgment dated 15/5/2015 in appeal No. 480/2017.

PARA WISE REPLY TO APPLICATION.

1. Pertain to record.
2. Pertain to record, however it is mentioned here by submitting the reply by the applicant in the civil appeal 480/2017, the applicant admitted that the applicant has knowledge about the proceeding of the case.
3. It is correct that service appeals Sartaj (8), service appeals Shamsul Taj (5) and service appeals of Roohulamin (5) were dismissed by this Hon'able Tribunal on basis of limitation and the service appeal of the respondent was adjourned by his council in the presence of the applicant which means the applicant has knowledge about the next date of hearing in the case of the respondent.
4. That hon'able member who accepted the case of respondent was also present in the bench comprising of worthy Chairman and member who dismissed the cases, moreover the learned Govt: pleader who perused the case of the respondent was also present in those cases who were dismissed.

5. Incorrect, the respondent No. 1 did not conceal facts from this Hon'able Tribunal in service appeal 480/2017.
6. Incorrect, each and every case has its own facts and legal point and it can be decided on that point. It is pertinent to mention here that other appeals were dismissed on the ground of limitation and the same point of limitation was also raised by this Hon'able Tribunal, but as the impugned order in respect of respondent No. 1 was passed by incompetent authority hence vide order and limitation does not run against such like order.
7. Incorrect. The respondent No. 1 did not make any mis-representation and did not mislead this Hon'able Tribunal.

It is therefore humbly prayed that on acceptance of this application, this Honourable Tribunal may kindly be dismissed the application under 12(2) with cost.



Respondent No. 1

Through;

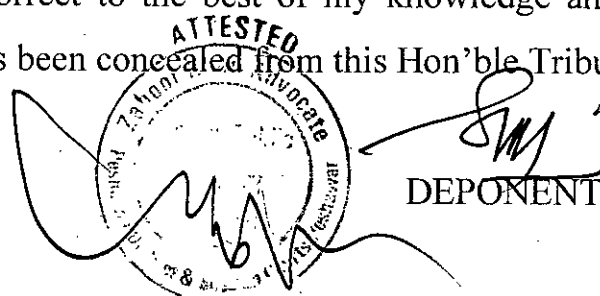


Taimur Ali Khan

Advocate High Court.

AFFIDAVIT

It do hereby solemnly affirm that the contents of this Reply is true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



ATTESTED
ADVOCATE
DEPONENT