

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 1079/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5675

Danish Nathaniel.....Appellant

Dated 3/5/23

Versus

Government of Khyber Pakhtunkhwa & othersRespondents

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BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO.1079 OF 2022

Danish Nathaniel.....Appellant

Versus

Through Secretary Health & others.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 01 TO 03

Respectfully Sheweth:

Preliminary Objections:-

1. That the appellant has got neither cause of action nor did 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 Laws and Rules.
4. That the appeal is not maintainable in its present form and also in the present circumstances of the issue.
5. That the appellant has filed the instant appeal with mala-fide intention hence liable to be dismissed.
6. That the appellant has not come to this Honorable Tribunal with clean hands.
7. That the appeal is barred by law and limitation.
8. That the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.
9. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.

ON FACTS:

1. Correct.
2. Correct, to the extent that the appellant was performing duty at DHQ Hospital, Nowshera for the last three (3) years, which shows that before the

impugned order dated 20-01-2022 the appellant has already completed his normal tenure of two (2) years.

3. Pertains to record however, the transfer of both Charge Nurses have been held in abeyance in the light of judgment of Khyber Pakhtunkhwa Service tribunal Peshawar till final decision.
4. Incorrect, both the Charge Nurses have not reported for duty at DHQ Hospital, Hangu rather filed Service Appeal in Khyber Pakhtunkhwa Service Tribunal Peshawar.
5. Incorrect, the appellant was transferred to DHQ Hospital, Hangu vide order No. 356-61/E II dated 20.01.2022 for serving more than his normal tenure in the public interest. He was verbally as well as in written directed to report for duty at DHQ Hospital, Hangu.
6. Incorrect, as per para 5.
7. Incorrect, the appellant has been transferred vide order dated 20-01-2022 in the public interest under section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973.
8. Incorrect, the appellant has not been transferred from DHQ Hospital, Nowshera on personal grudges/ political basis rather the impugned order was issued in the public interest under section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973.
9. Pertains to record however, the appellant has no vested right to claim posting on one station for an indefinite period being the Civil Servant he is liable to serve anywhere he is posted by the Competent Authority.
10. Pertains to record however, the appellant's wife may be transferred to DHQ Hospital, Hangu under Spouse policy if she is willing for her transfer over there as she has already completed her normal tenure in Mian Rashid Hussain Shaheed Memorial Hospital, Pabbi Nowshera.
11. Incorrect, the appellant has received his transfer order to DHQ Hospital, Hangu in written which is sufficient for him to submit departure report at DHQ Hospital Hangu. His pay has been stopped due to his transfer order and being a Civil Servant he is liable to obey the order.
12. As in Para 10 above.

13. Incorrect, no discrimination has been committed by the Respondents. The replying respondents issued the impugned transfer order in exigency of service and public interest hence, the para being concocted is denied. The impugned order has been issued in accordance with Law and Rules. The apex court has laid down following principles in a reported judgment 2017 SCMR 798:

- i. *It is within the competence of the authorities to transfer a civil servant from one place or post to another to meet the exigencies of service or administration; provided his terms and conditions of service are not adversely affected.*
- ii. *A Civil servant has no vested rights to claim posting or transfer to any particular place of his choice nor has any right to continue to hold a particular post at a particular place.*
- iii. *His transfer and posting is limited to the given tenure, or at the pleasure of the competent authorities.*
- iv. *Normally, he is not required to acquire any specialized skill or professional training in order to serve the new post or place.*
- v. *His seniority and progression of career in terms of promotion and other benefits of the services are not affected by the transfer and he remains pegged to his batch or group to which he was initially appointed after completing the required common and specialized trainings and after passing the required departmental examinations conducted by the FPSC.*
- vi. *He is posted and transferred routinely in the same grade or scale that he possesses in his service or group; unless the rule requires so or allows so.*

The appellant has been treated in accordance with the above dictum of the apex court. This honorable tribunal also dismissed service appeal No. 7035/2021 titled Dr. Ejaz Ahmad vs Govt of KPK dated 24-05-2022 on the basis of the above mentioned judgment.

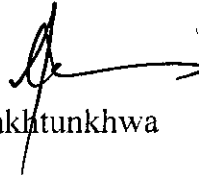
14. Incorrect, after his transfer from DHQ Hospital, Nowshera to DHQ Hospital, Hangu the appellant has no right to get salary from the strength of DHQ Hospital, Nowshera.
15. Misleading, no appeal of the appellant was considered for retention nor he was retained at DHQ Hospital, Nowshera.
16. Incorrect, the petitioner has been transferred on completion of tenure as well as in public interest. Detail reply has been given in para 13.
17. Incorrect, being civil servant the appellant has to serve anywhere in the province irrespective of his domestic problem.
18. Pertains to Court record.
19. Pertains to record.
20. The departmental appeal of the appellant is not entertainable.
21. Incorrect no vested right of the appellant has been violated by the answering respondents however, reply on the grounds are as under:

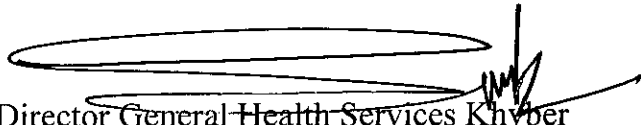
ON GROUNDS:

- A. Legal, however, the replying respondents have not violated any vested right of the appellant.
- B. Incorrect already explained in para 13 of the facts.
- C. Incorrect already explained in para 13 of the facts.
- D. Incorrect.
- E. Incorrect already explained in para 13 of the facts.
- F. Incorrect already explained in para 13 of the facts.
- G. Incorrect already explained in para 13 of the facts No need to reply.
- H. Incorrect already explained in para 13 of the facts.
- I. Incorrect already explained in para 13 of the facts.
- J. Incorrect already explained in para 13 of the facts.
- K. Incorrect already explained in para 13 of the facts.
- L. The answering respondents also seek prior permission of this Honorable Tribunal to adduce grounds at the time of arguments.

PRAYER:

It is therefore humbly prayed that on acceptance of the comments, the instant appeal of the appellants 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 Peshawar
Respondent No. 03

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

SERVICE APPEAL NO. 1079/2022

Danish Nathaniel.....Appellant

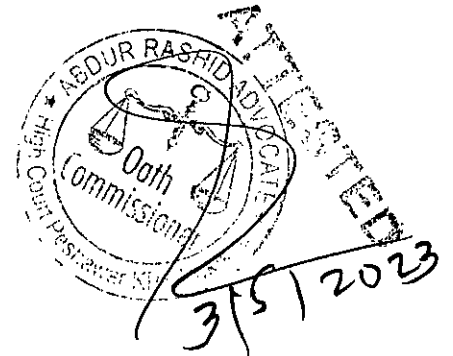
Versus

Government of Khyber Pakhtunkhwa & othersRespondents.

Affidavit

I, Laeeq Ahmad, Focal Person (Litigation) office of the Director General Health Services, Khyber Pakhtunkhwa, Peshawar, under the directions of the Competent Authority, do hereby solemnly affirm that the contents of the parawise Comments on behalf of Respondent are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'able Court.


Deponent





**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR**

*All communications should be addressed to the Director General Health Services
Peshawar and not to any official by name
Office # 091-9210269 Fax # 091-9210230*

AUTHORITY LETTER

Mr. Laeeq Ahmad Focal Person (Litigation) Directorate General Health Services, Khyber Pakhtunkhwa, is hereby authorized to submit parawise comments in case Service Appeal No. 1079/2022 titled Danish Nathaniel VS Govt. of Khyber Pakhtunkhwa and others on behalf of the undersigned in Khyber Pakhtunkhwa Service Tribunal, Peshawar.

7 **Director General Health Services
Khyber Pakhtunkhwa, Peshawar.**

DIRECTOR GENERAL
HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR