

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

Service appeal No .1269/ 2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7945

Dated 27/9/20

Mst Hurmat

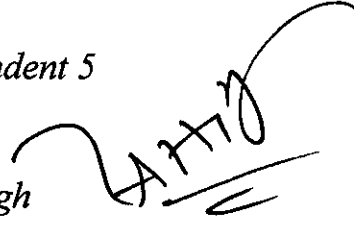
VS

The District Health Officer & others

INDEX

S. NO.	DOCUMENTS	ANNEXURE	PAGES
1.	<i>Para wise comments/ reply with verification</i>		1-5
2.	<i>Affidavit</i>		6
3.	<i>Application/ complaint to the DHO</i>		7

Respondent 5

Through 

Zahid Kakakhel

Advocate High Court

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

Service appeal No .1269/ 2023

Mst Hurmat

VS

The District Health Officer & others

PARAWISE COMMENTS/REPLY ON BEHALF OF RESPONDENT.5/MST.RUQIA

Respectfully Sheweth:

PRELIMINARY OBJECTIONS ARE AS UNDER.

- 1) That the petitioner has no cause of action to file the instant writ petition.*
- 2) That, the honest, reputable and intelligent inquiry officer made a categorical inquiry against appellant, which has been carried out in a very transparent, impartial and legal manner and he is not influenced from anyone. After an inquiry report, the appellant had rightly been transferred to BHU Bishbanr.*
- 3) That the appellant has been serving BHU Qambar for the last eight years, which is not accordance with law, legally the department is bound to transfer the appellant after three years. Moreover, the permanent residency of the appellant is Devlai Tehsil Kabal, District Swat.*
- 4) That the respondent No. 5 for the first time has been transferred to the BHU Qamber during her entire service tenure.*
- 5) That, behavior and manner of the appellant towards public was becoming more and more aggressive. A number of complaints has received from localities to the District Health Officer (DHO), thus, a proper inquiry was initiated and after fulfilment of all legal requirements, the appellant had been transferred to BHU Bishbanr. (documents are attached)*
- 6) That the answering respondent No.5 had performed her duties from 2002 to 2007 in Upper Dir, in 2007 she was transferred to Manglawar, in 2017 she was transferred to Bishbanr, in 2023 she was transferred to Qamar, the respondent No. 5 is bound to obey all the orders of the department without any question. the department as well as the answering respondent No.5 is neither any ill will or malafide intention to the appellant and the appellant has a moral duty to obey the law, rules and regulations of the department.*

- 7) *That the appellant has filed the instant appeal to obtain the benefits for which she is not entitled, therefore, the instant appeal is liable to be dismissed.*
- 8) *That after fulfilment of all the codle & legal requirements for transferring, appellant had been transferred. Therefore, the appellant has no locus standi to file the instant appeal.*
- 9) *That the answering respondent No.5 herself was not at fault in procuring the appointment or her posting in different BHU by unfair means. By accepting the offer validly made to her by the Department on the basis of her qualification and training in the relevant field, a valuable right had accrued to the respondent No.5 and she could not be made to suffer for the mistake or error of the officials of respondent-Department. Indeed, the offer had been accepted and actually acted upon by the respondent No.5. The instant appeal would, thus, be governed by the principle of locus poenitentiae and, the Department cannot retrace the steps already taken and lawfully acted upon by the respondent No.5."*
- 10) *That this Honorable court has got no jurisdiction.*

OBJECTIONS ON FACTS:-

1. *That para No.1 is not relevant to the respondent No.5, therefore, needs no reply.*
2. *That para No.2 is correct to the extent of issuing transfer order and inquiry, rest of para is incorrect hence denied, behavior and manner of the appellant towards public was becoming more and more aggressive. A number of complaints has received from localities to the District Health Officer (DHO), thus, a proper inquiry was initiated and after fulfilment of all legal requirements, the appellant had been transferred to BHU Bishbanr. details already given in the preliminary objections.*
3. *That para No. 3 is correct, but appeal of the appellant is wrong and illegal.*
4. *That para No.4 is correct, but appeal of the appellant is wrong and illegal.*

5. That para No.5 is incorrect, hence denied. The appellant has filed the instant appeal to obtain the benefits for which she is not entitled, therefore, the instant appeal is liable to be dismissed.

OBJECTIONS OF GROUNDS

- i) That para i is incorrect, hence denied. That, the honest, reputable and intelligent inquiry officer made a categorical inquiry against appellant, which has been carried out in a very transparent, impartial and legal manner and he is not influenced from anyone. After an inquiry report, the appellant had rightly been transferred to BHU Bishbanr.
- ii) That para ii is incorrect, hence denied. the respondents have no political revenge / influence with appellant & act of respondents is the sack of larger public interest, but the appellant is creating hurdles in the way of larger public interest by not obeying the orders of high ups.
- iii) That para iii is incorrect, hence denied. transfer of appellant is correct and accordance with law and is not the result of any revenge or ill will of respondents. Details already given in the above paras.
- iv) That para iv is incorrect, hence denied. transfer of appellant is correct and accordance with law and is not the result of any revenge or ill will of respondents. Details already given in the above paras.
- v) That para v is incorrect, hence denied. Detailed answer is already given in the above paras.
- vi) That para vi is incorrect, hence denied. Detailed answer is already given in the above paras.
- vii) That para vii is incorrect, hence denied. Detailed answer is already given in the above paras.
- viii) That para No. viii is incorrect, hence denied. A valuable right had accrued to the respondent No.5 and she could not be made to suffer for the mistake or error of the officials of respondent-Department. Indeed, the offer had been accepted and actually acted upon by the

respondent No.5. The instant appeal would, thus, be governed by the principle of locus poenitentiae and, the Department cannot retrace the steps already taken and lawfully acted upon by the respondent No.5.

- ix) That para No. ix is not relevant to the respondent No.5, therefore, needs no reply.
- x) That para No.x is incorrect , hence denied.

In view of the circumstances explained above, it is therefore, respectfully prayed that the instant appeal under reply/ comments may kindly be dismissed with heavy cost for the ends of justice.

Respondent No. 5

through counsel

ZAHID KAKA KHEL

Advocate, High Court

VERIFICATION

As per instructions provided my Client the contents of the reply/ comments are true and correct to the best my knowledge and nothing has been kept/concealed therein.

Zahid Kaka Khel

Advocate High Court

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AFFIDAVIT

I, Hayat Khan son of Aitbar Muhammad (attorney for respondent No. 5) r/o Mohalla Dowlat Khel Rahim Abad, Qambar Tehsil Babozai, District Swat do affirm and declare that the contents of the reply/ comments and annexed documents are true and correct to the best my knowledge and nothing has been kept/concealed therein.



Deponent

Hayat Khan

Muhammad Ilyas
ADVOCATE
OATH COMMISSIONER
District Courts Swat
No. *128* Date *26-09-23*

