


*Service Appeal No.7091/2021 titled "Khalil-ur-Rehman Versus Government of KP & others", Service Appeal No.7092/2021 titled "Niaz Muhammad versus Government of KP & others", Service Appeal No.7093/2021 titled "Yaqoob Masih versus Government of KP & others, decided on 30.05.2023 by Division Bench comprising Mr. Kalim Arshad Khan, Chairman and Mr. Muhammad Akbar Khan Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.*

rules under that, therefore, we hold that this Tribunal lacks jurisdiction in this matter. We thus return the appeal to the appellant under proper receipts to approach the proper forum. The office is directed to return original memo and grounds of appeal alongwith connected documents and retain copies of this file alongwith original order sheets and it be then consigned. This order shall also decide the connected Appeals No.7092 of 2021 titled "Niaz Muhammad Vs. Director General Health Services Khyber Pakhtunkhwa Peshawar and others" and Appeal No.7093 of 2021 titled "Yaqoob Masih Vs. Director General Health Services Khyber Pakhtunkhwa, Peshawar" as all these are involving same matter and thus can conveniently be decided together. Copy of this order be placed in the above appeal files.

07. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 30<sup>th</sup> day of May, 2023.*

  
(Kalim Arshad Khan)  
Chairman

  
(Muhammad Akbar Khan)  
Member (E)

*\*Kamranullah\**

04. Learned counsel for the appellant presented decision of this Tribunal in service Appeal No. 480/2017 titled "Dr. Jamshed Saeed Versus The Secretary Health Khyber Pakhtunkhwa, Peshawar and 03 others" where-under *the appeal was accepted and the impugned order was set aside.*

05. Mr. Asif Yousafzai, Advocate Legal Advisor on behalf of respondents No. 4 to 10 and learned AAG on behalf of respondents No. 1 to 3 questioned jurisdiction of this Tribunal in the matter of MTI's Tribunal and presented two judgments of this Tribunal passed in Service Appeal No. 1213/2018 titled "Mst Saba Memoona Versus Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar and 03 others" and Service Appeal No. 6621/2021 titled "Mr. Rehmat Ullah Jan Versus Government of Khyber Pakhtunkhwa through Director General Health Service Khyber Pakhtunkhwa, Peshawar and others" where-under *the appeals were returned on the ground of jurisdiction.*

06. It may be noted that in 2017 MTI Tribunal was non-existing. The MTI Tribunal started function since 2020. Since the grounds advanced in the appeal relate to the MTI Tribunal Act 2020, and the impugned order was passed by the Hospital Director MTI KTH, Peshawar and not by any authority under the Khyber Pakhtunkhwa Civil Servant Act, 1973 or rules made there-under, besides the departmental appeal has also been sent to the authority established under the MTI Act, 2015 and not to the authority under the Khyber Pakhtunkhwa Civil Servants Act, 1973 or

**Service Appeal No. 7091/2021 titled Khalil-ur-Rehman Vs Director General Health Services Khyber Pakhtunkhwa Peshawar and others**

**ORDER**

30<sup>th</sup> May, 2023

**MUHAMMAD AKBAR KHAN, MEMBER (E):-** Mr. Jalal-ud-Din

Advocate for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General on behalf of respondents No. 1 to 3 and Mr. Asif Yousafzai, Legal Advisor on behalf of respondents No. 4 to 10 present. Arguments heard and record perused.

02. The appellants were initially appointed in 1987. After introduction of MTI Act, 2015 the employees working under MTI KTH were given options to either become employees of the MTI or retain their status as civil servants. Accordingly they opted to retain their status as civil servants and as per provision of the MTI Act, 2015 (Amended 2020) they continued working in the KTH on deputation basis. The order to the effect of their working on deputation basis in KTH is not available on record. However, they are working in the KTH since their initial appointment back in 1987. The appellants advanced certain points in their appeal invoking certain provisions of MTI laws and rules made there-under which did not come under the jurisdiction of this Tribunal to adjudicate upon.

03. Record reveal that first they approached the MTI Tribunal against the impugned order dated 24.03.2021 however, they withdrew their appeals from the MTI Tribunal and the MTI Tribunal dismissed their appeal as withdrawn vide order dated 07.07.2021.