

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICES**

**TRIBUNAL PESHAWAR**

Service Appeal No.1792/2022

Jangraiz Khan

-----Appellant

**VS**

Secretary Health Department Government of Khyber Pakhtunkhwa &Others

-----Respondents

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Through

Respondent No. 03

**Additional**

**Hospital Director**

**MTD, Peshawar**

(A/ GOHAR DURRANI)

Advocate High Court

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**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICES**

**TRIBUNAL PESHAWAR**

Service Appeal No. 1792/2022

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 6500

Dated 17/7/2023

Jangraiz Khan

-----Appellant

VS

Secretary Health Department Government of Khyber Pakhtunkhwa & Others

-----Respondents

**PARAWISE COMMENTS ON BEHALF OF RESPONDENT No 03.**

**Respectfully Sheweth:**

**Preliminary Objections:**

- a) **Because** the Appellant is not an aggrieved person and has no locus standi to file the appeal in hand before this honorable tribunal.
- b) **Because** the instant appeal filed by the appellant is misconceived, not competent in its present form, is not maintainable, and is therefore liable to be dismissed forthwith. The appellant hasn't come with clean hands and has concealed material facts from this Honorable Court.
- c) **Because** the appeal of the appellant is badly time barred, and thus directly hit by the law of limitation and on that score alone the appeal is liable to be dismissed.
- d) **Because** the appellant, by concealing material and necessary facts from this Hon'ble Court, has come to seek justice when his own hands are unclean and tainted with the *malafide* of her own admitted conduct; and, the pleas of the petitioner should be rejected in their totality as a result.
- e) **Because** the appellant has acquiesced and is estopped by his own conduct to bring the instant appeal.
- f) **Because** the Appellant has got no cause of action to file the instant case.
- g) **Because** filing of this appeal is futile exercise and wastage of precious time of this Honorable Service Tribunal, liable to be dismissed forthwith.
- h) **Because** the instant appeal is barred by law and not maintainable.
- i) **Because** the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
- j) **Because** this Hon'ble tribunal has no jurisdiction to adjudicate upon the matter.
- k) **Because** other grounds and objections may be raised with the permission of this Honorable Tribunal.

**Para wise reply:**

1. **Para 1** of the instant appeal pertains to record.

- 2. **Para 2** of the instant appeal is admitted correct. The Appellant was charged in a Case FIR dated 12-11-2017 due to which he was imprisoned and absent from duty for a period of about 5 years.
- 3. **Para 3** of the instant appeal is correct and hence, needs no reply.
- 4. **Para 4** of the instant appeal is correct and hence, needs no reply.
- 5. **Para 5** of the instant appeal is misconceived and hence, denied. There is no evidence or documentation indicating that the appellant is entitled to paid leave for the period of 365 days from 01-02-2017 according to the appellants service book. While the appellant's application for leave may have been approved, it does not automatically imply entitlement to salary during the said period. Absence from duty without proper justification, such as imprisonment, does not qualify for paid leave benefits as per the department's policies and regulations. However, it is important to note that no salary was paid to the appellant during this period due to his absence from duty, which was a direct result of his imprisonment.
- 6. **Para 6** of the instant appeal is correct to the extent that that the appellant has been reinstated/restored in service vide order dated 24-01-2022. However, it is important to clarify that the period from 01-02-2017 to 23-01-2022, during which the appellant was absent from duty, cannot be considered for the calculation of back benefits. The appellant's absence from duty was a consequence of his imprisonment, which was unrelated to his employment with the respondent's department.
- 7. **Para 7** of the instant appeal is incorrect, hence denied. That the matters relating to back benefits do not constitute a continuous cause of action, as claimed. The appellant's absence from duty due to his imprisonment, which was a personal matter unrelated to the department, does not warrant entitlement to back benefits. It is important to note that the principle of "no work, no pay" applies in this situation. Additionally, there are no reported judgments from Superior Courts indicating that the appellant is entitled to back benefits for the period of absence resulting from imprisonment. The absence from duty due to incarceration is not a valid basis for claiming back benefits, as it is an extraordinary circumstance beyond the control of the department.
- 8. **Para 8** of the instant appeal is incorrect. The Appellant is not an aggrieved person and has been treated well in accordance with the law. The Appellant bereft of any cause, legal grounds and standing before this Honourable Tribunal, the whole premise of the Appellant's case is based on contradictions and falsifications.

**GROUND:**

- a. **Ground A** is Incorrect as laid. The appellant claims entitlement to full pay, back benefits/arrears of pay, increments, and promotion based on Fundamental Rule 54 and a reported judgment of the Apex Court, "2021 SCMR 962." However, it deems clarification that the cited judgment does not apply to the appellants situation. The mentioned judgment pertains to a civil servant who remained unemployed during the period of dismissal and was


unconditionally reinstated without engaging in any other employment. In the appellant's case, his absence from duty was a result of his imprisonment, which is unrelated to the department. Therefore, the appellant cannot be considered entitled to full pay or back benefits for this period.

- b. **Ground B** is Incorrect as laid. The cited judgments do not establish a direct correlation to the appellant's case. The appellant's absence from duty was due to his imprisonment, which falls outside the scope of entitlement to back benefits as per departmental policies and regulations.
- c. **Ground C** is completely misconceived, hence denied. The mentioned judgment pertains to a different set of circumstances and does not directly apply to the appellant's case. The appellant's absence from duty due to imprisonment based on charges unrelated to the respondents does not warrant entitlement to back benefits as per the respondents' departmental policies. When the appellant was terminated due to his imprisonment, he cannot seek any back benefits since he was not serving in the department during that period.
- d. **Ground D** of the instant appeal is incorrect as laid. The appellant's 27 years of unblemished service and good track record cannot be used as a basis for claiming entitlement to back benefits, arrears of pay, increments, and promotion. It is important to reiterate that the appellant's absence from duty and termination was a direct result of his imprisonment. Absence from duty due to imprisonment cannot be considered grounds for granting back benefits, as per our departmental policies and regulations. Furthermore, the appellant cannot seek the claim of back benefits once he was terminated due to the charges levelled against him, even after his reinstatement the claim of back benefits during the period of termination does not lie since the reason behind the appellants termination was the direct result of his imprisonment which had nothing to do with the respondent department.
- e. **Ground E** of the instant appeal is incorrect as laid. The appellant's absence from duty was a consequence of his imprisonment, which is unrelated to the respondents. The answering respondent cannot be held responsible for the appellant's personal situation and financial obligations.

It is therefore most humbly prayed that the instant appeal is meritless, may please be dismissed with cost.

Date: \_\_\_/\_\_\_/2023

THROUGH

  
 Respondent no. 03  
 Additional  
 Hospital Director  
 (ALI GOHAR DURRANI)  
 Advocate High Court  
 0332-9297427  
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AFFIDAVIT

I, Mr. Ihsanullah Khan, Litigation Officer/Pharmacist (BPS-17), Khalifa Gul Nawaz MTI, Bannu, do hereby solemnly affirm and declare on oath that the contents of the accompanying parawise comments are true and correct to the best of my knowledge & belief and nothing has been concealed from this Honorable Tribunal. It is further stated on oath that in this appeal, that the answering respondent has neither been placed ex-parte nor their defense has been struck off. *Ihsanullah*  
(Deponent)

*Ihsanullah*

Identified by  
*[Signature]*  
Ali Gohar Durkhan  
Advocate

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICES  
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-----Respondents

**Authority Letter**

Mr. Ihsanullah Khan Pharmacist/Litigation officer (BPS-17)KGN-MTI Bannu is hereby authorized to submit Parawise comments in my behalf in Service Appeal No.1792/2022 titled “ Jangraiz Khan Vs Secretary Health Department Govt of kpk & others” in Khyber Pakhtunkhwa Service Tribunal Peshawar.



Additional Hospital Director  
DHQ-MTI Bannu  
(Respondent no.3)  
**Additional  
Hospital Director  
(MTI) Bannu**

(6)

**POWER OF ATTORNEY**  
**BEFORE**

Service appeal No. 1792 of 2022

Jangriz Khan

(Petitioner)  
(Plaintiff)  
(Appellant)  
(Complainant)  
(Decree-Holder)

VERSUS

Govt of KPK &  
Others

(Respondent)  
(Defendant)  
(Accused)  
(Judgment-Debtor)

I/we Respond Respondent No. 3 the above named Accused/Petitioner/Plaintiff/Appellant/Respondents/Defendant do hereby appoint & constitute **ALI GOHAR DURRANI, ADVOCATE HIGH COURT(s), of the Law Firm "Shah | Durrani | Khattak"** as counsel (for R-3) in the above mentioned case, to do all or any of the following acts, deeds and things:-

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal or any other court/tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file Plaint/Written Statement or withdraw all proceedings, petitions, suit appeals, revision, review, affidavits and applications for compromise or withdrawal, or for submission to arbitration of the said case, or any other document, as may be deemed necessary or advisable by him for proper conduct, prosecution or defence of the said case at any stage.
3. To do and perform all other acts which may be deemed necessary or advisable during the course of the proceedings.

**AND HEREBY AGREE:-**

- a) To ratify whatever the said Advocate may do in the proceedings in my interest
- b) Not to hold the Advocate responsible if the said case be proceeded ex-parte or dismissed in default in consequence of their absence from the Court/Tribunal when it is called for hearing or is decided against me/us.
- c) That the Advocate shall be entitled to withdraw from the prosecution of the said case if the whole OR any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Power of Attorney/Wakalat Nama hereunder the contents of which have been read/expained to me/us and fully understood by me / us this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_

Signature of Executant(s)  
**Additional  
Hospital Director  
(MTI) Bannu**

Accepted subject to term regarding payment of fee.

**ALI GOHAR DURRANI (BC-13-4247)**  
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