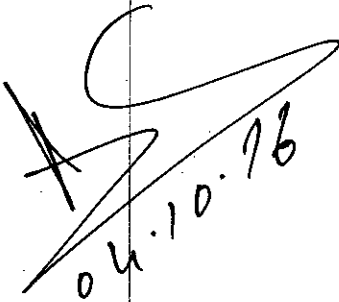


S.No.	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	04.10.2016	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p style="text-align: center;"><u>CAMP COURT SWAT</u></p> <p>1. Appeal No. 392/2015, Muhammad Arif, 2. Appeal No. 393/2015, Imran Khan, 3. Appeal No. 394/2015, Asghar Ali, 4. Appeal No. 395/2015, Waqas, 5. Appeal No. 396/2015, Noor Zaman Versus Government of Khyber Pakhtunkhwa through Secretary Health Services, Peshawar and 2 others.</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-</u></p> <p>Counsel for the appellants and Mr. Muhammad Zubair, Senior Government Pleader alongwith M/S Gohar Ayub, Medical Technician and Amjad Ali, Assistant for respondents present. Rejoinder submitted.</p> <p>2. This judgment shall dispose of the instant service appeal No. 392/2015 as well as connected service appeals No. 393/2015 to 396/2015 as identical questions of facts and law are involved therein.</p> <p>3. Brief facts giving rise to the present appeals are that the appellants were appointed as Junior Clerks in the office of District Health Officer Malakand at Batkhela vide appointment orders dated 02.4.2014. The said orders were withdrawn vide impugned orders dated 03.04.2014 where-against appellants preferred departmental appeal on 16.4.2014 which were rejected on 13.4.2015 and hence the instant service appeals preferred on 05.05.2015.</p>

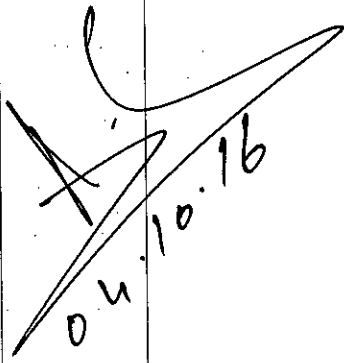

04.10.16

4. Learned counsel for the appellants has argued that the impugned orders were passed without affording any opportunity of hearing to the appellants. That the appellants were entitled to such an opportunity before passing such orders by the respondents and as such the impugned orders are liable to be set aside.

5. Learned Senior Government Pleader has argued that since the appellants had not joined his duty as such notice was not given to them. That certain forgeries were found in the documents of the selected candidates and as such the impugned orders were passed with an object to re-advertise the posts and afford opportunity to deserving candidates and to ensure appointments in transparent manners.

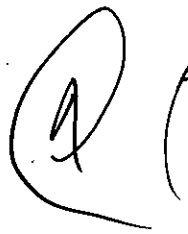
6. We have heard arguments of learned counsel for the parties and perused the record.

7. Admitted fact before us is that appointment orders were issued in favour of the appellants on 02.04.2014 and after notifying the said appointment orders the same were cancelled from the date of its issue on the very next day vide order dated 03.04.2014. The record does not suggest that any notice whatsoever was given to the appellants despite the fact that appointment orders were issued in their favour in the prescribed manners. The impugned orders are allegedly based on forgery in the documents of certain selected candidates. In such eventuality the respondents were bound to identify those selected candidates and to have afforded opportunity of hearing before condemning them on such allegations of making forgery in documents. As such we are of the view that the impugned orders dated 3.4.2014 and

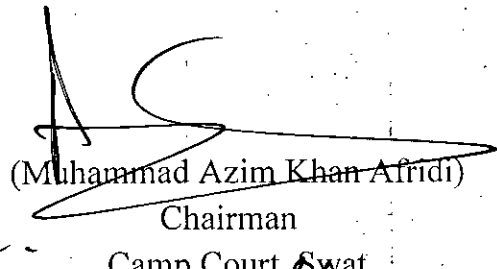
A handwritten signature is present in the left margin, with the date '04.10.16' written below it.

13.04.2015 are against facts and law and liable to be set aside.

8. We are therefore constrained to accept the present appeals set aside the impugned orders and direct the respondents to reconsider the issue and pass any order deem appropriate but after affording an opportunity of hearing to the appellants in the mode and manners prescribed by rules. Parties are left to bear their own costs. File be consigned to the record room.



(Abdul Latif)
Member



(Muhammad Azim Khan Afridi)

Chairman

Camp Court, Swat.

04.10.16

ANNOUNCED

04.10.2016


01.08.2016

Appellant with counsel and Mr. Gohar Ayub, Medical Technician alongwith Mr. Muhammad Zubair, Sr.GP for the respondents present. Due to non-availability of D.B arguments could not be heard. To come up for rejoinder and final hearing on 04.10.2016 before D.B at camp court, Swat.




Chairman
Camp court, Swat.


2.11.2015 Appellant in person, M/S Yar Gul, Senior Clerk and Gohar Ayub, Medical Technician alongwith Mr.Muhammad Zubair, Sr.G.P for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/ comments on 13.01.2016 before S.B at Camp Court Swat.


Chairman
Camp Court Swat

13.01.2016 Counsel for the appellant and Mr.Gohar Ayub, Medical Technician alongwith Mian Amir Qadir, G.P for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 4.4.2016 at Camp Court Swat.


Chairman
Camp Court Swat

04.04.2016 Counsel for the appellant and Mr. Gohar Ayub, Medical Technician alongwith Mr. Anwarul Haq, GP for the respondents present. Rejoinder submitted. Due to non-availability of D.B arguments could not be heard. To come up for final hearing before D.B on 01.08.2016 at Camp Court, Swat.

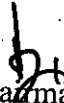

Chairman
Camp court, Swat.

3 1.6.2015

Appellant with counsel present. Learned counsel for the appellant argued that the appellant was appointed as Junior Clerk vide order dated 2.4.2014. That the said order was cancelled on the next day i.e. 3.4.2014 regarding which the appellant preferred departmental appeal on 16.4.2014 which was rejected on 13.4.2015 where-after the instant service appeal was preferred on 5.5.2015.


That the appellant was appointed in the prescribed manners and as such the order of cancellation of his appointment is without any lawful justification.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 7.9.2015 before S. B at camp court Swat.


Chairman
Camp Court Swat

7.9.2015

Counsel for the appellant and Mr. Gohar Ayub, Legal Adviser alongwith Mr. Muhammad Zubair, Sr. GP for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 2.11.2015 before S.B at Camp Court Swat.


Chairman
Camp Court Swat

Appellant Deposited
Security & Process Fee



Form- A

FORM OF ORDER SHEET

Court of

Case No.

392/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	05/05/2015	<p>The appeal of Mr. Muhammad Arif presented today by Mr. Aziz-ur-Rehman Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p><i>[Signature]</i> REGISTRAR</p>
2	11-5-15	<p>This case is entrusted to Touring Bench Swat for preliminary hearing to be put up thereon <u>1-6-2015</u></p> <p><i>[Signature]</i> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 392 of 2015

Muhammad Arif

...Appellant

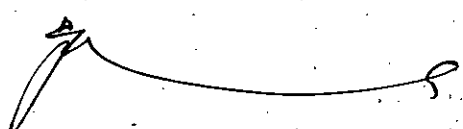
Versus

Government Of Khyber Pakhtunkhwa Through Secretary Health Services,
Peshawar and others

.... Respondent

INDEX

S.No	Description of Document	Annexure	Page (S)
1	Service Appeal	--	1 to 5
2	Affidavit	--	6
3	Addresses of Parities	--	7
4	Copy of the appointment order	A	8
5	Copy of the Order	B	9
6	Copy of the Departmental Appeal	C	10-11
7	Copy of the Order	D	12
8	Wakalat Nama	--	13


Aziz-ur-Rahman
Advocate, High Court Swat.
Office, Gulshan Chowk Khan Plaza,
G.T. Road Mingora Swat.
Cell # 0333-9297746

①

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 392 of 2015

Muhammad Arif S/o Khadim R/o Julegram, Malakand Agency.

K.W.P. Province
Service Tribunal
Diary No. 446
Date 05/5/15

...Appellant

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Health Services, Peshawar.
2. The Director Health Services Khyber Pakhtunkhwa, Peshawar.
3. The District Health Officer Malakand at Batkhila.

...Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER OF RESPONDENT NO. 3 BEARING NO. 1700-09/ DATED 03-04-2014, WHEREBY THE APPOINTMENT ORDER OF THE APPELLANT WAS CANCELLED AGAINST THE LAW, RULES AND SHARIAH THUS LIABLE TO BE SET ASIDE. THE APPELLANT FILED A DEPARTMENTAL APPEAL AGAINST THE ORDER OF THE RESPONDENT NO. 3 WHICH ALSO REJECTED BY THE RESPONDENT NO. 2 VIDE ORDER NO. 4174-78/PERSONNEL DATED 13-04-2015 AGAINST THE LAW, RULES AND SHARIAH HENCE BOTH THE ORDERS IMPUGNED ARE LIABLE TO BE SET

Filed to the
Registrar
5/5/15

(2)

ASIDE AND THE APPELLANT BE
REINSTATED INTO SERVICE FROM
THE DATE OF CANCELLATION.

Prayer:

*That on acceptance of this
service appeal both the orders
impugned may very kindly be set
aside and the appellant reinstated
into service with all
back/consequential benefits.*

Respectfully Sheweth:

Facts:

- i. That the appellant is a bona fide resident of Malakand Agency and qualified applied for the post of Junior Clerk, advertised by in a daily by the respondent department.
- ii. That the appellant, along with others, participated in the recruitment process and got successful.
- iii. That appellant was issued appointed order bearing No. 1612-15 dated 02-04-2014 by the respondent No. 3 after the fulfilment of all the codal formalities. Copy of the order is enclosed as Annexure "A".
- iv. That the very next day the appellant joined the service as Junior Clerk.

- 3
- v. That to the surprise of the appellant another order was issued by the respondent No. 3 bearing No. 1700-09/ dated 03-04-2014, whereby the appellant's appointment order was cancelled, without any reasons at all. Copy of the order is enclosed as Annexure "B".
- vi. That feeling aggrieved of the said order the appellant filed a departmental appeal to the respondent No. 2, which was also rejected vide order No. 4174-78/PERSONNAL dated 13-04-2015 in mechanical way and without giving any reasons. Moreover the said order of rejection is against the law, rules and Shariah and feeling aggrieved of the same thus this appeal on the following grounds. Copy of the appeal is enclosed as Annexure "C" and that of the order of rejection is enclosed as Annexure "D", respectively.

Grounds:

- a. That every authority, whosoever he may be, is under the command of the Constitution bound to remain within its mandate given to it by law and while exercising the powers it is incumbent upon the authority concerned to save the accrued rights of a person regarding whom an order is made.
- b. That the appellant is being discriminated and is considered as a rolling stone not allowing him to gain weight. Once the appellant was duly appointed in accordance with the law and fulfillment of all the codal formalities, then cancellation of the same in

such a fanciful manner and that too without any reasons, whatsoever, on the very next day finds no precedence of its kind. Needless to mention that the appellant was never even afforded the opportunity to defend himself and is condemned as unheard.

- c. That the appellant has the right to be treated in accordance with the law and Shariah and shall not be subjected to the arbitrary orders of the respondents.
- d. That the respondents have travelled beyond their jurisdiction by exercising the powers, not vested in them, in such a fanciful manner, which act is untenable under the law.
- e. That the appellant being eligible and thus appointed in accordance with the law and fulfillment of all the codal formalities thus has got legitimate expectancy to perform his duties without any illegal and undue interference.
- f. That it is by now a settled law that and there are plethora of judgments on the issue that any lapse on the part of the department cannot be attributed to the employee.

It is, therefore, very respectfully prayed that on acceptance of this appeal both the orders impugned may very kindly be set aside and the appellant reinstated into service from the dated of cancellation of his appointment with all back/consequential benefits.

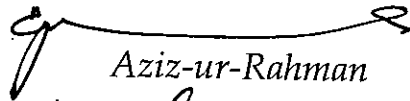
Any other relief deemed appropriate and not specifically prayed may also very kindly be granted.

(5)

Appellant

M. Arif
Muhammad Arif

Through Counsels,

 Aziz-ur-Rahman

 Imdad Ullah

Advocates Swat

(6)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2015

Muhammad Arif S/o Khadim R/o Julegram, Malakand
Agency.

...Appellant

VERSUS

The Government of Khyber Pakhtunkhwa through
Secretary Health Services, Peshawar and Others.

...Respondents

AFFIDAVIT

It is stated on Oath that all the contents of this
appeal are true and correct to the best of my knowledge and
belief and nothing has either been misstated or concealed
thereto.

Deponent

M. Arif
Muhammad Arif

Identified by:

Imdad
Imdad Ullah

Advocate Swat

ATTESTED

Sajid Ali Advocate
OATH COMMISSIONER
District Court Swat
No. 479 Date 4/5/15

(7)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ of 2015

Muhammad Arif S/o Khadim R/o Julegram, Malakand
Agency.

...Appellant

VERSUS

The Government of Khyber Pakhtunkhwa through
Secretary Health Services, Peshawar and Others.

...Respondents

ADDRESSES OF THE PARTIES

Appellant:


Muhammad Arif S/o Khadim R/o Julegram, Malakand
Agency.

Respondents:

1. The Government of Khyber Pakhtunkhwa through
Secretary Health Services, Peshawar.
2. The Director Health Services Khyber
Pakhtunkhwa, Peshawar.
3. The District Health Officer Malakand at Batkhila.

Appellant

Through Counsel,


Imdad Ullah

Advocate Swat



Annexure ¹¹ 8

OFFICE OF THE DISTRICT HEALTH OFFICER MALAKAND AT BATKHELA

OFFICE ORDER:

Consequent upon the recommendation of the District Selection Committee Mr. Muhammad Arif S/O Khadim Muhammad, resident of village and post office Julegram, District Malakand is hereby appointed as Junior Clerk in the time pay scale No.07 (5800-320-15400) plus usual allowances as admissible to him under the rules on temporary basis on the following terms and conditions from Disable Quota against the vacant post at District Health Officer office Malakand at Batkhela.


1. He shall for all intents and purposes, be Civil Servants and shall be governed by the Khyber Pakhtunkhwa Civil Servant Act 1973 and all the laws applicable to the Civil Servants and rules made there under.
2. He shall, initially, be on probation for a period of One Year extendable for further period of one year as provided under section 6 (1) of the Khyber Pakhtunkhwa Civil Servants Act 1973 read with rules 15 (1) of Khyber Pakhtunkhwa (appointment, Promotion and transfer) rules, 1989 duly amended.
3. If his work during the period of probation is not found satisfactory, he shall be terminated from services without any notice. In case he wish to resign from services he will give one month notice prior to resignation from services or one month's pay in lieu thereof will be forfeited.
4. He shall produce a Health and Age Certificate from the Medical Superintendent, DHQ Hospital Batkhela before reporting for duty.
5. He has to join duty at his own expenses.
6. He should report for duty to the office of undersigned within 10 days of the issuance of this order, otherwise the order will stand cancelled.
7. His appointment is subject to medical fitness and subject to verification of his complete documents.
8. His salary will be released on receipt of verification of documents from the concerned quarter.


No 1612-15

Copy to:

1. Medical Superintendent, DHQ Hospital Batkhela
2. District Accounts Officer, Malakand
3. Account Clerk of this office
4. Official concerned.

For information and further necessary action.


District Health Officer/
Malakand at Batkhela
Dated 02/04/2014


District Health Officer/
Malakand at Batkhela

ATTESTED

ADVOCATE

OFFICE OF THE DISTRICT HEALTH OFFICER MALAKAND AT BATKHILA

OFFICE ORDER:

Consequent upon the recommendation of the District Selection Committee Mr. Muhammad Arif S/O Khadim Muhammad resident of village and post office Julegram, Batkhila, District Malakand is hereby appointed as Junior Clerk in the pay scale No. 07 (5800-320-15400) plus usual allowances as admissible to him under the rules on temporary basis on the following terms and conditions from Disable Quota against the vacant post at District Health Officer office Malakand at Batkhila.

1. He shall for all intents and purposes be Civil Servant and shall be governed by the Khyber Pakhtunkhwa Civil Servant Act 1973 and all the laws applicable to the Civil Servants and rules made there under.
2. He shall, initially, be on probation for a period of One Year extendable for further period of one year as provided under section 6 (1) of the Khyber Pakhtunkhwa Civil Servants Act 1973 read with rules 15 (1) of the Khyber Pakhtunkhwa (appointment, promotion and transfer) rules, 1989 duly amended.
3. If his work during the period of probation is not found satisfactory, he shall be terminated from services without any notice. In case he wish to resign from services he will give one month notice prior to resignation from service or one month's pay in lieu thereof will be forfeited.
4. He shall produce a Health and Age Certificate from Medical Superintendent, DHQ Hospital Batkhila before reporting for duty.
5. He has to join duty at his own expenses.
6. He should report for duty to the office of Medical Superintendent, DHQ Hospital Batkhila within 10 days of the issuance of this order, otherwise the order will stand cancelled.
7. His appointment is subject to medical fitness and subject to verification of his complete documents.
8. His salary will be released on receipt of verification of documents from the concerned quarter.

--sd--

District Health Officer
Malakand at Batkhila

Dated 02/04/2014

No. 1612-15

Copy to:

1. Medical Superintendent, DHQ Hospital Batkhila.
2. District Accounts Officer, Malakand.
3. Official concerned.

For information and further necessary action.

ATTESTED

[Handwritten Signature]

ADVOCATE

--sd--

District Health Officer
Malakand at Batkhila

[Handwritten Signature]




Annexure B (9)

OFFICE OF THE DISTRICT HEALTH OFFICER, MALAKAND
Phone # 0932-410399, Fax No. 0932-413110

OFFICE ORDER:

In light of minutes of the meeting of the District Selection Committee held on 03-04-2014 the appointment orders of the following persons issued from this office is hereby cancelled with effect from the issuing date.

S/1	Name & Father's name	Office order No. & Date
1	Mr. Mohammad Arif S/O Khadim resident of Village & Post Office Julegram, District Malakand	1612-15, dated 02-04-2014
2	Mr. Asghar Ali S/O Muhammad Ismail, resident of village and post office Akhtar Ghonde, Batkhela, District Malakand	1617-20, dated 02-04-2014
3	Waqas S/O Rahman Ullah, Village and Post office Mohallah Sharif Abad, Batkhela, District Malakand	1621-25, dated 02-04-2014
4	Mr. Najib ur Rehman S/O Fazal Manan, resident of village and Post Office Dheri Julegram, District Malakand.	1626-29, dated 02-04-2014
5	Mr. Noor Zaman S/O Sher Zaman, Village and Post Office Dheri Julegram, as Junior Clerk DHQ Hospital Batkhela.	1630-32, dated 02-04-2014
6	Mr. Imran Khan S/O Mohammad Rafiq, Village and Post Office, Khar, Batkhela, as Junior Clerk DHQ Hospital Batkhela.	1633-35, dated 02-04-2014


District Health Officer
Malakand at Batkhela


No. 1700-09,

Dated 3 /04/14

Copy to:

1. Medical Superintendent, DHQ Hospital Batkhela
2. Additional Assistant Commissioner Malakand
3. Dr. Sabihuddin, D/O Malakand
4. District Account Officer, Malakand.
5. Mr. Mohammad Arif S/O Khadim resident of Village & Post Office Julegram, District Malakand
6. Mr. Asghar Ali S/O Muhammad Ismail, resident of village and post office Akhtar Ghonde, Batkhela, District Malakand.
7. Waqas S/O Rahman Ullah, Village and Post office Mohallah Sharif Abad, Batkhela, District Malakand.
8. Mr. Najib ur Rehman S/O Fazal Manan, resident of village and Post Office Dheri Julegram, District Malakand.
9. Mr. Noor Zaman S/O Sher Zaman, Village and Post Office Dheri Julegram.
10. Mr. Imran Khan S/O Mohammad Rafiq, Village and Post Office, Khar, Batkhela.

For information.


District Health Officer
Malakand at Batkhela

ATTESTED



ADVOCATE

The Director General, Health Services,

Khyber Pakhtunkhwa,

Peshawar.

Subject: Appeal against the order No: 1700-09 dated 03-04-2014, whereby the

appointed order (which was implemented as well) of the appellant was

cancelled.

Respected Sir,

i. That the appellant is bona fide residents of District Malakand and are

qualified applied for the posts of Junior Clerk in the respondent

department.

ii. That after the fulfillment of all the codal formalities the appellant got

selected and appointed vide-order No. 1612-15 dated 02-04-2014 by the

respondent No. 3. The appellant has taken the charge and the orders have

been implemented.

iii. That all of a sudden without any reason the appellant services were

terminated by cancelling the appointment orders of the appellant by the

vide order No. 1700-09 dated 03-04-2014 against the law and rules.

iv. That every authority, whosoever he may be, is under the command of the

Constitution bound to remain within its mandate given to it by law and

while exercising the powers it is incumbent upon the authority concerned

to save the accrued rights of a person regarding whom an order is made.

v. That the appellant are being discriminated and are considered as a rolling

stone not allowing them to gain weight. Once the appellant were duly

appointed in accordance with the law and fulfillment of all the codal

ADVOCATE

ATTESTED

[Signature]

Signature

(10)

(11)

formalities, then cancellation of the same in such a fanciful manner and that too without any reasons, whatsoever, on the very next day finds no precedence of its kind. Needless to mention that the appellant were never even afforded the opportunity to defend themselves and have condemned unheard.

It is, therefore, very respectfully prayed that on acceptance of this appeal the order impugned i.e. order No. 1700-09 dated 03-04-2014 may very kindly be declared as void ab initio and the appellant let to continue his services.

Appellant
M. Anif

Muhammad Anif

16-04-2014

ADVOCATE
[Signature]
ATTESTED



Annex D 12

DIRECTORATE GENERAL HEALTH SERVICES, GOVT. OF KHYBER PAKHTUNKHWA, PESHAWAR.

NO. 4174-78 / PERSONNEL
DATED 13/09/2015

1. Ashar Ali S/o Muhamamd Ali R/o Akhtar Ghonde, Batkhela District Malakand.
2. Muhammad Arif S/o Khadin R/o Julegram District Malakand.
3. Waqas S/o Rahman Ullah R/o Sharif Abad Batkhela Malakand.
4. Noor Zaman S/o Sher Zaman R/o Dheri Jolegram Malakand.
5. Imran Khan S/o Muhammad Rafiq R/o Khar Batkhela Malakand.

Subject: APPEAL.
Ref No:

In compliance with the Judgment of Peshawar High Court Mingora Bench (Arul Qaza) Swat, your case was properly enquired into and according to the Enquiry report your selection/ recruitment has been found in violation of the rules/ instruction of the Govt. on the subject, hence not entertain-able.

DIRECTOR GENERAL HEALTH SERVICES, K.P.K, PESHAWAR

/Personnel

Copy forwarded to the

1. DHO Malakand.
2. M.S DHQ Hospital Batkhela.
3. AD (Lit) DGHS, KPK Peshawar.

For information and necessary action.

DIRECTOR GENERAL HEALTH SERVICES, K.P.K, PESHAWAR

ATTESTED

ADVOCATE

بعدالت صبا سروس در میزالتیہ اور طبیہ روز سوم



مورخہ 02
 مقدمہ
 دعویٰ
 جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ آن مقام کیمپ کے سوا کسی اور شخص کے درمیان نہ ہوگی (دیکھو) مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل احتیاط ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زرا اور اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برآمد ہوگی اور منسوخ مذکور کے نسل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقررہ شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برواختہ منظور و قبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوا ایسے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ ہر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا کہ سند رہے

المرقوم 02
 ماہ
 سال

واہ شاہ

14-Aug-2017 واہ شاہ

مقرر

Attested and Accepted by

واہ شاہ العبدہ
 کے لئے منظور ہے
 بمقام کیمپ سروس
 Signed

BEFORE THE SERVICEN TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

APEAL NO 392 OF 2015

Muhammad Arif S/O Khadim R/O Julagram, District Malakand

-----Appellant

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Health Services, Peshawar.
2. The Director Health services Khyber Pakhtunkhwa, Peshawar.
3. The District Health Officer Malakand at Bathela.

-----Respondents.

AFFIDAVIT

It is stated on Oath that all the contents of this Reply/Comments are true and correct to the best of my knowledge and belief and nothing has either been misstated or concealed thereto.

Deponent



District Health officer District Malakand.

Identified by:

APEAL NO 392 OF 2015

Muhammad Arif S/O Khadim R/O Julagram, District Malakand.

---Appellant

VERSUS

1. *The Government of Khyber Pakhtunkhwa through Secretary Health Services, Peshawar.*
2. *The Director General Health Services Khyber Pakhtunkhwa, Peshawar.*
3. *The District Health Officer Malakand at Batkhela.*

-----Respondents.

PARA-WISE COMMENTS / REPLY OF RESPONDENTS NO.1 TO 3

PRELIMINARY OBJECTIONS

1. *The appellant has got no cause of action to file the instant appeal.*
2. *The appellant has concealed some facts from the honorable tribunal; hence the appeal is not maintainable.*

Facts Reply:

- i. *Correct.*
- ii. *Correct.*
- iii. *Correct.*
- iv. *Correct.*
- v. *Para no-(v) is incorrect hence denied because all the orders were cancelled due the reason that a meeting of the selection committee held in District Health officer Malakand office at Batkhela in which the committee decided to cancel all the orders because some of the appellant put wrong marks in their documents which after verification shown forgery on their part. Copy of the minutes of meeting is attached as annexure-A.*
- vi. *Para no-VI is incorrect hence denied because the departmental appeal filed by the appellants was rejected by the respondent No-2, the reason given by the respondent No-2 was that the selection/recruitment has been find in violation of the rules/instructions of the government on the subject, hence not entertain-able.
Copy of the appeal rejection letter is attached here as Annexure-B.*


Grounds Reply:


- a. Correct.
- b. Para No-b is incorrect hence denied; details are given in the reply of facts Para No-V.
- c. Para No-c is incorrect hence denied.
- d. -----do-----
- e. -----do-----
- f. No comments.

PRAYERS:

Keeping in view the above facts and on acceptance of this written reply/comments the appeal of the appellants may kindly be dismissed with cost.

Respondents:


1. The Secretary Health Services, Government of
Khyber Pakhtunkhwa, Peshawar.


2. Director General Health Services Khyber
Pakhtunkhwa, Peshawar.



3. District Health officer District Malakand.



OFFICE OF THE DISTRICT HEALTH OFFICER, MALAKAND

Phone # 0932-410399, Fax No. 0932-413110

Ref No

Dated /04/2014

MINUTES OF THE MEETING HELD IN THE OFFICE OF DISTRICT HEALTH OFFICER MALAKAND AT BATKHELA ON 03-04-2014 AT 10:00AM

A meeting under the Chairmanship of District Health Officer Malakand along with all members of the District Selection Committee was held on 03-04-2014 and discussed the issue of the appointment orders of Junior Clerks in detail. All the members were unanimously agreed to cancel the appointment orders of the Junior Clerks issued vide this office Number and date noted against each person:

S/No	Name & Father's name	Office order No. & Date
1	Mr. Mohammad Arif S/O Khadim resident of Village & Post Office Julegram, District Malakand	1612-15, dated 02-04-2014
2	Mr. Asghar Ali S/O Muhammad Ismail, resident of village and post office Akhtar Ghonde, Batkhela, District Malakand	1617-20, dated 02-04-2014
3	Vaqas S/O Rahman Ullah, Village and Post office Mohallah Sharif Abad, Batkhela, District Malakand	1621-25, dated 02-04-2014
4	Mr. Najib ur Rehman S/O Fazal Manan, resident of village and Post Office Dheri Julegram, District Malakand	1626-29, dated 02-04-2014
5	Mr. Noor Zaman S/O Sher Zaman, Village and Post Office Dheri Julegram, as Junior Clerk DHQ Hospital Batkhela.	1630-32, dated 02-04-2014
6	Mr. Imran Khan S/O Mohammad Rafiq, Village and Post Office, Khar, Batkhela, as Junior Clerk DHQ Hospital Batkhela.	1633-35, dated 02-04-2014

Grounds:

Some of the selected candidates put wrong marks in their documents which after verification shown forgery on their parts due to this reason some of the eligible candidates were left from selection because of disturbances in merit list.

In light of the above reason the committee agreed to cancel their appointment orders of the above named persons with effect from the issuing date. Moreover the interview held for the post of Store Keeper in Health Sector is also cancelled as decided by the District Selection Committee, Malakand. All these posts will be re-advertised in near future after getting approval from the competent authority.

District Health Officer
Malakand at Batkhela
(Chairman)

Dr. Mohammad Ayub
M.S. DHQ Hospital Batkhela
(Member)

Mohammad Imran Khan
AAC, Batkhela
(Member)

Dr. Subhuddin
DTO Malakand
(Member)

No. 1697-99

Copy to

1. Medical Superintendent, DHQ Hospital Batkhela
2. Additional Assistant Commissioner Malakand
3. Dr. Subhuddin, DTO Malakand

For information and further necessary action.

Attested

[Signature]
Medical Officer I/c
R.H.G. District Julegram
Malakand Agency

Dated /04/14

District Health Officer
Malakand at Batkhela

OFFICE OF THE DISTRICT HEALTH OFFICER MALAKAND AT BATKHELA

Phone #0932410399, fax No 0932413110

Ref. No _____

Dated ___/04/2014

MINUTES OF THE MEETING HELD IN THE OFFICE OF DISTRICT HEALTH OFFICER MALAKAND AT BATKHELA ON 03/04/2014 AT 10:00 AM

A meeting under the chairmanship of the District Health Officer Malakand along with all members of the District selection committee was held on 03-04-2014 and discussed the issue of the appointments orders of junior Clerks in details. All the members were unanimously agreed to cancel the appointment orders of the junior Clerks issued vide this office Number and date noted against each person.

S#	Name And father's name	Office order No. and Date
1	Mr Muhammad Arif S/O Khadim R/O Julagram, District Malakand	No.1612-15 dated 02/04/2014
2	Mr. Asghar Ali S/o Muhammad Ismail, residence of village and post office Akhtar Ghonde, Batkhela. District Malakand.	1617-20 dated 02-04-2014
3	Waqas S/o Rahman Ullah R/o Sharif Abad Batkhela, District Malakand	1621-25 dated 02-04-2014
4	Mr. Najib ur Rehman S/o Fazal Manan resident of village and post office Dheri Julagram, District Malakand.	1626-29 dated 02-04-2014
5	Mr Noor Zaman S/O Sher Zaman R/O Dheri Julagram District Malakand,	16330-32 dated 02-04-2014
6	Mr Imran khan S/o Muhammad Rafiq residence of village and post office Khar, Tehsil Batkhela	1633-35 dated 02-04-2014

Grounds:

Some of the selected candidates put wrong marks in their documents which after verification shown forgery on their part due to this reason some of the eligible candidates were left from selection because of disturbance in merit list.

In light of the above reason the committee agreed to cancel their appointment orders of the above Persons with effect from the issuance date. Moreover the interview held for the post of store keeper in health sector is also cancelled as decided by the District selection committee, Malakand. All these post will be re-advertised in near future after getting the approval from the competent authority.

District Health Officer	Dr. Muhammad Ayoub	Muhammad Imran Khan	Dr Sabihuddin
Malakand at Batkhela	M.S DHQ. Hospital Batkhela	AAC. Batkhela	DTOMalakand
Chairman	(Member)	(Member)	(Member)

No.1697-99Copy to:

1. Medical Superintendent
2. Additional Assistant Commissioner, Malakand
3. Dr. Sabihuddin DTO Malakand.

For information and further necessary action.

District Health Officer,
Malakand at Batkhela.



DIRECTORATE GENERAL HEALTH
SERVICES, GOVT. OF KHYBER PAKHTUNKHW,
PESHAWAR.

NO. _____ / PERSONNEL

DATED 13 / 07 / 2015.

To,

1. Ashar Ali S/o Muhamamd Ali R/o Akhtar Ghonde; Batkhela District Malakand.
2. Muhammad Arif S/o Khadim R/o Julegram District Malakand.
3. Waqas S/o Rahman Ullah R/o Sharif Abad Batkhela Malakand.
4. Noor Zaman S/o Sher Zaman R/o Dheri Julegram Malakand.
5. Imran Khan S/o Muhammad Rafiq R/o Khar Batkhela Malakand.

Subject: **APPEAL.**

Memo:

In compliance with the Judgment of Peshawar High Court Mingora Bench (Darul Qaza) Swat, your case was properly enquired into and according to the Enquiry report your selection/ recruitment has been found in violation of the rules/ instruction of the Govt: on the subject, hence not entertain-able.

DIRECTOR GENERAL HEALTH
SERVICES, K.P.K, PESHAWAR

No. 4179-01 / Personnel

Copy forwarded to the:

1. DHO Malakand.
2. M.S DHQ Hospital Batkhela.
3. AD(Lit) DGHS, KPK Peshawar.

For information and necessary action:

DIRECTOR GENERAL HEALTH
SERVICES, K.P.K, PESHAWAR

Hafiz S.M Ali Shah

Offe J... 01/11/15
20/11/15
Attes 24/11/15
Medical Officer I/c
R.H.G. Dheri Julegram
Malakand Agency.

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 392 of 2015

Muhammad Arif.

...Appellant

VERSUS

*The Government of Khyber Pakhtunkhwa through
Secretary Health and Others.*

...Respondents

REJOINDER BY THE APPELLANT.

Respectfully Sheweth:

Preliminary Objections:

That both the preliminary objections are incorrect and baseless hence are specifically denied. Moreover the appellant has got a prima facie case in his favour and has approached this Honourable Tribunal within time with clean hands and this Honourable Tribunal has got the jurisdiction to adjudicate upon the same.

On Facts:

- i. Para i to para iv being admissions, hence needs no comments.*
- ii. Para v of the comments as drafted is incorrect, baseless, without any proof and merits. Nothing of the alleged allegations are placed before this Honourable Tribunal nor is there any specific mention of the appellant, hence the para is*

- iii. *Para vi of the comments as drafted is incorrect baseless and without any meritless, vague and evasive hence is denied specifically.*

On Grounds:

- a. *Ground a needs no comments.*
- b. *Ground b is vague and evasive and amounts to admission, hence no comments.*
- c. *Ground c to ground f are evasive and amounts to admission hence no comments.*

It is, therefore, very respectfully prayed that on acceptance of this rejoinder the appeal of the appellant may very kindly be decided as prayed for originally.

Appellant
Arif
Muhammad Arif

Through Counsels,

Aziz-ur-Rahman

Imdad Ullah
Imdad Ullah

Advocates Swat

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 392 of 2015

Muhammad Arif.

...Appellant

VERSUS


The Government of Khyber Pakhtunkhwa through
Secretary Health and Others.

...Respondents

AFFIDAVIT

It is solemnly stated on Oath that all the contents of
this rejoinder are true and correct to the best of my
knowledge and belief and nothing has either been
misstated or concealed thereto.

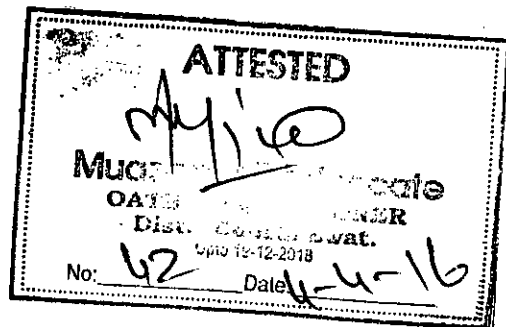
Deponent


Muhammad Arif

Identified By:


Imdad Ullah

Advocate Swat



KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1682 /ST Dated 10 / 10 / 2016


To

The D.H.O,
Malakand at Batkhela.

Subject: - JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 4.10.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.