

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 150/2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 4654

Date 31/3/2023

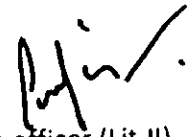
Dr. Niaz Ali Khan-----Appellant

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary &
Others

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Section officer (Lit-II)
Govt: of Khyber Pakhtunkhwa
Health Department
Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 150 OF 2023

Dr. Niaz Ali Khan.Appellant

Versus

Govt. of Khyber Pakhtunkhwa through Chief Secretary to Govt. Khyber Pakhtunkhwa and others.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 01 TO 04

Respectfully Sheweth:

Preliminary Objections:-

1. That the Appellant has no cause of action or locus standi to file the instant Appeal.
2. That the Appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant Appeal is against the prevailing Law and Rules.
4. That the Appeal is not maintainable in its present form.
5. That the Appellant has filed the instant Appeal with mala-fide intention hence liable to be dismissed.
6. That the Appeal is badly time barred.
7. That the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.
8. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
9. The impugned transfer Notification dated 06-10-2022 has been issued in accordance with Section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973.

ON FACTS:

1. No comments.
2. Pertains to record. However, it is worth to mention that the appellant was given look after charge of the post of DHO Karak as a stop gap arrangement till the posting of the proper incumbent. The appellant could not claim any benefit or vested right on the basis of look after charge of a higher post of DHO.

3. Incorrect. A complaint regarding ghost doctors in Karak supported by acting DHO Karak (Appellant) for his personal benefits was submitted before DGHS who constituted an inquiry committee comprising of Dr. Hidayat Ullah Deputy Director (Dev/ Coord-I), DGHS and Dr. Muhammad Saleem MS DHQ Hospital Karak. The inquiry committee conducted an inquiry in this respect and recommended that the DHO Karak (Acting) seems to have closed his eyes on these irregularity and negligence, being responsible for the above facts may be transfer from the post of DHO therefore, the appellant was relieved by the competent authority (Chief Minister Khyber Pakhtunkhwa) vide Notification dated 23-09-2022 whereas Dr. Shoukat Sohail (BS-20) of Managemnet Cadre was posted against the post of DHO Karak. The appellant was transferred from the post of Deputy DHO Karak and directed to report to Directorate General Health Services, Khyber Pakhtunkhwa vide Notification dated 06/10/2022 in the public interest.
4. Incorrect. As per para 02 and 04 of S&GAD letter No. SORII(S&GAD)5(29)/97-II dated 22-07-1998 that when anonymous / Pseudonymous communication contained allegations of a specific nature having a ring of truth, then these may be inquired. Therefore, the respondents conducted a fact finding inquiry on the allegations made therein the complaint.
5. Already explained in para 04 above.
6. Incorrect. In fact vide Notification dated 10-09-2021 a fact finding inquiry committee was constituted who conducted a fact finding inquiry whereas the provisions of Government servants (Efficiency & Disciplinary) Rules 2011 is applicable only on the formal inquiry proceedings.
7. Incorrect. Already replied in para 03 above.
8. Pertains to record.
9. Pertains to record.
10. Incorrect. Already explained in the preceding paras.
11. Incorrect. Already replied in para 03 above.
12. Incorrect. Already replied in para 03 above.
13. Already explained in para 03 above. It is further to clarify that he was given look after charge of the post of DHO Karak till the posting of the proper incumbent and vide order dated 23-09-2022 proper incumbent i.e Dr. Shoukat Sohail (BS-20) of management cadre has been posted as DHO Karak who has even not been cited as party in the instant case.
14. Incorrect. Already replied in para 03 above.
15. Pertains to record. However, the transfer / posting orders / Notifications have been issued by the replying respondents in accordance with law and rules.



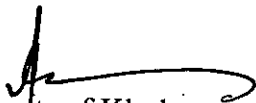
16. Incorrect. The appellant is not an aggrieved person as no vested rights of the appellant have been violated by the respondents as according to para 02 of the appeal he was posted as Deputy DHO Karak vide order dated 29-07-2020 therefore, he has completed normal tenure of two years before issuance of the impugned Notification dated 06-10-2022. Even otherwise under section 10 of the Khyber Pakhtunkhwa civil servant Act 1973 a civil servant may be transferred at any time anywhere as deemed appropriate by the competent authority to utilize his services.


ON GROUNDS:

- A. Incorrect. The impugned Notifications dated 23-09-2022 and 06-10-2022 have been issued in accordance with law, rules and policy of provincial government.
- B. Incorrect. Already replied in para 06 of the facts.
- C. Incorrect. Already replied in paras 04 & 05 of the facts.
- D. Incorrect. Already replied in para 03 of the facts.
- E. Incorrect. Already replied in para 16 of the facts.
- F. Incorrect. The appellant has not been penalized as he has been transferred which comes within terms and conditions of his service.
- G. Para-G is legal needs no comments however the replying respondents also seek the same relief at the time of arguments.

PRAYER:

It is therefore most humbly prayed that on acceptance of the comments, the instant appeal of the appellant may very graciously be dismissed with costs.


Secretary to Govt. of Khyber
Pakhtunkhwa Health Department
Respondent No. 01 & 02


Director General Health Services
Khyber Pakhtunkhwa
Respondent No. 03

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 150/2023

Dr. Niaz Ali Khan -----Appellant

VERSUS

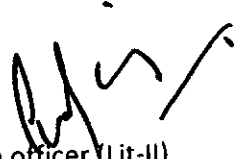
Government of Khyber Pakhtunkhwa through Chief Secretary &
Others

AFFIDAVIT.

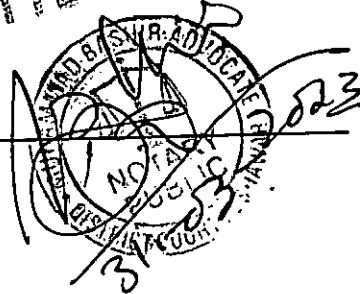
I Mohammad Tufail Section Officer (Lit-II) govt. of Khyber Pakhtunkhwa Health Department do hereby solemnly affirm and declare that the joint Para-wise comments in Service Appeal No. 150/2023 at Page-1-4 is submitted on behalf of respondents is true and correct to the best of my knowledge, belief and that nothing has been concealed from this Hon'ble Court.

Identified by:-

Addl: Advocate General,
Khyber Pakhtunkhwa


Section officer (Lit-II)
Govt: of Khyber Pakhtunkhwa
Health Department
Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

ATTESTED.



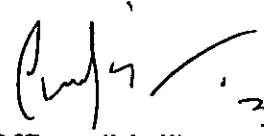
BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

EXECUTION PETITION NO. 157/2023 IN SERVICE APPEAL No. 150/2023

DR. NIAZ ALI KHAN VS CHIEF SECRETARY AND OTHERS

AUTHORITY LETTER

Mr. Muhammad Tufail Section Officer (Litigation-II) Health Department Khyber Pakhtunkhwa, Peshawar are hereby authorized to attend the case on behalf of Secretary Health and to sign any document on our behalf or record any statement or do any act for defense of the instant Service Appeal up to Service Tribunal, Khyber Pakhtunkhwa.

 31/3/23

**Section Officer (Lit-II)
(Health Department)**

**Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa**