BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1333/2017

Date of Institution ... 29.11.2017

Date of Decision ... 04.01.2022

Mr. Muhammad Abrar, Ward Orderly (BPS-02), Agency Surgeon Office Mohmand at Ghallanai. ... (Appellant)

VERSUS

The Additional Chief Secretary FATA, FATA Secretariat Warsak Road Khyber Pakhtunkhwa, Peshawar and two others. ... (Respondents)

Muhammad Maaz Madni,
Advocate ... For Appellant

Javed Ullah,
Assistant Advocate General ... For respondents

AHMAD SULTAN TAREEN ... CHAIRMAN
ATIQ-UR-REHMAN WAZIR ... MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant was appointed as Ward Orderly under ADP Scheme, who later on was adjusted against a regular post of ward orderly vide order dated 04-07-2016. During the course of his service, the appellant was proceeded against on the charges of absence from duty and was ultimately removed from service vide order dated 26-07-2017. Feeling aggrieved, the appellant filed departmental appeal dated 04-08-2017, which was not responded within the statutory period, hence the instant service appeal with prayers that the impugned order dated 26-07-2017 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, as such the concerned authorities

violated Article-4 and 25 of the Constitution; that no law/rule has been referred in the impugned order, hence the impugned order is void; that the impugned order is not a speaking order, which is violation of Section-24-A of the General Clauses Act; that the respondents acted in arbitrary manner by issuing the impugned order as disciplinary proceedings were not conducted in accordance with law; that no charge sheet/statement of allegation has been served upon the appellant; that no showcause notice has been served upon the appellant and the appellant has been condemned unheard; that the appellant has not been afforded chance of personal hearing, thus skipped a mandatory provision prescribed in law; that no regular inquiry has been conducted before imposition of major penalty of removal from service; that the appellant has been discriminated as one of the co-accused Mr. Abdullah was also proceeded on the charges of absence, but he was re-instated upon his departmental appeal, whereas stance of the appellant was not accepted.

03. Learned Assistant Advocate General for the respondents has contended that the appellant remained absent from lawful duty without permission of the competent authority; that the appellant was proceeded against departmentally in accordance with law and absence notice was sent to him, but he did not respond; that the same notice was also published in daily newspapers but he did not resume his duty; that after fulfilling all the codal formalities, the appellant was removed from service vide order dated 26-07-2017.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant has been removed from service vide order dated 26-07-2017 but the order in question is not in an official format and it cannot be ascertained as to what law/rule has been applied against the appellant. In light of judgment of Supreme Court of Pakistan reported as 2007 SCMR 229, such order is void and on this score alone the impugned order is liable to be set aside. The impugned order is not a speaking order, which is violation of Section-

24-A of the General Clauses Act. The appellant has also been discriminated as the appellant as well as another ward orderly, namely Abdullah were proceeded against on the same charges together, but record would suggest that Abdullah was re-instated in service, whereas stance of the appellant was not accepted. Placed on record is a publication in a single newspaper, which would suggest that the appellant had been proceeded against under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, but as per law, the respondents were required to sent an absence notice at his home address via registered mail and in case of no response, the same notice was required to be published in two leading newspapers, but the respondents badly failed to adhere to the procedure as prescribed. All the formalities had been completed in a haphazard manner, which depicted ignorance of law on part of the respondents. Even if stance of the respondents regarding absence of the appellant from duty is accepted, in that situation too, the penalty so awarded appears to be harsh, which does not commensurate with magnitude of the guilt. Supreme court of Pakistan in its judgment reported as 2006 SCMR 1120 has held that competent authority had jurisdiction to award any of the punishment mentioned in law to the government servant, but for the purpose of safe administration of justice such punishment should be awarded which commensurate with magnitude of the guilt, otherwise the law dealing with the subject would lose it efficacy.

06. In view of the foregoing discussion, the instant appeal is accepted. The impugned order dated 26-07-2017 is set aside and the appellant is re-instated in service. The intervening period is treated as extra ordinary leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
04.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN)

(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

ORDER
04.01.2022

Learned counsel for the appellant present. Mr. Javed Ullah Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted. The impugned order dated 26-07-2017 is set aside and the appellant is re-instated in service. The intervening period is treated as extra ordinary leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
04.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN)

(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

07.07.2021 Mr. Noor Muhammad Khattak, Advocate, for the appellant present. Mr. Nabi Gul, Superintendent alongwith Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present.

We being Members of Larger Bench, remained busy in hearing arguments in the appeals fixed before the Larger Bench, therefore, arguments in the instant appeal could not heard. Adjourned. To come up for arguments before the D.B on 20.08.2021.

(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

20.08.2021 Due to summer vacations, case is adjourned to 11.11.2021 for the same as before.

READER

11.11.2021 Mr. Muhammad Maaz Madni (junior of learned counsel for the appellant) present. Mr. Noor Zaman Khattak, District Attorney for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 04.01.2022 before the D.B.

(Atiq-Ur-Rehman Wazir)
Member (E)

(Salah-Ud-Din)
Member (J)

18.11.2020 Counsel for appellant present.

Muhammad Jan learned Deputy District Attorney for respondents present.

Former made a request for adjournment. Adjourned. To come up for arguments on 02.02.2021 before D.B.

(Atiq ur Rehman Wazir)
Member (E)

(Rozina Rehman)
Member (J)

02.02.2021 Mr. Afrasiyab Wazir, Advocate, for appellant is present. Mr. Muhammad Rashid, Deputy District Attorney, for the respondents is also present.

Learned counsel submitted that his senior counsel has proceeded to Dara-ul-Qaza, Swat, and could not attend the Tribunal today. Requested for adjournment. The request is acceded to, the appeal is adjourned to 07.04.2021 on which date file to come up for arguments before D.B.

(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

7.4.2021 Due to demise of the Hon'ble Chairman case is adjourned to 7.7.21 for the same as before

Reader

6.5.2020 Due to COVID19, the case is adjourned to 16/7/2020 for the same as before.

Reader

16.07.2020 Nemo for the appellant. Asstt. AG for the respondents present.

On previous date, the matter was posted for hearing today through Reader note. Notices be issued to appellant/ learned counsel for next date of hearing.

Adjourned to 15.09.2020 for arguments before the D.B.

(Muhammad Jamal Khan)
Member

Chairman

15.09.2020 Nemo for appellant.

Mr. Muhammad Jan learned Deputy District Attorney for respondents present.

On the preceding date due to absence of appellant and his counsel, notice was issued and case was adjourned to 15.09.2020 but once again, appellant is not before the Tribunal. Previous directions of this Tribunal have not been complied with as notice to appellant and his counsel is not available on file, therefore, explanation be called from the concerned Muharrir before date fixed.

Fresh notice be issued to appellant and his counsel for 18.11.2020 for arguments, before D.B.

Noted for 18/11/2020

(Atiq ur Rehman Wazir)
Member (E)

(Rozina Rehman)
Member (J)

20.01.2020 Due to general strike on the call of the Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Riaz Paindakhel learned Assistant Advocate General for the respondents present. Adjourned to 05.03.2020 for further proceedings before D.B.

(Hussain Shah)
Member

(M. Amin Khan Kundi)
Member

05.03.2020 Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 06.05.2020 before D.B.

(Mian Mohammad)
Member

(M. Amin Khan Kundi)
Member

Service Appeal No. 1333/2017

24.09.2019 Counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present. Learned counsel for the appellant submitted rejoinder which is placed on record. Learned counsel for the appellant also requested for adjournment for arguments. Adjourned to 29.11.2019 for arguments before D.B.

(Hussain Shah)
Member

(M. Amin Khan Kundi)
Member

29.11.2019 Appellant in person present. Asst: AG for respondents present. Appellant seeks adjournment as his counsel is not available today. Adjourn. To come up for arguments on 20.01.2020 before D.B.

Member

Member

25.04.2019 Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Neither written reply on behalf of respondents submitted nor representative of the department present therefore, notice be issued to the respondents with the direction to direct the representative to attend the court and submit written reply on the next date by way of last chance. Adjourned to 18.06.2019 for written reply before S.B.

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

18.06.2019 Counsel for the appellant and Mr. Shah Nawaz, Litigation Assistant alongwith Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply on behalf of respondents not submitted despite last chance. Representative of the department requested for further adjournment. Another last chance is granted. Case to come up for written reply/comments on 11.07.2019 before S.B.

(Muhammad Amin Khan Kundi)
Member

11.07.2019 Counsel for the appellant Danyal Ahmad, Store Keeper alongwith Addl. AG for the respondents present.

Representative of the respondents submitted written comments which are placed on file. The appeal is assigned to D.B for arguments on 24.09.2019. The appellant may submit rejoinder, within a fortnight, if so advised.

Chairman

27.12.2018 Learned counsel for the appellant present. No one present on behalf of respondent department. Notice be issued to the respondents with direction to furnish written reply. Adjourn. To come up for written reply/comments on 30.01.2019 before S.B.

Member

30.01.2019 None present on behalf of the appellant. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Shah Nawaz, Litigation Officer for the respondents present and requested for further adjournment for filing of written reply. Adjourned to 26.03.2019 for written reply/comments before S.B. Notice be also issued to appelant and his cousnel for attendance for the date fixed.

(Muhammad Amin Khan Kundi)
Member

26.03.2019 Junior to counsel for the appellant present. Written reply not submitted. Shah Nawaz Superintendent representative of the respondent department absent. He be summoned with direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on 25.04.2019 before S.B.

Member

03.08.2018 Mr. Muhammad Maaz Madni, Advocate counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply not submitted and again made a request for some time. Granted.

On perusal of the memo of appeal the respondents under the old nomenclature do not exist anymore and therefore, most probably written reply/comments could not be submitted in time. As such, counsel for the appellant is directed to amend the memo of appeal to that extent and thereafter fresh notices be also given to the newly impleaded respondents for written reply/comments on 19.09.2018 before S.B.

Chairman

19.09.2018 Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity is granted subject to payment of cots of Rs. 1000/- which shall be borne by the respondents from their own pockets. Adjourned. To come up for written reply/comments and cost of Rs. 1000/- on 09.11.2018 before S.B.

(Muhammad Amin Khan Kundi)
Member

09.11.2018 Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 27.12.2018. Written reply not received.

READER

20.03.2018 None present on behalf of appellant and his counsel. Mr. Kabir Ullah Khattak Additional AG present. Representative of the respondent department is also absent. Therefore fresh notice be issued to the appellant and his counsel as well as respondent department for attendance. To come up for written reply and comments on 19.04.2018 before S.B.

28/3/2018

Member

19.04.2018 None present on behalf of appellant. Mr. Kabir Ullah Khattak, Addl: AG present. Representative of the respondents department is also absent. Written reply not submitted. Learned Addl: AG requested for adjournment. Adjourned. Last opportunity is granted. To come up for written reply/comments on **08.05.2018** before S.B.

Member

08.05.2018 The Tribunal is non-functional due to retirement of our Hon'ble Chairman. Therefore, the case is adjourned. To come up for same on 03.07.2018.

Reader

03.07.2018 Junior counsel for the appellant and Mr. Sardar Shaukat Hayat, Addl: AG for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. Last opportunity is granted. To come up for written reply/comments on **03.08.2018** before S.B.

Member

16.01.2018

Counsel for the appellant present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Health Department as Ward Boy. It was further contended that during service he was removed from service by the competent authority vide order dated 06.07.2017 on the allegation of absence from duty. It was further contended that the appellant also filed departmental appeal but the same was not responded hence, the present service appeal within time. It was further contended that appellant was performing his duty regularly and neither absence notice nor any show-cause notice was issued to the appellant regarding his alleged absence nor proper inquiry was conducted, therefore, the impugned order is illegal and liable to be set-aside.

The contentions raised by learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days, thereafter notice be issued to the respondents for written reply/comments for 05.03.2018 before S.B.

Appellant Deposited Security & Process Fee

(Muhammad Amin Khan Kundi)
Member

05.03.2018

Clerk of the counsel for appellant and Assistant AG for the respondent present. Written reply not submitted. Learned Assistant AG requested for further time adjournment. Request accepted. To come up for written reply/comments on 20.03.2018 before S.B.

(Gul Zeb Khan)
Member

Form-A

FORMOF ORDERSHEET

Court of _____

Case No. 1333/**2017**

S.No.	Date of order proceedings	Order or other proceedings with **signature** of judge
1	2	3
1	29/11/2017	The appeal of Mr. Muhammad Abrar presented today by Mr. Noor Muhammad Khattak Advocate, may be entered in the Institution Register and put up to Worthy Chairman for proper order please. REGISTRAR 29/11/17
2-	30/11/17.	This case is entrusted to S. Bench for preliminary hearing to be put up there on 27/12/17. CHAIRMAN
	27.12.2017	Counsel for the appellant present and requested for adjournment. Adjourned. To come up for preliminary hearing on 16.01.2018 before S.B. (Gul Zeb Khan) Member (E)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1333 /2017

MUHAMMAD ABRAR VS ACS (FATA) & OTHERS

INDEX

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE

I

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1333 /2017

Khyber Pakhtunkhwa Service Tribunal
Diary No. 1362
Dated 29-11-2017

Mr. Muhammad Abrar, Ward Orderly (BPS-02),
Agency Surgeon Office Mohmand at Ghallanai.

..... **PETITIIONER**

VERSUS

1- The Additional Chief Secretary FATA, FATA Secretariat Warsak Road Khyber Pakhtunkhwa, Peshawar.
2- The Director Health Services FATA, FATA Secretariat, Warsak Road, Khyber Pakhtunkhwa, Peshawar.
3- The Agency Surgeon Mohmand at Ghallanai.

..... **RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 26-07-2017 WHEREBY THE APPELLANT HAS BEEN REMOVED FROM WITHOUT CONDUCTING REGULAR INQUIRY IN THE MATTER AND AGAINST NOT TAKING ACTION ON DEPARTMENTAL APPEAL DATED 04-08-2017 OF THE APPELLANT WITH IN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned order dated 26-07-2017 may very kindly be set aside and the respondents may be directed to re-instate the appellant into service with all back benefits. Any other remedy which this august Court deems fit may that also be awarded in favor of appellant.

Filed to-day
Registrar
29/11/17

R/SHEWETH:
ON FACTS:

1- That appellant was appointed as Ward Orderly under ADP Scheme and was later on adjusted against the Regular vacant post of Ward Orderly vide order dated 04-07-2016 after fulfilling all the codal formalities required for the post. Copy of order is attached as annexure ..... **A.**

2- That, the appellant was medically examined and accordingly service book was also prepared after submitting his arrival report. Copy of medical certificate & service book is attached as annexure ..... **B & C.**

3- That, after regularization of service the appellant was posted in the far flung area of Tehsil Prang Ghar Mohmand Agency where I was performing my duties quite efficiently and upto the entire satisfaction of his superiors.

4- That astonishingly the respondent No.3 issued the impugned removal order of the appellant dated 26-07-2017 on account of absentia which came to the knowledge of the appellant when the appellant visited the office of respondent no. 3 for receiving his salary. Copy of removal order is attached as annexure ..... **D.**

5- That feeling aggrieved from the impugned order dated 04.08.2017 the appellant filed Departmental appeal before respondent No.2 but no heed was paid by the respondent No.2 within the statutory period. Copy of Departmental Appeal is attached as annexure ..... **E.**

6- That feeling highly aggrieved the appellant filed the instant appeal on the following grounds amongst the others.

GROUNDS:

A- That the impugned order dated 26-07-2017 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.

B- That the appellant has not been treated by the respondents in accordance with law and rules on the subject noted above and as such the concerned authority violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

C- That the respondents acted in arbitrary and malafidy manner by issuing the impugned order dated 26-07-2017.

D- That no charge sheet and statement of allegation has been served on the appellant before issuing the impugned order dated 26-07-2017 against the appellant.

E- That no show cause notice has been served on the appellant before issuing the impugned order dated 26-07-2017.

F- That No chance of personal hearing/defense has been given to the appellant before issuing the impugned order dated 26-07-2017.

G- That no regular inquiry has been conducted before issuing the impugned order dated 26-07-2017 which is as per Supreme Court Judgment is necessary in punitive actions against the civil servant.

H- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 24-11-2017

APPELLANT

MUHAMMAD ABRAR

THROUGH:

NOOR MOHAMMAD KHATTAK

&

MUHAMMAD MAAZ MADNI
ADVOCATES, PESHAWAR

A-(4)

OFFICE OF THE AGENCY SURGEON
MOHMAND AGENCY

OFFICE ORDER:-

Muhammad Ibrar S/O Abdul Sattar presently working as Ward Orderly Surplus under ADP Scheme is hereby Adjusted /Posted against the regular vacant post of Ward Orderly in Mohmand Agency with immediate effect in the interest of Public.

Sdxxxxxx
Agency Surgeon
Mohmad Agency

No 2244-47/ASM

Dated 4/7/2016

Cc:

1- Director Health Services FATA Peshawar.
2- Political Agent Mohmand Agency.
3- Agency Accounts Officer Mohmand at Ghallanai.
4- Official concerned

Agency Surgeon
Mohmand Agency

Attested

N.W.F.P., Med. No. 4

GS&PD -NWFP—27 FS—2000 P of 100—29-7-98—(16)

B-5

MEDICAL CERTIFICATE.

Name of Official ..... Muhammad Ibrar

Caste or race ..... Mohmand

Father's name ..... Abdul Sattar

Residence Village Harichand Tehsil:- Tangi

..... Distt. Charsadda

Date of birth 1-1-1987

Exact height by measurement ..... 5-6"

Personal mark of identification ..... Scar on face

Signature of the Official ..... محمد ابرار

Signature of head of office .....

Seal of Office ..... Agency Surgeon
Mohmand at Ghallanai

I do hereby certify that I have examined Mr. Muhammad Ibrar a candidate for employment in the Office of the Health Deptt and can not discover that he had any disease communicable or other constitutional affection or bodily infirmity except ..... Nil

I do no consider this as disqualification for employment in the office of the Health Deptt. His age according to his own statement 29 year and by appearance about 29 years.

Attested

LEFT HAND THUMB AND FINGER IMPRESSIONS .....

Medical Superintendent,
Civil Hospital .....

Agency Surgeon
Mohmand at Ghallanai

Note: The entries on this page should be renewed or re-attested at least every five years and the Signature to lines 9 and 10 should be dated.

Name: Muhammad Ibrar

Race: Mohmand

Residence: Village: Haricharand Tehsil: Langi Distt Charsadda

Father's name and residence: Abdul Qaiser

Date of birth by Christian era as nearly as can be ascertained: 1-1-1987

Exact height by measurement: 5'-6"

Personal marks for identification:

Left hand thumb and Finger impression of (Non-Gazetted) officer:

Little Finger: Ring Finger:

Middle Finger: Fore Finger:

Thumb:

Signature of Government Servant: Attested

Signature and designation of the Head of the office, or other Attesting Officer.

Agency Surgeon
Mohmand at Ghallanai

1	2	3	4	5	6	7	8	9
Name of Post	Substantive Whether substantive or officiating and whether permanent or temporary.	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional pay for officiating	Other emolument falling under the term "pay"	Date of Appointment	Signature of Government servant	Name and Designation of the head of the office or attesting officer attestation of columns 1 to 8
ward orderly			Pay Rs:		13500/- Pay		محمد ایاز	
7790-275-18040 BPS-2	w/o		Pay Rs:		7790/- Pay	9 7/016	(FNO)	

Attested

(18)

8	9	10	11	12	13			14	15
					Leave				
Signature of Government servant	Signature and Designation of the head of the office or other attesting officer attestation of columns 1 to 8	Date of termination or appointment	Reason of termination (such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attseting officer	Nature and duration of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government		Signature of the head of the office or other attesting officer.	Reference to any recorded punishment or censure, or reward or praise of the Government Servant
						Period	Government to which debitable		
			Appointed as ward orderly against the vacant post of w/o under ADP Scheme CHS/FED, vide order No. 835-37/Pers dt 1/3/2016						
				Agency Surgeon Mohmand at Ghallanai					
			Adjusted against the vacant Regular post of ward orderly vide order No. 2244-47/Pers dt 4-7-2016						
				Agency Surgeon Mohmand at Ghallanai					

Attested

C-9

OFFICE OF THE AGENCY SURGEON
MOHMAND AT GHALLANAI

OFFICE ORDR

Reference absent Notice in "Daily Nai Baat" on dated 13 June 2017 &"Daily Mashriq" on dated 14 June 2017, Explanations letters No:2895/ASM dated 12-4-2017,No:3226/ASM dated 9-5-2017 & Final warning Vide this letter No:3587/ASM dated 25-05-2017.That Mr,Mohammad Ibrar Ward Orderly is absent from his duties since the date of appointment till date without information & prior permission of the competent authority.

Therefore Mr, Mohammad Ibrar Ward Orderly is hereby removed from services with immediate effect. He is hereby directed to deposit his salary amounting to rupees Rs, 294000/- in to govt: treasury through challan with in three days.
As he has illegally drawn his pay of his absent period.

.....Sd.....
Agency Surgeon
Mohmand Agency

No 3315-18/ASM

Dated 26/07/2017

Cc:

1 Director Health Services FATA, Peshawar.
2 Political Agent Mohmand with the request to make necessary arrangement to recover rupees Rs, 294000/.from the official concerned.
3 Agency Accounts Officer Mohmand with the request to freeze the G P Fund Accounts.
4. Mr, Mohammad Ibrar Ward Orderly

Agency Surgeon
Mohmand Agency

Attested

بخدمت جناب عزت مآب ڈائریکٹر ہیلتھ سروسز صاحب فاٹا ورسک روڈ پشاور

E - (10)

درخواست برائے: دلاپانے الضاف برخلاف برخاستگی

جناب عالی!

مؤدبانہ گزارش کی جاتی ہے کہ سائل آپ کے زیر سایہ ہمند ایجنسی میں بطور کلاس فور کام کر رہا ہے۔ سائل کی تعیناتی بطور وارڈ اردلی ہو چکی ہے۔ سائل اپنی ڈیوٹی انتہائی ایمانداری اور خوش اسلوبی کے ساتھ انجام دے رہا ہے۔ سائل اپنی ڈیوٹی حکم نامہ کے مطابق ہمند ایجنسی کے دور دراز علاقہ میں واقع ہیلتھ سنٹر میں ادا کر رہا ہے۔ سائل کا تعلق ایک غریب گھرانے سے ہے اور اپنے گھر کا واحد کفیل ہے۔ سائل کا نوکری کے علاوہ کوئی اور روزگار بھی نہیں ہے۔ سائل جب ایجنسی ہیڈ آفس کے دفتر اپنی تنخواہ لینے کیلئے گیا تو وہاں سے پتہ چلا کہ سائل کی نوکری ختم ہو چکی ہے۔ معلوم کرنے پر سائل کے ہاتھ میں برخاستگی کی چھٹی دے دی جس پر جو مورخہ 26/07/017 کی تاریخ درج دی گئی تھی۔

اسلئے آپ صاحبان سے عاجزانہ التماس کی جاتی ہے کہ سائل اپنی ڈیوٹی احسن طریقے سے انجام دے رہا ہے اور بغیر کسی وجہ بتائے نوکری سے نکال دیا گیا ہے۔ سائل کو نوکری پر بحال کیا جائے سائل عمر بھر آپکا شکر گزار و ممنون و دعا گو رہے گا۔

العارض

آپکا تابعدار

محمد ابرار

محمد ابرار

کلرک

ہیڈ آفس

04/08/2017

Attested

VAKALATNAMA

BEFORE THE KPK Service Tribunal Peshawar

_____ OF 2017

Muhammad Abrar (APPELLANT) (PLAINTIFF) (PETITIONER)

VERSUS

A.C.S FATA & Others (RESPONDENT) (DEFENDANT)

I/We Muhammad Abrar

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated._____/_____/2017

CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK
&
MUHAMMAD MAAZ MADNI
ADVOCATES

OFFICE:
Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.
Phone: 091-2211391
Mobile No.0345-9383141

BEFORE THE SERVICES TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Appeal No. 1333/2017

Muhammad Ibrar, Ward Orderly ..... Petitioner

VS

Additional Chief Secretary FATA and others .... Respondents

S NO.	DETAIL	PAGE NO.	Description
1	Para wise Comments	1-2	
2	Removal order	3	A
3	Absence notice in daily newspaper	4	B

BEFORE THE SERVICES TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Appeal No. 1333/2017

Muhammad Ibrar, Ward Orderly ..... Petitioner

VS

Additional Chief Secretary FATA and others .... Respondents

Parawise comments / reply on behalf of Respondents No. 1, 2, & 3

Preliminary objections

1. That the appellant has got no locus standi to file the instant petition as he did not submit his departmental appeal.
2. That the appellant has not come to this Honorable Court with clean hands.
3. That the appellant has got no cause of action to file the instant petition.
4. That, the appellant is not an "AGGRIEVED" person within the meaning of Article 199 of the Constitution of Pakistan.

Respectfully Sheweth;

ON FACTS

1. Correct to the extent of appointment as Ward Orderly under ADP Program but the adjustment of the appellant against regular post is not justified.
2. Pertain to record.
3. Pertain to record.
4. Correct to the extent of removal order dated 26.07.2017. However, it is pertinent to mentioned here that:
   - Before issuing the said order, the appellant was called explanation for his prolong absence from his legitimate duties followed by final warning vide letters mentioned in the said removal order at **Annex-A**.
   - The appellant has neither explained his position nor resumed duty.
   - Then absence notice was issued in the daily newspaper at **Annex-B,** even then he did not resume duty. Hence, the appellant was removed from service.
5. Incorrect, the appellant did not submit his departmental appeal.
6. Incorrect, the appellant is not aggrieved as he has not yet submitted departmental appeal.

GROUNDS

A. Incorrect, the order dated 26.07.2017 was issued after calling explanations and advertisement of absence notice in the daily newspaper.

B. Incorrect, the appellant was treated with proper procedure.

C. Incorrect, as stated above.

D. Incorrect, the appellant was absent and did not resume duty even after advertisement of absence notice in the daily newspaper. Hence, the order dated 26.07.2017 was issued.

E. Incorrect, the appellant was absent and did not resume duty even after advertisement of absence notice in the daily newspaper. Hence, the order dated 26.07.2017 was issued.

F. Incorrect, as stated above.

G. Incorrect, proper procedure was adopted as stated in above paras.

H. The department will also produce other proofs at the time of hearing.

In light of the above, the appeal is devoid of merits and has no legal footings; therefore, it may please be dismissed with cost.

Agency Surgeon
Mohmand at Ghallanai
Respondent No. 3

Director Health Services
Merged Areas Peshawar

For Respondent No. 1, 2

C-6

OFFICE OF THE AGENCY SURGEON
MOHMAND AT GHALLANAI

OFFICE ORDR

Reference absent Notice in "Daily Nai Baat" on dated 13 June 2017 &"Daily Mashriq" on dated 14 June 2017, Explanations letters No:2895/ASM dated 12-4-2017,No:3226/ASM dated 9-5-2017 & Final warning Vide this letter No:3587/ASM dated 25-05-2017.That Mr,Mohammad Ibrar Ward Orderly is absent from his duties since the date of appointment till date without information & prior permission of the competent authority.

Therefore Mr, Mohammad Ibrar Ward Orderly is hereby removed from services with immediate effect. He is hereby directed to deposit his salary amounting to rupees Rs, 294000/- in to govt: treasury through challan with in three days.
As he has illegally drawn his pay of his absent period.

.....Sd.....
Agency Surgeon
Mohmand Agency

No 3315-18/ASM

Dated 26/07/2017

Cc:

1. Director Health Services FATA, Peshawar.
2. Political Agent Mohmand with the request to make necessary arrangement to recover rupees Rs, 294000/.from the official concerned.
3. Agency Accounts Officer Mohmand with the request to freeze the G P Fund Accounts.
4. Mr, Mohammad Ibrar Ward Orderly

Agency Surgeon
Mohmand Agency

Attested

http://www.dailymashriq.com.pk

اللہ ہی کیلئے ہیں مشرق و مغرب القرآن

DAILY MASHRIQ PESHAWAR

روزنامہ مشرق پشاور

عہد نو کے بانی سید تاج میر شاہ

مسلسل اشاعت کے 50 سال

ABC CERTIFIED

پشاور اور اسلام آباد سے بیک وقت شائع ہونے والا کثیر الاشاعت قومی اخبار

جلد 50 | بدھ 18 رمضان 1438ھ 14 جون 2017ء 31 جیٹھ قیمت 13 روپے | شمارہ 296

از دفتر ایجنسی سرجن مہمند ایجنسی

نوٹس غیر حاضری

آپ عبداللہ طیر یاء سپروائیزر اور محمد ابرار وارڈ اردلی گزشتہ کافی عرصہ سے ڈیوٹی سے غیر حاضر رہے ہیں۔ جسکی بناء پر آپ کے گھر کے پتہ پر لیٹر نمبر 96-2895 بمورخہ 12/04/2017 اور دوبارہ لیٹر نمبر 3226 بمورخہ 09/05/2017 یعنی کئی خطوط ارسال کئے گئے کہ آپ 15 دن کے اندر اندر اپنی ڈیوٹی پر حاضر ہو جائیں۔ اور اپنی غیر حاضری کی وجہ بتائے۔ لہٰذا آپ کو آخری بار بذریعہ نوٹس ہذا مطلع کیا جاتا ہے۔ کہ اس نوٹس کے اشاعت کے 15 دن کے اندر اندر اپنی ڈیوٹی پر حاضر ہو جائیں۔ ورنہ آپ کے خلاف یکطرفہ کاروائی ہو جائیگی۔ جو آپ کے ملازمت سے برخاستگی ہو سکتی ہے۔

ڈاکٹر ذاکر حسین ایجنسی سرجن مہمند

KHYBER PAKHTUNKWA

SERVICE TRIBUNAL, PESHAWAR

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

No. 2758 **/ST** **Dated:** 23 / 09 **/2020**

To,

Mr. Shafi Ullah,
Junior Clerk,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar

Subject: **EXPLANATION**

You, Mr. Shafi Ullah, Junior Clerk have not served the notices upon the appellant and his counsel in service appeal no. 1333/2017 Titles Muhammad Abrar vs ACS (FATA) & others vide direction contained in order sheet dated 16-07-2020. Therefore the appellant and his counsel could not appear before the court on the date fixed i.e 15-09-2020. The Hon'ble Bench observed as under:

> ***"On the proceeding date due to absence of appellant and his counsel, notice was issued and case was adjourned to 15-09-2020 but once again, the appellant is not before the Tribunal. Previous directions of this Tribunal have not been complied with as notice to appellant and his counsel is not available on file, therefore, explanation be called from the concerned muharrir before date fixed."***

In view of the above, you are, therefore, called upon to explain the reason for not serve the notices upon the appellant and his counsel within three days, otherwise disciplinary action will be initiated against you under the E&D Rules 2011.

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

رجسٹرار صاحب سروس ٹریبونل پشاور

Khyber Pakhtunkhwa Service Tribunal
Diary No 759
Dated 25/9/2020

Explanation جواب بابت

جناب عالی!

یہ کہ سائل عرصہ دراز سے بطور جونئر کلرک آپ صاحب کے زیر نگرانی کام سرانجام دے رہا ہے۔ یہ کہ سائل سنگل بینچ SB برانچ محرر تعینات ہے۔ یہ کہ سائل روزانہ کی بنیاد پر انتہائی محنت سے نوٹسز وغیرہ اور دفتری کام بخوبی انجام دے رہا ہے۔

مسائل کا اس Case میں نوٹس نہ کرنا قصداً و عمداً نہیں بلکہ زیادہ کام اور غلطی کی بنا پر نوٹس نہیں ہوا ہے۔

آئندہ کیلئے ایسی غلطی نہیں کروں گا

لہذا آپ صاحبان سے گزارش ہے کہ Explanation داخل دفتر فرما کر مشکور فرمائیں۔

شفیع اللہ
جونئر کلرک محرر SB برانچ

Date
24-9-2020

KHYBER PAKHTUNKWA
SERVICE TRIBUNAL, PESHAWAR

No. 156 /ST

Dated: 25/01 /2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To

The Director General Health Services,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: **JUDGMENT IN APPEAL NO. 1333/2017, MR. MUHAMMAD ABRAR.**

I am directed to forward herewith a certified copy of Judgement dated 04.01.2022 passed by this Tribunal on the above subject for compliance please.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

BEFORE THE HONOURABLE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No _____/2017

Abdullah S/o Muhammad Azam, R/O Village Pir Qillah, Tehsil Ekka Ghund, District Mohmand Agency

(Petitioner)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Health, Civil Secretariat, Peshawar.
2. Director Health Service FATA, FATA Secretariat Warsak Road, Peshawar.
3. Political Agent Mohmand Agency at Ghalanai.
4. Agency Surgeon Mohmand Agency at Ghalanai.
5. Agency Account Officer, Mohmand Agency at Ghalanai.

(Respondents)

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

That the Petitioner very humbly invokes the constitutional jurisdiction of this Honourable Court, as follows:

BRIEF FACTS NECESSITATING TO THIS WRIT PETITION

1) That the petitioner was appointed as Ward Orderly in BPS-02, at the office of Agency Surgeon Mohmand

ATTESTED
EXAMINER
Peshawar High Court

PESHAWAR HIGH COURT PESHAWAR
ORDER SHEET

Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary
1	2
22.01.2019.	Writ Petition No. 3197-P of 2017. Present: Mr. Sardar Ali Raza, advocate for the petitioner. Syed Qaiser Ali Shah, AAG for respondents. ******** **WAQAR AHMAD SETH CJ:-** Abdullah, petitioner herein, aggrieved from the office order dated 26.07.2017, of Agency Surgeon, Mohmand Agency, has invoked the writ jurisdiction of this Court under Article, 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the prayer to set aside the impugned order and re-instate the petitioner with all consequential benefits. **2.** We have heard learned counsel for the petitioner, learned AAG for the State and available record gone through. **3.** Perusal of available record would depict that petitioner got appointed on 1.2.2016, as Ward Orderly

ATTESTED
EXAMINER
Peshawar High Court

BPS-02 against the vacant post in Agency Surgeon, Office Mohmad Agency, by Agency Surgeon, Mohmand at Ghallani. On 1.9.2016, he was adjusted / posted against the vacant post of Malaria Supervisor, in Mohmand Agency with immediate effect, in the interest of Public. During the period, petitioner, allegedly remained absent from the duty and vide office order dated 9.5.2017, Agency Surgeon, Mohmand Agency, constituted inquiry committee to probe into the matter of petitioner and others, and to submit the report within three days and vide their inquiry report dated 16.5.2017, the inquiry committee recommended that petitioner was contacted for personal appearance through his elder brother Abdul Wadood, clerk, but he failed to appear, despite publication in daily newspapers Nai Baat & Mashriq, and vide impugned office order dated 26.07.2017, petitioner was remove from service with direction to deposit his salary amounting to rupees 5,75,000/- illegally drawn, during absent period. It is important to mention here that the inquiry so conducted was in the

absence of petitioner and its report is dated 16.5.2017 whereas the notices as issued in the two daily newspaper are dated 13.6.2017 & 14.6.2017 i.e. after the inquiry proceedings.

4. Petitioner is alleging that since his appointment he is performing his duties as such, by referring to attendance register whereby he was shown present during the alleged absent period; further referred to page-4, annexure-A of CM for additional document whereby Agency Surgeon, Mohmand Agency, while submitting appeal No. 3197/2017, qua re-instatement of petitioner to Director Health Service, FATA, Peshawar, has recommended that this office has got no objection on the re-instatement of Mr. Abdullah (petitioner) alongwith all benefits from the date of removal of services, as the official has performed his duty which is evident from the attendance register and received his salary on regular basis, and was removed from service without fulfilling the codal formalities as well as without the recommendation of the inquiry officer. Petitioner, at present as per statement of his

learned counsel, has been re-instated into service and is performing his duties, which is neither denied nor controverted by learned AAG, therefore, this Court without touching the merits of the case that as to whether, the Agency Surgeon was competent to post / adjust the petitioner on the post of Malaria Supervisor BPS-12, on regular basis and can constitute inquiry committee against the petitioner in light of notification dated 25.5.2009 besides other material, available on file, direct the competent authority to constitute fresh inquiry committee and the committee would submit its report within a period of two months, positively for appropriate orders of competent authority.

Chief Justice.

Judge

No. 13540
Date of Presentation of Application 11/11/21
No of Pages 50
Copying fee 20/-
Total
Date of Preparation of Copy 11/11/21
Date of Delivery of Copy 11/11/21
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EXAMINER
Peshawar High Court, Peshawar
Authorised Under Article 87 of The Qanun-e-Shahadat Order 1984
11 NOV 2021

Tariq Jan PS.

DB, Mr. Justice Waqar Ahmad Seth, Chief Justice & Mr. Justice Ishtiaq Ibrahim.