

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 7787/2021

Razeem Khan.....Appellant.

Versus

The Chief Secretary,
Govt: of Khyber Pakhtunkhwa and others**Respondents.**

Para wise Reply by and on behalf of Respondents No.1 to 4.

Preliminary Objections.

1. That the Appellant has no cause of action and locus standi.
2. That the Appeal is not maintainable in present form.
3. That the appeal has been filed with malafide intention.
4. That appellant has not come to the court with clean hands and has suppressed material facts from this Honourable Tribunal. The charge assumption certificate/report annexed by the appellant as annexure-d (page-15 of the appeal) is **bogus and tempered**. The content of the certificate shows that the same has not been signed by the competent authority. The certification has no Endst: number and not stamped. It has been held by the Hon'ble Islamabad High Court, Islamabad vide reported judgment 2020 PLC (CS)1067 that relief could only be claimed by a person having bona-fide claim and who had approached the court with clean hands for enforcement of a legal right obtained in a lawful manner. (In the said

judgment High Court refused to give direction to the authorities to release the pension of the petitioner for having approached to the court with unclean hand). In the instant case, appellant has attached not only bogus charge assumption certificate but tempered its contents and date in order to prove that he has assumed charge before the respondent No.5 (Jamil Khan) Senior Clinical Technologist (Radiology) BPS-18 NKBMH, Peshawar. The element of tempering can best be judged from the bare perusal of the certificate. Appellant has committed fraud with the Tribunal therefore, not entitled for the discretionary relief rather liable for proceeding under section 195 Cr.P.C.

5. That the appeal is badly time barred.
6. That appellant is estopped by his own conduct. The principle of estoppels lies against the appellant.
7. That appellant has no vested right to serve at the station of his choice. Section 10 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 provide that; "Every civil servant shall be liable to serve anywhere within or outside the Province in any post under the Federal Government, or any Provincial Government or local authority, or a corporation or body set up or established by any such Government"

In view of the above cited provision of law, it is the obligatory duty of the appellant to serve at the station; where the competent authority desires him to serve in public interest. The impugned order has been passed by the competent authority in the best public interest and is not liable to be interfered with.

8. That appellant is not an aggrieved person within the meaning of section of Khyber Pakhtunkhwa Service Tribunal Act, 1974.

ON FACTS:

1. That Para No.1 is correct to the extent of his transfer to NKBMH, Peshawar. The stay of the appellant at NKBMH, Peshawar was not satisfactory in public interest.
2. That Para No.2 is correct to the extent of promotion of appellant to BPS-18 but it is incorrect that he was ordered to be posted at Nasir Ullah Khan Baber Hospital, Peshawar. The referred column shows the status of present posting and not the post against which he has been posted after being promoted. The notification dated 11-08-2021 attached by the appellant as annexure-c of the appeal is self explanatory.
3. That the statement pleaded in Para No.3 of the appeal is incorrect, hence denied. Respondent No.5 and appellant has been shown to have been posted at Nasir Ullah Khan Babar Memorial Hospital, Peshawar against vacant post vide posting and transfer order dated 29-09-2021. Since there was only one vacant sanctioned post of Senior Clinical Technologist (Radiology) BPS-18 at the Hospital, therefore, only one could be adjusted against the vacant post. Appellant has failed to place any malafide on the part of competent authority to adjust respondent No.5 in preference of appellant. Respondent No.5 made his arrival prior to appellant and **assumed charge of the vacant post on 06-10-2021** and whereas the charge assumption report of the appellant is bogus and more tempered.
4. That Para No.4 is incorrect, hence denied. The Charge report annexed by the appellant as annexure-d (page-15) of the appeal is bogus and self made. No such charge assumption report is available in the entire record of the Hospital. The charge assumption certificate annexed by the appellant has neither been signed by the competent authority nor the same bears official seal and endst: number. The contents of the so called charge assumption report shows tempering in the issue date. The date affixed as 28 has been

tempered and the relevant change has not been signed by any person. The alleged Posting date has also been tempered and made as 28 without any initial signature. The original posting and transfer order has been made on 29-09-2021 and whereas the charge assumption report shows that the same has been notified on 28-09-2021 i.e one day prior the posting order. The contents of the charge assumption report is also false with reference to the wording "order of the NWFP OF Government No.SOH-III/8-60/2021 dated 11-8-2021" as the order No.SOH-III/8-60/2021 dated 11-8-2021 the relevant column explain present place of posting of promoted employees and not the place of their/his new place of posting. More over the entry with respect to /8-60/ is also tempered. No initial exist on the change entry. All these facts can best be judged from the comparison of the document annexed by the appellant as annexure-b (page-10 of the appeal) and annexure-d (page-15 of the appeal). In the presence of such un-rebutted forgery and fraud coupled with tempering committed by the appellant discretionary relief could not be extended in his favor, rather he is liable for initiation of criminal proceedings under section 195 Cr.P.C by this Hon'ble Tribunal.

5. That Para No.5 is incorrect and against the record, hence denied. The posting transfer order annexed by the appellant as annexure-c (page-12) of the appeal shows/explain that respondent No.5 has been figured at serial No.21 with posting as Senior Clinical Technologist BPS-18 at Nasir Ullah Khan Babar Memorial Hospital, Peshawar. Since there was only one sanctioned vacant post at the Hospital and Respondent No.5 was already adjusted against the same therefore, there was no room to adjust TWO employee of the same cadre against the only one sanctioned post. Seniority does not play any role in posting and transfer policy. In view of the situation, it was the legal obligation of respondent No.4 to inform the high authorities and seek advice on the issue. The competent authority after pro and contra deliberation issued the impugned notification in public interest. Appellant has been adjusted within Peshawar, and not outside. No malafide exist in posting respondent No.5 against the sanctioned post. Detail of sanctioned posts are attached as Annexure-R/I. It is important to mention that the

ON GROUNDS:


- A. That ground A is incorrect hence denied. As already explained; the charge assumption report is bogus and fabricated and for which appellant is liable to be proceeded under section 195 Cr.P.C by this Hon'ble Tribunal.
- B. That ground B is incorrect hence denied. Appellant has no vested right to be posted against the post of Senior Clinical Technologist at Nasir Ullah Khan Baber Memorial Hospital, Peshawar. Section 10 of Khyber Pakhtunkhwa Civil Servant Act, 1973 is very clear on the point.
- C. That ground C is incorrect hence denied. The impugned notification has been issued by the competent authority and not by respondent No.4.
- D. That ground D is incorrect hence denied. The detail answer has already been submitted. Seniority does not play any role in posting and transfer policy.
- E. That ground E is incorrect hence denied. The detail answer has already been submitted. Posting and Transfer is the prerogative competency of the competent authority. No one has right to be post at station of his own choice. The impugned notifications have been issued in public interest. Appellant has failed to establish any malafide on the part of competent authority.
- F. That ground F is incorrect hence denied. The detailed answer has already been submitted. Appellant and respondent No.5 both are civil servant and under legal duty to adhered to the commands of competent authority. Respondent No.5 had already assumed charge against the vacant post of Senior Clinical Technologist therefore; there was no room for appellant to be adjusted. The charge assumption certificate presented by the appellant is bogus and tempered.
- G. The answering respondents would also like to seek the permission of this Hon'ble Court to advance argument in rebuttal.

PRAYER:

It is therefore prayed that in light of the reply as above, this Honorable Tribunal be gracious enough to dismiss the instant Service Appeal and decided the issue of forged/tempered charge assumption certificate in the light of the provision of section 195 Cr.P.C on merits.

Respondent No.1

**Chief Secretary
Govt: of KPK, Civil Secretariat,
Peshawar.**

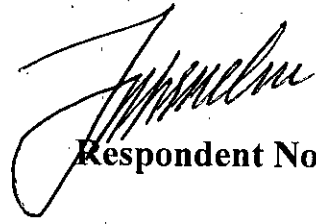

23/09/24
Respondent No 2-1

**Secretary Health
Govt: of KPK, Peshawar.**

Respondent No.3

**DG, Health,
Govt: of KPK, Peshawar.**

Shahem Afzali


Respondent No.4
**MS, NKBMH,
Peshawar.**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 7787/2021

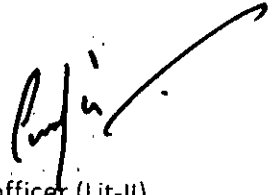
RAZEEM KHAN-----Appellant

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Health &
Others -----Respondent

AFFIDAVIT.

I Mohammad Tufail Section Officer (Lit-II) govt. of Khyber Pakhtunkhwa Health Department do hereby solemnly affirm and declare that the joint Para-wise comments in Service Appeal No.7787/2021 at Page-1-7 is submitted on behalf of respondents is true and correct to the best of my knowledge, belief and that nothing has been concealed from this Hon'ble Court.



Section officer (Lit-II)
Govt: of Khyber Pakhtunkhwa
Health Department

Section Officer (Lit-II)
Health Department
Khyber Pakhtunkhwa

WAKALAT NAMA

IN THE COURT OF Khyber Pakhtunkhwa Service Tribunal

Razeem Khan

Appellant(s)/Petitioner(s)

VERSUS

Secretary Health

Respondent # 4 CM/s NKBMH, Peshawar Respondent(s)

I/We Dr. Fakhruddin M/s NKBMH, Peshawar do hereby appoint Mr. Ashraf Ali Khattak, Advocate Supreme Court of Pakistan in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by

Ashraf Ali Khattak

Ashraf Ali Khattak
Advocate,
Supreme Court of Pakistan

(Respondent #4)
Signature of Executants
Medical Superintendent
Govt. N.K.B.M Hospital
Peshawar