

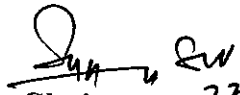
EP: 55/18

22.05.2018

Petitioner Mst. Shazia Bibi in person alongwith her counsel Mr. Hamayun Khan Advocate present. Fayaz Ali Shah Litigation Assistant on behalf of respondent No.3, Jafar Ali Assistant on behalf of respondent No.2 and Mujeeb Ur Rehman on behalf of respondent No.1 present. Mr. Usman Ghani learned District Attorney also present for respondents. Representative of respondent No.3 produced copy of office order bearing No.1092/95 dated 02.05.2018 showing the reinstatement of the petitioner. At this stage learned counsel for the petitioner stressed upon for the back benefits however on perusal of the order of this Tribunal it appears that the back benefits were subject to the outcome of denovo inquiry which as per information furnished by the learned counsel for the petitioner has not been conducted so far. As such in the humble view of this Tribunal the petitioner will be at liberty to seek her remedy from the respondents and in case her grievance is not redressed she may apply for execution of the order of this Tribunal afresh. In view of the above observations the present execution petition is filed without further proceedings.

ANNOUNCED

22.05.2018


Chairman 22.5.2018.
Camp court, A/Abad



OFFICE OF THE DISTRICT HEALTH OFFICER

Battagram (Khyber Pakhtunkhwa)

Phone & Fax: # (0997)310507

Office Order:-

With reference to the decision of Honorable Service Tribunal Khyber Pakhtunkhwa Camp Court Abbottabad Service Appeal No. 285/2015 dated 20.11.2017, Mst: Shazia Bibi is hereby Re-instated in to service with immediate effect.

District Health Officer
Battagram

No 1092-95

Dated: 2/05/2018




Copy Forwarded to:-

1. Honorable Service Tribunal Camp Court Abbottabad
2. Director General Health Services Office Peshawar, and request to adjust above name official along with court decision as it the movement there is no vacant position in District Battagram
3. Official Concerned for information
4. Office copy for record.


District Health Officer
Battagram

FORM OF ORDER SHEET

Execution Petition No. 55/2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	23.02.2018	<p>The Execution Petition of Mst. Shazia Bibi received to-day by post through Hamayun Khan 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>
2-	26-2-18	<p>This Execution Petition be put up before Touring S. Bench at A.Abad on <u>21-03-2018</u></p> <p style="text-align: right;"> CHAIRMAN</p>
21.03.2018		<p>Counsel for the petitioner and Mr. Usman Ghani, District Attorney for respondents present. Notices be issued to the respondents for submission of implementation report. To come up for implementation report on 22.05.2018 before the S.B at camp court, Abbottabad.</p> <p style="text-align: right;"> Chairman Camp court, A/Abad</p>

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

Execution Petition No. 55 /2018

Mst. Shazia Bibi daughter of Lal Khan, (Ex PHC) Technician Health Department Battagram, resident of Village Gulzar Abad Kuza Banda, District, Battagram.

...PETITIONER

VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary Health Peshawar & others.

...RESPONDENTS

APPLICATION

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1.	Application	1 to 2	
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3.	Copy of judgment	9-12	"B"
4.	Copy of application	13	"C"

...PETITIONER

Through

Dated: 21-02 /2018



(HAMAYUN KHAN)

Advocate High Court, Abbottabad
Office No. 15, New Lawyers Plaza,
Kutchery Compound Abbottabad
Cell No. 0312-0861681

①

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

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 219

Execution Petition No. 55 /2018

Dated 23/02/2018

Mst. Shazia Bibi daughter of Lal Khan, (Ex PHC) Technician Health Department Battagram, resident of Village Gulzar Abad Kuza Banda, District, Battagram.

...PETITIONER

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Health Peshawar.
2. Director General Health Services Khyber Pakhtunkhwa Peshawar.
3. District Health Officer Battagram.

...RESPONDENTS

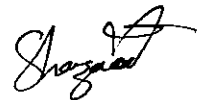
**APPLICATION FOR IMPLEMENTATION
OF JUDGMENT DATED 20/11/2017 PASSED
BY THIS HONOURABLE TRIBUNAL IN
APPEAL NO. 285/2015 TITLED "MST.
SHAZIA BIBI V/S GOVT. OF KPK &
OTHERS.**

Respectfully Sheweth:-

1. That petitioner filed service appeal No. 285/2015 against impugned order passed by respondent No 3. Copy of appeal is attached as Annexure "A".

2. That on 20/11/2017 after hearing of arguments this Honourable tribunal accepted appeal of the petitioner alongwith all back benefits. Copy of judgment is attached as annexure "B".
3. That thereafter on 27/11/2017 petitioner filed application before the respondent No. 3 for implementation/ reinstatement with back benefits. Copy of application is attached as Annexure "C".
4. That after laps of 90 days respondents not implemented judgment of this Honourable Tribunal and similarly they have not filed any appeal before August Supreme Court of Pakistan against the judgment of Honourable Tribunal.
5. That respondent No. 3 instead of complying with the direction of this Honourable Tribunal, straightaway refused to comply with the direction of this Honourable Tribunal.
6. That other point would be raised at the time of arguments with kind permission of this Honourable Tribunal.

It is therefore, humbly prayed that on acceptance of instant application respondents be kindly be directed forth with comply with the direction of this Honourable Tribunal contained in judgment dated 20/11/2017 in it true letter and spirit



...PETITIONER

Through

Dated: 21-02/2018



(HAMAYUN KHAN)

Advocate High Court, Abbottabad

BEFORE THE SERVICE TRIBUNAL KHYBPER
PAKHTUNKHWA PESHAWAR.

Service Appeal No. 285 /2015

Mst. Shazia Bibi daughter of Lal Khan (Ex-PHC Technician Health Department Battagram) resident of Village Gulzarabad Kuza Banda, Tehsil & District, Battagram.

...APPELLANT

VERSUS

1. Govt. of Khyber Pakhtunkhwa, through Secretary Health, Peshawar.
2. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
3. District Health Officer, Battagram.

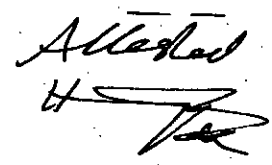
...RESPONDENTS

Attested
H. D. Ra

APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974,
READ UPTO DATE AMENDMENT, AGAINST THE
IMPUGNED ORDER DATED 03/07/2014 PASSED BY
RESPONDENT NO. 3 WHICH IS ILLEGAL,
UNLAWFUL, ABI-INITIO, VOID, AGAINST THE
PRINCIPLE OF NATURAL JUSTICE, AND LIABLE
TO BE SET ASIDE.

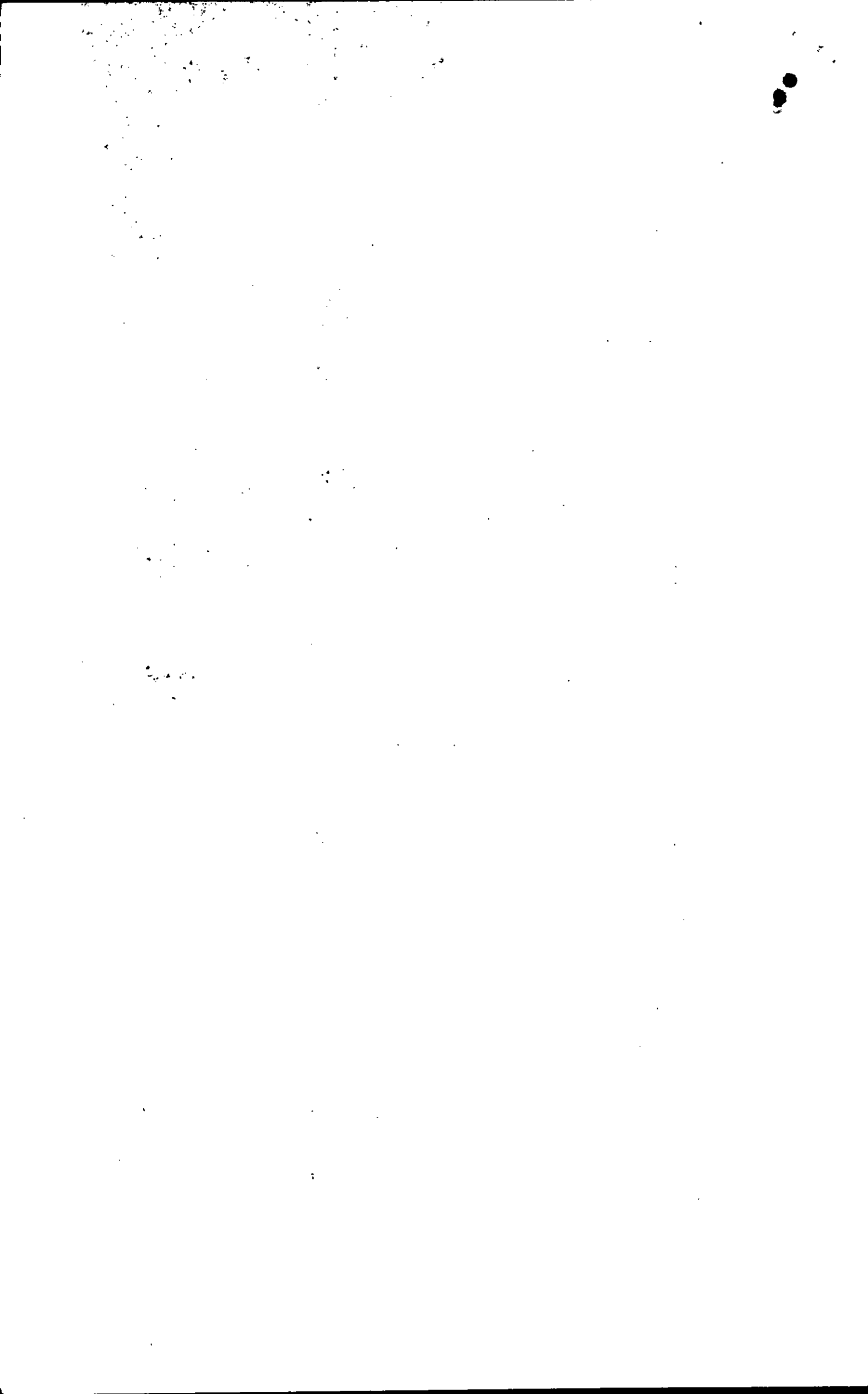
PRAYER: ON ACCEPTANCE OF THIS APPEAL, ORDER DATED 03/07/2014 MAY KINDLY BE DECLARED NULL AND VOID AND APPELLANT MAY GRACIOUSLY BE REINSTATED ALONGWITH ALL BACK BENEFITS.

Respectfully Sheweth: -



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

1. That the appellant was appointed as **PHC** in BPS-09 in District Health Department, Battagram on the basis of LHV Diploma alongwith higher qualification of M.A. Copy of appointment order and academic documents are annexed as Annexure "A" & "B".
2. That thereafter appellant submitted her medical fitness certificate and made arrival.
3. That *after* jointing service appellant continuously performed duty with full devotion and liability. There had no complaint in respect of duty against the appellant.



respondent No. 2. Copy of departmental appeal is annexed as Annexure "F".

8. That after filing departmental appeal appellant became seriously ill and suffer Hepatitis-B&C and started treatment and still her Health not recovered and she is under treatment. Copy of medical prescription is annexed as Annexure "G".

Attested
H. B.

9. That till date respondent No. 2 not passed any order on the departmental appeal and similarly not given any response hence the instant appeal on the following grounds:-

GROUNDS:-

- a. That the act of respondent No. 3 is illegal unlawful, against the principle of natural justice.
- b. That respondent No. 3 issued show cause notice in respect of appointment of the appellant after 8th month from the date of appointment and joining of duty which is shows malafide of the respondent No. 3, hence order dated 03/07/2014 is liable to be set aside.

c. That respondent did all proceeding with out touching the legal requirement of law, and procedure.

d. That the act of respondent No. 3 is against the fundamental rights which is guaranteed in the constitution.

Alleged
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e. That respondent No. 3 imposed major penalty without inquiry and personal hearing, hence order dated 03/07/2014 is liable to be set aside.

f. That respondent No. 3 made self made allegation and issued show cause notice on the basis of political interference.

g. That the appellant have no concerned with all allegation mentioned in show cause notice.

h. That respondent No. 3 conducted all proceeding against the appellant through arbitrary manner and far personal revenge issued impugned order dated 03/07/2014.

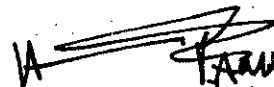
- i. That order dated 03/07/2014 is clear violation of natural justice and against the principle of locus potentia.
- j. That respondent ignored that legal right accrued in favour of appellant and the said proceeding could not be initiate after joining of service.
- k. That other point would be argued at the time of argument with the kind permission of this Honourable court.

It is, therefore, respectfully prayed that on acceptance of this appeal, order dated 03/07/2014 may kindly be declared null and void and appellant may graciously be reinstated alongwith all back benefits.

...APPELLANT

Dated: 26/3 /2015

Through;



(HAMAYUN KHAN)
Advocates High Court Abbottabad

VERIFICATION: -

Verified on oath that the contents of forgoing writ petition are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court

...APPELLANT



ANNEXURE**"B"****BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT ABBOTTABAD**

Service Appeal No: 285/2015

Date of Institution... 03.04.2015

Date of decision... 20.11.2017

Attested
H

Mst. Shazia Bibi D/O Lal Khan (Ex-PHC Technician) Health Department
Batagram R/O village Gulzarabad Kuza Banda, Tehsil and District, Battagram.
... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Health Peshawar and two others. (Respondents)

MR. HAMAYUN KHAN,
Advocate

... For appellant.

MR. MUHAMMAD BILAL
Deputy District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. AHMAD HASSAN,

... CHAIRMAN
... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was served with show cause notice on 10.06.2014 under the Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rule, 2011. She submitted reply to the show cause notice and thereafter the impugned order dated 03.07.2014 was passed by the competent authority, imposing major penalty of removal

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Camp Court, Abbottabad

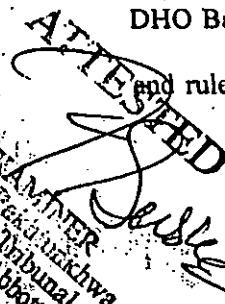
from service. Against this impugned order, the appellants filed departmental appeal on 15.07.2014 which was not responded to and thereafter the present appeal on 03.04.2015.

ARGUMENTS

Attested


3. On the point of limitation, the learned counsel for the appellant referred to an application for condonation of delay submitted with the memorandum of appeal. The reason for condonation are the illness of the appellant coupled with delivery of a girl baby on 09.11.2014. In this regard the learned counsel for the appellant filed additional documents today. The learned counsel for the appellant further argued that no specific charge has been leveled in the show cause notice. That the charge is only in general term regarding violation of the rules/standard criteria of the Government in the appointment. That in the show cause notice the regular enquiry has not been dispensed with nor any enquiry was conducted. That no charge sheet and statement of allegations were served on the appellant as there was no enquiry at all. That it is not made known to the appellant that under which specific charge show cause notice has been served upon her. That only in the reply of the respondents in present appeal in para-4 it has been mentioned that the appellant was terminated on the ground of ambiguity found in the appointment of the appellant. That even in the impugned order no specific detail of proof of any charge has been mentioned. That in the light of such casual approach of the authority, the penalty imposed on the appellant, cannot be sustained.

4. On the other hand, the learned Deputy District Attorney, argued that the present appeal is time barred. That the certificates annexed with the appeal and the documents submitted today are not sufficient for condonation of delay as these certificates do not give the result that the baby was born by the appellant. He further argued that the then DHO Batagram (Dr. Aqeel Bangash) had made certain appointments in violation of law and rules. That an enquiry was conducted against that DHO and in that enquiry certain

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 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar Court Abbottabad

irregularities were pin pointed by the enquiry committee. That those illegalities/irregularities were made the basis of the show cause notices against the appellant. He further argued that there is no illegality in the disciplinary proceedings.

CONCLUSION.

Attested
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BN

5. The appellant moved an application for condonation of delay as explained in the arguments portion of this judgment. The medical certificates regarding Hepatitis B and the delivery of the child of the appellant are sufficient reasons for condonation of delay. The delay is therefore, condoned.

6. The very show cause notice is in general term giving no specific detail of the charge/charges against the appellant. In absence of any specific charge/charges no proceedings could be initiated against the appellant. The authority has also not mentioned that why a regular enquiry was not being conducted. So much so that no order of dispensing with the regular enquiry was made by the authority much less the reasons for dispensing with the enquiry. It is clear from the above facts and circumstances' that the whole proceedings are illegal and cannot be sustained in the eyes of law. If any specific charge was leveled against the appellant, then that should have been mentioned in the show cause notice, at least. Non mentioning of this charge or any other charge, has deprived the appellant from defending herself in proper way.

7. In view of the above, the appeal is accepted and the appellant is reinstated in service. However, the department is at liberty to conduct fresh enquiry by following the concerned law and rules and if the department decides that fresh proceedings should be initiated then those should be completed within a period of 3 months from the date of receipt of this judgment. The issue of back benefits of the appellants shall be subject to

TESTED
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 Khyber Pakhtunkhwa
 Service Tribunal
 Camp Court, Abbottabad

the final outcome of denovo proceedings, if any. Parties are left to bear their own costs.

File be consigned to the record room.

set
(Ahmad Hassan)
Member

set
(Niaz Muhammad Khan)
Chairman
Camp Court, A/Abad

Attested
H

ANNOUNCED
20.11.2017

Certified to be true copy

Seesh
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Camp Court, Abbottabad

Date of Presentation of Application	<u>21-11-17</u>
Number of Words	<u>1600</u>
Costing Fee	<u>10-00</u>
U	<u>-</u>
T	<u>10-00</u>
N	<u>22-11-17</u>
D	<u>22-11-17</u>
Date of Delivery of Copy	<u>22-11-17</u>

گورنمنٹ جناب — DHO صدر میونسپلٹی

ANNEXURE

” C ”

(13)

عنوان: درخواست مساجد بحال کرنا اور سرکاری زمینوں پر

ادارے میں سرکاری زمینوں پر سرکاری زمینوں پر

20/11/17

Attest

Handwritten signature

جناب عالی

یہ سائیکل حکم سرکارہ 03/07/14 کے تحت صدر میونسپلٹی کے

سرکاری زمینوں میں اپیل کیا

یہ کہ صورتحال 20/11/17 کو عدالت نے بحال کر دیا ہے

کیسڈ سائیکل اپیل کو منظور کر کے سرکاری زمینوں کو

لوٹری پر بحال کیا ہے۔ نقل منسلک ہے

کتابت شدہ عاصمہ مسائیکل بحال کرنا اور سرکاری زمینوں پر

منسلک سرکارہ 20/11/17 کی روشنی میں زمینوں پر

جاوے

المستقیم 20/11/17

سائیکل

مسماہ سائیکل (LHV) Sharif

وکالت نامہ

کورٹ فیس

BEFORE THE WORK SERVICE TRIBUNAL بعدالت

Mr. Shazja نام Court Fee

PETITIONER EXECUTION PETITION منجانب:

EXECUTION PETITION نوعیت مقدمہ:

ABBOTABAD باعث تحریر آنکہ

مقدمہ مندرجہ میں اپنی طرف سے واسطے جبردی و جواب دہی کل کاروائی متعلقہ آن مقام

HAMAYUN KHAN ADVOCATE HIGH COURT

کو دیکل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز دیکل صاحب موصوف کو کرنے راضی نامہ و تقرر ٹائٹ و فیصلہ بر طرف دہینے اقبال دعویٰ اور بصورت دیگر ڈگری کرانے اجراء وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا محام صاحب قانونی کو اپنے ہمراہ اپنی بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا ساختہ پر داختم مجھ کو منظور قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب ہوں گے۔ نیز بتایا تم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ جبردی مقدمہ مذکورہ کریں اور اگر محام مقرر کردہ میں کوئی جڑو بٹایا ہو تو وکیل صاحب موصوف مقدمہ کی جبردی کے پابند نہ ہوں گے۔ نیز درخواست ہر ادا تجارت مالش بیسٹہ مفلسی کے دائرہ کرنے اور اس کی جبردی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کر دیا تاکہ سند رہے۔

المقوم: 21 Feb 2018

بمقام:

Accepted by

Shazja Petitioner
Mr. Shazja