

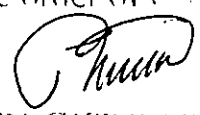
FORM OF ORDER SHEET

Court of _____

Appeal No. 1567/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	03/08/2023	The appeal of Mst. Shama Sohrab today by Syed Noman Ali Bukhari Adv. preliminary hearing before Single Bench at <i>07-08-2023</i>

By the order of Clerk


REGISTRAR

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1567 /2023

Mst. Shama Sohrab

V/S

Health Deptt.

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APPELLANT

Shama
Mst. Shama Sohrab

THROUGH:

Noman
(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT



Uzma
(UZMA SYED)
ADVOCATE PESHAWAR.

(1)

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 1567 /2023

Ms. Shama Sohrab, Ex-Lady Health Visitor BPS-09,
North Waziristan Tribal District.

(APPELLANT)

VERSUS

1. The Secretary, Health Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director General, Health Services, Khyber Pakhtunkhwa, Peshawar.
3. The District Health Officer North Waziristan Tribal District.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KP SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 27.10.2022 RECEIVED TO THE APPELLANT ON 15/12/2022 AND AGAINST THE INACTION OF THE RESPONDENTS DEPARTMENT ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF 90-DAYS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL THE ORDER DATED 27.10.2022 MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF THE APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant was appointed as Lady Health Visitor in BPS-09 vide order dated 08.09.1998. The appellant performed her duties since

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appointment with full zeal and zest. **Copy of the Appointment Order is attached as Annexure - A.**

2. That appellant while performing her duties the respondent issues termination order dated 27.10.2022 of the appellant was issued without observing codal formalities i.e charge sheet, regular inquiry, show cause notice and also without person hearing in violation of article 10-A of the constitution of Islamic Republic of Pakistan. **Copy of the Termination Order as Annexure - B.**
3. That the impugned order dated 27.10.2022 was received to the appellant on 15.12.2022 against which appellant filed departmental appeal on 21.12.2022 which was not responded till date, hence the present appeal on the following grounds amongst other. **Copy of the departmental appeal is attached s annexure-C.**

GROUND:

- A) That the order dated 27.10.2022 and not responded the departmental appeal of the appellant within statutory period are against the law, facts, norms of justice and material on record, therefore, not tenable and liable to be set aside.
- B) That the impugned order is clear violation of supreme court judgment that charge sheet and statement of allegation not only be issued but shall be communicated to the person by before imposing major punishment to the accused
- C) That the appellant has been condemned unheard and has not been treated according to law and rules.
- D) That no proper regular inquiry was conducted and without issuing final show cause notice the impugned order was passed which is against the law and principle of natural justice and also in violation of the judgment of the Supreme Court of Pakistan which is also amounts violation of article 187& 189 of the constitution of the Islamic Republic of Pakistan.
- E) That the opportunity of personal hearing and personal defense was not provided to the appellant.
- F) That the appellant has been condemned unheard in violation of Article 10-A of the Constitution of Islamic republic of Pakistan and in violation of maxim "Audi Alterum Partum" and has not been treated according to law and rules. That according to reported judgment cited

as 2019 CLC 1750 stated that Audi Alterum Partum" shall be read as part and parcel of the every statute. The same principle held in the Superior Court judgments cited as 2016 SCMR 943, 2010 SCMR 1554 and 2020 PLC(cs) 67.

- G) That the appellant have not been treated in accordance with law hence the appellant right secured and guaranteed under the law are badly violated.
- H) That according to Federal Shariyat court Judgment cited as PLD 1989 FSC 39 the show cause notice is must before taking any adverse action, non-issuance of show cause notice is against the injunction of Islam. Hence the impugned order is liable to be set-aside.
- I) That the show cause is the demand of natural justice and also necessary for fair trial and also necessary in light of injunction of Quran and Sunnah but show cause was not given to the appellant. So, fair trail denied to the appellant which is also violation of Article 10-A of the constitution. Further it is added that according to reported judgment cited as 1997 PLD page 617 stated that every action against natural justice treated to be void and unlawful. Hence impugned order is liable to be set-aside. The natural justice should be considered as part and parcel of every statute according to superior court judgment cited as 2017 PLD 173 and 1990 PLC cs 727.
- J) That the appellant have never committed any act or omission with bad or malafide intentions which could be termed as misconduct, albeit the appellant was dismissed from the service. Which is violation of reported judgment cited as 1997 PLC cs 564.
- K) That no charge sheet was issued to the appellant on the allegation appellant was dismissed from service which is violation of Rule-10(b) of the E&D Rules 2011 and no inquiry was conducted and appellant was awarded major penalty which is against the law, rules and norms of justice, because in case of imposing major penalty proper regular inquiry and proper procedure has to be conducted under Rule-5, 10, 11. & 14 of the E&D Rules 2011.
- L) That no show cause notice was issued before taking adverse action which is violation of rule Rule-5(a) Read with Rules -7 in case inquiry was not necessary and Rule-14(b) of the E&D Rules 2011, in case where regular inquiry is necessary. Which were totally ignored

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before taking adverse action. The same principle held in the Superior Court judgments cited as 1987 SCMR 1562, 2019 PLC cs 811, 2008 PLC cs 921 and 209 SCMR 605.

- M) That the opportunity of personal hearing and personal defense was not provided to the appellant which was violation of **Rule 7(d)** in case inquiry was not necessary and **14(5) of the E&D rules 2011** in case where inquiry is necessary. The same principle held in the Superior Court judgments cited as 2006 SCMR 1641
- N) That the appellant has many years of service to her credit and without keeping regard of anything she was disowned by the department and even her appointment was declared as ghost employee which is very harsh and is passed in violation of law therefore, the same is not sustainable in the eyes of law.
- O) That the Supreme Court and Federal Shariat Court of Pakistan held that whenever an adverse action is being taken against the employee the opportunity of show cause notice and personal hearing shall be given before taking any adverse action. Otherwise, the employee will be treated as condemned unheard.
- P) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

APPELLANT

Shama
Mst. Shama sohrab

THROUGH:

Noman
(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT

Uzma
&
(UZMA SYED)
ADVOCATE PESHAWAR.

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BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____ /2023

Mst. Shamma Sohrab

V/S

Health Deptt.:

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.

Shamma
DEPONENT

LIT OF BOOKS:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE.
3. Any other case law as per need.

Syed Noman Ali Bukhari
(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT

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BEFORE THE FEDERAL SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____ /2023

Shahnam Schwalb

V/S

Health Deptt:

APPLICATION FOR CONDONATION
OF DELAY IN THE INSTANT APPEAL

RESPECTFULLY SHEWETH:

1. That the instant appeal is pending before this Honourable Tribunal in which no date has been fixed.
2. That the appellant was terminated from service and the termination is not defined in E&D rules and as such the penalty order was without legal backing, void ab-initio and no limitation runs against such orders and this point is already decided by this Hon'able Tribunal.
3. That the august Supreme Court of Pakistan has held that decision on merit should be encouraged rather than knocking-out the litigants on technicalities including limitation. Therefore, appeal needs to be decided on merit (2003, PLD (SC) 724.
4. That the appellant was waiting for reply to departmental appeal therefore he has not able to file the appeal before Service Tribunal in time, otherwise, the appeal of the appellant on merit is good enough to be decided on merits.

It is therefore most humbly prayed that the instant appeal may be decided on merit by condoning the delay to meet the ends of justice.

Shahnam
APPELLANT
shahnam

THROUGH:

Noman
(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT, PESHAWAR.

&
Uzma
(UZMA SYED)
ADVOCATES, PESHAWAR

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BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2023

Mst. Shamma Sohrab

V/S

Health Deptt.:

AFFIDAVIT

I, SHAMMA SOHRAB, (Appellant) do hereby affirm that the contents of this service appeal and application are true and correct, and nothing has been concealed from this honorable Tribunal.



DEPONENT

Shamma
Shamma Sohrab

Annexure - A (8)

DIRECTORATE OF HEALTH SERVICES FATA, PESHAWAR

Appointment Letter.


Consequent upon the approval of Departmental Selection Committee Miss Shama Sohrab D/O Sohrab Khan is hereby appointed as Lady Health Visitor in BPS 9 plus usual allowances as admissible under the Rules.

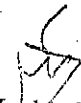
His/Her appointment will be subject to the following terms and conditions :-

1. That his/her appointment is purely on temporary basis and his services are liable to be terminated at any time without any notice or reasons being assigned.
2. That he/she is declared Medically fit for Government Service.
3. That he/she will be governed by such Rules and orders as may be issued by the Government of NWFP from time to time for the category of Government servants to which he belongs.
4. That if he/she wishes to resign at any time, he/she will resign in written with 30 days notice or pay in lieu there of and will continue to serve the Government till the acceptance of his/her resignation by the competent authority.
5. That he/she will be posted any where in FATA and will serve at the place of posting at least for five years for which he/she will give an undertaking on stamp paper duly attested by the Oath Commissioner.
6. He/she will not be entitled to any TA/DA for Medical Examination and joining the 1st appointment.
7. If he/she accepts the post on these conditions, he/she should report him/herself to DHO F.P. Tunde within 15 fifteen days. The offer will be cancelled if he/she fails to report for duty within above mentioned period.

No. 7234-38 Date: 8/9/98
Copy forwarded to the:

1. Accountant General AGPR Peshawar.
2. Agency / District Accounts Officers Office.
3. Agency Surgeon/District Health Officer/Medical Superintendent Concerned.
4. Personal File.
5. Official Concern.


Director Health Services,
FATA, Peshawar.


Director Health Services,
FATA, Peshawar.



Annexure B-09

**OFFICE OF THE DISTRICT HEALTH OFFICER
NORTH WAZIRISTAN TRIBAL DISTRICT AT MIRANSHAH**

Tel: (0928) 300788 FAX: (0928) 311662 Email: agency surgeon nwa2018@gmail.com

TERMINATION ORDER

Miss. Shama Sohrab is hereby terminated from services due to long absenteeism from government duties with immediate effect in the larger interest of public on the following grounds and adopting all codal formalities

1. Whereas, she is absent since long with out any prior permission/leave applications of the undersigned from her concerned Health facilities.
2. Whereas this office has already issued explanations/ showcause notice to her vide this office orders No.13147-50 dated 12/08/2021 No.15510-15 dated 12/10/2021 No. 5652-55 dated 26/11/2020 No.3745-49 dated 19/08/2020.
3. Whereas, it is reported to the undersigned that she is living out of North Waziristan Tribal District with out any prior permission of the undersigned since long which is against the government rules.
4. Whereas, she have not obeyed the order of the undersigned i.e. reply of explanation showcause notice. its mean that she is not considering her self as government employee.
5. Whereas, she has no official records of any approved leave from the office of the undersigned.
6. Whereas, the undersigned declared her as Ghosts employee.

SD/XXXXXXXXXX

District Health Officer,
North Waziristan Tribal District

No 8940-45

/DHO/MRN/terminations order dated the 27/10/2022

Copy forwarded to :

1. The PS to Secretary Health Department KPK Peshawar.
2. The Director-General Health Services KPK Peshawar.
3. The Deputy Commissioner North Waziristan Miranshah.
4. The District Accounts Officer North Waziristan Miranshah with request to stop the pay of concerned LHV having personal No. 50187715.
5. The District Monitoring Officer North Waziristan Miranshah.
6. Official Concerned.

District Health Officer,
North Waziristan Tribal District

C-10

The following is a copy of the

Application for the position of
of the political society
Miss Shama Shukla
Nagpur. BIA office.
The application is submitted
through letter dated 21/12/2012.

Report of the

- 1. That the petitioner/Applicant is a
born and bred citizen of India and is
a Hindu by religion and is a
resident of Nagpur.
- 2. That the petitioner/Applicant is a
graduate in Arts and has
been working in the capacity of
Teacher in a school in Nagpur.
She is a Hindu by religion and is
a resident of Nagpur.

It is also stated that the

applicant is a Hindu by religion
and is a resident of Nagpur.
The applicant is a Hindu by religion
and is a resident of Nagpur.

Date: 21/12/2012

Signature
of the

21/12/2012

Signature of Applicant
Miss Shama Shukla

Better Copy

TO THE DG HEALTH PESHAWAR

Application for reinstate of the petitioner

namely Miss Shama Shurab

LHR who were terminated through Letter No. 8934-39

Respected Sir:-

1. That the petitioner/appellant are belonging to a poor family and duty women who performing their duty faithfully.
2. That neither the petitioner/appellant were remained absent from duty nor they were inform regard proceeding taken against them i.e show cause notice. Worth mentioning here that they were punctually regularly performing her duty.

It is therefore most humbly prayed that on acceptance of this appeal the applicants may kindly be reinstated against her post that shall be grateful.

Applicants

Through

Miss Shama Shurab