

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 726/2016

Date of Institution ... 18.07.2016

Date of Decision ... 15.12.2017

Nasir Iqbal S/O Lal Gohar, R/O village Yaghi Ghulam Khel, Tehsil Takht-e-Nasrati & District Karak. .. (Appellant)

VERSUS

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

MR. FARMANULLAH KHATTAK, ... For appellant
Advocate

MR. KABEERULLAH KHATTAK, ... For respondents.
Addl. Advocate General

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. MUHAMMAD AMIN KHAN KUNDI, ... MEMBER

JUDGMENT

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

FACTS

2. The appellant was appointed Operator Cum Valve Man on 15.01.2016. His appointment order was cancelled on 23.02.2016, against which the appellant filed Writ Petition before the Worthy Peshawar High Court on 29.02.2016. The same was decided on 21.03.2016 for want of jurisdiction. Thereafter, the appellant filed

departmental appeal on 05.04.2016 which was not responded to and thereafter, he filed the present service appeal on 18.07.2016.

ARGUMENTS.

3. At the very outset, the learned Addl. Advocate General objected to the maintainability of this appeal on the ground that the appellant is not a civil servant and also on the ground that the present appeal is time barred.

4. To rebut this objection, the learned counsel for the appellant argued that the appellant is a civil servant as is apparent from the order of the Worthy Peshawar High Court dated 21.3.2016. While defending the objection of limitation, he argued that for the purpose of limitation for the departmental appeal, the reckoning date would be the decision of the Worthy Peshawar High Court. That his departmental appeal was within time and this service appeal is, therefore, also within time. He relied upon some judgments of the Superior Courts in order to augment his arguments that when the departmental appeal is not responded to then even the time barred departmental appeal would become within time. In this respect he specially relied upon a judgment reported as 2004-SCMR-527. The learned counsel for the appellant also relied upon judgments reported as 1995-SCMR-950, 1999-SCMR-988, PLD 2002-Supreme Court-84, 2016-SCMR-189 and 2002-SCMR-82.

CONCLUSION.

5. This Tribunal is first to decide the issue of limitation and if the appeal is held to be within time, then the merits of the appeal would be touched. Admittedly there is no application for condonation of delay in the present appeal. The learned

counsel for the appellant is of the view that the appeal is within time, therefore, there was no need of application for condonation of delay. The learned counsel for the appellant has not been able to show any law or judgment in which pursuing a remedy before wrong forum and the decision of the wrong forum would provide *terminus a quo* for the purpose of limitation. It is now a settled issue after the issuance of judgment of the Larger Bench of the august Supreme Court of Pakistan reported as PLD-2016-Supreme Court-872, that time consumed before wrong forum on any ground including wrong advice of the counsel, *actus curiae*, ignorance of law, negligence are *per se* no ground for condonation of delay. In order to get the relief of condonation, the appellant would have to specifically mention the ground which misled the counsel or the appellant to have resorted to wrong forum. The appellant has not moved any application for condonation of delay much less any reason for the delay. In the judgment relied upon by the learned counsel for the appellant reported as 2004-SCMR-527, the Tribunal accepted the application for condonation of delay but no application for condonation of delay has been moved by the present appellant. In the judgment reported as 1995-SCMR-950 the departmental appeal was decided which is not the case in hand. In the judgment reported as PLD-2002-Supreme Court-84 there was also an application for condonation of delay. In the judgment reported as 2016-SCMR-189, the Worthy High Court had sent the appeal to the Service Tribunal which is not the case in hand. In the judgment reported as 2002-SCMR-82, there was also an application for condonation of delay. But now after the judgment of the Larger Bench of the august Supreme Court of Pakistan as mentioned above, the condonation on the ground of pursuing the remedy before wrong forum would be decided on the basis of criteria laid therein which is missing in present appeal. Regarding the objection of jurisdiction as raised by the learned AAG, this Tribunal is not in agreement with the



learned AAG because the Worthy High Court has decided that the appellant is a civil servant.

6. Consequently, this appeal being time barred is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

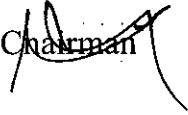
Niaz Muhammad Khan
(NIAZ MUHAMMAD KHAN)
CHAIRMAN

ANNOUNCED
15.12.2017

28.11.2017

Counsel for the appellant and Mr. Ziaullah, DDA for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 15.12.2017 before the D.B


Member


Chairman

15.12.2017

Counsel for the appellant and Mr. Kabeerullah Khattak, Addl. Advocate General for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, this appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

MEMBER


CHAIRMAN

ANNOUNCED
15.12.2017

13.03.2017

Junior counsel for appellant and Mr. Naveed Ahmed, Junior Clerk alongwith Mr. Muhammad Adeel Butt, Additional AG for respondents present. Clerk counsel for appellant requested for adjournment as senior counsel for appellant is not in attendance today. Adjournment granted. To come up for arguments on 12.07.2017 before D.B.

(M. Aamir Nazir)
MEMBER

(ASHFAQUE TAJ)
MEMBER

12.07.2017

Junior to counsel for the appellant and Asstt. AG for the respondents present. Requested for adjournment as senior counsel for the appellant is busy in Peshawar High Court. Adjourned. To come up for arguments on 17.11.2017 before the D.B.

(Gul Zeb Khan)
Member(E)

(M. Amin Khan Kundi)
Member(J)

17.11.2017

Counsel for the appellant and Addl. AG for the respondents present. Arguments partly heard. To come up for further arguments on 28.11.2017 before this D.B.


Member

Chairman

726/2016


22.09.2016

None present on behalf of the appellant. M/S Afsar Khan, Assistant and Muhammad Ismail, Sub-Engineer alongwith Additional AG for respondents present. Written reply by respondents not submitted. The learned Additional AG requested for time to file written reply. Request accepted. To come up for written reply/comments on 08.11.2016 before S.B.


Member

08.11.2016

Clerk to counsel for the appellant and Mr. Naveed, Junior Clerk alongwith Addl. AG for respondents present. Written reply submitted by respondents No. 1 and 2. To come up for written reply of respondent No. 3 on 19.12.2016 before S.B.


Member

19.12.2016

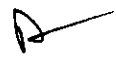
Clerk to counsel for the appellant, Mr. Muhammad Ismail, Sub Engineer and Naveed Ahmad, Junior Clerk alongwith Assistant AG for respondents present. Written reply already filed. Clerk to counsel for the appellant submitted rejoinder which is placed on file. To come up for arguments on 13.03.2017.

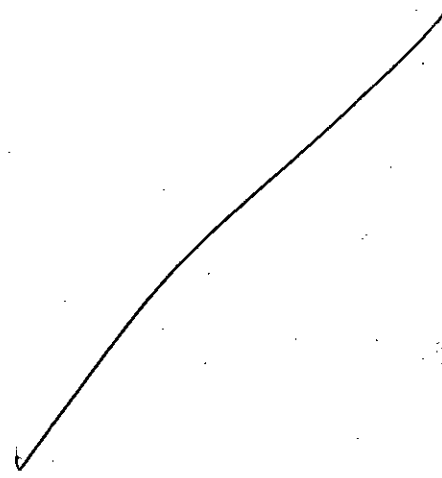

Member

21.07.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was appointed as Operator-cum-Valve-Man (BPS-3) on 15.01.2016 in pursuance of directions of Peshawar High Court passed in Writ Petition No. 232-B of 2010 dated 29.01.2015. Health and age certificate as required under the terms of appointment was submitted through registered post on 21.01.2016. The Locals did not allow him to assume the charge of the post as the scheme was disputed and even a murder had taken place on account of dispute in the scheme. He further argued that he requested the XEN concerned and also approached the District Police Officer for help to actualize his posting but to no avail and his appointment order was cancelled on 23.02.2016 on the pretext of non-arrival for duty. The said order was challenged in the Peshawar High Court under Writ petition No. 164-B/2016 who vide order dated 21.03.2016 directed to approach the competent forum where-after departmental appeal dated 05.04.2016 was made to the Superintendent Engineer PHE which remained unattended despite lapse of statutory period, hence the instant service on 18.07.2016. The learned counsel for the appellant argued that no inquiry was conducted in the case nor was the appellant heard in person before condemning him by withdrawal of his appointment vide impugned order dated 23.02.2016. He prayed for admitted the appeal for regular hearing.

Point urged at the Bar needs further consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days where-after notices be issued to the respondents for written reply/comments for 22.09.2016 before S.B.


Member

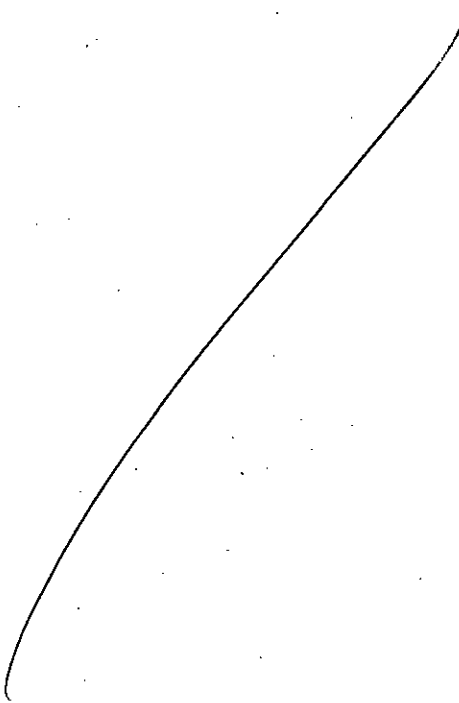


Appellant Deposited
Security & Process Fee

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 726/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	18/07/2016	<p>The appeal of Mr. Nasir Iqbal presented today by Mr. Farmanullah Khattak Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on. <u>21-7-16</u></p> <p style="text-align: right;">MEMBER</p> 

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

Service Appeal No. 726 of 216

Nasir Iqbal

...Appellant

Versus

Government of Khyber Pakhtunkhwa through Secretary Public
Health Engineering, Peshawar and others. (Respondents).

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S.No.	Description of Documents	Annexure	Pages
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2.	Address of parties.		7
3.	Copy of the Writ Petition No-232-B of 2010 & Judgment, dated, 29-01-2015.	A & B	8-14
4.	Copy of the appointment letter No.11-16/E-10, dated, PHE Karak the 15/01/2016.	C	15
5.	Copy of the Health Age Certificate, Arrival Report, and Registry Receipt dated, 21-01-2016.	D, E & F	16-18
6.	Copy of the Application to the District Police Officer.	G	19
7.	Copy of the application requesting for transfer and receipt of registry.	H & H/1	20-21
8.	Copy of the impugn order of recalling/cancellation, dated, 23-02-2016.	I	22
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Your humble appellant,

Through


(Farmanullah Khattak),
Advocate High Court, Peshawar.

(2)

**BEFORE THE PROVINCIAL SERVICE TRIBUNAL KHYBER
PAKHTUNKHAWA, PESHAWAR**

**Khyber Pakhtunkhwa
Service Tribunal**

Service Appeal No. 726 of 2016

Diary No. 712

Dated 18-7-2016

Nasir Iqbal S/O Lal Gohar, R/O Village Yaghi Ghulam Khel, Tehsil
Takht-e-Nasrati & District Karak. (Appellant).

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Public Health Engineering, Peshawar.
2. Superintending Engineer Public Health Engineering Circle, Kohat Division, Kohat.
3. Executive Engineer Public Health Division, Karak.

..... (Respondents).

APPEAL under Section-4 of the Khyber Pkhtunkhwa Service Tribunal Act, 1974, against order No. 36-41/E-10, Dated, 23-02-2016, vide, which offer of appointment has been recalled/cancelled as per Clause-4 of the terms and Condition of the order, dated, 15-01-2016. Against which petitioner initially approach to the Peshawar High Court Bannu, Bench in W.P. No. 164-P/2016 which was dismissed on 21-03-2016, however, Appellant was advised to approach proper forum admittedly being Civil Servant. Appellant then filed Departmental Appeal/Review Petition to the next higher authority (S.E. PHE Circle), vide, Diary No. 05, dated, 5-04-2016, however, the Appellate Authority did not decide the appeal/representation within stipulated period of Ninety days , hence, the instant Appeal before this Hon'ble Tribunal.

PRAYER-IN-APPEAL

THAT on acceptance of the instant Service Appeal, this Hon'ble Tribunal may graciously be pleased to set-aside the impugn order of re-calling/cancellation order, dated, 23-02-2016, passed by the Executive Engineer Public Health Engg. Division, Karak, by

Filed to Day
Registrar
18/7/16

declaring the same being illegal, void-ab-initio and of no legal effect and the appellant may be re-instated with all back benefits of Service and wages OR any other remedy deemed proper and appropriate may also be allowed.

Respectfully Sheweth:

The appellant very humbly submitted as under:-

1. That appellant is resident of Yaghi Ghulam Khel, Tehsil Takht-e-Nasrati, District Karak, initially filed Writ Petition No. 232-B of 2010, with the prayer to consider petitioner/appellant(herein) for appointment to the post of Mate(BPS-2) vacated by his father on retirement from service i.e. 20-04-2010. (Copy of the Writ Petition & Judgment is hereby enclosed **Anne. A & B**).
2. That in pursuance of the Judgment of the Peshawar High Court Bannu Bench and on the recommendation of the Departmental Selection Committee, appellant has been appointed on 15-01-2016, as an Operator Cum Valve Man against vacant post on Water Supply Scheme Silab Din Korona Shenava Gudi khel on merit basis Retire Son (Quota) in BPS-03, strictly in accordance with the spirit of the judgment. (Copy of the appointment letter is enclosed **Annex-C**).
3. That appellant then obtained Health & Age Certificate issued by Medical Superiendent DHQ Hospital Karak on 21-01-2016 and submitted arrival report on the very date before the Executive Engineer Public Health Engg. Division Karak through Registered Post. (Copy of the Medical Certificate, Arrival Report & Registered receipt is hereby enclosed as **Annex-D, E, & F**).
4. That the land owners of the area where appellant has been appointed as a Operator-Cum-Valve-Man against vacant post on

Water Supply Scheme Silab Din Korona Shenava Gudi khel showed much annoyance and threatened appellant for dire consequences and would not allowed them to perform their duties over there. Against this open and serious threat of killing, appellant initially approach to the worthy District Police Officer, Karak for protection. (Copy of the Application is hereby enclosed **Annex-G**).

5. That beside that appellant also submitted an application to the competent authority to post them to another place, where, appellant would perform their duties as the land owners had openly threatened them to kill but to no avail. (Copy of the Application through Registered post is hereby enclosed as **Annex-H & H/1**).
6. That meanwhile, the locals of the scheme area where appellant has been appointed also put pressure over the appointing authority. The Appointing authority finally succumb to the pressure of the locals without any formal enquiry/show cause notice cancel/withdrawn the order of appointment, vide, order, dated, 23-02-2016, on the pretext that you did not avail the offer of appointment within 15 days and failed to submit arrival report to the office nor report to the place of duty. (Copy of the impugn order of cancellation is hereby enclosed **Annex-I**).
7. That appellant being aggrieved from the impugn cancellation order, dated, 23-02-2016, approach to the Peshawar High Court Bannu Bench through Writ Petition No. 164-B/2016 for declaring the impugn order being illegal, void-ab-initio and to restore/maintain the appointment order in accordance with the law. The Division Bench of the Hon'ble High Court was of the view that petitioner is admittedly Civil Servant and therefore approach to the proper forum. (Attested Copy of the Judgment in Writ Petition is hereby enclosed as **Annex-J**).

8. That after dismissal of the Writ Petition wherein appellant was directed to approach proper forum admittedly being Civil Servant, appellant then filed Review petition/Departmental Appeal within the meaning of Section-22 of the Civil Servant Act, 1973 to the next higher authority i.e. Superintendent Engineer Public Health Engineering Circle Kohat Division, Kohat but the same was not decided within stipulated period of time. (Copy of the Departmental Appeal is hereby enclosed as **Annex-K**).
9. That the appellant has illegally been terminated from service and thus been aggrieved from the impugn cancellation order, dated, 23-02-2016, without any formal enquiry and had thus been constrained to approach this Hon'ble Tribunal, inter-alias, on the following grounds:-

GROUND:

- a. That the order impugned herein is totally, illegal, un-lawful, arbitrary, fanciful, legally and factually incorrect and against E & D Rules, 2011 and thus are liable to be set-aside & thrown away by this Hon'ble Tribunal.
- b. That the appellant has not been treated in accordance with the law and the impugn order has been in slip-shot manner.
- c. That the impugn order is illegal and patent violation of rule of Audi-alteram partum because no opportunity was provided before passing the impugn order, that whether appellant failed to submit arrival report within 15 days.
- d. That the appointing authority totally overlook the arrival, medical report and the ground reality when the locals of the area threaten for dire consequences especially when this backdrop an application was submitted to the District Police Officer, Karak who onward recorded observation and marked the same to

Respondent No-3. Despite of which the appointment order of the appellant has been recalled/cancelled on the pretext that you did not avail the offer of appointment.

- e. That the appellant has been condemned un-heard and no show cause notice and no opportunity of personal hearing has been provided to the appellant, rather, the impugn cancellation order has been passed on serious threats of the locals of the area when already one murder has been taken place among the land owners over the appointment of the same where the scheme is situated.
- f. That the factual position and the grounds reality has totally been ignored by disbelieving the documentary proof in the form of charge report/arrival report, application to the District Police Officer and medical report especially when the same has been send with registered post.
- g. That the appellant was neither served any show cause notice about non-arrival to the duty stationed and no proper procedure had been adopted before passing the cancellation order of the appellant and appellant had been condemned un-heard, thus the impugn order of recalling offer of appointment is nullity in the eyes of law and liable to be struck down by this Hon'ble Tribunal on this score alone.
- h. That the Appellant was inducted in service after hectic litigation and after short span of time he has been deprived from the fruit of litigation by dispensing his service in order to deprived them for earning bread and butter to their starving children.
- i. That once the appellant has been appointed and thus he got the status of Civil Servant especially when got the medical report for the District Hospital, Arrival report after observing all codal formalities and he also reported to the place of duty and in this

backdrop the impugn order of cancellation/recalling of the impugn office order is highly illegal, un-lawful and unfair on the face of record.

- j. That the Appellant had never committed any act or omission which could be termed by not honoring the offer of appointment, albeit the way the order has been recalled/*rescinded* is totally unfair and against the Rules.
- k. That the Appellant has been condemned unheard, thus the order of recalling /*rescinding order* is violative of law, rules and the principles of natural justice.
- l. That the appellant will seek permission of this Hon'ble Tribunal to urge additional grounds at the time of argument of this appeal.

It is therefore most humbly prayed that on acceptance of the instant appeal, this Hon'ble Tribunal may graciously be pleased to set-aside the impugn re-calling/cancellation order dated, 23-02-2016 passed by the Executive Engineer Public Health Engineering Division, Karak by declaring the same being illegal, void-ab-initio and of no legal effect and the appellant may be re-instated with all back benefits of service and wages or any other remedy deemed proper and appropriate may also be allowed.

Nasir Iqbal
S/O Lal Gohar
Appellant,

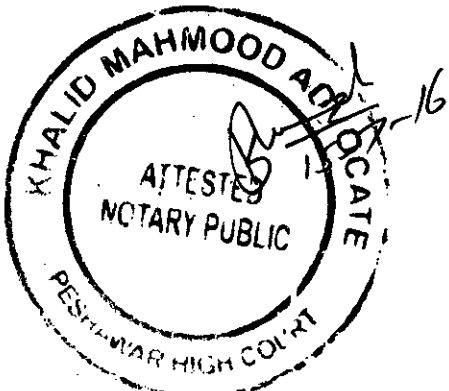
Through

[Signature]

(Farmanullah Khattak),
Advocate High Court, Peshawar.

Affidavit.

I, Nasir Iqbal S/O Lal Gohar, R/O Village Yaghi Ghulam Khel, Tehsil Takht-e-Nasrati & District Karak, do hereby solemnly declare on oath that the contents of the above Service Appeal as given by me are true and correct to the best of my knowledge and that nothing has been concealed or kept secret from this Hon'ble Tribunal.



[Signature]
Deponent.

7

BEFORE THE PROVINCIAL SERVICE TRIBUNAL KHYBER
PAKHTUNKHAWA, PESHAWAR

Service Appeal No. _____ of 216

Address of parties

Appellant:

**Nasir Iqbal S/O Lal Gohar, R/O Village Yaghi Ghulam Khel, Tehsil
Takht-e-Nasrati & District Karak**

Respondents:

- 1. Government of Khyber Pakhtunkhwa through Secretary
Public Health Engineering, Peshawar.**
- 2. Superintending Engineer Public Health Engineering Circle,
Kohat Division, Kohat.**
- 3. Executive Engineer Public Health Division, Karak.**

Your humble appellant,
Through

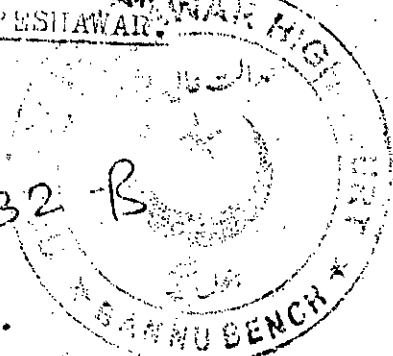


**(Farmanullah Khattak),
Advocate High Court Peshawar.**

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

8

A



Writ Petition No. 2513 of 2010.

Nasir Iqbal son of Lal Gohar resident of village Yaghi Ghulam Khel, Tehsil Takht Nasrati, District Karak.

..Petitioner

VERSUS

1. Government of Khyber Pakhtoon Khawa Province through Secretary Public Health Engineering Department, Peshawar.
2. Chief Engineer Public Health Engineering Department, Peshawar.
3. Superintending Engineer Public Health Engineering Circle, Kohat.
4. Executive Engineer, Public Health Engineering Division Karak.
5. Shams-uz-Zaman son of Sher Jan resident of village Jehangiri Tehsil Takht Nasrati District Karak.

..Respondents

ATTESTED

EXAMINER
Peshawar High Court,
Bannu Bench

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

Respectfully Sheweth:

The petitioner respectfully submits as under:-

1. That the petitioner's father namely Lal Gohar was serving as Mate has been retired from service on 20.4.2010 vide Annexure 'A'.

Attested
[Signature]
2

9



2.

That according to the Standing instructions issued by the Provincial Government in the Service and General Administration Department Peshawar which is reproduced below :-

"That in a meeting/representation held on 12.5.1996 under the Chairmanship of Provincial Minister, the following decision was arrived at Appointment of children of Class-IV on retirement.

"The facility of appointment of one child of the retiring Civil servant in BPS-1 to BPS-4 may be allowed against the posts in BPS-1 to BPS-4, provided that they have the prescribed qualifications for the post subject to the condition."

That there is no child of the retiring official already employed under the Provincial Government. The proposal was approved vide Annexure-B.

Attested

3.

That accordingly the petitioner has submitted an application vide Annexure 'C' accompanied by his Matriculation Certificate vide Annex: 'D'

4.

That the respondent No.3 on the recommendation of M.P.A. Malik Qasim PP-41 Karak and Chief Minister Khyber Pukhtoon Khawa Province has appointed respondent No.5 as Mate in the office of S.D.O. Public Health Engineering Sub Division Takht Nasrati against the vacant post in BPS-2 (Rs.3055-100-6035) plus usual allowances as admissible under the rules vide Annexure 'E' and has ignored the petitioner.

ATTESTED

EXAMINER
Peshawar High Court,
Bannu Bench

12/7/2

22

[Signature]

5. That the petitioner is highly aggrieved and is finding no other adequate remedy in the matter and hence this Writ Petition inter-alia on the following grounds :-

GROUNDS.

- A. That the instructions issued by the Provincial Government in S and GAD regarding appointment of one child of retiring civil servant in BPS-1 to BPS-4 (Annexure 'B') are quite clear and has to be acted upon under all circumstances. The petitioner being the son of an Ex-Mate of Public Health Engineering Department Peshawar and also being qualified and eligible was entitled for appointment against the post of Mate vacated by his father on his retirement but has been ignored and respondent No.5 has been appointed on the recommendation of M.P.S. Malik Qasim PF-41 Karak and Chief Minister Khyber Pukhtoon Khawa Province which is illegal under the law and is liable to be set aside.

- B. That the impugned appointment order of respondent No.5 dated 15.6.2010 is illegal, malafide, without jurisdiction and without lawful authority which is liable to be set aside.

- C. That the petitioner seeks leave of this Honourable Court to rely on additional grounds at the time of arguments.

It is, therefore, prayed that on acceptance of this Writ Petition, the impugned appointment order

ATTESTED

EXAMINER
Peshawar High Court,
Bannu Bench

FILED TODAY
22 JUN 2010

dated 15.6.2010 of respondent No.5 may be set aside and the respondents may be directed to consider the petitioner for appointment on the post of Mate (EPS-2) vacated by his father on his retirement on 20.4.2010 to meet the ends of Justice.

Prayer for Interim Relief.

It is further prayed that the appointment order dated 15.6.2010 of respondent No.5 may be suspended till final decision of this writ petition.

Dated 21 /6/2010.

Aslam Khan Khattak
Petitioner

through

Aslam
(ASLAM KHAN KHATTAK)
ADVOCATE, PESHAWAR.

Books relied upon.

1. Constitution of Pakistan.
2. Any other law books on the subject matter.

Certificate.

Certified that no writ petition on the same subject has been filed prior to the instant one.

Aslam
Advocate.

ATTESTED

Aslam
EXAMINER
Peshawar High Court,
Baran Bench

Aslam
22 JUN 2010

12



JUDGMENT SHEET
PESHAWAR HIGH COURT, BANNU BENCH
JUDICIAL DEPARTMENT

Writ Petition No.232 -B of 2010

JUDGMENT

Date of hearing.....29-01-2015.....

Petitioner(s) *Nasir Iqbal By Masood Iqbal Khattak*

Respondent(s) *By Sajid Rehman Khattak*
Addl. A.S.

MUHAMMAD YOUNIS THAHEEM, J.- Nasir

Iqbal, the petitioner, seeks constitutional jurisdiction of this Court praying:

“It is, therefore, prayed that on acceptance of this writ petition, the impugned appointment order dated 15.06.2010 of respondent No.5 be set aside and the respondents may be directed to consider the petitioner for appointment on the post of Mate (BPS-2) vacant by his father on his retirement on 20.04.2010 to meet the ends of justice.”

2. Brief and essential facts of the case are that father of the petitioner was appointed as Class-IV, Mate in respondents/ department and on attaining the age of superannuation, he was retired from service on 20.04.2010; that the petitioner moved application before the respondent No.3, to

Attested
[Signature]

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Peshawar High Court
Bannu Bench



appoint him as Class IV in 'retired persons' quota but in vain. Hence, the instant Writ Petition.

3. It would be appropriate that the grievance of the petitioner be considered by the department, strictly in accordance with the Policy of the retired government servants.

4. It may also be noted that in order to give effect to the Policy, the Administrative Departments should prepare and maintain the 'waiting list' of all the children of its retired government employees, who have applied for the service on the said quota. In fact, this list should be updated on quarterly basis and duly affixed at a conspicuous place in their respective offices, so that it is available to all. This would meet the ends of 'transparency' and 'natural justice', which are in fact the anchor sheets of 'good governance'.

5. Accordingly, for the reasons stated above, we direct respondent No.3, Superintending Engineer Public health Engineering Circle Kohat, to consider and decide the grievance of the petitioner. With it, the respondents should also display the waiting list of all the applicant children of the retired government employees in the manner stated hereinabove. The petitioner is directed to appear

Handwritten signature and scribbles on the left margin.

ATTESTED

EXAMINEE
Peshawar High Court.
Banni Barch

14
3



before Superintending Engineer Public health
Engineering Circle Kohat, respondent No.3 on
12.02.2015 at 10.00 a.m

6. In case, the petitioner cannot be granted
the relief sought, he shall be provided in writing the
reasons for the same. The copy thereof be also sent
to the Additional Registrar (Judicial) of this Court.

• This writ petition is disposed of accordingly.

Dt.29.1.2015.

Sd/- Yahya Afridi, J

Sd/- Muhammad Younis Thaheem, J

CERTIFIED TO BE TRUE COPY

Handwritten signature/initials

Registrar
Public Health Court Bannu Bench
According to Order Article 197 of
The Qanun-e-Shahadat Order 1984

Handwritten signature/initials

M.Azam

Sd/-	1945	_____
Date of Pre.	_____	_____
No of Copy	07-8	_____
Copying	41-	_____
Urgent	/	_____
Total	41-	_____
Date of Pre.	_____	6-2-15
Date Copy	_____	6-2-15
Date of Del.	_____	6-2-15
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OFFICE OF THE EXECUTIVE ENGINEER PUBLIC HEALTH
ENGINEERING DIVISION KARAK

No 11-16/E-10 Dated PHE Karak the 15/01/2016

OFFICE ORDER

In light Selection/recommendation of departmental selection committee interview of Class-IV held on 20-10-2015, with the approval of worthy Secretary to Govt. of Khyber Pakhtunkhwa PHED vide No. SO(Estt)/PHED/1-12/2014-15/Karak dated 06/01/2016 Mr. Nasir Iqbal S/O Lal Gohar r/o Ghulam Khel Tehsil T/Nasrati District Karak is hereby appointed as a Operator Cum Valve Man against the vacant post on Water Supply Scheme Silab Din Koroona Shenava Gudi Khel on merit basis under son quota in BPS-03 (6535-260-14335) @ Rs.6535 Per Month plus usual allowances as admissible under the rules from time to time with the following terms & conditions:-

- 1 All the terms & conditions of provincial Govt. services rules/policies in vogue will be applicable.
- 2 He services will be transferable in the jurisdiction of the office of PHE Division Karak.
- 3 He will have to produce health & age certificate from the Medical Superintendent of District Head Quarter Hospital Karak.
- 4 The offer of appointment is valid for (15) Fifteen days from the date of issuance.
- 5 He will be responsible for active struggle for water charges collection.
- 6 He will have to perform any duty on the scheme assigned to him by his incharge.
- 7 He will be responsible to look after all installed parts of the scheme.

If the offer of appointment is acceptable to the applicant, he will report arrival for duty to the office of Sub Divisional Office PHE Sub Division T/Nasrati with the validity period of the offer of appointment.

Note:-No TA/DA will be allowed for joining duty.

EXECUTIVE ENGINEER
PUBLIC HEALTH ENGG. DIVISION
KARAK

Copy is forwarded to:-

- 1 The Chief Engineer (South) PHED Peshawar for information please.
- 2 The Superintending Engineer PHE Circle Kohat for information please.
- 3 The SDO PHE Sub Division T/Nasrati. He is directed to verify N.I.C, Domicile certificate (if any).
- 4 The District Accounts Officer District Karak for information.
- 5 The D.A.O (Local) for information.
- 6 The applicant.

EXECUTIVE ENGINEER
PUBLIC HEALTH ENGG. DIVISION
KARAK

Attested
Rasool

Attested
Rasool

OFFICE OF THE MEDICAL SUPERINTENDENT DHQ HOSPITAL KARAK
HEALTH AND AGE CERTIFICATE

Name Nasir Iqbal
Father's Name Cal Aghar Khan
Nationality Pakistan
Cast Muhajir
Residence Dehganj Bawal P.O. Urojan Bawal
Teh. T. Nasrati Distt Karak.
Date of Birth 13-02-1980 Height _____

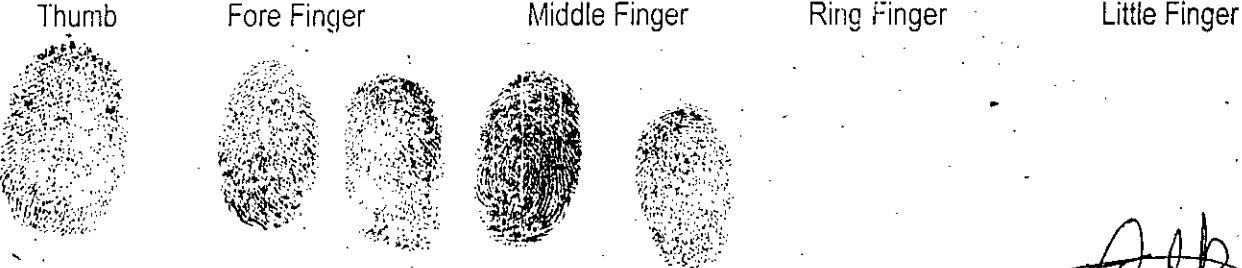
Personal Mark of Identification: A circular scar 1" below 1/2" lat. to \odot lip angle

HEAD OF OFFICE

I hereby certify that I have examined Mr/ Miss Nasir Iqbal
a candidate for employment in the Office of the Public Health Engg Div Karak
Department and cannot discover that he /she has any communicable disease
constitutional affection or bodily infirmity except nil
I do not consider his/her disqualification for employment in the _____
Department.

His/her age according to his/her own statement is 35 years and by physical
appearance in my opinion he/she is about Thirty five years of age.

LEFT/RIGHT HAND THUMB & FINGERS IMPESSION.



Attested
Zasood

Attested
[Signature]

[Signature] 21/01/2016
Medical Superintendent
DHQ Hospital Karak

Medical Superintendent
D.H.Q. Hospital
Karak

17



18

E

Arrival

To,

Executive Engineer,
Public Health Engrg. Division,
Karavali.

Subj: ARRIVAL REPORT.

In compliance of OEN P.H.E. Division
Karavali O/O NO-11-16/E-0 dated 15/01/2016,
I submit my arrival report on
21/01/2016 F.M.

Please accept my arrival and

Oblige.

DT: 21/01/2016.

Your obediently
Nasir Iqbal 21/1/016
(NASIR IQBAL)
S/O CAL GOHAR
VILL GHULAM KHIL
TEH-TIN DISSIT
KARK

Attested
Zinod

Attested

18

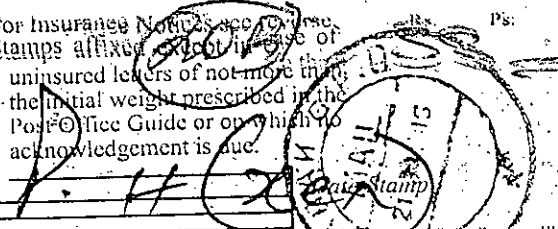
F

Answer

No. 564

For Insurance Notices see reverse. Stamps affixed subject to rate of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

Recd. a registered* addressed to



Initials of Receiving Officer R. H. [unclear] *Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) Rs. 1000 (in words)

If insured.

Insurance fee Rs. Rs. 10 Ps. 00 (in words) Weight 1000 Kilo Grams
Name and address of sender 21/1

Attested

جناب عالی!

ڈسٹرکٹ لوجسٹکس آفیسر رور

19

G

Answer

گزارش کی جاتی ہے کہ سائل کو پانچ سال کے بعد عدالت کے فیصلہ کی روشنی میں اپنے والد کی جگہ پر بطور آپریٹر کم چوکیدار کی آسامی پر تعیناتی بذریعہ آرڈر نمبر 11-16E-0 بتاریخ 15-01-2016 عمل میں لائی گئی۔ اب چونکہ سائل کو اپنی نوکری کا آرڈر مل چکا ہے پر جب سائل اپنی ڈیوٹی کیلئے تحت نصرتی (پابغی غلام خیل) ٹیوب ویل پر ڈیوٹی دینے کیلئے گیا تو وہاں پر چند آتشین اسلحہ سے لیس آدمی آئے جنوں نے سائل کو اور سائل کے خاندان کو جان سے مارنے کی دھمکی دی اور سائل کو وہاں ڈیوٹی کرنے سے منع کر دیا۔ اب سائل کیلئے وہاں ڈیوٹی کرنا خطرے سے خالی نہیں ہیں۔ سائل نے مزکورہ تمام صورت حال کا احوال متعلقہ ایکسین صاحب ضلع کرک کو آگاہ کیا لیکن کوئی شنوائی نہ ہوئی۔

لہذا آپ صاحبان سے التماس ہے کہ سائل کو چیف آفس میں ڈیوٹی کرنے کا حکم صادر فرمادیں تاکہ سائل اپنی سروس کو جاری رکھ سکے۔ سائل تاحیات آپ کیلئے دعا گو رہے گا۔

العارض

عین نوازش ہوگی

Attested
Zanood

Nasir Iqbal

ناصر اقبال (آپریٹر کم چوکیدار)

ولدیت: بعل گوہر خان

تحت نصرتی کرک

This seems a

serious issue. kindly look

into this, and also discuss

with me on phone, to have

Ex. Engr an amicable solution.

Pur Karak.

Secretary to Govt. of
Fakhtunkhwa

20/01/16

Attested



Annex

گھنڈی راولپنڈی اسکول کے نام سے لیا گیا ہے
خدا تعالیٰ

مفتی محمد رفیع صاحب

مفتی محمد رفیع صاحب نے اس وقت
بہاولپور میں مقیم ہیں۔ ان کا پتہ
بہاولپور، مدرسہ اسلامیہ، بازار گورنمنٹ
ہائیر سیکولر سکول، (Al-Bina) نزدیکی
کوئٹہ ریلوے اسٹیشن کے قریب ہے۔ ان کا
تعلق بدھو کوئٹہ کے مشہور ترین علماء
و محدثین میں سے ہے۔ ان کے علمی و
ادبی خدمات پر اعلیٰ ترین افسرانہ
ادب سے سرفراز ہیں۔ ان کی تصانیف
بہت سے ہیں۔ ان کے علمی و ادبی خدمات
پر اعلیٰ ترین افسرانہ ادب سے سرفراز
ہیں۔ ان کی تصانیف بہت سے ہیں۔

مفتی محمد رفیع صاحب

بہاولپور

Attested
Zaood

محمد رفیع صاحب
بہاولپور

Attested
JK

(22)

I
Amur

OFFICE OF THE EXECUTIVE ENGINEER
PUBLIC HEALTH ENGINEERING DIVISION KARAK.

OFFICE ORDER.

Mr: Nasir Iqbal S/O Lal Gohar appointed as Operator Cum Valve Man on Water Supply Scheme Silab Din Koroona Shenava Gudi Khel vide this office order No.11-16/E-10 dated 15/01/2016, in light of decision on the writ petition No.232-B/2010 announced by Peshawar High Court Bannu Bench Bannu on 29/01/2015 and recommendation of departmental selection committee on merit basis as per waiting list.

This offer of appointment was valid for fifteen (15) days of issue thereof i.e upto 30/01/2016 as per Class-IV of terms & conditions of letter of appointment.

Now as reported by SDO incharge of the scheme (his letter No.01/E-10 dated 03/2/2016 refers) the appointee failed to report arrival for duty either of scheme or in written in office to-date. Hence the aforementioned appointment order stands NUL AND VOID under condition IV thereof.

Due to non response offer of appointment by the official concerned, therefore the said appointment order of this office may be considered as cancelled.

EXECUTIVE ENGINEER
PUBLIC HEALTH ENGG: DIVISION
KARAK.

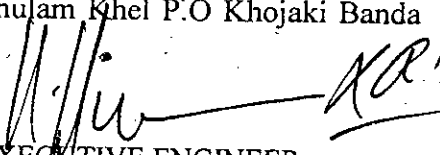
No. 36-41 /E-10

Dated PHE Karak

The 23 /02/2016.

Copy of the above office order is forwarded to:-

- 1 The Chief Engineer (South)PHED Peshawar for information please.
- 2 The Superintending Engineer PHE Circle Kohat for information please.
- 3 The Registrar Peshawar High Court Bannu Bench Bannu for information with reference decision of the writ petition No.232-B-2010 dated 29/1/2015 please.
- 4 The Additional Advocate General Peshawar High Court Bannu Bench Bannu for information with reference to above please.
- 5 The Sub Divisional Officer PHE Sub Division Tehsil T/Nasrati for information with reference to his report cited above.
- 6 Mr: Nasir Iqbal S/O Lal Gohar Khan r/o Yaghi Ghulam Khel P.O Khojaki Banda Tehsil T/Nasrati District Karak for information.


EXECUTIVE ENGINEER
PUBLIC HEALTH ENGG: DIVISION
KARAK.

23

7

Nasir



BEFORE THE PESHAWAR HIGH COURT, BANNU BENCH

Writ Petition No. 14-B/2016

Nasir Iqbal S/O Lal Gohar R/O Village Yaghi Ghulam Khel
Tehsil Takht-e-Nasrati, District Karak.Petitioner

Versus

1. Government of Khyber Pakhtunkhwa through Secretary
Public Health, Peshawar
 2. Superintending Engineer Public Health Engg; Circle
Kohat.
 3. Executive Engineer Public Health Division Karak
-Respondents

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

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth:

This Writ Petition rising up from the following facts:

1. That the petitioner is permanent resident of District Karak. (Copy of NIC is annexed as annexure "A").
2. That the father of the petitioner was retired as Mate from the respondents department on 20.04.2010 and the petitioner requested for appointment on the basis of retired son quota but after that the petitioner filed writ

2/11/16

Nasir Iqbal

ATTESTED
[Signature]
EXAMINER
Peshawar High Court
Bannu Bench

petition on 21.05.2010 which was disposed off on 29.01.2015.(Copy of the memo of writ petition and judgment is annexed as ; B;).

3. That on 15.01.2016 the respondent No.3 appointed the petitioner as Operator Cum Valve Man (BPS-03) against the vacant post on Water Supply Scheme Silab Din Koroona Shenawa Gudi Khell on merit basis under Retired son quota.(Copy of the Order is annexed as "C").
 4. That on 21.01.2016 after check up the medical fitness certificate issued by the Medical Superintendent DHQ Karak.(Copy of certificate is annexed as "D").
 5. That the petitioner sent arrival and medical certificate through registered post and also visited the office of the respondent No.3 and submitted an application before the district police officer karak.(Copy of the application and receipt is annexed "E").
 6. That on 23.02.2016 through Endst. No. 36-41 /E-10 PHE Karak the respondent No.3 cancelled the appointment order of the petitioner dated 15.01.2016 (Copy of the order is annexed "F").
- That being aggrieved from the impugned cancellation order dated 23.02.2016 of the respondent No.3 (Executive Engineer Public Health Engg: Division Karak),

ATTESTED
EXAMINER
Peshawar High Court.
Bannu Bench

the petitioner approaches this Honourable Court, inter alia, on the following grounds;

GROUND S:

A. That the father of the petitioner was retired from the respondent department in session 2010 and the petitioner filed writ petition which was disposed on 29.01.2015 whereby after one year the petitioner was appointed as Operator Cum Valve Man in shenawa Gudi Khel just to show the compliance of the order of the court to save his skin otherwise the competent authority refused the arrival report and medical fitness certificate of the petitioner, the land owner of the said scheme always present in the office of the respondent to cancel the order of the petitioner and thus developed some understanding between the land owner of the scheme and competent authority which is not admissible under the law, thus the impugned cancellation order dated 23.02.2016 of the respondent No.3 (Executive Engineer Public Health Engg: Division Karak) is void-ab-initio, illegal and is discriminatory in contravention of the provisions of the constitution of Pakistan, thus liable to be set aside.

B. That the impugned cancellation order dated 23.02.2016 of the respondent No.3 is not appealable to prudent

ATTESTED

EXAMINER
Peshawar High Court.
Banna Bench

mind and is against the article 4 and article 25 of the constitution of Pakistan 1973

C. That the petitioner always trying to do for his job thus why he report in the office of the district police regarding of his duty obstacle created by the land owner with collusion of the respondent No.3 so, impugned withdrawn order of the respondent No.2 is based on colourful exercise of powers, vested in the functionaries of the Government through Constitution of Pakistan, which is against the basic principles of the equality of citizens before the state.

D. That the impugned cancellation order dated 23.02.2016 is illegal, void-ab-initio, not sustainable in the eye of law, based on mala fide intention and without cogent reasons thus, liable to be set at naught.

It is, therefore, humbly prayed that on acceptance of this Writ Petition, the impugned cancellation order dated 23.02.2016 of the respondent No.3 may please be declared to be illegal, void-ab-initio and unsustainable and the respondents may further be directed to restore /Maintain the appointment order of the petitioner in accordance with law.

Any other efficacious remedy may also be granted in favour of the petitioner.

ATTESTED

EXAMINER
Peshawar High Court,
Bannu Bench

P. Anwar

Zawad

Petitioner
Through

Masood

Masood Iqbal Khattak
Advocate, Bannu

Dated: 29.02.2016

CERTIFICATE:

As per instructions of my client, certified that no such like **Writ Petition** has earlier been filed by the petitioner before this Honourable Court.

Masood

LIST OF BOOKS:

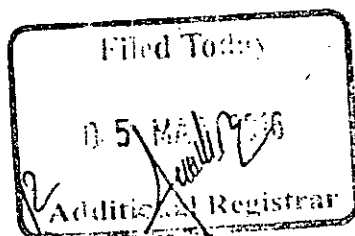
1. Constitution of Islamic Republic of Pakistan, 1973.
2. Case Law According to Need.

Advocate

Masood

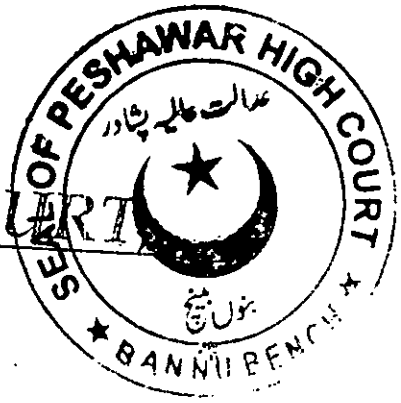
ATTESTED

EXAMINER
Peshawar High Court,
Bannu Bench



28

PESHAWAR HIGH COURT
BANNU BENCH.



FORM 'A'

FORM OF ORDER SHEET

Date of order or proceedings (1)

21.3.2016

Order or other proceedings with signature of Judge (s).

(2)

W.P No.164-B of 2016.

Present:

Masood Iqbal Khattak Advocate for petitioner.

IKRAMULLAH KHAN, J.- The record reveals that services of the petitioner were terminated and he was admittedly a civil servant. In view of Article 212 of Service Tribunal Act, this Court has got no jurisdiction to entertain such like grievance as Service Tribunal is functioning, therefore, this writ petition is dismissed. However, if the petitioner is otherwise entitle, may approach the competent forum.

Sd/- Ikramullah Khan, J

Sd/- Lal Jan Khattak, J

CERTIFIED TO BE TRUE COPY

Examiner

28/3/16
Peshawar High Court Bannu Bench
Authorised Under Article 87 of
The Qanun-e-Shahada' Order 1954



28/3/16

29

K

To

The Superintendent Engineer,
Public Health Engineering Circle
Kohat Division, Kohat.

O/o S.E.P.H.E. Circle Kohat

Annex

Dairy No. 05 dated 5-4-2016

Case No. SE/PHE/22

Subject: REVIEW PETITION/DEPARTMENTAL APPEAL AGAINST AGAINST ORDER
No. 36-41/E-10, DATED, 23-02-2016, VIDE, WHICH OFFER OF
APPOINTMENT HAS BEEN RECALLED/CANCELLED AS PER CLAUSE-4 OF
THE TERMS AND CONDITION OF THE ORDER, DATED, 30-01-2016.
AGAINST WHICH PETITIONER APPROACH TO THE PESHAWAR HIGH
COURT BANNU, BENCH THROUGH W.P. NO. 164-P/2016 WHICH WAS
DISMISSED ON 21-03-2016 AND PETITIONER WAS ADVISED TO
APPROACH PROPER FORUM.

Respected Sir,

With profound respect, I beg to submit few lines against the
recalling/cancellation order passed by the competent authority, vide
order dated. Feb. 23. 2016 and the instant representation has been
filed within time for your kind and sympathetic consideration:-

1. That appellant is resident of Tehsil Takht-e-Nasrati, District Karak, initially filed Writ Petition No. 232-B of 2010, with the prayer to consider petitioner/appellant(herein) for appointment to the post of Mate(BPS-2) vacated by his father on his retirement on 20-04-2010. (Copy of the Writ Petition & Judgment is hereby enclosed Annex-A & B).
2. That on the basis of Selection-recommendation of the Departmental Selection Committee, appellant has been appointed as a Operator Cum-Valve-Man (BPS-03) against vacant post on Water Supply Scheme Silab Din Korona Shenava Gudi khel on merit basis under Son(retire) Quota. (Copy of the appointment letter is enclosed Annex-C).
3. That appellant obtained Health & Age Certificate issued by Medical Superiendent DHQ Hospital Karak on 21-01-2016 and submitted Arrival report on the very date before the Exëcutive Engineer Public Health Engg. Division, Karak, through Registered Post. (Copy of the Medical Certificate, Arrival Report & Registered receipt is hereby enclosed as Annex-D, E, & F).
4. That the land owners of the area where appellant has been appointed as a Operator-Cum-Valve-Man against vacant post on Water Supply Scheme Silab Din Korona Shenava Gudi khel showed much annoyance and threatened appellant for dire consequences and would not allowed them to perform their duties over there. Against this open and serious threat of killing appellant approach to the worthy District Police Officer for protection. (Copy of the Application is hereby enclosed Annex-G).

NEW Karak
Arrival report
5/5/16

That even then appellant submitted an application to the competent authority to post them to another place, where, appellant would perform their duties as the land owners had openly threatened them to kill but to no avail. (Copy of the Application through Registered post is hereby enclosed as Annex-H & H/1).

6. That the locals of the area also put pressure over the appointing authority and finally without any formal inquiry, the competent authority without

Affected
[Signature]

any formal enquiry/show cause notice cancel/withdrawn the order of appointment, vide, order, dated, 23-02-2016, on the ground that you did not avail the offer of appointment within 15 days and failed to submit arrival report in the office and report to the place of duty. (Copy of the impugned order of cancellation is hereby enclosed **Annex-I**).

7. That appellant being aggrieved from the impugned cancellation order, dated, 23-02-2016, approach to the Peshawar High Court Bannu Bench through Writ Petition No. 164-B/2016 for declaring the impugned order being illegal: void-ab-initio and to restore/maintain the appointment order in accordance with the law. The Division Bench of the Hon'ble High Court was of the view that petitioner is admittedly Civil Servant and therefore approach to the proper forum. (Attested Copy of the Writ Petition is hereby enclosed as **Annex-J**). Therefore, through the instant **Representation/Appeal before the next higher authority in view of Section-22 of the Civil Servant Act, 1973 on the following grounds, inter alia**

GROUNDS:-

- A. That the appellant has not been treated in accordance with the law.
- B. That the impugned order has been cancelled/recalled without formal inquiry.
- C. That the impugned order is illegal and blatant violation of the Efficiency & Disciplinary Rules, 2011.
- D. That no opportunity or shows cause notice has been issued before passing impugned order.
- E. That, no proper procedure has been followed by the competent authority before passing order of cancellation.
- F. That the order has been passed with bias mind.
- G. That the factual position and grounds reality had totally been ignored.
- H. That the competent authority totally ignores the documentary proof.
- I. That there was bias attitude of the competent authority and appellant was condemned un-heard before the impugned order.
- J. That the appellant was neither served with any show cause notice about my absence by reporting authority.
- K. That the appellant has been appointed after hectic litigation and after short span of time he has been deprived from the fruit of litigation by dispensing his service in order to deprive them from earning bread & butter to their starving children.

It is therefore most humbly requested that on acceptance of the instant Appeal, your honour may graciously be pleased to set-aside the impugned order of re-calling/cancellation order, dated, 23-02-2016, passed by the Executive Engineer Public Health Engg. Division, Karak, by declaring the same being illegal, void-ab-initio and of no legal effect and the appellant may be re-instated with all back benefits of Service and wages.

Your's obediently
Nasir Iqbal

(Nasir Iqbal S/O Lal Gohar
R/O Yaghi Ghulam Khel, P/O Father Sher Banda
Tehsil Takht-e-Nasrati, District Karak.

بعدالت لہر چٹوڑی سرکاری سر جوئل لہارہ

Service Appeal

Appellant: 2 منجانب
بنام

Nasir Iqbal

مورخہ

مقدمہ

دعویٰ

جرم

vs
Govt. of K.P through Secretary
Health et.

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کلید کارروائی متعلقہ
آن مقام سرکاری سر جوئل لہارہ کیلئے حران لہارہ لہر چٹوڑی سر جوئل لہارہ

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سندر ہے۔

الرقوم

کا ماہ 07

2016

العہدہ

کے لئے ہے۔

22

Nasir Iqbal

مقام

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No.726/2016

Nasir Iqbal S/O Lal Gohar r/o Village Yaghi Ghulam Khel
Tehsil T/Nasrati & District Karak (Appellant)

Versus

Government Of Khyber Pakhtunkhwa through
Secretary Public Health Engineering Department,
Peshawar and others (Respondents)

Respectfully:

COMMENTS ON BEHALF OF RESPONDENTS
PRELIMINARY OBJECTIONS

- a. The appeal of appellant has not been based on facts.
- b. The appeal is barred by law and limitation.
- c. The appellant has wrongly invoked the jurisdiction of this honorable Tribunal.
- d. The appeal of appellant is not maintainable, as appellant has not been a civil servant.
- e. The appellant is estopped by his own conduct to file the appeal.
- f. The appeal is bad for mis-Joinder and non-Joinder of necessary parties.
- g. The appellant has not come to honorable Tribunal with clean hands.

FACTS

1. Correct to the extent that appellant was appointed as Operator Cum Valve Man (E/S-03) in Public Health Engg. Deptt. District Karak vide order No.11-16/E-10 dated 15/1/2016 against 25% retired employee son quota on merit in compliance with Peshawar High Court Bannu Bench order passed in writ petition No.232-B/2010 copy of the appointment order of appellant is enclosed as **(Annexure-A)**

2. Correct to the extent that appointment order of appellant as Operator Cum Valve Man was issued with terms and conditions enumerated in the order.
3. Incorrect, according to para No.4 of the terms & conditions of the appointment order was valid for 15-days and the appointee was under obligation to join duties within the stipulated period, but he did not join duties, therefore, the appointment order was cancelled vide order No.36-41/E-10 dated 23/2/2016 with copies to all concerned including Registrar High Court. Copy of order is enclosed as **(Annexure-B)**.
4. Incorrect, appellant was reluctant in joining duties and advanced lame excuses of threat to his life. Furthermore, the beneficiaries of the water supply scheme known, as Salib Din Koroona and the members of elected bodies lodged complaint to the effect that appellant has not joined duties and they are facing acute shortage of drinking water. The complaints were verified through SDO PHE Sub Division Takhti Nasrati and he reported that appellant has not joined duties, therefore, his appointment order was cancelled by the respondents. Copy of cancellation of appointment order is already enclosed as **Annexure-B**.
5. Incorrect, appellant did not join the duties within the stipulated period and advanced lame excuses of security threat. The appointment order was cancelled after verification of ground realities through responsible officer.
6. Incorrect, respondent cancelled the appointment order of appellant in view of the ill-conduct and incaution by appellant. Appointee/appellant did not fulfill the terms and conditions of the appointment order i.e joining duties within 15-days.
7. Incorrect, ignorance of law is no excuse. The appeal of appellant is badly time barred. Furthermore, appellants appointment order was cancelled and he had not yet joined duties, therefore, appellant had not acquired the status of civil servant to invoke the jurisdiction of this honorable Tribunal.

8. Incorrect, appellant appointment order was cancelled, therefore, his departmental appeal was not maintainable. Again departmental appeal was filed at very belated stage. The wife of appellant had also approached the Provincial Ombudsman but her prayer was turned down vide complaint No. 0630/06/2016/9057 dated 17/8/2016. Copy enclosed as **(Annexure-C)**.


9. Incorrect, the appointment order of appellant was cancelled as he had not assumed the duty, hence the appellant is not in status of civil servant, therefore, the service appeal is not maintainable.

GROUND

- a. Incorrect, the impugned order is just, legal and has been passed in accordance with law and rules.
- b. Incorrect, appellant was treated in accordance with law. He was appointed on merit against reserved quota of retired employee son. He did not obey the appointment order.
- c. Incorrect, appellants own conduct was behind passing the impugned order. He did not accept the offer of appointment within stipulated period of 15-days, therefore, the respondents were under obligation to pass the cancellation of appointment order.
- d. Incorrect, joining duty is pre-condition for regular and actual appointment. Appellant was not joining duties and resort to advancing lame excuses.
- e. Incorrect, the terms & conditions of the appointment order were as clear as a day and appellant in order to avoid service at far flung area advanced lame excuses of threat to his life.
- f. Incorrect, factual position and ground realities were confirmed and verified through responsible officer before passing the impugned order.
- g. Incorrect, appellant did not join duties and he had not yet acquired the status of civil servant and he did not oblige terms and conditions of appointment, therefore no show cause notice was issued to appellant.

- h. Incorrect, appellant did not honor the appointment order. He did not accept the offer of appointment within stipulated period of 15-days. Therefore conduct of appellant led to passing the impugned order.
- i. Incorrect, issuance of appointment order does not confer right of civil servant on appointee unless and until he has assumed duties.
- j. Incorrect, appellant did not accept offer of appointment within the prescribed 15-days therefore appointment order was cancelled.
- k. Incorrect, appellant was reluctant to join duties and failed to accept the offer of appointment, therefore, departmental proceedings against appellant were not justified/applicable as he was not civil servant .
- l. That the respondents also seek permission for raising other grounds during hearing of the case.

It is therefore prayed that the appeal of appellant may be dismissed with costs.


Executive Engineer,
PHE Division, Karak Petitioner No.3
and on behalf of **Respondent No.1&2**



**OFFICE OF THE EXECUTIVE ENGINEER PUBLIC HEALTH
ENGINEERING DIVISION KARAK**

No 11-16/E-10 Dated PHE Karak the 25/01/2016

OFFICE ORDER

In light Selection/recommendation of departmental selection committee interview of Class-IV held on 20-10-2015, with the approval of worthy Secretary to Govt. of Khyber Pakhtunkhwa, PHED vide No. SO(Estt)/PHED/1-42/2014-15/Karak dated 06/01/2016 Mr. Nasir Iqbal S/O Lal Gohar r/o Ghulam Khel Tehsil T/Nasrati District Karak is hereby appointed as a Operator Cum Valve Man against the vacant post on Water Supply Scheme Silob Din, Karoona, Shenaya Gudi Khel on merit basis under son quota in BPS-03 (6535-260-14335) @ Rs.6535 Per Month plus usual allowances as admissible under the rules from time to time with the following terms & conditions:-

1. All the terms & conditions of provincial Govt. services rules/policies in vogue will be applicable.
2. He services will be transferable in the jurisdiction of the office of PHE Division Karak.
3. He will have to produce health & age certificate from the Medical Superintendent of District Head Quarter Hospital Karak.
4. The offer of appointment is valid for (15) Fifteen days from the date of issuance.
5. He will be responsible for active struggle for water charges collection.
6. He will have to perform any duty on the scheme assigned to him by his incharge.
7. He will be responsible to look after all installed parts of the scheme.

If the offer of appointment is acceptable to the applicant, he will report arrival for duty to the office of Sub Divisional Office PHE Sub Division T/Nasrati with the validity period of the offer of appointment.

Note:-No TA/DA will be allowed for joining duty.

EXECUTIVE ENGINEER
PUBLIC HEALTH ENGG. DIVISION
KARAK

Copy is forwarded to:-

1. The Chief Engineer (South) PHED Peshawar for information please.
2. The Superintending Engineer PHE Circle Kohat for information please.
3. The SDO PHE Sub Division T/Nasrati. He is directed to verify N.I.C. Domicile certificate (if any).
4. The District Accounts Officer District Karak for information.
5. The D.A.O (Local) for information.
6. The applicant.

Nasir Iqbal
Executive Engineer
Public Health Enng. Division
Karak

Nasir Iqbal
EXECUTIVE ENGINEER
PUBLIC HEALTH ENGG. DIVISION
KARAK

Annex-B

OFFICE OF THE EXECUTIVE ENGINEER
PUBLIC HEALTH ENGINEERING DIVISION KARAK.

OFFICE ORDER.

Mr. Nasir Iqbal S/O Lal Gohar appointed as Operator Cum Valve Man on Water Supply Scheme Silab Din Koroona Shenava Gudi Khel vide this office order No.11-16/E-10 dated 15/01/2016, in light of decision on the writ petition No.232-B/2010 announced by Peshawar High Court Bannu Bench Bannu on 29/01/2015 and recommendation of departmental selection committee on merit basis as per waiting list.

This offer of appointment was valid for fifteen (15) days of issue thereof i.e upto 30/01/2016 as per Class-IV of terms & conditions of letter of appointment.

Now as reported by SDO incharge of the scheme (his letter No.01/E-10 dated 03/2/2016 refers) the appointee failed to report arrival for duty either of scheme or in written in office to-date. Hence the aforementioned appointment order stands NULL AND VOID under condition IV thereof.

Due to non response offer of appointment by the official concerned, therefore the said appointment order of this office may be considered as cancelled.

EXECUTIVE ENGINEER
PUBLIC HEALTH ENGG: DIVISION
KARAK.

No. 36-41 /E-10

Dated PHE Karak

The 23 /02/2016.

Copy of the above office order is forwarded to:-

- 1 The Chief Engineer (South)PHED Peshawar for information please.
- 2 The Superintending Engineer PHE Circle Kohat for information please.
- 3 The Registrar Peshawar High Court Bannu Bench Bannu for information with reference decision of the writ petition No.232-B-2010 dated 29/1/2015 please.
- 4 The Additional Advocate General Peshawar High Court Bannu Bench Bannu for information with reference to above please.
- 5 The Sub Divisional Officer PHE Sub Division Tehsil T/Nasrati for information with reference to his report cited above.
- 6 Mr. Nasir Iqbal S/O Lal Gohar Khan r/o Yaghi Ghulam Khel P.O. Khojaki Banda Tehsil T/Nasrati District Karak for information.

Attested

Executive Engineer
Public Health Engrg: Division
Karak

EXECUTIVE ENGINEER
PUBLIC HEALTH ENGG: DIVISION
KARAK.

24/02/2016



Annexur-1C

NOTICE
for information
of all
authorities

OFFICE OF THE EXECUTIVE ENGINEER PUBLIC HEALTH
ENGINEERING DIVISION KARAK

No 01 /E-10

Dated PHE Karak the 26/07/2016

ABDUL SATTAR KHAN,
Advisor-I Provincial Ombudsman Secretariat
Khyber Pakhtunkhwa Peshawar

Subject:-

APPEAL FOR JUSTICE

With reference to your office letter No.PO/Complaint/0630/06/ 2016/7838 dated 19/07/2016 in respect of complaint Mst. Tahira Naz w/o Nasir Iqbal r/o Yaghi am Khel P.O Khojaki Killa Tehsil T/Nasrati District Karak.

It is intimated that on the decision/direction of worthy Honorable Justice Ijaz Ahmad High Court Bannu Bench at the selection/recommendation of Departmental Selection Committee held on 22/10/2015, with the approval of worthy Secretary to Government of Khyber Pakhtunkhwa PHED Mr: Nasir Iqbal S/O Lal Gohar r/o Ghulam Khel Tehsil Nasrati District Karak was appointed as a Operator Cum Valve Man on Water Supply Scheme Salib Din Koroona Shenava Gudi Khel in BPS-3 on merit basis under son quota appointment order No.11-16/E-10 dated 15/1/2016 (photo copy) attached. The employee concerned was already been directed through appointment letter terms & conditions at para No.4 to immediate report to Office of the SDO under 15-days.

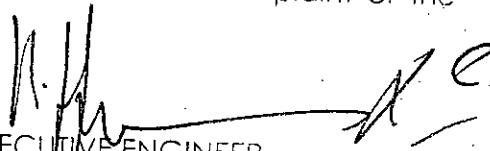
Inhabitants of WSS: Salib Din Koroona moved complaint time & again submitted to undersigned/SDO concerned on dated 18/1/2016, 25/1/2016, 02/2/2016 at the recommendation of Nazim/Councilors U/C Senava Gudi Khel against Mr: Nasir Iqbal S/O Lal Gohar willful absent from Govt: duty, which were verified by the undersigned concerned time & again and reported that official concerned not yet reported since appointment vide letter No.01/E-10 dated 03/2/2016.

In light non responsive offer of appointment under validity period of fifteen days as per Class-IV of terms & condition at para No.4 alongwith complaint of inhabitants of the area as well as report of the SDO concerned time & again, the aforementioned appointment order stands NUL AND VOID by the official concerned upto 03/2/2016, in this regard the said appointment order has been stand cancelled under the condition IV thereof vide this office order No.36-41/E-10 dated 03/2/2016.

Keeping in view factual position of the said case, as explained in above, therefore all relevant correspondence / documents about subject case are submitted for consideration and also requested to file the complaint of the employee concerned in the best interest of Govt: work please.

above


Executive Engineer
Public Health Engg: Division
Karak


EXECUTIVE ENGINEER
PUBLIC HEALTH ENGG: DIVISION
KARAK.



PROVINCIAL OMBUDSMAN (صوبائی محتسب) SECRETARIAT,
KHYBER PAKHTUNKHWA

Complaint No. 0630/06/2016/19057

Dated: 17/08/2016

1. Executive Engineer Public Health Engineering
Division Karak
2. Ms. Tahira Naz w/o Nasir Iqbal
r/o Village Yaghi Ghulam Khel
Tehsil Takhti Nasrati, District Karak

ect: APPEAL FOR JUSTICE

Findings of Provincial Ombudsman on the complaint No. 0630/06/2016 filed
ls. Tahira Naz w/o Nasir Iqbal, r/o Village Yaghi Ghulam Khel Tehsil Takhti Nasrati
ict Karak is enclosed herewith for perusal. The aggrieved person can file representation
overnor, Khyber Pakhtunkhwa within thirty (30) days of the order under Section 31 of
hyber Pakhtunkhwa, Provincial Ombudsman Act, 2010 (Act No. XIV of 2010s).

THIS ISSUES WITH THE APPROVAL OF THE PROVINCIAL OMBUDSMAN.

ABDUL SATTAR KHAN
(Advisor-I)
Provincial Ombudsman Secretariat,
Khyber Pakhtunkhwa.

DST: OF EVEN NO. & DATE:

Copy forwarded to i/c Computer Section, Provincial Ombudsman Secretariat, Khyber Pakhtunkhwa along
a findings in duplicate for updating record under Regulation 19 of the Khyber Pakhtunkhwa Provincial
budsman Office (Registration, Investigation and Disposal of Complaint) Regulation, 2011.

(Advisor-I)
Provincial Ombudsman Secretariat,
Khyber Pakhtunkhwa.

Executive Engineer
Public Health Engg: Division
Karak

**PROVINCIAL OMBUDSMAN (صوبائی محتسب) SECRETARIAT,
KHYBER PAKHTUNKHWA**

CLOSURE FINDINGS	
COMPLAINT NO.	P.O/Complaint/0630/06/2016.
NAME & ADDRESS OF THE COMPLAINANT	Ms. Tahira Naz w/o Nasir Iqbal, r/o Village Yaghi Ghulam Khel, Tehsil Takhti Nasrati, District Karak.
NAME OF THE AGENCY COMPLAINED AGAINST	Executive Engineer Public Health Engineering Division Karak.
NAME OF THE INVESTIGATION OFFICER	Abdul Sattar Khan (Advisor-I)
SUBJECT OF COMPLAINT	Appeal for justice
DATE OF REGISTRATION	28/06/2016.
DATE OF FINDINGS	16/08/2016.

THE COMPLAINT

Ms. Tahira Naz instituted complaint alleging that her husband Nasir Iqbal was appointed operator/valveman on 15/10/2016 on the orders of Peshawar High Court Circuit Bench Bannu in writ petition. His appointment order was cancelled on 23/02/2016 on the ground that husband failed to submit his arrival and medical report within 15 days. Now she seeks assistance of this Forum for redressal of her grievance.

REPLY OF THE AGENCY


Notice under Section 10(4) of the Khyber Pakhtunkhwa, Provincial Ombudsman Act, 2010 was issued to Executive Engineer Public Health Engineering Division Karak to meet the requirements and submit reply including rebuttal, if any. In his reply he admitted appointment of complainant's husband as operator/valveman on water supply scheme at Shanwa Guddi Khel but he also stated that he failed to submit arrival report within 15 days as one of the conditions in the appointment order. Therefore, his services were dispensed with on the report of inhabitants of the area and Sub Divisional Officer (SDO) concerned.

REJOINDER

Complainant was asked to file rejoinder in response to the comments of Agency. In her rejoinder she repeated her earlier version.

FINDINGS

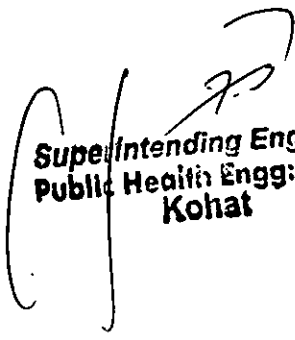
~~Record reveals that complainant is not an aggrieved person as defined in section 2(b) of Provincial Ombudsman Act, 2010 therefore the complaint is not maintainable and is disposed of accordingly.~~ *Amended*


Executive Engineer
Public Health Engg. Division
Karak


WAQAR AYUB
Provincial Ombudsman

AUTHORITY:

Mr:Afsar Khan Assistant of this office is hereby authorized to attend the court of chairman service tribunal Peshawar on 22.9.2016 in case of Mr: Nasir Iqbal S/O Lal Gohar District karak.


**SuperIntending Engineer
Public Health Engg: Circle
Kohat**

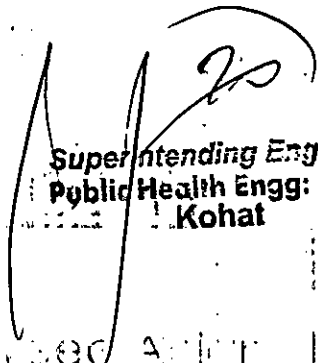
41/11/16 12:10

TO THE CHAIRMAN
SERVICE TRIBUNAL
PESHAWAR
FROM THE ASSISTANT
SECRETARY
KOHAT

AUTHORITY

Ahmad

Mr. Naveed Anjam Junior Clerk
of this office is hereby authorized to attend the court
of Chairman service Tribunal Peshawar in case of
Nasir Iqbal S/o Lal Gohar. on 8-11-2016.


Superintending Engineer
Public Health Engg: Circle
Kohat

Mr. Naveed Anjam Junior Clerk
of this office is hereby authorized to attend the court
of Chairman service Tribunal Peshawar in case of
Nasir Iqbal S/o Lal Gohar.

①

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

Rejoinder

In Writ Petition No. 654-P/2015

Nasir Iqbal.Petitioner

Versus

Govt. of Khyber Pakhtunkhwa

Through Secretary Public Health Engineering and others.

.....Respondents

**REJOINDER TO THE COMMENTS FILED BY
RESPONDENTS NO.3.**

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:

The entire preliminary objections raised in the comments filed by respondent's No. 3 and on behalf of respondent No 1 & 2, are misconceived, based on incorrect facts and misleading hence, denied. Through the instant Writ petition, petitioner rightly approach to this Hon'ble Tribunal after passing of the Order, dated, 21-03-2016 passed by the Peshawar High Court Bannu Bench after holding that appellant "admittedly being Civil Servant". Appellant then filed appeal to the next higher authority against termination order passed by appointing authority but the appellate authority neither rejected the departmental appeal within stipulated period of time, therefore, instant appeal is very much on time. Beside, appellant was appointed on 15-01-2016, in the light of the Judgment passed by the Peshawar High Court Bannu Bench over the Quota of retired employee's son's as per clause-4 "offer of appointment as valid for 15 days". Appellant submitted arrival report

through Registered post on the same day i.e. 21-1-2016 after obtaining Health & Age Certificate from the Medical Superintendent (DHQ) Hospital Karak and the aforementioned documents were not denied specifically in the comments filed by Respondent No-3. But the answering respondent No-3, in connivance with the locals of the area within the period of joining time manipulated three applications of the same verbatim copy containing similar versions/contents in order to pave way for the cancellation of appointment order. (Copies of the same are hereby enclosed as **Annex. R, R/1 & R/2**). Besides, there was no show-cause notice issued or regular enquiry conducted by the Department, before, cancellation of "offer of appointment order" as per terms and conditions of appointment order.

On Facts:-

1. Para-1 of the appeal had been admitted, hence, needs no rejoinder.
2. Again the contents had been admitted, needs no rejoinder.
3. That in reply to Para-3 of the comments in which the public documents i.e. arrival report accompanied by Health & Age Certificate issued by the Medical Superintendent (DHQ) Hospital Karak send through registered post had been denied for which there is no other way but this Hon'ble Tribunal has got the power under Section-7 of the KP Service Tribunal Act, 1974 to summon the officials of Post Office as well representative of MS DHQ Hospital Karak to examine and to record their statement and to compel them for production of documents to verify the factum of arrival report. The expenses whereof will be borne by the appellant, beside, the presumption of truth is highly attached to these public documents.

4. The averments in the form of explanation are after thought in-connivance of the locals of the area. As submitted above these complaint were manipulated/engineered having verbatim copy in shape of contents and only difference of handwriting in order to pave way for the cancellation of appointment order, although, in the corresponding Para of the Writ Petition, appellants had already expressed their reservations about the stubborn attitude of the Responded No-3.
5. The comments as laid down in the corresponding Para of the appeal are incorrect, hence denied. The appellant had already submitted on oath that arrival report had been submitted and he was not allowed to perform the duties and received life threat from the locals of the area as evident from the application address to the worthy District Police Office. Beside, the aforesaid complaints referred in reply to the corresponding Para of Appeal is manipulated and filed within the period of joining time. The answering respondent No-3 was so interested to conduct inquiry in the aforesaid complaint but neither any show cause notice to the appellant before issuing cancellation order nor appellant had been associated at any stage of verification of complaints to inquire about the arrival report. The averments in the corresponding Para of the appeal is highly wrong statements in order to justify the impugned order.
6. The offer of appointment order was re-called/cancelled one sided, without issuing any show-cause notice nor any regular inquiry was conducted before hand in which appellant had been associated. Hence, the cancellation order is wrong and after thought and the appellant is liable to be restored in service.

7. The appeal has been filed within time because the appellate authority did not pass any order over the appeal against impugned order of cancellation order. The appellant admittedly being Civil Servant as held by the Division Bench of the Peshawar High Court in the order, dated, 21-03-2016. The appeal lies to this Hon'ble Tribunal related to the terms and conditions of the service especially when answering respondents exclusively pressing hard terms & conditions No-4 of the appointment order. Hence, the appeal in hand is very competent before this Hon'ble Tribunal and this Hon'ble Court has got the Jurisdiction to entertain it.

8. The appeal before the appellate authority lies against the order of the competent authority (appointing authority) which was filed accordingly, however, the appellate authority not rejected appeal of the appellant within stipulated period of time, hence, the instant appeal has been filed within time. That so far the complaint filed before the Provincial Ombudsman by the wife of the appellant had been turn down not on merits but on the ground that wife of the appellant is not an aggrieved person, hence, complaint is not maintainable and disposed of accordingly.

9. The Comments advanced in response to the corresponding Para of the appeal is totally wrong and misleading hence, denied. The appellant admittedly being Civil Servant and amenable to the jurisdiction of this Hon'ble Tribunal as held by the Peshawar High Court. Besides, the appeal in hand is related to the terms and conditions of the appointment order, therefore, jurisdiction of this Hon'ble Tribunal had been invoked after passing of statutory period of 90 days to the appeal filed before the appellate authority.

GROUNDS:

- a. That in the impugn order no law and rules had been cited, hence, incorrect.
- b. Appellant had not been treated in accordance with the law because now show cause or inquiry had been conducted before passing impugns order.
- c. Appellant had forcefully pressing hard arrival report throughout which has been submitted in compliance of the appointment order, therefore, impugn cancellation order is un-justified in the eyes of law.
- d. Appellant submitted arrival report accompanied by Health & Age Certificate from the Medical Superiendent (DHQ) Hospital Karak and for joining duties he had not been allowed by the locals of the area by advancing life threat to them and to this effect an application has been submitted to the worthy District Police Officer.
- e. The appellant is even ready to serve anywhere, if he had been restored in service.
- f. The appellant had not been associated by verifying factual position nor had statement of appellant been recorded irrespective of the facts that no regular inquiry had been conducted.
- g. That appellant submitted arrival report after obtaining Health & Age Certificate from the Medical Superiendent (DHQ) Hospital Karak and therefore acquire status of Civil Servant as held by the Peshawar High Court Division Bench Bannu, vide, order, dated, 21-03-2016.
- h. Appellant submitted arrival report through registered post within stipulated period of 15 days and the appointment order was very much honored.
- i. The assumption of duties starts from the submission of arrival report, which has not been denied and that so far the discharge of duties after arrival report , appellant had not been allowed by

the locals to perform the duties of operator-cum-valve man on water supply scheme due to blood feud enmity over the appointment of the said post.

- j. Appellant accepted the offer of appointment order.
- k. Appellant was not reluctant to join the duties and total wrong statements has been given in the grounds.
- l. No ground is available to them to rescue their misdeeds.

It is, therefore, requested that this Honorable Court may kindly be pleased to accept the Appeal in the prayer made in the memo of appeal.

Your humble petitioner

Through Counsel



(FARMAN ULLAH KHATTAK)

**Advocate Supreme Court of
Pakistan at Peshawar.**

BEFORE THE PESHAWAR HIGH COURT PESHAWAR

Rejoinder

In Writ Petition No. 654-P/2015

Nasir Iqbal.Petitioner

Versus

Govt. of Khyber Pakhtunkhwa


Through Secretary Public Health Engineering and others.


.....Respondents

AFFIDAVIT

I, Farman Ullah Khattak Advocate, Peshawar, do hereby solemnly declare and affirm on oath that the contents of this Rejoinder are true and correct to the best of my knowledge and instruction of my client and that nothing has been concealed from this Honorable Court.

ATTESTED
 DAWOOD KHAN ADVOCATE
 NOTARY PUBLIC
 Date 18 DEC 2016
 High Court Peshawar



Deponent.


Farman Ullah Khattak.
Advocate, High Court
Peshawar.

(R/1)

✓ خدمت ضابط ریٹائر کیس نوٹس (8) PHE ڈویژن کرک

خدمت ضابط SDO 500 PHE سب ڈویژن عقین کث لکھن کرک

original NO. 15/E-10 dt 25/11/2016

SDO T/N

To depite concerned S/E with respect to check performance of the official at spot and report to us for

Further action against the concerned officer under the E.O. Rules

AKEN

عنوان درخواستی ملحد تعلیمت بہر صلاو نامہ
ولد علی گویم ایئر ٹریم والمین ڈویژن
مطلب دین کورونہ شوقہ ٹری منجیل

مذاہب عالی تدارک سے کہ بحوالہ ایہ صاحب دفتر ریٹائرمنٹ جی ایم
15/2016 کے تحت نامہ اقبال ولد علی گویم سکنہ غلام خیل کورونہ عقین

کث لکھن کرک ریٹائرمنٹ ایک صاحب دین کورونہ شوقہ ٹری منجیل کھالی پوسٹ

ایئر ٹریم والمین بہر تقرری ہوا ہے۔ جبکہ بندہ فر کورنہ کا حال سکیم ایسوسی

ریٹائرمنٹ سکیم صاحب دین کورونہ شوقہ ٹری منجیل بہر صاحب ریٹائرمنٹ ہے۔

مذکورہ مکتب کو تالیف تکلیف ہے۔ یہاں تاہم یہ ہے۔ علامہ مکتب لکھن کرک سے

مذاہب عرض درخواست ہے کہ بندہ فر کورنہ کو ریٹائرمنٹ کیجاوے کہ بندہ صاحب

ریٹائرمنٹ سکیم صاحب دین کورونہ شوقہ ٹری منجیل آگے سکیم ایسوسی

تو چالو کریں۔ عدوہ از میں بندہ فر کورنہ کو علامہ مکتب پورا محفوظ مانا

آگے ہم بھی بندہ فر کورنہ سکیم ہذا چالو کرنے سے قاصر ہوا

Haniza Ali Shah
Youth Councillor
V.C Shah Salim Karak

Malik Aslam Khan
District Councillor
V.C Shah Salim Karak

عین وزارت سے

Ahsan Khan Margikhel
NAZIM
V.C Shah Salim (Karak)

Jaslaam Khan
General Councillor
V.C Shah Salim (Karak)

MUHAMMAD KHAN
General Nazim Nazim
V.C Shah Salim

Muhammad Iqbal
General Councillor
V.C SHAH SALIM (KARAK)

Malik Nawab Ali Khan
District Councillor
V.C Shah Salim Karak

Jaslaam

محمد علی خان

محمد اقبال صاحب

P.T.O

h

Respectfully

SDO T/W

points to be decided on this scheme is printed
but I stand yet. After arrival of
staff he will be directed to perform
his duty regularly. *[Signature]*

R2

9

E-10

خدمت جاب انڈسٹریل انجینئر PHE ڈویژن کے لئے 2016/11/4

2. خدمت جاب SD قلم PHE ڈویژن کے لئے لڑی کر

original No. 11/E-10 dt 4-2-2016

عنوان: درخواست برائے ایف ایل ڈی نصاب
آپریٹنگ مین والٹن واٹر سٹیل کی کمپنی
شفوف لڈ ایف ایل

SDO T/M
To deputee concerned
Engineer to check
Performance of the
Official at spot
and report
New

تذاریت ہے کہ بحال آپ سے دفتر ایف ایل ڈی کے لئے

دور 15/01/2016 کے تحت ناصر اقبال ولد لعل گوہر کے لئے ایف ایل ڈی

ضلع کوٹ واٹر سٹیل کی کمپنی میں ایف ایل ڈی کے طور پر
آپریٹنگ مین والٹن واٹر سٹیل کی کمپنی میں ایف ایل ڈی کے طور پر
واٹر سٹیل کی کمپنی میں ایف ایل ڈی کے طور پر
علاقہ میں کو بنیاد تعلق ہے یا نا بنیاد ہے علاقہ میں سرانا احوال ہے

لینڈ ایجر میں درخواست ہے کہ بندہ مذکورہ کو بنیاد کیا ہے کہ
وہ ملا ناصر واٹر سٹیل کی کمپنی میں ایف ایل ڈی کے طور پر
ایف ایل ڈی کے طور پر ہے۔ علاوہ ازیں بندہ مذکورہ کو علاقہ میں پورا
تحفظ دینا۔ اگر ایف ایل ڈی بندہ مذکورہ کی کمپنی میں ایف ایل ڈی کے طور پر
کے خلاف قانونی کارروائی عمل میں لائی جاوے۔

عنا نواز شاہی ہونگ فقط مورخ 25/01/2016

سید محمد علی
ایف ایل ڈی کے لئے ایف ایل ڈی کے لئے ایف ایل ڈی کے لئے

P 10

AT
E-10
Shah
Ba

Respected Sir,

The Arrival Report of
the official has not received to office
so far, and his where about are
not known to any body. Report
is submitted for further
order/direction please

10-2-06

Umanand Lal

9/E

Sir

Report of General Subang

~~is present~~ The official is still
Absent from his duty report submitted
for further action please

He

Take action according
to rule/Regulation

18/2/1

R/3

خدمت صا - ایگزیکٹو آفیسر PHE ڈویژن کارک

2- خدمت صا - SDO قلمہ PHE سب ڈویژن قسطنطنیہ لفظی صلہ کارک

عنوان - درخواست مراد کیلینٹ بر خلاف نامہ اقبال

اصل گورنمنٹ ایمرٹیکم والمین ڈائریکٹری سکیم سیدہ
SDO T/N
SDO

You are hereby directed to submit arrival report of the official concerned and also check performance of the concerned at spot of scheme

Malik Islam Khan
District Councillor
V/C Shanawa Gudi Khel (Karak)

for a report

13/E-70 dlt 8/21/2016

کہ عمت نامہ اقبال ولد اعلیٰ گورنمنٹ ایمرٹیکم والمین ڈائریکٹری سکیم سیدہ میں حکومت ہواہ گورنمنٹ کے خالی پوسٹ ایمرٹیکم والمین پر توری ہوا ہے۔ جسکے ذمہ مذکورہ نامہ اقبال سکیم آنوشی ڈائریکٹری سکیم سیدہ میں حکومت ہواہ گورنمنٹ ایمرٹیکم والمین کی ہے۔ علقہ مکین کو انتہائی تعلق ہے۔ یہی تاہم ہے۔ علقہ مکین سرایا احتجاج ہے۔ لہذا عرضی درخواست ہے کہ مذکورہ علقہ مکین کی جاوے کہ وہ بلا تاہم ڈائریکٹری سکیم سیدہ میں حکومت ہواہ گورنمنٹ ایمرٹیکم والمین کو جانورس علقہ میں مذکورہ کو علقہ مکین پر محفوظ دے گا۔ اگر علقہ میں مذکورہ سکیم علقہ میں کرے سے تاہم ریکرٹ تو اس کے خلاف قانونی کارروائی عمل میں لائی جاوے۔

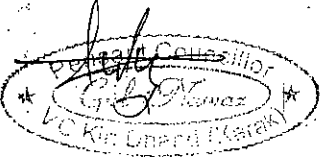
مذکورہ مذکورہ نامہ Arrival رپورٹ نہ تو دفتر SDO پینکٹ ہیلتھ گورنمنٹ ایمرٹیکم والمین میں ہے۔ اور نہ ہی سکیم مذکورہ پر علقہ مکین پینڈی یاں کیلئے شرط ہے۔

لہذا رپورٹ ہے کہ مذکورہ کے خلاف قانونی کارروائی کریں۔

عسین فوارس حویلی - مورخ 29/01/2016

Name: Malak Nawab Ali Khan
District Councillor
V/C Shanawa Gudi Khel

Alfian Khan Margikhel
ZIM
V/C Shan Salim (Karak)



فقط ایفانہ امداران
علاقہ مکین میں تہم توڑ
Abdur Rehman
General Councillor
V/C Shan Salim (Karak)

R/4W,

The Arrival Report of Mr. Naal
Jalal not yet received to office and
I also visited the scheme but found
absent from Govt. duty. Hence the report
is submitted for further guidelines/
instruction please.

[Signature] 10-2-06
Usmanullah
SE

~~As per report of Enclosed~~

~~the person is absent from duty~~
~~as per report is absent from duty~~

[Signature]

HC
submit draft for
Termination.
[Signature]
18/2