

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 851/2017

Date of Institution ... 11.08.2017

Date of Decision ... 24.02.2021

Mr. Ahmad Ali son of Abdul Razzaq, Mohallah Johar Abad, Samander Darhi,  
Post Office Nowshera Kalan, Tehsil and District Nowshera. ... (Appellant)

VERSUS

The Secretary Health Department, Khyber Pakhtunkhwa Peshawar and three  
others. ... (Respondent)

Present.

Mr. Taimur Ali Khan,  
Advocate.

... For appellant

Mr. Kabirullah Khattak,  
Addl. Advocate General

... For respondents.

MR. HAMID FAROOQ DURRANI,  
MIAN MUHAMMAD,

... CHAIRMAN  
... MEMBER(E)JUDGMENTHAMID FAROOQ DURRANI, CHAIRMAN:-

1. Instant appeal is preferred against the order dated 03.04.2017 communicated to the appellant on 05.05.2017. Through the order dated 03.04.2017, the appointment order of the appellant was withdrawn while his departmental appeal there-against was not responded to.

2. The appellant was appointed, as claimed through Memorandum of appeal, a Ward Orderly on 25.01.2017 under the control of DHO (BHUs) District Nowshera. On 26.01.2017, the appellant submitted arrival report at DHO office Nowshera. He, however, was not allowed posting and on 03.04.2017, his appointment as Ward Orderly BPS-04, was withdrawn. The

appellant submitted his departmental appeal on 06.05.2017 which was not attended to.

3. Learned counsel for the appellant as well as learned Addl. AG heard on behalf of the respondents. Available record also perused.

4. It was contended by learned counsel that the impugned order was passed against the appellant without following the prescribed procedure. No proper enquiry was conducted against the appellant nor he was allowed access to the relevant record. In his view, the impugned order was without any foundation, therefore, was not sustainable. In support of his arguments, learned counsel relied on 1997-SCMR-1552.

As against that, learned AAG referred to the judgment passed by this Tribunal in Service Appeal No. 228/2017 and contended that the departmental appeal of appellant was delayed, therefore, the subsequent appeal before the Tribunal was not competent. The appellant was still under probation when departmental proceedings were conducted against him. The holding of proper enquiry against the appellant was not mandatory due to his status in the service. He relied on PLD 2003-Supreme Court-913 and 2007-PLC(C.S) 250.

5. The contents of impugned order dated 03.04.2017 appear to be confusing and contradictory. It is noted in the order that "*appointment of Mr. Ahmad Ali S/O Abdul Razzaq, Mohallah Samandar Darhi, Diwshera Kalan as Ward Orderly BPS-04 is hereby withdrawn due to un-satisfactory performance and not reporting to any health facility for official duty till date.*"

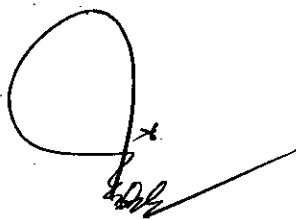
It is quite astonishing to note that on one hand the appointment of appellant was withdrawn due to unsatisfactory performance and, on the other, for not reporting to any health facility for official duty. The determining of performance of a civil servant without allowing him any posting would be without any yardstick thus could not be agitated as a ground for withdrawal of his appointment order.

6. It is by now well established that in cases where a civil servant is dislodged from service, a proper enquiry was all the more necessitated, but the same was not resorted to in the case in hand.

The respondents even did not care to provide any reason for dispensing with the regular enquiry. In the said manner, the career of appellant was conveniently brought to an end.

7. For what has been discussed above, the appeal in hand is allowed and the appellant is reinstated into service. The respondents shall be at liberty to conduct a proper enquiry against the appellant within a period of ninety days from the receipt of copy of instant judgment. The issue of back benefits shall be decided in accordance with outcome of the enquiry. Parties are left to bear their respective costs.

8. File be consigned to the record room.





(MIAN MUHAMMAD)  
MEMBER(E)



(HAMID FAROOQ DURRANI)  
CHAIRMAN

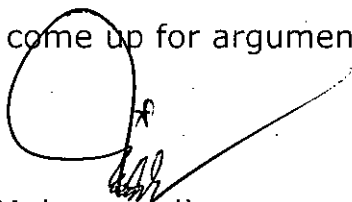
ANNOUNCED  
24.02.2021

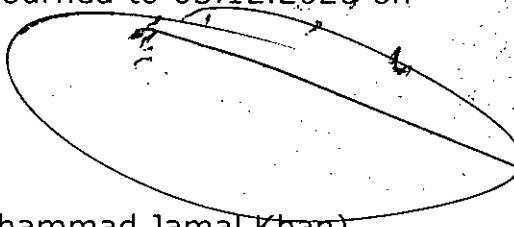
S.No.	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	24.02.2021	<p><u>Present.</u></p> <p>Mr. Taimur Ali Khan, ... For appellant Advocate</p> <p>Mr. Kabirullah Khattak, Addl. Advocate General, ... For respondents.</p> <p>Learned counsel for the appellant as well as learned Asstt. A.G heard on behalf of the respondents . Available record perused.</p> <p>Vide our detailed judgment, the appeal in hand is allowed and the appellant is reinstated into service. The respondents shall be at liberty to conduct a proper enquiry against the appellant within a period of ninety days from the receipt of copy of instant judgment. The issue of back benefits shall be decided in accordance with outcome of the enquiry. Parties are left to bear their respective costs.</p> <p>9. File be consigned to the record room.</p> <p style="text-align: center;">   (MIAN MUHAMMAD)  Member </p> <p style="text-align: right;">   CHAIRMAN </p> <p><u>ANNOUNCED</u> 24.02.2021</p>

25.09.2020

Appellant has not forth come, however, Assistant of learned counsel for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present.

According to the assistant that learned counsel for appellant is busy in the Hon'ble Peshawar High Court, Peshawar and is seeking time. Last chance is given. The appeal is adjourned to 03.12.2020 on which to come up for arguments before D.B.

  
(Mian Muhammad)  
Member (Executive)

  
(Muhammad Jamal Khan)  
Member (Judicial)

03.12.2020

Due to non-availability of D.B, the case is adjourned to 24.02.2021 for the same as before.

  
Reader

27.02.2020

Junior to counsel for the appellant present. Mr. Riaz Paindakhel learned Assistant Advocate General for the respondents present. Junior to counsel for the appellant requested for adjournment on the ground that senior counsel for the appellant is not available today. Adjourned. To come up for further proceedings/arguments on 02.04.2020 before D.B.

  
Member

  
Member

02.04.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 29.06.2020 before D.B.

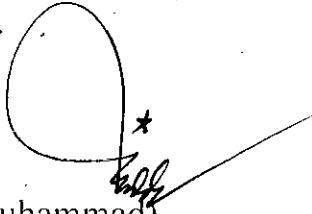
  
Reader


29.06.2020

Nemo for the appellant.

Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.

Notice be issued to appellant and his counsel for 25.09.2020 before D.B.

  
(Mian Muhammad)  
Member(E)

  
(Rozina Rehman)  
Member (J)

29.07.2019 Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 23.10.2019 before D.B.

  
Member

  
Member

23.10.2019 Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney for the respondents present.

Learned counsel for the appellant requests for adjournment due to engagement of learned senior counsel before the Honourable High Court today.

Adjourned to 26.12.2019 before D.B.

  
Member

  
Chairman

26.12.2019 Counsel for the appellant present. Mr. Ziaullah, DDA for respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 27.02.2020 before D.B.

  
Member

  
Member

27.02.2019

Counsel for the appellant and Addl. AG alongwith M/S Saleem Javed, Litigation Assistant and Hazrat Shah, Superintendent for the respondents present.

The representative of respondents shall positively produce the entire record of enquiry culminating into office order No. 3021-23/DHQ NSR dated 03.04.2017 on the next date of hearing.

Adjourned to 16.05.2019 before the D.B.



Member



Chairman

16.05.2019

Counsel for the appellant, Addl. AG alongwith Jaffar Ali, Senior Clerk for the respondents present.

Due to demise of his father, learned Member of the Bench (Mr. Hussain Shah) is on leave. Adjourned to 29.07.2019 for arguments before the D.B.



Chairman



13.09.2018

Counsel for the appellant and Mr. Muhammad Jan Learned Deputy District Attorney for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 06.11.2018 before D.B



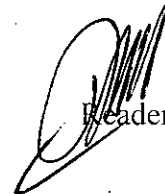
(Hussain Shah)  
Member



(Muhammad Hamid Mughal)  
Member

06.11.2018

Due to retirement of Hon'able Chairman, the Tribunal is defunct. Therefore, the case is adjourned for the same on 26.12.2018 before D.B.



Reader

26.12.2018

Counsel for the appellant and Mr. Muhammad Riaz Painda Khel, Asstt. AG for the respondents present.

Requests for adjournment in order to seek further instructions from the appellant who is not present today.

Adjourned to 27.02.2019 for arguments before the D.B.




Member




Chairman

03.01.2018


Counsel for the appellant present. Mr. Muhammad Jan, DDA alongwith Mr. Muhammad Shafiqu, M.O for respondents present. Rejoinder submitted which is placed on file. To come up for arguments on 06.03.2018 before D.B.

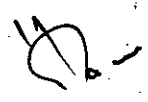
  
(Ahmad Hassan)  
Member(E)

  
(M.Amin Khan Kundi)  
Member (J)

06.03.2018

Learned counsel for the appellant and Mr. Muhammad Jan, Learned Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 08.05.2018 before D.B.

  
(Muhammad Amin Kundi)  
Member

  
(Muhammad Hamid Mughal)  
Member

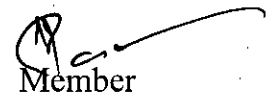
08.05.2018

The Tribunal is defunct due to retirement of Hon'ble Chairman. Therefore, the case is adjourned. To come on 23.07.2018

  
READER

23.07.2018

Appellant absent. Learned counsel for the appellant is also absent. However, junior counsel for the appellant present and requested for adjournment. Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Hazrat Shah, Superintendent for the respondents also present. Adjourned. To come up for arguments on 13.09.2018 before D.B.


  
Member

29.08.2017

Counsel for the appellant present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was appointed as Ward Ordely (BPS-4) against the vacant post under the control of DHO (BHUs) District Nowshera vide order dated 25.01.2017 by the competent authority and after medical examination he assumed the charge on 26.01.2017 and was performing his duty regularly however, on 03.04.2017 his appointment order was withdrawn due to his non-satisfactory performance. It was further contended that the withdrawal order of appointment order was passed without framing of charge sheet serving of any statement allegation, conducting of proper inquiry and issuing of any show-cause notice, therefore, the impugned order is illegal and liable to be set-aside.

Appellant Deposited  
Security & Process Fee

The contentions raised by learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days, thereafter notice be issued to the respondents for written reply/comments for 10.10.2017 before S.B.

  
(Muhammad Amin Khan Kundi)  
Member



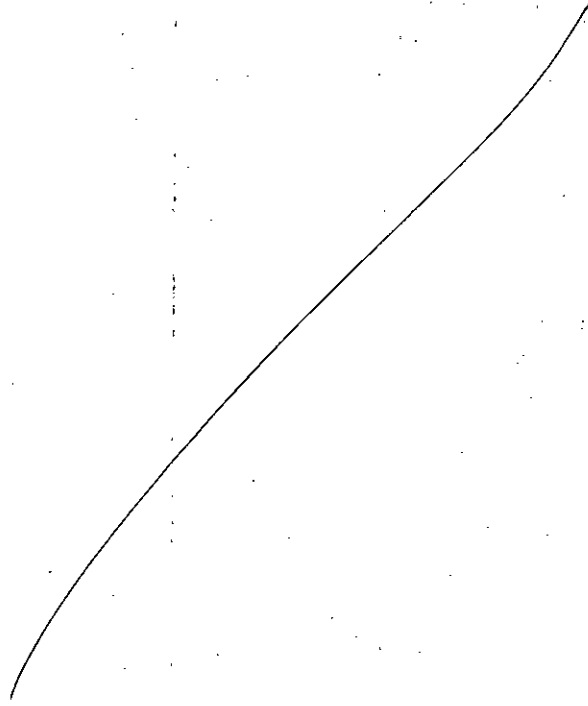
10.10.2017

Counsel for the appellant and Addl:AG alongwith Dr. M. Shafiq, MO for respondents present. Written reply submitted. To come up for rejoinder and final hearing on 03.01.2018 before D.B.

  
(AHMAD HASSAN)  
MEMBER

Form-A  
FORM OF ORDERSHEET

Court of \_\_\_\_\_  
Case No. 851/2017

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	11/08/2017	<p>The appeal of Mr. Ahmad Ali presented today by Mr. Muhammad Asif Yousafzai Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	16-8-2017	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>28-8-2017</u></p> <p style="text-align: right;"> CHAIRMAN</p> 

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

**APPEAL NO. 851 /2017**

Ahmad Ali

V/S

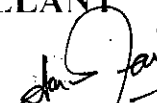
Health Deptt:

**INDEX**

S.NO.	DOCUHIMNTS	ANNEXURE	PAGE
1.	Memo of Appeal	-----	1-3
2.	Copy of appointment order	-A-	04
3.	Copy of medical certificate	-B-	05
4.	Copy of arrival report	-C-	06
5.	Copy of impugned order	-D-	07
6.	Copy of departmental appeal	-E-	08
7.	Copy of SC judgment	-F-	9-14
8.	Walakat Nama	-----	15

**APPELLANT**

Through:

  
(MASIF YOUSAFZAI)  
Advocate, Supreme Court

  
(TAIMUR ALI KHAN)

 &  
(SYED NOMAN ALI BUKHARI)  
Advocates, Peshawar

Cell NO: 0335-8390122

03339103240

Office:

Room No. Fr#8, 4<sup>th</sup> Floor, Bilor  
Plaza, Sadar Bazar, Peshawar  
Cantt: .

Date: \_\_\_ / \_\_\_ /2017.

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 851 /2017

Khyber Pakhtukhwa  
Service Tribunal

Diary No. 885

Dated 11-8-2017

Mr. Ahmad Ali S/o Abdul Razzaq,  
Muhallah JOhaR Abad, Samandar Darhi, P/O Nowshera Kalan,  
Tehsil and Dsistrict Nowshera.

(Appellant)

**VERSUS**

1. The Secretary health Deptt: KPK Peshawar.
2. DG Health Services, KPK Peshawar,
3. The District Health Officer, District Nowshera.
4. The Superintendent DHQ Hospital, Nowshera.

(Respondents)

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APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACTS, 1974, AGAINST THE ORDER DATED 03.04.2017, COMMUNICATED TO THE APPELLANT ON 05.05.2017 THROUGH POST WHEREBY THE APPOINTMENT ORDER OF THE APPELLANT WAS WITHDRAWN AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF 90 DAYS.

**PRAYER:**

Filed to-day

Registrar

11/8/17

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 03.04.2017, COMMUNICATED TO THE APPELLANT ON 05.05.2017 THROUGH POST MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

## RESPECTFULLY SUBMITTED:

### FACTS:

1. That the appellant was appointed as Ward Ordely BPS-04 against the vacant post vide order dated 25.01.2017 under the control of DHO (BHUs) District Nowshera. The appellant has performed his duties assigned to him with zeal and devotion and there was no complaint, what so ever regarding his performance. **(Copy of appointment order is attached as Annexure-A)**
2. That the appellant after medical fitness certificate, gave his arrival report on 26.01.2017 to District Health Officer Nowshera. **(Copy of medical certificate and arrival report is attached as Annexure-B & C).**
3. That the appellant's appointment order was withdrawn vide order dated 03.04.2017 communicated to the appellant on 05.05.2017 through post in a fanciful manner without any prior notice which is mandatory in law, against which appellant filed departmental appeal which was not responded within statutory period of 90 days. **(copy of impugned order and departmental appeal is attached as Annexure-D & E.)**
4. Hence the appellant is constrained to file the instant service appeal on the following grounds amongst others.

### GROUND:

- A. That the impugned order dated 03.04.2017, communicated to the appellant on 05.05.2017 and not taking action on the departmental appeal within statutory period of 90 days are against the law, facts, norms of justice, and material on record, therefore not tenable and liable to be set aside.
- B. That the whole proceeding conducted by the respondent department is against the law and rules.
- C. That during the probation period before termination one month prior notice is mandatory in law, the appellant has been terminated without serving upon him 1 month prior notice, which is against the law and Supreme Court Judgment reported as 1997 SCMR 1552. **Copy of judgment is attached as Annexure-F.**
- D. That the appellant was condemned unheard which is a violation of law and spirit of Article 10-A of the constitution.

E. That the appellant has not been treated according to law and rules.

F. That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

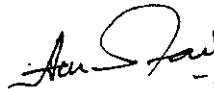
It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for



**Appellant**

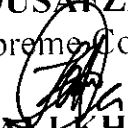
Ahmad Ali

**Through:**



**(MASIF YOUSAFZAI)**

Advocate Supreme Court



**(TAIMUR ALI KHAN)**



**(SYED NOMAN ALI BUKHARI)**

Advocates, Peshawar





A (4)

**OFFICE OF THE DISTRICT HEALTH OFFICER NOWSHERA**

Phone & Fax: 0923-580759

E-Mail: nowshera.edoh@gmail.com

OFFICE ORDER

On recommendation / approval of departmental selection committee, Mr. Ahmed Ali S/O Abdul Razzaq Mohallah Samandar Garhi, Nowshera Kalan District Nowshera is hereby appointed as Ward Orderly BPS-04 against the vacant post under the control of DoH (BHUs) District Nowshera with the following terms and conditions.

1. The appointment shall be subject to the Medical fitness and initially on probation for a period of 01-years.
2. The services can be dispensed with during the probation period on unsatisfactory performance.
3. The appointment will be governed by such rules and order issued by the Government from time to time.
4. In case of acceptance, he should submit his arrival report within 07-days.

Sd \_\_\_\_\_  
District Health Officer  
Nowshera

No. 933-36 / DHO NSR

Date: 25 / 01 / 2017

Copy forwarded to the:

1. Senior District Accounts Officer Nowshera.
2. Accounts Section DHO Office Nowshera.
3. Mr. Ahmed Ali S/O Abdul Razzaq Mohallah Samandar Garhi, Nowshera Kalan District Nowshera.
4. Office record.

District Health Officer  
Nowshera

**ATTESTED**  
K



D.H.O. [unclear]

Medical Certificate

NIC No: 17251-36384091-3

B 5 22



Name of Official ..... Ahmed Ali

Caste of race ..... Muslims

Father's Name ..... Abdul Razzaq

Residence ..... Mah. Samandar Crashi

DIST Newshera

Date of Birth ..... 27-01-1994

Exact height by measurement ..... 5-4 1/2

Personal mark of identification ..... [unclear]

Signature of Official ..... [Signature]

Signature of head of Officer ..... [Signature]

Head of Office District Health Officer

I do hereby certify that I have examined Mr Ahmed Ali in candidate for employment in the Office of the Health Dept A and can not discover that he had any disease or physical defect or constitutional affection or bodily infirmity except

I do not consider this as disqualification for employment in the office of the [unclear] His age according to his own statement [unclear] year and by appearance about [unclear]

LEFT HAND THUMB AND FINGER IMPRESSIONS

ATTESTED

Medical Superintendent,

D.H.O. Newshera

To

The District Health Officer,  
Nonsheha.

Subject: Arrival report

Sir

In compliance with the office  
Order no. 933-36/DHO/NSH, dated 25-01-2017  
issued by your good self, I hereby submit  
my arrival report for duty to stay on  
26-01-2017 at the DHO office Nonsheha.

Submitted for information please.

Yours obediently

Abdul Razzaq  
(Abneel (A.G.) S/o  
Abdul Razzaq  
ward ex-employee,  
DHO office Nonsheha.

26-1-2017

District Health Officer  
Nonsheha

ALIEBINA

Handwritten notes and signatures on the left side of the page, including "officer" and "DHO".



**OFFICE OF THE DISTRICT HEALTH OFFICER NOWSHERA.**

Phone & Fax: 0923-580759

E-Mail: nowshera.edoh@gmail.com

**OFFICE ORDER**

Reference this office order bearing endorsement No. 933-36/DHO NSR, dated 25-01-2017 on account of appointment of Mr. Ahmed Ali S/O Abdul Razzaq, Mohallah Samandar Darhi, Nowshera Kalan as Ward Orderly BPS-04 is hereby withdrawn due to unsatisfactory performance and not reporting to any health facility for official duty till date.

Sd \_\_\_\_\_  
District Health Officer  
Nowshera

No. 3021-23 / DHO NSR

Date: 03/04 /2017

Copy forwarded to the:

1. Senior District Accounts Officer Nowshera.
2. Accounts Section DHO Office Nowshera.
3. Mr. Ahmad Ali S/O Abdul Razzaq, Mohallah Samandar Garhi Nowshera Kalan.

District Health Officer  
Nowshera

**ATTESTED**

خدمت جناب ڈسٹرک ہیلتھ آفیسر صاحب ڈسٹرک ہیلتھ آفس ضلع نوشہرہ  
جناب عالی

اپیل برائے بحالی ملازمت

گذشتہ ہے کہ آپ کی ارسال کردہ چھٹی بڑی No. 3021-23/DHO NSR  
بتاریخ 03/4/2017 بعنوان آفس آرڈر جو کہ مجھے 05/5/2017 کو ملی۔ جس میں فدوی  
کو بلاجم نوکری سے فارغ کر دیا گیا ہے۔ (چھٹی منسلک ہے)  
جناب عالی:۔ فدوی کو دیپارٹمنٹل سیکلشن کمیٹی کی منظوری اور جناب کے دستخط  
سے بطور وارڈ اردلی (BPS-4) ملازمت کا لیٹر آفیس بڑی No. 933-36/DHO NSR  
بتاریخ 25/1/2017 کو ملا۔ (کاپی منسلک ہے) اور اسی تاریخ کو میڈیکل کرائی (فٹنس سرٹیفیکٹ  
منسلک ہے)۔

جناب عالی۔ فدوی نے جناب کے زیر سایہ اپنی ڈیوٹی احسن طریقے سے سر انجام دی  
بالا سٹاف کو کبھی بھی شکایت کا موقع نہیں دیا ہے۔ فدوی اپنا صحت مند اور تعلیم یافتہ  
نوجوان ہے اور اپنے گھر کا واحد کفیل ہے لہذا جناب سے بذریعہ درخواست اپیل  
کیجاتی ہے کہ بالا چھٹی بڑی No. 3021-23/DHO NSR بتاریخ 03/4/2017 کو منسوخ (cancel) کیا جائے  
اور فدوی کو ڈیوٹی پر بحالی کے آرڈر کیے جائیں۔

فدوی تا عمر رہا کروں گا

کندہ

درخواست  
06/5/17

احمد علی دلہ عبدالرزاق محلہ جوہر آباد سمندر گڑھی دکانہ نوشہرہ ضلع تحصیل ضلع نوشہرہ

ATTESTED

F 9

1997 S C M R 1552

[Supreme Court of Pakistan]

Present: Ajmal Mian, Actg, C.J., Irshad Hasan Khan and , Nasir Aslam Zahid, JJ

**THE SECRETARY, GOVERNMENT OF THE PUNJAB, through Secretary, Health Department, Lahore and others--Petitioners**

versus

**RIAZ-UL-HAQ---Respondent**

Civil Appeal No. 1428 of 1995, decided on 5th June, 1997.

(On appeal from the judgment dated 30-11-1994 of the Punjab Service Tribunal, Lahore, passed in Appeal No.657 of 1992).

**(a) Punjab Civil Servants Act (VIII of 1974)---**

----S. 10(3)---Punjab Civil Servants (Appointment and Conditions of Service) Rules. 1974, R. 7---Constitution of Pakistan (1973), Art. 212(3)--Misconduct---Temporary employee engaged on contract---Termination of service of employee on ground of misconduct and that his performance was not found satisfactory and that he failed to prove his innocence---Leave to appeal was granted to consider, as to whether employee's services could be terminated under S.10(3), Punjab Civil Servants Act, 1974 by serving him 30 days' notice as he was temporary employee.

**(b) Civil service---**

---- Termination of service---Misconduct---Civil servant's services were on temporary basis liable to be terminated on 30 days' notice or pay in lieu thereof on either side---Services of civil servant were to be governed by statute and Rules/Instructions/Regulations framed thereunder---If a person is employed on contract basis and terms of employment provide the manner of termination of his services, the same can be terminated in terms thereof---Where, however, a person is to be condemned for misconduct, in that event, even if he is a temporary employee or a person employed on contract basis or probationer, he is entitled to a fair opportunity to clear his position which means that there should be a regular enquiry in terms of Efficiency and Discipline Rules before condemning him for the alleged misconduct.

Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan PLD 1974 SC 393 and Pakistan (Punjab Province) v. Riaz Ali Khan 1982 SCMR 770 ref.

**(c) Civil service---**

----Termination of service---Misconduct---Regular enquiry---If an accused civil servant/employee is charged, with misconduct of the nature which cannot be proved without holding of regular enquiry, the removal or dismissal from service of a civil servant on the basis of summary enquiry is not

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sustainable in law---Charges of defiance of orders of superiors; being rude to his colleagues and having concealed the factum of having a job in another department, which the civil servant had denied involved factual controversy which could not be resolved without holding regular enquiry and services in such a situation could not be terminated without such enquiry.

Deputy Inspector-General of Police, Lahore and others v. Anis-urRehman Khan PLD 1985 SC 134; Alamgir v. Divisional Forest Officer, Multan and others 1993 SCMR 603; Jan Muhammad v. The General Manager, Karachi Telecommunication Region, Karachi and another 1993 SCMR 1440; Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others PLD 1994 SC 222 and Ghulam Muhammad Khan v. Prime Minister of Pakistan and others 1996 PLC (C.S.) 868 ref.

Ehsan Sabri, Assistant Advocate-General, Punjab for Petitioners.

Malik Amjad Pervez, Advocate Supreme Court for Respondent.

Date of hearing: 5th June, 1997.

### ORDER

**AJMAL MIAN, ACTG. C.J.**---This is an appeal with the leave to this Court against the judgment dated 30-11-1994 of the Punjab Service Tribunal, Lahore, hereinafter referred to as the Tribunal, passed in Appeal No.657 of 1992, filed by the respondent against the termination of his service by an order dated 29-5-1991 while working as a Stenographer in the Office of the Project Director, Paediatric Hospital/Institute, Lahore, hereinafter referred to as the Institute, allowing the same as follows:--

"18. Section 10(3) ibid prescribes 30 days' notice and not 10 days. Obviously it did not meet the requirement. In any event section 10 had no application inasmuch as it was not an ad hoc appointment. Parties were agreed that it was regular employment though they differed as to the precise date of joining it on the part of the appellant. Thus, 10 days' notice did not improve the situation.

19. As a result the appeal is allowed. The impugned order is set aside and the appellant is re-instated with back benefits. "

2. The brief facts are that the respondent was employed on 26-4-1986 on contract basis by the Health Department at the behest of the Project Director of the Institute. It seems that at the time of the respondent's induction into service, there were no rules to govern terms and conditions of the staff of the Institute. The rules were subsequently framed, which came into force with effect from 28-10-1988. It appears that after the framing the aforesaid rules, the respondent's services were regularised by an order dated 8-1-1989 retrospectively i.e. from the date when he joined the Institute on 26-4-1986. It was also stated in the aforementioned order of regularisation that like others, the respondent would also be treated as a civil servant and governed by the rules applicable to them. It further seems that the respondent's services were terminated by an order dated 18-5-1991. However, the above termination order was not acted upon and the respondent was served with a show-cause notice, calling upon him to explain as to why he observed local holidays without permission and why

**ATTESTED**

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used to leave the office without permission while his officers were still working in the office and thereby committed an act of misconduct and indiscipline. He was required to submit his reply within 10 days. It appears that before the expiry of above period of 10 days, the department served another notice dated 22-5-1991 upon the respondent, further charging him with defiance of orders of the superiors, being rude to his colleagues, having concealed the factum of having a job of a Stenographer with the Board of Excellence of Education by making a formal application there etc. It seems that the respondent refuted all these allegations. He also expressed his apprehension that he would not get justice from appellant No.4 Project Director of the Institute and requested that an Enquiry Officer might be appointed to look into the charges. It was further asserted by him that he was no more on probation and he had become a regular incumbent, whose services could not have been terminated especially by aforesaid order dated 18-5-1991. On receiving the above reply from the respondent, the Project Director of the Institute (i.e. appellant No.4) by his aforesaid order dated 29-5-1991 terminated the respondent's services. After that the respondent filed a departmental appeal and then approached the Tribunal through the aforementioned appeal, which was upheld in the above terms. Thereupon, the appellants i.e. the Government of the Punjab and other officials, filed a petition for leave to appeal, which was granted to consider, as to whether the respondent's services could be terminated under section 10(3) of the Punjab Civil Servants Act, 1974, hereinafter referred to as the Act, by serving 30 days notice as he was a temporary employee.

3. In support of the above appeal Mr. Ehsan Sabri, learned Assistant Advocate-General, Punjab, has vehemently contended that since the respondent was employed on contract basis and as he was a temporary employee, his services could have been terminated by serving 30 days' notice and therefore, the respondent, at the most, was entitled to one month's salary in lieu of the notice period.'

On the other hand, Malik Anjad Pervaiz, learned Advocate Supreme Court for the respondent, has strongly urged that factually the respondent was a permanent employee of the Institute as he was inducted against a permanent post and his services were regularised after the enforcement of the rules with effect from 28-10-1988. His further submission is that even if it is to be held that the respondent was a temporary employee of the Institute, his services could not have been terminated under section 10 of the Act read with Rule 7 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974. hereinafter referred to as the Rules, particularly by condemning the respondent without holding an enquiry.

4. In order to appreciate the respective contentions of the learned counsel for the parties, it may be pertinent to reproduce the above termination order dated 29-5-1991, which reads as under:--

"Whereas Mr. Riaz ul Haq Stenographer of this office was served with Memo. No.PF/4182/PH & I, dated May 18, 1991 to put up his defence in writing or otherwise as to why his services may not be terminated during probation under section 10 of the Punjab Civil Servants Act, 1974 read with Rules 7 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 on account of his work and conduct during the probation period being not satisfactory.

And whereas, he submitted a representation dated 26-5-1991 in this behalf which was given due consideration and he was also heard in person on the same day.

And whereas, the representation of the official having not been found satisfactory and he having not been able to prove his innocence in this behalf, therefore, in exercise of the powers conferred under section 10 of the Punjab Civil Servants, 1974. I hereby terminate his services with immediate effect in

**ATTESTED**  




(12)

the public interest. "

A perusal of the above order indicates that the respondent's services were terminated on the ground that his performance was not found satisfactory and that he failed to prove his innocence. Reference has also been made to the show-cause notice and the reply submitted by the respondent, and it has been stated that the respondent's reply was given due consideration and was also afforded personal hearing.

5. It will not be out of context to refer to the aforesaid order dated 8-1-1989, whereby the respondent's services were regularised. The above, order is at pages 35 and 36 of the paper book, which indicates that the respondent's services were regularised on the following terms and conditions:-

"(1) that your service will be governed by the provisions of the Punjab Civil Servants Act, 1974 and all Rules/Regulations/Instructions framed thereunder;

(2) that you will be required to undergo a medical examination if not already done on your first entry into Government service, and your appointment will be subject to the conditions that you are declared medically fit by the competent medical authority.

(3) that your appointment will be subject to verification of your character and antecedents to the satisfaction of the Government.

(4) that your appointment in the Paediatric Hospital/Institute will be on temporary basis liable to terminate on 30 days notice or pay in lieu thereof on either side.

(5) that you will be governed by such rules and orders relating to leave, T.A., Medical Attendance, Pay etc. as may be issued by the Government from time to time for the category of Government servants to which you will belong."

6. It is evident from the abovequoted terms and conditions that the respondent's services were to be governed by the provisions of the Act and of the Rules/Regulations/Instructions framed thereunder. It is also manifest that the respondent's services were on temporary basis, which were liable to be terminated on 30 days' notice or pay in lieu thereof on either side.

7. Without going into the controversy, as to whether the respondent's claim that he was a permanent employee, we may observe that there is a marked distinction between simpliciter termination of services in accordance with the terms of appointment and the termination of services on the ground of misconduct. There is no doubt that if a person is employed on contract basis and if the terms of employment provide the manner of termination of his services, the same can be terminated in terms thereof. However, if a person is to be condemned for misconduct, in that event, even if he is a temporary employee or a person employed on contract basis or a probationer, he is entitled to a fair opportunity to clear his position, which means that there should be a regular enquiry in terms of the Efficiency and Discipline Rules before condemning him for the alleged misconduct. In this regard, reliance has been placed by the learned counsel for the respondent on the case of Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan (PLD 1974 SC 393), in which Waheeduddin Ahmad, J. has succinctly brought out a distinction between termination of services of a probationer on the ground of unsatisfactory performance and the ground of misconduct as follows:-

"In the light of the above discussion, it appears to me that a probationer is a person who is taken in

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service subject to the condition that it will attain a sure footing only if during the period that he is on probation he shows that he is a fit person to be retained in service. I agree with the view expressed in Muhammad Afzal Khan v. The Superintendent of Police, Montgomery and Riaz Ali Khan v. Pakistan. that a person who is on probation is subject to all checks to which a permanent servant is subject. He cannot, for example, refuse to obey orders, keep his own hours of duty, or indulge in any malpractice. In my opinion, if the service of a probationer is terminated on the ground of unsatisfactory work that will not amount to dismissal or removal from service, such termination will be in terms of the contract or the rules made by the Government but if the service of a probationer is terminated on the ground of misconduct that will amount to removal or dismissal. It will be a stigma in his favour. In the last-mentioned case, the probationer will be protected by the provisions of Article 177 of the Constitution of 1962 and will be entitled to a show-cause notice and a proper enquiry against him must be made. "

8. The above view was reiterated by this Court in the case of Pakistan (Punjab Province) v. Riaz Ali Khan (1982 SCMR 770) as under:--

"From the pleadings of the parties it is clear that there was no latent stigma of misconduct but the sole ground of termination of service was his unsatisfactory work which was also apparent from the explanation submitted by the respondent. Therefore, the result of this appeal is concluded by a judgment of this Court reported as Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan (PLD 1974 SC 393). It was observed in this case at page 401 that a probationer is taken in service subject to the condition that it will attain a sure footing only if during the period that he is on probation he shows that he is a fit person to be retained in service; and if the service of a probationer is terminated on the ground of unsatisfactory work, it will not amount to dismissal or removal from service. Such termination will be in accordance with the terms of the contract or the Rules made by the Government in that behalf. However, a distinction was drawn that if such termination was on the ground of misconduct then it will be subject to the Constitutional protection which is not the case here."

9. We respectfully agree with the proposition of law as enunciated in the above reports. The same is in line with the view which we are inclined to take and which has been highlighted hereinabove.

It may be observed that in the present case, inter alia, the respondent was charged with defiance of the orders of his superiors, being rude to his colleagues, having concealed the factum of having a job of a Stenographer with the Board of Excellence of Education etc., which the respondent had denied and, therefore, there was a factual controversy which could not have been resolved without holding regular departmental disciplinary proceedings. In this regard, reference may be made to the following cases:

- (i) Deputy Inspector-General of Police, Lahore and others v. Anis-ur Rehman Khan (PLD 1985 SC 134);
- (ii) Alamgir v. Divisional Forest Officer, Multan and others (1993 SCMR 603);
- (iii) Jan Muhammad v. The General Manager, Karachi Telecommunication Region, Karachi and another (1993 SCMR 1440);
- (iv) Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence.

ATTESTED

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Rawalpindi and others (PLD 1994 SC 222); and

(v) Ghulam Muhammad Khan v. Prime Minister of Pakistan and others (1996 PLC (C.S.) 868);

In all the above reports, it has been held that if an accused civil servant/employee is charged with misconduct of the nature which cannot be proved without holding of a regular enquiry, the removal or dismissal from service of a civil servant on the basis of a summary enquiry is not sustainable in law. It will suffice to reproduce para. 5 from the last report, which reads as under:--

"5. It has been consistently held by this Court that there is a marked distinction between Rule 5 and Rule 6 of the Rules, inasmuch as under the former Rule, a regular inquiry can be dispensed with, whereas the latter Rule envisages conducting of regular inquiry which will necessitate the examination of witnesses in support of the charges brought against the accused civil servant, his right to cross-examine such witnesses and his right to produce evidence in rebuttal. The question, as to whether the charge of a particular misconduct needs holding of a regular inquiry or not, will depend on the nature of the alleged misconduct. If the nature of the alleged misconduct is such on which a finding of fact cannot be recorded without examining the witnesses in support of the charge or charges, the regular inquiry could not be dispensed with. Reference may be made in this behalf to the case of Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others (PLD 1994 SC 222)."


10. The above cases support the view of the Tribunal that the respondent's services could not have been terminated in the manner which was resorted to in the present case.

11. The upshot of the above discussion is that the instant appeal has no merits and the same is, accordingly, dismissed. However, there will be no order as to costs.

M.B.A./S-1/S

Appeal dismissed.

ATTESTED



**VAKALAT NAMA**

NO. \_\_\_\_\_/20

IN THE COURT OF Ko-Pok Service Tribunal, Peshawar

Ahmad Ali

(Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Health Deptt

(Respondent)  
(Defendant)

I/We, Ahmad Ali

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

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

Dated \_\_\_\_\_/20

Ahmad Ali  
(CLIENT)

ACCEPTED

M. Asif Yousafzai

**M. ASIF YOUSAFZAI**  
Advocate Supreme Court  
Peshawar.

Taimur Ali Khan

**Taimur Ali Khan**  
Advocate High Court

Syed Nauman Ali Bukhari

**Syed Nauman Ali Bukhari**  
Advocate

**OFFICE:**

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

For appellant Demanding  
Ahmad Ali

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 228/2017

Date of Institution ... 03.03.2017

Date of Decision ... 06.08.2019



Sahib Nawaz, Ex-Warder Central Prison, Peshawar. ... (Appellant)

VERSUS

The Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar and one other. ... (Respondents)

Present.

Mr. Taimur Ali Khan,  
Advocate.

For appellant

Mr. Ziaullah,  
Deputy District Attorney,


For respondents.

MR. HAMID FAROOQ DURRANI,  
MR. MUHAMMAD HAMID MUGHAL,

CHAIRMAN  
MEMBER

**ATTESTED**

JUDGMENT

  
CHAIRMAN  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar


HAMID FAROOQ DURRANI, CHAIRMAN:-

1. The appellant feeling aggrieved from orders dated 14.07.2016 and 18.11.2016 passed by respondent No. 2 and respondent No. 1, respectively has preferred instant appeal on 03.03.2017.

The available record suggests that the appellant was appointed as Warder (RPS-05) on 22.01.2015 and was posted at Central Prison, Peshawar. On account of unauthorized absence without leave he was proceeded against and the order of removal from service was passed against the appellant on 14.07.2016. His departmental appeal also did not prevail and was rejected on 18.11.2016.



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2. Learned counsel for the appellant, learned Deputy District Attorney on behalf of respondents heard and available record examined.

Learned counsel for the appellant argued that the procedure provided through Rule 9 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 was not followed by the respondents while proceeding against the appellant. Similarly, no regular enquiry was held against him and only a show cause notice was issued on 21.06.2016. It was also argued that at the time of issuance of show cause notice the absence of appellant was for 39 days and, in view of the default attributable to appellant, the awarded penalty was harsh. In support of his arguments learned counsel relied on judgments reported as 2006-SCMR-1120, PLD 2003-Supreme Court-724, 2004-PLC (C.S) 1014 and 1997-SCMR-1552.

Controverting the stance of the appellant, learned Deputy District Attorney contended that the departmental appeal preferred by appellant was beyond the period prescribed for the purpose as it was received on 06.10.2016; while the order impugned therein was passed on 14.07.2016. He further contended that the appellant was on probation at the relevant time when was proceeded against on account of absence, therefore, there was no need of conducting a regular enquiry against him. He relied on 2013-SCMR-911.

3. By now it is well settled that in cases where major penalty is imposed upon civil servant a regular departmental enquiry is all the more necessitated in order to reach a just conclusion regarding allegations against the official. Admittedly, in the instant case no regular enquiry was ever conducted against the appellant. It was noted in the show cause notice that in view of the report received through the Superintendent Central Prison Peshawar there was no need of holding further

ATTESTED



EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar




enquiry. In our view, the endorsement by the competent authority to the said effect could not at all be regarded as a cogent reason for dispensing with the enquiry.

The stance of appellant, as put forth through his departmental appeal, was to the effect that he had fallen ill on 06.06.2016 and was advised two days rest by the Police & Services Hospital, Peshawar. For the requisite rest the appellant proceeded to his home but did not get well, therefore, could not perform his duty for the alleged absence period. The order dated 18.11.2016 passed on the departmental appeal of appellant, on the other hand, did not cater for decision regarding the aspect of illness of the appellant.

4. We are unable to agree with the arguments of learned Deputy District Attorney regarding the competence of appeal in hand on the ground of delay in submission of departmental appeal. It is noticed that the departmental appeal of the appellant was decided on 18.11.2016, on its merits. There was a mention of appeal being time barred in the order but the delay was not made basis for its rejection. It shall not be out of place to mention that the date on the departmental appeal was provided as 03.08.2016.

We are also not in agreement with the submission of learned DDA regarding dispensing with of proper enquiry in the case of appellant who was on probation at the relevant time. In the said regard, we seek guidance from judgment of Apex Court (1997-SCMR-1552), wherein it has been laid down that where a person is to be condemned for misconduct, even if he is a temporary employee or a person employed on contract basis or probationer, he is entitled to a fair opportunity by way of regular enquiry in terms of Efficiency & Discipline Rules.

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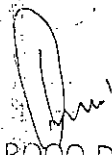
  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

5. For what has been discussed above, the appeal in hand is allowed and the impugned orders are set aside. The respondents are required to conduct a regular enquiry against the appellant in accordance with law. The proceedings of enquiry shall be concluded within ninety days from the date of communication of copy of instant judgment. Needless to note that the appellant shall be provided full opportunity of defending his cause in the departmental proceedings. The accrual of back benefits in favour of appellant shall be determined in the light of outcome of enquiry proceedings.

Parties are left to bear their respective costs. File be consigned to the record room.




(MUHAMMAD HAMID MUGHAL)  
MEMBER



(HAMID FAROOQ DURRANI)  
CHAIRMAN

ANNOUNCED  
06.08.2019.

Certified to be true copy

  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation 26-08-19  
Number of Copies 1600  
Copying Fee 20-00  
Urgent 4-00  
Total 24-00  
Name of Clerk [Signature]  
Date of Completion of Copy 26-08-19  
Date of Delivery of Copy 26-08-19



21.09.2015

Counsel for the appellant present. Preliminary arguments heard and record perused.

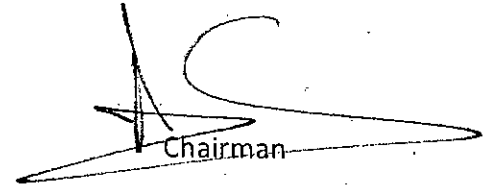
The appellant has preferred the present appeal against order dated 27.4.2010 vide which his services were terminated where-after he preferred departmental appeal which was dismissed on 15.6.2015 and hence the instant service appeal on 7.7.2015.

Brief facts of the case of the appellant are that the appellant was appointed as Computer Operator (BPS-12) in the Court of learned Civil Judge/Illaqā Qazi Behrain Swat. His services were terminated during probation period vide impugned order dated 27.4.2010 regarding which departmental appeal of the appellant was dismissed by respondent No. 1 Hon'ble Administrative Judge, Peshawar High Court, Peshawar vide order dated 15.6.2015.

Perusal of record would suggest that the services of the appellant were dispensed with as he was not in a position to give satisfactory performance during probation period.

Since the services of the appellant were dispensed with without any stigma and due to unsatisfactory performance during the period of probation as such no appeal would lie against such orders. The appeal is, therefore, dismissed in limine. File be consigned to the record.

ANNOUNCED  
21.9.2015

  
Chairman

21.09.15

AAC

**BEFORE THE HONOURABLE SERVICE TRIBUNAL PESHAWAR.**

**Service Appeal No. 851/2017**

Ahmad Ali..... Appellant

VS

Government of Khyber Pakhtunkhwa..... Respondents

**PARA WISE COMMENTS IN APPEAL NO. 851/2017 MR. AHMAD**

**ALI VS GOVERNMENT**

Respectfully Sheweth,

Preliminary objection

- i. That the appellant has neither cause of action nor locus standi.
- ii. The appellant has concealed actual position from this Honourable Service Tribunal.
- iii. That the appellant has just to pressurized the respondents / government
- iv. That the appellant has filed the instant petition on mala-fide motives.
- v. That the appellant has not come to the Service Tribunal with clean hands.
- vi. That the Honourable Service Tribunal has got no jurisdiction to entertain the present appeal.

**FACTS:**

1. Incorrect.
2. The appellant was appointed by the Respondent No. 3 however he has not performed his duty even for a single day in the office of the Respondent No. 3.

3. Incorrect, the appellant has not performed his duties as reported by the Office Superintendent and Incharge of Section (Annexure "A") moreover an enquiry was conducted on the report of the Office Superintendent where he is found absent from the very 1<sup>st</sup> day of his arrival to this office (Annexure "B"), remained absent from 27.01.2017 till the date of withdrawal of the appointment order dated 03.04.2017. The absent  
Period reflects in Daily Attendants Register (Annexure "C"), he has not affix any sign from 26.01.2017 to 03.04.2017. (Annexure "D,E'F'G). it is further stated that service of a civil servant may be terminated without any notice during the initial of extended period of his probation.
4. The appellant has got no cause of action to file instant appeal.

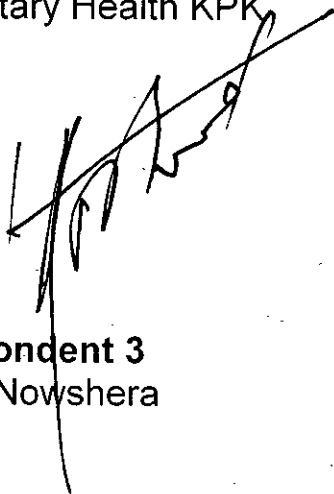
**GROUND:**

- A. Incorrect, the impugned order dated. 03.04.2017 has been passed after completing all coddle formalities, moreover the departmental appeal was regretted and was sent to the appellant through post as the appellant has also sent the departmental appeal to the office of the Respondent No. 3 on post and where about of the appellant was not known to the respondent.
- B. Incorrect, the proceeding are according to the law, rules and the conditions as mentioned in the appointment order No. 933-367/DHO/NSR dated. 25.01.2017 (Annexure "H").
- C. Incorrect, he termination is according to the law and rules laid down in the appointment order. Moreover mere and sheer submission of arrival does not mean the attendance and performance of duty.

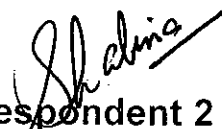
- D. The appellant was disappeared and un-seend after his arrival on 26.01.2017, however he has drawn one month salary from the government ex-chequer during his absent period with the help and support of his real uncle working as Additional Accounts Officer in the office of District Accounts Office Nowshera. Later on, the salary was refunded by the appellant admitting his absence period from duty (Annexure "I").
- E. The appellant has been treated according to the law and rules.
- F. The respondents seek leave to raise additional grounds at the time of arguments.



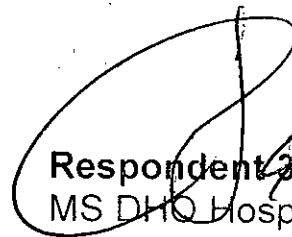
**Respondent 1**  
Secretary Health KPK



**Respondent 3**  
DHO Nowshera



**Respondent 2**  
DGHS KPK



**Respondent 2**  
MS DHO Hospital Nowshera

NOTE SHEET

Sir,

Mr. Ahmad Ali S/O Abdul Razzaq (Ward Orderly) newly appointee has submitted his arrival report to this office on 26-01-2017 for official duty at DHO Office Nowshera.

After that his where about is not known to this office after submission of arrival report.

Report is submitted for information please.

*[Signature]*  
16/3/17  
Superintendent  
DHO Office Nsr

*[Signature]*  
16/3/17  
Incharge,  
Record Section

Date 16-03-2017

*DDHO  
enquire  
Report, to and  
[Signature]*

*[Signature]*  
16/3/2017  
DHO  
Nowshera

MINUTES OF MEETING

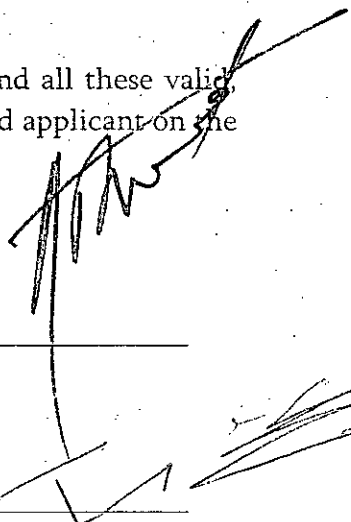
A constituted committee for the purpose has assembled on 23-01-2017 in the office of DHO Nowshera to scrutinize the application in respect of Mr. Ahmed Ali S/O Abdul Razzaq Mohallah Samandar Garhi, Nowshera Kalan District Nowshera who has applied for the vacant post of Class-IV under the control of DoH District Nowshera.

The committee thoroughly checked his documents and found all these valid, so the members of the committee agreed to appoint the above named applicant on the vacant post of Ward Orderly on need and emergency basis.

1. Dr. Arshad Ahmad Khan  
DHO Nowshera.

Chairman

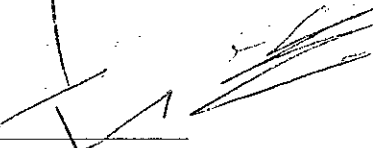
Signature



2. Dr. Tariq Khan  
DDHO Nowshera

Member

Signature



3. Dr. Abu Zar  
Coordinator DHIS  
Nowshera

Member

Signature





OFFICE OF THE DISTRICT HEALTH OFFICER NOWSHERA

Phone & Fax: 0923-580759

E-Mail: nowshera.edoh@gmail.com

16

OFFICE ORDER

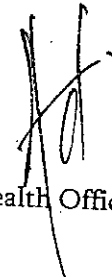

Dr. Tariq Khan (DDHO Nowshera) is hereby nominated as an inquiry officer to conduct inquiry against Mr. Ahmad Ali (ward orderly) newly appointee regarding non-performance of duty after submission of arrival report to DHO Office Nowshera on 26-01-2017 and submit report to the undersigned for further proceeding.

Sd \_\_\_\_\_  
District Health Officer  
Nowshera

Date: 17 / 03 / 2017

No. 2678 / DHO NSR

Copy forwarded to the:  
1. Inquiry Officer concerned.

  
District Health Officer  
Nowshera  


To

The District Health Officer,  
Nowshera.

Subject:  
Sir,

INQUIRY REPORT.

As per your direction vide Office Order No. 2678/DHO NSR, dated 17-03-2017.

I had gone through a detailed inquiry, record checking, observation and am of the opinion that Mr. Ahmad Ali S/O Abdul Razzaq (Ward Orderly) appointed on 25-01-2017 and submitted his arrival report on 26-01-2017 at DHO Office Nowshera for official duty, but after that he has never been seen on his duty.

The report submitted by the Superintendent and Incharge Record Section DHO Office Nowshera is based upon facts.

RECOMMENDATION

As Mr. Ahmad Ali S/O Abdul Razzaq (Ward Orderly) is in probation period, so as per para no. 02 of his appointment order his performance is not satisfactory, so he is recommended for termination from the service.

*Office*  
*Agreed*  
*Report of D.DHO*  
*is the*  
*DDHO Nowshera*  
*is*  
*issue the*  
*report*  
*all the*  
*to*  
*be*  
*sent.*

Deputy District Health Officer  
Nowshera

*1/1/10*  
*29/3/2017*

Date: 21-03-2017







Vm

for the month of

2017

09

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Total No. of Days

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(20)

for the month of

2017

Sept

21

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Total No. of Days

Remarks

(20)

*[The main body of the calendar is filled with handwritten entries, many of which are crossed out with large 'X's. The entries consist of letters (P, D) and numbers (1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12) arranged in columns corresponding to the dates. There is a significant amount of scribbling and correction throughout the page.]*

Found Absent 21  
white marks of 2017



**OFFICE OF THE DISTRICT HEALTH OFFICER NOWSHERA**

Phone & Fax: 0923-580759

E-Mail: nowshera.edoh@gmail.com

**OFFICE ORDER**

On recommendation / approval of departmental selection committee, Mr. Ahmed Ali S/O Abdul Razzaq Mohallah Samandar Garhi, Nowshera Kalan District Nowshera is hereby appointed as Ward Orderly BPS-04 against the vacant post under the control of DoH (BHUs) District Nowshera with the following terms and conditions.

1. The appointment shall be subject to the Medical fitness and initially on probation for a period of 01-years.
2. The services can be dispensed with during the probation period on unsatisfactory performance.
3. The appointment will be governed by such rules and order issued by the Government from time to time.
4. In case of acceptance, he should submit his arrival report within 07-days.

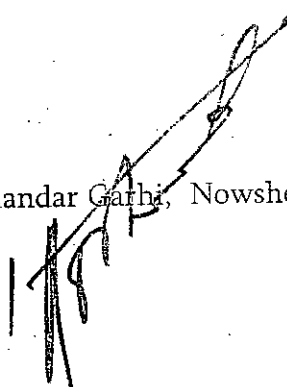
Sd \_\_\_\_\_  
District Health Officer  
Nowshera

Date: 25/01/2017

No. 933-36/ DHO NSR

Copy forwarded to the:

1. Senior District Accounts Officer Nowshera:
2. Accounts Section DHO Office Nowshera.
3. Mr. Ahmed Ali S/O Abdul Razzaq Mohallah Samandar Garhi, Nowshera Kalan District Nowshera.
4. Office record.

  
District Health Officer  
Nowshera



Entries on this page should be renewed or re-attested at least every five years and the Signature to lines 9 and 10 should be dated.

Name: Mr. Ahmed Ali

Religion: Muslim

Residence: Village Mohallah Samanda Garbi, Nowshera  
Kalam Tehsil and District Nowshera



Father's name and residence: Mr. Abdul Razzaq

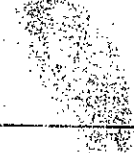

Date of birth by Christian era as early as can be ascertained: 07-01-1994


Exact height by measurement: 5' - 4"

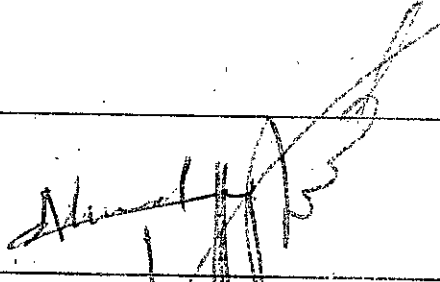
Personal marks for identification: NIL

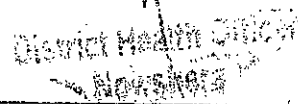
Left hand thumb and Finger impression (Non-Gazetted) officer:

Little Finger:  Ring Finger: 

Middle Finger:  Fore Finger: 

Thumb: 

Signature of Government Servant: 

Signature and designation of the head of the office, or other Attesting officer: 

District Health Officer  
Nowshera



Designation of the office Signifying officer ernation of 1 to 8	10 Date of termination or appointment	11 Reason of termination (such as promotion, transfer, dismissal, etc.)	12 Signature of the head of the office or other attesting officer	13 Leave		14 Signature of the head of the office or other attesting officer.	15 Reference to any recorded punishment or cesure, or reward or praise of the Government Servent
				Nature and dura- tion of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debtible to another Government		

Appointed as Ward Officer in BPS-04  
under the control of DHO Nowshera, vide  
D.H.O. Nowshera office order no: 933-36/  
DHO NBR, dated 25-01-2017

*[Signature]*  
District Health Officer  
Nowshera

Resumed duty  
on 26-1-2017  
*[Signature]*  
District Health Officer  
Nowshera

TR <sup>now</sup> 25/1 S-I M/Sed  
*[Signature]*

TR# SUB dt 7/3/17  
Action of P&A WPF  
26-1-17 to 31-1-17 R. 2898/

~~TR~~  
Reference this office order *[Signature]*  
bearing reference no. 933-36/DHO/NSR  
dated 25-1-2017 on account of appointment  
of Mr. Ahmad Ali S/O Ahsan Raza  
notably same Mr. Ahmad Ali S/O Ahsan Raza  
Kala as Ward Officer & by withdrawal of  
duty to unsatisfactory performance and not  
to be considered for promotion.





Registered

OFFICE OF THE MEDICAL SUPERINTENDENT DHQ; HOSPITAL  
NOWSHERA  
PHONE NO.0932644220,9220023 FAX NO.0932644220

No. 4260 Dated Nowshera the, 20/09/2017.

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 840

Dated 17-10-17

From:- The Medical Superintendent,  
DHQ Hospital Nowshera.

To:- The Registrar,  
Khyber Pakhtun Khwa Service Tribunal,  
Peshawar.

Subject:- COURT CASE

Reference your notice received to this office (Photo Copy attached)

It is for your kind information that the appointment ,withdrawal of  
Appointment In respect of Mr.Ahmed Ali S/O Abdul Razzaq made by District Health  
Officer,Nowshera which is not related to this office.

Therefore it is requested that the same may kindly be sent to District Health  
Officer,Nowshera .

Put up to the court  
with relevant appeal.

[Signature]  
17/10/17.

[Signature]

[Signature]  
Medical Superintendent,  
DHQ Hospital Nowshera.

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

Service Appeal No. 851/2017

Mr. Ahmad Ali

VS

Govt of KPK

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

**RESPECTFULLY SHEWETH:**

**Preliminary Objections:**

(1-6) 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. While para-1 of the appeal is correct as mentioned in the main appeal of the appellant.
- 2 Incorrect. While para-2 of the appeal is correct as mentioned in the main appeal of the appellant.
- 3 Incorrect. While para-3 of the appeal is correct as mentioned in the main appeal of the appellant.
- 4 Incorrect. The appellant has good cause of action.

**GROUND:**


- A) Incorrect. While Para-A of the ground of appeal is correct as mentioned in the main appeal of the appellant.
- B) Incorrect. While Para-B of the ground of appeal is correct as mentioned in the main appeal of the appellant.
- C) Incorrect. While Para-C of the ground of appeal is correct as mentioned in the main appeal of the appellant.
- D) Incorrect. While Para-D of the ground of appeal is correct as mentioned in the main appeal of the appellant.

- E) Incorrect. While Para-E of the ground of appeal is correct as mentioned in the main appeal of the appellant.
- F) Legal.

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

**APPELLANT**

Through:

  
(M. ASIF YOUSAFZAI)  
ADVOCATE, PESHAWAR.

**AFFIDAVIT**

It is affirmed and declared that the contents of appeal and rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from Hon'able tribunal.

  
DEPONENT

~~ATTESTED  
Oath Commissioner  
Zahoor Khan Advocate  
Distt: Court Peshawar~~

- 3 JAN 2018

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 698 /ST

Dated 13 / 04 / 2021

To


The District Health Officer,  
Government of Khyber Pakhtunkhwa,  
Nowshera.

Subject: -

JUDGMENT IN APPEAL NO. 851/2017, MR. AHMAD ALI.

I am directed to forward herewith a certified copy of Judgement dated 24.02.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD,  
PESHAWAR.

Regd  
No.

S-03

Appeal No. 851 of 20 17

Ahmad Ali Appellant/Petitioner

Versus

Seyi Health Pesh Respondent

Respondent No. 4

Notice to: - Superintendent DHQ Hospital  
Nowshera

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal \*on 10-10-17 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No. .... dated.....

Given under my hand and the seal of this Court, at Peshawar this .....

Day of ..... 9. 20 17

Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

- Note:
1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
  2. Always quote Case No. While making any correspondence.