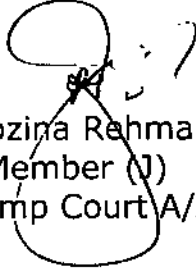


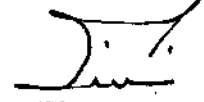
ORDER
18.01.2022

Nemo for the appellant. Mr. Sajjad Ali, Assistant alongwith Mr. Kabirullah Khattak, Additional Advocate General for official respondents No. 1 to 3 present. Private respondent No. 4 in person present.

The appeal in hand was called on for hearing after various intervals, however none appeared on behalf of the appellant till closing time, therefore, the appeal in hand stands dismissed in default. File be consigned to the record room.

ANNOUNCED
18.01.2022


(Rozina Rehman)
Member (J)
Camp Court A/Abad


(Salah-ud-Din)
Member (J)
Camp Court A/Abad

17.06.2021

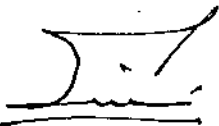
Due to COVID-19, tour to Abbottabad has been cancelled, therefore, case to come for the same as before on 12.10.2021.


Reader

12.10.2021

Learned counsel for the appellants present. Mr. Muhammad Rasheed, Deputy District Attorney alongwith Mr. Sajjad Ali Abbasi, Office Assistant for official respondents No. 1 to 3 and private respondent No. 4 in person present.

Learned counsel for the appellants seeks time for preparation. To come up for arguments on 18.01.2022 before the D.B at Camp Court Abbottabad.


(Salah-Ud-Din)
Member (Judicial)
Camp Court A/Abad

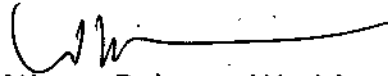

Chairman
Camp Court A/Abad

22.10.2020

Appellant present through representative.

Assistant Advocate General alongwith Amjid Ali, Assistant for respondents present.

Lawyers are on general strike, therefore, case is adjourned to 17.12.2020 for arguments before D.B at Camp Court, Abbottabad.



(Atiq-ur-Rehman Wazir)
Member (E)
Camp Court, A/Abad



(Rozina Rehman)
Member (J)
Camp Court, A/Abad

*Due to COVID-19 case is
adjourned to 18-03-2021*



18.03.2021

Junior counsel for appellant attended the Tribunal at morning.

Riaz Khan Paindakheil learned A.A.G alongwith Nisar Ahmad Assistant, Jaffar Ali Assistant and Munir S.C for official respondents present. Private respondent No.4 in person present.

Case was called time and again but neither appellant nor senior counsel attended the Tribunal, therefore, case is adjourned to 17/6/2021 for arguments before D.B at Camp Court, Abbottabad.



(Atiq-Ur-Rehman Wazir)
Member (E)
Camp Court A/Abad



(Rozina Rehman)
Member (J)
Camp Court, A/Abad

Due to covid ,19 case to come up for the same on 16 / 4 / 20
at camp court abbottabad.



Reader

Due to summer vacation case to come up for the same on
22 / 10 / 20 at camp court abbottabad.


Reader

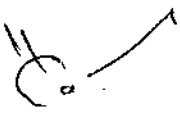
17.12.2019

Appellant alongwith his counsel and Mr. Usman Ghani, District Attorney alongwith Mr. Amjid Ali, Assistant and Abdul Karim, Technologist for the respondents present. Written reply on behalf of respondents not submitted. Representatives of the department requested for further adjournment. Last chance is granted. To come up for written reply/comments on 21.01.2020 before S.B at Camp Court Abbottabad.


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

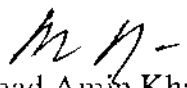
21.01.2020

None present on behalf of appellant. Mr. Zia Ullah learned Deputy District Attorney alongwith Amjid Ali Assistant and Munir Hussain S.C for official respondents present. Private respondent No.4 in person present. Join reply submitted on behalf of respondents. Adjourn. To come up for rejoinder if any and arguments on 18.02.2020 before D.B at Camp Court Abbottabad. Appellant be put to notice for the date fixed.


Member
Camp Court, Abbottabad


19.09.2019

Counsel for the appellant present. Mr. Muhammad Bilal, Deputy District Attorney alongwith M/S Amjid Ali, Assistant and Abdul Karim, Litigation Officer for official respondents No. 1 to 4 and private respondent No. 5 in person present. Written reply on behalf of respondents not submitted. Representative of official respondents as well as private respondent requested for further adjournment. Adjourned to 24.10.2019 for written reply/comments before S.B at Camp Court Abbottabad.


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

24.10.2019

Appellant absent. Counsel for the appellant absent. Mr. Usman Ghani, District Attorney alongwith Sher Baz Khan, SO, Abdul Karim, Technologist and Amjad Ali, Assistant for the respondents present and seek further time to furnish reply. To come up for written reply/comments on 18.11.2019 before S.B at camp court, Abbottabad.


Member
Camp court, A/Abad

18.11.2019

No one present on behalf of appellant. Saleem Javid Litigation Officer for official respondents present. Private respondent No.4 in person present. Appellant in person present. Written reply not submitted. Representative of official respondents as well as private respondent No.4 requested for time to furnish written reply/comments. Granted. To come up for written reply/comments on 17.12.2019 before S.B at Camp Court, Abbottabad.


Member
Camp Court, A/Abad

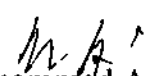
Sohail Babar

11.07.2019

Counsel for the appellant Dr. Sohail Babar Utman present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant is serving as District Specialist Child (BPS-18) in Havalian District Abbottabad since two years and three months. It was further contended that one Dr. Zardad District Specialist Child retired in Benazir Bhutto Shaheed Woman and Children Hospital Abbottabad therefore, the appellant requested the competent authority to transfer the appellant from Havalian to Benazir Bhutto Shaheed Woman and Children Hospital Abbottabad at the vacant post of Dr. Zardad but the competent authority instead of transfer to the appellant, appointed one Dr. Fayaz Jadoon on the vacant post at Benazir Bhutto Shaheed Woman and Children Hospital Abbottabad. It was further contended that the appellant filed Writ Petition before the worthy High Court which was disposed of vide order dated 18.01.2018 and the department was directed to pass an appropriate order on representation of the petitioner for his transfer to Benazir Bhutto Shaheed Woman and Children Hospital Abbottabad within a period of one month. It was further contended that the departmental appeal of the appellant was regretted by the departmental authority vide order dated 03.03.2018. It was further contended that the appellant again challenged the departmental authority order dated 30.03.2018 through Writ Petition which was disposed of by the worthy High Court and the appellant was directed to approach the Service Tribunal vide order dated 24.01.2019 and thereafter, the appellant filed the present service appeal on 02.04.2019. It was further contended that the post of District Specialist Child was lying vacant at the retirement of Dr. Zardad and the appellant was entitled for transfer to the said post on the ground of merit but the respondent-department has illegally rejected his departmental appeal vide order dated 30.03.2018 on the basis of political influence and malafide and posted one Fayaz Jadoon therefore, the respondent-department was bound to transfer the appellant to the said post.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days thereafter, notice be issued to the respondents for written reply/comments for 19.09.2019 before S.B at Camp Court Abbottabad. Learned counsel for the appellant also submitted application for interim relief. Notice of the same be also issued to the respondents for the date fixed.


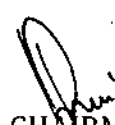

Appellant Deposited
Security & Process Fee


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 419/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	02/04/2019	<p>The appeal of Dr. Sohail Babar presented today by Mr. Raza Shah 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 2/4/19</p>
2-	5-4-19 21.06.2019	<p>This case is entrusted to touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>21-6-19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Counsel for the appellant present:</p> <p>Learned counsel for the appellant requests for adjournment to further prepare the brief.</p> <p>Adjourned to 11.07.2019 for preliminary hearing before S.B at camp court, Abbottabad.</p> <p style="text-align: right;"> Chairman Camp Court, A/Abad</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 419/2019

Sohail Babar Utman

..... Appellant

VERSUS

Government of KPK & Others

..... Respondents

INDEX

.No	Description	Annexure	Pages
1.	Service Appeal alongwith Verification, Affidavit and Certificate		1-13
2.	Copies of the Appointment Letter	A	14
3.	Copy of Arrival Report	B	15
4.	Copy of Letter Dated 29/12/2016	C	16
5.	Copies of both representations	D	17-18
6.	Copies of Writ Petition and Order of Hon'ble High Court	E & F	19-26
7.	Copy of Notice & Reply	G & H	27-30
8.	Copies of Writ Petition and Order	I	31-44
9.	Copy of Application	J	45
10.	Copies of Attendance Sheet of one Mr. Dr. Rashid Ali Medical Specialist	K	46-57
11.	Wakalat Nama		

Date: 02/04/2019

APPLICANT

Through

Raza Shah

Raza Shah
Advocate, High Court,
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. 419 /2019

Sohail Babar Utman S/o Abdul Raheem Utman R/o Supply Tehsil and District
Abbottabad.

...APPELLANT

V E R S U S

1. Government of Khyber Pakhtunkhwa through Secretary Health, Civil
Secretariat, Peshawar.
2. Health Department, Khyber Pakhtunkhwa through Director General, Health
Services, Khyber Pakhtunkhwa Peshawar.
3. District Health Officer, Abbottabad.
4. Dr.Fiaz Jadoon presently serving as District Child Specialist, Benazir Bhutto
Shaheed Women and Children Teaching Hospital, Gami Adda, Abbottabad.

...RESPONDENTS

SERVICE APPEAL UNDER SECTION 4 OF
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
ACT 1974, AGAINST THE ORDER OF
RESPONDENT NO.1 / SECRETARY HEALTH

DATED 30.03.2018 WHICH IS ILLEGAL, VOID AB-
INITIO, AGAINST THE NORMS OF JUSTICE,
WITHOUT JURISDICTION, HENCE, NOT TENABLE
IN THE EYES OF LAW AND IS LIABLE TO BE SET
ASIDE.

PRAYER:-

ON ACCEPTANCE OF INSTANT
SERVICE APPEAL, THE RESPONDENTS MAY
GRACIOUSLY BE ORDERED TO TRANSFER
APPELLANT FROM R.H.C HAVELIAN TO
BENAZIR BHUTTO SHAHEED WOMEN AND
CHILDREN TEACHING HOSPITAL GAMI ADDA
ABBOTTABAD AS DISTRICT CHILD SPECIALIST.

Respectfully Sheweth,

1. That succinctly facts giving rise to instant service appeal are that the appellant was graciously appointed by the respondents department on

recommendations of the Khyber Pakhtunkhwa Public Service Commission as District Specialist Children (BS-18) on regular basis in the Health Department through Notification No.SOH-1(HD) 3-5/2015 dated 2nd December 2016 on the terms and conditions narrated in the letter. *(Copies of the recommendation letter of the Public Service Commission & that of the appointment letter are appended as Annexure "A" & "B" respectively)*

2. That soon after the appointment, appellant joined the department through his arrival report to the respondent No.1 dated 08.12.2016. In the arrival report, appellant requested the preference of the postings. *(Copy of arrival report is attached as Annexure "C")*
3. That respondent No.3 posted the appellant at type D Hospital Havelian, Abbottabad as District Specialist Children and forwarded his arrival report to the respondent No.2 through his letter No.20847/ Etab/D/Charge Report dated Abbottabad the 29.12.2016. *(Copy of letter dated 29.12.2016 is annexed as Annexure "D")*

4. That, the appellant was so posted at Havelian because of the non-availability of post at Abbottabad at that time.
5. That when, one Dr.Zardad Muhammad, Senior District Specialist Children Benazir Bhutto Shaheed Teaching Hospital Gami Adda Abbottabad went to annual LPR of 365 days through Notification No.80H9(HD)/3-614/2005 Peshawar, dated 1st December 2016, the post of Child Specialist at above mentioned Hospital fall vacant.
6. That, appellant has requested the department time and again about severe illness of his father with the request of his transfer to Benazir Bhutto Shaheed Women and Children Teaching Hospital Gami Adda Abbottabad on compassionate grounds but the department did not pay any heed to the request of the appellant but passed the order in favour of one Mr.Fiaz Jadoon presently serving as District Child Specialist Benazir Bhutto Shaheed Women & Children Teaching Hospital Gami Adda Abbottabad by putting into effect the colorful exercise of power.

7. That on 01.03.2017 appellant sent a representation to the respondent No.1 which despite waiting for six months gone without any response whatsoever which compelled the appellant to humbly approach the authorities concerned / respondent No.1 again and he did so through a representation dated 05.06.2017. *(Copies of both representations supra are attached as Annexure "E")*

8. That upon failure of respondents to decide representations, the appellant was constrained to file a Writ Petition No.1078/2017 before Honourable High Court for giving a direction to the respondents for deciding the representation of the appellant and vide order dated 18.01.2018 Honourable Court was pleased to decide the Writ Petition with a direction to the respondent No.1 Secretary Health to decide the pending representation of appellant within a period of one month. *(Copies of Writ Petition and order of this Honourable Court are annexed as Annexures "F" & "G")*

9. That the appellant sent the attested copy of the order of Honourable High Court to respondent No.1 (Secretary Health) on 30.01.2018 and again sent a

Letter alongwith attested copy of the order of Honourable Court dated 18.01.2018.

10. That Honourable High Court was pleased to direct the respondents to decide the representation of appellant within a period of 30 days, however despite the orders of this Honourable Court the representation of appellant has not been decided and same has been put in cold storage.
11. That on dated 13.03.2018, the appellant sent contempt of court notice to Secretary Health by not complying the order of Court dated 18.01.2018, after that respondents decided the appellant's representation by giving unreasonable and unjustified grounds for not considering the transfer request of the appellant. (Copies of notice and reply are attached as Annexure "H" & "I").
12. That against the order dated 30.03.2018, the appellant filed writ petition before Honourable High Court Abbottabad Bench which is withdrawn with

Permission of Honourable Court for proper redressal of appellant's grievance at proper forum, hence, this service e appellant is submitted before this Honourable Tribunal. (Copy of Writ petition & order are attached as Annexure "J").

13. That the appellant again requested the department through fresh application dated 23.01.2019 for transfer on vacant post available in the Benazir Bhutto Shaheed Women & Children Hospital Gami Adda Abbottabad which is pending and no replied as yet. (Copy of the application is annexed as Annexure "K").

The reply of respondent is baseless, tortuous, fake against law and facts inter-alia on the following grounds:

GROUND

- a. That the reply of the respondent No. 1 Secretary Health is illegal against law, facts and circumstances which is untenable in the eyes of law.

- b) That, the act of respondents was based on malafide and discriminatory in nature by not taking arrival or joining report within the stipulated period from the date of appointment from respondent No.4 Dr.Fiaz Jadoon who was appointed in August / September 2016.
- c) That as per rules respondent No.4 has to make arrival Report within a month of appointment but he was not questioned by respondents about arrival or joining and he was appointed after lapse of about 7 to 8 months on the said post for which the appellant's transfer request was pending with the department.
- d) That, respondents intentionally and deliberately in collusion with respondent No.4 posted him on the vacated post and malafidely ignored the request of appellant for transfer to Benazir Bhutto Shaheed Women & Children Teaching Hospital Gami Adda Abbottabad.
- e) That appellant's request was genuine as circumstances mentioned in the representations made to the Secretary Health.

- f) That respondent No.4 who had not given his arrival / joining report since his appointment was illegal and collusively posted on the post on which the present appellant proposed and requested to respondents.
- g) That non consideration of the representation of the appellant on the said post at Abbottabad instead of respondent No.4 warrants the interference of this Honourable Tribunal for the due process of law and substantial justice.
- h) That the reason given by department that the post on which the appellant requested for transfer is of Grade 19 is false, fake and suppression of their illegal act, the appellant and respondent No.4 both are in the same Grade 18 and appellant is more qualified than the Dr.Fiaz Jadoon who is posted on the above mentioned post, which shows malafide on the part of the respondents. Appellant is MBBS, FCPS and MPH and has served as Assistant Professor of Pediatrics while respondent No.4 hold the minor Diploma of MCPS.
- i) That, so far the second reason given by the respondents in their reply i.e. of the tenure of

service is concerned it is obvious from the record available that the respondents transferred Dr.Rashid Ali & Dr.Raheed Jadoon from R.H.C Havelian to Abbottabad without considering tenure and time period of their services. *(Copies of the attendance sheet of one Mr.Dr.Rashid Ali Medical Specialist is attached as Annexure "I")*

- j) That the parent department of appellant is supposed to show a parentage attitude but in the appellant's case all norms have been ignored, tainted with the conduct which reflects the malafide of the department.
- k) That the valuable rights of the appellant are involved which should not be abolished on discriminatory act of the respondents.

PRAYER:-

It is, therefore, humbly prayed that by accepting of this Service Appeal the respondents may graciously be ordered to transfer appellant from R.H.C Havelian to Benazir Bhutto Shaheed women and children teaching hospital Gami Adda Abbottabad as district child specialist.

INTERIM RELIEF:

As an interim relief, it is further prayed that the appellant may not be transferred to any other station and any adverse action should not be taken against the appellant till the decision of the instant Service Appeal.


...APPELLANT

Through:

Dated: 2/4 /2019



(RAZA SHAH)
Advocate High Court Abbottabad

VERIFICATION:-

Verified that the contents of the instant Service Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

Dated:- 2/4 /2019


...APPELLANT

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. _____ /2019

Sohail Babar Utman

...APPELLANT

V E R S U S


Government of KPK and others

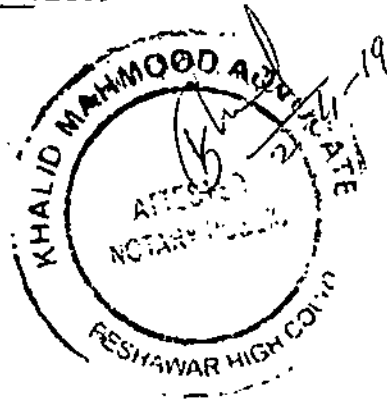
...RESPONDENTS

**SERVICE APPEAL
AFFIDAVIT**

I, *Sohail Babar Utman S/o Abdul Raheem Utman R/o Supply Tehsil und District Abbottabad appellant*, do hereby solemnly affirm and declare on Oath that the contents of instant *Appeal* are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.

Dated:- 2/4 /2019


...DEPONENT



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. _____ /2019

Sohail Babar Utman

...APPELLANT

V E R S U S

Government of KPK and others

...RESPONDENTS

**SERVICE APPEAL
CERTIFICATE**

*Certified that no such like Appeal has earlier been filed before
this Hon'ble Court or any other Court of Law.*



...APPELLANT

Through:

Dated: 2/4 /2019.



(RAZA SHAH)
Advocate High Court Abbottabad

K-14

Annexure "A" ~~108~~

No. PSC/SR-III/030293

Date: 14/10/2016

To

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

Subject: RECRUITMENT TO THIRTY ONE (31) POSTS OF DISTRICT
SPECIALIST CHILDREN (BPS-10) IN HEALTH DEPARTMENT
(Adv.L.01/2015, S. No. 48).

13/11

Rejoice
2/4/2019

Dear Sir,
I am directed to refer to the Peshawar High Court Order dated: 20.09.2016 in CM No.590-A/2016 in WP No. 477-A/2016 and in continuation of this office letter No. PSC/SR-III/030293 Dated: 15.06.2016 on the subject noted above. It is to state that the Commission recommends Dr. Sohail Babar Khan Utman S/O Abdul Rahim Utman of District Abbottabad to the Govt. for appointment against the vacant cited posts.

2. Recommendation in favour of the above recommendee is provisional subject to his medical fitness, and perusal of his ACRs by the Commission. Moreover, the Department may also confirm that ACRs furnished by the health department are correct and signed by the relevant reporting officer and counter signing authority. It may be ensured that the recommendee did not avail F.O.I, service break or proceeded on leave. In the event the same may be brought in to the notice of the Commission.

3. The Department may also get verified the documents of the selected candidate.

4. The appointment of all the recommendees is linked with other subjects of the same subject and the overall merit position will be intimated on the completion of the recruitment of all subjects.

5. The (04) candidates have been provisionally interviewed on the orders of the Peshawar High Court whose result/recommendation has been kept pending by the court.

6. Vacant posts will be re-advertised.

Original application of the recommendee (along-with enclosures) is sent herewith for your record.

Please acknowledge receipt.

Yours faithfully,

(Gulam Dastagir Amir)
DIRECTOR RECRUITMENT

Handwritten signatures and stamps at the bottom left of the page.

P-15. ~~2018~~

~~2018~~



SECRETARY HEALTH
RHC, PESHAWAR

~~Answer~~
"B" ~~B~~

13/11

SUBJECT: ANNUAL REPORT

Dear Sir,

Reference Notification No. SOH-I(HO)3-5/2015, I present my certified i.e.f. forenoon of 13/11/2016. I request your good self that I may please be posted at-

1. Abbottabad WCH
2. Havelian RHC
3. Mansehra DHQ.

Thank you

Yours obediently

Signature

M. Shahid Sabar Khan S/O Atiqur Ra. ...
- S. CB 1119, Supply Bazar, Abbottabad

P-10



OFFICE OF THE DISTRICT HEALTH OFFICER ABBOTTABAD.

No. 20847 /Estab/D/Charge Reports.

Dated Abbottabad the 29/12/2016.

(10)

To,

The Director General Health Services,
Khyber Pakhtunkhwa, Peshawar.

Handwritten notes: "C" and "13/12/16"

Subject: Arrival Report.
Sir.

I have the honor to state that in compliance with Government of Khyber Pakhtunkhwa Health Department Notification No.SOH-1/(HD) H-II/3-1236/2016 dated 22.12.2016, Dr. Sohail Babar Khan S/o Abdur Rehman Utman has submitted arrival report on the forenoon of 26.12.2016 as District Specialist Children (BS-13) at Type D Hospital Havelian Abbottabad.

Charge report forms in duplicate duly signed by the doctor concerned are submitted herewith for favour of further necessary action please.

District Health Officer,
Abbottabad.

No. 20848-52 /Estab/D/Charge Reports;
Copy forwarded to the:-

1. Copy with copy of charge report forms in duplicate is forwarded to the District Comptroller of Accounts, Abbottabad for information and necessary action please.
 2. Accounts Section undersigned office.
 3. Incharge, PMO Type D Hospital Havelian.
 4. Doctor concerned.
 5. Estt File.
- For information and necessary action.

District Health Officer,
Abbottabad.

District Health Officer, Link Road, Abbottabad.

Phone # 0992-9310192

Fax # 0992-9310196

cdohabd@yahoo.com

P.f

Forwarded to the _____

(1)

K-17

Letter to Secretary

Amrescure

"D" (circled)
"B" (circled)
Handwritten scribbles

TO

SECRETARY HEALTH
KPK HEALTH DEPARTMENT PESHAWAR

SUBJECT: TRANSFER TO BENAZIR BHUTTO SHAHEED
TEACHING HOSPITAL ABBOTTABAD ON COMPASSIONATE
GROUNDS

Dear Sir,

I am working as District Child Specialist in Havelian Hospital since 26/12/2016. I live with my family in Abbottabad. My kids are studying in Abbottabad. My parents are old & sick. They frequently get admitted in Ayub Teaching Hospital Abbottabad. I have to daily ply on dangerous road between Abbottabad and Havelian taking more than one hour one way. This has caused me health problems like backache and anxiety. It has become very difficult for me to manage parents illnesses, kids school and job. District Specialist seat is becoming vacant in Benazir Bhutto Shaheed Teaching Hospital Abbottabad from 3/4/2017 on account of retirement of Dr Zardad Muhammad vide Notification No. SOF/HL.3-614/2005 (please see attached photocopy of his retirement order). Therefore I request your good self that I may please kindly be transferred to Benazir Bhutto Shaheed Teaching Hospital Abbottabad on aforementioned compassionate grounds. I shall always remain obliged & thankful

Yours obediently,

Handwritten signature

Dr Sohail Babar Khan
S/O Prof Abdur Rahim Khan, District Child Specialist, Havelian Hospital,
Abbottabad

Date: 1/3/2017

From RHC please transfer grounds
" " " " " "



P-18

Transfer Request Secretary

(9)

Am-F

S

13/11/17

TO

SECRETARY HEALTH
KPK HEALTH DEPARTMENT
PESHAWAR

SUBJECT: TRANSFER TO RENAZIR KHUTTA
SHAHED TEACHING HOSPITAL
ABBOTTABAD ON COMPASSIONATE
GROUNDS AGAINST VACANT POST.

Dear Sir,

Reference my previous application for transfer to Abbottabad from Havelian against vacant post dated 1/3/2017 vide TCR No. 5064051438, I have learned that it has been rejected on the pretext of incomplete tenure. I remind your good self that this pretext of tenure was not considered while transferring Dr. Rashid Ali District Medical Specialist on his first appointment to RHC Havelian on 01/09/2016 to DHO Hospital Abbottabad on 05/10/2016. Dr. Rashid Ali hadn't medical & compassionate grounds like me. I once again request your good self that I may please kindly be transferred from RHC Havelian to

Amerus
"E & F"

K-11

-1-

~~SECRET~~

(6 papers)

BEFORE HONOURABLE PESHAWAR HIGH COURT, *Amerus*
CIRCUIT BENCH ABBOTTABAD. "SECRET"

W.P.No. 1072 /2017

Dr.Sohail Babar Utman S/o Abdul Raheem Utman R/o Supply Tehsil and District Abbottabad.

...PETITIONER

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Health Civil Secretariat Peshawar.
2. Health Department Khyber Pakhtunkhwa, through Director General Health Services Khyber Pakhtunkhwa Peshawar.
3. District Health Officer, Abbottabad.
4. Dr. Fiaz Jadoon presently serving as District Child Specialist, Benazir Bhutto Shaheed Women and Children. Teaching Hospital Gami Adda, Abbottabad.

...RESPONDENTS

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973.

No. 5298
01/11/17

Respectfully Sheweth,

Certain indispensable facts which have the logical nexus with the moot points being agitated through the instant constitutional petition are briefly

FILED TODAY narrated as under:-

ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
CIRCUIT BENCH ABBOTTABAD

P-20

1. That, petitioner was graciously appointed by the respondent department on recommendations of the Khyber Pakhtunkhwa Public Service Commission as District Specialist Children (BS-18) on regular Basis in the Health Department through notification No.SOH-I/(HD)3-5/2015 dated Pesh: 2nd Dec; 2016 on the terms and conditions narrated in the letter.

Copies of the recommendation letter of the Public Service Commission and that of appointment letter are appended as Annexures "A" & "B" respectively

2. That soon after the appointment, petitioner joined the department through his arrival report to the respondent No.1 dated 08.12.2016. In the arrival report, petitioner requested the preference of the postings.

Copy of the arrival report is attached as Annexure "C".

3. That, that respondent No.3 posted the petitioner at type D Hospital Havelian Abbottabad as District Specialist Children and forwarded his arrival report to the respondent No.2 through his letter No.20847/Estab/D/Charge Report dated Abbottabad the 29/12/2016.

FILED TODAY

ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
PESHAWAR

1-2-1
-3-

Copy of the letter dated 29-12-2016 is appended as Annexure "D".

4. That, the petitioners was so posted at Havelian because of the non availability of post at Abbottabad at that time.
5. That when, one Dr Zardad Muhammad, Senior District Specialist Children (BS-19), Benazir Bhutto Shaheed Teaching Hospital Gami Adda, Abbottabad, went to avail LPR of 365 days through notification No.SOH/HD/3-614/2005 dated Pesh; the 1st December 2016, the post of Child Specialist at above mentioned Hospital fall vacant and the respondent No.4 was appointed against the said vacant post.
6. That, petitioner has apprised the department time and again about sever illness of his father with the further requests of his transfer to Benazir Bhutto Shaheed Women and Children Teaching Hospital Gami Adda, Abbottabad on compassionate grounds but the department did not pay any heed to the request of the petitioner and passed the order of respondent No.4 by putting into effect the colorful exercise of power.

7. That on 01.03.2017, petitioner sent a representation to the respondent No.1 which despite waiting for 6

TODAY
REGISTRAR
COURT

P-22



months, gone without any response whatsoever which compelled the petitioner to humbly approach the authorities concerned/ respondent No.1 again and he did so through a representation dated 05.06.2017.

Copies of both the representation Supra are appended as Annexure "E" & "F" respectively

8. That, the petitioner strived to have any response from the respondent department whatsoever but despite the genuineness of petitioner's request, efforts of petitioner's have gone abortive, hence the instant petition for due redress, inter-alia, on the following grounds:-

GROUNDS:-

- a) That, the petitioners request in the above mentioned circumstance is genuine, legitimate and merits consideration.
- b) That, the non consideration of the representations of the petitioner warrants the interference of this Honourable Court for the due process of law and substantial justice.

FILED TODAY
ADDITIONAL REGISTRAR
MADRAS HIGH COURT
ADOTRABENEN

- 3 -

P- ~~201~~ 201

(3)

✓ c) That, the parent department of the petitioner is supposed to have a parentage attitude but in the petitioner's case, all norms have been ignored tainted with the conduct which reflects the malafide of the department.

d) That, the petitioner deserves to be treated in accordance with law.

e) That, no other alternate, efficacious or speedy remedy is available for the petitioner, hence the present Writ Petition.

✓ f) That, the valuable rights of the petitioner are involved.

g) That, notices have been served upon respondents as per rules.

Copies of notices alongwith postal receipts are annexed as Annexure "G"

h) That, Court fees stamp paper worth Rs.500/- is attached herewith.

FILED TODAY

ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABUL KALAM BENCH

~~255~~

(1)

It is, therefore, humbly prayed that:-

- a) Instant Writ Petition may please be accepted.
- b) Declaration may please be made to the effect that the respondent authorities are duty bound to consider the request of the petitioner on merit and dispose of the representation of the petitioner in accordance with law with further directions to despite of the same on merits and in accordance with law.
- c) Any other relief which this Honourable Court deems fit in the circumstances of the case.

Sahai
...PETITIONER

Through:

NAZ ELAHI MUGHAL

(NAZ ELAHI MUGHAL)
Advocate High Court, Abbottabad.

Dated: 13/10/2017

VERIFICATION:-

Verified that the contents of the instant Writ Petition are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.

Dated: 13/10/2017 FILED TODAY

Sahai
...PETITIONER

ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH

P-25.

-1-

~~258~~

Amesense

"G"

(2 papers)

BEFORE HONOURABLE PESHAWAR HIGH COURT,
CIRCUIT BENCH ABBOTTABAD.

W.P.No. 1072 12017

Dr.Sohail Babar Utman S/o Abdul Raheem Utman R/o Supply Tehsil and District
Abbottabad.

...PETITIONER

V E R S U S

1. Government of Khyber Pakhtunkhwa through Secretary Health Civil Secretariat Peshawar.
2. Health Department Khyber Pakhtunkhwa, through Director General Health Services Khyber Pakhtunkhwa Peshawar.
3. District Health Officer, Abbottabad.
4. Dr. Fiaz Jadoon presently serving as District Child Specialist, Benazir Bhutto Shaheed Women and Children Teaching Hospital Gami Acda, Abbottabad.

...RESPONDENTS

WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN, 1973.

Respectfully Sheweth,

Certain indispensable facts which have the
logical nexus with the moot points being agitated
through the instant constitutional petition are briefly
narrated as under:-

1503258
07/11/17

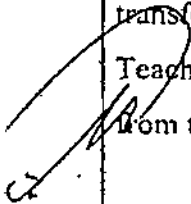
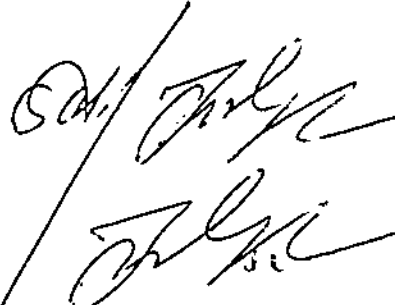
Certified to be a true copy
EXAMINED
08 MAR 2017
Peshawar High Court Circuit Bench
Abbottabad

1503258
07/11/17

P-26.

~~2017~~

PESHAWAR HIGH COURT, ABBOTTABAD BENCH
ORDER SHEET

Date of Order of Proceedings	Order or other Proceedings with Signature of Judge(s).
1	2
18.01.2018	<p><u>W.P. No.1078-A/2017</u></p> <p>Present: Mr. Naz Elahi Mughal, Advocate, for the petitioner.</p> <p>Raja Muhammad Zubair, AAG, for official respondents.</p> <p>*****</p> <p><u>LAL JAN KHATTAK, J:</u> The former stated at the bar that he would not press the instant petition if the respondent No.1 is directed to pass an appropriate order on the application dated 01.03.2017 submitted by the petitioner in the office of the Secretary, Health Department, Peshawar (application available on page 15 of the instant petition) to which the learned AAG agreed.</p> <p>In view of the above, the instant petition is dismissed as not pressed with direction to the Secretary (Health), Government of Khyber Pakhtunkhwa to pass an appropriate order on representation of the petitioner for his transfer to Benazir Bhutto Shaheed Women and Children Teaching Hospital, Abbottabad within a period of one month from today.</p> <p></p> <p></p>

(217)

K-2+

~~BBB~~

Annexure
"H" "⊙"

(3 papers)

To

The Secretary Health,
Civil Secretariat,
Peshawar.

SUBJECT: NON - COMPLIANCE OF THE ORDER
DATED 18-01-2018 OF THE ABBOTTABAD BENCH OF
THE PESHAWAR HIGH COURT IN WRIT PETITION
NO. 1078/2017.

Respectfully Sheweth;

1. That the petitioner filed above mentioned Writ petition in Peshawar High Court Abbottabad Bench against the non-hearing of his departmental appeal by your office in which the Honorable Court issued direction to solve the matter/appeal within 30 days. *(order of the court is attached herewith).*
2. That the decision order of the Honorable High Court Abbottabad Bench was sent to you by T.C.S for compliance with according to the order of High Court but no reply has been given on your end which tantamount refusal to honor the direction of Honourable High Court. *(Copy of the TCS receipt) is attached herewith.*
3. That it is hereby acknowledged to your good office for fulfill and compliance of the directive of the Honourable High Court as per direction issued to do the needful within 10 days, otherwise petitioner has no option except to re-agitate the matter in the High court for Non-compliance of judicial order entirely at the Cost and risk of the obcyer. hence, this application is posted through courier service with

P-28.

~~228~~

retained record of the application in accordance with the
law.

Address of communication.

S/O Abdul Rahim

R/O Haus # CB1119 Supply Bazar Abbotabad

Mob No 03219812815/0303333 9988.

Sohail
Dr. Sohail Baber

S/O Abdul Rahim

R/O CB1119 SUPPLY BAZAR ABBOTTABAD

Mob No 03219812815/0303333 9988

Dated 13-03-2018 /

K-27.

GST No. 12-00108-002-73



CIN: 50641134672

2018 01-30 05 29

ABT-PLN 0.5
Staff # 111 26105
Name AR KHAN
Contact ABBOTTABAD
Address ABBOTTABAD

HEALTH DEPARTMENT K
Phone 99999

155.0
Other Amount 0.0
VAT 0
Insurance & CHG 0
GST 25
Total 180.0

Signature

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

No.SOH-I/HD/3-1236/2016

Dated Pesh: the 30th March 2018

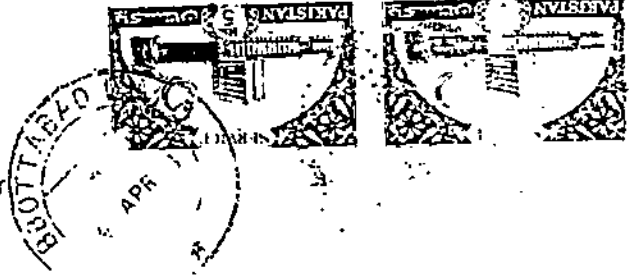
P-30

Amesure
of 22

To

Dispatched
Khyber Pakhtunkhwa
Health Department

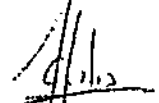
Dr. Sohail Babar
S/O Abdur Rahim
House No.CB 1119 Supply Bazar
Abbottabad.



SUBJECT - NON COMPLIANCE OF THE ORDER DATED 18/1/2018 OF THE ABBOTTABAD BENCH OF THE PESHAWAR HIGH COURT WRIT PETITION NO.1078/2017

I am directed to refer to your application dated 13/3/2018 on the above subject and to state that on the recommendations of Public Service Commission, Khyber Pakhtunkhwa, you were appointed as District Specialist Children (BS-18) and posted on your choice/option against the vacant post of District Specialist Children (BS-18) at RHC Havalian Abbottabad on 22nd Dec; 2016.


Health Department regrets its inability to accede to your request for transfer to BBS Teaching Hospital Abbottabad due to non completion of tenure at present station. In addition the post against which you have requested for transfer is in BS-19 which is to be filled in by way of promotion in due course of time.


Section Officer-I

Endst No and date even

C.C

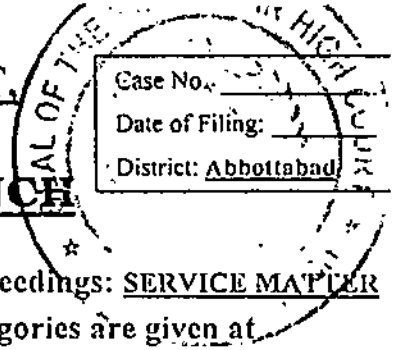
1. Registrar Peshawar High Court Abbottabad Bench for information.
2. Section Officer (Lit-I) Health Department.


Section Officer-I

1-51

**IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH**

OPENING SHEET FOR WRIT BRANCH



Case Type: WRIT PETITION

Nature of Original Proceedings: SERVICE MATTER

Category Code:

(Categories & Sub Categories are given at the back of the opening sheet)

Review/ Contempt of Court in respect of

*Annexure
"J"
(14 Papers)*

Writ of; Habeas Corpus Prohibition Mandamus Quo Warranto Certiorari

If Certiorari;

Forum	Date	Interlocutory /Final Order	Caste Pertains to
			<input type="checkbox"/> SB <input checked="" type="checkbox"/> DB

Petitioner Name	Dr.Sohail Babar Utman
Mobile No.	0336-0543470
Address	Supply Tehsil and District Abbottabad.
CNIC No.	13101-8018158-7
Email Address	dr.sohail01@gmail.com

Counsel for Petitioner(s)	Muhammad Tariq Khan Tanoli, Advocate Supreme Court of Pakistan, Abbottabad.
Mobile No.	0322-9936286
Address	C.B 305/11 Lala Rukh Colony Mansehra Road Abbottabad
CNIC No.	13101-1678860-7
Email Address	tanoli09@hotmail.com

SCANNED FILE

Respondent(s)	Govt. of KPK and others	Date	11/06/2018
Address	Mentioned in the heading of the writ petition	Sign	<i>[Signature]</i>

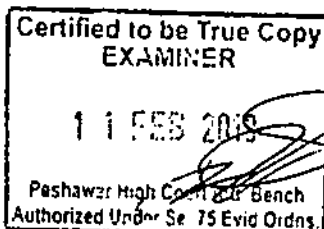
Original Order/ Action/ Inaction Complained of;
Illegal refusal of transfer request.

Prayer;
On accepting of this Writ Petition the respondents may graciously be ordered to transfer the petitioner from R.H.C Havelian to Benazir Bhutto Shaheed Women & Children Teaching Hospital Gami Adda Abbottabad on merit and considering compassionate / humanitarian grounds as mentioned in Writ Petition and any other relief this Court may deem fit may also be granted.

Law/Rules/Governing the original proceedings/action/Inaction

1. The Constitution of Islamic Republic of Pakistan, 1973.
2. Other case law related books will be cited at the Bar.

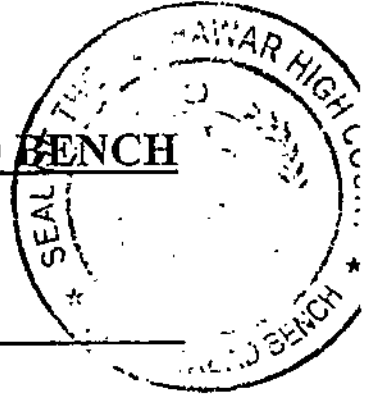
[Handwritten signature]



Signature: *[Handwritten signature]*

K-52.

PESHAWAR HIGH COURT, ABBOTTABAD BENCH



Advocate Detail

Full Name: MUHAMMAD TARIQ KHAN TANOLI

Father's Name; GHULAM JAN

Date of Birth: 12-05-1953 CNIC # 13101-1678860-7

Permanent Address: C.B 305/11 Lala Rulh Colony Mansehra Road Abbottabad

Present Address: As above

Email: tanoli09@hotmail.com District: Abbottabad

Mobile # 0322-9936286

License No. LC: BC No.10-1051 Issue Date: 15-02-1979

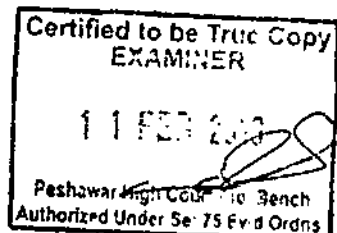
License No. HC: BC No.10-1051 Issue Date: 26-03-1981

License No. SC: Issue Date: 12-07-2003

MENTION YOUR PENDING CASES:

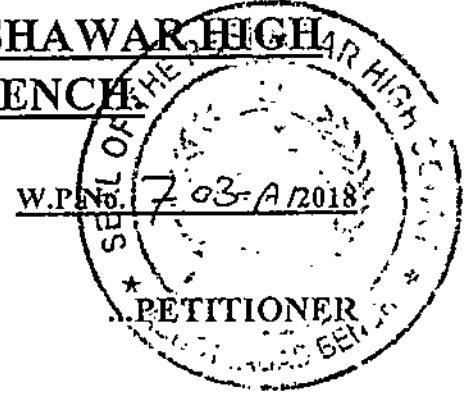
Case No.	Petitioner	Respondent
W.P No.280-A/2017	Sajid Mahmood	Secretary Safron & others
W.P No.1143/16	Syed Aftab ul Islam	Commissioner Afghan Refugees & others
W.P No.656-A/15	Shafaq Abdullah	Neelofar & others
W.P No.418/15	Ehzaz Ahmed	Shahzaman & others
W.P No.96-A/2017	Javed Akhtar	Govt of KPK and others

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BEFORE THE HONOURABLE PESHAWAR HIGH COURT, ABBOTTABAD BENCH

W.P.No. 703-A/2018



Sohail Babar Utman

V E R S U S

Government of KPK and others

...RESPONDENTS

WRIT PETITION
INDEX

S.No.	Description of Document	Annexures	Page No.
1.	Writ Petition alongwith Verification, Affidavit and Certificate	--	1-12
2.	Addresses of the Parties	--	13
3.	Copies of the recommendation letter of the Public Service Commission & that of the appointment letter	"A" & "B"	14 To 15
4.	Copy of arrival report	"C"	16
5.	Copy of letter dated 29.12.2016	"D"	17
6.	Copies of both representations supra	"E" & "F"	18 To 19
7.	Copies of Writ Petition and order of this Honourable Court	"F" & "G"	20 To 27
8.	Copies of the letters and receipts	"H"	27-A
9.	Copy of notice and reply	"I" & "J"	28-31
10.	Copies of the attendance sheet of one Mr.Dr.Rashid Ali Medical Specialist	"K"	32-43
11.	Copies of notices alongwith postal receipts	"L"	44-45
12.	Court fee stamp paper worth Rs.500/-	"M"	46
13.	Vakalat Nama	-	47

...PETITIONER

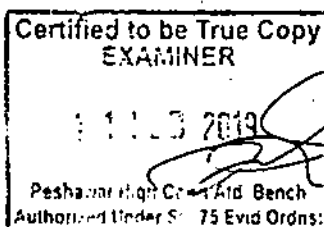
Through:

Dated: 13/6/2018

(MOHAMMAD TARIQ KHAN TANOLI)
Advocate Supreme Court of Pakistan, Abbottabad

&

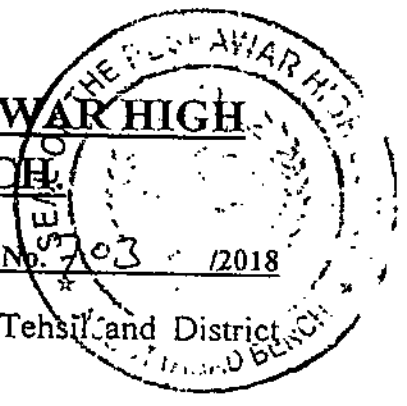
(RAZA SHAH)
Advocate High Court Abbottabad



P-27

BEFORE THE HONOURABLE PESHAWAR HIGH COURT, ABBOTTABAD BENCH.

W.P.No. 703 /2018



Sohail Babar Utman S/o Abdul Raheem Utman R/o Supply Tehsil and District Abbottabad.

...PETITIONER

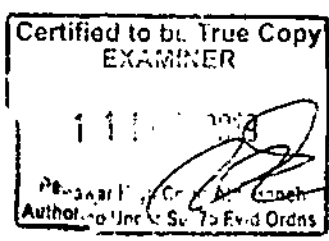
V E R S U S

1. Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
2. Health Department, Khyber Pakhtunkhwa through Director General, Health Services, Khyber Pakhtunkhwa Peshawar.
3. District Health Officer, Abbottabad.
4. Dr.Fiaz Jadoon presently serving as District Child Specialist, Benazir Bhutto Shaheed Women and Children Teaching Hospital, Gami Adda, Abbottabad.

...RESPONDENTS

No. 3436
27/6/18

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973.



PRAYER:-

ON ACCEPTANCE OF INSTANT WRIT PETITION, THE RESPONDENTS MAY GRACIOUSLY BE ORDERED TO TRANSFER PETITIONER FROM R.H.C HAVELIAN TO

2
27/6

BENAZIR BHUTTO SHAHEED WOMEN AND
CHILDREN TEACHING HOSPITAL GAMI ADDA
ABBOTTABAD AS DISTRICT CHILD SPECIALIST.

Respectfully Sheweth,

1. That succinctly facts giving rise to instant Petition are that the petitioner was graciously appointed by the respondents department on recommendations of the Khyber Pakhtunkhwa Public Service Commission as District Specialist Children (BS-18) on regular basis in the Health Department through Notification No.SOH-1(HD) 3-5/2015 dated 2nd December 2016 on the terms and conditions narrated in the letter.
(Copies of the recommendation letter of the Public Service Commission & that of the appointment letter are appended as Annexure "A" & "B" respectively)
2. That soon after the appointment, petitioner joined the department through his arrival report to the respondent No.1 dated 08.12.2016. In the arrival report, petitioner requested the preference of the

3
11.11.19

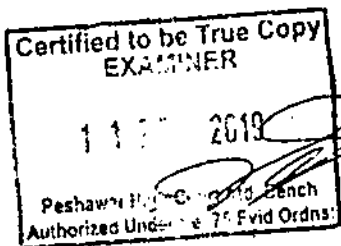
Certified to be True Copy
EXAMINER
11 FEB 2019
Peshawar High Court Bench
Authorized Under Sec 75 E and Ordns

postings. (Copy of arrival report is attached as Annexure "C")

3. That respondent No.3 posted the petitioner at type D Hospital Havelian, Abbottabad as District Specialist Children and forwarded his arrival report to the respondent No.2 through his letter No.20847/ Etab/D/Charge Report dated Abbottabad the 29.12.2016. (Copy of letter dated 29.12.2016 is annexed as Annexure "D")

4. That, the petitioner was so posted at Havelian because of the non-availability of post at Abbottabad at that time.

5. That when, one Dr.Zardad Muhammad, Senior District Specialist Children Benazir Bhutto Shaheed Teaching Hospital Gami Adda Abbottabad went to annual LPR of 365 days through Notification No.80H9(HD)/3-614/2005 Peshawar, dated 1st December 2016, the post of Child Specialist at above mentioned Hospital fall vacant.



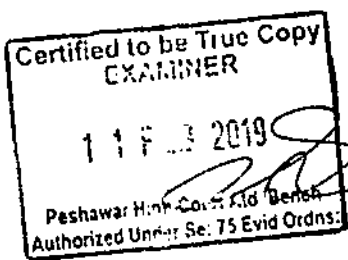
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6. That, petitioner has requested the department time and again about severe illness of his father with the

request of his transfer to Benazir Bhutto Shaheed Women and Children Teaching Hospital Gami Adda Abbottabad on compassionate grounds but the department did not pay any heed to the request of the petitioner but passed the order in favour of one Mr.Fiaz Jadoon presently serving as District Child Specialist Benazir Bhutto Shaheed Women & Children Teaching Hospital Gami Adda Abbottabad by putting into effect the colorful exercise of power.

7. That on 01.03.2017 petitioner sent a representation to the respondent No.1 which despite waiting for six months gone without any response whatsoever which compelled the petitioner to humbly approach the authorities concerned / respondent No.1 again and he did so through a representation dated 05.06.2017.

(Copies of both representations supra are attached as Annexure "E")



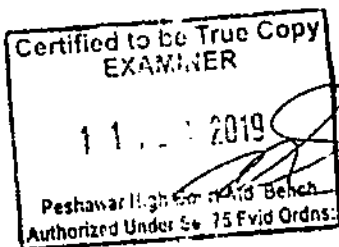
8. That upon failure of respondents to decide representations, the petitioner was constrained to file a Writ Petition No.1078/2017 before this Honourable Court for giving a direction to the respondents for deciding the representation of the petitioner and vide order dated 18.01.2018 this Honourable Court was

[Handwritten signature]

pleased to decide the Writ Petition with a direction to the respondent No.1 Secretary Health to decide the pending representation of petitioner within a period of one month. *(Copies of Writ Petition and order of this Honourable Court are annexed as Annexures "F" & "G")*

9. That the petitioner sent the attested copy of the order of this Honourable Court to respondent No.1 (Secretary Health) on 30.01.2018 and again sent a letter alongwith attested copy of the order of this Honourable Court dated 18.01.2018. *(Copies of the letters and receipts are attached as Annexure "H")*

10. That this Honourable Court was pleased to direct the respondents to decide the representation of petitioner within a period of 30 days, however despite the orders of this Honourable Court the representation of petitioner has not been decided and same has been put in cold storage.



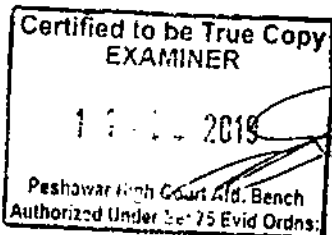
11. That on dated 13.03.2018 the petitioner sent contempt of Court notice to Secretary Health by not complying the order of Court dated 18.01.2018, after that respondents decided the petitioner's

representation by giving unreasonable and unjustified grounds for not considering the transfer request of the petitioner. *(Copy of notice and reply is attached as Annexure "I" and "J" respectively)*

The reply of respondent is baseless, tortuous, fake against law and facts inter-alia on the following grounds:-

GROUNDS:

- a) That the reply of the respondents No.1 Secretary Health is illegal against law, facts and circumstances which is untenable in the eyes of law.
- b) That, the act of respondents was based on malafide and discriminatory in nature by not taking arrival or joining report within the stipulated period from the date of appointment from respondent No.4 Dr.Fiaz Jadoon who was appointed in August / September 2016.
- c) That as per rules respondent No.4 has to make arrival Report within a month of appointment but he was not questioned by respondents about arrival or joining



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-7- P-40

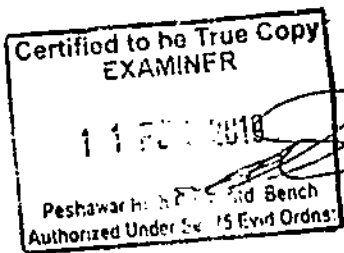
and he was appointed after lapse of about 7 to 8 months on the said post for which the petitioners transfer request was pending with the department.

d) That, respondents intentionally and deliberately in collusion with respondent No.4 posted him on the vacated post and malafidely ignored the request of petitioner for transfer to Benazir Bhutto Shaheed Women & Children Teaching Hospital Gami Adda Abbottabad.

e) That petitioner's request was genuine as circumstances mentioned in the representations made to the Secretary Health.

f) That respondent No.4 who had not given his arrival / joining report since his appointment was illegal and collusively posted on the post on which the present petitioner proposed and requested to respondents.

g) That non consideration of the representation of the petitioner on the said post at Abbottabad instead of respondent No.4 warrants the interference of this Honourable Court for the due process of law and substantial justice.

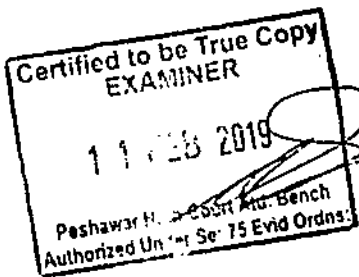



11/2/18

h) That the reason given by department that the post on which the petitioner requested for transfer is of Grade 19 is false, fake and suppression of their illegal act, the petitioner and respondent No.4 both are in the same Grade 18 and petitioner is more qualified than the Dr.Fiaz Jadoon who is posted on the above mentioned post, which shows malafide on the part of the respondents. Petitioner is MBBS, FCPS and MPH and has served as Assistant Professor of Pediatrics while respondent No.4 hold the minor Diploma of MCPS.

i) That, so far the second reason given by the respondents in their reply i.e. of the tenure of service is concerned it is obvious from the record available that the respondents transferred Dr.Rashid Ali & Dr.Raheed Jadoon from R.H.C Havelian to Abbottabad without considering tenure and time period of their services. *(Copies of the attendance sheet of one Mr.Dr.Rashid Ali Medical Specialist is attached as Annexure "K")*

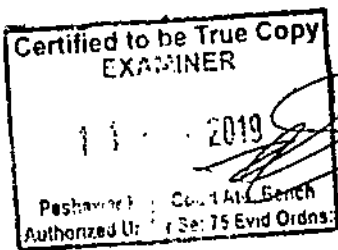
j) That the parent department of petitioner is supposed to show a parentage attitude but in the petitioner's case all norms have been ignored, tainted with the conduct which reflects the malafide of the department.



- k) That the valuable rights of the petitioner are involved which should not be abolished on discriminatory act of the respondents.
- l) That no other alternate efficacious remedy is available hence this Writ Petition.
- m) That the notices have been served upon the respondents as per rules. *(Copies of notices alongwith postal receipts are annexed as Annexure "L")*
- n) That, Court fees stamp paper Rs.500/- is annexed herewith.

PRAYER:-

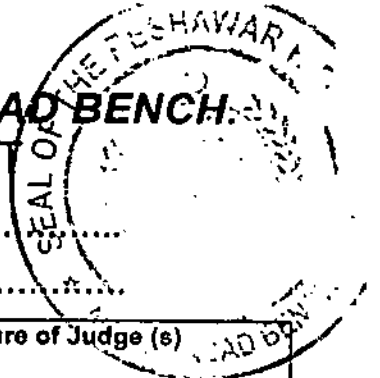
It is, therefore, humbly prayed that by accepting of this Writ Petition the respondents may graciously be ordered to transfer the petitioner from R.H.C Havelian to Benazir Bhutto Shaheed Women & Children Teaching Hospital Gami Adda Abbottabad on merit and considering compassionate / humanitarian grounds as



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1-41

PESHAWAR HIGH COURT, ABBOTTABAD BENCH
FORM OF ORDER SHEET



Court of.....
Case No.....Of.....

Date of Order of Proceedings	Order or other Proceedings with Signature of Judge (s)
1	2
24.01.2019	<p>WP No. 703-A/2018</p> <p>Present: Mr. Tariq Tanoli, Advocate for the petitioner.</p> <p>Raja Muhammad Zubair, AAG for the official respondents.</p> <p style="text-align: center;">***</p> <p>LAL JAN KHATTAK, J.- At the very outset, learned counsel for the petitioner submitted that he wants to withdraw the instant petition so that the petitioner could approach the Services Tribunal for redressal of his grievance. Order accordingly.</p> <p style="text-align: right;">sd/Judge sd/Judge</p>

Be True Copy
 2019
 Court Atd Bench
 Sec 75 Evid Ordns

(Arshed Iqbal)

Hon'ble Justices Lal Jan Khattak & Ijaz Anwar

SCANNED

4-40

No. 1277

Annexure 10K 99

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

Rs. Pe.

40

TO
SECRETARY HEALTH KPX
~~XXXXXXXXXXXXXXXXXXXX~~
SUBJECT: TRANSFER TO ABBOTTABAD

Received a registered addressed to _____ Date Stamp _____

Initials of Receiving Officer _____

Insured for Rs. (in figures) _____ (in words) _____

Insurance fee Rs. _____ Ps. _____ Weight _____ Kilo _____ Grams _____

Name and address of sender _____

Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Dear Sir,

I am a patient of ITP (thrombocytopenia) and my father is a patient of multiple organ failure. Me and my father need frequent hospitalizations and evaluations at tertiary care level hospitals.

I have completed two years of tenure at type D hospital Havelian. Dr Ahmed Zeb district child specialist at women & children hospital Abbottabad has been recently promoted to senior district child specialist and because of this district child specialist BPS18 has become vacant. Also Dr Ahmed zeb domicile is other than Abbottabad while my domicile is of Abbottabad. Despite this dr Ahmed zeb is enjoying this posting at Abbottabad since many many years (more than 5-7 years). Also he holds a minor diploma of DCH while I hold fellowship major degree of FCPS.

In early part of 2017 when Dr zardad tanoli district child specialist retired from women & children hospital Abbottabad, I applied for transfer to his seat which was denied to me and was given to Dr fiaz jadoon, MCP qualified and my junior. Dr fiaz jadoon was transferred out in September-October, 2018 to accommodate Dr nasir but he was retransferred back after a few months. I again retrierte that Dr fiaz jadoon and me were selected together through PSC.

In light of above facts I deserve to be posted at my home station of Abbottabad. So I may please kindly be transferred to Abbottabad in light of above facts.

Thanks & regards

Yours obediently,

DR SOHAIL BABAR KHAN
MBBS MD MCPS FCPS MPH
DISTRICT CHILD SPECIALIST BPS 18
TYPE D HOSPITAL HAVELIAN ABBOTTABAD.

Dated: 23/01/2019

Attendance Register of the

[Handwritten mark]

Name	Rank	Date						
		1	2	3	4	5	6	7
M. S. RAO	10							
S. S. RAO	11							
M. S. RAO	12							
M. S. RAO	13							
M. S. RAO	14							
M. S. RAO	15							
M. S. RAO	16							
M. S. RAO	17							
M. S. RAO	18							
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M. S. RAO	27							
M. S. RAO	28							
M. S. RAO	29							
M. S. RAO	30							
M. S. RAO	31							
M. S. RAO	32							
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M. S. RAO	39							
M. S. RAO	40							
M. S. RAO	41							
M. S. RAO	42							
M. S. RAO	43							
M. S. RAO	44							
M. S. RAO	45							
M. S. RAO	46							
M. S. RAO	47							
M. S. RAO	48							
M. S. RAO	49							
M. S. RAO	50							

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Daily Attendance Register of the Type D Hospital

Serial No.	Name	Rank	1	2	3	4	5	6	7	8	9	10	11	12
1	Dr. USTAD AHMAD MUG	PAIC	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present
2	Dr. SHARIFUDDIN	C/S	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present
3	RUBINA AMBIB	S. W. M. O.	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present
4	Dr. RASHID ALI	Specialist	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present
5	Dr. MASUD ALI SHAH	N.C.I.	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present
6	Dr. IMRAN AHMED	M.O.	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present
7	Dr. ASHRAF	M.O.	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present
8	Dr. RASHIDA ABBAS	L.V.M.O.	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present
9	Dr. NASEEM	L.V.M.O. M.N.C.I.	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present
10	Dr. HAQIYAH JALIL	M.O.	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present
11	Dr. BAKHTAWAR	M.O.	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present
12	Dr. CHENA	L.V.M.O.	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present
13	Dr. AZMAI	M.O.	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present

Leave Name

Change Name

Dr. SHARIF

Dr. FIRAQI

Dr. SAID

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55.

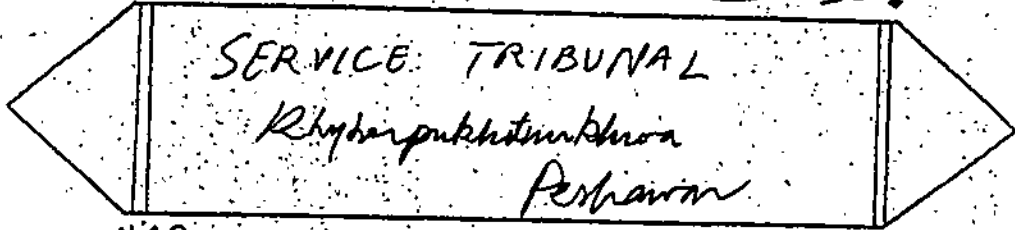
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LIST for the Month of November

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Annesume
"M"

بعدالت



2 جناب
بنام

2/4/2019 مورخہ
Service Appeal مقدمہ
دعوی
ج.م

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی اور جواب دہی دکن کارروائی متعلقہ میں
آن مقام لشکرہ کیلئے رہنما سٹارڈنٹس ہائی گورنمنٹ
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار دیا گیا۔ نیز
دیکل صاحب کو راضی نامہ کرنے و تقرر تالیف فیصلہ مرحلہ دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک دروینہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری کی طرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور دیکل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساتھ
پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو چیز چاہے جانے تو اسے مقدمہ کے سبب سے دہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو دیکل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا نکالت نامہ لکھ دیا کہ سند ہے۔

المقوم 2/4/2019ء 2 اپریل 2019ء

مقام لشکرہ Service Tribunal کے لئے منظور ہے۔
Accepted me for Page
Soleman

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

SERVICE APPEAL NO. 419 OF 2019

Dr. Sohail Babar Utman.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa and others.....Respondents

Respectfully Sheweth:

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Preliminary Objections:-

1. That the Appellant has got neither cause of action nor 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 and also in the present circumstances of the issue.
5. That the Appellant has filed the instant Appeal with mala-fide intention hence liable to be dismissed.
6. That the Appellant has not come to the Tribunal with clean hands.
7. That the Appeal is time barred.
8. That the Honorable Tribunal has no Jurisdiction to adjudicate upon the matter.
9. That the instant Appeal is bad for mis-joinder and non-joinder of the necessary parties.

ON FACTS:

1. Para No. 1 is correct being matter of record.
2. Para No. 2 is correct.
3. Para No. 3 is correct. Type D Hospital Havailian Abbottabad was also one of his preferences for posting.
4. Para No. 4 is correct but Type D Hospital Havailian is also in District Abbottabad.
5. Para No. 5 is correct but Dr. Zardad Muhammad was Senior District Specialist (Children) BPS-19 while the Appellant is District Specialist (Children) in BPS-18.
6. Para No. 6 is incorrect. The Appellant is working in Type D Hospital Havailian Abbottabad since 26/12/2016 and has not completed his normal tenure. Dr. Fiaz Jadoon District Specialist (Children) was already working in Benazeer Bhutto Shaheed Teaching Hospital Abbottabad since 22/07/2017 against the post of District Specialist and has been adjusted against the vacant post of District

Specialist (Children) BPS-18 Women & Children / DHQ Hospital Abbottabad
vide Notification No. SOH-I/HD/3-5/2019 dated 11/07/2019.

7. Para No. 7 is correct but his appeal was considered and regretted due to premature transfer.
8. Para No. 8 is correct. The case was considered and regretted being not covered under the posting/transfer policy tenure.
9. Para No. 9 is correct.
10. Para No. 10 as already replied in Para No. 8.
11. Para No. 11 as in preceding para.
12. Para No. 12 pertains to record.
13. Para No. 13 No comments.

ON GROUNDS:

- a. In reply to Para-a it is submitted that the claim of the Appellant is non-maintainable. Infact, since his appointment he has been filing court cases without any legal footings. The services of all Civil Servants are Govt. under Khyber Pakhtunkhwa Civil Servants Act which categorically says that the Govt. employee has to serve everywhere within or even outside of the province. His appeal was considered and regretted by the competent authority.
- b. In reply to Para-b it is to submit that rebutted on the ground that Khyber Pakhtunkhwa Public Service Commission recommended Dr. Faiz Ahmad S/o Niaz Khan vide letter No. Khyber Pakhtunkhwa Public Service Commission/SR-III/030203 dated 15/06/2016 and his appointment/posting order was issued on 04/08/2016 (Annex-A). Sequel to his appointment Dr. Faiz Ahmad floated application for leaving as he was undergoing TMO Ship (FCPS Part-II) till 31/07/2017 (Annex-B). His leave was considered in light of Section 6 of Regulatory Act 2011 and accordingly EOL was sanctioned in his favor (Annex-C).
- c. Para-c as already explained in preceding para.
- d. Para-d is incorrect. Posting/transfer are made as per rules/policy and exigency and not on discrimination. On the expiry of Dr. Faiz Ahmad he was posted against the vacant post whereas the Appellant at that time had premature tenure and could not be considered for posting.
- e. Para-e needs no comments.
- f. Para-f as already explained in Para-b & d above.
- g. In reply to Para-g it is submitted that the Appellant request was considered and regretted being not covered under posting/transfer policy hence his stance is non-maintainable.
- h. Para-h no comments.

i. Para-i needs no comments.

j. In reply to Para-j it is submitted that Department always considers merit of the case and not face. All are equal before the eyes of Department rather the fact is the Appellant every now and then dragged health department in futile litigation exercises.

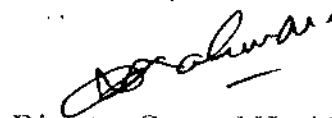
k. In reply to Para-k it is submitted that the Appellant has always been treated equally and his all representations were considered on merit.

PRAYER:

It is therefore humbly prayed that on acceptance of the comments, the instant Appeal may very graciously be dismissed with cost.



Secretary to Govt. of Khyber Pakhtunkhwa
Health Department Peshawar
Respondent No. 01



Director General Health Services,
Khyber Pakhtunkhwa.
Respondent No. 02



District Health Officer Abbottabad
Respondent No. 03



Dr. Fiaz Jadoon District Specialist
(Children) BBS Teaching Hospital
Abbottabad
Respondent No. 04



GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT

Dated Pesh: the 4TH Aug; 2016

NOTIFICATION

No.SOH-I/(HD)3-5/2015 The Competent Authority, on the recommendations of Khyber Pakhtunkhwa Public Service Commission is pleased to appoint the following doctors as Distt: Specialists Orthopaedic and Children (BS-18) on regular basis in the Health Department with immediate effect. Their salaries shall not be released till confirmation of their PERs (for in-service appointees) and verification of their documents. They will be on probation for a period of one year extendable for another one year.

A. Distt: Specialist Orthopaedic (BS-18)

- | S.No | Name of doctor |
|------|---|
| 1. | Dr. Abbas Ali S/O Hashim Ali Khan |
| 2. | Dr. Abdul Haleem S/O Ghulam Khan |
| 3. | Dr. Abdus Saboor Awan S/O Muhammad Yunas Awan |
| 4. | Dr. Akhtar Zaman S/O Goharur Rehman |
| 5. | Dr. Asghar Khan S/O Itbar Khan |
| 6. | Dr. Imran Khan S/O Janat Shah Jahan |
| 7. | Dr. Khial Wali S/O Yaghi Shah |
| 8. | Dr. Muhammad Khalid Khan S/O Abdul Majeed |
| 9. | Dr. Muhammad Riaz S/O Lal Noor |
| 10. | Dr. Muhammad Saeed S/O Usman Sher |
| 11. | Dr. Mushtaq Hussain S/O Raqeeb Gul |
| 12. | Dr. Qayyum Khan S/O Akbar Khan |
| 13. | Dr. Shams ur Rehman S/O Mirza Ali Khan |
| 14. | Dr. Waliullah Khan S/O Qasim Khan |
| 15. | Dr. Waseequr Rehman S/O Shafiqur Rehman |

B. Distt: Specialist Children

- | | |
|-----|--|
| 1. | Dr. Sajjad Hussain Khan S/O Iqbal Hussain |
| 2. | Dr. Tausif Ahmed S/O Muhammad Haroon |
| 3. | Dr. Abdul Rashid S/O Faqir Muhammad |
| 4. | Dr. Akbar Jan Burki S/O Badad Khan |
| 5. | Dr. Faiz Ahmed S/O Niaz Khan |
| 6. | Dr. Haleema Bibi D/O Jauhar Khan |
| 7. | Dr. Liaqat Ali S/O Awal Khan |
| 8. | Dr. Mir Saeed Khan S/O Amal Khan |
| 9. | Dr. Muhammad Jamal Khan S/O Muhammad Israr Khattak |
| 10. | Dr. Syed Muhammad Tariq S/O Syed Amin ul Haq |

2 Consequent upon the above, the above mentioned doctors are hereby posted as Distt: specialist Surgery (BS-18) in the hospitals noted against their names;

ED

S.No.	Name of doctor	Present place of posting	Domicile	Posted at
ORTHOPAEDIC BPS-18				
1.	Dr. Abbas Ali S/O Hashim Ali Khan	MO Reg/Distt: Specialist Orthopaedic Adhoc DHQH Charsadda	Peshawar	DHQH Charsadda.
2.	Dr. Abdul Haleem S/O Ghulam Khan	MO Reg/Distt Specialist adhoc King Abdullah Teaching Hospital Mansehra	Mansehra	King Abdullah Teaching Hospital Mansehra
3.	Dr. Abdus Saboor Awan S/O Muhammad Yuhus Awan	MO Reg/Distt: Specialist Adhoc Battagram	Mansehra	DHQH Battagram.
4.	Dr. Akhtar Zaman S/O Goharur Rehman	MO-DHQH Haripur	Haripur	DHQH Abbottabad
5.	Dr. Asghar Khan S/O Ifbar Khan	Fresh	Swat	THQH Matta Swat
6.	Dr. Imran Khan S/O Janat Shah Jahan	Junior Registrar HMC Peshawar	NW Agency	DHQH Karak against the vacant post of Orthopaedic BS-19 at DHQK Karak
7.	Dr. Khial Wali S/O Yaghi Shah	SMO AHQH Landi kotal	Khyber Agency	DHQH Battagram
8.	Dr. Muhammad Khalid Khan S/O Abdul Majeed	MO KTH, Peshawar	Bannu	THQH Takhti Nasrati Karak against vacant post
9.	Dr. Muhammad Riaz S/O Lal Noor	SR SGTH Swat	Khyber Agency	DHQH Batkhela
10.	Dr. Muhammad Saeed S/O Usman Sher	Junior Registrar HMC	Swabi	THQH Lahore Swabi
11.	Dr. Mushtaq Hussain S/O Raqeeb Gul	Fresh	Malakand	THQH Dargai Malakand
12.	Dr. Qayyum Khan S/O Akbar Khan	MO Reg/Adhoc Distt; Specialist THQH Takht Bahi Mardan	Mohmand Agency	THQH Takht Bahi Mardan
13.	Dr. Shams ur Rehman S/O Mirza Ali Khan	MO Reg/AP Orthopaedic KGNTH Bannu	FR Bannu	DHQH Bannu against the post of SMO (BS-18)
14.	Dr. Waliullah Khan S/O Qasim Khan	MO Reg/Distt: Specialist Adhoc THQH Sarai Naurang Lakki Marwat	Lakki Marwat	THQH Sarai Naurang Lakki Marwat.
15.	Dr. Waseequr Rehman S/O Shafiqur Rehman	MO Naseerullah Khan Babar Memorial Hospital Peshawar.	Karak	Satellite Hospital Nahaqi Peshawar.
CHILDREN SPECIALIST BPS-18				
1.	Dr. Sajjad Hussain Khan S/O Iqbal Hussain	Fresh	Swat	At the disposal of Chief Executive, SGTH Swat.
2.	Dr. Tausif Ahmed S/O Muhammad Haroon	Fresh	Abbottabad	Type 'D' Hospital Boi Abbottabad
3.	Dr. Abdul Rashid S/O Faqir Muhammad	SMO King Abdullah Teaching Hospital Mansehra	Mansehra	DHQH Mansehra
4.	Dr. Akbar Jani Burki S/O Badad Khan	SMO Paeds AHQH Wana	SW Agency	THQH Panyala D.J.Khan
5.	Dr. Faiz Ahmed S/O Niaz Khan	Junior Registrar Paeds ATH Abbottabad	Abbottabad	Type 'D' Hospital Hawilyc Abbottabad

The Department may also get verified the documents of the selectees before
appointment.

54

Inter-se merit of all the recommendees is linked with other subjects of the said
advertisement and the overall merit position will be intimated on the completion of the
interview in all subjects.

5. Recommendation in favour of One (01) candidate will conveyed after receipt of
his vital deficiency. Other five (05) candidates have been provisionally interviewed on
the interim order of Peshawar High Court whose result/recommendation has been kept
pending till final decision of the court.
6. Unfilled posts will be re-advertised.
7. Original applications of the recommendees (along-with enclosures) are sent
herewith for your record.
8. Please acknowledge receipt.

Yours faithfully,

(Ghulam Dastagir Ahmad)
DIRECTOR RECRUITMENT

Encl: As above

55

GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT



DATED PESH: THE 6TH SEPT; 2016

NOTIFICATION

No.SOH-I/HD/1-1/2016 Sanction is hereby accorded to the grant of Extra Ordinary Leave in favour of Dr. Fiaz Ahmad, Distt: Specialsit (Children) Type-D Hospital Havelian Abbottabad till completion of his undergoing FCPS training Part-II i.e **31/7/2017**.

2. Certified that on expiry of leave the officer concerned will resume duty against his original post:

SECRETARY HEALTH

Endst No and date even

C.C to:-

- 1 Director General Health Services, Khyber Pakhtunkhwa Peshawar.
- 2 Medical Supdt./Incharge Type-D Hospital Havelian Abbottabad.
- 3 DHO, Abbottabad.
- 4 Distt: Accounts Officer, Abbottabad.
- 5 Doctor concerned.
- 6 Personal file of the doctor concerned.

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Section Officer-I

(61)



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

Dated Pesh: the 18th July 2017

NOTIFICATION

No.SOH-I/HD/7-53/2017 Consequent upon completion of FCPS-II training, Dr. Riaz Ahmad, Distt: Specialist (Children BS-18) awaiting posting is hereby adjusted/posted against the vacant post of Senior District Specialist Children (BS-19) at Women and Children Hospital Abbottabad with immediate effect in the public interest.

SECRETARY HEALTH

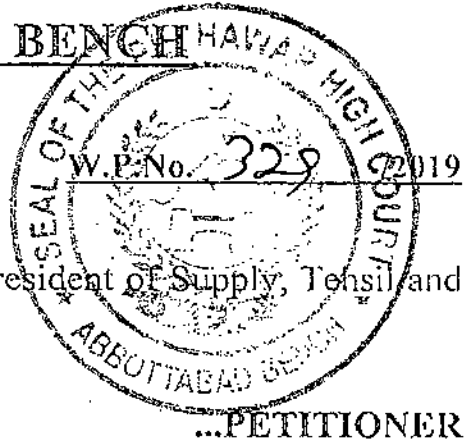
Encl: No and date even

C.C :

1. Director: General Health Services, Khyber Pakhtunkhwa, Peshawar.
2. Medical Supdt; Women and Children Hospital Abbottabad.
3. District Accounts Officer, Abbottabad.
4. Doctor concerned.
5. Personal file of the doctor concerned.


Section Officer-I

BEFORE THE HONOURABLE PESHAWAR HIGH COURT, ABBOTTABAD BENCH



Dr. Sohail Babar son of Abdul Rahim Utman, resident of Supply, Tensil and District Abbottabad.

...PETITIONER

V E R S U S

1. Government of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
2. Health Department, Khyber Pakhtunkhwa though Director General, Health Services, Khyber Pakhtunkhwa, Peshawar.
3. District Health Officer, Abbottabad.
4. Accountant General, Khyber Pakhtunkhwa, Fort Road, Cantonment, Peshawar.
5. District Account Officer, Abbottabad.

...RESPONDENTS

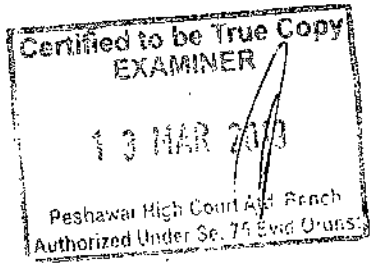
WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 AS AMENDED TILL DATE.

No. 1555
05/3/19

PRAYER:-

ON ACCEPTANCE OF INSTANT WRIT PETITION, THE RESPONDENTS BE RESTRAINED / DIRECTED NOT TO STOP THE SALARY OF THE PETITIONER AND FURTHER RELEASE THE SALARY WITHOUT FAIL, ANY OTHER RELIEF

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PESHAWAR HIGH COURT ABBOTTABAD
BENCH

JUDICIAL DEPARTMENT

JUDGMENT SHEET

WP No. 329-A/2019.

Date of hearing 12.03.2019.

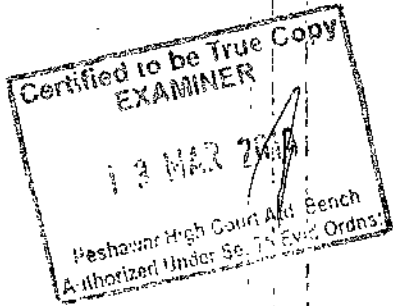
Petitioner/s (Dr. Sohail Babar) by Syed Raza Shah, Advocate.

Respondent/s (Government of KPK & others) by Raja Muhammad Zubair, AAG.

IJAZ ANWAR. J. Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner namely **Dr. Sohail Babar** has prayed as under:-

“That on acceptance of instant writ petition, the respondents be restrained/directed not to stop the salary of the petitioner and further release the salary without fail.”

2. Brief facts leading to filing of instant writ petition are that on recommendation of Public Service Commission, the petitioner was appointed as District Specialist Children (BPS-18) in the Health Department vide notification dated: 02.12.2016. That in the meanwhile,

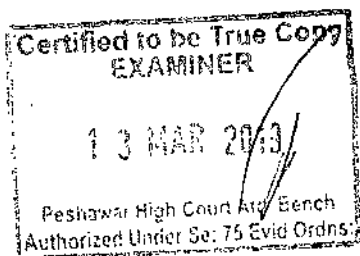


respondent No. 3 issued an office order dated: 06.02.2019 to mentally torture the petitioner, directed for relieving him from the station of his duty, to which the petitioner filed reply/representation before competent authority, decision of which is awaited but in the meantime, the salary of petitioner was stopped without any justification, hence, the instant writ petition.

3. Heard.

4. Perusal of the record reveals that initially the petitioner was appointed as District Specialist Children on regular basis in the health department pursuant to the recommendation of Public Service Commission and thus his status is that of civil servant. Similarly, during the course of his service vide impugned order dated: 06.02.2019, the petitioner was relieved from the post of Child Specialist from type "D" hospital, Havelian.

5. It seems that the respondents intend to initiate departmental proceedings against the petitioner. Posting and transfer



besides analyzing the conduct of its employees is the domain of respondents to maintain discipline in the government department.

6. The grievance of the petitioner is regarding stoppage of his salary. Pending any such departmental proceedings, salary of a civil servant cannot be withheld under any circumstances, at the most recovery could be effected from the salary of the civil servant in case any loss is caused to the government exchequer and even such recovery is subject to conduct of departmental inquiry and proof of the charges, while in the instant case, no proceeding has been initiated till date but salary of the petitioner has been stopped.

7. We thus, without further commenting upon the merits of the case send this matter to the respondent No. 2 for decision of the case at his end, in accordance with law. We further direct that the salary of the petitioner be released forthwith.

