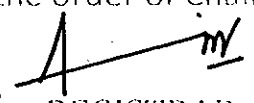


Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Implementation Petition No. 305/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	17.05.2023	<p>The execution petition of Dr. Sadaf Jamil submitted today Mr. Taimur Ali Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date.</p> <p style="text-align: right;">By the order of Chairman                        For REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Execution petition No. 305 /2023

In Service Appeal No. 11824/2020

Dr. Sadaf Jamil

V/S

Govt. of KP

INDEX

S.No.	Documents	Annexure	P. No.
1	Memo of execution petition	-----	01-03
2	Copy of memo of appeal	A	04-09
3	Copy of judgment dated 26.01.2022	B	10-17
4	Copy of notification dated 27.03.2023	C	18
5	Vakalat Nama	-----	19.

THROUGH:

APPELLANT



TAIMUR ALI KHAN  
(ADVOCATE HIGH COURT)

Cell# 0333-9390916

①

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR**

Execution petition No. 305 /2023  
In Service Appeal No.11824/2020

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 5381

Dated 17-05-23

Dr. Sadaf Jamil D/O Muhammad Jamil Khan,  
RHC Ekka Ghund, District Mohmand.

**PETITIONER**

**VERSUS**

1. The Govt. of Khyber Pakhtunkhwa, through Chief Secretary Khyber Pakhtunkhwa, Civil secretariat Peshawar.
2. The Secretary, Govt. of Khyber Pakhtunkhwa, Health Department, Civil secretariat Peshawar.
3. The Director General Health Services, Khyber Pakhtunkhwa, FATA Secretariat, Warsak Road, Peshawar.

**RESPONDENTS**

-----  
**EXECUTION PETITION FOR DIRECTING THE  
RESPONDENTS TO IMPLEMENT THE  
JUDGMENT DATED 26.01.2022 OF THIS  
HONORABLE TRIBUNAL IN LETTER AND  
SPIRIT.**  
-----

**RESPECTFULLY SHEWETH:**

1. That the petitioner has filed service appeal No.11824/2020 against the impugned action of the respondents by not adjusting /issuing proper posting order in respect of the petitioner and by not releasing monthly salary of the appellant stopped since August 2014 vide order dated 29.07.2015 in this Honorable Tribunal with the prayer that the respondents may kindly directed to proper posting order be issued with release of monthly salaries stopped since August 2014 with all consequential benefits. **(Copy of memo of appeal is attached as Annexure-A)**

2. That the service appeal of the petitioner was heard and decided by this Honorable Tribunal on 26.01.2022. The Honorable Tribunal accepted the appeal of the petitioner, set aside the impugned order dated 29.07.2015 and directed the respondents to give proper posting and release her salary stopped since August 2015. **(Copy of judgment dated 26.01.2022 is attached as Annexure-B)**
3. That in the compliance of judgment dated 26.01.2022 in service appeal No.11824/2020, the competent authority regularized the waiting period for posting period w.e.f August 2015 to 05 September, 2002 in respect of the Dr. Sadaf Jamil (petitioner) WMO (BS-17) attached to DHO, Mohmand for the purpose of pay against her posting, but without HPA vide notification dated 27.03.2023. **(Copy of notification dated 27.03.2023 is attached as Annexure-C)**
4. That as the petitioner was illegally kept away from performance of her duty by the respondents, which was also endorsed by this Honorable Tribunal in its judgment dated 26.01.2022 and the Honorable Tribunal also allowed the appeal of the petitioner with the direction of respondents to give proper posting and release her salary stopped since August 2015 and in the compliance of judgment dated 26.01.2022 of this Honorable Tribunal her salary was released from August 2015 to 05.09.2023, but her Health Professional Allowance (HPA) was not granted for that period despite the fact that the appellant did not perform duty due to fault of the respondent of not adjusting her on her post and she should not be deprived from HPA for that period due to the fault of the respondents and not granting HPA for that period is violation in implementing of judgment dated 26.01.2022 of this Honorable Tribunal in its true letter and spirit.
5. That as per superior court judgment that once an official was reinstated in service after exoneration of charges leveled against him/her, the period during which he/she remained either suspended or dismissed/removed could not be attributed as fault on his/her part. Absence of official during period of dismissal/removal was not voluntary on his/her part but it was due to the order of the authority which restrained from attending his/her job/duty. Therefore, his/her service record could neither be adversely affected nor could he/she be denied any benefits to which he/she would have been entitled had he/she not been removed/dismissed and as the petitioner was not posted/adjusted on her post by the competent authority

to perform her duty and due the act of the respondents the petitioner cannot be deprived from HPA and is entitle HPA for that period.

- 6. That the judgment is still in filed and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to obey the judgment dated 26.01.2022 of this Honorable Tribunal in letter and spirit.
- 7. That the petitioner having no other remedy except to file this execution petition for full implementation of judgment dated 26.01.2022 of this Honorable Tribunal.

It is therefore, most humbly prayed that the respondents may kindly be directed to fully implement the judgment dated 26.01.2022 of this Honorable Service Tribunal in letter and spirit and grant PHA along with pay. Any other remedy, which this Honorable Tribunal deems fit and appropriate that, may also be awarded in favour of the petitioner.

*Sadaf*

PETITIONER

Dr. Sadaf Jamil

THROUGH:

*Taimur Ali Khan*

TAIMUR ALI KHAN

ADVOCATE HIGH COURT

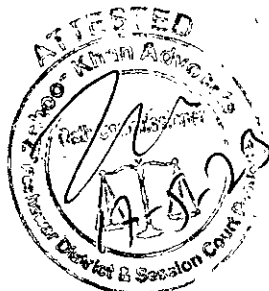
& *Shakir Ullah Torani*

SHAKIR ULLAH TORANI

ADVOCATE

**AFFIDAVIT**

It is affirmed and declared that the contents of this execution petition are true and correct to the best of my knowledge and belief.



*Sadaf*

DEPONENT

A (14)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

Khyber Pakhtunkhwa  
Service Tribunal

SERVICE APPEAL NO. 11824 /2020

Diary No. 10808

Dated 29/9/2020

Dr. SADAF JAMIL d/o Muhammad Jamil Khan, WMO (BPS-17)  
H# 322, St# 49, Sector-F, Safari House, Phase-8, Behria Town, Rawalpindi.

.....APPELLANT

VERSUS

1. GOVT. OF KHYBER PAKHTUNKHWA,  
through Chief Secretary, Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar.
  2. THE SECRETARY, GOVT. OF KHYBER PAKHTUNKHWA,  
Health Department, Civil Secretariat, Peshawar.
  3. THE DIRECTOR GENERAL HEALTH SERVICES,  
Khyber Pakhtunkhwa, FATA Secretariat, Warsak Road, Peshawar.
- ..... RESPONDENTS

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT ADJUSTING/ISSUING PROPER POSTING ORDER IN RESPECT OF THE APPELLANT& BY NOT RELEASING MONTHLY SALARY OF THE APPELLANT STOPPED SINCE AUGUST 2015 AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL DATED 02-06-2020 OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF 90 DAYS

PRAYER:

That on acceptance of the instant service appeal the inaction of the respondent by not adjusting/issuing proper posting order in respect of appellant& stopping the monthly salary of the appellant may very kindly be declared as illegal and proper posting order be issued with release of monthly salaries stopped since August 2015 with all consequential back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

Respectfully Sheweth:

FACTS:

Filed to-day  
29/9/2020  
Resubmitted to-day  
and filed.  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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

1. That, the appellant is the Law abiding, peaceful & bonafide citizen of Pakistan having domicile of District Mohmand (erstwhile FATA) and is the employee of the respondent Department.

2. That appellant is appointed as Women Medical Officer (BPS-17) on the proper recommendation of the Khyber Pakhtunkhwa Public Service Commission at Serial No. 70 of appointed order dated 05/10/2007 and placed the services of the appellant at the disposal of Ex-Director Health Services FATA.

Copy of appointment order dated 05-10-2007 is attached as ANNEXURE .....A.

3. That appellantsubmitted her arrival report before Director Health Services FATA on 18/10/2007 and accordingly the appellant was further posted and placed her services in Agency Headquarter Hospital Khar Bajaur Agency now District Bajaur vide order dated 23/10/2007.

Copy of arrival report & posting order dated 23.10.2007 is attached as ANNEXURE..... B.

4. That the appellant after working for sufficient time was allowed to work as Assistant Director (Technical) in Population Welfare Department of FATA with further direction that the appellant will draw her salary from her original place of posting vide order dated 04.04.2009.

Copy of order dated 04.04.2009 is attached as ANNEXURE.....C.

5. That appellant was awarded scholarship from Australian Development Scholarship program for Master in Public Health (Epidemiology) in Australia 2012 when the appellant was working as Assistant Director in EPI Cell which was for a period of One Year from January 2012 to December 2012, hence, the appellant submitted application for NOC on 02/08/2011 which was allowed/approved vide notification dated 27/11/2011.

Copy of Application & Notification dated 27.11.2011 is attached as ANNEXURE.....D.

6. That after successful completion of the training course the appellant came back and submitted her arrival report in Ex-DHS FATA for further posting and as such the appellant was posted as Assistant Director (EPI) FATA with immediate effect vide order dated 13/05/2013 and in response thereof the appellant

submitted her arrival report on the post of Assistant Director EPI FATA.

Copy of Posting Order & arrival report dated 13.05.2013 is attached as ANNEXURE. ....E.

- 7. That the appellant submitted a request for regularization of her gap period w.e.f 01/03/2013 to 13/05/2013 which was approved and the gap period between 01/03/2013 to 13/05/2013 was regularized vide notification dated 25/06/2013.

Copy of request & approval order dated 25.06.2013 is attached as ANNEXURE.....F.

- 8. That the appellant has to attend Graduation Ceremony in Australia therefore, the appellant moved an application for Ex-Pakistan Leave from 15<sup>th</sup> June 2014 to 31<sup>st</sup> August 2014, which was forwarded vide letter dated 16/06/2014 and was finally approved vide respondent no. 2 notification dated 11/07/2014.

Copy of Application, forwarding letter dated 16.06.2016 & Notification dated 11.07.2014 is attached as ANNEXURE. ....G.

- 9. That astonishingly monthly salary of the appellant was stopped from August 2015 by the then Director Health Services FATA vide letter dated 29/07/2015 without showing any cogent/plausible reason or any intimation letter of stopping monthly salary and inquiring the appellant was informed that inquiry has been started against the appellant in a frivolous and ambiguous charge from the office of respondent no. 3 and one Dr. Muhammad Asif (BS-19) Coordinator of (PH) DHO Office Peshawar is nominated as inquiry officer for fact finding inquiry vide order dated 27/03/2015 when the appellant approached the office DHS FATA the appellant was informed that your home address is incorrect that's why not contacted well in time hence the appellant submitted her complete home address along with contact no. to the concerned official in the office of Director Health Services FATA and also informed the official that I have neither changed my contact no. nor closed my email address through which I can easily be contacted.

Copy of order date 27.03.2015, address receipt along with other relevant documents & Impugned order dated 29.07.2015 are attached as ANNEXURE .....H&I.

- 10. That the appellant was made a pendulum between the office of respondent no. 2 & the then DHS FATA office and finally



received a copy of the fact finding inquiry from the office of respondent no. 2 when the appellant submitted a request for meeting with respondent no. 2 vide application dated 05/08/2016.

Copy of the Application & fact finding inquiry report is attached as ANNEXURE ..... J & K.

11. That the appellant after receiving the fact finding inquiry report also submitted an objection/observation report vide dated 03/11/2016 which was allotted with proper dairy no. 19336 from the office of respondent No. 2 and perused the same by visiting different office including the office respondent no. 1 till March 2017 but no fruitful or any reasonable result has been received to the appellant that deteriorated the mental and physical health of the appellant which lasted recently when the appellant recovered for Fibroid and Uterine Artery Embolization surgery.

Copy of the Objection dated 03.11.2016 and medical reports are attached as ANNEXURE ..... L & M.

12. That when the appellant get a little bit health the appellant filed Departmental Appeal dated 02/06/2020 before respondent no. 2 against not issuing proper posting/adjustment order and stoppage of monthly salaries stopped since August 2015 which was allotted a proper dairy no. 5888, and after laps of 90 when the appellant did not received any response also filed a request for providing a copy of order (if any) passed in response to the departmental Appeal dated 02/06/2020 vide request dated 31/08/2020 but till date no response has been received so far.

Copy of Departmental Appeal dated 02.06.2020 & application dated 31.08.2020 is attached as ANNEXURE ..... N & O.

13. That the appellant having no other efficacious, adequate and alternate remedy but to approach this Honourable Tribunal on the following grounds amongst others:

GROUND:-

- A. That act and omission of the respondents by not adjusting/issuing proper posting order to the appellant and also not releasing monthly salary stopped since Aug 2015 is against the Law, Rules, Fact & material available on record hence not tenable in the eye of Law and needs interference of this Honourable Tribunal.
- B. That the appellant has not been treated by the respondents in accordance with Law and Rules on the subject noted above and

as such the respondents are clearly violating Article 4, 9, 10-A and 25 of the constitution of Islamic Republic of Pakistan 1973.

- C. That the respondents have not acted in accordance with Law and the rules governing on the subject matter by not adjusting/issuing proper posting order to the appellant and also not releasing monthly salary stopped since Aug 2015 which is illegally stopped since August 2015.
- D. That only a fact finding ex-parte inquiry has been initiated against the appellant upon which objection/observation has been raised over the inquiry conducted but that too was not responded with any fruitful result.
- E. That acts and omission of the respondents while not adjusting/issuing proper posting order to the appellant and also not releasing monthly salary stopped since Aug 2015 is nothing but just to harass the appellant by one way or the other.
- F. That monthly salaries of the appellant has been stopped since August 2015 vide the impugned order dated 29.07.2015 which is highly been deprecated by the Apex Supreme Court of Pakistan in its various judgment that salary could not be stopped in anyway and even then the salary of the appellant has not been released.
- G. That, acts and omission on the part of the respondents while not adjusting/issuing proper posting order to the appellant and also not releasing monthly salary stopped since Aug 2015 is neither in the public interest nor in the exigencies of service.
- H. That acts and omission of the respondent while not adjusting/issuing proper posting order to the appellant and also not releasing monthly salary stopped since Aug 2015 is nothing but performed a misconception of law and under a wrong law hence it had vitiated entire proceedings, which could not be sustained under the law and is liable to be struck down.
- I. That the act and omission on the part of the respondents by not adjusting/issuing proper posting order to the appellant and also not releasing monthly salary stopped since Aug 2015 is clear violation of Article- 38 (e) of the Constitution of Islamic republic of Pakistan which states that:  
"to reduce disparity in the income and earning of the individual including the persons in Service of Pakistan".
- J. That act and omission on the part of the respondents while not adjusting/issuing proper posting order to the appellant and also

not releasing monthly salary stopped since Aug 2015 is also against the Natural Justice and hence liable to be struck down.

K. That any other grounds will be raised at the time of arguments with prior permission of this Honourable Tribunal.

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

Dated: 29-09-2020

Appellant

*Sadaf* 28/09/2020

DR. SADAF JAMIL

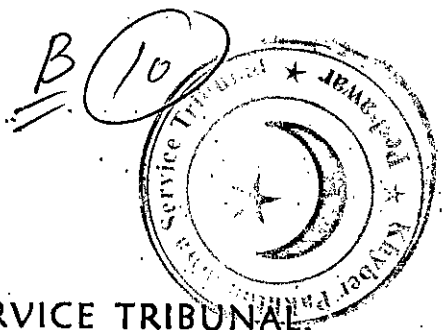
Through

MUHAMMAD MAAZMADNI

Advocate,

High Court, Peshawar.

*Muhammad Maaz Madni*  
28/9/2020



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

Khyber Pakhtunkhwa  
Service Tribunal

SERVICE APPEAL NO. 11824 /2020

Diary No. 10808

Dated 29/9/2020

Dr. SADAF JAMIL d/o Muhammad Jamil Khan, WMO (BPS-17)  
H# 322, St# 49, Sector-F, Safari House, Phase-8, Behria Town, Rawalpindi.

.....APPELLANT

VERSUS

1. GOVT. OF KHYBER PAKHTUNKHWA,  
through Chief Secretary, Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar.
  2. THE SECRETARY, GOVT. OF KHYBER PAKHTUNKHWA,  
Health Department, Civil Secretariat, Peshawar.
  3. THE DIRECTOR GENERAL HEALTH SERVICES,  
Khyber Pakhtunkhwa, FATA Secretariat, Warsak Road, Peshawar.
- ..... RESPONDENTS

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE  
INACTION OF THE RESPONDENTS BY NOT  
ADJUSTING/ISSUING PROPER POSTING ORDER IN RESPECT  
OF THE APPELLANT & BY NOT RELEASING MONTHLY SALARY  
OF THE APPELLANT STOPPED SINCE AUGUST 2015 AND  
AGAINST NOT TAKING ANY ACTION ON THE  
DEPARTMENTAL APPEAL DATED 02-06-2020 OF THE  
APPELLANT WITHIN THE STATUTORY PERIOD OF 90 DAYS

PRAYER:

That on acceptance of the instant service appeal the inaction of the respondent by not adjusting/issuing proper posting order in respect of appellant & stopping the monthly salary of the appellant may very kindly be declared as illegal and proper posting order be issued with release of monthly salaries stopped since August 2015 with all consequential back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

Respectfully Sheweth:

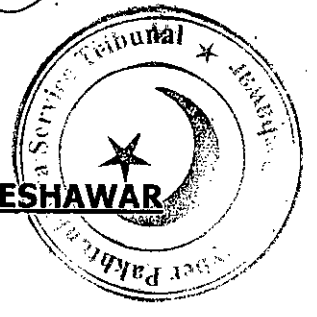
FACTS:

**ATTESTED**

*[Signature]*  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Filed to-day  
Registrar  
29/9/2020  
Re-submitted to-day  
and filed.  
Registrar  
7/10/2020

11



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 11824/2020

Date of Institution ... 29.09.2020  
Date of Decision ... 26.01.2022

Dr. Sadaf Jamil d/o Muhammad Jamil Khan, WMO (BPS-17) H# 322, St#49,  
Sector-F, Safari House Phase-8, Behria Town, Rawalpindi. ... (Appellant)

**VERSUS**

Govt. of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa Civil  
Secretariat, Peshawar and others. ... (Respondents)

Muhammad Maaz Madni,  
Advocate ... For Appellant

Asif Masood Ali Shah,  
Deputy District Attorney ... For respondents

**AHMAD SULTAN TAREEN** ... **CHAIRMAN**  
**ATIQ-UR-REHMAN WAZIR** ... **MEMBER (EXECUTIVE)**

**JUDGMENT**

**ATIQ-UR-REHMAN WAZIR MEMBER (E):-** Brief facts of the case are

that upon recommendations of public service commission, the appellant was appointed as women medical officer BPS-17 vide order dated 05-10-2007 and placed her services at the disposal of Director Health ex-FATA. The appellant reported her arrival on 18-10-2007 and she was further posted in Agency Head Quarter Hospital ex-Bajawar Agency vide order dated 23-10-2007. Thereafter, the appellant was allowed vide order 04-04-2009 to work as Assistant Director (Technical) in Population Welfare Department Ex-FATA with further direction that she will draw her salary from her original place of posting. The appellant was awarded scholarship from Australian Development Scholarship Programme for master in Public Health (Epidemiology) in Australia; when the appellant was working as Assistant Director in Extended Programme for Immunization (EPI)

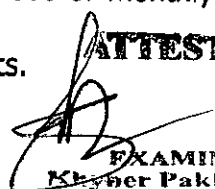
**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

12

cell. The course was for a period of one year from January to December 2012 and the appellant was allowed to attend such scholarship vide order dated 27-01-2011. After completion of the course, the appellant returned and was posted as Assistant Director EPI Ex-FATA with immediate effect vide order dated 13-05-2013. The appellant filed an appeal for regularization of gap period with effect from 01-03-2013 to 13-05-2013, which was allowed and the gap was regularized vide order dated 25-06-2013. In order to attend graduation ceremony in Australia, the appellant was allowed Ex-Pakistan leave with effect from 15-06-2014 to 31-08-2014 vide order dated 11-07-2014. After expiry of the Ex-Pakistan leave, the appellant returned to resume her duty but monthly salary of the appellant was stopped with effect from august 2014 vide order dated 29-07-2015 without showing any reason. On query, it was known that the respondents had conducted a fact finding inquiry vide order dated 27-03-2015 against the appellant on the charges of absence from duty, copy of which was delivered to the appellant at a belated stage under the pleas that her home address was not available with the respondents, against which the appellant filed reply vide letter dated 03-11-2016, thereafter the appellant visited numerous offices of the respondents for release of her salary up till march 2017, but with no fruitful results, which deteriorated the physical and mental health of the appellant, which lasted recently when the appellant recovered from Fibroid and Uterine Artery Embolization Surgery. After recovery from serious illness, the appellant filed departmental appeal dated 02-06-2020 against not issuing proper posting/adjustment order and stoppage of her salary since August, 2015, which was not responded within the statutory period, hence the instant service appeal with prayers that inaction of the respondents by not adjusting/issuing proper posting order in respect of the appellant and stopping her salary may be declared as illegal and proper posting order be issued with release of monthly salaries stopped since August,2015 with all consequential benefits.

ATTESTED

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

02. Learned counsel for the appellant has contended that act and omission of the respondents by not adjusting/issuing proper posting order to the appellant and also not releasing monthly salary stopped since August, 2015 is against law, fact and norms of natural justice, hence not tenable and are liable to be set aside; that the appellant has not been treated in accordance with law, as such, the respondents violated Article-4, 9, 10-A and 25 of the Constitution; that only a fact finding inquiry has been conducted against the appellant upon which objection/observations had been raised, but that too was not responded; that monthly salary of the appellant has been stopped since August,2015 vide impugned order dated 29-07-2015, which is highly been deprecated by the apex court vide judgment dated 29-07-2015.

03. Learned Deputy District Attorney for the respondents has contended that the appellant was granted 76 days Ex-Pakistan leave with effect from 15-06-2014 vide order dated 11-07-2014; that the appellant was bound to resume her official duty after expiry of her leave on 30-08-2014 but the appellant did not turn up; that the appellant was adjusted against the vacant post of assistant director EPI Population Welfare Department for the purpose of pay vide order dated 04-08-2014 and surprisingly the appellant came on the same date to the office of assistant director EPI, who was on leave and handed over the charge; that the appellant unlawfully retained official vehicle in her possession for five months and returned the vehicle on 17-01-2015; that absence of the appellant was reported to health department vide order dated 05-03-2015; that the appellant did not submit arrival after expiry of Ex-Pakistan leave on 30-08-2014 and received salaries without performing duty up-to June 2015, hence her salary was stopped vide order dated 29-07-2015 and inquiry was also initiated against the appellant vide order dated 27-03-2015 and proper notices were served at her home address, but the appellant failed to report; that in light of the above factual position, the appellant has no right to file the instant appeal.

ATTESTED

EXAMINER  
 Sindh & Punjab  
 Service Tribunal  
 Peshawar

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that upon recommendations of public service commission, the appellant was appointed as women medical officer BPS-17 on regular basis vide order dated 05-10-2007 and was posted in Agency Head Quarter Hospital Ex-Bajawar Agency vide order dated 23-10-2007. The appellant was re-posted in AHQ Hospital Ex-Mohmand Agency on her own request and the gap period from 18-10-2007 till 20-03-2009 was regularized as leave without pay. Thereafter, the appellant was allowed vide order 04-04-2009 to work as assistant director (technical) in population welfare department ex-FATA with further direction that she will draw her salary from her original place of posting in ex-Mohmand Agency. The appellant was adjusted for the purpose of pay against the post of WMO reproductive health ex-Mohmand Agency vide order dated 25-05-2010. Vide order 20-06-2011, the appellant was transferred from population welfare department ex-FATA to EPI Ex-FATA and was allowed to draw pay from population welfare department. The appellant availed foreign scholarship from January to December 2012, which was allowed vide order dated 27-01-2011. After completion of the course, the appellant returned and was adjusted for the purpose of pay in AHQ Hospital ex-Mohmand Agency vide order dated 14-02-2012, subsequently posted as Assistant Director EPI Ex-FATA with immediate effect vide order dated 13-05-2013. The appellant filed an appeal for regularization her gap period with effect from 01-03-2013 to 13-05-2013, which was allowed and the gap was regularized vide order dated 25-06-2013. In order to attend graduation ceremony in Australia, the appellant was allowed Ex-Pakistan leave vide order dated 11-07-2014 with effect from 15-06-2014 to 31-08-2014. For the purpose of pay for the period of Ex-Pakistan leave mentioned above, the appellant was adjusted against the post of Assistant Director (Technical) Population Welfare Department vide order dated 04-08-

ATTI/STED

EXAMINER  
Cyber Pakhtunkhwa  
Service Tribunal  
Peshawar

2014.



06. Placed on record is a fact finding inquiry, which would suggest that the appellant due to her dual posting, one for actual duty and the other for the purpose of salary was found absent from both the places since August, 2014, whereas stance of the appellant is that she performed her duty in her original place, whereas they were tracing me against the post meant for salary purpose and due to the reason, she was granted salary up to June, 2015. The fact finding inquiry recommended that salary drawn from august, 2014 to July, 2015 be recovered from her and disciplinary action be initiated against her under E&D Rules, 2011, hence salary of the appellant was stopped vide order dated 29-07-2015 but no further action was taken against her.

07. It is pertinent to mention that the fact finding inquiry was conducted without associating the appellant with proceedings of the inquiry, nor she was afforded any opportunity to her version of defense. The said inquiry was one-sided and was conducted at the back of the appellant under the plea that notice was issued to her on her home address, but due to change of her residence, she could not receive such notice. In pursuance of recommendations of the inquiry report, only salary of the appellant was stopped but no further action was taken against her. In response to the fact finding inquiry, the appellant filed reply vide letter dated 03-11-2016, which reveals that the inquiry so conducted against her was as a result of grudge of the Director Health with the appellant and which smacks malafide on part of the respondents. Thereafter the appellant visited numerous offices of the respondents for release of her salary up till March 2017, but with no fruitful results. Finally, the appellant visited the office of chief secretary and secretary health but nobody listened to her clamor. Record would suggest that the appellant in the meanwhile suffered from a serious disease, which fact is also enumerated in her departmental appeal and documents to this effect are placed on record, which would suggest that the appellant was unable even to submit her departmental appeal. After her surgery and full recovery, the appellant filed departmental appeal dated 02-06-2020

ATTESTED

  
 EXAMINER  
 Khayee Dikhtukhwa  
 Service Tribunal  
 Peshawar

narrating the whole story of her miseries and against not issuing proper posting/adjustment order and stoppage of her salary since August 2015.

08. The issue under consideration was that the appellant after availing Ex-Pakistan leave, reported her arrival for her posting, instead fact finding inquiry was conducted against her and further posting was refused by the respondents inspite of the fact that no adverse order was issued except stoppage of her salary, but the appellant was/is still on the roll of Health department. The allegations so leveled were absence from duty, but neither the appellant was permitted to join her duty nor any disciplinary proceedings were conducted against her and the issue lingered for longer. Second irregularity, which was noticed, was the fact finding inquiry, where the appellant was not associated and was based on malafide due to the reason that the appellant was kept ignorant of such proceedings and her salary was stopped illegally. As per recommendations of the fact-finding inquiry, no regular inquiry was conducted against the appellant, thus the appellant was kept deprived of the opportunity to defend her cause. Departmental appeal of the appellant was not considered nor her serious illness was taken into consideration. It however is a well-settled legal proposition that absence on medical ground even without permission does not constitute gross misconduct.

Wh

09. We are also mindful of the question of limitation, as the appellant filed departmental appeal after considerable delay, but with strong justification of her illness, which is evident from the record. Moreover, the circumstances in the instant appeal are eccentric, which requires dealing in a distinguishable manner, as service of the appellant is still intact and no adverse order was issued by the respondents. Secondly no regular inquiry was conducted against her and the appellant was deprived of the opportunity to explain her position. Thirdly, the appellant seriously fell ill, which is evident from record and was unable to file appeal well in time. on the other hand, the appellant has got a sound case on merit and the Supreme Court of Pakistan in its judgment have held that decision

ATTESTED

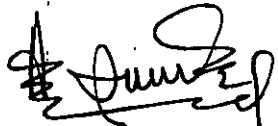
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar


of cases on merit is always encouraged instead of non-suiting litigants on technical reason including ground of limitation. Reliance is placed on 2004 PLC (CS) 1014 and 1999 SCMR 880. We have also noted that the respondents have no case on merit except limitation and the supreme court of Pakistan in its judgment reported as PLD 2002 Supreme Court 84 have held that where on merits the respondents has no case, then limitation would not be hurdle in the way of appellant for getting justice. Supreme Court has observed that the court should not be reluctant in condoning the delay depending upon facts of the case under consideration. We are of the considered opinion that delay on part of the appellant was not intentional, rather due to the reason beyond control of the appellant, hence she deserve to be treated on humanitarian grounds.


10. We are of the considered opinion that the appellant has not been treated in accordance with law and was illegally kept away from performance of her duty. Departmental appeal of the appellant was not considered, respondents however were required to dispose of her appeal with speaking order. Service of the appellant is still intact and she deserves to be given proper posting.

11. In view of the foregoing discussion, the instant appeal is accepted by setting aside the impugned order dated 29-07-2015 with direction to the respondents to give her proper posting and release her salary stopped since August 2015. Parties are left to bear their own costs. File be consigned to record room.

**ANNOUNCED**  
26.01.2022

  
(AHMAD SULTAN TAREEN)  
CHAIRMAN

  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (E)

**Certified to be true copy**  
  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 16/5/23  
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C 18

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT**

Dated Peshawar the 27<sup>th</sup> March , 2023

**NOTIFICATION**

**NO.SOH(E-II)4-1/2023/12665-75** : In compliance of Service Tribunal Judgment dated 26.01.2022 in Service Appeal No. 11824/2020 and as per recommendation of inquiry committee, the Competent Authority is pleased to regularized the waiting for posting period w.e.f. August 2015 to 05<sup>th</sup> September, 2022 in respect of Dr. Sadaf Jamil D/O Muhammad Jamil Khan, Women Medical Officer (BS-17), attached to District Health Officer, Mohmand for the purpose of pay without HPA against her existing post.

**SECRETARY HEALTH  
KHYBER PAKHTUNKHWA**

**Endst. of even No. & Date.**

Copy to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General, Health Services, Khyber Pakhtunkhwa.
3. District Health Officer concerned.
4. District Account Officer concerned.
5. Medical Superintendent concerned.
6. PS to Secretary Health, Khyber Pakhtunkhwa.
7. PS to Special Secretary (E&A/B&D), Health Department.
8. PA to Additional Secretary (E&A/B&D), Health Department.
9. PA to Deputy Secretary Establishment Health Department.
10. Deputy Director (IT), Health Department Peshawar.
11. Doctor concerned.
12. Master file.

  
**Section Officer (E-I)**

**VAKALAT NAMA**

NO. \_\_\_\_\_/2023

IN THE COURT OF KP Service Tribunal, Peshawar

Dr. Sadaf Jamil

(Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Govt. of KP

(Respondent)  
(Defendant)

I/We, Dr. Sadaf Jamil

Do hereby appoint and constitute **TAIMUR ALI KHAN, ADVOCATE HIGH COURT**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

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

Dated \_\_\_\_\_/2023

Sadaf  
(CLIENT)

ACCEPTED

Taimur Ali Khan

(TAIMUR ALI KHAN)  
ADVOCATE HIGH COURT

Shahidullah Khan Potani  
Advocate Peshawar