

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1700/2022


Muhammad Tayyab Abbas.....(Appellant)

Versus

Government of Khyber Pakhtunkhwa through Chief Secretary Health
Peshawar.....**Respondents**

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

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 1700 /2022

Muhammad Tayyab Abbas Chief Drug Inspector (BPS-19), Health Department
.....Appellant

**Khyber Pakhtunkhwa
Service Tribunal**

Versus

Diary No. 6313

1. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar
2. The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar
3. The Director General Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar Respondents

Dated 06/07/23

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

RESPECTFULLY SHEWETH

PRELIMINARY OBJECTIONS.

1. That the Appellant has got no cause of action or locus standi to file the instant Appeal.
2. That the Appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant Appeal is against the prevailing Law and Rules.
4. That the Appeal is not maintainable in its present form.
5. That the Appeal is badly time barred.
6. That the Honourable Tribunal has no Jurisdiction to adjudicate upon the matter.
7. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
8. That the matter has already been adjudicated by the Honourable Service Tribunal in its judgment/ order dated 31-10-2022 in Execution Petition No. 4821/2021 and by the honourable Peshawar High Court in its judgment dated 28-09-2022 in WP No. 3508-P/2022, hence the instant appeal is hit by principle of Res-judicata (**Annexure-A**).
9. The impugned transfer Notification dated 22-08-2022 has been issued in accordance with Section 10 of the Civil Servant Act 1973.

ON FACTS:

1. Correct to the extent that the appellant & others had filed appeal bearing No. 10535/2020 before the Service Tribunal against the Transfer Notification dated 30/04/2020
2. Correct to the extent that the appellant along with others had filed different Service Appeals against their transfer/posting Notification dated 30/04/2020 vide appeal No. 10535/2020,

16578/2020 & 16579/2020 & others before the Service Tribunal with prayers for not transferring them from their own cadre which were decided on 06.12.2021 vide consolidated judgment where in the honourable Tribunal set aside the impugned Notification dated 30/04/2020. However the honourable Tribunal did not restrict the replying respondents from further transferring the appellant within the cadre.

The operative clause of the order of execution petition dated 31st October 2022 is as under;

"In view above state of affairs when we see the notification dated 22.08.2022 issued in compliance of the judgement it appears that judgement has been implemented in its letter & spirit and we cannot allow any body to exploit the terms by making a self-beneficial interpretation and to get any relief which was not granted in the judgement. Therefore the contentions of the petitioner/s that they could not be transferred from the station they were previously posted, is not well founded." (Copy of the judgment dated 31-10-2022 is Annexure-B)

3. Correct to the extent of the judgment dated 06.12.2021 which was accepted as prayed by the appellants however it is worth mentioning that all the appellants in their appeals prayed for transferring them within their cadres which was accepted by the honorable Service Tribunal.

4. **Incorrect, False & Misleading Statement.** As stated in the above paras that the appellants prayed in their Service Appeals for transfer within their cadre which was accepted by the honorable Service Tribunal vide its judgment dated 06-12-2021 therefore, the replying respondents in compliance to the judgment dated 06-12-2021 issued the impugned Notification dated 22-08-2022 and submitted before the Service Tribunal in the Execution Petitions No. 236/2022 & Others filed by the appellant and others and the honorable Service Tribunal on 31-10-2022 accepted the compliance report of the department and rejected all the Execution petitions.

5. Pertains to record. However the appellant is not an aggrieved person as no vested right of the appellant has been violated by the replying Respondents.

6. Correct to the extent of explanation letter as pendency of an appeal before the departmental authority is no ground for omission to join and perform his duty. It is further to clarify that the appellant is unwilling worker and having poor performance in term of implementation of the Drug laws/Rules. The respondent No 3, the controlling office of the appellant/s issued explanation letters to the Drug inspector/s for not obeying the order of the competent authority and commit disobedience after the lapse of 2 months and 08 days. The noncompliance of the order to take the charge of the Chief Drug inspector at district Abbottabad will hamper the activities of the drugs/medicines in the market as well as in the Public Hospitals which will create unrest in District Abbottabad. It is further to inform this honorable Tribunal that Disciplinary proceeding against the appellant on account of corruption, Inefficiency & Misconduct has been initiated under Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules 2011. (**Annexure-C**)

7. **Incorrect.** The appellant is not an aggrieved person as no vested right of the petitioner has been violated by the replying respondents however reply on the grounds is as under.

Grounds:

A. **Incorrect.** The impugned Notification dated 22-08-2022 is based on law Rules principles of Natural Justice.

B. **Incorrect.** There is no mala fide on the part of respondents towards the appellant. The appellant issued the transfer notification in accordance with law in the public interest and in implementation of the judgment of the Honorable Service Tribunal. Presently the appellant assumed the charge of Chief Drug Inspector Abbottabad.

C. **Incorrect.** Already replied in para 04 of the facts.

D. **Incorrect.** Already replied in the above paras. As per 2020 PLCCS 1207 Supreme Court,

Place of service is the Prerogatives of employer. Government servant was required to serve anywhere his employer wanted him to serve; it was not a choice or prerogative of the employee to claim a right to serve at a place that he chose to serve.

Similarly in another judgment reported as 2004 PLC (CS) 705S.C. It has been laid down that civil servant could not claim posting at a particular station or at the place of his choice. Competent authority, under S 9 of the Punjab civil servant Act 1974, was empowered to transfer any civil servant from one place to other at any time in exigencies of service or on administrative ground.

E. **Incorrect.** Already replied in the preceding paras.

F. Incorrect. Already explained in Para D above.

G. Already replied in Para D above.

H. As per para D. It is worth to mention that the Apex Court has held in 2010 PLC CS Supreme Court 924 (b) "Every case is to be decided on its own peculiar circumstances and facts" hence the referred judgment in the para is not applicable to the instant case.

I. Incorrect. Already replied in para D above.

J. Incorrect. Already replied in para A of the grounds.


K. Already replied in para 04 of the facts.

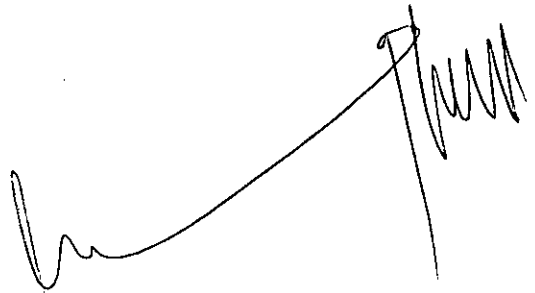
L. Incorrect the case law referred in the para has no relevancy with the instant case. The Apex Court has held in 2010 PLC CS Supreme Court 924 (b) "Every case is to be decided on its own peculiar circumstances and facts" hence the referred judgment in the para is not applicable to the instant case.

M. As per para L above.

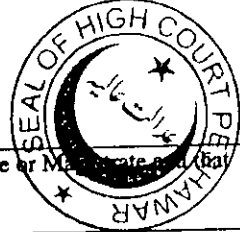
N. No comments however, the replying respondents also seek permission of this honorable Court to adduce other grounds during final hearing of the case.

In view the above, it is therefore, requested that the instant service appeal may please be dismissed with heavy cost.


Secretary Health Govt. of Khyber
Pakhtunkhwa
(Respondent No-01&02)


Director General Drug Control & Pharmacy
Services, Khyber Pakhtunkhwa
(Respondent No-3)

PESHAWAR HIGH COURT, PESHAWAR.
FORM "A"
FORM OF ORDER SHEET.



Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of judge or Magistrate and that of parties or counsel where necessary
1	2	3
	28.09.2022.	<p><u>W.P.No.3508-P/2022.</u></p> <p><u>Present:-</u> Mr.Noor Muhammad Khattak, Advocate for the petitioners.</p> <p>====</p> <p><u>S M ATTIQUE SHAH:-</u> Through instant writ petition, petitioners have approached to this court with the following prayer:-</p> <p>"1. An appropriate writ may kindly be issued to declare the impugned notification vide dated 22.08.2022 to the extent of the term "Competent Authority", as ineffective upon the rights of petitioners, without mandate of law, illegal, unlawful, unconstitutional, impracticable, invalid, void ab initio and ultra vires in light of the judgments cited as <u>2022 SCMR 439</u> narrated under the roof of grounds.</p> <p>2. Further, a writ of mandamus may also be kindly issued directing the respondents No.1, 2, 3, (Provincial Government) defined under Article 129 of the Constitution of Islamic Republic of Pakistan to act strictly in accordance with law while communicating the respondent No.05 to keep him bound for notifying/publishing the orders/directions contained in the judgment cited as <u>2022 SCMR 439</u> under proper authority in the official Gazette under Section 20-A of General Clauses Act to take a legal effect. "</p> <p>2. In essence, the petitioners are aggrieved from notification No.SOH-III/7-262/2022(Drug Inspector), issued by respondent No.4 being in violation of the judgment of the august Apex</p>

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Court rendered in *Province of Sindh and others Vs. Shahzad Hussain Talpur*, reported as (2022 SCMR 439).

- 3. Heard. Record perused.
- 4. Perusal of the ibid notification would reflect that the said notification has been issued pursuant to the judgment of the Khyber Pakhtunkhwa Services Tribunal dated 06.12.2021 in Service Appeal No.16578/2020. For ready reference, the said notification is reproduced below:-

NOTIFICATION

SOH-III/7-262/2022(Drug Inspector) : In compliance of the Services Tribunal, Peshawar judgment dated 06.12.2021 in Service Appeal no. 16578/2020, and consequent upon the approval of competent authority, the posting/transfer orders of the following Chief Drug Inspector/Drug Inspectors/Drug Analyst is hereby made with immediate effect.

S. No.	Name of Officers & Designation	From	To	Remarks
1.	Syed Muhammad Asad Halimi Chief Drug Inspector BS-19	Chief Pharmacist (BP-19), KDA, Kohat	Chief Drug Inspector (BS-19), District D.I. Khan	Against the vacant post
2.	Tayyab Abbas Chief Drug Inspector BS-19	Chief Pharmacist (BS-19), Services Hospital, Peshawar	Chief Drug Inspector (BS-19), District Abbottabad	Against the vacant post
3.	Amin ul Haq Senior Drug Inspector (BS-18)	Already under report to DG, DC&PS on account of Disciplinary proceeding under E&D Rules, 2011		
4.	Arif Hussain Analyst BS-18	Senior Pharmacist (BS-18), Services Hospital, Peshawar	Drug Analyst (BS-18), Drug Testing Laboratory (DTL), Peshawar	Against the vacant post
5.	Manzoor Ahmad Drug Inspector BS-17	Drug Inspector (BS-17) District Peshawar	Drug Inspector (BS-17) District Dir Lower	Against the vacant post
6.	Zia Ullah Drug Inspector BS-17	Drug Inspector (BS-17) District Dir Lower	Drug Inspector (BS-17) District Bannu	Against the vacant post
7.	Muhammad Shoab Khan Drug Inspector BS-17	Already under report to DG, DC&PS on account of Disciplinary proceeding under E&D Rules, 2011		
8.	Shahzada Mustafa Anwar Drug Inspector BS-17	Waiting for posting at Directorate of Drug Control & Pharmacy Services, Khyber Pakhtunkhwa, Peshawar	Drug Inspector (BS-17) District Karak	Against the vacant post

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Peshawar High Court

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Secretary to Govt. of Khyber
Pakhtunkhwa Health Department.

Ibid notification clearly reflects that the same is based upon the judgment of the Service Tribunal dated 06.12.2021 passed in Service Appeal No.16578/2020 of the petitioners. In fact the petitioners through instant writ petition under the guise of the ibid judgment of the august Apex Court, seek setting aside of the said notification being violative of the ibid judgment of the august Apex Court.

The matter of the impugned notification revolves around the posting/ transfers of the petitioners which squarely falls within the terms and; condition of the service of the petitioners provided by Chapter II of the Civil Servants Act, 1973, which are indeed amenable to the jurisdiction of the Khyber Pakhtunkhwa Service Tribunal provided by section 4 of the Service Tribunal Act, 1974. The jurisdiction of this court in such matter is explicitly barred under the provisions of Article 212 (2) of the Constitution. **Miss Rukhsana Ijaz Vs. Secretary, Education, Punjab & others (1997 SCMR 167), Ayyaz Anjum Vs. Govt: of Punjab, Housing & Physical Planning Department through Secretary and others (1997 SCMR 169), Rafique Ahmad Chaudhry Vs. Ahmad Nawaz Malik & others (1997 SCMR 170), Secretary Education NWFP, Peshawar and 2 others Vs.**

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Mustamir Khan & others (2005 SCMR 17) and Peer Muhammad Vs. Govt: of Baluchistan through Chief Secretary & others (2007 SCMR 54).

5. The ibid view of the august Apex Court has further been affirmed in recent judgment rendered by the august Apex Court in **Chief Secretary, Govt: of Punjab Lahore and others Vs. M/s Shamim Usman's** reported in (2021 SCMR 1390), the relevant portion of the ibid judgment is reproduced below:-

"The High Court had no jurisdiction to entertain any proceedings in respect of terms and conditions of service of a civil servant which could be adjudicated upon by the Service Tribunal. The High Court as a constitutional court should always be mindful of the jurisdictional exclusion contained under Article 212 of the Constitution. Any transgression of such constitutional limitation would render the order of the High Court void and illegal."

Coming to the contention of the learned counsel for the petitioners that the impugned notification is liable to be set aside being in violation of the judgment of the august Apex Court reported in the case of **Province of Sindh Vs. Shehzad Hussain Talpur (2022 SCMR 439)**, the relevant portion of the ibid judgment is reproduced below:-

"15. Whenever the Constitution grants power to an individual it mentions the person's position/designation, for instance the President, the Prime Minister, the Chief Justice, the Governor, et cetera. The same also holds true with regard to Federal and provincial laws,

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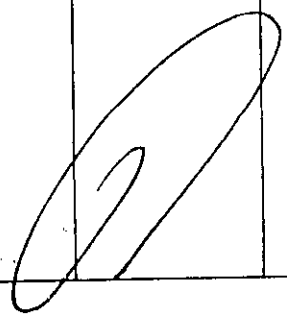
including the cited laws and to the governments' rules of business. It is an individual who holds a particular position and by virtue of such position exercises power. Merely mentioning the competent authority without disclosing the designation and name of the person who is supposed to be the competent authority is utterly meaningless. Non-disclosure serves to obfuscate and enables illegalities to be committed. In this case the Secretary was not authorized to appoint the respondent but managed to do so by donning the competent authority cloak. We are not at all persuaded by the contention of the respondent's counsel that the respondent should not be penalized for the illegalities committed by the department. The respondent was illegally selected and appointed by the Secretary and his selection/appointment is not sustainable nor is it such a minor transgression that it could be condoned.

16. We may also observe that the use of vague and imprecise language, such as, the competent authority, in legal matters is an anathema and oftentimes results in avoidable disputes, which unnecessarily consume time and public resources. The use of accurate and precise language helps avoid disputes. Using the term the competent authority but without disclosing such person's designation and name is against public policy and also against the public interest since it facilitates illegalities to be committed and protects those committing them. Every functionary of the government, and everyone else paid out of the public exchequer, serves the people of Pakistan; positions of trust cannot be misused to appoint one's own or to illegally exercise power.

17. For the reasons mentioned above, this petition is converted into an appeal and allowed and the impugned judgment of the Tribunal is set aside. We are also convinced that there is a need to put a stop to the use of the illusive and elusive term - the competent authority without disclosure of the competent authority's designation and name. Therefore, the governments of Sindh (petitioner No. 1), Balochistan, Khyber Pakhtunkhwa, Punjab, the

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 Peshawar High Court



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Government of Pakistan, Registrars of the Supreme Court and all High Courts, and through the Registrars of the High Courts all District and Sessions courts, are required to issue requisite orders/directions that they and their respective functionaries, semi-government and statutory organizations whenever issuing notifications, orders, office memorandums, instructions, letters and other communications must disclose the designation and the name of the person issuing the same to ensure that it is by one who is legally authorized to do so, and which will ensure that such person remains accountable. Copies of this judgment be sent to the Secretary, Establishment Division, Government of Pakistan, to the Chief Secretaries of the provinces, to the head of the Islamabad Capital Territory, Registrars of the Supreme Court and all High Courts who are directed to issue requisite orders/ directions and to publish the same in their respective gazettes or ask the concerned government to do so. Compliance report be submitted for our consideration in chamber by or before 1 March 2022."

Pursuant to the above judgment of the august Apex Court the worthy Chief Secretary, Government of Khyber Pakhtunkhwa has issued a notification No.SO(Lit-1)E&AD/1-1/2020 dated 14.02.2022 vide which compliance of the ibid judgment was sought in letter and spirit in future. However, due to the reasons best known to the respondents at the time of issuance of the impugned notification the ibid judgment of the august Apex Court was not complied with in letter and; spirit.

Under the provisions of Article 189 of the Constitution the decisions of the Supreme Court are binding on all other courts. For ready

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 Peshawar High Court

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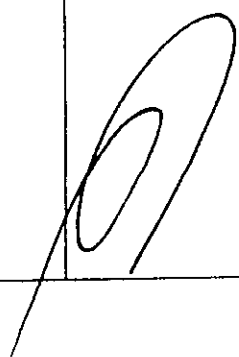
reference the same is reproduced below:-

"Any decision of the Supreme Court shall, to the extent that it decides a question of law which is based upon or enunciates a principle of law, is binding on all other courts in Pakistan."

Given that the decisions of the Supreme Court are binding upon all the stakeholders and; as earlier discussed the Government of Khyber Pakhtunkhwa has already issued a notification qua the compliance of the ibid judgment of the august Apex Court in letter and; spirit, however, mere non-compliance of the ibid judgment of the august Apex Court would not confer jurisdiction upon this court in a matter which is squarely arising out of the terms and; conditions of the service of a civil servant. Undeniably the decisions of the august Apex Court are binding on each and; every organ of the state by virtue of the provisions of Articles 189 and; 190 of the Constitution. It is well settled that a question of law, pronounced or declared by august Apex Court in terms of Article 189 of the Constitution has binding effect on all functionaries both executive and; the judicial authorities. The superior courts, tribunals have obligation to implement and; adhere to the judgment of the Supreme Court rendered. **Moulvi Abdul Qadir & others Vs. Moulvi Abdul Wassay and others (2010 SCMR 1877).**

6. In view thereof the worthy Service

Amir



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Tribunal Khyber Pakhtunkhwa is very much clothed with the jurisdiction and; authority to implement the ibid decision of the august Apex Court in terms of Articles 189 and; 190 of the Constitution and; petitioners can validly agitate the same before the worthy Service Tribunal if they so wish and; desire.

7. For what has been discussed above, this petition, being bereft of any merit, is hereby dismissed in *limine*. However, respondents are directed to implement and; enforce the ibid judgment of august Apex Court in its letter and; spirit. Copy of instant judgment be sent to the worthy Chief Secretary for compliance.

[Signature]
JUDGE

[Signature]
JUDGE

Announced.
Dt.28.09.2022.

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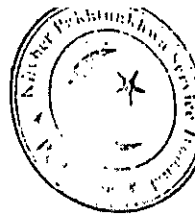
REFUSED TO BE TRUE
01 NOV 2022

No. 57026
Date of Presentation of Application 1-11-22
No. of Pages 17
Copying fee 68
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Date of Preparation of Copy 1-11-22
Date of Delivery of Copy 1-11-22
By [Signature]

(Hon'ble Court Secretary)

HON'BLE MR. JUSTICE MOHAMMAD IBRAHIM KHAN &
HON'BLE MR. JUSTICE S. M. ATTIQUE SHAH

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Annex B

31st Oct, 2022

1. Learned for the petitioner present. Mr. Kabirullah Khan, Addl: AG alongwith Mr. Safiullah, Focal Person for respondents present.

02. This single order shall also dispose of executions petitions No. 171/2022 titled "Syed Mohammad Asad Halimi-vs-Health Department", No. 172/2022 titled "Muhammad Arif Hussain-vs- Health Department", No. 236/2022 titled "Tayyab Abbas-vs-Health Department", No. 533/2022 titled "Zia Ullah-vs-Health Department", No. 534/2022 titled "Manzoor Ahmad-vs-Health Department", No. 535/2022 titled "Shoaib Khan-vs-Health Department", No. 536/2022 titled "Gohar Ali-vs-Health Department" as all are regarding execution of the judgment dated 06.12.2021, passed in the appeals of the petitioners in all the petitions. The relief granted in the judgment was as under:-

"For what has gone above, all the appeals with their respective prayers are accepted as prayed for. Consequently, the impugned order is set aside and respondents are directed not to transfer the appellants from the post of Drug Inspector or Drug Analyst as the case may be. Parties are left to bear their own costs. File be consigned to record room after completion".

3. In the instant matter the prayer of the petitioner Amin Ul Haq was as under:-

"That on acceptance of this appeal the impugned notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from the post of Drug Inspector (BS-17), District Peshawar. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant".

Amir

ATTESTED

CLERK
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

4. Similarly in the appeal of the petitioner in execution petition No. 171/2022 titled "Syed Mohammad Asad Halimi-vs-Health Department" his prayer was as under:-

"On acceptance of this appeal the respondents may kindly be directed to pass an order in favor of the appellant in the following terms:-

- i. Declare that the impugned notification No. SOH-III/7-262/2020 dated 30th April, 2020 is void ab initio. Therefore, the respondents may kindly be directed to withdraw the impugned notification.
- ii. The posting/transfer be done in a rational manner as per the prevailing laws, the appellant is redressed & to get his constitutional rights through this Hon'ble Service Tribunal.
- iii. That the appellant order of illegal ex-cadre transfer/posting may kindly revoked and continue his services in his own cadre i.e. Drug Inspector.
- iv. Grant any other relief which is deemed appropriate by this Hon'ble Service Tribunal in the circumstances of the case."

5. In appeal of the petitioner in execution petition No. 172/2022 titled "Muhanmad Arif Hussain-vs-Health Department" his prayer was as under:-

"that on acceptance of this appeal the impugned notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and private respondent No.5 and the respondents may kindly be directed not to transfer the appellant from the post of Drug Analyst (BS-18), Drug testing laboratory, Peshawar. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant".

6. In appeal of the petitioner in execution petition No. 236/2022 titled "Tayyab Abbas-vs-Health Department" his prayer was as under:-

"On acceptance of this appeal the respondents may kindly be directed to pass an order in favor of the appellant in the following terms:-

ATTESTED

Kulam Arshad Khan
Chairman
Khyber Pakhtunkhwa Service Tribunal
Peshawar

- i. Declare that the impugned notification No. SOH-III/7-262/2020 dated 30th April, 2020 is void ab initio. Therefore, the respondents may kindly be directed to withdraw the impugned notification.
- ii. The posting/transfer be done in a rational manner as per the prevailing laws, the appellant is redressed & to get his constitutional rights through this Hon'ble Service Tribunal.
- iii. That the appellant order of illegal ex-cadre transfer/posting may kindly revoked and continue his services in his own cadre i.e. Drug Inspector.
- iv. Grant any other relief which is deemed appropriate by this Hon'ble Service Tribunal in the circumstances of the case."

7. In appeal of the petitioner in execution petition No. 533/2022 titled "Zia Ullah-vs-Health Department" his prayer as under:-

"That on acceptance of this appeal the impugned notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from the post of Drug Control Unite, Temargara, District Dir Lower. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant".

8. In appeal of the petitioner in execution petition No.534/2022 titled "Manzoor Ahmad-vs-Health Department" his prayer as under:-

"That on acceptance of this appeal the impugned notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from the post of Drug Inspector (BS-17), District

ATTESTED

SECRETARY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Peshawar. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant".

9. In appeal of the petitioner in execution petition No. 535/2022 titled "Shoaib Khan-vs-Health Department", his prayer as under:

"That on acceptance of this appeal the impugned notification dated 06.10.2020 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from the post of Drug Inspector (BS-17), District Mardan. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant".

10. In appeal of the petitioner in execution petition No. 536/2022 titled "Gohar Ali-vs-Health Department" his prayed as under:

"That on acceptance of this appeal the impugned notification dated 11.01.2021 may very kindly be set aside to the extent of appellant and the respondents may kindly be directed not to transfer the appellant from the post of Drug Inspector (BS-17), District Swat. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant".

11. The prayer in the instant petition is to initiate contempt proceedings and to implement the judgment of this Tribunal while in the connected execution petitions No. 171/2022, 172/2022 and 236/2022, the prayers are to implement the judgment in letter & spirit.

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Execution Petition No 70/2022 in service appeal No 4821/2021 filed "Amin Ul Haq vs The Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others" and connected execution petition No 111/2022 No 172/2022, 236/2022 No. 333/2022 No. 334/2022, No 335/2022 and No 336/2022 are decided on 31st October 2022 by Single Bench comprising Kulm Arshad Khan Chairman, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

12. During the pendency of the above petitions, respondents, in compliance with the judgment dated 06.12.2021, in Service Appeal No.16578/2020, produced a copy of Notification No.SOH-III/7-262/2022(Drug Inspector) dated 22.08.2022, vide which the petitioners were dealt with in the following manner:-

S.No	Name of Officers & Designation	From	To	Remarks
1.	Syed Muhammad Asad Halimi Chief Drug Inspector BS-19	Chief Pharmacist (BS-19), KDA, Kohat	Chief Drug Inspector (BS-19), District D.I. Khan	Against the vacant post
2.	Tayyab Abbas Chief Drug Inspector BS-19	Chief Pharmacist (BS-19) Services Hospital Peshawar	Chief Drug Inspector (BS-19), District Abbottabad	Against the vacant post.
3.	Amin ul Haq Senior Drug Inspector (BS-18)	Already under report to DG,DC&PS on account of disciplinary proceeding under E&D Rules, 2011		
4.	Arif Hussain Analyst (BS-18)	Senior Pharmacist (BS-18), Services Hospital, Peshawar	Drug Analyst (BS-18), Drug Testing Laboratory (DTL), Peshawar.	Against the vacant post.
5.	Manzoor Ahmad, Drug Inspector (BS-17)	Drug Inspector (BS-17), District Peshawar	Drug Inspector (BS-17), District, Dir Lower.	Against the vacant post
6.	Zia Ullah Drug Inspector BS-17	Drug Inspector (BS-17) District Dir, Lower.	Drug Inspector (BS-17) District Bannu	Against the vacant post
7.	Muhammad Shoaib Khan Drug Inspector (BS-17)	Already under report to DG, DC&PS on account of disciplinary proceedings under E&D Rules, 2011.		
8.	Shazada Mustafa Anwar Drug Inspector BS-17	Waiting for posting at Directorate of Drug Control & Pharmacy	Drug Inspector (BS-17) District Karak	Against the vacant post.

ATTESTED


 CHAIRMAN
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

			Services, Khyber Pakhtunkhw a. Peshawar		
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13. The above petitions were taken up for decision on 14.09.2022 when the learned counsel for the petitioners informed the Tribunal that he had filed four (4) more execution petitions on 14.09.2022, so it was deemed appropriate that let all the petitions be decided together and, therefore, the above petitions were adjourned for 31.10.2022 for decision of the same.

14. In the newly instituted execution petitions No.533/2022, 534/2022, 535/2022 and 536/2022, the petitioners prayed that the judgment might be implemented in true letter and spirit without wasting the precious time of the Tribunal as well as to avoid unnecessary rounds of litigation. It is, however, urged in paragraph 6 of all the newly filed execution petitions that the respondent/department submitted compliance notification issued on 22.08.2022, which was totally in defiance of the judgment whereas proper compliance of the judgment as desired by the Tribunal was to be made and for which basically the appeals were accepted as prayed for.

15. The main stress of the learned counsel for the petitioners was that as all the appeals with their respective prayers were accepted as prayed for, therefore, the petitioners

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

could not be transferred from the stations they were already posted.

16. It is cardinal principle that while judging the intention of a document, the construction of the document has to be seen and for the purpose not any portion but the whole/entire document has to be seen. Keeping in view the above principle, paragraph 10 of the judgment is worth reproduction, which reads as under:

"10. From the divergent pleadings of parties particularly discussed herein before, the main question wanting determination is, whether vice versa transfer of the holders of the post of Drug Inspector/Analyst and of Pharmacist is reasonably doable?"

17. The rest of the paragraphs of the judgment have answered the above, one and the only formulated question/point for determination in detail and the finding was in negative, which by all means very clearly speaks that the only issue before the Tribunal was whether vice versa transfer of the holders of the post of Drug Inspector/Analyst and of Pharmacist is reasonably doable and that was decided in negative. Thus by no stretch of imagination it could be inferred from the judgment that it also intended not to transfer the petitioners from one station to another. True that all the appeals with their respective prayers were accepted as prayed for but with specific and quite clear resultant consequence of setting aside the impugned order and not transferring the appellants from the post of DRUG INSPECTOR or DRUG

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal

Execution Petition No. 170/2022 in service appeal No. 4821/2021 titled "Amin Ul Haq vs. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others" and connected execution petition No. 171/2022, No. 172/2022, 236/2022, No. 533/2022, No. 534/2022, No. 535/2022 and No. 536/2022 are decided on 31st October 2022 by Single Bench comprising Kalim Arshad Khan, Chairman, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

ANALYST as the case may be. This condition of the order, after acceptance of the appeals, has restricted the relief to the above extent only i.e. the Drug Inspectors should remain posted as Drug Inspectors while Drug Analyst should remain posted as such etc and none of the two or of any other category could be given posting against any other category. Therefore, this Tribunal, while executing the judgment and sitting as executing court, cannot extend the relief by giving that any other meaning or import, especially, to extract the meaning that the petitioners could not be transferred from the stations they are already posted.

18. There is no denying the fact that the executing court cannot go beyond the terms of the decree/order/judgment it stands for and it cannot modify these terms or deviate from them in exercise of its power of execution rather it has to execute/implement the judgment/decrees/order strictly in the terms of the same.

19. In the above state of affairs when we see the notification dated 22.08.2022, issued in compliance of the judgment, it appears that the judgment had been implemented in its letter and spirit and we cannot allow anybody to exploit the terms by making self-beneficial interpretation and to get any relief which was not granted in the judgment. Therefore, the contention of the petitioners that they could not be transferred from the stations they were previously posted, is not well founded.

Copy to:-

ATTORNEY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Execution Petition No 170/2022 in service appeal No. 4821/2021 filed "Amin Ul Haq vs. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others" and connected execution petition No 171/2022, No 172/2022, 236/2022, No. 533/2022 No 534/2022, No 535/2022 and No 536/2022 are decided on 31st October 2022 by Single Bench comprising Kalim Arshad Khan, Chairman, Khyber Pakhtunkhwa Service Tribunal, Peshawar

20. It was also argued by the petitioners Amin ul Haq and Muhammad Shoaib that instead of compliance of judgment, the department did not give them any posting because of some disciplinary proceedings. It is in this regards observed that in the appeals of the above two petitioners there is no mention of the disciplinary proceedings nor the same were discussed anywhere in the judgment. Therefore, the Tribunal, in the respective execution petitions of the petitioners, cannot direct the department not to take any disciplinary action against them. Needless to say that the above named two petitioners have every right to separately challenge the disciplinary proceedings, which they might have and if they did not already challenge those. In case they challenge the same now, those would definitely have to be decided subject to all limitations and restrictions and in accordance with law. *Copy of this order*

to be placed on all the connected matters. Consign.

21. Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 31st day of October, 2022.

(Kalim Arshad Khan)
Chairman

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Amir

Date of Presentation of Application 13/12/22
 Number of Words 3600
 Copying Fee 200
 Deposit 500
 Total 700
 Name of Applicant _____
 Date of Delivery of Copy 13/12/22
 Date of Delivery of Copy 13/12/22

Gover



DIRECTORATE GENERAL DRUG CONTROL & PHARMACY SERVICES

Annex C

All communication should be addressed to the Director General Drug Control & Pharmacy Services

DG Ph: +92-91-9222824

No. 443 /DGDCPS/2023

Email: directoratedcps@gmail.com

Dated the Peshawar: 27/04/2023

To: The Secretary to Govt. of Khyber Pakhtunkhwa Health Department.

A3695
28/04/2023

Attention: SECTION OFFICER-III ✓

Subject: **DISCIPLINARY ACTION AGAINST Mr. MUHAMMAD TAYYAB ABBAS EX-CHIEF DRUG INSPECTOR MARDAN, MR. AMIN UL HAQ, EX-SENIOR DRUG INSPECTOR MARDAN AND MUHAMMAD SHOAIB EX-PROVINCIAL DRUG INSPECTOR MARDAN, DIRECTORATE GENERAL DRUG CONTROL & PHARMACY SERVICES KHYBER PAKHTUNKHWA PESHAWAR IN ACCOUNT OF CORRUPTION, MISCONDUCT AND MIS USE OF AUTHORITY.**

Kindly refer to the above cited subject.

Health Department had constituted four member committee under chairmanship of the Additional Secretary Health vide letter No: SOH-III/7-262/2020 dated 24th June, 2020, for comprehensive audit of various Districts including district Mardan (**Annexure-I**). The report unveil gross irregularities pertaining to Fake Drug Sale Licenses, NOCs to other districts, Monthly Progress Reports, Seized Stocks, PQCB, Court Cases etc. The committee has given certain recommendations on part of the Drug Inspectors Mardan (CDI, SDI & DI) concerned which are as under;

The office of the drug control at Mardan may be directed to compile record of all type of drug licenses along with streamlining the relevant record and NOC issued for other districts and submit the same within two weeks to the office of Director General Drug control & Pharmacy Services for further necessary action.

Amir

SS (AS) DS (A)

In light of the committee recommendations, the Directorate General DC & PS has issued the letter No. 147-50/CDI/KP/DG, DC & PS dated 02/07/2021 to Drug Inspectors Mardan to carry out the comprehensive market survey of District Mardan and ascertain the record of Drug sale licenses and tally with medicines stores outlets/distribution outlets & others and to submit a detail report in this regard to Directorate (**Annexure-II**).

SSH/E&
AS - EST
AS - MTI
DS - Adn
DS - Leg
DS - EST

(SO-III)

In compliance the Drug inspectors Mardan vide letter No. 203/PDI/S MRD dated 22/3/2023, has submitted the detail report of Fake/bogus Drug sale licenses issued in District Mardan. The statements of the forty seven (47) proprietors/owners of drug stores at district Mardan (**Annexure-III**) stated that they had been issued drug

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DIRECTORATE GENERAL DRUG CONTROL & PHARMACY SERVICES

All communication should be addressed to the Director General Drug Control & Pharmacy Services

DG Ph: +92-91-9222824

No. 443 /DGDCPS/2023

Email: directoratedcps@gmail.com

Dated the Peshawar: 27/04/2023

licenses by the concerned Drug inspector or with the connivance his front man by taking money.

The report in respect of Drug Sale Licenses (DSL) recovered/seized from district Mardan in compliance to the direction of the audit report conducted by audit committee of health department are as under;

- A. Total 73 Drug sale licenses (Retail, Distributions & Narcotic) were examined/verified with record and forty seven (47) DSL were issued without fulfilment of its legal requirements as defined in the Drug Sale Rules 1982 Amended 2017.
- B. No record of applications as specified in the Rules, was available while Drug licenses were issued. Form 8A, 8B, 8C & 8D were not in the record in forty Seven (47) Drug Sale licenses.
- C. Copies of CNICs, Affidavits and other credentials of the qualified persons and Proprietors were not present in the record of the Drug Control office while licenses were fraudulently issued.
- D. Those Drug Sale licenses which were issued bear signatures of the then Chief Drug Inspector Muhammad Tayyab Abbas, Senior Drug Inspector Amin Ul Haq & Shoaib Khan.
- E. The name of qualified person/s were used in the Drug Sale licenses who are not aware of their engagement as qualified person in the fake Drug sale license/s in the Medical Store and the proprietors/owners were charged with a handsome amount on account of corruption as described in attached table.
- F. Fake Drug Sale licenses were issued to the medical Store/Drug outlets after receiving illegal Payments by the CDI (Tayyab Abbas) directly or through middle men as per statements attached.
- G. Most of the fake/bogus Drug Sale Licenses recovered/ collected during inspection of the medical Stores in different area of District Mardan was issued without maintaining any such record hence no record found available in the office.
- H. The manual Drug Sale licenses (DSL) recovered during inspections by the Drug Inspectors from various medical store/Distribution outlets bearing facitious serial No number and these were not existed in the office record in the office.
- I. No objection certificates (NOCs) were not obtained in respect of qualified person from concerned district/s as well as no verification was obtained from Khyber Pakhtunkhwa Pharmacy Council before issuing a DSL.
- J. On account of non-maintenance of licences record ; loss to the govt exchequer is made by non-submission of fee (Rs 8000/ DSL) as prescribed under the rules.
- K. No record of Physical inspection/inspection proforma IRO of Drug Sale outlet was in record to whom fake Drug Sale Licenses were issued.
- L. fake/bogus Drug Sale Licenses were directly recovered from the possession of concerned medical store by the committee/drug inspectors during visits/inspection.
- M. Statements revealed that the staff of drug control office Mardan, in connivance with some private persons, took amount Rs. 5.72 Millions in just 47 Drug sale licenses.



DIRECTORATE GENERAL DRUG CONTROL & PHARMACY SERVICES

All communication should be addressed to the Director General Drug Control & Pharmacy Services
DG Ph: +92-91-9222824 No. 443 /DGDCPS/2023
Email: directoratedcps@gmail.com Dated the Peshawar: 27/04 /2023

Name of Drug Inspector	Total No. of Drug Sale License Issued	Total Amount Taken in account of issuance of Fake Drug Sale licenses
Muhammad Tayyab Abbas BS-19	11	1240000
Amin Ul Haq BS-18	04	445000
Shoaib Khan BS-17	32	4039000
	47	5724000 (5.72 Million)

N. It was found that practice of issuance of bogus license was carried out by ex-Chief Drug Inspector Mardan Muhammad Tayyab Abbas, Amin Ul Haq & Shoaib Khan involving a group of private people serve as middle men.

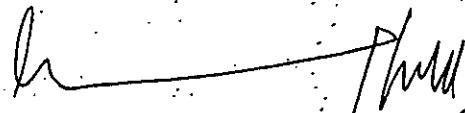
O. On account of issuance of fake DSL, the legal requirements as mentioned in Rule 12, 13, 14, 15, 16, 17, 18, 19, & 20 of the Khyber Pakhtunkhwa Drug Sale Rules 1982 Amended 2017 were not fulfilled thus the sale of high therapeutic index drugs were prone to be sold by unauthorized persons.

It is pertinent to mentioned here that the competent authority (Chief Minister Khyber Pakhtunkhwa has imposed the major penalty "removal from service" under E&D Rules 2011 on account of commission/omission of inefficiency, misconduct and mis use of authority upon the accused Amin. Ul Haq, ex-Senior Drug Inspector (BS-18) and Mr. Shoaib Khan ex-Drug Inspector Mardan (BS-17) and subsequently they were removed from the service vide notification No. SOH-III/7-262/2023 (Shoaib) & No. SOH-III/7-262/2023 (Amin Ul Haq) dated 2nd Feb, 2023 (Annexure-IV).

In view of the above,

A. It is proposed that disciplinary proceeding under E&D Rules 2011 may be initiated against Muhammad Tayyab Abbas the then Chief Drug Inspector District Mardan in account of Corruption, Mis use of authority and Mis conduct.

B. Action against Amin-ul-Haq ex-Senior Drug Inspector & Shoaib Khan ex- Drug Inspector, District Mardan may be initiated under anti-corruption law.


DIRECTOR GENERAL,
Drug Control & Pharmacy Services,
Khyber Pakhtunkhwa Peshawar.

27/04/2023



Annex-11

C

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DIRECTORATE GENERAL DRUG CONTROL & PHARMACY SERVICES

All communications should be addressed to the Director General Drug Control & Pharmacy Services
DG Phone: +92-91-9222824 No. 1230 /DGDCPS/2022
Email: directoratedcps@gmail.com Dated the Peshawar: 08 / 12 /2022

To

✓ The Secretary to Govt. of Khyber Pakhtunkhwa,
Health Department Peshawar.

Dairy No. A 1638
Date. 01-03-23
Health Department

Attention: SECTION OFFICER-III

SUBJECT: DISCIPLINARY ACTION AGAINST MR. TAYYAB ABBAS CHIEF DRUG INSPECTOR (BS-19) ABBOTTABAD, DIRECTORATE GENERAL DRUG CONTROL AND PHARMACY SERVICES, KHYBER PAKHTUNKHWA, PESHAWAR.

Dear Sir,

Kindly refer to the letter No. SOH-III/7-262/2022(Drug Inspector), dated 22nd August, 2022 on the subject cited above.

MR. TAYYAB ABBAS CHIEF DRUG INSPECTOR (BS-19) was transferred vide No. SOH-III/7-262/2022(Drug Inspector), dated 22nd August, 2022 by the Health Department in compliance to the decision/order of Khyber Pakhtunkhwa Service Tribunal in service appeal No. 16578/2020 to the post of Chief Drug Inspector Abbottabad(Annexure-I).


The Directorate General DC & PS issued vide Letter No/Endorsement No. 917-/DGDCPS/2022 dated 25-08-2022 to Tayyab Abbas Chief Drug Inspector Abbottabad for submission of his Arrival/Departure report (Annexure-II) but he fails do so.

Subsequently, after lapse of two months and eight days, an explanation letter vide letter No. 1042-47/DGDCPS dated 31-10-2022 for his not obeying the order of the competent authority which tantamount his disobedience in taking the charge of Chief Drug Inspector Abbottabad (Annexure-III) but he again failed to do in stipulated time period.

Furthermore, vide letter No. 1207-10/DGDCPS/2022 dated 6th December, 2022 (Annexure-IV) was served to the District Heads/incharge Senior Drug Inspector for current status of the concerned Drug inspector.

This act of not obeying the orders of the competent authority tantamount disobedience of the Mr. Tayyab Abbas in respect of Assuming Charge of Chief Drug Inspector Abbottabad.

In view of the above, it is proposed that disciplinary proceeding under E&D Rules 2011 may kindly be initiated against Mr. Tayyab Abbas Chief Drug Inspector Abbottabad.

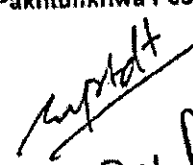

DIRECTOR GENERAL,
Drug Control & Pharmacy Services,
Khyber Pakhtunkhwa Peshawar.

Copy

SOH (2643) AS-ESTT
Annexure 2
2/3/23

So (15)
2/3/23

AS-III
Copy Forwarded for information to: -
DS1-APS to Minister Health, Government of Khyber Pakhtunkhwa.
DS2-LPA to Section Officer-III, Health Department Peshawar.
DS - ESTT


P. U, Pks
10/03

26

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 1700/2022

Muhammad Tayyab Abbas.....**Appellant**

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary Health
Peshawar.....**Respondents**

AFFIDAVIT

I Muhammad Tufail Section Officer (Lit-II) govt. of Khyber Pakhtunkhwa Health Department do hereby solemnly affirm and declare that the joint parawise comments in Service Appeal No.1700/2022 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.

Muhammad Tufail 6/7/23

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

Identified by:-

Add: Advocate General,
Khyber Pakhtunkhwa



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

AUTHORITY LETTER

Mr. Safi Ullah, Focal Person (Litigation-II), Health Department, Civil Secretariat is hereby authorized to attend/defend the Court Cases and file comments on behalf of Secretary Health Government of Khyber Pakhtunkhwa before the Service Tribunal and lower Courts.

(MAHMOOD ASLAM)


Secretary to Govt. of Khyber Pakhtunkhwa
Health Department
Secretary to Govt. of
Khyber Pakhtunkhwa
Health Department

Section Officer (Lt-II)
Health Department
Khyber Pakhtunkhwa

Cost of Rs. 3000/- received in Service Appeal No. 1700/2022,

Titled Tayyab Abbass VS. Health

in the office of Assistant Registrar, Dated: 06/07/2023.


Assistant Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar