

Service Appeal No. 388/2018

2nd June, 2023

1. Learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for the respondent.
2. Learned counsel for the appellant submits that the grievance of the appellant is going to be resolved outside the court, which resolution may take some time and instead of seeking adjournments, he request that it may be adjourned *sine-die*. leaving the appellant at liberty to make an application to get it restored and decided after resolution of the matter in respondent department. Learned Addl. AG has also no objection on the *sine-die* adjournment. Adjourned sine-die accordingly. Consign.
3. *Pronounced in open court in Peshawar and given under our hands*

and seal of the Tribunal on this 02nd day of June, 2023.

SCANNED
KPST
Peshawar

(Muhammad Akbar Khan)
Member (E)


(Kajim Arshad Khan)
Chairman


Kaleem Ullah

14th April, 2023

1. Learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for the respondents present.

2. Learned counsel for requested for adjournment on the ground that he has not made preparation for arguments. Last chance is given to the appellant to argue the case on the next date positively, failing which the case will be decided on the available record without arguments. Adjourned. To come up on 02.06.2023 before D.B. Parcha Peshi given to the parties.


(Muhammad Akbar Khan)
Member (E)


(Kalim Arshad Khan)
Chairman

kamran ullah


SCANNED
KPST
Peshawar

03.01.2023

Learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not gone through the record. Adjourned. To come up for arguments on 24.03.2023 before the D.B.

SCANNED
KPT
Peshawar



(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

24.03.2023

Junior to learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

The Worthy Chairman is on leave today, therefore, the bench is incomplete. The case is, therefore, adjourned to 14.04.2023 for arguments before the D.B. Parcha Peshi given to the parties.

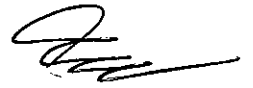
SCANNED
KPT
Peshawar



(FAREEHA PAUL)
Member (E)

18.8.22

As per to Summer Vacation the case is adjourned to 6-10-22 for the same.

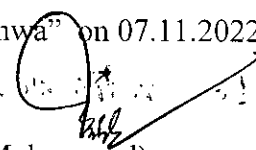



06.10.2022

Junior to counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present.

File to come up alongwith connected Service Appeal No. 387/2018 titled "Bakht Zaman Vs Government of Khyber Pakhtunkhwa" on 07.11.2022 before D.B.

Faint handwritten notes and stamps on the left side of the page.


(Mian Muhammad)
Member (E)


(Kalim Arshad Khan)
Chairman


07.11.2022


Counsel for the appellant present.

Naseer Ud Din Shah learned Assistant Advocate General for respondents present.

Former made a request for adjournment on the ground that he has not prepared the brief. Adjourned. To come up for arguments on 03.01.2023 before D.B.

**SCANNED
KPST
Peshawar**

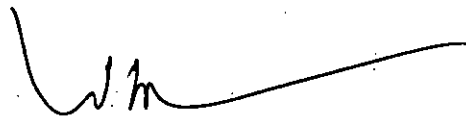

(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

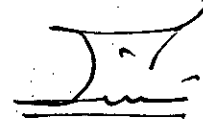
10.11.2021

Mr. Said Khan, Advocate junior of learned counsel for the appellant present. Mr. Javed Ullah, Assistant Advocate General for respondents present.

Junior of learned counsel for the appellant sought adjournment on the ground that learned counsel for the appellant is unable to appear before the Tribunal today due to illness. Adjourned. To come up for arguments before the D.B on 10.02.2022.




(ATIQU UR REHMAN WAZIR)
MEMBER (E)



(SALAH-UD-DIN)
MEMBER (J)

10-2-2022

*Due to retirement of the Honorable
chairman the case is adjourned to
come up for the same as before
on 6/6/2022*



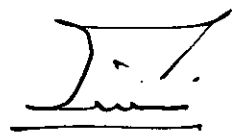
06.06.2022

Clerk of learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today due to strike of lawyers. Adjourned. To come up for arguments on 18.08.2022 before the D.B.



(Fareeha Paul)
Member (E)




(Salah-ud-Din)
Member (J)

22.06.2021

Mr. Said Khan, Advocate, junior of learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar, therefore, adjournment may be granted. Adjourned. To come up for arguments before the D.B on 13.10.2021.



(Rozina Rehman)
Member(Judicial)



(Salah-ud-Din)
Member(Judicial)

13.10.2021

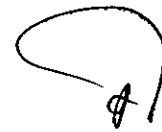
Learned counsel for the appellant present.

Mr. Kabiurullah Khattak, Additional Advocate General for respondents present.

File to come up alongwith connected Service Appeal bearing No. 387/2018 titled Bakht Zamin Vs. Government, on 10.11.2021 before D.B.



(Atiq-Ur-Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

S.A No. 388-18

Postscript

26.05.2021

The order dated 24.03.2021 was written but could not be signed by the D.B including the then Chairman who due to unforeseen reason could not attend the office in coming days. He died in the meantime and the order sheet was left unsigned. To bring the proceedings of appeal on track, it is become expedient for ex-post facto completion of the order sheet. The unsigned order dated 24.03.2021 is reproduced below which be given effect accordingly:-

"Junior to counsel for the appellant and Mr. Noor Zaman Khattak, learned District Attorney for the respondents present.

Former requests for adjournment due to illness of learned senior counsel for the appellant.

Adjourned to 23.6.2021 for arguments before the D.B."

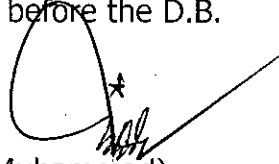

(Atiq-ur-Rehman Wazir)
Member


Chairman

01.10.2020

Junior to counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present.

Request for adjournment is made due to engagement of learned senior counsel before the Hon'ble High Court in many cases today. The matter is adjourned to 22.12.2020 for hearing before the D.B.



(Mian Muhammad)
Member (Executive)



Chairman.

22.12.2020

Due to COVID-19, the matter is adjourned to 24.3.21 for the same.



Reader

24.03.2021

Junior to counsel for the appellant and Mr. Noor Zaman Khattak learned Deputy District Attorney for respondents present.

Former requests for adjournment due to illness of learned senior counsel for the appellant.

Adjourned to 21.06.2021 for arguments before D.B.

Chairman

(Atiq-ur-Rehman Wazir)
Member (E)

05.03.2020

Clerk of counsel for the appellant and Addl. AG
alongwith Gul Badshah, Assistant for the respondents
present.

Representative of the respondents submitted written
reply which is placed on record. To come up for rejoinder,
if any, and arguments on 14.04.2020 before the D.B.


Member

14.04.2020

Due to public holidays on account of Covid-19, the case
is adjourned. To come up for the same on 03.07.2020 before
D.B.


Reader

03.07.2020


Due to COVID19, the case is adjourned to 01.10.2020 for
the same as before,

Reader

27.08.2019

Counsel for the appellant and Addl. AG alongwith Danyal Ahmad, Store Keeper for the respondents.

Respondents have not submitted written reply/comments despite last opportunity was granted to them on 01.07.2019. The appeal is, therefore, posted to D.B for arguments on 14.10.2019.


Chairman

14.10.2019

Learned counsel for the appellant present. Mr. Riaz Khan Paindakhel learned Assistant Advocate General alongwith Mr. Shah Nawaz Junior Clerk for the respondents present. Representative of the respondents department submitted written reply which is placed on file. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for further proceedings on 24.12.2019 before D.B.



Member


Member

24.12.2019

Junior to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 28.02.2020 before D.B.


Member


Member

10.04.2019

Counsel for the appellant present. Mr. Aziz Rehman M.S.
Bajaur representative of the respondents present.

Counsel for the appellant has submitted an application for amending the word "FATA" to "Merged Area" as mentioned in the penal of respondents.

The application is allowed and the office is directed to make requisite amendment in the memorandum of appeal and thereafter, issue notice to all the respondents for the submission of written reply and comments on 16.05.2019 before S.B


Chairmah

16.05.2019

Junior to counsel for the appellant present. Written reply not submitted. Daud Jan Superintendent representative of the respondent department absent. He be summoned with the direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on 01.07.2019 before S.B. Respondents be also put to notice for reply/comments.


Member

01.07.2019

Junior to counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Written reply not submitted. None present on behalf of the respondents department, therefore, notice be issued to the respondents to attend the court and submitted written reply/comments. Last opportunity is granted. Adjourned. To come up for written reply/comments on 27.08.2019 before S.B.


Member

30.01.2019

Counsel for the appellant present. Mr. Kabirullah Khattak,
Additional AG for the respondents present. Written reply on behalf of
respondents not submitted. Learned Additional AG requested for further
adjournment. Adjourned to 06.02.2019 for written reply/comments before
S.B.

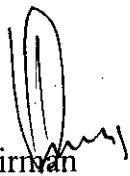

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

06.2.2019

Nemo for appellant. Addl. AG for the respondents
present.

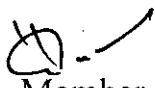
Learned AAG requests for adjournment for
submission of written reply by the respondents. Adjourned
to 28.02.2019 before S.B.

The appellant may submit a list of respondents under
their fresh nomenclature, if any, after merger of FATA on
the next date.


Chairman

28.02.2019

No one present on behalf of appellant. Written reply not
submitted. Daud Jan Superintendent representative of the
respondents absent. He be summoned with direction to
furnish written reply/comments. Adjourn. To come up for
written reply/comments on 10.04.2019 before S.B.


Member

22-9-2018

Due to muharram ul Haram
vacations the case was
not heard on 20-9-2018
Adjourned for 7-11-2018

7-11-2018

^{of order}
READER
Due to Retirement of Honorable
Chairman the Tribunal is non-
functional therefore the case is
adjourned to come up for the same
on 25-12-2018

^{of order}
Reader

26.12.2018

Learned counsel for the appellant present. Written reply not
submitted. Daud Jan Superintendent representative of the
respondent department absent. Adjourn. To come up for written
reply/comments on 30.01.2019 before S.B. Notice has
issued to the respondents.



Member

27.06.2018


SCANNED
KPST
Peshawar

Counsel for the petitioner present. Arguments on restoration of appeal heard. Record reveals that service appeal was dismissed in default on 05.06.2018. Learned counsel for the petitioner submitted application on 11.06.2018 for restoration of the same. The application is well within time therefore, restoration application is accepted and the appeal is restored. To come up for arguments on 08.08.2018 before D.B. Notice be also issued to the respondents accordingly.


(Muhammad Amin Khan Kundi)
Member

08.08.2018

Learned counsel for the applicant and learned AAG for the respondents present. Adjournment requested. Adjourned. To come up for further proceedings on 03.09.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member

03.09.2018

Learned counsel for the applicant and Mr. Kabirullah Khattak, Additional Advocate General, for the respondents present. Written reply not submitted. Therefore, notices be issued to the respondents for written reply/comments. Adjourned. To come up for written reply/comments on 21.09.2018 before S.B.





(Muhammad Amin Kundi)
Member

Form-A

FORM OF ORDER SHEET

Court of _____

Appeal's Restoration Application No. 184/2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	11.06.2018	<p>The application for restoration of appeal no. 388/2018 submitted by Mr. Noor Muhammad Khattak Advocate, may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	<p style="writing-mode: vertical-rl; transform: rotate(180deg);">SCANNED REGISTERED PESHAWAR</p>	<p>This restoration application is entrusted to S. Bench to be put up there on <u>25/6/18</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	25.06.2018	<p>Counsel for the petitioner present. Learned Additional AG on behalf of respondents present. Adjourned. To come up for reply and arguments on 27.06.2018 before S.B.</p> <p style="text-align: right;"> Member</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

C.M NO. 184 /2018
IN
SERVICE APPEAL NO.388/2018

Khyber Pakhtunkhwa
Service Tribunal

Entry No. 666

Dated 11/06/2018

NOOR UL ISLAM

VS

A.C.S FATA

**APPLICATION FOR RESTORATION OF THE ABOVE
MENTIONED APPEAL**

R/SHEWETH:

- 1- That the above mentioned service appeal was pending adjudication before this august Tribunal in which 05.06.2018 date was fixed for hearing.
- 2- That appellant filed the above mentioned appeal against the adjustment of his original post i.e. Pharmacy Technician in light of the Agency Cadre Policy.
- 3- That due to non appearance of the Counsel for appellant the above mentioned appeal of the appellant has been dismissed by this august Tribunal vide order/ judgment dated 05.06.2018. Copy of the order/judgment is attached as annexure.....**A.**
- 4- That on the same date Counsel for the appellant was busy before the Hon'ble Peshawar High Court Peshawar and when he came to attend the above mentioned appeal but unfortunately the same was dismissed due to non presence of counsel for the appellant.
- 5- That the non appearance of the Counsel for appellant was neither deliberate nor intentionally but caused due to the above mentioned reason.

It is therefore, most humbly prayed that on acceptance of this application the above mentioned service appeal No.388/2018 may very kindly be restored.

Dated: 11.05.2018.

APPLICANT


NOOR UL ISLAM

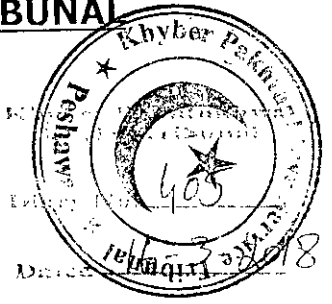
THROUGH:


**NOOR MOHAMMAD KHATTAK
ADVOCATE**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

A. (3)

APPEAL NO. 388 /2018



Mr. Noor-ul-Islam, Pharmacy Technician (BPS-12),
Agency Headquarter Hospital, Bajaur Agency.

..... APPELLANT

VERSUS

Merged Area

- 1- Additional Chief Secretary (FATA), FATA Secretariat, Warsak Road, Peshawar.
- 2- The Director Health Services (FATA), FATA Secretariat, Warsak Road, Peshawar.
- 3- The Agency Surgeon, Bajaur at Khar.
- 4- The Medical Superintendent, AHQ Hospital Bajaur Agency.

Merged Area

District

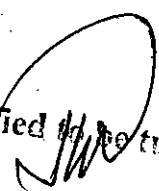
.....RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT ADJUSTING THE APPELLANT ON HIS ORIGINAL POST OF PHARMACY TECHNICIAN IN LIGHT OF THE AGENCY CADRE POLICY AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY (90) DAYS

over
sheet
dated
10/04/19

05.06.2018.

Appellant absent. Learned counsel for the appellant absent. Learned Additional Advocate General present. Case called for several times but no one appeared on behalf of appellant. Consequently the present service appeal is dismissed in default. File be consigned to the record room.

Certified  true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 6-6-18
Number of Words 400
Copying Fee 4
Urgent _____
Total 4
Name of Copyist Flaminis
Date of Completion of Copy 7-6-18
Date of Delivery of Copy 7-6-18

Service Appeal No. 388/2018

08.05.2018

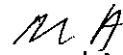
The Tribunal is non-functional due to retirement of our Hon'ble Chairman. Therefore, the case is adjourned. To come up for same on 03.07.2018.



Reader

22.05.2018

Clerk of the counsel for appellant present. Mr. Kabirullah Khattak, Additional AG for the respondents also present. Written reply not submitted. Learned Additional AG seeks adjournment. Adjourned. To come up for written reply/comments on 05.06.2018 before S.B. The restraint order shall continue till the date fixed.



(Muhammad Amin Khan Kundi)

Member

05.06.2018

Appellant absent. Learned counsel for the appellant absent. Learned Additional Advocate General present. Case called for several times but no one appeared on behalf of appellant. Consequently the present service appeal is dismissed in default. File be consigned to the record room.

ANNOUNCED

05.06.2018



Member

11.04.2018

Counsel for the appellant present and seeks adjournment. Adjourned. To come up for preliminary hearing on 23.04.2018 before S.B.


Member

23.04.2018

Counsel for the appellant present. Preliminary arguments heard and case file perused. Learned counsel for the appellant argued that the appellant was appointed as Dispenser vide order dated 28.11.2006 on contract basis. That later on he was regularized on 10.11.2008. It was further contended that the government also issued policy regarding Agency cadre vide order dated 25.05.2009. That on the basis of such Agency cadre policy the appellant submitted application from North Waziristan to Bajaur Agency. It was further contended that in the light of the said policy the appellant was transferred from North Waziristan to Bajaur Agency but against the vacant post of Chief Blood Bank Technician till proper posting of original incumbent of the post vide order dated 03.10.2013. It was further contended that four posts of the Pharmacy Technician has been created for financial year 2017-18 and the respondent-department are going to recruit other people on the said post, although the appellant is entitle for adjusting on the same post, therefore, he filed departmental appeal which was not responded, hence, the present service appeal. Learned counsel for the appellant contended that the appellant was transferred to Bajaur Agency on the wrong post vide order dated 03.10.2013 till proper posting of original incumbent of the post, therefore, the respondent-department are bound to adjust the appellant on the said post instead of recruiting the other people.

Appellant Deposited
Sec. Process Fee

Points urged need consideration. Admit, subject to deposit of security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments on 8.05.2018 before S.B.


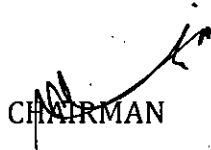

In the mean while status quo to maintain till date


(Muhammad Amin Khan Kundi)

Member

Form-A
FORM OF ORDERSHEET

Court of _____
Case No. 388/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	16/03/2018	<p>The appeal of Mr. Noor-ul-Islam presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	29/03/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>29/03/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
29.03.2018		<p>Counsel for the appellant present and seeks adjournment. Adjourned. To come up for preliminary hearing on 11.04.2018 before S.B.</p> <p style="text-align: right;"> (Ahmad Hassan) Member</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 388 /2018

NOOR-UL-ISLAM

VS

A.C.S FATA & OTHERS

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal	1- 3.
2.	Stay application	4.
3.	Appointment order	A	5.
4.	Regularization order	B	6.
5.	Agency cadre policy	C	7.
6.	CNIC	D	8.
7.	Letters	E	9- 10.
8.	Order	F	11.
9.	Departmental appeal	G	12.
10.	Vakalat nama	13.

APPELLANT

THROUGH:


NOOR MUHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 388 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 405

Mr. Noor-ul-Islam, Pharmacy Technician (BPS-12),
Agency Headquarter Hospital, Bajaur Agency.

Dated 16-3-2018

..... **APPELLANT**

VERSUS

- Merged Area*
- 1- Additional Chief Secretary (FATA), FATA Secretariat, Warsak Road, Peshawar.

Merged Area

 - 2- The Director Health Services (FATA), FATA Secretariat, Warsak Road, Peshawar.
 - 3- The Agency Surgeon, Bajaur at Khar. *District*
 - 4- The Medical Superintendent, AHQ Hospital Bajaur Agency.

..... **RESPONDENTS**

*Order sheet
Dated
16/04/18*

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT ADJUSTING THE APPELLANT ON HIS ORIGINAL POST OF PHARMACY TECHNICIAN IN LIGHT OF THE AGENCY CADRE POLICY AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY (90) DAYS

PRAYERS:

That on acceptance of this appeal the inaction of the respondents may be declared as illegal and unwarranted upon the rights of the appellant. That the respondents may be directed to adjusted the appellant on his original post of Pharmacy Technician (BPS-12) at Bajaur Agency under the Agency Cadre policy. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:-

- 1- That appellant is the bonafide resident of Bajaur Agency and was initially appointed as Pharmacy Technician (BPS-09) now (BPS-12) in NW Agency by Respondent No.2 vide appointment order dated 28-11-2006 after fulfilling all the codal formalities required for the post. Copy of the appointment order is attached as annexure..... **A.**

*Filed by
Sund
16/3/18
Registrar*

- 2- That the appellant took over the charge of his post at the assigned station and started performing duties quite efficiently, whole heartedly and up to the entire satisfaction of his high ups, in the meanwhile the appellant was issued regularization order dated 10-11-2008. Copy of the regularization order is attached as annexure..... **B.**
- 3- That being the bonafide resident of Bajaur Agency the appellant submitted application for his transfer from North Waziristan Agency to Bajaur Agency under the agency cadre policy of the respondent Department. That the said application was properly corresponded between respondent no. 2 and Respondent no. 3 upon which respondent No.3 forwarded a response letter to Respondent No. 2 vide letter dated 19-02-2010 and finally the appellant was transferred from North Waziristan Agency to Bajaur Agency. Copies of the Agency cadre policy, CNIC, letters are attached as annexure..... **C, D & E.**
- 4- That, unfortunately the appellant was not adjusted on his original post of Pharmacy Technician but was adjusted on the post of Chief Blood Bank Technician at Agency Headquarter Hospital Khar Bajaur Agency vide office order dated 03-10-2013. Copy of order is attached as annexure **F.**
- 5- That, appellant time and again requested the respondents for his adjustment against the original post of Pharmacy technician but recently it came into the knowledge of the appellant that some post of Pharmacy Technicians have been sanctioned for the newly constructed Trauma Center at Bajaur Agency for which the appellant filed an appeal/request which was not responded to the appellant till date. Copy of the Departmental Appeal is attached as annexure **G.**
- 6- That appellant having no other remedy but to file the instant appeal on the following grounds amongst the others.

GROUND:

- A- That by not adjusting the appellant on his original post is against the law, facts and norms of natural justice.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

- C- That the respondents acted in arbitrary and malafide manner by not adjusting the appellant on his original post of Pharmacy Technician.
- D- That the respondents are intentionally not adjusting the appellant against his original post of Pharmacy Technician but they are just to accommodate their blue eyed persons on the said post.
- E- That the post held by appellant is not his original post on which he was initially appointed in light of Appointment, promotion and transfer Rules 1989 but the respondents malafidely adjusted the appellant to another which is a post falling vacant due to non availability of its original incumbent.
- F- That the respondents discriminated the appellant on the subject noted above and as such the respondents violated their own policy regarding agency cadre.
- G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 13-03-2018

APPELLANT,


NOOR UL ISLAM

THROUGH:


NOOR MOHAMMAD KHATTAK


MUHAMMAD MAAZ MADNI
ADVOCATES, PESHAWAR

BEFORE THE KHYBER PAKHTUNKHEWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO _____/2018

NOOR UL ISLAM

VS

A.C.S FATA & OTHERS

APPLICATION FOR RESTRAINING THE
RESPONDENTS NOT TO FILL UP THE POST OF
PHARMACY AND MEDICAL TECHNICIANS TILL THE
DISPOSAL OF THE ABOVE MENTIONED APPEAL

R/SHEWETH:

- 1- That the appellant filed above mentioned appeal along with this application before this august service Tribunal in which no date has been fixed so far.
- 2- That all the three ingredients necessary for the stay is in favor of the appellant.
- 3- That the inaction of the respondents by not adjusting the appellant on his original post is against the Civil Servant Act 1973 as well as the appointment, promotion and transfer Rules 1989.
- 4- That the inaction of the respondents by not adjusting the appellant on his original post is also violative of agency cadre policy.
- 5- That the grounds of main appeal is also be considered as integral part of this application.

It is therefore humbly prayed that on acceptance of this application the respondents may be restrained that not to fill up the posts of Pharmacy and Medical Technicians at Bajaur Agency till disposal of this appeal.

APPELLANT


NOOR UL ISLAM

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

DIRECTORATE OF HEALTH SERVICES FATA

Governor's Secretariat Warsak Road Peshawar

Office Order

On the recommendation of the Departmental Selection Committee the competent authority is pleased to appoint Mr/Ms. Noor-ul-Islam S/BAWO Mohibullah as Dispenser BPS 09 on contract basis on the terms and conditions laid down below:

1. His/Her appointment shall be for a period of 3 years / till the life of the project from the date of his/her joining in services and shall be extended on his satisfactory performance.
2. He/She is declared medical fit for this job.
3. His/Her appointment is purely on contract basis (prescribed under Government of NWFP Contract Policy 2002) till the availability of post and he / she shall be bound to serve for at least 5 years in FATA.
4. His/ Her appointment is non-transferable. Moreover spouse policy and district cadre policy shall not be applicable to him/ her.
5. Either party can terminate this contract with 60 days notice or pay in lieu thereof.
6. He/She shall be dealt in accordance with rules and regulations applicable to contract employees under contract policy 2002.
7. He/She shall not indulge in any trade, business and any other activity what so ever which has been declared prohibited for the Government Servants in Civil Servant Act 1973.
8. He/She shall be entitled for all those allowances admissible under the rules.
9. He/She will not be entitled for any TA/DA for joining service and the offer shall be automatically held cancelled if he/she fails to join the duty in 15 days of the receipt of this offer.
10. He/She shall be posted anywhere in FATA.
11. The appointment shall be declared null and void and penalty be imposed in accordance with the prevalent law if the documents are proved tempered or bogus.
12. Prescribed affidavit shall be submitted as per format endorsed prior to join duty.

If he/she accepts the above terms and conditions, he/ she is directed to report for duty to the Agency Surgeon/ Medical Superintendent North Waziristan Agency for further posting with in Agency.

Sd/xxxx
Dr Muhammad Zubair Khan
Director Health Services FATA
Peshawar

No. 1267-73 /DHS/Admin/FATA Dated 28/11/2006.

Copy for information in necessary action to:

1. AGPR, Sub Office Peshawar.
2. Deputy Director Admin DHS FATA.
3. Agency Surgeon / Medical Superintendent North Waziristan Agency.
4. Agency Account Officer / EDO
5. Accountant Local Office, DHS FATA Peshawar
6. Dealing Assistant for record DHS FATA
7. Official Concerned.

ATTESTED


Deputy Director (Admin)
DHS FATA Peshawar

DIRECTORATE OF HEALTH SERVICES FATA
FATA SECRETARIAT WARSAK ROAD PESHAWAR.

B-6

OFFICE ORDER:

In pursuance to Government of NWFP, Civil Servants (Amendment) Act 2005 read with Government of NWFP, Establishment & Administration Department (Regulation Wing) Notification No.SO-VI(Regulation) (E&D)1-13/2005 dated 10.8.2005 the Services of Mr. Noor ul Islam S/O Muhib ullah appointed as Dispenser (BPS-09) vide Office Order No. 1267-73/DHS/Admin/FATA Dated 28/11/2008 presently attached to Agency Surgeon North Waziristan Agency is hereby regularized from the date of his appointment/charge assumption as Dispenser.

He will for all intent and purposes be civil servant except the purpose of Pension and gratuity, In lieu of the same. He will be entitled to receive contributory provident fund. For the said fund 10% will be contributed by the Civil Servant concerned in the prescribed manner. Provided further that in the event of death of the Civil Servant, whether before or after retirement his family shall be entitled to receive the said amount, if it has already not received by concerned deceased Civil Servant.

Sd/-xxx
Director Health Services,
FATA, Peshawar.

No. 20231-34 /FATA/Admn

Dated 10 /11/2008

Copy forwarded to the: -

1. Director General Health Services, NWFP, Peshawar.
2. Agency Surgeon, North Waziristan Agency.
3. Agency Accounts Officer North Waziristan Agency.
4. Official concerned.

ATTESTED

[Handwritten signature]

[Handwritten signature]
Director Health Services,
FATA, Peshawar.



GOVERNMENT OF NWFP
HEALTH DEPARTMENT

Dated the Peshawar 25th May 2009

NOTIFICATION.

No. SOH-III/8-90/2009 (FATA). The Governor of the North West Frontier Province (NWFP), in his capacity as agent to the President of Islamic Republic of Pakistan for FATA has been pleased to delegate powers of appointing authority to Director Health Services FATA, Political Agents and the Agency Surgeons for appointment against posts in the Health sector given hereunder:-

Sr.No.	Pay Scale	Appointing Authority
1.	Posts up to BPS-15 in the FATA Directorate.	Director of Health Services FATA.
2.	Posts in BPS-11 to BPS-15 in an Agency.	Political Agent of the concerned Agency.
3.	Posts in BPS-10 and below in an Agency.	Agency Surgeon of the concerned Agency.

Secretary to Govt. of NWFP,
Health Department.

Endst No. of even No and Date.

Copy forwarded for information to:

1. Secretary to Governor NWFP.
2. Principal Secretary to Chief Minister, NWFP.
3. Accountant General, NWFP.
4. Secretary to Govt. of NWFP, Establishment Department.
5. Secretary to Govt. of NWFP, Administration and Coordination Department FATA Secretariat NWFP Peshawar.
6. Director General Health Services, NWFP.
7. Director Health Services, FATA.
8. All Political Agents.
9. All Agency Surgeons in FATA.
10. PS to Chief Secretary NWFP.
11. PS to Secretary Health, NWFP.
12. Programmer, Health Department, NWFP.



Signature

Sen

27/5/09




Section Officer (H-III)


ATTESTED

Signature


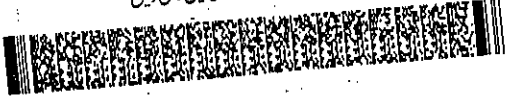
Government of NWFP
Health Department
FATA Secretariat
Peshawar

①
②
③
④
⑤
⑥
⑦


 حکومت پاکستان
 قومی شناختی کارڈ
 21107-0630759-1
 نام: نور الاسلام
 جنس: مذکر
 والد کا نام: سید اہد
 شناختی صوبہ: کوئی نہیں
 تاریخ پیدائش: 25/01/1976
 اسمیٰ زماجوہر
 دستخط مسٹر جنرل

ATTACHED


شناختی نمبر: 21107-0630759-1
 خانہ نمبر: Y17R1X
 سروس پوزیشن: ہانڈہ گھی، ڈاکخانہ قذافی، تحصیل اٹمان خیل، ضلع باجوڑ، ایف سی
 شناختی کارڈ نمبر: 11976287590
 تاریخ اجراء: 04/08/2014
 تاریخ ختم: 04/08/2024
 گمشدہ کارڈ ملنے پر ترمیمی لیٹر ملنے میں ڈال دیں

E-9

DIRECTORATE OF HEALTH SERVICES, FATA,
FATA SECRETARIAT WARSAK ROAD PESHAWAR.

NO. 2696 /DHS/FATA/ADMIN

DATED. 04/3/2010 ✓

To,

The Agency Surgeon Bajaur.
At Khar

Subject
Memo:-

TRANSFER FROM NW AGENCY TO BAJAUR.

above.

Reference your letter No. 191 Dated 19.2.2010 on the subject noted

The letter of Syed Akhunzada Chitan MNA Bajaur Agency bearing the remarks of the undersigned is returned herewith in original with the remarks to please consider Mr. Noor-ul-Islam Pharmacy Technician for adjustment against the post of Pharmacy Technician in Bajaur Agency as and when become available.

Director Health Services,
FATA, Peshawar.

ATTESTED

Handwritten signature

10

OFFICE OF AGENCY SURGEON
BAJAUR AGENCY

NO. 191/c₃ Dated 19/2/2010.

To

The Director Health (FATA)
Peshawar.

Subject:-

TRANSFER FROM N.W.AGENCY TO BAJAUR.

I want to bring in your kind notice that Mr. Saeed Bad Shah S/O Mian Bad Shah Dispenser is to be retired in the first week of March.

As the applicant is serving as a Pharmacy Technician in North Wazeristan Agency Since 2006.

I recommended Mr. Noor Ul Islam fro the said post. So I have no Objection if he is transferred from North Wazeristan to Bajaur.

ATTESTED

[Handwritten signature]

[Handwritten signature]
Agency Surgeon
Bajaur Agency

ESTABLISHMENT OF TRAUMA CENTER IN BALAJI AGENCY

#	Designation	BPS	Yardstick	Posts Sanctioned
1	Casualty Medical Officer	18	1	1
2	General Surgeon	18	1	1
3	Neuro Surgeon	18	1	1
4	Orthopedic Surgeon	18	2	2
5	Medical Officer	17	6	6
6	Women Medical Officer	17	2	2
7	Female Nurse	16	6	6
8	LHV	12	2	2
9	Pharmacy Tech:	12	4	4
10	OT Technician	12	4	4
11	Anesthesia Technician	12	4	4
12	Ward Orderly	4	4	4
13	Dai	4	2	2
14	Chowkidar	3	2	2
15	Sweeper	3	2	2
Total			45	45

Handwritten notes:
 09/2/20
 4
 2
 2
 2

III. SHEIKH FATIMA BINT-E-MUBARAK MODEL HOSPITAL SHOLAM, SWA

#	Designation	BPS	Posts in the Yardstick	Posts sanctioned
1	Medical Superintendent	18	1	1
2	Surgical Specialist	18	1	1
3	Medical Specialist	18	1	1
4	Gynaecologist	18	1	1
5	Children Specialist	18	1	1
6	Nephrologist (Dialysis specialist)	18	0	1
7	GDMOs	17	11	10
8	Charge Nurse	16	9	9
9	Anesthesia Tech	12	2	2
10	OT Tech:	12	2	2
11	Blood Bank Tech:	12	1	1
12	Lab: tech:	12	2	2
13	X-ray Tech:	12	2	2
14	ECG Tech:	12	1	1
15	Sterilization Tech	12	1	1
16	Dental Tech:	12	1	1

Handwritten notes:
 09/2/20
 4
 2
 2
 2

DIRECTORATE OF HEALTH SERVICES, FATA
FATA SECRETARIAT WARSAK ROAD PESHAWAR.

F-11

OFFICE ORDER

In supersession of this Directorate office order bearing endorsement No. 15449-55/DHS /FATA/Admn dated 24.09.2013, Mr. Noor Islam Pharmacy Technician under transfer to AHQ Hospital: Khar Bajaur is hereby posted against the vacant post of Chief Blood Bank Technician till proper posting of original incumbent of the post in the interest of public service with immediate effect till further orders.

.....Sd.....

Director Health Services,
FATA, Peshawar.

16123-29
NO. _____/DHS/FATA/Admn

Dated 3/10/2013

Copy forwarded to the:-

1. Deputy Director (Admin :) DHS, FATA.
2. Agency Surgeon NW Agency.
3. Medical Superintendent AHQ Hospital: Bajaur.
4. Agency Accounts Officer NW at Miranshah.
5. Agency Accounts Officer Bajaur at Khar.
6. PS to Secretary Social Sectors Department FATA.
7. Official concerned.

For information and necessary action.

[Handwritten Signature]

Director Health Services,
FATA, Peshawar.

ATTESTED

[Handwritten Signature]

محکمات جناب ڈائریکٹر نیپٹہ سروسز خانہ ایسٹاڈر
گورنمنٹ : ایجنسی ہرجن باجوڑ

G-(12)

درخواست برادر: ایڈمنٹ اپنے اور جنرل پوسٹ

جناب عالی!

مودبانہ گزارش کی جاتی ہے کہ سائل آپ کے
آفس سائپ باجوڑ ایجنسی میں بطور فارمسی ڈسٹریکشن کی
آفس میں کام کر رہا ہے اور جو کہ سائل اپنے پوسٹ کی جگہ
کئی دوہرے پوسٹ پر لگا دیا ہے۔ میں نے بار بار آپ حضور
والا سے درخواست کی کہ جو وہ اپنے پوسٹ پر تعینات کی جائے
تاکہ حقیقت میں کوئی دشواری نہ ہو۔ اس سائل کو یہ معلوم
ہوا ہے کہ پتہ باجوڑ ایجنسی کیلئے نئے پوسٹیں آئے
ہوئے ہیں۔

اس لیے آپ صاحب سے رجوع کی جاتی ہے کہ سائل
کو ان نئی پوسٹوں پر تعینات کیا جائے تاکہ اس کی
مشکلات حل ہو سکیں۔

الغرض

ایک ایسی بات ہے کہ

المرقوم 05/12/2017

نور الدین
فارمسی ڈسٹریکشن
باجوڑ ایجنسی

ATTESTED

Handwritten signature

VAKALATNAMA

Before the Khyber Peshawar High Court Peshawar

OF 2018

Noor-ul-Islam

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

A.C.S FATA & Others

(RESPONDENT)
(DEFENDANT)

I/we Noor-ul-Islam

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** 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 cost. 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.

Dated. 13 / 3 / 2018

Noor-ul-Islam
CLIENT

Noor-ul-Islam
ACCEPTED

NOOR MOHAMMAD KHATTAK

**MUHAMMAD MAAZ MADNI
&
ADVOCATES**

OFFICE:

Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141

BEFORE THE SERVICES TRIBUNAL

KHYBER PAKHTUNKHWA, PESHAWAR

APPEAL NO. 388 / 2019

Mr. Noor ul Islam Pharmacy Technician (BPS-12)
DHQ Hospital, Bajaur at Khar----- Appellant

VERSES

Additional Chief Secretary (FATA) and others----- Respondents

S NO.	DETAIL	PAGE NO.	Description
1	Para wise Comments	1-2	
2	Letter of M.S. DHQ Hospital Bajaur	3	A

BEFORE THE SERVICES TRIBUNAL

KHYBER PAKHTUNKHWA, PESHAWAR

APPEAL NO. 388 / 2019

Mr. Noor ul Islam Pharmacy Technician (BPS-12)
DHQ Hospital, Bajaur at Khar----- Appellant

VERSES

Additional Chief Secretary (FATA) and others----- Respondents

Reply / comments on behalf of the Respondents No. 1, 2, 3 & 4.

Respected Sheweth

Preliminary objections

1. That the appellant has not yet submitted departmental appeal.
2. That the appellant has got no locus standi to file the instant appeal.
3. That the appellant has not come to this Honorable Court with clean hands.
4. That the appellant has got no cause of action to file the instant appeal.
5. That, the appellant is not an "AGGRIEVED" person within the meaning of Article 199 of the Constitution of Pakistan.

FACTS

1. Correct, the appellant was appointed as Dispenser BPS-9 on contract basis for a period of 3 years and posted in NW Agency vide office order attached with the appeal. Now the appellant is working as Pharmacy Technician BPS-12 in DHQ Hospital Bajaur.
2. Pertains to record.
3. Correct to the extent of application and transfer order but it is pertinent to mention here that as per para-4 of Terms and Conditions of the appointment order, the post was non-transferrable, moreover, spouse policy and district cadre policy was also not applicable upon him. However, the appellant was transferred from NW Agency to Bajaur Agency.
4. Correct, as per letter of the Medical Superintendent DHQ Hospital Bajaur at Annex-A, the appellant was adjusted against the post of Chief Blood Bank Technician for the purpose of drawl of salary due to non-availability of his original post.

5. Incorrect, the appellant has not submitted departmental appeal. As far as sanction of new posts for the Trauma Centre at DHQ Hospital Bajaur is concerned so it is stated that these posts have been filled by transfer of Pharmacy Technician belonging to Tribal District Bajaur and working in other Tribal Districts, under District Cadre Policy. Now there is no vacant post of Pharmacy Technician in DHQ Hospital Bajaur.
6. The appellant has no right to file the instant appeal as he is getting salary regularly.


GROUNDS

- A- Incorrect. Due to non-availability of his original post, the appellant was adjusted against the post of Chief Blood Bank Technician for the purpose of drawl of salary till date.
- B- Incorrect, as stated above.
- C- Incorrect, as stated in Para 1 to 6 above.
- D- Incorrect, as stated in Para – 5 above.
- E- Incorrect, as stated in above paras.
- F- Incorrect as stated in above paras.
- G- The Department will also raise other grounds at the time of arguments.


As the vacant position of Pharmacy Technician is not available at DHQ Hospital Bajaur at the moment, therefore, it is humbly prayed that the appeal may please be dismissed.


District Health Officer
Tribal District Bajaur

Respondent No. 3.


Medical Superintendent,
DHQ Hospital Khar.
Tribal District Bajaur

Respondent No. 4


Director Health Services,
Merged Areas Peshawar.

For Respondent No. 1 & 2

**OFFICE OF THE MEDICAL SUPERINTENDENT
DHQ, HOSPITAL BAJAUR AT KHAR.**

No. 4327 /C-6/MS Phone Office 0942-221200

Dated Khar the 28 / 8 /2019.

To,

The Director Health Services
Merged Areas Peshawar.

Attention Faiz
Mehd. Sb.

Subject: -

POSTING OF PARAMEDICAL STAFF/ COURT CASE.

Sir,

Kindly refer to your office telephonic message today on 2/8/2019.
The following paramedical staff members were posted by the Directorate Health Services
Merged Areas Peshawar in this hospital against the posts noted against each:-

Sr.#	Name	Designation	with	Working against
1	Noor-ul Islam	Pharmacy (BS-12)	Tech:	Working against the post of Chief blood bank Technician (BS-16)
2	Adam Khan	-do-		Working against the post of Charge Nurse (BS-16)
3	Bakht Zamin	-do-		-do-
4	Muhammad Zahid	Medical Technician (BS-12)		Working against Chief Pathology Technician (BS-16)

[Signature]
Medical Superintendent
DHQ, Bajaur at Khar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

CM NO. _____/2019

IN

Appeal No. 388/2018

NOOR-UL-ISLAM

V/S

HEALTH DEPARTMENT

APPLICATION FOR AMENDING THE WORD FATA AS (MERGED AREA)

Respectfully Sheweth;


1. That, the above title case is pending adjudication before this Honourable Tribunal which is fixed for hearing on 28.02.2019.
2. That, with the passing of the 25th Amendment of the Constitution of Pakistan, FATA has been merged with the Province of Khyber Pakhtunkhwa.
3. That, in above titled the word FATA & AGENCY has been used in the penal of the respondents which may be amended as merged Area and that of Agency with DISTRICT.
4. That, likewise the word Political Agent may be amended with Deputy Commission and Assistant Political Agency with Assistant Commissioner.
5. That, there is no legal bar involved while amending the word FATA with that of the Merged Area.

It is therefore, most humbly prayed that on acceptance of this application necessary amendments may be made by amending the word FATA with MERGED AREA and that of Agency as District.

Dated: 28.02.2019

APPELLANT

Through:


NOOR MOHAMMAD KHATTAK
Advocate High Court,
Peshawar