

Before the Khyber Pukhtunkhwa, Services Tribunal, Peshawar

CM No. \_\_\_\_\_/2023

In Re;

Service Appeal No. 78/2019

Khyber Pukhtunkhwa  
Services Tribunal

Diary No. 5660

Dated 30/5/2023

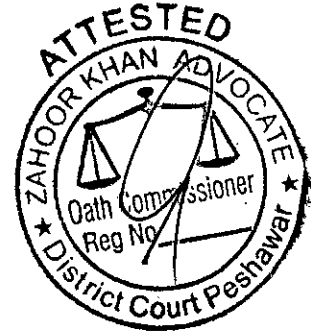
Ghulam Hussain \_\_\_\_\_ Appellant

VERSUS

Govt. of KPK \_\_\_\_\_ Respondents

Application for Rectification of the Judgment rendered in Service Appeal no. 78/2019, instituted on dated 17-01-2019, Decided on dated 13-12-2022, to the extent of mentioning the correct name of the Advocate/Counsel i.e. Mr. Mufariq Shah Advocate instead of Ibrahim Khan Afridi Advocate.

Respectfully Sheweth,



1. That the above mentioned titled appeal was decided on dated 13-12-2022 by this worthy service tribunal.
2. That when the judgment was taken to the department to act upon as per the judgment, the department at once pointed out, that the case had been submitted and argued by Mr. Mufariq Shah Advocate but the name of the advocate had been wrongly mentined/typed as Mr. Ibrahim Khan Afridi Advocate which is the legal counsel of the LRH, hence this application for the rectification of the counsel/advocate name in the judgment dated 13-12-2022. (Copy of judgment in service appeal no. 78/2019 dated 13-12-2022 is annexed)

3. That there is no legal bar in allowing this application, rather it is in the best interest of justice.

It is therefore, humbly prayed that by allowing and accepting this application, the name mentioned wrongly as **Mr. Ibrahim Khan Afridi Advocate** may kindly be replaced with **Mr. Mufariq Shah Advocate**.

Applicant/Appellant

Through



Mufariq Shah

Advocate High Court.

Office No. 15, Hazrat Shah Plaza, Shoba Bazar, Peshawar.

Mobile: 0314-9175656.

Email:mufariq\_shah@hotmail.com

**Certificate/Affidavit:**

It is certified that as per instruction imparted upon me by my client, no such like application has earlier been moved before this or any other court. Nothing concealed nor stated false anything from this worthy Tribunal.



  
30/5/2023  
Deponent

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR**



Service Appeal No.78/2019

Date of Institution ..... 17.01.2019  
Date of Decision ..... 13.12.2022

**SCANNED  
KPST  
Peshawar**

Ghulam Hussain S/O Ghulam Sarwar R/O Presently Dalazak Road, Street No. 4, Mohalla Gul Abad No.1, Peshawar.

... (Appellant)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Health Department, Peshawar.
2. Lady Reading Hospital Peshawar through its Director Hospital.
3. Director General Health Services Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

Ibrahim Khan Afridi  
Advocate

For appellant

Naseer Ud Din Shah  
Assistant Advocate General

For respondents

Mrs. Rozina Rehman  
Miss Farecha Paul

Member (J)  
Member (E)

**JUDGMENT**

ROZINA REHMAN, MEMBER (J) The appellant has invoked the jurisdiction of this Tribunal through above titled appeal with the prayer as copied below:

“That on acceptance of this appeal the impugned order dated 19.02.2018 may please be set aside/turned down and the deducted salary of the appellant may kindly be reimbursed back to the appellant.”


**ATTESTED**

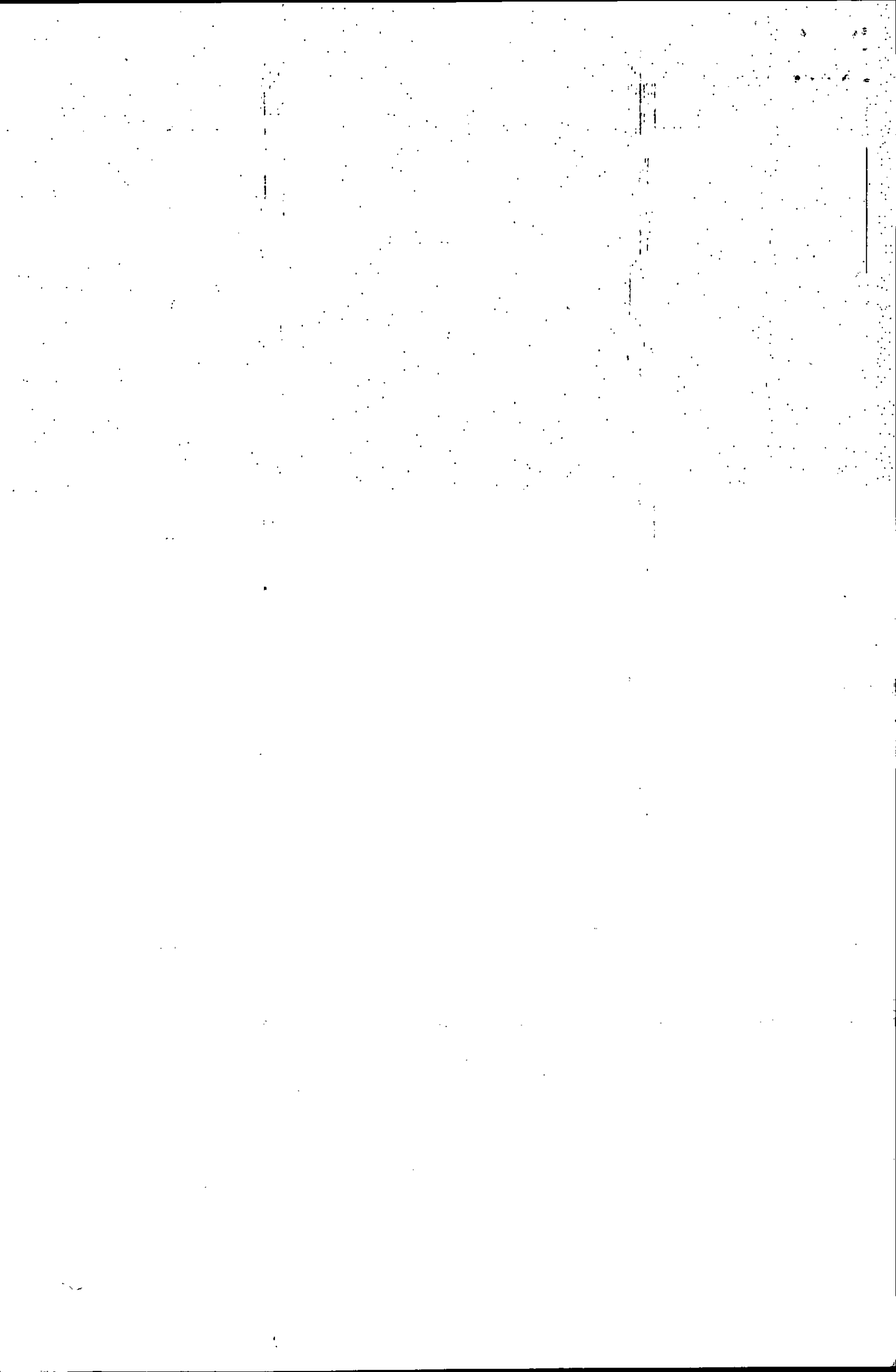
ATTENDING  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

2. Brief facts of the case are that appellant was Provincial Civil Servant who was performing his duties in Lady Reading Hospital Peshawar as a cook. His salary was withheld without any reason and plausible explanation which was later on released vide order dated 19.02.2018. Respondents deducted salary of 71 days which is evident from his pay roll. He then submitted an application/departmental appeal regarding deduction of his salary but the same was not responded to; hence the present service appeal.

3. We have heard Ibrahim Khan Afridi, Advocate learned counsel for the appellant and Nasser Ud Din Shah learned Assistant Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Ibrahim Khan Afridi, Advocate learned counsel for the appellant submitted that the impugned order is against law and facts as the appellant was not treated according to law rather treated in a discriminatory manner which was not warranted in the eyes of law. He submitted that the appellant was not treated at par with his colleagues as envisaged in article 4 of Constitution of Islamic Republic of Pakistan. That as per Article 25 of Constitution of Islamic Republic of Pakistan there shall be no discrimination but in the instant case whole process was done partially according to the will of the respondent No. 2. Learned counsel further contended that well settled principle of law "Audi alteram partem" was violated and that appellant was not given an opportunity before issuance of impugned order. He, therefore, requested for acceptance of the instant service appeal.

**ATTESTED**  
  
 NASSER UD DIN SHAH  
 Assistant Advocate General  
 Peshawar

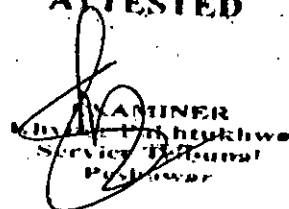


5. Conversely, learned Assistant Advocate General submitted that the salary of the appellant was withheld due to non-performance of his duty. He submitted that appellant was transferred to the office of Assistant Director (Legal) vide office order dated 09.10.2017 but he failed to join his duty; therefore, explanation was called but no response was tendered, therefore, show cause notice was issued for his long absence on 15.01.2018 but he failed to submit any reply. He resumed his duty on 10.01.2018. In consequence respondent No. 2 issued letter dated 20.02.2018 vide which salary for period of absence from duty i.e 71 days, was ordered to be deducted. Lastly, he submitted that there was no discrimination and that appellant was treated in accordance with law and procedure.

6. From the record it is evident that the appellant was provincial civil servant who was performing his duties in Leady Reading Hospital Peshawar as ward orderly. Allegations against the present appellant are that he remained absent for 71 days; therefore, salary for the said period was ordered to be deducted. Record shows that respondents blatantly violated the set norms and rules and conducted the proceedings in an authoritarian manner. No proper procedure as envisaged in E&D Rules, 2011 was followed. No charge sheet alongwith statement of allegations was issued to the appellant. No proper inquiry was conducted in order to bring on record the alleged absence of the appellant without the permission of the competent authority. It is astonishing as to why the department kept mum for a long period of 71 days without initiating proper proceedings against



**ATTESTED**



**EXAMINER**  
 Civil Service Tribunal  
 Peshawar

